

The Defender Initiative's **Fourth Annual Conference on Public Defense**

Friday, March 7, 2014 at Seattle University School of Law

Program will be held in Sullivan Hall Room C5

Lunch in the 2nd Floor Gallery

AGENDA

7.25 CLE credits

Materials will be available one week before the conference.

8:00 a.m. **Registration**

Breakfast breads and coffee/tea service

8:30 a.m. **Welcome**

Annette Clark, Dean, Seattle University School of Law

8:45 a.m. **Washington State - Leading the Way on Public Defense**

Robert C. Boruchowitz, Professor and Director of The Defender Initiative

The Washington Supreme Court has enacted a rule requiring defenders to certify that they meet standards, including caseload limits. The Standards are based on those that were developed by defenders and approved by the Washington State Bar Board of Governors before being approved by the Court. The Federal Court in Seattle has issued an historic opinion about systemic denial of counsel in two misdemeanor courts, citing the Standards in its order to the cities. The U.S. Department of Justice filed an unprecedented Statement of Interest in that case. Defender Initiative Director Professor Bob Boruchowitz will discuss how as the rest of the country struggles with what US Attorney General Holder has called a crisis in public defense, Washington has made great strides to improve public defense.

CLE Materials

[State Supreme Court Issues Historic Order on Defender Standards](#)

9:20 a.m. **The Ripple Effect: Strategies for Prioritizing the Things That Matter Most to Your Clients**

Annie Benson, Washington Defender Association

Merf Ehman, Columbia Legal Services

Leo Flor, Northwest Justice Project

Leesa Manion, Chief of Staff, King County Prosecuting Attorney's Office

Travis Stearns, Moderator, Washington Defender Association

Is your client a veteran, living in public housing or at risk of deportation? In a series of recent cases the United States Supreme Court has made clear that the obligation of defense attorneys is to consider the broad consequences of a decision before they give advice to their client about a trial or guilty plea. This panel will address how the defense role has evolved. Our speakers will address these important consequences of a conviction and will discuss strategies for negotiating a resolution that prioritizes these important real life considerations in a way that is favorable to your client and agreeable to the prosecutors that you are working with.

CLE Materials

[Criminal Records, Race and Redemption](#)

[The Ripple Effect Powerpoint](#)

[Lafler v. Cooper](#)

[Missouri v. Frye](#)

[Padilla v. Kentucky](#)

[Seattle Job Assistance Ordinance](#)

[State v. Sandoval](#)

10:35 a.m. **Break**

10:50 a.m. **The Latest News on Case Weighting and Standards**
George Yeannakis, Washington State Office of Public Defense
Dave Chapman, King County Public Defender
Dan Fessler, Yakima County Director of Assigned Counsel

The Washington Supreme Court's order requiring defenders to certify that they comply with standards, including caseload limits, has taken effect including caseload limits for felony and juvenile offender cases. The misdemeanor caseload limits are set to take effect in January 2015. This session will discuss the latest developments including a misdemeanor case weighting study by the Washington State Office of Public Defense, a case weighting effort by the King County Public Defender, and a just published case weighting study for the Missouri Defender. Panelists include the director of the King County Public Defender office, the Washington OPD staffer who led the case weighting study, and the Yakima County Director of Assigned Counsel who will discuss his own case weighting system and some proposed amendments to the WSBA Standards.

CLE Materials

[In the Matter of the Standards for Indigent Defense Implementation](#)

[Misdemeanor Representation Time Study and Model Case Weighting Policy](#)

[Misdemeanor Time Study Frequently Asked Questions](#)

[The Missouri Project: A Study of the Missouri Defender System and Attorney Workload Standards](#)

[State Supreme Court Issues Historic Order on Defender Standards](#)

[Washington State Office of Public Defense Misdemeanor Time Study](#)

12:05 p.m. **Lunch**
2nd Floor Gallery

12:40 p.m. **Anatomy of a False Confession: The Defense Role in Preventing Wrongful Convictions**
Janet Ainsworth, Professor, Seattle University School of Law

Professor Ainsworth analyzes a capital case in which seven men were falsely accused of rape and murder as a result of four false confessions. This case illustrates the factors in interrogation that can lead to false confessions and suggests ways in which defense counsel can identify these cases and prevent miscarriages of justice.

CLE Materials

[Silence, Speech, and the Paradox of the Right to Remain Silent in American Police Interrogation](#)

1:40 p.m. **Break**

2:00 p.m. **Race and Jury Selection - Implications of Saintcalle**
Charles Wiggins, Justice for the Washington State Supreme Court
Jeffery Robinson, Veteran Defense Attorney
Lila Silverstein, Appellate Defender
Anna Roberts, Professor, Seattle University School of Law

In a recent murder appeal, the Washington Supreme Court concluded that the state's *Batson* procedures are not "robust enough to effectively combat race discrimination in the selection of juries." Nevertheless the Court upheld the murder conviction. In five separate opinions, the justices discussed the problem of implicit bias. Justice Gonzalez called for eliminating peremptory challenges and the late Justice Chambers, in dissent, "would hold that a prima facie case of discrimination is established when the sole remaining venire member of a constitutional cognizable racial group is peremptorily challenged.... I would do this, not under *Batson*, but under our inherent supervisory power and based on our own understanding of the pernicious effect of unconscious racism on a fair system of justice." The lead opinion by Justice Charles Wiggins said "now is the time to begin the task of formulating a new, functional method to prevent racial bias in jury selection. To do so, we seek to enlist the best ideas from trial judges, trial lawyers, academics, and others to find the best alternative to the *Batson* analysis."

This panel features Justice Wiggins, Lila Silverstein, who represented the appellant, Jeff Robinson, a veteran defense attorney with an expertise in jury selection, and Professor Anna Roberts, who is a former public defender and who has written about jury selection.

CLE Materials

[Illegal Racial Discrimination in Jury Selection: A Continuing Legacy](#)

[Preliminary Report on Race and Washington's Criminal Justice System](#)

[The Challenge of Peremptory Challenges](#)

[State of Washington v. Kirk Ricardo Saintcalle Opinion](#)

3:15 p.m. **Break**

3:30 p.m. **"Willfully Blind" --The Implications of the Wilbur Case v. Mt. Vernon and Burlington**

Plaintiff's Counsel Toby Marshall, Terrell Marshall Daudt & Willie PLLC
Plaintiff's Counsel James Williams, Partner, Perkins Coie
Plaintiff's Counsel Nancy Talner, Staff Attorney for ACLU-WA
John Strait, Expert Witness, and Professor, Seattle University School of Law

For the first time in decades, a Federal court has reached the merits of a class action lawsuit alleging systemic denial of effective counsel. In the *Wilbur* case, Judge Robert Lasnik found that two Washington cities were willfully blind to the deficiencies in their public defense services and has ordered a variety of remedies. The U.S. Department of Justice for the first time filed a "Statement of Interest" in the case stating that the United States has an interest in ensuring that all jurisdictions are fulfilling their obligation to provide effective assistance of counsel as required by *Gideon*. In this panel, three of the plaintiffs' counsel and one of the expert witnesses will discuss the case and its implications for reform in Washington and beyond.

CLE Materials

[Document 54 – Declaration of John Strait in Support of Plaintiffs' Cross-Motion for Preliminary Injunction and Opposition to Defendants' Summary Judgment Motions](#)

[Document 55 – Declaration of Christine Jackson](#)

[Document 143 – Order Certifying Class](#)

[Document 294 – Plaintiffs Trial Brief](#)

[Document 321 – Motion of Washington Defender Association for Leave to File Amicus Curiae Brief](#)

[Document 322 – Statement of Interest of the United States](#)

[Plaintiffs' Closing Argument Powerpoint](#)

[Second Supplemental Declaration of Christine Jackson](#)

4:30 p.m. **New Directions in Policing to Reduce Racial Disparities in Enforcement**

Lisa Daugaard, Policy Director, Public Defender Association and Interim Deputy
Public Defender for King County
Reverend Harriett Walden, Director, Mothers for Police Accountability
Jim Pugel, Assistant Chief, Seattle Police Department

The Seattle Police Department has agreed with the Community Police Commission and the U.S. Department of Justice to implement a new bias free policing policy. This panel will discuss the policy and alternative approaches to public safety/public order issues that may result in less disparate impact but be equally or more effective.

CLE Materials

[Document 118 – Memorandum Submitting Consensus Seattle Police Department Policies and Order Approving Same](#)

5:30 p.m. **Conference Ends**