

# North Carolina Bar Association Foundation



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## FINAL REPORT OF THE SPECIAL COMMITTEE ON INDIGENT LEGAL SERVICES DELIVERY SYSTEMS

AS AMENDED AND ACCEPTED BY  
THE BOARD OF GOVERNORS

OF THE  
NORTH CAROLINA BAR ASSOCIATION  
AND THE  
BOARD OF DIRECTORS  
OF THE

NORTH CAROLINA BAR ASSOCIATION FOUNDATION, INC.  
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CRIME CONTROL & SAFE STREETS  
ACT OF 1968, AS AMENDED



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## ACKNOWLEDGMENTS

The work of this Committee has been both creatively satisfying and painfully frustrating. Frustrating because no member of the Committee was poor and we had no personal insight into the effect of poverty on the equality of protection of the law. We had no personal experience with the role of poverty in placing us outside of the comfortable ambit of remedies traditionally available under our legal system where legal representation is provided by attorneys who derive their livelihood from legal fees. It has been creatively satisfying because, as we learned the facts, we gradually chipped away at our upper middle class assumptions and gained insights into the many areas of life in which the law could protect the rights of the poor if lawyers were available to represent them.

I am deeply grateful to each member of the Committee for their unqualified dedication to seeking realistic solutions to this highly complex problem. Although many of them were skeptical at the beginning of the study, all shared the lawyers' conviction that equal justice is ultimately necessary to a free society. This conviction was the common denominator which bound the committee members together throughout our work.

Special thanks must go to our Project Director Thorns Craven and our Technical Committee members, Denny Ray and Jimmy Little. These men worked prodigiously and brought to the study a professionalism which enhanced the quality of our work immeasurably. Furthermore, they continuously assaulted my insular assumptions and thus broadened the scope of the study at every juncture.

Our Coordinator, Rosemary Hill, was incomparable in her quiet commitment, her consistent efficiency and her gentle grace. Our thanks also go to Ed Rodman and the staff of the North Carolina Bar Center and the Administrative Office of the Courts.

Finally, Joe Moore and Walter Brinkley in their capacity as consecutive Presidents of the North Carolina Bar Association provided unfailing support and affirmative leadership without which our work could not have succeeded. To them and many others, I express the gratitude of all of us who seek a land whose people strive to make liberty and justice a reality for all.

William L. Thorp  
Chairman  
March 19, 1976



## 1. INTRODUCTION

The development of Anglo-American jurisprudence clearly shows an expectation of assistance of legal counsel. We have incorporated a right to counsel in the Bill of Rights to our Constitution. As our society has become more complex, the right to counsel has developed beyond the original concept. It is clear today that the right to counsel means that legal representation is a necessity--that justice cannot be done when participants in our legal system must proceed without legal assistance. This has meant that society has taken on the obligation of providing attorneys for individuals who are unable to provide counsel for themselves.

In civil cases, organized legal aid services have been provided to indigent citizens in the United States for more than one hundred years. Around the turn of the century, bar associations and city governments in metropolitan areas founded legal aid societies--law offices to which the poor could turn for legal assistance. The bulk of legal assistance available to the poor throughout the first half of this century, however, was the result of the charitable efforts of attorneys across the country. With the focus of government turned toward breaking the cycle of poverty for millions of Americans in the mid-1960's, there began to be an organized effort to provide legal services to the poor beyond the charity of individual attorneys. The federal government began financing legal aid offices; staffed with full-time attorneys and operating as fully equipped law offices.

When the attention of these attorneys was turned to the legal problems of poor people, an entirely new area of the law began to emerge. Poverty law--the law which affects poor people--was something unheard of before 1965. Since then the development of this body of law has had great impact in areas where our poor citizens have suffered silently for generations, and the law, which has always known landlords, lenders, government officials, has recently become acquainted with tenants, borrowers and public assistance recipients.

In criminal matters, the Supreme Court has broadened the concept of the Sixth Amendment's right to counsel to its present interpretation, that any accused who stands in jeopardy of loss of liberty is entitled to legal counsel at the state's expense if he is without means to secure his own attorney. Not only has there been an increase in the types of cases and situations which require appointment of counsel at the state's expense, there has



also been a drastic increase in the crime rate as exemplified by each new release of Federal Bureau of Investigation statistics. The appellate courts not only are receiving more appeals, they are receiving more pro se petitions because there are more cases and more prisoners.

Unless some order is brought to this ever-increasing demand for state resources, the state will be spending more and more money merely to patch the walls of the dike. Without a comprehensive plan, the public defender system will be expanded, taking over the practice of criminal law in area after area without real regard to the effect on the private bar. In addition, the problems of the assigned counsel system, particularly in regard to ineffective representation by a few attorneys, will continue unabated.

The result will eventually be a crisis situation which could disrupt the criminal justice system as has happened elsewhere in the country, both at the trial and appellate levels. The General Assembly is acutely aware of the increasing costs of this system, and it has been that body which has taken action. Without recommendations from the organized bar, the legislature can be expected in the future to seek various ways of ensuring that the state gets the value of the millions of dollars spent on indigent criminal defense.

Across the United States, the development of legal services for the poor has not been a popular movement. Resistance to legal counsel for the poor has been powerful and persistent. But the attorneys of this country have recognized that a legal system without justice does not survive indefinitely, and that a legal system to which a significant portion of the population does not have access is one without justice.

This plan, if adopted, is not only a means of ensuring effective and economical representation of indigents, it is also a bold step forward by the bar in recognizing its responsibility to the people of North Carolina.

THORNS CRAVEN  
Project Director

## 2. THE PRESENT SYSTEM

### Civil Legal Services

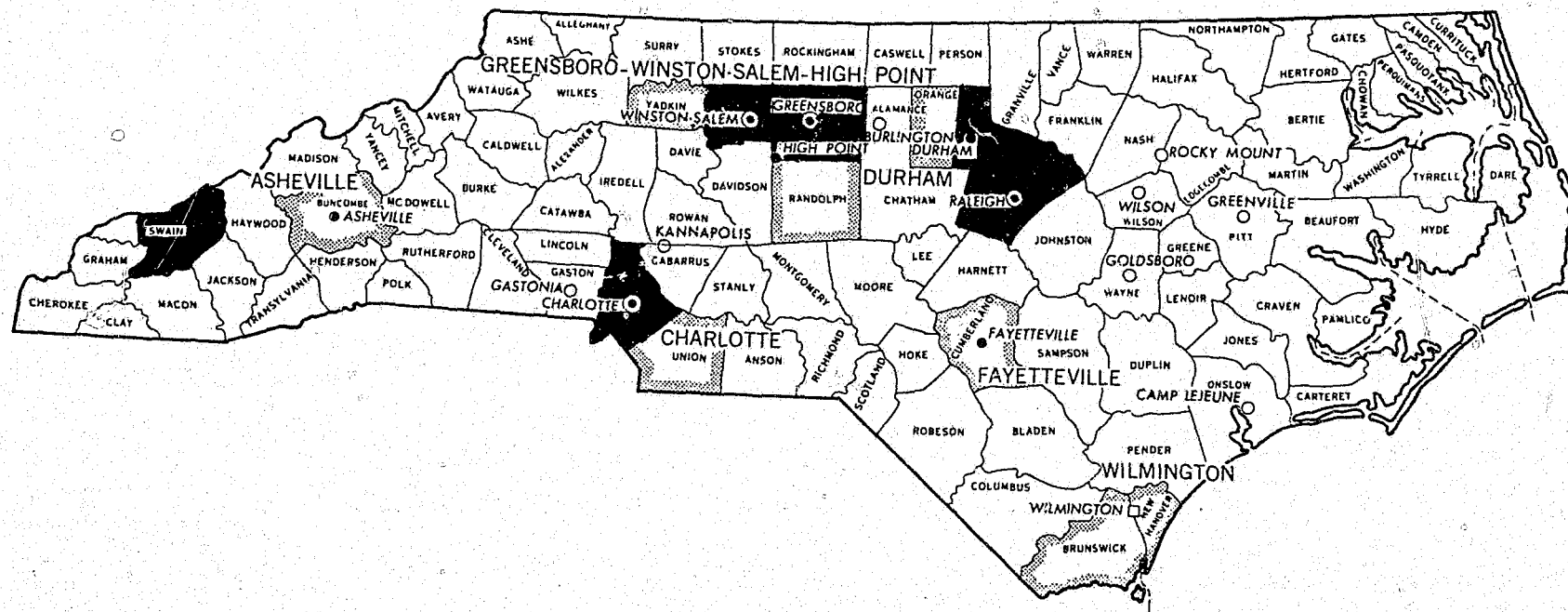
On January 1, 1976, there were seven organized legal aid offices providing legal services to the poor in North Carolina in six counties. The Committee finds that not one office in North Carolina currently operates with a sufficient number of attorneys. (The staff requirements for adequate legal aid offices will be discussed in a later section of this report.) When this fact is combined with the finding that only 19 percent of the poor population of North Carolina, according to the census definition,<sup>1</sup> are nominally served by these offices, the enormity of need for legal services in North Carolina becomes apparent.

Figure 1 shows the location of legal aid offices in North Carolina. The offices in Charlotte, Winston-Salem and Durham receive their primary funding from the national Legal Services Corporation, the successor to the Office of Legal Services of the Office of Economic Opportunity (OEO). On the Cherokee reservation, there is an office which provides legal assistance to members of the tribe in civil and criminal cases. It is funded by a national religious charity. In Greensboro, High Point and Raleigh are legal aid offices which receive the bulk of their funding through contracts for legal services with the county departments of social services. The state provides these funds from the federal Department of Health, Education and Welfare, under Title XX of the Social Security Act.<sup>2</sup> Prior to receipt of Title XX funding in October 1975, the offices in Greensboro, High Point and Raleigh were supported primarily by local funds, either from government or charitable sources. Table 1 provides a breakdown of source of funds and total operating budgets for each legal aid office in the state during 1975.

Currently in the formative stages are two more legal aid programs financed by Title XX funds, in Orange and New Hanover Counties. These two programs were beginning operation at the end of the Committee's study.

The impetus for initiating legal aid programs has generally come from local attorneys and bar associations, and success or failure has turned upon the ability to attract an adequate financial support for a functioning law office. In Mecklenburg and Forsyth Counties, bar groups founded legal aid societies which

FIGURE 1  
COUNTIES SERVED BY LEGAL AID PROGRAMS



LEGEND

- Places of 100,000 or more inhabitants
- Places of 50,000 to 100,000 inhabitants
- Central cities of SMSA's with fewer than 50,000 inhabitants
- Places of 25,000 to 50,000 inhabitants outside SMSA's



Standard Metropolitan  
Statistical Areas (SMSA's)

SCALE

0 10 20 30 40 50 MILES

TABLE 1  
ANNUAL BUDGETS OF LEGAL AID PROGRAMS, 1974-75

Program	Funding Sources							Total
	Office of Legal Services*	DHEW - Social Services	Community Development	County Government	United Fund	Bar Associations	Other**	
Charlotte	170,200			17,500		1,000	3,000	191,700
Cherokee							35,000	35,000
Durham	172,200					5,000		177,200
Greensboro					32,918			32,918
High Point		51,514	17,171					68,685
Raleigh		44,250			8,200	3,000	15,000	70,450
Winston-Salem	145,088				15,000	4,000	35,000	199,088
TOTAL	487,488	95,764	17,171	17,500	56,118	13,000	88,000	775,041
Percentage of Total	62.9	12.4	2.2	2.3	7.5	1.7	11.3	

\*These figures include funding for Reginald Heber Smith Fellows and for special work dealing with emergency food issues.

\*\*This category includes local foundations, colleges, the Junior League, and a national religious charity.

were in operation in the mid-1960's when the Office of Economic Opportunity began to provide funds for legal services. These two societies, and the Legal Aid Society of Durham County, which began as a clinic on law and poverty operated by the Duke University School of Law, are the only North Carolina programs which have ever received funds from the federal Office of Legal Services. The per capita expenditure for legal services for the poor in North Carolina by the federal government has been the third lowest of all the states.<sup>3</sup>

With every legal aid office in North Carolina operating under the direction of an independent and unrelated board of directors, there is presently no direction to the necessary growth and expansion of legal services. The professional staffs in each office, all undermanned, give most of their attention to purely local problems. Each office, in effect, competes against the others for the inadequate amount of money available to finance their efforts. While there is a praiseworthy amount of cooperation among the local offices in areas where that is possible, there is no overall direction to those efforts. It is clear that many functions of such offices can be carried out more efficiently and effectively with centralized direction.

When attention is turned to those areas of the state not presently served by a legal aid program, it is even more apparent how the state suffers from a lack of direction. Of course there are the laudable individual efforts by attorneys across North Carolina to provide poor people with legal advice and representation on an ad hoc basis. And the Committee has received inquiries from local attorneys and bar groups from across the state interested in initiating organized legal service programs. However, the results of a questionnaire mailed by the Committee to all district and superior court judges show that 85 percent of those responding feel that poor persons in their area are not often or never provided with an attorney in civil cases. Of the eighteen judges who responded that poor persons are often or always provided with counsel, fifteen were from districts which are currently served by legal aid programs.

Another important consideration is that there does not now exist, beyond the study of this Special Committee, any plan to meet the legal needs of the poor citizens of North Carolina. The national Legal Services Corporation has in the past been principally concerned with continued funding for its existing programs (and has had insufficient funds from Congress to meet those needs); the state presently only reacts to local initiative, and that only occurs in the Division of Social Services as local groups, often without any attorney participation, seek to secure small amounts of Title XX funding.

In the provision of legal assistance to the poor in North Carolina in civil matters, the Committee has found that the present system is not a system at all. Six counties in North Carolina have some organized legal aid services, but in most areas, the poor have nowhere to turn except for the limited, charitable efforts of some attorneys. It must be concluded that the overwhelming



majority of poor North Carolinians now have no practical expectation of ever being able to consult an attorney when they are faced with a legal problem.

### Criminal Defense System

Currently the representation of indigent criminal defendants is directed by the Administrative Office of the Courts. There are five public defender offices staffed with a total of thirty full-time attorney positions in the Twelfth, Eighteenth, Twenty-Sixth, Twenty-Seventh and Twenty-Eighth Judicial Districts. A map showing these areas is included as figure 2. In all other areas of the state, indigent criminal defendants are represented by assigned private counsel, who are reimbursed at the rate of twenty dollars per hour for out-of-court time and thirty dollars per hour in court. The total cost of assigned counsel and public defenders has more than tripled during the last five years. The expenditures in this period were as follows:<sup>4</sup>

TABLE 2  
EXPENDITURES FOR INDIGENT DEFENSE

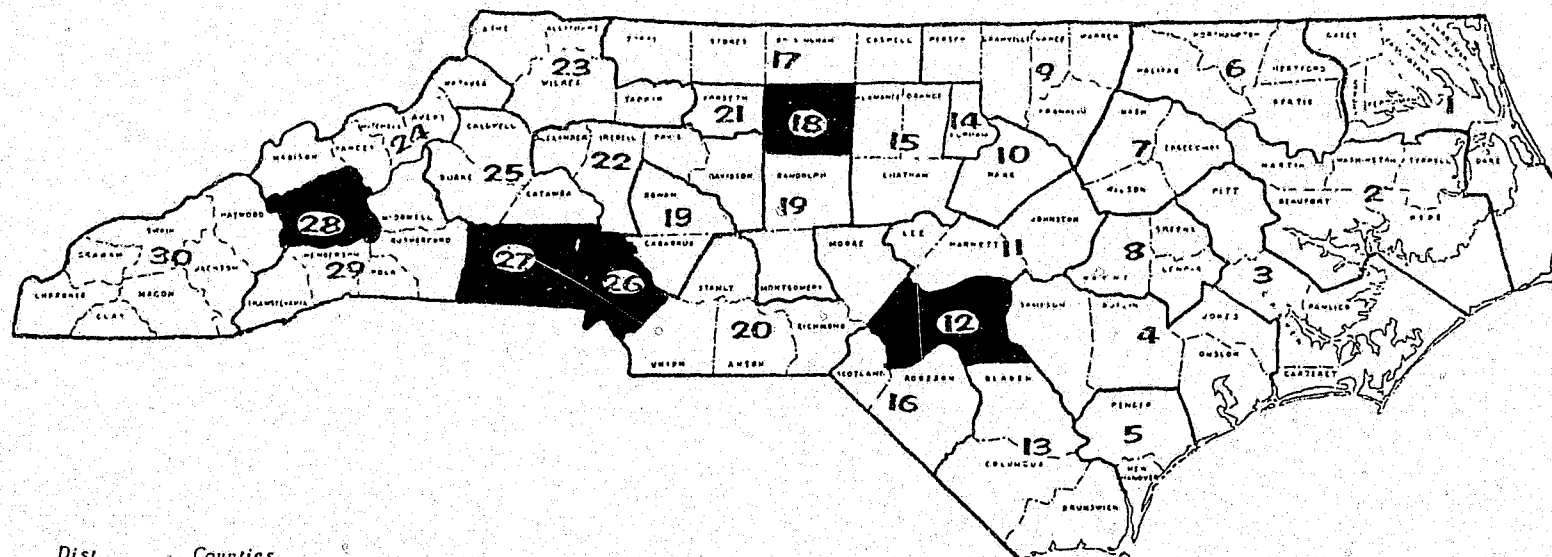
<u>Fiscal Year</u>	<u>Total Expenditures</u>	<u>Percentage Increase From Previous Year</u>
1970-71	\$1,626,355	38.8%
1971-72	1,972,720	20.7
1972-73	2,624,378	33.7
1973-74	3,683,144	40.3
1974-75	5,029,019	36.5

[At this time there are no uniform standards of indigency, no functional training programs for assigned counsel relating to their qualifications to represent indigents, no comprehensive plan for determining the competence of counsel to handle particular types of criminal cases, no unified public defender system, no centralized assigned counsel system, and no definitive guidelines as to what types of cases require the appointment of counsel.]

In 1969 the North Carolina Courts Commission summarized its recommendations in this area to the General Assembly as follows:

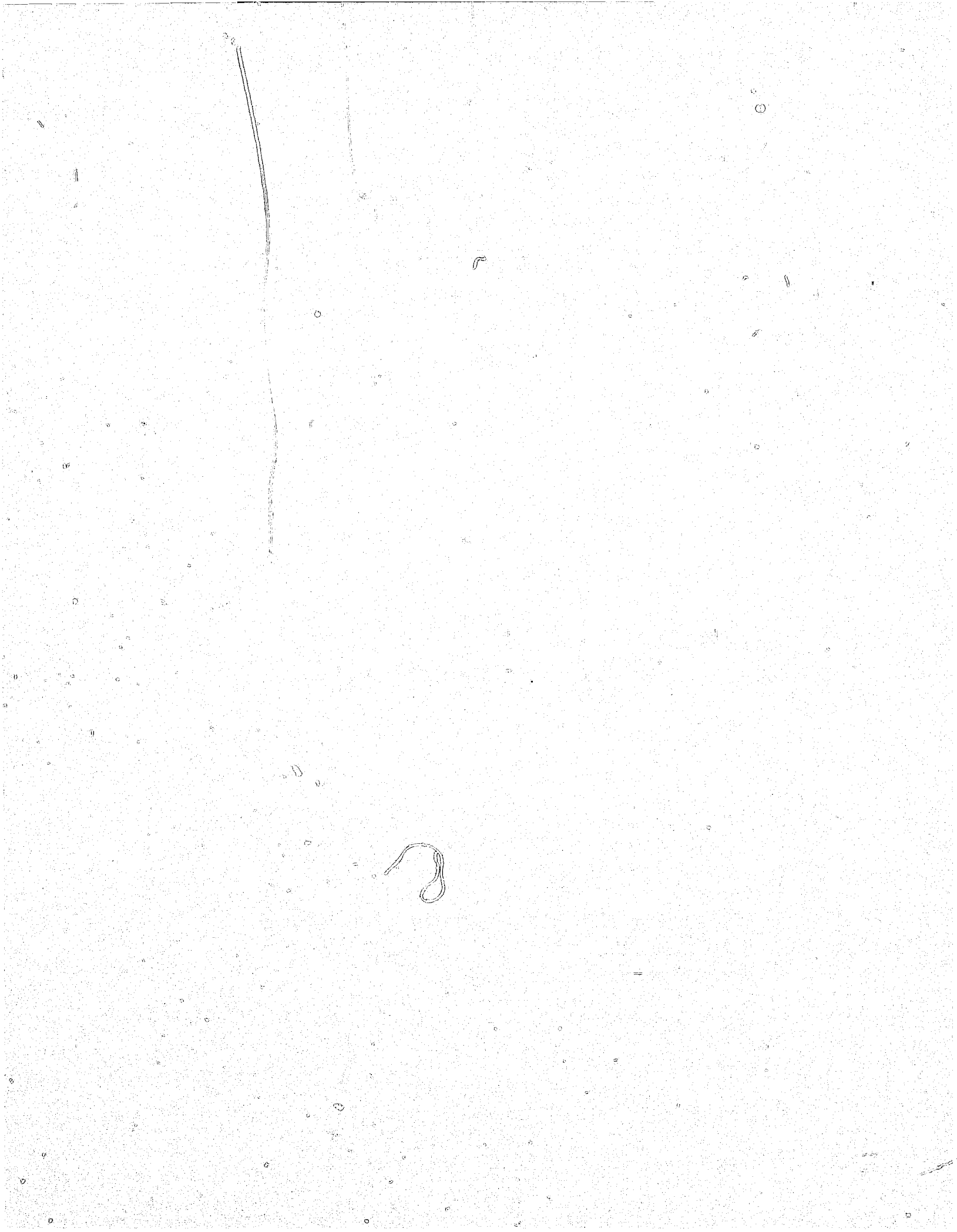
In summary, the Commission, after studying in-depth the problem of representation of indigents, recommends legislation which:

FIGURE 2  
PUBLIC DEFENDER DISTRICTS



- Dist. Counties
- 1-Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans
  - 2-Beaufort, Hyde, Martin, Tyrrell, Washington
  - 3-Carteret, Craven, Pamlico, Pitt
  - 4-Duplin, Jones, Onslow, Sampson
  - 5-New Hanover, Pender
  - 6-Bertie, Halifax, Hertford, Northampton
  - 7-Edgecombe, Nash, Wilson
  - 8-Greene, Lenoir, Wayne
  - 9-Franklin, Granville, Person, Vance, Warren
  - 10-Wake
  - 11-Harnett, Johnston, Lee
  - 12-Cumberland, Hoke
  - 13-Bladen, Brunswick, Columbus
  - 14-Durham
  - 15-Alamance, Chatham, Orange
  - 16-Robeson, Scotland

- 17-Caswell, Rockingham, Stokes, Surry
- 18-Guilford
- 19-Cabarrus, Montgomery, Randolph, Rowan
- 20-Anson, Moore, Richmond, Stanly, Union
- 21-Forsyth
- 22-Alexander, Davidson, Davie, Iredell
- 23-Alleghany, Ashe, Wilkes, Yadkin
- 24-Avery, Madison, Mitchell, Watauga, Yancey
- 25-Burke, Caldwell, Catawba
- 26-Mecklenburg
- 27-Cleveland, Gaston, Lincoln
- 28-Buncombe
- 29-Henderson, McDowell, Polk, Rutherford, Transylvania
- 30-Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain



- (1) revises present statutes with respect to the scope of the right to counsel to encompass coverage required by applicable case law;
- (2) strengthens the present assigned counsel system by providing adequate compensation for counsel and supervision of local assignment systems to assure greater equality in fairness in assignments;
- (3) replaces the assigned counsel system in a number of the most populous districts by the defender system, to assure greater efficiency and economy; and
- (4) provides for monitoring of both systems with a view to recommending improvements in each based on experience.<sup>5</sup>

The first experimental defender offices in the Twelfth and Eighteenth Judicial Districts were established in 1970 as a result of the Commission's recommendations. But other than expansion of the system into three additional districts, little has been done to implement the Commission's recommendations.

Chief Justice Sharp has called for changes in the operation of the present system. On October 17, 1975, she stated that "the appellate division has been increasingly concerned about the quality of indigent representation as shown by the records of the cases which come to us on appeal," and proposed that the public defender system be expanded into eleven additional districts by the 1977 General Assembly.<sup>6</sup>

During the course of the Committee's work, several studies were carried out to compare the cost and quality of the representation provided by assigned counsel and public defenders. The cases handled by both were compared during the month of February, 1975, and a questionnaire was mailed to all district and superior court judges in the state. The results are discussed in more detail in Appendix D and Appendix E.

In general, the caseload study showed that public defender offices are cheaper on a cost-per-case basis in urban areas. The average cost of a public defender case during the month was \$97 compared with \$124 for assigned counsel. However, the Committee agreed that cost-per-case figures are misleading because costs vary widely for different types of charges. On the average, the state pays assigned counsel four times as much for a felony as for a juvenile proceeding or involuntary commitment. Felonies make up 57 percent of the caseload of the Fayetteville office compared with 19 percent in Asheville. These kinds of regional variations in commission of crimes make cost predictions difficult.

The quality of representation was compared by looking at the disposition of cases and sentences received during February. The analysis showed that defendants represented by a public defender are more likely to plead guilty to a lesser offense and more likely to receive suspended sentences. This difference may be attributed to the defender's daily dealings with the criminal courts and district attorneys.

The returns from the judges' questionnaires show that district and superior court judges give a high rating to the performance of public defenders in their courts. The defenders are more likely to make first contact with their client within one day of arrest, and the judges gave the public defenders approximately a 20 percent higher rating in terms of criminal trial experience, investigation and knowledge of recent appellate decisions.

Access to counsel--adequate counsel--is a Constitutional requirement in criminal cases which must be provided by our state. But the supervision of these services has been thrust upon the Administrative Office of the Courts without the resources or the authority to plan systematically. This undertaking can be vastly improved by the establishment of an organization whose primary function is the provision of legal services for those who cannot afford them.



### 3. RECOMMENDATIONS: CIVIL LEGAL SERVICES

During the course of its study, the Committee has surveyed the existing legal aid programs in North Carolina, analyzing their strengths and deficiencies. From this context, it has studied the methods which other states have adopted in order to meet the needs of their indigent citizens for civil legal services. Primarily the Committee studied approaches taken in Georgia and Florida because these states are characterized by an active interest of the organized bar in the provision of legal services to the poor, and a longer history of development of programs than exists in North Carolina. These two states also provided an interesting and informative contrast in approaches to the delivery of legal services to the poor on a statewide basis. Georgia has a highly centralized organization while in Florida there is a very loose confederation of local programs with centralized support functions.

After considerable deliberation, the Special Committee recommends a system which should combine the best features of both of these approaches. A plan is recommended which provides for local offices that retain their separate identity and are supervised by local boards of directors. A central statewide office will establish broad policies, receive and allocate funds from state, federal and private sources to the local offices, and evaluate progress to assure a high level of performance and compliance with established policies.

The Committee recommends:

I. THAT A NON-PROFIT, TAX EXEMPT CORPORATION BE ORGANIZED AND ESTABLISHED ACCORDING TO THE LAWS OF NORTH CAROLINA AND THE APPROVAL OF THE NORTH CAROLINA STATE BAR UNDER THE SPONSORSHIP OF THE NORTH CAROLINA BAR ASSOCIATION. THIS CORPORATION WOULD BE CALLED "LEGAL SERVICES OF NORTH CAROLINA, INC."

a. Board of Directors. The Board of Directors of the corporation would be selected subject to the approval of the Board of Governors of the North Carolina Bar Association. A majority of the directors would be attorneys licensed to practice in North Carolina. The Board of Directors would also have as members persons who would be eligible for legal services provided by the corporation, and could have members who would be neither attorneys nor eligible clients.

b. Duties of the Board of Directors. The Board of Directors would establish the broad policies of the corporation and adopt a plan to ensure the prompt and orderly development of legal services

to the poor throughout North Carolina. The Board would also determine standards of eligibility for services provided by the corporation, types of cases to be handled, proper training for staff, and development of support for the activities of the corporation.

c. Articles of Incorporation and Bylaws. A proposed draft of articles of incorporation and bylaws for the corporation are attached as Appendix A. These articles would establish the corporation as a nonprofit corporation with members. The bylaws provide for an initial, interim board of directors made up of the president, immediate past president, and the president-elect of the North Carolina Bar Association, the Chairman and Co-Chairman of the Committee, and seven (7) designees of the Board of Governors of the Association. The total number of members of the interim board would be twelve (12), and this board would operate the corporation until reconstituted under the bylaws. Such reconstitution may occur when the national Legal Services Corporation publishes regulations governing the composition of boards of directors of organizations which will receive money from them, or within one year, whichever occurs first. The reconstituted Board of Directors calls for fifteen members (15), plus the president of the North Carolina Bar Association ex officio. Of the fifteen, at least nine (9) persons shall be members of the North Carolina Bar Association, and three (3) persons would be eligible clients, or their representatives as might be permitted by national Legal Services Corporation regulations. The remaining three (3) persons would be undesignated. The bylaws establish that all selections to the Board of Directors shall be by vote of the members of the corporation.

II. THAT ONCE ESTABLISHED, THE BOARD OF DIRECTORS OF THE LEGAL SERVICES OF NORTH CAROLINA, INC., SHOULD RECRUIT AND HIRE AN EXECUTIVE DIRECTOR. The Executive Director should be an attorney. Other staff members of Legal Services of North Carolina, Inc. should be employed by the Director, subject to policies adopted by the Board of Directors.

III. THAT THE BOARD OF DIRECTORS ADOPT A GENERAL PLAN TO ENSURE APPROPRIATE DISTRIBUTION OF LEGAL SERVICES THROUGHOUT NORTH CAROLINA. The plan which is adopted by the Board of Directors should be in two steps, one based on funds and services currently available in the state, and the second a long-range plan based on actual needs in the state. Planning for distribution of legal services throughout North Carolina should take into account the population distribution, geographical factors, the incidence of poverty in various areas, the existing availability of services, the location and number of attorneys, and the availability of funding.

IV. THAT WHERE THERE ARE CURRENTLY EXISTING PROGRAMS, EVERY EFFORT SHOULD BE MADE TO BRING THEM WITHIN THE STATEWIDE SYSTEM OF LEGAL SERVICES FOR THE POOR. There should be a minimum modification of local operations, with compromise where necessary between established local procedures and statewide standards, and these programs should be guaranteed so that at least the existing levels of service would be maintained in the allocation of funds. The

Board should also consider the use of existing offices as the bases for expansion under a long-range plan for development of a regional system.

V. THAT WHERE THERE ARE NO CURRENTLY EXISTING PROGRAMS, THE CORPORATION SHOULD DETERMINE WHEN AND WHERE NEW LOCAL OFFICES SHOULD BE ESTABLISHED, AND THERE SHOULD BE NO EXPANSION WITHOUT CORPORATION APPROVAL, IN ACCORDANCE WITH CRITERIA ESTABLISHED BY THE CORPORATION. The corporation should encourage local groups to participate in the establishment of local offices, and it should provide technical assistance to such groups in the form of personnel, training and equipment.

VI. (A) THAT ALL PRIMARY OPERATING FUNDS SHOULD BE RAISED, RECEIVED AND DISTRIBUTED BY THE LEGAL SERVICES OF NORTH CAROLINA, INC., AND SECONDARY FUNDS SHOULD BE RAISED BY LOCAL OFFICES, SUBJECT TO POLICIES ESTABLISHED BY THE CORPORATION. Primary funds refers to funds which are provided by the state and federal governments and private foundations for provision of legal services to the poor. Supplementary funds refers to resources made available at the community level, by public and private donors, for the same purpose. The overwhelming majority of funds for provision of civil legal services in the United States comes from the federal government, with a varying degree of participation by state governments and local sources. For economy and efficiency, a statewide legal services corporation should be the consolidated recipient of all generally available funds coming into North Carolina for the provisions of legal services to the poor.

(B) THAT ALL FUNDS RECEIVED BY THE CORPORATION SHOULD BE ALLOCATED FOR THE FOLLOWING PURPOSES: (1) OPERATION OF THE CENTRAL OFFICE, (2) OPERATION OF EXISTING LOCAL PROGRAMS, (3) EXPANSION OF EXISTING PROGRAMS, AND (4) ESTABLISHMENT OF NEW LOCAL OFFICES. In spending the funds available to it, the corporation should first establish, support and administer a centralized operation (which is discussed in a later recommendation). Thereafter as funds are available, it should provide for the continuation of services which are currently in existence, provide for the expansion of those local programs, and establish new programs, pursuant to the plans developed by the corporation.

(C) THAT TO RECEIVE FUNDS FROM THE CORPORATION, EXISTING AND CONTEMPLATED LOCAL OFFICES SHOULD SUBMIT ANNUAL BUDGETS (INCLUDING ALL FUNDING SOURCES) TO THE CORPORATION, AND THE CORPORATION SHOULD EVALUATE EXISTING PROGRAMS TO DETERMINE THEIR NEED FOR FUNDS. In making evaluations of existing offices, the corporation should ensure compliance with policies stated in funding contracts, review fiscal affairs and audit procedures, evaluate results, recommend changes needed, and take appropriate action in event of violation of policies. Such action could include suspension or termination of funding by the corporation.

VII. THAT EACH LOCAL OFFICE SHOULD BE INCORPORATED AND CONTROLLED BY A LOCAL BOARD OF DIRECTORS, CONSISTENT WITH POLICIES ESTABLISHED BY THE STATEWIDE CORPORATION. The local board should employ its own director, who would then hire other members of the

staff. Within the area served, the local board will determine the needs of the area, the types of cases to be handled (unless contrary to statewide policies), the location of offices and the use of circuit riding and other methods of delivering services. Their method of operation and performance will be reviewed annually by the state corporation when the program's funding contract is renewed.

In connection with this refunding process the Committee recommends that the statewide organization require each program to develop annually a list of priorities for the use of resources allocated. This requirement should apply not only to local programs, but also to any specialized programs of greater than local area scope. The statewide organization should advise and give technical assistance to the groups in setting priorities, but it should not mandate either specific priorities or the methods used in determining them. Any periodic evaluations of a program should be made largely on the program's accomplishment of its priorities. Priorities set should include, but not be limited to the types of cases to be handled, since other methods of delivery of legal services, such as community education, might be more important to a particular location than continual individual representation would be.

VIII. THAT THE CORPORATION SHOULD ESTABLISH STATEWIDE STANDARDS AND PROCEDURES TO ENSURE UNIFORM HIGH QUALITY OF LEGAL REPRESENTATION ACROSS THE STATE.

(A) THAT ELIGIBILITY STANDARDS FOR CIVIL CASES BE SET BY THE CORPORATION AND BE UNIFORM THROUGHOUT THE STATE. Uniform standards will assure that no single locality arbitrarily discriminates against potential applicants on the basis of income. In addition to considering an applicant's income in determining eligibility, the corporation should take into account the applicant's cash and liquid assets, real property ownership, number of dependents, debts, and expenses above those reasonably required for subsistence.

Although the cost of living may be less in rural areas than in urban areas, minimum subsistence in both areas, as determined by the Research Triangle Institute, is \$687 per month, or \$8,244 annually, gross income for a family of four.<sup>7</sup> All existing or potential (i.e. Title XX) eligibility criteria for delivery of legal services to indigents are lower than this amount. Consequently, separate urban and rural eligibility levels would be unnecessary as long as a uniform level is chosen which is lower than the reasonable subsistence level determined by the Research Triangle Institute.

The statewide legal services program may apply for money under Title XX of the Social Security Act. To receive such money for legal services, the organization must be in a position of serving Title XX eligibles wherever they are located in the state, and Title XX eligibility criteria are uniform statewide. The standards now used by each of the existing legal aid programs are included as table 3.





TABLE 3  
CURRENT ELIGIBILITY STANDARDS BASED ON ANNUAL INCOME

<u>Program</u>	<u>1 Person</u>	<u>2 Persons</u>	<u>3 Persons</u>	<u>4 Persons</u>	<u>Each Additional Person</u>
Charlotte (Net)	\$3,120	\$3,900	\$4,420	\$5,200	\$ 780
Durham (Net)	4,056	4,992	5,616	6,240	624
Greensboro )					
High Point ) (Gross)	4,111	5,376	6,641	7,906	1,265
Raleigh ) (Net)	3,535	4,623	5,711	6,799	1,088
Winston-Salem (Net)	2,590	3,410	4,230	5,050	820
<u>OEO Poverty Guidelines</u> <u>(March, 1975) (Net)</u>	2,590	3,410	4,230	5,050	820
<u>Title XX Eligibility Guidelines</u> <u>for Legal Services</u> (Gross)	4,111	5,376	6,641	7,906	1,265
(Net)	3,535	4,623	5,711	6,799	1,088
<u>Minimum Subsistence Level Found by</u> <u>Research Triangle Institute</u> (January, 1974) (Gross)	2,968	4,946	6,843	8,244	1,566
(Net)	2,517	4,195	5,803	6,992	1,348

NOTE: The differences between net and gross incomes are based on standard deductions for income and Social Security taxes.

(B) THAT THE CORPORATION SHOULD ESTABLISH CRITERIA FOR DETERMINING WHICH CASES WILL OR WILL NOT BE HANDLED BY LOCAL OFFICES. Any criteria established by the corporation should accomplish the following objectives:

- (1) Assure that the quality of service provided in any locality complies with the standards set forth in the Code of Professional Responsibility;
- (2) Assure uniform availability of legal services to all indigent applicants in all counties or judicial districts throughout the state subject only to limitations created by resource imbalances between localities;
- (3) Assure prompt response to applicants' needs and that necessity for time-consuming application or referral processes are minimized;
- (4) Assure understanding and support of the private bar throughout the state.

No funding sources should be solicited or accepted whose restrictions would impair achievement of the goals stated above. And any funding source whose restrictions would interfere with attorney-client confidentiality or with the independence of an attorney's judgment should be avoided. The Committee recognizes, however, that multi-funded programs can achieve all their objectives when proper administrative structures are developed which reconcile accomplishment of objectives while complying with funding source restrictions. Consequently, restricted funding sources should not be avoided if other funds are available to offer a full range of services.

Following is a list of types of cases now handled by legal services programs existing in North Carolina. In order to assure equal access to services throughout the state (goal (1) above), offices receiving state corporation funds should offer services in at least all of these types of cases subject only to limitations necessitated by caseload management and achievement of priorities set by each program to allocate resources.

Fee-generating cases will occur in many of these categories of cases, but such limitation should be made on the basis of individual cases rather than by elimination of a particular category of cases.

- (1) Consumer Actions (offensive and defensive):
  - Repossessions/Claim and Delivery
  - Violations of Small Loan Act, R.I.S.A. and U.C.C.
  - Violations of Federal Truth-in-Lending and Fair Credit Reporting Acts
  - Unfair and deceptive trade practices
  - Fraud and misrepresentation
  - Breach of contract or of warranties within contracts
  - Defective merchandise and/or repairs
  - Personal bankruptcies
  - Illegal liens

## Usury

Insurance contracts

Utilities terminations or overcharges

- (2) Employment:
  - Wage claims
  - Public employment policies and procedures
  - Employment discrimination
- (3) Government Benefits and Administrative Procedures:
  - Social Security and Supplemental Security Income
  - Aid to Families with Dependent Children
  - Food Stamps
  - Medicare and Medicaid
  - Hill Burton Act violations
  - Insurance or utility rate settings
  - Drivers license revocations
  - Unemployment Insurance
  - Veterans' Administration Benefits
  - Urban Renewal and Community Development Programs
- (4) Housing:
  - Private landlord-tenant disputes
  - Housing Code violations
  - Public Housing policies and procedures
  - Mortgage foreclosure and other real property contract problems
  - Deed transfers
  - Farmers Home Administration policies and procedures
- (5) Family Law:
  - Divorce and separation
  - Child and spouse abuse
  - Adoption
  - Legitimation and paternity
  - Custody and guardianship
  - Name change
- (6) School Problems:
  - Fees and charges
  - Suspensions and terminations
  - Ability placements
  - Educationally Mentally Retarded placements
- (7) Miscellaneous:
  - Torts
  - Wills
  - Right to treatment in mental institutions
  - Prison conditions and policies
  - Nursing home conditions

(C) THAT FEE-GENERATING CASES WILL NOT BE HANDLED BY LEGAL SERVICES ATTORNEYS. Fee-generating cases should be defined in detail by the statewide board. Such definition should not create restrictions which would limit any policies set out by major funding sources such as the national Legal Services Corporation. In general, a fee-generating case is one for which an applicant

otherwise eligible for legal services can receive representation from the private bar because of the fee potential inherent in the case.

When a poor person comes to a legal services office with a case which is fee-generating, the office should refer such applicant to a bar association referral service. Close cooperation between the local programs and the bar referral systems will minimize inconvenience to indigent applicants, eliminate suspicion about favored or "direct" referrals of fee-generating cases and maximize statewide bar support of the legal services program.

The Committee recommends that poor persons who use volunteers of the North Carolina Bar Association's referral service not be charged the initial fifteen dollar fee. It was also agreed that the best method of handling these referrals is for the legal services office to call the referral service and then the private lawyers on behalf of the applicants to ensure that the goal of prompt response to the applicant's needs is met. Referral should not be necessary in actions which can be filed as small claims.

(D) THAT THE CORPORATION ESTABLISH CRITERIA FOR SERVICE ON LOCAL BOARDS OF DIRECTORS WHICH SHOULD BE UNIFORM AND STATEWIDE. Lack of uniform criteria for local board selection might mean boards composed entirely of attorneys in one location, or boards without attorneys in another. This is an area where statewide standards can be adopted and maintained.

IX. THAT THE CORPORATION SHOULD PROVIDE AFFIRMATIVE SUPPORT FOR THE ACTIVITIES OF LOCAL OFFICES BY ESTABLISHING TRAINING PROGRAMS FOR STAFF ATTORNEYS, PARALEGAL ASSISTANTS AND CLERICAL STAFF, BY PROVIDING TECHNICAL ASSISTANCE IN THE FORM OF RESEARCH IN SPECIALIZED AREAS, DEVELOPMENT OF LEGAL FORMS AND ROUTINES, PROVISION OF SPECIALISTS IN NON-ROUTINE MATTERS AND ASSISTANCE IN HANDLING UNUSUAL CASES REQUIRING MORE FUNDS OR PERSONNEL THAN LOCALLY AVAILABLE. With the assumption of a measure of control and administration by the corporation, in the interest of efficiency and economy, attention must be paid to the flowing of benefits to the local offices. Functions which can be assumed by the statewide offices are training, technical assistance and back-up support in unusual and non-recurring circumstances.

X. THAT THE CORPORATION SHOULD DEVELOP PROGRAMS WHICH ARE NEEDED IN THE STATE, BUT WHICH ARE NOT SUSCEPTIBLE TO DEVELOPMENT AND IMPLEMENTATION AT A STRICTLY LOCAL LEVEL. In many instances, the legal problems of the poor are similar regardless of location. But there are groups of poor people whose problems are unique to the group, and often that group does not exist in substantial numbers in any one community. Examples are seasonal migrant workers, the mentally ill, prisoners, members of the armed forces and their dependents. A statewide approach to the legal problems of these and other groups would be more efficient and effective, and should be implemented by the corporation.

XI. THAT THE CORPORATION SHOULD MAKE AFFIRMATIVE EFFORTS TO PUBLICIZE THE AVAILABILITY OF LEGAL SERVICES TO THE POOR, AND TO OBTAIN PUBLIC SUPPORT FOR THE PROVISION OF THESE SERVICES. The

support of the bar and the public of such a program is essential. All appropriate efforts should be made to secure and maintain such support consistent with the Code of Professional Responsibility and rulings of the Ethics Committee of the American Bar Association.

XII. THAT THERE SHOULD BE NO FEWER THAN THREE FULL-TIME ATTORNEYS IN EACH LOCAL OFFICE IN ORDER TO PROVIDE SERVICES ECONOMICALLY AND EFFECTIVELY. An area must be able to utilize the minimum number of attorneys before a staff office is established there. The attorneys need the benefit of exchange among themselves of ideas, knowledge of the law and procedure, and broader contacts with the bar and judiciary. The office will also need flexibility so that conflicting court dockets may be covered. At least this number is needed for maximum efficient use of the substantial capital investment in space, library and equipment.

While total specialization in a given area is not anticipated, where a number of attorneys operate out of a single office, each attorney can become especially proficient in a given specialized area and his knowledge will be available to all of his colleagues. A larger staff will allow for a wider spread of age and experience among the members of the staff so that the younger, less experienced attorneys will receive the benefit of the experience and judgment of the older attorneys.

XIII. THAT A MAXIMUM EFFORT SHOULD BE MADE TO UTILIZE THE SERVICES OF PARALEGALS AND THUS EXTEND THE SERVICES PROVIDED BY THE PROGRAM TO AS WIDE A POPULATION AS POSSIBLE. Under supervision of an attorney, paralegals can be used as specialists in given fields to represent clients before administrative bodies where the regulations of such administrative agencies expressly provide for such representation or where there is no requirement that persons be represented only by a licensed attorney. They can also function in an educational capacity to train the personnel of service agencies in given areas of the law. Intake centers could be maintained by paralegals in the sparsely populated sections of the state where they could handle screening of clients and setting up of appointments so that an attorney making periodic visits to the center could utilize his time most effectively.

XIV. THAT IT IS ESSENTIAL TO INVOLVE THE PRIVATE BAR IN THE PROVISION OF LEGAL SERVICES TO THE POOR. The use of volunteer attorneys from the private bar is important to the successful operation of a legal services program. It not only will provide additional services, but also will serve to educate the private bar in the legal problems of the poor. This will be beneficial both in enabling the bar to appreciate the necessity of the legal services program, and also in advising their clients who deal with the poor on how these clients can avoid violating the rights of the poor.

- (1) Volunteer attorneys can handle cases on assignment by agreement. The types of cases to be handled by such volunteers should be clearly defined in order to assure that the private attorney handling a case has sufficient knowledge in that area of the law to

represent the client effectively. Cases involving poverty law questions of a specialized nature should be handled by the staff attorney, while cases involving legal questions generally encountered by the private attorney should be assigned to volunteer attorneys.

- (2) In conflict cases where two or more poor persons are on opposite sides of a legal matter and the legal services office would have a conflict of interest if it represents more than one of them, private attorneys can be called in as volunteers to represent the other parties to the dispute.
- (3) In many cases it will be beneficial to the staff attorney to have a co-counsel relationship with a member of the private bar to benefit from the expertise, advice and practical assistance of a private attorney in the handling of a given case.
- (4) Volunteer attorneys can be used effectively to man the legal services office at night or on Saturday. These attorneys could accept the cases which come into them while they are manning the office and handle these cases to conclusion. If a case involves specialized knowledge of poverty law, the volunteer attorneys could consult with the staff attorneys. This will serve to educate the volunteer attorneys over a period of time in the handling of poverty law cases.

XV. THAT IN SPARSELY POPULATED AREAS, PRIVATE ATTORNEYS CAN BE RELIED ON TO HANDLE POVERTY LAW CASES FOR A FEE IF THEY HAVE RECEIVED APPROPRIATE TRAINING IN POVERTY LAW. The Committee recommends that the most effective way of developing this type of program is to contract with a private attorney who is planning to practice or is already practicing in a sparsely populated area to:

- (1) Take the appropriate courses in poverty law training; and
- (2) Agree to handle a certain number of legal services cases per year. Compensation for such services could be on a straight subsidy of a set amount of money per year or on a case-by-case basis. The advantage of a set subsidy would be that it would assure the attorney of a certain amount of income sufficient to justify his taking the necessary time to properly train to handle cases involving the poor. In order for this system to work, it would be necessary to have an intake center from which the clients could be referred to the contracting attorney. This intake center should be located at some well-known service agency so that additional space would not be required. Care should be given to requiring the referring source to utilize the North Carolina Bar Association's lawyer referral service whenever the case or the client does not qualify for handling by a legal services lawyer.

XVI. THAT LEGAL ADVICE WILL BE PROVIDED NOT ONLY IN A ONE-TO-ONE ATTORNEY-CLIENT RELATIONSHIP, BUT ALSO TO GROUPS OF CLIENTS WITH COMMON INTERESTS WHO MEET THE PROGRAM'S GROUP ELIGIBILITY STANDARDS, AND IN CERTAIN NON-TRADITIONAL AREAS. Group representation may include assistance in undertaking cooperative ventures involving housing or other programs which will reduce their living costs or increase their ability to earn a livelihood. Advice to groups will involve legal advice to poor people's organizations, such as tenants' rights organizations, welfare rights organizations, senior citizens groups and migrant workers.

Additional services that could be provided are:

- (1) Disseminating Educational Information. Information regarding the rights of poor people, the legal services available and the importance to our free society for such services to be available will be disseminated through news articles and other written material, radio and television programs, and speakers, to the client community. Community leaders, judges, law enforcement officers, clerks of court and service agencies can be educated to the need for their organizations to uphold the rights of poor persons and can become sources of referrals to legal services programs.
- (2) Dealing with Domestic Problems. Leadership will be provided in developing a community program to deal with domestic problems through the appropriate social service agencies. The legal services attorney will provide the needed legal advice without becoming encumbered with the non-legal aspects of domestic problems.
- (3) Quasi-Legal Counseling. Leadership will be provided to develop services, such as debt counseling, which are non-legal in their immediate sense but which require a knowledge of the law.
- (4) Training Non-Legal Personnel. Legal services attorneys can realize maximum benefit from their time by training non-legal personnel in the rights of poor people. These persons can then assist in counseling poor people in methods of avoiding legal problems and of finding appropriate remedies. This is especially true in areas such as Social Security, social services, food stamps, and unemployment benefits. For example, a senior citizen who is retired and residing in a housing project may well be an extremely capable counselor to other elderly persons within the project regarding their rights under the Social Security law. Such a person, along with others living in similar situations, could be trained and kept up to date so that they could provide a source of constant advice to the residents of the housing complex at a minimum cost to the program.

XVII. THAT THE STATEWIDE BOARD SHOULD MANDATE THAT ALL LOCAL AND SPECIALIZED PROGRAMS DEVELOP METHODS OF CASELOAD MANAGEMENT WHICH WILL LEAD TO ACCOMPLISHMENT OF LOCAL PRIORITIES. The



Committee recognizes the critical necessity for effective caseload management. The history of legal services programs shows that without determined efforts to limit the number of cases handled by a program, quality service is impossible.

The methods used to limit caseload should not be determined at the state level. The central office staff should be responsible for assisting localities in implementing management methods and should monitor programs to assure that such methods exist and that they reasonably accomplish the programs' priority goals.

The Committee did not feel that it was necessary to establish a specific number of poor people that can be served by a single legal services attorney. The caseload which can be effectively handled by a single attorney depends on a number of factors, and varies greatly according to the nature of the legal problems of his clients. Certain cases require advice only, while others require endless hours of work. However, the caseload should be monitored on a regular basis to assure effective use of attorneys' time. Cases should be grouped by type to develop specialized handling and to assure that the legal services attorneys' effectiveness is not reduced. The experience of the projects operating in North Carolina in 1974 shows that the average caseload was actually 241 cases per lawyer during that year (see table 4 below).

TABLE 4  
CASELOAD OF LEGAL SERVICES ATTORNEYS IN 1974

<u>Program</u>	<u>Total Number of Cases</u>	<u>Number of Attorneys</u>	<u>Caseload/ Attorney</u>
Charlotte	1,627	7	232
Durham	1,040	5	208
Greensboro	889	2	445
High Point	292	3	97
Winston-Salem	1,700	6	283
	<u>5,548</u>	<u>23</u>	<u>241</u>

NOTE: The office in Raleigh is omitted because it was in operation for only the last few months of 1974. The program on the Cherokee reservation handles both civil and criminal cases.

#### 4. RECOMMENDATIONS: CRIMINAL DEFENSE SYSTEM

In the Committee's deliberations regarding the indigent criminal defense system, there were several key factors which guided the group in arriving at recommendations. The first was the Constitutional requirement, ever expanding, that an indigent criminal defendant must have the right to effective representation. This requirement cuts across the entire criminal justice spectrum, extending from initial interrogation of an indigent accused while in custody of the police, to post-charge identification line-ups, trial, sentencing, and finally to appeal. It is further required in juvenile proceedings, mental commitment proceedings, and, under certain conditions, proceedings involving the revocation of probation.

Another consideration was the Committee's commitment to keep the private bar actively involved in the representation of indigent criminal defendants. This participation was considered not only to be proper, but also to be absolutely necessary so as to ensure a continued general interest in, and support of the criminal justice system.

The economic factor was also important because, in addition to its being effective, the criminal representation must be provided in the most economical manner possible, consistent, of course, with Constitutional requirements. Finally, the Committee knew that it was necessary to have a broad perspective of the criminal justice system in North Carolina in order to make recommendations that would be as viable ten years from now as they would be next year.

This report is in no way intended to be a criticism of the current system for providing representation. Rather, it is what the Committee considers to be a combination of the best ingredients of the current system. Other successful systems have also been analyzed and pertinent aspects of them are included which will be workable in North Carolina in meeting the projected needs of the future. Together with recommendations from several national surveys and reports, the Committee proposes to mold these various elements into a cohesive and responsive statewide system, uniquely designed for North Carolina.

The Committee recommends:

XVIII. THAT THE RESPONSIBILITY FOR SUPERVISING THE REPRESENTATION OF INDIGENT CRIMINAL DEFENDANTS IN NORTH CAROLINA BE

VESTED IN THE CORPORATION PREVIOUSLY DESCRIBED IN RECOMMENDATION I, LEGAL SERVICES OF NORTH CAROLINA, INC., WHICH WILL COORDINATE A STATEWIDE DEFENSE SYSTEM.<sup>9</sup> RESPONSIBILITY FOR THE OPERATION OF THE CRIMINAL DEFENSE DIVISION OF THIS ORGANIZATION SHOULD BE VESTED IN A CHIEF PUBLIC DEFENDER WHO SHALL BE APPOINTED BY THE CORPORATION BOARD OF DIRECTORS.<sup>10</sup> The chief public defender should have the authority to appoint heads of branch offices after notifying local bar associations of an opening in their area. He would also be responsible for the selection of the state-level staff which will include a training officer, a program planning officer, an administrator of the assigned counsel system, administrative personnel and chief of an appellate branch.

The training officer for the statewide defender system would be responsible for designing and implementing training programs for the benefit of the public defenders and those members of the bar who are on the assigned counsel list.<sup>11</sup> The training officer should also work with law schools in the state in developing clinical legal programs.

There should be a program planning officer at the state level whose responsibility would be: (1) obtaining grants and otherwise designing experimental and innovative programs, (2) serving as a contact person for those seeking information about the system, and (3) expanding and improving services provided by the defender system. This section should thus not only seek funds other than from the state, but should establish programs to save the state money.

An administrative section should have responsibilities for budgeting, directing personnel policies, purchasing, and establishing communications among the various participants. There should also be an administrative officer in the state office whose responsibility would be the overall supervision of the assigned counsel system. This person's specific responsibilities are detailed later in this report.

XIX. THAT THE CORPORATION INCLUDE AN APPELLATE BRANCH WHOSE RESPONSIBILITY WOULD BE THE REPRESENTATION OF ALL APPEALS OF INDIGENTS IN CRIMINAL CASES, EXCEPT WHERE THERE IS A CONFLICT, OR IN CASES WHEN TRIAL COUNSEL DESIRES TO TAKE THE CASE ON APPEAL AND THE CHIEF OF THE APPELLATE SECTION APPROVES.<sup>12</sup> The appellate branch should handle appeals from the local defender offices, as well as from those defendants who had assigned counsel at the trial level. The appellate unit will also represent prisoners petitioning appellate and trial courts. This office will be part of the statewide system and will be responsible to the chief public defender. The Committee feels that the creation of the appellate branch will not only increase the quality of the representation, but also will reduce the number of appeals, reduce the time required by the attorney effecting the appeal, and produce substantial savings in the cost of appeals in the state.

XX. THAT A CENTRALIZED ASSIGNED COUNSEL SYSTEM BE ESTABLISHED AND THAT IT BE SUPERVISED BY A COORDINATOR IN THE CENTRAL OFFICE. Under the present system with no uniform guidelines and administration, there have been inconsistent fees awarded and

variations in the quality of representation by assigned counsel. The legislature has provided neither the statutory framework nor the funds to enable the Administrative Office of the Courts to collect, maintain and analyze data concerning caseloads of available attorneys, types of cases handled, costs of assigned cases, and results of such cases. These problems can be at least partially resolved through the establishment of a centralized assigned counsel system.

An assigned counsel coordinator should be located in the office of the chief public defender to exercise general supervisory control over the assigned counsel system.<sup>13</sup> He should review all vouchers for uniformity and implement a reporting procedure so that he can monitor and evaluate the system and project expenditures. Upon approval of vouchers by the trial judge, the coordinator would have the final authority to award the amount. He should work with attorneys in the appellate branch so that they could act as a back-up resource for trial counsel, supplying model briefs, providing up-to-date research, and answering questions regarding recent appellate decisions.

(A) THAT A COMMISSION OF THE BAR SHOULD BE ESTABLISHED TO ADVISE THE CHIEF PUBLIC DEFENDER REGARDING GENERAL SUPERVISION OF THE ASSIGNED COUNSEL SYSTEM. However, ultimate responsibility would lie with the coordinator and his superior, the chief public defender. The commission may include representatives of the bar, a judge of every level served, a dean of a law school, and if desired, members of the client community, and should be appointed by the corporation Board of Directors. The commission could assist in areas such as developing job specifications, establishing requirements for adding or deleting attorneys from the list, maintaining ongoing training programs, determining fee schedules, and evaluating indigency and caseload standards.

In urban districts the assigned counsel coordinator should work with trial court administrators who are employees of the Administrative Office of the Courts, and not part of the statewide organization. The Administrative Office of the Courts has recently received funding for a pilot project to place such administrators in five judicial districts.

(B) THAT THE TRIAL COURT ADMINISTRATORS SHOULD ALSO BE RESPONSIBLE FOR CALENDARING CASES. The orderly calendaring and calling of cases under the direction of a trial court administrator will reduce the economic burden of witnesses, jurors and parties who are required to waste endless hours under the present system waiting for their cases to be called.

To accomplish this objective, the Committee proposes that the authority to calendar criminal cases be vested in the chief resident superior court judge, and redelegated to the trial court administrator. By giving this authority to one whose only concern is the efficient and economical operation of the criminal justice system, control is taken out of the hands of any interested party and placed with one whose neutral position and specialized training better enables him to effectively manage.

It is further recommended that this be accomplished through the Judicial Council.

In rural areas the regional defender office will administer the assigned counsel system.

(C) THAT FEE SCHEDULES SHOULD BE UNIFORM THROUGHOUT THE STATE, BASED ON THE TYPE OF PROCEEDING RATHER THAN THE CURRENT HOURLY RATE. The schedule could include per diem rates in misdemeanor cases, standard fees based on whether it is jury or non-jury and the type of service provided; e.g., arraignment, day of trial, line-up, or plea of guilty.

The need for a uniform fee schedule was apparent to the Committee after examining the vouchers submitted to the Administrative Office of the Courts for payment in the month of February, 1975. The results of a sample of seven judicial districts showed considerable differences from district to district in the number of vouchers that were changed by the judges. As shown in Appendix C only 4 percent of the vouchers in the Thirtieth Judicial District were reduced from the amount the attorney submitted for payment, compared with 53 percent of those submitted in the 26th District (Mecklenburg County).

When these figures are compared with the percentage of the private bar willing to accept appointments, there appears to be a relationship between these factors. In general, the districts where a small number of vouchers are reduced are the areas in which a greater percentage of the private bar is willing to accept appointments.

(D) THAT IN ORDER TO REDUCE THE COST AND IMPROVE THE QUALITY OF REPRESENTATION UNDER THE ASSIGNED COUNSEL SYSTEM, THAT APPOINTED COUNSEL BE ASSIGNED A SUFFICIENT VOLUME OF CASES AT A GIVEN SESSION OF COURT SO THAT HE CAN HANDLE THESE CASES ON A BASIS WHICH IS ECONOMICAL TO THE SYSTEM, BUT WITHOUT FINANCIAL SACRIFICE TO HIM. In order to reduce the cost of the assigned counsel system, wherever possible, the cases assigned to a single attorney should be calendared on the same day in order that he will not spend the entire week waiting for his case to be called.<sup>14</sup>

(E) THAT ELIGIBILITY REQUIREMENTS BE ESTABLISHED BY THE CHIEF PUBLIC DEFENDER IN CONSULTATION WITH A COMMISSION OF THE BAR BEFORE A PRIVATE ATTORNEY IS ELIGIBLE FOR INCLUSION ON THE ASSIGNED COUNSEL LIST.<sup>15</sup> These requirements should bring into consideration, among other factors, practical experience, proven ability and special training through attending institutes, seminars and training programs. The attorney should be placed on the list within a category based on his ability to adequately represent defendants in particular types of cases.

XXI. THAT PUBLIC DEFENDER BRANCH OFFICES BE IMPLEMENTED IN URBAN AREAS WHERE IT IS ECONOMICALLY FEASIBLE. The head of each branch office should be appointed by the chief public defender and may be removed from office by him for cause. The head of each branch office should have the right to appeal a dismissal directly to the Board of Directors of the statewide corporation.

He should also have the authority to hire and fire the other employees in the branch office. The heads of branch offices and their assistants should be full-time employees of the corporation and should not engage in the private practice of law. The salaries of all defenders should be on a scale with the state prosecutors.

A list for assigned counsel should be maintained in each district where there are full-time public defenders in order to represent defendants in cases where there are co-defendants and a conflict of interest arises (in accordance with American Bar Association Standards).<sup>16</sup> In addition, the Committee recommends that consideration be given to a system whereby the public defender represents a certain percentage of the cases, with assigned counsel being appointed to the remainder. This will ensure active, meaningful involvement of the private bar in the criminal justice system, even in those areas with full-time public defenders.<sup>17</sup>

XXII. THAT IN RURAL AREAS REPRESENTATION SHOULD BE PROVIDED BY A COMBINATION OF ASSIGNED COUNSEL, PART-TIME DEFENDERS, AND REGIONAL DEFENDERS. A part-time defender would be a private attorney who is paid for a certain percentage of his time by the statewide organization to represent the bulk of indigent criminal defendants in his locality. This contemplates using such a defender in a county of under fifty thousand population where it would be economically sound for one attorney to provide such representation. By using a part-time defender (or if that is not practical, by appointing a private attorney to several cases and calendaring these cases together) dead time in court will be reduced to a minimum, thus saving the state money and the attorney time. This type of defender work should be carefully delineated as follows:

- (1) To avoid conflicts of interest, a part-time public defender should not be permitted to maintain a private practice in criminal law;
- (2) Under no circumstances may the part-time defender represent a client who is found to be ineligible for indigent criminal legal services;
- (3) The attorney must devote a specified percentage of his time to public defender work, and his salary would correlate with such percentage.

Regional defender offices should also be established which would cover several judicial districts. This anticipates an office staffed by two or three full-time attorneys in rural areas which would be responsible for a certain percentage of the representation of indigents with the primary responsibility going to assigned counsel. The regional defender could additionally serve as a backup or information and research center for assigned counsel and his office could include a staff member who would administer the assigned counsel in that particular area. It is



recommended that such an office be implemented in one area of the state in order to determine its value and feasibility.

XXIII. THAT THE CORPORATION BOARD SHOULD DETERMINE WHICH AREAS OF THE STATE SHOULD HAVE THE PUBLIC DEFENDER BRANCH OFFICE, ASSIGNED COUNSEL, PART-TIME DEFENDER, REGIONAL DEFENDER, OR ANY COMBINATION THEREOF. In making this determination, the Board should take into account the following factors:

- (1) Number of cases requiring appointed counsel for each court and type of case;
- (2) Current cost of each type of case;
- (3) Population of the area;
- (4) Percentage of cases that go to trial: (a) before judge, or (b) before jury;
- (5) Average length of trial for each type of case;
- (6) Annual percentage increase of each type case;
- (7) Number of cases with two or more co-defendants;
- (8) Percentage of defendants who are indigent by type of case.

It is recommended that the best way to obtain this information is to ask that extensive time and case records be kept by one urban defender office and one regional defender in a rural area so that the chief public defender will have a valid basis for making decisions.

The Board would also need to know certain other basic information in order to decide which system is best for a particular location and to project costs, including:

- (1) Number of practicing attorneys available to represent indigent defendants and, of those, how many have a predominantly criminal practice;
- (2) Average local attorney fees for different services;
- (3) Salary scales for public defenders, clerical employees and investigative employees;
- (4) Number of law students in the area (Note: This contemplates representation of defendants by students pursuant to the third-year rule).

XXIV. THAT CASELOAD STANDARDS BE ESTABLISHED BY THE CHIEF PUBLIC DEFENDER FOR ALL FULL-TIME DEFENDER ATTORNEYS. It is recognized that individual situations vary greatly, but as a general rule these limits should be recognized. When a defender office reaches its maximum limit, additional cases should be



assigned to private counsel until the defender office can ethically resume representing clients. There can be no effective representation by a public defender whose caseload is so large as to preclude his rendering an effective service to his clients.

XXV. THAT THE CONFERENCES OF DISTRICT AND SUPERIOR COURT JUDGES WORK WITH THEIR MEMBERS TO ENSURE UNIFORM PRACTICES REGARDING APPOINTMENT OF COUNSEL.

In the case of Argersinger v. Hamlin, 407 U.S. 25, the Supreme Court held that counsel is required for any case in which the accused may be deprived of his liberty. To make this determination, the judge must look first to see whether a jail sentence is possible under the statute and then decide whether a jail sentence is likely to be imposed.<sup>18</sup> The judges surveyed in our questionnaire (Appendix D) felt that there were few problems involved in implementing this decision, but those who added comments most often mentioned the problem of having to prejudge a case in advance.

The results of the questionnaire also show that the criteria for appointing counsel are not uniform throughout the state. Attorneys are provided in some areas when any sentence is likely to be imposed, in others only for offenses punishable by more than six months, and in one area only for those facing a possible sentence of two years or more. In some districts all misdemeanor defendants are informed of their right to counsel. In others, the defendant must specifically request counsel.

The right to counsel in all felony cases should be determined in district court within ninety-six hours of arrest.<sup>19</sup> The same rule should apply to misdemeanor cases when the defendant is incarcerated.

XXVI. THAT THERE BE UNIFORM FINANCIAL GUIDELINES FOR DETERMINING INDIGENCY. In its consideration of financial standards for determining indigency, the Committee used as a guiding principle the recommendations of the American Bar Association and National Advisory Commission on Criminal Justice Standards and Goals. Both groups advise that retaining a private attorney should not result in a "serious hardship" for the defendant. On the other hand, the Committee could not ignore the ever-increasing costs to the state for providing appointed counsel.

The formula recommended for determining whether the defendant is eligible for appointed counsel is essentially a sliding scale, taking into account the net assets and net income of the defendant, and the seriousness of the charge.<sup>20</sup> From the total amount of assets and income of the defendant, a living allowance based on the federal poverty guidelines is deducted. The remaining amount is considered to be the funds available to hire a private attorney. The determination of whether the defendant is eligible is then made by comparing the available funds with the approximate amount a private attorney would charge to handle the case. The entire formula is illustrated in Table 5.

TABLE 5  
DETERMINATION OF ELIGIBILITY IN CRIMINAL CASES

KEY

A = net assets  
B = net income (weekly take-home pay)  
C = total assets/income  
D = living allowance (Table I below)  
E = available funds

$$\frac{A}{\quad} + \frac{B}{\quad} = \frac{C}{\quad} \quad \frac{C}{\quad} - \frac{D}{\quad} = \frac{E}{\quad}$$

TABLE I. Minimum Living Allowance (D) (per week)  
(Federal Poverty Guidelines)

Individual	\$ 50
Individual with 1 dependent	66
Individual with 2 dependents	81
Individual with 3 dependents	97
Individual with 4 dependents	113
Individual with 5 dependents	129
Individual with 6 dependents	144

For each additional dependent add \$ 16

TABLE II. Attorney Allowances

Appellate Matter:

Capital Felony	)	
Felony - 10 years to life	)	
Felony - 5 to 10 years	)	
Felony - up to 5 years	)	To be determined
Serious Misdemeanor	)	by corporation
Non-serious Misdemeanor	)	
Mental Commitment	)	
Juvenile Case	)	

RECOMMENDATION

\_\_\_\_\_ Eligible  
\_\_\_\_\_ Eligible with contribution order  
          one payment \$ \_\_\_\_\_ multi-payment \$ \_\_\_\_\_  
\_\_\_\_\_ Eligible with further inquiry necessary  
\_\_\_\_\_ Ineligible

One of the advantages of this system is that it allows a person to be found partially indigent. If the defendant's income/assets exceed the standard but he cannot find a private attorney to represent him, the court can appoint a public defender or private counsel and order the defendant to repay a portion or all of the cost of the services. The monthly payments should be equal to the amount the defendant earns in excess of the guidelines.

The Committee realizes that North Carolina statutes currently require the court to enter a judgment against all indigent defendants found guilty for the value of services rendered.<sup>21</sup> However, receipts from payments on these judgments average less than 3 percent per year. The bookkeeping costs of entering these judgments undoubtedly exceeds the amounts recovered. The Committee recommends that a judgment be entered only when a person is found to be partially indigent.

Local bar associations may also consider referring a partially indigent defendant to a panel of the local bar which estimates the cost of the representation, decides what the defendant can afford, and gives the defendant three or four names of private attorneys who will represent him for a reduced fee. (This is a current California practice.)

XXVII. THAT SEPARATE DETERMINATIONS OF INDIGENCY BE MADE BOTH AT THE DISTRICT AND SUPERIOR COURTS IN EACH CASE WHERE A PERSON SEEKS COURT-APPOINTED COUNSEL. Defendants receiving appointed counsel in district court should have their indigency determined again in superior court because of the possibility that their financial situation may have changed. This can only reduce the financial responsibility of the state because many times a person is found indigent at the preliminary hearing because he is in jail. By the time his case reaches superior court, he may have been out on bail and returned to work so that he can possibly now afford private counsel.

XXVIII. THAT THE TRIAL COURT ADMINISTRATOR, IF AVAILABLE, OR OTHER ADMINISTRATIVE OFFICIAL MAKE DETERMINATIONS OF INDIGENCY USING CLEAR AND CONCISE GUIDELINES. THE JUDGE OR PUBLIC DEFENDER SHOULD HAVE THE AUTHORITY TO OVERRULE IF NECESSARY BUT WOULD BE RELIEVED OF ROUTINE DETERMINATIONS. The Committee considered several possibilities as to who should actually make the determination of indigency. It was decided that this process involves an inefficient use of a judge's time and may result in substantial inequities based on the personal standards of individual judges. The public defender has the same problem plus there may be a tendency for him to become more or less lenient depending on the caseload in his office.<sup>22</sup>

#### Other Recommendations

Although the Committee as a whole did not get a chance to consider them, the subcommittees which studied this area wish to recommend several other changes in administration of the judicial system which are not directly related to the proposed statewide

defense system. These recommendations should increase efficiency, reduce costs and improve the quality of justice in the state and are included as attachments to this report in Appendix G.

## 5. RECOMMENDATIONS: COMBINING CIVIL AND CRIMINAL SERVICES

One important aspect of the Committee's study has been an examination of the feasibility of combining civil and criminal services within the same organization. A number of metropolitan legal aid societies, such as those in New York and Cleveland, have successfully provided both types of representation within the same office. However, no other state has implemented such a system statewide primarily because of differences in funding sources. For example, the state funds appropriated for public defenders or assigned counsel could not be used to pay an attorney who is handling civil cases. By the same token, funds paid by the national Legal Services Corporation could not be used to pay an attorney handling criminal matters. This does not preclude the establishment of a single legal services office with a criminal division and a civil division with the attorneys in the respective divisions being paid and the overhead allocated according to the type of cases they handle. The experience of private law firms indicates that a larger law "firm" with attorneys specializing within the firm is highly productive.

There are many advantages to the combining of services. In sparsely populated areas much duplication of fixed costs, such as office space, office equipment, secretarial and para-legal staff, could be avoided by combining the handling of civil and criminal cases in the same office. In this way, an office with the minimum number of attorneys needed for an effective operation can be put in an area where the population would not justify putting an office to handle only civil or only criminal cases.

The location of service centers is important. It would simplify locating the legal services office for the client who may not know whether he has a civil or a criminal matter if the two types of cases were handled under the same roof or by attorneys with offices in the same building. The contacts of the attorneys located in the same office in dealing with court personnel would inure to the benefit of their colleagues whether handling civil or criminal matters, and would multiply the beneficial effects of such contacts.

Recruiting for a combined office could be done on a much broader basis where attorneys interested in either civil or criminal matters or both could be recruited. The staff would also have more flexibility and variety if an attorney could handle criminal matters for a given period of time and then, with appropriate official changes in his status, switch over to civil matters.

In designing systems for civil and criminal services, the Committee looked at each separately through the work of its subcommittees. On the civil side, the Committee has recommended a statewide organization which would receive all funds, except those raised locally, decide where new offices would be located and provide technical assistance. Each local office is to be a separate corporation with its own board of directors, which hires the local director. Each program is to submit a budget and list of priorities for review by the central office.

After study of the criminal defense system, a plan is recommended with more central control. The chief public defender has the authority to hire the heads of local defender offices and decide where these offices should be located, whether full-time, part-time or regional operations. There is no provision in the proposed defender plan for local corporations or boards.

Considering the advantages of combining services and the differences in organizational structure, the Committee recommends:

XXIX. THAT AT THE LOCAL LEVEL, WHERE BOTH EXIST, EVERY EFFORT WOULD BE MADE TO LOCATE CIVIL AND DEFENDER PROGRAMS IN THE SAME OFFICE OR BUILDING. However, they would have no formal relationship with each other except to share certain overhead expenses. In this way the clients could benefit from having a single location for both types of legal services and the attorneys could share information and ideas, but the local boards of directors would oversee only the civil operation.

XXX. THAT AT THE STATE LEVEL, THE SAME CORPORATION, LEGAL SERVICES OF NORTH CAROLINA, INC., WILL RECEIVE AND ADMINISTER FUNDS FOR BOTH SERVICES THROUGH A CIVIL AND DEFENDER DIVISION. Even though there will be separate divisions responsible for field operations, many central office functions can be combined, such as training, planning and administrative services.

The Committee considered several alternatives for how the central office staff should be organized. There was substantial feeling that there should be a single executive director, with assistants who are heads of the civil and defender divisions, whom the board and the staff could look to as the person in charge.

On the other hand, since funding sources and requirements for services are fundamentally different in the two areas, it might be better to have two executive directors reporting directly to the board of directors. For this alternative the corporation would have the model of a number of large companies that have recently gone to a "multiple management" system with several top officers sharing responsibility.

The Committee concluded that it is best to reserve this decision for the corporation board as the organization develops.

APPENDIX A

ARTICLES OF INCORPORATION

OF

LEGAL SERVICES OF NORTH CAROLINA, INC.

---

A NONPROFIT CORPORATION

I, the undersigned natural person, being over the age of eighteen (18) years and acting as incorporator for the purpose of creating a nonprofit corporation under the laws of the State of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina and the several amendments thereto, do hereby set forth:

I.

The name of the corporation is Legal Services of North Carolina, Incorporated.

II.

The period of duration of the corporation shall be perpetual.

III.

The purposes for which this corporation is formed are as follows:

- a. To create a statewide organization to administer and make available legal services to the poor in both civil and criminal areas of the law.
- b. To attract substantial support from contributions, directly or indirectly, from the general public and governmental units as described in 170 (b) (1) (A) (vi) of the Internal Revenue Code of 1954. The corporation has not been formed for pecuniary profit or financial gain,



and no part of the assets, income, or profit as a corporation shall be distributed to, or inure to the benefit of, its Directors or Officers. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting, to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these Articles, the corporation shall not carry on any other activities not permitted to be carried on by (a) a corporation exempt from federal income taxes under Section 501 (c) (3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue law) or (b) a corporation, contributions to which are deductible under Section 170 (c) (2) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue law).

- c. To carry on any activity necessary or convenient in connection with any of the foregoing purposes or the powers enumerated in the Nonprofit Corporation Act of North Carolina.

#### IV.

The members of this corporation shall be the currently serving officers and members of the Board of Governors of the North Carolina Bar Association or their successors.

#### V.

The government of the corporation shall be vested in a Board of Directors, and, except as provided herein, the number and class of Directors, manner of their election and terms of office shall be provided by the Bylaws of this corporation.

#### VI.

This corporation shall, at all times, be operated in full compliance with the requirements of Section 501 (c) of the Internal Revenue Code of 1954 as the same shall be from time to time amended. Upon dissolution of the corporation, the Directors shall, after paying or making provision for the payment of all of the liabilities of the corporation, dispose of all the assets of the corporation by delivering them in fee to such organization or organizations organized and operated exclusively for charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501 (c) (3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue law) as the Directors shall determine.

## VII.

The address of the initial registered office of the corporation is 1025 Wade Avenue, Raleigh, North Carolina 27605, and the name of the initial registered agent at such address is Allan B. Head. The number of Directors constituting the initial Board of Directors shall be twelve (12), and the names and addresses of those who are to serve are:

Edward N. Rodman  
President, North Carolina  
Bar Association

P. O. Drawer 795  
Washington, NC 27889

Walter F. Brinkley  
Immediate Past President  
North Carolina Bar Association

P. O. Box 557  
Lexington, NC 27292

Ralph M. Stockton, Jr.  
President-Elect  
North Carolina Bar Association

P. O. Box 2860  
Winston-Salem, NC 27101

William L. Thorp  
Designee, Board of Governors  
North Carolina Bar Association  
Chairman, Special Committee on  
Indigent Legal Services Delivery  
Systems of the North Carolina  
Bar Association

P. O. Drawer 32  
Rocky Mount, NC 27801

Lindsay C. Warren, Jr.  
Designee, Board of Governors  
North Carolina Bar Association  
Co-Chairman, Special Committee  
on Indigent Legal Services  
Delivery Systems of the North  
Carolina Bar Association

P. O. Box 1616  
Goldsboro, NC 27530

David M. Clark  
Designee, Board of Governors  
North Carolina Bar Association

P. O. Box 1497  
Greensboro, NC 27402

Thorns Craven  
Designee, Board of Governors  
North Carolina Bar Association

202 West Third Street  
Winston-Salem, NC 27101

James D. Little  
Designee, Board of Governors  
North Carolina Bar Association

111 Dick Street  
Fayetteville, NC 28301

Alvin A. London  
Designee, Board of Governors  
North Carolina Bar Association

900 Law Building  
Charlotte, NC 28202

Joseph C. Moore, Jr.  
Designee, Board of Governors  
North Carolina Bar Association

P. O. Box 19207  
Raleigh, NC 27609

Denison Ray  
 Designee, Board of Governors  
 North Carolina Bar Association

P. O. Box 2101  
 Durham, NC 27702

Ann Reed  
 Designee, Board of Governors  
 North Carolina Bar Association

P. O. Box 629  
 Raleigh, NC 27602

# VIII.

The name and address of the incorporator is:

William L. Thorp  
 P. O. Drawer 32  
 Rocky Mount, NC 27801

IN TESTIMONY WHEREOF, I have hereunto set my hand on this  
 the \_\_\_\_\_ day of \_\_\_\_\_, 1976.

NORTH CAROLINA )  
 )  
 FORSYTH COUNTY )

I, \_\_\_\_\_, a notary public,  
 do hereby certify that \_\_\_\_\_  
 personally appeared before me this day and acknowledged the due  
 execution of the foregoing Articles of Incorporation.

Witness my hand and notarial seal, this the \_\_\_\_\_ day  
 of \_\_\_\_\_, 1976.

\_\_\_\_\_  
 Notary Public

My commission expires:  
 \_\_\_\_\_

## BYLAWS

## OF

LEGAL SERVICES OF NORTH CAROLINA, INC.  
(a corporation not for profit)

## ARTICLE I

## NAME AND OFFICE

Section 1. Name. The name of this association is Legal Services of North Carolina, Inc.

Section 2. Office. The principal office of this corporation shall be in Raleigh, North Carolina. The corporation may have offices at such other places within the State of North Carolina as the Board of Directors may from time to time designate.

## ARTICLE II

## PURPOSES

The general nature of the objects and purposes of this corporation shall be:

To provide or help to provide legal services for economically disadvantaged persons and groups throughout the State of North Carolina, provided, however, that local Board of Directors' approval will be obtained prior to commencement of any group or class action;

To promote compliance with and fulfillment of the practicing attorney's Code of Professional Responsibility through the establishment and active support of this corporation and its purposes and by soliciting and encouraging the support of local attorneys and other persons, groups and institutions which share a concern for our indigent citizens and their right to seek and obtain equal access to our legal system;

To attempt to ensure that no person will be denied necessary legal counsel and/or representation for his or her legal needs solely because of the inability to pay for such services;

To establish, conduct, manage, promote, and otherwise support projects to improve community understanding of individual legal rights and responsibilities, and to publicize the availability of legal services by any and all methods consistent with the high ethical standards of the legal profession;

To have and exercise all of the corporate powers provided in Chapter 55A, Nonprofit Corporation Act, General Statutes of North Carolina, and all other powers consistent therewith and necessary and proper to the operation of this corporation.

## ARTICLE III

## MEMBERS

Section 1. The members of this corporation shall be the officers and Board of Governors of the North Carolina Bar Association as the same shall be constituted from time to time.

Section 2. The annual meeting of the members shall be held immediately following the close of the annual meeting of the Board of Governors of the North Carolina Bar Association at 1025 Wade Avenue, Raleigh, North Carolina, 27605, or at such other place either within or without the State of North Carolina as may be designated by the officers of the Board of Governors of the North Carolina Bar Association. The purpose of the annual meeting shall be for the election of the Board of Directors by the members and for the transaction of such other business as may properly come before the meeting. Notice of the time and place of the annual meeting of the members shall be mailed to each member entitled to vote to his or her address as the same appears on the records of the North Carolina Bar Association, at least ten days prior to the meeting, but provision of said written notice may be waived by the members.

Section 3. A special meeting of the members may be held at any time upon the call of the President or by order of the Board of Directors, or a majority thereof, and it shall be the duty of the President to call such a meeting whenever requested to do so by fifty per cent of the members. Written notice of such special meeting shall be mailed to each member at his or her address as the same appears on the records of the North Carolina Bar Association at least five days prior to the meeting, but written notice may be waived by the members.

Section 4. A majority of the members entitled to vote shall constitute a quorum at meetings of the members. If a quorum fails to attend at the time and place of meeting, those who do attend may adjourn from time to time until the meeting shall be regularly constituted and at any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the original meeting. No notice of an adjourned meeting need be given.

Section 5. At such meeting, all questions, unless by the charter, these bylaws, or otherwise by law provided, shall be determined by a majority vote of the members entitled to vote present in person or by proxy; each member shall be entitled to one vote. There shall be no cumulative voting.

Section 6. A member may vote in person or by proxy executed in writing by the member or by his duly authorized attorney in fact. No proxy shall be valid after eleven months from the date of its execution.

## ARTICLE IV

## BOARD OF DIRECTORS

Section 1. Number and Composition. The affairs of this corporation shall be managed and its corporate powers exercised by its Board of Directors. The Board shall consist of fifteen (15) voting members and the President of the North Carolina Bar Association, ex officio. The President of the North Carolina Bar Association shall have a vote in the event of a tie vote at any meeting. Of the voting members, at least nine (9) persons shall be members in good standing of the North Carolina Bar Association and three (3) members shall be persons (or their representatives as may be permitted by provisions of the National Legal Services Corporation Act) eligible for legal services provided or supported, in whole or in part, by the corporation, except that the composition of the initial members of the Board of Directors shall be as provided in Section 2 hereof.

Section 2. Election. The Board of Directors shall be elected by the members of the corporation. Provided, however, that at the time of the incorporation of this corporation its initial Board of Directors shall be the following persons:

Edward N. Rodman  
President, North Carolina Bar Association

Walter F. Brinkley  
Immediate Past President  
North Carolina Bar Association

Ralph M. Stockton, Jr.  
President-Elect  
North Carolina Bar Association

William L. Thorp  
Designee, Board of Governors  
North Carolina Bar Association  
Chairman, Special Committee on  
Indigent Legal Services Delivery Systems  
of the North Carolina Bar Association

Lindsay C. Warren, Jr.  
Designee, Board of Governors  
North Carolina Bar Association  
Co-Chairman, Special Committee on  
Indigent Legal Services Delivery Systems  
of the North Carolina Bar Association

David M. Clark  
Designee, Board of Governors  
North Carolina Bar Association

Thorns Craven  
Designee, Board of Governors  
North Carolina Bar Association

James D. Little  
Designee, Board of Governors  
North Carolina Bar Association

Alvin A. London  
Designee, Board of Governors  
North Carolina Bar Association

Joseph C. Moore, Jr.  
Designee, Board of Governors  
North Carolina Bar Association

Denison Ray  
Designee, Board of Governors  
North Carolina Bar Association

Ann Reed  
Designee, Board of Governors  
North Carolina Bar Association

Section 3. Reconstitution. The initial Board of Directors shall remain in office until either: (1) the effective date of regulations promulgated by the national Legal Services Corporation with respect to the manner of election and composition of recipient governing bodies, or (2) one year from the date of adoption of these Bylaws, whichever comes first, at which time a successor shall be elected in accordance with Sections 1 and 2 hereof, or in compliance with such final regulations as might be inconsistent therewith. Provided, however, that the service of any member of the initial or reconstituted Board of Directors who is a public defender, or is employed by any group, association, or corporation which is eligible to receive funds from this corporation, shall immediately terminate at the time this corporation has any funds available for distribution to any public defender or any such group, association, or corporation.

Section 4. Terms. The term of the initial members of the Board shall be until the date of reconstitution as provided in Section 3 hereof. The terms of the first members of the Board as reconstituted shall be three years for five such members, two years for five other such members, and one year for the remaining five members, as designated by the initial Board which selects them. Thereafter the term of each member of the Board shall be three years, which will be computed from the date of termination of the preceding term. Each member of the Board shall continue to serve until his successor is selected. Any member of the Board selected to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was selected shall be selected for the remainder of such term. No member of the Board shall serve more than two consecutive terms, but any member shall be eligible to serve again at a later date.

Section 5. Qualifications. All Directors shall be residents of the State of North Carolina and be otherwise qualified in accordance with the Articles of Incorporation of this corporation and these Bylaws.



Section 6. Duties of the Board of Directors. Control and Management. The Board of Directors shall have control and general management of the affairs and business of the corporation, and shall determine the policies of the corporation and in general assume responsibility for the guidance of said policies, including the regulation and adoption of such appropriate guidelines and regulations as they deem necessary and proper to carry out their duties, and not inconsistent with these Bylaws, the Articles of Incorporation and the laws of the State of North Carolina. In the determination of such policies the Board of Directors shall not interfere in any way with an attorney in carrying out his professional responsibility to his or her clients as established in the Code of Professional Responsibility of the North Carolina Bar.

Section 7. Directors' Meetings. Regular meetings of the Board of Directors shall be held at least quarterly on the first Friday of March, June, September, and December, if not a legal holiday, or, if a legal holiday, then on the next business day following, at 2 p.m., or at such other date and time as shall be determined by a majority of the members of the Board. Special meetings of the Board may be called by the President at any time, and shall be called by the President and Secretary upon the written request of five (5) Directors. Regular and special meetings shall be held in the State of North Carolina, unless the majority of the members of the Board otherwise determine. Notice of time and place of a regular or special meeting shall be mailed to each Director and ex officio member at least ten days before the date of the meeting or shall be telegraphed or hand delivered at least five days before such date. Any matter properly before the Board may be voted on at a regular meeting; at special meetings only those matters specified in the notice of meeting may be voted on.

Section 8. Quorum. The presence of eight (8) Directors shall constitute a quorum for the transaction of business. Except as otherwise provided by law, or in these Bylaws, the vote of a majority of the Directors present at the time of a vote, provided that a quorum is present at such time, shall be the act of the Board.

Section 9. Voting. At all meetings of the Board of Directors, each Director shall have one vote. There shall be no voting by proxy.

Section 10. Vacancies. Vacancies occurring in the Board of Directors shall be filled as soon as possible for the unexpired term thereof by election by the members of the corporation.

Section 11. Power to Elect Officers. The Board of Directors, at its initial meeting, shall elect a president, vice president, secretary and treasurer. All officers must be Directors of the corporation. The term for such officers shall be one year. In its discretion the Board may combine the offices of secretary and treasurer in the same person. The Board of Directors shall have the power to appoint such other officers as the Board may deem necessary for the transaction of the business of the corporation.

The Board shall have the power to fill in any vacancy in any office.

Section 12. Removal of Directors.

(a) A Director may be removed by a three-fourths majority vote of the members of this corporation.

(b) When a Director shall fail to appear at three consecutive meetings of the Board or at one-half of the meetings held during a two-year period, his membership on the Board of Directors shall automatically terminate, and he shall be so notified by the Secretary in writing. Provided, however, that such Director may, upon his written request therefor, be allowed to appear at the next regular meeting of the Board to request reinstatement, and the Board may, in its discretion, after such appearance by the terminated Director, for good cause, reinstate his membership as a Director.

Section 13. Employees and Agents. The Board of Directors may employ and discharge such employees and agents of the corporation as it may deem necessary. Authority to hire and discharge may be delegated in whole or in part by the Board of Directors to such person or persons as it may designate. In the event that the Board of Directors shall cause to be hired one or more full-time employees, it shall adopt a formal Personnel Policy establishing the terms of employment.

Section 14. Appointment of Executive and Other Committees. The Board of Directors shall appoint an Executive Committee comprised of the four officers and two other directors who shall have and exercise the authority of the Board in the management of the business of the corporation between meetings of the Board. The Board may in its discretion appoint such other committees as it deems necessary. Committees shall have representation by persons eligible for legal services provided or supported, in whole or in part, by the corporation.

Section 15. Compensation. Directors shall be entitled to receive, at appropriate rates prescribed from time to time by the Board, reimbursement for travel, subsistence, and other expenses necessarily incurred in connection therewith. A Director shall not serve the corporation in any other capacity or receive compensation for such services, except as authorized by the Board. In no event shall a Director receive compensation in more than one capacity.

Section 16. Resignation. A Director may resign by giving written notice to the President of the corporation. A resignation shall take effect at the time received by the President unless another time is specified therein, and acceptance of a resignation shall not be necessary to make it effective.

Section 17. Action Without a Meeting. Any action which may be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the Directors.

## ARTICLE V

## OFFICERS

Section 1. Officers. The officers of the Board of Directors shall be the officers of this corporation. They shall consist of a president, vice-president, secretary and treasurer and such other officers as the Board may deem necessary.

Section 2. President. The President shall preside at all meetings of the Board of Directors. He shall have and exercise general charge and supervision of the affairs of the corporation and shall do and perform such other duties as may be assigned to him by the Board of Directors.

Section 3. Vice-President. At the request of the President, or in his absence or disability, the Vice-President shall perform the duties and possess and exercise the powers of the President; and to the extent authorized by law the Vice-President shall have such other powers as the Board of Directors may determine and shall perform such other duties as may be assigned to him by the Board of Directors.

Section 4. Secretary. The Secretary shall keep a complete record of all meetings of the corporation and of the Board and shall have general charge and supervision of the books and records of the corporation. The Secretary shall sign such papers pertaining to the corporation as he may be authorized or directed to sign by the Board. The Secretary shall serve all notices required by law and by these Bylaws and shall make a full report of all matters and business pertaining to his office to the members at the annual meeting. The Secretary shall keep the corporate seal and affix it to all papers requiring a seal. The Secretary shall make all reports required by law and shall perform such other duties as may be required of him by the Board.

Section 5. Treasurer. The Treasurer shall have the custody of all funds, property and securities of the corporation, subject to such regulations as may be imposed by the Board of Directors. The Treasurer shall be required to give bond for the faithful performance of his duties, in such sum and with such surety as the Board of Directors may require. When necessary or proper he may endorse on behalf of the corporation for collection, checks, notes and other obligations and shall deposit the same to the credit of the corporation at such bank or banks or depository as the Board of Directors may designate. The Treasurer shall sign all receipts and vouchers and together with such other officer or officers, if any, as shall be designated by the Board of Directors, he shall sign all checks of the corporation and bills of exchange and promissory notes issued by the corporation, except in cases where the signing and execution thereof shall be expressly designated by the Board of Directors or by these Bylaws to some other officer or agent of the corporation. The Treasurer shall make such payments as shall be necessary or proper to be made on behalf of the corporation. He shall enter regularly on the books of the corporation to be kept by him for the purpose, full and accurate account of all monies and obligations received

and paid by him for or on account of the corporation, and shall exhibit such books at all reasonable times to any director on application at the offices of the corporation. The Treasurer shall, in general, perform all the duties incident to the Office of the Treasurer, subject to the control of the Board of Directors. The Treasurer may delegate any of his duties of a routine or book-keeping nature to any employee, or agent without the approval of the Board. The Board may direct the delegation of any duty of the Treasurer to an employee or agent.

Section 6. Compensation. Officers shall be entitled to receive at appropriate rates prescribed from time to time by the Board, reimbursement for travel, subsistence, and other expenses necessarily incurred in connection with their duties as officers of the corporation.

Section 7. Resignation. Any officer may resign at any time by giving written notice of his resignation to the Board. Such resignation shall take effect at the time received, unless another time is specified therein, and the acceptance of such resignation shall not be necessary to make it effective.

Section 8. Prohibition Against Political Test or Qualification. No political test or political qualification shall be used in selecting, appointing, voting or taking any other personnel action with regard to any officer, agent or employee of the corporation.

## ARTICLE VI

### FISCAL YEAR

The fiscal year of the corporation shall commence on the first day of January and end on the last day of December, or as designated from time to time by the Board of Directors.

## ARTICLE VII

### SEAL

The seal of the corporation shall have the name of the corporation suitably arranged upon a circular seal, as prescribed by law, and said seal shall be in the custody of the Secretary.

## ARTICLE VIII

### AMENDMENT TO BYLAWS

These Bylaws may be amended by a two-thirds majority vote of the members of this corporation entitled to vote present in person or by proxy at the meeting in which the proposed amendment is offered for enactment.

## APPENDIX B

### POOR PERSONS AND ATTORNEYS IN NORTH CAROLINA

#### What "Poor" Means

Approximately 20% of North Carolina's five million people are called "poor" by government standards. The Bureau of the Census bases its definition of poverty on a study by the Social Security Administration.<sup>23</sup> The index is adjusted for such factors as family size and farm and non-farm residence. The Office of Economic Opportunity's poverty guidelines are derived from the same source.<sup>24</sup>

For a family of four living in a non-farm area, the figure used in the 1970 census was an annual family income of \$3,721. The Office of Economic Opportunity periodically revises its guidelines to account for the increase in the cost of living. The latest standard published in March, 1975 raises the income level for a family of four by 35% to \$5,050.

These guidelines define upper limits only. The income of most poor persons falls far below it. The average income of poor families in 1970 was \$2,025, approximately \$1,700 below the threshold level.

The Research Triangle Institute has studied the minimum subsistence level of living for a family of four in North Carolina. This is the income necessary for "a manner of living that provides for maintenance of health and social well-being, the nurture of children and participation in community activities."<sup>25</sup> The net annual income they found required to maintain this standard is approximately \$6,800 in rural areas and \$7,270 in urban ones. This is nearly \$5,000 above the average income of poor families in the state, and \$3,000 above the upper limit of the definition of poverty.

#### Location of the Poverty Population

Over one-half (55%) of the persons in North Carolina live in rural areas. (The Census Bureau describes as "rural" any area with less than 2,500 inhabitants.) One-third of the counties in the state are 100% rural, that is, they contain no population centers larger than 2,500 persons. These counties are almost

evenly split between the coastal plains region and the mountains. Only four are in the piedmont area.

The size and location of the state's rural population is significant as an indicator of where poverty is most severe. The ratio of poor to non-poor persons is 10% higher in rural areas than urban ones. The coastal plains counties contain one-half of the poverty population, as many as the piedmont and mountains combined.<sup>26</sup>

The degree of poverty in North Carolina counties ranges from 9.4% of the population of Catawba County to 46.0% of Northampton County. The seven counties where the proportion of poor to non-poor is over 40% are all located in the coastal plains.

### Distribution of Attorneys

North Carolina has fewer attorneys for its population than any other state in the nation according to 1970 figures. The lack of attorneys is partially related to the fact that there are few large cities in the state. Fifty-two percent of all attorneys in the country practice in cities of 250,000 or more and in 1970 North Carolina had no cities of this size.<sup>27</sup>

The number of persons per attorney in the nation in 1970 was 572, while in North Carolina it was 1,096. Of the 5,034 attorneys practicing in the state in 1973, 72.4% were in private practice. Attorneys in private practice are therefore available to the non-poor persons in the state at an average of one attorney for every 1,158 persons.

The number of attorneys in each county ranges from none in Camden County to 473 in Wake County and 466 in Mecklenburg County.<sup>28</sup> The ratio of persons to attorney is greatest in Currituck County where it is 6,976 persons for one attorney. The seven counties with the fewest attorneys for their population are all classified as 100% rural.

In counties served by legal aid societies there are 4,176 poor persons for every full-time legal aid attorney. This is approximately four times the figure for the number of attorneys in private practice serving the non-poor population. The ratio of poor persons to defender attorneys is only somewhat higher at 5,836. The following chart (table 6) contains more detailed information on the location of the poverty population and attorneys.





TABLE 6  
POOR PERSONS AND ATTORNEYS IN NORTH CAROLINA BY COUNTY AND JUDICIAL DISTRICT

Judicial District	No. of Persons*	% Rural*	No. of Poor Persons*	% of All Persons Who are Poor*	No. of Attorneys**	Persons/Attorney	No. of Legal Aid Attorneys	No. of Defender Attorneys	Poor Persons/Attorney
<u>1st District</u>									
Camden	5,453	100.0	1,385	25.4	0	-	0	AC	-
Chowan	10,764	55.7	3,224	30.0	7	1,537	0	AC	-
Currituck	6,976	100.0	1,600	23.3	1	6,976	0	AC	-
Dare	6,995	100.0	1,125	16.4	9	777	0	AC	-
Gates	8,524	100.0	2,696	32.1	2	4,262	0	AC	-
Pasquotank	26,824	48.3	6,921	26.8	31	865	0	AC	-
Perquimans	8,351	100.0	3,354	40.6	2	4,155	0	AC	-
TOTAL	73,887	74.7	17,285	23.4	52	1,421	0	AC	-
<u>2nd District</u>									
Beaufort	35,980	75.0	10,824	30.3	19	1,894	0	AC	-
Hyde	5,571	100.0	2,339	42.2	3	1,857	0	AC	-
Martin	24,730	73.4	8,555	34.8	16	1,546	0	AC	-
Tyrrell	3,806	100.0	1,702	44.8	2	1,903	0	AC	-
Washington	14,038	66.0	4,055	29.2	7	2,005	0	AC	-
TOTAL	84,125	75.8	27,475	32.6	47	1,790	0	AC	-
<u>3rd District</u>									
Carteret	31,603	72.7	5,621	18.0	26	1,216	0	AC	-
Craven	62,554	44.8	12,746	22.0	39	1,604	0	AC	-
Pamlico	9,467	100.0	2,957	31.2	2	4,734	0	AC	-
Pitt	73,900	50.4	24,552	35.2	55	1,344	0	AC	-
TOTAL	177,524	55.0	45,876	25.8	122	1,455	0	AC	-

\*From 1970 Census

\*\*From North Carolina Legal Directory 1973-1974

AC = Assigned Counsel

<u>Judicial District</u>	<u>No. of Persons</u>	<u>% Rural</u>	<u>No. of Poor Persons</u>	<u>% of All Persons Who are Poor</u>	<u>No. of Attorneys</u>	<u>Persons/Attorney</u>	<u>No. of Legal Aid Attorneys</u>	<u>Defender Attorneys</u>	<u>Poor Persons/Attorney</u>
<u>4th District</u>									
Duplin	38,015	84.9	12,614	33.3	18	2,112	0	AC	-
Jones	9,779	100.0	3,670	37.7	6	1,630	0	AC	-
Onslow	103,126	42.6	16,741	21.7	25	4,125	0	AC	-
Sampson	44,954	84.3	15,157	34.0	30	1,498	0	AC	-
TOTAL	195,874	63.2	48,182	24.6	79	2,479	0	AC	-
<u>5th District</u>									
New Hanover	82,996	31.0	14,838	18.1	90	922	0*	AC	-
Pender	18,146	100.0	6,390	35.6	6	3,024	0	AC	-
TOTAL	101,142	43.3	21,228	20.9	96	1,053	0	AC	-
<u>6th District</u>									
Bertie	20,528	100.0	9,068	44.3	8	2,566	0	AC	-
Halifax	53,884	63.3	20,395	38.7	24	2,245	0	AC	-
Hertford	23,529	65.3	8,110	34.7	16	1,471	0	AC	-
Northampton	24,001	100.0	10,441	46.0	18	1,333	0	AC	-
TOTAL	121,942	77.0	48,014	39.3	66	1,847	0	AC	-
<u>7th District</u>									
Edgecombe	52,341	52.9	17,785	34.3	59	887	0	AC	-
Nash	59,122	67.8	17,767	30.4	58	1,019	0	AC	-
Wilson	57,483	48.9	15,829	28.3	43	1,337	0	AC	-
TOTAL	168,946	56.7	51,381	30.4	160	1,056	0	AC	-
<u>8th District</u>									
Greene	14,967	100.0	5,970	40.4	14	1,069	0	AC	-
Lenoir	55,204	55.0	15,810	30.0	37	1,492	0	AC	-
Wayne	85,408	53.3	21,784	27.2	60	1,423	0	AC	-
TOTAL	155,579	58.4	43,564	28.0	111	1,402	0	AC	-

\*New program just beginning will have 2 attorneys.

Continued...

<u>Judicial District</u>	<u>No. of Persons</u>	<u>% Rural</u>	<u>No. of Poor Persons</u>	<u>% of All Persons Who are Poor</u>	<u>No. of Attorneys</u>	<u>Persons/Attorney</u>	<u>No. of Legal Aid Attorneys</u>	<u>Defender Attorneys</u>	<u>Poor Persons/Attorney</u>
<u>9th District</u>									
Franklin	26,820	89.0	8,733	33.5	13	2,063	0	AC	-
Granville	32,762	67.3	8,892	30.7	8	4,095	0	AC	-
Person	25,914	79.3	6,504	25.2	12	2,160	0	AC	-
Vance	32,691	58.0	9,112	28.3	21	1,557	0	AC	-
Warren	15,810	100.0	6,588	41.8	8	1,976	0	AC	-
TOTAL	133,997	75.5	39,829	29.7	62	2,161	0	AC	-
<u>10th District</u>									
Wake	228,453	24.4	32,969	15.3	473	483	8	AC	4,121
TOTAL	228,453	24.4	32,969	15.3	473	483	8	AC	4,121
<u>11th District</u>									
Harnett	49,667	77.6	12,427	25.7	39	1,274	0	AC	-
Johnston	61,737	77.0	17,556	28.5	35	1,764	0	AC	-
Lee	39,466	62.0	5,908	19.6	24	1,644	0	AC	-
TOTAL	150,870	73.2	35,891	23.8	98	1,539	0	AC	-
<u>12th District</u>									
Cumberland	212,042	23.7	36,271	17.1	116	1,828	0 )	5	8,166
Hoke	16,436	80.6	4,560	27.7	6	2,739	0 )		
TOTAL	228,478	27.7	40,831	17.9	122	1,872	0	5	8,166
<u>13th District</u>									
Bladen	26,477	100.0	9,589	36.5	9	2,942	0	AC	-
Brunswick	24,223	100.0	6,653	27.7	17	1,425	0	AC	-
Columbus	46,937	91.1	15,482	33.3	23	2,041	0	AC	-
TOTAL	97,637	95.7	31,724	32.5	49	1,992	0	AC	-
<u>14th District</u>									
Durham	132,681	24.1	22,685	18.0	170	780	8	AC	2,836
TOTAL	132,681	24.1	22,685	18.0	170	780	8	AC	2,836

Continued...

Judicial District	No. of Persons	% Rural	No. of Poor Persons	% of All Persons Who are Poor	No. of Attorneys	Persons/Attorney	No. of Legal Aid Attorneys	Defender Attorneys	Poor Persons/Attorney
<u>15th District</u>									
Alamance	96,362	47.3	10,442	11.0	67	1,438	0	AC	-
Chatham	29,554	84.1	5,952	20.2	21	1,407	0	AC	-
Orange	57,707	49.7	8,489	14.7	66	874	0*	AC	-
TOTAL	183,623	53.9	24,883	13.6	154	1,192	0	AC	-
<u>16th District</u>									
Robeson	84,842	72.7	32,012	38.2	50	1,697	0	AC	-
Scotland	26,929	67.3	7,793	29.9	9	2,992	0	AC	-
TOTAL	111,771	71.4	39,805	35.6	59	1,894	0	AC	-
<u>17th District</u>									
Caswell	19,055	100.0	4,581	24.4	4	4,764	0	AC	-
Rockingham	72,402	55.2	10,992	15.2	40	1,810	0	AC	-
Stokes	23,782	100.0	4,440	18.8	8	2,973	0	AC	-
Surry	51,415	75.1	9,099	17.8	41	1,254	0	AC	-
TOTAL	166,654	72.8	29,112	17.5	93	1,792	0	AC	-
<u>18th District</u>									
Guilford	288,590	23.8	34,044	12.2	451	640	7	8	2,270**
TOTAL	288,590	23.8	34,044	12.2	451	640	7	8	2,270
<u>19th District</u>									
Cabarrus	74,629	36.0	8,435	11.5	47	1,588	0	AC	-
Montgomery	19,267	100.0	4,541	23.9	5	3,853	0	AC	-
Randolph	76,358	70.2	8,921	11.7	25	3,054	0	AC	-
Rowan	90,035	57.9	11,217	12.8	38	2,369	0	AC	-
TOTAL	260,289	58.3	33,114	12.7	115	2,263	0	AC	-

\*New program just beginning will have 1 attorney.

\*\*4,863 (civil)

4,256 (defender)

Continued...

Judicial District	No. of Persons	% Rural	No. of Poor Persons	% of All Persons Who are Poor	No. of Attorneys	Persons/Attorney	No. of Legal Aid Attorneys	Defender Attorneys	Poor Persons/Attorney
<u>20th District</u>									
Anson	23,488	83.1	8,002	34.5	11	2,135	0	AC	-
Moore	39,048	84.6	9,154	23.9	30	1,302	0	AC	-
Richmond	39,889	66.5	10,172	25.9	25	1,596	0	AC	-
Stanly	42,822	73.9	5,448	12.9	18	2,379	0	AC	-
Union	54,714	74.6	8,642	16.2	25	2,189	0	AC	-
TOTAL	199,961	75.7	41,418	20.7	109	1,835	0	AC	-
<u>21st District</u>									
Forsyth	214,348	30.9	29,975	14.3	316	678	7	AC	4,282
TOTAL	214,348	30.9	29,975	14.3	316	678	7	AC	4,282
<u>22nd District</u>									
Alexander	19,466	100.0	2,496	13.0	4	4,867	0	AC	-
Davidson	95,627	73.1	11,914	12.6	41	2,332	0	AC	-
Davie	18,855	86.6	3,076	16.5	7	2,694	0	AC	-
Iredell	72,197	55.8	9,511	13.3	35	2,063	0	AC	-
TOTAL	206,145	70.8	26,997	13.1	87	2,369	0	AC	-
<u>23rd District</u>									
Alleghany	8,134	100.0	2,420	30.0	3	2,711	0	AC	-
Ashe	19,571	100.0	6,078	31.1	6	3,262	0	AC	-
Wilkes	49,523	93.1	10,906	22.2	28	1,769	0	AC	-
Yadkin	24,599	100.0	4,445	18.3	7	3,514	0	AC	-
TOTAL	101,827	96.6	23,849	23.4	44	2,314	0	AC	-
<u>24th District</u>									
Avery	12,655	100.0	3,580	29.6	6	2,109	0	AC	-
Madison	16,003	100.0	5,377	34.2	3	5,334	0	AC	-
Mitchell	13,447	100.0	4,321	32.1	4	3,362	0	AC	-
Watauga	23,404	62.6	5,703	27.8	9	2,600	0	AC	-
Yancey	12,629	100.0	4,130	33.0	6	2,105	0	AC	-
TOTAL	78,138	88.8	23,111	29.6	28	2,791	0	AC	-

Continued...

Judicial District	No. of Persons	% Rural	No. of Poor Persons	% of All Persons Who are Poor	No. of Attorneys	Persons/Attorney	No. of Legal Aid Attorneys	Defender Attorneys	Poor Persons/Attorney
<u>25th District</u>									
Burke	60,364	71.5	7,243	12.8	29	2,182	0	AC	-
Caldwell	56,699	69.0	8,122	14.4	18	3,150	0	AC	-
Catawba	90,873	57.1	8,397	9.4	58	1,567	0	AC	-
TOTAL	207,936	64.5	23,762	11.4	105	1,980	0	AC	-
<u>26th District</u>									
Mecklenburg	354,656	20.2	43,487	12.5	466	761	10	8	2,416*
TOTAL	354,656	20.2	43,487	12.5	466	761	10	8	2,416
<u>27th District</u>									
Cleveland	72,556	66.4	11,852	16.6	37	1,961	0 )		
Gaston	148,410	39.8	17,489	11.9	74	2,006	0 )	5	6,757
Lincoln	32,680	84.0	4,446	13.7	17	1,922	0 )		
TOTAL	253,646	53.1	33,787	13.3	128	1,982	0	5	6,757
<u>28th District</u>									
Buncombe	145,056	47.7	22,938	16.1	154	942	0	4	5,735
TOTAL	145,056	47.7	22,938	16.1	154	942	0	4	5,735
<u>29th District</u>									
Henderson	42,804	71.6	9,625	22.6	27	1,585	0	AC	-
McDowell	30,648	69.0	5,097	16.8	13	2,358	0	AC	-
Polk	11,735	100.0	2,663	22.9	9	1,304	0	AC	-
Rutherford	47,337	69.8	8,190	17.5	24	1,972	0	AC	-
Transylvania	19,713	72.7	3,240	16.9	13	1,516	0	AC	-
TOTAL	152,237	73.0	28,815	18.9	86	1,770	0	AC	-

\*4,349 (civil)  
5,436 (defender)

Continued...

<u>Judicial District</u>	<u>No. of Persons</u>	<u>% Rural</u>	<u>No. of Poor Persons</u>	<u>% of All Persons Who are Poor</u>	<u>No. of Attorneys</u>	<u>Persons/Attorney</u>	<u>No. of Legal Aid Attorneys</u>	<u>Defender Attorneys</u>	<u>Poor Persons/Attorney</u>
<u>30th District</u>									
Cherokee	16,330	100.0	4,341	26.7	8	2,041	0	AC	-
Clay	5,180	100.0	1,738	33.7	1	5,180	0	AC	-
Graham	6,562	100.0	1,667	25.4	2	3,281	0	AC	-
Haywood	41,710	72.2	7,380	17.9	21	1,986	0	AC	-
Jackson	21,593	100.0	5,507	28.8	10	2,159	0*	AC	-
Macon	15,788	100.0	4,303	27.3	10	1,579	0	AC	-
Swain	7,861	100.0	2,340	29.9	5	1,572	0*	AC	-
TOTAL	115,024	89.8	27,276	23.7	57	2,018	0	AC	-

\*One attorney on the Cherokee Reservation serves members of the tribe in these counties.





## APPENDIX C

PARTICIPATION IN THE ASSIGNED  
COUNSEL SYSTEM

In order to arrive at the number of private attorneys taking assigned counsel cases and the average income received, a sample of 22 counties was reviewed at the Administrative Office of the Courts. Vouchers were examined for Fiscal Year 1973-74 because this was the last complete year for which records were available. The results of the sample are shown in table 7.

The degree of participation varied widely from district to district. Of those examined, the districts containing Wake and Forsyth counties had the lowest percentage of local attorneys accepting assigned counsel cases. The highest was in the 22nd Judicial District (Alexander, Davidson, Davie and Iredell counties) where 85% of the attorneys took assignments. The overall average for the sample counties was 33%, or one attorney out of every three.

The most glaring inequity in the distribution of assigned counsel income occurred in the 7th Judicial District. In these three counties (Edgecombe, Nash and Wilson), four attorneys received 49% of all fees awarded.

The average annual income from assigned counsel cases per attorney was \$1,783. The lowest average incomes were in the most rural districts (\$1,358 in the 2nd District and \$1,257 in the 30th District). The highest was in Mecklenburg County where it was \$2,020. The amount awarded for an individual case ranged from \$25 to over \$8,000 for a first-degree murder trial. The overall average was \$114.

Table 8 is a summary of the number of attorneys within each category of total amount earned. The largest group is those who earned between \$1,000 and \$2,000 in the 1973-74 accounting period. Twenty-seven percent of all participating attorneys fall in this category. The chart shows that 96% of all those accepting assignments earned less than \$5,000.

In general the participation was higher in the more rural districts and lower in the urban areas. This result might be expected since there are fewer attorneys in rural sections to take cases. However, there is also a possibility that attorneys

are less willing to accept appointments in areas where their vouchers are being reduced by the trial court judges. For these same seven districts the vouchers submitted by assigned counsel during February, 1975 (see also Appendix E) were examined to see what changes were made in them. The amount requested was figured on the basis of time submitted for reimbursement at \$20 per hour out of court and \$30 per hour in court. The results shown in Table 9 demonstrate that there is considerable variation across the state in the handling of vouchers. Only 4% were reduced in the 30th District compared with 53% in the 26th. Many were increased as well, as many as 47% in the 30th District.

When the number of attorneys accepting assignments is compared with the percentage of vouchers reduced in their district, there appears to be a relationship between these two factors. (Table 10 gives the figures by district.) A high number of vouchers reduced in a particular district may be a factor in discouraging participation by the private bar.



TABLE 7  
PARTICIPATION OF ATTORNEYS BY COUNTY AND DISTRICT

<u>Judicial District</u>	<u>Cases Handled*</u>	<u>Total Cost</u>	<u>No. of Attorneys in County**</u>	<u>Number Participating</u>	<u>% Participating</u>	<u>Average Annual Fees/Attorney</u>
<u>2nd District</u>						
Beaufort	166	\$ 19,811	19	11	58	
Hyde	26	2,760	3	1	33	
Martin	137	10,130	16	10	63	
Tyrrell	10	825	2	2	100	
Washington	72	5,860	7	5	71	
TOTAL	411	\$ 39,386	47	29	62	\$1,358
<u>7th District</u>						
Edgecombe	325	\$ 31,326	59	23	39	
Nash	325	36,141	58	20	34	
Wilson	428	42,285	43	12	28	
TOTAL	1,074	\$109,751	160	55	34	\$1,995
<u>10th District</u>						
Wake	2,054	\$224,380	473	120	25	\$1,870
<u>21st District</u>						
Forsyth	979	\$133,727	316	80	25	\$1,672
<u>22nd District</u>						
Alexander	134	\$ 14,184	4	4	100	
Davidson	450	54,192	41	34	83	
Davie	74	6,870	8	8	100	
Iredell	414	44,181	35	28	80	
TOTAL	1,072	\$119,427	87	74	85	\$1,614

\*From records at Administrative Office of the Courts

\*\*From North Carolina Legal Directory, 1973-74

Continued...

<u>Judicial District</u>	<u>Cases Handled</u>	<u>Total Cost</u>	<u>No. of Attorneys in County</u>	<u>Number Participating</u>	<u>% Participating</u>	<u>Average Annual Fees/Attorney</u>
<u>26th District</u>						
Mecklenburg	2,830	\$292,945	466	145	31	\$2,020
<u>30th District</u>						
Cherokee	91	\$ 9,111	8	8	100	
Clay	24	1,490	1	1	100	
Graham	30	4,829	2	1	50	
Haywood	263	19,771	21	12	57	
Jackson	76	5,889	10	9	90	
Macon	93	6,970	10	9	90	
Swain	54	5,985	5	3	60	
TOTAL	631	\$ 54,045	57	43	75	\$1,257
GRAND TOTAL	9,051	\$973,661	1,606	546	34	\$1,783

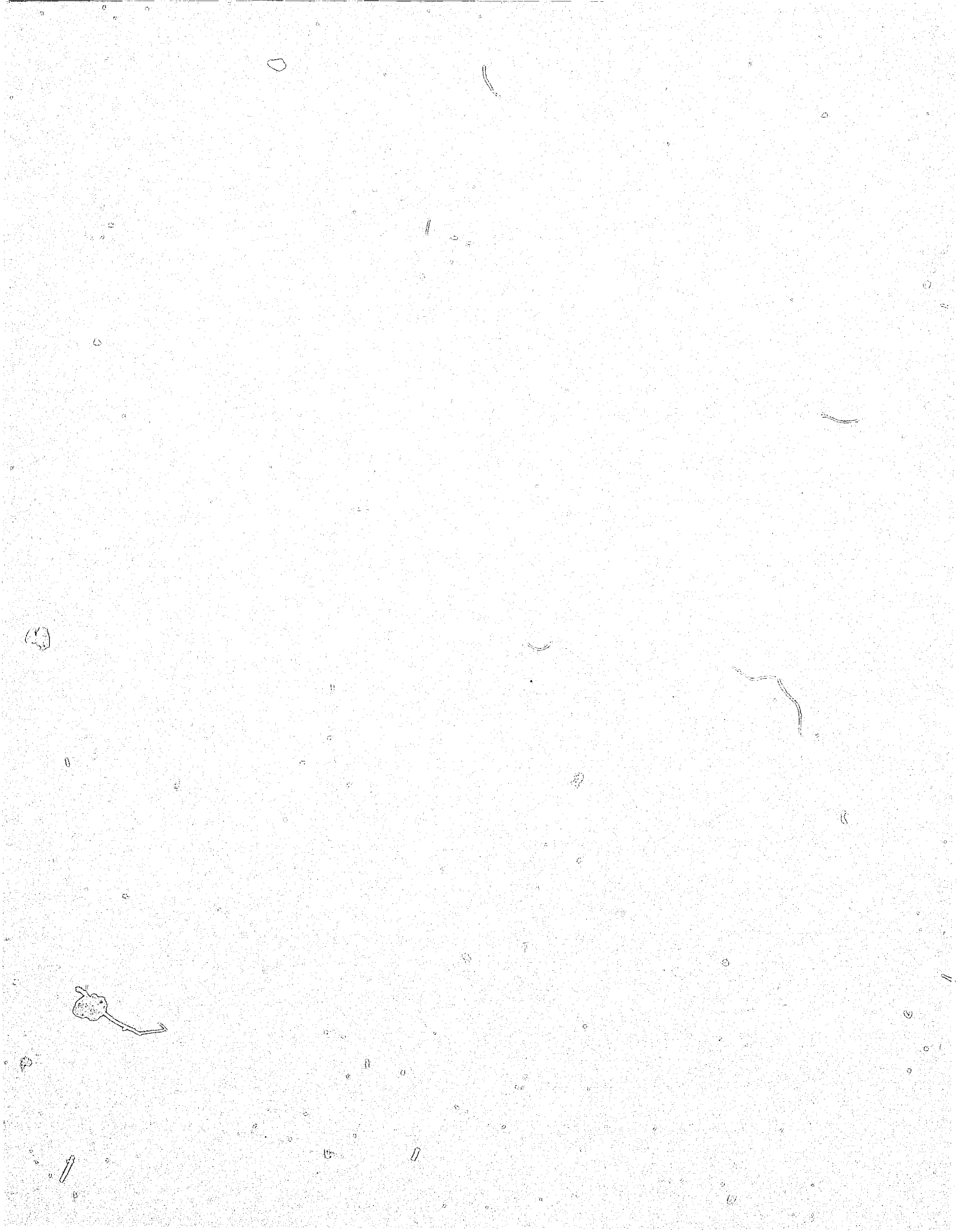




TABLE 8  
ANNUAL INCOME PER PARTICIPATING ATTORNEY

	<u>Number of Attorneys</u>	<u>Percentage of All Participating</u>
\$ 0 - \$ 500	122	22.0
\$ 500 - \$ 1,000	90	17.0
\$ 1,000 - \$ 2,000	147	27.0
\$ 2,000 - \$ 3,000	95	17.0
\$ 3,000 - \$ 4,000	45	8.0
\$ 4,000 - \$ 5,000	25	5.0
\$ 5,000 - \$ 6,000	6	1.1
\$ 6,000 - \$ 8,000	9	1.6
\$ 8,000 - \$10,000	4	0.7
\$10,000 - \$15,000	1	0.2
\$15,000 - \$20,000	1	0.2
Over \$20,000	<u>1</u>	<u>0.2</u>
TOTAL	546	100.0

TABLE 9  
CHANGES MADE IN VOUCHERS SUBMITTED BY ASSIGNED COUNSEL

(In Seven Sample Districts)

February, 1975

District Number	Total Cases	Unchanged		Reduced			Increased		
		Number	%	Number	%	Average Reduction	Number	%	Average Increase
2	49	36	(74%)	9	(18%)	\$116.	4	(8%)	\$77.
7	81	51	(63%)	27	(33%)	51.	3	(4%)	21.
10	263	97	(37%)	88	(33%)	22.	78	(30%)	11.
21	107	30	(28%)	43	(40%)	35.	34	(32%)	32.
22	130	65	(50%)	31	(24%)	44.	34	(26%)	15.
26	264	105	(40%)	141	(53%)	41.	18	(7%)	10.
30	45	22	(49%)	2	(4%)	20.	21	(47%)	10.



TABLE 10  
COMPARISON OF VOUCHER REDUCATION AND  
PARTICIPATION OF PRIVATE BAR

<u>District Number</u>	<u>Percentage Reduced</u>	<u>Percentage of Bar Participating</u>
30	4	75
2	18	62
22	24	85
7	33	34
10	33	25
21	40	25
26	53	31

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## APPENDIX D

## JUDICIAL QUESTIONNAIRE

In order to learn more about the criminal defense system and the operation of legal aid programs in North Carolina, the Special Committee sent a questionnaire to all district and superior court judges in the state. Approximately 70% responded, 75% of the superior court judges and 67% of the district court judges.

Determination of Indigency

With regard to determination of indigency, the vast majority of judges said that this decision is made at the defendant's first appearance before them. The factors most often taken into consideration in deciding whether a person is indigent are cash and liquid assets, ownership or equity in real property, wages or salary, and number of dependents.

The percentage of felony defendants who are found to be indigent varies greatly from district to district. The greatest number of judges felt that between 21% and 40% of these defendants were indigent. However, almost as many chose the 41-60% category and nearly a quarter of those responding answered 61% to 80%. The figures for those accused of misdemeanors were considerably lower with the majority of judges finding 0-20% of the defendants indigent.

Misdemeanors

The judges have encountered few problems in the implementation of the Argersinger decision. Of the problems that were noted, not enough money to finance the provision of counsel was the most frequently mentioned. Added comments included the problem of having to prejudge a case in advance and problems of delay, continuances, and inconvenience to witnesses.

The decision on whether counsel should be provided in misdemeanors is usually made on the basis of whether it is likely that a jail sentence will be imposed. However, the comments under this section show that the criteria for appointing counsel are not uniform. Attorneys are provided in some areas when any sentence is likely to be imposed, in others only for offenses punishable by more than six months, and in one case only for those facing a possible sentence of two years or more. In some districts all





**CONTINUED**

**1 OF 2**

misdemeanor defendants are informed of their right to counsel. In others, the defendant must specifically request counsel.

There is also considerable variation in the number of misdemeanor defendants who waive the right to counsel. While 40% of the judges stated that less than 20% of the defendants waive this right, 13% of those responding felt that it was as high as 80%. Sixty-one percent of the judges make repayment of the cost of representation a requirement of probation in some cases, and an additional 11% require it in all cases.

### Assigned Counsel

The judges use various methods of selecting private attorneys for appointments. Most often the attorneys are chosen from a list provided by the district bar association. The next most frequently used method is selection from a list of all attorneys in the county. A small number pick from attorneys present in the courtroom. Quite a few judges added in the section for comments that they select attorneys out of order to assure that defendants in capital or other serious cases are represented by experienced trial attorneys. Others added that the lists are limited to attorneys who practice criminal law.

Most felt that appointed counsel made contact with the defendant within 10 days of arrest. The figures indicate that this is more likely to be the case in felonies than in misdemeanors.

The representation provided by assigned counsel was considered equal to or better than the prosecutor with regard to criminal trial experience, investigation and knowledge of recent appellate and U.S. Supreme Court decisions. The greatest number of judges felt that between 76 to 100% of assigned counsel were experienced criminal defense attorneys. However, over a quarter said it was only 26 to 50%, and a similar percentage chose 51-75%.

Sixty-six percent of the judges said that the quality of representation provided by assigned counsel was good, and an additional 17% said it was excellent.

### Public Defenders

With regard to public defenders, only 42% of the judges felt that they were familiar enough with one of the public defender offices to answer questions regarding their operation. The majority were superior court judges since their mobility gives them knowledge of a number of different districts.

The first three questions in this section dealt with whether there is a sufficient number of attorneys and investigators in these districts and whether they are adequately paid. Between 40 and 50% of those responding said yes to all of these questions. However, it is interesting to note that this is one of the few areas in which district court judges differed from the superior court judges to any appreciable extent. A higher percentage of

district court judges felt that the defender offices were understaffed and underpaid.

The next five questions concerned the time of first contact with client and the quality of representation provided compared with the prosecutor and privately retained counsel. These are identical to questions asked regarding assigned counsel and provide some interesting comparisons.

The judges rated public defenders twice as likely in felony cases to have first contact with their client within one day of arrest (22% of the time compared with 10% for assigned counsel). There is an even greater disparity in misdemeanor cases where the judges said that public defenders contacted their clients within one day after arrest 16% of the time versus 4% for assigned counsel.

The following chart shows a comparison of how the judges rated the quality of representation provided under the two systems:

	<u>Assigned Counsel</u>	<u>Public Defender</u>
Equal or superior to prosecutor in terms of:		
a. criminal trial experience	75%	93%
b. investigation	63%	84%
c. knowledge of recent appellate and U.S. Supreme Court decisions	74%	98%
Equal or superior to privately retained counsel	67%	76%
Quality of representation overall (good or excellent)	85%	91%

An additional question dealt with the defenders' professional reputations within the legal community. Eighty-eight percent rated their reputation as good or excellent.

The judges were next asked to choose the ideal system of providing counsel for indigent defendants. Forty-four percent chose a publicly salaried full-time defender as the ideal method. The assigned counsel system as it presently operates was chosen by 25% of those responding. Twelve percent picked assigned counsel selected by an administrator and another 12% chose a combination of assigned counsel and public defender.

It is interesting to note that the percentage of judges favoring the public defender system was the same whether their jurisdiction is urban or rural. Also, the judges that are familiar with a particular public defender office picked this method 13% more often. The judges not familiar with public defenders were 25% more likely to choose the assigned counsel system either selected by a judge or an administrator.

In the section for comments most recommended public defenders for urban areas and assigned counsel in less populous or multi-county districts. Several persons said that they preferred having the private bar handle these cases but felt that the high cost would eventually lead to a public defender system. Still another judge said he preferred public defenders but felt it would be too expensive in a multi-county district.

### Civil Cases

A final section of the questionnaire dealt with legal aid in civil cases. Sixty-three percent of the judges said poor persons are rarely or never provided with an attorney in their area. An additional 22% felt it did not often happen. Of the eighteen judges who responded that poor persons are often or always provided with counsel, fifteen are from districts which are currently served by legal aid societies.

The next question regarding the method most often used by poor persons to obtain legal assistance shows that most areas do not have a referral system and that usually a poor person must contact a private attorney on his own. A panel of volunteer attorneys is the method most rarely used.

Concerning the ideal system or providing civil services, 24% chose a legal aid society staffed by full-time attorneys. Twenty-one percent preferred a panel of volunteer attorneys from the private bar and another 21% chose a combination of legal aid attorneys and volunteers. The judges who said that they were familiar with the operation of one of the existing legal aid societies were 16% more likely to choose this as the ideal method. Fifty-three percent of the judges from the most urban districts preferred legal aid societies compared with only 15% of those in the most rural areas.

Several persons added comments on this section as well. Some feared abuse of a legal aid system by persons who could afford a private lawyer. A few judges felt that the public should not pay for counsel in civil cases because this is a luxury unless faced with the possibility of imprisonment.

Finally, the 35% of the judges who said that they were familiar with the operation of one of the seven legal aid offices in North Carolina were asked to comment on them.

When asked whether the legal aid offices had enough staff attorneys, those who answered this section split almost evenly into "yes," "no," and "don't know." Eighty-two percent rated legal aid lawyers less experienced in trial work than privately retained counsel. Sixty-three percent said they were equally as prepared as private counsel, and the same number said that they were equally or more knowledgeable than privately retained counsel regarding recent appellate decisions.

Concerning the professional reputation of legal aid attorneys, 42% of those responding to this question said this was good or excellent. Fifty percent rated the quality of representation provided as good or excellent.

## JUDICIAL QUESTIONNAIRE

## DETERMINATION OF INDIGENCY

1. Which statement below best describes the earliest time that the determination of indigency is normally made in felony cases and/or in misdemeanor cases?

<u>Time</u>	<u>Felonies</u>	<u>Misdemeanors</u>
1. Before arrest (line ups, interrogations, etc.)	<input type="checkbox"/> _____	<input type="checkbox"/> _____
2. Immediately following arrest	<input type="checkbox"/> 4.4%	<input type="checkbox"/> _____
3. In Jail	<input type="checkbox"/> 14.9%	<input type="checkbox"/> 9.1%
4. At first appearance before a judge	* <input type="checkbox"/> 70.2%	* <input type="checkbox"/> 80.0%
5. At preliminary hearing	<input type="checkbox"/> 7.9%	<input type="checkbox"/> 1.8%
6. At arraignment	<input type="checkbox"/> 1.8%	<input type="checkbox"/> 1.8%
7. After first appearance but before trial	<input type="checkbox"/> 0.9%	<input type="checkbox"/> 4.5%
8. At trial	<input type="checkbox"/> _____	<input type="checkbox"/> 2.7%
9. Other _____	<input type="checkbox"/>	<input type="checkbox"/>
10. Not applicable	<input type="checkbox"/>	<input type="checkbox"/>

2. Please indicate how important each factor listed below is in determining if an accused is indigent.

<u>Factor</u>	<u>Important</u>	<u>Not Important</u>
1. Cash and liquid assets	* <input type="checkbox"/> 99.1%	<input type="checkbox"/>
2. Ownership or equity in real property	* <input type="checkbox"/> 93.7%	<input type="checkbox"/>
3. Wages or salary	* <input type="checkbox"/> 95.5%	<input type="checkbox"/>
4. Debts	<input type="checkbox"/> 74.8%	<input type="checkbox"/>
5. Ownership of automobile	<input type="checkbox"/> 80.6%	<input type="checkbox"/>
6. Number of dependents	* <input type="checkbox"/> 94.4%	<input type="checkbox"/>
7. Defendant's statement on the Affidavit of Indigency	<input type="checkbox"/> 87.3%	<input type="checkbox"/>
8. Defendant's ability to make bail	<input type="checkbox"/> 45.2%	<input type="checkbox"/>
9. Nature of offense charged	<input type="checkbox"/> 50.5%	<input type="checkbox"/>
10. Probable expense of legal services	<input type="checkbox"/> 39.4%	<input type="checkbox"/>
11. Other _____	<input type="checkbox"/>	<input type="checkbox"/>

3. Approximately what percentage of all defendants are indigent?

<u>Percentage</u>	<u>Felonies</u>	<u>Misdemeanors Entitled to Counsel</u>
1. 0 - 20%	<input type="checkbox"/> 8.7%	* <input type="checkbox"/> 43.9%
2. 21 - 40%	* <input type="checkbox"/> 33.0%	<input type="checkbox"/> 32.7%
3. 41 - 60%	<input type="checkbox"/> 31.1%	<input type="checkbox"/> 17.3%
4. 61 - 80%	<input type="checkbox"/> 23.3%	<input type="checkbox"/> 5.1%
5. 81 - 100%	<input type="checkbox"/> 3.9%	<input type="checkbox"/> 1.0%

**MISDEMEANORS**

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4. In attempting to meet the requirements of the decision of the U.S. Supreme Court in Argersinger v. Hamlin what problems if any have you encountered? (Please check all applicable responses.)

- 17.1% ☐ 1. Not enough money to finance the provision of counsel  
1.9% ☐ 2. Not enough lawyers to handle all the cases requiring counsel  
7.6% ☐ 3. Not enough judges to handle the present volume of cases.  
\*64.8% ☐ 4. No significant problems have been encountered  
8.6% ☐ 5. Other (Please specify) \_\_\_\_\_

5. What is the present practice in your court regarding the determination of which misdemeanor defendants are entitled to counsel? (Please check only one box below)

- 20.4% ☐ 1. If the offense is punishable by a jail sentence, counsel IS provided for indigent defendants.  
0.9% ☐ 2. Counsel IS provided only if the prosecutor seeks to have a jail sentence imposed.  
\*55.6% ☐ 3. Counsel IS provided only if I believe that a jail sentence is likely to be imposed if defendant is found guilty.  
2.8% ☐ 4. Counsel IS provided if, after the prosecutor and I confer, it is decided that a jail sentence will be imposed if defendant is found guilty.  
13.9% ☐ 5. All indigent misdemeanor defendants are provided with counsel regardless of the possibility of a jail sentence.  
\_\_\_\_\_ ☐ 6. Counsel IS NOT provided for any indigent misdemeanor defendants.  
6.5% ☐ 7. Other (Please specify) \_\_\_\_\_

6. Approximately what percentage of indigent misdemeanor defendants who are entitled to counsel waive this right?

- \*40.2% ☐ 1. 0 - 20%  
23.5% ☐ 2. 21 - 40%  
19.6% ☐ 3. 41 - 60%  
12.7% ☐ 4. 61 - 80%  
3.9% ☐ 5. 81 - 100%

**COST OF REPRESENTATION**

7. Do you make repayment of the cost of representation a requirement of probation?

- 11.3% ☐ 1. Yes, in all cases  
\*60.9% ☐ 2. Yes, in some cases  
27.8% ☐ 3. No

**ASSIGNED COUNSEL**

8. If you select the attorney to be appointed to represent an indigent defendant, how often do you use the following methods of selection? (Please check one response for each item.)

**Method of Selection****Very Often****Often****Not Often****Never**

1. From a list of all attorneys in the county  
2. From a list of attorneys provided by the District Bar Association  
3. From my own personal list of attorneys  
4. From among attorneys present in the court room  
5. From among attorneys present in the courtroom who have their names on file with me  
6. Other (Please specify) \_\_\_\_\_

- \* ☐ 43.4% ☐ 13.2% ☐ 19.7% ☐ 23.7%  
\* ☐ 69.1% ☐ 9.6% ☐ 6.4% ☐ 14.9%  
☐ 1.6% ☐ 1.6% ☐ 12.7% ☐ 84.1%\*  
☐ 6.7% ☐ 18.7% \* ☐ 62.7% ☐ 12.0%  
☐ 8.5% ☐ 14.1% ☐ 36.6% ☐ 40.8%\*  
☐ ☐ ☐ ☐

9. At what point in time does an assigned counsel usually have first contact with an indigent defendant? (Check one box for felony cases and/or one box for misdemeanor cases.)

<u>Time</u>	<u>Felony</u>	<u>Misdemeanor</u>
1. Before arrest (line ups, interrogations, etc.)	<input type="checkbox"/> 0.9%	<input type="checkbox"/> _____
2. At police station immediately after arrest	<input type="checkbox"/> 0.9%	<input type="checkbox"/> 0.9%
3. Within one day after arrest	<input type="checkbox"/> 8.0%	<input type="checkbox"/> 2.8%
4. 1 - 10 days after arrest	* <input type="checkbox"/> 71.7%	* <input type="checkbox"/> 53.8%
5. 11 - 30 days after arrest	<input type="checkbox"/> 6.2%	<input type="checkbox"/> 19.8%
6. Longer than 30 days after arrest (Please specify _____ days.)	<input type="checkbox"/> 0.9%	<input type="checkbox"/> 0.9%
7. Don't know	<input type="checkbox"/> 10.6%	<input type="checkbox"/> 20.8%
8. Not applicable	<input type="checkbox"/> 0.9%	<input type="checkbox"/> 0.9%

10. On the whole, based on your observation of the assigned counsel appearing before you, how does the assigned counsel compare with the prosecutor?

a. In terms of criminal trial experience, more often than not, are assigned counsel

- 19.0% 1. ☐ More experienced than the prosecutor? 22.4% 3. ☐ Less experienced than the prosecutor?  
 \*56.0% 2. ☐ Equally experienced as the prosecutor? 2.6% 4. ☐ Don't know

b. Likewise, on the whole, how would you compare assigned counsel with prosecutor in terms of investigation? More often than not, is the assigned counsel's case

- 27.2% 1. ☐ More adequately investigated than the prosecutor's case?  
 \*36.0% 2. ☐ As equally investigated as the prosecutor's case?  
 32.5% 3. ☐ Less adequately investigated than the prosecutor's case?  
 4.4% 4. ☐ Don't know

c. On the whole, how would you compare assigned counsel with prosecutors in terms of knowledge of recent appellate and U.S. Supreme Court decisions in criminal cases? More often than not, are assigned counsel

- 15.8% 1. ☐ More knowledgeable than the prosecutor?  
 \*57.9% 2. ☐ Equally as knowledgeable as the prosecutor?  
 22.8% 3. ☐ Less knowledgeable than the prosecutor?  
 3.5% 4. ☐ Don't know

11. In your opinion would you say that the defense presented by assigned counsel is on the average, superior, equal to, or inferior to the defense presented by privately retained counsel?

- \*67.3% 1. ☐ Superior to retained counsel  
 30.1% 2. ☐ Equal to retained counsel  
 2.7% 3. ☐ Inferior to retained counsel  
 4. ☐ Don't know

12. Approximately what percent of the assigned counsel representing indigent defendants are experienced criminal defense attorneys?

- 0.9% 1. ☐ None  
 8.7% 2. ☐ 0 - 25%  
 27.0% 3. ☐ 26 - 50%  
 27.8% 4. ☐ 51 - 75%  
 32.2% 5. ☐ 76 - 100%  
 3.5% 6. ☐ Don't know



13. All things considered, how do you feel about the quality of representation given to indigent defendants by assigned counsel?

1. ☐ Excellent 2. ☐ Good 3. ☐ Fair 4. ☐ Poor 5. ☐ Don't know

18.6%

\*66.1%

15.3%

**PUBLIC DEFENDERS**

14. Are you familiar with the operation of one of the three public defender offices in North Carolina (in the 12th, 18th and 28th Judicial Districts)?

1. ☐ Yes

2. ☐ No

41.9%

\*58.1%

IF YOU ANSWERED "NO" PLEASE SKIP QUESTIONS 15 - 22 AND GO ON TO QUESTION 23.

15. In your opinion does the defender office have an adequate number of attorneys to effectively handle the indigent caseload assigned to it?

1. ☐ Yes

2. ☐ No

3. ☐ Don't know

\*48.9%

27.7%

23.4%

16. Is the number of investigators in the defender office adequate to properly investigate all cases handled by the defender office?

1. ☐ Yes

2. ☐ No

3. ☐ Not applicable

4. ☐ Don't know

40.4%

17.0%

\*42.6%

17. In your opinion, are defender personnel

1. ☐ overpaid?

2. ☐ adequately paid?

3. ☐ underpaid?

4. ☐ Don't know

\*51.1%

21.3%

27.7%

18. At what point in time does the defender usually have first contact with an indigent defendant? (Check one box for felony cases and/or one box for misdemeanor cases.)

Time of First Client Contact

Felony

Misdemeanor

1. Before arrest (line ups, interrogation, etc.)

☐ 2.4%

☐ 2.6%

2. At police station immediately after arrest

☐ 2.4%

☐ 2.6%

3. Within one day after arrest

☐ 16.7%

☐ 10.5%

4. From one - ten days after arrest

\* ☐ 47.6%

\* ☐ 42.1%

5. From eleven - thirty days after arrest

☐ 4.8%

☐ 10.5%

6. Longer than thirty days after arrest (Specify \_\_\_\_ days)

☐ \_\_\_\_\_

☐ \_\_\_\_\_

7. Don't know

☐ 26.2%

☐ 31.6%

8. Not applicable

☐

☐

19. On the whole, based upon your observation of the performance of the defender(s) appearing before you, how does the defender compare generally with the prosecutor?

a. In terms of criminal trial experience more often than not, is the defender

20.9% 1. ☐ more experienced than the prosecutor?

\*72.1% 2. ☐ as equally experienced as the prosecutor?

7.0% 3. ☐ less experienced than the prosecutor?

b. Likewise, on the whole how would you compare the defender with the prosecutor in terms of investigation?

More often than not, is the defender's case

23.3% 1. ☐ more adequately investigated than the prosecutor's case?

\*60.5% 2. ☐ as equally investigated as the prosecutor's case?

16.3% 3. ☐ less adequately investigated than the prosecutor's case?

c. On the whole how would you compare the defender with the prosecutor in terms of knowledge of recent appellate and U.S. Supreme Court decisions in criminal cases?

More often than not, is the defender

20.9% 1. ☐ more knowledgeable than the prosecutor?

\*76.7% 2. ☐ as equally knowledgeable as the prosecutor?

2.3% 3. ☐ less knowledgeable than the prosecutor?

20. In your opinion would you say that, on the average, the defense presented by defenders is superior, equal, or inferior to that presented by privately retained counsel?

8.9% 1. ☐ Superior to retained counsel \*66.7% 2. ☐ Equal to retained counsel  
20.0% 3. ☐ Inferior to retained counsel 4.4% 4. ☐ Don't know

21. How would you characterize the defender's professional reputation within the legal community?

1. ☐ Excellent 41.9% 2. ☐ Good \*46.5% 3. ☐ Fair 4.7% 4. ☐ Poor \_\_\_\_\_ 5. ☐ Don't know 7.0%

22. All things considered, how do you feel about the quality of representation given to indigent defendants in your court by the defender?

1. ☐ Excellent 37.8% 2. ☐ Good \*53.3% 3. ☐ Fair 4.4% 4. ☐ Poor \_\_\_\_\_ 5. ☐ Don't know 4.4%

23. What do you consider to be the IDEAL method of providing counsel for indigent defendants?

24.5% 1. ☐ Assigned counsel selected by judge on a case-by-case basis  
12.3% 2. ☐ Assigned counsel selected by an administrator on a case-by-case basis from a qualified panel of attorneys  
\*44.3% 3. ☐ A publicly salaried full-time defender  
0.9% 4. ☐ A publicly salaried part-time defender  
12.3% 5. ☐ A combination of assigned counsel and publicly salaried defender  
5.7% 6. ☐ Other (please specify) \_\_\_\_\_

#### CIVIL CASES.

24. Are poor persons in your area provided with an attorney if they cannot afford one in a civil case?

1. ☐ Always 2.6% 2. ☐ Often 13.2% 3. ☐ Not Often 21.9% 4. ☐ Rarely 24.6% 5. ☐ Never \*37.7%

25. By which of the following methods does a poor person in your area obtain legal assistance?

Method	Very Often	Often	Not Often	Never
1. Referral by bar association	<input type="checkbox"/> 13.4%	<input type="checkbox"/> 7.5%	<input type="checkbox"/> 47.8%	<input type="checkbox"/> *31.3%
2. Contacting a private attorney on his own	<input type="checkbox"/> *37.5%	<input type="checkbox"/> 34.1%	<input type="checkbox"/> 23.9%	<input type="checkbox"/> 4.5%
3. Panel of volunteer attorneys	<input type="checkbox"/> 5.5%	<input type="checkbox"/> 3.6%	<input type="checkbox"/> 16.4%	<input type="checkbox"/> *74.5%
4. Legal aid society staffed by full-time lawyers	<input type="checkbox"/> 24.0%	<input type="checkbox"/> 18.7%	<input type="checkbox"/> 5.3%	<input type="checkbox"/> *52.0%
5. Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

26. What do you consider to be the IDEAL method of providing counsel for poor persons in civil matters?

\*24.1% 1. ☐ Legal aid society staffed by full-time lawyers.  
14.3% 2. ☐ Assignment of cases to a panel of private lawyers similar to the assigned counsel system in criminal cases.  
9.8% 3. ☐ Allowing each person who is certified as eligible to select a private lawyer who is then reimbursed for his services.  
21.4% 4. ☐ A panel of volunteer attorneys who would rotate responsibility within the private bar.  
21.4% 5. ☐ A combination of full-time legal aid lawyers and volunteers from the private bar.  
8.9% 6. ☐ Other \_\_\_\_\_

27. Are you familiar with the operation of one of the seven legal aid offices in North Carolina (in Charlotte, Cherokee, Durham, Greensboro, High Point, Raleigh and Winston-Salem)?

1. ☐ Yes

34.8%

2. ☐ No

\*65.2%

IF YOU ANSWERED "YES" PLEASE GO ON TO QUESTIONS 28-33.

IF YOU ANSWERED "NO" YOU HAVE COMPLETED THE QUESTIONNAIRE.

28. In your opinion does the legal aid office in your area have an adequate number of attorneys to effectively handle its caseload?

1. ☐ Yes \*35.9%

2. ☐ No 30.8%

3. ☐ Don't know. 33.3%

29. In terms of trial experience, more often than not are legal aid lawyers

1. ☐ more experienced than privately retained counsel?

10.5% 2. ☐ equally experienced as privately retained counsel?

\*81.6% 3. ☐ less experienced than privately retained counsel?

7.9% 4. ☐ Don't know.

30. On the whole, how would you compare legal aid lawyers with privately retained counsel in terms of preparation?  
More often than not is the legal aid lawyer's case

1. ☐ more adequately prepared than privately retained counsel's case?

\*63.2% 2. ☐ as adequately prepared as privately retained counsel's case?

21.1% 3. ☐ less adequately prepared than privately retained counsel's case?

15.8% 4. ☐ Don't know.

31. In terms of knowledge of recent appellate and U. S. Supreme Court decisions in civil cases, more often than not are legal aid lawyers.

15.8% 1. ☐ more knowledgeable than privately retained counsel?

\*47.4% 2. ☐ equally as knowledgeable as privately retained counsel?

26.3% 3. ☐ less knowledgeable than privately retained counsel?

10.5% 4. ☐ Don't know.

32. How would you characterize the professional reputation of legal aid lawyers within the legal community?

1. ☐ Excellent

5.3%

2. ☐ Good

\*36.8%

3. ☐ Fair

34.2%

4. ☐ Poor

13.2%

5. ☐ Don't know.

10.5%

33. All things considered, how do you feel about the quality of representation provided by legal aid lawyers in your county?

1. ☐ Excellent

2.8%

2. ☐ Good

\*47.2%

3. ☐ Fair

38.9%

4. ☐ Poor

2.8%

5. ☐ Don't know.

8.3%



## APPENDIX E

COMPARISON OF ASSIGNED COUNSEL AND  
PUBLIC DEFENDERS  
FEBRUARY, 1975

In order to compare the two systems of providing legal services to indigent defendants now operating in North Carolina, the cases handled by assigned counsel and public defenders were examined during the month of February, 1975. The information for appointed counsel was taken from the vouchers submitted for payment to the Administrative Office of the Courts. The three public defender offices then in operation filled out the same form for each case they closed during the month.

Table 11 shows the types of cases handled by assigned counsel, broken down by percentage of the total caseload, average fee awarded and percentage of the total fees. As would be expected, felonies make up the largest category of cases handled -- 35% of the total number and 58% of the fees awarded. The average felony case was handled for a cost of \$204. Misdemeanors were close behind at 34% of the total number of cases, but they accounted for only 25% of the fees.

The least amount of time spent on any type of case was on involuntary commitments. These cases cost an average of \$50 each. The highest fees were for appeals. The average fee was \$693 for the 20 appeals taken during the month.

Table 12 shows similar information for the three public defender offices. The figures indicate that there was considerable variation in the types of cases handled by each office. Fifty-seven percent of the cases in Fayetteville were felonies compared with 19% in Asheville. However, the percentages for all three offices combined were remarkably similar to those for appointed counsel:

	<u>Assigned Counsel</u>	<u>Public Defenders</u>
Felony	35.2%	39.0%
Misdemeanor	33.8%	28.8%
Invol. Commitment	19.6%	20.4%
Juvenile	8.2%	8.2%
Probation Violation	1.3%	1.6%
Appeal	0.7%	0.4%
Other	1.2%	1.6%

With regard to cost per case for the public defenders (table 13), the overall cost was \$94, compared with \$124 for appointed counsel. In order to arrive at the real cost of each defender office, an overhead rate of 20% of the total budget, or 25% of the personnel costs recorded at the Administrative Office of the Courts, was used to estimate the cost of rent, supplies and other operating expenses. The 20% figure was arrived at by looking at the budgets of other small to medium-sized defender offices in the country.

The cost per case in the individual districts ranged from \$78 in Greensboro to \$146 in Fayetteville. For the most part, this difference is explained by the types of cases handled. As shown in table 11, a felony requires approximately four times the effort as an involuntary commitment, using the size of fees awarded as an indicator. If the number of cases handled by each office is weighted in this manner, assigning four times more weight to a felony as an involuntary commitment, two times more for a misdemeanor, twelve times more for an appeal, for example, the costs of the three offices were similar. A unit of representation by this method costs \$47 in Fayetteville, \$45 in Asheville and \$31 in Greensboro.

To see if there is a difference in the quality of representation provided under the two systems, the disposition of cases and the sentences received during the month were compared.

With regard to disposition of cases (table 14), those charged with felonies were found guilty as charged 25% of the time when represented by public defenders, compared with 32% of those represented by appointed counsel. An identical percentage under both systems (73%) were found guilty of some crime when charged with a felony. The difference between the two systems was greater in the handling of misdemeanors. Fewer clients of public defenders were found guilty as charged (43% compared to 52%) and guilty of a lesser offense (19% compared with 23%). The assigned counsel came out better in juvenile cases with 77% found guilty as opposed to 93% of those represented by public defenders.

Finally, a comparison of sentences received (table 15) showed that in felony cases, defendants represented by appointed counsel were almost twice as likely to get active sentences as those represented by public defenders (72% compared with 39%). The misdemeanor defendants received active sentences in 50% of the cases handled by assigned counsel, as opposed to 30% of public defender cases. There was less difference in handling of juveniles and involuntary commitments. Juveniles represented by assigned counsel were given active sentences 33% of the time, compared with 27% for public defenders. The clients of assigned counsel were committed involuntarily in 63% of cases while those represented by public defenders were committed only 46% of the time.

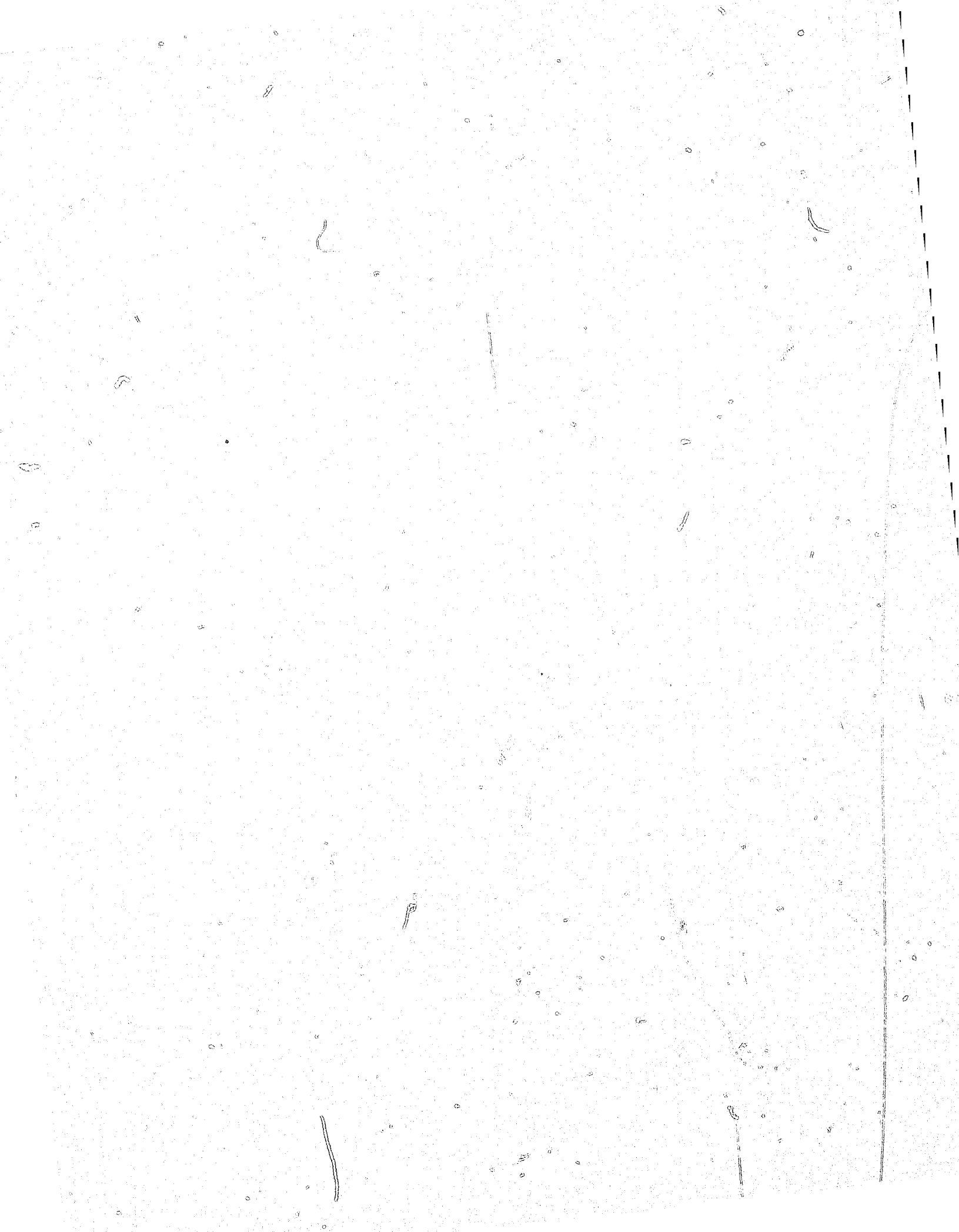


TABLE 11  
CASES HANDLED BY ASSIGNED COUNSEL

February, 1975

<u>Type of Case</u>	<u>No. of Cases Handled</u>	<u>% of Total Cases</u>	<u>Total Fees Awarded</u>	<u>Average Fee Awarded</u>	<u>% of Fees Awarded</u>
Felony	984	35.2	\$200,960	\$204	58.4
Misdemeanor	943	33.8	92,559	98	26.1
Involuntary Commitment	547	19.6	27,185	50	7.7
Juvenile	230	8.2	12,994	57	3.7
Violation of Probation	35	1.3	3,560	102	1.0
Appeal	20	0.7	13,866	693	2.2
Other	34	1.2	3,269	92	0.9
TOTAL	2,793	100.0	\$354,393	\$127	100.0



TABLE 12  
CASES HANDLED BY PUBLIC DEFENDERS

February, 1975

<u>Judicial District</u>	<u>Felony</u>	<u>Misdemeanor</u>	<u>Involuntary Commitment</u>	<u>Juvenile</u>	<u>Probation Violation</u>	<u>Appeal</u>	<u>Other</u>	<u>Total</u>
<u>12th District</u> <u>(Fayetteville)</u>								
Number	58	18	15	6	2	2	0	101
Percentage	57.4%	17.8%	14.9%	5.9%	2.0%	2.0%	-	100.0%
<u>18th District</u> <u>(Greensboro)</u>								
Number	117	79	56	19	4	0	7	282
Percentage	41.5%	28.0%	19.9%	6.7%	1.4%	-	2.5%	100.0%
<u>28th District</u> <u>(Asheville)</u>								
Number	24	50	33	17	2	0	1	127
Percentage	18.9%	39.4%	25.9%	13.4%	1.6%	-	0.8%	100.0%
<u>TOTAL:</u>								
Number	199	147	104	42	8	2	8	510
Percentage	39.0%	28.8%	20.4%	8.2%	1.6%	0.4%	1.6%	100.0%

TABLE 13  
COST PER CASE FOR PUBLIC DEFENDER OFFICES  
February, 1975

<u>Judicial District</u>	<u>Total No. of Cases</u>	<u>Cost of Operation</u>			<u>Cost Per Case</u>
		<u>Personnel</u>	<u>20% Overhead</u>	<u>Total</u>	
<u>12th District</u> <u>(Fayetteville)</u>	101	\$11,823	\$2,956	\$14,779	\$146
<u>18th District</u> <u>(Greensboro)</u>	282	17,704	4,426	22,130	78
<u>28th District</u> <u>(Asheville)</u>	127	<u>8,991</u>	<u>2,248</u>	<u>11,239</u>	<u>88</u>
	510			\$48,148	\$ 94

TABLE 14  
DISPOSITION OF CASES

February, 1975

	<u>Felony</u>		<u>Misdemeanor</u>		<u>Juvenile</u>	
	Number	%	Number	%	Number	%
<u>Assigned Counsel</u>						
Guilty as Charged	319	32.2%	492	52.2%	177	77.0%
Guilty of a Lesser Offense	406	41.0%	214	22.7%	-	-
Not Guilty	26	2.6%	87	9.2%	8	3.4%
Nol Pros or Dismiss	240	24.2%	150	15.9%	45	19.6%
<u>Public Defender</u>						
Guilty as Charged	50	25.1%	63	42.8%	39	92.9%
Guilty of a Lesser Offense	96	48.2%	27	18.4%	-	-
Not Guilty	2	1.0%	17	11.6%	-	-
Nol Pros or Dismiss	51	25.6%	40	27.2%	3	7.1%

TABLE 15  
COMPARISON OF SENTENCES RECEIVED

February, 1975

	<u>Assigned Counsel</u>			<u>Public Defender</u>		
	<u>Active</u>	<u>Suspended</u>	<u>Not Stated</u>	<u>Active</u>	<u>Suspended</u>	<u>Not Stated</u>
<u>Felony</u>						
Number	247	98	384	50	80	16
Percentage	71.6%	28.4%	-	38.5%	61.5%	-
<u>Misdemeanor</u>						
Number	183	186	337	24	57	9
Percentage	49.5%	50.5%	-	29.6%	70.4%	-
<u>Juvenile</u>						
Number	47	97	33	8	22	9
Percentage	32.6%	67.4%	-	26.7%	73.3%	-
<u>Involuntary Commitment</u>	<u>Committed</u>		<u>Not Committed</u>	<u>Committed</u>		<u>Not Committed</u>
	Number	342	205	48	56	
	Percentage	62.5%	37.4%	46.2%	53.8%	



## APPENDIX F

## INMATE QUESTIONNAIRE

One of the reasons for the Committee's combined study of civil and criminal legal services was to determine if there is a relationship between these two types of problems. Does the inability to consult an attorney with a civil problem contribute to the likelihood of criminal behavior? The best method of gathering information on this subject was to interview those whom the courts had already found guilty of crimes to see if they had more civil legal problems before they were arrested than the population as a whole. The easiest way to reach these persons was in the prison system. A total of 222 interviews were carried out in two institutions in the state--Central Prison in Raleigh and a minimum security institution in Bunn. Central Prison processes incoming inmates convicted of felonies from sixteen counties in the north-central area of the state. The Bunn prison is an intake center for misdemeanors from the same counties. The interviews were conducted along with other diagnostic tests given to incoming inmates.

The questionnaire used was divided into two parts. The first section was a series of questions designed to inventory the types of legal problems which are usually handled by legal aid programs. The second section dealt with various aspects of the inmate's criminal case.

Part 1

In order to be able to determine whether those convicted of crimes are indeed more likely to have civil legal problems, it was necessary to have figures to compare to the general population. The American Bar Association has recently issued the preliminary results of their study of the Legal Needs of the Public.<sup>29</sup> The Committee's questionnaire was designed so that the questions duplicated those asked in the ABA study. Table 16 shows a comparison of the ABA's results for the general population with the inmates' responses in five major categories.

The inmates did in fact have a higher number of problems of all types. The most significant differences occurred in problems concerning personal property and credit and in marital problems.

TABLE 16  
COMPARISON OF LEGAL PROBLEMS ENCOUNTERED

	<u>ABA Survey*</u>	<u>Inmates</u>
<u>Rental Housing</u> (attempted eviction or other serious dispute with landlord) Questions 1 and 2	2%	5%
<u>Personal Property and Credit</u> (repossession, garnishment of wages, bankruptcy) Questions 3, 4, 5, 6, 7 and 9	6%	22%
<u>Job Discrimination</u> Question 8	2%	7%
<u>Government Agencies</u> (difficulty obtaining municipal services, dispute with local, state or federal government) Questions 10, 11, 12 and 13	7%	12%
<u>Marital Problems</u> (divorce, separation, problems with child support or custody) Questions 14 and 15	2%	15%
TOTAL	19%	61%

\*From The Legal Needs of the Public, American Bar Foundation.

It is difficult to quantify exactly how the availability of legal aid services would have affected their later criminal behavior. There is the problem of whether those with legal problems would have been eligible for legal aid services if a program had been available in their area. Even considering just those whom the court had found indigent is not an accurate method since there are no uniform standards across the state to guide the judges who make this determination. Also, the legal aid programs currently in existence have varying formulas for determining eligibility. Finally, there was no indication of the financial status of those who did not have an attorney. Clearly, however, most of those interviewed could not have afforded to pay an attorney in a civil case, even though an exact percentage could not be determined.

Only six percent of those interviewed had consulted with an attorney for any of the problems mentioned, most often in domestic matters, and of those, only half paid a fee of any kind. The others primarily talked with acquaintances. Only one person had gone to a legal aid program. It must be concluded that there is a possible relationship between the incidence of civil legal problems and the commission of crimes. The availability of legal aid services could do much to alleviate the problem of the increasing crime rate.

## Part 2

The second section of the questionnaire was added to get the inmate's view of the handling of his criminal case. The responses that were easily quantifiable are entered on the attached questionnaire. When a particular question elicited different responses from the group at Central Prison than those at Bunn, the answers are shown separately, as well as an overall figure.

Well over half of those interviewed were repeat offenders and the figure was much higher (83%) for those convicted of misdemeanors. This may be explained by the fact that many of the inmates in the Bunn institution were charged with offenses related to consumption of alcohol.

The overall average of time spent in jail before trial or other disposition was 59 days--77 for those convicted of felonies and 18 for misdemeanors. Only 40% of those interviewed were released on bail.

There was also a difference in the two institutions regarding whether the inmates were represented by attorneys. Ninety-seven percent of those at Central had attorneys, compared with only 71% of those at Bunn. However, those that did have attorneys at Bunn were more likely to have court-appointed counsel. Three-quarters of the misdemeanor inmates had attorneys provided by the state, compared with two-thirds of those convicted of felonies.

There were virtually no public defenders included in the court-appointed attorneys because the north-central region of the state does not have any public defender offices.



One of the most startling results of the questionnaire was the average time elapsed between arrest and first contact with an attorney. The overall figure was 25 days according to information provided by the inmates. There is a good possibility that the time may have become exaggerated in prisoners' minds since many of them spent this time in jail, and there was no way of verifying the information they provided. However, the average figure is also somewhat misleading. In table 17, the time of first contact is broken down into categories from 1 day to 50 days or more. The chart demonstrates that over half saw their attorney within 10 days or less. The average figure is distorted therefore by the group that waited 50 days or more--16% of those interviewed.

On the average the inmates saw their attorney four times in the process of preparation and disposition of their cases. Of the following questions regarding the attorneys' activities on behalf of their clients the most striking aspect of the responses, particularly with regard to plea negotiations, was the lack of understanding on the part of the inmates as to what was happening to them and what kind of sentence to expect.

Finally, the inmates were asked to rate their attorneys overall as to what kind of job they did. The results are given in more detail in the questionnaire attached. Overall the answers are fairly evenly divided from worst possible job to the best he could do. Those at Bunn did, however, have a somewhat higher opinion of the work done by their attorney than those at Central.

It is interesting to compare the answers to this question with (1) how much time elapsed before talking with their attorney and (2) whether the attorney was court appointed or paid by the inmate. There does appear to be a positive relationship between the time of first contact and the inmate's opinion of the attorney's work. Those who picked the worst two categories as an overall rating of the job done waited almost two times longer than the average to talk with their attorney. However, there was virtually no difference in the ratings for court-appointed and client-paid counsel. There was an even distribution of bad and good judgments in the two categories.

TABLE 17  
FIRST CONTACT WITH ATTORNEY

<u>Number of Days After Arrest</u> <u>Within</u>	<u>Percentage of Responses</u>		
	<u>Central</u>	<u>Bunn</u>	<u>Overall</u>
1 day	10	16	12
5 days	17	27	20
10 days	26	6	21
20 days	11	8	11
30 days	9	22	13
40 days	1	0	1
50 days or more	17	12	16
Other responses	9	8	9

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## INMATE QUESTIONNAIRE

PART I

DURING THE YEAR BEFORE YOU WERE ARRESTED:

1. Did any landlord try to evict you?

2% Yes                      98% No

If yes, describe problem:

2. Did you have any other serious disagreement or difficulty with any landlord about the condition of the rented property, about the services he was to provide, or about your responsibilities or obligations as a tenant?

3% Yes                      97% No

If yes, describe problem:

3. Did you make a major purchase--such as a refrigerator, car, or furniture--and have a serious disagreement with the seller over the quality or condition of the goods purchased, or other promises he made in connection with these goods?

4% Yes                      96% No

If yes, describe problem:

4. Did you have any serious disagreement or difficulty with a creditor, such as a bank or finance company, about the amount owed, or your obligation to pay, or his responsibilities?

5% Yes                      95% No

If yes, describe problem:

5. Did anyone try to repossess any property--such as a refrigerator, car, or furniture--from you?

6% Yes                      94% No

If yes, describe problem:

6. Did anyone try to garnish or attach your wages?

0% Yes 100% No

If yes, describe problem:

7. Did you have any other serious difficulty collecting pay any employer owed you?

6% Yes 94% No

If yes, describe problem:

8. Did you believe you were denied a job (or promotion in your job) or fired because of your race, sex, age, nationality, or religion?

7% Yes 93% No

If yes, describe problem:

9. Did you go through bankruptcy?

0.5% Yes 99.5% No

If yes, describe problem:

10. Did you have serious difficulty obtaining municipal services --such as police or fire protection, trash collection, street repairs, traffic controls, or other services like these?

2% Yes 98% No

If yes, describe problem:

11. Did you have serious difficulties or a dispute with any municipal or county agency--like the building inspector, Board of Education, housing authority, or other agency like these?

1% Yes 99% No

If yes, describe problem:

12. Did you have serious difficulties or a dispute with any state agency--like the state welfare department, food stamp agency, the state department of labor, the motor vehicles department, or any other state agency or department like these?

6% Yes 94% No

If yes, describe problem:

13. Did you have serious difficulties or a dispute with a federal agency--such as the Veterans' Administration, the Internal Revenue Service, Social Security, or any other agency like these?

3% Yes 97% No

If yes, describe problem:

14. Were you divorced or separated?

14% Yes 86% No

If yes, describe problem:

15. If you were divorced, did the court decree require payment of alimony or child support?

3% Yes 12% No 85% Not Applicable

If yes, did you have any serious difficulties or disagreements with your former spouse about payment or receipt of alimony or child support, or about custody of children?

16. Did you go to a lawyer to help you with any of these problems?

6% Yes 94% No

If yes, which problems?

17. Did he charge a fee? 3% Yes 3% No 94% Not Applicable  
If not, why was that--was he a legal aid lawyer or was it for some other reason?

PART II

1. What are you charged with?

2. Have you ever been convicted before?

68% Yes

32% No

(Central - 62%)

(Bunn - 83%)

If yes, how much time elapsed between the arrest for the charge you are now serving time for and your most recent previous conviction?

AFTER ARREST FOR THE CHARGE YOU ARE NOW SERVING TIME FOR:

3. How long did you spend in jail before trial?

Average: 59 days

(Central - 77 days)

(Bunn - 18 days)

4. Were you released on bail? 40% Yes 60% No

5. Did you have a lawyer to represent you? 89% Yes 11% No

(Central - 97%)

(Bunn - 71%)

6. If you did have a lawyer, did you pay him or did the court appoint him?

24% paid

65% appointed 11% No Lawyer

7. If he was appointed, was he a private lawyer or a public defender?

63% private lawyer

2% public defender 35% Not Applicable

8. When did you first talk with him? (How many days after arrest?)

Average: 25 days

9. How many times did you see your lawyer?

Average: 4 times

10. Did he investigate any of the facts of your case or talk to witnesses?

30% Yes 41% No 15% Don't Know 14% No Answer

11. Did all the witnesses that you asked to have at your trial appear?

15% Yes 13% No 72% Not Applicable or  
None Requested

If not, did your lawyer tell you why they were not present?

12. Did you have a trial? 27% Yes 70% No (Central - 33%)  
(Bunn - 16%)

If so, did your lawyer explain to you what was going to happen at the trial?

13. If there was a plea negotiation what were you told about it?

14. Overall, would you rate him as having done:

	<u>Overall</u>	<u>Central</u>	<u>Bunn</u>
(a) the worst possible job	13%	14%	8%
(b) a bad job	26%	30%	16%
(c) not good, not bad	19%	18%	23%
(d) a good job	30%	25%	45%
(e) the best job he could	12%	13%	8%

## APPENDIX G

OTHER RECOMMENDATIONS CONCERNING  
THE CRIMINAL JUSTICE SYSTEMAppellate Courts

In accordance with the American Bar Association Standards for Criminal Justice, Appellate Review of Sentences, the subcommittee recommends that the Court of Appeals be empowered to review the disposition following conviction of defendants. This review of sentences should be provided to those who plead guilty and not guilty. For a person convicted and sentenced after trial, the question of sentencing should be raised on appeal along with other issues of the case or as alternative issue. In the instance of guilty pleas and where desired upon conviction by a jury, the sole question of sentencing should be a matter subject to review by the Court of Appeals.

Recommendations of ABA Standard 2.3 should govern the record on appeal, and ABA Standards 3.1 through 3.4 should govern the scope of the review including the duties of the reviewing court, powers of the reviewing court, and the limitation on available dispositions.

The ABA Standards relative to the appellate review of sentences explain the advantages to appellate review of sentencing, including correcting excessive (as opposed to illegal) sentences, the facilitation of rehabilitation, the promotion of respect for law, the development of a rational and consistent approach to the sentencing problem, and a recognition that this process would help to eliminate the situation where appellate courts sometimes tend to review sentences by finding reversible errors in the trial when the basic reason for the appeal is the sentence itself.

The Standards recognize the fact that the basic reason behind many appeals is dissatisfaction over the sentence, and suggest that permitting review of the sentence will have the effect of focusing the contest on what in many cases is the only real issue. It is further believed that this process will actually decrease the workload of the appellate courts and at the same time will encourage rather than discourage pleas of guilty in proper cases, since the defendant will know that should he believe the sentence is unfair, he will have the right to have an appellate review of the sentence itself.



Another procedure that is recommended for the Court of Appeals is that in instances where the defense attorney believes there is clearly reversible error in a completed trial, a stipulated record of the relevant part of the trial record should be sent immediately to the Court of Appeals for review of the particular issue. If, on the basis of the alleged error, the Court of Appeals does in fact find reversible error, then the case should be reversed and remanded. If the Court of Appeals does not find error, the defendant should be allowed to proceed as in a normal appeal.

It is believed that this procedure will accomplish two functions. First, in cases where the appeal is well taken, the defense, prosecution, and court will have been spared the necessity of preparing, briefing and reviewing a record of the entire case. In instances where the appeal is rejected by the court, the attorney will be in a better position to properly advise his client as to the practicality and advisability of going forward with the appeal, and in many instances experience in jurisdictions with this type of appellate process indicates that no further appeal will be taken. This procedure then should serve to expedite appellate caseload and to lighten appellate caseload.

### Reducing Trial Court Caseload

#### a. Prosecutor's Screening Function

(The following information was extracted from The Prosecutor's Screening Function: Case Evaluation and Control, National District Attorneys Association and the National Center for Prosecution Management.)

The discretionary power to charge is formally recognized by the American Bar Association's standards on prosecution and defense functions: "The decision to institute criminal proceedings should be initially and primarily the responsibility of the prosecutor...the prosecutor is not obliged to present all charges which the evidence might support. The prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute, notwithstanding that evidence may exist which would support a conviction."<sup>30</sup>

This report recommends screening as an important and necessary function of the district attorney. "Screening may be defined as a process whereby a prosecuting attorney examines the facts of a situation presented to him, and then exercises his discretion to determine what further action, if any, should be taken."<sup>31</sup> In simple terms this requires that before a warrant is issued, the prosecutor must approve the issuance of the warrant. Screening occurs at some process in a criminal case by the prosecutor taking the form of a reduced plea, voluntary dismissal, trial, etc. This report recommends that screening should occur at the earliest point, that is, before a warrant is issued. It further recommends that screening should be the responsibility of the district attorney and should be performed in his office.

The American Bar Association also suggests that

...vesting the primary responsibility for the decision to prosecute in the prosecutor's office requires that he establish orderly procedures for the screening of cases initiated by the police.... This specialization of the function is particularly effective where the prosecution office places these screening functions in the hands of staff lawyers whose familiarity with trial and appellate problems<sup>32</sup> gives them a broad base for evaluating cases.

The following recommendations suggest the organization and responsibility of the screening unit in the district attorney's office:

One of the most able and experienced assistants in the office should head the screening unit. The district attorney must then delegate adequate authority and assign full responsibility to the screening supervisor for the necessary decisions on cases reviewed.

An intelligent decision regarding whether and/or what to charge cannot be made unless the screening attorney understands the factual basis of the police officer's request for prosecution. Only when the prosecutor recognizes this and exercises his authority to withhold charges when necessary information is missing, will that problem be alleviated....

When the screening attorney decides that further investigation is necessary, he should require that it be completed prior to the filing of the formal charges. The prosecutor's file should contain the screening assistant's impressions of the evidence and also identify likely legal problems that may arise.

The screening attorney should be responsible for insuring that the witness list is complete and accurate. The screening attorney should also determine which witnesses will be needed for the various pre-trial proceedings in the case. Whenever possible, consideration should be given to including tentative plea possibilities in the file at this very early stage....

In exercising his discretionary power the screening assistant must realize that he is fulfilling a quasi-judicial function and therefore initially does not act as an advocate for either side. Only

after he has made the decision to charge does his role revert to that of advocate for the prosecution.

In determining whether to exercise the power to charge, many considerations will be present, but four are of fundamental significance: (1) Is the nature of the crime a serious threat to the community? (2) Is the defendant potentially a serious threat to the community? (3) What are the probabilities of conviction? (4) What alternatives to prosecution are available?

First offenders obviously should be considered candidates for non-criminal disposition. The district attorney and those assigned to screen should be thoroughly familiar with, and explore the availability of, all non-criminal disposition programs of rehabilitation available in the community, whether they be formal or informal.

Rigid or inflexible guidelines are not the key to successful screening....When a screening attorney decides not to charge, or puts a case into a diversionary program of some kind, that fact and the reasons for the action should be formally reported in writing to the screening supervisor.<sup>33</sup>

The recommendations mentioned above are similar to those already in practice in the federal court system. In addition, California, Michigan, and Wisconsin have enacted statutes requiring the district attorney's approval before criminal prosecution can be commenced. It is believed that this procedure saves the court, prosecutors, witnesses, and the state time and money by eliminating a substantial number of cases due to lack of evidence or for policy reasons before a warrant is even issued.

In the annual report of the Administrative Office of the Courts, 1974, of the 1,066,712 cases disposed of, 464,851 were by waiver, and 193,136 were disposed of under a category headed "Otherwise," most of which were nol prosses. Although a number of the nol prosses were in consideration for pleas of guilty on other cases, a large percentage were the direct result of a lack of evidence. Screening could have eliminated the bulk of the latter type cases. The same situation existed for the superior court division, where 44,700 cases were disposed of; 22,379 were by pleas of guilty, and 18,797 (42%) were disposed of under the heading "Other" most of which involved nol prosses.

In the Committee's study of the disposition of cases handled by assigned counsel and public defenders in February, 1975 (see Appendix E) the figures in table 14 show the nol pros or dismissal rate for various types of proceedings. In felonies an average of 25 percent of the cases were nol prossed or dismissed during that month.

## b. Pre-Trial Diversion

The concept of pre-trial diversion has been adopted in several jurisdictions throughout the United States. The subcommittee recommends that pre-trial diversion programs be established in North Carolina. The constitutionality of such diversionary programs has been upheld. These programs will undertake to screen first offender misdemeanants and persons charged with less serious felonies prior to their first court date and to place selected offenders in a program that includes counseling and the utilization of existing community resources to meet the particular needs of the individual.

Persons charged with certain offenses such as public drunkenness, prostitution, traffic violations, non-support, and worthless check violations could be excluded from consideration. Any participant in the diversionary program who is rearrested during the period of supervision would be prosecuted upon the initial charge; also, if the diversionary offender were arrested within a twelve-month period immediately following termination of the diversionary program for the same offense then the original charge would be reopened. The period of supervision, including initial screening, verification and evaluation procedures, resource contacts, follow-up reports, and final discharge would cover approximately six months.

Such a program would help to reduce the enormous workload of the judicial system and to provide an alternative within the criminal justice system to processing an increasing number of offenders. In the several jurisdictions in this country where a pre-trial diversion program has been established it is significant to note that the rate of recidivism among first offenders has diminished.

## c. De-Criminalization of Motor Vehicle Laws

Over the past decade, the number of traffic violations has grown rapidly, due largely to increasing numbers of automobiles and drivers, and to a growing concern for law enforcement and highway safety. Traffic cases clog the calendars of many of the lower courts, and rising caseloads have led to a breakdown in the prompt and judicious handling of both criminal and traffic cases. Because of the backlog of cases in the lower courts, courts are often forced to respond by processing traffic offenses in a hasty, ill-considered manner. Not only are many citizens turned off by what they see, but also traffic safety suffers through excessive delays in clearing the roads of demonstrably unsafe drivers and applying disciplinary or rehabilitative measures.

One response to these problems would be to establish an administrative board for handling less serious moving and non-moving infractions. The criminal court would retain jurisdiction over all traffic violations considered more serious and criminal, such as vehicular homicide, driving while intoxicated, reckless driving, and leaving the scene of an accident. With this organization, the less serious proceedings would be civil in nature without the possibility of a jail sentence. This system would eliminate

the need for involving the criminal court, and would simplify the entire adjudication process. The National Advisory Commission on Criminal Justice Standards and Goals has recommended that most traffic violation cases be made infractions subject to administrative disposition.<sup>34</sup>

The administrative adjudication bureau should be set up under the Department of Motor Vehicles, and the central office would be located in Raleigh. At the central office, the adjudication process would begin with the receipt of complaint document (ticket) issued by the law enforcement officer. The basic information of these documents would be entered in the Department of Motor Vehicles computerized data base. If appropriate, a hearing would be held. If the motorist is dissatisfied, an appeal would be possible. When a case is closed, the central office staff would update its records, processes and accounts for all fines, and maintain compliance data on other types of sanctions, such as license suspensions and revocations.

As an example of this operation, if a person were issued a ticket, he could plead guilty, guilty with an explanation, or not guilty. In the case of a guilty plea, the motorist would simply mail in the citation with a prescribed fine to the central office. At the time of the issuance of the citation, the motorist should be made fully aware of consequences of a plea of guilty to that offense such as license suspension or revocation. If the motorist wishes to plead guilty with an explanation, he would appear in person before the district court judge and be given approximately five minutes to present an explanation. After listening to the motorist and reviewing his past driving record, the judge would be allowed to impose a lesser sanction than that prescribed by law but no greater sanction. If the person wishes to plead not guilty he would appear in district court before the judge for a hearing at the date and time which had been previously scheduled by the police officer, based on the availability of courtrooms and the police officer's schedule. In such cases, if the judge entered a verdict of guilty in the case, the motorist would be allowed to appeal the case to superior court.

By creating a system in which the less serious traffic offenses are de-criminalized and handled through an administrative board, criminal court congestion would be greatly reduced. Moreover, by permitting motorists to plead and pay fines by mail, the adjudication process would be made more convenient and there would be considerably less time between citation and case disposition. Finally, by allowing for administrative processing of the less serious traffic offenses the cost to the state should be substantially lower than the use of the criminal courts for such cases.

(Most of the suggestions incorporated in this paper were taken from The National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistant Administration, United States Department of Justice.)

## NOTES

1. U.S. Department of Commerce, Bureau of the Census, 1970 Census of Population, General Social and Economic Characteristics, Series PC(1)-C35 (1972), p. 35-222.

2. Social Services Amendments of 1974. 42 U.S.C. 1397.

3. Leonard H. Goodman and Margaret H. Walker, The Legal Services Program: Resource Distribution and Low Income Population, Bureau of Social Science Research (1975), p. 38.

4. From the Annual Report of the Administrative Office of Courts 1971-74 and figures supplied by the director's office for 1974-75.

5. Members of the 1969 Courts' Commission were J. Ruffin Bailey, Chairman, and J. J. Harrington, Sneed High, Herbert L. Hyde, Wilbur M. Jolly, Karl W. McGhee, James B. McMillan, J. D. Phillips, H. H. Rountree, W. Marcus Short, J. Eugene Snyder, H. P. Taylor, Jr., Earl W. Vaughn, Lindsay C. Warren, Jr. and A. A. Zollicoffer, Jr.

6. From remarks to the annual meeting of the North Carolina State Bar in Pinehurst, October 17, 1975.

7. J. Valley Rachal, Elizabeth H. Rooks and Paul F. Mulligan, Cost of Living Study to Determine the Minimum Subsistence Level for a Family of Four in North Carolina, Research Triangle Institute (1974), p. 13.

8. See American Bar Association Formal Opinion 334 (Aug. 10, 1974).

9. National Center for State Courts, Implementation of Argersinger v. Hamlin: A Prescriptive Program Package (1974), p. 12. "Based upon our study, a statewide public defender agency is highly recommended as a model in structuring a public defender system. Such a structure could include a central appellate section for the entire state, and utilize the skills of specialized public defenders as necessary."

10. Proceedings of the National Defender Conference (May 14-16, 1969), p. 164. (Remarks of Charles L. Decker, Director of the National Defender Project). "The proceedings of this conference have made it clear that every state should have an organization at the state level which would be headed by a man whose title would be that of defender general or director of defense."



11. National Advisory Commission on Criminal Justice Standards and Goals, Task Force Report on the Courts (1973), p. 284. Standard 13.16: "...Each state should establish its own defender training program to instruct new defenders and assigned panel members in substantive law procedure and practice."

National Legal Aid and Defender Association, The Other Face of Justice -- A Report of the National Defender Survey (1973), p. 69. "The day has long since passed when a law degree and a license to practice, in themselves, qualify a person as a criminal defense attorney. As a recent study of assigned counsel representation showed, over forty percent of the criminal appeals before the Virginia Supreme Court of Appeals during the October 1970 Term were affirmed without consideration of constitutional issues because of a failure to make proper objections at trial."

12. National Defender Conference, p. 25. "Criminal law is in a state of constant change and refinement. With skilled appellate advocates available to distill the issues quickly and to draw on the collective knowledge of the attorneys in the office, the problem of full and effective representation on appeal could be efficiently solved at a minimum cost. Even if such an office did not handle all indigent appeals it could be the repository of knowledge and practical experience to which any practitioner appointed in such a case could turn."

Ibid, p. 157. (Remarks of Honorable William M. McAllister, Supreme Court of Oregon) "My assignment has been to report to you about our rather unique program in Oregon where we have a state public defender who represents indigent defendants only at the appellate level in original criminal appeals and in post conviction proceedings to the Supreme Court of Oregon. ...From the outset the defender made himself easily available for consultation with all the prison inmates, about ninety percent of whom are indigent. A conference was held by the public defender with each of these inmates and the practice of conferring with all prisoners requesting interview is still continuing. I am happy to report that...the number of (post conviction) petitioners filed has diminished to a marked degree....The number of appeals from post conviction hearings in the trial court has declined in like proportion....You can imagine what a relief it is to our court to have a flood of pro se petitions reduced to a mere trickle of fifteen appeals per year handled and represented by highly skilled appellate counsel. These cases present important constitutional questions, but the issues are well defined. Frivolous issues are eliminated, and the cases are adequately and expertly briefed and argued. The fine record established by the public defender is due in large measure to his ability to convince most of the inmates that they have no adequate or even arguable grounds for post conviction relief....I think that those figures demonstrate that the public defender has been able to obtain the confidence and respect of the prison inmates and that they have respect for this judgment."

13. Implementation of Argersinger, p. 41. "The administration of the centralized assigned counsel system should rest with the administrator of indigent defense assisted by the advice of a

standing committee of the commission established to oversee the program. The administrator should have flexibility to do any and all things necessary to assure the efficient and effective operation of the system."

14. Chief Justice Sharp. "Improvements can be made now in the amount of time which attorneys are required to wait in court. Better calendar management by the district attorneys can reduce this waiting time and thus reduce the amount of time charged by attorneys."

15. National Advisory Commission, p. 282. Commentary to Standard 13.15: "Effective implementation of an assigned counsel system requires an up-to-date list of qualified attorneys who are willing to accept appointments....Compiling and maintaining the list should involve more than the mechanical task of putting together names. Minimum experience in criminal litigation should be required, and the attorneys on the list might approximately be categorized according to their level of experience."

16. See Ethical Considerations 5-14 through 5-20, Code of Professional Responsibility of the North Carolina State Bar.

17. Boston University Center for Criminal Justice, The Right to Counsel -- Argersinger v. Hamlin, An Unmet Challenge, (p. 7 of interim synopsis) "To ensure both quality defense and proper political attention, it is critically important to involve as many members of the private bar as possible in the defense system. The most effective and cost-efficient approach--both in terms of individual defense and law reform--is to bring the private bar into the system through an organization established to provide back-up support, training, adequate remuneration, and equitable assignments. For most jurisdictions, the Center recommends the establishment of a mixed system, whereby public defenders and the private bar share total caseload."

18. See also N.C.G.S. 7A-451.

19. N.C.G.S. 15A-601.

20. This formula is based substantially on the one used in the District of Columbia and reproduced in the Implementation of Argersinger, p. 78.

21. N.C.G.S. 7A-455.

22. N.C.G.S. 7A-467 currently gives the public defender the power to make assignments in his district.

23. 1970 Census, App-29.

24. Community Services Administration, "CSA Income Poverty Guidelines (Revised)," CSA Instruction 6004-1g (March 26, 1975), p. 1.

25. Cost of Living Study, p. 5.



26. North Carolina Department of Social Services, "Poverty: Facts About the Poor People of North Carolina" (1972), p. 21.

27. David H. Stuart, The Requirements for and Availability of Lawyers in North Carolina, 1970-1980, Research Triangle Institute (1974), p. 10-13.

28. Legal Directories Publishing Company, Inc., North Carolina Legal Directory, 1973-1974.

29. Barbara A. Curran and Francis O. Spalding, The Legal Needs of the Public, American Bar Foundation (1974), p. 64-65 and p. 136-168.

30. National District Attorneys Association and the National Center for Prosecution Management, The Prosecutor's Screening Function: Case Evaluation and Control (1973), p. 44.

31. Ibid.

32. American Bar Association Project on Standards for Criminal Justice, The Prosecution Function and the Defense Function (1971), p. 84.

33. Prosecutor's Screening Function, p. 46-48.

34. National Advisory Commission, p. 168.