



Washoe County District Attorney

**RICHARD A. GAMMICK
DISTRICT ATTORNEY**

April 21, 2008

David J. Carroll
Director of Research
National Legal Aid & Defender Association
1140 Connecticut Avenue, NW, Suite 900
Washington, DC 20036

RE: ADKT No. 411 Performance Standards & Early Case
Resolution Programs

Dear Mr. Carroll:

This is to advise that I have received and reviewed your letter of April 14, 2008, to the Nevada Supreme Court. I have been involved with the ECR program of Washoe County since its inception, and have continued on a regular basis to monitor the program. There are many representations and comments within your letter that because of my familiarity with the ECR program caused me to write you this letter. I would hope that you would assist in providing answers to the questions I raise in this letter so that our Supreme Court can have the benefit of your comments prior to their meeting on April 23, 2008.

My questions are as follows:

1. I know I have not spoken to you or anyone from your organization; have you spoken to anyone else in the Washoe County District Attorney's Office concerning the ECR program, and if so, who?
2. Many members of the judiciary in Washoe County have been involved with the ECR program. Calendaring accommodations for the ECR Program have taken place at the Justice Court level. The taking of pleas and sentencings pursuant to ECR negotiations have occurred at the District Court level. Who among the Justices of the Peace or the District Court Judges have you spoken to concerning the ECR program, and what concerns have they specifically provided to you?
3. You indicate on page 1 within your letter, "Therefore, I do not reject all early case resolution (ECR) programs out of

- hand." Are there ECR programs or similar programs that you feel you could support, and if so, what are the jurisdictions in which those programs exist?
4. Also at page 1, and following the above-quoted sentence, you proceed by stating, "So long as clients' constitutional rights are adequately protected, NLADA believes the Court may support ECR programs." Are you in fact telling our Supreme Court that an ECR program can be crafted in such a way to alleviate your concerns?
 5. The final paragraph at page 1 proceeds as follows: "However, it has long been documented that the particular ECR program in Washoe County fails to adequately protect the rights of the poor." If you are relying on other documents in addition to the 2000 report referred to in the paragraph conducted for the Supreme Court Task Force on Elimination of Racial, Gender and Economic Bias, would you please provide that documentation for my review.
 6. As to the 2000 report referred to above for the Supreme Court Task Force, are you aware that the expansion of the ECR program to include additional serious felonies was done subsequent to discussion with the Public Defender's Office and did not remove the ability of the Public Defender's Office to reject any particular case for ECR consideration? Knowing this, is your concern over the expansion of the ECR program reduced at all?
 7. As to the Department of Justice/ABA report referred to above, are you aware that additional discovery was often provided in ECR cases when deemed necessary prior to finalizing the negotiations by entry of plea? Additionally, while the first negotiation was done by an ECR deputy for the Public Defender's Office, the subsequent entry of plea was completed by another Public Defender who could, and on occasion did, reject the ECR negotiation previously agreed to. In such cases, there was never any argument concerning the remand of the case to Justice Court to be treated as a non-ECR case. Would these facts change your opinion or concerns expressed within your letter?
 8. In the same paragraph referred to above, you cite a section of the DOJ/ABA report that asserts, "One of the most notable effects of the ECR program is that the Washoe County Public Defender Office takes only approximately 30 cases to trial each year." It seems that the inference intended is that the Public Defender's Office should be going to trial more often. It may be that the elimination of ECR will result in more jury trials but not for the

reason you seem to promote. In reality, the Washoe County District Attorney's Office has made negotiations which it later regrets due to a variety of reasons. It has been the practice of this office to honor the negotiations and allow the plea to go through. I can think of no more than four to five cases in which this office has withdrawn a plea negotiation. Other than the fact that this office may have negotiated a case too soon, what is the argument that the ECR program's elimination would result in more trials?

9. Within your letter, you have referred to the expansion of the ECR program. Would a return to the original criteria of the ECR program satisfy your concerns? Are you aware or have personal knowledge of what the original criteria was as compared to the expansion you referred to?
10. On page 2 of your letter, you express concern that the decision as to which cases go to the ECR program are "solely in the hands of the prosecutor," and again that more serious cases continue to be sent to ECR. In addition to my comments concerning the collaborative effort as to the expansion of ECR, would it make a difference to you that while a prosecutor picks the cases out of those submitted everyday to our office, the Public Defender can request the inclusion of a case for consideration and certainly retains the ability to reject any case from discussion?
11. At the third paragraph of page 2, you state "interestingly, the haste by which the system is run leaves open the possibility that certain categories of cases are charged simply because the District Attorney and police realize that the ECR process will result in a quick, negotiated plea." Would it make a difference to you that the only direct police involvement in the ECR program is an occasional request to not include a case for consideration? Law enforcement's concern is that a case may be resolved too much to the benefit of the defendant.
12. Also within the third paragraph of page 2 of your letter, you indicate that the elimination of ECR may have already contributed to a reduction in jail population. Apparently you came to this conclusion after talking to the Washoe County Public Defender. Was it his representation that the elimination of ECR was responsible for a reduction in jail population? The population this morning is 1,118.
13. Noting that you engaged in a discussion with the Washoe County Public Defender's Office concerning the ECR program, was it ever his suggestion to contact myself or a member of

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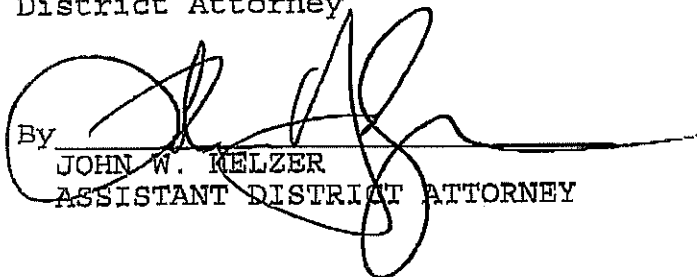
the Washoe County District Attorney's Office to discuss the
ECR program?

Again, I would appreciate your effort to answer the above
questions. If you are only able to answer some of them, I would
still request that you provide that information to me and the
members of the Nevada Supreme Court.

If you have any questions, I can be reached at 775-328-3208.

Sincerely,

RICHARD A. GAMMICK
District Attorney

By 
JOHN W. MELZER
ASSISTANT DISTRICT ATTORNEY

JWH:lj