

# Failing Gideon

Utah's Flawed County-By-County Public Defender System



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A Report By:

The American Civil Liberties Union of Utah





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## **Letter From the Executive Director**

When someone is arrested and charged with a crime, the right to counsel is one of the most fundamental rights the accused person has. This is true regardless of the person's wealth. As the United States Supreme Court has consistently held since rendering its famous decision in *Gideon v. Wainright* in 1963, the Sixth Amendment to the United States Constitution requires that states provide attorneys for all individuals who are accused of crimes and who are unable to afford their own lawyers.

Since 2008, the ACLU of Utah has been investigating whether the State of Utah is complying with this constitutional mandate. At the time our investigation began, we knew that Utah was one of only two states that provided no state funding for public defender services, and that Utah's county-by-county approach was funded, at a statewide per capita average, at less than 45% of the nationwide average. With the help of the University of Utah, S.J. Quinney College of Law Civil Rights Clinic and private sector cooperating attorneys, we delved deeply into each county's structure. The conclusion? Utah's county-by-county public defender system is failing, and in dire need of repair. With no funding, supervision or guidance from the state, counties are left to their own devices. In some counties, budgets for public defense are less than 20 percent of the monies allocated to the prosecution. In other counties, public defender caseloads are so high that they may have eight hours or less to handle each felony case. These factors, among others, place public defenders and their clients at a distinct disadvantage with significant inequalities. The result is not only a denial of justice to the poor, but also higher costs to the entire justice system.

We believe the statistics and stories that follow in this report amply demonstrate a pressing need to overhaul Utah's public defense system. We hope this information will serve to educate our public officials, members of the legal community, and the public about the failings of our current system so as to inspire the commitment to bring about the necessary reforms to make Utah's public defense system constitutionally sound.

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## **EXECUTIVE SUMMARY**

*"[R]eason and reflection, require us to recognize that, in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth."*

*- Gideon v. Wainwright, 372 U.S. 335, 344 (1963).*

### **Part I: *Gideon v. Wainwright* and the Right to Counsel**

The United States Constitution is the supreme law of the land protecting all citizens of the United States and all those residing within it. It is against that backdrop that our individual rights must be considered and protected.

In the popular culture of the United States, we are generally familiar with the Fourth Amendment (the right against unreasonable searches and seizures), the Fifth Amendment (the right against compelled self-incrimination), and—of course—the First Amendment (protections for freedom of speech and the press, and to freedom of religion). Although we are generally less familiar with the Sixth Amendment, the rights it protects are no less important (U.S. Const., amend. VI (emphasis added)<sup>1</sup>):

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Supreme Court has interpreted the Sixth Amendment to guarantee, among other rights, the right to state-appointed attorneys for all individuals accused of state crimes<sup>2</sup> who face the possibility of incarceration if convicted of the crimes with which they are charged.<sup>3</sup> *Gideon v.*

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<sup>1</sup> Like the United States Constitution, the Utah State Constitution provides: "In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel . . ." Utah Const. art. I, § 12.

<sup>2</sup> *Gideon* dealt only with the right to counsel in state criminal prosecutions. Years earlier, in *Johnson v. Zerbst*, 304 U.S. 458 (1938), the Supreme Court concluded that indigent defendants accused of crimes in federal court were entitled to court-appointed counsel.

<sup>3</sup> Two other cases decided by the Supreme Court in 1972, *Argersinger v. Hamlin*, 407 U.S. 25, and 2002, *Alabama v. Shelton*, 535 U.S. 654, respectively, affirmed that the Sixth Amendment guarantee of counsel encompasses the appointment of counsel for individuals accused of misdemeanors in state court, even if the jail sentence to be imposed is later suspended.

*Wainwright*, 372 U.S. 335, 344 (1963) (noting that, although “[t]he right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, . . . it is in ours”).

Where the accused individual is too impoverished to retain and pay for his own attorney, the Supreme Court has recognized that it is incumbent on the state to provide counsel. See *Gideon*, 372 U.S. at 344. As the *Gideon* Court recognized (*id.*):

From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

Relying on language from *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932),<sup>4</sup> a case establishing the right to appointed counsel in capital cases, the *Gideon* Court explained:

Even the intelligent and educated layman has small and sometimes no skill in the science of law. . . . Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the

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<sup>4</sup> *Powell v. Alabama* is also infamously known as the Scottsboro Boys case. The “Scottsboro Boys” were nine black teenage boys accused of raping two white women in Alabama in 1931. They were tried together in front of an all-white jury only twelve days after their arrest. “[U]ntil the very morning of the trial, no lawyer had been named or definitely designated to represent the defendants.” *Powell*, 287 U.S. at 56. On the morning of trial, all defendants were deemed to be represented by two attorneys who were inexperienced in criminal law and, in any event, were given no time to investigate or otherwise to prepare an adequate defense. *Id.* at 57. Eight of the nine defendants were convicted and sentenced to death. *Id.* at 50. Conceding that the Sixth Amendment guaranteed the right to counsel, *id.* at 66, the Supreme Court reversed the convictions on the additional ground that due process had been violated by defense counsel’s lack of time and opportunity to prepare an adequate defense. *Id.* at 71 (“[U]nder the circumstances just stated, the necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of counsel was likewise a denial of due process within the meaning of the Fourteenth Amendment.”).

danger of conviction because he does not know how to establish his innocence.

The Supreme Court has also held that state- or court-appointed attorneys may not be just anyone, with any set of skills (or lack thereof). Instead, “the right to counsel is the right to the effective assistance of counsel.”<sup>5</sup> *Strickland v. Washington*, 466 U.S. 668, 686 (1984) (emphasis added) (citing *McMann v. Richardson*, 397 U.S. 771 n.14 (1970)); *see also Cuyler v. Sullivan*, 446 U.S. 335, 344 (1980) (“The right to counsel prevents the States from conducting trials at which persons who face incarceration must defend themselves without adequate legal assistance.” (emphasis added)).

The constitutional mandate is clear and cannot be gainsaid: individuals who are accused of committing crimes for which jail time might be assessed are entitled to appointment, by the state, of constitutionally adequate, effective public defenders. And this right matters to more than just a few people; some estimate that as many as four out of every five people accused of crimes are eligible for court-appointed counsel.<sup>6</sup>

## **Part II: Public Defense Systems in Utah and Elsewhere**

There are three primary models for the provision of public defense services in the United States: (i) public defender offices, which have full- or part-time salaried employees who provide public defense services, often from a single, centralized office with support staff and supportive resources (e.g., Salt Lake County, Utah County); (ii) assigned counsel, who are private sector attorneys appointed as necessary on a case-by-case basis, usually with an agreement that they will be paid hourly (e.g., Daggett County); and (iii) contract counsel, who are private sector attorneys selected to provide on-going public defense services on a contract basis for a set contractual fee. Most Utah counties follow the contract counsel model.

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<sup>5</sup> Although seemingly simple on its face, enforcing the requirements of “effectiveness” and “adequacy” has proven difficult. Even in cases where counsel have been caught sleeping or using drugs in court, or shown up admittedly unprepared, courts have been loathe to find that the services provided by counsel were constitutionally “ineffective.” *See* David Cole, *No Equal Justice: Race and Class in the American Criminal Justice System* (NY, NY: The New Press 1999), at 78-79, *cited in* Justice Policy Institute, *System Overload: The Costs of Under-Resourcing Public Defense* (July 2011) (“2011 JPI Report”), at 3 & n.15, *available at* <http://www.justicepolicy.org/research/2756> (last visited Aug. 11, 2011).

<sup>6</sup> *See* 2011 JPI Report, *supra* note 5, at 2 & n.3 (citing, in turn, Scott Wallace & David Carroll, *Implementation and Impact of Indigent Defense Standards* (Wash., D.C.; Nat’l Legal Aid & Defender Ass’n 2003), at i, *available at* [www.ncjrs.gov/pdffiles1/nij/grants/205023.pdf](http://www.ncjrs.gov/pdffiles1/nij/grants/205023.pdf) (last visited Aug. 11, 2011)).



Although the constitutional obligation to provide adequate, effective attorneys rests with the state, the State of Utah fails to live up to its constitutional obligation. We are not the first to draw this conclusion; almost 20 years ago, a task force commissioned by the Utah Supreme Court found that there was such “a significant problem with inconsistent appellate representation of indigents,” that it recommended the creation of a statewide appellate public defenders’ office.<sup>7</sup> Utah never adopted that recommendation, and what we found (*see* discussion *infra* at pp. 12-84 & Appendix A hereto) indicates that its commitment to trial-level public defender services is no better.

Utah is one of only two states in the United States—Pennsylvania is the other—that provides no state funding or oversight of public defense services within the state.<sup>8</sup> Instead, in what is essentially an unfunded mandate, Utah requires that each of its 29 counties bear the full financial and administrative responsibility for providing constitutionally adequate public defense services to those who require them. *See* Utah Code Ann. § 77-32-301 (stating that “[e]ach county, city, and town shall provide for the defense of an indigent . . .”). With no state support or oversight, counties in Utah spend an average of only approximately \$5.22<sup>9</sup> per capita on public defense services, which is only 44 percent of the national average of \$11.86.<sup>10</sup>

County-, as opposed to state-, based funding of public defender services is “often criticized because it can create ‘patchwork’ systems in

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<sup>7</sup> Judicial Council, Task Force on Appellate Representation of Indigent Defendants, Final Report (Sept. 14, 1994), at 2, 5. A second Appellate Task Force was formed in 2008 (“2008 Appellate Task Force”). *See* Judicial Council, Study Comm. on Appellate Representation of Indigent Criminal Defendants, Final Report (Jan. 6, 2011) (“2011 Utah Appellate Task Force Report”), at 1. The 2011 Utah Appellate Task Force Report again found significant problems with Utah’s provision of public defender services on appeal, *see, e.g., id.* at 3-4 (summarizing task force findings and recommendations), and the work of the task force encouraged the Judicial Council to commission a similar group to study trial-level public defender services.

<sup>8</sup> Nat’l Legal Aid & Defender Association, *Gideon’s Unfulfilled Promise: The Right to Counsel in America* (Jan. 31, 2008) (draft report) (“Gideon Unfulfilled”), at 9 (on file with the ACLU of Utah). This is so despite the fact that many states, post-*Gideon*, “have been moving towards full or greater statewide funding, recognizing that statewide funding structures offer a number of advantages.” *See* 2011 JPI report, *supra* note 5, at 4.

<sup>9</sup> Nat’l Legal Aid & Defender Association, *A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis* (2008) (“2008 NLADA Report”) at iii, *available at* [http://www.mynlada.org/michigan/michigan\\_report.pdf](http://www.mynlada.org/michigan/michigan_report.pdf) (last visited July 3, 2011).

<sup>10</sup> *See id.* at 7. Admittedly, relying on per capita estimates is an imperfect measure, as it necessarily overvalues monies spent in counties with high numbers of transient workers, visitors, and others. So, for example, using the per capita measure in a place like Uintah County, which has high numbers of transient oil field and other seasonal workers, may create the impression that the public defense system is more adequately funded than it really is.

which access to justice could depend on which side of the county line a person is arrested.”<sup>11</sup> And the problem of “patchworks” extends far beyond just money. Although the Utah Code of Criminal Procedure sets forth minimum standards for public defense—including, for example, that the state “afford timely representation by competent legal counsel,” “provide the investigatory resources necessary for a complete defense,” and “assure undivided loyalty of defense counsel to the client,” *see* Utah Code Ann. § 77-32-301(2)-(4)—few, if any, of the counties studied in this report have in place any systems to monitor whether those minimum standards are being satisfied, let alone systems for corrective action if they are not. The State of Utah, perhaps not surprisingly, is wholly absent from that process.

### **Part III: Methodology of This Report**

In 2008, the ACLU of Utah sent public information requests under the Utah Government Records Access and Management Act, 63G-2-101, *et seq.*, to each of Utah’s 29 counties.<sup>12</sup> Each GRAMA request sought information pertaining to the county’s individualized system for providing public defense, including:

- Qualifications for public defenders;
- Procedures for advertising and evaluating bids for public defender contracts;
- Public defender contract terms;
- Public defense budgets; and
- Systems to track public defender caseloads, quality of services provided, and actual or potential conflicts of interest.

We requested similar information from each County Attorney’s office so that we could compare resources between the two.<sup>13</sup>

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<sup>11</sup> *See* 2011 JPI Report, *supra* note 5, at 4 & n.21 (citing April 27, 2011, telephone interview with James Neuhard, Former Director of the State Appellate Defender Office of Michigan). Michigan’s constitutionally deficient public defense system is under legal challenge by the ACLU of Michigan in a case entitled *Duncan v. Michigan*. Information on that case is available at <http://www.aclu.org/racial-justice/duncan-et-al-v-state-michigan-executive-summary> (last visited Aug. 5, 2011). Similar lawsuits have been brought by various ACLU affiliates in, for example, Montana, *see* <http://www.aclu.org/racial-justice/aclu-files-class-action-lawsuit-against-montanas-indigent-defense-program> (last visited Aug. 5, 2011), and New York, *see* <http://www.nyclu.org/node/1483> (last visited Aug. 5, 2011) and <http://www.nytimes.com/2010/03/16/nyregion/16defenders.html?scp=1&sq=%22public%20defenders%22&st=cse> (last visited Aug. 5, 2011).

<sup>12</sup> A sample ACLU of Utah GRAMA request from 2008 is attached to this report in Appendix B.

<sup>13</sup> Our desire to compare the two is hardly surprising. As the Supreme Court noted in *Gideon*, the significant monetary resources spent on prosecutors and, where possible, criminal

After analyzing the documents received in connection with our 2008 GRAMA requests, we realized that an analysis of all 29 counties would be unwieldy, at best. We decided instead to analyze the public defender systems in a smaller, but diverse, array of counties<sup>14</sup>: Box Elder County, Daggett County, Duchesne County, Iron County, Kane County, San Juan County, Sevier County, Uintah County, and Weber County. We also began the process of increasing public awareness of the problems we saw as we examined public defender systems across the state.<sup>15</sup>

In 2009, to ensure that we had the most updated information possible, we—now in cooperation with the University of Utah, S.J. Quinney College of Law Civil Rights Clinic (under the supervision of Associate Professor of Law Emily Chiang)—sent each county a second GRAMA request, and followed up in some counties with additional correspondence in 2010.<sup>16</sup> We also relied on publicly available information such as county commission board minutes, public officials' salaries, and budget information filed annually by the counties with the State Auditor's Office. We conducted interviews and observed court proceedings in the targeted counties, and sent additional public information requests to third parties, such as the Utah Administrative Office of the Courts. We also obtained and analyzed hundreds of reports from Utah residents who had received public defender services in the various counties.<sup>17</sup>

We then compiled and compared all the data against information from other states describing their public defender systems, and published reports assessing the pros and cons of various forms of public defender systems throughout the country. We also assessed the information we

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defense attorneys reflect vital truths about our criminal justice system. *See* 372 U.S. at 344 (“That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries.”). Our comparison of the budgets of public defenders who defend against criminal accusations versus the county attorneys who prosecute them was, in a word, alarming. *See* discussion *infra* at pp. 7-10 & Appendix A.

<sup>14</sup> We felt strongly that demographic diversity was important. We realized, for example, that to look only at Davis, Summit, and Weber Counties would necessarily skew the data toward problems inherent in urban areas, while to ignore them completely in favor of more rural counties such as Carbon, San Juan, and Wayne would skew the data in the opposite direction. We also wanted to analyze the public defender systems in counties from throughout the state, rather than, for example, only those on the Wasatch Front.

<sup>15</sup> *See, e.g.,* Marina Lowe, *Indigent Defense in Utah: Constitutionally Adequate?*, Utah Bar Journal (Utah Bar Ass'n, Nov./Dec. 2009).

<sup>16</sup> A sample ACLU of Utah GRAMA request from 2009 is attached to this report in Appendix B.

<sup>17</sup> Although anecdotal, we found these reports to be helpful evidence when assessing the on-the-ground effects of each county's public defense system.

collected against, for example, published reports analyzing funding of public defense nationwide,<sup>18</sup> and national standards for public defense systems such as the American Bar Association's ("ABA") Ten Principles of a Public Defense Delivery System<sup>19</sup> and the U.S. Department of Justice National Advisory Commission ("NAC") standards for public defender caseloads.<sup>20</sup>

#### **Part IV: Summary Results**

What we saw confirmed that our initial concerns were well-founded: in every county we studied, the public defender system fails *Gideon* in almost every (if not every) respect.

Public defenders in the counties we studied appear to be chronically underfunded and overworked, with some handling caseloads that, based on the contract fee, result in \$400 (or less) per felony or felony equivalent.<sup>21</sup> Those same caseloads may result in an average of less than 10 hours to spend on each such case.<sup>22</sup> And those figures don't (and can't) fully account for either the non-case-related expenses that these public defenders must deduct from their contract fee for overhead and other costs (such as

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<sup>18</sup> See, e.g., 2008 NLADA Report, supra note 9; 2011 JPI Report, supra note 5; Gideon Unfulfilled, supra note 8.

<sup>19</sup> See American Bar Association, Ten Principles of a Public Defense Delivery System (Feb. 2002) ("ABA Ten Principles"), at 1, available at <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf> (last visited July 4, 2011).

<sup>20</sup> NAC guidelines state: "[T]he caseload of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25." U.S. Dept. of Justice, Nat'l Advisory Comm'n on Criminal Justice Standards & Goals, Task Force on Courts, Courts § 13.12 (1973).

<sup>21</sup> "Felony equivalent" case totals were derived by dividing the attorney's misdemeanor caseload by 2.66 (the relative felony weight under standards promulgated by NAC) and adding that number to the attorney's felony caseload. "Other" or "miscellaneous" cases are not included in the NAC felony equivalent for lack of a standard weight, but they are included in the "Total Cases" calculation.

<sup>22</sup> As one study notes: "One of the single most important impediments to the furnishing of quality defense services for the poor is the presence of excessive caseloads. . . . Unfortunately, not even the most able and industrious lawyers can provide quality representation when their workloads are unmanageable. Excessive workloads, moreover, lead to attorney frustration, disillusionment by clients, and weakening of the adversary system." American Bar Association, Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (revised ed. Feb. 2003) ("ABA Guidelines For Death Penalty Cases"), at 39 (quoting American Bar Association Standards For Criminal Justice: Providing Defense Services, Standard 5-5.3 cmt. (3d ed. 1992)), available at [http://www.nacdl.org/sl\\_docs.nsf/issues/ABADPGuidelines/\\$FILE/ABA\\_DPGuidelines2003.pdf](http://www.nacdl.org/sl_docs.nsf/issues/ABADPGuidelines/$FILE/ABA_DPGuidelines2003.pdf) (last visited July 4, 2011).

insurance or continuing education) or for the additional civil or other matters they might handle outside their criminal docket.

Moreover, after comparing each county's public defense budget against the budget for the various county attorneys, we found staggering discrepancies. Public defender budgets routinely fall in the range of 25-35 percent of the county attorneys' budgets, with little or no monies set aside in the public defense budgets for investigative, expert, or other resources necessary to build an adequate defense in many cases. A full budget comparison for all nine counties included in this report is contained in Appendix A. Not surprisingly, chronic underfunding of public defense systems can, in the end, generate additional, hidden costs to the taxpayers in the form of over-incarceration both pre- and post-trial, increased pressure to plead guilty, and wrongful convictions.<sup>23</sup>

Note, as well, that this already-alarming resource disparity doesn't take into account the numerous non-budgeted resources available to county attorneys, but not to public defenders, in support of the counties' criminal prosecutions. Those resources include, but are not limited to: ready access to law enforcement; state-funded forensic services; expert witnesses; state-funded prosecutors for juvenile and certain other cases; and free or low-cost continuing legal education classes provided by the Utah Prosecution Council and others. In addition, there are potentially substantial funds available to the various county attorneys' offices through the Utah Statewide Association of Prosecutors.

Equally troubling, in many counties we examined, we learned that the county attorney (or other potentially biased individual) has a hand in selecting which attorneys will be awarded the public defender contracts. We further learned that, in every county we examined, there are no formal systems in place to track public defender caseloads, monitor performance, screen for conflicts of interest, or otherwise to oversee the on-going provision or quality of public defender services.

Finally, in no county we studied were there sufficient (if any) minimum qualifications or criteria to actually be a public defender. As a result, some of the public defenders we saw are extremely new to the practice of law, e.g., 2-3 years out of law school, which means they have little to no prior experience with criminal (or any other) law, and some have produced such dubious work product as to have been repeatedly chastised by the courts.

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<sup>23</sup> See, e.g., 2011 JPI Report, supra note 5, at 18-27.

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When comparing these nine Utah counties against the ABA's Ten Principles, it is not hard to see why a 2008 national report determined that Utah was rightfully placed in the author's lowest possible category, "Gideon Ignored."<sup>24</sup> Indeed, as viewed against each and every of the Ten Principles, the realities of Utah's county-by-county public defender system indicate systemic failure:

<b>ABA PRINCIPLE</b>	<b>UTAH REALITY</b>
1- The public defense function, including the selection, funding, and payment of defense counsel, is independent.	County attorneys routinely help select public defenders, and may also help negotiate the terms of their contracts.
2- Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.	There are no systems in place to track caseloads, and thus little to no ability to engage the private bar when necessary.
3- Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.	We were advised that clients often wait weeks for even initial meetings with their public defenders, and that those meetings often occur at the courthouse in the 5-10 minutes before court appearances.
4- Defense counsel is provided sufficient time and a confidential space within which to meet with the client.	See above.
5- Defense counsel's workload is controlled to permit the rendering of quality representation.	There are no systems in place to track caseloads or quality of representation.
6- Defense counsel's ability, training, and experience match the complexity of the case.	There are few, if any, written criteria or minimum qualifications for public defenders, and no on-going monitoring of ability or training.
7- The same attorney continuously represents the client until completion of the case.	Unknown.
8- There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.	Resource disparities are significant, with county attorneys routinely receiving 3-5 times the budget allocated to public defense.
9- Defense counsel is provided with and required to attend continuing legal education.	There are no requirements for continuing education, and public defender contracts rarely include any monies set aside for that purpose.
10- Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.	There are no procedures in place to supervise public defenders, or to monitor the quality or efficiency of their services.

<sup>24</sup> See Gideon Unfulfilled, supra note 8, at 7.

Overall, we determined that, in most counties we studied, public defenders' caseloads are so high as to effectively preclude "timely representation" of their indigent clients. *See* Utah Code Ann. § 77-32-301(2). And, in many counties, those caseloads may also be so high as to render "competent" representation impossible—regardless of the dedication or skill of the public defender.

Similarly, there is a systemic deficiency in providing the "investigatory resources necessary for a complete defense," *id.* at § 77-32-301(3), and no systems whatsoever to ensure the "undivided loyalty of defense counsel to the client," *id.* at § 77-32-301(4).

Finally, because in none of the counties we studied were public defenders precluded from maintaining private practices, the counties' complete failure to monitor caseloads and conflicts may cause problems not just when the public defender has conflicts as between his court-appointed clients, but also when the public defender must weigh the needs of court-appointed clients against those clients who are willing and able to pay an hourly rate.

### **Part V: Conclusion**

As discussed above, and as more fully detailed below, the State of Utah's county-by-county public defense system is constitutionally inadequate. It places at risk not just the rights set forth in the Sixth Amendment of the United States Constitution and article I, section twelve of the Utah State Constitution, but also the lives and livelihoods of every single Utah resident who is accused of committing a crime and who cannot afford to retain private counsel.

The risks of such a deeply flawed system should not be viewed in the abstract. Consider what you would do if your daughter or son were charged with a felony—rightfully or wrongfully—and the case were assigned to a public defender who had only 10 hours to devote to the case, or whose compensation for the matter would come out to only \$400 no matter the outcome. And then ask yourself: would that be enough for you? Because if the answer is no, then your answer should similarly be "no" when Utah's underfunded, under-resourced, and under-managed county-by-county public defense system affects anyone's daughter, or anyone's son, anywhere in Utah.

Of course, recognizing the myriad problems presented by Utah's county-by-county public defense system is only the first step in formulating and implementing a solution. Certainly, the state must be held to the

constitutional mandate set forth in the Sixth Amendment and acknowledged in *Gideon*; the quality of justice meted out in the State of Utah's criminal courts cannot depend on the wealth of the accused, or on the location of her arrest or trial. But there are conceivably a number of approaches that could lead to crafting a solution of county and state involvement that would be responsive to Utah's political and geographic realities. Whether assistance from the state comes in the form of statewide standards and oversight of county or regional public defender offices, coupled perhaps with substantial funding allocated by the state to subsidize counties' public defense budgets, or in some other form, it cannot reasonably be disputed that assistance from the state, in one form or another, is necessary.

Hopefully, this report will add to—or, for some, spark the beginning of—important discussions by and among the stakeholders throughout the state who, like the ACLU of Utah, care deeply about finding a solution to Utah's constitutional failures.<sup>25</sup> This includes not only the elected officials and other political leaders who have the power to enact change, but also the judges, public defenders, prosecutors, private sector criminal defense attorneys, and others who—by sharing their observations and expertise—can help lead the way.

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<sup>25</sup> We note, for example, the on-going efforts of the current Judicial Council task force on trial-level public defense. *Supra* note 7. Those individuals—many of whom also served on the 2008 Appellate Task Force, *see id.*—reflect a diverse array of backgrounds and political interests. We believe they also share our goal of effecting significant, meaningful, and long-lasting changes to ensure that the State of Utah starts meeting its constitutional obligations under *Gideon*.



## **BOX ELDER COUNTY**

### **SUMMARY**

Box Elder County has a population of 49,975<sup>26</sup>; the largest city is Brigham City.<sup>27</sup> Box Elder County has a lower poverty rate (9.6%) than the Utah State average (11.7%).<sup>28</sup>

In fiscal year 2010 (July 1, 2009-June 30, 2010), 216 felonies and 74 misdemeanors were filed in the District Court for Box Elder County.<sup>29</sup> Another 1,343 misdemeanors were filed in the Box Elder County justice courts.<sup>30</sup>

Box Elder County, like all other counties in Utah, receives no money from the state for public defender services. Box Elder County spends only approximately \$3.43 per capita on public defense services,<sup>31</sup> which is 29 percent of the national average (\$11.86<sup>32</sup>) and 66 percent of the Utah state average (\$5.22<sup>33</sup>).

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<sup>26</sup> See 2010 U.S. Census estimates for Box Elder County, *available at* <http://quickfacts.census.gov/qfd/states/49/49003.html> (last visited June 7, 2011). Utah's total population in 2010 was 2,763,885. *Id.*

<sup>27</sup> See 2010 U.S. Census data for Brigham City (pop. 17,899), *available for search and download at* <http://quickfacts.census.gov/cgi-bin/qfd/demolink?49> (last visited June 4, 2011).

<sup>28</sup> See <http://www.ers.usda.gov/Data/povertyrates/PovListpct.asp?st=UT&view=Percent&longname=Utah> (last visited May 29, 2011) (printout on file with the ACLU of Utah).

<sup>29</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, First District Court for Box Elder County (July 1, 2009-June 30, 2010), *available at* [http://www.utcourts.gov/stats/files/2010FY/district/1-Box\\_Elder.pdf](http://www.utcourts.gov/stats/files/2010FY/district/1-Box_Elder.pdf) (last visited June 27, 2011).

<sup>30</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, Box Elder County Justice Court (July 1, 2009-June 30, 2010), *available at* [http://www.utcourts.gov/stats/files/2010FY/justice/1-Box\\_Elder.pdf](http://www.utcourts.gov/stats/files/2010FY/justice/1-Box_Elder.pdf) (last visited June 27, 2011). The justice courts for Box Elder County handle cases filed by several entities, e.g., Brigham City, in addition to Box Elder County, and many (if not most) justice court cases do not involve the appointment of counsel. We are advised that relatively few Box Elder justice court cases are filed by Box Elder County and thereafter assigned to the Box Elder County public defenders. That is likely true in other counties, as well.

<sup>31</sup> See 2010 Adopted Budget for Box Elder County at 2 ("Box Elder 2010 Budget"), *available for search and download at* <http://www.sao.state.ut.us/lgReports.html#> (last visited June 27, 2011); *see also* U.S. Census Bureau, State & County QuickFacts Box Elder County, Utah (Nov. 4, 2010), *available at* <http://quickfacts.census.gov/qfd/states/49/49003.html> (last visited June 27, 2011). In 2010, Box Elder County's estimated population was 49,975, which divided into the total public defense budget of \$171,500 equals \$3.43 per capita.

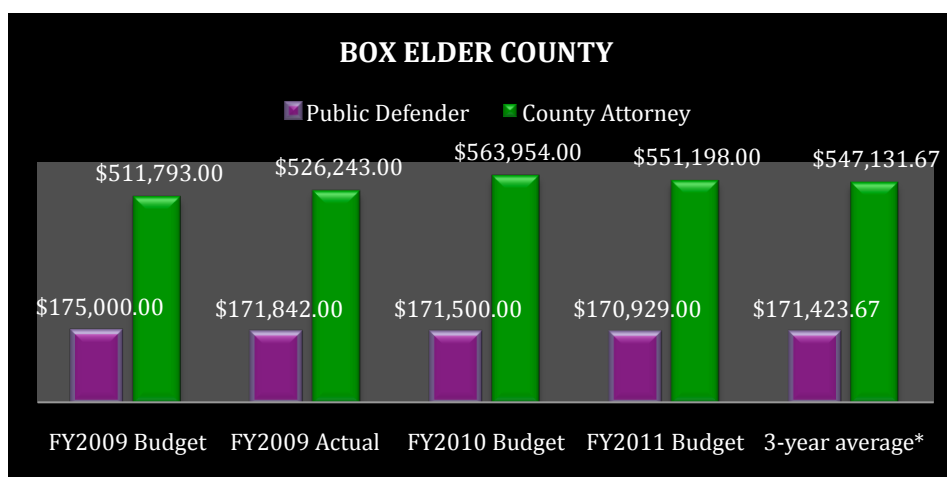
<sup>32</sup> 2008 NLADA Report, *supra* note 9, at 7.

<sup>33</sup> *See id.* at iii.

**Failing Gideon:** Utah’s Flawed County-By-County Public Defender System

Box Elder County contracts yearly with a private law firm, Ogden-based Allen, Richards & Pace, P.C. (“ARP”), for all public defense services.<sup>34</sup> The yearly contract amount is \$171,500, of which \$2,000 is designated for expenses.<sup>35</sup> This contract amount is intended to cover not only the defense attorneys’ time, but also their overhead expenses, continuing legal education costs, support staff, and other expenses necessary to put together an accurate and thorough defense.

By contrast, the County Attorney’s 2010 budget was \$563,954—nearly three times as much—including a line item reflecting a \$2,340 allowance solely for cell phone service.<sup>36</sup> Add to that the near unlimited access enjoyed by the County Attorney’s office to police officers and victim advocates (who often are allowed to testify as experts) and to state-paid-for forensic services, and one can reasonably estimate that the resources allocated to the County Attorney are likely closer to four times the amount of the public defender’s budget.



<sup>34</sup> See Attorney Agreement dated Nov. 18, 2008, produced in response to ACLU of Utah GRAMA request dated Sept. 15, 2009 (“Box Elder Attorney Agreement”) (on file with the ACLU of Utah). ARP is comprised of partners Bernard Allen, Randy Richards, and Jonathan Pace, and associate attorneys Brittany Brown and Jason Richards. See, e.g., <http://arplegal.com/> (last visited July 4, 2011). Bernard Allen, on behalf of the firm, provides much of the public defense services in Box Elder County. Randy Richards is a contract appellate attorney in Weber County and a former Weber County Public Defender. Jonathan Pace is a Weber County Public Defender handling juvenile cases. In addition to their public defense work, at least Messrs. Allen and Richards maintain active private practices, including private-client criminal defense work and varied civil matters.

<sup>35</sup> Box Elder 2010 Budget, supra note 31, at 2.

<sup>36</sup> *Id.* at 6-7.

When asked, Box Elder County could not provide any documentation demonstrating that it has in place any policies or procedures to guarantee that—or even to monitor whether—individual defendants in Box Elder County receive quality defense services.<sup>37</sup> For example, there are apparently no systems in place to screen for conflicts of interest, to track caseloads, or to ensure consistent and competent representation.<sup>38</sup>

To further compound this lack of oversight, the Box Elder County Commission relies on the advice and input of the courts and the County Attorney himself in awarding and renewing the public defender contract.<sup>39</sup> Allowing the County Attorney such a direct and influential role in choosing the public defenders is inconsistent with the first of the ABA's Ten Principles because, as the ABA explains<sup>40</sup>:

The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems.

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<sup>37</sup> See Jan. 22, 2010, Resp. by Box Elder County to ACLU of Utah GRAMA request dated Sep. 15, 2009 ("2010 Box Elder Resp."), at 1-2 (on file with ACLU of Utah).

<sup>38</sup> See *id.* at 1-3.

<sup>39</sup> See Box Elder County Commission Minutes dated Nov. 18, 2008 ("Nov. 18, 2008, Box Elder Commission Minutes"), at 4-5, *available for search and download at* <http://www.boxeldercounty.org/agendas-and-minutes-2008.htm> (last visited July 4, 2011).

<sup>40</sup> See ABA Ten Principles, *supra* note 19, at 1-2.

## **DETAILED PUBLIC RECORDS INFORMATION: BOX ELDER COUNTY**

### **STANDARDS & OVERSIGHT**

- Box Elder County contracts with the law firm Allen, Richards & Pace (“ARP”) for public defense services.<sup>41</sup> The firm is responsible for providing legal representation to “[d]rug court participants and indigent persons in all matters and appeals there from for which the [county] is obligated to pay for indigent legal services.”<sup>42</sup>
- Box Elder County does not<sup>43</sup>:
  - Supervise the ongoing provision of public defense services;
  - Require public defenders to participate in continuing legal education; or
  - Monitor the caseloads of public defenders.
- Box Elder County does not have any written criteria or guidelines for<sup>44</sup>:
  - Selecting counsel to represent indigent defendants;
  - Ensuring that public defenders meet minimum qualifications or performance standards; or
  - Analyzing the adequacy of compensation for public defenders.

### **CONFLICTS OF INTEREST**

- Box Elder County has no procedures in place to screen for conflicts of interest,<sup>45</sup> relying instead, it appears, on the public defenders, County Attorney, and judges to recognize conflicts of interest as they arise. Even leaving aside the necessarily ad hoc nature of that process (or lack thereof) to screen for conflicts of interest, as a practical matter it would be difficult for those entities to: (i) monitor each individual case in which a public defender appears; (ii) identify actual or potential conflicts of interest in each such case; and (iii) analyze whether each and every actual or potential conflict of interest warrants disqualification.

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<sup>41</sup> See generally Box Elder Attorney Agreement, supra note 34.

<sup>42</sup> See *id.* at ¶ 2.

<sup>43</sup> See 2010 Box Elder Resp., supra note 37, at 1-3.

<sup>44</sup> See *id.* at 1-4.

<sup>45</sup> See *id.* at 3.

- In Box Elder County, public defenders are required to pay for conflict counsel out of their base contract.<sup>46</sup> This is inherently problematic. It may discourage public defenders from identifying conflicts and hiring conflict counsel and, if conflict counsel is retained, it may incentivize public defenders to retain the least expensive conflict counsel they can find.
- The Box Elder County Commission relies on the advice and input of the courts and the County Attorney himself in awarding and renewing the public defender contract.<sup>47</sup> In 2008, the Box Elder County Attorney argued that renewing the contract with ARP (then Richards, Caine, Allen & Pace) was preferable to accepting the bid of competitor firm Grover & Beins because the County Attorney was “very pleased with [ARP’s] work.”<sup>48</sup> At that time, ARP’s bid was also \$7,500 lower than the competitor’s and did not allow for renegotiation even if caseloads were to dramatically increase.<sup>49</sup>

## **FUNDING & RESOURCES**

- Box Elder County spends \$3.43 per capita on public defense services,<sup>50</sup> or only 29 percent of the national average of \$11.86.<sup>51</sup>
- Box Elder County’s 2010 adopted budget allocates \$171,500 for all public defense services, which includes \$2,000 for expenses incurred by public defense counsel.<sup>52</sup>
- By contrast, the County Attorney’s 2010 total budget was \$563,954.<sup>53</sup>

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<sup>46</sup> See Box Elder Attorney Agreement, supra note 34, at ¶ 9.

<sup>47</sup> In 2008, for example, County Commissioner Clark Davis admitted that he did “not know enough about the [public defenders] and [that he relied] on the expertise of the county attorney’s office” to help decide who should be awarded the public defender contract. See 11/18/08 Box Elder Commission Minutes, supra note 39, at 4-5.

<sup>48</sup> See *id.*

<sup>49</sup> See *id.*

<sup>50</sup> See calculations, supra note 31.

<sup>51</sup> 2008 NLADA Report, supra note 9, at 7.

<sup>52</sup> Box Elder 2010 Budget, supra note 31, at 2.

<sup>53</sup> See *id.* at 6-7.

**Compensation for Public Defenders v. County Attorney's Office**

<b>PUBLIC DEFENDERS</b>	<b>CONTRACT<sup>54</sup></b>	<b>COUNTY ATTORNEY'S OFFICE</b>	<b>SALARY/WAGE<sup>55</sup></b>
ARP	\$171,500	Stephen Hadfield (county attorney)	\$100,000
		Brandon Maynard (prosecutor)	\$70,210
		Kirk Morgan (p/t prosecutor)	\$58,149
		Loreen Henry (legal secretary)	\$31,232
		Julia Ann Wardle (p/t legal secretary)	\$23,539
<b>PD Total</b>	<b>\$171,500</b>	<b>County Attorney's Office Salary Total</b>	<b>\$283,130</b>

- In addition to salaries, for fiscal year 2011 Box Elder County has budgeted for the following expenses for the County Attorney's Office: office space; employee benefits (\$126,248); office supplies (\$5,000); books, subscriptions and professional association dues (\$14,020); travel reimbursement (\$3,000); "professional and technical" costs (\$10,000); and education and training (\$1,500).<sup>56</sup>
- An additional \$46,430 has been budgeted to pay for Box Elder County's victim's witness advocate in fiscal year 2011.<sup>57</sup> Victim's witness advocates are often allowed to testify as expert witnesses in criminal cases, thereby alleviating the need for the prosecution to hire an outside expert.
- Because the attorneys at ARP are contract workers, as opposed to employees of the county, the contract provides no monies for overhead, support staff, administrative expenses, or employment benefits such as health insurance, worker's compensation, sick leave, vacation, or pension.<sup>58</sup>
- Box Elder County's public defense contract provides that certain defense costs such as transcript fees, witness fees, expert witness fees, and mental examination fees, may be reimbursed by the county on a case-by-case basis so long as the expenses are first approved by

<sup>54</sup> *Id.* at 2.

<sup>55</sup> Salaries for many public employees, including those listed in this chart, can be searched and reviewed at <http://utahsright.com/> (last visited June 3, 2011).

<sup>56</sup> See 2011 Adopted Budget for Box Elder County ("Box Elder 2011 Budget"), at 3, *available for search and download* at <http://www.sao.state.ut.us/lgReports.html#> (last visited June 27, 2011).

<sup>57</sup> See *id.*

<sup>58</sup> Box Elder Attorney Agreement, *supra* note 34, at ¶ 7.

the Court as reasonable.<sup>59</sup> No such pre-approval is required of the County Attorney's Office, which also has access to city, county, and state law enforcement resources and forensic services.

## CASELOADS

- In fiscal year 2010 (July 1, 2009-June 30, 2010), 216 felonies and 74 misdemeanors were filed in the District Court for Box Elder County.<sup>60</sup> Another 1,343 misdemeanors were filed in the Box Elder County justice courts.<sup>61</sup>
- Mr. Allen, who handles much of the public defender work for Box Elder County, entered an appearance as counsel in 120 felony cases and 55 misdemeanor cases, including one capital homicide, over the year between October 2009 and September 2010.<sup>62</sup>
- Setting aside Mr. Allen's representation in the capital case (and any civil matters in which he is counsel), his total annual criminal caseload—the equivalent of 140 felonies when the misdemeanors are weighted and added<sup>63</sup>—approaches the maximum of 150 felonies recommended under the longstanding professional guidelines promulgated by NAC in 1973.<sup>64</sup>
- When Mr. Allen's criminal caseload is analyzed to include his capital caseload, as well, the potential for overload is starker still. According to one study, the average time required to litigate a capital case from appointment of public defense counsel through trial is 1,889 hours.<sup>65</sup> This is one reason why some states—although not Utah—strictly limit caseloads for attorneys who represent capital defendants.

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<sup>59</sup> *Id.* at ¶8.

<sup>60</sup> *Supra* note 29.

<sup>61</sup> *Supra* note 30.

<sup>62</sup> See Oct. 2010 Resp. by Utah Admin. Office of the Courts to ACLU of Utah GRAMA request dated Oct. 22, 2010 ("2010 Utah AO Resp.") (on file with the ACLU of Utah). Note that these figures may actually understate the total number of cases handled in any given year by any public defender, because each public defender will be responsible not only for newly assigned cases but also for cases pending from previous years. See U.S. Dept. of Justice, Bureau of Justice Statistics, County-Based and Local Public Defender's Offices 2007 (Sept. 2010, NJC 231175) ("2007 DOJ Public Defender's Report"), at 8, available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/clpdo07.pdf> (last visited July 4, 2011).

<sup>63</sup> *Supra* note 21.

<sup>64</sup> *Supra* note 20.

<sup>65</sup> See ABA Guidelines For Death Penalty Cases, *supra* note 22, at 40.

- Assuming, we think conservatively, that each capital case takes three years to adjudicate through trial, such that defense counsel can expect to spend an average of 630 hours per year on each capital case, then an attorney handling one capital case who works for 40 hours a week, 50 weeks a year (with two weeks set aside for vacation), will have 1,370 hours left to handle the remainder of his caseload. (40 hours/week x 50 weeks = 2,000 hours; 2,000 hours - 630 hours = 1,370 hours.)
- In Mr. Allen's case, that would leave only 1,370 hours to handle, in addition to his "miscellaneous" and civil matters, the equivalent of 140 felonies. That leaves less than 10 hours per felony. (1,370 hours/140 felonies = 9.79 hours/felony.)
- As one study notes: "One of the single most important impediments to the furnishing of quality defense services for the poor is the presence of excessive caseloads. . . . Unfortunately, not even the most able and industrious lawyers can provide quality representation when their workloads are unmanageable. Excessive workloads, moreover, lead to attorney frustration, disillusionment by clients, and weakening of the adversary system."<sup>66</sup>

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<sup>66</sup> See *id.* at 39. We have not received complaints indicating that indigent defendants in Box Elder County have found Mr. Allen or any of his colleagues at ARP to be excessively busy or otherwise deficient in their provision of public defender services.



## **DAGGETT COUNTY**

### **SUMMARY**

Daggett County has a population of only 1,059 people.<sup>67</sup> Daggett County has a significantly lower poverty rate (6.6%) than the Utah State average (11.7%).<sup>68</sup>

In fiscal year 2010 (July 1, 2009-June 30, 2010), only three felonies and two misdemeanors were filed in the District Court for Daggett County.<sup>69</sup> Another 138 misdemeanors were filed in the Daggett County justice courts.<sup>70</sup> Daggett County spends approximately \$3.96 per capita on public defense services,<sup>71</sup> which is 33 percent of the national average (\$11.86<sup>72</sup>) and 76 percent of the Utah state average (\$5.22<sup>73</sup>).

Daggett County does not have a public defender contract. Instead, it utilizes assigned counsel on a case-by-case basis at approximately \$50/hour. This hourly rate is intended to cover the attorneys' time and all other attorney expenses relating to the case. Although Daggett County's budget used to include a line item of \$200 allocated for "indigent professional fees"

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<sup>67</sup> See 2010 U.S. Census estimates for Daggett County, *available at* <http://quickfacts.census.gov/qfd/states/49/49009.html> (last visited June 2, 2011).

<sup>68</sup> See <http://www.ers.usda.gov/Data/povertyrates/PovListpct.asp?st=UT&view=Percent&longname=Utah> (last visited May 29, 2011) (printout on file with the ACLU of Utah).

<sup>69</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, First District Court for Daggett County (July 1, 2009-June 30, 2010), *available at* <http://www.utcourts.gov/stats/files/2010FY/district/8-Daggett.pdf> (last visited May 29, 2011).

<sup>70</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, Daggett County Justice Court, (July 1, 2009-June 30, 2010), *available at* <http://www.utcourts.gov/stats/files/2010FY/justice/8-Daggett.pdf> (last visited May 29, 2011).

<sup>71</sup> See Daggett County attorney invoices for years 2006-2010 produced in response to ACLU of Utah GRAMA request dated Sept. 16, 2009 ("Daggett Attorney Invoices")(on file with the ACLU of Utah), at 6-87, 93-107; *see also* U.S. Census Bureau, State & County QuickFacts Daggett County, Utah (Nov. 4, 2010), *available at* <http://quickfacts.census.gov/qfd/states/49/49009.html> (last visited June 27, 2011). Daggett County, unlike most other counties studied for this report, does not list its public defender budget as a separate line item in its annual budgets or financial reports. As a result, when calculating Daggett County's public defense expenditures, we relied on attorney invoices produced by Daggett County in response to an ACLU of Utah GRAMA request. The last full year for which invoices were produced was 2009. In 2010, Daggett County's estimated population was 1,059, which divided into the 2009 total public defense budget of \$4,197 equals \$3.96 per capita.

<sup>72</sup> 2008 NLADA Report, *supra* note 9, at 7.

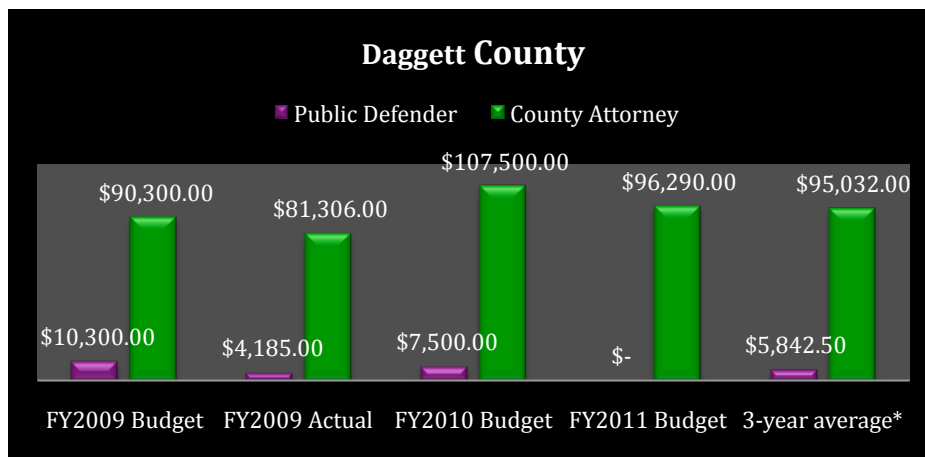
<sup>73</sup> *Id.* at iii.

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for public defenders,<sup>74</sup> it is unclear what that was intended to cover and, in any event, we did not find any record of any public defender actually billing separately for such services in the years 2006-2010.<sup>75</sup>

By contrast, the budget for the County Attorney's Office has averaged \$95,032 over the last three years.<sup>76</sup>



When asked, Daggett County could not provide any documentation demonstrating that it has in place any policies or procedures to guarantee that—or even to monitor whether—individual defendants in Daggett County receive quality defense services.<sup>77</sup> Despite the low case load in Daggett County, there are apparently no systems in place to screen for conflicts of interest, to track caseloads, or to ensure consistent and competent representation.<sup>78</sup>

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<sup>74</sup> See Daggett County budget materials, produced in response to ACLU of Utah GRAMA request dated Sept. 16, 2009 (“Daggett Budget Materials”), at 2-5 (on file with the ACLU of Utah).

<sup>75</sup> See Daggett Attorney Invoices, *supra* note 71, at 6-87, 93-107.

<sup>76</sup> See 2009 Adopted Budget for Daggett County at 4, and 2010 Adopted Budget for Daggett County at 4, both available for search and download at <http://www.sao.state.ut.us/lgReports.html#> (last visited June 27, 2011).

<sup>77</sup> See July 15, 2008, Notes of Telephone Interview with Daggett County Clerk’s Office in connection with ACLU of Utah GRAMA request dated May 13, 2008 (“2008 Daggett Resp.”), at 1 (on file with the ACLU of Utah).

<sup>78</sup> See *id.*

**DETAILED PUBLIC RECORDS INFORMATION: DAGGETT COUNTY**

**STANDARDS & OVERSIGHT**

- Joel Berrett, who practices in Roosevelt (and thus must travel approximately 100 miles each way to get to and from the Manilla courthouse) appears to be the attorney most frequently hired for public defense cases.<sup>79</sup>
- Two other attorneys provide conflict counsel on an ad hoc basis:
  - John Beaslin: In addition to acting as conflict counsel, Mr. Beaslin was until Fall 2010 one of two contract public defenders in Uintah County. He was reimbursed by Daggett County only once between 2006 and 2010.<sup>80</sup>
  - Herb Gillespie: In addition to providing services as conflict counsel, Mr. Gillespie was substituted for Mr. Berrett in at least one Daggett County case.<sup>81</sup> He is also the contract public defender for juvenile cases in Duchesne County.
- Daggett County does not<sup>82</sup>:
  - Supervise the ongoing provision of public defense services;
  - Require public defenders to participate in continuing legal education; or
  - Monitor the caseloads of public defenders.
- Daggett County does not have any written criteria or guidelines for<sup>83</sup>:
  - Selecting counsel to represent indigent defendants;
  - Ensuring that public defenders meet minimum qualifications or performance standards;
  - Analyzing the adequacy of compensation for public defenders;
  - Determining and reassigning counsel based on conflicts of interest;
  - Evaluating and approving public defenders' billings for services; or

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<sup>79</sup> See Daggett Attorney Invoices (Berrett), *supra* note 71, at 6-81.

<sup>80</sup> See Daggett Budget Materials, *supra* note 67. Mr. Beaslin ceased being a public defender in Uintah County in Fall 2010. We were unable to determine whether he is still practicing. See discussion *infra* at note 325.

<sup>81</sup> See Daggett Attorney Invoices, *supra* note 64, at 6-87, 93-107.

<sup>82</sup> See 2008 Daggett Resp., *supra* note 77, at 1.

<sup>83</sup> See *id.* at 1.

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- Appealing rejected reimbursement requests by public defenders.
- When asked, Daggett County was also unable to produce any written policies or procedures for<sup>84</sup>:
  - Tracking the number of prosecutions filed;
  - Classifying prosecutions by type or by assignment to which county attorney; or
  - Tracking the number of criminal cases tried or settled.

**CONFLICTS OF INTEREST**

- Daggett County was unable to produce any written requirements, policies, or standards for evaluating potential structural conflicts of interest for attorneys contracting for public defense work in Daggett County, and the County apparently keeps no record of public defender case assignments or decisions to substitute counsel.

**FUNDING & RESOURCES**

- Daggett County spends approximately \$3.96 per capita on public defense services,<sup>85</sup> which is 33 percent of the national average of \$11.86.<sup>86</sup> Daggett County receives no state appropriations for public defense services.

**COMPARISON OF DAGGETT COUNTY FUNDING AND SUPPORT**

<b>TOTAL PUBLIC DEFENSE BUDGET<sup>87</sup>:</b> 2008 - \$15,800 2009 - \$10,300 2010 - \$7,500	<b>TOTAL COUNTY ATTORNEY BUDGET<sup>88</sup>:</b> 2008 - \$77,800 2009 - \$90,300 2010 - \$107,500
<b>Reimbursements to Attorneys<sup>89</sup>:</b> 2008 - \$3,563 2009 - \$4,185 2010 - \$752 <sup>90</sup>	<b>Contracted Compensation<sup>91</sup>:</b> 2008 - \$62,000 2009 - \$66,000 2010 - \$66,000

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<sup>84</sup> See March 25, 2010, Resp. by Daggett County to ACLU of Utah GRAMA request dated Oct. 21, 2009 ("2010 Daggett Resp."), at 1 (on file with the ACLU of Utah). County personnel indicated that they were working to create these records as of March 25, 2010, and expected to complete them by April 1, 2010. Those records were never received.

<sup>85</sup> See calculations supra note 71.

<sup>86</sup> 2008 NLADA Report, supra note 9, at 7.

<sup>87</sup> See Daggett Attorney Invoices, supra note 71, at 6-87, 93-107.

<sup>88</sup> See 2009 Adopted Budget for Daggett County at 4, and 2010 Adopted Budget for Daggett County at 4, both supra note 76.

- In addition to the contract amounts paid to the three attorneys who provide services as county attorneys, Daggett County pays for the following expenses of the Daggett County Attorney's Office: office space; printer copying expenses, records storage, subpoena service, discovery and investigation, and travel reimbursements.<sup>92</sup>
- Because the public defenders are contract workers, as opposed to employees of the county, they are provided no monies for overhead, support staff, administrative expenses, or employment benefits such as health insurance, worker's compensation, sick leave, vacation, or pension. The contracted public defenders are reimbursed only for their travel expenses.<sup>93</sup>

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<sup>89</sup> See Daggett Attorney Invoices, supra note 71, at 6-87, 93-107. The public defender reimbursement rate remained static at \$50/hour from 2006 to 2010. *Id.*

<sup>90</sup> Amounts for 2010 public defender reimbursements were estimated based on attorney invoices received for the period January 1-March 31, 2010. That is the most recent data we have available.

<sup>91</sup> See Daggett County Attorney Contracts dated Jan. 2, 2009, produced in response to ACLU of Utah GRAMA request dated Sept. 16, 2009, at ¶¶ 4-5 (on file with the ACLU of Utah). Per those documents, County Attorney services are provided by three "mutually covenant" attorneys.

<sup>92</sup> See *id.*

<sup>93</sup> See Daggett Attorney Invoices, supra note 71, at 6-87, 93-107.

## **DUCHESNE COUNTY**

### **SUMMARY**

Duchesne County has a population of 18,607<sup>94</sup>; the largest city is Roosevelt.<sup>95</sup> Duchesne County has a slightly lower poverty rate (10.6%) than the Utah State average (11.7%),<sup>96</sup> and also has a significantly higher-than-average Native American population (4.5% compared to 1.2% statewide<sup>97</sup>).

In fiscal year 2010 (July 1, 2009-June 30, 2010), 405 felonies and 417 misdemeanors were filed in the district courts for Duchesne County.<sup>98</sup> Another 439 misdemeanors were filed in the Duchesne County justice courts.<sup>99</sup>

Duchesne County, like all other Utah counties, receives no money for public defense services. Duchesne County spends approximately \$9.41 per capita on public defense services,<sup>100</sup> which is 79 percent of the national

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<sup>94</sup> See 2010 U.S. Census estimates for Duchesne County, *available at* <http://quickfacts.census.gov/qfd/states/49/49013.html> (last visited June 7, 2011).

<sup>95</sup> See 2010 U.S. Census data for Roosevelt (pop. 6,046), *available for search and download at* <http://quickfacts.census.gov/cgi-bin/qfd/demolink?49> (last visited June 4, 2011).

<sup>96</sup> See <http://www.ers.usda.gov/Data/povertyrates/PovListpct.asp?st=UT&view=Percent&longname=Utah> (last visited May 29, 2011) (printout on file with the ACLU of Utah).

<sup>97</sup> See 2010 U.S. Census estimates for Duchesne County, *available at* <http://quickfacts.census.gov/qfd/states/49/49013.html> (last visited June 7, 2011).

<sup>98</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, First District Court for Duchesne County (July 1, 2009-June 30, 2010), *available at* <http://www.utcourts.gov/stats/files/2010FY/district/8-Duchesne-Duchesne.pdf> (last visited May 29, 2011) and <http://www.utcourts.gov/stats/files/2010FY/district/8-Duchesne-Roosevelt.pdf> (last visited May 29, 2011).

<sup>99</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, Duchesne County Justice Court (July 1, 2009-June 30, 2010), *available at* <http://www.utcourts.gov/stats/files/2010FY/justice/8-Duchesne.pdf> (last visited May 29, 2011).

<sup>100</sup> See 2010 Adopted Budget for Duchesne County ("Duchesne 2010 Budget") at 6, *available for search and download at* <http://www.sao.state.ut.us/lgReports.html#> (last visited June 27, 2011); *see also* U.S. Census Bureau, State & County QuickFacts Duchesne County, Utah (Nov. 4, 2010), *available at* <http://quickfacts.census.gov/qfd/states/49/49013.html> (last visited June 27, 2011). We had to estimate the county's public defense budget because Duchesne County, unlike most other counties studied for this report, does not list its public defender budget as a separate line item in its annual budgets or financial reports. The \$175,000 estimate is based on (i) what we understand the public defenders' salaries to be, (ii) review of the "professional and technical contracts" figures from Duchesne County's 2010 and 2011 budgets (line item 4965), and (iii) discussions with certain criminal defense attorneys. In 2010, Duchesne County's estimated population was 18,607, which divided into the total estimated public defense budget equals \$9.41 per capita.

average of \$11.86.<sup>101</sup> As noted previously, however, using the per capita measure in a place like Duchesne County, which has high numbers of transient and other seasonal workers, may create the impression that the public defense system is more adequately funded than it really is.<sup>102</sup> We believe that is the case in Duchesne County, where all evidence indicates that—no matter its per capita spending—the public defense system is constitutionally deficient.

Until recently, Duchesne County contracted with two private attorneys to handle non-juvenile cases<sup>103</sup>: Roland Uresk<sup>104</sup> and Marea Doherty.<sup>105</sup> In Fall 2010, Mr. Uresk declined to renew his contract, apparently citing as a primary reason the poor compensation offered by the county—i.e., approximately \$61,167 annually to cover not only his time, but also his overhead expenses, continuing legal education costs, support staff, and other expenses necessary to put together an accurate and thorough defense.<sup>106</sup> Given Mr. Uresk's approximate annual criminal caseload of 130 felonies and 59 misdemeanors<sup>107</sup> (for a NAC felony equivalent of 152 felonies per year<sup>108</sup>), his contract with Duchesne County afforded him only

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<sup>101</sup> 2008 NLADA Report, *supra* note 9, at 7.

<sup>102</sup> *See supra* note 10.

<sup>103</sup> In or around January 2011, Duchesne County hired a Salt Lake City-based law firm, Morrison & Morrison, to handle Mr. Uresk's approximately 50 percent of the Duchesne public defender docket; Ms Doherty continues to handle the other approximately 50 percent. *See* Duchesne County Commission Minutes dated Jan. 31, 2011, at 1, *available at* [http://duchesne.utah.gov/images/1-31-11\\_reg.pdf](http://duchesne.utah.gov/images/1-31-11_reg.pdf) (last visited June 15, 2011). A third public defender, Herb Gillespie, handles only juvenile cases. *See* Duchesne County Commission Minutes dated Dec. 6, 2010 ("Dec. 6, 2010, Commission Minutes"), at 2, *available at* [http://duchesne.utah.gov/images/commission/2010/12-06-10\\_reg.pdf](http://duchesne.utah.gov/images/commission/2010/12-06-10_reg.pdf) (last visited June 15, 2011).

<sup>104</sup> *See* Duchesne County Commission Minutes dated Jan. 7, 2008, at 1, *available at* <http://duchesne.utah.gov/images/departments/commission/2008/2008-01-07.pdf> (last visited June 15, 2011).

<sup>105</sup> Ms. Doherty took over the contract from Stephanie Miya on or about January 12, 2009. *See* Duchesne County Commission Minutes dated Jan. 12, 2009, at 3, *available at* <http://duchesnegov.net/clerkauditor/2009minutes/01-12-09%20reg.pdf> (last visited June 15, 2011).

<sup>106</sup> *See* Agreement for Legal Services, Roland Uresk, Justice Courts (Jan. 7, 2008-Dec. 31, 2010) ("Uresk JC Agreement"), produced by Duchesne County in response to ACLU of Utah GRAMA request dated May 13, 2008, at ¶2 (\$6,000 annually for justice court cases) (on file with ACLU of Utah); Agreement for Legal Services, Roland Uresk, District Court (Jan. 7, 2008-Dec. 31, 2010) ("Uresk DC Agreement"), produced by Duchesne County in response to ACLU of Utah GRAMA request dated May 13, 2008, at ¶2(a)-(c) (by 2010, \$55,166.80 annually for district court cases) (on file with ACLU of Utah) (collectively, "Uresk Agreements").

<sup>107</sup> *See* 2010 Utah AO Resp., *supra* note 62.

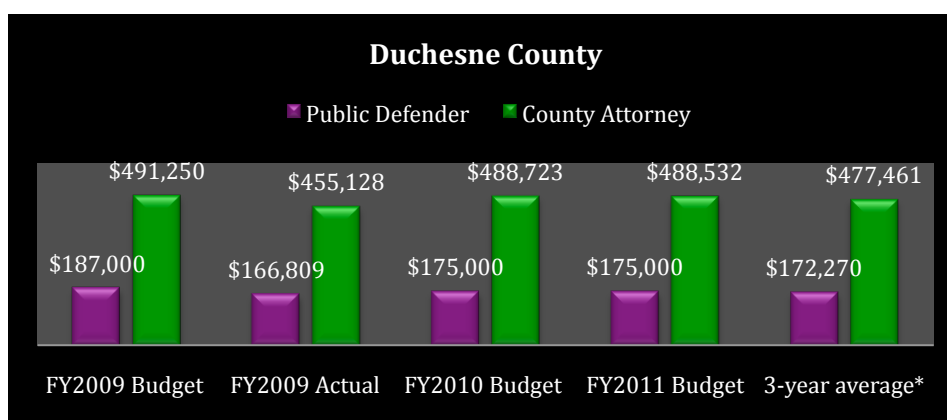
<sup>108</sup> *Supra* note 21.

**Failing Gideon:** Utah's Flawed County-By-County Public Defender System

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about \$400 per felony or felony equivalent. (\$61,167/152 felonies = \$402.41/felony.)

Contrast these numbers with the Duchesne County Attorney's Office, which in 2010 had a total budget of \$488,845—almost three times what was budgeted for public defense services.<sup>109</sup> Included in that budget were salaries for the County Attorney (\$78,790), two deputy county attorneys (\$65,499 and \$65,562), and three legal secretaries (with an average salary of \$39,811).<sup>110</sup> Employee benefits for those six workers totaled another \$125,379.<sup>111</sup>



When asked, Duchesne County was unable to produce any documentation demonstrating that it has in place any policies or procedures to guarantee that—or even to monitor whether—individual defendants in Duchesne County receive quality defense services.<sup>112</sup> There are apparently no systems in place to screen for conflicts of interest, to track caseloads, or to ensure consistent and competent representation.<sup>113</sup> Instead, all that is required by contract is that the attorney provide “competent legal representation”—with no explanation of what that might mean, let alone

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<sup>109</sup> See Duchesne 2010 Budget, *supra* note 100, at 5.

<sup>110</sup> See April 8, 2010, Resp. by Duchesne County to ACLU of Utah GRAMA Request dated Feb. 16, 2010 (“2010 Duchesne Resp.”), at 2-3 (on file with ACLU of Utah); *see also* [http://utahsright.com/salaries.php?city=duchesne\\_county](http://utahsright.com/salaries.php?city=duchesne_county) (last visited July 4, 2011), a website on which many public sector employees’ salaries, including these attorneys, can be searched and reviewed.

<sup>111</sup> See 2010 Duchesne Resp., *supra* note 110, at 2.

<sup>112</sup> See May 29, 2008, Resp. by Duchesne County to ACLU of Utah GRAMA Request dated May 13, 2008 (“2008 Duchesne Resp.”), at 1-2 (on file with ACLU of Utah).

<sup>113</sup> See *id.*



how it might be enforced—and “attend all appearances in all criminal proceedings in which representation is being provided by [the] Attorney.”<sup>114</sup>

Duchesne County apparently has no procedures in place to screen for conflicts of interest; as we understand it, Duchesne County relies instead on the judge presiding over the case to monitor and, if appropriate, disqualify the attorney for a conflict of interest.<sup>115</sup> To further compound this lack of oversight, the Duchesne County Commission relies on the advice and input of the County Attorney when deciding to whom public defender contracts should be awarded.<sup>116</sup>

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<sup>114</sup> See, e.g., Duchesne County Commission Minutes dated Jan. 22, 2007 (“Jan. 22, 2007, Commission Minutes”), at 3, available at <http://duchesne.utah.gov/images/departments/commission/2007/2007-01-22.pdf> (last visited June 15, 2011).

<sup>115</sup> See, e.g., Uresk DC Agreement, supra note 106, at ¶5.

<sup>116</sup> When Mr. Uresk decided not to renew his public defender contract in Fall 2010, the County Commissioners contacted the County Attorney’s office to “see if he knows anything about the public defender contracts” before moving forward with finding a replacement. See Duchesne County Council Minutes dated Dec. 13, 2010, available at [http://duchesne.utah.gov/images/departments/commission/2010/12-13-10\\_reg.pdf](http://duchesne.utah.gov/images/departments/commission/2010/12-13-10_reg.pdf) (last visited June 11, 2011). The County Attorney’s Office was involved not just in selecting the replacement public defender, but also in deciding the material terms of the public defender contract. See Dec. 27, 2010, Duchesne County Commission Minutes dated Dec. 27, 2010 (“Dec. 27, 2010, Commission Minutes”), available at [http://duchesne.utah.gov/images/departments/commission/2010/12-27-10\\_reg.pdf](http://duchesne.utah.gov/images/departments/commission/2010/12-27-10_reg.pdf) (last visited June 11, 2011). This violates the first of the ABA’s Ten Principles, supra note 19.

**DETAILED PUBLIC RECORDS INFORMATION: DUCHESNE COUNTY**

**STANDARDS & OVERSIGHT**

- Duchesne County hires public defenders as independent contractors through an open bid system.<sup>117</sup> There are no written policies or guidelines governing selection of public defenders.<sup>118</sup> Attorneys need only be “licensed to practice law in the State of Utah” and a “resident of, or willing to relocate to, Duchesne County.”<sup>119</sup> Public defenders are permitted to maintain separate private practices.
- Until Fall 2010, Duchesne County contracted with three private attorneys to provide public defense services: Marea Doherty provided public defense services to approximately half of the defendants in district court; Roland Uresk provided public defense services to the other half and to all indigent defendants in justice court; and Herb Gillespie provided all juvenile court public defense services.<sup>120</sup>
- Mr. Uresk declined to renew his contract at the end of its first term.
- Ms. Doherty renegotiated her contract in March 2011 to include a contract fee of \$67,200 (described as “sixty percent (60%) of the one hundred twelve thousand (\$112,000.00) budgeted for this expense”), with a three percent increase each year.<sup>121</sup> Ms. Doherty’s new contract also includes a provision allowing for up to \$1,000 annually for reimbursement of CLE classes.<sup>122</sup>
- The law firm Morrison & Morrison, L.L.C. took over the second public defender contract in early 2011. The contract has been described as “almost the same as the one signed by” Ms. Doherty.<sup>123</sup> Presumably, however, the firm’s compensation is approximately \$44,800, or 40

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<sup>117</sup> See, e.g., Dec. 14, 2006, Letters from Duchesne County Personnel Office and May 27, 2008, Notice of Advertisement of Public Defender Position, produced by Duchesne County in response to ACLU of Utah GRAMA request dated May 13, 2008 (on file with ACLU of Utah).

<sup>118</sup> See 2008 Duchesne Resp., supra note 112, at 1-2.

<sup>119</sup> See May 27, 2008, Notice of Advertisement of Public Defender Position, supra note 117.

<sup>120</sup> Supra note 103.

<sup>121</sup> See Duchesne County Commission Minutes dated March 28, 2011, at 2 (“Mar. 28, 2011, Commission Minutes”), available at [http://duchesne.utah.gov/images/3-28-11\\_reg.pdf](http://duchesne.utah.gov/images/3-28-11_reg.pdf) (last visited July 4, 2011).

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

percent of what the county described as “the one hundred twelve thousand (\$112,000.00) budgeted for this expense.”<sup>124</sup>

- None of the public defender contracts in Duchesne County contain any meaningful criteria governing the quality of defense services that must be provided. Instead, they require only that public defenders must provide “competent legal representation” and should “attend all appearances in all criminal proceedings in which representation is being provided by [the] Attorney.”<sup>125</sup>
- In the past, the public defender contracts have also required that the public defender must “establish local communications (phone) and an ability to meet locally with defendants to effectively serve their needs on a local basis.”<sup>126</sup> We have been unable to determine whether that contractual provision still exists. We note, however, that such a provision would be nearly impossible to enforce if, as Duchesne County has acknowledged, the county does not supervise the ongoing provision of public defense services.<sup>127</sup>
- Duchesne County does not<sup>128</sup>:
  - Supervise the ongoing provision of public defense services;
  - Require public defenders to participate in continuing legal education; or
  - Monitor the caseloads of public defenders.

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<sup>124</sup> *Id.* We were unable to find additional information in the public record concerning the terms of Morrison & Morrison’s contract. The County Commission Minutes concerning the appointment state only, “Commissioner Winterton stated that after the interview process, the interview committee came to the conclusion that Morrison & Morrison is who they would like to extend the contract to.” See Duchesne County Commission Minutes dated Jan. 31, 2011, at 1 (“Jan. 31, 2011, Commission Minutes”), available at [http://duchesne.utah.gov/images/1-31-11\\_reg.pdf](http://duchesne.utah.gov/images/1-31-11_reg.pdf) (last visited July 4, 2011).

<sup>125</sup> See, e.g., Jan. 22, 2007, Commission Minutes, *supra* note 114, at 3; see also Uresk DC Agreement, *supra* note 106, at ¶¶ 3, 11 (requiring “competent” legal representation).

<sup>126</sup> See Uresk DC Agreement, *supra* note 106, at ¶8.

<sup>127</sup> See 2008 Duchesne Resp., *supra* note 112, at 1-2.

<sup>128</sup> *Id.*

- Duchesne County does not have any written policies or guidelines for<sup>129</sup>:
  - Selecting counsel to represent indigent defendants;
  - Ensuring that public defenders meet minimum qualifications or performance standards; or
  - Analyzing the adequacy of compensation for public defenders.

### **CONFLICTS OF INTEREST**

- It appears that Duchesne County does not have written policies or procedures for identifying conflicts of interest, and that it instead relies on the presiding judge to disqualify attorneys when conflicts of interest arise.<sup>130</sup>

### **FUNDING & RESOURCES**

- Duchesne County spends approximately \$9.41 per capita on public defense services,<sup>131</sup> which is 79 percent of the national average of \$11.86.<sup>132</sup>
- Unlike most other counties, Duchesne County does not list its public defender budget as a separate line item in its annual budgets or financial reports. We estimate that Duchesne County's budget allocation for public defender services is approximately \$175,000 for fiscal year 2011.<sup>133</sup>
- By contrast, Duchesne County's 2011 budget allocates \$488,532 to the County Attorney's Office<sup>134</sup>—roughly 2.5 times more than the budget for public defense services. Although we do not have detailed information for fiscal year 2011, the 2009 County Attorney's budget (\$491,250) included, for example, a \$3,400 line item for telephone service.<sup>135</sup>

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<sup>129</sup> *Id.*

<sup>130</sup> *See, e.g.,* Uresk DC Agreement, *supra* note 106, at ¶5.

<sup>131</sup> *See* calculations *supra* note 100.

<sup>132</sup> 2008 NLADA Report, *supra* note 9, at 7.

<sup>133</sup> *See* calculations, *supra* note 100.

<sup>134</sup> *See* 2011 Adopted Budget for Duchesne County at 5, *available at* <http://www.sao.state.ut.us/lgReports.html#> (last visited June 27, 2011).

<sup>135</sup> *See* 2010 Duchesne Resp., *supra* note 110, at 2.

**Compensation for Public Defenders v. County Attorney's Office**

<b>PUBLIC DEFENDERS</b>	<b>CONTRACT<sup>136</sup></b>	<b>COUNTY ATTORNEY'S OFFICE</b>	<b>SALARY/WAGE<sup>137</sup></b>
Marea Doherty	\$67,200	Stephen Foote (county attorney)	\$78,790
Morrison & Morrison (est.)	\$44,800	Charles Grant (prosecutor)	\$65,499
Herbert Gillespie	\$55,073	Jonathan Stearmer (prosecutor)	\$65,562
		Loreen Henry (legal secretary)	\$31,232
		Dennie Foote (legal secretary)	\$42,162
		Elaine Despain (legal secretary)	\$36,525
<b>PD Total (est.)</b>	<b>\$167,073</b>	<b>County Attorney's Office Salary Total</b>	<b>\$319,770</b>

- In addition to salaries, Duchesne County pays for the following expenses of the County Attorney's Office: office space; employee benefits (\$125,379 in FY 2009); travel and training expenses; office supplies; books and subscriptions; and other equipment.<sup>138</sup>
- Because the public defenders in Duchesne County are contract workers, as opposed to employees of the county, their contracts provide no monies for overhead, support staff, administrative expenses, or employment benefits such as health insurance, workers' compensation, sick leave, vacation, or pension.
- Duchesne County's public defense contract provides that the county will pay for certain "indigent transcript costs, investigatory, and expert-witness costs approved by the Court."<sup>139</sup> No such pre-approval by the Court is required of the County Attorney's Office, which also has access to city, county, and state law enforcement resources and forensic services.
- Duchesne County's public defender contract also provides that "travel, telephone, postage, and office expenses shall be the responsibility of the Attorney."<sup>140</sup>

<sup>136</sup> See Mar. 28, 2011, Commission Minutes, supra note 121, at 2; Jan. 31, 2011 Commission Minutes, supra note 124, at 1; Dec. 6, 2010, Commission Minutes, supra note 103, at 2.

<sup>137</sup> See 2010 Duchesne Resp., supra note 110, at 2.

<sup>138</sup> *Id.*

<sup>139</sup> See, e.g., Jan. 22, 2007, Commission Minutes, supra note 114, at 3, 4.

<sup>140</sup> See *id.*

## CASELOADS

- In fiscal year 2010 (July 1, 2009-June 30, 2010), 405 felonies and 417 misdemeanors were filed in the district courts for Duchesne County.<sup>141</sup> Another 439 misdemeanors were filed in the Duchesne County justice courts.<sup>142</sup>
- Mr. Uresk entered an appearance as counsel in at least 130 felonies, 59 misdemeanors, and at least 8 miscellaneous cases over the year between October 2009 and September 2010.<sup>143</sup> Setting aside any civil matters in which he was counsel, Mr. Uresk's total annual criminal caseload—the equivalent of 152 felonies when misdemeanors are weighted and added<sup>144</sup>—exceeds the maximum of 150 felonies recommended under the longstanding professional guidelines promulgated by NAC in 1973.<sup>145</sup>
- Assuming that an attorney will work for 40 hours a week, 50 weeks a year (with two weeks set aside for vacation), he or she will have a total of 2,000 hours to allocate to casework. (40 hours/week x 50 weeks = 2,000 hours.) In Mr. Uresk's case, even excluding his civil caseload, that schedule would result in only about 13 hours per felony. (2,000 hours/152 felonies = 13.16 hours/felony.) Again, that takes into account only his criminal work, and does not factor in any "miscellaneous" or civil matters.
- When determining which attorney or firm should replace Mr. Uresk in December 2010 and January 2011, the County Commission explicitly declined to accept caseload limits as part of the new contract.<sup>146</sup>
- Another factor worth noting when assessing the ability of public defenders in rural areas, such as Duchesne County, to provide constitutionally adequate public defender services is the substantial travel that can be involved. Both Mr. Uresk and Ms. Doherty practice in both Duchesne and Uintah Counties, for example, and it is an approximately two hour roundtrip drive from Duchesne to Vernal.

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<sup>141</sup> *Supra* note 98.

<sup>142</sup> *Supra* note 99.

<sup>143</sup> *See* 2010 Utah AO Resp., *supra* note 62.

<sup>144</sup> *Supra* note 21.

<sup>145</sup> *Supra* note 20.

<sup>146</sup> *See* Dec. 27, 2010, Commission Minutes, *supra* note 116, at 2.

Substantial travel is one of the factors referenced as important when assessing any given public defender's caseload.<sup>147</sup>

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<sup>147</sup> See ABA Guidelines for Death Penalty Cases, *supra* note 22, at 39-40 n.112 (noting that, although many organizations have considered the issue of maximum "acceptable" public defender caseloads, only NAC has set forth numerical standards, and NAC has urged that its "numbers are provided with the caveat 'that particular local conditions—such as travel time—may mean that lower limits are essential.'").

## **IRON COUNTY**

### **SUMMARY**

Iron County has a population of 46,163<sup>148</sup>; the largest city is Cedar City.<sup>149</sup> Iron County has a significantly higher poverty rate (18.3%) than the Utah State average (11.7%).<sup>150</sup>

In fiscal year 2010 (July 1, 2009-June 30, 2010), 499 felonies and 233 misdemeanors were filed in the district courts for Iron County.<sup>151</sup> Another 1,511 misdemeanors were filed in the Iron County justice courts.<sup>152</sup> Iron County spends approximately \$4.42 per capita on non-capital public defense,<sup>153</sup> which is 37 percent of the national average of \$11.86 per capita.<sup>154</sup>

Iron County contracts with two private attorneys, Jack Burns and Jeffery Slack, each at \$70,000 annually, to handle all public defense cases in the district and justice courts.<sup>155</sup> Both Mr. Burns and Mr. Slack also maintain active private practices. For the period October 2009 to September 2010, the caseloads of both Mr. Burns and Mr. Slack far exceeded the guidelines for public defender caseloads. Assuming a standard work schedule, and without

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<sup>148</sup> See 2010 U.S. Census estimates for Iron County, *available at* <http://quickfacts.census.gov/qfd/states/49/49021.html> (last visited June 7, 2011).

<sup>149</sup> See 2010 U.S. Census data for Cedar City (pop. 28,857), *available for search and download at* <http://quickfacts.census.gov/cgi-bin/qfd/demolink?49> (last visited June 4, 2011).

<sup>150</sup> See <http://www.ers.usda.gov/Data/povertyrates/PovListpct.asp?st=UT&view=Percent&longname=Utah> (last visited May 29, 2011) (printout on file with the ACLU of Utah).

<sup>151</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, First District Court for Iron County (July 1, 2009-June 30, 2010), *available at* <http://www.utcourts.gov/stats/files/2010FY/district/5-Iron.pdf> (last visited May 29, 2011).

<sup>152</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, Iron County Justice Court (July 1, 2009-June 30, 2010), *available at* <http://www.utcourts.gov/stats/files/2010FY/justice/5-Iron.pdf> (last visited May 29, 2011).

<sup>153</sup> See 2010 Adopted Budget for Iron County ("Iron 2010 Budget") at 5, *available for search and download at* <http://www.sao.state.ut.us/lgReports.html#> (last visited June 27, 2011); see also U.S. Census Bureau, State & County QuickFacts Iron County, Utah (Nov. 4, 2010), *available at* <http://quickfacts.census.gov/qfd/states/49/49021.html> (last visited June 27, 2011). In 2010, Iron County's estimated population was 46,163, which divided into the total public defense budget of \$204,000 equals \$4.42 per capita. It appears from the budget and other publicly available materials that Iron County contributes another approximately \$26,118 to the Indigent Capital Defense Fund. See Iron 2010 Adopted Budget, *supra*, at 5.

<sup>154</sup> 2008 NLADA Report, *supra* note 9, at 7.

<sup>155</sup> See Agreements with Jack Burns and Jeffery Slack, produced by Iron County in response to ACLU of Utah GRAMA Request dated May 13, 2008 ("Iron Attorney Agreements"), at ¶¶ 2-3 (both) (on file with ACLU of Utah). Appeals are contracted separately at a flat fee of \$750 per appeal, regardless of each appeal's complexity. See *id.* at ¶¶ 6 (both).



factoring in any time spent on civil or “miscellaneous” matters, the reported caseloads of Messrs. Burns and Slack would leave them with only about 13.1 hours and 12.6 hours, respectively, to handle each felony or felony equivalent<sup>156</sup> case on their dockets.<sup>157</sup> And if their “miscellaneous” cases are factored in and total tracked caseloads are considered, those numbers drop to only 9.3 hours (Mr. Burns) or 6.7 hours (Mr. Slack) per case.

A third attorney, William Leigh, handles all juvenile court cases at a contract amount of \$45,000 annually.<sup>158</sup> Mr. Leigh is also the contract public defender in neighboring Kane County (infra at pp. 43-48), with a contract amount of \$50,000 annually, and also maintains an active private practice.

According to 2010 budget figures, Iron County budgeted almost no additional funds—a mere \$19,000—above and beyond these contract amounts (totaling \$185,000) for non-capital public defense services.<sup>159</sup>

By contrast, the Iron County Attorney's Office staff currently includes five attorneys and had a 2010 budget allocation of \$884,600.<sup>160</sup> That is over four times the amount budgeted for non-capital public defense services that same year. Add to that the near unlimited access enjoyed by the County Attorney's office to police officers and victim advocates (who often are allowed to testify as experts) and to the state crime lab, and one can reasonably estimate that the resources allocated to the County Attorney are likely closer to five times the amount of the public defense budget.

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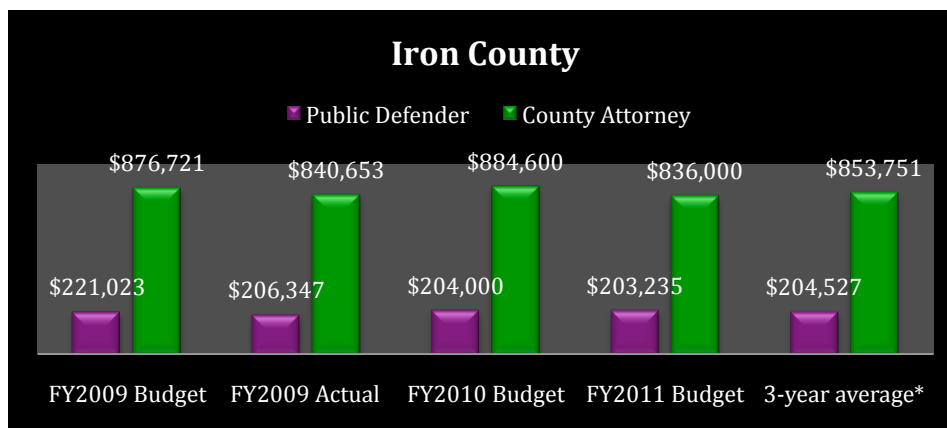
<sup>156</sup> Supra note 21.

<sup>157</sup> See full discussion infra at pp. 41-42.

<sup>158</sup> See Agreement with William Leigh, produced by Iron County in response to ACLU of Utah GRAMA Request dated May 13, 2008 (“Leigh Agreement”), at ¶ 2-3 (on file with ACLU of Utah).

<sup>159</sup> See Iron 2010 Budget, supra note 153, at 5.

<sup>160</sup> *Id.* at 12. The County Attorney's budget for fiscal year 2010 included, among other things, \$530,000 for employee salaries, \$275,000 for employee benefits, and \$8,000 for travel and training.



When asked, Iron County could not provide any documentation demonstrating that it has in place any policies or procedures to guarantee that—or even to monitor whether—individual defendants in Iron County receive quality defense services.<sup>161</sup> There are apparently no systems in place to screen for conflicts of interest, to track caseloads, or to ensure consistent and competent representation.<sup>162</sup>

To further compound this lack of oversight, the Iron County Commission primarily relies on the advice and input of the County Attorney when awarding and renewing the public defender contracts. This violates the first of the ABA's Ten Principles, i.e., full independence of public defenders from prosecutorial or political influence or control.<sup>163</sup>

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<sup>161</sup> See June 4, 2008, Resp. from Iron County to ACLU of Utah GRAMA request dated May 13, 2008 ("2008 Iron Resp."), at 1 (on file with the ACLU of Utah).

<sup>162</sup> *Id.*

<sup>163</sup> See ABA Ten Principles, *supra* note 19, at 1.

**DETAILED PUBLIC RECORDS INFORMATION: IRON COUNTY**

**STANDARDS AND OVERSIGHT**

- Iron County contracts with three private attorneys to provide public defense services: Jack Burns handles half of the county's non-juvenile public defense cases (at \$70,000 annually); Jeffery Slack handles the other half of the county's non-juvenile public defense cases (also at \$70,000 annually); and William Leigh handles the county's juvenile public defense cases (at \$45,000 annually).<sup>164</sup>
- Appeals are handled separately at a contractual set fee of \$750 per case, regardless of the case's complexity.<sup>165</sup>
- Iron County stated that it does not have written policies for<sup>166</sup>:
  - Supervising the ongoing provision of public defense services;
  - Requiring public defenders to participate in continuing legal education; or
  - Monitoring the caseloads of public defenders.
- Iron County stated that it does not have any written criteria or guidelines for<sup>167</sup>:
  - Selecting counsel to represent indigent defendants;
  - Ensuring that public defenders meet minimum qualifications or performance standards; or
  - Analyzing the adequacy of compensation for public defenders.

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<sup>164</sup> See Iron Attorney Agreements, supra note 155, at ¶¶2-3 (both); Leigh Agreement, supra note 158, at ¶¶2-3.

<sup>165</sup> See Iron Attorney Agreements, supra note 155, at ¶6 (both); Leigh Agreement, supra note 158, at ¶6. We are advised that appeals are frequently handled by Randall C. Allen, who—in addition to handling appeals in Iron County—has public defender contracts in Beaver County, Garfield County, Kane County, Parowan City, and Cedar City. See July 16, 2008, Resp. by Kane County to ACLU of Utah GRAMA Request dated May 13, 2008, at 28 (on file with ACLU of Utah). Mr. Allen also maintains a private practice and teaches as an assistant professor of political science at Southern Utah University. See, e.g., Resume of Randall C. Allen, available at <http://www.suu.edu/faculty/AllenR/Vita.pdf> (last visited July 2, 2011).

<sup>166</sup> See 2008 Iron Resp., supra note 161, at 1.

<sup>167</sup> See *id.*

## **CONFLICTS OF INTEREST**

- Until recently, in Iron County, public defenders were required to pay for conflict counsel out of their base contract. That contractual provision has now been eliminated.
- Iron County does not have any written policy or procedure for screening for or identifying conflicts of interest.<sup>168</sup>

## **FUNDING AND RESOURCES**

- Iron County spends approximately \$4.42 per capita on non-capital public defense,<sup>169</sup> which is 37 percent of the national average of \$11.86 per capita.<sup>170</sup>
- According to 2010 budget figures, Iron County budgeted \$204,000 for non-capital public defender services. That includes \$185,000 in contract payments to Messrs. Burns, Slack, and Leigh, \$10,000 that is described as “other legal services,” and an undesignated \$9,000 that is lumped in with the contracts under “legal services.”<sup>171</sup> According to the Office of the Utah State Auditor, the total expenditure for the Iron County non-capital public defense system in 2009 was approximately \$206,000 (out of a budgeted \$221,023).<sup>172</sup>
- By contrast, the total expenditure for the Iron County Attorney’s Office in 2009 was approximately \$840,653 (out of a budgeted \$876,721)<sup>173</sup>—over four times the allocation for public defense. That number increased to \$884,600 for fiscal year 2010 (compared to \$204,000 for public defender services),<sup>174</sup> and decreased to

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<sup>168</sup> *See id.*

<sup>169</sup> *See* calculations *supra* note 153.

<sup>170</sup> 2008 NLADA Report, *supra* note 9, at 7.

<sup>171</sup> *See* Iron 2010 Budget, *supra* note 153, at 5.

<sup>172</sup> *See* 2009 Financial Report for Iron County, at 44, *available for search and download at* <http://www.sao.state.ut.us/lgReports.html#> (last visited June 27, 2011). The difference may be accounted for, in part, by Iron County’s inclusion in the public defense budget line item monies that it contributes, instead, to the Indigent Capital Defense Fund. *See* discussion *supra* note 153 & Appendix A hereto.

<sup>173</sup> *Id.*

<sup>174</sup> *See* Iron 2010 Budget, *supra* note 146, at 5, 12.

**Failing Gideon:** Utah's Flawed County-By-County Public Defender System

\$836,000 for fiscal year 2011 (compared to \$204,000 for public defender services).<sup>175</sup>

**Compensation for Public Defenders v. County Attorney's Office**

<b>PUBLIC DEFENDERS</b>	<b>CONTRACT<sup>176</sup></b>	<b>COUNTY ATTORNEY'S OFFICE</b>	<b>SALARY/WAGE<sup>177</sup></b>
Jack Burns	\$70,000	Scott Garrett (county attorney)	\$99,992
Jeffery Slack	\$70,000	Troy Little (chief deputy attorney)	\$83,893
William Leigh	\$45,000	Greg Romeril (deputy attorney)	\$50,191
		Gary Edwards (deputy attorney)	\$55,417
		Ann Marie Allen Mciff (deputy attorney)	\$45,515
		Calleen Mason (office manager)	\$45,118
		Laura Lee (victim's serv. coord.)	\$27,231
		Amy Robinson (legal assistant)	\$37,813
		Holly Chandler (legal assistant)	\$35,247
		Denise Heaton (legal assistant)	\$26,326
		Shelly Leavitt (legal assistant)	\$27,313
		Jessica Roy (victim's serv. coord.)	\$3,578
<b>PD Total</b>	<b>\$185,000</b>	<b>County Attorney's Office Salary Total</b>	<b>\$537,634</b>

- In addition to salaries, Iron County has budgeted for at least the following expenses of County Attorney's Office in fiscal year 2011: office space; employee benefits (\$248,200); postage (\$3,000); office supplies (\$4,000); vehicle operations and fuel (\$4,500); telephone (\$9,000); legal publications (\$9,000); and training (\$8,000).<sup>178</sup>
- Because the Iron County public defenders are contract workers, as opposed to employees of the county, their contract provides no monies for overhead, support staff, administrative expenses, or employment benefits such as health insurance, worker's compensation, sick leave, vacation, or pension.<sup>179</sup>

<sup>175</sup> See 2011 Adopted Budget for Iron County ("Iron 2011 Budget") at 14, 7, available for search and download at <http://www.sao.state.ut.us/lgReports.html#> (last visited June 27, 2011).

<sup>176</sup> See Iron Attorney Agreements, supra note 155, at ¶2 (both); Leigh Agreement, supra note 158, at ¶2.

<sup>177</sup> Salaries for many public employees, including those listed in this chart, can be searched and reviewed at <http://utahsright.com/> (last visited June 3, 2011).

<sup>178</sup> See Iron 2011 Budget, supra note 175, at 14.

<sup>179</sup> See Iron Attorney Agreements, supra note 155, at ¶13 (both); Leigh Agreement, supra note 158, at ¶12.

- Unlike most counties included in this report, Iron County provides some monies toward the cost of investigations; notably, however, those requests must be submitted to the County Attorney's Office, which has the discretion to approve or deny all such requests. If the County Attorney denies the request, the submitting public defender must apply to the court for pre-approval.<sup>180</sup> No such pre-approval is required of the County Attorney's Office, which also has access to city, county, and state law enforcement resources and forensic services.

### **CASELOADS**

- In fiscal year 2010 (July 1, 2009-June 30, 2010), 499 felonies and 233 misdemeanors were filed in the district courts for Iron County.<sup>181</sup> Another 1,511 misdemeanors were filed in the Iron County justice courts.<sup>182</sup>
- For the period October 2009 to September 2010, the caseloads of both Mr. Burns and Mr. Slack far exceeded NAC guidelines for public defender caseloads. As noted previously: "[N]ot even the most able and industrious lawyers can provide quality representation when their workloads are unmanageable. Excessive workloads, moreover, lead to attorney frustration, disillusionment by clients, and weakening of the adversary system."<sup>183</sup>
- Mr. Burns appeared as counsel in 129 felony and 63 misdemeanor cases (for a NAC felony equivalent of 153 felonies<sup>184</sup>) and another 23 miscellaneous cases (for a total of 215 cases in one year).<sup>185</sup> Assuming a work schedule of 40 hours per week for 50 weeks a year (setting aside two weeks for vacation), and without factoring in any time spent on civil or "miscellaneous" matters, that would leave Mr. Burns with only about 13.1 hours to handle each felony or felony

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<sup>180</sup> See Iron Attorney Agreements, supra note 155, at ¶9 (both); Leigh Agreement, supra note 158, at ¶8. There is apparently no procedure whereby public defenders may appeal court-rejected reimbursement requests. We note, however, that at least one Iron County public defender indicated that County Attorney Scott Garrett is "reasonable" with requests for additional funding for defense investigations.

<sup>181</sup> Supra note 151.

<sup>182</sup> Supra note 152.

<sup>183</sup> See ABA Guidelines For Death Penalty Cases, supra note 22, at 39 (quoting American Bar Association Standards For Criminal Justice: Providing Defense Services, Standard 5-5.3 cmt. (3d ed. 1992)).

<sup>184</sup> Supra note 21.

<sup>185</sup> See 2010 Utah AO Resp., supra note 62.

equivalent case on his docket. (2,000 hours/153 felonies = 13.07 hours/felony.) If the “miscellaneous” cases are factored in and total tracked caseloads are considered, that number drops to 9.3 hours per case. (2,000 hours/215 cases = 9.3 hours/case.)

- Mr. Slack appeared as counsel in 117 felony and 112 misdemeanor cases (for a NAC felony equivalent of 159 felonies<sup>186</sup>) and another miscellaneous 71 cases (for a total of 300 cases in one year).<sup>187</sup> Assuming the same work schedule, and without factoring in any time spent on civil or “miscellaneous” matters, that would leave Mr. Slack with only about 12.6 hours to handle each felony or felony equivalent case on his docket. (2,000 hours/159 felonies = 12.6 hours/felony.) If the “miscellaneous” cases are factored in and total tracked caseloads are considered, that number drops to 6.7 hours per case. (2,000 hours/300 cases = 6.7 hours/case.)
- Mr. Leigh handles all juvenile court public defense cases in Iron County. Not counting Mr. Leigh’s juvenile docket, for which case statistics were not available from the Utah Administrative Office of the Courts, Mr. Leigh appeared as counsel in 94 felonies and 58 misdemeanors (for a NAC felony equivalent of 116 felonies<sup>188</sup>) and another 51 “miscellaneous” cases (for a total of 203 cases) between October 2009 and September 2010.<sup>189</sup> Assuming the same work schedule, and without factoring in any time spent on civil or “miscellaneous” matters, that would leave Mr. Leigh with only about 17.2 hours to handle each felony or felony equivalent case on his docket. (2,000 hours/116 felonies = 17.2 hours/felony.) Once the “miscellaneous” cases are factored in and total tracked caseloads are considered, that number goes down to 9.9 hours per case. (2,000 hours/203 cases = 9.9 hours/case.)
- Moreover, considering that Mr. Leigh practices extensively in both Iron and Kane Counties (and, indeed, has a public defender contract in both), and that the courthouses in those two counties are approximately two hours apart, one way, a significant portion of Mr. Leigh’s time must be spent traveling. As noted previously,

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<sup>186</sup> *Supra* note 21.

<sup>187</sup> *See* 2010 Utah AO Resp., *supra* note 62.

<sup>188</sup> *Supra* note 21.

<sup>189</sup> *See* 2010 Utah AO Resp., *supra* note 62.

substantial travel is one of the factors referenced as important when assessing any given public defender's caseload.<sup>190</sup>

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<sup>190</sup> See ABA Guidelines for Death Penalty Cases, *supra* note 22, at 39-40 n.112 (noting that, although many organizations have considered the issue of maximum "acceptable" public defender caseloads, only NAC has set forth numerical standards, and NAC has urged that its "numbers are provided with the caveat 'that particular local conditions—such as travel time—may mean that lower limits are essential.'").



## **KANE COUNTY**

### **SUMMARY**

Kane County has a population of 7,125 people<sup>191</sup>; the largest city is Kanab.<sup>192</sup> Kane County has the same poverty rate (11.7%) as the Utah State average.<sup>193</sup>

In fiscal year 2010 (July 1, 2009-June 30, 2010), 161 felonies and 45 misdemeanors were filed in the District Court for Kane County.<sup>194</sup> Another 589 misdemeanors were filed in the Kane County justice courts.<sup>195</sup> Kane County, like all other counties in Utah, receives no money from the state for public defense. In 2010, Kane County budgeted approximately \$8.63 per capita for non-capital public defense services,<sup>196</sup> which is 73 percent of the national average amount spent (\$11.86<sup>197</sup>).

Kane County contracts with private attorney William Leigh, paying \$50,000 annually for all public defense services.<sup>198</sup> Mr. Leigh also holds the public defense contract for juvenile cases in neighboring Iron County, with

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<sup>191</sup> See 2010 U.S. Census estimates for Kane County, *available at* <http://quickfacts.census.gov/qfd/states/49/49025.html> (last visited June 7, 2011).

<sup>192</sup> See 2010 U.S. Census data for Kanab (pop. 4,312), *available for search and download at* <http://quickfacts.census.gov/cgi-bin/qfd/demolink?49> (last visited June 4, 2011).

<sup>193</sup> See <http://www.ers.usda.gov/Data/povertyrates/PovListpct.asp?st=UT&view=Percent&longname=Utah> (last visited May 29, 2011) (printout on file with the ACLU of Utah).

<sup>194</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, First District Court for Kane County (July 1, 2009-June 30, 2010), *available at* <http://www.utcourts.gov/stats/files/2010FY/district/6-Kane.pdf> (last visited June 4, 2011).

<sup>195</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, Kane County Justice Court (July 1, 2009-June 30, 2010), *available at* <http://www.utcourts.gov/stats/files/2010FY/justice/6-Kane.pdf> (last visited June 4, 2011).

<sup>196</sup> See 2010 Adopted Budget for Kane County ("Kane 2010 Budget") at 3, *available for search and download at* <http://www.sao.state.ut.us/lgReports.html#> (last visited June 27, 2011); see also U.S. Census Bureau, State & County QuickFacts Iron County, Utah (Nov. 4, 2010), *available at* <http://quickfacts.census.gov/qfd/states/49/49021.html> (last visited June 27, 2011). In 2010, Kane County's estimated population was 7,125, which divided into the total public defense budget of approximately \$61,500 is \$8.63 per capita. It appears from the budget and other publicly available materials that Kane County contributes another approximately \$8,130 to the Indigent Capital Defense Fund. See, e.g., July 31, 2008, Revenue and Expense Report (unaudited) ("2008 Revenue Report") produced by Kane County in response to ACLU of Utah GRAMA request dated May 13, 2008 (on file with the ACLU of Utah).

<sup>197</sup> 2008 NLADA Report, *supra* note 9, at 7.

<sup>198</sup> See 2011 Utah Appellate Task Force Report, *supra* note 7, at Appendix A at 3 (listing the material terms of Mr. Leigh's public defender contract in Kane County) (on file with the ACLU of Utah). We have been unable to locate a publicly available copy of Mr. Leigh's contract, and none was submitted in response to the ACLU of Utah's GRAMA requests to Kane County.

an annual contract amount of \$45,000,<sup>199</sup> and maintains an active private practice.

As an independent contractor, Mr. Leigh is expected to take from the \$50,000 contract amount all monies necessary for his overhead expenses (including office space, copying costs, telephone calls (except collect calls)), continuing legal education costs, legal research costs, and support staff. Travel costs alone, which are not covered by the contract and must be paid out-of-pocket by the public defender, are significant; assuming that Mr. Leigh travels between Iron County and Kane County four times a month (at four hours and approximately 180 miles for each roundtrip drive), and assuming average gas mileage of 25 miles per gallon, then each month will present 720 miles of driving, with 28.8 gallons of fuel expended. At \$3.40/gallon (a low average for 2010<sup>200</sup>), Mr. Leigh would pay \$97.92 each month, or \$1,175.04 each year, in fuel costs alone. That does not include wear and tear on his vehicle, meals, or overnight stays.<sup>201</sup>

By contrast, the Kane County Attorney's Office had a 2010 budget allocation of \$353,029—over five times the amount allocated to non-capital public defense services.<sup>202</sup> At the beginning of 2010, the County Attorney's Office had three attorneys engaged in criminal prosecutions full- or part-time (with salaries totaling \$216,078.60<sup>203</sup>), three "certified prosecutorial assistants" (with salaries totaling \$91,291.20), and one secretary.<sup>204</sup> Unlike Mr. Leigh, employees of the Kane County Attorney's Office enjoy additional benefits and services paid for by the county, including travel expenses (\$11,675), telephones (\$1,500), equipment, furniture, subscriptions and memberships (\$2,659), office supplies (\$4,700), postage (\$3,000), data processing, transcripts (\$4,800), process of service (\$900), witness expenses (\$1,000), law library (\$1,100), and employee benefits (\$64,262).<sup>205</sup>

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<sup>199</sup> See Leigh Agreement, *supra* note 158.

<sup>200</sup> See <http://fuelgaugereport.opisnet.com/UTmetro.asp> (last visited May 27, 2011).

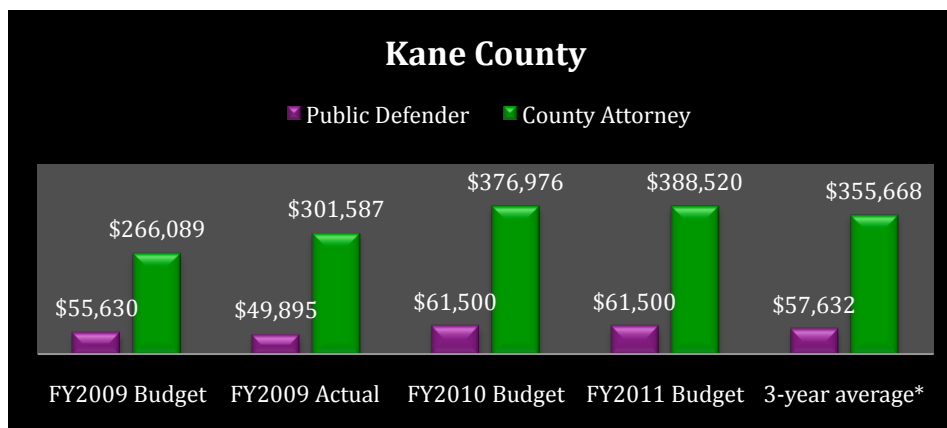
<sup>201</sup> Using the Internal Revenue Service's standard mileage rate for 2010, *available at* <http://www.irs.gov/newsroom/article/0,,id=216048,00.html> (last visited May 27, 2011), Mr. Leigh's travel at the above assumed frequencies, inclusive of gasoline and wear and tear on his vehicle, would be valued at \$360/month, or \$4,320/year.

<sup>202</sup> See Kane 2010 Budget, *supra* note 196, at 3. This does not include monies allocated to the victim's witness advocate, even though victim's witness advocates primarily assist the prosecution.

<sup>203</sup> See Oct. 26, 2010, Resp. by Kane County to ACLU of Utah GRAMA Request dated Sept. 15, 2009 ("2010 Kane Resp."), at 12 (on file with ACLU of Utah). One of the attorneys, William Bernard, ceased working in the County Attorney's Office sometime in 2010.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.* at 8.



Unlike many other counties studied for this report, Kane County does set aside some additional resources for public defense, but does so at levels far below what is provided to the County Attorney’s Office. For example, Kane County’s 2008 budget shows that \$5,700 was set aside for “investigations” by the public defender<sup>206</sup>; notably, however, Mr. Leigh was still required to submit a request to the County Attorney in order to access those funds<sup>207</sup> and, in any event, the set aside amount is roughly one-third of the \$19,800 amount set aside and included in the budget for “investigations” by the County Attorney’s Office.<sup>208</sup>

<sup>206</sup> See 2008 Revenue Report, supra note 196.

<sup>207</sup> We are advised that the Kane County Attorney regularly denies these requests, forcing Mr. Leigh regularly to seek court intervention and approval—and to expend additional time and resources—in order to access the funds supposedly set aside for “investigations.”

<sup>208</sup> See 2010 Kane Resp., supra note 203, at 6. The “investigations” allocation for the County Attorney increased to \$20,723 in 2009 and to \$23,500 in 2010. *Id.* at 7-8.

**DETAILED PUBLIC RECORDS INFORMATION: KANE COUNTY**

**STANDARDS & OVERSIGHT**

- Kane County contracts annually with private attorney William Leigh for all public defense services. His contract is for \$50,000 annually.<sup>209</sup>
- Kane County's 2010 advertisement for the position did not list any specific qualifications or experience required of potential applicants.<sup>210</sup> A previous advertisement for the position stated only that bidders "must be Utah licensed and in good standing with the Utah State Bar."<sup>211</sup>
- Kane County apparently does not have written policies regarding<sup>212</sup>:
  - Supervising the ongoing provision of public defense services;
  - Requiring the public defender to participate in continuing legal education; or
  - Monitoring the caseloads of the public defender.
- Kane County apparently does not have any written criteria or guidelines for<sup>213</sup>:
  - Selecting counsel to represent indigent defendants;
  - Ensuring that the public defender meets minimum qualifications or performance standards; or
  - Analyzing the adequacy of compensation for the public defender.

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<sup>209</sup> See 2011 Utah Appellate Task Force Report, *supra* note 7, Appendix A at 3.

<sup>210</sup> See, e.g., Public Notice of Public Defender Position, *available at* <http://www.utah.gov/pmn/sitemap/notice/38183.html> (last visited Jan. 28, 2011).

<sup>211</sup> See Advertisement Requests produced by Kane County in response to ACLU of Utah GRAMA Request dated May 13, 2008 (on file with ACLU of Utah).

<sup>212</sup> See July 22, 2008, Resp. by Kane County to ACLU of Utah GRAMA Request dated May 13, 2008 ("2008 Kane Resp."); *see also* Agreement with Randall C. Allen, produced by Kane County in response to ACLU of Utah GRAMA request dated May 13, 2008, at 20-27 (on file with the ACLU of Utah).

<sup>213</sup> See 2008 Kane Resp., *supra* note 212.

**CONFLICTS OF INTEREST**

- In Kane County, the public defender must pay for conflict counsel out of his base contract.<sup>214</sup> This is inherently problematic. It may discourage the public defender from acknowledging conflicts and hiring conflict counsel and, if conflict counsel is retained, may incentivize the public defender to retain the least expensive conflict counsel he can find.

**FUNDING & RESOURCES**

- In 2010, Kane County budgeted approximately \$8.63 per capita for non-capital public defense services,<sup>215</sup> which is 76 percent of the national average amount spent (\$11.86<sup>216</sup>).
- Kane County's 2010 budget for non-capital public defense services was approximately \$61,500.<sup>217</sup> The 2010 budget for the County Attorney's office, by contrast, was \$353,029—over five times the public defense budget.<sup>218</sup>

**Compensation for Public Defenders v. County Attorney's Office**

<b>PUBLIC DEFENDER</b>	<b>CONTRACT</b>	<b>COUNTY ATTORNEY'S OFFICE</b>	<b>SALARY/WAGE<sup>219</sup></b>
William Leigh	\$50,000	James Scarth (county attorney)	\$78,643.13
		William Bernard (deputy county attorney)	\$56,784.00
		Robert Van Dyke (deputy county attorney)	\$53,518.40
		Patricia Shirley (certified prosecutorial asst)	\$34,756.80
		Bridget Mackey (certified prosecutorial asst)	\$27,851.20
		Stacey Hutchings (secretary)	\$21,216.00
<b>PD Total</b>	<b>\$50,000</b>	<b>County Attorney's Office Salary Total</b>	<b>\$272,769.53</b>

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<sup>214</sup> See 2011 Utah Appellate Task Force Report, supra note 7, Appendix A at 3.

<sup>215</sup> See calculations supra note 196.

<sup>216</sup> 2008 NLADA Report, supra note 9, at 7.

<sup>217</sup> See Kane 2010 Budget, supra note 196, at 3, and related calculations.

<sup>218</sup> *Id.*

## CASELOADS

- In fiscal year 2010 (July 1, 2009-June 30, 2010), 161 felonies and 45 misdemeanors were filed in the Kane County District Court,<sup>220</sup> and 589 misdemeanors were filed in the Kane County justice courts.<sup>221</sup>
- Mr. Leigh handles all public defense cases in Kane County, as well as all juvenile public defense cases in Iron County. Not counting Mr. Leigh's juvenile docket, for which case statistics were not available from the Utah Administrative Office of the Courts, Mr. Leigh appeared as counsel in 94 felonies and 58 misdemeanors (for a NAC felony equivalent of 116 felonies<sup>222</sup>) and another 51 "miscellaneous" cases (for a total of 203 cases) between October 2009 and September 2010.<sup>223</sup>
- Assuming a standard work schedule and without factoring in any time spent on civil or "miscellaneous" cases, that would leave Mr. Leigh with only about 17.2 hours to handle each felony or felony equivalent case on his docket. (40 hours/week x 50 weeks = 2,000 hours; 2,000 hours/116 felonies = 17.2 hours/felony.) Once the "miscellaneous" cases are factored in and total tracked caseloads are considered, that number goes down to 9.9 hours per case. (2,000 hours/203 cases = 9.9 hours/case.)
- Moreover, assuming that Mr. Leigh travels between Iron County and Kane County four times a month (at four hours and 180 miles for each roundtrip drive), that would add up to 16 hours per month (192 hours per year) spent driving between his two public defender jobs. Once those hours are deducted from Mr. Leigh's available work time, his available time per felony or felony equivalent goes from 17.2 hours to 15.6 hours. (1,808 hours/116 felonies = 15.6 hours/felony.) Once the "miscellaneous" cases are factored in and total tracked caseloads are considered, that number goes down to 8.9 hours per case. (1,808 hours/203 cases = 8.9 hours/case.)

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<sup>219</sup> Salaries for many public employees, including those listed in this chart, can be searched and reviewed at <http://utahsright.com/> (last visited June 3, 2011).

<sup>220</sup> *Supra* note 194.

<sup>221</sup> *Supra* note 195.

<sup>222</sup> *Supra* note 21.

<sup>223</sup> *See* 2010 Utah AO Resp., *supra* note 62.

## **SAN JUAN COUNTY**

### **SUMMARY**

San Juan County, which is the largest Utah county geographically (covering almost 8,000 square miles), has a population of 14,746<sup>224</sup>; the largest city is Blanding.<sup>225</sup> San Juan County has a significantly higher poverty rate (28.3%) than the Utah State average (11.7%).<sup>226</sup> The population is predominantly Native American (50.4%).<sup>227</sup>

In fiscal year 2010 (July 1, 2009-June 30, 2010), 64 felonies and 24 misdemeanors were filed in the District Court for San Juan County.<sup>228</sup> Another 611 misdemeanors were filed in the San Juan County justice courts.<sup>229</sup>

San Juan County, like all other counties in Utah, receives no money from the state for public defense. Despite its extremely high poverty rate, San Juan County spends only \$5.19 per capita on public defense services,<sup>230</sup> which is 44 percent of the national average of \$11.86.<sup>231</sup>

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<sup>224</sup> See 2010 U.S. Census estimates for San Juan County, *available at* <http://quickfacts.census.gov/qfd/states/49/49037.html> (last visited June 7, 2011).

<sup>225</sup> See 2010 U.S. Census data for Blanding (pop. 3,375), *available for search and download at* <http://quickfacts.census.gov/cgi-bin/qfd/demolink?49> (last visited July 2, 2011).

<sup>226</sup> See <http://www.ers.usda.gov/Data/povertyrates/PovListpct.asp?st=UT&view=Percent&longname=Utah> (last visited May 29, 2011) (printout on file with the ACLU of Utah).

<sup>227</sup> See 2010 U.S. Census estimates for San Juan County, *available at* <http://quickfacts.census.gov/qfd/states/49/49037.html> (last visited June 7, 2011).

<sup>228</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, District Court for San Juan County (July 1, 2009-June 30, 2010), *available at* [http://www.utcourts.gov/stats/files/2010FY/district/7-San\\_Juan.pdf](http://www.utcourts.gov/stats/files/2010FY/district/7-San_Juan.pdf) (last visited July 1, 2011).

<sup>229</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, San Juan County Justice Court (July 1, 2009-June 30, 2010), *available at* [http://www.utcourts.gov/stats/files/2010FY/justice/7-San\\_Juan.pdf](http://www.utcourts.gov/stats/files/2010FY/justice/7-San_Juan.pdf) (last visited July 1, 2011).

<sup>230</sup> See 2010 Adopted Budget for San Juan County ("San Juan 2010 Budget") at 3, *available for search and download at* <http://www.sao.state.ut.us/lgReports.html#> (last visited June 27, 2011); *see also* U.S. Census Bureau, State & County QuickFacts San Juan County, Utah dated (Nov. 4, 2010), *available at* <http://quickfacts.census.gov/qfd/states/49/49037.html> (last visited June 27, 2011). In 2010, San Juan County's estimated population was 14,746, which divided into the total public defense budget of \$76,480 equals \$5.19 per capita. Note, however, that using the per capita measure in a place like San Juan County may effectively overvalue monies spent on public defense given the high numbers of transient workers, visitors, and others who may utilize public defense services in any given year.

<sup>231</sup> 2008 NLADA Report, *supra* note 9, at 7.

San Juan County contracts for three-year periods with private attorneys for all public defense services. Since at least 1996 until the end of 2010, the contracted public defender was William Schultz.<sup>232</sup> Mr. Schultz's contract amount by 2009 was for \$70,000 per year.<sup>233</sup> San Juan County used to offer Mr. Schultz additional compensation for appellate work, but that provision was eliminated in 2008.<sup>234</sup> We are advised by a former county commissioner that, for a time, the County Attorney felt compelled to review all Mr. Schultz written work before it could be submitted to a court.<sup>235</sup>

At the end of 2009, San Juan County contracted for public defender services with Mitch Maughan, a private attorney out of Spanish Fork, Utah—which is approximately four hours and 237 miles away from the Monticello courthouse.<sup>236</sup> Mr. Maughan was selected from a total of three applicants who applied for the job. Due to health problems that “prevent[ed] him from being in th[e] rural area,” however, Mr. Maughan was released from the

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<sup>232</sup> See San Juan County Commission Minutes dated May 28, 1996 (“May 28, 1996, San Juan Minutes”), at 1, available at <http://www.sanjuancounty.org/archives/Minutes/19960528.txt> (last visited July 4, 2011). At the time of the initial contract, all investigative expenses of the public defender had to be approved in advance by the San Juan County Commission. See San Juan County Commission Minutes dated April 28, 1997, available at <http://www.sanjuancounty.org/archives/Minutes/19970428.txt> (last visited July 4, 2011).

<sup>233</sup> See San Juan County Commission Minutes dated April 7, 2008 (“Apr. 7, 2008 San Juan Minutes”), at 3, available at <http://www.sanjuancounty.org/archives/Minutes/20080407.TXT> (last visited July 4, 2011). In 2001, during the course of his contract, Mr. Schultz proposed to the County Commission that the county start charging a “recoupment fee” for indigent defendants, i.e., his clients, and that this fee should be given directly to him as additional compensation. That proposal was approved by the San Juan County Commission on February 5, 2001. See San Juan County Commission Minutes dated Feb. 5, 2001, at 1, available at <http://www.sanjuancounty.org/archives/Minutes/20010205.txt> (last visited July 4, 2011). That provision was eliminated in 2008. See Apr. 7, 2008 San Juan Minutes, *supra*, at 3.

<sup>234</sup> *Id.*

<sup>235</sup> No matter the reason why, having the County Attorney review the work of public defenders raises obvious concerns, and violates the first of the ten ABA Principles of a Public Defense Delivery System. See ABA Ten Principles, *supra* note 19.

<sup>236</sup> See San Juan County Commission Minutes dated Dec. 14, 2009 (“Dec. 14, 2009, San Juan Minutes”), available at <http://www.sanjuancounty.org/archives/Minutes/20091214.txt> (last visited May 27, 2011). There was apparently some concern about Mr. Maughan’s availability to meet with clients and handle court appearances from so far away. *Id.* (“Rick reported to Commissioners that he has received three proposals for the Public Defender Contract. There was some discussion on locations and availability of potential Public Defenders. Rick presented a request to approve Mitch Maughan as the Public Defender stating that he would be located in Monticello/Blanding and available.”)). Mr. Maughan’s bid was nonetheless accepted without objection. *Id.*



contract almost immediately after it was awarded.<sup>237</sup> Rather than sponsor a new bidding process, San Juan County re-contracted with Mr. Schulz.<sup>238</sup>

It appears that the County Commission considered seeking bids for the public defender position in March 2010.<sup>239</sup> It further appears, however, that the county decided shortly thereafter to leave the contract in place until the beginning of 2011.<sup>240</sup> Currently, the public defender for San Juan County is Happy Morgan, who was the County Attorney in neighboring Grand County until Fall 2010.<sup>241</sup>

San Juan County's 2011 budget allocates \$88,124 for public defender services.<sup>242</sup> By contrast, the 2011 budget allocates \$259,165—almost three times as much—to the County Attorney's Office.<sup>243</sup> This budgeted amount includes, among other items, \$196,303 for salaries and wages, \$26,696 for retirement benefits, \$4,000 for travel expenses, \$9,000 for law library supplies, and \$3,000 for telephone costs.<sup>244</sup> Add to that the near unlimited

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<sup>237</sup> See San Juan County Commission Minutes dated Jan. 4, 2010 ("Jan. 4, 2010, San Juan Minutes"), at 1, available at <http://www.sanjuancounty.org/archives/Minutes/20100104.txt> (last visited May 27, 2011) ("Rick reported to Commissioners that the public SJC defender position is back open. Rick stated that the person whom Commissioners had voted on has health problems that prevent[] him from being in this rural area.").

<sup>238</sup> *Id.* ("Bill Schultz, public defender, reported to Commissioners that he could take the case load for the year 2010 and the county could rebid in the fall. Following a discussion on the advantages of retaining the current public defender, a motion to approve Bill Schultz as the SJC public defender for the 2010 calendar year was made by Commissioner Kenneth Maryboy. . . . Vote unanimous.").

<sup>239</sup> See San Juan County Commission Minutes dated Mar. 22, 2010 ("March 22, 2010, San Juan Minutes"), at 1 available at <http://www.sanjuancounty.org/archives/Minutes/20100322.txt> (last visited July 4, 2011) ("Commissioners asked Rick [Bailey, San Juan County Administrator] to advertise for the Public Defender Contract . . .").

<sup>240</sup> See San Juan County Commission Minutes dated June 7, 2010 ("June 7, 2010, San Juan Minutes"), at 1, available at <http://www.sanjuancounty.org/archives/Minutes/20100607.txt> (last visited July 4, 2011) ("A motion to leave the Public Defender Contract intact until January 2010 was made by Commission[er] Lynn Stevens. . . . Vote unanimous. In October/November the County will issue a new RFP for Contract.").

<sup>241</sup> See San Juan County Commission Minutes dated Dec. 20, 2010 ("Dec. 20, 2010, San Juan Minutes"), at 1, available at <http://www.sanjuancounty.org/archives/Minutes/20101220.txt> (last visited July 1, 2011); see also Grand County Commission Minutes dated Dec. 21, 2010, at 3, available at [http://www.grandcountyutah.net/pdf/council\\_minutes/2010\\_12\\_21.pdf](http://www.grandcountyutah.net/pdf/council_minutes/2010_12_21.pdf) (last visited July 1, 2011) (recognizing out-going County Attorney Happy Morgan for her years of service).

<sup>242</sup> See 2011 Adopted Budget for San Juan County ("San Juan 2011 Budget") at 3, available for search and download at <http://www.sao.state.ut.us/lgReports.html#> (last visited June 27, 2011).

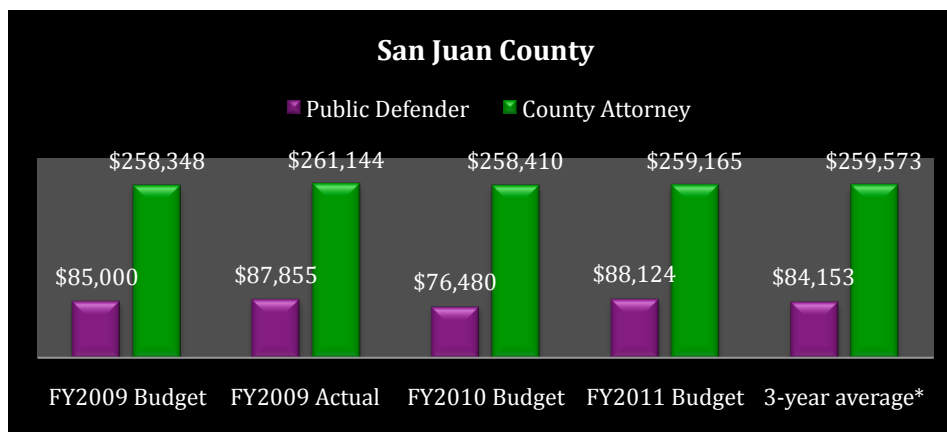
<sup>243</sup> *Id.*

<sup>244</sup> See San Juan County 2011 Budget: Approved Detail ("San Juan 2011 Detail Budget"), at 13-14, available at <http://www.google.com/url?sa=t&source=web&cd=5&ved=0CDYQFjAE&url>

**Failing Gideon:** Utah's Flawed County-By-County Public Defender System

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access enjoyed by the County Attorney's office to police officers and victim advocates (who often are allowed to testify as experts) and to state-funded forensic services, and the disparity is starker still.



When asked, San Juan County could not provide any documentation demonstrating that it has in place any policies or procedures to guarantee that—or even to monitor whether—individual defendants in San Juan County receive quality defense services.<sup>245</sup>

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=<http://www.sanjuancounty.org/documents/Budget%20-%202011%20Approved%20Summary.pdf&rct=j&q=site%3Asanjuancounty.org%20slavens%20public%20defender&ei=qRwTTrK0DY3TiAKkq-jwDQ&usg=AFQjCNEWdFCkBZd9kqMdII0v8JLTuGV1Og&cad=rja> (last visited July 4, 2011) (on file with the ACLU of Utah).

<sup>245</sup> See Aug. 15, 2008, Resp. of San Juan County to ACLU of Utah GRAMA request dated May 13, 2008 ("2008 San Juan Resp."), at 1 (on file with the ACLU of Utah).

**DETAILED PUBLIC RECORDS INFORMATION: SAN JUAN COUNTY**

**STANDARDS AND OVERSIGHT**

- San Juan County contracted for all public defense services with private attorney William Schultz from at least 1996 to the end of 2010. By 2009, Mr. Schultz's contract amount was \$70,000 per year.<sup>246</sup>
- In December 2009, San Juan County awarded the contract for all public defense services to Mitch Maughan, a private attorney out of Spanish Fork, Utah.<sup>247</sup> Due to health problems, Mr. Maughan was released from the contract almost immediately after it was awarded<sup>248</sup> and the contract was again assigned to Mr. Schultz.<sup>249</sup>
- Currently, the public defender for San Juan County is Happy Morgan.<sup>250</sup>
- San Juan County does not have written policies for<sup>251</sup>:
  - Supervising the ongoing provision of public defense services;
  - Requiring the public defender to participate in continuing legal education; or
  - Monitor the caseloads of the public defender.
- San Juan County does not have any written criteria or guidelines for<sup>252</sup>:
  - Selecting counsel to represent indigent defendants;
  - Ensuring that the public defender meet minimum qualifications or performance standards; or
  - Analyzing the adequacy of compensation for the public defender.

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<sup>246</sup> See May 28, 1996, San Juan Minutes, *supra* note 232, at 1; April 7, 2008, San Juan Minutes, *supra* note 233, at 3.

<sup>247</sup> See Dec. 14, 2009, San Juan Commission Minutes, *supra* note 236, at 1.

<sup>248</sup> See Jan. 4, 2010, San Juan Commission Minutes, *supra* note 237, at 1.

<sup>249</sup> *Id.*

<sup>250</sup> See Dec. 20, 2010, San Juan County Minutes, *supra* note 241, at 1.

<sup>251</sup> See 2008 San Juan Resp., *supra* note 245, at 1-2.

<sup>252</sup> *Id.*

**FUNDING & RESOURCES**

- Despite its extremely high poverty rate (28.3%<sup>253</sup>), San Juan County budgets only \$5.19 per capita on public defense services,<sup>254</sup> which is 44 percent of the national average of \$11.86.<sup>255</sup>
- San Juan County’s 2011 budget allocates \$88,124 for public defense services.<sup>256</sup> We estimate that the public defender is paid a set contract price of \$70,000 annually.<sup>257</sup> We have been unable to determine what in addition to the contract price is included in San Juan County’s budget allocation for public defender services.
- By comparison, the County Attorney’s 2011 budget allocation is \$259,165—roughly three times the amount budgeted for public defense services.<sup>258</sup>

**Compensation for Public Defenders v. County Attorney’s Office**

<b>PUBLIC DEFENDER</b>	<b>CONTRACT (est.)</b>	<b>COUNTY ATTORNEY’S OFFICE</b>	<b>SALARY/WAGE<sup>259</sup></b>
Happy Morgan	\$70,000	Craig Halls (county attorney)	\$94,716
		Walter Bird (deputy county attorney)	\$75,072
		Juliann Robison	\$26,520
<b>PD Total</b>	<b>\$70,000</b>	<b>County Attorney’s Office Salary Total</b>	<b>\$196,308</b>

- In addition to salaries, San Juan County has budgeted for the following expenses of the County Attorney’s Office in fiscal year 2011: office space; office “expense” (\$600); “professional/technical” expenses (\$4,000); travel reimbursement (\$4,000); law library costs (\$9,000); FICA expenses (\$15,016); telephone expenses (\$3,000); and retirement (\$26,696) and other employee benefits.<sup>260</sup>

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<sup>253</sup> Supra note 226.

<sup>254</sup> See calculations supra note 230.

<sup>255</sup> 2008 NLADA Report, supra note 9, at 7.

<sup>256</sup> See San Juan 2011 Budget, supra note 242, at 3.

<sup>257</sup> We asked Ms. Morgan for a copy of her contract, but it was never received. Thus, the \$70,000 contract amount is an estimate based on the value of Mr. Schultz’s final contract.

<sup>258</sup> See San Juan 2011 Budget, supra note 242, at 3.

<sup>259</sup> Salaries for many public sector employees, including those listed in this table, are available for search and review at <http://www.utahsright.com> (last visited July 1, 2011).

<sup>260</sup> See San Juan 2011 Detail Budget, supra note 244, at 13-14.

- Because Ms. Morgan is a contract worker, as opposed to an employee of the county, her contract provides no monies for overhead, support staff, administrative expenses, or employment benefits such as health insurance, worker's compensation, sick leave, vacation, or pension.

### **CASELOADS**

- In fiscal year 2010 (July 1, 2009-June 30, 2010), 64 felonies and 24 misdemeanors were filed in the District Court for San Juan County.<sup>261</sup> Another 611 misdemeanors were filed in the San Juan County justice courts.<sup>262</sup> Given the high rate of poverty in San Juan County, it is fair to assume that a good portion of those cases will be assigned to Ms. Morgan.<sup>263</sup>
- Even if, for example, only 40 percent of those cases required the appointment of a public defender, that would result in a caseload of 26 felonies and 254 misdemeanors—i.e., the equivalent of 121 felonies when the misdemeanors are weighted and added.<sup>264</sup> That number would not include any of Ms. Morgan's privately retained clients, nor would it include any "miscellaneous" or civil matters where she is counsel.

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<sup>261</sup> Supra note 228.

<sup>262</sup> Supra note 229.

<sup>263</sup> The only document we received that provides any idea of the prior public defender's caseload indicates that Mr. Schultz handled approximately 110 cases during one calendar year. See "Cases with public defenders Monticello FY2006-2007," produced by San Juan County in response to ACLU of Utah GRAMA request dated May 13, 2008 (on file with the ACLU of Utah).

<sup>264</sup> Supra note 21.

## **SEVIER COUNTY**

### **SUMMARY**

Sevier County has a population of 20,802<sup>265</sup>; the largest city is Richfield.<sup>266</sup> Sevier County has a slightly higher poverty rate (12.5%) than the Utah State average (11.7%).<sup>267</sup>

In fiscal year 2010 (July 1, 2009-June 30, 2010), 210 felonies and 55 misdemeanors were filed in the District Court for Sevier County.<sup>268</sup> Another 572 misdemeanors were filed in the Sevier County justice courts.<sup>269</sup>

Sevier County, like all other counties in Utah, receives no money from the state for public defense. Despite its higher-than-average poverty rate, Sevier County spends only \$4.90 per capita on public defense services,<sup>270</sup> which is 41 percent of the national average (\$11.86<sup>271</sup>).

Sevier County contracts with two private attorneys, Douglas Neeley (full-time, currently \$60,000 annually) and Mandy Larsen (part-time,

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<sup>265</sup> See 2010 U.S. Census estimates for Sevier County, *available at* <http://quickfacts.census.gov/qfd/states/49/49041.html> (last visited June 7, 2011).

<sup>266</sup> See 2010 U.S. Census data for Richfield (pop. 7,551), *available for search and download at* <http://quickfacts.census.gov/cgi-bin/qfd/demolink?49> (last visited June 4, 2011).

<sup>267</sup> See <http://www.ers.usda.gov/Data/povertyrates/PovListpct.asp?st=UT&view=Percent&longname=Utah> (last visited May 29, 2011) (printout on file with the ACLU of Utah).

<sup>268</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, District Court for Sevier County (July 1, 2009-June 30, 2010), *available at* <http://www.utcourts.gov/stats/files/2010FY/district/6-Sevier.pdf> (last visited June 4, 2011).

<sup>269</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, Sevier County Justice Court (July 1, 2009-June 30, 2010), *available at* <http://www.utcourts.gov/stats/files/2010FY/justice/6-Sevier.pdf> (last visited June 4, 2011).

<sup>270</sup> See 2010 Adopted Budget for Sevier County ("Sevier 2010 Budget"), at 3, *available for search and download at* <http://www.sao.state.ut.us/lgReports.html#> (last visited June 27, 2011); *see also* U.S. Census Bureau, State & County QuickFacts Sevier County, Utah dated (Nov. 4, 2010), *available at* <http://quickfacts.census.gov/qfd/states/49/49041.html> (last visited June 27, 2011). In 2010, Sevier County's estimated population was 20,802, which divided into the total public defense budget of \$102,000 equals \$4.90 per capita. It is worth noting that the 2010 and 2011 Adopted budgets for Sevier County include in the "public defender" budget line item an entry for a victim's witness advocate (with a 2011 salary of \$36,570, employee benefits totaling \$23,200, and travel expenses estimated at \$2,189). *See* Sevier 2010 Budget at 3; 2011 Adopted Budget for Sevier County ("Sevier 2011 Budget"), at 3, *available for search and download at* <http://www.sao.state.ut.us/lgReports.html#> (last visited June 27, 2011). Victim's witness advocates are not part of the public defense system and, indeed, primarily serve the prosecution. Thus, we have deleted those entries from the total reported public defender budget.

<sup>271</sup> 2008 NLADA Report, *supra* note 9, at 7.

currently \$18,000 annually).<sup>272</sup> This contract amount is intended to cover not only the defense attorneys' time, but also their overhead expenses, continuing legal education costs, support staff, and other expenses necessary to put together an accurate and thorough defense.

Unlike most counties included in this report, Sevier County allocates some monies toward the cost of investigations, i.e., "additional funds for a complete defense"<sup>273</sup>; notably, however, those requests must be submitted to the County Attorney's Office, which has the discretion to approve or deny all such requests.<sup>274</sup> If the County Attorney denies the request, the submitting public defender must apply to the court for pre-approval. No such pre-approval is required of the County Attorney's Office, which also has access to city, county, and state law enforcement resources and forensic services.

In 2009, Sevier County budgeted \$102,000 for public defender services.<sup>275</sup> Only \$83,984 was actually spent.<sup>276</sup> Given that the total for both public defender contracts in 2009 was \$83,000, it appears that almost no additional monies were spent for public defender services that year. Thus, although additional monies may have been theoretically available for public defenders to, for example, investigate cases or retain experts, it appears that either the public defenders did not request use of those funds or the County Attorney denied their requests. Sevier County budgeted \$102,000 for public defender services in 2010 and 2011, as well; given the numbers from 2009, we think that budget is significantly inflated.

Contrast this with the actual monies spent to operate the County Attorney's office in 2009: \$356,707 (which was \$31,387 over the budgeted amount of \$325,320).<sup>277</sup> The budgeted amount in 2009 included, among other allocations: salaries (\$201,370); employee benefits (\$83,950);

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<sup>272</sup> See Attorney Agreements dated March 1, 2009 (Larsen), and May 1, 2009 (Neeley) ("Sevier Attorney Agreements"), produced by Sevier County in response to ACLU of Utah GRAMA request dated Sept. 16, 2009, at 2 (both) (on file with the ACLU of Utah).

<sup>273</sup> See Sevier Attorney Agreements, *supra* note 272, at ¶1.4 (Neeley) and ¶1.3 (Larsen).

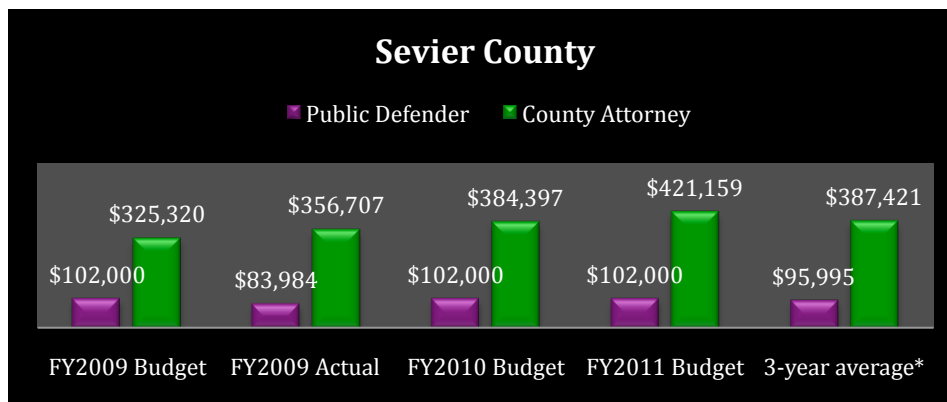
<sup>274</sup> See Sevier Attorney Agreements, *supra* note 272, at ¶1.4 (Neeley) and ¶1.3 (Larsen).

<sup>275</sup> See 2009 Adopted Budget for Sevier County ("Sevier 2009 Budget") at 4, *available for search and download at* <http://www.sao.state.ut.us/lgReports.html#> (last visited June 27, 2011).

<sup>276</sup> See Sevier 2011 Budget, *supra* note 270, at 3. The same was true in 2008; although \$102,000 was budgeted, only \$88,383 was actually spent. *Compare* Sevier 2009 Budget, *supra* note 275 (showing 2008 budget allocation), at 4, *with* Sevier 2010 Budget, *supra* note 270, at 3 (showing 2008 actual monies spent).

<sup>277</sup> *Compare* Sevier 2009 Budget, *supra* note 275, at 5 (showing 2009 budget allocation), *with* Sevier 2011 Budget, *supra* note 270, at 4 (showing 2009 actual monies spent)

professional and technical expenses (\$18,000); training (\$1,500); office supplies and expenses (\$6,500); and telephone costs (\$2,500).<sup>278</sup> Sevier County budgeted \$323,850 and \$333,000 in fiscal years 2010 and 2011, respectively, for the County Attorney's Office.<sup>279</sup>



Add to this notable discrepancy in funding the substantial caseload carried by Mr. Neeley and the problems in Sevier County become even more apparent. Public records indicate that Mr. Neeley entered an appearance as counsel in 157 felony and 46 misdemeanor cases, as well as 70 “miscellaneous” cases, between October 2009 and September 2010.<sup>280</sup> Even setting aside Mr. Neeley’s civil caseload and other “miscellaneous” cases, his criminal caseload—the equivalent of 174 felonies when the misdemeanors are weighted and added<sup>281</sup>—exceeds the maximum of 150 felonies recommended under the longstanding professional guidelines promulgated by NAC.<sup>282</sup>

Further compounding the problems inherent in a public defender carrying that heavy a caseload, Sevier County was unable to provide any documentation demonstrating that it has in place any policies or procedures to guarantee that—or even to monitor whether—individual defendants in Sevier County receive quality defense services.<sup>283</sup>

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<sup>278</sup> See Sevier 2009 Budget, *supra* note 275, at 5.

<sup>279</sup> See Sevier 2010 Budget, *supra* note 270, at 4; Sevier 2011 Budget, *supra* note 270, at 4.

<sup>280</sup> See 2010 Utah AO Resp., *supra* note 62.

<sup>281</sup> *Supra* note 21.

<sup>282</sup> *Supra* note 20.

<sup>283</sup> See July 9, 2008, Resp. of Sevier County to ACLU of Utah GRAMA request dated May 13, 2008 (“2008 Sevier Resp.”), at 1 (on file with the ACLU of Utah).



**DETAILED PUBLIC RECORDS INFORMATION: SEVIER COUNTY**

**STANDARDS AND OVERSIGHT**

- Sevier County contracts with two private attorneys, Douglas Neeley (full-time, currently \$60,000 annually) and Mandy Larsen (part-time, currently \$18,000 annually).<sup>284</sup>
- Sevier County does not have written policies for<sup>285</sup>:
  - Supervising the ongoing provision of public defense services;
  - Requiring public defenders to participate in continuing legal education; or
  - Monitoring the caseloads of the public defenders.
- Sevier County does not have any written criteria or guidelines for<sup>286</sup>:
  - Selecting counsel to represent indigent defendants;
  - Ensuring that public defenders meet minimum qualifications or performance standards; or
  - Analyzing the adequacy of compensation for public defenders.

**CONFLICTS OF INTEREST**

- Since 2009, Sevier County has required public defenders to pay for conflict counsel out of their own contractual flat fee.<sup>287</sup> When public defenders are required to pay out-of-pocket for conflict counsel, as they now are in Sevier County, there is a natural disincentive for them to identify conflicts; the effect is to discourage public defenders from hiring conflict counsel and, if conflict counsel is retained, to encourage them to retain the least expensive counsel they can find.
- The contract requires public defense attorneys to provide trial counsel, rights of first appeal, and other pre- and post-conviction remedies.<sup>288</sup> This can create a conflict in cases requiring appeal, especially where one issue to be legitimately raised on appeal may be the ineffective assistance of trial counsel. In order to avoid that inherent conflict, i.e., a situation where trial counsel must (or should)

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<sup>284</sup> See Sevier Attorney Agreements, supra note 272, at ¶2 (both).

<sup>285</sup> See 2008 Sevier Resp., supra note 283, at 1.

<sup>286</sup> *Id.*

<sup>287</sup> See Sevier Attorney Agreements, supra note 272, at 3 (both).

<sup>288</sup> See Sevier Attorney Agreements, supra note 272, at ¶1.6 (Neeley) and ¶1.5 (Larsen).

argue against his own effectiveness at trial, most studies agree that the best course is for separate counsel to handle the appeal.<sup>289</sup>

## **FUNDING & RESOURCES**

- Sevier County spends only \$4.90 per capita on public defense services,<sup>290</sup> which is 41 percent of the national average (\$11.86<sup>291</sup>).
- Sevier County's 2009 budget allocated \$102,000 for all public defense services.<sup>292</sup> This amount reflected a \$5,000 decrease in Mr. Neeley's annual contract amount (from \$65,000 in 2007 and 2008 to \$60,000 in 2009).<sup>293</sup>
- Of the \$102,000 budgeted in 2009, only \$83,984 was actually spent.<sup>294</sup> Sevier County budgeted \$102,000 for public defender services in 2010 and 2011, as well.
- Contrast this with the actual monies spent to operate the County Attorney's office in 2009: \$356,707.<sup>295</sup> Sevier County budgeted \$323,850 and \$333,000 in fiscal years 2010 and 2011, respectively, for the County Attorney's Office.<sup>296</sup>
- In 2010, at the same time Mr. Neeley's contract price was being reduced by \$5,000 annually, Sevier County added another employee to the County Attorney's Office, a "Victim's Advocate," at an estimated cost of \$59,347 annually.<sup>297</sup> Like law enforcement officers, "victim's witness advocates" are sometimes allowed to testify as experts in criminal trials, thereby alleviating the county's otherwise-additional costs for expert witnesses.

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<sup>289</sup> See, e.g., generally 2011 Utah Appellate Task Force Report, *supra* note 7.

<sup>290</sup> See calculations *supra* note 270.

<sup>291</sup> 2008 NLADA Report, *supra* note 9, at 7.

<sup>292</sup> See Sevier 2009 Budget, *supra* note 275, at 4.

<sup>293</sup> See Sevier Attorney Agreements (Neeley), *supra* note 272, at ¶3.

<sup>294</sup> See Sevier 2011 Budget, *supra* note 270, at 3.

<sup>295</sup> See *id.* at 4.

<sup>296</sup> See Sevier 2010 Budget, *supra* note 272, at 4; Sevier 2011 Budget, *supra* note 262, at 4. This does not include monies allocated to the victim's witness advocate, even though victim's witness advocates primarily assist the prosecution.

<sup>297</sup> See Sevier 2010 Budget, *supra* note 272, at 3. The 2011 Budget shows an increased cost for this position (\$63,159). See Sevier 2011 Budget, *supra* note 270, at 3.

**Compensation for Public Defenders v. County Attorney's Office**

<b>PUBLIC DEFENDERS</b>	<b>CONTRACT<sup>298</sup></b>	<b>COUNTY ATTORNEY'S OFFICE</b>	<b>SALARY/WAGE<sup>299</sup></b>
Douglas Neeley	\$60,000	Dale Eyre (county attorney)	\$100,006
Mandy Larsen (part-time)	\$18,000	Casey Jewkes (deputy county attorney)	\$64,230
		Auna Stone (administrative)	\$37,128
<b>PD Total</b>	<b>\$78,000</b>	<b>County Attorney's Office Salary Total</b>	<b>\$201,364</b>

- In addition to salaries, Sevier County has budgeted for the following expenses of the County Attorney's Office in fiscal year 2011: employee benefits (\$88,550); professional and technical expenses (\$18,000); travel reimbursements (\$3,500); subscriptions and membership (\$2,500); training (\$1,500); office supplies and expenses (\$5,500); and telephone costs (\$3,000).<sup>300</sup>
- Unlike most counties included in this report, Sevier County apparently allocates some monies toward the cost of investigations, i.e., "additional funds for a complete defense"<sup>301</sup>; notably, however, those requests must be submitted to the County Attorney's Office, which has the discretion to approve or deny all such requests.<sup>302</sup>
- Until 2009, Sevier Country was obligated by contract to pay for certain travel expenses (travel, lodging, and per diem) incurred by the public defenders, so long as those costs were for travel outside the county and were court-approved.<sup>303</sup> That contractual provision was eliminated in 2009.
- Also eliminated in 2009 was provision that required the county to pay the first \$1,000 each month for conflict counsel.<sup>304</sup> Now the public defenders are required to find and retain conflict counsel at their own cost, i.e., paid for out-of-pocket by the public defender.

<sup>298</sup> See Sevier Attorney Agreements, supra note 272.

<sup>299</sup> Salaries for many public sector employees, including those listed in this table, are available for search and review at <http://www.utahsright.com> (last visited July 1, 2011).

<sup>300</sup> See Sevier 2011 Budget, supra note 270, at 4.

<sup>301</sup> See Sevier Attorney Agreements, supra note 272, at ¶1.4 (Neeley) and ¶1.3 (Larsen).

<sup>302</sup> See Sevier Attorney Agreements, supra note 272, at ¶1.4 (Neeley) and ¶1.3 (Larsen).

<sup>303</sup> See Sevier Attorney Agreements, supra note 272, at ¶1.4 (Neeley) and ¶1.3 (Larsen).

<sup>304</sup> See Sevier Attorney Agreements, supra note 272, at ¶¶3, 6 (both).

- Because the public defenders are contract workers, as opposed to employees of the county, their contract provides no monies for overhead, support staff, administrative expenses, or employment benefits such as health insurance, worker's compensation, sick leave, vacation, or pension.<sup>305</sup>

## **CASELOADS**

- In fiscal year 2010 (July 1, 2009-June 30, 2010), 210 felonies and 55 misdemeanors were filed in the District Court for Sevier County.<sup>306</sup> Another 572 misdemeanors were filed in the Sevier County justice courts.<sup>307</sup>
- Mr. Neeley entered an appearance as counsel in 157 felony and 46 misdemeanor cases, as well as 70 "miscellaneous" cases, between October 2009 and September 2010.<sup>308</sup> Even setting aside Mr. Neeley's civil matters and other "miscellaneous" cases, his criminal caseload—the equivalent of 174 felonies when the misdemeanors are weighted and added<sup>309</sup>—exceeds the maximum of 150 felonies recommended under the longstanding professional guidelines promulgated by NAC.<sup>310</sup>
- Assuming a standard work schedule, and excluding all civil or "miscellaneous" cases, that would leave Mr. Neeley only 11.5 hours per felony or felony equivalent. (2,000 hours/174 felonies = 11.5 hours/felony.) If the "miscellaneous" cases are factored in and total tracked caseloads are considered, that number drops to 7.3 hours per case. (2,000 hours/273 total cases = 7.3 hours/case.)
- Moreover, it appears that Mr. Neeley's caseload over this period included ten district court cases outside Sevier County, in jurisdictions ranging from Cedar City (118 miles and approximately 2 hours from Richfield) to Salt Lake City (165 miles and approximately 2.75 hours from Richfield).<sup>311</sup> Assuming even just one roundtrip (at four hours each) every two months to Cedar City,

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<sup>305</sup> See Sevier Attorney Agreements, *supra* note 272, at ¶7 (both).

<sup>306</sup> *Supra* note 268.

<sup>307</sup> *Supra* note 269.

<sup>308</sup> See 2010 Utah AO Resp., *supra* note 62.

<sup>309</sup> *Supra* note 21.

<sup>310</sup> *Supra* note 20.

<sup>311</sup> See 2010 Utah AO Resp., *supra* note 62.

and one roundtrip (at 5.5 hours each) every two months to Salt Lake City, that adds approximately 57 hours of travel time to Mr. Neeley's work schedule. That would reduce even further his available time to work on his public defender (and other) cases.

- As noted previously: "One of the single most important impediments to the furnishing of quality defense services for the poor is the presence of excessive caseloads. . . . Unfortunately, not even the most able and industrious lawyers can provide quality representation when their workloads are unmanageable. Excessive workloads, moreover, lead to attorney frustration, disillusionment by clients, and weakening of the adversary system."<sup>312</sup>

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<sup>312</sup> See ABA Guidelines For Death Penalty Cases, *supra* note 22, at 39 (quoting American Bar Association Standards For Criminal Justice: Providing Defense Services, Standard 5-5.3 cmt. (3d ed. 1992)).

## **UINTAH COUNTY**

### **SUMMARY**

Uintah County has a population of 32,588<sup>313</sup>; the largest city is Vernal.<sup>314</sup> Uintah County has a slightly lower poverty rate (10.1%) than the Utah State average (11.7%).<sup>315</sup> It has a significantly higher-than-average Native American population (7.7% compared to 1.2% statewide).<sup>316</sup>

In fiscal year 2010 (July 1, 2009-June 30, 2010), 522 felonies and 186 misdemeanors were filed in the District Court for Uintah County.<sup>317</sup> Another 796 misdemeanors were filed in the Uintah County justice courts.<sup>318</sup>

Uintah County, like all other counties in Utah, receives no money from the state for public defense. In 2010, Uintah County budgeted approximately \$8.52 per capita on public defense services,<sup>319</sup> which is 72 percent of the national average of \$11.86.<sup>320</sup> As noted previously, using the per capita measure in a place like Uintah County, which has high numbers of transient oil field and other seasonal workers, may create the impression that the public defense system is more adequately funded than it really is.<sup>321</sup> We believe that is the case in Uintah County, where all evidence indicates that—no matter its per capita spending—Uintah County's public defense system is constitutionally inadequate, suffering from both a disabling

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<sup>313</sup> See 2010 U.S. Census estimates for Uintah County, *available at* <http://quickfacts.census.gov/qfd/states/49/49047.html> (last visited June 7, 2011).

<sup>314</sup> See 2010 U.S. Census data for Vernal (pop. 9,089), *available for search and download at* <http://quickfacts.census.gov/cgi-bin/qfd/demolink?49> (last visited June 4, 2011).

<sup>315</sup> See <http://www.ers.usda.gov/Data/povertyrates/PovListpct.asp?st=UT&view=Percent&longname=Utah> (last visited May 29, 2011) (printout on file with the ACLU of Utah).

<sup>316</sup> *Supra* note 313.

<sup>317</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, Uintah County (July 1, 2009-June 30, 2010), *available at* <http://www.utcourts.gov/stats/files/2010FY/district/8-Uintah.pdf> (last visited June 4, 2011).

<sup>318</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, Uintah County Justice Court (July 1, 2009-June 30, 2010), *available at* <http://www.utcourts.gov/stats/files/2010FY/justice/8-Uintah.pdf> (last visited June 4, 2011).

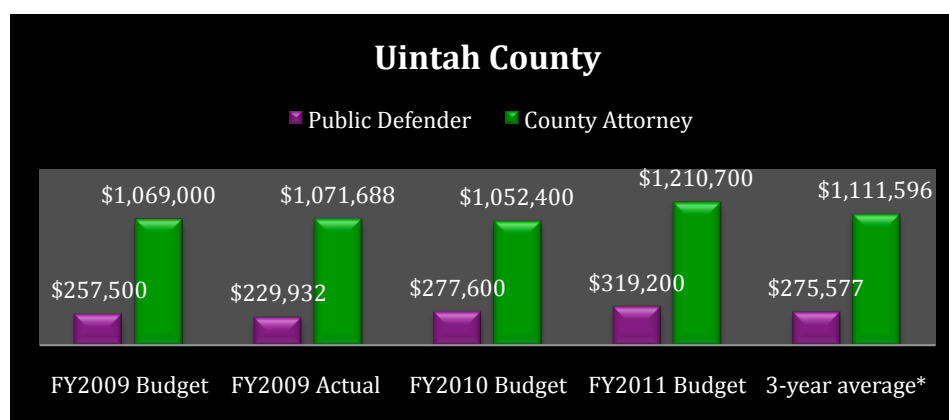
<sup>319</sup> See 2010 Adopted Budget for Uintah County ("Uintah County 2010 Budget"), at 6, *available for search and download at* <http://www.sao.state.ut.us/lgReports.html#> (last visited June 27, 2011); *see also* U.S. Census Bureau, State & County QuickFacts Uintah County, Utah dated (Nov. 4, 2010), *available at* <http://quickfacts.census.gov/qfd/states/49/49047.html> (last visited June 27, 2011). In 2010, Uintah County's estimated population was 32,588, which divided into the total 2010 public defense budget \$277,600 equals \$8.52 per capita.

<sup>320</sup> 2008 NLADA Report, *supra* note 9, at 7.

<sup>321</sup> *See supra* note 10.

disparity in resources and a lack of any meaningful oversight or quality control.

The total 2009 allocation for public defender services was \$257,500, only \$229,932 of which was actually spent.<sup>322</sup> That same year, the Uintah County Attorney's Office spent \$1,071,688 (out of a budgeted \$1,069,000)—i.e., over four times as much as the amount spent on public defense.<sup>323</sup> The 2011 budget is not much better: \$319,200 has been budgeted for public defense while \$1,210,700 has been budgeted for the County Attorney's Office.<sup>324</sup> That is still 3.8 times as much.



In addition to the significant disparity in resources, Uintah County has recently experienced upheaval in its public defense system. Both of the two public defenders, John Beaslin and Lance Dean, were recently replaced, apparently before either of their contract terms had expired.<sup>325</sup> We were unable to determine the reason.

During their time as public defenders, Mr. Beaslin had a contract to handle one half of the public defense district court cases (at \$63,000

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<sup>322</sup> See 2009 Financial Report for Uintah County ("Uintah County 2009 Financials"), at 68, available for search and download at <http://www.sao.state.ut.us/lgReports.html#> (last visited June 27, 2011).

<sup>323</sup> See *id.*

<sup>324</sup> See 2011 Adopted Budget for Uintah County ("2011 Uintah Budget"), at 5, available for search and download at <http://www.sao.state.ut.us/lgReports.html#> (last visited June 27, 2011).

<sup>325</sup> We were unable to determine whether Mr. Beaslin is still practicing law. He was admitted to practice law 56 years ago, in 1955. Assuming he was 23 or 24 when he finished law school, he is likely about 80 years old, and may have retired. Mr. Dean is now a guardian ad litem in Cedar City, Utah. See <http://www.myutahbar.org/PublicDirectory/PublicDirectory.aspx?s=dean&m=06206> (last visited June 4, 2011).

annually) and Mr. Dean had a contract to handle the other one half of the public defense district court cases and all public defense juvenile court cases (at \$99,000 annually).<sup>326</sup> Both also maintained active private practices.

Over the year between October 2009 and September 2010, Mr. Beaslin entered an appearance as counsel in 146 felony and 55 misdemeanor cases (as well as 15 miscellaneous cases), for a total caseload of 216 cases, not including any juvenile cases or other civil matters.<sup>327</sup> Mr. Dean entered an appearance as counsel in 71 felony and 22 misdemeanor cases (as well as 6 miscellaneous cases) for a total non-juvenile caseload, excluding other civil matters, of 99.<sup>328</sup> Given that Mr. Dean also had the public defender contract for juvenile cases, and given that 944 juvenile matters were filed in Uintah County in fiscal year 2010,<sup>329</sup> one can safely assume that his total caseload was actually much higher.

Michael Humiston took over Mr. Beaslin's contract in or around October 2010, and is now a contracted public defender for Uintah County at \$66,000 annually.<sup>330</sup> His bid was the lowest of five submitted for that contract.<sup>331</sup> All other bids were significantly higher: one at \$6,250/month (\$75,000/year); two at \$6,500/month (\$78,000/year); and one at \$7,250/month (\$87,000/year).<sup>332</sup>

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<sup>326</sup> See Attorney Agreements produced on Nov. 24, 2010, by Uintah County in response to ACLU of Utah GRAMA request dated Sept. 19, 2009 ("Uintah Attorney Agreements"), at ¶2 (both). We have been advised that Mr. Dean subcontracted some portion of his public defender trial work to two other attorneys, Bryan Sidwell and Michael Humiston, at a rate of \$20/hour. This was apparently not prohibited either by his contract or by the Uintah County Commission.

<sup>327</sup> See 2010 Utah AO Resp., supra note 62.

<sup>328</sup> *Id.*

<sup>329</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, Uintah County Juvenile Court (July 1, 2009-June 30, 2010), available at <http://www.utcourts.gov/stats/files/2010FY/juvenile/8-Vernal.pdf> (last visited June 4, 2011).

<sup>330</sup> See Minutes of the Uintah County Commission dated Oct. 4, 2010 ("Oct. 4, 2010, Uintah County Minutes"), at 1, available at <http://www.co.uintah.ut.us/comm/minutes/2010/Oct/10-04-2010.pdf> (last visited June 3, 2011).

<sup>331</sup> See *id.* Our recent observations of Mr. Humiston have raised some concerns. On or about April 14, 2011, we watched Mr. Humiston argue a felony case before the Utah Supreme Court in which he had neglected to file a merits brief on behalf of his client. The first several minutes of the argument thus addressed whether he should be permitted to address the Court at all. Also, in a Utah Court of Appeals decision dated June 16, 2011, Mr. Humiston was repeatedly chastised for inadequately briefing key issues, providing "no meaningful legal analysis" for an argument, and for relying on a legal standard that was superseded in 1998 (one year after it was adopted). See *State v. Chrisman*, No. 20090295-CA, 2011 Utah App. 189, at ¶4 & n.2, and ¶¶5-7 & n.3 (Utah. Ct. App. June 16, 2011).

<sup>332</sup> See Oct. 4, 2010, Uintah County Minutes, supra note 329, at 1.



The second public defender contract, formerly held by Mr. Dean, was awarded only after the County Attorney's Office was given one week to "review" all eight of the bids submitted.<sup>333</sup> The winning two-person firm, Hendricks & Larsen, is based in Provo and specializes in bankruptcy and family law.<sup>334</sup> The contract is for \$96,000 annually.<sup>335</sup> Neither attorney at Hendricks & Larsen has been in practice for even three years.<sup>336</sup> The firm specializes in bankruptcy and family law, and the attorneys appear to have limited (if any) criminal defense experience.<sup>337</sup> The firm's website shows only one office for the firm, in Provo, which is approximately 155 miles (and about three hours) away from the courthouse in Vernal.<sup>338</sup>

Unlike Mr. Humiston, Hendricks & Larsen was not the lowest bidder; two of the eight bids (including one from Mr. Humiston, who had just been awarded the first public defender contract) came in lower.<sup>339</sup> Eight bids were submitted for this second contract, in amounts ranging from \$82,800 annually (from former Duchesne County public defender Stephanie Miya) to

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<sup>333</sup> See Minutes of the Uintah County Commission dated Nov. 8, 2010 ("Nov. 8, 2010, Uintah County Minutes"), at 3, available at <http://www.co.uitah.ut.us/comm/minutes/2010/Nov/11-08-2010.pdf> (last visited June 3, 2011) ("Commissioner Raymond moved to accept the bids and allow time for the attorney's office to review and award at a later date. . . . Motion passed.").

<sup>334</sup> See, e.g., <http://www.hendricksandlarsen.com/> (last visited July 4, 2011).

<sup>335</sup> See Nov. 8, 2010, Uintah County Minutes, *supra* note 333, at 3.

<sup>336</sup> See <http://www.myutahbar.org/PublicDirectory/PublicDirectory.aspx?s=Hendricks&m=12114> (last visited June 3, 2011), and <http://www.myutahbar.org/PublicDirectory/PublicDirectory.aspx?s=Larsen,John&m=12149> (last visited June 3, 2011).

<sup>337</sup> It appears that only one of the two attorneys has prior experience with criminal law, and that consists only of some time working during law school at the Oklahoma City Public Defender's Office. See the websites for Hendricks & Larsen at <http://provoutahbankruptcy.com/our-team> (last visited June 3, 2011) and <http://www.hendricksandlarsen.com/> (last visited June 3, 2011). It does not appear, however, that he provides much—or perhaps any—of the public defender services on behalf of the firm. See July 18, 2011, Resp. by Utah Admin. Office of the Courts to ACLU of Utah GRAMA request dated July 14, 2011 ("2011 Utah AO Resp.") (on file with the ACLU of Utah).

<sup>338</sup> See <http://www.hendricksandlarsen.com/hendricks-and-larsen-attorneys---provo-orem-utah.htm> (last visited June 3, 2011). Although County Commission minutes indicate that the firm was expected to open an office in Vernal, see Minutes of the Uintah County Commission dated Nov. 15, 2010 ("Nov. 15, 2010, Uintah County Minutes"), at 2, available at <http://www.co.uitah.ut.us/comm/minutes/2010/Nov/11-15-2010.pdf> (last visited June 3, 2011), we could find no evidence that the firm has done so.

<sup>339</sup> See Nov. 8, 2010, Uintah County Minutes, *supra* note 333, at 3. The other bidders included Roland Uresk, a former contracted public defender in Duchesne County (see discussion *supra* at pp. 25-26), and James Slavens, a former contracted public defender in Millard County who was terminated in 2010, see Minutes of the Millard County Commission dated July 6, 2010, at 10, available at <http://www.millardcounty.org/commission/bocc-minutes/2010-minutes/10-0706.pdf> (last visited Aug. 11, 2011).

**Failing Gideon:** Utah's Flawed County-By-County Public Defender System

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\$108,000 annually (from the law firm Stowell & Crayk, which already has multiple other public defender contracts “in four municipalities along the Wasatch front”).<sup>340</sup>

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<sup>340</sup> See Nov. 8, 2010, Uintah County Minutes, *supra* note 333, at 3; website of Stowell & Crayk, <http://stowellandcrayk.com/> (last visited June 3, 2011).

## **DETAILED PUBLIC RECORDS INFORMATION: UINTAH COUNTY**

### **STANDARDS & OVERSIGHT**

- Uintah County currently contracts with two private sector attorneys to provide public defense services:
  - Michael Humiston currently has a public defender contract, at \$66,000 annually, to handle one half of the public defense cases in district court.<sup>341</sup>
  - The Provo-based law firm of Hendricks & Larsen currently has the other public defender contract, at \$96,000 annually, to handle one half of the public defense cases in district court and all public defense cases in juvenile court.<sup>342</sup>
- In awarding these public defender contracts, the Uintah County Commission waited an extra week to give the Uintah County Attorney time to “review” each of the bids submitted.<sup>343</sup> Allowing the County Attorney such a direct and influential role in choosing the public defenders who will be his opponents, is inconsistent with the first of the ABA’s Ten Principles, which requires that public defenders be wholly independent of the prosecution.<sup>344</sup>

### **CONFLICTS OF INTEREST**

- Uintah County has no procedures in place to screen for conflicts of interest.<sup>345</sup> The lack of procedure and oversight of actual or potential conflicts of interest recently led to the following particularly egregious situation:
  - A juvenile, JMS, got pregnant by Brandon Gale. In or around May 2009, the state charged JMS with Criminal Solicitation to Commit Murder, naming the fetus as the intended victim.<sup>346</sup> The state alleged that JMS sought to terminate her pregnancy

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<sup>341</sup> See Oct. 4, 2010, Uintah County Minutes, supra note 329, at 2.

<sup>342</sup> See Nov. 15, 2010, Uintah County Minutes, supra note 338, at 2.

<sup>343</sup> See Nov. 8, 2010, Uintah County Minutes, supra note 333, at 3 (“Commissioner Raymond moved to accept the bids and allow time for the attorney’s office to review and award at a later date. Commissioner Burns seconded. Motion passed.”).

<sup>344</sup> ABA Ten Principles, supra note 19, at 1-2.

<sup>345</sup> See May 22, 2008, Response by Uintah County to ACLU of Utah GRAMA request dated May 13, 2008 (“2008 Uintah Resp.”), at 1-3 (on file with the ACLU of Utah).

<sup>346</sup> See Michelle Goldberg, “Policing Pregnancy,” *The Nation* (May 9, 2011), available at <http://www.thenation.com/article/160092/policing-pregnancy> (last visited Aug. 11, 2011).

by asking a second man, Aaron Harrison, to beat her.<sup>347</sup> Mr. Dean was appointed to represent her; at the time, he was already representing Mr. Gale—the father of the unborn fetus—on multiple felony charges.<sup>348</sup> Despite the conflict of interest involved in representing both her and Mr. Gale, Mr. Dean nonetheless accepted the appointment to be her counsel. Only months later, after having convinced JMS to enter an admission on the criminal charges (that were later dismissed as legally unsound), did Mr. Dean advise the court in Mr. Gale's case of his conflict of interest and withdraw as his attorney.<sup>349</sup> And even then his stated reason for withdrawing was not because of his representation of JMS, but because he had been retained to represent a co-defendant of Mr. Gale's.<sup>350</sup>

## FUNDING & RESOURCES

- In 2010, Uintah County budgeted approximately \$8.52 per capita on public defense services,<sup>351</sup> which is 72 percent of the national average of \$11.86.<sup>352</sup>
- The total 2009 allocation for public defender services was \$257,500, only \$229,932 of which was actually spent.<sup>353</sup> That same year, the

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<sup>347</sup> *Id.*; see also Ben Winslow, "Did teenage girl solicit murder or get an abortion performed?" (April 13, 2011), available at <http://www.fox13now.com/news/local/kstu-did-teenage-girl-solicit-murder-or-get-an-abortion-performed-20110413,0,5955984.story> (last visited Aug. 11, 2011).

<sup>348</sup> See docket reports in case numbers 091800271, *State v. Brandon Gale*, and 091800270, *State v. Brandon Gale*, both filed in Uintah County, available for search and download at <http://www.utcourts.gov/xchange/> (last visited Aug. 11, 2011).

<sup>349</sup> See *id.* In both cases, the prosecuting attorney acknowledged that he, too, had been aware of Mr. Dean's simultaneous representation of both Mr. Gale and JMS. See, e.g., docket report in case number 091800271, *State v. Brandon Gale* (entry dated July 29, 2009) ("Mr. Foote speaks to the Court stating he has no problem with the withdrawal because Mr. Deal also has represented a victim of Mr. Gale's in Juvenile Court and can see that it would be a problem for his[sic] to represent the defendant.") Yet neither Mr. Dean nor the prosecutor had previously advised the Court of the conflict.

<sup>350</sup> See *id.* ("Mr. Dean is the appointed counsel in this case and has filed a Motion to Withdraw with the Court. The Court has not signed the Order as yet. Mr. Dean states he has a conflict with representing Defendant as he has been retained to represent a co-defendant of Mr. Gale's.").

<sup>351</sup> See calculations *supra* note 319.

<sup>352</sup> 2008 NLADA Report, *supra* note 9, at 7.

<sup>353</sup> See Uintah County 2009 Financials, *supra* note 322, at 68.

Uintah County Attorney's Office spent \$1,071,688—i.e., 4.7 times as much as the amount spent on public defense.<sup>354</sup>

- The fiscal year 2011 budget for Uintah County reflects that \$319,200 has been budgeted for public defense.<sup>355</sup> It is unclear what is included in this total figure; the contracted-for amounts to be paid to the public defenders total only \$162,000, and we were unable to find any publicly available information explaining the allocation of another \$157,200.
- Uintah County has budgeted \$1,210,700 for the County Attorney's Office in fiscal year 2011.<sup>356</sup> Unlike most counties we studied for this report, we were unable to find any publicly available information explaining how the budget for the County Attorney's Office breaks down into monies allocated to, for example, salaries, employee benefits, costs for office space, equipment, or travel, or any other category of expense.

#### **CASELOADS**

- In fiscal year 2010 (July 1, 2009-June 30, 2010), 522 felonies and 186 misdemeanors were filed in the District Court for Uintah County.<sup>357</sup> Another 796 misdemeanors were filed in the Uintah County justice courts.<sup>358</sup>
- Over the year between October 2009 and September 2010, Mr. Beaslin entered an appearance as counsel in 146 felony and 55 misdemeanor cases (as well as 15 miscellaneous cases), for a total caseload of 216 cases, not including any juvenile cases or other civil matters.<sup>359</sup> Mr. Beaslin's total annual criminal caseload—the equivalent of 167 felonies when the misdemeanors are weighted and added<sup>360</sup>—exceeds the maximum of 150 felonies recommended by NAC.<sup>361</sup>

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<sup>354</sup> *Id.*

<sup>355</sup> *See* 2011 Uintah Budget, *supra* note 324, at 5.

<sup>356</sup> *See id.*

<sup>357</sup> *Supra* note 317.

<sup>358</sup> *Supra* note 318.

<sup>359</sup> *See* 2010 Utah AO Resp., *supra* note 62.

<sup>360</sup> *Supra* note 21.

<sup>361</sup> *Supra* note 20.

- Mr. Dean entered an appearance as counsel in 71 felony and 22 misdemeanor cases (as well as 6 miscellaneous cases) for a total non-juvenile caseload, excluding other civil matters, of 99.<sup>362</sup> Given that Mr. Dean also had the public defender contract for juvenile cases, and given that 944 juvenile matters were filed in Uintah County in fiscal year 2010,<sup>363</sup> one can safely assume that his total caseload was actually much higher.

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<sup>362</sup> See 2010 Utah AO Resp., supra note 62.

<sup>363</sup> Supra note 317.

## **WEBER COUNTY**

### **SUMMARY**

Weber County, the largest county we studied, has a population of 231,236<sup>364</sup>; the largest city is Ogden.<sup>365</sup> Weber County has a slightly higher poverty rate (12.5%) than the Utah State average (11.7%).<sup>366</sup>

In fiscal year 2010 (July 1, 2009-June 30, 2010), 1,969 felonies and 669 misdemeanors were filed in the District Court for Weber County.<sup>367</sup> Another 6,459 misdemeanors were filed in the Weber County justice courts.<sup>368</sup>

Weber County, like all other counties in Utah, receives no money from the state for public defense. In 2010, Weber County budgeted \$1,113,000, or \$4.81 per capita, on public defense services<sup>369</sup>; that is 41 percent of the national average of \$11.86.<sup>370</sup> Compare that to a total of \$2,606,608 budgeted for the Weber County Attorney's Office in 2010.<sup>371</sup>

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<sup>364</sup> See 2010 U.S. Census estimates for Weber County, *available at* <http://quickfacts.census.gov/qfd/states/49/49057.html> (last visited June 7, 2011).

<sup>365</sup> See 2010 U.S. Census data for Ogden (pop. 82,825), *available for search and download at* <http://quickfacts.census.gov/cgi-bin/qfd/demolink?49> (last visited July 15, 2011).

<sup>366</sup> See <http://www.ers.usda.gov/Data/povertyrates/PovListpct.asp?st=UT&view=Percent&longname=Utah> (last visited July 3, 2011) (printout on file with the ACLU of Utah).

<sup>367</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, District Court for Weber County (July 1, 2009-June 30, 2010), *available at* <http://www.utcourts.gov/stats/files/2010FY/district/2-Weber.pdf> (last visited June 27, 2011).

<sup>368</sup> Utah Administrative Office of the Courts, Fiscal Year 2010 Utah Courts Caseload, Justice Court for Weber County (July 1, 2009-June 30, 2010), *available at* <http://www.utcourts.gov/stats/files/2010FY/justice/2-Weber.pdf> (last visited June 27, 2011).

<sup>369</sup> See 2010 Adopted Budget for Weber County ("Weber 2010 Budget"), at 15, *available for search and download at* <http://www.sao.state.ut.us/lgReports.html#> (last visited June 27, 2011); *see also* U.S. Census Bureau, State & County QuickFacts Weber County, Utah (Nov. 4, 2010), *available at* <http://quickfacts.census.gov/qfd/states/49/49057.html> (last visited June 27, 2011). In 2010, Weber County's estimated population was 231,236, which divided into the total public defense budget of \$1,113,000 equals \$4.81 per capita.

<sup>370</sup> 2008 NLADA Report, *supra* note 9, at 7.

<sup>371</sup> See Weber 2010 Budget, *supra* note 369, at 15. Unlike most counties studied for this report, Weber County appears to break the County Attorney Office's budget into two line items in its annual budgets: "Attorney-Criminal" (line item 4145) and "Attorney-Civil" (line item 4150). We are advised (and have observed) that attorneys classified as "civil" also work on criminal matters. We assume the same is true of at least some support staff and other resources classified as "civil." Moreover, in order to more accurately contrast Weber County's budget appropriations against the budgets of other county attorney's offices included in this report—none of which use the two-line item-approach—we use total, rather than partial, budgets. We have thus included the entire Weber County Attorney's Office budget as the

Notably, that number does not include the attorneys who handle Weber County's substantial docket of child welfare cases, which are filed and prosecuted by the Utah Attorney General's Office.<sup>372</sup> Thus, in 2010, even excluding the attorneys who handle its child welfare cases, Weber County budgeted approximately 2.3 times more to its County Attorney's Office than for its public defender services.

Although the budgeted amounts for 2011 seem slightly better—i.e., \$1,592,800 for public defense services versus a total of \$2,832,248 for the County Attorney's Office (or 1.78 times as much)<sup>373</sup>—it appears those numbers may be misleading. Again, the County Attorney's Office budget does not include monies to pay for the five lawyers who handle the “extremely time intensive” child welfare cases<sup>374</sup>; those attorneys are paid for by the state. More important, we are advised that the additional budgeted monies are not to contract with additional public defenders or to increase the value of the contracts. Instead, it appears that Weber County simply added into its public defender budget (line item 4126) monies allocated to fund Weber County's pending capital cases.<sup>375</sup>

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point of comparison but note that some of the resources included in the “Attorney-Civil” budget line item (\$569,087) may be used primarily (or maybe even wholly) for civil matters.

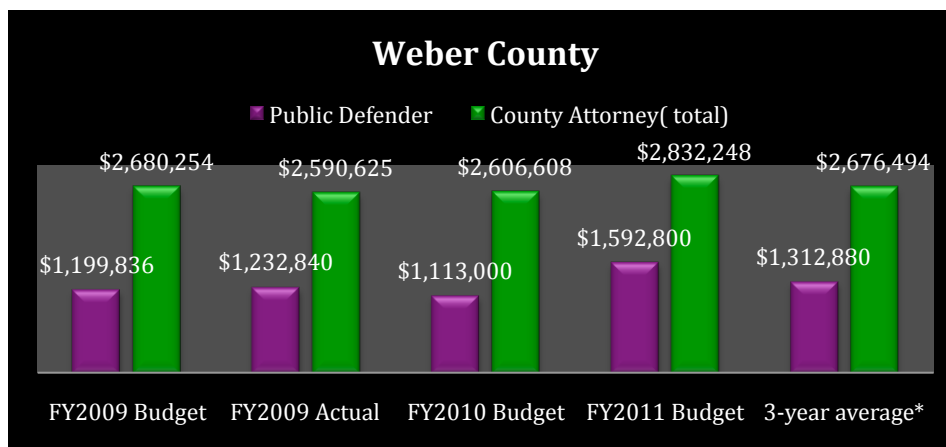
<sup>372</sup> See, e.g., Aug. 15, 2007, “Weber County Indigent Legal Services Evaluation and Report,” produced by Weber County in response to ACLU of Utah GRAMA request dated Oct. 18, 2010 (“2007 Weber Report”), at 8, 2 (on file with the ACLU of Utah) (discussing how Weber County's child welfare cases are handled). The 2007 report described these cases as “extremely time intensive,” although fewer in number than juvenile delinquency cases. *Id.* In 2007, the Weber County Public Defenders Association's coordinator for juvenile cases estimated that child welfare cases comprised 80 percent of the time spent by the five lawyers who were, at the time, assigned to handle the indigent juvenile court docket for Weber County. That, of course, was before the Association was disbanded in January 2010. See discussion *infra* at pp. 75-77.

<sup>373</sup> See 2011 Adopted Budget for Weber County (“Weber 2011 Adopted Budget”), at 3, available for search and download at <http://www.sao.state.ut.us/lgReports.html#> (last visited July 6, 2011). Again, see *supra* note 362, the County Attorney's Office budget amount listed here adds the numbers set forth on line item 4145 (“Attorney-Criminal,” \$2,251,924) and line item 4150 (“Attorney-Civil,” \$580,324).

<sup>374</sup> See 2007 Weber Report, *supra* note 372, at 8.

<sup>375</sup> We have not been able to confirm this, but knowledgeable sources within Weber County tell us that no additional public defenders have been retained and no trial-level public defender contracts have been increased in value. (One appellate contract may have increased in value slightly, however, when the appellate public defender was asked to add a capital case to his appellate docket.) Moreover, Weber County does not participate in the Indigent Capital Defense Fund, and has three on-going capital cases that have significantly stretched its budget. See, e.g., Tim Gurrister, “Weber to pull nearly \$250,000 from county budget in '10 to cover death penalty cases,” *Standard Examiner* (Utah) (June 6, 2010), available at <http://www.standard.net/topics/courts/2010/06/06/weber-pull-nearly-250000-county-budget-10-cover-death-penalty-cases> (last visited July 14, 2011). Although Weber County





In previous years, Weber County’s public defense costs were slightly higher.<sup>376</sup> In late 2009, however, Weber County let lapse a nearly forty-year contract with the Weber County Public Defenders Association (the “Association”), opting instead for individual contracts with no additional monies for support or other services, in an effort to save the county \$100,000 annually.<sup>377</sup> Although the Association was not a traditional public defenders’ office staffed by full-time attorneys and support professionals handling no work other than public defense cases, it did provide important organizational structure and support, mandated some level of attorney supervision, and had in place systems both to track caseloads and to screen for conflicts. None of that exists under Weber County’s current system for public defense services.

Weber County determined to eliminate the Association after commissioning a report in 2007 to analyze what would be necessary in Weber County for the County and the State of Utah to meet its constitutional obligation “to provide legal defender services and resources to public

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used to include a death penalty appropriation in the amounts budgeted each year to the Weber County Public Defenders Association, the county terminated its contract with the Association in January 2010 and, when so doing, allocated no monies to pay for capital defense services. *Id.* By mid-2010, Weber County owed in excess of \$250,000 to three separate capital defense teams, but had yet to pay them anything for their services. *Id.*

<sup>376</sup> Compare Weber 2011 Adopted Budget, supra note 373, at 3 (showing 2009 actual costs of \$1,232,840), with Weber 2010 Budget, supra note 369, at 15 (showing 2008 actual costs of \$1,243,955), and with 2009 Adopted Budget for Weber County (“Weber 2009 Budget”), at 6, available for search and download at <http://www.sao.state.ut.us/lgReports.html#> (last visited Aug. 16, 2011).

<sup>377</sup> See Tim Gurrister, “No More Weber Attorney Group for Indigent,” Standard Examiner (Utah) (July 27, 2009), available at <http://www.allbusiness.com/government/government-bodies-offices-regional/12587121-1.html> (last visited July 5, 2011).

defendants charged within their jurisdictions.”<sup>378</sup> Some of the concerns, when the study was commissioned, were increased costs, “the level of accountability of contract defenders[,] and the quality of service provided to indigent defendants.”<sup>379</sup>

At the time of the report, the Association contracted with sixteen attorneys—including seven assigned to district court cases, five assigned to juvenile court cases, one handling only homicides, one handling only mental health cases, and two handling only appeals—and four full-time secretaries, one file clerk, and one part-time investigator.<sup>380</sup> Most office expenses and benefits were paid for by the contracted public defenders as part of their contracts.<sup>381</sup> Other resources, such as transcripts or expert witnesses, were not provided for in the budget and were instead available only on motion to the Court (copied to the County Attorney)<sup>382</sup> Appeals were handled primarily by Randall Richards, who was “assisted by Dee Smith,”<sup>383</sup> who at the time was a public defender but is now the elected County Attorney in Weber.<sup>384</sup> Caseloads at the time almost doubled NAC guidelines, with an average per-attorney caseload of 298 felony or felony-equivalent cases.<sup>385</sup>

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<sup>378</sup> See Jan. 19, 2007, “Legal Defender Services Study Proposal” submitted by Mel Wilson to Weber County Commissioner Craig Dearden, produced by Weber County in response to ACLU of Utah GRAMA request dated Oct. 18, 2010 (“Wilson Proposal”), at 1-2 (on file with the ACLU of Utah). Mel Wilson is a career prosecutor, with 30 years of service with the Davis County Attorney’s Office (including 20 as the Davis County Attorney) and two years as a contract public defender. *Id.* at 3.

<sup>379</sup> See *id.* at 1-2.

<sup>380</sup> See 2007 Weber Report, *supra* note 372, at 6-8.

<sup>381</sup> See *id.* at 19.

<sup>382</sup> See *id.* at 7.

<sup>383</sup> See *id.* at 8.

<sup>384</sup> See <http://www.co.weber.ut.us/attorney/about.php> (last visited July 14, 2011).

<sup>385</sup> See 2007 Weber Report, *supra* note 372, at 17. This figure did not include another 528 probation violation cases. *Id.* Contrast this with average calculated felony or felony equivalent caseloads that year in Davis County (191). Caseloads, excluding misdemeanors, in Utah and Salt Lake Counties during the same period were calculated as 143 and 154 respectively. *Id.* The report noted that no interviewed public defender in Weber County reported feeling “overwhelmed” by his or her caseload. *Id.* at 16. The report concluded, however: “The fact that the current public defenders do not feel they are overwhelmed by their caseloads does not relieve the county of its responsibility to ensure legal defenders are providing legal representation equal to the standard required under Utah law. . . . The caseload statistics in Weber County are alarming in numbers, especially considering they do not include approximately 522 probation violations handled by the legal defenders in the District Court.” *Id.* Of significance, the report also acknowledged that the county “must rely to a great extent that the Association will monitor the contract attorneys to ensure they are meeting the statutory requirements.” *Id.* Under the current system in Weber County, that reliance is, of course, not possible.

The report analyzed the public defender systems in Weber, Davis, Salt Lake, and Utah Counties, and offered three alternative suggestions for improvement.<sup>386</sup> Notably, none of the suggestions involved simply terminating the county's contract with the Association and relying instead on individual contracted public defenders with no centralized management whatsoever. To the contrary, the report strongly advised a full-time public defender's office. In so advising, the report noted, among other things, that "[a] full-time Legal Defender Program . . . is superior in a number of factors, such as accountability, consistency, case management, specialization, career advancement, training[,] and supervision staff."<sup>387</sup>

Again, rather than adopt the approach of establishing a full-time public defender's office, Weber County chose to terminate its contract with the Association and instead to contract with various individual attorneys. In so doing, Weber County abandoned any pretense of monitoring the quality or quantity of defense services provided in the county. Under the current system in Weber County, there are no policies or procedures to guarantee that—or even to monitor whether—individual defendants in Weber County receive quality defense services.

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<sup>386</sup> See 2007 Weber Report, *supra* note 372, at 5-15, 20; *see also id.* at A1-1 to A1-9 (alternative one, full-time office, anticipated budget of \$1,381,725 plus another approximately \$136,000 for capital and other expenditures), A2-1 to A2-4 (alternative two, full-time office, anticipated budget of \$1,333,387), and A3-1 to A3-4 (alternative three, continuation/modification of current system, anticipated budget of \$1,196,000).

<sup>387</sup> See 2007 Weber Report, *supra* note 372, at 20.

## **DETAILED PUBLIC RECORDS INFORMATION: WEBER COUNTY**

### **STANDARDS & OVERSIGHT**

- At the beginning of 2010, Weber County contracted individually with twelve private attorneys—five of whom handle only juvenile court cases—to provide all public defense services.<sup>388</sup> Weber County also contracted with Michael Bouwhuis as the “Coordinating Attorney” for all of the independently contracted public defenders.<sup>389</sup>
- Weber County does not keep any written job descriptions or qualifications for public defenders, aside from requiring that the attorneys remain in good standing with the Utah State Bar Association.<sup>390</sup> The contracts also require that the attorneys agree to “abide by the rules of Professional Conduct” of the American and Utah Bar Associations, and also the laws of the State of Utah.<sup>391</sup>
- To the extent that any of the contracted public defenders determines that his or her caseload has become “sufficiently burdensome to create an ineffective assistance of counsel issue or could cause the attorney to be in violation of the Rules of Professional Conduct,” the attorney is instructed to advise the Coordinating Attorney immediately “and determine a proper course of action to remedy the situation.”<sup>392</sup>

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<sup>388</sup> See generally Attorney Agreements produced by Weber County in response to ACLU of Utah GRAMA Request dated Feb. 26, 2010 (“Weber Attorney Agreements”) (agreements with Gary Barr (\$86,500 (juvenile court only)), Jeff Bissegar (\$66,300), Ryan Bushell (\$35,000), Jennifer Clark (\$86,500 (juvenile court only)), Stephen Laker (\$79,500), Randy Marshall (\$71,500), Carol Mortensen (\$66,000 (juvenile court only)), Samuel Newton (\$38,500 (appeals only)), Jonathan Pace (\$79,000 (juvenile court only)), James Retallick (\$76,000), Sharon Sipes (\$78,000 (juvenile court only)), and Sean Young (\$73,000)) (all on file with ACLU of Utah).

<sup>389</sup> See Minutes of the Weber County Commission dated Oct. 13, 2009, at 1, available at [http://www.co.weber.ut.us/commission/view\\_minutes.php?minute\\_id=467&id=1](http://www.co.weber.ut.us/commission/view_minutes.php?minute_id=467&id=1) (last visited July 18, 2011).

<sup>390</sup> See, e.g., Weber Attorney Agreement (Retallick), supra note 388, at 1; Weber Attorney Agreement (Clark), supra note 379, at 1.

<sup>391</sup> See, e.g., Weber Attorney Agreement (Retallick), supra note 388, at ¶19; Weber Attorney Agreement (Clark), supra note 379, at ¶15. Each public defender is also required to establish an office in Weber County. See, e.g., Weber Attorney Agreement (Retallick), supra note 379, at ¶20; Weber Attorney Agreement (Clark), supra note 379, at ¶16.

<sup>392</sup> See, e.g., Weber Attorney Agreement (Retallick), supra note 388, at ¶11; Weber Attorney Agreement (Clark), supra note 379, at ¶9.

- Weber County does not<sup>393</sup>:
  - Supervise the ongoing provision of public defense services;
  - Require public defense counsel to participate in continuing legal education; or
  - Monitor the caseloads of the public defense service provider.
- Weber County does not have any written criteria or guidelines for<sup>394</sup>:
  - Selecting counsel to represent indigent defendants;
  - Ensuring that public defense counsel meet minimum qualifications or performance standards; or
  - Analyzing the adequacy of compensation for public defense services.

### **CONFLICTS OF INTEREST**

- In Weber County, contracted public defenders are instructed to “use his [or her] best efforts to avoid any conflicts of interest which would divide loyalty of defense counsel to the client.”<sup>395</sup> There does not seem to be any centralized system for identifying or analyzing actual or potential conflicts of interest.<sup>396</sup> Instead, conflicts will be acknowledged and addressed only “after a determination of the appointing Court.”
- We are advised that at least three public defenders in Weber County share office space and also share one secretary, facsimile machine, and other supportive resources. We are aware of no systems in place to screen for and protect against conflicts of interest that may arise as between their clients, if, for example, any of those three public defenders were assigned to represent co-defendants.

### **FUNDING & RESOURCES**

- In 2010, Weber County budgeted \$1,113,000,<sup>397</sup> or \$4.81 per capita,<sup>398</sup> on public defense services; that is 41 percent of the national average of \$11.86.<sup>399</sup>

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<sup>393</sup> See Oct. 9, 2009, Letter from Weber County responding to ACLU of Utah GRAMA request dated Sept. 17, 2009 (“Weber 2009 Resp.”), at 2-3 (on file with ACLU of Utah).

<sup>394</sup> *Id.*

<sup>395</sup> See, e.g., Weber Attorney Agreement (Retallick), *supra* note 388, at ¶21; Weber Attorney Agreement (Clark), *supra* note 379, at ¶17.

<sup>396</sup> See Weber 2009 Resp., *supra* note 393, at 3.

<sup>397</sup> See 2010 Weber Budget, *supra* note 369, at 15.

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- Compare that to a total of \$2,606,608 budgeted for the Weber County Attorney's Office in 2010.<sup>400</sup> That number does not include the attorneys who handle Weber County's substantial docket of child welfare cases, which are filed and prosecuted by the Utah Attorney General's Office.<sup>401</sup>
- Although the budgeted amounts for 2011 seem slightly better—i.e., \$1,592,800 for public defense services versus a total of \$2,832,248 for the County Attorney's Office<sup>402</sup>—it appears those numbers may be misleading.<sup>403</sup>

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<sup>398</sup> See calculations supra note 369.

<sup>399</sup> 2008 NLADA Report, supra note 9, at 7.

<sup>400</sup> See Weber 2010 Budget, supra note 369, at 15; see also calculations supra note 369.

<sup>401</sup> See, e.g., 2007 Weber Report, supra note 372, at 8, 2.

<sup>402</sup> See Weber 2011 Adopted Budget, supra note 373, at 3. Again, the County Attorney's Office budget adds together the numbers set forth on line item 4145 ("Attorney-Criminal," \$2,251,924) and line item 4150 ("Attorney-Civil," \$580,324).

<sup>403</sup> See discussion supra note 371.

**Compensation for Public Defenders v. County Attorney's Office**

<b>PUBLIC DEFENDERS</b>	<b>CONTRACT<sup>404</sup></b>	<b>COUNTY ATTORNEY'S OFFICE ("ATTORNEY-CRIMINAL" (LINE ITEM 4145) ONLY)</b>	<b>SALARY/WAGE<sup>405</sup></b>
Michael Bouwhuis	\$90,000	Dee Smith (County Attorney)	\$65,652
Stephen Laker	\$79,500	William Daines	\$126,635
Randall Marshall	\$71,500	Gary Heward	\$116,874
James Retallick	\$76,000	Sandra Lee Corp	\$98,723
Sean Young	\$73,000	Christopher Shaw	\$97,539
Haylee Mills	\$64,300	Lawrence Saunders	\$86,379
Ryan Bushell	\$35,000	Branden Miles	\$58,680
Jeff Bissegar	\$66,300	Nathan Lyon	\$55,918
Gary Barr (juvenile)	\$86,500	Maile Verbica (part-time)	\$21,818
Jennifer Clark (juvenile)	\$86,500	Robert Carpenter (Investigator)	\$78,111
Jonathan Pace (juvenile)	\$79,000	Shane Minor (Investigator)	\$68,198
Sharon Sipes (juvenile)	\$78,000	Beckie Read (Legal Tech)	\$40,790
Carol Mortensen (juvenile)	\$66,000	Nadene Allen (Secretary)	\$37,500
Sam Newton (appeals)	\$38,500	Darlene Sewell (Legal Tech)	\$22,320
Martin Gravis	Unknown	Amy Lyn Baughman (Service Tech)	\$19,492
		Jamie Pitt (Legal Tech)	\$27,062
Mike Stewart (Investigator)	\$39,000	Katie Stryker (Secretary)	\$24,864
		Rebecca Jackson (Secretary)	\$24,814
		Amanda Seamons (Secretary)	\$25,368
		Diane Oberg-Lowe	\$13,539
		Letitia Toombs (Law Clerk)	\$23,222
		Law Clerk (employee unspecified)	\$12,978
<b>PD Total</b>	<b>\$1,029,100</b>	<b>County Attorney's Office Salary Total</b>	<b>\$1,146,476</b>

- Figures from Weber County's 2009 detailed budget indicate that, in addition to salaries, Weber County budgeted for the additional monies in support of the Weber County Attorney's Office (line item 4145, "Attorney-Criminal"): employee benefits (\$541,575); subscriptions (\$10,000); training and travel (\$14,000); meals and entertainment (\$1,300); office expenses and supplies (\$27,235);

<sup>404</sup> See generally Weber Attorney Agreements, supra note 388.

<sup>405</sup> Salaries for many public employees, including those listed in this chart, can be searched and reviewed at <http://utahsright.com/> (last visited July 15, 2011).

postage (\$9,000); telephone (\$2,000); service fees (\$23,000); dues (\$9,000); and "interdepartmental charges for telephone (\$14,179) and fleet vehicles (\$20,585).<sup>406</sup>

- The budget for fiscal year 2011 is similar in that, in addition to salaries (totaling \$1,349,451), Weber County has budgeted the following in support of the County Attorney's Office: office space; health and dental insurance (\$197,900); retirement benefits (\$223,242); FICA (\$104,002); unemployment (\$26,987); worker's compensation (\$15,521), professional association dues (\$9,000); legal subscriptions (\$10,000); and risk management (\$14,914).<sup>407</sup>
- Because the public defenders in Weber County are contract workers, as opposed to employees of the county, their contract provides no monies for overhead, support staff, administrative expenses, or employment benefits such as health insurance, worker's compensation, sick leave, vacation, or pension.<sup>408</sup>
- Weber County's public defense contracts provide that certain defense costs such as transcript fees, witness fees, expert witness fees, and mental examination fees, may be reimbursed by the county on a case-by-case basis so long as the expenses are first approved by the Court as reasonable.<sup>409</sup> No such pre-approval is required of the County Attorney's Office, which also has access to city, county, and state law enforcement resources and forensic services.

## CASELOADS

- In fiscal year 2010 (July 1, 2009-June 30, 2010), 1,969 felonies and 669 misdemeanors were filed in the District Court for Weber

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<sup>406</sup> See 2009 Budget Summary of Revenues and Expenditures, produced by Weber County in response to ACLU of Utah GRAMA request dated Sept. 17, 2009 (on file with the ACLU of Utah).

<sup>407</sup> See 2011 Tentative Budget for Weber County ("Weber 2011 Tentative Budget"), at 17, available at [http://www.co.weber.ut.us/Clerk\\_Auditor/pdf/2011%20TENTV%20online\\_re.pdf](http://www.co.weber.ut.us/Clerk_Auditor/pdf/2011%20TENTV%20online_re.pdf) (last visited July 14, 2011).

<sup>408</sup> See, e.g., Weber Attorney Agreement (Retallick), supra note 388, at ¶27; Weber Attorney Agreement (Clark), supra note 379, at ¶22.

<sup>409</sup> See, e.g., Weber Attorney Agreement (Retallick), supra note 388, at ¶24; Weber Attorney Agreement (Clark), supra note 379, at ¶19.



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County.<sup>410</sup> Another 6,459 misdemeanors were filed in the Weber County justice courts.<sup>411</sup>

- As set forth below, caseloads for nearly every contracted trial-level public defender in Weber County exceeded the maximum of 150 felony or felony-equivalent cases <sup>412</sup> recommended under the longstanding professional guidelines promulgated by NAC.<sup>413</sup>

**Weber County Public Defender Annual Caseload (Non-Juvenile)<sup>414</sup>**

<b>PUBLIC DEFENDER</b>	<b>FELONY</b>	<b>MISDEMEANOR</b>	<b>OTHER</b>	<b>NAC FELONY EQUIVALENT</b>	<b>TOTAL CASES</b>
R. Bushell	248	127	41	296	<b>416</b>
S. Young	206	85	13	238	<b>304</b>
S. Laker	198	88	7	231	<b>293</b>
R. Marshall	176	71	20	203	<b>267</b>
J. Retallick	165	88	31	198	<b>284</b>
H. Mills	150	47	9	168	<b>206</b>
M. Gravis	145	64	2	169	<b>211</b>
M. Bouwhuis	96	154	21	154	<b>271</b>

- Weber County public defenders have in the past raised concerns over excessive caseloads and inadequate funding. Indeed, then-public defender Michael Boyle was terminated in 2001 after he argued in a motion to the court that funding and staffing shortages rendered public defense in Weber County constitutionally inadequate.<sup>415</sup>
- Another public defender for Ogden City, which contracts separately from Weber County, was terminated after he filed a federal lawsuit earlier this year alleging that the public defense system for Ogden City was so underfunded as to be constitutionally inadequate.<sup>416</sup>

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<sup>410</sup> Supra note 367.

<sup>411</sup> Supra note 368.

<sup>412</sup> Supra note 21.

<sup>413</sup> Supra note 20.

<sup>414</sup> See Oct. 2010 Resp. by Utah Admin. Office of the Courts to ACLU of Utah GRAMA request dated Sept. 27, 2010 (on file with the ACLU of Utah).

<sup>415</sup> Tim Gurrister, "Weber public defender fired after funding complaint: Attorney will continue to pursue motion over funding, staffing levels," Standard Examiner (Utah) (Oct. 4, 2001).

<sup>416</sup> See Tim Gurrister, "Ogden public defender fired after filing lawsuit on low pay," Standard Examiner (Utah), Feb. 27, 2011, available at <http://www.standard.net/topics/courts/2011/02/27/ogden-public-defender-fired-after-filing-lawsuit-low-pay> (last visited July 14, 2011).

## **Appendix A**

### **County-By-County Resource Comparison Chart**

**PUBLIC DEFENDERS VERSUS COUNTY ATTORNEY BUDGETS (EST.)**

**FY2009-FY2011**

(county budgets and financial statements available for download at  
<http://www.sao.state.ut.us/lgReports.html#>)

<u>County</u>	<u>FY2009</u> <u>(Budget)</u>	<u>FY2009</u> <u>Actual</u>	<u>FY2010</u> <u>Budget</u>	<u>FY2011</u> <u>Budget</u>	<u>3-year average*</u>
<u>Box Elder</u>					
Public Defender	\$175,000	\$171,842	\$171,500	\$170,929	\$171,424
County Attorney	\$511,793	\$526,243	\$563,954	\$551,198	\$547,132
PD % of CA budget	34.19%	32.65%	30.41%	31.01%	31.36%
<u>Daggett**</u>					
Public Defender	\$10,300	\$4,185	\$7,500 not budgeted		\$5,842.5
County Attorney	\$90,300	\$81,306	\$107,500	\$96,290	\$95,032
PD % of CA budget	11.41%	5.15%	6.98%		4.04%
<u>Duchesne**</u>					
Public Defender	\$187,000	\$166,809	\$175,000	\$175,000	\$172,270
County Attorney	\$491,250	\$455,128	\$488,723	\$488,532	\$477,461
PD % of CA budget	38.07%	36.65%	35.81%	35.82%	36.09%
<u>Iron***</u>					
Public Defender	\$221,023	\$206,347	\$204,000	\$203,235	\$204,527
County Attorney	\$876,721	\$840,653	\$884,600	\$836,000	\$853,751
PD % of CA budget	25.21%	24.55%	23.06%	24.31%	23.97%
<u>Kane***, ****</u>					
Public Defender	\$55,630	\$49,895	\$61,500	\$61,500	\$57,632
County Attorney	\$266,089	\$301,507	\$376,976	\$388,520	\$355,668
PD % of CA budget	20.91%	16.55%	16.31%	15.83%	16.23%
<u>San Juan</u>					
Public Defender	\$85,000	\$87,855	\$76,480	\$88,124	\$84,153
County Attorney	\$258,348	\$261,144	\$258,410	\$259,165	\$259,573
PD % of CA budget	32.90%	33.64%	29.60%	34.00%	32.41%
<u>Sevier****</u>					
Public Defender	\$102,000	\$83,984	\$102,000	\$102,000	\$95,995
County Attorney	\$325,320	\$356,707	\$384,397	\$421,159	\$387,421
PD % of CA budget	31.35%	23.54%	26.54%	24.22%	24.77%
<u>Uintah</u>					
Public Defender	\$257,500	\$229,932	\$277,600	\$319,200	\$275,577
County Attorney	\$1,069,900	\$1,071,688	\$1,052,400	\$1,210,700	\$1,111,596
PD % of CA budget	24.07%	21.46%	26.38%	26.36%	24.73%
<u>Weber*****</u>					
Public Defender	\$1,199,836	\$1,232,840	\$1,113,000	\$1,592,800	\$1,312,880
County Attorney (crim)	\$2,080,947	\$2,033,404	\$2,037,521	\$2,251,924	\$2,107,616
County Attorney( total)	\$2,680,254	\$2,590,625	\$2,606,608	\$2,832,248	\$2,676,494
PD % of CA crim budget	57.66%	60.63%	54.63%	70.73%	62.00%
PD % of CA total budget	44.77%	47.59%	42.70%	56.24%	48.84%

**PUBLIC DEFENDERS VERSUS COUNTY ATTORNEY BUDGETS (EST.)  
FY2009-FY2011**

(county budgets and financial statements available for download at  
<http://www.sao.state.ut.us/lgReports.html#>)

**Notes:**

\* Calculated, where possible, using FY2009 actual costs plus budgeted amounts for FY2010 and FY2011.

\*\* Daggett and Duchesne Counties do not include public defender services as a separate, identifiable line item in their budgets or financial statements. Public defender budget figures have been derived from other documents either publicly available or produced by those counties.

\*\*\* It was evident from financial materials available for Iron and Kane Counties that they include in their reported public defense budgets monies that are actually allocated to the Indigent Capital Defense Fund. Given the unique nature of capital cases, and given that those funds are not actually available for general public defender services, we have removed those amounts from the monies reported as budgeted for public defense services in those counties.

\*\*\*\* Unlike most counties studied for this report, Kane and Sevier Counties do not include the "victim's witness advocate" as part of the County Attorney's Office budget. Because that position undeniably benefits and is part of the prosecution function, we have added the monies budgeted for that position back into the county attorney budgets for those counties.

\*\*\*\*\* Unlike most counties studied for this report, Weber County appears to separate its County Attorney Office budget into two separate line items: "attorney-criminal" and "attorney civil." We have provided comparisons using both figures. Note, however, that the Weber County budget numbers do not reflect an additional five state-paid attorneys who prosecute juvenile cases. We estimate that adding those attorneys to Weber's budget would add another approximately \$500,000.

## **Appendix B**

### **Sample ACLU of Utah GRAMA Requests**

## **SAMPLE**

May 13, 2008

**RE: Request For Records Pursuant to Utah Government Records and Management Act, Utah Code Ann. Sec. 63-2-101, et seq.**

Dear Commissioners:

This is a formal request pursuant to the Utah Government Records and Management Act, Utah Code Ann. Section. 63-2-101, et seq. Please produce the records described in detail below:

Policies, procedures, guidelines and other records related to the selection, supervision, evaluation and remuneration of attorneys hired to represent indigent defendants. In particular, we request:

Requests for Proposals for representation of indigent defendants issued within the past two years.

Contracts entered into with attorneys or other groups for representation of indigent defendants within the past two years.

Minutes of Commission/Council meetings at which defense of indigent defendants was discussed, including those of meetings at which contracts for representation of indigent defendants were approved.

Policies or guidelines related to selection of counsel to provide representation for indigent defendants within your county.

Policies or guidelines related to qualifications required of attorneys representing indigent defendants within your county.

Records, policies and procedures regarding providing defense to indigent defendants in your county.

Records related to county supervision/oversight of the provision of indigent defense services, including evaluation forms, supervision guidelines, suggested policies for supervision, etc.

Records related to training provided to attorneys who provide indigent defense services on behalf of your county or pursuant to a contract entered into with your county.

Documents related to evaluation of indigent defense contracts.

Policies and records establishing case load guidelines for attorneys providing indigent defense services, including records showing the caseload of each attorney providing indigent defense services in your county.

Documents establishing how much your county has expended on indigent defense services in the past two years.

Documents providing a breakdown of costs for indigent defense services in your county in the past two years, including separate expenditures for defense of capital cases, other felonies, and misdemeanors.

Documents that evidence your county's expenditures for indigent defense (excluding attorney fees), including such items as expert witness fees, investigator fees, forensic testing, psychiatric and psychological evaluation, etc.

We also request a waiver of copy costs under Utah Code Section 63-2-203(4), which encourages entities to fulfill a records request without charge. Based on this section, we request a waiver of copy costs because releasing the records primarily benefits the public, rather than an individual. Despite Section 63-2-203(4), we understand that we may be responsible for fees associated with copying charges or research charges as permitted by Utah Code Section 63-2-203. If the costs are more than \$25.00, please notify us before incurring the cost.

If you have any questions, please do not hesitate to contact me at 801/521-9862 (ext. 103). Thank you for your attention to this matter. If this request was directed to you in error, please forward it to the person in charge of such requests. Thank you for your assistance.

Sincerely,

Marina Lowe  
Staff Attorney

Lucy R. Juarez  
c/o Emily Chiang  
S.J. Quinney College of Law  
University of Utah  
332 South 1400 East, Room 101  
Salt Lake City, Utah 84112

September 16, 2009

Stephen Foote  
Duchesne County Attorney  
P.O. Box 206  
Duchesne, Utah 84021

**Re: Utah Government Records and Management Act Request**

Dear Mr. Foote:

I am a law student at the University of Utah conducting research on the indigent defense system in Utah. Pursuant to the Utah Government Records and Management Act (Utah Code Ann. § 63G-2-101 et. seq.), I respectfully request that you provide me with copies of the following documents, for each year from January 1, 2007, to the present:

1. Documents sufficient to reflect the annual budget of the County Attorney's Office;
2. Documents sufficient to reflect the amount and/or percentage of the annual budget of the County Attorney's Office designated for each budget line item;
3. Documents sufficient to demonstrate the total number of individuals employed by and/or working at the County Attorney's Office;
4. Documents sufficient to demonstrate the title and salary of each individual employed by and/or working at the County Attorney's Office;
5. Documents sufficient to demonstrate all training received by each attorney employed by and/or working at the County Attorney's Office, including but not limited to continuing legal education classes, workshops provided by the office, and attendance at trainings funded by the office;
6. Documents sufficient to demonstrate the total number of prosecutions initiated by the County Attorney's Office;



7. Documents sufficient to demonstrate the breakdown of the total number of prosecutions by the number of misdemeanors, felonies, and cases other than misdemeanors and felonies, initiated by the County Attorney's Office;
8. Documents sufficient to demonstrate the breakdown of the total number of prosecutions by the number assigned to each prosecuting attorney for the County Attorney's Office;
9. Documents sufficient to demonstrate the number of cases that were actually tried, and the number of cases that were settled, by the County Attorney's Office;
10. Any and all documents related to the standards, guidelines and/or requirements for the selection of attorneys for employment with the County Attorney's Office;
11. Any and all documents related to the standards, guidelines and/or procedures for monitoring, supervising, and/or evaluating the performance of attorneys employed at the County Attorney's Office.

I also request a waiver of copy costs under Utah Code Section 63G-2-203(4), which encourages entities to fulfill a records request without charge. Based on this section, I request a waiver of copy costs because releasing the records primarily benefits the public, rather than the individual. Despite Section 63G-2-203(4), I understand that I may be responsible for fees associated with copying charges or research charges as permitted under Utah Code Section 63G-2-203. If the costs are more than \$25.00, please notify me before incurring the cost.

I greatly appreciate your help in this matter. Should you have any questions, please feel free to contact me at: (801) 699-2319 or [lucy.juarez@law.utah.edu](mailto:lucy.juarez@law.utah.edu)

Sincerely,

  
Lucy R. Juarez

## **Appendix C**

### **Other Publications of Interest**

## ADDITIONAL RESOURCES

ABA Committee On Ethics & Professional Responsibility, Formal Op. 06-441 (May 2006).

ABA Committee on Legal Aid & Indigent Defendants, *Gideon's Broken Promise: America's Continuing Quest for Equal Justice* (Dec. 2004).

ABA Committee on Legal Aid & Indigent Defendants, *Ten Principles of a Public Defense Delivery System* (Feb. 2002).

ABA, *Guidelines for the Appointment & Performance of Defense Counsel in Death Penalty Cases* (revised ed. Feb. 2003).

ABA, *Indigent Defense/Public Defender Systems Reports & Studies*, [http://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/initiatives/indigent\\_defense\\_systems\\_improvement/reports\\_studies.html](http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/indigent_defense_systems_improvement/reports_studies.html).

*ABA Standards for Criminal Justice: Providing Defense Services* (3d ed. 1992).

Bob Kemper, *Gideon: Right to Council?*, Wash. Lawyer (Sept. 2009).

David Cole, *No Equal Justice: Race and Class in the American Criminal Justice System* (NY, NY: The New Press 1999).

Dr. Emily M. West, *Court Findings of Ineffective Assistance of Counsel Claims in Post-Conviction Appeals: Among the First 255 DNA Exoneration Cases* (Sept. 2010).

Justice Policy Institute, *System Overload: The Costs of Under-Resourcing Public Defense* (July 2011).

Marina Lowe, *Indigent Defense in Utah: Constitutionally Adequate?*, Utah Bar J. (Nov./Dec. 2009).

National Legal Aid & Defender Association, *A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis* (2008).

National Legal Aid & Defender Association, American Council of Chief Defenders, Ethics Opinion 03-01 (April 2003).

National Legal Aid & Defender Association, American Council of Chief Defenders, *Statement on Caseloads and Workloads* (Aug. 2007).

National Legal Aid & Defender Association, *Gideon's Unfulfilled Promise: The Right to Counsel in America* (Jan. 31, 2008) (draft report).

National Legal Aid & Defender Association, *The Guarantee of Counsel: Advocacy and Due Process in Idaho's Trial Courts* (Jan. 2010).

National Right to Counsel Committee, *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel* (April 2009).

Scott Wallace & David Carroll, National Legal Aid & Defender Association, *Implementation and Impact of Indigent Defense Standards* (2003).

The Spangenberg Group, *Indigent Defense Standards & Guidelines Index* (May 1998).

The Spangenberg Group, *Indigent Defense Systems of the 50 States* (2006).

The Spangenberg Group, *Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview* (June 2007).

The Spangenberg Group, *State & County Expenditures for Indigent Defense Services in Fiscal Year 2005* (Dec. 2006).

The Spangenberg Group, *State Indigent Defense Commissions* (Dec. 2006).

U.S. Department of Justice, Bureau of Justice Assistance, *Contracting for Indigent Defense Services* (April 2000).

U.S. Department of Justice, Bureau of Justice Assistance, *Keeping Defender Workloads Manageable* (Jan. 2001).

U.S. Department of Justice, Bureau of Justice Statistics, *County-Based & Local Public Defender's Offices 2007* (Sept. 2010, NJC 231175).

U.S. Department of Justice, Nat'l Advisory Commission on Criminal Justice Standards & Goals, Task Force on Courts, *Report* (1973).

Utah Judicial Council, Study Committee on Appellate Representation of Indigent Criminal Defendants, *Final Report* (Jan. 6, 2011).

Utah Judicial Council, Task Force on Appellate Representation of Indigent Defendants, *Final Report* (Sept. 14, 1994).