

SYSTEMS DEVELOPMENT STUDY
CUYAHOGA COUNTY, OHIO
INDIGENT DEFENSE SERVICES

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October 1976

CONSULTANTS:

National Center for Defense Management

Michael L. Altman, Esq.
David C. Coleman, Esq.
Alan S. Rapoport, Esq.
Dr. Peter Haynes
Gustav Goldberger, Esq.

Boston University Center for Criminal Justice

Sheldon Krantz, Esq.
Paul Froyd, Esq.
Charles Smith, Esq.

Cleveland Court Management Project

Francis L. Bremson, Esq.
Melvin B. Mixner II

Legal Services

Brent L. Henry, Esq.

CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT
The American University Law Institute
4900 Massachusetts Avenue, N.W.
Washington, D.C. 20016
(202) 686-3803

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TABLE OF CONTENTS

| | |
|--------------------------------------------------|----|
| Acknowledgements. | i |
| Foreword. | ii |
| I. INTRODUCTION | |
| A. Background. | 1 |
| B. Nature of the Request | 2 |
| C. Methodology | 3 |
| D. Scope of Report | 5 |
| II. THE SCOPE AND QUALITY OF THE EXISTING SYSTEM | |
| A. Misdemeanors. | 7 |
| B. Felonies. | 11 |
| C. Early Representation. | 14 |
| D. Resource Allocation | 15 |
| 1. Cleveland Legal Aid Society Caseload. | 15 |
| 2. Assigned Counsel Fee Structure. | 17 |
| E. Private Bar Survey. | 22 |
| 1. Private Bar Membership. | 22 |
| 2. Criminal Law Specialists. | 22 |
| III. ALTERNATIVE SYSTEMS | |
| A. Description | 24 |
| 1. Coordinated Assigned Counsel System | 24 |
| 2. Defender System | 25 |
| 3. Mixed System. | 26 |
| B. Enabling Legislation. | 27 |
| IV. PROJECTED COSTS | |
| A. Cost Projection Methodology | 28 |
| B. Caseload Projection | 29 |
| 1. General | 29 |
| 2. Felonies. | 30 |
| 3. Juvenile Cases. | 33 |
| 4. Misdemeanors. | 34 |
| 5. Mental Health Cases | 36 |
| C. Attorney Caseload Standards | 36 |
| D. Cost Projections. | 38 |
| E. Other Cost Considerations | 46 |
| V. TEAM RATIONALE | |
| | 49 |
| VI. A PROPOSED MIXED SYSTEM | |
| A. Closed Attorney Panel | 51 |
| B. Support Services | 52 |
| C. Early Appointment of Counsel | 52 |
| D. Training | 53 |
| E. Management | 54 |

VII. RECOMMENDATIONS 56

APPENDICES

- A. NCDM Consultant Resumes
- B. Interview Schedule
- C. The Provision of Indigent Criminal Defense Services in Cleveland
- D. Cost Projection Data
- E. Private Bar Questionnaire and Survey Results

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FOREWORD

The National Center for Defense Management (NCDM) was founded late in 1974 through a grant from the Law Enforcement Assistance Administration (LEAA) to the National Legal Aid and Defender Association (NLADA). NCDM was born out of the need to enhance and improve the efficiency of systems for the defense of the poor through sound planning, management assistance and management training, and to maximize the quality of such systems while maintaining their cost-effectiveness.

Under the terms of the LEAA grant awarded to NLADA, the principal goals of the National Center for Defense Management are as follows:

- To conduct management studies and analyses of the operations of existing defender offices and other defense delivery systems, with a view to making practical recommendations which will assist such offices and systems in achieving goals of improved effectiveness, and conduct evaluations of such offices and systems;
- To provide management consultation and technical assistance for defender offices and organized defense systems requesting such services, assisting these offices and systems in their efforts to design and implement improved management systems and procedures;
- To provide management training programs designed specifically for defender managers; and
- To furnish technical assistance to organizations, communities, states or other groups which desire to establish new or improved systems (including defender systems) for the provision of legal representation to eligible criminally accused or convicted persons, or persons facing juvenile court proceedings.

INTRODUCTION

A. Background

The Sixth Amendment to the U.S. Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has made the Sixth Amendment right to appointed counsel applicable to "any person haled into court, who is too poor to hire a lawyer,"¹ and has held that this right is incorporated into the due process clause of the Fourteenth Amendment; it therefore applies to state and federal prosecutions.

The question remained whether the Sixth Amendment's "all criminal prosecutions" language included misdemeanors as well as felonies. The Supreme Court answered this question in 1972, holding that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense whether classified as petty, misdemeanor or felony, unless he was represented by counsel at his trial."² This ruling, while imposing new financial burdens upon the criminal justice system, has given additional meaning to the concept "equality before the law" for indigent defendants; legal defense services must now be provided to all indigents accused of crimes -- felonies or misdemeanors -- whenever imprisonment is a possible penalty.

Courts across the nation have become more aware of the need to provide quality legal representation to indigent defendants and the client community has become more informed about their rights to effective legal defense. It is now recognized that counsel is not only of crucial importance at trial, but that lawyers must actively involve themselves with numerous facets of a

¹Gideon v. Wainwright, 372 US 335, 344 (1963).

²Argersinger v. Hamlin, 407 US 25, 37 (1972).

client's case, from pre-trial investigation and preliminary hearings to the provision of expert witnesses and scientific testimony, through postconviction remedies, appeals and in other collateral matters.

An individual charged with the commission of a crime is confronted with the awesome power of the state manifested by its agents -- judges, prosecutors, investigators and bailiffs -- plus a legal code containing complex and technical terminology. Without assistance of counsel the accused, generally unfamiliar with legal language, institutions and processes, finds it difficult to understand the relevant law, much less know the appropriate ways in which to present an effective defense.

It is clear from the perspectives of all concerned that lawyers, particularly for indigents facing charges in our criminal justice system, are as the U.S. Supreme Court has indicated, "necessities, not luxuries."³

While ruling in Argersinger that counsel must be made available to any indigent facing a possible jail sentence, the Supreme Court did not specify the method by which defense services should be provided. It left to the states and/or local jurisdictions the responsibility and fiscal burden for developing and funding criminal defense systems that would meet local needs.

B. Nature of the Request

In 1975, the Ohio General Assembly adopted a Public Defender Act authorizing and regulating indigent defense services throughout the State of Ohio. The defender bill provides each county the option of creating a county public defender office, using an assigned counsel system or establishing a system combining both of the above. The funding provision in the Act requires that the county furnish 50 percent of the entire indigent criminal defense

³Gideon v. Wainright, 372 US 335, 344 (1963).

budget in order to qualify for matching funds from the State.

The Cuyahoga County Board of Commissioners, in response to this defender legislation, appointed a local task force under the chairmanship of County Administrator William Gaskill. Its purpose was to recommend to the Board a suitable plan for implementing the Ohio Defender Act in the context of the Cuyahoga County criminal justice system.

To assist the task force, Mr. Gaskill requested technical assistance through the Adjudication Division, Office of Regional Operations, in LEAA's national office. Pending approval of 1976-77 funding for the National Legal Aid and Defender Association's National Center for Defense Management, the assignment was referred to the American University Criminal Courts Technical Assistance Project which provided funding for this effort. A consortium effort was orchestrated, with the National Center for Defense Management being designated the primary consultant.* Other participants included Brent Henry; the Court Management Project (CMP) of Cleveland; and the Boston University Center for Criminal Justice. NCDM was charged with the task of formulating the recommendations contained in this report, in concert with the other consultants.

C. Methodology

The proposal by the Board of Commissioners for consultant services set forth the following four objectives:

- Gather and analyze data;
- Provide required legislative review and research;
- Develop and analyze alternatives for the provision of criminal defense services for the indigent;
- Develop recommendations on the law-related services a public defender's office might provide.

*NCDM consultant resumes attached at Appendix A

Consistent with these objectives, a series of planning meetings were held between the County Administrator and the consultants both in Washington, D.C. and in Cleveland, Ohio. Data collection requirements were discussed, study objectives detailed and arrangements made for an onsite visit by the NCDM consultant team.

Specific assignment areas for the respective consulting groups were designated generally as follows:

Court Management Project (CMP) -- To provide data collection consistent with the study objectives;

Brent L. Henry, Esq. -- To prepare legal research materials with specific reference to Ohio law and the new Public Defender Act;

Boston University Center for Criminal Justice -- To assist and review the work of the NCDM consultant team, to address issues relating to standards and goals for indigent defense, and to direct attention to the provision of other services by a public defender office;

National Center for Defense Management -- To review and analyze data collected by CMP; interview the principal personnel as well as persons prominent in the Cuyahoga County Criminal Justice System; obtain an overview of all issues relevant to the design of an indigent criminal defense system for Cuyahoga County; discuss and prepare recommendations for such design in the form of alternatives; and draft a summary report of conclusions reached by the consultant team followed by a more comprehensive report reflecting the composite input by the respective consultant groups.

The onsite visit by the consultant team was conducted May 23-28, 1976, in accordance with a comprehensive interview list.* At the request of the County Administrator, a preliminary report was prepared and submitted in June, 1976, containing preliminary recommendations. This final report is a reaffirmation of the recommendations contained in the preliminary document containing additional material and discussion.

*Interview schedule attached at Appendix B

D. Scope of Report

The purpose of this report is to describe indigent defense services in Cuyahoga County, set forth the impressions of the NCDM consultant team on those services and to provide recommendations for their improvement. Due to time constraints and to the fact that the consortium consultant effort was split as to study requirements, the scope of this report is limited by the areas of study assigned to NCDM, i.e., the representation provided indigent defendants in the Court of Common Pleas. Other aspects of indigent defense representation in Cuyahoga County have been addressed elsewhere by other participants in the consortium effort.

While such defense services are being provided in both juvenile and mental health commitment cases--and to a limited extent in misdemeanor cases in some municipal courts--the Court of Common Pleas appears to receive the lion's share of public resources presently expended for indigent defense services in the County. The issue of cost seemed to weigh heavily in the context of the technical assistance request and this led to the decision to refocus the study effort, as indicated above.

It should be noted that this report is not intended to duplicate the information and material provided in a previous study prepared by Brent L. Henry in September, 1975. Therefore, this report will not detail descriptions of court structure and the criminal justice process except where relevant for discussion purposes. Such material is adequately addressed and well presented in the earlier study; a summary of that report is attached at Appendix C.

The consultant team sought to identify critical problems relevant to quality and cost implications for any new system of providing indigent defense services; it explored solutions to apparent deficiencies

In the current system and attempted to put a price tag on alternative systems calculated to provide overall improvements in those services.

Court statistics compiled by the Court Management Project were utilized and relied upon by the study team.

THE SCOPE AND QUALITY OF THE EXISTING SYSTEM

As stated earlier, it was not the purpose of this report to detail the court structure and the criminal justice process in Cuyahoga County; nor was it intended to duplicate the study by Brent L. Henry. Suffice it to state that the consultant team concurs in the important findings of that report.⁴ This section will deal with team observations, generally consistent with that report, presented from the perspective of the consultants.

A. Misdemeanors

The United States Supreme Court has set forth minimal federal constitutional standards for providing counsel to indigents in any case which may result in a loss of personal liberty. In the criminal justice system of Cuyahoga County, the impact of such decisions has been limited to so-called serious felony cases and virtually ignored when applied to misdemeanor cases. The most significant limitation on the scope of the existing system of defense services lies in the different standards applied in felony as opposed to misdemeanor cases. The existing system purports to provide counsel to all indigent defendants who request an attorney at arraignment in the municipal courts. Nevertheless, it is widely acknowledged and readily apparent that only a small proportion of indigent defendants charged with misdemeanors are represented by appointed counsel.

Court Management Project data estimated the number of misdemeanor cases for all municipal courts in the county in 1975 to be 42,000. During that year the Cleveland Legal Aid Society Misdemeanor Division processed 11,483 such cases, or approximately 27.3 percent. This was

done on a contractual basis with two municipal courts--Cleveland and East Cleveland. While some municipal courts make use of volunteer services provided by members of the local bar, no data was available on how extensive this volunteer effort may be. However, no matter how willing local practitioners may be to accept voluntary appointments, it is clear that more than half of the persons charged with misdemeanors go unrepresented and a large proportion of these defendants might qualify for court appointed counsel.

It appears that the problem is most severe in the suburban municipal courts; yet, in the Cleveland Municipal Court the statistics which purport to reflect the size of the indigent caseload do not accurately portray the extent of the need for representation of indigent persons accused of misdemeanors.

The Cleveland Legal Aid Society (CLAS) has been providing defense services to indigent defendants since the early 1960's. Funding during this period was provided partly through OEO, although the defense component was funded through appointment fees by Court agreement. Currently, a dozen attorneys are employed by CLAS and they provide defense services in both misdemeanor and felony cases.

Approximately half of the CLAS attorneys receive their case assignments from the Court of Common Pleas. These cases are handled on a contractual basis with that court. CLAS has a contract which provides that they will receive a minimum number of cases per month from that court for representation by staff attorneys. In the terminology of the Cleveland defense bar, this means that CLAS gets its cases just like all the other attorneys--that is, out of Room One, the Arraignment room.

Approximately six other attorneys are employed by CLAS to handle misdemeanors under a contractual arrangement with the Cleveland Municipal Court and the East Cleveland Municipal Court; these misdemeanor cases are selected on an ad hoc basis and federal poverty guidelines are applied for determinations of indigency.

The remainder of the staff of the CLAS Criminal Division consists of three investigators, providing a ratio of one investigator for every four attorneys. Their current investigation rate is approximately 30 cases per month. Additionally, two social workers are employed in conjunction with the Criminal Division; this constitutes a ratio of one social worker for every six attorneys.

Finally, CLAS employs two lawyers who exclusively process appeals; their caseload consisted of approximately 125 appeals in 1975.

Based on site observations of Cleveland Municipal Court arraignments on misdemeanors, the study team felt that the procedure used might result in defendants feeling pressure to waive counsel. In particular, the admonition read by the court on the date observers from the team visited the municipal court arraignment room suggested strongly that a request for counsel could result in the defendant's receiving a jail sentence upon conviction, but that such an outcome would be avoided if counsel were waived. Procedures which discourage requests for counsel who could render advice on possible pleas, constitutional issues and trial representation are clearly contradictory to the U.S. Supreme Court decisions requiring counsel at all "critical stages" of criminal proceedings as well as "a knowing and intelligent waiver of counsel" when the defendant so elects.

Without reflection on the dedication and skill of the attorneys from the Misdemeanor Division of the Cleveland Legal Aid Society, it is difficult to imagine that the six attorneys in that division can adequately handle in excess of 11,000 cases per year. The magnitude of their caseload does not allow for quality legal representation in each and every case. Based on estimates by CLAS, this caseload is probably twice that which could be comfortably handled by an attorney handling only misdemeanor cases, given existing discovery, pretrial and negotiation practices in the Cleveland Municipal Courts. The National Advisory Commission on Criminal Justice Standards and Goals recommends a defender attorney caseload not to exceed 400 misdemeanors(excluding traffic).⁵

It is clear that the scope of defense services should encompass virtually all misdemeanors punishable by a jail term as well as felonies, mental health commitments and the representation of minors and/or parents in all juvenile delinquency cases. It was apparent to the study team that indigent defense services of this scope are neither presently provided nor even being considered. Most accused misdemeanants go unrepresented even though they would be eligible to receive appointed counsel if such defense services were available within the system. Moreover, serious questions about the quality and scope of representation afforded those indigents who do have counsel appointed arise from even a cursory examination of the financial resources devoted to misdemeanor representation in this jurisdiction.

⁵NAC Standard 13.12 Workload of Public Defenders

B. Felonies

Only after a person is arraigned in Cuyahoga County Common Pleas Court can it be said that any systematic effort is made to comply with the constitutional requirements of providing counsel to indigents. Persons interviewed by the consultant team consistently referred to arraignment as the crucial juncture where an indigent defendant could declare that he or she was unable to retain private counsel and ask that the court appoint an attorney for the remainder of the proceedings. These perceptions of judges, attorneys, clients and court administrators alike were borne out by the team's observations in the Municipal Courts and in Room One, the arraignment room for the Common Pleas Court. And indeed, the background statistical and budgetary information provided to the team corroborate this conclusion. In short, defense services appear to be deficient at the early stages of the criminal justice process, particularly at the arrest, preliminary hearing and bail stages.

CLAS handles felonies from the time of arrest; this means staff attorneys are present when felony defendants are arraigned in Municipal Court following their arrest. The chances of CLAS being appointed after arraignment in the Court of Common Pleas are about five to one against assignment. Approximately one-third to one-half of the persons represented by CLAS demand a preliminary hearing. It is not clear whether such hearings are then held; often a demand will only result in a request for a continuance from the prosecution and the taking of the case to the Grand Jury in the interim. Perhaps only ten or fifteen percent of these clients ever get a preliminary hearing.

It should be noted that the defendant, even after arraignment in Room One, must still wait to meet an attorney. The practice for out-of-custody defendants is for court personnel to transmit clients' addresses and phone numbers to appointed counsel who may then set up initial interviews. Three in-custody defendants interviewed at the Cuyahoga County Jail, all related that they met their appointed attorney for the first time in court at the pretrial conference. Two of the three stated that this first meeting lasted less than ten minutes and included consultations regarding the negotiated disposition or "deal" being discussed with the prosecution. It is extremely difficult, if not impossible, to build an effective attorney-client relationship of confidence and trust under such circumstances.

It is widely assumed that CLAS provides representation for almost all indigent defendants in the Cleveland and East Cleveland Municipal Courts while those courts retain jurisdiction over the initial proceedings (before an indictment is returned by the Grand Jury). According to CLAS, in 1976 they provided representation in 3,554 felony preliminary hearings in CMC.⁶ The limited CLAS staff cannot adequately represent such a caseload. Indeed, it is clear that CLAS simply does not provide full defense representation in all preindictment proceedings.

In reality, the vast majority of defendants in Municipal Court either waive counsel in that court or counsel is appointed (often from the ranks of the CLAS attorneys who may be assigned to a given courtroom on a particular day) and a pro forma appearance is made at which the defendant waives the preliminary hearing and is bound over to the grand jury for indictment. Apparently only limited representation is available for indigents in lower court felony

⁶ Court Management Project Memorandum, dated May 17, 1976, p. 2.

proceedings in the suburban municipal courts, where CLAS has no role.

The consultants were unanimous in their concern about absence of a standard procedure by which defendants are provided counsel at each "critical stage" of the criminal justice process. It appears that few indigent defendants in Cuyahoga County receive the services of an attorney in presenting pertinent information which may be persuasive in the Municipal Court on the question of bond. Needless to say, the issue of what amount will be required for release on bond can be a most critical decision for an indigent defendant, who may have to wait in jail for weeks pending indictment by the grand jury and arraignment in Common Pleas Court.

The consultant team was puzzled by the relative infrequency of preliminary hearings and their superficiality when they were conducted. When questioned as to why preliminary hearings were not demanded more frequently, practitioners gave several tactical and strategic reasons which might justify waiver in a limited number of special circumstances. It seems doubtful, however, that those strategic or tactical reasons could reasonably account for what appears to be a very widespread practice. It appeared, therefore, that the many benefits that can be derived from a full and complete preliminary hearing (in terms of discovery, development of material

for impeachment at trial, etc.) are being forfeited because of time constraints and/or monetary considerations rather than on strictly strategic grounds.

It also appeared that the CLAS staff was resigned to accepting this widespread practice of waiving preliminary hearings and providing merely token representation in felony proceedings prior to arraignment in Common Pleas Court; while possibly understandable in terms of their heavy caseloads, prevailing practices and more subtle pressures, such tacit acceptance invariably affects the quality of representation.

C. Early Representation

The phrase "early representation" is commonly used by defense practitioners to describe those functions which an attorney should be providing prior to formal court appearances. Such an early representation program was alluded to by many persons interviewed as having existed in the past in the form of private attorneys who were available to defendants for consultation soon after arrest and while in custody but before a formal court appearance. Evidently, however, that program was abandoned. It did not appear that those services are currently available in any form.

The first opportunity for a defendant in custody to consult with an attorney is generally minutes prior to appearance in Municipal Court. The current system is not designed to respond to requests for representation prior to or during police interrogation or lineups or to provide legal advice and assistance to indigents who fear they may be under suspicion or called as witnesses in connection with pending criminal investigations or trials.

The functioning of the existing system for providing counsel to indigents in terms of early representation to felony defendants can only be described as woefully inadequate in light of mandates by the United States Supreme Court and in comparison to the prevailing practices in other jurisdictions of comparable size, diversity and urbanity. Both the ABA and NAC Standards cite the need for representation to begin at or before the time of arrest.⁷

While not explained by reference to unique facets of Ohio criminal procedure or to strategic and tactical questions involved in the typical felony case, many of the inadequacies in respect to early access to counsel can only be attributed to the failures of the existing system to insure provision of counsel at these all-important initial stages.

D. Resource Allocation

In considering cost projections for this indigent defense system, the study team first examined the resource allocations for the existing system and made the following observations.⁸

1. Cleveland Legal Aid Society (CLAS) Caseload

The existing system of providing defense representation to indigents basically operates by appointing private counsel and reimbursing these attorneys at the conclusion of the case from funds made available by the county to the Court of Common Pleas. While \$1.2 million was actually

⁷ ABA Standards Relating to Provision of Defense Services §5.1; NAC Standard 13.1

⁸ The data relied on for the purpose of these observations are those prepared through the Court Management Project (CMP), "Public Defender Task Force Data Collection Progress Report," May 17, 1976.

expended for felony defendant representation in the Common Pleas Courts during 1975, \$1.4 million has been budgeted for that purpose in 1976. These funds were allocated among some 3,594 indigent defendants' cases.⁹

The average amount expended per felony case based on this data was \$345.32. Of the 3,564 defendants who were found to be indigent and in need of appointed counsel, 741 were assigned to the felony division of CLAS. In return for representing this many assigned cases pursuant to a contract between CLAS and the Common Pleas Court, CLAS was reimbursed in 12 equal monthly installments of \$13,637.¹⁰ The 1975 CLAS budget for all adult criminal defense services was \$210,000.

Interviews with CLAS personnel revealed that the Society receives only about 20 percent of the total amount available to the courts for payment of fees to indigent counsel; yet they perform almost 25 percent of the total services rendered. One explanation offered for this discrepancy suggests that when private counsel withdraws from a case, more often than not, CLAS is appointed. The withdrawals of private counsel are highly correlated with the refusal of defendants to accept plea bargains and their insistence on going to trial -- the most costly and time consuming phase of the criminal justice process.

⁹ CMP, p. 3

¹⁰ Brent L. Henry, "The Provision of Indigent Defense Services in Greater Cleveland," September, 1975.

2. Assigned Counsel Fee Structure

The cost data presented above is somewhat incomplete for assessing the existing indigent defense system in relation to the quality and efficiency of the legal services being provided at county expense. Additional data needed to understand the operation of the existing system of defense services is found in the statutory fee schedule for the reimbursement of attorney fees.¹¹ Cuyahoga County Common Pleas Court Rule 33 sets out a schedule of fees for assigned counsel in accordance with the nature of the crime, the type of disposition, whether or not the case goes to trial and how many days are spent in trial. Compensation to the attorney assigned to represent an indigent defendant is determined by the trial court based upon the judge's knowledge of the case and an itemized statement submitted by counsel. Within this rule, no provision is made for investigation or expert witness fees, except in homicide cases. While substantial distinctions are made and variations in fees mandated for different types of homicide cases, a very simple fee system is provided for so-called "non-homicide" felonies. Attorneys are reimbursed a minimum amount of \$125 for a plea to a maximum of \$150, while two or more days of trial can pay a maximum of only \$300.

Given the existence of a system which relies most exclusively on the assignment of private counsel to indigent defendants accused of

¹¹ The vitality of this rule has been brought into question by passage of the new Ohio Public Defender Bill. Previously existing statutory rules for the payment of private attorneys were repealed with the enactment of the new statute. However, it has been agreed to maintain the existing schedules for the time being until some new direction regarding the provision of defense services for the county is either decided upon or implemented.

felonies, it is this maximum ceiling on reimbursement for non-homicide felonies which clearly influences the quality of defense services in Cuyahoga County. Essentially, this means that by virtue of a fixed and very rigid ceiling on fees (totally unrelated to the legal, factual and human complexities of a serious criminal case) the financial interest of the attorney and the legal interests of the indigent defendant can be totally divergent.

The ABA Standards call for reasonable compensation for assigned counsel.¹² The defendant may want--and/or it may be in his/her best interest to demand--a jury trial. Most felony trials will almost invariably require an average of three to five days of in court time--exclusive of time already expended on other court appearances, preparation of written motions, investigation, research and pretrial negotiations. Such time requirements mean that the conscientious attorney appointed to represent an indigent defendant on a serious felony charge is playing economic roulette because of the fee ceilings.

Attorneys interviewed by the study team repeatedly referred to the prevailing "practice" of accepting ten felony assignments, pleading eight with the expectations of receiving up to \$150 per case and asking the court to relieve them of responsibility for the two or so defendants who insist on going to trial, or for whom no acceptable plea bargain can be arranged.

There can be no question that such a method of reimbursement in

¹² ABA §2.4 Compensation

non-homicide cases creates intolerable incentives to temper the quality and zeal of representation by even the most dedicated attorney. These economic disincentives imposed by the present fee structure are common knowledge among both attorneys and clients, and can only serve to undermine the trust which is essential to an effective attorney-client relationship.

Cruiously, it appears that a rather irrational dichotomy has developed between the compensation provided for homicide and non-homicide cases. First, it should be noted that the so-called non-homicide cases constitute the bulk of the serious crime problems in any urban area and Cleveland is no exception. It is estimated that less than 300 of the nearly 7,000 felonies were homicide cases. While there appear to be no definitive figures on the proportion of cases with assigned counsel which were homicides, estimates indicate that 40 to 50 percent of the funds for appointed counsel are allocated to homicide cases. This seems to be due to (1) the prescribed maximum of \$3,000 for a guilty plea in a homicide case and \$3,500 to \$5,000 for a trial in a first degree or aggravated murder case and (2) the practice of assigning two separately reimbursed attorneys for each homicide

defendant. In short, homicides which comprise less than five percent of total felony cases receive close to half of the funds allocated to assigned counsel.

An article in the June, 1975 edition of The Panelist, a newsletter of the New York Indigent Defendants Legal Panel, cited criticism by the Committee on Criminal Courts of the New York City Bar Association, and others, of a very similar system of dual appointments in homicide cases. The automatic assignment of two attorneys was felt to be "a wasteful practice which diffused responsibility and increased the possibility of patronage assignments."¹³

Admittedly, there can be tremendous variation in the complexity of a homicide case which makes it difficult to assess whether the maximum and minimum fees paid to assigned counsel in such cases are exorbitant or inordinately low. Nevertheless, it is clear that the disparity between fees in homicide prosecutions and those in non-homicide cases has definitely made one type of case economically desirable and the other type financially unattractive for attorneys with even moderately successful practices.

This is a curious result when examined from almost any standpoint. With the exception of the occasional homicide where the imposition of the death penalty is a likely outcome, there is usually little to distinguish a homicide case from an aggravated robbery, burglary, or narcotics sales case in terms of the relative harshness of potential sentences. From another standpoint, many indigent defendants are

¹³ The Panelist, Indigent Defendants Legal Panel, Office of Project Development, Supreme Court of the State of New York, June, 1976.

afforded only minimal resources for their defense on charges which may be much more serious (both in penalty for the defendant and danger to the community) than those charges faced by the homicide defendant whose defense is, at least relatively speaking, lavishly bankrolled by the state.

E. Private Bar Survey

As part of the Task Force effort, the Cleveland Court Management Project undertook to survey the private bar and the criminal law specialists. While an indigent defense system should not be designed solely on the basis of what private practitioners think and want, it is certainly relevant to know their views. Listed below are a few selected responses from the survey that were deemed of special interest in the context of this report. The questionnaire utilized and tabulation of the survey results can be found at Appendix E .

1. Private Bar Membership:

- 46.7 percent claim no criminal law experience.
- 95.3 percent have never been assigned to misdemeanor cases.
- 80 percent have never been assigned to felony cases.
- 66.8 percent would not take non-homicide felony assignments because fees are too low.
- 48.8 percent are unwilling to accept felony case assignments; the implication is that 51.2 percent might be willing to do so. This appears consistent with the basic assumption that there is significant receptivity to a mixed system.
- 49.6 percent would prefer an hourly rate for in-court and out-of-court time; 36.8 percent suggest \$41-\$50/hr. for in-court time and 30.6 percent suggest a similar figure for out-of-court time.
- 82.2 percent would be unwilling to serve as co-counsel in felony cases without pay to develop experience while 93.6 percent express this view for misdemeanor cases.

2. Criminal Law Specialists:

- 89.1 percent of this group have never been assigned a misdemeanor case.

- 53.1 percent would take non-homicide cases under the present fee structure.
- 35.3 percent would want over \$3,000 per homicide case; 25.5 percent would want \$1,000 to \$1,499 for serious non-homicide cases.
- 28.7 percent would accept appointments in felony cases if compensation were adequate.
- 74.2 percent would prefer an hourly fee schedule; 28.4 percent suggest \$41-\$50 per hour for in-court time.

ALTERNATIVE SYSTEMS

The study team considered three alternative systems for improving the delivery of legal defense services to indigent criminally accused. The three options--Coordinated Assigned Counsel System, Defender System and Mixed System--are variations of the basic defense systems employed throughout this country.

A. Description

1. Coordinated Assigned Counsel (CAC) System

The term "assigned counsel system" is used to describe the typical practice in those jurisdictions where attorneys are appointed by the court to represent indigent defendants on a case-by-case basis. The innovation proposed under the Coordinated Assigned Counsel (CAC) System is the addition of an administrator, whose primary function would be to coordinate such appointments.

Specifically, the Administrator would be responsible for (1) compiling a comprehensive list of all attorneys available for appointment; (2) adopting a rating system based on attorneys' trial experience and familiarity with criminal practice; (3) implementing a rotation system to insure equitable distribution of cases; and (4) designing and administering a fee distribution plan which fairly compensates appointed counsel.

The CAC Administrator should establish certification standards and co-counsel arrangements for new attorneys desiring appointments, and should arrange for appropriate training programs. Ongoing training for all participating attorneys should be encouraged and perhaps made mandatory to upgrade the quality of representation.

A system for monitoring the performance of appointed counsel should be

developed and implemented through the Administrator's office. Effective machinery for hearing and ruling on complaints against appointed counsel should also be established. Counsel who consistently fail to measure up to prescribed standards should be removed from the appointment list.

The CAC administrator, in cooperation with the courts, probation office, law enforcement officials and other criminal justice agencies, should develop a uniform indigency determination procedure to facilitate the immediate appointment of counsel.

The CAC program should have sufficient staff and resources to provide the necessary support to assigned counsel; the budget should include allocations for investigators as well as expert witnesses and social services personnel, as needed.

The Administrator should be appointed by an independent board or commission to insulate appointed counsel from unwarranted judicial or political influence. It is suggested that this body include representatives of local government, the judiciary, the bar and the community served, especially low income and minority groups.

2. Defender System

The term "Defender System" describes a method of providing indigent defense services where an attorney or a group of attorneys, under a contractual arrangement or as public employees, provide legal representation for indigent criminal defendants on a regular basis.

Under this plan, qualified defense lawyers are available to represent all indigent criminally accused who request legal counsel. Services should include the handling of felonies, misdemeanors, juvenile cases, postconviction remedies,

appeals, extraordinary appearances and related legal advice. When conflicts of interest arise, particularly in connection with co-defendants, the private bar would be called upon to accept appointments.

Staff attorneys could be assigned to different courts on a rotating basis, in order to equalize their experience and to help prevent development of accommodation relationships which often occur when an attorney routinely appears before the same judge. Support facilities, including adequate office space, equipment, investigative capability and funds for expert witnesses are all necessary to adequately provide effective assistance of counsel.

It would be the responsibility of the defender office to (1) arrange procedures that assure immediate representation; (2) develop a mechanism for initial indigency determination by the defender staff or other nonjudicial personnel; and (3) develop an inservice training program for staff attorneys, dealing with tactics, techniques and new decisions which affect day-to-day criminal practice.

A defender office budget for support personnel and facilities should include such items as rent, copying equipment, telephones, postage, tape recording, photographic and other investigative equipment as well as funds to employ expert witnesses, allow travel and provide a law library.

The Chief Defender should be appointed by a broadly representative and independent supervisory board or commission, organized as a nonprofit corporation. Defenders should not be elected to office, due to the strong need to insulate them from political influence. Independence from control and supervision by the judiciary is essential in order to avoid the appearance of unwarranted judicial interference in the defense of criminal cases.

3. Mixed System

A Mixed Criminal Defense System would include the establishment of a

Coordinated Assigned Counsel program and a parallel Defender operation. Each component of this system would be responsible for handling a fixed percentage of the indigent criminal caseload. The division of that caseload into the functional categories of felonies, misdemeanors, juvenile and appeal cases should be left to the respective administrators. Under the Mixed System, many of the functions outlined in the CAC program can be performed by the Defender office. The defender component's responsibilities would remain unchanged.

B. Enabling Legislation

The Ohio Public Defender Act¹⁴ which took effect in January of this year, can be characterized as enabling legislation; it will permit local jurisdictions to establish either of the three defender systems described above. A State Defender is authorized to coordinate the operation of indigent defense programs while county defender commissions may contract with established legal services programs or set up a defender operation to provide criminal defense services.¹⁵ The existing CLAS operation could be contracted for this purpose. The mixed system recommended in this report is clearly consistent with this recently implemented defender legislation.¹⁶

The American Bar Association's Standards for Criminal Justice take the following position on a mixed system for the provision of defense services:

ABA § 1.2, Systems:

"Counsel should be provided in a systematic manner in accordance with a widely publicized plan employing a defender or assigned counsel or a combination of these."

The National Advisory Commission on Criminal Justice Standards and Goals takes a more definitive position favoring a mixed system approach:

NAC § 13.5, Method of Delivering Defense Services:

"Services of a fulltime public defender organization, and a coordinated assigned counsel system involving substantial participation of the private bar, should be available in each jurisdiction to supply attorney services to indigents accused of crime. . ."

¹⁴Ohio Code Supp. §120.01-.40 (1976)

¹⁵ibid, §120.04(c) and 120.14(c)

¹⁶ibid, §120.23-.33

IV

PROJECTED COSTS

This section examines the impacts of caseloads and indigency rates on costs, beginning with the assigned counsel system currently in use and projecting these figures to estimate future costs of both existing and alternative defense systems.

In order to compare and evaluate alternative defense systems which may be utilized in Cuyahoga County, it is first necessary to project the indigent caseload for that court system. Factors affecting this caseload will not be analyzed in detail in this section; rather, caseload and indigency trends and the resulting costs will be examined and displayed. In order to realistically compare present costs with those that will be projected, the current expenditures for defense services in Cuyahoga County will be developed into cost levels that would be required in order to provide effective representation in accordance with national standards and constitutional law. The projected costs of alternative defense delivery systems will then be presented.

A. Cost Projection Methodology

In order to accomplish the objectives stated above, a methodology was developed which facilitates understanding of the intermediate steps in the cost projection process. A summary of these steps is presented below (a detailed analysis of each step can be found at Appendix D-7).

1. Identify the present caseload and derive projected caseloads, in the following categories: felonies, misdemeanors, juvenile and mental health cases.
2. Identify the indigency rates for each of the above categories.

3. Multiply the total caseload by the total indigency rate, for each category, to derive the indigent caseload.
4. Identify the manageable caseload for a public defender unit in order to derive the staffing requirements for such a system, recognizing that a certain percentage of the cases will require assigned counsel where conflicts of interest arise.
5. Apply reasonable salary and other personnel line items requirements to a budget for a public defender unit for comparison with assigned counsel costs.
6. Identify the cost of a mixed public defender/assigned counsel system by allocating the required costs proportionately between the two components to obtain the estimated cost of a mixed system, reflecting the percentage of the caseload handled by each unit.

B. Caseload Projection

1. General

The Cleveland Court Management Project has taken the reported total number of cases in four categories, estimated the percentage of cases in each category which involve appointed counsel and multiplied the two foregoing factors to arrive at an indigent caseload estimate for each category.¹ The data are displayed on the next page in Table 4.1.

¹Court Management Project, Cleveland, Ohio, May 17, 1976, PUBLIC DEFENDER TASK FORCE, Data Collection Progress Report.

Table 4.1. Indigent Caseload Estimates

| | <u>Total 1975 Caseload</u> | X | <u>Indigency Rate</u> | = | <u>Caseload</u> |
|---------------|--------------------------------|---|---------------------------|---|-----------------|
| Felonies | 6,779 | | 51.7% ² | | 3,505 |
| Misdemeanors | 41,772 | | 39.0% ² | | 16,291 |
| Juvenile | 9,827 | | 8.3% ³ | | 814 |
| Mental Health | 829 | | 41.6% ³ | | 345 |

The data developed by the Court Management Project was reviewed by means of interviews with local judges, attorneys and court administrators. Emphasis was placed on providing data of primary interest to the county (e.g., felony and juvenile proceedings).

2. Felonies

In the felony area, because of somewhat questionable indigency data sources, the Court Management Project studied the felony dockets at the arraignment stage. The docket check revealed the following revised indigency data:

- 38.4 percent--assigned counsel cases
- 29.1 percent--retained counsel cases
- 32.5 percent--no record or self representation cases

If the final category, "no record or self representation" is assumed to

²Indigency rate derived from Cost of Providing Defense Services for Indigent Accused in Ohio (1/75), American University Criminal Courts Technical Assistance Project

³Actual 1975 rate derived by Court Management Project

reflect the same general distribution as the two previous categories and is distributed between them, the assigned counsel caseload would increase to 56.9 percent (the details of how this was derived can be found at Appendix D1). If, however, it is assumed that all of the "no record or self representation" cases involve appointments; then, by adding them to the assigned counsel cases, the indigency rate would increase to 70.9 percent.

There are three factors that may tend to alter these assumptions:

1. The docket check focused on the arraignment stage; some defendants may have begun this stage with retained counsel and subsequently have received appointed counsel.
2. Some felony proceedings, which are initiated in the municipal court, are reduced to misdemeanors at arraignment.
3. The indigency derivation was based upon cases filed and not individual defendants.

Interviews with the judges of the Court of Common Pleas and observations of the arraignment process indicate that the actual indigency rate is probably in excess of the figure in the Court Management Project calculations and may approach the 70 - 80 percent range in felony cases. Given these various rates, the applicable national indigency average of 64.5 percent is a reasonable estimate for projection purposes.⁴ If that 64.5% figure is used to replace the Court Management Project estimate of 51.7 percent, the number of appointments for indigent felony defendants in 1975 would be 4,373.

⁴The Other Face of Justice, National Defender Survey, National Legal Aid and Defender Association, 1973, p.83

Statistics developed in the Court of Common Pleas, in the first two months of 1976, indicate an increasing trend in the number of felony case filings. These data are displayed below at Table 4.2.

| Table 4.2. | <u>Felony Caseload Trend</u> | | |
|------------------|------------------------------|------|------------|
| | 1975 | 1976 | % Increase |
| January Filings | 465 | 544 | 17.0 |
| February Filings | 523 | 630 | 20.5 |
| TOTAL | 988 | 1174 | 18.8 |

This increase is probably the result of both general crime increases and the impact of recent changes in Ohio law, which treat a second misdemeanor charge as a felony. Since this increase may reflect a trend, it seems appropriate to project that 1976 will produce, perhaps up to a 20% increase in felony filings. An additional 10 percent increase in 1977 is also projected; this is merely a conservative estimate.

The combined effect of these projected growth rates for felony filings would result in an estimated increase from 6,779 (previously reported) felony cases filed in 1975 to 8,949 in 1977. (A detailed explanation of the derivation of these figures can be found at Appendix D2). For convenience, we have rounded off this projected figure to 9,000. Assuming a 70 percent felony indigency rate in 1977 it can be estimated that the resulting indigent felony caseload will be 6,300 cases in that year.

3. Juvenile Cases

The data derived in this category was limited to juvenile delinquency cases; excluded were dependency cases, adults accused of contributing to the delinquency of a minor, neglect and paternity actions. Additionally, interviews with juvenile court personnel indicated that CLAS attorneys are frequently appointed to serve as guardian ad litem. A breakdown of juvenile litigation, supplied by court personnel, can be found at Appendix D3.

While the appendicized data display purports to reflect the entire spectrum of juvenile litigation, conversations with court personnel and representatives of the CLAS office confirm that some data has been omitted in that display. Since the CLAS routinely receives almost all juvenile case appointments, it seems appropriate to display the caseload figures reported by that office relating to juvenile appointments; this data is displayed below in Table 4.3.

| Table 4.3: CLAS Juvenile Caseload Summary | | | | |
|-------------------------------------------|--------------|-----------------------|------------------|----------------------|
| Case Category | Net Caseload | Cases Carried Forward | New Cases Opened | Cases Transferred In |
| Paternity | 96 | 36 | 198 | 16 |
| Adoption/Guardian | 244 | 74 | 388 | 34 |
| Other Family | 447 | 287 | 1227 | 127 |
| School & Education | 14 | 8 | 30 | 4 |
| Juvenile: Neglect | 35 | 21 | 51 | 8 |
| Commitment | 58 | 50 | 105 | 21 |
| Delinquent | 496 | 204 | 814 | 110 |
| Dependency | 29 | 14 | 52 | 4 |
| Other Juvenile | 129 | 91 | 255 | 28 |
| Total | 1548 | 785 | 3120 | 352 |

In the juvenile area there have been general increases in the number of delinquency petitions and adult cases which involve children. While the growth in these categories has not been as dramatic in this area as in felony cases, nationwide trends indicate that this workload will also increase. There is also a definite potential for growth in the number of juvenile cases which will require appointed counsel.

In 1975, as reported in Table 4.1, only 814 or 8.3 percent of the juvenile caseload, involved appointed counsel. While the total number of juvenile petitions includes many cases where young persons are merely counseled and released, the indigency rate is currently so extraordinarily low that some increase must be certainly expected. While only four CLAS attorneys are presently available to provide representation in juvenile cases, assignments of volunteer private counsel take place when workloads become excessive.⁵

4. Misdemeanors

Under present law and practice in Ohio, the cities are responsible for all misdemeanor cases filed under city ordinance; the county is responsible for misdemeanors filed under state statutes. This allows cities to receive the revenue from fines and to avoid some incarceration costs and appointed counsel fees.

⁵While the juvenile indigency rate appears to be excessively low, thorough discussions with court personnel and representatives of the CLAS office substantiate the fact that this jurisdiction appears to be an example of the very low end of the indigency spectrum within the United States. Accordingly, it was decided to adhere to the 8.3 percent juvenile indigency projection.

If the number of municipal court appointments should increase substantially, a significantly larger portion of these cases will likely be filed under state statute. This is because the income derived from fines may then not equal the amount of dollars required to meet the rising cost of indigent representation. For this reason, it would be advisable for the county to closely monitor this area in the future to identify such trends early.

It is clear that a municipality will not be able to receive the 50 percent reimbursement of the cost of indigent representation from the state unless it contracts for defense services with either the established county legal aid system (CLAS) or establishes a new defender operation in accordance with the Ohio Defender Act. The responsibility for indigent misdemeanor representation should certainly be built into any new defender system. This function should be considered, for purposes of accounting classification, as a separate and distinct budget line item subject to reimbursement by the State and the municipalities serviced. Additionally, it should be noted that an Ohio House Joint Resolution (HJR-100) has been introduced which has the potential for changing the status of municipal courts. If the county assumes fiscal responsibility for these courts in the future, under this resolution they will also assume the burden of indigent representation.

Finally, while it was not possible to assess the accuracy of the 39 percent misdemeanor indigency rate, it does compare closely to the national standard mentioned above.⁶ Due to the dearth of data relating

⁶The Other Face of Justice, National Legal Aid and Defender Association, 1973 supra.

to indigency rates in misdemeanor cases, and complicated by the variable options in financial responsibility between the county and related municipalities, it is suggested that the 39 percent indigency rate be utilized for planning purposes.

5. Mental Health Cases

Research constraints required acceptance of the indigency figures reported by the Court Management Project, 345 indigent cases out of a total of 829, resulting in a 41.6 percent indigency rate. No dramatic increases are anticipated in this area.

C. Attorney Caseload Standards

Caseload standards, developed by the ABA, the National Advisory Commission and NLADA have been available in this country for some time. While standardized caseloads should be viewed with caution, they have proven useful in a variety of jurisdictions. The National Advisory Commission, a generally accepted standard, provides that one attorney equivalent should be assigned no more than: 150 felony cases, 400 misdemeanors, 200 juvenile cases or 200 mental commitments.⁷

These standard caseloads assume early representation, representation at all critical stages of proceedings and standard court rules and practices. Therefore, local practices and rules, and particularly, the geographical location of the various courts, should be considered when estimating the appropriate caseloads for a particular jurisdiction. In Cuyahoga County, where initial appearances and preliminary hearings may occur in an outlying municipality, and the arraignment and trial may occur in downtown Cleveland, it may be that a single attorney could not adequately handle 150 felony cases

⁷ National Advisory Commission on Criminal Justice Standards and Goals, 1973, Standard 13.12, p. 276

per year. Additionally, because of local procedure, such as motion practice and restrictive discovery practices, national standards may be too high as applied to Cuyahoga County. Eight attorneys, in the felony division of the Cleveland Legal Aid Society (CLAS), handled 741 cases in 1975, slightly less than 100 cases per year; the present director of the CLAS Criminal Division, believes that the average caseload per attorney could and should not be increased beyond that level.

D. Cost Projections

The Court Management Project projected the cost of assigned counsel for Cuyahoga County at \$4,966,400 with just under \$2 million going for felony cases (see Appendix D-4). For purposes of this report, line item budgets detailing the consultants' estimates of the projected cost for felony representation by a defender office and by a mixed defender/assigned counsel component (50% defender/50% assigned counsel) are presented. Limited caseload data in other offense categories precluded a more comprehensive approach. Totals displayed reflect both total costs and costs to the county after state reimbursement under the Public Defender Act. Details on the derivation of the data displayed can be found at Appendices D-5 and 6.

Cost estimates for budget purposes were derived from 1975 caseload data projections; larger caseload increases would significantly affect costs. In 1975, the county fee structure resulted in the disbursal of \$1,292,154 to assigned counsel for felony representation; computations using federal bar fees reveal \$1,944,060 would have been required. This differential, the conservative salary estimates for defender attorneys and the austere fees currently being paid to assigned counsel (a schedule appears at Appendix D-5), serve to underline the fact that the cost figures presented are most likely modest estimates.

BUDGET DETAIL

Sample Budget #1 -- Defender Office (Felonies Only)

A. Start-up Costs

| | |
|-----------------------------|------------------|
| <u>Equipment</u> | \$144,550 |
| 104 desks* | \$ 20,800 |
| 50 executive chairs | 6,250 |
| 12 desk chairs | 900 |
| 42 secretary chairs | 2,310 |
| 40 typewriters | 28,000 |
| 144 side chairs | 10,800 |
| 144 file caginetts | 18,720 |
| 60 bookcases | 3,000 |
| 50 dictaphones | 25,000 |
| law library** | 20,000 |
| 2 slide projectors | 260 |
| 2 screens | 110 |
| 12 photographic equipment | 6,720 |
| 12 tape recorders | 1,680 |
| <u>Recruitment</u> | \$ 25,000 |
| <u>TOTAL Start-up Costs</u> | <u>\$169,950</u> |

B. Operating Budget

| | |
|-----------------------------------------------|-------------|
| <u>Personnel</u> | \$1,543,300 |
| 1 Chief Defender | \$ 25,000 |
| 1 Deputy Defender | 22,000 |
| 2 Associate Defender | 40,000 |
| 44 Staff Attorneys @ \$18,000 | 792,000 |
| 1 Chief Investigator | 13,000 |
| 1 Assistant Investigator | 11,000 |
| 10 Staff Investigators @ \$10,000 | 100,000 |
| 1 Executive Secretary | 10,000 |
| 1 Administrative Secretary | 9,000 |
| 40 Secretaries @ \$8,000 | 320,000 |
| Fringe Benefits (15%) | 201,300 |
| <u>Travel, Transportation and Subsistence</u> | \$ 44,000 |
| Training conferences, seminars | \$ 22,000 |
| 8 Investigator trips/week | 22,000 |

* Includes two clinical law students

** Includes annual updating

Sample Budget #1 -- Defender Office, cont.

| | |
|-----------------------------------------|--------------------|
| <u>Supplies and Other Expenses</u> | \$ 189,200 |
| General office supplies | \$ 15,000 |
| Office space (150 sq. ft. x \$7/person) | 109,200 |
| Postage | 20,000 |
| Telephone | 25,000 |
| Duplicating | 20,000 |
| <u>Contract Services</u> | \$ 164,640 |
| <u>TOTAL Operating Budget</u> | <u>\$1,941,140</u> |
| <u>GRAND TOTAL</u> | <u>\$2,111,090</u> |
| County Share (50%) | \$1,055,545 |

BUDGET DETAIL

Sample Budget #2 -- A Mixed Defender/Assigned Counsel Component (50/50; Felonies Only)

A. Start-up Costs

| | |
|---------------------------------|----------------------|
| <u>Equipment**</u> | \$ 82,275 |
| 52 desks | \$ 10,400 |
| 25 executive chairs | 3,125 |
| 6 desk chairs* | 450 |
| 21 secretary chairs | 1,155 |
| 20 typewriters | 14,000 |
| 72 side chairs | 5,400 |
| 72 file cabinets | 9,360 |
| 30 bookcases | 1,500 |
| 25 dictaphones | 12,500 |
| law library | 20,000 |
| 1 slide projector | 130 |
| 1 screen | 55 |
| 6 photographic equipment | 3,360 |
| 6 tape recorders | 840 |
| <u>Recruitment</u> | \$ 13,000 |
| <u>TOTAL Start-up Costs</u> | <u>\$ 95,275</u> |

B. Operating Budget

| | |
|---------------------------------------------------|----------------|
| <u>Personnel</u> | \$ 777,400 |
| 1 Chief Defender | \$ 25,000 |
| 1 Deputy Defender | 22,000 |
| 22 Staff Attorneys @ \$18,000 | 396,000 |
| 1 Chief Investigator | 13,000 |
| 5 Staff Investigators @ \$10,000 | 50,000 |
| 1 Executive Secretary | 10,000 |
| 20 Secretaries @ \$8,000 | 160,000 |
| Fringe Benefits (15%) | 101,400 |
| <u>Travel, Transportation and Subsistence</u> | \$ 22,000 |
| Training conferences, seminars | \$ 11,000 |
| 4 Investigator trips/week | 11,000 |
| <u>Supplies and Other Operating Expenses</u> | \$ 102,100 |
| General office supplies | \$ 10,500 |
| Office space * | 54,600 |
| Postage | 10,500 |
| Telephone | 14,500 |
| Duplicating | 12,000 |

* Includes 1 law student

** Includes equipment for CAC program

Sample Budget #2 -- A Mixed Defender/Assigned Counsel Component, cont.

| | |
|------------------------------------------------|------------------------|
| <u>Contract Services*</u> | \$ 142,820 |
| <u>Professional Services</u> (Attorneys' fees) | \$1,087,500 |
| <u>TOTAL</u> Operating Budget | <u>\$2,131,820</u> |
| <u>GRAND TOTAL</u> | <u>\$2,227,095</u> |
| County Share (50%) | \$1,113,548 |

* Includes Assigned Counsel Administrator (\$25,000) and Assistant Administrator (\$18,000) and support staff, as well as investigative and expert witness fees in assigned counsel cases.

The budget computations were based upon two primary assumptions, in addition to the projections previously discussed. An average cost per case of \$250 to be paid to assigned counsel in felony cases was assumed; \$2000 per case was estimated for aggravated homicide cases. These figures are general estimates because the fee schedule that will ultimately be adopted for assigned counsel is unknown.

An important change in homicide representation is also posited. In the mixed system a single public defender would be appointed in most homicide cases except in aggravated homicides -- capital offenses where a public defender and a private attorney would be assigned. This somewhat reduces the cost of processing homicide cases by reducing the number of dual assignments, significantly decreasing the average cost per felony case.

The county bar association favors increased assigned counsel fees. In December, 1975, they proposed an increased fee ceiling in felony cases of \$1000 and higher fees in homicide cases up to a maximum of \$10,000. Even a limited move in this direction would enhance the comparative cost-benefits of the mixed system over the existing indigent defense program.

A second key assumption concerns the determination of personnel costs for administrators and staff attorneys for each system. Salaries of \$25,000 for a Chief Defender and \$30,000 for the County Public Defender and an average of \$18,000 per staff attorney are suggested figures which we believe reasonable considering comparable salaries in other cities. The Assigned Counsel Administrator requires \$25,000 and the Training Co-ordinator \$18,000. These figures could be revised, based upon the salary structure that is ultimately adopted, the number of support staff utilized and rental rates, if applicable.

In order to derive total costs and cost per case comparisons for the defender and mixed systems presented, it was necessary to add personnel costs of \$66,000 for a County Public Defender, the Training Co-ordinator and support

staff to the budget detail grand totals for each system. These additions bring the Defender system cost to \$2,177,090 and the Mixed system total to \$2,293,095 (see Table 4.4, below). In 1975, the county paid \$1,241,000 to assigned private counsel who appeared in 2,863 felony cases at an average cost of \$434 per case. When CLAS representation is included the unit cost drops to \$390. This compares with a \$347 cost per case utilizing the mixed system and \$330 a case in the straight defender system. Thus, a relatively small increase in unit cost permits extensive participation by the private bar in the representation of indigents in felony cases. A comparison of overall defender system and mixed system costs is displayed below at Table 4.4.

| TABLE 4.4 | | |
|-------------------------------------------------------------------------------------------------------------|------------------------|---------------------------------------------------|
| Comparative Costs of a Defender System and Mixed System for Indigent Defense Services (Felonies Only) | | |
| | <u>Defender System</u> | <u>Mixed Defender/Assigned Counsel System</u> |
| Total Cost | \$2,177,090 | \$2,293,095 |
| County Share (50%) | \$1,088,545 | \$1,146,547 |

Another method of evaluating the total cost of an indigent defense system is to compare it with that of the prosecutor's office. The 1976 budget for the Cuyahoga County Prosecutor's Office is \$1,953,950, not including expenditures for office space but covering salaries for professional staff and support services in the criminal division.

When comparing prosecutor and defender costs, a number of factors must be considered:

1. County prosecutors are permitted to engage in private practice; this means that they can be paid less than full-time public defenders.

2. The real costs of investigative services for the prosecutor's office are not listed in that unit's budget but are buried in the police department budget.
3. In many jurisdictions, assistant prosecutor's jobs are always in demand while the position of assistant public defender is less sought after. This results in more applicants for prosecutorial positions and a correspondingly lesser need for salary incentives to attract qualified candidates than in a defender organization.
4. A public defender's office has somewhat different personnel needs than a prosecutor's office -- intake specialists and social workers may be more appropriate in the former than in the latter.

The entry level salary for an attorney in the prosecutor's office is \$15,000 and most of those interviewed agreed that such a salary would be appropriate for a beginning assistant public defender. The maximum salary paid in the prosecutor's office is \$27,000 (the County Prosecutor, pursuant to statute, receives \$25,000). Almost all those interviewed felt that \$25,000 was an inadequate salary for a County Public Defender and that \$30,000 to \$35,000 would be more appropriate and indeed necessary to attract an experienced person for the job. A potential political problem might arise if the County Public Defender were paid more than the Prosecutor but the inadequacy of the prosecutor's salary should not prevent setting an adequate salary for the public defender. The remedy should be to increase the prosecutor's salary, not to decrease the Public Defender's.

We have not presented budgets for representation in juvenile, misdemeanor and mental health cases because of the limited availability of data in these areas, which precludes the possibility of developing meaningful caseload projections. When more precise data becomes available, the necessary staffing requirements should be determined.

E. Other Cost Considerations

Although direct costs of an assigned counsel and an organized defender system can be calculated and compared, there are at least two areas where a public defender system or a mixed system have the potential for reducing the overall cost to the county. Both of these areas have been exploited in the past by other jurisdictions.

First, a defender office or component is in a position to obtain and utilize volunteer assistance, such as law student clinical interns who can work under the direction of an attorney to research cases and even to represent clients, with supervision. Services can also be supplied by students in criminal justice or public administration programs. Special skills can be supplied by persons with social services background who can serve as counselors to assist clients and their families and who can develop suggested sentencing alternatives.

Second, a defender's unit has the ability to seek and use grant funds from a variety of other agencies. The present legal aid society has received such funds for representation it provides in the juvenile area (resulting in a county cost of only \$35 per case) and also for its services in the municipal courts. At the present time they have exhausted their eligibility for funding from the regional planning unit of the state planning agency.

However, the staff of that unit (the Criminal Justice Coordinating Council) indicates that a new public defender system would be eligible for funds for innovative projects. A potential exists, therefore, for obtaining some

funding through the federal government, at least for a few years, as well as through private foundations. These funding possibilities can be pursued by an established defender unit; private counsel systems, however, are effectively precluded from obtaining such resources.

It is possible receipt of federal and other grant funds by a county public defender may supply a double bonus to the county because the total cost of supplying defender services is subject to the 50 percent state reimbursement formula. As an example, such a project with a budget of \$100,000 which has received a grant of \$90,000 and a county contribution of \$10,000 could receive a state reimbursement of \$50,000. This would mean that a county investment of \$10,000 would result in the purchase of \$150,000 worth of defense services--not an unattractive arrangement.

It is evident that any estimations of the relative costs of supplying a system for indigent defense will be critically dependent upon a number of factors, as discussed above. Ultimately, the cost of any system can be described in terms of cost per case. If assigned counsel fees are restricted to \$200 per felony case, then an equivalently-priced public defender system would have to supply a trial attorney capable of processing 100 felony cases at an overhead cost of no more than \$20,000 (or 150 felony cases at an overhead cost of \$30,000).

If the cost per case for appointed counsel were \$250 (as has been proposed by a private association of lawyers to the Judges of the Court of Common Pleas), then a public defender with an overhead cost of \$25,000 per

attorney handling 100 cases would be cost competitive. An increase to \$300 per case would raise the public defender figure to \$30,000⁰ (\$45,000 if the caseload were established at 150 felony cases).

Any particular system that is proposed will fluctuate in overall cost depending on the assumptions made about specific costs in each area. It should be clear, however, that costs and quality are, to some extent, inter-dependent and the costs per case of either a defender's office or an assigned counsel system can be reduced but the likely effect is to reduce service quality. We believe that there is a point where the cost per case is so low that effective representation is impossible. Accordingly, we have made assumptions in our budget projections which we believe do not conflict with quality representation.

TEAM RATIONALE

Several basic considerations were explored by the study team during the planning meetings prior to the on-site visit. These included:

- the need to upgrade and improve the delivery of defense services to indigent persons in Cuyahoga County
- some uncertainty as to the receptiveness of the legal community to a mixed system approach to defense services
- an awareness that the limited financial resources available for defense services required designing an effective system which the County could implement.

In view of the above issues and the subsequent analysis performed during the course of this study, the team concluded that a mixed assigned counsel/defender system would be the best approach for improving the caliber of legal defense services in the County. The mixed system proposed would retain an assigned counsel component within the recommended defender operation. The desirability of such an approach was dictated by a number of factors which included the following:

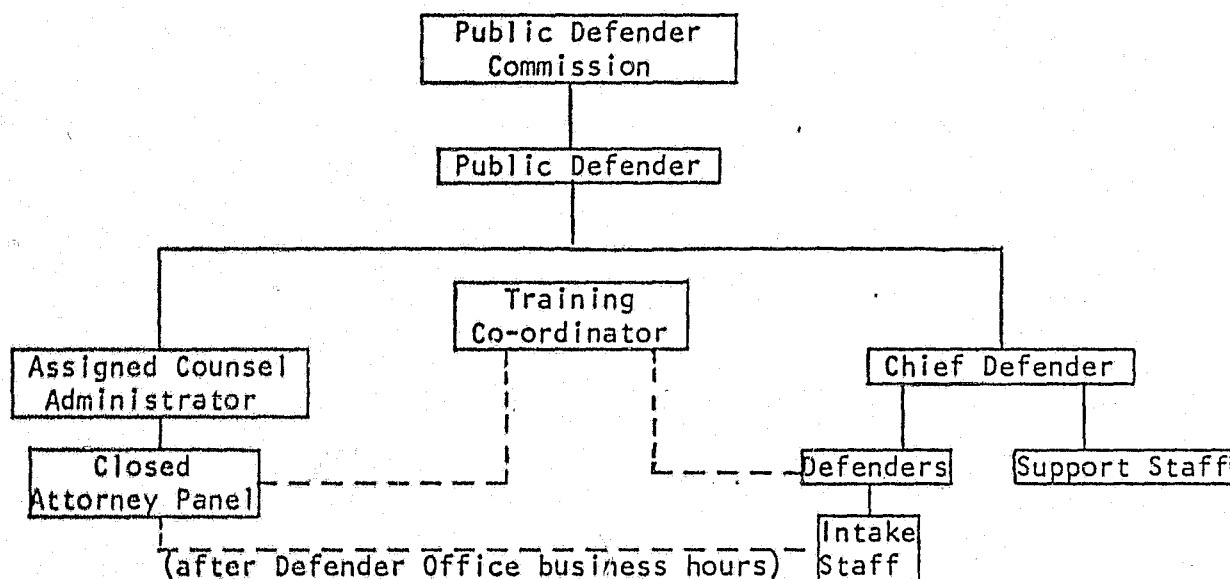
- the need to institute a system for providing indigent defense services which could accommodate the relatively large population and geographic dispersion of the County;
 - the need to retain the involvement of the private bar as a resource which could be called upon to provide services in conflict of interest situations, for example, and to provide insight into the needs of indigent defendants to legislative and other bodies;
 - the strong desire on the part of the private bar in Cuyahoga County to remain involved in the provision of indigent defense services.
-

During the course of the study, the team interviewed members of the judiciary, the private bar, court personnel, the legal aid staff, prosecutors and several prisoners. The results of these interviews and subsequent analysis indicated that the existing system for providing representation to indigents in the County is inadequate and that a mixed system for the delivery of defense services is clearly appropriate. A closed panel was favored for appointments of private counsel and a public defender component was deemed necessary to enhance the effectiveness of representation. The consultants then proceeded to design a mixed system which would be appropriate to the needs expressed and resources available in the jurisdiction.

While the team is aware that the resources initially indicated for the recommended system are less than required for an ideal program with optimal defense services, the proposed system is designed to substantially improve the current system at a cost level that is within the realistic reach of the County, given the rather generous state reimbursement formula. Only by a continuing assessment process can quality defense services be maintained following the implementation of the proposed mixed system.

A PROPOSED MIXED SYSTEM

An operational diagram of the mixed defender/assigned counsel system proposed for Cuyahoga County is displayed below:



This structure is recommended because of the nature of the court system and the tradition of appointed counsel in Cuyahoga County. The system contemplates a substantial assigned counsel component as well as a significant defender operation. To maintain uniformity of standards, coordination and control and to promote client understanding that the system is not judicially controlled, both the assigned counsel and the public defender components of the system are responsible to the Public Defender, appointed by the Public Defender Commission.

Closed Attorney Panel

The Assigned Counsel Administrator would be responsible for developing and maintaining a list of qualified attorneys who will be appointed in fifty percent of the cases.* Development and maintenance of the panel list would involve working with the local bar association and courts to arrive at

* For management and budgetary purposes, it is most important that the system developed be designed to ensure that a fixed percentage of cases will be assigned to the public defender component.

acceptable criteria for certification of attorneys, fee schedules and procedures for appointment.

Whatever the precise structure of the appointment system, it is important that the system ensure an even distribution of cases throughout the panel and minimize the likelihood that appointments will be made on the basis of political concerns rather than client needs.

Once the closed panel of attorneys is developed and the system of appointments is operational, the responsibility of the assigned counsel administrator would be to ensure that the panel continues to function and grow effectively, to promote coordination between appointed counsel and defenders, to monitor the performance of assigned counsel and to review bills submitted by attorneys. It is suggested that the ultimate fee schedule include maximum fees that can be approved by the assigned counsel administrator with any fee requests submitted which are above that amount requiring judicial approval.

Support Services

A support services fund proposed under this model would be controlled by the Assigned Counsel Administrator and would include funds sufficient to reimburse appointed counsel for necessary investigative services and expert witness fees. Under this system, assigned counsel could then retain investigators or experts of their choice; a requirement that judicial approval be obtained before payment is authorized for such support services might be considered.

Early Appointment of Counsel

Of prime importance to an effective defender system is the matter of early access to counsel. It is universally recognized that client contact substantially contemporaneous with the time of arrest is essential to effective representation. Investigations must begin before evidence and witnesses'

recollections are stale. Timely legal advice must be made available to potential defendants. For these specific reasons, the proposed system contemplates an intake staff to provide early contact with potential clients and to obtain relevant information as to eligibility, bail and investigative considerations.

The intake staff, which may be composed of law students and/or paralegals under the supervision of an attorney, should function on a 24-hour basis. During business hours, this can be accomplished within the defender office by maintaining intake staff on duty as they perform other tasks. After hours, personnel should be assigned to a designated station in or near the booking areas of the criminal justice center and police departments with significant activity.

The defender office, in addition to providing initial appearance representation in most cases, would be responsible for handling fifty percent of the indigent caseload. Defender attorneys, augmented by a permanent support staff of investigative, paralegal, social service and clerical personnel would have responsibility for individual clients from as soon as possible before or after initial police contact through completion of the case. The defender office should maintain a briefbank and legal information service, for both its own staff and the assigned counsel panel.

Training

The necessity for continuing legal education for criminal lawyers is well recognized in this field where statutory and case law are constantly being revised. Inhouse training for defender and panel attorneys should, therefore, be provided through a training coordinator who would also have primary responsibility for entry-level orientation and training. Such training should be mandatory for defenders and panel lawyers although separate programs at the

more advanced levels may be created. Other components of the criminal justice system should be invited to participate in such programs, where appropriate.

One of the chief responsibilities of the Cuyahoga County Public Defender would be to establish defender office personnel policies. All recruitment, selection, retention and termination of personnel, including the Chief Defender, should be covered by a merit system. It is strongly recommended that employment criteria for both the defender office and the assigned counsel panel include an affirmative action plan which reflects the racial, sexual and ethnic character of both the community and local bar membership.

Management

Management of a system expected to handle in excess of 6,000 felony cases during its first full year of operation is a matter of significant concern, particularly when financial resources are scarce. The possible use of electronic data processing and information retrieval equipment should be explored. Filing and case assignment systems must be developed. These are areas where professional assistance is available and the use of management expertise in the day-to-day operation of the system is strongly suggested. In circumstances where potential clients have little or no choice in the selection of their attorney, control over the quality of representation is of utmost importance. The services provided should be continuously monitored and regular outside evaluations should be contemplated.

Public understanding and support are essential for the effective functioning of a criminal defense system which requires significant expenditures of public funds for this important, yet rarely understood, public service. Therefore, the Public Defender should participate in programs to educate the community about the nature and operation of the criminal justice system.

~~This discussion has focused on providing defense services in felony~~

cases arising in Cuyahoga County. Under the Public Defender Act, the scope of defense services also includes juvenile, mental commitment, misdemeanor and postconviction proceedings. Defense delivery systems should be developed for these types of cases with the same concern that is applicable in felony cases. The study team did not develop a model for providing such representation primarily because the consultants had only a limited opportunity to examine defense services in these categories of cases.

VII

RECOMMENDATIONS

Based upon previous reports, the interviews conducted by the team, their observations and the consultants' expertise, a number of preliminary recommendations were formulated. Those initial recommendations have been reconsidered by the consultant team and are adopted with minor changes as a part of this final report. The study team recommends that:

1. INDIGENT DEFENSE SERVICES IN CUYAHOGA COUNTY SHOULD BE PROVIDED THROUGH A COORDINATED MIXED SYSTEM CONSISTING OF A PUBLIC DEFENDER COMPONENT AND A CLOSED PANEL OF THE PRIVATE BAR.
2. A COUNTY PUBLIC DEFENDER COMMISSION BE APPOINTED TO SELECT A PUBLIC DEFENDER WITH SUPERVISORY AUTHORITY OVER THE SYSTEM.
3. CASE ASSIGNMENTS SHOULD BE ALLOCATED EQUALLY BETWEEN THE DEFENDER OFFICE AND THE PRIVATE ATTORNEY PANEL.
4. DEFENDERS AND PANEL ATTORNEYS SHOULD HAVE ACCESS TO ORIENTATION, TRAINING AND CONTINUING LEGAL EDUCATION PROGRAMS PROVIDED THROUGH THE OFFICE OF THE PUBLIC DEFENDER.
5. REIMBURSEMENT FOR PANEL ATTORNEYS SHOULD BE BASED ON AN HOURLY RATE FOR ALL CASES WITHOUT REGARD TO WHETHER A CLIENT PLEADS GUILTY OR EXERCISES THE RIGHT TO TRIAL. AN ADVISORY COMMITTEE OF THE LOCAL BAR ASSOCIATIONS SHOULD RECOMMEND CRITERIA FOR APPROPRIATE FEES.
6. THE CURRENT PRACTICE OF ASSIGNING TWO ATTORNEYS TO HOMICIDE DEFENDANTS SHOULD BE LIMITED TO CASES IN WHICH THE DEATH PENALTY MAY BE IMPOSED. ONE OF THE TWO ATTORNEYS ASSIGNED IN CAPITAL CASES SHOULD BE A PUBLIC DEFENDER.
7. COUNSEL SHOULD BE PROVIDED BY THE COUNTY IN ALL FELONY, JUVENILE, MENTAL COMMITMENT, POST-CONVICTION PROCEEDINGS AND MISDEMEANOR CASES BROUGHT UNDER STATE STATUTE.
8. MISDEMEANOR CASES BROUGHT UNDER MUNICIPAL ORDINANCES SHOULD REMAIN THE FINANCIAL RESPONSIBILITY OF THE RESPECTIVE MUNICIPALITIES EXCEPT THAT THEY SHOULD CONTRACT WITH THE COUNTY FOR INDIGENT DEFENSE SERVICES THROUGH THE PUBLIC DEFENDER OFFICE.
9. APPELLATE AND OTHER POST-CONVICTION REPRESENTATION SHOULD BE COORDINATED WITH THE STATE PUBLIC DEFENDER OFFICE.
10. TO INSURE QUALITY REPRESENTATION, COUNSEL SHOULD BE AVAILABLE PRIOR TO, AT THE TIME OF OR IMMEDIATELY FOLLOWING A SUSPECT'S ARREST.

11. THE COUNTY PUBLIC DEFENDER SHOULD ADOPT AND ENCOURAGE THE USE OF PROFESSIONAL MANAGEMENT PERSONNEL AND/OR TECHNIQUES TO ASSIST IN THE DAY-TO-DAY OPERATION OF THE MIXED INDIGENT DEFENSE SYSTEM, TO INSURE EFFECTIVE USE OF LIMITED MANPOWER RESOURCES.

12. DEFENSE SERVICES PROVIDED THROUGH THE COUNTY PUBLIC DEFENDER SHOULD BE CONTINUOUSLY MONITORED FOR PERFORMANCE QUALITY; THE PUBLIC DEFENDER COMMISSION SHOULD ARRANGE FOR REGULAR OUTSIDE EVALUATIONS OF THE ENTIRE INDIGENT DEFENSE SYSTEM.

13. THE COUNTY PUBLIC DEFENDER SHOULD ACTIVELY SEEK TO EDUCATE THE COMMUNITY IN MATTERS RELATING TO THE CRIMINAL JUSTICE SYSTEM AND PROMOTE PUBLIC SUPPORT FOR QUALITY LEGAL REPRESENTATION.

14. A MECHANISM SHOULD BE DEVELOPED FOR INSURING THAT THE PRIVATE BAR PANEL BE REPRESENTATIVE OF ALL AGE, SEX, RACIAL AND ECONOMIC GROUPS WITHIN THE VARIOUS LOCAL BAR ASSOCIATIONS.

15. SCRUPULOUS ATTENTION SHOULD BE PAID TO INSURING THAT THE PUBLIC DEFENDER COMMISSIONERS, THE COUNTY PUBLIC DEFENDER AND THEIR STAFFS BE SELECTED WITHOUT REGARD TO PATRONAGE OR OTHER POLITICAL CONSIDERATIONS.

APPENDIX A

NCDM Consultant Resumes

MICHAEL L. ALTMAN

Home
Address: 312 East Concorda Drive
Tempe, Arizona 85282
(602) 966-3055

Business
Address: Arizona State University
Tempe, Arizona 85381

Education:

Harvard Law School
Cambridge, Mass.

LL.M. 1968

Boston College Law School
Newton, Mass.

LL.B. 1966
Law Review Coif
Dean's List

Bowdoin College
Brunswick, Maine

A.B., Political Science, 1963
Dean's List

Work Experience:

Current:

Professor of Law
Arizona State University
Chairman of Clinical Committee

1975 to present

Previous:

Associate Professor
Arizona State University

Senior Attorney, Boston Legal Assistance Project

Assistant Attorney General, Massachusetts

Law Clerk, U.S. District Court (S.D. N.Y.)

Consultancy:

1975: National Advisory Commission on Criminal Justice Standards and Goals

1973: National Juvenile Justice Standards Project

1975: White House Domestic Council, Committee on Privacy

1974: National Legal Services Training Program

1970-72: O.E.O.

1973-74: Committee for Criminal Justice, Boston, Massachusetts

1972: Project on Police Rule Making

Books, Articles:

Altman, "Watching Children," 10 Trial No. 3, p. 19 (1974)

Altman, "Juvenile Records and Information Systems: A Comparative Analysis"
24 Juvenile Justice, No. 4, p. 2 (1974)

Altman, Special Education, School Psychologists and the Law (1974)

JOHN, David Conway III

ADDRESS: 1945 Beverly Place
Berkeley, California 94706

PHONE: (415) 527-0836

DATE OF BIRTH: January 15, 1946
PLACE OF BIRTH: Welch, West Virginia
MARITAL STATUS: Single
HEALTH: Excellent

EDUCATION:

9/63 - 6/67 Yale College; New Haven, Connecticut
B.A. with honors in Political Science & Economics awarded June 1967

9/67 - 6/68 Yale Law School; New Haven, Connecticut

9/69 - 6/71 Harvard Law School; Cambridge, Massachusetts
LL.B. from Harvard Law School awarded June 1971

EMPLOYMENT:

1/74 - present Office of the Public Defender
Contra Costa County
Richmond, California
Deputy Public Defender

6/72 - 12/74 National Housing and Economic
Development Law Project
Earl Warren Legal Institute
University of California
Berkeley, California
Project Attorney - Corporate and
securities law for OEO-funded
community development corporations
and legal services offices involved
community-based economic developmen

4/70 - 6/71 Circle, Inc.
Boston, Massachusetts
Staff Associate - Technical assistance
research and administration for an
funded community development corpor

9/69 - 4/70 Barrs, Reitzel & Associates
Cambridge, Massachusetts
Research Associate - Social science
research.

3/69 - 9/69 Center for Policy Analysis
National League of Cities/
U.S. Conference of Mayors
Washington, D.C.
Staff Associate - Project Director of
HUD/DOF-funded transportation project
administered by NLC/USCM; urban and
legislative research.

11/68 - 3/69 Transcentury Corporation
Washington, D.C.
Field Research Supervisor.

6/68 - 11/68 Office of Inspection
Office of Economic Opportunity
Washington, D.C.
Inspector.

6/67 - 9/67 Brandeis University
Waltham, Massachusetts
Research Assistant, Florence Heller
School of Social Work.

6/66 - 9/66 Yale Summer High School
New Haven, Connecticut
Counselor-Teacher.

6/65 - 9/65 Arizona State Employment
Service, Tucson, Arizona
Employment Interviewer.

MEMBERSHIPS, FELLOWSHIPS AND AWARDS:

9/71 - 5/72

Knox Fellowship from Harvard University

for research and study in United Kingdom

Woodrow Wilson Fellowship in Political Science, 1967 (Declined).

Robert Lesser Award for Graduate Study, 1967.

Urban America/Ford Fellowship for Tour of European New Towns, 1969.

Member of State Bar of California.

Member of Richmond Bar Association

Member of Board of Directors, Berkeley Neighborhood Legal Services

Member of Charles Houston Law Club

PUBLICATIONS:

"State and Local Fiscal Assistance Act of 1972: General Revenue Sharing,"

6 Clearinghouse Review 529 (January 1973).

"General Revenue Sharing: Some New Developments," 7 Clearinghouse Review 85 (June 1973).

Coleman, D. and Madway, D., "Introduction to Community-Based Economic Development," Chapter I, pp. 1-23; and

Coleman, D. and Smith, M., "Securities Law Considerations," Chapter IV, pp. 439-587, in A Lawyer's Manual for Community-Based Economic Development.

ALAN S. RAPOPORT

Home 1300 Army Navy Drive, Apt. 1006
Address: Arlington, Virginia 22022
(703) 920-3160

Business National Legal Aid & Defender Association
Address: 2100 M Street, N.W., Suite 601
Washington, D.C. 20037
(202) 452-0620

Education:

Washington University School of Law, St. Louis, Missouri: J.D. June, 1968

Yale University, New Haven, Connecticut: B.A. June 1966

Work Experience:

Current:

Deputy Director, Defender Evaluation Project--June 1975 to present.

Operating under an LEAA one year grant, the Defender Evaluation Project has created an evaluation design based on sound social science principles of validity and reliability for the assessment of defender offices on a nation-wide basis. Three test evaluations have just been completed and the design, as well as a self-evaluation manual for defender offices, are now undergoing final revision. While my duties with the project have included extensive writing and editing of evaluation research and office management materials, as well as administration of the three test evaluations, my primary responsibility has dealt with providing the substantive legal foundation for the evaluation design.

Previous:

Chief Defender, Kent County Legal Aid and Defender Association--Sept. 1971 to May 1975

Directed a staff of four attorneys and six support personnel in providing legal representation for indigent persons accused of felonies.

Staff Attorney, Muskegon-Oceana Legal Aid Bureau--June 1969 to September 1971

Provided representation to indigent persons in civil and minor criminal cases.

Coordinator, Block Partnership Program, St. Louis, Missouri--Summer, 1968

Organized groups of inner city residents to establish needs and priorities. Coordinated these "Block" groups with "resource" groups from the suburbs to provide technical assistance.

Professional Associations

State Bar of Michigan

Member - Criminal Law Section Council

Member, Chairman Elect - Committee on Defender Systems and Services

Professional Associations (cont.)

Grand Rapids Bar Association
American Bar Association
American Judicature Society
National Legal Aid and Defender Association

Volunteer Activities:

Chairman, Ex-Offenders Contact Center Board of Directors
Advisor, Citizens Committee for Criminal Justice
Coordinator, Faculty member and participant in various professional conferences organized by the Criminal Law Section and Michigan Prosecuting Attorney's Association.

Personal:

Date of Birth: December 17, 1942

Marital Status: Divorced, no children

References will be supplied on request.

RESUME

PETER HAINES

Address Arizona State University or 6402 East Exeter Blvd.
 Center of Criminal Justice Scottsdale, AZ 85251
 Tempe, AZ 85281 (602) 946-3915
 (602) 965-7682

PROFESSIONAL EXPERIENCE

1975 (Aug.) - present

Associate Professor

Center of Criminal Justice, Arizona State University, Tempe. Teach Court Administration, Research, Planning and Organization, and Management. Consult on part-time basis with National Court and Criminal Justice Agencies. Head National Task-Force on Court Funding. Serve on usual department committees.

1974 (Jan.) - 1975 (Aug.)

Self-Employed Consultant and Lecturer on Court Administration

Consulted for the Law Enforcement Assistance Administration (LEAA), American University Criminal Courts Technical Assistance project, The American Judicature Society, The National Center for State Courts, RAND Corporation and The Institute for Court Management on National Court Administration and related issues. Consulted on a number of other state projects. Served as a visiting faculty member at the National College for the State Judiciary, The Institute for Court Management and Arizona State University.

1971 (Aug.) - 1974 (July)

Founding Director of Judicial Administration

University of Southern California, Los Angeles. Guided the establishment of this unique program for educating present and aspiring court administrators from initial concept to a fully institutionalized, self-sufficient graduate level program. Had complete administrative responsibility for financing (grants and internal budgets), staff (selection and direction), program design, faculty selection and student selection and placement. Represented the program within the university and with national, state and local justice organizations.

Responsible for the research, design, construction and presentation of a series of novel gaming-simulation exercises for the training of court administrators. Created and presented new graduate level courses in court administration and, as a lecturer in law, taught them in the program and elsewhere.

1970 (Sept.) - 1971 (June)

Research Associate

University of Denver Law Center in Institute for Court Management. Worked in Wayne County Circuit Court, Detroit, Michigan assessing caseload management procedures. Carried out one of the first calendar management studies performed by the Institute.

1966 - 1970

Research Staff

Shell Development Company, Emeryville, California. A problem solver in a variety of different areas ranging from basic research to commercial development. My discoveries in this project environment led to numerous patents (U.S. and foreign).

1964 - 1966

Research Associate

Yale University, New Haven, Connecticut. Designed and carried out research projects while assisting doctoral students.

EDUCATION

Ph.D., University of Toronto, Canada - 1964

Honors: National Research Council of Canada Fellowship,
1963 - 1964

M.A., University of Toronto, Canada - 1962

B.Sc., University of Southampton, England - 1961

Honors: Honors Degree Designation

County Government Scholarships, 1959 - 1961

CONSULTING EXPERIENCE - 1971-present

Have consulted for a wide variety of national, state and local organizations.

Law Enforcement Assistance Administration (LEAA) - Washington, D. C.

Office of the Administrator

Served on the Select-Study team which examined LEAA support of state courts and headed a comprehensive special task force on national court funding.

Office of National Priority Programs

Served on the National Advisory Task Force on the citizens initiative. Assisted in the design and imitation of the model long-term technical assistance project.

Office of Planning and Management

Advised on design of an evaluation training program.

American University Law Center - Washington, D. C.

Assisted the Criminal Courts Technical Assistance Project. This project participated in the court funding work described above which involved specific work in all the states in the Continental United States. In addition, I worked in Florida (simulation) Oregon (police witness scheduling) and Kentucky (constitutional change).

American Judicature Society - Chicago, Illinois

Consultant and contributing author to the following studies:

- (i) The funding of Massachusetts Courts
- (ii) A plan for Indiana Courts
- (iii) A Criminal Case Management System for Chester County, Court of Common Pleas - Pennsylvania

Also, chief reporter at a meeting of disability and removal commission members.

National Center for State Courts - Denver, Colorado

An evaluator of six judicial training programs.

- (i) The Institute for Court Management
- (ii) National College of the State Judiciary
- (iii) The American Academy of Judicial Education

- (iv) The National College of Juvenile Justice
- (v) The Institute of Judicial Administration
- (vi) Louisiana State University - Institute of Continuing Legal Education - Appellate Judges Seminar

National College for the State Judiciary - Reno, Nevada

Assisted in organizational development (OD) programs in Michigan, Alabama, and Georgia. Served as faculty member for court administration program and as panelist for conference on courts and computers.

Institute for Court Management - Denver, Colorado

I have made presentations in the Court Executive Development Program and other programs, every year since leaving the staff in 1972. Have also guided court studies by interns in Texas, Iowa, California and Nebraska.

Other National Planning and Evaluation Efforts

- (i) RAND Corporation - Santa Monica, California
Consultant on development of performance measures for criminal proceedings.
- (ii) National Legal Aid and Defenders Association (NLADA) - Washington, D. C.
Advisory board member for defender evaluation project.
- (iii) American Institutes for Research - Washington, D. C.
Consulted on National Manpower Survey.
- (iv) Hudson County Superior Court - New Jersey
Simulation design.
- (v) L. A. Regional Justice Planning Board
Court planning group design.

Education and Training Programs

- (i) Cleveland Court Management Project
Evaluational panel member for development of a court support personnel training program.
- (ii) Eastern Kentucky University, Richmond
Designed complete court administration program for this institution.
- (iii) Wisconsin Supreme Court
Judicial Education Program - Madison - designed and presented programs for court clerks.

Designed series of training programs for court personnel.

- (v) Skyline College - San Bruno, California
Evaluated court support personnel, videotaped training program.

Recent Presentations

1. American Bar Association (ABA) Annual Meeting -
Montreal, Canada - August 1975
2. National Association of Trial Court Administrators
(NATCA) - Annual Meeting - Honolulu, Hawaii 1975
3. Indiana Judicial Center - Court Administrators Program -
August 1975

AFFILIATIONS

American Bar Association - Judicial Associate
National Association of Trial Court Administrators
Institute of Judicial Administration

PUBLICATIONS AND REPORTS - Authored or Co-authored the following:

1. Task Force Report on LEAA Court Funding - 1972 - 1975.
In preparation - 1976.
2. Report of the Special Study Team on LEAA Support of State Courts. A report of the American University Criminal Courts Technical Assistance Project - February 1975.
3. Performance Measures for Criminal Proceedings. A report of the preliminary and practitioner interview phase - RAND Corporation - 1975.
4. Design of Masters level degree program in Court Administration course outlines and readings - Eastern Kentucky University, Richmond - 1975.
5. Court Improvement Training Package (1974). An evaluation of six judicial training organizations - National Center for State Courts and LEAA - 1975.
6. Evaluations of Skyline College videotape training program for court support personnel - Office of Criminal Justice Planning, Sacramento, California - 1974 and 1975.
7. A Criminal Case Processing Exercise and Manual - University of Southern California - 1974.
8. A Civil Case Processing Exercise and Manual - University of Southern California - 1974.
9. Court Policies Exercise and Manual - University of Southern California - 1973.
10. Recommendations for Reducing Court Related Expenditures on Police Overtime in Multnomah County, Oregon (Portland) - A report of the American University Technical Assistance project - October 1974.
11. Development of a Graduate Degree Program in Judicial Administration. Report to the California Office of Criminal Justice Planning - 1974.
12. COURTEX. A series of Exercises for Training Court and other Justice Administrators. Report to the California Office of Criminal Justice Planning, 1974.
13. Development of a gaming simulation of felony case processing in the twentieth Judicial Circuit, Ft. Meyers, Florida - A report of the American University, Criminal Courts Technical Assistance Project, 1974.

14. "Development of a Graduate Degree Program in Judicial Administration." Report to the California Council on Criminal Justice, 1971.
15. "Design and Construction of the First Judicial Administration Training Gaming - Simulation " Report to the California Council on Criminal Justice, 1972.
16. "Analysis of Civil Calendaring Procedures in Wayne County Circuit Court." Institute for Court Management, 1971.
17. Descriptive Analysis of Criminal Procedures in Wayne County Circuit Court, Detroit, Michigan. Institute for Court Management - 1970.

Also contributed substantially to the writing of the following reports:

18. Financing Massachusetts Courts - American Judicature Society - 1974.
19. A Plan for Indiana Courts - American Judicature Society - 1976.
20. A Criminal Case Management System for Chester County, Pennsylvania Court of Common Pleas - American Judicature Society - 1976.

In addition, I have published nine (9) articles in scientific journals, two (2) theses, four (4) U.S. patents and more than fifty (50) foreign patents. I have eight (8) reports of confidential studies performed while employed by Shell Development Company (1966 - 1970).

GUSTAV GOLDBERGER
1401 Highland Drive
Silver Spring, Md. 20910
(301) 585-7177

2/8/76

EDUCATIONAL DATA

Elementary Schools: Public Schools

Copenhagen, Denmark 1940-43
Gothenburg, Sweden 1943-45
Montreal, Canada 1946-47

Secondary Schools: Matriculated High School
McGill University - Montreal, Canada

Attended Private School - Montreal, Canada

Colleges: McGill University
Montreal, Canada 1951-53

Sir George Williams University
Montreal, Canada
B.A. 1957

Post Graduate: Rutgers - The State University
School of Law
New Jersey 1957-61
J.D. Degree

Northwestern University
School of Law
Short Course for Prosecutors 1965

PROFESSIONAL EXPERIENCE

City of Akron: Assistant Law Director 1963-64

City of Akron: Chief Prosecutor 1964-66

Summit County Ohio: Assistant County Prosecutor 1966-67

Private Practice: Erickson, Sheppard, Goldberger & Wheeler
Akron, Ohio 1966-67

Goldberger, Thomasson, Lane & Rosenblithe
Akron, Ohio 1970-75

Project Director: O.E.O. Legal Services
Summit County, Ohio
September 1967-70

Deputy Director: Summit County Public Defender Office
Akron, Ohio 1974-75

2/8/76

Director: National Center for Defense Management
National Legal Aid and Defender
Association
Washington, D.C. 1975 to present

MEMBERSHIP

American Bar Association
Ohio Bar Association
Akron Bar Association
A.T.L.A.
Judicature Society
District of Columbia Bar Association

ADMITTED TO PRACTICE

| | |
|----------------------------------------------------|-----------------|
| Ohio Bar | 1963 |
| U.S. District Court (Northern District of Ohio) | 1964 |
| U.S. Supreme Court | 1968 |
| D.C. Court of Appeals | October 8, 1975 |

AWARD

Public Service Award: Summit County Prosecutor 1968

PUBLICATIONS

Legal Aid Divorces - A Practical Approach
American University Law Review
Volume 20, Number 1; August 1970

Book Review
Insanity Defense, by Richard Arens
University of Akron Law Review
Volume 7, Number 3; Spring 1974

ASSIGNMENTS

Reactor: National Colloquium on the Future of Defender
Services, January 1976

Study Team
Captain:

- El Paso, Texas Defense Development Study
- Iowa Defense Development Study
- Evaluation of Omaha Alternative to Incarceration Project
- State of Oklahoma Indigent Defense Feasibility Study
- Evaluation, Public Defender Office, New Hampshire

APPENDIX B
Interview Schedule

NCDM CONSULTANT TEAM

May 23-28, 1976

SUNDAY - 5/23

6 p.m. - Meeting - Consultant Team and Key Actors
Lakeside Holiday Inn, 1111 Lakeside Avenue

MONDAY - 5/24

a.m.

9:30 - Alvin I. Krenzler, Chief Justice
Court of Appeals
Cuyahoga County Court House
1 Lakeside Avenue
621-5800
ext. 568

10:00 - Jack G. Day, Judge
Court of Appeals
Cuyahoga County Court House
1 Lakeside Avenue
621-5800
ext. 582

Ervin Wierzbinski, Court Administrator
Juvenile Court
2163 E. 22nd Street
771-8400
ext. 401

Noon - Burt W. Griffin, Judge
Court of Common Pleas
Mott Building Court Rooms
220 St. Clair Avenue, N.W. 2nd Floor
621-5800
ext. 245

(Plans to have sandwiches brought in)

p.m.

1:30 - Lionel Jones/Roger Hurley
Legal Aid Society of Cleveland
2108 Payne Avenue
861-6242
(Interview expected to last to about 4:30 p.m.)

2:00 - John V. Corrigan, Judge
Court of Appeals
Cuyahoga County Court House
1 Lakeside Avenue
621-5800
ext. 575

Monday - 5/24 (Cont.)

p.m.

- 3:00 - Bernard Friedman, Judge
Court of Common Pleas
Cuyahoga County Court House
1 Lakeside Avenue 621-5800
ext. 208
- 3:30 - Harold J. Craig, Judge
Municipal Court
Lakewood City Hall
12650 Detroit Avenue
Lakewood 226-2460
- 4:00 - Alice K. Henry
Cleveland Women's Lawyers Association
5767 Mayfield Road
Mayfield Heights 461-0010
- 6:00 - Meeting, Consultant Team

TUESDAY - 5/25

a.m.

- 9:00 - John Petruska, Mayor
Parma City Hall
6611 Ridge Road
Parma 886-2326
- 9:30 - Earle C. Horton
John M. Harlan Law Club
1276 W. 3rd Street - Suite 616 696-7170
- William Yarmesch, Clerk
Court of Common Pleas
Criminal Courts Building
1560 E. 21st Street 771-0660
- 10:00 - Gerald E. Furest, Clerk of Courts
Cuyahoga County Court House
1 Lakeside Avenue 621-5800
ext. 411
- Edward F. Katalinas, Judge/ and
John J. O'Toole, Court Administrator
Cleveland Municipal Court
601 Lakeside Avenue 621-6345

Tuesday - 5/25 (Cont.)

a.m.

10:00 - Gerald Messerman, Attorney 696-6122
1100 Investment Plaza
1801 E. 9th Street

11:00 - Almeta Johnson, Police Prosecutor 771-5154
Police Station
2001 Payne Avenue

p.m.

1:00 - David Barnhizer, Legal Clinic- (Cle. St. Univ.) 687-2525
2300 Chester Avenue - Room 2044

1:30 - Inmate Interviews (5) 771-0660
Cuyahoga County Jail 241-2155
1560 E. 21st Street

2:00 - John J. Toner, Judge 771-8400
Juvenile Court
2163 E. 22nd Street

3:30 - Wally Slump and Wayne Moster 241-2155
County Jail Social Services
Cuyahoga County Jail
1560 E. 21st Street

(must call to give name of actual interviewer prior
to interview)

4:00 - Gerald S. Gold 696-6122
Greater Cleveland Bar Association
Investment Plaza
1801 E. 9th Street

6:00 - Meeting - NCDM Consultant Team

WEDNESDAY - 5/26

a.m.

9:30 - Ed Kollin, Courts Planner 696-2840
Criminal Justice Coordinating Committee
112 Hamilton Avenue - 6th Floor

10:30 - John H. Carson, Jr. 795-1515
Criminal Courts Coordinating Committee
1949 E. 105th Street

Wednesday - 5/26

a.m.

11:00 - John J. McMahon, Judge
Court of Common Pleas
Cuyahoga County Court House
1 Lakeside Avenue 621-5800

p.m

1:30 - Lindsey Cowen, Dean and
Lou Katz, Director, Law Clinic
Case Western Reserve University
School of Law
11075 East Blvd. 368-3280

2:15 - Manuel J. Rocker, Judge
Shaker Heights Municipal Court
3355 Lee Road
Shaker Heights 921-4930

3:00 - James M. DeVinne, Judge
East Cleveland Municipal Court
East Cleveland City Hall
14340 Euclid Avenue
East Cleveland 681-5020

4:00 - George J. McMonagle, Judge
Court of Common Pleas
Cuyahoga County Court House
1 Lakeside Avenue 621-5800

6:00 - Meeting - NCDM Consultant Team

THURSDAY - 5/27

Sub-Committee Meetings

All sub-committee meetings will be held at:

Court Management Project Offices
200 Mall Building
118 St. Clair Avenue, N.E. 694-3781

a.m.

9:30 - Sub-committee on Approach

10:30 - Sub-committee on Staffing/Budget

Thursday - 5/27 (Cont.)

p.m.

- 1:30 - Sub-committee on Legal/Policy Issues
- 2:30 - Sub-committee on Standards
- 6:00 - Meeting - NCDM Consultant Team

FRIDAY - 5/28

a.m.

- 9:30 - Leo M. Spellacy, Chief Justice
Court of Common Pleas
Cuyahoga County Court House
1 Lakeside Avenue
621-5800
ext. 203
- Robert M. Lawther, Mayor
City of Lakewood
12650 Detroit Avenue
Lakewood
521-7580
- John Donnelly (Bailiff for Francis J. Talty,
Judge)
Probate Court
Cuyahoga County Court House
1 Lakeside Avenue
621-5800

APPENDIX C

The Provision of Indigent Criminal Defense Services in Cleveland:

Summary of Study
Prepared By
Brent L. Henry
September 1975

The Provision of Indigent Criminal Defense Services in Cleveland

A Summary

I. Statement of the Problem

The Sixth Amendment to the Constitution guarantees every person charged with a criminal offense the right to be represented by an attorney.

The attempts by the Supreme Court and various federal courts to refine the concept of "right to counsel" have placed an ever-increasing burden upon state and local jurisdictions to provide free counsel to persons who are unable to afford a lawyer. The constitutional responsibility of the courts has been expanded from the appointment of counsel for accused felons at trial¹ to the provision of assigned counsel at all critical stages of the judicial proceedings within the criminal process.² Recent decisions have also determined that the quality of court-appointed representation must meet certain minimum standards in order to insure the provision of "effective assistance of counsel."³

The Supreme Court case of Argersinger v. Hamlin has significantly broadened the obligation to appoint counsel so that it now applies to

1 Gideon v. Wainwright, 372 U.S. 335 (1963).

2 See Escobedo v. Illinois, 378 U.S. 478 (1964); United States v. Wade, 388 U.S. 218 (1967); Coleman v. Alabama, 399 U.S. 1 (1970).

3 See Moore v. United States, 432 F.2d 730, 737 (3d Cir. 1970); United States v. DeCoster, 487 F.2d 1197, 1202 (D.C.Cir. 1973).

criminal defendants charged with any offense which results in confinement.⁴

However, the Court in Argersinger refused to dictate a method by which states should comply with the decision. As a result, a debate has arisen in recent years as to whether the state response should be the adoption of an "imprisonment in fact" standard (where the decision to appoint counsel rests upon a predetermination by the judge whether to impose incarceration upon a finding of guilt), or an "imprisonment in law" standard (where counsel is automatically appointed for all indigents charged with a crime for which imprisonment is a possible punishment).

The imprisonment in fact standard has been criticized as containing potential constitutional problems as well as the possibility of judicial prejudice. Therefore, most legal commentators have advocated the adoption of an imprisonment in law standard.

While requiring the appointment of counsel for indigent defendants charged with serious offenses (crimes which carry a penalty of more than six months' imprisonment), the Ohio Rules of Criminal Procedure have apparently left the choice of standard up to local courts for those indigent defendants charged with petty offenses (crimes which carry a penalty of less than six months' imprisonment). The Rules state only that defendants in the latter category may not be incarcerated unless they have been given the opportunity

⁴ Argersinger v. Hamlin, 407 U.S. 25, 37 (1972).

to be represented by counsel.⁵ This has resulted in the wide-spread application of an imprisonment in fact standard at the municipal court level in Cuyahoga County.

Although the Ohio statutes and Rules of Criminal Procedure allow for the right to counsel at a wide range of "critical" stages in the criminal process, the bulk of indigent representation in Cuyahoga County occurs in the common pleas and municipal courts. Due to the lack of legislative authority for municipal courts to reimburse appointed counsel, most of the indigent defendants appearing in the suburban municipal courts are represented by volunteer attorneys. Unfortunately, many judges attempt to keep this volume to a minimum by accepting guilty pleas prior to informing defendants of their right to counsel or by encouraging defendants to waive that right. The tremendous size of the criminal docket in Cleveland Municipal Court also results in numbers of indigents never being informed of their right to counsel.

Only one suburban court, East Cleveland, has agreed to join the Cleveland Municipal Court in participating in the Misdemeanor Defense Program of the Cleveland Legal Aid Society ("CLAS"). Under this arrangement, the Misdemeanor Section of the CLAS Criminal Division provides attorneys to represent virtually all of the defendants determined to be indigent in these two courts. The federal government has agreed to fund a large share of the CLAS costs, supplemented by contributions from each of the participating municipalities.

⁵ O. Crim. R. 44(B).

Representation at the Common Pleas Court level is provided by both private counsel and attorneys from the Felony Section of the CLAS Criminal Division. Although it is unlikely that indigent defendants will appear in Common Pleas Court without the assistance of counsel, there is evidence which suggests that indigent defendants do not always receive effective assistance of counsel. This results largely from the combination of the haphazard method of assigning private counsel and the fee reimbursement schedule which creates financial pressure on private attorneys to plead their clients guilty.

The County would clearly like to reduce its present level of funding for indigent defense in the Common Pleas Court (which now approaches almost \$1 million per year). Although CLAS has proven that it can handle its cases more efficiently than private attorneys, at present it only handles one-quarter of the indigent defense caseload of that court.

II. National Developments

An examination of various nationwide studies reveals that Cuyahoga County is one of the few major metropolitan counties in the country which still relies heavily upon an assigned counsel system of indigent criminal defense. Numerous articles and local studies in the area of indigent criminal defense services have endorsed the development of public defender offices with full-time salaried attorneys as a means of efficiently and effectively meeting the potential volume of indigent cases which would result from an imprisonment in law interpretation of the Argersinger decision.

Various national organizations and committees have endorsed the development of uniform indigency standards as a method of insuring that courts in a given jurisdiction are making these services available on an equal basis. Standards of conduct for defense attorneys have also been promulgated which may serve as appropriate measures of effectiveness if local jurisdictions choose to employ them.

The failure to follow any of these trends or to adopt any of the standards which have emerged may be viewed as an indication of how much must be done to improve the quality of indigent criminal defense services in Cuyahoga County.

III. Specific Issues Selected

This report has examined in detail several problem areas which are directly related to the improvement of the level of indigent defense representation in the County. They include:

A. The Need for Data

At present, much of the basic information needed for planning a comprehensive defender program is not readily available. Many items which would be helpful in designing such a program are obtainable only from a search of individual case files. There is no uniform method of record keeping among the municipal courts in the County.

B. The Need for the Creation of More Funding Sources

Municipal courts should not be forced to rely upon volunteer lawyers or federal grants to meet their continuing needs for indigent representation. This dependence precludes the opportunity for long-range planning and the efficient and effective delivery of services.

C. The Need for the Adoption of Uniform Standards for Determining Indigency

The combination of the municipal courts' inability to pay for assigned counsel representation and the lack of uniform eligibility standards has resulted in an uneven application of the Argersinger mandate. The adoption of local indigency standards is needed to insure equitable treatment for all indigent defendants.

D. The Need for Procedures to Insure Effective Representation

The present unorganized system of appointing defense counsel and the existing schedule of compensation apparently leads to large number of defendants being represented by attorneys who lack skill, experience, time, or interest and consequently provide "ineffective assistance of counsel" to their clients.

E. The Need for a Comprehensive Indigent Defense Delivery System

The efficiency of CLAS has demonstrated that a full-time salaried defender could provide representation at a lower cost per case than private attorneys. However, CLAS is faced with funding problems which have limited

the size of its staff and the range of its services as well. Serious thought must be given to the expansion of CLAS' manpower resources to include law school students and volunteer private attorneys as part of a "mixed system" approach to criminal defense.

Recommendations

The above issues clearly point out a need for the development of a formal organizational structure which should be charged with the responsibility of solving those problems.

It is recommended that consideration be given immediately to the creation of a Committee for Indigent Defense ("CID") which would be organized through the joint efforts of the Cleveland Foundation and as many of those members of the Special Committee as would be interested. The Cleveland Foundation should consider funding staff operations for this committee for a period of one year.

The CID should consist of representatives from each of the local bar associations, the prosecutor's office, at least one judge each from the municipal common pleas and appellate courts in the county, a representative of CLAS, representatives from the two local law schools, and an influential member of the private criminal bar and the private civil bar. It is felt that the cooperation of each of the above entities is essential to the implementation of a comprehensive program for indigent defense in Cuyahoga County.

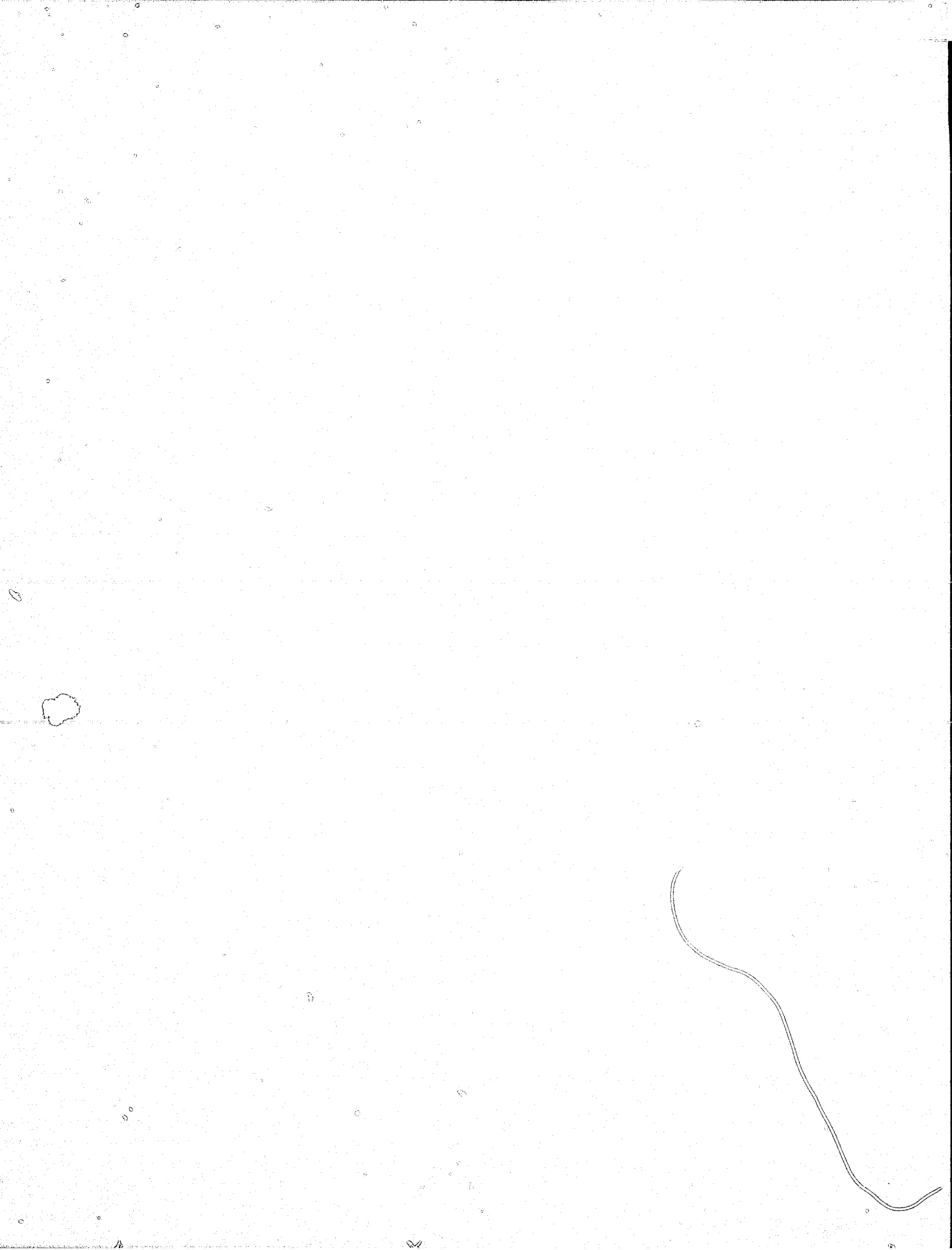
The CID should be supplemented by a staff to conduct preliminary research and facilitate the implementation of its recommendations. This staff should consist of a full-time coordinator, a secretary, and one or two law students employed part-time. Money should also be made available for items such as consultant fees and travel.

During the first five months of its existence, the CID would be expected to accomplish the following:

- (a) The establishment of a system to collect and analyze data necessary for the development and continual monitoring of a public defender program.
- (b) The design of a comprehensive program for the provision of indigent defense in Cuyahoga County based upon the data collected.
- (c) The identification of potential funding sources for the indigent defense program.
- (d) The identification of items in the area of legislative and procedural reform which would facilitate the implementation of the indigent defense program and the development of strategies to bring those changes about.

During the final seven months, the CID would be expected to:

- (a) Implement its strategies regarding legislative and procedural reform and adjust the design of its program in light of accomplishments or the likelihood of changes occurring in these areas.



CONTINUED

1 OF 2

(b) Approach possible funding sources and secure support for its proposed program.

(c) Implement its proposed indigent defense program.

(d) Establish a procedure for the initial monitoring of the program to insure that it operates as planned and to facilitate whatever adjustments may be necessary during the period of initial operation.

It is expected that the CID would give careful thought to the following recommendations.

A. To facilitate the collection and analysis of data, the Cleveland Foundation should encourage the expansion of JIS capabilities (to include relevant indigent defense data), and the establishment of uniform recording methods in municipal courts by providing grant money for those purposes.

B. Uniform indigency standards should be adopted in the form of local court rules for use by the courts in Cuyahoga County. The basis for such standards should be a determination of the existence of sufficient financial resources which would enable the accused to retain counsel without substantial hardship. Partial prepayment of legal fees to assigned counsel should be permitted in cases where defendants cannot afford the total cost

of their defense. The determination of indigency should be conducted by a separate staff in the defender's office which is able to be present at all points where counsel can be appointed. These persons should be the accused's initial contact for appointed counsel.

C. In order to insure the provision of higher quality appointed defense counsel, the courts should limit their appointments to a pool of private attorneys who have been selected by a panel of judges and local bar association representatives. Eligibility for this pool of attorneys would be based upon years of civil litigation experience or generally recognized competence in the area of criminal law. In order to give new attorneys an exposure to indigent criminal defense representation, they should be assigned as co-counsel whenever the opportunity arises. They could also be given the primary responsibility of handling those cases which carry relatively mild sentences. The local courts should adopt effectiveness standards for defense attorneys and create a method for administrative or judicial review of those cases involving lawyers charged with rendering "ineffective assistance of counsel".

D. The formulation of any comprehensive plan for the delivery of indigent defense services in Cuyahoga County, should include a "mixed system" approach to providing criminal indigent defense services utilizing the pool of private criminal attorneys outlined above as a resource for the representation of homicide defendants, co-defendants, defendants who qualify for partial prepayment, and defendants in

conflict situations.

E. The present attorney fee reimbursement schedule in the local court rules should be abolished and replaced with an hourly compensation rate which would be roughly comparable to that paid in Federal Court. In order to insure authority for this change, § 2941.51 of the Ohio Revised Code must be amended to grant local jurisdictions the discretion to implement hourly reimbursement schedules.

F. Municipalities in the respective municipal court jurisdictions should be encouraged to consider indigent defense service arrangements by which a public defender office would agree to represent indigent defendants for a regular prepaid fee based upon an annual caseload. The Cleveland Foundation should consider offering matching grants to induce municipalities to participate in such arrangements.

Conclusion

Widespread advocacy for the adoption of uniform standards of indigency and effectiveness of counsel has failed to generate a positive response in Cuyahoga County. Procedural rules and legislation which encourage compliance with Argersinger based upon an imprisonment in fact standard have not been amended to require a more equitable approach to the obligation of the courts. Despite numerous articles and studies which illustrate the effectiveness of a salaried-defender approach to

indigent representation, Cuyahoga County continues to rely heavily upon private attorneys as a major resource.

When the situation with regard to indigent defense services in Greater Cleveland is viewed in light of these emerging national trends it becomes clear that decisive action is needed immediately.

APPENDIX D

Cost Projection Data

- D-1 Computation Procedures for Deriving Indigency Rate
- D-2 Computation Procedures for Deriving Increased Assigned Counsel Caseload
- D-3 Juvenile Litigation Caseload Summary
- D-4 Assigned Counsel Costs
- D-5 Schedule of Fees for Assigned Counsel
- D-6 A Mixed Defender/Assigned Counsel System
- D-7 The Process of Projecting Costs of a Defender System

D-1

COMPUTATION PROCEDURES

FOR DERIVING INDIGENCY RATE (p.27)

| | |
|----------------------------------|--------------|
| Assigned Counsel Cases | 38.4% |
| Retained Counsel Cases | <u>29.1%</u> |
| TOTAL | 67.5% |
| No Record or Self Representation | 32.5% |

$$\frac{38.4\%}{67.5\%} = \frac{x\%}{32.5\%} \quad x = 18,49 = 18.5\%$$

$$30.4\% + 18.5\% = 56.9\%$$

$$38.4\% + 32.5\% = 70.9\%$$

D-2

COMPUTATION PROCEDURES

FOR DERIVING INCREASED ASSIGNED COUNSEL CASELOAD PROJECTIONS

(Explanation of Narrative, p. 28)

| | |
|------------------------|-------------|
| 1975 Indigent Caseload | 6779 |
| 20% increase in 1976 | <u>1356</u> |
| SUB-TOTAL | 8135 |
| 10% increase in 1977 | <u>814</u> |
| TOTAL | 8949 |

JUVENILE LITIGATION CASELOAD SUMMARYNew ComplaintsChildren's Cases:19751974Delinquency: Boys
Girls7,763
1,6627,663
1,527

Total Delinquency

9,425

9,190

Unruliness: Boys
Girls1,313
1,1491,310
1,115

Total Unruliness:

2,462

2,425

Total Delinquency and Unruliness

11,887

11,615

Juvenile Traffic Offenders

9,807

9,786

Neglected Children's Cases

115

111

Dependent Children's Cases

287

251

Application to Determine Custody

57

83

Application for Approval of Permanent Surrender

25

29

Application for Consent to Marry

56

104

Writ of Habeas Corpus

13

22

Applications, Photos, Fingerprints

16

21

Other Cases

2

2

Total Children's Cases

22,26522,024Adult Cases:19751974

Non-Support of Children

282

349

Neglect of Children

8

14

Endangering Children

12

18

Contributing to Delinquency

30

26

Contributing to Unruliness

34

37

Paternity Complaints

859

723

Certifications and Motions

29

30

Contempt of Court

41

29

Other Cases

26

15

Total Adult Cases

1,3111,241Total, New Complaints23,57623,265

Alias Complaints

3,819

3,468

Grand Total, New and Alias Complaints27,39526,733

ASSIGNED COUNSEL COSTS

(Assigned Counsel System based upon
Federal Bar hourly fee schedule)Felony Cases:

| <u>% Indigent Caseload</u> | <u>Cases</u> | X | <u>Rate</u> | = | <u>Total Cost</u> |
|----------------------------|--------------|---|-------------|---|---------------------|
| 75% | 2629 | | \$ 140 | | \$ 368,060 |
| 20% | 701 | | 1000 | | 701,000 |
| 5% | 175 | | 5000 | | 875,000 |
| | <u>3505</u> | | | | <u>\$ 1,944,060</u> |

Misdemeanor Cases:

| <u>% Indigent Caseload</u> | <u>Cases</u> | X | <u>Rate</u> | = | <u>Total Cost</u> |
|----------------------------|---------------|---|-------------|---|--------------------|
| 75% | 12,218 | | \$ 70 | | \$ 855,260 |
| 25% | 4,073 | | 500 | | 2,036,500 |
| | <u>16,291</u> | | | | <u>\$2,891,760</u> |

Juvenile Cases:

| <u>% Indigent Caseload</u> | <u>Cases</u> | X | <u>Rate</u> | = | <u>Total Cost</u> |
|----------------------------|--------------|---|-------------|---|-------------------|
| 90% | 733 | | \$ 70 | | \$ 51,310 |
| 10% | 81 | | 500 | | 40,500 |
| | <u>814</u> | | | | <u>\$ 91,810</u> |

Mental Commitments:

| <u>% Indigent Caseload</u> | <u>Cases</u> | X | <u>Rate</u> | = | <u>Total Cost</u> |
|----------------------------|--------------|---|-------------|---|-------------------|
| 90% | 311 | | \$ 70 | | \$ 21,770 |
| 10% | 34 | | 500 | | 17,000 |
| | <u>345</u> | | | | <u>\$ 38,770</u> |

GRAND TOTAL \$ 4,966,400

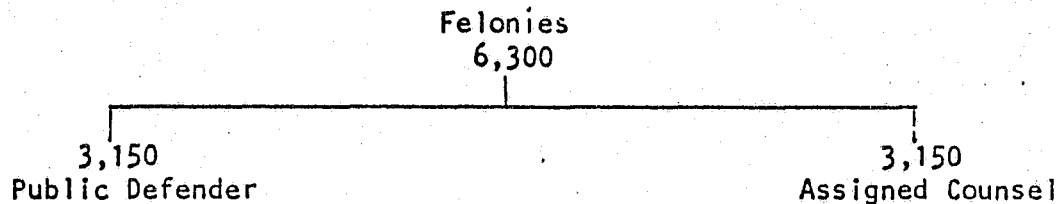
SCHEDULE OF FEES FOR ASSIGNED COUNSEL

| <u>Nature of Crime</u> | <u>Plea</u> | <u>Trial</u> |
|-----------------------------------------------------------------------------------|------------------------------------------------------------|------------------------------------------------------------------------|
| (a) non-homicide | \$125. min. \$150. max. | 2 days or more \$250. min. \$300. max. |
| (b) aggravated vehicular homicide and vehicular homicide | \$250. min. \$500. max. | 2 days or more \$500. min. \$1000. max. |
| (c) voluntary manslaughter, involuntary manslaughter and negligent homicide | \$500. min. \$750. max. | 2 days or more \$750. min. \$1500. max. |
| (d) aggravated murder without specifications and murder | \$1500. min. \$2000. max. | 2 days or more \$2000. min. \$2500. max. |
| (e) aggravated murder with specifications | lesser included offense \$2500. min. \$3000. max. | *3 weeks or less \$3500. max. *more than 3 weeks \$5000. max. |

*Maximum limits are within discretion of the court.

A Mixed Defender/Assigned Counsel System

In 1977, the year in which a defender system could become operational, we have projected that there will be 6,300 felony cases which will require appointed counsel. We are proposing that the responsibility for this work be shared equally* between an assigned counsel system and an organized defender's office.



However, we project that there will also be approximately 300 homicide cases in 1977 and homicide cases are treated somewhat specially in Ohio. In capital cases two counsel are appointed. If this system is to continue,** we are proposing that a joint public defender/assigned counsel team be used in aggravated homicides. This would mean that the assigned counsel panel and the defender component would provide defense services in 3,300 cases each.***

The cost of professional services for felony representation by a mixed system with cases allocated equally between public defenders and assigned counsel was computed as follows:

1. Assigned Counsel Fees (Professional Services)

| | |
|-----------------------------------------|--------------------|
| 3150 cases @ \$250/case | \$ 787,500 |
| 150 aggravated homicides @ \$2,000/case | \$ 300,000 |
| <u>3300</u> | <u>\$1,087,500</u> |

2. Defender Component

| | |
|-----------------------------------------------|-------------------|
| 3450 cases with 24 attorneys | \$ 443,000 |
| Support Staff (Investigators and Secretaries) | \$ 233,000 |
| | <u>\$ 676,000</u> |

* We have recommended a 50/50 allocation primarily for political reasons. The consensus in Cuyahoga County is that there should be a mixed system of providing representation. In most jurisdictions, there are approximately 20% of the cases which require assigned counsel because of conflicts. We have included another 30% to accomodate the established assignment system.

** We have recommended that two counsel be appointed only in aggravated homicides. We believe that two attorneys in other cases are unnecessary and too expensive.

The Process of Projecting Costs of a Defender or a Mixed System

1. Estimate the rate of indigency (i.e., the percentage of cases in which the client desires but cannot afford to retain private counsel) for each offense category. A single estimate of indigency should not be utilized because the rate may vary depending upon the seriousness of the charge which affects the size of the applicable fee. A person of moderate income may be able to afford private counsel in a misdemeanor case but not in a homicide case. Estimates in each category should be based upon projections as to indigency criteria, likely practices in Cuyahoga County courts and experiences in similar jurisdictions.
2. Estimate the projected number of cases in each category as of the time the proposed defender system will be instituted, given present caseloads and recent trends.
3. Multiply the estimated indigency rates by the estimated number of cases in each category to determine the number of cases in which the county will be required to provide counsel.
4. Determine standard annual caseloads for public defenders in each offense category; these caseloads will vary depending upon the nature of the charge, i.e., one defender can handle many more misdemeanors than homicide cases in one year.
5. Divide the estimated number of cases in each category to be handled by public defenders by the caseload responsibility for each attorney to arrive at an estimate of the number of trial attorneys needed to staff a defender office.
6. Estimate the number of attorneys needed in a defender office (in addition to trial attorneys) to handle administrative, supervisory, training and post-conviction matters.
7. Add totals in five and six to determine the total number of attorneys needed

to staff a public defender office.

8. Estimate the average salary and overhead per attorney. This figure will vary depending upon the salary structure, support staff, rental expenditures (if any), and other office expenses.
9. Multiply the average cost per attorney by the estimated number of attorneys to arrive at the total legal staff costs of a defender office.
10. Estimate the average fee to be paid to private counsel in each offense category.
11. Multiply the average fee per case for each category by the estimated number of cases in which private counsel will be appointed to arrive at the total amount needed for fee payments to assigned private counsel.
12. Estimate the administrative, training and support costs of the private counsel component of the proposed system.
13. Add totals in 11 and 12 to arrive at the total estimated cost for appointed private counsel.
14. Add totals in 9 and 13 to arrive at the total attorney costs of a mixed system.

APPENDIX E

Private Bar Questionnaire and Survey Results

ATTORNEY QUESTIONNAIRE

1. How long have you been a member of the bar?
2. Your law specialty(ies), if any.
3. How many years experience have you had in criminal trial work?
4. What proportion of your total civil and criminal practice is devoted to each of the following:

| T Y P E | % of Total Practice | |
|----------------------------------|---------------------|----------|
| | Retained | Assigned |
| Felony Defense | | |
| Misdemeanor Defense | | |
| Juvenile Representation | | |
| Mental Commitment Representation | | |

5. If you do not presently take criminal assignments in Common Pleas Court, please indicate reason.

☐ Cases not assigned to you.

☐ Fees too low.

☐ No competence in area.

☐ No interest in practicing criminal law.

☐ Other (please specify).

6. Would you accept assignments of non-homicide cases in Common Pleas Court under the existing fee schedule which allows \$300 as a maximum fee?

☐ Yes ☐ No

7. For each of the following classifications, please indicate with an "X" in the appropriate box the minimum fee you would need to provide effective assistance as assigned counsel in the following types of cases. Also, indicate with an "0" the average fee you would charge a paying client for each type of case. For purposes of this question, representation would include factual investigation, preparedness to go to trial, and dispositional preparation.

M I N I M U M F E E

| TYPE OF CASE | Less \$100 | 100 199 | 200 299 | 300 399 | 400 499 | 500 999 | 1000 1499 | 1500 1999 | 2000 2999 | Over 3000 |
|-------------------------------------------------------------------------------------------------------|---------------|------------|------------|------------|------------|------------|--------------|--------------|--------------|--------------|
| Homicide | | | | | | | | | | |
| Serious/Complicated Non-Homicide (e.g. aggravated assault, armed robbery, drug offenders) | | | | | | | | | | |
| Minor Non-Homicides (e.g. carrying con- cealed weapon, for- gery) | | | | | | | | | | |
| Misdemeanors | | | | | | | | | | |
| Delinquency Cases in Juvenile Court | | | | | | | | | | |
| Mental Commitment Cases in Probate Court | | | | | | | | | | |

8. Under an assigned counsel system which would make assignments to private attorneys and provide adequate compensation, how many of the following cases would you be willing to accept per year?

| TYPE OF CASE | CASES/YEAR | | | | | | | |
|--------------------|------------|------|-------|-------|-------|-------|--------|------|
| | 0 | 1-10 | 11-20 | 21-30 | 31-40 | 41-50 | 51-100 | 100+ |
| Felonies | | | | | | | | |
| Misdemeanors | | | | | | | | |
| Mental Commitments | | | | | | | | |
| Juvenile Cases | | | | | | | | |

9. What basis for computing fees would you prefer?

____ Hourly rate for in-court and out-of-court time (if this is your preference please indicate what a fair and acceptable fee schedule would be: \$____/hr In-Court
\$____/hr Out-of-Court

____ Flat fee by type of case and case involvement (If this is your preference please indicate what a fair and acceptable flat fee schedule would be:

____ Rule 33 of the Rules of the Court of Common Pleas

____ Other (please specify, e.g. amount for homicides, etc.)

____ Other (please specify)

10. Would you be interested in serving as co-counsel without pay in any of the following types of cases in order to develop experience?

| TYPE OF CASE | YES | NO |
|-------------------|-----|----|
| Felonies | | |
| Misdemeanors | | |
| Mental Commitment | | |
| Juvenile Cases | | |

NAME: _____

(Optional)

| QUESTION #1 | YEARS - BAR MEMBERSHIP | |
|---------------------------------|-----------------------------------------|---------|
| | Number | % Total |
| 0-5 | 78 | 28.4 |
| 6-10 | 52 | 18.9 |
| 11-15 | 41 | 14.9 |
| 16-20 | 30 | 10.9 |
| 21-25 | 31 | 11.3 |
| 26-30 | 20 | 7.3 |
| Over 30 | 23 | 8.4 |
| No Response | 1 | .4 |
| QUESTION #2 | LAW SPECIALTY | |
| Civil | | |
| Criminal | 40 | 14.5 |
| Both | 230 | 83.6 |
| No Response | 2 | .7 |
| Law Clerk to Appellate Judge | 1 | .4 |
| Prosecutor | 1 | .4 |
| QUESTION #3 | YRS - CRIMINAL EXPERIENCE | |
| 1-5 | 108 | 39.3 |
| 6-10 | 67 | 24.4 |
| 11-15 | 30 | 10.9 |
| 16-20 | 22 | 8.0 |
| 21-25 | 22 | 8.0 |
| 26-30 | 11 | 4.0 |
| Over 30 | 12 | 4.4 |
| No Response | 3 | 1.1 |
| QUESTION #4 | % TOTAL PRACTICE FELONIES - RETAINED | |
| 0 | 56 | 20.4 |
| 1-10 | 139 | 50.5 |
| 11-20 | 19 | 6.9 |
| 21-30 | 21 | 7.6 |
| 21-40 | 3 | 1.1 |
| 41-50 | 4 | 1.5 |
| 51-60 | 5 | 1.8 |
| 61-70 | 1 | .4 |
| 71-80 | 3 | 1.1 |
| 81-90 | 3 | 1.1 |
| 91-100 | 1 | .4 |
| Some | 19 | 6.9 |
| | % TOTAL PRACTICE FELONIES - ASSIGNED | |
| 0 | 130 | 47.3 |
| 1-10 | 94 | 34.2 |
| 11-20 | 20 | 7.3 |
| 21-30 | 11 | 4.0 |
| 31-40 | 2 | .7 |
| 41-50 | 2 | .7 |
| 51-60 | 2 | .7 |
| 81-90 | 1 | .4 |
| Some | 13 | 4.7 |

| QUESTION #4 (Continued) | % TOTAL PRACTICE MISDEMEANOR - RETAINED | |
|-------------------------------|--------------------------------------------|---------|
| | Number | % Total |
| 0 | 34 | 12.4 |
| 1-10 | 168 | 61.1 |
| 11-20 | 31 | 11.3 |
| 21-30 | 11 | 4.0 |
| 31-40 | 2 | .7 |
| 41-50 | 3 | 1.1 |
| 51-60 | 1 | .4 |
| 61-70 | 1 | .4 |
| 71-80 | 2 | .7 |
| Some | 22 | 8.0 |
| | MISDEMEANOR - ASSIGNED | |
| 0 | 245 | 89.1 |
| 1-10 | 23 | 8.4 |
| 11-20 | 1 | .4 |
| 21-30 | 1 | .4 |
| 41-50 | 1 | .4 |
| Some | 4 | 1.5 |
| | JUVENILE - RETAINED | |
| 0 | 72 | 26.2 |
| 1-10 | 174 | 63.3 |
| 11-20 | 5 | 1.8 |
| 21-30 | 5 | 1.8 |
| 31-40 | 1 | .4 |
| Some | 18 | 6.5 |
| | JUVENILE - ASSIGNED | |
| 0 | 259 | 94.2 |
| 1-10 | 13 | 4.7 |
| 11-20 | 2 | .7 |
| Some | 1 | .4 |
| | MENTAL COMMIT. - RETAINED | |
| 0 | 220 | 80.0 |
| 1-10 | 42 | 15.3 |
| 11-20 | 2 | .7 |
| Some | 11 | 4.0 |
| | MENTAL COMMIT. - ASSIGNED | |
| 0 | 255 | 92.7 |
| 1-10 | 19 | 6.9 |
| Some | 1 | .4 |
| QUESTION #5 | REASONS FOR NOT TAKING CRIMINAL CASES | |
| Not Assigned | 53 | 19.3 |
| Fees too Low | 63 | 22.9 |
| No Response | 27 | 9.8 |
| Other | 132 | 48.0 |
| -Presently Ac- cepts cases | 87 | 65.9 |
| -Not accept | 1 | .8 |
| -Not assigned | 29 | 22.0 |
| fees low | | |
| -Law Clerk | 1 | .8 |
| - Prosecutor | 7 | 5.3 |
| - Too busy | 3 | 2.3 |
| - Retired | 1 | .8 |
| - Judge | 2 | 1.5 |

| QUESTION #6 | ACCEPT NON-HOMICIDE UNDER PRESENT SYSTEM | |
|-------------|---------------------------------------------|---------|
| | Number | % Total |
| Yes | 146 | 53.1 |
| No | 120 | 43.6 |
| No Response | 6 | 2.2 |
| Maybe | 3 | 1.1 |
| QUESTION #7 | ACCEPTABLE FEE HOMICIDE-ASSIGNED | |
| Under \$100 | 1 | .4 |
| 200-299 | 1 | .4 |
| 500-999 | 5 | 1.8 |
| 1000-1499 | 24 | 8.7 |
| 1500-1999 | 44 | 16.0 |
| 2000-2999 | 67 | 24.4 |
| Over \$3000 | 97 | 35.3 |
| No Response | 36 | 13.1 |
| | HOMICIDE-RETAINED | |
| 500-999 | 2 | .7 |
| 1000-1499 | 5 | 1.8 |
| 1500-1999 | 10 | 3.6 |
| 2000-2999 | 27 | 9.8 |
| Over \$3000 | 117 | 42.5 |
| No Response | 114 | 41.5 |
| | SERIOUS NON-HOMICIDE ASSIGNED | |
| Under \$100 | 1 | .4 |
| 100-199 | 1 | .4 |
| 200-299 | 2 | .7 |
| 300-399 | 7 | 2.5 |
| 400-499 | 9 | 3.3 |
| 500-999 | 63 | 22.9 |
| 1000-1499 | 70 | 25.5 |
| 1500-1999 | 50 | 18.2 |
| 2000-2999 | 38 | 13.8 |
| Over \$3000 | 8 | 2.9 |
| No Response | 26 | 9.5 |
| | SERIOUS NON-HOMICIDE RETAINED | |
| 200-299 | 1 | .4 |
| 300-399 | 1 | .4 |
| 400-499 | 1 | .4 |
| 500-999 | 12 | 4.4 |
| 1000-1499 | 43 | 15.6 |
| 1500-1999 | 56 | 20.4 |
| 200-2999 | 48 | 17.5 |
| Over \$3000 | 20 | 7.3 |
| No Response | 93 | 33.8 |

| QUESTION #7 (Continued) | ACCEPTABLE FEE MINOR NON-HOMICIDES ASSIGNED | |
|----------------------------|---------------------------------------------------|---------|
| | Number | % Total |
| Under \$100 | 1 | .4 |
| 100-199 | 5 | 1.8 |
| 200-299 | 9 | 3.3 |
| 300-399 | 30 | 10.9 |
| 400-499 | 50 | 18.2 |
| 500-999 | 83 | 30.2 |
| 1000-1499 | 48 | 17.5 |
| 1500-1999 | 20 | 7.3 |
| 2000-2999 | 5 | 1.8 |
| No Response | 24 | 8.7 |
| | MINOR NON-HOMICIDES RETAINED | |
| 200-299 | 3 | 1.1 |
| 300-399 | 5 | 1.8 |
| 400-499 | 17 | 6.2 |
| 500-999 | 68 | 24.7 |
| 1000-1499 | 49 | 17.8 |
| 1500-1999 | 30 | 10.9 |
| 2000-2999 | 6 | 2.2 |
| Over \$3000 | 2 | .7 |
| No Response | 95 | 35.4 |
| | MISDEMEANOR-ASSIGNED | |
| Under \$100 | 4 | 1.5 |
| 100-199 | 20 | 7.3 |
| 200-299 | 41 | 14.9 |
| 300-399 | 68 | 24.7 |
| 400-499 | 47 | 17.1 |
| 500-999 | 59 | 21.5 |
| 1000-1499 | 12 | 4.4 |
| 1500-1999 | 3 | 1.1 |
| No Response | 21 | 7.6 |
| | MISDEMEANOR-RETAINED | |
| 100-199 | 5 | 1.8 |
| 200-299 | 14 | 5.1 |
| 300-399 | 39 | 14.2 |
| 400-499 | 38 | 13.8 |
| 500-999 | 59 | 21.5 |
| 1000-1499 | 16 | 5.8 |
| 1500-1999 | 2 | .7 |
| 2000-2999 | 1 | .4 |
| No Response | 101 | 36.7 |
| | JUVENILE-ASSIGNED | |
| Under \$100 | 4 | 1.5 |
| 100-199 | 19 | 6.9 |
| 200-299 | 49 | 17.8 |
| 300-399 | 68 | 24.7 |
| 400-499 | 50 | 18.2 |
| 500-999 | 47 | 17.1 |
| 1000-1499 | 2 | .7 |
| Over \$3000 | 1 | .4 |
| No Response | 35 | 12.7 |

| QUESTION #7 (Continued) | ACCEPTABLE FEE JUVENILE-RETAINED | |
|----------------------------|----------------------------------------------|---------|
| | Number | % Total |
| 100-199 | 5 | 1.8 |
| 200-299 | 23 | 8.4 |
| 300-399 | 49 | 17.8 |
| 400-499 | 24 | 8.7 |
| 500-999 | 46 | 16.7 |
| 1000-1499 | 11 | 4.0 |
| 1500-1999 | 2 | .7 |
| 2000-2999 | 1 | .4 |
| Over \$3000 | 1 | .4 |
| No Response | 113 | 41.1 |
| Under \$100 | MENTAL COMMIT.-ASSIGNED | |
| | Number | % Total |
| Under \$100 | 6 | 2.2 |
| 100-199 | 22 | 8.0 |
| 200-299 | 35 | 12.7 |
| 300-399 | 39 | 14.2 |
| 400-499 | 23 | 8.4 |
| 500-999 | 28 | 10.2 |
| 1000-1499 | 4 | 1.5 |
| 1500-1999 | 2 | .7 |
| No Response | 116 | 42.2 |
| Under \$100 | MENTAL COMMIT.-RETAINED | |
| | Number | % Total |
| Under \$100 | 1 | .4 |
| 100-199 | 9 | 3.3 |
| 200-299 | 12 | 4.4 |
| 300-399 | 25 | 9.1 |
| 400-499 | 24 | 8.7 |
| 500-999 | 27 | 9.8 |
| 1000-1499 | 8 | 2.9 |
| 1500-1999 | 1 | .4 |
| 2000-2999 | 1 | .4 |
| Over \$3000 | 1 | .4 |
| No Response | 166 | 60.4 |
| QUESTION #8 | ASSIGNED COUNSEL SYSTM ACCEPT #CASES/YEAR | |
| | FELONIES | |
| 0 | 12 | 4.4 |
| 1-10 | 90 | 32.7 |
| 11-20 | 79 | 28.7 |
| 21-30 | 23 | 8.4 |
| 31-40 | 14 | 5.1 |
| 41-50 | 18 | 6.5 |
| 51-100 | 17 | 6.2 |
| Over 100 | 22 | 8.0 |
| 0 | MISDEMEANORS | |
| | Number | % Total |
| 0 | 37 | 13.5 |
| 1-10 | 67 | 24.4 |
| 11-20 | 67 | 24.4 |
| 21-30 | 36 | 13.1 |
| 31-40 | 18 | 6.5 |
| 41-50 | 18 | 6.5 |
| 51-100 | 11 | 4.0 |
| Over 100 | 21 | 7.6 |

| QUESTION #8 (Continued) | ASSIGNED COUNSEL SYSTM ACCEPT #CASES/YEAR MENTAL COMMITMENTS | |
|----------------------------|--------------------------------------------------------------------|---------|
| | Number | % Total |
| 0 | 131 | 47.6 |
| 1-10 | 73 | 26.5 |
| 11-20 | 35 | 12.7 |
| 21-30 | 16 | 5.8 |
| 31-40 | 3 | 1.1 |
| 41-50 | 5 | 1.8 |
| 51-100 | 2 | .7 |
| Over 100 | 10 | 3.6 |
| 0 | JUVENILE | |
| | Number | % Total |
| 0 | 87 | 31.6 |
| 1-10 | 89 | 32.4 |
| 11-20 | 49 | 17.8 |
| 21-30 | 19 | 6.9 |
| 31-40 | 8 | 2.9 |
| 41-50 | 7 | 2.5 |
| 51-100 | 7 | 2.5 |
| Over 100 | 9 | 3.3 |
| QUESTION #9 | PREFERRED BASIS COMPUTING FEES | |
| | Number | % Total |
| Hourly | 204 | 74.2 |
| Flat | 55 | 20.0 |
| -Rule 33 | 18 | 32.7 |
| -Other | 21 | 38.2 |
| -No Response | 16 | 29.1 |
| No Response | 16 | 2.8 |
| 16-20 | HOURLY RATE PREFERENCE IN-COURT | |
| | Number | % Total |
| 16-20 | 3 | 1.1 |
| 21-25 | 3 | 1.1 |
| 26-30 | 17 | 6.2 |
| 31-35 | 17 | 6.2 |
| 36-40 | 28 | 10.2 |
| 41-50 | 78 | 28.4 |
| 51-60 | 26 | 9.5 |
| 61-70 | 4 | 1.5 |
| 71-80 | 20 | 7.3 |
| 91-100 | 5 | 1.8 |
| Over 100 | 1 | .4 |
| No Response | 2 | .7 |
| 0-10 | OUT-OF-COURT | |
| | Number | % Total |
| 0-10 | 1 | .4 |
| 10-15 | 1 | .4 |
| 16-20 | 15 | 5.5 |
| 21-25 | 37 | 13.5 |
| 26-30 | 26 | 9.5 |
| 31-35 | 18 | 6.5 |
| 36-40 | 41 | 14.9 |
| 41-50 | 45 | 16.4 |
| 51-60 | 12 | 4.4 |
| 71-80 | 3 | 1.1 |
| 91-100 | 3 | 1.1 |
| No Response | 2 | .7 |

| QUESTION #3 | ASSIGNED COUNSEL SYSTM ACCEPT #CASES/YEAR | |
|--------------|----------------------------------------------|---------|
| | FELONIES | |
| | Number | % Total |
| 0 | 396 | 48.8 |
| 1-10 | 200 | 24.7 |
| 11-20 | 102 | 12.6 |
| 21-30 | 33 | 4.1 |
| 31-40 | 18 | 2.2 |
| 41-50 | 21 | 2.6 |
| 51-100 | 19 | 2.3 |
| Over 100 | 22 | 2.7 |
| | MISDEMEANORS | |
| | Number | % Total |
| | | |
| 0 | 405 | 49.9 |
| 1-10 | 147 | 18.1 |
| 11-20 | 121 | 14.9 |
| 21-30 | 57 | 7.0 |
| 31-40 | 21 | 2.6 |
| 41-50 | 23 | 2.8 |
| 51-100 | 13 | 1.6 |
| Over 100 | 24 | 2.9 |
| | MENTAL COMMITMENTS | |
| | Number | % Total |
| | | |
| 0 | 565 | 69.7 |
| 1-10 | 141 | 17.4 |
| 11-20 | 49 | 6.0 |
| 21-30 | 23 | 2.8 |
| 31-40 | 6 | .7 |
| 41-50 | 7 | .9 |
| 51-100 | 4 | .5 |
| Over 100 | 16 | 1.9 |
| | JUVENILE | |
| | Number | % Total |
| | | |
| 0 | 497 | 61.3 |
| 1-10 | 184 | 22.7 |
| 11-20 | 66 | 8.1 |
| 21-30 | 29 | 3.6 |
| 31-40 | 11 | 1.4 |
| 41-50 | 7 | .9 |
| 51-100 | 7 | .9 |
| Over 100 | 10 | 1.2 |
| QUESTION #9 | PREFERRED BASIS COMPUTING FEES | |
| | Number | % Total |
| | | |
| Hourly | 402 | 49.6 |
| Flat | 91 | 11.2 |
| -Rule 33 | 38 | 4.8 |
| -Other | 25 | 3.1 |
| -No Response | 28 | 3.5 |
| No Response | 318 | 39.2 |

| | HOURLY RATE PREFERENCE IN-OF-COURT | |
|--------------|--------------------------------------------|---------|
| | Number | % Total |
| | | |
| 10-15 | | |
| 16-20 | 3 | .7 |
| 21-25 | 7 | 1.7 |
| 26-30 | 23 | 5.7 |
| 31-35 | 20 | 4.9 |
| 36-40 | 44 | 10.9 |
| 41-50 | 148 | 36.8 |
| 51-60 | 63 | 15.7 |
| 61-70 | 16 | 3.9 |
| 71-80 | 50 | 12.4 |
| 81-90 | 2 | .5 |
| 91-100 | 17 | 4.2 |
| Over \$100 | 9 | 2.2 |
| | OUT-OF-COURT | |
| | Number | % Total |
| | | |
| 0-10 | | |
| 10-15 | 3 | .7 |
| 16-20 | 24 | 5.8 |
| 21-25 | 46 | 11.4 |
| 26-30 | 40 | 9.9 |
| 31-35 | 30 | 7.5 |
| 36-40 | 85 | 21.1 |
| 41-50 | 123 | 30.6 |
| 51-60 | 23 | 5.7 |
| 61-70 | 4 | .9 |
| 71-80 | 17 | 4.2 |
| 81-90 | 3 | .7 |
| 91-100 | 3 | .7 |
| Over \$100 | 1 | .2 |
| QUESTION #10 | SERVE AS CO-COUNSEL W/O PAY--EXPERIENCE | |
| | FELONIES | |
| | Yes | No |
| | 144 | 17.8 |
| | 667 | 82.2 |
| | MISDEMEANORS | |
| | Yes | No |
| | | |
| | 52 | 6.4 |
| | 759 | 93.6 |
| | MENTAL COMMITMENTS | |
| | Yes | No |
| | | |
| | 70 | 8.6 |
| | 741 | 91.4 |
| | JUVENILE | |
| | Yes | No |
| | | |
| | 58 | 7.2 |
| | 753 | 92.8 |

| QUESTION #7 (continued) | ACCEPTABLE MINIMUM FEE JUVENILE - ASSIGNED | | QUESTION #7 (continued) | ACCEPTABLE MINIMUM FEE MINOR NON-HOMICIDES ASSIGNED | |
|----------------------------------|-----------------------------------------------|---------|---------------------------------|-----------------------------------------------------------|---------|
| | Number | % Total | | Number | % Total |
| Under \$100 | 5 | .6 | Under \$100 | 2 | .2 |
| 100-199 | 36 | 4.4 | 100-199 | 7 | .9 |
| 200-299 | 70 | 8.6 | 200-299 | 18 | 2.2 |
| 300-399 | 108 | 13.3 | 300-399 | 46 | 5.7 |
| 400-499 | 68 | 8.4 | 400-499 | 77 | 9.5 |
| 500-999 | 91 | 11.2 | 500-999 | 129 | 15.9 |
| 1000-1499 | 11 | 1.4 | 1000-1499 | 96 | 11.8 |
| 1500-1999 | 4 | .5 | 1500-1999 | 42 | 5.2 |
| 2000-2999 | | | 2000-2999 | 14 | 1.7 |
| Over \$3000 | 3 | .4 | Over \$3000 | 5 | .6 |
| No Response | 415 | 51.2 | No Response | 375 | 46.2 |
| JUVENILE - RETAINED | | | MINOR NON-HOMICIDES RETAINED | | |
| Under \$100 | 2 | .2 | Under \$100 | 1 | .1 |
| 100-199 | 8 | .9 | 100-199 | 1 | .1 |
| 200-299 | 39 | 4.8 | 200-299 | 4 | .5 |
| 300-399 | 75 | 9.2 | 300-399 | 14 | 1.7 |
| 400-499 | 42 | 5.2 | 400-499 | 25 | 3.1 |
| 500-999 | 76 | 9.4 | 500-999 | 115 | 14.2 |
| 1000-1499 | 26 | 3.2 | 1000-1499 | 74 | 9.1 |
| 1500-1999 | 6 | .7 | 1500-1999 | 47 | 5.8 |
| 200-2999 | 2 | .2 | 2000-2999 | 16 | 1.9 |
| Over \$3000 | 2 | .2 | Over \$3000 | 6 | .7 |
| No Response | 533 | 65.7 | No Response | 508 | 62.6 |
| SERIOUS NON-HOMICIDE RETAINED | | | MENTAL COMMITMENTS ASSIGNED | | |
| Under \$100 | 2 | .2 | Under \$100 | 5 | .6 |
| 100-199 | 1 | .1 | 100-199 | 27 | 3.3 |
| 200-299 | 4 | .5 | 200-299 | 54 | 6.7 |
| 300-399 | 12 | 1.5 | 300-399 | 71 | 8.8 |
| 400-499 | 12 | 1.5 | 400-499 | 40 | 4.9 |
| 500-999 | 88 | 10.9 | 500-999 | 65 | 8.0 |
| 1000-1499 | 113 | 13.9 | 1000-1499 | 13 | 1.6 |
| 1500-1999 | 79 | 9.7 | 1500-1999 | 5 | .6 |
| 200-2999 | 78 | 9.6 | 2000-2999 | 3 | .4 |
| Over \$3000 | 36 | 4.4 | Over \$3000 | 4 | .5 |
| No Response | 386 | 47.6 | No Response | 524 | 64.6 |
| SERIOUS NON-HOMICIDE ASSIGNED | | | MENTAL COMMITMENTS RETAINED | | |
| Under \$100 | 1 | .1 | Under \$100 | 4 | .5 |
| 100-199 | | | 100-199 | 17 | 2.1 |
| 200-299 | 2 | .2 | 200-299 | 20 | 2.5 |
| 300-399 | 2 | .2 | 300-399 | 45 | 5.5 |
| 400-499 | 1 | .1 | 400-499 | 33 | 4.1 |
| 500-999 | 22 | 2.7 | 500-999 | 68 | 8.4 |
| 1000-1499 | 71 | 8.8 | 1000-1499 | 21 | 2.6 |
| 1500-1999 | 86 | 10.6 | 1500-1999 | 8 | .9 |
| 200-2999 | 72 | 8.9 | 2000-2999 | 2 | .2 |
| Over \$3000 | 37 | 4.6 | Over \$3000 | 2 | .2 |
| No Response | 517 | 63.7 | No Response | 591 | 72.9 |

| QUESTION #5 | REASONS FOR NOT TAKING ASSIGNED CRIMINAL CASES COMMON PLEAS COURT | | QUESTION #6 | ACCEPT NON-HOMICIDE CASES ALLOWING \$300 MAXIMUM FEE | |
|--------------------------------------------|-------------------------------------------------------------------------|---------|--------------|------------------------------------------------------------|-------------------------|
| | Number | % Total | | Number | % Total |
| Not Assigned | 102 | 12.6 | Yes | 233 | 28.7 |
| Fees Too Low | 87 | 10.7 | No | 542 | 66.8 |
| No Competence | 62 | 7.6 | No Response | 32 | 3.9 |
| No Interest | 100 | 12.3 | Some | 2 | .2 |
| No Response | 130 | 16.1 | Unsure | 2 | .2 |
| Other | 330 | 40.7 | QUESTION #7 | | ACCEPTABLE MINIMUM FEE |
| •All of above | 9 | 2.7 | | | HOMICIDE - ASSIGNED |
| •Not Competent/ Interested | 167 | 50.6 | Under \$100 | 2 | .2 |
| •Not Assigned/ Competent/ Fees Low | 12 | 3.6 | 100-199 | | |
| •Presently Ac- cepts Cases | 3 | .9 | 200-299 | 1 | .1 |
| •Firm does not accept case | 3 | .9 | 300-399 | | |
| •Too busy | 8 | 2.4 | 400-499 | 1 | .1 |
| •Prefer juven- ile cases | 1 | .3 | 500-999 | 11 | 1.4 |
| •No private practice permitted | 26 | 7.9 | 1000-1499 | 44 | 5.4 |
| •Not accept assigned cases | 3 | .9 | 1500-1999 | 65 | 8.0 |
| •Not assigned/ fees low | 39 | 11.8 | 2000-2999 | 108 | 13.3 |
| •Not assigned/ competent/ interested | 17 | 5.2 | Over \$3000 | 175 | 21.6 |
| •Not attempted to obtain cases | 2 | .6 | No Response | 404 | 49.8 |
| •Prosecutor | 9 | 2.7 | | | HOMICIDE - RETAINED |
| •Retired | 5 | 1.5 | 400-499 | 1 | .1 |
| •Not competent/ fees low | 4 | 1.2 | 500-999 | 4 | .5 |
| •Not competent/ interested/ fees low | 7 | 2.1 | 1000-1499 | 9 | 1.1 |
| •Not assigned/ all guilty anyway | 1 | .3 | 1500-1999 | 14 | 1.7 |
| •Not interest/ fees low | 1 | .3 | 2000-2999 | 45 | 5.5 |
| •Not assigned/ competent | 8 | 2.4 | Over \$3000 | 195 | 24.0 |
| •Teacher | 1 | .3 | No Response | 543 | 67.0 |
| •Not assigned/ interested | 3 | .9 | | | MISDEMEANORS - ASSIGNED |
| •No experience | 1 | .3 | Under \$100 | 5 | .6 |
| | | | 100-199 | 36 | 4.4 |
| | | | 200-299 | 70 | 8.6 |
| | | | 300-399 | 107 | 13.2 |
| | | | 400-499 | 71 | 8.8 |
| | | | 500-999 | 102 | 12.6 |
| | | | 1000-1499 | 19 | 2.3 |
| | | | 1500-1999 | 7 | .9 |
| | | | 2000-2999 | 6 | .7 |
| | | | Over \$3000 | 2 | .2 |
| | | | No Response | 386 | 47.6 |
| | | | | | MISDEMEANOR - RETAINED |
| | | | Under \$100. | 2 | .2 |
| | | | 100-199 | 6 | .7 |
| | | | 200-299 | 26 | 3.2 |
| | | | 300-399 | 70 | 8.6 |
| | | | 400-499 | 58 | 7.2 |
| | | | 500-999 | 103 | 12.7 |
| | | | 1000-1499 | 21 | 2.6 |
| | | | 1500-1999 | 7 | .9 |
| | | | 2000-2999 | 4 | .5 |
| | | | Over \$3000 | 3 | .4 |
| | | | No Response | 511 | 63.0 |

PUBLIC DEFENDER SURVEY
-BAR MEMBERSHIP

Total Response
811/4976 = 16.3%

| QUESTION #1 | YEARS OF BAR MEMBERSHIP | | QUESTION #3 | YEARS OF CRIMINAL EXPERIENCE | |
|----------------------------------------------------------|-------------------------|---------|----------------------------------------------------------|------------------------------|---------|
| | Number | % Total | | Number | % Total |
| 0 - 5 | 200 | 24.7 | None | 379 | 46.7 |
| 6 - 10 | 122 | 15.0 | Minimal | 96 | 11.8 |
| 11 - 15 | 100 | 12.3 | 1 - 5 | 137 | 16.9 |
| 16 - 20 | 87 | 10.7 | 6 - 10 | 74 | 9.1 |
| 21 - 25 | 104 | 12.8 | 11 - 15 | 30 | 3.7 |
| 26 - 30 | 51 | 6.3 | 16 - 20 | 28 | 3.5 |
| Over 30 | 136 | 16.8 | 21 - 25 | 25 | 3.1 |
| No Response | 11 | 1.4 | 26 - 30 | 11 | 1.4 |
| QUESTION #2 | | | Over 30 | 14 | 1.7 |
| LAW SPECIALTY | | | No Response | 17 | 2.1 |
| Civil | 467 | 57.6 | QUESTION #4 | | |
| Criminal | 40 | 4.9 | % OF TOTAL PRACTICE FOR FELONIES-RETAINED | | |
| Both | 278 | 34.3 | 0 | 542 | 66.8 |
| No Response | 25 | 3.1 | 1 - 10 | 182 | 22.4 |
| Teacher | 1 | .1 | 11 - 20 | 26 | 3.2 |
| QUESTION #4 | | | 21 - 30 | 21 | 2.6 |
| % OF TOTAL PRACTICE FOR MISDEMEANOR DEFENSE RETAINED | | | 31 - 40 | 2 | .2 |
| 0 | 510 | 62.9 | 41 - 50 | 7 | .9 |
| 1 - 10 | 234 | 28.9 | 51 - 60 | 6 | .7 |
| 11 - 20 | 32 | 3.9 | 61 - 70 | 1 | .1 |
| 21 - 30 | 11 | 1.4 | 71 - 80 | 4 | .5 |
| 31 - 40 | 2 | .2 | 81 - 90 | 4 | .5 |
| 41 - 50 | 5 | .6 | 91 - 100 | 6 | .7 |
| 51 - 60 | 1 | .1 | Some | 10 | 1.2 |
| 61 - 70 | 1 | .1 | QUESTION #4 | | |
| 71 - 80 | 2 | .2 | % OF TOTAL PRACTICE FOR FELONIES-ASSIGNED | | |
| Some | 13 | 1.6 | 0 | 649 | 80.0 |
| QUESTION #4 | | | 1 - 10 | 114 | 14.1 |
| % OF TOTAL PRACTICE FOR MISDEMEANOR DEFENSE ASSIGNED | | | 11 - 20 | 24 | 2.9 |
| 0 | 773 | 95.3 | 21 - 30 | 2 | 1.5 |
| 1 - 10 | 31 | 3.8 | 31 - 40 | 1 | .1 |
| 21 - 30 | 1 | .1 | 41 - 50 | 3 | .4 |
| Some | 6 | .7 | 51 - 60 | 1 | .1 |
| QUESTION #4 | | | 91 - 100 | 1 | .1 |
| % OF TOTAL PRACTICE FOR JUVENILE REPRESENTATION RETAINED | | | Some | 6 | .7 |
| 0 | 561 | 69.2 | QUESTION #4 | | |
| 1 - 10 | 225 | 27.7 | % OF TOTAL PRACTICE FOR JUVENILE REPRESENTATION ASSIGNED | | |
| 11 - 20 | 9 | 1.1 | 0 | 784 | 96.7 |
| 21 - 30 | 5 | .6 | 1 - 10 | 21 | 2.6 |
| 41 - 50 | 1 | .1 | 11 - 20 | 1 | .1 |
| Some | 10 | 1.2 | 41 - 50 | 1 | .1 |
| QUESTION #4 | | | Some | 4 | .5 |
| % OF TOTAL PRACTICE FOR MENTAL COMMITMENTS ASSIGNED | | | QUESTION #4 | | |
| 0 | 788 | 97.2 | % OF TOTAL PRACTICE FOR MENTAL COMMITMENTS RETAINED | | |
| 1 - 10 | 21 | 2.6 | 0 | 746 | 92.0 |
| Some | 2 | .2 | 1 - 10 | 55 | 6.8 |
| | | | 11 - 20 | 3 | .4 |
| | | | 21 - 30 | 1 | .1 |
| | | | Some | 6 | .7 |

| | | | | |
|--------------|--------------------------------------------|---------|--|--|
| QUESTION #10 | SERVE AS CO-COUNSEL W/O PAY--EXPERIENCE | | | |
| | FELONIES | | | |
| | Number | % Total | | |
| Yes | 64 23.3 | | | |
| No | 211 76.7 | | | |
| | MISDEMEANORS | | | |
| | 16 5.8 | | | |
| | 259 94.2 | | | |
| | MENTAL COMMITMENTS | | | |
| | 29 10.5 | | | |
| | 246 89.5 | | | |
| | JUVENILE | | | |
| | 14 5.1 | | | |
| | 261 94.9 | | | |

END