

Monday, August 18, 2008

The plight of pro se defendants.

Â Bill of Rights.Â (From the public domain.)Â Â One day I asked a prosecutor if she feels any discomfort going against unrepresented criminal defendants, most of whom are not poor enough to qualify for court-appointed counsel but for whom the financial struggle is too great or impossible to hire a lawyer, and some of whom are dilatory in obtaining a court-appointed or private lawyer. Â She said she feels no discomfort, because she offers all defendants the same guilty plea offers, whether or not represented by a lawyer. Assuming the truth ofÂ her assertion, for argument's sake, what happens after she conveysÂ the initialÂ guilty plea offer? A capable criminal defense lawyer will advise the client whether to reject the plea offer, accept it, or return with a counteroffer, and how to time and express any reply.Â How will the pro se defendant respond? If the case goes to trial, will the pro se defendant represent himself or herself anywhere near as capably as an experienced trial lawyer? Also, the pro se defendant effectively loses the right to remain silent throughout trial. Â How do prosecutors respond to a counteroffer from a skilled trial lawyer versus from a pro se defendant (and, for that matter, versus a lawyer who is green or about whom the prosecutor knows nothing)? Negotiations are about hedgebetting. Prosecutors have fewerÂ bets to hedgeÂ with unrepresented defendants, whom, by definition, are on weaker ground than if they had a qualified lawyer. Â A case in point came recently whenÂ I walked into misdemeanor court, and the prosecutor cheerfully offered for my client to plead guilty to a lesser but still jailable and collateral-risk laden offense. I asked which witnesses were present, and none were. During the break, the prosecutor said the arresting officer in the case was on his way, and urged that his guilty plea offer was the way to go. Probably having had much more time to know my one case versus the prosecutor's two dozen cases, I told the prosecutor that even if the cop arrived, he still had a weak case because of A, B and C, and I said I would not recommend that my client plead guilty to any jailable offenses. The prosecutor ended up dismissing my case later in the day.Â How would a pro se defendant have handled the foregoing scenario, and how would the prosecutor have responded? WouldÂ theÂ pro se defendant have known whether this was a courthouse and case where ordinarily the defendant can get away with waiting for prosecution witnesses to show up before deciding whether to accept a guilty plea offer?Â Would the prosecutor have told the pro se defendant that the plea offer would be off the table upon the cop's arrival? Would the prosecutor have emphasized the jail risks faced by the pro se defendant byÂ going to trial when the plea offer involved no executed jail request from the prosecutor? Would the prosecutor have argued that the pro se defendant was entering dangerous, uncharted territory to take a case to trial without a lawyer? Â How do we ameliorate the plight of pro se defendants? One way is to assure that quality court-appointed/ public defender counsel is made available to indigent defendants, and that truly needy defendants are not barred by guidelines or unfair or uneven application thereof that misses them. What do about defendants who are not poor enough to obtain indigent defense counsel but will struggle mightily to pay for a lawyer -- after paying for rent, transportation, children's needs, groceries, and other essentials -- or will not be able to obtain the funds at all? As to the former category of criminal defendant, at least in the past, the Maryland criminal defense bar used to have members who agreed to be part of a "gray panel" that offered reduced rates to such people; such a practice needs to continue. Have indigent defense lawyer application guidelines kept up with today's economic realities of expensive rates for qualified criminal defense lawyers and high prices for gas, food, and other essentials? Should publicÂ funds be made available to provide partial subsidies to people who are borderline eligible to obtain indigent defense counsel but do not qualify? Awhile ago, I wrote this piece about the struggles that most ordinary-income people face in paying for quality legal representation. Â Of course, probably we always will also see a handful of pro se criminal defendants who would not obtain counsel even if they qualified for indigent defense counsel. All criminal defendants have the right to choose their own counsel, including to proceed with self-representation. Caveat emptor. Jon Katz.

Posted by Jon Katz in Drunk driving/DWI/DUI at 00:00

well i went pro se in a 3-5 du.i in hall county ga. it was a jury trial and i was acquitted on 2 counts. i was under 21 when i got the d.u.i so they had me on an underage d.u.i and a less safe d.u.i. i blew a .117 and i walked out a free man. the trial lasted 2 days and the jury deliberated for 6 hours. go to myfoxatlanta.com...type in hall co man...then go to 21 year old represents himself and watch. also how can i get into law school???

Anonymous on Dec 15 2008, 02:19