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Economy & Efficiency Commission Presentation

Editorial Note: Although every effort has been made to insure the accuracy of the material in this presentation, the scope of the material covered and the discussions undertaken lends itself to the possibility of minor transcription misinterpretations.

**PRESENTATION BY
Michael P. Judge, Esquire
Public Defender, Los Angeles County**

Topic: State of the Public Defender's Office

February 7, 2002

Chairman Philibosian introduced Mr. Michael P. Judge, Public Defender, as an accomplished attorney and recommended that the commissioners read his extensive biography. Chairman Philibosian commented that he works well with staff, the Court, the Probation Department, and the District Attorney's Office. He has done an outstanding job in leading the Department and in defending the indigent population of Los Angeles County. Mr. Judge thanked Chairman Philibosian for the generous introduction, and proceeded to introduce Ms. Penny Van Bogaert, his Administrative Deputy, who was available to answer questions.

Mr. Judge stated that the Los Angeles County Public Defender's Office has the oldest, largest and best full service office in the country. In some of the major urban areas of the country the Office of the Public Defender does not handle homicide or death penalty cases. Currently, the Los Angeles Public Defender's Office has fifty clients that are awaiting death penalty trials. Also, its management through "economies of scale" demonstrates the department's effectiveness and efficiency in achieving the lowest cost per case in the State of California of any indigent defense provider. This is illustrated in several California Public Defender Association studies. The private bar fees are two to three times higher for indigent defendants' cases.

The Office of the Public Defender has an international reputation. It is used as a model for the quality of their indigent defense, as well as mitigation of the costs per case. Delegations from Great Britain, Japan, China and many of the developing countries in Eastern Europe (including Armenia) have visited Los Angeles County to discuss the Justice and the Public Defender's Systems.

Risk Management is another multi-faceted topic. A Senior Risk Manager has been appointed to monitor breaches in service quality and in training issues. Multiple levels of management review a "colorable" claim; whereby training, discipline and/or termination are suggested. There are other issues including the health of the work force. This can be influenced by secondary trauma, which has a potential cumulative effect on the entire staff.

A psychologist has assessed the stress level of paralegals (often involved in the penalty phase of death

cases). Training was recommended and well received; it has been continued for all of the managers, and, ultimately for the entire Office. After completion of the training, confidential surveys were distributed; results indicated that some individuals needed more training. These persons volunteered to work with the psychologists in small groups. Awareness of the health of the workforce is key to addressing breakdown or burn out.

Sometimes, in misdemeanor cases, a public defender might appear in the defendant's place - similar to private practice. Careful measures have been taken to indicate that the client is a "977 Appearance" (meaning the client appears in court when called). The real question is what determines a person to be indigent. The court has that designation authority, but has normally delegated this to the Public Defender. When the Office screened the potential clients their standards were higher and the cost was all-inclusive in the process. (Other methods were used; i.e., county departments have screened potential clients; however the county employees' standards were too lenient.) At the conclusion of each case, the judge can conduct a hearing and determine the reasonable value of the services and the client's ability to pay: a portion or the entirety; now, or in six months. Usually the courts generate around \$2M in revenue each year from the ability to pay the process. The funds are not returned to the Public Defender's Office but to the County General Fund. The court receives a revenue credit.

The Public Defender training for new lawyers usually takes a year. Many trainees are precocious in their development; therefore, the approach is customized. It begins with one trainee at a time that has accessibility to a trainer, a lawyer and a mentor. "Rookies" move through felony preliminary hearings, general misdemeanor trials, and "driving under the influence" trials. Most finish in nine or ten months and are capable of handling a full caseload. When the cost per case is computed; the trainees, who handle a reduced caseload, are included

The Public Defender is a certified provider of in-house classes known as Mandatory Continuing Legal Education (MCLE), which the Los Angeles County Bar Association demands that attorneys complete. Fifteen classes are offered. On several weekends a year there are other training programs. There is a juvenile law-training program every year, which is held on the same day that the juvenile judges, referees and commissioners are being trained. It is available to outsiders from ten or twelve different counties; these lawyers pay for the program. For lawyers who are about to enter a felony trial practice, training is available in order to develop specific litigation skills. For the more advanced lawyers there is an in-house capital case/death penalty college lasting two or three days.

The Elimination of Racial Bias Program (which was not a result of any court order, mandate or grievance) was initiated to manage the changes that the Public Defender's Office and the County were undergoing. The collective experience, vision and wisdom that a multi-cultural environment entails would enable the Public Defender's Office to match up with clients, families and witnesses. The program took 18 months to conceive with volunteers meeting from 4:30 to 7:30 p.m. A confidential/anonymous survey was produced to get a "sense" of the staff; which was provided to the Affirmative Action Compliance Officer; and to the Human Relations Director. The Public Defenders Office wanted to reach a high standard in order to maximize the racial health of the organization.

The Program was mandatory for all staff and was initiated over a four day period, each day of which twenty five percent of the Office staff were taken "offline" for a full day's presentation, breaking into facilitated focus groups. Trained facilitators from other county departments (including Human Relations and Affirmative Action) delved into deeper understanding of the issues that involved service delivery and client treatment. Additional mandatory focus groups were designed and are now institutionalized; new staff are required to partake in the training.

Practical results from the Elimination of Racial Bias Program were the interest in other staff member's cultures. Mr. Judge said that he designed a six-part program to increase the awareness of the people that came from Mexico. It explains the customs, the expectations, and how to avoid inadvertently insulting people. In addition many of the staff were frustrated despite 180 county certified bilingual members, i.e. often people would call in and the staff could not communicate with them; the Spanish clients were

monolingual and had the largest caseload. A bilingual staff project was started with a grant from the Quality and Productivity Commission to provide further education in a two-week immersion program for a limited number of the staff to improve their conversational Spanish. The Office of the Public Defender has also established, with the Mexican Counsel General, a bilingual Miranda Call.

In a similar vein, a new Elimination of Gender Bias Program has had multiple planning sessions. The survey has been completed and the Department is moving forward in its development stage.

The Drug Treatment Courts have a 75% success rate with the focus being on heavy-duty addicts who have been tracked for seven years. There is a Drug Court Oversight Committee, which is chaired by a judge, and vice-chaired by the Public Defender. At present there are 14 successful drug treatment courts. The Public Defender has occupied a leadership role in establishing all of these courts.

The Office of the Public Defender is also involved with the Homeless and Community Courts that have begun to develop. The Public Defender has a new approach in Juvenile in which the objective is that the clients be "better off" when they exit the system. Grants were received for sixteen licensed Clinical Social Workers (CSWs). Twelve give psycho/social interview assessments at intake, (they determine the mental health, special education needs and the conflict-resolution skill needs due to illiteracy or dysfunctional families). There are 4 CSWs who look at failed placements. Many youths who have been sent to camp with serious mental health issues have not had them addressed in the camp. The Probation Department recognizes this and has been working in partnership with the Office of the Public Defender to improve services. About 90% of the youths, who have been identified as being in poor placements, have been moved into better care so that, ultimately, they will not become delinquent adult clients.

The Public Defender's Office has the first Public Integrity Section in the country. The task of this section is to look at cases that may have resulted in wrongful convictions due to misconduct, to investigate and research those convictions, to get them set aside when appropriate; and, more importantly, to determine what went wrong. Training and processing issues are being examined to develop an agenda for a legitimate, reasonable, and middle of the road reform that could be embraced by everyone.

Mr. Judge mentioned that he is the Chair of the Information Systems Advisory Body (ISAB) which is facilitating the development of some of the Criminal Justice Information Systems for the District Attorney, Probation Department, the Courts, the Sheriff, the Los Angeles Police Department (L.A.P.D.), and the Public Defender. ISAB develops systems such as the Comprehensive Criminal History Record System, which links together nine justice data systems so that police agencies, prosecutors and courts can be certain that once they have identified an individual, they will have the complete record available with which to make bail or sentencing decisions. Mr. Judge envisions information systems to be paperless, beginning with the L.A.P.D. Killing trees, storage (files cannot be destroyed without the clients' approval or proof of death) and paper retrieval (a monumental task) are issues that also need to be addressed. The Court can destroy felony records after 75 years.

There is a new Public Defender in-house computer-training lab, which offers software programs like CrimeTime (checks the computation of sentencing) including an Immigration Module (aids in determining the Immigration Consequences) for which the Office is held liable. Jury instructions, Internet research, and videoconferencing in the Los Angeles Criminal Justice System are other utilizations.

The Office assisted ISAB to secure two grants from the Air Quality Management District for over \$1M in the aggregate. Other monies were received from the Cable Communications Franchise Fee Fund for video conferencing. There are some court case arraignments using video. Probation Officers and Public Defenders no longer have to travel to remote locations. If there is a lockdown or a client has been moved, this no longer results in a useless trip, inmates can be interviewed later via video conferencing. The Office of the Public Defender has taken a leadership role, along with the Sheriff, in conceiving and implementing the Modified Automated Process and Accounting System (MAPAS) which automated the subpoena function of LASD.

The Public Defender's Office lobbied for a \$25.00 registration fee (can be waived), which is a minimal fee

that client's are asked to pay for representation by the Public Defender. The fee brings in approximately \$600,000 per year.

Student Loan forgiveness is essential to recruit new lawyers. Some have \$130,000 worth of student loans and the Office is offering them only \$52,000 a year salary. There is a student loan forgiveness program for prosecutors from the Perkins Student Loans that may constitute about 30% of total student loans. Last year the Governor signed legislation providing for prosecutors and defenders to receive student loan repayment assistance. Although no money being available at this time, the program structure is in place.

The Public Defender has a crucial need in the area of data system staff. The Department suffers from the lowest data systems staff to line staff of the legal and criminal justice agencies. This hinders their ability to service, repair, and roll-out computer soft and hardware.

Commissioner Simmons asked how many clients per attorney are there in the Public Defender's Office? Mr. Judge responded that it depended upon the type of case. A felony caseload had a lower ratio than a misdemeanor caseload. A felony caseload generally had about 20 open cases with a dozen to fifteen new cases each month. A misdemeanor caseload was approximately 100 per lawyer; there were 80 to 100 new cases per month. If it were determined that the incoming caseload exceeded the capacity to provide adequate service, the Office became "unavailable". The cases were then diverted to the private bar. Any complaints against a private lawyer appointed by the court are assumed by the defendant to be the Public Defender's Office fault.

Commissioner Barcelona asked that since Mr. Judge mentioned he had worked with the Consul General of Mexico in Los Angeles, were there similar programs in place to assist American citizens when they run into problems in Mexico? Mr. Judge responded that the Consul General assisted in getting Mexican documents and facilitated investigator travel into difficult areas but Mr. Judge has not pursued the problem of service to U.S. Nationals in Mexico.

Commissioner Fuhrman asked where the courts stand in using DNA testing to corroborate guilt or establish innocence either during the trial or after conviction. Mr. Judge responded that over a year ago he established an Innocence Project in the Office. The staff was surveyed for cases that might have biological evidence from which DNA analysis could determine guilt or innocence; this survey is still underway. The State of California passed a law providing financial support for prisoners who are claiming they were falsely convicted. Under that law the Los Angeles County Public Defender received the first exoneration in the entire State under the law - a man from Long Beach who was wrongfully convicted of a child molesting case was released, and the guilty man (who was in prison for child molesting) was identified. There are eight or nine other cases that are being actively investigated. In 1988 the Public Defender began looking at DNA, with three co-coordinators actively pursuing this solution.

Commissioner Farrar asked if there were a backlog of rape cases where DNA could be used. Mr. Judge responded that there were a significant number of current rape cases in which there was DNA evidence that could come forward, but it hasn't been analyzed. In the past smudged fingerprints had been considered useless, now DNA can be "lifted off" of the smudge. The use of DNA will be used in increasing numbers of cases.

Commissioner Padilla asked about the issue of mentally ill foster youth; he understood that the Sheriff wanted to hold mentally ill indigents outside of the jail. Mr. Judge responded that as to foster care, the Public Defender's Office was not involved in dependency, but was involved in delinquency. The foster youth and emancipation issues are outside the purview of the Public Defender. The County Bar is sponsoring an effort to work with some of those children. Mr. Judge stated that he formed a Mental Health Task Force within the Office. A number of lawyers have experience with working with Department 95; mental health issues transcend a variety of different lines for juveniles and adults. Mr. Judge praised the efforts of Sheriff Lee Baca in dealing sensibly and humanely with the mentally ill.

Commissioner Fuhrman asked where Mr. Judge stood in terms of the involuntary confinement. Mr. Judge responded that there were some who have conservatorships. The Public Defender represents those who were

conservatees in Department 95. Sometimes the Office resisted their incarceration, but questioned the motives of the conservators and how they treated the mentally ill.

Ms. Bogaert distributed handouts: 1) pertaining to the mental health and educational needs of the juvenile clients using psychiatric/social workers, 2) the Public Defender's Strategic Plan and 3) a Costs Per Case List comparing fees of the Office of the Public Defender with private attorneys who are under contract to Los Angeles County.

Chairman Philibosian thanked Mr. Judge for his presentation, which was greatly appreciated by the Commission.

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