



NACDL Indigent Defense

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For More Information:

Paul Petterson, Indigent Defense Coordinator
202-872-8600, indigent@nacdl.com

Office of Justice Programs/Bureau of Justice Assistance

Indigent Defense Focus Group

Summary Report November 1997

Background

Over the past four years, the Office of Justice Programs (OJP) and the Bureau of Justice Assistance (BJA) have actively solicited the input and counsel of our criminal justice colleagues -- both practitioners and constituent group representatives -- concerning emerging issues and how we can shape program direction to best meet the needs of the field. Consistent with the strong interest of OJP and BJA in supporting balanced attention to the needs of all components of the criminal justice system -- and the Attorney General's strongly expressed interest in the issue of indigent defense -- we invited representatives from the indigent defense community to participate in an informal discussion with us.

The purpose of the meeting was to solicit and listen to the views and suggestions of the defense bar, knowledgeable law professors, and experts in this area on ways we can be more responsive to the issues involving representation of indigent criminal defendants, and how we can build more collaborative relationships with others concerned with indigent defense.

The day-long focus group session took place on September 18, 1997, in the OJP building in Washington, D.C. Chris Stone, President of the Vera Institute and a former public defender, served as the facilitator for the discussion. In addition to those invited from outside the Department, representatives from the Attorney General's Office, the Deputy Attorney General's Office, the Associate Attorney General's Office, the Office of Policy Development, the Criminal Division, the Civil Rights Division, and the other OJP Bureaus were invited to participate as observers. The morning session was devoted to building an agenda of issues through a roundtable dialogue. Each participant was asked to identify the most pressing concern that they were interested in seeing addressed by the group. Attorney General Reno joined the discussion for a brief period and provided comments, emphasizing her strong interest in the issues involved with the representation of indigent criminal defendants.

During the afternoon, the focus group members revisited the issues raised and addressed them through the following six general themes:

- Advocating for Indigent Defense Services
- Building an Independent Indigent Defense Structure
- Allocating Resources Equitably
- Meeting These Challenges in the Juvenile Justice System
- Developing Standards for Indigent Defense Programs
- Building a Capacity for Using Technology

A summary follows of the group's discussion around each of these themes. It identifies various recommendations made by Focus Group members, and can serve as a platform for future actions by the Department, OJP, BJA, and other OJP components.

Discussion Themes and Recommendations

1. Advocating for Indigent Defense Service

A common concern among members of the Focus Group was that for too long the importance of the defense function in the criminal justice system has been largely neglected. Participants felt that acknowledgment by the Attorney General and others at the Department of Justice of the essential role of indigent defense services in the administration of justice would be of great benefit both to the field itself and to the general public, which lacks even a basic understanding of such fundamental principles as the right to counsel and equal access to justice for everyone regardless of whether they are rich or poor.

Recommendations

- The Attorney General and others in the Department of Justice were urged to use the "bully pulpit" to support the essential role of indigent defense services in the administration of justice and the importance of providing sufficient resources to ensure a "fair fight in the courtroom." The Attorney General's remarks at the American Bar Association meeting in San Francisco was noted as an encouraging beginning.
- The Department of Justice, attendees said, should consider establishing a position to serve as an "indigent defense advocate" within DOJ to ensure continued attention to issues generated by the Focus Group.
- OJP was asked to survey its publicly-available information and data systems - including its website -- to ensure that sufficient informational material exists, or is developed, that features the role and function of indigent services in the criminal justice process.
- As part of appropriate seminars and conferences, OJP and its component agencies were urged to include issues involving indigent defense as an integral part of the program, and include representatives from the indigent defense community as participants.

- OJP should utilize its network, attendees said, to encourage key policymakers in the criminal justice community to speak out on the importance of the indigent defense system and its unique role as an important partner in the administration of justice.
- OJP was urged -- through the grant process and other means -- to provide education and encouragement to other components of the criminal justice system -- courts, corrections officials, law enforcement, and even victims groups -- on the importance of the indigent defense function to the administration of justice, particularly, because of defenders' unique relationship with their clients. They said it is especially important for judges to speak out in educating the general public on the public defender's role.

2. Building an Independent Indigent Defense Structure

The marked growth in defender services over the past 30 years has generated a number of policy issues related to program structure, workload, staffing, and funding of services. Focus Group participants raised significant leadership and programmatic issues central to the problems facing defender agencies, including the patchwork of various structural models, funding mechanisms, and governing bodies that control the delivery of indigent defense services across the country.

Participants stated that in many jurisdictions, the very structure of the system for providing counsel poses a serious threat to defendants' rights. Often, assigned counsel are forced to choose between their financial interest in continuing to receive assignments and providing their clients with the zealous advocacy for which they might be penalized by the judge making the assignments.

Moreover, group members stated that the Sixth Amendment right to counsel is unenforced in many parts of the country both because of the overall lack of independence of the defense function and the fact that indigent defense services often virtually do not exist in rural areas. Participants provided examples of the same kind of sustained resistance in some areas of the country to *Gideon* as there once was to *Brown v. Board of Education*. Members of the group saw an advocacy role for the Justice Department, as well as bar associations, to enforce the principles set forth in *Gideon*.

Recommendations

- The Department was asked to do whatever it can to encourage the adoption of independent public defender structures in jurisdictions where they do not currently exist. One effort toward this end would be for OJP to publish a resource document for policymakers addressing the issues of defender independence in the adjudication/appeals process. Examples of program models (organization, funding mechanisms, and operations policy) could be included to enhance the publication's usefulness.
- The Department of Justice was encouraged to include state and local indigent

defender representatives in the Department's ongoing meetings with federal public defenders to address the common substantive issues facing the defender services community

- OJP, and especially BJA, were urged to issue an administrative regulation to encourage state grant applicants seeking funding for enhancements to the adjudication process to provide assurances of an equitable sharing of funds with indigent defender services. Along with this, BJA was asked to encourage the Byrne agencies themselves to do more outreach and be more inclusive and responsive to the needs of indigent defense services in their states.

3. Allocating Resources Equitably

A major concern of the Focus Group was the inadequate funding of defender systems, and adverse impacts on the quality of indigent defense services. Several participants felt that many of the obstacles to providing quality indigent defense services could be overcome with adequate funding. Moreover, there was strong consensus on part of the attendees that indigent defense has not received its "fair share" of funding when compared to other components of the justice system, such as law enforcement, prosecution, and corrections systems.

Recommendations

- The Department of Justice was strongly encouraged to explore ways to actively support more equitable funding for indigent defense in both the state and federal systems. Specifically, the Attorney General was asked to continue her support to secure an appropriation to implement the Heflin Amendment (Sec. 210602 of the Crime Act of 1994), which would provide funding "over five years to local courts, prosecutors and public defenders and other criminal justice participants as necessary to meet the increased demands for judicial activities resulting from huge subsidies to law enforcement." The Department's ability to provide a strong voice would be of value to defender systems in their efforts to obtain adequate resources from state and local government funding agencies, attendees said.
- OJP and its component agencies were urged to identify and develop programs that provide financial assistance directly to the indigent defense community, as well as assist them in securing needed funding, i.e., partnering with prosecution and court colleagues in budget preparation and presentation, getting "a seat at the table" for defenders at community crime planning meetings, etc. OJP was also encouraged to consider defender interests in other grant programs affecting the administration of justice.
- OJP and its component agencies, attendees said, should provide additional training and technical assistance funding to indigent defense systems in such areas as emerging computer technologies, case management models, development and evaluation of standards for indigent defense services, and related system infrastructure improvements.

- OJP and its component agencies were urged to ensure active outreach to Native American Tribes and Alaska Native representatives on defense issues; grant solicitations, as appropriate, they said, should invite the participation of defense services for these communities.

4. Meeting These Challenges in the Juvenile Justice System

The juvenile justice system was viewed by the group as moving in two seemingly different directions--the emphasis on prevention and early intervention with young children, and the increased efforts to try juvenile offenders as adults and incarcerate them for long prison terms.

It was noted that the defense community shares common ground for partnerships in the prevention arena. Defenders can develop relationships with others in the community, including community police officers, trying to reach youth before they enter the justice process.

Recommendations

- OJP and its component agencies, through training and technical assistance, were urged to provide leadership in supporting the efforts of public defender offices to better understand how they can participate in community justice initiatives without compromising their ethical obligation of zealous representation. One way to do this might be by identifying mentor sites that are doing this successfully and providing assistance for other jurisdictions to observe these programs first-hand.
- OJP and its component agencies were asked to help fund training for defenders on the unique needs of working with juvenile offenders.
- An assessment of the impact of proposed legislation and grant programs on the balance of the criminal justice system, including indigent defense, should be required.

5. Developing Standards for Indigent Defense Programs

There was agreement among Focus Group participants on the need to accelerate efforts to develop and enforce standards for indigent defense programs. As a first step, the group identified several different standards efforts currently in place, such as the John Jay Legal Services, Inc., collection of standards for indigent defense services and monitoring, and the recently published "Index to Indigent Defense Standards and Guidelines" prepared by The Spangenberg Group for the American Bar Association Bar Information Program. The use of the Internet was suggested as a way to access and disseminate these standards as well as others published by national organizations and other public defender groups. Participants addressed the need for a comparative analysis of existing standards. Also discussed were issues on implementation and enforcement of standards, raising the question of how standards improve practice.

Focus Group participants also discussed the threat to quality standards posed by funding sources looking for the least expensive delivery system. Contracting for defender services was mentioned as an area of great concern. In this context, attendees argued that defender service contracts should require minimum standards for such items as caseload levels and funds for investigators, subject matter experts, and training

Recommendation

- OJP or its component agencies were asked to study the impact of standards on legal defense system performance and quality of services; and help support creation of Web Sites for transmittal of information and documents of interest to the indigent defense community.

6. Building a Capacity for Using Technology

Participants agreed that public defenders are lagging behind their criminal justice counterparts in automating basic office functions, particularly in the administration and case management areas. The problem, they said, is not due to staff resistance to technology innovations but, rather, because there are frequently virtually no funds available for equipment purchases and staff training. The group felt that improved technology capacity would have a significant impact on increasing the efficiency and effectiveness of defender services. This is particularly true as law enforcement, prosecutors, and other parts of the justice system move into an era of advanced technology.

Recommendations

- OJP and its component agencies' investment of funds in the integration of criminal justice information systems were urged to ensure defense and prosecution components are included, as appropriate, in systems design, funding, and implementation.
- OJP and its component agencies were asked to consider funding several pilot projects with the objective of demonstrating the application of technology systems in public defender offices to overall program efficiency and effectiveness.
- OJP should utilize its computer information network, attendees asked, to disseminate "best practices" documents, model information system guides, and technical reports, such as the NIJ Report on the use of DNA to establish innocence, to all public defender agencies.

National Association of Criminal Defense Lawyers (NACDL)

1025 Connecticut Ave. NW, Ste. 901, Washington DC 20036

www.criminaljustice.org / www.nacdl.org

(202) 872-8600 / FAX(202) 872-8690 / assist@nacdl.com

