



King County Department of Public Defense

Annual Report
2020





King County

This report was prepared by the
King County Department of Public Defense
710 Second Avenue, Suite 200
Seattle, WA 98104 | 206-296-7662
[www.kingcounty.gov/public defense](http://www.kingcounty.gov/public%20defense)

PHOTOS

On the cover (top to bottom):
DPD attorneys Bill Prestia and Ariana Downing representing protesters in June in King County Superior Court
DPD employees at the “We Want to Live” March in June
A DPD client with his daughter
Above: DPD attorneys David Montes and La Rond Baker at a march in Seattle last summer

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A YEAR OF CHALLENGES & SUCCESSES:

A note from Anita Khandelwal

This past year was a challenging one for the Department of Public Defense, due largely to a global pandemic that put our clients in jeopardy and our staff on the frontlines. We faced a cascade of emergency court orders that in many instances imposed new burdens on our clients. We raced to keep up with a legal system that constantly changed course. We confronted not only a pandemic but also a legal system that refused to see the humanity of our clients and that was often indifferent to our reasonable demands for a more humane response to the challenges posed by COVID-19.

Many of us did the critical work of public defense from our homes—from basements, closets, spare bedrooms—using new and sometimes flawed technology. Others stood beside our clients in courtrooms crowded with court staff, correctional officers, clients, and family members, while judges were behind plexiglass or appearing remotely via video. That the system is unfair to our clients—and thus to us, as we stand with them—was made starker in the face of this pandemic.

But the story of public defense in 2020 was also a deeply inspiring one. Over and over again, I saw our employees fighting harder than ever for the rights of their clients. Defense teams in every practice area achieved remarkable victories, often against all odds. They got people at risk of COVID released from jail; persuaded prosecutors to reduce or dismiss charges; wrote mitigation reports that spoke truth to power; conducted investigations that revealed flaws in police work.

Painful though it was, the movement that arose in the wake of George Floyd’s tragic death also made a difference, opening the door to developments many of us have been striving to achieve for years. Significant wins—including the unanimous passage of what we believe is the country’s strongest youth rights ordinance and the funding of Restorative Community Pathways—stem directly from the demands political leaders were hearing on the streets. We stood

with the community, supporting their vision for a more just world.

The State Supreme Court issued some opinions affirming our clients’ rights, influenced, I believe, by our strong appellate work. We were able to continue running a high-quality internship program, drawing committed and diverse lawyers to DPD, and reformatted our training program, enabling us to continue the work of strengthening our skills. Our administrative staff, resourceful and resilient, worked harder than ever to ensure the pandemic did not interfere with client representation.

What you’ll find in the pages that follow are stories that speak to the meaning of this work—stories of small successes and big ones, of heroism and steadfastness, of system-changing reform and incremental progress. Yes, you’ll find an overview of the department and our divisions, but you’ll also read about the people who work here—their excellence, fortitude, and grace.

This past year was tough, to be sure. But it was also remarkable for the way it underscored what it is we in public defense bring to society—a spirit of tenacity, determination, and compassion in support of our community’s most vulnerable members.

Anita Khandelwal
Director, King County Department of Public Defense



DPD staff at the “We Want to Live” march in June. From left, Stev Weidlich, Katie Hurley, Jennifer Symms, Scott Ketterling, Anita Khandelwal, Andrew Repanich, and Justin Mathews.

The Work of Public Defense: Supporting a community-led response to a harmful system



Our strategic plan calls on us to “partner with the community to dismantle the systems that oppress our clients and advocate for pathways that will allow them to succeed. Where traditional systems remain,” it adds, “use our community partnerships and expertise to make them less harmful and more restorative.”

In 2020, the meaning of those words became painfully evident. Thousands of people took to the streets in Seattle in the wake of George Floyd’s brutal murder, protesting decades of state-sanctioned violence against Black and Brown people. The events resonated deeply at DPD, where many of us have been proximate to police violence and racial animus for years and where we have long railed against a harmful and racially unjust system.

Some at DPD joined the protests, including the “We Want to Live” march in June, organized by Community Passageways, Creative Justice, and other organizations. We were in the courtrooms, fighting for the release of protesters who were facing incarceration on high bail amounts in the midst of a pandemic. And as a department, we stepped forward in support of our partners and clients, looking for new ways to use our expertise to make the criminal legal system less harmful.

But as we partnered with the community, our goal was not to lead the way. Our goal was to support the community and empower our partners to achieve their vision for a fairer and more just country, premised on the rich history of lawyers acting in solidarity with social movements. As the Law for Black Lives wrote recently, this approach, called by some “movement lawyering,” “means building the power of the people, not the power of the law.” That, too, was part of our work in 2020.

Photo of the “We Want to Live” march - Ken Lambert, The Seattle Times (used with permission)

THE DEPARTMENT OF PUBLIC DEFENSE:

Working on behalf of our clients

The King County Department of Public Defense (DPD) provides high-quality legal representation to people who are charged with a crime or face a loss of liberty and cannot afford an attorney. The department also partners with the community to dismantle the systems that oppress our clients and advocate for pathways that allow them to succeed.

DPD provides representation to both adults and youth facing felony or misdemeanor charges, people who could lose their children in a dependency proceeding or face involuntary commitment to a psychiatric or sex offender facility, those facing incarceration for unpaid child support debt, and youth facing certain civil or dependency proceedings. DPD represents clients in King County Superior and District Courts and in Seattle Municipal Court.

Client representation is provided by four divisions, operating as separate law firms so that DPD can keep as many cases in-house as possible. Reflecting their history as nonprofits before becoming a part of the county in 2013, the divisions are called:

- Associated Counsel for the Accused Division (ACAD)
- Northwest Defenders Division (NDD)
- Society of Counsel Representing Accused Persons Division (SCRAPD)
- The Defender Association Division (TDAD)

The Director’s Office provides strategic and policy direction for the department, runs the department’s training program, and provides budgetary oversight, human resources support, communications support, and administrative support. Case coordinators in the Director’s Office also interview clients to determine financial eligibility, assign cases to the divisions, and manage case assignments.

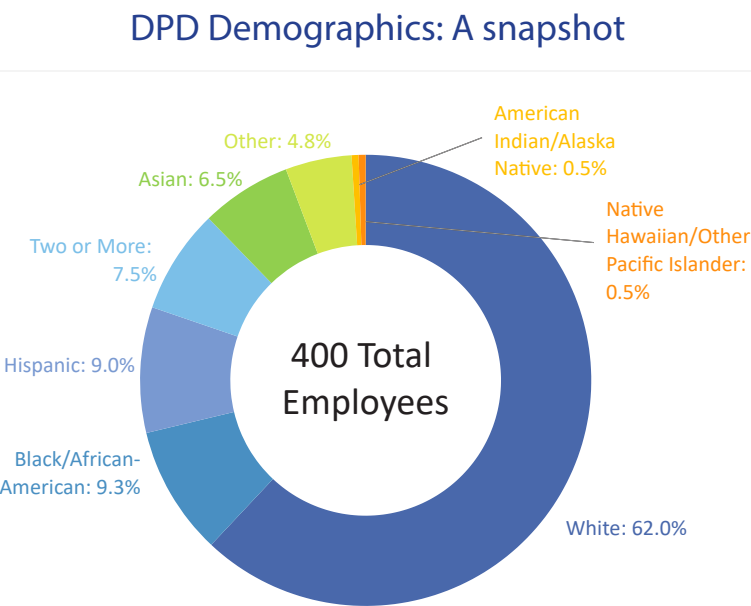
The department employs and depends on attorneys, investigators, mitigation specialists, paralegals, legal administrative specialists, fiscal and data specialists, case coordinators, human resources specialists, and more. Attorneys comprise about half of DPD’s staff. Two unions—SEIU Local 925 and Teamsters Local 117—represent the majority of DPD’s employees. (SEIU represents non-supervisory staff; Teamsters represents supervisors.) A panel of assigned counsel—outside attorneys who have met certain

The King County Department of Public Defense represents indigent adults and children facing a loss of liberty. Our department is an independent voice that promotes justice and equity for our clients and advocates for their objectives, interests, and dignity.

DPD’s Mission Statement

qualifications—provides representation when none of the divisions can do so. Assigned counsel provide representation in adult felony, adult misdemeanor, juvenile, civil commitment, and contempt of court.

The 11-member Public Defense Advisory Board (PDAB), established by County Ordinance 17678 and codified as part of King County Code §2.60, reviews DPD’s activities and plans, advocates for high-quality public defense, and advises the Executive and the County Council on matters of equity and social justice related to public defense. The board meets several times a year. It is currently chaired by Louis Frantz; the vice chair is Chris Carney. Other members on the board are: Safia Ahmed, Angélica Cházaro, Adam Chromy, Nyema Clark, Sophia Byrd McSherry, Shrounda Selivanoff, John Strait, Judge Michael Trickey (ret.), and Judge Ron Whitener (ret.).



The Work of Public Defense: Keeping a young client out of adult prison

Adrien Leavitt, an attorney at NDD, and Rachel Dryden, NDD’s mitigation specialist supervisor, represented a teenager who was very special to them, an open, warm, and earnest young person who was loved by his community. He was facing prosecution in adult court, which meant the potential of many years in the adult prison system, a devastating outcome were it to happen. Adrien and Rachel hired De-Bug Silicon Valley—a multi-media, community organization based in San Jose, Calif., that is at the forefront of the system reform movement—to create a mitigation video. “De-Bug was more than just filming,” Adrien said. “They had a deep understanding of the work and what we were trying to accomplish and helped identify key themes in our client’s life to tell his story.” What’s more, the actual filming was a positive experience for their client. “They made him feel heard and understood, which was so important as he opened up about his life,” Rachel said. The video, the team’s successful work with an expert forensic psychologist, plus strong community support made a huge difference. In April, a reluctant prosecutor agreed to a plea that kept this youth in a juvenile institution. It was a significant victory—several years in an adult prison would have been far more harmful to this young man. (Left, Adrien Leavitt and Rachel Dryden.)

The Work of Public Defense: Helping others by telling stories

DPD received a King County Equity & Social Justice grant last year to create a new video exploring the first few days of incarceration and how a person who has a loved one in jail can support that person. The video tells the story both through interviews with people who have experienced those frightening and bewildering first few days in jail, as well as with an attorney, Lauren Conner, who calmly explains the process of incarceration and what a loved one needs to know to support someone who is booked into jail. The film was created by Block by Block Creative, which is dedicated to making videos that promote social change. The 6-minute video will soon be posted on our website. (Right, Jordan Melograna, director of Block by Block, films Lauren Conner.)



STAFFING MODELS & BUDGETS:

Managing a challenging situation

Mounting felony caseloads

This past year was marked by caseloads that fluctuated significantly, beginning with skyrocketing felony filing rates in the first quarter that dropped when the pandemic hit.

The spike in felony filings began in the fall of 2019 and continued unabated into March of 2020. Anita Khandelwal sent a letter on March 10 to the King County Superior Court, including Presiding Judge Jim Rogers, telling them that DPD could not accept additional assignments for out-of-custody clients because our capacity had been exceeded for many months in a row; DPD’s conflict panel also could not take additional out-of-custody cases, DPD told the court, due to our need to maintain capacity for in-custody clients in need of representation. Receiving no response, Anita and Gordon Hill, DPD’s deputy director, appeared in Superior Court a few days later to state, on the record, that the department’s resources had been exhausted. We would continue to accept in-custody assignments because those clients’ needs were emergent, we told the court, but we would not accept out-of-custody assignments until the following month. Judge Rogers issued an

emergency order on March 19, 2020, directing DPD to accept all new assignments. DPD responded with a motion for reconsideration based on our lack of resources to take more cases and on our Sixth Amendment obligation to provide adequate representation.

When the King County Prosecuting Attorney’s Office (PAO) changed its charging priorities as COVID-19 hit the region, the number of felony filings fell and DPD was able to absorb all new filings with its existing capacity. But the experience laid bare the failings of a staffing model that is based on annual filings, that fails to take into account the dramatic month-to-month variability of the PAO’s filings, and that entails an inflexible hiring authority tied to a filing forecast based on nothing more than filing levels in prior years.

DPD’s Staffing Model and the 2021 Budget

In 2020, the Director’s Office worked closely with the County’s Office of Performance, Strategy and Budget (PSB) to find ways to mitigate the problems highlighted by the pre-COVID filing spike and to address the shortcomings of our staffing model. From this process emerged the idea of an “FTE

trigger,” which would allow the department to hire an additional career service attorney each time the number of assignments to DPD exceeds, for two months in a row, the equivalent of a single attorney’s caseload (eight assignments/month for the purposes of staffing). The FTE trigger was included in the Executive’s budget, which was approved by the County Council in November 2020. This new mechanism will give the department—for the first time—some much-needed flexibility in hiring.

Even with this hiring flexibility, however, DPD’s staffing model remains flawed. It is built on 50-year-old caseload standards that fail to take into account fundamental changes that have occurred in the standards of legal practice over the past five decades, including the nature and scope of evidence, the application of forensic science, and the increased need for expert review. The new FTE hiring authority when filings exceed projections helps. But what is also needed is the development of a more accurate and realistic staffing model that reflects the current state of indigent defense.

To that end, both DPD and the Public Defense Advisory Board continue to advocate for a Delphi study, an iterative process whereby a panel of experts works together to determine realistic resource and time expectations for each case type, making that the basis for workload standards rather than the actual time worked by a specific attorney on a specific case, as is currently the method in King County. In other words, a Delphi study would determine how much time an attorney should spend on a particular type of case.

Staffing and the City of Seattle Contract for SMC Services

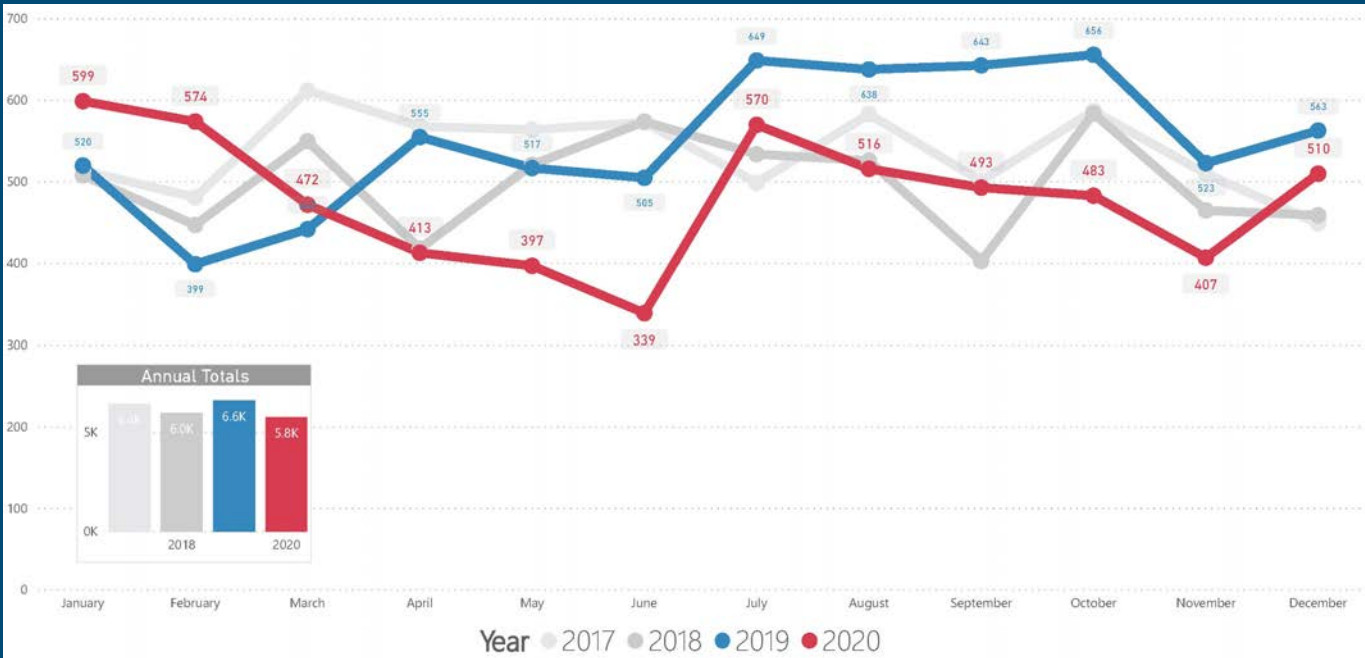
DPD has a contract with the City of Seattle to provide public defense services for people charged with an offense in Seattle Municipal Court (SMC). About 90 percent of those charged with a misdemeanor offense in the City of Seattle meet the financial guidelines to receive public defense services. In 2020, our SMC attorneys handled 4,024 assignments.

The Work of Public Defense: Securing a great outcome for a young client

After months of work, Karri Ridgeway, a felony attorney at NDD, secured a fantastic outcome for a young client. Her client had barely turned 18 when she was charged with Robbery in the 2nd Degree in adult Superior Court. She had no criminal history and big dreams about being the first person in her family to attend college and eventually law school. The deputy prosecutor offered what she said was a good deal—a deferred sentence on a misdemeanor plea. But Karri wanted the charge dismissed. A deferred sentence is still considered a conviction that this young woman would need to disclose in her college and financial aid applications; and in fact, the State Supreme Court, in a case a DPD attorney argued, recently held that deferred sentences are convictions and cannot be automatically vacated. Karri used that Supreme Court holding as leverage in her negotiations with the deputy prosecutor, pointing out that deferred sentences aren’t as great as they seem. The deputy prosecutor was receptive, but it took many months to get the PAO to agree. Ultimately, the client participated in a mediation that included an advocate from Community Passageways, a community member, Karri, the prosecutor, and others (the victim didn’t want to participate, so a surrogate stepped in who was able to speak for the victim). It was a meaningful experience, Karri said. And best of all, in January 2021, the young woman’s charge was dismissed. (Below, Karri Ridgeway.)



Superior Court Criminal Filings by month, 2017-2020



Staffing models & budgets, cont.

This past year, issues around workloads and caseloads came into question when the City attempted to reduce its 2021 contract with DPD because of its belief that 2021 would have fewer filings. The City failed to account for the fact that although the contract assumes each case will take 4.5 hours of work by a public defender, a DPD attorney actually spends 5.5 to 5.9 hours per case. The City wanted to reduce the contract based on a projection of reduced filings and the assumption that attorneys could complete cases within 4.5 hours per case.

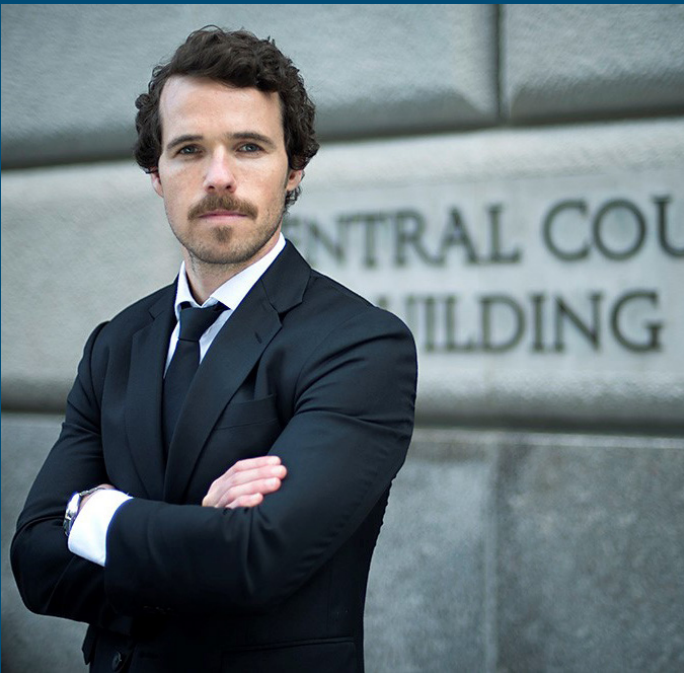
The Director’s Office, in negotiations with the City, pushed back, noting that the City failed to accurately account for time spent per case such that even if filings fell, DPD would need the same number of attorneys in order to provide high-quality service. Ultimately, the Director’s Office was able to negotiate a contract that ensures our attorneys continue to receive the minimum resources they need to provide quality representation to the hundreds of people DPD represents in that court. ➡

DPD selects vendor for a new case management system

After a months-long, staff-involved selection process in 2020, the department expects to launch a new case management system in 2021 to replace an existing one that many at DPD find cumbersome and time-consuming. DPD issued an RFP for a new case management system in 2019. In 2020, after selecting three finalists, we began a rigorous selection process, which included two day-long demonstrations by each of the companies. Staff from across the department and many job classifications participated, providing invaluable feedback on each of the vendors’ systems. Ultimately, our team of scorers chose eDefender, developed by Journal Technologies, a California-based company that provides case management software to more than 500 agencies and courts in 42 states. The department and Journal Technologies have been negotiating a contract over the past several months, which we expect will be signed by summer 2021. This is a huge development for the department. We expect eDefender will better meet our needs as a public defense agency and will provide greater data reliability, greater efficiency, and help DPD develop more consistent practices across the divisions.

The work of public defense: Ensuring our client’s voice is heard

Adam Heyman, a felony attorney at ACAD in Kent, represented a 52-year-old woman who was charged last October with Robbery in the 1st Degree-DV and Assault 2-DV alleging that she had stabbed and robbed a man who eventually died from his wounds. The State was about to amend to murder. But Adam, working with Molly Gilbert, an investigator, and Alix Willard, a mitigation specialist, was able to get the State to listen to an audio recording on her phone that showed that she was actually the victim. They also got the State to understand her struggles with substance abuse, mental health, and other physical abuse, including at the hands of the alleged victim. In July, the State decided to dismiss the case without prejudice and immediately released her from jail. The client was deeply relieved to not face murder charges but also grateful to have her voice heard and her struggles acknowledged by the State. It was an emotionally moving victory. (Below, Adam Heyman.)



Administrative staff: Stepping up to meet the challenges of a pandemic

The department employs 39 legal administrative specialists (LASs) in our four divisions. This past year, they worked heroically to ensure that the pandemic did not interfere with client representation.

Their work includes opening and closing case files, uploading discovery, coordinating conflict checks, redacting discovery, and handling endless lists of office-related needs and requests. When the pandemic hit our region in March, DPD’s LASs had to re-invent their work world in a matter of days, creating new systems for nearly every element of their job. They had to quickly set up home offices. They had to learn how to do much of their work electronically, ushering in new paperless systems virtually overnight. They had to find creative ways to support attorneys, who were also facing an upside world.

In some of the divisions, they had to be cross trained, so that they could fill in for one another and better handle the challenges of this unfamiliar

terrain. When a new employee came on board, they had to train the person via Skype or other screen-sharing apps.

Add to that the fact that the rules were changing constantly as the courts also adjusted to COVID, said Stephanie Sellers, who supervises the administrative staff in the SCRAP Division. “Their patience and understanding through this have been amazing,” she said. Lou Garcia, who supervises the administrative staff at NDD, agreed. “They stepped up in every way possible.”

Brittany Sweet, an LAS at NDD, said the hardest part of the transition was the sudden move to a paperless system. “It was always in the cards, but because of so many competing priorities, it just didn’t happen. Once COVID hit, we all had to adjust pretty quickly,” she said. At the same time, the move has been a plus for the administrative staff. “We were forced to streamline. But now that we’re doing so, it’s been a huge time-saver,” Brittany said.

Ben Goldsmith, the managing attorney at TDAD, said he’s been impressed by how well the administrative staff stepped up to the new demands, a willingness that he believes stems from their commitment to public defense. “We’re proud of how dedicated and mission-driven our administrative staff are,” he said. Haydee Vargas, ACAD’s managing attorney, said the LASs have been particularly important to clients, who have also struggled in the face of the pandemic. “Our LASs really take time to talk to our clients who call and who are scared and nervous because they don’t know if they have to go to court. They are the ones who often walk our clients through some of their worries,” she said. “They really care about serving the clients.”



“One of the challenges I’m sure we all faced was staying organized. It was hard to have a designated workspace when our workspace and home space became combined. It was also hard to have to suddenly do everything electronically, especially at the beginning. But surprisingly, our team has grown closer over the past year. In fact, I feel I’ve seen more faces via Zoom than I did when we were working in the office. Being so separate has forced us to communicate a lot more.”

Zulen Pantoja-Ortega, a legal administrative specialist at the SCRAP Division who plans to attend law school this fall

CRIMINAL DEFENSE: Representing clients in the midst of a global pandemic

DPD employees working in criminal defense—representing people charged with misdemeanors or felonies during the midst of a global pandemic—found themselves facing some of the most challenging situations of their careers.

In the face of the pandemic, the courts implemented a number of new processes in a stated effort to keep people safe. But over and over again, DPD’s attorneys were the ones who were standing next to clients in courtrooms crowded with court staff, correctional officers, clients, and family members. In King County Superior Court, District Court, and Seattle Municipal Court, DPD’s attorneys represented clients in trials, arraignments, and other hearings, while judges were behind plexiglass or even in other courtrooms and prosecutors were many feet away from anyone else or appearing via video from their homes or offices.

Public defense staff went into jails to help with

their clients’ competency evaluations, since state evaluators refused to enter the jails. Interpreters were also often unwilling to appear in court or in jail, creating new challenges for public defenders representing non-English-speaking clients. For nearly eight months last year, speedy trial rules were suspended and jury trials paused. Day-reporting and work release programs were cancelled. Attorneys fought to get their clients released from jail, a congregate setting that presents a high risk for COVID transmission. Sometimes they succeeded, sometimes not. As one attorney wryly noted, she could advocate for electronic home monitoring, but not if her client didn’t have a home.

Every step of the way, it was uncharted territory—challenging for the defense teams, confusing and often frightening for clients, especially those in jail who feared they would get sick. Client communication was key; attorneys did their best to



keep in close touch with their clients, many of whom were languishing in jail. Technology sometimes helped, but it also often failed or was simply non-existent. Because it was so difficult for cases to resolve, we believe that the number of open cases each attorney, investigator, and mitigation specialist carried mounted. And unless the King County Prosecutor changes his filing practices, the situation could get worse this year. According to the prosecutor, his office historically has an average of 3,250 pending felony cases at any given time. That number jumped to 6,450 pending felonies in early 2021 and is expected to rise to as many as 9,000 over the course of the year.

The Director’s Office worked to support staff in our criminal divisions by advocating at all levels for procedures that would help to keep employees safe and protect the health and due process rights of our clients. We worked with the jail and the prosecuting attorney on more restrictive booking criteria for both adults and young clients. We urged prosecutors to stop filing property and drug cases. We pushed for changes in court operations, trying to get judges to end out-of-custody proceedings, to ease courtroom crowding, to delay reopening when the pandemic began to ease over the summer, and to institute better safety protocols once they did reopen. We worked with the jail and PAO to change the way the investigation calendar works and to ensure our attorneys could visit clients individually in booths, rather than all together in a small room. Every step of the way, we tried to slow down the system—from bookings to filings—while supporting our attorneys in getting clients out of jail and cases dismissed. A calendar on page 34 shows the extent of this advocacy, an endless stream of letters, emails, meetings, and motions.

Our staff saw clients who were clearly suffering from the chaotic and uncertain situation they found themselves in. “Many of our clients are housing insecure and food insecure. They’ve experienced considerable trauma,” said Joshua Andrews, an SMC supervisor at NDD. “Add to that trauma all of these other variables, all of this uncertainty, and we saw clients who were deeply stressed.”

A look at the numbers

In 2020, we represented a total of 15,009 people in all of our practice areas, handling more than 20,000 assignments. Of those assignments, about 2,000 were assigned to our outside panel of attorneys, largely due to

The Work of Public Defense: Fighting for a client’s release

Jennifer Symms, a felony attorney in the SCRAP Division, represented a client who had been jailed for nearly two years on \$100,000 bail while awaiting trial on a felony weapons charge. In April, as the impact of the pandemic in a congregate setting grew more serious, Jennifer became increasingly concerned about her client’s health—he had both asthma and a history of pneumonia. She sought a new bond hearing for him, arguing that COVID-19 was a change of circumstances that warranted such a review. The prosecutor disagreed, arguing that Jennifer’s client had already had a bond hearing and that nothing materially had changed. But Jennifer persisted, and the judge agreed, saying that COVID most certainly was a change of circumstance and that the client should be released pending his trial. The judge ordered him to do Community Center for Alternative Programs (CCAP), calling in every day. The client’s mother, listening by phone, cried when she heard the news. He got out of jail later that night to unite with his new wife, whom he married while in jail. Mitigation specialist Janet Radachy, with support from her supervisor, Jennifer Woodard, played a significant role, obtaining the medical records that showed the client’s vulnerability to COVID. (Below, Jennifer Symms.)



The Work of Public Defense: Representing protesters



Last summer, during the height of the protests for racial justice, the Seattle Police Department made dozens of arrests, booking protesters into jail until they could come before a judge for a first appearance hearing. With such a full calendar and as a pandemic raged, attorneys from TDAD, NDD, and the Director’s Office worked side-by-side in the small courtroom on the first floor of the King County jail in downtown Seattle, advocating for the release of each individual. Both divisions sent extra attorneys to help with the full calendar. TV cameras lined up to watch the hectic scene. Family members and community activists filled the benches. In nearly every instance, the deputy prosecutor asked the judge to impose bail; for the most part, he refused, agreeing with defense to release the individual. Then, part way through the calendar, the court—based on what appeared to be a vague security threat—suddenly shut down over DPD’s objections, and dozens of clients were escorted back to the jail where they had to spend another night. Ultimately, nearly everyone was released without bail, but it was tense, at times chaotic, and hard for the defendants and family members. “It was a really intense and emotional time period,” said Whitney Sichel, a supervising attorney at TDAD. “But it also stands as a good example of how well the divisions and the DO worked together to make sure everyone had a lawyer arguing for their release.” (Left, Gordon Hill and Ariana Downing.)

Criminal defense, cont.

conflicts that required assigned counsel.

Overall, case filings in 2020 were lower than those in 2019, when both felonies and misdemeanors spiked. The rate of filings in Superior, District, and Seattle Municipal Court dropped considerably in the spring and early summer of 2020, as prosecutors and courts adjusted to the reality of a global pandemic, then climbed back up in summer as courts began to reopen. But even with a pandemic raging, the overall number of felonies in 2020 was on par with the number in 2018. (See chart, page 8.) ↻

“You can’t effectively represent someone in a trial if you’re sitting six feet away. You’re this person’s advocate. You don’t want the jury to think you’re afraid of them. I’ve tried to manage my personal risk by doing as many video visits as possible. But there’s no substitute for a face-to-face visit if you’re trying to connect with someone who you want to have trust you.”

Kristin Shotwell, felony supervisor in Kent, who handled two jury trials in 2020

A new Community Court at SMC allows people to retain their constitutional rights

Seattle Municipal Court, with considerable input from DPD, created a new Community Court last year, which lessens the harm of the criminal legal system. It attempts to identify a person’s needs and connect them to community-based services, eliminating jail as a response to low-level, non-violent crime and dismissing the participant’s case within 45 days if they achieve a set of individualized goals. The program is founded on a release-first principle, where individuals choosing to participate are immediately released from custody so they can begin setting goals and connecting to community services. The court was launched in August. By the end of the year, about 100 people had participated in it.

DPD helped to develop the court after SMC leaders agreed that participants would not have to give up their constitutional right to a trial to enter the program. In other words, if the program does not work out for any reason, the individual can still request a trial and advocate for their rights before a judge. Also noteworthy from a public defense perspective is that the new court does not bar participation based on an individual’s criminal history.

Anita Khandelwal, in a video SMC created about the new court, said both of those factors were significant to her. “Coming together to see if we can collaboratively help people address an unmet need and help them walk out the courthouse door never to come back is a great idea,” she said. “It’s also a testament to this moment in time when we’re developing a deeper understanding of the ways that system-involvement can harm people and the racial impacts of the system and share a desire to mitigate these harms.”



Case coordinators find new ways to help clients

In the Director’s Office, a team of coordinators screens all the clients who call in need of a public defender and then determines what division can take their case, tracking caseload levels as well as potential conflicts per division. (Under the Rules of Professional Conduct, clients cannot be represented by a division if it is determined that there’s a conflict of interest, meaning, typically, that a co-defendant or a witness in a case is being represented by an attorney in that same division.) Like other parts of the department, our coordinators, managed by Jonathan Rudd, had to find new ways to do their work once the pandemic hit. They did so well, Jonathan said.

Shortly before COVID, they launched a two-desk team system, enabling the coordinators assigned to a desk (e.g., felonies, misdemeanors, family defense) to back each other up as needed. This worked well as coordinators began to work remotely in March. It required the use of centralized online tools, shared email inboxes, shared tracking logs, and other forms of electronic coordination, all of which were folded into Microsoft Teams. Jonathan and the coordinators also created an extensive manual for all the practice areas, which they could refer to easily from their home offices. Meanwhile, Claudia Yescas became the team’s new floater, which meant she had to train to handle new practice areas entirely remotely, while another case coordinator, Kenya Hart, was admitted to the Washington State Bar, a major accomplishment. “It’s amazing what we were able to accomplish while adjusting to the impact of the pandemic,” Jonathan said.

The Work of Public Defense: ‘Children are different.’



Justin Mathews, an attorney at ACAD, represented a youth, 16 at the time of the incident, who was charged as an adult and facing a sentence that would keep him imprisoned until his 40s. Justin and Molly Hennessey, a mitigation specialist, worked on the case for several months, coming to deeply appreciate this young man and the need to keep him out of adult prison. Molly added enormously to the team, working closely with the youth and his family, as well as Community Passageways and other experts, and writing an excellent mitigation report. Brandon Davis also assisted, and earlier in the case, Joe Alvarado and Kevin McCabe were co-counsel. Kelli Maguire, the investigator on the case, organized mountains of discovery and helped with several interviews and other aspects of the case, and Dee Jackson, a paralegal, helped with funding requests and expert services. As trial approached and after the defense team and Community Passageways met with the PAO, the prosecutor finally agreed to a deal that would keep the youth from adult prison. But in May, when it came time for sentencing on the agreed recommendation, friends and family of the victim showed up in force, urging the judge to not accept the plea and calling the young man horrible names. Justin, undeterred, spoke extensively about this young person and his life and about the difference between adults and children—noting that “children are different,” as both our State Supreme Court and the U.S. Supreme Court have said. He had an expert speak about the youth’s low risk; Dominique Davis and Keith Hedgepedge from Community Passageways and members of the young man’s family also spoke. “Justin really eloquently addressed all the pain and injustice felt by everyone in the courtroom in a calm and gentle manner. I loved how he repeated a very clear theme throughout, which was that ‘children are different,’” Molly said. When the judge agreed to the plea, he quoted Justin as he did so. (Left, Justin Mathews and Molly Hennessey)



JUVENILE PRACTICE: Supporting youth and strengthening community

Our juvenile defense teams represented youth on more than 1,100 matters last year, working aggressively to lessen the harm the criminal legal system causes them. When the pandemic hit, DPD staff moved quickly to quash warrants, to get as many young people out of custody as possible, and to implement remote practices so that clients rarely had to come into court. Keeping youth out of the courtrooms was a priority pre-COVID; that effort ramped up as COVID cases rose in the region. Eventually, the only in-person courtroom proceedings were for in-custody youth, and the number of youth in custody, thanks in part to our advocacy, dropped. The number of incarcerated youth in early March was 43; by year’s end, it had dropped to 25.

The logistics were sometimes challenging for staff. Court operations changed quickly. And while clients and their families appreciated not having to come to court, it was harder for attorneys to connect with their young clients over the phone or via Zoom. Community Passageways, a nonprofit that works to keep youth out of the criminal legal system, supported efforts to ensure youth were connecting with their attorneys, programs and other needed services, delivering iPads and other equipment to youth at home as part of its Connecting Youth with Care program.

Meanwhile, at a policy level, the Director’s Office continued its effort to partner with community to divest resources from a punitive and carceral juvenile legal system and invest in programs that are restorative, evidence-based, and community-based. The juvenile system has been shown to make young people’s lives less stable and to place them at greater risk. In King County, it is also highly racially disproportionate, due to the biases and discretion built into the system and the over-policing of communities of color. In 2020, Black youth, Indigenous youth, and youth of color represented about 72% of the youth prosecuted and

77% of the youth incarcerated in King County.

The department worked with community partners, system stakeholders and lawmakers on several programs and policy changes – all with an eye towards reducing the reach of a harmful legal system. We worked on legislation informed by adolescent brain science, including the drafting of several bills pending before the legislature in 2021. We worked with partners to get people who were sentenced as youth resentenced based on two significant State Supreme Court rulings. And we stood with our partners in the community, supporting them as they fought for a system that was less punitive and more restorative. We had some significant successes in 2020, many of them coming to fruition after years of community work. What follows are three highlights.

Passage of a Youth Rights Ordinance

Last summer, both the Seattle City Council and the King County Council passed a youth right-to-counsel ordinance that we believe is the most progressive one in the country. It took more than a year of work, strong partnerships with the community, and, in the end, a concerted effort by a wide range of people who care about young people—from teachers, to activists, to pediatricians, to parents. Even in the face of a strongly worded letter in opposition by the King County Prosecutor, the King County Sheriff’s Office, and the Seattle Police Department, both councils passed the measure unanimously.

The ordinance is a huge step forward in DPD’s ongoing effort to protect vulnerable youth from coercive police tactics. In short, it will safeguard young people’s constitutional rights by requiring legal representation for youth when law enforcement is asking them to waive their constitutional right to remain silent (after administering



Miranda warnings) or asking them to consent to a search. The ordinance honors MiChance Dunlap-Gittens, who dreamed of one day going to law school and championing the rights of young people; he was tragically killed by police two years ago, when he was 17. The need for such legislation – as an act of advancing racial justice in our community – is overwhelming: Last year, 61% of the youth who were referred by police to King County prosecutors for potential filings were BIPOC. It is also in keeping with brain science, which shows that young people—especially when confronted by armed officers—often lack the cognitive development to understand the consequences of waiving their rights.

DPD also worked with partners to draft legislation that would create a statewide youth right-to-counsel law. HB 1140—Juvenile Access to Attorneys—was introduced in January of 2021. A letter to Washington state lawmakers, signed by 32 organizations and individuals, urged passage: “Young people are often incredibly scared, disempowered, and vulnerable when interacting with police officers. The power dynamics between a police officer and a young person can be overwhelming, and these feelings are exacerbated for many Black youth, who have personally and intergenerationally experienced abuse at the hands of law enforcement officers. The safeguards in this legislation are essential to protecting vulnerable youth from police coercion and ensuring that they are not exploited.”

Restorative Community Pathways

The Director’s Office worked with several community and system partners to develop a new community-based, community-led response to harm called Restorative Community Pathways (RCP), which could help hundreds of young people stay out of the harmful juvenile legal system each year and instead receive community-based support, mentorship, and targeted intervention. At the same time, according to the program, the harmed party would also receive support, including restitution and restorative mediation. The program places financial resources in the community to offer these services and supports.

Last fall, the Executive included the proposed program in his budget, divesting funds from the juvenile legal system and investing those funds in this new program. And in November, the King County Council passed it as part of the county’s two-year spending plan. The impact is expected

The Work of Public Defense: Going the extra mile, literally

When a 16-year-old client at TDAD faced roadblocks in getting into treatment, Valarie Mitchell, a TDAD mitigation specialist, went the extra mile—literally. The teen was a client of Ashwin Kumar, and he and Valarie worked hard with the family and the court to get the client out of jail and into a treatment program. After a lot of effort, the team finally lined up a placement at an excellent program in Spokane, but then transportation proved problematic. The family could not take him there, and the treatment center, due to COVID, would not accept anyone who arrived via bus, plane, or any other form of public transport. In November, with the bed date two days away, both the family and team feared they were about to lose this significant opportunity – so Valarie jumped in. With little notice, she managed to get the needed special approval, book a car, coordinate with probation, pick up the family—including our client—and then drive them 280 miles to Spokane. And then, of course, she drove the family back to Seattle. (Everyone wore masks for the entire trip.) And as if that weren’t enough, she used all that time in the car to gather the family history she needed for her mitigation report. A fantastic outcome that shows how hard we work to do what’s right for our clients. (Below, Valarie Mitchell.)



Juvenile practice, cont.

to be far-reaching. Once implemented, we expect 400 youth currently prosecuted and convicted of crimes in King County’s juvenile legal system (or about 40% of those prosecuted) and about 200 misdemeanors that are currently diverted through the juvenile legal system would be referred to RCP.

The program builds community while reducing the harm of a system that is profoundly racially disproportionate. DPD partnered with several community-based organizations, including Creative Justice, Community Passageways, CHOOSE 180, and Collective Justice in developing this response.

New rule adopted to protect youth from warrants

Last year, DPD joined with several community partners to call for a new Juvenile Court Rule – 7.16, which would govern the issuance of warrants to youth subjected to juvenile offense proceedings. DPD and others were concerned about the disproportionate impact of warrants issued when a youth violates a court order related to a juvenile offense proceeding, as well as the harm of incarcerating young people during the pandemic. Thus, we proposed Ju CR 7.16, allowing a judge to issue a warrant to a youth who misses a court date or violates probation only if the judge finds incarceration is necessary to protect against a serious threat to public safety. It would also quash all outstanding warrants.

In a letter to the Supreme Court in September, signed by more than 70 partners, we underscored the disproportionality of the use of warrants and their harmful impact: Of the 795 warrants issued for court order violations and failures to appear in King County in 2019, more than 80 percent of them were against Black youth, Indigenous youth, and youth of color. Rather than incarceration, young people need support from family and community, from those best positioned to provide them with stable housing, access to education, mentorship, and more. “If this rule is adopted, it will help shift our response to youth in the juvenile legal system from a punitive one of arrest and incarceration to a restorative one of support and care,” the letter said. On Nov. 6, by an 8-1 vote, the Supreme Court agreed and adopted the Ju CR 7.16, a significant development.

The impact is already evident. As of January 2021, there were 10 outstanding warrants, a major change from last year, when there were as many as 70 outstanding warrants. 🔄

The Work of Public Defense:
Helping a vulnerable youth

Hal Palmer, an attorney in the juvenile unit at SCRAPD, and Katie Castillo, a paralegal, worked hard to secure the early release of a youth who was medically high risk and auto-immune-compromised—and for whom incarceration was dangerous. The client had a few more months to serve when Hal and Katie brought a motion to amend her disposition order so that she could be released early from a 139-week commitment at Echo Glen. What made the difference was Katie’s dogged work securing information about the client’s fragile health condition from her medical providers. Katie also did an excellent job of keeping the client informed, so that she felt supported throughout the process. Add to that Hal’s strong advocacy with the prosecutor—and they were able to convince the PAO to agree to the release motion. The client headed home in July to a father and grandmother in West Seattle, ready to take her into their home and make sure she received the medical attention she needed. (Below, Hal Palmer and Katie Castillo.)



Internship Recruitment in 2020: Charting a new path

COVID turned our world upside down in many ways, not least of which was how we structured our 2020 summer law student internship program and how we recruited a new class of interns for 2021.

After careful consideration, we decided last spring to move forward with our 2020 summer internship program, shortening the program by one week and offering our 18 interns the choice of working remotely or traveling to Seattle for remote work. Interns began the program in June, with four days of intensive training (all via Zoom), after which they were placed—remotely—in our four divisions to support the work of public defense. Working in the



Director’s Office, Abbey McMahon managed not only the technical aspects of the last-minute shift to remote work but also managed to troubleshoot and support remote supervision for our interns.

Many of the interns reported an excellent experience, despite the impact of the pandemic. They talked with clients, researched legal issues, wrote and argued motions and supported DPD in its policy work, all under the guidance of seasoned public defenders. But the interns missed the opportunity to take a case to trial and (most of all) the chance to really get to

know our clients. Despite the limitations, we are grateful for the contributions they were able to make over their nine-week summer.

Due to the pandemic, the department also had to find new ways to recruit interns for our 2021 program. We attended virtual law school recruiting events and job fairs in the spring and summer and held our own virtual open house in September, attended by nearly 200 people interested in interning or working at DPD.

All told, we reviewed approximately 150 applications, interviewed 45 students, and ultimately hired 15 promising interns from law schools across the country for 2021, including the University of Washington, Yale University, Berkeley, New York University, and the University of Michigan.

Several attorneys at DPD helped in this endeavor, including Meg Giske, Ginger Branham, Reid Burkland, Sarra Marie, Cady Nicol, Ashwin Kumar, Kate Aitken, Mahalia Kahsay, Brian Flaherty, David Montes, Matthew Pang, Edwin Aralica, Whitney Sichel, Haydee Vargas, Nicole Tingelstad, Kimberly La Fronz, La Rond Baker, Lauren Conner, Alena Ciecko, Kari Boyum, Katie Hurley, and Scott Ketterling.



“Throughout law school, I’ve heard a lot about being an advocate and how the client comes first. But being around the attorneys here at DPD has shown me what this means in action, where the client’s goals are what come first. Seeing that in action was inspiring.”

Hisrael Carranza,
2020 intern

“Working with the interns over the summer was a highlight of 2020. Even in a pandemic, we were lucky to have multiple interns who brought excitement and new eyes to this work. They quickly adapted to remote work and managed to provide high-quality representation and impressive results to our clients even during a short program in a pandemic.”

Sarra Marie,
Attorney, ACAD

FAMILY DEFENSE: Protecting and expanding the rights of families

Attorneys from our four divisions represented nearly 1,200 parents and 340 children in dependency cases in 2020, most of them filed by the state Department of Children, Youth and Families (DCYF) in an attempt to remove children from their parents or terminate parental rights. The termination of parental rights—permanently severing the bond, and all legal relationship, between a parent and a child—is considered the family law equivalent of the death penalty in a criminal case. Like the criminal legal system, the family regulation system is deeply racially disproportionate.

Family defense during a pandemic

In 2020, our family defense work—both in the courtroom and at the policy level—was made even more challenging by the pandemic and the spate of often confusing and misguided policies state officials and courts issued. Those emergency rules and court procedures not only created great uncertainty among both attorneys and clients, but also further harmed their fragile families.

DCYF banned in-person family visits in March, based on what DPD believed was an inaccurate interpretation of one of Gov. Inslee’s emergency orders—a decision that further traumatized vulnerable children, inhibited healthy parent-child bonding, and violated the law and countless orders in ongoing court cases. DPD attorneys fought aggressively in the courtroom for their clients’ visitation rights, while the Director’s Office worked with dozens of community partners to address this misguided policy at the state level.

DPD also fought for the due process rights of its clients, which were placed in jeopardy by the court system’s response to the pandemic. In King County, for instance, the court issued an emergency order preventing family defense attorneys from telephonically raising “non-emergency” motions implicating the fundamental right to family integrity, including motions to return a child to their parent, provide in-person visitations, or to allow a child to move from foster care to a placement with someone they know. This bar, according to a Motion for Reconsideration filed by DPD in April,

“resulted in the court making substantive decisions regarding parental rights outside of the courtroom, without input from parties and without due process protections.” At the end of 2020, the dependency court extended certain emergency procedures. Even now, the court has continued to suspend the local juvenile court rules and does not hear oral argument on dependency motions in all cases.

Finally, DPD raised concerns about the state’s decision to allow termination trials to proceed by video. In a letter to the State Supreme Court in June, we argued that remote hearing technology should be prohibited in termination trials, when a parent’s fundamental right to family integrity is at stake; that video hearings should be permitted in dependency trials only if a parent elects to do so and has meaningful access to needed technology; that public access to dependency trials needs to be guaranteed, but in a way that allows litigants to see who is watching; and that technology for remote participation must be offered equally. DPD also noted that holding trials via telephone or video made no sense during this public health crisis, since the court-ordered services that stem from a dependency were largely not available due to the pandemic. Although the Supreme Court issued guidance discouraging the termination of parental rights using remote hearing procedures, courts have continued to terminate parental rights throughout this pandemic, remotely and on video.

Parents’ interest in the care, custody, and control of their children “is perhaps the oldest of the fundamental liberty interests recognized.”

Troxel v. Granville

In these ongoing battles, we sometimes prevailed and sometimes did not. We worked with other organizations, many of them with deep roots in the community. As always, our family defense attorneys continued to fight hard for the rights of their clients,



using every tool at their disposal to make sure parents’ rights were protected and families remained intact.

Striving for fundamental change

Black and Native American children are disproportionately removed from their parents, remain out of home longer, and are disproportionately more likely to have their rights to their family permanently severed. Poverty—more than any other factor—is a predictor of family separation; a parent’s inability to meet a child’s needs is confused with an unwillingness to meet a child’s needs. But, even so, the system separates disproportionately more Black and Indigenous families because of the amount of discretion the laws allows—discretion that allows racism and implicit bias to play a role in the decision to separate families.

Last summer, DPD began to work with a coalition called “Keeping Families Together”—made up of parents and children who have lived experience with the harms of family separation and other stakeholder organizations—to propose changes to the law that would address these issues. Legislation we helped to draft and that was introduced into the legislature in 2021 would have raised the legal burden to remove children from their parents, from “a reasonable cause”—the barest thread of evidence—to a preponderance of the evidence. It would have also required the dependency court to find a causal connection between the parent’s conduct and the risk of harm and require the state to prove that relatives are unfit, prior to placing a child with strangers, if the court determines children must be removed. (The legislation was significantly amended, and it is unclear what version, if any, will pass. Advocates will continue to advance these ideas next year, if necessary.)

We believe legislative reform is needed to limit the harms of a system that tears families apart. We now know that children and their families endure trauma and lifelong consequences as a result of family separation. What is needed instead are networks of community support that nurture and heal families. Reducing the number of children entering the system is the first step towards transforming our approach to families in crisis or in need of support.

A huge win: Affirming the Indian Child Welfare Act

In September, the State Supreme Court ruled in favor of our client and the Tlingit and Haida Tribes in a landmark decision affirming core provisions of the Indian Child Welfare Act (ICWA). Justice Raquel Montoya-Lewis led a unanimous court in the opinion, ensuring that the law’s protections apply early enough to prevent the unnecessary removal of Native children from their families. The decision was considered a resounding defense of ICWA, passed in 1978 to end a

The work of public defense: Fighting for in-person visits

The importance of maintaining or securing in-person visits for parents and their children was highlighted in April when Daewoo Kim, a family defense attorney at the SCRAP Division, represented a mother who had been granted in-person visits to nurse her baby until DCYF unilaterally put a halt to these visits. Daewoo filed a motion objecting to the department’s action. Initially, a court clerk would not schedule a hearing to even determine whether an emergency existed, stating it wasn’t an emergency motion. Daewoo continued to push, however, and a second court staff person scheduled the emergency hearing. DCYF, meanwhile, objected to the emergency hearing, claiming that what mattered was not the best interest of this specific child, but rather the best interest of the residents of Washington during the pandemic.

Ultimately, Daewoo was able to get a judge to hear the case—and once he did, the court agreed that such visits were critical. Bobbie Edmiston and Matthew Bjork, ACAD attorneys who represented the other parent, also argued in support of the motion.

Family Defense, cont.

long and egregious history of states forcibly separating Indigenous families.

Of particular note was not only the substance of the ruling, but the analysis and context Justice Montoya-Lewis brought to it. An enrolled member of the Pueblo of Isleta, a federally recognized tribe in New Mexico, she wrote eloquently and powerfully about our country’s “historical and persistent state-sponsored destruction of Native families and communities,” beginning with her opening words: “In Native American communities across the country, many families tell stories of family members they have lost to the systems of child welfare, adoption, boarding schools, and other institutions that separated Native children from their families and tribes. This history is a living part of tribal communities, with scars that stretch from the earliest days of this country to its most recent ones.”

DPD represented both parents at the trial level and then took over the appellate case after the court of appeals decision. DPD represented the father in the Supreme Court, arguing the case and organizing many friends of the court, known as amici, to support our arguments.

The decision reversed a lower court ruling, advocated by the State Attorney General’s Office, that would have denied protection to our Native American clients at the critical stage in a case when the state seeks to remove their children. Although the decision came too late to directly benefit our client in this case, his insistence that his family was wronged was vindicated by our highest court, a remarkable victory. 🍷

The Work of Public Defense:
Keeping families together

Teams from NDD and TDAD won a hard-fought victory for two parents in a dependency trial in November, enabling the parents to reunite with their five children and begin rebuilding a life together. Hannah Gold and Katie McClellan, NDD attorneys, represented the mother. They were ably supported by Nicole Johnson, a paralegal, and Stephanie Brown, an investigator. At TDAD, attorneys Justine Olimene and Helen Redman represented the father—with excellent support from Mónica Mendoza-Castrejón, a paralegal, and Deb Scott, an investigator. The complex case involved interviews with multiple witnesses, voluminous discovery, and hundreds of exhibits, making it a particularly challenging case as the teams went into trial. Seven weeks later, however, Judge Amini ruled in favor of the parents, saying the children should be returned home. That was not the end of the story. After the judge’s ruling, the parents drove from South Carolina to pick up their children in Yakima, when DCYF raised a new allegation against the parents and insisted on interviewing the children again before letting them go home. Luckily, Hannah had driven to Yakima to ensure that the family was reunited, so she was able to see that the children left with their parents. The family is now together in South Carolina.



“As most people know, family defense is both legally and emotionally challenging. The highs are really high and the lows are pretty low. Once in a while, you will get a client with an especially challenging set of circumstances. This was one such case, where we had all the decks stacked against us. This made the win much more impactful—and, for our client, so much more meaningful. I learned so much from all the incredible defense attorneys involved during the seven weeks of trial. It was truly an out of body experience for me and I appreciate everyone in the unit who helped us make it happen.”

Justine Olimene, an attorney for the father

The Work of Public
Defense: Supporting our
community

In February, seven of our mitigation specialists worked as volunteers at FareStart, serving food, clearing tables, seating people, and more for the restaurant’s Guest Chef Night. The evening’s spread was prepared by Off the Rez Catering, owned and operated by a Native American couple. Supporting the effort were several DPD staff who dined in the restaurant that night. It was a big night for FareStart, a nonprofit that helps people who have experienced poverty get the training, life skills, and other support they need to land jobs in the food service industry. According to the volunteer coordinator, the dinner brought in nearly \$7,300 for FareStart’s training programs. Our DPD volunteers (clockwise from top left) were Kevin Toth, Nina Elmore, Valarie Mitchell, Nikelle Rosier, Rachel Dryden, Molly Hennessey, and Jennifer Rubio.



The Work of Public Defense:
Being ‘more than an attorney’

Jonathan Nomamiukor, a felony attorney in the SCRAP Division, represented a client last year who was sitting in jail for nearly seven months on felony drug and stolen vehicle charges, unable to get the treatment he needed to begin to rebuild his life. Jonathan asked Ben Kaplan, a mitigation specialist, to step in, and Ben worked hard to find an excellent treatment program for the client and to arrange for him to begin a training program at Fare Start, a nonprofit that provides job training in the food services industry. Armed with this information, Jonathan argued for his client’s release to electronic home monitoring. The judge agreed, and the client is now thriving: He completed treatment and is poised to graduate from Fare Start. Jonathan is now working with the prosecutor to make sure his client doesn’t serve any more time in jail. And the client, deeply appreciative of Jonathan’s work, wrote a letter to the division praising Jonathan for his help: “He’s more than an attorney. He always seems to go the extra mile. He’s a leader and role model for the firm and the community. Indeed, he truly exemplifies excellence. I am sending kudos because I am truly grateful to have him as my attorney.” (Left., Jonathan Nomamiukor.)

APPELLATE LITIGATION: Bringing the voice of our clients to the appellate level

In 2020, DPD began a new chapter in its advocacy work, bringing a public defense perspective as well as the voices of our clients to the appellate level in an effort to effect systemic reform. Led largely by La Rond Baker, DPD’s special counsel for affirmative litigation and policy, this work has enabled us to address a number of systemic issues that have chronically affected our clients—poor people, often people of color, who have neither the power nor resources to meaningfully protect their rights and interests.

Historically, there’s been a divide between on-the-ground public defense work and high-level appellate litigation. But our voice matters at the appellate level. Public defenders know how certain laws are harming our clients. We know what kinds of remedies might help. We also know how important the right appellate decision can be for both our current (or former clients), as well as those who might come later. Appellate litigation is about effecting change that will help reduce the way the criminal or civil legal system harms the people we stand next to in courtrooms every day.

A few cases highlight the significance of this kind of advocacy and what it looks like when public defense has a voice at the appellate level.

Supreme Court cites DPD brief in an important ruling on the use of shackles in criminal trials

In April, DPD filed an amicus brief in *State of Washington v. Jackson*, challenging the practice of shackling people in the courtroom without an individualized determination of necessity. The lower court found that the shackling of Mr. Jackson without an individualized inquiry violated his constitutional rights but was harmless, leaving him with “a constitutional violation without a remedy.” DPD’s brief, written by DPD with the support of several partners, said shackling is hardly harmless. Shackling implicates significant issues of fairness, impartiality, and racial and economic justice because of the way it infringes on a person’s civil liberties and meaningful access to counsel and because of its extensive use against people of color.

Their brief also provided important historical context: The United States has a long and painful history

“As amici KCDPD et al emphasize in their brief, the use of shackling as a means of control and oppression, primarily against people of color, has run rampant in the history of this country. ... We recognize that although these atrocities occurred over a century ago, the systemic control of persons of color remains in society, particularly within the criminal justice system.”

Washington v. Jackson

of shackling as a way to punish and control Black people, Native Americans, and vulnerable people, such as those in the midst of a mental health crisis. This is an issue that translates into practices today, the brief said, where courts routinely use blanket policies that disproportionately affect people of color, damaging their individual dignity, presumption of innocence, and ability to defend against criminal charges.

In July, the State Supreme Court—in a powerful unanimous opinion that cited DPD’s amicus brief—reversed the lower court’s holding that shackling Mr. Jackson was harmless. Justice Whitener, writing for the court, echoed our concerns about the historical legacy of shackling and its symbolism as a tool of oppression today. “As amici KCDPD et al. emphasize in their brief, the use of shackling as a means of control and oppression, primarily against people of color, has run rampant in the history of this country. ... Shackles and restraints remain an image of the transatlantic slave trade and the systematic abuse and ownership of African persons that has endured long beyond the end of slavery. Shackles and restraints also represent the forced removal of Native people from their homelands through the Trail of Tears and the slave labor of Native people. We recognize that although these atrocities occurred over a century ago, the systemic control of persons of color remains in society, particularly within the criminal justice system.”



DPD files amicus addressing racial biases and inhumanity of three strikes law

DPD filed an amicus brief in October in support of *State v. Jenks*, which would make the removal of Robbery 2 from the so-called strike list retroactive, giving people currently facing life sentences without the possibility of parole due to this often low-level offense a chance at freedom. The brief discussed the racial animus behind three strike laws—drafted to target the Black community during the height of the war on drugs and building on the legacies of slavery and Jim Crow. In Washington state, it has led to huge disparities: According to one report on the three strikes law, Black people made up 3.9 percent of the statewide population in 2019 yet represented 40 percent of the Washingtonians serving life sentences for a third strike.

The brief also explored the link between people serving life in prison on a third strike and the foster care-to-prison pipeline. “Considering how many of those serving life without the possibility of parole were part of the foster care system, or were even in the custody of the foster care system when they were prosecuted and convicted of their first strikes, the only possible conclusion is that the failure of the foster care system to provide adequate support and meaningfully address behavioral health disorders had life-long effects,” the brief said. What’s more, many of those sentenced to die in prison landed there due to behaviors stemming from substance use disorders. The statute that removed Robbery 2 from the “strike list” is meant to remedy these prior wrongs and thus should be applied retroactively. The brief was signed by NAACP, the Concerned Lifers Organization, Community Passageways, the Black Prisoners Caucus of the Washington State Reformatory, and Yoga Behind Bars—organizations that include individuals who reviewed the brief from prison where they are serving life sentences.

DPD files amicus brief in support of the state’s lawsuit against ICE

DPD filed a brief on behalf of several amici in January 2020, supporting a lawsuit by the state Attorney General’s Office against the Trump administration for its practice of arresting people at courthouses for immigration violations. The brief, signed by several partners, argued that the practice of allowing immigration enforcement at state courthouses impedes access to justice for immigrants

The work of public defense: Defending clients at risk of deportation

Mahalia Kahsay, an attorney at ACAD, represented a client in SMC this fall for whom the stakes were high: He was not a citizen but had been living in the U.S. since he was a teen and had been told by an immigration official that they were watching the case and that any criminal conviction would make it much more difficult for him to renew his green card. He was charged with DUI – Physical Control. After Mahalia filed several motions, winning one of them, the prosecutor offered to reduce the charge to a DWLS 3, which would have been a huge victory if not for the possible immigration consequences. Mahalia continued to advocate, and the prosecutor agreed to reduce it to a parking infraction, which Mahalia still did not believe was fair or necessary. With the court breathing down her neck, multiple interpreters on hold, and a parking infraction on the table, Mahalia walked back into the courtroom, had a private conversation with the prosecutor, and convinced him to dismiss the case outright with prejudice. A rare event in SMC, a testament to Mahalia’s determination, and a great result for a vulnerable client. It was also the result of good teamwork, including excellent work by investigator Bryan Cohen, co-chairing by attorney Nate Crowley, and sideline assistance by George Eppler. (Below, Mahalia Kahsay.)



Appellate Litigation, cont.

and their families, many of whom are poor, are people of color, and have limited access to the power and resources necessary to protect their rights. The brief describes chilling situations: an ICE agent poses as an attorney, eavesdropping on a client’s conversations with their lawyer and using what he hears as the basis for an immigration arrest; two agents chase a client down the street outside of the Seattle Municipal Courthouse to arrest him on an immigration charge after the client appears in court on a shoplifting charge.

This targeted enforcement, the brief says, is contrary to state and federal law, deters immigrants from accessing courts to protect their rights, and chills public defense clients’ ability to defend against criminal charges. It’s particularly egregious, the brief notes, because ICE’s courthouse efforts occurred even as Washington was taking affirmative steps to safeguard immigrants’ access to courts. The brief was signed by Northwest Immigrant Rights Project, Northwest Justice Project, Washington Defender Association, Columbia Legal Services, the ACLU of Washington, and the Public Defender Association. 📄

“The injustice of racially disproportionate criminal legal and child welfare proceedings is only compounded by focusing immigration enforcement against our clients while they are in courthouses fighting for their rights.”

Amicus Brief, State of Washington v. U.S. Department of Homeland Security

DPD’s training program continued to thrive in 2020

The department’s training program is premised on these principles: To share in-house expertise and bring in outside experts to generate new ideas; to offer relevant trainings across practice areas and job classes, including a mix of legal skills, professional skills, and up-t0-date training on developments in the law; to deepen our understanding of how structures of oppression operate in our work, highlighting the experience of those most impacted and creating opportunities to learn about a broader historical and legal context for our work, and to support our staff in meeting their professional development goals. To that end, we continued to develop a robust training program in 2020, offering a wide range of programs to staff at all levels of the organization. At the same time, the department’s small training team had to remake the program due to the pandemic, using online platforms most of us were not used to. It was quite a feat.

Remarkably, the pace of the trainings we offered in 2020 remained nearly the same as it did in 2019: We provided 90 trainings in 2020, as well as a week-long training program for interns, a week-long new attorney training, and three supervisor trainings. This compares to 97 trainings in 2019. Attendance was up in 2020: On average, 21 people attended each training session in 2019, compared to 33 people per session in 2020.

Many of the sessions were focused on issues that arose due to the pandemic, including how best to handle video hearings, the impact of COVID-19 on speedy trials, the impact of the pandemic on jails and prisons, and a historical look at the laws surrounding quarantine orders. We had many other significant trainings, as well, including:

- Three workshops for attorneys on client communication by the Freedom Project, a nonprofit organization that works to dismantle the institution of mass incarceration and heal its traumatic effects on our community.
- Two sessions on secondary trauma and its impact on public defense staff, led by Laura van Dernoot Lipsy, founder of the Trauma Stewardship Institute.
- A look at the history behind the Indian Child Welfare Act, led by Margaret Jacobs, a history professor at the University of Nebraska.
- A session on “movement lawyering,” led by Angélica Chazaro and Nikkita Oliver, community leaders.

Due to the pandemic, we were not able to offer our annual conference, a rich part of our training program, nor are we planning such a conference in 2021. But the department will continue to build on its strong foundation, with an eye towards providing more content specific to investigators and mitigation specialists, more ethics training, and more trial skills training.

The Work of Public Defense: A jury trial during the pandemic



Carey Huffman, a felony attorney at TDAD, got a not guilty verdict on the first completed trial since King County Superior Court’s resumption of jury trials in July. The jury found Carey’s client not guilty in part, Carey said, because of the strong testimony by an expert—a psychiatrist who said the client’s erratic behavior was due to severe paranoid delusions stemming from his diagnosis of a Substance Intoxication Delirium. TDAD investigator Cory Potts provided excellent support. The trial was also a window into the surreal world of jury trials during the pandemic.

Voir dire took place via Zoom, despite Carey’s motion that it should be in person—and not surprisingly, Carey said he found it challenging. Some in the pool didn’t pay a lot of attention (jurors were cautioned and removed for working on their computers during voir dire); some needed to scroll back and forth on their cellphones to see all of the screens; some were “borrowing” Internet access because they did not have Wi-Fi at home; and some had to increase their data plan so they could participate. “This is an extremely unsatisfactory way to conduct voir dire,” he said. Once the jury was empaneled, they lost two of their 14 jurors to concerns about catching the coronavirus and had another juror leave for a COVID-19 test after she began suffering from respiratory issues, causing another long recess. (Her test came back negative.) Carey talked to some of the jurors after the trial, who said that the masks on witnesses were not as much of a distraction to them as he thought they would be. “However, the ones who did speak with me expressed their concerns that they couldn’t see all of the face of the witnesses and therefore did lose some of their expressions, which made them wonder if they were missing some body language and what that might imply.”

Perhaps most important in all of this was his client’s joy at being found not guilty. “He wanted to give me a hug but said he knew he couldn’t because of COVID,” Carey said.

Photo of Carey Huffman in King County Superior Court - Ken Lambert, The Seattle Times (used with permission)

REPRESENTING CLIENTS IN ITA COURT:

The pandemic did not slow the pace

DPD provides representation to people in King County who face civil commitment to a psychiatric facility by the county’s Involuntary Treatment Act (ITA) Court. It is one of the busiest courts in the county, and this past year was no different. In fact, even as COVID-19 slowed down much of the criminal system, DPD’s ITA numbers went up in 2020—the only unit to experience an increase in filings in 2020. All told, DPD’s ITA attorneys represented 4,168 individuals in ITA Court in 2020, a 3.3 percent increase over the year before and a continuation of this court’s ongoing upward trend.

For the teams in our two divisions representing clients in the ITA Court, the pandemic had a huge impact. Before COVID, attorneys traveled among 23 hospitals in the county to meet their clients, representing them in hearings from either one of the nine evaluating and treating hospitals with their own remote video courtrooms or from the ITA court located in the Harborview Medical Center Complex, where they were taken via ambulance. Under either scenario, the attorney and client would sit together during hearings that were conducted via videoconferencing, with the judge presiding from their chambers. When COVID hit, the county stopped transporting clients to Harborview and all hearings became hospital based. At the same time, it was becoming unsafe for our attorneys to sit side-by-side with their clients during hearings, and some attorneys were forced to go immediately into quarantine because of confirmed exposure to clients diagnosed with the virus. In March, DPD took a strong stance: We would stop accepting assignments unless the court forced the hospitals to develop safe systems.

Within hours, the court issued an emergency order, and the hospitals began to put into place remote procedures—some doing so quickly, others dragging their feet. A few of the hospitals got technology to their ITA patients, so that

they could meet via video with their attorneys. More hospitals began putting discovery onto shared online platforms, rather than forcing attorneys to come into the hospitals to copy records. Indeed, it happened at some of the hospitals so quickly that there was hardly a break in representation. As Katy Wallace, TDAD’s ITA Unit supervisor, put it: “We never paused. We didn’t have a day to reflect.”

DPD, however, needed to continue to push some of the hospitals to implement remote procedures that guaranteed clients’ fundamental right to counsel, as required by state law. Some of the hospitals, for instance, backed by the Washington State Hospital Association, maintained that telephones were sufficient for patients who needed to talk to their attorneys and attend a hearing. The Director’s Office, in a letter first to King County Superior Court and ultimately to the State Supreme Court, said such a response was inadequate. “Telephone calls alone are not sufficient for us to develop a relationship that will allow us to represent our clients,” the department told Superior Court. Ultimately, all the hospitals complied, providing ways for DPD’s attorneys to work fully remotely, meeting with clients via video and reviewing discovery electronically.

Some clients struggled to adjust to the profound changes in the ITA system and to their attorney appearing remotely, said Tim Johnson, a TDAD attorney in the ITA unit last year. “We had an increase in clients who just wouldn’t talk to us, who had no idea what was going on,” he said. “If we were at the hospital, we’d go see them, and they’d immediately understand we were there to help them. We couldn’t do that from home.” But for most, he said, it worked surprisingly well. “Our clients were really glad that we were fighting for them. I think many felt like they were getting a fair shake.” 🐶

“DPD has already seen hospitals choose not to implement video visitation despite the ready availability of video conferencing platforms and wireless devices on which conferences could occur. As a result, the substance of any client’s right to counsel turns on the coincidence of the hospital in which they are detained. This cannot be an accepted part of an intentional system of laws that affect a deprivation of liberty.”

DPD Letter to the State Supreme Court, April 2, 2020

Representing people facing civil commitments to the Special Commitment Center

Washington is one of 20 states that can try to get people civilly committed indefinitely under the state’s Sexually Violent Predator law (RCW 71.09) after they’ve completed sentences for sexual offenses. The Special Commitment Center (SCC), as it’s called, is on McNeil Island in South Puget Sound. Currently, about 230 people are housed there, either because they’ve been civilly committed or are awaiting trials to determine if they’ll be committed.

DPD has a small Sexual Offender Commitment (SOC) unit—four attorneys plus an investigator, mitigation specialist, and paralegal—who represent people involved in civil commitments to the SCC. That representation includes trying to keep people from being civilly committed or, for those in the SCC, helping them to get released into the community, either unconditionally or, more often, on what’s called a “least restrictive alternative” (LRA). Attorneys also represent people in the community on an LRA who face revocation hearings or who are seeking unconditional release. The unit’s mitigation specialist puts together release plans in support of clients, working to find housing, programs, and other services to better guarantee success.

This past year, DPD’s SOC unit represented about 50 people, representation made more challenging by the pandemic. DPD staff stopped nearly all but the most essential travel to the SCC in March, but significant technological limitations at McNeil made it difficult for SCC staff to set up video calls. For several weeks, communication beyond phone calls was virtually impossible and many cases were at risk of becoming completely stalled. Even so, DPD’s small unit had several successes last year, getting at least one client unconditionally released and several others released on LRAs. Meanwhile, jury trials—to determine if someone should be civilly committed indefinitely to the center – have also proven difficult. These trials are long and complex and require a large jury pool (many potential jurors are honest about their inability to be fair or impartial and are thus disqualified). Four trials were continued until 2021, and it’s not clear when these trials will take place.

On a policy level, DPD has been working with partners to try to ensure people conditionally released from the center have better access to housing and services. The law that established the SCC is 30 years old, and people are being released into the community, said Devon Gibbs, an attorney in the unit. “More releases are happening. We want to make sure the supports are in place for people to be successful in the community.”

The Work of Public Defense:

A skilled investigation



A DPD client was facing multiple felonies for allegedly sending threatening messages via social media to his ex-girlfriend, her new boyfriend, and his ex-girlfriend’s best friend when NDD investigator Mon-Cheri Barnes was brought into the case. Among other things, the messages demanded money from the alleged victims or face the release of personal photos and information. After reviewing the discovery, Mon-Cheri had her doubts. It seemed odd to her that the client would create several accounts on social media that included different combinations of his name to harass people he knew. What’s more, the client had not been in contact with his ex-girlfriend in years. Mon-Cheri was also troubled by what she saw as flaws in the police investigation; officers, for instance, interviewed all three of the alleged victims together. As she dug deeper, she developed a rapport with the ex-girlfriend and her best friend, and they began forwarding to her more messages allegedly sent by DPD’s client. Some, however, were sent while he was incarcerated pre-trial on this very case and contained information he could not have known. Surprisingly, the client’s ex-girlfriend told Mon-Cheri she believed her own best friend was the source of the messages because she was known to get jealous when she was in a relationship. Mon-Cheri and Miranda Maurmann, the attorney, decided to interview the best friend again, suggesting she was behind all of the messages. She did not confirm this but broke down during the interview, saying she no longer wanted to be involved in the case. When presented with this information, the prosecutor decided to dismiss the case. (Above, Mon-Cheri Barnes.)

THE INQUEST PROCESS IN KING COUNTY:

Fighting for greater police accountability

For years, community activists have called for an inquest process that would truly hold police accountable. Too often, inquests—investigations into the death of community member at the hands of law enforcement—are pro forma exercises that result in an officer being absolved of all wrongdoing. The victims are disproportionately people of color living in poverty. Many, had they not been killed, would have been DPD’s clients.

This past year, as protests for racial justice swept the nation, the meaning and importance of inquests came into sharp focus in King County. At issue was the county’s community-driven effort to create a fairer and more transparent inquest process, announced in 2018 but stalled by a number of lawsuits on both sides of the issue: Law enforcement agencies and some cities in the county filed suits to try to dismantle the new process; families of loved ones killed by police sued to make it stronger.

Those families were grieving the deaths of three community members killed by law enforcement in 2017: Damarius Butts, who was 19 and the father of a 1-year-old daughter at the time of his death; Isaiah Obet, who was shot in the head by Auburn Officer Jeff Nelson, who has since been charged with murder for killing a different community member; and Charleena Lyles, a pregnant mother of four, shot in front of her

1-year-old child. All of them were people of color. In 2019, three separate inquests were convened to investigate their deaths but were put on hold early in 2020 after the lawsuits were filed. DPD attorneys represent two of the families in the inquest process. La Rond Baker, DPD’s special counsel for affirmative litigation and policy, and Adrien Leavitt, an attorney at NDD, represent Mr. Butts’ family. Amy Parker and Susan Sobel, attorneys at ACAD, represent Mr. Obet’s family. At issue in the families’ suits are two key reforms to the inquest process—requiring that officers testify about their deadly use of force and allowing the inquest jury to consider whether the officers engaged in criminal activity in their use of that force.

As the lawsuits progressed last year, the community rallied around the families’ call for a stronger inquest system. A community letter, with more than 3,500 signers, was sent to city and county leaders in June, expressing outrage over the lawsuits by the law enforcement agencies and the cities and their efforts to derail a stronger and more transparent inquest system. Those jurisdictions’ suits, the letter said, made the recent promises of racial justice “ring hollow.” The City of Seattle, one of the jurisdictions that had sued, dropped its lawsuit while the letter was circulating.

Then, in July, a coalition of 32 community organizations, represented by Nikkita Oliver, a Seattle



attorney and activist, filed an amicus brief in support of the families’ lawsuits. Among the groups that signed as amici were COVID-19 Mutual Aid, Decriminalize Seattle, Africatown, Columbia Legal Services, Loren Miller Bar Association, Casa Latina, and the ACLU of Washington. “Until police stop killing Black and Brown people and until we as a society decide to defund and disband law enforcement agencies as we know them, anything less than full and transparent community-involved investigations of law enforcement’s use of force on community members only serves to further exacerbate public concern regarding police brutality and stokes the fear of law enforcement in communities of color,” Nikkita said at the time of the filing.

In August, King County Superior Court Judge Julie Spector ruled in favor of the law enforcement parties and struck down many aspects of the newly revised inquest process, effectively preventing any inquests from moving forward. Two months later, the State Supreme Court granted direct review. And on Jan. 19, 2021, La Rond argued the case—The Family of Damarius Butts, et al., v. Dow Constantine—on behalf of all three families. She began by telling the Court about the three people killed by police in 2017, then highlighted the historical significance of the issue before them, what she called “this critical moment of our reckoning with America’s longstanding practice of violently policing Black and Brown bodies and communities.”

As the families await the State Supreme Court’s ruling, DPD continues to support them and their call for a fair inquest process. “Nothing will bring my son, Damarius, back to me,” Ann Butts, the mother of Damarius Butts, said. “But a full, thorough, and fair public investigation into his death would at least put some of my questions to rest and allow me, his siblings, and his daughter to finish this part of grieving the loss of our Damarius.”

Voters in King County see the importance of a fair and thorough inquest process. An amendment to the county charter was put before voters last fall, codifying aspects of the county’s reformed inquest process. The amendment clarified that an inquest is required whenever a member of law enforcement kills a community member and that the family of the person killed would be represented by a public defender. The amendment passed by a margin of more than 80 percent.

The Work of Public Defense: Holding police accountable

When ACAD attorneys Amy Parker and Susy Sobel were assigned last year to represent the family of Isaiah Obet in an inquest proceeding, they began by gathering information about Jeff Nelson, the Auburn police officer who shot and killed Isaiah in 2017. This was per the direction of the family, who wanted to see Nelson held accountable and ensure he did not cause another family to experience the kind of pain and loss they had. With the help of investigator Bryan Cohen, the team filed several public disclosure requests, obtaining some crucial information, but not all of it; Auburn initially refused to share the dash cams Bryan had requested from the department. Then, they got a call from a colleague in the federal public defender office, where a team was representing a man who had both ankles broken and his shoulder dislocated when he was run down by Nelson’s patrol car in a parking lot. The federal public defenders had subpoenaed and received a trove of information from Auburn. The two teams sat down and began detailing Nelson’s history of abusive behavior—65 reports of use of force, two of which resulted in death. They later learned he had killed a third community member, Jesse Sarey, in May 2019.

“Once we discovered he’d killed others, the family was clear about their goal: Don’t let him hurt another community member,” Amy said. Amy and Susy began detailing Nelson’s pattern of abusive behavior in their pleadings. They also finally got the dash cams, which Bryan began reviewing, discovering critical inconsistencies between what Nelson said right after he killed Isaiah and the statement he made to a lawyer a few months later.

When Nelson was charged with murder in Jesse Sarey’s death last August, Amy and Susy did not celebrate. “Nobody’s taking joy in incarceration,” Susy said. At the same time, the Obet family has found some validation in his arrest. “Seeing a court validate the harm he has caused through charges has meant a lot to the family,” Susy said. “They’re just really grateful for the work.”



Damarius Butts



Charleena Lyles



Isaiah Obet

FROM OUR UNIONS: Working to protect our members and our clients during a pandemic

A note from SEIU Local 925

After a comparatively uneventful start to the year, SEIU Local 925—which represents more than 350 employees at DPD—sprang into action in March with the COVID-19 pandemic and resulting workplace changes. We met with the Director’s Office and Human Resources about important policies concerning telecommuting, closing down our offices to in-person visitors, and keeping staff safe when they did need to go to the office, court, or the jails. While the information surrounding COVID-19 always was (and still is) changing, we began to get a better sense of what the courts and our other workplaces were going to look like for the foreseeable future. The vast majority of attorney members expressed concern that appearing for in-person hearings posed a risk to themselves, their clients, and their clients’ families. We again held meetings to make sure those concerns were being heard. We were impressed, and continue to be impressed, at how the concern for each member’s own health was always coupled with a concern for their clients’ rights and safety.

“We spent the end of 2020 working to address continued issues with COVID-19 safety in the courts and jails and the burden that ballooning caseloads and increased filings have had on all of DPD’s staff.”

As it became clear that COVID-19 was going to be impacting our work for the foreseeable future, we worked with the Director’s Office and HR to plan for the future of telecommuting and the eventual return of some employees to the office. Policies were adjusted and funding was secured to enable our members to bring home portable office furniture or to otherwise purchase ergonomic furniture to make telecommuting more sustainable.

When the entire nation watched police kill a Black man who cried for his mother, we turned our focus to the union itself, working to ensure that SEIU-925 was at the forefront of protests, of calls to defund the police, and of removing the Seattle Police Officers Guild from the King County Labor Council, an effort that was ultimately successful. We encouraged our DPD members as well as the entirety of SEIU-925 to join Community Passageways at the “We Want to Live” march at Othello Park in June. We were awed by

our members who took up the cause of anti-racism on their own time, working with the National Lawyers Guild to serve as legal observers, starting a collective of concerned defenders to take direct action to dismantle the racist system of police and punishment, publishing op-eds, marching and rallying, and supporting local and national organizations that have been doing this important work for so long.

We spent the end of 2020 working to address the continued issues with COVID-19 safety in the courts and jails and the burden that ballooning caseloads and increased filings (including of low-level offenses and crimes of poverty) have had on all of DPD’s staff. We met with Washington State Department of Labor & Industries to assess our options to continue to push back on the unsafe conditions in the courts and the jails. We met with the Public Defense Advisory Board to help them prepare their annual report and told them about the ongoing struggles our members were facing in the daily

fight to protect their clients and now to protect themselves as well. And we sent a letter to each of the presiding judges in November expressing our concerns about restarting jury trials when COVID-19 cases were approaching what would soon become Washington’s greatest peak of cases since the start of the pandemic.

We know this has been an incredibly challenging year, unlike any other that any of us have faced in our careers. We thank our members for your continued perseverance in serving and caring for our clients, and your continued advocacy in the face of new obstacles. We look forward to continuing to serve you in the new year.

Kimberly La Fronz, President, DPD Chapter, SEIU Local 925

A note from Teamsters Local 117

The supervisors at DPD are represented by Teamsters Local 117, which represents approximately 17,000



people at more than 200 places of employment throughout the region. DPD supervisors strive to solve problems, support our staff, and inspire others. We focus on the clients and staff, act responsibly, champion racial justice, and seek to understand the bigger context in which our members work. We attend the Public Defense Advisory Board’s meetings to share developments with the panel. In our roles as supervisors, we are charged with a wide array of responsibilities, and none are more important than our responsibility to protect our staff and clients.

We have worked with our leadership at DPD to secure PPE for both clients, staff and supervisors. We have worked to continue updating the Managing Attorney Preparation Program and continue to focus on caseload issues and personal safety for our members.

In February 2021, the DPD Teamsters Supervisors were able to give a small statement to Council regarding the ongoing concerns in the courts and jails during COVID-19. We urged the Council to put pressure on the Courts and jails to assist our leadership at DPD in their efforts to keep our clients and staff safe. We reminded Council that the sentiment in our world is that “we’re at the mercy of the Courts.”

Our stewards meet as much as possible when issues arise, including how we can best support those we supervise in achieving a healthy work/life balance especially during COVID-19.

We have been in virtual negotiations both large table and small table since mid/late 2020 regarding the two-year collective bargaining agreement for 2020-2022. Teamsters 117 bargains as a part of the King County Coalition of Unions, negotiating to address our collective priorities related to the Master Labor Agreement, including total compensation and employees’ health care benefits. The development of a new contract will be a significant accomplishment for the union, and we look forward to working constructively with DPD management and our labor partners to ensure our contract supports our members and the important work they do every day.

Rachael Schultz,
Chief Steward, DPD Chapter,
Teamsters Local 117



The work of public defense: The power of listening

The power and importance of listening is something we hear often from our clients—how that alone sometimes makes a difference. Josh Hicks, a mitigation specialist at NDD, had such an experience with a client last spring, after he spent many hours with him, interviewing him as part of a comprehensive social history to support him in achieving a positive case outcome. Josh wrote an excellent report based on these interviews, and ultimately the client did have a positive outcome. But equally important was the process of Josh’s engagement with the client, a process that enabled the client to feel truly heard, possibly for the first time in his life. Josh said he was struck by the client’s story—by the depth of the physical and emotional trauma he had experienced. “This client had one of the most intense, even epic, life stories and trauma histories that I’ve ever heard. And I’ve heard a lot,” Josh said. He was also struck by the client’s resilience in the face of that trauma. “He wanted to tell his story, and he wanted it to be known. My sense is that he really appreciated someone sitting with him for many hours in order to capture what he had to say.” The client got out of jail in June, and thanks to several community contacts, Josh was able to provide a warm hand-off from jail to the community, where he was connected to services that provided a path to housing. “I can see a path working out for him in a positive way,” Josh said. (Above, Josh Hicks.)

A YEAR OF ADVOCACY: Partnering with the community to keep our clients and staff safe

From the moment Gov. Inslee issued his first set of emergency orders, the Director’s Office—often with the support of our partners—began to fiercely advocate for the due process rights of our clients, for their safety, and for our staff’s safety. What follows is a calendar that highlights this tenacity.

- March 12: DO proposes more restrictive booking criteria for juvenile detention.
- March 12: DO tells the ITA court that we could not take any new clients because the court could not guarantee our attorneys’ safety. Court issues emergency order telling us to take cases but also requiring hospitals to meet certain conditions. A win for staff.
- March 18: DO begins working with KCPAO and the CAO on agreed-release process to get as many people out of our two jails as possible. Also begins working with community partners on getting people released.
- March 23: DO writes letter—signed by more than 25 partners—to Gov. Inslee and DCYF Sec. Hunter advocating for continuation of in-person family visitations between children and parents who are facing dependency proceedings. State Supreme Court folds some of our concerns into a new order.
- March 24: Executive issues news release suspending Work Release Program so as to reduce jail population.
- March 24: DO advocates with District Court judges and prosecutors about changes that could be made to better protect the safety of both DPD staff and clients in KCJ1. And they asked the state to review cases ASAP and strike individuals

“Our government bears a unique responsibility to protect incarcerated persons who, because of their loss of liberty, lack the ability to protect themselves and are completely dependent on our local government during their incarceration. ... The County and City must do their part to stop the flow of people into the criminal legal system during this pandemic.”

Letter to City/County Leaders, April 8

from the calendar where the state is agreeing to release.

- March 26: DO and partners send letter and proposed order JuCR 7.16 to the State Supreme Court governing warrant quashes in juvenile court in an effort to limit youth incarceration. This was the beginning of several months of advocacy in support of this new rule.
- March 26: DO sends letter to Judge Steiner about ITA clients, urging the court to continue to follow COVID-related emergency order.
- March 30: DO drafts letter to Judge Mahoney raising concerns about the set up for first appearances in KCJ1.
- March 31: DO sends letter sent Gov. Inslee requesting clarification regarding in-person parent-child visits for children in the foster care system.
- April 1: DO works to address ongoing concerns about how crowded KCJ2 is.
- April 2: DO sends letter to Chief Justice regarding the court’s proposed order that could undermine the rights of our clients facing a civil commitment to a psychiatric facility.
- April 6: DO works to get the KCPAO to agree to quash a number of warrants for clients in Juvenile Court, similar to what we sought in the form of an emergency order from the State Supreme Court.
- April 7: DO signs a letter to Gov. Inslee and Sec. Hunter asking them to support needs of older youth in foster care during the pandemic by taking a number of immediate steps.
- April 8: DO, in concert with a large working group, sends letter to county and city leaders asking them to take several actions that would lead to more adults being released from the county jails and reduce the number of new inmates.
- April 8: After considerable advocacy by DPD and partners, King County Juvenile Court formally adopted some additional screening and release protocols and slightly modified booking criteria.
- April 17: After considerable advocacy by DPD, the State Supreme Court revises emergency order regarding psychiatric civil commitments, addressing all concerns that we raised.
- April 20: DO files Motion for Reconsideration of KC Superior Court’s emergency order, the first step in DPD’s ongoing strategy to regain basic due



process rights for our clients facing dependency actions.

- April 21: DO convinces the PAO to approve redactions in cases pretrial, rather than forcing clients to set their cases for trial before they’re allowed to review and approve redacted discovery—a significant, though temporary, shift by the PAO.
- April 28: DO and partners send letter to leaders in KC Public Health, calling on them to expand voluntary testing to all individuals incarcerated in one of the county’s jails and to all DPD staff working with clients in the courtroom or jails.
- April 28: DO sends letter to State Supreme Court raising concerns about a proposed order addressing dependency matters pending before the state Supreme Court and the serious impact it would have on the rights of our clients, were it to be implemented.
- April 30: State Supreme Court issues order on dependency matters, saying the court should hear motions regarding visitation, as DO had argued.
- May 8: DPD joins partners in letter to the state Department of Corrections calling on DOC to act quickly to stop the spread of COVID-19 at Reynolds, a work release facility in Seattle.
- May 15: DO holds listening session with community partners to get input on court’s proposed video hearings plan; all raised serious concerns.
- May 19: DO sends letter to KC Dependency Court about its step-up plan, which, among other things, allowed review hearings to occur without oral arguments.
- May 22: DO sends letter to KC Superior Court raising several concerns about how the court plans to resume criminal jury trials.
- May 23: DO sends email to KC District Court asking the judge to postpone plans to ramp up in-person, out-of-custody hearings.
- May 26: DO writes letter to the State Supreme Court, requesting clarification and guidance on how lower courts should proceed with dependency trials via video.
- May 29: DO sends another letter to KC District Court, this one co-signed by KCPAO, asking the court to delay its plan to hold out-of-custody arraignments and pre-trials until King County

“Amidst the horrors of this pandemic, we in the community have seen King County’s juvenile legal system find new, innovative ways to get and keep young people out of detention. Through this work, important temporary reforms have been quickly implemented. These temporary reforms are leading to positive results and give a roadmap to making broader changes to King County’s juvenile legal system.”

“Free the Youth” letter to King County, June 15

- moves to Phase 2 of Gov. Inslee’s Safe Start plan.
- June 8: DO and partners send letter to Gov. Inslee urging him to address the issue of young people “aging out” of Extended Foster Care and finding themselves with few, if any, any resources in the midst of a pandemic.
- June 9: DO, in a letter sent to the State Supreme Court’s Remote Trials Workgroup today, lays out DPD’s concerns and recommendations regarding the use of remote hearing technology in dependency and termination cases, making clear that remote hearing technology should be prohibited in termination trials.
- June 15: DPD joins partners in a “free the youth” letter, asking the county to release the approximately 30 youth who are incarcerated in the county’s youth jail.
- June 24: DO and several partners send letter to Seattle City Council and City Attorney’s Office, calling on the CAO to stop prosecuting most misdemeanors and for the City Council to shift funding away from probation and into community supports.
- June 26: DPD and partners send letter to several KC Superior Court judges, asking them to comply with a Supreme Court order and stop incarcerating youth on warrants for status offenses.
- July 1: DO sends email to judges at KC Superior Court, raising concerns about their plans to restart jury trials on July 6.
- July 14: DO and partners send letter to DCYF, urging the agency to find a way to swiftly allocate rent assistance to youth exiting foster care.
- July 15: DO sends letter to KC Dependency Court, outlining issues that need to be addressed before court can begin remote dependency and termination bench trials. Without written protocols in place, the letter says, Superior Court is not ready to begin holding these trials in compliance with the Supreme Court’s guidelines.

A Year of Advocacy, cont.

- Sept. 23: DPD joins several partners in requesting KC Juvenile Court to stop issuing Failure to Appear warrants except for those situations where there's a serious threat to public safety.
- Sept. 28: The DO and more than 70 other partners/stakeholders send a letter to the State Supreme Court urging the court to adopt a rule banning the issuance of warrants on juvenile offense proceedings except in instances where there's a serious threat to public safety.
- Sept. 29: DPD sends message to State Supreme Court in support of proposed changes to CrR 3.4 that would reduce the harmful effects of repeated and unnecessary court appearances on our clients.
- Sept. 30: DO sends email to KC Superior Court judges saying DPD can no longer provide effective representation to non-English-speaking clients due to the court's ongoing failure to provide in-person interpretation at the jail or the court.
- Oct. 7: After considerable advocacy by DPD and partners, KC Juvenile Court agrees to stop incarcerating youth on status offense charges unless a "specific and serious" risk to personal or public safety exists.
- Nov. 6: State Supreme Court adopts new court rule banning the issuance of warrants on juvenile offense proceedings except in instances where there's a serious threat to public safety—again, after a concerted push by DPD and partners.
- Nov. 13: With COVID-19 cases again on the rise, DO raises concerns with KC District and Superior Courts and SMC about client and staff safety. Staff helped in the effort, tracking data on a shared spreadsheet to help inform DO's advocacy.
- Nov. 20: SMC and KC Superior Court announced suspension of in-person jury trials.
- Nov. 25: DO sends letter to KCSC Judge Rogers asking about his plans to consult with the UW School of Public Health, recommending that DPD and KCPAO be included in these consultations so that we can "problem-solve issues together as they arise." Judge Rogers declined to include us or other stakeholders.
- Dec. 11: The DO and four other leaders in public defense send letter to the governor and two top officials in the state Department of Health, calling on the state to include incarcerated people and public defense employees in Phase 1 of the state's Vaccine Distribution Plan. 🗣️



DPD employees applaud one of the speakers at the “We Want to Live” march in June.

TEN PRINCIPLES FOR PUBLIC DEFENSE:
A report by the Public Defense Advisory Board

The American Bar Association’s Ten Principles of a Public Defense Delivery System “were created as a practical guide for government officials, policymakers, and other parties” to use as “fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney.” King County adopted these principles in 2013 by “[e]nsuring that the American Bar Association Ten Principles for [sic] a Public Defense Delivery System ... guide the management of the department and development of department standards for legal defense representation. ...” KCC §2.60.026 (4).

The Public Defense Advisory Board conducted interviews of judges, supervising attorneys, line attorneys, staff, and DPD leadership and makes the following findings and recommendations.

Principle 1: The public defense function, including the selection, funding, and payment of defense counsel, is independent.

Board Comment: The Department functions independently of political and judicial supervision or interference. Overall management of the Department, including hiring of attorneys, interns and staff, and the development of departmental policies, procedures, and guidelines is conducted by the director or the director’s designees. The board is aware of no political or judicial interference in the day-to-day operations to either the departmental or divisional levels of the Department of Public Defense.

Departmental duties under the King County Code include “fostering and promoting system improvements, efficiencies, access to justice and equity in the criminal justice system.” KCC 2.60.020(7). The code also reaffirms this obligation on the Director, whose duties include “[f]ostering and promoting system improvements, efficiencies, access to justice and equity in the criminal justice system.” KCC 2.60.026(A) (8). Thus, both the director and the department as a whole are required to both provide independent defense and to advocate for access to justice and equity with the criminal justice system. DPD has taken positions on criminal and juvenile policies, advocated for its budget, and made hiring decisions without

interference by County officials. The onset of the COVID-19 pandemic in February of 2020 provided a test to the department’s leadership. As of the writing of this Annual Report, almost 450,000 individuals in the United States have died due to COVID-19, with almost 5,000 deaths in Washington State. Early in the pandemic, the King County courts appear to have been slow responding to the pandemic with some courts clinging to continuing in-person hearings and summoning of large pools of defendants to court calendars.

Interviewees unanimously agreed that Anita Khandelwal, director of the department, aggressively advocated for the department, attempting to mitigate the risk to the department’s line attorneys and staff who were regularly exposed to infected individuals, resulting in quarantines. Interviewees also report that the Director’s Office worked hard maintaining the quality of representation of the department’s clients, continuing to hire and train new and existing attorneys and staff, while also protecting the attorneys and staff who continued going into the courtrooms and jails during this pandemic. The Board strongly approves of Director Khandelwal doing what an independent defender must do—defending her defenders’ and staff’s ability to competently represent their clients even when doing so goes against the position of other County officials.

There is no evidence the Executive or Council took any budgetary or other action against DPD or the director because of DPD taking public policy positions with which they disagree or advocating for the safety of department attorneys and staff. The judges of King County, the attorneys and staff of the Department of Public Defense, and community partners agree that the DPD director properly asserts independent policy positions.

Principle 2: Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

Board Comment: Principle 2 addresses the need for a coordinated plan for the active participation of the private bar where caseloads are sufficiently high, as is the case in King County to require

outside appointment of counsel. Public defense inevitably creates many conflicts of interest requiring assignment of cases to outside private counsel. The range of repetitive conflict problems requires an active and competent outside private counsel assignment panel. In 2016-17, DPD conducted a review and evaluation of all members of the panel. New attorneys were added to the panel and some attorneys, who did not meet the new criteria, were removed. At this time, DPD also began including outside counsel in training, supervision of caseloads, and setting standards for outside assigned counsel. That supervision, according to judicial comments, has substantially improved panel representation standards. The assigned counsel panel in King County handles cases when conflicts of interest prevent the divisions from representing the client or when DPD attorneys are at capacity and additional assignments would violate caseload standards. Comments from judges interviewed for this report suggest that the quality of representation by the assigned counsel panel is generally consistent with that provided by DPD staff attorneys and has improved.

In past Annual Reports, we found the County did not comply with Principle 2 because it failed to adequately fund the assigned counsel panel. The 2019- 2020 County budget provided for a much-needed and long-neglected increase in the rates paid to assigned counsel; however, as outlined in the Board’s 2019 Budget Report, more must be done to attract and retain quality conflict counsel.

Principle 3: Clients are screened for eligibility and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel.

Board Comment: Although the former not-for-profit corporations that preceded the creation of the Department of Public of Defense had differing policies about face-to-face contact with clients at the earliest possible opportunity, the department has set a requirement that face-to-face contact, particularly for in-custody clients, take place prior to arraignment and/or first appearance. That standard complies with national standards. New procedures adopted in January 2017 added telephone financial screening to in-person screening of applicants for appointed counsel. This enhancement provided a more efficient, expedited process, but the extent to which it has shortened the time from arrest to assignment of counsel and to a face-to-face meeting between

attorney and client has been greatly affected by the COVID-10 pandemic. Interviewees report that it is much more difficult for the DPD line attorneys to meet with their clients when they are restricted from face-to-face contact. All interviewees noted this concern, however the judges interviewed unanimously felt that the DPD attorneys always seem to have found a way to talk to their clients and they have received very few client complaints about communication with their counsel.

Principle 4: Defense counsel is provided sufficient time and a confidential space within which to meet with the client.

Board Comment: Department policy requires counsel to meet with clients within 24 hours of their detention and well before any court appearances. Private meeting space is available at the DPD offices for out of custody clients and it is normally available at jails and occasionally available at courthouses where defense counsel, paralegals, investigators, mitigation specialists and interpreters can meet with clients in confidential settings. As with many of the 10 Principles, COVID-19 has had a drastic effect on this issue.

Due to social distancing requirements, the available meeting spaces have been drastically reduced in both the courthouses and in the jail facilities in King County. The ability to meet with clients has been greatly reduced, resulting in a heavier reliance on video conferencing which is often unavailable or technically difficult from the jails. An additional problem is the inability or unwillingness of interpreters to meet face to face with attorneys/ specialized staff and the clients, resulting in difficulty communicating with non-English-speaking clients. At the time of the writing of this Annual Report, vaccinations in Washington State are increasing and we are seeing a reduction in new infections statewide. It is hoped that in the next year, the ability of the department to comply with this principle will return to pre-pandemic status and may be improved overall by uptake of video conferencing by County institutions and clients.

Principle 5: Defense counsel’s workload is controlled to permit the rendering of quality representation.

Board Comment: DPD has been complying with the State Supreme Court-mandated caseload standards (developed in 1973) through a staffing model that

was developed in 2015 by a task force led by the director of the County’s Office of Performance, Strategy, and Budget and that included representatives of the department and the PDAB. The Board believes that applying this staffing model and the supplemental credit system resulted in compliance with 1973 caseload standards prior to the COVID-19 pandemic.

In fall of 2019 and prior to the onset of the COVID-19 pandemic in the winter of 2020, King County saw a large increase in criminal case filings. While DPD was absorbing those increased filings, the onset of the pandemic resulted in several actions contributing to caseload increases beyond the normal capacity of the department. While the King County Prosecutor slowed the filings on non-serious criminal charges for a brief period, it continued to file serious cases and has since increased the number of non-serious case filings. The Washington State Supreme Court, meanwhile, extended speedy trial on all criminal cases until it was safe to convene juries again.

At the writing of this report and almost exactly a year from the beginning of the pandemic, jury trials have largely not resumed. Trials were conducted for a brief period during the summer, when only a handful of trials occurred. County and city prosecutors began to work from home almost exclusively, which coupled with the lack of speedy trial pressure, seems to have greatly affected negotiations over these cases. The reduction in staff in the County and City offices has also slowed discovery being timely disclosed. This slowdown in providing discovery to defense is confirmed by many of the judges interviewed. Finally, the courts were required to implement remote hearings using video conferencing, which they were largely ill-equipped for and the learning curve of this technology greatly reduced the number of cases addressed in a day. The culmination of this storm of change has swelled DPD’s caseload, and interviewees all unanimously report that the department is

“Even with the COVID-19 pandemic, the department has maintained a robust training program for its attorneys and staff. Attorney interviews noted that the department is still maintaining weekly trainings and offering them at times making them accessible to large numbers of attorneys and staff.”

From Principle 6

experiencing burnout and a loss of attorneys and staff. All interviewees note that the entire court system is being affected by the case backlog created by the pandemic and it is not clear how easily or quickly this will be resolved in the future.

Principle 6: Defense Counsel’s ability, training, and experience match the complexity of the case.

Board Comment: In addition to certifying compliance with the basic professional qualifications in Standard 14.1 of the Washington Supreme Court Standards, an attorney representing a defendant accused of a Class A felony must also certify that he/she meets the experience requirements set forth in Standard 14.2. Managing attorneys in each of the four divisions are responsible for ensuring these standards are met. Interviews confirm that the quality of representation provided by Department attorneys is good and, while individual concerns have been expressed as to specific lawyers, most concerns have been addressed. One of the judges interviewed noted that even the brand-new attorneys appear to have been well trained and prepared for their cases.

Even with the COVID-19 pandemic, the department has maintained a robust training program for its attorneys and staff. Attorney interviews noted that the department is still maintaining weekly trainings and offering them at times making them accessible to large numbers of attorneys and staff. One issue raised by the specialized staff was that in-house training is largely for the attorneys and they believe that the training department is not as able to meet the training needs of specialized staff. The department should conduct information gathering from the specialized staff and determine what gaps in training exist.

Principle 7: The same attorney continuously represents the client until the completion of the case.

Board Comment: DPD attorneys are assigned to represent each client at all stages of their case through trial with the exception of the initial appearance (e.g., arraignment calendar) at which a calendar lawyer may represent the client. It has been DPD’s policy to do “vertical” representation other than the initial calendar appearance. Interviewees noted that with the changes brought by the COVID-19 pandemic that the courts are seeing more withdrawals and substitution of counsel. Interviewees also noted turnover among Department attorneys

in the Juvenile Court were initially a concern, but the attorneys put in place by the Department were experienced, and few problems were seen. One issue raised by the Juvenile Court was that the current practice of withdrawing after disposition created delay and inconsistency of appointment when the case was taken up on the sealing calendar. The Department could consider reviewing this policy to see if there is a way to maintain the goal of same-attorney representation throughout the entire juvenile court process.

Principle 8: There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

Board Comment: Parity with the Prosecuting Attorney’s Office is an issue that was raised while negotiating the most recent collective bargaining agreement signed by SEIU and the County in March 2018. Salary parity has largely been reached between similar job classifications. Identifying other criteria to determine parity with the Prosecutor’s Office has proven quite difficult to define and implement. A recent King County Office of Performance, Strategy, and Budget report about parity between the Prosecuting Attorney’s Office and the Department of Public Defense, dated July 8, 2019, recognizes that no common definition of office function can be easily established. Each office has substantially different functions from the other. More nuanced definitions of parity, other than salary-by-position parity, which has largely been achieved, still need to be developed. There appears to be substantially greater supervisory and support staff in the Prosecutor’s Office than in comparable DPD divisions other than ITA. Issues remaining to be resolved are the number of senior attorney slots between the two offices and whether or not they should be relatively equal in number; how to reach parity for defense investigators either in number or salary when compared to the police agencies available to the prosecution, etc. The Board has undertaken a project to determine a definition of “parity” other than salary parity which may be useful in future budgeting decisions. Unfortunately, the COVID-19 pandemic has slowed these initiatives.

To the extent “parity” means “equal partner” in the justice system, the Department through its Director and designees participates regularly in criminal justice initiatives and reform efforts. The King County Prosecutor’s Office has emphasized its desire to further partner and collaborate with the Department

on systemic reforms. The Board encourages such cooperation and joint presentation where feasible.

Principle 9: Defense counsel is provided with and required to attend continuing legal education.

Board Comment: Professional training is a high priority for the Department, and substantial resources, both human and financial, are devoted to providing opportunities for attorneys and non-attorney staff alike. Many in-house CLEs took place in 2019 and 2020, as documented in the previous Director’s Report. Training is a priority for Director Khandelwal, who has encouraged higher utilization of in-house expertise. DPD attorneys and staff are encouraged to also attend Washington Defender Association and Washington Association of Criminal Defense Lawyers trainings as well.

Principle 10: Defense counsel is supervised and systematically reviewed for quality and efficiency ac- cording to nationally and locally adopted standards.

Board Comment: In the past year, DPD has increased the use and dissemination of data to supervisors and managing attorneys to assist them in reviewing attorneys’ work.

DPDs collective bargaining agreements, as well as the Washington State Bar Association standards, set forth a requirement that each agency providing public defense services provide one full-time supervisor for every 10 staff lawyers. This results in supervisors often carrying cases in addition to their supervisory duties. Interviews of the judges found that there appears to be a good working relationship between the bench and the supervising attorneys. They noted that the supervising attorneys were proactive with the judges if there were issues the Department believed needed to be addressed. Likewise, when the judges had concerns with any Department attorney or policy, the supervising attorneys promptly responded and worked toward solutions.

The previous Annual Report recommended that the formulas for supervising attorneys and staff should be reviewed, however the COVID-19 pandemic required the Department more closely focus on providing competent representation with the limitations imposed by local, state and federal safety requirements. ➡

