

## BAR BULLETIN

HOME &gt; FOR LAWYERS &gt; BAR BULLETIN

## King County Can Celebrate Strong Public Defense 60 Years after Gideon v. Wainwright

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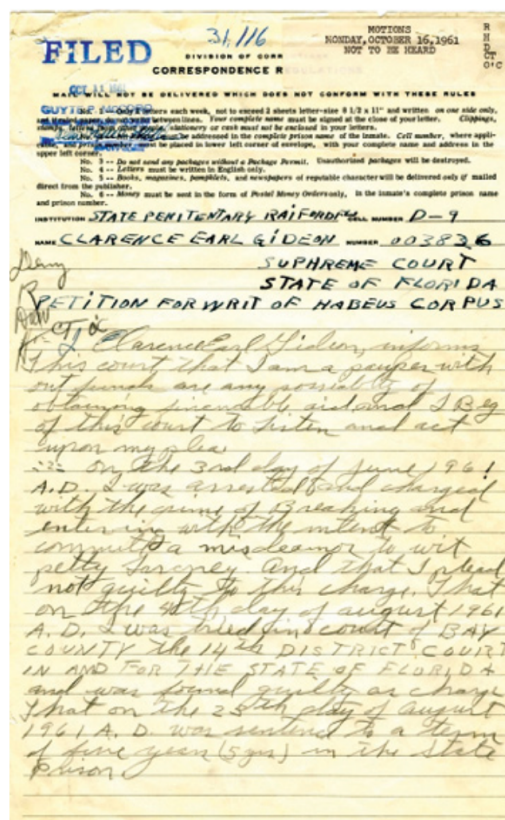
Sixty years ago, the U.S. Supreme Court held that Clarence Earl Gideon, who wrote to them from his Florida prison on a yellow pad, should have had an appointed lawyer when he was tried and convicted for a burglary. In the landmark case of *Gideon v. Wainwright*, the Court said that in our country, having a lawyer was a fundamental right that protected the other rights of a criminally accused person. The court wrote, “The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.” With a new lawyer and a new trial, Gideon was found not guilty.

Six years later, the City of Seattle engaged The Defender Association, using a small, federal Model Cities grant, to provide representation for people in Municipal Court. The Defender was the first of what became four non-profit defender firms in the County.

Today, the King County Department of Public Defense (DPD) has 195 lawyers, 43 investigators, 32 mitigation specialists, 40 paralegals, 39 legal assistants, and represents approximately 15,000 individuals per year in more than 19,000 cases. DPD is able to attract top students not only from Washington law schools but also from leading schools nationally.

King County is recognized nationally as a leader in public defense. Defender alumni are among the most respected defense attorneys and include law professors and judges and other public officials. Two former defenders, one from Associated Counsel for the Accused and one from The Defender Association, are now Washington Supreme Court justices — Justice Barbara Madsen and Justice Sheryl Gordon McCloud.

The County brought public defense into a county department after a state supreme court decision found that the County had put restrictions on the non-profit offices such that the employees should have county retirement benefits. While there is plenty of room for improvement, King County's defenders have among the lowest per attorney caseloads and the strongest support services in the country.



The Defender Association arose from a series of meetings in the wake of civil unrest in 1968, including the assassination of The Urban League executive director. Model Cities advertised weekly meetings in the central area of Seattle on various aspects of education, health and public safety.

A group concerned about public safety began to concentrate on obtaining legal representation in Municipal Court — the court with which most citizens had contact. They developed a plan for an independent defender office. Not only was the office to represent indigent clients, but also it was to address removing procedural road blocks to justice and changing rules and laws to that end.

The Defender's independent Board of Directors was established in the spring of 1969. The Board included appointees of the Mayor and the County Executive as well as of the County Bar Association and the Urban League. The Board hired a former assistant U.S. Attorney, John Darrah, as the first Public Defender in September, and the first staff started in late October. The Defender opened an office in the Smith Tower, with a staff of five and a budget of \$234,851.

The baptism by fire began in early 1970. In Seattle, a protest at the Federal courthouse ended with a charge by police. Seventy-five arrests provided plenty of clients for the new office. The Defender joined with the Lawyers Committee for Civil Rights Under Law and the ACLU and the Medical Committee for Human Rights at a press conference criticizing the police conduct.

The office compiled an impressive record of successfully representing persons charged in the civil chaos that continued to erupt in the Central, University, and downtown areas. The police department went through a reorganization. Corruption cases were filed in federal and state courts.

As the result of a "blue ribbon" task force, King County decided to contract with a non-profit corporation to provide public defense to be responsive to, but independent of, political influences. The County contracted with the Defender Association in 1970. The Defender logo, St. George slaying the dragon, appeared on a sign outside of the Smith Tower office and generated some criticism from a judge who thought it was too aggressive and ridiculed judges.

In 1972, the office received a Law Enforcement Assistance Administration grant which enabled the establishment of a pre-sentence counseling unit, staffed mostly by ex-offenders. This program evolved into a professional social work and dispositional planning unit, headed by an MSW and supported by interns.



In 1978, the professionalism of the office was recognized in a national study, *Criminal Violence, Criminal Justice*, by Charles Silberman. It referred to Seattle as setting the standard for criminal defense, noting the use of investigators, social workers, an appeals section, and senior lawyers to consult on difficult questions of law or strategy.

Because of funding strains and caseload pressures, the Defender began in the early 1980s to advance the idea of Defender standards, both in Seattle and nationally. This advocacy helped to produce the Seattle-King County Bar Association standards in 1982, which included annual per attorney caseload ceilings. The Seattle City Council soon set a limit of 380 cases per attorney per year for Municipal Court work.

In May 1982, King County Executive Randy Revelle and Defender Association Deputy Director George Finkle (later a King County Superior Court judge) signed a settlement of the Defender's class action lawsuit against the County over jail conditions for pre-trial detainees. Among other important results of the settlement, the jail was required to achieve medical accreditation and to improve sanitation practices dramatically.

Revelle congratulated the Defender, emphasizing that he relied on its attorneys to hold the County accountable.

Today, the King County Charter recognizes and provides protection for the Defender's advocacy role:

The department of public defense shall also foster and promote system improvements, efficiencies, access to justice and equity in the criminal justice system. . . . Elected officials shall not interfere with the exercise of these duties by the department; however, the enactment of appropriation ordinances does not constitute interference. The department shall not have its duties, as established in this section, decreased by the county council or the county executive.<sup>1</sup>

In 1983, the defenders helped to form the Washington Defender Association, a membership and support group for Defenders across the state. With the help of two grants from the American Bar Association, WDA developed a set of defender standards and obtained endorsement for them by the Washington Bar Association Board of Governors in 1985. The same year, the ABA House of Delegates endorsed a set of standards based in part on recommendations supported by the office. WDA now has a staff that provides training and support for defenders across the state.

The impact of the standards has been significant, as King County accepted the concept of standards and applied much of the WSBA-WDA standards as it built budgets for public defense. The Washington Legislature passed a statute, RCW 10.101, requiring local governments to establish defender standards. The defender offices in King County worked to persuade local government to maintain the standards.



The King County Defenders and alumni were key advocates for the standards that the Washington Supreme Court incorporated into court rules that set caseload limits and qualification requirements for different levels of cases.

In 1999, the Defender Association began the Racial Disparity Project with federal funding. The RDP successfully challenged the impoundment of cars of people arrested for driving with a suspended license. Later, led by Lisa Daugaard, the RDP challenged the disproportionate arrests and prosecution of people of color for drug offenses. That work led to a landmark decision on discovery in selective enforcement cases and lay the foundation for what became the Law Enforcement Assisted Diversion program, which has been emulated nationally.

The RDP grew into the Public Defender Association, with more than 20 staff, advocating for criminal legal system reform and developing alternatives that shift from a punishment paradigm to a system that supports individual and community health.

The Defender Association also developed a Death Penalty Assistance Center and led the way in defending “sexually violent predator” cases with a team approach.

The other non-profit offices also provided innovative leadership. The Society of Counsel Representing Accused Persons (SCRAP) developed the Raising our Youth as Leaders (ROYAL) program, to assist youth of color. The Northwest Defender Association’s (NDA) former director, Eileen Farley, was selected by the Federal Court to supervise a remedial program after the court found two Washington cities to have systemically denied effective assistance of counsel. ACA provided direction for mental health courts.

DPD’s director Anita Khandelwal reports that the department has provided a consistently high level of practice in the four divisions that had been the separate nonprofit offices. DPD has developed practice guidelines for adult criminal, juvenile offender, family defense (dependency), and civil commitment practices. The office emphasizes client-centered representation. The guidelines include the following:

- (1) Attorneys must partner and collaborate with clients to achieve the client’s goals, ensuring the client is informed about their case in all respects throughout the duration of the representation.
- (2) DPD works closely with our community partners to dismantle the systems that oppress our clients and, where traditional systems remain, to make those systems less harmful and more restorative. The defense team should frequently connect clients with critical community supports and resources.

DPD has worked to enhance the right to counsel for juveniles both in King County and statewide. With support from community partners, DPD successfully advocated for a local ordinance and a state law that require law enforcement to connect a youth (under 18) with a lawyer before they conduct a custodial interrogation, when they detain a youth based on probable cause of criminal activity, or when they request that the youth consent to a search of their person, property, or vehicle. The consultation can be by phone. The state Office of Public Defense has established a statewide call system for young people.

DPD continues to advocate for re-sentencing options for people who received extremely long sentences.

Ms. Khandelwal recognizes that her office has greater resources than other counties but says she could use twice the number of mitigation specialists (social workers) that she has. And she would like to reduce attorney caseloads further. DPD's felony lawyers have between 80 and 90 cases per year, far below the 150 that is common in other offices. But a new national report is expected to recommend even lower numbers, and Ms. Khandelwal is looking forward to the publication of that report, expected this month.

Ms. Khandelwal says of the criminal legal system, "If this were a pilot project, it would fail completely." She recommends shrinking the system, investing in housing, universal basic income, and better public safety measures than continuing to invest in the existing carceral system.

DPD has "amazing staff and amazing community partners," Ms. Khandelwal says. "Those two things help us get really strong outcomes for our clients." She says the department is grounded in the needs of the clients and the community. She praises the high-quality staff and robust expert services available to them.

Continuing challenges include retention and recruitment of staff that is a national issue, aggravated by pandemic-related changes. She notes that public defense is incredibly hard work that does not pay as well as other legal jobs, many of which do not require lawyers to go downtown to court or offices or jail. She continues to hire mission driven people.

Ms. Khandelwal notes that the more policy work DPD engages in, the more their independence comes under threat, whether to their budget or otherwise. She acknowledges that the County Charter provides some structural independence, and she has the support of an advisory board. Even with those, there remain political challenges.

The publication of the new national report will be an opportunity for further examination of the criminal legal system and how to allocate resources. King County's defenders will be in the vanguard for those efforts.

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