



April 7, 2008

California Commission on the Fair Administration of Justice
Attn: John Van de Kamp, Chair
900 Lafayette Street, Suite 608
Santa Clara, California 95050

Re: Resource Disparities Between Prosecution and Defense in California

Dear Mr. Van De Kamp:

We appreciate the ongoing opportunity to contribute to the California Commission on the Fair Administration of Justice. We understand that the Commission continues to discuss its recommendations regarding indigent defense. We are therefore submitting this letter providing additional information about the resource disparity between prosecutors and public defenders in California. This research provides a level of detail regarding the disparities in monetary and human resources not provided in Professor Benner's report. We hope this additional data is of assistance to the Commission in deciding what types of reforms are needed.

I. Summary of Findings

Professor Benner's research demonstrated to the Commission an overall budget disparity between Public Defender and District Attorney offices throughout California. His research, however, did not provide a means of assessing the actual workload of each office, to allow a more detailed comparison between offices, nor did he review the detailed budgets of the offices. Our research picks up where Professor Benner left off, assessing the resource disparity in terms of the number of felony cases handled by each office. Further, our research includes analysis of the detailed budgets of the offices, allowing us to identify those program areas within the overall budget with the greatest disparities. The data from six counties is analyzed in this letter.

Our analysis of this data led us to five findings:

- 1) There is a significant imbalance between the overall budgets of District Attorney and Public Defender offices, when viewed in light of the number of felony cases handled by each office.

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- 2) Public Defender offices have far more felony cases per attorney than their District Attorney counterparts.
- 3) The greatest staffing disparity is in investigators: Public Defender offices have far more felony cases per investigator than their District Attorney counterparts.
- 4) In some counties, Public Defender offices are given a fraction of the resources that District Attorney offices are given for professional services.
- 5) The extent of the resource imbalance between prosecution and defense varies significantly between counties, and depending on what type of resources are considered.

Each of these findings is discussed below.

II. Survey Methodology

In late 2007 and early 2008, the ACLU-NC sent Public Record Act requests to 11 counties in California requesting the detailed budgets, actual expenditures, staffing levels, and office-wide felony caseloads for the District Attorney, Public Defender, and any other county program providing indigent defense. Our goal was to identify in particular the attorney and investigator staffing levels for each department and the amount available for “professional services” such as expert witnesses. We also requested the number of felony cases handled by each office in the past year, to compare the resources of prosecutor and defense offices in light of their respective workloads.

In response, we received a wide range of documents with varying levels of detail. In most cases, the Auditor-Controller of the county provided the records to us. Some of our requests were transferred to the District Attorney and Public Defender offices, who submitted the responsive documents directly to our office. In total, we received and reviewed several hundred pages of documents.

After reviewing the records, we concluded that it would be difficult to compare the data provided for indigent defense programs outside of county Public Defender or Alternate Defender offices with the other data provided. The budget records provided for the contract or panel programs for indigent defense services varied significantly in form and content from the documents provided for the offices of the District Attorney and Public Defender within the county. These records also varied significantly across the counties.

In addition, although we received records from all 11 counties requested, we found that in five counties, the materials provided lacked the level of detail needed for comparison. For example, the Alameda County Public Defender was only able to provide a figure for felony cases handled by the office that includes probation violations, while the District

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Attorney provided a figure for new felony cases filed, excluding probation violations. We continue to seek the additional data needed to complete our analysis for all 11 counties. However, knowing that the Commission must soon finalize its report, we have decided to provide you with the information we have available now.

This letter therefore summarizes and compares the information provided for the District Attorney and Public Defender offices¹ in six counties: Los Angeles, Orange, Sacramento, Santa Clara, Tulare, and Ventura. For these six counties, the data provided allowed us to determine what percentage of new felony cases filed by the District Attorney are handled by the Public Defender in each county. This provided a means of comparing the overall office budgets, to determine if each office received comparable resources based on the office-wide felony case load. We also calculated the number of felony cases per attorney and per investigator in the District Attorney and Public Defender offices.² This calculation provided a way of comparing the staffing levels of the two departments within a county and between counties. Finally, the detailed budgets also allowed us to compare the resources available for professional services. "Professional services," as used here, refers to that portion of the budget that provides for the hiring of outside contractors and consultants, such as expert witnesses.

Exhibits A and B show the raw data for each county of the six counties. For each county and office, the data reflects the most recent twelve-month accounting period between the years 2005 and 2008.³

III. Detailed Findings

- 1) There is a significant imbalance between the overall budgets of District Attorney and Public Defender offices, when viewed in light of the number of felony cases handled by each office.**

In all six counties, Public Defender offices represented clients in the majority of felony cases but did not receive equivalent resources as the District Attorney, based on the number of felony cases handled. The percentage of new felony cases filed by the District Attorney that are handled by the Public Defender in each of the six counties varied significantly, from a low of 72 percent in Tulare, to a high of 89 percent in Santa Clara. On average, Public Defender offices handled 82 percent of the felony cases filed by the District Attorney. Based on these office-wide felony case loads, the overall budget disparities range from a low of only 11 percent in Tulare, to a high of 58 percent in

¹ Santa Clara County tracks budget and caseload information for its Public Defender and Alternate Defender offices together. For this county, we compare the combined data from both offices to the county District Attorney.

² Note that this calculation does not represent the number of felony cases actually handled by individual attorneys since many attorneys in each office work on other types of cases.

³ Note that not all counties use the same twelve-month accounting period. Most counties use a July 1-July 1 fiscal year but some use a calendar year for accounting.

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Sacramento. On average, the budgets for Public Defender offices were 35 percent below what they would be if the office received comparable funding to the District Attorney in the county. The Public Defender offices in this sample worked at an average disadvantage of \$37 million.

Chart 1

County	Felony Cases Filed by DA in which PD is appointed	PD Budget as Percentage of DA Budget	Overall Resource Disparity Based on Felony Cases
Santa Clara	89%	41%	48 % or \$46 million
Sacramento	87%	29%	58%, or \$55.6 million
Tulare	72%	61%	11%, or \$1.5 million
Los Angeles	80%	54%	26%, or \$74.8 million
Orange	87%	57%	30%, or \$31.7 million
Ventura	78%	39%	39%, or \$13 million
AVERAGE	82%	47%	35%, or \$37 million

2) Public Defender offices have far more felony cases per attorney than their District Attorney counterparts.

The Public Defender offices of these counties have far fewer attorneys than the District Attorney offices, when judge based on their office-wide felony case loads. As Chart 2 reveals, attorneys at Public Defender offices have an average of 34 percent more cases than prosecutors. Again, there is significant variation between the counties. In Los Angeles, the imbalance is only 10 percent, while in Santa Clara, the Public Defender office handles 64 percent more felony cases per attorney.

Chart 2

County	DA: Felony Cases Per Attorney	PD: Felony Cases Per Attorney	Imbalance
Santa Clara	58.7	96.1	64% more cases
Sacramento	64.4	95.1	48% more cases
Tulare	84.9	104.9	24% more cases
Los Angeles	68.4	75.4	10% more cases
Orange	66.3	83.9	27% more cases
Ventura	52.8	69.6	32% more cases
AVERAGE	65.9	87.5	34% more cases

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- 3) The greatest staffing disparity is in investigators: Public Defender offices have far more felony cases per investigator than their District Attorney counterparts.**

The imbalance between investigator staffing in District Attorney and Public Defender offices is astounding. As shown in Chart 3, investigators at Public Defender offices have, on average, 268 percent more cases than investigators working for District Attorneys. In not one of the counties did the imbalance fall below 150 percent and in Los Angeles, the county with the lowest imbalance when measured by attorney staffing, the investigator imbalance is the highest at 470 percent.

Chart 3

County	DA: Felony Cases Per Investigator	PD: Felony Cases Per Investigator	Imbalance
Santa Clara	117.3	380.7	225% more cases
Sacramento	100.1	411	311% more cases
Tulare	139.6	410	194% more cases
Los Angeles	231.7	701.7	470% more cases
Orange	93.2	231.2	148% more cases
Ventura	87.6	328.8	257% more cases
AVERAGE	128.3	410.6	268% more cases

- 4) In some counties, Public Defender offices are given a fraction of the resources that District Attorneys offices are given for professional services.**

In four counties, Public Defender offices are given far less for professional services than are District Attorneys. Chart 4 shows that Public Defenders spend an average of 50 percent less on professional services than do District Attorneys, even though on average, they handle 82 percent of the felony cases filed by the District Attorney. This average, however, may be unduly impacted by the immense disparity in professional services in Santa Clara County where the Public Defender's Office receives only .55 percent of the amount the District Attorney does for professional services. In contrast, two counties—Tulare and Orange—provided more resources for professional services to the Public Defender than to the District Attorney.

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Chart 4

County	PD Budget for Professional Services as Percent of DA Budget	Imbalance
Santa Clara	0.55%	89%, or \$3 million
Sacramento	31%	56%, or \$1 million
Tulare	107%	-35%, or -\$74,912
Los Angeles	8.00%	72%, or \$2 million
Orange	97%	-10%, or -\$291,800
Ventura	57%	21%, or \$1 million
AVERAGE	50%	32%, or \$1.1 million

5) The extent of the resource imbalance between prosecution and defense varies significantly between counties in California and depending on what type of resources are considered.

While none of the counties surveyed provided equal funding for indigent criminal defense and prosecution, the degree of the disparity varies significantly between counties. Santa Clara and Sacramento measured imbalances of 48 percent or greater in each of the four categories reviewed above. Tulare County showed the lowest overall level of disparity and in fact provided significantly more resources for professional services to the Public Defender. Still, the Tulare Public Defender's Office has half the investigators that the District Attorney's Office does based on number of felony cases handled. Likewise, Los Angeles County approaches parity in attorney staffing, but has the largest imbalance in investigator staffing.

V. Conclusion

The results of our research indicate that, overall, there is a significant disparity in the resources available for the prosecution and the defense when viewed in light of the respective office-wide felony case loads. The level of disparity varies from county to county and based on the type of resource considered. The disparity in investigator staffing is particularly shocking.

We urge the Commission to recommend reforms that will establish overall funding parity between prosecution and defense, based on the actual workload of each office. We further urge the Commission to consider reforms that require parity in key office programs including attorney and investigator staffing and professional services. Ensuring equivalent resources in attorneys, investigators and necessary ancillary services between the prosecution and the defense is critical to ensuring that the innocent are protected from wrongful conviction, no matter how poor they maybe.

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Please feel free to contact me if you wish to discuss this data or need copies of any of the documents were reviewed.

Thank you again for the continuing opportunity to contribute to your important work.

Sincerely,

A handwritten signature in black ink, appearing to read "N. Minsker". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

Natasha Minsker
Death Penalty Policy Director

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Exhibit A
Budget Figures

Los Angeles County

Expenditures (2007)	District Attorney	Public Defender
Overall	\$287,758,276	\$155,380,007
Professional Services	\$2,845,501	\$215,994

Orange County

Expenditures (2007-2008)	District Attorney	Public Defender
Overall	\$105,717,601	\$60,728,089
Professional Services	\$2,860,000	\$2,780,000

Sacramento County

Expenditures (2007-2008)	District Attorney	Public Defender
Overall	\$95,848,480	\$27,651,426
Professional Services	\$1,925,108	\$600,000

Santa Clara County

Expenditures (2008)	District Attorney	Public Defender & Alternate Defender
Overall	\$96,376,524	\$39,828,407
Professional Services	\$3,495,891	\$19,053

Tulare County

Expenditures (2008)	District Attorney	Public Defender
Overall	\$13,767,172	\$8,444,449
Professional Services	\$215,400	\$230,000

Ventura County

Expenditures	District Attorney	Public Defender
Overall (2007-2008)	\$33,731,663	\$13,314,372
Professional Services (2006)	\$476,015	\$270,126

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Exhibit B
Staffing Levels and Office-Wide Felony Case Loads

Los Angeles County

	District Attorney	Public Defender
Felony Cases Opened (2006-2007)	67,889	54,034
Attorneys on Staff (2006-2007)	992	717
Investigators on Staff (2006-2007)	293	77

Orange County

	District Attorney	Public Defender
Felony Cases Opened (2006-2007)	18,624	16,194
Attorneys on Staff (2007-2008)	281	193
Investigators on Staff (2007-2008)	200	70

Sacramento County

	District Attorney	Public Defender
Felony Cases Opened (2006-2007)	11,837	10,274
Attorneys on Staff (2006-2007)	184	108
Investigators on Staff (2006-2007)	118.3	25

Santa Clara County

	District Attorney	Public Defender & Alternate Defender
Felony Cases Opened (2007)	10,558	9,326
Attorneys on Staff (2007)	180	97
Investigators on Staff (2007)	117.3	24.5

Tulare County

	District Attorney	Public Defender
Felony Cases Opened (2007)	6,280	4,510
Attorneys on Staff (2007-2008)	74	43
Investigators on Staff (2007-2008)	45	11

Ventura County

	District Attorney	Public Defender
Felony Cases Opened (2007)	4,642	3,617
Attorneys on Staff (2007-2008)	88	52
Investigators on Staff (2006-2007)	53	11