The Slow Justice Movement

BY GEOFF BURKHART

When things happen too fast, nobody can be certain about anything, about anything at all, not even about himself.


Americans exalt efficiency. Rapid transit, high-speed Internet, speed dating, fast food—few would abandon these for buggies and snail mail. But, as those of us who have daily gorged ourselves on fast food can attest, speed carries a cost. Some things are better slow.

Nowhere is this truer than in criminal justice. A quick Google or Westlaw search for “McJustice” or “assembly line justice” yields impressive results:

With many counties at their breaking points, Michigan courts increasingly value speed over quality, leading many advocates in the Ottawa County criminal justice community to describe the system as providing “McJustice.”

(Press Release, NLADA, Michigan Ranks 44th in the Nation for Public Defense Spending; So-Called “McJustice” System Puts Communities at Risk (June 2008), http://tinyurl.com/ovkzotn.)

Quality is sacrificed for efficiency. . . . We are fast becoming the courts of McJustice.

(Jeff Severns Guntzel, Minnesota’s Public Defender Shortage: “We Are Fast Becoming the Courts of McJustice,” MINNPOST (Oct. 13, 2010).)

[The courtroom was more of a fast food process rather than the idealistic notions which television and movies place in our head. I saw the public defenders, assistant district attorneys and judges as providing a service where the goal is to dispose of the cases as quickly as possible while still effectuating justice. Every player has a role to help the business run efficiently.

(William P. Quigley, Reflections from the Journals of Prosecution Clinic Students, 74 Miss. L.J. 1147, 1167 (2005).)

We’re seeing court systems that are run about like a fast food restaurant. A fast food restaurant may be a little better, because at least there [are] some choices and a menu there for the customers. But people are processed through court not understanding what’s happening to them, with no investigation by the lawyer, no understanding of who they are, when they’re sentenced. They’re just processed through the system.

(Mark C. Milton, Why Fools Choose to Be Fools: A Look at What Compels Indigent Criminal Defendants to Choose Self-Representation, 54 St. Louis U. L.J. 385, 404 (2009).)

[The attorney] describes being a public defender as a cross between an air-traffic controller and working at a fast-food restaurant. There are a lot of moving parts that have to be dealt with quickly and with people’s lives hanging in the balance.


Data backs this up. Last year, an ABA study of the Missouri Public Defender Office found that attorneys spent, on average, 2.3 hours on each misdemeanor, but should be spending 11.7 hours in order to deliver reasonably effective assistance of counsel. (THE MISSOURI PROJECT: A STUDY OF THE MISSOURI PUBLIC DEFENDER SYSTEM AND ATTORNEY WORKLOAD STANDARDS 24 (2014), http://tinyurl.com/qpp4v5u.) In 2009, a study by the National Association of Criminal Defense Lawyers (NACDL) found that, on average, attorneys in Chicago, Atlanta, and Miami handled more than 2,000 misdemeanors a year. (NACDL, MINOR CRIMES, MASSIVE WASTE: THE TERRIBLE TOLL OF AMERICA’S BROKEN MISDEMEANOR COURTS 21 (2009), available at www.nacdl.org/reports/misdemeanor/) A separate NACDL report found that the average misdemeanor arraignment in Florida lasts less than three minutes, even while most misdemeanants plead guilty at arraignment. (NACDL, THREE-MINUTE JUSTICE: HASTE AND WASTE IN FLORIDA’S MISDEMEANOR COURTS 9 (2011), available at www.nacdl.org/reports/threeminutejustice/.)

The ABA has developed extensive standards regarding defense counsel’s duties. (STANDARDS FOR CRIMINAL JUSTICE: DEF. FUNCTION (4th ed. 2015).) Not one of those tasks—investigating the facts (Standard 4-4.1), researching the law (Standard 4-4.6), communicating with the client (Standards 4-3.1, 4-3.3, 4-3.9, 4-5.1), negotiating with prosecutors (Standards 4-6.1, 4-6.2, 4-6.3), filing appropriate motions (Standard 4-6.2, 4-7.11, 4-8.1)—could be completed in less than three minutes, much less all of them.

GEOFF BURKHART is an attorney and project director for the American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants.
And while books and television aren’t an accurate reflection of legal practice—the rules of evidence, for instance, don’t seem to exist in Hollywood—the gap between practice and the stories that inspired many of us is often disturbing. The methodically crafted defense mounted by Atticus Finch (before his sequel-driven downfall) bears little resemblance to an attorney saddled with more than 2,000 cases a year. Given that more than 95 percent of defendants plead guilty, the diligence of the jurors in 12 Angry Men is still.

While assembly line justice burdens attorneys, its effect on clients is greater still. The National Registry of Exonerations, a joint program of the University of Michigan and Northwestern University, has documented over 1,300 exonerations since 1989. Because exonerations occur most often in homicide and rape cases, which constitute less than 2 percent of felony convictions, scholars believe that this is just the tip of the iceberg.

But justice isn’t reserved for the innocent. We have a duty to provide competent and diligent representation to all clients. (See Model Rules of Prof’l Conduct R. 1.1, 1.3; ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 06-441 (2006).) That’s simply impossible when shouldering hundreds of cases. (See, e.g., Tina Peng, I’m a Public Defender. It’s Impossible for Me to Do a Good Job Representing My Clients, Wash. Post, Sept. 3, 2015.)

We’ve prized efficiency over effectiveness for too long. There’s a movement afoot, across several disciplines, to slow down. The Slow Movement is an intentional shift toward more thoughtful, logical pacing. A central tenet is that faster is not always better—some things are worth doing well instead of quickly. The time is ripe to apply this simple principle to criminal justice.

Carl Honore’s In Praise of Slowness (2004) is a call to arms for slow-minded folks (pun unavoidable). Honore argues that “some things cannot, should not, be sped up. They take time; they need slowness. When you accelerate things that should not be accelerated, when you forget how to slow down, there is a price to pay.” (Id. at 4–5.) As described above, we’ve paid a price for assembly line justice many times over in attorneys neglecting their ethical and constitutional obligations, clients being processed like cattle, and money being spent on imprisonment, re-litigation, and compensation for innocent clients.

But what would a Slow Justice Movement look like? The image shouldn’t be too foreign. Simply put, it would look a great deal like ABA standards. Instead of three-minute justice, an attorney could meet with his or her client before court, research the law, investigate the facts, explore collateral consequences, strategize with other attorneys, develop mitigation, and give informed advice as to whether to proceed by way of trial or plea.

That last part warrants consideration. To be sure, a utopian system devoid of pleas isn’t desirable. Guilty pleas are an excellent tool when attorneys have sufficient time to investigate, research, and communicate. But meet-and-pleads have no place in criminal justice. If guilty pleas are to exist, attorneys should stick closely to ABA standards, which require full investigation and research prior to entering a plea. (See, e.g., Standards for Criminal Justice: Def. Function Standard 4-6.1(b) (“In every criminal matter, defense counsel . . . should not recommend to a client acceptance of a disposition offer unless and until appropriate investigation and study of the matter has been completed. Such study should include discussion with the client and an analysis of relevant law, the prosecution’s evidence, and potential dispositions and relevant collateral consequences.”).) Thus, while a Slow Justice Movement would have fewer guilty pleas, it would certainly have some.

Nor is a Slow Justice Movement contrary to the right to a speedy trial. Despite its name and snail logo, the Slow Movement does not seek to do everything at a snail’s pace. Rather, it seeks the right pace. As Honore writes, “The paradox is that Slow does not always mean slow.” Rather, the Slow Movement is about balance. The aim is the right speed: not too fast, not too slow, but control the pace, maximizing both efficiency and effectiveness.

How, then, should we pursue a Slow Justice Movement? There are several ways to slow criminal justice: lowering caseloads through decriminalization, reclassification, caseload limits, or prosecutorial discretion; increasing funding through education, lobbying, or litigation; using the private bar as a release valve when caseloads are too high. Whatever the approach, quality must precede quantity.

Like a drive-thru burger, American criminal justice is often fast, cheap, and unhealthy, while maintaining a nourishing guise. But we have seen the actual effects of speed—both in food and justice—for too many years to be complacent. The time to slow down is now.