Rural Washington County Settles Shoddy Indigent Defense Lawsuit

By C.C. Simmons

In 2004, the American Civil Liberties Union of Washington State (ACLU) and Columbia Legal Services (CLS) filed a class-action lawsuit in Kittitas County Superior Court. The ACLU and CLS claimed in the lawsuit that Grant County, a rural central Washington county, failed to provide adequate legal defense for people who couldn't afford their own attorney. The plaintiffs claimed that Grant County used unqualified and overworked public defenders who were paid a flat fee of only $650 to represent defendants in serious felony cases.

On November 8, 2005, the day the trial was to begin, the parties reached a settlement which requires Grant County to pay the plaintiffs $500,000 for attorneys' fees and costs. The county is also required to hire a full-time supervisor for its public defenders, to limit individual defenders' caseloads to 150 felony cases per year, to hire one full-time investigator for each four public defenders, and to provide an interpreter, when needed, for attorney-client meetings.

To ensure compliance during the six-year term of the agreement, a monitor will be appointed to ensure that Grant County upholds its end of the agreement. For each year that the county fails to do so, $100,000 will be added to the settlement fees. It will be the first time a Washington county's public defender system will be subject to comprehensive independent monitoring.

The plaintiffs noted that in 2004, the Washington Supreme Court disbarred two attorneys who had worked as public defenders in Grant County. The Washington State Bar had sought the disbarment of those public defenders, Tom Earl and Guillermo Romero, after substantiating accusations that they had solicited payments from indigent defendants they were appointed to represent.

Earl and Romero are now barred from practicing law, but two other Grant County public defenders who were criticized by the plaintiff's lawsuit are not. Although the settlement provides that the county will not hire former defenders Randy Smith or Ted Mahr, Smith will apparently continue to represent the court-appointed clients he already has.

When questioned about the settlement, Mahr said that nobody had informed him that the county would not rehire him. He defended his work saying, "I work very had and do a good job for my clients."

Smith's performance as a public defender has been questionable. The plaintiffs alleged that in one case, Smith didn't know how to enter a simple document into evidence. In another case, Smith misinformed a client about the consequences of a guilty plea that resulted in a sentence of up to life in prison. Nevertheless, Smith will continue to represent his indigent Grant County clients who were assigned before the settlement was reached.

According to LeRoy Allison, Chairman of the Grant County Board of Commissioners, the settlement "applies to future contracts, not current or past. So the impact of that determination isn't for today's clients or yesterday's clients, but for future clients."

Among the clients Smith will continue to represent is Evan Savoie, 15, who faces an April 2006 trial for murder. Savoie is charged with stabbing and killing Craig Sorger, then 13, in February 2003. Savoie was 12 when he allegedly killed Sorger.

The Savoie case has been highly publicized not only because of the parties' ages, but because the trial will bring together a public defender who has been harshly criticized, a prosecutor who has been convicted of a drug felony, a trial judge who has been censured for incompetence, and a public-defender system that is among the worst in Washington State.

When Smith was appointed to represent Savoie, he had been an attorney for fewer than four years. "Is there something about my law degree that is somehow less because I have an office in Grant County?" asked Smith. "Maybe I'm young and cocky but I think I'm pretty good," he added.

For more about the Grant County public defender scandal, see "The High Cost of Free Defense," *Justice:Denied*, Issue 26, Fall 2004, p. 26.

Sources: Grant County public defender out — after big case, Ken Armstrong and Jonathan Martin, *Seattle Times*, November 20, 2005.
Grant County settles defense lawsuit, Ken Armstrong, *Seattle Times*, November 8, 2005

Appeal Judges Censure Magistrate For Wrongly Convicting Defendants

By Bob Frean & Ingrid Oellermann

A Port Shepstone, South Africa regional magistrate, Nonesi Dlamini, was reported to the Magistrate's Commission twice in October 2005 by high court judges of appeal sitting in Pietermaritzburg.

Judge Noel Hurt, with Judge Vivienne Niles-Duner concurring, found that Dlamini had not administered justice when she wrongly convicted a man of two rapes and sentenced him to an effective 15 years in jail.

Hurt set aside the sentence and referred his judgment to the minister of justice and to the Magistrate's Commission — the second case in three days in which judges have ordered their judgments, which are critical of Dlamini, to be sent to the commission.

In both cases dealt with by the high court, the wrongly convicted appellants had languished in jail for more than two years.

On Tuesday (Oct 18, 2005), Niles-Duner also set aside the murder conviction of Petros Zwelethu Shozi and his nine-year prison sentence, and ordered that a copy of the judgment be sent to the commission.

Port Shepstone is a town of about 6,000 people on the southeastern Indian Ocean coast of South Africa. It is about 130 miles southwest of Durban, the closest major city.

The 60-year-old accused in yesterday's appeal cannot be named, to protect the identity of his alleged victims, who were family members.

Hurt said that the alleged rapist and his wife had become estranged and Dlamini should have found that his assertions that the rape charges had been trumped up against him could have been true.

Dlamini had made no effort to apply the rules of law in her analysis of all the evidence, Hurt said. Other judges have previously set aside Dlamini's convictions and ordered copies of their judgments criticising her conduct, to be sent to the Magistrate's Commission.

In 2003 two of Dlamini's judgments were set aside. The first was described by the judges as being the worst they had ever seen. The judges on the second case criticised Dlamini's approach to the case as having been "entirely unacceptable" and suggestive of bias, and said the judgment had been "largely incomprehensible."

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