

**Wilbur v. City of Mount Vernon—The
Right to a Meaningful Defense**
Municipal and Justice Court Defender Training
Office of State Public Defender
August 24, 2016
Biloxi, Mississippi

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Defender Initiative

Fred T. Korematsu Center for Law and Equality

**William Hellerstein: The Importance of the
Misdemeanor Case on Trial and Appeal 1970**

...the criminal court, the misdemeanor court, is such an abomination that it destroys any myth or notion that I ever had about the realities of American criminal justice. Only a reappraisal of the importance of what transpires in that court by defender agencies and efforts consistent with that reappraisal can provide some improvement.

Forty-four years ago— Argersinger v. Hamlin

- **Counsel is needed so that the accused may know precisely what he is doing, so that he is fully aware of the prospect of going to jail or prison, and so that he is treated fairly by the prosecution.**
- ...the volume of misdemeanor cases, far greater in number than felony prosecutions, may create an obsession for speedy dispositions, regardless of the fairness of the result.

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1130 (W.D. Wash. 2013)

- In *Argersinger v. Hamlin*, 407 U.S. 25, 33, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972), the Supreme Court noted that the legal and constitutional questions involved in the prosecution of petty offenses are not necessarily any less complex than those that arise in felony cases. In addition, the sheer volume of misdemeanor cases may give rise to unique procedural challenges that threaten the fairness of the criminal justice system...

<h3>Minor Crimes, Massive Waste</h3> <p>The Terrible Toll of America's Broken Misdemeanor Courts</p>	<h3>Three-Minute Justice:</h3> <p>Haste and Waste in Florida's Misdemeanor Courts</p>
	
 <p>NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS April 2009</p>	 <p>NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS July 2011</p>

 UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

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Protecting the Constitutional Right to Counsel for Indigents Charged with Misdemeanors

Full Committee
Date: Wednesday, May 13, 2015
Time: 10:00 AM
Location: Dirksen 226
Presiding: Chairman Grassley

Mississippi Constitution

- SECTION 26. In all criminal prosecutions the accused shall have a right to be heard by himself or counsel, or both....

UNIFORM RULES OF PROCEDURE FOR JUSTICE COURT

RULE 3.02 REPRESENTATION BY COUNSEL

Initial appearance, preliminary hearings, and representation by counsel shall be conducted according to the Uniform Rules of Circuit and County Courts approved by the Mississippi Supreme Court.

Outline of Discussion

- Biloxi Settlement and Requirements for Public Defense
- The Guidance from *Wilbur* and *Hurrell Herring* litigation, and their influence on Florida
- Impact of Case Weighting Studies
- How to use these cases and studies to reinforce effective representation

Biloxi settles suit over jail, fines

Jeff Amy, Associated Press 7:44 p.m. CDT March 15, 2016



(Photo: Special to The Clarion-Ledger)

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The city of Biloxi, the American Civil Liberties Union and a private probation service are settling a lawsuit about how the city court system treats poor people who can't pay fines.

The Biloxi City Council voted unanimously Tuesday to approve the settlement, which a federal magistrate judge approved last week. Under the deal, the city will spend more to provide lawyers to people who can't afford them, make sure anyone gets a hearing before being jailed over fines, and cut ties with private probation companies.

ACLU attorney Nusrat Choudhury praised Biloxi's settlement, saying it's a model for other cities. The suit was one of many nationwide alleging authorities are running "debtor's prisons" by ignoring constitutional protections against imprisoning poor people and employing for-profit probation services that demand additional fees.

"People shouldn't be detained because they don't have the ability to pay," Choudhury said. "We really think Biloxi came to the table to create a system that provides a workable model."

The case, *Kennedy v. City of Biloxi*, was filed in the U.S. District Court for the Southern District of Mississippi in Gulfport. The ACLU of Mississippi and Simon & Teuwissen PLLC are co-counsel for the plaintiffs.

The biggest change that the city court is making is to guarantee indigent defendants will have a public defender....

Biloxi spokesman Vincent Creel said the city will spend \$344,000 more per year to take over payment programs from the private company and provide public defenders to protect poor people.

"Biloxi's old procedures should have required ability-to-pay hearings not just at the first appearance, but at each stage of the process," Mayor Andrew "FoFo" Gilich said in a statement. "The biggest change that the city court is making is to guarantee indigent defendants will have a public defender and receive follow-up hearings on ability to pay if the defendant fails to comply with the sentence."

The suit alleged that Biloxi jailed 415 people in a nine-month period without offering them a lawyer or determining whether they had money.

■ <http://www.clarionledger.com/story/news/2016/03/15/biloxi-settles-suit-jail-fines/81838108/>

MAR
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BILOXI SETTLES LAWSUIT OVER COURT PRACTICES

Last Updated by [Evelina Burnett](#) on Mar 17, 2016 at 7:58 am



THE BUILDING OF THE BILOXI MUNICIPAL COURT.
ACLU

The city of Biloxi is changing its municipal court practices as part of a settlement in a federal lawsuit that had alleged the city was jailing people who were unable to pay traffic and other fines. MPB's Evelina Burnett reports.

"Essentially what we're going to be doing in Biloxi as a result of this settlement is we're going to be taking more steps to make sure that we're protecting the rights of all individuals that come before us in community court," says Vincent Creel, a spokesperson for the city of Biloxi.

- Nusrat Choudhury is an attorney with the ACLU. She says she hopes the model created in Biloxi will serve as inspiration for other cities.
- "There are a number of cities in the state of Mississippi that we've observed are jailing people in violation of their constitutional rights, people who are too poor to pay court-imposed fines and fees," she says. "We hope that every city in Mississippi takes a hard look at their court procedures and follows the model that Biloxi has set."

**KENNEDY V. CITY OF BILOXI - STIPULATED
SETTLEMENT AGREEMENT (EXHIBITS A & B)**

**STIPULATED SETTLEMENT AGREEMENT
AND RETENTION OF JURISDICTION**

TRAINING

d. Court-Appointed Defense Counsel. For a minimum of two (2) years, the public defender(s) and panel attorneys appointed by the Biloxi Municipal Court to represent indigent defendants shall attend annual trainings on LFO issues. The training shall address: (i) the standards set forth in *Bearden v. Georgia*, 461 U.S. 660 (1983); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); and *Turner v. Rogers*, 564 U.S. 431 (2011); (ii) the rights of defendants and indigent people charged with nonpayment of LFOs, including defendants' right to an ability-to-pay hearing and to be represented by counsel prior to jailing for failure to pay, and indigent defendants' right to court-appointed counsel at no cost to defend against possible incarceration for failure to pay; (iii) procedures and standards for assessing ability to pay at the time of imposing LFOs, setting a Payment Plan, and during Compliance Hearings, including the factors giving rise to a rebuttable presumption of inability to pay; (iv) defenses to charges of willful failure to pay LFOs and evidence in support of mitigation; (v) the Bench Card, the Biloxi Municipal Court Procedures for LFO Collection and Community Service and the forms attached

Training (continued)

thereto; (vi) the importance of meeting with clients in advance of sentencing proceedings and Compliance Hearings in order to prepare defenses against the imposition of LFOs and/or a finding of willful failure to pay, and to provide sufficient time to gather evidence in support of defenses and/or mitigation against failure-to-pay charges; (vii) the impact of LFOs on indigent people; (viii) alternatives to incarceration for those determined to be unable to pay LFOs, including the reduction or waiver of fines, fees, court costs, and restitution, as well as community service and approved job skills training and programs in education, counseling, mental health and drug treatment; and (ix) considerations regarding the inclusion of LFOs in plea agreements with indigent defendants. Biloxi shall ensure that copies of training materials are provided to, and reviewed with, all new public defenders and counsel added to the list of panel attorneys for appointment by the Biloxi Municipal Court.

Funding to Provide Competent Representation

Including Supervision and Data Collection

13. Public Defense and Appointment of Counsel to the Indigent. Since the filing of

this lawsuit, Biloxi has voluntarily provided additional funding to the Biloxi Legal Department and Biloxi Municipal Court and intends to continue providing funding needed to ensure: (a) that every defendant charged with failure to pay LFOs is provided a competent indigence determination using the Affidavit of Indigence for purposes of evaluating whether the Biloxi Municipal Court must appoint counsel to represent the defendant in any Compliance Hearing; (b) that all court-appointed counsel, whether a panel attorney or public defender, provide competent representation (including appeals and *habeas corpus* motions, as allowed by law) to indigent defendants charged with failure to pay LFOs; and (c) sufficient supervision of panel attorneys and public defenders; and (d) data collection.

a. Public Defense Contracts. Any professional services agreements with public defenders or panel attorneys working on a contract basis and representing indigent people in the Biloxi Municipal Court shall make clear: (i) that the attorney may be appointed to represent indigent people solely with respect to the issue of nonpayment of LFOs imposed by the Biloxi Municipal Court; (ii) that the attorney is expected and obligated to provide competent representation on LFO issues to any indigent person to whom the attorney is appointed, regardless of whether appointment was specifically in relation to nonpayment of LFOs; (iii) that such representation shall cover the imposition of LFOs, setting of a Payment Plan, and charges of nonpayment of LFOs; that such representation shall be continuing in nature (including appeals and habeas motions, as allowed by law); (iv) that the attorney is expected and obligated to participate in training on LFO issues and review related materials; (v) that the attorney will be supervised by Biloxi regarding the representation of indigent people in relation to LFO issues; and (vi) that the attorney is obligated to provide information, as defined in Paragraph (c) below, to Biloxi regarding such representation.

Supervision and No Excessive Caseloads

b. Supervision. No later than June 15, 2016, Biloxi shall establish procedures for the supervision of counsel appointed to represent indigent people charged with failure to pay LFOs. The supervision shall ensure that: (i) court-appointed attorneys are providing competent representation to indigent people regarding LFO issues, including LFO imposition and alleged nonpayment; (ii) that such representation shall be continuing in nature (including all appeals and habeas motions, as allowed by law); (iii) that adequate data is collected; and (iv) that each court-appointed attorney's caseload does not impede competent representation of indigent defendants.

Data Collection

Number of cases
Time per case
Jail visits, Motions, Trials, Investigation
Requests

c. Data Collection. No later than July 30, 2016, Biloxi shall start collecting the following data concerning cases involving the appointment of counsel to represent indigent people in the imposition and/or collection of LFOs: (i) number of cases to which each court-appointed attorney is appointed; (ii) amount of time spent on each case; and (iii) number of jail visits, motion filings, trials, and investigation requests handled by the attorney for each case.

City Paid \$75,000

- Divided among the three plaintiffs and providing \$25,000 in attorney fees to ACLU.

EXHIBIT A

BILOXI MUNICIPAL COURT PROCEDURES FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

No person shall be imprisoned solely because she/he lacks the resources to pay a fine, state assessment, fee, court cost, or restitution (collectively, "legal financial obligation" or "LFO"), or because she/he is unable to perform any required community service.

A person alleged to have not paid an LFO has the right to an ability-to-pay hearing and the right to have legal counsel present for representation to defend against possible incarceration for failure to pay. An indigent person facing possible incarceration for LFO nonpayment has an affirmative right to representation by court-appointed counsel at no cost in LFO collection proceedings.

To protect these and other rights, all Biloxi and private company personnel, if any, involved in LFO collection and evaluation of performance of community service imposed by the Biloxi Municipal Court shall abide by the following policies and procedures.

I) FIRST APPEARANCE - APPOINTMENT OF COUNSEL

The Court may appoint counsel to represent an indigent defendant charged with a misdemeanor offense punishable by confinement. The Court shall determine indigence for purposes of appointing counsel by using the attached **Affidavit of Indigence** (Form Three) and by considering any other relevant factors.

When the Court determines that representation is required at the plea, trial, sentencing, or post-sentencing stage, it must appoint counsel to represent an indigent defendant, unless there is a knowing, voluntary, and intelligent waiver of the right.

989 F.Supp.2d 1122
 United States District Court,
 W.D. Washington,
 at Seattle.

Joseph Jerome WILBUR, et al., Plaintiffs,
 v.
 CITY OF MOUNT VERNON, et al., Defendants.

No. C11-1100RSL.
 Signed Dec. 4, 2013.

Synopsis

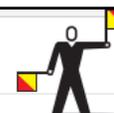
Background: Indigent criminal defendants brought class action in state court against cities, alleging public defense system provided by cities violated their Sixth Amendment right to counsel.

Holdings: Following removal, the District Court, [Robert S. Lasnik, J.](#), held that:
 1 cities' public defense system deprived indigent criminal defendants of their Sixth Amendment right to counsel;
 2 deprivation was caused by deliberate choices of city officials in charge of public defense system; and
 3 cities were required to re-evaluate public defender contracts and hire public defense supervisor.

Judgment for plaintiffs.

Taking Note

THE EDITORIAL PAGE EDITOR'S BLOG



December 9, 2013, 11:08 am | [52 Comments](#)

The Right to an Attorney Who Actually Does His Job

By JESSE WEGMAN

On Dec. 4, a federal judge in Washington State [issued a stinging rebuke](#) of the public-defense systems of two towns near Seattle, finding them so inadequate that they violate the Sixth Amendment right to the assistance of counsel in criminal prosecutions.

Calling it “little more than a ‘meet and plead’ system,” U.S. District Judge Robert Lasnik excoriated the cities of Mt. Vernon and Burlington, Washington, for failing to provide meaningful representation to indigent defendants facing misdemeanor charges.

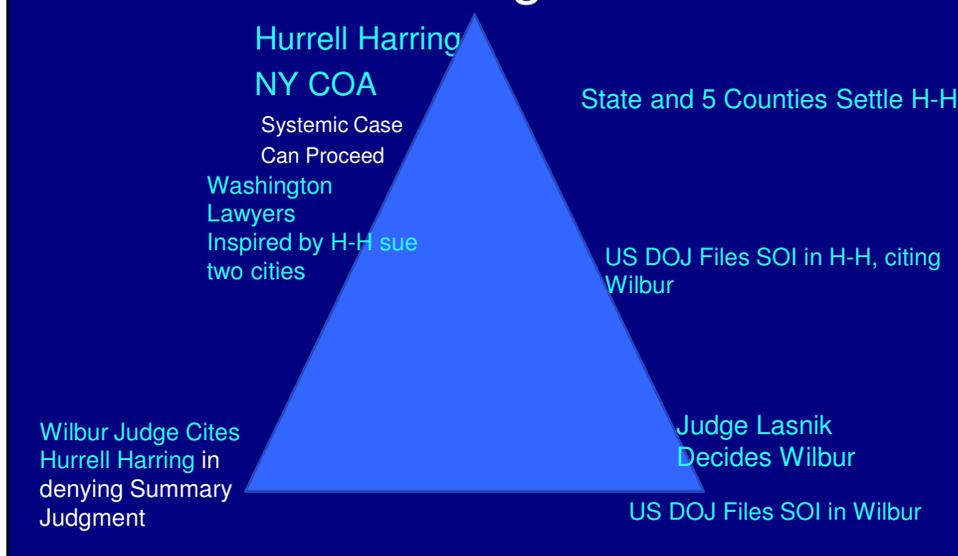
The class-action suit against the cities, which was brought by the American Civil Liberties Union's Washington affiliate and private citizens, went to trial in June but only garnered national attention after the Justice Department [weighed in](#) with the unprecedented request that the court appoint a federal monitor to oversee the cities' systems if it found in the plaintiffs' favor.

Focus on Cronic Not Just Strickland

- **“The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing.”**

– **United States v. Cronic 466 U.S. 648 (1984).**

Relationship HH and Wilbur Triangle



Attorney General Holder Endorses Caseload Limits, Cites Wilbur SOI

The Washington Post

Defendants' legal rights undermined by budget cuts

By Eric H. Holder Jr., Published: August 22

Eric H. Holder Jr. is attorney general of the United States.

Fifty years ago, the U.S. Supreme Court unanimously held that everyone who is charged with a serious crime has the right to an attorney. In *Gideon v. Wainwright*, Justice Hugo Black observed for the court that "in our adversary system, any person haled into court, who is too poor to hire a lawyer, cannot be assured of a fair trial unless counsel is provided to him." As a prosecutor, as a judge and as our nation's attorney general, I have seen this reality firsthand.

Despite the promise of the court's ruling in *Gideon*, however, the U.S. indigent defense systems — which provide representation to those who cannot afford it — are in financial crisis, plagued by crushing caseloads and insufficient resources. And this year's forced budget reductions, due largely to sequestration, are further undermining this critical work.

The Justice Department is strongly committed to supporting indigent defense efforts through an office known as the Access to Justice Initiative, which I launched in 2010, and a range of grant programs. The department took this commitment to a new level on Aug. 14 by filing a statement of interest in the case of *Wilbur v. City of Mt. Vernon* — asserting that the federal government has a strong interest in ensuring that all jurisdictions are fulfilling their obligations under *Gideon* and endorsing limits on the caseloads of public defenders so they can provide quality representation to each client.

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1124 (W.D. Wash. 2013)

- ...an almost complete absence of opportunities for the accused to confer with appointed counsel in a confidential setting. Most interactions occurred in the courtroom: discussions regarding possible defenses, the need for investigation, existing physical or mental health issues, immigration status, client goals, and potential dispositions were, if they occurred at all, perfunctory and/or public.

**Wilbur v. City of Mount Vernon, 989 F. Supp.
2d 1122, 1124 (W.D. Wash. 2013)**

- There is almost no evidence that Sybrandy and Witt conducted investigations in any of their thousands of cases, nor is there any suggestion that they did legal analysis regarding the elements of the crime charged or possible defenses or that they discussed such issues with their clients. Substantive hearings and trials during that era were rare. In general, counsel presumed that the police officers had done their jobs correctly and negotiated a plea bargain based on that assumption.

**Wilbur v. City of Mount Vernon, 989 F. Supp.
2d 1122, 1124 (W.D. Wash. 2013)**

- The appointment of counsel was, for the most part, little more than a formality, a stepping stone on the way to a case closure or plea bargain having almost nothing to do with the individual indigent defendant. To the extent that “adequate representation” presumes a certain basic representational relationship, there was a systemic failure in the Sybrandy and Witt era. Adversarial testing of the government's case was so infrequent that it was virtually a non-factor in the functioning of the Cities' criminal justice system.

Little More than Meet and Plead

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1124 (W.D. Wash. 2013)

- This situation was the natural, foreseeable, and expected result of the caseloads the attorneys handled. Sybrandy and Witt, both of whom also had private practices (Mr. Witt spent only 40% of his time providing public defense services), each closed approximately 1,000 public defense cases per year in 2009, 2010, and 2011 and often spent less than an hour on each case. ... it is clear that, in light of the sheer number of cases they handled, the services they offered to their indigent clients amounted to little more than a “meet and plead” system.

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1124 (W.D. Wash. 2013)

- ...the indigent defendants had virtually no relationship with their assigned counsel and could not fairly be said to have been “represented” by them at all. The Cities, which were fully aware of the number of public defenders under contract, remained wilfully blind regarding their overall caseloads and their case processing techniques.

**Wilbur v. City of Mount Vernon, 989 F. Supp.
2d 1122, 1125 (W.D. Wash. 2013)**

- Even when Sybrandy and Witt expressly declined to provide basic services requested by the Cities—such as initiating contact with their clients and/or visiting in-custody defendants—the Cities were not particularly concerned.

**Client Input Essential to
Representation**

- Timely and confidential input from the client regarding such things as possible defenses, the need for investigation, mental and physical health issues, immigration status, client goals, and potential dispositions are essential to an informed representational relationship.
- Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1126 (W.D. Wash. 2013)

Wilbur v. City of Mount Vernon, 989 F. Supp.
2d 1122, 1126–27 (W.D. Wash. 2013)

- Public defenders are not required to accept their clients' statements at face value or to follow every lead suggested, but **they cannot simply presume that the police officers and prosecutor have done their jobs correctly or that investigation would be futile.** The nature and scope of the investigation, legal research, and pretrial motions practice in a particular case should reflect counsel's informed judgment based on the information obtained through timely and confidential communications with the client. A failure of communication precludes the possibility of informed judgment.

Wilbur v. City of Mount Vernon, 989 F. Supp.
2d 1122, 1128 (W.D. Wash. 2013)

- Thus, the public defenders often meet their clients for the first time in the courtroom, sometimes with a plea offer already in hand. At that point, there is really no opportunity for a confidential interview, the client may or may not understand the proceedings, and the public defender is unprepared to go forward on the merits of the case. The client is given a choice between continuing the hearing so he or she can meet with the public defender or to accept whatever offer happens to be on the table.

Wilbur v. City of Mount Vernon, 989 F. Supp.
2d 1122, 1128 (W.D. Wash. 2013)

- ...a review of fifty Mountain Law case files showed no documentation of any legal analysis or research, and there is evidence of only one pre-trial motion and five or six trials in 2012.

Wilbur v. City of Mount Vernon, 989 F. Supp.
2d 1122, 1131 (W.D. Wash. 2013)

- Mere appointment of counsel to represent an indigent defendant is not enough to satisfy the Sixth Amendment's promise of the assistance of counsel.

While the outright failure to appoint counsel will invalidate a resulting criminal conviction, less extreme circumstances will also give rise to a presumption that the outcome was not reliable.

- For example, if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, if there is no opportunity for appointed counsel to confer with the accused to prepare a defense, or circumstances exist that make it highly unlikely that any lawyer, no matter how competent, would be able to provide effective assistance, the appointment of counsel may be little more than a sham and an adverse effect on the reliability of the trial process will be presumed. *Cronic*, 466 U.S. at 658–60, 104 S.Ct. 2039;

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- A system that makes it impossible for appointed counsel to provide the sort of assistance required by the Sixth Amendment works irreparable harm: the lack of an actual representational relationship and/or adversarial testing injures both the indigent defendant and the criminal justice system as a whole.

Wilbur opinion

- The Cities' unwillingness to accept that they had any duty to monitor the constitutional adequacy of the representation provided by the public defenders, their steadfast insistence that the defense services offered by Sybrandy and Witt were not just adequate, but “outstanding,” their surprisingly slow response to the pendency of this litigation and the Supreme Court's adoption of specific caseload limits, and their budgetary constraints all lead to the conclusion that a declaration will not be sufficient to compel change.

The Court finds that the combination of contracting, funding, legislating, and monitoring decisions made by the policymaking authorities for the Cities directly caused the truncated case handling procedures that have deprived indigent criminal defendants in Mount Vernon and Burlington of private attorney/client consultation, reasonable investigation and advocacy, and the adversarial testing of the prosecutor's case. The Cities are therefore liable under § 1983 for the systemic Sixth Amendment violation proved by plaintiffs. See Miranda v.

- Having chosen to operate a municipal court system, however, defendants are obligated to comply with the dictates of the Sixth Amendment, and the Court will “not shrink from [its] obligation to enforce the constitutional rights of all persons.”

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1134 (W.D. Wash. 2013)

5	UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE	
6		
7		
8	JOSEPH JEROME WILBUR, <i>et al.</i> ,	No. C11-1100RSL
9	Plaintiffs,	
10	v.	MEMORANDUM OF DECISION
11	CITY OF MOUNT VERNON, <i>et al.</i> ,	
12	Defendants.	
13		
11	– Within seven days of the date of this Order, the officials charged with	
12	administering the public defense contracts in Mount Vernon and Burlington and all full- and	
13	part-time public defenders in those municipalities shall read the Washington Defender	
14	Association’s 2007 Final Standards for Public Defense Services with Commentary	
15	(http://www.defensenet.org/about-wda/standards).	





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, dependency, or civil commitment proceedings in Washington State.

Washington Supreme Court Ties Standards to ANJ Opinion

STANDARDS FOR INDIGENT DEFENSE

[New]

Preamble

The Washington Supreme Court adopts the following Standards to address certain basic elements of public defense practice related to the effective assistance of counsel. The Certification of Appointed Counsel of Compliance with Standards Required by CrR 3.1/CrRLJ 3.1/JuCR 9.2 references specific "Applicable Standards." The Court adopts additional Standards beyond those required for certification as guidance for public defense attorneys in addressing issues identified in *State v. A.N.J.*, 168 Wash.2d 91 (2010), including the suitability of contracts that public defense attorneys may negotiate and sign. To the extent that certain Standards may refer to or be interpreted as referring to local governments, the Court recognizes the authority of its Rules is limited to attorneys and the courts. Local courts and clerks are encouraged to develop protocols for procedures for receiving and retaining Certifications.

ANJ

- Washington Supreme Court concluded that because of ineffective assistance of counsel, the 12 year old A.N.J. was misinformed of the consequences of his plea and was not adequately informed of the nature of the charge against him and allowed him to withdraw his plea.
- Court referred to WDA Standards in discussing need for investigation and limited caseload.

ANJ

- Based on Anderson's testimony as a whole, it appears that he spent as little as 55 minutes with A.N.J. before the plea hearing, did no independent investigation, did not carefully review the plea agreement, and consulted with no experts. Based upon the testimony of A.N.J.'s parents, Anderson spent between 35 and 40 minutes with their son before the plea.

ANJ

- the fact that [the defense lawyer] seemed to believe that his client was going to confess, or even was guilty, was not enough to excuse some investigation. False confessions (especially by children), mistaken eyewitness identifications, and the fallibility of child testimony are well documented.

ANJ

- Effective assistance of counsel includes assisting the defendant in making an informed decision as to whether to plead guilty or to proceed to trial. The degree and extent of investigation required will vary depending upon the issues and facts of each case, but we hold that at the very least, counsel must reasonably evaluate the evidence against the accused and the likelihood of a conviction if the case proceeds to trial so that the defendant can make a meaningful decision as to whether or not to plead guilty.

Cities have to ensure that their contract is not antithetical to

- a public defense system that allows for private attorney/client communications at the outset of the relationship and the ability to follow up as appropriate given the circumstances, including the client's status, input, and goals

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1134 (W.D. Wash. 2013)

- The critical issue is whether the system provides indigent criminal defendants the actual assistance of counsel, such that defendants have the opportunity to assert any rights or defenses that may be available to them and appropriate adversarial testing occurs

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1134 (W.D. Wash. 2013)

ORDER

- —The Cities shall hire one part-time Public Defense Supervisor to work at least twenty hours per week.

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1134 (W.D. Wash. 2013)

Extensive Supervision Requirements

- 1. Supervision and evaluation of whether the public defenders are making contact (in-person or by phone) in a confidential setting with each new client within 72 hours of appointment. If contact cannot be made within that time period, the Public Defense Supervisor shall document the reason(s) for the failure and whether an opportunity for confidential communications occurred prior to the client's first court hearing.

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1135 (W.D. Wash. 2013)

**Wilbur v. City of Mount Vernon, 989 F. Supp.
2d 1122, 1135 (W.D. Wash. 2013)**

- The Public Defense Supervisor will also take steps to ensure that the public defenders perform the **following tasks when they first meet with a client** following a new case assignment: (i) advise the client of the right to jury trial and right to a speedy trial; (ii) advise the client of the elements of the charge and that the prosecutor must prove each element beyond a reasonable doubt to obtain a conviction; (iii) advise the client of the right to present a defense; (iv) advise the client that it is solely the client's decision whether to accept or reject any plea offer; and (v) discuss with the client any potential witnesses or avenues of investigation.

- 2. Monthly supervision and evaluation of the first contact with clients, documenting **whether the public defenders are determining if each client**: (i) appears competent to proceed with the court process; (ii) has a sufficient literacy level to understand written court documents such as the guilty plea form and sentencing orders; (iii) **needs an interpreter**; and (iv) is a non-citizen in need of expert immigration advice from the WDA or another source.

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1135 (W.D. Wash. 2013)

- 3. Monthly supervision and evaluation of whether the public defenders are responding appropriately to information provided by the client and discovery obtained in each case, including pursuing additional discussions with the client, investigations, medical evaluations, legal research, motions, etc., as suggested by the circumstances.

- 4. Establishing a policy for public defenders to respond to all client contacts and complaints (including jail kites), including the length of time within which a response must occur.

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1135 (W.D. Wash. 2013)

- 5. Monthly supervision and evaluation of whether the public defenders are appropriately using interpreters and translators before any decisions are made by the client.

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1135–36 (W.D. Wash. 2013)

- 6. Supervision and evaluation of courtroom proceedings to ensure that the public defenders are fulfilling their role as advocate before the court on the client's behalf.

- 7. Supervision and evaluation of whether the public defenders are fully advising clients of their options regarding possible dispositions, including information on treatment services, any options for a less onerous disposition based on treatment, explanations of plea offers, the consequences of a conviction, conditions that are normally imposed at sentencing, any applicable immigration consequences, and any other consequences about which the client has expressed concern.

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1136 (W.D. Wash. 2013)

- 8. Supervision and evaluation of whether the public defenders are maintaining contemporaneous records on a daily basis showing the amount of time spent on each task for each case, recorded in tenth-of-an-hour increments.

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1136 (W.D. Wash. 2013)

- 9. Quarterly supervision and evaluation of whether cases are being allocated to each public defender fairly and in consideration of existing workloads, the seriousness of the charge(s), any factors that make the case more complex or time-consuming, and the attorney's experience level.

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1136 (W.D. Wash. 2013)

- 10. Quarterly selection and review of fifteen randomly chosen files from each public defender to ensure that the necessary tasks are being performed and documented, with appropriate time being spent on each task. The Public Defense Supervisor shall conduct a quarterly meeting with each public defender to advise how their performance can be improved based on the file review.

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1136 (W.D. Wash. 2013)

- 11. Collecting data on a quarterly basis showing:
 - (i) the frequency of use of investigators and expert witnesses;
 - (ii) the number of motions on substantive issues that are filed and the outcome of each motion;
 - (iii) the frequency with which cases are resolved by outright dismissal or a nonconviction disposition;
 - (iv) the frequency of pleas to a lesser charge; and
 - (v) the number of trials (broken down by bench vs. jury trials) conducted and the outcome of the trials.

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1136 (W.D. Wash. 2013)

- 12. Conducting a quarterly analysis of whether the Cities' public defense system (i) provides actual representation of and assistance to individual criminal defendants, including reasonable investigation and advocacy and, where appropriate, the adversarial testing of the prosecutor's case and (ii) complies with all provisions of the public defense contract and all applicable provisions of the Cities' ordinances and regulations.

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1136 (W.D. Wash. 2013)

CONCLUSION

It has been fifty years since the United States Supreme Court first recognized that the accused has a right to the assistance of counsel for his defense in all criminal prosecutions and that the state courts must appoint counsel for indigent defendants who cannot afford to retain their own lawyer. The notes of freedom and liberty that emerged from Gideon's trumpet a half a century ago cannot survive if that trumpet is muted and dented by harsh fiscal measures that reduce the promise to a hollow shell of a hallowed right.

Dated this 4th day of December, 2013.

Robert S. Lasnik
 Robert S. Lasnik
 United States District Judge



New York—Favorable Settlement

WHEREAS, Plaintiffs and the State intend that the terms and measures set forth in this Settlement Agreement will ensure counsel at arraignment for indigent defendants in the Five Counties, provide caseload relief for attorneys providing Mandated Representation in the Five Counties, improve the quality of Mandated Representation in the Five Counties, and lead to improved eligibility determinations;

(1) The **State** of New York (the "State") shall ensure.....

V. INITIATIVES TO IMPROVE THE QUALITY OF INDIGENT DEFENSE

Key Areas

- Supervision and Training
- Investigators, Interpreters, Expert Witnesses
- Communicate effectively with clients—promptly, in-person, and confidentially
- Qualifications and experience for types of cases assigned
- Eligibility

Florida Supreme Court

- Remanded motion to withdraw to trial court to see “if the circumstances still warrant granting the Public Defender's motion to decline appointments in future third-degree felony cases”.

Pub. Defender, Eleventh Judicial Circuit of Fla. v. State, 115 So. 3d 261, 283 (Fla. 2013)

**Pub. Defender, Eleventh Judicial Circuit of Fla.
v. State, 115 So. 3d 261, 278 (Fla. 2013)**

- The instant case involves similar circumstances to *Hurrell–Harring*. Witnesses from the Public Defender's office described “meet and greet pleas” as being routine procedure. The assistant public defender meets the defendant for the first time at arraignment during a few minutes in the courtroom or hallway and knows nothing about the case except for the arrest form provided by the state attorney, yet is expected to counsel the defendant about the State's plea offer.

In this regard, **the public defenders serve “as mere conduits for plea offers.”** The witnesses also **described engaging in “triage”** with their cases—giving priority to the cases of defendants in custody, leaving out-of-custody defendants effectively without representation for lengthy periods subsequent to arraignment. The witnesses also testified that the attorneys almost never visited the crime scenes, were unable to properly investigate or interview witnesses themselves, often had other attorneys conduct their depositions, and were often unprepared to proceed to trial when the case was called.

- Thus, the circumstances presented here involve some measure of nonrepresentation and therefore a denial of the actual assistance of counsel guaranteed by *Gideon* and the Sixth Amendment.

75

RCB Declaration in H-H

- The use of the word “**triage**” as applied to defender clients is jarring, and in my opinion, results from the recognition by LAS that LAS attorneys’ workloads are too high to provide adequate representation to indigent clients. While allocating resources based on complexity of the assignment makes sense, “triage” has connotations better suited to an emergency room.

Triage

- The dictionary definition of triage is
- *Noun*
 1. the process of **sorting victims**, as of a battle or disaster, to determine medical priority in order to increase the number of survivors.
 - 2. the determination of priorities for action in an emergency.

Guidelines for Indigent Defense Caseloads

A Report to the
Texas Indigent Defense Commission

- Three complementary data collection approaches were used for the study. These included a **Timekeeping Study**, a **Time Sufficiency Survey**, and final recommendations generated using the **Delphi Method**. Eight different task categories were used to describe attorneys' use of time.

Texas Study

- These included communication with clients or their families, interaction with the court, discovery or investigation by the attorney, time spent by a private or public defender investigator, legal research and trial preparation, negotiations or meetings related to litigation issues, social work assistance for clients, and case-specific office support.

Client Communication

- Meetings, letters, emails, texting, phone, discussions at court with client and/or family members
- Jail visits, wait time, time locating client
- Arranging for interpreter

Negotiation/ Meetings

- Negotiation with officials (e.g., judges, DA, probation department, pretrial services) regarding plea bargaining, discovery, trial preparation, motions, client supervision or bond status, sentencing or other litigation issues.

Discovery

- Discovery requests
- Review of discovery materials or state's evidence
- Listening to jail calls to family and friends

Attorney Investigation

- Investigation of the facts conducted by the attorney (Record external private practice or public defender investigation under IN)
- Depositions and statements from witnesses/family/friends
- Visits to the crime scene
- Consulting with external investigator
- (See State Bar Defense Guideline 4.1b3 regarding counsel's responsibilities in the investigation of potential witnesses adverse to the client)⁵¹

<ul style="list-style-type: none"> • If investigation is conducted by office support staff, record the time as OS
Legal Research/Trial Preparation <ul style="list-style-type: none"> • Consulting with experts (e.g., immigration attorney, social workers, forensics specialists) • Drafting case-specific motions and pleadings • Developing theory of the case • Preparing/coordinating with witnesses, jury instruction • Sentencing materials, alternative sentencing research
Court Time <ul style="list-style-type: none"> • Filing documents (including standardized motions) • Calls, emails, internet usage to schedule court time or check court dates • Calls to court clerk regarding a specific case • Court appearances, hearing and trials, time waiting in court
Social Work/Case Management <ul style="list-style-type: none"> • Assistance to help clients to get benefits and services needed for better defense outcomes. Examples include mental health treatment, medical care, public benefits, housing, etc. • Other forms of direct client assistance to improve their wellbeing and case outcomes.
Case-Specific Office Support <ul style="list-style-type: none"> • Time spent by attorneys or their staff (paralegals, clerical, or administrative support staff) helping to prepare the defense of a specific client. • Includes administrative work such as file creation and management, invoicing, and calendaring. • May include fact-finding, social work, or other case-specific functions performed by a non-attorney assistant.

Texas Conclusions

- To ensure effective representation, a 66 percent increase in time was recommended at every offense level. By far, the greatest proportional increase by task was for investigation. Lawyers surveyed advised that non-attorney investigator's time should increase by a factor of 13 times for misdemeanors, and 10 times for high-level felonies.

Delphi Members Conclusions

- Delphi members supported at least a **five-fold increase in attorney discovery and investigation and a twenty-fold increase in non-attorney investigator's time**. As much as forty times more external investigation was recommended for misdemeanors in particular. Delphi members also agreed with survey respondents that about six times more time should be spent in negotiation or meetings with officials such as prosecutors and judges that can impact case outcomes, and that time spent communicating with clients should increase by more than two-thirds on average.

Delphi panel recommended trial rate of **14-20% for misdemeanors (up from 1.1)** and 11-20% for felonies (up from 2.5).

No More than 236 Class B Misdemeanors or 216 Class A Misdemeanors

The results indicate for the delivery of reasonably competent and effective representation attorneys should carry an annual full-time equivalent caseload of no more than the following:

- 236 Class B Misdemeanors
- 216 Class A Misdemeanors
- 174 State Jail Felonies
- 144 Third Degree Felonies
- 105 Second Degree Felonies
- 77 First Degree Felonies

Figure 8-1. Hours per Case Recommended by Delphi Panel Compared to Time Sufficiency Survey Respondents

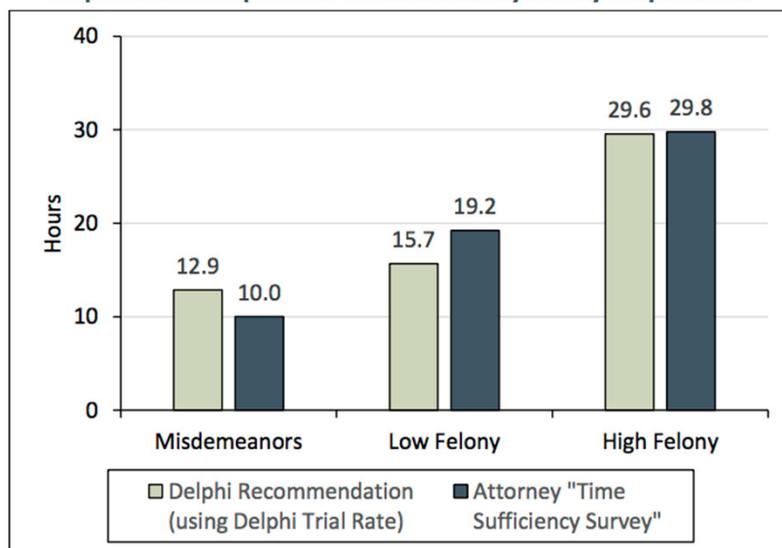


Figure 8-5. Final Recommended Caseload Guidelines for Texas
(Based on Delphi Time Estimates and FY 2014 Trial Rates)

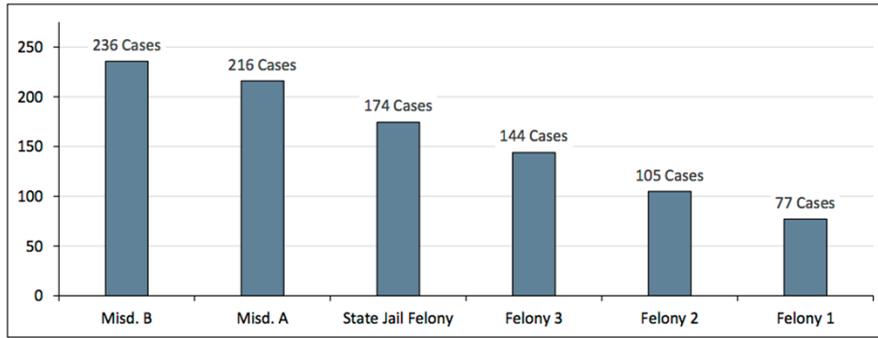
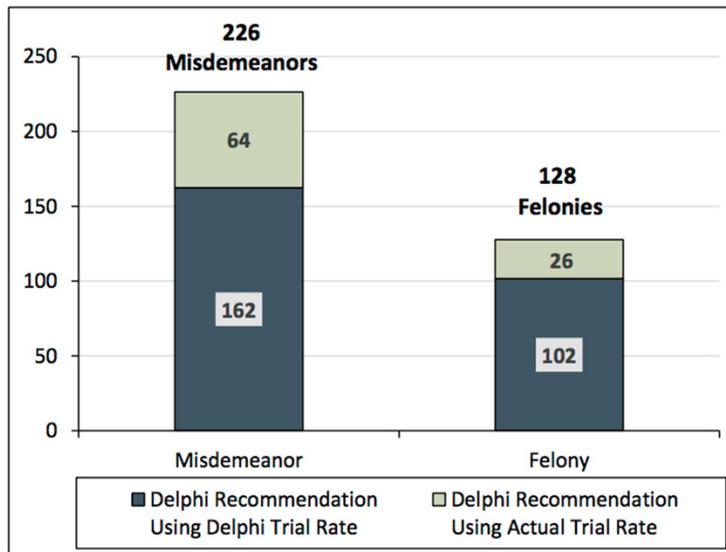


Figure 8-3. Change in Caseload Guidelines after Applying Actual Trial Rates to Delphi Panel Recommendations



**Average Minutes Recommended by Delphi Panel for
Non-Trial Case Resolutions**

NON-TRIAL RESOLUTION	Misdemeanors		Low-Level Felony		High-Level Felony	
	Class B	Class A	State Jail	F3	F 2	F 1
Client Communication	75 (14.5%)	75 (13.3%)	108 (15.8%)	117 (14.2%)	210 (18.7%)	240 (15.6%)
Negotiation/Meetings	60 (11.6%)	60 (10.6%)	75 (11.0%)	94 (11.4%)	106 (9.4%)	126 (8.2%)
Discovery	60 (11.6%)	60 (10.6%)	70 (10.2%)	93 (11.2%)	150 (13.3%)	210 (13.6%)
Attorney Investigation	60 (11.6%)	90 (15.9%)	90 (13.2%)	120 (14.6%)	120 (10.7%)	161 (10.4%)
Investigator's Time	25 (4.9%)	32 (5.6%)	41 (5.9%)	60 (7.3%)	83 (7.3%)	157 (10.2%)
Legal Research/Trial Preparation	60 (11.6%)	60 (10.6%)	64 (9.4%)	98 (11.8%)	111 (9.9%)	240 (15.6%)
Court Time	128 (24.8%)	132 (23.4%)	165 (24.2%)	164 (19.9%)	246 (21.9%)	291 (18.9%)
Case Management/Social Work	9 (1.7%)	11 (2.0%)	19 (2.8%)	23 (2.8%)	26 (2.3%)	33 (2.1%)
Case-Specific Office Support	40 (7.7%)	45 (8.0%)	51 (7.4%)	56 (6.8%)	73 (6.5%)	86 (5.6%)
TOTAL MINUTES	517 (100%)	565 (100%)	682 (100%)	823 (100%)	1,125 (100%)	1,543 (100%)

**Average Minutes Recommended by Delphi Panel for
Trial Case Resolutions**

TRIAL RESOLUTION	Misdemeanors		Low-Level Felony		High-Level Felony	
	Class B	Class A	State Jail	F3	F 2	F 1
Client Communication	168 (8.9%)	225 (11.4%)	240 (11.1%)	240 (8.8%)	350 (8.8%)	433 (8.6%)
Negotiation/Meetings	80 (4.3%)	80 (4.1%)	106 (4.9%)	142 (5.2%)	156 (3.9%)	185 (3.7%)
Discovery	81 (4.3%)	104 (5.3%)	119 (5.5%)	133 (4.9%)	186 (4.7%)	294 (5.9%)
Attorney Investigation	115 (6.1%)	126 (6.4%)	130 (6.0%)	150 (5.5%)	208 (5.3%)	258 (5.2%)
Investigator's Time	150 (8.0%)	150 (7.6%)	154 (7.1%)	180 (6.6%)	250 (6.3%)	369 (7.4%)
Legal Research/Trial Preparation	240 (12.8%)	270 (13.7%)	270 (12.5%)	300 (11.0%)	480 (12.1%)	600 (12.0%)
Court Time	939 (50.1%)	898 (45.6%)	1,020 (47.2%)	1,440 (52.6%)	2,160 (54.5%)	2,640 (52.6%)
Case Management/Social Work	23 (1.2%)	24 (1.2%)	31 (1.4%)	42 (1.5%)	42 (1.1%)	45 (0.9%)
Case-Specific Office Support	78 (4.2%)	93 (4.7%)	92 (4.3%)	112 (4.1%)	133 (3.4%)	190 (3.8%)
TOTAL MINUTES	1,875 (100%)	1,971 (100%)	2,162 (100%)	2,739 (100%)	3,966 (100%)	5,015 (100%)

With evidence-based caseload parameters, appointing authorities and attorneys taking appointments can be held accountable for managing workloads, information is available to set fair compensation rates, and jurisdictions adhering to reasonable caseload limits are less exposed to potential litigation. Caseload guidelines alone may not guarantee the provision of reasonably effective counsel, but they are certainly a necessary component, essential to securing the Sixth Amendment right to counsel for the indigent accused.

Caseload guidelines are essential to securing the right to counsel.

The Missouri Project:
A Study of the Missouri Defender System
and
Attorney Workload Standards
January 2014

Prepared by:



On Behalf of the American Bar Association's
Standing Committee on Legal Aid and Indigent Defendants



This publication has been prepared by RubinBrown on behalf of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants. The views expressed herein, unless otherwise noted, have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

The resulting attorney workload standards (shown below) reflect estimates of the average amount of time¹⁰ an attorney can expect to spend on a category of Case Tasks for a particular type of case to provide reasonably effective assistance of counsel.¹¹

Case Type	Controllable Case Task	
	Hours per Case	
Murder/Homicide	106.6	
A/B Felony	47.6	
C/D Felony	25.0	
Sex Felony	63.8	
Misdemeanor	11.7	
Juvenile	19.5	
Appellate/PCR	96.5	
Probation Violation	9.8	

Don't I Need A Lawyer?



Pretrial Justice and the Right to Counsel at First Judicial Bail Hearing

A Report of The Constitution Project
National Right to Counsel Committee

March 2015

- **Recommendation 1: Jurisdictions should appoint counsel in a timely manner prior to initial bail and release hearings.**

- **Recommendation 2: The first appearance hearing should be held in public and should provide the opportunity for defense counsel, pretrial release services representatives and family members to present information supporting the least onerous pretrial release conditions appropriate.**

Recommendation

- An assigned defense lawyer should be appointed at the earliest possible time to ensure that he or she has the opportunity to interview the defendant prior to the first appearance hearing and to provide adequate opportunity to prepare an argument. Preparation includes access to a telephone to call family members, friends and other individuals who can verify information needed to establish a defendant's community ties, and access to a defendant's prior criminal history and appearance in court.

...empirical data confirms that counsel's effective advocacy and offering of credible information has succeeded in gaining pretrial release on recognizance for two and a half times as many defendants charged with misdemeanors and non-violent crimes than those defendants without a lawyer.

Why counsel is required at first appearances

- Accused persons generally cannot without help
- * understand the elements of the charge, possible defenses, or the full nature of the consequences of a conviction;
 - *challenge a finding of probable cause;
 - *advocate effectively for personal recognizance release or reduced bail;
 - *advocate effectively for sentencing alternatives.

Because of all of the foregoing...

- Accused persons generally cannot without help make a valid decision about waiving counsel or waiving trial.
- The fairness of the proceedings and the integrity of the court are at risk.

The Judges Recognize...

- **The reality we see every day is that people entering our criminal justice system are confused by or ignorant of legal concepts, often unsophisticated, low on the literacy continuum, frightened, intimidated by authority, and faced by increasingly complicated direct and collateral consequences of conviction.**

District and Municipal Court Judges' Association

April 6, 2009

Honorable Charles W. Johnson
Washington State Supreme Court
Temple of Justice
PO Box 40929
Olympia, Washington 98504-0929

Sincerely,



Judge Marilyn Paja
2008/09 DMCJA President

What Counsel Should Be Doing at These Hearings

- Challenge probable cause
- Talk with client about rights, silence, ability to post bail, residence, work, references, time in community; assess any immediate needs of client
- Advocate for release
- Confirm appointment process beyond first appearance
- Consider appellate review and pursue as appropriate
- Begin investigation and research

STOP

Before you enter your plea

Consider the Possible Effects of Pleading Guilty

You have a right to see a defense attorney, even if you can't pay for one. Your attorney will explain what can happen because of your plea and help you decide what to do.

In addition to possible penalties such as jail time and fines, examples of issues you may want to discuss with an attorney include:

IMMIGRATION
If you are a non-citizen, you may:
• Be DEPORTED, or removed, from the United States
• Be denied entry to the United States
• Lose certain benefits

EMPLOYMENT
You may be unable to:
• Work with children or vulnerable adults
• Work in airport security, the state patrol, and certain jobs involving transportation
• Obtain work that requires a driver's license

FAMILY ISSUES
You may be affected with regard to:
• Proceedings involving your children
• Attempts to adopt
• Foster care proceedings

HOUSING
You may be subject to:
• Private landlord screening
• Denial of public housing and subsidies
• Evictions

MILITARY SERVICE
You may:
• Be disqualified from serving in the military
• Lose certain privileges

PUBLIC BENEFITS
You may lose eligibility for:
• Food stamps
• Social Security/Disability
• Other welfare benefits

STUDENT LOANS, VOTING, DRIVING
You may lose your ability to:
• Obtain eligibility for federal education assistance
• Vote and serve on jury duty
• Hold a driver's license

PROBATION AND OTHER ISSUES
A guilty plea — even for a minor offense — may result in having probation revoked, and there are many other possible effects of a guilty plea. Only an attorney can identify all the consequences for you.

¡ALTO!

Antes de que usted se declare

Considere las consecuencias de admitir culpabilidad.

Usted tiene el derecho de consultar a un abogado, incluso si no tiene los recursos para pagar sus servicios. Su abogado le explicará lo que puede suceder a consecuencia de su declaración y le aconsejará a decidir lo que puede hacer.

Además de posibles condenas tales como encarcelamiento y multas, ejemplos de asuntos a discutir con un abogado incluyen los siguientes:

INMIGRACION
Si no es ciudadano, usted puede ser deportado, o removido, de los Estados Unidos. Se le puede negar la entrada a los Estados Unidos y puede perder ciertos beneficios.

EMPLEO
Tal vez usted no pueda trabajar con niños o adultos vulnerables o indisciplinados.
• No podrá trabajar en ocupaciones como seguridad aeroportuaria, la guardia estatal y ciertos trabajos relacionados con el transporte.
• Usted tampoco podrá obtener trabajos que requieran una licencia de manejar.

EDICTOS DE FAMILIA
Usted se puede ver afectado con respecto a:
• Procedimientos que impliquen a sus hijos.
• Trámites de adopción.
• Procedimientos de custodia temporal.

RENTA DE VIVIENDA
Usted puede ser sujeto a:
• Investigación privada del propietario.
• Negación de vivienda pública o de subsidios.
• Desahucios y evicciones.

SERVICIO MILITAR
Usted puede ser descalificado de dar servicio militar y de perder ciertos privilegios.

SERVICIOS SOCIALES
Usted puede dejar de ser elegible para:
• Bónos de racionamiento.
• Seguro Social/Incapacidad.
• Otros servicios sociales.

PRESTAMOS ESTUDIANTILES, DERECHO AL VOTO, MANEJO DE VEHICULOS
Usted puede perder el derecho de:
• Ser elegible de recibir ayuda federal para continuar su educación.
• Votar en elecciones y de servir como miembro de un jurado.
• Obtener y portar una licencia de manejar.

LIBERTAD CONDICIONAL Y ASUNTOS RELACIONADOS CON ESTA
Una admisión de culpabilidad — incluso de un delito menor — puede dar lugar a que la libertad condicional sea revocada, incluyendo otros efectos posibles del delito a una admisión de culpabilidad. Solamente un abogado puede identificar y explicar todas las consecuencias posibles para usted.

If You Plead Guilty:

REMEMBER

- You have a **RIGHT** to an attorney right now.
- An attorney can explain the potential consequences of your plea.
- If you cannot afford an attorney, an attorney will be provided at **NO COST** to you.
- If you don't have an attorney, you can ask for one to be appointed and for a continuance until you have one appointed.

Washington
State Bar
Council on
Public
Defense
Form

What Judges Can Do

- Provide thorough advice to defendants on what counsel can do for them and the disadvantages of going pro se
- Do thorough inquiries on waivers of right to counsel and right to trial
- Make sure that people who plead guilty understand the elements of the charge and the consequences of a guilty verdict.
 - *Use the WSBA CPD form.*
- Provide counsel to eligible people.

Ethical Issues--RPC

RULE 1.1 COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

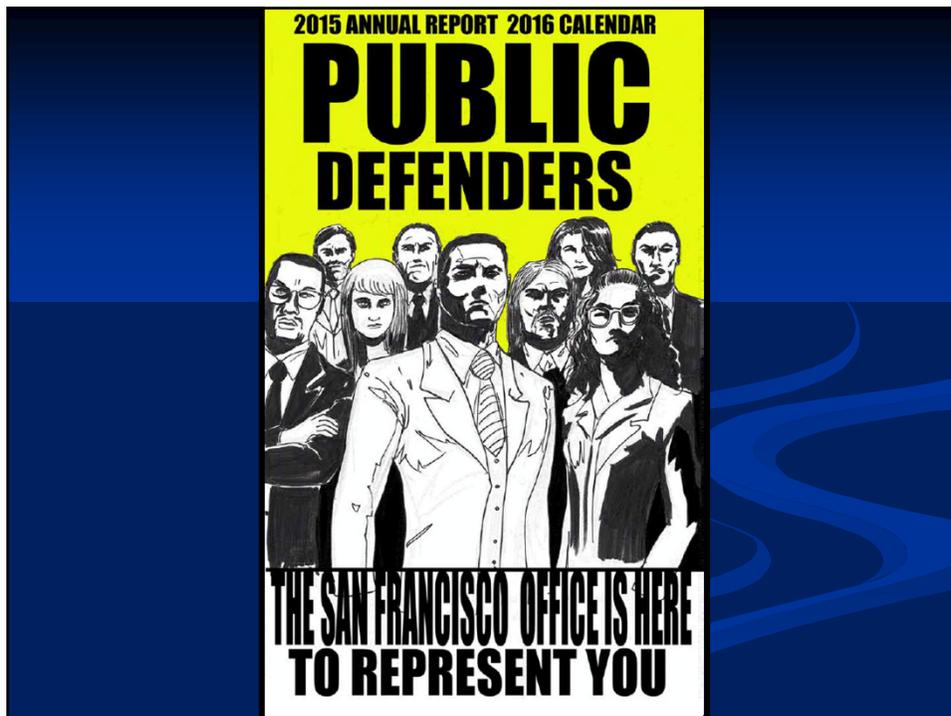
Comment: A lawyer's workload should be controlled so that each matter can be handled adequately.

¹³⁹ Access to counsel does not mean a warm body standing next to the accused person, but a trained lawyer with enough time and resources to represent the person effectively. To have the assistance of counsel requires more than a warm body in a suit next to the defendant. The legal profession's rules of ethics require that lawyers prepare their cases. Attorneys must be familiar with the law and facts in the case... Warm bodies won't do: Defendants deserve lawyers fully prepared to defend them. David A. Harris, PITTSBURGH POST-GAZETTE, (Mar. 30, 2012), <http://www.post-gazette.com/stories/opinion/>

Having a lawyer can make a
difference

- ...when no lawyers are testing the government's case, cases that might be dismissed proceed and often result in jail and probation. In my experience in Seattle Municipal Court, as many as 25 percent of cases were dismissed after lawyers worked on them. If people plead guilty at arraignment without a lawyer, cases that should be dismissed go forward and result in unnecessary costs and life-altering disadvantages to the accused persons.

Robert C. Boruchowitz, *Fifty Years After Gideon: It Is Long Past Time to Provide Lawyers for Misdemeanor Defendants Who Cannot Afford to Hire Their Own*, 11 *Seattle J. for Soc. Just.* 891, 920 (2013)



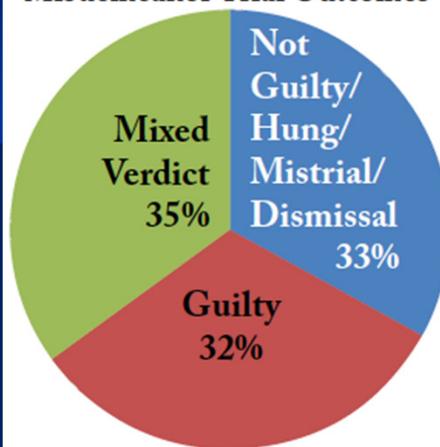


San Francisco Public Defender

Misdemeanor

161: Jury trials
624: Motions filed
207: Dismissals on trial calendar
76: Average cases per attorney at any given time
17: Participants in the Volunteer Attorney Program
48: Trials by volunteer attorneys
159: Motions by volunteer attorneys

Misdemeanor Trial Outcomes



From the 2013 Defender Initiative Conference...

Our office has an atmosphere that not just encourages, but expects, folks to push back on the government's claims and take nothing for face value. The culture is one of zealous representation for the client, no matter how "minor" the allegations.

· A Seattle defender.

How to use these cases and studies to reinforce effective representation

Possible approaches

- Motions for investigator and expert resources
- Motions for continuances to be able to prepare
- Motions for additional lawyers on cases
 - Appeal denial of motions
- Consider declining new appointments when workload is excessive
- Challenge use of prior uncounseled convictions and inadequate pleas
- Raise IAC on appeal
- **Build alliances and community support for well-supported budget requests**
- Work with state and national organizations

Work Together

- Never doubt that a small group of thoughtful, committed citizens can change the world.
– Margaret Mead

