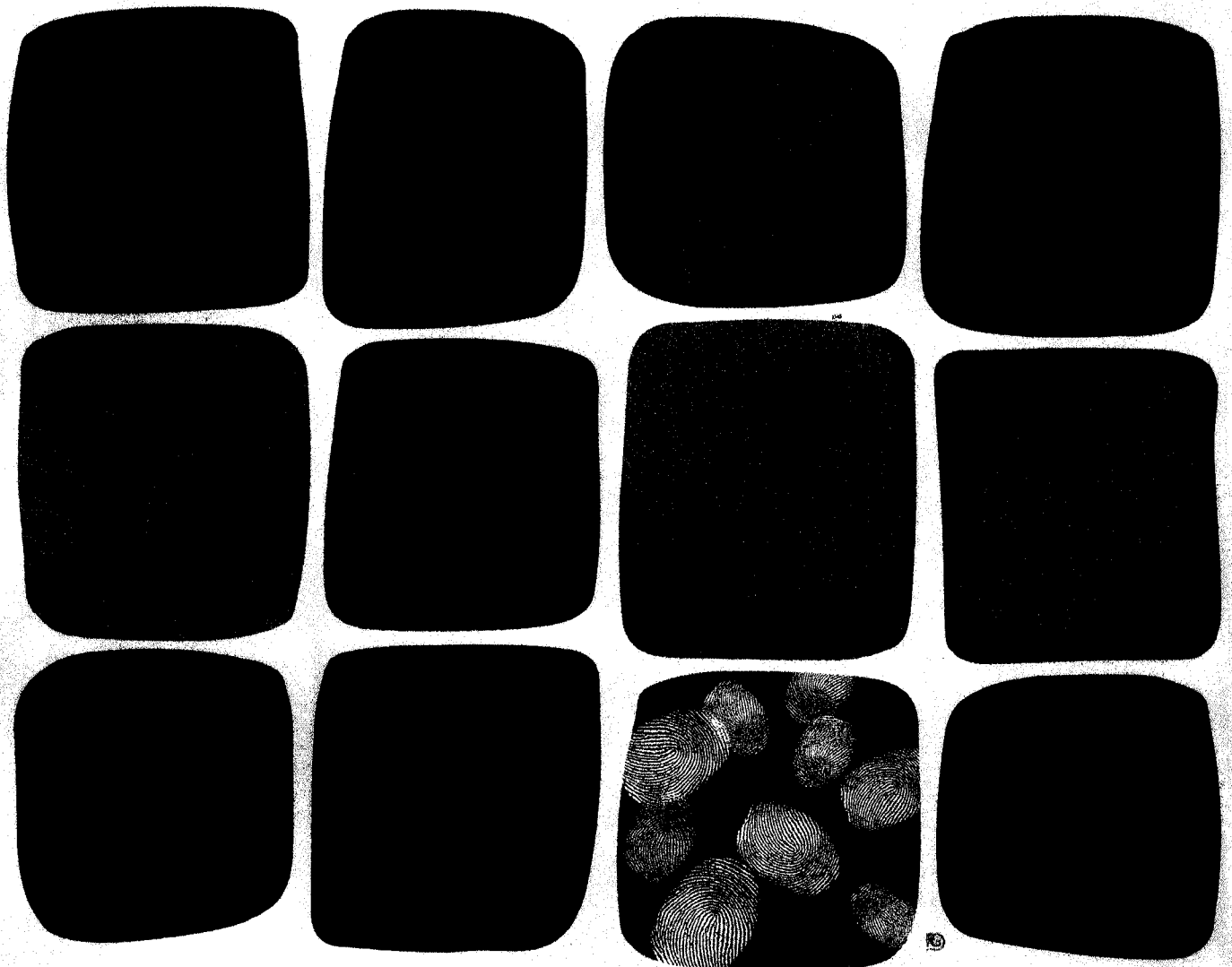


# Litigation

AMERICAN BAR ASSOCIATION

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uniform without any insignia and refused to enter a plea. Her defense counsel insisted that Nash was not guilty of any offenses involving the Hesse crown jewels because the Hesse family had abandoned the treasures or, alternatively, that the jewels were legitimate spoils of war.

The court disagreed. It found Nash guilty and sentenced her to be imprisoned for five years.

Watson was next. His defense was that looting was common in Germany and that because the treasure belonged either to dead Nazis or S.S. members, the property could not be returned to them. In any event, argued Watson, he lacked the criminal intent to steal anything. The court of 10 colonels agreed with Watson, at least in part. But, while finding him not guilty of larceny, the panel convicted him of the remaining offenses, including receiving stolen property. He was sentenced to three years in jail.

Jack Durant was the last to go to trial. Colonel Durant was found guilty of all charges. He was sentenced to 15 years confinement at hard labor.

In August 1951, the Army announced that it had “returned to their owners the Hesse jewels, which have been in the custody of the United States since 1946,” including “jewels filling 22 cubic foot Army safes and consisting of more than 270 items.” Among the returned treasures were “a platinum bracelet encrusted with 405 diamonds; a platinum watch and bracelet with 606 diamonds; a sapphire weighing 116.20 carats; a group of diamonds weighing 282.77 carats; and a gold bracelet with 27 diamonds, 54 rubies and 67 emeralds.”

Despite the return of these items, more than half of the Hesse crown jewels, and most of the gold and silver that had been hidden in the wine cellar, were never recovered. To this day, no one knows what happened to this missing treasure.

As for Nash, Watson, and Durant, they served their sentences at the U.S. Disciplinary Barracks, Fort Leavenworth,

Kansas, and were then released. Watson was the first to be freed; he was paroled in 1947. When he died in 1984, he was still petitioning for a presidential pardon. Nash and Durant were both released in 1952; apparently, they spent their remaining days together before dying in the mid-1980s. ■

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LETTER TO THE EDITOR

## Defender Workloads Are Unethical

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We read with interest and dismay Judge Sean C. Gallagher’s “Sua Sponte” comments in the Winter 2016 issue, in which he responds to the featured article “Meet-and-Plead: The Inevitable Consequence of Crushing Defender Workloads,” written by several of our American Bar Association colleagues. Among other things, Judge Gallagher claims that such a characterization “is an oversimplification that doesn’t hold up.”

Instead, Judge Gallagher maintains, despite considerable evidence to the contrary, that our criminal justice system is “overwhelmingly fair” and that we must “find an acceptable balance between efficiency and justice.” Finally, he rather cynically urges all of us to “accept the reality that things are not going to dramatically change.”

That we refuse to do. We are the National Association for Public Defense (NAPD), a two-year-old organization of more than 13,000 public defenders all over America who every day do the heroic, indeed Sisyphean work of defending poor people accused of crimes against the power of the state. The pervasive problem

of excessive public defender workloads all over America was the primary organizing principle driving the formation of the NAPD.

As noted by our ABA colleagues in their well-documented article, both the Missouri Supreme Court (in 2012) and the Florida Supreme Court (in 2013) have squarely held that a judge exceeds his authority and is subject to an immediate writ of prohibition when he orders a public defender to violate the Rules of Professional Conduct and the U.S. Constitution by accepting new appointments when that public defender has so many cases that she cannot provide reasonably effective assistance of counsel to each one of her clients.

In sharp contrast to Judge Gallagher’s observation that our criminal justice system is “overwhelmingly fair,” the Florida Supreme Court described the evidence presented in that case as “a damning indictment of the poor quality of trial representation being afforded indigent defendants.”

Led by the ABA’s Standing Committee on Legal Aid and Indigent Defendants and some of our nation’s leading accounting and consulting and research organizations, we are now generating the reliable data and analytics (not just anecdotes and generalizations) that will provide the factual predicate for systemic case refusal as a remedy for such systemic Sixth Amendment and ethical violations all over the country.

So we refuse to accept Judge Gallagher’s admonition to accept the reality that things are not going to change. On the contrary, that is precisely what things are about to do.

Justice Stevens, speaking in a Fourth Amendment context that could well apply in the Sixth Amendment context, has described our criminal courts as “loyal foot soldier[s] in the Executive’s war on crime.” We will no longer march to the beat of that drum. ■