How Investigative Reports Can Support Defense Reform

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SEATTLE UNIVERSITY SCHOOL OF LAW

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Key Needs for Reform

Independence of Defenders

Counsel at all hearings
Reasonable Caseloads
Adequate Compensation
Expert and support staff resources

Training and Supervision

Interpreters

Diversion or Decriminalization of Minor Offenses

Attention to Racial Disparity

Reduction in Sentencing Impact and Collateral Consequences

FINAL

JUSTICE DENIED

AMERICA'S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL

Report of the
National Right to Counsel Committee

The Constitution Project

- **What States Should Do**
- *Compliance with the Constitution*

- **Recommendation 1**—States should adhere to their obligation to guarantee fair criminal and juvenile proceedings in compliance with constitutional requirements. Accordingly, legislators should appropriate adequate funds so that quality indigent defense services can be provided. Judges should ensure that all waivers of counsel are voluntary, knowing, intelligent, and on the record, and that guilty pleas are not accepted from accused persons absent valid waivers of counsel. Prosecutors should not negotiate plea agreements with accused persons absent valid waivers of counsel and should adhere to their duty to assure that accused persons are advised of their right to a lawyer.

- **Recommendation 2**—States should establish a statewide, independent, non-partisan agency headed by a Board or Commission responsible for all components of indigent defense services. The members of the Board or Commission of the agency should be appointed by leaders of the executive, judicial, and legislative branches of government, as well as by officials of bar associations, and Board or Commission members should bear no obligations to the persons, department of government, or bar associations responsible for their appointments. All members of the Board or Commission should be committed to the delivery of quality indigent defense services, and a majority of the members should have had prior experience in providing indigent defense representation

- *Qualifications, Performance, and Supervision of Counsel*

- **Recommendation 5**—The Board or Commission should establish and enforce qualification and performance standards for defense attorneys in criminal and juvenile cases who represent persons unable to afford counsel. The Board or Commission should ensure that all attorneys who provide defense representation are effectively supervised and remove those defense attorneys who fail to provide quality services.

- *Workload*

- **Recommendation 6**—The Board or Commission should establish and enforce workload limits for defense attorneys, which take into account their other responsibilities in addition to client representation, in order to ensure that quality defense services are provided and ethical obligations are not violated.

- *Compensation*

- **Recommendation 7**—Fair compensation should be provided, as well as reasonable fees and overhead expenses, to all publicly funded defenders and for attorneys who provide representation pursuant to contracts and on a case-by-case basis. Public defenders should be employed full time whenever practicable and salary parity should be provided for defenders with equivalent prosecution attorneys when prosecutors are fairly compensated. Law student loan forgiveness programs should be established for both prosecutors and public defenders

- *Adequate Support and Resources*
- **Recommendation 8**—Sufficient support services and resources should be provided to enable all defense attorneys to deliver quality indigent defense representation, including access to independent experts, investigators, social workers, paralegals, secretaries, technology, research capabilities, and training.
- **Recommendation 9**—Prompt eligibility screening should be undertaken by individuals who are independent of any defense agency, and defense lawyers should be provided as soon as feasible after accused persons are arrested, detained, or request counsel.

- **Recommendation 10**—In order to promote the fair administration of justice, certain non-serious misdemeanors should be reclassified, thereby reducing financial and other pressures on a state's indigent defense system.

Minor Crimes, Massive Waste

The Terrible Toll of America's Broken Misdemeanor Courts

News conference
April 28, 2009
10 a.m.

SEATTLE UNIVERSITY SCHOOL OF LAW

National Association of Criminal Defense Lawyers
NACDL 1958

The explosive growth of misdemeanor cases is placing a staggering burden on America's courts. Defenders across the country are forced to carry unethical caseloads that leave too little time for clients to be properly represented.
As a result, constitutional obligations are left unmet and taxpayers' money is wasted....

Legal representation for misdemeanants is absent in many cases. When an attorney is provided, crushing workloads often make it impossible for the defender to effectively represent her clients. Counsel is unable to spend adequate time on each of her cases, and often lacks necessary resources, such as access to investigators, experts, and online research tools.

- These deficiencies force even the most competent and dedicated attorneys to engage in breaches of professional duties. Too often, judges and prosecutors are complicit in these breaches, pushing defenders and defendants
- to take action with limited time and knowledge of their cases. This leads to guilty pleas by the innocent, inappropriate sentences, and wrongful incarceration, all at taxpayer expense.

WASHINGTON DEFENDER ASSOCIATION

STANDARDS FOR PUBLIC DEFENSE SERVICES

Objectives and minimum requirements for providing legal representation to poor persons accused of crimes or facing Juvenile or Civil Commitment proceedings in Washington State.

October 1989

Defender News

Tales of the Seattle - King County Defender Association

August 28, 1987

City Council Staff Report Finds Defender Caseloads Excessive, Recommends Higher Salaries

A City Council staff report recommends that Defender caseloads be reduced and public defender salaries be increased so that they are more comparable to those paid to assistant city attorneys. The report also recommends increasing the payment rate for RALJ cases.

The recommendations were contained in a 30 page report presented this week to the City Council Public Safety Committee. The report was written by staff person Susan Crane, who formerly worked at Evergreen Legal Services. Representatives of the Defender and ACA were consulted in the preparation of the report.

The report recommends lowering the budgeting assumption of 400 cases per public defender attorney. The Defender aims for a caseload of 360-375, and ACA runs between 400 and 450 per lawyer. The report also recommends increasing the payment rate for RALJ appeals, from the current $487.50 to approximately $839, recongizing that it takes defender attorneys at least 20 hours per case instead of the 9.3 hours budgeted. This recommendation was relatively uncontroversial, as both the Defender and ACA support this analysis and the city budget office did not object.

The report concluded that Seattle's defenders carry heavy caseloads and that the nature of the work has become more complex in recent years. The salaries are low by both local and national standards, with only Snohomish County defenders among Washington cities earning less than the Defender staff.

Ms. Crane recommended, however, that the city not readjust the caseload and salary assumptions immeidately, and that the city and county should develop a "unitary standard for public defender reimbursement."

Defender News

Tales of the Seattle - King County Defender Association

September 14, 1988

Rights 'Stomped On', Says Judge

City Attorney Calls Municipal Court Arraignment Calendar a 'Zoo"

City Attorney Doug Jewett, lamenting budget problems, told the City Council Public Safety Committee yesterday that "no one feels comfortable in the zoo that is now the arraignment calendar" in Municipal Court.

In a meeting called to discuss problems in the court, Mr. Jewett described the arraignment calendar and the pre-jury trial calendar as a "zoo" in which it is difficult to provide justice. He said that the addition of 90 police officers has become counterproductive in terms of the inefficiencies in the system and the failure to provide justice. "We're all the losers for it," he said.

Judge Ron Kessler said that the in-custody arraignment calendar is the most serious problem that the court has. Noting that the National Legal Aid and Defender Association in 1981 condemned the arraignment calendar as "supermarket justice", he said that the number of cases has increased and the amount of court time available has decreased, and "if anything, we're in worse shape now." He said that the average time per accused person on the calendar is under three minutes. The pressure on the lawyers and the judges is to move the calendar along, "and when you do that, people's rights get stomped on."

The judges are not taking the time to determine the appropriateness of the sentence, and once again, Judge Kessler said, "you end up with supermarket justice."

Judge Kessler recommended that the calendar be limited to 70-80 clients per day, not the 150 who appeared on the Labor Day calendar which went until 9 p.m. He said the court can handle 20 an hour, but that "is intolerable." He described the tank where the clients wait as "woefully inadequate" and said that the noise level is "horrible". Because of the noise, the judges do not even bother to advise the group of their rights because they cannot hear.

Because of the pressure to move cases, the judges do not have time, he said, to weigh carefully release or sentencing decisions.

Presiding Judge Ron Mamiya, who pointed out that the court's revenue would exceed its

Defender Initiative's Misdemeanor Right to Counsel Project

To implement the right to counsel in misdemeanor courts in Washington State, and create a model for application in other states

Funded by The Foundation to Promote Open Society

Defender Initiative Plan

- Identify courts that do not provide counsel at arraignment
- Urge them to do so
- If necessary, take legal action
- Education—bar, bench, public

Methodology

- Observe courts, listen to recorded hearings
- Write to courts explaining deficiencies and proposing change
- Meet with judges, defenders, others
- Follow up
- Discuss possible litigation

Success So Far

- Sunnyside Municipal Court—added lawyer at arraignment
- Spokane District Court—added lawyer to the DUI arraignment calendar that did not have one
- Spokane Municipal—Promise to provide counsel at all hearings by March 1
- Pasco Municipal—changes in court procedures, promised change in advice of rights form, commitment to seek funding for arraignment counsel, completing plan to provide counsel

Strategies for Change

- Make Reports Widely Available
- Get Media Interest in Problems and Recommendations
- Build Alliances—Include Local Bar Associations
- Suggest ways to improve, need for funding
- Have Litigation as Option, Including writs and appeals
- Seek Legislation
  - To Limit Caseloads
  - To Require Standards

Legislation

City of Seattle 2004

Council Bill Number: 114900

Ordinance Number: 121501

- The City hereby reaffirms the caseload standards established in the 1989 Budget Intent Statement. The 1989 Budget Intent Statement, **the American Bar Association's Ten Principles of a Public Defense Delivery System** and the provisions of Section 1 of this Ordinance shall collectively constitute "standards for public defense services" as that term is used in RCW 10.101.030 until such time as the City Council may by ordinance adjust those standards. Consistent with the 1989 Budget Intent Statement, City agreements with indigent public defense service providers shall require caseloads no higher than 380 cases per-attorney per-year. The City also affirms the Washington State Bar- endorsed supervision standard of one full-time supervisor for every ten staff lawyers.

Washington State

- RCW 10.101.030 Standards.
- **Each county or city under this chapter shall adopt standards for the delivery of public defense services, whether** those services are provided by contract, assigned counsel, or a public defender office. **Standards shall include the following: Compensation of counsel, duties and responsibilities of counsel, case load limits and types of cases, responsibility for expert witness fees and other costs associated with representation, administrative expenses, support services, reports of attorney activity and vouchers, training, supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on private practice of contract attorneys, qualifications of attorneys, disposition of client complaints, cause for termination of contract or removal of attorney, and nondiscrimination**. The standards endorsed by the Washington state bar association for the provision of public defense services should serve as guidelines to local legislative authorities in adopting standards.

Case Law Citing Reports

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)Respondent,) No. 81236-5

v.) En Banc

A.N.J.,)) Appellant.)

Filed January 28, 2010

- Yet 45 years after Gideon, we continue our efforts to fulfill Gideon's promise. While the vast majority of public defenders do sterling and impressive work, in some times and places, inadequate funding and troublesome limits on indigent counsel have made the promise of effective assistance of counsel more myth than fact, more illusion than substance. Public funds for appointed counsel are sometimes woefully inadequate, and public contracts have imposed statistically impossible case loads on public defenders and require that the costs of experts, investigators, and conflict counsel must come out of the defenders' own already inadequate compensation. [citing among other references The Constitution Project, Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel]

- The Washington Defender Association (WDA) has established standards for adequate representation. ... However, while not binding, **relevant standards are often useful to courts in evaluating things like effective assistance of counsel**. See, e.g., In re Pers. Restraint of Brett, 142 Wn.2d 868, 879-80, 16 P.3d 601 (2001). We note that state law now requires each county or city providing public defense to adopt such standards, guided by standards endorsed by the Washington State Bar Association. RCW 10.101.030; see also Wash. State Bar Ass'n, Standards for Indigent Defense

Ways to Cut Caseload and Costs

- Diversion of Suspended Driver License Cases
- Re-Licensing programs
- Diversion of Marijuana Possession Cases
- Diversion of Minor in Possession of Alcohol Cases
- Diversion of Shoplifting Cases
- Decriminalization of Offenses Such as Sleeping on Sidewalk

Examples of Press Coverage

Study: Drug, driving charges sap nation's courts

By LEVI PULKKINEN
SEATTLEPI.COM STAFF

- Immediate change is needed in the prosecution of low-level driving offenses and drug crimes, Seattle University researchers said in announcing the results of a study of the nation's misdemeanor courts.
- The nation's misdemeanor courts, which handle criminal cases that carry less than a one-year jail term, are stressed to the point that many jurisdictions fail to provide low-income defendants with constitutionally mandated legal counsel, said Professor Bob Boruchowitz, lead researcher on the National Association of Criminal Defense Lawyers-supported study. Much of that load could be removed if authorities would handle some non-injury driving offenses and simple drug possession like they currently process traffic infractions.
- Often regarded as minor offenses, Boruchowitz said those convicted of misdemeanors lose employment and housing opportunities as well as access to federally backed student loans and other government services. Compounding the problem for poorer defendants, misdemeanor public defenders handle, at a minimum, several hundred cases a year.
- In King County, public defenders handling misdemeanors take on the equivalent of 380 to 450 cases a year. That's far lower than other jurisdictions studied by Boruchowitz, several of which carried averages of more than 2,000 cases a year.
- In the study -- "Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts" -- the authors outline a number of specific recommendations, including a proliferation in the number of diversion programs available to drivers caught with suspended licenses. King County Prosecutor Norm Maleng implemented such a system years before his death in 2007, a framework which Borchowitz called "a model for the rest of the country."

Monday, July 21, 2003

Thousands lack lawyers in crucial court hearings

Defenders on mission to ensure legal rights

By TRACY JOHNSON
SEATTLE POST-INTELLIGENCER REPORTER

- One man who was found drunk in a broken-down truck near Issaquah pleaded guilty without the help of a lawyer, later regretting that decision as he sat behind bars.
- Another man listened to a courtroom discussion between an Auburn city prosecutor and a judge, who seemed to agree on his fate.
- "What's going on?" the man asked, quickly learning he was headed to jail for three years.
- To most people, it's a given: You get charged with a crime; you have the right to a lawyer. If you decide to go it alone, the judge must make sure you fully understand what you're up against -- and each right that you're giving up.
- Yet in smaller Washington courts that handle misdemeanor charges, that doesn't always happen.

The Olympian

- **Don't send kids to court alone**
  Published April 21, 2008
- **Legal aid for the thousands of impoverished people charged with crimes in Washington state has improved in recent years, thanks to increased responsibility and funding by the state.**
- **But a just-released report on the status of public defense in the state shows there are still major gaps in legal support for the poor.**
- **Most troubling is the finding that 17 counties never or only sometimes make public defense attorneys available to children and teenagers during their first appearance in juvenile court.**

Helpful to Remind Local Governments

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KITTITAS COUNTY

JEFFREY BEST, DANIEL CAMPOS, and GARY DALE HUTT, on behalf of themselves and all others similarly situated; and GREG HANSEN, Plaintiffs, v. GRANT COUNTY, a Washington county, Defendant.	NO. 04-2-00189-0 SETTLEMENT AGREEMENT

A. Commitment to Provide Effective Assistance of Counsel

Grant County agrees to maintain and operate a public defense system that provides effective assistance of counsel to all indigent persons charged with felony crimes in Grant County.

V. ATTORNEYS' FEES AND COSTS

1. Base Payment. Not later than two weeks after the Effective Date, Grant County shall pay Plaintiffs' counsel the sum of $500,000 in partial payment of the attorneys' fees and costs incurred by Plaintiffs' counsel during the litigation of this action.