

INDIANA PUBLIC DEFENDER COUNCIL

Annual Board Retreat
September 24, 2005
Bloomington, Indiana

MINUTES

I. CALL TO ORDER

The meeting of the Board of Directors of the Indiana Public Defender Council (IPDC) was called to order by chair Doug Garner at 9:10 A.M. at Chapman's Conference Center in Bloomington, IN. Board members present were Susan Carpenter, Dave Cook, Dave Hennessy, Doug Garner, Mike McDaniel, Neil Weisman, Sonya Scott and Neil Weisman. Absent were Bob Hill and Micki Kraus. Staff present were Larry Landis, Jodie English, Don Murphy, Paula Sites, Loretta Jackson and Teresa Campbell.

II. APPROVAL OF MINUTES

Minutes of the meeting of May 19, 2005 were unanimously approved.

III. AGENDA

The agenda for the meeting was unanimously approved.

IV. EXECUTIVE DIRECTOR'S REPORT

A. Budget

Larry Landis reported on the balances in the two revenue accounts. He stated that the increase in seminar registration fees has generated adequate revenue for the planned training, which includes the anticipated cost of the Trial Practice Institute. A question was raised if there had been any complaints about the increased fees. Paula Sites stated that there were a few complaints concerning the increase in Death Penalty Seminar fee to \$300, but also stated that the two day death penalty program is expensive to produce.

B. Strategic Directions

1. Improving Delivery System

Larry Landis began his report by stating that perhaps it is time to make some changes in our strategic directions to fulfill the Council's mission of improving indigent defense services.

Larry Landis reported that the Public Defender Commission wants to audit counties to ensure that they are performing as they should. In some counties, particularly the smaller ones, the Public Defender Boards are often made up of members who are not knowledgeable about the law. There is little, if any, accountability for the quality of services provided. Often they meet only to approve the budget, and some never meet at

all. In some counties, the judges still control the system. He stated that county-based funding is a problem due to the limited tax base and perhaps it is time to rethink the county-based system and consider switching to a state-wide public defender system in the long term. Terry Harper, who is on the Monroe County PD Board, pointed out that many boards don't really know what they are to do. Mike McDaniel asked why a state system would be any better in terms of quality of services provided. Dave Cook responded that local systems are very political and a state-wide system would be less so and states that use this system are well-run and efficient. Lorinda Youngcourt countered that statement by pointing out that Kentucky and Missouri, which have state-wide systems, have constant funding battles.

A discussion followed on what would a state-wide system look like. Larry Landis stated there is no perfect system and we don't know what would be the best model for Indiana.. David Hennessy suggested regional directors reporting to the state and using a weighting system. Larry Landis responded that there is no way to do a weighting system until JTAC gets up and running, which could be years.

Lorinda Youngcourt pointed out that switching to a state system will not address quality of representation. Dave Cook stated that if control is wrested from judges and counties, then accountability and quality would be built into the system. David Hennessy asked if the PD Commission can change the make-up of the PD Boards. Doug Garner suggested requiring a defense attorney be a member.

After further discussion, it was decided to create a subcommittee to study different delivery systems. David Hennessy, David Cook, Mike McDaniel, Terry Harper, Susan Carpenter and Lorinda Youngcourt will be on the committee. Dave Cook will chair it. The agenda at the first meeting will include whether non-IPDC Council board members, should be added, perhaps a Chief Public Defender.

Discussion then turned to whether a new State Appellate Defender Office should be created, with state funding, taking appeals from the counties. Susan Carpenter stated that counties do not want to do appeals, and Paula Sites noted that the Council gets calls for help from attorneys who have been appointed to conduct an appeal and who have no idea what to do.

Larry Landis stated that in looking at delivery systems, the entire system needs to be looked at, not just the trial level. The focus should not be on what is being done under the current system, but how to restructure the entire system, including removing the State Public Defender Office from under the control of the Chief Justice. The entire state structure needs to be looked at to decide if a new system needs to be created.

C. Goals

1. Standards and funding

Larry Landis reported that the Indigent Defense Database is nearly complete. Data is being collected and entered on compensation and benefits of public defenders in each county. Information on recoupment criteria and procedure and indigence screening is being collected by Pat Rios. Kim Robinson is modifying NLADA's indigent defense contract procedures.

2. Forensic Diversion

Larry Landis reported on the Forensic Division Program. Each county is required to prepare a plan, but it does not have to be implemented until funding is available. The legislature is trying to figure out a way to fund the program. Counties can design the plan any way they want. Twenty-eight counties currently have a plan. Six counties are running a pilot project with DOC funding.

3. Sentencing Policy Study Commission

Larry Landis reported that the Commission has held its second meeting. A request was made that a list of members of the Commission be provided to the Board.

The problem of storage of physical evidence was brought up. Currently there is no system and no rules regarding storage. Jodie English, a member of the Supreme Court Rules Committee, noted that a rule was drafted but not adopted because there was no money available. Susan Carpenter said the problem needs to be dealt with legislatively because it is a three-branch issue. Larry stated the Commission on Courts would be a better place to deal with this issue rather than the Sentencing Policy Study Commission.

David Hennessy requested Goal B.2.e, "detention after NGRI" be changed to include GBMI. He noted that a person found guilty of a suspendible crime may remain free pending appeal, a GBMI defendant immediately goes into custody.

David Hennessy also wants to increase the priority level of Goal B.3.b, expanding the right to expungement. The current law is too restrictive. Susan Carpenter noted that the DOC is in favor of expungement. Larry Landis stated that one problem is that the Criminal Law Study Commission hasn't met in two years and we need a group to endorse the change to get the legislature to act. Getting the Indiana Prosecuting Attorneys Council to change their board policy would help. He will write to IPAC but it will help to build up a good case for change by having specific case examples of how the restrictive expungement policy has harmed people.

V. TRAINING/MENTORING PROGRAM

A. Performance Improvement

Don Murphy presented his report on training and performance improvement. He reported that there is progress in getting a handle on the quality of representation and monitoring performance. There will be a workshop in October on monitoring performance. Terry Richmond is setting up in-house training facilities in Vigo and Vanderburgh Counties. The question was asked what happens after Terry leaves. Don Murphy responded that one person will be identified to continue training. Murphy also stated that he is focusing on Public Defender offices. They tell him what they want and he puts it together.

Don Murphy reported that not much has been done on increasing regional training since the last retreat. He has focused on working with public defender offices rather than regional training and is using MCPDA as a model.

Don Murphy suggested doing a comprehensive needs analysis and use it to remodel training.

He emphasized moving from training to performance improvement and doing more interactive seminars. The Public Defender Commission should have counties monitor performance. David Cook is doing performance reviews; some other Chief PDs are doing case reviews. Terry Harper suggested having input from appellate lawyers who review trial transcripts. Neil Weisman pointed out that most cases don't go to trial, so how do you determine how good an advocate the attorney is. David Hennessy suggested asking the client questions, such as how often did your attorney meet with you; how did the judge treat your attorney.

B. Coaching Program

Don Murphy reported that Floyd, Clark, Vigo, Vanderburgh and Lake counties want the program to return, saying it was the best training they have received. He proposed requiring the Chief PD to commit to a performance improvement program along with the coaching program. Terry Harper asked if it is possible to extract a commitment from mentorees to remain as a PD after training.

Larry Landis asked for feedback concerning the mentoring program, pointing out that it is not cost effective, at approximately \$4000 per person trained, and asking if the quality of representation improved post-training. Doug Garner noted that in the smaller counties, it tends to have a ripple effect, raising the bar for other local PDs. When they see attorneys doing things they learned during the program, they also start doing it.

Larry Landis suggested linking mentoring with TPI: the mentor does a followup and a professional development plan – what was learned, how it was implemented. A year or two later, the person takes an advanced TPI, because a lot of skill building can be done in a group setting. Dave Cook said that the major value of the program was the mentoree got to work with his own case. Mike McDaniel pointed out that we have made a quantum leap in our seminars in using bring your own case. Larry Landis said we need to focus on recruiting/training mentors in different regions of the state. Terry Harper suggested a financial incentive to get mentors. The consensus was that there is a need for mentoring, but there was no consensus as to where to go from here. Mike McDaniel asked that the focus be on the southern part of the state where the demand is already there. Doug Garner said to send it back to the Training Committee and link mentoring to TPI. Lorinda Youngcourt suggested that after TPI the trainer could keep in touch with the trainee by e-mail and phone. She also said that taking TPI should be a prerequisite to getting a mentor.

C. Training/Seminars

David Hennessy asked if attorneys can receive CLEs for video training. Don Murphy responded that six hours of CLE credits per three year period is allowed. Murphy stated that there needs to be a CLE accredited organization as a sponsor and that a public defender office would qualify. He also stated that someone needs to be on site to organize and monitor the program. It was asked if someone could be designated a representative of IPDC and apply for CLEs.

There was a general discussion about preparing DVDs, including questions and suggestions about hiring someone to edit our videotapes. Jodie English reported that Emily Hawk has been hired to develop topic-oriented materials and prepare one-hour segments of different seminars for counties to build their own training program..

Doug Garner said we need to set a goal of which training to put onto DVD. Lorinda Youngcourt asked that a list of available videotapes be sent to the Training Committee who will look at it and report on which ones to use.

Jodie English reported as follows:

1. She thanked Teresa Campbell for her work in seeing that the seminars ran on time and for having all hotels for 2006 confirmed.
2. One hour of ethics training, relevant to the specific seminar topic, has been added whenever possible. In the upcoming Forensics seminar in December Vince Aprile will speak on ethics.
3. The Misdemeanor and TPR seminars brought in people who had never attended one of our seminars before.
4. For this year's TPI, a death penalty track has been added. Two teams from the death penalty seminar will do two days on jury selection. There is also discussion of doing a three-day death penalty TPI some time in the future.
5. In 2006, an Evidence program has been added in March, and the Defenses seminar in April will include bring-your-own-case.
6. Jodie will be assisting Paula Sites plan next year's death penalty defense seminar.

Paula Sites reported that in response to the Board's request at last year's retreat to increase interaction between research, publications and training that she is capturing what types of questions are being asked on research calls and relaying that information to Jodie English and Don Murphy for training and also tying it into the Defender.

Larry Landis asked if anything needs to be added to the training calendar. Lorinda Youngcourt suggested a train-the-trainer program. Jodie answered that people who conduct that type of training are expensive and will not tailor the training to our needs. David Cook requested training for paralegals. It will be added to the 2007 goals.

As requested at the last retreat, immigration issues are being incorporated into seminars. Irene Bublik at the Marion County PD Agency is being used.

VI. PUBLICATIONS/WEB SITE

Paula Sites reported on publications. She announced a joint project with Vickie Yaser of the Juvenile Law Center to update the Juvenile Manual at no charge. Andy Krull is in the processing of writing a pamphlet on the effects of a conviction on immigration. Joel Schumm is interested in doing an appellate manual. Ann Sutton will do the pleadings component. The possibility of creating a brief bank had been discussed in the Technology Committee. It was decided that this is not a high priority.

Paula also reported that seminar materials are being added to our web site within two weeks of the seminar. Currently they are just listed under the appropriate seminar heading, but they need to be

organized by topic. The expert witness transcripts are being put on-line as they become available. We are working on getting transcripts for specific topics such as Shaken Baby Syndrome, DNA, Child Molest and Ballistics.

Stacy Uliana is working on a motions manual.

Doug Garner requested that something be put on-line identifying the different issues in *Blakely*.

Don Murphy stated that a draft version of the Defense Attorney Checklist and the Juvenile Performance Guidelines had been sent out approximately a year ago. He asked approval to prepare a final form and distribute them to our members. Mike McDaniel asked to include that attorneys should attend presentence interviews. The Board unanimously approved sending out these publications in final form.

VII. RESEARCH AND TECHNICAL ASSISTANCE

Don Murphy reported on a Defendnet study proposed by a researcher at Indiana University, to study how professionals share information on line. The proposed study would include a survey, interviews, and tracking content threads on defendnet. The question was asked, how does this benefit us? Don Murphy replied that it would give us better insight on usage, an indication of how people learn on-line, and how effective it is. There was some concern that there could be a problem with confidentiality issues. After discussion of the proposal, a motion was made to vote on approving permission to do the study. The proposal failed.

Doug Garner and Lorinda Youngcourt reported on the ongoing process of creating a new Defendnet message board through the State DoIt Center. The new listserv would have message threads. The plan is to have a demo available by the end of October and then get 30-40 people to participate in beta testing the new board.

VIII. CRIMINAL JUSTICE POLICY AND LEGISLATION

Larry Landis requested a position by the Board on HB 1055 which would impose a pretrial services fee for persons released on bail and require intensive supervision by a probation officer. After a brief discussion, the Board unanimously opposed this bill.

Larry Landis reported that he is looking for a legislator to introduce a bill to prohibit the execution of the mentally ill. He hopes to have a coalition of forces to support. He requested support from the Board. The Board unanimously approved supporting such a bill.

IX. NEW BUSINESS

Susan Carpenter announced that there are now eight certified Spanish court interpreters and one Arabic interpreter.

Doug Garner asked the whether the Council should become an affiliate of the National Association of Criminal Defense Lawyers. Larry Landis is to find out if the IPDC, as a State agency, can become an affiliate of a private organization. If we can, the subject will be revisited at the next board meeting.

X. ELECTION OF OFFICERS

The current slate of officers was nominated and unanimously approved to continue for FY 2005-2006:

Chair: Doug Garner
Vice-Chair: David Hennessy
Secretary: Mike McDaniel

The next board meeting will be December 15, 2005, at a time to be determined later.

Meeting adjourned at 3:45 P.M., EST.

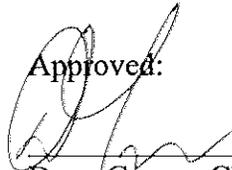
Respectfully submitted:



Loretta Jackson, Acting Secretary

Date: 8-11-06

Approved:



Doug Garner, Chair

Date: 7/31/06