



COUNTY OF SONOMA

OFFICE OF THE PUBLIC DEFENDER

HALL OF JUSTICE
600 ADMINISTRATION DRIVE, ROOM 111-J
SANTA ROSA, CALIFORNIA 95403
TELEPHONE (707) 565-2791 - FAX (707) 565-3357

LOUIS S. HAFFNER
Public Defender

Chief Deputies
H. BRUCE KINNISON
KATHLEEN POZZI
STEVEN C. WEISS

Administrative Officer
KATHY CAHILL

1578

SEP 10 2003

GRAND JURY

MT 9/3/03

September 3, 2003

Hon. Mark Tansil
Superior Court of Sonoma County California
Santa Rosa, CA.

RE: PUBLIC DEFENDER RESPONSE TO THE 2002-2003 GRAND JURY REPORT

Please accept the attached as the Public Defender response to the 2002-2003 Grand Jury Report.

Louis S. Haffner
Sonoma County Public Defender

**SONOMA COUNTY PUBLIC DEFENDER
RESPONSE TO THE 2002-2003 GRAND JURY REPORT**

PROFESSIONALS DEFEND SONOMA COUNTY'S INDIGENTS

I. RESPONSE TO FINDINGS:

F1. (Page 3) Misdemeanor and juvenile caseloads in the Sonoma County Public Defender's Office are more than double caseload acceptability standards recommended by national organizations such as the American Bar Association and the U.S. Bureau of Justice.

The respondent wholly agrees with the finding.

Misdemeanor and juvenile caseloads are higher than caseload acceptability standards recommended by national organizations.

F4. (Page 3) Eighteen counties responded to our external survey, and fifteen of those have a Public Defender's Office. Sonoma County is one of only three respondents that does not have a written performance review policy; it is the only one of those 15 that does not require an annual evaluation throughout an employee's career.

The respondent disagrees partially with the finding.

The Sonoma County Public Defender's Office does have a written performance review policy - it is the County's performance review policy. And the Office follows this policy. Although the County policy does not call for a written performance review for all employees every year, most employees do get an annual performance review. Only long term employees who are at the top of their salary step get reviewed every two years.

F8. (Page 3) Annual department goals as stated in the budget are not specific, time-based or measurable.

The respondent disagrees wholly with the finding.

Past annual budget goals stated in budgets have been met. (e.g. staffing newly created Drug Courts, Domestic Violence Courts.) Some goals cannot be quantified. The Public Defender's Office has a history of successful response to rapid changes in criminal laws and procedures and changes in the Sonoma County Superior Court rules and structures.

F10. (Page 3) The Public Defender's office employees enjoy a remarkably high level of cooperation and mutual support.

The Respondent agrees with the finding.

"The Public Defender's Office employees enjoy a remarkable high level of cooperation and mutual support."

F12. (Page 3) "Civil service" is the reason most frequently given for being unable to terminate consistently poor performers in the Public Defender's Office, and the only consequence for poor performance is being moved to a different (sometimes easier) assignment.

The Respondent disagrees wholly with the finding.

Although some staff may have responded to the Grand Jury Survey by blaming "civil service" for being "unable to terminate consistent poor performers" and complained that "poor performers" were just moved to a different assignment, the Grand Jury recognizes that staff is performing at a very high professional level under the stress of high caseloads. In addition to high caseloads, the nature of the job - adversarial, representing people charged with crimes faced with the loss of liberty or sometime the loss of life, requiring intense investigation of the facts leading to the criminal charges and often ending in a struggle played out in public to test the truth of the charges (jury trial) - leads to occasional burnout by staff. One deputy public defender has completed 125 jury trials while working in this office. The response of management is to offer rotation to other assignments for varying periods of time to employees who need relief. The Department Head also fosters as much positive emphasis in performance reviews as is fair and accurate and insists that any criticisms be phrased in the most constructive and helpful terms. Although this Department Head can not and should not take complete credit for the "remarkable high level of cooperation and mutual support," the Public Defender hopes that his management style, and the management structure of the supervisors in the Office support this remarkable cooperation.

F15. (Page 3) Attorneys are required by the State Bar to complete 24 hours of training each year. While additional training is available, travel time and seminar length preclude staff with heavy caseloads from taking full advantage of the dollars allocated and the opportunities to advance their knowledge. Investigators indicated they do not receive training after they are hired. There is no formal training system for department employees.

The Respondent wholly agrees with the finding.

There is no formal training system for department employees. Very large Public Defender offices (Los Angeles with 600 deputy public defenders, San Diego with 260 deputy public defenders) and some medium sized offices do offer varying in-house formal training programs. This Department does not have the staff or other resources to do this. But we attempt to offer the equivalent by sending every new attorney to a five day Basic Trial Skills Training program put on by the California Public Defenders Association in San Diego. Also, new attorneys are partnered with a more experienced attorney during their first assignment for supportive mentoring. The office has achieved State Bar accreditation for Mandatory Continuing Legal Education programs. Video tapes of California Public Defender educational programs are purchased and available to all staff free of charge. Investigators have successfully completed professional training paid by their professional development programs. Secretarial and clerical personnel have available County development courses and their own professional development funds. They are encouraged to attend professional development courses.

II. RESPONSE TO RECOMMENDATIONS:

R1. (Page 7) Public Defender management should involve all employees in evaluating current workloads and determining the most effective department structure, staffing and case assignment process to avoid exceeding recommended standards. The Board of Supervisors should support their efforts.

The Recommendation has not yet been implemented, but will be implemented in the future. This fiscal year the Public Defender will be working with all employees in evaluating current caseloads (and workloads) in determining the most effective department structure, staffing and case assignment process. The standards published in 1973 by the National Advisory Committee on Criminal Justice Standards and Goals (and reaffirmed by the American Bar Association in 1999) are important but each county's criminal justice system is unique. Standards applicable to Chicago or New York may not fit Sonoma County. However, the disparity in caseloads between the Sonoma County Public Defender's office and comparably sized counties in California demonstrated by the data collected by the Grand Jury is persuasive. The Public Defender will be working with the C.A.O. and the Board of Supervisors to add to staff to adjust caseloads to an appropriate level.

R2. (Page 7) The Public Defender should update the fee schedule in place at least since 1997, so that it is in line with fees of comparable counties.

The Recommendation has not yet been implemented, but will be implemented in the future. This fiscal year the Public Defender will update the fee schedule and calculate an accurate fee schedule based on the budget and expenditures for the Office. While the fee schedules of comparable counties are useful, the California Penal Code requires that fees be based on the cost to the County for the services provided to each client. A high caseload and an efficient staff minimizes the costs both to the County per case and the legal ability to collect from clients. We will conform to the statutory requirements but cannot assess more than actual costs per case for each client regardless of the fee schedule of other counties.

R3. (Page 7) The Public Defender and the Director of Collections should implement a process that provides a more rigorous examination of financial data using asset and credit checks to ensure those who can pay for their defense do so.

The Recommendation has been implemented.

The Public Defender in consultation with the Director of Collections has already put in place procedures to duplicate confidential financial applications of our clients and send copies to the Collections Department. They will be treated confidentially but used to assist in collecting court ordered public defender fees. The Grand Jury should be aware that the Penal Code exempts certain clients from paying any fees and for the rest, the final decision on fees if there is a dispute by a client, is made by the Courts.

R4. (Page 7) The Public Defender should create and implement basic policies and procedures for the office including one for performance evaluations and ensure that managers personally observe those they evaluate.

The Recommendation has not yet been implemented, but will be implemented in the future. Within thirty days, the Public Defender will implement a policy that mandates managers personally observe those that they evaluate. One of the strengths of the management structure of the Public Defenders Office is that managers of attorneys work in the same courts as most of the deputy public defenders that they manage. Most of the deputy public defenders also consult with managers about challenging cases and issues as they arise. This gives the managers a unique advantage in assessing performance of the deputies that they supervise. Managers also solicit information from the judges that preside over the professional work of the deputies, both trials and contested motions. However, since managers have their own caseloads they are also stressed for time. If staff can be added to the Office, more time will be allocated to supervise and assess performance. This is equally true for investigators and secretarial/clerical staff. Personal observation will be mandated.

R6. (Page 7) The Public Defender's Office should use a time-record method to reevaluate individual attorney workloads to meet the standards set by defender organizations and improve representation of indigent clients. The information systems department should support this effort.

The Recommendation requires further analysis.

The Public Defender has already contacted other county public defenders to gather information on computer programs to measure and collect workload data. The application of these programs may involve the collection of time-record data unique to the operation of the Sonoma County Public Defender's Office. This process will require an allocation of staff hours that may not be available. The Grand Jury should note that one award winning program cost the San Diego Public Defender \$1,000,000.00. The provider of that program has informally estimated that the costs to Sonoma County would be \$50,000.00 per year. The Public Defender will also work with Information Systems to see if a less expensive "off the shelf" program is available or if a program can be developed using County resources. The results of these inquiries should be completed within six months and shared with the Chief Administrative Officer and the Board of Supervisors. If an appropriate program is identified the issue of available resources in these challenging budget times will be critical.

R7. (Page 8) The Public Defender should partner with the courts, the district attorney's office and contract attorneys to develop a case definition that all use uniformly.

The Recommendation will not be implemented because it is not warranted.

The Courts, the District Attorney and the Public Defender may each have a "case definition" that is different. It is my understanding that the Courts are bound to follow the "case definition" set by the Administrative Office of the Courts that is used for all California courts. If the District Attorney and the Public Defender unify the "case definition" with the Sonoma County Superior Court, we will all have to follow the definition of a case set by the central Administrative Office of the Courts for the California State Courts. This would have two disadvantages: (1) The method used by the courts is not the most useful way to measure the workload of the Public

Defender. We use the definitions set by the California Public Defenders Association. (2) By continuing to use the same definition of a “case”, the Public Defender maintains a continuity of data that is valid for measuring increases and decreases in cases over fiscal years. This data is one valid measure of the need to adjust staff to match caseload.

R.8. (Page 8) The Department should create a formal training process that is managed by a senior attorney and includes all employees.

The Recommendation has not yet been implemented, but will be implemented in the future. If and when additional staff can be added to the Public Defender office, the time of a senior attorney can be dedicated to training for all employees. We have already planned a training session for secretarial and clerical staff on some topics that were unique to attorneys to give them a broader understanding of the work that attorneys do in court and their reliance on secretarial/clerical staff.

R9. (Page 8) The Public Defender’s Office supported by the Board of Supervisors and the Mental Health Department should retain the service of a full-time mental health professional.

The Recommendation will not be implemented because it is not warranted. The Public Defender already spends about \$75,000.00 per year to retain experts, mostly psychiatrists and psychologists to assist attorneys in evaluating mental defenses of clients and clients ability to function in the criminal justice system.

R10. (Page 8) The Public Defender’s Office should provide full-time interpreter services.

The Recommendation has not yet been implemented, but will be implemented in the future. The Public Defender should have a full time Spanish-English interpreter. But the office has seven full time employees and one half time employee who can speak Spanish. The office retains interpreters for other languages as needed. If additional resources are provided in future fiscal years, a full time Spanish-English interpreter will be added to the staff.

R11. (Page 8) The Public Defender should use the good news in this report to formally recognize his excellent staff and celebrate their achievements.

The Recommendation has been implemented.

The Public Defender joins the Sonoma County Grand Jury in recognizing the excellent work of the staff. **“The Jury found the Sonoma County Public Defender’s Office is staffed with professionals dedicated to the clients they serve. The Jury also believes the great majority of persons in Sonoma County who are represented by public defenders receive excellent representation.”** (From the Grand Jury Report, 2002-3) This finding is especially gratifying in the light of the Grand Jury’s findings that the staff is stressed with a high caseload and workload. In addition, the Public Defender thanks the Sonoma County Grand Jury for the constructive spirit of the investigation, findings and recommendations of the study of the Public Defender’s Office. The Public Defender will do all that is possible to work with the Board of Supervisors and the Chief Administrative Officer to add resources to address the challenges faced by the staff in serving our clients and the public of Sonoma County.