

Experts Concerned that LA County Youth Not Always Well Served by the Juvenile Justice System

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By Gary Cohn.



Antonio was only 14 years old when he was charged with two counts of attempted murder in April 2012. Because of his age and the fact that he had no prior record and because there were strong indications that he didn't know his much older co-defendant was going to shoot anyone, he seemed to be a strong candidate to be tried in juvenile court.

Inexplicably, his appointed lawyer failed to vigorously fight to have Antonio tried as a juvenile, failed to call witnesses or ask questions at a probable cause hearing where Antonio's lesser culpability could have been argued and failed to ensure that Antonio's probation report was accurate and complete, according to interviews and court records.

As a result of this litany of legal missteps, Antonio's case was sent to adult court — where he suddenly was facing 90 years in prison if convicted.

Such problems are far from unique. Nearly 50 years after the U.S. Supreme Court established the rights of juveniles to have adequate legal representation in a landmark case known as *In re Gault*, due process rights remain unclear for thousands of indigent juvenile defendants facing felony charges that could lead to years of incarceration.

The problem is particularly serious in Los Angeles County, one of the world's largest juvenile justice systems, where a controversial low-bid, flat fee compensation system for attorneys representing certain indigent youth raises systemic due process concerns. Under that system, contract attorneys — such as the one who represented Antonio, are paid an astonishingly low fee of \$300 to \$350 per case, regardless of whether the case involves shoplifting or murder. This is in a city where private lawyers are costly. Criminal defense attorney fees in Los Angeles can easily exceed \$500 an hour.

Here's how it works: Indigent juvenile defendants in Los Angeles who cannot afford an attorney are usually represented by the county's public defender's office. But in instances in which the public defender is already representing another defendant in the case, a private attorney from a separate contract panel is appointed to avoid a possible conflict of interest. Here in Los Angeles, an estimated 57 percent of the juvenile justice cases are handled by the county's public defenders's office, another 36 percent by panel attorneys such as the one who represented Antonio, and the remaining 7 percent by others.

Juvenile justice advocates said, and numerous studies have shown, that the \$300-\$350 flat fee system in Los Angeles results in less than adequate legal representation.

“There is no possibly way for attorneys to provide competent delinquency representation for the flat fee they are paid.” Sue Burrell, a staff attorney for the San Francisco-based Youth Law Center, wrote in a May 2012 letter to the chief executive officer of Los Angeles County, after conducting extensive research on appointed delinquency counsel contracts in California.

Carol Chodroff, an attorney and juvenile justice advocate in Los Angeles and formerly staff counsel to the U.S. House of Representatives Committee on the Judiciary, agreed. “Young people in conflict cases, who are not eligible for representation by the public defender, end up getting the short end of the stick,” she said.

Indeed, a recent study found that there were huge differences in the quality and outcome of indigent legal services provided by the appointed panel attorneys in Los Angeles when compared with the county's public defender's office. After reviewing 3,000 randomly selected cases that spanned four years, the researchers found juveniles represented by the panel attorneys were convicted of more serious offenses and given longer sentences in more restrictive environments.

Among other findings, the study — titled “Kids, Counsel and Costs: An Empirical Study of Indigent Defense Services in the Los Angeles Juvenile Delinquency Courts” — determined that juveniles represented by the panel attorneys had a 34 percent higher likelihood of ending up at a higher level of supervision than those facing the same charges but represented by public defenders. Cyn Yamashiro, an attorney and former director of the Center for Juvenile Law and Policy at Loyola Law School and one of the authors of the study, which was recently published in the *Criminal Law Bulletin*, said the research confirmed how crucial effective lawyering is in juvenile court. He pointed out that the lawyer is the only one who has complete access to a juvenile's education, medical and psychological history.



Cyn Yamashiro, former director of the Center for Juvenile Law and Policy

“The lawyer is the gatekeeper,” Yamashiro said. “If that person doesn't have his eyes on the prize and isn't paying attention, then (the court system) doesn't get information that is important — which is why the outcomes are what they are.”

The problems involving panel attorneys and juvenile indigent defense have existed for decades in Los Angeles County, but they are now beginning to be raised with urgency. Backed with empirical evidence provided by the Yamashiro study and others, a coalition of local, state and national

organizations, juvenile justice advocates, former judges and law professors are challenging the fairness and constitutionality of the panel system and calling for immediate reforms.

In a letter to the Los Angeles Board of Supervisors last month, the coalition said the current system results in systemic inequities and called for a thorough review of the system. “Los Angeles County’s use of such a low flat-fee compensation rate builds a perverse incentive into the County’s indigent defense system, because panel attorneys are paid the exact same amount for pleading a case at the initial appearance as for taking a case all the way through trial,” the letter stated.

The letter was signed by Erwin Chemerinsky, dean of the University of California, Irvine School of Law; Jan Levine, a retired judge of the Los Angeles Superior Court; Scott Budnick, a Hollywood producer and juvenile justice advocate, and officials from the ACLU of Southern California, Human Rights Watch, Homeboy Industries, the Youth Law Center and the Children’s Defense Fund of California, among others.

Spurred by the coalition, the Board of Supervisors on Feb. 11 voted unanimously to study the issue of panel attorneys’ compensation and other issues involving the county’s juvenile defense system. A series of recommendations is expected to be presented to the board this spring.

The juvenile justice system in Los Angeles is one of the largest in the world. Each year, more than 20,000 juveniles are formally charged with crimes and processed through the juvenile justice system. Like many other places around the country, Los Angeles County juvenile justice system has a disproportionate number of minority and ethnic youth. And juvenile justice advocates say the situation involving the panel attorneys only makes the problem worse.

“Given that youth of color already receive disproportionately harsh treatment in the juvenile justice system, the lack of competent representation only exacerbates the disparity,” Chodroff, the former counsel to the House Judiciary Committee, told JJIE.

That’s what happened to Antonio, a then-14-year-old Hispanic youth who was facing a possible 90 years in prison after his panel attorney failed to fight zealously to have him tried as a juvenile. Eventually, after Antonio was placed in the adult system, an adult public defender filed an appeal and the case was eventually returned to juvenile court.

“Trial counsel for Antonio failed to act as a reasonably competent, diligent and conscientious attorney in representing him in the course of his juvenile court proceedings, and in particular with respect to his juvenile court fitness hearing,” Maureen Pacheo, then clinical director at the Center for Juvenile Law and Policy at Loyola Law School, wrote in a declaration filed with the California Court of Court. “Had such an investigation been conducted and evidence presented, there is a reasonable probability that the matter would not have resulted in a finding of unfitness for juvenile court.”

Once his case was returned to juvenile court, Antonio accepted a plea bargain and he is currently serving a nine-month sentence at a juvenile camp.

David Villa, Antonio’s panel attorney, said he wasn’t at liberty to discuss confidential juvenile proceedings, though he generally defended his representation. “It’s not like there was no effort. I did retain an expert. All efforts were made to try to keep him in juvenile court. ... I didn’t prevail.”

Villa, who said he has represented hundreds of clients as a panel attorney, said he believes that, “in certain cases, compensation should be adjusted.” But he insisted that he always does his best for the juveniles he represents.

“You seek the best outcome for your client,” Villa told JJIE. “I don’t believe it’s based on compensation. I don’t believe we’re looking at the clock.”

Juvenile justice advocates stress that the problem is a systemic one.

“The point is not to point fingers at individual panel attorneys and blame them for poor performance,” Chodroff said. “While that may be true in far too many cases, the real underlying problem is the need for systemic change. We need a system in which all juvenile defense attorneys are receiving support,” from training to access to investigators and social service workers.

One possible fix would be to adopt a similar system to the one used for indigent adult defendants in cases where there is a conflict of interest and the public defender cannot represent someone. Unlike the juvenile system, the adult criminal justice system in Los Angeles does not use the controversial flat-fee system. Instead, defendants are represented by attorneys from an alternate public defender’s office or by private attorneys paid an hourly rate based on the complexity of the case and seriousness of the offense.

“It’s not rocket science,” says Chodroff. “It an easy fix.”

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The Juvenile Justice Information Exchange (JJIE) is the only publication covering juvenile justice and related issues nationally on a consistent, daily basis.