

# Court ruling buys Idaho time to do nothing

**Marty Trillhaase/Lewiston Tribune Editorial Board**

Fourth District Court Judge Samuel Hoagland may have let the state off the hook last week when he dismissed the American Civil Liberties Union's lawsuit attacking the way Idaho provides attorneys for indigent criminal defendants.

But Hoagland is not blind to the problem.

Far from it.

Hoagland agreed the system is broken.

"The central issue in this case concerns the continuous and systematic violation of fundamental constitutional human rights," Hoagland ruled last week.

Defendants are at the mercy of overburdened public defenders who often lack resources and even experience - and who answer to county commissioners more attuned to the bottom line than any constitutional niceties.

But the blame, Hoagland ruled, does not belong to the counties.

The Sixth Amendment guarantee to a fair trial, the 14th Amendment guarantee to due process, the Idaho Constitution and the U.S. Supreme Court all place the responsibility on the state.

"The fact that the Legislature has delegated public defender services to the individual counties does not abdicate the defendants' responsibility to indigent criminal defendants in the state of Idaho," he wrote. "(Neither does it abdicate further legislative responsibility, nor excuse legislative inaction.)"

If the judge had left it there, Idaho lawmakers would be scrambling to address a problem that's been allowed to fester for more than a decade. In 2007, the National Legal Aid and Defender Association documented the system's shortcomings. The state has responded by assigning the Criminal Justice Commission and the Idaho Public Defense Commission to design reforms. But the heart of the matter is money. Again this year, Gov. C.L. "Butch" Otter has urged lawmakers to upgrade the system with an infusion of resources and accountability.

Instead, Hoagland ruled the ACLU was dealing in hypotheticals. The situation is bad; but where are the individuals who have been demonstrably wronged by it?

"Essentially, the plaintiffs request the court to assume control of public defense in Idaho, on the basis that a few defendants might have their rights violated," Hoagland wrote. "Such relief is too speculative and fundamentally violates the notion that courts are to decide specific cases and controversies before them."

Two outcomes are possible: The

Idaho Supreme Court, which will hear the ACLU's appeal, may disagree with Hoagland.

Or the ACLU will start rounding up aggrieved parties, such as:

- The person facing a felony charge who shows up in court without any counsel at all.
- An individual accused of a crime who, without the assistance of a lawyer, can't post bond, sits in jail, loses his job and can't assist in his own defense.
- The defendant who meets once or twice with his public defender - and then only for the few minutes the attorney can spare in his busy schedule - and is steered toward taking a plea bargain.

Here's betting the ACLU won't have much trouble, but the process will take time.

Why put everybody through that? Idaho lawmakers could follow up on Otter's request for \$5 million and not wait for an adverse court ruling that is certainly coming.

Lawmakers didn't so much win a court case last week as they got a temporary reprieve. They merely got a little more time to proactively reform the public defense system - rather than wait for a judge to tell them how to do it. - M.T.