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A REPORT AND EVALUATION

on

PUBLIC DEFENDER PROGRAMS

in the

STATE OF GEORGIA

Prepared by:

The National Legal Aid and Defender Association;

The Younger Lawyers Section, State Bar of Georgia;

The State Crime Commission; and

The Georgia Criminal Justice Council

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FOREWORD

In the Spring of 1975, Governor George Busbee of Georgia requested the Georgia Criminal Justice Council to conduct an evaluation of all LEAA funded indigent defense programs operating in the state. The scope of this request involved eleven separate programs and, to adequately assess them, the Council divided the requisite study into two separate efforts: an evaluation of the eight public defender offices operating outside of Atlanta and a separate evaluation of the two partially LEAA funded large metropolitan Atlanta area defender offices located in the counties of DeKalb and Fulton, and the University of Georgia's Prisoner Legal Counseling Program.

This report documents the study methodology and findings regarding the eight offices operating outside of Atlanta.

With the assistance of the State Crime Commission (SPA) and the Younger Lawyers Section of the State Bar of Georgia, initial visits to the subject offices were made in April and May to gather information relating to their caseload and operations. However, to analyze the data collected, assess its import and evaluate the operations and services of each office, the Council Director, Ms. Bettye Kehrer, requested LEAA's Criminal Courts Technical Assistance Project at the American University to provide consultant services which could make such an assessment in the light of generally recognized national standards.

Under the auspices of the Technical Assistance Project and with partial funding from the National Legal Aid and Defender Association's

(NCADA) National Center for Defense Management, a two-man team was selected by NLADA consisting of John M. Young, Public Defender for Columbia, South Carolina and Chairman of the NLADA Standards Committee, and John Delgado, trial lawyer in the Public Defender's Office of Richmond County, South Carolina and a Georgia native. The consultants met with Ms. Kehrer and other local officials in Atlanta on May 27 to discuss the methodology to be used and applicable state law bearing on the study. In addition, statistical and empirical data gathered during the initial visits by the Council and SPA representatives were provided along with materials relating to the governor's request, national standards to be used and other relevant documents.*

Site visits were scheduled for the following three days during which each team member travelled to four judicial circuits involving a combined total of approximately 1500 miles. Mr. Young focussed on the offices in the southern portion of the state and Mr. Delgado studied those in the north.

The team was assisted in their site interviews and in preparation of this report by the following members of the Younger Lawyers

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* These included a copy of the Survey of Indigent Defense Needs in the State of Georgia prepared by the Younger Lawyers Section of the State Bar and a survey summary; Recommendations Regarding Indigent Defense Services issued by the Governor's Commission on Criminal Justice Standards and Goals in November 1974; copies of the Criminal Justice Act of 1968; and Senate Bill 107, the proposed administration amendment to the Act that would authorize, legislatively, the present Criminal Justice Council and would provide for its funding and extended statewide activities; and proposed alternative House Bills 14 and 1215.

Section of the State Bar of Georgia:

Professor Lucy McGough, Emory University, Atlanta, Georgia

Professor John Cole, Mercer University, Macon, Georgia

Deryl Dantzler, Macon

Bill Kirby, Columbus

Ed Augustine, Athens

Austin Catts, Brunswick

A description and summary evaluation of each program, in the order of its creation, is provided in Part II of this report. Recommendations are provided, with commentary, in Part III and a listing of individuals contacted in each locality is set out in Appendix A.

I: INTRODUCTION

"In all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense." This is the command of the Sixth Amendment to the Constitution. By its very terms, no distinction is drawn between rich and poor defendants, nor between serious and "petty" offenses. However, originally the Sixth Amendment was thought to mean that a citizen could insist only upon his right to be represented by an attorney whom he had privately retained. Only in the twentieth century, and even then in an extreme case, a prosecution for a crime carrying the death penalty, did the Supreme Court confront the problem of a defendant too poor to hire his own lawyer. Powell v. Alabama, 287 U.S. 45 (1932).

As the Supreme Court later observed:

> In our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. Gideon v. Wainwright, 372 U.S. 335, 344 (1963)

Thus, the Supreme Court has confirmed that the Constitution requires that counsel be afforded an indigent defendant, and that

the Constitution requires that counsel be afforded an indigent defendant, and that the burden of assuring him such counsel is the responsibility of the government which prosecutes him. Johnson v. Zerbst, 304 U.S. 458 (1938); Betts v. Brady, 316 U.S. 455 (1942); Gideon v. Wainwright, 372 U.S. 335 (1963). Though the Supreme Court interpreted the Sixth Amendment to require some method of providing defense counsel for an accused, it has never delved into the equally critical issue of how this obligation is to be met by the government. In its most recent decision in the area, the Court bluntly stated, "We do not sit as an ombudsman to direct state courts how to manage their affairs but only to make clear the federal constitutional requirement". Argersinger v. Hamlin, 407 U.S. 25, 37 (1972)

Since its first Constitution of 1877, Georgia has recognized the right of any accused citizen to have "the privilege and benefit of counsel". Georgia Constitution of 1877, Art I, § 1, Para. V (Georgia Code §2-105). In subsequent years, unfortunately, little legislative attention was given to the problem of the indigent accused who could not afford to secure defense counsel.

Even in recent times, the responsibility for providing a free defense was thought to be a duty of each individual lawyer rather than an obligation upon the state. The 1933 Georgia Code admonished lawyers "Never to reject, for a consideration personal to themselves, the cause of the defenseless or oppressed". Georgia Code §9-601 (5)

The Criminal Justice Act of 1968 was the first comprehensive enactment of the Georgia legislature in recognition of the state's obligations to its indigent accused, although it was quite modest in scope. The Act was simply a local option statute permitting each of the 159 counties in the state to select a plan of indigent representation from among three alternative plans or combinations thereof: (1) assignment of counsel on some sort of rotational basis from those lawyers in local practice; (2) assignment by contract with a non-profit legal aid agency; or (3) assignment by the creation of a staffed county or circuit public defender office.

Five years later, a study was conducted by the Younger Lawyers Section of the State Bar of the Bar's Criminal Justice Committee in order to review what action had been taken by local governments pursuant to the authority of the Criminal Justice Act. The findings reported in its Survey of Indigent Defense Needs in the State of Georgia were disconcerting. (See below). Even in felony prosecutions, the overwhelming majority of the counties persisted in appointing local counsel, at an average fee per case of $50.00, and at least nine counties paid nothing for such services.*

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* -Assignment by appointment of local bar - paid — 86 counties (54.1%)
-Combination of methods (principally mixing paid and unpaid appointed counsel) — 51 counties (32.1%)
-Public Defender System — 12 counties (7.5%)
-Assignment by appointment of local bar - unpaid — 9 counties (5.8%)
-Contract with private non-profit agency — 1 county

Furthermore, the Survey's findings concerning representation in juvenile and misdemeanor prosecutions were even more bleak. As with felonies, the predominant method of providing counsel was through minimally paid appointed counsel, although unpaid "volunteer" counsel existed in a number of counties. Since 1967, the right to appointed counsel in the juvenile court system had been mandated by the Supreme Court in Gault 387 U.S. 1 (1967). While the Survey was being prepared, the Supreme Court in its Argersinger decision extended the requirement of counsel to indigents accused of offenses which carried the potential penalties of incarceration for six months or longer. Therefore, by definition in Georgia, every indigent charged with a misdemeanor or most municipal ordinance violations was entitled to have counsel provided for his defense.

If the system of appointed private counsel was floundering under the load of felony cases in 1972, with the prospect of the inclusion of hundreds of thousands of lesser prosecutions, reevaluation of alternative methods of providing counsel became critical. As the Bar's Survey concluded:

> Under the present county option system, there are wide disparities in some very critical areas... Very few counties are spending an adequate amount of money for the provision of counsel. Several spend nothing at all, and many spend only a token amount. As a result of inadequate funding, the system is subsidized and supported by only those attorneys who accept appointments instead of by the community as a whole. Such an allocation of the cost of providing counsel may be appropriate on an occasional or temporary basis, but it is not acceptable as a long-range solution, because it imposes an unfair burden on the bar and inevitably leads to substandard representation. Even where an attorney is willing to donate his professional services,

> there are other expenses which must be met in order to provide an adequate defense. In many counties, these expenses are having to be paid out of the attorney's personal funds...
>
> In about one out of every three counties, there is a critical shortage of attorneys available to represent indigents in criminal cases. Even if each of these counties offered competitive pay rates on a case-by-case basis for appointed criminal work, there probably would not be a large enough caseload to attract new lawyers to the county.

While the State Bar Survey stopped short of making explicit recommendations for the most efficient method of providing defense services for the indigent, it clearly supported the need for expansion and coordination. "There is too great a disparity among the county systems which have been established under the Criminal Justice Act. There should be uniform standards of indigency, times of appointment, handling [of the right to appointed counsel by a defendant] and record keeping. There must be adequate funding and available attorneys throughout the state."

What was implicit in the State Bar's study was made explicit in a report published in 1974 by the Governor's Commission on Criminal Justice Standards and Goals. After examining all possible systems for the delivery of criminal defense services, the Commission concluded

> A statewide indigent defense program should be implemented in Georgia to provide the most efficient, competent, and uniform plan for the defense of indigents in criminal cases. The system should provide for the use of public defenders supervised by an independent board incorporating the use of assigned counsel from the private bar. Consideration should be given for circuits to continue or establish defender systems meeting state criteria for quality defense services

and supported by state grants.
CT. 7-B, October 12, 1974

Pursuant to the findings of the Survey and the clear recommendation of the Governor's Commission, the State Bar and the Governor united in the legislative session of 1975 to press for the passage of Senate Bill 107 which provided for a statewide indigent defense system. There is every indication that such a uniform and comprehensive system will be adopted in the very near future.

In the past four years, eight public defender offices have been established with LEAA funding which are currently affording at least partial service to eight of the 42 judicial circuits in Georgia. If a statewide system of public defender services is to be implemented, then a candid assessment of current strengths and weaknesses of those local public defender programs can provide information crucial to sound planning for the future.

In assessing whether a Public Defender's Office is doing its job, available standards can be used. Certainly the Constitution requires more than simply naming a lawyer to make a formal appearance for an indigent defendant in court. The Sixth Amendment requires counsel, but in addition, the Fourteenth Amendment guarantees that every accused shall receive a full and fair trial. Thus, the Supreme Court has repeatedly held that a defendant's right to the assistance of counsel is not satisfied by the mere formality of an appointment of an attorney by the Court; there must be "effective representation".

For example, representation at the trial level has been successfully challenged in the appellate court where counsel had taken only minutes in which to confer with his client, West v. Louisiana, 478 F. 2d 1026 (5th Circ. 1973); where counsel failed to appeal an erroneous conviction, United States ex rel. Masselli v. Reincke, 383 F.2d 129 (2d Circ. 1967); failure to object to the admission into evidence of a coerced confession, McMann v. Richardson, 397 U.S. 759 (1970) (dictum); failure to investigate the source of the charges against the defendant, United States v. Norman, 412 F.2d 629 (9th Cir. 1969); or lack of effective negotiation for a plea and failure to argue for a mitigated sentence, Jones v. Smith, 411 F.2d 475 (5th Circ. 1969).

Yet these are only the most extreme examples of inadequacy. There is no body of case law really meaningful in evaluating the day to day effectiveness of defense counsel. Instead, one must seek other sources, such as, the American Bar Association's Standards for the Administration of Criminal Justice, the Report of the National Advisory Commission on Standards and Goals, and Recommendations of the National Legal Aid and Defender Association. Moreover, national standards must be seasoned with local analysis; therefore, this evaluation has sought an equally important measure, the stature of the various Public Defender Offices in the local communities in which each functions and, to some extent, the assessment of clients entrusted to their care.

Periodic assessment of the quality of services given by defender offices is essential. It would be a hollow development indeed if the

establishment of a Public Defender Office resulted only in providing an indigent accused with defense counsel inexperienced or ill-versed in trial techniques, ignorant of rapidly developing substantive rights of the defendant, or possessed of no investigative support, no matter how motivated such a defender might be by a sense of professional responsibility or social injustice.

So, too, the Office of Public Defender is a position of public trust; the Defender is charged with fulfilling society's obligation to afford an indigent accused with "the guiding hand of counsel at every step in the proceedings against him". If the system established by a local community and its governing authority prevents the Defender from providing an effective defense, then the system must be altered.

II: DESCRIPTION AND EVALUATION OF THE PROGRAMS

A. CONSOLIDATED GOVERNMENT OF COLUMBUS PUBLIC DEFENDER'S OFFICE

1. Office and Organization

Muscogee County is located on the western border of Georgia on the Alabama line, and covers a rather large area which includes a military installation at Fort Benning. Its population, which has been rapidly increasing, has a composition of about 30% black and 70% white. Within the past few years, the governments of the City of Columbus and Muscogee County have consolidated for a more effective system of service delivery to their citizens, and the Public Defender's Office was one of the first new services contracted through united effort.

The Public Defender's Office for the Consolidated Government of Columbus was established on January 1, 1971 through an LEAA grant from the State Crime Commission. Because it is the oldest established Public Defender's Office, having now been in existence for more than four years, it should perhaps be subjected to the most stringent scrutiny. In terms of experience, the Columbus program should have by now perfected its procedures and established a reputation for effective assistance to indigent defendants; however, by all reports, the Columbus Office has not realized its potential even when judged by the most minimal standards.

The Office is composed of a senior Public Defender, a part-time assistant Public Defender, an investigator and a secretary and is located in a building housing various other local government offices across the street from the Consolidated Government Office Building in

COLUMBUS OFFICE

downtown Columbus. Office space is adequate for the existing three full-time employees to each have his own office. Sufficient waiting space is available for clients in the secretary's reception area. The part-time Deputy Defender has maintained his own office in a private firm, separate and apart from other defender staff.

2. Staff

The Public Defender was appointed by and reports to the Senior Judge of the Superior Court. He is also subject to removal from office by the Senior Judge. His salary currently is $25,000 per year. All other positions are governed by the local merit system. The Assistant Defender whose position has now been phased out, receives an annual salary of $17,500, while the Investigator and the Secretary, respectively, receive $7,758 and $5,511 per year.

The Public Defender is Dan Byars. He has enjoyed a reputation as a good trial lawyer once he becomes involved in a jury trial, but was criticized for being inaccessible, a poor administrator and lacking the leadership essential for the office. It was specifically noted that he can never be found, that he is never in his office, and that he does not return telephone calls.

On an even more serious nature is the reputation which Mr. Byars and the Defender's Office has in the client community. According to several sources with knowledge of the State Diagnostic and Evaluation Center at Jackson, it was assumed at Jackson that all defendants coming from Columbus pleaded guilty and had never gone to trial if represented by the Public Defender.

The Assistant Defender, J. Fitt, whose salary had been $17,500 as a full-time defender now offers part-time services on a reduced salary in the Juvenile Courts. As he was slated to resign his duties as of July 1975, no study was made concerning his effectiveness. Interviews with the Senior Public Defender and Assistant Defender indicated later functional interaction between them.

The Investigator, Julius Graham, is considered an impressive member of the office staff. Mr. Graham is a former Columbus Police officer with considerable formal training in investigation and police techniques. The Defenders and local attorneys concurred that he has been extremely effective in his service to clients and office lawyers.

The secretary, Dianne Miller, either through lack of authority or initiative, has done little to organize the statistical date of the office. The data submitted by the Columbus Defender's Office is inconsistent from month to month, rendering accurate and meaningful analysis impossible.

All staff, including professionals except the Senior Defender, are on a system of civil service selection and appointment.

The current grant from the State Crime Commission provides for all salary expenses plus office equipment; other budgeted office expenses are borne by the local governing authority. There are no funds available for training, expert witnesses or travel which must be absorbed by individual staff members.

3. Client Eligibility and Caseload

There are no established eligibility criteria, and the current process for determining indigency in Columbus affords the Defender's ultimate clients the worst of both worlds. Apparently, at the commitment hearing, all defendants who do not have a lawyer and who would like one are automatically assigned to the Public Defender's Office; even if a defendant does not wish to have a lawyer, the Defender is made available to assist him. After the commitment hearing is concluded, it may well turn out that a particular client is ineligible. The time spent representing ineligible defendants saps available defense energies and capabilities from legitimate clients. It is only at the later arraignment stage shortly before trial that the Public Defender is formally confirmed in responsibility for a particular defendant.

The only definite factor cited as influential on the eligibility determination is the ability of the defendant to make bond. The Defender explains the current system by observing that he has requested the local Bar to provide him with formalized approved standards for determining indigency, although he has not indicated any effort to submit standards for the Bar's consideration and adoption. Until the Bar participates in setting standards, Mr. Byars concludes that the unilateral formulation of criteria would not be purposeful.

There is no accurate assessment possible of the number of cases which have been handled by the Defender's Office during the past four years. The data submitted by the Office, for example, includes prelimi-

nary or committal hearings attended as a case disposition.

According to the terms of the grant, the goal of the office is to furnish indigent representation for the Superior, State, Municipal, Juvenile and Recorders Courts in Columbus and Muscogee County. The grant provides for one full-time Assistant Public Defender available for general representation.

It may be inferred from comments made by the District Attorney that the Defender strikes an even balance between plea cases and those which are tried. He also added that the Defender obtained the "best deal" possible for his clients. However, in contrast, in the client community, the office has the reputation of being a plea mill.

No information was given concerning the Office's past efforts, if any, to divert clients from the criminal justice system. A major emphasis of the program is placed upon reducing court caseloads and keeping court trial congestion to a minimum, to the exclusion of individual client representation.

4. Case Entry

The potential of the Columbus Office for early, effective assistance is quite evident and bears some elaboration. In Columbus, when an individual is arrested, he is afforded a committal or preliminary hearing as a matter of course and usually within 24 hours of arrest. As noted previously, the Public Defender is appointed for every potentially eligible defendant. Thereafter, at the arraignment which usually takes place a week before the case is calendared for trial, formal appointment of trial counsel is made.

Thus, the Defender has access to clients almost immediately after arrest. A committal hearing is thus routinely afforded defendants, making pre-trial discovery available in every case, a benefit not enjoyed in other parts of the State. Committal hearings are held every day and constitute a substantial portion of the office's activities. However, since these committal or preliminary hearings are scheduled so shortly after arrest, an inadequate period of time is afforded for the preparation necessary to make discovery meaningful. No mention was made of any effort by the Defender's Office to seek a continuance of a case in order to make special preparation nor is it known whether transcripts of the hearings are available for trial preparation. Furthermore, the indiscriminate appointment of the Defender to clients, at this stage of the proceedings, dilutes the Defender's effectiveness on behalf of those clients to whom he is later formally assigned. The asset of early case entry in the Columbus system is currently being converted into a liability.

In addition, it was stated in some interviews that the Defender's Office does little to assist a client in being released on bail. There appeared to be a larger than average number of clients who were in jail awaiting trial.

5. Independence of the Office

As has been noted previously, the Public Defender is personally selected and appointed by the Senior Superior Court Judge, Alvin Davis. It was generally felt by the interviewees that the Public Defender

Office should be independent of the Court. While Judge Davis may not agree with every evaluation and trial strategy of the Defender, he understands that it is the Defender's responsibility to vigorously represent his clients. According to members of the private bar, Judge Davis would not hesitate in allowing a Defender reasonable lattitude to pursue each and every defense. In sum, the Columbus judicial system affords distinct advantages for a strong and independent Defender which are currently not being realized, not because of judicial restraint but because of the Office's own lethargy. Unfortunately, Judge Davis is nearing retirement within the next term or so.

6. Local Evaluation of the Program

a. District Attorney: The District Attorney observed that his relationship with the Defender was strictly "professional". He does not think that his files and records should be opened to defense counsel and, thus, there is little interaction except in plea bargaining and at trial. He stated that according to his knowledge the Defender is well-accepted by the Judges and members of the local Bar.

b. Probation Officer: As a general rule, contact with the Defender's Office occurs during presentence investigations and in the event of probation revocations. The only records made available to the Defender prior to disposition are those which are available as public record. The probation officer did note, however, that the Defender's Office requests probation findings through the Court on an average of three to five times per month. The Defender does not participate in probation recommendations.

c. Law Enforcement: Both officers interviewed were highly complimentary of the Public Defender and of the Office in general. They stated that they had extensive contact with the Defender beginning at the investigative stage, including line-ups, through trial. They considered that good use of police reports was made during cross-examination and that the Defender and staff were always available when called to provide assistance at the police station. Both concluded that the Defender was doing a good job representing individuals unable to pay for an attorney.

d. Clients: Clients stated a preference for a private attorney if one could have been afforded. None had any criticism of condescension or rudeness on the part of the Defender, observing that they had been treated "good as persons".

e. Private Bar: Contact was made with three members of the local Bar. They expressed sentiments regarding the Defendant's effectiveness similar to those of other interviewees and generally disapproved of the Office's program as it has operated in the past four years. Each observed that a Public Defender system in Columbus could provide a vital, much needed public service but that currently it was an operation viewed as inefficient and wasteful.

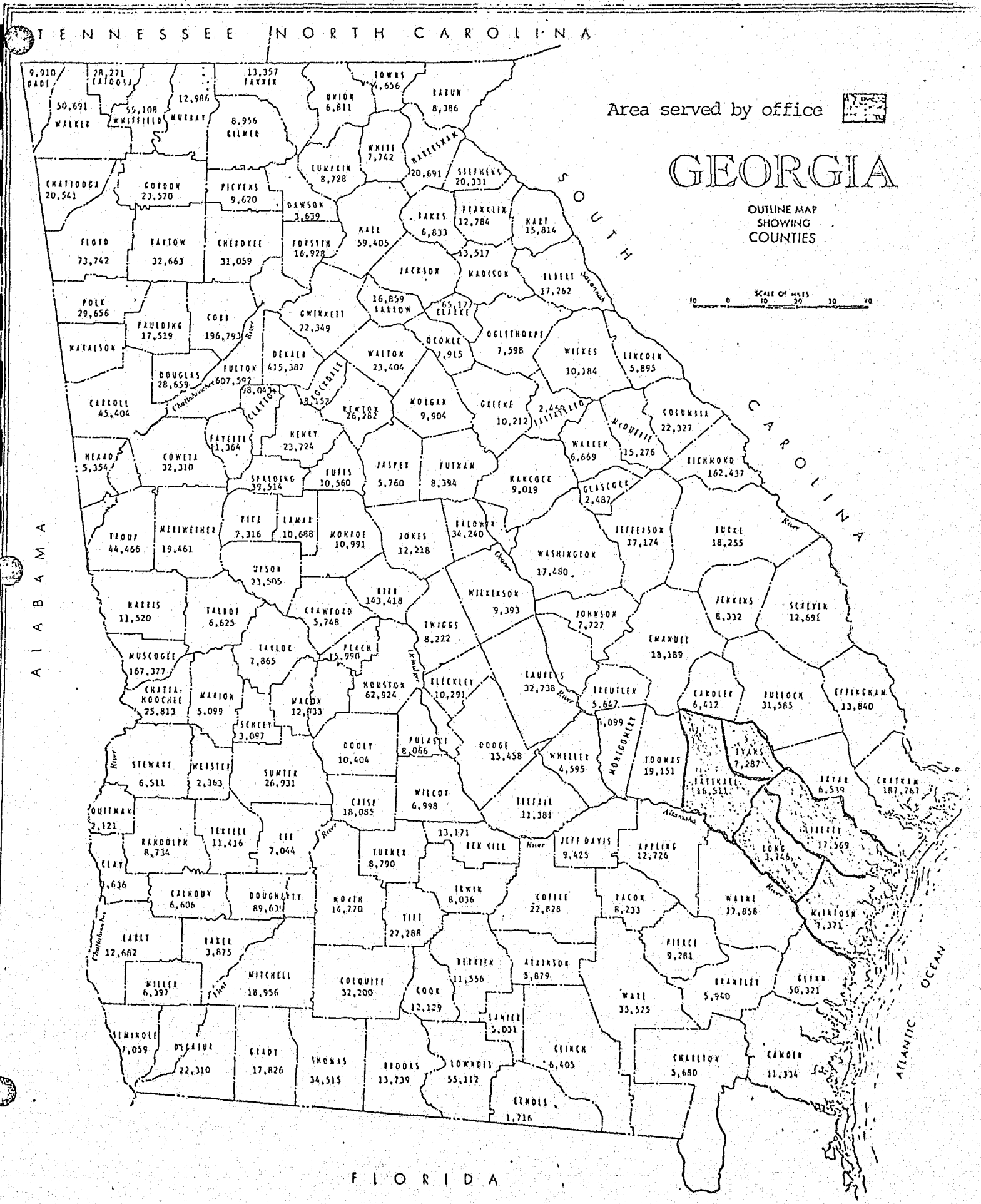
B. ATLANTIC JUDICIAL CIRCUIT DEFENDER OFFICE

1. Office and Organization

The Atlantic Judicial Circuit is located on the coast between Savannah and Brunswick. The Defender's Office was funded in 1972 with an LEAA grant from the State Crime Commission to serve the Circuit's six counties: Evans, Tattnall, Long, Liberty, Bryan and McIntosh. The Circuit's racial composition is about 64% white and 36% black. Like other areas of the rural south, the Atlantic Circuit has experienced an acute shortage of lawyers; in Bryan County there is only one lawyer, in McIntosh County, two lawyers, and in Evans County, one sole practitioner and another small firm. Yet the demand for criminal representation within the Circuit is far above average due to the presence of a military base, Fort Stewart, and the State Prison at Reidsville. In addition, because the Circuit extends to the seacoast, many transient indigents have been arrested while traveling through its bounds.

Originally a single full-time Public Defender was envisioned, but after a year's operation a second Defender was authorized under a continuation grant. Due to the rather substantial geographical distances encompassed by the Circuit, each Defender now operates autonomously in a three-county "sub-Circuit" area. Carroll L. Cowart, the Chief Public Defender under the grant, has an office in Glenville, (Liberty County) and Tom Radcliff has maintained an office in Pembroke, (Bryan County). Although Mr. Radcliff has now resigned his position as Public Defender, presumably the same division of responsi-

ATLANTIC CIRCUIT OFFICE



bility between the two Defenders will continue.

Each of the Defender Offices is separated from the local government complex. Each Defender has retained his former private law office, its equipment and furnishings. Both Defenders share office space with former law partners. The details concerning space and equipment are not known as on-site visits were not made.

2. Staff

Each Defender was appointed by the Senior Judge of the Circuit under a two-year contract at an annual salary of $18,000.00. Each Defender has a part-time secretary budgeted for three days per week. There are no additional staff members available either for research or case investigation. Under the grants awarded in both 1973 and 1974, special budgetery allowance was made for travel and supplies. However, no funds are allocated for expert evaluation or testimony or training. By terms of the grant, each Defender is required to be "full-time". According to their accounts, both Defenders have devoted "forty hours" per week to program duties although each concedes continuing to accept a small civil caseload. No time records were maintained.

No information was gathered concerning the defenders' efforts to keep abreast of developments in the specialty of criminal law and procedure or concerning their interaction with other defense attorneys in the Circuit or elsewhere in the State.

3. Client Eligibility and Caseload

There is no formal set of criteria by which eligibility for ser-

vices is determined. Apparently each case is considered on an ad hoc basis, and the local Sheriff seems to be a prime source of information concerning a potential client's financial resources. Although one Defender interviewed indicated that eligibility was constantly monitored by the local bar, there was no indication that the bar has been involved officially in any discussion of appropriate standards. In any questionable case, the trial judge appears to make a final determination.

During 1974, 552 cases (including juvenile hearings) were assigned to the two Public Defenders in addition to the completion of work on 119 cases left pending at the close of 1973. Of these 671 cases, 564 cases were disposed of with 107 carried over to 1975. The Public Defender Office includes within its caseload the representation of inmates at the Reidsville Prison who are accused of crimes committed while incarcerated.

The caseload of the Defender Offices has tripled in the first four months of 1975; moreover, there is every indication that the Defenders' workload will continue to increase dramatically. According to the Sheriff of Liberty County, population projections for that County show that it should quadruple within the next three years.

Defender Cowart estimated that approximately 75% of his cases resulted either in guilty pleas or were nolle prossed or dead docketed through plea bargaining. Senior Circuit Judge Paul Caswell concurred in this approximation (60% to 75%) and added that more of the Public

Defenders' clients pleaded guilty than those represented by private counsel. No breakdown of statistics for jury vis a vis judge trials was available. Jointly the Defenders serve clients accused of offenses before the Superior, Juvenile Recorder and Magistrate Courts throughout the Circuit.

There was some indication that this Defender's Office had actively sought alternatives to the criminal justice system for their clients. Specifically cited as resources which had been utilized were services offered by county departments of Family and Children Services and mental health centers with the Circuit.

4. Case Entry

While the point of entry of the Defender into a case varies, as a general rule, he is appointed at the initial commitment hearing when bond is set. Unlike other Offices, the Atlantic Circuit Defenders have apparently experienced no difficulty in interviewing potential clients before formal appointment. The Defender is often present at the line-up and pre-trial interrogation stages. According to the Liberty County jailer, the Public Defender usually enters a case approximately five to twelve days after arrest.

Apparently these Public Defenders also enjoy a good working relationship with the District Attorney's Office. According to an Assistant District Attorney of Liberty County, whenever persons being questioned or placed in a line-up request a lawyer, the Defender is summoned. The Defender corroborated the impression that the District Attorney is very cooperative in opening his files for informal discovery. By

agreement, preliminary hearing requests are preserved for the Defenders' clients even when they have been released on bond.

5. Independence of the Office

Although formally appointed by the Senior Circuit Judge, the Defenders indicate that no problems which would undermine their independence have arisen in their relationship with the Court despite the fact that each reports directly to the Senior Judge. The relationship between the Office and the Senior Judge appears to be one of complete cooperation and mutual respect. This positive relationship stems undoubtedly from Judge Caswell's wholehearted recognition of the need for Defenders in his Circuit. Judge Caswell stated bluntly that if there were no Public Defenders in his Circuit, the courts would break down. He likes this system of representation and thinks that the Public Defender should be appointed by the local judge; he would resist appointments from outside. Judge Caswell's only complaint was that the Defenders were already overworked in his Circuit and needed assistance especially the services of an investigator.

6. Local Evaluation of the Program

a. District Attorney: A full-time Assistant District Attorney, Dupont Cheney, stated that both Public Defenders worked hard and were as competent as any of the Circuit's attorneys in private practice. He observed that the Public Defenders enjoyed an advantage in plea bargaining but were limited by the lack of investigative services. Mr. Cheney stated that he works well with the Defender's Office, but that there is a very strong adversary relationship during the course.

of a trial; out of court, there is a spirit of cooperation. Both Defenders were described as very prepared, protective of their clients' rights, and judicious in the use of guilty pleas. He concluded that the Public Defenders "go an extra mile" to help a defendant assigned to their care.

b. Probation Department: According to the probation officer interviewed, he comes into contact with the Public Defender initially during presentence investigations which are conducted in this Circuit before trial. The Circuit Judge seems to use probation extensively as a disposition. Although defense lawyers are not allowed to see probation findings prior to trial, the Public Defenders work closely with the Probation Officers in developing recommendations. Such recommendations are of critical importance since the judges accept them an estimated 95% of the time. He stated that he had worked both under the former appointed lawyer system and the Public Defender system and had concluded that the appointed system was ineffective by comparison. He noted that a Public Defender system depends entirely on the quality of its Defenders: if they were "bad" or disinterested, the system could be terrible. However, he stated that they had been fortunate in the Atlantic Circuit to have always had good Defender representation.

c. Law Enforcement: The Liberty County Sheriff stated that he comes into contact with the Defender at line-ups, interrogations, and in court. He stated that the Defender with whom he had worked was very prepared in court and made use of police reports and officers'

testimony. The Sheriff defined the role of the Public Defender "to dedicate himself to the welfare of his clients" and that the existing Defender's Office had fulfilled this duty. According to him, the appointed system was unfair and defendants did not get adequate representation because the lawyers were disinterested in the case. In contrast, the Public Defenders were just as good as any of the Circuit's lawyers in private criminal representation. However, the Defenders seemed to be overworked and needed additional Assistant Defenders.

The Liberty County Jailer gave extremely high praise; were he in trouble, he would rather have the Public Defender than any other lawyer he knows. He stated that he could not say enough good about the abilities, competency, and hard work that the Defenders do. He agreed that the Public Defenders are over-worked especially in Liberty County and the State Prison: he stated that Liberty County could use its own Public Defender full-time. In conclusion he noted that the Public Defender system is "one more fine system" and that the Defenders were super-conscientious.

d. Clients: Although only two clients were interviewed at the City-County Jail, both indicated that they were represented beginning with the preliminary hearing. Both subsequently had insisted upon trial although each was advised to enter a guilty plea by the Defender. By way of general criticism, both thought that they would have had better representation had they been able to afford a private attorney principally because each thought that an insufficient amount of time had been devoted to consideration of his case.

C. HOUSTON JUDICIAL CIRCUIT: HOUSTON COUNTY PUBLIC DEFENDER OFFICE

1. Background: Office and Organization

Houston County is located directly south of the Macon metropolitan area. Although the greatest population concentration in the County is in Warner Robins, the community which has developed around the Air Force Base, the County seat is Perry. The racial composition of the County is approximately 80% white and 20% black. The Houston County Public Defender's Office was established in January, 1973 through an LEAA grant from the State Crime Commission.

The Office is composed of a single Public Defender, Ned Pooser and a Secretary-Receptionist, Mary Lou Stokes. Mr. Pooser is a 1974 graduate of the Mercer University Law School who had no prior legal experience before assuming his duties as Defender.

Office space appears to be quite inadequate. The Defender's Office comprises two small rooms with no waiting area except the hallway for clients. In addition, current offices are located in the county courthouse on the same floor as both the Judge and District Attorney.

2. Staff

The Defender was appointed by the Superior Court Judge at an annual salary of $20,000.00. The Secretary-Receptionist receives $5,200.00 per year. There are no additional staff members available either for research of case investigation. Because of the Office's location, it might be possible to work out student placements with the nearby Mercer Law School although space limitations

HOUSTON CIRCUIT OFFICE

would currently prohibit such an arrangement. There is no budgetary allowance for travel or training; the Defender must pay for such expenses out of his own pocket. Furthermore, no funds are allocated for expert evaluation or testimony.

Mr. Pooser devotes full-time to his Defender responsibilities and maintains no outside practice, either civil or criminal. He has expressed a desire to receive technical assistance and to remedy in as short a time span as possible his lack of legal experience. As an illustration of Mr. Pooser's recognition of and commitment to the need to stay abreast of developments and trends in the law, he has personally compiled a synopsis of the past two years Supreme Court decisions in the criminal law area which he uses as a trial notebook. At the time of interview, he was engaged in evaluating several cases for appeal despite a heavy trial calendar. It was not specifically noted whether or not the Defender has contacted or even could avail himself of assistance from other local defense attorneys.

3. Client Eligibility and Caseload

There is no formal set of criteria by which eligibility for services is determined. Apparently each case is considered on an ad hoc basis. All potentially eligible clients are assigned to the Public Defender who has power delegated by the Superior Court Judge to evaluate eligibility and report his findings. The Defender then prepares for each referral an "Affidavit of Indigency" which sets out the claimed financial resources. However, no fixed financial limits or criteria

have been established, and the final determination is made by the Judge. The Defender conceded that there seemed to be some slippage in the current system: that there seemed to be too many cases in which the client did not appear to be really indigent. The Superior Court Judge, J. Willis Hunt, also recognizes that there may be too many people taking advantage of their current rather flexible screening procedures and has supported the Defender's efforts to siphon off ineligible clients from the caseload. Mr. Pooser was quite confident in approaching Judge Hunt with a report of apparent ineligibility; in the past, the Court has then appointed a member of the private bar. Although there has been no formal involvement of the private bar in any discussion of appropriate eligibility standards, according to local attorney Ed Harmon, to date there has been no dissatisfaction engendered by any previous representation of non-indigent clients. All indications are that the Court and Defender will take all necessary steps to correct current problems of eligibility determination.

During 1974, 269 cases were assigned to the Office of which 70 were left pending at the end of the year. Although the grant, as written, exacted coverage of all courts within the County including the municipal courts of Perry, Centerville, and Warner Robins, the caseload generated by the Superior, State and Juvenile Courts of the County has prohibited municipal court representation.

Based upon inconsistencies of the reports filed by the office, no break-down by disposition is possible. However, it should be noted that no one interviewed mentioned a reluctance of the Defender to take a case to trial; there is no apparent problem with a guilty plea imbalance.

Certainly it is clear from all reports that the Defender is overworked. He and the Secretary have devoted weekends and holidays simply to get abreast of the burgeoning caseload. While apparently representation has not suffered to the point of ineffectiveness as yet, if he continues without additional supportive services and caseload adjustment, the calibre of his aggressive advocacy will undoubtedly be diminished or, in frustration, he will leave the Public Defender's Office.

The Defender has extensively explored alternatives to the criminal justice system and incarceration which are available in the County and surrounding area. Specifically, these include a drug treatment center in nearby Columbus and other rehabilitative and court-diversion programs operating in Houston County.

4. Case Entry

In the Superior Court, the Defender enters a case at the time of arrest or shortly thereafter because the Defender receives a jail list. However, in the lower courts and in the municipal jails, the Defender's access to clients is limited due to his having no list from which to learn of potential clients until their initial formal court appearance. As a result of a confrontation between the Defender and certain law enforcement officials in the past, he is barred currently from visiting the Perry City Jail. However, whatever previous difficulties there were, it is generally recognized by Judge Hunt, Mr. Pooser and the law enforcement officials that the situation has now, for the most part, been resolved: while there may be future clashes of conflicting views, such

will be seen in the light of the Defender's professional responsibility rather than personal antagonism.

It should be noted that although there is the advantage of early entry in most felony charges, there are still no preliminary hearings accorded defendants appearing before the Superior Court. Even when demanded, after a client is assigned to the Public Defender, counsel may not lay claim to the valuable discovery rights which inhere in preliminary hearings. Why the Defender has not yet challenged such a system was not explored.

5. Independence of the Office

As mentioned previously, the Houston County Public Defender was selected and appointed by the Superior Court Judge and, should controversy arise concerning the Office operations, the Defender is directly answerable to this Judge. Judge Hunt was reluctant to discuss a transfer of control from the local level to the State level. He seemed concerned that such a change would destroy local initiative as well as local control. In terms of the current personalities involved, the evaluators were most impressed with Judge Hunt and his strong support of the young, aggressive Public Defender. The Defender stated that Judge Hunt had never interfered with the operation of the office; furthermore, the court's trust and confidence in the Defender is evidenced by his permitting the Defender to make recommendations regarding eligibility. The Judge has also mediated to some extent the Defender's problems with law enforcement personnel. However, the Defender also readily acknowledges the power of the Superior Court Judge as the appointing authority and his ability to influence the employment and activities of the office if he were

so inclined.

6. Local Evaluation of the Program

a. District Attorney: The Houston County District Attorney characterized his relationship with the Defender as good, but noted that the Defender had "a different way of doing things." He observed that the Defender struck a good balance between trials and pleas and had used good judgment in making his case evaluations. He pointed out the problems which the Defender had encountered with the State Court Judge but conceded that the Defender seemed to relate quite well to the Superior Court Judge. In sum, the District Attorney concluded that while Mr. Pooser lacked extensive experience, he was above average in ability.

b. Probation Officer: The probation officer stated that his main contact with the Defender occurred after indictment but prior to arraignment. He indicated that the presentence report was made available to the Defender and that the Defender had actively participated in formulating recommendations. No records other than the presentence report are made available to the Defender.

c. Law Enforcement: Clearly the Defender is a controversial figure to the various law enforcement personnel within the County. For reasons not at all clear, the Defender remains barred from the Perry City Jail. One officer from Warner Robins criticized the Defender for not coming by the City Jail often enough and for "causing a time lag

in the court system". An officer from Houston County, however, conceded that there was a definite need for the Defender and attributed whatever inadequacies currently existed to his being overloaded with cases. A deputy sheriff observed that he had seen the Defender grow in abilities within a very short period of time. He contrasted the first time he had seen the Defender try a case with a recent appearance in which he had successfully defended to acquittal a client accused of armed robbery. He concluded that the Defender was much more effective, much more active an advocate for his client now than when he began.

d. Clients: As might be expected, the client reviews were mixed. Seven clients were interviewed, and all conceded that the Defender was very polite and respectful. Two clients who had already been tried and convicted stated that they would have preferred an attorney in private practice; in contrast, a client awaiting trial was happy with the work of the Defender on his case and thought that he was a good lawyer. Two of the interviewees noted that their defense would have been enhanced had they been represented at an earlier time of the proceedings. Four clients seemed very pleased by the Defender's representation and indicated that given the choice between private representation and the Defender, each would have selected the Defender.

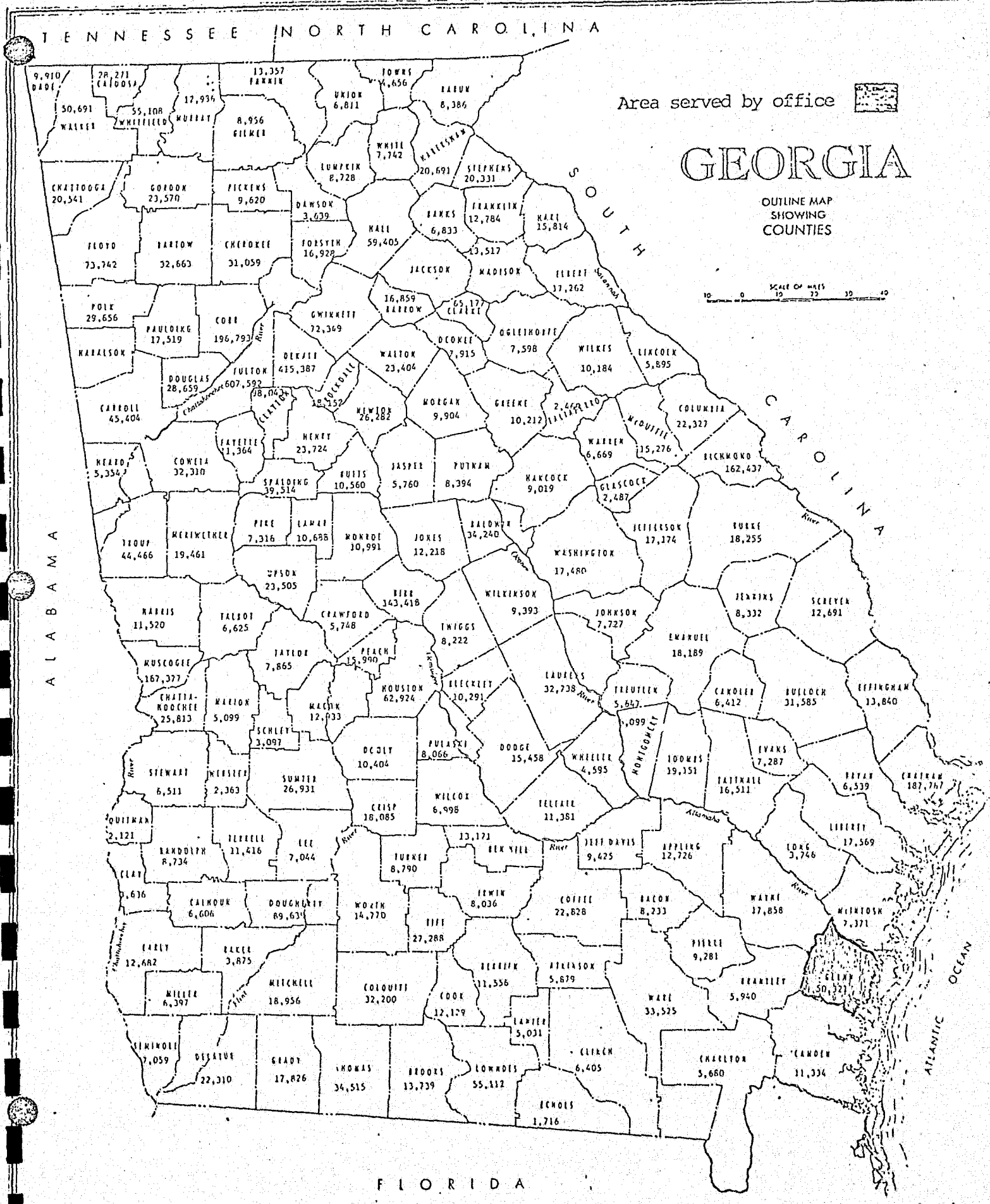
D. BRUNSWICK JUDICIAL CIRCUIT: GLYNN COUNTY PUBLIC DEFENDER OFFICE

1. Office and Organization

Glynn County is located on the coast of Georgia. Brunswick, its county seat, has enjoyed substantial growth in recent years due to increased industry and the development of a resort commerce. As a result of its strong economy and influx of population, Glynn County is more metropolitan in outlook than the majority of other counties in the State. The racial composition of Glynn County is approximately 75% white, 25% black. The Public Defender Office was established in October, 1973 through an LEAA grant from the State Crime Commission. The Brunswick Office is one of two in the State which contracts for services with the Georgia Criminal Justice Council. The staff has consisted of a Senior Defender, a Deputy Defender, an Investigator and a Secretary; all are employees of the Council.

Due to the limited resources, the office is occupying free space provided by the Civil Legal Services Program. The space is barely adequate with little room in the client waiting area; however, it seems to be in an excellent location near but separate from public offices in the courthouse. Since the initial contact in nearly all of the cases is made in the County Jail, perhaps some mention should be made of the poor facilities which currently there exist. The interview room contains no furniture, and the attorney must stand and talk through both a screen and glass while consulting with his client. Such conditions greatly hamper the Defender's ability to discuss fully and at leisure defense strategy as well as to make complete notes of critical information. It should be explored further whether such conditions are the

GLYNN COUNTY OFFICE



result of the conscious effort to discourage jail interviews and visitations or simply benign neglect of the amenities.

2. Staff

The Senior Defender, Grayson Lane, and the Deputy Defender, Eric Kocher, both of whom had been with the Office since its inception until their recent resignations to enter private practice, received annual salaries of $22,000.00 and $18,000.00 respectively. The recently hired Senior Defender, Randall Clark, came from a substantial criminal practice with a private law firm in Brunswick and by all accounts was highly regarded as a competent and conscientious trial lawyer. Because of a cutback in available LEAA funds, there are no plans to fill the Deputy Defender position. The Criminal Justice Council is working with the County governing authorities and the local bar association to implement an adequately compensated panel of private attorneys who will handle overflow and co-defendant conflict and misdemeanor cases for a "combined" public defender and private attorney system in the Circuit.

The Investigator, Lloyd Thompson, is a former probation officer and a law student currently awaiting the results of the Bar Examination, and is a distinct asset to the Office. He displayed considerable knowledge of the community, concern for the clients, and appears dilligent in assisting case development. The Investigator's salary is $10,800 per year. The Office Secretary, Rubye Baker is a former commercial teacher in the City school system and is also very competent with knowledge of and concern for the client community. She

receives $7,200 per year for her services.

All staff members are full-time; the attorney does not maintain an outside civil practice. There are no funds in the Office budget earmarked for training or for expert evaluation or testimony. Both in-state and out-of-state training opportunities through the National College for Criminal Defense Lawyers and Public Defenders and the National Legal Aid and Defender Association have been afforded the staff due to its ties with the Criminal Justice Council, a benefit other Offices do not have. The Office can call upon the Council staff members for technical assistance; recently the Council's Senior Defender joined as counsel of record in a rather celebrated armed robbery case. Presumably once the Council fully develops its in-house training program, the Glynn County Office will be able to participate in such on-going professional training.

3. Client Eligibility and Caseload

The Public Defender's Office completes a financial statement on each potential client. There is a formal set of criteria by which eligibility is determined which has been approved by both the local Bar Association and the Courts. A set financial scale is used to determine eligibility based on the client's monthly income, taking into consideration outstanding obligations, number of dependents, etc.

During 1974, 522 cases were assigned to the Office of which 126 were left pending at the end of the year. Under terms of the grant, all courts in Glynn County are covered by the Defender. The statistics compiled by the Office show an extraordinarily high number of non-

trial dispositions: pleas, nolle prossed and dead docketed cases. Approximately 17 cases were tried during 1974. Two factors were cited to explain the low number of trials: the generally depressed trial calendar of the superior court due to a prolonged illness of the Judge, and, apparently, the favorable pleas offered by the District Attorney.

Although staff members acknowledged a responsibility to explore alternatives to the criminal justice system and incarceration, no specific information concerning their efforts to develop such resources was obtained during the interviews.

4. Case Entry

The Defender learns of and initiates contact with a client shortly after arrest due to regular, almost daily visits to the county jail by the Defender or the Investigator. In addition, as a result of the Defender's early involvement, preliminary hearings are now routine and accorded as a matter of right.

5. Independence of the Office

As a result of the service contract between the County and the Georgia Criminal Justice Council, the Defender and his office have been able to provide a strong and independent representation to their client as privately retained counsel. However there is every indication that, were the Defender subject to the Senior Superior Court Judge, Gordon Knox, defender services would either be seriously constricted or nonexistant. According to several sources, Judge Knox had stated that he was strongly opposed to Public Defenders in the Brunswick Judicial Cir-

cuit. The relationship between staff members of the Office and Judge Knox was described as a strained partnership that vacillated between open hostility and mere toleration. The relationship with other members of the judiciary was more one of respect and acceptance of the Defender having responsibility for the same measure of representation to his client as would privately retained counsel.

6. Local Evaluation of the Program

a. District Attorney: The District Attorney, Glenn Thomas, characterized his relationship with the Public Defender's Office as strictly business. He spoke about the Office reluctantly because he considered it unnecessary and ineffective in speeding up the process of justice. The District Attorney commented that he thought the Defenders were overzealous in protecting the rights of their clients.

b. Probation Officer: Deputies of the Glynn County Sheriff's Department noted that most of their contact occurred either at the jail or in court. They corroborated the fact that someone from the Defender's Office was "constantly" at the jail meeting with clients. The Chief Deputy Sheriff stated that he had no suggestions for improvement because the role of the Defender was "exactly what he is doing, defending people who can't afford a lawyer".

c. Clients: All three of the clients interviewed stated that even if they had a choice of attorneys, they would stay with the Public Defender. One client with previous experience with the criminal process felt that he was getting better service from the Defender than he had

received previously with private counsel. The only negative comment heard was that one client had not seen the Defender enough to discuss his case; in this instance, principal contact had been established with the Investigator.

d. Private Bar: A member of the Brunswick Bar Association who had formerly been with the Fulton County Public Defender's Office, Austin Catts, related that the Bar is basically supportive of the Office's efforts in the County. He feels that a Defender system is far superior to court-appointed lawyers and that both former and current defender staff were and are extremely competent and conscientious. Having seen both the system in Fulton where the Defender is judicially appointed and the Criminal Justice Council Office in Glynn County, he stated that independence greatly enhanced the Defender's ability to provide effective representation. He had no criticism of the operations or structure of the Glynn County program but did note the inequitable disparity in salary between the Defender's and District Attorney's staff.

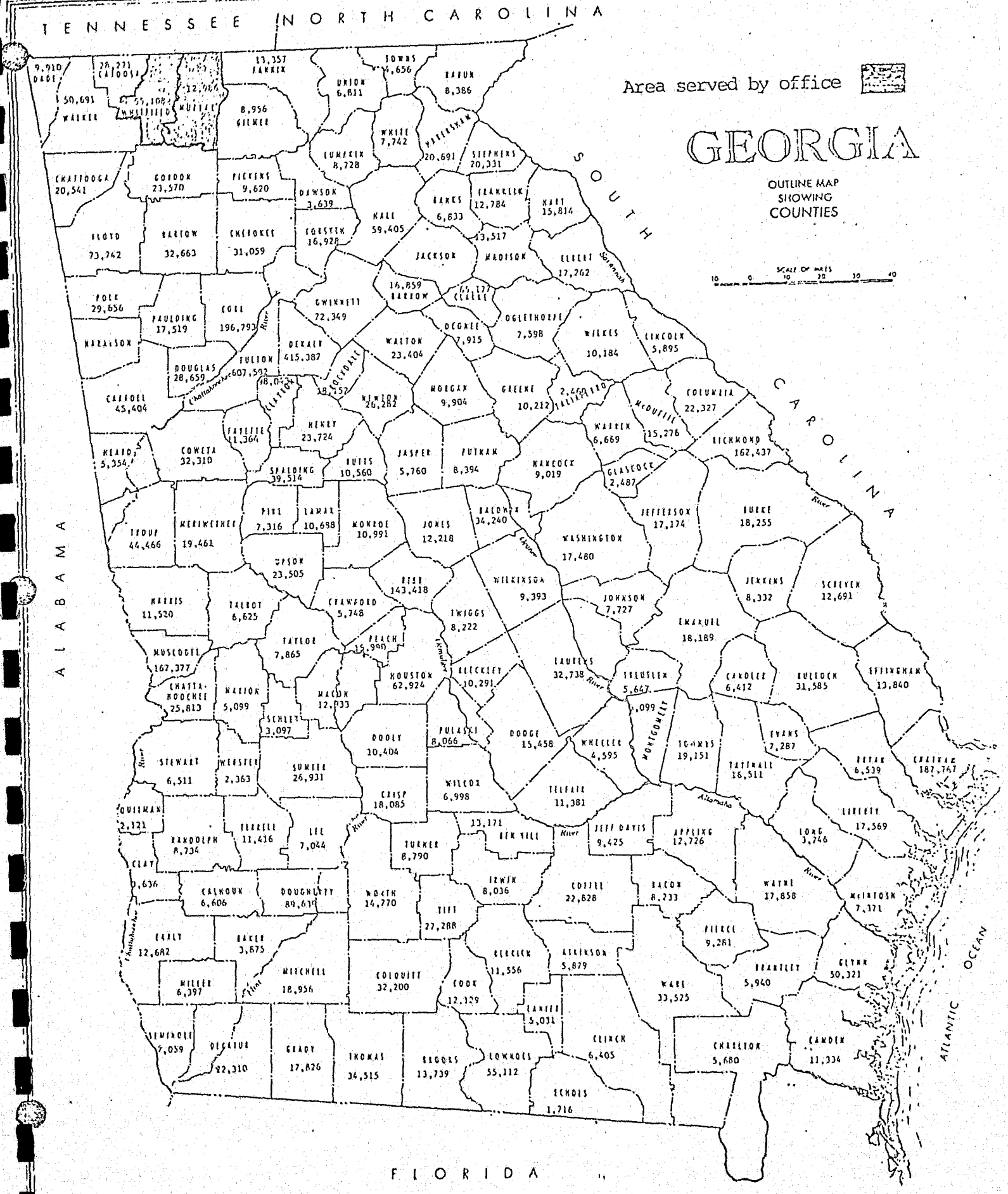
E. CONASAUGA CIRCUIT PUBLIC DEFENDER OFFICE

1. Office and Organization

The Conasauga Judicial Circuit is located at the foot of the Applachians on the northern border of Georgia abutting on Tennessee. It is composed or two counties, Whitfield and Murray, in the heart of the textile mills section. The racial breakdown in the Circuit is approximately 95% white and 5% black with a predominantly farming and working class population. The Conasauga Circuit Public Defender Office was established in November, 1973 through an LEAA grant from the State Crime Commission. The Conasauga Office is one of two in the state which contracts for services with the Georgia Criminal Justice Council. Under terms of the existing grant, there were four staff members: A Senior Defender, a Deputy Defender, an Investigator and a Secretary; all are employees of the Council. As of May, 1975, a vacancy was created with the resignation of the Deputy Defender, and at this time, there are no plans to fill this position with a replacement because of a cutback in available LEAA funds. The Criminal Justice Council is working with the County governing authorities and the local Bar Association to implement an adequately compensated panel of private attorneys who will handle overflow and co-defendant conflict and misdemeanor cases for a "combined" public defender and private attorney system in the Circuit.

The Defender's Office is located in Dalton, the county seat of Whitfield County, and is separate and apart from the courthouse and other public offices. However, due to limited resources, the office

CONASAUGA CIRCUIT OFFICE



is occupying free space provided by the civil Legal Services Program.

The office space and facilities are clearly inadequate. The Defender and Investigator currently share an office, and there is no waiting room for clients. In addition, the Secretary's office is quite small and congested, thus impairing the confidentiality of her work on cases and files. The Defender's Office shares a telephone line with the Legal Services Office and apparently also a share of the political ill-will which has been gene ated by the Legal Services Office as a result of this arrangement. Apparently the Whitfield County Commission is constantly involved in political turmoil with the Legal Services Office.

2. Staff

The Senior Defender, Mr. Gene Gouge, receives an annual salary of $22,000.00. The Investigator, Steve Boyd, and the Secretary, Carolyn Creekmore, receive $12,000 and $7,200 respectively. Mr. Gouge was an attorney in private practice and was highly recommended for the position. Since assuming his duties as Defender at the inception of the Office, Mr. Gouge has been the subject of controversy concerning the relatively few number of cases he has tried; the degree to which cases have been adequately prepared for trial and an over-dependence upon his Investigator. Some difficulty was also expressed in regard to keeping account of the Defender for pleas and sentencing even though he may have completed all prior negotiations to set up the arrangement.

Despite conflicting reports of the program's operations, several areas clearly warrant further study. First, the Defender needs training in administration in order to maintain his credibility with the courts and community programs even if current criticism is exaggerated. As politically sensitive as the position of Public Defender is, the office must appear and operate in a highly professional manner, above reproach. Second, all interviewers agreed that Mr. Gouge is a skilled trial lawyer when he does try a case. However, for whatever reason, only four jury cases have been tried in nineteen months, a statistic suspect without a much more extensive exploration than this evaluation permitted. Mr. Gouge is himself highly receptive to this criticism; repeatedly he referred to the point that more cases need to be tried.

The office has had the services of an energetic and highly respected Investigator who by comparison may be overshadowing his chief, the Defender. Mr. Boyd related that several clients turned to him for corroboration when approached by the Defender with a plea bargain he had recommended for their acceptance. The Whitfield County Sheriff further attested to Mr. Boyd's reputation when he noted that he had permitted Boyd to take a client to Atlanta without a Deputy because he trusted Boyd to accomplish the mission and to return promptly with the inmate. In any event, Mr. Boyd has been tapped to initiate a demonstration pre-trial release program sponsored by the Georgia Criminal Justice Council and the Younger Lawyers Section of the State

Bar and a replacement for his position is being sought.

All staff members are full-time; the Defender does not maintain a civil practice. There are no funds in the Office budget earmarked for training or for expert evaluation or testimony; however, both comprehensive in-state and out-of-state training have been offered to the staff through the National College of Criminal Defense Lawyers and Public Defenders, the National Legal Aid and Defender Association and by the Georgia Criminal Justice Council. As noted previously, at least on one occasion, the Office sought a polygraph test for a client, an indication of the office's awareness of the need for such supportive services. Despite this budget limitation, the Conasauga Circuit Office enjoys the benefit of its ties with the Criminal Justice Council. The Office has access to staff of the Council for technical assistance and, on at least one occasion, a Council Defender appeared in a local capital jury trial at the request of the Office. Presumably once the Council fully develops statewide training programs for both defendants and private attorneys accepting indigent defense appointments, the Conasauga Circuit Office will participate in such on-going professional training.

3. Client Eligibility and Caseload

The Defender's Office makes a preliminary assessment of eligibility after an applicant completes a "Financial Eligibility Determination" form. While eligibility standards have not been formally approved by the local bar, there has been "tacit approval" by the Liaison Com-

mittee of the local bar. In any event, there has been no opposition or complaint made by any local attorney to any client heretofore represented by the Office. After such pre-screening by the Office, the Court follows with a formal appointment confirming Office representation. Since the establishment of the Program, court appointments of private counsel have been reduced to less than 2% of the total number of indigent cases.

During 1974, 634 cases were assigned to the Public Defender's Office of which 263 were left pending at the end of the year. Under the terms of the grant, the Superior and Juvenile Courts of both Whitfield and Murray counties were to be provided with Defender services; however, the overwhelming majority of the Office's caseload comes from Whitfield County. This fact may be explained by the location of the Office within its bounds, but certainly further scrutiny seems justified into the needs of the indigent of Murray County.

During 1974, of 371 total cases completed, none was disposed of by jury trial, and apparently only four jury cases have been tried since the office began operations. The cases were all disposed of by guilty plea or, to a lesser extent, nolle prossed or dead-docketed. According to the Defender, the major emphasis of the Office has been on diversion of cases from the criminal justice system. There is some evidence of the Defender's work in developing alternatives. Cited as examples were the diversion of young drug offenders by utilizing services provided by the probation department under a stipulation by the District Attorney that the case will remain open pending a positive

progress report from the department; the use of Alcoholics Anonymous for clients with alchohol-related problems of adjustment; the diversion of two juveniles from incarceration by arranging for their acceptance into the Rolloff Home for Hard Core Delinquents in Corpus Christi, Texas. It was also reported that the Defender had personally arranged for employment of several clients with local businessmen and had worked with a local minister who functions in a quasi-diversion position.

4. Case Entry

The Defender learns of and initiates contact with a client shortly after arrest due to very frequent visits to the local county jails. The Office must compile its own jail list which is updated every four or five days. The Office takes great pride in its early and continuing contact with clients with the lion's share of such responsibility being carried by the Investigator. The Office remains open for a half day on Saturday and the Defender makes himself accessible by telephone on nights and weekends.

The backlog of pending cases in both felony and misdemeanor categories has virtually been eliminated, demonstrating the efficiency of the Defender system despite the fact that the frequency of preliminary hearings has increased substantially since the inception of Defender services.

5. Independence of the Office

As a result of the service contract between the County and the Georgia Criminal Justice Council, the Conasauga Circuit Defender

Office is formally an autonomous entity within the community. To some extent, though, Senior Superior Court Judge Robert Vining has assumed a general responsibility for overseeing any local problems which may arise concerning the day-to-day operations of the program.

6. Local Evaluation of the Program

a. Court: Judge Vining, Senior Superior Court Judge of Whitfield County, expressed support of the Office and stated that he expected a Defender to operate in the most effective, efficient manner possible. The evaluators were impressed that Judge Vining sincerely wanted a Public Defender Office which would represent zealously the rights of those assigned its services even if this necessitated an occasional disagreement between the Court and defense counsel. The Judge expressed some concern over the few number of cases brought to trial but attributed this fact to the favorable bargains offered by the District Attorney.

b. District Attorney: The District Attorney of Whitfield County, Sam Brantly, stated that his relationship with the Defender was very good and that they worked well together. He asserted that the Defender maintained a good balance between pleaded cases and tried cases, that he was always well-prepared and zealous in protecting the rights of his clients. He thought that clients of the Defender receive as good a defense as those of privately retained counsel and that the Defender system was probably better than the previous system of court-appointed private counsel.

c. Probation Officer; The Probation Officer stated that his principal contact with the Office occurred either at the point of arrest, during presentence investigations, or at probation revocation hearings. He confirmed that the Defender does participate in the formation of presentence recommendations although the reports are not made available to the Defender Office unless the Court so orders. While he conceded a general need for Defender services, he did not feel that any was necessary for a clear-cut case of probation violation, probation revocation hearings.

d. Law Enforcement: A good working relationship seems to have been established with law enforcement officers, particularly with Sheriff Jerry Mauldin of Whitfield County. The Sheriff trusts the Office and has in the past made special accommodations for their clients at the request of the Defender's staff. The Deputies interviewed observed that in their opinions, the Defender was always well-prepared in Court and provided better services than a court-appointed attorney from private practice. They seemed especially impressed with the dilligence of the Office in keeping in contact with their clients, noting that either the Defender or the Investigator visited the Whitfield County jail on a daily basis.

e. Clients: Despite the reports of a possible misuse of the guilty plea, of the eight clients interviewed, all expressed satisfaction with the Defender's services. No one voiced any complaints or misgivings about their representation. Two clients

specifically noted that the Defender had contacted them almost immediately, had stayed in touch, and had given what seemed to be a sufficient amount of time to counseling and investigation of their cases; furthermore, given the choice of a private attorney, each would still prefer the Public Defender. Another client, however, charged with rape, felt the Defender was reluctant to tackle a controversial case.

F. OGEECHEE JUDICIAL CIRCUIT PUBLIC DEFENDER OFFICE

1. Background: Office and Organization

The Ogeechee Judicial Circuit is located on the eastern border of the State adjoining South Carolina, immediately north of Savannah and Chatham County. It is a relatively poor, rural Circuit in which little expenditure has traditionally been allocated for the criminal justice system; even the District Attorney (usually one of the most powerful political personnages in a Circuit) has no secretary and must pay from his personal funds for telephone bills, office furniture and mileage as well as for his trial transcripts and other appellate expenses. The Circuit is composed of four counties: Effingham, Bulloch, Jenkins, and Screven with a racial composition of approximately 63% white, and 37% black.

The Ogeechee Circuit Public Defender's Office was established in June, 1973, through an LEAA grant from the State Crime Commission. It is located in Statesboro, the county seat of Bulloch County. The Office is composed of a single Public Defender, Ralph Bacon, and a Secretary. Mr. Bacon had extensive prior experience in a local practice.

Office space appears quite adequate: Mr. Bacon continues to operate out of the same office in which he formerly practiced law, and no charge for his office space is borne by the grant. While Mr. Bacon personally has only a very limited library, there is a county-maintained law library across the street to which he has full access, as needed.


TENNESSEE
NORTH CAROLINA
SOUTH CAROLINA
ALABAMA
FLORIDA
ATLANTIC OCEAN
Area served by office
GEORGIA
OUTLINE MAP
SHOWING
COUNTIES
SCALE OF MILES
10 0 10 20 30 40
WALKER 50,691
WHITFIELD 55,108
MURRAY 12,984
CATOOSA 28,221
DADE 9,910
CHATTOOGA 20,541
GORDON 23,570
PICKENS 9,620
GILMER 8,956
FANNIN 13,357
UNION 6,811
TOWNS 4,656
RABUN 8,386
LUMPKIN 8,728
WHITE 7,742
HABERSHAM 20,691
STEPHENS 20,331
DAWSON 3,639
FORSYTH 16,928
HALL 59,405
BANKS 6,833
FRANKLIN 12,784
HART 15,814
FLOYD 73,742
BARTOW 32,663
CHEROKEE 31,059
JACKSON 13,517
MADISON
ELBERT 17,262
POLK 29,656
PAULDING 17,519
COBB 196,793
GWINNETT 72,349
16,859 BARROW
65,177 CLARKE
OGLETHORPE 7,598
WILKES 10,184
LINCOLN 5,895
HARALSON
DOUGLAS 28,659
FULTON 607,592
DEKALB 415,387
WALTON 23,404
OCONEE 7,915
CARROLL 45,404
NEWTON 26,282
MORGAN 9,904
GREENE 10,212
TALIAFERRO 2,466
COLUMBIA 22,327
MCDUFFIE 15,276
WARREN 6,669
HEARD 5,354
COWETA 32,310
FAYETTE 11,364
HENRY 23,724
SPALDING 39,514
BUTTS 10,560
JASPER 5,760
PUTNAM 8,394
HANCOCK 9,019
GLASCOCK 2,487
RICHMOND 162,437
TROUP 44,466
MERIWETHER 19,461
PIKE 7,316
LAMAR 10,688
MONROE 10,991
JONES 12,218
BALDWIN 34,240
WASHINGTON 17,480
JEFFERSON 17,174
BURKE 18,255
UPSON 23,505
HARRIS 11,520
TALBOT 6,625
CRAWFORD 5,748
BIBB 143,418
TWIGGS 8,222
WILKINSON 9,393
JOHNSON 7,727
JENKINS 8,332
SCREVEN 12,691
EMANUEL 18,189
MUSCOGEE 167,377
TAYLOR 7,865
PEACH 15,990
CHATTAHOOCHEE 25,813
MARION 5,099
SCHLEY 3,097
MACON 12,833
HOUSTON 62,924
BLECKLEY 10,291
LAURENS 32,738
TREUTLEN 5,647
CANDLER 6,412
BULLOCH 31,585
EFFINGHAM 13,849
STEWART 6,511
WEBSTER 2,363
SUMTER 26,931
DOOLY 10,404
PULASKI 8,066
DODGE 15,458
WHEELER 4,595
MONTGOMERY 5,099
TOOMBS 19,151
EVANS 7,267
TATTNALL 16,511
BRYAN 6,539
CHATHAM 187,767
QUITMAN 2,121
RANDOLPH 8,734
TERRELL 11,416
CLAY 3,636
LEE 7,044
CRISP 18,085
WILCOX 6,998
TELFAIR 11,381
TURNER 8,790
BEN HILL 13,171
JEFF DAVIS 9,425
APPLING 12,726
LONG 3,746
LIBERTY 17,569
CALHOUN 6,606
DOUGHERTY 89,671
WORTH 14,770
IRWIN 8,036
COFFEE 22,828
BACON 8,233
WAYNE 17,858
MCINTOSH 7,371
EARLY 12,682
BAKER 3,875
MILLER 6,397
MITCHELL 18,956
BERRIEN 11,556
ATKINSON 5,879
PIERCE 9,281
BRANTLEY 5,940
GLYNN 50,321
COLQUITT 32,200
COOK 12,129
LANIER 5,031
WARE 33,525
SEMINOLE 7,059
DECATUR 22,310
GRADY 17,826
THOMAS 34,515
BROOKS 13,739
LOWNDES 55,112
CLINCH 6,405
CHARLTON 5,680
CAMDEN 11,334
ECHOLS 1,716

2. Staff

The Defender was selected and appointed by the Superior Court Judge and currently earns $18,000.00 per year. According to the Judge, Mr. Bacon was and is highly qualified for this position. The secretary receives an annual salary of $5,000.00. There are no additional staff members available either for research or case investgation. There is no budgetary allowance for travel or training, and no funds are currently allocated for expert evaluation or testimony.

3. Client Eligibility and Caseload

There is no formal set of criteria by which eligibility for services is determined. The Superior Court Judge, W.C. Hawkins, makes inquiries and decides eligibility at arraignment and, if satisfied, appoints the Defender. Apparently the Superior Court Judge and the Defender are both satisfied with the current case-by-case method; an eligibility questionnaire is viewed as unnecessary because of their combined knowledge of most of the citizens of their community. In fact, Judge Hawkins stated he was opposed to stated or fixed standards.

Since the program was begun two years ago, 1,937 cases have been assigned to the Defender, and 522 cases were pending as of March, 1975. There are available figures separate for each year of operation. Under the terms of the grant, the Defender is responsible for all indigent clients appearing before the Superior, State, and Juvenile Courts of the four county area.

Of the total number of cases, 376 defendants, or approximately one out of every five whom the Defender represents, received a jury trial. Indeed, the Defender basically sees his function to provide every defendant so desiring a full and complete jury trial. The Defender does not file many pre-trial motions and concentrates his energies at the trial stage.

It was generally reported that the Defender was very active in diverting cases from the criminal justice system although specific examples were not obtained. One of the clients interviewed did state that the Defender had found a job for him when he was placed on probation.

4. Case Entry

In the vast majority of his cases, estimated at 90%, the Defender does not assume responsibility until the arraignment stage. In the remaining 10% of cases, contact is made earlier when the client is incarcerated awaiting initial appearance. The Defender enjoys a very amicable relationship with the Sheriff who has on occasion, requested that he come to the jail to talk to an inmate who appears in need of his services.

The relatively late entry of the Defender explains, in part, the lack of preliminary hearings in the Circuit and the limited use of pre-trial motions by the Office.

5. Independence of the Office

As mentioned previously, the Ogeechee Circuit Public Defender

was selected and appointed by the Superior Court Judge and, should controversy arise concerning the Office's operations, the Defender is directly answerable to this Judge. According to the probation officer, apparently the Public Defender is required to be present in the courtroom at all times when court is in session.

The Superior Court Judge was not interviewed concerning the issue of the Office's independence. No one suggested any problems of conflict which might have arisen in the past. Clearly, the Court has not interfered with the Defender's insistence upon jury trials. However, equally clear is the fact that it is the Court which initially determines eligibility and withholds appointment until arraignment.

6. Local Evaluation of the Program

a. District Attorney: The District Attorney characterized his relationship with the Defender as "very good"; while they were friendly outside of court, they were adversarial when on trial. He estimated that the Defender's plea-to-trial ratio was similar to that of the private bar and that he seemed to use good judgment in evaluating plea bargains. He thought that the Defender was always well-prepared in court and extremely conscientious in protecting the rights of his clients. The District Attorney added that the Defender also seemed to maintain a good working relationship with the Judge. He was supportive of the Defender program, noting that it is much needed in this Circuit and observing that the Defender's clients received as good,

if not better, representation as clients of the private bar.

b. Probation Officer: He noted that he came in contact with the Defender on an almost daily basis. In the Ogeechee Circuit, presentence investigations are prepared on every defendant, and the Defender actively participated in attempting to obtain probation and probation recommendations. A copy of all such investigations prepared on the Defender's clients is automatically given to the Defender. The Probation Officer reported that the Defender is available morning, noon and night, including weekends, at any time when he is called upon to counsel a client in jail. From having often observed the Defender on trial, the Probation Officer thought that he conducted himself very well, was competent and conscientious counsel. His only criticism concerned the fact that in some cases, the Defender did not get appointed to represent indigents until their arraignment and as a result, he had little time to prepare his case for trial and virtually no time for extensive pre-trial investigation. The Probation Officer concurred that the Defender provided greatly needed services of a calibre equal to if not better than members of the local private bar.

c. Law Enforcement: The Sheriff stated that the Defender always represents his clients as though they were paying for counsel. In particular, the Sheriff praised the Defender's accessibility, his willingness to counsel any client upon request. In comparison with the old appointed counsel system, he thought the Defender

system was much better.

d. Clients: Two clients were interviewed, and each felt that he had received very good representation, equal to that he would have received had he been able to retain counsel. Neither would have preferred private counsel over the Defender. One client was especially impressed with the fact that the Defender had found a job for him when he was released on probation.

G. NORTHERN JUDICIAL CIRCUIT PUBLIC DEFENDER OFFICE

1. Office and Organization

The Northern Judicial Circuit is located in the northeastern part of the State, on the eastern boundary abutting on South Carolina. It is composed of five counties: Hall, Oglethorpe, Franklin, Hart and Elbert, each of which is predominantly rural and dependent upon an agricultural economy. The racial composition of the Circuit is approximately equally divided between black and white. The most influential center of the Circuit is Gainesville, the largest city and the county seat of Hall County, where two small colleges are located.

The Northern Circuit Public Defender's Office was established in July, 1974 through an LEAA grant from the State Crime Commission. The Office is composed of a single Public Defender, J. Cleve Miller, and a secretary, Sharon Moore.

The Office is located in Elberton, one block from the Elbert County Courthouse. The Defender maintains the office which he formerly occupied while in private practice; he continues to share space with two of his former law partners. While the firm library is modest, the Defender is within an hour's drive from the Law Library at the University of Georgia to which he has access should the need for in-depth research occur.

2. Staff

The Defender was appointed by the Superior Court Judge, John William Williford, and receives an annual salary of $25,000.00. The


TENNESSEE
NORTH CAROLINA
SOUTH CAROLINA
ALABAMA
FLORIDA
ATLANTIC OCEAN
Area served by office
GEORGIA
OUTLINE MAP
SHOWING
COUNTIES
SCALE OF MILES
10 0 10 20 30 40
9,910 DADE
28,271 CATOOSA
13,357 RABUN
TOWNS 4,656
UNION 6,811
RABUN 8,386
50,691 WALKER
55,108 WHITFIELD
MURRAY 12,986
GILMER 8,956
WHITE 7,742
HABERSHAM 20,691
STEPHENS 20,331
LUMPKIN 8,728
CHATTOOGA 20,541
GORDON 23,570
PICKENS 9,620
DAWSON 3,639
BANKS 6,833
FRANKLIN 12,784
HART 15,814
FLOYD 73,742
BARTOW 32,663
CHEROKEE 31,059
FORSYTH 16,928
HALL 59,405
JACKSON 13,517
MADISON 11,262
ELBERT 17,262
POLK 29,656
PAULDING 17,519
COBB 196,793
GWINNETT 72,349
16,859 BARROW
65,177 CLARKE
OGLETHORPE 7,598
WILKES 10,184
LINCOLN 5,895
HARALSON
DOUGLAS 28,659
FULTON 607,592
DEKALB 415,387
WALTON 23,404
OCONEE 7,915
CARROLL 45,404
FAYETTE 11,364
HENRY 23,724
NEWTON 26,282
MORGAN 9,904
GREENE 10,212
TALIAFERRO 2,466
WARREN 6,669
MCDUFFIE 15,276
COLUMBIA 22,327
HEARD 5,354
COWETA 32,316
SPALDING 39,514
BUTTS 10,560
JASPER 5,760
PUTNAM 8,394
HANCOCK 9,019
GLASCOCK 2,487
RICHMOND 162,437
TROUP 44,466
MERIWETHER 19,461
PIKE 7,316
LAMAR 10,688
MONROE 10,991
JONES 12,218
BALDWIN 34,240
WASHINGTON 17,480
JEFFERSON 17,174
BURKE 18,255
UPSON 23,505
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WILKINSON 9,393
JOHNSON 7,727
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HARRIS 11,520
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TWIGGS 8,222
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MUSCOGEE 167,377
TAYLOR 7,865
PEACH 15,990
HOUSTON 62,924
PULASKI 8,066
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LAURENS 32,738
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CANDLER 6,412
BULLOCH 31,585
EFFINGHAM 13,840
CHATTAHOOCHEE 25,813
MARION 5,099
MACON 12,033
SCHLEY 3,097
STEWART 6,511
WEBSTER 2,363
SUMTER 26,931
DOOLY 10,404
WHEELER 4,595
TOOMBS 19,151
EVANS 7,282
BRYAN 6,539
CHATHAM 187,767
WILCOX 6,998
TELFAIR 11,381
TATTNALL 16,511
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Secretary receives $6,000 per year. There are no additional staff members available for either research or case investigation. Because of the Office's location, it might be possible to work out student clinical placements with the nearby University of Georgia Law School although this possibility was not explored in interviews. There is no budgetery allowance for travel or training since under the terms of the grant, the County provides $250.00 per month for all expenses of the Defender's Office. Of this amount $200.00 per month must be expended for rent which leaves only $50.00 per month for all traveling and supplies. Therefore, the majority of extraordinary expenses must be personally borne by the Defender. No funds are available for expert evaluation or testimony.

Mr. Miller was formerly a partner in the Elberton firm of Hawes, Miller, and Shurling, other members of the firm have included Peyton Hawes, a former State Revenue Commissioner and now retired Supreme Court Judge. Some of those interviewed expressed concern as to whether or not Mr. Miller's prior relationships in the law enforcement and political powers in the Circuit can hinder his aggressiveness.

The Defender still maintains a civil practice of unknown dimension in addition to his full-time duties as Circuit Defender. He states that his current private practice basically involves uncontested litigation, divorce and estate work, for former clients, and states that he must supplement his salary as Defender with such

outside income.

The Defender was quite receptive to the possibility of technical assistance and support in the area of criminal law and procedure. He expressed an interest in attending training seminars and programs which would enable him to become a more effective trial counsel. Mr. Miller has to some extent done appellate work and recognizes its value, perhaps more critical than usual given the nature of the trial court in which he must practice.

3. Client Eligibility and Caseload

There is no formal set of criteria by which eligibility for services is determined. Judge Williford conducts his investigation into eligibility and decides on an ad hoc basis whether or not to appoint the Defender. It was stated that the Georgia Criminal Justice Act was basically used to determine indigent status. The lower than might be expected number of Defender cases might well be explained by the use of a conservative, or even unduly restrictive, standard of eligibility by the Court.

Since its inception some nine months ago, 169 cases (80 individual clients) were disposed of. As of March, 1975, 39 cases (an unknown number of individual clients) were still pending. By terms of the grant, the Defender provides services to all indigents appearing before the Superior, State, Recorders, Magistrates and Juvenile Courts in the five county area. The majority of these cases were disposed of by plea bargain. According to the District Attorney, Clete Johnson,

apporoximately eight cases have been tried since the program's inception. Although none of these cases resulted in an acquittal, the District Attorney commented that in each case, the evidence was overwhelmingly against the defendants. In addition, he noted that, on occasion the Defender had obtained lesser sentences for his clients than had been originally recommended. Local officials attributed the low proportion of cases won to the type of cases being handled.

Judge Williford estimated that 90% of the Defender's cases are handled by a plea conference without a trial and that this type of bargaining is necessary to keep the court "up to date".

No information was elicited concerning the Defender's efforts to date to divert clients from the criminal justice system.

4. Case Entry

Normally the Defender enters a case at arraignment upon appointment by the Court. According to custom and practice in the Northern Judicial Circuit, if a client is released on bail, he waives his rights to a preliminary hearing. There seems to be a considerable degree of pressure by law enforcement personnel to encourage defendants to get released on bond, thus short-circuiting the availability or preliminary hearings and concomitant discovery rights of the defense. The Defender estimated that approximately 50% of his clients were out on bond at the time of his appointment. The Defender's attitude about challenging such a practice was not explored in interviews.

As noted before, the Defender does not have the supportive ser-

vices of an Investigator although he expressed a need for at least part-time assistance. Currently he places great emphasis on self-help by the clients themselves if they are out on bail. He depends upon clients to gather information and to persuade potential witnesses to come to his office for interviews. In cases in which the defendants are still in jail, the Defender is forced to do all of the information-gathering himself. The Office secretary also noted that she occasionally interviewed clients and even went to their homes on special investigative assignments.

Yet the Northern Circuit Defendant does have the advantage of a cooperative District Attorney. According to Clete Johnson, his files are generally open to the Defender and information concerning the Defender's clients is usually made available to him.

5. Independence of the Office

The Defender was selected and appointed by the Superior Court Judge and is subject to his control to a greater extent than perhaps any other Office evaluated. According to some who practice in the circuit, the Judge resents any intrusion in his judicial control of the court system.

Judge Williford stated that public defense work should be controlled and maintained by the local officials on the local level. It was apparent from Judge Williford's comments that he wanted to maintain complete control of the Public Defender system; and apparently did not recognize a need for the Office to be independent, even in theory.

While the Defender indicated he would effectively represent his clients in every case, he is cognizant of the fact that his job and

future security rest upon his working within the current system.

6. Local Evaluation of the Program

a. Court: Judge Williford concedes that the present Defender system affords better, more effective representation than the prior appointed attorney system did. Moreover, he is of the opinion that there is essentially no difference between the services provided by the Defender than those provided by privately retained counsel. He added that, from his observations, the Defender was as competent in court as the District Attorney.

b. District Attorney: Clete Johnson, the District Attorney, described his relationship with the Defender as cooperative. He observed that the Defender has always been well prepared in court and that he strikes a good balance between cases pleaded and cases tried. Significantly, the District Attorney noted what he considered to be a "good attitude" on the part of the Defender; according to him, he would much prefer to have a Defender in Court than appointed counsel because in the past court-appointed attorneys have aggravated the Judge, District Attorney, and jury by making time-consuming arguments which were not necessary.

c. Probation Officer: Doug Jordon, the Probation Officer interviewed, said that he usually comes into professional contact with the Defender after one of his clients has been placed on probation or, occasionally, during presentence investigations of Defender clients.

In this Circuit, the presentence investigation report does not contain recommendations; it is submitted directly to the District Attorney and the Judge. Neither the Defender nor private defense counsel are allowed to participate in these evaluations. The Defender is occasionally allowed to see reports prior to disposition, but only when the Judge has given special permission.

d. Law Enforcement: Law enforcement officials in the Circuit were complimentary of the Defender's activities and actions. In particular, Deputy Sheriff Gene Smith of Elbert County noted that in his estimation the Defender is very competent in defending his clients. He stated that a defendant is read his rights upon arrest and, if he says that he cannot afford private counsel, the Judge is informed, and the Defender is appointed immediately. He believed that the major goal of the Defender should be to defend his clients to the best of his ability and that this is exactly what the present Defender is doing.

e. Clients: Due to the fact that most of the Defender's clients are out on bail, residing in various parts of the Circuit, only one client was interviewed. He was incarcerated in the Oglethorpe County Jail awaiting trial for murder of his wife and apparently had been previously charged with another murder. During a very short conversation, he seemed to be satisfied with the representation of the Public Defender and indicated that Mr. Miller had done what was necessary so far to represent his interests at trial; he seemed resigned to the fact that, if convicted, he would receive a severe sentence.

H. WAYCROSS JUDICIAL CIRCUIT PUBLIC DEFENDER OFFICE

1. Background: Office and Organization

The Waycross Judicial Circuit is located in the extreme southeastern corner of Georgia on the Florida boundary. It is a predominantly rural, agricultural area with one rather large city, Waycross, the county seat of Ware County. The Circuit, composed of 6 counties: (Bacon, Brantley, Charlton, Coffee, Pierce and Ware)has a racial composition of approximately 80% white, 20% black.

The Waycross Circuit Public Defender Office was established in August, 1974, through an LEAA grant from the State Crime Commission. The Office is composed of a Senior Public Defender, E. Kontz Bennett, Jr., a Deputy Defender, Dennis Strickland, an Investigator, John Thigpen, and a Secretary, Cherry Pittman. The funds for the Investigator's salary came from a special grant from the Georgia Criminal Justice Council.

The Office is located in the Ware County Courthouse and appears adequate according to current staff size. Additional space will be needed if any personnel are added. The waiting space for clients is limited.

2. Staff

The Senior Public Defender was selected and appointed by the Superior Court Judge, Ben A. Hodges in consultation with the other Circuit Superior Court Judge, L.E. Holton, for a two-year term. The remaining staff were all recruited and hired by the Defender. Annual salaries for staff is as follows: Senior Defender, $20,000.00;


TENNESSEE
NORTH CAROLINA
SOUTH CAROLINA
ALABAMA
FLORIDA
ATLANTIC OCEAN
Area served by office
GEORGIA
OUTLINE MAP
SHOWING
COUNTIES
SCALE OF MILES
10 0 10 20 30 40
9,910 DADE
28,221 CATOOSA
50,691 WALKER
55,108 WHITFIELD
12,986 MURRAY
13,357 FANNIN
8,956 GILMER
UNION 6,811
TOWNS 4,656
RABUN 8,386
WHITE 7,742
HABERSHAM 20,691
STEPHENS 20,331
LUMPKIN 8,778
CHATTOOGA 20,541
GORDON 23,570
PICKENS 9,620
DAWSON 3,639
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HART 15,814
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GWINNETT 72,349
16,859 BARROW
65,177 CLARKE
OGLETHORPE 7,598
WILKES 10,184
LINCOLN 5,895
HARALSON
DOUGLAS 28,659
FULTON 607,592
98,064 CLAYTON
DEKALB 415,387
ROCKDALE 18,152
WALTON 23,404
OCONEE 7,915
CARROLL 45,404
NEWTON 26,262
MORGAN 9,904
GREENE 10,217
2,669 TALIAFERRO
WARREN 6,669
MCDUFFIE 15,276
COLUMBIA 22,327
HEARD 5,354
COWETA 32,310
FAYETTE 11,364
HENRY 23,724
SPALDING 39,514
BUTTS 10,560
JASPER 5,760
PUTNAM 8,396
HANCOCK 9,019
GLASCOCK 2,487
RICHMOND 162,437
TROUP 44,466
MERIWETHER 19,461
PIKE 7,316
LAMAR 10,688
MONROE 10,991
JONES 12,218
BALDWIN 34,240
WASHINGTON 17,480
JEFFERSON 17,174
BURKE 18,255
UPSON 23,505
HARRIS 11,520
TALBOT 6,625
CRAWFORD 5,748
BIBB 143,418
TWIGGS 8,222
WILKINSON 9,393
JOHNSON 7,727
JENKINS 8,332
SCREVEN 12,691
EMANUEL 18,189
MUSCOGEE 167,377
TAYLOR 7,865
PEACH 15,990
CHATTA-HOOCHEE 25,813
MARION 5,099
SCHLEY 3,097
MACON 12,833
HOUSTON 62,924
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DODGE 15,458
BLECKLEY 10,291
LAURENS 32,738
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CANDLER 6,412
BULLOCH 31,585
EFFINGHAM 13,840
STEWART 6,513
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SUMTER 26,931
DOOLY 10,404
WILCOX 6,998
CRISP 18,085
WHEELER 4,595
MONTGOMERY 7,099
TOOMBS 19,151
EVANS 7,287
TATTNALL 16,511
BRYAN 6,539
CHATHAM 187,767
QUITMAN 2,121
RANDOLPH 8,734
TERRELL 11,416
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CLAY 3,636
CALHOUN 6,606
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WORTH 14,770
TIFT 27,288
IRWIN 8,036
COFFEE 22,828
BACON 8,233
WAYNE 17,658
MCINTOSH 7,371
EARLY 12,682
BAKER 3,875
MILLER 6,397
MITCHELL 18,956
COLQUITT 32,200
COOK 12,129
BERRIEN 11,556
ATKINSON 5,879
PIERCE 9,281
WARE 33,525
BRANTLEY 5,940
GLYNN 50,321
LANIER 5,031
CLINCH 6,405
CHARLTON 5,680
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DECATUR 22,310
GRADY 17,826
THOMAS 34,515
BROOKS 13,739
LOWNDES 55,112
ECHOLS 1,716

According to all reports, the Defenders have to date provided their clients with an aggressive defense which has generated some local friction, although they seem respected by all. In addition, one of the evaluators had the opportunity to observe the Assistant Public Defender in trial. He seemed to do an excellent job in all respects, direct cross-examination as well as in closing argument.

The Investigator, John Thigpen, deserves special comment. With a college degree in criminology, he has proved to be a real asset for the Office. Judge Holton singled him out for praise noting that he was hard-working, accurate, believable, and essential to the operations of the Defender's Office.

In addition, the Office Secretary, Cherry Pittman, seems to have done more to cope with the administrative problems of a circuit-wide Office than any other program officer interviewed. She has developed and keeps up to date a master statistical chart for each Court; a docket book for each of the six counties; a county court book; card index; and case files. She maintains all files and prepares all briefs.

Although all staff are considered full-time, the Senior Defender also maintains a civil practice described as "minimal" but of unknown volume.

The Office has no training funds in its budget, but the Defender seems amenable to in-service training and technical assistance. On at least one occasion, the office requested the assistance of staff lawyers

from the Criminal Justice Council although such action apparently exacerbated their relationship with the Judge and District Attorney. The Georgia Criminal Justice Council, which maintains an "informal" relationship with the Office, has also provided out-of-state training for both the Senior Defender and the Investigator through the National College of Criminal Defense Lawyers and Public Defenders and the National Legal Aid and Defender Association.

3. Client Eligibility and Caseload

The Waycross Defender Office has developed the most elaborate eligibility procedures of any Office evaluated. Once a potential client is referred, a four page document entitled "Application for Public Defense Service" is completed which calls for information concerning total income, assets, liabilities, etc. to arrive at a net figure known as "disposable income". No specific financial criteria or maximum disposable income figures have been set. The final determination of eligibility is made by the Superior Court Judge.

Since its inception, some eight months prior to the time of evaluation, the Office had been appointed in 546 cases. Under the terms of the grant, the Defender is responsible for services to indigents appearing in any court in the six county area; however, the majority of the Defender's current caseload comes from Ware and Coffee Counties.

Due to the excellent records maintained by the Office, the following break-down by types of cases can be reported: 36 capital felonies; 356 non-capital felonies; 149 misdemeanors; two juvenile cases; and three ordinance violations. Not included in this case count are probation

revocations, appeals and various motions.

A break-down by case disposition is not currently available. Interviews did reveal that two clients received the death penalty; one case has been affirmed on appeal and the second is currently pending appeal. In terms of the ratio between tried and pleaded cases, the Waycross Office does not seem to be abusing the use of guilty pleas. Indeed, according to the District Attorney, the Defenders have erred in the opposite direction try too many cases. He also complained that the Public Defender would not plead some defendants guilty even if they requested such a plea.

It may be anticipated that the appellate workload of the Waycross Defender's Office will be substantially higher than other offices, principally due to three factors: first, the attitude of the Waycross Defender's Office itself and the demonstrated determination of staff to afford an effective and complete defense; second, the acknowledged attitude of Judge Holton to make a rather extensive use of straight jail time sentences; and finally, the Judge's custom of personally advising each defendant who receives a sentence of more than five years of his rights to review. If the Defenders are currently overburdened from less than a year's operation, once the appeals generated from their trials start coming due, their workload will increase substantially.

The Defenders have already made some effort to seek alternatives to incarceration for their clients. Cited as an example of their efforts in this direction was a case involving a juvenile female who had

been evaluated in Savannah for potential diversion from the State system of Youth Development Centers, however, progress in this area will probably be quite slow and arduous due to the current lack of interaction between the Defender's Office and the Probation Office as well as the Court's rather punitive predisposition.

Judge Holton stated that he has a policy of not following any recommendations for probation in crimes of violence where a deadly weapon is used or in cases involving the sale of drugs. In his opinion, these crimes per se call for prison sentences.

4. Case Entry

Case entry has been the most controversial aspect of the Office's past activities. Initially, the Defenders, following the pattern set by offices affiliated with the Georgia Criminal Justice Council had access to clients who were in jail awaiting an initial court appearance. However, because of a court incident the Defenders were formally restrained by the Superior Court Judge from contacting any client before formal appointment, which occurs at arraignment.

Law enforcement officials were split in opinion concerning the proper point of entry for the Defenders. The Sheriff of Ware County was adamantly opposed to the Defender coming into the jail before arraignment and "interfering" with a defendant's processing, i.e. fingerprinting, breathalizer testing as well as other investigating and questioning. In contrast, the Captain of the Waycross Police Department believed that the Public Defender should come into the case at the point when the defendant is arrested.

The prosecution forces are united in opposing efforts to broaden defense pre-trial discovery rights. The Circuit follows the practice of denying a preliminary hearing if a defendant is admitted to bail. The District Attorney observed that discovery should be allowed if, and only if, he got more staff; he estimated that he would need at least four more supportive staff "if discovery were made the law". The Sheriff added, that he, too, was completely opposed to discovery. Completing the united front against defense access to information is the Circuit Probation Department. The probation officers interviewed noted that they make no information available to the Public Defender unless ordered to do so by the Court. They stated that they do not let the Defender participate in probation recommendations although occasionally they do discuss presentence reports with the Defender prior to sentencing. Furthermore, the probation officers were in full agreement with the current system. One of the officers observed that the Judge should not give a copy of the presentence report to the Public Defender because some portions are confidential, containing information about community reputation, personal history, etc.

5. Independence of the Office

The current Senior Defender was selected and appointed by the Superior Court Judge and is responsible to him for the Office's operations. The Defender candidly discussed the problems such a relationship might create but stated that as far as he personally was concerned, the two year term of his contract afforded him sufficient insulation to

chart an independent course.

In an extensive interview, Judge Holton expressed his concern which appeared to be principally that local lawyers be tapped to perform public defender services. Indeed he stated that he did not think that the Public Defender should be answerable to Judges. He feels strongly that the Public Defender should be selected on a local level by the Bar Association or by the public.

He is on record as being adamantly opposed to current efforts to create a statewide system of indigent defense, which he feels is unrealistic and impractical.

The District Attorney echoed the sentiment that some sort of local control was needed over the Defender.

Despite the formal obligations owed under the grant by the Defender's Office to the Superior Court Judge, his independence to date does not seem to have been curtailed excepting in the one critical area of early entry. By all reports, the Office has generated much controversy in providing aggressive representation. Nothing in the Program's activities during its first year indicates a conservative approach has been adopted; to the contrary, according to the District Attorney and apparently the Judge, since he signed the Order, the Office has been restrained from "soliciting" clients in the jail. However, the Defender's two year contract provides slim protection against official pressure should more intense efforts to undermine the Office's integrity be landed in the future.

6. Local Evaluation of the Program

a. Court: According to Judge Holton, both Defenders do an extremely good job in representing their clients; both are capable and conscientious and work very hard despite the fact that they are overworked. In general, Judge Holton is pleased with the Waycross Defender's Office as it currently exists. He stated that he had reservations about the former court-appointed system because private lawyers, when appointed, just "did not work to defend their clients". Furthermore, he commented that the Defenders should be paid commensurate with the salaries received by District Attorneys since they "work just as hard".

b. District Attorney: The District Attorney was less complimentary although he conceded that the Defenders were competent, conscientious, hard-working lawyers. He described his relationship with the Office as an adversarial one. He was of the opinion that the Defender "tried too many cases", and "filed too many motions". He had many complaints which principally concerned what he considered to be an overzealous representation by the Defenders.

c. Probation Officer: More than any other Circuit seen, the probation officers in Waycross were less cooperative with the Defender's Office. There is little interaction by formal design; the Defender is not permitted to participate in the formulation of probation recommendations. The principal contact appears to occur in cases of probation revocation and immediately prior to sentencing. However, the officers interviewed were of the opinion that the Defenders did a good job in representing their clients and were overworked.

d. Law Enforcement: While the Sheriff of Ware County was opposed to the Defender's "interfering" with the Department's processing of the defendants in the pre-trial stages, he did concede that the Defenders did a very good job. In his opinion, the Defenders were overloaded and overworked, and they both were dedicated to their clients. Although critical of the Defenders methods in gathering information, the Sheriff also noted that the Defender was very prepared when he went to court and that he vigorously cross-examined police officers. The Captain of the Waycross Police Department concurred in the estimate that the Defenders did an excellent job, and that both are overworked. He added that he thought that the caseload was far too heavy for two defenders and that they did not have enough time to prepare individual cases. He characterized the former, court-appointed system as "a plea mill" and thought that the Defender's Office was making satisfactory progress.

e. Clients: Two clients were interviewed. Both individuals stated that they were satisfied with the Defender and would retain him even if private counsel were available. Both thought that the Defender was as capable as the Prosecutor and had given sufficient time to their cases. In addition, each considered the Defender to be polite and interested in their problems.

f. Private Bar: Leon Wilson, a lawyer in a private practice with some criminal defense work, stated that he was 100% in favor of the Public Defender system as is the whole local bar association. He noted that the former, appointed system was terrible and that the Public Defenders are efficient, competent, and very aggressive. There has

been no problem in the Waycross Circuit of bar resistance for fear of siphoning off fee cases; according to Mr. Wilson, there were so few lawyers in the Circuit that all became disgusted and tired of being put on the list to represent indigents. In his estimation, the Public Defender was just as important to the criminal justice system as the District Attorney and does a lot more work; both should be paid the same amount and enough to attract really talented lawyers into the positions.

III: RECOMMENDATIONS

A. INDEPENDENCE OF THE PUBLIC DEFENDER OFFICE

1. Relevant Standards

Standards Relating to the Administration of Criminal Justice, "Providing defense services: at 147-148 (American Bar Association Project on standards for criminal justice, 1974) [hereinafter cited as ABA Standards]

§1.4 Professional Independence

The plan should be designed to guarantee the integrity of the relationship between lawyer and client. The plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in hte same manner and to the same extent as are lawyers in private practice. One means for assuring this independence, regardless of the type of system adopted, is to place the ultimate authority and responsibility for the operation of the plan in a board of trustees. Where an assigned counsel system is selected, it should be governed by such a board. The board should have the power to establish general policy for the operation of the plan, consistent with these standards and in keeping with the standards of professional conduct. The board should be precluded from interfering in the conduct of particular cases.

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Courts at 268

National Advisory Commission on Criminal Justice Standards and Goals (1973) [hereinafter cited as NAC Standards]

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Standard 13.8 Selection of Public Defenders

The method employed to select public defenders should insure that the public defender is as independent as any private counsel who undertakes the defense of a fee-paying criminally accused person. The most appropriate selection board and appointment by the Governor...

A public defender should serve for a time of not less than four years and should be permitted to be reappointed.

A public defender should be subject to disciplinary or removal procedures for permanent physical or mental disability seriously interfering with the performance of

> his duties, willful misconduct in office, willful and persistent failure to perform public defender duties, habitual intemperance, or conduct prejudicial to the administration of justice. Power to discipline a public defender should be placed in the judicial conduct commission...

By current design, six of the eight Public Defender Offices in Georgia are responsible directly to Senior Superior Court Judges. Only the Glynn County Office and the Conasauga Circuit Office, through contract with the Georgia Criminal Justice Council, are independent under the terms of American Bar Association and National Advisory Commission standards. As the Commentary to the NAC Standards succinctly observes:

> Appointment [and continuing control] of the defender by a judge may impair the impartiality of the defender, because the defendant becomes an employee of the judge. Moreover, such a system will create a potentially dangerous conflict, because the defender will be placed in a position where occasionally he must urge the error of his employer on behalf of his client. Such dual allegiance, to judge and client, will cripple seriously any system providing defender services.
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> NAC Standards at 268

2. Commentary:

The issue of office independence was discussed in every jurisdiction visited in this evaluation, and with the exception of Judge Holton in the Waycross Circuit, and Judge Vining in the Conasauga Circuit, the judges reacted negatively to the suggestion of the need for a method of selection by someone other than the judges. Selection and evaluation by a statewide organization or independent board is not equated with the loss of local accountability nor does it diminish the authority of any court to discipline or restrain, under its general powers, the conduct of a

Defender as an officer of the court. Even in Glynn County and in the Conasauga Judicial Circuit the Defenders must operate according to the standards of conduct applicable to all attorneys and, should they engage in unethical practices, not only would the effectiveness and reputation of the Office be seriously damaged, but they, as individuals, would be exposed to all professional and judicial sanctions.

No Judge in a busy jurisdiction can possibly spare the time to know precisely what a Defender or his staff is doing on any case on any particular day. Even apart from knowledge of a Defender's activities, no judge can spare any substantial time to advise or supervise actions of a Defender even on issues not privileged by the attorney-client relationship.

What has instead happened in those jurisdictions where the judge has the appointing authority is that the Defender has, in effect, been left unsupervised, uncounseled, and unsupported except where controversies have so escalated that they reach the ear of the court.

Under the current system of judicial supervisory authority over a Defender Office, all concede that the potential for loss of independence and therefore less effective representation is present. In fact several Defenders candidly expressed qualms about challenging the judge upon whom their employment depended. No judge controls, in the sense of hiring, supervising his office procedures, or firing, a District Attorney; the District Attorney is elected and owes his primary allegiance to the public which put him in office. There is

no valid reason why the Defender should not enjoy similar independence in order to meet his responsibilities to his clients.

B. CASELOAD CONTROL

1. Relevant Standards
ABA Standards at 150

§4. Criminal Cases

Counsel should be provided in all criminal proceedings for offenses punishable by loss of liberty, except those types of offenses for which such punishment is not likely to be imposed, regardless of their denomination as felonies, misdemeanors or otherwise.

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NAC Standards at 276

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Standard 13.12 Workload of Public Defenders

The caseload of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.

For purposes of this standard, the term case means a single charge or set of charges concerning a defendant (or other client) in one court in one proceeding. An appeal or other action for postjudgment review is a separate case. If the public defender determines that because of excessive workload the assumption of additional cases by his office might reasonably be expected to lead to inadequate representation in cases handled by him, he should bring this to the attention of the court. If the court accepts such assertions, the court should direct the public defender to refuse to accept or retain additional cases for representation by his office.

2. Commentary

Despite problems of incomplete statistical data currently being maintained by at least five of the eight defender offices, a general assessment of current caseloads is possible.

As noted by the pertinent ABA Standard, the State is obligated under the constitution to provide counsel for indigents accused of offenses punishable by a loss of liberty (at least for a potential loss of liberty for six months or longer under the precise holding of the Argersinger decision). Currently in counties or circuits in which Defender Offices have been established, only a few, if any, indigent cases are assigned to counsel other than Defender staff. With tight budgets and the potential of overwhelming caseloads, the quality of Defender services is threatened.

Some of the extant officers have already taken steps to curtail their burgeoning cases. While the Conasauga Circuit office is, by the terms of its grant, obligated to serve both Whitfield and Murray counties, the vast majority of its 634 cases handled during 1974 came from Whitfield County alone; Murray County is therefore, currently an untapped lode of potential cases. Similarly, the Waycross Circuit Office has concentrated its resources on Ware and Coffee counties although there are four other counties for which it is formally responsible. Even the Houston County Office which has a smaller geographical area to cover has been forced to confine its activities to the county's Superior, State and Juvenile Courts to the exclusion of municipal court representation.

Some quality contracts are necessary to insure continued effectiveness of Defender representation. Both the National Advisory Commission on Criminal Justice Standards and Goals and the National Legal Aid and Defender Association recommend maximums for client represent-

ation according to the level of the criminal offense charged. However, as the Commentary to the NAC Standards notes,"[P]articular local conditions -- such as travel time -- may mean that lower limits are essential to adequate provision of defense services in any specific jurisdiction." NAC Standards at 277. Thus in those Offices which have circuit-wide responsibility the maximums set out as recommendations in the standards might need to be lower.

Certainly any set of standards for an attorney's workload must be viewed as general assumptions about average work capacity; individual attorneys may be able to handle slightly more or fewer cases than the level recommended as an average. Too, any such standards must be flexibly applied to account for the unusual unexpected complexities, for example, in the defense of relatively minor offenses. However, the point remains that some rational attempt must be made to protect Defenders against over-extension of their abilities and a consequent dilution of their efforts on behalf of their clients.

It is recommended that the workload limits adopted by the National Advisory Commission and the National Legal Aid and Defender Association be used to assess the current responsibilities of the various Defender Offices in Georgia. This obviously means that alterations in current statistical accounting of the Offices will have to be made; each office should begin counting workload in terms of clients represented, the so-called "body-count" method. Moreover, such a survey must be made as soon as possible in order to make necessary adjustments in individual

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programs before the situation becomes critical.

Certainly it was the impression from local interviews that all of the Offices, with the possible exception of the Northern Circuit Office, appear to be working at an overload level. In order to preserve effectiveness of counsel, either the areas of responsibility will have to be reduced, appointed private counsel resorted to more often, or additional staff must be provided in the very near future. The Defenders should be encouraged in their right and duty to apply to the Superior Court judge for either a temporary moratorium on additional cases until the caseload becomes manageable and/or for modifications in their formal basic programs.

The appointed private counsel system is a safety-valve available to check a flow of indigent cases which would otherwise explode the effectiveness of a Defender Office. At least until the day that Defender Offices are fully staffed and frequently reassessed in keeping with increased demands for service, greater use should be made of the appointed counsel system to supplement the Defender services.

C. SUPPORTING SERVICES AND TRAINING

1. Relevant Standards
ABA Standards at 148

§1.5 Supporting Services

The plan should provide for investigatory, expert and other services necessary to an adequate defense. These should include not only those services and facilities needed for an effective defense participation in every phase of the process, including determinations on pre-trial release, competency to stand trial and disposition following conviction.

NAC Standards at 284

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Standard 13.14 Supporting Personnel and Facilities

The defender office should have immediate access to a [basic] library containing the following basic materials: the annotated laws of the State, the State code of criminal procedure, the municipal code, the United States Code Annotated, the State appellate reports, the U.S. Supreme Court reports, Federal courts of appeal and district court reports, citators governing all reports and statutes in the library, digests for State and Federal cases, a legal reference jury charges, legal treatises on evidence and criminal law, criminal and U.S. Supreme Court case reporters published weekly, loose leaf services related to criminal law, and, if available, an index to the State appellate brief bank. In smaller offices, a secretary who has substantial experience with legal work should be assigned as librarian, under the direction of one of the senior lawyers. In large offices, a staff attorney should be responsible for the library.

Standard 13.16 Training and Education of Defenders

The training of public defenders and assigned counsel panel members should be systematic and comprehensive. Defenders should receive training at least equal to that received by the prosecutor and the judge. An intensive entry-level training program should be established at State and national levels to assure that all attorneys, prior to representing the indigent accused, have the basic defense skills necessary to provide effective representation...

Each State should establish its own defender training program to instruct new defenders and assigned panel members in substantive law procedure and practice.

Every defender office should establish its own orientation program for new staff attorneys and for new panel members participating in provision of defense services by assigned counsel.

Inservice training and continuing legal education programs should be established on a systematic basis at the State and local level for public defenders, their staff attorneys, and lawyers on assigned counsel panels as well as for other interested lawyers.

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2. Commentary

In terms of investigatory services, the defender offices are evenly split. Four offices, Columbus, Conasauga Circuit, Waycross Circuit, and Glynn County have a full-time investigator on their staffs; the remaining four offices, Atlantic Circuit, Ogeechee Circuit, Northern Circuit and Houston County currently do not enjoy such a critical supporting service. The need for a staff investigator was nowhere made so evident as in Northern Circuit: there the Defender has had to rely upon the clients' ability to gather information and potential witnesses and has even, on occasion, pressed the office secretary into a quasi-investigatory role.

The value of a staff investigator is almost self-evident. He can save the attorney hours of valuable professional time, and maintain continuing contact with clients channeling information. Without exception, the staff investigators were singled out for praise by all individuals interviewed and were considered an invaluable

asset of those offices which have them. Every office currently has a caseload sufficient to support the need for an investigator. An immediate priority should attach to providing each office with such a staff member.

Concerning other supporting services, no grant affords any funds currently available for expert evaluation or testimony. Indeed, it appears each defender must pay for travel from his personal funds except in the Glynn County, Conasauga Circuit and Ware County offices. While this may be a minor problem for an office like Houston County, it is considerable in the Ogeechee Circuit where the defender is responsible for serving a sprawling four county area. At least two offices have demonstrated ingenuity in the fact of such adversity: through some arrangement, the Conasauga Circuit Defender obtained a polygraph evaluation of a client in Atlanta, and the Waycross Circuit defender was successful in obtaining a psychological evaluation of a juvenile client in Savannah. There should either be a line item of Defender budgets for such services or some sort of centrally administered fund from which offices could obtain special expenses as needed.

Without access to such funds, the Defenders' operations as effective counsel are jeopardized. Moreover, it is not difficult to imagine the situation in which a Defender, sensitive to his inability to proceed without, for example, a psychiatric evaluation of his client, may challenge the lack of such a resource out of a sense of professional responsibility to his client. Certainly such funding de-

ficiencies set up ineffective assistance of counsel grounds ripe for appeal or other post-conviction relief.

Continuing Defender education may be as informal as exchanging ideas and information with other defense lawyers in the community and elsewhere in the state and as formal as training seminars in trial technique and substantive legal developments. Some exchange with others engaged in similar professional work is essential to keep a defender current, innovative, and fresh in the performance of his services.

Currently no office has budgeted funds for the Defender's expenses in attending conferences or seminars relevant to the practice of criminal law. However, two offices, Conasauga Circuit and Glynn County, because of their connection with the Georgia Criminal Justice Council, can receive technical assistance from full-time senior legal staff of the Council. In addition, internal staff development programs are being developed by the Council for their offices in the very near future. The Council has made it possible for legal staff of both the Conasauga Circuit and Glynn County offices to attend state and national training programs of the National College for Criminal Defense Lawyers and Public Defenders as well as the National Legal Aid and Defender Conferences. It also secured the opportunity for the Waycross Circuit Office Investigator to attend a national training seminar on investigative services; and for the senior de-

fender to attend the summer session of the National College for Criminal Defense Lawyers and Public Defenders.

Every defender should be afforded the opportunity and encouraged to attend seminars currently offered by the State Bar and programs sponsored by its Criminal Law Section. A defender has a commonality of interest with every lawyer in the State who represents defendants in criminal actions and professional contacts for the defender should be nurtured. Yet the Defenders in the eight offices also share a special interest with each other in the problems unique to Public Defender work. The District Attorneys have organized and meet annually in Athens at the Institute for Continuing Education for both fraternization and a refresher course in criminal law. The defenders should enjoy the opportunity to engage in similar convocations.

D. FULL-TIME RESPONSIBILITY AND COMMENSURATE SALARY

1. Relevant Standards
ABA Standards at 149

§3.1 Career Services

A defender plan should be designed to create a career service. Selection of the chief defender and staff should be made on the basis of merit and should be free from political, racial, religious, ethnic and other considerations extraneous to professional competence. The tenure of the defender and his staff should be protected similarly. The defender and staff should be compensated at a rate commensurate with their experience and skill, sufficient to attract career personnel, and comparable to that provided for their counterparts in prosecutorial offices.

NAC Standards at 267

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Standard 13.7 Defender to be Full Time and Adequately Compensated

The Office of public defender should be a full-time occupation. State of local units of government should create regional public defenders serving more than one local unit of government if this is necessary to create a caseload of sufficient size to justify a full-time public defender. The public defender should be compensated at a rate not less than that of the presiding judge of the trial court of general jurisdiction.

2. Commentary

It seems self-evident that a Public Defender should be exclusively devoted to the cases assigned to him. Potential conflicts of interest are avoided and the Defender escapes being torn between obligations owed to private clients and appointed defendants.

Furthermore, the purposes served by an insistence upon full-time service are not met through any casuistic distinctions between civil and criminal cases or weekend-work and weekday-work. Even the simplest appearing domestic relations dispute can suddenly erupt requiring intense and immediate attention, and legal actions of whatever label have a notorious habit of exploding in unexpected fashion, usually after regular office hours.

While under the terms of each grant, each Defender is required to be "full-time", this has apparently been interpreted to mean simply "available for forty hours per week". Thus, in three offices, the Defender maintains a civil practice of unknown volume in addition to criminal defense duties: the Atlantic Circuit, Waycross Circuit, and the Northern Circuit Offices. In the Columbus Office, while the Senior Defender is full-time, the Assistant Defender contributes only part-time services but at a nearly full-time salary of $16,000.00.

In the remaining offices, Glynn County, Houston County, Ogeechee Circuit and the Conasauga Circuit, the Defenders devote exclusive services to their offices.

Although the salaries of District Attorneys were not discovered by this Evaluation, according to all reports, prosecutors were paid at a higher level than Defenders. Since the function is precisely analogous for both court officers, it is recommended that Defender salaries be brought in line with those currently received by the District Attorneys.

E. ENTRY AND DURATION OF REPRESENTATION

1. Relevant Standards
ABA Standards at 151

§5.1 Initial Provision of Counsel; notice

Counsel should be provided to the accused as soon as feasible after he is taken into custody, when he appears before a committing magistrate, or when he is formally charged, whichever occurs earliest. The authorities should have the responsibility to notify the defender or the official responsible for assigning counsel whenever a person is in custody and he requests counsel or he is without counsel.

§5.2 Duration of Representation

Counsel should be provided at every stage of the proceedings, including sentencing, appeal, and post-conviction review. Counsel initially appointed should continue to represent the defendant through all stages of the proceedings unless a new appointment is made because geographical considerations or other factors make it necessary.

NAC Standards at 253

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Standard 13.1 Availability of Publicly Financed Representation in Criminal Cases

Public representation should be made available to eligible defendants (as defined in Standard 13.2) in all criminal cases at their request, or the request of someone acting for them, beginning at the time the individual either is arrested or is requested to participate in an investigation that has focused upon him as a likely suspect. The representation should continue during trial court proceedings and through the exhaustion of all avenues of relief from conviction.

Defendants should be discouraged from conducting their own defense in criminal prosecutions. No defendant should be permitted to defend himself if there is a basis for believing that:

1. The defendant will not be able to deal effectively with the legal or factual issues likely to be raised;

2. The defendant's self-representation is likely to impede the reasonably expeditious processing of the case; or

3. The Defendant's conduct is likely to be disruptive of the trial process.

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2. Commentary

Every lawyer who has ever tried a criminal case realizes that all may be won or lost in the early stages of a client's apprehension and investigation after arrest. The Supreme Court has observed that interrogation, post-indictment line-ups and other identification confrontations, and preliminary hearings are "critical stages" of the prosecutorial process commanding the availability of counsel. Furthermore, if counsel is not assigned to a case until arraignment and arraignments are scheduled shortly before trial, quite clearly the defense may be impaired by inadequate time for investigation and preparation. Not only is the defense at trial adversely effected by postponed appointments, but also a defendant's rights to be evaluated for pre-trial bail may suffer from his lack of counsel who could present all factors favoring his release for consideration by the court. Yet perhaps the greatest variation in local practices of the Defender Offices occurs in the point of entry of the Defender. According to both the pertinent ABA and NAC Standards, the Defender Offices in the Atlantic Circuit, Conasauga Circuit, and Glynn County are in full compliance. Client contact is established shortly after arrest, with frequent visits

by Defender staff to local jails, and continuous throughout the early stages in investigation in preparation for trial. From on-site visits of these Offices, this procedure of early client contact has not hampered law enforcement officials or the District Attorney in the performances of their duties; early contact is an accepted, essential performance of the Defender's duties on behalf of his clients.

The situation is quite different in the Ogeechee and Northern Circuits. In an estimated 90% of his cases, the Public Defender for the Ogeechee Circuit has no contact with his client until arraignment, the point in which in this state a defendant is formally apprised of indictment or accusation and is called upon to plead to the charges. Obviously if indictment tolls the availability of a preliminary hearing on the issue of probable cause to stand trial, deferring appointment until after indictment at the arraignment stage results in a loss of a client's rights to a preliminary hearing. Given the total lack of formal pre-trial discovery rights in Georgia, except by way of preliminary hearing, the defense is seriously impaired by late appointment of counsel. In the Northern Circuit, rights to a preliminary hearing are deemed waived if a defendant is admitted to bail; the Defender estimated that at least 50% of his clients were out on bail at the time of his appointment, thus in at least half of his cases, pre-trial discovery was precluded.

In the Houston County and in Waycross Judicial Circuit, the timing of the Defender's entry into a case has generated heated controversy. The Houston County Defender is currently barred from confer-

ring with potential clients in the Perry City Jail although he has early access to clients being held on charges within the Superior Court's jurisdiction. The situation in the Waycross Circuit is of even greater concern: the Superior Court has entered a restraining order against preventing the Defender any contact with his potential clients at the jails until the Defender is formally appointed at arraignment.

Mediation is needed as soon as possible in both Houston County and the Waycross Circuit to attempt to resolve the conflicts which currently prevent early consultation by the Defender Office with clients.

It is important to note that early entry is inextricably related to the use of approved eligibility criteria and pre-screening by Defenders. Early entry in the Atlantic Circuit, Conasauga Circuit and Glynn County is undoubtedly due to early albeit tentative eligibility determination. Eligibility screening and early entry must go hand in hand in order to avoid the disadvantages of postponed assignment, as recounted above, as well as the curious situation currently tolerated in Columbus of mass assignment of the Defender for representation at the committal hearing stage.

F. ELIGIBILITY FOR DEFENDER SERVICES

1. Relevant Standards

ABA Standards at 152

§6.1 Eligibility

Counsel should be provided to any person who is financially unable to obtain adequate representation without substantial hardship to himself or his family. Counsel should not be denied to any person merely because his friends or relatives have resources adequate to retain counsel or because he has posted or is capable of posting bond.

§6.3 Determination of Eligibility

A preliminary and tentative determination of eligibility should be made as soon as feasible after a person is taken into custody. The formal determination of eligibility should be made by the judge or an officer of the court selected by him. A questionnaire should be used to determine the nature and extent of the financial resources available for obtaining representation. If at any subsequent stage of the proceedings new information concerning eligibility becomes available, eligibility should be redetermined.

NAC Standards at 257

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Standard 13.2 Payment for Public Representation

An individual provided public representation should be required to pay any portion of the cost of the representation that he is able to pay at the time. Such payment should be no more than an amount that can be paid without causing substantial hardship to the individual or his family, such representation should be provided without cost.

The test for determining ability to pay should be a flexible one that considers such factors as amount of income, bank account, ownership of a home, a car, or other tangible or intangible property, the number of dependents, and the cost of subsistence for the defendant and those to whom he owes a legal duty of support. In applying this test, the following criteria and qualifications should govern:

1. Counsel should not be denied to any person merely because his friends or relatives have resources adequate to retain counsel or because he has posted, or is capable of posting, bond.

2. Whether a private attorney would be interested in representing the defendant in his present economic circumstances should be considered.

3. The fact that an accused on bail has been able to continue employment following his arrest should not be determinative of his ability to employ private counsel.

4. The defendant's own assessment of his financial ability or inability to obtain representation without substantial hardship to himself or his family should be considered.

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2. Commentary

Under the Georgia Criminal Justice Act, an "indigent person" is defined as one "who is unable, without undue hardship, to employ the legal services of an attorney or defray the necessary expenses of legal representation". Georgia Code §27-3202(a) (4). Furthermore, the Act provided guidelines for use in determining eligibility:

> In establishing a standard of indigency the superior court shall consider such factors as income, property owned, expenses, outstanding obligations, and the numbers and ages of dependants. Release on bail shall not necessarily preclude a person from being indigent nor shall it be necessary that a person be destitute or a pauper to be indigent.
>
> Georgia Code §27-3209(a)

Under the explicit terms of the Act, the method for assessing such criteria is left open; it may be as formal as a questionnaire in affidavit form or as informal as a colloquy in open court between judge and defendant.

The procedures for determining eligibility for defender services were found to vary from office to office. The only constant was that the ultimate responsibility for final determination devolves upon the superior court judge. Pre-screening of potentially eligible clients is conducted by the Glynn County, Conasauga Circuit, and Waycross Circuit Offices; each utilizes a formal set of criteria based upon financial information elicited from the client. In each of these communities, either express or tacit approval of eligibility standards used has been obtained from the local bar thus minimizing possible friction.

In the other five offices, eligibility is determined on an ad hoc basis. This lack of standards has created problems at both extremes. In the Northern Judicial Circuit, eligibility appears to be so restrictively assessed that the Defender's caseload is comparatively quite low; in contrast the Columbus office has been inundated by clients at the committal hearing stage, many of whom later are found to be eligible, and the Houston County Office suspects that a number of its previously served clients have, in fact, been non-indigent.

The ABA Standard §6.3 recommends the use of a questionnaire eliciting pertinent information from a client. Certainly this would seem to involve minimal paper work and should serve to emphasize to the potential client, in a more formal way than questioning by the judge, that the Defender's services are limited and to be conserved for only those who qualify. Such a procedure should also serve to insure that a comprehensive assessment of the client's financial status has been

made in each case and that no asset or liability has been overlooked.

The ABA Standard also envisions that a preliminary investigation will be made by someone other than the judge who is the ultimate arbiter of eligibility. Such pre-screening could save substantial amounts of judicial time. It could be accomplished by any official, administrator or clerk of the court; however, it should not be a function assumed by law enforcement or District Attorney's Office staff. Clients already inclined to deprecate the value of any appointed defense counsel would hardly find consultation if defender services were introduced to them by any one associated with the prosecution.

If the recommendations of this evaluation concerning early appointment are followed, [see Recommendation E, infra at 84] then the Defender's Office, which will be contacting potentially eligible clients shortly after arrest, could in this initial contact take the necessary data for a preliminary assessment of eligibility: provided, there has been agreement reached among the court and local bar concerning eligibility criteria.

The procedures currently in effect in Glynn County and the Conasauga Circuit are commended as models for consideration in other locales. Moreover, while costs of living may vary slightly in different areas of the State, there would appear to be no reason why the same basic eligibility criteria could not be used for all public defender offices. Certainly this evaluation confirms a conclusion reached by the State Bar's Survey of Indigent Defense Needs in the State of Georgia in 1973:

[T]he standards of indigency are not uniformly defined or applied throughout the State, even assuming variations in the cost of living. Persons who would be entitled to counsel in some counties are not provided counsel in others. This practice is not only unfair but raises serious questions of equal protection of the laws.

Survey at 23

G. ACCOUNTABILITY: RECORDS AND STATISTICAL DATA

Commentary

There are no formalized standards pertaining to record keeping by Public Defender Offices adopted by either the American Bar Association or the National Advisory Commission on Criminal Justice Standards and Goals. This is undoubtedly due to the fact that accurate record keeping is generally presumed a responsibility of any well-managed law office, and thus any standard should be unnecessary.

Unfortunately, the records currently maintained by all offices except the Waycross Circuit, Conasauga Circuit and Glynn County Offices are of doubtful validity and for some offices, notably Columbus, incapable of providing even a reasonable guess about both the number of clients actually served and the disposition of each charge for which the Defender undertakes representation. Poor administrative management not only frustrates fair evaluation of an office's workload and effectiveness but also a Defender's ability to keep abreast of what his office is doing and to make appropriate internal adjustments. The Public Defender is responsible as an individual attorney to his clients and, in addition, is the chief administrator of his program. As such, it is his responsibility to institute office procedures necessary to insure that all court appearances are kept as scheduled and filing deadlines are met; to maintain a client file to avoid conflicts of interest; and to keep accurate, reliable and complete records of clients and charges, including appearances made and final dispositions received.

Such administrative duties are not simply the responsibilities of sound management, the Georgia Criminal Justice Act requires that a detailed annual report be submitted to the county governing authority. The report must show the number of persons represented under the program, the crime involved, the outcome of each case, and the expenditures totaled by kind made in each defense. In the State Bar's Survey of Indigent Defense Needs in the State of Georgia published in 1973, it was then observed: "This requirement [of the Criminal Justice Act for reports] is not being met in a vast majority of the counties in Georgia. A statewide uniform method of record keeping should be established so that an analysis of the present system can be based upon more precise data." Survey at 24

What was noted in 1973 is still true today in most of the public defender offices. The office of the public defender should be accountable to the public as tax payers who bear the burden of financial support as well as to the legal profession, the courts, and all groups interested in the administration of criminal justice.

The internal records and controls developed by the Waycross Judicial Circuit Office are commended as models to all other offices. In addition, a monthly reporting form developed by the Administrator of the Georgia Criminal Justice Council is included in these materials as Appendix B.

APPENDIX "A"

INTERVIEWS CONDUCTED DURING THE STATEWIDE EVALUATION

INTERVIEWS CONDUCTED DURING THE STATEWIDE EVALUATION

Northern Circuit Office (Elbert County)

J. Cleve Miller, Public Defender
Sharon Moore, Secretary
Clete Johnson, District Attorney
Doug Jordan, Probation Officer
John W. Williford, Judge
Gene Smith, Deputy Sheriff, Elbert County
one (1) client

Conasauga Circuit Office (Whitfield County)

M. Gene Gouge, Public Defender
Stephen Boyd, Investigator
Carolyn Creekmore, Secretary
Judge Robert Vining
Sam Brantley, District Attorney
Frank Long, Sheriff's Department
Marvin Hackney, Chief Probation Officer
two (2) clients

Ogeechee Circuit Office (Bulloch County)

Ralph Bacon, Public Defender
J. Lane Johnston, District Attorney
J. Paul Nevill, Sheriff
Josh S. Lanier, Chief Probation Supervisor
Mr. Powell, Probation Officer
W.C. Hawkins, Judge
two (2) clients

Atlantic Circuit Office (Liberty County)

Carroll Cowart, Senior Public Defender
Thomas Radcliff, Public Defender
Paul Caswell, Judge
Dupont Chaney, Assistant District Attorney
Norman L. Stripling, Probation Officer
Robert Sikes, Sheriff, Liberty County
John E. Smiley, Deputy Sheriff, Liberty County
two (2) clients

Waycross Circuit Office (Ware County)

K. Kontz Bennett, Senior Public Defender
Dennis Strickland, Deputy Defender
John R. Thigpen, Investigator
Judge Elie Holton, Superior Court
Judge Ben Hodges, Superior Court
Judge Ben Smith, State Court
Cherry Pittman, Secretary
Mr. W.E. Strickland, Sheriff
Gene Hatfield, Captain, Waycross Police Department
Dewey Hayes, District Attorney
Tommy Rouse, Probation Officer
Freddie Hersey, Probation Department
Jimmie Griffin, Probation Department
Leon Wilson, Private Bar
two (2) clients

Brunswick Circuit Office (Glynn County)

Grayson Lane, Senior Defender
Eric Kocher, Deputy Defender
Lloyd Thompson, Investigator
Rubye Baker, Secretary
Tom Jones, Chief Deputy Sheriff
Richard Krauss, Probation Officer
Glenn Thomas, District Attorney
three (3) clients
Austin Catts, Private Bar

Houston Circuit Office (Houston County)

Edwin Ned Pooser, Public Defender
Mary Lou Stokes, Secretary
Judge Willis B. Hunt
Steve Pace, District Attorney
two (2) law enforcement officials
three (3) probation department officials
three (3) clients

Columbus Circuit Office (Muscogee County)

Dan Byar; Senior Defender
Julius Graham, Investigator
Dianne Miller, Secretary
E. Mullins Whisnant, District Attorney
Probation Officer
two (2) law enforcement officers from Sheriff's Department
two (2) clients
three (3) members of Private Bar

APPENDIX "B"

ATTORNEY MONTHLY REPORT OF CASES

HANDLED BY TYPE

I. FELONIES --- B - Brought Forward
[redacted] - New Case

NAME	CHARGE	DATE OF ARREST	1st INTER-VIEW DATE	AMOUNT OF BOND	DATE BOND MADE	PRELIM. HEARING DATE	PRELIM. HEARING RESULT	DEPOSITION	DATE	OFFICE USE
										For com tation actual jail ti of clie

[redacted] MEAN[redacted] -- [redacted] Bro[redacted] Forw[redacted]
N - New Case

NAME	CHARGE	DATE OF ARREST	1st INTER-VIEW DATE	AMOUNT OF BOND	DATE BOND MADE	PRELIM. HEARING DATE	PRELIM. HEARING RESULT	DEPOSITION	DATE	OFFICE USE
										For computation of actual jail time of client.

[redacted] II. [redacted] AND [redacted] HE[redacted]S -- [redacted] - Br[redacted] Fo[redacted]

N - New Case

NAME	CHARGE	DATE OF ARREST	1st INTER-VIEW DATE	AMOUNT OF BOND	DATE BOND MADE	PRELIM. HEARING DATE	PRELIM. HEARING RESULT	DEPOSITION	DATE	OFFICE USE
										For computation of actual jail time of client.

END