

## SPECIAL VOLUNTEER ISSUE

# A REAL CHANCE TO EFFECT REAL CHANGE



BY ROBERT C. BORUCHOWITZ

“Why do you volunteer for bar committees?” asked the *Bar News* editor. “Could you write about your experience and the impacts the WSBA’s Council on Public Defense has had?”

This led me to reflect on my more than 40 years on state, local, and national committees related to public defense. The work has been rewarding

and has led to real change.

As I often tell students and new lawyers, if you volunteer and are willing to work, you can fairly quickly help to set the agenda of committees and even become an officer. I became the chair of the WSBA Criminal Law Section after being in practice for about seven years. And three years later, through the Section, we were able to gain the support of the WSBA Board of Governors for public defense standards developed by

the Washington Defender Association (WDA). Those standards became the foundation for later revisions that were in large part adopted by the Washington Supreme Court in its rules requiring public defense counsel to comply with standards that include caseload limits and experience qualifications. *See, e.g., CrR 3.1 Standards for Indigent Defense.* I’ll return to these standards, and their continuing impact statewide, later in this article.

### HISTORY AND ACCOMPLISHMENTS OF COUNCIL ON PUBLIC DEFENSE

In 2002, WDA asked the WSBA to make a major commitment to improve public defense. Jon Ostlund, then the Whatcom County public defender and the first defender to be on the WSBA Board of Governors, arranged to invite WDA to make a presentation. WDA Executive Director Christie Hedman, Snohomish County Defender Director Bill Jaquette, and I explained the serious problems of excessive caseload and inadequate resources across the state. The Board appointed a task force which issued a report that led to the Council on Public Defense (CPD) being formed.

The CPD’s wide-ranging charter includes the following:

- Recommend amendments to and mechanisms to assure compliance with public defense standards and performance guidelines to the BOG and the Washington Supreme Court.
- Develop “Best Practices” guidelines for public defense services contracts.
- Address current issues relating to the provision of constitutional public defense services in Washington, including supporting efforts to ensure adequate funding is available.
- Seek, review and recommend possible improvements in the criminal justice system which might impact public defense or the ability to provide public defense services.
- Improve delivery of defense services in Washington by examining and reporting on public defense systems and projects.
- Develop recommendations concerning the most effective and appropriate statewide structure for the delivery and accountability for defense services.

I was an original member of the WSBA Committee on Public Defense and later the Council on Public Defense. For the past 19 years, the CPD has successfully promoted court rules and developed guidelines and standards that have transformed the practice, helping thousands of clients across the state.

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## A Real Chance to Effect Real Change

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The Washington Supreme Court asked the CPD to develop guidelines and approved a court rule proposed by the CPD that juveniles cannot waive counsel until they have had advice from a lawyer. JuCR 7.15. This effectively ended what had been the practice in some courts in which judges were accepting guilty pleas from children who had no lawyers.

The Supreme Court adopted another rule proposed by the CPD, RPC 1.8(m), which states that it is a conflict of interest for a lawyer to enter into or accept compensation under a public defense contract if the contract requires the lawyer to compensate conflict counsel, expert witnesses, and investigators out of the lawyer's own compensation.

The court rule limiting caseloads, referenced earlier, resulted in drastically cutting caseloads for many public defense counsel, particularly in misdemeanor courts. In some jurisdictions, the caseloads were cut by more than half. Lawyers who had been representing more than 1,000 clients a year were now limited by court rule to no more than 400. The rule also led to increased diversion of misdemeanor cases, particularly for driving while license suspended in the third degree, offenses that mostly are for failing to pay tickets. In Spokane, greater diversion of those cases alone dropped the municipal court public defender caseloads by one-third, from 600 to 400.

While the caseloads in most places are still too high and working on 400 cases per year is crushing and threatens the ability to provide effective representation, lawyers have had substantially more time to work on their clients' cases since the rule became effective. Because there is a limit, many defender offices have reexamined long-standing practices and pushed the caseload down below the limit set by the rule.

New national workload standards are scheduled to be published this spring, and they likely will recommend even lower caseload limits for felony and misdemeanor cases. I am hopeful that the Washington Supreme Court, having

recognized the importance of limiting caseloads, will be open to amending the rule and reducing defender workloads further.

## CPD ADVISORY NOTICES AND STATEMENTS

After the murder of George Floyd, the CPD issued a response to the Supreme Court's call to action<sup>1</sup>; it stated in part:

All members of the legal community, including public defenders, have been complicit in where the legal system is today. Defenders have led efforts to challenge racial bias but must continue to commit to embracing anti-racism, eliminating explicit and implicit biases, and advocating to dismantle white supremacy in the legal system. We must examine our own biases and blind spots and create opportunities for others to do the same.

During the first two years of the pandemic, the CPD issued three statements and advisory notices aimed at helping defenders and local governments respond to increased workloads and other challenges caused by the pandemic.

In July 2022, the CPD issued a statement, adopted by the WSBA Board, "*Public Defense Lawyers Should Seek Relief from Excessive Workloads.*"<sup>2</sup> The statement began, "Public defense lawyers in Washington face a workload crisis, threatening their clients' right to effective representation and the well-being of the lawyers and their staffs." The CPD found that the primary reasons for the workload crisis were the following:

- Inability to recruit and retain sufficient numbers of public defense lawyers to handle the total workload;
- Inadequate resources, such as support staff, investigators, and social workers; and
- Inability to resolve cases, particularly the complex cases, in a timely manner in order to offset new case assignments, in part due to the pandemic.



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Citing previous statements approved by the WSBA Board as well as the American Bar Association, the CPD wrote:

Washington defenders and assigned counsel can and should seek relief from excessive workloads, declining to accept new appointments, working with others to develop and increase diversion programs, and seeking new or improved resources.

Defenders across the state have cited the CPD/Board statements in efforts to obtain additional resources.

## INTEGRATING STATE AND NATIONAL EFFORTS

By working with state and national organizations, I have been able to integrate good ideas and practices into each. We can cite Washington examples when we write national policy statements, and we can cite national standards when we write Washington standards. An example of that was the American Council of Chief Defenders Statement on Caseloads and Workloads,<sup>3</sup> which was produced by a committee I chaired. The statement referred to both Washington and King County caseload limits.

It also is possible to connect projects to other organizations. In the case of the CPD, that includes the Washington Supreme Court's Minority and Justice Commission and its Gender and Justice Commission, the Washington Office of Public Defense, and nonprofit organizations including TeamChild, WDA, and the ACLU-WA.

## VOLUNTEERING IS GOOD FOR YOU, THE PROFESSION, AND THE PUBLIC

One advantage of joining bar committees is the opportunity to work with bright and committed lawyers and non-lawyers seeking to improve the legal system. The exchange of ideas, often during months of meetings and drafting documents, can result in solid products that can lead to real reform.

The *Seattle Times* reported in February that "volunteerism has continued to decline in the Seattle area."<sup>4</sup> Only 22 percent of Seattle-area adults said they had volunteered in the past 12 months. I do not know what percentage of lawyers volunteer, but I know that much of the great work of both the WSBA and county bar associations is done by volunteers and often leads to real reform as well as pro bono representation of people who cannot afford to hire a lawyer.

The CPD vice-chair, Maia Vanyo of the Whatcom County Public Defender Office, invites "anyone interested in public defense to join our open monthly meetings to hear and participate in discussions about issues affecting the administration and provision of public defense services."

I highly recommend finding a committee or project that aligns with one's values and interests. The volunteer work can illuminate one's "day job" and provide a way to channel energy and skill for real change. [BN](#)

## NOTES

1. The Washington Supreme Court's June 4, 2020 letter to members of the judiciary and legal community is available at [www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf](http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf).
2. Available at [www.wsba.org/docs/default-source/legal-community/committees/council-on-public-defense/council-on-public-defense-statement-statement-public-defense-lawyers-should-look-for-relief-from-excessive-workloads2d3d6fbd-73c1-46ee-8aec-0c2ff2006de5.pdf?Status=Master&sfvrsn=60f013f1\\_5](http://www.wsba.org/docs/default-source/legal-community/committees/council-on-public-defense/council-on-public-defense-statement-statement-public-defense-lawyers-should-look-for-relief-from-excessive-workloads2d3d6fbd-73c1-46ee-8aec-0c2ff2006de5.pdf?Status=Master&sfvrsn=60f013f1_5).
3. Available at [www.oregon.gov/opds/provid-er/StandardsBP/ACCDCaseloadsReport.pdf](http://www.oregon.gov/opds/provid-er/StandardsBP/ACCDCaseloadsReport.pdf).
4. Gene Balk, "Seattle volunteerism tumbled during the pandemic. It hasn't bounced back," *Seattle Times*, Feb. 11, 2023.