



# BJA's Sixth Amendment Initiative: Strengthening the Constitutional Protections of the Accused

**A Report on Ten Sites Participating  
in Strategic Planning**

**Center for Court Innovation**

520 8th Avenue  
New York, NY 10018  
p. 646.386.3100  
f. 212.397.0985  
courttinnovation.org

**Authors**

Lisa Bailey Vavonese

Jennifer A. Tallon

Marea Beeman

Amanda Berman

Michela Lowry

Elizabeth Ling

Suvi Hynynen Lambson

Brett Taylor

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## Chapter 1

# Introduction

### Overview

The Sixth Amendment of the U.S. Constitution encompasses a set of rights for all individuals who are accused of crimes: the right to a speedy and public trial by an impartial jury; to know the nature of the accusation; to confront and call witnesses; and to have the assistance of a lawyer. These rights ensure fair adjudication and accurate verdicts. The right to a lawyer is paramount because it affects the ability to assert all of the other rights.<sup>1</sup> The Sixth and Fourteenth Amendments obligate states to provide an *effective* lawyer to accused indigent defendants at all critical stages of criminal or delinquency cases that carry the loss of liberty as a potential punishment. Yet, across America, indigent defendants are frequently represented by lawyers burdened by excessive caseloads and lacking in qualifications and resources,<sup>2</sup> or receive no representation at all.<sup>3</sup> Consequently, systematic right to counsel failures jeopardize the ability of courts to dispense justice effectively and efficiently, and contribute to over-incarceration and wrongful convictions. These failures are rooted in three core problems: 1) a lack of state-level integration and/or independent oversight; 2) diffuse and antiquated data infrastructures; and 3) capacity shortfalls.<sup>4</sup>

#### LACK OF STATE-LEVEL INTEGRATION.

When left to local governments to administer, constitutional rights are often sacrificed for case processing efficiency.<sup>5</sup> While a state-level indigent defense system does not guarantee greater controls, state-level systems with independent oversight bodies are empirically associated with broader protections for defendants.<sup>6</sup>

#### DIFFUSE AND ANTIQUATED DATA INFRASTRUCTURE.

Many state and local governments lack accurate, reliable data technology systems to track how indigent defense systems operate or to implement evidence-based reforms, and continue to rely on antiquated data tracking

systems or even hard copy files.<sup>7</sup> Actionable data is a prerequisite for evidence-based reform.

#### CAPACITY SHORTFALLS.

Widespread capacity shortfalls lead to systemic deficiencies in the representation of the poor. Research shows that the quality of indigent defense services is contingent on appropriate funding and competent administration.<sup>8</sup> As legal scholar Laurence Benner notes, disparity in the allocation of resources for defense has resulted in a “system where processing the ‘presumed guilty’ as cheaply as possible has been made a higher priority than investigating the possibility of innocence.”<sup>9</sup>

The introduction of evidence-based practices to improve the protection of Sixth Amendment rights—led by BJA's *Innovative Solutions in Public Defense Initiative*, national advocacy groups, and a handful of bellwether jurisdictions<sup>10</sup>—has resulted in several model reform efforts. National resources, e.g., the American Bar Association's *Ten Principles of A Public Defense Delivery System* and NLADA's *Basic Data Every Defender Program Needs To Track: A Toolkit for Defender Leaders*, have also shaped these reforms. Despite these advances, the paucity of effective indigent defense remains a national crisis.<sup>11</sup>

### BJA's Sixth Amendment Initiative

The Sixth Amendment Initiative is a unique project of the Bureau of Justice Assistance (BJA), at the Department of Justice (DOJ). BJA has long recognized the importance of strong court procedures and a quality public defense to ensuring a fair justice system. The purpose of the Sixth Amendment Initiative is to enhance the capacity of state and local governments to protect all rights guaranteed by the Sixth Amendment. In 2017, BJA awarded funding to three agencies to provide training and technical assistance (TTA) to sites across the country seeking to address issues within their jurisdictions. The Center for Court Innovation (the Center), with its partner

National Legal Aid and Defender Association (NLADA), was selected to provide strategic planning services; the Sixth Amendment Center (6AC) was selected to provide assessment services (statewide evaluation with recommendations); and NLADA was selected to provide on-demand services (light touch or discrete challenges), produce publications, deliver trainings, and build a website.

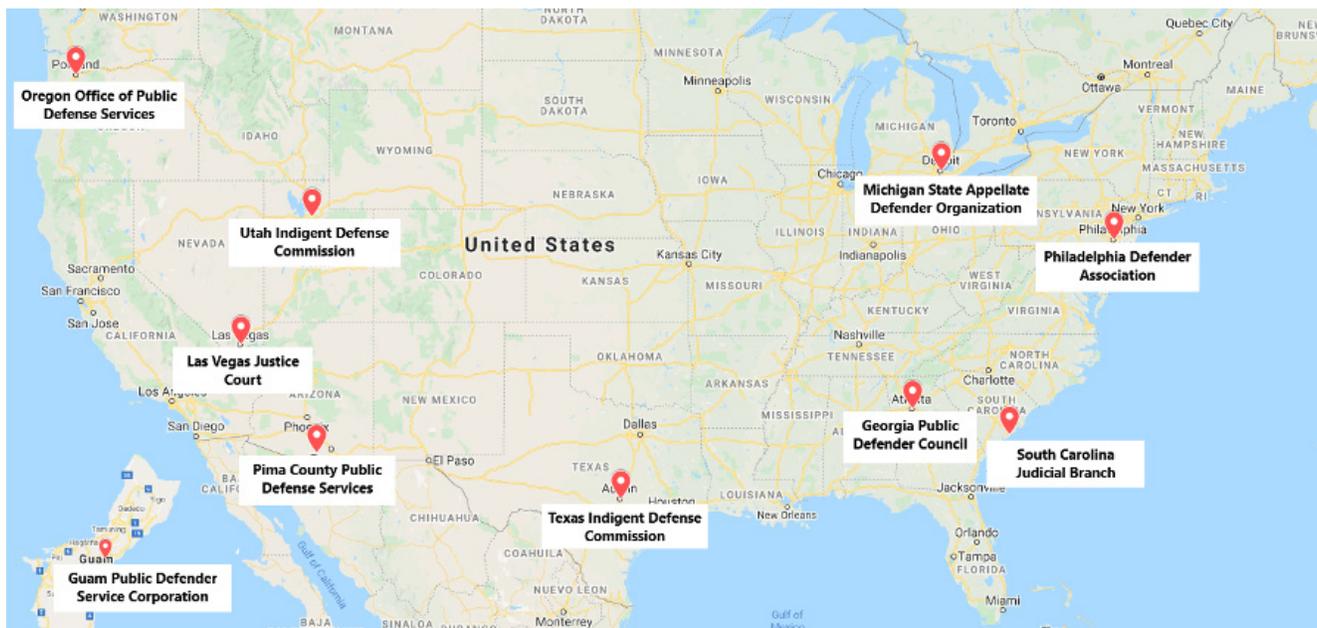
The goal of the initiative is to improve practice at the local, state, and national level. TTA providers, using data and research, support individual sites in their efforts to identify issues within their jurisdiction and implement change. TTA providers connect sites for peer-to-peer learning and national subject matter experts, and disseminate lessons learned to the broader field.

**SITES IN THE INITIATIVE**

The Center and its partner NLADA, in collaboration with BJA, developed and managed a competitive application process for site selection. Interested sites submitted an online application form, followed by a long-form

interview questionnaire, and then participated in a telephone interview. The selection process focused on sites that varied across several domains, including region, size (urban and rural), stakeholder type, funding type, and delivery systems, as well as issue type, including all protections found within the Sixth Amendment. Ten sites were selected for TTA in the area of strategic planning services, which are:

JURISDICTION	AGENCY
Georgia	Georgia Public Defender Council
Territory of Guam	Public Defender Services Corporation
Las Vegas, Nevada	Justice Court
Michigan	State Appellate Defender Office
Pima County, Arizona	Public Defender Services
Philadelphia, Pennsylvania	Defender Association of Philadelphia
Oregon	Office of Public Defense Services
Utah	Indigent Defense Commission
South Carolina	Judicial Branch
Texas	Texas Indigent Defense Commission



## Strategic Planning Approach

The Center and NLADA's collaborative TTA teams utilized a research-practice model that takes a rigorous, evidence-generating approach to strategic planning. The work with each site was guided by a two-person team, an attorney practitioner with criminal court experience and a researcher with experience in data capacity-building. The model combines experience in both the art of technical assistance itself—*i.e.* how to engage practitioners, structure site visits, perform needs assessments, etc.—and in relevant content knowledge. In this case, relevant content includes knowledge of evidence-based principles and practices generally, and potentially promising or innovative strategies to improving indigent defense systems specifically. With regard to form, the approach includes structured consultation calls, site visits, and activities or exercises (e.g. systems mapping and court observations), which are described in more detail below. All practitioners and researchers had substantial experience with these forms of technical assistance.

The approach developed over four phases of work. **Phase one** entailed initial planning and a needs assessment. Following award notice from BJA of selection as a site to receive strategic planning TTA, sites were asked to accomplish key tasks during the first phase, including:

1. Assemble a local planning team ("core team") that will be responsible for driving the site's efforts over the course of the TTA work;
2. Designate a planning liaison (primary point of contact from the core team) that will be responsible for communicating and coordinating with Center staff; and
3. Designate 1–3 individual(s), either the planning liaison or other(s), that will work with Center research staff to conduct an initial research support diagnostic, which includes a discussion around site research needs, how research support can help, and any available data.

To help sites successfully complete the "getting started" tasks, TTA teams scheduled monthly consultation calls. During the calls, TTA teams assessed previous reform work, the degree of stakeholder buy-in, initial needs,

and planned for the site visit, which is explained in more detail below.

The initial site visit is an opportunity for TTA teams to gather qualitative data through observations and engagement with the site. Prior to the visit, sites were asked to complete the following activities:

1. Provide Center staff with relevant local laws and regulations, and brief Center staff on any current local political and/or justice system issues that may impact the TTA work;
2. Provide Center staff with any existing strategic plans, case flow maps, systems maps, or logic models, if applicable; and
3. Schedule and coordinate the initial site visit, including potential for court observations, TTA activities, and stakeholder interviews and/or focus groups.

Most initial site visits took place over a three-day period and included participation of the site's entire core team and other key stakeholders. To complete a thorough needs-assessment, TTA teams recommended a variety of initial site visit activities:

- Anatomy of the Sixth Amendment exercise, an in-depth review of each right guaranteed by the Sixth Amendment, and how a site can improve adherence;
- Stress point, case flow, or systems mapping, a process to help sites understand how their system operates, and surface promising areas for reform;
- Courtroom observations, the opportunity for an outside actor to share firsthand observations about real-time case processes, the relationship between defendants, attorneys, judges, and other court actors, as well as the overall experience;
- Interviews and focus groups, to better understand sites practices, strengths, and challenges;
- Review of Self-Assessment to Adherence to the American Bar Association's "Ten Principles of a Public Defense Delivery System," self-examination of a site's compliance with each principle, and identification specific areas for reform;
- Development of a mission statement, a facilitated activity to focus and ground the work of an agency, and;

Summarized Activities Selected By Sites For The Initial Site Visit

	ANATOMY OF SIXTH AMEND.	MAPPING	COURTROOM OBSERVATIONS	INTERVIEWS FOCUS GROUPS	REVIEW OF SELF-ASSESSMENT	MISSION STATEMENT	STRATEGIC PLANNING
Georgia			X	X			X
Guam	X	X	X	X	X		X
Las Vegas			X	X			X
Michigan		X		X	X	X	X
Pima Cty	X	X	X	X	X		X
Philadelphia		X	X	X			X
Oregon				X			X
Utah				X		X	X
S. Carolina	X	X	X	X			X
Texas		X		X	X		X

■ Strategic planning session, typically the last activity of the site visit in which the TTA team presents to the core team broad themes from the site visit, and the core team makes decisions regarding the future course of the work.

**Phase two** work began following the initial site visit. TTA teams produced a summary report for the site. The report distills strengths, challenges, and recommendations for improvement based on site visit observations, activities, and stakeholder interviews and focus groups. The report included an action plan that outlines specific projects and action steps to be completed by the site with the support of their TTA team.

After sites finalized their action plans, researchers from the Center conducted a “research diagnostic” call with the site—a conversation with the site about what type of data analysis or other research activities would best support their strategic planning goals.<sup>12</sup> Researchers produced a report for each site that included plans for specific research support. Examples of research activities included: policy scans on specific topics of interest (e.g., holistic defense), and developing and fielding client surveys.

**Phase three** work was focused on moving through the strategic plan. To keep track of the progress and maintain momentum, TTA teams organized regular, ongoing calls with each site. The calls were anchored by

the action plans, which served as living documents to mark progress.

TTA teams responded to each site’s individual needs. Support included consultation calls, sharing of national or best practices, and connecting sites through peer-to-peer learning opportunities or with national subject matter experts on a wide range of issues. TTA teams conducted second site visits for sites that requested additional support.<sup>13</sup>

**Phase four** work centered on sustainability planning. During the final months of TTA support, teams worked with sites to identify projects from the action plan that could be completed within the remaining period of the grant award, and established timelines and plans for longer-term projects so sites were equipped to continue making progress after TTA support ended.

See **Appendix A** for a description of the local context at each site and the goals identified for strategic planning.

## Chapter 2

# Strategic Planning

As described in Chapter One, the ten sites selected for strategic planning TTA were diverse in region, composition (urban and rural), stakeholder involvement, funding structure, and delivery systems. Despite these differences, four common areas of focus for strategic planning efforts emerged, which were:

- Access to Counsel
- Effective Representation
- Research and Data Capacity
- Sustainability

### Access to Counsel

The Sixth Amendment includes the right to have the assistance of a lawyer. If a person cannot afford counsel, the government must provide an attorney.<sup>14</sup> In its landmark decision in *Gideon v. Wainwright*, the Supreme Court explained that the layman lacks the skills and knowledge to adequately prepare his own defense and requires the “guiding hand of counsel at every step in the proceedings against him.” Without counsel, the layman “faces the danger of conviction because he does not know how to establish his innocence.” The Supreme Court declared that the assistance of counsel is a “fundamental right essential to a fair trial.”<sup>15</sup>

Yet, across the country, many indigent defendants face prosecution without any counsel at all or so late in the court process that the representation is rendered meaningless.<sup>16</sup> Access to counsel issues identified by the sites in the initiative generally fell into two categories: (1) Appointment of Counsel and (2) Initial Appearance (IA) Court.

#### APPOINTMENT OF COUNSEL

Indigent defense representation begins when a lawyer is appointed to a case. When and how appointment occurs varies widely depending on the jurisdiction. However, the earlier counsel is appointed, the sooner the lawyer can begin the work to investigate the circumstances of the defendant and the facts of the crime.<sup>17</sup>

One critical area for indigent defense systems to consider when examining policies related to appointment of counsel is case conflicts. Late change of counsel can cause major disruptions to a case and erode the client/attorney relationship. During a strategic planning session with the TTA team while on-site, **Guam Public Defender Services Corporation (PDSC)** identified concerns with how the office checks for case conflicts. The TTA team facilitated a discussion with PDSC staff to identify office strengths and challenges in this area. PDSC concluded that it needed to revise the office's standard operating procedure for conflict checks. A new operating procedure was drafted and implemented so that conflicts are identified as quickly as possible and the defendant can be appointed alternate counsel.

The appointment of counsel in appellate cases also has implications for defendants' Sixth Amendment rights. The planning team at the **Michigan State Appellate Defender Office (SADO)** decided to take steps to improve the appointment process. While the TTA team was on-site, during a session aimed at identifying priorities in strategic planning efforts, the planning team discussed inconsistencies across the state in the handling of defendant requests for appellate counsel. If the requisite paperwork was not filed within a specific time period, the defendant lost certain rights. This regularly occurred due to incorrect mailings and filings. To protect against the potential harm, the SADO team proposed a rule change that was adopted by the Michigan Supreme Court. Now, a request for appellate counsel is deemed filed when it is received by the trial court (including on the record at sentencing) or when it is received by the Michigan Appellate Assigned Counsel System (MAACS).

#### INITIAL APPEARANCE (IA) COURT

Indigent defendants that face jail time as a sentence are entitled to representation at every *critical stage* of their case.<sup>18</sup> Through numerous opinions over the course of decades, the Supreme Court has held specific events as critical, such as custodial interrogations, trials, and

sentencing.<sup>19</sup> The Court has never said that the specific events it has listed are exhaustive of all critical stages. IA Court can include judicial bail reviews, probable cause determinations, and the reading of charges. It is typically the first opportunity in which the defendant appears before a judicial officer. Consequently, numerous sites in the initiative identified IA Court as part of their strategic planning work.

**Pima County Public Defender Services (PDS)** selected IA Court practice and procedure as a focus of their strategic planning efforts. The use of videoconferencing technology raised concerns for the planning team related to defendants' constitutional rights and perceptions of procedural fairness. To better understand the defendant experience, the TTA team supported PDS in developing a defendant survey about the usefulness of an information card that defense lawyer give defendants following IA Court. The card provided the defendant with key information regarding how to contact their attorney and their next court appearance. PDS fielded the survey over the course of a two-week period and used the results to inform revisions to the document. The revised information card was implemented and PDS once again surveyed defendants to determine if the changes improved defendant's understanding of the next steps in their case. By comparing the pre and post survey responses, PDS learned that the new card increased defendants' understanding of the IA Court process and what comes next. To build upon these insights, the planning team intends to conduct a second survey targeting defendants' overall perceptions of IA Court.

During the TTA team's second site visit to the **Las Vegas Justice Court**, after the IA court had been in operation for six months, the judge regularly assigned to the IA Court was on vacation. The TTA team observed a covering, or "pro tem," judge. After hearing the TTA team's observations, the planning team identified the potential inconsistencies in the IA Court process when the assigned judge is not available. To address the concern, the planning team decided to update and offer more trainings for all judges that cover IA Court.

## Effective Representation

The Supreme Court of the United States had held that the right to counsel means the right to *effective* counsel.<sup>20</sup> Indigent defense lawyers must have the time, resources, and skills necessary to defend each case. Effective representation issues identified by sites in the initiative generally fell into four categories: (1) Attorney Performance Standards, (3) Attorney Training, (3) Attorney/Client Communications, and (4) the Role of Non-Attorney Staff.

### ATTORNEY PERFORMANCE STANDARDS

Defining and measuring quality of indigent defense representation is still relatively new in the defender community and not yet common practice across the country. These standards can also be referred to as quality indicators or best practices. The objectives for a defender office are to use the data to better monitor work, more effectively allocate resources, improve services, and to demonstrate to policy makers and funders the value of indigent defense representation. Development requires a substantial investment of time and resources.<sup>21</sup>

Early in their strategic planning efforts, **Guam PDSC** identified the development of attorney performance standards as a priority. Working with the TTA Team and BJA, PDSC was connected to NLADA for assistance through on-demand services. Under the guidance of a subject matter expert, PDSC is in the final stages of developing both juvenile and adult standards specific to their unique jurisdictional culture.

**SADO** also included attorney performance as a focus of their strategic planning work. The Michigan Supreme Court has approved minimum standards for indigent criminal appellate defense services.<sup>22</sup> With minimum standards already established, SADO sought to enhance the review of attorney performance with the use of data by utilizing a case closing checklist. The SADO planning team met with the NYS Office of Indigent Legal Services (ILS) to discuss a case closing checklist it developed to measure system performance. The Washington County, NY Public Defender described to the SADO planning team how this checklist ultimately became helpful as an internal measure of office performance and as part

of individual attorney performance reviews. SADO has selected a point person from their planning team to lead the office through the process of developing a checklist. Guam PDSC also anticipates developing a checklist.

### ATTORNEY TRAINING

The *ABA Ten Principles Of a Public Defense Delivery System* were created as a practical guide for decision-makers, and the principles “constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney.”<sup>23</sup> Principle Nine of the *ABA Ten Principles* provides that attorneys are required to attend continuing legal education and should receive comprehensive and systematic training.

The **Texas Indigent Defense Commission (TIDC)** developed an attorney mentoring program to help support solo practitioners and public defenders throughout the state who provide indigent defense services and have little to no support network. It was built on a model undertaken in Harris County, Texas, whereby attorneys attend the nationally renowned Gideon’s Promise trainings, which are usually only available to attorneys working in institutional defender programs. The attorneys return from the training matched with a local mentor. In addition to advising TIDC on the features of the program, the TTA team helped TIDC develop post-program survey questionnaires for both mentors and mentees to evaluate program design. After reviewing the results from the initial class of mentorships, TIDC refined the program to tailor aspects of the programming to better serve the needs of Texas practitioners.

To expand its track record of sparking system innovation, TIDC incorporated new performance metrics into its monitoring of county indigent defense systems, which it undertakes in all 254 counties in Texas. While “formula” funding is proportionately distributed by TIDC across all counties, system improvement grants are awarded in a competitive application process to select counties only. As examples, improvement grants have supported creating new public defender offices or managed assigned counsel programs. The new “formula plus” mechanism will reward counties with additional funding that are working to make performance improvements,

rather than continuing to routinely subsidize systems that remain substandard.

The **Utah Indigent Defense Commission (UIDC)** identified improving the quality of indigent defense practice throughout the state, especially in rural communities, as a strategic planning priority. A training committee comprised of the UIDC training coordinator as well as subject matter experts from across the state was formed to design curriculums and deliver trainings directly to attorneys. The planning team developed a monthly newsletter for attorneys to distribute information about UIDC trainings, as well as national trainings, resources, and trends in criminal defense practice. Included in the newsletter is a “spotlight” section that features attorneys who either demonstrate high quality practice or individuals who support indigent defense work. The spotlight section was identified during the TTA team’s second site visit as a way to encourage professional development and build relationships with individual attorneys throughout Utah.

To increase office understanding of all Sixth Amendment protections, **Pima County PDS** developed a training exercise that asks three questions: What do we do well to protect this right? What do we do that might hinder this right? How can we improve the protection of this right? Building on the momentum, while onsite, the TTA team asked the PDS planning team to prioritize the ideas generated in response to the third question—how can we improve? The top vote getters were added to the team’s Action Plan. The exercise was so successful at surfacing promising areas of improvement that PDS and the TTA team formally titled it the *Anatomy of the Sixth Amendment* and offered it to all other sites in the initiative as part of their strategic planning work. PDS also worked with NLADA to include the exercise as a learning module on the website built as part of the initiative.

The **SADO** planning team identified and completed trainings on numerous topics, including strengthening teams, implicit bias and cultural competency, and training for trial lawyers in appellate practice. The trainings for trial lawyers are part of strategic efforts to improve relationships with the trial bar, which can be complex because SADO attorneys litigate ineffectiveness of trial counsel during appeals.

## ATTORNEY/CLIENT COMMUNICATIONS

In *Powell v. Alabama*, the Supreme Court held that the Sixth Amendment right to counsel requires that the defendant have "sufficient time to advise with counsel and to prepare a defense."<sup>24</sup> In *Powell*, defendants were appointed a lawyer without the necessary training and qualifications, and the trial proceeded on the very same day of appointment. The Court held "the right to have counsel appointed, when necessary, is a logical corollary to the right to be heard by counsel." Principle Four of the *ABA Ten Principles* provides that defense counsel be provided with "sufficient time and confidential space within which to meet with the client." This includes confidential space at courthouses and jails.

Through its strategic planning efforts, **Guam PDSC** sought to increase attorney/client communications. First, Guam PDSC collaborated with the department of corrections to begin receiving daily inmate reports that list newly confined, released, and total head counts. Knowing up-to-date client location allows for attorneys to more easily set-up a client visit. Second, video conferencing terminals were installed within PDSC's office to allow remote attorney/client consultations. PDSC also set up a Wi-Fi hotspot that extends internet service to the parking to allow clients to remotely attend court hearings. Finally, progress is underway to install video conferencing terminals at each of the detention facilities.

**SADO's** planning team identified earlier initial client contact in its action plan. To reduce the period of time a client spends waiting to hear from their attorney, SADO changed an internal policy. Rather than wait for the office to receive the trial transcripts, which can take weeks, SADO is transitioning to a system where individual attorneys are immediately assigned to cases after appointment. This change allows attorneys to establish contact with clients sooner.

Enhancing opportunities for communication between attorneys and clients was a central component of the **Defender Association of Philadelphia's** efforts to improve early advocacy. The TTA team supported the planning team in identifying needs and potential implementation strategies related to pre-arraignment client interviews. In addition, the planning team brainstormed with the TTA providers about solutions

that could improve the number of clients that appear for meetings at the Defender Association's offices. The ideas were incorporated into the site's action plan which included planning around conducting off-site interviews within the community, environmental improvements to the Defender Association's offices (e.g., providing free computer access, food, and information on social services resources in the waiting area), and training front desk staff to better respond to urgent client needs (e.g., mental health first aid).

## ROLE OF NON-ATTORNEY STAFF

In *Gideon* and its progeny, the Supreme Court made it clear that criminal defendants have a fundamental right to counsel, and that the refusal to provide counsel to defendants unable to afford a lawyer violates the Sixth Amendment.<sup>25</sup> Over 50 years later, the conversation surrounding what constitutes effective assistance of counsel continues. More recently, indigent defense providers argue that non-attorney staff are critical to effective assistance of counsel. Defense teams may include support staff such as paralegals, social workers, investigators, and mitigation specialists.<sup>26</sup>

Non-Attorney staff can play a critical role in building rapport with clients, identifying their needs outside of the legal case, and humanizing them for other court players. The **Defender Association of Philadelphia** worked with the TTA team to explore the possibility of having non-attorney staff conduct pre-arraignment interviews to gather personal information about the client (e.g., employment, family obligations, housing, treatment program participation, etc.) that can be used for advocacy. Attorneys could then apply this information to inform their bail arguments in order to provide evidence as to why their client should remain in the community while awaiting trial.

During the initial site visit with **SADO**, the planning team heard feedback from staff about some internal tensions, particularly between attorney and non-attorney staff. During a second site visit, the TTA team practitioner facilitated a workshop with staff attorneys and mitigation specialists from the juvenile unit. The workshop focused on communication styles and team dynamics. The workshop ended with acknowledgement that there is some good communication happening and there are

opportunities for growth. The teambuilding workshop was the first in a series of anticipated trainings aimed at improving the effectiveness of teams. Topics for additional workshops include: developing team values, how to give and receive feedback, and defining roles and boundaries. It is also anticipated that the workshop series will be provided to the direct appeals unit.

The **Georgia Public Defender Council (GPDC)** sought to increase its support of case advocates, the term used for staff that perform social work-like functions at defender offices. GPDC identified the need for and mechanisms to connect existing case advocates across the state through peer-to-peer learning opportunities, trainings, and shared repositories for templates, forms, and other resources. And the TTA team assisted GPDC in creating an outline for a toolkit that will support circuit defenders in advocating for and making best use of case advocates. The finalization and production of the toolkit were put on hold initially because of staffing furloughs and then because of staffing changes.

**Guam PDSC** felt a critical role missing from their office was a social worker. The strategic planning process helped PDSC justify the creation of and local funding for a social worker position at their office. The position was filled in August 2020.

## Research and Data Capacity

Although evidence-based practices have been established across the criminal justice system, the field of indigent defense has grappled with how to define and measure what constitutes effective representation and successful outcomes.<sup>27</sup> Accordingly, the field has prioritized the need for indigent defense providers to improve their data capacity, but many practitioners may lack the expertise or bandwidth to undertake such a task.<sup>28</sup> Researcher-practitioner partnerships are one way for indigent defense providers to fill this gap as it represents a collaborative, data-driven solution to planning, programming, and implementation all while building research capacity.<sup>29</sup> Under the current project, each site was offered the opportunity to undergo a research diagnostic in which the assigned researcher from the TTA team facilitated a discussion with members

of the planning team to better understand their research needs. The researcher and planning team representative developed a research support plan that would be tailored to the goals of each site. This participatory approach frequently complimented some of the goals identified in the site's strategic plan, but also offered an opportunity to explore other areas of interest. The research support reflected the following three areas: (1) survey development, (2) research and policy scans, and (3) qualitative data collection and analysis.

### SURVEY DEVELOPMENT

Surveys can be an efficient way for defense providers to collect information from different communities (e.g., defense attorneys, court representatives, clients) to better inform potential changes to internal policy and practice. However, the process of designing, collecting, and analyzing data may require additional support from a researcher.<sup>30</sup>

One area in which surveys are frequently utilized by defender organizations is as a means of measuring client satisfaction.<sup>31</sup> Given their focus on holistic appellate defense, **SADO** decided to undertake a process for developing a client satisfaction survey to be administered as part of case closure. Researchers worked with planning team members to devise a strategy for securing buy-in from SADO staff and drafting the survey questionnaire. The idea was introduced during a SADO staff meeting to assuage potential concerns that the survey would be used to measure the performance of individual attorneys and to engage staff interested in participating in the development process. Next, the site convened a focus group of former SADO clients to better understand their experiences and identify domains that the survey could measure. Although subsequent focus groups were to be conducted with SADO staff to capture their perspectives, COVID-19 interrupted this work plan. When the site can resume work in this area, researchers provided them with multiple examples from other jurisdictions to use in tailoring a survey to their organizational needs and the needs expressed by their clients.

In contrast, other sites used survey data to guide specific areas of their strategic plan. As described above, **Pima County PDS** surveyed defendants to inform revisions to

documents given to defendants at IA court. Researchers worked with the site to review and revise the survey questionnaire to ensure they were measuring variables of interest. Similarly, representatives from TIDC worked with a researcher to revise the survey questionnaire they developed to collect feedback from participants in their mentoring program. In both scenarios, each site wanted to collect data across multiple points in time to measure changes in perceptions. Thus, researchers worked to help the site think through their fielding strategy, ways to analyze the data, potential ways to supplement the survey results with qualitative data, and how to translate those findings into policy and practice. The TTA team worked with the **South Carolina Judicial Branch (South Carolina)** planning team to design and conduct a survey of municipal court judges regarding current practice and challenges relating to access to counsel for misdemeanor defendants. Findings from the survey were integrated into the team's strategic plan—specifically, the team used these responses to help modify its orientation school curriculum for new summary court judges. And additional information about Sixth Amendment obligations will be introduced to on-going training that is provided to summary court judges and emphasized by mentor judges working with mentees.

### RESEARCH AND POLICY SCANS

Research and policy scans can be an effective beginning step in either the development of a research plan or to serve as a means of understanding innovations in in the broader field. The first scenario was best reflected in the research support provided to **SADO** around the development of a client satisfaction survey. The planning team wanted examples of client surveys from other trial level defense organizations to understand whether they could be adapted for appellate practice. Researchers gathered instruments from other institutional providers in addition to drafting an annotated bibliography summarizing research from the social sciences about defendant perceptions of defense attorneys.

In relation to the second scenario, **Guam PDSC** expressed a need to learn more about how similarly positioned jurisdictions had implemented elements of holistic representation. The research team conducted a national scan of jurisdictions engaging in holistic defense practices in addition to summarizing the relevant social

science literature. Similarly, **Oregon Office of Public Defense Services (OPDS)** wanted to learn more about how other statewide agencies had implemented data collection and performance measures. OPDS planned to introduce a new statewide case management system (CMS) for use by all attorneys, and the comparative measures would inform the design of that system. Although OPDS did not receive the anticipated funding to introduce a new statewide CMS, researchers collected key comparative information from select states to assist OPDS in planning for how to best structure data collection efforts, both in the short-term until a new case management system is purchased and implemented, and after the new system is in place. For both **Guam PDSC** and **OPDS**, the scans became a springboard by which sites could be connected with jurisdictions outside of the Sixth Amendment Initiative to engage in peer-to-peer learning.

### QUALITATIVE DATA COLLECTION AND ANALYSIS

Sites frequently requested research support related to understanding how to collect and analyze qualitative data. For example, members of the **GPDC** planning team from **Fulton County** had over 20 years of social workers' case notes recorded in an excel file. The TTA team worked with the site to understand whether the notes could be content coded and how they could potentially find a local research partner from a college or university to accomplish this task.

Other sites requested that researchers conduct additional interviews to capture multiple perspectives related to specific elements of the strategic plan. These interviews were later analyzed for themes which were shared with the planning team to inform their work. For example, **Las Vegas** and **South Carolina** requested that interviews be conducted with members of the defender and judicial communities to gather additional perspectives to inform planning related to accessing counsel. **Guam PDSC** requested follow-up interviews with external stakeholders to better inform both their strategic plan and explore opportunities for collaboration.

Other sites requested the support of the TTA team in collecting qualitative data for the purposes of initiating a conversation with external stakeholders about how to shift policy. In order to build on the recommendations

of the 6AC report, UIDC requested court observation data to better understand Sixth Amendment issues in Justice Courts. As part of the second site visit, the TTA team visited several justice courts and synthesized their findings in a report for the planning team. Additionally, the TTA team worked with UIDC to develop a court observation tool and potential strategy for implementing a future court watch program for the Justice Courts. **Pima County PDS** also expressed a desire for the TTA team to conduct observations of IA court from two different perspectives: within the jail where the defendant and defense attorney appear via video and within the courtroom with the judge and prosecutor. These observations were used to frame larger themes that emerged from interviews and focus groups the TTA team conducted during a second site visit with a diverse array of stakeholders (PDS attorneys, IA court judges, prosecutors, jail representatives) to understand IA court policies and practices, with a specific eye toward the use of video. The findings were synthesized into a report that the Pima County PDS will share with stakeholders to start a conversation about moving IA Court to in-person.

## Sustainability

Strategic planning is an investment of time and resources. Yet, all too often, execution fails. It can be a struggle to bridge the gap between strategy and day-to-day implementation.<sup>32</sup> Accomplishing long term strategic planning goals requires an ongoing commitment.<sup>33</sup> Sustainability efforts by sites in the initiative generally fell into three categories: (1) resources, (2) organizational culture, and (3) cross-agency collaborations.

## RESOURCES

In *Gideon*, the Supreme Court made clear that states are required to provide a lawyer to those who cannot afford one but failed to specify which level of government would be responsible. This absence of clear instruction has resulted in a "patchwork" of policies, with many states leaving the funding and administration of indigent defense to county- or municipal- level government.<sup>34</sup> The resources allocated to indigent defense services have been found "grossly deficient,"<sup>35</sup> with attorneys carrying "out-of-control caseloads."<sup>36</sup> Well-resourced indigent defense is "absolutely essential to reduce the very real

risk of wrongful convictions of innocent persons."<sup>37</sup>

**TIDC** successfully secured additional funding during the 2019 legislative session. The infusion of resources allowed TIDC to hire additional staff and expand programs, such as the attorney mentoring program and grant funding program mentioned early in this chapter.

A focus area included in **Guam PDSC's** Action Plan was to increase access to witnesses, including expert witnesses. PDSC acknowledged that hiring expert witnesses was challenging because they pay a lower rate than the prosecutor's office. With major advances over the last several decades in forensic science and the pervasive use of cameras, video, and audio recordings, expert analysis is critical to defending a case. PDSC went to their board to request a funding scheme that allowed them to pay the same rate as the prosecutor's office, which the board approved. However, due to decreased revenue projects for FY 2021, the request is unlikely to be funded in the coming year.

**OPDS** restructured its compensation system to pay indigent defense practitioners a presumptive hourly rate of pay of \$75 for misdemeanor and most felony cases, and \$105 for aggravated murder cases (an increase from \$55 per hour). OPDS had anticipated a substantial increase in funding to support the implementation of additional recommendations found in the 6AC report. Ultimately, the increase was more modest. Efforts, such as a statewide case management system to be used by all attorneys, have been delayed. The restructured hourly compensation increase was also scaled back due to COVID-19 related budget shortfalls. The goal is a presumptive hourly rate of \$90 for misdemeanors and \$110 for felonies.

While the **GPDC** was unable to secure additional state funding to support the work of case advocates, it successfully leveraged their strategic planning efforts in federal grant applications. As the TTA came to a close, GPDC learned that the Office of Juvenile Justice and Delinquency Prevention (OJJDP) made a grant award of \$445,248 to GPDC for the Georgia Juvenile Defense Project, which will create the Juvenile Defense Division at GPDC. A significant portion of the funding will be used to hire a case advocate to assist with coordinating a statewide network for other juvenile case advocates,

including training on the benefits of having case advocates search for alternative treatment placements. This work drew directly from strategic planning goals to build a foundation for the value of case advocates, secure funding for the function, and identifying key performance metrics.

### ORGANIZATIONAL CULTURE

As public defense advocate Jonathan Rapping wrote, culture is the “phenomenon that shapes the organization and the mindset and the actions of the people who make it up.”<sup>38</sup> For many indigent defense leaders, the daily efforts required to constantly put out fires has prevented them from defining the culture of their offices. Instead, indigent defense culture has been characterized by a dearth of financial resources and structural deficiencies, e.g. lack of independence from the judiciary. According to Rapping, changing culture is a long and often difficult process.<sup>39</sup>

In its application for strategic planning TTA, SADO requested support with the composition of a mission statement. During the initial site visit, nearly all members of SADO staff, along with planning team members from MAACS, participated in a process to craft a new mission statement. Using a storytelling framework, the TTA team organized both small and large group work. Voting was used to narrow the possibilities. The finalized mission statement reads: “Fighting injustice through access, advocacy, compassion, and education.”

The SADO planning team identified further actions to promote a positive office culture. As part of their Action Plan, the team included the reevaluation of staff flex time and parental leave policies. Both were modified and implemented and will be continuously monitored.

The three-year strategic plan developed by Guam PDSC and APD was set to be reexamined in 2018. Following the initial site visit and finalizing of their Action Plan, PDSC and APD decided to align the goals and objectives in their strategic plan with the protections found in the Sixth Amendment and the *ABA Ten Principles*. The planning team linked each strategic focus area in the strategic plan with the specific protection from the Sixth Amendment and principle from the *ABA Ten Principles*. The intention was to root the protections and principles to the strategic plan and translate that into the daily practices of their

offices, and to extend the strategic plan for another period of time.

In early 2020, UIDC’s training responsibilities expanded to include parental and juvenile defense, which were previously provided by other agencies. The UIDC training coordinator requested assistance from the TTA team in crafting a mission statement for the training program. The goal was to establish a unified training program with effective communication and opportunities for collaboration by bringing previously distinct agencies together to identify what they want the training program to accomplish and how to do it. The TTA team facilitated a remote mission statement crafting session with the UIDC training coordinator, the executive director of the Parental Defense Alliance of Utah, and the program manager of the Utah Statewide Juvenile Delinquency Defense Training and Sustainable Capacity Project. The finalized mission statement is: “Provide targeted training, resources, and support to build a robust, connected community of specialized indigent defense practitioners who elevate the quality of representation.” To meet its mission, the TTA team also assisted UIDC to establish performance goals for the training program that will be measured with data UIDC collects.

### CROSS-AGENCY COLLABORATIONS

Effective strategic planning includes engagement across stakeholder agencies. Diverse representation builds support and commitment to the effort and increases the probability that the plan will be produce the desired results.<sup>40</sup> Buy-in and cooperation of all criminal justice stakeholders is necessary to ensure all of the protections guaranteed by the Sixth Amendment are fulfilled.<sup>41</sup>

Pima County PDS had early success in its strategic planning efforts by collaborating with the County Attorney’s Office. For many years, the prosecutor’s office had an internal policy to withdraw plea offers if defense counsel asked to interview witnesses from the prosecution’s list. The policy had a chilling effect on defense counsel completing interviews with witnesses that were essential to the case against their clients. PDS reached out to the County Attorney’s Office and engaged in conversation. The County Attorney’s Office agreed to end the policy.

PDS also identified cross-agency collaboration as a

major objective of the TTA team's second site visit. First, PDS invited representatives from the County Attorney's Office, Tucson Police Department, and the Pima County Superior Court to participate in the Anatomy of the Sixth Amendment exercise. The TTA team facilitated the activity with four judges, three prosecutors, two police officers, and four public defenders. An area of concern identified was the lengthy delays in releasing police worn bodycam footage to defense counsel because of the time required to redact portions of the footage. Through consensus decision-making the group selected this concern as their focus. A working group was formed that includes representatives from PDS, the County Attorney's Office, and Tucson Police department. The working group meets regularly and has mapped initial steps to achieve its goal to reduce the delay.

Second, PDS' planning team asked the TTA team to hold a focus group with staff from the county probation department. The focus group lasted about an hour and a half and covered a wide range of topics. The TTA team prepared a report that synthesized the information and identified potential areas of improvement. PDS is coordinating a meeting with the probation department to discuss the report. The objectives are to increase communication and learn more about the procedure and practices of each other's offices.

## Chapter 3

# Challenges, Lessons Learned, and Recommendations

Effective strategic planning requires an investment of time and resources. Over the course of the Initiative, the ten strategic planning sites engaged in the following: approximately 200 TTA and research calls, ten on-site needs assessments, nine research diagnostics, and six follow-up visits. The return on the investment was crafting a strategy with direction, clarity, and focus, and seeing that strategy through. Major accomplishments by sites included changing court rules, enhancing attorney training programs, implementing new or updated procedures, soliciting and understanding defendants' perspectives, increasing attorney/client contact, and collaborating with other criminal justice system stakeholders.

Strategic planning, and carrying out strategic plans, is not easy. Some sites never gained traction or lost momentum. This chapter documents the key challenges and lessons learned from the experiences of the sites receiving strategic planning TTA services, which were:

- Composition of Planning Teams
- Roles, Boundaries, and Expectations
- External Threats

This chapter also presents recommendations from the members of the TTA team who were asked to reflect upon their three years of strategic planning work. These recommendations are intended to inform other TTA providers and communities interested in engaging in strategic planning around Sixth Amendment protections.

An issue that presented itself throughout the course of the TTA services and underscores the challenges and lessons learned described below, was lack of

implementation funding. While gains were certainly made, several sites could have benefitted from implementation funds after expected funding opportunities fell through or were rolled back. Thus, in addition to the recommendations below, funders of future strategic planning efforts may want to consider implementation funds to support specific projects identified.

### Composition of Planning Teams

Several sites encountered roadblocks because of a lack of variety of experience on the planning team. The number of individuals on local planning teams ranged from three or four members to 15 members. The professional role of the members ranged from front line staff to senior-level management. Some teams included only staff from the named agency, and others included external stakeholder partners. Diversity among members of the planning team proved to be valuable for strategic planning efforts.

### CHALLENGES

In examining the internal considerations associated with selecting members to be a part of the planning team, some sites failed to include both non-management and management staff on their teams. Without non-management staff, the nuts and bolts of everyday practice may not have been fully considered and led to a lack of buy-in when practice or policy changes were rolled out on the ground. Conversely, some sites failed to secure support from management staff, specifically senior level or executive staff, early enough in the process for the requisite approvals or support for the potential improvements.

In one site, this created an environment of mistrust between executive leadership and the planning team.

The TTA team also observed challenges when planning teams omitted external stakeholders from their planning team. This was particularly problematic for sites that selected work that required external partners to change or modify their behavior to achieve results. Failure to include these partners also created situations in which duplicative efforts were being undertaken simultaneously. Finally, a site experienced a set-back when an external partner planning team member left their agency. There was no back-up plan to accommodate the departure and the work came to a halt.

### RECOMMENDATIONS

Sites that included both non-management and management staff as members of their planning team were generally more successful than sites with members reflective of only one of these groups. Executive leadership as members of the planning process was particularly important. Executive leadership set the tone for the overall importance of the work to the site. Without this buy-in or support, sites were generally unable to gain momentum and the work stalled. To summarize, the TTA team recommends:

- Embrace variety of experience of members on the planning team.
- Include both management and non-management level staff.
- If not members of the planning team, ensure buy-in and approval from senior level or executive staff.

All things considered, many sites that decided to embark on the strategic planning process with a fully internal planning team were still successful. These sites chose to illicit feedback from external partners through interviews and focus groups during the initial site visit by the TTA team. When appropriate, these sites would engage with external partners to accomplish specific work within their action plans. In contrast, sites that sought strategic planning services for a specific improvement requiring the participation of an external partner were generally less successful or had difficulties securing buy-in if the partner was omitted from the planning team or engaged late in the process. The TTA Team recommends:

- When applicable, include external partners as members of the planning team.
- Invite external partners to the table early in the process, possibly during the application stage.
- Develop a backup plan in the event an external partner is no longer available to continue the work.

### Roles, Boundaries, and Expectations

A strategic planning process facilitated by a TTA team has unique challenges different from an internal strategic planning process. Some sites experienced confusion and delay due to a lack of clear roles, boundaries, and expectations between individual planning team members and between the planning team and the TTA team. Strategic planning efforts are rarely included as part of one's job description. Therefore, it is incredibly important that all team members see the purpose and value in their participation. Equally important is a clear understanding of the scope of the effort and what it is meant to achieve. Both the TTA team and the site's main point of contact (POC) must take precautions to ensure open and clear communications between individual team members and the planning team and TTA team.

### CHALLENGES

Once a planning team is established, it is important that sites focus on what each member could add to the strategic planning effort. Sites that did not define the role of each planning team member saw a lack of accountability around level of engagement and effort in the strategic planning process. It emerged as most problematic when the site's POC for the TTA team did not have authority or direct supervision over the other members of the planning team and executive staff was either not engaged or did not empower the POC with any authority. In these situations, the POC often had difficulty bringing the planning team members together and/or gaining buy-in for the process. Additionally, a few sites established a POC with limited bandwidth to support the TTA team in a coordinating role which resulted in delays. At other times, key planning team members or the POC left their positions either on the team or at the agency all together resulting in delay or loss of progress.

In examining the expectations and boundaries of planning teams, some sites experienced setbacks because

there was a misunderstanding about the scope of the TTA services. Specifically, under this category of work within the initiative, the support offered was *planning* services to build the capacity of local jurisdictions to enhance Sixth Amendment protections. Sites looking for *implementation* support or funding to support implementation efforts were frustrated with the process and became disengaged. Furthermore, TTA support was limited to enhancing Sixth Amendment protections, which could become a point of frustration for sites interested in support beyond the scope of the project. This was particularly a concern if sites were engaged in other improvement efforts at the same time they were involved in strategic planning.

### RECOMMENDATIONS

Sites that established well-defined roles for all planning team members were generally high-functioning and avoided common pitfalls associated with teamwork, such as poor communication, inability to make decisions, and lack of participation. POCs that were adept at motivating and coordinating their planning teams were able to achieve tangible results. It was also generally helpful for POCs to have subject matter expertise. Finally, sites where POCs worked closely with the TTA team saw the most results. The TTA team recommends:

- Establish clearly defined roles for all members of the planning team.
- Ensure the main point of contact (POC) has sufficient authority and bandwidth to support their role.
- Clarify time commitments for all members, particularly the POC.
- Develop a plan to fill gaps if there is turnover in the planning team.
- The TTA team and POC should establish a close working relationship to facilitate communication and planning.

Furthermore, sites that did not have a clear understanding of the scope of the TTA services offered were generally less successful than other sites. Most criminal justice practitioners have limited time and bandwidth to participate in TTA efforts. A slow or stalled planning process due to communication errors is preventable and every effort should be made to ensure a shared understanding exists. The TTA team recommends:

- Set clear expectations.
- Clarify strategic planning versus implementation.
- Clarify scope of the planning services and differentiate it from other initiatives sites may be involved with.
- Consider a letter of commitment that lays out clear roles, boundaries, and expectations.

## External Threats

### CHALLENGES

Some sites were thrown curveballs by events outside their control that directly impacted the work they sought to address through strategic planning. These events happened at both the state and local level and involved events such as reductions in funding or the filing of lawsuits with Sixth Amendment implications. Most notably, almost all sites experienced significant disruption in their strategic planning efforts due to the public health crisis caused by the COVID-19 pandemic in early 2020. Government agencies, the courts, and individual offices were closed, and almost all staff were required to begin working remotely. All TTA team travel was canceled. Many planning teams put most strategic planning work on hold to focus on the magnitude of the public health crisis and how to most effectively respond.

### RECOMMENDATIONS

Sites that could adapt to changes outside their control were more successful. To support flexibility for team members with little bandwidth, a few sites shifted from large planning team meetings to smaller group meetings with the TTA team, and others opted to conduct most communication with the TTA team via email or other online platforms. The TTA team recommends:

- Be flexible and willing to pivot.
- Anticipate rapidly changing landscapes.
- Strategic planning is not one size fits all model and should be responsive to individual sites needs and on-the-ground challenges.

**APPENDIX A**

# Site Summaries

JURISDICTION	AREA OF TTA FOCUS
Georgia	Help GPDC chart a path toward expanded use of case advocates in all areas of state, especially rural circuits.
Territory of Guam	Improve and enhance practice based on national standards, specifically in the areas of holistic defense, jury pool diversity, attorney/client confidentiality, and independence of defense function. Integrate best practices into strategic plan.
Las Vegas, NV	Improve and enhance Initial Appearance (IA) Court process and Pretrial Services.
Michigan	Improve overall quality of appellate criminal representation across the state for indigent clients.
Pima County, AZ	Improve Initial Appearance (IA) Court procedure and practice, and increase timely and complete disclosure.
Philadelphia, PA	Enhance practices around early representation and advocacy for release at initial arraignment and early bail review stage.
Oregon	Support OPDS's implementation of recommendations in the January 2019 report, "Evaluation of Trial Level Public Defense Representation Provided Through the Office of Public Defense Services," prepared by the Sixth Amendment Center.
Utah	Development of and prioritizing action items related to UIDC's areas of statutorily mandated responsibility.
South Carolina	Help Judicial Branch implement the right to counsel in Summary Courts (municipal and magistrate courts).
Texas	Assist TIDC to prioritize and undertake action items relating to indigent defense funding, oversight, and system building in the state's 254 counties.

**GEORGIA PUBLIC DEFENDER COUNCIL**

The Georgia Public Defender Council (GPDC) is an independent agency within the executive branch of the state government. The agency's mission is to ensure, independently of political considerations or private interests, that each client represented by a circuit public defender office in Georgia's criminal or juvenile courts receives zealous, adequate, effective, timely, and ethical legal counsel, consistent with the guarantees of the Constitution of Georgia, the Constitution of the United States, and the mandates of the Georgia Indigent Defense Act of 2003. Trial-level services are provided by circuit public defender offices located in 43 of Georgia's 49 judicial circuits.

Currently, no state funds are appropriated for circuit offices to hire social workers (termed "case advocates" by GPDC). Individual chief circuit defenders must advocate to the counties in their circuits for funding. Only a handful have successfully hired case advocates. Given that there are relatively few case advocates, and all are

supported with local funds, GPDC has not dedicated resources to centralized training or information sharing for case advocates like it has for attorneys.

The goal of the strategic planning TTA provided to GPDC was to help the agency chart a path toward expanded use of case advocates in all areas of state, particularly in rural circuits. The local planning team included circuit public defenders, both with and without case advocates; assistant public defenders; case advocates; and a staff member of GPDC. The TTA team conducted two site visits. The first site visit consisted of interviews with case advocates and circuit defenders. The second site visit included court observations and a strategic planning session with the local planning team.

Following the site visits and development of an Action Plan, TTA support focused on three areas: 1) increase the ease with which case advocates could communicate to share knowledge and resources with colleagues across the state, 2) begin to identify standardized approaches

for case advocate activity tracking and data collection, and 3) develop messaging materials to support expanded use of case advocates. As part of their Action Plan, GPDC emphasized the need to build data tracking capacity in circuit public defender offices to more effectively tell the story of case advocates. Following a research diagnostic call with the Center's researchers, the following strategy was developed: review existing data sources from two offices with established programs with an eye towards identifying key performance metrics.

### **GUAM PUBLIC DEFENDER SERVICES CORPORATION, GUAM**

The Guam Public Defender Services Corporation (PDSC) provides the primary system for delivering indigent criminal defense services on the territory of Guam and the Alternate Public Defender (APD) assigned to handle conflicts. In 2015, PDSC and APD jointly developed a three-year strategic plan. The corporation applied for TTA services to enhance its capacity to protect all rights guaranteed by the Sixth Amendment, to support adherence to the ABA's *Ten Principles of a Public Defense Delivery System*, and to support the integration of performance standards and best practices into their strategic plan.

The initial site visit included interviews with judges, former clients, and attorneys from PDSC, APD, and the private bar, along with several TTA activities that included all staff from PDSC and APD. Following the site visit, PDSC determined that additional interviews could help inform their strategic planning work, and also cultivate important relationships with those criminal justice actors. The TTA team conducted remote interviews with representatives from the Department of Corrections, Department of Probation, Court Administration, Department of Youth Affairs, Office of the Attorney General, and an elected representative. The TTA team produced an initial site visit report and remote interview report. Thereafter, PDSC refined its strategic planning goal to include improving practice and procedure on Guam in the following areas: attorney performance, attorney/client confidentiality, holistic defense, jury poll diversity, and the independence of the defense function.

To support PDSC's goal of improving attorney performance, PDSC applied for supplementary TTA

services through the Sixth Amendment Initiative to develop standards. This work was supported by NLADA, and included a second site visit to Guam. Additionally, to help inform PDSC's development of a holistic defense practice, Center researchers completed a national policy and research scan of holistic defense models. The scan included a review of relevant literature and research reports, case studies of specific models, and an overview of effective implementation of social workers in defender offices.

### **LAS VEGAS, NV JUSTICE COURT**

In January 2019, the Las Vegas Justice Court (Justice Court) launched an Initial Appearance (IA) Court. Prior to the launch, for defendants charged with felonies and certain misdemeanors, judicial bail review and probable cause findings were held in chambers without a prosecutor or defense attorney. To address concerns that this practice violated defendants' Sixth Amendment right to counsel, the Justice Court developed and implemented the IA Court. Within 24 hours of arrest, defendants appear before a judge with defense counsel.

The Justice Court applied for TTA assistance before the launch of the IA Court for support in planning and implementation. The first site visit occurred in October 2018 and focused on stakeholder interviews and court observations to inform strategic planning. The TTA team produced a needs assessment report for the Court. In general, stakeholders across criminal justice agencies supported the creation of the IA Court, and were committed to its success. Identified focus areas included: IA court operations (pretrial supervision), and jail procedures (booking process).

A second site visit was held six months following the launch of the IA Court in June 2019. The Justice Court narrowed their planning efforts to include: additional training for pro tem judges, reducing the size of the IA docket, balancing morning and afternoon calendars, increasing education for defendants on the IA process, and increasing the number of cases eligible for administrative release at jail booking. Additionally, Center researchers worked with planning team members to convene interviews with defense attorneys to learn how the IA Court has shaped practice within the defender's office.

### **MICHIGAN STATE APPELLATE DEFENDER OFFICE**

In Michigan, persons convicted of a felony have a right to counsel for appeal. Staff attorneys at the State Appellate Defender Office (SADO) handle approximately twenty-five percent of all appeals in Michigan. Additionally, SADO provides re-sentencing representation for individuals who were sentenced as juveniles to life without parole. The leadership of SADO oversees the Michigan Appellate Assigned Counsel System (MAACS), which administers the appointment of defense counsel from a roster of private attorneys who handle 75% of all appeals. Re-entry services and training for attorneys across the state are provided by SADO through its Criminal Defense Resource Center (CRC).

The SADO planning team consisted of seven staff from SADO and three staff from MAACS. During the initial site visit in January 2019, the TTA team conducted nine individual or group interviews with two additional interviews conducted remotely following the site visit. In total, 34 people agreed to be interviewed, including: former clients, appellate court judges, MAACS roster attorneys and staff, and SADO staff attorneys, mitigation and investigation professionals, and support staff. The TTA team worked with SADO's entire staff to develop a mission statement. The goal for SADO's strategic planning work is to improve the overall quality of appellate criminal representation across the state for indigent clients.

A second site visit was held in September 2019. The planning team's identified goals were to explore case closing checklists as a technique to enhance review of individual attorney performance and measure general practice in the office, and to promote team building between attorneys and other professional staff in the office. Center researchers worked with SADO to provide research support to help facilitate work identified in the Action Plan (e.g., reviewing drafts of surveys, helping interpret responses). Specifically, Center researchers assisted SADO staff with the development of a client satisfaction survey.

### **PIMA COUNTY DEFENSE SERVICES, AZ**

Pima County Defense Services (PDS) oversees the strategic direction of indigent defense in Pima County (Tucson), Arizona. The agency is comprised of three

departments—the Public Defender's Office, Legal Defender's Office, and Legal Advocate's Office—that represent criminal defendants in felony cases, and one contract department that approves and administers assignment and billing for conflict cases. The goal of PDS is to be client-focused while responsibly using taxpayer resources, and facilitating collaboration between the broader defense community.

The planning team convened by PDS was comprised of staff members from all three departments and the contract department. The initial site visit was conducted in December 2018, and included interviews with a representative from Pretrial Services, PDS, and County Attorney's Office, as well as a judge. An additional interview with a prosecutor formerly with the County Attorney's Office was conducted remotely following the site visit. The TTA team also observed Initial Appearance (IA) Court—a bail determination hearing in which the defense attorney and incarcerated client appear from jail via video and the judge and prosecutor are in the courtroom. Following the site visit, PDS approved an Action Plan prepared by the TTA team, and decided to focus on the following areas: improving IA Court procedure and practice, and increasing timely and complete disclosure.

A second site visit was coordinated for February 2020. The goals of the visit were to gather more information and data about IA Court, and encourage collaboration between local criminal justice stakeholders around Sixth Amendment protections. The TTA observed IA Court from both inside the jail and the courtroom to gain further insight into court proceedings. Additional interviews were conducted with two IA Court judges, PDS attorneys, a prosecutor, and representatives from the Sheriff's Department to gain further perspectives on the strengths and challenges associated with conducting IA hearings using video technology. The TTA team also facilitated a conversation with representatives from PDS, County Attorney's Office, Tucson Police Department, and Superior Court Judges. Through a consensus decision making process, the group decided to work together to address discovery delays due to the time required to redact police body camera footage. Additionally, PDS worked with Center researchers to develop and field

a defendant survey to take a data driven approach to improving documents provided to defendants at IA Court.

### **DEFENDER ASSOCIATION OF PHILADELPHIA, PA**

Created in 1934, the Defender Association is a non-profit that serves as the primary indigent defense provider in Philadelphia, representing more than 70 percent of defendants in adult and juvenile state courts and civil and criminal mental health hearings. Initially, the Defender Association focused its strategic planning work on shifting from a horizontal to vertical representation model of defense practice.

A preliminary site visit was conducted in January 2019 to gain a better understanding of the current model, its impact on attorneys and clients, and the challenges to making such a shift. Following the visit, the TTA team conducted a series of telephone interviews with practitioners and experts from across the country to identify lessons learned from others who had attempted a similar transition. The TTA team then provided a summary of findings and observations, along with recommendations for next steps.

Shortly after the preliminary visit, in March 2019, the American Civil Liberties Union of Pennsylvania filed a lawsuit against Pennsylvania's First Judicial District alleging that arraignment court magistrates were failing to follow proper legal procedure when making bail determinations. This lawsuit created an opportunity to leverage conversations with stakeholders to enhance practices around Sixth Amendment protections, particularly at the early case processing stages.

As a result of the litigation and the opportunities it presented, the Defender Association's planning team decided to shift its strategic planning focus to the area of early representation and advocacy, specifically the touch points of initial appearance through the bail determination and subsequent bail review process. With this new focus area in mind, the full site visit took place in November 2019. This visit included: stress point mapping, courtroom observation, staff interviews, focus groups, and a strategic planning session. Interviews and focus groups included a full range of staff, including executive leadership, attorneys at varying levels of experience, and non-attorneys (i.e., social workers and bail navigators).

Subsequently, the TTA team produced a site visit summary report, which included recommendations related to the following focus areas: access to clients before and during initial appearance; early advocacy; and client interview processes. Collectively, these three categories represented the greatest opportunity and need for improvements around Sixth Amendment protections.

### **OREGON OFFICE OF PUBLIC DEFENSE SERVICES**

In Oregon, provision and funding of indigent defense services in non-municipal adult criminal, juvenile delinquency, and juvenile dependency cases are directed through the Public Defense Services Commission (PDSC) and overseen by the Office of Public Defense Services (OPDS). The duties of PDSC include setting compensation for defense attorneys and adopting standards governing all aspects of indigent defense in the state's trial and appellate courts. For trial-level services, contracts with providers are approved by PDSC and then managed by OPDS, which provides day-to-day oversight. There are several different service delivery models, including public defender offices, consortia of attorneys, for profit and non-profit law offices, contracts with individual attorneys, plus individual attorneys appointed case-by-case.

In 2018, the Sixth Amendment Center (6AC) undertook an evaluation, funded by the state legislature, of indigent defense representation provided to adults in trial level courts where that representation is provided through OPDS.<sup>42</sup> A report with findings and recommendations was released in January 2019. The goal of strategic planning TTA was to help OPDS implement recommendations in the report, which were dependent in large measure on OPDS securing additional funding through the legislature.

An initial site visit took place in January 2019 and included stakeholder interviews and OPDS and PDSC meeting observations. Two areas of focus for strategic planning were identified: 1) increasing OPDS's oversight capacity of contract programs; and 2) replacing the existing attorney compensation mechanism ("the case rate" model). The planning team's research goals were to try to create a simplified data collection process of provider work, to track system information sought by the legislature (e.g., relating to recidivism and public safety cost savings)

and to collect metrics that are not shared with OPDS by the court system, such as case outcomes. The TTA Team worked with OPDS to identify new attorney performance and workload metrics, as well as potential data collection systems. In October 2019, a second site visit was held to introduce the TTA team to a newly hired data analyst and further discuss how to modernize data collection and reporting systems. Ultimately, OPDS successfully replaced the "case rate" compensation mechanism and increased pay for practitioners but did not receive the funding necessary to implement additional recommendations from the 6AC report. Additional TTA support included guidance on how to message OPDS' work to the legislature to position itself for future funding requests.

#### **UTAH INDIGENT DEFENSE COMMISSION**

In October 2015, the Sixth Amendment Center (6AC) published a statewide assessment of trial-level indigent defense in Utah.<sup>43</sup> The report highlighted that of the 29 counties and 236 municipalities in Utah, only two counties have non-profit public defender's offices. The rest relied on a patchwork approach involving some combination of contracted private attorneys and an assigned counsel system to provide indigent defense. The lack of any statewide institutional support or oversight of indigent defense services in Utah resulted in the actual and constructive denial of the Sixth Amendment right to counsel in Utah's misdemeanor and felony courts.

In response, the state legislature created the Utah Indigent Defense Commission (UIDC) in 2016 and tasked it with providing ongoing support for indigent defense services, including juvenile and parental termination cases. As part of their mandate, UIDC developed a series of core principles with specific guidance on overseeing, providing, and assessing indigent defense representation. Additionally, UIDC administers state-funded grants to local governments to improve indigent defense representation in accordance with the core principles.

In 2018, UIDC sought strategic planning TTA to help support the regionalization of defense services across Utah. The initial site visit included interviews with government officials, justice system advocates, prosecutors, defense attorneys, and a court

administrator and judge. The TTA team worked with UIDC to develop a mission statement in addition to outlining the following focus areas for strategic planning work: increasing its statewide presence, obtaining additional state funding for local governments, and the strengthening of defense services in rural areas through regionalization.

The TTA team traveled to Utah for a second site visit in October 2019. The TTA team completed observations in six Justice Courts and identified areas which demonstrated improvements in adherence to Sixth Amendment protections since the 2015 6AC report, and areas of continued constitutional concern. Further, UIDC refined its strategic planning work to include the following specific action steps: 1) streamlining the internal functioning of UIDC, 2) developing a technical assistance project to support local governments, 3) strengthening the training and education program for individual practitioners, and 4) collecting and using data to assess indigent defense representation across the state. Additionally, researchers from the Center worked with UIDC to develop court observation protocols to be used in the Justice Courts to help inform adherence to Sixth Amendment protections.

#### **SOUTH CAROLINA JUDICIAL BRANCH**

In September 2017, South Carolina Supreme Court Chief Justice Beatty issued a directive requiring judges, attorneys, and law enforcement officers to address practices that violate defendants' constitutional rights. The directive was aimed at summary courts, which include municipal and magistrate courts, where defendants were being jailed without having access to legal counsel. The topic had been the focus of media attention and a lawsuit highlighting that the problems were particularly acute in municipal courts.

In South Carolina, municipal courts are optional and established by any municipality that opts to have one. As lower level courts, they have trial jurisdiction over criminal offenses with a maximum punishment of no more than 30 days imprisonment, or a fine of no more than \$500.00, or both. Some offenses can result in imprisonment of up to 90 days. Municipal judges are not state employees and the Supreme Court exercises no direct administrative authority over them. In 2015, a

budget proviso passed by the State General Assembly clarified that any municipality with a municipal court must provide adequate funds for legal representation of indigent defendants.

The South Carolina Judicial Branch (South Carolina) applied for strategic planning services to address these problems. In February 2019, the TTA team conducted a site visit consisting of stakeholder interviews, courtroom observations, and TTA activities designed to look at the state of Sixth Amendment protections within South Carolina's summary courts. The TTA team supported South Carolina in developing an Action Plan with three broad, yet overlapping, focus areas aimed at improving practice in summary courts: 1) increased judicial and law enforcement training, 2) enhanced research, data, and technology, and 3) development of resources and enforcement mechanisms. The planning team's research goals were to conduct a survey of municipal court judges and interview local judges to better understand current practices in municipal courts and the challenges they face in ensuring compliance with the Sixth Amendment.

#### **TEXAS INDIGENT DEFENSE COMMISSION**

In Texas, the state's 254 counties bear the primary responsibility for funding, organizing, and delivering indigent defense services. The Texas Indigent Defense Commission (TIDC) is a state-funded agency that provides support for indigent defense services throughout the state. The commission's work spans three areas of responsibility: (1) administering state-funded grants to counties for indigent defense delivery, as well as discretionary funding to support innovative projects or address compliance issues; (2) oversight of county compliance with the Texas Fair Defense Act, which includes serving as a clearinghouse for statewide indigent defense data; and (3) establishing standards and policies related to attorney performance, qualifications, training, caseload controls, indigency determinations, contracting, and attorney compensation. Additionally, TIDC also provides counties with technical assistance and training.

Prior to applying for strategic planning TTA, TIDC was already undertaking bold programmatic improvements following appointment of the second executive director in the agency's then-18-year history. To complement

these efforts, TIDC sought TTA support for its existing areas of responsibility, as well as guidance through its 2020 legislative process. Following an initial site visit in September 2018, TIDC worked with the TTA team to identify actionable steps in each of the agency's three areas of responsibility, including the launch of an attorney training and mentoring program and expanded policy monitoring and system development programs. Upon the conclusion of the legislative session, the TTA team worked with TIDC to strategize about how to apply the session's results to programming.

During a second site visit in September 2019, the TTA team participated in a discussion with planning team members about TIDC's strategic planning priorities. After reviewing TIDC's accomplishments since the initial site visit, the planning team identified continued focus on improving the quality of indigent defense services through a combination of incentives and compliance enforcement efforts. The planning team's research goal was the development of an evaluation protocol for TIDC's attorney mentoring program.

## END NOTES

1. As the Supreme Court has opined, “[o]f all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have.” *United States v. Cronin*, 466 U.S. 668, 654 (1984).
2. The U.S. Supreme Court calls this the “constructive denial of counsel,” whereby the accused is appointed an attorney who is unqualified, unsupervised, and/or financially conflicted, and who often carries an excessive number of cases in addition to other professional responsibilities such that the defendant receives little to no representation at all. See *Strickland v. Washington*, 466 U.S. 668, 692 (1984) (citing *United States v. Cronin*, 466 U.S. 648, 659 (1984)).
3. The U.S. Supreme Court calls this the “actual denial of counsel,” whereby the individual is adjudicated guilty and incarcerated without ever speaking to an attorney. See *Strickland v. Washington*, 466 U.S. 668, 692 (1984) (citing *United States v. Cronin*, 466 U.S. 648, 659 (1984)).
4. Robert Boruchowitz, Malia Brink, and Maureen Dimino, “Minor Crimes, Massive Waste: The Terrible Toll of America’s Broken Misdemeanor Courts,” National Association of Criminal Defense Lawyers (2009): 9; Mark Erwin and Meg Ledyard, “Increasing Analytics Capacity: A Toolkit for Public Defender Organizations,” National Legal Aid and Defender Association (2016); Alissa Pollitz Worden, Andrew Lucas Blaize Davies, and Elizabeth K. Brown, “A Patchwork of Policies: Justice, Due Process, and Public Defense Across American States,” (2011): 1442.
5. Alexandra Natapoff, “Misdemeanors,” 85 Southern California Law Review 101 (February 24, 2012); Legal Studies Paper No. 2012-08. Loyola Law School (2012): 103-104.
6. David Simon, “Equal Before the Law: Toward a Restoration of Gideon’s Promise,” *Harvard Civil Rights-Civil Liberties Law Review* 43 (2005): 594.
7. Marea Beeman, “Basic Data Every Defender Program Needs to Track: A Toolkit for Defender Leaders,” National Legal Aid and Defender Association (2014).
8. Worden et al, “A patchwork of policies,” 1462.
9. Laurence Benner, “The Presumption of Guilt: Systemic Factors that Contribute to Ineffective Assistance of Counsel in California,” *California Western Law Review* 45 (2009): 158.
10. For example, both North Carolina and Texas created commissions to address quality, cost, and control concerns and have championed evidence-based practices.
11. Worden et al, “A Patchwork of Polices,” 1427.
12. Nine of the ten sites participated in a research diagnostic call.
13. Six of the ten sites opted for a second site visit.
14. *Gideon v. Wainwright*, 372 U.S. 335 (1963).
15. *Gideon v. Wainwright*, 372 U.S. 335 (1963).
16. “Actual Denial of Counsel in Misdemeanor Courts,” The Sixth Amendment Center (2015): 4; Douglas L. Colbert, “Prosecution Without Representation,” *Buffalo Law Review* 59, no. 2 (April 2011): 333. (The actual denial of counsel is particularly acute in misdemeanor courts).
17. “Early Appointment of Counsel: The Law, Implementation, and Benefits,” Sixth Amendment Center and Pretrial Justice Institute, (2014): 10.
18. *Missouri v. Frye*, 566 U.S. 134 (2012) (quoting *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009) (quoting *United States v. Wade*, 388 U.S. 218, 227-228 (1967)).
19. Which include custodial interrogations, preliminary hearings, lineups and show-ups, plea negotiations, entry of plea, arraignments, pre-trial period, trials, sentencing, appeals as of right, and some probation and parole revocations proceedings.
20. *United States v. Cronin*, 466 U.S. 648 (1984); *Strickland v. Washington* 466 U.S. 668 (1984).
21. Marea Beeman, Claire Buetow, and Michael Mrozinski, “Assessing Quality: A History of Indigent Defense Quality Indicators,” National Legal Aid and Defender Association (2018): 3.
22. Minimum standards are distinct from standards that reflect best practices or aspirational standards.
23. “ABA Ten Principles Of a Public Defense Delivery System,” American Bar Association (2011).
24. *Powell v. Alabama*, 287 U.S. 45 (1932).
25. Until the 1960s, case law acknowledged the right to counsel in state courts only in capital cases. *Powell v. Alabama*, 287 U.S. 45 (1932). Starting in 1963, case law sometimes referred to as “Gideon and its progeny” expanded the right to counsel for indigents to include state felony cases, *Gideon v. Wainwright*, 372 U.S. 335 (1963), misdemeanors, *Argersinger v. Hamlin*, 407 U.S. 25 (1972), and juvenile delinquency cases, *In re Gault*, 387 U.S. 1 (1967). For a full sketch of the development of the right to counsel through case law, see Chapter 1 of *Justice Denied: America’s Continuing Neglect of Our Constitutional Right to Counsel*, (The Constitution Project 2009).
26. Brian J. Ostrom and Jordan Bowman, “Examining the Effectiveness of Indigent Defense Team Services: A Multisite Evaluation of Holistic Defense in Practice, Project Summary,” February 2020: 6.
27. Jennifer E. Laurin, “Gideon by the Numbers: The Emergence of Evidence-Based Practice in Indigent Defense,” *Ohio State Journal of Criminal Law*, 12, 325 (2015)
28. Marea Beeman, “Basic Data Every Defender Program Needs to Track,” National Legal Aid & Defender Association, 2014.
29. Jack Cutrone, “Researcher-Practitioner Partnerships: Applying a Collaborative Model to Improve Indigent Defense Systems,” National Legal Aid & Defender Association, September 2019.
30. Kristin A. Morgan, Reveka V. Shteynberg, Rebecca Ackerman, and Cynthia G. Lee, “Incorporating Client Perspective into Indigent Defense Research: A Guide for Practitioners,” National Legal Aid & Defender Association, 2018.
31. Campbell, C., Moore, J., Maier, M., & Gaffney, M. (2015). Unnoticed, untapped, and underappreciated: Clients’ perceptions of their public defenders. *Behavioral Sciences and the Law*, 33, 751-770.
32. “Why good strategies fail: Lessons for the C-suite,” *The Economist* (2013). (61% of respondents acknowledge that their firms often struggle to bridge the gap between strategy formulation and its day-to-day implementation., page 3).
33. “Guide to Effective Strategic Planning,” National Criminal Justice Association, found at: [www.ncja.org/strategic-planning](http://www.ncja.org/strategic-planning). Sustainable strategic planning requires: (1) ongoing monitoring of progress in achieving expected results, (2) an assessment of problems, needs, internal and external conditions, and (3) ensuring effective solutions on a routine and ongoing basis.
34. David Simon, “Equal Before the Law: Toward a Restoration of Gideon’s Promise,” *Harvard Civil Rights-Civil Liberties Law Review* 43 (2005): 586.
35. Donald A. Dripps, “Ineffective Assistance of Counsel: The Case for an Ex Ante Parity Standard,” *Journal of Criminal Law and Criminology* 88, no. 1 (Fall 1997): 246 (quoting National Legal Aid and Defender Association, *The Other Face of Justice* 70 (1973)).

36. Norman Lefstein, "Securing Reasonable Caseloads: Ethics and Law in Public Defense," American Bar Association Standing Committee on Legal Aid and Indigent Defendants (2011): 14.
37. "A Determination of Caseload Standards pursuant to § IV of the *Hurrell-Harring v. The State of New York Settlement*," (December 8, 2016): 6.
38. Jonathan Rapping, "Directing the Winds of Change: Using Organization Culture to Reform Indigent Defense," *Loyola Journal of Public Interest Law*, (2009): 200.
39. Jonathan Rapping, "Directing the Winds of Change: Using Organization Culture to Reform Indigent Defense," *Loyola Journal of Public Interest Law*, (2009): 200.
40. "Guide to Effective Strategic Planning," National Criminal Justice Association, found at: [www.ncja.org/strategic-planning](http://www.ncja.org/strategic-planning).
41. See [www.strengthenthesixth.org](http://www.strengthenthesixth.org).
42. The Sixth Amendment Center and The Defender Initiative (2019). *The Right to Counsel in Oregon: Evaluation of Trial Level Public Defense Representation Provided Through the Office of Public Defense Services*.
43. The Sixth Amendment Center and The Defender Initiative (2015). *The Right to Counsel in Utah: An Assessment of Trial-Level Indigent Defense Services*. Seattle, WA; Fred T. Korematsu Center for Law and Equality. [https://digitalcommons.law.seattleu.edu/korematsu\\_center/27](https://digitalcommons.law.seattleu.edu/korematsu_center/27)





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520 Eighth Avenue  
New York, NY 10018  
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