

September 2009 Bar Bulletin

The Defender Association Celebrates 40 Years

By Robert C. Boruchowitz

The Defender Association, which began as a Model Cities program and is the oldest of the four non-profit defender offices in King County, plans to celebrate its 40th anniversary with a gala event at Benaroya Hall on October 21. The Association expects more than 300 people, including many alumni, to attend.

The Defender Association has 80 attorneys representing clients in more than 11,000 cases per year in felony, misdemeanor, juvenile, family advocacy and civil commitment cases, as well as a number of appeals at all levels of the state courts.

Many of the Association's former attorneys have become leaders in the bench and bar. Federal Magistrate Judge Brian Tsuchida, who was the felony supervisor at The Defender, is the most recent judicial appointment. The first Defender director, John Darrah, later became both a Municipal Court judge and a Superior Court judge. Two of the office's deputy directors, George Finkle and James Doerty, became Superior Court judges. Other supervisors, including Ron Kessler and Helen Halpert, became Superior Court judges. More than 14 Defender attorneys have become judges.

Other alumni have become leaders in the private bar, in government and in academia. Dolores Sibonga became a City Council member and Marilyn Smith became president of the Seattle School Board. Kate Pflaumer became the United States Attorney for the Western District of Washington. Bob Welden is general counsel for the Washington State Bar Association. Former Defender attorneys teach at the law schools of the University of Washington, Seattle University, Cardozo, the University of West Virginia, Northwestern and DePaul.

And a number of attorneys have become federal defenders, spawning a running joke between the two offices. The Defender calls the Federal Defender its retirement home and the Federal Defender likes to call on its "farm team" for new hires.

The Defender Association is recognized regionally and nationally as a leader in public defense, and its staff members are active in national and local bar associations and have received numerous awards. For example, Legal Intern Supervisor Theresa Allman was named 2008 Mentor of the Year by the King County Bar Association. Several of The Defender attorneys and alumni have won the Washington Association of Criminal Defense Lawyers William O. Douglas award, including Sheryl Gordon McCloud, Jeff Robinson, Simmie Baer, Richard Hansen, Lenell Nussbaum, David Allen, Bob Boruchowitz and Katie Ross.

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

The Defender was singled out in a law review article with the Public Defender Service of the District of Columbia as having "earned reputations within the defense community for innovative and client-centered representation."¹ The office also was co-founder with Columbia Legal Services of the award-winning TeamChild program that represents youth who are involved in the juvenile courts in civil matters, such as education and housing.

The office competes with other leading programs for new graduates. Thirty-one different law schools are represented on the attorney staff, with 14 each from the University of Washington and Seattle University. Approximately one-third of the staff attorneys worked with the office as interns. The office has a nationally recognized summer intern program as well as investigator and social work intern programs. This summer the investigation program has 33 interns.

Fifty-four percent of the attorneys are women and 16 attorneys are people of color. Approximately 20 percent of the attorney staff has been with the office from six to 10 years and 34 percent have been with the office for more than 10 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.

The office has a clinical program with Seattle University School of Law. That partnership recently resulted in a Court of Appeals decision establishing a right to counsel for children in truancy court first appearances, which has since been accepted for review by the Washington Supreme Court.

The office was one of the first defender programs in the country to use social workers; they now provide critical assistance to the attorneys in assessing client needs and developing dispositional alternatives. Recently, a Superior Court judge praised the release plan recommended by the Defender 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 Defender Association has helped to establish standards for defender services in Washington and nationally. Its lawyers have been involved in some key appellate decisions, such as cases establishing due process rights for clients in civil commitment cases, including those for children and sex offenders; limiting conditions that can be placed on the release of defendants pre-trial; and clarifying the notice requirements in capital cases.

The office is known for its zealous trial practice as well as for creative sentencing advocacy. Earlier this year, association lawyers in Seattle Municipal Court tried and won four jury trials in one week. A number of the defenders have won praise from judges for their "vigorous advocacy." They have challenged a number of issues in trespass cases and the office has a Soros Advocacy Fellow who will be working on trespass issues. The felony division has been equally busy, winning four acquittals in July.

The office established a Racial Disparity Project in 1999, believed to be the only one of its kind in the nation. The Project has attracted federal, county and foundation funding, and has focused on racially disparate impacts in suspended driver's license cases and drug law enforcement. An evaluation of that project concluded:

[T]he Seattle Defender Association has gone beyond case-by-case representation of clients. ... The Racial Disparity Project enables the DA 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 office also hosts the state's Death Penalty Assistance Center, funded by the state Office of Public Defense. The Center provides training and technical assistance to attorneys throughout the state.

The Defender Association has been a leader in civil commitment cases, handling more than 2,400 a year. The division successfully overturned, on constitutional grounds, a portion of a statute dealing with involuntary chemical dependency treatment. Most 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.

The Defender also has helped to set a high standard in representing defendants charged under the "three strikes" persistent offender law. One attorney, Renee Alsept, working with other attorneys, was able to resolve 18 of 19 cases with less than life sentences. In many of those cases, she was able to demonstrate that the client had mental illness and in some cases an IQ of borderline mental retardation.

In the juvenile area, in addition to helping to start TeamChild, the office has helped to shape zealous advocacy for children and families. Former supervisor Simmie Baer won the American Bar Association Livingston Hall award for her juvenile work.

People interested in attending the gala should contact Debbie Bielman at debbie.bielman@defender.org.

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1 See "Tuning Up Gideon's Trumpet," 71 Fordham L. Rev. 1461, 1500 (2003).

[Go Back](#)

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