

PROGRAM NARRATIVE

A. Vision Statement and Statement of the Problem

1. Vision Statement

Although there has been much comment about the inadequacy and underfunding of state and local indigent defense services in the U.S., with particular attention to the situation during this Gideon anniversary year, these commentaries seldom address a major impediment to reform: a lack of knowledge and capacity to systematically assess and improve organizational structure(s) that would promote quality services and strengthen funding requests. This application proposes a multi-faceted strategy for providing national assistance to address these deficiencies.

The project will be carried out by the Justice Programs Office of the School of Public Affairs at American University, which brings extensive experience in providing national judicial system technical assistance to state and local judicial systems, with a major focus on indigent defense service delivery. American University will partner with the National Legal Aid and Defender Association (NLADA) drawing on its years of experience, expertise and working contacts in the field of indigent defense services. Founded in 1911, NLADA has pioneered access to counsel for more than 100 years, including playing a significant role in the development of our nation's indigent defense systems. Over its long history, NLADA has established itself as a leader in the development of national standards for indigent defense, standards-based research, technical assistance and training to secure the adoption of effective indigent defense policies and practices. Indeed, the *Ten Principles* were originally written by NLADA before being adopted by the ABA.

AU's partnership with NLADA will complement the defender focused expertise of NLADA and broaden its outreach to achieve the systemic impact which lasting improvement in indigent defense services will require. The unparalleled experience of the applicant organizations in providing technical assistance to state and local justice systems generally and indigent defense service providers specifically, coupled with the vast network of judicial system and defense practitioners and consultants with which the respective organizations have long-standing working relationships, and their broad knowledge of the interrelationship of the practical and policy issues at play, make the applicant uniquely qualified to assist state and local jurisdictions in improving the effectiveness of their indigent defense delivery systems.

A unique feature of the proposed approach entails using, for the first time in our nation's history, a national self-assessment tool for evaluating the degree to which state and local indigent defense systems are achieving the standards incorporated into the ABA's *Ten Principles of Indigent Defense Delivery Systems* and empirically measuring progress and improvements.

During the first three months of the project, NLADA will refine and distribute nationally its online self-assessment tool (GIDEONline) to state and local indigent defense providers, with the responses used as a foundation for the project's subsequent activities. These will include: (1) developing a profile of the implementation status of responding defender systems regarding each of the *Ten Principles* (to be updated during the project's second and third years); (2) identifying potential state and local jurisdictions for technical assistance provision; (3) developing training materials (a) for public defenders to address critical needs identified, drawing on relevant evidence-based practices; and (b) for other stakeholders to improve the overall functioning of the justice systems in which indigent defense services are provided; (4) launching a publication/resource series geared to evaluating indigent defense services and documenting and promoting

promising practices for implementation; and (5) initiating policy development initiatives to strengthen the systemic organizational infrastructure of state and local indigent defense service delivery systems and address policy issues of immediate import. All of the project's activities will be undertaken within the framework of the *Ten Principles* Framework and will be integrated and mutually reinforcing.

2. Statement of the Problem

One can't help wondering why, after fifty years following *Gideon*, the constitutional right to counsel is so difficult to implement at the state and local level. The recent *Gideon* Symposium which the applicant organizations jointly conducted highlighted a number of issues which play varying roles in creating the present situation: (1) the increased criminalization of conduct requiring defense representation, with significant sentence exposure and additional collateral consequences, which increases both caseloads and workloads¹; (2) the message of the 1982 U.S. Supreme Court *Strickland*² case and subsequent implementation, which sets a threshold for "effective" representation that is significantly lower than national standards for quality defense; (3) lack of parity between defense resources and those of the prosecution and law enforcement; (4) the need for defenders/defense counsel to participate as equal partners in justice system planning; and (5) the need to compile basic information and data on the extent and nature of the

¹ A Bureau of Justice Statistics survey found that, of the seventeen statewide public defender programs that were in effect in 1999, caseloads increased between 1999 - 2007 by 20% while staffing experienced a dramatically smaller increase over the same period of only 4%. *Donald J. Farole, Jr. and Lynn Langton, State Public Defender Programs, 2007, (Washington, D.C.: Bureau of Justice Statistics, 2010)*. Additionally 79% of state defenders reported having insufficient resources and attorneys to meet caseload standards. *Id.*

² **Strickland v. Washington**, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) which established a two-part test for determining a claim of ineffective assistance of counsel; a showing that counsel's performance fell below an objective standard of reasonableness and that counsel's performance gave rise to a reasonable probability that, had he/she performed adequately, the result of the proceeding would have been different. Attendees at the "Gideon" Symposium identified "Strickland" as one of the priority issues that efforts to improve the quality of indigent defense services must address;

need for indigent defense services as well as what is being provided, comparable to the data available for law enforcement, prosecution and other court functions³. But, most fundamental, is the need for the knowledge and capacity to systematically assess and improve organizational (indigent defense) structure(s).

Presently, assessments of the quality of systems -- and their compliance with ABA *Ten Principles* and other standards -- are often based on anecdotes and best “guesstimates” since no uniform system of quantifiable measures exist. Further, generally identifying which systems are failing to meet the *Ten Principles* does not pinpoint where the entities are most vulnerable. Such vagueness prevents the most effective use of limited reform resources. A quick look at the organization of defense delivery systems in the U.S indicates that there is no pattern for providing state and local indigent defense services; every state is different and, even within states, there is tremendous variation both in structure and in actual practice. While *Gideon* established the right to counsel, it set up no mechanisms to implement it. While the ABA *Ten Principles* provide a comprehensive framework for addressing these issues, an evidence-based implementation blueprint is desperately needed to meaningfully adapt them to the operational issues many indigent defense providers are addressing and serve as a catalyst for improving the quality of defense services provided. The proposed project plan is designed to do this.

B. Project Design and Implementation

1. Project Design

Although BJA’s solicitation provides for the project to extend for three years, the project design contemplates the major project initiatives to be completed during the first two years, with

³ See e.g., Fabelo, Tony, *What Policy Makers Need to Know to Improve Public Defense Systems*, Papers from the Executive Session on Public Defense, Harvard University (December 2001) (“[t]wo serious obstacles to improving public defense systems are the lack of data and lack of systemic policy analysis that state policymakers need to address the relevant issues concerning public defense. Examination of the limited literature in this area reveals the lack of empirical research relevant to improving public defense systems”).

the bulk of activity completed during the first eighteen months. (See Project Task/Timeline in Appendix C(1)(c) and Plan for Addressing ABA *Ten Principles* by Project Task (Appendix C(1)(d)). This timeline will take advantage of the national momentum created by the *Gideon* Anniversary and will not delay the remedial/ reform activity that is being called for. Into the current amalgam of indigent defense service approaches and environments, the project will first develop an assessment process to measure the “health” of indigent defense “systems” that will also (1) educate service providers to the concepts underlying the *Ten Principles*; and (2) update available information relevant to assessing the degree to which “systems” are achieving the *Ten Principles* and areas of urgent and common need being encountered. This national assessment process will be jumpstarted by NLADA’s Grading Indigent Defense Effectiveness Online (“GIDEONline”), which, as noted earlier, is the first standardized means for quantifying the degree of achievement of state and local indigent defense offices with the ABA *Ten Principles*. The results will provide an economical way to assess the “health” of indigent defense systems in the U.S. and develop a coordinated plan for improving the delivery of defense services and enhancing the ability of local jurisdictions to provide quality representation consistent with the precepts of the ABA *Ten Principles*.

With some slight upgrading of NLADA’s self-assessment tool, we will be able to change the landscape of indigent defense quality evaluation and promote targeted reform and measurable progress in achieving *Gideon*’s promise. The tool, designed within the framework of the *Ten Principles* and incorporating NLADA’s *Performance Standards for Criminal Defense Representation*, GIDEONline presents an array of over 200 questions on a likert-style scale, designed to be answered by program administrators at both the state and local level.

GIDEONline will be distributed electronically to over 1,000 indigent defense offices within the first three months of the project, with the results used diagnostically to assess the “health” of indigent defense systems nationally, as well as to develop the project’s plan for technical assistance, publications, and training “to enhance state and local jurisdictions’ ability to provide quality representation to indigent defendants.” By accessing GIDEONline, indigent defense system actors will be able to take the assessment to measure compliance with each of the ABA Ten Principles and will receive a numeric score (and potentially an ‘A through F’ grade). This testing alone will be of significant value to the field and the thousands of state and county jurisdictions across the country where indigent defense services are being provided. At the same time, GIDEONline will also be providing BJA and the field with current information measuring the status of indigent defense service provision based on national standards.

This information base will provide the foundation for the project’s activities and deliverables described below.

2. Implementation

a. Technical Assistance:

The project will provide formal technical assistance services to five jurisdictions, with two of these assignments focusing on state level indigent defense service provision, and three at the local or regional level. The answers to the self-assessment and resulting scores on the GIDEONLine will provide a foundation for identifying the pool of jurisdictions and programs to be considered for technical assistance services, coupled with other relevant available information. Criteria for site selection will include: (1) nature and range of needs presented in terms of achievement of the *Ten Principles*; (2) amenability of these needs to be addressed through technical assistance services; (3) the existence of the broader based local support to

promote the likelihood of the implementation and effectiveness of the technical assistance services; and (4) the degree to which the technical assistance services provided will have replication value to other jurisdictions.

(1) TA Site Selection and Provision

Specific Principles. In order to select the specific TA recipients, AU and NLADA will use the GIDEONline evaluation answers and grades and other relevant information to identify the systems in greatest need of assistance in areas that can be treated through the use of targeted technical assistance. We anticipate that the range of needs relevant to achieving the Ten Principles will vary in scope as well as in what is required (and by whom) to improve the level of compliance. Accordingly, to be most effective in our work, it may be most useful to provide TA assistance to focus on specific ABA principles that we have identified as most receptive to intervention: Principles Three, Six, Seven, Nine and Ten, with the other principles addressed through the other project activities.

Measuring Health of Systems and Amenability to Change. AU and NLADA will prioritize requests for systems that score poorest in the evaluations, with consideration also of the assessment score for each principle. Some principles are more wide-reaching than others, and compliance with these principles may affect the capacity for change in other areas. For example, the first principle, independence, is critical to a defender system having the authority to invite and institute reform. Independent systems are also better able to improve practices without fear of interference or retaliation. NLADA and AU will therefore not simply prioritize systems with the lowest overall scores but will also take into account systems that may be high functioning in certain of the principles, thereby making them more amenable to measurable change during the grant period.

(2) *Current Gideon Grantees*

Capturing and publishing lessons learned from BJA's four FY 2012 Gideon Grantees listed below will entail working with a mix of structures and environments in which indigent defense services are being provided and where special issues are being addressed which are common to other jurisdictions and directly support achievement of one or more of the Ten Principles/and or project deliverables:

- *Harris County Public Defender's Office, Texas:* to implement the "Future Appointed Counsel Training Program," to establish a training, mentoring, and supervision program for new private lawyers based on national principles, state guidelines, and best practices from around the country. (Primary Support of Principles Six and Nine and *Training*): [Project time period: August 2013 – August 2015]
- *Delaware's Criminal Justice Counsel:* to enhance its ability to provide quality representation to indigent defendants in cases where the state's public defender office is conflicted from representing an individual. (Principles One, Two, Six, Nine and Ten) [project time period not known]
- *Massachusetts Committee for Public Counsel Services and the Center for Court Innovation:* to implement a program to study and improve the way that data are collected and used to drive decision making. (Principles Five, Ten, and *Policy Development*) [Project time period: October 2012 – September 2014]
- *Michigan State Appellate Defender Office:* to support a project to help individuals who are convicted of offenses that may be eligible for community-based or non-prison sentences. A multiyear effort, the goal of the project is to improve the quality of indigent defense at sentencing, while reducing recidivism. (*Policy Development*): [Project Time Period: October 2012 – March 2014]

During the project's first month, the partnering organizations will contact the project director at each of these offices – with which NLADA already has long standing working relationships – and will begin compiling information on the projects. This will include implementation experience to date, tools and resources developed, lessons learned, and advice to others contemplating similar initiatives. It appears that all of these grants will still be in progress

at the time of this contact so the applicant will be able to participate in the implementation activities of these grants, providing whatever technical assistance may be useful and feasible, and documenting each grantee's accomplishments so as to be as useful as possible to the field.

b. Training and Education Opportunities

The project will conduct a minimum of three training/educational sessions at the state, local or regional level in addition to presentations at national conferences of both defense and other stakeholders (e.g., judges, court administrators, county government officials, etc.) at which project activities and policy initiatives will be presented. While the precise nature of the training will be determined on the basis of the GIDEONline self-assessment results, recommendations of the Gideon Symposium Policy Committee (see "d" below), relevant developments in the field, replication potential of the Gideon Grantee projects, and BJA recommendations, two priority areas for training are immediately noted: (1) strategies for achieving the ABA *Ten Principles* (or components, geared to various audiences); and (2) why the public should care about the quality of indigent defense services – a topic that received major attention at the recent *Gideon* Symposium conducted by the applicants. Although the project contemplates providing at least one of these training programs at a site which will host the session, it is anticipated that the majority of the training activity will be provided through interactive webinars which will then be archived for subsequent access by the field.

c. Publications and Resources

In addition to the documentation relating to the Gideon Grantees and reports of the technical assistance provided, a minimum of three publications will be produced designed to promote assessments of the "health" of indigent defense systems, including the degree to which they are achieving the *Ten Principles* and other relevant standards, and implementation guidance

on promising practices. Although the specific topics for these publications will be identified in consultation with BJA, it is anticipated that potential areas for publication may include: (a) a national report on the “health” of indigent defense systems reflected in the results of the GIDEONline initial self-assessment survey at the start of the project, and updates in the project’s second and third years; and (b) publications documenting the recommendations of the Gideon policy committee (see “d” below), including a compilation of standards and other guidelines that have been adopted by states that raise the threshold established by *Strickland* (see “d.” Policy Development) which, as noted earlier, is considered a major barrier to promoting quality indigent defense services. It is anticipated that, to the extent feasible, publications will be web based and designed to be updated on an ongoing *basis* to reflect relevant developments.

Both AU and NLADA will maintain a dedicated webpage for the project on which project information and resources will be posed. The information on the page will include: (a) a description of the project and ongoing updates of project activities; (b) copies of all project publications and archived webinars and webinar meetings; (c) contact information and descriptions of the Gideon Grantees; and (d) contact information for both project staff and the jurisdictions at which the project is providing technical assistance.

d. Policy Development

The project will build on the policy issues addressed at the applicants’ March 18th Gideon Symposium for the project’s special policy development initiative which will comprise both a separate deliverable of the project as well as support the project’s technical assistance, training and publications activities. During the project’s first month, the multi-disciplinary stakeholder/ participants at the Gideon Symposium who agreed to work on critical policy issues will be contacted and asked to serve as the project’s policy committee members to further address the

policy issues identified at the meeting, to be further refined in consultation with BJA. These included: (1) raising the threshold for *adequacy* of indigent defense services promulgated in *Strickland*, through the development of at least one policy consensus paper on “adequacy” endorsed by a working group of the policy committee, supplemented by a compilation of state standards, rules, and other references that further define “adequacy” of indigent defense services; (2) promoting early assignment of indigent defense counsel by first appearance (Principle Three); (3) promoting diversion and other alternatives to the criminal case process for appropriate cases and offenders; (4) promoting active representation of defense as a meaningful and equal partner in all justice system planning, reform, and funding initiatives (Principle Eight) ; and (5) conducting a comprehensive assessment of the nature and extent of need for indigent defense services in the country and documentation of current services, to produce the type of information available for courts and prosecutors, and which can then be used to provide a foundation for discussing both adequacy of resources generally (Principles Two, Three, Four, Five, Six, Nine and Ten) as well as parity with prosecutors (Principle Eight).

3. Management Plan for Conducting the Project

The project will be a joint effort of American University and the National Legal Aid and Defender Association (NLADA), both of which are located in Washington, D.C. American University is the formal applicant and will be the single BJA grantee in the event of award. Each of the partner organizations will dedicate portions of the time of key personnel to the project and bring a unique combination of strengths to the project’s technical assistance, training and resource development activities to improve the effectiveness of local and state indigent defense services. AU will bring its expertise and long history of experience in promoting justice system improvement, including indigent defense services, through collaborative, judicial system

initiatives systems and its large network of judges, defense, prosecution, and others who can serve as consultants to promote the collaborative efforts that will be essential to improving indigent defense services, as well as its experience in managing complex justice system projects of the type proposed. NLADA will bring its decades of experience in working with indigent defense services, the vast network of indigent defense service providers who comprise its membership, and its national reputation for quality services, including the standards it has developed and have been applied by many jurisdictions; A detailed description of the project's management plan is provided in Appendix C, including the respective tasks the partner organizations will be carrying out and the expertise designated staff will bring.

The project plan calls for overall management of the project by American University, working jointly with NLADA on the principal project tasks and deliverables, with NLADA taking the lead in refining, distributing and compiling responses to the GIDEONline self - assessment instrument and AU taking the lead in the project's technical assistance services and coordination with the policy committee and working subcommittees. Other tasks and deliverables will be jointly handled in accordance with the summary provided in Chart 1: *Organizational Responsibilities for Project Tasks* (Appendix C (1)) and the *Task/Time Line and Tasks Addressing the ABA Principles* (Charts 2 and 3) in Appendix C.

AU and NLADA staff will meet in person or through conference calls bi-weekly during the project's first six months while the needs assessment process is underway, potential sites for technical assistance are being selected, potential topics for training and publication/resource development are being identified, policy development tasks are being initiated, and initial contact is being made with the Gideon Grantees. Thereafter, monthly meetings will be held to review the status of project activities and adherence to time/task plans being developed for them.

C. Capabilities and Competencies

In March 2013, AU and NLADA jointly hosted the “Gideon Symposium”, with BJA support, and attended by 35+ policy makers from multiple disciplines involved with justice system policy, including provision of indigent defense services. The reform momentum developed at the Symposium, together with the action planning that resulted, will play an important role in jumpstarting the tasks outlined in this proposal and the reforms that the project will stimulate. Both AU and NLADA have worked together for many years on other joint initiatives and, through these efforts, have developed a long-standing working relationship that will provide the foundation for their joint efforts in performing the tasks proposed for the project. Their specific capabilities are summarized briefly below, supplemented by Appendix D material.

1. American University : The proposed project will be housed in the Justice Programs Office (JPO) of American University’s School of Public Affairs. This unit, which specializes in justice system technical assistance and training, has served as a national-scope, judicial system-focused training and technical assistance (TTA) provider for the Bureau of Justice Assistance continuously since 1990 and has served over 1,500 jurisdictions on BJA’s behalf over that period. Virtually all of these assignments have entailed implementing evidence-based practices, in a variety of local jurisdictional settings and cultures, through the intervention of practitioner-consultants who serve simultaneously as outside experts and mentors for the recipient jurisdictions. Many of these assignments have entailed improvements in the delivery of indigent defense services in a variety of state and local settings, several of which have been undertaken in connection with litigation challenging the constitutional adequacy of services provided. (See Appendix D for a list of American University’s recent reports dealing with state and local indigent defense services, also posted at: www.american.edu/justice.) The proposed

principal investigator, [REDACTED], and Technical Assistance Coordinator, [REDACTED], [REDACTED], have led many of these projects at AU and the proposed Project Coordinator, [REDACTED], [REDACTED], has been involved with similar initiatives during her ten year association with the National Association of Criminal Defense Lawyers (NACDL) before leaving to teach criminal law. All of the project staff also have significant public defender practitioner experience and, as noted above, close working relationships with NLADA. Their resumes and specific project responsibilities are described in Appendix C.

2. National Legal Aid and Defender Association: The National Legal Aid & Defender Association (NLADA), founded in 1911, is America's oldest and largest nonprofit association devoted to excellence in the delivery of legal services to those who cannot afford counsel. NLADA's long history of providing technical assistance and policy development to support reform of state and local indigent defense delivery systems is summarized in Appendix D. To carry out the tasks outlined in this proposal NLADA will utilize, in addition to its staff resources, the vast network of experts that comprise NLADA membership and governance, including the Systems Development and Reform Committee of the American Council of Chief Defenders, as well as the National Alliance of Indigent Defense Educators and the Defender Policy Group, which will provide a pool of resources from which can be drawn the expertise necessary to match the needs of the jurisdictions served.

NLADA staff for the proposed project also brings extensive experience in working in major public defender offices as well as in policy development and leadership on national indigent defense issues and broad established networks with the indigent defense community.

[REDACTED], NLADA Director of Research, will serve as project director, with [REDACTED] and [REDACTED], NLADA Defender Services Director and Defender Counsel, respectively,

and a Research Coordinator, to be hired upon grant award, complementing the NLADA personnel on the project. Their resumes and a summary of NLADA's recent relevant national activities are presented in Appendices C (2) and D.

D. Plan for Collecting the Data required for this Solicitation's Performance Measures

The applicant will comply with BJA performance measurement requirements, including those listed in the solicitation, as applicable to the project's activities and services. During the project's first month, forms and procedures for project performance reporting will be drafted and reviewed with BJA and revised, as appropriate. Quantitative data documenting the range of project activities, products, contacts with the field, and dissemination activities will be maintained in an adaptation of AU's technical assistance activity data base which it has used to record and report activity for other BJA technical assistance projects. Data relating to access to and downloading from the applicants' websites will be derived from the website statistics which are maintained on each site. Data relevant to measuring the impact of project services, recommendation implementation resulting, and the timeliness and quality of the TA delivery process will be compiled using adaptations of client agency and training program participant evaluation forms AU has already developed, augmented by structured telephone follow-up interviews with recipients of the project's services. Project timelines and schedules for producing deliverables will be managed and monitored by the NLADA project director, in close coordination with the AU project coordinator, and staff of both organizations. The NLADA project director will be responsible for requisite reporting to BJA, including entering requisite data in the TTARS, and for on-going tracking of project performance, including meeting timelines and deliverables, and will ensure that any issues that emerge affecting project compliance with its task timeline are promptly addressed.