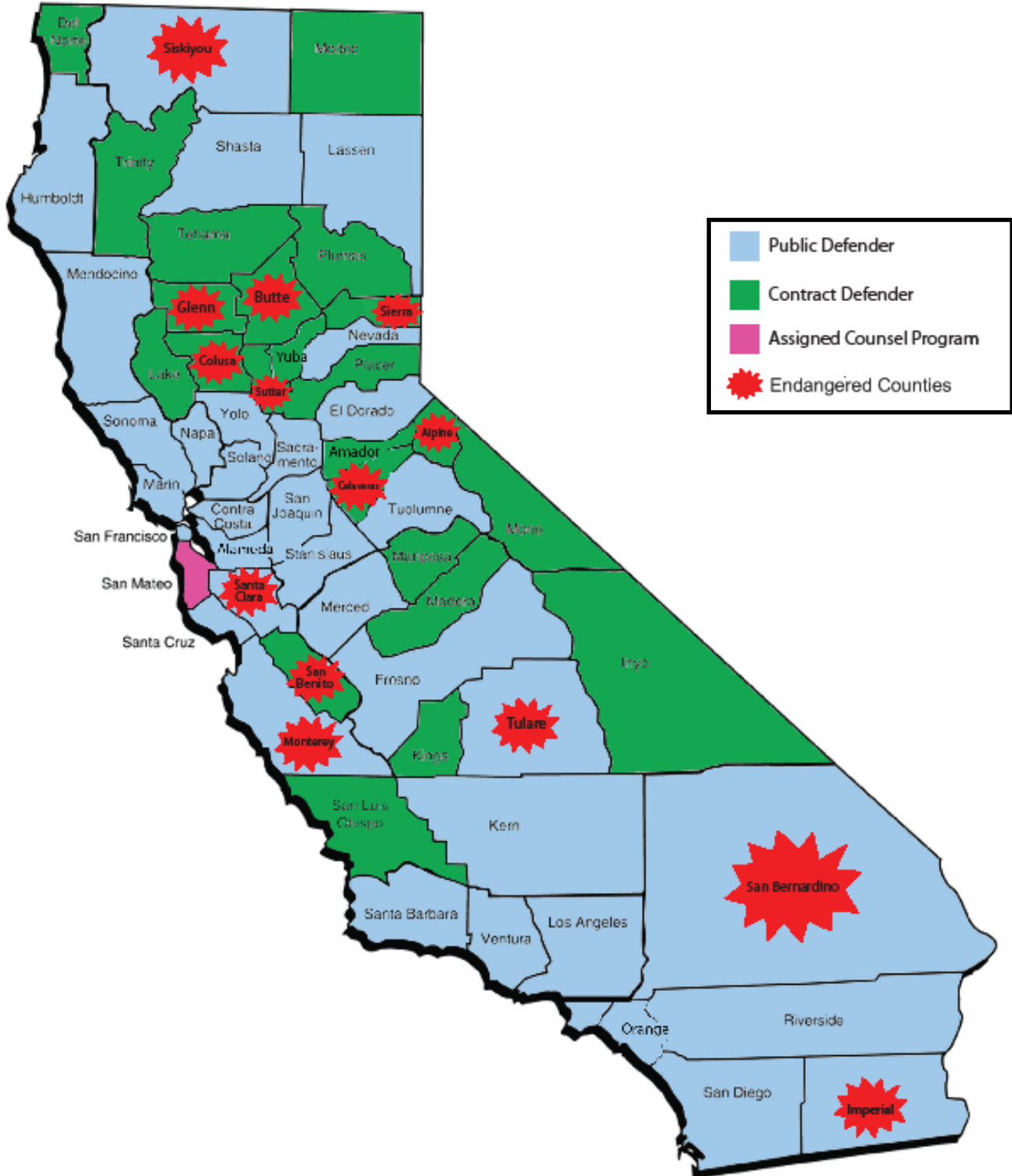


SYSTEMIC FACTORS AFFECTING THE QUALITY OF CRIMINAL DEFENSE REPRESENTATION

SUPPLEMENTAL REPORT

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SYSTEMIC FACTORS AFFECTING THE QUALITY OF CRIMINAL DEFENSE REPRESENTATION

The purpose of this Supplemental Report is to update the Commission with new and revised data that has been obtained since the Preliminary Report was issued. This data will be integrated into the Final Report but is reported separately here so that it will be easy to access.

I. Indigent Defense Funding:

A. Disparity:

Although more than eight out of ten criminal defendants prosecuted in superior court require appointment of counsel,¹ data from the FY 2006-07 county budgets show that for every dollar spent on prosecution, the counties spend on average only 53 cents on indigent defense. **Figure 1** on the following page shows this disparity by county, both in terms of actual dollar difference and in terms of the fraction of the prosecution's budget represented by the entire indigent defense budget. This gap is referred to as the defense ratio. While it would be expected that the indigent defense budget would be equal to at least 85% of the prosecution's budget,² only a handful of counties even approached this type of parity. In the aggregate it would therefore appear that indigent defense is under-funded statewide by at least 300 million dollars.³ Several counties had budgets that only amounted to 18% of the prosecutor's budget. Over half of the counties had indigent defense budgets below 70% of the prosecution's budget.

It has been suggested that a portion of this disparity might be due to the fact that the district attorney's office requires additional staff to screen all arrests before filing. However, California State Bar Standards, citing § 27706 of the California Government Code, emphasize that the public defender is also responsible for providing representation at the arrest stage.⁴ Moreover an analysis of this small incremental segment of a district attorney's workload shows that it is more than offset by the much larger additional workload imposed on the indigent defense system to handle non-traffic misdemeanor cases prosecuted by the office of the city attorney rather than the district attorney.⁵

¹ It will be recalled that we sent questionnaires to the Presiding Superior Court judge and where applicable, the Criminal Supervising judge in each county. The overwhelming majority of the responding judges (84%) reported that they had previously served as prosecutors or defense counsel. These judges were asked to assess the percent of their felony criminal docket that required appointment of counsel. With the expert assistance of Professor Donald Smythe, of California Western School of Law, we undertook a statistical analysis of these judicial responses and determined that we could reject the hypothesis that the indigency rate was as low as 85% in favor of the alternative that it was higher with a 98% level of confidence. We therefore would expect the indigent defense budget to be higher than 85% of the prosecution's budget.

² See footnote 1 above.

³ The total prosecution budget (\$1,218,481,004) x 85% = \$1,035,708,854 – total actual indigent defense expenditure (\$726,773,196) = a shortfall of \$308,935,658.

⁴ California State Bar Standards require the public defender to provide "comprehensive services" and provide representation "at all stages" upon request of any indigent person charged with an "offense triable in superior court." See Preliminary Report, page 25.

⁵ The Criminal Justice Statistics Center of the Office of the Attorney General reports that there were 538,166 felony arrests statewide in 2005. See <http://caag.state.ca.us/cjsc/statisticsdatatabs/dtabscrim.htm>, viewed 10/13/2007. The Judicial Council of California's Court Statistics Report for FY 2005-06 reports that there were 289,206 felony filings. The net additional statewide prosecution workload to screen cases not filed as felonies is thus 248,960 cases. This figure is more than offset, however, by the additional workload public defenders must undertake to represent misdemeanor defendants who are prosecuted by the local city attorney's office rather than the district attorney. The Judicial Council reported 625,233 non-traffic misdemeanor filings for the same period. Conservatively assuming that only 50% of this number were actually prosecuted by city attorneys and represented by indigent defense counsel, this still leaves indigent defenders handling 63,656 more cases than district attorneys. It hardly needs to be added that competently defending a non-traffic misdemeanor client also entails a significantly greater amount of work than simply screening a felony arrest for the purpose of making a charging decision.

Figure 1. Defense Ratio

County ¹	Total Indigent Defense Budget ² (Actual)	Total Prosecution Budget (Actual)	Actual difference in \$	Defense Ratio ³
Alameda	\$39,348,805	\$52,979,521	\$13,630,716	74%
Alpine	\$55,000	\$217,460	\$162,460	25%
Amador	\$561,613	\$3,150,723	\$2,589,110	18%
Butte	\$2,158,276	\$8,604,246	\$6,445,970	25%
Calaveras	\$433,500	\$1,350,949	\$917,449	32%
Colusa	\$285,715	\$656,543	\$370,828	44%
Contra Costa	\$20,016,941	\$27,334,381	\$7,317,440	73%
Del Norte	--	--	--	--
El Dorado	\$2,750,135	\$6,960,087	\$4,209,952	40%
Fresno	\$12,508,874	\$21,928,145	\$9,419,271	57%
Glenn	\$340,663	\$980,084	\$639,421	35%
Humboldt	\$2,898,913	\$4,151,423	\$1,252,510	70%
Imperial	\$2,112,820	\$3,958,689	\$1,845,869	53%
Inyo	--	--	--	--
Kern	\$15,780,940	\$22,591,632	\$6,810,692	70%
Kings	\$900,000	\$1,124,434	\$224,434	80%
Lake	\$989,609	\$2,018,832	\$1,029,223	49%
Lassen	\$519,280	\$618,747	\$99,467	84%
Los Angeles	\$196,788,000	\$294,647,000	\$97,859,000	67%
Madera	--	--	--	--
Marin	\$5,610,745	\$14,145,763	\$8,535,018	40%
Mariposa	--	--	--	--
Mendocino	\$2,254,711	\$3,612,137	\$1,357,426	62%
Merced	\$4,520,530	\$7,609,293	\$3,088,763	59%
Modoc	--	--	--	--
Mono	\$485,000	\$1,646,222	\$1,161,222	29%
Monterey	\$5,447,046	\$13,369,056	\$7,922,010	41%
Napa	\$3,716,962	\$7,040,009	\$3,323,047	53%
Nevada	\$1,800,407	\$3,263,407	\$1,463,000	55%
Orange	\$65,277,088	\$90,456,643	\$25,179,555	72%
Placer	\$10,283,275	\$16,114,921	\$5,831,646	64%
Plumas	\$353,498	\$911,466	\$557,968	39%
Riverside	\$41,348,356	\$84,264,984	\$42,916,628	49%
Sacramento	\$22,749,779	\$37,659,643	\$14,909,864	60%
San Benito	\$641,486	\$1,037,973	\$396,487	62%
San Bernardino	\$27,262,282	\$61,943,252	\$34,680,970	44%
San Diego	\$65,889,048	\$118,940,401	\$53,051,353	55%
San Francisco	\$22,316,010	\$37,569,853	\$15,253,843	59%
San Joaquin	\$14,946,141	\$17,711,400	\$2,765,259	84%
San Luis Obispo	\$4,329,000	\$10,487,000	\$6,158,000	41%
San Mateo	\$14,624,218	\$20,707,020	\$6,082,802	71%
Santa Barbara	\$8,209,134	\$14,502,927	\$6,293,793	57%
Santa Clara	\$38,351,909	\$74,084,132	\$35,732,223	52%
Santa Cruz	\$7,322,155	\$10,369,301	\$3,047,146	71%
Shasta	\$4,447,632	\$6,350,152	\$1,902,520	70%
Sierra	\$91,708	\$238,208	\$146,500	38%
Siskiyou	\$655,143	\$2,203,960	\$1,548,817	30%
Solano	\$9,210,446	\$18,605,916	\$9,395,470	50%
Sonoma	\$7,780,233	\$10,679,993	\$2,899,760	73%
Stanslaus	\$8,022,104	\$13,048,706	\$5,026,602	61%
Sutter	\$534,700	\$2,902,618	\$2,367,918	18%
Tehama	--	--	--	--
Trinity	\$502,500	\$1,044,025	\$541,525	48%
Tulare	\$7,489,699	\$14,613,242	\$7,123,543	51%
Tuolumne	--	--	--	--
Ventura	\$14,973,331	\$34,890,001	\$19,916,670	43%
Yolo	\$5,847,368	\$11,444,209	\$5,596,841	51%
Yuba	\$1,030,468	\$1,740,275	\$709,807	59%
			Statewide Average Defense Ratio	53%

¹ Data represents fiscal year 06-07 except as follows: Lake, Monterey, Plumas, San Luis Obispo, Santa Barbara, Siskiyou and Yuba = 05-06; Amador, Kings, Marin, and San Benito = 04-05. Years are the same for both prosecution and defense budgets.

² Includes total indigent defense budget for all providers in county

³ The percentage that the total indigent defense budget represents of the Prosecution budget.

-- Indicates no budget data was reported by the County to the State Controller.

The most disturbing finding, however, is that the gap between prosecution and indigent defense funding is increasing. Between FY 2003-04 and FY 2006-07 the disparity increased in the aggregate by over 20%.⁶ In two counties this gap widened by almost 50% over the three year period and in one county (San Bernardino) it doubled.

B. Contract Defender Systems

We also found that there was a statistically significant relationship between the size of the gap and the type of indigent defense provider. The gap between indigent defense and prosecution is significantly larger in counties having contract defenders than those with institutional public defender systems.

As **Figure 2** indicates, 13 of the 24 contract defender counties have ratios well below the state average. Five of the contract defender counties (Del Norte, Madera, Mariposa, Modoc and Tehama) are not shown because they reported no data to the State Controller.

C. Quality of Representation

While an on-site docket study would be necessary to assess the actual quality of representation provided by chronically under-funded counties, one danger sign is whether cases are simply processed by guilty pleas or contested before a jury. We therefore looked at court data from all counties regarding the rate at which superior court cases are tried to a jury. We found there was also a statistically significant relationship between the type of provider and the rate of felony jury trials. Institutional public defender systems were twice as likely to take a case to jury trial as contract defender systems.⁷

D. Counties in Danger

Contract defender counties were not the only counties exhibiting danger signs as a result of significant under-funding. We searched for objective indicators which would provide an indication of the health of a county's indigent defense system. These factors included: 1) a defense ratio below the mean (i.e. the disparity between prosecution and defense funding was greater than the state average), 2) a below average jury trial rate, 3) having one or more death penalty cases, and 4) having no certified criminal defense specialist in the county.

Fourteen counties were found to exhibit at least three out of four of these factors. Over one-half (57 %) of these counties employed contract defender systems and were (with the exception of Butte County) under 100,000 in population. However, as seen in **Figure 3**, several urban and two metropolitan counties (having populations in excess of one million) also exhibited these danger signs.

Figure 2.

Contract Defender Counties Defense Ratios	
Alpine	25%
Amador	18%
Butte	25%
Calaveras	32%
Colusa	44%
Glenn	35%
Kings	80%
Lake	49%
Mono	29%
Placer	64%
Plumas	39%
San Benito	62%
San Luis Obispo	41%
Santa Cruz	71%
Sierra	38%
Sutter	18%
Trinity	48%
Yuba	59%

⁶ We were able to obtain budgetary data for this period for sixteen counties. The difference in the aggregate amount spent on prosecution and defense was \$117,140,588 in FY 2003-04. This gap increased to \$211,438,915 in FY 2006-07.

⁷ This analysis was conducted on court data obtained from the California Judicial Council for FY2004-05. The difference was statistically significant at the 98% level of confidence.

Figure 3.

Counties in Danger

County	Type of Primary Provider	Below Mean Defense Ratio	Has Certified Criminal Defense Specialist	Below Mean Jury Trial Rate	Had Death Penalty Case	Defender Reported Excessive Attorney Workloads	Felony Caseload Exceeds ABA Standard	Defender Reported Excessive Investigator Workloads	Investigator Workload Exceeds NAC Standard
Alpine	contract	yes	no	yes		nd	nd	nd	nd
Butte	contract	yes	no	yes		nd	nd	nd	nd
Calaveras	contract	yes	no	yes		nd	nd	nd	nd
Colusa	contract	yes	no	yes		nd	nd	nd	nd
Glen	contract	yes	no	yes		nd	nd	nd	nd
Imperial	IPD		no	yes	yes	yes	no	no	yes
Monterey	IPD	yes		yes	yes	yes	yes	yes	yes
San Benito	contract		no	yes	yes	yes	yes	yes	no
San Bernardino	IPD	yes		yes	yes	yes	yes	yes	yes
Santa Clara	IPD	yes		yes	yes	yes	yes	yes	yes
Sierra	contract	yes	no	yes		nd	nd	nd	nd
Siskiyou	IPD	yes	no	yes		nd	nd	nd	nd
Sutter	contract	yes	no	yes		nd	nd	nd	nd
Tulare	IPD	yes		yes	yes	yes	yes	yes	yes

nd = no data available either because defender did not respond to questionnaire or did not answer question.

IPD = institutional public defender

contract = contract defender

Most significantly in both of the metropolitan counties the gap between funding for prosecution and indigent defense is growing. The gap between the prosecution and defense budget in Santa Clara County increased from \$28,925,070 in FY 2003-04 to \$35,732,223 in FY 2006-07 – an increase of 24%. More dramatically the gap in San Bernardino County increased by 100% from \$17,365,106 to \$34,680,970 during the same period.

Both the Santa Clara Public Defender and the Alternate Defender answered our questionnaire. Their responses confirmed that they labored under both excessive attorney workloads and excessive investigator workloads.⁸ Both offices handled a combined total of eight death penalty cases during the past year. The ratio of attorneys to investigators exceeded the National Advisory Commission Standard of 1 investigator to 3 attorneys in both offices.⁹ One office indicated that their attorneys substantially exceeded the ABA Standard of 150 felonies per attorney per year. The other office did not answer this question. However, both offices indicated that their attorneys handled misdemeanor caseloads that substantially exceeded the ABA minimum 400 cases per attorney per year.

As **Figure 3** reveals the San Bernardino Public Defender also responded to our questionnaire and gave similar responses. This office handled seven death penalty cases, and also had both felony and misdemeanor caseloads that substantially exceeded the ABA Standards.¹⁰

⁸ Defenders were asked: “To what extent does your office confront any of the following problems? ...Excessive attorney workloads...excessive investigator workloads. Respondents were asked to indicate the significance of the problem using a five point scale in which 1 = minor problem , 3 = significant problem and 5 = serious problem. Both respondents rated the significance level at 4 with respect to both types of excessive workloads.

⁹ The ratio was 1 to 4 in one office and almost 1 to 5 in the other.

¹⁰ While “caseload” should be adjusted to take into account the adequacy of support services and the complexity of cases to determine an accurate measurement of actual “workload” the ABA has stated that these national caseload standards represent the absolute maximum and “ should in no event be exceeded.” Ten Principles of A Public Defense Delivery System, Principle 5, American Bar Association (2002).

The Need for State Assistance

Chief Justice Warren Burger declared in *Argersinger v Hamlin*¹¹ that “the system for providing counsel and facilities for the defense should be as good as the system which society provides for the prosecution.”¹² Significant disparities between staffing and resources allocated to the prosecution and the defense result in excessive workloads in defender offices, which in turn lead to delays in justice for both victims and defendants. Such an imbalanced criminal justice system also promotes ineffective assistance of counsel which gives rise to more appeals, retrials and unnecessary expense.

The obligation to provide the effective assistance of counsel and the resources necessary to conduct an adequate defense are state obligations. The failure of a state to provide uniform resources for indigent defense across the state violates the Equal Protection under the Federal Constitution.¹³

E. Recommendations

It is therefore respectfully submitted that the Commission seriously consider recommending the following:

- 1. That state assistance be given to counties in which the indigent defense system is funded at less than 50% of the system for prosecution, unless an outside evaluation finds that the system is in substantial compliance with the ABA’s Ten Principles of a Public Defense Delivery System.**
- 2. That legislation be proposed to require that any increase in funding for the district attorney (whether by local or outside grant funds) include matching funds for indigent defense services, if the result of such enhanced prosecution funding will be to increase the gap between prosecution and defense funding in that county by more than 25%.**

II. Ineffective Assistance of Counsel

A. Analysis of Judicial Decisions on Ineffective Assistance of Counsel: Final Results

In Appendix III to our Preliminary Report we presented our initial research on the ineffective assistance of counsel (IAC) cases we had compiled at the time we were asked to give preliminary findings for the purpose of discussing the focus questions at the Commission’s July 11th meeting. As noted in that Report we were still researching unpublished decisions which had not been given headnotes by Westlaw and were also in the process of attempting to discover the attorney involved in cases where there was a finding of deficient performance.¹⁴ To date we have reviewed over 2500 cases in which ineffective assistance of counsel was raised as an issue. In

¹¹ 407 U.S. 25(1972) *Argersinger* extended the right to counsel to misdemeanor cases.

¹² Id. 43, concurring opinion.

¹³ See *Griffin v Illinois*, 351 U.S. 12 (1956) and *Bush v Gore*, 531 U.S. 98 (2000) holding that where a fundamental right is involved a state must take steps to ensure that there is equal treatment in the enjoyment of that right.

¹⁴ See page 11 of our Preliminary Report for a description of our search methodology. While our initial research culled cases decided during the last ten years, we discovered many of the cases decided before 2002 involved convictions that were well outside the 10 year cutoff. We therefore expanded our exploration of 2007 cases and limited our follow up research into unpublished cases to the past five years. This brought the total of cases in which deficient performance was found to 121 cases. 88% of these cases were decided after 2001.

only 121 of those cases was counsel’s performance found to be deficient. In only 104 cases was this deficient performance also found to be prejudicial and thus justify reversal of the conviction or sentence.

Attempting to identify the attorney who provided ineffective assistance has in many cases proved to be quite challenging as the appellate courts routinely fail to state either the name or the status of the attorney. The veil of secrecy that surrounds such cases reached unusual proportions in an embarrassing case where a retained defense lawyer was found in his car in the courthouse parking lot, passed out from methamphetamine use. Arrested for drug possession, he spent the night in jail and then, without preparation, gave an incoherent closing argument to the jury the next day. This case came to our attention as a federal habeas case, but we learned that the California Court of Appeals had failed to even send the previous state appellate decision (which found no ineffective assistance) to Westlaw. While this case was literally unpublished, we found that over half (54.5%) of the successful IAC cases we discovered were not certified for publication. When such decisions are decertified before being sent to Westlaw no headnote or key number is added by Westlaw to facilitate research on this issue.

In those cases in which the status of the attorney could be identified 39 (32%) were privately retained, 18 (15%) were assigned counsel, and 40 (33%) were public defenders.¹⁵ In the remaining 24 cases we were not able to determine the identity of the attorney. Further research in this area would require doing a docket study in each county in which the IAC case arose. Nevertheless, based on the available data it does appear that the deficient performance rate by privately retained counsel is higher than would be expected given the fact that only about 15% of criminal defendants retain private counsel.¹⁶

As **Figure 4** shows, the overwhelming majority of the attorneys who provided ineffective assistance were experienced, with 63 attorneys (76%) having 11 or more years of experience. The average number of years experience at the time of deficient performance was 18 years. Only 5 attorneys (6%) had less than five years experience. One third had over 20 years experience. The fact that almost one in five (19%) of these cases involved the death penalty may account for the apparent overrepresentation of older attorneys, since these cases were, with few exceptions,¹⁷ represented by attorneys with substantial experience. In any event the bulk of the errors cannot be attributed to inexperience.

Years Experience	Number of Attorneys	Percentage
5 years or less	5	6%
6-10 years	16	18%
11-20 years	37	43%
Over 20 years	29	33%
n=87		

Figure 4.

¹⁵ n=121

¹⁶ This is based upon our finding that the indigency rate is at least 85%. See footnote 1.

¹⁷ One death penalty attorney had only 9 years experience. Three others had 10 to 11 years experience. The majority however had substantial experience, often over 20 years.

B. Type of Errors

Appendix III (updated) contains an analysis of the type of error made in each case. The most significant finding continues to be the frequency of the failure to investigate. Forty-four percent of the “deficient performance” cases involved counsel’s failure to investigate either with respect to guilt or with respect to mitigation. **Figure 5** gives the percentages for the other categories of deficient performance found. Almost one-third (32%) of the deficient performance cases involved counsel’s lack of knowledge of the law.

Figure 5.

Category of Deficient Performance	# of Claims*	Percent of ALL IAC CASES
Failure to Investigate	53	44%
Lack of Knowledge of Law	39	32%
Guilty Plea Advice	14	12%
Failure to raise Mental Health Issue	13	11%
Lack of Trial Skills	12	10%
Sentencing Error	10	8%
Failure to suppress Inadmissible Evidence	8	7%
Failure to Call Expert	5	4%
Failure to challenge/present Forensic Evidence	3	2%
Failure to file Notice of Appeal	3	2%
Failure to Call Witness	3	2%
Failure to Object	3	2%
Negligence	3	2%
Conflict of Interest	2	2%
Other -	2	2%
* Because many cases contain multiple claims the number of claims exceeds the number of cases.		n = 121 cases

In those cases where counsel had over 20 years experience, the most frequent error was lack of knowledge of law (38%) followed by the failure to investigate (35%) and failure to raise a mental health issue (17%).

C. Recommendations

It is suggested that before an attorney is permitted to handle a serious or violent felony as defined by Sections 1192.17 and 1270.1 of the California Penal Code, he or she should be certified as meeting minimum standards of competency. The requirements for certification as a criminal defense specialist with appropriate modifications could be used as a model. It is further suggested that re-certification be required every five years based upon a showing of active participation and compliance with a continuing educational requirement specifically approved for criminal law practitioners.

III. Revised Recommendation on Preliminary Hearings

It is strongly urged that the Commission seriously consider a limited recommendation regarding the necessity for returning to the time honored traditional means of ensuring innocent defendants are not convicted by mistaken eye-witness identification testimony.

It is recognized that any change in the current law would require a super majority of the state legislature. However, it is respectfully submitted that rational opposition could be made to the following limited recommendation only with great difficulty:

1. Where probable cause is based primarily on eye-witness testimony and no evidence substantially corroborates the defendant's guilt, the defendant shall have the right to cross examine known eye-witnesses at the preliminary hearing, provided that where an eye-witness is a victim of the defendant's alleged crime, the court may, upon a showing of good cause, order that the victim's deposition be taken in lieu of public testimony.

IV. Comments from Public Defenders and Certified Criminal Defense Specialists

Public Defenders were asked to describe any practice or policy of judges or prosecutors which hindered effective defense representation in their county. Responses are reported by type of county: Metropolitan (population over one million), Urban (100,000 to one million) and Rural (under 100,000). They were also given the opportunity to comment on any concern that they wished, especially if there was an area of concern not addressed in the questionnaire. These comments are attached in full in Appendix I to this Supplemental Report.

A sample of selected comments is provided below. We urge each member of the Commission to listen to the voices of those who are in the trenches everyday dealing with the reality of scarce resources and a system of criminal justice that has forgotten it was designed to protect the innocent and instead has become a system for processing the presumed guilty.

Metropolitan Public Defenders:

- Constant hassle re expert appointments.
- Judges participate in strong arm tactics to assist D.A. in pushing hard bargains....
- Late discovery without any court sanctions; late lab work (drug results); our D.A. files all strikes without using discretion...
- Lack of prompt discovery from DA, withholding of Brady evidence by DA, inability to interview prosecution witnesses.

Urban Public Defenders:

- System is completely broken in my view, and there's no such thing as the evidence code or constitutional protections anymore.... AND neither courts nor D.A.'s take any action against cops who blatantly lie on stand - so they get away with anything and everything w/ impunity. DA's filing policies - everything is a felony....Petty theft is a burglary or robbery; .01 gram of meth is a felony even if Prop 36 eligible.... In my view, whole criminal justice system is broken - we're creating an entire class of

people who will never be able to reap the benefits of society, and who have no upward mobility whatsoever, creating worsening social problems. We put them in a hole so deep (fines, assessment, fees, terms of probation - for those "lucky" enough to get probation) they can never get out. And we force them to wear a scarlet letter forever. The whole thing is a complex, convoluted mess.

- I have been a public defender for over 30 years in three different counties. There is a great disparity in the quality of defender services throughout the state, I think that statewide minimum standards - with teeth - should be established and every county should be required to meet those standards. A move in that direction exists in dependency representation. Why not for criminal defense? An alternative would be for the state to take over administration and funding for criminal defense services.
- Judges favor prosecutors - even suggesting how to prosecute a case, giving continuances, putting pressure on defense attorneys but not on prosecutors. Defense attorneys are criticized for lack of ability to force defendants to plead while D.A.s who cannot make offers or settle cases without their supervisor's approval are given every courtesy. There is a general disdain by the judges towards criminal defendants and their counsel which is reflected in their choice of words, demeanor, body language and rulings.

Rural Public Defenders:

- The amount of assigned cases is not the problem. The problem is the workload. Investigators are only provided for very serious cases, so the individual attorney is forced to do all investigation and witness interviews.
- Judge pushes cases through system at rapid speed.

Certified Criminal Defense Specialists were also asked to provide similar comments. These responses are presented in Appendix II. A sample of responses from specialists in urban and metropolitan counties is presented below.

- 1. Discovery is always late...The discovery scheme is a hindrance to effective investigations by the defense. This must be improved. 2. If D.A. chooses to proceed by preliminary hearing the eye-witnesses must be presented. This is so wrong.
- Restore a meaningful preliminary hearing. The present system is of no value.
- Need to disclose all discovery and seek out *Brady* evidence more vigorously and at an earlier point than just before TMCs or trial.
- Put ethics teeth into Brady obligations. D.A.'s rarely are disciplined by State Bar or D.A., California offices in even in the most egregious cases of withholding evidence.
- Set up an independent body to authorize funds for sources for indigent defendants....The fees/rates that investigators are authorized make it very difficult to get competent investigation done in my court appointed cases.

- Stop the prosecution from using victim witness advocates and/or its own lawyers to discourage victims and witnesses from speaking with defense investigators - witnesses would be made available for brief, videotaped interviews with defense investigators. The current practice of telling witnesses they do not have to talk with defense is used to discourage and thwart defense investigation.
- I began when victims/witnesses were called at P.H. We should return to that system. It taught lawyers how to question witnesses and helped to weed out weak cases.