



The Implementation and Impact of Indigent Defense Standards

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*Award No. 1999-IJ-CX-0049, National Institute of Justice
Office of Justice Programs
United States Department of Justice*

DECEMBER 2003

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Contents

Executive Summary	i
Introduction	1
Background	3
Methodology	7
Indigent Defense Standards: Ten Fundamental Areas	11
1. Independence	11
2. Resources	13
3. Vertical Representation	13
4. Attorney Qualifications	14
5. Attorney Training	15
6. Client Eligibility	16
7. Timeliness of Appointment and Contact	16
8. Confidential Meeting With Client	17
9. Attorney Performance	17
10. Attorney Caseload/Workload	18
Survey Analysis	20
Table 1. Funding Structure	20
Table 2. Organization Structure	20
Table 3. Jurisdiction Population	20
Table 4. Percentage of Respondents with Jurisdictional Standards	21
Table 5. Workload Standards By Type	22
Table 6. Impact of Standards	26
Table 7. Adequacy of Existing Standards	27
Table 8. Desired Type of Workload Standards	28
Table 9. "What Other Areas Should Be Covered By Standards?"	29
Four Methods of Implementing Standards, and the Effect Upon the Impact of the Standards	30
VANDERBURGH COUNTY, INDIANA: <i>State Funding Conditioned Upon Compliance with Standards</i>	30
RIVERSIDE COUNTY, CALIFORNIA: <i>Voluntary National Standards Applied Through An Outside Audit</i>	42
OREGON: <i>Standards Implemented Via Contracting for Services</i>	49
MASSACHUSETTS: <i>Statutory Standards</i>	59

Acknowledgements

66

Appendices

Survey instrument	Appendix 1
National Survey of Indigent Defense Systems 2000 Questions Regarding Standards	Appendix 2
Site Visit Protocol	Appendix 3
Prevalence of standards: <i>Demographic detail</i>	Appendix 4
“What other areas should be covered by standards?” <i>Demographic detail</i>	Appendix 5
Ten Principles of a Public Defense Delivery System American Bar Association	Appendix 6

RIVERSIDE COUNTY, CALIFORNIA: Voluntary National Standards Applied Through An Outside Audit

Each of California's 58 counties is responsible for organizing and funding indigent defense services at the trial-level,⁸⁰ including developing, instituting and enforcing standards if they choose.⁸¹ Each county may opt for a public defender office, contract counsel, an assigned counsel program, or some combination thereof. Riverside County has established a public defender office as the primary delivery system. The Chief Public Defender serves at the will of the Board of Supervisors. The County has not formally adopted indigent defense standards, but has undertaken a process of applying national indigent defense standards through an independent outside audit of management and systemic deficiencies in the County Public Defender Office.

Geographically, Riverside County is the fourth largest county in California. In terms of population, it has been the fastest growing county in the state, increasing by more than 240% between 1980 and 2000.⁸² The rapid population explosion coincided with a substantial increase in the number of cases entering the criminal justice system, and concomitant strains on the workload, funding and management capacities of the Public Defender Office.

In 1987, an extensive management audit of the Public Defender Office raised questions about the leadership capabilities of the management team, attorney-client relationships, staffing levels, computerized management systems, funding levels, parity levels with the District Attorney's office, and other issues. Despite the thoroughness of the report, little improvement was made over the next decade. In 1999, the Board of Supervisors retained the services of NLADA to conduct another comprehensive management evaluation. The 1999 audit report identified 19 areas and office functions where improvements were dictated by national standards and sound public agency management principles. A year and a half later, the County asked NLADA to conduct a follow-up audit, assessing the degree of progress in each of the 19 areas. Both evaluations were performed by a team of experienced chief public defenders and evaluators from around the nation (seven for the first audit, and four for the second).⁸³ Though the NLADA report raised many of the

⁸⁰ Direct appeals cases are handled by the state-funded State Public Defender. Additionally, the California Habeas Resource Center represents indigent defendants in state and federal habeas corpus proceedings in capital cases.

⁸¹ Although limited numbers of indigent defense guidelines have been promulgated by the California Public Defender Association and the State Bar, they are non-binding on counties.

⁸² U.S. Census Bureau data indicates that the population of Riverside County grew from 663,166 in 1980 to 1,170,413 in 1990 (increase of 76.48%). The population of Riverside County increased by another 32% in the subsequent decade (up to 1,635,888).

⁸³ Access to chief public defenders with evaluation experience throughout the United States is made possible through the American Council of Chief Defenders (ACCD), a leadership council of NLADA.

same issues as the 1987 audit, the use of national standards to justify recommendations was seen on the local level as critical to implementing needed change.

Resources/Parity

The original NLADA report identified a variety of functions and areas where lack of resource parity with the District Attorney's office was creating problems in areas such as attorney workload and court coverage, supervision, technology, and support staff including investigators and clerical. The audit found that salaries of the Public Defender and his senior managers were not at parity with those of the District Attorney and his senior managers due in large part to the fact that separate collective bargaining representatives negotiate for the District Attorney and the Public Defender. The audit recommended that the County and the Public Defender Office, in cooperation with the District Attorney and the courts, undertake a study to determine an appropriate ratio of staffing, budget and resources between the District Attorney and Public Defender.

Impact. The Riverside County Executive conducted a study of seven comparable California counties to determine criminal justice expenditures. That study found that the ratio of public defenders' salaries to those of prosecutors in Riverside County, at 43 percent, is the lowest among the seven counties, and substantially lower than the 61 percent average of the seven counties.

The County Board of Supervisors advised the public defender that it is committed to increasing the Office's funding and staffing levels. In fiscal year 2002, the Office was allotted 15 new staff positions, with a net increase of just over \$2.1 million (compared to a net increase in county funding for the District Attorney of just over \$1.6 million). Out of 40 lawyers requested in the wake of the first NLADA audit, the Office has received approximately 21.

The County has also funded improvements in the Office's physical facilities, with additional space, new furniture, and a training facility. The County conducted another comparison study of public defender investigator salaries, which led to increases in investigator salaries. Another study is planned in early 2003, which is expected to lead to a requirement that public defender investigators have a law enforcement background, which will require pay parity with prosecution investigators.

Training

The 1987 management audit report found that in-house training of the Public Defender Office was "grossly inadequate," and recommended that the Public Defender direct the training supervisor to "prepare a training program for public defenders and to request state and/or federal funds if available." By the time of the NLADA 1999 audit, this

recommendation was still not implemented.⁸⁴ The Office did hold brief, informal monthly sessions on various topics, but offered no comprehensive litigation-skills training, no new-lawyer orientation, and no staff-transition training (e.g., from misdemeanor to felony to supervisor). Even the Office's willingness to reimburse attorney's for the registration fees of attending outside training events offered by state or national organizations was undermined by the preclusion of reimbursement for travel or accommodations.

Impact: The Office has appointed a full-time training coordinator, who has no other responsibilities. The training coordinator has encouraged staff participation in designing training curricula via both staff meetings and one-on-one interviews. Initial training efforts have been segmented by job function, and in-house training has begun in the area of technology applications. The Office has established a computer lab, where training is provided in subjects like computerized research. The Office has launched an intranet site, which gives every attorney in the office access to Lexis/Nexis, a motion bank, video and audio training programs (through the California Public Defender Association web site), the Office's policies and procedures, and other educational and administrative tools.

The Office has acquired a former courtroom, still equipped with bench, bar and jury box, which is used as a mock courtroom for training, and trial-skills training curricula are being developed to leverage its use. In the same building, the Office has set aside space for a dedicated computer-training center.

In terms of outside training, the Office seeks scholarships for some attorneys to attend the California Public Defenders Association Trial Skills Institute. Management training is provided at the County's Management Supervisory Academy, and by private contractors and NLADA, and executive teams are trained at the Anderson School at the University of California Riverside campus. If an Office attorney is directed to attend a training program requiring an overnight stay, the Office now pays for half of the hotel cost.

Attorney Performance

The NLADA audit found that the Office lacked a meaningful performance evaluation system for attorneys and other employees, and recommended that performance standards based upon NLADA's *Performance Guidelines for Criminal Defense Representation* be developed along with behaviorally based measures necessary to distinguish between levels of performance and enhance reliability between raters. To institute such a system, it was recommended that more supervisors, with reduced caseloads, were necessary to be available to review cases, assist in developing approaches to each case, observe in court,

⁸⁴ Except for several years beginning in 1989 when the office had a training academy funded by the Honda Corporation, the office has had neither a supervisor responsible exclusively for training, nor a fully developed training program.

and provide feedback and suggestions to the supervisee. The audit recommended a ratio of full-time supervisors to staff lawyers, pursuant to national standards, of no more than one supervisor to ten lawyers.⁸⁵

Impact: The Office has established nine Supervising Attorney positions (without caseloads, except as a vehicle to train or mentor attorneys), and has fully achieved the recommended staffing ratio recommended in the Evaluation Report. A dedicated supervisor performance evaluation system has been established. The Office is working with an individual with an academic professional to assist in developing approaches to evaluating attorney trial performance. The previous system of perfunctory evaluation or self-evaluation, with promotions based on seniority, was replaced with more formalized and frequent processes. Supervisors now meet with attorney-supervisees at least quarterly, and conduct an annual performance evaluation. On a weekly basis, the misdemeanor chief meets with his attorneys both individually and as a group.

In response to the NLADA audit's recommendations for procedures to reduce staff attorneys' excessive and unregulated rates of continuances and declarations of conflict of interest the past, and extremely low trial rate⁸⁶ (all driven by workload pressures), the Public Defender instituted various procedures. Staff attorneys were directed to follow the ethical requirement that it is the client's decision whether to go to trial or plead guilty; attorneys are not permitted to pressure clients to plead guilty, but only to give them advice and options. Experienced supervisory attorneys have responsibility and authority for case management. Declarations of conflict of interest, and some continuances on older cases, must be approved by a supervisor. The number of trials, though still lower than national averages, has increased substantially, including an increase in favorable case outcomes, which the Public Defender formally recognizes through a new "Golden Spike" award, publicized in the office newsletter and presented at an annual awards banquet.

Client satisfaction and acceptance of case outcomes has increased, though the Public Defender indicates there is still much room for improvement. He reports receiving fewer complaint letters from clients, and even a few thank-you letters. To improve community relations and increase community acceptance of the integrity of criminal justice dispositions involving the Office, the Office has embarked on a community education campaign, including "adopting" a high school, making staff members available to read to preschoolers and address community groups (such as Kiwanis), and launching a public web site.⁸⁷

Timeliness of Appointment and Contact

⁸⁵ NSC, Guideline 4.1.

⁸⁶ From January 1, 1997 through May 31, 2001, the Office's attorneys averaged one trial per attorney per year.

⁸⁷ www.publicdef.co.riverside.ca.us.

The 1987 audit report found that the Public Defender does not represent clients at misdemeanor arraignments, and should enter such cases and counsel clients early, to produce better decisions by clients and save time in later court proceedings. The 1999 NLADA audit found that the Public Defender still was not providing representation to some 12,000 defendants per year, at felony or misdemeanor arraignments in Municipal Court, when important legal decisions are made, including the setting of bond and uncounselled guilty pleas.⁸⁸ The audit recommended that budget and staffing limitations cannot negate the constitutional entitlement to counsel at critical stages of all cases entailing a risk of incarceration, including misdemeanors.⁸⁹

Impact: A modest increase in staffing and the shifting of certain attorney assignments and responsibilities has allowed the Office to initiate representation at virtually all felony arraignments and misdemeanor custody arraignments in Riverside, and to a lesser extent in Public Defender branch offices. Staffing is still not adequate to allow universal representation of non-custody defendants at misdemeanor arraignments. The nine additional attorney positions approved in the Office's 2000-2001 budget were roughly one-quarter of the number requested based on the audit recommendations. A recent ruling by the state Supreme Court raises the risk that any continuing shortfall in providing representation at arraignment may expose the Office and the County to legal liability.⁹⁰

Attorneys for indigent in-custody defendants are now appointed at arraignment, which is held within 48 hours of arrest.⁹¹ The Office attempts to begin representation of indigent defendants in high profile cases as soon as it learns of the case (e.g. through media reports). On the first day after appointment, the Office reviews the case for conflicts and assigns it to an attorney. Client interviews, previously conducted by an investigator or other staff members in violation of national standards,⁹² are now conducted by attorneys. Attorneys are required to interview in-custody clients at the jail within 48 hours of appointment (assignment within the office usually occurs 2-3 days after arrest), and are required to interview in-custody clients at the jail prior to every court appearance. The Office periodically checks jail logs to verify that clients are being interviewed as required.

Vertical Representation

⁸⁸ From October 1, 1998 to September 30, 1999, that there were 14,365 guilty pleas at misdemeanor arraignments, of which 12,350 were made without benefit of counsel.

⁸⁹ *Argersinger v. Hamlin*, *supra* n.12.

⁹⁰ *Barner v. Leeds*, 24 Cal. 4th 676 (2000) (public defenders are not entitled to immunity as government employees under California Government Code §820.2 when sued by clients for malpractice, and owe the same duty of care to their clients as do private attorneys). *See also*, *Wiley v. County of San Diego* (1998) 19 Cal. 4th 532.

⁹¹ Up to three-quarters of felony defendants are in custody at arraignment, while only 2-3% of misdemeanor defendants are in custody at arraignment (the County is under a court-ordered cap on its jail population).

⁹² NLADA *Performance Guidelines*, Guideline 2.2.

Instead of continuous or vertical representation, the practice of having separate lawyers for felony preliminary hearings and felony trials was pervasive throughout the Riverside County system at the time of the 1999 NLADA audit.⁹³ In felony cases, no public defender at all was assigned to represent the client at initial arraignment in municipal court, except for homicide or other special case. Five attorneys handled all preliminary hearings, and the supervisor of the felony trial division personally handled all felony arraignments in the Superior Court. She would assign the surviving cases to the 17 lawyers who do felony trials. This meant that, at a minimum, the client received representation from three different lawyers, and if a lawyer were to be added at the first arraignment, there would be four lawyers. The 1999 NLADA audit recommended vertical representation in felony cases.

Impact: The Office still lacks staffing to allow vertical representation in all cases. A planned change in the processing of cases which originate at another court in the southwestern part of the County – i.e., keeping them in the originating court instead of transferring them to the Riverside City courts – will allow these cases to be handled vertically.

Workload

The felony division in Riverside consists of 17 trial lawyers and one supervisor. In 1998-99, the Office was assigned to 9,851 felony cases, more than double the per-attorney caseload limits allowed under national standards.⁹⁴ Workload concerns were exacerbated by the lack of a proper supervisory structure for the felony trial division. In Riverside, the felony supervisor had a substantial arraignment caseload as well as supervisory responsibility for 17 lawyers.

Impact: Caseloads still exceed national standards, but are now lower than the statewide norm.

New Office policies require attorneys to dispose of most cases within 120 days. (Previously, because of high workload, it was not uncommon for attorneys to neglect cases for longer periods.) Under the new policy, if a case is more than 120 days old, approval from a supervisor is required before the case can be continued.

Another new Office policy encourages attorneys who believe their workloads do not permit them to provide quality representation to discuss the issue with their supervisors and, if they are not satisfied with the supervisor's response, with the Public Defender himself. The Public Defender has declined to invoke national standards requiring him to

⁹³ The only cases handled "vertically" were murder, child molestation, rape, and "three strikes" cases subject to life imprisonment.

⁹⁴ The average annual caseload for felony trial lawyers in Riverside is 277. Adding violations of felony probation as approximately half a case adds another 58 cases to each lawyer for a total of 335, compared to national standards for felonies of 150.

declare the Office unavailable to take excess cases,⁹⁵ preferring to rely on gradual improvements in staffing and workload.

Conclusions: Though independent standards-based audits can be an important part of improving an indigent defense system, they lack the enforcement mechanisms that formal state or local standards have when codified or adopted by Court Rule or case law. Despite sympathy for the aims of the national standards, local funding restricts the ability of jurisdictions to come into compliance quickly. Riverside County has pursued a gradual plan for meeting minimum national thresholds for quality and cost-effectiveness.

⁹⁵ *NSC*, Guideline 5.1, 5.3; *ABA Defense Services*, Standards 5-5.3; *ABA Defense Function*, Standard 4-1.3(e); *NAC*, Standard 13.12.