



Indigent Defense
Assessment
Of
Venango County,
Pennsylvania

JUNE, 2002

Chapter I Introduction

Overview: A National Perspective on Indigent Defense Funding

In the landmark case *Alabama v. Powell*, The United States Supreme Court opined:

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

Unfortunately, the *Powell* decision left the states responsible for deciding how far the right to counsel extends. It would take another 31 years before the Supreme Court guaranteed counsel to those of insufficient means under the Sixth amendment of the U.S. Constitution, while reaffirming the states responsibility to provide representation in *Gideon v. Wainwright*, 372 U.S. 335 (1963).¹

Over the ensuing forty years, 44% of the states (22 of 50) moved to enforce the *Gideon* decision by vesting the responsibility for funding indigent defense services at the state-level. Another nine states now fund at least half of all indigent defense costs and one other state funds indigent defense services through a combination of court fees and state money (bringing the total number of states that take at least an equal share in funding the right to counsel to 32, or 64% of the states.) Though the Commonwealth of Pennsylvania requires each of its counties to establish a public defender office² to furnish legal counsel to any person who, for lack of sufficient funds, is unable to obtain legal counsel in cases that may result in a loss of freedom,³ the Commonwealth contributes no financial resources to ensure the adequacy of the services

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

² Philadelphia County is an exception. The Defender Association of Philadelphia (DAP) is a private, non-profit organization founded in 1934 to provide defender services in that county. It is governed by an independent Board of Supervisors and is not a county agency. The longevity of the organization accounts for the County being exempted from the statutes governing the other counties.

³ Pennsylvania Statute §9960.3

provided. In fact, Pennsylvania remains one of only two states that require its counties to assume all costs for providing counsel to its poor in criminal proceedings (2 of 50, or 4%).⁴

The Effect of No State Funding on Counties in the Commonwealth of Pennsylvania

Leaving counties responsible for administering and funding their criminal justice systems, and in particular indigent defense services, can put an undue hardship on local jurisdictions to ensure adequate representation of poor people accused with crimes.⁵ Nationally, counties with fewer sources of revenue may have to dedicate a far greater portion of their limited budget to defender services than would counties in better economic standing. For instance, crime rates tend to increase when there is a high level of unemployment.⁶ Thus, at a time when tax-revenues may be down due to depressed real estate prices and people leaving the community, the criminal justice system is often expected to increase its workload. A county's revenue base may also be strained during economic downturns because of the need for increased social services, such as indigent medical costs. In addition, counties also must provide the citizenry with other important services, such as public education. The need to balance these responsibilities while maintaining fiscal accountability to the local citizenry often leaves county officials in the unenviable position of having to choose between funding needed services and upholding the constitutional commitment to guarantee adequate indigent defense services.

The inherent problems associated with funding the criminal justice system at the county-level was recognized in the Interim Report of the Master in the Pennsylvania Supreme Court case *Pennsylvania State Association of County Commissioners v. Commonwealth of Pennsylvania*, 681 A. 2d 699 (1996) mandating the transition from county to state funding of the unified judicial circuit:

The fundamental principle that anchors the Allegheny decisions⁷ is the Constitutional right of equal access to equal justice for all Pennsylvanians, Pa.

⁴ South Dakota is the other state. South Dakota, one of the least populated areas of the contiguous United States, has a total population (754,844) that is almost 94% smaller than the population of Pennsylvania (12,281,054) and smaller than either of Pennsylvania's two largest counties [Allegheny (1,281,666); Philadelphia (1,517,550)]. The United States Census Bureau, 2000. (www.census.gov).

⁵ The following is a synopsis of the testimony of David J. Carroll, Director of Research & Evaluations for NLADA, before the Supreme Court of Pennsylvania, Committee on Racial and Gender Bias in the Justice System (November 27, 2000 in Pittsburgh, PA). At the time of the testimonial, Mr. Carroll was a Senior Research Associate for The Spangenberg Group, a nationally recognized criminal justice research and consulting group.

⁶ Amburgey, Bryce. Kentucky Department of Public Advocacy. "Will 9/11 Drive Crime Rates and Defender Workloads Up? The Experts Say Yes." *NLADA Cornerstone*, Winter 2001/2002, Issue 4; Gould, Eric with Bruce Weinberg and David Mustard. "Crime Rates and Local Labor Market Opportunities in the United State: 1979-1997. National bureau of Economic Research Summer Institute Workshop. Cambridge, MA. July 6, 1998 (Revised October 2000).

⁷ *County of Allegheny v. Commonwealth of Pennsylvania*, 517 Pa. 65, 534 A. 2d 760 (1987) was a mandamus action seeking to have declared unconstitutional legislation defining the counties' responsibility to finance and support the court system. *County of Allegheny v. Commonwealth of Pennsylvania*, 626 A. 2d 492 (1993) was a mandamus action filed by the Pennsylvania Association of County Commissioners and ten counties seeking to enforce the order in the first Allegheny case.

Const. Art. 1. §11, exercised within the framework of an integrated judicial system. It has been clearly recognized that where there is financial fragmentation and disparity among counties, the right is seriously compromised, and the system unified in name only. That fragmentation is readily apparent in the Judiciary as it now stands: there are 67 counties comprising 60 judicial districts in Pennsylvania, suffering from numerous disparities in staffing, compensation, caseloads and programs. The President Judge of these districts are [sic] dependent upon the beneficence of 67 boards of commissioners for hiring, salary determinations, program support and physical and technological improvements. Each of these boards has a different vision of what constitutes the role of the judiciary, and indeed what elements comprise the Judiciary; some of these visions are in diametric opposition to a judicial system which is a true and equal participant in a tripartite system of government.

As Pennsylvania counties continued to bear the responsibility for funding indigent defense services, the disparity of resources noted above began to raise serious allegations of violations of the right to counsel and due process under both the U.S. and Pennsylvania State Constitutions against specific counties. *Doyle v. Allegheny County* was filed in the Allegheny Court of Common Pleas by the American Civil Liberties Union (ACLU) on behalf of all indigent defendants, juveniles facing delinquency charges and mental commitment patients who receive the services of the Allegheny County Public Defender Office for failure to ensure the adequacy of the right to counsel. The lawsuit was settled in 1998 when Allegheny County agreed to a substantial increase in public defender staff size and resources.

In March 2001, the ACLU and the National Association of Criminal Defense Lawyers (NACDL) contracted a private consultant to provide a preliminary assessment of the Venango County public defender office after the national organizations had received similar claims that limited county-funding there had caused public defenders to provide inadequate representation to their indigent clients.⁸ In May, *Report on Public Defender Office, Venango County, Pennsylvania: A Preliminary Assessment* was released. Concluding that given “the current workload of the office and its current resources, it may be impossible for the lawyers to do a Constitutionally acceptable job of representing their indigent clients,”⁹ the consultant recommended sufficient resources be dedicated to the public defender office to increase the staff size, obtain salary and resource parity with the District Attorney’s Office, secure a new case management system, and support additional staff training.

The Present Study of the Venango County Indigent Defense System

Over the course of 2001, Venango County officials engaged in a dialogue with attorneys for the ACLU and NACDL with the aim of improving defender services and, hopefully, avoiding

⁸ Venango County is a small county in decline covering 675 square miles in Northwest Pennsylvania. In 2000, the U.S. Census Bureau reported that 57,565 people resided in Venango, the lowest population figure since 1910, and a decrease of almost 12% from the population high of 65,328 in 1950. The median Venango County household income is \$29,474, and a full 20% of the county’s children live in poverty. The United States Census Bureau, 2000 (www.census.gov).

⁹ *Preliminary Assessment*, p. 13.

a lawsuit. During that exchange, the ACLU/NACDL representatives proposed a series of improvements to guarantee an adequate level of service to indigent defendants. To help the county determine the legitimacy of the ACLU/NACDL position, Venango County retained the services of the National Legal Aid & Defender Association (NLADA)¹⁰ to conduct an independent assessment of the county indigent defense system.

For decades, NLADA has played a leadership role in the development of national standards for indigent defense functions and systems.¹¹ National standards serve a number of important purposes. While NLADA's standards are non-binding on state or local programs, they do serve as a model for enacting jurisdiction-specific standards, many of which are binding and enforceable by virtue of statutory codification, promulgation of state supreme court rule, adoption/citation in state supreme court opinion, conditionality upon state funding, or adoption by state indigent defense oversight commission or public defense agency. Such standards were gathered into the first-ever National Compendium of Standards for Indigent Defense Systems by the U.S. Department of Justice, with NLADA assistance, in 2000.¹² Standards allow objective measurement of an individual organization's mechanisms for effectuating key requirements of an indigent defense system, such as independence, accountability, training, supervision, effective management, fiscal controls, and competent representation.

NLADA's Venango County evaluation methodology employs national standards as a basis to assess three main areas of concern: the quality of representation provided to clients by both the public defender office and other providers of indigent defense services; the cost-effectiveness of those defender services; and the impact of policies and practices of other criminal justice agencies on the indigent defense providers. Toward this end, NLADA staff members Jo-Ann Wallace¹³ and David Carroll¹⁴ conducted on-site interviews with Court of

¹⁰ The National Legal Aid and Defender Association (NLADA) is a national, non-profit membership association dedicated to quality legal representation for poor people. Founded in 1911 as the National Alliance of Legal Aid Societies, NLADA has grown to include 2,300 public defender, assigned counsel and civil legal services organizations -- representing more than 25,000 legal service and indigent defense professionals across the country. In addition, more than 1,000 private attorneys, public defenders, civil legal services attorneys, social workers, clients and interested persons hold NLADA individual memberships.

¹¹ Guidelines for Legal Defense Systems in the United States (National Study Commission on Defense Services [staffed by NLADA; commissioned by the U.S. Department of Justice], 1976); The Ten Principles of a Public Defense Delivery System (written by NLADA officials, adopted by ABA in February 2002, published in U.S. Department of Justice *Compendium of Standards for Indigent Defense Systems, infra n.12*) (<http://www.abanet.org/legalservices/downloads/sclaid/10principles.pdf>); Standards for the Appointment and Performance of Counsel in Death Penalty Cases (NLADA, 1988; ABA, 1989), Defender Training and Development Standards (NLADA, 1997); Performance Guidelines for Criminal Defense Representation (NLADA, 1995); Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services (NLADA, 1984; ABA, 1985); Standards for the Administration of Assigned Counsel Systems (NLADA, 1989); Standards and Evaluation Design for Appellate Defender Offices (NLADA, 1980); Evaluation Design for Public Defender Offices (NLADA, 1977); and Indigent Defense Caseloads and Common Sense: An Update (NLADA, 1994). Other related national standards: American Bar Association, Standards for Criminal Justice, Providing Defense Services (3rd ed., 1992); American Bar Association, Standards for Criminal Justice: Defense Function (3rd ed., 1993); Report on Courts, Chapter 13: The Defense (National Advisory Commission on Criminal Justice Standards and Goals, 1973).

¹² www.ojp.usdoj.gov/indigentdefense/compendium/

¹³ Jo-Ann Wallace is Vice President and Chief Counsel for Defender Operations of NLADA. From June 1994–February 2000 she was the Director of the Public Defender Service for the District of Columbia. Before becoming

Common Plea Judges, District Court Justices, the District Attorney, the District Court Administrator, Public Defender attorneys and staff, the Jail Warden, indigent defense conflict attorneys, the County Solicitor, and County Commissioners over the course of three days in late January 2002. As part of the assessment, NLADA team members 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. During this trip, NLADA also reviewed numerous public defender case files, visited public defender clients under the supervision of the County Jail Warden and conducted in-court observations of Central Court (preliminary hearings), Gagnon hearings (probation and parole revocation) and juvenile delinquency hearings. Finally, NLADA requested and reviewed court statistics, jail and District Attorney case-tracking data, annual reports, and county policy/procedure manuals.

NLADA wishes to thank the representatives of Venango County we met with for their candidness and the thoughtfulness with which they approached our site assessment. Many people re-worked their busy schedules to find time to meet with us, in many instances coming in early or staying late. NLADA especially acknowledges the assistance of: County Counsel Vicki Beatty and County Solicitor George Thompson for providing us with preliminary information and scheduling most of our site visit; County Management Information Specialist William Kresinki for assisting in transmitting data from various county database systems; District Attorney Marie Veon and Jail Warden Ron Snyder for permitting NLADA access to their case-tracking systems; County Administrator Denise Jones for coordinating the collection and transfer of various information requests; Public Defender Jim Blackwood for providing complete access to case files, data and staff; and District Court Administrator Carol Hutchison for responding to numerous follow-up questions related to the processing of criminal cases through the Venango County court system.

the Director, she was the Deputy Chief of the Appellate Division. She previously served the agency as the Coordinator of the Juvenile Services Program. Ms. Wallace has extensive experience as a lecturer on criminal justice topics. She has served as a visiting faculty member for Harvard Law School's Trial Advocacy Workshop and is a regular faculty member of the District of Columbia Criminal Practice Institute, the District of Columbia Delinquency and Neglect Practice Institute, NLADA's Appellate Defender Training and Leadership and Management Training.

¹⁴ David Carroll joined NLADA as Director of Research & Evaluations for the Defender Services Department in January 2002. For the past five and a half years, Mr. Carroll worked as a Senior Research Associate for the Spangenberg Group (TSG) a national and international research and consulting firm specializing in criminal justice reform. Mr. Carroll directed numerous projects on behalf of TSG, including: a jail-planning study for Pierce County (Tacoma) Washington; a study of indigent defense cost recovery efforts in Jefferson and Fayette Counties, Kentucky (Louisville and Lexington); and a statewide assessment of West Virginia's Public Defender Services. Mr. Carroll also was chosen to provide on-site technical assistance to statewide Task Forces in Illinois, Nevada, Alabama, and Vermont under the auspices of the American Bar Association and the U.S. Department of Justice, Bureau of Justice Assistance.

Chapter II The Venango County Indigent Defense System

The ACLU/NACDL consultant conducted a one-day site visit to Venango County at the end of March 2001. At the time, the county indigent defense system, and in particular the public defender office, was undergoing a transition. A discussion of this transition period is critical to understanding the workload concerns raised in the ACLU/NACDL report and analyzed in detail in Chapter IV. The indigent defense system is described here in three separate and distinct periods.

Pre-March 2001

In 1997, Virginia Sharpe was appointed to be the Chief Public Defender of Venango County. Despite carrying a full caseload and having the responsibility of managing an office of two part-time assistant defenders and a support staff of one, the position was classified as part-time. At the time of her appointment, Sharpe had three years experience as a part-time assistant public defender under the supervision of Chief Public Defender Robert Boyer (now a District Court Justice). For most of Sharpe's tenure, public defenders provided primary services for clients in felony, misdemeanor, parole and probation revocation hearings, parental representation in children and youth services hearings, appeal, post-conviction relief petitions, and in compliance matters related to non-payment of court fees and fines. The public defender office also acted as a conflict defender unit for children facing juvenile delinquency proceedings.

Though the public defenders were "part-time," the workload demands limited the time they could dedicate to private cases or other non-public defender related endeavors. Prior to 1998, the public defender/private workload split was approximately four to one. After that time, public defenders generally had to use what little public defender down time there was to fit in an occasional private case. The private caseload of public defenders was described to us as "mostly real estate cases for friends" though some were criminal cases for defendants with income above the eligibility criteria.

Contract counsel handled conflict of interest cases.¹⁵ In December 1999, the county engaged Douglas Dinberg, Michael Hadley and D. Shawn White to handle 30 criminal defendants at all stages of the proceedings, including post-sentence appeals for \$7,000 each (or approximately \$233 per case). Dinberg also was contracted to handle all defendants in the Oil City Area Health Center Annex and at Warren State Hospital at hearings filed under the Mental Health Procedures Act for an additional \$3,000. In February 2000, Gerald Cassady (a former public defender) was retained to provide representation in 35 criminal proceedings at the same aforementioned rate. He was also contracted to provide primary representation to all juvenile defendants in Juvenile Court proceedings, compensated for a fixed, flat fee rate of \$10,750.00.

¹⁵ Though the nomenclature "contract counsel" is used in the county, technically these attorneys provide services under order of the President Judge of the Court of Common Pleas.

The Transitional Year of 2001

As the workload demands of the indigent defense caseload increased, public defenders found little time to augment their low pay with private cases. They were effectively working full-time for half-time pay. Nationally, high caseloads and low pay are contributing factors to high employee turnover. Young attorneys fresh out of law school often hone their trial skills in public defender (and district attorney) offices then move on to more profitable endeavors in private law firms after a year or 18 months. This national phenomenon was certainly true of the Venango County public defender office for most of Sharpe's tenure.¹⁶

The high employee turnover further restricted Sharpe's time. When assistant public defenders resign, all of their cases must be re-assigned to the remaining staff. During this transition period, the Chief Public Defender must go through the hiring process, and train/monitor the performance of a new attorney, all while trying to provide adequate representation to a larger number of clients. Occasionally having to experience such a transition workload is stressful enough on a Chief Public Defender, but having to do so with regularity (as was the case in Venango County) is one of many factors that oftentimes contributes to Chief Public Defender "burn out." On top of this, Sharpe was expected to deal with these demands while handling a serious homicide case.

Employee turnover, workload fatigue and the stress of providing adequate services to a growing client base were contributing factors to Sharpe's decision to request additional staff from the Venango County Board of Commissioners. Under Sharpe's plans, one full-time attorney (paid on par with an assistant district attorney) would be added to the staff at an additional cost to the county of \$20, 377.¹⁷

The Board of Commissioners was concerned about the request. In Venango County, the budget process officially begins in August of each year when department heads are presented with a budget analysis showing current year-to-date data and a forecasted budget for the next year. Department heads use the late summer/early fall to put together their own proposals. In October, formal fiscal hearings are set to discuss requested capital outlay items and departmental budget forecasts with the Commissioners. After considerable consideration of the County revenue and tax-base, the Commissioners present their proposed budget during a twenty-day public comment period. The budget is formally adopted by the close of the fiscal year, December 31st (and usually earlier).

Sharpe's request was received the day after the budget was adopted. The Commissioners worried that acting upon Sharpe's request would set bad precedent, opening the floodgates to similar late requests by every other department. In the Commissioners' view, Sharpe surely knew of the workload demands in the prior months and should have proposed her new staffing

¹⁶ In the two years prior to Ms. Sharpe's resignation, the public defender office had five assistant public defenders terminate their employment (or an average of 2.5 assistant attorneys per year). Considering that the office functioned on average with just two assistant public defenders per year, this means that the office had an average attorney turnover rate of 125%. On top of this, two legal secretaries terminated from the public defender office in the two-year period preceding Sharpe's resignation.

¹⁷ The full-time attorney was to be paid \$32,000 per year plus benefits. The county financial responsibility was less because the three part-time attorneys were to have their pay reduced to \$22,500. The part-time attorneys assumed that the full-time position would reduce their hours such as to allow them to augment their pay with private cases.

plans during the budgetary process. The ensuing weeks saw the Board entertain several ideas for providing indigent defense services, including one to privatize the public defender office, before settling on a plan to staff the office with two full-time public defenders. Subsequently, Sharpe resigned effective March 30, 2001.¹⁸

The Board of Commissioners hired Mr. James Blackwood as the full-time Chief Public Defender effective April 1, 2001. Mr. Blackwood was a part-time assistant public defender under Sharpe. Blackwood had many years of service at the bar, including a long tenure in the Erie County District Attorneys office.¹⁹ The Commissioners believed that two full-time attorneys could handle the workload of the office and allowed Blackwood to use the staffing budget allotment as he saw fit. After accounting for his support staff, Blackwood basically proportionally split the remaining budget between himself and the other assistant public defender, Mr. Russell Karl.²⁰ Blackwood and Karl were the only two public defender attorneys for the rest of 2001.

The county again retained private attorneys Cassady and Dinberg to provide representation in 30 criminal proceedings each at an average of \$233 per case. Both attorneys were similarly contracted to provide primary representation to juveniles in delinquency proceedings (Cassady) and mental health hearings (Dinberg). Additionally, the county contracted D. Shawn White to handle 30 criminal cases at the same compensation rate as Cassady and Dinberg.

On May 14, 2001, the ACLU and NACDL released its preliminary assessment of the public defender office in Venango County. Concluding, among other things, that the public defender office was understaffed and therefore not providing adequate representation under the U.S. and Pennsylvania Constitutions, the ACLU threatened legal action to correct the situation. Despite the tacit understanding that the County would conduct its own assessment before agreeing to any ACLU/NACDL demands, the Venango County Commissioners still made several improvements to the delivery of indigent defense services over the course of 2001, including approving the hiring of a part-time secretary for the office. After the report was made public, Blackwood used the slot to hire a part-time paralegal in May 2001. Since then, Venango County has upgraded the paralegal position to a full-time paralegal/investigator position (in September 2001).

In November of 2001, a Court Order contracted Dinberg and Cassady to take on an additional ten criminal cases each. The attorneys received an increase in their rates for the supplemental cases. Each contract was for a fixed, flat-fee of \$3,750.00 (or \$375 per case, an increase of over 60%).

¹⁸ March 30, 2001 was the date of the ACLU/NACDL consultant visit.

¹⁹ Mr. Blackwood has been an attorney for over 35 years. His criminal law experiences include: 17 years as a part-time Assistant District Attorney (Erie, PA); two years full-time Assistant District Attorney (Erie, PA); two years experience as a Juvenile Master of Erie County hearing evidence in matters involving juvenile delinquency and dependency proceedings; and, service as Law Clerk to the Chief Judge of the 3rd Circuit Court of Appeals.

²⁰ In doing so, the assistant public defender salary rose above the salary of an assistant district attorney. The Commissioners authorized adjustments in the assistant district attorney salaries to account for parity after District Attorney Veon informed them of their oversight.

2002 and Beyond

In looking ahead to budget year 2002, the County made several more improvements. In an effort to alleviate the public defender caseload, the county increased its reliance on the private bar. Dinberg, White and Mr. Neil Rothschild were retained to handle 35 criminal cases each for a fixed rate of \$13,500 or, \$385.71 per case (an increase of 65.5% over the initial 2001 rate). Dinberg still handles the mental health proceedings, while Rothschild now represents parents in CYS hearings and for parents in involuntary termination of parental rights hearings (an area of representation formally handled by the public defenders). Sharpe and another former assistant public defender, Ms. Diane Hasek, were contracted to provide primary representation to all juveniles for a flat-fee of \$22,000. Sharpe handles all hearings for juvenile probation cases while Hasek handles all dependency cases. Hasek also accepts appointments for involuntary termination of parental rights cases for a flat fee of \$350 per case. Additionally, Ms. Schellart Ham-Los will handle all post-conviction collateral petitioners at a cost of \$9,700.00.²¹

Additionally, the 2002 budget authorized expanding the public defender full-time clerical position to an Office Manager position.²² The 2002 budget also authorizes a second full-time paralegal to be hired. This position will be entry-level, with some expectation that the position will also provide some traditional clerical/secretarial support functions. Moreover, the County authorized a third full-time assistant public defender position, effective January 2002.

In early 2002, Karl resigned his position as assistant public defender. At the time of our visit, the person hired to replace Karl had been working for less than one week. Additionally, our site visit coincided with the first day of the third full-time public defender.²³ In short, the indigent defense system visited by NLADA was different from the one visited by the ACLU and NACDL.

²¹ Should the need arise, judges are authorized to appoint private attorneys to adult criminal cases on a case-by-case basis. Appointments are made for a flat fee of \$500 for a misdemeanor case and \$750 for a felony. If there are extenuating circumstances, judges may authorize payment on an hourly rate plan of \$60/hour for both in-court and out-of-court activities.

²² In doing so, County officials hoped the salary increase would bring in a more qualified pool of candidates to fill the vacancy when the clerical support person resigned in 2001. The Office Manager position was filled in September 2001.

²³ Venango County currently employs John Lackatos and Paul Yessler as assistant public defenders. Lackatos has spent the last fifteen years as a trial attorney for the Allegheny County Office of the District Attorney and serves as an Instructor at the Indiana University of Pennsylvania, School of Continuing Education. Yessler has some limited indigent defense experience, mostly in misdemeanor cases as a private attorney, but did serve three years as a contract attorney for the Department of Justice, Violent Crime Section in Washington, DC.

Chapter III

The Venango County Criminal Justice System

The Venango County indigent defense system operates within the context of the overall county criminal justice system. The ability of a public defender to handle his or her caseload effectively often depends on what demands are placed on him or her by the court schedule and other criminal justice agencies. Like many jurisdictions, Venango County has institutional shifts in which a public defender is expected to staff a courtroom for all or part of a day, effectively reducing the number of hours the public defender can spend on out-of-court activities.²⁴ Thus, it is important to give a brief review of the Venango County criminal court procedures before the workload analysis.

District Court Arraignment

People arrested on criminal charges in Venango County have the right to be brought before one of four District Justices²⁵ within six hours of their arrest to officially have the charges against them read.²⁶ Defense attorneys are not present at these arraignment hearings. District Justices cannot accept pleas at the hearings, but the District Justices do assess the appropriateness of releasing the defendant on his or her own recognizance or, conversely, set bail based on the seriousness of the charges, the person's criminal history, and risk of flight while remanding the defendant to the County Jail.²⁷

During arraignment, defendants are told that an attorney will be provided to them if they cannot afford one and if they meet the county's financial eligibility requirements.²⁸ Public Defender applications are available to defendants at the arraignment hearings. If the defendant is released, an application is also included with the summons announcing their next court date. Detained defendants fill out public defender application forms at the jail when interviewed by the public defender paralegal staff person.²⁹

²⁴ Important public defender out-of-court activities include: client contact; investigation; legal research; conferences with judges, district attorneys and other court officers; case preparation; office administration; training; public education and other community service endeavors; and professional development; among others. Rovner-Piecznik, Roberta with Alan Rapoport and Martha Lane, *Evaluation Design for the Offices of the Public Defender*, NLADA (1976).

²⁵ The Venango County District Justices are: Robert Boyer (Franklin); David Fish (Pleasantville); Douglas Gerwick (Emlenton); and William Martin (Seneca).

²⁶ Case law directs that a preliminary arraignment shall occur "without unnecessary delay." *Commonwealth v. Davenport*, 471 Pa 278, 370 A.2d 301 (1977); and, *Commonwealth v. Duncan*, 514 Pa 395, 525 A.2d 1177 (1987).

²⁷ Pa.R.CrimP. 540.

²⁸ To qualify for a public defender, a single, unmarried defendant with no dependents cannot exceed \$9,863.00 in annual gross income. *Venango County Public Defender Income Eligibility Guidelines* (March 1997).

²⁹ The ACLU/NACDL report stated that the Jail Warden reviews public defender applications of in-custody defendants (*Preliminary Assessment*, pp. 4-5). The Jail Warden denies that this was ever his practice. He also pointed out that he was not interviewed nor asked about such claims by the ACLU/NACDL consultant directly.

Central Court

“Central Court” is the jurisdictional nomenclature for District Court preliminary hearings in misdemeanor and felony cases. On most Wednesdays, Central Court is convened in two of the Court of Common Pleas courtrooms in Franklin.³⁰ Two of the four District Justices preside over the hearings each week on a rotating schedule. One District Justice presides over cases in which the preliminary hearing is waived while the other presides over those cases in which a plea is entered. Two Central Court sessions are held each week (two of Venango County municipalities’ cases are heard in the afternoon session; while the other municipalities and State Trooper cases are scheduled for the morning session).³¹

At the start of Central Court, a District Court Justice has a roll call for out-of-custody defendants. A bench warrant is issued for any defendant who is not present. If defendants appear at roll call without an attorney, but wishing to have an attorney appointed, the defendant is instructed to go to the public defender’s office to fill out the eligibility application. During the roll call, defendants are asked whether they are going to accept a plea agreement, waive preliminary hearing or proceed with the hearing. Because most defendants are meeting their attorney for the first time at Central Court, most attorneys ask for a few minutes of the court’s time to discuss the case with their clients before determining how to proceed. In the case of public defenders, a few minutes per client ends up taking up a significant amount of the court’s time.

In-custody defendants are brought from the county jail to the courtrooms by the staff of the County Sheriff’s Department as their cases are called.³² Defendants must wait three days

During our visit, the Warden did state that for convenience he often walked the applications to the public defender office, but that even this practice has been stopped because of the potential appearance of infringing on the confidentiality of the client-attorney relationship. Review of attorney correspondence by jail personnel represents an infringement on the right to counsel and violates counsel’s ethical requirements to preserve confidentiality. (See ABA Criminal Justice Standard 5-3.1(c): “Personnel of jails, prisons, and custodial institutions should be prohibited by law or administrative regulations from examining or otherwise interfering with any communication or correspondence between client and defense counsel relating to legal action arising out of charges or incarceration.”) However, we did not find evidence that this was the Warden’s practice and the use of the public defender staff paralegal to assist inmates with application forms should prevent confidentiality infringements in the future.

³⁰ Central Court is scheduled every Wednesday except in instances in which a holiday falls on that day. Additionally, Central Court will not be scheduled if the judge, district attorney staff or public defender staff has conflicts due to training or conferences. Over the past three years, Central Court convened, on average, 49 times per year.

³¹ Prior to the establishment of Central Court in the early 1990’s, preliminary hearings were heard in each of the four district courts. Since public defenders are required to attend these hearings, the public defender staff had to “ride circuit” to cover each district court room. This proved to be an impossible task for the part-time attorneys as caseload increased. Thus, one of the primary reasons for consolidating the various preliminary hearing dockets was to accommodate the public defenders. Central Court also had the added benefit of getting the district attorneys involved earlier in the case. Prior to the establishment of Central Court, district attorneys rarely attended preliminary hearings. The two-session format was agreed to as a compromise with local police departments after complaints that Central Court resulted in police officers waiting around too long for the cases to be heard. Such waiting time made it difficult for police departments to schedule coverage and increased their payroll budget due to increased over-time.

³² The County Jail is located across the street from the Courthouse. Sheriff personnel may bring several defendants from the jail at once, or one at a time, depending on the security risk.

from their arraignment before having a preliminary hearing. Additionally, the preliminary hearing must be held within ten days for in-custody defendants.³³ As noted in the ACLU/NACDL report, this means that a defendant arrested on a Sunday night will be held in jail the maximum ten days before having a preliminary hearing (and often without having spoken to counsel).

Over the past few years, Central Court has seen the number of cases disposed at preliminary hearing decrease [from 337 (1997) to 255 (1999)] as the number of dispositions increased [up from 1,073 (1997) to 1,135 (1999)]. This means the rate of misdemeanor and felony cases disposed at first appearance decreased from 31% to 22%.

Accelerated Rehabilitative Disposition (ARD)

The ARD program is a diversion specialty court for first-time offenders of victimless crime (DUI, simple possession of marijuana, etc). Occasionally, a defendant in a minor theft or retail theft case will also be accepted in the ARD program. To be accepted, defense counsel must file an application with the District Attorney.³⁴ The application is filed subsequent to the case being bound over or waived at Central Court. It is solely within the discretion of the District Attorney as to whether or not the defendant will be diverted out of the criminal court system into the care of the Court Supervision Services. Once approved, clients participate in programs designed to increase their ability to become responsible members of the community, including community service activities, counseling and/or DUI school, bad check programs or shoplifter alternative programs, depending on the offense.

A single public defender represents all clients without representation at ARD court. ARD court is scheduled for once a month, but since the applications are of a boilerplate template nature, the session usually lasts only an hour to an hour and a half.

Upon successful completion of the program, counsel for the defendant files a motion to expunge all records of the case. Subsequently, a Court Order directs the police, District Attorney, Court clerks and the District Justice to expunge their records in the matter. The District Attorney does retain a card file that is for her use in the event the defendant is arrested on new charges.³⁵

Court of Common Pleas Arraignment

President Judge H. William White oversees the criminal and civil divisions of a very busy Court of Common Pleas. Judge Oliver Lobaugh and Senior Judge William Breene, who

³³ Pa.R.Crim.P. 540 (e)(1) requires that a preliminary hearing occur within 3-10 days following preliminary arraignment. Section (a) states that the time can be extended for cause shown and Section b) states that the preliminary hearing can occur earlier at the request of the defendant if the Commonwealth agrees.

³⁴ The filing of the application puts the case into "inactive" status for tracking purposes because in filing the Application, defendant waives his right to a speedy trial under Rule 600.

³⁵ ARD in DUI cases counts as a first offense for sentencing purposes if defendant has a second or subsequent offense of DUI within 7 years of the date of placement into the ARD program.

works part-time in an emeritus capacity to help reduce the workload of the other two judges, assist him. In 1991, 610 criminal cases were disposed in the Court of Common Pleas.³⁶ By 1999, that number had grown to 1,153 (an increase of 89%). Much of that growth occurred in the final three years [from 629 (1997) to 1,153 (1999), an increase of approximately 83%].³⁷ At the same time, the number of new criminal filings and re-opened cases has experienced a similar rise, increasing the number of cases pending at the close of each year [from 223 (1997) to 478 (1999), an increase of over 114%.]³⁸

Part of the high workload of the Common Plea Judges can be attributed to the fact that in Pennsylvania the District Courts are courts of limited jurisdiction. District Court Justices can only accept guilty pleas to criminal cases of a Misdemeanor III-level severity or lower.³⁹ Correspondingly, more misdemeanor cases are heard at the Common Plea Court. Additionally, Venango County Court of Common Pleas has a high trial rate. On average, 7% of all cases go to trial each year. According to the National Center for State Courts (NCSC), the trial rate nationally was 3.1% in 1999.⁴⁰

Cases that are bound over from District Court are set for an arraignment at the Common Pleas level. During this arraignment, defendants may plead guilty or not guilty, and arguments can be heard on motions for bail reduction for in-custody defendants. At arraignment, defense attorneys also file a motion for discovery.⁴¹

“Criminal Call of the List” & Pre-Trial Conferences

Trials are scheduled for two weeks each month.⁴² Prior to jury selection, the District Court Administrator holds a meeting with prosecutors and defense attorneys to review the status of the pending cases and to determine which cases will be set for trial and which cases will be

³⁶ 1995 Annual Report: Court of Common Pleas of Venango County, Pennsylvania and Venango County Court of Common Pleas Report 1997-1999.

³⁷ The number of dispositions has leveled off over the past two years: 1,039 (2000) and 1,019 (2001).

³⁸ Much of the growing backlog was addressed when 301 cases were placed on inactive status during 1999. The previous high for cases moved to inactive status was 58 in 1997. Despite administratively closing these cases, the number of pending cases has remained high over the past two years: 312 (2000) and 278 (2001).

³⁹ NLADA was informed that District Justices could accept pleas to cases charged at more serious levels (Misdemeanor I or II, or Felony) only in instances in which the plea agreement is to a Misdemeanor III or less.

⁴⁰ “Manner of Disposition for Criminal Cases Filed in 28 Unified and General Jurisdiction Courts, 1999,” *Examining the Work of State Courts, 1999 - 2000*, National Center for State Courts (http://www.ncsc.dni.us/divisions/research/csp/Court_Statistics/Criminal%20Section%20Graphics.PDF).

⁴¹ In many instances defense attorneys must file another motion at a later date to compel the district attorneys office to provide discovery in instances in which the district attorney’s office does not comply with the terms of the original motion.

⁴² There are eleven trial terms per year. No trials are heard in July. According to the *Venango County Court of Common Pleas Report for 1997-1999*, criminal cases dominate the trial terms. Criminal Trials increased over 100% from 1997 (31) to 1999 (65), page 27-28.

put on a “stand-by” list. This meeting occurs on the Monday before jury selection and lasts approximately two hours. Older cases take priority in scheduling, but several other factors come into play, including the number of days attorneys estimate the trial will take and the availability of witnesses. Alternatively, prosecutors and defense attorneys may agree to have the case set for a pre-trial conference.

In years past, Venango County conducted informal pre-trial conferences in which defense counsel and prosecutors discussed potential plea agreements, trial length and/or particular issues in a case. Many representatives of the Venango County criminal justice system NLADA interviewed agreed that little was accomplished at these informal meetings. President Judge White formalized the process into a hearing before a Common Pleas Judge. One of the intentions of having formal pre-trial conferences was to try to have more cases reach a disposition without having to go to trial. If a plea agreement is reached during this hearing, the case will be scheduled for a re-arraignment at which time the court will accept a plea.

Trial & Sentencing

The Court of Common Pleas employs a “one-day/one-jury” philosophy in which a jury will be selected to sit for a specific day, unless, of course, the trial they are selected for is set for two or more days. All juries for the term are selected on the first day of the term and told which day(s) they will be needed to hear a case. If the attorneys in a case originally projected that the case would take only one day, and that case takes longer than expected, the trial is continued on into the night until its completion.

Because cases may be settled up until the time that a trial begins, the “stand-by” list was created to allow the court to maximize its schedule. Should the defendant in the scheduled trial accept a last minute plea arrangement, a case off of the stand-by list will be docketed in its place. Once again, the oldest case on the stand-by list is technically supposed to be chosen to fill in for the original trial, though certain interviewees raised issue that the choice of trials chosen off of the stand-by list appeared arbitrary. The District Court Administrator stated that her methodology for choosing cases off of the stand-by list was indeed to give preference to the oldest case, but circumstances prevent her from doing so in every instance. For example, if a case set for one day is settled prior to trial, the District Court Administrator will not set the oldest case if that case is scheduled for two or more days. Additionally, the District Court Administrator trial docketing decision is partly based on attorney availability (i.e., if an attorney on the case is already scheduled for a trial that day she obviously will not schedule another.) Finally, she does consult with the District Attorney regarding availability of victims/witnesses for trial.

Should a defendant be found guilty at trial, a sentencing hearing is scheduled. At a sentencing hearing, defense counsel is allowed to present mitigating evidence to try to influence the Common Pleas Judge’s sentencing decision. As would be expected, the county jail population has grown proportionally to the increase in cases. The annual commitments have risen 104% (from 651 in 1993 to 1,329 in 2001), while the average daily population has increased by 140.6% during the same period (from 65 people to 156.4 people). During this same period, people committed under a condition of sentencing increased approximately 56% (up from 279 in 1993 to 435 in 2001).

Juvenile Delinquency & Children and Youth Services (CYS) Hearings

The handling of children in the criminal justice system is different from that of adults. The process begins when the police file an allegation or complaint with the District Attorney's office. The District Attorney reviews the allegation and decides who should be brought to court, given a consent decree or put under supervision of the Court Services Department (which includes juvenile probation). Most juveniles are not detained pre-trial except in the most serious cases or cases in which a new crime was alleged to have happened while already on parole or probation. Defense counsel receives a copy of the allegation from the District Attorney's office, but does not contact the defendant until the District Attorney files a formal petition with the court (defense counsel also gets copies of the petition).⁴³ Juvenile Probation sends a list to the court notifying which cases will be heard on the next juvenile delinquency docket. On average, juvenile delinquency dockets are set 1.5 times per month, with each alternating month having either one or two dockets. There can be a significant gap in time between the filing of the allegation/petition and a final determination to bring the case to a full hearing, the cause of which may be due to the District Attorney needing more time to investigate the claims. Alternatively, the delay may be due to the rate at which cases are docketed by Juvenile Probation being less than the number of cases coming into the system (thus creating a backlog).⁴⁴

The children in CYS cases are represented by counsel at a dependency review hearing within 72 hours of being removed from a home by the Department of Children and Youth Services. In many instances, children are placed with foster families residing outside of Venango County. It is rare that the contract attorney speaks to the child in-person prior to the 72-hour hearing, though phone contact is made whenever possible. Defense counsel represents all children in a home with more than one dependant. The District Attorney's office is not involved in CYS cases.

After the initial dependency hearing, status hearings are set for every six months (sometimes less depending on the specific needs of a child) on one of the 18 Court of Common Pleas' CYS dockets scheduled each year. If appropriate, the contract attorney represents the child's interest in permanent placement hearings.

Post-Adjudication Actions

All defendants found guilty at trial are allowed to appeal that decision to a higher court. In the instance in which trial occurs at the District Court level, appeals are made to the Court of Common Pleas. Pennsylvania has two intermediate courts to hear appeals arising from cases

⁴³ The petition is also sent to the defendant instructing him or her to contact the contract indigent defense provider.

⁴⁴ Pennsylvania's speedy trial Rule 600 does not apply in juvenile cases. NLADA was told that the Venango County Court Supervision Services drafted a comprehensive policy and procedure plan to address these concerns at the request of Judge White, though no plan has been adopted as of this writing. While the concept of "swift justice," which speedy trial rules are meant to protect, is always important, it has heightened significance in the case of juveniles, who gauge time differently as a developmental matter. Thus, particularly with juveniles, effective rehabilitation requires the system to respond as quickly as possible.

tried in the Court of Common Pleas. In criminal cases and cases involving children and youth services, appeals are filed in Superior Court.⁴⁵

Probation/Parole & Gagnon Hearings

Venango County was one of only two counties to accept the Commonwealth's offer to take over adult parole and probation services in 1972. The Pennsylvania Board of Probation and Parole supervises adults who have been granted provisional freedom under a suspended sentence or released from jail/prison before the expiration of their sentence. When parolees or probationers are alleged to have broken the terms of their supervision they are brought to the Court to be judged whether their parole or probation privileges should be revoked. In Pennsylvania, these revocation proceedings are termed "Gagnon" hearings. Gagnon hearings are scheduled twice a month and are treated as an institutional assignment shift for the public defender staff. One public defender attends the hearings and represents all defendants that are without counsel. Many times the defendants at Gagnon hearings are former public defender clients, but there are some who are not former clients.

Compliance Hearings

At the close of a case, defendants are often subject to a series of fines and fees, in addition to restitution, as a condition of sentencing. In Venango County, indigent defendants are also assessed a \$50 public defender fee to offset the cost of representation. Once a month, a Compliance Docket is scheduled to review the status of a defendant's financial obligations to the court. During the compliance docket, Judges are allowed to waive fines and fees for discretionary reasons, but are not allowed to waive restitution charges. A public defender attorney represents defendants at compliance hearings because clients may be jailed for failure to pay, or failure to show a good faith effort to pay.

⁴⁵ Commonwealth Court hears appeals from decisions of state agencies and Court of Common Pleas involving the Commonwealth and local agencies, as well as original cases brought by or against the Commonwealth. (www.courts.state.pa.us).

Chapter IV Workload Analysis

The balance of this report represents NLADA's findings (Chapters IV-VII) and recommendations (Chapter VIII). Because much of the ACLU/NACDL report is dedicated to estimating the number of hours needed to adequately defend clients given the County's indigent defense caseload, NLADA took special care to study the workload issues in depth.

NLADA Workload Methodology

For comparison purposes, NLADA will determine the public defender workload, and thus appropriate office staff size, based on the same calendar year as the ACLU/NACDL consultant (2000). In doing so, NLADA will use the following methodology:

1. Determine number of available hours attorneys are paid to complete public defender work (work year);
2. Determine the number of public defender hours needed to staff institutional shifts for the courts;
3. Adjust the work year figure to account for institutional shifts;
4. Determine caseload;
5. Determine the number of cases disposed in institutional shifts;
6. Adjust caseload figures accordingly;
7. Determine the average number of hours needed to bring the average case of each case grade to disposition;
8. Multiply the average-hours-per-disposition figures by the appropriate adjusted caseload figure;
9. Divide the resulting sum into the adjusted work year.

Step 1: Public Defender Work Year Calculation

To calculate the public defender work year, we begin by determining the number of hours a full-time equivalent attorney (FTE) is paid to work per day. Venango County employees are paid to work an eight-hour day (or 40 hour week). Multiplying the 40-hour workweek by 52 weeks equals 2,080 hours per year. To establish available hours per attorney, one must then subtract from the 2,080 hours all paid holidays, allowable sick time or personnel time, and time for continuing legal education and other professional development opportunities such as attending professional association conferences.

The Venango County Court system is closed in observance of fourteen holidays per year.⁴⁶ Public defenders are classified as exempt employees. As such, they are allowed two-weeks vacation time each year⁴⁷ and three weeks of sick/personal leave.⁴⁸ Finally, all Pennsylvania attorneys are required to complete 12 hours of CLE credit each year.⁴⁹ Venango County also approves days to attend the Pennsylvania Public Defender Commission events each year.

Table 3-1 calculates the Venango County public defender work year for 2002:

	Calculation	Hours
A. Work Day		8
B. Work Year	(A x 5 x 52)	2,080
C. Holidays	(A x 14)	112
D. Vacation	(A x 10)	80
E. Sick/Personal Leave	(A x 5)	40
F. CLE/ Conferences	(A x 5)	40
G. Work Year	[B - (C+D+E+F)]	1,808 ⁵⁰

Step 2: Required Public Defender Hours to Staff Institutional Shifts

In Venango County, there are four institutional shifts that the public defenders are required to staff for the courts: Central Court, ARD Court, Compliance Court and Gagnon Hearings.

Central Court is scheduled for most Wednesdays during the year. In 2000, there were 49 Central Court dates. All three public defenders were required to be present at these hearings. Though the number of hours required to be present varies from week to week, most interviewees acknowledged that Central Court oftentimes runs all day. We calculated the required hours based on an eight-hour shift.

⁴⁶ New Year's Day, Martin Luther King Day, Presidents Day, Good Friday, Primary Election Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veteran's Day, Thanksgiving (2 days), and Christmas. *Venango County Policy for Exempt Staff, 1992.*

⁴⁷ Vacation time is based on length of services: Date of hire through five-years of service (two weeks); Five to ten-years of service (three weeks); Over ten-years (four weeks). *Venango County Policy for Exempt Staff, 1992.*

⁴⁸ Because an employee is not expected to use all of the available sick time, bereavement leave and/or other leave each year, NLADA has calculated the work year based on an employee using five such days.

⁴⁹ Though only twelve hours of CLE credit is required, oftentimes an attorney loses two-full days (16 hours) fulfilling the requirements.

⁵⁰ The ACLU/NACDL work year figure was 1,600 hours.

ARD Court is scheduled for once each month. Only one staff public defender is needed and, on average, the docket last one and a half hours. The resulting hours needed to cover the shift is 18 hours. Since coverage in 2001 rotated between the three public defenders, the 18 hours is divided by three in our calculations below (or six hours per FTE attorney per year.)

Once a month, a public defender is needed to staff Compliance Court. Again, the number of hours needed to staff this shift varies from month to month. Since Compliance Court can last all day, a public defender must be prepared to be away from his or her other duties for the entire day (12 months x 8 hours = 96 hours). As with ARD Court, Compliance Court only requires a single staff attorney to be present. Thus, the required annual institutional hours for an FTE public defender are 32 ($96/3 = 32$ hours).

A single public defender is required to staff Gagnon Hearings as well. These hearings are scheduled for twice a month and, generally, last six hours. Using the same methodology described above would result in 48 hours needed per FTE work year to cover parole and probation hearings. However, another adjustment must be made. The NLADA workload methodology requires that if institutional shifts are to be subtracted out of the FTE work year then all cases disposed in those hearings should be similarly removed from the public defender caseload.⁵¹ In 2000, public defenders represented 145 defendants at Gagnon hearings. Based on the fact that Gagnon hearings were scheduled 24 times in 2000 and estimated to have lasted, on average, six hours each, this means that public defenders spent 144 hours on Gagnon hearings that year (24 dockets x 6 hours = 144 hours). Thus, each Gagnon case took approximately one-hour to dispose. Unlike compliance or ARD hearings, parole and probation revocation hearings require an attorney to be well versed in the facts of the case, have investigated the allegations of the parole/probation officers, and have researched potential alternatives to incarceration. This cannot be accomplished while meeting your client at the hearing itself.⁵² One hour is not a sufficient amount of time to adequately represent clients at revocation hearings consistent with representation standards. Based on our knowledge and experiences, NLADA finds that 2-3 hours per case is a more realistic figure to provide adequate representation in revocation proceedings. We have used a 2.5-hour adjustment in our calculations.

Table 3-2 calculates the required Venango County public defender hours needed to staff institutional shifts:

⁵¹ The ACLU/NACDL workload methodology double-counts public defender hours in cases disposed at preliminary hearings. Case-weighting studies seek to determine the average amount of time the average public defender takes to bring the average case of a certain class to disposition. It is hard for attorneys to estimate how long a case disposed at a preliminary hearing takes in relation to cases that go into further court proceedings. Thus, the Delphi methodology employed by the ACLU/NACDL consultant often results in the average amount of time the average attorney brings the average case *that is not disposed at a preliminary hearing* to disposition. In essence, the ACLU/NACDL methodology treats every misdemeanor case as if none were disposed at preliminary hearings *in addition* to crediting the public defenders with the 832 hours needed to staff Central Court.

⁵² The NLADA site team conducted in-court observations of Gagnon hearings. It was quite apparent that the attorney had not met with every defendant and generally needed a significant amount of the courts time to discuss the case with the defendant.

Table 3-2 Public Defender Institutional Shift Hours (2000)		
	Calculation	Hours
A. Work Day		8
H. Central Court	(A X 49)	392
I. ARD Court	[(12 x 1.5 hrs)/3]	6
J. Compliance Court	[(A x 12)/3]	32
K. Gagnon Hearings	[(24 x 6 hrs.)/3] x 2.5	120
L. Sub-Total	(H+I+J+K)	550 ⁵³

Step 3: Adjusted Public Defender Work Year

To adjust the public defender work year to account for institutional shifts, we subtracted the institutional shift sub-total from the original work year figure (as demonstrated in Table 3-3):

Table 3-3 Adjusted Public Defender Work Year (2002)		
	Calculation	Hours
G. Work Year	[B - (C+D+E+F)]	1,808
L. Sub-Total	(H+I+J+K)	550
M. Adjusted Work Year	(G-L)	1,258

Step 4: Determine Caseload

NLADA went to considerable length to determine the public defender caseload in each of the years 1999-2001, including hand counts of public defender control cards, an independent analysis of the District Attorney case-tracking system, and hand tallies of court dockets. The Venango County public defender does not have a computerized case-tracking system. Rather, support staff personnel fill out a public defender control card for each new assignment. This manual system tracks basic client information (name, date of birth, address, phone number, etc.), complaint information (date, charges, co-defendant, etc.), and case information (arraignment date, trial date, disposition, etc.). These control cards are kept by defendant last name by year in a file cardholder in the office.

The manual system does not lend itself to easy statistical analysis for many reasons, the least of which is that the system requires hand tallies. Additionally, the cards do not list the grade of the offense (felony, misdemeanor, juvenile, etc.). Thus, a person determined to tally

⁵³ The NLADA calculation of hours needed to cover institutional shifts differs from that used by the ACLU/NACDL consultant for several reasons. For example, the ACLU/NACDL consultant bases his calculations on Central Court occurring 52 weeks per year, but a review of the court calendar reveals that it was scheduled for only 49 weeks in 2000. More importantly, the ACLU/NACDL report states that compliance hearings are set for one afternoon per week. A review of the court schedules for 1999-2002 indicate the compliance hearings are set for one day per month. A similar discrepancy was found in Gagnon hearings.

misdemeanor cases, but unfamiliar with Pennsylvania charging codes, would have to make occasional judgment calls as to whether a charge is a serious misdemeanor or a low-level felony. Accordingly, NLADA only conducted hand counts of those cards marked “bench warrant,” “revocation,” or some other well-marked and distinct case-type (i.e., extradition, post-conviction relief, etc.).

Due to the lack of a computerized PDO case tracking system and incomplete data the caseload analysis contained herein is based on information contained in the District Attorney’s database. Our review of their case-tracking data and interviews with those responsible for it indicated a high degree of uniformity in recording defense attorney names, grade of offense and pertinent events dates. The District Attorney Office uses the Prosecution Management System; an oracle-based case-tracking system employed in District Attorneys’ offices across the state. Because of the importance caseload plays in determining adequate public defender staff size, NLADA requested an electronic copy of pertinent data fields off of the District Attorney system.⁵⁴ Finally, NLADA requested copies of compliance court dockets to tally the number of cases public defenders handled in 2000. Table 3-4 sets out NLADA’s hand counts and compares them to the case counts set out in the ACLU/NACDL report for the year 2000:

⁵⁴ William Kresinki of the Venango County Management Information System office assisted in this task. Mr. Kresinki converted the aggregate data into Microsoft-Access database tables. Data fields included: Defense Attorney name, grade, arrest date, hearing dates, and charges, among others. All cases, including non-indigent defense cases that had an event date during the period 1999-2001 were included. NLADA linked the tables into a single database based on the system identification number uniquely identifying each case on each of the relational database tables. We also filtered out all multiple occurrences of system identification numbers based on the following criteria: in instances in which arraignment dates matched but had multiple charges, NLADA counted the case under the highest charge (i.e., a system identification number that referenced one felony and three misdemeanor charges were counted as one felony case). Given the available information this methodology comports as closely as possible with the National Center of State Courts case counting procedures. The Conference of State Court Administrators and the National Center for State Courts’ publication *State Court Model Statistical Dictionary, 1989*, instructs administrators to “[c]ount each defendant and all charges involved in a single incident as a single case (page 19).” (The methodology does not account for instances in which a single charging document may include more than one incident because the data does not reflect such occurrences.)

	ACLU	NLADA	Difference
Felony	86	100	14
Misdemeanor	500	369	-131
Revocation	117	145	28
Juvenile	34	29	-5
Direct Appeals	15	5	-10
PCR	0	2	2
Warrants	122	117	-5
Compliance	209	289	80
Other	17	11	-6
Summary	28	40	12
Extradition	0	1	1
Total	1,128	1,108	-25

NLADA believes that the ACLU/NACDL methodology slightly overstates the number of cases handled by public defenders in 2000.⁵⁵ More importantly, there are some significant differences in case counts by individual case-type that may have significant impact on workload (i.e. the misdemeanor count.)⁵⁶

Steps 5 & 6: Determine the Number of Cases Disposed at Institutional Shifts and Adjust Caseload Accordingly

Removing the number of cases disposed at institutional shifts is easiest for Gagnon Hearings and Compliance Court. Since public defenders staff the courtrooms for the hearings, and since all matters are resolved during those hearings, all revocation proceedings and compliance matters should be removed from the workload equation for staffing projections.⁵⁷

Similarly, accounting for ARD cases is relatively simple. Based on the District Attorney's case-tracking system, 32 public defender cases were set for ARD court in 2000 (all misdemeanors). This brings the total number of misdemeanor/summary cases to 388 (420 – 32 = 388).

⁵⁵ There may be several reasons why the NLADA and ACLU misdemeanor case counts vary. First, the public defender manual card system does not list dispositions. It is likely that the public defender office found a conflict of interest on a percentage of cases after they had been assigned to the office. Early withdrawals from cases most assuredly are not reflected in the office's assignment logs or card files. Conversely, the District Attorney case-tracking system does not have a field to note whether the attorney of record changed during the life of a case. As such, original assignments to the public defender office may have been overwritten. This same issue would arise for defendants who retained private counsel after initial determination of indigency.

⁵⁶ For the duration of this analysis, NLADA will collapse the "misdemeanor," "summary," and "other" cases into a single "misdemeanor/summary" category.

⁵⁷ The time has been accounted for in Step 2 of this analysis.

Accounting for Central Court time is more complex. Approximately 32% of all public defender misdemeanor/summary cases are disposed of at Central Court through entering guilty pleas. Once again, no felony pleas are accepted at Central Court. Thus, the 388-misdemeanor/summary count must be multiplied by 0.68 to properly offset the 392 hours needed to staff Central Court and removed from the work year in Step 2 (Table 3-2, above). In doing so, one is left with 264 misdemeanor/summary cases on which to project staffing needs.

Another measure must be taken into account before the workload analysis can continue. According to national standards, every misdemeanor case that survives District Court and is bound over to Common Pleas Court must be counted as a “new” case for workload purposes. As such, misdemeanor/summary cases must be counted once at the District Court level (388) and once at the Common Pleas level (264). For workload analysis purposes, the misdemeanor/summary caseload in 2000 was 652.

Finally, NLADA encountered some problems with bench warrant cases. Nationally, it is accepted case-counting procedure to administratively close bench warrant cases after a determinate period of time (usually 60-90 days). If a defendant is picked up on a bench warrant after that time period has elapsed, it should be counted as a “new” case. The reason for this is that after ninety days, a public defender may essentially have to start over in preparing the case (including finding witnesses, re-investigating, etc.) Venango County does not follow this accepted norm. Cases are kept on active status (i.e., “open”) until a defendant is returned to the system. No statistics are kept on the length of time elapsed on the average bench warrant case from issuance to capture. Thus, NLADA had to rely on its expertise to determine how to “count” bench warrant cases. After some follow-up interviews, it appears that the vast majority of defendants picked up on bench warrants come back to the criminal justice system within the 60-90 day period, and therefore the cases should not be considered “new” cases.⁵⁸

Table 3-6 shows the adjusted public defender caseload for 2001:

	NLADA
Felony	100
District Court: Misdr./Summary	388
Common Pleas: Misdr./Summary	264
Juvenile	29
Appeals	7
Total	788

⁵⁸ Criminal justice representatives we interviewed stated that the courts try to give bench warranted defendants a hearing as soon as possible after they return to the court system. In small rural counties it is often the case that defendants miss court appearances due to transportation issues, a desire not to miss a day of work, or non-receipt of proper notification of the court hearing, among others. In such circumstances, they may be quickly identified and returned to the system. NLADA is receptive to any arguments that a percentage of the bench warrant cases should be counted as “new” for workload purposes.

Step 7: Calculate Average Hours-per-Disposition Figures

The best way to calculate public defender hours-per-disposition figures is to conduct a case-weighting study. The case-weighting methodology consists of having public defender attorneys keep daily time records by case-type and activity over the course of seven to 13 weeks. The cumulative aggregate time by case-type is then divided by the number of disposition occurring during the time study for the same case-types. Limited resources and time preclude such a study being done for Venango County. In the absence of a formal case-weighting study, hours-per-disposition figures often must necessarily rely to a large extent on the estimates of public defender lawyers (as in the ACLU/NACDL report). Unfortunately, such a methodology can serve to institutionalize bad practices. That is, if a public defender estimates that the average felony case that survives preliminary hearing takes five hours to dispose due to the demands placed on them by the criminal justice system, crushing caseloads, and/or non-compliance with recognized criminal defense performance standards (i.e., not visiting detained defendants prior to preliminary hearing), the estimated hours-to-disposition figure may not be an accurate account of what is needed to ensure adequate representation.

National caseload standards provide a useful reference point for those estimates. The only national source that has attempted to quantify a maximum annual public defender caseload is the National Advisory Commission (NAC), established to develop standards for all components of the criminal justice system pursuant to the direction of the Attorney General's Crime Commission in 1967, which published its standards for indigent defense in 1973. In that report, Standard 13.12 on Courts states:

The caseload of a public defender attorney should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.⁵⁹

By dividing the national caseload standards by the Venango County work year, NLADA developed our own hours-per-disposition figures and compared them with the ACLU/NACDL estimates (Table 3-7, below).⁶⁰

⁵⁹ National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, *Courts* (Washington, D.C., 1973), p. 186.

⁶⁰ Since the national standards do not adjust for any institutional shifts, NLADA used the Venango County base work year figure of 1808 hours to conduct this part of the analysis.

	NAC Standard	1808 WrkYr./Standard	ACLU/NACDL Est.
Felony	150	12.05	12.75
Misdemeanor/Summary	400	4.52	3
Juvenile	200	9.04	7.06
Appeal	25	72.32	30

Though the estimated felony hours-per-disposition is within an acceptable margin of error, NLADA believes that the ACLU/NACDL misdemeanor/summary, juvenile and appellate hours-per-disposition estimates indicate quality issues with the public defender performance on these cases. For the balance of the workload analysis, the NLADA hours-per-disposition figures will be used.

Before moving on an important qualification must first be noted. NAC standards do not include a separate standard for homicide cases. Case weighting studies and local standards that have been developed since the NAC standards limit caseloads to between 2 – 5 homicides per attorney/per year. The District Attorney’s case tracking data do not categorize homicides as a separate grade from other felonies. Without any additional information on the frequency of homicides, we did not include them in the caseload analysis. If the PDO regularly handles two or more homicides per year, this analysis should be adjusted accordingly.

Step 8 & 9: Multiply the Hours-per-Disposition Figures by the Adjusted Caseload Figure and Divide the Resulting Sum into the Adjusted Work Year.

At this point, projecting staffing needs is a matter of multiplying the hours-per-disposition figure by the adjusted caseload and dividing the resulting sum into the adjusted workload figure (as depicted in Table 3-8, below):

	Caseload	Hours-Per-Disposition	Hours per Year
Felony	100	12.05	1205
Misdemeanor/Summary	652	4.52	2947
Juvenile	29	9.04	262
Appeal	7	72.32	506
Total Hours			4920
Venango County Adjusted Work Year			1258
Projected Public Defender Attorney Staffing			3.91

Support Staff

The role of support staff (investigators, social workers, paralegals, legal secretaries, and office managers) in public defender offices has taken on more importance over time both in terms of quality and cost-effectiveness. Properly trained investigators, for example, can find and interview witnesses, visit crimes scenes and other critical tasks pertinent to adequate

representation that would otherwise have to be conducted by a busy attorney. Professional investigators may in fact be better skilled for these tasks and, generally, are compensated at a lower rate than attorneys. Moreover, the use of investigators reduces the inefficiencies and costs that arise when an attorney is forced to withdraw from a case because his investigation has made him a witness. Similarly, professionally trained social workers can have a great impact on the overall cost of the criminal justice system by finding treatment for defendants with mental handicaps and/or substance abuse problems who otherwise may be committed to the jail at greater cost to the county;⁶¹ Such efforts are also recognized as improving the safety of the community, by addressing client problems which would otherwise contribute to an increased risk of recidivism.

Both the ABA and NLADA standards make clear that support services are a vital part of adequate representation. Standard 5-4.1 of the ABA Defense Services Standards states: “The legal representation plan should provide for investigatory, expert, and other services necessary to quality legal representation. These should include not only those services and facilities needed for an effective defense at trial but also those that are required for effective defense participation in every phase of the process.” Other national standards go further than the ABA standard in quantifying appropriate support staff levels. The National Study Commission on Defense Services directs that “defender offices should employ investigators with criminal investigation training and experience. A minimum of one investigator should be employed for every three staff attorneys in an office. Every defender office should employ at least one investigator.”⁶² NLADA bases our staffing analysis on The National Study Commission on Defense Services recommended guidelines:⁶³

- One full time Legal Assistant for every four FTE attorneys
- One full time Social Service Caseworker for every 450 Felony Cases
- One full time Social Service Caseworker for every 600 Juvenile Cases
- One full time Social Service Caseworker for every 1200 Misdemeanor Cases
- One full time Investigator for every 450 Felony Cases
- One full time Investigator for every 600 Juvenile Cases
- One full time Investigator for every 1200 Misdemeanor Cases

Based on the legal secretary-to-attorney ratio noted above, the Venango County Public Defender Office should have employed 0.92 FTE legal secretaries in 2000. Table 3-9 (below)

⁶¹ For example, national indigent defense standards require attorneys to present the sentencing judge with researched, dispositional alternatives. Social workers can do much of the work faster (due to their experience) and at a lower cost.

⁶² *National Study Commission on Defense Services, Guidelines for Legal Defense Systems in the United States, 1976, 4.1, Task Allocation in the Trial Function: Specialists and Supporting Services.*

⁶³ Numeric guidelines for professional business management staff are not in the National Study Commission guidelines, but they do comment that “professional business management staff should be employed by defender offices to provide expertise in budget development and financial management, personnel administration, purchasing, data processing, statistics, record-keeping and information systems, facilities management and other administrative services if senior legal management are expending at least one person-year of effort for these functions or where administrative and business management functions are not being performed effectively and on a timely basis.”

uses the caseload-based guidelines to show the number of investigators and social workers needed in 2000:

	Caseload	Social Worker	Investigator
Felony	100	0.22	0.22
Misdemeanor/Summary	652	0.54	0.54
Juvenile	29	0.05	0.05
Projected Public Defender Support Staff		0.81	0.81

Finding #1: Venango County has Historically Understaffed the Public Defender Office

The ACLU/NACDL consultant concludes: “Based upon that minimal number of hours (4,941) estimated by the Public Defenders themselves as required to handle the caseload, it would be impossible for two full-time defenders alone to meet the needs of the Court system in Venango County.”⁶⁴ Based on this finding, the consultant recommends: “At a minimum, the Public Defender office staff should include a full-time investigator, additional legal staff, and a part-time or consulting sentencing advocate or social worker.”⁶⁵ The consultant does not give a specific number of lawyer positions he felt were needed to provide adequate representation.

A June, 2001 letter from the ACLU and NACDL to the County states that the following measures must be taken to bring Venango County into compliance with national standards and the state and federal Constitutions: 1) fund and employ six full-time public defenders at salaries equal to their counterparts in the District Attorney’s office; 2) fund and employ one full-time investigator; and, 3) fund and employ one full-time social worker.⁶⁶

The NLADA attorney staffing projections were based on calendar year 2000 workload considerations. During that year, Venango County had three part-time public defenders (or 1.5 FTE). Based on the research, the staffing level was inadequate to manage the caseload. Even taking into account the fact that the three public defenders generally worked the equivalent of a full-time attorney, the office was still understaffed (3 to 3.91). The understaffing is more glaring when one considers the extraordinarily high attorney staff turnover rate the Chief had to deal with during this time. Moreover, the attorney understaffing came at a time when the office was

⁶⁴ *Preliminary Assessment*, p. 7.

⁶⁵ *Ibid.*, “Recap of Recommendations,” p. 15.

⁶⁶ Letter to Venango County Board of Commissioners from ACLU and NACDL, June 4, 2001. Other demands were made besides these staffing standards that will be discussed later. The county has estimated that it would need to raise taxes by 10% in order to come up with the \$400,000 needed to meet the ACLU/NACDL demands. This is in addition to building or renting a new office space to house the larger public defender staff. The ACLU/NACDL demands would also make the public defender office one of the largest government departments in Venango County, with a staff size exceeding the District Attorney’s staff, the Judges’ staff, or the Commissioner’s staff.

not in compliance with national support staff guidelines. In 2000, the public defender office functioned with one support staff that served as a hybrid office manager, legal secretary and clerical staff. Furthermore, the support staff position experienced similar turnover problems in that year.

NLADA has subsequently applied the same methodology to the 1999 and 2001 public defender caseloads. In 1999, Venango County had three part-time public defenders covering a caseload requiring 3.5 full-time attorneys. Attorney staff and caseload that year suggest that the office also needed at least one full-time legal secretary, a part-time investigator, and a part-time social worker. In 2001, when the caseload required 3.67 FTE attorneys, Venango County had only two full-time attorneys on staff for most of the year. Though the county should be commended for hiring full-time attorneys,⁶⁷ a full-time office manager and a full-time paralegal/investigator, it should be noted that the latter functions almost exclusively as a paralegal. Venango County public defender office still does not employ a social worker.

Looking forward, Venango County has shifted more and more cases to the private bar and hired another full-time public defender (as noted in Chapter II). Basing 2002 staffing needs on calendar year 2001 caseload numbers results in a FTE requirement of 3.5 attorneys.⁶⁸ Support staff requirements remain as one full-time paralegal, a 75% FTE investigator and a 75% FTE social worker, in addition to the full-time office manager.

⁶⁷ Standard 5-4.2 of the ABA Defense Services Standards states: “Defense organizations should be staffed with full-time attorneys. All such attorneys should be prohibited from engaging in the private practice of law.”

⁶⁸ For reasons described more fully in Chapter V, if the County adds an additional attorney, it should permit the Chief Defender to serve as the .5 attorney by having a reduced caseload. Many similarly situated small defender offices permit the Chief Defender to carry a reduced caseload in order to fulfill management and administration responsibilities, including staff supervision.

Chapter V

The Venango County Public Defender Office

As earlier stated, indigent legal representation in the County is provided through a mixed system of representation, with many of the cases handled by a public defender agency. This chapter reviews the operations in that office.

Management

As is true of any organization, sound management practices and competent leadership are required for a public defender organization to be able to provide services efficiently and cost effectively. Moreover, even in the smallest of defender offices, leadership and management are essential to support the provision of legal services in an ethical, consistent and constitutional manner. Public Defender leaders must model zealous representation, inspire it and support it with appropriate management processes and resources. At least partially due to the significant understaffing of the agency, there currently is no formalized management structure in the public defender office. The lack of an adequate management structure is having a negative impact on operations, including the quality of representation, the ability to document workload and the capacity to make accurate budget projections or secure adequate resources.

Although NLADA was informed that extensive written policies and procedures based upon national standards for defender services had been developed and implemented in the Venango Public Defender Office (PDO) in the past, at the time of our visit, they were no longer in effect.⁶⁹ Indeed, with one exception,⁷⁰ the office currently has no written policies or procedures. The need for particular policies will be addressed throughout this chapter. Suffice it to say here, that the Chief Public Defender should begin immediately to establish policies and procedures (and processes for reviewing, modifying and implementing them) in the areas of Caseflow/Management Information Systems, Personnel, Training & Supervision, Budget and Resource Development, Public Education, Community Service & Systemic Improvement and Legal Representation.⁷¹ A helpful list of many types of defender office management policies that should be implemented is contained in the Appendix A.⁷²

Caseflow/Management Information Systems

As noted in Chapter IV, the public defender office has no computerized case-tracking system. The PDO could not provide accurate projections of the number of cases currently pending or the number of cases closed over a given period. It is inconsistent with national standards and good management practices for the PDO to rely on the courts or district attorney to

⁶⁹ NLADA representatives spent time trying to locate the policies to review as part of this evaluation and to make them available to the current defender chief but were not able to find them.

⁷⁰ The office has a written document that sets forth eligibility guidelines.

⁷¹ There are some County policies that apply to the PDO, such as employee classification (exempt and non-exempt employees, for example) and the amount of leave that employees receive. The PDO has wide latitude in developing its own operational policies, procedures and performance measures.

⁷² National Institute of Law Enforcement and Criminal Justice, US Department of Justice, *Evaluation Design for Public Defender Offices* (1977).

provide important statistical information about the office to either the county overseers or the general public.

An important key to effective administration of a public defender office is 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 should be allowed to update a file electronically to reflect developments such as continuance dates, disposition, and method of disposition (e.g., bench, jury, plea). The goal is to ensure the Chief that by the end of the year disposition information is available on: number of assignments by case type by attorney; number of dispositions by case type by attorney; the number of pleas, trials, etc. conducted by each lawyer; and the length of time from assignment to disposition of the case. Moreover, data fields should be developed to track the length of time indigent defendants were detained in jail pre-trial, and whether or not they were remanded back to jail for failure to pay court fines and fees after the disposition of the case. Adequate information systems are necessary to provide relevant data to the County Board of Commissioners in support of budget and staffing requests.

A master calendar is also a critically important part of supervision. It is the tool that allows management to know exactly where every case and every lawyer is or should be on a daily basis, and flags important upcoming dates.⁷³ It allows a supervisor to know what cases must be covered when someone is on vacation. It allows a Chief to have a better picture of both the quantity and quality of work performed by an assistant public defender.

Technology is a tool that is only as useful as the underlying policies and procedures that support the maintenance, compilation and use of accurate data. The PDO needs to establish policies and procedures for case flow management that ensure that adequate files are maintained uniformly and identify what and how information is to be tracked electronically. The policies should contain caseload limitations, including some mechanism for weighting cases that will more accurately reflect workload.⁷⁴ They should include a single definition of a case (optimally in conjunction with the District Attorney's Office and the Courts, so that the entire system would be able to base its reports and projections on the same information)⁷⁵ and set forth clear guidance on when and how cases should be closed.

At the time of the site visit the current PDO office staff already had identified inadequacies in tracking cases and maintaining accurate case information and were working to develop better office systems. Their work needs to be supported with technology and the greater involvement of the Chief Defender to ensure that the workflow processes they develop are consistent with and supported by substantive goals and policies, and can be maintained consistently and efficiently.

⁷³ This is especially important to alert attorneys to filing dates for appeals (to be discussed below).

⁷⁴ The process utilized in this report to make staffing assessments should provide a useful starting point for developing workload policies and evaluating on-going staff needs.

⁷⁵ The PDO should consider adopting the case definition used by many defender and prosecutor offices and the National Center for State Courts, which is a charge or set of charges against a single individual arising from a single incident. This is the definition that was employed in the workload analysis contained within this report. See p. 22 & note 54, *supra*. A model for joint weighted caseload planning has been presented at two U.S. Department of Justice conferences. See "The Tennessee Weighted Caseload Study," in *Improving Criminal Justice Systems Through Expanded Strategies and Innovative Collaborations*, www.ojp.usdoj.gov/indigentdefense/icjs.pdf; and "Tennessee Weighted Caseload Study," in *National Symposium on Indigent Defense 2000: Redefining Leadership for Equal Justice*, www.ojp.usdoj.gov/indigentdefense/symposium.pdf.

Personnel

Clear personnel policies and practices are a critical component of attracting and retaining qualified staff, and are a key element of ensuring competent and efficient service delivery. In addition to helping morale by making staff feel they will be fairly treated, sound personnel practices can provide significant assistance in preventing the unnecessary expenditure of administrative resources caused by excessive turnover or avoidable litigation. The PDO should develop formal personnel policies that include, among other topics, procedures governing staff hiring, and detailed job descriptions that are sufficient to inform applicants and employees what is required of them as well as to form the basis of an employee performance evaluation system. The Chief Public Defender indicated that he worked with County officials to expand the recruitment area during the last attorney hiring cycle. He may wish to further expand recruitment efforts by utilizing many of the free job posting opportunities that exist on the Internet and in educational institutions. The relatively close proximity of several colleges or universities to the County provide an opportunity to consider the economical option of recruiting volunteers to assist in investigations and legal research (at least during the summers) as do many PDOs across the country.

Training & Supervision

The ABA's *Defense Services* Standard 5-1.5 states the "[t]he legal representation plan should provide for the effective training, professional development and continuing education of all counsel and staff involved in providing defense services. Continuing education programs should be available, and public funds should be provided to enable all counsel and staff to attend such programs." Outside of the 12 hours of required continuing legal education, there is no on-going training or professional development in the Venango County Public Defender Office. The PDO currently has no process in place for routinely assessing or addressing the training needs of staff. New employees begin work without the benefit of a structured orientation program or entry-level training. In short, identified staff training needs have gone unmet.

Although supervision can provide an important additional opportunity for training, supervision in the office is sporadic, at best. Although the defender chief stated he monitored the assignment of cases to ensure that attorneys' training, experience and skills were appropriate to the seriousness of the charges, evidence gathered during the NLADA site visit revealed serious defects in that process.⁷⁶ 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."⁷⁷

The PDO should establish policies consistent with national standards for training and supervision that provide for orientation of new employees, entry-level training and on-going

⁷⁶ For example, the evaluation team witnessed one of the newly hired attorneys (without previous criminal law practice experience) handling the preliminary hearing, unsupervised, in a vehicular homicide case.

⁷⁷ *Guidelines for Legal Defense Systems in the United States*, National Study Commission on Defense Services, Guideline 5.4.

training and supervision. The Chief Public Defender should develop a performance evaluation process that provides for review and assessment of performance at regular intervals, and includes a process for regularly evaluating training and other staff needs. The evaluation process should include the development of individualized performance plans that identify resources for meeting training and other performance needs. It should include a probationary period for all employees, including attorneys, and should provide clear guidance on what performance is required in order to satisfactorily complete the probationary period.

The Chief Public Defender should have regularly scheduled individual supervisory meetings with attorneys to review cases and practices, and give guidance on strategies and tactics.⁷⁸ Supervision should include case/file reviews, in-court observation, and an opportunity to co-counsel a trial with the Chief Public Defender or other senior attorney (when the staffing levels so permit). The public defender chief should also have (group) staff meetings to exchange information, strategies and ideas about cases, and policies and procedures and to provide in-house training opportunities. The Chief Public Defender should avail himself of no-cost or low-cost opportunities to seek out training and other resources for his staff.⁷⁹

Budgeting/Resource Development

One of a public defender manager's most important functions is to effectively advocate for the resources needed to provide adequate representation to its clients. Unless and until the time arrives in which the Commonwealth of Pennsylvania assumes its responsibility for providing funding for the provision of indigent legal services, the Chief Public Defender's ethical duty to control caseloads requires him to advise the County and Courts when this is not possible and inform them of the resources required to provide competent representation.⁸⁰ Moreover, as stated previously, the Chief Defender must have policies and procedures in place to respond to caseload increases, including, in appropriate circumstances, refusing further assignments when well-documented caseloads reach levels that prevent representation consistent with attorneys' ethical and constitutional obligations.⁸¹

The necessity for an effective management structure, and the consequences of the failure to have one, is perhaps nowhere more apparent than in the area of budgeting and resources. Competent counsel requires attorneys with appropriate training, manageable caseloads and

⁷⁸ The frequency and duration of the meetings should be determined by, among other things, the training, experience and skill level of each attorney. An entry level attorney with no criminal law experience may initially need to check in with a supervisor quite frequently, even daily, if only briefly.

⁷⁹ For example, the Chief can visit the public calendar on the NLADA web site (www.nlada.org), on which defender trainers from anywhere in the country may announce training events. The web site also provides information on NLADA's and other national organizations' training activities.

⁸⁰ National Study Commission on Defense Services, Guideline 5.1, 5.3; ABA Defense Services Standard 5-5.3; ABA Defense Function Standards, 15 and 4-1.3(e); National Advisory Commission on Criminal Justice Standards and Goals, Standard 13.12; Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services, Guidelines III-6, III-12; Standards for the Administration of Assigned Counsel Systems, 4.1,4.1.2; ABA Counsel for Private Parties Standards, 2.2 (B) (iv).

⁸¹ *Id.*

access to investigators, experts and other services. In order to effectively and empirically document the resources necessary to accomplish this, the PDO must have substantive policies that define acceptable performance, financial information sufficient to determine and reasonably forecast the costs of performance, and workload information sufficient to determine when there are impediments to meeting performance requirements. In addition, the Chief Defender must have the ability and the inclination to put the information together in an understandable and persuasive manner to educate County officials who may not have his expertise concerning the prerequisites of competent representation. Lacking many of these requirements, the Chief Defender incorrectly assured the County that two full-time defenders could handle the burgeoning caseload.

Accordingly, in addition to the case management and other policies and practices discussed elsewhere in this chapter, the PDO must establish policies concerning the use of resources in case preparation, including legal research, investigative resources and expert services. The PDO should ensure that its data collection is a sufficient basis upon which to make reasonable forecasts regarding future resource needs.

Public Education, Community Service & Systemic Improvement

Defenders should contribute to the community's understanding of the criminal justice process and the defender role and seek to improve the criminal justice system. A Chief Public Defender should be active in civic and community organizations that may affect the office or its clients, and should encourage and be available for on-going dialogues with other justice system leaders.⁸² Even small public relations projects such as developing a brochure explaining the office, its location, and its availability to the indigent accused, with phone numbers and a hot-line, would help build awareness and confidence in the client community.

NLADA representatives were consistently met with concerns about the current Chief Public Defender's perceived lack of connection with and availability to the Venango County community. Some of these concerns might be addressed by the Chief Public Defender playing a lead role in organizing Criminal Justice Coordinating Council meetings (discussed in Chapter VII, *infra*) or simply taking the initiative to meet regularly before or after court hours with other Court and County officials, clients and staff.⁸³ The Chief Public Defender should also seek out opportunities to speak at schools and other public gatherings regarding the role of the office and its importance in helping maintain public safety and fairness in the criminal justice system. These important aspects of the job cannot always be accomplished on a 9:00 a.m. - 5:00 p.m. schedule.

⁸² National Study Commission on Defense Services, Guideline 5.13 ("Role in the Community and the Criminal Justice System"). The ABA's *Ten Principles of a Public Defense Delivery System* directs that "Public defense should participate as an equal partner in improving the justice system" (in Principle 8).

⁸³ For instance, many of the people we interviewed were troubled by the unavailability of the public defender office, and the chief in particular, before 9:00 a.m. or after 5:00 p.m. Though indigent defense attorneys should be appropriately compensated and attorneys should not be expected to work excessive hours as a means of dealing with case overload, an attorney's obligation to his clients and community usually requires flexibility in his work schedule.

Attorney Performance

The PDO has no policies or procedures governing representation. The lack of clear performance expectations in this area, combined with inadequate training, supervision and other managerial structures produces inadequate representation, as explained below. The Chief Public Defender should make the development of practice standards and policies, and establishing mechanisms for implementing them, a priority.⁸⁴

Attorney-Client Communication

The public defender has an obligation to provide “zealous and quality representation to their clients at all stages of the criminal process.”⁸⁵ A critical part of quality representation is to keep the client informed.⁸⁶ Communication between clients and attorneys is especially critical during the initial stages of the case. ABA Defense Services Standard 4-2.1 states that “[e]very jurisdiction should guarantee by statute or court rule the right of an accused person to prompt and effective communication with a lawyer.” Affording access to counsel is especially important for those who are detained pre-trial.⁸⁷

Almost without exception, criminal justice representatives interviewed believe that public defender attorneys are not meeting with the majority of clients until the morning of Central Court. These assertions were buttressed by NLADA’s observation of Central Court, where it was apparent that public defender attorneys had not discussed cases with many of the detained defendants before the court date.⁸⁸ Though out-of-custody defendants share partial responsibility

⁸⁴ A suggested tool that the PDO may wish to adopt in setting performance expectations for trial attorneys is the *Performance Guidelines for Criminal Defense Representation* (NLADA, 1995), a project that took ten years to complete, and have been formally implemented in many other jurisdictions. 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 Venango County could be used as a guidepost against which to measure trial attorney performance.

⁸⁵ NLADA’s *Performance Guidelines for Criminal Defense Representation*, Guideline 1.1; ABA Defense Function Standards, 4-1.2 (“to serve as the accused’s counselor and advocate with courage and devotion and to render effective, quality representation”).

⁸⁶ *Id.*, Guideline 1.3(c); ABA *Criminal Justice Standard* 4-3.8(a) (“Defense counsel should keep the client informed of the developments in the case and the progress of preparing the defense and should promptly comply with reasonable requests for information. (b) Defense counsel should explain developments in the case to the extent reasonably necessary to permit the client to make informed decisions.”)

⁸⁷ ABA *Criminal Justice Standard* 5-8.1(c): “An attorney or representative from the appropriate program should be available to respond promptly to a person in custody who requests the services of counsel.” *See also* ABA *Criminal Justice Standard* 5-8.1(b): “Custodial authorities should provide access to a telephone, the telephone number of the defender, assigned counsel or contract for services program, and any other means necessary to establish communication with a lawyer.”

⁸⁸ Additionally, attorneys for the ACLU and NACDL have provided NLADA with a listing of complaints they have received from defendants under the supervision of the Jail Warden. The majority of these complaints allege that the Chief Public Defender and his staff fail to meet with defendants and keep their clients informed of the progress of their case.

for any failure to meet prior to preliminary hearing, it is the sole responsibility of defense attorneys to interview in-custody defendants before court. Each of the several clients interviewed at the jail also expressed concern about the lack of attorney communication.

NLADA sought to conduct an independent assessment of Venango County jail visitor logs to determine the factual basis for the claims of poor attorney/client contact.⁸⁹ Although there are limitations to the conclusions that can be drawn from the data, at a minimum it can be stated that an attorney never sees the majority of clients during their incarceration. In 1999, public defender attorneys made 77 visits to the jail. Each visit lasted, on average, 38 minutes. The following year, the combined public defender felony and misdemeanor caseload increased by approximately 5.26% (from 494 to 520), and the frequency of public defender jail visits increased by 46.75% (from 77 to 113). Though the duration of each visit decreased slightly (from 38 minutes in 1999 to 35 minutes in 2000), the total time spent by public defender attorneys in the jail increased by 32.83% (from 2,955 to 3,925 minutes).

The year Sharpe resigned as Chief Public Defender (2001), public defender attorneys saw their felony/misdemeanor caseload increase from 520 to 557 cases (an increase of 7.12%). This caseload increase was matched by a decrease in jail visits by public defender attorneys of more than -21% (down from 113 to 89). Though attorneys stayed at the jail approximately 11 minutes longer each trip in 2001, overall, public defender attorneys spent less time with clients in jail in 2001 than the previous year despite serving more clients.

The year 2001 also coincided with an increase in trials (from 14 to 19) that generally requires more attorney/client consultations.⁹⁰ It is important to note that in 2001 the Public Defender Office hired a full-time paralegal/investigator who made frequent visits to the jail (60 visits between April and December at an average of 40 minutes per visit). Many of these trips were made together with public defender attorneys, making it difficult for us to determine with accuracy whether her visitation was to meet different clients. Still, though support staff can be effectively used to augment attorney/client contact, they should never serve as a replacement for that contact because they are not trained or educated as attorneys and therefore cannot, for example, give legal advice.

Investigations, Legal Research and Motions Practice

NLADA's Performance Guideline 4.1(a) states that "counsel has a duty to conduct an independent investigation regardless of the accused's admissions or statements to the lawyer of facts constituting guilt. The investigation should be conducted as promptly as possible." A

⁸⁹ This entailed manually recording visits by contract counsel, public defender attorneys and staff, including the date and length of visit onto a Microsoft Excel spreadsheet. Pivot tables were created for the analysis of the years 1999-2001. Because of the difficulty of separating out private from indigent defense cases, contract counsel was eliminated from the analysis.

⁹⁰ NLADA was not able to effectively tie the jail case-tracking system to the district attorney case-tracking system to determine whether there was an increase or decrease in the number of indigent defendants detained pre-trial. Obviously, this would be a key piece of data needed before drawing conclusion as to whether or not the decrease in attorney visitations correlates to inadequate representation. Having said that, more defendants are being detained pre-trial each year (see Chapter VII) and it is the perception of many criminal justice representatives in Venango County that the majority of these detainees are indigent.

similar standard has been adopted by the ABA.⁹¹ It is a duty innately connected to the integrity and fairness of criminal case outcomes and the protection of the innocent. Until the spring of 2001, the public defender office did not have any professional support staff to assist in investigations. Although a paralegal/investigator position has been added since then, the employee did not have previous investigative experience and no investigative training has been provided. The staffing, caseloads and case file reviews make it impossible to conclude other than that important investigation is not being conducted, and that the level of services in this regard is often not consistent with adequate representation.

Evidence of a vigorous motions practice or adequate legal research was similarly found lacking. The most frequent motion contained in the file reviews was a motion to compel discovery. Although the paralegal expressed both an interest and desire to assist the attorneys by conducting legal research consistent with her paralegal training, the overwhelming workload simply does not permit her to take the time to do so in addition to her many other duties. While there certainly was evidence of some appropriate casework, including acquittals, the file review and observations, particularly when combined with the inadequate training and supervision, raised concerns about an inappropriately low incidence of substantial legal research and motions practice.

Sentencing

Effective representation at sentencing requires counsel to research and present reasonable alternatives to incarceration to the sentencing judge.⁹² Interviews and file reviews raised concerns about the extent to which the PDO is meeting this obligation. One of many expressing concerns in this area, the chief public defender estimates that more than half of those charged have either drug addictions, mental illnesses, or both. He attributes an inability to seek alternatives placements to a lack of staff.

While inadequate staff surely contributes to the problem, the lack of clear performance expectations regarding attorney practice also has an impact. Moreover, even if the staffing pressure is reduced by the addition of a social worker, as this report recommends, the ultimate responsibility for providing investigating sentencing alternatives remain with defense counsel. The PDO should develop policies and practices in line with these obligations.⁹³ In many public defender offices, the chief public defender takes the initiative to establish relationships with community-based service providers, to routinize and expedite the assessment, referral and

⁹¹ *ABA Defense Function Standard 4-4.1(a)*: “Defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty.”

⁹² Performance Guidelines for Criminal Defense Representation, Guidelines 8.1-8.7; *ABA Defense Function Standard 4-8.1*.

⁹³ By all accounts, Judge White is viewed as one of the most knowledgeable criminal justice system officials in the County on the issue of available alternatives to incarceration for individuals who have mental illnesses or drug addictions, for example. Nevertheless, Judge White’s commendable interest and education in this regard does not relieve defense counsel of the duty to be similarly educated.

placement of clients in appropriate services, and to reduce correctional costs and improve community safety.⁹⁴

Appellate Representation

All national standards recognize the importance of protecting a defendant's right to appeal as part of the ethical duties of defense counsel.⁹⁵ Despite this, one interviewee called appellate representation the "soft underbelly" of the criminal justice system in Venango County. Many others concurred that direct appeals are not aggressively pursued, and that there were many instances of public defender attorneys not perfecting appeals within the timelines set out by the court.

Although NLADA was not able to review the case files for every client found guilty at trial nor consult with those clients, the concerns raised in the interviews were compounded by some very troubling statistics. In 1999, the public defender office filed eight direct appeals with no timelines being missed. In the two subsequent years, only five direct appeals were filed in each year. While two appeals were dismissed in 2000 for failure to meet timelines, public defender attorneys failed to perfect appeals in the required time in three instances in 2001 (or in 37.5% of the direct appeals).

These alarming statistics, combined with the significant training, supervision and management development that needs to be done by the office concerning trial practice alone suggest that either the PDO needs to have at least one attorney who has the experience, skills and interest in handling appeals or that perhaps the County should consider contracting appellate work out to an interested, qualified attorney(s). Whether appellate representation is provided through a contract system or within the PDO, appellate practice standards and policies should be established to support the provision of competent representation. Moreover, even if appeals are handled outside of the PDO, the PDO must establish policies and procedures for ensuring that clients are routinely advised of their appellate rights, and that adequate case documentation exists to be passed on to the appellate attorney.

Finding #2: Venango County's Public Defender Office Does Not Meet Nationally Recognized Performance Guidelines.

It is impossible for a public defender manager to fulfill the obligations of good management while carrying a full caseload, let alone a caseload above national standards. However, adequate staffing alone will not rectify the current poor management of the office. There is a fundamental difference between the role of a Chief Public Defender and that of an assistant public defender. As set forth throughout this chapter, good management includes providing supervision, conducting periodic staff performance reviews, monitoring quality of

⁹⁴ See, e.g., "Community Partnerships: Holistic Advocacy Through a 'Public Defender Anti-Violence Initiative,'" *NLADA Indigent Defense*, Vol. 3, No. 2, May/June 1999, at 1.

⁹⁵ *NLADA Performance Guideline 9.2. ABA Criminal Justice Standard 4-8.2.*

representation, becoming an equal player in criminal justice policy review and implementation, grant-writing, statistical analysis of caseload and effectively advocating for the program. It is also critical that the Chief perform community service work and participate in local public education on the role of a public defender in the justice system. Though the Chief Defender's past experience makes him, by many accounts, a good courtroom attorney, he has had little experience in running a government agency. Simply possessing outstanding trial skills does not automatically translate into outstanding managerial skills. Such skills, however, can be learned, if a desire exists to do so. The Chief Defender should take steps to obtain materials and attend training in the areas of leadership, management and training development.⁹⁶

⁹⁶ The National Defender Leadership Institute (NDLI), sponsored by NLADA, offers three training programs annually, including one focused on the transition from trial attorney to manager. See http://www.nlada.org/Training/Train_Defender/Train_Defender_Leadership. The Chief Defender may also want to explore no-cost or low-cost resources, such as the American Council of Chief Defenders' mentoring program.

Chapter VI

**The American Bar Association’s
“10 Principles of a Public Defense Delivery System”**

Shortly after the NLADA site visit to Venango County, The American Bar Association met in Philadelphia and adopted a set of ten principles which “constitute the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney.”⁹⁷ This chapter uses the principles to gauge the overall Venango County indigent defense delivery system.

The purpose of the *10 Principles* is to distill the existing voluminous national standards pertaining to indigent defense systems down to their most basic elements, in a succinct form that busy officials and policymakers can readily review and apply. They were designed to be a starting point for jurisdictions like Venango County interested in the practical fundamentals of indigent defense system improvement. We have imported the text of the Principles into the body of this chapter (including original footnotes) in italics. Our recommendations are notated in plain text. Many of the standards and guidelines that have already been discussed in this report are incorporated in the 10 Principles.

1. ***The public defense function, including the selection, funding, and payment of defense counsel,⁹⁸ is independent.*** *The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.⁹⁹ To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel,*

⁹⁷ The 10 Principles is based on a paper by H. Scott Wallace NLADA Director of Defender Legal Services, and James Neuhard, State Appellate Defender of Michigan and former NLADA President. It was published in December 2000 in the *Compendium of Standards for Indigent Defense Systems* (www.ojp.usdoj.gov/indigentdefense/compendium/). Both versions are densely footnoted with references to all national standards issued over the previous three decades providing relevant support for the black-letter principles stated.

⁹⁸ “Counsel” as used herein includes a defender office, a criminal defense attorney in a defender office, a contract attorney or an attorney in private practice accepting appointments. “Defense” as used herein relates to both the juvenile and adult public defense systems.

⁹⁹ National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) [hereinafter “NAC”], Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter “NSC”], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992) [hereinafter “ABA”], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter “Assigned Counsel”], Standard 2.2; NLADA *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (1984) [hereinafter “Contracting”], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter “Model Act”], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter “ABA Counsel for Private Parties”], Standard 2.1 (D).

or contract systems.¹⁰⁰ Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.¹⁰¹ The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.¹⁰²

The Venango County Public Defender is appointed by the County Commissioners and serves at will. From all information, the Commissioners permit the Public Defender to act independently, while providing administrative support upon the Chief Defender's request. By all accounts, the past two defender chiefs selected by the Commissioners have had significant experience and skill at criminal trial representation.

The indigent defense contract system is currently under the direct purview of the President Judge of the Court of Common Pleas – a system that creates the potential for, or appearance of, improper judicial or political influence. If contracts are to be utilized, there are ways, addressed in the discussion under ABA Principle 8, to ensure that they afford both independence and adequate safeguards for quality and accountability.

- 2. *Where the caseload is sufficiently high,¹⁰³ the public defense delivery system consists of both a defender office¹⁰⁴ and the active participation of the private bar. The private bar participation may include part time defenders, a controlled assigned counsel plan, or contracts for services.¹⁰⁵ The appointment process should never be ad hoc,¹⁰⁶ but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction.¹⁰⁷***

¹⁰⁰ NSC, *supra* note 2, Guidelines 2.10-2.13; ABA, *supra* note 2, Standard 5-1.3(b); Assigned Counsel, Standards 3.2.1, 2; Contracting, Guidelines II-1, II-3, IV-2; Institute for Judicial Administration/ American Bar Association, *Juvenile Justice Standards Relating to Monitoring* (1979) [hereinafter “ABA Monitoring”], Standard 3.2.

¹⁰¹ Judicial independence is “the most essential character of a free society” (American Bar Association Standing Committee on Judicial Independence, 1997).

¹⁰² ABA, Standard 5-4.1

¹⁰³ “Sufficiently high” is described in detail in NAC Standard 13.5 and ABA Standard 5-1.2. The phrase can generally be understood to mean that there are enough assigned cases to support a full-time public defender (taking into account distances, caseload diversity, etc.), and the remaining number of cases is enough to support meaningful involvement of the private bar.

¹⁰⁴ NAC, Standard 13.5; ABA, Standard 5-1.2; ABA Counsel for Private Parties, Standard 2.2. “Defender office” means a full-time public defender office and includes a private nonprofit organization operating in the same manner as a full-time public defender office under a contract with a jurisdiction.

¹⁰⁵ ABA, Standard 5-1.2(a) and (b); NSC, Guideline 2.3; ABA, Standard 5-2.1.

¹⁰⁶ NSC, Guideline 2.3; ABA, Standard 5-2.1.

¹⁰⁷ ABA, Standard 5-2.1 and commentary; Assigned Counsel, Standard 3.3.1 and commentary n.5 (duties of Assigned Counsel Administrator such as supervision of attorney work cannot ethically be performed by a non-attorney, citing ABA Model Code of Professional Responsibility and Model Rules of Professional Conduct).

*Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.*¹⁰⁸

Though the County has appropriately established a full-time public defender office, the problem is that the quality of indigent defense representation can be adversely affected if the move from a part-time to a full-time office is not matched with proper funding.

Venango County should be commended for including the active participation of the private bar in the indigent defense plan. Representation in Venango County should be further improved with the addition of counsel for post-conviction relief petitions.

The major failing under this Principle, as discussed previously, is the lack of state funding and a statewide structure. This is important for two reasons: that the Sixth Amendment and *Gideon v. Wainwright* require it, and that county revenue sources grow and diminish in inverse proportion to crime rates and the demand for indigent defense services, guaranteeing inadequate constitutionally required representation at times of greatest need.

3. ***Clients are screened for eligibility,¹⁰⁹ and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention or request,¹¹⁰ and usually within 24 hours thereafter.¹¹¹***

As noted previously, Venango County indigent defense clients may wait up to 10 days in jail before meeting counsel, due in large part to the fact that counsel is not appointed in a timely manner. Visitor logs from the County jail show that public defenders make infrequent visits to the county jail. Defendants are clearly not in contact with attorneys within 24 hours of arrest.

4. ***Defense counsel is provided sufficient time and a confidential space with which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date.¹¹² Counsel should have confidential access to the client for the full exchange of legal, procedural and factual information***

¹⁰⁸ NSC, Guideline 2.4; Model Act, *supra* note 2, § 10; ABA, Standard 5-1.2(c); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (provision of indigent defense services is obligation of state).

¹⁰⁹ For screening approaches, see NSC, Guideline 1.6 and ABA, Standard 5-7.3.

¹¹⁰ NAC, Standard 13.3; ABA, Standard 5-6.1; Model Act § 3; NSC, Guidelines 1.2-1.4; ABA Counsel for Private Parties, Standard 2.4 (A).

¹¹¹ NSC, Guideline 1.3.

¹¹² American Bar Association Standards for Criminal Justice, *Defense Function* (3rd ed. 1993) [hereinafter "ABA Defense Function"], Standard 4-3.2; *Performance Guidelines for Criminal Defense Representation* (NLADA 1995) [hereinafter "Performance Guidelines"], Guidelines 2.1-4.1; ABA Counsel for Private Parties, Standard 4.2.

between counsel and client.¹¹³ To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses and other places where defendants must confer with counsel.¹¹⁴

Although the Venango County Jail does provide confidential meeting space for attorneys and their clients, the majority of client/attorney conferences during the initial phase of a case are conducted in the overcrowded Common Pleas courthouse. NLADA witnessed many attorney/client meetings take place in a corner of a Central Court courtroom – conversations which were audible to us while seated in the general audience section of the courtroom. Other client/attorney exchanges were conducted in crowded hallways. Sufficient time and space must be provided to allow confidential attorney meetings with clients prior to preliminary hearings.

5. Defense counsel’s workload is controlled to permit the rendering of quality representation. *Counsel’s workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.¹¹⁵ National caseload standards should in no event be exceeded,¹¹⁶ but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney’s nonrepresentational duties) is a more accurate measurement.¹¹⁷*

As noted in the Chapter III, Venango County has had a history of public defender caseloads in excess of the national standards. There currently are no mechanisms in place to control caseloads, either by contract, administrative policies or practices. At a minimum, such standards should become public defender policy and be incorporated into contracts.

¹¹³ NSC, Guideline 5.10; ABA Defense Function, Standards 4-2.3, 4-3.1, 4-3.2; Performance Guidelines, Guideline 2.2.

¹¹⁴ ABA Defense Function, Standard 4-3.1.

¹¹⁵ NSC, Guideline 5.1, 5.3; ABA, Standards 5-5.3; ABA Defense Function, Standard 4-1.3(e); NAC, Standard 13.12; Contracting, Guidelines III-6, III-12; Assigned Counsel, Standards 4.1,4.1.2; ABA Counsel for Private Parties, Standard 2.2 (B) (iv).

¹¹⁶ Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should “reflect” (NSC Guideline 5.1) or “under no circumstances exceed” (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). See also *ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* (NLADA, 1988; ABA, 1989) [hereinafter “Death Penalty”].

¹¹⁷ ABA, Standard 5-5.3; NSC, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980), Standard 1-F.

6. ***Defense counsel’s ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.***¹¹⁸

Concerns regarding attorney performance has been addressed elsewhere. Suffice it to say there are serious concerns in this regard and the office needs to take into consideration attorney qualifications in hiring, training and making assignments and not assign cases on a strictly rotational basis.

7. ***The same attorney continuously represents the client until completion of the case. Often referred to as “vertical representation,” the same attorney should continuously represent the client from initial assignment through the trial and sentencing.***¹¹⁹ *The attorney assigned for the direct appeal should represent the client throughout the direct appeal.*

Venango County and the PDO should be commended for employing vertical representation in their indigent defense system. Concerns about the manner in which representation is provided and the quality of direct appellate representation has been noted elsewhere (*See, e.g.,* Chapter IV).

8. ***There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.***¹²⁰ *Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses.*¹²¹ *Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual or complex cases,*¹²² *and separately fund expert, investigative and other litigation support*

¹¹⁸ Performance Guidelines, Guidelines 1.2, 1.3(a); Death Penalty, Guideline 5.1.

¹¹⁹ NSC, Guidelines 5.11, 5.12; ABA, Standard 5-6.2; NAC, Standard 13.1; Assigned Counsel, Standard 2.6; Contracting, Guidelines III-12, III-23; ABA Counsel for Private Parties, Standard 2.4 (B) (i).

¹²⁰ NSC, Guideline 3.4; ABA, Standards 5-4.1, 5-4.3; Contracting, Guideline III-10; Assigned Counsel, Standard 4.7.1; Appellate; ABA Counsel for Private Parties, Standard 2.1 (B) (iv). *See* NSC, Guideline 4.1 (includes numerical staffing ratios, e.g., there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). *Cf.* NAC, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

¹²¹ ABA, Standard 5-2.4; Assigned Counsel, Standard 4.7.3.

¹²² NSC, Guideline 2.6; ABA, Standards 5-3.1, 5-3.2, 5-3.3; Contracting, Guidelines III-6, III-12, and *passim*.

services.¹²³ No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system.¹²⁴ This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

The principle of parity between the resources of a district attorney's office and an indigent defense system is fairly straightforward. It derives from the fact that indigent defense workloads are driven by external factors: first, by the prosecution – its policies and its capacity to initiate cases, as driven by its staffing and funding; and second, by indigency rates among the defendant population in the jurisdiction. Whatever the percentage of criminal defendants entitled to counsel in a jurisdiction that are typically indigent, that same percentage is used as a starting point for calculating the ratio of prosecution funding to indigent defense funding. These figures may be adjusted up or down depending on the existence of other relevant factors increasing or decreasing one side's workload or budget.

For example, the prosecutor's office may have some duties not requiring indigent defense representation, such as certain civil cases or providing victim support services, or declination policies may lead it to routinely decline prosecution in 20 percent of the cases reviewed upon referral by the police. Similarly, indigent defense providers in Venango County handle certain cases (juvenile dependency) that are not handled by the district attorney office. Also, the public defender's office may not have access to supplemental types of funding available to the prosecutor's office, such as forfeited assets, fines, federal grants; and as in all jurisdictions, some key resources and services available to prosecutors are furnished through other agencies budgets, and are hence "off budget" and not visible in a simple comparison of direct appropriations to the local offices of the District Attorney and the Public Defender – items such as investigative resources of local law enforcement, state and federal crime labs, psychiatric and mental health experts, and federal agency personnel (e.g., FBI). As the U.S. Department of Justice has suggested, such policies, practices, and off-budget resources must be calculated into the parity balance sheet.¹²⁵ In 2001, indigent defense providers (public defender and contract counsel) represented 60% of the felony and misdemeanor cases in Venango County.¹²⁶ The indigent defense budget for that year was \$200,722, or approximately 54% of the prosecutor's budget of \$369,214. In both 1999 and 2000, the indigent defense caseload was 55% that of the county's

¹²³ ABA, Standard 5-3.3(b)(x); Contracting, Guidelines III-8, III-9.

¹²⁴ ABA Defense Function, Standard 4-1.2(d).

¹²⁵ See *Indigent Defense Services in Large Counties, 1999*, Bureau of Justice Statistics, U.S. Department of Justice (www.ojp.usdoj.gov/bjs/abstract/idslc99.htm) ("Some categories of expenses are typically borne by indigent defense but not necessarily by local prosecution agencies, thus hindering direct comparisons (e.g., expenditures of prosecutors' offices may not include investigative resources provided by law enforcement agencies, forensic laboratory work or expert witnesses, office space or technology, and training").

¹²⁶ An additional 138 people went unrepresented by counsel. NLADA was not able to determine whether these people wanted counsel and were denied because of the eligibility requirements or simply refused counsel. If they were included in the set of people that should be appointed counsel, the indigency rate in the county would be 71%.

total criminal caseload while indigent defense was funded at approximately 50% of the prosecutor's office.

These figures do not reflect the additional resources the District Attorney secured through grants to augment the local appropriation. In 2001, the District Attorney secured an additional \$88,674 in grants, dropping the indigent defense parity proportion to 44%. In 1999, an additional \$171,961 in district attorney grant funds lowered the indigent defense parity rate to 33%. The public defender should similarly seek additional funding where and when available. However, as a practical matter, the availability of such supplemental federal grant funding is quite limited in Pennsylvania, and should not be counted on to match the grant funding obtained by the District Attorney. According to surveys conducted each year by NLADA for the U.S. Department of Justice, the total amount of federal justice-assistance formula grant funds distributed to indigent defense by the designated state and local administering agencies in Pennsylvania (primarily the Pennsylvania Council on Crime and Delinquency) has averaged less than \$120,000 per year over a five-year period (1995-99) *for the entire state*.¹²⁷

A well-funded district attorney's office will generate more cases, resulting in an increased defender workload.¹²⁸ Disparity of resources simply adds to the inability of public defenders to keep up with workload and causes delay in dispensing justice to victims, witnesses and defendants.

On the positive side, Venango County has taken considerable strides in providing salary parity to assistant public defenders and assistant district attorneys. This parity had not been achieved at the time of the ACLU/NACDL visit and should be pursued in the future. An additional step that can be taken is for the PDO to establish policies and practices that support parity between the two offices. Mechanisms to ensure balanced resources could be the subject of Criminal Justice Coordinating Council discussion, addressed below.

An additional glaring shortcoming under Principle 8 is Venango County's use of flat-fee contracts for indigent defense services in juvenile delinquency and dependency proceedings. These are categorically prohibited under Principle 8 and all other national standards. Fixed annual contract rates for an unlimited amount of cases, or flat rates per case, create a motivation for attorneys to cut corners. Nationally, the average overhead costs of running a law office (rent, support staff, legal research databases, other office costs) are \$58 per hour. Adjusting this rate to allow the requisite "reasonable" take-home compensation for the attorney might produce the \$90 hourly rate set most recently by Congress for federal criminal case appointments. What this means is that if the 29 juvenile delinquency cases handled by the PDO in 2000 were instead handled by the current contract defender under the agreed upon price (\$11,000), the attorney could only afford to dedicate slightly more than four hours per case, or half the amount suggested by the national workload standards ($\$11,000/29 \text{ cases} = \379.31 per case ; $\$379.31/\$90 \text{ per hour} = 4.2 \text{ hours}$).

In light of such problems, both NLADA and the ABA have adopted standards specifically addressing contracts for defense services. NLADA has gone a step further, and

¹²⁷ www.nlada.org/Defender/NLADA_News/0113120419.03

¹²⁸ NLADA does not take a position on whether or not the District Attorney's office in Venango County is adequately funded and notes that the district attorney staff has experienced similar turnover as the public defender office over the years.

developed a Model Contract for Public Defense Services, designed to be the practical implementation of the standards, in a form that local jurisdictions can conveniently and electronically adapt to local circumstances.¹²⁹ As stated in the U.S. Department of Justice Bulletin describing the Model Contract:

The Model Contract is designed to be the practical implementation of the NLADA/ABA contracting guidelines and other national standards, to promote uniform quality of services when contracting is relied upon. It includes background on the issue of contracting, the Model Contract itself, a digest of cases where courts have intervened to curtail excessive defender caseloads, and comments and annotations to national and state standards. Among the elements of the Model Contract: workload limits, procedures for exceeding the limits, special provisions for complex cases, support staff ratios, separate funds for investigations, oversight by an independent board, requirements for attorney experience, qualifications, training and supervision, and administrative provisions covering areas such as record-keeping, reporting, liability, insurance, subcontracting, and termination/renegotiation.

NLADA recommends that Venango County utilize the Model Contract for Public Defense Services in its future contracting.

- 9. *Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.***¹³⁰

As stated elsewhere, the training of the public defenders in Venango County is not sufficient.

- 10. *Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.***¹³¹

¹²⁹ A hard copy is attached as Appendix B. An electronic version of the model contract is available on-line at: www.nlada.org/DMS/Documents/1015619283.17/Full%20volume.doc.

¹³⁰ NAC, Standards 13.15, 13.16; NSC, Guidelines 2.4(4), 5.6-5.8; ABA, Standards 5-1.5; Model Act, § 10(e); Contracting, Guideline III-17; Assigned Counsel, Standards 4.2, 4.3.1, 4.3.2, 4.4.1; NLADA *Defender Training and Development Standards* (1997); ABA Counsel for Private Parties, Standard 2.1 (A).

¹³¹ NSC, Guidelines 5.4, 5.5; Contracting, Guidelines III-16; Assigned Counsel, Standard 4.4; ABA Counsel for Private Parties, Standards 2.1 (A), 2.2; ABA Monitoring, Standards 3.2, 3.3. Examples of performance standards applicable in conducting these reviews include NLADA Performance Guidelines, ABA Defense Function, and NLADA/ABA Death Penalty.

Supervision and evaluation have been identified as shortcomings previously in this report, and various means have been discussed to address the problem, both in the public defender and contract systems. As the footnotes to Principle 10 indicate, a basic step toward regular comprehensive performance reviews for attorneys is the implementation of the NLADA *Performance Guidelines for Criminal Defense Representation*, or a similar set of standards.

Finding #3: Venango County's Indigent Defense System Does Not Meet the Majority of the ABA's "Ten Principles of a Public Defense Office.

Chapter VII

Systemic Issues Affecting Indigent Defense Services & Criminal Justice Efficiency

Although the focus of this evaluation is Venango County's indigent defense system, it is often said that the criminal justice system is an "eco-system," in which all components are inextricably intertwined. Policies and practices of each component affect all of the others. This chapter raises systemic issues that have a direct impact on the quality of indigent defense services or which have an indirect impact because they deal with matters of efficiency and cost-effectiveness, and hence influence the amount of resources generally available to fund the defense function. We hope that these findings and recommendations serve to generate discussion among all segments of the criminal justice system.

Criminal Justice Coordinating Council

Recognizing that any change in one criminal justice agency's policies or practices impacts the whole system, many jurisdictions have formed "Coordinating Councils" to find jointly developed solutions to problems that are consistent with the various agency missions and functions.¹³² Coordinating Council members explore ways in which systems can operate more efficiently, economically, effectively (in promoting public safety) and fairly. Successful councils have made positive changes in the administration of justice in numerous jurisdictions across the country. While the manner in which councils operate and the issues they have tackled vary greatly, there are some essential components common to the most successful of these entities. These include membership that includes all of the leaders whose responsibilities significantly impact the functioning of the criminal justice system (for example, presiding judge, district attorney, chief defender, police chief, corrections official, and appointed or elected officials); regular meetings that occur in an atmosphere that promotes trust; volunteer or paid staff (often employees of one or more of the participating agencies) who have experience in meeting facilitation and project management; and access to data and a willingness to share it.

The County should explore the feasibility of creating a Criminal Justice Coordinating Council with appropriate officials as a vehicle for consideration of the following issues:

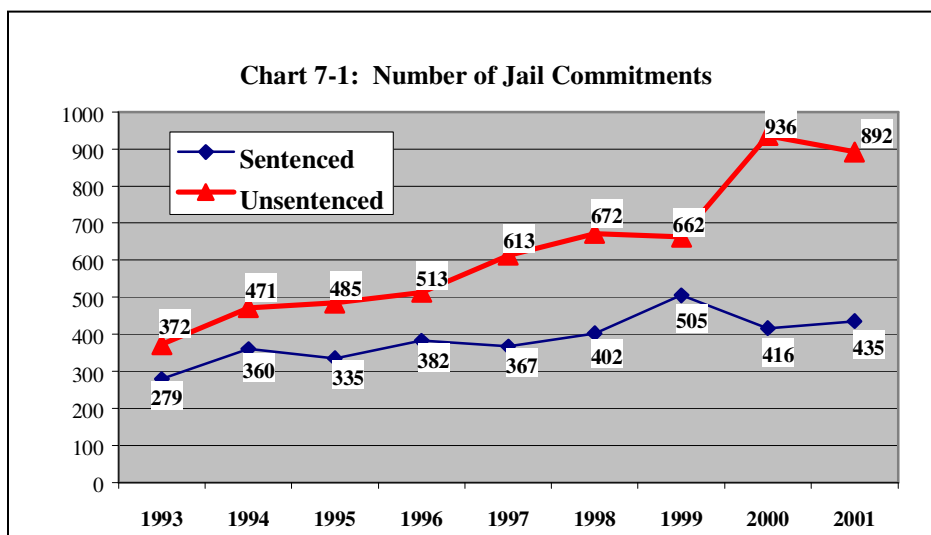
Pre-Trial Detention

Generally, when a jurisdiction needs to find money to improve indigent defense services it is best to look at where current resources are dedicated. In 2001, corrections accounted for 39% of the total county's criminal justice budget (\$1,722,489 of \$4,448,381). Though we were not able to get solid statistical information regarding pre-trial detention of indigent defendants, it

¹³² See *Guidelines for Developing a Criminal Justice Coordinating Committee*, National Institute of Corrections, U.S. Department of Justice, 2002 (www.nicic.org/pubs/2002/017232.pdf); *Improving State and Local Criminal Justice Systems: A Report on How Public Defenders, Prosecutors, and Other Criminal Justice System Practitioners Are Collaborating Across the Country*, Bureau of Justice Assistance, U.S. Department of Justice, October 1998 (www.ncjrs.org/pdffiles/173391.pdf).

was the perception of several criminal justice representatives that more people could be released on their own recognizance or with nominal bail. ABA policy supports this position.¹³³

What we can state is that the percentage and number of people under the Supervision of the Jail Warden that are not committed under sentence is growing. In 1993, 57.14% of the 651 people committed to jail were not under sentence (or 372). By 2001, the total number of commitments had increased by approximately 104% (from 651 to 1327) with the percentage of people not under sentencing increasing to 67.12% (bringing the number of people in jail not under sentence to 891, or an increase of approximately 140%). See Chart 7-1, below:



On top of this, the average length of stay of people not under sentence but remanded to the jail is also growing. Average length of stay figures could only be retained going back to 1999. From 1999 to 2001, the average length of stay for a person not under sentence in the County Jail increased from 89 days to 104 days (an increase of 16.85%). Furthermore, the daily cost per detained individual increased by nearly 25% between 1999 and 2000 (from \$24.92/day to \$31.12/day).¹³⁴ What this means is that the projected resources needed to incarcerate pre-

¹³³ *ABA Standards for Criminal Justice, Pretrial Release, Standard 10-1.1*: “The law favors the release of defendants pending determinations of guilt or innocence. These standards recognize, however, that in a limited number of cases there may be exceptions to this policy and establish specific criteria and procedures for affecting the pretrial detention of certain defendants after determinations that these defendants pose significant threats to the safety of the community and the administration of criminal justice. Because deprivation of liberty pending trial is harsh and oppressive, subjects persons to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support, these standards limit the circumstances under which preventive detention may be authorized and provide procedural safeguards to govern preventive detention proceedings.”

¹³⁴ 2001 daily jail cost per detainee is unavailable as of this date. It is important to note that despite the increase in cost per detainee between 1999 and 2000, the year 1999 represented an eight-year low for jail cost per inmate statistic. In 1993, the average cost was \$41.53 per day. The 1999 figure was a nearly 40% decrease from the same figure for 1993.

sentenced detainees is growing exponentially. Of the 662 people committed to jail not under sentence in 1999, the county can expect to pay \$1,468,236.56 over the course of their detention (662 commitments x \$24.92/day x 89 day length of stay). For the people committed not under sentence in 2000, the County can expect to pay \$2,825,447 over the course of their stay (936 commitments x \$31.12/day x 104 day length of stay.) This is an increase of over 92%.

Because of the high cost associated with incarceration, Venango County should take every means to ensure that the greatest number of defendants is released pre-trial without posing a threat to community safety. To accomplish this, the County may want to consider changing the proposed hybrid public defender/jail position to a full-time Pre-Trial Services position responsible for screening for the appropriateness of pre-trial release and conducting indigency screening. After examining the data, NLADA contacted both the Pre-Trial Services Resource Center and the National Institute of Corrections (NIC). NIC provides on-site technical assistance to jurisdictions facing overcrowding jail situations for both sentenced and non-sentenced populations under a grant from the U.S. Department of Justice at no expense to the local community. If the County wishes to seek NIC's assistance Jail Warden Snyder must apply for these services.

Arraignments

National standards call for the appointment of counsel "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" ¹³⁵ Consistent with those standards, the PDO should be providing representation when clients are arraigned. During the site visit, the Chief Public Defender acknowledged that this should and could be done. Beyond protecting the rights of the accused, providing counsel at arraignments may well have the systemic benefit of reducing the jail population. Counsel's ability to assist the court in getting accurate information relevant to the detention decision and in developing resources that would support release often favorably impacts pre-detention release decisions.

The current process, described earlier, does pose some logistical problems for the PDO, while changing the current process likely would impact other agencies. The impending use of video arraignments has been suggested as one potential response. If that course is pursued, it should be recognized that video arraignments present their own set of issues. Detained defendants should have defense counsel physically present with them where they are detained. In that event, national standards state the prosecution should not be in the courtroom with the judge. ¹³⁶

In any event, this issue is one in which thoughtful discussion in a Council setting could result in solutions that are logistically feasible, efficient for the system and protective of the rights of the accused.

¹³⁵ ABA, Providing Defense Services, Standard 5-6.1 (3d Ed. 1992). *See also Guidelines for Legal Defense Systems in the United States*, Guideline 1.2.

¹³⁶ *Id.*

Central Court

Central Court was referred to alternatively as “disorganized organization,” and “Central Zoo” by some of the interviewees. The NLADA site team was amazed that the chaotic atmosphere is accepted as normal court practice. For close to two hours we witnessed District Justices, court reporters, Sheriff personnel, and attorneys simply standing around waiting for the public defender attorneys to meet with their clients.

Besides the waste of taxpayers’ resources created by paying for law enforcement and other personnel to wait around while lawyers meet with their clients for the first time, the chaotic atmosphere sends a poor message to the Venango County community regarding the ability of the courts to deliver justice. During Central Court observations, there was clear confusion on the part of victims, witnesses, family members, and other people that made up the audience as to what was going on in the courtroom.

While a change in the PDO policies and practice requiring attorneys to contact clients before the hearing date should assist this process, other factors are at play. For example, space issues result in members of the public waiting on cramped stairwells for their cases to be called. These issues appear to have grown along with the rising number of cases. With projections indicating that those numbers will not ease without intervention, this issue, too, could well benefit from joint discussions between the Public Defender and other criminal justice entities.

Plea Practices of the District Attorney

As stated, Venango County has an unusually high trial rate for a county its size. When asked about the reason for a high trial rate, the majority of interviewees stated that it was due to the practice and policies of the District Attorney. The District Attorney does not accept plea offers to anything less than the lowest provable charge. The District Attorney herself also stated that this was her policy during her interview. Without better plea conditions, defense attorneys many times have nothing to lose by going to trial. Cases that are not disposed prior to trial have a major impact on the entire cost of the criminal justice system.

Plea policies are usually based upon legitimate concerns. Often when well-intentioned justice system leaders in a confidential setting that fosters a “give and take” between agencies discuss those concerns jointly, new ways are discovered to meet the underlying concerns while remedying some of the unintended systemic consequences of the practice. Recognizing the policy prerogatives of a duly elected official, this comment is added in acknowledgement of the County’s financial constraints and in the spirit of analyzing the cost-effectiveness of the current criminal justice system.

Compliance Court

In the years 1999-2000, 79 people have been remanded to the County Jail for failure to pay fines and fees. Of these, only seven had retained private counsel on their original proceedings (or 8.86%). Another 10.13% (eight defendants) waived their right to counsel on their original charges (one on a felony). The remaining 81% of the people incarcerated for failure to pay were found to be indigent.

National research reveals an excessive number of fees assessed may put an undue hardship on indigent defendants, who by definition have limited means to pay their obligations to the court. Accordingly, there are myriad ways in which criminal justice systems seek to preserve the integrity of the system such that those who have the ability to pay court fines and fees are compelled to do so, while seeking to reduce the expenses associated with doing so. Because of the potentially exorbitant costs associated with developing collection programs, and because of the fact that indigent defendants by definition may have limited means to ever pay court costs and fees, some jurisdictions automatically waive all fines and fees for defendants deemed indigent. The County may wish to re-evaluate this practice to determine whether the cost of collecting the fees is greater than the economic and policy benefits of incarcerating individuals, in effect, because they are poor.

Chapter VIII Recommendations

NLADA is impressed with the desire on the part of county, court and other criminal justice officials in Venango County to address the concerns of the ACLU and NACDL in an appropriate and timely manner. Though NLADA recognizes that the actions of the county came under the threat of court action, we believe Venango County's desire to correct indigent defense issues extends beyond a simple attempt to stem a lawsuit. Throughout our interviews, NLADA was impressed by the level of genuine concern shown to indigent defendants at all levels of the county government and the court system. Time and again, interviewees acknowledged that the vast majority of indigent defendants in Venango County are a part of their own community, and deserve the same dignity and respect afforded to citizens of more sufficient means. Many interviewees expressed a deep-seated concern that the county had failed to actualize this basic fairness doctrine in providing indigent defense services to the poor of Venango County.

We believe that much of the credit for the countywide adherence to the ideals of fairness and equity is due to the to the judicial philosophy of President Judge William White. Despite a significantly high workload, Judge White finds time to serve on a number of social service boards. Throughout his time on the bench, Judge White has refused to err on the side of expediency and has consistently extended the right to counsel in appropriate cases. He expressed to us his belief that quality lawyers on both sides of the aisle would prevent error and ensure to the citizenry of Venango County that the criminal justice system produces verdicts that are fair, correct and final.

Having said this, it takes more than concern and compassion to protect the constitutional rights of Americans. The following eight steps should be taken to currently ensure adequate representation of indigent defendants:

- 1. Venango County should authorize the necessary spending to staff the Public Defender Office with one Chief Public Defender (carrying a half-time FTE caseload), three full-time assistant public defenders, an office manager, a full-time investigator, a full-time social worker, and a clerical staff.**
- 2. Venango County should provide sufficient office space to accommodate such a staff, including guaranteeing private, confidential meeting rooms for attorney/client conferences.**
- 3. The Public Defender Office should adopt a formal policy requiring attorneys to meet with clients prior to preliminary hearings.** Besides improving the overall quality of representation, attorney preparedness should produce cost-savings throughout the criminal justice system due to a decrease in "waiting" time by court personnel.
- 4. The Public Defender Office should develop performance standards based on nationally recognized guidelines, such as NLADA's *Performance Guidelines For Criminal Defense Representation*, and other policies and procedures described in**

Chapter V that are required to promote effective representation and efficient management. Performance standards should focus on the role of defense counsel at each stage of a case, including: initial interview, pretrial release, arraignment, preliminary hearing, pretrial motions, plea negotiations, voir dire, jury instructions, sentencing, and post-trial matters. Similarly, standards regarding attorney qualifications, workload, training and conflicts should be established and implemented.

- 5. The Public Defender Office should develop a supervision program to monitor attorney performance against these standards on an on-going basis.** A modification of the national standards to fit criminal practice in Venango County can be used as an evaluation tool against which to measure trial attorney performance.
- 6. Venango County should authorize the funding to allow public defenders to participate in local, state and national training programs and professional conferences and be authorized to visit appropriate mentor sites and to permit adequate access to legal resources.**¹³⁷
- 7. Venango County should formalize the current conflict, juvenile and post-conviction contracts along the lines of the NLADA model contract.**
- 8. The Public Defender should purchase or develop a computerized case-tracking system.**¹³⁸

In addition to the above eight requirements to ensure adequate representation of indigent defendants:

- 9. Venango County should consider forming a Criminal Justice Coordinating Council or another process for addressing the issues raised in Chapter VII of this report.**

In conclusion, NLADA believes that Venango County has the personnel to make the tough criminal justice decisions that lay ahead to ensure adequate representation to its indigent citizens. Unfortunately, the economic realities of the county are such that should all of the

¹³⁷ The County is to be commended for increasing the PDO training budget 200%, from \$2,000 in 2001, to \$6,000 in 2002. The sufficiency of the budgeted amount will only be known after an assessment of training needs is made and a specific plan created for meeting the training objectives.

¹³⁸ Toward this end, NLADA researched available case-tracking software. The Office of the State Public Defender in Rhode Island has developed a Microsoft Access-based case-tracking system that is adaptable to small public defender offices. Under agreement with NLADA, the Rhode Island Public Defender is willing to give its case-tracking program code to Venango County free of charge. There will be some licensing fees, and training costs associated with start-up, but overall NLADA believes this to be a low cost alternative to meeting the need identified in the ACLU/NACDL report and concurred with here. NLADA is willing to pursue this option with the County in the future.

recommendations detailed in this report be enacted, we still believe that it is only a matter of time until the adequacy of indigent defense services is again put in jeopardy. The number of cases entering the Venango County criminal court system is growing and becoming more serious in nature with each passing year, despite a declining population. Thus, the burden of paying to protect the rights of defendants will continue to increase as the county tax-base further declines.

Our constitutional rights extend to all of our citizens, not merely those of sufficient means. Though we understand that County Commissioners must balance other important demands on their resources, the Constitution does not allow for justice to be rationed to the poor due to insufficient funds. The issues raised in this report serve to underscore the failure on the part of the Commonwealth of Pennsylvania to live up to the spirit of the U.S. Supreme Court *Gideon* decision. This failure is made more glaring in light of the steps taken by the other Mid-Atlantic and New England states to provide their citizenry with adequate defender services. Of the twelve New England and Mid-Atlantic states, only Pennsylvania and New York fail to provide less than 100% of all indigent defense funding.¹³⁹ Forcing counties to bear the full brunt of financing indigent defense systems is, in effect, an unfunded mandate imposed by the Commonwealth on its counties. Thus, our final recommendation:

- 10. Venango County Commissioners, court officers and court personnel should work with their professional associations, legislators and Supreme Court to highlight the consequences of the failure of the Commonwealth of Pennsylvania to fund indigent defense and advocate for needed change.**

¹³⁹ Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont, Virginia and West Virginia all assume the full financial responsibility for providing indigent defense service at both the trial and appellate levels.