



**Research and Evaluation**

Washington State  
Department of Community Development

**Washington State Defender  
Assistance Program:  
An Evaluation**

April 1993

142916

*Stronger Communities For A Better Washington*

142916



**Research and Evaluation**

Washington State  
**Department of Community Development**

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**Washington State Defender**  

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**Assistance Program:**  

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**An Evaluation**  

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Dr. Patrick M. Moran, Research Investigator  
April 1993



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**The survey data reflectd in this report are taken directly from the survey responses. Opinions expressed by the respondents are not necessarily the views of the author nor the Washington State Department of Community Development.**

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## **EXECUTIVE SUMMARY**



## EXECUTIVE SUMMARY

The Defender Assistance Program was first funded through U.S. Department of Justice, Bureau of Justice Assistance (BJA), funds in 1988. Discontinued for three years, this program was funded once again in 1992 and during that year the Program received 2.2 percent of BJA funds and during the next year it received 3.13 percent.

The goals of this program are:

1. Providing consultation services to public defenders throughout the state.
2. Conducting and participating in local and regional continuing legal education training.
3. Contributing to the Washington Defender Association brief bank.
4. Producing and distributing the DefenseNET Newsletter.
5. Producing and distributing a Drug Defense Manual.
6. Appearing in court as *amicus curiae* in "cases involving broad impact" and providing other legal assistance.

Program performance was assessed through the analysis of data and information obtained through three means: interviews with the Washington Defender Association (WDA) Executive Director, a review of Quarterly Activity Reports, and a survey instrument circulated to all individuals on the DefenseNET mailing list (defender organizations and individual members). A 32 percent return rate was obtained on surveys circulated to 657 potential respondents (n = 210).

- 58.6 percent were attorney's with defender organizations (n = 123)
- 26.7 percent were individual member attorneys (n = 56)

- 5.7 percent were administrators with defender organizations (n = 12)
- 5.2 percent were investigator with defender organizations (n = 11)
- 1.4 percent were individual member investigators (n = 3)
- 1.0 percent were employed in non-identified positions with defender organizations (n = 2)
- 1.0 percent were individual member administrators (n = 2)
- .5 percent were individual members in non-identified positions (n = 1)

General written comments were provided by 15 of the respondents and of those only one was negative in tone. Most called for an increase in funding. The majority of those individuals recorded a continued need and support for the program and its resources. Individuals who recorded those observations were largely attorneys with defender organizations.

Fifty-nine percent of the respondents were attorneys with defender organizations, but this represented only a 27 percent return rate for defender organization personnel. Although individuals in private practice (i.e., "individual members") made up only 25 percent of the potential respondent pool, this group realized a 46 percent return rate.

#### **Consultation Services**

Consultation services are provided upon request by program resource attorney staff.

- Between October 1991 and September 1992, 267 consultations were provided.
- Except for one quarter (July - September 1992), the number of telephone consultations increased while the number of in-person consultations decreased.

- 25 in-person consultations were provided to 17 separate agencies/offices.
- Related to satisfaction, timeliness, and applicability, over 85 percent of the total number of respondents assigned a "high" rating to in-person consultation services.
- 242 telephone consultations were provided, averaging approximately 1.18 hours each for a total of 286 hours.
- Over 75 percent of the respondents assigned a "high" rating to the areas of satisfaction, timeliness, and applicability of telephone consultation services.

Four attorneys provided written feedback, and three of these individuals were with defender organizations. All provided highly positive input regarding the program resource attorney who provided the assistance. The fourth attorney was engaged in private practice and stated that he wasn't aware that the consultation service was available.

No in-person consultation services were provided to individuals in private practice though a number of telephone consultations were provided to private practice attorneys. Only 48 percent of the respondents (n = 100) recorded that they received one of these forms of consultation. The remaining 52 percent did not record an assessment of the service. It can be assumed that the absence of the requested assessment indicates that they were unaware of its existence or were of the opinion that they could not benefit from it. Either way, it is recommended that:

- The availability of this resource be made better known to individuals with both public defender organizations and in private practice. The DefenseNET Newsletter would appear to be an ideal vehicle for this.

## Training

Over a seven-month period, program staff participated in the provision of Continuing Legal Education training to 536 attorneys and investigators.

- 25 percent of the respondents attended the Defending Drug Cases training held in Spokane; 71 percent stated they were highly satisfied and 63 percent stated it was highly applicable.
- Only two percent of the respondents attended the Exceptional Downward Sentencing training held in Pierce County; 50 percent stated they were highly satisfied with the training and 75 percent stated that it was highly applicable.
- 12 percent of the respondents attended the Gangs and Drugs training held in Seattle; 40 percent stated they were highly satisfied with the training and 38 percent stated that it was highly applicable.
- 21 percent of the respondents attended the Making Your Point in the War on Drugs training held in Seattle; 75 percent stated they were highly satisfied with the training and 73 percent stated that it was highly applicable.
- 11 percent of the respondents attended the Making Your Point in the War on Drugs training held in Spokane; 48 percent stated they were highly satisfied with the training and 50 percent stated that it was highly applicable.
- 5 percent of the respondents attended the Making Your Point in the War on Drugs training held in the Tri-cities area; 60 percent stated they were highly satisfied with the training and 70 percent stated that it was highly applicable.
- 37 percent of the respondents attended a Making Your Point in the War on Drugs training session; 65 percent of the respondents stated they were highly satisfied with the training and 66 percent stated that it was highly applicable.
- 16 percent of the respondents attended the Drug Updates - Defender Conference held in Winthrop; 71 percent stated they were highly satisfied with the training and 74 percent stated that it was highly applicable.

- 10 percent of the respondents attended the Advanced Training in the War on Drugs training held in Yakima; 65 percent stated they were highly satisfied with the training and 74 percent stated that it was highly applicable.

Six individuals took the opportunity to provide written feedback regarding the training. Four of these were attorneys with defender organizations; two of them offered suggestions for future training and two indicated that they did not find the training helpful. The two investigators who responded, one attached to a defender organization and one in private practice, offered the suggestion that more training be geared toward the needs of the investigator.

The percentage of respondents who attended these training sessions ranged from two percent to 25 percent. There was a great deal of variation in the respondents' satisfaction level and assessment of training applicability. Most of the written comments indicated that, at least among these respondents, training relevance is an issue. Therefore, it is recommended that:

- **The training needs of both public and private practice attorneys and investigators be assessed and a mechanism be developed to measure participant satisfaction (e.g., training evaluation forms).**

#### **Brief Bank**

Twenty-one percent of survey respondents recorded that they used the WDA brief bank.

- These individuals accessed the brief bank over 137 times.
- A high satisfaction rating was assigned by 74 percent of the respondents.
- A high timeliness rating was assigned by 86 percent of the respondents.

- A high applicability rating was assigned by 66 percent of the respondents.

Two attorneys with public defender organizations commented on brief bank resources. Both indicated that although they have not used this resource in the past, they will in the future.

Approximately one-fifth of the respondents indicated that they used brief bank resources. Most individuals recorded a high level of satisfaction with the resource and found service very timely. Fewer respondents indicated that the applicability of the resource was high. Only seven percent of the respondents recorded that they had submitted material to the brief bank. It is recommended that:

- A greater effort be made to solicit briefs from attorneys in both public and private practice which would reflect the needs of WDA members.

#### **DefenseNET Newsletter**

Ninety percent of the respondents provided an assessment of the DefenseNet Newsletter.

- 78 percent assigned a high satisfaction rating.
- 75 percent assigned a high timeliness rating.
- 74 percent assigned a high applicability rating.

Nine individuals provided written feedback related to the DefenseNET Newsletter. Without exception, whether attorney or investigator in public or private practice, no one provided a negative assessment.

By approximately three to one, respondents assigned high ratings to DefenseNET timeliness and applicability, as well as overall satisfaction. No recommendations are offered regarding this publication.

## **Drug Defense Manual**

The Drug Defense Manual took nearly one and one-half years to complete. Considering the scope and complexity of the work, this is understandable. Review of written comments offered by respondents reflects a high level of satisfaction, if not outright praise, regarding the briefs composed by these program attorneys.

As noted, the Drug Defense Manual has only recently been distributed. It is recommended, though, that:

- **Recommendations obtained from individuals attending training conducted by WDA staff be incorporated in future revisions.**

## **Amicus Curiae**

Due to the unique nature of amicus curiae work, no recommendations are offered. It should be noted that written responses indicate a high level of satisfaction with this form of assistance.

# OVERVIEW



## OVERVIEW

The Defender Assistance Program was first funded in Washington State out of U.S. Department of Justice, Bureau of Justice Assistance (BJA), funds in 1988 (State Fiscal Year). These funds were made available through the 1988 Anti-Drug Abuse Act (P.L. 100-690), Drug Control and System Improvement Grant Program, and were administered by the Washington State Department of Community Development (DCD). Although the impetus of BJA program funds has been the investigation, arrest, and prosecution of suspected drug offenders, these funds have also been used to support innovative programs which facilitate judicial proceedings. The increase in federal and state funding to programs concerned with the arrest and prosecution of suspected illegal drug users and suppliers during the last 12 or so years has had the effect of straining defender resources.

The Defender Assistance Program seeks to ensure that the rights guaranteed all individuals under both the state and federal constitutions are protected. This program was funded under the Act's tenth listed purpose area:

"Programs which improve the operational effectiveness of the court process through programs such as court delay reduction programs and enhancement programs."

A key to this purpose area was presented in the BJA Individual Project Report (IPR) Instructions (August, 1991). The aim of this purpose area, as presented in the "key", is "[i]mproving court-based operations and adjudication management systems to

allow more effective and efficient case processing" (p. 5). The rationale for this program was succinctly stated in the DCD composed Narcotics Control Strategy:

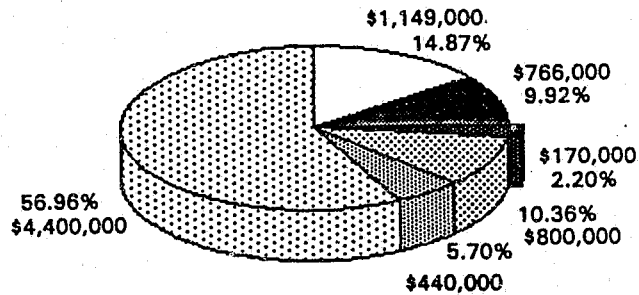
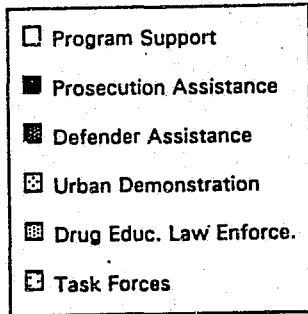
"With the increase in substance-abuse related arrests, the need for adequate defense services has risen. The Defender Assistance Program provides resources to improve and coordinate statewide indigent defense proceedings involving drug offenses in a manner consistent with state, local, and tribal priorities."  
(p. 30)

This Narcotics Control Strategy was drafted under review by a multi-agency State Drug Policy Advisory Board (see Appendix A). The Defender Assistance Program was, and is, coordinated by the Washington Defender Association (WDA) located in Seattle, Washington. Further, this program was designed by WDA in response to direction and feedback by public defender agencies throughout the state. These agencies were:

Assigned Council for the Accused (King County)  
Clallam/Jefferson County  
Northwest Defender Association (King County)  
Pierce County  
Society of Counsel Representing Accused Persons (King County)  
Seattle-King County  
Skagit County  
Snohomish County  
Spokane County  
Thurston County  
Washington Appellate Defender  
Whatcom County  
Yakima County

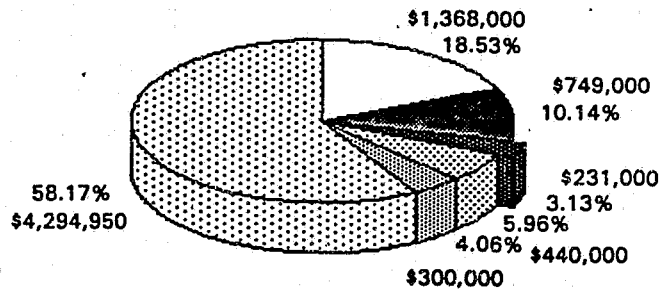
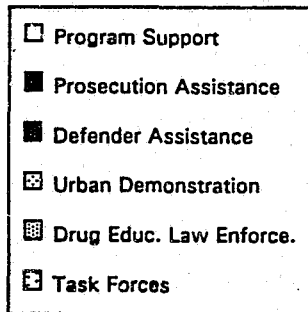
Although the Defender Assistance Program was first funded in 1988, four years were to pass before this program was funded out of BJA funds once again in State Fiscal Year (SFY) 1992. During SFY 1992, this program received 2.2 percent of BJA funds.

**BJA FUNDED AREAS:  
SFY 1992 - FFY 1991**



The following year, the Defender Assistance Program received a 36 percent increase in funding. This program was the only program area, except Program Support, which did not receive a reduction in support.

**BJA FUNDED AREAS:  
SFY 1993 - FFY 1992**



It should be noted, though, that the Defender Assistance Program received the smallest proportion of overall funding during both years (2.2 percent and 3.13 percent per year for SFY 1992 and SFY 1993 respectively).



## **GENERAL PROGRAM GOALS**

## GENERAL PROGRAM GOALS

The Defender Assistance Program identified five major goals in its original funding proposal dated May 30, 1991. Early during program implementation, the program took on the additional responsibility of producing a bi-monthly newsletter (DefenseNET).

These program goals are:

1. Providing consultation services to public defenders throughout the state.
2. Conducting and participating in local and regional continuing legal education training.
3. Contributing to the Washington Defender Association brief bank.
4. Producing and distributing the DefenseNET Newsletter.
5. Producing and distributing a Drug Defense Manual.
6. Appearing in court as *amicus curiae* in "cases involving broad impact" and providing other legal assistance.

Each of these program goals will be addressed in the following pages.



## METHODS



## METHODS

Information related to program structure and performance was obtained through three means:

1. An interview with the WDA Executive Director.
2. A review of the Defender Assistance Program Quarterly Activity Reports.
3. A survey of program assistance recipients.

The interview format used with the WDA Executive Director, consisted of a series of open-ended questions. These questions were concerned with training activities, consultation services, the WDA brief bank, the DefenseNET Newsletter, amicus curiae support, and the Drug Defense Manual.

Review of the Quarterly Activity Reports covered the period October 1991 through September 1992. Material presented in a typical quarterly activity report included consultation activities and number of related hours, seminar and training activities, the DefenseNET Newsletter, and the Drug Defense Manual. In addition, program staff performance was also noted; e.g., amicus curiae work.

The survey was developed after the Executive Director interview and review of the quarterly activity reports. Except for amicus curiae, the areas covered in the instrument were the same as outlined in the preceding paragraphs. Utilizing the DefenseNET mailing list of WDA members, 657 surveys were sent out with a requested return date of January 15, 1993 (see Appendix B for a copy of this instrument). The respondents were attorneys,

investigators, and administrators in both public and private practice. One-hundred sixty-two surveys were sent directly to individual members and 495 were sent to 14 defender organization offices across the state.

## FINDINGS

## FINDINGS

The following section presents data and findings gathered through the WDA Executive Director interview, the review of the Defender Assistance Program Quarterly Activity Reports, and the survey of program assistance recipients. In the survey, respondents not only were asked to assess the service areas, but also were afforded the opportunity to provide written comments. Thirty individuals provided written comments, and most of them were specific in nature (i.e., relating to a certain area or areas).

Of the 657 surveys sent to potential respondents, there was a 32 percent return rate (n = 210). Within the two respondent groupings, there was a 46 percent return rate for individual members (n = 74) and a 27 percent return rate for those sent to defender organizations (n = 136). Of the 210 individuals who returned completed surveys:

- 58.6 percent were attorneys with defender organizations (n = 123)
- 5.2 percent were investigators with defender organizations (n = 11)
- 5.7 percent were administrators with defender organizations (n = 12)
- 1.0 percent were employed in non-identified positions with defender organizations (n = 2)
- 26.7 percent were individual member attorneys (n = 56)
- 1.4 percent were individual member investigators (n = 3)
- 1.0 percent were individual member administrators (n = 2)

- o .5 percent were individual members in non-identified positions (n = 1)

In addition, six surveys were returned without the respondent's name or organizational affiliation or completely blank. Data recorded on these six surveys were not included in the survey analysis. Although 210 individuals returned completed surveys, not all survey items were responded to. For example, only 12 percent of the respondents (n = 25) attended the Gangs & Drugs training session held in February 1992. In order to negate the effect of large numbers of missing cases and control for relatively small case-specific respondent n's, the actual reported n's and valid percents are used in the analysis of survey data.

Thirty of the respondents took the opportunity to provide written comments. Nineteen of those individuals were with defender organizations, and the remaining 11 were individual members. Many of those respondents provided feedback related to more than one Defender Assistance Program service, so the number of written response items reported in the following section is greater than the sum of the written respondent total.

Written comments of a more general nature were provided by 15 of the respondents. Four of these individuals were attorneys with public defender organizations and three of those were decidedly positive in tone:

"Having a defense resource program has been of immense value in that new insights have been available; the C.D. Law assistance has increased our efficiency and ability to prepare more briefs; appellate assistance has helped us insure the record is perfected for better appeal

results."

"The response and applicability of information provided by the [Defender] Assistance Program was of the highest quality and extremely valuable to me, although my use was limited only by my need. I have been able to extend much information received throughout much of my practice."

"The Defenders Assistance Program is an extremely helpful tool and certainly should be continued. It is one of the few assistance programs available to defense counsel and it clearly fills an ongoing and ever-expanding need."

"Funding is crucial to continued enforcement of bill of rights/constitution etc."

Four administrators with public defender organizations provided general written comments:

"Pierce County's (DAC) delivery of indigent defense program has found the Washington Defender Association to be competent and effective. The services they provide relevant to funds provided through DCD regarding drug prosecutions is significant benefit and assistance to DAC's defender staff attorneys as well as attorneys (private) appointed through DAC."

"It is essential that the funding for this excellent program be increased. Training is desperately needed for defender organizations. Moreover the prosecutors and police have received so much more funding that the current allocation [to] the defenders is ridiculously low."

"Besides the brief bank, consultation and legal research on particular points of law have been very useful and routinely used. We have asked for and received research assistance on special projects that have helped us to focus on the issue and be better prepared in court."

"Due to the peculiar nature of my position, I have not personally attended training sessions or become involved in making deposits or withdrawals (again, personally) to or from the brief bank. I have, however, had occasion to direct attorneys to training events and the brief bank, and have generally heard positive feedback."

One individual, who recorded his position simply as "Assistant", noted:

"My failure thus far to utilize the consultation and brief bank should not be taken as a lack of interest in these services. I'm sure that in time I will utilize both consultation and brief bank."

Six private practice attorneys recorded written comments. Three of these comments were positive in tone, two recorded a need for additional services, and one was highly negative.

"I am happy to have the Defenders Association as a resource. Personnel are supportive, cheerful and energetic."

"This is a very worthwhile program and has proven invaluable to me."

"The establishment of regional offices and consultants on drug and appellate issues have been tremendous step forward!"

"Of approximately 16,000 Washington attorneys, only 4,000 live in eastern Washington. However, much of the drug related cases are in Yakima/Tri-cities area and many of the defendents are Hispanic. We need more information, resources, etc. to balance the equation in court. We need a brief bank over here accessible to the Eastside."

"We need cooperation as to narc's statewide for history and pattern."

"They are going to hang more people in Clark County unless more funds are provided for indigent defense services. Wesley Allen Dodd's appeal is a bad joke by a millionaire attorney who no longer has to make money by working like the rest of us. We realize we are rather far from Seattle/Puget Sound and most people think we belong to Oregon, but our funding comes from Washington State. They pay the county prosecutor and some very bad traffic judges \$100,000 a year, but seem unable to provide a public defender's office in this rapidly growing county of 250,000. Ronald Reagan and George Bush may have doubled the number of millionaires in this country, but they also doubled the number of prisoners. Jails are not an adequate substitute for jobs. We need

more defense resources down here.

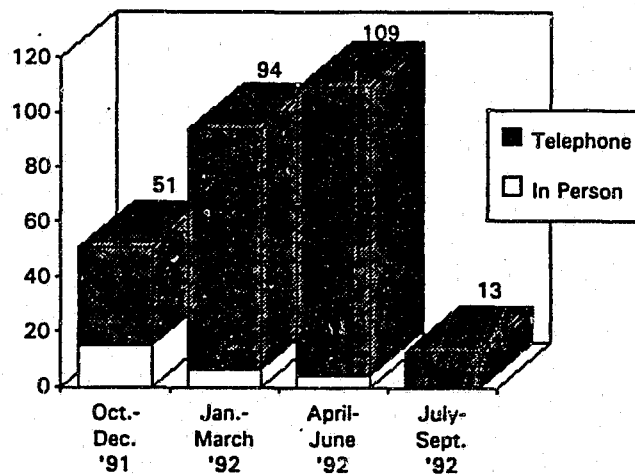
I am not reimbursed for long distance calls or mailing my indigent cases, so [consultation] resources in Seattle are a bad joke."

### Consultations

Consultations were provided upon request to public defenders in 19 of the 39 Washington State counties and also the Washington Appellate Defender Association. There is no "formal" means to request assistance from the Defender Assistance Program; a telephone call is all that is necessary. A contact log is maintained by each of the two program resource attorney's and related data is compiled and submitted to DCD in the Quarterly Activity Reports.

Using data reported to DCD in the Quarterly Activity Reports, which is extracted directly from contact logs maintained by resource attorney, it is found that consultation services have been provided 267 times during the 12 month October 1991 to September 1992 period.

NUMBER AND TYPE OF CONSULTATIONS



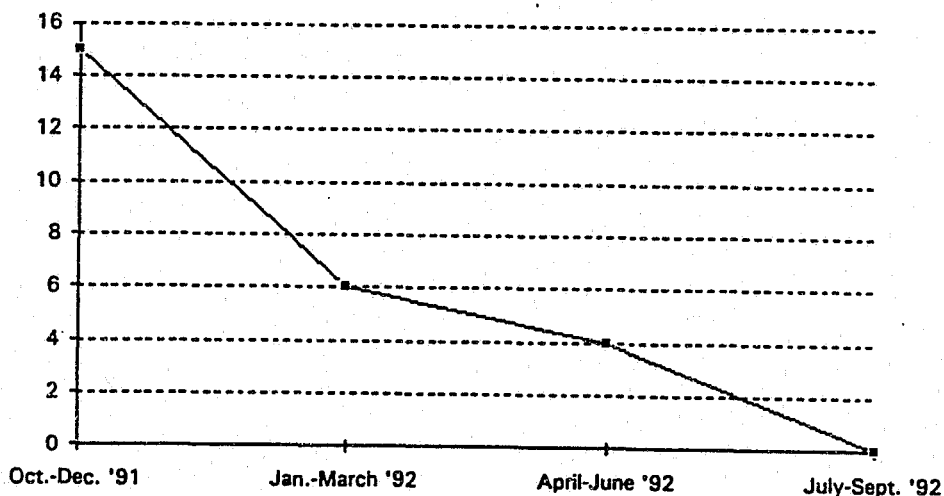


As can be seen in the above chart, the vast majority of consultations were provided over the telephone. Over three of the four quarters, there was overall growth in the number of consultations. During the July - September 1992 quarter, though, there was a sharp decrease in the number of consultations provided. Follow-up with the WDA Executive Director provided the following by way of clarification and explanation:

1. The requests for consultation services did not drop during this period.
2. The ability to reply to these requests were hampered by the temporary reassignment of program attorney resources to Drug Defense Manual production.

In-person consultation services were provided to 12 separate public defender agencies and five other agencies. Twenty-five site visits were paid to these agencies. The "other" agencies were the Washington Appellate Defenders Association, Division III Court of Appeals, the Washington Defender Association Investigation Division, the Eastern Washington Minority Association, and the Federal Public Defender.

NUMBER OF IN-PERSON CONSULTATIONS



As can be seen in the preceding chart, the number of in-person consultations consistently decreased during each quarterly period. Although the increased time devoted to Drug Defense Manual production can account for part of this trend (i.e., the July through September 1992 period), it cannot account for all of it.

Of the individuals using in-person consultation services 88 percent stated that they were highly satisfied with the service. Eighty-six percent of the respondents recorded that the in-person consultation services were delivered in a very (i.e., "highly") timely manner. The same proportion of respondents recorded that the service/information they received was highly applicable.

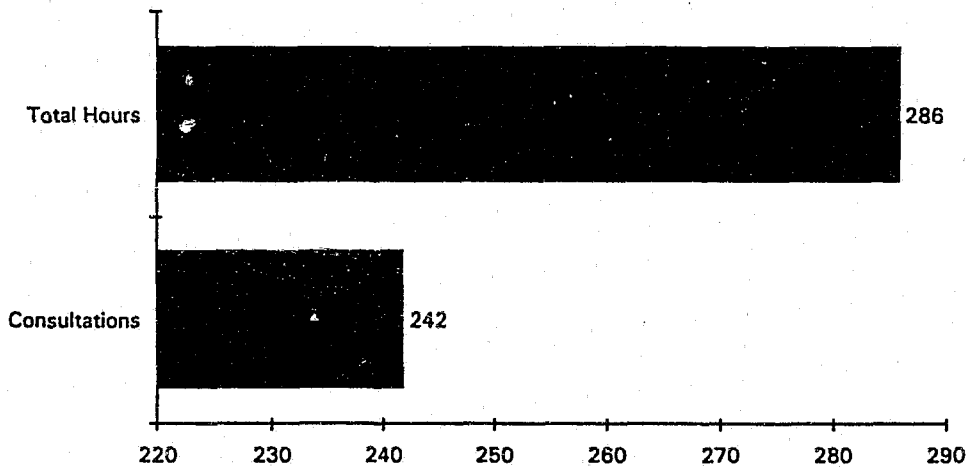
<b>In-Person Consultation Services</b>			
	<b>Level</b>		
	<b>High</b>	<b>Medium</b>	<b>Low</b>
Satisfaction	88.1	9.5	2.4
Timeliness	85.7	11.9	2.4
Applicability	85.7	11.9	2.4
Valid cases = 42	Percent of population = 20.0		

Of the respondents who were highly satisfied with the in-person consultation services, 54 percent were attorneys with public defender organizations (it must be remembered, though, that these individuals made up the largest proportion of the respondent pool, 52 percent). Ninety-one percent of these public defender attorneys assigned a "high" satisfaction rating to this means of consultation. This proportion is very similar to the 90 percent of

private practice attorneys who assigned a like rating.

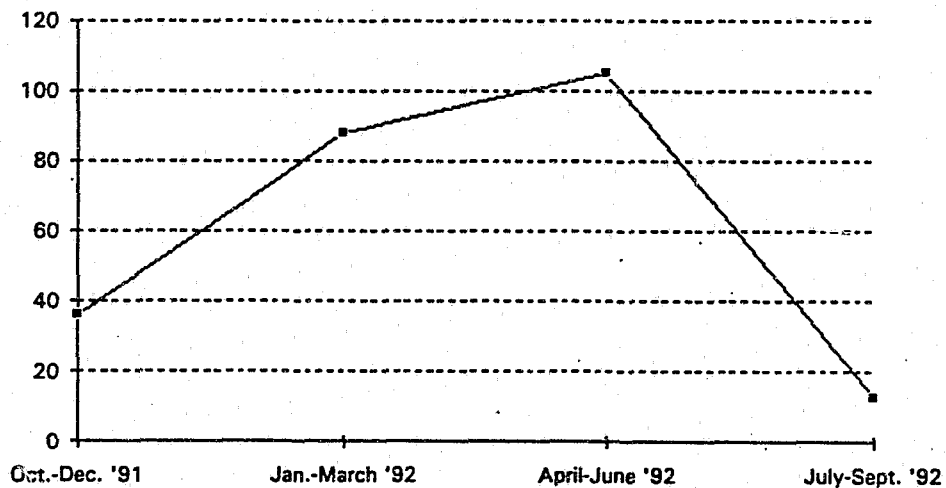
During the target year (October 1991 through September 1992), 242 telephone consultations were provided to public defenders averaging approximately 1.18 hours each and 286 hours total.

NUMBER OF TELEPHONE CONSULTATIONS AND NUMBER OF HOURS OF SERVICE



Unlike in-person consultations, the number of telephone consultations were consistently increasing over the first three reported quarters. The decrease during the fourth quarter can be attributed to the Drug Defense Manual production scheduling.

NUMBER OF TELEPHONE CONSULTATIONS



The survey of service recipients revealed that a high level of satisfaction was recorded by over four-fifths of the respondents. In addition, both timeliness and applicability were assigned high ratings by the large majority of respondents.

<b>Telephone Consultation Services</b>			
	Level		
	High	Medium	Low
Satisfaction	81.0	19.0	--
Timeliness	84.2	14.9	1.8
Applicability	76.8	19.6	3.6
Valid cases = 58	Percent of population = 27.6		

Sixty-two percent of the respondents who assigned a high rating to telephone consultation services were attorneys with public defender organizations. Ninety-one percent of these public attorneys assigned a high rating, and 77 percent of the private practice attorneys also assigned this rating.

Three attorneys with defender organizations provided written comments regarding the consultation services. These comments were mainly concerned with providing praise to Defender Assistance Program resource attorneys.

"The consultation services were excellent. Pat Novotny helped on a number of occasions with research and preparation of briefs. Helped to take average work product and make it special. Her assistance made a difference."

"On a more personal note. I would like to suggest having Kathy Knox here with us has been one to the most positive experiences of our office life. She is incredibly capable, bright, conscientious, quick to provide

insightful assistance, and a joy to associate with. Our whole office has relished her visits and we all wish she could be a permanent "fixture" here. Her ability to quickly spot the key issue and articulate the applicable defense theory we should explore is remarkable. In addition, I've never met anyone who could produce a brief "from scratch" as quickly as she. Any program that has attorney Knox as a participant is indeed fortunate!"

"Felony drug defense is an integral part of my practice as a public defender and anything I can use to help my clients is greatly appreciated. Since Kathy Knox was situated in our office for a time, I had occasion to use many of the services, but also benefited from the dialogue we shared regarding these issues. Office dialogue, sharing of issues and ideas is crucial and Ms. Knox was able to contribute an added perspective. In addition, her ability to focus on an issue and flesh it out during such dialogues was very helpful."

One attorney in private practice stated that:

"I didn't know this service was available."

### **Training**

Over a seven-month period (December 1991 through June 1992), Defender Assistance Program personnel participated in eight workshops and training sessions. This training was conducted either solely by program attorneys or sponsored by the coordinating agency, Washington Defender Association, with program attorney participation (see Appendix C for synopsis of select course offerings).

Individuals participating in these formalized training sessions were awarded Continuing Legal Education (CLE) credits by the Washington Bar Association. Between December 1991 and June 1992, 536 attorneys and investigators participated in these eight training sessions. This training with the location, number of

participants, and number of CLE's awarded, is:

Title	Date	Location	No.	CLE's
Defending Drug Cases	Dec. '91	Spokane	54	6.00
Exceptional Downward Sentencing	Jan. '92	Pierce Cnty	60	1.00
Gangs and Drugs	Feb. '92	Seattle	93	5.25
Making Your Point - War on Drugs	Apr. '92	Seattle	120	7.00
Making Your Point - War on Drugs	Apr. '92	Spokane	39	7.00
Drug Updates - Defender Conf.	May '92	Winthrop	125	1.00
Making Your Point - War on Drugs	May '92	Tri-Cities	8	3.25
Advanced Training - War on Drugs	Jun. '92	Yakima	37	3.75

Considering that this training was conducted over approximately a seven-month period, a great deal was accomplished. Also, the level of participation seemed to vary. For example, although program staff participated in the "Making Your Point in the War on Drugs" training held in Seattle on April 10, 1992, it would appear that after review of the training curriculum, program staff participated to a greater extent the next day at the Spokane session. The May 1, 1992, training held in Winthrop was part of the 1992 Defender Conference, and although only one CLE was awarded for Drug Updates, seven CLE's were awarded for the full two-day training. The "Making Your Point in the War on Drugs" training held on May 13, 1992, entailed a presentation by program staff and review of video-tapes of the Seattle and Spokane training sessions.

It should be noted that not all individuals who attended these training sessions returned completed surveys. For example, according to Defender Assistance Program records, 54 individuals attended the Defending Drug Cases training held in Seattle whereas only 52 individuals out of the 210 respondents noted that they had. Other examples are not as close, and the most disparate example can

be seen in the case of the Exceptional Downward Sentencing training where the Defender Assistance Program states that 60 individuals attended the training, yet only four respondents recorded that they attended. Also, Defender Assistance Program records indicate that eight individuals attended the Making Your Point in the War on Drugs training in the Tri-Cities region but ten surveyed individuals recorded that they had attended this training.

Of the 210 survey respondents, 25 percent (n = 52) attended the Defending Drug Cases training held in Spokane in December 1991. Respondents were, with exception, highly satisfied with the training and felt that the training which they received was highly applicable.

<b>Defending Drug Cases</b>			
	Level		
	High	Medium	Low
Satisfaction	71.2	26.9	1.9
Applicability	62.5	29.2	8.3
Valid cases = 52	Percent of population = 24.8		

Of those respondents who assigned a satisfaction rating to the Defending Drug Cases training, 50 percent were attorneys with public defender agencies. Overall, 51 percent of those assigning a high rating were public attorneys and 38 percent were private attorneys.

A very small percentage of the respondents had attended the Exceptional Downward Sentencing training held in January of 1991

(two percent). Respondents were equally split over their satisfaction assessment, though by 3 to 1 they felt that the training was highly applicable.

<b>Exceptional Downward Sentencing</b>			
	Level		
	High	Medium	Low
Satisfaction	50.0	50.0	--
Applicability	75.0	25.0	--
Valid cases = 4	Percent of population = 1.9		

Only public and private attorneys attended this training and they were equally split in their satisfaction assessment.

The largest proportion of respondents who attended the Gangs and Drugs training expressed a medium level of satisfaction. A medium applicability rating was also assigned by roughly three-fifths of the respondents. Only 12 percent of the total number of respondents attended this training.

<b>Gangs and Drugs</b>			
	Level		
	High	Medium	Low
Satisfaction	40.0	44.0	16.0
Applicability	37.5	58.3	4.2
Valid cases = 25	Percent of population = 11.9		

Forty-eight percent of individuals who attended the Gangs and Drugs training were public attorneys, and 36 percent were



investigators with public agencies. Fifty percent of those who assigned this training a high satisfaction level rating were public attorneys and 20 percent were public investigators.

Approximately three-quarters of the respondents who attended the Making Your Point in the War on Drugs training session held in Seattle were highly satisfied with the training and felt it was highly applicable. Twenty-one percent of the survey respondents had attended this training.

<b>Making Your Point in the War on Drugs (Seattle)</b>			
	Level		
	High	Medium	Low
Satisfaction	75.0	25.0	--
Applicability	73.2	26.8	--
Valid cases = 44	Percent of population = 20.9		

Of those individuals who attended the Making Your Point in the War on Drugs training held in Seattle, 71 percent were attorneys with public agencies. Sixty-seven percent of those assigning a high rating were public attorneys and 21 percent were private practice attorneys.

The Making Your Point in the War on Drugs session held in Spokane was not as highly rated in respect to both satisfaction and applicability as the Seattle session. Over one-half of the Spokane training participants relayed a medium level of satisfaction and exactly one-half recorded that it was highly applicable.

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**Making Your Point in the War on Drugs (Spokane)**

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	Level		
	High	Medium	Low
Satisfaction	47.8	52.2	--
Applicability	50.0	36.4	13.6
Valid cases = 23	Percent of population = 10.9		

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Of those individuals who attended the Making Your Point in the War on Drugs training held in Spokane, 73 percent were attorneys with public agencies. Seventy-three percent of those assigning a high rating were public attorneys, and the remaining 27 percent were private practice attorneys.

Respondents who attended the Making Your Point in the War on Drugs training held in the Tri-Cities region, were, for the most part, highly satisfied with the training they received. Close to three-quarters of the individuals who attended this training felt that it was highly applicable.

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**Making Your Point in the War on Drugs (Tri-Cities)**

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	Level		
	High	Medium	Low
Satisfaction	60.0	40.0	--
Applicability	70.0	30.0	--
Valid cases = 10	Percent of population = 4.8		

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Of those individuals who attended the Making Your Point in the War on Drugs training held in Tri-Cities, 60 percent were private

practice attorneys. Sixty-seven percent of those assigning a high rating were attorneys in private practice, and the remaining 33 percent was split evenly between public agency attorneys and private practice administrators.

Looking across all three regional Making Your Point in the War on Drugs training sessions, it was found that 37 percent of the entire respondent population had attended at least one of the sessions. Sixty-five percent indicated that they were highly satisfied with the training, and 66 percent recorded that this training was highly applicable.

<b>Making Your Point in the War on Drugs (all regions)</b>			
	Level		
	High	Medium	Low
Satisfaction	64.9	35.1	--
Applicability	65.8	30.1	4.1
Valid cases = 77	Percent of population = 36.7		

Attorneys employed by public defender organizations made up the single largest proportion of training session participants across all three regional training sessions (66 percent). Sixty-two percent of the high satisfaction ratings overall were assigned by these public attorneys, which is the same proportion of high ratings assigned within this attorney group. Within the private attorney group, though, the high satisfaction rating was assigned by 74 percent of this attorney group.

The Drug Updates - Defender Conference held in Winthrop was

attended by 16 percent of the respondent population. By roughly a three-to-one ratio, respondents recorded that they were both highly satisfied with the training and that it was highly applicable.

<b>Drug Updates - Defender Conference</b>			
	Level		
	High	Medium	Low
Satisfaction	70.6	29.4	--
Applicability	74.2	25.8	--
Valid cases = 34	Percent of population = 16.2		

Of those individuals who attended the Drug Updates training conducted during the May 1992 Defender Conference, 61 percent were public agency attorneys. Fifty-four percent of those respondents who assigned a high satisfaction rating were public attorneys, and 29 percent were private practice attorneys. It should be noted, though, that all private practice attorneys who attended this training session and responded to this survey assigned a high satisfaction rating.

Almost ten percent of the respondents attended the Advanced Training in the War on Drugs session held in Yakima. More respondents rated the training as being highly applicable than were highly satisfied.

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**Advanced Training in the War on Drugs**

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	Level		
	High	Medium	Low
Satisfaction	65.0	35.0	--
Applicability	73.7	26.3	--
Valid cases = 20	Percent of population = 9.5		

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Of those who attended the Advanced Training in the War on Drugs, 50 percent were public agency attorneys and 35 percent were attorneys in private practice. Of those assigning a high rating to this training, 46 percent were public attorneys and 31 percent were private attorneys.

For the eight training sessions held during the seven month December 1991 to June 1992 period, a relatively high level of satisfaction was recorded by the respondents who had attended training. Only two training sessions (Gangs and Drugs, and the Making Your Point in the War on Drugs held in Spokane) realized less than a 50 percent participant high satisfaction. Only one training session (Gangs and Drugs) had fewer than 50 percent of the participants stating that the training was largely applicable.

Four defender organization attorneys provided written comments regarding the training. Two of these comments provided suggestions for future training and two an assessment of applicability:

"I am a dependency attorney, and therefore, did not attend seminar on drugs, etc. I would be interested in any seminar dealing with trial skills in general or with dependencies."

"Offer this in Seattle." [Re: Defending Drug Cases training session]

Training "[n]ot helpful to appellate work."

"...the seminars never really provided a sophisticated tool for the experienced attorneys."

One investigator attached to a defender organization provided written input:

"As an investigator, I don't feel my field or role in public defense is adequately addressed by WDA, probably because it does not receive the funding necessary to put on investigator relevant seminars."

One investigator in private practice offered a suggestion for future training and provided an assessment on another WDA training session:

"Being an Investigator and working in criminal defense, I would like to encourage more workshops for the investigators. I would also like to credit the Defender Association with the October 23, 1992, seminar for Investigators on "Child Sexual Abuse." Being a retired police officer and having taken courses at the Washington State Criminal Justice Training Center, I would put this as one of the best classes I have ever attended. I hope more of these types of training become available in the future."

#### **Brief Bank**

The Defender Assistance Program coordinates the computerized brief bank administered by WDA. Defenders throughout the state are solicited for relevant legal briefs. A resource form was developed by program staff to collect this material. In all, 34 briefs have been collected by the program (see Appendix D for a copy of the resource form and a listing of the briefs).

Survey data revealed that 20.5 percent (n = 43) of the survey respondents had used the WDA brief bank. Twenty-four individuals indicated that they used the brief bank at least twice; nine individuals three times each; and one individual each five times, six times, eight times, nine times, and ten times. One individual recorded that she accessed the brief bank 36 times during a 12-month period. In total, 39 individuals accessed the brief bank 137 times. Four respondents stated that they had used the brief bank but did not indicate how many times or during what period of time.

Respondents were also asked if they had submitted material to the brief bank. Fifteen individuals recorded that they had submitted material (7.1 percent). These 15 respondents, all attorneys, represented 34.9 percent of the individuals who had accessed the brief bank for material. Six individuals submitted one brief each, three individuals submitted two briefs each, four individuals submitted three briefs each, and one individual submitted eight briefs. In total, 34 briefs were submitted by these 15 attorneys to the WDA brief bank.

Of the 43 individuals who accessed the brief bank, 74 percent were highly satisfied with the overall service. In addition, 86 percent rated the timeliness of the material and service as being high, and 66 percent recorded that the material accessed was highly applicable.

Brief Bank	Level		
	High	Medium	Low
Satisfaction	74.4	25.6	--
Timeliness	85.7	14.3	--
Applicability	65.9	34.1	--
Valid cases = 43	Percent of population = 20.5		

Of those respondents who recorded a level of satisfaction with the brief bank, 61 percent were attorneys employed by public defender agencies. These public attorneys provided 53 percent of the high ratings for the brief bank and private practice attorneys provided 38 percent. Within each of these two sectors, though (i.e., public and private), private practice attorneys, as a group, were more satisfied with the brief bank than were public agency attorneys. Eighty-six percent of the attorneys in private practice assigned a high rating to the brief bank, whereas only 65 percent of the public agency attorneys provided this high rating.

Two attorneys with public defender organizations commented on the brief bank resource:

"I have only recently started trying felony drug cases. I expect to be using these services more in the upcoming months. Although I have not directly requested materials from the brief bank, I have received some "hand me downs" that I found very useful."

"No, [I have not utilized Brief Bank resources] but I now will."

#### DefenseNET Newsletter

As noted in the Methods section of this report, all



individuals on the WDA DefenseNET mailing list were sent a copy of the survey instrument. This being the case, it is not surprising that a relatively larger proportion of individuals responded to the DefenseNET assessment item than all the preceding items. In total, 90 percent of the respondents provided an assessment of DefenseNET (n = 189).

DefenseNET	Level			
	High	Medium	Low	Missing
Satisfaction	77.8	22.2	--	--
Timeliness	75.1	22.8	.5	1.6
Applicability	73.5	24.9	.5	1.1
Valid cases = 189	Percent of population = 90.0			

Across all three assessment categories, approximately three-quarters of the respondents assigned high ratings to the DefenseNET publication. Fifty-nine percent of the respondents who assigned a satisfaction rating were attorneys with public defender organizations. The next largest category of respondents were attorneys in private practice (27 percent). Sixty-one percent of those individuals who assigned a high rating were public agency attorneys and 27 percent were private attorneys.

Four attorneys provided generally positive feedback regarding the DefenseNET newsletter:

"The newsletter was a decent summary of new cases and analyses... "

"I am presently assigned to the Misdemeanor Unit. Most of the materials are specifically oriented toward felony drug cases, but I have found the information helpful even

for the misdemeanor cases. Please continue the good work, I appreciate it."

"I like the DefenseNET, it's kind of the like getting a caselaw update on (specialized) drug stuff. I wish it came out more often or more frequently."

"...the DefenseNET publication is an excellent tool."

One investigator attached to a public defender organization recorded a written comment on DefenseNET applicability:

"Directed more for attorney use, but I sometimes find it useful to me."

In addition, one public defender agency administrator offered a succinct assessment:

"DefenseNET is invaluable."

Three attorneys in private practice offered written comments on the DefenseNET publication:

"DefenseNET is the best thing to happen to criminal defense in Washington during the 17 years I've been practicing criminal law."

"Outstanding, very useful."

"It's difficult for me to read them all." [i.e., cases/information provided in DefenseNET]

A copy of DefenseNET can be found in Appendix E.

### **Drug Defense Manual**

The Defender Assistance Program started work on the Drug Defense Manual (publication title, Defense of a Drug Case) during its first recent year of funding, 1991 (SFY 1992). The manual was completed in January 1993 and is close to 600 pages in length. It was constructed largely through Defender Assistance Program

resource attorney efforts with assistance provided by a number of other WDA staff. Much of the material contained in its pages was also published in the DefenseNET newsletter and is organized around three main sections of eight subsections each.

These three main sections are, Overview, Strategies and Tactics, and Applicable Law. Each of these main sections contains subsections addressing eight central issues: Pre-Arrestment, Arrestment, Pretrial Proceedings, the Trial, Post-Trial Proceedings, Sentencing, Appeal, and Other Consequences of a Felony Drug conviction. Appendix F includes the manual's Table of Contents and preceding pages.

During January and February, 1993, the manual was distributed to all 657 individuals on the DefenseNET mailing list. In addition, during this distribution period, 12 training sessions were held throughout the state related to the organization and utility of the manual. Feedback solicited by WDA trainers from the training participants has been developed into recommendations for future modification (e.g., a "forms" section).

#### **Amicus Curiae**

During the first 18 months of program operation, five amicus curiae (friend of the court) briefs were filed by program resource attorney staff. Assessment of impact is difficult with this form of technical assistance. In short, written feedback from respondents indicated a high level of satisfaction with briefs composed by resource attorney program staff.

## **SUMMARY AND RECOMMENDATIONS**

## SUMMARY AND RECOMMENDATIONS

The Defender Assistance Program received its first year of U.S. Department of Justice, Bureau of Justice Assistance (BJA), funds in 1988. Four years later this program was funded once again. During State Fiscal Year 1992, the Defender Assistance Program received 2.2 percent of these BJA funds, and during State Fiscal Year 1993 it received 3.13 percent.

This program has six primary goals:

1. Providing consultation services to public defenders throughout the state.
2. Conducting and participating in local and regional continuing legal education training.
3. Contributing to the Washington Defender Association brief bank.
4. Producing and distributing the DefenseNET Newsletter.
5. Producing and distributing a Drug Defense Manual.
6. Appearing in court as *amicus curiae* in "cases involving broad impact" and providing other legal assistance.

Assessment of program performance was accomplished through the analysis of data and information obtained through interviews with the Washington Defender Association Executive Director, a review of Quarterly Activity Reports, and a survey instrument circulated to all individuals on the DefenseNET mailing list (defender organizations and individual members). A 32 percent return rate was obtained on the surveys circulated to 657 potential respondents (n = 210) and of these:

- 58.6 percent were attorneys with defender organizations (n = 123)

- 26.7 percent were individual member attorneys (n = 56)
- 5.7 percent were administrators with defender organizations (n = 12)
- 5.2 percent were investigators with defender organizations (n = 11)
- 1.4 percent were individual member investigators (n = 3)
- 1.0 percent were employed in non-identified positions with defender organizations (n = 2)
- 1.0 percent were individual member administrators (n = 2)
- .5 percent were individual members in non-identified positions (n = 1)

General written comments were provided by 15 of the respondents. Of these, only one was negative in tone, and most called for an increase in funding. By and large, the majority recorded a continued need and support for the program and its resources.

It must be kept in mind, though, that the individuals who recorded these observations were largely attorneys with defender organizations. In fact, 59 percent of the respondents were attorneys with defender organizations, but this represents only a 27 percent return rate for defender organization personnel. In short, there is an inherent bias in the large number of defender organization personnel (75 percent) in the potential respondent pool. Although individuals in private practice (i.e., "individual members") made up only 25 percent of the potential respondent pool, this group realized a 46 percent return rate.

## Consultation Services

Consultation services are provided upon request by program resource attorney staff.

- Between October 1991 and September 1992, 267 consultations were provided.
- Except for one quarter (July - September 1992), the number of telephone consultations increased while the number of in-person consultations decreased.
- 25 in-person consultations were provided to 17 separate agencies/offices.
- Related to satisfaction, timeliness, and applicability, over 85 percent of the total number of respondents assigned a "high" rating to in-person consultation services.
- 242 telephone consultations were provided averaging approximately 1.18 hours each for a total of 286 hours.
- Over 75 percent of the respondents assigned a "high" rating to the areas of satisfaction, timeliness, and applicability of telephone consultation services.

Four attorneys provided written feedback. Three of these individuals were with defender organizations and all provided highly positive input regarding the program resource attorney who provided the assistance. The fourth attorney was in private practice and he stated that he wasn't aware that the consultation service was available.

Regarding in-person consultation services, none were provided to individuals in private practice, though a number of telephone consultations were provided to private practice attorneys. Only 48 percent of the respondents (n = 100) recorded that they received one of these forms of consultation. The remaining 52 percent did

not record an assessment of the service, so it can be assumed that they were unaware of its existence or were of the opinion that they could not benefit from it. Either way, it can be recommended that:

- The availability of this resource be made better known to individuals with both public defender organizations and in private practice. The DefenseNET Newsletter would appear to be an ideal vehicle for this.

### Training

Over a seven-month period, program staff participated in the provision of Continuing Legal Education training to 536 attorneys and investigators.

- 25 percent of the respondents attended the Defending Drug Cases training held in Spokane; 71 percent stated they were highly satisfied and 63 percent stated that it was highly applicable.
- Only two percent of the respondents attended the Exceptional Downward Sentencing training held in Pierce County; 50 percent stated they were highly satisfied with the training and 75 percent stated that it was highly applicable.
- 12 percent of the respondents attended the Gangs and Drugs training held in Seattle; 40 percent stated they were highly satisfied with the training and 38 percent stated that it was highly applicable.
- 21 percent of the respondents attended the Making Your Point in the War on Drugs training held in Seattle; 75 percent stated they were highly satisfied with the training and 73 percent stated that it was highly applicable.
- 11 percent of the respondents attended the Making Your Point in the War on Drugs training held in Spokane; 48 percent stated they were highly satisfied with the training and 50 percent stated that it was highly applicable.
- 5 percent of the respondents attended the Making Your Point in the War on Drugs training held in the Tri-cities



area; 60 percent stated they were highly satisfied with the training and 70 percent stated that it was highly applicable.

- 37 percent of the respondents attended a Making Your Point in the War on Drugs training session; 65 percent of the respondents stated they were highly satisfied with the training and 66 percent stated that it was highly applicable.
- 16 percent of the respondents attended the Drug Updates - Defender Conference held in Winthrop; 71 percent stated they were highly satisfied with the training and 74 percent stated that it was highly applicable.
- 10 percent of the respondents attended the Advanced Training in the War on Drugs training held in Yakima; 65 percent stated they were highly satisfied with the training and 74 percent stated that it was highly applicable.

Six individuals took the opportunity to provide written feedback regarding the training. Four of these were attorneys with defender organizations; two of them offered suggestions for future training and two indicated that they did not find the training helpful. The two investigators who responded, one attached to a defender organization and one in private practice, offered the suggestion that more training be geared toward the needs of the investigator.

It is recognized that it is highly unlikely that a given respondent would attend all eight training sessions. The percentage of respondents who attended these training sessions ranged from two percent to 25 percent. There was a great deal of variation in the respondents satisfaction level and assessment of training applicability. Further, most of the written comments indicated that, at least among these respondents, training

relevance is an issue. Therefore, it is recommended that:

- The training needs of both public and private practice attorneys and investigators be assessed and a mechanism be developed to measure participant satisfaction (e.g., training evaluation forms).

#### **Brief Bank**

Twenty-one percent of survey respondents recorded that they used the WDA brief bank.

- These individuals accessed the brief bank over 137 time.
- A high satisfaction rating was assigned by 74 percent of the respondents.
- A high timeliness rating was assigned by 86 percent of the respondents.
- A high applicability rating was assigned by 66 percent of the respondents.

Two attorneys with public defender organizations commented on brief bank resources. Both indicated that although they have not used this resource in the past, they will in the future.

Approximately one-fifth of the respondents indicated that they used brief bank resources. Most individuals recorded a high level of satisfaction with the resource and found service very timely. Fewer respondents felt that the applicability of the resource was high. Only seven percent of the respondents recorded that they had submitted material to the brief bank. It is recommended that:

- A greater effort be made to solicit briefs from attorneys in both public and private practice which would reflect the needs of WDA members.

## **DefenseNET Newsletter**

Ninety percent of the respondents provided an assessment of the DefenseNet Newsletter.

- 78 percent assigned a high satisfaction rating.
- 75 percent assigned a high timeliness rating.
- 74 percent assigned a high applicability rating.

Nine individuals provided written feedback related to the DefenseNET Newsletter. Without exception, whether attorney or investigator in public or private practice, no one provided a negative assessment.

By approximately three to one, respondents assigned high ratings to DefenseNET timeliness and applicability, as well as overall satisfaction. No recommendations are offered regarding this publication.

## **Drug Defense Manual**

The Drug Defense Manual took nearly one and one-half years to complete. Considering the scope and complexity of the work, this is understandable. Written comments offered by respondents reflect a high level of satisfaction, if not outright praise, regarding the briefs composed by these program attorneys.

As noted, the Drug Defense Manual has only recently been distributed. It is recommended, though, that:

- **Recommendations obtained from individuals attending training conducted by WDA staff be incorporated in future revisions.**

### **Amicus Curiae**

Due to the unique nature of amicus curiae work, no recommendations are offered. It should be noted that written responses indicate a high level of satisfaction with this form of assistance.

**APPENDIX A:**  
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(206) 786-7684

Alternate:  
Cindi Holmstrom\*  
Fiscal Analyst  
Senate Ways and Means Committee  
300 Cherberg Building  
Post Office Box 40484  
Olympia, WA 98504-0484  
(206) 786-7715



The Honorable Gary F. Locke  
WA State Representative  
204 John L. O'Brien Building  
Post Office Box 40674  
Olympia, WA 98504-0674  
(206) 786-7838

Alternate:

Maureen Morris\*  
Appropriations Committee  
John L. O'Brien Building  
Room 217  
Post Office Box 40740  
Olympia, WA 98504-0740  
(206) 786-7152

Lawrence L. Lusardi  
Drug Enforcement Administration  
220 West Mercer, Room 301  
Seattle, WA 98119  
(206) 553-5443

The Honorable Sandi Strawn  
Benton County Commissioner  
Post Office Box 190  
Prosser, WA 99350  
(509) 786-5600/Joanne

The Honorable Barbara Skinner  
Pierce County Council  
930 Tacoma Avenue South  
Tacoma, Washington 98402  
(206) 591-7777  
SCAN 236-7777  
Fax 591-7509

Douglas Mah\*  
Research Coordinator  
Office of Financial Management  
Statistical Analysis Center  
Post Office Box 43113  
Olympia, WA 98504-3113  
(206) 753-9638  
SCAN 234-9638

Mary Poole\*  
Fiscal Analyst  
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(206) 786-7715  
FAX 786-7615

Mike Mattlick  
Washington State Patrol  
Post Office Box 42601  
Olympia, WA 98504-2601

**APPENDIX B:**

**SURVEY INSTRUMENT**

Respondent Name: \_\_\_\_\_

Title/Role: \_\_\_\_\_

Office/Organization: \_\_\_\_\_

Date: \_\_\_\_\_

Please identify which services, provided by the Bureau of Justice Assistance funded Defender Assistance Program, you have utilized:

- A. Consultation Services                    \_\_\_ Yes (see item 1)    \_\_\_ No
- B. Training & Seminar Activities\*        \_\_\_ Yes (see item 2)    \_\_\_ No
- C. Brief Bank                                \_\_\_ Yes (see item 3)    \_\_\_ No
- D. DefenseNET                                \_\_\_ Yes (see item 4)    \_\_\_ No

\* Training and seminar activities which the Defender Assistance Program has participated in are:

Title	Date	Location
Defending Drug Cases	Dec. 1991	Spokane
Exceptional Downward Sentencing	Jan. 1992	Pierce Cnty
Gangs and Drugs	Feb. 1992	Seattle
Making Your Point - War on Drugs	Apr. 1992	Seattle
Making Your Point - War on Drugs	Apr. 1992	Spokane
Drug Updates - Defender Conference	May 1992	Winthrop
Making Your Point - War on Drugs	May 1992	Tri-Cities
Advanced Training - War on Drugs	Jun. 1992	Yakima

1. Consultation services are provided through two basic avenues; in-person and over the telephone. Please provide assessments for each of these means of delivery.

Check if N.A.	Satisfaction			Timeliness			Applicability		
	Hi	Med	Low	Hi	Med	Low	Hi	Med	Low
___ In-person	0	0	0	0	0	0	0	0	0
___ Telephone	0	0	0	0	0	0	0	0	0

2. Please place a check mark in front of the training activities which you have participated in and indicate the appropriate rating. (See list on page 1, for dates and locations.)

Check Here	Title	Satisfaction			Applicability		
		Hi	Med	Low	Hi	Med	Low
<input type="checkbox"/>	Defending Drug Cases	0	0	0	0	0	0
<input type="checkbox"/>	Exceptional Downward Sentencing	0	0	0	0	0	0
<input type="checkbox"/>	Gangs and Drugs	0	0	0	0	0	0
<input type="checkbox"/>	Making Your Point-War on Drugs	0	0	0	0	0	0
<input type="checkbox"/>	Making Your Point-War on Drugs	0	0	0	0	0	0
<input type="checkbox"/>	Drug Updates - Defender Conf.	0	0	0	0	0	0
<input type="checkbox"/>	Making Your Point-War on Drugs	0	0	0	0	0	0
<input type="checkbox"/>	Advanced Training-War on Drugs	0	0	0	0	0	0

3a. Have you utilized the Defender Assistance Program maintained Brief Bank?

Yes                       No

\_\_\_\_\_ times

\_\_\_\_\_ period (use months, dates, or years)

proceed to item 4

3b. Besides from utilizing the Defender Assistance Program maintained Brief Bank, have you submitted material for inclusion?

Yes                       No

How many?

\_\_\_\_\_

3c. Please provide the following Brief Bank assessment:

	Satisfaction			Timeliness			Applicability		
	Hi	Med	Low	Hi	Med	Low	Hi	Med	Low
Brief Bank	0	0	0	0	0	0	0	0	0

4. Regarding the bi-monthly Defender Assistance Program publication, DefenseNET, please provide an assessment.

	Satisfaction			Timeliness			Applicability		
	Hi	Med	Low	Hi	Med	Low	Hi	Med	Low
DefenseNET	0	0	0	0	0	0	0	0	0

Please use the back of this form, or attach additional sheets, if you wish to record any additional comments.

Please return the completed survey in the attached envelope, by January 15, 1993.

If the envelope becomes detached, please return by this date to:

Dr. Patrick M. Moran  
Department of Community Development  
906 Columbia Street S.W.  
P.O. Box 48300  
Olympia, WA 98504-8300



**APPENDIX C:**  
**SYNOPSIS OF SELECT COURSE OFFERINGS**

# PROGRAM

ADVANCED TRAINING IN  
THE WAR ON DRUGS  
Yakima, 06/26/92

- 8:00am Registration
- 8:30-9:15 *Drug Updates*, Kathy Knox and Pat Novotny
- 9:15-10:15 *Suppression of Evidence*, Jeffrey Steinborn
- 10:15-10:30 Break
- 10:30-11:00 *Wiretaps*, Richard Smith
- 11:00-11:30 *Confidential Informants*, Rafael Gonzales
- 11:30-12:00 *Tactics & Techniques in the Defense of Drug Cases*,  
Diana G. Parker
- 12:00-12:15 Roundtable Discussion

# FACULTY

**Rafael Gonzales** is an attorney with the Yakima County Department of Assigned Counsel. After graduating from Gonzaga Law School as a Thomas More Scholar in 1986, he clerked for Judge Stanley Worswick and was in private practice for a year and a half.

**Kathy Knox** serves Eastern Washington as a Drug Defense Resource Attorney with the Washington Defender Association. Prior to joining WDA in October of 1991, she was a Law Clerk in the Division III Court of Appeals for a year and was in private practice in the Tri-Cities for ten years.

**Pat Novotny** has served Western Washington as a Drug Defense Resource Attorney with the Washington Defender Association since October 1991. Prior to joining WDA, she was a staff attorney at the Washington Appellate Defender for two and a half years and a sole practitioner from 1986-1989.

**Diana G. Parker** received her JD in 1986 from Willamette University College of Law in Salem, Oregon. After graduation, she was in private practice in Yakima and worked as part of the defense team on a death penalty case. She has worked as a defense attorney, mainly handling drug cases, with the Yakima County Department of Assigned Counsel since the opening of the office in November, 1989.

**Richard A. Smith** received his JD from the University of Puget Sound Law School in 1984. He practices with the law firm of Smith Law Offices in Yakima. His practice emphasizes criminal defense, particularly drug cases.

**Jeffrey Steinborn** has been in private practice for more than twenty years. He specializes in the law of search and seizure and is a local spokesperson for NORML and highly recommends their annual meeting in Key West. Jeff is a 1968 graduate of Yale Law School.



# 1992 Defender Conference Schedule

Winthrop  
May 1-3, 1992

*7 CLE Credits*

## Attorney Program

### Friday, May 1

- 1:00 pm Registration  
1:30 pm Legislative Update  
*Bob Boruchowitz*  
2:00 pm Entrapment in Drug Cases  
*Ellen Yaroshefsky*  
3:00 pm Break  
3:15 pm Drug Updates  
*Kathy Knox and Pat Novotny*  
4:15 pm Extradition  
*Jon Ostlund and Dan Fessler*  
5:00 pm Adjournment  
6:00 pm Social Hour (No-Host Bar)  
7:00 pm Dinner

### Saturday, May 2

- 9:00 am Impeachment, The Government Can  
Give It Out But Can They Take It?  
*Jeff Robinson*  
10:00 am Using the Court of Appeals to Fix  
Trial Court Mistakes  
*Julie Kesler, Carol Ellerby, and  
Mary Perdue*  
10:45 am Break  
11:00 am The Developmentally Disabled in  
the Special Commitment Center  
*Bill Jaquette*  
11:30 am Civilization and Its Discontents:  
Life As A Defense Attorney  
*Ellen Yaroshefsky*

- 12:30 pm Adjournment  
12:45-2:30 pm Directors' Meeting  
6:00 pm Social Hour (No-Host Bar)  
7:00 pm Western Barbecue

## Investigator Program

This is first in a series on the criminal process. Detective Sonny Davis's presentation will cover the crime scene and the development of a suspect.

### Friday, May 1

- 1:00 pm Registration  
1:30 pm Introduction and Overview  
1:45 pm Basic Crime Scene Protocols  
2:45 pm Break  
3:00 pm Crime Scene Reconstruction  
(Based on an adjudicated 1984 double  
homicide case.)  
5:00 pm Adjournment

### Saturday, May 2

- 9:00 am Who Done It?  
(A crime scene reconstruction using  
an unsolved 1990 homicide case which  
occurred in North Seattle.)  
11:00 am Break  
11:15 am Round Table Discussion  
12:30 pm Adjournment

# Making Your Point in the War on Drugs

**Seattle**  
**Friday, April 10**  
**Radisson Airport Hotel**

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- 8:30 Registration
- 9-10 **Suppression Hearings: Selling (Educating) Your Judge**  
Jeffrey Steinborn
- 10-10:45 **Chain of Custody: How? When? Why?**  
Julie Spector
- 10:45-11 Break
- 11-12 **Defending the Defenseless Drug Case**  
James K. Jenkins
- 12-1 Lunch Break
- 1-2 **How to Handle Confidential Informants**  
Gail Shifman
- 2-3 **Voir Dire: Working the Jury Panel: Anne Harper, Al Kitching, Dave Neupert, Nancy Horgan**
- 3-3:15 Break
- 3:15-4:15 **Drug Testing**  
Washington State Patrol Crime Lab Representatives William Gresham and Edward Suzuki
- 4:15-4:45 **Judicial Perspective on Sentencing in Drug Cases**  
Judge Robert Lasnik
- 4:45-5:00 **The Future of Sentencing (Legislative Update)**  
Mike Frost

**Spokane**  
**Saturday, April 11**  
**Spokane-Sheraton Hotel**

---

- 8:30 Registration
- 9-9:45 **Pending Appellate Cases and Perspectives on Appeals**  
Paul Wasson
- 9:45-10:45 **Suppression Hearings: Selling (Educating) Your Judge**  
Jeffrey Steinborn
- 10:45-11 Break
- 11-12 **Defending the Defenseless Drug Case**  
James K. Jenkins
- 12-1 Lunch Break
- 1-2 **How to Handle Confidential Informants**  
Gail Shifman
- 2-3 **What's Happening in Drug Cases and What To Do About It**  
Rafael Gonzales and Kathy Knox
- 3-3:15 Break
- 3:15-4:15 **Drug Testing**  
Washington State Patrol Crime Lab Representative Darrell Brender
- 4:15-4:45 **Wire Taps: Current Issues**  
Richard A. Smith
- 4:45 Adjourn

# Defending Drug Cases: Select Issues

12/13/91

Cavanaugh's Inn at The Park  
West 303 North River Drive, Spokane, Washington

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- 8:30 • Registration
- 9:00-9:45 • *How to Protect Defendants in State Court from Later Federal Consequences*  
Michael Kinkley
- 9:45-10:30 • *General Principles Regarding Preservation of Error in State Court*  
Bryan Harnetiaux
- 10:30-10:45 • Break
- 10:45-11:15 • *Multicultural Perspectives*  
Rafael Gonzales
- 11:15-Noon • *Voir Dire: How to Shape the Jury*  
Mark Vovos
- Noon-1:00 • Lunch Break
- 1:00-2:15 • *The Year In Review: Appellate Cases*  
Patricia Novotny and Katherine Knox
- 2:15-3:00 • *Suppression of Evidence*  
The Honorable John A. Schultheis
- 3:00-4:00 • *The Prosecution and Defense of Drug Cases: Local Trends.*  
Panel Discussion

**APPENDIX D:**  
**BRIEF BANK RESOURCE FORM**  
**AND**  
**LIST OF COLLECTED BRIEFS**

## DefenseNET

### Coordinating Drug Defense Resources

To: Patricia Novotny/Katherine Knox  
Washington Defender Association  
810 Third Avenue, Suite 800  
Seattle, WA 98104

From: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Re:  Charging Practices       Confessions  
 Confidential Informant       Discovery Abuse  
 Entrapment       Forfeiture  
 Forensics       Information  
 Jury Instructions       Police Misconduct  
 Prosecutor Misconduct       Search and Seizure  
 Sentencing       Severance  
 Other: \_\_\_\_\_

Describe: (use back for additional space if necessary)

*Your experiences, comments, and suggestions are vital to the success of our Drug Defense Resource Network. Thanks for taking the time to send us this information! Please feel free to call us if we can be of assistance. Pat Novotny's telephone and fax number is (206)624-1101. Kathy Knox's telephone number is (509)454-5399. The Association Office telephone number is (206)623-4321 and the fax number is (206)623-5420.*

WDA's Seattle Brief Bank

1. City attorney's brief and Appellant's brief for Washington State Supreme Court regarding constitutionality of Tacoma Drug Loitering Statute. City of Tacoma v. John Luvene.
2. Appellant's brief in Div. II regarding whether crime of Conspiracy to Deliver a Controlled Substance under 69.50.407 is an unranked felony under the Sentencing Reform Act. State v. Herbert.
3. Appellant's brief in Div. III regarding failure of proof and constitutionality of School Bus zone enhancement. State v. Wimbs.
4. Motion to Suppress Evidence based on "consent" search. "Knock and Talk" leading to consent to search home. State v. Glaspie.
5. Motion to declare the seriousness level of VUCSA (Delivery) to be six, based on unconstitutionality of the statute purporting to raise its seriousness level. State v. Bradley.
6. Motion to dismiss for lack of evidence that more than a "trace of residue" of cocaine was found in charge of possession. State v. Anderson.
7. Motion to Dismiss for lack of particularity in warrant. Form language stating that warrant allows the search of all persons, coming and going, and their vehicles. State v. White.
8. Memorandum on burden of proof. Issue: Who has the burden of proof with regard to the lack of a prescription for Lorazepam? State v. DeLeau.
9. Motion to Suppress based on officer's lack of articulable facts justifying stop. State v. Johnson.
10. Appellant's brief in Court of Appeals regarding whether a custodial arrest violates Art. 1 section 7 when the arrest was for a misdemeanor traffic offense and there was no reasonable belief that Appellant would not respond to a citation and notice to appear if issued one?
11. Motion to exclude alleged co-conspirator statements. State v. Hinton.
12. Motion to Suppress. Illegal Search and Seizure. Automobile stop based on one cross of street dividing line. Stop for possible DWI. Miranda violations after the stop... State v. Molina.
13. Defense memorandum on UA testing as part of Community Supervision.
14. Appellant's brief in Div. I regarding informant reliability and Washington' Privacy act as it relates to Police authorized electronic eavesdropping without prior judicial approval.

15. Motion to Dismiss and request for Bill of Particulars for charge of "Attempted Possession." Analysis of "attempt" statute.
16. Appellant's brief in Div. III regarding buyer charged with delivery. State v. Cummins.
17. Amicus brief on "Casual Street Encounter" State v. Gleason.
18. Appellant's brief on Constitutional "single subject" requirement as applied to delivery offense and the "Omnibus Alcohol and Controlled Substances Act."
19. List of relevant cases dealing with disclosure of informants.
20. Memorandum/Article on Post-Trial Drug Testing: Is it Susceptible to Due Process Challenges?
21. Amicus Brief in Washington State Supreme Court on exceptional sentence downward to include drug treatment for addicted offenders. State v. Gaines.
22. Memorandum: High Crime Area Stops. A summary of current case law.
23. Appellant's Brief and State's Brief in Washington State Supreme Court on the use of infrared detection devices or scanners.
24. Paper presented by Northwest Immigrant Rights Project. "Immigration Consequences of Criminal Convictions."
25. Motion to Suppress based on pretext stop or arrest for minor traffic infraction. Also includes outlined summary of case law.
26. Form for Knapstad motion. Article regarding same.
27. Motion to Suppress. Pedestrian stop. Issue of whether contact initiated by officers was a "seizure."
28. Motion to Dismiss for Prosecutorial Misconduct. State v. Jones. Article on same subject.
29. Article and Outline on Suppression Hearings.
30. Memorandum and Motion to Suppress based on warrantless home entry to effect an arrest. State v. Daugherty.
31. Motion to Dismiss. Privacy Act and wiretap issues.
32. Amicus Brief in Washington State Supreme Court regarding heat and energy scans. State v. Young.
33. Amicus Brief by WDA in Court of Appeals, Division III, State v. Graham, re: applicability of RCW 69.50.435 (school zone enhancements) to accomplices.

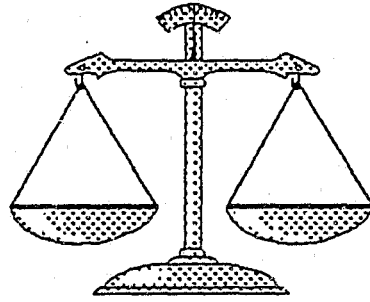
34. Amicus Brief by WDA in Washington Supreme Court regarding school bus stops as school zones. State v. Coria.



**APPENDIX E:**

**DefenseNET NEWSLETTER**

## DefenseNET



Assisting Defenders in Drug Cases

Vol. 1, No. 6

September 15, 1992

# WASHINGTON DEFENDER ASSOCIATION

## Eastern Washington Report

Kathy Knox

The Drug Defense Manual is nearly finished and will be published in October. WDA wants to thank everyone for their patience with us during the last few months.

## Decisions Not Yet Published in the Advance Sheets

The following are summaries of opinions from the Washington Supreme Court and the Court of Appeals relevant to issues in drug cases in which opinions have been filed, but not yet published in the Advance Sheets:

Police officers may make custodial arrests for non-minor traffic offenses -- The Supreme Court (Utter, J.) holds 9-0 that under RCW 46.64.015 and RCW 10.31.100(3), police officers may make custodial arrests for non-minor traffic offenses (such as reckless driving), overruling State v. Stortroen, 53 Wn. App. 654, 769 P.2d 321 (1989) insofar as it is inconsistent. State v. Reding, No. 58462-1 (slip op. September 10, 1992).

The essential elements rule applies to citations -- The Supreme Court (Andersen, J.) holds 9-0 that a misdemeanor or gross misdemeanor citation used as the final charging document is constitutionally deficient if it merely states the name of the crime and its numerical code section, because it violates the essential elements rule, citing State v. Leach, 113 Wn.2d

679, 782 P.2d 552 (1989) and Seattle v. Hein, 115 Wn.2d 555, 799 P.2d 734 (1990). Auburn v. Brooke, No. 57867-2 (slip op. September 9, 1992).

A search of rented premises where the tenant is present is unreasonable where the police did not ask the tenant for his permission to search -- In State v. Birdsong, No. 27636-1-I (slip op. July 20, 1992, Division I (Thompson, J.) held that the exclusionary rule prohibited the admission of evidence seized from a rented home during a warrantless search and post-arrest statements made by the defendant. In that case, the landlord and tenant were both present at the time of the search, but the police did not ask the tenant for permission to search. The State did not establish an exception to the warrant

requirement. Although the tenant had removed some of his belongings, the evidence was insufficient to find that the defendant had voluntarily abandoned the premises.

A search warrant affidavit was held to be insufficient to support a finding of probable cause -- In State v. Bittner, No. 26689-6-I (slip op. July 20, 1992), Division I (Coleman, J.) held the trial court erred in admitting evidence obtained during the execution of a search warrant. A single unobserved transaction by an unidentified friend of the informant, uncorroborated by any other evidence, without any effort to establish the friend's reliability is insufficient to support a finding of probable cause.

A search of an arrestee's fanny pack was reasonable as incident to the defendant's arrest even though the pack was in the officer's exclusive control and the defendant was handcuffed and in the patrol car -- In State v. Smith, No. 58374-9 (slip op. September 10, 1992, the Supreme Court (Johnson, J.) 9-0 reversed Division III of the Court of Appeals (Shields, J.) (61 Wn. App. 482 (1991)). The arrestee's fanny pack which he wore just prior to the arrest was searched just after the arrest. The Supreme Court held the search of the fanny pack was reasonable as a search incident to arrest even though the arrestee was handcuffed and placed in the back of a patrol car prior to that search, and the fanny pack was under the exclusive control of the arresting officer. A delay of 17 minutes prior to searching the item was found not to be unreasonable.

Prior deportations and post-conviction threats of harm to others are not proper reasons justifying an exceptional sentence -- In State v. Valdez, No. 13523-0-II (slip op. July 22, 1992), Division II (Alexander, J.) held that the trial court erred when it considered the defendant's prior deportations and post-conviction threats of harm to others as reasons justifying imposition of an exceptional sentence above the range, citing State v. Barnes, 117 Wn.2d 701, 711, 818 P.2d 1088 (1991) (future dangerousness is not a basis for an exceptional sentence in nonsexual offense cases).

A current sentencing court has discretion on how concurrently served prior offenses are to be counted, even though the earlier sentencing court determined the crimes were not the same criminal conduct -- In State v. Lara, No.

11347-7-III, Division III (Sweeney, J.) (slip op. August 11, 1992) held that the current sentencing court has discretion to count prior offenses served concurrently as one offense under RCW 9.94A.360(6)(a), even though prior sentencing courts determined that the offenses were not the same criminal conduct (RCW 9.94A.400(1)(a)). The court remanded the case to the sentencing court because the record was not clear the court exercised its discretion.

An attempted possession conviction is supportable even though the substance is not a controlled substance -- Division I (Forrest, J.) held in State v. Lynn, No. 26462-1-I (slip op. August 31, 1992) that a person can be convicted of attempted possession of a controlled substance under RCW 69.50.407 even though the substance actually delivered to him was not a controlled substance.

An exceptional sentence above the range is reversed -- Division I reversed and remanded for a sentence within the standard range in State v. Bolton, No. 27539-9-I (Forrest, J.) (slip op. August 31, 1992). Pending charges or unproven allegations cannot be considered as aggravating factors supporting an exceptional sentence. Callous disregard and future dangerousness cannot support an exceptional sentence in a non-sex offense case.

Information obtained in violation of RCW 9.73.210 and .230 is inadmissible -- In State v. Salinas, No. 27454-6-I (slip op. August 24, 1992), Division I (Webster, A.C.J.) reversed a conviction of possession of cocaine with intent to deliver, citing RCW 9.73.050, because RCW 9.73.210 was violated (no written authorization from a police officer or commander above the rank of first line supervisor) and under State v. Fjermestad, 114 Wn.2d 828, 791 P.2d 897 (1990), any information obtained in violation of RCW 9.73.050 including visual observations as well as assertive gestures is inadmissible in a criminal trial. Nor is RCW 9.73.230 applicable.

Due diligence was used to enter findings in a juvenile case even though they were untimely filed, and automatic reversal is not justified -- Citing State v. Pena, 65 Wn. App. 711, 829 P.2d 256 (1992), Division I held that the untimely filing of findings in a juvenile case did not result in the automatic reversal in every case where the State fails to strictly comply with JuCR 7.11(d). State v. Cowgill, No. 30775-4-I (per curiam) (slip op. August 24, 1992).

A trooper can ask for identification, but he can't go into the wallet and get it himself -- Cocaine was seized from the defendant's wallet, a passenger in the car, following the arrest of the passenger for a traffic infraction, an open container violation. The officer asked the defendant for identification so he could issue a citation. The passenger first said he had none, and then said he had a Costco card, which he produced. The trooper testified that the defendant was acting furtively as though he didn't want the trooper to see inside his wallet. Because he was not satisfied with the identification produced, and his suspicions were aroused by the defendant's conduct, the trooper asked him to place his wallet on the hood of the car. The trooper then looked inside the partially opened wallet, and saw a bundle which he seized. Division III found that the trooper's suspicions were pure speculation; the defendant was not given an opportunity to sign a promise to

appear. The defendant has a right of privacy in his wallet; he did not have to hold it open for the officer to see. The trooper's seizure of the bundle in the wallet was improper. Because the facts do not support a reasonable belief that the defendant would fail to appear and answer the citation, there were no grounds to support his custodial arrest. State v. Barwick, No. 10958-5-III (Thompson, A.C.J.) (slip op. July 30, 1992).

Striker is superseded by the 1980 amendments to CrR 3.3. -- In State v. Phillips, No. 14129-9-II (slip op. July 29, 1992), Division II (Morgan, J.) held the 1980 amendments to CrR 3.3 superseded the decision in State v. Striker, 87 Wn.2d 870, 557 P.2d 847 (1976), (when the first appearance does not occur "within a reasonable time after the filing of the information, the 90-day period for trial is triggered not on the date of the first appearance, but on the date of the filing of the information). Under CrR 3.3, if the defendant is not in custody or subject to conditions of release, time for arraignment commences on the date of the defendant's appearance which follows the filing of the charge. If the defendant is in custody, the time for arraignment commences on the date a charge is filed. The case was reversed and remanded to determine if there is a violation of the defendant's constitutional speedy trial right.

RCW 69.50.435 does not violate due process or equal protection -- In State v. Dobbins, No. 28001-5-I, Division I (Coleman, J.) (slip op. August 17, 1992) held that the statutory presumption in RCW 69.50.435(a) that a delivery within 1,000 feet of a school detrimentally affects the children attending that school does not violate due process; the affirmative defense of RCW 69.50.435(d) does not violate equal protection of the laws, and there are reasonable grounds to distinguish between dealers for profit in or near a vehicle who deliver in a public area adjacent to a school yard and recreational users who deliver drugs not-for-profit in a private home where children are not present. A vehicle is accorded a lesser expectation of privacy than a home.

The Uniform Building Code saves the day! -- In State v. Browning, No. 27892-2-I (slip op. August 17, 1992), Division I (Baker, J.) reversed convictions of possession of a controlled substance with intent to deliver. In that case, a building inspector inadvertently discovered marijuana plants in a basement during a final housing inspection. The appellate court determined that the building inspector's entry was unlawful because the defendant did not consent to the entry (the building contractor let him in even though the owner was home) and the inspector did not present his credentials or request entry as required under the Uniform Building Code.

The simultaneous possession of two different controlled substances does not encompass the same criminal conduct for purposes of calculating the offender score -- In State v. Vike, No. 27651-4-I, Division I (Agid, J.) (slip op. July 27, 1992) held that the simultaneous possession of heroin and clonazepam are not the same criminal conduct for calculating the offender score.

Random sampling in testing drugs is sufficient if the substances and packages are consistent in appearance -- In State v. Caldera, No. 26923-2-I, Division I (Baker, J.) (slip

op. July 20, 1992) approved random sampling to support the identity of the entire quantity as an illegal drug. During an undercover operation, the defendant delivered several plastic bags containing a total of about 9 ounces of white powdery substance to undercover officers. A forensic expert visually inspected the substance in each of the plastic bags, finding them consistent in appearance and packaging, and randomly selected one bag for scientific testing. It tested positive for cocaine. Based on this random sampling, the trial court found that all the bags contained cocaine. An exceptional sentence above the range was justified because of the size of the intended drug transaction (19 ounces) and the amount actually delivered (9 ounces).

**A declaration against penal interest made after arrest is reliable** -- In a case involving an informant's declaration against penal interest, State v. Dyer, No. 11483-0-III (slip op. July 16, 1992), Division III (Sweeney, J.) held that because the informant provided the statement in order to avoid his incarceration on a parole violation, the veracity element of Aguilar-Spinelli (usually satisfied by evaluating the informant's "track record") was satisfied by the declaration against penal interest, even though little was known about the informant. Citing State v. Estorga, 60 Wn. App. 298, 304, 803 P.2d 813, review denied, 116 Wn.2d 1027 (1991), the defendant was motivated in this postarrest situation to provide accurate information about the house. The basis of knowledge prong was satisfied because of the informant's personal observations of the grow operation. The Court noted the potential risk of disfavor with the prosecutor is a motive to be truthful where the information is given in exchange for a promise of leniency.

*The following are recent unpublished opinions. Although the cases cannot be cited as authority, they are helpful in seeing how the Courts of Appeal analyze issues.*

**NOTE: Unpublished opinions cannot be cited as authority.**

In an unpublished opinion in State v. Stewart, No. 11439-2-III filed August 11, 1992, Division III of the Court of Appeals (Sweeney, J.) reversed a Whitman County conviction of possession of a controlled substance. Based on an informant's tip that the car contained ten pounds of cocaine and ten to twelve thousand in cash, troopers stopped a vehicle on the highway. The car was also speeding. The troopers arrested the driver for driving while license suspended. The car was towed, and the passenger went with the tow truck driver. Without advising him of his Miranda rights, a detective questioned the passenger about the driver and his connection to him. When he was advised that he was being detained to give a statement, the passenger reached into his pocket and produced two bags and a bundle containing cocaine. He was then given his Miranda warnings. He moved to suppress the cocaine, and the trial court denied the motion. The Court of Appeals reversed and dismissed, holding that the act of producing the cocaine was a testimonial act, and should have been suppressed. But, the cocaine he surrendered is admissible because he was not coerced into surrendering it, citing State v. Wethered, 110 Wn.2d 466, 755 P.2d 797 (1988). Without the evidence that the defendant produced the bag, there was insufficient evidence to support the conviction.

In an unpublished opinion, State v. Alvarez, No. 10637-3 III, Division III (Munson, J.) determined that testimony by the officer that the defendant was acting as a look-out rather than being an innocent bystander was not admissible under ER 701 (lay witness) or under ER 702 (expert witness). The officer's testimony that the defendant acted as a look-out was tantamount to an opinion he was an accomplice, an ultimate issue of fact for the jury. The officer offered no foundation for his opinion, only the result. Because the officer was testifying both as a fact witness and as an expert on narcotics operations, the probative value of his opinion as to ultimate facts may be outweighed by the potential for prejudice, citing United States v. Campiro, 890 F.2d 588, 593 (2d Cir. 1989), cert. denied, 112 L.Ed.2d 143 (1990). The error, however, was not reversible error because it did not, within a reasonable possibility, materially affect the outcome of the trial.

In an unpublished opinion, State v. Hall, No. 10913-5-III (slip op. July 30, 1992), Division III (Thompson, J.) affirmed a conviction for possession of methamphetamine. The defendant challenged the sufficiency of the search warrant affidavit, particularly whether the identified informant's unsolicited statement against penal interest, that he used marijuana while at the defendant's residence, provides sufficient indicia of his reliability to support issuance of the warrant. Citing State v. O'Connor, 39 Wn. App. 113, 120, 692 P.2d 208 (1984), review denied, 103 Wn.2d 1022 (1985), a Division One case, independent corroboration of the information is not required. The disclosure of the informant's identity and his unsolicited statement against penal interest raise a reasonable inference that he was truthful. The statement supported issuance of the search warrant.

Division III in State v. Pitts, No. 11707-3-III (Thompson, J.) (slip op. July 21, 1992), an unpublished case, held the defendant's arrest was supported by probable cause. The informant's statement that the defendant had delivered cocaine to him on two occasions during controlled buys, and the officer's corroborations, particularly that she left the residence and returned with the cocaine, on each occasion were sufficient to permit a person of reasonable caution to believe the defendant had committed a felony. The court distinguished State v. Steenerson, 38 Wn. App. 722, 726-27, 688 P.2d 544 (1984).

## Relevant Cases Set For Argument During The September Term Of The Washington Supreme Court

State v. Houf, No. 59156-3, will be argued on September 29, 1992. Houf raises the issue of whether an exceptional sentence above the range may be imposed based on the sentencing court's finding that the defendant committed perjury while testifying at trial. A similar issue was raised and answered by Division III in State v. Martinez, 66 Wn. App. 53 (June 9, 1992).

On October 15, 1992, State v. Hutsell, No. 58579-2, oral arguments will be presented on the issue of whether a defendant's drug addiction can support an exceptional sentence below the standard range when the sentencing court finds that the addiction was involuntary and impaired the defendant's

ability to appreciate the wrongfulness of his criminal conduct.

The issue, whether the trial court erred in suppressing evidence gained by police when the police, executing a search warrant at the defendant's home, answered a telephone and arranged to sell marijuana to the caller, will be argued on October 22, 1992 in State v. Perry, No. 59240-3.

### Advance Sheets (July and August, 1992)

Cases that were reported in Vol. 1, No. 5 of DefenseNET that are now published will not be reported on in this edition of the newsletter.

Credit for good behavior against time served must be uniformly applied -- In In re Schaupp, 66 Wn. App. 45 (June 9, 1992), the court held that RCW 9.94A.150(i) and RCW 9.92.151 provide for early release credit for good behavior in an amount up to one-third of the defendant's total sentence when the defendant was confined in a county jail as to a particular crime. A defendant confined in one county cannot be treated differently than a defendant confined in another county. See In re Mota, 114 Wn.2d 465, 788 P.2d 538 (1990).

A weapons search is limited -- The trial court erred in denying a suppression motion. Under Terry, a weapons search may be conducted only if the police officer reasonably believes the defendant to be armed and presently dangerous. State v. Collins, 66 Wn. App. 157 (June 22, 1992).

"Future dangerousness" applies only to sexual offenses --The

"future dangerousness" aggravating sentencing factor applies only to sexual offenses and applies to sexual offenses only if the defendant has a history or similar criminal acts and the defendant is not likely to be amenable to treatment. To apply the "future dangerousness" aggravating factor to a defendant convicted of a sexual offense, the sentencing court must have before it the opinion of a mental health professional that the defendant will not likely be amenable to treatment. State v. Strauss, 119 Wn.2d 401 (July 9, 1992).

"Abuse of trust" can be an aggravating factor in non-economic crimes -- The aggravating sentencing factor of an abuse of a position of trust can apply to defendants who commit non-economic crimes as well as to defendants who commit economic crimes because the list of aggravating factors in RCW 9.94A.390 is merely illustrative and not exclusive. An "abuse of trust" can occur through recklessness as well as through purposeful design. State v. Chadderton, 119 Wn.2d 390 (July 9, 1992)

*Katherine S. Knox*

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### Notes to Members

A change in staff is occurring at WDA. Pat Novotny has left the program as of August 31st and we hope to have her replacement on staff by October. Kathy Knox will be handling all consultations in the interim. Kathy is now based part-time at the Spokane County Public Defender office (509-456-4246) as well as in Yakima. She will move to Spokane full-time in January of 1993 when our third staff attorney begins in Yakima.

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October 2, 1992

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North Auditorium  
915 Second Avenue

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**APPENDIX F:**

**SELECT SECTION OF DRUG DEFENSE MANUAL**

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# DEFENSE

— OF A —

# DRUG CASE

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JANUARY 1993

The Washington Defender Association

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# ***Acknowledgement***

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This manual is the result of months of work by several people. Christie Hedman, executive director of WDA, was the shepherd who guided the flock of writers and editors and technical people through the numerous drafts and revisions to the final product. She was assisted by Meredith Hunnibell and Susan Hesselgrave.

The main writers and researchers of the manual were WDA staff attorneys Kathy Knox and Pat Novotny. Staff attorney Rick Cowan assisted in the final stages. Suzanne Elliott, director of the Washington Appellate Defender Association, provided substantial editing advice. Also on the manual committee were Dave Compton, executive director of Society of Counsel, and Bob Boruchowitz, director of the Seattle-King County Defender Association. Michael Spearman, felony supervisor at the Defender Association, provided technical assistance. Style editing was done by Sheila Molnar and the layout and production of the manual was done by David Oxley.

This is WDA's first practice guidebook of this scope. We hope that it will be useful for criminal law practitioners representing clients in drug cases. Obviously, it cannot address every wrinkle in every case, and attorneys should apply their own experience and insight. We welcome suggestions for possible later editions.

*Robert C. Boruchowitz*  
*President, WDA*

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# *How to Use This Manual*

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This manual was produced for use by criminal defense trial attorneys, especially appointed counsel. It is designed to be helpful both to attorneys with experience handling drug cases and to attorneys who are new to drug defense work.

## *Structure of the Manual*

The subjects that may arise during the course of a felony drug trial appear in the manual at the place where they would appear chronologically in the trial. The manual is divided into three parts, with each part fulfilling a different purpose.

**Part One** provides a chronological overview of the typical drug case in a brief narrative form, broken down into topics and subtopics. Look here if you have never done a drug trial ( or want to refresh your memory).

**Part Two** contains strategies and tactics. This section describes for the defense attorney **WHAT TO DO** (or to think of doing) **OR NOT TO DO** at every stage of the trial process. Included are practice tips, as well as strategy and ethical considerations. You will find in Part Three the full citations to the cases mentioned here.

**Part Three** contains legal analysis for each identified topic and subtopic. Included are the controlling rules, statutes, and cases to aid your evaluation of an issue. *Note: this section is not copyrighted and you may integrate text from here into your brief or memo. However, counsel is responsible for the accuracy of the law, and you should check the most recent cases. Cases included in the manual were current through 118 Wn.2d and 64 Wn.App.*

## *Finding A Subject*

Each individual subject has been assigned a chronological position and an unique topic (or subtopic) number. A subject will appear in each of the three parts at the same topic number, although in each part (as outlined above) it will be discussed differently.

*For example:*

**3.3** refers to **plea negotiation issues** in each of the three manual parts:

- Part One gives a brief overview of plea negotiations.
- Part Two provides nuts and bolts directions for handling plea negotiations.
- Part Three analyzes the law as it relates to plea negotiations.

## ***How to Use This Manual***

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### ***Conventions***

To guide you in the use of this manual, we have used the following conventions:

**3.5.1** Numbers designate individual topics and subtopics.

- Bullets indicate lists and, in Part Two, “Question” and “Actions to Take” items.

**Note:** Calls attention to important information.

***Italic*** Used for all cross-references.

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