

Gideon's Promise: Making It Real in California Juvenile Justice

Beyond the Bench XXII: Equal Access to Justice for Children and Families
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Constitutional Right to Counsel

Gideon v. Wainwright (1963) 372 U.S. 335 (criminal cases)
In re Gault (1967) 387 U.S. 1 (juveniles)

California has given children a statutory right to be represented by an appointed attorney in delinquency cases since the enactment of the Arnold-Kennick Juvenile Court Act in 1961.

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Juvenile Delinquency Representation Data for 2011*

Of the 60,968 cases in which youth were represented by counsel:

- ✓ 40,898 youth were represented by public defenders (67%)
- ✓ 15,600 youth were represented by other appointed counsel (25.6%)
- ✓ 3,832 youth were represented by private counsel (6.3%)

Of 73,639 cases, the state data system reveals that 532 (1%) were not represented by counsel, and cannot determine whether 12,139 (16%) youth were represented.

* Juvenile Justice in California 2011, "Defense Representation 2011, Table 20 (2012)

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California juvenile defense professional achievements over recent decades:

- ✓ CPDA Monterey Juvenile Defense Seminar since the 1980s (2 day trng. since 1992)
- ✓ L.A. County Public Defender Spring Training since 1984; also The Dog Book: A Practical Guide to Juvenile Delinquency Law since 1984
- ✓ Increased attention to delinquency at Beyond the Bench
- ✓ Pacific Juvenile Defender Center (PJDC), affiliate of National Juvenile Defender Center, since 1999
- ✓ Mobilization in relation to Youth Authority crisis beginning intensively around 2003; statewide list serve since 2004
- ✓ Statewide PJDC Roundtable Training since 2004
- ✓ Establishment of Loyola Center for Juvenile Law & Policy in 2004
- ✓ Implementation of holistic representation in some offices

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In 2008, California was one of 4 states invited to participate in the MacArthur Juvenile Indigent Defense Action Network:

- Multi-year project working with MacArthur Models for Change & National Juvenile Defender Center to develop a statewide resource center
- Contacted juvenile defense counsel around the state to connect them with PJDC
- Performed statewide assessment of training and resource needs
- Launched of comprehensive PJDC web site with practice materials
- Created Expert Corner for ongoing trial support
- Provided appellate, legislative and policy support through Amicus Committee
- Published *Collateral Consequences in California Juvenile Justice Handbook*
- Held first ever NITA trial skills training for California Delinquency attorneys
- Laid groundwork for long term goals: training academy and ongoing training; practice standards and manuals; mentoring programs; increased support for underserved areas

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Broader Recognition for Juvenile Defense as a Specialty

- Special attention in State Bar Guidelines for Indigent Defense (2007)
- California Rules of Court, rule 1479, Responsibilities of children's counsel in delinquency proceedings (2007; now renumbered 5.663)
- Special attention in Judicial Council Delinquency Court Assessment (2008)
- National Juvenile Defense Standards and JTIP Training (2012)
- Los Angeles County Superior Court Practice Guidelines (2013)

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Where are We Now?

Despite many achievements, juvenile defense continues to face serious challenges:

- Uneven access to training and support resources around the state
- Lack of clarity on standards for juvenile delinquency representation
- Structuring of work that fails to meet client needs (education, post-disposition work)
- Compensation structuring in some places that is inadequate for adequate representation
- Workloads that are too heavy to assure adequate representation
- Lack of career paths for juvenile defenders
- General lack of respect for or understanding of what we do with the public at large
- Even in professional organizations, being overlooked or viewed as a side issue

Ineffective Assistance of Counsel: Systemic Causes, Systemic Solutions

Effective Assistance in Juvenile Delinquency Defense Requires:

- ✓ Criminal Law (what does and does not apply; e.g., confessions; witness corroboration, time credits)
- ✓ Juvenile Law (cases, statutes, court rules; unique motions, e.g., fitness, incapacity, competence)
- ✓ Ethical Duties (expressed interests not best interests; confidentiality)
- ✓ Trial and Appellate Skills
- ✓ Investigation/Building Case Strategy
- ✓ Working with Experts, Consultants
- ✓ Adolescent Development, Brain Science (both for the defense & working with clients)
- ✓ Rehabilitation – What It Is and How to Get It
- ✓ Collateral Consequences
- ✓ Post-Disposition Advocacy (modifications, violations, sealing)

Ineffective Assistance of Counsel: Systemic Causes, Systemic Solutions

Effective Juvenile Delinquency Representation Helps to Prevent:

- Wrongful conviction
- Formal wardship when informal resolution would suffice
- Unnecessary incarceration
- Unrecognized mental health or educational issues that could have been addressed
- Findings of unfitness for juvenile court treatment
- Inappropriate disposition
- Violations stemming from inadequacies of service providers
- Re-entry without support
- Preventable collateral consequences
- Unchallenged legal errors
- Unchecked systemic problems that need correction

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Survey of Training & Practice Resources for California Delinquency Counsel

- ✓ 45% had no juvenile specific training before representing youth in court
- ✓ Of those with some specific training, 43% received one day or less
- ✓ 50% work in offices that do not provide ongoing delinquency training
- ✓ 70% work in offices with no practice manual or do not know if one exists
- ✓ 82% work in offices that lack practice standards or do not know if standards exist

[Surveys of more than 200 juvenile defense counsel from 38 counties in 2010]

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Lack of Guidance for Non-Defender Appointed Counsel

- Most counties use generic contracts used for other kinds of cases
- Fewer than 1 out of 4 appointed delinquency counsel contracts in California include:
 - ✓ Duty of confidentiality/role of counsel
 - ✓ Scope of work
 - ✓ Post-disposition duties
 - ✓ Experience
 - ✓ Delinquency specific training requirements

[Compiled from June 2010 Public Information Act request to the 58 California counties; 56 responses]

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Current Efforts to Address Training Needs:

- SB 166 (Liu) calls for Judicial Council to develop training requirements for appointed delinquency counsel to be fulfilled within the MCLE requirements
- PJDC is applying for funding to develop an entry level training program that would meet the requirements of SB 166, as well as increasing capacity for ongoing training
- The net effect will be to increase the availability of training for beginning lawyers and for underserved parts of the state

Ineffective Assistance of Counsel: Systemic Causes, Systemic Solutions

Resource Issues: Does Compensation Cover Expected Activities?

Compensation in California Delinquency Counsel Contracts:

- ✓ Most are flat fee or lump sum systems
- ✓ Hourly Compensation – 14 counties
- ✓ Fee Schedule for Delinquency Cases – 6 counties

Ineffective Assistance of Counsel: Systemic Causes, Systemic Solutions

Example: Los Angeles County Fee for South Central Indigent Panel:

\$319 per case*

Covers "investigation of cases, interview and preparation time, all necessary court appearances, all progress reports and change of plan reports for juveniles, hearings, motions, court waiting time, and trials at the trial court level and for writ proceeding [sic] and the filing of any notice of appeal that may be required...including legal research, preparation of documents, secretarial and clerical support services, administrative services including payment of all attorneys, investigators, and other staff and travel."**

* Contract Amendment and Extension for Nov. 2010 through Oct. 2011. For the same period, other Los Angeles Panels paid as much as \$345 per case.
** Language from the Compton Juvenile Court contract (for the South Central Indigent Panel)

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What Needs to Be Done to Address Resource Issues:

- Public education about what is involved in juvenile defense, and how it benefits the community
- Policy and legislative advocacy to assure adequate resources – this is a systemic issue – in defender offices, contract offices and panels
- Example: As a result of media attention and Board of Supervisor's inquiries, LA is currently auditing juvenile indigent defense services with an eye to re-evaluating its system

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Professional Challenges in Defender Agencies

- ✓ Not viewing juvenile defense as a specialty
- ✓ Not valuing juvenile defense in office hierarchies
- ✓ Failing to provide a career path for juvenile specialists & limiting advancement
- ✓ Failing to provide juvenile specific training and resources
- ✓ Failing to provide appellate support
- ✓ Failing to provide holistic & post-disposition representation

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What Needs to Be Done Within Defender Agencies

- Better documentation of what juvenile defenders do
- Evaluation of how holistic representation improves outcomes & saves \$ for the office
- Increased communication with adult attorneys on issues where juvenile issues overlap – e.g., juvenile tried as adults
- Recognition of National Juvenile Defender Standards and Los Angeles Practice Standards as the guiding force in resources and training
- Advocacy for parity in pay, status, and career paths

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