

HISTORY OF THE FEDERAL PUBLIC DEFENDER, DISTRICT OF ARIZONA

By: Heather E. Williams, Federal Defender, Eastern District of California

One month before *Gideon v. Wainwright*¹ was decided in March 1963 (extending to state court indigent defendants - via the 14th Amendment - the right of court-appointed counsel), the National Legal Aid and Defender Association established the National Defender Project.² It was without government money and solely funded by the Ford Foundation.³ Major General Charles L. Decker, Judge Advocate of the United States Army and Chairman, ABA Sections for Criminal Justice and for Legal Education, was named its first director in January 1964.⁴

In August 1964, Congress passed the Criminal Justice Act (CJA) of 1964.⁵ Though it initially did not form federal government public defender offices, effective August 1965, it permitted federal government payments to bar associations or legal aid defense lawyers in federal court.⁶ Their rate: \$10 an hour out-of-court; \$15 an hour in-court.⁷

San Francisco opened the first federal criminal defense office in 1965, due in large part to a Ford Foundation grant. These grants shortly financed similar offices in Phoenix, Arizona (Tom Karas, Director), Chicago, Illinois (Terry MacCarthy), and San Diego, California (Harry Steward).⁸

Tom Karas, at the Honorable Walter E. Craig's request, came to criminal defense from being the Chief Criminal Deputy, District of Arizona's U.S. Attorney's Office.⁹ Karas worked without any assistant attorneys, a secretary, even a desk when the Office opened its doors October, 1965.¹⁰ The Office, Karas' salary, an eventual secretary, and supplies were funded by a \$32,377, 3-year grant by the National Defender Project to the Maricopa County Legal Aid Society, and grants from the Maricopa County Bar Association, and the Arizona State Bar.¹¹ It was seventeen months, before Karas hired another lawyer,

¹ 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).

² Hon. Pamela J. Franks, *Federal Defender Organizations in the Ninth Circuit*, 2 Western Legal History 21, 22 (1989).

³ Id.

⁴ Id.

⁵ 18 U.S.C. § 3006A.

⁶ Franks @ 22.

⁷ Id.

⁸ Id. at 23.

⁹ Id.

¹⁰ Id.

¹¹ Id.

Thomas O'Toole, who was made First Assistant, to join him in their Office in the Phoenix Federal Courthouse.¹²

President Nixon, in October, 1970, signed an amendment to the CJA permitting establishing federal public and community defender organizations.¹³ Shortly after, the Northern District of California appointed James Hewitt, a former Assistant U.S. Attorney, to be the first Federal Public Defender in the country.¹⁴ Hewitt was friend to then-District of Arizona Chief Judge Carl Muecke who learned of the elaborate celebration Hewitt planned, complete with engraved announcements sent across the United States. Chief Judge Muecke called Karas, ordering Karas to his chambers immediately.¹⁵ When Karas showed up, Chief Judge Muecke quickly swore in Karas as the United States' and the District of Arizona's first Federal Public Defender on April 30, 1971.¹⁶

The District's cases were mostly violent crimes (assaults, murders, sex offenses) off the many Native American reservations in the State and drugs cases from its southern border with Mexico.

Karas left the Federal Defender Office in January 1976, when O'Toole was named the District's second Defender. O'Toole became a Maricopa County Superior Court Judge in 1984 (eventually becoming that Bench's Chief Presiding Judge), and Fredric Kay, an Assistant Federal Public Defender since 1971 (and third lawyer hired by Karas in Tucson after Jo Ann Diamos - a then-rare female lawyer - and Gilbert Veliz), became the District's third Defender.

The Office grew quickly while Kay was Defender. When the Arizona Capital Representation Project, and several like organizations, lost their national funding to pursue and defend capital habeas corpus and appeals in 1995, Federal Defender Offices nationwide sought to absorb these lawyers and their cases. Arizona began its Capital Habeas Unit with only a few lawyers and grew to meet the burgeoning Death Row population.

In 1988, Congress increased legislation to make its War on Drugs, as well as criminalize undocumented immigrant presence in the United States. Increased law enforcement in these areas, combined with increased penalties, changed the caseloads throughout the District and became the majority of cases in the Tucson Office. Immigration cases became such a great part of the Tucson Office's caseload that, from 1997 to 2006, that Office had a separate Immigration

¹² Id.

¹³ Id.

¹⁴ Fred Kay speech to the Tucson Federal Bar Association, 1/15/2004.

¹⁵ Id.

¹⁶ Franks at 23; Fred Kay speech.

Unit, quickly recognized across the country for its expertise in Immigration law.¹⁷

Kay retired from his position in September 2004 (retired to then and now work as a Pima County Deputy Public Defender at Juvenile Court).

Jon Sands, an Assistant Federal Defender since 1987 and supervisor for several years in the District's Phoenix Office, was named the fourth Federal Public Defender. Since then, the Office opened two Branch Offices - Yuma in December 2005 and Flagstaff in early 2006.

The Federal Defender's Office has produced many who have served the State Bar well. Karas was the Arizona State Bar President from 1989-1990. John Hannah, an Assistant in the Phoenix Office, was on the State Bar Ethics Committee. Jon Sands has served on the State Bar's Diversity Panel for years.

Several Defenders have been or are presently on the Bench:

- Frank R. Zapata, Rosemary Marquéz, U.S. District Court Judge.
- Glenda Edmonds, Jacqueline Rateau, Bernardo Velasco, Deborah Fine, U.S. Magistrate Judges.
- Thomas Kleinschmidt (retired), Arizona Court of Appeals, Division One.
- Thomas Kleinschmidt (retired), Thomas O'Toole, Pamela Franks, Sally Duncan, Michael Gordon, John Hannah, Maricopa Superior Court Judges.
- Bernardo Velasco (retired), Gilbert Veliz (retired), Javier Chon-Lopez, José Robles, Pima County Superior Court.

Assistant FPDs have argued before the Supreme Court while with the Office:

- Thomas O'Toole: *U. S. v. Wheeler*, 435 U.S. 313 (1978) which decided it was not double jeopardy to be tried in tribal and in federal court.
- Bernardo Velasco: *U.S. v. Cortez*, 449 U.S. 411 (1981) affirming the District Court's decision that an investigative stop was lawful.
- Victoria Brambl: *U.S. v. Arvizu*. 534 U.S. 266 (2002) deciding the Court of Appeals must properly take into account the "totality of the circumstances" when deciding an appeal.
- Kenneth Murray: *Schriro v. Summerlin*, 542 U.S. 348 (2004) holding *Ring v. Arizona* does not apply retroactively to cases already final on direct review.
- Leticia Marquéz: *Ryan v. Gonzalez*, ___ U.S. ___ (2013) holding 18 U.S.C. § 3599 does not provide a state prisoner with the right to suspend his federal habeas proceedings when he is adjudged incompetent.

¹⁷ The Unit was joined to the remainder of the Tucson Office when it became clear the Immigration cases were closely intertwined with the other types of cases the Office handled.

Today, members of the Office have served at the Office of Defender Services, the Training Branch, and with the U.S. Sentencing Commission in Washington D.C. Lawyers, paralegals, and computer support staff are invited around the country to train and speak at numerous seminars and skills workshops, within the federal system and many national, state and local associations. Many office lawyers have been published in national professional periodicals and teach at state law schools.