SYSTEMS DEVELOPMENT STUDY

OF

AN APPELLATE DEFENDER PROGRAM

FOR

THE STATE OF NORTH CAROLINA

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I

INTRODUCTION

A. History and Nature of the Request for Technical Assistance

The Special Committee on Indigent Legal Services Delivery Systems, a research project of the North Carolina Bar Association Foundation, has been engaged in formulating an integrated statewide system of legal aid and representation for indigent criminal defendants in North Carolina. The Special Committee requested technical assistance in the form of a systems development study of an appellate defender service on August 6, 1975. The Law Enforcement Assistance Administration approved this request for technical assistance on November 20, 1975 and directed the National Center for Defense Management (NCDM), a project of the National Legal Aid and Defender Association, to conduct the study.[1]

The major objectives of the study were to be as follows:

- To determine the structure and cost-effectiveness of the present appellate counsel system; and
- To design a pilot appellate defender system which would provide quality representation to indigent appellants in a certain percentage of the criminal, juvenile and mental commitment appeals before the North Carolina Court of Appeals and Supreme Court.

B. Transferability

This report, designed to provide assistance to the Special Committee on Indigent Legal Services Delivery System of the State Bar of North

[1] Request for technical assistance is at Appendix A.

Carolina, is also written with a view to assisting other jurisdictions with similar interests to blueprint an approach of their own, with or without technical assistance from other sources, and therefore contains much data already known to the client jurisdiction and its agencies and personnel. The inclusion of this material is not intended to imply unawareness thereof by the client jurisdiction but, rather, is done in order to facilitate replicability of methodology and concepts elsewhere, in accordance with LEAA policies.

C. Methodology

The consultant team was primarily concerned with discerning the structure of the appellate system in North Carolina, the indigency rate as it exists in the client community, the costs of the present appellate assigned counsel system, and designing an appellate defender system to replace the former in whole or in part.

William R. Higham, NCDM Director, made a presite visit to North Carolina on December 23, 1975 in order to discuss the scope and details of the proposed study with the Special Committee and its staff, and to begin the data-gathering process.

Consultants' handbooks prepared for orientation purposes contained pertinent information compiled by the Special Committee as well as data gathered by the NCDM staff. A list of prospective interviewees was prepared,[2] and the scope and methodology of planned surveys was outlined in previsit orientation sessions with staff and the technical assistance teams.

The site visit was performed January 26-31, 1976. The members of the consultant team were William R. Higham, Director, National Center for Defense Management, Bruce L. Herr, Appellate Defender, State of New Mexico, and Bruce

[2] A list of persons interviewed is at Appendix B.

Stratton, Appellate Defender, State of Illinois.[3]

During the site visit, the consultant team endeavored to collect and analyze information from all concerned segments of the appellate defense system. The first major area of investigation of this system was the judiciary. In interviews with members of the Court of Appeals and the Supreme Court (including Chief Justice Sharp), the consultant team sought to elicit the opinions of the bench concerning the present appellate assigned counsel system, the need for an appellate defender system and the comparative strengths and weaknesses of both systems. The team also sought to gauge the receptivity of the judiciary on all levels to the implementation of an appellate defender system, through discussions of the practical considerations of such a system with the appellate judges.

The second area of investigation used both interviews and statistical surveys to examine the appellate process in North Carolina. The interview process in this area included discussions with clerks of the Court of Appeals and State Supreme Court about certain unique features of North Carolina's appellate procedure and the functional aspects of the appellate defense process. The clerks and the Administrative Office of the Courts (as well as the staff of the Special Committee) provided the consultant team with the materials to conduct statistical surveys of such vital factors as criminal caseload of the two appellate courts, indigency rate, indigent appellate caseload and approximate cost of representation. This statistical data formed the basis for projections of caseload and cost comparison of the present system and the pilot project design.

The third area of the criminal appellate process to be investigated during the site visit was that of the appellate criminal attorney. The team

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[3]Resumes of the consultant team members are at Appendix C.

attempted to determine, through interviews with attorneys (both defender and private) whose practices include a significant amount of criminal appellate work, such things as time consumption in an "average" appellate case and the problems peculiar to North Carolina which arise in relation thereto; their perceptions of what the private bar's attitude toward an appellate defender would be; and their assessment of the flow of cases through the appellate process.

Finally, the team contacted a representative of the North Carolina Law and Order Section of the Division of Community Assistance, Department of Community Assistance, Department of Natural and Economic Resources (the State Planning Agency) for background information. Additionally, contact was made with persons working in or with the state correctional system in order to assess the consequences of an appellate defender process.

Subsequent to most of the investigative process, the consultant team engaged in a comprehensive discussion of all material, notes, observations and opinions derived from their onsite experience and made certain general findings. The team analyzed the statistical data and developed a model of the present assigned counsel system, which includes a determination of case-load, time demands and cost-effectiveness. The consultants then formulated a pilot project model whose budget, staffing and caseload requirements were determined by the statistical and investigative results. This model and its comparison with the present assigned counsel system form the basis for the general recommendations of the consultants.

D. Summary of Recommendations

The NCDM consultant team recommends the following:

- THAT A PILOT APPELLATE DEFENDER SYSTEM BE ESTABLISHED IN NORTH CAROLINA TO PROVIDE APPELLATE REPRESENTATION TO APPROXIMATELY FIFTY PERCENT OF ALL INDIGENT CRIMINAL APPELLANTS IN THE STATE.

The Mixed System of assigned counsel and an appellate defender office would provide the most feasible appellate defense services during the pilot program, and would allow an adequate opportunity for objective analysis of the pilot design and its effectiveness. Such a system would also continue the active participation of the private bar in the appellate defense process.

The fifty-percent figure was chosen as a suitable proportion of the caseload of an appellate defender because the administration of the program is easily formulated and the staffing requirements can be determined more accurately for such a program based on the available data.

The proposed structure and budget of this recommended office are presented in Chapter IV.

- THAT A NONPROFIT CORPORATION BE ORGANIZED UNDER THE SPONSORSHIP OF THE NORTH CAROLINA BAR ASSOCIATION TO CARRY THE PILOT APPELLATE DEFENDER SYSTEM INTO EFFECT. THIS CORPORATION SHOULD BE GOVERNED BY A BOARD OF DIRECTORS, THE MAJORITY OF WHOM SHOULD BE PRACTICING ATTORNEYS.

The Office of the Appellate Defender should be incorporated, and the Chief Appellate Defender should be appointed by the Corporation's Board of Directors.

The appointment, composition and responsibilities of the Board of Directors can best be determined by the Special Committee, which is familiar with the needs and interests of the community with respect to the criminal justice system. NCDM recommends that a majority of the Board be attorneys. In order to insure the independence of the corporation, no members of the judiciary or the Attorney General's Office should serve on the Board.

- THAT AN INDEPENDENT ADVISORY COMMISSION BE ESTABLISHED, COMPOSED OF REPRESENTATIVES OR DESIGNEES OF SUCH GROUPS AS

THE BAR, THE COURTS OF EVERY LEVEL SERVED, THE ADMINISTRATIVE OFFICE OF THE COURTS AND THE LEGISLATURE.

If this Advisory Commission is deemed desirable by the Special Committee, it would provide the Appellate Defender and the Board of Directors of the Corporation with counsel in significant policy matters concerning appellate defense services. It would insure the continued active involvement of the bar and the judiciary in the process, while maintaining the independence of the Appellate Defender and the Corporation.

- THAT FAIR STANDARDS FOR THE DETERMINATION OF APPELLANTS' INDIGENCY BE ESTABLISHED, AND THAT THEY BE CONSISTENTLY APPLIED TO ALL CRIMINAL APPELLANTS.

The Special Committee has made specific recommendations of standards for the determination of indigency in the Final Report to the Board of Governors (see page 29 thereof). NCDM recommends the adoption of these or similar guidelines and methods of administration to insure that all appellants who cannot afford retained counsel will receive competent appellate defense services.

- THAT APPELLATE DEFENDERS AND ASSIGNED COUNSEL RECEIVE ADEQUATE COMPENSATION FOR THEIR SERVICES.

It is recommended that the salaries of defenders stated in the Sample Budget for the Office of Appellate Defender be used. The fee schedule for assigned appellate counsel should provide for compensation of attorneys in an equitable manner.

- THAT THE APPELLATE DEFENDER HAVE THE AUTHORITY TO DETERMINE THE CASEWORK LOAD OF, AND THE NATURE OF APPEALS UNDERTAKEN BY, THE OFFICE OF THE APPELLATE DEFENDER.

This authority would include the power to initiate any action in state or Federal court which concerns an appeal from a state conviction. It would include the authority to refuse cases, should the workload of the office become such that adequate representation is not possible. It is further

recommended that the Defender handle appeals on a nonappointive basis when appropriate and when a determination of the client's indigency has been made.

- THAT AN ONGOING, INTERNAL QUALITATIVE EVALUATION AND AN ONGOING, INTERNAL TIME AND WORKLOAD ANALYSIS BE DESIGNED AND IMPLEMENTED FOR THE OFFICE OF THE APPELLATE DEFENDER.

Sophisticated timekeeping procedures should be instituted in the office in order to assess the actual workload capabilities of appellate defenders and the number and type of cases being handled by the office. This will facilitate the evaluation of the project on an objective basis. Ongoing qualitative evaluation of representation, using objective data (among other methods), should also be conducted.

II

THE CRIMINAL APPELLATE FUNCTION IN NORTH CAROLINA

A. Relevant Data Concerning North Carolina

The examination of certain critical aspects of the North Carolina criminal justice system is an integral part of the systems development study for an appellate defender project. In the course of this examination, certain factors concerning both the State of North Carolina and its system of administration of justice were perceived by the study team as being highly relevant to the development of any plan for defense services. Therefore, a brief discussion of these factors and their importance to the appellate process appears here to serve as introduction and background to the more specialized information on appellate criminal justice.

The State of North Carolina, with a population of 5,273,000,[4] is predominantly rural. Fifty-five percent of the State's population live in areas with population centers of less than 2500 inhabitants.[5] One of the concomitants of a largely rural state is a "circuit-riding" judiciary. In North Carolina, a rural Superior Court judge will sit in a number of the State's twenty-eight judicial districts, frequently holding court in a district only a few times annually. The District Court judges often sit in several different counties within each district. Because of the time structures inherent in a system where a judge both tries and sentences defendants within a short period, presentence investigations and reports are encountered less frequently than

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[4] Bureau of Census (1970)

[5] Special Committee on Indigent Legal Services Delivery Systems, Final Report to the Board of Governors, Appendix B, p. 47. A community is urban when it consists of an incorporated area having 2500 or more inhabitants; it is rural in the absence of such population centers. North Carolina is highly rural.

they are in urban areas. The judge is, therefore, often unable to utilize a presentence report from a disinterested party as a source of information in the sentencing process. Critical data about sentencing alternatives, mitigating circumstances about the defendant and his/her family and the defendant's employment status and place in the community are, in such cases, lost to the judge. Consequently, sentencing in such cases is based solely on such mechanical factors as the type of offense and the judge's opinion of the defendant gained through a brief and often stressful encounter.

In such a situation, where there is little opportunity for examination of extrinsic factors or for investigation and development of sentencing alternatives, sentences will more frequently be "active" and they will tend to be longer. This may account in part for the large prison population (13,000) in North Carolina.

Active sentences involving a considerable period of time probably encourage appeals. While a convicted defendant serving a probationary sentence or a short prison term will not often exercise his right to appeal (particularly with the safe keeping practice as it now exists), a defendant serving a long prison term has a great deal more incentive to appeal, particularly if a sense of injustice is fostered by the brevity of the trial court proceedings.

Twenty percent of North Carolina's population is "poor", according to federal government guidelines[6] which establish the lower limits of poverty in the state. Federal guidelines are obviously not on a par with the much higher indigency rate in the criminal justice client community. However, there is an obvious correlation between the number of poor persons in a given community

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[6] Ibid.

and the indigency rate of those charged with criminal offenses in that community. The fact that North Carolina is a state with a relatively large segment of poverty population will affect the appellate indigency rate.

The North Carolina correctional system has features which appear to have an impact on the appellate process. It is useful to describe the events which occur when a convicted defendant files an appeal. Upon filing the notice of appeal or the automatic appeal to the Supreme Court (in death and life imprisonment cases), the defendant who is unable to secure a release pending appeal will, upon order of the Superior Court, be transferred to the maximum security facility, Central Prison, in Raleigh. This transfer to Raleigh, where all appeals are heard, is required by statute. At the Central Prison, the appellant is placed in "safe keeping", a type of segregation similar to that required for pretrial detainees.

Safe keeping has its basis in an opinion of the Attorney General, which recommends isolation of appellants while not actually interpreting the law as mandating it. According to one corrections official, safe keeping is used to protect the State from a constitutionally-based attack which could occur, were integration of the appellants with the general prison population to take place.

The process of safe keeping almost certainly has a deterrent effect on appeals. The consultants were informed by a corrections official of cases where an appeal has been abandoned in order that the appellant could be taken out of safe keeping.

The average appeal consumes approximately six months. The prison system in North Carolina is very decentralized: there are 77 active prison facilities in the State, one in almost every county. Most prisoners (except those requiring maximum security, who must be incarcerated at Raleigh) serve in a facility relatively close to their home. Upon filing of notice of appeal,

the safe keeper must be sent to Raleigh, which may necessitate a long separation from family. Once in Central Penitentiary, the safe keeper is isolated from the general population, with no opportunity for employment, no diagnostic treatment available (except emergency medical, psychiatric and dental care) and restricted resources and privileges. No good time privileges may be accrued while one is a safe keeper (however, upon affirmation of the appellant's conviction by the Court of Appeals or Supreme Court, retroactive good time credit is given). For many convicted defendants, particularly those with relatively short sentences, the disadvantages contingent upon appeal must outweigh the advantages to be gained therefrom.

The consultants were informed that the practice of safe keeping may be ended in the near future; it is possible that an attack on the constitutionality of the practice may succeed. In this event, the number of appeals, which has remained relatively static for the last four years, may increase substantially.

The final significant aspect of the North Carolina criminal justice system as it relates to criminal appeals is the death penalty and its ramifications. In 1974, the State of North Carolina sentenced forty-nine people to death. There is an automatic direct appeal from a death sentence to the Supreme Court. The gravity of the sentence and the enormity of its consequences make the appeal from such a sentence a burdensome, time-consuming and emotionally exhausting process for the appellate attorney. Many competent and conscientious private practitioners are reluctant to handle death cases repeatedly. Such appeals require not only a more than adequate search for and briefing of possible trial court errors, but also a thorough analysis of the significant constitutional issues raised by the death sentence. Any death sentence appeal will place a decided strain on an appellate defender

office and it must be assumed that an appellate defender would handle a significant number of them.

It should also be noted that North Carolina has, at the time of this writing, 104 persons on Death Row, by far the largest number in any state. The implications of a Supreme Court decision upholding the constitutionality of the death sentence are serious for an appellate defense system in the State. The burden of death penalty appeals would become significantly heavier when executions become imminent.

B. The Appellate Process in Criminal Cases

The court system in North Carolina is divided into Magistrate Courts, District Courts, Superior Courts, the Court of Appeals and the Supreme Court.

1. Magistrate Court

Magistrate Courts, for purposes of the criminal process, have authority only to issue arrest and search warrants, to set bond and to make initial determinations of probable cause for continued detention (of the sort required by Gerstein v. Pugh). No criminal cases are appealed from the Magistrate Court to any higher court.

2. District Court

District Courts have original jurisdiction over juvenile proceedings, mental commitment proceedings and all misdemeanors. Juvenile and involuntary commitment cases are appealable as of right directly to the Court of Appeals on the District Court record. There was an insignificant number of such appeals for the period we examined, but the number of appeals in this area is likely to increase dramatically if the right to appeal adverse rulings is

ever fully exercised.

Misdemeanor convictions in District Court are appealable by trial de novo to Superior Court. Such a de novo appeal is regarded as a new trial in Superior Court, and would be handled by a trial level public defender or assigned counsel rather than by the Appellate Defender.

3. Superior Court

The Superior Court is the court of original jurisdiction for all felonies. A unique characteristic of North Carolina procedure is that all contested criminal proceedings are tried to a jury. (It is not possible to waive a jury and be tried by the court.) One result of this may be that trials in simple cases will be longer than in jurisdictions which permit bench trial, because of the necessity for voir dire, the argument of matters outside the presence of the jury; the submission and settling of instructions; and other procedures which are absent from bench trials.

4. Court of Appeals

All felony convictions (except cases involving capital punishment or life imprisonment) are appealed to the Court of Appeals, as of right, from Superior Court. Misdemeanors are appealed to the Court of Appeals, as of right, following trial de novo in Superior Court. Juvenile and involuntary commitment cases come to the Court of Appeals directly from the District Court, as of right.

A discretionary right of appeal to the Court of Appeals exists from pleas of guilty, denial of postconviction or habeas corpus relief, and revocations of probation in the Superior Court. These proceedings are initiated by petition for writ of certiorari in the Court of Appeals, and consultants

were told that review is rarely granted.

In addition, the Court of Appeals has original extraordinary writ jurisdiction, and receives petitions for writs of habeas corpus, mandamus and supersedeas, but not in significant numbers.

There is, however, a significant number of late appeals ruled on by the Court of Appeals. If an appeal has not been perfected within the prescribed time limits, an untimely appeal may be requested by petition for writ of certiorari. The random sample and interviews indicate that hearings on these petitions are liberally granted.

5. Supreme Court

Convictions involving capital punishment or life imprisonment are appealed, as of right, directly to the Supreme Court from the Superior Court.

Cases are appealable as of right from the Court of Appeals to the Supreme Court if (a) there was a dissent on the Court of Appeals (which, consultants were told, is unusual) or (b) a significant constitutional question is involved. Of course, the latter category is not actually an appeal of right at all, because the determination of whether or not a significant constitutional question is involved is in itself a discretionary matter. If an appeal is taken on this ground, the Attorney General may move to dismiss the appeal for lack of a significant constitutional question.

All other review by the Supreme Court of decisions of the Court of Appeals is discretionary, and the procedure is initiated by filing a petition for discretionary review in the Supreme Court. We were informed that such petitions are occasionally granted. On some occasions, the Supreme Court may decide on its own motion to hear cases ordinarily cognizable in the Court of Appeals.

6. Appellate Procedure

Appeals as of right are initiated by filing notice of appeal. This must be done within ten days of entry of judgment and sentence. The appellant has 150 days from the date of entry of judgment and sentence in which to docket the appeal in the appellate court, which is done by filing the Record on Appeal.

The Record on Appeal is prepared by the appellant from (a) the Superior Court file and (b) the verbatim transcript of proceedings prepared by the court reporter. The Record on Appeal consists of reproduction of the necessary portions of the court file, plus a first-person narrative of the testimony and rulings of the court. It is similar in nature to what is called the abstract of record or appendix in other jurisdictions.

Whenever an issue appears in the Record, an exception is noted. At the close of the Record the exceptions are listed and numbered in the Bill of Exceptions.

The completed Record on Appeal is submitted to the District Attorney, who, if he disagrees, may indicate his objection and have the record settled by the trial judge. (Consultants were told that disagreement over the Record on Appeal is unusual, and that the District Attorney ordinarily stipulates to the Record on Appeal submitted by the appellant.) Once settled, the Record on Appeal is filed in the appellate court. Neither the original trial court pleadings nor the verbatim transcript is filed.

The appellant then prepares and files his brief, making reference to the Record on Appeal. Exceptions which are not carried forward and argued in the brief are deemed abandoned.

The State's brief is prepared and filed by the Attorney General. There

is no organized appellate division of the Attorney General's office; appeals are simply assigned to Assistant Attorneys General.

No reply briefs by the appellant are permitted.

In a procedure which may be unique to North Carolina, the Record on Appeal and the briefs of both parties are typed on stencils by the appellate court and printed. They are first edited by the Office of the Court Administrator, who excises unnecessary portions, and are then retyped, mimeographed, and bound in small booklets. Thirty-seven copies of these documents are made for appeal in the Court of Appeals, for distribution to the Court, all North Carolina law schools and the Supreme Court (should the appeal eventually reach that court). The clerk's office also maintains hardbound copies of all Records and briefs for the use of attorneys.

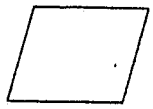
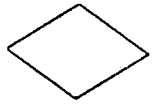
Oral argument is available as of right, and is almost always requested in criminal cases. The Court of Appeals, which consists of nine judges, hears cases in random panels of three. The Supreme Court, composed of seven justices, sits en banc.

Following submission, the case is decided by the appellate court and an opinion issued in due course. As of January 1, 1976, memorandum opinions are used in some cases. These memorandum opinions are not officially reported.

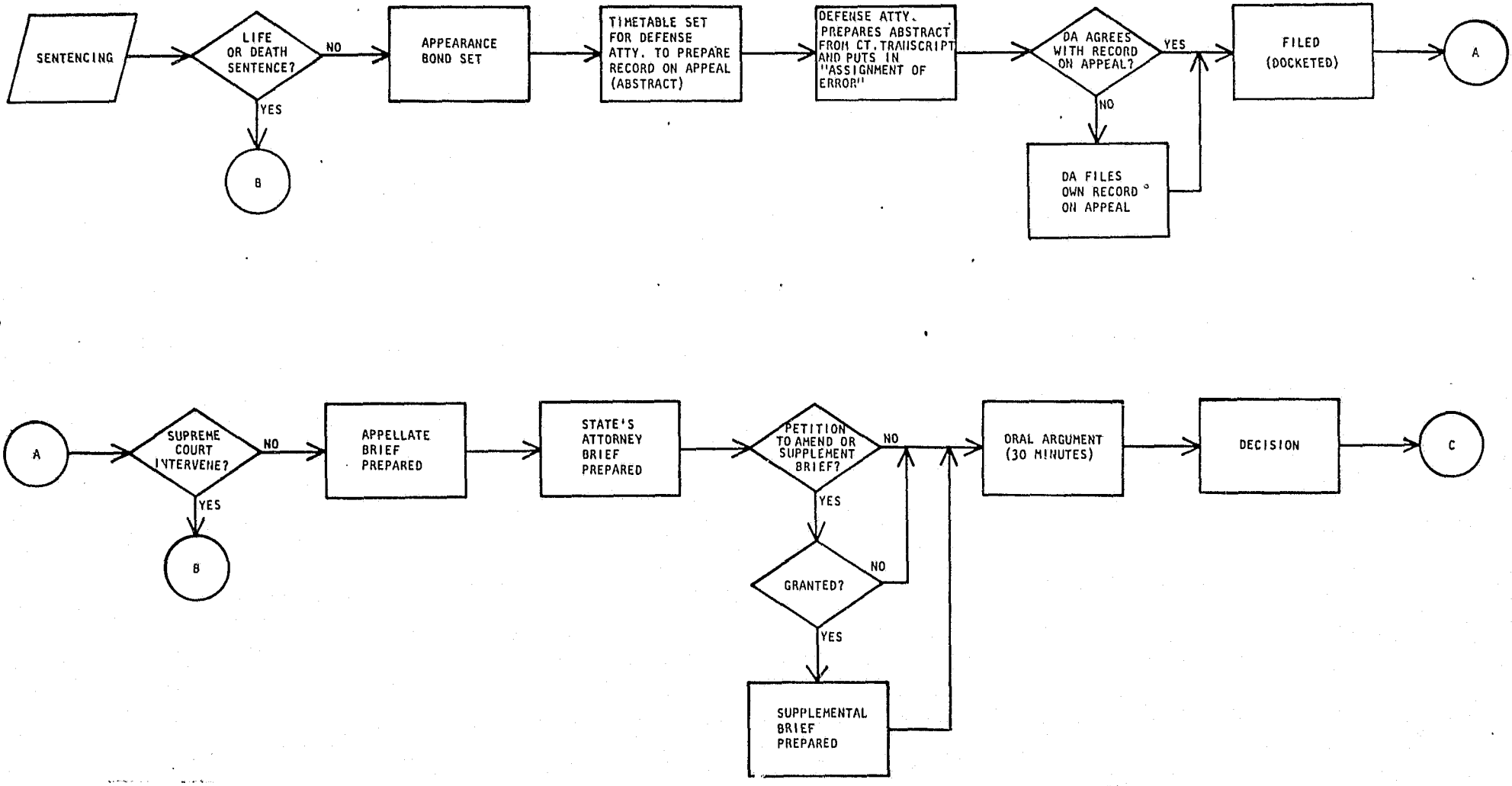
Petitions for rehearing are not permitted, although in unusual circumstances the court may withdraw and reissue an opinion.

From examination of several files, it appears that when a discretionary appeal is allowed, the appellate court establishes appropriate time limits for preparation of the record. The appeal then proceeds apace as in the case of an appeal as of right.

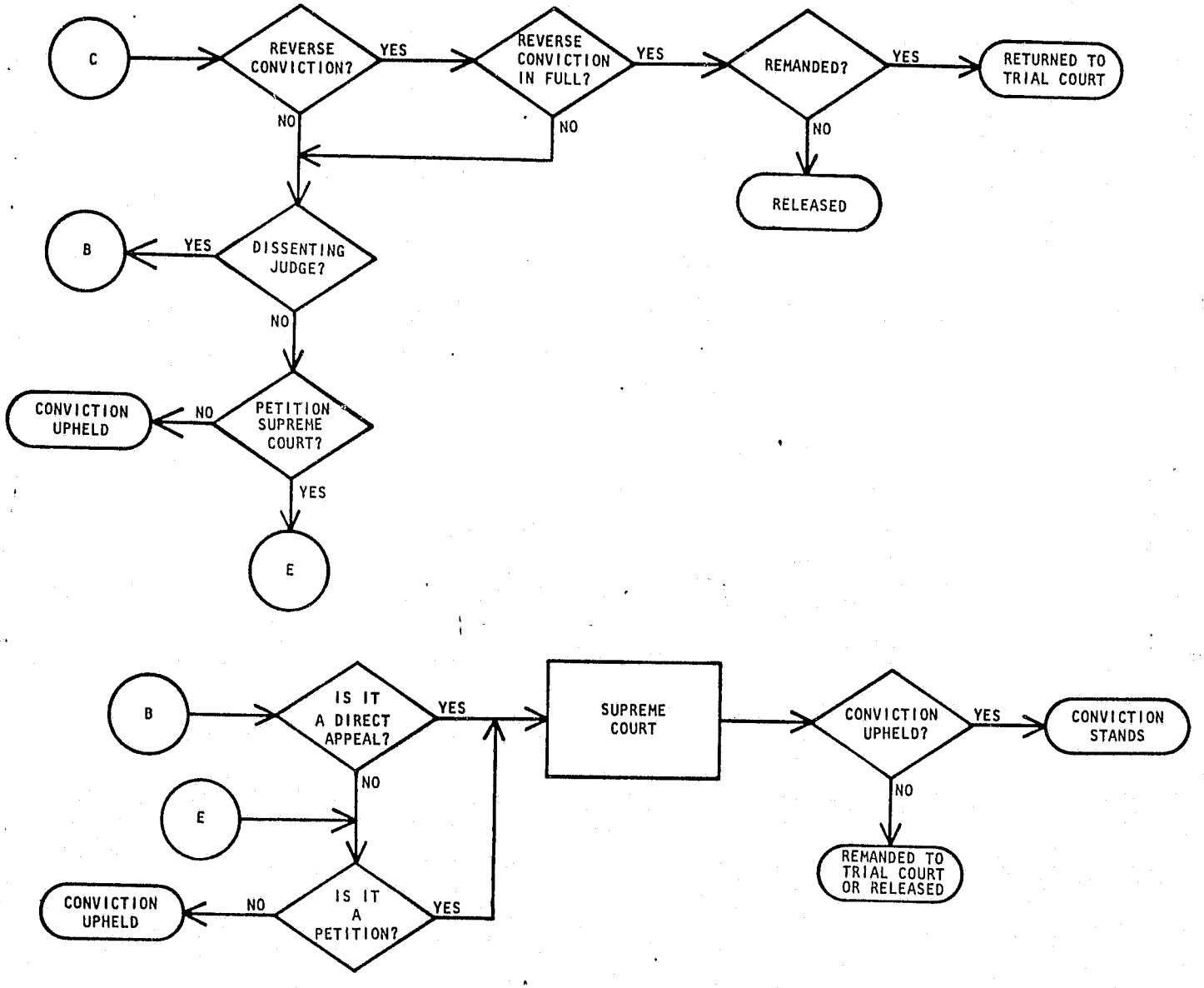
To complement the foregoing description, the NCDM staff has prepared a chart displaying the appellate process in North Carolina. The flowchart display is designed to show the following:

- Where the accused enters the system - 
- Where the accused goes through some processing - 
- Where a decision is required which will determine where the defendant will proceed next - 
- Where the defendant will leave the criminal justice system - 
- Where the defendant will transfer to another subsection of the criminal justice process or where the display will recommence in another subsystem - 

The charts follow on the next two pages.



THE APPELLATE PROCESS IN NORTH CAROLINA


C
REVERSE CONVICTION?
YES
REVERSE CONVICTION IN FULL?
YES
REMANDED?
YES
RETURNED TO TRIAL COURT
NO
NO
NO
RELEASED
B
YES
DISSENTING JUDGE?
NO
CONVICTION UPHELD
NO
PETITION SUPREME COURT?
YES
E
B
IS IT A DIRECT APPEAL?
YES
SUPREME COURT
CONVICTION UPHELD?
YES
CONVICTION STANDS
NO
NO
E
REMANDED TO TRIAL COURT OR RELEASED
CONVICTION UPHELD
NO
IS IT A PETITION?
YES

C. Statistical Data Affecting Criminal Appeals

1. Trial Court Statistics (Felony Cases)

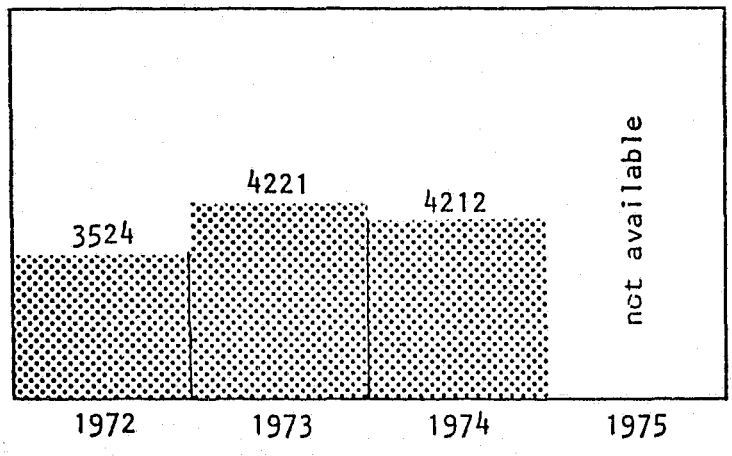
While projections for future years' appellate caseloads are difficult to make, the State's annual total of felony trials has some value as an indication of potential maximum caseload, as

(a) There is no appeal as a matter of right following a plea of guilty in North Carolina;

(b) While juvenile, mental health and misdemeanor appeals find their way to the Court of Appeals and Supreme Court, they are likely to be statistically offset to some degree by the acquittals after trial (which, of course, would not be appealed); and

(c) Continued public demand for more severe penalties after conviction is likely to produce more defendants dissatisifed with case outcome. Those convicted after trial will therefore tend to have motivation and appropriate legal posture to take appeals as a matter of right.

The numbers of criminal cases disposed of in recent years in North Carolina's Superior Courts by jury trial (bench trials are not used in these courts in criminal cases) were as follows:



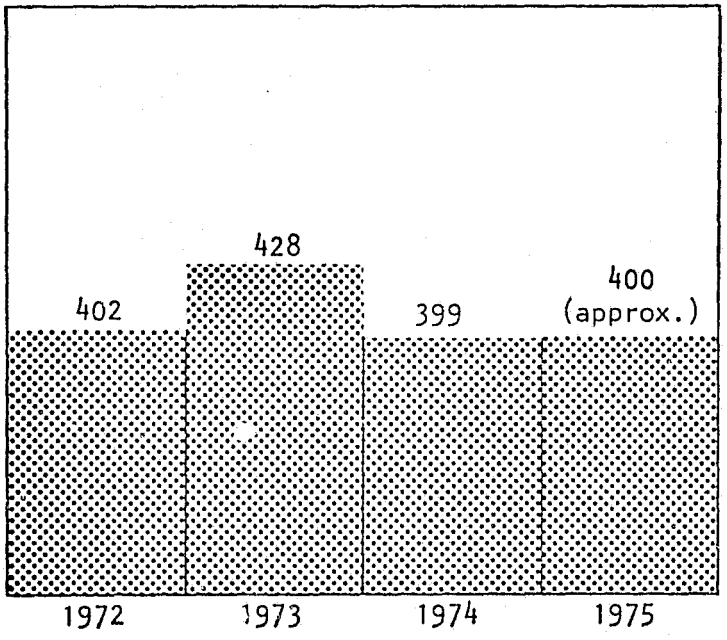
Since the number of cases tried is substantially larger than the number of appeals for the same period, it would be helpful to know (a) the acquittal-conviction rate in trial and (b) the number of persons sentenced to prison following conviction at trial. The latter figure would, if experience elsewhere holds true in North Carolina, provide a more realistic ceiling for projections of future possible appellate caseload.

2. Criminal and Related Statutes, Court of Appeals

a. Direct Criminal Appeals Filed

Direct criminal appeals (both indigent and nonindigent) filed in recent years were as follows:

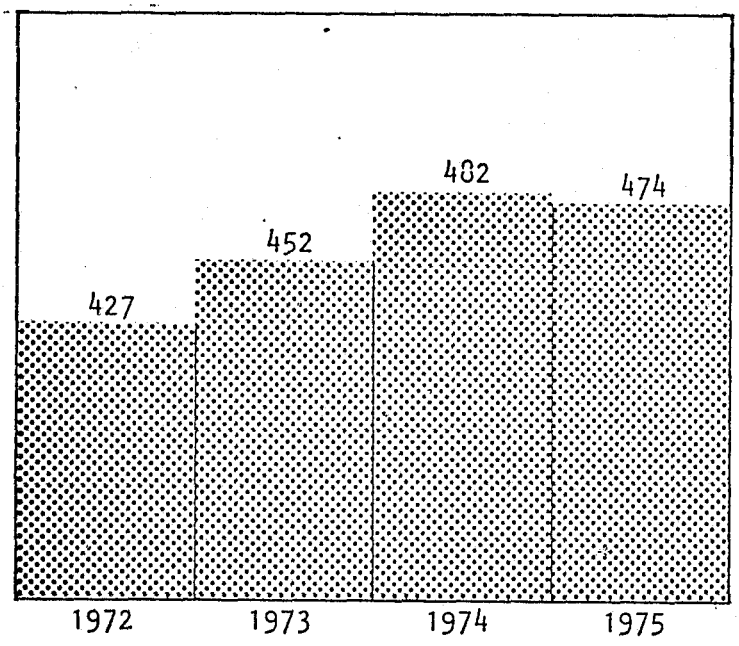
Source: Clerk of Court of Appeals



No upward or downward trends are discernable from these figures.

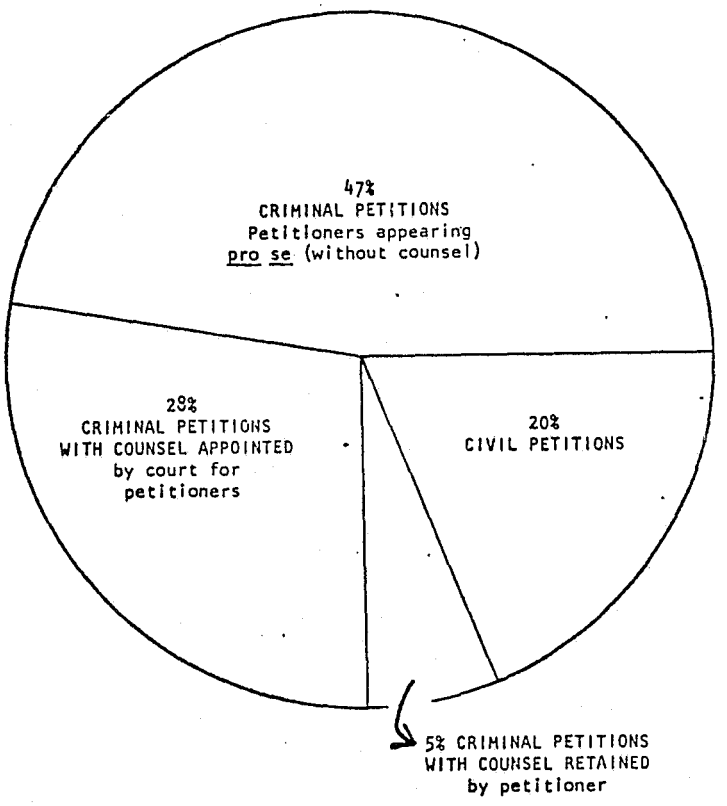
b. Petitions Disposed of in the Court of Appeals

These figures, except where otherwise indicated, are totals of both civil and criminal petitions for collateral relief (usually certiorari) and relate to dispositions rather than felonies. However, since most of such petitions appear to relate to criminal matters and since most are apparently disposed of quite promptly, the figures are probably valid indicators of a potential crime intake rate in collateral appellate matters.



As with direct appeals, no significant upward or downward trends appear to exist.

In order to have some indication of the number of criminal and indigent criminal matters handled in the Court of Appeals through the filing of petitions, the consultants conducted a sampling of 1975 filings. The results are shown as follows:



c. Misdemeanor, Juvenile and Mental Health Act Appellate Matters in the Court of Appeals

Misdemeanor appellate matters are included in general criminal totals (see "a" and "b" above). No data was available regarding Mental Health Act matters. Juvenile totals are not published; consultants were informed that eleven appeals from judgments of juvenile courts were filed in the Court of Appeals in 1974.

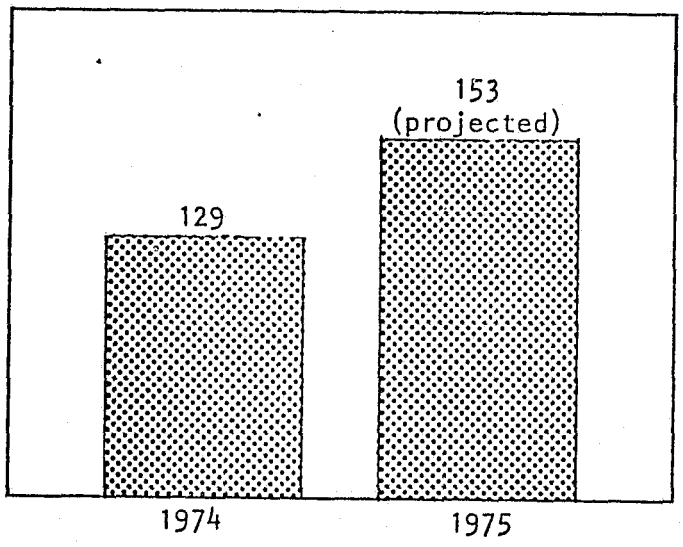
While this number (11) may be seen as low enough to be statistically insignificant, North Carolina may have the experience of some states in which, in a short period of time, filing rates in juvenile appellate matters have soared dramatically.

3. Criminal and Related Statistics, Supreme Court

Of necessity, the data regarding Supreme Court matters must be presented in a different form than from that of the Court of Appeals, as the two courts report their statistics differently. Supplemental investigations by the staff of the Special Committee and NCDM consultants have added some detail to the figures, but have not made reporting consistency between the two courts possible.

a. Total Criminal Cases

Total criminal cases of all kinds which were accepted (filed) for 1974 and 1975 were reported as follows:

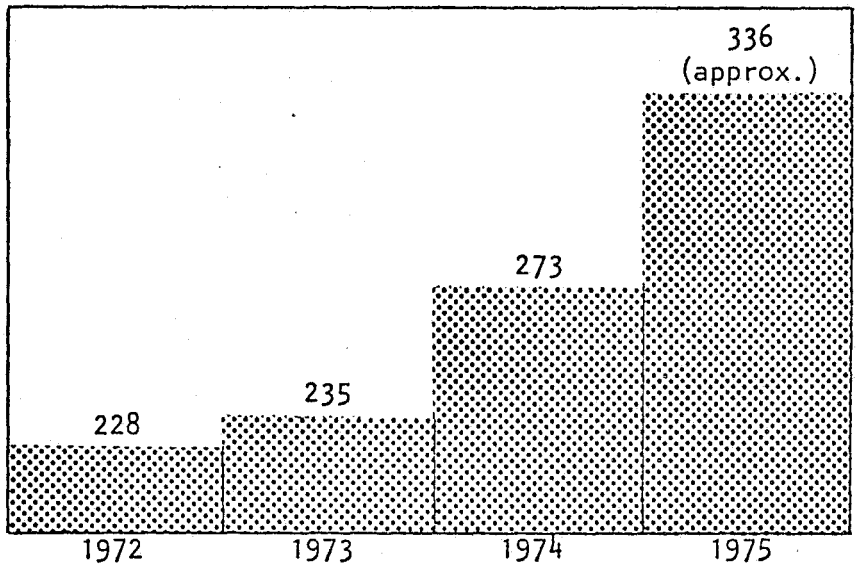


b. Death Penalty and Life Imprisonment Cases

Apparently, some 49 death penalty cases and 15 life imprisonment cases were filed in 1974. These felonies would presumably be reflected in the 1974 total shown above, and 1975 would have a substantial number thereof.

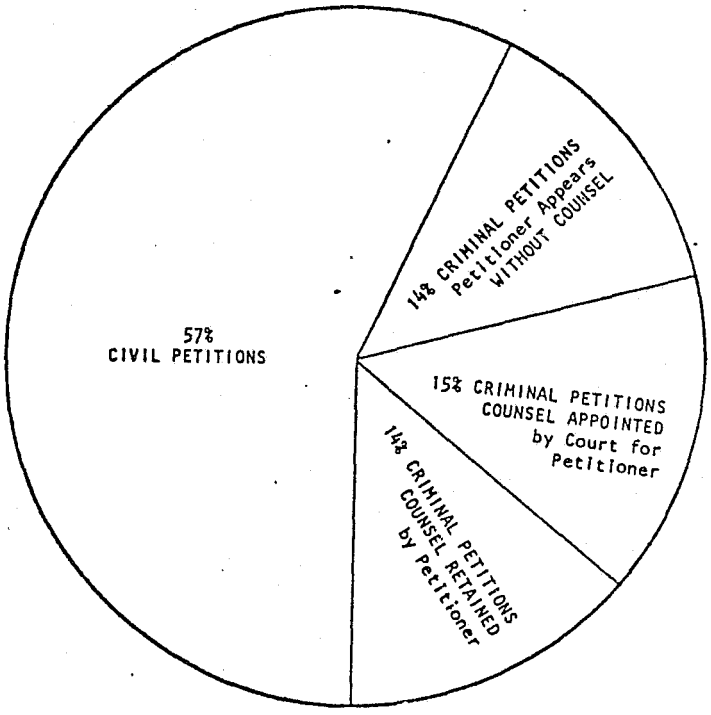
c. Petitions Disposed of in Supreme Court

These figures, except where otherwise indicated, are totals of both civil and criminal petitions for collateral relief (usually certiorari), and relate to dispositions rather than felonies. However, since most of such petitions appear to relate to criminal matters and since most are apparently disposed of quite promptly, the figures are probably valid evidence of a potential crime intake rate in collateral appellate matters.



Some evidence of an upswing exists with regard to these appellate matters.

In order to have some indication of the number of criminal and indigent criminal matters handled in the Supreme Court through the filing of petitions, the consultants conducted a sampling of 1975 filings. The results are drawn as follows:



4. Legal Indigency Rate

In 1974, 57 percent of Supreme Court criminal filings were in forma pauperis; in the Court of Appeals this figure was 66 percent. In 1975 (through November 21st) these figures were 79 and 72 percent respectively.

The consultants were informed that in all death penalty appeals, the appellant would be found to be indigent, as a realistic matter (though privately-funded defense groups might support some of these appeals).

The Final Report of the Special Committee contains, on page 29, proposed guidelines for determination of financial eligibility in criminal cases. Review of this draft does not suggest to the consultants that any decrease in the number of eligible criminal appellants can necessarily be expected if the guidelines are implemented. The common experience of all of the consultants, confirmed by interviews with the appellate judiciary in Raleigh, suggests that in North Carolina, as elsewhere, most criminal appellants are in fact legally indigent. Therefore, the figure of 75 percent as an indigency rate for planning purposes should be applied to the annual filing totals in computing workload.

5. Costs Per Case of Assigned Counsel in Appellate Matters

Estimates of average cost per case for fees of assigned counsel handling indigent appeals tend to vary. An average cost based on a Special Committee analysis of fees paid in February 1975 was $609 per case. Staff of the Administrative Office of the Courts gave NCDM consultants an average cost of $793 per case. Time analysis of a typical appellate matter conducted with the assistance of a local attorney versed in criminal appellate practice suggested that if the present computations rate of $20 per hour for noncourt time and $30 per hour for court time were followed, typical fees might well

be around $870.

6. Federal Appellate Matters Arising Out of North Carolina State Court Proceedings

No specific statistical data is set forth, and NCDM's recommendation is that the pilot Appellate Defender program handle these matters on a discretionary basis. While present levels of activity in this area are not of major statistical significance, changes in legal doctrines (for example, doctrines defining competence of counsel) may cause a major upsurge in this area of North Carolina as in other parts of the country.

Also, if the United States Supreme Court upholds the constitutionality of the North Carolina death penalty, a substantial amount of federal litigation may become necessary in these cases, all at the same time.

III

ASSESSMENTS OF PROBLEMS AND NEEDS

A. Recommendations of the Special Committee

The Special Committee on Indigent Legal Services Delivery Systems in its Final Report to the Board of Governors has recommended that a criminal defense system for indigents be a major component of a nonprofit Legal Services Corporation and that responsibility for such a system be vested in a Chief Public Defender appointed by the Board of the Corporation.

The Special Committee has recommended as part of this indigent criminal defense system the establishment of

> "an appellate branch whose responsibility would be the representation of all appeals of indigents in criminal cases, except where there is a conflict or in cases when trial counsel desires to take the case on appeal and the chief of the appellate section approves."[7]

The Special Committee in the Final Report stated the opinion that an appellate branch of the public defender component of a statewide system would greatly increase the quality and cost-effectiveness of appellate representation.

B. Goals and Standards of the North Carolina Governor's Law and Order Commission

The Governor's Law and Order Commission published in 1975 Goals and Standards for the Criminal Justice System in North Carolina. Therein, it was recommended that by July 1, 1979 an Appellate Rules Commission should be established to draft and formulate new appellate procedures.[8] Each convicted defendant would be afforded the opportunity to obtain one full and fair

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[7]Final Report to Board of Governors, Special Committee on Indigent Legal Services Delivery Systems, p. 24.

[8]Chapter IX, "The Adjudication Component" Standard 9.1.

judicial review by a tribunal other than that in which he was tried and sentenced. Review should extend to the entire case and cover all substantive and collateral issues (legalities and appropriateness of trial, conviction and sentence included).

Further review should, the Special Committee holds, be available by writ of certiorari to the North Carolina Supreme Court.

Chapter XVI of Part Two of the Goals and Standards discusses publicly-financed defense representation. It does not deal specifically with appellate representation, but in Part Three (the Post-Adjudication Component), Chapter VIII, a number of standards relating to the rights of offenders stress right of access to courts and legal services. The relevant Goals and Standards are set forth in detail in Appendix D.

C. Results of Interviews

The names and titles of persons interviewed are set forth in Appendix B. Since formal opinion-sampling was not to be a responsibility of the consultant team,[9] interviews focused primarily on assessing problems and acquiring information and data necessary for planning purposes.

However, since complaints relating to the present assigned counsel system were deemed relevant if perpetuation of undesirable conditions is to be avoided in a new system, the team sought to focus on these. A substantial amount of judicial dissatisfaction was expressed over the size of some claims for reimbursement. This area was explored, and it appeared that the primary basis for the concern lay less in the sizes of fees per se than

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[9]By agreement with the staff of the Special Committee.

in the practice of a few appointed appellate attorneys of padding their statements of time spent and expenses incurred. Examples include charging for hours used to drive to Raleigh to file briefs instead of mailing them or using messenger services; unnecessarily coming into Raleigh the night before oral argument and charging the court for hotel bills; and charging for time used to generally educate oneself about criminal appeals. Some specific concern was, however, expressed over the size of fees generally.

Concern was also expressed about the quality of appointed appellate representation. If counsel fails to reply to letters from imprisoned clients, the clients write to the courts, which must then look into the matter. Death and life-imprisonment cases received by the Supreme Court were frequently briefed inadequately, consultants were told. Where death penalties were affirmed, counsel sometimes had to be urged to petition for certiorari to the United States Supreme Court.

Most appointed appellate counsel were appointed counsel at the trial court level. Some are less enthusiastic about the appellate function than about the trial function. However, there are talented and effective private attorneys who appreciate the opportunity to serve as appointed appellate counsel, and an appellate defender system that entirely eliminates them from this area of practice might not only encounter substantial opposition from the private bar, but also damage the appellate process in the long run, by depriving it of their interest and creativity.

IV

RECOMMENDATIONS RELATING TO PROPOSED DESIGN FOR PILOT APPELLATE DEFENDER PROGRAM

A. Description of Proposed Pilot Appellate Defender System

1. Nonprofit Corporation

We recommend that a private nonprofit corporation be established with responsibility for supervising the Appellate Defender Office. If there is a proscription against a private corporation being a grantee of the State Planning Agency, the team recommends that the possibilities be explored of the Pilot Appellate Defender Corporation subcontracting on a sole-source basis to provide such services. Another alternative would be for the project to be implemented under the auspices of the Supreme Court or Administrative Office of the Courts. Such an alternative does not, however, provide the preferred degree of independence for the Appellate Defender.

The team strongly recommends the establishment of this private nonprofit corporation as the method that would insure the greatest independence of the Appellate Defender Office.

2. Governing Body

Assuming the establishment of a private nonprofit corporation as the governing organization for the Appellate Defender Office, we recommend that the corporation be governed by a Board of Directors, the majority of whom are attorneys. Members of the judiciary and the Attorney General's Office should not serve on the board. The appointment, composition and responsibilities of the Board can best be determined by the Special Committee for Indigent Legal Services, which is familiar with the needs and interests of the

community in respect to the criminal justice system.

3. Advisory Commission

The consultant team recognizes that interest in the function of the proposed appellate defender system presently exists in a number of quarters in North Carolina and that the concerns of various constituencies and groups must be considered. Therefore, the team further suggests the establishment of an Advisory Commission which would advise, on general policy matters, either the Board of Directors of the Corporation or the Appellate Defender (in the case of either a private corporation or an Appellate Defender Office under the auspices of the Bar Association or the Court System). If an Advisory Commission is deemed desirable by the Special Committee, it may include representatives or designees of such groups as the private bar, the State Supreme Court, the Court of Appeals and the Superior Courts, the Office of the Administrator of the Courts and the legislature. This Commission would insure the continued active involvement of the bar and the judiciary in the appellate defense process as well as the integrity of the Appellate Defender Office, by retaining ultimate responsibility for the program in the Board of Directors or the Appellate Defender.

4. Scope of Power and Duties

The nature and scope of the appeals undertaken by the Appellate Defender should be delineated in detail. It is recommended that the Appellate Defender's authority should not be limited to appeals as of right but should, at his or her discretion, include the authority to initiate any action in either state or Federal Court necessary to attack a state conviction or ancillary to a

state appeal.

In the case of entry into the Federal Courts, the Appellate Defender's authority would include, but not necessarily be limited to, petitions for writ of certiorari to the United States Supreme Court and petitions for federal habeas corpus relief under 28 USCA §2254 (1970). It would not extend to any case involving an appeal from a conviction of a federal criminal offense.

Similarly, it is recommended that, at least initially, the Appellate Defender Office not seek to undertake cases involving prisoners' complaints about conditions of their confinement unless such conditions are completely ancillary to a case already undertaken by the Appellate Defender. The considerations which motivate this recommendation include the considerable volume of such complaints, the time involved in their resolution and the subsequent displacement of resources to such cases from direct appeals. However, this recommendation is not intended to imply any lack of need for, or low priority assigned to such litigation; it is included solely out of a concern for the necessity of the pilot Appellate Defender program to operate, in large part, as an experimental project designed to pave the way for a permanent state defender system. In this role, it is important that the project largely confine itself to doing those things which are presently performed by assigned counsel on appeal, so that meaningful cost and qualitative comparisons can be made.

The second consideration arising in the context of the Appellate Defender's scope of responsibility is his/her authority to undertake nonappointive appellate matters; to enter cases within the scope of the program upon request of an eligible client but without court appointment. Payment of state monies under present statute law may require court-appointment as a condition. However, the goal of defender system development is to equalize

justice between affluent and nonaffluent as much as possible. It is a recognized step in the direction of attaining such a goal to grant discretionary power to the Appellate Defender to act upon the requests of eligible applicants. Certainly, precedent exists for such discretionary power.[10] NCDM therefore recommends that the pilot Appellate Defender program of North Carolina have such power.

5. Implementation of Case Assignment Procedures (The "Fifty Percent" Guideline)

The consultants recommend that the pilot Appellate Defender system handle approximately 50 percent of all indigent criminal appellate matters in the Court of Appeals and the Supreme Court. The reasons for this are several. First, it is not clear at present how much indigent appellate work exists, as a number of variables in the State's criminal justice system have the potential of affecting the appellate process in significant ways. Even without such variables, existing statistics do not give planners sufficient knowledge to accurately quantify the total indigent appellate workload.

Second, a total takeover of indigent criminal appellate representation by a defender system at this time would, it is believed, antagonize segments of the private bar (upon which the defender program must rely for support), and virtually eliminate it from an important arena at a critical time. Third, since it is contemplated that the pilot project will not undertake all of the indigent criminal appellate work, there remains the question of how many of the cases should be assumed by the project. The consultants feel that the 50 percent figure recommended provides the best basis for comparison of defender and assigned counsel appellate practice, both from the standpoint of cost and

[10] See Appendix E, California State Public Defender Act, 1975

quality of representation. The 50 percent figure would provide a defender office of moderate size, in which the economies of scale would operate, but which could be organized in a fairly short time. The recommended size would be smaller than that at which management tends to become a serious problem.

Implementation of the 50 percent guideline would require the active cooperation of the State's trial level judiciary, particularly the Superior Court judges who sit in felony cases who are responsible for appointing counsel for indigent appellate matters. In order to gain their voluntary cooperation, it is felt that the leadership of the Chief Justice of the Supreme Court and the Director of the Administrative Office of the Courts is essential. It is believed that their endorsements of the appellate project together with requests to trial judges that the project be appointed for 50 percent of indigent appellate matters, would secure such cooperation if it can be secured at all. Because the problems addressed by the Appellate Defender project are a source of legitimate concern to the judiciary as a whole, consultants believe that judicial support can be achieved.

There are two principal ways the 50 percent balance could be implemented. One would be a system whereby the Appellate Defender is appointed in every second indigent appellate matter, using an odd/even trial court docket number system. This has the advantage of giving the Appellate Defender System and the Assigned Counsel System an essentially random equal mix of cases. It also has the virtue of simplicity.

The other method would be to select areas of the State by county or judicial district, designating some as appellate defender program areas (all indigent appellate matters from there would go to the program), and the remainder as assigned counsel areas. With this method, the mix would be less random, but fewer trial-level judges would need to be involved in such a system, and therefore, cooperation problems would be minimized. However,

if seen as discriminatory, such a system might meet resistance from sectors of the private bar who, in particular designated areas, would be entirely excluded from indigent appellate practice.

These things considered, the consultant team prefers the odd-even docket number system as (probably) the more workable of the two methods.

7. Funding the Pilot Appellate Defender Program

As noted in Section E hereof, financial savings is not among the virtues of the pilot Appellate Defender program. The fees ordinarily paid to private counsel appointed in criminal appellate matters would, it is assumed, be paid to the appellate program for the cases it handles, at the same rates. It is clear from analysis of time spent on cases and fees allowed that this procedure will not support the appellate defender project.

Therefore, NCDM recommends that 50 percent or more of the system cost in the first three years be paid through LEAA funding allocated by the State Planning Agency.[11] A grant application should be filed for same, and the appointment fees should be used in part as matching funds. Even with second- and third-year funding requiring more than a 10 percent match, the state funds available over a three-year period should provide more than sufficient total match for the entire period in question. The fact that the Pilot Appellate Defender Project would fulfill a number of the goals and standards of the Governor's Law and Order Commission (see Appendix D) should facilitate funding.

B. Workload and Staffing Determinations

The staffing requirements of the Appellate Defender Office were deter-

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[11] Law and Order Section, Division of Community Assistance, Department of Natural and Economic Resources

mined by using (1) the number of criminal matters requiring appointment of counsel before the appellate courts, and (2) estimates by members of the appellate judiciary and the bar of the amount of time required to prepare and argue an appeal. The indigency rate (in criminal appeals) used for planning purposes was 75 percent, the nationally accepted figure for felony and nontraffic misdemeanor appeals.[12] Discussions with court personnel and data gathered indicate that the 75 percent figure is relatively accurate for North Carolina; it may even be somewhat low (see Chapter II,C,4).

The records of the Court of Appeals indicate that an annual average of 306 appeals apparently requiring the appointment of counsel were filed for the period 1972-1975[13] The same records show that an annual average of 129 petitions for certiorari apparently requiring the appointment of counsel were filed.[14] In the North Carolina Supreme Court, an average of 65 direct appeals (death and life-imprisonment sentences) and 41 certiorari petitions apparently requiring the appointment of counsel have been filed annually during the same four-year period.

We would anticipate that an appellate defender pilot project capable of handling 50 percent of these cases would have a minimum caseload of approximately 153 direct appeal cases in the Court of Appeals, 33 direct appeal cases in the Supreme Court, 65 petitions for certiorari in the Court of Appeals and 21 petitions for certiorari in the Supreme Court.[15]

Extended interviews with appellate judiciary and members of the

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[12]"The Other Face of Justice," National Legal Aid and Defender Association, Chicago, 1973, p. 84.
[13]See Chapter II,C,2. The average annual filing rate of direct appeals for 1972-1975 is 407.25. An indigency rate of 75 percent yields an annual average indigent caseload of 305.44.
[14]28 percent of 458.75 (annual average).
[15]The number of petition cases in which counsel ought to be appointed was the subject of some discussion among the consultants; a large, dormant potential caseload is suspected, but unverified.

North Carolina bar and others led the consultants to conclude that an average appeal representing the middle fifty-percent of the cases reviewed would require from seven to ten attorney workdays to prepare and argue. From interviews and examination of court records, consultants estimate that petitions for certiorari in the Supreme Court or the Court of Appeals would require approximately one day apiece.

For planning purposes, a workload standard is generally followed which calls for an appellate defender attorney to handle no more than 25 appeals per year. This figure has been verified as approximate from appellate defender offices and was verified by consultants in interview findings. Using the 25-cases-per-attorney standard and computing time necessary for petitions, it appears that eight is the minimum number of lawyers needed. However, it is anticipated that the pilot project will be appointed to a substantial number of death penalty cases; the increased burdens placed on the office as a result of such appointments together with the rising rate of certiorari petitions would necessitate an additional attorney. This would certainly be the case if some matters were carried into the federal courts.

It is further anticipated that the Chief Appellate Defender will spend most of his time on administrative matters and will not produce many briefs, at least in the first year.

NCDM therefore recommends an office staffed with a Chief Appellate Defender, nine attorneys, six secretaries, a bookkeeper and two paralegals or assistants. The Chief Appellate Defender will need a full-time executive secretary and a bookkeeper. Five other secretaries, one equipped with an IBM Mag Card II typewriter, should be able to handle typing for the nine staff attorneys.

The two assistants or paralegals would assist the attorneys and thereby conserve time by interviewing clients, locating and securing missing records or portions thereof and handling both client and nonclient correspondence. It is even possible that paralegals might be trained to prepare the Record on Appeal.

The pilot project budget includes a law student program which contemplates five law students in an intern program for the summer or three law students on a yearround basis. It may be possible to eliminate the two assistants from the budget and use the law students for the same purpose.

Salaries in the budget are reasonably consistent with comparable positions in the Attorney General's office. Rent is based upon a facility in which each attorney has a private office. If the project is located in a state-owned building, this figure may be reduced substantially.

The following is a proposed total budget for the recommended Appellate Defender office, containing breakdowns for certain entries.

C. First, Second and Third Year Budgets

1. Three Year Budgets Summarized

	1st Year	2nd Year	3rd Year
a. Personnel Services	$278,300	$308,200	$330,050
b. Contractual Services	39,500	40,000	42,000
c. Telecommunications	6,000	6,000	6,000
d. Travel	5,000	5,000	6,000
e. Supplies	7,000	5,000	6,000
f. Printing	1,000	1,000	1,000
g. Library	11,505	1,105	1,200
h. Equipment	20,890	2,000	2,000
i. Law Student Program	12,000	12,600	13,500
j. TOTALS	$381,195	$380,905	$407,750

2. Budget Detail and Narrative

a. Personnel Services

Chief Appellate Defender	$ 27,000	$ 30,000	$ 32,000
Staff Attorneys (9)			
2 @ $23,000	46,000		
-2 @ $25,000		50,000	
--2 @ $27,000			54,000
1 @ $16,000	16,000		
-1 @ $18,000		18,000	
--1 @ $18,000			18,000
6 @ $14,000	84,000		
-4 @ $16,000		64,000	
-2 @ $14,000		28,000	
--4 @ $17,000			68,000
--2 @ $14,000			28,000
Bookkeeper	8,000	9,000	10,000
Assistants (2) @ $9,000, $10,000 & $11,000	18,000	20,000	22,000
Secretaries (6)			
Executive	8,000	9,000	10,000
5 @ $7,000, $8,000, $9,000	35,000	40,000	45,000
Fringe (15%)	36,300	40,200	43,050
TOTAL	$278,300	$308,200	$330,050

b. Contractual Services

	1st Year
Rent	$20,000
Postage	4,000
Equipment Rental (Xerox 4500) (Mag Card II)	12,000
Equipment Maintenance	1,000
Advertising	500
Other	2,000
TOTAL	$39,500

Expenses peculiar to second- and third-year operations cannot be adequately anticipated at this time. This line item will probably increase as general costs rise.

c. Telecommunications. This figure should be adequate for all telecommunications expenses, including answering service costs.

d. Travel. This item is primarily for attorney and assitant travel to the penitentiary for client interviews, although it does include a certain amount of intrastate travel for investigatory purposes.

e. Supplies. This item provides for all office supplies.

f. Printing. This figure includes printing of briefs, records and office materials; as well as other duplicating costs (other than machine rental).

g. Library. A detailed budget for the law library is at Appendix F.

h. Equipment

Items	Unit Cost	Total Year Cost
19 desks	$200	$3,800
19 chairs	60	1,140
6 typewriters	600	3,600
10 4-door file cabinets	125	1,250
1 library table	300	300
10 library chairs	60	600
25 side chairs	60	1,500
6 bookshelves (library)	150	900
10 bookshelves (attorney)	80	800
10 dictating units	400	4,000
5 transcribing units	400	2,000
other equipment		1,000
TOTAL		$20,890

Expenses in the second and third years should be for only a few new items, and for replacement of any others lost or destroyed.

i. Law Student Program

5 law students for 12 weeks (summer interns) @ $150/wk.	$ 9,000
1 secretary for 12 weeks @ $125/wk.	1,500
	$10,500

OR

3 part time law (student) clerks year round @ $4,000 per year	$12,000

D. Factors Likely to Impact Appellate Workload in the Future

The criminal justice system in North Carolina, as elsewhere, is experiencing a degree of metamorphosis which is likely to render present indigent appellate defense workload calculations inaccurate in the future. Some of these problems or possible impacting factors are catalogued in the numbered items that follow. The consultant team has elected to identify and list these factors for two reasons. First, whenever changes in a criminal justice system are planned, the systemwide effects should be considered. This does not always happen. The second reason concerns future credibility of defender staff. Too often, defender systems have been compelled due to circumstances beyond their control to expand far beyond the projections of those who planned the systems. Usually these expansions are necessitated by the impact of exogenous variables. Therefore, NCDM and the consultant team have considered the present posture of criminal justice in North Carolina and have identified the following factors as potentially impactive:

1. U.S. Supreme Court Decisions Affirming the Constitutionality of North Carolina's Death Penalty Statute(s).

Those who recall the 1950's and early 1960's will recall the feverish advocacy which occurred during the final days and hours before each execution. North Carolina has over 100 prisoners under sentence of death. If such sentences were affirmed by U.S. Supreme Court action, it is presumed that stays of execution would be vacated. Litigation, instead of ceasing, would become more intense. (See, for example, the voluminous compendium prepared by Professor Anthony Amsterdam and others, colloquially known as the attorney's "Last Aid Kit.")

2. A Substantial Increase in Juvenile and Mental Health Appellate Litigations.

North Carolina apparently has little volume of juvenile or mental health appellate litigation. Study of a trial-level, regional overall defender program did little to reassure the consultants that the infrequency of such litigation is the result of near-perfect trial court procedures and substantive dispositions. Both juvenile court and mental commitment litigation are constitutional frontiers, and the consultants believe it to be only a matter of time before these areas begin receiving major appellate attention in North Carolina.

3. Abandonment of the Practice of Safe Keeping in the Prison System.

This practice of Safe Keeping is discussed in Chapter II of this report. Abandonment of Safe Keeping is, the consultants believe, likely to result in more appeals, as Safe Keeping appears to have a chilling effect on the exercise of appeal rights.

4. Enhanced Awareness on the Part of Convicted Defendants of Appeal Rights.

Interviews with appellate judiciary indicated that numbers of late notices of (or requests for) appeals were received. These notices, the consultants were informed, were handled through liberal granting of postconviction hearings. However, the possibility of appeals being "waived" because of ignorance of appeal rights was not ruled out to the total satisfaction of the consultant team. Formalized procedures for insuring awareness of appeal rights may well increase the number of appeals.

5. Change in Constitutional Standards Regarding Attorney Competence in Criminal Matters.

Considerable pressure is currently being exerted to establish higher standards of required attorney competence in criminal cases than presently

exist. Indigent trial practice being what it is in North Carolina and in the United States generally, such elevation of standards of practice is likely to increase the number of appealable convictions.

6. Limitations on Statutory Rights of Appeal.

The consultants were made aware that some sentiment exists for limiting the statutory right of appeal in criminal cases. Such limitations might decrease direct appeals, but in the long run would probably increase petitions for collateral relief and federal court litigation.

7. Prison Commitments and Lengths of Term.

North Carolina currently has, by national standards, a somewhat high prison commitment rate, and some local sentiment exists which calls for more and longer prison terms for convicted persons. Appeal rates are often directly proportional to both the number of prison commitments and the length of sentences. Persons receiving suspended sentences or short terms are generally less motivated to engage in extended appellate litigation than those facing many years in prison. Therefore, any significant increases in the number of prison commitments or lengths of prison terms is likely to stimulate additional appellate litigation.

E. Discussion of Comparative Costs: Present Assigned Counsel System and Proposed Appellate Defender System

It has been estimated (see Chapter II, C. 5) that the present cost per case for indigent appellate representation is approximately $800. The inescapable reality which must be faced is that the proposed pilot appellate defender program's first-year budget would yield a cost-per-case of about $1400,[15] and that subsequent year costs would not be significantly less.

Most States which have adopted appellate defender programs have had to face this reality. Unlike trial-level defender programs, which in urban areas can often produce representation at substantially less cost than assigned counsel systems, appellate defender programs are not known for their capabilities in terms of effecting economies. Rather, such programs are adopted as a means of upgrading the quality of indigent appellate defense advocacy. They tend to cost as much as or more than appellate assigned counsel systems due to the unfortunate tradition which exists in too many regions of underpaying the private lawyers who serve such systems. In fact, the $1400 per case cost set forth above is in line with typical appellate defender average rates.

Are North Carolina's private attorneys underpaid for these indigent appellate appointments? Many persons in the court system who were interviewed by the consultant team appeared to feel that in numbers of cases the opposite was true; examples of attorneys charging for "learning time" and otherwise padding claims for payment were cited. The consultants (who included two experienced appellate attorneys) verified that a properly handled direct appeal in North Carolina, as elsewhere, would probably consume from seven to ten days of an experienced lawyer's time. Comparing this with claims for reimbursement,

[15] See Part B of this chapter; a minimum caseload of 272 appellate cases (direct appeals and petitions) is anticipated and, in Part C, a first-year budget of $381,195 is projected.

the consultants were forced to conclude that both propositions were true: overpayments were occurring, but the costs per case were too low. In other words, insufficient time was being put into appeal preparation, and claims for unjustifiable time and expenses were being submitted. Certainly, it does not benefit an indigent appellant to have only half the necessary preparation conducted in his case and then to have the meager hours thus utilized swollen by time unnecessarily consumed in driving to Raleigh to file the brief.

In the final analysis, a properly administered appellate defender program holds genuine promise of true cost-effectiveness. The State can be assured that the professional time utilized in appellate advocacy will be properly spent in delivering high-quality services which, if delivered by adequately-compensated, qualified and experienced private counsel, would cost far more. The burden, which now falls on the appellate courts, of making up appellate counsels' deficiencies would no longer exist, and the adversary process on the appellate level would operate as it should.

F. Recommendations Regarding Ongoing Qualitative, Workload and Timekeeping Analyses

It is the conclusion of the consultants that available data and interview results were insufficient to predict accurately the precise staffing needs of the proposed pilot appellate defender program (or, the precise caseload-carrying capability of an experienced full-time staff attorney working in such a program), given the individualized characteristics of the North Carolina criminal appellate process and the milieu within which it operates. This is one of the reasons why the consultants did not attempt to design a program which, without being over-staffed on the one hand or overloaded on the other, would handle the indigent criminal appellate caseload in toto.

A major feature of the proposed design is to allow assessment by the

State of total feasibility of the defender method of delivering appellate representation to include evaluation of quality of services and cost-effectiveness. It is essential, therefore, that the pilot program develop a sound and accurate data base upon which later decisions can be predicated. Hence, NCDM recommends the following:

1. Qualitative Evaluation

It is essential that, once operations have commenced, qualitative evaluation of services rendered occurs. Presently, no evaluation design for internal use by an appellate defender office has been produced, but, as this report is written, NLADA's Defender Evaluation Project[17] is nearing completion of two evaluation designs, one for external evaluation of state court trial-level defender offices and one for internal self-evaluation of such offices. These designs contain many features which are adaptable in principle to appellate offices; a technical assistance request to NCDM to establish an internal qualitative monitoring system to permit comparison with the appellate assigned counsel system (operating in parallel with the defender program) should be considered.

2. Workload and Timekeeping Measurement

The consultants, in computing initial staffing needs of the pilot appellate defender program, used the National Advisory Commission Standard[18] of 25 appellate cases per attorney per year, after engaging in some degree of verification of its applicability through interviews with those skilled

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[17] LEAA Grant No. 74NI-99-0049.

[18] National Advisory Commission on Criminal Justice Standards and Goals, Task Force Report: The Courts, Standard 13.12.

in criminal appellate representation (see section B of this chapter). This methodology, while sufficient as a basis upon which to engage in initial planning, is not satisfactory as a permanent yardstick.

It is axiomatic that, for the appellate defender as for the private practitioner, the effective work-year does not contain 261 days and the effective work-day does not contain eight hours. Administrative demands, training, vacations and illnesses, telephone calls on matters unrelated to cases, travel time, waiting time in courts and elsewhere, the impact of interruptions of train-of-thought, and a myriad of other factors reduce the time actually available to do effective work on cases. A private practicing attorney who is able to point to 1,400 billable hours per year is probably doing well; an analogous situation is likely to be true in many publicly-financed defender programs.

At a certain point, the management of the pilot appellate defender program will be required to give accurate, substantiated answers to hard questions in this entire area. Reliance on such sources as the National Advisory Commission Standards will not be enough. Fortunately, models exist which can be of assistance to program management.

The Appellate Division of the Public Defender Department of the State of New Mexico has designed and implemented a timekeeping system to account for attorney time and to measure workload capability. A description thereof is at Appendix G.

A workload and time analysis will, hopefully, help to avoid the work overloads which characterize so many of America's defender programs; and will constitute a genuine aid to planning for both the program management and the State. Technical assistance from NCDM should be considered for implementation

of such analyses.

One final admonition is in order. Neither the pilot appellate defender program nor any successor program should ever be required to provide representation in more cases than it can handle competently. The American Bar Association's Code of Professional Responsibility provides as follows:

> Canon 6: A Lawyer Should Represent A Client Competently
>
> Disciplinary Rule 6-1-1: A lawyer shall not:
>
> . . .
>
> (2) Handle a legal matter without preparation adequate in the circumstances.
>
> (3) Neglect a legal matter entrusted to him.

The obligation to comply with these canons and rules is personal to each lawyer and cannot be delegated to or assumed by courts, governmental entities or administrative agencies. Therefore, discretion to limit the caseload must rest with the chief defender and his or her staff.

APPENDIX A

Correspondence Relating To
Request for Technical Assistance

LEAA FORM 1331/6 (8-72)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

TO : Jim Swain, ORO
ATTN : Greg Brady, ORO
THRU : Joseph A. Nardoza
Assistant Administrator, ORO
FROM : William B. Herndon
Courts Specialist
THRU : Ben A. Jordan
Director, PDTAD
SUBJECT: TA Request: N.C. Bar Association - Indigent Defense Services

DATE: November 17, 1975

The enclosures (2 copies each) detail subject request which has the endorsement of the SPA and this office. It was somehow unduly delayed in transmission to this office so time is of the essence.

The assistance desired is appropriate and timely and I urge your early referral of the request for expeditious processing. We anticipate 3 to 5 man-days to fulfill this TA request. The State Representative (Seldomridge) and I are the Regional Office contacts and J.C. Rudisill is the SPA contact in this matter.

Your assistance in this matter will be greatly appreciated.

Enclosures

11/20/75 Approved
Gregory C. Brady
LEAA

7

North Carolina Department of
Natural & Economic Resources

P.O. BOX 27687
RALEIGH 27611

JAMES E. HOLSHOUSER, JR., GOVERNOR • JAMES E. HARRINGTON, SECRETARY

TELEPHONE 919 829-4984

October 24, 1975

Mr. David Seldomridge
Field Representative
Law Enforcement Assistance Administration
730 Peachtree Street, N.E., Room 985
Atlanta, Georgia 30308

Dear Mr. Seldomridge:

Re: Project No. 30-029-174-12
N.C. Indigent Legal Services Deliver System Study

In recent years the unified adjudication system of North Carolina has been troubled, as have other states, with many problems in the assignment of counsel to indigent defendants. The Director of the Administrative Office of the Courts, Mr. Montague, has desired to approach this question in the most efficient, expedient, and economical method for uniform application to our system. Consequently he has applied for and received LEAA funds which he has utilized in contracting with the North Carolina Bar Association for an indepth study with resulting recommendations through the associations Bar Foundation with a working special committee. This committee has very diligently and conscienciously applied its resources to study, research, survey, and evaluation of the many and varied problems and approaches to indigent defense. Tentative scheduling of this committee estimates termination of its efforts with the submission of final reports and recommendations to the AOC early in March 1976.

We have received a request, a copy of which is enclosed, from the committee for special consultant assistance in three specific areas of concern and investigation. We believe that the requested services are available through the LEAA contract with the Criminal Courts Technical Assistance Project at American University, or possibly other contracts/projects, and solicit your support and assistance in securing such services for this important and beneficial study effort.

Suffice it to say that the SPA concurrs in the beneficial need for the requesting consultant services by this very reputable and diligent working committee and herewith solicits your favorable consideration and expedient services in making same available to them. Should there be need of additional information please contact J. C. Rudisill, planning specialist, of our staff.

Sincerely,

Donald R. Nichols
Administrator
LAW AND ORDER SECTION

DRN/JCRjr/jal

Enclosure

Special Committee on
Indigent Legal Services Delivery Systems

Post Office Box 827
Durham, N. C. 27702
Telephone (919) 682-6982

August 13, 1975

Mr. J. C. Rudisell
Court Planning Specialist
Law and Order Section
P.O. Box 27687
Raleigh, North Carolina 27611

Re: N.C. Indigent Legal Services Delivery Systems Study
(30-029-174-12)

Dear Mr. Rudisell:

As you know, the Special Committee is carrying out a study, now scheduled to be completed on March 1, 1976, to determine the most effective means of providing legal services in civil and criminal cases to poor persons in North Carolina.

We have reached the point in our work where we feel the need of some outside assistance with several of the recommendations that the Committee is considering. In particular, we would like help in the following areas:

(1) Trial Court Administrators
The Committee has heard from judges and lawyers who feel that changes are needed in the calendaring process to make the assigned counsel system more efficient. A trial court administrator in each judicial district has been suggested to reduce time spent by appointed counsel in waiting for his case to be called. An administrator could also make the initial determination of indigency and make assignments from an approved panel so that counsel may be appointed as early as possible. We would like a consultant who could look into the feasibility of such a system in North Carolina and design a pilot project for one or more judicial districts in the state.

(2) Appellate Defender Office
The Committee is extremely interested in setting up an office to handle all appeals by indigent defendants. I believe five states now have such a system separate from county administered public defender and assigned counsel systems, and most of the statewide public defender organizations have such a unit. We would like some help in deciding whether an appellate office is feasible for North Carolina, what is the best model, and how much would it cost.

(3) Alternative Systems for Rural Areas
Because over half (55%) of North Carolina's population live in rural areas, we are particularly concerned about the problems of delivering services in these areas. A consultant visit would be helpful in designing one or more pilot projects, possibly using a regional defender to cover several judicial districts, or a single lawyer in a county to handle civil and criminal cases.

I understand that technical assistance of this sort is available free of charge from the Criminal Courts Technical Assistance Project at American University in Washington,D.C.

We would appreciate your assistance in getting our request approved by the LEAA regional and national offices. The Committee is breaking down into subcommittees to deal with various aspects of designing a statewide program. Assignments to subcommittees will be finalized at the Committee meeting on August 22, and they will begin to meet shortly thereafter. It would be good if any consultants that are made available could meet with the appropriate subcommittees during the early stages of their work.

If any further information is necessary, please let me know.

Sincerely,

Rosemary Hill
Coordinator

RH/pms

cc: Carolyn S. Cooper, Deputy Director
Criminal Courts Technical Assistance Project

NATIONAL CENTER FOR DEFENSE MANAGEMENT

A Project of
The National Legal Aid and Defender Association
Suite 601, 2100 M Street, N.W. / Washington, D.C. 20037
202/452-0620

December 24, 1975

Ms. Rosemary Hill
Administrative Coordinator
Special Committee on Indigent Legal
Services Delivery Systems
Post Office Box 827
Durham, North Carolina 27702

Dear Rosemary:

It was most helpful for me to review the goals and scope of our planned technical assistance projects for North Carolina with you on December 22-23 in Durham, and I thank you for your time and patience. I would also like to compliment you and your Committee on quality and range of your planning and data-gathering, too; I think North Carolina has, as a result thereof, a far better than usual chance of getting off to a really good start in terms of comprehensive defense and legal aid programs for its less-affluent citizens.

You mentioned, while I was there, that there was a desire on the part of your Committee (or some of them) to have us plan and help establish a permanent in-service training program for defenders and assigned counsel in North Carolina. As I suggested, this probably should be put through as a new "T.A." request for two reasons; one, that it is somewhat outside the scope of the present assignment as approved and two, that it should be part of NCDM's second-year plan (i.e., for implementation after March 1, 1976). I do wish to encourage you in making such request, as I feel we were able to develop a good program for the State of Vermont (enclosed is a copy of what we did for them). Just follow the same procedures you did for the current "T.A." with respect to this request.

With respect to the current assignments, the following is my understanding of what our respective functions and responsibilities will be:

(1) <u>In General</u>

NCDM will design two pilot defender systems for your Committee. One will engage in appellate representation of indigent criminal and juvenile defendants and indigent persons committed as mentally ill before the North Carolina Supreme Court and Court of Appeals. The other would provide trial

court level representation to indigent persons facing criminal, juvenile court, or mental commitment proceedings in the Superior or District Courts of a multi-judicial district rural region of North Carolina.

In neither case will the defender office be designed to handle all indigent representation in its courts. Rather, since both are pilot projects, estimates of caseload capability will accompany designs but these will not be binding on such offices if they are implemented. Designs are to include proposals for administration of assigned counsel or part-time or "contract" defender components to handle excess indigent cases not taken by such offices.

If such pilot programs are implemented, it is NCDM's recommendation that sophisticated internal time-keeping systems (see (4), below) be instituted so that accurate planning for future programs and future staffing can take place.

The ascertainment of feasibility of such programs to the extent that such feasibility depends on public, governmental, State Planning Agency, judicial or Bar support (or lack of opposition) will not be a responsibility of NCDM; rather, your Committee and its staff will measure and/or muster such support in furtherance of implementation. NCDM will, however, upon specific request, assist with the design of any survey questionnaire documents the Committee may wish to initiate.

Your Committee's staff will, to the extent that their time permits, assist NCDM with data-gathering. Specifically, you are planning to attempt to obtain salary scales and classification data for all attorney positions in the state Attorney General's Office and District Attorney and existing Defender offices (we would, if possible, like similar data with respect to investigative, any paraprofessional, administrative and clerical positions in such offices - any type of position which might well be used in the two programs to be designed).

The LEAA "hard match" requirement for the cost of this assistance will be paid by NCDM's sponsor, the National Legal Aid and Defender Association, as we understand that your Committee has no non-federal funds available for this purpose.

It appears possible (perhaps likely) at this point that implementation of either or both of the two programs may require partial funding through the Law and Order Section of the North Carolina Department of Natural and Economic Resources. We understand that your Committee anticipates that a statewide defender or defense plan may be considered by the 1977 North Carolina Legislature and that these, therefore, may be interim programs which could be merged into such final plan.

(2) Appellate Defender Office

NCDM will retain two consultants to review data gathered by you and visit Raleigh for approximately five days in order to design a pilot

appellate defender program including staffing and the proposed budget. It is hoped that they can complete such visit by the end of January; we understand, however, that one or more key persons will be unavailable during most of the weeks of January 5-9 and 19-23, 1976. We did not discuss whether or not such Appellate Defender should be authorized to continue representation of state court clients into federal courts; this should be resolved.

(3) Alternative Systems for Rural Areas

NCDM will design a pilot rural regional defense system to cover several contiguous judicial districts in North Carolina. The specific geographic region to be covered by the design is to be selected on the basis of rurality, poverty and dearth of private counsel by your Committee or its designates; we understand that the region of the 1st, 2nd and 6th judicial districts (or part thereof), which you and I discussed, may be selected.

The system designed is to approximate, within the limits of practicality, that which is described on pages 9 (beginning with the second paragraph) and 10 (ending with the second paragraph) of the draft Preliminary Report of Subcommittees II and IV (of your Committee) dated December 5, 1975, except that an attorney staffing level of from three to five full time defender attorneys has been tentatively estimated by us as needed. As the above report recommends, the system designed will include both defender and assigned counsel components; you have indicated a further desire to have the assigned counsel component under an administrator whose position is to be included in the design and who shall be part of the defense system rather than the courts system.

In order to design this rural system, NCDM will need as much of the following data as can be readily obtained:

(a) Numbers (by group) of felonies, misdemeanors, juvenile cases, and mental commitments actually filed in the District Courts (of the sixteen counties in districts one, two, and six if this be the target region selected), ideally for the three calendar years ending December 31, 1975, but in any event for some (minimally, 12-month) recent base period. If data exists, other than at the county courthouses themselves, whereby felonies and misdemeanors can be sub-categorized, this would be helpful.

(b) Numbers (by category) of such cases which reach Superior Court in each county, with information (e.g., trial de novo, etc.) on how non-felonies reached Superior Court.

(c) The numbers of cases in each of the foregoing categories in each county (Superior and District Courts) in which court appointed counsel served (by group).

(d) The total aggregate compensation of such assigned counsel in cases within each of the foregoing categories in each county (Superior and District Courts).

Some of this information is reflected in data you have already provided for us, and some of it may not be obtainable by us or anyone in the time available. However, I feel it wise to identify the desired data in case you should discover some relatively easy way in which it could be obtained (the State Court Administrator might have ideas), in which case, we would attempt to obtain it before our visit. If it is not readily obtainable, we may utilize statistical sampling methods in courthouses or develop data through extrapolation.

In that regard, your memo of December 16, 1975, describing a proposed procedure to determine indigency rates looks as though it could be helpful. If specific indigency standards are to be substituted for what happens now, then (I think) (a) the present indigency rate among defendants (not the general population) should be determined, and then (b) the rate should be modified up or down based on the review and comparison you describe.

Two consultants will probably be utilized, each for about five days. The visit will, hopefully, occur early in February, 1976.

(4) Time Studies In Pilot Offices And One Other

As I indicated to you, if pilot project offices are to be used effectively as models for a statewide proposal to be presented to the Legislature in 1977, it is, I believe, essential that the actual workload capabilities of defender attorneys operating in different courts and handling varying types of cases be ascertained, and that the impacts of travel, rurality, and non-rurality be gauged.

Therefore, if the pilot projects are implemented after February 29, 1976, I would suggest that a time-study methodology be designed and simultaneously implemented within each pilot project office and, in addition, that a grant be sought to bring one existing non-rural office up to a desirable staffing level and that a time-study be run in that office.

Then, you will be able to furnish the Legislature with real rather than speculative data.

NCDM has the capability of such time-study design, and, subject to SPA-LEAA approval, would welcome the addition of this project to our second-year plan if this was the desire of your Committee.

(5) Direct Application for Defender Services

NCDM recommends that provisions be written into the designs whereby indigent persons can obtain immediate legal representation without the necessity of waiting for court appointment (e.g., where an indigent person is under investigation by police or is facing interrogation or lineup procedures, or may need immediate appellate-level action). Instances where such requests for representation are made tend to be few in most jurisdictions, but when the need therefor arises, it is usually an extreme need. Therefore, the "additional work" involved is minimal but very important.

Please let me know if I have omitted any details of our understanding as to the nature and scope of the assistance to be rendered.

Again, thank you for all of the material you furnished us and for your courtesy and assistance during my recent visit.

Sincerely,

WILLIAM R. HIGHAM
Director,
National Center for Defense Management

WRH:ag

Enclosure

APPENDIX B

List of Persons Interviewed

Persons Interviewed by Staff and Consultants

January 27 - 30, 1976

Supreme Court

Hon. Susie Sharp
Chief Justice of the
Supreme Court of
North Carolina

Hon. Joseph Branch
Associate Justice of the
Supreme Court of
North Carolina

Adrian Newton
Clerk of the Supreme Court

Court of Appeals

Hon. Walter E. Brock
Chief Judge of the
Court of Appeals of
North Carolina

Hon. Earl W. Vaughn
Judge of the Court of
Appeals of North Carolina

Theodore C. Brown, Jr.
Clerk of the Court of Appeals

Administrative Office of the Courts

Bert M. Montague
Director of the
Administrative Office
of the Courts

Special Committee On Indigent Legal Services Delivery Systems

William L. Thorp, Esq.
Chairman, Special Committee

Rosemary Hill
Coordinator

Attorneys at Law

Deno G. Economou, Esq.
Assistant Public Defender
Fayetteville, North Carolina

Roger W. Smith, Esq.
Tharrington, Smith & Hargrove
Attorneys at Law
Raleigh, North Carolina

Mary Ann Tally, Esq.
Assistant Public Defender
Fayetteville, North Carolina

Law and Order Section of
the Division of Community Assistance
Department of Natural
And Economic Resources

Alex Almasy
Adult Corrections
Planning Specialist

North Carolina
Department of Correction

James Peeler Smith
Senior Administrative Assistant

APPENDIX C

Consultant and Staff Resumes

BRUCE STRATTON - Mr. Stratton is currently the Administrative Director and chief fiscal officer for the Office of the State Appellate Defender. He is a 1964 graduate of Chicago Kent College of Law. Prior to assuming his present responsibilities as Administrative Director, Mr. Stratton was an associate in the law firm of O'Brien & Stoffel in Galesburg, Illinois, and later a partner in the firm of Stoffel & Stratton. In addition, Mr. Stratton has taught at Knox College and at the Illinois Institute of Technology (Chicago Kent College of Law). He was a member of the Knox County Board of Supervisors from 1965 to 1973. Mr. Stratton has also been a frequent lecturer at seminars and has written several articles for professional journals.

RESUME

NAME — Bruce L. Herr

ADRESS

Home:
214 Sereno Drive
Santa Fe, New Mexico 87501
(505) 983-3157

Office:
215 West San Francisco Street
Santa Fe, New Mexico 87501
(505) 827-5242

BORN — August 12, 1943 in Chicago, Illinois

MARRIED — Married the former Ellen Louise Epstein
February 22, 1968

FAMILY — Two daughters, Sarah, born April 24, 1970, and
Rachel, born April 11, 1972.

EDUCATION

Preparatory:

Carl Schurz High School; Chicago, Illinois
Attended 1957-1961

College:

Harvard College; Cambridge, Massachusetts
Attended 1961-1965
Course -- Liberal Arts, Concentration in American
Government. A.B. degree.
Honors -- Cum Laude in General Studies
Harvard College Scholarship (honorary)
Activities -- Harvard University Band (Manager)
Pit orchestras for various musicals
Phillips Brooks House (service organization)

Graduate:

Harvard Law School; Cambridge, Massachusetts
Attended 1965-1968
Standing -- B average
Course -- As prescribed, with the following electives:

Second year -- Trusts, Public International Law, Comparison of Soviet-American Law, and Psychoanalytical Theory and the Law.

Third year -- Commercial Transactions, Criminal Process, Evidence, Estate Planning, Family Law, Administrative Law, Trial Practice, and Civil Rights: Problems of Minorities and the Poor (seminar).

Degree -- L.L.B., June, 1968. Subsequently changed to J.D.
Activities -- Ames Competition (moot court)
Community Legal Assistance Office

WORK EXPERIENCE

Summer, 1962

E. J. Brach's & Sons
Chicago, Illinois
factory worker

Summer, 1965

Public School Teachers' Pension and Retirement Fund of Chicago
228 North LaSalle Street
Chicago, Illinois
Office Assistant

Summer, 1966

United States Army Artillery Board
Fort Sill, Oklahoma
Mail Clerk

Summer, 1967

Dinebeiina Nahiilna Be Agaditahe, Inc. Legal Services Program
Window Rock, Arizona
Law Clerk

July, 1968 - July, 1970

Dinebeiina Nahiilna Be Agaditahe, Inc. Legal Services Program
Shiprock, New Mexico
Law Clerk, Attorney

July, 1970 - June 1973

Illinois Defender Project
312 South Fourth Street
Springfield, Illinois 62701
Staff Attorney

July, 1973 - August, 1973

Office of the State Appellate Defender of Illinois
200 East Monroe Street
Springfield, Illinois 62701
Legal Director

September, 1973 - present

New Mexico Public Defender Department
215 West San Francisco Street
Santa Fe, New Mexico 87501
Appellate Defender

ADMITTED TO PRACTICE	State Bar of New Mexico (1969) U.S. District Court, District of New Mexico (1969) Illinois State Courts (1970) U.S. District Court, Southern District of Illinois (1972) U.S. Court of Appeals, Seventh Circuit (1972) U.S. Supreme Court (1973)
PROFESSIONAL ORGANIZATIONS	State Bar of New Mexico American Bar Association Illinois State Bar Association New Mexico Criminal Defense Lawyers' Association (Secretary-Treasurer)
OTHER ACTIVITIES AND INTERESTS	Criminal Procedure Committee This is a standing committee of the New Mexico Supreme Court, and is responsible for development of the New Mexico Rules of Criminal Procedure and is currently drafting Uniform Criminal Jury Instructions. Criminal Appellate Procedure Committee This was a special committee of the New Mexico Supreme Court, appointed to draft rules of appellate procedure for criminal cases. I served as a member of this committee throughout its existence, filing a minority dissenting report from the rules which were recommended by the committee and subsequently adopted by the Supreme Court. Task Force on Juvenile Officers' Information File I served as a member of this task force in Illinois in 1973, studying this police clearinghouse of arrest information. Within the task force, I concentrated my attention on the legal and civil liberties problems created by such juvenile record-keeping. American Civil Liberties Union I was active in A.C.L.U. activities in Illinois, serving as Chairman of the Springfield Area A.C.L.U. and as a member of the Illinois State Board, but have not been active since my return to New Mexico. College Courses During the past several years I have taken several courses in Spanish grammar, Spanish literature, and conversational Spanish, both by correspondence and in person, in a seemingly futile attempt to learn the language.

PERSONAL RESUME

William R. Higham

I EDUCATION

Law School: Hastings College of Law (University of California) 1949-1952 (Bachelor of Laws degree).

College: Oregon State University, 1945-1949. (Bachelor of Science degree in General Science).

High School: Diocesan College, Capetown, South Africa. Graduated in 1944.

II EMPLOYMENT AND SELF EMPLOYMENT (1956-1975)

December 1974 to present

Director, National Center for Defense Management, 2100 M Street, N.W., Suite 601 Washington, D.C. 20037

As director of this National Legal Aid and Defender Association (hereafter referred to as NLADA)-sponsored, LEAA-funded program, duties are to achieve the fulfillment of stated project goals. These include the furnishing of management assistance to defender organizations, the conducting of feasibility studies and evaluations, the sponsorship of management training programs for defender managers, the development of management systems for defender offices, and related functions. Supervise two professional staff, two clerical staff, numerous consultants.

November, 1966 to November, 1974

Public Defender of Contra Costa County California, 901 Pine Street, Martinez, California 94553

As first public defender of this 570,000 population county, was responsible for bringing the office into being and managing it from its initial size (one office location, eleven employees) to its size in the fiscal year 1974-75 (four branches, over sixty employees, $1.3 million budget).

April, 1966 to November, 1966

Private Practice of Law, 423 Cumberland Street, Pittsburg, California

General practice of law, with emphasis on criminal defense practice.

February, 1958 to March, 1966 — Deputy District Attorney for Contra Costa County, California, 100 -37th Street, Richmond, California
At time of leaving, was Deputy-in-Charge of Richmond Branch Office, supervising a staff of about seventeen persons.

October, 1956 to February, 1958 — Private Practice of Law, 1766 Locust Street, Walnut Creek, California
General practice of law.

III PRIOR CONSULTANCIES

1972 — To Courts Task Force of National Advisory Commission on Criminal Justice Standards and Goals (through NLADA).
Co-authored a draft of proposed defense standards for the U.S., many of which were incorporated in the final text adopted.

1973 — To Alaska Public Defender Agency (through NLADA and Criminal Courts Technical Assistance Project of American University).
Conducted evaluation and engaged in management consultation.

1973 — To Massachusetts Defenders Committee (private consultation).
Subject matter dealt with forensic photography and use of visual aids in trial, and systems to resources necessary to effectuate such use.

1974 — To Vermont Defender General's Office (through NLADA and Criminal Courts Technical Assistance Project of American University).
Conducted evaluation and engaged in management consultation.

1974 — To Seattle-King County Public Defender Association (through NLADA and Criminal Courts Technical Assistance Project of American University).
Developed a request for proposals to conduct an evaluation of indigent defense services in Seattle-King County, Washington.

IV RELEVANT ACTIVITIES

Chairman, Defender Committee, NLADA, from November, 1973 to November, 1974. Member of Defender Committee from 1971-1974; served on and/or chaired various defender subcommittees before and after that time, including subcommittees on NLADA dues structure, NLADA bylaws, defender standards, defender membership, and death penalty.

Member, Board of Directors, NLADA, November, 1974 to present.

President, California Public Defenders Association, from September, 1972 to May, 1974. Previously served terms as First Vice President, Second Vice President and Secretary Treasurer. As President, personally supervised the Association's legislative program during the months that the legislative chairman was heavily engaged in representation in a major case. Testified as the Association's representative before both the California State Senate Judiciary Committee and Assembly Criminal Justice Committee in hearings on restoration of the death penalty.

As the Association's first Secretary-Treasurer (two terms), was responsible for drafting its bylaws and articles of incorporation, incorporating it, and doing all things necessary to place it on a sound financial footing.

Member, Board of Directors, Western Regional Defender Association, 1972-1974. Was responsible for drafting the bylaws and articles of incorporation of this association and incorporating it.

Chairman, Judicial Process Committee, and Member, Board of Directors, of the Criminal Justice Agency of Contra Costa County, from 1971 to 1974. This agency was responsible for reviewing grant applications for funding of projects in the county out of such county's allocation of LEAA money received through California's state block grants.

Delegate to and Discussion Leader at the National Conference on Criminal Justice, Washington, D.C., in January, 1973. Chaired panel discussions on National Advisory Commission Standards for the defense.

Member, Board of Directors, Contra Costa County Mental Health Association, (1971-1973).

V AWARDS

Reginald Heber Smith Award (Defender)
By NLADA, November 16, 1974

VI ARTICLES AND PAPERS

"The Defender Office: Making Managers Out of Lawyers"; paper given at American Association for Advancement of Science meeting, New York, N.Y. January 31, 1975.

VII BAR ADMISSIONS

Admitted to practice in California on June 16, 1955, including admission to practice in United States District Court for Northern California and Ninth Circuit Court of Appeals. U.S. Supreme Court admission on October 23, 1967.

Certified in California as Criminal Law Specialist.

VIII ORGANIZATIONAL MEMBERSHIPS

National Legal Aid and Defender Association

California State Bar Association

California Public Defenders Association (Honorary Life Member)

California Attorneys for Criminal Justice

IX MILITARY SERVICE

U.S. Navy, World War II

LYNNE BALSLEY BARR

4210 Alton Place, N.W.
Washington, D.C. 20016

Telephone: (202) 363-0025

26 years old | Married | 5'11", 145 lbs.

Job Objective

Challenging position with private firm or public entity which affords an opportunity for significant responsibility and interaction within the practice of law.

Member of the Bar of the District of Columbia

Education

THE NATIONAL LAW CENTER
GEORGE WASHINGTON UNIVERSITY — WASHINGTON, D.C.

1972 - 1975

Received degree of Juris Doctor, with Honors, in May 1975. Class standing in top 12%.

Clinical Activities

Fall 1974 - Selected as participant in D.C. Law Students in Court, Criminal Division. Certified as a student member of the District of Columbia Bar. Appointed by Superior Court to represent clients charged with misdemeanors from arraignment through jury trial and appeal. Responsible for all aspects of clients' representation.

Summer 1974 - Served as investigator for attorney in Public Defender Service of Washington, D.C.

Fall 1973 - Worked as consumer problems counselor in neighborhood legal services office. Received and recorded complaints, and mediated among adverse parties.

Writing samples will be furnished upon request.

1971 - 1972

GEORGE WASHINGTON UNIVERSITY — WASHINGTON, D.C.

A.B. degree in September 1972 with major in Anthropology and general emphasis in social sciences. Completed an accelerated program with a 3.7 average on a 4.0 scale. Consistent Dean's List student.

1970

WILLIAMS COLLEGE — WILLIAMSTOWN, MASSACHUSETTS

Attended one semester as a special student. Achieved 3.2 average.

1967 - 1969	UNIVERSITY OF CALIFORNIA	BERKELEY, CALIFORNIA
	Participated during first two years of college in highly selective honors program in the humanities, emphasizing political philosophy.	
Work Experience	Financed 100% law school tuition through full-time secretarial employment during first year of law school. Other work experience includes full-time secretarial work at The University of Chicago (1970-1971) and summer work in corporate personnel offices.	
Personal	Born and raised in San Francisco Bay area. Attended public high school and graduated in upper five percent of class. Husband is a financial analyst.	
References	Will be furnished upon request.	

APPENDIX D

Relevant North Carolina Standards and Goals

APPELLATE REVIEW

STANDARD 9.1: APPELLATE REFORM

GOAL: By July 1, 1979, an Appellate Rules Commission should be established to draft and formulate new appellate procedures which would encompass the basic philosophy of a rapid and total judicial review for each convicted defendant.

STANDARD: It is recommended that the North Carolina General Assembly take such action as is necessary to establish and mandate an Appellate Rules Commission. State and/or federal funds should be sought to support this project.

STANDARD: It is recommended that the Appellate Rules Commission should evaluate but not limit itself to the following considerations:

1. Affording each convicted defendant the opportunity to obtain one full and fair judicial review.
2. Review should as rapidly follow conviction and sentencing as procedures will allow. The use of specific time limitations should be considered.
3. Review should be done by a tribunal other than that by which the convicted defendant was tried and sentenced.
4. Review should extend to the entire case and include all substantive and collateral issues. Arguments as to the legality and appropriateness of the trial, conviction, and sentence could all be heard in a single appellate proceeding.
5. Further review from the single unified review should be available by writ of certiorari to the North Carolina Supreme Court.

THE DEFENSE

STANDARD 16.1: PUBLICALLY FINANCED REPRESENTATION

GOAL: Public representation should continue to be made available to eligible defendants in all criminal cases, pursuant to N.C.G.S. 7A-451 and any federal or North Carolina Constitutional requirements, and pursuant to any new laws promulgated to provide representation.

STANDARD 16.2: DISCOURAGEMENT OF WAIVER OF COUNSEL

GOAL: Defendants should be discouraged from conducting their own defense in criminal prosecution.

STANDARD 16.3: PAYMENT FOR PUBLIC REPRESENTATION

GOAL: 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. Where any payment would cause substantial hardship to the individual or his family, such representation should be provided without cost.

STANDARD: 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.

STANDARD 16.4: INITIAL CONTACT WITH CLIENT

GOAL: The first client contact and initial interview by the public defender, his attorney staff, or appointed counsel should be governed by the following:

1. The accused, or a relative, close friend, or other responsible person acting for him may request representation at the first appearance before a district court judge. Procedures should exist whereby the accused is informed of this right, and of the method for exercising it. Upon such request, the public defender or appointed counsel should contact the interviewee.

2. If, at the initial appearance, no request for publicly provided defense services has been made, and it appears to the judicial officer that the accused has not made an informed waiver of counsel and is eligible for public representation, an order should be entered by the judicial officer referring the case to the public defender, or to appointed counsel. The public defender or appointed counsel should contact the accused as soon as possible following entry of such an order.

3. Where, pursuant to court order or a request by or on behalf of an accused, a publicly provided attorney interviews an accused and it appears that the accused is financially ineligible for public defender services, the attorney should help the accused obtain competent private counsel in accordance with established bar procedures and should continue to render all necessary public defender services until private counsel assumes responsibility for full representation of the accused.

STANDARD 16.5: METHOD OF DELIVERING DEFENSE SERVICES

GOAL: Services of a full-time public defender organization or an assigned counsel system involving participation of the private bar should be available in each jurisdiction to supply attorney services to indigents accused of crime.

STANDARD: Those jurisdictions which establish a public defender's organization should maintain an assigned attorney system to supplement the public defender's office.

STANDARD 16.6: ASSIGNED COUNSEL

GOAL: In those areas which utilize the assigned counsel system the District Bar should promulgate and enforce rules which will ensure the competency and capabilities on the attorneys on the assigned counsel list.

STANDARD 16.7: FINANCING OF DEFENSE SERVICES

GOAL: Defender services should be organized and administered in a manner consistent with the needs of the local jurisdiction. Financing of defender services should be provided by the State. Administration and organization should be provided statewide.

STANDARD 16.8: DEFENDER TO BE FULL-TIME AND ADEQUATELY COMPENSATED

GOAL: The office of public defender should be a full-time occupation. The public defender should be compensated at a rate not less than that of the presiding judge of the trial court of general jurisdiction.

STANDARD 16.9: SELECTION OF PUBLIC DEFENDERS

GOAL: For terms of office beginning January 1, 1979, and thereafter, public defenders should be selected in a uniform fashion throughout the state and in a manner that will ensure their competence and independence.

STANDARD: The public defender should be elected by judicial districts, in the same manner and for the same length of office as the district attorney.

STANDARD: The public defender should be subject to the same rules and procedures of discipline, censure, and removal as the district attorney.

STANDARD 16.10: PERFORMANCE OF PUBLIC DEFENDER FUNCTION

GOAL: Policy should be established for and supervision maintained over a defender office by the public defender. It should be the responsibility of the public defender to ensure that the duties of the office are discharged with diligence and competence.

STANDARD: The public defender should assume a role of leadership in the general community, interpreting his function to the public and seeking to hold and maintain their support of and respect for this function.

STANDARD: The public defender should seek to maintain his office and the performance of its function free from political pressures that may interfere with his ability to provide effective defense services.

STANDARD: The relationship between the law enforcement component of the criminal justice system and the public defender should be characterized by professionalism, mutual respect, and integrity. Specifically, the following guidelines should be followed:

1. The relations between public defender attorneys and prosecution attorneys should be on the same high level of professionalism that is expected between responsible members of the bar in other situations.
2. The public defender must negate the appearance of impropriety by avoiding excessive and unnecessary camaraderie in and around the courthouse and in his relations with law enforcement officials, remaining at all times aware of his image as seen by his client community.
3. The public defender should be prepared to take positive action, when invited to do so, to assist the police and other law enforcement components in understanding and developing their proper roles in the criminal justice system, and to assist them in developing their own professionalism. In the course of

this educational process, he should assist in resolving possible areas of misunderstanding.

4. He should maintain a close professional relationship with his fellow members of the legal community and organized bar, keeping in mind at all times that this group offers the most potential support for his office in the community and that, in the final analysis, he is one of them. Specifically:

a. He must be aware of their potential concern that he will preempt the field of criminal law, accepting as clients all accused persons without regard to their ability or willingness to retain private counsel. He must avoid both the appearance and fact of competing with the private bar.

b. He must, while in no way compromising his representation of his own clients, remain sensitive to the calendaring problems that beset civil cases as a result of criminal case overloads, and cooperate in resolving these.

c. He must maintain the bar's faith in the defender system by affording vigorous and effective representation to his own clients.

d. He must maintain dialogue between his office and the private bar, never forgetting that the bar more than any other group has the potential to assist in keeping his office free from the effects of political pressures and influences.

STANDARD 16.11: THE ASSISTANT PUBLIC DEFENDER

GOAL: The primary basis for the selection and retention of assistant public defenders should be demonstrated legal ability.

STANDARD: Care should be taken to recruit lawyers from all segments of the population.

STANDARD: The public defender should undertake programs, such as legal internships for law students, designed to attract able young lawyers to careers in public defense.

STANDARD: The starting salary for assistant public defenders should be no less than those paid by private law firms in the jurisdiction. This parity in salary levels should be maintained during the first five years of service.

STANDARD: The public defender should have the authority to increase periodically the salaries for assistant public defenders to a level that will encourage the retention of able and experienced attorneys, subject to approval and authorization in the Budget Appropriations Act.

STANDARD 16.12: ASSISTANT PUBLIC DEFENDER'S CASELOAD

GOAL: The position of assistant public defender should be a full-time occupation.

STANDARD: The caseload for each assistant public defender should be limited to permit the proper preparation of cases. Cases should be assigned sufficiently in advance of the court date to enable the defending attorney to interview every defense witness, and to conduct supplementary investigations when necessary.

STANDARD: If the public defender determines that because of excessive workload the assumption of additional cases might reasonably be expected to lead to inadequate representation in cases handled by him or his assistants, he should bring this to the attention of the court.

STANDARD 16.13: COMMUNITY RELATIONS

GOAL: The public defender should be sensitive to all of the problems of his client community. He should be particularly sensitive to the difficulty often experienced by the members of that community in understanding his role.

STANDARD: In fulfilling his role to the community he serves, the public defender should:

1. Seek, by all possible and ethical means, to interpret the process of plea negotiation and the public defender's role in it to the client community.
2. Where possible, seek office locations that will not cause the public defender's office to be excessively identified with the judicial and law enforcement components of the criminal justice system.
3. Be available to schools and organizations to educate members of the community as to their rights and duties related to criminal justice.

STANDARD 16.14: SUPPORTING PERSONNEL

GOAL: The office of public defender should have a supporting staff comparable to that of similar-size private law firms.

STANDARD: Each public defender's office should have at least two attorneys for each trial judge conducting felony trials on a full-time basis or the equivalent of such a judge. Each office should have a sufficient number of attorneys to perform the other functions of the office.

STANDARD: Paraprofessionals should be utilized for law-related tasks that do not require an attorney's experience and training.

STANDARD: There should be adequate secretarial help for all staff attorneys.

STANDARD: Special efforts should be made to recruit members of the supporting staff from all segments of the community served by the office.

STANDARD 16.15: SUPPORTING FACILITIES

GOAL: The office of public defender should have physical facilities comparable to those of similar-size private law firms. There should be at least one conference room and a public waiting area separate from the offices of the staff.

STANDARD: By July 1, 1979, each public defender and his staff should have immediate access to a library sufficiently extensive to fulfill the needs of the office.

STANDARD: Staff attorneys should be supplied with personal copies of books, such as the State criminal code, needed for their day-to-day duties.

STANDARD: The basic library available to a public defender's office should include but not be limited to the following: 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 appeals and district court reports, citators covering all reports and statutes in the library, digests for State and Federal cases, a legal reference work digesting State law, a legal reference work digesting law in general, a form book of approved jury charges, legal treatises on evidence and criminal law, criminal law and U. S. Supreme Court case reporters published weekly, looseleaf services related to criminal law, and if it becomes available, an index to the State appellate brief bank.

STANDARD 16.16: EDUCATION OF PROFESSIONAL PERSONNEL

GOAL: Education programs should be utilized to assure that public defenders and their assistants have the highest possible professional competence. All public defenders and assistants should attend a formal training course each year, in addition to the regular in-house training.

CHAPTER VIII

Rights and Responsibilities of Offenders

STANDARD 8.1: ACCESS TO COURTS

GOAL: By 1976, the Department of Correction should continue to develop and implement policies and procedures to fulfill the right of persons under correctional supervision to have access to courts to present any issue cognizable therein, including (1) challenging the legality of the conviction or confinement; (2) seeking redress for illegal conditions or treatment while incarcerated or under correctional control; (3) pursuing remedies in connection with civil legal problems; and (4) asserting against correctional or other governmental authority and other rights protected by constitutional or statutory provision or common law.

STANDARD: The State should make available to persons under correctional authority each of the purposes enumerated herein adequate remedies that permit, and are administered to provide, prompt resolution of suits, claims, and petitions. Where adequate remedies already exist, they should be available to the offenders, including pretrial detainees, and on the same basis as to citizens generally.

STANDARD: There should be no necessity for an inmate to wait until termination of confinement for access to courts.

STANDARD: Where complaints are filed against conditions of correctional control or against the administrative action or treatment by correctional or other governmental authorities, offenders may be required first to seek recourse under established administrative procedures and appeals and to exhaust their administrative remedies. Administrative remedies should be normally operative within 30 days and not in a way that would unduly delay or hamper their use by aggrieved offenders. Where no reasonable administrative means is available for presenting and resolving disputes or where past practice demonstrates the futility of such means, the doctrine of exhaustion should not apply.

STANDARD: Offenders should not be prevented by correctional authority administrative policies or actions from filing timely appeals of convictions or other judgements; from transmitting pleadings and engaging in correspondence with judges, other court officials, and attorneys; or from instituting suits and actions. Nor should they be penalized for so doing.

STANDARD: Transportation to and attendance at court proceedings may be subject to reasonable requirements of correctional security and scheduling. Courts dealing with offender matters and suits should cooperate in formulating arrangements to accomodate both offenders and correctional management.

STANDARD: The Department of Correction, wherever possible, should accept gifts of legal materials made to the department for the use of inmates. Inmates should be provided paper, pens, carbon paper, and to the extent facilities permit, a suitable area for preparing court petitions. Inmates should be permitted to receive the assistance of their fellow inmates in preparing court petitions. Inmates should

be permitted to maintain their personal legal files and receive legal publications, subject to reasonable restrictions regarding the receipt of any publications, and to keep in their living area, their legal materials to the extent that security or other legitimate prison interest are not jeopardized.

STANDARD 8.2: ACCESS TO LEGAL SERVICES

GOAL: By 1976, the Department of Correction should insure that its policies in no matter impede the right of persons in its custody or under its supervision to secure the assistance of legal counsel and wherever possible, its policies should facilitate the retention of such counsels. When the individual has retained legal counsel, the Department should insure that correspondence and communication between the inmate and his counsel be maintained as confidential and interviews of clients by attorneys should be private not subject to surveillance. Access of attorneys to thier clients should be guaranteed. The Department should cooperate with the attorney in making available his client at the attorney's convenience. The attorney should be subject to no more restrictions, including searches of his person and property, than is absolutely necessary to insure the security of the facility. The Department need not authorize the presence of attorneys at disciplinary proceedings. The Department shall provide staff assistance to all inmates at any disciplinary action which could result in the loss of gain time earned for good conduct or assignment to segregation. The Department should cooperate with efforts by private attorneys and Legal Aid Societies and other interested organizations in providing assis tnce to the inmate with regard to civil legal problems relating to debts, marital status, property, or other personal affairs to the offender.

STANDARD: Substitute counsel should also be provided at any classification action which could result in the inmate being placed in prolonged segregation. Assistance from other inmates should not be prohibited.

STANDARD: The access to legal services provided herein should apply to all juveniles under correctional control.

STANDARD: Correctional authorities should assist inmates in making confifential contact with attorneys. This assistance includes visits during normal institutional hours, uncensored correspondence, telephone communications, and special consideration for after hour visits when requested on the basis of special circumstances.

APPENDIX E

California State Public
Defender Act of 1975

CRIMINAL PROCEDURE—STATE PUBLIC DEFENDER

CHAPTER 1125

SENATE BILL NO. 1018

An act to amend Sections 27706 and 27707.1 of, and to add Part 7 (commencing with Section 15400) to Division 3 of Title 2 of the Government Code, and to amend Sections 1239 and 1241 of, and to add Section 1240 to, the Penal Code, relating to counsel in criminal cases.

LEGISLATIVE COUNSEL'S DIGEST

Existing law makes no provision for a State Public Defender.

This bill would authorize the appointment of a State Public Defender by the Governor subject to confirmation by the Senate. The appointment would be for a 4-year term, commencing January 1, 1976. The position would require membership in the State Bar for five years preceding appointment, with substantial experience in the representation of accused or convicted persons in criminal or juvenile proceedings, and would provide for the same annual salary as the Attorney General. The bill would authorize the State

Changes or additions in text are indicated by underline

CONTINUED

1 OF 2

tract for the services of nonprofit corporations and private attorneys in certain instances, and to enter into reciprocal or mutual assistance agreements with counties.

The bill would specify various duties for the State Public Defender, including the representation of indigent persons in specified appellate proceedings where indigents are entitled to legal counsel, and the formulation of plans for the representation of indigents on the appellate level.

The bill would make various changes in the Penal Code reflecting the shift of responsibility from other agencies to the State Public Defender in defending such indigents.

The bill would provide that its provisions relating to the establishment of the State Public Defender shall take effect on January 1, 1976, and the other provisions of the bill shall take effect on July 1, 1976.

The people of the State of California do enact as follows:

SECTION 1. Part 7 (commencing with Section 15400) is added to Division 3 of Title 2 of the Government Code, to read:

PART 7. STATE PUBLIC DEFENDER

CHAPTER 1. GENERAL PROVISIONS

15400.

The Governor shall appoint a State Public Defender, subject to confirmation by the Senate. The State Public Defender shall be a member of the State Bar, shall have been a member of the State Bar during the five years preceding appointment, and shall have had substantial experience in the representation of accused or convicted persons in criminal or juvenile proceedings during that time.

15401.

(a) The State Public Defender shall be appointed for a term of four years commencing on January 1, 1976, and shall serve until the appointment and qualification of his successor. Any vacancy shall be filled for the balance of the unexpired term.

(b) The State Public Defender shall receive the same annual salary as the Attorney General.

15402.

The State Public Defender may employ such deputies and other employees, and establish and operate such offices, as he may need for the proper performance of his duties. All civil service examinations for attorney positions shall be on an open basis without career civil service credits given to any person. The State Public Defender may contract with county public defenders, private attorneys, and nonprofit corporations organized to furnish legal services to persons who are not financially able to employ counsel and pay a reasonable sum for those services pursuant to such contracts. He may provide for participation by such attorneys and organizations in his representation of eligible persons. Such attorneys and organizations shall serve under the supervision and control of the State Public Defender and shall be compensated for their services either under such contracts or in the manner provided in Penal Code Section 1241.

The State Public Defender may also enter into reciprocal or mutual assistance agreements with the board of supervisors of one or more counties to provide for exchange of personnel for the purposes set forth in Section 27707.1.

15403.

The State Public Defender shall formulate plans for the representation of indigents in the Supreme Court and in each appellate district as provided in this article. Each plan shall be adopted upon the approval of the court to which the

plan is applicable. Any such plan may be modified or replaced by the State Public Defender with the approval of the court to which the plan is applicable.

15404.

The State Public Defender may issue any regulations and take any actions as may be necessary for proper implementation of this part.

CHAPTER 2. DUTIES AND POWERS

15420.

The primary responsibility of the State Public Defender is to represent those persons who are entitled to representation at public expense in the proceedings listed in subdivisions (a), (b), and (c) of Section 15421. This responsibility shall take precedence over all other duties and powers set forth in this chapter.

15421.

Upon appointment by the court or upon the request of the person involved the State Public Defender is authorized to represent any person who is not financially able to employ counsel in the following matters:

(a) An appeal, petition for hearing, or petition for rehearing to any appellate court, a petition for certiorari to the United States Supreme Court, or a petition for executive clemency from a judgment relating to criminal or juvenile court proceedings;

(b) A petition for an extraordinary writ or an action for injunctive or declaratory relief relating to a final judgment of conviction or wardship, or to the punishment or treatment imposed thereunder;

(c) A proceeding of any nature after a judgment of death has been rendered;

(d) A proceeding of any nature where a person is entitled to representation at public expense.

15422.

Where a county public defender has refused, or is otherwise reasonably unable to represent a person because of conflict of interest or other reason, the State Public Defender is authorized to represent such person, pursuant to a contract with the county which provides for reimbursement of costs, where the person is not financially able to employ counsel and is charged with the commission of any contempt or offense triable in the superior, municipal or justice courts at all stages of any proceedings relating to such charge, including restrictions on liberty resulting from such charge. The State Public Defender may decline to represent such person by filing a letter with the appropriate court citing Section 15420 of this chapter.

15423.

The State Public Defender is authorized to appear as a friend of the court and may appear in a legislative, administrative or other similar proceeding.

15424.

A person requesting the appointment of counsel shall make a financial statement under oath in the manner provided in rules adopted by the Judicial Council.

15425.

The duties prescribed for the State Public Defender by this chapter are not exclusive and he may perform any acts consistent with them in carrying out the functions of the office.

SEC. 2. Section 27706 of the Government Code is amended to read:

27706.

The public defender shall perform the following duties:

(a) Upon request of the defendant or upon order of the court, he shall defend, without expense to the defendant, except as provided by Section 987.8 of the Penal Code, any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the superior, municipal or justice courts at all stages of the proceedings.

lination. The public defender shall, upon request, give counsel and advice to such person about any charge against him upon which the public defender is conducting the defense, and shall prosecute all appeals to a higher court or courts of any person who has been convicted, where, in his opinion, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction.

(b) Upon request, he shall prosecute actions for the collection of wages and other demands of any person who is not financially able to employ counsel, where the sum involved does not exceed one hundred dollars ($100), and where, in the judgment of the public defender, the claim urged is valid and enforceable in the courts.

(c) Upon request, he shall defend any person who is not financially able to employ counsel in any civil litigation in which, in the judgment of the public defender, the person is being persecuted or unjustly harassed.

(d) Upon request, or upon order of the court, he shall represent any person who is not financially able to employ counsel in proceedings under Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(e) Upon order of the court, he shall represent any person who is entitled to be represented by counsel but is not financially able to employ counsel in proceedings under Chapter 2 (commencing with Section 500) of Part 1 of Division 2 of the Welfare and Institutions Code.

(f) Upon order of the court he shall represent any person who is required to have counsel pursuant to Section 686.1 of the Penal Code.

(g) Upon the order of the court or upon the request of the person involved, he may represent any person who is not financially able to employ counsel in a proceeding of any nature relating to the nature or conditions of detention, of other restrictions prior to adjudication, of treatment, or of punishment resulting from criminal or juvenile proceedings.

SEC. 2.5. Section 27707.1 of the Government Code is amended to read:

27707.1

The boards of supervisors of two or more counties may authorize their respective public defenders to enter into reciprocal or mutual assistance agreements whereby a deputy public defender of one county may be assigned on a temporary basis to perform public defender duties in the county to which he has been assigned in actions or proceedings in which the public defender of the county to which the deputy has been assigned has properly refused to represent a party because of a conflict of interest.

Whenever a deputy public defender is assigned to perform public defender duties in another county pursuant to such an agreement, the county to which he is assigned shall reimburse the county in which he is regularly employed in an amount equal to the portion of his regular salary for the time he performs public defender duties in the county to which he has been assigned. The deputy public defender shall also receive from the county to which he has been assigned the amount of actual and necessary traveling and other expenses incurred by him in traveling between his regular place of employment and the place of employment in the county to which he has been assigned.

A board of supervisors may also authorize the reciprocal or mutual assistance agreements provided for in this section with the State Public Defender.

SEC. 3. Section 1239 of the Penal Code is amended to read:

1239.

(a) Where an appeal lies on behalf of the defendant or the people, it may be taken by the defendant or his counsel, or by counsel for the people, in the manner provided in rules adopted by the Judicial Council.

(b) When [illegible] plea a judgment of death is rendered, an appeal is auto-

SEC. 4. Section 1240 is added to the Penal Code, to read:

1240.

(a) When in a proceeding falling within the provisions of Section 15421 of the Government Code a person is not represented by a public defender acting pursuant to Section 27706 of the Government Code or other counsel and he is unable to afford the services of counsel, the court shall appoint the State Public Defender to represent the person except as follows:

(1) The court shall appoint counsel other than the State Public Defender when the State Public Defender has refused to represent the person because of conflict of interest or other reason.

(2) The court may, in its discretion, appoint either the State Public Defender or the attorney who represented the person at his trial when the person requests the latter to represent him on appeal and the attorney consents to the appointment. In unusual cases, where good cause exists, the court may appoint any other attorney.

(3) A court may appoint a county public defender, private attorney, or nonprofit corporation with which the State Public Defender has contracted to furnish defense services pursuant to Government Code Section 15402.

(4) When a judgment of death has been rendered the Supreme Court may, in its discretion, appoint counsel other than the State Public Defender or the attorney who represented the person at trial.

(b) If counsel other than the State Public Defender is appointed pursuant to this section, he may exercise the same authority as the State Public Defender pursuant to Chapter 2 (commencing with Section 15420) of Part 7 of Division 3 of Title 2 of the Government Code.

SEC. 5. Section 1241 of the Penal Code is amended to read:

1241.

In any case in which counsel <u>other than a public defender</u> has been appointed by the Supreme Court or by a court of appeal to represent a party to any appeal or proceeding, such counsel shall receive a reasonable sum for compensation and necessary expenses, the amount of which shall be determined by the court and paid from any funds appropriated <u>to the Judicial Council</u> for that purpose. Claim for the payment of such compensation and expenses shall be made on a form prescribed by the Judicial Council and presented by counsel to the clerk of the appointing court. After the court has made its order fixing the amount to be paid the clerk shall transmit a copy of the order to the State Controller who shall draw his warrant in payment thereof and transmit it to the payee.

SEC. 6. Sections 15400, 15401, 15402 and 15403 of the Government Code, as added by Section 1 of this act, shall become operative on January 1, 1976, and the remainder of this act shall become operative on July 1, 1976.

Approved and filed Sept. 28, 1975.

APPENDIX F

Proposed Library For
Pilot Appellate Defender Program

LIBRARY

Essential Publications

1)	Complete set of Supreme Court Reporters (West S. Ct. Reporters)	$1,372.50[1]
	Current bound volumes with advance sheets (per year)	54.00
2)	Complete set North Carolina Combined Reports	1,489.50
	Current volumes with advance sheets (approx. 6 volumes per year @ $7 per volume)	42.00[2]
3)	Complete set of Shepard's Citations	
	North Carolina	95.00
	Current volumes/year	56.00
	F.2d	175.00
	Current volumes/year	64.00
	United States	175.00
	Current volumes/year	64.00
4)	Complete set of North Carolina Statutes, Annotated	372.00
	Current volumes/year	50.00
5)	Complete set of ABA Standards for Criminal Justice	42.00
6)	Criminal Law Reporter (per year)	210.00
7)	North Carolina Digest (West)	627.00
TOTAL OF ESSENTIAL PUBLICATIONS----------		$4,888.00

Extremely Useful Publications

1)	Complete set of Federal Reporter 2d (West)[3]	$5,949.50
	Current volumes with advance sheets (19 volumes per year @ $19 per volume)	361.00
2)	Nedrud, Criminal Law (optional)	70.00
3)	Weinstein, Evidence (7 vols.)[4]	148.75

[1]The figure quoted is for a new set. It may be possible to purchase a used set; the price of such a set depends upon its availability, condition and shipping costs. An estimate of the cost would be approximately $900.
[2]The upkeep per year cost is approximate because it is based on a cost per volume and the number of volumes differs each year.
[3]It may be possible to purchase a used set. See footnote 1.
[4]These treatises are cited as examples. Defender should decide which titles would be useful.

4)	Kamisar, LaFave, et al., Modern Criminal Procedure and supplement	24.50
5)	Contents of Current Legal Periodicals (per year)	35.00
6)	University of North Carolina Law Review	12.00
7)	Duke Law Review	14.00

TOTAL OF USEFUL PUBLICATIONS----------$6,614.75

TOTAL OF ESSENTIAL AND USEFUL ITEMS----------$11,504.75

YEARLY UPKEEP

Essential Items

1)	S. Ct. Reporters	$54.00
2)	North Carolina Reports	42.00
3)	Shepard's Citations	
	N.C.	56.00
	F.2d	64.00
	U.S.	64.00
4)	Statutes	50.00
5)	Crim. L. Reptr.	210.00
6)	Digest per year after 1st year	70.00

TOTAL UPKEEP--ESSENTIALS----------$612.00

Useful Items

1)	F.2d	$361.00
2)	Crim. Law	70.00
3)	Legal Periodicals	35.00
4)	Law Reviews	26.00

TOTAL UPKEEP--USEFULS----------$492.00

TOTAL UPKEEP OF ESSENTIALS AND USEFULS----------$1,104.00

APPENDIX G

Description of Timekeeping System: New Mexico Public Defender Department, Appellate Division

Description of the New Mexico Public Defender Department Appellate Division Timekeeping System

Information provided by Bruce Herr, New Mexico Appellate Defender

1. In General

The Appellate Division of the New Mexico Department began using a timekeeping system towards the end of November, 1975; therefore, such system has been in operation for a relatively short time as of this writing. The office is still experimenting with it and making changes from time to time. [illegible]ment began by obtaining the Solano County, California, Public Defender [illegible]fice timekeeping system, which had been designed by the head of that office, Paul Ligda. The Solano system is designed essentially for a trial-level defender office and the New Mexico Appellate Division modified it for use in an appellate office. Since such systems depend for their effectiveness and accuracy on total staff cooperation, the attorneys in the New Mexico appellate program were informed that they were going to be asked to keep time records, but that such time records would not be used in any way to "check up" on them. In addition, management of the office made a conscious decision to see to it that the time records would not be used for such purpose. In this manner, it was hoped that the timekeeping would be more accurate and cases of "padding" would be avoided. To back all of this up, the attorneys were informed that the office would not even tabulate the number of hours each attorney put in each week on an individual basis. Rather, what would be done would be to determine the total number of hours put in by all attorneys and, from these totals, certain analyses would be made, such as:

- The hours required to do motions and petitions,
- The time required for habeas corpus proceedings,
- The time required for matters not related to case handling

- Time required for client contact, and
- Time required for administrative matters.

The time sheets used do not have the time breakdown for each workday that some time records do, whereby (typically in the lefthand margin) the hours of the workday are set forth in blocks (e.g., 8 a.m. to 8:15 a.m.; 8:15 a.m. to 8:30 a.m. etc). One reason for this was concern over the psychological factor whereby empty "blocks" suggest to an attorney that he or she is not using his or her time profitably and padding tends to be invited. Rather, a simple list with no predetermined time blocks was used (see time recordation forms enclosed in this appendix). The time sheet used lists the date, the name of the client if there is one, or, if there is no client involved in the time usage, the code "NC" is employed. In addition, the type of work performed (again indicated by a code which is in an attached memorandum) is shown. A typical entry would show the date, the client, the type of work by code, and the particular time of day (e.g., 9:00-10:30) and a total of the amount of time (90 minutes).

2. Primary and Backup Attorneys

The attached memorandum of explanation refers to persons who are or are not the "Primary Attorney" in a particular case. The New Mexico office has a procedure whereby, once a file has been made up on an appellate case, it goes to the Appellate Defender for assignment to a staff attorney. The Appellate Defender (Mr. Herr) assigns it to an attorney who becomes the "Primary Attorney" and, at the same time, he assigns a "Backup Attorney" who may be any other person in the office or Mr. Herr himself. Ordinarily, these assignments are more or less random, although consideration is given to spacing out the times of cases and attempting to equalize workloads. The Primary Attorney has the duty of

functioning as the principal attorney in the case, i.e., it is his or her case and he or she usually handles it from beginning to end. The extent to which the Primary Attorney makes use of the Backup Attorney varies from person to person in the office. Ideally, the Backup Attorney will consult with the Primary Attorney on issues in the case as they develop, read through the transcript or at least glance over it for broad issues and discuss them with the Primary Attorney, and, in addition, perhaps do some checking and reading on the brief as it is being prepared by the Primary Attorney. Obviously, depending on the kind of case and the difficulty of the issues involved, the Backup Attorney is used to a greater or lesser extent as dictated by circumstances. In death penalty cases, the Backup Attorney actually becomes co-counsel with the Primary Attorney on the case. In a routine case, when the Backup Attorney and the Primary Attorney find an issue which they either cannot agree upon or concerning which they need additional help, or, an issue which they think is of particular importance, they will bring the matter to the attention of the entire appellate attorney staff at the weekly staff meeting. Such staff meetings are held regularly and a substantial percentage of meeting time is devoted to a discussion of issues pending in cases in the office, how particular cases should be handled, whether certain issues should be raised, and whether anybody has any advice on difficult issues.

3. Docketing Statement

Under 1 of the Revised Memorandum of December 22, 1975, the term "docketing statement" is used. This refers to a procedure recently instituted in New Mexico whereby the trial attorney or someone acting for the appellant must prepare and file with the appellate court a "docketing statement" within ten days of the date on which the notice of appeal is filed. Such docketing statement

must not only contain a narrative of all the facts material to the case, but must indicate all issues on appeal and give some (at least cursory) legal authority for these issues. Such docketing statement must be prepared and filed with the appellate court even before the transcript on appeal is prepared. This poses considerable difficulty for appellate counsel, particularly where a different attorney is handling the appeal than the one who handled the trial. In such circumstances, the appellate attorney must confer with the trial attorney immediately upon the filing of the notice of appeal, or, better yet, before the filing of such notice, preferably right after the return of the adverse verdict and as soon as everybody knows that there's going to be an appeal in the case. At that point, it is necessary to ascertain all of the issues on appeal. As a practical matter, the docketing statement has to be prepared largely by the trial attorney and the function, therefore, of the Appellate Division is to operate as a watchdog to make sure that the docketing statement is in proper form and that no issues are inadvertedly omitted. This process consumes a great deal of time in New Mexico; however, there does not appear to be a comparable procedure in North Carolina, and, therefore, such time usage would not be anticipated should a pilot appellate defender project be instituted.

4. Administrative Time

This is discussed in the memorandum under II, Part B. Most of the entries under this category of time are self-explanatory (probably "fee enquiries" would not be relevant in a North Carolina system). In New Mexico, the Public Defender Department administers the assigned counsel system; as a result, some inquiries are received from private counsel seeking information about the fee schedule under which the system operates. Also, fee

schedule vouchers are submitted to the Department for payment and are processed through the administrative office of the Department and are then reviewed by Mr. Herr. The code term "SW" refers to highly routine assignments parceled out among the professional staff, such as library maintenance, logging in briefs into the briefbank, indexing of briefs, updating citations, and numerous other mundane matters which can only be done by someone trained in law. Administrative matters are divided into "Appellate Division Administration" (ADA) and "Departmental Administration" (DA). This is because the Appellate Division is part of the Public Defender Department of the entire state and, for example, Mr. Herr functions not only as head of the Appellate Division but as the Deputy to the Chief Public Defender of the State of New Mexico. He therefore has some department-wide functions.

As of this stage of development of time categorization, "gaps" in definitions are still surfacing. Attorney staff are requested to attempt to categorize time within the framework of the work codes provided and, where they are in doubt, to then include a brief narrative as to what they did. In this fashion, accurate records are kept and a basis for "debugging" the system exists.

5. Other Time Designations

In the memorandum of January 23, 1976, certain changes were made. Attempts were made to deal with the problem of travel time (typically to the penitentiary). The decision was made that, where several clients were seen on one visit, the time would be apportioned equally among all of the clients seen, regardless of the time actually spent with each client. This was on the theory that the attorney would have had to make the trip to talk to the client regardless of whether the interview lasted for ten minutes or an hour.

6. Time Sheets and Summaries

At the end of each week, individual time sheets are tallied and compiled into summaries. Copies of completed summaries are enclosed in this appendix. As a result of this procedure, three different summary totals are compiled. The total number of client hours spent each week are shown, the total number of non-client hours spent each week are also shown, and, finally, the summary sets forth the total number of administrative hours spent each week. Then, the totals are shown as totals of so many hours out of the available time each week. For example, in the summary total for the week of January 5, 1976 through January 11, 1976, there were 40 available work hours in the week (weeks with holidays would show less than 40). Of these 40 hours, 19 per attorney were averaged on working for clients. Eighteen and a half were averaged per attorney on administrative matters. One hour and six minutes was the average for "non-client people time" for each attorney. This showed a rounded off total average time per attorney of 38 hours and 40 minutes (approximately) out of the available 40 hours. Therefore, about an hour and 20 minutes average per attorney per week was not accounted for. Time lost because of sick leave or annual leave is not taken into account in the weekly summaries, but is calculated only when cumulative statistics are compiled.

Naturally, the compilations will be more meaningful and more accurate when summaries are prepared for three months, six months and annual periods. The management of the New Mexico system believed that this type of timekeeping with division into categories is, in the long run, the only effective means of maintaining credibility with legislative and executive branch representatives charged with the duty of reviewing their budget requests. Simply compiling the fruits of activities, such as numbers of cases, numbers of motions, numbers of briefs, numbers of oral arguments, does not yield a meaningful picture of how the office is spending its time and what the manpower needs of the program

of the program are. Only time itself, being quantitatively finite and qualitatively inelastic, can provide the basis of true measurement of workload, personnel, and staffing requirements.

1/5/76 - 1/11/76 (Total Hours: 40)

ent-Time	CT	CT2	C	C2	FF	FF2	D	D2	B	B2	P2	PC2	DS	DS2	MSA	MSA2	MSNA	MSN2	TOTAL
egory Totals	805		910	445	210	20	195	185	3785		310	15	80	535	45	560			8000
Hr./Min.	13/25		15/10	7/35	3/30	/20	3/15	3/05	63/05		5/10	/15	1/20	5/55	/45	9/20			133/20
SUMMARY: AVERAGE CLIENT TIME PER ATTORNEY: 19 HRS.: 40																			

INISTRATIVE	MS	CL	S	AP	WS	SW	ADA	DA	E	PO	PO2		TOTAL
	605	170	695		110	95	275	2490	2755	235	45		7675
Hr./Min.	10/5	2/50	14/55		1/50	1/35	4/35	41/30	45/55	3/55	/45		127/55
SUMMARY: AVERAGE ADMINISTRATIVE TIME PER ATTORNEY: 18/30: 40													

PER PERSON

-CLIENT TIME	FF	D	D2	MSNA	TCT	MSA	C	TB	TOTAL	HR./MIN.
ero, J.P.	30	15	15						60	1
. Dist./Client	40								40	
os, T.H.				20					20	
cia					110				110	1/50
ton, T.		30							30	
ds						25	15		40	
mas							30		30	
Vegas Dist. Client								115	115	1/55
TOTAL	70	45	15	20	110	25	45	115	445	7/25

SUMMARY: AVERAGE NON-CLIENT PEOPLE TIME PER ATTORNEY: 1/6: 40

AVERAGE TOTAL TIME PER ATTORNEY: 38/~~40~~: 40

Jan. 12, 1976 – Jan. 16, 1976

ENT TIME

	CT	CT2	C	C2	FF	FF2	D	D2	B	B2	PC	PC2	DS	DS2	MSA	MSA2	MSNA	MSN2	
egory Totals			931		535	15	275	50	3545		255		870		540	10	145	180	7351
rs./Min.			15/30		8/55	/15	4/35	/50	59/5		4/15		14/30		9/0	/10	2/25	3/0	122/30

MMARY: AVERAGE CLIENT TIME PER ATTORNEY: 17/30: 40

INISTRATIVE	MS	CL	S	AP	WS	SW	ADA	DA	E	PO	TOTAL
	435	45	143	135	170	105	1025	570	2385	555	5,568
rs./Mins.	7/15	/45	2/25	2/15	2/50	1/45	17/5	9/30	39/45	9/15	92/48

UMMARY: AVERAGE ADMINISTRATIVE TIME PER ATTORNEY: 13/15: 40

-CLIENT TIME	FF	D	TC	MSNA	TCT	TMS	C	TB	PER PERSON TOTAL	HR/MIN
lins, Tony	45						20		65	1/5
oon, Greg.			20		30			30	80	1/20
cker, Norman							10		10	/10
irez, P.				25					25	/25
nley, D.G.		30							30	/30
ero, J.P.						15	10		25	/25
chez, A.J.							10		10	/10
ff							5		5	/05
ouge		10							10	/10
ato					90				90	1/30
cia	170						40		210	3/30

(continued)

PER PERSON

	FF	D	TC	MSNA	TCT	TMS	C	TB	TOTAL	HR/MIN.
una, F.							15		15	/15
rleson				15					15	/15
hwartz, Leroy	115								115	1/55
ntoya &										
dilla			55						55	/55
aton	135								135	2/15
TOTAL	465	40	75	40	120	15	110	30	1295	21/35

MMARY: AVERAGE NON-CLIENT PEOPLE IME PER ATTORN ': 3/5 40

AVERAG TOTAL TIME PER ATTORNEY: 33/55: 40

11/19/76 - 1/23/76

IENT-TIME	CT	CT2	C	C2	FF	FF2	D	D2	B	D2	PC	PC2	DS	DS2	MSA	MSA2	MSNA	MSNA2	CA	TOTA
			720		860		375	825	3330	5	405		1055		525	10	70		230	84
c./Min.			12		14/20		6/15	13/45	55/30	/5	6/45		17/35		8/45	/10	1/10		3/50	140
SUMMARY: AVERAGE CLIENT TIME PER ATTORNEY: 20/5: 40																				
MINISTRATIVE	MS	CL	S	AP	WS	SW	ADA	DA	E	PO	TD	TOTAL								
	375	85	225	180	30		685	175	470	395	45	2665								
s./Mins.	6/15	1/25	3/45	3	/30		11/25	2/55	7/50	6/35	/45	44/25								
SUMMARY: AVERAGE ADMINISTRATIVE TIME PER ATTORNEY: 6/25: 40																				
N-CLIENT	FF	D	D2	MSNA	TCT	MSA	C	TB	CA	TD	PER PERSON TOTAL		HR/MIN							
rtinez, Juan		55									55		/55							
llins, Tony							50				50		/50							
cero, J.P.									80		80		1/20							
wland							15				15		/15							
vató, M.										40	40		/40							
anley, D.G.		10									10		/10							
rtinez										10	10		/10							
mirez, P.							15				15		/15							
F.Dist.Client		20									20		/20							
Schmidt Client										25	25		/25							
rcia	125										125		2/5							

NON-CLIENT (Continued)

	FF	D	D2	MSNA	TCT	MSA	C	TB	CA	TD	PER PERSON TOTAL	HR/MIN
es, D.	15										15	/15
derson, J	15										15	/15
toya &												
Padilla					335						335	5/35
TOTAL	155	85			335		80		80	7[illegible]	795	13/15

SUMMARY: AVERAGE NON-CLIENT PEOPLE TIME PER ATTORNEY: 1/55: 40

SUMMARY: VERAGE TOTAL TIME PER ATTORNEY: 28/20: 40

December 22, 1975

REVISED MEMORANDUM:

RE: TIME SHEETS AND RELATED STATISTICS

I. CLIENT TIME* (Name of Client is necessary)

CT - Court Appearances
C - Client Communications: letters, interviews
FF - Fact Finding: transcript reading, discussion w/trial attorney
D - Discussion: issue discussions
B - Research, determining issues, writing brief+
DS - Writing docketing statement, discussion w/trial attorney++
MSA - Miscellaneous Appeal Work, Motions for extension, etc.
MSNA - Miscellaneous Non-appeal work: e.g., contacting legal aid for client
PC - Petitions for cert., etc.

*Time spent on a case by a person who is not the primary attorney should be indicated by 2 following the type of work, e.g., time spent on transcript reading of another attorney's case should read FF2. The client's name and the primary attorney's name should also appear. For example, if I read a transcript in a case of Gerald's, my time sheet should show:

12/16 ' Doe FF2 (GHC) ' 8:00 ' 9:00 ' 60

II. NON-CLIENT TIME+++

A. Inmate non-clients (Name should be indicated)

Same designations as above preceded by NC, e.g., a letter to a non-client would appear:

12/16 ' Roe NCC ' 8:00 ' 8:15 ' 15

B. Administrative time

MS - Maintaining skills: e.g., reading advance sheets
CL - Caseload: e.g., assigning cases, fee enquiries+
S - Statistics, time sheets
AP - Appellate Procedure: non-case related work concerning appeals. e.g., Lynn: statistics from ct.app., memos to tr. attorney
WS - Work Station maintenance
SW - E.g., John: library, Sarah: Brief Bank, Don: cites
ADA - Appellate Div. Administration: Administrative matters involving only App. Div. personnel
DA - Dept. Administration: Administrative matters w/non-App.Div. personnel
E - Education
PO - Personal Organization: determining your schedule, etc.

+ This should include research and preparation of substantive motions. Routine on busy work motions should be listed as MSA.

++ Per our staff meeting, all time spent on docketing statement should be listed simply DS. If you merely receive initial call regarding a new appeal, list time as CL under administrative.

+++ All time spent on trial level activity should be listed as non-client time and should be described as to the type of work as client designations preceded by T. For example, if you write a trial memo or research an issue for district office case of John Jones it should read: 12/12 ' Jones, J. ' NCTB ' 10 ' 11 ' 60

January 23, 1976

MEMORANDUM

Re: Time Sheets

The following changes have been made in our designations:

CA (Collateral attack) all work done on post-conviction motions, except cert. petitions, and habeas corpus petitions

Travel time should be attributed to client and designated as whatever category the purpose of the trip was. E.g. a trip to the Pen to visit Doe with 1/2 hour interview and 40 min. travel time would appear as:

Doe/C/8.00/9.20/70

If more than one client is involved apportion the time equally among all clients involved.

Court preparation time is listed under B.

Referred cases on which you do something following the referral is listed as NC with the defendant's name. E.g. if the new attorney calls you to discuss an issue it should appear as :

NC Doe/D/8.00/8.20/20

SMS:ct

DATE	CLIENT (IF NON-CLIENT INDICATE BY NC)	TYPE OF WORK	TIMES FROM	TIMES TO	TOTAL TIME

ATTORNEY: ____________________ TOTAL TIME

END