



The Defender Association

Fortieth Anniversary Report

1969-2009

Forty Years of Innovative and Effective Public Defense Representation

The Defender Association has grown from a handful of lawyers handling misdemeanor cases into one of the largest and most respected public defender offices in the country. At the 40 year mark, we celebrate extraordinary progress and accomplishments while preparing for inevitable challenges ahead.

Forty years ago, the Defender Association began handling cases in Seattle Municipal Court. Only six years earlier, the United States Supreme Court had decided in *Gideon v. Wainwright* that the Sixth Amendment guaranteed court-appointed counsel in state felony cases. It would not be until 1972 that they applied that right to misdemeanor cases in state courts, three years after the Defender Association opened its doors. As former Director Bob Boruchowitz and his co-authors documented in a report earlier this year for the National Association of Criminal Defense Lawyers (NACDL), many accused persons around the nation still do not enjoy the right to effective counsel in misdemeanor

cases that the Defender Association implemented in Seattle in 1969.

Today, the Defender Association is a large law firm of 82 attorneys and 59 support staff, with a variety of innovative programs which have won national attention. The staff and alumni are recognized as leaders in the bar, and about two dozen have become judges and court commissioners. Association alumni serve on the faculties of seven law schools from coast to coast.

The late King County Prosecuting Attorney Norm Maleng said of the Defender Association and the King County public defense system, "I think we really have a national model for an effective public defense."

In 1978, the professionalism of the office was recognized in a national study, *Criminal Violence, Criminal Justice*, by Charles Silberman. It referred to our practice 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.

The cornerstone of Defender Association practice is to pursue and accomplish the goals of the client as defined by the client. New York University clinical law professor Kim Taylor-Thompson, former Director of the Public Defender Service (PDS) for the District of Columbia, has observed that along with PDS, the Defender Association has "earned [a] reputation within the defense community for innovative and client-centered representation." *Tuning Up Gideon's Trumpet*, 71 *Fordham Law Review* 1461, 1500 (2003).

The strength of our program over the years has been based on:

- excellent communication with, and loyalty to, clients
- a strong trial, motion and interlocutory appeal practice
- timely and resourceful pre-trial mitigation work
- a widely recognized investigation and investigator training program
- a highly trained and well-staffed social work program
- committed and talented attorneys and supervisors
- vigorous adherence to caseload and supervision standards

In addition to maintaining a strong trial-level practice, Defender Association attorneys frequently pursue extraordinary writs to prevent or remedy unlawful actions by courts of limited jurisdiction. Our writ expertise is relied upon as a resource by many defenders and private counsel.

The office has helped to establish standards for defender services in Seattle/King County, statewide, and nationally.

The Defender Association Began With Model Cities Funding

The Defender Association was founded as part of the federal Model Cities Program in 1969, the product of a union of angry citizens of Seattle and their elected representatives.

Until 1968, Seattle watched with some smugness as Newark, Detroit, Los Angeles, and other cities erupted in flames and riots. But Seattle was not immune.

Killings by police of young black men fueled protests which challenged police. The morale of line officers ebbed as a scandal over widespread corruption began to unfold. Student unrest over the Vietnam War added a dimension of revolutionary rhetoric to the violence. The Urban League executive director was assassinated in his home and the Black Panthers displayed their guns in public. Buildings were burned or dynamited.

In this atmosphere, Model Cities advertised weekly meetings in the central area of Seattle on various aspects of education, health and public safety. Heated verbal confrontations frequently occurred before the group got down to business. Sometimes the meetings were canceled because of trouble on the street.

A group of those concerned about public safety began to concentrate on obtaining legal representation in Seattle Municipal Court--the court with which most citizens had contact. In 1963, the United States Supreme Court had written in *Gideon*:

...in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. ...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.

Seattle residents sought to apply the right reaffirmed in *Gideon*, in the context of Municipal Court. The planning assistant assigned to the meetings worked well with citizens and they soon had a plan for an independent public defender modeled in part on the San Diego Federal Defender office. Not only was the office to represent indigent clients, but also it was to concern itself with removing procedural road blocks to justice and changing rules and laws to that end.

Office Begins With Municipal Court Work in 1969

The Defender Association'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 Association 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 Association 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 killings at Kent State led to marches in Seattle, disruption of traffic, and many arrests. Vigilante action by people believed to be members of the police tactical squad caused many injuries to students and others in the University District. The Defender Association set up offices on campus to gather information for their cases and to document the police conduct.

During this time, the office hired a full complement of staff and compiled an impressive record of successfully representing persons charged in the civil chaos that continued to erupt in the Central District, University District, and downtown areas. The police department was reorganized,

and corruption cases were filed in federal and state courts.

The pledge to address systemic barriers to justice led to civil litigation in several instances. The first Director, John Darrah, with other Defender Association lawyers, brought a declaratory judgment action and habeas and mandamus writs on behalf of suspects held in the City of Seattle jail for prolonged periods without appearing before a magistrate (*Johnson v. Moore*, 80 Wn.2d 531 (1972)). The office also prevailed in a challenge to the practice of requiring a defendant in a criminal traffic case to post a bail in order to obtain a trial date (*State ex rel. Wallen v. Judges Noe, Towne, Johnson*, 78 Wn.2d 484 (1970)).

County Contracts with Defender Association in 1970

As the result of a "blue ribbon" task force, which included Carolyn Dimmick, later a Federal judge, Superior Court Judge Edward E. Henry, and University of Washington Law Professor John Junker, 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 office soon handled all kinds of cases, and emerged as a leader in public defense both in Washington and around the nation. The Defender Association logo--St. George slaying the dragon of injustice--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; most of the staff were formerly incarcerated. This program evolved into a professional social work and dispositional planning unit, headed by an MSW and supported by interns.

Defender Association Work to Develop Standards

To respond to funding limitations and caseload pressures, the Defender Association began in the early 1980s to advance the idea of public defense 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 office was

the chief proponent of a 380 case annual limit for Municipal Court practice when the Seattle City Council first endorsed it in 1987 (Council Resolution 27696). Five years ago, we worked with the other King County non-profit defender agencies to support the City Council's adoption of the 380 caseload limit by ordinance, sponsored by Public Safety Committee Chair Nick Licata.

In 1983, the office helped to found the Washington Defender Association, a membership and support group for defenders across the state. Then-Director Bob Boruchowitz served as President of WDA for the first 20 years after its founding. With the help of two grants from the American Bar Association, WDA developed a set of defender standards and obtained the endorsement of 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. Bob worked with the National Legal Aid and Defender Association (NLADA) to develop a model defender services contract, and led a national defender committee that drafted a statement on caseloads and workloads in 2007.

The caseload standards championed by the Defender Association have been a key factor ensuring high-quality indigent defense services in Martin Luther King County. The County eventually incorporated much of the WSBA-WDA standards in its budgeting and contracts for public defense. Caseload ceilings are enforced. Attorney salaries have improved and are tied to prosecutor salary levels. The Washington Legislature has passed a statute requiring local governments to establish defender standards.

In recent years, the state bar association established a task force on public defense, which used the WDA/WSBA standards to measure the scope of problems and the need for additional funding for defenders across the state. The bar has maintained active support for defender standards and for increased state funding for defenders.

Alumni

Defender Association "alumni" have become leaders in the private bar, staff attorneys at the Federal Defender and other public service agencies, professors at law schools, and approximately two dozen have

become judges and commissioners in King County Superior Court, Seattle Municipal Court, two other municipal courts, and the Court of Appeals. Two have become U.S. Attorney for the Western District of Washington. The general counsel for the state bar, the director of the Northwest Defenders Association, the special counsel for TeamChild, the director of the Cowlitz Public Defender, the Office of Professional Accountability Auditor for the Seattle Police Department, the deputy director of the ACLU of Washington, and the President of the Seattle/King County NAACP are alumni. Defender Association alumni have served on the Seattle City Council, the King County Council, the Seattle School Board and the WSBA Board of Governors.

Former non-attorney staff have become Assistant Chief in the King County Sheriff's Office, the Seattle Municipal Court Administrator, and the ACLU Legislative Director.

Staff Recognition

Defender Association attorneys have been tapped to serve on the state Sentencing Guidelines Commission, the state Office of Public Defense Advisory Board, the WSBA Council on Public Defense, the Minority and Justice Commission, various bar association groups, the ACLU-Washington board, and special task forces, including the City of Seattle Racial Profiling Task Force and the Seattle Marijuana Policy Review Panel.

More than one third of the attorneys certified by a Washington Supreme Court panel as qualified to handle capital appellate and post conviction work are either at the Defender Association or are Defender Association alumni.

Several Defender Association attorneys have been recognized with awards and in Bar magazine articles. Eight Defender Association attorneys and alumni have won the Washington Association of Criminal Defense Lawyers William O. Douglas award. Several Defender Association attorneys have won the Champion of Justice Award and the President's Award from WACDL. The Racial Disparity Project received the Service and Advocacy to Communities of Color Award from the Minority Executive Directors Coalition, and the Paul Robeson Award from Mothers for Police Accountability. KCBA Outstanding Mentor.

TeamChild

The Defender Association has long encouraged its attorneys to address underlying problems affecting clients by thinking outside the box of the usual role of defense counsel. In the early 1990s, in collaboration with Columbia Legal Services and the Washington Defender Association, Defender Association attorneys founded TeamChild, a model program which provided an integrated approach to the criminal justice and civil legal needs of juvenile offenders. TeamChild, which started as a Defender Association project, later became a freestanding organization that has been replicated in several other states. TeamChild received awards from the American Bar Association and the National Legal Aid and Defender Association for its work helping juvenile defendants with their education and other non-criminal needs.

Racial Disparity Project

The Racial Disparity Project began in 1999 with a grant from the U.S. Department of Justice to work to reduce racial disparity in the criminal justice system. It has since been supported by grants from the Open Society Institute, the Drug Policy Alliance, the Racial Justice Collaborative, the JEHT Foundation, the Ford Foundation, the Massena Foundation and King County.

Project staff have consulted for, and provided training for, the Brennan Center for Justice, the Drug Policy Alliance, the Open Society Institute, the Impact Fund, and the ACLU on strategies for involving clients and community partners in criminal justice reform. An evaluation of the Project by the Institute on Race and Poverty at the University of Minnesota found that the Defender Association had

gone beyond case-by-case representation of clients to work proactively on behalf of both clients and the communities whence they come ... The Racial Disparity Project enables the [Defender Association] to broaden its advocacy to encompass not only representation of individual clients, but also efforts to change the system for the benefit of disadvantaged communities, and particularly communities of color.

The RDP initially focused on Driving While License Suspended 3rd degree charges, the most common misdemeanor in local courts of limited jurisdiction, and a charge filed against drivers of color at very high rates compared to the general population. The RDP worked with Defender Association clients to form the Drive to Survive Campaign, which pushed successfully for relicensing assistance from courts and to rescind the City of Seattle's vehicle impoundment program for drivers suspended due to unpaid traffic fines.

The project then turned to racial disparity in drug enforcement. Working in partnership with the ACLU Drug Law Reform Project, pro bono counsel from local law firms, and a sociologist at the University of Washington, Racial Disparity Project attorneys litigated selective enforcement challenges to Seattle drug arrests based on racial bias/selective enforcement from 2001-2005 and from 2006-2008. Both rounds of litigation yielded preliminary discovery rulings in favor of the RDP clients, which were affirmed on interlocutory review. Both cases ultimately were resolved with dismissals or time served offers to the Project's clients.

Meanwhile, Project staff worked with community partners to develop a more effective and humane community-based diversion alternative to arrest which could mitigate the harm of racial disparity in enforcement patterns. This approach has been piloted in the Rainier Beach neighborhood since 2006 with funding from the City of Seattle and King County. Project staff have collaborated with community public safety leaders, the King County Prosecutor's Office and the ACLU of Washington to develop a pre-booking diversion protocol and find funding to expand the model elsewhere in Seattle and King County.

A staff attorney was awarded a Soros Justice Fellowship in 2009 to work with the RDP to address the local law enforcement practice of "admonishing" or barring individuals from accessing public space.

Death Penalty Assistance Center

The Defender Association advocated for state funding for assistance to lawyers handling death penalty cases. After the legislature provided funding, the office was awarded a contract by the state Office of Public Defense in 2001. The Washington State Death Penalty Assistance

Center's primary function is to assist defense attorneys in providing effective representation to individuals facing a potential death sentence. WDPAC provides resources, training, and consultation to capital defense counsel throughout Washington State.

Recently the Center has worked with the University of Washington to present programs featuring experts from the medical school and behavioral sciences departments. The Center also has offered training on capital jury selection, many other CLE programs, and conducts active case meetings. The Center's website and daily e-mails are designed to keep practitioners up to date on the latest legal developments and alert them to trainings.

The Center has studied the administration of Washington's death penalty system. In *Where Are We Heading? Current Trends of Washington's Death Penalty*, WDPAC reviewed the significant impact race and location has on the administration of Washington's death penalty. WDPAC analyzed the extraordinary expense, time, and uncertain results of Washington's death penalty in *Washington's Death Penalty System: A Review of the Cost, Length, and Results in Washington State*, which was posted on the home page of a national death penalty web site. In 2004, WDPAC assisted the Washington State Bar Association's Blue Ribbon Panel by providing data about Washington's death penalty system, which prompted the Panel to conclude "that a WSBA subcommittee should be established to examine issues arising from the administration of the death penalty."

Clinics

For many years, the Defender Association housed a University of Washington School of Law criminal defense clinic. Current felony trial supervisor Leo Hamaji was honored by the law school as teacher of the year when he served as the clinic instructor in 2000-2001. Currently, the office has a clinical program with Seattle University School of Law, focused on juvenile offender and misdemeanor representation. That partnership recently resulted in a Court of Appeals decision establishing a right to counsel for children in truancy court first appearances. Several graduates of both clinics have joined the Defender Association staff.

When the City of Seattle began to impound vehicles driven by people

whose licenses allegedly were suspended for unpaid traffic fines, the Defender Association proposed and staffed a City-funded impoundment clinic to represent individuals in post-seizure hearings to regain their vehicles or the replacement value if the cars had been sold at auction. The clinic was directed by a Defender Association supervising attorney and staffed by University of Washington students and pro bono attorneys through the King County Bar Association volunteer legal services program. The clinic had an extremely high success rate until it ended when the City Council amended the impoundment law to alleviate the hardships that clinic clients had experienced. The clinic was necessary to address what our clients reported was a far more onerous penalty than being charged with DWLS 3rd degree – the permanent loss of, for many, the most valuable asset their family owned.

Social Work & Mitigation

The Defender Association was one of the first defender programs in the nation to integrate social workers into our representation of individual clients. Our social workers assist lawyers in achieving not just the best possible legal outcome (by providing release information to the court and by preparing a mitigation case for use in negotiation or sentencing), but also the best holistic outcome for the client's life. Our social work division is well-regarded and highly trained, with all of our staff social workers holding Masters degrees, and most being licensed social workers (a relatively new and rigorous state certification process).

All of the staff social workers hold a Masters degree from an accredited graduate school. Many of our social workers have obtained or are in the process of obtaining state licensure (LICSW), which is of particular value when we seek to have a court accept the expert opinion of the social worker. Our social workers are active members in the National Association of Social Workers, National Association of Black Social Workers, the National Organization of Forensic Social Workers, and the International Association of Forensic Mental Health Specialists.

Recently, a Superior Court judge praised the release plan recommended by the Defender Association social worker for a young man who is deaf and mentally ill. The judge called it “the best release plan [she] had ever seen put together in a case.”

The social work/mitigation services division has developed an excellent fieldwork program with the University of Washington School of Social Work. Each year, three to six graduate students complete their practicum in our office. Each Masters candidate carries an active caseload under the close supervision of the supervisor of the division and their University of Washington School of Social Work clinic supervisor. Division supervisor Cynthia Skow was recognized recently as an outstanding field supervisor by the School of Social Work.

Appeals

The Defender Association has a small appellate unit, which works mostly on misdemeanor appeals, but the office continues to handle a small number of complex appeals at all levels of state and federal courts. Appeals supervisor Chris Jackson provides training and support to staff attorneys seeking habeas corpus writs to reverse certain lower court actions, or pursuing or defending against interlocutory appellate review of a trial court decision.

Recent appellate victories include:

- a Washington Supreme Court decision establishing a clear and convincing evidence standard of proof necessary to detain an accused for restoration of competency to stand trial;
- a Supreme Court decision applying the speedy trial rule to a misdemeanor defendant detained out of county because of a contract with Yakima for jail services;
- a Supreme Court decision striking down the decades-old doctrine of fugitive disentitlement, in which defendants on warrant status in the case being appealed were thought to forfeit their right to appeal;
- a Court of Appeals ruling invalidating common pre-trial release conditions as exceeding the authority provided in court rules; and
- a Court of Appeals decision affirming a trial court discovery order in a selective enforcement challenge to Seattle drug arrests.

Felony Practice

The felony division has grown as the legislature has added new categories of crime and sent juvenile offenders to adult court. The division has become the largest in the office, with 26 attorneys and five paralegals.

An increasing portion of the felony workload involves very serious cases -- homicide, complex fraud, sexual offenses resulting in potential lifetime incarceration upon conviction, and persistent offender ("three strikes" and "two strikes") cases. For several years, the office has been working on a high-profile aggravated homicide case in which our team of attorneys (Katie Ross, John Carpenter and Wesley Richards worked on the case at various stages) persuaded the prosecutor not to seek the death penalty, and won a hung jury in the first trial. Felony division attorneys have had other recent successes in homicide cases, including one case in which two attorneys and the investigator working with them persuaded the prosecutor to dismiss a first degree murder charge against their client because he did not commit the crime. The attorneys (Colette Tvedt and Avi Lipman), who have since entered private practice, are now on the Board of Directors.

The attorneys handling persistent offender cases continue to set a very high standard for effective representation in those life-without-parole cases, successfully negotiating pleas to non-strike offenses, in some cases misdemeanors, and obtaining dismissals in some cases. For example, in one recent stretch, a persistent offender attorney, Renee Alsept, resolved 18 out of 19 cases with less than life sentences, often through exceptional mitigation work also involving the social work and investigation staff.

Staff attorneys handling non-persistent offender cases have also turned in remarkable results in recent months, both in trial and by using mitigation information to persuade the prosecutor to agree to favorable resolutions. A staff attorney, Ali Pearson, recently brought a new challenge to the admissibility of fingerprint evidence based on scientific standards.

Misdemeanors

After a brief hiatus in which our Municipal Court practice was reduced to two lawyers, we now have a more robust unit of seven lawyers in place in Municipal Court. They have an aggressive trial and motion practice and have won praise from judges for their “vigorous advocacy.” On average, the attorneys are winning more acquittals more often than the prosecution gains convictions. In a recent trial week, two TDA lawyers tried a total of 4 trials in one week, obtaining acquittals in 3 of those cases. The attorneys’ factual and legal analysis of their cases and pretrial investigations have resulted in favorable resolutions in DUI and domestic violence cases and probation matters where the stakes can be relatively high and the consequences severe. When the judges overstep the law, the attorneys have taken writs to correct those mistakes in a timely manner. As the breath test is making a come back in DUI trials, the lawyers are demanding that the prosecution name its two expert witnesses in advance of trial so that they can be prepared to meet the testimony used to admit the test result. The government’s reluctance to naming its experts in advance has produced some favorable resolutions. The bottom line is that the lawyers in the misdemeanor division are pushing hard every day to provide the best representation possible while handling hundreds of cases each year.

Juvenile Practice

In addition to dedicated individual representation, the Juvenile Division attorneys are helping to frame policy discussions about how the justice system should engage young people charged with or suspected of crimes. Citing research recently published by the Justice Department, Juvenile Division staff attorneys have discussed in the press whether there is any reason to expect deterrence or public safety gains from prosecuting an increasing number of juvenile defendants in the adult system. They point out that decline of juvenile jurisdiction is associated with increased recidivism. Division attorneys have met with staff of the Seattle Youth Violence Prevention Initiative at the Urban League to discuss the intersection between the Initiative and the role of defense attorneys. Staff attorney Katie Hurley co-chairs the WSBA Juvenile Law Section Offender Committee, and has organized trainings on juvenile justice policy.

Dependency Practice

Over the past several years the dependency division further established a proud tradition of industry leading advocacy for parents and children caught in the child welfare system. In just the past couple of months, attorneys from The Defender Association successfully fought against the imposition of the “civil death penalty”, know as Termination of Parental Rights, in at least a half dozen cases. In 2009, the number is over a dozen. Additionally, our attorneys fight daily for smaller, but often equally meaningful, victories in court, where they force the State and the Court to recognize the integrity, achievement, and relationship our clients have within their families.

It is often said that it takes a village to raise a child. However, our clients often find the village unwilling to pitch in, opting instead for “easier” options of Termination of Parental Rights and adoption. Attorneys in the TDA Dependency Division demonstrate commitment, skill, and discipline in holding the community to its role as a support for our most vulnerable children and parents. Members of this division receive frequent compliments from all corners of the practice - Judges, CASA, Assistant Attorneys General, other agency and private counsel, and the professional community serving our clients – all to giving credit for the excellent work of our attorneys.

TDA attorneys do not let their advocacy end at the courtroom. We are involved in both King County and Washington State Bar Association efforts in the field of child welfare. We are an integral part of Family Treatment Court (a drug court model in the dependency practice), the Model Courts Project (a part of the National Council of Juvenile and Family Court Judges program to implement “best practices” in juvenile courts around the country), The Securing Early Connections pilot project (bringing one of the most effective therapeutic interventions ever established to our clients in King County), The Mediation pilot project (also part of the Model Courts program, bringing more productive resolutions to our cases and honor to our clients), the Parent-to-Parent program (connecting “veteran parents” who successfully navigated the dependency system together with current clients), the Reasonable Efforts Symposium (an annual gathering of the King County Child Welfare practitioners), as well as many other meaningful projects and presentations around King County and the State.

Lastly, no proper compliment to the dependency division is made without mention of the TDA social workers from our Mitigation Division. All too often our clients must negotiate an unforgiving “system” without effective

help from their state social worker; at times feeling more at odds than supported. The social workers at TDA play a vital role in helping our families stand back on their feet again, and much of the success mentioned here is due in large part to the efforts of TDA social workers. It is always our hope to expand our collaboration with our own social workers, as well as with our juvenile criminal defense division, to provide an ever increasing level of support and advocacy to the most vulnerable and troubled children and families in King County.

Civil Commitment

The civil commitment unit represents clients whom the state seeks to place in mental hospitals or forced alcohol treatment. Lawyers and social workers may assist clients in finding housing and outpatient treatment and may persuade the hospitals to allow clients who want to become voluntary patients to do so. The practice requires facility with expert psychiatric testimony in contested hearings, as well as an ability to form viable attorney-client relationships with clients who may be quite debilitated due to mental illness.

The Defender Association has continued to be a leader in the representation of the mentally ill and to be involved in most of the major state appellate court civil commitment cases. The division successfully overturned, on constitutional grounds, a portion of a statute dealing with involuntary chemical dependency treatment. Recently, the division successfully prevented a forced-medication hearing for an individual at Western State Hospital who had pled not guilty by reason of insanity, on the ground there was no legal authority to require medication.

Recently the division attorneys were assigned new offices in the Harborview Court building, dramatically expanding and improving their work space there.

Sex Offender Commitment Division

Since 1990, the Defender Association has represented clients charged under the "sexually violent predator" statute. The law seeks to detain indefinitely clients who have completed their prison sentences but whom the state accuses of being "mentally abnormal" and likely to be dangerous in the future. Trials routinely last several weeks and are preceded by months of depositions and motion practice.

The lawyers recently have won release of several clients, some in jury trials with unconditional release, some with conditional release, and several when the prosecutor agreed to dismiss the petitions after defense investigation established that the standard for commitment could not be met. They also have been successful in several appellate cases that set standards for admissibility of expert testimony, among other issues. They division provides information to legislators considering changes in the law.

Legal Intern Program

The Defender Association legal intern training program is well known nationally as an excellent training ground for defenders. After completing an intensive trial advocacy training curriculum, the students are assigned to their own caseloads and also assist attorneys with research and writing. Approximately one third of Defender Association staff attorneys joined the office after participating in the legal intern training program. Supervisor Theresa Allman was the co-winner of the KCBA Mentor of the Year Award 2009.

Investigation

Our training program for defender investigators is extremely thorough and highly regarded. It includes formal instruction in investigation procedures, legal concepts, ethical issues, scene and field investigations, interviewing civilians, interviewing police officers, the attorney-investigator relationship, interview role-play, and courtroom testimony. Our training program has produced many of the best criminal defense investigators in the region. There are more than 25 graduates serving as public defense investigators in the Seattle area, not just at our office but at each of the King County defender agencies. In addition, our program has produced approximately 30 licensed private investigators working in the local area. We are able to retain many of the strongest investigators as Defender Association staff. Defender Association investigators and alumni founded the investigator training program at the University of Washington Investigator Certificate Program; our current investigator intern supervisor is on the Board of that program.

Several staff investigators have gone on to law school and rejoined the Defender Association as staff attorneys.

Systemic Advocacy

The office has kept faith with the original promise to address structural barriers to justice. Staff attorneys, other professional staff, supervisors and managers regularly provide their viewpoint on problematic practices to policymakers and to other justice system partners. They also frequently propose system reforms that increase efficiencies and fairness in the justice system without compromising public safety.

During the World Trade Organization protests in 1999, in an atmosphere of quasi-martial law, Defender Association attorneys mobilized to document the prolonged detention of demonstrators and others swept off of Seattle's streets, and their lack of access to counsel. The lawyers sought and obtained a temporary restraining order requiring prompt access to counsel for all arrestees. The Defender Association team then negotiated with the King County Executive and the City Attorney, and ultimately facilitated the release from jail of hundreds of arrestees. Office lawyers played the role of lead counsel in the subsequent defense of hundreds of arrestees, researching, investigating and drafting motions which ultimately resulted in dismissal of charges against virtually all of those arrested. Since the WTO, Defender Association attorneys have protected the speech and assembly rights of other demonstrators and organizations, often through legal advice and advocacy which helped to avoid problems.

When the City of Seattle proposed in 2004 to send pre-trial defendants to the Yakima Jail, Defender Association lawyers urged the City Council not to allow the move in order to protect defendants' access to the court, to counsel, and to their families. When pre-trial defendants were indeed sent to Yakima in 2005 despite the safeguards the Council had instituted, a Defender Association lawyer, her client and her supervisors worked together to bring a constitutional challenge to the practice through a writ of prohibition in Superior Court. The resulting decision, while denying relief as moot because the defendant's trial date had passed, made clear that holding pre-trial defendants in remote jail facilities likely is unconstitutional as applied.

When the City of Seattle determined that it had no choice but to build a new Municipal Jail, at a cost of over \$200 million, the Defender Association was a strong proponent of re-evaluating the assumptions that made a new jail appear necessary. We pushed for a re-assessment of regional jail capacity needs in light of the trends we have seen toward lower felony filings, and urged that community-based diversion alternatives to booking and prosecution be adopted for low-level drug offenses and similar crimes. The Director and Deputy Director worked with a Jail Capacity Advisory Group convened by the City Council to examine those issues. One year after a new jail was portrayed as inevitable, there is an emerging consensus among policy makers and candidates for public office is that new jail construction can and must be avoided through better, smarter public safety policy choices.

Experienced Staff

As the office has matured, so has its staff. In 1984, eight of the 50 attorneys had been with the office more than five years. Today, more than half of the staff has been with the office for more than five years; a third have been with the office for more than ten years. Director Floris Mikkelsen has been with the office for 29 years. She served as the misdemeanor supervisor for 13 years and established a reputation for high standards and thorough preparation. Staff Attorney Bob Bock has been with the office for 39 years.

Over a third of our staff attorneys trained in the legal intern program. More than half of the lawyers are women and almost one quarter are people of color. 20 of the lawyers are from Seattle University School of Law and 13 are from the University of Washington. 32 law schools have graduates on the staff.

The ranks of the non-attorney staff also include many long-term veterans. The longest-serving are paralegal Wanda Montgomery (31 years) and Executive Assistant Cindy Donion (29 years).

Softball Team

The Defender Association staff has been successful together in non-professional spheres as well. The office co-ed softball team has won its Division title in the lawyers softball league seven times in the last eleven

years, and came in second place in the league championship playoffs in 2005. They were 2-2 in this year's playoffs. Each summer, approximately 20 staff, alumni, and interns participate on the team, managed in a low-key fashion by former Director Bob Boruchowitz. They typically prevail over the prosecutors' team.

Future Challenges

Forty years of leadership have helped to establish the Defender Association as a major player in the justice system in a way which was not possible in the early post-*Gideon* years. But recurring financial pressures and political challenges continue. The Defender Association has renewed its community roots, working with community organizations to strengthen alliances to advocate for our clients. Defenders continue to speak and to write and to forge coalitions to seek a more just society and a more effective legal system.

Recent years have taught that, notwithstanding its many advantages, the model of the non-profit independent contractor defender office is vulnerable to political pressure exerting through the contracting process. Funding crises for local government also pose a potential threat to adequate support for public defense. To date, we have been fortunate to have the support and partnership of the City and County Councils, which repeatedly have stepped forward to ensure adequate funding and standards for indigent defense. At the same time, Defender Association staff have been working with colleagues around the state to raise awareness of the need for state funding to ease the burden on local governments, while raising the standard of practice for defenders state-wide. There is real opportunity as well as risk in the years ahead.

In 2008, the King County Council recognized the increasing complexity of the felony practice, and provided additional case credits for homicide and sex cases that can result in indeterminate life sentences. This is a major step toward improving lawyer workloads so that it is feasible to provide effective representation in every case.

The Defender Association remains committed to its dual mission: providing excellent individual representation, and ensuring that the defender perspective is heard on systemic justice and equality issues. We are committed to recruiting, training and retaining the most talented lawyers and support staff; to working in partnership with SEIU Local 925,

which represents most of our staff, on issues of common concern; and to advocating for the resources necessary to provide an excellent defense in each of our cases. We will continue to challenge systemic barriers to equal justice, and to propose more sensible and constructive approaches to public safety.

Defender Association Staff October 2009

<i>Name</i>	<i>Position</i>	<i>Years with office</i>
ADAIR, Mark	Attorney	9
ALDERSON, Nichelle	Mitigation Specialist	2
ALLMAN, Theresa	Legal Intern Sup./Asst.Sup.—Misd.	18
ALSEPT, Renee	Attorney	19
ATWOOD, Jennifer	Attorney	2
BAJRA, Preman	Office Mgr.	16
BEACH, Nina	Mitigation Specialist	1
BECKERMAN, Kathryn	Attorney	20
BENJAMIN, Rodney	Attorney	20
BERDECIA, Tamara	Investigator	+
BIELMAN, Debbie	Admin. Assistant/ Paralegal	3
BIRrane, Deborah	Word Processor	6
BOCK, Robert	Attorney	39
BRADLEY, Mark	Attorney	6
BREETON, Angela	Paralegal	10
BROWN, Elizabeth	Docket Clerk	22
CALDER, Carolyn	Paralegal	2
CARPENTER, John	Attorney	8
CARTER, Twyla	Attorney	2
CARTER-ELDRRED, Scott	Asst. Supervisor—Felonies/RJC	4
CHANG, Ken	Attorney	6
COOK, Mark	Office Asst.	9
CUNNINGHAM, D'Adre	Attorney	8
DAUGAARD, Lisa	Deputy Director/RDP Supervisor	13
DAW, Daniel	Docket Clerk/Office Asst.	4
DE FELICE, Mike	Supervisor--Civil Commitments	20
DELGADO, Maisie	Office Asst.	3
DENNISON, Joe	Office Asst.	+
DIEFENDORF, Jayne	Paralegal	24
DONION, Cindy	Executive Assistant	29
DROGSETH, Melinda	Attorney	+
ELLERBY, Carol	Attorney	20

EWERS, John	Attorney	2
FALLER, Gini	Attorney	18
FAULKNER, Judy	Office Assistant	26
FLAHERTY, Brian	Attorney	+
FOEDISCH, Tory	Attorney	23
FRANKLIN, Chris	Attorney	5
FRANKLIN, Krista	Investigator	2
FREE, Jay	Investigator	+
FREEMAN, Lawrence	Supervisor-- Investigation	2
GAER, Ival	Attorney	20
GARRISON, Eula	Attorney	+
GARRISON, Leslie	Supervisor--SOC	21
GIBBS, Devon	Attorney	8
GOLDSMITH, Ben	Asst. Supervisor—Felonies Seattle	3
GREGORY, Gerald	Investigator	14
GUTIÉRREZ, Isela	Diversion Program Coord.--RDP	+
HAMAJI, Leo	Felony Trial Supervisor	21
HAMMERSTAD, David	Attorney	6
HAMPTON, Bradley	Attorney	25
HARDY, Willie	Docket Clerk	32
HART, Larry	Paralegal	23
HARVEY, Shannon	Investigator	+
HENRIKSON, Ken	Attorney	22
HILLAS, Duart	Paralegal/Docketing/Office Asst.	2
HOCHSTRASSER, Verna	Asst. Sup. -- Investigation Interns	27
HODDER, Brian	Investigator	3
HUFFMAN, Carey	Attorney	2
HURLEY, Kate	Attorney	3
JACKSON, Chris	Supervisor--Misdemeanors	19
JARVIS, Zachary	Attorney	4
JOHNSON, Tim	Attorney	8
JOURDAN, Robert	Attorney	7
KATO, Nick	Investigator	+
KHANDELWAL, Anita	Staff Attorney--RDP	1
KNOWLES, Devon	Attorney	2
LAPPS, Tracy	Attorney	11
LaROSE, Sheila	Investigator	6
LEDERER, Rebecca	Attorney	1
LICHTENSTADTER, Rick	Supervisor--Juvenile	23
LOPEZ, Elizabeth	Attorney	3
LOVELL, Erin	Attorney	4
LUTHRA, Anu	Attorney	+
LUYOMBYA, Juni	Attorney	13
MACDONALD, Pete	Attorney	9
McKEE, Maureen	Attorney	7

MCKINNEY, Beth	Paralegal	22
McLANE, Lauren	Attorney	+
McMURDO, Ann	Word Processor	+
McNABB, Marie	Controller	1
MENOVCIK, Matt	Legal Assistant	11
MERCHANT, Karim	Attorney	2
MIKKELSEN, Floris	Director	29
MITCHELL, Valarie	Mitigation Specialist	2
MONTGOMERY, Wanda	Paralegal	31
MORRIS, Laurie	Attorney	11
MURRAY, Kristen	Attorney	5
NADEN, Marian	Attorney	20
NARVAEZ, Alexandra	Attorney	2
NYROP, Kris	Diversion Program Director--RDP	+
OFFENBECHER, Cooper	Attorney	1
OSTERMANN, John	Attorney	6
PAULSEN, Anita	Attorney	23
PEARSON, Ali	Attorney	2
PERRY, Armand	Attorney	+
PRADO, Arnold	Paralegal	12
PRESTIA, Bill	Attorney	4
PRUS, Magda	Attorney	1
REDMAN, Helen	Attorney	1
RIEGER, Donna	Bookkeeper	+
ROBERTS, Lorraine	Attorney	14
ROMANOVICH, Robin	Attorney	2
ROSS, Kathryn	Supervisor--Death Penalty Center	4
RUBENSTEIN, Andrew	Attorney	1
SANDERS, Shaakirrah	Attorney	1
SANDVER, Nathan	Network Administrator	8
SANGUINETTI, Bopha	Mitigation Specialist	1
SCHEINMAN, Tenaya	Attorney	1
SCHULTZ, Lynn	Investigator	4
SCHWARTZ, Jen	Investigator	6
SCOTT, Debra	Investigator	3
SEAGER, Sara	Investigator	11
SEAWELL, David	Supervisor--Felonies	4
SELK, Christian	Supervisor-- Investigation Interns	22
SHANNON, K.L.	Community Liaison--RDP	5
SHIN, Kara	Paralegal Intern	+
SKOW, Cynthia	Supervisor -- Mitigation Services	6
SPENCER, Erick	Attorney	18
STEARNS, Theresa	Docket Clerk	22
STEPHENS, Kyana	Interim Supervisor -- Juvenile	4
SWABY, Christopher	Assist. Sup. – Felonies Seattle	1

TALLARICO, Shari	Investigator	+
THOMAS, Leona	Attorney	22
THOMAS, Sara	Office Asst.	1
TOBIN, Milo	Docket Clerk	10
TORRES, Marlon	Investigator	+
TRAN, Hong	Attorney	1
TURNER, Tiffanie	Paralegal	10
UNTEN, Christine	Word Processor	3
VARNADO-RHODES, Sharon	Attorney	12
VAVRICK, Doug	Paralegal	5
VERNON, Paul	Attorney	1
WALLACE, Katy	Attorney	13
WELTER, Tim	Paralegal	16
WIGGINS, Henry	Attorney	9
WINCHESTER, Tonia	Investigator	+
WOYNAROWSKI, Mick	Attorney	7
WYMAN, Robert	Supervisor - Dependency	9
YOUNG, Lei	Attorney	3
ZIMMERMAN, Henry	Mitigation Specialist	3
ZORICH, Jacklynn	Attorney	7

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The Defender Association 40th Anniversary Program

5:30 - 7:00

**Reception and Silent Auction
Garfield Jazz Trio**

7:00 - 8:30

Welcome Address
Floris Mikkelsen
Director

Remarks
Robert C. Boruchowitz
Former Director

Board Recognition
Floris Mikkelsen

Introduction of Speaker
Lisa Daugaard
Deputy Director and Racial Disparity Project Supervisor

Speaker
Honorable Larry Gossett
King County Councilmember

Celebration Continues

