

# ***Evaluation of the Public Defender Office***

## **Clark County, Nevada**

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## EXECUTIVE SUMMARY

The United States Supreme Court guaranteed counsel to those of insufficient means under the Sixth and Fourteenth amendments of the U.S. Constitution, while reaffirming the states' responsibility to provide representation in *Gideon v. Wainwright*, 372 U.S. 335 (1963). Despite this, Nevada remains among the shrinking minority of states that still rely primarily on county funding to ensure its citizens' constitutional right to assistance of counsel. The extent to which Nevada relies on county funding for indigent defense services and the inadequacies of services it produces was extensively detailed in the joint U.S. Department of Justice and American Bar Association report *Indigent Defense Services in the State of Nevada: Findings and Recommendations* (December 2000). It was the professional opinion of the DOJ/ABA team that the issues raised throughout the state justified further study through county-by-county public defender audits.

In March 2002, Clark County issued a Request for Proposal (RFP) to evaluate current practices and recommend alternatives for improving the efficient use of attorney and staff in the Clark County Public Defender Office (CCPDO). Additionally, the RFP solicited proposals to study and recommend the best management structure to allow CCPDO to monitor its performance. After a competitive bid process, the National Legal Aid & Defender Association (NLADA) was awarded the contract. NLADA is a national, non-profit membership association dedicated to quality legal representation for poor people and has played a leadership role in the development of national standards for indigent defense functions and systems for decades.

During the week of July 8<sup>th</sup>, 2002, an NLADA assessment team conducted one-on-one interviews with CCPDO management, attorney supervisors, staff attorneys, investigation management and staff, legal support staff, and operations personnel. NLADA also reviewed numerous public defender case files, visited public defender clients in the County Jail and conducted in-court observations. Finally, NLADA reviewed CCPDO assignment and disposition statistics, budget requests, job descriptions, annual reports, and county policy/procedure manuals.

Chapter I (pages 1-7) of this report is an overview of indigent defense funding from a national perspective and serves as an introduction to the current study. Chapter 2 (pages 8-12) explains the county's criminal justice system in which the county's indigent defense system operates and details the organizational structure and current practices of the CCPDO.

Although the report identifies areas within the current management structure that need improvement, the NLADA assessment team determined that the majority of the problems preventing the office from providing adequate representation in an effective and cost-efficient manner were created in years past. The discussion of two of these issues, related to organizational culture and workload, are set apart in Chapter III and IV (pages 13-37) to underscore the seriousness of the issues and to emphasize the immediate need to address these operational deficiencies.

Our finding in Chapter III states that the CCPDO has a longstanding institutional culture that places a priority on attorney autonomy over the collective health of the organization. This has fostered organizational isolationism that limits accountability, support and professional development of staff, and inhibits interactions between attorneys

in the office, between attorneys and support staff, between the organization and its client base, and between the organization and the national indigent defense community -- all of which has hindered the organization's ability to implement effective change.

Chapter IV finds that CCPDO attorney caseloads are in serious breach of national workload standards. The office has been historically understaffed and there is a serious crisis in adult felony and misdemeanor representation. Juvenile representation is beyond the crisis point and requires immediate attention to avert constitutional challenges of ineffective assistance of counsel. Since 1983, the juvenile facility has been staffed with only two attorneys. The current Chief Public Defender added a third in 2002. From 1993 until 2001, the CCPDO juvenile new assignments increased over 397% (from 576 to 2,867) without a single new attorney being added to help with the workload. At the close of 2001, CCPDO's juvenile attorneys were expected to handle more than *seven times* the number of cases recommended by standards promulgated by the American Bar Association (ABA) and NLADA.

The report concludes that Clark County has many assets that can support positive change, including, among other things, dedicated, talented CCPDO staff and leadership, strong County leadership, an engaged community that desires good performance and accountability, and competitive salaries to recruit and retain qualified staff. However, no management team or structure will be able to institute the performance-based accountability system desired by the County without a serious recommitment of resources to CCPDO and some significant changes. Chapter V (pages 38-74) details NLADA recommendations needed to bring Clark County into compliance with national indigent defense standards. They include, among others, the following:

- \* Clark County must increase the number and type of CCPDO staff positions;
- \* CCPDO should redefine its management structure;
- \* CCPDO must develop and implement a performance plan that includes clear performance guidelines and expectations, training and other appropriate means for promoting staff development and consistent processes for assessing development needs as well as performance;
- \* CCPDO must develop training programs and opportunities for all staff and should consider creating a specialized training unit;
- \* CCPDO should create a separate appellate unit incorporating NLADA's *Standards and Evaluation Design for Appellate Defender Offices*;
- \* CCPDO should consider alternative methods of attorney assignment and the composition of teams;
- \* The Chief Public Defender should immediately design and implement an agency-wide communications plan;
- \* CCPDO must begin active community outreach to promote positive relations in the community-at-large and its client base; and,
- \* Clark County and the CCPDO should use national standards and guidelines when considering the most appropriate process for determining financial eligibility.

Though Clark County policymakers must balance other important demands on the County's resources, the Constitution does not allow for justice to be rationed to the poor due to limited funding. The issues raised in this report serve to underscore the failure on the part of the State of Nevada to adhere to the *Gideon* decision. Though *Gideon* vests the responsibility for funding indigent defense services with the state, the County must continue to bear the brunt of providing adequate defender services until such time as the State accepts its constitutional responsibilities.

The report's conclusion (Chapter VI, page 75) recommends that Clark County work in partnership with CCPDO management to address the problems facing the organization that were created over the past decades but which continue to jeopardize the constitutional rights of its people.

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## Chapter I Introduction

### *The Constitutional Right to Counsel in Criminal Cases*

In the landmark case *Alabama v. Powell*, The United States Supreme Court set out the basic fairness doctrine underlying the constitutional right to assistance of counsel:

The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. [287 U.S. 45, 68-69 (1932)].

Unfortunately, the *Powell* decision applied only to death penalty cases. It would take another 31 years before the Supreme Court ruled that states have a constitutional obligation under the Sixth and Fourteenth Amendments to the U.S. Constitution to provide counsel to non-capital indigent defendants, in *Gideon v. Wainwright*, 372 U.S. 335 (1963). In subsequent years, the right to counsel for defendants facing criminal charges has been consistently extended to any case that may result in a potential loss of liberty.<sup>1</sup>

### *Indigent Defense Services in Nevada*

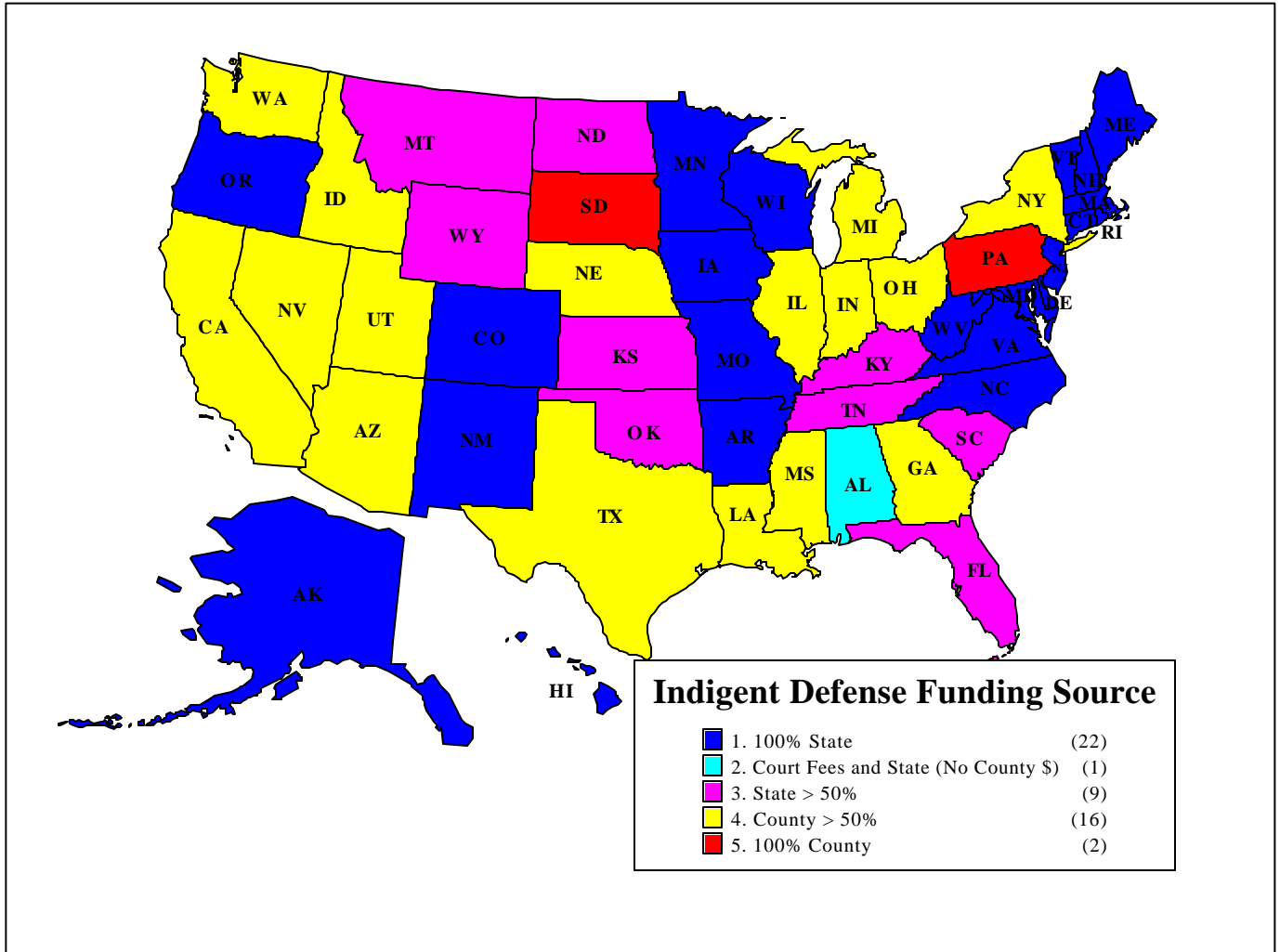
Since the Supreme Court in *Gideon v. Wainwright* ordered the states to provide indigent defense services, 22 states have undertaken to administer and fund indigent defense services at the state level, while another nine states now fund at least half of all indigent defense costs. One other state funds indigent defense services through a combination of court fees and state money, bringing the total number of states that take at least an equal share in funding the right to counsel to 32. Thus, Nevada is among the

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<sup>1</sup> *Gideon* established the right to counsel for indigent defendants facing felony trials. Subsequent cases further extend that right to: direct appeals - *Douglas v. California*, 372 U.S. 353 (1963); custodial interrogation - *Miranda v. Arizona*, 384 U.S. 436 (1966); juvenile proceedings resulting in confinement - *In Re Gault*, 387 U.S. 1 (1967); critical stages of preliminary hearings - *Coleman v. Alabama*, 399 U.S. 1 (1970); misdemeanors involving possible imprisonment - *Argersinger v. Hamlin*, 407 U.S. 25 (1972); and most recently, misdemeanors involving a suspended sentence - *Shelton v. Alabama*, 535 U.S. 654 (2002).

shrinking minority of states that still rely primarily on county funding to ensure its citizens' constitutional right to assistance of counsel (See Table 1-1, below).

Table 1.1  
**50-State Comparison of Indigent Defense Funding Source**



County funding, which is primarily derived from property taxes, tends to constrict in inverse proportion to the demand for indigent defense services (i.e., a weakened local economy causes increases in unemployment, worker flight, demands for other county services, and crime), producing instability in funding and wide fluctuations in the quality of indigent defense.<sup>2</sup>

<sup>2</sup> The extent to which Nevada relies on county funding for indigent defense services and the inadequacies of services it produces was extensively detailed in the joint U.S. Department of Justice and American Bar Association report *Indigent Defense Services in the State of Nevada: Findings and Recommendations* (December 2000) written and produced by The Spangenberg Group (report available at: [www.spangenberggroup.com/pub.html](http://www.spangenberggroup.com/pub.html)). That report indicates that the State of Nevada contributes only 2.3% of all indigent defense funding statewide. Moreover, the report states: "Nevada ranks 40<sup>th</sup> of the 43 sample states for indigent-defense-cost per capita. In fact, no other state in the sample that provides any



The inadequacy of indigent defense funding in Nevada became a primary focus of the Nevada Supreme Court Task Force for the Study of Racial and Economic Bias in the Justice System (Task Force).<sup>3</sup> After several years of study, the Task Force issued a report<sup>4</sup> in 1997 that found that there was inadequate financial support of public defender offices throughout the state to ensure: proper attorney, investigation and support staff; adequate training of indigent defense attorneys; and early contact with indigent defendants,<sup>5</sup> among other findings.

In the wake of the report, the Task Force formed an implementation committee to study and advocate the best way to institutionalize its recommendations, which included: increased funding for public defender offices to ensure effective assistance of counsel, and establishment of a formal training program for new attorneys. This implementation committee merged with another Nevada Supreme Court task force studying gender issues in the justice system to form the Implementation Committee for the Elimination of Racial, Economic and Gender Bias in the Justice System (Implementation Committee). The Implementation Committee received technical assistance under a joint grant from the Department of Justice's Bureau of Justice Assistance and the American Bar Association's Bar Information Program to make recommendations for sustainable improvement to indigent defense services.<sup>6</sup>

The resulting DOJ/ABA findings and recommendations raise serious issues with indigent defense services across the state of Nevada, but in particular with the quality of services provided to those of insufficient means in Clark County (Las Vegas). Chief among those concerns were: the low trial rate; the lack of qualification standards for new attorneys handling serious indigent defense cases; poor appellate defender services; and inadequate defender services provided in District Courts using video-arraignments.

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money for indigent defense services has a lower state cost-per-capita figure (\$0.30).” The report noted that of the other 18 states that provide less than half of all indigent defense funding, nine (or 50%) fund statewide appellate services for indigent defendants. Nevada has no such services (see page 26).

Mr. David J. Carroll, Director of Research & Evaluations for the National Legal Aid & Defender Association and co-author of the present report was the Project Director for the DOJ/ABA study while working as a Senior Research Associate at The Spangenberg Group.

<sup>3</sup> The Task Force was created in the winter of 1992-93 in response to a community movement alleging disparate treatment of people of color and/or of insufficient means. Though the Task Force mandate included study of a broad range of issues (including law enforcement and sentencing), much of the focus centered on inadequate access to justice for adults and juveniles facing criminal charges.

<sup>4</sup> *Recommendations of the Supreme Court Task Force for the Study of Racial and Economic Bias in the Justice System* (1997).

<sup>5</sup> “Early contact” was defined as within 24-48 hours.

<sup>6</sup> The U.S. Department of Justice, Bureau of Justice Assistance (BJA) awarded the American Bar Association, Bar Information Project (BIP) a two-year grant to expand its technical assistance capacities to specifically help states with no statewide oversight of indigent defense services. BIP, a project of the ABA's Standing Committee on Legal Aid and Indigent Defendants (SCLAID), provides limited technical assistance at no cost to indigent defense systems across the country. (For more information, see: [www.abanet.org/legalservices/sclaid/defender.html](http://www.abanet.org/legalservices/sclaid/defender.html).)

Because of limited resources, the DOJ/ABA grant did not allow for the research team to spend more than a few days on-site in a sample number of Nevada counties. Consequently, no public defender office underwent a formal management or performance audit. It was the professional opinion of the DOJ/ABA team that the issues raised throughout the state justified further study through such county-by-county public defender audits.<sup>7</sup>

### *The Current Study*

In March 2002, Clark County issued a Request for Proposal (RFP) to evaluate current practices and recommend alternatives for improving the efficient use of attorney and staff in the Clark County Public Defender Office (CCPDO). Additionally, the RFP elicited proposals to study and recommend the best management structure to allow CCPDO to monitor its performance. The RFP also sought experts to determine appropriate indigency standards based on a survey of comparable public defender offices.

After a competitive bid process, the National Legal Aid & Defender Association<sup>8</sup> was awarded the contract. For decades, NLADA has played a leadership role in the development of national standards for indigent defense functions and systems.<sup>9</sup> National standards serve a number of important purposes. While NLADA's standards are non-binding on state or local programs, they do serve as a model for enacting jurisdiction-specific standards, many of which are binding and enforceable by virtue of statutory codification, promulgation of a state supreme court rule, adoption/citation in a state supreme court opinion, as a condition to receive state financial support, or adoption by a state indigent defense oversight commission or public defense agency. Such standards

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<sup>7</sup> *Indigent Defense Services in the State of Nevada*, pp. 83-84.

<sup>8</sup> The National Legal Aid and Defender Association (NLADA) is a national, non-profit membership association dedicated to quality legal representation for poor people. Founded in 1911 as the National Alliance of Legal Aid Societies, NLADA has grown to include 2,300 public defender, assigned counsel and civil legal services organizations -- representing more than 25,000 legal service and indigent defense professionals across the country. In addition, more than 1,000 private attorneys, public defenders, civil legal services attorneys, social workers, clients and interested persons hold NLADA individual memberships.

<sup>9</sup> Guidelines for Legal Defense Systems in the United States (National Study Commission on Defense Services [staffed by NLADA; commissioned by the U.S. Department of Justice], 1976); The Ten Principles of a Public Defense Delivery System (written by NLADA officials, adopted by ABA in February 2002, published in U.S. Department of Justice *Compendium of Standards for Indigent Defense Systems, infra n.12*) (<http://www.abanet.org/legalservices/downloads/sclaid/10principles.pdf>); Standards for the Appointment and Performance of Counsel in Death Penalty Cases (NLADA, 1988; ABA, 1989), Defender Training and Development Standards (NLADA, 1997); Performance Guidelines for Criminal Defense Representation (NLADA, 1995); Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services (NLADA, 1984; ABA, 1985); Standards for the Administration of Assigned Counsel Systems (NLADA, 1989); Standards and Evaluation Design for Appellate Defender Offices (NLADA, 1980); Evaluation Design for Public Defender Offices (NLADA, 1977); and Indigent Defense Caseloads and Common Sense: An Update (NLADA, 1994). Other related national standards: American Bar Association, Standards for Criminal Justice, Providing Defense Services (3rd ed., 1992); American Bar Association, Standards for Criminal Justice: Defense Function (3rd ed., 1993); Report on Courts, Chapter 13: The Defense (National Advisory Commission on Criminal Justice Standards and Goals, 1973).

were gathered into the first-ever National Compendium of Standards for Indigent Defense Systems by the U.S. Department of Justice, with NLADA assistance, in 2000.<sup>10</sup> Standards allow objective measurement of an individual organization's mechanisms for effectuating key requirements of an indigent defense system, such as independence, accountability, training, supervision, effective management, fiscal controls, and competent representation.

In standards-based site assessments, NLADA teams conduct an initial site visit to gather quantitative statistics, meet with senior management about assessment goals and objectives, and distribute staff surveys.<sup>11</sup> David J. Carroll<sup>12</sup> conducted such an initial site visit on May 22-23, 2002. Based on the results of the initial visit, NLADA put together a site assessment team consisting of NLADA staff representatives and members of the American Council of Chief Defenders (ACCD).<sup>13</sup> Through the ACCD, NLADA has a standing commitment from numerous experienced national public defender leaders to assist in site assessments. ACCD members for the CCPDO study were chosen from jurisdictions with similar county-based indigent defense structures, and/or possessing special expertise in areas of concerns raised by senior management.<sup>14</sup>

In addition to Mr. Carroll, the CCPDO site team consisted of NLADA staff members Jo-Ann Wallace<sup>15</sup> and Catherine Clarke.<sup>16</sup> ACCD representatives Robert Boruchowitz,<sup>17</sup>

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<sup>10</sup> [www.ojp.usdoj.gov/indigentdefense/compendium/](http://www.ojp.usdoj.gov/indigentdefense/compendium/)

<sup>11</sup> NLADA utilizes a modified version of the Pieczenik Evaluation Design for Public Defender Offices, which has been used since 1976 by NLADA and other organizations, such as the National Defender Institute and the Criminal Courts Technical Assistance Project of the American University Justice Programs Office. The process includes a 75-question survey disseminated to all staff. The results are reported throughout this report. Survey form and overview is included as Appendix A.

<sup>12</sup> David Carroll joined NLADA as Director of Research & Evaluations for the Defender Services Department in January 2002. Since joining NLADA, Mr. Carroll was Project Director on a standards-based assessment of indigent defense services in Venango County (Franklin), PA and co-authored a report for the U.S. Department of Justice, National Institute of Justice on the impact of standards on indigent defense services nationwide. For the past five and a half years, Mr. Carroll worked as a Senior Research Associate for the Spangenberg Group (TSG) a national and international research and consulting firm specializing in criminal justice reform. Mr. Carroll directed numerous projects on behalf of TSG, including: a jail-planning study for Pierce County (Tacoma) Washington; a study of indigent defense cost recovery efforts in Jefferson and Fayette Counties, Kentucky (Louisville and Lexington); and a statewide assessment of West Virginia's Public Defender Services. Mr. Carroll also was chosen to provide on-site technical assistance to statewide Task Forces in Illinois, Nevada, Alabama, and Vermont under the auspices of the American Bar Association and the U.S. Department of Justice, Bureau of Justice Assistance.

<sup>13</sup> ACCD is a section of NLADA composed of chief executives of indigent defense programs across the country. ACCD is dedicated to supporting leaders of all types of indigent defense systems through the open exchange of information and ideas.

<sup>14</sup> Senior management felt that office supervision, appellate representation, juvenile representation and training should be a particular focus of the study. Therefore, NLADA selected experts in those fields to participate in the site assessment.

<sup>15</sup> Jo-Ann Wallace is Vice President and Chief Counsel for Defender Operations of NLADA. From June 1994–February 2000 she was the Director of the Public Defender Service for the District of Columbia. Before becoming the Director, she was the Deputy Chief of the Appellate Division. She previously served the agency as the Coordinator of the Juvenile Services Program. Ms. Wallace has extensive experience as a

Susan Hendricks,<sup>18</sup> David Meyer<sup>19</sup> and Leonard Noisette<sup>20</sup> augmented the NLADA site assessment team.

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lecturer on criminal justice topics. She has served as a visiting faculty member for Harvard Law School's Trial Advocacy Workshop and is a regular faculty member of the District of Columbia Criminal Practice Institute, the District of Columbia Delinquency and Neglect Practice Institute, NLADA's Appellate Defender Training and Leadership and Management Training.

<sup>16</sup> Catherine Clarke is the Director of the National Defender Leadership Institute (NDLI). NDLI is an initiative of the NLADA that offers a series of innovative training programs for public defenders with the goal of improving managerial and leadership skills. NDLI supports new leadership initiatives by defenders who seek to build stronger community support, establish a national network of defender leaders, improve communications strategies, and strengthen the role of defenders throughout state and local criminal justice systems. From 1998 to 2002, Ms. Clarke was the Project Manager for the Harvard John F. Kennedy School of Government's Executive Session on Public Defense (ESPD) where she coordinated a national group of academics and practitioners who met over a three-year term to identify ways to rethink the right to counsel and improve public understanding of defenders' roles. Prior to her ESPD tenure, Ms. Clarke was a criminal professor at Loyola University Law School and Georgetown Law School. Ms. Clarke has authored countless articles on criminal justice issues.

<sup>17</sup> Since 1978, Mr. Boruchowitz has been the Executive Director of The Defender Association, a private, non-profit public defender agency providing representation to indigent defendants in King County (Seattle), WA. In that capacity, Mr. Boruchowitz administers an office of approximately 130 staff, including 90 lawyers and a budget of approximately \$9.8 million. He co-counseled the first King County "sexual predator" commitment jury trial (1991), and appeal in state supreme court (1991-1993), and remand to superior court (1993-1994). He also argued the case before the U.S. Supreme Court (*Selig v. Young*, 531 U.S. 250 (2001)). As President of Washington Defender Association, Mr. Boruchowitz oversees a statewide membership organization representing more than 700 lawyers and staff representing indigent people accused of crimes.

<sup>18</sup> Susan Hendricks is the Deputy Attorney-in-Charge, Criminal Defense Division of the New York Legal Aid Society (New York City). For three years, Ms. Hendricks has supervised the day-to-day operations of New York City's largest public defender office, with an annual budget in excess of \$60 million and a staff of 715 attorneys and support staff. She has particular responsibility for attorney training, initiatives to improve the quality of practice, community relations and relations with local and state government agencies. Prior to her current appointment, Ms. Hendricks served as the Director of the Legal Aid Society's Special Litigation Unit. In that capacity, she supervised an office that conducts civil rights and class action litigation on behalf of indigent criminal defendants in federal and state courts, provides litigation support and training to criminal defense attorneys on test case issues and handles criminal and civil appeals. Ms. Hendricks also has extensive experience as a Senior Trial Attorney for LAS.

<sup>19</sup> David Meyer is a nationally recognized expert in organizational management, who has served on the Malcolm Baldrige National Quality Award Board of Examiners. Mr. Meyer currently is the Chief Deputy Director for the Los Angeles County Department of Mental Health, after a more than twenty-year career with the Los Angeles County Public Defender Office (LACPDO). From 1971 to 1993, Mr. Meyer served in several capacities, including acting head of the organization, Chief Deputy, Head of the Mental Health Division and Head of the Juvenile Unit. Mr. Meyer frequently lectures on organizational management and has participated in several NLADA site assessments (most recently in Riverside County and San Bernardino County, CA) in addition to private consulting services provided to defender organizations nationwide.

<sup>20</sup> Leonard Noisette is the Executive Director of The Neighborhood Defender Services of Harlem (NDS) in New York City. NDS is a community-based law office providing legal representation to residents of upper Manhattan. Since 1990, NDS has been a model for innovative public defender services, including: law office locations in the community; early intervention in cases; team representation; and extended services

During the week of July 8<sup>th</sup>, the site team conducted one-on-one interviews with CCPDO management, Team Chiefs, staff attorneys, investigation management and staff, legal support staff, and operations personnel. Roundtable discussions on best practices were also held with the Chief Public Defender and Assistant Public Defender. NLADA also reviewed numerous public defender case files, visited public defender clients under the supervision of the County Jail and conducted in-court observations of arraignment calendars, preliminary hearings, probation revocation proceedings and juvenile delinquency hearings. Finally, NLADA reviewed CCPDO assignment and disposition statistics, budget requests, job descriptions, annual reports, and county policy/procedure manuals.

NLADA wishes to thank the representatives of the CCPDO we met with for the forthrightness expressed during interviews. Mr. Dale Ficklin, CCPDO Administration Services Manager, is especially recognized for responding to numerous requests for budget and workload statistical data. As with any statistical inquiry, initial data requests inevitably led to many follow-up data queries. Mr. Ficklin always responded to our requests in a professional, thorough and timely manner.

Finally, NLADA extends special thanks to Mr. Marcus Cooper, Chief Public Defender and Mr. Ralph Baker, Assistant Public Defender. Performance and management audits always bring with them a certain level of trepidation on the part of those charged with overseeing an organization. Given the somewhat contentious history of the office, and the charges leveled at the office's performance in the past, the potential for this audit to raise the level of critical examination of the leadership abilities of Mr. Cooper and Mr. Baker was quite high. Despite this, Mr. Cooper and Mr. Baker encouraged NLADA to shine a light on any and all CCPDO policies, management philosophies and office structures, both past and present, with a single-minded determination to improve the quality and cost-effectiveness of defender services. This attitude allowed the NLADA team unrestricted access to staff, policy manuals, clients, and case files. A management philosophy that is based upon such open, honest and critical examination is an important first step toward the desired improvement.

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to help clients address long-standing needs (including civil representation and social service placement). NDS also offers educational programs to young people and community groups to teach them life-skills that help to minimize the likelihood of violence or arrest. NDS and the community defender model have been featured in various best-practices publications by the U.S. Department of Justice, and are being replicated in jurisdictions throughout the country.

## Chapter II

### Structure and Practices of the Clark County Public Defender Office

Clark County is the fastest growing county in the United States,<sup>21</sup> covering 109,826 square miles<sup>22</sup> at the Southern tip of Nevada. As statutorily required of any Nevada County over 100,000 in population,<sup>23</sup> Clark County established a public defender office in July 1966 to provide primary services to individuals facing criminal charges and unable to afford counsel.<sup>24</sup>

The Chief Public Defender in Clark County is appointed by, and serves at the pleasure of, the county commissioners. The current Public Defender, Mr. Marcus Cooper, was appointed in October 2001 from a pool of internal and external CCPDO candidates. The County initiated the extensive hiring process in the wake of the former Chief Public Defender's decision to step down. Mr. Cooper is the first new head of the agency in 31 years, and only the fifth agency head in the organization's 36-year history.

CCPDO represents indigent clients in Justice Courts, District Courts and the Nevada Supreme Court. Until July 2002, CCPDO also independently contracted with the City of Las Vegas to represent indigent clients facing charges in the city's Municipal Court. Each of these four courts is briefly described below:

#### Justice Court & Municipal Court

The county courts of limited jurisdiction in Nevada are known as "Justice Court." Justices of the Peace have jurisdiction over all misdemeanor cases<sup>25</sup> arising within the county's borders, unless such cases occur in a city. NRS 5.010 requires every city in the state to establish a Municipal Court. These courts have "jurisdiction of all misdemeanors committed in violation of the ordinances of their respective cities. (NRS 5.050)" Because a large percentage of Clark County's population is centered in the cities of Las Vegas, Henderson, and Laughlin, more misdemeanor cases are heard at the Municipal Court level than in the Justice Courts.

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<sup>21</sup> The U.S. Census Bureau estimates Clark County's population at 2,106,074 for 2001, up 5.4% from the 2000 census (1,998,257). From 1990 to 2000, the county experienced a 66.3% increase in population. <http://quickfacts.census.gov/qfd/states/32000.html>.

<sup>22</sup> *Ibid.*

<sup>23</sup> NRS 260.010

<sup>24</sup> In addition to the CCPDO, Clark County has established a secondary and tertiary manner for delivering services in conflict of interest cases. The Office of the Special Public Defender is a separate public defender organization that exclusively handles conflict death penalty cases, serious felony and murder cases. Though NRS 7.125 sets an hourly rate of \$75 for both in-court and out-of-court work for private attorneys assigned to represent indigent clients, the majority of CCPDO conflict and/or overflow cases for all other types of non-serious or non-murder cases are generally handled through a contract-for-services system in which the elected District Judges directly oversee the contracts with attorneys practicing before them. At the time of the DOJ/ABA study, the District Court "administer[ed] 27 individual contracts with private attorneys to provide representation in conflict cases at a flat fee of \$2,700.00 month." *Indigent Defense Services in the State of Nevada*, pp. 13-14.

<sup>25</sup> NRS 4.370-3.

Justices of the Peace also preside over a variety of other criminal matters, including felony and gross misdemeanor arraignments and preliminary hearings. In the rural jurisdictions of the state, Justices of the Peace also may serve as Masters in certain early stages in juvenile proceedings. Despite this, a Justice of the Peace does not have to be an attorney who is licensed and admitted to practice law in the courts of the state -- though NRS 4.010 requires Justices of the Peace to be lawyers in townships whose population is 100,000 or more in a County of 400,000 citizens or more. Thus, most, but not all, Justices of Peace are required to be attorneys in Clark County.

There are 55 Justice Courts throughout the state, 11 of which are within the borders of Clark County (Laughlin Justice Court, which is staffed by the CCPDO, is located 99 miles from the downtown office). The counties assume the cost of administering the Justice Courts.

### District Court

District Courts comprise the second level of the judiciary. Besides overseeing all felony and gross misdemeanor trials, District Judges hear appeals arising from Justice and Municipal Courts. They also have primary jurisdiction over all juvenile and family matters. District Judges are elected to specific courtrooms, creating a decentralization of administrative powers. The cost of running the District Courts is a state function. Slightly fewer than half of all District Judges preside in Clark County (33 of 71), thirteen of who handle strictly criminal matters and thirteen of who handle strictly family court matters. The Justice Courts are designated to feed cases into specific District Courts. So, for example, every case arising out of Justice Court A or B will always be bound over to District Court #1, Justice Court C and D feed District Court #2, etc.

### Supreme Court

The Supreme Court of Nevada is the court of last resort. There is no intermediate level appellate court. Despite the workload burden this places on the Court, the creation of an intermediate court requires a constitutional amendment. Movements to amend the constitution to allow for an intermediate court to date have failed. To deal with the enormous workload, the Supreme Court created a fast-track appeal system under Nevada Rules of Appellate Procedure Rule 3C.<sup>26</sup> Under the rules of the fast track system, appeals are disposed of within 112 days.

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<sup>26</sup> As noted in the DOJ/ABA report: “The Supreme Court screens fast-track appeals based upon condensed briefs, transcripts and records. Based on the screening, appeals will be summarily disposed of, scheduled for a fast track conference, or ordered to a full briefing calendar. During a fast-track conference, attorneys appear before one justice or judicial officer to present arguments regarding whether the appeal should be summarily disposed of or fully briefed. After the conference, the presiding justice or judicial officer will recommend a disposition of the case to the entire Supreme Court or recommend that the case be fully briefed (it is generally acknowledged that the recommendation becomes the decision of the court.) The decision will be made solely upon review of the rough draft transcripts, fast track statement and response. Currently, over 85% of all appeals are resolved through an order dismissing the appeal.” The fast-track system handles over 80 percent of the newly filed criminal appeals (over 450 cases per month). (See pp. 15-16).

## *CCPDO Operations*

As Chief Public Defender, Mr. Cooper selected Mr. Ralph Baker as his Assistant Public Defender. In the current organizational schematic, middle management reports directly to Mr. Baker. Together, Cooper and Baker are responsible for administering the second largest law firm in the state<sup>27</sup> with a staff of 69 attorneys, 14 investigators, 27 secretarial/records clerks, and 16 other operations staff (finance, management information services (MIS), human resources, etc.). Despite the size of the law office, it does not have a single social worker or paralegal.<sup>28</sup> The majority of staff is housed on two floors of a county building located in immediate proximity to the District Court (less than a block away). The building also houses the County Law Library and the Office of the Special Public Defender, among others.

### Adult Representation

The CCPDO practices what is known locally as “team” representation. Though each team is made up of one team chief, five to eight trial attorneys, an investigator, and a legal secretary, the functioning of the office is not built upon a true team concept, as are other team-based public defender offices across the country.<sup>29</sup> So, for example, teams do not share clients or work together in an established fashion on other members’ cases. Similarly, office location is not determined by team assignment. Attorneys on the same “team” are not centrally located in an area that would promote mentoring or other collegial forms of assistance. In fact, offices of two attorneys from the same team may be situated at opposite ends of the building and on two different floors.

In the context of CCPDO practices, the “team” nomenclature simply refers to the district courtroom to which an attorney is assigned and the investigator the attorney can request. Though each “team” is headed up by a “Team Chief,” the position does not carry with it additional responsibilities, such as supervision,<sup>30</sup> nor additional pay. In fact, a “Team Chief” carries a full-time equivalent caseload, as would any attorney on the team. The only additional task of a Team Chief is to assign cases among the attorneys on the team. The team chiefs report to the Assistant Public Defender. Seven of the “teams” are dedicated to one of each of the seven district court rooms and the corresponding justice courtrooms. Thus, attorneys always practice before the same judges.<sup>31</sup>

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<sup>27</sup> The Clark County District Attorney’s office is the largest.

<sup>28</sup> One position (Appellate Legal Secretary) is classified for HR purposes as a “paralegal.” See Chapter V for a further discussion of issues regarding CCPDO staffing positions that do not appear to match their job classification.

<sup>29</sup> More traditional “teams” in the national sense are discussed at length in Chapter V: “Recommendations.”

<sup>30</sup> Some of the “Team Chiefs” expressed the opinion that supervision of their team was part of their responsibilities, though there was no common expectation among them of what tasks or obligations defined the supervisory role. There is no specific job description for “Team Chief” defining supervisory responsibilities.

<sup>31</sup> NLADA was told that the District Attorney’s Office in Clark County also practices a similar “tracking” approach, which mean defense attorneys always practice before the same district attorneys as well.



There are two specialty teams for adult representation (Capital Murder and Sexual Assault). Attorneys on these teams are assigned cases in a variety of courtrooms (dependent on where the murder or sexual assault is alleged to have occurred) and generally (at least in the case of the Capital Murder team) try to have all of their offices in close proximity.

As previously mentioned, until July 2002 the CCPDO also handled indigent defense representation for the Municipal Court in the City of Las Vegas. Five attorneys were dedicated to handling all indigent defense cases arising in each of the five courtrooms (one attorney was assigned to each courtroom). These attorneys operated out of a satellite office in the Municipal Court building. The attorneys had the assistance of two support staff, but had to request investigation services from the main office.

The investigation unit is located on the fourth floor, with all investigators working out of one large office space.<sup>32</sup> Though investigators are assigned to “teams,” the lack of proximity to their attorneys limits the efficiencies generally recognized as beneficial to a “team” approach to defense representation.<sup>33</sup> The investigation unit is supervised by Ms. Naomi Conaway,<sup>34</sup> who reports directly to the Assistant Public Defender. Technically, the investigation unit is composed of 13 investigators, though specialization and other duties have lessened the actual number of investigators who conduct fieldwork. For instance, prior to Conaway’s appointment, one investigator was exclusively deployed as the staff polygrapher. One more effectively functions as staff interpreters.

#### Juvenile Representation

The Juvenile Team is housed in an office in the juvenile courthouse approximately three miles from the main CCPDO office. The office has been traditionally staffed with just two attorneys, though a third attorney was added to the team under the direction of Mr. Cooper. The Juvenile Team has two legal secretaries on-site, but as with the former Municipal Court representation, investigation services must be requested from the main office.

#### Appellate Representation

Unlike many states that have separate units (or entire organizations) dedicated solely to representing indigent defendants on appeal, CCPDO trial attorneys also handle appellate representation for the clients they represented at trial.<sup>35</sup> The office does have an Appellate Supervisor and one additional attorney to handle all new appellate cases

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<sup>32</sup> The Chief Investigator does have private office space within the unit.

<sup>33</sup> Legal secretaries and data entry clerks are similarly housed in large open office spaces on the first floor, which are away from the attorney offices, again limiting the benefits of the team approach.

<sup>34</sup> At the time of our site visit, Ms. Conaway had been the head of the unit for less than five months. Ms. Conaway is a former Detroit police lieutenant with 25 years experience (15 as an administrator overseeing both internal and external audits.) She is the first African-American woman to serve in a supervisory position in the CCPDO’s history.

<sup>35</sup> This practice is customary throughout Nevada.

assigned to the CCPDO in which the CCPDO did not represent the client at trial. There is an expectation that this appellate “unit” is to serve as a help desk to the other attorneys preparing appeals.

Training

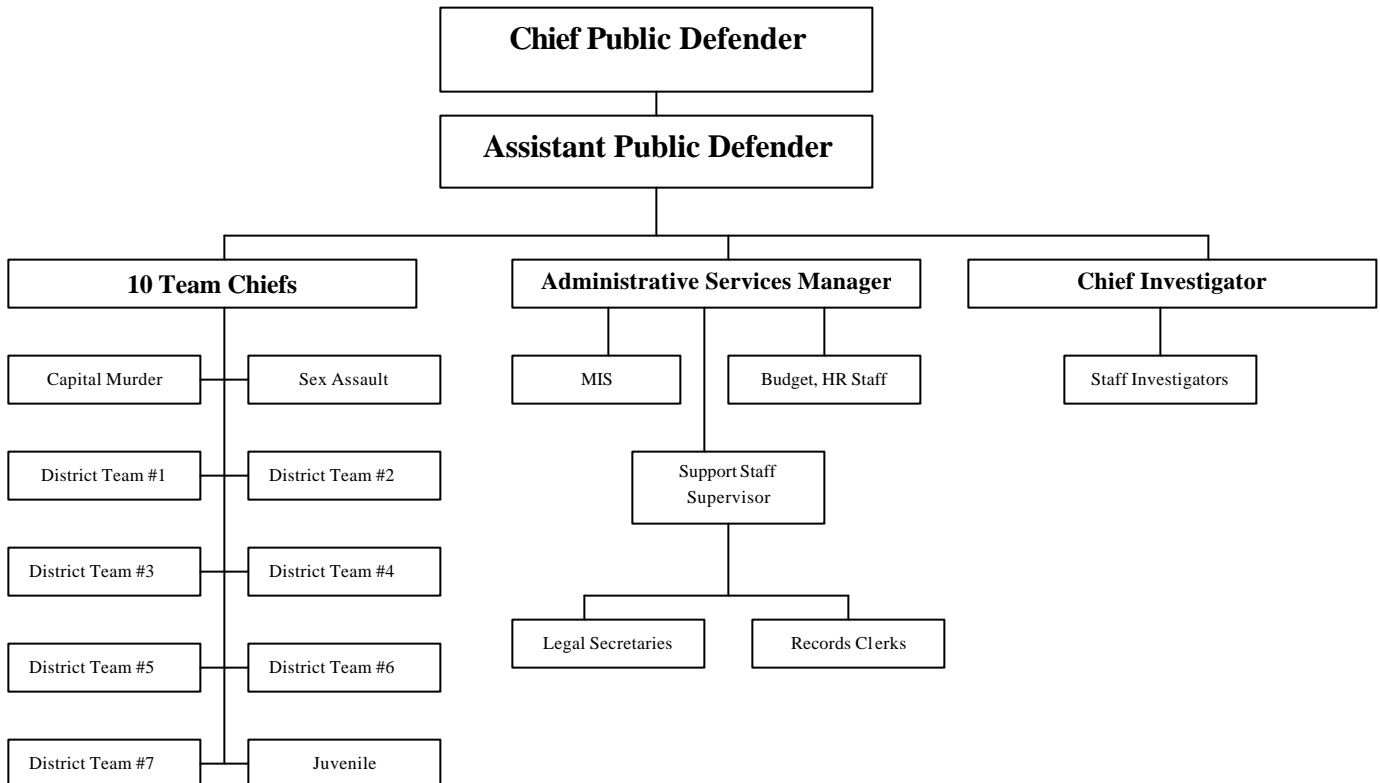
The office has no formal training unit.

Other Support Staff

Mr. Dale Ficklin, Administrative Services Manager, oversees the rest of the office’s 32 operations and support staff personnel and answers directly to the Chief Assistant Public Defender. It was somewhat difficult to understand the basic operational organization for support staff. Many traditional non-attorney operations in other public defender offices across the country (i.e., budget officer, human resources, etc.) are divided up among several positions in the CCPDO. For instance, three different operations people (including Mr. Ficklin) are responsible for various parts of the budget. Payroll and other similar functions are also divided among two or more positions.

Beyond budgeting and human resources, Ficklin also oversees both the CCPDO MIS department and the legal secretaries/records clerk staff. At the time of our visit, CCPDO was in the process of converting to a new case-tracking system that came on-line in January 2003. In addition to overseeing the conversion and operation of the new system, the two-person MIS staff is responsible for day-to-day maintenance of the office’s servers. They operate as a de facto help desk for any staff problems, whether hardware or software related. Some attorneys in the office have come to rely on the MIS staff to generate in-court Microsoft PowerPoint® and other court presentations.

There is another layer of mid-level managers who oversee the legal secretaries and the records clerks, in addition to Ficklin.



### Chapter III

## Findings: Organizational Culture

Many of the CCPDO staff we interviewed wanted to discuss the public criticism leveled at the office by a vocal contingent of the community, the depiction of the office's low trial rate in the DOJ/ABA report, and other policies and practices of the former Chief Public Defender. While understanding the depth of feelings toward the former CCPDO administration (both pro and con) and while appreciating the degree to which past histories still affect the current delivery of indigent defense services in Clark County, it would be inappropriate for this report to focus on the past by offering up a gratuitous airing of every issue raised during our site visit regarding the prior management of the office. Rather, the aim is to help the organization build upon its present strengths.

Having said that, decisions of past management have seriously limited the organization's current ability to provide effective and cost-efficient representation. The discussion of two of these decisions, related to organizational culture and workload, are set apart in this and the subsequent chapter to underscore the seriousness of the issues and to emphasize the immediate need to address these operational deficiencies.

**Finding #1:** *The CCPDO has a longstanding institutional culture that places a priority on attorney autonomy over the collective health of the organization. This has fostered organizational isolationism that limits accountability, support and professional development of staff, and inhibits interactions between attorneys in the office, between attorneys and support staff, between the organization and its client-base, and between the organization and the national indigent defense community -- all of which has hindered the organization's ability to change as circumstances dictate.*

Much has been written nationally about why teams "work", but a general summary of the literature yields the following explanations.<sup>36</sup> First, teams bring together a variety of complementary skills that no individual alone can possess. Second, the variety of skills and experience constituted by the team permits greater flexibility and a more rapid response than individuals can achieve. Third, teams provide a social dimension to work that overcomes inherent barriers that exist when individuals separately perform similar tasks.<sup>37</sup> Fourth, the social aspect of the team approach simply makes work more fun. In this sense, the team approach becomes a form of reward and incentive, especially in the stressful work environment of indigent defense.

Rather than a unified law firm committed to providing effective and efficient services in such a cooperative environment, CCPDO has evolved over its 36-year history into 70 separate, individual law practices housed under a single roof. The degree to which the CCPDO past management commitment to attorney autonomy has hindered the professional development of the organization is detailed below.

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<sup>36</sup> See Katzenbach, J. and Smith, D., *The Wisdom of Teams*, Harvard Business School Press 1993.

<sup>37</sup> One example is that teams ameliorate the negative aspects of personal competition within organizations.

### *Isolation of Attorneys from One Another*

The emphasis on attorney autonomy has produced an organization without an effective performance plan or supervisory structure, which in turn has resulted in inadequate accountability. As the County, the CCPDO, and the caseload in the criminal courts grew over the past three decades, the management structure and style in the CCPDO remained the same. What may have worked in a smaller county with a smaller criminal court caseload in the 1970's and 1980's is clearly inadequate in 2002.<sup>38</sup>

Though indigent defense organizations in small jurisdictions sometimes lack a supervisory management level, public defender offices the size of CCPDO generally have attorney supervisors dedicated solely (or close to exclusively) to monitoring and improving the quality and efficiency of attorney staff. Problems with the CCPDO's lack of supervision can be grouped in two categories: 1) lack of training and support; and 2) the failure to hold staff accountable for performance-related deficiencies.

#### Lack of Training & Support

A substantial number of staff reported being "thrown into" practice with no training or support, and having to "figure out for myself" how to do motions, trials and appeals, etc. Some reported having to handle significant felony matters under such circumstances.<sup>39</sup> Such a lack of support leads to both the development of bad practices and the inability to recognize poor performance when it occurs. For instance, although members of the assessment team discovered a troubling lack of pretrial motion practice, many CCPDO staff felt the motion practice was adequate. Even among those who felt they "probably should be filing more motions" but did not have enough time to do so,

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<sup>38</sup> The DOJ/ABA report similarly cited the County criminal justice system's practice of conducting "business as usual" in the face of a rapid population and criminal caseload growth as part of the explanation for the low indigent defense trial rate: "The population growth has fostered a dynamic in which a large, urban defense system has been created in what was relatively a small town in the not too distant past. Older attorneys recounted the days when a member of the bar knew the vast majority of other attorneys. Therefore, the familiarity of attorney relationships often seen only in small towns between prosecutors and defenders has been historically transposed on the burgeoning county. Such relationships traditionally have promoted settlements as opposed to trials." (p. 61)

<sup>39</sup> Because CCPDO's caseload is made up primarily of felonies, the consequences of no training are quite severe. The DOJ/ABA report also raised concern with attorneys handling serious cases for which they were not qualified and for which they received no support or mentoring. (See pp 40-41). The consequences of the training void are exacerbated by the County's hiring restrictions. The large revenue base affords the county the ability to pay competitive salaries to its employees. But to ensure fiscal responsibility of taxpayer money, a county agency can only use an entry-level grade slot to fill the position. Because the CCPDO caseload is not an "entry-level" caseload (i.e., there are few cases in which the potential punishment involves little or no incarceration time), a potential conflict exists between the aims of the county and the effective performance of the agency's necessary duties. Though the grade slot may attract some experienced attorneys from other jurisdictions, the requirement of designating all vacant attorney positions as entry-level grade slots limits the ability of the defender office to hire attorneys qualified to handle the bulk of the office's work – i.e. felonies. Defender offices in other jurisdictions are commonly able to hire experienced attorneys "laterally" into felony divisions, and to use rotations in misdemeanor, juvenile delinquency, dependency, and civil commitment practices to give their new lawyers experience and their veteran felony attorneys a change of pace.

there was not (with some exceptions) a general sense of concern about this.<sup>40</sup> In short, the ability of the attorney to forge his or her own practice has led to varying, and questionable, levels of quality within the office.

The need to promote consistent, quality representation by indigent defense providers has resulted in the establishment of numerous national standards.<sup>41</sup> Most recently, in February 2002, the American Bar Association (ABA) adopted a set of ten principles which “constitute the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney.”<sup>42</sup> The purpose of the *Ten Principles* is to distill the existing voluminous national standards for indigent defense systems (as opposed to individual attorney performance<sup>43</sup>) down to their most basic elements, in a succinct form that busy officials and policymakers can readily review and apply. They were designed to be a starting point for jurisdictions like Clark County interested in the practical fundamentals of indigent defense system improvement.<sup>44</sup>

Leaving attorneys to fend for themselves, and potentially leaving the fate of indigent clients in the hands of unqualified attorneys, is in direct violation of the ABA’s *Ten Principles* (as well as other standards). The sixth of the ABA’s *Ten Principles* provides that:

***Defense counsel’s ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated***

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<sup>40</sup> To the extent that attorneys are filing motions, they appear largely to be around bail/release issues, or evidentiary issues that arise in a trial context. Few lawyers file motions to suppress evidence on constitutional grounds. Indeed, some admitted to having never filed such a motion, in as many as five years of practice. The typical explanation was that the motions were not likely to be granted, with the inference being that the filing of the motion would be a waste of time. One very dedicated and experienced lawyer expressed embarrassment about his own use of this excuse to justify his minimal motion practice. It should be emphasized here that the NLADA team members were genuinely impressed with the level of commitment expressed by most of the CCPDO attorney staff and recognize that the lack of motions practice does not indicate a conscious decision to forego valid litigative or appellate issues – though one attorney said that the office was discouraged from motions practice under the former CCPDO administration. Rather, this example demonstrates the extent to which the CCPDO staff lacks a broader perspective to assess its own practice, and thus is falling short of prevailing standards.

<sup>41</sup> See footnote 9 for list of national standards promulgated by NLADA.

<sup>42</sup> The *Ten Principles of an Indigent Defense System* is based on a paper by James Neuhard, State Appellate Defender of Michigan and former NLADA President and H. Scott Wallace, NLADA Director of Defender Legal Services, which was published in December 2000 in the *Compendium of Standards for Indigent Defense Systems* ([www.ojp.usdoj.gov/indigentdefense/compendium/](http://www.ojp.usdoj.gov/indigentdefense/compendium/)). Both versions are densely footnoted with references to all national standards issued over the previous three decades providing relevant support for the black-letter principles stated.

<sup>43</sup> Requirements for individual attorney performance are comprehensively addressed in other NLADA and ABA standards. See NLADA Performance Guidelines and ABA Defense Function Standards, *supra* note 9.

<sup>44</sup> The *Ten Principles* is attached as Appendix B.

*to refuse appointment if unable to provide ethical, high quality representation.*

This requirement derives from all attorneys' ethical obligations to accept only those cases for which they know they have the knowledge and experience to offer zealous and quality representation.<sup>45</sup> This Principle integrates this duty together with various systemic interests – such as efficiency and the avoidance of attorney errors, reversals and retrials, findings of ineffective assistance of counsel, wrongful convictions and/or executions, and attendant malpractice liability – and restates it as an obligation of the indigent defense system within which the attorney is engaged to provide legal representation services.

Typically, this requirement is implemented by dividing attorneys into classifications and assigning cases according to ability, which is determined through performance evaluations that look to, among other things, years and types of experience and training. The classifications correspond to case categories that are set according to the level of complexity of issues, the severity of charges and potential punishments, and the degree of legal skills generally required. Attorneys can rise from one classification to the next by accumulating experience and training.

CCPDO has no such system by which to appoint attorneys to cases. Moreover, because the bulk of misdemeanor representation is handled at the municipal level by private lawyers under contract to the City of Las Vegas, new attorneys have limited options for building their skills on less serious matters (under the mentorship of more qualified attorneys) before moving on to more serious matters as their skills develop. Even when CCPDO provided representation in these cases, the Municipal Court division was for all intents and purposes treated as a totally separate unit in which attorneys did not interact or receive supervision from more experienced attorneys. The ability of CCPDO to move to such a model is seriously hampered by the lack of supervision generally.<sup>46</sup>

Attorney professional development is also hampered by the lack of a unit or staff solely devoted to training. The ninth of the ABA's Ten Principles provides:

***Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.***

Standards requiring training are typically cast, like the discussion of attorney qualifications above, in terms of both quality of representation to clients and various systemic interests in maximizing efficiency and avoiding errors. Commentary to the ABA *Standards for Providing Defense Services* views attorney training as, among other benefits, a “cost-saving device” because of the “cost of retrials based on trial errors by

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<sup>45</sup> See, e.g., *ABA Model Rules of Professional Conduct*, Rule 1.1; *ABA Defense Function*, Standard 4-1.6(a); *NLADA Performance Guidelines*, 1.3(a).

<sup>46</sup> As noted in Chapter II, “Team Chiefs” do not uniformly perform any traditional supervisory function to advance the skills of their team nor are they so required.

defense counsel or on counsel's ineffectiveness." The Preface to the NLADA *Defender Training and Development Standards* states that quality training makes staff members "more productive, efficient and effective."<sup>47</sup> In adopting the *Ten Principles* in 2002, the ABA emphasized the particular importance of training with regard to indigent criminal defense by endorsing, for the first time in any area of legal practice, a requirement of *mandatory* continuing legal education.

Some of the most important training that any public defender receives is that provided when s/he is just out of law school or a clerkship and is about to begin representing clients. This training ideally teaches the new attorney how to interview a client, the level of investigation, legal research and other preparation necessary for a competent defense, trial tactics, relevant case law, and ethical obligations. It includes a thorough introduction to the workings of the public defender's office, the district attorney's office, the court system, and the probation and sheriff's departments as well as any other corrections components. And it makes use of role playing and other mock exercises, and videotapes to record student work on required skills such as direct and cross-examination, and interviews (or mock interviews) of clients, which are then played back and critiqued by a more experienced attorney or supervisor.

As the standards indicate, training should be a continual facet of a public defender agency. Skills need to be refined and expanded, and knowledge needs to be updated as laws change and practices in related fields, such as forensics, evolve. Thus, on-going training is always critical, but even more so where, as here, experienced attorneys never received any initial "New Attorney" training and may need to re-learn skills or unlearn bad practices. Without training, attorneys are left to determine on their own what constitutes competent representation and will often fall short of that mark. This is especially true when there are no practice guidelines in place and performance is not monitored on an on-going basis.

The staff is well aware of the training deficit and want the deficiency corrected. CCPDO staff surveys and interviews indicate that training is the number one staff need and desire. One attorney wrote on their survey: "WE NEED TRAINING, TRAINING, TRAINING." Others echoed this sentiment: "Please get us training;" "There is not and never has been any training."

#### Failure to Hold Staff Accountable

The desire to emphasize individualism over cooperation has led to an environment in which some attorneys raise issues over the quality of representation afforded to "other attorney's clients" -- as if the claims of a colleague's ineffective assistance of counsel was the sole responsibility of that attorney and had nothing to do with the overall health of the organization or their own practice. The number of complaints we heard about the quality of representation, ranging from attorneys' complete abdication of responsibilities, to disrespectful treatment of clients, to benign neglect, are an indication of the non-collegial atmosphere that exists between certain attorneys in the office and underscores the failure of the former administration to set performance standards, to create a structured review system, to discipline, and ultimately to terminate staff who fail to change poor performance. Poor performance affects the entire staff. One attorney

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<sup>47</sup> [www.nlada.org/Defender/Defender\\_Standards/Defender\\_Training\\_Standards](http://www.nlada.org/Defender/Defender_Standards/Defender_Training_Standards).

indicated: “Some people hate our clients and are here just for the money. I wish we could eliminate them.” Similarly, one investigator stated: “Some people just come to work to collect a paycheck, it seems like these people do not care about quality. This atmosphere demoralizes those who do want to produce a good work quality.”

The lack of traditional team structures in the office increases the likelihood that attorneys will insulate themselves from the bad practices around them. Whereas poor performance in a team atmosphere would reflect poorly on all of the 8-10 individuals charged with overseeing a group of cases, and likely instigate action by one’s peers to improve the performance of the person in question, the current office structure allows attorneys to place their own interests (whether monetary or job-security) above the protection of a clients right to counsel. Moreover, the lawyers who are concerned with others’ performance have traditionally been cast as “trouble-makers” or have become “burned out” trying to push for change. This fosters an office atmosphere where bad performance is acceptable. Whatever types of “teams” are used, the lack of a performance plan that delineates clear supervisory responsibilities is a major program deficit.

The tenth of the ABA’s *Ten Principles* puts standards regarding the duties of attorneys in individual cases in terms of the indigent defense system’s obligation to ensure that attorneys are monitored for compliance with such standards:

***Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.***

*The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency [citing the ABA’s Defense Function Standards and NLADA’s Performance Guidelines for Criminal Defense Representation].*

Two offshoots of the historical emphasis on attorney autonomy are major impediments to CCPDO being able to institute such an effective performance review system. One, since attorneys have been permitted to establish their own “practices,” no program-wide performance standards have ever been adopted. Second, the most likely candidates to become formal supervisors, the Team Chiefs, have not been provided with a clear mandate, authority, or the resources necessary to take on such responsibility.

While providing managers with clear expectations regarding their supervisory roles is critical, the ability of the office to institute supervision is not merely a matter of charging the Team Chiefs with new responsibilities. Good supervision includes coaching and mentoring, conducting periodic staff performance reviews, assessing individuals’ training and other resource needs, performing on-going monitoring of quality of representation, and conducting statistical analyses of caseloads. Team Chiefs historically have not been selected on the basis of their ability to perform these tasks, but rather as a reward for good courtroom performance (in the best case scenario) or as a show of favoritism of the past CCPDO management (the view of many of the staff).<sup>48</sup> However, even assuming

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<sup>48</sup> A significant percentage of the staff expressed the view that some Team Chief appointments were made for reasons other than ability and skill. This viewpoint is commonly accompanied by the complaint that these same “favored” Team Chiefs under the old administration have used their position of limited



that selections were based on courtroom performance, outstanding trial skills do not automatically translate into outstanding supervisory skills. Such skills, however, can be learned, if sufficient support is accompanied by the desire to do so.

Even if Team Chiefs were chosen on the basis of the supervisory skills, the fact that they still currently carry full caseloads prevents the institution of an effective supervision program. It is impossible for any public defender supervisor to fulfill the obligations of good management while carrying a full caseload. In large, urban public defender systems across the country, the burden of supervisory duties – including conducting in-court observations, reviewing case files, discussing theories of the case, providing training, and monitoring the overall work of the people they are charged with overseeing – customarily allows supervisors to carry no caseload of their own, or at most, a very limited one.

### *Isolation of Attorneys and Support Staff*

The “individual law practice” approach to indigent defense services in the CCPDO has also led to a systemic undervaluing of support staff. NLADA team members were impressed with the dedication of support staff that often take direction from eight to ten different bosses (in the case of legal secretaries), or 70 different bosses (as is the case with the records staff and the appellate secretary). Although it is not uncommon for support staff in public defender offices to work with several attorneys, the attorney-to-support-staff ratio in the CCPDO exceeds national norms (as discussed more fully in the ensuing chapter). In addition, the majority of support staff expressed the opinion that attorneys act as though the support staff’s other workload concerns are irrelevant whenever an individual attorney needs immediate attention. Importantly, the emphasis on attorney autonomy places an additional workload burden on support staff, increasing inefficiencies and therefore costs to the County. For instance, attorneys are permitted to take case files without signing them out, resulting in added workload demands on the record clerk team that spends hours each day simply tracking down missing files. Amazingly, over one full-time equivalent staff person’s time is spent each day simply trying to track down case files from attorneys. This is a significant amount of time, which without a doubt, could be put to better use.<sup>49</sup>

The physical layout of the office further serves to undervalue the support staff and create a tension between them and the attorney staff. Attorney mailboxes are centrally located in the open area in which legal secretaries and records clerks work. Because attorneys are not held accountable for their actions, support staff work is constantly interrupted with attorneys chatting while checking their mail.

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authority to reward friends with easy caseloads and punish troublemakers with more difficult caseloads, including giving themselves easy caseloads. Not all Team Chiefs were viewed with the same distrust, and indeed, the dedication of some of the Team Chiefs was impressive. Nevertheless, factual evidence supports the concern of the staff. The DOJ/ABA report states “...from 1995-2000, the nine team chiefs have represented indigent defendants in 62 trials, or approximately one trial per Team Chief per year.” The report also notes that 54.84% of these trials were for misdemeanor cases. (See p. 62).

<sup>49</sup> It is necessary for attorneys to have case files in their office during the life of a case and we are not suggesting that attorneys check out files on a day-to-day basis. Rather, case files should be signed out of a central filing system and be locatable at all times.

Finally, the management organization itself also undervalues the support staff. The investigator supervisor and the support staff supervisor respond directly to the Assistant Public Defender who functions more or less in the capacity that a Chief Trial Attorney would in a more traditionally structured public defender office.<sup>50</sup> To the support staff, this creates the perception that investigation and support staff issues are not given the same credence as attorney issues. Given the autonomy afforded to the attorney staff, the lack of access to upper management has fostered an environment in which few support staff view themselves as critical and co-equal partners in the provision of effective representation to indigent clients.

Staff survey responses indicate a wide gulf between the attorney and support staff at the CCPDO. For example:

1. "The support staff and their needs have been stepped on for so long that negativity permeates everything;"
2. "The worst problem I see is the total lack of respect and concern management shows to the support staff;"
3. "The secretaries and support staff need to be treated with more respect and dignity. They are adults, not children;"
4. "I love my job, but attorneys treat me poorly."
5. "There is a whole caste system here. You know there is a different set of rules for attorneys compared to support staff. On 'payday Friday' the third floor [attorney staff] is a ghost town. The lawyers leave early afternoon.... The biggest problem is the morale of the support staff, but if you treat people like garbage they are going to leave. I get paid good money, but I am leaving because I'm treated so poorly."
6. "Lawyers around here rarely answer the phone or return clients' calls. Only the few good ones do. Many times I hear lawyers actually yelling at their clients on the phone ..... Support staff end up looking out for the clients."

### *Isolation of Attorneys from their Client Base*

The decision of the former CCPDO management to retreat from the community rather than engage in constructive dialogue to bridge the differences between attorneys and clients gives credence to the community's number one charge against the office: namely that the CCPDO's obligation to the courts and the County historically has superceded the organization's commitment to its clients.

The perception among the client population, gleaned from courtroom observation and client interviews, is that the public defender office seeks to get clients to plead as quickly as possible, regardless of whether they are guilty or of other needs and concerns the client may have. Even clients who felt that their particular lawyer had fought hard on their behalf expressed this view. In some respects this lack of confidence is the plight of many public defenders, but in a jurisdiction where pleas are so uncommonly dominant a

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<sup>50</sup> The more traditional responsibilities of a Chief Defender, Assistant Defender and Chief Trial Attorney are discussed in more depth in Chapter V: Recommendations. The point here is that Mr. Baker is viewed by a significant portion of the support staff as the de facto head of the attorneys and not of the entire staff.

method of disposition, such a perception is more pronounced. Moreover, there are aspects of the culture of the Clark County system that perpetuate and foster this distrust.

Among them is the courtroom role played by many of the public defenders. The extent to which judges feel entitled to question public defender clients while counsel sits quietly at the table was troubling. Equally disturbing was that clients were ushered into court, in shackles, left to feel, as one former client reported, "all alone in the courtroom" when his attorney failed to acknowledge his presence or confer with him. Another client reported public defenders approach clients and propose pleas without having first asked any questions about their cases. Still other clients recount having to make their own appeals to the court for release on their own recognizance.

Court observations during the site visit were consistent with such client remarks. The NLADA team split up to conduct in-court observations of arraignment and probation revocation proceedings. Each NLADA team member, though in different courtrooms, made similar observations. At some point during each of the court dockets an indigent defense client was seen advocating on his own behalf without his or her public defender raising an issue or advising the client about the risks of such action. Team members witnessed clients advocating for "time served" to be counted against a community service sentence, or for a lower bail, while their attorneys sat idly at counsel table. This courtroom conduct was not universal, but common enough to fuel the perception that the public defender office is not providing adequate representation to its clients.

When the issue was raised with CCPDO attorneys, they noted simply that that is the way the system works in Clark County. Their lack of apparent concern likely reflects the lack of adequate training and supervision regarding the basic ethical requirements of attorney performance under the ABA Defense Function Standards and the NLADA Performance Guidelines for Criminal Defense Representation.

The CCPDO's isolation from the community in the face of public criticism concerning the services it provides is at odds with long-standing requirements of national standards.<sup>51</sup> Defender agencies nationally are taking an increasingly broad view of these

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<sup>51</sup> Standard 13.13 of the standards promulgated in 1973 by the Attorney General's National Advisory Commission on Criminal Justice Standards and Goals provides:

The public defender should be sensitive to all of the problems of his client community. He should be particularly sensitive to the difficulty often experienced by the members of that community in understanding his role. In response:

1. He should seek, by all possible and ethical means, to interpret the process of plea negotiation and the public defender's role in it to the client community.
2. He should, where possible, seek office locations that will not cause the public defender's office to be excessively identified with the judicial and law enforcement components of the criminal justice system, and should make every effort to have an office or offices within the neighborhoods from which clients predominantly come.
3. He should be available to schools and organizations to educate members of the community as to their rights and duties related to criminal justice. (*Standard 13.13: Community Relations*).

Similarly, the Guidelines for Legal Defense Systems in the United States, promulgated in 1976 by the National Study Commission on Defense Services, provide:

...Defense system attorneys should be especially sensitive to the image that they project to clients...

requirements for community outreach. Learning from other community-based approaches to criminal justice (such as community policing, community prosecution, community corrections, and community courts) that are helping to prevent crime and recidivism, defender offices are expanding their focus on problem-solving and community defense. Instead of simply providing legal representation in a specific court action, many indigent defense providers are recognizing that they have unique opportunities to help clients alter the behaviors that brought them in contact with the criminal justice system in the first place, through practices such as problem-solving representation, public policy advocacy, and community outreach.

Problem-solving representation starts with assessment of any treatable needs or problems of the client, such as substance abuse, mental illness, educational or job-skill deficits, and family dysfunction or abuse. Placements are then arranged in appropriate community-based programs, and the individually tailored package of community-based interventions is advocated either to the prosecutor in the context of plea negotiations, or to the court in the context of pretrial diversion or a post-conviction sentencing plan. Typically, a team consisting of an attorney, a social worker and an investigator or paralegal conducts this work. Examples include arranging counseling services, assisting with educational or employment needs, accessing government assistance, or getting a civil legal assistance program to address problems which may stand as a barrier to stabilizing the client's life, such as an eviction, immigration issues, or the need for a protective order against domestic violence. It was striking the limited knowledge the CCPDO staff expressed during our interviews regarding available assistance programs for clients.

Successful public defender offices also forge a bond with the community by acting as their voice in public policy matters, such as helping communities address issues like racial profiling which disproportionately affect their clients, or participating in criminal justice coordinating councils, where all criminal justice agencies come together to address systemic needs and improvements. Finally, public defenders elsewhere in the country routinely engage their communities through outreach programs. Such initiatives may include putting on public education programs on the function of the public defender, "adopting" a public school in an impoverished neighborhood, or speaking with non-client groups to educate them about the communities of their constituency.<sup>52</sup> CCPDO

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The defense system's Director should educate the community about the purpose and function of the defense system. He should develop and maintain relations with community organizations to promote understanding of program operations and to assist in improving defense services. He should include police, judges, prosecutors and corrections-personnel in training programs. The defense system should make speakers available for school and community organizations and should encourage media coverage and issue regular press statements. Every defense system should have an official among whose responsibilities is press liaison and should have a procedure by which media requests for information are channeled to the appropriate official. (5.13 *Role in the Community and the Criminal Justice System*).

<sup>52</sup> At a national symposium on indigent defense convened by the U.S. Department of Justice in 2000, teams of defenders, judges, prosecutors and elected officials from all 50 states brainstormed the most effective types of community outreach. The final report of the symposium catalogues the 12 most common

historically has chosen to take an antagonistic approach to community critics, rather than employ these proven community-relations techniques to improve the system for all.

### *Isolation From the National Indigent Defense Community*

Indigent defense representation is not a set of static skills that only need to be learned once and applied uniformly thereafter. Indigent defense organizations must be poised to deal with new developments, ranging from substantive law and procedure, to scientific advancements like DNA testing. Without an outside perspective, an organization must face these challenges based solely upon their own experiences. With an organization like CCPDO, the limited experiences of the staff restrict the potential for improvement and efficiency. The result is organizational stagnation rather than adaptability.

Similarly, leadership and management are cognizable, evolving disciplines, which also involve skill sets that need to be mastered. NLADA and other national and state organizations provide indigent defense practitioners with opportunities to develop and enhance the knowledge and skills that are required to run defender programs competently.<sup>53</sup> These resources and the advancement of communication technologies make connecting with the greater indigent defense community much easier than in decades past. The leadership of CCPDO must raise their horizons to anticipate change rather than react to it or ignore it. Collegial discussions, or more formal mentorship relationships can lead to the application of successful principles of other jurisdictions in one's own organization. CCPDO has lost out on such relationships that could have enabled a multitude of agency improvements and the mastering the essential management basics because of the determination of the prior management team to go it alone.<sup>54</sup>

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recommendations. See *National Symposium on Indigent Defense 2000: Redefining Leadership for Equal Justice*, <http://www.ojp.usdoj.gov/indigentdefense/symposium.pdf>, at pp. 82-84.

<sup>53</sup> With the enhanced resources of the American Council of Chief Defenders (ACCD) and the National Defender Leadership Institute (NDLI), NLADA has increased its ability to train new leaders, strengthen the skills of experienced leaders, and foster information-sharing and networks where defender leaders can collectively address problems facing their profession.

<sup>54</sup> Since our visit, CCPDO has taken some first steps to improve their connection to the national indigent defense community. Mr. Cooper attended the NLADA annual conference and ACCD meetings in Milwaukee, WI in November 2002 and approved the participation of one of the staff attorneys in NDLI's "Nuts & Bolts of Leadership" Conference that was held last spring. Similarly, Ms. Conaway attended an intern training session on the invitation of Mr. Boruchowitz of the Defender Association in Seattle, WA.

**Chapter IV**  
**FINDINGS: WORKLOAD**

One of the lessons learned by the national indigent defense community over the years is the importance of quantitative, statistical data to inform policy-makers about the quality and cost-effectiveness of the services provided at taxpayers' expense. Without independently verifiable data, policy makers (many of whom are not necessarily versed in the constitutional, ethical and practical requirements of indigent defense representation) are left to make critical funding decisions based on speculation, unverifiable assertions, "gut feel," or the competing budget demands of other agencies within their jurisdiction.

CCPDO historically has not been focused on collecting and disseminating uniform and verifiable data regarding its operations. Many of the people we interviewed indicated that they have crushing caseloads. Though some pointed to the low trial rates as proof of their burgeoning caseloads, such anecdotal evidence is not a sufficient basis either to prove the point or manage a law office. No one we interviewed was able to offer quantitative data that proved to us that their workload deviated seriously from nationally recognized caseload standards in any meaningful way. The lack of that verification may explain why the County Administration has not fully addressed caseload concerns by funding new staff positions.

Considerable time was spent analyzing Clark County indigent defense data, both the CCPDO's internal database and those numbers reported to the Legislative Committee as required by NRS 260.075 in an effort to independently study the workload of CCPDO staff.<sup>55</sup> This chapter details those efforts and supports the following conclusion:

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<sup>55</sup> Several issues hindered the CCPDO data analysis. First and foremost, there is a significant amount of data in the CCPDO database that is simply incomplete, missing or entered in error. Much of this is likely due to incomplete file folder information being recorded by attorneys and/or keying errors in data entry. It is additionally apparent that case files are held back by attorneys in some instances until a point in time well after the disposition of the case. In these instances, the "date entered" field does not reflect the date of assignment (in many instances delays of several years were noted) but rather the date the case was finally entered in the system. Considerable time and attention was given to "cleaning" the data to accurately reflect proper assignment and disposition dates based on cross-references to court docket numbers.

Another hindrance was the number of records that have been deleted or "destroyed" from the database. Though back-up data was obtained, many of the data fields for these cases were missing. For instance, "Charge Type" (Felony, Gross Misdemeanor, etc.) necessary to accurately tally cases by classification had been stripped from the system. Thus a "look-up" reference table to cross reference charge codes to charge types was created to get an accurate description of the CCPDO workload. Upon completing this task, it was determined that any data recorded before 1992 was too damaged to be of any use. It appears that in 1992 some corrective action was taken to update old data. Unfortunately, no cross-reference was possible to correct whether these entries reflected new cases or old data, greatly inflating the caseload numbers for 1992. Consequently, our data analysis looks at a nine-year window from calendar year 1993 to 2001.

Third, the Conference of State Court Administrators and the National Center for State Courts' publication *State Court Model Statistical Dictionary, 1989*, instructs administrators to "[c]ount each defendant and all charges involved in a single incident as a single case (page 19)." Our interview with Mr. Ficklin confirmed that CCPDO caseload as reported to the Legislative Commission complies with this definition, but our review of the database uncovered that this case definition was not maintained uniformly in all instances. For example, Municipal Court cases are recorded on the database by "charge" rather than "incidence," overstating the workload of CCPDO misdemeanor representation. For our data analysis, the

**Finding #2:** *The CCPDO Attorney Caseloads Are In Serious Breach of Nationally Recognized Workload Standards. The Office Has Been Historically Understaffed And There Is A Serious Crisis in Adult Felony and Misdemeanor Representation. Juvenile Representation Is Beyond The Crisis Point And Requires Immediate Attention to Avert Constitutional Challenges of Ineffective Assistance of Counsel.*

ABA Principle 10 states: “Defense counsel’s workload is controlled to permit the rendering of quality representation. Counsel’s workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.”

Regulating an attorney’s workload is perhaps the simplest, most common and direct safeguard against overloaded public defense attorneys and deficient defense representation for low-income people facing criminal charges. The National Advisory Commission (NAC) on Criminal Justice Standards and Goals first developed numerical caseload limits in 1973 under the auspices of the U.S. Department of Justice, which, with slight modifications in some jurisdictions, have been widely adopted and proven quite durable in the intervening three decades.<sup>56</sup> NAC Standard 13.12 on Courts states:

The caseload of a public defender attorney should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.<sup>57</sup>

What this means is that an attorney who handles only felony cases should handle no more than 150 such cases in a single year *and nothing else*. Other national standards support the NAC numerical limitations on caseload,<sup>58</sup> including the ABA’s *Ten*

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assumption was made that any single client appearing on the same day in Municipal Court to answer to several separate charges should be counted as a single case. While understanding that this may undercount the misdemeanor numbers slightly (as in the case in which a client is charged with shoplifting from two different stores on two different days), we believe this assumption more accurately reflects the misdemeanor workload.

Finally, we “cleaned” the database of duplicate entries. This again lowers the workload numbers from that reported previously to the Legislative Commission. Where appropriate, the caseload numbers reported to the Legislative Commission as a comparison to NLADA’s data analysis are contained in a footnote.

<sup>56</sup> See *Indigent Defense Caseloads and Common Sense: An Update* (NLADA, 1992), surveying state and local replication and adaptation of the NAC caseload limits.

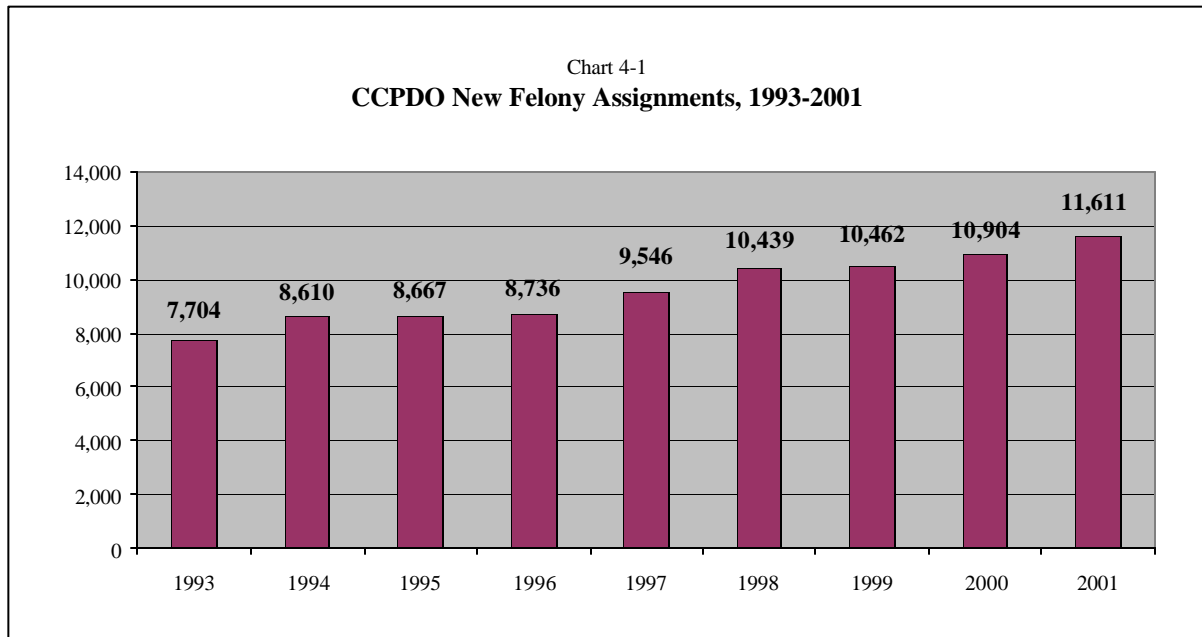
<sup>57</sup> National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, *Courts* (Washington, D.C., 1973), p. 186.

<sup>58</sup> NSC, Guideline 5.1, 5.3; ABA, Standards 55.3; ABA Defense Function, Standard 41.3(e); NAC, Standard 13.12; Contracting, Guidelines III-6, III-12; Assigned Counsel, Standards 4.1.4.1.2; ABA Counsel for Private Parties, Standard 2.2 (B) (iv).

*Principles* instruction that caseloads should “under no circumstances exceed” these numerical limits.<sup>59</sup>

### *Adult Representation at District and Justice Courts*

Chart 4-1 (below) shows the number of new felony cases assigned to the CCPDO from 1993-2001:



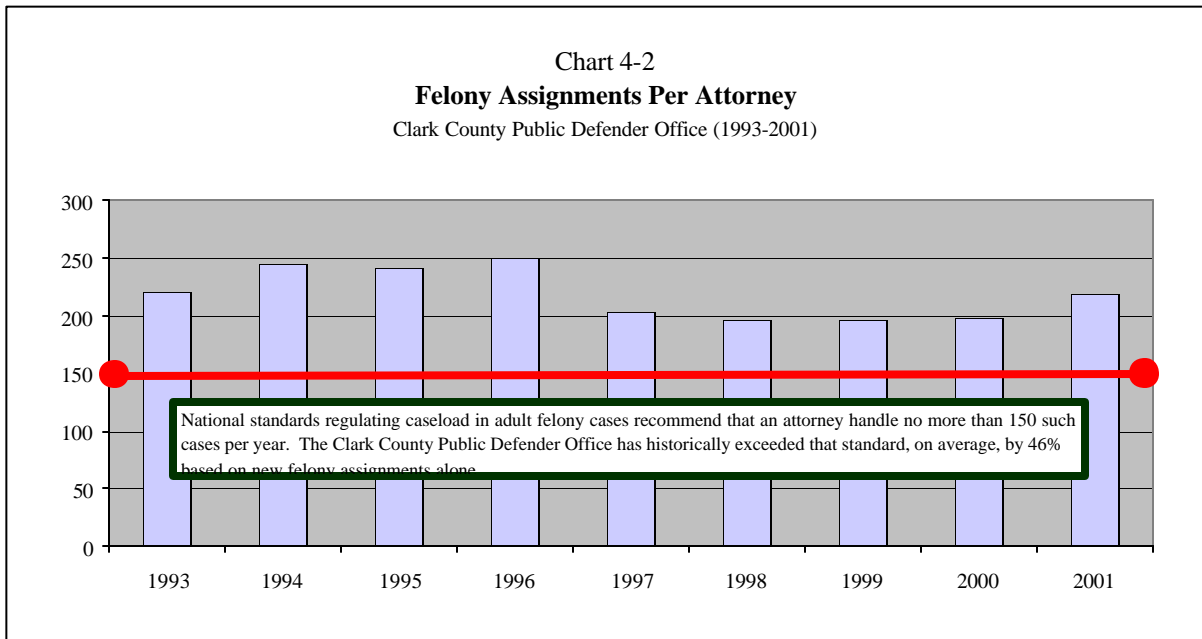
<sup>59</sup> The NAC workload standards have been refined, but not supplanted, by a growing body of methodology and experience in many jurisdictions for assessing “workload” rather than simply the number of cases, by assigning different “weights” to different types of cases, proceedings and dispositions. *See Case Weighting Systems: A Handbook for Budget Preparation* (NLADA, 1985); *Keeping Defender Workloads Manageable*, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 (Spangenberg Group, 2001) ([www.ncjrs.org/pdffiles1/bja/185632.pdf](http://www.ncjrs.org/pdffiles1/bja/185632.pdf)).

Workload limits have been reinforced in recent years by a growing number of systemic challenges to underfunded indigent defense systems, where courts do not wait for the conclusion of a case, but rule before trial that a defender’s caseloads will inevitably preclude the furnishing of adequate defense representation. *See, e.g., State ex rel. Wolff v. Ruddy*, 617 S.W.2d 64 (Mo. 1981), *cert. den.* 454 U.S. 1142 (1982); *State v. Robinson*, 123 N.H. 665, 465 A.2d 1214 (1983) *Corenevsky v. Superior Court*, 36 Cal.3d 307, 682 P.2d 360 (1984); *State v. Smith*, 140 Ariz. 355, 681 P.2d 1374 (1984); *State v. Hanger*, 146 Ariz. 473, 706 P.2d 1240 (1985); *People v. Knight*, 194 Cal. App. 337, 239 Cal. Rptr. 413 (1987); *State ex rel. Stephan v. Smith*, 242 Kan. 336, 747 P.2d 816 (1987); *Luckey v. Harris*, 860 F.2d 1012 (11th Cir. 1988), *cert den.* 495 U.S. 957 (1989); *Hatten v. State*, 561 So.2d 562 (Fla. 1990); *In re Order on Prosecution of Criminal Appeals by the Tenth Judicial Circuit*, 561 So.2d 1130 (Fla. 1990); *State v. Lynch*, 796 P.2d 1150 (Okla. 1990); *Arnold v. Kemp*, 306 Ark. 294, 813 S.W.2d 770 (1991); *City of Mount Vernon v. Weston*, 68 Wash. App. 411, 844 P.2d 438 (1993); *State v. Peart*, 621 So.2d 780 (La. 1993); *Kennedy v. Carlson*, 544 N.W.2d 1 (Minn. 1996). Many other cases have been resolved by way of settlement.



Between 1993 and 2001, felony assignments increased 50.71% (from 7,704 to 11,611).<sup>60</sup> During this time, the number of staff attorneys dedicated to felony representation increased at about the same rate (from 35 to 53, or 51.43%).<sup>61</sup>

But a similar increase in attorneys to match increases in felony case assignments is not sufficient if the original baseline of cases-per-attorney was in excess of the national standards. Chart 4-2 shows the number of new assignments per felony attorney. Attorneys handling felony cases have been forced to handle a caseload between 31% to 65% above the national caseload standard of 150 cases (from 196 felony cases per attorney in 1998 to 250 felony cases per attorney in 1996). This means that on average over the nine-year period, CCPDO attorneys deviate from the national standard in excess of 46%:



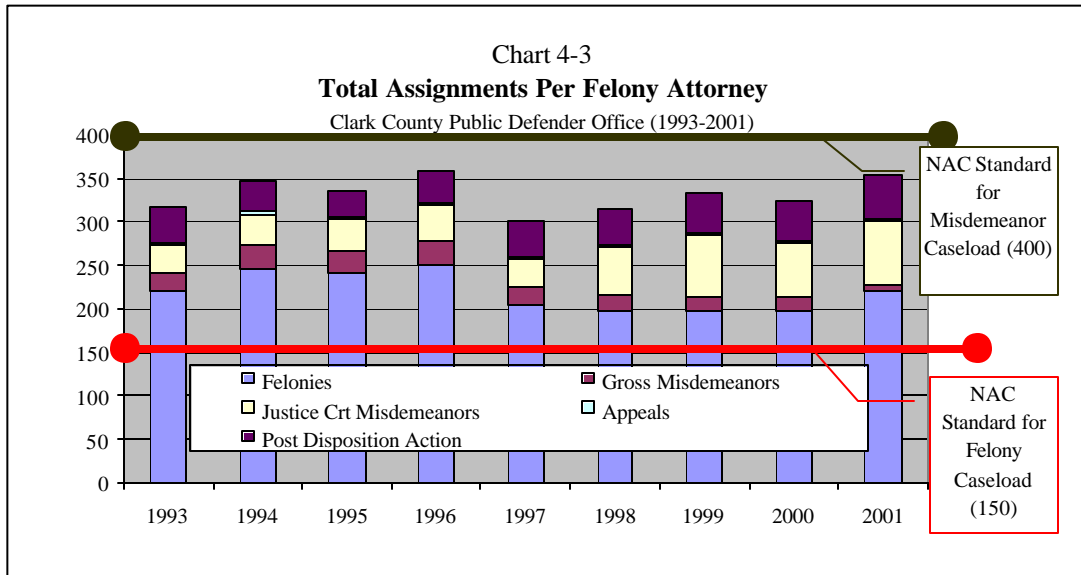
More importantly, simply dividing attorney numbers into new assignments does not give a complete depiction of an attorney’s workload. For instance, every attorney handling felony cases also may handle gross misdemeanor cases, county misdemeanor cases alleged to have occur outside of a city limit, post-disposition actions (parole/probation revocation, modification of sentencing, etc.) and direct appeals.<sup>62</sup> Chart

<sup>60</sup> Numbers reported to the Legislative Commission show a similar increase of 44.3%, though the felony caseload numbers are slightly larger (from 8,259 in 1993 to 11,918 in 2001).

<sup>61</sup> NLADA obtained historical staffing records from the CCPDO. To determine the number of attorneys handling felony cases, NLADA subtracted attorneys specifically dedicated to administration, juvenile representation, appellate representation, municipal misdemeanor representation or the murder team.

<sup>62</sup> NLADA did not factor drug court numbers into the adult representation workload since a single CCPDO attorney generally handles all drug court cases. Drug Court cases have increased from 584 in 1993 to 1,213 in 2001. There are currently no national defender caseload standards for such specialized courts. However, drug court cases may be considered as comparable to juvenile and mental health cases – both of which are subject to annual caseload limits of 200 under the NAC standards – inasmuch as they are oriented toward treatment and rehabilitation dispositions rather than mere charge processing, and they typically require far

4-3 depicts the number of total cases per felony attorney -- not just felony cases. When these other case types are accounted for in the attorneys' caseload, the number of cases expected to be handled by an individual attorney in a single year increases to nearly the nationally recognized standard for misdemeanor cases alone, even though the largest percentage of cases handled by attorneys are felonies. This means that CCPDO felony attorneys are handling cases at more than double the recommended national caseload.



Moreover, to determine accurate caseload-per-attorney numbers one must add the total number of new assignments in a given year to the pending cases at the start of the same year before dividing the resulting sum by the total number of CCPDO attorneys working on that specific type of case. For instance, if an attorney is given 220 new felony cases in a given year but can only dispose of 150, it leaves a balance of 70 cases still to be completed during the ensuing year. If in year two the same attorney is given another 220 cases but can still only adequately dispose of 150, the attorney will have 140 cases pending at the start of year three.

The cost implications to the entire criminal justice system of a growing backlog are wide-ranging. If defense attorneys are unprepared to move forward on a case, court time and resources for judges, bailiffs, court reporters, district attorneys, etc. are utilized inefficiently. Additionally, as pending cases grow, attorneys may adopt a triage system in which their attention is turned to whatever is the next court date on their calendar without taking into account the circumstances of all of their other clients. When this occurs, defendants may linger in jail pre-trial or be wrongly incarcerated post-trial, substantially increasing corrections costs. Conversely, an attorney may opt to “cut

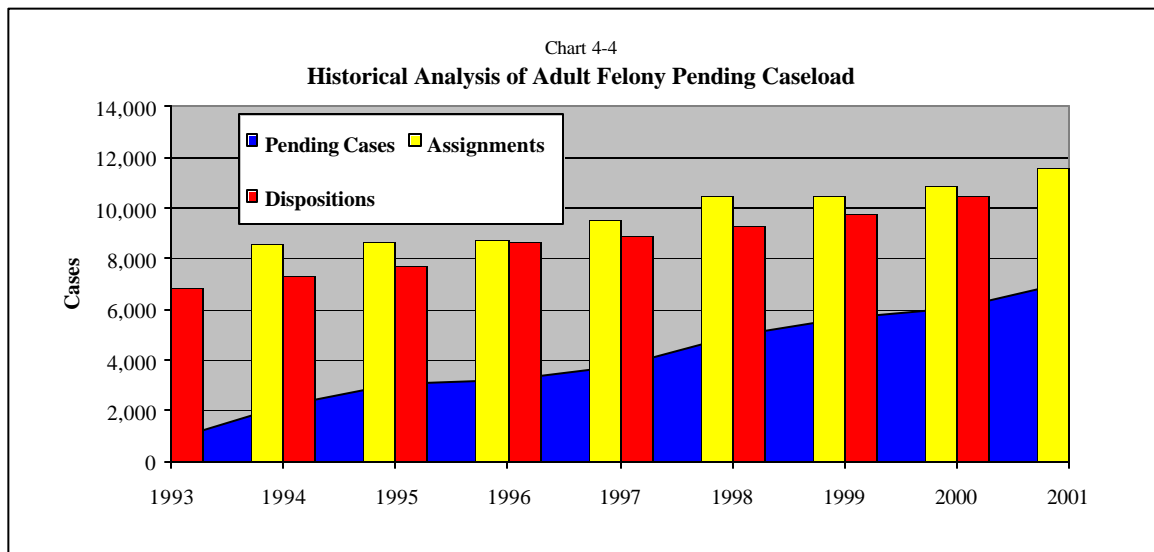
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more court appearances than any other type of case, because of the court's ongoing monitoring role during the course of drug treatment. Also, drug court cases may be either misdemeanor (400-case NAC limit) or felony (150-case NAC limit). Under any formulation, 1,213 cases is too many of any kind of case for a single attorney to handle per year. This means that, on average, less than an hour and a half is spent on each client assuming that the attorney spends 100% of her available time on cases (and none on such important matters as training or professional development).

corners” to keep their caseload manageable, again bringing into question the adequacy of the representation afforded to the poor, and raising the prospect of costly ineffective-assistance-of-counsel claims and wrongful convictions. The loss of trust in the system has tangible impacts on systemic costs and efficiencies in that jurors and witnesses become reluctant to come forward. Moreover, as we have seen in the Nevada history leading to this study, public confidence in the integrity of the system is lost when the community perceives that inadequate representation creates a system that metes out justice differently to the rich and the poor.

Quantifying CCPDO’s exact number of pending cases is difficult, because of two factors. First, CCPDO does not administratively close cases in which the client failed to appear in court and for which a bench warrant was issued after 30, 60 or 90 days as is commonly practiced in many public defender offices nationally.<sup>63</sup> Secondly, the growing pending caseload may be somewhat reflective of poor record keeping. It is possible that some percentage of the pending cases have indeed been disposed but that the case file has not been returned to the records clerks.

Significantly, in no single year since 1993 has the CCPDO disposed of as many felony cases as it was assigned.<sup>64</sup> Such a ratio between opened and closed cases produces a pending caseload that grows exponentially with each passing year (as depicted in Chart 4-4).

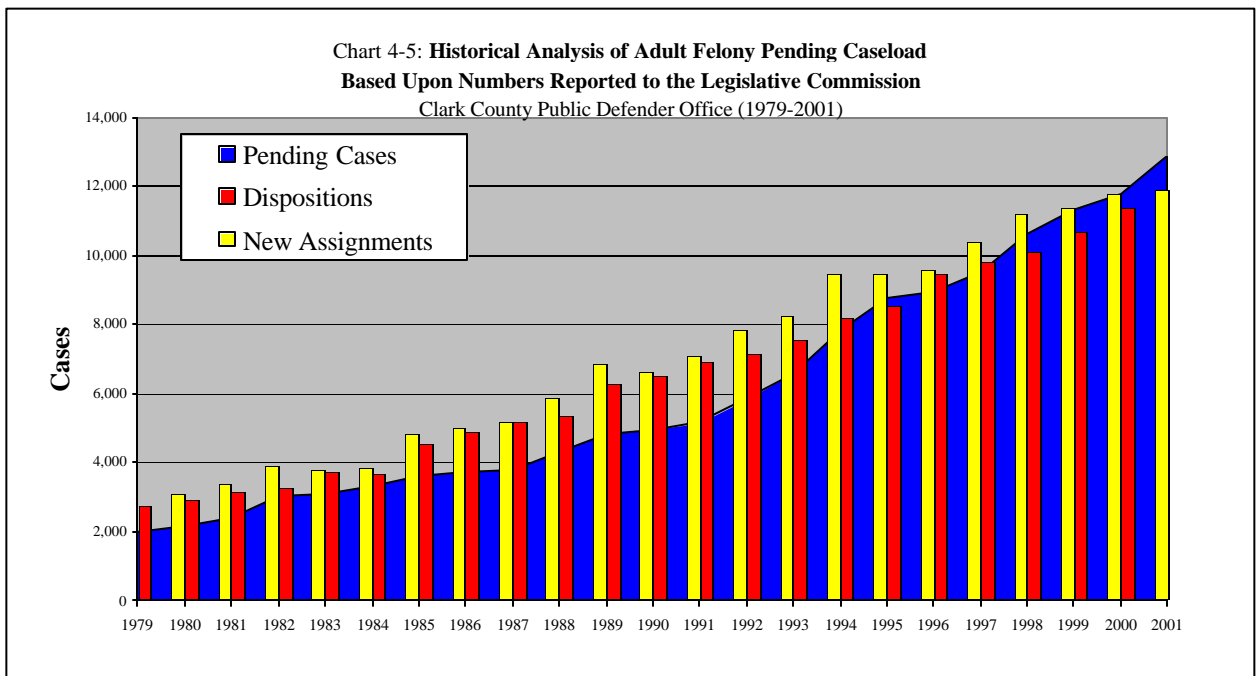


<sup>63</sup> This fact does not affect the workload-per-attorney numbers of CCPDO since jurisdictions that do administratively close such cases also count the return of clients on bench warrants as new cases.

<sup>64</sup> As one would expect, the number of gross misdemeanors and Justice Court misdemeanors assigned generally equals the number of similar cases disposed in the same year, since these cases, being less serious, generally require less attorney time per case. Interestingly enough, murder cases are not developing a backlog despite the complex nature of the work. In years in which murder assignments are relatively low, the murder dispositions handled by the murder team are greater, in effect, catching up on the backlog.

The rising tide of pending cases could be even more serious than depicted above. The table above assumes a zero balance of pending cases in year one (1993) when in fact there surely were pending cases at the start of that year. In fact, in *every* year since the Legislative Commission began requiring data reporting (1979), the total number of new felony case assignments has *exceeded* the number of felony cases disposed for the same year. Between 1979 and 2001, new assignments increased at an average rate of 6.7% from year to year while dispositions increased at a 6.6% rate from year to year. Pending caseloads subsequently increased at an average rate of 9.0% over the same time period.

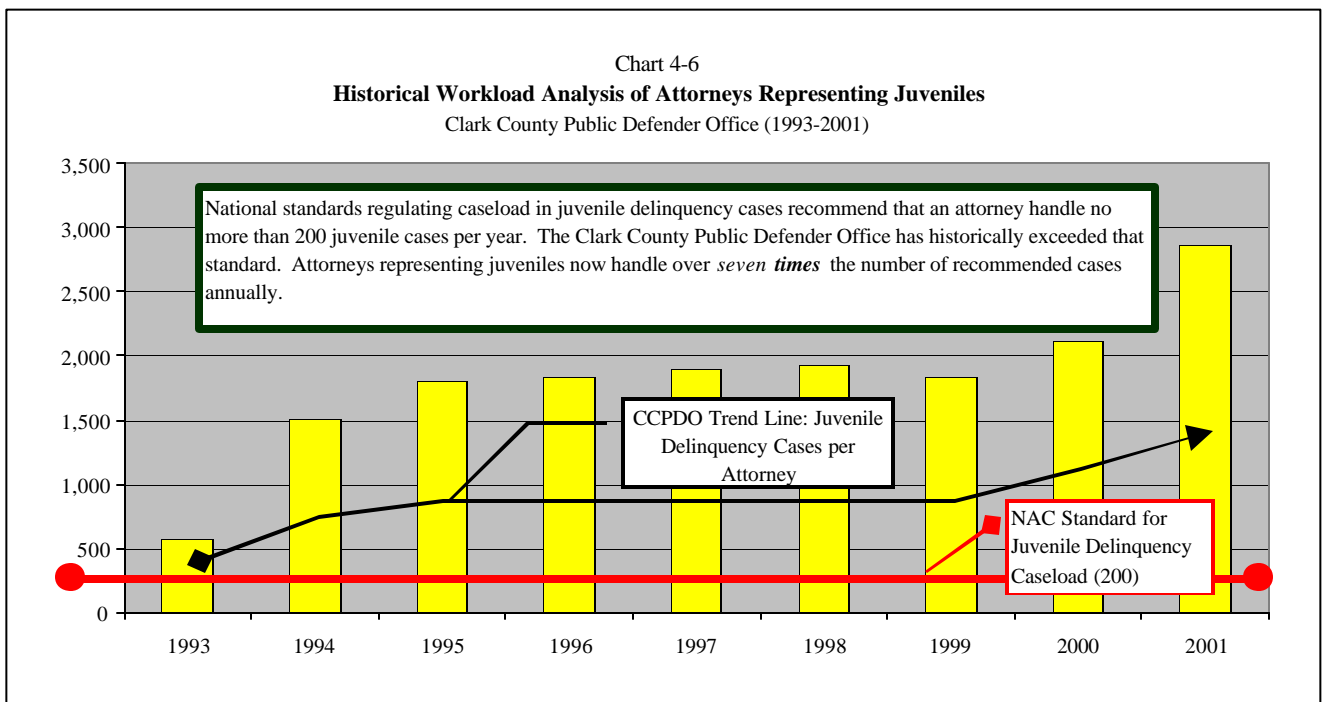
What this means is that as assignments increased 320% (from 2,963 in 1979 to 11,918 in 2001), dispositions increased only 296% (from 2,723 to 10,793) creating a pending felony caseload that has grown by 550% (from 1,983 to 12,895). As reported to the Legislative Commission, CCPDO is currently facing a pending caseload that is greater than the number of new cases assigned in any given year (2001 new assignments = 11,918; Pending cases at the close of the year = 12,895.) Because the numbers reported to the Legislative Commission cannot be verifiably supported, Chart 4-5 is provided for speculative purposes only. It does not depict the actual pending caseload, but rather the looming impact that the County will have to deal with at some point in time when the system collapses under its own weight.



It is safe to state that there is some level of pending cases that is growing. Whereas attorneys representing adults at justice and district courts are already in breach of national caseload standards, the addition of a pending caseload into the mix makes that situation even direr. The NAC standards have been in place since 1973, yet at no time in the CCPDO's history has the county properly funded the office to meet those standards.

*Juvenile Representation*

Since 1983, the juvenile facility has been staffed with only two attorneys. Mr. Cooper added a third in 2002. From 1993 until 2001, the CCPDO juvenile new assignments increased over 397% (from 576 to 2,867) without a single new attorney being added to help with the workload. This is despite the fact that in 1993, the juvenile team was already slightly above the national standard for juvenile cases (200) that an attorney should handle based on new assignments alone (in that year two attorneys divided 576 new assignments – an average of 288 cases per attorney, or 44% above the national standard). Chart 4-6 depicts the number of juvenile assignments per attorney. At the close of 2001, CCPDO’s juvenile attorneys were expected to handle more than *seven times* the number of cases recommended by the NAC standards (as depicted below).<sup>65</sup>



Whereas the pending caseload in adult felony representation may indicate that some teams have attempted to maintain quality controls by extending the time to disposition on the average case, there is no comparable pending caseload in juvenile representation. In fact, in three years the number of dispositions outnumbered new juvenile assignments (1996, 1997 and 2001). In two other years (1995 and 1999) the number of new assignments was marginally above the number of juvenile cases disposed (two and seven respectively).

Based on these numbers, one would expect that the average length of time spent on any one juvenile case must be decreasing over time. A check on the average length of

<sup>65</sup> According to the legislative Commission reports, juvenile attorneys were in excess of national workload standard by more than ten times.

time between assignment and disposition based on the “date entered” and “date disposed” data field on all closed cases assigned in a given year was conducted to determine this. Chart 4-7 shows the average number of days from assignment to disposition of juvenile cases. As anticipated, there has been a steady decrease in length of time to disposition on juvenile cases:

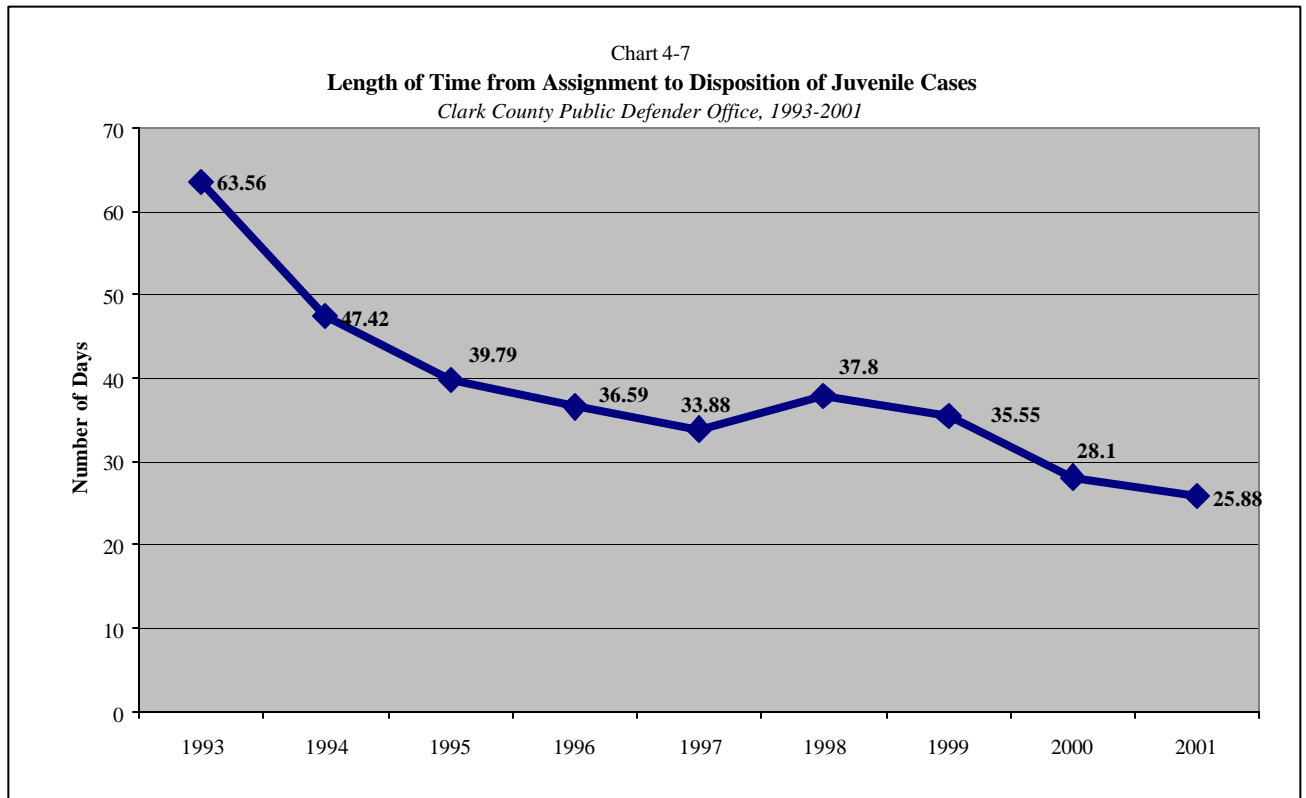


Chart 4-7 does not show a system that has increasingly become more efficient. Even with the third attorney added under Mr. Cooper’s direction, the caseload per attorney handling juvenile matters is still more than 950 cases per year (or 375% above the national standards). This means that each child is given less than two hours of attorney time per case.<sup>66</sup> When combined with these extraordinarily high caseload numbers, what

<sup>66</sup> This calculation is based on an attorney work year of 1,864 hours. It is necessary for any workload analysis to establish some baseline for a work year. For non-exempt employees who are compensated for each hour worked, the establishment of a baseline work year is quite simple. If an employee is paid to work a 35-hour workweek, the baseline work year is 1,820 hours (or 35 hours times 52 weeks). For exempt employees who are paid to fulfill the parameters of their job regardless of hours worked, the establishment of a work year is more problematic. An exempt employee may work 25 hours one week, and 55 hours the next. NLADA uses a 40-hour workweek for exempt employees for two reasons. First, a 40-hour work week has become the *maximum* workweek standard used by other national agencies for determining workload capacities of criminal justice exempt employees (See: National Center for State Courts, *Updated Judicial Weighted Caseload Model*, November 1999; The American Prosecutors Research Institute, *Tennessee District Attorneys General Weighted Caseload Study*, April 1999; U.S Department of Justice, Office of Juvenile Justice and Delinquency Programs, *Workload Measurement for Juvenile Justice System Personnel: Practice and Needs*, November 1999); The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study*; April 1999.) Second, discussions with Mr. Don Fisk and Mr. Arthur Young of the

Chart 4-7 shows is that as the number of cases increased, attorneys have less and less time to spend on anything other than determining how to dispose of the case. The site visit confirmed what the statistics indicate: the attorneys' work in this unit of the CCPDO is not about representing children; it is about processing cases.<sup>67</sup>

At-risk juveniles require special attention from public defenders if there is hope to change behavior and prevent escalating behavioral problems that increase the risk that they will eventually be brought into the adult criminal justice system in later years. These are commonly children who have been neglected by parents and the range of other support structures that normally channel children in appropriate constructive directions. When they are brought to Family Court and given a public defender who has no time for them other than to dispose of the case as quickly as possible, the message of neglect and valuelessness continues, and the risk of not only recidivism, but of escalation of misconduct, increases. Recognizing this, other public defender offices have elevated the priority of juvenile representation and established special divisions not only to promote assessment and placement of juveniles in appropriate community-based service programs, but also to train and collaborate with others in the system to support the same goals, such as jail officials, judges, prosecutors and policy makers.<sup>68</sup>

There was no other aspect of the site visit that was more troubling than the observations in the area of juvenile representation. In *In Re Gault* in 1967, the United States Supreme Court held that juveniles are entitled to essentially the same type of representation in delinquency proceedings that adults charged in criminal cases should receive. The standard of representation outlined in *Gault* has been fleshed out over the intervening decades in 19 volumes of Juvenile Justice Standards promulgated by the ABA Institute of Judicial Administration.<sup>69</sup> Measured against any standard, the services provided by the CCPDO to young people are inadequate.

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U.S. Department of Labor, Bureau of Labor Statistics suggest that using a 40-hour work week for measuring workload of other local and state government exempt employees is the best method of approximating staffing needs.

Working 52 weeks per year at 40 hours per week results in a base work year of 2,080 hours. Subtracting 12 national holidays (12 days x 8 hours = 96 hours) and three weeks vacation (15 days x 8 hours = 80 hours) from the base year equals 1,864 available attorney hours per year. Thus, if each of the three attorneys handles 955 cases (2,867 cases divided by 3 attorneys = 955 cases per attorney), on average, 1.96 hours of attorney time would be spent on each juvenile case (1,864 hours divided by 955 hours = 1.96 hours per case, or 1 hour and 58 minutes). As bad as these figures appear, the reality may, in fact, be far worse. We have not factored in sick time or time required to attend Continual Legal Education training (or other types of professional development). Our calculation also assumes that every available attorney hour is used productively working on a case.

<sup>67</sup> Watching young people file in and out of the court in such numbers that the attorneys barely had time to speak to clients conveyed powerfully the significant gap between reality in the CCPDO juvenile unit and all national benchmarks for attorney performance in juvenile justice systems. See generally *Compendium of Standards for Indigent Defense Systems* (Office of Justice Programs, U.S. Department of Justice, 2000), Vol. V, Standards for Juvenile Justice Defense.

<sup>68</sup> See Juvenile Sentencing Advocacy Project, Miami/Dade County, Florida (proposal for this and other successful federal Byrne grants on-line at [www.nlada.org/Defender/Defender\\_Funding/Successful](http://www.nlada.org/Defender/Defender_Funding/Successful)). See also Youth Advocacy Project, Roxbury, MA ([www.nlada.org/News/NLADA\\_News/1005694565.43](http://www.nlada.org/News/NLADA_News/1005694565.43)).

<sup>69</sup> See key provisions relating to juvenile defense, indexed in *Compendium of Standards for Indigent Defense Systems*, Volume V, *supra* note 2.

Charges are seldom investigated. Indeed there are no investigators in the juvenile facility. If an attorney wishes investigation in a juvenile case, he or she must file a special request for investigative services with the main CCPDO office. Motions are rarely filed or litigated. If legal issues are raised at all, they are done orally in court. Although the new judge presiding over juvenile matters has specifically requested the CCPDO attorneys to file written motions and has encouraged them to litigate legal issues, the attorneys simply do not have the time to make this a regular part of their practice.

There is no time to develop professional client relations. The first contact a young person may have with the office is with the part-time intake worker. In most defender offices this initial interview has several goals: beginning the process of establishing a relationship of trust to facilitate the legal representation; explaining the basic functioning of the justice system and what the next step in the process will be; collecting social information about the client and his or her family; and obtaining information about the charges. The interviews observed by a member of the NLADA team lasted under five minutes.

It is not uncommon in many jurisdictions to find low trial rates in juvenile cases and an emphasis on dispositions; but there is generally a corresponding emphasis on constructive alternative dispositions, through rehabilitation, social work staff and educational and social services. But in the CCPDO, neither increased social work staff nor attorney time spent on locating appropriate services nor developing disposition alternatives accompanies the emphasis on dispositions. Similarly, in many public defender offices, juvenile transfer or waiver hearings, because of their serious potential consequences, are regarded as second only in importance to death penalty proceedings. Staff understands that the decision to treat a juvenile as an adult can mean the difference between a short time in a detention facility and a longer time in prison. It can mean the difference between receiving educational and other rehabilitative services or a purely punitive sentence; between an opportunity for becoming a productive member of society or becoming the victim of sexual abuse while incarcerated with adults. CCPDO staff acknowledged that although they conduct numerous transfer hearings throughout the year, they do not have the time or resources to adequately prepare for them.

The inadequacy of resources in the juvenile unit is not limited to insufficient personnel. The unit does not have basic technology necessary to support a law office. Case management in the office is accomplished by inefficient, outdated manual procedures (forms filled out by hand, or a typewriter in some instances) because the office has neither the computer equipment or MIS support to incorporate more efficient, computer-based tracking systems. Incredibly, at the time of the site visit, the unit had no photocopier. This meant there were two options for making the numerous copies of documents required daily. Staff could use the copier function on the fax machine, which results in substandard, barely legible copies, or travel some distance to the District Attorney's office to request permission to use their machine – a request that is, reportedly, denied with increasing frequency.<sup>70</sup>

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<sup>70</sup> It was reported to NLADA team members that a copier was secured for the juvenile office since our visit.



One impressive part of CCPDO juvenile operations was the dedication and professionalism of the staff. Despite laboring under onerous caseloads with insufficient support, the overriding desire repeatedly expressed by both attorney and non-legal staff was to be able to serve their young clients and the public competently and professionally. The staff of the juvenile office readily acknowledged the shortcomings of their practice. In sum, the inadequate services appear to be due not to a lack of desire but to a lack of resources.

### *Municipal Misdemeanor Representation*

Although the focus of this report is indigent defense representation under the County's jurisdiction, the representation historically afforded to indigent defendants in Municipal Court has a potential impact on the workload in District Court.<sup>71</sup> Until July of

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<sup>71</sup> Similarly, NLADA was not contracted to study the entire Clark County indigent defense system. Consequently, NLADA representatives did not interview District Court Judges or the Court Administrator regarding the contract conflict system. However, it should be noted that the contract system depicted in the DOJ/ABA report, and confirmed through site visit interviews with CCPDO management and staff, violates numerous national standards. Fixed annual contract rates for an unlimited amount of cases, or flat rates per case, create a conflict of interest between attorney and client, in violation of the *Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services* ([www.nlada.org/Defender/Defender\\_Standards/Negotiating\\_And\\_Awarding\\_ID\\_Contracts](http://www.nlada.org/Defender/Defender_Standards/Negotiating_And_Awarding_ID_Contracts)), written by NLADA and adopted by the ABA in 1985. Guideline III-13, entitled "Conflicts of Interest," prohibits contracts under which payment of expenses for necessary services such as investigations, expert witnesses, and transcripts would "decrease the Contractor's income or compensation to attorneys or other personnel," because this situation creates a conflict of interest between attorney and client. The same guideline addresses contracts that simply provide low compensation to attorneys, thereby giving attorneys an incentive to minimize the amount of work performed or "to waive a client's rights for reasons not related to the client's best interests."

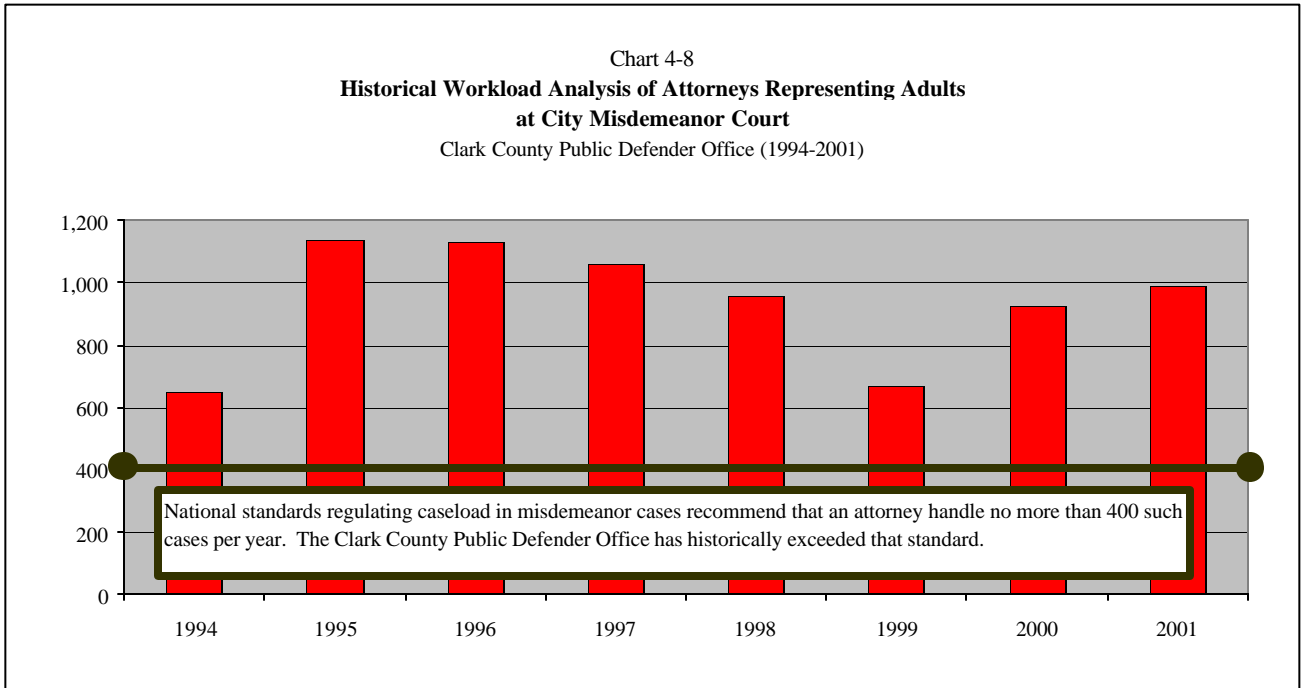
For these reasons, all national standards, as summarized in the ABA's Ten Principles (Chapter III, *supra*) direct that: "Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual or complex cases, and separately fund expert, investigative and other litigation support services" (Principle 8).

Standards also prohibit indigent defense contracts being directly engaged or overseen by the judiciary. The first of the ABA's Ten Principles of a Public Defense Delivery System requires that:

**The public defense function, including the selection, funding, and payment of defense counsel, is independent.** The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.

To effectuate the requirements of standards regarding indigent defense contracting, the U.S. Department of Justice funded the preparation of a Model Contract for Public Defense Services by NLADA and the Criminal Courts Technical Assistance Project, "to help counties and states interested in contracting for indigent defense services identify and address issues regarding cost, accountability, workload, and quality of services" (see Bureau of Justice Assistance Bulletin, <http://www.ncjrs.org/pdffiles1/bja/185780.pdf>, at p. 4). Mr. Boruchowitz, consultant on the Clark County assessment, is one of the model contract's primary authors. A hard copy is attached as Appendix C. An

2002, the CCPDO contracted with the City of Las Vegas to provide representation in its Municipal Court. Chart 4-8 (below) depicts the average number of misdemeanor assignments per Municipal Court defender over time. In 1994, CCPDO represented Municipal Court clients in 1,293 cases, covered by just two attorneys (or 642 cases per attorney). This exceeded the national workload standard by over 68%. By 2001, attorneys handling municipal misdemeanor cases were in excess of the national workload standard (400) by over 247% (each of five attorneys handle over 988 misdemeanor cases apiece).



As is true with juvenile representation, the sheer numbers of cases alone indicate serious deficiencies in the quality of the services rendered under this plan. Although inappropriate misdemeanor convictions or sentences may not generally result in lengthy incarceration, the life consequences of convictions can be severe, including job loss, family breakup, substance abuse and deportation – all factors that tend to foster recidivism. By investing in defender services for clients at the “entry” end of a criminal career, whether facing misdemeanor or juvenile charges, jurisdictions may be able to retard the rate of more serious crimes, and the consequent costs for indigent defense and the rest of the system. By investing up front, in not only more staff but also particular types of staff, such as social workers, the cost of running a criminal justice system at the back end can be reduced.

In a related vein, attention must be called to the U.S. Supreme Court’s decision in May of 2002 significantly expanding the constitutional right to counsel in misdemeanor

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electronic version of the model contract is available on-line at:  
[www.nlada.org/DMS/Documents/1015619283.17/Full%20volume.doc](http://www.nlada.org/DMS/Documents/1015619283.17/Full%20volume.doc).

cases. In *Alabama v. Shelton*,<sup>72</sup> the Court mandated that governments must provide counsel to not only those indigent defendants who are sentenced to any term of incarceration, but to defendants who receive probationary or suspended sentences which are subsequently converted into incarceration by virtue of a technical violation of the terms of the probation or suspended sentences. Nationally, this is a very significant number of cases; more than 4 million offenders receive probation or a suspended sentence, and of these, 13%, or some 600,000, are subsequently incarcerated for violating their conditions.<sup>73</sup> Though the Court noted that 34 states were already in compliance with its ruling by virtue of providing a statutory right to counsel in such cases, Nevada is not one of them.<sup>74</sup> Thus, Nevada faces not only the prospect of significant increases in misdemeanor caseloads, but because of its failure to act statutorily earlier, the possibility of significant and costly collateral litigation over *Shelton* retroactivity issues (such as habeas corpus petitions by incarcerated misdemeanants, motions to strike convictions as priors for sentencing purposes, and appeals and other actions to overturn, vacate, expunge or pardon convictions).

The decision by the City of Las Vegas to terminate the contract with CCPDO and instead contract with five private lawyers can only result in a further reduction in the level of services. Not only does their caseload of indigent clients start at 247% above national standards, but the time spent on these cases will be further reduced by allowing these privately contracted attorneys to continue to provide services to paying customers – who inevitably tend to command more of any attorney’s attention than their non-paying counterparts.

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<sup>72</sup> No. 00-1214 (<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=00-1214>)

<sup>73</sup> Probation and Parole in the United States, 2001 (Bureau of Justice Statistics, U.S. Department of Justice, [www.ojp.usdoj.gov/bjs/abstract/ppus01.htm](http://www.ojp.usdoj.gov/bjs/abstract/ppus01.htm))

<sup>74</sup> See footnote 8 of majority opinion.

## Chapter V Recommendations

One of the single most important factors in the success of a public defense program is the strength of its leadership. Mr. Cooper appears to possess the right combination of vision and compassion to rejuvenate the CCPDO. Though change has not been as fast as some would like, this is due in large part to Mr. Cooper's genuine understanding of the enormity of the tasks that lie ahead. His management approach has been one of pragmatism. His tenure as Chief has been defined by trying to walk the fine line between implementing needed change and having the office fracture beyond repair. Before detailing the work that remains to be done it is important to remind the County, staff and citizens of the numerous changes that he has made already – even as we caution that the recommendations of this report should be made under an aggressive timeline:

1. One of Mr. Cooper's first acts as Chief was to hire Ralph Baker as Assistant Public Defender. His selection of Mr. Baker, who has a well-established reputation as an excellent trial attorney, was partly to send a strong message to the office and the community that the quality of representation under his leadership was going to be different. Mr. Baker's decision-making style is also distinct but complimentary to Mr. Cooper's own management approaches.
2. Mr. Cooper immediately teamed with the County to get some assistance in addressing the organizational structure of the office, by securing this comprehensive and objective program evaluation. It is important to note that part of the delay for substantive organizational change is due to Mr. Cooper's reasoned desire to obtain the results of that assessment prior to instituting organizational restructuring.
3. The resignation of the former Chief coincided with the resignation of the Chief Investigator. Mr. Cooper got the County to agree to a national search rather than looking at internal candidates only. In doing so, he succeeded in both finding a leader with impressive credentials and moving toward assembling a staff and management team that is more reflective of the racial and gender make-up of the community.<sup>75</sup>
4. Under the past administration, CCPDO staff received glowing reviews (whether warranted or not) and pay raises for over two decades. Where measurable competent performance is not made the linchpin of representation,

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<sup>75</sup> Ms. Conaway has already taken advantage of the resources offered through national indigent defense networks, posting questions on a national email list regarding investigators' ability to carry firearms, salary parity with prosecution investigators, and availability of training. She has also taken the lead on visiting and collecting information on a volunteer investigator program, which could result in significant savings for the County.

an "entitlement" mentality develops, which is at odds with performance-based management.<sup>76</sup> Consistent with the goal of improving performance, Mr. Cooper went through the staff evaluation process, and in conjunction with Mr. Baker, critiqued attorneys' performance, giving many "needs improvement" ratings.<sup>77</sup> This bold first step was a critically important one to successfully change the CCPDO culture.<sup>78</sup>

5. Mr. Cooper created a "Sexual Assault" team to address the specific complexities inherent in this category of cases and to expand the expertise within the office. This move toward specialization and away from the traditional tracking approach – which can be further expanded given additional staff – is to be applauded. Although there was some significant confusion among staff regarding the precise goals and functioning of the team, those concerns can be addressed through improved communication mechanisms, including some of the recommendations that appear later in this report.
6. Mr. Cooper added staff –one attorney, through reassignment – to the juvenile team. While the shift in staff is far from adequate, it at least indicates his awareness of a major problem facing the office.
7. Mr. Cooper also has hired five new deputy public defenders during his tenure. As mentioned elsewhere, his choice of candidates and the process through which they were selected address the dual hiring goals of having a qualified and diverse staff.
8. Mr. Cooper extended the CCPDO office hours to better meet the needs of clients.
9. Mr. Cooper and the University of Nevada, Las Vegas created an investigator extern program. Similarly, in cooperation with the Boyd Law School, CCPDO began a law student extern program in January 2003.
10. Mr. Cooper retained efficiency experts to evaluate the work area in order to improve efficiency of operation, morale of staff and safety of work place.
11. In an historic move, Mr. Cooper has begun to build bridges with the Federal Public Defender, an important resource for training and professional development. Among the efforts in this regard, the Chief Federal Public

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<sup>76</sup> "People believe they are owed a raise twice a year," wrote one staff-survey respondent, "and any attempt to hold back those raises are a direct attack on a person's livelihood."

<sup>77</sup> Although raises were not dependent on these initial reviews, to say that even this first step caused problems in the office is an understatement.

<sup>78</sup> It was reported to the NLADA team that Mr. Cooper's performance measures have been adopted by the District Attorney's office and Clark County to measure the performance of other attorney staff.

Defender (and former candidate for Mr. Cooper's position) has been invited to conduct informal "brown-bag" training sessions in the office.<sup>79</sup>

All of these steps are *major improvements*, considering the uphill battle Mr. Cooper faced upon his appointment. Although this report identifies areas within the current management structure that need improvement, the majority of the problems preventing the office from providing adequate representation in an effective and cost-efficient manner were created in years past. Clark County has many assets that can support positive change, including, among other things, dedicated, talented CCPDO staff and leadership, strong County leadership, an engaged community that desires good performance and accountability, and competitive salaries to recruit and retain qualified staff.

It has been clear from the inception of this project that the Clark County Public Defender Office has the potential to become a national model organization for indigent defense representation. However, no management team or structure will be able to institute the performance-based accountability system desired by the County without a serious recommitment of resources to CCPDO and some significant changes. The following recommendations are made to bring Clark County into compliance with national indigent defense standards:

- 1. Clark County Must Increase the Number and Type of CCPDO Staff Positions.** *The County should fund additional attorney, investigator and paralegal positions. CCPDO should create and the County should fund new social worker positions. The County should fund CCPDO's creation of new attorney "supervisor" positions that have responsibility for training, mentoring and evaluating attorney staff performance in place of the old "Team Chief" model.*

#### *A. Attorney Staff*

As the caseload analysis in Chapter IV indicates, there are far too few attorneys to provide competent representation to all of the CCPDO's clients. The national workload standards discussed in previous chapters and the 2001 CCPDO caseload require the following staffing:

- i. Ten attorneys dedicated to murder cases;
- ii. 77 attorneys dedicated to felony representation;
- iii. 11 attorneys dedicated to misdemeanor representation;
- iv. 14 attorneys dedicated to juvenile representation;
- v. Five attorneys dedicated to appellate representation; and,
- vi. Seven attorneys to revocation proceedings.<sup>80</sup>

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<sup>79</sup> Mr. Cooper reported to us that numerous other changes have been implemented since our site visit. The changes include: implementing a real-time telephone monitoring system; securing funding for the first ever paralegal position (to be filled in 2003); creating a social worker extern program (one social worker on staff); sending some attorneys to innovative Continuing Legal Education (CLE); obtaining new computers; instituting regular staff meetings; requiring attorneys to meet in-custody defendants within 48 hours of arraignment; creating a client information brochure; and, adopting a formal conflict of interest policy.

### *B. Attorney Supervisors*

Consistent quality performance is not achievable without first creating a supervisory staff structure. A new job description for “Attorney Supervisors” should be developed and classified according to the County’s human resources guidelines. The positions should include responsibility for supervision, training and performance evaluation.<sup>81</sup> Vacancy announcements should be posted inside and outside of the CCPDO. Diversity of the supervisory team should be considered in the hiring process. Not only is this consistent with research and practice concerning effective teams, it can assist the CCPDO’s efforts to develop better community relations and support.<sup>82</sup> The new supervisors should carry no caseloads, or only extremely limited ones.<sup>83</sup> Whether or not they have caseloads, willingness to try cases and skill in doing so should be among the hiring considerations. National standards call for no less than one supervisor for every ten lawyers.<sup>84</sup> Based on the staff numbers recommended above, there should be 11 Attorney Supervisors.

### *C. Support Staff*

The role of support staff (investigators, social workers, paralegals, legal secretaries, and office managers) in public defender offices has taken on more importance over time both in terms of quality and cost-effectiveness. Investigators, for example, have specialized experience and training to make them more effective than attorneys at critical case-preparation tasks such as finding and interviewing witnesses, assessing crimes scenes, and gathering and evaluating evidence – tasks that would otherwise have to be conducted, at greater cost, by an attorney. Similarly, social workers have the training and

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<sup>80</sup> Additionally, though we realize that Clark County does not have jurisdiction over Municipal Court, we strongly urge the City of Las Vegas to reconsider its decision to contract out the workload to five private attorneys. Misdemeanor representation has long proven to be an effective way for young attorneys to develop their skills and prove their abilities before moving on to felony work. The misdemeanor workload in the Municipal Court requires ten attorneys. When combined with County misdemeanor staff and revocation-proceeding staff, this would give the CCPDO a junior staff of 28 attorneys and allow them to create a system whereby attorneys are advanced to felonies based upon experience and performance merit. A rotation system in which felony-experienced lawyers spend some time periodically in misdemeanor (and juvenile) work would strengthen the other divisions, provide senior advisers for less experienced attorneys, and give felony lawyers a change of pace. Support staff calculations are based upon attorney-to-staff ratios that do not include the ten Municipal Court attorneys mentioned above.

<sup>81</sup> The new positions are significantly different than the “team chief” positions. For that reason and others, including sending a message that this is not “business as usual,” re-naming the positions is recommended. As these are new positions, an open hiring process should be conducted.

<sup>82</sup> Seven of the eight current team chiefs are white males.

<sup>83</sup> There are compelling reasons to requiring attorney supervisors to carry a limited amount of cases, including: (1) it helps them to stay current on criminal law and court practices as they change; (2) watching skillful, experienced attorneys in court is often good for morale and is an effective way to demonstrate practices than less experienced attorneys can; and (3) it provides mentoring opportunities for less experienced attorneys through “co-counseling” or “second-chairing” cases. Attorney supervisors with caseloads generally are assigned more complex cases that are likely to go to trial.

<sup>84</sup> Guidelines for Legal Defense Systems in the United States, 4.1(b).

experience to assist attorneys in fulfilling their ethical obligations with respect to sentencing, by assessing the client's deficiencies and needs (e.g., mental illness, substance abuse, domestic problems, educational or job-skills deficits), relating them to available community-based services and resources, and preparing a dispositional plan meeting the requirements and expectations of the court, the prosecutor and the law. Such services have multiple advantages: as with investigators, social workers are not only better trained to perform these tasks than attorneys, but more cost-effective; preparation of an effective community-based sentencing plan reduces reliance on jail, and its attendant costs; defense-based social workers are, by virtue of the relationship of trust engendered by the attorney-client relationship, more likely to obtain candid information upon which to predicate an effective dispositional plan; and the completion of an appropriate community-based sentencing plan can restore the client to a productive life, reduce the risk of future crime, and increase public safety.

Both the ABA and NLADA standards require that support services are a vital part of adequate representation. Standard 5-4.1 of the ABA Standards for Criminal Justice, Providing Defense Services, directs that: "The legal representation plan should provide for investigative, expert, and other services necessary to quality legal representation. These should include not only those services and facilities needed for an effective defense at trial but also those that are required for effective defense participation in every phase of the process." ABA Defense Function Standard 4-8.1 requires the defense at time of sentencing to "be prepared to suggest a program of rehabilitation based on defense counsel's exploration of employment, educational and other opportunities made available by community services." And NLADA Performance Guidelines for Criminal Defense Representation require counsel to obtain information as early as possible relating to matters such as the client's mental health, education, medical needs, and other background and personal history, in preparation for sentencing or negotiated disposition.<sup>85</sup>

The Guidelines for Legal Defense Systems in the United States issued by the National Study Commission on Defense Services direct that "defender offices should employ investigators with criminal investigation training and experience. A minimum of one investigator should be employed for every three staff attorneys in an office."<sup>86</sup> The Guidelines further prescribe precise numeric ratios of attorneys to non-attorney staff:<sup>87</sup>

One full time Legal Assistant for every four FTE attorneys;

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<sup>85</sup> Guidelines 2.2(b)(2), 4.1(b)(2)(c), 8.3.

<sup>86</sup> National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States, 1976*, 4.1, Task Allocation in the Trial Function: Specialists and Supporting Services.

<sup>87</sup> Numeric guidelines for professional business management staff are not in the National Study Commission guidelines, but the Commission commented that "professional business management staff should be employed by defender offices to provide expertise in budget development and financial management, personnel administration, purchasing, data processing, statistics, record-keeping and information systems, facilities management and other administrative services if senior legal management are expending at least one person-year of effort for these functions or where administrative and business management functions are not being performed effectively and on a timely basis."



One full time Social Service Caseworker for every 450 Felony Cases;  
One full time Social Service Caseworker for every 600 Juvenile Cases;  
One full time Social Service Caseworker for every 1200 Misdemeanor Cases;  
One full time Investigator for every 450 Felony Cases;  
One full time Investigator for every 600 Juvenile Cases;  
One full time Investigator for every 1200 Misdemeanor Cases;

### C.1 Investigators

It appears from the case file review and interviews conducted by the team that many attorneys request investigations so infrequently as to indicate that important casework is being omitted. Additionally, some investigators are reportedly unfamiliar with how to conduct criminal defense investigations. This is not surprising since they receive no training from the CCPDO, and must do their learning on the job. Especially since they lack consistent guidance from the attorneys and have no structured training, a single supervisor in the investigations unit is inadequate to assure competent work. Thus, the CCPDO should create several “Lead Investigator” or “Investigative Supervisor” positions. Whatever the title, the incumbents should maintain only small caseloads and have supervision and training responsibilities. Creation of lead investigator positions would not only improve the work quality in the investigative unit, but also increase the opportunities for promotion as an incentive for quality work performance.<sup>88</sup>

The investigation unit is already understaffed under national standards in relation to the current attorney staff level, and needs to be increased.<sup>89</sup> But, given the need to increase attorney staff, the investigation staff must further be significantly increased to maintain effective coverage of investigative duties. The staff should be increased to 35 investigators, five of whom should be assigned to the juvenile unit.<sup>90</sup>

### C.2 Paralegal Staff

Virtually every government law office, and all private law offices employ paralegals to assist attorneys in preparing their cases. Effective use of paralegals frees up attorney time for casework that can and should only be handled by the attorney. The PDO currently has one paralegal. Pursuant to NSC Guidelines there should be 30.<sup>91</sup>

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<sup>88</sup> Current investigator positions include a listing for “special investigators,” but the position does not include supervisory duties. Instead, the first level of supervision in the CCPDO is the “Manager of Investigators.” The District Attorney’s Office appears to have an intermediate supervisory position comparable to what this report recommends for the CCPDO, described as “Investigative Supervisor.”

<sup>89</sup> Under the NAC guidelines, CCPDO should currently have 23 investigators and 17 Legal Assistants.

<sup>90</sup> This represents a large commitment of new resources for investigations. The Defender Association in Seattle, WA and Public Defender Services of the District of Columbia are just two examples of public defender offices that have been able to successfully use investigator interns for a significant part of the investigation work. A similar use of interns could be employed by CCPDO as a cost-savings alternative, though we caution that such a program must be accompanied by professional investigation staff dedicated to supervision and training.

<sup>91</sup> There is concern about the lack of advancement possibilities for the current support staff. As one data entry clerk surveyed stated: “I would like to make the public defender office my career. However, there is no room for advancement.” The Legal-Aid Society (New York City) found there was a benefit to re-

### C.3 Social Workers

Similarly, every sizable public defender office (and many smaller programs) employ, or otherwise utilize, licensed clinical social workers. Social workers not only develop presentence reports and pretrial release, pretrial diversion and alternative sentencing plans for their adult and juvenile clients, but also develop mitigation evidence in serious cases. Mitigation specialists, who are commonly social workers, are essential in capital cases, since they, far more than attorneys, have the skills to identify and evaluate the complex range of bio-psychosocial factors which can help shed light on the reasons for the criminal behavior, and make the difference between life or death for the client.<sup>92</sup> The effective development and presentation of mitigation evidence in capital cases is constitutionally mandated.<sup>93</sup> Social workers also provide valuable assistance to attorneys in mental health cases. And as the federal judiciary has found, it is far more cost effective to have social workers doing this work than attorneys.<sup>94</sup>

There should be 35 social workers on the CCPDO staff; five of them should be dedicated to juvenile cases.<sup>95</sup>

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training the best and the brightest of their clerical staff to become paralegals as a reward for outstanding performance. Though not every trainee made a good paralegal, the success of the project was overwhelming as to increasing morale and advancing the productivity and effectiveness of the office. Ms. Susan Hendricks discussed the program with Mr. Cooper during the site visit.

<sup>92</sup> See Stetler, "Why Capital Cases Require Mitigation Specialists," *NLADA Indigent Defense*, July/August 1999, at 1. The proposed Second Edition of the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, scheduled for adoption by the ABA House of Delegates in February 2003, requires that the defense team include "at least one mitigation specialist and one fact investigator [and that] at least one member [should be] qualified by training and experience to screen individuals for the presence of mental or psychological disorders or impairments" (Guideline 10.4(C)(2)); the Guidelines require that the mitigation investigation is complex and wide-ranging (Guideline 10.7 and commentary), and should commence as soon as possible after designation of lead counsel (Guideline 10.4).

<sup>93</sup> [Terry] Williams v. Taylor, \_\_\_ U.S. \_\_\_ (No.98-8384, April 20, 2000).

<sup>94</sup> Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation, Judicial Conference of the United States, May 1998, at 51 (The Importance of Experts and their Cost) (<http://www.uscourts.gov/dpenalty/4REPORT.htm#a010>)

<sup>95</sup> In total, Recommendation #1 represents a very significant commitment of new staffing resources. Such a commitment of resources is further warranted under ABA Principal 8 which states, "There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense."

It is always difficult to compare the resources of a district attorney's office and an indigent defense system. Prosecutors and public defenders have different functions in the criminal justice system. Prosecutors' caseloads include cases that may never be charged, let alone end up as a public defender case. On the other hand, prosecution agencies have access to additional resources beyond their direct appropriations which are not available to public defenders, including: investigative resources of local law enforcement, state and federal crime labs; psychiatric and mental health experts; and resources such as forfeited assets, civil RICO funds, positions funded by various federal grant programs, and federal agency personnel (e.g., FBI). Moreover, district attorneys have more control over their caseloads and can institute policies that affect caseload dependent on current resources. Public defenders are constitutionally bound to

2. **CCPDO Should Re-Define Its Management Structure.** *In re-structuring, the public defender should consider adding a new position of Chief Operations Officer to the Executive Management Team; new positions for Trial Chief, Appellate Chief, and Social Work Chief should be created on par with each other and the current position of Investigative Manager. Creating or re-classifying many of the operations positions must occur concurrently.*

The current management structure is not sufficient to promote and support a cultural change in the agency from one that tolerates individually determined standards of practice to one that supports efficient, consistent, quality work performance and behavior. Both the executive and mid-level management infrastructure need to be strengthened.

### ***Executive Management Team: Chief Public Defender, Assistant Public Defender & Chief Operating Officer***

#### ***A. Re-Defining the Roles of the Chief Public Defender and Assistant Public Defender***

The distinction in roles between the Chief Public Defender and Assistant Public Defender are currently insufficiently defined, and perhaps not clearly understood by Mr. Cooper and Mr. Baker themselves. Generally, public defender management responsibilities can be distinguished as “inside” and “outside” office duties. If the Chief views his strengths as internal management, the external responsibilities are delegated to the Assistant Public Defender. Conversely, if the Chief sees his primary responsibilities as functioning as the office mouthpiece vis-à-vis the press, the wider criminal justice system, the county administration and the citizens of the county, the Assistant Public Defender should be given the authority to oversee and implement practices to ensure the effective day-to-day operations of the organization.

From our perspective, Mr. Cooper views the “outside” responsibilities to be a

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provide representation to whomever is assigned to them; although they have an ethical responsibility to decline appointment to cases exceeding national caseload standards (ABA Principle 5; NSC Guideline 5.1, 5.3; ABA Defense Services Standard 55.3; ABA Defense Function Standard 41.3(e); NAC Standard 13.12; Contracting Guidelines III-6, III-12; Assigned Counsel Standards 4.1,4.1.2; ABA Counsel for Private Parties Standard 2.2 (B) (iv)), the CCPDO has never exercised this responsibility. Additionally, indigent defense providers in Clark County handle certain cases (traffic) that are not handled by the district attorney’s office.

Quantifying prosecution/indigent-defense parity in Clark County presents additional difficulties because of the case-tracking issues highlighted throughout this report. NLADA did not interview the District Attorney for this report, but did obtain the caseload reports sent to the Legislative Commission. Many of the data fields for the District Attorney were not filled in, in many instances because the District Attorney expressed the position that the data as requested was not an accurate way to measure the office’s workload. NLADA recommends that a formal parity comparison be conducted and presents the following conclusion for informational purposes only. In 2001, CCPDO represented clients in 11,611 felony cases. The District Attorney reported prosecuting 21,258 felony cases. This means that CCPDO handled 55% of the district attorney’s felony caseload. According to the Clark County Amended Final Budget, FY 2001-2002, the CCPDO receive only 44% of the funding of the District Attorney’s office (CCPDO: \$13,061,617; District Attorney: \$29,128,036). The two offices have salary parity for all but investigative staff. Thus, the disparity is not due to differing salary structures.

predominant part of his duties as Chief. Though all internal decisions of importance are, and should be, made in conjunction with the Assistant Public Defender, Mr. Cooper expressed on several occasions that he wanted Mr. Baker to be seen as the “go to” person for internal issues within the office. However, with his carrying of a caseload, admitted lack of exposure to non-attorney issues (and probably an aversion to them), and his lack of management training in general, the Assistant Public Defender’s actual role has become more of a Chief Trial Attorney (CTA) -- a very important part of the management team in an office with the trial record and reputation of the CCPDO – but a role more narrowly defined than what the office needs to operate efficiently.

In short, the CCPDO has a significant vacuum in the management of its operations – both “internal” and “external.”<sup>96</sup> For instance, in more traditionally managed public defender offices, “outside” duties include taking policy positions on criminal justice practices affecting the cost and quality of indigent defense services. Recognizing that any change in one criminal justice agency’s policies or practices impacts the whole system, Chief Defenders in many jurisdictions have taken the lead in forming “Coordinating Councils” to find jointly developed solutions to problems that are consistent with the various agency missions and functions.<sup>97</sup> Coordinating Council members explore ways in which systems can operate more efficiently, economically, effectively (in promoting public safety) and fairly.<sup>98</sup>

Having such “outside” responsibilities precludes the Chief from taking the greater responsibility for the development and institution of internal standards and guidelines, which we view as the primary responsibility for the Assistant Public Defender to undertake. Though this report has focused primarily on the need for performance measures, the CCPDO is in need of a whole host of other policies relating to personnel, training, supervision, budget and resource development, public education, community service, systemic improvement and legal representation (to be discussed further in Recommendation #4, below).

With these important “internal” and “external” responsibilities, the Chief and

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<sup>96</sup> One such area is “community relations.” Because of the serious problems between the office and their client-base, NLADA has included a discussion of community relations as a separate recommendation (See Recommendation #10, below).

<sup>97</sup> See *Guidelines for Developing a Criminal Justice Coordinating Committee*, National Institute of Corrections, U.S. Department of Justice, 2002 ([www.nicic.org/pubs/2002/017232.pdf](http://www.nicic.org/pubs/2002/017232.pdf)); *Improving State and Local Criminal Justice Systems: A Report on How Public Defenders, Prosecutors, and Other Criminal Justice System Practitioners Are Collaborating Across the Country*, Bureau of Justice Assistance, U.S. Department of Justice, October 1998 ([www.ncjrs.org/pdffiles/173391.pdf](http://www.ncjrs.org/pdffiles/173391.pdf)).

<sup>98</sup> While the manner in which councils operate and the issues they have tackled vary greatly, there are some essential components common to the most successful of these entities. These include membership that includes all of the leaders whose responsibilities significantly impact the functioning of the criminal justice system (for example, presiding judge, district attorney, chief defender, police chief, corrections official, and appointed or elected officials); regular meetings that occur in an atmosphere that promotes trust; volunteer or paid staff (often employees of one or more of the participating agencies) who have experience in meeting facilitation and project management; and access to data and a willingness to share it. The County should explore the feasibility of creating a Criminal Justice Coordinating Council with appropriate officials as a vehicle for making systemic improvements.

Assistant Public Defender cannot be expected to carry a caseload or to micromanage every detail of the day-to-day operations of the organization without significant support.<sup>99</sup> The Chief and Assistant Public Defender need the support of a third member of the Executive Team to help oversee the efficient running of a large organization -- this is especially true for the business-side or operations of the organization.

### *B. Chief Operating Officer*

There is a need for a strong Chief Operating Officer (COO) to be a part of the Executive Team. The COO would directly supervise a Budget Director, Human Resources Director, and an MIS Director. The COO position should require significant skills and experience in management, finance and administration.<sup>100</sup>

Along with responsibilities that are analogous to those outlined above for the programmatic “chief” positions, the COO should work with the HR Director and the County Human Resources Department to create, redefine or reclassify positions to ensure efficient management of support staff and operations. Some job descriptions on the operations side do not appear to comport with an employee’s day-to-day responsibilities. For example, the executive secretary to Mr. Cooper is officially classified as an “Office Services Manager.” The “Manager” title indicates direct supervision of the two secretaries in the off-site juvenile office (and formerly of the Municipal Court secretaries), which is far from an efficient management structure.<sup>101</sup> Much of the rest of the clerical staff time is spent in redundant and probably unnecessary paperwork processing. An active effort should be made to identify, describe and simplify what they do. In effect, simplification and elimination of redundancy produces more capacity (more on this below).

### *Middle Management*

Mr. Cooper must define and select a middle management team that is inclusive of attorney and non-attorney staff alike. The new management team should meet regularly

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<sup>99</sup> Rarely in an organization the size of CCPDO does the Chief Executive not have an administrative secretary dedicated solely to his workload demands. There is not apparent reason to deviate from this practice. Indeed, it is difficult to imagine how Mr. Cooper could efficiently address change without such staffing.

<sup>100</sup> In some defender offices the COO function described above is bifurcated, and there is a CFO (Chief Financial Officer), who also serves on the executive management team. Mr. Cooper may wish to consider this option if he chooses to follow the recommendations and re-structure his management team.

<sup>101</sup> Several interviewees stated that the bifurcated operations system currently in place is due, in part, to the actions of the former CCPDO administration, in which, at times, non-attorney job descriptions would be based in part on a desire to increase salaries for certain employees. Such additional responsibilities would allow a county human resource department to reclassify the position to a “manager” and justify a higher pay scale. Whether accurate or not, this statement is not a reflection on the quality of work performed by the Offices Services Manager, and should not be construed to be a recommendation that her pay be reduced. Rather it serves to highlight the need for the County Human Resources Department to reclassify some operational positions. Some of the organizational changes recommended will, if approved, require such reclassification in any event.

and create clear policies for communicating important decisions back to the staff. The elevation of the non-attorney chiefs to a position of authority along with the creation of a Chief Trial Attorney position will draw clear lines of communication to assure that non-attorney issues are being raised at the highest level. Below is one example of what a newly restructured middle management team may look like:

#### *A. Chief Trial Attorney*

The Chief Trial Attorney (CTA) is a new position that would oversee the new Attorney Supervisor positions, the Training Director and the paralegal staff. The CTA should be required to have strong trial skills. Position responsibility should include oversight of all attorneys in the trial side (as opposed to appellate) of the agency and legal “quality assurance” – defined to include: ensuring uniformity of supervision (including performance evaluations); working with the Training Director to develop and implement training for attorney and other professional staff (for example, investigators, social workers and paralegals); assisting in the development of standards for attorney performance, other case practice standards, other policies and procedures that relate to the work of the trial division, and awards systems and programs; monitoring division workload and professional discipline; scheduling regular meetings with judges and justices to entertain feedback on attorney performance in the courtrooms; and incorporating paralegals into the legal practice of the office. The CTA should also have a very limited caseload. Mr. Cooper should entertain a national search for this position, in the hopes of hiring someone with prior attorney supervision background. The CTA would oversee:

##### *Training Director*

Mr. Cooper should immediately seek authorization and funding to create the position of Training Director.<sup>102</sup> The Training Director should oversee the development and implementation of training for all legal staff. Working with the Trial Chief, Attorney Supervisors and Appellate Chief, the Training Director should be responsible for the development of training assessment instruments and processes, curricula for new attorney training, and on-going training for all legal staff, and an annual calendar of training activities, including one or two “training days.” The Training Director would also coordinate with and serve as a resource for the managers who are responsible for developing training curricula for all other staff, including, for example, the Investigative Manager, Chief Social Worker, and Human Resources Chief.

##### *Attorney Supervisors*

See Recommendation #1 for description of “Attorney Supervisor” responsibilities.

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<sup>102</sup> For more on the development of a professional Training Unit, see Recommendation #5.

### *Paralegal/Legal Secretary Supervisor*

Oversee paralegal and legal secretary staff.

#### *B. Chief Appellate Attorney*

This new position should be responsible for the management and administration of an Appellate Division. Position responsibilities would parallel those for the Chief Trial Attorney, described above, as they pertain to appellate work.<sup>103</sup>

#### *C. Chief Investigator*

In addition to current responsibilities, the Chief Investigator should supervise the Lead Investigator positions and work with the Training Director to ensure that professional development and on-going training is extended to the investigation staff. The Chief Investigator should also assist in developing internal standards and guidelines and policies and procedures related to the investigating of client cases.

#### *D. Chief Social Worker*

The Chief Social Worker should be responsible for hiring and incorporating new social workers into the effective management of the CCPDO operations. Because it will be difficult to bring on 35 social workers immediately, the Chief Social Worker should develop a plan to phase in staff and make the best use of the staff as they are hired. Like the other “chief” positions, the Chief Social Worker would be responsible for the management and administration of the division, including the development of policies and procedures and practice guidelines. Again, because of CCPDO’s unfamiliarity with the use of social workers, a national search is recommended.

On the Operations side, Public Defender should consider reclassifying or creating the following positions:

#### *E. Budget Director*

The CCPDO’s annual budget proposals comport with rigid conventions prescribed by Clark County. The result has been regularly frustrating and occasionally stultifying for CCPDO management. There are separate, loosely connected, components of the budget proposal related to technology, fixed or capital assets, and personnel plus services and supplies. Capital improvement requests compete with those of other County agencies and are prioritized for funding in a joint decision-making process that is external to the CCPDO. This fragmented approach to budget development makes meaningful planning difficult and sometimes results in disjointed budget allocations.<sup>104</sup> It is even more difficult without a single person being charged with coordinating the needs of each

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<sup>103</sup> See Recommendation #6 on the creation of a separate Appellate Unit.

<sup>104</sup> For example, during the 2002-2003 budget process, new paraprofessional positions were funded without concurrent allocations of necessary space, equipment or supplies to support them.

department (attorney, investigations, social workers, support staff) and working with the County to streamline the budget process.<sup>105</sup>

While the vagaries of County budgeting have had a clear impact on the fate of the CCPDO's budget submissions, it is also clear that the office has come to the conclusion that it can do little to affect the outcome. With a strong Budget Officer in place, several changes could, over time, strengthen the CCPDO's position in the budget process. First, strategic planning and strategy implementation should occur within the same process by which budgets are developed. Second, budget justifications should contain much greater detail than is the current practice. Specifically, quantitative data demonstrating CCPDO historical performance and anticipated need should support each request for additional funding (improving data collection is discussed below). In the past, submissions have been driven by anecdotal experience or projections of decision-making at County management or policy-maker levels. While experience and intuition can help, over time only actual performance and assessment of need lead to better outcomes.<sup>106</sup>

Finally, local governments across the nation are increasingly struggling with the growing costs of the overall criminal justice system. Public defenders are in a good position to offer suggestions that could lead to reducing costs. For example, developing alternatives to incarceration, diversion programs for less serious offenses, and considering treating some felonies as misdemeanors all can significantly reduce both short-term costs and potentially long-term costs by reducing recidivism (with beneficial impacts also, of course, on public safety). The Budget Officer should include this kind of cost-reduction analysis in the CCPDO budget preparations. By helping to build coalitions for this kind of change, the Chief Public Defender can also foster support for his own budget recommendations. The CCPDO should seek support from bar associations, the law school, and from community-based organizations for the improvements it plans in the office and for the budget allocations it will need to implement those changes.

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<sup>105</sup> The budget submission cycle begins in September, only two months after the current budget year has begun. Currently, the Administrative Services Manager and his staff develop the budget submission. Mid-cycle budget adjustments require an extraordinary process that is not regularly employed and the CCPDO is not permitted independently to transfer funds between line item accounts. "Base-budget" proposals are essentially "roll-over" exercises that augment the previous year's budget allocation with requests for incremental increases. Zero-based budgeting and performance-based budgeting approaches are not used in Clark County. Increases in the base-budget requests are supported by brief descriptive justifications. Quantitative data are not consistently submitted for this purpose.

<sup>106</sup> A simple example related to caseload illustrates this point. As demonstrated in Chapter IV, if additional positions are requested to address caseload increases, the justification could include data that show a multi-year trend. In turn, the trend might be statistically compared to national standards. While these sorts of justifications may not have short-term impact, a multi-year trend that shows increasing deviation from significant national standards (such as caseload standards) would provide a consistent and supportable reference point for budget and staffing projections over time. It would also insulate the CCPDO and the Chief Public Defender from charges that County managers and Commissioners were not informed in advance of caseload-related problems. While these sorts of budget justifications may not be required by current practice, consistent use of this approach will have an impact over time on decision-making at the management and policy levels in Clark County—even if performance-based budgeting is not used. (See Meyer, D., *Management by Outcomes*, NLADA Cornerstone Magazine, 2000.)



#### *F. Director of Management Information Services*

The Chief Defender, Assistant Public Defender and Budget Officer will all be significantly handicapped without quantitative data derived from fiscal, administrative and law practice areas to support day-to-day decision-making. On-going data reporting has the two-fold benefit of maintaining a year-round focus on the budget and of supporting the use of quantitative approaches to support management decision-making. The latter has come to be known in the management literature as “evidence-based” practices or management by outcomes.<sup>107</sup> Of course, this requires that data be collected, aggregated and analyzed in a consistent fashion for a limited number of strategically determined activities – something that has been absent from CCPDO operations for some time.<sup>108</sup>

With the advent of the NewDawn<sup>®</sup> case-tracking system going on-line shortly, it would be a fundamental mistake to allow poor data collection practices to be continued under the new system. A position of Director of Management Information Services should be created to oversee the case-tracking implementation and the production of regular reports to be shared by management and staff (regarding workload, pending caseload, dispositions, trial rates, etc.). Most importantly, the MIS Director should ensure quality control over data, since any case management system is only as good as the data that are put into it.

To accomplish this, the Director of Management Information Services should directly oversee the data input staff. A records clerk supervisor position should be created to assist the Director. Data entry guidelines and standards must be developed and compliance monitored to protect the integrity of the data. Toward this end, the Director faces a major challenge. Much of the current records clerks’ time is spent in redundant and probably unnecessary work processing. An active effort should be made to identify, describe and simplify what they do. Simplification and elimination of redundancy produces more capacity.<sup>109</sup>

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<sup>107</sup> Meyer, D. *Management by Outcomes*, *ibid.*

<sup>108</sup> This approach is often called a “dashboard” of performance indicators. At budget submission time, “dashboard results” support strategic decisions that are translated directly into budget proposals as part of the justification. There is no separate need to develop data because they are in continual use. The Administrative Services Manager and his staff have made a promising start at tracking and graphically showing trends in expenditures during the current fiscal year. Most notably, a monthly report is generated throughout the year showing expenditures to date in the “7000” or services-and-supplies budget. The report contains bar charts that clearly illustrate the relationship of budget allocated to actual expenditures. This is a powerful management tool, useful to managers and illustrative to anyone, for judging organizational performance. It is an excellent example of how a dashboard indicator can be used in practice.

<sup>109</sup> Toward this end, NLADA spent one morning with the data entry staff. We were extremely impressed with their enthusiasm and dedication. We asked them what would make their jobs more efficient and rewarding. The staff offered numerous sensible solutions to increase office efficiencies, including creating a records library system. CCPDO management must begin to tap the human resources already on staff in this manner. A records library makes sense. The loose attitudes with respect to case file management and their contents at CCPDO are appalling. In our view, the case files are sacrosanct. The CCPDO should have a full time legal records officer who has authority to take appropriate disciplinary or corrective action when someone abuses or loses case files. All case files should be “checked out” of a centralized file room, library style, and returned there when not needed to support case-related activities. People who violate such

Though the expansion of the MIS department is critical, it should not come at the expense of other innovative uses of technology. For instance, the courtroom technology support program being developed by Mr. Jeff Jaeger is both important and impressive. We viewed several Microsoft PowerPoint® presentations that were among the best we have seen from a public defender organization. This aspect of MIS-support risks being lost, however, during the impending installation of the new case-tracking system and the recommended shift of data collection staff to MIS. To avoid this, another full-time position should be added to the MIS department to expand Mr. Jaeger's courtroom technology program and work closely with the Director of Training to train attorneys on its use. A second full-time MIS position should be added to assist with hardware and software issues and function as a "help desk" for staff issues.

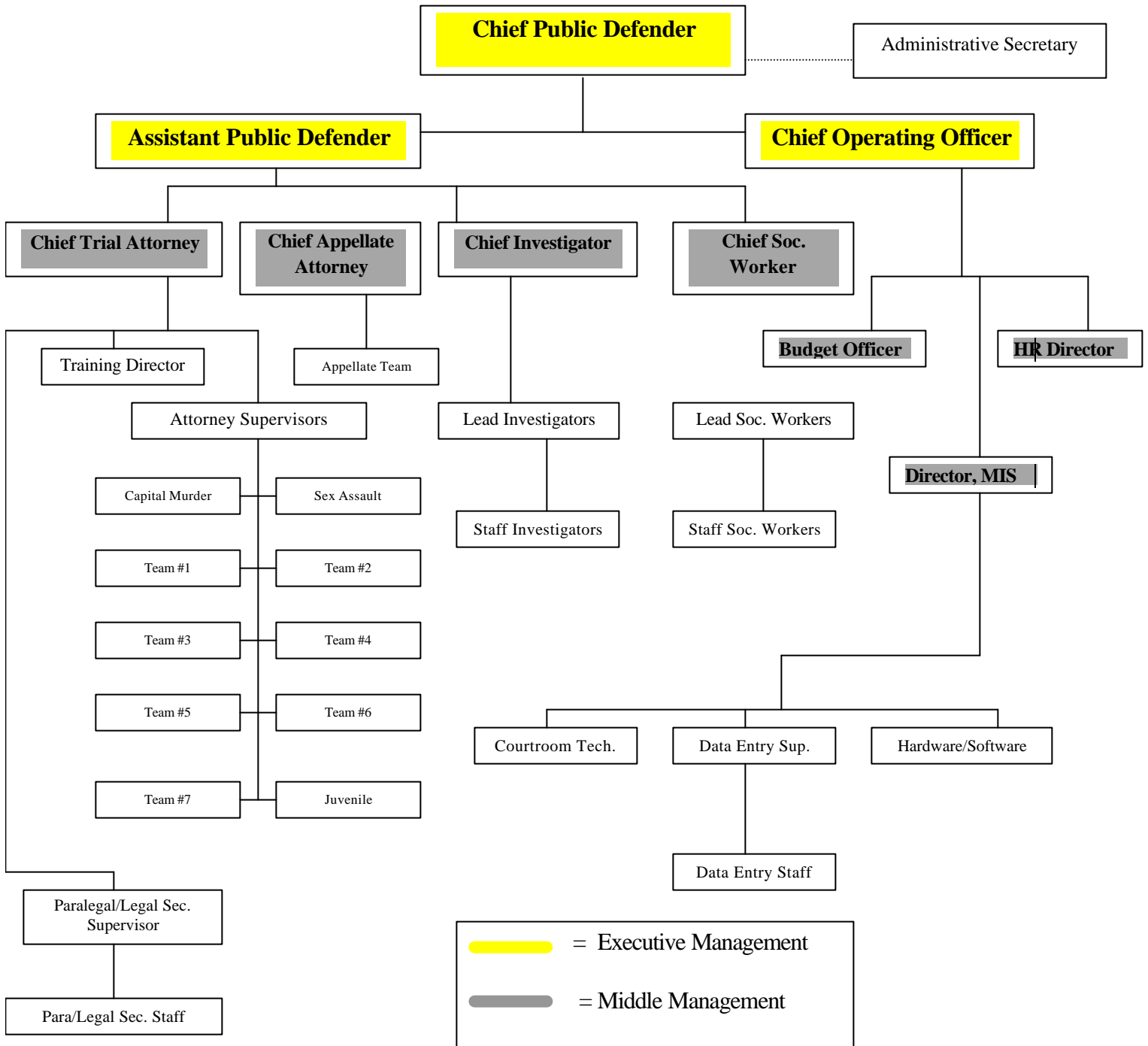
#### *G. Human Resources Director*

Though the County has a Department of Human Resources (HR), the CCPDO needs HR expertise to ensure that County requirements are incorporated into mission- and function-specific policies and practices. In addition to acting as a liaison with the County and assisting in the development of positions and policies, a position with HR expertise will fill a critical management need in implementing a performance plan. The HR Director might also be given responsibility for developing training opportunities for the secretarial and other support staff.

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policies should be disciplined. Finally, under no circumstances should case files ever be destroyed. The CCPDO current policy is to destroy all misdemeanor files after one year. All felony case files (except homicide cases) are destroyed one year after the completion of the sentence (if guilty). The Defender Association of Seattle is required to retain files for seven years, though their internal practice is to keep them longer. National standards regarding contract public defender offices require record retention for at least five years, as "necessary to protect the rights of a defendant for a reasonable time after termination of a case." (Contracting Guideline III-21). NLADA recognizes that there are costs associated with file retention and retrieval. Many public defender agencies are exploring alternatives to paper storage, including scanning, to try to hold down costs.

The organizational chart below is included to help visualize the reorganization.



### **3. The CCPDO Should Develop a Policy and Procedures Manual**

As is true of any organization, sound management practices are required for a public defender organization to be able to provide legal services in an ethical, constitutional and cost-effective manner. Public defender leaders must model zealous representation, inspire it and support it with appropriate management processes and resources. Mr. Cooper inherited an office almost entirely lacking up-to-date, written policies of the type that regularly support defender operations. The lack of an adequate, formalized management system and the corresponding over-reliance on individual judgment has produced inconsistent results in every area. For example, teams are left to develop their own practices and procedures without a clear communication mechanism to inform each Team Chief how the other teams are operating. The policy void has produced inefficiencies throughout the office, an inability to accurately document caseloads and dispositions or to accurately project budgetary needs, and most importantly, an unacceptable disparity in the quality of representation provided to clients.

Under Mr. Cooper's direction, the office has begun developing policies, but much work remains.<sup>110</sup> The Assistant Public Defender should immediately begin to establish policies and procedures (and processes for implementing, reviewing and modifying them) in the areas of Personnel<sup>111</sup>, Training and Supervision, Budget and Resource Development, Public Education & Community Service, Legal Representation and Systemic Improvement. The policies and procedures manual should incorporate the requirements of existing, nationally recognized standards, such as NLADA's *Performance Guidelines for Criminal Defense Representation*, *Standards for the Appointment and Performance of Counsel in Death Penalty Cases* and *Defender Training and Development Standards*, and the American Bar Association's *Standards for Criminal Justice: Defense Function* and *Providing Defense Services*. The PDO should consult with other defender offices, for example the Riverside County Public Defender, which has recently developed a policies and procedures manual that is consistent with these standards.<sup>112</sup>

### **4. CCPDO Must Develop and Implement a Performance Plan that Includes Clear Performance Guidelines and Expectations, Training and Other Appropriate Means for Promoting Staff Development and Consistent Processes for Assessing Development Needs as well as Performance.**

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<sup>110</sup> At the time of the site visit Mr. Cooper had instituted a policy regarding the timeliness of the initial attorney/client contact, for example, and the office was in the process of devising case-tracking policies to correspond with the implementation of a new case management system.

<sup>111</sup> Although the County has personnel policies, the CCPDO needs to develop policies that, while consistent with County practices, more specifically address personnel issues within the context of the work of a public defender agency.

<sup>112</sup> An excerpt from the Chapter on "Evaluating Defender Office Management" from *Evaluation Design for Public Defender Offices* (U. S. Department of Justice, Law Enforcement Assistance Administration, 1977), incorporates many of the policies defender offices should have in a detailed listing of management "benchmarks." The excerpt follows the body of this report in Appendix D.

Most staff members openly expressed the sentiment there has never been any meaningful assessment of performance in the CCPDO.<sup>113</sup> Staff members repeatedly raised concerns that evaluation procedures are more about salary increases than performance.

An effective performance plan is much more than an evaluation form or process for monitoring compliance with standards. Without question assessment is an important part of performance planning, but it is sound performance plans entail much more. Given the widespread cynicism created by the use (or misuse) of evaluation processes in the past, it is even more important than usual that the CCPDO process for creating and implementing a performance plan provide mechanisms through which staff are provided with consistent information from management about the development process and have an opportunity to provide input into the plan as it is developed.

There is no “one-size-fits-all” performance plan. This is not only because organizations’ performance needs differ, but also because successful performance plans allow for some opportunity for staff to shape the plan. Despite differences in performance plans, sometimes even between similarly situated defender offices, there are many features that consistently appear in plans that work well.<sup>114</sup> They include:

- i. *Clear plan objectives.* These can vary greatly both in kind and number but they commonly include such things as: fostering and supporting professional development; giving people clear guidance about what is expected of them; and supporting accountability. Moreover, effective performance plans are tied to and support the fulfillment of the agency’s mission and vision. Critically, effective plans emphasize a goal of promoting employees’ performance success.
- ii. *Specific performance guidelines.* People need to know what is expected of them in order to work to fulfill those expectations. Performance expectations should include for example, attitudinal expectations and administrative responsibilities as well as substantive knowledge and skills.
- iii. *Specific tools and processes for (1) assessing how people are performing relative to those expectations and (2) assessing what training or other support they need to meet performance expectations.* People whose positions require them to conduct performance evaluations must be trained and evaluated as part of their performance plan so that evaluations are done fairly and consistently.
- iv. *Specific processes for providing training, supervision and other resources that are necessary to support performance success.*

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<sup>113</sup> As noted earlier, many staff stated that there had never been a single bad review or a single person terminated for bad performance under the former CCPDO management team.

<sup>114</sup> NLADA can provide CCPDO with sample performance plans from other public defender organizations to assist in this endeavor.

The CCPDO should immediately begin to develop a comprehensive performance plan in line with the information set forth above. Because of the agency's history with evaluation processes, mentioned above, and the lack of exposure to basic management philosophies and strategies, the CCPDO should consider obtaining a professional from outside the agency to assist in developing a short-term planning process and to facilitate some of the management and/or staff meetings that the planning will involve. The CCPDO should develop mission and vision statements.

The CCPDO should write detailed position descriptions for every agency position and should immediately adopt the NLADA *Performance Guidelines for Criminal Defense Representation*. The CCPDO should replace the current evaluation instrument with detailed evaluation instruments that incorporate (specifically or by reference) the position description, the *Performance Guidelines* (for appropriate positions) and reference specific, relevant policies and procedures (from the manual that this report recommends creating.) The performance plan should define the methods and components of evaluations,<sup>115</sup> as well as the timing and frequency. Evaluations should be conducted on a regular basis (at least once a year); they should be in writing, shown to each employee and discussed with the supervisor who conducted the evaluation. The employee must be able to submit written comments on the evaluation and there must be a grievance procedure for disagreements about conclusions contained in the evaluation. To assure that evaluations are reliably done, evaluations of supervisors must address the effective use of the performance evaluation process.

At the beginning of each evaluation period employees should meet with their supervisor(s). The meeting should be utilized to discuss performance expectations and answer questions related to the performance plan (including the evaluation) process. Together, the employee and supervisor should set performance goals for that employee for the specific evaluation period and identify areas where training or other support may be needed to achieve those goals. The performance plan process should include regular training and other resource needs assessments and the CCPDO should create training surveys and other tools to use routinely.

The performance plan should specify the supervision and coaching practices that the agency will employ, and the timing of the practices. For example, attorney supervision commonly involves court-watching, case file reviews, case theory discussions, role-playing, "second-chairing" or "co-counseling," trial or appellate practice groups, training, and many other practices.<sup>116</sup> The CCPDO should develop a yearly "supervision

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<sup>115</sup> A meaningful evaluation process should include both "objective" measures of performance such as case dispositions and other statistics, and the so-called "subjective" measures such as courtroom observation and review of files. The "subjective" measures should be employed by reference to the policies and procedures and may also include the judgment of experienced supervisors about an attorney's courtroom performance, sensitivity in dealing with clients and other factors. Whether "objective" or "subjective," these measures should be memorialized as performance standards and should be consistent with the NLADA *Performance Guidelines* and other national standards. The performance expectations should be published and made available to all staff, and they must be applied equally to all staff in the same categories (for example, all first year attorneys).

<sup>116</sup> While some of the emphasis here is on attorneys, it should be clear that the performance plan should include position descriptions, performance guidelines, supervision and evaluation processes, etc. for all staff, although tailored to the specific position functions.

calendar” that gives general guidance to supervisees and the employees they supervise regarding the frequency of the various practices, while allowing flexibility to address needs individually.<sup>117</sup> Supervision itself is an ongoing event. If done well, it promotes good performance and makes the evaluation process go smoothly. Adequate supervision eliminates employees being surprised by what is contained in an evaluation because they will have been discussing performance issues with their supervisor throughout the year.

Automatic raises should be eliminated. In many offices, merit systems provide for raises determined by performance ratings. The justification for such systems emphasize the value of individualized incentives for good performance and regard the competition in the workplace that the system may generate as tolerable, if not positive. On the other hand, many defender offices have chosen not to utilize systems that foster that type of competition.<sup>118</sup> Raises may be linked, for example, to number of years in the office, such that every one similarly situated gets the same increase annually, *provided that* they meet or exceed a certain performance rating. These offices place a premium on fostering a team environment of collective client responsibility. They view clients, in some respects, as the agency’s responsibility, not just a single attorney’s, and encourage an atmosphere in which colleagues will readily “jump in” to assist one another, for instance when emergencies arise, without regard to who is going to get credit for the act when it comes times to determine raises. Whatever path the CCPDO chooses, the key is that remuneration be linked, in a fair and meaningful way, to performance.

Development of a performance plan will involve time and resources. Successful implementation of this recommendation will benefit employees by fostering professional growth and increased opportunities within the organization and it will benefit CCPDO by improving employee morale. Moreover, it will benefit the clients and the community for years to come. On the other hand, until a performance plan in which staff is given some ownership of the collective health of the organization is implemented, the office will not be able to break the culture that has been holding it back for decades.

##### **5. CCPDO Must Develop Training Programs and Opportunities for All Staff and Should Consider Creating a Specialized Training Unit.**

As should be apparent from the preceding section, training is a key element of a performance plan. The CCPDO should begin immediately to develop a training program, with at least two attorneys dedicated solely to training (including a Training Director position, discussed earlier in the report). The unit should staff a clearinghouse function that contains information on all types of relevant regional, local or national training programs, create and maintain a motions bank and develop other types of specialized

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<sup>117</sup> Some practices, like watching supervisees in court, may occur only a few times during a supervision cycle, while others, like case discussions, could be a weekly occurrence. Ultimately though, frequency should be determined individually, and may vary based on experience levels and individual needs.

<sup>118</sup> CCPDO staff expressed concern about the impact of a competitive pay scheme to the NLADA team. As one attorney stated, “The majority of the people in the office are upset about the new “competition” process for raises being proposed. We do not want to compete with each other because it will turn the office into a backbiting snake pit. Several attorneys have already started to engage in one-up-man-ship where they are trying to pad their statistics.”

materials, including specialized litigation notebooks, sample discovery letters and other documents and checklists geared to special types of cases. The training staff should also take the lead in designing in-house training programs, discussed in more detail below.

In addition, the training unit should be responsible for developing training needs assessments to determine particular staff training needs, and regular processes for conducting them in conjunction with managers and supervisors agency-wide. Based on the assessments and other staff and management input, the training unit should be responsible for establishing a yearly training calendar. The training staff should develop a separate program for new lawyers, which should include role-playing, videotaping, demonstrations and other interactive teaching methods as well as lectures. The most effective defender “new attorney” training programs bring new attorneys on in “classes,” once or twice each year, and provide a 4-6 week intensive training curricula. While coordinated by the training director, the programs usually incorporate participation by many, if not all, staff members.

On-going training for more experienced attorneys must also be provided, as well as advanced programs for lawyers moving into felonies, juvenile court, appeals, and supervisory positions. See Note 2 to the NLADA *Defender Training and Development Standards* (“Other specialized areas of practice which deserve special training include juvenile cases, non-capital homicide offenses, sex abuse cases, sentencing advocacy, appellate/post conviction practice and mental health commitment cases”). The CCPDO should consider some of the model training practices utilized by other defender offices including, monthly trial, appellate, investigator or other practice (small) groups that are utilized for both skills training and supervision; annual (or twice yearly) full staff training retreats; monthly attorney staff meetings that bring in outside experts to train on substantive topics in areas such as forensics or mental health;<sup>119</sup> and annual trial or appellate practice institutes, among others.

Training staff should be a resource for identifying and developing training of all types, for all categories of staff.<sup>120</sup> *Blue Ribbon Advisory Committee on Indigent Defense Services*, found that: “Management training has been underemphasized in the defender community. In addition to instruction in such traditional areas as recruitment, training, personnel evaluation, utilization of personnel, budgeting, computerized case management, and statistics, management training should include some of the formalized

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<sup>119</sup> As NLADA’s *Blue Ribbon Advisory Committee on Indigent Defense Services*<sup>119</sup> concluded in 1996, specialized training should cover the defense of drugs and violent crime cases; mental health, juvenile laws, domestic violence, and substance abuse and treatment; training of both attorneys and investigators on new and developing law enforcement technology and forensic sciences; training of non-legal staff to identify diversion and other programs in the community; and training in the use of modern technology to gather information, conduct research, litigate and communicate.

<sup>120</sup> One of the most critical needs is for training in supervisory and management skills. The transition from litigator to supervisor, and from supervisor to leader, is difficult and requires many new skills. Training must include how to evaluate personnel effectively and fairly to maximize their professional growth, how to deal with disciplinary problems, developments in technology, case management and budgeting, and how to work with other staff members to achieve the goals of the organization. In addition to training the lawyers, the training director should design programs for investigators with the assistance of the Chief Investigator, and for support staff. The Chief Investigator expressed significant interest in such a training program. Both the CCPDO management and the county should support her in this endeavor.



techniques of modern project management.” Similarly, the *Defender Training and Development Standards* call for “the defender organization to provide all supervisors and leaders with training in management, supervisory, and training skills, as well as in leadership principles.”<sup>121</sup>

6. **CCPDO Should Create a Separate Appellate Unit Incorporating the Standards and Evaluation Design for Appellate Defender Offices.**<sup>122</sup> *The PDO should establish policies implementing attorneys’ statutory obligation to assist in the appeal process. Appropriate forms should be developed to support this process. Supervisors should monitor case and court files to assure that the policy is being implemented and performance evaluations should reflect individual actions.*

Appellate representation requires specialization. Appeals often last for years making it difficult to fulfill the demands of appellate research while fulfilling the equally demanding requirements of trial practice. For these reasons, most statewide and major countywide defender offices have developed their own appellate divisions separate and apart from the trial function.<sup>123</sup> It is extremely rare and extraordinarily inefficient for trial counsel to conduct appeals in most of a county as they do in Clark County.<sup>124</sup> It is a practice that heightens the risk of unethical and unconstitutional appellate representation.

NLADA *Guidelines for Legal Defense Systems in the United States* stress the importance of separating the trial and appellate functions. Guideline 4.3 unequivocally states that:

The appellate and post conviction functions should be independent of the trial function in order to accomplish free and unrestricted review of trial court proceedings. Where the appellate office is part of a defender system that includes both trials and appeals, the appellate function should be as organizationally independent of the trial function as is feasible.<sup>125</sup>

The standard makes clear that the main reason for independence of the appellate function is to allow for “independent review of the competence and performance of trial counsel.” Such review is essential to avoid violating conflict of interest laws and ethics rules. Furthermore, leaving trial attorneys responsible for conducting their own appeals

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<sup>121</sup> Standard 8.1 (NLADA, 1997).

<sup>122</sup> NLADA, 1980.

<sup>123</sup> Specialized appellate defender offices exist in over 40 states.

<sup>124</sup> Occasionally, a lawyer may be particularly invested in the issues in a case, and have litigated a variety of specialized motions that would facilitate effective representation on appeal. While most lawyers are more skilled in either trials or appeals, some lawyers are equally effective in both trial and appellate arenas. In this limited sense, it may make sense for the trial lawyer to retain the appeal, but generally it is best to have separate counsel on appeal.

<sup>125</sup> Similarly, ABA Principle 7 segregates the requirements of continuity of representation between trial and appellate representation.

can produce a chilling effect on individuals' right to a fair trial: attorneys do not proceed to trial because they know it can mean that their workload will increase with the potential of a direct appeal upon conviction. The low trial rate and appellate rate highlighted in the DOJ/ABA report may reflect this. Indeed, because the CCPDO lacks policies or procedures for routinely advising individuals of their right to an appeal and there is no training in what constitutes a valid constitutional waiver of that right, the low trial and appeal rates raise significant questions as to whether appellate obligations are being fulfilled.

The low number of direct appeals historically filed by CCPDO make it difficult to judge exactly how many attorneys should be dedicated to the new division, but the volume of serious cases the office handles suggests that at least five would be a reasonable beginning. Once the new case-tracking system is implemented the data can be used to determine the division workload more accurately.

In addition to providing appellate representation, well-managed appeals units can provide important support to trial divisions also. Appellate attorneys are often in the best position to provide research and writing support for complex legal issues that can arise unexpectedly in the course of a trial. Appeals divisions produce monthly digests of new opinions relevant to criminal law practice and procedure and maintain indexed, brief banks accessible to all attorneys (not just those in the division.)<sup>126</sup> In many offices the appellate division is responsible for important post-conviction work.<sup>127</sup> The CCPDO should incorporate these features into the work processes of the unit.

**7. CCPDO Should Consider Alternative Methods of Attorney Assignment and the Composition of Teams.** *The new structure should support ethically required independence and maximize the benefits of team interaction.*

Public defender offices occupy a unique position in the criminal justice system – indeed, in the communities in which they exist. Like the courts and prosecutors, defender offices are publicly funded, and have an obligation to the public to manage their budgets effectively and efficiently. However, unlike the courts and prosecutors, the defender office's obligation to the public takes the form of an obligation to each individual low-income client the office is assigned to represent pursuant to the government's constitutional obligations under the Sixth Amendment.

National standards and ethical rules command that public defense providers be independent of undue control or influence by the courts and the politically elected branches of government, including those that fund them. As required in ABA Principle 1, the public defense function should be “subject to judicial supervision only in the same

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<sup>126</sup> In many jurisdictions, the brief bank is also made available to contract attorneys or assigned counsel who are not part of the defender office, as part of the support defender programs provide to the private bar.

<sup>127</sup> The CCPDO should train all attorneys and paralegals in appropriate and effective pre-judgment motion practice. Form motions should be produced to support this effort and attorneys should have access to a brief bank containing samples. Supervisors should encourage the use of pre-judgment motions in appropriate situations and should monitor case files to determine if practice in this area is improving. Attorney performance evaluations should address this area of practice.

manner and to the same extent as retained counsel.” This requirement derives from the constitutional requirement of conflict-free defense representation.<sup>128</sup>

The County Board of Supervisors appoints the Clark County Public Defender who serves at will. The current Chief Public Defender was appointed in October 2001. Although fact gathering for this report did not call for interviews with County officials, there was no evidence from the internal operations of the office to suggest that they do not permit the Public Defender to operate independently.

Similarly, although there was no direct evidence of undue judicial influence in the Office’s operations, the CCPDO’s structure is one that can foster a diminution of the independence of the attorneys. Specifically, attorneys are assigned to courtrooms where they appear before the same judge, sometimes for years. At worst, this system is a recipe for actual influence or conflict of interest, or at a minimum, the appearance of undue influence by the judge over the representation provided to clients. The structure often results in some reluctance on the part of individual defenders to disagree with or challenge the judge before whom they must appear every day. It invites others, including clients, to infer that the attorney and the judge are some sort of “team,” or, worse, that the attorney is subordinate to, or “works for,” the judge. Aside from independence issues, practicing before the same judicial officer tends to stagnate attorneys’ (and other professionals’) professional development.

For all of these reasons, the CCPDO should replace this assignment system with a system that assigns attorneys to cases. Until the new assignment system has been fully implemented, attorneys can be rotated into different courtrooms. The reevaluation of the assignment system provides an opportunity for reconfiguring teams and integrating true team processes into office operations. There are many different ways to configure the teams, and indeed it may be the case that no two models in defender offices are identical. But all successful teams, both inside and outside of public defender offices, combine different skills and expertise in doing the teams’ work. Teams in many offices include varying disciplines and paraprofessional staff members, in addition to attorneys. Examples are social workers, language translators, community workers, investigators and clerical staff. Often called “cross-functional work teams,” such groupings of individuals deliver service in fundamentally different ways than traditional functionally divided offices.

Teams can be configured based on the type of cases the unit will handle. The determinative case type can be substantive, like the CCPDO units that currently handle sex offenses or homicide cases, or designated by case category or grade, such as Felony A, Felony B, etc. Some public defender offices develop attorney teams based upon experience level. Such team designations also provide a basis for organizing structured training tailored to skills and experience, as well as for managing case assignments. Others utilize teams that are staffed with a diversity of experience levels, which may range from entry level to very experienced staff. And still others combine some aspects of all of the models set forth above. Even teams that are not “cross-functional,” should be developed with consideration given to choosing team members who have different strengths.

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<sup>128</sup> See *Holloway v. Arkansas*, [435 U.S. 475](#) (1978); *Cuyler v. Sullivan*, [446 U.S. 335](#) (1980); *Wood v. Georgia*, [450 U.S. 261](#) (1981).

The first step in developing new teams is to determine the primary goal of implementing such an approach. If the goal is to bring the full advantage of team representation to each client's case, then a model like that employed by the Neighborhood Defender Service ("NDS"), for example, may be appropriate. NDS clients are assigned not solely to a single attorney but to a "cross-functional" (multidisciplinary) team of attorneys, investigators, social workers and others, all of whom are expected to be able to step in if necessary to provide services to a particular team client.<sup>129</sup> On the other hand, if the primary goal is to develop effective training units, then an experience-based team composition may prove more useful.

Whatever decision is made about teams, the team structure must implement work processes that incorporate sound principles of "teaming," which require basic changes in how work is done. The performance of the investigation function can be used to illustrate the differences in work processes between teams and divided organizations. The CCPDO maintains a separate division for investigators. A "library" approach to investigation is used in which specific requests are made for specific investigative tasks. When the task is completed, the investigator moves on to different tasks in different cases handled by different lawyers. In a team-based organization, the investigator serves within a single team and handles his or her work in a joint fashion with other team members including attorneys and other paraprofessionals. He or she may be responsible for the entire investigative work of the team. But, at the margins of individual responsibility, team members share specific kinds of work whatever their training or expertise.

Changing an organization from an individual to a team-based culture is far more difficult than starting a team-based organization or division from scratch. There are four components to successful implementation of team structures. First, teams must have consistent work processes that are clearly defined and delineated.<sup>130</sup> Processes are the "how" of doing work. This means that the way in which work is done in individual cases and for individual clients must be consistent for all cases and clients. That is, while cases differ, clients differ and legal strategies differ, the way in which the team goes about preparing the case and representing the client must be the same. This consistency in work processes obviates the need for continual delegation of responsibility or modification of work processes in individual cases. In effect, consistent work processes offset several traditional mechanisms of management. To accomplish this, the work processes must be carefully defined in advance and described in writing.

Second, project management, even in rudimentary forms, must be used by teams to manage work processes to assure that goals are achieved. The delegation to or division of work among team members is an active process undertaken at the beginning of a case. However, work processes are managed throughout the case and to its conclusion by treating the case as a project. This may consist of task definition with supporting time lines for achievement,<sup>131</sup> by regular structured meetings in which progress is gauged or

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<sup>129</sup> The challenges in implementing the NDS team model are increased by the CCPDO's current high caseloads and understaffing.

<sup>130</sup> Scholtes, P., *The Team Handbook Second Edition*, Oriol Books, 1996.

<sup>131</sup> Gantt charts are one example of this.

by a variety of problem-solving techniques associated with quality improvement.<sup>132</sup> In any event, constant and formalized communication is required to support team processes and project management. Project management must include formalized communication within the team. Whether this is by team meetings, as suggested above, or by information systems (for example e-mail), communication must not be haphazard or left to chance.

Third, team performance should be measured and the results used continually to assess and improve team performance. Performance indicators should be established for this purpose so that team members can judge their achievements and the CCPDO can give appropriate support or rewards to the teams as an entity. The concept of a “dashboard” of indicators is discussed elsewhere in this evaluation report, but the concept applies equally to managing team performance. This sort of performance “feedback loop” is essential to judging team effectiveness.

Finally, management must actively support the group interaction that is essential to team success. In most organizations that are organized around teams, space allocation plays an essential role in this.<sup>133</sup> Information systems can also support interaction and group activities through “virtual” space.<sup>134</sup> However, the existing physical space within the CCPDO office and the current approach to its allocation are barriers to group interaction (exacerbated by the need to increase staff). Individual offices are arrayed along narrow halls on separate floors and office assignment is independent of team composition. While remarkable strides have been made recently with respect to information systems support, only the CCPDO’s e-mail capacity directly supports group interaction. To support team interaction, space assignment should be adjusted to group team members in common areas. If office size is adequate, more than one individual can be assigned to a given space. Space assignment should be made in a fashion that integrates paraprofessional and support personnel in common areas with attorneys. Group interaction should be actively supported with requirements of frequent team meetings and dissemination of quantitative information from the dashboard. Information systems strategy and related budget allocations should account for team interaction and communication. With the prevalence of teams in organizations, abundant “off-the-shelf” applications and solutions are available for this purpose.

As suggested above, there is a vast body of knowledge about the complex matter of organizing around and delivering work through teams. Before implementing team models, the CCPDO management should consult with other public defender organizations that have used them. In addition, CCPDO management should read at least some of the available literature and consider using consultants who have experience in this field. While “high-performance work teams” have achieved remarkable outcomes in many endeavors, it is also true that they have failed in others due to insufficient management understanding, inadequate planning or poor implementation.

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<sup>132</sup> Scholtes, P., *The Team Handbook*, *ibid*.

<sup>133</sup> See Peters, T., *Liberation Management*, Ballantine Books, 1994

<sup>134</sup> For example, with project management software and video conferencing capability.

8. **The CCPDO Should Begin a Strategic Planning Process that Includes a Structured Planning Process for the Annual Budget Submission and Engages Senior Management.** *Justifications should be detailed and supported by quantitative data collected over time. Performance indicators that support day-to-day decision-making should be developed and consistently used throughout the year and annually in support of budget submissions.*

The CCPDO should produce a written strategic plan to accomplish specific strategic goals. The goals should include the recommendations of this evaluation. Performance indicators, especially quantitative and “outcomes” indicators should be established so that progress against the plan can be judged.

As part of its overall management plan, the CCPDO should write mission and vision statements that are developed through a collaborative process among managers and staff. The CCPDO should embark on a continuous planning process, to support its vision and mission statements and specific strategic objectives, including achieving the goals described above on an office-wide basis, and additional goals set by individual divisions and units. Divisional and unit plans and goals should be supported by quantitative indicators in a fashion that supports organizational goals and indicators. The planning process should include specific procedures for developing some of the strategies discussed elsewhere in this report, including, for example, community outreach initiatives.

The process should include regular contact among PDO management, the court and the District Attorney’s office, and between PDO management and management in other public defender offices. It should also include regular attendance at outside management training programs, so that senior management can become familiar not only with techniques and programs in other defender offices, but also in large law firms and organizations with similar staff sizes and operations.

Strategic planning and budget development should occur at the same time and by a single process. This requires that the management team from all divisions, along with the Budget Officer, be active in budget development. In this way, strategic priorities support meaningful budget development. This unified process will also reinforce communication and consensus among managers with respect to strategy and the related prioritizing of expenditures. Over time, CCPDO managers will begin to “think” budget and expenditures when thinking strategically. Additionally, in dealing with County management and the Board of Commissioners on budget issues, a focus should be maintained on those issues of greatest importance. The entire budget development process should be described by the Budget Officer in a written policy or similar document so that it becomes a permanent management activity.

Most defender managers come to their jobs with no training or experience in organizational development. While the Chief Defender’s involvement in the strategic planning process is critical, the processes should be developed in the first instance with the assistance of professionals who can ensure the expeditious design of a planning strategy and facilitate some of the initial planning sessions. Once underway, the internal management staff will be better positioned to continue implementation and refinement of the processes in accordance with need.

## **9. The Public Defender Should Immediately Design and Implement an Agency-Wide Communications Plan.**

Mr. Cooper's appointment to the position of Chief Public Defender was greeted with optimism by many of the CCPDO staff. Office factions that had pushed for change in the administration felt that Mr. Cooper understood the problems to be fixed and would not tolerate business as usual. At the same time, the office faction that believed the office functioned effectively under the prior regime was relieved that the appointment did not go to an "outsider." At the time of our site visit, Mr. Cooper had been Chief Public Defender for close to nine months. Suffice it to say that the spirit of optimism was beginning to erode.

The single most important factor in this erosion appears to be the feeling that whatever decisions are being contemplated or made, the lines of communication from Mr. Cooper and Mr. Baker about the decisions are nonexistent. Information collected by the NLADA team reveals that CCPDO suffers from a lack of communication from the top down. Apart from the lack of training, poor communication was cited most often on the staff surveys and interviews as the organizational issue needing the most attention. One attorney commented: "Communication in this office is sorely lacking. Management decisions are made and delivered through the Team Chiefs, some of whom pass along the information to their attorneys and some don't." Another noted: "Communication in our office is not great. It would be nice if Marcus sent out regular e-mails or visited one-on-one with the staff."

The communication problem is even more pronounced with the non-attorney staff, many of whom feel like they are left out of the loop on every matter of office importance. Though this culture was clearly a remnant from the old administration, current management has not done enough to address the former practices.

Frequent and effective communications between managers and staff are essential to effective management. Communication ensures that management and staff keep each other informed about important developments in the criminal justice system and in the office; develops and enhances mutual respect and support; and encourages staff to take responsibility for the success of the entire organization (not just their own job responsibilities, or the team to which they are assigned). Obviously, in an office of approximately 130 people, it would be impossible for the Public Defender to spend a great deal of time with each person one-on-one. There are, however, efficient, manageable ways to keep managers in touch with staff, and staff in touch with each other. It is imperative for Mr. Cooper to develop ways to meet with staff regularly. He should also make a concerted effort to be seen around the office and to increase his accessibility. Though the recommended changes in management structure should help the current communication deficiency, Mr. Cooper still should consider the following strategies in developing an agency-wide communications plan:

- i. *Involve staff in the process of developing the plan.* A staff meeting(s) with an announced goal of improving office-wide communications, in which staff brainstorm ideas for doing so, sends an immediate signal that management is serious about the issue and that staff thoughts on the subject are important. Some

of the strategies suggested by staff that can be easily implemented should be put in place immediately.

- ii. *Design a regular meeting schedule for the Public Defender to meet with staff.* While Mr. Cooper cannot be expected to attend all office meetings, he should develop regular patterns for meetings within the office that he will lead and/or attend.<sup>135</sup> That might mean a single monthly full staff meeting or separate meetings for attorney and non-attorney staff or even smaller groupings. Whatever system is devised for bringing staff together should include some opportunity for staff to have access to Mr. Cooper at least monthly.<sup>136</sup> Meeting agendas should be designed to provide opportunities both for Mr. Cooper to provide information to staff and for staff to provide feedback and information to management.
- iii. *In addition to a formal meeting structure, Mr. Cooper should consider informal routines to increase his interaction with staff.* For example, some defender chiefs make themselves available in their offices at a set time weekly, often lunchtime or at the end of the day, for staff who wish to drop by for informal conversation on work-related topics. Others routinely spend an hour or so each day “walking the halls” and stopping in offices to speak to staff.
- iv. *Launch an agency newsletter.* Many defender organizations have regular newsletters that are used to promote interagency communications, including information sharing, praise for “jobs well done,” and other features. A column written by the chief defender is usually a regular feature.
- v. *Participate and promote appropriate social events.* Office social events, on the occasion of retirements or as opportunities to recognize significant staff work or milestones, or simply for fostering collegiality (such as an annual staff family picnic), are all good ways to remove barriers and facilitate strong working relations between staff and management.

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<sup>135</sup> Commendably, at the time of the site visit, Mr. Baker had begun weekly meetings with Team Chiefs. Especially during the years of transition, regular meetings with managers will be a crucial feature of improving office operations. The staff meetings referenced in this section should be in addition to a regular management meeting structure.

<sup>136</sup> Mr. Cooper should consider hearing from staff their ideas on what kind of staff meeting structures would be most helpful toward improving communication and the work processes of the organization.



**10. CCPDO Must Begin Active Community Outreach to Promote Positive Relations in the Community-at-Large and its Client Base.** *The office should work towards the establishment of a Citizens Advisory Board.*

As referenced earlier in this report, the history of the CCPDO includes significant community dissatisfaction with the manner in which the office has been providing constitutionally mandated services. Aware of the history and the importance of community support to effective functioning, the Public Defender is poised to take steps to address the concerns. During our preliminary fact-finding site visit, Mr. Cooper expressed great interest in the concept of community defense representation, particularly the idea of having satellite public defender offices based in sections of the County where the office's client populations are concentrated. This was one of the reasons Mr. Leonard Noisette from the Neighborhood Defender Services of Harlem (NDS) was invited to participate on the NLADA final site team. NDS is one of the premier community-based (public defender) law offices in the country. NDS is regarded as an important participant in the life of the Harlem community. In addition to providing representation to individuals who cannot afford to retain counsel, NDS also offers various types of community outreach and services, including educational programs to young people and community groups to improve conflict-resolution skills and basic life-skills, to reduce the likelihood of unlawful conduct, and to increase understanding of the criminal justice system. .

Opportunities for improving community relations are one of the reasons that adoption of a community-based law offices approach would be beneficial to the CCPDO. Even under the best circumstances, however, such a project requires significant planning and implementation time, and will require putting several critical "building blocks" into place to increase the likelihood of a successful program. Given the prudence of moving to improve relations more quickly than is possible to open a new office, the CCPDO should start with some smaller steps that can have a more immediate impact.

- i. *CCPDO should develop and implement consistent policies and practices for dealing with client and community complaints*
- ii. *CCPDO should follow the lead of other public defender offices nationwide and create a professional law office reception area that connotes courtesy, "customer service" and professionalism.*<sup>137</sup> For many clients or their families, the first impression of the organization charged with representing them is the CCPDO's reception area, which currently is a stark, unwelcoming place.<sup>138</sup>

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<sup>137</sup> On a similar note, NLADA made numerous phone calls to the CCPDO during the course of the present study. On many occasions we were not able to get through the switchboard, or were left on hold for over ten minutes. We suggest that the CCPDO re-examine their phone service system with an eye toward customer relations.

<sup>138</sup> The area is somewhat reminiscent of a bus terminal waiting area, complete with a very loud soft drink machine humming in the background. Receptionists are cordoned off from the public behind thick glass,

The reception area decor does not present a first impression likely to promote positive community relations, or to engender the trust and confidence of the office's indigent clients and their families.

One example of a creative community outreach initiative, which several defender programs have developed both to improve the office environment and reach out to the community, is a community art forum. A staff committee works on ways to locate art from community members, often school children, to decorate the waiting area and hallways of the public defender office. Some defender offices have co-sponsored art contests in local schools in partnership with other community groups. Some have extended the program to inmates. Either way, the client population and young people in the community embark upon a valuable exercise of skill-building, achievement and community recognition, and self-confidence.

- iii. *The Public Defender should inventory staff through surveys and/or staff-meeting discussions to determine the community work that staff is already engaged in.* Defender Chiefs who do so are often surprised at the extent to which staff is involved in community projects on their own time.<sup>139</sup> Management should then consider ways to let the community know of the CCPDO staff members' positive contributions to the community, perhaps by a monthly write-up that is available in the reception area, awards and public recognition for outstanding staff contributions, joint media or public outreach perhaps in concert with the District Attorney's office, or through other means.
- iv. *The Public Defender should seek staff input on other initiatives the organization can feasibly undertake to improve community relations.* Allowing staff to brainstorm ideas is an easy way to tap into staff creative resources. It is also a useful way to identify those staff members with the greatest interest and ability to work on committees that can play a lead role in implementing initiatives that the CCPDO decides to undertake. Such meetings are a good way to generate staff support and begin creating a structure for longer term planning – two of the building blocks essential in the development of a community law office.<sup>140</sup>

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and clients must ask for a public defender through a microphone set up similarly to family-visitation rooms in county jails.

<sup>139</sup> Team interviews during the site visit revealed many such examples. These include participation by the Chief Public Defender in community service projects such as tutoring/mentoring for children at Reynaldo L. Martinez Elementary School. The Martinez school has the largest concentration of homeless students in the elementary Clark Count School District setting. Twenty employees (including 18 attorneys) have agreed to participate in this worthwhile endeavor. Mr. Cooper also reported to NLADA that there is now active community outreach by CCPDO employees through the Martin Luther King Junior Resource Center.

<sup>140</sup> This has also proven to be a successful strategy for improving attorney/non-attorney staff relations by providing opportunities them to work together on projects in settings where the attorneys are not necessarily the individuals with the expertise.

- v. *The Public Defender should create a forum in which community members feel free to both air complaints and offer suggestions for how the CCPDO can be more attuned to community needs.* This is another of the important steps toward developing a community office. It will require Mr. Cooper and other managers to build relationships and form coalitions with community groups. It is especially important to reach out to the juvenile community, via youth organizations, faith-based initiatives, and schools to begin explaining the purpose of the CCPDO and build trust among at-risk groups. Some public defender agencies have found it beneficial to develop a PDO citizens' advisory board in which a cross section of volunteer community members offer insights and feedback to defender management on an on-going basis regarding the organization's ability to fulfill the needs of its client base. Such groups have been invaluable to defender offices and the criminal justice system, as well as the community at-large.<sup>141</sup>

#### **11. CCPDO Management Should Take Advantage of the Resources Available Through Active Participation in the National Indigent Defense Community to Support Improvement of CCPDO Operations.**

Much of the information and a wealth of resources that will eliminate the need for the CCPDO management to waste time and money “reinventing wheels” as they move to address issues raised in this report are readily available through the national indigent defense community. Through an expansive national network that includes several national organizations and people in the defender community all across the country, Mr. Cooper and the CCPDO can access training (both skills and substantive), sample training curricula and other materials, standards, management information, sample forms, manuals and other documents, as well as a network of defender leaders and practitioners willing to share sound ideas, strategies, advice and support. The Public Defender should actively pursue opportunities to connect with the national defender leadership community and make efforts to provide similar opportunities for other CCPDO managers and staff.<sup>142</sup> In this regard, Mr. Cooper should consider the following among the many ways to tap into these resources.<sup>143</sup>

Attend American Council of Chief Defenders (ACCD) activities and utilize ACCD resources, including joining the email list, taking advantage of the leadership mentoring

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<sup>141</sup> Mr. Cooper may wish to contact the Brennan Center for Justice Criminal Justice Program in New York City for additional information on planning community forums and other defender-led community initiatives.

<sup>142</sup> Participants report that the cost of sending staff to national events are readily offset by knowledge gained about cost-saving initiatives, management efficiencies, and the sharing of documents, systems, technologies and “best practices” which would otherwise need to be created from “scratch” or through trial and error.

<sup>143</sup> Once the CCPDO makes determinations about timeframes and priorities for the recommendations in this report that they intend to pursue, the evaluation team can provide additional information about resources tailored to those objectives.

network, and establishing a “sister state” relationship. The ACCD email list provides a no-cost way of quickly getting information from multiple other jurisdictions. For example, a chief defender in New Mexico recently sought information to assist her in setting assigned counsel rates in death penalty cases. Within 24 hours of sending a request for information on the email list she had information about the rates in half the states in the country.

The ACCD Leadership Mentoring Initiative matches defender leaders with one or more of their counterparts who lead public defense systems that have successfully addressed issues that the defender leader is facing. For the CCPDO, the Public Defender Service for the District of Columbia (PDS) would be an appropriate match.<sup>144</sup> At a minimum, Mr. Cooper should spend time at PDS to observe its operations. It is recommended that he travel to Washington D.C. with a team that could include, for example, Mr. Baker and other current (or potential) managers and staff such as an appellate attorney, the head of the juvenile division, and the manager for investigations.<sup>145</sup>

The “sister-state” relationship is another opportunity to connect in a more formal way with another defender agency. Unlike what is often a one-time mentor site visit, the “sister-state” programs establish on-going relationships that can provide both defender agencies with information-sharing benefits. For convenience and cost reasons, the “sister-state” agencies tend to be more physically proximate to one another than may be the case in the mentoring arrangement. The Riverside County Public Defender Office has recently undergone a cultural transformation similar to the recommendations in this report, and could be a beneficial pairing for the CCPDO.<sup>146</sup>

## **12. Clark County and the CCPDO Should Use National Standards and Guidelines When Considering the Most Appropriate Process for Determining Financial Eligibility.**

Though *Gideon v. Wainwright* requires states to provide counsel for those unable to afford counsel, it does not state explicitly how to determine financial eligibility. Jurisdictions across the country have weighed various interests when considering how best to make such determinations. Many jurisdictions that have no eligibility guidelines and conduct no inquiry, or simply appoint a lawyer for all defendants who claim they cannot afford retained counsel. The reasons for such systems (or non-systems, to be more accurate) vary: poverty rates among the defendant population may have been empirically

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<sup>144</sup> For many reasons, including compliance with most national indigent defense standards, PDS is regarded nationally as a model defender agency. PDS has implemented successful strategies to address many of the significant issues mentioned in this report, including implementing comprehensive training programs, establishing an appellate division based on national standards, providing effective representation in juvenile court and creating a division of social workers, and an investigative division staff as well as a volunteer investigator program. The office has also recently opened a small community satellite office.

<sup>145</sup> Mr. Ron Sullivan, the PDS Director, already has agreed to the “mentoring” relationship and would welcome a visit from Mr. Cooper and his staff if he determines that such a relationship would be beneficial.

<sup>146</sup> Mr. Gary Windom, the Public Defender for Riverside County, also has already expressed an interest and willingness to “partner” with the CCPDO.

found to be so high that the cost of eligibility screening would exceed the potential cost-savings; the need to keep court dockets moving may have been determined by the judiciary to be more important than taking the time and effort to conduct eligibility screening; or the reason may be simple inertia on the part of the responsible officials. But many other jurisdictions have determined that important fiscal goals of cost-control and accountability are served by implementing procedures to ensure that no one who can afford counsel is appointed one at public expense. In these areas of the country, there is often very thorough verification of financial information provided by the defendant – many times by an independent pre-trial services unit and often at substantial costs.

Currently, very little financial screening is done by the CCPDO. The initial interview form solicits limited financial data and little or no verification is performed. Consequently, there is a general belief among the staff that some people are getting the services of the CCPDO who otherwise could afford private counsel.

The limited amount of disposition data kept by CCPDO on its case-tracking system prevented an accurate determination of information regarding financial screening. First, the evaluation team was not able to secure information on those defendants who requested counsel but were denied a public attorney upon a financial determination prior to appointment of the CCPDO. Second, of those defendants who were at least initially appointed the services of CCPDO, disposition information is not maintained with any degree of uniformity in the case-tracking system. For instance, though some case files state that the defendant “retained private counsel,” more simply had a disposition code of “private attorney.” Unfortunately, this disposition code also may indicate an indigent defendant for whom the office determined a conflict of interest and who was given a contract attorney. More importantly, a catchall “other” disposition code is used which covers both conflicts of interest and defendants who retained private counsel.<sup>147</sup> Short of a case-by-case hand count, there is no way to determine with accuracy the percentage of cases in which defendants were able to retain counsel with private funds at some point after being appointed a public defender.

What we can state is that of the 9,758 felony cases disposed in 1999, 1,294 were marked “other,” while 188 were marked “retained private counsel.” Another four cases were marked “withdrawal.” When added together, these cases total 1,486. This means that 15.23% of all cases assigned to the CCPDO in 1999 were not represented by the agency. We also ran similar data for 2000. In that year, 1,481 of the 10,480 dispositions (or 14.13%) were marked with similar field codes (other: 437; retained: 958; conflict: 75; and withdrawal: 11).

Clark County officials must decide to what extent the need to ensure the public that money is being spent efficiently outweighs the cost of eligibility verification processes. If it is determined to move ahead with more rigorous screening, national standards can be used to structure the process.

The *Guidelines for Legal Defense Systems in the United States* issued by the National Study Commission on Defense Services state that, “[e]ffective representation should be provided to anyone who is unable, without substantial financial hardship to himself or to

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<sup>147</sup> In certain instances, more disposition detail was contained in the “sentence” field, which assisted in making a determination of the case’s actual disposition, but not in all cases.

his dependents, to obtain such representation.”<sup>148</sup> “Substantial hardship” is also the standard promulgated by the ABA.<sup>149</sup> While ABA Defense Services Standard 5-7.1 makes no effort to define need or hardship, it does prohibit denial of appointed counsel because of a person's ability to pay part of the cost of representation, because friends or relatives have resources to retain counsel, or because bond has been or can be posted. In practice, the “substantial hardship” standard has led many jurisdictions to create a tiered screening system. At some minimum asset threshold, a defendant is presumed eligible without undergoing further screening. Defendants not falling below the presumptive threshold are then subjected to a more rigorous screening process to determine if their particular circumstances (including seriousness of the charges being faced, monthly expenses, local private counsel rates) would result in a “substantial hardship” were they to seek to retain private counsel. The great majority of defendants currently being offered the services of the CCPDO should qualify for public counsel under the presumptive standard, thus minimizing the need to use a more expansive screening and verification process. Examples of such presumptive standards include:

- i. A defendant is presumed eligible if he or she receives public assistance, such as Food Stamps, Aid to Families of Dependent Children, Medicaid, Disability Insurance, or resides in public housing.<sup>150</sup>
- ii. A defendant is presumed eligible if he or she is currently serving a sentence in a correctional institution or is housed in a mental health facility.

For those who do not meet the presumptive standard but who may still qualify under the “substantial hardship” standard, many jurisdictions have developed financial eligibility formulas that take into account a household’s net income, liquid assets, “reasonable” necessary expenses and other “exceptional” expenses. The National Study Commission on Defense Services’ guidelines are more comprehensive than other national standards in guiding this second tier of eligibility determinations. The first step is to determine a defendant’s net income (usually verified through documented pay stubs) and liquid assets. Under Guideline 1.5, liquid assets include cash in hand, stocks and bonds, bank accounts and any other property that can be readily converted to cash. Factors not to be considered include the person's car,<sup>151</sup> house,<sup>152</sup> household furnishings, clothing, any

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<sup>148</sup> Guideline 1.5.

<sup>149</sup> *ABA Standards for Criminal Justice: Providing Defense Services 5-7.1* states: “Counsel should be provided to persons who are financially unable to obtain adequate representation without substantial hardship.”

<sup>150</sup> An additional benefit to using public aid as a presumptive threshold is that other agencies already rigorously screen and verify the person to qualify for such assistance. Using these standards allows a jurisdiction to, in effect, “piggy-back” onto the verification process without duplicating efforts.

<sup>151</sup> A defendant’s vehicle may be the only thing keeping him and her off of public assistance by allowing him or her the means to get to work, or comply with conditions of probation or pretrial release such as drug or mental health treatment, or family counseling. In a county as geographically expansive as Clark County, including a car in a person’s liquid assets may be ultimately more costly than appointing the person a public defender.

property declared exempt from attachment or execution by law, the person's release on bond, or the resources of a spouse, parent or other person.

Next, the screening agency assesses a defendant's reasonable necessary expenses and other money owed for exceptional expenses, like medical care not covered by insurance, or court-ordered family support. Though jurisdictions vary as to what constitutes "necessary" expenses, most include rent, day-care and utilities.

Screeners then determine an individual's available funds to contribute toward defense representation by adding the net income and liquid assets and subtracting from the total the sum of reasonable and exceptional expenses. [(Net Income + Liquid Assets) – (Reasonable + Exceptional Expenses) = Available Funds]. The resulting "available funds" can then be measured against a second tier presumptive eligibility standard. In many jurisdictions, this second presumptive level is tied to a percentage of the Federal Poverty guidelines. For instance, Florida sets its presumptive standard at 250% of the Federal Poverty guideline.<sup>153</sup> Table 5-1 (below) shows the 2002 Health and Human Services Poverty Guidelines, by family size and annual income, and compares the 250% and 150% standard for both annual and monthly income.

Family Size	Poverty Index	150%		250%	
		Annual	Monthly	Annual	Monthly
1	\$8,860	\$13,290	\$1,107.50	\$22,150	\$1,845.83
2	\$11,940	\$17,910	\$1,492.50	\$29,850	\$2,487.50
3	\$15,020	\$22,530	\$1,877.50	\$37,550	\$3,129.17
4	\$18,100	\$27,150	\$2,262.50	\$45,250	\$3,770.83
5	\$21,180	\$31,770	\$2,647.50	\$52,950	\$4,412.50
6	\$24,260	\$36,390	\$3,032.50	\$60,650	\$5,054.17

In some jurisdictions, eligibility screening is terminated if a person's net income and liquid assets exceed these income thresholds, and the person is deemed ineligible for public appointment of counsel. In others, persons can be deemed eligible if their net income and liquid assets exceed these thresholds, but reasonable and exceptional expenses bring them under the threshold.

One example of jurisdiction employing such a financial determination system is New York City. There, the formula also takes into account the seriousness of the charge. As with most jurisdictions, defendants in New York City whose gross income falls at or

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<sup>152</sup> It is assumed that the goals of the criminal justice system are not served by rendering homeless a charged-but-unadjudicated defendant, or his or her family.

<sup>153</sup> FL. Stat. §27.52. Though a state-by-state, county-by-county study has not been conducted to determine the total number of jurisdictions that use the Federal Poverty guidelines and some presumptive percentage thereof, the evaluation team's range of experience suggests a national norm of approximately 150% of the federal rate.

<sup>154</sup> *Federal Register*, Vol. 67, No. 31, February 14, 2002, pp. 6,931-6,933. For each additional household member, add \$3,080.

below the current federal poverty index are presumptively eligible for assigned counsel. However, even defendants with household gross incomes above these levels are eligible for assigned counsel, if they are financially unable to retain counsel. In determining whether a defendant is unable to retain counsel, the court considers the household's other financial commitments, including rent or mortgage payments, the cost of food and utilities, debts, the likely cost of counsel, unusual expenses, and available liquid assets.<sup>155</sup>

As in Florida, New York City's guidelines provide that defendants charged with misdemeanors are presumptively eligible for assigned counsel when the gross household income is at or below 250% of the federal poverty standard. The guidelines similarly provide that defendants charged with felonies are presumptively eligible for assigned counsel when the gross household income is at or below 350% of the federal poverty standard.

In lieu of the Federal Poverty guidelines, other jurisdictions take into account the going rate for private counsel to represent a defendant on various case types. For instance, in Clark County, private attorneys routinely ask for a \$5,000 retainer to represent a person on a felony indictment, in which case a defendant may fall above the 150% Federal Poverty index (\$1,107.50 monthly available funds) but would still face a "substantial hardship" if he or she were to retain private counsel. The evaluation team was told that private attorneys routinely charge \$800 to defend a person against misdemeanor charges. In such an instance, the defendant in the above example would not qualify for counsel if facing a misdemeanor charge while qualifying if facing felony charges.<sup>156</sup>

The three-tiered screening system described above has an added benefit to the overall justice system. In many jurisdictions, public defenders employ investigation interns to conduct these eligibility screenings at little or no cost.<sup>157</sup> These interns regularly go to the jail each morning and afternoon to conduct the financial screening on all people brought in on new charges. The appointment of the public defender can be made as soon as the eligibility is determined, and attorneys are able to make bail recommendations

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<sup>155</sup> Once the public defender has been assigned, a court may not relieve it on the ground of non-indigency unless the defender agency first moves to be relieved. Construing County Law §722-d, the Appellate Division has stated that "the report of counsel [is] a predicate to any action on the part of the court to relieve counsel of the assignment." *Matter of The Legal Aid Society v. Samenga*, 39 A.D.2d 912, 913 (2d Dept. 1972). Thus, for example, where a court suspects that a defendant has the resources to retain counsel because bail has been posted, at most it would ask the assigned attorney to review the accused's eligibility, keeping in mind that persons who contribute to bail cannot be required to assign their money for purposes of hiring an attorney unless they also are obligated to contribute to the defendant's support. Therefore, where bail is posted by the accused's spouse, that money can be considered as an asset in evaluating eligibility, but bail money posted by an employer, family friend or member of the defendant's extended family (aunt, uncle, cousin) ordinarily should not be considered as an asset of the accused.

<sup>156</sup> If Clark County elects to construct a financial eligibility process that incorporates the private rates charged by criminal defense lawyers, we suggest establishment of a study commission to conduct a survey of private criminal defense rates of lawyers and law firms in the county. The average cost should be used as the standard. In lieu of such a study, state and regional studies of hourly attorneys' fees are available from the legal consulting firm of Altman Weil, Inc. ([www.altmanweil.com](http://www.altmanweil.com))

<sup>157</sup> As mentioned above, other jurisdictions employ Pre-Trial Services departments that are able to make financial eligibility determinations at the same time as screening to determine eligibility for release on one's own recognizance.



earlier, reducing the number of beds in the County jail used for pre-trial detention. And early appointment of counsel allows earlier investigation, discovery and preparation, which results in more prompt decisions regarding either negotiated dispositions or going to trial.

## Chapter VI Conclusion

Constitutional rights extend to all of our citizens, not merely those of sufficient means. Though we understand that County Commissioners must balance other important demands on their resources, the Constitution does not allow for justice to be rationed to the poor due to insufficient funds. The issues raised in this report serve to underscore the failure on the part of the State of Nevada to live up to the spirit of the U.S. Supreme Court *Gideon* decision. Though the *Gideon* decision vests the responsibility for funding indigent defense services with the state, the County must continue to bear the brunt of providing adequate defender services until such time as the State accepts its constitutional responsibilities. The County should work in partnership with Mr. Cooper to address the problems facing the CCPDO that were created over the past decades but which continue to jeopardize the constitutional rights of its people.