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# Indigent-defense case could result in federal oversight of a public-defender agency

An unprecedented filing by the Department of Justice in a class-action lawsuit in Mount Vernon and Burlington signals a watershed solution to the country's crisis in indigent defense: a first-ever federal-court takeover of a local public-defender agency.

By Mike Carter

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In a landmark case 50 years ago, a unanimous U.S. Supreme Court found it to be an “obvious truth” that the criminally accused, regardless of their circumstances, have the right to an attorney and adequate legal representation.

Today, many in America's legal and law-enforcement communities — from judges and prosecutors to defense lawyers — believe the promise of *Gideon v. Wainwright*, grounded in the Sixth Amendment, has mostly gone unfulfilled.

To prove it, some point to Mount Vernon and Burlington.

The Skagit County towns are at the center of a groundbreaking class-action civil-rights lawsuit over indigent defense filed two years ago by the American Civil Liberties Union, alleging misdemeanor defendants were given little more than a “meet 'em, greet 'em and plead 'em” defense by a pair of public defenders expected to handle more than 2,000 cases a year.

Now, with a Seattle-based U.S. District Court judge set to rule on the case, Mount Vernon and Burlington may become part of an unprecedented solution — the first-ever federal-court takeover of a public-defender system.

The U.S. Department of Justice on Aug. 14 filed a “statement of interest” in the case of *Wilbur v. Mount Vernon et al*, saying the “United States has an interest in ensuring that all jurisdictions — federal, state and local — are fulfilling their obligation ... to provide effective assistance of counsel” to criminal defendants who can't afford an attorney of their own. It quotes Attorney General Eric Holder saying the nation's indigent defense systems exist in a “state of crisis” where, in some places, they do “little more than process people in and out of the courts.”

“Our national difficulty to meet the obligations recognized in *Gideon* is well-documented,” Holder is quoted as saying in the document.

The Department of Justice statement does not take a position on the ACLU's assertion that the rights of the criminally accused in Mount Vernon and Burlington were systematically violated, which is the key question being mullied by U.S. District Judge Robert Lasnik after a bench trial in June.

However, if Lasnik should arrive at that conclusion, the Justice Department urges him to considering appointing a federal monitor to oversee reforms.

That in itself would be “huge,” according to Jonathan Rapping, a criminal-law professor at the John Marshall Law School in Atlanta and the founder and president of Gideon’s Promise, a national organization aimed at improving indigent defense.

But the Justice Department is going even further, he said, by suggesting in its letter of interest that the court not only consider attorney caseloads — the number of clients an attorney is representing — but also workloads, recognizing that some cases are more difficult and require more time.

The goal, Rapping said, should be that the indigent accused “receive the same kind of representation that you or I would pay for.”

The reality at this point, however, is that most public-defender agencies — including the federal Public Defender’s Office — are struggling with budget cuts and a paucity of resources, he said.

“It’s unfortunate, but over the years we have become accustomed to a lower standard of justice for poor people,” Rapping said.

In Mount Vernon and Burlington, the ACLU alleges that two public defenders, Richard Sybrandy and Morgan Witt, were carrying yearly caseloads of more than 1,000 clients each while also maintaining private practices.

The Washington State Bar last year adopted guidelines calling for a maximum misdemeanor caseload of 400 cases a year.

According to the complaint and evidence presented at trial, Burlington’s assistant chief of police complained to prosecutors and city officials in 2008 that he had witnessed the public defenders playing crossword puzzles and other games while representing clients in court on at least seven occasions. Court records show the defenders visited the Skagit County Jail just six times in 2010, and, in 2011, the defenders participated in just two trials while closing 2,271 cases.

The ACLU says that this and other issues show the towns have been indifferent to their responsibilities under the Constitution to provide a meaningful defense to thousands of defendants who are unable to hire their own attorney.

Mount Vernon and Burlington have responded to the situation through what its lawyers have called a “complete overhaul” of the defender’s office: hiring four attorneys and monitoring their work, according to court filings. They say the problems have been corrected, and that the court now has no reason to appoint a monitor.

The cities say that appointing a monitor would “place the cities under the yoke of an unprecedented federal injunction” that is now unnecessary.

Just what a monitor would look like is unclear. But the Justice Department suggests a monitor could watch not just the number of cases a defender might have, but the workload, and ensure that defendants were being provided counsel in jail and before court.

Sarah Dunne, a legal director at the ACLU of Washington, declined to comment about the case, citing the judge’s deliberations. A telephone call to Andrew Cooley, the lawyer representing the cities, was not immediately returned on Friday.

If Lasnik appoints a monitor, the message it would send to states, counties and cities about the need to provide adequate indigent defense cannot be understated, said Jessica Eaglin, counsel for justice programs at the Brennan Center for Justice, a nonpartisan law and policy institute at New York University School of Law.

The Justice Department already investigates alleged systemic civil-rights violations by jails, prisons and police, which led to the 2012 settlement agreement reached between the department's Civil Rights Division and the Seattle Police Department over the use of excessive force.

But it has never suggested federal-court oversight of a public-defense system, and the implications are significant.

Eaglin said such a move could set a precedent the Justice Department could use to force changes to substandard public-defense agencies throughout the country.

"It would allow others to bring suit and push forward indigent defense reform through the courts, not through legislation," she said.

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