

**TESTIMONY OF THE NATIONAL ASSOCIATION
OF CRIMINAL DEFENSE LAWYERS
BEFORE
THE COOK COUNTY
BOARD OF COMMISSIONERS
AGAINST BUDGET CUTS FOR
THE OFFICE OF PUBLIC DEFENDER**

**MAYWOOD, IL
JANUARY 30, 2007**

**Martin S. Pinales, President
John Wesley Hall, Vice President
National Association of Criminal Defense Lawyers
1150 18th Street, NW, Suite 950
Washington, DC 20036**

I. Introduction

We are here to testify on behalf of the National Association of Criminal Defense Lawyers (NACDL) against budget cuts for the Office of Public Defender for Cook County.

NACDL's mission is to ensure justice and due process for the accused; to foster the integrity, independence, and expertise of the criminal defense profession; and to promote the proper and fair administration of justice. NACDL is the only national bar association¹ working in the interest of public and private criminal defense attorneys and their clients.

NACDL has long worked to improve this country's public defense systems. Through public education, advocacy and litigation, we have sought to ensure that those without financial means are afforded the zealous, competent counsel necessary to guarantee a fair trial in our adversarial system. We have come to Cook County to urge this Board to ensure that the Public Defender Office is not subject to *any* budgetary cut that would result in increased workloads because they already greatly exceed national standards. Any increase would place the office even further outside of national standards, create inefficiencies that would dramatically increase secondary costs, and raise serious ethical issues for attorneys in the office.

II. The Cook County Public Defenders Already Far Exceed National Caseload Limits

No matter how brilliant and dedicated the attorney, if she is given too large a workload, she will not be able to provide clients with appropriate assistance. With this in mind, the National Advisory Commission on Criminal Justice Standards and Goals set the following caseload limits for full-time public defenders: 150 felonies, or 400 misdemeanors, or 200 juvenile, or 200 mental health, or 25 appeals.² In no event should

¹ NACDL has more than 13,000 members nationwide. It also has over 90 state, local, and international affiliate organizations, which have, in total, over 35,000 members.

² While precise workload targets are best established through an individualized study that allows a locality to take into account its unique geographic issues, the administrative and other responsibilities of the attorney, as well as the format of its judicial system and the make-up of its criminal docket, the baseline national caseload standards allow us to evaluate systems where an individualized workload study has not been done.

Colorado is an example of a system that used a case-weighting study to establish appropriate workloads for its public defenders. The study was completed in 1996 and the legislature has accepted the formula from that study for purposes of both budgeting and analyzing the fiscal impact of proposed legislation. A number of other states also have established caseload standards. For a slightly outdated overview, see Bureau of Justice Assistance, Keeping Defender Workloads Manageable, available at <http://www.ncjrs.org/pdffiles1/bja/185632.pdf>.

caseloads surpass the maximum listed in the NAC standards.³ Established more than 20 years ago, these standards have withstood the test of time as a barometer against which full-time public defender caseloads should be judged.

Sources universally agree that the caseloads of Cook County public defenders already significantly exceed these national standards.

- The Union places the current caseloads at 160% of national standards.
- In a recent Chicago Sun Times article, a felony trial defender estimated his caseload at 240 felonies a year (160% of national standards) and a misdemeanor defender estimated his caseload at 400 misdemeanors a month (1200% of national standards).⁴
- An earlier Chicago Tribune news report noted that the juvenile justice division of the public defender office was similarly carrying “overwhelming caseloads.”⁵

The current budget proposal would require the elimination of at least 36 existing attorney positions and 11 existing support staff positions.⁶ Such further cuts will dramatically escalate what is already a caseload crisis in Cook County, and the effects of this increase would be devastating.

III. The Effects of Further Raising Caseloads in Cook County Would Be Devastating.

NACDL has participated in indigent reform efforts across the county and is in the unique position of having observed the effects of numerous such budget cuts and the resulting caseload increases. The effects are universal: **delay, increased costs and increased errors.**

³ There are a variety of reasons, however, that caseloads should, in reality, be lower than the standards propose. For example, the standards assume that the defender is full-time and works exclusively on cases. Accordingly, any administrative responsibilities allocated to the defender should reduce the expected maximum caseload. The caseload standards also assume appropriate support staffing in the office. If the number of assistants or investigators is insufficient, requiring the attorney to take on this work as well, the attorney’s caseload should be reduced accordingly.

⁴ Abdon M. Pallasch, *Call to Limit Cases Amuses Public Defenders*, Chicago Sun Times, News, July 24, 2006.

⁵ Jeff Coen, *Report Leads to Changes In Defense For Juveniles*, Chicago Tribune, Metro, September 5, 2005.

⁶ The caseload standards also assume appropriate levels of support services, specifically secretarial, paralegal and investigatory services. For full-time defender offices, the Bureau of Justice Assistance has opined that there should be approximately one paralegal, one secretary and one investigator for every four attorneys. Offices that do not maintain the recommended ratios of support staff to attorneys must reduce their workload expectations for attorneys. See Bureau of Justice Assistance *Keeping Defender Workloads Manageable* (January 2001), at 10. Accordingly, reducing greater numbers of support staff while maintaining attorney numbers is not an alternative the resolves the caseload problem.

An attorney – no matter how experienced – can only handle so many cases in a single day, month, or year. As a result, increased caseloads inevitably lead to more frequent continuances, which slow down the overall efficiency of the justice system. It is not uncommon in locations with caseloads double the national standards to see the time from charging to disposition increase dramatically. In some locations where the caseload problems persist, the average time to disposition is more than two years. Moreover, in such systems, the backlog generally continues to grow, the delay worsening every day.

These delays are costly for taxpayers. The increased continuances result in longer pretrial incarceration times in county jails at an exorbitant cost to taxpayers.⁷

Moreover, attorneys with overwhelming caseloads are forced to take short cuts. They cannot fully investigate their cases or meet with their clients.⁸ This makes errors more common.

The goal of the justice system is to ensure that the innocent go free and that the guilty are convicted. In an overburdened public defense system, too often the innocent are erroneously convicted and the guilty go free – which is bad for everyone.

Errors are also costly.

First, lawsuits by those erroneously convicted as a result of defense and prosecution errors have resulted in larger and larger verdicts over the past few years.

Second, the long term harm of such systems has been so widely recognized that increasingly counties and states are being sued at the outset for failing to maintain a system that can provide an adequate defense to individuals charged with crimes who cannot afford private counsel. For example, in the past two years, both the State of Montana and Best County in Washington were forced to settle class action lawsuits over inadequate indigent defense services. In both cases, the settlements required the defendants to completely reorganize and fund their public defense systems.

Third, these budget cuts will likely decrease the finality of criminal cases after trial or plea, to the tremendous detriment of the criminal justice system as a whole. Indigent defense clients who have not received effective assistance of counsel at trial are forced to pursue appeals and post-conviction proceedings in state and federal court in an effort to vindicate their rights. Such proceedings can carry on for years and require tremendous time from the judiciary, the prosecutors, and the state's Attorney General, in addition to the public defender's office.

IV. Ethical Implications of Increased Caseloads for Public Defenders

Increasing the caseloads of the public defenders in Cook County will create ethical problems for each defender. This year, the American Bar Association's Standing

⁷ See NAACP Legal Defense Fund, *Assembly Line Justice*, available at http://www.naacpldf.org/content/pdf/indigent/Assembly_Line_Justice.pdf, at 19 (noting that in a county where public defenders had overwhelming caseloads the result was significant jail overcrowding and increased incarceration costs). By contrast, in Georgia, reform of the indigent defense system that reduced public defender caseloads was seen to dramatically reduce jail costs.

⁸ Cook County's public defender office has been criticized for these problems in the past. Jeff Coen, *Report Leads to Changes In Defense For Juveniles*, Chicago Tribune, Metro, September 5, 2005. Since that time, the Public Defender budget has only been decreased.

Committee on Ethics and Professional Responsibility issued an ethics opinion that requires public defenders to keep their caseloads under control or seek relief in court. The ruling, Ethical Opinion No. 06-441,⁹ states, “If a lawyer believes that her workload is such that she is unable to meet the basic ethical obligations required of her in the representation of a client, she must not continue the representation of that client or, if representation has not yet begun, she must decline the representation.”¹⁰ In other words, if the caseloads become too high, individual public defenders will be ethically compelled to seek a reduction.

The ethics opinion first requires a line defender to go to his or her supervisor for that reduction, and then to the head of the office. If, however, the office does not address the caseload problem, the opinion *requires* the defender to go above the heads of her supervisors and seek relief in court. “[T]he lawyer should file a motion with the trial court requesting permission to withdraw from a sufficient number of cases to allow the provision of competent and diligent representation to the remaining clients.”

Under this opinion, were these cuts enacted, each public defender would be ethically obligated to seek a caseload reduction.¹¹ The result, whether the reductions occurred internally or through litigation, would be that the office would be compelled to take fewer cases than it currently does, and some other means of providing counsel in the overflow cases would have to be sought, such as paying private lawyers to take the other cases. Such an alternative is likely to be more expensive than simply funding the Public Defender Office at the outset. Accordingly, Cook County would not save money, but would have to endure administrative chaos in its public defender department and court system.¹²

V. Closing

For all of these reasons, NACDL urges this Board to scrupulously avoid any budgetary action that will have the result of increasing the workload of the dedicated attorneys in the Cook County Public Defender office. Indeed steps should be taken, as

⁹ The full opinion can be read at http://www.abanet.org/cpr/06_441.pdf.

¹⁰ The American Council of Chief Defenders has similarly published an ethical opinion stating that defenders are “ethically required to refuse to accept additional casework” if that casework would cause them to exceed the capacity of the agency’s attorneys. See ACCD Ethics Opinion 03-01 (April 2003), available at http://www.nlada.org/Defender/Defender_ACCD/Defender_ACCD_Home.

¹¹ See also John Wesley Hall, Jr., *Professional Responsibility in Criminal Defense Practice* §9:13 (2d ed. 2005).

¹² It has been suggested that law firms and other lawyers in Chicago might be able to assume some of the public defender’s caseload on a *pro bono* basis. In NACDL’s experience, such efforts have failed. First and foremost, the attorneys permitted to provide this *pro bono* service would have to be trained in criminal defense and their credential reviewed to ensure their qualifications. The program would have to be administered and closely monitored by county attorneys to ensure that the appropriate services are actually provided to clients, as, legally, it would remain a county responsibility. In areas where such a program has been undertaken, the administration and oversight has been too difficult to establish and appropriately qualified attorneys too difficult to recruit.

soon as possible, to reduce the workload of those attorneys – for the financial efficiency and public safety of all of the county’s residents and taxpayers.

Thank you for the opportunity to speak to you all today. We hope the information NACDL has provided is helpful to you.