

## Grant County's Public Defense on Trial

October 20, 2005

Kittitas County Superior Court Judge Michael E. Cooper has ruled that indigent defendants in Grant County have a well-grounded fear of not receiving effective legal counsel from Grant County's public defense system. Among other things, the judge found that Grant County's system overworked its lawyers, failed to provide effective supervision, and allowed the Grant County Prosecutor's Office to interfere with funding for expert witnesses and investigators.

The ruling came in a lawsuit challenging the Grant County public defense system filed by the American Civil Liberties Union and Columbia Legal Services. The case is set to go to trial on Nov. 8, with the trial focused on devising a public defense system that meets the County's constitutional obligation to provide effective assistance of counsel.

"We are pleased with the decision. It resolved many of the critical issues in favor of the plaintiffs and shows there's a clear need for an injunction to protect the rights of people who cannot afford an attorney," said David Taylor, an ACLU cooperating attorney in the case.

"With this ruling, the Court has properly focused the trial on exactly the right issue: how to eliminate the serious deficiencies in Grant County's public defense system so that in the future, people accused of felonies who can't afford an attorney will have a committed, qualified, and effective lawyer at their side," said Don Scaramastra, an attorney with Garvey Schubert Barer.

"The right of a person accused of a crime to be assisted by a competent attorney is fundamental to a criminal justice system that is fair to all. Unfortunately, deficient public defense systems exist in many counties in the state. The ACLU will be looking for other counties to address problems with their own indigent defense systems," said Julya Hampton, Legal Program Director for the ACLU.

In 2005 the Washington Legislature enacted legislation to provide limited state funding for public defense. The ACLU will continue to work in the 2006 session to gain full funding of public defense statewide and enforcement of the practice standards. Currently it is up to counties to fund public defenders for felony defendants who can't afford their own attorney.

The ACLU and Columbia Legal Services filed suit in April 2004 on behalf of Jeffrey Best, Daniel Campos and Gary Dale Hutt. The three were charged with felony offenses and alleged that Grant County didn't provide them with effective assistance of counsel. The lawsuit also includes a taxpayer plaintiff, Greg Hansen, who wants the county to provide constitutionally adequate defense to indigent persons and to use public funds wisely. The court granted the plaintiffs class-action status in August 2004.

In his ruling, Judge Cooper pointed out that "[A] right to effective assistance of counsel is inherent in the guarantee of counsel and is essential to a fair trial." Judge Cooper said it was "virtually uncontested" that the Grant County public defense system in place before April 2004 "suffered from systemic deficiencies, " such as public defenders with excessive case loads or little meaningful supervision. The system also allowed county prosecutors to interfere with the selection of defense

attorneys and with the funds for defense experts and investigators.

These deficiencies "created an atmosphere in which the class plaintiffs developed a well-grounded fear of immediate invasion of their respective right to effective assistance of counsel and is evidence of an ongoing concern," Judge Cooper wrote.

Judge Cooper noted that although some improvements have been made with the 2005 public defense contract, problems in the current system continue. The trial will focus on devising a public defense system that meets constitutional standards. The Court will rely on the Washington Defender Association Standards for Public Defense Services and the principles established by the American Bar Association.

In addition to the deficiencies listed by Judge Cooper, the lawsuit also argued that Grant County's public defenders:

- Failed to communicate with clients
- Did not interview potential witnesses
- Failed to use investigators or experts
- Failed to properly advise clients before entering guilty pleas
- Did not file critical legal motions

Evidence presented to the Court included testimony from the County's own expert in public defense systems that prior to the filing of the lawsuit, Grant County's public defense system was "terrible" and that "intolerable caseloads" prevented public defenders from providing effective assistance of counsel.

The lawsuit is being handled by attorneys at the Perkins Coie and Garvey Schubert Barer law firms. The litigation team includes ACLU cooperating attorneys David Taylor, Breena Roos and Beth Colgan from Perkins Coie and ACLU staff attorney Nancy Talner. Garvey Schubert Barer attorneys include Don Scaramastra, Justin Dolan and Charles Cottrell and Lori Salzarulo. Columbia Legal Services attorneys are Pat Arthur, Joachim Morrison and Chris Kerkering.

The ACLU is reviewing practices in other counties to ensure that their indigent defense systems are constitutionally adequate. The 2004 ACLU report, "The Unfulfilled Promise of Gideon" shows that a majority of Washington counties lack comprehensive standards for the delivery of public defense services. Many counties do not have adequate oversight systems in place to sufficiently ensure these publicly funded legal services meet basic fiscal and constitutional standards of accountability. "The Unfulfilled Promise of Gideon" is available online [here](#).