

**ANNUAL REPORT
FISCAL YEAR 2014-2015**

**TO THE
BOARD OF SUPERVISORS
SAN MATEO COUNTY**



**SAN MATEO COUNTY BAR ASSOCIATION
PRIVATE DEFENDER PROGRAM**

**JOHN S. DIGIACINTO
CHIEF DEFENDER**

TABLE OF CONTENTS

PREFACE	1
OVERVIEW	1
FOREWORD	2
THE PRIVATE DEFENDER PROGRAM	4
A Brief History.....	4
Administration and Structure.....	5
Appointment and Assignment.....	7
Who Are the Lawyers of the PDP?.....	13
How the PDP Lawyers Accomplish Their Mission.....	17
Juvenile Services.....	19
The Investigation Division.....	21
THE IMPORTANCE OF RELATIONSHIPS	25
The Superior Court.....	25
Pathways.....	25
Veterans Treatment Court.....	26
APPOINTMENTS IN FISCAL YEAR 2014 - 2015	30
THE BUDGET	32
PERFORMANCE BENCHMARKS	33
Attorney Training.....	33
Resources Outside the PDP.....	37
Attorney Evaluation.....	37
Evaluation Standards.....	37
How Performance is Monitored and Evaluated.....	38
Annual Surveys.....	39
Results of the Evaluations.....	41
Client Relations.....	42
Initial Client Meetings.....	50
Community Outreach.....	51
CONCLUSION	55

APPENDICES

Appendix A	Endnotes
Appendix B	County Contract
Appendix C	Case Counts
Appendix D	Budgets
Appendix E	PDP Fee Schedule
Appendix F	Evaluation Standards
Appendix G	Attorney Caseloads FYE 2015
Appendix H	Civil Grand Jury Report on the Private Defender Program

PREFACE

This year marks the 46th anniversary of the operation of the San Mateo County Bar Association's Private Defender Program. We are happy to once again be celebrating the longevity of the relationship we formed with the County of San Mateo and the commitment we made together to those members of our community who, due to their poverty, are entitled to the appointment of counsel at public expense.

While the pages that follow describe the operation of the Private Defender Program for the fiscal year ending June 30, 2015, we hope that the detail enhances rather than obscures how we have been and continue to be guided by the commitment articulated in our Mission Statement:

The Mission of the Private Defender Program is to provide high quality legal representation to every indigent person whose case has been entrusted to us by the San Mateo County Superior Court. We are dedicated to the vigorous protection of the fundamental rights of our clients in criminal, juvenile, mental health and in other cases for which the appointment of counsel at public expense is provided by law. While acting as strong and ethical advocates for those facing loss of life, freedom or family, we strive to preserve the dignity of the individuals we represent, to keep them and the communities in which they live safe from wrongful convictions and unjust outcomes, and to enhance the integrity of the criminal justice system in San Mateo County.

OVERVIEW

This is the 13th Annual Report of the Chief Defender of the Private Defender Program to the San Mateo County Board of Supervisors. On June 23, 2015, the County of San Mateo (the County) and the San Mateo County Bar Association (the Association or SMCBA) entered into a two-year agreement to provide legal representation to indigent persons entitled to the appointment of counsel at public expense (the Agreement). (The Agreement is attached as Appendix B.) Paragraph 10.h. of that Agreement calls for the submission of this report within 90 days of the end of the fiscal year, and requires that it detail the Private Defender Program's performance with respect to the items described in Paragraphs 10.a. through 10.g. of the Agreement, and that it include the annual budget of the Program, "setting forth the costs of the operation of the program for the year, including fees for attorney's services, investigation and other ancillary defense services as well as the cost of administration."

The Agreement between the County and the Association addresses concerns that go beyond the crucial issue of providing adequate financial resources. For the past 46 years, the County and the Bar Association have shared a commitment to the people of our community. That commitment has been and continues to be the provision of high-quality legal representation in a cost-effective manner to the members of our community who cannot afford to hire their own counsel. The contract discussions included a considerable amount of time devoted to discussing ways in which we could effectively evaluate how that commitment was being met. The County and the Association concluded that an annual report on certain performance benchmarks and the budget of the Program would serve to achieve that goal. It is thus that this 13th Annual Report is submitted.

NEW ELEMENTS

There are some new elements that we are pleased to include in this year's Annual Report.

This year, the Private Defender Program received a great deal of scrutiny, both during the process of negotiating a new contract and because the San Mateo County Civil Grand Jury chose it as one of its topics to review this session. While those outside of the Private Defender Program have provided their thoughts on the strengths and weaknesses of the PDP, this year's Annual Report includes a self-evaluation pursuant to the national standards set forth by the American Bar Association. While every system can always be improved, and every system must adjust to changes in the law and society, we are proud of the legal services the PDP lawyers dutifully and passionately provide to the most marginalized individuals in our community.

Another feature of this year's Annual report is a short discussion of Proposition 47, which voters passed during the November 2014 election. That new law reduces some felonies to misdemeanors, and provides a three-year time period in which defendants with convictions of Proposition 47-eligible felonies may petition the court for a reduction of those offenses to misdemeanors. While the full effect of Proposition 47 on the Private Defender Program statistics, its clientele and its attorneys is not yet known, this Annual Report reflects what data is available where applicable.

We have again included in the Client Relations segment of the report results of our client satisfaction surveys that were a part of the Agreement with the County seeking the clients' views of their lawyers.

Prominently featured again in this year's Annual Report is the PDP's Investigation Division. Chief Investigator **John Maness** has built a dynamic team that has transformed the Investigation Division into what we believe to be the finest indigent defense investigation team in the nation. Applying his vision of teamwork, strategic spending, and comprehensive training opportunities for PDP investigators has made the Investigation Division a model of cost efficiency and excellent performance.

We received positive feedback from the change in the layout of the Annual Report that we initiated a number of years ago, and thus we repeat it here. While the information contained in the detail-laden footnotes remains an integral part of the Annual Report, we have kept this information at the end of the document (as Endnotes in Appendix A) in the hope of making it easier for the casual reader to peruse.

FOREWORD

On March 18, 2013, our country marked the 50th anniversary of the United States Supreme Court's landmark decision in *Gideon v. Wainwright*.¹ *Gideon* established that any person accused of a crime who is too poor to employ an attorney has a constitutional right to the appointment of counsel at public expense.² In so ruling, the Supreme Court recognized the right to appointed counsel as a fundamental guarantee of the Bill of Rights and as immune from state invasion as the freedoms of speech, press, religion, assembly and association.

Writing for the Court, Justice Black noted:

...[R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society.... The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.³

San Mateo County is perceived to be a very prosperous place. The median price of existing single-family houses is more than two-and-a-half times that of the rest of California.⁴ Economic indicators, including income figures, routinely identify this as one of the wealthiest counties in America.

But there is another story here. While only 8.0 percent of the estimated 758,581 people who live here are beneath the federal poverty threshold (\$11,888 weighted average for an individual based on the most recent available data),⁵ our Court determined that accused people were without the means to employ counsel over 20,000 times during the year.⁶ The faces of poverty are not all to be found beneath poverty lines drawn by demographers. They are found in families all over San Mateo County struggling to keep their heads above water in a place in which the cost of living is staggering.

Chief Justice Warren Burger⁷ spoke of the defense function in a criminal case as critical to the administration of justice in America. He likened the roles of prosecutor, judge and defense lawyer to a three-legged stool. If one leg is weak, the stool will collapse, and the promise of equal justice under our Constitution falls with it.⁸ If an appointed lawyer is without the skill, experience and resources to defend a poor client properly, our Constitution and the system of justice it defines is trivialized and exposed as an elaborate lie. If there isn't equal justice, there is no justice.

Fulfilling the promise of *Gideon* is not inexpensive, and it can hardly be suggested that funding indigent defense from dwindling resources is high on the priority list of most taxpayers. But the leaders of our County, along with our Court and the San Mateo County Bar Association, have recognized, by deed as well as word, that a promise is a promise. They have also recognized that the promise of *Gideon* is not a promise only to the poor. It is a solemn promise to *all* the people of San Mateo County that the criminal justice system here - *their* criminal justice system - will accurately reflect *their* belief in equality as promised by *their* Constitution.

Defending the poor accused of crime has never been just a *job* – it is a *vocation*. We hope that the pages that follow will provide a glimpse at the context within which the men and women of the Private Defender Program answer their calling. We hope, too, that the information that follows will help the leaders and citizens of San Mateo County feel assured that the promise of *Gideon* is being kept in their community.

THE PRIVATE DEFENDER PROGRAM A BRIEF HISTORY

The Supreme Court's decision in *Gideon* compelled state courts and county governments across America to move quickly to comply with its mandate. The San Mateo County courts established what could best be described as an *ad hoc* system for appointing counsel.

Each judge controlled the appointment of lawyers in his courtroom for all eligible cases that were set there.⁹ Some judges had a list of lawyers from which appointments would be made. Other judges would simply call on a lawyer who happened to be present in the courtroom at the time an eligible defendant appeared in court, appointing the lawyer on the spot, at times without regard to that lawyer's experience in criminal law. Each judge also had the responsibility for reviewing the billings of appointed counsel before ordering payment by the County. As a matter of routine, some judges approved billings exactly as submitted by lawyers, and others felt compelled to slash billings for reasons not readily apparent.

Needless to say, it was a system that didn't work well. It created uncertainty for the County since it was essentially impossible to know what the cost of indigent defense would be for any given fiscal year. It created uncertainty for lawyers appointed by some judges because slashed bills rendered their efforts for the client essentially donated time. It also created frequent mismatches of attorneys with cases because skill and experience levels were not always considered in the appointment process.

In 1967 and 1968 the Board of Supervisors undertook the task of evaluating how best to provide mandated lawyers for accused indigent persons. County staff at first recommended that a public defender's office be considered. Asked for its input on the subject, the Board of Directors of the San Mateo County Bar Association voiced objection to the proposal after studying it thoroughly. The Association objected because the proposal included a funding recommendation that would create a department without the resources necessary to meet the demands that would be placed upon it.

The Association presented an alternative proposal to the County. Recognizing that it had a wealth of solo practitioners and small firms with established expertise in criminal law, the Association proposed to establish and administer the County's indigent defense program. That proposal was accepted in late 1968.

The San Mateo County Bar Association's Private Defender Program (PDP) began operations in February, 1969. In 1968 the Association entered into its first contract with the County of San Mateo for the provision of indigent defense services for a six-month period at a cost of \$500,000. The staff consisted of an Administrator (now deceased Superior Court Judge

William Lanam) and a single secretary. It was new territory for the County and the Association – the beginning of a relationship between county government and the private non-profit sector that has grown in strength during the past 46 years.

ADMINISTRATION AND STRUCTURE

The Private Defender Program is operated by the San Mateo County Bar Association, a non-profit corporation governed by a 15-member Board of Directors. The Private Defender Program Committee is a standing committee of the Board of Directors. It makes recommendations to the Board about the operation of the PDP, and it meets regularly to discuss problems that arise in the criminal justice system and to propose solutions.

John Digiacinto is the Chief Defender of the PDP and is responsible for the overall operation of the Program. He also serves as the Executive Director of the Association and reports directly to its Board of Directors. He graduated from Lincoln University School of Law in 1977 and was admitted to the Bar that same year. In private practice he served indigent clients as a PDP lawyer for 12 years. He handled the complete range of criminal and juvenile cases, beginning his career with misdemeanors and advancing to the defense of the most serious of felonies, including capital murder cases. He has taught trial advocacy to public defenders and assigned counsel from around the country by invitation of the Institute of Criminal Defense Advocacy in San Diego. He became the Assistant Chief Defender of the PDP in October 1989 and the Chief Defender of the Program in July 2000.

John maintains an active role in indigent defense community leadership organizations, seeking cutting edge ways to maintain the PDP as a model assigned counsel program. He is a member of the National Legal Aid and Defender Association's American Council of Chief Defenders, and its Leadership Development and Training and Best Practices Committees. He was appointed to the ten-member commission tasked with revising the Indigent Defense Guidelines for California, promulgated by the State Bar of California in 2006. He is a member of the California Public Defenders Association and its California Council of Chief Defenders. He is also a member of the California Attorneys for Criminal Justice and the National Association of Criminal Defense Lawyers.

Myra Weiher became the Assistant Chief Defender of the PDP in April 2006. She assists the Chief Defender in the overall operation of the Program, and reports directly to him. She also acts as the Assistant Executive Director of the Association.

After graduating from the University of California at Davis and then Hastings College of the Law, Myra was appointed to defend her first case for the PDP in 1973. During the 42 years that she has defended the indigent people of San Mateo County, Myra has handled virtually every kind of criminal case. She is a veteran of many murder trials, and was the first woman to act as lead defense counsel in a death penalty case in San Mateo County. In addition to homicides and serious felonies, she has a special interest in representing clients whose cases are related to mental health issues, including Sexually Violent Predators, people involuntarily confined to mental hospitals under the terms of the Lanterman-Petris-Short Act, and those who have been hospitalized after being found "not guilty" by reason of insanity. Myra is a member of the

National Legal Aid and Defender Association's American Council of Chief Defenders, California Attorneys for Criminal Justice, and the California Public Defenders Association.

Among her many accomplishments, Myra was awarded the PDP's highest honor, the Dennis L. Woodman Memorial Award, in 2005.

Richard Halpern is the Managing Attorney of the PDP's Juvenile Court operation. He began this position in 2012 upon the retirement of Gerard Hilliard. He is responsible for the delinquency and dependency caseloads of the PDP at Juvenile Court as well as the Lanterman-Petris-Short Act (mental health) caseloads for the Probate Court.

Rick was admitted to the California State Bar in 1970. Prior to joining the Private Defender Panel in 1972, Rick worked as a Deputy Public Defender in San Bernardino County where he represented both juveniles and adults. During his 43-year tenure as an attorney on the PDP, Rick handled all levels of adult and juvenile cases from minor misdemeanor matters to serious felony cases, including numerous "Three Strikes" and homicide cases. As a participant on the Juvenile Panel, he handled all levels of cases as well. Rick has always been actively involved with the PDP, serving as a mentor for a number of attorneys both on the adult and juvenile panels. He has been on the Private Defender Committee of the Bar Association as well as being a past chairman of that committee. He also was a member of the San Mateo County Bar Association Board of Directors. In 2003, Rick was awarded the PDP's highest honor, the Dennis L. Woodman Memorial Award.

Eric Liberman joined the Private Defender Panel administration as Managing Attorney of the Adult Division in August of 2013. After 31 years as a PDP attorney trying misdemeanors to murder cases, Eric has great experience that he shares with the younger PDP attorneys he mentors and monitors. While the position of Adult Division Managing Attorney is a new role recently added to the PDP administration and is therefore evolving, Eric has taken on various responsibilities, including spending one or two days a week observing PDP attorneys at various calendars, hearings and trials, as well as assessing the general happenings of the court. His day-to-day tasks include reviewing fees of and assigning cases to Panel attorneys, and assisting PDP clients and the public with their issues and questions. As part of the legal community, Eric participates as a judge in the yearly San Mateo County high school mock trial competition, and he coaches students in Marin County on improving their mock trial skills.

After graduating from Colgate University in Hamilton, New York, Eric moved to San Francisco to attend Hastings College of the Law, from which he graduated in 1981. Eric came to the PDP with no criminal experience and worked his way up through its ranks to eventually defend some of the most serious cases, including a lengthy and complicated capital case. Eric knows the PDP clients, cases and interworkings well because he has worked nearly exclusively on over ten thousand PDP cases for his entire career as a criminal defense attorney. While still practicing, Eric was the trial attorney who raised an issue of parolees' rights in the only criminal case from San Mateo County that has been heard and decided by the United States Supreme Court.¹⁰

Chief Investigator **John Maness** has completed his sixth full year with the PDP managing the Investigation Division. The Private Defender Program's Controller, **David Alves**,

brings a wealth of experience as a certified public accountant, who has advised both large and small corporations. David, along with Senior Bookkeeper **Elaine Finn** and Bookkeeper **Richard Qureishi** tend to the fiscal aspects of the operation in the Accounting Department.

PDP Office Manager **Susanna Guevara** and her staff – **Terri Cuellar**, **Edelmira Lopez** and **Miguel Ibarra** – handle all of the administrative responsibilities surrounding the assignment of cases to the PDP lawyers. **Suzanne Ury**, among many other tasks, supports the Investigation Division as the Executive Assistant to the Chief Investigator, as well as the Association as the Human Resources Coordinator.

APPOINTMENT AND ASSIGNMENT

At the time of arraignment¹¹ in the Superior Court, a person who wishes to be represented by a court-appointed attorney completes a financial declaration form and submits it to the Court. If the Court determines that the defendant is eligible for court-appointed counsel, the Private Defender Program is appointed. Every day, at every arraignment calendar, there is a PDP lawyer present to represent each person for whom counsel is appointed. He or she will generally enter a “not guilty” plea on the client’s behalf, will seek to secure the client’s release on his or her own recognizance or affordable bail, and will set dates for future court appearances. The client will be advised via a written form how to reach the PDP office to learn the name and telephone number of the lawyer who has been assigned to his or her case. The same lawyer represents a PDP client from the beginning to the end of his or her case. The calendar lawyer reports the relevant information on the cases to which the PDP has been appointed that day to the PDP staff, and the staff assigns the cases to lawyers, almost always within two days. In Juvenile Court, the attorney who will be assigned to the child’s case appears with the client at the first court appearance.¹² This makes it possible for the child to meet with the lawyer who will be handling his or her case throughout its pendency from the outset of the Program’s appointment.

Cases are assigned to attorneys based on their ability, training and experience, their availability to appear on the dates set for a particular case, and an assessment of the attorney’s current caseload.¹³ The Office Manager and her staff assign routine adult cases.

Before the most serious cases are assigned, the Chief Defender or Assistant Chief Defender will review them to assess seriousness and complexity, and will direct the assignment to particular lawyers. A similar procedure is followed in juvenile cases. The Juvenile Managing Attorney conducts an assessment of each case before assigning it. All homicide cases, adult and juvenile, are assigned directly by the Chief Defender or Assistant Chief Defender.

ALWAYS IMPROVING

As an organization that provides what is essentially a public service, the Private Defender Program rightly receives scrutiny from a number of sources. Every year, the San Mateo County Board of Supervisors evaluates the PDP both during contract negotiations and through this Annual Report. Additionally, pursuant to Paragraph 11 of the Agreement, not less than every ten years, the County may perform a formal evaluation of the PDP through a committee composed

of members of the judiciary, the Bar Association (who are not actively participating as PDP attorneys), and other interested people. The last time the County chose to perform such an evaluation was in 2012.

In 2014-2015, the San Mateo County Civil Grand Jury (Civil Grand Jury) chose the County's system for delivering indigent legal services as one of its subjects of review. In addition to considering criminal indictments, as first comes to people's minds when they hear the term "grand jury," the Civil Grand Jury is charged with investigating the County government on a yearly basis. The PDP was among a number of other subjects the Civil Grand Jury investigated this year, including "Athletes at Risk: Are San Mateo County High Schools Safeguarding Athletes From Serious Head Trauma?," "Flooding Ahead: Planning for Sea Level Rise," and "Treatment for Adult Mental Illness in San Mateo County What Exists? What Should Exist?"

The Grand Jury chose to evaluate the PDP "because the County's approach to indigent defense is unusual." Importantly, the Grand Jury had "not received any citizens' complaints, nor [was] it aware of received program criticism." As the San Mateo County Civil Grand Jury website explains:

A large portion of the public mistakenly believes that an individual appearing before the Civil Grand Jury, particularly a public official, suggests malfeasance or misfeasance. It should be clearly understood that it is the constitutional responsibility of the Grand Jury to review the conduct of county government each year. This entails having public officials appear before the jury to provide information to the jury relative to their departments or offices.

While Grand Jurors are a part of the Judicial System and are considered as officers of the court, the Grand Jury is an entirely independent body. The Grand Jury Judge, the District Attorney, the County Counsel, and the State Attorney General act as advisors, but cannot limit actions of the jury except for illegality.¹⁴

Although it is not a direct evaluation of the efficacy of the PDP, the Grand Jury's report does provide some insight on the perception of the PDP. The Grand Jury determined that the County continues to use the PDP, as opposed to a public defender system, "because most County officials regard it as well managed, effective, and economical." A copy of the Grand Jury's report is attached as Appendix H.

The Grand Jury's report included recommendations that the County do more frequent formal evaluations (i.e., at least every five years, rather than within 10 as provided in the Agreement), and that the evaluations include a determination as to whether the County's approach to indigent defense through the PDP is consistent with state and national guidelines. The report, however, did not include any such evaluation. Therefore, this Annual Report includes a self-evaluation under the national standards as a starting point to the external evaluation that the PDP welcomes in the near future.

Self-Evaluation

In addition to evaluating itself once a year through the process of producing this Annual Report, this year the administration of the PDP engaged in a self-evaluation pursuant the national

standards of the American Bar Association as set forth below. Readers of this Annual Report should note that there are state standards promulgated by the State Bar of California called *Guidelines on Indigent Defense Services Delivery Systems*, another measure by which the Grand Jury recommended the County use to evaluate the PDP. A self-evaluation under the state standards is less instructive because the Chief Defender and author of this Annual Report participated as one of the ten-member working group that drafted those guidelines, and he ensures through his work on a daily basis and as detailed in this Report that those standards are met. A self-evaluation under the national standards, however, can provide some useful information to those considering the PDP's efficacy.

The American Bar Association has published *Ten Principles of a Public Defense Delivery System*. Though not binding law, the ABA is a national organization that the legal profession uses as a model. The following is a self-evaluation under those Ten Principles.

1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.

The selection, qualification, assignment and payment of all defense counsel are the responsibility of the Chief Defender (assisted by the Assistant Chief Defender, Managing Attorneys and PDP staff), and are completely independent of the judiciary.

2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

All of the 107 lawyers of the PDP are in private practice, and have the support of the San Mateo County Bar Association and its approximately 1,300 members. In some ways, the PDP meets this principle even better than a traditional public defender system with a conflicts panel because all of the attorneys are completely independent. Each and every indigent case is assigned in the same manner – by being assigned to a private attorney, rather than some indigent defendants being assigned a public defender and others being assigned a private attorney who accepts cases from a conflicts panel.

3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

Eligibility for the appointment of counsel at public expense is made by the San Mateo County Superior Court judge before whom a defendant first appears at arraignment. Because there is a PDP lawyer assigned to every arraignment calendar, each client has immediate contact with an attorney from the moment of appointment. If the arraignment calendar attorney is not the appropriate lawyer for a particular person's case (e.g., because of a conflict or caseload issue), the PDP staff will assign a trial attorney generally within two days. Additionally, PDP attorneys are expected to attempt to assist defendants on the day of arraignment with whatever needs may arise that can reasonably be addressed in that short period of time.

4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.

Each PDP lawyer is required to have their principal office within San Mateo County, and is required to meet with any out-of-custody client who seeks to make an office appointment. The court and sheriff have provided confidential meeting space both in the jail and at the courthouse for in-custody clients. PDP attorneys are expected to spend a sufficient amount of time with their clients in order to build a rapport through which the client can gain confidence that the attorney is listening to the client, is invested in the best outcome for the client, and is pursuing every viable avenue of defense.

5. Defense counsel's workload is controlled to permit the rendering of quality representation.

Conducting its own case-weighting and caseload analysis, and setting caseload limits has enabled the PDP to carefully monitor and control the number and types of cases that each lawyer handles. The percentage of time that each PDP lawyer spends on privately retained cases is accounted for in setting workload limits for each attorney. The number and types of cases assigned is reported for each individual lawyer annually in Appendix G to this Report.

6. Defense counsel's ability, training, and experience match the complexity of the case.

Cases are not assigned a simple rotating basis; rather, they are assigned to attorneys based on their ability, training and experience as determined by the Chief Defender and his attorney staff, along with assessment of the attorney's current caseload. While routine cases are assigned by the PDP staff to lawyers whose abilities have been assessed to fit the general nature of the charges, the Chief Defender, Assistant Chief Defender, and/or Managing Attorneys personally assess the complexity of the most serious cases, directing assignment to particular lawyers with the skills to match those cases. Only certain, extremely experienced and well-qualified attorneys are given homicide cases, and many of those attorneys take only homicide cases from the Panel.

7. The same attorney continuously represents the client until completion of the case.

Each PDP client is represented by the same lawyer continuously until completion of his or her case. If a client wishes to seek expungement of his or her criminal conviction, the same PDP attorney will often even represent the client for that post-case relief.

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.

Both the ABA and the State Bar of California recognize the importance of parity. The 2006 *Guidelines on Indigent Defense Services Delivery Systems* provides, "There should exist, at a minimum, parity between full-time indigent defense providers and full-time prosecutors in net compensation, as well as benefits or an amount sufficient to provide benefits of the same value.

Total compensation of indigent defense providers should bear a clear relationship to the relative importance of their responsibility in providing the spectrum of indigent defense services.” (p. 32)

In San Mateo County there is no disparity with respect to investigation, experts or other resources available to the defense in the representation of their clients. A PDP lawyer has access to the assistance of a private investigator in any type of case from simple infractions to complex death penalty homicides. Investigators are paid at the rate of \$60 per hour, and they are not limited to a set number of hours in any case. Request for the assistance of forensic experts are made to the Chief Defender or Assistant Chief Defender and are discussed in the context of the facts of the case. The range of forensic experts called upon to assist PDP lawyers in the defense of their cases include psychiatrists, psychologists, physicians, serologists, toxicologists, accident re-constructionists, social workers, and weapons, fingerprint and DNA experts. Despite the prosecution’s vast resources through police agencies and their investigative units, there is no disparity of ancillary services between the defense and the prosecution.

Parity of compensation between PDP attorneys and deputy district attorneys (DDAs) is an area that needs significant improvement. Compensation for PDP lawyers is set forth in the 2008 Fee Schedule attached as Appendix E to this Report. The PDP uses a combination of an event-based and hourly system of compensation designed to pay more to lawyers whose work is more extensive and who are defending cases with particularly complex issues. The Fee Schedule encourages lawyers to do all work appropriate to secure the rights of their clients, including the right to a trial by jury. In addition to base fee per case of \$270 (case fee plus pretrial fee) for misdemeanors and \$240 for substantive (not routine) motions, attorneys in misdemeanor jury trials are paid at the rate of \$125 per hour in court with an additional \$260 per day for out-of-court preparation time.

Most felony cases follow the same fee structure as misdemeanor cases, but they have a per-case fee of \$660 (case fee plus pretrial fee). The more serious felonies are compensated on an hourly basis, without a specified limit as to the number of hours that can be spent on a case. Hourly rates are the same for such cases in and out of court. The large variety of cases that carry potential life sentences or capital punishment are compensated by the PDP at rates between \$125 per hour to \$165 per hour.

In June of 2015, the Association entered into a new two-year contract with the County to cover the fiscal years 2015-2016 and 2016-2017. With this year’s Agreement, the County allotted \$1,047,327 in additional funds for the current fiscal year beginning July 2, 2015, and \$370,056 in additional funds for next fiscal year. As this Annual Report is being written, a sub-committee of the Private Defender Program Committee of the Bar Association is re-evaluating the fee schedule to increase the fees paid for several categories of cases.

Despite the contractual increase of six percent this year and two percent next year, the disparity in income levels between DDAs and PDP attorneys is stark. It was a factor that was often discussed during the contract negotiations. DDAs are salaried employees with benefits and retirement contributions from the County, and making a dollar-for-dollar comparison with the PDP independent contractors is difficult. PDP attorneys are private lawyers who are free to accept private cases in addition to their PDP-assigned cases. In theory, a PDP lawyer has the opportunity to make as much or more than a DDA with the same experience and qualifications. Nonetheless, it is important to note that PDP attorneys report that 84 percent of their time is

spent on PDP cases, and 52.3 percent (56) of PDP attorneys report that they spend 90 percent or more of their time representing PDP clients.

The indicators show a significant disparity between compensation for prosecutors as compared to PDP defense attorneys. For example, the District Attorney's Office has a structured organization of management and employee lawyers and staff. DDAs receive "step" increases with some regularity as they meet performance expectations and garner more experience through different assignments. In contrast, PDP attorneys have not received any sort of increase since 2008 until this year. While PDP attorneys may be given more serious cases as they advance their careers, those cases often do not mean a significant increase in income from the PDP because most felonies are not compensated on a special fee (i.e., hourly) basis.

When PDP attorneys are not compensated at a comparable level as their prosecution counterparts, they are, in effect, not treated as equal partners in the criminal justice system. There is no doubt that our PDP attorneys work as hard as they can for their clients because they are professionals who care about their own ethics and reputations, as well as the welfare of those they represent. They are committed to their work as public servants, and they provide excellent representation because of their passion for their jobs. However, as the ABA principle and State Bar *Guidelines* recognize, PDP attorneys deserve to be compensated more on par with the DDAs they see every day in court. Achieving that parity is a continuing goal of the PDP administration, and it will be part of future contract negotiations.

9. Defense counsel is provided with and required to attend continuing legal education.

The PDP presents its own mandatory seminars each year, and offers approximately 15 hours of "in house" education annually. In addition, each lawyer has a continuing education budget of \$750 per year to purchase reference materials or attend seminars presented by the California Public Defenders Association and other qualified providers that relate to the types of cases they handle for the PDP. Moreover, as shown in the Attorney Evaluation Standards attached as Appendix F and as set forth in the Attorney Evaluation section of this Report, PDP attorneys are required to specifically list the continuing education courses they have attended as part of their annual survey responses, and they are evaluated in light of that attendance.

10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

The performance of every PDP lawyer is evaluated each year by the Chief Defender and his attorney staff. The standards by which PDP lawyers are evaluated include assessment of each lawyer's professional ability as measured by preparation, knowledge, and advocacy skills. The standards also assess professional attitude, which includes ethics, integrity, and work habits. Finally, personal relations are taken into account, assessing attorneys' skills in communicating with clients and with other members of the criminal justice system.

Through our evaluation process each year, the PDP requires that its attorneys report on the number and types of trials they conducted during that fiscal year. Trying cases before juries continues to be a point of emphasis for the Program because aggressive trial advocacy routinely results in better outcomes for the clients. Lawyers who have not tried a case within a reasonable

period of time are counseled. In instances where administrators conclude that clients' rights to trial by jury may be neglected, an attorney may be dismissed from the Program. One area of improvement we recently identified is monitoring attorneys throughout the year more closely. To address that concern, we recently added Adult Managing Attorney **Eric Liberman** to observe courtroom performance on a regular basis and report those observations to the Chief Defender and Assistant Chief Defender.

Although there are always areas that could be improved – and any effective organization will continually evaluate, identify and attempt to address those areas– the Private Defender Program is undoubtedly doing an excellent job. Perhaps the most obvious example of that is the fact that in August of 2012, the ABA and the National Legal Aid and Defender Association awarded the Private Defender Program its Harrison Tweed Award for long-term excellence in providing for the defense of the indigent. In our evaluation, the PDP and its dedicated attorneys have only improved since then.

WHO ARE THE LAWYERS OF THE PDP?

All of the lawyers to whom cases are assigned are in private practice in San Mateo County. Presently, there are 107 lawyers on the PDP panel. Each was accepted to the PDP only after a thorough application process was completed. Attorneys who seek admission to the PDP must submit an application that details their background and experience, and provide references. The Assistant Chief Defender performs a detailed background check of the applicant. She checks not only the references provided by the applicant, but also seeks out and consults other people within the criminal and/or juvenile justice community with whom the applicant could be expected to have had contact. The Assistant Chief Defender then conducts a thorough interview and makes a recommendation to the Chief Defender concerning admission. If that recommendation is positive, the applicant will then be interviewed by the Chief Defender, who will make and inform the applicant of his decision.

All admission decisions, of course, are preceded by an assessment of the need of the Program to add attorneys based on an analysis of current caseloads and projections for the future. While skill and experience are certainly high on the list of factors considered in admission decisions, they are only starting points for an evaluation of an applicant. Since we believe that defending the indigent accused is more a vocation than an occupation, an evaluation will be made of the devotion of the applicant to the representation of the poor as opposed to a desire to simply create or supplement cash flow. For the less experienced attorney applicant, we will also assess the likelihood that he or she will strive to and will achieve a level of excellence that will enable him or her to handle serious felony cases in the future.

Contrary to a common perception of the public, most of the work of defending people accused of crimes involves negotiation rather than the visible confrontations that take place in courtrooms. Successful negotiation is preceded by thorough case preparation, and lawyers accomplish it with tenacity, self-confidence and with the credibility that comes with a reputation for taking cases to trial. An evaluation of an applicant's ability to work within the San Mateo

County justice community is also important, particularly in view of the unique and valued relationships that exist between the PDP and the other justice agencies with which we regularly interact.

The most important single factor in evaluating an applicant is his or her reputation for honesty and integrity in all segments of the criminal justice community. A lawyer's word is his or her most precious asset. Without impeccable credibility, a lawyer cannot hope to successfully serve the clients entrusted by the Court to the Private Defender Program.

As the chart below suggests, the PDP is able to bring a wealth of experience to the defense of the clients we are appointed to represent.¹⁵

PRIVATE DEFENDER PROGRAM MAKEUP OF CRIMINAL/JUVENILE PANEL

Experience Level of Criminal/Juvenile Attorneys	Number of Attorneys	Percent of Total Panel
5 Years & Under	5	4.7%
6 - 10 Years	17	15.9%
11-15 Years	12	11.2%
16 Years & Over	73	68.2%
Total	107	100.0%
<hr/>		
Institutional Experience*		
Former Deputy District Attorney	22	20.6%
Former Public Defender	16	15.0%
Management	2	1.9%
Total	40	37.5%

* Some attorneys fit more than one of the above categories.

The PDP has been very fortunate to retain highly skilled and experienced lawyers and to attract such talented lawyers from private practices and from other institutional defender and prosecutorial agencies. While the reasons for this are as diverse as the PDP lawyers themselves, attorneys have pointed to elements of the structure of the Program as important to their decisions to apply and remain.

Defending the indigent accused of criminal conduct is a rewarding profession. At times it is also one of the most difficult, thankless, and stressful career paths that an attorney can elect to

travel. Providing opportunities to minimize *burnout* in the practice of criminal law has been and continues to be one of the strengths of the PDP. We have found that the opportunities for lawyers to *diversify* their practices, to *control* the size of their caseloads, to *choose* the types of cases they handle, and to have access to *adequate resources* to properly defend their clients are keys to the avoidance of burnout.

The average PDP lawyer devotes **84** percent of his or her time to the representation of clients assigned to them by the Program.¹⁶ These lawyers are free, of course, to fill the remainder of their time representing retained clients in any field of law in which they have an interest. There are some PDP lawyers who choose to devote all of their time to the representation of clients assigned to them by the PDP. On the other hand, there are some who choose to make the representation of PDP clients a much smaller part of their practices. For example, we have some highly skilled lawyers who choose to handle only fraud cases for the PDP because such cases are closely related to the white-collar cases they regularly handle in the balance of their practices. There are other highly skilled lawyers who choose to handle only one or two serious PDP cases at a time. Because we have such a large pool of death penalty and homicide-qualified lawyers on the Panel, we are, as a general rule, able to assure that no PDP lawyer has more than one murder case pending at any given time.

PDP lawyers with the training, experience, knowledge and skill to defend murder cases and other very serious crimes are not confined to the defense of such cases simply because they are qualified to do so. The stress associated with defending serious felonies exclusively can be enormous. You will thus find homicide-qualified PDP lawyers announcing their readiness to try petty theft and DUI cases on the misdemeanor trial calendar on any given morning. PDP clients benefit from the choice of such skilled and experienced lawyers to diversify their practices. At the same time, the freedom to choose the types of cases that he or she will defend tends to keep PDP lawyers fresh and enthusiastic.

There is no such thing as “the typical PDP lawyer.” Their backgrounds are widely diverse, and they come from nearly every corner of our country – and, in the case of a few PDP lawyers, from other countries. The PDP includes 19 lawyers who are members of racial minority groups, 42 women, and 14 lawyers who are fluent in Spanish. We also have lawyers fluent in other languages, including Cantonese, German, Hebrew, French, Russian, Ukrainian, Italian, Byelorussian, Polish, Catalan, Dutch, Tamil, Hindi and Czech.

There is another kind of diversity within the Private Defender Program that is not well known to the public. The indigent people of our County who are entitled to the assistance of court-appointed counsel are not to be found only in the criminal trial courts. PDP lawyers bring a wide range of experience and skill to a variety of cases including the representation of abused and neglected children, people with serious and disabling mental illnesses and elderly people who can no longer tend to their affairs. Trial lawyers representing clients in capital and other complex felony cases also need the crucial assistance of appellate specialists to help them protect their clients’ rights and lives. While the diverse work of PDP lawyers and investigators is performed daily in open courtrooms, the perception of some members of the public, and even some of our clients, is that these men and women are virtually anonymous “parts of the system.”

Over the past year the PDP welcomed four new lawyers. **Paul Wilkins**, a former prosecutor and local criminal defense attorney, joined the Panel and is handling adult criminal cases. **Ken Rutherford**, a former public defender from Southern California, has also joined the Adult Panel and is handling serious felony cases. Also joining our Adult Panel is **Michael Armstrong**, another long-time local attorney with extensive criminal experience in San Mateo County. Finally, **Pamela Glazner**, whose criminal law and litigation background is diverse, joined the Panel to write writs and appeals, and to handle special projects.

With the happy addition of new attorneys, we also had to bid goodbye to three of our lawyers. Both **Cristina Mazzei** and **Rachel Holt**, longtime valued members of the PDP, were appointed to serve as Commissioners for the San Mateo County Superior Court. We will sorely miss their service and contributions to the PDP.

Sadly, the PDP lost one of its original members, **Ben Lamar**, who died in July 2015. Ben was one of the first attorneys to be appointed under the Program, taking his first PDP case on March 28, 1969. This year's Annual Report is dedicated to his memory.

In Memoriam and Gratitude for his Faithful Service to the Underrepresented

Ben LaMar
1935 – 2015



The Dennis L. Woodman Memorial award is presented annually to a Private Defender Program lawyer who “heedless of opposition and with ceaseless determination fights for those whose liberty or lives are in peril.” The award recipient is selected by the Private Defender Program Committee, and is thus truly an award whose value is all the greater because it is made by one’s peers. No member of the Private Defender Program Committee nor the Private Defender Program staff is eligible for the award.

Since 1993, the private defender program lawyers who were winners of the award were:

Phil Barnett
Geoff Carr
Kathy Jacomb
Gordon Rockhill
David Goldstein
Peter Goldscheider
Gary Merritt
Richard Keyes
Bill Johnston
Ed Pomeroy
Richard Halpern
Steve Schaiman

Myra Weiher
Pat Concannon
Savas Loukedis
Charlie Robinson
Dek Ketchum
Bonnie Miller
Steve Chase
Connie O'Brien
John May
John Halley
Jeff Boyarsky

HOW THE PDP LAWYERS ACCOMPLISH THEIR MISSION

When the Private Defender Program is appointed by the Court to represent a person, an attorney with the appropriate training, experience and skill for that case is promptly assigned. Assigning the right lawyer to the case, however, is only a small part of the job. The promise of *Gideon*¹⁷ is that a competent lawyer, with *adequate resources* to defend the case, will be appointed. There is no PDP lawyer who will be put in a position to represent a client without the resources necessary to do so properly.

In the context of criminal defense, *adequate resources* mean more than just money. It means providing lawyers with the opportunity to use investigators and experts in the cases that call for them. It means having the support of an organization designed and managed in a way that puts the interests of the client first. It means being part of an organization that is structured to recognize that each client and each case is unique and that sometimes lawyers with unique skills, training and interests are needed.

There were 98 trial lawyers assigned individual cases in the normal course of operations by the PDP staff in this fiscal year. Because they did not handle assigned caseloads in these types of cases, three of the 10 specialty calendar lawyers are not listed here. Also not listed are the appellate lawyers, the lawyers who handle civil cases exclusively, those who left the PDP during the course of the year, those who were on various types of leaves of absence and the lawyers who were added too close to the end of the fiscal year to have acquired a statistically significant caseload. These trial lawyers are responsible for representing the client from the moment they are assigned to the case until it is concluded. There are other PDP lawyers, however, who play specialized roles in the organization – roles that support the trial lawyers and roles that address special needs of our clients.

There are 10 PDP lawyers who handle specialty *calendars*.¹⁸ Nine of these lawyers handle all of the in-custody arraignment calendars. Each of them has 25 or more years of experience and the skills and credibility that go with them. This experience is crucial to those clients who appear on these calendars charged with minor misdemeanor or simple drug possession offenses

and who will remain incarcerated because they have been deemed ineligible for release on their own recognizance and are without the financial means to post bail.¹⁹

When a minor misdemeanor offense is charged against a client in this situation,²⁰ the calendar lawyer may ask the judge to pass the case over to the end of the calendar. Because the police reports are available at the time of arraignment, the lawyer will then review them, discuss the case with the client, and confer with the judge and the deputy district attorney handling the calendar. If there is no defense to the charge, the client may elect to plead guilty to the offense or a lesser offense, and will usually be sentenced to the time he or she has already served in jail, thus being released from custody.²¹ The experience of these lawyers enables them to quickly assess the provability of the case and thus to discuss with the client whether or not proceeding to trial is a sound idea.²² The ability to assess the provability of a case may also work to persuade the deputy district attorney to dismiss the case when its weaknesses are discussed in the context of the client's intended defense. If the judge is persuaded that a case is weak, he or she may be inclined to revisit the question of the client's custodial status absent a motion to dismiss the case from the prosecution. The object, of course, is to secure the client's freedom as soon as possible.

The San Mateo County Superior Court has always earnestly sought out ways to improve the manner in which criminal justice is administered in this County. Gathering all of the members of the criminal justice community, including the PDP, District Attorney, the Probation and Health Departments, and the Human Services Agency, our Court devised and put into operation *Bridges*, an innovative and successful program designed to find a way to address the problem of local recidivism beyond the fruitless and expensive habit of simply locking up convicted drug addicts and alcohol-dependent people in the County jail. The PDP has responded by staffing the *Bridges* Court calendars with lawyers whose emphasis and expertise is in dealing with our drug and alcohol-dependent clients. We have staffed the Drug Court calendar with three attorneys. By having the same attorneys staff these calendars week after week, our clients are better served, because the continuity of their expertise enhances the crucial element of trust between assigned counsel and clients who are recovering from crippling addictions.

Providing support for the trial attorneys are four appellate lawyers. In addition to handling misdemeanor appeals in the Superior Court,²³ these lawyers are available to assist trial counsel in preparing writs for extraordinary relief from the appellate courts, for research and preparation of unusual motions, and to review the constitutionality of prior convictions alleged by the prosecution pursuant to provisions of the Three Strikes law.²⁴

If an attorney feels that the assistance of a forensic expert is needed in a case, he or she will contact the Chief Defender or Assistant Chief Defender for an adult case, or the Managing Attorney for a juvenile case, to discuss the request in the context of the facts of the case. The range of forensic experts called upon to assist PDP lawyers in the defense of their cases is limited only by the rules of evidence. Examples of such experts include: forensic psychiatrists, psychologists, physicians, serologists, toxicologists, accident re-constructionists, social workers, weapons, fingerprint and DNA experts.

JUVENILE SERVICES

The PDP represents minors charged with crimes, minors and their parents in dependency proceedings, and individuals subjected to involuntary commitments pursuant to the state's mental health laws in our Juvenile Services Division, which is located in the Youth Services Center in San Mateo.

Our Juvenile Managing Attorney, **Rick Halpern**, has headed the Juvenile Services Division since 2012 and has been in practice representing clients in juvenile matters for over 45 years. This year the PDP has added one new member, **Joan Tillman**, to its delinquency panel. Some of the Panel members handle only delinquency cases, and others take only dependency cases, but a majority of our attorneys address both.

All of the cases that come to the Private Defender Program are reviewed by our Managing Attorney, who then assigns them to the individual lawyers. The Managing Attorney is available in the office to oversee the representation of clients, as well as to address any complaints or concerns the clients may have. When the Managing Attorney is out of the office, an officer of the day, who is one of the attorneys experienced in both delinquency and dependency cases, is always available.

Rick is ably assisted in his job by his administrative assistant, **Carina Arteaga**, who is proficient in both English and Spanish. **Suzanne Ury** also provides assistance in the Juvenile Office.

The lawyers on the Juvenile Panel are actively involved in community outreach. **Marianna Klebanov** and **Bonnie Miller** are members of the County's Juvenile Justice and Delinquency Prevention Commission. **Rebecca Ross** is a member of the Steering Committee for the development of the re-design of the Camp Glenwood Program. She is also a member of the Administrative Office of the Courts, State of California, Center for Families, Children, and the Courts Commission. **Sara Williams** is a member of the Blue Ribbon Commission Education sub-committee. Managing Attorney **Rick Halpern** is a member of the Juvenile Justice Coordinating Council, the Blue Ribbon Commission on Foster Care, and the Education sub-committee of the Blue Ribbon Commission. He is also a member of the Forensic Evaluators Committee of the Superior Court. While not a member, Rick regularly attends the monthly meetings of the Juvenile Justice and Delinquency Prevention Commission, in order to supply input and to answer questions that may arise concerning the Private Defender Program. Both **Rick Halpern** and **Kathy Yolken** have been active in working with the Probation Department concerning the Girl's Empowerment Program, as well as the Girl's Camp.

In October of 2014, **Rick Halpern** participated in the Juvenile Defender Leadership Summit in Louisville, Kentucky. He also is on the Advisory Committee for the Training Institute for Holistic Representation of Legal Services for Children of San Francisco. Rick is also on the Advisory Council for Project Change at the College of San Mateo. Rick also participated on the JAG Steering Committee, which was ultimately successful in obtaining the Edward Byrne Memorial Assistance Grant for reducing truancy, providing alternatives for gang involvement, eliminating school violence and curbing substance abuse among at risk youths. He continues to assist in an advisory capacity in the implementation of the grant. In June of 2015, Rick was

invited to speak about the Juvenile Office of the Private Defender at the San Mateo County Chapter of the NAACP.

The Managing Attorney has an excellent working relationship with presiding Judge **Clifford Cretan**, Judge **Marta Diaz**, managing attorney at the District Attorney's Office **James Wade**, as well as the Probation Department, all of whom he meets with frequently to discuss and resolve issues that arise.

MENTAL HEALTH AND PROBATE

The Private Defender Program's Juvenile Office administers the Program's representation of clients in Lanterman-Petris-Short Act (LPS) cases (psychiatric) and probate (general) conservatorships when appointed by the Court. The cases present a great variety of issues that are interesting, often unusual, sometimes bizarre, and always challenging. The Panel attorneys must always be advocates for their clients first, but because the clients are almost always under some disability or lack capacity, the attorneys must also be mindful at times of what may be best for their clients. The attorney, who is foremost an advocate, must tread the line between the two concerns carefully.

Our dedicated panel of attorneys, which includes **Emily Andrews, Robert Brady, Margaret Copenhagen, Mara Feiger, Gina Jett, Marianna Klebanov, Dave McDonell, Anne Murphy, Elsie Wanton** and **Neal Winchell**, travel all over the Bay Area to visit their clients in mental health facilities in order to provide legal representation concerning their LPS conservatorships, as well as issues arising over medical decisions. **Robert Brady**, in addition to his representation of clients, has unselfishly provided mentoring for our LPS panel for many years.

LPS Conservatorships:

Clients allegedly unable to care for daily needs because of a psychiatric condition sometimes find themselves placed on a locked hospital ward against their will and subject to the possible establishment of an LPS conservatorship. The LPS attorney must be able to assist the client in a Writ of Habeas Corpus hearing to challenge the hospitalization hold, in a hearing to challenge forced antipsychotic medication when there is an appeal from a medication review (Riese) hearing, or later in a court or jury trial to oppose establishment of LPS conservatorship. For patients under conservatorship, panel attorneys are also called upon to assist LPS clients when a conservator seeks court authorization for extraordinary medical procedures or a DNR (Do Not Resuscitate) order.

Probate Conservatorships:

An individual, often elderly, allegedly unable to care for himself or herself properly or who is unable to manage his or her finances, may be subject to a probate (general) conservatorship. A young adult who is developmentally disabled may be the subject of a limited conservatorship – a conservatorship tailored to meet the individual's specific needs. The Private Defender Program assists these clients at hearings on the establishment of the conservatorship. If the client is opposed to the establishment of the conservatorship, the Private

Defender Program will represent them in a court or jury trial. The attorney must be able to work with individuals who may be incapacitated or disabled. Panel attorneys, either before or after a conservatorship is established, may be appointed to investigate and to assist victims of financial abuse. Representing a client effectively often requires the attorney to be skilled in dealing with complex family dynamics.

Other Matters:

Conservatorship panel attorneys are sometimes called on to represent clients in matters somewhat out of the ordinary. For example, individuals who are subject to a petition for ECT (electroconvulsive therapy), or who are allegedly refusing to cooperate with treatment and who are being held against their will for treatment of tuberculosis may need representation and services provided by the PDP.

THE INVESTIGATION DIVISION INNOVATION, EXCELLENCE AND COST EFFICIENCY

No matter how talented, experienced and skillful the lawyer, he or she will not be able to properly represent a client without the resources – the tools – necessary to do so. The Private Defender Program understands that in a wide variety of cases, the help of an investigator is crucial to the high-quality representation to which our clients are entitled. The PDP's commitment to that principle is nowhere better evidenced than in its policy with respect to the assignment of investigators: Investigators are available for *all* cases – including misdemeanors, felonies, juvenile delinquency and dependency cases – on request. *All* requests for an investigator are granted.

Now completing his sixth full year as the PDP's Chief Investigator, **John Maness** continues the never-ending process of refining the Investigation Division to meet the growing needs of our clients and their lawyers. Not long after he became Chief Investigator, John set in motion an aggressive and comprehensive overhaul of the Division so that it would move forward quickly to fulfill its vision of "being renowned for providing zealous investigative services to our attorneys, 'that truth should not escape nor innocence suffer,' and to be a nationwide model for delivery of criminal defense investigative services." Bringing the prodigious team building and communication skills he developed during his career to the task, he implemented the plan he developed with the help of a team of gifted and devoted PDP investigators and lawyers.

FISCAL YEAR 2014-2015 OVERVIEW

During Fiscal Year 2014-2015, the Investigation Division assigned investigators to 1,410 new cases. The cases were categorized as follows: 709 felony, 511 misdemeanor, and 190 juvenile. Twenty-five of those cases were gang-related. One hundred forty required Spanish language skills. In addition, there were 166 assists.²⁵ The Chief Investigator was assigned to four felony cases, seven misdemeanor cases, one juvenile case and three assists.

The Investigation Division budget for Fiscal Year 2014-2015 was \$2,200,000. It cost \$2,130,159 to deliver investigative services throughout the year (\$69,841 less than budgeted). Operation Sunny Day – an indictment of 16 defendants in gang-related charges ranging from

murder to narcotics trafficking – consumed approximately ten percent of the Investigation Division budget at \$223,876.

During the previous Fiscal Year of 2013-2014, the Investigation Division assigned 1,292 cases at a cost of \$2,084,291. There was an increase in overall case assignments (118) and, excluding Sunny Day expenses, a significant decrease in overall costs (\$178,000). While felony assignments decreased by five percent, there were more misdemeanor (107) and juvenile (45) assignments. Gang cases remained steady following two consecutive years of decline. Juvenile case assignments increased by 24 percent. Spanish needs cases rose 11 percent, and assists held steady.

SPECIAL FEES

During Fiscal Year 2014-2015, the Investigation Division spent \$8,988 in special fees charged to accounts other than investigators' fees. They include costs associated with acting chief coverage by Investigator **Doug Eckles**.

STAFFING

Staffing remained consistent throughout the fiscal year. We presently have a complement of 36 investigators, five of whom speak Spanish. We continue to enjoy a waiting list of qualified applicants.

INTERNAL AFFAIRS

No complaints were received during the fiscal year.

COMMENDATIONS

The Investigation Division received 25 commendations from PDP attorneys during the fiscal year, all of which were for exceptional work performed by investigators. The Chief Investigator acknowledged each and every commendation and placed copies in the appropriate files.

PROFESSIONAL STANDARDS AND TRAINING COMMITTEE

Unlike many criminal defense investigation units, the Chief Investigator continues to enjoy dedicated funding for the continuing education of investigators. The Professional Standards and Training Committee is responsible for providing our investigators with meaningful training opportunities and ensures the efficient use of those funds. It is also responsible for ensuring the fulfillment of the mandate of the Investigation Division Mission Statement: "To provide investigative and support services of the highest ethical and professional standards, second to none, in the defense of indigent clients in San Mateo County."

Our Professional Standards and Training Committee, comprised of Investigators **Doug Eckles** (Chair), **Frank Daley**, **Sylvia Palma**, **Michael Hartmann** and Managing Attorney **Eric Liberman**, has been nothing short of remarkable in identifying training needs and maintaining our standard of excellence. During the fiscal year, the dedicated members of the committee

worked hard to provide our investigators with numerous continuing education opportunities that resulted in the delivery of more than 580 hours of training. This speaks very highly of the committee and all of the investigators who devoted time to these numerous opportunities.

In addition to the aforementioned training of investigators, the Investigation Division provides a mentor program, which acquaints new investigators with the PDP and its Investigation Division. Senior investigators are paid a flat fee of \$500 for each mentor/mentee relationship.

OTHER DUTIES

The Chief Investigator ensures that the San Mateo County Bar Association has sufficient full-time staff members trained to effectively respond to life-threatening medical emergencies that occur inside SMCBA offices. The Association maintains its own Automated External Defibrillator, medical oxygen with various delivery systems, artificial airways and a manual resuscitator. In March of 2015, seven full-time SMCBA staff members received training in Cardiopulmonary Resuscitation and Automated External Defibrillation (AED). This marks the fourth consecutive year of CPR/AED training.

NETWORKING

The Investigation Division continues to network with our colleagues in neighboring jurisdictions and beyond. We routinely train together and do not hesitate to call upon one another for advice and outside agency assistance. In May 2015, following two terms as Northern California Regional Director, one term as Secretary/Treasurer and one term as Vice-President for the Defense Investigators Association of California (DIA), the Chief Investigator was elected to serve as President of the organization. The primary mission of the DIA is to provide high quality regional continuing education opportunities for criminal defense investigators.

IN THE CHIEF INVESTIGATOR'S OWN WORDS

I would be remiss if I failed to mention two individuals who provided me with invaluable assistance throughout another challenging, exciting fiscal year: **Suzanne Ury** and **Doug Eckles**.

Executive Assistant **Suzanne Ury** continues to obtain and distribute discovery to our attorneys and investigators. This past year has been particularly challenging given the volume of discovery associated with the Operation Sunny Day cases. Suzanne spent an extraordinary number of hours fulfilling all the duplication requests, which will continue until the cases are resolved. Suzanne also coordinates all Investigation Division committee meetings, special unit meetings, training seminars, and special projects and events. She prepares the agenda and takes minutes at the Professional Standards and Training Committee meeting. This past October, she coordinated the Defense Investigator Association's fall meeting in Sacramento.

Suzanne also provides administrative support to our Juvenile Branch as needed. In January of 2014, her job title was amended to include Human Resources Coordinator. Throughout the fiscal year, Suzanne worked with Controller **David Alves** and the Chief Investigator to create a modern SMCBA Employee Personnel Manual.

As part of the Investigation Division, Suzanne routinely assists in other areas of the organization. For example, once again in 2015, Suzanne served as the volunteer coordinator of the San Mateo County Mock Trial 2015 Competition in direct support of the SMCBA. Mock Trial is an extremely important community event the SMCBA sponsors. Suzanne was steadfast in her mission to recruit, schedule, remind and even reschedule judges, coaches and other busy professionals who volunteered their time to work with the students throughout the months of this worthwhile program. Thanks to Suzanne's tireless efforts, Mock Trial 2015 was another enormous success with Menlo School finishing first in the County competition, and eighth at the state competition in Riverside.

Investigator **Doug Eckles** serves not only as Chairman of the Professional Standards and Training Committee but also as Acting Chief Investigator in my absence. Doug is always a pleasure to work with and his contribution to the successful administration of the Investigation Division cannot be overstated. He is always willing to research and make suggestions for replacing outdated equipment or processes. Doug's vast knowledge of current technology has continued to enhance the Investigation Division, as well as the PDP as a whole.

Once again, the overwhelming support I receive from Assistant Chief Defender **Myra Weiher**, Chief Defender **John Digiacinto**, Managing Attorney **Rick Halpern** and Managing Attorney **Eric Liberman** has made my job the best job in the entire criminal justice system. I look forward to another exciting year with them.

THE IMPORTANCE OF RELATIONSHIPS THE SUPERIOR COURT

Representation of the poor consists of more than attending courtroom proceedings. It is crucial to the administration of criminal and juvenile justice that the agency that represents the indigent also be a voice to protect their rights as a group. Policies adopted without the voice of defenders can operate, even if by inadvertence, to compromise their ability to effectively represent the interests of their clients.

The Private Defender Program's effectiveness as a voice in the policy-making process in San Mateo County's criminal justice community is a product of the very strong relationship that it has with the Superior Court. The Association and its Private Defender Program are *always* "invited to the table" to discuss the formation and implementation of criminal justice policy. Unlike many other jurisdictions, our Court *never* hands down such policy decisions before our input has been sought and received. The importance of that relationship to the persons we are appointed to represent cannot be overstated. We are very grateful for it.

Our clients are the direct beneficiaries of the strong relationship between the PDP and the Superior Court. The eagerness of our Court to fashion solutions to problems by working together with us and other members of the criminal justice community benefits all of the people of San Mateo County. The mental health treatment court, called "Pathways," and Veterans Treatment Court are two excellent examples of the results of collaborative efforts of the Court and other members of the criminal justice community. From the beginning, along with the Court, the District Attorney's Office and the Probation Department, Assistant Chief Defender **Myra Weiher** has been one of the moving forces for these programs.

PATHWAYS

Pathways was first proposed by our Superior Court to address the growing problem of seriously mentally ill individuals within the criminal justice system in San Mateo County. It is a collaboration among the San Mateo County Superior Court, Probation Department, District Attorney's Office, Private Defender Program, Behavioral Health and Recovery, Sheriff's Office and Correctional Health. Crucial support and funding has been provided by the San Mateo County Board of Supervisors.

Pathways is a program which integrates judicial and criminal justice sanctions and approaches while addressing the underlying mental health and behavioral health problems that may have led or contributed to the individual's involvement in the criminal justice system. The program is designed to provide supervision by both mental health clinicians and probation officers to assure that the clients are receiving needed support and case management and treatment, as well as remaining healthy and active in the community, and making plans for a productive future once their participation in the program is completed.

The Pathways mental health treatment court accepted its first client on November 8, 2006. It presently has over 38 active clients and 73 graduates. The program accepts both men and women, and has four basic criteria for admission: 1) the presence of a major mental illness

(Axis I)²⁶; 2) eligibility for probation; 3) residence in the County of San Mateo; and 4) willingness to participate.

Thanks to the concern, vision and energy of Judges **Robert Foiles**, **George Miram** and **Mark Forcum**, the program has been a success.

VETERANS TREATMENT COURT

The Veterans Treatment Court (VTC) was established as a Court pilot program in May of 2012, after a year of planning by a partnership of criminal justice community stakeholders. VTC involves all the same criminal justice community participants as the Pathways court, and includes the participation of the Veterans Administration Criminal Justice Outreach Coordinator. It is a collaborative treatment court, the goal of which is to get the treatment and support each veteran needs to successfully navigate life. Although the same entities participate in the planning and implementation of the program, the treatment programs are provided by the Veterans Administration (VA), usually either at the Menlo Park or Palo Alto facilities.

California Penal Code section 1170.9(a) provides that veterans are entitled to special treatment in the criminal justice system if the Court finds that the veteran "...committed the offense as a result of a sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from service in the United States military."

Judge **John L. Grandsaert** is the Veterans Treatment Court judge who presides over each session. At the beginning of each court session, he reads a statement to the veterans and others who attend the court. In addition to the description of processes, procedures and rules for gaining admission and completing VTC, he describes the reason veterans treatment courts have been established throughout the United States: "We treat Veterans a little differently than others in the criminal justice system because Veterans deserve different treatment. Veterans have already sacrificed part of their life for the benefit of this country and the rest of us."

Veterans Treatment Court is a post-conviction court. When the veteran makes his or her first appearance in VTC, he or she is assigned a mentor, also a military veteran, who can be called upon for advice, support and assistance with the rigors of post-military life and the court programs. If the veteran is accepted into the VTC program, he or she is placed on probation and ordered by the Court to participate in programs and treatment as directed. The treatment plan is discussed among the parties to determine which VA programs would be the most effective for the individual needs of the veteran involved.

Once admitted to Veterans Treatment Court as a participant, the veteran is supervised by San Mateo County Probation while receiving treatment and services through the VA. Veterans must return to Court at varying intervals, depending upon their progress. They may be required to appear once or twice per month, or perhaps not for two months at a time. A progress report regarding each veteran is prepared for each court appearance. If the veteran is doing well, a gift card is awarded from the program and the Court acknowledges his or her progress. If the veteran is struggling, the Court engages in discussion with the veteran as to how he or she might become more successful. There are currently 29 veterans actively participating in VTC, and we have 12 graduates.

Upon successful completion of the Veterans Treatment Court program, a veteran is eligible to have fines and fees reduced or eliminated, and the convictions which led them to VTC may be expunged and possibly sealed.

In addition to Veterans Treatment Court, there are two new laws that pay deference to our County's veterans who find themselves in the criminal justice system.

In January of 2015, Penal Code section 1170.91 became effective. That statute provides that in felony sentencing of a veteran who is suffering from the conditions enumerated above (i.e., sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse or mental health problems) the court "shall consider these mitigating circumstances from which the defendant may be suffering as a result of military service," which could mean a more lenient sentence.

Another new law that went into effect in January of 2015, provides for the establishment of a Military Diversion Court for misdemeanors. Unlike Veterans Treatment Court, this is a pre-plea program that can result in a complete dismissal of the charges, and if the veteran successfully completes a program of treatment and/or education, the arrest is deemed to have "never occurred" for most purposes. After planning meetings to establish the protocol and procedures, the Military Diversion Court began accepting applicants on September 1, 2015.

OTHER IMPORTANT RELATIONSHIPS

Like the relationship with the Superior Court, the relationships we have with the other members of the criminal justice community in this County are an important part of securing equal protection for the indigent. These relationships are based on the trust and respect that have been earned and cultivated for many years. We value deeply our relationships with the Office of the District Attorney, the Sheriff's Department, the Probation Department, County Counsel, the Department of Health, and the Human Services Agency.

Also important is the relationship we share with the elected representatives of the community. The members of the San Mateo County Board of Supervisors have consistently included the PDP in all discussions about policy that might affect the people we represent. Unlike many other places, their concern for the less fortunate is expressed in actions, rather than in empty words. Likewise, we value greatly our relationship with the tireless staff of the San Mateo County Manager's Office. Charged with the responsibility of implementing the policies of the Board of Supervisors, these men and women have always evidenced their eagerness to work together with us to help us meet our mutual commitment to the community.

In the criminal law business, as in life, relationships require attention and work. PDP administrators participate in several committees that periodically meet to discuss and attempt to solve problems that arise in our justice community. A wide variety of county agencies are represented in these committees. The Chief Defender, for example, participates as a statutory member of the Community Corrections Partnership (CCP) and as a member of its executive

committee. Chaired by Chief Probation Officer **John Keene**, it was charged with the responsibility of devising an implementation plan for the realignment of California's correctional facilities under Assembly Bill 109. Other members of the executive committee include District Attorney **Steve Wagstaffe**, Human Resources Services Agency Director **Iliana Rodriguez**, San Mateo Police Department Chief **Susan Manheimer**, and San Mateo County Sheriff **Greg Munks**.

Other examples include Juvenile Managing Attorney **Rick Halpern's** participation on numerous County committees involved with the representation of minors, including the Juvenile Justice Coordinating Council, the San Mateo County Blue Ribbon Commission on Foster Care, and the Forensic Evaluators Committee. Rick was also on the Advisory Committee for Project Change at the College of San Mateo, on the Steering Committee for the re-design of Camp Glenwood, and on the Steering Committee for Justice Assistance Grant.

Individual Private Defender Program lawyers also regularly participate in the work of committees and teams working on specific programs in the criminal justice system, such as the Drug Court team and the *Bridges* team.

It is of no surprise to anyone acquainted with the criminal justice system that many incarcerated PDP clients are troubled and sometimes difficult people. The task of making the process of attorney-client and investigator-client communications and visits go smoothly falls on the men and women of our Sheriff's Department. We wish here to acknowledge their professionalism and courtesy in helping us to better represent our incarcerated clients.

The relationships we have formed with our fellow public defenders throughout California are enormously important. The friendships cemented through our participation in the California Public Defenders Association, and particularly those formed by the Chief Defender in the California Council of Chief Defenders, have been sources of wisdom and advice over the years that have helped the PDP stay on the cutting edge of the best practices in indigent defense.

Building for the Future
Stanford Law School and the PDP

In 2010, the Private Defender Program entered into a relationship with the Stanford University School of Law Criminal Defense Clinic. Up to eight second and third year law students of the Clinic, working in pairs, represent Private Defender clients accused of misdemeanor crimes in San Mateo County. The cases encompass a wide range of misdemeanor offenses, including theft, drug possession, being under the influence of drugs or alcohol, simple assault and weapons possession. The students are certified by the State Bar of California to represent clients under supervision of licensed California attorneys. The project began with students participating in this program for one quarter, and in 2012 the students began taking cases for two quarters each academic year.

Under the supervision of Associate Professor of Law and Director of the Criminal Defense Clinic **Ronald Tyler** and Clinical Supervising Attorney **Suzanne Luban**, the students

represent the clients in all stages of the proceedings, including investigation, interviewing witnesses, plea negotiations, court conferences, working with experts, filing and arguing motions and trial. In addition to the Professor and Clinical Supervising Attorney who supervise the students, the Private Defender Program assigns mentor attorneys to every student. These mentor attorneys, with extensive knowledge of local criminal practice, meet with the students and assist them in navigating the local courts and consult with them on issues which may arise in their cases.

Current Private Defender attorneys who have volunteered their time to participate in this program as mentors over the past five years are **Hallie Aaron, Emily Andrews, Esther Aguayo, Michael Devoy, John Elworth, Mitri Hanania, Shelly Landon, Lisa Maguire, Scott Newbould, Naresh Rajan** and **Monica Toole**.

Professor **Ronald Tyler** explained the relationship this way:

It is truly a pleasure to work with an organization that shares the Stanford Criminal Defense Clinic's commitment to high-quality, empathetic and client-centered representation. Our success is due in no small part to our collaboration with the Private Defender Program. Each quarter, our students comment favorably on the support and encouragement they receive from the Private Defender Program management, investigators and attorney mentors. I am looking forward to our continued collaboration for years to come.

APPOINTMENTS IN FISCAL YEAR 2014 - 2015

Under the Association's agreement with the County, the Private Defender Program is obliged to represent all indigent persons entitled to appointed counsel at public expense. Contrary to popular belief, such representation is not limited to criminal and juvenile cases.

Attached as Appendix C is a document entitled "Private Defender Program Case Counts for the Year Ended June 30, 2015." Also enclosed as Appendix C are the case counts for the fiscal year ending June 30, 2014 so a comparison can readily be made. Each of the statistical categories is described by case type in the Agreement between the County and the Association.

Some brief and general description of the types of cases identified in these documents may be of some assistance.

"Type A" cases cover a wide array of civil and criminal cases. These range from felony cases arraigned in the Superior Court after preliminary hearings and other proceedings have been concluded ("Arraignments") to civil proceedings, such as paternity, probate conservatorships, adoptions, and extensions of commitment pursuant to the Sexually Violent Predator Act.

"Type B" cases generally originate in what was the Municipal Court before the unification of our Court in 1998. This category itemizes the number of misdemeanor cases, felonies through a preliminary hearing, and other miscellaneous criminal cases in which the PDP was appointed.

"Type C" cases describe those in which the PDP was appointed in various mental health proceedings. Included here are cases filed pursuant to the provisions of the Lanterman-Petris-Short Act (LPS cases), in which the involuntary commitment of persons who are gravely disabled²⁷ as the result of a mental disorder is at issue.

"Type D" cases describe those Juvenile Dependency cases in which the PDP was appointed. The issue in such cases is the fate of neglected or abused children and the rights of their parents with respect to those children. In such proceedings, the PDP may be called upon to assign lawyers to one or both parents, and/or to represent the children.

"Type E" cases describe those Juvenile Delinquency cases to which the PDP was appointed.

As far as the case types "A" through "E" listed above, the PDP was appointed in an almost identical number of cases in 2015 as it was in 2014. The Program was appointed in 20,254 cases in 2014 and 20,239 cases in 2015.

PROPOSITION 47
A Shift in Caseloads

On November 4, 2014, the California electorate passed Proposition 47 (codified in Penal Code section 1170.18), which reclassifies a number of theft and drug-related offenses from felonies to misdemeanors.

Proposition 47 has and will have two effects on PDP cases. One provision of Proposition 47 alters the preexisting law such that new cases that previously were classified as felonies may now be filed only as misdemeanors in most circumstances. Because cases affected by Proposition 47 are simply filed as misdemeanors rather than felonies, there is no efficient way to track how many cases are affected by the law.

A second provision of the law allows prior “Prop 47” felony convictions to be reduced to misdemeanors. The law imposed a three-year deadline to file petitions for such reductions, thereby limiting the relief available to defendants and work for the PDP attorneys to complete to the time period before November 4, 2017. Not all felonies qualify for reduction because only about ten types of low-level theft and simple drug possession convictions are included. Also, not all people qualify for reduction. To effectively and efficiently navigate the intricacies of the law and manage the petition process, the PDP has assigned attorney **Laura Torres** to file petitions and address questions of PDP clients and attorneys on a full-time basis. For the first time in the 2015 appointment counts we have included as Superior Court Arraignments the cases where reduction petitions were filed, and have identified how many of these cases were Prop 47 cases as footnotes in Appendix C.

THE BUDGET

Attached as Appendix D are documents that describe the Private Defender Program budget for the fiscal year as approved by the San Mateo County Bar Association Board of Directors. It is based on the two-year contract between the County of San Mateo and the San Mateo County Bar Association dated June 23, 2015 covering the fiscal years ending June 30, 2016 and June 30, 2017.

The document that sets forth the budget for the FYE June 30, 2015 also describes the “Preliminary Actual” expenditures to the right of the budgeted amounts for purposes of comparison. Since many of the cases in which the PDP was appointed during the FYE June 30, 2015 are not yet concluded, an estimate of the actual final costs of completing such cases is included.

As can be seen by comparing the “Preliminary Actual” income and expense figures to those budgeted for the fiscal year ending June 30, 2015, our projection that expenses would exceed income in this fiscal year was significantly pessimistic. While we projected that expenses would exceed income by \$361, our “Preliminary Actual” figures show income exceeding expenses by \$966,681. (Note: Attorney and investigator fee accrual is not included in the preliminary actual figures. The accruals are not calculated until January so we can provide time for actual fee expenses to be determined on cases with arraignment dates prior to July 1, 2015. Similarly, accruals for operating and variable expenses are not included in these preliminary actual figures as invoices for services and purchases have not yet been received and processed.)

There were reasons attributable to both the income and expense sides of the budgeting process that contributed to this result. At the time that the budget was approved by the SMCBA Board of Directors, the amount that would eventually be paid to the PDP pursuant to the provisions of AB109 was unknown. Thus, the amount of \$134,845 was not budgeted at the beginning of the fiscal year. (The same thing is true of the budget for the FYE June 30, 2016. We do not know what amount, if any, will be authorized by the legislature in the coming year for this purpose.) On the expense side, Attorneys’ Fees were less than anticipated by \$381,364; Investigators’ Fees were less than expected by \$293,709; and Expert and Related Services were under budget by \$82,386.

The budget for the fiscal year ending June 30, 2016 is also included. Income from the County contract will be \$18,502,766 – a six percent increase over the previous fiscal year. The PDP administration is hard at work adjusting the PDP Attorney Fee Schedule to increase rates that have not been increased since January 1, 2008.

PERFORMANCE BENCHMARKS ATTORNEY TRAINING

It is important for any effective defender organization to provide in-house training to its lawyers and to provide the resources for additional training from other certified providers of continuing legal education. Recognizing the significance of this component of our organization, the Agreement between the County and the Association provides for an annual report on this subject. As indicated on the second page of the Budget for FYE June 30, 2015, the Program spent \$94,730 on attorney training during the year (Appendix D, Education and Seminars for Attorneys) and \$14,633 on investigator training (Appendix D, Education and Seminars for Investigators). The sum of \$99,000 has been budgeted for attorney and investigator training for the FYE June 30, 2016. The PDP paid for a variety of legal education programs for its lawyers during the fiscal year, all of which were directly related to the work they did on PDP cases. More detail on the nature of those programs follows.

PDP Seminars:

Each year the PDP presents its own mandatory seminars, which are videotaped. Panel attorneys unable to attend must check out and view the DVD. Additional cases are not assigned to attorneys who have not attended the seminars or viewed the DVDs. Four such mandatory seminars presented for PDP lawyers handling adult cases in this fiscal year were:

Gideon's Army – August, 2014
Presented by PDP Attorney **Kevin Allen**

Stress and Burn Out – November, 2014
Presented by PDP Attorneys **Ed Pomeroy, Savas Loukedis, Richard Keyes** and **Connie O'Brien**

New Laws, 2015 – January, 2015
Presented by PDP Attorneys **Tom Kelly** and **Dan Mayfield**

Mental Health Issues – May, 2015
Presented by PDP attorneys **Michael Armstrong, Dek Ketchum, Dr. Douglas Korpi** and **Dr. Jeffrey Weiner**

The Private Defender Program hosted other seminars throughout the year on a wide variety of topics. A few examples of these seminars were:

Domestic Violence: Probation's Perspective – August, 2014
Presented by Probation Officer **Cherlene Wright**

Felony Sentencing– September, 2014
Presented by Deputy District Attorney **Mary Alhiser**

What Is In Your Discovery And What Should Be – February, 2015

Presented by PDP Managing Attorney **Eric Liberman**, PDP Chief Investigator **John Maness**, and PDP Investigator **Frank Daley**

Welfare and Institutions Code Section 827 Petitions – March, 2015

Presented by PDP Attorneys **Jeffrey Hayden** and **Jeff Rolston**

Veteran’s Court – April, 2015

Presented by PDP Assistant Chief Defender **Myra Weiher**, Justice & Domiciliary Outreach Programs Coordinator **David Grillo**, and Veterans Justice Outreach Specialist **Matthew Stimmel, PhD**

Technology – May, 2015

Presented by PDP Attorneys **Ray Bueneventura** and **William Johnston**

Guns and California Law – May, 2015

Presented by San Mateo County Sheriff Sergeants **Tony Torres** and **Bob Pronski**

Criminal Defense Investigations in the Digital Age – June, 2015

Presented by **Ben Rose**

PDP attorneys **Kevin Allen**, **John May** and **Naresh Rajan** served this year as the continuing education subcommittee of the Private Defender Program Committee, arranging and scheduling of all the in-house continuing education seminars for PDP lawyers handling adult cases.

For our juvenile practitioners, the following seminars were presented:

Investigators and Investigation –August, 2014

Presented By Chief Investigator **John Maness** and Juvenile Managing Attorney **Rick Halpern**

Probation Conditions and Assessment– November, 2014

Presented By Juvenile Managing Attorney **Rick Halpern**

Proposition 47 – November, 2014

Presented by Juvenile Managing Attorney **Rick Halpern**

Sealing Juvenile Records and Writs– May, 2015

Presented By PDP Attorneys **Monica Loya** and **Carol Koenig**, and Juvenile Managing Attorney **Rick Halpern**

The Private Defender Program presented a total of 29 hours of “in-house” continuing legal education in this fiscal year for its lawyers. Some of these trainings were targeted for smaller groups, including a seminar for our calendar attorneys introducing the District Attorney’s Office’s new DEJ Program, presented by Assistant Chief Defender **Myra Weiher** and PDP Attorney **Laura Torres**. Another small group seminar was directed to our newer PDP attorneys on “Issues in Handling Criminal Cases,” presented by PDP Attorney **David Goldstein** and Managing Attorney **Eric Liberman**.

In addition to these “in-house” training sessions, the PDP paid for attorneys and investigators to attend various training sessions presented by certified providers. These providers included the California Attorneys for Criminal Justice and the California Public Defenders Association, and the seminars included subjects such as “Trial Skills,” “Homicide Defense,” “Capital Case Defense,” “Felony Defense,” “Juvenile Defense” and “Driving Under the Influence Defense.”

Mentoring:

The mentoring program is designed to make the wealth of experience of the most skilled panel attorneys available to new panel attorneys and to those who are handling more difficult cases. A mentor is assigned to help a new attorney develop into a more effective advocate for his or her clients. A mentor will be paired with any attorney recently admitted to the Program, regardless of experience, or to an attorney who has not had sufficient trial experience within the last three years as determined by the Chief Defender, the Assistant Chief Defender and/or the Managing Attorney. An attorney transitioning from one panel to another (e.g., misdemeanor to felony, adult to juvenile, juvenile to adult) will also be assigned a mentor.

The Chief Defender selects mentor attorneys who have been active in the Program for at least 10 years and who have extensive experience in all phases of criminal and/or juvenile defense. Such experience includes frequent participation in jury trials, preliminary hearings, and pretrial conferences. Mentors have considerable experience in preparing and arguing written motions on suppression of evidence, setting aside the information, dismissal for failing to arrest or prosecute in a timely manner, limiting the introduction of evidence and other significant areas of criminal defense practice. Juvenile Court mentors must have comparable experience in all areas of delinquency and/or dependency proceedings.

Mentors cover all aspects of effective representation, including interviewing and relating to clients, reviewing investigative reports to identify issues and defenses, and understanding court procedures and motion practice. A mentor will meet with the new lawyer at least twice each month to review his or her current cases, and to discuss defenses, strategies, possible investigative needs, motions that might be beneficial, and any other concerns relating to the best possible representation of the client. The mentor is required to attend a minimum of two pretrial conferences conducted by the new lawyer within the first two months of the mentor program. The mentor must attend from start to finish the lawyer’s first jury trial, his or her first preliminary hearing (in the case of a lawyer just moving into felony representation), or comparable hearings in Juvenile Court.

The mentor will regularly discuss the progress of the new lawyer with the Chief Defender, Assistant Chief Defender or Managing Attorney. The new lawyer will continue in the mentoring program until he or she is determined to have developed sufficient skill in all aspects of client representation, including actual trial by jury or contested jurisdictional hearings in Juvenile Court. There is no established “graduation” date. The time each lawyer spends in the mentoring program depends entirely on the pace of the new lawyer’s progress. Mentors are compensated according to the provisions relating to mentoring in the Fee Schedule (attached as Appendix E).²⁸

The least visible but perhaps most important value that the mentoring program brings to the PDP is the solid relationships that it helps to create. The relationships that are formed between mentors and new lawyers last a lifetime. The transition from “mentor-new lawyer” to “defender-colleague” creates relationships that are formed in an environment that seeks to achieve excellence in the practice of criminal law for those who can’t afford to pay for it. Such relationships are the very core of the PDP and benefit our clients year after year.

Since 2005, the PDP added an additional component to its training program, that being intensive one-on-one trial advocacy training. **David Goldstein**, a member of the PDP for the past 43 years, is advising all of our new attorneys. His beginning to end, trial preparation to verdict jury trial assistance has proved to be enormously valuable in developing the trial advocacy skills of new lawyers who have just joined the PDP. David devotes all of his time to mentoring new PDP lawyers; he does not carry a caseload himself.

It is not only lawyers who are new to the PDP who are assigned a mentor. Lawyers who are beginning to handle more serious cases are again assigned a mentor so the transition will be seamless for our clients. This year mentors **Connie O’Brien, Mike Devoy, Laura Torres, John Elworth, Kevin Nowack, John May** and **David Goldstein** worked with lawyers who were new to the PDP or were being assigned their first felony cases. Additionally, when an attorney moves from their first serious felony cases to more aggravated and serious felonies such as attempted murder or murder cases, **Vince O’Malley**, a PDP lawyer and mentor, has been assigned to work with and assist the attorney from the beginning to the end of the case.

Mentors **Gina Jett, Kathy Yolken** and **Rebecca Ross** were assigned to work with attorneys who were new to the Dependency Panel. Mentors **Bob Brady** and **Emily Andrews** were assigned to work with attorneys who were given their first LPS cases. **David Avila** was assigned to mentor one of our attorneys who is new to the Delinquency Panel.

No description of the mentoring of PDP lawyers would be complete without noting the countless uncompensated hours that **Geoffrey Carr** has given to PDP lawyers over many years. He continues to “give back” to the PDP by focusing on helping younger lawyers to be more aggressive and effective trial attorneys.

Other PDP-Provided Training and Education:

Technology has provided PDP lawyers with many means to stay abreast of the latest developments in the law. One is the PDP Listserv, provided for the exclusive use of Program attorneys.²⁹ Within moments of the publication of an appellate court decision relevant to the cases we defend, an administrator or any member of the panel may send a summary of such a decision alerting the entire panel to law that can affect the outcome of one or more of our pending cases. Advice about the best way an individual client can be served is routinely solicited and provided by PDP lawyers on the Listserv.

The Chief Defender, Assistant Chief Defender, and the Managing Attorneys are important sources of advice and training for younger lawyers. Among them they bring more than 100 years of experience in the defense of criminal and juvenile cases. A substantial amount of time is spent by these four lawyer-administrators discussing the art of trial advocacy and strategies for putting criminal and juvenile cases in a posture that will benefit the individual client.

Resources Outside the PDP:

An education fund of \$750³⁰ is available annually for each PDP lawyer who may spend this money on approved education and training programs that are directly related to the types of cases he or she is handling for PDP clients.³¹

In addition to the education fund, the Program pays for the membership of any lawyer who elects to join the California Attorneys for Criminal Justice (CACJ) and for all PDP lawyers in the California Public Defenders Association (CPDA). Both statewide organizations provide excellent legal education, presented by talented and devoted criminal and juvenile practitioners. Both organizations publish magazines that are filled with detailed information and training materials. The CPDA also offers subscriptions to its web-based brief bank and list server (called CLARANET), which provides a valuable resource for all member attorneys. The PDP pays for the CLARANET subscriptions of our lawyers. PDP lawyers may also use their education fund to pay for membership in the National Association of Criminal Defense Lawyers, a national organization that also provides excellent training materials and articles in its magazine, *The Champion*.

ATTORNEY EVALUATION

The Agreement between the County and the Association addresses the concern that the performance of PDP lawyers be evaluated. This portion of the Agreement requires annual evaluations of PDP lawyers and evidence that they were conducted, while assuring that the content of those evaluations will remain confidential between the PDP and the attorneys. The Agreement also requires that the standards by which performance is measured be disclosed and that the results of these evaluations be included, in summary form, in this Annual Report.

Evaluation Standards:

The standards by which PDP lawyers are evaluated are attached as Appendix F. These standards include assessment of each lawyer's professional ability as measured by preparation, knowledge, and advocacy skills. The standards also assess professional attitude, which includes ethics, integrity, and work habits. Finally, personal relations are taken into account, assessing attorneys' skills in communicating with clients, other members of the criminal justice system, and with PDP staff.

As with any system of performance assessment, some things count more than others. While all of the factors set forth in the attached Evaluation Standards are considered, our evaluation of the greatest number of PDP lawyers again this year placed great weight on a few important factors.

They were:

1. Effective use of investigation. (Standard 1.A.4.)
2. Willingness to try cases. (Standard 1.B.2.)
3. Professional growth. (Standard II.A.2.)
4. Effective use of legal research and pretrial motions. (Standard 1.A.3.)

5. Consideration of immigration issues and use of resources in that regard. (Standards I.A.1 & I.A.3)
6. Attendance at MCLE events. (Standard I.A.2)
7. Use of education budget. (Standard I.A.2)

How Performance is Monitored and Evaluated:

The task of evaluating all of the lawyers of the PDP is not a matter of following a checklist that applies to every individual. The attorneys of the PDP are a wide-ranging group, from death penalty qualified lawyers with 25 to 35 years of experience to younger lawyers recently admitted to practice. Some lawyers are assigned only to misdemeanor cases, others exclusively to Juvenile Court dependency cases. Some lawyers accept assignment just in Juvenile Court delinquency cases, while some handle only felony cases. The caseload of others consists entirely of serious felony cases, while some handle murder cases exclusively. There are some lawyers on the Panel whose caseload consists of just one death penalty or special circumstances homicide case. There are those who are assigned only civil or mental health cases. Then there are those who are assigned to a variety of criminal and juvenile cases.

The diversity of experience is one of the greatest strengths of the PDP. Thus, any meaningful evaluation must be tailored to the particular lawyer whose performance is being evaluated, along with the nature and size of his or her caseload. It would be folly, for example, to follow a checklist approach that requires the Chief Defender or Assistant Chief Defender to observe a lawyer in jury trial who handles only Juvenile Court cases.³²

Mentoring Program:

This unique program is described in detail in the “Attorney Training” portion of this Report. The opportunity for the Chief Defender and his staff to receive regular reports from the hands-on instructor who is working with the attorney to be evaluated is simply invaluable to meaningful performance assessment.

Motion Practice:

As a review of the attached Fee Schedule will disclose, lawyers are additionally compensated for written motions and for time in court arguing such motions. A lawyer will not be paid for a written motion unless it is attached to his or her bill for the case. This affords the Chief Defender, the Assistant Chief Defender, and the Managing Attorneys the opportunity to randomly select written motions for review. The Annual Survey, to which more detailed reference is made below, requires each lawyer to submit a copy of a motion or brief that they submitted to the court during this fiscal year. Those writing samples are reviewed by the Managing Attorneys and the Assistant Chief Defender during the annual evaluation process.

Administrators’ In-Court Observations:

The Chief Defender, Assistant Chief Defender, Managing Attorneys and lead mentor, **David Goldstein**, all regularly attend court calendars and trials to personally assess the courtroom skills of PDP lawyers. These administrators observe PDP lawyers in jury trials, court

trials, hearings on motions, Superior Court reviews, and pretrial conferences without advance notice.³³ Most PDP lawyers handling misdemeanor and felony cases and all of the lawyers handling Juvenile Court cases were thus observed.

Special Litigation Fee Cases:

Special Fee cases are the most serious and/or the most complex types of cases described in our Fee Schedule. The work on such cases must be itemized in detail in increments of tenths of an hour. The Chief Defender, the Assistant Chief Defender and/or the Managing Attorneys must review each of these bills.³⁴ Since these administrators are familiar with the facts of each of these serious cases, bill review paints a clear picture of what work is being performed on each case and whether or not it is appropriate.

The Court – A Unique Relationship:

The Association and its PDP share a unique and very strong relationship with our Superior Court. The Court, as the guardian of the Sixth Amendment right to competent counsel for indigent persons, has a very real stake in the performance of the lawyers of “its” Private Defender Program. There is no hesitation on the part of the Chief Defender or his staff to contact judges directly about PDP lawyers’ performances, nor is there any hesitation on the part of judges to contact the administrators of the PDP.

Personal Contact:

The Chief Defender, Assistant Chief Defender, and the Managing Attorneys are in frequent contact with the lawyers of the PDP. Such contact includes a substantial amount of discussion about each lawyer’s cases.

To secure the assistance of an expert in a case, the assigned lawyer must contact the Chief Defender, Assistant Chief Defender, or Managing Attorneys. This frequent contact presents a good opportunity for administrators to acquaint themselves with the manner in which the attorney is preparing the defense of his or her case in the context of the facts presented by the prosecution and those gathered by defense investigation.

Annual Surveys:

PDP lawyers are compelled to respond yearly to a survey about the work they have done during the fiscal year. Lawyers were asked to provide the following information:

1. Please list the PDP misdemeanor, felony, and/or LPS cases that you have tried to a jury verdict during the above period. Please provide the client’s name, the case number, the name of the Judge before whom the case was tried, and the result.
2. Please list the PDP misdemeanor, felony, probate or LPS cases that you have tried before a court only during the above period. Please provide the client’s name, the case number, the name of the Judge before whom the case was tried, and the result.

3. Please list two PDP misdemeanor, felony, contempt, or LPS cases (other than the ones listed in response to question #1) which went to an evidentiary hearing on issues raised in written points and authorities. Again, please provide the client's name, the case number, the Judge before whom the motion was litigated, and the result.
4.
 - a. Please list all PDP W & I 602 Jurisdictional Hearings you have tried during this same period. Please provide the case number, the Judge before whom the case was tried and the result.
 - b. Please list 3 PDP W & I 300 contested hearings in which witnesses were called.
5. Please list two PDP W & I 602 cases which went to an evidentiary hearing on issues raised in written points and authorities. Please provide the case number, the Judge before whom the motion was litigated and the result.
6. Please list two PDP W & I 300 cases in which you filed written points and authorities. Provide the case number and the result.
7.
 - a. Please list the PDP W & I 602 cases in which you used an investigator. Name the investigator used.
 - b. Please list the PDP W & I 300 cases in which you used an investigator. Name the investigator used.
8. Please list the PDP W & I 602 or 300 cases in which you used an expert. Name the expert(s) used and the issue involved.
9. Please list the PDP cases in which you raised competency or litigated In re Gladys R. issues.
10. You are required to have met the minimum number of MCLE hours per year pursuant to the Policy and Procedure Manual, Paragraphs 2.5.1 and 2.5.3 (adult panels) or 5.3.3.7 (juvenile panels).
 - a. For Adult Panel lawyers and for Juvenile Panel Lawyers, please list the courses you took for MCLE credit during this same period, the subjects of which were directly related to your work on PDP cases. Please include the name of the provider (e.g., PDP, CEB, CPDA, CACJ, etc.), and the number of hours of MCLE credit earned. Don't forget to **include** PDP provided seminars. Please total the hours of MCLE you have earned.
 - b. For Juvenile Dependency Panel lawyers, please also list all MCLE classes taken for the same time period (including PDP Brown Bags) in which the topics included were child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, as well as dependency law. Please include the number of hours for each course and the total number of hours of MCLE credits earned.

11. Please state the legal research tools you used in preparation of motions, briefs and responses during the period covered in this survey. (For example, name your on-line provider, books available in your office, law library, or other.)
12. Please state the approximate percent of your cases in which the client had some type of immigration issue. Please state which sources/resources you used to assist you in providing accurate legal advice to your clients concerning the immigration consequences of a particular case. Please state whether or not you consulted with the Immigrant Legal Resource Center for their assistance. If you did not consult with the ILRC, please state why not.
13. Please attach a copy of a motion or brief, which you **researched and wrote yourself**, on substantive issues (not routine continuance motions) and filed in Court during the period between July 1, 2014 and June 30, 2015. This should be a brief or motion or response to a DA's motion and should be based on **your own legal research and writing**. Do not submit a continuance motion (unless it had extraordinary issues) or an in limine motion which you file in every trial you have, or a canned brief you obtained from any other source to which the only modification made was to change the caption and include a brief statement of the facts of your case. This brief or motion is to be an **example of your work, and your work alone**. If you have not prepared and submitted any such document in this one-year period, please so indicate in your answer to this question and explain why not.

We also gathered information from the PDP lawyers about how many cases were dismissed on the day of misdemeanor jury trial when the defender announced ready for trial. We did not include questions about the utilization of investigators, since we maintain records of all requests for investigation by case and by lawyer. Requests for investigation are also reviewed by administrators on a random basis.

Trial Calendar:

The Chief Defender and Assistant Chief Defender are notified each Thursday afternoon (courtesy of the District Attorney's office) of which cases (and lawyers) are scheduled to appear on the following Monday's trial calendar.

In-house Staff Evaluations:

The Chief Defender and Assistant Chief Defender meet with PDP staff members at least quarterly to review the types and numbers of cases each lawyer is being assigned. At such meetings, the "people" part of each lawyer's performance is reviewed, both from a staff and client perspective.

Results of the Evaluations:

The performance of each attorney in the Private Defender Program was again evaluated this year.³⁵ Interviews with the Chief Defender were arranged for three lawyers who have not taken cases to jury trial with sufficient frequency. One of those lawyers was given a final warning

of this deficiency because it had been discussed with him on a previous occasion. If it continues into the next evaluation period, he will be removed from the Panel. The Chief Defender also scheduled an interview with a lawyer whose advocacy skills and aggressiveness appeared to be deficient. A decision on whether or not that lawyer will remain a member of the PDP will depend on the outcome of the interview. Another interview was scheduled for a lawyer who had made inadequate use of investigation in his cases. This is the first time this has been discussed with this particular attorney. Another lawyer was reassigned to work that will not involve direct client contact because Officers of the Day continued to receive complaints about the lawyer's client relations skills.

CLIENT RELATIONS

The Agreement between the County and the Association requires a report on "(t)he number and nature of..." client complaints to the Program "...as well as their disposition." The PDP has a lawyer with extensive felony experience on duty each business day at the Private Defender Program offices during regular business hours to receive complaints about performance of PDP lawyers directly from PDP clients. These lawyers, called "Officers of the Day" (or "ODs") follow a written procedure for handling such complaints, which is attached to and made a part of the Agreement between the County and the Association.

The role of the Officer of the Day is by no means limited to fielding complaints. In fact, the OD is a tremendous resource for the entire community. In addition to answering inquiries by our clients, the OD spends many hours each week simply answering questions, calming fears, and giving advice to members of the general public who call for help. ODs average 35-40 calls each week from the general public. The Officers of the Day are happy to answer any questions of the public that relate to criminal law – their area of expertise. We did not document the calls from the general public.

Officers of the Day documented 2050 calls from our clients during the year. This is the second consecutive year of substantial increases from previous years and about 505 higher than the number from last year.³⁶ We attribute the increase in the past year to a large number of calls concerning the implementation of California's recently passed Proposition 47. This law, which the voters passed in the November 2014 election, reduced many felony offenses to misdemeanors. The law also had a provision that allows former felony convictions to be reduced to misdemeanors. However, that provision limits the time in which people may request reductions in their felony convictions to three years. The PDP has assigned Attorney **Laura Torres** to work full-time on handling these requests for reduction of former convictions.

Once again, many phone calls were also attributed to requests for expungements. A request for expungement is a motion one can file after successfully completing probation in order to seek the "clearing" of their criminal record. Assistance with expungements is a service that PDP lawyers provide for any of our former clients that qualify for such relief.

The **2050** calls fell into the following categories:

INQUIRIES: 1973

General Inquiries: (Examples this year include)

- “Do I qualify for Prop 47?”
- “How do you get an expungement and what is it?”
- “Can I move out of state while I am on probation?”
- “I need an extension of my surrender date. What do I do?”
- “Who is my assigned lawyer?”
- “Do I have to pay for my court appointed lawyer? I received a letter from Revenue Services.”

Specific Inquires: (Examples this year include)

- “Can I get a copy of my discovery?”
- “I was sentenced to Delancey Street but I am still at the jail.”
- “I received a subpoena but I don’t want to go to court.”
- “I want my bail reinstated.”
- “When is my release date?”
- “My credits are incorrectly calculated”
- “What is my next court date?”

COMPLAINTS: 77 total, divided into two broad categories, as follows:

Relationship Issues: (Examples this year include)

- 63**
- “My attorney has not returned my phone calls.”
 - “I only saw my lawyer one time before court.”
 - “My lawyer was very abrupt with me – it’s not a good fit.”
 - “I never wanted an attorney. They told me I had to fill out the form.”
 - “My attorney insisted on having a meeting with me. He refused to do it over the phone.”
 - “My lawyer has not seen me.”

Performance Issues: (Examples this year include)

- 14**
- “My lawyer didn’t continue the case for as long as I wanted him to.”
 - “My attorney slandered me. He mentioned my rape conviction in front of other inmates.”
 - “I want a *Marsden* motion.”
 - “My lawyer gave the judge a letter from my parents without me seeing it first. I don’t want them involved in my case.”
 - “I want to withdraw my plea.”

The Assistant Chief Defender and the Managing Attorney reviewed documentation of each and every inquiry or complaint prepared by the ODs. In each instance of a client complaint to the OD, the attorney involved was notified and asked about the client’s complaint. The OD also

reviewed the available court records and PDP client information to determine the appropriate disposition of the complaint. Importantly, every complaint, whether substantiated or not, is represented in this count.

There were six *Marsden*³⁷ motions granted by the Court during the year based on the judge's assessment that irreconcilable differences existed between the lawyer and client. One *Marsden* motion was granted based on allegations of ineffective assistance of counsel.

The 14 complaints received by the Officer of the Day that raised perceived performance issues represent 0.07 percent of the cases in which the Private Defender was appointed this year. Put another way, a complaint based on attorney performance was received in one of every 1,446 cases in which the PDP was appointed this year.

Finally, several of the 2050 received phone calls from clients to the OD included praise and thanks for their court-appointed attorney. Comments included, "He did a great job for me," and "I just wanted to thank you for helping me get on calendar and get an extension."

In a further attempt to monitor client relations, and at the request of the Board of Supervisors, we began sending out client surveys in November of 2013. The clients who receive the surveys are selected at random from recently closed cases. The surveys are sent out, along with self-addressed stamped envelopes, in the hope that prompt return of the surveys will be facilitated.

The survey asks seven questions and invite expanded explanations of answers as well as seeking any additional comments that the clients may wish to offer. The questions are crafted to determine if the clients felt that they had adequate opportunity to communicate meaningfully with their lawyer, and to determine if the client believed that they received quality representation.

The questions that address whether or not there was sufficient opportunity to communicate with counsel include:

- "Did your attorney return phone calls?"
- "Did you have a chance to meet with the attorney before the first court appearance?"
- "Did you have enough time with your attorney to discuss your case?"
- "Did your attorney explain sufficiently what was going on with your case?"

The questions that address adequacy of representation include:

- "Did your attorney appear to be prepared in court?"
- "Was your attorney on time for meetings with you?"
- "Were you satisfied with the overall representation of your attorney?"

We sent out a total of 358 surveys during our fiscal year ending June 30, 2015. We only received 38 replies to the mailed surveys, 31 of which were positive. We continue to hope for a greater response to the surveys, and we are examining whether or not other methods can be used in the future to increase the response rate beyond approximately 10 percent. We are, however, pleased to report that of the surveys responded to, 82 percent of the clients were happy with the performance of their attorneys.

JUVENILE DIVISION

In the Juvenile Division, client complaints and concerns are handled by the Managing Attorney for the Juvenile Services. When a client calls the Juvenile Office with a concern about the representation they are being provided by their assigned attorneys, the Managing Attorney speaks to them personally about their concerns. Some of the matters are handled on the phone. All of the clients, however, are afforded the opportunity to come in and personally meet with the Managing Attorney. On the occasions that the clients come into the office as opposed to calling first, they are quickly accommodated and can meet with the Managing Attorney to discuss their concerns.

Once the clients have been interviewed, the Managing Attorney then speaks to the assigned attorney about the client's concerns. The Managing Attorney encourages the client and their assigned counsel to meet and attempt to resolve their differences. The client is also informed about the *Marsden* hearing process as an alternative should the differences remain unresolved and the Managing Attorney decides not to change assigned counsel.

In the last fiscal year, the Juvenile Office represented in excess of 1,900 clients. The Managing Attorney received eight complaints about the representation of assigned counsel from our clients. It should be noted that the Managing Attorney received some complaints from the parents or grandparents of our clients concerning the representation of their children. It was explained to them that before the Managing Attorney could consider removing an assigned attorney, the Managing Attorney would have to hear from their child (our client) that they were unsatisfied and exactly why. Most of these complaints concerned the attorney not sharing with the parents police reports or other information about the case. The Managing Attorney in those instances would explain to the parents that the Private Defenders' obligations are to the clients (their children) and the protection afforded by the attorney-client privilege. If contacted by the client, the Managing Attorney would then treat the complaints in the manner described above.

Of the complaints received by the Managing Attorney in the last fiscal year, the most common complaint was the lack of the attorney's contact with the client and the failure to return phone calls. All but one of these instances was resolved by speaking with the attorneys and advising them to meet with their clients to resolve their differences. The Managing Attorney had advised the clients that if they were unable to work out their differences to contact him again. No further contact was received and it appears the complaints were resolved. In one instance the attorney was removed from the case and a different lawyer was assigned.

One complaint was received from the San Mateo County Chapter of the NAACP. This complaint emanated from a grandparent of a client in a delinquency case. The Managing Attorney met with the grandparent, some representatives of the NAACP, the client and the attorney assigned to the case. The complaint concerned what the grandmother believed to be lack of communication between the attorney and herself. The process was explained to the grandmother and the representatives of the NAACP. After speaking with the client, in private, the Managing Attorney determined that the client was satisfied with the representation by his attorney. Once the process was explained, the NAACP representatives appeared to be satisfied and invited the Managing Attorney to speak to their Organization at a future meeting to explain the process to their members and answer questions the group may have. The Managing Attorney subsequently did so in June of 2015.

As with the Adult Division, at the request of the Board of Supervisors, a client satisfaction survey was prepared and made available to Juvenile PDP clients. These surveys were placed in a conspicuous place in the hallway near the courtrooms at Juvenile Court. Four responses were received, three of which contained positive comments concerning the Private Defender representation, and one of which included negative comments concerning the court but no comments concerning the attorney. It is apparent from the periodic replenishment of the blank surveys that clients regularly take them but do not return them.

ATTORNEY CASELOADS

Paragraph 10.d. of the Agreement between the County and the Association provides for a report to be made on the caseloads of PDP lawyers. It states:

The Association and County agree that the number and type of cases for which a lawyer is responsible may impact the quality of representation individual clients receive. While there are many variables to consider, including the seriousness or complexity of each case and the skill and experience of the individual lawyer, useful information might be gathered from an evaluation of the caseloads of Private Defender Program Attorneys. To this end, the Private Defender Program shall include the caseloads of each Private Defender Program attorney by types of cases, as well as the average caseloads for the Private Defender Program as a whole in the annual report....

What follows is a brief history of the study of caseloads and workloads and the evolution of their significance in indigent defense. We also describe in detail how our own caseload study was conducted and then detail the results for the FYE June 30, 2015. As noted elsewhere in this Report, the California electorate approved Proposition 47 on the November 4, 2014 ballot, and it became effective immediately. Prop 47 reduced a host of “non-serious, non-violent” crimes from felonies to misdemeanors. This included, most significantly, possession for personal use of illegal drugs and many property crimes, all of which had been felonies before the approval of Proposition 47. The initiative also made provision for people already sentenced for felonies to petition to be resentenced as misdemeanants. We expect that Proposition 47 will have a significant impact on the caseloads of PDP lawyers, but it is still too early to tell what that impact will be. Needless to say, our caseload study will have to be revised substantially in the very near future. It will be one of our priorities over the next fiscal year.

Early in the course of contract discussions with the County in 2000, we began the process of researching various caseload evaluation alternatives. The system the PDP had been using up to that point in time was accurate as far as counting the number of cases that were assigned to each lawyer. PDP staff members responsible for assigning cases to individual lawyers accounted for every case assigned and thus, for any given month, could tally precisely how many felonies and/or misdemeanors were assigned to each attorney. The computer program that was supposed to assist in this process, however, proved to be cumbersome and in some ways more labor intensive than counting the case assignments by hand. We had to overcome those shortcomings to implement the evaluation system we later devised. We had to create a software program that

made it possible for us to carefully manage and report individual attorney and program-wide caseload information.

During the course of our research we learned of the early efforts of criminal justice agencies to find answers to the questions that growing caseloads were posing for public defender organizations and for the governmental bodies responsible for funding them. That the effectiveness of representation for the poor was being pervasively compromised by unmanageable caseloads had become obvious. How large a staff should a governmental funding body pay for in a public defender agency? How many lawyers does it take to do the job? How many felonies should a defender be asked to handle each year? How many misdemeanors?

Being without answers to such questions, the National Advisory Commission (NAC) on Criminal Justice Standards and Goals first came up with numerical caseload limits in 1973 under the auspices of the U.S. Department of Justice. The numerical caseload standards established by the NAC for public defender attorneys are: no more than 150 felonies per attorney per year; or no more than 400 misdemeanors (excluding traffic cases) per attorney per year; or no more than 200 juvenile cases per attorney per year; or no more than 200 “Mental Health Act” cases per attorney per year; or no more than 25 appeals per attorney per year.³⁸ According to the NAC standard, this means that an attorney who handles misdemeanor cases, and nothing else, should not exceed 400 such cases in a single year.

While the NAC standards are still very much a part of staffing and funding discussions across the country, they have been refined over the years since they were first published to make them a more meaningful point of reference for local jurisdictions.³⁹ This is not surprising since the NAC standards were an attempt, in effect, to “nationalize” how much time is devoted to cases from countless jurisdictions across the country.⁴⁰ It is also significant to note that the NAC standards were formulated exclusively by attorney estimates of how much time it should take to complete tasks during the pendency of a case. These “educated guesses” were then averaged to produce the estimated amount of time needed to bring a particular type of case to a conclusion.⁴¹

While the NAC standards remain helpful as a point of general reference, it has become widely recognized that the assumptions and estimates that formed the basis for them 40 years ago may have little to do with the practice of criminal law in a particular jurisdiction today.⁴² Experts in the management of indigent defense caseloads now recommend an empirical approach called “case-weighting.”⁴³ Case-weight is a term that refers to the amount of work (in time) that is required to bring a case to a conclusion. This method of evaluation requires the indigent defense organization to actually track the exact amount of time that it takes to reach a disposition in a wide variety of cases.

More recent assessments of caseload management issues have reaffirmed the importance of jurisdiction specific case-weighting. The State Bar of California recently promulgated its *Guidelines on Indigent Defense Services Systems (2006)*. In addition to emphasizing the obligation of chief defenders to monitor and manage the caseloads of lawyers, it affirmed the importance of determining what “workload” a numerical caseload represents within a particular jurisdiction.⁴⁴ Even more recently, the American Council of Chief Defenders promulgated its *Statement on Caseloads and Workloads*, which, while affirming the efficacy of the NAC caseload standards, urged “...thorough assessment in each jurisdiction to determine the impact of local practices and laws on those [NAC] levels...”⁴⁵

The Private Defender Program began its caseload study in FYE 2001-2002 and focused on adult misdemeanor and felony cases. The group of lawyers selected for the study represented a wide range of experience levels within the Program. They were required to keep contemporaneous and detailed time records for all cases assigned to them during a three-month period. They were asked to keep these time records until each of the cases assigned to them during that period was concluded.⁴⁶ Time records were kept for a wide variety of misdemeanors and felonies and included serious felony cases such as attempted murder and cases prosecuted under the Three Strikes law.⁴⁷

Our objective, of course, was to determine the maximum number of cases that a PDP lawyer could handle properly in the course of a year. Beginning with a 40-hour workweek for 52 weeks (2,080 hours per year), we subtracted hours for holidays (96 hours), vacations (80 hours), and sick time (44 hours), arriving at 1860 hours available for casework per year. We compared this calculation with two other studies that were conducted by The Spangenberg Group.⁴⁸ We found the differences to be insignificant when viewed in the context of the contrasts that exist between the ways in which a public defender office and a controlled assigned counsel organization operate.⁴⁹ Our caseload evaluation also accounted for the fact that PDP lawyers are in private practice and are thus free to accept cases in addition to those assigned by the Program. We asked all PDP lawyers to provide us with the percentage of time spent in their practices⁵⁰ in the FYE June 30, 2015 defending cases assigned to them by the Private Defender Program.

Our evaluation of the time records submitted in the study led us to conclude that our target yearly caseloads for adult cases needed to be broken down further than simply as “misdemeanors” and “felonies.” Our case-weighting analysis showed that misdemeanor cases that alleged domestic violence consumed considerably more of a lawyer’s time than did other misdemeanors. While we concluded that a PDP attorney who devotes 100 percent of his or her time to non-domestic violence PDP misdemeanor cases could readily handle 450 such cases yearly, we found that such a lawyer could handle only 334 domestic violence misdemeanors per year.⁵¹

Our case-weighting analysis also led us to conclude that the targeted caseload should be different for each of two broad categories of felonies. We found that those felonies that qualify under local court rule to be set for Superior Court Review (SCR) are less time-consuming than those that do not. These are the non-serious non-Three Strike felonies that are set at arraignment for a conference with the Criminal Presiding Judge before the time set for a preliminary hearing. The SCR thus creates an early opportunity for the defender to secure a reduction in the charges from the prosecutor and/or a sentence limitation commitment from the judge. A significant number of such felonies are resolved at the time of the SCR.⁵² Our case-weighting analysis found that a PDP lawyer who devotes 100 percent of his or her time to such felonies assigned by the PDP could handle 265 such cases per year. We found that the more serious felonies, not surprisingly, require more time to defend. Our case-weighting analysis found that a PDP lawyer who devotes 100 percent of his or her time to the defense of this category of cases assigned by the Program could handle 174 such cases per year.⁵³

With the exception of domestic violence misdemeanors, the target caseloads for the PDP are higher than those suggested by the NAC 40 years ago.⁵⁴ There are many factors that

undoubtedly played a role in the results we obtained in our time study. Some of them relate to how the practice of criminal law in general has changed in those three intervening decades. The most striking example is the computer, which enables lawyers to do on-line research, create brief banks, produce template motions, and track their time easily. Other factors relate to the way criminal cases are handled by the San Mateo County Superior Court. For example, rather than being required to handle one case at each pretrial conference or SCR, PDP lawyers are able to set three or four cases on the same calendar, thus handling multiple cases in the same amount of time as it would take to handle one. The fact that most of the courtrooms that handle criminal cases are within 100 yards of the County jail also contributes to lawyer efficiency. The makeup of the PDP itself also contributes to the findings of the study. Because homicide-qualified PDP lawyers also handle misdemeanors and less serious felonies, they bring a wealth of experience and efficiency to the process of defending our clients.

Attached as Appendix G are two documents that provide specifics of the study and its application to the case assignments this fiscal year. The first is a document entitled “PDP Caseloads – Case Weighted Targets for Percent of PDP Practice.” It describes the target caseload for each category of adult case and for juvenile delinquency and dependency cases.⁵⁵ It also shows the target for PDP lawyers by the percentage of their practices that are devoted to defending PDP cases. The first column sets forth the percentage of practice devoted to PDP cases exclusively. The second column sets forth the misdemeanor target for that particular PDP practice percentage. The third column describes the same for domestic violence (DV) misdemeanors. The fourth column, designated “Felony 1,” describes the target number for SCR-eligible felonies. The fifth column, designated “Felony 2,” provides the target number for SCR-ineligible felonies. The sixth column, designated “Juvenile,” provides the target number for juvenile delinquency cases. The seventh column, designated “300,”⁵⁶ provides the target number for juvenile dependency cases. For example, a lawyer who devotes 100 percent of his or her time to PDP cases, would have a target of 450 misdemeanors, *or* 334 domestic violence misdemeanors, *or* 265 SCR-eligible felonies, *or* 174 SCR-ineligible felonies, *or* 335 juvenile delinquency, *or* 188 juvenile dependency cases. For a lawyer who devotes 75 percent of his or her practice to PDP cases, those numbers would read across the page as 337.5, 250.5, 198.75, 130.5, 251.25, and 141.

The second document of Appendix G is entitled “Actual Cases and Percentages of Target Maximums.” This document sets forth the actual number and types of cases handled by each of the PDP’s trial attorneys, the percentage of time devoted by each lawyer to PDP cases in their practices, and the percentage of the targeted maximum that the actual number of each type of case represents. Each lawyer is identified by a number in the column to the far left, in order of those who devote the lowest percentage of their practices to PDP cases to those who devote the highest.⁵⁷ As described in the section entitled “How the PDP Lawyers Accomplish Their Mission,” *supra*, there were 98 lawyers who handled caseloads assigned to them by the PDP staff this fiscal year. Because they did not handle assigned caseloads in these types of cases, three of the 10 specialty calendar lawyers are not listed here. Also not listed here are the appellate lawyers, the lawyers who handle civil cases exclusively, those who left the PDP during the course of the year and those who were on various types of leave from the Program. Cases that were handled to conclusion entirely on those specialty calendars are not included in this document.⁵⁸ To be consistent with case-weighting studies of other jurisdictions cited in this report, minor traffic cases and probation violations were also excluded.

This second document of Appendix G is designed to recognize and illustrate how the target caseloads for each type of case are accounted for in the case of lawyers who handled more than one type of case during the fiscal year.⁵⁹ Looking at the entries for “Attorney Number 85” for example, we learn that he or she devoted 95 percent of his or her practice in this fiscal year to PDP cases. Moving to the next column to the right (MSD) we learn that this lawyer handled 182 misdemeanors, and in the next column (MSD%) we learn that those 182 misdemeanors are 42.57 percent of the 337.5-case targeted maximum for this type of case. Continuing from left to right across the page, we see that the attorney handled 4 domestic violence misdemeanors (DV), which is 1.26 percent (DV%) of the 250.5-case targeted maximum for this type of case. The 5 SCR-eligible felonies (FEL1) he or she handled are 1.99 percent (FEL1%) of the target for these cases, and the 5 SCR-ineligible cases (FEL2) are 3.02 percent (FEL2%) of the target for this type of case. In the case of Attorney Number 85, he or she also handled 13 juvenile dependency cases (Juvi300), which represents 7.28 percent (Juvi300%) of the target for this type of case. He or she also handled 1 juvenile delinquency case (Juvi602), which represents 0.31 percent (Juvi602%) of this type of case. The last column to the right combines the percentages of the columns to the left to show what percentage of the combined target caseloads this attorney handled. In the case of Attorney Number 85, he or she handled 56.44 percent of the cases we have targeted for him or her. In other words, the column to the far right sets forth the percentage of the target of all case types that this lawyer handled during this fiscal year.

At the bottom of the second page of this document the overall averages are set forth. It shows that the Average Caseloads for these lawyers were: 90 misdemeanors; 13 domestic violence misdemeanors; 18 SCR-eligible felonies; 22 SCR-ineligible felonies; 29 juvenile dependency cases; and 63 juvenile delinquency cases. The document also shows that the average attorney handled 22.22 percent of the targeted maximum for misdemeanors; 4.28 percent of the targeted maximum for domestic violence misdemeanors; 7.45 percent of the targeted maximum for SCR-eligible felonies; 14.59 percent of the targeted maximum for SCR-ineligible felonies; 17.26 percent of the targeted maximum for juvenile dependency cases; and 23.62 percent of the targeted maximum for juvenile delinquency cases. Finally, this document shows that the average PDP trial attorney devoted 84 percent of his or her time to handling PDP cases and handled 43.28 percent of her or his targeted maximum of cases.

No attorneys exceeded their targeted maximums for this fiscal year.

The workload assessment we made during the 2001-2002 fiscal year has become dated. We hope to take another look at our workload assessment for felonies in the near future. Because it is a very time-consuming and labor-intensive process, our ability to revisit those targets may depend on our ability to add support staff to compile the necessary data.

INITIAL CLIENT MEETINGS

Like the subject of Attorney Caseloads, the Agreement with the County requires a report annually on this subject. We have again taken a look at the factors that affect the ability of PDP lawyers to visit their in-custody clients after appointment and before the next appearance in court. We should note that such visits are not aspirational. They are a requirement specifically set forth in the Practice and Procedure Manual of the Private Defender Program.

We have learned to date that the best system for monitoring the ability of lawyers to visit their clients before pretrial conferences or SCRs⁶⁰ is a combination of tools. We have surveyed lawyers who are appointed to in-custody clients and have found that the inability to visit a client prior to the first post-arraignment appearance is very rare. The results of these surveys have been confirmed by personal observation at such court appearances by the Chief Defender, the Assistant Chief Defender, and the Managing Attorneys at Juvenile Court and in Adult Court. Ten years ago we developed an additional tool for monitoring these client visits. The billing form that must be submitted by PDP lawyers includes a place in which the lawyer must list the date on which he or she visited an in-custody client. Administrators check these entries at random to further monitor attorney visits to incarcerated clients.

In the rare instances in which the assigned lawyer did not immediately visit the client, we found that the “quick set” by the arraignment calendar judge or commissioner was sometimes the culprit. By quick set we refer to a date set by the judge or commissioner for the first post-arraignment court appearance within a very short period of time. Such a short period of time makes it almost impossible for the assigned lawyer to secure and review the police reports and to have a meaningful conference with the client in jail before that appearance.

Of course, there are sound reasons for such quick sets. They almost always occur because the arraignment judge or commissioner is left without a choice because of the combination of a Court holiday and the statutory time limits for in-custody clients. We are unaware of any problems with client visitation occurring during this fiscal year by quick sets.

Over the course of the year there were some obstacles to visitation with in-custody clients that were the product of unexpected situations within the County jail. We notified our attorneys and investigators that the jail elevators were inoperable – and thus clients were inaccessible – on October 16, 2014, February 25, February 26 and March 23, 2015.

On March 16, 2015, we notified our attorneys and investigators that a segment of the jail – known as “Old Maguire” – had been placed under quarantine for measles and shingles. We advised them to “use your own judgment” as to how well the diseases could be contained in that one section of the facility. On March 18, 2015, we notified them that they expected that section of the jail to be under quarantine for an additional one to two weeks, but advised them that the inmates could still receive legal mail, and that they were welcome to visit other areas of the main jail.

While our Sheriff and his staff did their usual excellent job to provide inmates with the opportunity to see their lawyers, there are some inmates who may well have been without the usual attorney visits during this limited time period.

COMMUNITY OUTREACH MAKING “HOUSE CALLS” WITH ALLIES

The Agreement between the County and the Association calls for a report on the Community Outreach efforts of the Private Defender Program during the year.

It is with great pride that we describe again this year the extraordinary volunteer efforts of Private Defender Program attorneys who joined with civil attorneys of the San Mateo County Bar Association and the Legal Aid Society of San Mateo County to reach out to the most vulnerable members of our community – the homeless. But this effort goes far beyond “reaching out” as that term is commonly used. These lawyers not only volunteered their time to help these members of our community, they went to their temporary homes – homeless shelters – to offer legal assistance to those who were hesitant to ask for help through ordinary channels.

Legal Clinics at InnVision Shelter Network

Shelter Network was founded in 1987 to provide a comprehensive coordinated network of housing and social services for the homeless residents of San Mateo County. It was initiated as a broad based community response to the plight of homeless families and single adults, and stands as a model of community involvement – combining the effort and focus of residents, religious organizations, businesses and local government to help these vulnerable members of our community. Shelter Network became InnVision Shelter Network in 2012 with the merger of two nonprofit organizations with similar missions and goals: InnVision the Way Home (f. 1973) and Shelter Network (f. 1987). Shelter Network began with a budget of \$150,000, two paid staff members and a core of volunteers and visionaries intent on forming the first housing programs to help homeless families in San Mateo County. The merged programs now have 240 employees, 18,000 volunteers annually, 17 facilities in Silicon Valley and the Peninsula, and a budget of \$16 million. One thousand homeless individuals are housed each night, including families, women and children, single adults, and veterans and their families.⁶¹

Attorneys from the San Mateo County Bar Association, San Mateo County Legal Aid and the Private Defender Program staff Legal Nights at Maple Street Shelter in Redwood City monthly (except December), and First Step for Families Shelter in San Mateo, as well as Haven House Shelter in Menlo Park quarterly. The most common legal issues faced by shelter residents are in the areas of criminal law, immigration, family law, government benefits, employment, housing and bankruptcy. A “triage” attorney briefly interviews each client to determine which type of legal advice the client needs and then assigns the client to a 15- to 20-minute confidential appointment with an attorney that evening. Follow up by telephone is necessary if the client’s legal issue cannot be resolved in one evening. The clients may also be referred to workshops, self-help centers or a nonprofit or service organization to assist them with their issues. One of the original founders of the legal clinics, **Amanda Riddle**, developed a “legal reference guide” which was distributed to the homeless shelters. The guide includes contact information for legal and other services, which can provide some assistance the clients need between Legal Nights.

The PDP attorneys who volunteered their time this year to staff these clinics are **Myra Weiher**, **Jason Cueva**, and **Richard Keyes**. Special thanks to **Hallie Aaron** who has volunteered for every one of Maple Street Shelter’s clinics for the past three years, and **Bob Daye** who volunteers enormous amounts of his time, energy and vast knowledge of criminal and family law at all the clinics.

Yet More Community Outreach

As in years past, we sought and found opportunities to reach out to the community in places where we thought it would have the greatest effect. That meant, of course, that we sought

to make our community a better place in which to live by reaching out to the high school students of San Mateo County.

One of the ways in which SMCBA lawyers have worked to bring understanding of the criminal justice system to high school students is through their participation in the Mock Trial Program. For the past 31 years, the San Mateo County Bar Association has been a sponsor of this Program along with the San Mateo County Office of Education and the Constitutional Rights Foundation. This Program introduces high school students to the very soul of the Constitution – the criminal trial court. This year’s winning team from Menlo School did exceptionally well and placed eighth at the state competition in Riverside.

Many Association lawyers, judges and retired judges have and continue to participate in this Program designed to reach out to this vital pool of future leaders. There is simply not enough space in this document to list them all here. But it is important to note that the two agencies responsible for criminal litigation in this County, the PDP and the office of the San Mateo County District Attorney, were well represented. PDP lawyers **Emily Andrews, John Elworth** and **Kevin Allen**, as well as Deputy District Attorneys **Kristen Coleman** and **Nadia Hahn** and San Mateo County Bar Association Board Member **David Silberman**, volunteered enormous amounts of their time to coach Mock Trial teams. PDP lawyers acting as Judges/Presiders this year included **Nafiz Ahmed, Rick Halpern, Jeff Hayden, Eric Liberman** and **John May**. PDP lawyers who volunteered to help as scorers included **Hallie Aaron, Nafiz Ahmed, Ray Buenaventura, Michelle Danley, Mike Devoy, John Digiacinto, David Franklin, Sherrie Friedman, Ross Green, Mitri Hanania, Jeff Hayden, Kathy Jacomb, Shelly Landon, Paul Loveseth, Lisa Maguire, Bonnie Miller, Neva Tassan, Joan Tillman, Myra Weiher, and Kathy Yolken**. The delegation of participants from the office of our District Attorney was led by District Attorney **Steve Wagstaffe** and Chief Deputy District Attorney **Karen Guidotti**, and included Deputy District Attorneys **Amanda Alcantara, Jamal Anderson, Ben Blumenthal, Shin-Mee Chang, Amelia Diedrich, Rebecca Dreyfuss, Christine Ford, Jenna Johansson, Amara Lee, Deshawn Madha, Joshua Martin, Ryan McLaughlin, Marie Montesano, Elizabeth Naardi, Morley Pitt, Michael Redding, Nicole Sato** and **James Wade**. Additionally, members of the judiciary who volunteered their time were **Donald Ayoob, Leland Davis, III, Richard Du Bois, Steven Dylina, Susan Etezadi, Mark Forcum, Jack Grandsaert, Elizabeth Hill, Susan Jakubowski, Elizabeth Lee, George Miram, Raymond Swope, Marie Weiner, and Linda Gemello (Ret.)**. The enormous task of coordinating the judges and scorers for the many individual competitions at multiple locations was taken on with superb results by the Executive Assistant to the Chief Investigator, **Suzanne Ury**.

Special thanks, too, are due to Master Calendar Coordinator **Karen Brake**, as well as **Sara Lind** and **Susan Maxwell**, for scheduling the courtrooms for each competition. We would also like to thank County Facilities Manager **Paul Tachis** for his indispensable assistance, and **Lt. Ken Jones** of the San Mateo County Sheriff’s Office for handling security. Former and current Presidents of the San Mateo County Bar Association’s *Barristers* **Charli Hoffman** and **Jaclyn Smith** were terrific resources for volunteer lawyers. And last, but by no means least, the President of the San Mateo County Trial Lawyers Association, **Amanda Riddle**, proved once against her importance to this County and its children by being front and center when she was needed.

The high school students who participated in the *Mock Trial Program* were the guests of the Association (and the generous lawyers and judges who helped pay for the students' lunches) at the annual Law Day Luncheon held at the Crowne Plaza Hotel in Burlingame on May 1, 2015. There were a record 90 students in attendance representing 16 high schools, along with an audience of Association members, judges and commissioners of our Court. Awards for excellence in the Program were given, and scholarships were presented to three students by the San Mateo County Trial Lawyers Association.

Reaching out to the community is something that is a part of everyday operations at the Private Defender Program offices. PDP Officers of the Day responded to more than *1000 inquiries from the general public* during the year.

CONCLUSION: THE PDP 46 YEARS LATER THE CHALLENGE OF THE FUTURE

I have now completed my 15th year as the Chief Defender. I have had the good fortune to have been a part of the Private Defender Program for 38 of the 46 years it has served the people of San Mateo County. Being a part of this amazing team of lawyers, investigators and staff members is an extraordinary privilege. I am truly grateful.

While the foregoing pages have detailed the operation of the Private Defender Program for the fiscal year ending June 30, 2015, I hope that some of the other reasons for the success of the program are apparent. The steady commitment and determination of the San Mateo County Bar Association and its members to truly be a part of the community at large is an important piece of the formula for success. The work of the PDP is a crucial part of the mission of the Association, which includes providing quality legal service to those who cannot afford it.

We are very pleased to have extended the relationship between the County of San Mateo and the San Mateo County Bar Association with a new two-year Agreement for the provision of the services of the Private Defender Program. The new Agreement covers the fiscal years 2015 to 2017.

The County of San Mateo and the San Mateo County Bar Association have built a strong relationship that is centered on a mutual commitment to the community. Nothing short of the highest quality of legal representation for poor people accused of crimes was or is acceptable to either. As a consequence, the Agreement for the services of the Private Defender Program not only calls for regular performance measurement, but it also makes the results of that measurement public every year. Both the County and the Association understand that lawyers must have the tools essential to properly represent their clients. Investigation and the assistance of appropriate forensic experts are not luxuries. They are as important to criminal lawyers as hammers and saws are to carpenters.

This report is once again submitted with great pride in the accomplishments of the lawyers of the Private Defender Program – the men and women who pour their hearts and souls into this work, swimming hard every day against the current of public sentiment and the awesome power of the State. As champions of the weak, the voiceless, the disenfranchised and the despised, they bring tremendous public value to the community. Their vigorous advocacy for *fairness* strengthens public confidence in the integrity of the criminal justice system in our community. Without that public confidence, the system would collapse. I have been defending the poor people of San Mateo County side-by-side with them for the past 38 years. I am so very proud to be one of them.

The devotion of the Private Defender Program staff to our clients shows itself in the way they do their jobs every day. There is nothing simple about tending to 20,000 cases and in dealing with the often-desperate people who are our clients. Their loyalty and dedication makes going to the office a joy for me.

I want to separately acknowledge and thank Assistant Chief Defender **Myra Weiher** for her tremendous and indispensable help in gathering and organizing material for this Report, especially for the attorney evaluation section. Her devotion to the mission of the Private Defender Program shows itself day after day in this office and in the community. She is an extraordinary lawyer and an extraordinary person. We are very fortunate to have her.

Thanks to Juvenile Managing Attorney **Rick Halpern** for keeping our Juvenile Court operation first rate, assuring that our lawyers have what they need to properly represent the children and families of our community. The sections describing our work in Juvenile Services and Mental Health and Probate were significant additions to help us explain our mission to the public. He is a true innovator and cares profoundly about the Private Defender Program and its clients.

I also want to acknowledge Managing Attorney in our adult operations, **Eric Liberman**. He too was instrumental in the preparation of this report, particularly the “Client Relations” and “Who are the Lawyers of the PDP” segments. His addition to the staff has enabled us to make many more in-court observations and thus more comprehensive performance evaluations to guide our efforts to focus training where it is needed. He spent 32 years as a Private Defender Program lawyer and now he utilizes the skills he acquired in a very different role with the organization.

Special thanks are our owed to PDP Office Manager **Susanna Guevara**, Controller **David Alves** and to Bookkeeper **Richard Qureishi** for their terrific work in assembling the caseload statistics so crucial to the attorney caseloads segment of the Report. Sincere thanks too are owed to **Suzanne Ury** for performing the very difficult and important job of proofreading this report from beginning to end and for assembling this complex document for printing.

A special note of thanks goes out to PDP Attorney **Pamela Glazner** for her crucial help with major chunks of this Report, including the self-assessment piece evaluating the PDP in the context of the ABA Ten Principles of a Public Defense Delivery System.

It is important for me to acknowledge and thank everyone who contributed to this Annual Report. This compilation of detailed information was unquestionably a team effort by the entire Private Defender Program staff.

The members of the Board of Directors of the San Mateo County Bar Association gave countless hours of their time overseeing the operation of the Association and its Private Defender Program. Their concern for the poor of San Mateo County is demonstrated year in and year out. Their support of the staff and lawyers of the PDP is important to our success and is greatly appreciated by those of us who benefit from the ample time they give to this important task.

Finally, this Report is submitted with a deep appreciation of the men and women of our County government who have made a commitment to the poor of our community to treat quality representation as a right, rather than as an empty promise. I would like to especially recognize County Budget Director **Jim Saco** and Deputy County Manager **Mike Callagy** who worked hard with us to craft the Agreement between the Bar Association and the County for Private Defender Program services. Finally, we want to recognize the keen intelligence, insight and perspective that

County Manager **John Maltbie** brings to his work. We are very lucky to have all of them here in San Mateo County.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John S. Digiacinto". The signature is fluid and cursive, with a large initial "J" and "S".

John S. Digiacinto
Chief Defender

john.d@smcba.org

Appendix A

ENDNOTES

¹ *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799 (1963).

² *Gideon* established the right to counsel in felony cases. Cases that followed *Gideon* extended the right to appointed counsel for indigents to direct appeals – *Douglas v. California*, 372 U.S. 353 (1963); to custodial interrogation – *Miranda v. Arizona*, 384 U.S.436 (1966); to juvenile proceedings that can result in confinement – *In re Gault*, 387 U.S. 1 (1967); to critical stages of criminal proceedings, i.e., preliminary hearings – *Coleman v. Alabama*, 399 U.S. 1 (1970); to misdemeanors involving possible imprisonment – *Argersinger v. Hamlin*, 407 U.S. 25 (1972); and most recently to misdemeanors that involve suspended sentences – *Shelton v. Alabama*, 535 U.S. 654 (2002).

³ *Gideon*, 372 U.S. 335 at 344.

⁴ The California Association of Realtors indicates that in July of 2015, the median price of a single-family home in California was \$488,260, whereas the median price of such a home in San Mateo County was \$1,300,440. California Association of Realtors, <http://www.car.org/marketdata/data/countysalesactivity/> (last visited on August 25, 2015).

⁵ The U.S. Census Bureau, Quick Facts for San Mateo County, <http://www.census.gov/quickfacts/table/PST045214/00,06081> (last visited August 25, 2015); U.S. Census Bureau, Poverty Thresholds for 2013, <http://www.census.gov/hhes/www/poverty/about/overview/measure.html> (last visited August 25, 2015).

⁶ It is the inability to employ counsel, rather than a rigid income/expense formula, which controls entitlement to appointed counsel. See *Gideon* and its progeny, and California Penal Code section 987(a). Because of the high cost of living in San Mateo County, the federal poverty threshold does little to inform a judge about the ability of a person to hire an attorney. “In 2007, a family of three in San Mateo County needed household earnings of \$71,827 to be self sufficient. More than 40 percent of households earned less than that level of income. In 2008, the self-sufficiency level increased to \$79,816, reflecting continued high prices for food, transportation and housing.” *Indicators for a Sustainable San Mateo County, Thirteenth Annual Report Card, April 2009, at page 27.*

⁷ Warren E. Burger (1907 - 1995), Chief Justice of the United States from 1969 to 1986.

⁸ Noted in the transcribed remarks of Samuel Dash on the occasion of the 40th anniversary of *Gideon*, reported in the July 2003 issue of *The Champion*, the magazine of the National Association of Criminal Defense Lawyers, beginning at page 28.

⁹ There were only “his” courts in 1963. A woman judge had yet to be appointed or elected at that point in time.

¹⁰ *Samson v. California*, 547 U.S. 843, 846 (2006).

¹¹ An arraignment is the first court appearance for a person accused of a crime, at which time the accused is informed of the specific charge against him or her.

¹² The first court appearance in Juvenile Court is called an “arraignment hearing” if the child is not in custody and a “detention hearing” if the child appears while in custody. The assigned attorney appears with the child in about 95 percent of juvenile cases. The few exceptions to this rule are some of the serious cases, where the Managing Attorney appears with the child and specially assigns such cases after reviewing the evidence that purports to support the charges filed.

¹³ PDP staff accounts for each case that is assigned to each lawyer. With its case management software, the exact number and types of cases any lawyer has pending at any given point in time can be promptly determined. The lawyer also participates in this caseload assessment. Lawyers are encouraged to inform PDP staff if they are simply too busy to take on additional cases.

¹⁴ San Mateo County Civil Grand Jury, Frequently Asked Questions, http://www.sanmateocourt.org/court_divisions/grand_jury/faqs.php?h=1#2 (last visited August 31, 2015).

¹⁵ The attorney count totals in this section do not include the Stanford teaching staff.

¹⁶ The percentage of time that each Panel attorney devotes to PDP cases, as well as the number and types of cases each lawyer handled last year, is set forth in detail in the discussion *infra* of *Attorney Caseloads* and Appendix G.

¹⁷ *Gideon v. Wainwright*, 372 U.S. 335.

¹⁸ In the parlance of the criminal and juvenile justice system, a *calendar* is a time set aside by one judge to handle a significant number of cases that are at the same procedural point of the criminal justice process. For example, an *in-custody arraignment calendar* would be a time set aside by a judge to handle all of the cases of people who must be arraigned on the charges filed against them who remain in custody, unable to post bail or to be otherwise cited and released.

¹⁹ Since all of our clients are indigent, the inability to post bail is almost universal among them.

²⁰ Examples include petty theft with no prior convictions, trespassing and various traffic misdemeanors.

²¹ While the trial lawyers who handle regular caseloads bill each case upon conclusion, the in-custody calendar attorneys are paid a flat rate of \$500 for handling each calendar. They are not paid additionally for cases that are closed by plea or otherwise on the arraignment calendar.

²² Proceeding to trial would mean, of course, that the client would remain in jail at least until the trial is concluded – a period that generally will not exceed 30 days.

²³ The PDP does not appoint counsel for appeals of felony convictions to the District Court of Appeals. We handled only 10 misdemeanor appeals in Fiscal Year 2014-2015.

²⁴ The PDP is also fortunate to have two lawyers who handle civil cases exclusively.

²⁵ Assists represent circumstances where the primary investigator assigned to a case engaged another investigator to assist him or her with special skills, knowledge or abilities. The PDP is unique in its encouragement of this type of cooperation. Assists also include the assignment of researchers to obtain necessary records from courts, hospitals, etc.

²⁶ Axis I describes clinical syndromes that we typically think of as diagnoses. *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*, published by the American Psychiatric Association.

²⁷ “...Or alleged to be a danger to themselves or to others...”

²⁸ As mentors are paid via the Fee Schedule, their fees are not included in the “Education and Seminars” line item of the Budget. Rather, their fees are included in the “Attorneys’ Fees” item of the Budget.

²⁹ All PDP lawyers are required to have Internet access.

³⁰ The annual fund for education for each lawyer was increased to \$750 for the FYE June 30, 2008. This is designed to help lawyers reach the new training goals set forth in the State Bar of California’s *Guidelines on Indigent Defense Services Delivery Systems (2006)*. The *Guidelines* (at pg. 18, Training) suggest that experienced indigent defense providers should be expected to complete a minimum of 15 hours of relevant legal education classes or equivalent training dealing specifically with juvenile (dependency or delinquency), mental health and/or criminal law per year. They go on to suggest a minimum of 21 hours of classes or equivalent training for lawyers in their first year of practice.

³¹ The education pursued by PDP lawyers is a factor that is considered in the evaluation of their performance. (*See Attorney Evaluations, infra*.)

³² The law does not provide for jury trials in Juvenile Court cases.

³³ And in the case of in-chambers appearances, such as SCRs or pretrial conferences, with the complete support and permission of the judges of our Court.

³⁴ Special Fee bills are also reviewed by a Special Fee Committee member, a lawyer qualified to handle the defense of homicide cases, appointed by the Private Defender Program Committee each year. The Treasurer of the Association also reviews these bills.

³⁵ There were a few exceptions. Trial lawyers who were not assigned cases and were thus inactive with the Private Defender Program this year were not evaluated. There were three appellate lawyers whose performance was not reviewed because they did not work on any appeals or writs during the year. Finally, there were a few new lawyers who had only

recently been added to the PDP who had not completed enough cases by the time this report was written to enable administrators to conduct any meaningful performance review.

³⁶ We documented 1447 calls to the Officer of the Day for EYE June 30, 2014; 707 calls in the FYE June 30, 2013; 235 calls in the FYE June 30, 2011; 317 calls in the FYE June 30, 2010; 287 calls in the FYE June 30, 2009; 335 calls in the FYE June 30, 2008; 309 calls in the FYE June 30, 2007; 234 calls in the FYE June 30, 2006; 266 such calls in the FYE June 30, 2005; 224 such calls during the FYE June 30, 2004; and 270 such calls during the FYE June 30, 2003. Call counts for FYE 2011-2012 were not tabulated because the County performed an intensive review of the Private Defender Program in lieu of the Annual Report for which such figures are prepared.

³⁷ *People v. Marsden*, 2 Cal.3d 118, 84 Cal.Rptr. 156 (1970). This case provides for removal of appointed counsel from a case for one of two general reasons: (1) deficiencies in the lawyer's performance, or (2) irreconcilable differences between the lawyer and the client.

³⁸ National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, *Courts* (Washington, D.C., 1973), p. 186.

³⁹ It is as well at this point as any other that we acknowledge how heavily we have borrowed from the work of the National Legal Aid and Defender Association (NLADA) in the development of our caseload evaluation system and in the preparation of this segment of the report. We wish to acknowledge how invaluable the work, advice and assistance of David J. Carroll, Director of Research and Evaluations for the NLADA, has been to our efforts. We have relied significantly on his presentation to legislators of the State of Maryland: *Indigent Defense Services in the State of Maryland: A National Perspective*. Hearing of the Senate Sub-Committee on Public Safety, Transportation and the Environment, January 6, 2003.

⁴⁰ It is interesting to note that the NLADA has found it appropriate to refine and expand the NAC standards. In its Model Contract (for indigent defense agencies) of February 2000 (at section VII.E) it suggests the following provisions for inclusion: "Case Loads: It is agreed that the Agency will maintain **average annual caseloads** per full-time attorney or full-time equivalent (FTE) no greater than the following: Felony Cases – 150; Misdemeanor Cases – 400 (excluding traffic); Juvenile Offender Cases – 200; Juvenile Dependency Cases – 60; Civil Commitment Cases – 250; Contempt of Court Cases – 225; Drug Court Cases – 200; [Appeals – 25]" (emphasis added).

⁴¹ David J. Carroll, *Indigent Defense Services in the State of Maryland, supra*.

⁴² "Making comparisons between various indigent defense systems is an imperfect science, due to the wide number of variables affecting indigent defense services in each state." The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study, Final Draft Report* (April 1999), p. 59 (footnote omitted). The problem of excessive caseloads in indigent defense organizations has continued to receive the attention of legal scholars in this field. See Laurence A. Benner and Lorenda S. Stern, *Systemic Factors Affecting the Quality of Criminal Defense Representation: Preliminary Report to the California Commission on the Fair Administration of Justice* (2007); Norman Lefstein (Professor of Law and Dean Emeritus, Indiana University School of Law – Indianapolis) and Robert L. Spangenberg, *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*, Report of the National Right to Counsel Committee (The Constitution Project 2009); and Amy Bach, *Ordinary Injustice* (2009).

⁴³ "Based upon more than a decade of work in the field of public defender caseload/workload measures, The Spangenberg Group feels that any reliable caseload study must be empirically-based in order to assure reliability both for public defender management and the funding source.... The most reliable method... is the case-weighting method using contemporaneous time records. The Spangenberg Group, *Tennessee Public Defender Case Weighting Study, supra*, p. 11. The NLADA pioneered the case-weighting movement for indigent defense providers in the late 1970s and early 1980s. David J. Carroll's *Indigent Defense Services in the State of Maryland, supra*.

⁴⁴ The Chief Defender of the PDP was honored to serve on the 10-member committee tasked with drafting these revised *Guidelines* for the approval of the Board of Governors of the State Bar of California.

⁴⁵ The *American Council of Chief Defenders Statement on Caseloads and Workloads* was approved by the ACCD on August 24, 2007, at its meeting in San Francisco. The Chief Defender of the PDP served on the three-member drafting sub-committee of the ACCD's Caseload Standards Taskforce.

⁴⁶ These time records were kept in a fashion that mirrors how civil litigation law firms track their time, including time spent that would be classified as "billable hours," and time spent on administrative functions such as preparing billing on cases for submission to the PDP office.

⁴⁷ Conviction of such charges can result in life imprisonment under California law.

⁴⁸ The Spangenberg Group was recognized nationally for its extensive experience and knowledge in conducting caseload studies for indigent defense organizations. The studies to which we here refer were for Tennessee and for Colorado. The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study*, *supra*, and *Weighted Caseload Study for the Colorado Public Defender*, November 1996.

⁴⁹ The Colorado study began with 2080 hours per year and deducted vacations, holidays and sick time to arrive at 1832 hours per year, and then reduced that further by 96 hours for “administrative time” and “training time.” In our study, administrative time was included in the time records kept by the study group. Because PDP lawyers are not employees, typical administrative meetings occasioned by an employee/employer relationship do not take place. All PDP training seminars are conducted outside of the 40-hour workweek – either in the evening, during lunch, or on weekends in the case of California Attorneys for Criminal Justice and California Public Defenders Association training seminars.

⁵⁰ We asked that these estimates be rounded to the nearest five percent.

⁵¹ While there are several factors that undoubtedly contribute to this finding, the contentiousness of the relationship between the accused and the accuser makes demands on the lawyer’s time that other misdemeanors do not. Conducting an appropriate investigation and preparation for jury trial in such cases is simply more time consuming. That so many of these cases are concluded only after a trial by jury also undoubtedly contributed to our findings.

⁵² In this fiscal year, of the 2209 felonies that were filed in the former municipal court in which the PDP was appointed (this figure excludes the 995 cases in which petitions were filed pursuant to Proposition 47), only 1519 went beyond the preliminary hearing stage to arraignment in Superior Court. A preliminary hearing is less useful to defenders in California than in other jurisdictions because the prosecution can, and usually does in these types of felonies, present hearsay evidence without calling any actual witnesses to the alleged offense.

⁵³ Because we drew the line in our study based on local court rule about what cases are eligible for a Superior Court Review, this category of cases includes a significant number of simple felony offenses. Because no one is eligible for SCR who has a prior “strike” conviction, cases such as simple narcotic possession and petty-theft-with-prior-conviction are necessarily included in this category. It is important to note that, although our case-weighting analysis for felonies of both types is higher than the 150-felony maximum recommended by the NAC in 1973, there is no PDP lawyer whose actual felony caseload for this fiscal year exceeds that suggested maximum.

⁵⁴ Some examples of case-weighting results from other jurisdictions include: Colorado: 598 misdemeanors, 241 felonies, 310 juvenile; Oregon: 400 misdemeanors, 240 felonies, 480 juvenile cases; Tennessee: 500 misdemeanors, 233 felonies; Massachusetts: 400 misdemeanors, 200 felonies, 300 juvenile cases. Some of the targeted maximums from these jurisdictions are weighted – meaning that serious cases and less serious cases are averaged to reach the final number. See *Keeping Defender Workloads Manageable*, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series No. 4 (The Spangenberg Group, 2001).

⁵⁵ Each lawyer who handles juvenile dependency cases participated in a detailed statewide time study conducted by the Judicial Council of California’s Administrative Office of the Courts. The results of that extensive study, *Interim Report: The Caseload Study for Court-Appointed Dependency Counsel*, were published in November 2003. As noted in previous Annual Reports, we adopted their target number along with the manner in which they counted cases – i.e., 141 cases per lawyer per year. We adopted their number even though it assumes a different number of hours per year (1778) available for casework than we found to be available for lawyers handling cases for the PDP (1860 hours per year as detailed earlier in this section of the Report). The NLADA standards for these types of cases are 200 juvenile delinquency cases and 60 juvenile dependency cases. Most recently however, the AOC changed its own standards. As reported by the Judicial Council of California’s Administrative Office of the Courts in its *Dependency Counsel Caseload Standards: A Report to the California Legislature* (April 2008), the Judicial Council adopted a revised caseload standard in October 2007 of 188 cases per lawyer rather than 141 cases previously set as the target maximum. (It is instructive to note that at the outset of the caseload study that resulted in the 141-case target, the actual statewide average number was 273 clients per attorney.) The AOC also decided to count each sibling in a group represented by a single lawyer as an individual case without a trace of empirical data apparent to support that conclusion (see *Report to the California Legislature*, *supra*, at page 12, footnote 9). In this *Attorney Caseloads* segment of the Annual Report we again report our caseload data using the target maximum caseload of 188 cases and count those cases as has the AOC. We do so to make comparisons of our caseload data with other jurisdictions easier for all of the indigent defense

organizations that represent parents and children in dependency cases. In the *Appointments in Fiscal Year 2013-2014* segment of the Annual Report we report the number of cases in a manner consistent with our agreement with the County of San Mateo – i.e., if one lawyer is assigned to represent more than one sibling in a single case, it is counted as one case.

⁵⁶ Juvenile Dependency cases are filed pursuant to the authority of California Welfare and Institutions Code Section 300, *et seq.*

⁵⁷ Trial attorneys who were not assigned cases during this fiscal year are not listed here. For the most part these are lawyers who for personal reasons (such as health or family issues) were inactive during this period of time. Lawyers who handled only appeals, civil cases or specialty calendars (e.g., drug court, veterans court) are not listed here either. Finally, there were a few new lawyers who had only recently been added to the PDP who had too few cases assigned to them at the time this Report was written to merit inclusion.

⁵⁸ In its caseload study for the Colorado Public Defender, *supra*, The Spangenberg Group took note of the uniqueness of some calendar courts and the awkwardness of accounting for those cases when it noted (at p. 68): “... the Denver Drug Court is a different animal than traditional district courts, therefore the felony caseload standards in this report are not to be applied to the attorneys assigned to drug court.”

⁵⁹ As acknowledged in the Agreement between the County and the Association (paragraph 10.d., footnote 4), caseload averages are not appropriate for measuring the quality of representation by an individual attorney; rather, they are tools for evaluating staffing needs of the PDP as a whole. The Spangenberg Group, *Weighted Caseload Study for the Colorado State Public Defender, supra*, p. 67. As noted by The Spangenberg Group in its *Tennessee Public Defender Case-Weighting Study, supra*, p. 70: “Finally, we note that workload standards are not a tool that can be used to measure individual attorney performance.... Individual caseloads vary substantially from one attorney to another in terms of workload and any assignment decisions or productivity measurement must continue to be based on a detailed knowledge of the relationship between a public defender and her client on a case-by-case basis and not on the broader caseload standards.”

⁶⁰ As noted earlier, “SCRs” are Superior Court Reviews, which are the first post-arraignment court appearance in non-serious non-Three-Strike cases in San Mateo County. In misdemeanor cases, the pretrial conference is the first post-arraignment court appearance. The PDP is appointed by the Court to represent a client at the arraignment.

⁶¹ Description taken directly from the InnVision Shelter Network website at <http://www.ivsn.org/about/> (last visited September 17, 2015).

Appendix B

RESOLUTION NO. 073891

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

*** * * * ***

RESOLUTION AUTHORIZING THE PRESIDENT OF THE BOARD OF SUPERVISORS TO EXECUTE AN AGREEMENT WITH THE SAN MATEO COUNTY BAR ASSOCIATION FOR PRIVATE DEFENDER PROGRAM SERVICES FOR THE PERIOD OF JULY 1, 2015 THROUGH JUNE 30, 2017.

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, it is the desire of the County to provide appropriate and competent legal services to financially eligible persons entitled to Court Appointed Counsel in San Mateo County; and

WHEREAS, the San Mateo County Bar Association has successfully provided such services through the Private Defender Program since 1968; and

WHEREAS, it is the desire of the County and the San Mateo County Bar Association to continue to provide these services; and

WHEREAS, the County has negotiated a new two year agreement with the San Mateo County Bar Association for the provision of the Private Defender Program, increasing the contract amount by \$1,047,327, or 6%, for a total amount of \$18,502,766 during the period of July 1, 2015 through June 30, 2016; and increasing the contract amount by \$370,056, or 2.0%, for a total amount of \$18,872,822 during the period of July 1, 2016 through June 30, 2017; and

WHEREAS, these contract amounts do not include the Sunny Day Amendment approved by this Board on December 9, 2014 (Resolution No. 073541), which remains in full force and effect; and

WHEREAS, this Board has been presented with a form of the Agreement and wishes to approve same as to both form and content and desires to enter into the Agreement;

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the President of the Board of be authorized and directed to execute the agreement with the San Mateo County Bar Association for the Private Defender Program and on behalf of the County of San Mateo, and the Clerk of this Board shall attest to the signature thereto.

* * * * *

Regularly passed and adopted this 23th day of June 2015

AYES and in favor of said resolution:

Supervisors:

CAROLE GROOM

DAVE PINE

DON HORSLEY

WARREN SLOCUM

ADRIENNE J. TISSIER

NOES and against said resolution:

Supervisors:

NONE

Absent Supervisors:

NONE

Carole Groom
*President, Board of Supervisors
County of San Mateo
State of California*

Certificate of Delivery

I certify that a copy of the original resolution filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.

John L. Maltbie
*John L. Maltbie
Clerk of the Board of Supervisors*

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY BAR ASSOCIATION

THIS AGREEMENT, made and entered into this 23rd day of June 2015, by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California, (hereinafter "County") and the SAN MATEO COUNTY BAR ASSOCIATION, a corporation, (hereinafter, "Association");

WHEREAS, it is the desire of both the County and the Association to continue to provide appropriate and competent legal services to financially eligible persons accused of crime in San Mateo County, to those who are subject to the laws of the Juvenile Court, and to all those entitled to the services of court-appointed counsel in other proceedings;

WHEREAS, the Association is qualified to provide such legal services and representation through its Private Defender Program, subject to the authority of the courts to appoint counsel in certain cases;

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, Association agrees to furnish such legal services through its Private Defender Program, and County agrees to pay to Association certain sums therefore upon the following terms and conditions:

1. SERVICES

Association will provide qualified attorneys for acceptance of appointment as counsel for all financially eligible persons entitled to court-appointed counsel as a matter of law in the Superior Court of San Mateo County¹. Association will provide such representation in criminal cases, juvenile cases, mental health cases, and civil and miscellaneous cases as more fully described in Paragraph 2 of this Agreement. As part of such representation, Association shall provide attorneys to appear at all arraignment calendars, drug court calendars, treatment court calendars (formed to implement the provisions of Penal Code section 1210 *et seq.*), *Bridges Program* calendars, *Pathways* and *Veterans Court* calendars, mental health calendars, juvenile court detention calendars, 'Glenwood' and 'Girls Program' review calendars, '300' and '602' placement calendars, and as requested by the Superior Court of San Mateo County. As to the cases described in Paragraph 2 of this Agreement, Association will provide necessary and appropriate ancillary services such as investigators, experts and other forensic services, the expense of which is not otherwise provided for by

¹ The San Mateo County Superior Court became unified in 1998. Prior to that time, it was divided into a court of limited jurisdiction, the "Municipal Court", and a court of general jurisdiction, the "Superior Court". To promote an ease of description and a continuity with previous agreements between the Association and the County, the "case types" defined and described in paragraph 2 of this Agreement will continue to refer to a "Municipal" and a "Superior" Court as they existed in San Mateo County prior to 1998.

law. Association shall also employ appropriate staff as may be required to fulfill its obligations under this Agreement.

Association agrees and understands that the services performed under this Agreement, whether by the Association or the attorneys providing the representation described herein, are performed as an independent Contractor and not as an employee of the County and that neither the Association nor any members or attorneys performing hereunder acquires any of the rights, privileges, powers, or advantages of County employees.

2. CASE TYPES

For the purposes of this Agreement, a “case” shall be defined as follows: The representation of one person on one accusatory pleading. Multiple charges against a defendant in one accusatory pleading shall not prevent designation of a matter as a single case. If a single defendant is accused in more than one accusatory pleading, each separate pleading shall constitute a separate case. If multiple defendants are charged in a single accusatory pleading, it shall be considered that there are as many cases as there are defendants. Matters involving trial competency pursuant to Penal Code section 1367 *et seq.*, certified from the Municipal Court to the Superior Court, shall be deemed a separate case in each court. Any other proceeding instituted after sentence, or after the Private Defender Program has been relieved by the Court, and requiring appointment of counsel, shall be treated as one additional case.

- a. **“TYPE A” CASE** is generally described as a single Superior Court matter involving one accusatory pleading including an indictment, information, or certification under Penal Code section 859(a). It also includes the matters described in greater detail in **APPENDIX A**, attached hereto and incorporated by reference as though fully set forth herein.
- b. **“TYPE B” CASE** is generally described as a single Municipal Court matter involving one complaint or accusatory pleading, alleging a misdemeanor or a felony, and shall further be defined as a single court matter involving a petition, certification, or other Municipal or Superior Court proceeding, including but not limited to the matters described in greater detail in **APPENDIX A**, attached hereto and incorporated by reference as though fully set forth herein.
- c. **“TYPE C” CASE** is generally described as any case initiated pursuant to the Lanterman-Petris-Short Act or the Developmental Disability laws set forth in the California Welfare and Institutions Code.
- d. **“TYPE D” CASE** is defined as a juvenile dependency case initiated on behalf of a minor as defined by California Welfare and Institutions Code section 300, in which attorneys are appointed for one or both parents and/or for the child or children pursuant to

Welfare and Institutions Code section 317. Each such appointment shall be counted as a case. When an attorney, previously appointed pursuant to Section 317 of the Welfare and Institutions Code, represents a party at a proceeding pursuant to Section 366.26 of the Welfare and Institutions Code for the purpose of: (1) the termination of parental rights, or, (2) the establishment of legal guardianship of a dependent minor, such proceeding shall be deemed a separate case. A petition for extraordinary writ review from an order of the court pursuant to Welfare and Institutions Code section 366.25 shall also be counted as a separate case.

- e. **“TYPE E” CASE** is defined as any matter in the Juvenile Court brought pursuant to the juvenile delinquency statutes of the State of California, including but not limited to those set forth in Welfare and Institutions Code section 602 *et seq.*.

If, during the term of this Agreement, the Legislature enacts any law, or a court decision is rendered which has the effect of changing the definition of a “Type” as defined in Paragraphs 2.a., 2.b., 2.c., 2.d. and 2.e. above, County and Association agree to continue to define the case as set forth in this Agreement.

In the event of a termination of the contract, and/or a determination not to contract further, Association’s responsibility for the representation of persons it has been appointed to represent in juvenile dependency cases (“Type D” cases as described in paragraph 2.d above) will not extend beyond the term of this Agreement.

3. **COMPENSATION**

This Agreement covers a period of two years, and provides for fixed amounts of compensation during the term of the Agreement. Both the County and the Association acknowledge uncertainty about the effect that significant increases or decreases in case appointments, the number and nature of murder and other Special Litigation (defined below in paragraph 3e) case appointments, legislation, court decisions, or actions of other agencies could have on the ability of the parties to perform under the terms of the Agreement. The County and the Association agree to meet, at the request of either party, to discuss any such concern at the earliest possible time so as to determine whether changes in the terms of the Agreement are necessary.

In consideration for Association’s performance of the obligations set forth herein, County agrees to pay Association a fixed sum each fiscal year in the amounts set forth in paragraphs 3.a. and 3.b. below.

- a. For the period commencing July 1, 2015 and ending June 30, 2016, the total amount of compensation to be paid by the County to the Association shall be \$18,502,766. This sum is due and payable as follows: \$9,251,383 will be paid on July 1, 2015; and \$9,251,383 will be paid on January 4, 2016.

- b. For the period commencing July 1, 2016 and ending June 30, 2017, the total amount of compensation to be paid by the County to the Association shall be \$18,872,822. This sum is due and payable as follows: \$9,436,411 will be paid on July 1, 2016; and \$9,436,411 will be paid on January 2, 2017.
- c. Except as specified in Paragraphs 3e, 3g, 3h and 3i below, such annual amounts of compensation shall include all services for court appointments defined under Paragraph 2, **CASE TYPES**, and for **SPECIAL LITIGATION CASES**, defined in Paragraph 3e below, made during the period of the Agreement. In addition, all cases appointed to the Private Defender Program prior to June 30, 2013, but unfinished as of July 1, 2015, are included within the terms of this Agreement. An appointment shall be deemed made within the meaning of this Agreement on the date on which the Private Defender Program is first appointed.
- d. Association shall be responsible for the complete representation of all persons for whom appointment was made under Paragraph 2 during the period of this Agreement. Complete representation shall include provision of all services under the terms of this Agreement until a new appointment is authorized by the terms of Paragraph 2. Association shall make a good faith effort to maintain a reserve fund, which, in Association's estimate, shall be adequate to provide compensation for representation, and all associated expenses, consistent with this Paragraph, in the event of a termination of the contract, and/or a determination not to contract further. The parties acknowledge that a minimum reserve level of 10 percent should be maintained by a program of this size and complexity. The parties acknowledge that the reserve that exists at the commencement of this Agreement is substantially below that level.
- e. A **SPECIAL LITIGATION CASE** is a case involving multiple charges, unusually complex issues of law or facts, novel issues of law requiring complex motions or writs, or which requires extraordinary demands upon an attorney's time and efforts and skill. Special Litigation cases are primarily cases involving a homicide, attempted homicide, or cases providing for a sentence of life imprisonment. They also include proceedings pursuant to the Sexually Violent Predators Act (California Welfare and Institutions Code section 6600 *et seq.*), proceedings to extend the commitments of Mentally Disordered Offenders (California Penal Code section 2962 *et seq.*), and proceedings to extend the commitments of persons found Not Guilty by reason of Insanity (California Penal Code section 1026.5). Private Defender Program lawyers are

compensated on an hourly basis for such cases, at the rates set forth in the Fee Schedule established by the Association. In the event that no agreement exists between County and Association after June 30, 2015, County agrees to pay for all Special Litigation case services as are provided after June 30, 2015 by Association for Special Litigation cases appointed during the term of this Agreement or previous agreements at the rates the Association pays, and under procedures prevailing during the last year of this Agreement.

- f. The payments set forth in Paragraphs 3.a. and 3.b. above, are based on a calculation of the anticipated caseload for each type of case. The rates for each type of case, for the term of this Agreement, are set forth in detail in APPENDIX B, attached hereto and incorporated by reference as though fully set forth herein.
- g. **Exclusion for Certain Cases.** Any case that is prosecuted by the Office of the Attorney General of California, or any case in which an attorney is appointed pursuant to the provisions of *Harris v. Superior Court* (1977) 19 Cal.3d 706, 140 Cal.Rptr. 318, shall not be included within the terms of this Agreement, but may at County option, be the subject of a separate agreement for representation. Notice of any known Motion pursuant to *Harris* above, shall be immediately forwarded to the County by the Private Defender Program. Any case in which a privately retained attorney seeks court appointment through the Private Defender Program, shall not be included within the terms of this Agreement unless the Chief Defender of the Private Defender Program shall approve. In the event that the Chief Defender intends not to approve, he or she shall notify the County immediately. Without the Chief Defender's approval, the County has no obligation to compensate the Association for such cases, nor does the Association have an obligation to compensate such attorneys. Such attorneys must apply directly to the appointing court for compensation pursuant to Sections 987.2(a) and 987.3 of the California Penal Code.
- h. **Exclusion for Penal Code 987.9.** In the event that Section 987.9 of the California Penal Code (concerning funds for investigators, experts, and other ancillary services in death penalty cases) is modified, repealed or superseded during the term of this Agreement, any case expense currently reimbursable by the State of California which is transferred to the County due to such Section 987.9 being modified, repealed or superseded is not included in the terms of this Agreement, and shall be reimbursed separately and in addition thereto.

4. CONSULTATION WITH COURT ABOUT ELIGIBILITY

The Association agrees to consult with the judiciary and representatives of the County in implementing this Agreement to assure competent representation of financially eligible persons at reasonable costs. The Association agrees to cooperate with the County and with the judiciary in the determination of financial eligibility of applicants for such services, and agrees to use best efforts in implementing any adopted financial eligibility determination system. The Association will make recommendations to the judiciary with regard to court appointment of counsel in individual cases. The term “financially eligible”, as used in this Agreement, refers to persons without sufficient means to retain counsel, as defined in California Penal Code section 987 *et seq.*

5. NON-DISCRIMINATION

No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (including cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination, including the receipt of non-discriminatory services, under this Agreement. Association shall ensure full compliance with federal, state or local laws, directives and executive orders regarding non-discrimination for all service providers, employees and subcontractors under this Agreement.

Association shall comply with section 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.

Association shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Association’s equal employment policies shall be made available to County of San Mateo upon request.

With respect to the provision of employee benefits, Association shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

Association shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

Association shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that

its employees shall receive from the Association, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Association or that the Association deduct from the employees regular pay the fees received for jury service.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Association to penalties, to be determined by the County Manager, including but not limited to

- i) termination of this Agreement;
- ii) disqualification of the Association from bidding on or being awarded a County contract for a period of up to 3 years;
- iii) liquidated damages of \$2,500 per violation;
- iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager shall have the authority to

- i) examine Association's employment records with respect to compliance with this Section 5;
- ii) set off all or any portion of the amount described in this Section 5 against amounts due to Association under the Agreement or any other contractor between Association and County.

With regard to performance and services provided pursuant to this agreement, Association shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Association that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Association shall provide County with a copy of the response to the Complaint when filed.

6. INDEMNIFICATION

The Association shall hold harmless, defend and indemnify County, its agents, officers and employees, from any and all liability, claims, actions, costs, damages or losses of any kind (including but not limited to injuries, or damage to person and/or property or any loss or cost) which arise out of the performance by the Association, its agents, officers, and employees under this Agreement. This obligation to hold harmless, defend and indemnify shall continue beyond the term of this Agreement or any extension of this Agreement.

The County shall hold harmless, defend and indemnify the Association, its agents, officers and employees, from any and all liability, claims, actions, costs, damages or losses of any kind (including but not limited to injuries, or damage to person and/or property or any loss or cost) which arise out of the performance by the County, its agents, officers, and employees under this Agreement. This obligation to hold harmless, defend and indemnify shall continue beyond the term of this Agreement or any extension of this Agreement.

7. INSURANCE

- a. Liability insurance.** The Association shall take out and maintain during the life of this Agreement such Comprehensive General Liability, Motor Vehicle Liability and Professional Liability Insurance as shall protect Association while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Association operations under this Agreement, whether such operations be by Association or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability..... \$1,000,000
- (b) Motor Vehicle Liability Insurance..... \$1,000,000
- (c) Professional Liability..... \$1,000,000

After one year from the date this Agreement is first executed, the County may, at its sole discretion, require an increase in the amount of liability insurance to the level then customary in similar county agreements by giving sixty (60) days notice to Association. County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or the event any notice is received which indicates any required insurance coverage will be diminished or cancelled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

- b. **Worker's Compensation Insurance.** The Association shall have in effect, during the entire life of the Agreement, Worker's Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, Association certifies awareness of the provisions of section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provision of the Code, and certifies compliance with such provisions before commencing the performance of this work of the Agreement as set forth in California Labor Code section 1861.

8. MEDIATION

Any dispute between the parties arising out of this Agreement, or any of the APPENDICES attached hereto, that the parties have been unable to resolve shall be referred to mediation. The parties will agree upon a mediator from a list of available mediators within five (5) days of being provided with a list of mediators by a Service Provider. If the parties cannot agree on a mediator within such period, then a list of three available mediators will be sent by the Service Provider to the parties. Each party may strike one name by delivering written notice to the Service Provider within five (5) days after delivery of the list of mediators. The remaining name will be the Mediator; provided that if two names are left, the Service Provider shall select which of the two shall serve as Mediator. The parties shall use their reasonable efforts to resolve this dispute during the Mediation. Mediation shall continue until the dispute is resolved or the parties decide to abandon mediation. In the event that the dispute has not been resolved within sixty (60) days after the dispute has been referred to mediation, either party shall have the right to proceed to litigation with respect to such dispute.

It is agreed by the parties that the cost of the Mediator and any associated costs resulting from mediation shall be shared equally between the parties.

It is agreed by the parties that unless otherwise expressly waived by them, any action brought to enforce any of the provisions of the Agreement for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of San Mateo, State of California.

9. **RECORDS AND AUDITS**

- a. Association shall maintain records and accounts during the course of this Agreement and for four years thereafter, and shall observe accepted accounting practices. Association shall make all statistical and financial records and data relevant to the provisions of this Agreement that are not confidential and are not protected by the attorney-client or work-product privileges, available for inspection and audit by authorized representatives of the County at any reasonable time.

Except as otherwise authorized by California Government Code sections 27707 *et seq.*, nothing herein shall be construed to permit County to examine the files of assigned counsel pertaining to actual representation of accused persons, and the laws defining the attorney-client privilege and attorney work-product will be strictly construed and observed to protect client confidentiality.

- b. Association shall furnish to the County, within 60 days of the end of each quarter of this Agreement, the names of all attorneys who represented Private Defender Program clients during that quarter.
- c. Association shall furnish to the County, within 20 days of the end of each month of each year of this Agreement, a statistical breakdown of the number of cases in each of the categories defined and described in Paragraph 2 herein, to enable the County to evaluate the performance of services under this Agreement. The Association shall also provide to the County, periodically or as appropriate, reports of fees and costs which are, or may be, subject to reimbursement by the State or Federal governments, or which may be eligible for other than County funding. Such reports may include recommended procedures for obtaining reimbursement or funding.
- d. The County shall maintain complete records of all reimbursement to the County, from whatever source, for services provided by the Association pursuant to the terms of this Agreement. County shall furnish to the Association, upon request, information regarding the amount and source of reimbursement received by the County.
- e. The Association shall have the sole responsibility for determining the fees and rates paid to Private Defender Program attorneys for work performed under the terms of this Agreement. The Association shall provide a copy of the current Fee Schedule, setting forth such fees and rates, to the County, and agrees to

provide a copy of any modifications to the Fee Schedule within 30 days of adoption by the Association.

10. PERFORMANCE BENCHMARKS

a. **Attorney Training.**

The Association recognizes that ongoing professional training is a necessity to keep attorneys abreast of changes and developments in the law. The Association shall provide sufficient training, whether in-house or through a qualified provider of Continuing Legal Education certified by the California State Bar Association, to keep all of its attorneys who perform work under this Agreement abreast of developments in relevant law and procedure. This subject shall be included in the annual report of the Private Defender Program to the County as described in Paragraph 10.h. below.

b. **Attorney Evaluation.**

The Chief Defender of the Private Defender Program, and/or his/her designee, shall evaluate the professional performance of Private Defender Program attorneys annually. The Association shall make available to the County the standards by which performance was measured, and evidence that such evaluations were conducted, although all evaluations are to be confidential between the Private Defender Program and the attorneys. The number of evaluations conducted and the results thereof shall be included in summary form in the annual report of the Private Defender Program to the County as described in Paragraph 10.h. below.

c. **Client Feedback.**

The Private Defender Program will have a lawyer with felony experience on duty each business day at the Private Defender Program offices during regular business hours to receive complaints about the performance of Private Defender Program lawyers directly from Private Defender Program clients. Such attorneys, known as “Officers of the Day”, will follow the written procedure for the handling of client complaints, which is attached hereto as APPENDIX C and incorporated herein by reference. Any client who indicates dissatisfaction with the decision of the Officer of the Day, will be informed of his/her right to bring the complaint to the attention of the Court in the form of a *Marsden*² hearing, since the adequacy of the performance of counsel in court-appointed cases is ultimately for the Court to determine³. The number and nature of such complaints as well as their disposition

² *People v. Marsden* (1970) 2 Cal.3d 118; 84 Cal.Rptr. 156.

³ *Phillips v. Seely* (1974) 43 Cal.App.3d 104,115.

shall be included in summary form, in the annual report of the Private Defender Program to the County, as described in Paragraph 10.h. below.

d. Attorney Caseloads.

The Association and County agree that the number and type of cases for which a lawyer is responsible may impact the quality of representation individual clients receive. While there are many variables to consider, including the seriousness or complexity of each case and the skill and experience of the individual lawyer, useful information might be gathered from an evaluation of the caseloads of Private Defender Program attorneys. To this end, the Private Defender Program shall include the caseloads of each Private Defender Program attorney by types of cases, as well as the average caseloads for the Private Defender Program as a whole in the annual report of the Private Defender Program to the County, as described in Paragraph 10.h. below.⁴

e. Initial Client Meetings.

The Association and the County agree that attorneys should conduct a client interview as soon as practicable after being appointed by the Court, in order to obtain information necessary to provide quality representation in the early stages of the case and to provide the client with information concerning the lawyer's representation and the course criminal cases take in the San Mateo County Superior Court. Such meetings may also serve to foster a relationship of trust and understanding that will ultimately inure to the client's benefit. Consequently, the Private Defender Program will devise a system to monitor the occurrence of early interviews of incarcerated clients, taking into account the factors that affect the ability of Private Defender Program lawyers to make early jail visits, including but not limited to the number of days between arraignment and the next court appearance and the speed of assignment of cases to individual lawyers. The results shall be included in the annual report of the Private Defender Program to the County, as described below in Paragraph 10.h.

f. Community Outreach.

The Association and the County recognize and acknowledge the significant impact that the criminal justice system has on our community, particularly in portions of our community that have been affected by crime to an extent disproportionate to population.

⁴ The parties acknowledge that caseload averages are not appropriate for measuring the quality of representation provided by any individual attorney; rather they are tools for evaluating staffing needs for the Private Defender Program as a whole. The Spangenberg Group, "Weighted Caseload Study for the Colorado State Public Defender", November 1996, pg.67.

The Association recognizes that the privilege of practicing law in this community also provides the lawyers of the Private Defender Program an opportunity to share their knowledge and experience with those whose lives are most likely to be disrupted by entanglement in the criminal justice system.

The Association, independently and/or in conjunction with community outreach programs of the San Mateo County Superior Court and other community agencies, will undertake to communicate to the public the mission of the Private Defender Program and its role in the criminal and juvenile justice systems. Community outreach efforts will be included in the annual report of the Private Defender Program to the County, as described in Paragraph 10.h. below.

g. Client Survey.

The Association will create a survey instrument and process to seek client views on the representation they received from the Private Defender Program. The results of such survey will be included in the Annual Report of the Chief Defender beginning with the Report for the FY 2013-2014.

h. Annual Report of the Chief Defender.

Subject to the exception articulated in Paragraph 11 hereafter, within ninety (90) days of the end of each fiscal year during the term of this Agreement, the Chief Defender of the Private Defender Program shall submit a written report to the Board of Supervisors detailing the Program's performance with respect to the items described in Paragraphs 10.a., 10.b., 10.c., 10.d., 10.e., 10.f. and 10.g. The annual report will also include the annual budget of the program, setting forth the costs of the operation of the program for the year, including fees for attorney's services, investigation and other ancillary defense services as well as the cost of administration.

The Chief Defender may request an additional 30 days within which to submit said report, and upon receipt of said written request, the County may consent to said 30 day extension, which consent shall not be unreasonably withheld.

11. EVALUATION

The County and the Association recognize and acknowledge that evaluation of the performance under the terms of this Agreement is a function that necessarily includes the participation of the San Mateo County Superior Court. As noted in *Phillips v. Seely* (1974) 43 Cal.App.3d 104,115:

“The availability of a reasonable sum of money to reasonably compensate assigned counsel where required by law is the responsibility of the board of supervisors; whether indigent persons entitled to counsel at public expense are being adequately represented by reasonably compensated counsel is for the court to determine.”

The County may form a committee to evaluate ongoing performance under the terms of this Agreement, at any time during the period of this Agreement and no less than every 10 years, that shall include members of the judiciary, members of the Bar Association who are not actively participating as Private Defender Program attorneys, and may include other interested persons as determined by the County, to make such reports and recommendations as may be appropriate and of assistance to the parties hereto.

In any year in which such a performance review is conducted it will be in lieu of the requirement of the Annual Report described in Paragraph 10.h.

The County and the Association agree that, upon the submission of any report and/or recommendation by the Committee, either party may require the other party to meet and confer regarding any changes to the Private Defender Program or amendments to this Agreement that may be warranted based on such report or recommendations.

12. WITNESS, INTERPRETER AND TRANSLATOR FEES.

Payment of witness fees shall be governed by the provisions of Sections 1329 and 1334.3 of the Penal Code, by Sections 68093 and 68098 of the Government Code, and such other statutory provisions as may be applicable; and the payment of interpreter and translator fees shall be governed by Section 68092 of the Government Code and Sections 731 and 752 of the Evidence Code.

13. COURT-REQUESTED INVESTIGATIVE SERVICES.

Upon request of the Court and Association acceptance, investigative and ancillary defense services shall be provided on behalf of a party before the court in a proceeding where such party has not received appointed counsel. Any expense incurred for services rendered under the provisions of this paragraph during the period of this Agreement may be accounted for as a Special Litigation case, and is included within the total compensation paid by County to Association.

14. TERM OF AGREEMENT.

The term of this Agreement shall be from July 1, 2015 through June 30, 2017.

15. USE OF CONTRACT REVENUES.

Association agrees that all funds provided to it hereunder will be used only to enable Association to meet its responsibilities as herein defined.

16. SUCCESSION PLANNING.

The Association shall appoint a Chief Defender of the Private Defender Program. The position of Chief Defender is currently filled by John Digiacinto. Should John Digiacinto retire, resign or otherwise leave his current post as the Chief Defender, the Association agrees to notify the County of such change immediately. The Association shall further meet and confer with the County regarding the selection process for the position of Chief Defender.

17. TIME is of the essence of this Agreement.

18. ENTIRE CONTRACT.

This is the entire contract between the parties, and no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Association and the County. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

19. AUTHORIZED AGENT; NOTICES.

The County Manager's Office shall be County's agent for the purpose of this Agreement. All notices provided for hereunder shall be addressed and delivered to the County Manager's Office of the County of San Mateo.

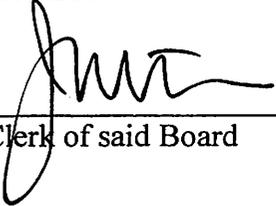
* * * * *

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for the provision of services in connection with the Private Defender Program, effective as of July 1, 2015.

COUNTY OF SAN MATEO

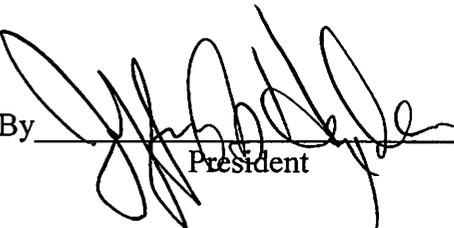
BY Carole Snow
President, Board of Supervisors

ATTEST:



Clerk of said Board

SAN MATEO COUNTY BAR ASSOCIATION

By 

President

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY BAR ASSOCIATION

FY 2015-2017

APPENDIX A

“TYPE A” CASES also include appeals to the Appellate Department of the Superior Court of San Mateo County; writs filed on behalf of defendants (specifically excluding writs of *habeas corpus* filed on behalf of prisoners of the State of California pursuant to the provisions of California Penal Code section 4750); and all quasi-criminal and civil proceedings in either the Municipal or Superior Court which are not specifically mentioned in subsections 2b, 2c, 2d, or 2e herein, but which are proceedings in which the law requires that counsel be provided at public expense, including but not limited to contempt proceedings (California Code of Civil Procedure sections 1209 *et seq.*); proceedings to terminate parental rights (California Family Code sections 7802, 7860-7864 *et seq.*); probate conservatorship proceedings pursuant to California Probate Code sections 1471 and 1852; paternity, support, and adoption proceedings, proceedings pursuant to the provisions of the Servicemembers Civil Relief Act, and proceedings pursuant to the Sexually Violent Predators Act (California Welfare and Institutions Code section 6600 *et seq.*).

For the first time, this Agreement includes the cost of representation of those felony offenders sentenced to life imprisonment pursuant to the provisions of California’s Three Strikes law who may be affected by the provisions of “Proposition 36” approved by the voters in the November 2012 California ballot. Since this Initiative statute has just been enacted, neither party is able to provide a reliable estimate of the cost of representation in such cases. Accordingly, the costs of these Special Litigation cases will be monitored to determine what if any effect they may have on the ability of the Association to perform under the terms of the Agreement pursuant to Paragraph 3 (Compensation) of this contract.

“TYPE B” CASES also include proceedings to revoke or modify probation; matters involving competency and insanity pleas certified from the Municipal Court to the Superior Court; matters arising after the suspension of criminal proceedings pursuant to the provisions of the Welfare and Institutions Code, or after commitment to the California Rehabilitation Center; representation at lineups; representation of witnesses; and any other appearances or representations by assigned attorneys specifically requested or ratified by a Judge of the Superior Court of San Mateo County, and not included in any other provisions of this AGREEMENT, where the law requires that counsel be provided at public expense, whether or not such matter is filed in court.

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY BAR ASSOCIATION

FY 2015-2017

APPENDIX A-1

This *Appendix* amends the *AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY BAR ASSOCIATION*, made and entered into on the 4th day of June, 2013, for the provision of services by the Association's Private Defender Program (Agreement).

Pursuant to Paragraph 3 of the Original Agreement and at the request of the Association, the parties met and discussed the inability of the Association to complete its obligations under the contract for the FYE June 30, 2015 at the compensation amount set forth in the Original Agreement. This inability is the direct result of the appointment of the Private Defender Program in the criminal cases *People v. Marvin Ware, et al, San Mateo County Superior Court Nos. SC080432, SC080433, and SC080434*.

As a result of the most massive criminal investigation in the history of San Mateo County, charges were filed pursuant to three separate but interrelated indictments against 16 individuals, nine of whom are accused of a series of Special Circumstance murders. Also alleged are a variety of other serious and violent felonies, including attempted murder, attempted robbery and dissuasion of a witness, all alleged to be in furtherance of the interests of three alleged local street gangs. The amount of evidence that has been collected is enormous. The number of hours that Private Defender Program lawyers, investigators and expert witnesses will necessarily spend in fulfilling their duties to their clients is, at this point in time, incalculable.

In order to enable the Association to fulfill its obligations under the terms of the Original Agreement in light of the appointment of the Private Defender Program in the above-referenced Superior Court cases, the Original Agreement is hereby amended to reflect that the County will pay, in addition to the compensation set forth in the Original Agreement, the attorney and investigator fees and related costs of these specific cases a sum not to exceed \$5,000,000 during the term of the current Agreement. This sum is subject to change in future agreements. Subsequent agreements will include the following terms and conditions:

1. All funds paid to the Association pursuant to this amendment will be spent exclusively on the fees and costs as defined in the Original Agreement incurred by the Association for the defense of these specific cases;
2. Should the Private Defender Program's obligations concluded for any reason while there is an unexpended balance of these funds , that balance will be refunded to the County;

3. Payments by the County to reimburse the Association for the fees and costs incurred in the defense of these cases will be made in increments of approximately \$500,000. Each incremental payment will be made as the fees and costs incurred by the Association have reached that approximate amount. The Association will send an electronically transmitted detailed invoice in that amount to the County on a monthly basis, submitted between the 26th and the 29th of each month. The detailed invoice shall reflect a breakdown of the following information: amount billed for attorney's fees; amount billed for expert costs; amount billed for investigation costs; and amount billed for miscellaneous costs. The County will make payment thereof within 30 calendar days of receipt of detailed invoice.
4. In addition to Paragraph 9.a. of the Original Agreement, the County will on a quarterly basis compare the actual bills to the categories of expenses submitted on a monthly basis to ensure accuracy in expense reported. The Association will fully cooperate with providing any and all information requested for review by the County pursuant to Paragraph 9.a. of the Original Agreement.
5. Because the initial fees and costs of these cases, incurred from April 2014 through October 2014, have already exceeded the sum of \$500,000, the first incremental payment will be credited toward those already expended funds upon the submission of a detailed invoice. The unpaid balance will be reimbursed as part of the next incremental payment. This first incremental payment of \$500,000 shall be due within 10 calendar days of the approval of this amended Agreement.
6. The provisions of Paragraph 3.b. of the Original Agreement, setting forth the dates payments are due on the original contract price, will not apply to the sums to be paid under the terms of this Appendix;
7. Notice of sums due to be paid under the terms of this Appendix may be transmitted by electronic mail;
8. All of the remaining provisions of the Original Agreement shall remain in full force and effect.

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE
SAN MATEO COUNTY BAR ASSOCIATION**

FY 2015-2017

APPENDIX B

CALCULATION OF CASE COSTS BY TYPE AND YEAR

a. For the period commencing July 1, 2015 and ending June 30, 2016

Type A Case (Paragraph 2a)	\$ 1,474
Type B Case (Paragraph 2b)	\$ 646
Type C Case (Paragraph 2c)	\$ 726
Type D Case (Paragraph 2d)	\$ 1,079
Type E Case (Paragraph 2e)	\$ 317

b. For the period commencing July 1, 2016 and ending June 30, 2017:

Type A Case (Paragraph 2a)	\$ 1,518
Type B Case (Paragraph 2b)	\$ 665
Type C Case (Paragraph 2c)	\$ 748
Type D Case (Paragraph 2d)	\$ 1,111
Type E Case (Paragraph 2e)	\$ 327

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY BAR ASSOCIATION

FY 2015-2017

APPENDIX C

COMPLAINT PROCEDURE

1/ The Private Defender Program (hereinafter “PDP”) will have a felony-qualified lawyer on duty each day during regular business hours to field complaints about PDP lawyers’ performance directly from PDP clients.

2/ This “Officer of the Day” (OD) will log receipt of the complaint call, a brief description of the complaint, and what if any resolution was reached. Where appropriate, the OD will review Court records and will contact the attorney involved to investigate the merit of a client’s complaint.

3/ The OD is empowered to change an attorney at the request of a client if, in his or her judgment, the assigned attorney’s performance to date has been deficient, and that deficiency has eroded the client’s confidence in his or her attorney’s representation.

The OD will bring any instance of such a performance-based attorney reassignment to the attention of the Chief Defender or Assistant Chief Defender. The Chief Defender or Assistant Chief Defender will then contact the lawyer from whom the case was reassigned to ascertain their perspective of the facts surrounding his or her representation of the client.

4/ The OD is also authorized to replace an attorney at the client’s request, notwithstanding the adequacy of his or her representation, where the OD is of the view that the interests of justice would best be served by such a substitution of assigned counsel.

5/ Where the OD decides not to honor the client’s request for a change of lawyers, he or she will inform the client of the right to present his or her argument to the trial court pursuant to the California Supreme Court’s 1970 decision *People v. Marsden*.⁵

6/ When a spouse or other member of the client’s immediate family calls to complain about the performance of a PDP attorney, the caller should be encouraged to notify the client that he or she should contact the PDP office directly.

⁵ *People v. Marsden* (1970) 2 Cal.3d 118; 84 Cal.Rptr. 156.

7/ When a complaint is called to the PDP by a person who purports to be a representative of a religious, civil rights or other client advocacy organization, the OD should invite the caller to reduce his or her understanding of the substance of the client's complaint to writing, and to direct it to the Chief Defender or Assistant Chief Defender of the PDP. Written acknowledgment of receipt of such a letter will be made by the PDP administration. Such a caller should be encouraged to notify the client that he or she should contact the PDP office directly.

8/ Officers of the Day are also obliged to discuss with PDP administrators instances where multiple complaints have been lodged against an individual attorney.

[Note: In no instance will any part of a client's case that is protected by the attorney-client or other recognized legal privilege be discussed with anyone other than the client.]

Appendix C

PRIVATE DEFENDER PROGRAM CASES COUNTS
FOR THE YEAR ENDED JUNE 30, 2015

	July 2014	Aug. 2014	Sept. 2014	Oct. 2014	Nov. 2014	Dec. 2014	Jan. 2015	Feb. 2015	March 2015	April 2015	May 2015	June 2015	Year End True-up	Grand Totals
"A" CASES														
Appeals		3		2		1			1			1		10
Superior Court Arraignments	140	149	154	161	124 (1)	133 (2)	135 (3)	100 (4)	187 (5)	473 (6)	194 (7)	428 (8)	136	2,514
* Contempts	4	7	11	12	9	10	14	3	3	7	6	4		101
Other (BW,PT,R&S, etc.)	7	6	2	3	1	1	6	6	6	3	2	2		47
* Paternity														0
* Probate	2	4	5	3	4	5	5	9	10	6	9	12		77
Probation violations	15	21	16	32	8	16	17	11	7	14	15	13		186
Sexually Violent Predator(SVP)														0
* Adoption														0
* Military Civil Relief Act														0
Wrts														0
Sub-total	168	190	188	213	146	166	177	129	214	503	226	460	155	2,935
859a	7	10	10	3	4	-	5	-	6	6	4	7		63
Monthly Totals	175	200	198	216	150	166	182	129	220	509	230	467	156	2,998
Cumulative Totals	175	375	573	789	939	1,105	1,287	1,416	1,636	2,145	2,375	2,842		2,998
"B" CASES														
1367-68 P.C. (Sup. Ct.)	2	3	6	6	2	4	2	4	1	2	4	2		38
Line ups			2			2	1	1		1	1	2		10
Probation violations(Sup.Ct.)	124	113	146	103	71	104	94	98	97	76	83	85	15	1,209
Other	15	15	19	17	6	3	8	10	12	19	38	20		224
Muni Court Arraignments	1,217	1,222	1,209	1,176	917	1,018	1,025	942	1,164	1,030	1,047	1,171	-1	13,137
Monthly Totals	1,358	1,353	1,382	1,302	996	1,131	1,130	1,055	1,274	1,128	1,173	1,280	56	14,618
Cumulative Totals	1,358	2,711	4,093	5,395	6,391	7,522	8,652	9,707	10,981	12,109	13,282	14,562		14,618
"C" CASES-LPS														
LPS-Regular	62	53	42	52	47	58	35	41	49	49	51	67		606
LPS-Wrts	6	15	9	5	7	0	1	6	3	3	5	1		61
Petitions for Rehearings	3	1	0	2	3	2	2	0	2	0	1	2		18
Monthly Totals	71	69	51	59	57	60	38	47	54	52	57	70		685
Cumulative Totals	71	140	191	250	307	367	405	452	506	558	615	685		685
"D" CASES-Child appt.(300's)														
Child appt.(300's)	13	14	18	29	16	11	19	6	22	13	9	16		186
Parent appt. (300's)	26	17	36	50	24	17	19	10	31	20	14	23		287
366.26 WIC	7	3	10	13	10	15	22	10	17	8	0	4		119
Monthly Totals	46	34	64	92	50	43	60	26	70	41	23	43		592
Cumulative Totals	46	80	144	236	286	329	389	415	485	526	549	592		592
XX= additional AOC representations														0
"E" CASES														
Regular appts.(602's)	117	122	130	120	97	106	133 (9)	109 (10)	101	121	92	101 (11)	-3	1,346
Cumulative Totals	117	239	369	489	586	692	825	934	1,035	1,156	1,248	1,349		1,346
MONTHLY GRAND TOTALS	1,767	1,778	1,825	1,789	1,350	1,506	1,543	1,366	1,719	1,851	1,575	1,961		20,030
CUMULATIVE GRAND TOTALS	1,767	3,545	5,370	7,159	8,509	10,015	11,558	12,924	14,643	16,494	18,069	20,030	209	20,239
FISCAL YR. CUMULATIVE PROJECTION	21,204	21,270	21,480	21,477	20,422	20,030	19,814	19,386	19,524	19,793	19,712	20,030		20,239
* = "A" & "B" Type Civil Cases														
All "C" and "D" Cases are Civil Cases														
NOTE: Delays in adding cases into our computer system may result in the "A", "B" and "E" case counts being understated. The "Year End True-up" column adjusts for special assignments and expungement cases added in subsequent months.														
X = incomplete data for this period														
XX=Additional representations per AOC reporting standards. AOC counts each child separately when siblings are represented by one attorney														
MEMO: These additional representations, per AOC reporting standards, are not included in the totals above.														
(1)	Includes 49 Prop 47 cases	(3)	Includes 57 Prop 47 cases			(5)	Includes 55 Prop 47 cases		(7)	Includes 91 Prop 47 cases		(9)	Includes 3 Prop 47 cases	
(2)	Includes 70 Prop 47 cases	(4)	Includes 13 Prop 47 cases			(6)	Includes 335 Prop 47 cases		(8)	Includes 320 Prop 47 cases		(10)	Includes 1 Prop 47 cases	
												(11)	Includes 1 Prop 47 cases	

**PRIVATE DEFENDER PROGRAM CASES COUNTS
FOR THE YEAR ENDED JUNE 30, 2014**

	July 2013	Aug. 2013	Sept. 2013	Oct. 2013	Nov. 2013	Dec. 2013	Jan. 2014	Feb. 2014	March 2014	April 2014	May 2014	June 2014	Grand Totals
"A" CASES													
Appeals	1	1	1	2		6			1	1			13
Superior Court Arraignments	140	119	115	156	154	122	151	121	149	142	168	139	1,676
* Contempts	19	9	16	10	11	6	9	7	12	8	7	4	118
Other(BW,PT,R&S, etc.)	13	11	8	17	2		3	2	13	7	4	8	88
* Paternity													0
* Probate	11	6	5	5	3	8	5	5	10	7	6	9	80
Probation violations	10	12	15	6	14	8	12	4	24	14	20	24	163
Sexually Violent Predator(SVP)													0
* Adoption													0
* Military Civil Relief Act													0
Writs													0
Sub-total	194	158	160	196	184	150	180	139	209	179	205	184	2,138
859a	10	13	7	7	5	14	9	6	9	4	6	11	101
Monthly Totals	204	171	167	203	189	164	189	145	218	183	211	195	2,239
Cumulative Totals	204	375	542	745	934	1,098	1,287	1,432	1,650	1,833	2,044	2,239	2,239
"B" CASES													
1367-68 P.C. (Sup. Ct.)	10	5	6	9	1	3	9	4	12	7	11	8	85
Line ups		1	5							1		1	8
Probation violations(Sup.Ct.)	126	106	101	160	113	109	132	105	127	143	141	112	1,475
Other	11	17	10	16	12	15	13	16	16	10	10	8	154
Muni Court Arraignments	1,144	1,171	1,107	1,154	1,088	1,108	1,207	1,086	1,085	1,228	1,195	1,260	13,833
Monthly Totals	1,291	1,300	1,229	1,339	1,214	1,235	1,361	1,211	1,240	1,389	1,357	1,389	15,555
Cumulative Totals	1,291	2,591	3,820	5,159	6,373	7,608	8,969	10,180	11,420	12,809	14,166	15,555	15,555
"C" CASES-LPS													
LPS-Regular	46	30	26	37	41	60	45	36	43	52	56	52	524
LPS-Writs	5	2	3	0	0	0	1	5	2	2	7	8	35
Petitions for Rehearings	0	0	0	0	0	0	1	0	0	0	2	2	5
Monthly Totals	51	32	29	37	41	60	47	41	45	54	65	62	564
Cumulative Totals	51	83	112	149	190	250	297	338	383	437	502	564	564
"D" CASES-Child appt.(300's)													
Child appt.(300's)	14	8	9	11	2	16	16	16	19	20	11	13	155
Parent appt. (300's)	23	15	15	23	4	21	20	34	33	26	22	15	251
366.26 WIC	3	10	12	4	12	19	0	15	8	8	6	4	101
Monthly Totals	40	33	36	38	18	56	36	65	60	54	39	32	507
Cumulative Totals	40	73	109	147	165	221	257	322	382	436	475	507	507
"E" CASES													
Regular appts.(602's)	126	114	125	108	83	96	121	119	128	145	116	108	1,389
Cumulative Totals	126	240	365	473	556	652	773	892	1,020	1,165	1,281	1,389	1,389
MONTHLY GRAND TOTALS	1,712	1,650	1,586	1,725	1,545	1,611	1,754	1,581	1,691	1,825	1,788	1,786	20,254
CUMULATIVE GRAND TOTALS	1,712	3,362	4,948	6,673	8,218	9,829	11,583	13,164	14,855	16,680	18,468	20,254	20,254
Delays in adding cases into our computer system may result in the "A", "B" and "E" case counts being understated by over 100 cases.													
* = "A" & "B" Type Civil Cases													
All "C" and "D" Cases are Civil Cases													
FISCAL YR. CUMULATIVE PROJECTION	20,544	20,172	19,792	20,019	19,723	19,658	19,857	19,746	19,807	20,016	20,147	20,254	

Appendix D

SAN MATEO COUNTY BAR ASSOCIATION
PRIVATE DEFENDER PROGRAM
Budget for the Fiscal Year
June 30, 2015

INCOME	BUDGET	PRELIMINARY ACTUAL
County Contract	\$ 17,455,439	\$ 17,455,439
County Contract - Project Operation Sunny Day	-	1,054,676
AB109 Funding	-	134,845
Miscellaneous	-	263
Investment Earnings	5,000	5,897
TOTAL INCOME	17,460,439	18,651,120
CASE COSTS		
Attorneys' Fees	11,000,000	10,618,636
Attorneys' Fees - Project Operation Sunny Day	-	793,037
Investigators' Fees	2,200,000	1,906,283
Investigators' Fees - Project Operation Sunny Day	-	223,876
Expert & Related Services	1,500,000	1,417,614
Expert & Related Services - Operation Sunny Day	-	37,763
Library	32,000	35,756
Professional Liability Insurance	55,000	54,590
TOTAL CASE COSTS	14,787,000	15,087,555
LABOR COSTS		
Salaries & Wages	1,600,000	1,586,279
Payroll Taxes	105,000	102,757
Employee Benefits	318,000	293,733
Workers Compensation Insurance	7,500	7,769
TOTAL LABOR COSTS	2,030,500	1,990,538
TOTAL OPERATING EXPENSES (Detail Attached)	318,500	288,160
TOTAL VARIABLE EXPENSES (Detail Attached)	324,800	318,186
TOTAL EXPENSES	17,460,800	17,684,439
INCREASE/(DECREASE) IN RESERVES	(361)	966,681
RESERVE, BEGINNING OF YEAR	324,019	324,019
ESTIMATED RESERVE, END OF YEAR	\$ 323,658	\$ 1,290,700

NOTE> Accruals for attorneys and investigators fees are not reflected in the preliminary actuals as these expenses are reviewed in January to determine actual costs for cases with arraignment dates occurring through June 30, 2015 and are accrued at that time.

Similarly, accruals for operating and variable expenses are not included in these preliminary actuals as invoices for services and purchases have not yet been received and processed.

SAN MATEO COUNTY BAR ASSOCIATION
PRIVATE DEFENDER PROGRAM
Budget for the Fiscal Year
June 30, 2015

<u>OPERATING EXPENSES</u>	<u>BUDGET</u>	<u>PRELIMINARY ACTUAL</u>
Computer Software/Justice Works	\$ 45,000	\$ 41,130
Computer Support	60,000	35,960
Fax	1,000	1,824
Furniture & Equipment	9,000	16,966
Equipment Lease	7,500	6,735
Insurance	3,000	3,841
Office Expenses	20,000	20,185
Postage & Mailing	1,500	881
Postage Meter Lease	500	348
Rent	108,000	108,780
Computer Data Lines	17,500	15,535
Stationery/Supplies	12,000	5,196
Taxes	1,500	859
Telephone	32,000	29,920
	<u>\$ 318,500</u>	<u>\$ 288,160</u>
 <u>VARIABLE EXPENSES</u>		
Auditors' Fees	\$ 32,000	\$ 32,000
Card Key Expense	300	740
Community Affairs	500	290
Consulting Services	2,000	1,988
Publications/Manuals/Brochures	6,000	4,624
Dues & Subscriptions	3,500	3,233
Legal Services	1,000	1,026
Meetings	3,000	4,293
Repairs & Maint	1,000	0
Retirement Plan	160,000	160,000
Education/Seminars-Attorneys	90,000	94,730
Education/Seminars-Investigators	15,000	14,633
Special Projects	5,000	300
Travel/Conventions	5,000	71
Website	500	258
	<u>\$ 324,800</u>	<u>\$ 318,186</u>

SAN MATEO COUNTY BAR ASSOCIATION
PRIVATE DEFENDER PROGRAM
Budget for the Fiscal Year
June 30, 2016

INCOME

County Contract	\$ 18,502,766
County Contract - Project Operation Sunny Day	\$ 1,500,000
Investment Earnings	<u>6,000</u>
 TOTAL INCOME	 <u>20,008,766</u>

CASE COSTS

Attorneys' Fees	12,100,000
Attorneys' Fees - Project Operation Sunny Day	1,200,000
Investigators' Fees	2,000,000
Investigators' Fees - Project Operation Sunny Day	250,000
Expert & Related Services	1,500,000
Expert & Related Services - Project Operation Sunny Day	50,000
Library	40,000
Professional Liability Insurance	<u>54,000</u>
 TOTAL CASE COSTS	 <u>17,194,000</u>

LABOR COSTS

Salaries & Wages	1,704,000
Payroll Taxes	110,400
Employee Benefits	300,000
Workers Compensation Insurance	<u>7,800</u>

TOTAL LABOR COSTS 2,122,200

TOTAL OPERATING EXPENSES (Detail Attached) 371,200

TOTAL VARIABLE EXPENSES (Detail Attached) 321,000

TOTAL EXPENSES 20,008,400

INCREASE/(DECREASE) IN RESERVES 366

RESERVE, BEGINNING OF YEAR 1,290,700

ESTIMATED RESERVE, END OF YEAR \$ 1,291,066

NOTE> This budget does not include a provision for AB109 funding since we do not know if there will be any funding for fiscal 2016 or what the amount may be.

SAN MATEO COUNTY BAR ASSOCIATION
PRIVATE DEFENDER PROGRAM
Budget for the Fiscal Year
June 30, 2016

OPERATING EXPENSES

Computer Software/Justice Works	\$ 45,000
Computer Support	39,600
Fax	2,400
Furniture & Equipment	6,000
Equipment Lease	7,800
Insurance	4,200
Office Expenses	20,400
Postage & Mailing	1,500
Postage Meter Lease	600
Rent	186,300
Computer Data Lines	17,500
Stationery/Supplies	6,000
Taxes	1,500
Telephone	32,400
	<hr/>
	371,200

VARIABLE EXPENSES

Auditors' Fees	36,000
Card Key Expense	600
Community Affairs	600
Consulting Services	2,400
Publications/Manuals/Brochures	6,000
Dues & Subscriptions	3,600
Legal Services	1,200
Meetings	3,600
Repairs & Maint	1,200
Retirement Plan	156,000
Education/Seminars-Attorneys	84,000
Education/Seminars-Investigators	15,000
Special Projects	5,400
Travel/Conventions	4,800
Website	600
	<hr/>
	\$ 321,000

Appendix E

San Mateo County Bar Association

PRIVATE DEFENDER PROGRAM



FEE SCHEDULE

Effective 1/1/2008

SECTION I – MISDEMEANOR/FELONY – CRIMINAL

1. CASE FEE – Misdemeanors¹	\$190.
Payable except for domestic violence cases, cases closed on calendar, and special assignments.	
2. CASE FEE – Domestic Violence Misdemeanor	\$210.
3. CASE FEE – Superior Court (Felony after Preliminary Hearing)	
A. Regular	\$550.
B. 859a P.C. Certification	\$220.
C. Probation violation, 1367 P.C., 871.5 P.C., 1429.5 P.C.	\$190.
[NOTE: See Footnote 1 re: failures to appear.]	
4. PRETRIAL CONFERENCES [Payable once per case.]²	
A. Misdemeanors except Domestic Violence	\$ 80.
B. Superior Court (Felonies after Prelim) & Misdmnr. Dom. Viol.	\$110.
5. PRELIMINARY HEARINGS (Felonies before Prelim)	
[This is the TOTAL fee; there is no SCR fee.]	
A. HEARING HELD on cases with an SCR appearance:	
(1) First session (a.m. or p.m.)	\$400.
(2) Additional sessions – per hour	\$ 75.
B. HEARING HELD on cases with no SCR appearance:	
(1) First session (a.m. or p.m.)	\$550.
(2) Additional sessions – per hour	\$ 75.
C. HEARING NOT HELD: [Total fees are as indicated below.]	
(1) Client certified to Superior Court because pleads to felony or waives preliminary hearing.	\$200.
(2) Client fails to appear & attorney withdraws at SCR.	\$160.
at preliminary hearing.	\$210.
(3) Retained counsel substituted & attorney withdraws at SCR.	\$160.
at preliminary hearing.	\$210.
(4) Client pleads to misdemeanor or felony and sentenced.	\$320.
(5) Case totally dismissed.	\$320.
(6) Client is given DEJ.	\$320.
(7) Case reduced to misdemeanor and set for PT.	
[Plus either or both of the following fees, if applicable: misdemeanor case fee and misdemeanor pretrial fee.]	\$125.

¹ In any case, felony or misdemeanor, on which the client fails to appear (arraignment, 859a, pretrial conference or other calendared appearance) and on which the PDP is relieved by the Court, the case may be submitted for payment. Should the client appear again in Court within sixty (60) days of the FTA, the previously assigned attorney will be expected to resume representation of the client, and no additional case fee may be billed.

² Where a single client has multiple cases on the same calendar for pretrial conference, a pretrial conference fee may be billed for only one of those cases.

6. TRIAL FEES (in addition to case fee)	
A. Jury trial	
(1) Per hour	\$125.
(2) Preparation Fee – per day	\$260.
(3) Jury deliberation – per hour (payable only if attorney is unable to return to office – explain on bill)	\$ 70.
B. Court trial	
(1) Per hour	\$ 90.
(2) Preparation Fee – per ½ day (am or pm)	\$110.

[NOTE: Trial fees commence when the trial calendar is called ONLY IF case is then actually assigned out, and are thereafter payable only for hours in court, or, for in– chambers discussions. Preparation fee is payable for each day of jury trial and each ½ day of court trial, once the case is assigned **and** either *in limine* motions or jury selection has begun through closing argument only. The Preparation Fee is NOT paid for Probation Violations or Court Trials on transcripts with no arguments or testimony.]

7. MOTIONS (except Standard Discovery, or, Continuance unless unusual circumstances are shown – please explain on your bill)	
A. Points & Authorities (copy of motion <u>MUST</u> be sent to PDP attached to your bill; if the motion takes an unusual amount of time and is complex, consider asking for an Administrative Fee.)	\$240.
B. Hearing or argument on motion – per hour	\$ 90.

8. PROBATION VIOLATIONS	
A. Unconsolidated	\$160.
B. Consolidated (with case or other P.V. with same allegation)	\$ 75.
C. Hearings – per hour	\$ 90.

9. CALENDARS	
A. Arraignment Calendar – two (2) hours or less ³	\$100.
B. Over two (2) hours – additional per hour.	\$ 70.
C. Cases closed on calendar – 5 max. – each	\$ 75.
D. Specialty Court Calendars – (e.g. Drug Court, Prop. 36, Bridges, Pathways – per hour)	\$170.

³ Attorneys handling out-of-custody Arraignment Calendars will be able to keep five (5) cases from each calendar.

SECTION II – JUVENILE COURT

1. DELINQUENCY:

- A. Case Fee \$220.
 - (1) Additional Petition: Unconsolidated \$220.
 - (2) Additional Petition: Consolidated (with case or other PV) \$ 90.
- B. Contested Hearing Fee
 - (1) Per hour. \$ 90.

[NOTE: Hourly fees commence from the scheduled calendar time (e.g. 9:00 a.m. or 2:00 p.m.) ONLY if a witness is called and are Thereafter payable only for hours in court and in-chambers Discussions.]

- (2) Preparation Fee – per ½ day (a.m. or p.m.). \$110.

[NOTE: Preparation fee is payable for each ½ day of contested hearing, once the hearing has begun. The preparation fee is NOT paid for Probation Violations or Contested Hearings on transcripts or reports with no testimony.]

- C. Disposition Fee (for each separate appearance) \$100.
- D. Calendars:
 - (1) Two (2) hours or less (including preparation time) \$100.
 - (2) Over two (2) hours – add per hour \$ 70.
 - (3) Drug Court calendar \$275.

2. DEPENDENCY:

- A. Case Fee
 - (1) Child Representation (1 or more children) \$600.
 - (2) Parent Representation (1 or both) \$600.

[NOTE: Case fee is billable after disposition hearing and includes all uncontested hearings through disposition and all future non-appearance reviews. Contested hearing fees are additional.]

- B. Contested Hearing Fee
 - (1) Per hour \$ 90.

[NOTE: Hourly fees commence from the scheduled calendar time (e.g. 9:00 a.m. or 2:00 p.m.) ONLY IF a witness is called and are thereafter payable only for hours in court and in-chambers discussions.]

- (2) Preparation fee – per ½ day (a.m. or p.m.) \$110.

[NOTE: Preparation fee is payable for each ½ day of contested hearing, once the hearing has begun. The preparation fee is NOT paid for Contested Hearings on transcripts or reports with no testimony.]

- C. Mandatory post-disposition review – by assigned attorney \$ 95.
(for each appearance made by assigned attorney)

SECTION III – L.P.S.

1. TRIALS AND RE-HEARINGS

A. Case fee	\$195.
B. Jury trial	
(1) Per hour (in addition to case fee)	\$125.
(2) Preparation Fee – per day	\$260.
(3) Jury deliberation – per hour (payable only if attorney is unable to return to office – explain on bill)	\$ 70.
C. Court trial	
(1) Per hour (in addition to case fee)	\$ 90.
(2) Preparation Fee – per ½ day (a.m. or p.m.)	\$110.

[NOTE: Trial fees commence when the trial calendar is called ONLY IF case is then actually assigned out, and are thereafter payable only for hours in court, or for in-chambers discussions. Preparation fee is payable for each day of jury trial and each ½ day of court trial, once the case is assigned **and** either *in limine* motions or jury selection has begun through closing argument only. The preparation fee is NOT paid for Court Trials on transcripts or reports with no arguments or testimony.]

2. CALENDAR

A. Two hours or less (including preparation)	\$165.
B. Over two hours – additional per hour	\$ 80.

3. WRITS

Preparation and hearing – per hour	\$ 95.
------------------------------------	--------

SECTION IV – SPECIAL SERVICES

1. CIVIL PROCEEDINGS:

[Family Law contempt; Probate; Military dissolution; Paternity; Petitions under 232 CC; etc.]

A. Per hour (up to 12 hours; Special Fee request required if over 12 hours)	\$ 85.
B. Trial fees – [Please see Section I, 6; Prep Fees are NOT paid.]	

2. WRITS:

Per hour – including preparation and hearing (up to 12 hours; Special Fee request required if over 12 hours.)	\$ 95.
---	--------

3. APPEALS:

Per hour – including preparation and hearing (up to 12 hours; Special Fee request required if over 12 hours.)	\$ 95.
---	--------

4. **SPECIAL ASSIGNMENTS [only by assignment from the PDP office]:**
- A. Per hour – (or agreed fee) \$ 95.
 [Lineup; interrogation; consultation; expungement; etc.,
 by request from the PDP Office.]
 - B. Witness Representation: \$300 case fee plus \$95/hour
 - C. Officer of the Day – per day. \$350.
5. **MENTOR SERVICES**
- A. Case Fee \$1000.
 [Note: This fee is intended to compensate for the time the mentor
 invests as a resource to the mentee. It covers such things as
 telephone conversations, and other casual meetings that do not
 consume significant amounts of time during the period of the
 relationship.]
 - B. Hourly fee \$ 95.
 [Note: This rate is paid in addition to 5A, above, and covers time
 spent in more structured meetings that consume significant
 amounts of time, including but not limited to, scheduled meetings
 to discuss cases, attending court appearances except jury trials,
 etc.]
 - C. Trials
 [Please see Section I, 6A and B for rates; no daily Trial
 Preparation Fee is paid but payment can be requested under
 Section IV, 5B.]

**[NOTE: ALL BILLS MUST BE SUBMITTED WITHIN 90 DAYS OF
 THE DATE OF COMPLETION OF THE CASE OR THEY WILL NOT
 BE PAID.]**

SECTION V – EXTRAORDINARY FEE REQUESTS

1. Administrative Fee – Reviewed by Attorney Staff for requests up to \$2000 additional to fee schedule.

Cases that do not meet the criteria for treatment as a Special Fee Case (see below), and yet require **extraordinary** effort and time, may be considered for additional compensation. These are cases where the amount requested exceeds the fees allowed by the Fee Schedule by \$2000 or less. The Chief Defender, Assistant Chief Defender, the Managing Attorney– Juvenile, or their designee will handle such requests.

Administrative Fee requests must seek a specific amount of compensation. A letter describing the case and the factors that made it extraordinary should be attached to the bill. Additionally the letter should include a brief itemization of the time invested.

Your bill should reflect your understanding that the Fee Schedule was designed to cover the vast majority of cases, and is intended to compensate all attorneys on the panel equally for their work. While the Administrative Fee process is available to compensate lawyers for truly extraordinary cases, the evaluators will be mindful of the fact that panel attorneys are never asked to return money on cases assigned to them that settled quickly with little time or effort.

2. Special Fee – Reviewed by Special Litigation Fee Committee for requests over \$2000 additional to fee schedule. These cases are billed hourly; no other part of the fee schedule is used in billing these cases. There are two types of Special Fee Cases:

A. Life Imprisonment. This category includes murders and any case that includes a charge for which the penalty prescribed by law is life imprisonment. Examples of this type of case include murder, attempted premeditated murder, Three Strikes, One Strike sexual assault, kidnapping for ransom, etc.

B. Non-life Imprisonment. This category includes all other Special Fee cases. Cases that most frequently fall into this category are extremely difficult felony cases, such as, manslaughter, kidnapping, sexual assault, child molestation, high tech crimes and complex fraud litigation. Also included in this category are cases that place extraordinary demands on the attorney's time and skills, and thus qualify, in the Special Litigation Fee Committee's judgment, for treatment as Special Fee cases payable at an hourly rate described below.

In reviewing your request the Special Litigation Fee Committee will evaluate the request for compensation in the light of the realities of indigent criminal defense representation, including our inability to pay the true market value of attorney services. Factors that are considered in determining whether or not a case merits Special Fee treatment include:

- i. Difficult client – sanity, personality, contrariness, etc.
- ii. Nature of charges – the gist of the case, the prosecution position, potential punishment
- iii. Extra hours – unusual legal issues, expert witnesses to deal with, travel, quantity of documentary evidence to review, difficult witness interviews, etc.
- iv. Motions – unusual in scope or number (attach copy to billings)

Special Fee Request Format

On Type B cases only, you should contact the Assistant Chief Defender, or the Chief Defender, **before** you send in your first bill on a case. She/he will discuss the case with you in order to make a preliminary determination regarding your request that the case be given Special Fee treatment. She/he will also suggest an hourly rate at which the case should be billed.

You should be aware that some changes in the status of a case will likely result in a change of the applicable rate. For example, if the District Attorney's office declares that they will no longer seek the death penalty in a special circumstance murder prosecution, the rate would change from \$150/hour to \$125/hour. Similarly, if a simple kidnapping charge becomes a kidnapping for robbery case after preliminary hearing, the case would become a special fee case payable at the \$115/hour rate from that point forward. You should alert the Assistant Chief Defender or the Chief Defender of such a change in status at the first available opportunity.

Without violating the attorney client privilege or compromising either the rights of the client or the attorney's ethical and legal duties, each Special Fee request **must** include the following:

1. The SPECIAL FEE REQUEST FORM completed and attached to the top of the additional materials submitted in support of the request. Please list the most serious charge first on the form. Please mark all the appropriate places on the form; note that a bill can be both a "First" and "Final" bill, etc.
2. The **first billing** of a Type B case must include a letter setting forth in detail the things that make that particular case extraordinary and thus entitled to Special Fee treatment. The **first billing** of a Type A case must include a letter setting forth the charges that make the case subject to Special Fee treatment.
3. A **detailed itemization** of all time spent on the case:
 - a. Each Special Fee case shall be billed monthly, whether or not services have been performed during that billing cycle, until the case closes. The Special Fee Committee shall maintain the billing history for each case.
 - b. Attorneys shall identify each major issue researched and the time spent on them.
 - c. The bill shall indicate the nature of the work performed, i.e. SCR, pre-trial, review discovery, preliminary hearing, preparation for trial, and meeting with client, investigator, DA, or witness, etc.
 - d. Identify the documents reviewed.
 - e. Identify any motion researched or drafted.
 - f. State the nature of the court appearance and the time involved.
 - g. All time spent **must be itemized in 1/10 hour increments.**

Special Fee Hourly Rates

The Special Litigation Fee Committee has established the following hourly rates for billing in cases that you believe are special fee cases. The basis of the Committee's determination was the hourly rate set by the California Supreme Court for death penalty appeals. All the other rates are reduced from that figure. If the Supreme Court raises the rate for death penalty appeals in the future, **AND** if the Private Defender Program budget is sufficient to do so, the Special Fee Committee will consider adjusting our special fee rates accordingly.

- A. \$165/hour* Applies to Lead Counsel in Death Penalty Cases
- B. \$140/hour Applies to Lead Counsel in a Special Circumstance Case
- C. \$140/hour* Applies to Second Counsel in Death Penalty Cases
- D. \$125/hour Applies to all other murder, attempted–premeditated murder cases, Three Strike cases (in which the new charge **is** a serious felony) and cases that include a charge for which life imprisonment can be imposed.
- E. \$110/hour** Applies to extremely difficult **felony** cases, such as, manslaughter, vehicular manslaughter, kidnapping, sexual assault, SVP, child molestation, high tech crime, complex fraud prosecutions and cases that include gang allegations pursuant to Penal Code Section 186.22.
- F. \$95/hour** Applies to Three Strikes cases (in which the new charge **is not** a Serious felony).
- G. \$75 to \$90/hour** Applies to all other Special Fee cases. (Determined by the Chief Defender, Assistant Chief Defender, or the Managing Attorney – Juvenile.)

* In death penalty cases, where two attorneys are authorized, counsel may agree to split the hourly rates between themselves. For example Lead Counsel and Second Counsel might agree to each bill at \$152.50 per hour, instead of \$165 and \$140 respectively.

** The rate paid for jury trials in these cases will be the higher rate described for all jury trials in the fee schedule — i.e.\$125 per hour.

Appendix F

EVALUATION STANDARDS

1. PROFESSIONAL ABILITY

A. Preparation and Knowledge

1. Recognition of Legal Issues: The attorney recognizes the issues in the case that are necessary for the proper defense of the client. The attorney demonstrates creativity in resolving legal problems.

2. Judgment in Assessing Cases: The attorney demonstrates an ability to evaluate and assess a case taking into consideration the strengths and weaknesses of the prosecution and defense cases.

3. Effective Legal Research and Use of Pretrial Motions: The attorney has a satisfactory working knowledge of resource materials for use in all aspects of criminal practice. The attorney prepares well-written and researched motions that are timely filed in appropriate cases.

4. Effective Use of Investigation: The attorney recognizes those cases in which investigation is required. Requests are reasonable and appropriate and communicated in a clear and timely manner.

5. Effective Use of Experts: The attorney seeks assistance of experts in appropriate cases. Information is provided to the expert in a timely fashion, and the attorney prepares for presentation of expert testimony.

6. Witness Preparation: The attorney prepares witnesses and clients in such areas as courtroom procedures, direct and cross-examination, demeanor, and physical appearance.

B. Advocacy

1. Courtroom Demeanor: The attorney's demeanor is professional and conducive to effective representation.

2. Willingness to Try Cases: The attorney takes cases to trial when appropriate.

3. Advocacy Skills: A Private Defender is called upon to employ a variety of differing advocacy skills in representing clients in jury trials, court trials, juvenile hearings, preliminary hearings, and in other courtroom matters. For purposes of this category, the attorney should demonstrate effective advocacy skills including but not limited to such items as: voir dire; direct and cross-examination; introduction of, objection to, and admissibility of evidence; argument; instructions; and recognition of appellate issues.

4. Case Negotiations and Sentencing: The attorney enters into case negotiations conversant with the significant issues and ascertainable facts. The attorney recognizes plea alternatives and

consequences and properly advises the client. The attorney communicates effectively with the other parties involved in the case. The attorney makes thorough use of sentencing laws, seeking imaginative and creative sentencing alternatives.

II. PROFESSIONAL ATTITUDE

A. Professionalism

1. Ethics and Integrity: The attorney is aware of and observes the Rules of Professional Conduct and other ethical obligations of the defense bar and acts at all times with integrity.

2. Professional Growth: The attorney demonstrates an interest in his or her professional growth by a willingness to accept new and more challenging assignments and by seeking educational opportunities that will make him or her a more knowledgeable advocate. The attorney's attendance at Private Defender Program education programs and at continuing education programs sponsored by other defender organizations, such as CPDA and CACJ, should demonstrate his or her zeal for excellence as a trial lawyer.

B. Work Habits

1. Volume and Calendar Management: The attorney satisfactorily handles the number of cases he or she accepts and manages his or her schedule to maximize personal effectiveness to the benefit of the client.

2. Court Appearances: The attorney appears in court punctually and keeps the court apprised of his or her whereabouts.

III. PERSONAL RELATIONS

1. Clients: The attorney maintains contact with both in- and out-of-custody clients sufficient to provide competent representation for each court appearance. The attorney develops and maintains the client's trust and confidence. The attorney keeps the client advised as to the status of the case and explains constitutional and statutory rights. The attorney is sensitive to the special problems attendant to the representation of mentally ill clients, hostile clients, and resistant clients.

2. Private Defender Staff: The attorney's interaction with, clerical staff, investigators, and other staff demonstrates a spirit of cooperation, assistance and respect. The attorney is considerate of the pressures imposed upon all staff by high volume, time constraints and limited resources.

3. Members of the Justice System: The attorney is cognizant that the manner in which he or she interacts with judicial officers, prosecutors, courtroom personnel, law enforcement personnel, co-counsel, and other members of the justice system contributes to the effective representation of Private Defender clients.

Appendix G

PDP CASELOADS

Case Weighted Targets for Percent of PDP Practice

%PDP	Misdemeanor	DV	Felony 1	Felony 2	Juvi	300
100%	450	334	265	174	335	188
95%	427.5	317.3	251.75	165.3	318.25	178.6
90%	405	300.6	238.5	156.6	301.5	169.2
85%	382.5	283.9	225.25	147.9	284.75	159.8
80%	360	267.2	212	139.2	268	150.4
75%	337.5	250.5	198.75	130.5	251.25	141
70%	315	233.8	185.5	121.8	234.5	131.6
65%	292.5	217.1	172.25	113.1	217.75	122.2
60%	270	200.4	159	104.4	201	112.8
55%	247.5	183.7	145.75	95.7	184.25	103.4
50%	225	167	132.5	87	167.5	94
45%	202.5	150.3	119.25	78.3	150.75	84.6
40%	180	133.6	106	69.6	134	75.2
35%	157.5	116.9	92.75	60.9	117.25	65.8
30%	135	100.2	79.5	52.2	100.5	56.4
25%	112.5	83.5	66.25	43.5	83.75	47
20%	90	66.8	53	34.8	67	37.6
15%	67.5	50.1	39.75	26.1	50.25	28.2
10%	45	33.4	26.5	17.4	33.5	18.8

Actual Cases and Percentages of Target Maximums

ATTY #	ATTY % PDP	MSD	MSD %	DV	DV%	FEL 1	FEL 1 %	FEL 2	FEL 2 %	JUVI 300	JUVI 300 %	JUVI 602	JUVI 602 %	% OF TARGET
72	10%							1	5.75%					5.75%
14	20%	3	3.33%	1	1.50%	1	1.89%							6.72%
63	20%	1	1.11%											1.11%
33	35%	4	2.54%			1	1.08%	2	3.28%					6.90%
88	40%											74	55.22%	55.22%
20	40%	1	0.56%											0.56%
7	50%									14	14.89%	65	38.81%	53.70%
24	50%	74	32.89%											32.89%
38	50%	3	1.33%			1	0.75%	3	3.45%					5.54%
80	50%	2	0.89%					4	4.60%					5.49%
87	50%									1	1.06%	47	28.06%	29.12%
8	60%	7	2.59%			24	15.09%	37	35.44%					53.13%
39	60%	7	2.59%			1	0.63%	6	5.75%					8.97%
55	65%	61	20.85%											20.85%
3	70%	161	51.11%	36	15.40%	16	8.63%	14	11.49%					86.63%
42	70%	4	1.27%	2	0.86%	1	0.54%	11	9.03%					11.70%
53	70%									26	19.76%	41	17.48%	37.24%
86	70%	201	63.81%	2	0.86%	29	11.52%	19	15.60%					91.78%
40	75%	31	9.19%			25	12.58%	41	31.42%					71.89%
58	75%									14	9.93%	87	34.63%	44.56%
13	80%	187	51.94%	2	0.75%									52.69%
15	80%	4	1.11%	1	0.37%	1	0.47%	15	10.78%					12.73%
36	80%	100	27.78%			21	9.91%	32	22.99%					60.67%
41	80%	2	0.56%	1	0.37%	16	7.55%	38	27.30%					35.78%
51	80%	12	3.33%	2	0.75%	19	8.96%	19	13.65%					26.69%
73	80%	48	13.33%			54	25.47%	63	45.26%					84.06%
21	85%	3	0.78%											0.78%
43	85%	56	14.64%	3	1.06%	27	11.99%	42	28.40%					56.08%
44	85%	217	56.73%	18	6.34%	4	1.78%	6	4.06%					68.90%
45	85%	83	21.70%	2	0.70%	26	11.54%	59	39.89%					73.84%
52	85%									47	29.41%			29.41%
57	85%	190	49.67%	43	15.15%									64.82%
12	90%	83	20.49%			22	9.22%	19	12.13%					41.85%
17	90%									45	26.60%	72	23.88%	50.48%
18	90%	150	37.04%	53	17.63%	31	13.00%	19	12.13%					79.80%
22	90%	81	20.00%	6	2.00%	47	19.71%	53	33.84%					75.55%
23	90%	80	19.75%							33	19.50%	55	18.24%	57.50%
46	90%	43	10.62%	3	1.00%									11.62%
59	90%	35	8.64%	1	0.33%	15	6.29%	37	23.63%					38.89%
60	90%	1	0.25%			1	0.42%	3	1.92%					2.58%
68	90%	45	11.11%			9	3.77%	25	15.96%					30.85%
74	90%	185	45.68%	4	1.33%	10	4.19%	9	5.75%					56.95%
77	90%									2	1.18%	115	38.14%	39.32%
79	90%	54	13.33%			16	6.71%	29	18.52%					38.56%
81	90%									35	20.69%	3	1.00%	21.68%
5	95%	65	15.20%			15	5.96%	29	17.54%					38.71%
9	95%	49	11.46%	1	0.32%	28	11.12%	52	31.46%					54.36%
10	95%	159	37.19%	13	4.10%	18	7.15%	9	5.44%					53.88%
16	95%	49	11.46%	2	0.63%	3	1.19%	32	19.36%					32.64%
25	95%	183	42.81%	41	12.92%									55.73%
27	95%	166	38.83%	17	5.36%	5	1.99%	12	7.26%					53.43%
29	95%	219	51.23%	38	11.98%	24	9.53%	3	1.81%					74.55%

Appendix H



SAN MATEO COUNTY PRIVATE DEFENDER PROGRAM

[Issue](#) | [Summary](#) | [Glossary](#) | [Background](#) | [Methodology](#) | [Discussion](#) | [Findings](#)
[Recommendations](#) | [Requests for Responses](#) | [Bibliography](#) | [Responses](#)

ISSUE

Why does the County of San Mateo use an approach to indigent defense that is different from the approach taken in all other California counties? Is the County's approach consistent with national and state indigent defense guidelines?

SUMMARY

The constitutions of both the United States and of California guarantee competent counsel for those who cannot afford to pay. California requires its counties to provide and reasonably compensate such counsel. The County of San Mateo (County) contracts with the local bar association to provide counsel for indigent defendants. It is the only California county with a population over 500,000 that does not work through a Public Defender's Office to provide such counsel. While the approach to indigent defense is fully funded by the County and, in capital cases by the State, it is called the Private Defender Program (PDP) because the indigent defendants' attorneys and investigators are independent contractors, not County employees.

The County adopted this indigent defense system in 1968 and continues to use it because most County officials regard it as well managed, effective, and economical. While San Mateo County's PDP has been praised locally and nationally,¹ the County has not evaluated the program to determine whether the County's utilization of the PDP is consistent with state and national indigent defense system guidelines. Formal evaluations submitted to the Board of Supervisors in 2001, 2003, and 2012, for example, do not specifically include references to such guidelines.

The Grand Jury recommends more frequent formal evaluations of the PDP to which the community is invited to comment. Evaluation should include review of the County's indigent defense approach to ensure that it remains the best model for the County.

¹ Norman Lefstein, *Securing Reasonable Caseloads: Ethics and Law in Public Defense*, American Bar Association, 2011. http://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads.authcheckdam.pdf, pp. 217-228.

Laurence A. Benner, *Support for Nomination of San Mateo Bar Association*, Letter to Members of the Harrison Tweed Award Committee, March 21, 2012. http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_ht_san_mateo_submission.authcheckdam.pdf.

James D. Bethke, *Nomination of San Mateo County Bar Association Harrison Tweed Award*, Letter to American Bar Association Standing Committee on Legal Aid and Indigent Defendants, March 23, 2012. http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_ht_san_mateo_submission.authcheckdam.pdf.

GLOSSARY

Assigned Counsel Systems: A system for the provision of indigent criminal defense whereby attorneys are appointed on an as-needed basis. The County's PDP model has aspects of an assigned counsel system insofar as private attorneys for indigent defense are appointed by the Bar Association.

Contract System: The contract model of indigent defense involves a contract with an attorney, law firm, or other entity to provide representation for some or all indigent criminal defendants. San Mateo County's PDP has aspects of a contract system as well as an assigned counsel system insofar as the County has a contract with the local Bar Association for the provision of such legal services.

Public Defender: A full-time attorney employed by a governmental organization to represent indigent defendants in criminal cases at public expense.

BACKGROUND

Introduction

The Grand Jury decided to study this issue because the County's approach to indigent defense is unusual. The Grand Jury has not received any citizens' complaints, nor is it aware of recent program criticism. Although the Grand Jury's initial focus was on the reasons this approach is used, that inquiry led the Grand Jury to study whether the County's approach to indigent defense is consistent with state and national guidelines.

Why Is Legal Counsel Provided for Those Who Cannot Afford to Pay and Who Pays for Such Counsel?

While the Sixth Amendment to the United States Constitution guarantees defendants the right to counsel in criminal prosecutions, the states were not required until 1963 to provide counsel for those too poor to pay for their own defense. In *Gideon v. Wainwright*, the United States Supreme Court unanimously ruled that the Constitution's Fourteenth Amendment required states to provide counsel to such indigent defendants. In *Gideon*, the Supreme Court declared, among other things, that "in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."²

California is one of only seven states that does not contribute, except in capital cases, to indigent defense.³ California law requires that, while the court determines whether appointed counsel is

² American Bar Association, *Gideon's Broken Promise: America's Continuing Quest for Equal Justice*, 2004. http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_bp_right_to_counsel_in_criminal_proceedings.authcheckdam.pdf, Introduction.

³ David Carroll, "Why the State of California Is Responsible for the Public Defense Crisis in Fresno County," *Pleading the Sixth* (blog), Sixth Amendment Center: Ensuring Fairness & Equal Access to Justice. September 29, 2013, Accessed May 20, 2015. <http://sixthamendment.org/why-the-state-of-california-is-responsible-for-the-public-defense-crisis-in-fresno-county/>.

adequately representing the indigent person, each county board of supervisors has the responsibility to reasonably compensate appointed counsel.⁴

How Do Other California Counties Provide for Indigent Defense and How Does San Mateo County Differ?

In California, no statewide authority dictates the type of defense program, monitors the adequacy of the defense program, or collects data regarding the level of funding provided by counties for indigent defense. These responsibilities fall on each county. Of the 58 California counties, 33 have a Public Defender's Office,⁵ including every county with a population over 500,000 except San Mateo County. Twenty-four counties contract for indigent defense using a variety of contract agreements.⁶

San Mateo County is the only county utilizing a contract with the local bar association to be the *sole* provider of indigent defense services.⁷ The County has used the PDP since 1968, contracting yearly or for longer periods with the local San Mateo County Bar Association. This system has aspects of both an "assigned counsel system" and a "contract system."

An assigned counsel system is an indigent defense delivery system in which the client is represented by appointed counsel. Virtually every county in California utilizes such assigned counsel "to handle some clients in multiple defendant cases where the primary provider [of legal services] would have a conflict of interest in representing more than one defendant."⁸ An assigned counsel is ordinarily appointed to handle a single case.

The contract agreement (Agreement) between the County and the Bar Association includes terms regarding both the frequency and the manner of evaluation of the program. The Agreement is based upon the estimated number of cases to be handled (20,254 in FY 2013-2014) and a combination of flat and hourly fees for each type of case. The contract amount for 2014-2015 was \$17,455,439.⁹ However, in extraordinary circumstances, the contract amount can be increased as it was by \$5 million in 2014 because of very complex cases involving many defendants (e.g., the "Operation Sunny Day" cases in 2013¹⁰).

The Chief Defender and the Assistant Chief Defender administer the PDP for the San Mateo County Bar Association. Detailed information about the PDP is provided in the

⁴ Casetext, *Phillips v. Seely*, 43 Cal.App.3d 104, 115 (3d Dist., 1974). <https://casetext.com/case/phillips-v-seely>.

⁵ Public defenders are appointees in every county utilizing a public defender's office except for the City and County of San Francisco, which has an elected public defender. Jeff Adachi of San Francisco is the only publicly elected public defender in California. San Francisco Public Defender, Accessed February 3, 2015, sfpublicdefender.org/.

⁶ California Commission on the Fair Administration of Justice, *Report and Recommendations on Funding of Defense Services in California*, April 14, 2008, p. 2.

<http://www.ccfaj.org/documents/reports/prosecutorial/official/OFFICIAL%20REPORT%20ON%20DEFENSE%20SERVICES.pdf>

⁷ Ibid.

⁸ Ibid., p.3. Public defender offices can only represent one defendant in a case.

⁹ John S. Digiacinto, *Annual Report Fiscal Year 2013-2014*. Appendix B. https://www.smcba.org/UserFiles/files/docs/Annual%20Report%20FY%202013-2014_3%20w%20Appx.pdf.

¹⁰ The term *Operation Sunny Day* refers to the term allegedly used by the defendants to confirm the killing a rival gang member. The case concerns 16 defendants indicted for crimes related to their alleged involvement with East Palo Alto gangs.

Bar Association's Annual Report. A copy of the current Agreement is appended to the Annual Report.¹¹

METHODOLOGY

The Grand Jury sought to answer its questions by conducting interviews, by reviewing PDP Annual Reports with attached Agreements,¹² and by studying state and national guidelines for indigent defense as well as related literature (see Bibliography). The Grand Jury was particularly interested in the *ABA Ten Principles of a Public Defense Delivery System*, the California Commission on the Fair Administration of Justice *Report and Recommendations on Funding of Defense Service in California*, and *The State Bar of California's Guidelines on Indigent Defense Services Delivery Systems*.

The Grand Jury interviewed County officials, a judge, officials of the County Bar Association, a retired district attorney, retired public defenders (from another county), a court officer, and a law professor in criminal justice. The interviewees also included members of the PDP's 2012 Evaluation Committee. The interviews were the primary source for determining the County's rationale for utilizing this approach to indigent defense.

DISCUSSION

Why Does San Mateo County Use This Approach?

Since 1968, the PDP has satisfied the courts that it is adequately representing indigent defendants. The PDP was last formally evaluated in 2012 by a five-member evaluation committee appointed by the County Manager. The 2012 Evaluation Committee reported to the Board of Supervisors that "the Private Defender Program is a well-managed program and considered a model throughout the country for providing indigent defense."¹³ Most County officials interviewed affirmed their belief that the PDP is well managed, effective, and more economical than maintaining a public defender's office.¹⁴

What Are Seen as Advantages of PDP?

County officials see an economic advantage to the PDP especially in multiple-defendant cases in which a public defender's office would have a conflict of interest and would not be able to represent all defendants. County officials noted that, by using a PDP panel, which is comprised of independent practitioners, the County achieved savings by not requiring separate agreements for conflict cases (i.e., those cases with more than one defendant, whereby a traditional public defender's office can only represent one defendant). While the joint representation of multiple defendants is not impermissible, California law prohibits defense counsel from representing

¹¹ Digiacinto, *Annual Report Fiscal Year 2013-2014*. Appendix B.

¹² Digiacinto, *Annual Report Fiscal Year 2012-2013*.

https://www.smcba.org/UserFiles/files/docs/ANNUAL%20%20REPORT%20FY%202012-2013%20DVD%20Final_opt.pdf.
Digiacinto, *Annual Report Fiscal Year 2013-2014*.

¹³ 2012 Evaluation Committee Report to Board of Supervisors, January 2013.

¹⁴ County Manager's Office, Court Officials, and County Supervisor: interviews by the Grand Jury.

multiple defendants when such defendants have competing interests.¹⁵ Officials also are of the opinion that the PDP model avoids the costs of structure, overhead, and employee benefits that would apply to maintaining a public defender's office.

Some of the County officials interviewed believe that the private defender model provides superior counsel and that there is no guarantee of quality in a public defender.¹⁶ The utilization of the County's PDP approach was praised for its very low number of *Marsden* motions.¹⁷ A *Marsden* motion is a request to the court by a criminal defendant for discharge of a court-appointed lawyer on the basis of being incompetently or inadequately represented (there were none in 2013-2014) or for irreconcilable differences between lawyer and client (eight in 2013-2014). The Grand Jury was informed that such motions for incompetent or inadequate representation are extremely rare in San Mateo County, which indicates that clients believed that they received adequate or more than adequate defense.

Is the PDP Consistent with State and National Guidelines?

The Grand Jury acknowledges that a guideline is a recommended practice that allows some discretion or leeway in its interpretation, implementation, or use. However, because of the potential seriousness of consequences to an indigent defendant, the Grand Jury believes that the County should ensure that state and national guidelines are carefully considered for indigent defense regardless of the defense model. The 2001, 2003, and 2012 Evaluation reports did not expressly compare the PDP to applicable state and national guidelines regarding the provision of indigent legal defense.

Section 11 of the Agreement¹⁸ provides that the County may form a committee to evaluate ongoing performance and can be done at any time. According to a County official, a current evaluation is underway that will include a determination of whether the PDP still provides the best approach for San Mateo County residents. The evaluation will also focus on two aspects: parity of resources with prosecution and cost comparisons with alternate methods of indigent defense services.¹⁹

The 2012 evaluation was nine years after the previous such evaluation and was not opened for public input and feedback. In contrast, the 2001 evaluation committee meetings were "open to the public and were regularly attended by representatives of the American Civil Liberties Union (ACLU) and the NAACP who also contributed to the Committee's deliberations." The 2003 Review Committee reported: "Our committee also held an open forum allowing members of the community to address the committee and convey their criticisms of the private defender. Among those in attendance included representatives of the ACLU and the NAACP." Although the 2012 Committee instead "heard *invited* testimony from 20 individuals, representing a wide range of experiences interacting with the Program," it did not open up the process to other individuals or

¹⁵ *People v. Barboza*, 29 Cal.3d 375 (1981). Supreme Court of California. *People v. Barboza*. Justia US Law. Crim. No. 21664. May 4, 1981. <http://law.justia.com/cases/california/supreme-court/3d/29/375.html>.

¹⁶ San Mateo County Superior Court Judge, interview by the Grand Jury, January 9, 2015.

¹⁷ *People v. Marsden*, 2 Cal.3d 118 (1970). San Mateo County Law Library, "Making Marsden and/or Faretta Motions," Research Guide #11. <http://www.smclawlibrary.org/needhelp/MarsdenFarettaMotions.pdf>.

¹⁸ Digiacinto, *Annual Report Fiscal Year 2013-2014*. Appendix B.

¹⁹ Official from the County Manager's Office, interview by the Grand Jury.

organizations. The Grand Jury believes that formal evaluations should be held no less than every five years and that the community should be allowed to participate whether or not they have been specifically invited.

County officials have asserted that such evaluations would undoubtedly have included a review of state and national guidelines and that said evaluators would have promptly investigated any deviations from such guidelines. The Grand Jury recommends that future evaluations expressly address whether the PDP complies with such guidelines.

FINDINGS

- F1. According to its Agreement with the San Mateo County Bar Association, the County can conduct contract evaluations at any time, but they have not been done on a regular basis. No evaluation was done between 2003 and 2012.
- F2. None of the last three County evaluations (in 2001, 2003, and 2012) have specifically addressed whether state and national guidelines were considered.
- F3. The County's 2012 evaluation of the PDP limited public input to individuals and entities invited by the evaluation committee to participate. The evaluation process was not open to members of the public or community organizations.
- F4. The County's last three evaluations of the PDP did not report any review or conclusions of whether the PDP continues to be the best model for the County to provide indigent legal defense.

RECOMMENDATIONS

The Grand Jury recommends that the Board of Supervisors direct the County Manager's Office to:

- R1. Conduct formal evaluations of the indigent defense system at least every five years.
- R2. Include, as a component of such formal evaluations, a determination of whether the County's approach to indigent defense is consistent with state and national guidelines.
- R3. Include, as a component of such formal evaluations, input from community members and organizations. The process of receiving community input should be open to the public and not by invitation only.
- R4. Include, as a component of such formal evaluations, whether the current system continues to be the best model for the County for providing indigent legal defense.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses from the San Mateo County Board of Supervisors to all of the recommendations (R1-R4) set forth above.

The Board of Supervisors' responses must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

BIBLIOGRAPHY

2001 Evaluation Committee. *Private Defender Evaluation Committee Report*. May 11, 2001. <http://www.co.sanmateo.ca.us/bos.dir/BOSAgendas/agendas2001/agenda20010306/20010306-06.pdf>.

2003 Private Defender Annual Review Committee. "Private Defender Annual Review Report." March 14, 2003. Copy given to the Grand Jury. February 4, 2015.

2012 Evaluation Committee. *Evaluation of the Private Defender Program*. San Mateo County Manager's Office. December 26, 2012, pp. 11-16. http://www.co.sanmateo.ca.us/bos.dir/BosAgendas/agendas2013/Agenda20130115/text_currentagenda.pdf.

2012-2013 San Mateo County Grand Jury. *County Lacks Firm Basis for Outsourcing Work: Charter Revision Recommended*. July 15, 2013. https://www.sanmateocourt.org/documents/grand_jury/2012/outsourcing.pdf.

American Bar Association. *2012 Harrison Tweed Nomination Form*. http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_ht_san_mateo_submission.authcheckdam.pdf.

American Bar Association. *ABA Ten Principles of a Public Defense Delivery System*. February 2002. http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf.

American Bar Association. *Eight Guidelines of Public Defense Related to Excessive Workloads*. Standing Committee on Legal Aid and Indigent Defendants. August 2009. http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_eight_guidelines_of_public_defense.authcheckdam.pdf.

American Bar Association. *Gideon's Broken Promise: America's Continuing Quest for Equal Justice*. 2004. http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_bp_right_to_counsel_in_criminal_proceedings.authcheckdam.pdf.

Benner, Laurence A. *Presumption of Guilt: Systemic Factors That Contribute to Ineffective Assistance of Counsel in California*. California Western Law Review. 2009. Vol. 45: No. 2, Article 2. <http://scholarlycommons.law.cwsl.edu/cwlr/vol45/iss2/2>.

Benner, Laurence A. *Support for Nomination of San Mateo Bar Association*. Letter to Members of the Harrison Tweed Award Committee. March 21, 2012. http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_ht_san_mateo_submission.authcheckdam.pdf. 5.

Bethke, James D. *Nomination of San Mateo County Bar Association Harrison Tweed Award*. Letter to American Bar Association Standing Committee on Legal Aid and Indigent Defendants. March 23, 2012.

http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_ht_san_mateo_submission.authcheckdam.pdf.

California Code Section 31000. Official California Legislative Information.

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=30001-31000&file=31000-31011>.

California Commission on the Fair Administration of Justice. *Report and Recommendations on Funding of Defense Services in California*. April 14, 2008.

<http://www.ccfaj.org/documents/reports/prosecutorial/official/OFFICIAL%20REPORT%20ON%20DEFENSE%20SERVICES.pdf>.

Carroll, David. "Why the State of California Is Responsible for the Public Defense Crisis in Fresno County." *Pleading the Sixth* (blog). Sixth Amendment Center: Ensuring Fairness & Equal Access to Justice. September 29, 2013. <http://sixthamendment.org/why-the-state-of-california-is-responsible-for-the-public-defense-crisis-in-fresno-county/>.

County of San Mateo, California. *Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2014*.

http://controller.smcgov.org/sites/controller.smcgov.org/files/documents/files/2014_CAFR_Final%20Report_0.pdf.

County of San Mateo Controller's Office. *Comprehensive Annual Financial Reports Fiscal Year Ended June 30, 2014*. <https://controller.smcgov.org/comprehensive-annual-financial-reports-cafr>.

County of San Mateo. *FY 2013-15, Adopted Budget, County Organization Chart*.

https://cmo.smcgov.org/sites/cmo.smcgov.org/files/documents/files/Adopted%20Budget%20FY2013-15_0.pdf. A1.

County of San Mateo. *FY 2013-15, Recommended Budget, County Organization Chart*.

https://cmo.smcgov.org/sites/cmo.smcgov.org/files/documents/files/Recommended%20Budget%20Book%20FY%202013-15_0.pdf. B1.

County of San Mateo Manager's Office. "DA (25111) Budget Unit Summary for FY 2014-15 Adopted Budget." Emailed to the Grand Jury. December 9, 2014.

County of San Mateo Manager's Office. "DA Case Management System (CMS) Project Expenses and Carry-forward." Emailed to the Grand Jury. December 9, 2014.

County of San Mateo Manager's Office. "PDP vs. DA Cost Analysis performed in FY 2012-13." Emailed to the Grand Jury. December 9, 2014.

County of San Mateo Manager's Office. "PDP vs. DA Cost Analysis performed for FY 2014-15." Emailed to the Grand Jury. December 9, 2014.

County of San Mateo Manager's Office. "PDP (28110) Budget Unit Summary for FY 2014-15 Adopted Budget." Emailed to the Grand Jury. December 9, 2014.

County of San Mateo Manager's Office. "Private Defender Program (2800B), General Fund, FY 2014-15 Budget Unit Summary." March 18, 2015.

County of San Mateo Manager's Office. "Survey Results—County Provision of Public Defender Services." May 2011. Emailed to the Grand Jury. December 9, 2014.

County of San Mateo Open Data Portal. "2013 County of San Mateo Employee Salary Data." <https://data.smcgov.org/Government/2013-County-of-San-Mateo-Employee-Salary-Data/ge8up5h3>. <https://www.smcba.org/News/NewsDetail.aspx?NewsId=3>.

County of Santa Clara. "DA vs Public Defender Cost Analysis." May 7, 2012. Emailed to the Grand Jury by San Mateo County Manager's Office. February 13, 2015.

Digiacinto, John S. *Annual Report Fiscal Year 2012-2013*. https://www.smcba.org/UserFiles/files/docs/ANNUAL%20%20REPORT%20FY%202012-2013%20DVD%20Final_opt.pdf.

Digiacinto, John S. *Annual Report Fiscal Year 2013-2014*. https://www.smcba.org/UserFiles/files/docs/Annual%20Report%20FY%202013-2014_3%20w%20Appx.pdf.

Durand, Michelle. "County May Spend Up to \$5M Extra on 'Sunny Day' Defense: Private Defender Program Says 16-person Case beyond Budget." *San Mateo Daily Journal*, December 9, 2014. Accessed February 1, 2015. <http://www.smdailyjournal.com/articles/news/2014-12-09/county-may-spend-up-to-5m-extra-on-sunny-day-defense-private-defender-program-says-16-person-case-beyond-budget/1776425134697.html>.

Editorial Board, The. "A Rare Victory for Public Defense." *New York Times*. October 26, 2014. http://www.nytimes.com/2014/10/27/opinion/a-rare-victory-for-public-defense.html?_r=0.

Facts and Case Summary: Gideon v. Wainwright 372 U.S. 335. United States Courts 1963. Accessed February 3, 2015. <http://www.uscourts.gov/educational-resources/get-involved/constitution-activities/sixth-amendment/right-counsel/facts-case-summary-gideon.aspx>.

Gideon. "Public Defenders vs Assigned Counsel vs Private Attys: Round I Lost Count." *A Public Defender* (blog). July 21, 2011. <http://apublicdefender.com/2011/07/21/public-defenders-vs-assigned-counsel-vs-private-attys-round-i-lost-count/comment-page-1>.

Harvey M. Rose Accountancy Corporation. *Management Audit of the Office of the Public Defender and Indigent Defense System of the County of Santa Clara*. Board of Supervisors Management Audit Division. January 2007. <http://www.sccgov.org/sites/bos/Management%20Audit/Documents/PublicDefenderAudit.pdf>.

Lefstein, Norman. *Securing Reasonable Caseloads: Ethics and Law in Public Defense*. American Bar Association. 2011.
http://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads.authcheckdam.pdf.

National Legal Aid & Defender Association. "Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services." Accessed March 17, 2015.
http://www.nlada.org/Defender/Defender_Standards/Negotiating_And_Awarding_ID_Contracts.

National Legal Aid & Defender Association. "Standards for the Administration of Assigned Counsel Systems." Accessed March 17, 2015.
http://www.nlada.org/Defender/Defender_Standards/Standards_For_The_Administration_Of_Assigned_Counsel.

National Legal Aid & Defender Association. "Ten Principles of a Public Defense Delivery System." http://www.nlada.org/Defender/Defender_Kit/principles.

National Right to Counsel Committee. *Justice Denied America's Continuing Neglect of Our Constitutional Right to Counsel*. The Constitution Project. August 2009.
<http://www.constitutionproject.org/wp-content/uploads/2012/10/139.pdf>.

Office of the Federal Public Defender-Northern District of California. Accessed February 2, 2015. <http://www.ndcalfpd.org/employment.html>.

Office of the State [of California] Public Defender. Accessed February 3, 2015.
<http://www.ospd.ca.gov/>.

"Phillips v Seeley [Civ. No. 13635. Court of Appeals of California, Third Appellate District. November 15, 1974.]" <http://law.justia.com/cases/california/court-of-appeal/3d/43/104.html>.

Private Defender Program. *Client Survey*. October 13, 2013 - July 8, 2014. February 17, 2015.

Private Defender Program. *Attorney Manual: Policies and Procedures for Independent Contractor Attorneys*. January 2010.

Reynolds, Julia. "Gideon's Promise: 50 Years after Landmark Case, Public Defenders Worry about Their Future." *Monterey Herald*, March 16, 2013. Accessed February 2, 2015.
<http://www.montereyherald.com/20130316/gideons-promise-50-years-after-landmark-case-public-defenders-worry-about-their-future>.

San Francisco Public Defender. Accessed February 3, 2015. sfpublicdefender.org/.

San Mateo County Law Library. "Making Marsden and/or Faretta Motions. Research Guide #11." <http://www.smclawlibrary.org/needhelp/MarsdenFarettaMotions.pdf>.

Spangenberg Group, The. *Keeping Defender Workloads Manageable*. January 2001.
<https://www.ncjrs.gov/pdffiles1/bja/185632.pdf>.

Spangenberg, Robert L. and Marea L. Beeman. *Indigent Defense Systems in the United States*. 1995. <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4264&context=lcp>

State Bar of California. "Guidelines on Indigent Defense Services Delivery Systems." 2006. Accessed February 3, 2015. <http://www.calbar.ca.gov/LinkClick.aspx?fileticket=fwTzyTmupEY%3D&tabid=2326>.

Supreme Court of California. *People v. Barboza*. Justia US Law. Crim. No. 21664. May 4, 1981. <http://law.justia.com/cases/california/supreme-court/3d/29/375.html>.

Supreme Court of Washington. *In the Matter of the Adoption of New Standards for Indigent Defense and Certification of Compliance*. Order No. 25700-A-1004. June 15, 2012. <http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1004.pdf>.

Issued: July 6, 2015