

**From Cocktail Napkins to Automation  
Tracking Case Data and Attorney Time  
For Caseload Controls**

**The History of One County Public Defender Office**

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## **Introduction**

As the director of a county public defender office for almost four decades, I confronted the issue of reasonable caseloads for the attorneys who worked in my office on an almost daily basis. During that time, I read numerous articles and attended an unknown number of conferences all dealing with this subject. I commissioned three outside evaluations of our office's caseload, and I have talked to numerous individuals about the pros and cons of the various methods of establishing caseload standards. Over that time period, our office moved from having no caseload standards of any kind, through a system loosely based upon national numerical standards, to an internally developed time-based caseload standard, to a research-based system of numerical time-based standards of cases per year, which is still being used in the office today. After this long journey, I cannot say with certainty what will work for every public defender office to improve their ability to provide effective assistance of counsel. I can only tell you what has proved effective for our office - research based time standards.

## **Starting With Nothing**

I became the director of the Lancaster County Public Defender's office in Lincoln, Nebraska in January of 1979. At that time, the office had 7.5 attorneys including the director, one full-time and one part-time support staff, and a part-time law clerk. My background was not in law office management. I had spent two years after law school as a deputy public defender representing clients first in juvenile court and later, adult clients in our county and district courts. I then spent four years with another attorney in a law partnership that focused primarily on criminal defense.

To say that the office had no system for case management when I began, is an understatement. Some of the case files were literally written on cocktail napkins and scraps of paper (my predecessor owned a bar). Not only was there no consistent or focused method of keeping information regarding each case, the office lacked the ability to even tell how many cases each attorney had at any point in time. Despite this lack of basic information, it became clear to me within a few months of managing the office that the attorneys in the office had many more cases than they could competently and effectively handle during a reasonable work week.

Being a new manager, I turned to the National Legal Aid and Defender Association (NLADA) for guidance and assistance. The Executive Director of NLADA at that time, Howard Eisenberg, came to Lincoln, observed the staff, reviewed what minimal caseload information we had and wrote a five page letter report in which he set out a "weighted caseload" for the office based upon the number of cases our office opened compared to the "national standard" of 400 misdemeanor cases per attorney per year. The report did not explain the "national standard" numerical figure (NAC standards<sup>1</sup>) or how the figure was arrived at, but the report did result in the addition of two staff attorneys.

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<sup>1</sup>National Advisory Commission on Criminal Justice Standards and Goals, (1973). "Workload of Public Defenders." *Courts*, Standard 13.12, p.276.

## **AMICUS - The Dawn of Time Keeping**

Shortly after that first outside evaluation of our office, we became aware that NLADA was in the final stages of the development of a new product – a manual case management information system specific for public defender offices. The product was called AMICUS<sup>2</sup> and as part of the rollout, they asked our office to become one of several test sites for the new system. I readily agreed with their request.

The AMICUS system provided us with a number of features that we did not have prior to that time. The system came with forms such as index cards for cases, case log notes and closing sheets. The system also had a number of management reports that could be assembled from information contained in the closing sheets. While AMICUS now seems like a prehistoric system, at that time it was a vast improvement over what we did have – which was nothing.

As part of that AMICUS manual case management information system, when case file jackets were assembled, the Closing Sheet was placed with the Case Log on the left side of the file folder. The attorneys were requested to keep track of all of their case related activities on the Case Log, using codes for courtroom time, negotiations or other contacts with the prosecutor, client contacts, research, fact-finding, and wait/travel time.

In making their handwritten notes on the Case Log in each file, the attorneys noted the date that the activity took place, an abbreviation for the nature of the activity (CT for court time, DE for client contact, etc.), the amount of time that the activity took in tenths of hours, and the initials of the staff person performing the activity. At the end of the case, the attorney would enter certain information on the Closing Sheet including the disposition of the case, the sentence (if there was a sentence) along with other information about the case and the client that we wanted to capture, including a breakdown of the amount of attorney time that the case required from beginning to end. The attorneys or the paralegal would total each category of activity and then enter a grand total on the Closing Sheet. The Closing Sheets were then saved by type of case. However, at that time, we really did not have the ability to utilize the time information because of the labor intensive effort required to go through the closing sheets to capture and total the time information, and create averages.

I readily admit that the decision to use this time tracking feature was based, at that time, solely on the fact that the AMICUS system required it. As a manager, I did not have any clear goals for the use of this information, other than the vague notion that knowing the average amount of time required by the various case types could be useful information both for equitable distribution of cases within the office and setting some meaningful maximum standards. As an office, we didn't even know how we were going to retrieve and organize the data once the attorney time had been compiled on the individual case Closing Sheets.

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<sup>2</sup> Nichols, R.E. (1981) "AMICUS System, A Manual Management Information System For Public Defender Offices." National Legal Aid and Defender Association: Washington, D.C.

Because I lacked a complete understanding of and appreciation for the purpose and possibilities of this time tracking feature, I did not effectively communicate the reasons for this requirement to my staff. Consequently, the time keeping requirement met with great resistance from the attorneys, at first. Over time, the resistance broke down as the attorneys became familiar with the new system and realized that keeping a log of case activity was helpful to them in their representation of clients, and the amount of time needed to note the tenths of hours required for the activity was minimal and did not significantly burden them. Eventually, the attorneys could see a clear benefit to using the system because it provided them with a concise record of what they had done (which helped them determine what remained to be done) and what they had talked about with their clients and the prosecutors on previous occasions. Much later, they would appreciate the time information even more because of the caseload limits that came with the time based standards.

Whatever resistance remained in the early days of this experiment, was completely shattered when one of my senior felony attorneys, who was at the core of the initial resistance, was called to testify at a post-conviction hearing in a case that had been opened prior to the implementation of AMICUS. There were virtually no notes in the attorney's file and certainly no indication of how much time he had spent on the file or with his client and his ability to recall events and activities that had occurred many years earlier was significantly hampered. That attorney went from being one of the most ardent opponents of the new system to one of its strongest advocates. It is also interesting to note that several attorneys who have left my office for private practice over the years took the AMICUS system with them for use in their private cases.

### **Using the Time Data**

Despite the fact that the resistance to keeping time evaporated, it was still not clear what value the time information had either to the attorneys or to the office as a whole because we still did not have an efficient way to analyze and use the data. However, after a few years of collecting numerous Closing Sheets for all case types, a researcher with the National Institute of Justice asked for and received access to our office's time data for a study under a grant awarded to the NLADA. A year's worth of Case Closing Sheets from the AMICUS system were collected from three public defender offices for this research project: the Hawaii State Public Defender, the Metropolitan Public Defender in Nashville, Tennessee and my office.

The analysis of this time data provided the framework for its use in budget preparation (but not operational uses such as case assignment).<sup>3</sup> Overall, this analysis of our time data was helpful in the sense that it provided an overview of the amount of time that attorneys were required to spend on the various types of cases, and explained how to use that

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<sup>3</sup> Jacoby, J. (1985). "Case Weighting Systems: A Handbook for Budget Preparation", National Legal Aid and Defender Association: Washington, DC.

information and projections regarding future caseload in the budgeting process. However, we were still not using the data to set maximum caseload figures and we still had no way of using the time information in an ongoing fashion.

That changed when our county's Information Services Department created a mainframe based case management information system that we called GIDEON. GIDEON was based upon NLADA's AMICUS manual system. All of the forms and the reports from AMICUS were built in to our new GIDEON system. One of the primary advantages of this system was that it made the attorney time information much easier to access, analyze, and use.

Beginning in 1987, whenever a case in our office was closed, the data about the case contained in our Case Closing Sheets, including the amount of attorney time, was entered into our GIDEON case management information system. Thereafter, we were able to produce reports showing, for each of the case types and for any time period, the amount of attorney time required and the life of the case, from appointment to final disposition. From these figures, we developed our own in-house caseload standards for pending cases per attorney.

### **The Spangenberg Report**

In 1991, I asked Bob Spangenberg of The Spangenberg Group to do a caseload study for our office because of the increased number of cases we were receiving. We had over three years' worth of cases in our automated case management information system at that time and we provided that, along with a great deal of other information to The Spangenberg Group. Bob Spangenberg's final report resulted in the addition of a staff attorney position and a support staff position.<sup>4</sup> It also provided us with a weighted caseload methodology based upon the NAC standards and our data on the average life of the case. But most importantly, it provided us with a road map to the future of time based caseload standards. In two Findings and Recommendations from that report related to time keeping and time based standards, Spangenberg said:

**Finding 6:** The GIDEON MIS is a suitable system for the Public Defender's Office. It is useful to monitor caseloads, calendar court appearances, and maintain close contact with the County Attorney's Office and the court. In fact, very few public defender offices have gone as far as the Lancaster County Public Defender Office in developing their MIS. The opening and closing of cases is done efficiently and the case turnaround information is reliable.

It is unclear, however, whether the staff attorneys are all operating under the same or similar assumptions when recording their time on a case. It is critical that the recording methods be standardized, so that the times are reliable and statistically valid. This is a small problem requiring minor adjustments. The institution of a list of rules and assumptions and a short training session would resolve any questions about the reliability of this information.

***If standardization procedures were instituted, a study of time spent per case could be undertaken which would enable a more detailed evaluation of public defender caseload. The use of case turnaround time is reliable but not as precise as would be a study done utilizing contemporaneous time records of individual attorneys.***

**Recommendation 6:** Standardize the recording practices under the Gideon MIS. This can be done fairly easily by establishing some rules for recording time and conducting a training session so that time is recorded accurately and under the same set of assumptions.

Once the standardized recording practices have been in place for a sufficient length of time, the public defender should consider conducting a follow-up study based upon these individual case times. ***At that time, with reliable attorney time-per-case data in hand, very precise estimates of attorney caseload could be made. This could be done by ascertaining the average amount of attorney time devoted to the most common case types and then dividing this number into the annual billable hours to obtain the average number of cases that an attorney can handle in one year.*** For example, the annual billable hours for the Lancaster County public defender is approximately 1664. If an attorney spends approximately 12 hours on an average felony, then an attorney handling a strictly felony caseload could handle approximately 139 felonies in one year. Of course most attorneys handle a mixed caseload so the number of felony, misdemeanor, juvenile and other cases in the caseload would be proportioned in accordance with the time per case type and the NAC Standard.

**Finding 7:** The Public Defender currently has in place a system for weighting the caseload/workload of its staff, to ensure that each staff attorney is carrying approximately the same workload. It is unclear, however, how often this system is updated and modified to consider changing policies and procedures which may affect the system. Court, prosecutor and internal office policies may affect the weight assigned to each case and for this reason, the system should be updated periodically.

**Recommendation 7:** The system should be reviewed annually to ensure that the weight given to each case type is accurate in light of changing policies. (Emphasis Supplied).

In addition to adding staff, we implemented each of the recommendations made in the report, with special attention to those relating to the development of time based caseload standards. Written policies were put in place, training was provided, and we monitored the attorney time and life of the case information frequently and made adjustments, if needed, every six months. We created computer reports that looked at each attorney's caseload at any point in time and told us not just how many cases the attorney had in

each case type but also what the weight for those cases would be based upon the average amount of attorney time and the average life of the case type. The report gave us the number of pending cases and the weight of those cases individually and in the aggregate. Our maximum standard was expressed as workload and was based upon Spangenberg's determination of the number of attorney hours available in our office for case specific work. The only part of Spangenberg's recommendations that we were not able to implement until recently, was the recommendation that we conduct a follow-up study to determine the statistical reliability of our time data and then use it in creating an annual caseload standard.

Our failure to act quickly on this second study recommendation was not due to a lack of commitment to such a project, but a lack of funds for it coupled with some success using the standards we developed internally. On at least two occasions between 1997 and 2008, we successfully withdrew from cases based upon case overload as shown by our internal standards. The primary reason we were successful in withdrawing from cases, in my opinion, is that the courts were cooperative and supportive.

This is not to say that there was no pushback regarding our withdrawal from cases based upon our time based standards. At one point, I was ambushed by the chief prosecutor in a meeting with two County Board members present and asked to explain our caseload maximums and why we were withdrawing from cases. I explained in great detail the Spangenberg recommendations, how the time information was kept, how the averages and case weights were arrived at, and I also explained the limitations of the system. At the conclusion of the meeting, the County Board Chair told the County Attorney that his office should have a time based caseload study similar to what we had done (he eventually did).

### **The Neeley Study**

Despite the fact that this system served our office fairly well over the years, a number of factors combined in more recent times to make the Spangenberg recommendation of a follow-up study appear more urgent. First, there was considerable change in personalities on our County Board. Each change required a new educational effort on my part, but I was sensing less of a commitment to or even sympathy for the important work of our office. Secondly, tighter budgets and greater scrutiny on spending, especially on adding new employees, were having an impact. Third, the Great Recession coupled with the decision of our County Board to proceed with the construction of a new \$66 million jail, made it apparent to me that less and less of the local tax revenue pie devoted to criminal justice agencies would be going to my office.

With our caseloads rising in all categories, there was great concern that what had worked in the past to keep caseloads reasonable, might not work in the future. Finally, there was growing national attention and education about the ethical considerations involved in excessive public defender caseloads.<sup>5</sup> Although I still believed that the local judiciary

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<sup>5</sup> Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation," (May, 2006). American Bar Association: Standing Committee on Ethics

understood the problems and would generally support our standards, I was not certain that the political leadership would be as accepting as they had been in the past. It became clear to me that we needed an outside researcher to determine the statistical reliability of the data and the validity of the figures that we were using for our caseload standards and, if necessary, provide us with research-based caseload figures that would strengthen the credibility of our standards and protect the office from excessive caseloads.

In 2008, two major events coincided in our office, both related to caseload standards. First, after having used the GIDEON mainframe system for 20 years, we switched gears and began using a web-based system purchased from a private vendor -- Defender Data by Justice Works. With modifications built specifically for our office, attorneys now were able to electronically enter notes and track their time within the case management system (something that had not been possible previously) and reports about caseload and workload were more readily available and easy to access for everyone in the office. Secondly, we were successful in getting the County Board to retain the services of the University of Nebraska Public Policy Center to conduct a workload study for our office, which would include a review of our historical time data for the purpose of determining its statistical reliability. All of the time data that we collected over so many years, would be utilized in a meaningful way to assess whether or not what we had been doing was correct and to suggest what the workloads should be within our office. I convinced the County Board to fund this study by educating them about the recent ABA Ethics Opinion 06-441 and by assuring them that such a study would make their future budget decisions easier because they would not have to guess at whether or not additional staff for my office was necessary nor simply take my word for it, they would have a research based study that would give them the answer.

At the outset of the caseload study, I asked the County Board to form an advisory committee which included representatives from each of our courts (juvenile, county and district) as well as distinguished members of the local bar and a representative of the County Board. Elizabeth Neeley, the primary researcher on the project, took all of our time data, analyzed it and determined that it was, indeed, statistically reliable over time and across attorneys. Dr. Neeley also surveyed the attorneys, and facilitated focus groups within the office. She presented her findings to the advisory committee which made recommendations based upon those findings, and eventually issued a report which was accepted by our County Board and has been the basis of our caseload standards ever since.<sup>6</sup> These new standards were expressed as maximum number of new cases per year based upon the time averages for each major case type and the available number of attorney hours for case specific work.

Following our office's adoption of the standards, I met with the judges from each of the

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and Professional Responsibility, Formal Opinion 06-441 .

<sup>6</sup> Neeley, E. (2008). "Lancaster County Public Defender Workload Assessment," University of Nebraska Public Policy Center. Available electronically at: <http://lancaster.ne.gov/pdefen/workloadas.pdf>

courts to explain the standards and our intentions to withdraw from excessive caseloads. Because one of their colleagues had been on the advisory committee, I had that judge's support in this educational effort. It was determined that when we reached our maximum caseloads, either I or one of my supervising attorneys would file an affidavit to that effect, and the judges would appoint other counsel,<sup>7</sup> under a statute that allowed for such appointments in conflict cases and "for other good cause."<sup>8</sup> There was virtually no open opposition to what we were doing. Some prosecutors grumbled and made noises about what right we had to withdraw from cases and we were told about one judge who would refuse to appoint outside counsel, but we never had a request to withdraw denied. Eight years later, there is very little discussion of the caseload standards. They have become a part of the local legal culture. Probably the best affirmation of what we had accomplished with this study came in 2013 when our chief prosecutor asked Dr. Neeley to assist his office in developing a system to track attorney time so he could develop workload standards.

During the first twelve months of implementation of the new standards, our office filed overload affidavits and were allowed to withdraw in 29 felony cases, 275 misdemeanor cases, and 46 juvenile cases. These numbers were significantly below my predictions, mainly because the crime rate fell resulting in fewer cases filed and fewer appointments of our office. During the budget process immediately following the adoption of the standards, the County Board approved my proposal to contract with a private law firm for the Child Support Enforcement cases and we used that attorney time to absorb some of the misdemeanor overload cases.

One year following implementation of the standards, Dr. Neeley did a follow-up survey of the attorneys in my office. In every single category identified as measuring functional representation, attorneys reported that their available time to perform these essential tasks had increased.<sup>9</sup> Data also indicated that attorneys, across all divisions, recognized the positive difference that caseload standards had on their ability to manage their cases.

"The caseload standards have definitely helped. The workload has stayed more consistent and manageable. Prior to having standards there were times when

someone's caseload would spiral out of control, causing great stress, and making it difficult to practice law effectively."

-Felony Defender

"I have more time to meet with clients, prepare for trials and hearings and to review police reports. I am better prepared for court. I am able to set aside time to meet

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<sup>7</sup>See Appendix A.

<sup>9</sup> The areas of functional representation were: bail review detention hearings, general preparation, client contact, investigation and discovery, legal research, pretrial hearings, exploring disposition without trial, trial/contested adjudication, post disposition hearings, sentencing disposition, post trial activities, and noncase related activities.

with about 50% more of my clients. I have more time to answer phone calls. It is SO much better than a year ago.”

-Misdemeanor Defender

“Caseloads standards have had a positive impact on the workload of the attorneys in that the attorneys know that the cases just won't keep coming & coming without any limits. This has helped attitude and generally has allowed for more time to be spent on cases.” -Juvenile Defender <sup>10</sup>

In the next four years we averaged only 45 felony case overages and the number of misdemeanor overage cases dwindled to only a few case that were companion cases to felonies. We had no juvenile cases over our maximums since the first two years of implementation until 2014. However, in the fiscal year which ended in June 30, 2014, we had a significant increase in the number of felony appointments. Consequently, we had to file motions to withdraw from 294 felony cases during that fiscal year. At the average cost of \$1292/felony case for private assigned counsel, it was apparent that the county should add another felony staff attorney to our office. Based upon the data (both time data and case data) we successfully persuaded the Board of Commissioners that it was in their fiscal interest to add an attorney to our felony division. This is another advantage of meaningful, research based caseload standards--the funding authority does not have to guess when additional staff is needed.

### **Issues Regarding Time Recording and Time Based Standards**

In my conversations about time recording and time based standards over the years with other public defenders and knowledgeable experts, there are several recurring themes or issues. I do not profess to have all of the answers but I do have some strong beliefs on these questions based upon my experience and the experience of my office while I was the Public Defender.

### **Requiring Public Defenders To Track Time**

One of the major issues relates to requiring public defenders to keep track of the time that they spend on cases. There are those who argue that it is “not in the public defender culture” to keep track of time, others who say that requiring public defenders to keep time wastes precious moments that could better be spent on the client’s case and provides no discernable benefit, and others who argue that even if required, public defenders won’t keep accurate records of time because they don’t see a benefit to them or their client.

While I am not entirely certain what is meant by the “public defender culture” in this context, I will assume that it has a great deal to do with distinguishing public defenders in

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<sup>10</sup> Neeley, E. (2009). “The Intersection of Caseload Standards and Evidence Based Practices in Public Defense,” presentation at the 2009 NLADA Annual Conference, Denver, Colorado

their own minds from attorneys in large civil firms where billable hours may appear to rule. As someone who has devoted their entire professional career to legal services for the indigent and who appreciates the commitment to principle and dedication to clients that I see in so many public defenders, I understand this aspect of the public defender mind set. However, just because attorneys in private firms keep track of time for purposes of accountability and billing, does not mean that it is a bad thing for public defenders to do albeit for different reasons.

If the single most significant problem for public defender offices is keeping caseloads under control (and I believe it is) and requiring staff attorneys to track their time can help alleviate that problem, maybe the public defender community needs to change the "culture." I would also note that the movement to get the bar ethics watchdogs involved in public defender caseload issues is based, at least in part, upon the thought that public defenders should be treated just like all other attorneys regarding ethical obligations. If that is the case (we want public defenders to be viewed like all attorneys), maybe we need to stop emphasizing the differences.

As to the argument that it is "wasting precious time" to "keep time," I can only say that this has not been our office's experience. If we can agree that it is a matter of professional responsibility for attorneys to keep notes on what has been done on a case, the amount of time it takes to simultaneously note, in tenths of hours, how much time the activity required, is inconsequential. It is not a burden, especially with systems that allow the attorney to enter this information electronically using tablets or laptops.

A related concern that has been expressed is that public defenders should not be required to track time unless that information is going to be used for a specific purpose, such as a caseload study, and, then only so long as necessary to provide usable information for the study. I certainly agree that public defenders should not be asked to track time unless there is a specific purpose and valid use for the information. Establishing caseload standards and caseload management are certainly valid purposes.

We kept time on a continuous basis in our office even after the most recent caseload study. We did this for two reasons. First, it was recommended in our Spangenberg study in order to update caseload figures to account for changing policies over time such as prosecutor's plea bargaining practices, court procedures, and legislative changes. Recently, we have confronted two prime examples of why this is a very good idea. Our county's jail has been directly across the street from our offices for years. Attorneys could easily and quickly stop over to visit clients or do so between court appearances. As of October 1, 2013 our new jail opened and it is 5 miles away and takes longer not only for travel but apparently for waiting. Fortunately, we anticipated that the time would be significant and we decided a year ago to track this time specifically so we can answer the question how much additional time the new jail added to our attorneys' workload. Also, debuting on October 1, 2013, was new juvenile legislation passed by the Nebraska Legislature earlier. Without going in to great detail about the legislation, suffice it to say that it required us to change how and when we open a juvenile case and, for a period of time, actually changed our definition of case for juveniles. Consequently, we will need to

revisit the caseload standards for juvenile cases after we have had some experience with our new procedures.

The second reason we continued to keep time after the 2008 study, is that keeping time has become so ingrained with the attorneys in the office that some use the system for their own case file organizational needs. At one point after our office had adopted the caseload standards recommended in Dr. Neeley's report, I had a conversation with my senior attorneys asking them if they felt that we should cease requiring the time tracking by attorneys in the office. I offered this as a possibility because we have built within our current case management system, the ability to pick up and track time again at any point that we wish. Each of the senior attorneys that I consulted with urged me not to do away with the time tracking requirement. They based their advice on the fact that tracking time had become second nature for the attorneys, that it was not a time-consuming requirement, and that it was a good professional tool that the attorneys used to organize the information in their file. (In other words, they found their own separate use for the time keeping protocols). They were concerned that without such a requirement some attorneys might get sloppy in their record keeping overall.

The final complaint that I sometimes hear on this issue, that attorneys won't keep time accurately so the result won't be useful or correct, was answered by the recent study in our office and the analysis of the time data that was kept for more than 20 years. The data is statistically reliable, across attorneys and over time. Additionally, all of the major research organizations that have conducted time studies in public defender offices have relied on the public defender attorneys' record keeping in determining caseload figures. If anything, our data should be even more reliable because it was kept over time and not for the purpose of a specific caseload study.

I would also note that, by keeping attorney time over the period of years, rather than as part of a specific office caseload study, our office was able to significantly cut the costs for the caseload study itself. This is because so much of the effort in conducting a caseload study where no time records exist goes into developing and testing time keeping protocols, training the attorneys in how to keep time, monitoring the process and then compiling the data. Our office was able to skip that time consuming and expensive part of the process.

### Time Based Standards v. NAC Standards

There are those in the public defender community who believe that time based caseload standards are unnecessary because we have the NAC numerical standards. My thought on this issue is that whatever works to keep public defender caseloads manageable and budgets reasonable should be used. If the NAC standards work in a given jurisdiction, then use them. I had several reasons for wanting more than what the NAC standards offered. First, when local budgets become tight, politicians are less likely to be persuaded by "national standards" that are a consensus of "national experts." While some have argued that the NAC standards were developed using the "Delphi Method," the process used for those standards does not in any way resemble the rigorous process described

recently in The Missouri Project produced by the ABA using the national accounting firm of Rubin Brown.

I admit that I share some skepticism about the NAC standards. For example, I do not believe that a felony case, in terms of the amount of attorney time required, is the same in New York City, Eagle River, Alaska and Lincoln, Nebraska. I'm not even certain that those three jurisdictions would all have the same definition of a "case." Additionally, the NAC standard for "Juvenile" cases (no more than 200 per attorney per year) does not define what type of case they are talking about – abuse/neglect, law violation, or status offense. My informal observation, which was confirmed by our time based caseload study, was that 200 cases would be far too many if we are talking about abuse/neglect cases and far too few if we are talking about law violation cases. There are also problems with the misdemeanor standards which do not differentiate between traffic ordinance cases where there is no right to a jury trial and domestic assaults that can carry up to a year in jail. It has always appeared to me that a time based standard, specific to our office, would be a greater benefit in budgeting and caseload control than citing to national standards. It is easier to get local politicians to "buy in" for the same reasons.

#### Time Based Standards and the Danger of Institutionalizing Bad Practice

Some in the defender community worry that time studies in public defender offices may be defining what is happening in a bad situation rather than what should be happening. In other words, if you conduct a time study in a public defender's office that is clearly overloaded, the time averages you get will reflect poor practices (minimal motion practice, investigation and research and few trials). Obviously, this is a concern. Professional research organizations that conduct such studies with a limited period of time recording, try to avoid this problem by surveying the attorneys (or some panel of experts) regarding what they feel they should be doing that they are not able to do because of excessive caseload. Later, in focus groups, they try to reach a consensus on the amount of additional time that would be required for each case type if everything that should be done, was done. The average times are adjusted accordingly. This isn't perfect, but there is no perfect answer.

In the most recent study of our office, rather than looking at time data kept for a specific period for the study, all of the time data was analyzed and it was shown to be consistent over time and among attorneys for the various case types. In other words, the attorneys were putting in virtually the same amount of time per case regardless of the year, the attorneys taking those types of cases, and the number of cases.<sup>11</sup> Obviously, our caseload problems have never reached the magnitude that some offices have experienced, but when we did run into heavier than normal caseloads, the attorneys continued to do the same amount of work per case which extended their workday and cut into their weekends and it took a personal toll because it cut deeper into their outside lives also causing an adverse impact on office morale, until additional staff was added or cases

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<sup>11</sup> The exception to this is when there is brand new attorney introduced to the office or when there is a substantive or procedural law change that requires attorney to handle the case in a different way (Neeley, 2008).

were declined. Therefore, in order to move from the “what is” to what “should be” our caseload standards were based not on the total number of hours attorneys were devoting at that time, but on the number of case-related hours attorneys could reasonably spend in a day (known as the calculation of annual attorney availability).

## **Conclusion**

As of January 1, 2015, my old office had 21 attorneys, including the Elected Public Defender, 13 full time support staff and 4 part time law clerks. I cannot speak for other public defender offices, but I believe that our history of tracking attorney time had nothing but a positive impact on the office and the people who work there and those whom we represented. Our caseload standards, based upon attorney time, have proven to be readily accepted by judges and our funding agency, because it is specific to our office and the data is now verified as statistically valid. Given this experience, I would not hesitate to recommend time record keeping to any public defender office.

**Appendix A**

The Lancaster County Public Defender's Office hereby moves this Court, pursuant to Neb Rev Stat. §29-3904, for an Order appointing other counsel for the reason that the acceptance of this case by the Public Defender would cause that office to exceed established caseload standards, thereby putting at risk the client's right to the effective assistance of counsel and the assigned attorney's obligations under the Nebraska Rules of Professional Conduct.

{Client First Name} {Client Last Name},

Defendant

BY: \_\_\_\_\_  
DENNIS R. KEEFE, #12157

633 South 9th Street Lincoln, NE  
68508 (402) 441-7631  
DEFENDANT'S ATTORNEY

The Court hereby finds that good cause exists and the motion should be sustained. IT IS THEREFORE ORDERED that the Office of the Lancaster County Public Defender is given leave to withdraw and \_\_\_\_\_, is hereby appointed.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY THE COURT

\_\_\_\_\_  
County Court Judge

## Appendix B

### **Neb. Rev. Stat § 29-3904. Appointment of other counsel; when**

(1) Nothing in sections 23-3402, 29-3902, and 29-3903 shall prevent any judge from appointing counsel other than the public defender or other substitute counsel when the public defender or counsel initially appointed might otherwise be required to represent conflicting interests or for other good cause shown, from not appointing any counsel for any indigent felony defendant who expressly waives his or her right to such counsel at any stage of felony proceedings, or from appointing the public defender or other counsel as may be required or permitted by other applicable law.

(2) In selecting counsel to represent an indigent felony defendant, the prosecuting attorney shall not have any role whatsoever in the selection or appointment process of the counsel by the court, including, but not limited to, any individual appointment suggestions.