

EVALUATION REPORT AND RECOMMENDATIONS

To the County of Riverside

RIVERSIDE COUNTY PUBLIC DEFENDER OFFICE

January 2000



National Legal Aid and Defender Association

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EVALUATION REPORT ON RIVERSIDE COUNTY PUBLIC DEFENDER OFFICE

SUMMARY OF RECOMMENDATIONS

1. Organization. The Chief Public Defender should issue a clear statement of the mission of the office, and its goals and objectives. He should prepare both short range and long range plans for the office, and should maintain an "open door" policy for staff and other mechanisms to receive staff input and feedback. The organization of the Public Defender Office should be reconfigured to allow for three Assistant Public Defenders and eight Grade V supervisors (i.e., Supervising Deputy Public Defenders), one of which will be a full-time training director. This group, designated for the purpose of this report as Executive Senior Staff, should meet at least once a month to exchange information, be informed of policy directives and be involved in policy setting. Their job descriptions and responsibilities should be clearly delineated. It should be a clear principle underlying the criminal justice system of Riverside County that the office of the public defender must be at parity with the District Attorney. This includes salary, personnel, training and workload, and all resources.

2. Training. The office should establish a formal training program for all employees, including upper and mid-level managers. It should develop a litigation manual covering all aspects of handling a case. It should pay reasonable costs of staff attending appropriate training programs out of the office, including travel and hotel expenses and registration fees for state and national training programs. It should seek training grants from both state and federal sources. Professional staff members should have access to brief and motion banks, and to summaries of recent cases.

3. Supervision. Supervisors should be full time and not carry caseloads. There should be no less than one supervisor for every ten lawyers. Supervisors should conduct comprehensive evaluations on a regular basis for all staff. For attorney staff, supervisors should review cases with them in advance, observe them in court and on trial, and solicit feedback from the judiciary. Performance standards based on guidelines such as NLADA's *Performance Guidelines For Criminal Defense Representation* should be developed along with behaviorally based measures that enhance reliability between raters. Automatic promotions should be replaced with a merit promotion system based upon predetermined standards. High achievement reflected in the performance evaluation system should be rewarded. In addition, a meaningful performance management system should be established by which the PDO can judge its progress and plan its future. Such a system should include development of meaningful statistical measures including process and results indicators.

4. Counsel at arraignment. Public Defender lawyers must be made available to represent

individual indigent defendants at felony and misdemeanor arraignments. The public defender should seek the staff necessary to provide such entry into cases at arraignment. Notices should be clearly posted in all courts and detention facilities providing the telephone number of the public defender office, and any written materials and oral information provided to defendants should prominently notify them of their right to counsel and how to secure counsel if they are financially unable to retain private counsel.

5. Vertical representation. In both Riverside and Indio, in felony cases, the same lawyer should represent the defendant at the preliminary hearing and all subsequent proceedings in order to preserve "continuity of representation" otherwise known as "vertical representation."

6. Conflicts. A clear policy on conflicts should be promulgated, and no conflicts should be declared without review and approval by supervisory personnel.

7. Technology. The office should obtain new computer equipment and develop a uniform computerized information system sufficient to provide baseline information on the number of cases assigned to each lawyer, the number closed, their dispositions, their method of disposition, the length of time between opening and closing of a case, and a master calendar to assist in proper evaluation of staff, caseload control, and future budget and staffing needs. The PDO's computer system should be integrated with the systems of other criminal justice agencies, including courts, prosecution and Sheriff, to improve calendaring, expedite case-processing, and eliminate redundant data entry.

8. External relations. The Public Defender should participate in a County Criminal Justice Council or other coordinating body, and in civic and community groups. The Public Defender should consider publishing a brochure explaining defendant's rights and the location and services of the office. The Public Defender should approve all statements to the media, or designate an experienced member of his staff to perform this function.

9. Juvenile Division. The Public Defender should review staffing patterns in the Juvenile Court and seek adjustment from the County Executive and the Board of Supervisors to allow caseloads in conformity with national standards. The Supervisor of the Division should not carry a caseload. The Public Defender should review the space needs of the Division and seek appropriate additional space.

10. Investigations. Investigator salaries should be at parity with those of District Attorney Investigators. To the extent that the current disparity reflects advanced training of District Attorney Investigators, similar training opportunities should be made available to Public Defender Investigators, by a trainer able to provide POST (Police Officers Standards Training). Investigators in the Civil Division should receive specialized mental health training.

11. Social workers. The high quality work of the existing social service personnel should be recognized, and the division should be expanded to include a Licensed Clinical Social Worker in Riverside, and an additional social worker for the Juvenile Court in Indio. The office should add

Spanish-speaking professionals such as certified interpreters who understand the criminal justice system and could interview adult and child clients.

12. Riverside Felony Division staffing. The Public Defender and senior staff should maintain information on the actual caseloads being carried by the Felony Division lawyers in Riverside, annual disposition rates, and how many open cases defenders have at any given time, and should determine how far they deviate from recognized national caseload standards, and seek appropriate adjustment through the budget process. There should be an additional supervisor assigned to the felony trial division in Riverside. Both felony trial supervisors should not carry caseloads. There should be an appellate attorney in Riverside to prepare pre-judgment appellate writs. The division should be reorganized so that felony cases are handled vertically, with the same lawyer handling preliminary hearings, felony arraignments and felony trials. There should be a special task force to deal with complex litigation and death penalty cases.

13. Misdemeanor caseloads. The Public Defender should review staffing patterns in light of national caseload standards, information about the number of cases disposed of, the open caseload for each lawyer, and the length of time between the assignment of a case and its disposition, and should request staffing levels in accordance therewith from the Board of Supervisors.

14. Indio. The office in Indio should require that all lawyers maintain a case diary form in the file, reflecting every court appearance, motions filed, interviews with the defendant, interviews of witnesses, and work done on the case. The office should represent defendants at arraignment in Municipal Court. It should utilize "vertical representation," i.e. the felony trial division and the preliminary hearing division should be merged, and the same lawyer should be assigned to both the preliminary hearing and the felony trial. Three attorneys should be added to cover the arraignment call, and three additional attorneys in order to allow for a vertical representation model for felonies. The office should receive a social worker to assist in juvenile court and in alternative sentencing work, and two law clerks to assist in research. Since the misdemeanor caseload per lawyer in Indio is four times the maximum recommended caseload under national standards, information about the number of cases disposed of, the open caseload for each lawyer, and the length of time between the assignment of a case and its disposition, should be gathered and studied, after which staffing should be adjusted accordingly.

15. Hemet. a) Public Defenders should be present at both felony and misdemeanor Arraignments. b) Public Defenders should not wait until the settlement conference or the Preliminary Hearing to interview their clients for the first time. c) Felony cases should be handled on a "vertical" basis, i.e. the same lawyer who handles the felony preliminary hearing should also represent the client at his or her felony trial if the case is not resolved earlier. d) The Public Defender has a responsibility to get the defendant released on bail or on "Own Recognizance" if possible. In appropriate cases, bail motions should be filed in writing, and aggressive appellate follow-up should be made to insure that appellate review and bail guidelines are set by the reviewing court, and not only by the trial court. e) The staff in Hemet should be rotated into other offices in the Riverside County System.

16. Rotation. The entire office staff be involved in periodic rotations for the purpose of cross-training, morale building, prevention of burnout, and improved service to clients.

17. Civil Division.

The PDO should either dissolve its Civil Division or significantly alter it. The unit has either lost or abandoned its beneficial role in PDO operations and has become disconnected from the core responsibilities and interests of the PDO organization. Continued functioning of the Civil Division without ameliorative measures threatens the viability of the entire PDO.

The PDO should either cease representation in conservatorship cases or significantly reduce the types of conservatorship cases in which representation is provided. If it continues to represent conservatorship estates, the PDO should require each person assigned to the Civil Division to regularly file financial and other statements evidencing compliance with Riverside County's Conflicts of Interest policies. At a minimum, the PDO should withdraw from representation of conservatees with significant estates.

A line supervisor should be appointed to run the day to day operations of the Civil Division. That supervisor should be accountable to executive management for operating the Division in a manner consistent with the goals and philosophy of the organization as a whole.

The PDO should regularly rotate attorneys and paraprofessionals into and out of the Civil Division.

The PDO should carefully examine the scope of activities of its Civil Division staff to determine whether training is required or, in some instances, certain activities should be truncated.

The PDO should work to rebuild relationships with other agencies that operate within the Civil Division's area of responsibility. The Public Defender himself should participate in regular meetings with the heads of these agencies until such time as effective communication is restored and appropriate interaction is the norm.

18. Accounting. A full financial audit should be conducted to determine needs and opportunities for improvement in the management of the PDO budget and finances. A Chief Fiscal Officer should be named and a financial and accounting support staff hired to insure that all public funds available to the PDO are expended pursuant to proper procedure and fiscal controls. The Chief Fiscal Officer should report directly to the Public Defender.

19. Support staff. A thorough assessment of clerical job requirements and compensation should be undertaken. Support staff should have pay parity with their counterparts in the court system

and other criminal justice agencies. Clerical performance standards supported by meaningful performance evaluation should be initiated, to insure that motivated and capable staff are retained and can advance within the agency. Performance should be linked to retention and advancement. Excellence should be recognized, such as by a formal office-wide "employee of the month" award. A full-time position of Human Relations Officer should be created in the PDO.

METHODOLOGY AND BACKGROUND OF THE REPORT

Riverside County contracted with the National Legal Aid and Defender Association (NLADA) to conduct an evaluation of its Public Defender Office. Scott Wallace, Director of Defender Services for NLADA, recruited a team of experienced public defenders with extensive experience as managers and litigators, and in conducting management audits of indigent defense programs.

The team included David Meyer, a consultant specializing in quality and continuous improvement technique and formerly Chief Deputy Public Defender and Acting Public Defender in Los Angeles County, the largest public defender program in the nation; Theodore Gottfried, State Appellate Defender of Illinois; Mary Broderick, Executive Director of California Attorneys for Criminal Justice and former Defender Director of NLADA; Rita Fry, Chief Public Defender of Cook County, Illinois, the second largest public defender program in the nation; Scott Wallace, Director of Defender Legal Services for NLADA; Ronald Gottlieb, Senior Counsel and Training Director in the NLADA Division of Defender Legal Services; and Marshall Hartman, Deputy Defender for the Capital Litigation Division of the Illinois State Appellate Defender Agency, formerly Public Defender of Lake County, Illinois, and former Director of Defender Services and Acting Executive Director of NLADA.

The team utilized 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 Design contemplates a pre-site visit to gain information and determine who should be interviewed by the full team during the site visit. The pre-site visit was conducted by David Meyer and Mary Broderick in September. The Design also contemplates requesting budgetary and organizational information from the jurisdiction prior to the full team site visit. During the site visit, the team conducted interviews with key players in the criminal justice system of the County, including judges, prosecutors, law enforcement officials, PDO staff, members of the Riverside County Board of Supervisors, county executive and administrative staff, defendants in the county jail who had been represented by the Public Defender, members of the private bar, including contract counsel, and others. These interviews were conducted utilizing structured interview forms. Pursuant to the Design, the team met each evening for progress reports, information sharing and to consider changes to the following day's interview and observation schedule. Team members visited several outlying branch offices in the County, and also observed some court proceedings. The site visit was conducted during the week of October 17-21 and over 45 interviews were conducted. At the end of the site visit, the Team Captain met with senior county executive staff for a preliminary exit interview.

In addition to the staff interviews, a 75-question survey was distributed to every employee in the office, soliciting perceptions and attitudes about the mission and philosophy of the office, supervision and the PDO organizational culture, staff members' work and assignments, PDO work processes, training and professional development, intra-office communications, and other issues relating to organization and structure. 138 surveys were completed and returned, for a

response rate of more than 80 percent. The survey included a space for written comments, and a wide range of written comments were received to most questions. The surveys were tabulated by James Derzon, a social science researcher and statistician engaged by NLADA.

This report contains findings and recommendations for action, based upon established national standards for the operation of public defender offices. The first set of national standards governing indigent defense was promulgated in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals (NAC) appointed by the Administrator of the Law Enforcement Assistance Administration, in the U.S. Department of Justice. Its mission was to set national standards for every component of the criminal justice system, to implement the report of the 1967 President's Commission on Law Enforcement and the Administration of Justice ("The Challenge of Crime in a Free Society"). Volume 4 of the NAC report deals with the courts, and Chapter 13 thereof deals with indigent defense. These were followed by the *Guidelines for Legal Defense Systems in the United States*, promulgated over a two-year period by the National Study Commission on Defense Services (NSCDS), a project established by LEAA and staffed by NLADA. In 1996, under a grant from the Justice Department's Bureau of Justice Assistance, NLADA convened the National Advisory Committee on Indigent Defense Services, which issued a *Blue Ribbon Report on the Future of Indigent Defense Services*. NLADA has also issued over the years a variety of specialized standards building upon the NAC and NSCDS standards, in areas such as the administration of assigned counsel systems, contract systems, appeals, death penalty cases, and defender training and development. Significant contributions from the American Bar Association have been the various volumes of Standards for Criminal Justice, including *Providing Defense Services* (3rd ed., 1992).

THE CRIMINAL JUSTICE SYSTEM OF RIVERSIDE COUNTY

Riverside County is the fourth largest county in California, comprising 7,200 square miles, extending from within 14 miles of the Pacific Ocean to the Colorado River. Populated first by Native American tribes, then ruled by Mexico, and finally part of the territory and state of California, Riverside County was formed in 1893 in an area bounded by San Bernardino County to the North and San Diego to the south. Between 1980 and 1990 the county experienced a population explosion of over 76 percent, making it the fastest growing county in California. By 1992, the total population of the county rose to 1.3 million people. The population is estimated today at 1.5 million.

Naturally, growth of this kind meant changes in crime rates and demanded corresponding changes in the institutions and agencies of its criminal justice system. The Public Defender Office was founded in 1948 by the County Board of Supervisors with a part time Chief Defender. Today, the PDO is budgeted for 154 staff positions, including 85 lawyers. The felony caseload increased over the years, including spurts during the years of greatest population growth. For example, as caseloads increased 32 percent from 1984 to 1986, the office's legal staff increased 25 percent during the same period, from 41 in 1984 to 51 in 1986.

In FY 1991, the office reported appointments to 7,111 felonies, while in FY 1998-99, it reported appointments in 9,851 felonies plus 4,231 appointments in violation-of-probation cases. In addition, there were 1,923 felony conflict of interest cases reported which were handled by counsel other than the public defender. In total, the office was assigned to 44,502 cases in fiscal 1997-1998, which includes felony, misdemeanor, juvenile, violations of probation, mental health cases, conservatorships and appeals. Its proposed budget for 1999-2000 is \$13,846,803. The PDO has offices in Riverside, Perris, Hemet, Corona, Banning, Indio, and Blythe.

About 20 to 30 percent of the indigent criminal appointments in Riverside go to contract conflicts counsel, of whom there are a total of five in the County. The aggregate budget for conflicts counsel (including funds for experts and investigators) is \$9.2 million. (See below for further discussion of the Contract Conflicts program.)

I. ORGANIZATION OF THE PUBLIC DEFENDER OFFICE

The 1987 Management Audit Report of the Public Defender Office, conducted by the Management Services Division of the County Administrative Office, found that the "organization of the Public Defender's Office is fragmented." The office was criticized for the lack of clear lines of authority from the Public Defender to the Assistants. The Audit Team found that the organization of the office was still fragmented prior to the hiring of the new Public Defender, and that there was negligible oversight over some PDO lawyers, including lawyers in the outlying offices and Juvenile Court. The Team heard significant concerns that some of the lawyers believed that they are independent contractors and not subject to any supervision or control by the Chief Public Defender. In the Audit Team's survey of PDO staff, although almost 9 out of 10 respondents reported that they were clear about the mission of the office, less than 40 percent agreed that the office has a well-defined plan or clear performance standards for carrying out its mission.

At the outset, the new Chief Defender should develop and issue, through an inclusive planning process within the office, a clear statement of the mission, goals, and objectives of the office. In responding to the Survey question of whether everyone understood the mission of the office, one staff member wrote, "It's unclear what the PDO's mission and philosophy is at this time. Sometimes I think it's just to plead everyone as quickly as possible so that you can go home." Another respondent wrote, "It is difficult to answer these questions as the new Public Defender has a different philosophy than the previous one."

The Audit Team recommends that the goals of the office should embrace the most fundamental notions of quality service to clients, as well as effective, efficient and equitable administration within the office, and respectful and professional relations with other entities of the criminal justice system and the community. Any goal of obstructing or delaying the adjudication of cases should be expressly eschewed. This statement of the goals and mission of the office should also reference nationally recognized standards for the delivery of legal defense services to the indigent accused, and performance standards of the highest caliber for both capital

and non-capital cases, e.g. the American Bar Association, the National Legal Aid and Defender Association, the National Advisory Commission on Criminal Justice Standards and Goals, etc. Such a statement would send a clear message to all staff, partners in the criminal justice system of Riverside County, and the public where the office stands and what it hopes to achieve.

The Audit Team also noted patterns of concerns that staff public defenders have no guidance from the Chief Public Defender or supervisory staff regarding the declaration of conflicts, trial strategy, or substantive law; that clients in custody are not seen until the day of court in some outlying locations; that suspects who request a Public Defender prior to their scheduled court date are turned away and told to wait until their court date when the office would be appointed by the court; and that the office fails to keep critical statistics relative to the number of cases disposed of by the lawyers. In addition, there were complaints that some lawyers arrived at work late and to court late, so that judges and clerks call looking for them. A common criticism was that in the past a few PDO staff did not dress professionally, especially in the office, even though they dressed properly for Court.

The new Chief Public Defender seems aware of these problems, and has developed initiatives to improve the delegation of authority while retaining clear lines of control, and to change practices which are inconsistent with recognized national standards for the operation of public defender offices. He proposes the designation of three Assistant Public Defenders, which could be accomplished by retaining the one Assistant Public Defender slot now in the office, converting the former Chief Assistant Public Defender slot (who has resigned) to an Assistant's slot, and creating one new Assistant Public Defender slot. One Assistant Public Defender would be in charge of the Eastern Part of the County (Blythe and Indio); one Assistant Public Defender would be in charge of the West (including Perris, Hemet, Corona, and Banning), and one Assistant Public Defender would be in charge of Riverside. That Assistant would also be responsible for a number of functions which are office-wide, e.g., clerical support, drug court, appeals, sexual assault unit, complex litigation, and any other legal matters which affect the county as a whole. These three Assistants would report directly to the Chief Public Defender.

The Chief Investigator would report directly to the Chief Public Defender. There are currently four Public Defender Grade V's (or Supervising Deputy Public Defenders) in the office. There should be four more for a total of eight Grade V's. They would be distributed in the following manner: four in the West (one each in Perris, Hemet, Corona, and Banning so that each office is headed by a Grade V public defender; two in the East (for Indio and Blythe), and two in Riverside. In Riverside, one Grade V would assist in running the office, and the other would be a full-time training director. The need for a training director was made plain in interviews with staff, judges, and prosecutors. The responsibilities of the training director will be discussed in Part IV below.

This kind of organizational structure will allow for both delegation of authority so that every decision need not be made by the Chief Public Defender alone, while allowing for clear lines of authority and responsibility.

Of course, merely adding these slots will not make the office more responsive to the Chief Public Defender and his attempts to implement nationally recognized standards for the operation of public defender offices. There should be clear job descriptions for each of these positions so that each Assistant Public Defender and Grade V supervisor knows exactly what their areas of responsibility are.

There should be frequent executive staff meetings involving the three Assistant Public Defenders, the Chief Investigator, and the Grade V supervisors. Under the prior administration, the Grade V supervisors were not consulted about policy matters. One supervisor reported that there had been one staff meeting in three years. The purpose of such meetings is twofold. The first is to inform senior executive staff of decisions already made to insure their prompt and uniform implementation. The second is to allow free discussion and policy input in the broad decision-making function of the executive staff. Although the Public Defender has the ultimate responsibility for the policies of the office and concomitantly the ultimate authority, by allowing input and suggestions by his senior staff he will insure that all perspectives and aspects of an issue have been examined before a policy is adopted, and that those who have to implement it have been involved in the policy setting process and have a commitment to it. In addition to getting policy input from his senior staff, the Public Defender should maintain an "open door" policy for input from other staff members, including the possibility of a "suggestion box" or other mechanism to get input and reactions to policies.

Instead of reacting to crises, the office must be proactive. The Public Defender should prepare a long-range plan covering the next five years. Planning should include examination of prior caseload statistics to determine crime and caseload trends to assist in predicting staffing needs. It should include developing and implementing a formula, in collaboration with the judiciary, the District Attorney and the Sheriff, to gauge the proportionate increases in staffing and resources required for each agency when events occur which will lead to predictable workload increases for the agencies, such as the establishment of additional judgeships, significant law enforcement staffing increases, or significant changes in crime rates.

A fundamental premise of this report is the concept of parity, both of resources and workload, with the District Attorney. This includes staffing patterns, workload, supervisory ratios, support staff, equipment, facilities, salaries and other budgetary issues, and representation on criminal justice councils and other bodies which set criminal justice policy in the county. One respondent to the staff Survey wrote, "compensation is not equal to the District Attorney's, who do the identical job, or to our counterparts in Orange County or L.A. This is demoralizing and unjust." Another catalogued the perceived disparities: "Our counterparts with the District Attorney's office are much better compensated in many ways. They have an extensive management hierarchy, get more promotions, go on extended vacations, have sufficient staff for backup, have significantly more support staff, have significantly more resources for training, have much better equipment, etc."

Parity is essential to ensure that neither side has an advantage in recruiting and retaining competent, dedicated staff. If pay is lower on one side, or the lawyers less experienced, or the

workload heavier, critical measurements such as morale, productivity and turnover suffer, and the credibility, integrity and fairness of the adversarial balance is called into question.

Parity is a key underpinning of all national standards. "The Defender Director's compensation should be set at a level which is commensurate with his qualifications and experience, and which recognizes the responsibility of the position. The Director's salary should...in no event [be] less than that of the Chief Prosecutor. The starting levels of compensation for staff attorneys...should in no event be less than that paid in the prosecutor's office... In order to attract and retain qualified supporting personnel, compensation should ... in no event be less than that paid for similar positions in the court system. (National Study Commission on Defense Services, Guidelines for Legal Defense Systems in the United States, Standard 3.2).

RECOMMENDATION: The Chief Public Defender should issue a clear statement of the mission of the office, and its goals and objectives. He should prepare both short range and long range plans for the office, and should maintain an "open door" policy for staff and other mechanisms to receive staff input and feedback. The organization of the Public Defender Office should be reconfigured to allow for three Assistant Public Defenders and eight Grade V supervisors (i.e., Supervising Deputy Public Defenders), one of which will be a full-time training director. This group, designated for the purpose of this report as Executive Senior Staff, should meet at least once a month to exchange information, be informed of policy directives and be involved in policy setting. Their job descriptions and responsibilities should be clearly delineated. It should be a clear principle underlying the criminal justice system of Riverside County that the office of the public defender must be at parity with the District Attorney. This includes salary, personnel, training and workload, and all resources.

II. TRAINING

The Management Audit Report of 1987 found that in-house training of the PDO was "grossly inadequate," and recommended that the Public Defender direct the training supervisor to "prepare a training program for public defenders and to request state and or federal funds if available."

This recommendation has not yet been implemented. Except for several years beginning in 1989 when the office had a training academy funded by the Honda Corporation, the office has had neither a supervisor responsible exclusively for training, nor a fully developed training program. The Defender Training and Development Standards promulgated by NLADA in 1997 provide that "the leadership of the organization must ensure that the training efforts are administered and overseen by person who has training as a specific job duty, and whose other work duties are adjusted to ensure that the training responsibilities can be completely directed. Such person should be provided with resources and staff to accomplish these responsibilities."

Except for staff who were hired during the period in which the Honda-funded two-week training academy was in existence, staff received virtually no training upon joining the organization, or as they progressed through the PDO from misdemeanor to felony to supervisor. By comparison, the prosecutors have a three-week training program for all new employees, in addition to training sessions put on by the California District Attorneys Association.

Though the office currently holds brief monthly sessions on topics such as recent case updates, mental retardation, voir dire, jury selection, and forensic evidence, they are not a substitute for a comprehensive program, such as on the full range of trial advocacy skills. In the NLADA Audit Team survey of PDO staff, only slightly more than a third of respondents agreed that appropriate training is provided, or that it is effective. The great majority agreed that training is so important that it should take priority over other budgeted items, and that ethics and professional responsibility should be a training priority.

A professional training program should include a needs assessment survey to determine the particular training needs of existing staff, and a cataloguing of the tasks of all staff lawyers (e.g., responsibilities dictated by the *Performance Guidelines for Criminal Defense Representation*, such as client interviews, bond hearings, preliminary hearings, understanding and preparing sentencing alternatives, working with investigators and/or social workers, plea bargaining, guilty pleas, and dealing with the defendant's family). The entire staff should be consulted in preparing the training plan for both new lawyers and more experienced lawyers, to increase its responsiveness to their needs and to encourage their participation in the training program.

The training program should include separate programs for new lawyers, which could include videotapes, demonstrations, and participation by the staff, 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").

Written materials and specialized litigation manuals are essential. Checklists and sample motions and forms can be especially helpful. (The California Public Defender Association has a web-site with a comprehensive brief and motion bank. The Los Angeles County Public Defender Office publishes current summaries of important California cases.) Both trial advocacy topics as well as substantive law are important. As NLADA's *Blue Ribbon Advisory Committee on Indigent Defense Services* 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.

The training director will have a wealth of material and opportunities to utilize or build upon, including NLADA's biannual Train the Trainers program, its ongoing Defender Trainers Section, a forthcoming Training Manual being published by the Division of Defender Legal Services, a regular Defender Training column in NLADA bimonthly periodical *Indigent Defense* (recent articles on training new defenders, conducting needs assessments, and presenting large-group trainings), training events and materials from the California Public Defender Association and California Attorneys for Criminal Justice, training programs from other jurisdictions, the Institute For Trial Advocacy at Cal-Western Law School, and the National College of Criminal Defense.

Though the office allows lawyers to attend state and national training seminars (as it must, in satisfaction of the 25 hours of CLE training required by the state every three years), and pays their registration fees, lawyers must pay their own travel and hotel bills. Out-of-house training should be a significant portion of the total training program and should be fairly and evenly administered. Travel expenses as well as registration fees should be paid by the office.

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.

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. The *National Advisory Committee on Indigent Defense Services* (NLADA, 1996), 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 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." Standard 8.1 (NLADA, 1997).

Several respondents to the Staff Survey pointed out the necessity of management training for their supervisors. "Most of the PDO management team are trial attorneys promoted to management positions and learned their management skills on the job," wrote one. "Most of them have learned management skills the hard way. It would be ... useful for the PDO to have intensive management training given to management and prospective management staff."

RECOMMENDATION: The office should establish a formal training program for all employees, including upper and mid-level managers. It should develop a litigation manual covering all aspects of handling a case. It should pay reasonable costs of staff attending appropriate training programs out of the office, including travel and hotel expenses and

registration fees for state and national training programs. It should seek training grants from both state and federal sources. Lawyers should have access to brief and motion banks, and to summaries of recent cases.

III. SUPERVISION AND EVALUATION

National standards direct that “the professional performance of defender staff attorneys should be subject to systematic supervision and evaluation, based upon published criteria. Supervision and evaluation efforts should be individualized, and should include monitoring of time and caseload records, review and inspection of case files and transcripts, in-court observation and periodic conferences.” *Guidelines for Legal Defense Systems in the United States*, National Study Commission on Defense Services, Guideline 5.4.

The PDO is without a meaningful performance evaluation system for any of its employees. This is especially true for the attorneys. Performance standards based upon the NLADA guidelines should be developed along with behaviorally based measures that enhance reliability between raters. The Investigative Division is well above the other parts of the office in respect to performance ratings and the use of the evaluation process for managing operations. However, even it lacks the behaviorally based measures necessary to distinguish between levels of performance.

The Audit Team found limited in-court observation of or conferring with trial attorneys by supervisors. Several judges indicated that they would welcome the opportunity to discuss the performance of lawyers with supervisory personnel (as they reported that they observed frequently with contract lawyer’s performance). In some offices, evaluations appear to be performed regularly, but in the agency as whole they were not. Only half the respondents to the Staff Survey indicated that they receive regular performance reviews, and an even smaller percentage indicated that they understood the criteria against which they were being evaluated or found the process a worthwhile experience. With respect to evaluations, only 22% of those responding strongly agreed that their formal performance evaluation was a worthwhile experience. One respondent to the Staff Survey wrote that evaluations are “mostly inaccurate” for employees in outlying offices, asking: “How can they tell us about our work performance when they might come out maybe once a year if that to see how we are doing?” A significant theme in the written comments to the Staff Survey was a concern that promotions are based more on seniority, or on cronyism, than on merit.

Close “hands on” supervision coupled with regular written performance evaluations would significantly promote accountability and the quality and uniformity of legal services in accordance with the office’s declared mission and goals. A suggested tool for measuring the effectiveness of trial attorneys is the *Performance Guidelines for Criminal Defense Representation* (NLADA, 1995), a project which took ten years to complete. These guidelines comprehensively cover the role of defense counsel, including initial interview, pretrial release, arraignment, preliminary hearing, pretrial motions, plea negotiations, voir dire, jury instructions,

sentencing, and post-trial matters. A modification of these standards to fit criminal practice in Riverside County could be used as a guidepost against which to measure trial attorney performance. The Department of Human Resources is preparing improvements in the evaluation forms used by the office. The Public Defender should be very involved in this process so that the evaluation criteria reference the national standards.

Almost 60 of those responding to the Staff Survey strongly agreed that their supervisors treated them with respect. One respondent commented, "I believe our supervisors have some job knowledge in our field, but knowledge of how to be a supervisor needs improvement." One commented upon the supervisors' heavy workloads and unavailability to do much supervision: "My supervisor does a good job but has too much to do – it's hard to reach her and then when I do, I feel that I have to hurry because she is rushed." Another wrote, "we need more management. We need more 5's, like the ones we have now who will care about this office and work with the staff. We have great 5's now, we just need more. We need strong management."

The Audit Team agrees that more level V supervisors are needed. Supervisory personnel should not carry regular caseloads, so that they can be available to review cases, assist in developing the theory and strategy of each case (even if it be a plea of guilty), observe in court, and provide feedback and suggestions to the supervisee. The ratio of full-time supervisors to staff lawyers should be no more than one supervisor to every ten lawyers (as directed by the *Guidelines for Legal Defense Systems in the United States*, Guideline 4.1, "Proper attorney supervision in a defender office requires one full time supervisor for every ten staff lawyers or one part-time supervisor for every five lawyers").

RECOMMENDATION: Supervisors should be full time and not carry caseloads. There should be no less than one supervisor for every ten lawyers. Supervisors should conduct comprehensive evaluations on a regular basis, review cases with lawyers under them in advance, observe the lawyers in court and on trial and solicit feedback from the judiciary. Lawyers' performance should be measured against clearly articulated standards such as NLADA's *Performance Guidelines for Criminal Defense Representation*. Automatic promotions should be replaced by a merit promotion system based upon predetermined standards. A meaningful performance management system should be established by which the PDO can judge its progress and plan its future. Such a system should include development of meaningful statistical measures including process and results indicators.

IV. PROVISION OF COUNSEL AT ARRAIGNMENT

National standards provide that counsel should be provided at every stage of the criminal process. The *Guidelines for Legal Defense Systems in the United States* provide that "effective representation should be provided for every eligible person as soon as the person is arrested or detained" (Guideline 1.2). ABA standards provide that "counsel should be provided to the accused as soon as feasible and in any event after custody begins, at appearance before a committing magistrate, or when formal charges are filed, whichever occurs earliest.... The

authorities should promptly notify the defender ... whenever the person in custody requests counsel or is without counsel."

The 1987 Audit Report observed that "the Public Defender does not represent clients at misdemeanor arraignments in Riverside Municipal Court, but it appears that it would be desirable to do so. Proper counseling of clients initially should result in better decisions by clients and save time in later court proceedings." Twelve years later, however, the Public Defender still does not provide representation at felony or misdemeanor arraignments in Municipal Court, in both Riverside and the branch offices, even though, at this critical first stage in the process, important legal decisions are made. These include the setting of bond, the appointment of counsel, and very frequently, uncounselled pleas of guilty. In Indio, it was estimated that 40-60 percent of the cases are disposed of at arraignment without counsel. In Perris, the commissioner who handles misdemeanor arraignments accepts uncounselled pleas but refuses to have a court reporter present, so that there is no record of what takes place at these hearings without counsel. A Deputy Sheriff staffing the misdemeanor arraignment court in Riverside told an Audit Team member that between 90 and 95 percent of all misdemeanor defendants in that court plead guilty without counsel. The annual statistics from October 1, 1998 to September 30, 1999 indicate that there were 14,365 guilty pleas at misdemeanor arraignments, of which 12,350 were made without benefit of counsel.

To check these disturbing statistics, one NLADA Audit Team member observed an arraignment court. There were more than 70 misdemeanor defendants in the room. The Sheriff's deputy instructed them all on what would occur. He told the group that "the judge knows more about your case than you do." He told them that when the judge called them up, they were to answer only yes, no, not guilty, or no contest. He attempted to tell them the difference between guilty, not guilty, and no contest. His presentation was in English only, while a significant proportion of the group was Hispanic. When the Commissioner entered, he also advised them of their rights – in English. He explained that if they pled guilty, they would give up their right to counsel, but "it's always a great relief to get your court case done." The Commissioner told the defendants that the "deals" he offers are only good in his courtroom.

There was a Spanish interpreter in the back of the courtroom who did no simultaneous translation, but told the NLADA Audit Team observer later that he "summarizes" the speeches of the bailiff and the Commissioner at some time before the speeches are presented. He also said he translates the "Advisement of Rights" forms to them, containing up to 16 brief statements of about defendants rights and the potential consequences of a conviction, including a single-sentence summary of the potential immigration consequences. The interpreter also accompanied defendants to the bench to interpret when their individual case was called.

The result of the Public Defender's absence from these proceedings is that the Office, whose authority and responsibility is to provide legal representation to indigent people charged with criminal offenses, fails to represent at least 12,000 defendants a year. Budget limitations afford no justification for this practice. And the fact that no prosecuting attorney is present at the misdemeanor arraignments either does not excuse the absence of the Public Defender, whose

duty flows not only law and national standards, but from the U.S. Constitution itself, under *Argersinger v. Hamlin*, 407 U.S. 25 (1972). The mere fact that almost all the defendants who plead guilty without counsel at misdemeanor arraignment are not sentenced to jail at this time is also not dispositive of the issue: for a subsequent misdemeanor offense (e.g., driving without a license which was suspended in the first proceeding), even though counsel may be provided, incarceration could be imposed on the basis of the prior uncounselled conviction. That this actually happens was confirmed in the Audit Team's interviews with defendants held in the County Jail.

The new Public Defender indicates that he will reverse this failing. This will require the addition of approximately thirteen lawyers: four in Riverside, three in Indio and Blythe, three in Hemet, and one each in Perris, Banning, and Corona.

Video arraignments present additional issues. If detained indigent defendants are to be arraigned by video hookup to the jail, they must have an opportunity to have defense counsel physically present with them during the proceeding. In that event, national standards require that the prosecution not be in the courtroom with the judge. American Bar Association standards, which urge against video court proceedings under any circumstances (expressing "a preference for live public proceedings in the courtroom with all parties physically present," *Criminal Justice Standards on the Special Functions of the Trial Judge*, Standard 6.18(a)), provide that remote video participation by any party "should not result in a situation where only the prosecuting or defense counsel is physically present before the judge" (*id.*, 6.18(d)).

In addition to representing clients at arraignment, the office should be available to any prisoner in custody who wishes to talk to a public defender before he goes to court or is interrogated by the police. The American Bar Association Standards provide that, "Upon request, counsel should be provided to persons ... who are in need of legal representation arising from criminal proceedings.... The authorities should promptly notify the defender ... whenever the person in custody requests counsel or is without counsel." (Providing Defense Services, 5-6.1) Notices should be clearly posted in all courts and detention facilities providing the telephone number of the PDO, and any written materials and oral information provided to defendants should prominently notify them of their right to counsel and how to secure counsel if they are financially unable to retain private counsel.

RECOMMENDATION: Public Defender lawyers must be made available to represent individual indigent defendants at felony and misdemeanor arraignments. The public defender should seek the staff necessary to provide such entry into cases at arraignment. Notices should be clearly posted in all courts and detention facilities providing the telephone number of the public defender office, and any written materials and oral information provided to defendants should prominently notify them of their right to counsel and how to secure counsel if they are financially unable to retain private counsel.

V. CONTINUITY OF REPRESENTATION

The national standards uniformly recommend against having different lawyers at successive stages of a single case and in favor of "continuity of counsel," or "vertical representation." The *Guidelines on Legal Defense Systems in the United States* require "continuous and uninterrupted representation of eligible clients from initial appearance through sentencing up to, but not including, the appellate and post-conviction stages by the same individual attorney. Defender offices should urge changes in court structure and administration to reduce fragmentation and to facilitate continuous representation" (Guideline 5.11).

Instead of continuous or vertical representation, the practice of having separate lawyers for felony preliminary hearings and different lawyers for felony trials is pervasive throughout the Riverside County system. The only cases that are handled "vertically" are murder, child molestation, rape, and "three strike" cases subject to life imprisonment. In felony cases in Riverside, no public defender is assigned to represent the client at initial arraignment in municipal court unless it is a homicide or other special case. At the preliminary hearing stage, five lawyers are assigned to handle all of the hearings. At the felony arraignment stage in the Superior Court, the supervisor of the felony trial division personally handles all of the cases. Some cases are resolved at the preliminary hearing stage, and others at the felony arraignment stage. Then the felony supervisor assigns the remaining cases to the 17 lawyers who do felony trials. This means that, at a minimum, the client receives representation from three different lawyers, and if a lawyer is added at the first arraignment, there would be four lawyers. Similarly, in Indio, there are five lawyers who conduct felony preliminary hearings (including one who also does misdemeanor cases) and four other lawyers who represent defendants at felony trials.

This mode of representation is confusing to clients who have to trust different lawyers at each stage, retell their stories to each, and gain a rapport with each lawyer in turn. Each lawyer may have a different view of the case, or feel that they are not ultimately responsible for the case, in which case they may delay investigation or sentencing plans, and ultimate resolution of the case. The lawyer who tries the case may miss something by not being able to assess the strength of the state's case at the preliminary hearing stage.

The office already uses "vertical representation" in some cases. Several staff lawyers interviewed who were assigned to felony trials stated that they would prefer to have conducted the preliminary hearings and handled the case "vertically." Misdemeanor cases in Perris and Hemet are also handled on a vertical basis.

RECOMMENDATION: In felony cases, the same lawyer should represent the defendant at the preliminary hearing and all other proceedings in order to preserve continuity of representation, or "vertical representation."

VI. CONFLICTS OF INTEREST

The County Criminal Justice System includes a number of contracts with private counsel

to supplement the work of the Public Defender Office. These contracts were designed to handle cases in which the public defender was unable to represent indigent defendants due to conflicts of interest. There are five such contracts with the county in the aggregate amount of \$7.9 million plus \$1.3 million in accounts for expert witnesses, investigation, transcripts, and court interpreters, for a total of \$9.2 million. (One contract is for cases arising in the Desert Superior and Municipal Courts of Blythe, Indio, and Palm Springs; one for the Superior Court in Riverside; one for Juvenile representation in Riverside; one for misdemeanor representation in Riverside; and one for felony preliminary hearings and misdemeanors in Banning, Hemet, and Perris courts).

There has been significant controversy over PDO lawyers' declaration of conflicts. Some of those interviewed felt that staff public defenders have discretion to declare conflicts on their own, irrespective of how long they had had the case, and without supervisory approval. Some denied that the conflicts process was abused, stating that supervisory personnel are required to approve conflict determinations, and that if a conflict is declared late, it may be because the defender has just received late discovery from the state and found the conflict at that time.

The procedure utilized in Indio to discover the existence of conflicts is instructive. The steps in the process are as follows:

- 1) The Judge appoints the Public Defender Office at arraignment.
- 2) The Clerk of Court prepares a packet for the office which includes police reports, discovery, the complaint and the indigency form.
- 3) A secretary picks up these packets at 10:30 and 3:30 PM, stamps them in and distributes the packets to the felony, misdemeanor, and juvenile secretaries for each division.
- 4) The division secretary prioritizes the cases by court date and conducts a "conflicts check."
- 5) The "conflicts check" consists of checking the name of the defendant against the office computerized data base. (That data base consists of all prior defendants, all prior witnesses listed in police reports which the secretaries review, and all prior victims.)
- 6) All possible conflicts go to the Chief of the Indio office for a decision. No trial lawyer can declare a conflict without the approval of the supervisor in charge.

Similarly, in Perris, the Supervisor of the Office approves all declarations of conflict of interest.

The new Public Defender has asked for a review of practices for the declaring of conflicts, including a memorandum of relevant law on the problem. This memo has been distributed to top staff, and he has met with his supervisory staff with respect to solidifying policy in this area. Pending this review, he has directed that all requests to declare conflicts of interest must be approved by supervisory personnel.

RECOMMENDATION: A clear policy on conflicts should be promulgated, and no conflicts should be declared without review and approval by supervisory personnel.

VII. MANAGEMENT INFORMATION SYSTEMS

The office has a rudimentary management information system (MIS), and after every court hearing the lawyers fill out a court update form showing what happened in court that day. That information is typed into the computer system by the secretary. The system is inadequate for the needs of the office. The current hardware system served by an IBM ASA 400 is so outmoded that IBM has informed the office that it will no longer be responsible for maintenance after 1999. The office keeps statistics on the number of cases assigned to each lawyer, but managers seem unaware of how many cases each lawyer has, the length of time it takes to dispose of them, the nature of the disposition of each case, or even how many cases the attorneys under them had disposed of in a fiscal year. When supervising lawyers in outlying courts were asked for these statistics they replied that these numbers were kept in the Riverside office by the Assistant Public Defender in charge of these offices. When that person was asked how many cases were disposed of by each lawyer in these offices, she replied that she could get this information for the Audit Team, but it would tie up the computer for 30 days. Consequently, that information was not supplied to the Audit Team. In addition, in reviewing several files in outlying offices, it was noted that there was no case diary form which tracked all activity on the case, in court or out. Without such a case diary form it is difficult for another public defender or supervisor to appear in court on the case, or for a supervisor to effectively know what has been done or not done in a case when reviewing a file. It is recommended that, at a minimum, a case diary form be added to the forms required to be kept by the Public Defender staff.

An important key to effective supervision of the office is its management information system, a computerized system for tracking the progress of cases, including maintaining a master calendar, the attorney's caseload list, and the office court call. At each stage, lawyers update the file to reflect developments such as continuance dates, disposition, and method of disposition (e.g., bench, jury, plea), so that by the end of the year disposition information is available on every case, how many cases each lawyer was assigned and how many they closed, the number of pleas, trials, etc. conducted by each lawyer and by the office by categorizations such as offense type, or the amount of time from assignment to disposition of the case.

The master calendar is critically important, in combination with the entire management information system. It is the tool that allows management to know exactly where every case and every lawyer is or should be on a daily basis. It allows a supervisor to know what cases must be covered when someone is on vacation. It allows an evaluator to have a better picture of both the quantity and quality of work performed by an assistant public defender. It assists in presenting data to the County Board in support of its budget and staffing requests.

The current MIS fails to maintain a master calendar. Every lawyer has to keep his or her own calendar. Supervisors do not know what cases are due in court for each lawyer, and thus their supervision is hampered. Without specific caseload information on how many cases of each type are disposed of, it is difficult to project staffing needs on a rational caseload basis. National

standards call for a maximum of 150 felonies per year per lawyer or 400 misdemeanors per lawyer per year (National Advisory Commission on Criminal Justice Standards and Goals, Standard 13.12). But it is difficult to project accurate staffing needs if the Chief Defender cannot ascertain from the MIS how many cases are actually disposed of. In addition, different types of cases require widely differing amounts of work. If caseloads are refined into appropriately weighted workloads – i.e., further analyzed by case type, and type of disposition – staffing projections can be far more sensitive and accurate.

The new Public Defender is cognizant of the deficiencies of the present MIS, and is seeking a system that can support a master calendar.

In the process of a modernized computer system, added efficiencies could be realized by designing its system architecture to be compatible with other justice system agencies, including the judiciary, prosecution and Sheriff. The U.S. Department of Justice has been working for many years with national organizations of courts, prosecution, defense, law enforcement, corrections, probation and parole, as well as with state and local jurisdictions around the country, to develop and refine models of technology integration, which essentially allow data on a criminal case to be entered once by one agency and used many times by other agencies sharing the same technology (see *Report of the National Task Force on Court Automation and Integration*, Bureau of Justice Assistance, U.S. Department of Justice, June 1999). The security of each agency's proprietary data is maintained, while redundant entry of data which all agencies agree should be shared is eliminated. Court calendaring can be coordinated instantaneously for the court and all attorneys, reducing continuances and delays. Information essential to the preparation of the defense, such as the police report, can be forwarded to the Public Defender at the push of a button, reducing the problem of delayed declaration of conflicts due to delayed discovery, and increasing the efficiency of dispositions, and reducing jail days for detained defendants awaiting adjudication. Staffing needs for data entry in all agencies is reduced, and speed and the reliability of information is increased. In October of 1999, NLADA published a *Defender Guidebook to Technology Integration in Criminal Justice Information Systems*, discussing the critical issues for defenders in technology integration, and describing a variety of successful integration initiatives involving indigent defense agencies in numerous jurisdictions. The Audit Team recommends that before finalizing technology purchases, the PDO enter into joint consultations with the judiciary, prosecution and Sheriff's office to discuss the feasibility of some degree of technology integration.

RECOMMENDATION: The office should obtain new computer equipment and develop a uniform computerized information system sufficient to provide baseline information on the number of cases assigned to each lawyer, the number closed, their dispositions, their method of disposition, the length of time between opening and closing of a case, and a master calendar to assist in proper evaluation of staff, caseload control, and future budget and staffing needs. The PDO's computer system should be integrated with the systems of other criminal justice agencies, including courts, prosecution and Sheriff, to improve calendaring, expedite case-processing, and eliminate redundant data entry.

VIII. EXTERNAL RELATIONS

Criminal justice systems are increasingly operating as an organic whole rather than separate agencies, and are realizing improvements in efficiency, cost, comprehensive planning and budgeting, and the delivery of effective, holistic sanctions to specialized offender populations. The U.S. Department of Justice has issued several publications discussing the importance of defender participation in effective adjudication partnerships, from specialty courts to criminal justice planning bodies (see *Key Elements of Successful Adjudication Partnerships*, Bureau of Justice Assistance, U.S. Department of Justice, May 1999), and in February 1999 convened an historic national symposium focused on spurring collaborations between indigent defense and other components of the criminal justice system.

At one time Riverside County had a criminal justice coordinating committee, but it no longer officially meets as such. Currently, the Public Defender, contract counsel, the District Attorney, the Clerk of Court and three Superior Court Judges, including the Chief Judge, meet once a month for lunch. This is certainly an important step in coordinating the criminal justice system and giving each of the components a chance for input into policies. These meetings should be expanded to include corrections officials, the Sheriff, the Chief Probation Officer and other county departments, including the County Executive. (For further examples of such councils and what they have accomplished as a unified group, see *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).

Such a council would provide an important forum for the collaborative discussion and resolution of criminal justice issues of mutual concern, from long-range planning to short-term crisis resolution, and would help establish a professional symbiosis and collegiality between the Public Defender and other agencies. The Sheriff told the Audit Team, for example, of his interest in Public Defender reforms which might reduce jail overcrowding, and of his support for collaborative staffing formulae which would prescribe the extent of staffing increases for the Public Defender or other agencies to keep up with increases in judgeships, law enforcement, population or crime rates. A revived criminal justice coordinating committee could examine the impact on jail overcrowding of public defenders appropriately advocating at arraignment for pretrial release from custody (as is counsel's duty under the *Performance Guidelines for Criminal Defense Representation*). It could consider a joint weighted workload study involving prosecution, defense and courts, to develop a uniform formula for predicting workload and simplifying budgeting and staffing projections (see "Strange Bedfellows: A Joint Workload Study for Defenders, Prosecutors and Judges Can Serve Everybody's Funding Needs," *Indigent Defense*, November/December 1998, at 1, www.nlada.org/indig/novdec98/hardin.htm). It could discuss improvements in areas such as drug court, death penalty cases, technology integration, video arraignments, and correctional options.

The Public Defender and staff members should also be active in bar activities, and in

civic and community organizations that may affect the PDO or its clients. A brochure explaining the office, its locations, and its availability to the indigent accused, with phone numbers and a hot line, would help build awareness and confidence in the client community and maximize service to clients. In the critical and sensitive area of media relations, the Public Defender should approve all statements to the media, or delegate that duty to a member of his staff, experienced in dealing with the media and public and community perception of the office.

RECOMMENDATION: The Public Defender should participate in a County Criminal Justice Council or other coordinating body, civic and community groups. The Public Defender should consider publishing a brochure explaining defendant's rights and the location and services of the office. The Public Defender should approve all statements to the media, or designate an experienced member of his staff to perform this function.

IX. JUVENILE COURT

The Juvenile Division of the Public Defender Office in Riverside is composed of 10 lawyers, including a supervisor, three full-time investigators and one part-time investigator, one social worker, and a number of interns from neighboring colleges who work without compensation. It is located at a separate site from the main office in Riverside. There are two attorneys assigned to Juvenile Court in Indio, who are located in the Indio office. The total juvenile caseload in 1998-99 was 4,485 cases, including 1,027 dependency cases (of which 823 arose in Riverside and 204 in Indio) and 3,458 delinquency cases (of which 2,869 arose in Riverside and 589 in Indio).

There were conflicting reports about the operation of the Juvenile Court staff of the PDO. Critics suggested that there was a lack of supervision by the Public Defender, and staff public defenders were "on their own" with respect to legal questions and or trial strategy. It was clear there was no policy with respect to conflicts. There is a lack of space for confidential interviews, filing, and other functions. There has not been any specialized training for the Juvenile Court staff. One attorney noted that the lack of clear criteria for advancement in the PDO affected the work ethic of the staff in Juvenile Court. But even critics of the division acknowledged the competence of the PD staff at Juvenile Court. Staff members observed that the loss of salary parity with the District Attorney's office, which had existed for the past ten years, had adversely affected morale.

Evaluations are problematic in Juvenile Court. The Supervisor had a full caseload in addition to his supervisory duties, and was not available to observe staff lawyers in court. He did evaluations when he had time, but it was not done on a regular basis. Rotation of staff was suggested as one solution.

Some interviewees stated that some of the Juvenile Court staff saw no need for a dress code for the lawyers, nor a need for further evaluations if the lawyer has reached the maximum pay scale. The NLADA Audit Team took issue with these views. Although it may not be

necessary to promulgate a specific dress code for the office, professional custom would dictate that appropriate dress must be worn in the courtroom and when the staff comes into contact with the public, and that should inform appropriate dress at the office. With respect to regular evaluations should be conducted for staff at all salary levels. The performance evaluations must be tied to realistic and clearly articulated performance measures and standards. The performance evaluation is a tool to determine whether the staff is performing at levels which are consistent with accepted standards for lawyer performance. If not, remedial measures would include specialized training, supervised performance in court, case review by supervisors, and feedback from the judiciary and clients.

The Supervisor of the Juvenile Division should be a full time supervisor and not carry a caseload. That would allow him to observe his lawyers in Court, conduct coaching and case review, get feedback from the judiciary, and evaluate staff. In addition, the caseload in the Juvenile Division is almost twice the maximum caseload provided in national standards (National Advisory Commission on Criminal Justice Standards and Goals, Standard 13.12 recommends a limit of 200 juvenile cases per attorney per year. The Public Defender should review juvenile staffing patterns against the national standards and seek appropriate adjustments with the Board of Supervisors through the County Executive.

RECOMMENDATION: The Public Defender should review staffing patterns in the Juvenile Court and seek adjustment from the County Executive and the Board of Supervisors to allow caseloads in conformity with national standards. The Supervisor of the Division should not carry a caseload. The Public Defender should review the space needs of the Division and seek appropriate additional space.

X. INVESTIGATIONS

The investigative division consists of 29 investigator positions, including one chief investigator and three supervisory positions. There is one full-time supervisory investigator unfilled and three temporary positions unfilled. The investigative division interviews clients, locates witnesses, interviews witnesses, and works closely with PDO lawyers and social service staff. The Chief Investigator has been in the office for 19 years and has worked her way up through the system, becoming Chief Investigator in December, 1997.

With respect to the investigators assigned to the civil division, the same investigators have been there for ten years. One of their responsibilities is to investigate civil commitment cases. These cases involve significant mental health issues, and require assessment of facilities, patient charts, patient medication, and working with difficult clients. Yet there has been no specialized training afforded the investigators in this area, other than on-the-job. This is not adequate; specialized training is necessary.

Elsewhere in the investigative division, there is a training component so that new investigators receive an orientation and ongoing training. The division has reached out to Rio

Hondo College's criminal justice program to provide some academic training for staff investigators. The Chief Investigator would like to offer advanced training equivalent to the Police Officers Standards Training (POST) to her investigators to bring them up to the level of the District Attorney investigators. The office has just recently been certified to do this POST peace officer training, and needs a dedicated trainer to provide this training.

The division has a functioning evaluation system, and performance evaluations are conducted annually. Investigator feedback forms are periodically distributed to attorneys for their comments on individual investigators' performance. The division maintains statistics on cases opened and closed each month, open cases each month, cases in which the defendant speaks only Spanish, sex cases, and "three strike" cases assigned to investigators.

Investigator salaries are a major issue in the office because investigators in the District Attorney's office are paid as much as 20 percent more. The Public Defender should work with the County Board and County Executive to remedy this disparity, since the work performed by investigators on both sides is similar. If the differential is attributed to specialized training which the prosecutor's investigators receive, then this kind of specialized training should be made available to defense investigators as well.

RECOMMENDATION: Investigator salaries should be at parity with those of District Attorney Investigators. To the extent that the current disparity reflects advanced training of District Attorney Investigators, similar training opportunities should be made available to Public Defender Investigators, by a trainer able to provide POST (Police Officers Standards Training). Investigators in the Civil Division should receive specialized mental health training.

XI. SOCIAL SERVICES

The National Advisory Committee on Indigent Defense services, in its 1996 final report, stated that "the social services professional is recognized as an essential partner in the presentation of the defense case, not only in the sentencing area, but in all phases of the criminal justice process. Early intervention by social service providers may result in both time and cost savings to the system. Benefits include possible release on bond into appropriate programs, referrals that divert cases from the Court system into treatment programs, early identification of mental and substance abuse problems, and assistance with development of the defense theories" (www.nlada.org/indig/mj97/bluerib1.htm). The alternative sentencing function is a very important one in the Public Defender office. Taxpayer funds can be saved if a defendant can be placed with an alternative sentencing program as opposed to the county jail or state prison. By addressing an offender's drug addiction, alcohol abuse, or mental health problems, the likelihood of recidivism is reduced.

There is one PDO staff member who seeks alternative programs for defendants who have drug, alcohol, or mental health problems. She has contacts with mental health professionals, substance abuse agencies, and other community resources to assist in this work. She speaks Spanish and is able to explain to them what is happening to them in the criminal justice system. One social services worker is assigned to the child dependency unit of the Juvenile Court division. He has a Bachelors Degree in Social Work (but is not a licensed clinical social worker under California law). He carries a caseload of between 70-80 cases at any given time, which is relatively high. Because of his Spanish language skills, he sometimes does investigations in delinquency cases when the children involved are Spanish-speaking only. One social worker is assigned to the Civil Division, and there are several social service volunteer interns.

The social service staff should be expanded, to conduct client assessments and develop diversion or sentencing plans which place clients in appropriate community-based programs or facilities to address problems contributing to their criminal behavior, such as substance abuse or mental illness. It might also be important for the office to hire other Spanish-speaking interpreters to interview clients both adult and juvenile, instead of having to resort to a court appointed interpreter or a family member who may not be familiar with criminal justice terms and proceedings.

RECOMMENDATION: The high quality work of the existing social service personnel should be recognized, and the division should be expanded to include a Licensed Clinical Social Worker in Riverside, and an additional social worker for the Juvenile Court in Indio. The office should add Spanish-speaking professionals such as certified interpreters who understand the criminal justice system and could interview adult and child client defendants.

XII. FELONY DIVISION – RIVERSIDE

The felony division in Riverside consists of 17 trial lawyers and one supervisor. The supervisor handles all felony arraignments in Superior Court (772 total in 1998-99). This enables her to dispose of some cases at that level, and gives her insight into the nature of the remaining cases, which she then assigns to the lawyers in her division. In homicide and other serious cases, the felony lawyers also handle the preliminary hearings. (See "Continuity of Representation," Part VII, *supra*.)

In 1998-99 the agency was assigned to 9,851 felony cases. Of that number 4,716 were assigned to the Riverside Felony Staff. There are twelve investigators assigned to the Riverside Office, who do both felonies and misdemeanors. In addition, the agency was assigned to 4,231 violations of probation, of which 1,959 were assigned in Riverside. In roughly the same time period, figures for 1988 show that the investigators were assigned 924 felony cases including 28 homicide cases.

The caseloads assigned to felony trial lawyers in Riverside significantly exceed national standards. The National Advisory Commission on Criminal Justice Standards and Goals set a maximum of 150 felony cases per lawyer per year. The average for felony trial lawyers in Riverside, however, is 277. Adding violations of felony probation as approximately half a case adds another 58 cases to each lawyer for a total of 335, more than twice the national standard. Based upon these figures, the Public Defender in conjunction with the felony supervisor in Riverside and the Assistant Public Defender in charge of Riverside should reassess the caseload of each lawyer in the division, and make the proper adjustments through appropriate budget requests backed up by statistics.

The well-respected supervisor of the felony trial division in Riverside attempts to track assignments to her lawyers, but currently the only statistic she is able to keep is the number of cases scheduled for trials. Nor has she had the time to do formal performance evaluations of her staff on a regular basis. As a manager, she has only had one formal performance evaluation of her work. There are no written performance standards for trial attorneys or managers, and promotions to Grade IV have been made on seniority instead of merit.

There also appears to be a need for a lawyer to do pre-judgment writ work, especially in capital cases. But since the current appellate person is in Hemet, the trial lawyers in the felony division must do their own appellate work as well. It is suggested that another appellate position be created in Riverside to be available to the trial division. (Since the Audit Team's site visit, a rotation of attorney staff has taken place, and the appellate lawyer position in Indio has been moved to Riverside, and an additional appellate slot assigned there as well.)

In addition, the supervisory structure of the felony trial division is violative of national standards. Standard 4.1 of the Guidelines for Legal Defense Systems in the United States provide that "proper attorney supervision in a defender office requires one full time supervisor for every ten staff lawyers or one part-time supervisor for every five lawyers." In Riverside, the felony supervisor has a heavy arraignment caseload as well as supervisory responsibility for 17 lawyers.

There should be a minimum of two supervisors in this important division, and they should be full-time, without the requirement of carrying a caseload.

There should also be a special unit for complex litigation and death penalty cases, with investigators and the resources necessary to try complex matters. Naturally, all cases assigned to this unit would be handled on a vertical representation basis. This would utilize those lawyers who have demonstrated excellence in their other assignments and would be a natural path to promotion.

RECOMMENDATION: The Public Defender and senior staff should maintain information on the actual caseloads being carried by the Felony Division lawyers in Riverside, determine how far they deviate from recognized national caseload standards, and seek appropriate adjustment through the budget process. There should be an additional supervisor assigned to the felony trial division in Riverside. Both felony trial supervisors should not carry caseloads. There should be an appellate attorney in Riverside to prepare pre-judgment appellate writs. The division should be reorganized so that felony cases are handled vertically, with the same lawyer handling preliminary hearings, felony arraignments and felony trials. There should also be a special task force to deal with complex litigation and death penalty cases.

XIII. MISDEMEANOR CASELOADS

In Riverside there are five attorneys assigned to misdemeanors in addition to one supervisor, who also supervises preliminary hearings. In 1998-99, 3,785 misdemeanor cases were assigned to Riverside. That means that each trial lawyer was assigned an average of 757 cases per year, which is in excess of national caseload standards, which call for no more than 400 misdemeanors per lawyer per year (National Advisory Commission on Criminal Justice Standards and Goals, Standard 13.12).

In Indio, where there are four lawyers to represent misdemeanor clients, in 1998-99 the office was assigned 6,327 cases. That is an average of 1,582 cases per lawyer, or almost four times the maximum caseload set by national standards.

In Hemet, three lawyers were assigned to 2,342 misdemeanor cases in 1998-99 in addition to 1,582 violations of misdemeanor probation. (These lawyers also are expected to do preliminary hearings.) Without counting violations of probation, the misdemeanors alone give each lawyer a caseload of almost 800 cases – twice the national standard.

In Perris, three lawyers were assigned to 2,715 misdemeanor cases in FY 1998-99, or an average of over 900 cases per lawyer, again more than twice the national standard. In addition, the office was assigned to 923 violations of probation.

In order to assess how many lawyers the Public Defender needs to provide effective

representation in misdemeanor cases, the Public Defender needs to determine from the Management Information Systems how many cases each lawyer is disposing of in a year, how long the cases are staying in the system, what is the open caseload for each lawyer at any given time, and whether the lawyers are doing all the work that is required of them (e.g., early interview of clients at the county jail or in their offices, motions filed, and other responsibilities assigned by national or PDO *Performance Guidelines*). This will provide the basis for determining the number of lawyers needed to furnish competent representation to each indigent client.

RECOMMENDATION: The Public Defender should review staffing patterns in light of national caseload standards, information about the number of cases disposed of, the open caseload for each lawyer, and the length of time between the assignment of a case and its disposition, and should request staffing levels in accordance therewith from the Board of Supervisors.

XIV. INDIO

The Indio office is composed of 16 lawyers, including a supervising attorney. In addition, the office has five investigators and four permanent clerical staff and several temporary staff. In 1998-99 Indio was assigned 2,125 felonies, 6,327 misdemeanors, 204 Juvenile Dependency cases and 589 delinquency cases. Indio also was assigned 2,004 felony (926) and misdemeanor (1,078) violations of probation. Five lawyers are assigned to felony trials, four lawyers to preliminary hearings, four lawyers to misdemeanors, and two lawyers to Juvenile. The secretarial staff includes one secretary for Juvenile cases, 1 for felony, 1 for misdemeanors, 1 for drug court, 1 receptionist and 1 legal stenographer.

The office does not handle arraignments in Municipal Court. 40-60 percent of cases are disposed of without counsel at arraignment. These are typically cases such as DUI with no incarceration, or vandalism, or petty theft. Thus, the Public Defender system is not serving a significant percentage of the indigent defendant population of Indio.

In contrast, the District Attorney's office in Indio has 27 lawyers, 12 investigators, 27 support staff-including 1 forensic tech, 6 investigative technicians, 6 victim advocates, 1 computer person, and 1 stock clerk & mail room person. In Blythe, the District Attorney has 2 attorneys, 1 investigator, 2 clerical people, and 1 victim witness advocate – compared to Public Defender staff of one lawyer with a temporary clerical person.

The Assistant District Attorney has organized her office in Indio into three teams, a pretrial team for preliminary hearings, a trial team that does misdemeanors, felonies, and three or four death penalty cases which are handled vertically; and two vertical units for major narcotics cases, family violence, elder abuse, child abuse, and statutory rape, and a juvenile division.

The Public Defender Supervisor indicated that the two-week training academy

commenced in 1989 with support from the Honda Company was excellent, and that since its termination, the office sends some lawyers to the Cal-Western Law School trial advocacy program, as well as other state and national training programs. He seeks a monthly training program for the office and a resumption of the case updates previously prepared by the appellate attorney.

The entire office is networked with Hewlett Packard PCs. Each lawyer and staff member also has access to the Court Computer, which provides all the information contained in the Clerk's files.

There seemed to be a collegial atmosphere in the office, high morale, and high commitment to clients. Attorneys interview defendants within 2-5 days of their appointment, and in felonies, they make motions to reduce bond if the defendant has not been released by the time they are assigned to the case. In reviewing files, it was noted that although assistant public defenders used an investigator request form to assign specific tasks to the investigator, and filled out an update form for the computer every time he or she came back from court, they did not use a case diary form covering contacts with the client, history of court appearances, etc. in case someone else had to pick up the file and handle the case in court.

RECOMMENDATION: The office in Indio should require that all lawyers maintain a case diary form in the file, reflecting every court appearance, motions filed, interviews with the defendant, interviews of witnesses, and work done on the case. The office should represent defendants at arraignment in Municipal Court. It should also utilize "vertical representation," i.e. the felony trial division and the preliminary hearing division ought to be merged, and the same lawyer should be assigned to both the preliminary hearing and the felony trial. Three additional attorneys should be added to cover the arraignment call, and three additional attorneys in order to allow for a vertical representation model for felonies. The office should receive a social worker to assist in juvenile court and in alternative sentencing work, and two law clerks to assist in research. Since the misdemeanor caseload per lawyer in Indio is four times the maximum recommended caseload under national standards, information about the number of cases disposed of, the open caseload for each lawyer, and the length of time between the assignment of a case and its disposition, should be gathered and studied, after which staffing should be adjusted accordingly.

XV. HEMET

Organization of Office and Caseload: The office is composed of five lawyers – three for felony preliminary hearings and misdemeanors, and two for felony trials, including a supervising attorney. In 1998-99, the office in Hemet was assigned to 932 felonies, 322 violations of felony probation, 2,342 misdemeanors, and 1,582 violations of misdemeanor probation. Although felonies are not handled vertically, misdemeanors are. However, the office does not handle arraignments in Municipal Court. At felony arraignments in the Municipal Court, the public

defender is not present, but no pleas are taken. But uncounselled pleas are taken in misdemeanor cases at arraignment.

Attorney Caseloads: a) Felony – Lawyers are assigned 5-10 new felony cases per lawyer per week. The Sheriff brings the defendants over for a settlement conference which is held after arraignment but before preliminary hearing. The lawyers in Hemet typically spend about 15-20 minutes with each defendant, but may spend up to an hour if necessary. Then the case is either settled or continued for preliminary hearing. About 10-20 percent go to preliminary hearing, while the rest are resolved at the settlement conference. b). Misdemeanor – Every week there are 15-20 new misdemeanors assigned to each lawyer. At arraignment, the judge sets a date for a pre-trial conference, at which time the lawyer sees the defendant for the first time, and 95 percent of the misdemeanor cases are settled at that stage, or at arraignment.

Eligibility Determinations: For misdemeanors, the judge's bailiff hands a form to the client. The defendant fills out the form and hands it to the Court. In felonies, the form is not filled out, since the Public Defender is appointed to all felonies.

Bail: In felony cases, bail is set based on a fee schedule. There is also an OR clerk who interviews the felony defendants and sends a recommendation to the Court. The Public Defender office moves to reduce bond in 10 percent or less of the cases, and then by oral motion only. These motions are usually denied. However, they have not been generally appealed, so that the lower Court's bail decision stands in every case. Most misdemeanor cases are released on OR, or bond is set according to the bail schedule. In this community, however, most misdemeanor defendants have received tickets from the police, and are not in custody at the time of misdemeanor arraignment.

Since this office does the preliminary hearing in felony cases and felony arraignments in Superior Court, it seems logical to assign the felony trials to the same lawyer that the defendant had below. This would help mitigate the perception that the office is a factory with assembly line representation as opposed to a law office where the defendant has a single lawyer to deal with. A single lawyer can better gain and maintain the confidence of the client, and avoids problems of lost information or inconsistent strategies when cases are passed from one lawyer to another for different stages of the proceedings. The National Study Commission on Defense Services stated that, "Defender offices should provide for continuous and uninterrupted representation of eligible clients from initial appearance through sentencing up to, but not including the appellate and post-conviction stages by the same individual attorney" (Standard 5.11, Guidelines For Legal Defense Systems in the United States).

Again, the practice of public defenders not being at arraignments should be corrected. It is especially egregious when pleas of guilty are accepted at these arraignments without the benefit of counsel.

The Audit Team was told that the office accepts collect calls from defendants at the jail, but if the defendant requests a visit, he is told that the lawyer will see him in court. One lawyer

stated that he did not keep track of where his clients were. The failure of the lawyers to see their clients at the county jails at the earliest opportunity or in the office by appointment if they are not incarcerated is violative of national standards to the effect that "effective representation should be provided for every eligible person as soon as the person is arrested or detained" (Guidelines for Legal Defense Systems in the United States, Guideline 1.2). Seeing the client for fifteen minutes at a settlement conference subjects the client to unnecessary pressure and may assist in obtaining a plea without investigation, legal research, defense witnesses being present, or a chance for even a single private, confidential consultation between attorney and client.

The failure of the office staff to view themselves as major players in the decision for bail, the failure to file written motions, or to appeal in appropriate cases may cause unnecessary detention in the County Jail in cases where the defendant could have been released had the office advocated for release. One of a defender's most basic obligations is "to attempt to secure the pretrial release of the client under the conditions most favorable and acceptable to the client" (*Performance Guidelines for Criminal Defense Representation*, Guideline 2.1).

Finally, the staff at Hemet is very experienced, averaging over 16 years in the office (ranging from 12 to 28 years), and are handling low level felonies as well as misdemeanors. The lawyers interviewed all had prior felony trial experience which could be put to more effective use elsewhere in the system. This staff should be rotated to give other offices in the system a chance to utilize their experience.

RECOMMENDATION: a) Public Defenders in Hemet should be present at both felony and misdemeanor arraignments. b) Public Defenders should not wait until the settlement conference or the Preliminary Hearing to interview their clients for the first time. c) Felony cases should be handled on a "vertical" basis, i.e. the same lawyer who handles the felony preliminary hearing should also represent the client at his or her felony trial, if the case is not resolved earlier. d) The Public Defender has a responsibility to get the defendant released on bail or "Own Recognizance" if possible. In appropriate cases, bail motions should be filed in writing, and aggressive appellate follow-up should be made to insure that appellate review and bail guidelines are set by the reviewing court, and not only by the trial court. e) PDO staff in Hemet should be rotated into other offices in the Riverside County System.

XVI. ROTATION

The staff of the PDO should be rotated into other offices in the Riverside County Public Defender System. The reasons for this are to bring fresh perspectives, skills and energy into each division from other parts of the agency, to promote cross-training in each aspect of public defender work which will allow the agency to respond to temporary or unforeseen staffing shortfalls or work overload, to provide a growth experience for all staff in the agency, to sensitize staff members to issues in other divisions, and to promote cohesion and loyalty to all members of the agency staff, instead to just a few. Finally, a well-rounded staff member, who understands

each aspect of the office, will be able to deliver better quality service to their clients in Riverside County. As one respondent to the Staff Survey noted, "regular rotations would help prevent burnout. It's insane to expect felony trial attorneys to work for years with no break..." Another respondent wrote: "People in the office have been in some positions in excess of ten years. This has resulted in atrophy of lawyering skills and an inability for an office to be flexible."

Rotation is not related to or a substitute for performance evaluations or specialized training. Performance evaluations and follow-up (so that if a deficiency is noted in one performance evaluation, it is addressed prior to the next evaluation and discussed by the supervisor to determine if it has been corrected) should be tied to clear performance standards. For example, a performance standard might be to visit one's client within 48 hours of assignment in the County Jail. If a lawyer does not visit a client at all in the County Jail, but waits for preliminary hearing, that performance standard is not being followed, and that should be noted so that the deficiency is corrected.

Nor is a rotation procedure to be viewed as punitive in any way, even though the practical result of any rotation may be to shuffle more or less desirable assignments. The executive senior staff and the Public Defender should design rotations to ensure equitable distribution of workload.

(It should be noted that as of December 6, 1999, the new Public Defender has issued a memo involving the rotation of virtually the whole office. He is to be commended for his strong leadership on this issue.)

RECOMMENDATION: That the entire office staff be involved in periodic rotations for the purpose of cross-training, morale building, prevention of burnout, and improved service to clients.

XVII. CONSERVATORSHIPS AND THE CIVIL DIVISION

The PDO operates a Civil Division, with four attorneys, three investigators and its own clerical staff. There is no direct "line" supervision for the unit because the supervisory position that had previously been allocated was eliminated several years ago to accommodate a "golden parachute" retirement. The Civil Division provides service in a broad variety of human services-related legal proceedings, including conservatorships for individuals with mental illness under the Lanterman, Petris, Short Act (LPS), and conservatorships for disabled adults under the California Probate Code and Guardianships for Children. It also handles some quasi-criminal matters such as civil commitment of Sexually Violent Predators and contempts in child support cases. Jurisdiction for all of this activity is described in §27706 California Government Code. In 1998-99 the unit handled a total of 670 cases.

The PDO has represented conservatees for roughly 20 years. The formation of a separate Civil Division tracked the growth in caseload of that unit. Its involvement in probate

conservatorships arose from a request by the Court. The assignment of two of the Civil Division attorneys is long standing. They handle the bulk of the conservatorship cases and they have developed substantial expertise in this arcane (for Public Defenders) area of law.

This Audit was part of the County's response to a series of problematic events surrounding conservatorships. Conservatorships are a legal device the effect of which is to transfer certain "powers" and "rights" from one person (the conservatee) to another (the conservator) for protective purposes. Conservatorships of the person relate to the residence, personal care and freedom of movement of the conservatee. They can also affect such personal rights as the right to vote, refuse treatment, or drive a motor vehicle. Conservatorships of the estate relate to finances, in effect transferring authority over the Conservatee's money and property to the Conservator. Conservatorships of the person and estate can exist independently or together and in determining them, the court may select among the powers held by the conservator and the deprivation of rights of the conservatee. When appointed to represent the conservatee, part of the responsibility of the conservatee's attorney is to protect the interests of the conservatee vis-à-vis the conservator.

During the Spring of 1999, allegations of significant impropriety were made involving losses from conservatorship estates handled by an entity called West Coast Conservatorships, Inc. (WCCI). The investigation of those events continues. However, shortly after our site visit, the District Attorney brought criminal charges against several individuals who had been private¹ conservators, or their attorney, associated with WCCI. The charges allege theft, embezzlement, perjury and related crimes from the estates of 23 conservatees.

The PDO served as attorney for the Conservatee² in several of the WCCI cases. In that role, substantial controversy arose concerning the performance of the Civil Division.³ However, no criminal charges have been brought against Public Defender attorneys. It should also be noted that several individuals have made spirited defenses of the Civil Division attorneys' performance and we were informed that they vigorously deny impropriety.⁴

The Audit Team's findings and recommendations with respect to the Civil Division are

¹ In court parlance, "private" conservators are non-governmental individuals or professional entities appointed to supervise the conservatee personally or his or her estate. These conservators are often families or close friends of the conservatee. However, attorneys, accountants and occasionally private individuals may be appointed. This is differentiated from those conservatorships supervised by the governmental Public Guardian who is a statutory officer under California law.

² This role is authorized by §27706(d) of the California Government Code, §§5276 and 5350 of the California Welfare and Institutions Code and §§1471 and 1852 of the California Probate Code.

⁴ The Audit Team discussed the Civil Division with attorneys, support staff and administrators within and outside of the PDO. This included Civil Division staff including the de facto supervisor, support staff and one attorney assigned to the Civil Division. Another attorney assigned to the Civil Division declined an interview due to other commitments. A request was made of a supervisor to interview one of the remaining two Civil Division attorneys. The supervisor related back that "they" would not participate without the presence of their personal attorney. That condition was not acceptable to the Audit Team.

not based on the performance of individual attorneys in individual cases⁵. The significance of the controversy surrounding the WCCI cases is in what it revealed from an organizational perspective. In this light, what the Team found was deep and long-standing organizational dysfunction.

RECOMMENDATION: The PDO should either cease representation in conservatorship cases or significantly reduce the types of conservatorship cases in which representation is provided. If it continues to represent conservatorship estates, the PDO should require each person assigned to the Civil Division to regularly file financial and other statements evidencing compliance with Riverside County’s Conflicts of Interest policies.

Irrespective of the causes, the events surrounding the WCCI conservatorships have had a seriously detrimental impact on the PDO and its management. As attorney for the conservatee, it was among the PDO’s responsibilities to protect the conservatee against wrongdoing by the conservator. Suspicions of conflict of interest arose when allegations were made public that personal favors had been extended by the WCCI principal to one of the Civil Division attorneys. Further, in a number of instances, the PDO had affirmatively sought the appointment of WCCI personnel as conservator. All of this allowed public speculation that the conservatee’s protector had, even if unwittingly, assisted in the misconduct. At the very least, the image of the PDO as defender of the defenseless was seriously compromised. The Team heard repeatedly from sources inside of the PDO and out, that the reputation of the office and of its employees had been damaged by these events. When the allegations concerning WCCI became public, reactions were so intense as to include calls for dismantling the entire PDO. Hence, whatever the role of the Civil Division in the WCCI conservatorships, the efficaciousness and viability of the entire PDO organization was placed at issue. For that reason alone, ameliorative actions must be taken.

At the very least, the allegations involving the WCCI cases placed at issue the welfare of PDO clients. One obvious response would have been for the PDO to withdraw (or “conflict out”) from representation of WCCI conservatees. This would have permitted other counsel to assess the client’s legal situation and formulate appropriate legal responses. Again, the Audit Team is not by this suggestion assigning fault, but is suggesting that for attorneys acting cautiously within the Rules of Professional Conduct and ABA Model Rules, the client’s welfare and best interests must come first. As the saying goes nationwide among Public Defenders: “you can’t argue your own incompetence.”

The initial response of the PDO was not to withdraw, but to add a fourth attorney to the Civil Division whose responsibility it was to handle the WCCI cases⁶. This not only permitted

⁵ Though the question of Civil Division attorney performance was repeatedly called to the Audit Team’s attention, such issues are outside the scope of this evaluation and are not addressed here. Because of the potential for litigation, these issues will be resolved in the judicial process and based on legal advice. The significant issues for purposes of this evaluation involve systems and management. Our expertise and recommendations relate to issues of organization and management.

⁶ This was prior to the appointment of Public Defender Gary Windom who, as noted in the text, has since moved to withdraw.

the appearance of foreclosing the conservatee's options, it allowed the impression that the PDO was stonewalling. Hence, the initial reactions of the PDO were interpreted as insensitivity to both the appearance of impropriety and the impact of these actions on its entire operations.

In considering whether to continue participation in conservatorships and related cases, the PDO and the County must consider the application of the recent case of *Public Defender Association of San Diego County v. Board of Supervisors of San Diego County* (1999), 74 Cal. App. 4th 1327. That case holds, in pertinent part, that "in counties that have elected to establish the office of public defender pursuant to Government Code section 27700, the public defender has mandatory duties prescribed by Government Code section 27706. They cannot be diminished or privatized by the Board [of Supervisors]." California Government Code §27706(d) provides, in pertinent part, "the public defender *shall* represent any person who is not financially able to employ counsel in proceedings under Division 4 (commencing with Section 1400) of the Probate Code and Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code." (Emphasis added.) Included in the cited sections is participation in conservatorships.

The Audit Team defers to the County's attorneys and the PDO on the application of *Public Defender Association of San Diego County v. Board of Supervisors of San Diego County* and whether Riverside County is mandated to provide service in conservatorships. However, we offer three observations.

First, the case specifically interprets the application of Government Code §27706 (a) and Penal Code §987.2 subsections (d) and (e). These sections apply to the appointment of the Public Defender or other counsel in criminal matters. There is no reference in the case to appointments under Government Code §27706(d).

Second, Government Code §27706(d) limits the role of the Public Defender to conservatees who are "not financially able to employ counsel." The WCCI cases in which the Public Defender participated apparently had significant estates.

Third, practice varies in counties across California with respect to representation by Public Defenders in conservatorships. For example, in Los Angeles County the Public Defender represents conservatees in LPS conservatorships, but not in "Probate"⁷ conservatorships. In the latter cases, representation of conservatees is provided by attorneys appointed from the Court's Probate Volunteer Panel. In LPS cases, the Los Angeles County Public Defender does not provide representation to conservatees who have large estates.⁸ Rather, private attorneys are appointed from a panel that services the county's dedicated Mental Health Court. In San Diego County, the Public Defender represents conservatees in only LPS conservatorships of the person. All estates are handled separately as Probate Conservatorships in which representation is provided by a panel of appointed lawyers. In Orange County, the Public Defender provides representation in both LPS and Probate Conservatorship of the person. It does not participate in

⁷ I.e., conservatorships for disabled adults as provided in California Probate Code §§1471 and 1852.

⁸ Those cases in which it does provide such representation are limited to small estates consisting primarily of public benefits.

Probate conservatorships of the estate. On rare occasion, it has been appointed over its own objection for the closing of Public Guardian LPS conservatorship estates. Otherwise, it does not represent conservatees in LPS estates. In Ventura County, the Public Defender represents conservatees of the person and estate in both LPS and Probate proceedings. However, when the Public Defender is appointed in cases with extensive or complex estates, it withdraws in favor of a specially-trained panel of private attorneys.

This variation of approaches exists across the entire state, apparently having arisen for historical or practical reasons not related to the constraints of law. That is, the various Public Defender offices and court systems pick and chose among the proceedings described in Government Code §27706(d). The Audit Team recommends that the PDO's choices should be guided by a focus on its core practice of adult criminal defense, and suggest the following options. First, the PDO could withdraw from representation in Probate Conservatorships, but remain active in LPS conservatorships. Second, it could withdraw from all conservatorships, but continue to provide other services under the LPS act.⁹ Third, it could limit its representation to conservatorships that also involve criminal proceedings – e.g., those cases arising from California Welfare and Institutions Code §§5008(h)(1)(B) and 5370 or California Penal Code §§1367.1, 1370(c)(2) and 4011.6.

At a minimum, the PDO should withdraw from representation of conservatees with significant estates. This is consistent with practice elsewhere and comports with the apparent legislative intent as expressed in Government Code §27706(d) – i.e., to represent conservatees who are “not financially able to employ counsel.” The Audit Team heard a two-fold rationale for representation by the PDO in conservatorships with estates. First, they provide effective representation of the conservatees. This, of course, may be at issue in the WCCI cases. Second, attorneys' fees and “costs” arising from the Public Defender's service in these cases are a source of revenue. While we fully recognize the importance of generating revenue for indigent defense services, the events surrounding the WCCI cases spawn actual and potential offsetting costs. In addition, it may take years to resolve the consequential damage to the reputation of the PDO and its attorneys. The Team questions whether these sorts of costs justify the revenues, but also believes that the necessarily courageous act of the PDO withdrawing from conservatorships with estates should not result in a net loss of funding (i.e., by virtue of the revenue forgone). The County should provide the PDO with an additional appropriation equal to that lost by withdrawing from conservatorships. Another possibility is to work toward revising the enabling legislation so that the office would no longer be responsible for conservatorships altogether.

As noted above, issues surrounding conflicts of interest have arisen. Especially where money and property is involved, the PDO must guard against both impropriety and the appearance of impropriety. The PDO should fully participate in the County's conflicts of interest policies and programs. If it continues to participate in conservatorship estates, the PDO should require each person assigned to the Civil Division to regularly file financial and other statements evidencing compliance with the County's Conflicts of Interest policies. At a minimum, any PDO

⁹ Part 1 (commencing with Section 5000) of Division 5 of the California Welfare and Institutions Code.

employee who deals with clients' money or property should be required to regularly file FPPC form 700 or the equivalent.¹⁰

If the PDO is to continue participation in conservatorship cases, steps must be taken to assure accountability and organizational effectiveness within the Civil Division. The next several recommendations address these steps.

RECOMMENDATION: A line supervisor should be appointed to run the day to day operations of the Civil Division. That supervisor should be accountable to executive management for operating the Division in a manner consistent with the goals and philosophy of the organization as a whole.

Like each part of the organization, the PDO Civil Division must have a beneficial role in overall organizational operations. We observed a significant management systems failure of the Civil Division in which individuals behave as if they are not answerable or accountable to PDO management. The Audit Team was astounded to learn that when the new Public Defender decided after reviewing the WCCI cases to move to withdraw the office as attorney of record in 27 WCCI cases, the Civil Division attorneys opposed this decision in court. That is, there was an active effort to prevent the Public Defender from carrying out his policy decision – an act of extreme insubordination worthy of disciplinary action. It is also an illustration that the involved personnel are out of touch with their role as “deputies” to the Public Defender and do not understand that they are responsible to the PDO organization for their actions. Significantly, there is evidence that these are long-standing problems.

Currently, there is no full-time “line” manager for the Civil Division, and has not been one in several years. Such everyday supervisory tasks as employee performance evaluation have apparently devolved in recent times of to a member of executive management. At the time of the Audit Team’s site visit, an Assistant Public Defender who had significantly greater responsibilities was providing part-time supervision. But there appeared to be no one providing day to day oversight, giving management input or making management “line” decisions. All of this lends credence to the comments we heard that the Civil Division is “on its own” or “out of control.” Lacking a supervisor providing continuous input in a practice area so tangential to customary public defender work, it is not surprising that the unit has developed an unhealthy level of independence. Without guidance based on the overall philosophy and interests of the whole office, it is predictable that subgroups within any organization will develop their own culture and become guided by their own stars.

A line manager should be allocated and assigned to the Civil Division at the earliest possible date. That manager should be given the resources and authority necessary to do the job. This includes training in management skills, a suitably narrow span of responsibility and the authority to impose discipline in appropriate circumstances. The manager chosen to lead the Civil Division must be committed to the philosophy and requirements of the PDO and its role in the justice system and county government. That person, along with the Public Defender himself

¹⁰ See generally, California Government Code §§81002 and 87100 et seq.

and other executive managers, must be willing make hard decisions and take difficult disciplinary actions to assure accountability of all staff members to the goals and policies of the PDO organization.

RECOMMENDATION: The PDO should regularly rotate attorneys and paraprofessionals into and out of the Civil Division.

The Audit Team strongly supports the policy decision announced by the new Public Defender on October 19, 1999 concerning the rotation of all attorneys among all divisions department-wide. The Team also supports his rationale of providing cross-training and professional development for staff members to enhance operational efficiency. That rationale is especially apposite to experience in mental health proceedings. It is unfortunate, and axiomatic to Public Defender practice across the country, that there is a disproportionate incidence of mental illness among individuals accused of crime. Regular rotation of attorneys from the Civil Division will assure that skills learned in representing mentally ill clients can be applied in other areas of practice. The knowledge of those attorneys would serve to train others who lack it. Rotation will also help to integrate the Civil Division into the PDO organizational structure and help to ameliorate an unhealthy separation.

There are two arguments against rotation into and out of the Civil Division. First, shifting people between assignments reduces knowledge and ability of attorneys in every division of the organization. The Audit Team finds to the contrary, that new challenges and new knowledge are beneficial to everyone. As noted above, knowledge of mental health law has clear relevance for the criminal practitioner. Rotation of attorneys would also have benefits for the Civil Division. In all parts of organizations, new people bring enthusiasm and a willingness to try new approaches unbounded by past “rules.” Experience in adult criminal, juvenile delinquency and juvenile dependency cases brought by attorneys new to the Civil Division should enrich the overall level of practice there.

The second argument against rotation is that the expertise brought to bear by experienced lawyers will be lost. The Audit Team believes, however, that the necessary levels of expertise and practice knowledge can be maintained across the Civil Division practice even with rotation. Civil practice, while unfamiliar to most criminal defense attorneys, is neither unbounded nor unlearnable. Management expert Tom Peters provides the following insight to the loss of “irreplaceable” experts. “A not especially cynical executive described the loss of a veteran functional specialist this way: ‘It’s not as if we lost twenty-three years of experience. We lost one year of experience repeated twenty-two times.’”¹¹ In Los Angeles County, the Public Defender has regularly rotated attorneys into and out of its Mental Health Branch for more than twenty years. Training and strong management have assured consistent quality and an impressive level of joint learning among attorneys and paraprofessionals. For that matter, the Riverside PDO’s own experience provides proof that these skills can be quickly learned and applied by capable, energetic lawyers. When the PDO assigned a fourth lawyer to the Civil Division to handle WCCI

¹¹ Peters, Tom. *Liberation Management*, Ballantine Books (1994) pg. 441.

cases, there is every indication that this lawyer quickly learned a broad variety of sophisticated skills that permitted practice in the area.

Continuous training and current practice manuals are the key components to maintaining a high level of professional functioning in the Civil Division while regularly rotating personnel. Training of this sort could be developed within the PDO and could be leveraged by training relationships with other local Public Defender offices that do this kind of work. Practice manuals must be developed and continually updated. It is notable that the supervising Civil Division secretary has, on her own, developed a clerical desk book describing many of the unusual procedures of mental health law and conservatorship practice. Excellent forms are included in this work. The Audit Team was impressed by this effort and encourages the PDO to model this example in developing practice manuals. Resources of this kind can have an immensely beneficial impact for practitioners who are transferred into new assignments.

RECOMMENDATION: The PDO should carefully examine the scope of activities of its Civil Division staff to determine whether training is required or, in some instances, certain activities should be truncated.

It is clear that substantial expertise has been developed in the Civil Division and that considerable enthusiasm and esprit among staff members has been fostered there. There is a laudable sense of pride, purpose and initiative in the unit. But given the insular culture and practice paradigms of the Civil Division, there can be consequential danger as well.

Because this evaluation focused on the organizational issues surrounding the Civil Division, the Team did not focus on the specifics of practice. However, we noted two areas of potential danger that we commend to the PDO for further evaluation. First, a significant amount of pre-hearing interaction between Civil Division Investigators and clients occurs during visits at residential treatment facilities. Apparently, attorneys do not regularly make these visits. While we were assured that this interaction never involves legal advice, this is an area where comforts of practice can easily overtake the constraints of law. We recommend that the PDO carefully examine the role and practice of paraprofessionals in the Civil Division vis-à-vis the constraints of legal practice.

Another area of concern is clinical expertise. We were informed that among the activities of investigators while visiting clients in residential care is a “medication review.” While it is unclear what the investigators do, medication review is a specific clinical care practice that requires clinical licensure and a great deal of medical or nursing expertise. Making judgments about psychoactive medications and their powerful effects is beyond the competence of PDO staff and should not be done under any circumstances. We recommend that the PDO retain appropriately trained and licensed clinicians to examine what is being done by Civil Division paraprofessional staff and assist in establishing clear practice limits. Part of what was described to the Audit Team as the investigator’s function was actually social work. While the Team commends the effort, it questions whether investigators have the necessary social work skills and resources to adequately do this kind of work. It would be worth the effort to determine whether a

trained social worker could do the job more effectively and cost efficiently.

RECOMMENDATION: The PDO should work to rebuild relationships with other agencies that operate within the Civil Division’s area of responsibility. The Public Defender himself should participate in regular meetings with the heads of these agencies until such time as effective communication is restored and appropriate interaction is the norm.

Relationships between the PDO and other parts of the LPS and conservatorship system are extremely strained. Poor communication, poor cooperation and even personal enmity characterize agency interactions. While there are many explanations for this dysfunction and mutual assignment of blame, responsibility is likely shared and should be addressed by each agency. The Audit Team’s responsibility, however, is to recommend actions that might be taken by the PDO to help ameliorate this serious problem.

Public Defenders normally operate in the adversarial system of criminal justice. In such a system, confrontation and contention are the appropriate behavioral norms. Conservatorships are handled within the “probate” system where procedures and norms of behavior are quite different. This is appropriately so, given that the purpose of the conservatorship system is to provide support for disabled people. However, especially LPS conservatorships have potential for massive deprivation of civil liberties. For someone who is subject to involuntary hospitalization and forced treatment with extremely powerful drugs, the usually polite non-adversarial proceedings that characterize decedent’s estates may be inadequate.

In the late 1960s, the LPS Act brought to involuntary mental health care a focus on community mental health treatment and the supportive approach of conservatorships.¹² To safeguard against the massive civil rights abuses of the old commitment system,¹³ the LPS law provides for appointment of the Public Defender in mental health proceedings, including conservatorships.¹⁴ Although potentially less onerous, probate law conservatorships may also impose loss of civil liberties. Consequently, in the early 1980s, the legislature provided for the appointment of counsel, including the Public Defender, for conservatorships under the probate law. The legal context for both LPS and probate conservatorships is the probate law.¹⁵

Public Defenders bring some level of contention and confrontation to the otherwise placid functioning of a probate or mental health court. This is a product of institutional training and culture. It is typical across California for Public Defenders representing conservatees to rankle the sensibilities of other agencies. As suggested above, this is a natural and intended consequence of their role. Nor should it be expected that the Public Defender should be swayed by others’ assessments of their clients’ best interests. Not only do such judgments often vary by source, all

¹² California Welfare and Institutions Codes §§5001(e), 5115(a) and 5120.

¹³ See California Welfare and Institutions Code §§5001(a) and 5002.

¹⁴ California Government Code §27706(d), California Welfare and Institutions Code §§5276 and 5350. Later §§1471 and 1852 were added to the California Probate Code to permit Public Defender participation in “probate” conservatorships for disabled adults.

¹⁵ California Welfare and Institutions Code §5350.

attorneys are professionally bound by their client's expressed wishes, including in conservatorship cases. To be effective, however, Public Defenders must operate in a fashion that allows others to realize their own effectiveness. On an institutional level, a Public Defender office must actively maintain a balance between assertive representation and mutually beneficial cooperation. This is quite different than in the criminal courts system where opposing vigor yields equipoise.

The Audit Team does not suggest that the PDO should pull its punches in conservatorships. It cautions in the strongest terms that we support the PDO in providing zealous, effective and, when necessary to the individual case, uncompromising representation of conservatees. That their clients are disabled is all the more reason that they should do so. But personal hostility and assertion of power for its own sake, not for the benefit of the client, are inappropriate to the conservatorship system and thus detrimental to the PDO organization.

The Audit Team's recommendations to address the Civil Division's role in agency relationship issues are similar to those noted elsewhere in this report for other PDO operations. They include a full-time manager for the Civil Division exercising appropriate oversight, training, and regular rotation of personnel assigned to the unit. To the extent that personalities contribute to interagency problems, rotation permits new people and new relationships that should help to assuage past tensions. The Riverside County Public Defender himself should initiate meetings with the County Counsel, Public Guardian/Director of Mental Health, the Probate Examiner and appropriate representatives of the Court to identify means by which interagency cooperation can be enhanced. These meetings would be in addition to the Criminal Justice Council noted elsewhere. This high level of involvement will assure that decision making is followed by direct action. It will also send an unmistakable message concerning joint expectations to everyone involved. These meetings should continue regularly until the respective agency heads reach consensus that the system can successfully function without their personal intervention.

XVIII. ACCOUNTING PROCEDURES

The Audit Team's assessment did not include a financial audit and we have no evidence of widespread financial problems. However, the Team did find anecdotal evidence of failures of accounting controls in the area of recovery of funds under Penal Code §987.9. A full financial audit should be conducted to determine needs and opportunities for improvement in the management of the PDO budget and finances.

There is a special state fund, authorized by section 987.9 of the California Penal Code, which was established to reimburse local defense expenditures in capital cases. Both private counsel and the Public Defender can utilize these funds, which can be quite substantial. The system contemplates the defense lawyer or public defender obtaining court authorization in advance for expenditures out of this funds.

To initiate this procedure in the PDO, one of the two lawyers assigned to a capital case is required to fill out a Special Service Request Form (SSRF). The form should then go to the Accounting Department, then to the Chief Public Defender and the Court for approval. Then, when the funds are placed in the Public Defender account, the Accounting Department could authorize the expenditure. However, some assistant public defenders spend the money first, i.e., they retain expert witnesses and tell them to perform the work contemplated. Often, it is not until months later that the Accounting Department learns of the authorization by the trial lawyer and that work was performed without approval by the Public Defender or the court. Not only is the Public Defender embarrassed by the demands of forensic experts to be paid, but sometimes the court will not approve retrospective expenditures. In the past, prior public defenders have not enforced these procedures. However, the current Public Defender, who has already been faced with bills incurred prior to his appointment, which were never approved, will have to deal with this problem.

In order to deal with these problems, the new Public Defender should appoint a Chief Financial or Chief Fiscal Officer and recruit a staff of accounting and budgetary experts to assist him. To insure that there are no lurking problems of a financial nature to haunt the new Public Defender, he should consider seeking a full audit of public defender use of these funds.

In addition, it is important to insure communication between the Public Defender and his financial staff. This "open door" policy will go a long way to avoid abuse of public funds in this very sensitive area.

RECOMMENDATION: A full financial audit should be conducted to determine needs and opportunities for improvement in the management of the PDO budget and finances. A Chief Fiscal Officer should be named and a financial and accounting support staff hired to insure that all public funds available to the PDO are expended pursuant to proper procedure and fiscal controls. The Chief Fiscal Officer should report directly to the Public Defender.

XIX. CLERICAL SUPPORT

Retention of clerical personnel is a significant problem. An inadequate clerical career ladder is a major problem for the office. A thorough assessment of clerical job requirements should be undertaken as soon as possible and appropriate adjustment to the PDO budget should be made to accommodate this need. Appropriate job classifications and pay should help stem the loss of support personnel.

Several key members of the support staff were interviewed in depth. One of the support people has numerous tasks, including processing new employees and employee promotions, processing employee evaluations, maintaining personnel records, dealing with workman's compensation reports, and liaison with the county personnel office. This alone would be a full time job, but in addition, she assists the Public Defender's secretary with various ad hoc assignments, acts as the Department's safety officer and oversees critical incident reporting and risk management, and deals with parking and related issues. She also trains other personnel on the use of the computer for various applications and legal research.

The personnel work that she does is critical, and a full-time human resources coordinator position needs to be created. Certainly, this support person could fill that position easily, but it is impossible for any one person to do all the other work she is assigned to and carry out the personnel work, which is clearly a full time function.

Additional duties of the secretarial staff include typing confessions from tape recordings to transcript form, doing preliminary work on certificates of rehabilitation and pardons, and sometimes interviewing clients to initiate these processes. The interview work should be done by lawyers, and that practice should be reviewed by the Public Defender. Although the secretaries are not assigned to specific lawyers, sometimes lawyers view them as their personal secretaries, which can cause problems.

The Supervising Secretary has produced an excellent manual for the civil secretaries, which contains descriptive materials about the cases and work processes, directions for various tasks and samples of the various tasks and samples of types of written work prepared by the secretaries. It also tracks court rules and important new cases. She should be commended for this excellent effort.

In general, there has been significant turnover in clerical positions. The main reason is a disparity in pay with the Court, which pays more for similar positions. The office has been used as a training ground for support staff, who can then leave for more pay with the court system. This problem should be addressed, and parity established with court support staff.

In addition, meaningful clerical performance standards supported by meaningful performance review must be initiated. Excellent performance must be linked to advancement. Advancement should be based upon positive performance achievement and assessments. In order to retain personnel there should be recognition of performance. A formal office-wide recognition

such as "employee of the month" could be utilized. There must also be a career ladder so that ambitious and capable employees can advance in the system. Finally, courtesy and recognition by lawyers and others of the importance of the support staff is essential not only for morale, but for improved performance as well.

RECOMMENDATION: A thorough assessment of clerical job requirements and compensation should be undertaken. Support staff should have pay parity with their counterparts in the court system and other criminal justice agencies. Clerical performance standards supported by meaningful performance evaluation should be initiated, to insure that motivated and capable staff are retained and can advance within the agency. Performance should be linked to retention and advancement. Excellence should be recognized, such as by a formal office-wide "employee of the month" award. A full-time position of human resources coordinator should be created in the PDO.

SUMMARY RESULTS OF DEFENDER STAFF SURVEY

Respondents to the Staff Survey (see "Methodology and Background," *supra* Part I) were asked to express one of five different levels of agreement with 75 statements, or to answer "no information." They could respond that they 1) strongly disagreed, 2) somewhat disagreed, 3) neither agreed or disagreed, 4) somewhat agreed, or 5) strongly agreed. Many respondents added written comments. Without covering the entire survey in this summary, some of the results should be of great interest to policy makers and the new Public Defender. This quick analysis will focus on the category "strongly agree."

With the statement that the current organizational structure was appropriate for the Public Defender Office's mission and philosophy (item #71), only 12.5 percent strongly agreed. One respondent noted that "the Public Defender's office needs independence. The Public Defender should not be an at will position. The Public Defender has to take politically unpopular positions. He should not have to worry about his job when doing so."

On the question of whether the employees understood the mission of the office (#1), over 70 percent strongly felt that the mission of the office was clear to them. But on the question of whether the PDO has an organizational philosophy by which it accomplishes its mission (#2), less than 18 percent strongly agreed. Less than 23 percent strongly supported the philosophy with which the PDO is accomplishing its mission (#4). Only 22 percent strongly agreed that the PDO was accomplishing its mission (#5), and less than 13 percent strongly agreed that the PDO's official policies and procedures were followed and applied (#47).

On the question of whether the PDO had the respect of the rest of the criminal justice system (#25), only 15 percent of managers and less than 2 percent of the staff strongly agreed. Over 60 percent of respondents strongly agreed that outside forces threatened the PDO organization (#70), and over 50 percent of the respondents strongly agreed that inside "factions" were destructive to the PDO (#69). One respondent summed up the faction problems as follows:

"There are strong factions in this office with their own political and personal agendas, and these include supervisors. If they don't like you,... they will seek to destroy the person in the office and in the legal community...." Nevertheless, over 60 percent of the staff strongly agreed that they were proud to work for the PDO (#27), and 69 percent strongly agreed that the PDO was their career (#75). One respondent wrote, "most of the public defenders in our office care very much about what happens to their clients. These public defenders do their best to provide competent ethical representation of their clients.... Most of the problems of our office stem from frustration. Public Defenders are human beings. We don't expect thanks. We want respect. More importantly, we want our client treated fairly..."

With respect to supervisors, less than 23 percent strongly agreed that their supervisors and managers had the skills necessary for their jobs (#29), and less than 40 percent strongly agreed that their direct supervisor was helpful to them in accomplishing their daily tasks (#41). However, almost 60 percent of those responding strongly agreed that their supervisors treated them with respect (#28). With respect to evaluations, only 22 percent strongly agreed that their formal performance evaluation was a worthwhile experience (#18). (See discussion of "Supervision and Evaluation, *supra* Part V).

Only 33 percent strongly agreed that their supervisor made a point of letting them know about their performance (#15). On the other hand, approximately 50 percent strongly agreed that they were encouraged to do high quality work (#40), and over 60 percent strongly agreed that they had enough discretion to perform their duties effectively (#62). But only 9 percent strongly agreed that the PDO had the resources needed to get the job done (#74). With respect to resources, one respondent noted that, "we are routinely ignored at county budget time. We need more attorneys, more money for training, more funding for expert witnesses, and updates of their archaic computer system." One respondent specified a need for items such as laptop computers, shredders, better offices with more space for a break room, library, and a video camera for the investigative division.

With respect to training, less than 8 percent strongly agreed that appropriate training was identified and provided for staff by the PDO (#51), and less than 10 percent strongly agreed that the training provided by the PDO was effective (#53). With respect to the importance of training, 37 percent strongly agreed that training is so important that it should take spending priority over other budgeted items (#48). 38 percent strongly agreed that ethics and professional responsibility ought to be a training priority (#52). One wrote that "our training program is woefully inadequate with virtually no training provided to the attorneys after the first year in office." Another recommended that "there should be office seminars more frequently. The office should pay for outside training, including motels and providing a county car for transportation. All homicide attorneys should be sent to the annual death penalty seminar." Another urged "more training in terms of substantive law and practical procedures," and one noted a disparity with outlying offices: "When it comes to the Desert, or better yet, Blythe, employees must train themselves with no type of aid."

Several respondents pointed out the necessity of management training for their

supervisors, e.g.: "a good supervisor needs sufficient management training and/or experience... most of the PDO management team are trial attorneys promoted to management positions and learned their management skills on the job. Most of them have learned management skills the hard way. It would be...useful for the PDO to have intensive management training given to management and prospective management staff."

Some respondents stressed deficiencies in training support staff, especially new clerical staff: "I believe they do not get adequate training. They are just pushed to do the work... They are lucky if they get one full day of training." One urged that "computer training should be a priority. We spend huge sums on computers and technology."

With respect to communication, only 8 percent strongly agreed that organizational information was disseminated in an effective manner (#56), and only 13 percent strongly agreed that "when management says something, you can believe it's true" (#60). But one respondent stressed, "not under prior management. Hopefully, things will be different now."

Another disturbing response related to promotion. Only 16.5 percent of the respondents strongly agreed that they understood the criteria for promotion (#22). One wrote, "I wish I knew what the criteria for promotion are. I've never been told – I've never seen anything in writing." Less than 12 percent strongly agreed that promotions were based on the promotional criteria (#24). Added one respondent: "Unfortunately, a number of promotions have been given out in the past based on who liked whom at the time rather than on objective criteria." Numerous respondents observed that promotions seemed to be based only on favoritism and seniority.

With respect to workload, only 25 percent of those responding strongly agreed that their workload was appropriate (#31), and less than 10 percent strongly agreed that staff assignments were rotated in a way that enhances organizational effectiveness (#33). One respondent wrote, "there are some instances where grossly unqualified attorneys have been given cases and assignments based on friendships and favoritism." Another lawyer commented, "Why are there attorneys who don't do trials (haven't for years), don't supervise, work the equivalent of part time, and earn level IV salaries?" One summarized: "Workload and assignments are based upon favoritism, and they are unequally and unfairly distributed."

A number of comments relating to the disparity of resources between the Public Defender office and the District Attorney's office were noted. Basically, those commenting stated that the office performed as well as it did, in spite of the lack of county support, due to the "countless uncompensated hours and resources" contributed by the staff. Several respondents suggested that the hiring of more support staff and equipment would actually be more cost-effective for the office: "Our office has insufficient support staff. This means that it takes longer to prepare a case, the case may not be prepared as well, and the attorney may have to do the work on his or her own time on the case that should be done by support staff. Countless hours are also wasted when PDO staff have to contend with out-of-date, worn, broken, and inadequate equipment," wrote one. "Our jobs could be done much more efficiently if we had adequate support staff, adequate staff to provide backup, and adequate up to date equipment," wrote another. One concluded, "my time

could be more efficiently utilized if we had the necessary staff and equipment. I put in many uncompensated hours doing tasks that support staff could be doing.... In order to compete with the DA, I have had to purchase quite a bit of machinery and equipment out of my own pocket to supplement what the office has been able to provide.... I need a good laptop computer to take to court."

It is clear from the more than 80 percent of the staff who completed the Survey that they feel a significant investment in the office and their work. In their desire to provide competent and effective representation to poor people accused of crime, they feel hampered by lack of training, supervision, adequate budget, parity with the prosecutor's office, and plagued by high caseloads and ineffective management. It is also clear from the written comments that many of the staff are looking to the new administration to solve many of the ills of the past, and are hopeful for the future.

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