

13 CHAIRMAN ROSS: Let's move to the State of
14 Washington.

15 Bob Boruchowitz.

16 MR. BORUCHOWITZ: Thanks very much. I'm Bob
17 Boruchowitz. I'm the president of Washington Defender
18 Association, which is a membership group of most of the
19 public defenders in the state. I'm also the director of the
20 Seattle Defender Association, which is a nonprofit public
21 defender office. I've been at that office for twenty-nine
22 years, and I felt a little nervous when Mr. Simpson talked
23 about somebody who's been in it for thirty years because I'm
24 getting close. But I've been director for twenty-four years
25 and president of the WDA for almost twenty. I've done a lot

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1 of trial and appellate work on a wide range of cases.

2 I just want to take a minute to say something
3 about Clark County, Nevada, because I spent time there with
4 an evaluation team; and I think it's to the credit of the
5 new public defender director there that he asked us to come
6 in and do an evaluation and make recommendations. We came
7 in and met with him, and I think he is receptive. It's a
8 very difficult situation as was described.

9 In Washington we have many of the same problems
10 you've heard about in the other states. We have 39
11 counties. Only 11 of those have organized defender systems.
12 The others have a combination of low bid, private appointed
13 systems. The defenders also have a wide range of resource
14 levels in their high case load, low salaries, meager
15 benefits, inadequate equipment and insufficient support
16 staff and expert witness funding throughout the state.

17 In King County here in Seattle we actually are
18 relatively well funded. We have pretty good access to
19 investigation and expert witnesses. Our salaries are close
20 to prosecutor's salaries. They're not quite there, but
21 they're in the ball park. They get further apart the more
22 experienced you are. But we have inadequate benefits. Our
23 benefits are very meager compared particularly with regard
24 to retirement.

25 The case load issues have been moderately improved

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1 because of standards that we have developed; and Christie
2 Hedman, who is going to follow me, will talk about our
3 standards. We spent a lot of time working on standards and
4 working both with the ABA and NLADA on standards for
5 decades. But even with those standards we have defender
6 offices that are doing 170, 180, 200 felonies, sometimes
7 more than 200 felonies a year per person when the standard
8 is 150. And we've had in Spokane County as recently as two
9 years ago in the civil commitment area over 1,300 hearings
10 per lawyer per year. And city defenders and county
11 defenders in misdemeanor cases do as many as 540 cases a
12 year, even though the standard is 300.

13 We've also had a complication of judges making the
14 situation worse. One of the things we've been looking at,
15 which I'm going to be spending some time on in the next
16 year, is misdemeanor courts; and one of the good things
17 that's happened is that some light has been shown on these

18 problems by the Supreme Court and by the disciplinary system
19 for judges. And I referenced in our materials a couple of
20 cases, including one of a judge who had been disciplined.
21 After he came back from his discipline, he still didn't get
22 the message of appointing counsel for people and he was
23 actually stipulated to his removal from the court. And this
24 has happened all around the state with judges in smaller
25 courts who routinely accept guilty pleas from unrepresented
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1 people and send them to jail, and it even has happened in
2 our county here in one of the richest communities of the
3 state in east King County where a judge sent a young woman
4 to jail without counsel for a minor possession of alcohol
5 for a probation violation. And when that came to the
6 attention of public defenders, we were able to get her out
7 on a habeus corpus and to institute some changes in the
8 procedures of the court.

9 But there are other contract defenders in our
10 county here in municipal courts because there are a lot of
11 small cities throughout the state, including here in King
12 County, who don't have defender offices and don't contract
13 with the King County defense system and we've had complaints
14 from clients and have confirmed with the offices of these
15 contract lawyers.

16 "I don't go to jail to see my clients because it's
17 much easier for me to talk to them on the phone when they
18 call me from the jail because I have my books here in my
19 office, so it's better than going into the jail. And of
20 course it's also more efficient. You don't have to take the
21 time." So that's a problem right here in our county.

22 The scope of the problem in misdemeanor cases is
23 huge. There's at least 150,000 misdemeanor cases a year in
24 Washington, and my guess is well over half of those don't
25 really have any meaningful access to counsel.

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1 One of the things that we have taken on as a state
2 association, which actually might be helpful in other
3 places, both the formation of the association and then
4 trying to use it, is to act as an amicus in cases where the
5 local defenders do try to do something about it. An example
6 is a case we have in our materials Mount Vernon versus
7 Weston.

8 In this case the defenders had enormous case
9 loads, but they were trying to do a good job. But they
10 asked us to come in because they appealed cases, and the
11 trial judge who at that time controlled the appointment of
12 lawyers on appeal refused to let them withdraw from the
13 appeal even though they were on overload with his trial
14 court. So we came in and argued the appeal, and the court
15 said you have to let the defenders out because their case
16 load is overwhelming.

17 So we got an opinion and a recognition that in
18 fact there are limits to how many cases someone can handle.
19 So our state standards are recognized in an appellate
20 opinion now. And we've been able to do a little bit of that
21 at the trial level also.

22 The problem of ineffective assistance in capital

23 cases is a big issue in Washington as well. We've made
24 strides because we've been able to get standards for capital
25 counsel which are in fact being followed, and I indicated

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1 several cases where either overburden and inexperienced
2 defenders or totally underfunded private counsel resulted in
3 ineffective assistance at the trial level. Fortunately in
4 King County we've been able to get excellent funding for
5 capital work, and we have funding in King County for two
6 full-time attorneys and a full-time investigator for the
7 pendency of a capital case. So we have good resources and
8 we get resources for expert services.

9 The problems that I talked about in misdemeanors
10 are also happening in juvenile cases. One thing I wanted to
11 mention in terms of going forward is that I spoke at a very
12 similar meeting to this, as did Norm Lefstein, in Boston
13 twenty years ago on the 20th anniversary of Gideon and -- I
14 was only five years old at that time --

15 CHAIRMAN ROSS: Nice that you are both still
16 dancing together.

17 MR. BORUCHOWITZ: -- one of the things I
18 recommended then was that ABA leaders could work with state
19 bar leaders in their communities to work with local lawyers
20 doing this work and try to advocate for them in whatever
21 funding authorities they have.

22 A little bit of that has happened over the last
23 twenty years, and there have been enormous developments in
24 terms of NLADA which is available to offer assistance to
25 folks like in Montana if they ask us about it and let us

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1 know about it; but these are relatively new developments and
2 relative new and far between and require somebody to ask.

3 Your question about the appeals, these low bid
4 outfits, they don't try any cases and they don't appeal any
5 cases. And so appellate defenders, even if well organized
6 and run, don't know about these cases because they never get
7 appealed. And indigent clients who are in prison have very
8 few resources to get somebody to call to the attention of
9 the ACLU, and ACLU national office cannot sue 50 states and
10 50 counties in each state.

11 So what needs to happen is to motivate the folks
12 who are doing it at the local levels, bar associations,
13 universities, whatever, to try to organize, to try to help
14 the people who have the contracts to recognize that there
15 are resources available and if they band together they can in
16 fact get some assistance. It's my hope that when we get
17 back together on the 60th anniversary that we'll be able to
18 have a more uniformly positive report.

19 CHAIRMAN ROSS: Thank you.

20 MR. SONNETT: How did the WDA get formed? Is that
21 a creature of state legislation or just banding together of
22 public defenders?

23 MR. BORUCHOWITZ: Yes. A bunch of us sat down in
24 our office and talked about how we could do it and got
25 defenders to do it. And our first real project was to take

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1 on case load standards and standards in general. And I'm

2 happy to say that we got a small grant from the ABA Bar
3 Information Project to help develop, publish and educate
4 about the standards. And I think we actually got two small
5 grants from the Bar Information Project to do that. And it
6 was really defenders deciding that the problems were so big
7 that we needed an organization. It went beyond each of our
8 counties to take that on.

9 MR. SONNETT: But it covers a variety of different
10 kinds of systems. Public defender systems, contract
11 systems.

12 MR. BORUCHOWITZ: Right. Our board of directors
13 for the organization consists of the director of each
14 organized defender that belongs to the association; and I
15 think we have all the organized defenders, at least I think
16 we do. And we have also the individual at large members who
17 represent assigned counsel, some of whom have contract
18 systems and some of whom are individually appointed.

19 The great bulk of the activity in the organization
20 is organized defender offices, and most of the largest
21 counties have organized defenders. Clark County is one of
22 the larger counties and does not have an organized defender
23 system. They used to. They closed the office down when
24 they asked for too many resources. So there are problems.

25 But our organization basically got started by

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1 banning together, taxing ourselves in terms of dues and then
2 we were able to get some grants and go from there. And
3 Christie can talk about that.

4 MR. SONNETT: One of the things that I noticed in
5 the written materials that we got in advance was some of the
6 things that the WDA was able to accomplish in terms of
7 standards and in terms of the interaction with the state bar
8 or the governors of the state bar. Is there something
9 replicable about that?

10 MR. BORUCHOWITZ: Yes. I think there is.

11 MR. SONNETT: Put you together with the folks from
12 Montana.

13 MR. BORUCHOWITZ: We're happy to do it. And a
14 couple years ago I talked with a lawyer who was doing
15 contract work in Louisiana; and I think part of the problem
16 is a lot of the folks doing this work are so overwhelmed in
17 terms of the cases they have when they are conscientious and
18 trying to do a good job they don't have time to go to the
19 state capital which is often hundreds of miles away, they
20 don't have time to go to bar meetings and so forth.

21 One of the benefits of forming an association is
22 you can then, if you get enough resources, get a staff to do
23 that; but you do need individuals in each location that are
24 willing to stand up. And it's very hard because of the
25 kinds of pressures that you heard about in terms of judicial

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1 and political pressures.

2 When I first became a director, I went to a
3 training that was funded by the Justice Department.
4 Marshall Hartman was one of the teachers there, and we spent
5 half a day on how do you deal with political pressure. I'm
6 happy to say that as the director of a nonprofit, while I

7 have lots of political pressure in terms of my budget, I
8 almost never have the kind of pressure where a judge calls
9 me up and says, "You have to fire Randolph Stone; he's
10 really a terrible guy." I think I've had five phone calls
11 in the twenty-four years as director where a judge has said
12 get rid of this person or hire this person. I don't get
13 those calls. And I think it's because we've been able to
14 establish our nonprofit independent system with good bar
15 support both locally and statewide that you don't do that
16 with us. But it's something that you develop over time.

17 I think you have to figure out how to get
18 community and bar support. My office got started in great
19 part because community members, particularly people of
20 color, came forward and said, "We're not being represented
21 in the municipal court of Seattle." This was 1969. It was
22 pre Argosy (phonetic) and post Gideon. In Model Cities at
23 that time federal money was available. Not very much. I
24 think we got \$25,000 to start the office from Model Cities.
25 But in 1969 that was real money and you could actually do

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1 something.

2 Then during that year the King County bar, under a
3 lot of pressure from the community, formed a task force
4 which included a lot of the real lawyers as you call them
5 from the civil bar, some of whom are now professors and
6 judges; and they recommended a nonprofit model for the
7 county system. And then the county agreed with that and
8 hired our office to be the county public defender, and now
9 we have four county public defenders to deal with the volume
10 and the conflicts.

11 MR. SONNETT: Maybe a three part question here. I
12 know a lot of the criminal defense lawyers in Washington.
13 You've got an outstanding criminal defense bar, and I assume
14 that you've been able to get good support from them.

15 MR. BORUCHOWITZ: Yes.

16 MR. SONNETT: But you have also received, have you
17 not, very strong support from the noncriminal defense bar?
18 I mean, I joke about the real lawyer thing because I'm a
19 criminal defense lawyer. But the state bar of Washington
20 has given you broad support.

21 MR. BORUCHOWITZ: Yes.

22 MR. SONNETT: How about the other two
23 constituencies, judges and prosecutors? Would you agree
24 that they have a stake in seeing that an indigent defense
25 system runs well? And have you been able to count on judges

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1 and prosecutors to help make the system fair?

2 CHAIRMAN ROSS: That's a nonpolitical question.

3 MR. BORUCHOWITZ: I'm not sure who is sitting
4 behind me right now. I don't think you can answer that yes
5 or no. It's been a mixed record.

6 Lately and erratically during my career there have
7 been many judges who have stood up for effective public
8 defense, including in the last couple of years. A number of
9 those who used to work in my office, but they're not all. I
10 know a lot of the more distinguished senior appellate and
11 retired appellate judges have been very strong on public

12 defense. In general the King County judges have been very
13 happy with I think having an independent model and have
14 become accustomed to that in a way that many judges are not.

15 The prosecutors are really mixed around the state.
16 Some of them really have fought hard against good public
17 defense services. Others are pretty supportive. Our
18 prosecutor here has several times said he thinks we have the
19 best public defense system in the country and he is not
20 trying to change it. He doesn't want to change it. He
21 likes it the way it is. One of his former chief deputies,
22 Dave Boerner, who is a professor at Seattle U law school,
23 early upon his retirement from the prosecutor's office I
24 asked him to come and testify at a council hearing and he
25 basically said, "Look, I'm a prosecutor, former prosecutor;

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1 I want good public defenders because if I have good
2 experience with public defenders it's going to be efficient
3 and fair."

4 Now, if somebody is a prosecutor who is not
5 interested in fairness, then it's even more efficient to
6 plead everybody guilty. But if you assume there's going to
7 be some fairness involved, then you want some efficient
8 people and effective people so you can work with them.

9 CHAIRMAN ROSS: Thank you very much.

10 MR. BORUCHOWITZ: Thank you.