

National Center

☒ MARICOPA COUNTY, ARIZONA
TECHNICAL ASSISTANCE PROJECT

For Defense

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MARICOPA COUNTY, ARIZONA
TECHNICAL ASSISTANCE PROJECT

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Consultants
Shelvin Singer
Paul Ligda

Staff Coordinator
Bonnie E. McFadden

NATIONAL CENTER FOR DEFENSE MANAGEMENT
Bonnie E. McFadden, Acting Director
2100 M Street, N.W., Suite 601
Washington, D.C. 20037
(202) 452-0620

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FOREWORD

The National Center for Defense Management was founded in 1974 through a grant from the Law Enforcement Assistance Administration to the National Legal Aid and Defender Association

The Center was established to provide specialized management services in the area of indigent criminal defense services. The Center has conducted over fifty such technical assistance projects throughout the United States.

Our mandate is to improve and design new systems for the defense of the poor. Systems assisted by the Center have included assigned counsel programs, public defender offices, mixed assigned counsel-defender units, and state and local governments.

The Center performs objective and practical evaluations as well as direct management consulting assistance to assigned counsel and defender programs to upgrade the efficiency of their operations. The Center will assist units of government and private organizations seeking analysis and redesign of their defense delivery systems.

PREFACE

The National Center for Defense Management would like to express its appreciation to Gordon W. Allison, Court Administrator for Maricopa County, and to Gary A. Morris, Assistant Court Administrator of Maricopa County, for their invaluable assistance to our consultants in conducting this assessment.

I.

INTRODUCTION

In April, 1977, the Maricopa County Board of Supervisors sought technical assistance from the National Center for Defense Management (hereinafter referred to as the Center) for a study of its indigent criminal defense services. The technical assistance requested encompassed an analysis of the present delivery system for providing indigent defense services, and an exploration of alternatives to the present assigned counsel component with a view to reducing expenditures (see Appendix A).

The Arizona State Justice Planning Agency endorsed the proposed study and the Law Enforcement Assistance Administration (LEAA) Region IX Courts Specialist recommended approval of the request. In May, 1977, the Center's Project Monitor, Gregory C. Brady, gave formal approval to this technical assistance request, and referred this project to the Center. Initial planning sessions took place in late June and early July, 1977, as a result of which this proposed outline was developed.

A. Objectives

The objective of this report is to provide recommendations for increasing the efficiency and effectiveness of defense services in those cases where the Public Defender cannot represent an otherwise eligible person. The focus of this technical assistance was to provide the following consulting services:

- An assessment of indigent defense services currently being provided in Maricopa County;
- An examination of alternative methods for the delivery of defense services, particularly in

conflict of interest cases, as well as possible modifications of the current delivery system; and

- An analysis of the resources required to process conflict of interest cases in a more cost-effective manner.

B. The Study Team

The study team selected consisted of Bonnie E. McFadden, Acting Director of the National Center for Defense Management; Paul Ligda, Public Defender of Solano County, California; and Shelvin Singer, Professor of Law, Illinois Institute of Technology, Chicago-Kent College of Law. Their resumes are included as Appendix B.

A pre-site assessment to Maricopa County was made on August 31 to September 2, 1977 by Shelvin Singer and Bonnie E. McFadden. The full team visit occurred October 5 through 8, 1977.

C. Methodology

The evaluation team conducted a pre-site visit to Maricopa County from August 31 through September 2, 1977 to refine the scope of technical assistance to be provided. Preparations by the Center for the full site visit included: analysis of all pertinent data relative to the Maricopa Criminal Justice System; identification of key decision-makers within that system; and preparation of a field site work book, consisting of available statistical information, various descriptive summaries of the court and indigent defense systems, and structured questionnaires for various categories of respondents (judges, defense lawyers, and other professionals within the criminal justice system). Statistical data was also accumulated regarding case disposition by type of counsel, i.e. private-retained, private-appointed and public defenders.

The full team visit to Maricopa County was conducted from October 5 through October 8, 1977. The team conducted field interviews of private practitioners, court administrative personnel, judges and other professional and lay persons actively involved in the criminal justice system. The team also observed procedures in court rooms for appointment of counsel, the determination of eligibility process and related matters.

D. Alternative Defense Systems: Operative Definitions

At the present time, Maricopa County provides criminal defense representation for those who cannot afford to retain their own counsel through a public defender agency with the alternative assignment of conflict-of-interest cases to private attorneys. This system will be more fully described below. For purposes of clarity and to illustrate the complexity of the problem of identifying suitable delivery of legal service systems, a brief explanation will be given of the various kinds of organizational structures for delivery of criminal defense services to people unable to retain their own counsel.¹

1. Organized Defender Agency

All major metropolitan counties and cities (i.e., those with over

¹ See the following resource material: Lynch-Neary, B. and Benner, L., The Other Face of Justice, National Legal Aid and Defender Association, Washington, D.C. (1973); Goldberg, N. (Director), Report of the National Study Commission on Defense Services, Guidelines for Legal Defense Systems in the United States, National Legal Aid and Defender Association, Washington, D.C. (1976); LaFrance, A., "Criminal Defense Systems for the Poor," 50 NOTRE DAME L.R. 41, (Oct. 1974); Singer, S., Lynch, B., Smith, K., Indigent Defense Systems Analysis, unpublished report, National Legal Aid and Defender Association, Washington, D.C. (1977).

1,000,000 in population) except Houston and Dallas, Texas, are served by an organized defender office. The common characteristics of the organized defender agency are employment of a staff consisting of lawyers and sometimes other professionals, along with support personnel, who are available to provide legal defense services for poor people charged with crimes. The staffs are salaried and operate to some degree within a bureaucratic setting, and are publicly funded, in part, at least.

Within the definition of "Defender Agency" a number of variations are found. Some defender agencies are units of state or local government. Other defender agencies are private, non-profit corporations, utilizing public funds, at least in part. Included in the defender definition are private law firms under contract with local government to provide indigent representation.

There are several ways in which to categorize defender offices: a) as to the limitation of services; i.e., misdemeanor or lesser trial court service, trial-level service only, exclusively appellate and/or post-conviction representation; b) by geographic area served; i.e. exclusively city or county, or regional, circuit or statewide; and c) as to the method of selecting the supervisor of the agency; i.e. judicial appointment, election, private board appointment, legislative body appointment, and government executive appointment.

2. Assigned Private Counsel

a. Ad Hoc Assignment

This refers to the assignment of cases to private counsel, individuals or law firms, in a relatively unformalized manner. Frequently, individual judges or court staff will keep lists of attorneys who will

accept assignments. Appointments are then made on a case by case basis. Although payment is made from public funds, there is little or no supervision or support services available to the assigned private counsel. Not infrequently, persons who volunteer for such assignment lists are new to the practice of law and desire appointed cases both for reasons of finance and to gain trial experience. More seasoned attorneys may accept assignments to supplement their practices or as a favor to the Court. (In some jurisdictions, acceptance of an assignment is mandatory).

Payment for indigent representation is usually made on a per case or per hour basis. In some jurisdictions, the amount of the fee is made discretionary with the Court or the Court Administrator; in others, there is a set fee schedule. Fees and methods of making the assignments vary widely, based on local circumstances.

b. Coordinated Assigned Panels

Ever-increasing caseloads and costs have been instrumental in the development of more structured methods for utilizing private counsel in indigent cases. This has come to be known as the coordinated assigned counsel system.

A coordinated system is one in which a part or full-time administrator is responsible for making and processing all indigent criminal case assignments. Attorney fee vouchers are reviewed and approved. The administrator may screen client applicants to determine their eligibility, and may supervise the recoupment of legal fees. Support services may be coordinated and budgeted. Such panels may involve local bar association, legal interest, and community groups as an advisory or directory commit-

tee. Standards for panel membership may be promulgated, and case assignments made on the basis of experience and expertise in given areas. The degree of structure and duties of the administrator vary with local needs.

3. The Interrelation of the Two Systems

Because of the problems that arise in conflict situations, it is a legal as well as a practical impossibility for one defender agency to provide representation in all indigent criminal cases.² Hence, in all jurisdictions that have an organized defender office, private counsel will also have to be involved in the defense of the indigent criminally accused.

Recently in Cook County, Illinois, a second defender agency functioning independent of the Cook County Public Defender opened its doors and provided representation in some Public Defender conflict cases, along with the assigned counsel system. San Diego, California, also is considering several independent defender systems for providing defense services. But today in most localities having organized defender offices, the assigned private counsel functions as an alternate system for the delivery of criminal legal defense services for people unable to retain their own counsel.

² People v. Smith, 37 Ill.2d 632, 230 N.E. 2d 622 (1967). Commonwealth v. Resinger, 432 Pa.2d 497 (1968). Williams v. State, 214 So.2d 29 (Florida, 1968). Bruton v. United States, 391 U.S. 123 (1968). See also, American Bar Association Standards Relating to the Defense Function, 3.5 p.211. For a contrary view see People v. Wilkins, 320 N.Y. 2d 53 (1971).

II.

THE EXISTING SYSTEM FOR CRIMINAL REPRESENTATION OF INDIGENT PERSONS IN MARICOPA COUNTY, ARIZONA

A. Overview

There are three systems for delivery of legal services to poor people in Maricopa County:

1. The Public Defender, a county agency;
2. Appointment of attorneys in private practice;
3. Contractual agreements with private counsel.

B. The Office of the Public Defender

The Public Defender provides representation in the bulk of appointive criminal cases in Maricopa County. Under a contractual arrangement with the City of Phoenix, the defender also provides representation in appointed cases in eight of the twelve City Courtrooms hearing criminal and quasi-criminal matters.

For the period July 1, 1976 through June 30, 1977, the Defender Agency expended \$2,004,526.72. During that period the Defender Office closed 14,509 county cases, including felony trial court cases, appellate, post-conviction, and juvenile court matters,³ and 5,901 cases

³ The defender defines a case as each separate action commenced against a defendant, no matter how many counts. The breakdown of cases is as follows:

Felony Trial Court	6,971	Delinquency	873
Felony Appeals	319	Incorrigibility	354
Post Conviction	72	Misdemeanor	5,901
Juvenile Appeals	19		

assigned by the Phoenix City Courts.⁴ The detailed statistical report is included in Appendix C.

The Chief Defender is appointed by the County Board and serves at the Board's pleasure. The Defender Agency is located in a modern office building in downtown Phoenix. It is an efficient, business-like office with a highly professional air. The record-keeping system is excellent, the office appears to be well-managed and to provide the necessary support services to its attorneys. The Public Defender Office enjoys a positive reputation among the legal and government community.

C. The Contract System

Three of the Courtrooms of the City of Phoenix have agreements with three separate law firms wherein the firms provide representation in those Courtrooms in all assigned cases. This system has replaced the Public Defender, who provided indigent representation in these Courtrooms up to September, 1977. This is part of an apparent effort to reduce costs.

Each contract provides for a \$15,000 per year payment for all representation, with the agreement to be reviewed at the end of six months. The Maricopa Defender receives \$26,000 per year per Courtroom for the legal representation which that agency provides in the eight other city Courtrooms. The savings available is obvious if the contract

⁴ Phoenix City Courts have jurisdiction in matters arising within the City where the maximum incarceration period does not exceed six months.

system in fact can provide effective representation. According to the Defender's Annual Report for the period July 1, 1976 to June 30, 1977, his agency represented 4,303 defendants in the Phoenix City Court, i.e., 11 Courtrooms disposing of cases in that period on an average of approximately 390 cases per Courtroom.

According to the National Advisory Commission on Criminal Justice Standards and Goals, 13.12, one lawyer, with adequate support staff, i.e., secretarial, investigatorial, etc. on a full-time basis, should have no more than 400 misdemeanor cases per year, and with that caseload, provide representation in no other cases. It seems unlikely that under the present plan the contract lawyers can meet that goal as they are also engaged in private practice.

One member of a two-person partnership which had one of the contracts, described their present operation under the agreement. The program had only been in operation a month at the time of the interview. According to that respondent, all assignments by the judge are made without presence of an attorney. One room in the Phoenix City Courthouse has been set aside for the contract lawyers, and the paperwork on an assigned case is placed in a tray in that room. The paperwork is retrieved by the lawyer two or three times a week. The next court date is approximately a month after the appointment for unincarcerated accused persons. This is a pre-trial conference where plea bargaining takes place. The judge who appoints the contract lawyer provides the defendant with a mimeographed paper advising the defendant who his lawyer is, where to contact him, and directing the client to contact the lawyer. Approximately 90% of the appointed clients do make contact with the lawyer, according to this

contract attorney. If the matter is not resolved at the plea bargaining conference, the case is set for trial approximately 30 days later. The respondent also stated that the City Judge agreed that an investigator would be appointed in appropriate cases. To date, the respondent has made no request for an investigator. According to the respondent, only 1% of his appointed clients are incarcerated, and no arrangements are made to contact the defendants who are in jail.

The Defender lawyer who supervised Defender office personnel providing representation in the Phoenix City Courts gave a description of how his attorneys function. According to this respondent approximately 20% of the appointed clients are in custody at the time their assignments are received. Within 72 hours of receiving the assignment, the Public Defender will represent clients who are unable to make bond at a bond reduction hearing. At that hearing, a defender is present, and many cases where the client is in custody result in immediate disposition of the case by negotiated pleas of guilty, often for a sentence of time already spent incarcerated.

Indigent representation in the City was not within the scope of this study, and the contract system is too new to judge its effectiveness. However, it appears that the contract lawyer interviewed does not attend the bond review hearing described by the defender lawyer. Also, the contract lawyer had no plan for contacting incarcerated defendants before the plea negotiation hearing, and saw no special problem for the incarcerated defendant awaiting City Court trial.

D. The Appointed Counsel System

The Appointed Private Attorney program is under the direction of the Maricopa County Court Administrator. Assigned private attorneys are utilized in conflict situations where there are multiple defendants in a single criminal case. A list of attorneys who have indicated an interest in receiving assigned criminal cases is maintained and attorneys are routinely assigned on a rotation basis from the list. Some discretion is exercised in the extraordinary case, as identified by the administrative staff, and an especially experienced attorney is selected. There are about 2,000 attorneys in private practice in the County and approximately 250 lawyers on the assigned counsel list.

Appointed attorneys are paid at the rate of \$20.00 per hour for felony preparation hours, and \$15.00 per preparation hour in misdemeanor cases. For a trial, \$150.00 per day is paid, with a maximum of \$1,500.00 per case. Fee petitions are prepared by the assigned lawyer then submitted to the trial judge who reviews them, and may make some changes. The fee petitions are then reviewed by the presiding criminal division judge and sent to the Court Administrator, who orders payment from the Comptroller of the County. In extraordinary cases the maximum can be waived by the trial court for good reason, upon petition of defense counsel. Investigative expenses are available in murder cases as additional costs, but are not usually available in other cases. In one example of particularly protracted and celebrated litigation, total fees of \$60,000 were paid to a law firm in an appointed case last year.

Lawyers are generally placed on the assigned counsel list at their request. However, where lawyers have had little or no experience, they

are informally initiated with misdemeanor cases. According to the respondents interviewed, the lawyers on the list are predominantly younger practitioners. The assigned counsel fees are a significant source of income for the lawyers. Most of the lawyers interviewed stated that their fees in retained cases are significantly higher than the appointed counsel fees in similar cases. But the lawyers interviewed found that they had time to undertake appointed cases which were somewhat fee productive, where the time otherwise would be entirely unproductive. Some of the very successful criminal practitioners did not take appointed cases. This is not meant to indicate that the lawyers appointed were not able lawyers. Many of the appointed lawyers interviewed, though younger lawyers, had several years experience with the prosecutor or defender prior to private practice. The Court Administrator's office does attempt to assure that representation is competent, and the assignment clerk tries to assign very serious cases to experienced attorneys. There are no written standards for this procedure, however, and some inappropriate case assignments have occurred.

One experienced criminal attorney stated that the rotation roster system had significantly reduced his assigned caseload. He expressed concern that the strict rotation method was, at least in a few cases, reducing the quality of representation. The lack of written policies also gives rise to possible charges of favoritism in the assignment of very serious cases.

It is not recommended that the strict rotation system be continued. It is recommended that written standards and procedures for the assignment of cases be promulgated, which are based on national standards and

which involve the participation and support of the current roster attorneys, local bar association groups, the judiciary, and other who are key to an effective defense function.

E. Provision of Defense for the Marginally Indigent:
MIDAS Referral System

Among the innovative programs for the delivery of legal criminal defense services in Maricopa County is the MIDAS program. The objective of this project is to provide the so-called marginally indigent criminal-ly accused with competent legal representation from the private bar at a modest cost, substantially less than that charged by attorneys in retained cases. It is designed for people who can pay some fee, though not the going rate for services normally provided by retained counsel.⁵ MIDAS clients are to pay \$20.00 per hour (the felony rate), and \$15.00 per hour (the misdemeanor rate). This is the same rate as that paid to appointed counsel.

Lawyers who were on the assigned counsel list also were given the opportunity to be on the MIDAS program attorney list. Those lawyers in the program then received MIDAS clients on a rotation basis. However, most lawyers interviewed expressed dissatisfaction with the program. Staff members of the Court's Appearance and Indigency Determination (AID) Program, who make recommendations as to MIDAS referrals, confirmed that the MIDAS program was not working well.

⁴5NAC Standard 13.2 recommends public representation for those who cannot pay full fees, yet can make partial fee payments.

According to the criticism voiced, the vast majority of MIDAS clients do not pay even the partial fee assessed. The principal problems, according to the MIDAS lawyers interviewed, are that those identified as eligible for MIDAS are, in reality, unable to pay any fee and should have the Defender or assigned counsel represent them. Moreover, those who have the ability to pay some fees do not fully understand their financial obligations.

Eligibility standards for the MIDAS program should be reevaluated. In view of the reported fact that the prospective MIDAS client did not fully understand his responsibility to pay a partial fee it is recommended that extraordinary care be taken to assure that MIDAS clients understand their fee obligations to the lawyers who represent them.

At present, the only means by which the MIDAS attorney can attempt to collect the fee is to sue the client. That practice is expensive, time consuming and often futile. It is recommended that the county undertake to coordinate payment of fees. The MIDAS system, if improved, could greatly reduce county costs.

F. Case Entry

The Maricopa County Court Administrator's Office operates a project called, Appearance and Indigency Determination (AID)," whose personnel screen all defendants and verify information relative to bail and appointment of counsel recommendations. The defendants are interviewed at the central holding jail where they are brought, usually within 10 hours after arrest. Arrestees in the Maricopa County towns of Gila Bend, Chandler and Wickenburg are not brought to the central holding jail so determination of indigency is left to the Justice of the Peace, before

whom they initially appear. This amounts to only a relatively small percentage of cases.

After the AID interview, the arrestee will appear before a commissioner. This usually occurs within 24 hours of arrest. The Commissioners hold court at the central jail building and the Commissioner's Court functions seven days a week. Bond is set and a determination is made by the Commissioner concerning the financial status of defendants. If a defendant is found to be indigent, and in need of counsel, the Commissioner's clerk notifies the office of the Court Administrator or the Public Defender, as appropriate. A date for preliminary hearing is set. If the arrestee is able to make bond, the defendant is instructed about contacting his counsel prior to the next hearing.

When the Defender is appointed, the agency is notified by telephone. When private counsel is appointed, the Court Administrator's Office is notified and the assignment secretary in the Court Administrator's Office selects and notifies the lawyer of the appointment by telephone.

For people before the Commissioner without counsel, conditions of pre-trial release are set by the Commissioner, who usually follows the recommendations of AID. However, if the accused has retained counsel at that first hearing, counsel is present and participates in the setting of pre-trial release conditions. Thus, it is obvious that a substantial distinction exists between the affluent person who can retain counsel and the poor person who cannot. Several respondents who are familiar with the Commissioner's hearing indicated that persons with retained counsel are more likely to be released from jail at this stage. There are those who are not represented.

Occasionally, counsel is appointed in later stages of the proceedings either because the defendant originally was thought able to - or said he would - retain counsel, but found he could not; or because original counsel had to withdraw for non-payment of fees. In that situation the usual practice is for the judge before whom the case is pending to either appoint the defender or telephone the Court Administrator's Office for the assignment of a private attorney.

Once private counsel has been appointed, it is incumbent upon the attorney to contact his client and prepare for trial, and the same attorney will remain with the case throughout the trial stage, barring quite unusual circumstances.

It should be noted here that at the time of the initial commissioner's hearing when counsel is appointed, the prosecutor's office may not have filed formal charges against the accused. Several days may elapse between the time an individual is arrested and counsel appointed and the time when the prosecutor makes the decision as to whether or not a formal case will be filed or the matter discontinued. As assigned counsel do not receive a copy of the police report at the time of assignment, this lapse of days can result in attorney hours being spent on client and witness interviews and upon other investigation. Should the prosecutor decide not to file charges, the county is billed for unnecessary legal services.

The team recommends that, insofar as it is possible to do so, the County urge the Prosecutor to routinely supply copies of the police report to counsel at the time the assignment is made. This would reduce unnecessary investigation costs, and could serve to speed up the case

disposition process. National Prosecution Standards promulgated by the National District Attorneys Association⁶ supports such disclosure.

Standard 13.1 provides:

A. Scope of Discovery

In order to provide adequate information for informed pleas, expedite trials, minimize surprise, afford opportunity for effective cross-examination and meet the requirement of due process, discovery prior to trial should be as full and free as possible.

(See also Standards 13.1 b and c on implementation and the duty to disclose.).

G. Cost and Case Disposition

Assigned private counsel provided representation in approximately 1,608 cases for which fees and expenses of \$644,542.67 were paid.⁷ The average cost per case was \$369.00, inclusive of felonies and misdemeanors. This caseload included 78 jury trials, 18 trials without a jury, and 25 submissions on the preliminary hearing record. Not all contested cases could be traced. However, the team was able to determine that in the 63 jury disposition cases traced, the average cost per case was \$1,244.00; in the 10 non-jury trial cases examined, the average cost per case was \$1,006.00; in the 19 submissions, the average cost per case was \$535.00. Given that average for the total of contested cases, it is

⁵ National Prosecution Standards published by National District Attorneys Association, Chicago, Illinois, 1977

⁶ Recoupment practices for the period of July 1, 1976 to June 30, 1977, resulted in a refund of \$8,600 for appointed private counsel services, and \$35,600 for Public Defender Services.

clear that the proportionate cost of contested matters was much greater than the proportionate cost for uncontested matters.

78 Jury Trials @ \$1,244 per trial	\$97,032
18 Court Trials @ \$1,006 per trial	18,108
25 Submissions @ \$535 per trial	13,375
<hr/>	<hr/>
121	\$128,515

Thus, 121 cases cost approximately \$128,515, or an average cost per case of \$1,062.10, while the remaining 1,482 cases cost \$644,543 - 128,515 = \$516,028.

A cost per case for the Defender Office, for the period July 1, 1976 to June 30, 1977, according to the Defender Report for the Maricopa County cases (i.e. excluding Phoenix City Court cases), is as follows: 14,064 cases closed, on an expended budget of \$2,004,427, for a cost per case of \$142.52. According to the Defender's Report, the contested cases were as follows: 124 felony jury trials, 115 felony bench trials, 145 juvenile trials (without a jury). Misdemeanor trial figures were not provided.(7)

7 There was no retrievable data available concerning average costs per type of disposition for the Public Defender Office and the procedures for data categorization were substantially different. Thus, it is not possible to validly compare that office's costs with those paid to assigned private counsel.

In a study prepared by a division of the Court Administrator's Office, in September and October, 1975, of criminal defense legal fees in retained cases, the average out-of-court hourly charge was \$49.85, and in-court hourly charge, \$58.52. The study also lists the range of fees reported by criminal to charge. The Study is included here as Appendix D.

Computer printout trial court records were made available to the team for the fiscal year July 1, 1976 to June 30, 1977. From these printouts the team was able to compare results in some of the cases according to classification of counsel. However, in some cases classification of counsel was not identifiable.⁸ To the extent that counsel category was identified, the available data indicated the following dispositional pattern:

Percentage of all Non-Dismissed Cases
Disposed of by Guilty Pleas*
Year July 1, 1976 to June 30, 1977

Public Defender	83.4% (2,643 cases)
Retained Counsel	79.0% (1,063 cases)
Assigned Counsel	79.5% (710 cases)

*The computer printouts of case disposition did not report status of many of defendant's counsel.

While a slightly higher percentage of Defender clients plead guilty,

⁸ Oaks, D., Lehman, W., "The Criminal Process of Cook County and the Indigent Defendant," 1966 UNIV. OF ILL. L.R. 584, pp 722-723.

the difference of 3.9% would not appear to be significant. In a study of the Cook County, Illinois, Public Defender conducted in the mid-60's, the researchers found that Defender clients plead guilty in 82% of their cases, while retained counsel clients plead guilty in 68% of their cases, and appointed counsel clients in 69% of their cases.(9)

A 1974 study of case disposition in eight localities: Oakland, California; Philadelphia, Pennsylvania; Columbus, Ohio; Baltimore County, Maryland; Louisville (Jefferson County), Kentucky; Utica (Oneida County) New York; and Las Vegas (Clark County), Nevada, reported the following comparative guilty plea rate:(10)

Comparative Guilty Plea Rates for Assigned Counsel
and Defender "Serious" and "Less Serious" Cases*

	<u>Public Defender</u>	<u>Assigned Counsel</u>
<u>SERIOUS</u>		
Pleas	74.8%	65.6%
Trials	25.2%	34.4%
<u>LESS SERIOUS</u>		
Pleas	86.4%	68.5%
Trials	13.6%	31.5%

⁹ It should be noted that in many of the cases that were dismissed, type of counsel was not identifiable from the printout records. As a result, dismissals were not included in the calculations.

¹⁰ Singer, S., Lynch, B., Smith, K., Indigent Defense Systems Analysis, unpublished study, National Legal Aid and Defender Association, Washington, D.C., 1977

*Serious includes unlawful homicide, rape, robbery. Less serious includes aggravated assault, burglary, theft and narcotics.

Like the Cook County study, that research established that Defender clients plead guilty with a higher frequency than assigned counsel clients. The 1974 study, however, found the fact that the assigned counsel had a higher percentage of clients free on bond than defender clients, was a substantial factor contributing to a higher guilty plea rate. The slight difference in the reported guilty plea rates in Maricopa County between the defender and assigned and retained private counsel thus indicates that defense counsel in all three sectors, both public and private, contest cases with the same relative frequency.

A further analysis of the guilty plea rates indicates that pleas of guilty to lesser included offenses are about the same for each category of counsel:

Percentage of Guilty Pleas
to Lesser Included Offenses:
July 1, 1976 to June 30, 1977

Public Defender	27.6%	(866 cases)
Retained Counsel	28.9%	(389 cases)
Appointed Counsel	22.7%	(203 cases)

Percentage of cases that were contested break out as follows:

Percentage of Contested Disposition
July 1, 1976 to June 30, 1977

Public Defender	9.0%	(283 cases)
Retained Counsel	12.8%	(123 cases)
Appointed Counsel	13.5%	(121 cases)

Percentage of All Cases Disposed of
in Trials Without a Jury
July 1, 1976 to June 30, 1977

Public Defender	4.6%	(194 cases)
Retained Counsel	5.5%	(75 cases)
Appointed Counsel	4.8%	(43 cases)

Percentage of All Cases Disposed of
in Trials with a Jury
July 1, 1976 to June 30, 1977

Public Defender	2%	(56 cases)
Retained Counsel	7%	(93 cases)
Appointed Counsel	9%	(77 cases)

The above statistics do indicate that assigned counsel contest more cases and obtain fewer pleas to lesser included offenses than either the Public Defender or retained counsel. However, the differences are too small to be of statistical significance.

III

FINDINGS

A. Strengths in the Present Defense Delivery System

At the outset, it should be stated that although this project was not an in-depth evaluation of criminal legal defense services for the indigent of Maricopa County, the team was left with the distinct impression that both the Defender and assigned private counsel compare favorably with services provided by privately retained counsel.

1. The Public Defender Agency is a well organized, well managed agency concerned with providing quality services to clients. The staff appears highly competent and professional.

2. Similarly, the assigned private counsel, though predominantly the younger practitioners, are generally experienced and work hard for very modest fees, to provide quality service to their appointed clients. While the statistics may indicate the existence of some marginal lawyers on the appointed counsel list, the lawyers that the team interviewed appeared uniformly vigorous, professional, and committed to quality representation for their assigned clients.

3. The team concluded that the quality of criminal defense services for indigent persons of Maricopa County was of excellent quality, in no small measure because of the continuing concern and dedication of the Court Administrator's Office. The Court Administrative Agency is staffed with highly competent, devoted personnel. It is one of the best such agencies that the members of this team have observed. The Court Administrative office is genuinely concerned with providing high quality legal representation at the least possible cost.

B. Areas in the Present Defense Delivery System Which Require Improvement

1. Attorneys are not appointed at the earliest possible stage of prosecution as required by National Standards

Like the Public Defender, the assigned private counsel does not undertake the representation of the client until after the initial court appearance and bond has been set. Yet it was observed that retained private counsel were present and providing representation at that initial court appearance. Not only are indigent clients not represented at the initial court appearance, but in addition, the procedure for delivery of defense services to the poor precludes essential police station representation.

The decision of Miranda v. Arizona, 384 U.S. 436 (1966), requires counsel at police station interrogation sessions unless knowingly and intelligently waived, or unless interrogation immediately ends following a request for counsel.¹¹

In Moore v. Illinois, (December, 1977) the United States Supreme Court also held that following the signing of a complaint, an eye-witness identification of the suspect could not take place unless the suspect was represented by counsel, even though there had yet been no court appearance where counsel could be appointed.

The National Study Commission on Defense Services (hereinafter referred to as NSC), recommended that publicly provided representation should be available at the focus of suspicion stage when the suspect is aware

¹¹ See United States ex rel Williams v. Twomey, 467 F.2d 1248 (7th Cir, 1972).

that he is wanted by police, and if not before arrest, at the police station immediately after arrest.(12)

The National Advisory Commission on Criminal Justice Standards and Goals (hereinafter referred to as NAC) Courts Standard 13.3 also requires pre-court appearance, i.e. police station and earlier legal representation.

To facilitate early entry by publicly provided counsel, it is recommended that counsel be available for eligible arrestees on a 24-hour basis. Legal services should be available when a defendant becomes aware that he is a suspect, or provided upon request by the defendant or his family, immediately after his arrest. Such representation should continue at least through the initial court appearance and the establishment of pre-trial release conditions, and in the appropriate cases throughout the trial.

This recommendation will require that counsel make a determination of eligibility of the client for free legal services. In the alternative, the Public Defender office should be provided with an early representation capability for all potentially eligible accused persons. The Public Defender can then withdraw after the first court appearance of the defendant if it appears the defendant can retain counsel or if a potential conflict has arisen.

Wide publicity should be given the early availability of counsel and a 24-hour telephone service maintained through which clients or their

¹² Guidelines for Legal Defense Systems in the United States, Recommendation 1.2.

families can contact lawyers.

2. Support Services for Assigned Private Counsel Are Inadequate

While funding for investigatory services, and the services of other experts may be made available upon motion of defense counsel in capital cases, such services are generally not available in non-capital cases. Indeed, even the necessity of a court motion for such funding places the assigned counsel client at a disadvantage. It gives notice to the Prosecutor concerning information which may necessarily be encompassed by the attorney-client privilege. On the other hand, the Defender Agency has its own investigators for use at the discretion of defenders, without prior motion, in capital as well as in non-capital cases. The Defender office also has funds in its budget for employment of various experts, to be expended at the discretion of the Defender.

Thus, there is a material distinction between the services of private assigned counsel and the Defender that may have an impact upon both cost and quality of representation. The American Bar Association Standards Relating to Providing Defender Services (hereinafter referred to as ABA Standards), Standard 1.5 requires such supportive services.⁽¹³⁾

Implementation of the foregoing recommendations should result in cost savings. Under the present procedure attorneys do work (at the rate of \$20.00 per hour in felony cases and \$15.00 per hour in misdemeanor cases) that could and should be done less expensively by investigators. The

¹³ NAC Standard 13.4 and NSC Recommendation 3.1 are also in accord.

implementation of this recommendation will be addressed in the discussion of structure and administration of the assigned counsel system.

3. There is a lack of Continuing Legal Education Courses and court practice/trial practice programs for attorneys who are undertaking indigent representation.

With the exception of a recent Bar Association Program on the new Arizona Criminal Code Revision, there appear to have been few continuing legal education programs in criminal and related law topics available in Maricopa County. The Public Defender advises that he has a modest continuing legal education budget, but expressed a willingness to include private counsel in an expanded training program.

This could be accomplished at little or no added expense. Knowledgeable and well trained defense counsel will increase the effectiveness of representation, and can result in a significant cost reduction. A knowledgeable counsel does not spend useless hours on fruitless legal theories and unrealistic defenses. He or she moves directly to the central issues with accuracy and promptness, thus reducing hourly fees to the County.

It is therefore recommended that a systematic, organized continuing legal education program be implemented for both defenders and attorneys on the assigned counsel roster. See NACA Standard 13.16; NSC Recommendations 5.7 and 5.8.

IV

PROPOSALS FOR REORGANIZATION OF THE PRESENT ASSIGNED COUNSEL PANEL SYSTEM

The assigned counsel system in Maricopa County is substantially better organized and administered than most such systems found throughout the country. However, several weaknesses exist:

1. There were inexperienced attorneys on the roster.
2. While some discretion was exercised in the assignment of cases, there was a reluctance by the Court Administrative Staff to modify the rotation of assignments in all but extraordinary cases. Some private practitioners, on the other hand, thought the Administrative Office was displaying favoritism in some instances.
3. Inexperienced attorneys were expending needless time and thus increasing costs and wasting court resources.

Accordingly, the following recommendations are made:

A. Modification Towards a Coordinated System

The roster of assigned counsel should be structured, and categories established based upon years of experience, and particular expertise in certain types of cases. Such screening will require a great deal of sensitivity and extraordinary care. The screening process should include bar association involvement for the necessary expertise, for community support and legitimization. While the advice of judges should be solicited, the judiciary should not participate in selecting the assigned counsel roster as even the appearance of judicial control must be

avoided.⁽¹⁴⁾

B. Coordinated Assigned Counsel Panel: Standards, Training and Support Services.

Standards for moving into other categories in the roster should be imposed; for example, moving from handling misdemeanor to felony cases, or less serious to serious felonies, and for remaining on the roster. These standards should include some of the following elements:

1. Novice attorneys should assist more experienced attorneys in assigned counsel cases at reduced, or no fee until adequate experience is achieved.
2. Entry level training for novice attorneys should be developed and required as a condition for joining the roster.
3. A systematic continuing legal education program should be developed, and participation should be made a condition for remaining on the assigned counsel roster and movement from one category to another on the roster.
4. The assigned counsel roster should be reviewed annually, and additions and deletions made when appropriate.

¹⁴ ABA Standard for Providing Defense Services, Standard 1.4.: Professional independence.

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

5. At least two full-time investigators should be included on the staff, as well as a full-time administrator for the program.
6. A special budgetary allotment should be set aside for payment of experts.
7. A law student intern program should be developed for assigned counsel support services.

While at the outset, the foregoing may appear to initially increase cost, the team concludes that implementation of these recommendations will result in cost savings as well as increased effectiveness of assigned counsel. The utilization of novice attorneys should provide some services at little or no cost. At the same time, the novice attorney should welcome the opportunity to participate in the program for the training benefits and to achieve inclusion on the assigned counsel roster.

The law school faculty interviewed in the county indicated a willingness to explore the possibility of a clinical intern program with the assigned counsel panel that would reward the participating student with credit toward graduation, rather than salary.

The training, classification according to ability, and development of greater expertise among the roster lawyers should decrease the time spent on cases by lawyers and more efficiently utilize courtroom time.

While the employment of an administrator would involve additional cost, the administrator would effect savings through the development of a Brief and Memoranda of Law Bank, careful supervision of the assigned counsel and of the fee petitions submitted.

Employment of investigator assistance would reduce lawyer time spent in preparation of a case and equalize service with the Public Defender. See NSC Recommendations 2.2, 2.3, 2.13, 2.14, 2.15, 2.16, 2.18(b.1), 3.1; ABA Providing Defense Services Standards 2.1, 2.3.

C. Proposals for Assigned Counsel Panel Fee

The Court Administrative Office is deeply concerned with the spiraling costs of providing assigned counsel, and well they should be. However, the study conducted by the MIDAS Program described above and more fully detailed in Appendix D, seems to indicate that the rate of \$20.00 per hour for felonies and \$15.00 per hour for misdemeanors, and \$150.00 per trial day, is well below retained fees. As community resources become scarce and demands for tax funds increase, the citizenry becomes more insistent upon frugal government operations. However, not keeping the assigned counsel fees at a fair proportion of retained fees could drive better practitioners out of the program, encourage inadequate representation, and would result in impairment of the integrity of the entire criminal justice system. ABA Defense Services Standard 2.4.:

"2.4 Compensation.

Assigned counsel should be compensated for time and service necessarily performed in the discretion of the court within limits specified by the applicable statute. In establishing the limits and in the exercise of discretion the objective should be to provide reasonable compensation in accordance with the prevailing standards."⁽¹⁵⁾

The study team did not observe any abuses by assigned attorneys in the petition for fees reviewed. However, the monitoring system involves only an examination of fee petitions. Centralized and knowledgeable administration of the assigned counsel system will enable a more careful supervision of fee charges, and in turn encourage lawyers to more carefully bill for their time.

¹⁵ See also NSC Recommendation 2.18(b)

ALTERNATIVES TO THE ASSIGNED COUNSEL SYSTEM

A. A Second, Independent Public Defender Office

In the section of this report comparing defender costs with assigned counsel costs, it was readily deduced that on a cost-per-case basis, the defender costs are substantially less than the assigned private counsel costs. At the same time, the defender office has an excellent reputation for providing quality defense services. Every objective indicator observed by the study team is consistent with the conclusion that the Defender Agency provided high quality services.

It would therefore seem appropriate to consider a second defender agency.

At the outset, it should be noted that a second defender agency would not entirely eliminate the need for assigned private counsel, for some cases involve more than two co-defendants in need of appointed counsel. Thus, the apparatus of an assigned counsel system would have to be retained. A second defender agency would substantially reduce the need for assigned counsel. However, the elimination of a large segment of the private bar from participation in an assigned counsel program would substantially impair a vigorous private defense bar. As the private bar becomes too distant from the work of representing the indigent criminally accused, there is a strong likelihood that the private bar's support for the defense system and the defense system's ability to provide full representation will be impaired.⁽¹⁶⁾

¹⁶ Current Status of Defense Services in Washington, Washington State Bar Association (1976), p.12.

The creation of a second defender agency would place almost total reliance upon government for defense services, and would add another bureaucratic structure to county government. The use of two defender offices limits flexibility of case assignments in peak or emergency crime situations, and at times when the caseload significantly declines.

A second agency might also result in a cost competition which in turn would adversely effect the quality of services. A second defender agency, entirely under county government, may increase the pressure upon each office to reduce costs, at the expense of services, as the private bar in assigned cases would present no competition as to rates of dismissal and not guilty results. Public agencies that are not insulated from public officials charged with responsibility for tax expenditures find it exceedingly difficult to resist budget reductions that impair services. The present Public Defender is in an exposed position because no independent board of knowledgeable attorneys and concerned client community lay people stand between him and the county board.⁽¹⁷⁾

That defender services have remained at an apparent quality level is a tribute to the present defender and present county board. But the contributions of a vigorous bar, adequately compensated, as an alternative to the Public Defender help assure quality defender services. Substantial impairment of private bar involvement by a second defender agency without a private, vigorous independent board may disproportionately turn attention toward cost reduction at the expense of effective representation.

¹⁷ See ABA Defense Services Standard 1.4 quoted above.

B. Contractual Arrangements With Private Law Firms

An alternative method is for the county to enter into contractual arrangements with one, or several law firms to have them provide alternative representation for indigent criminally accused clients. The City of Phoenix has already initiated such a system in the City Courts. However, several problems are immediately apparent from the City Plan.

Initially, it should be observed that the City Plan does not meet conflict problems, for it is designed to entirely supplant the Public Defender in the three courtrooms the contract lawyers serve. No provision has been made for alternative appointed counsel in conflict cases.

The one contract lawyer interviewed presented a plan of representation that is alarming for it results in late case entry, tenuous client contact prior to the trial date, and a total lack of sensitivity for or contact with pre-trial incarcerated clients.⁽¹⁸⁾ Unless the case entry procedures described by the contract lawyers are drastically changed, the quality of representation is likely to be poor.

As with the case of a second public defender office, the contract system lacks the necessary flexibility to handle sudden increases in caseload. There is the danger that a firm would attempt to meet its contractual duties by reducing the time spent on each case in peak periods. Likewise, should the Court Administrator or the bench become seriously dissatisfied with the services of the contracted firm, they would

¹⁸ In Shackelford v. U.S., 383 F.2d 212, 216 (D.C. Cir. 1967) the court stated that one of the essential obligations of appointed defense counsel is to file appropriate motions for review of conditions of pre-trial release where defendant is incarcerated in the pre-trial stage, and to perfect appeals of pre-trial release conditions when necessary and appropriate.

be unable to speedily remove the firm or its attorneys.

The Washington State Bar Association's 1975 study, Methods of Providing Representation for Indigent Criminal Accused⁽¹⁹⁾ addressed, inter alia, the contract system. Their data was based on an evaluation of existing systems in the State of Washington; however, the following conclusions from that study seem equally applicable to possible utilization of a contract system in Maricopa County:

"There appeared to be two essential weaknesses in the contract system. The first is that a flat payment for the work provides an economic disincentive against spending more time or taking cases to trial. The second is the conflict of attorney responsibility between private practice and public practice. Putting aside the economic incentive to concentrate on private practice, the number of contract cases cannot be limited by the lawyer and can increase at any time to the point where either private or contract work is significantly hurt. When the economic factor is added back into the equation, it becomes obvious that it is contract work that is most likely to suffer.

The evaluations of contract systems indicate that a flat fee for representation of indigent criminal accused results in significant economic pressure on the contract attorney to minimize the time spent representing indigent criminal accused. The evaluations also illustrate the necessity of a differential between payments for representation of plea bargained cases and cases taken to trial to avoid economic disincentives against satisfactory representation. The evidence suggests as well that a mechanism for limiting the number of cases handled by an individual attorney is necessary. The elimination of these problems essentially removes the distinctions between contract systems and a variation on a traditional assigned counsel system. Thus it appears that contract systems should be converted to coordinated assigned counsel or public defender systems or a combination of both. In larger counties, the combination seems most appropriate.

¹⁹ Law and Justice Planning Office, Office of Community Development, Office of the Governor, Olympia, Washington, Approved and adopted by the Board of Governors of the Washington State Bar Association upon submission by the Legal Aid Committee, June 20, 1975.

RECOMMENDATIONS:

1. A combination of coordinated assigned counsel and public defender systems is recommended as the best system for most Washington counties.
2. Contract systems should be eliminated and replaced with other systems.
3. For counties with very small populations, either a combination of coordinated assigned counsel and public defender systems or a coordinated assigned counsel system alone (serving the whole Judicial District where the District includes more than one county) is recommended."

Based on such studies and based on their own experiences with the contract form of representation, the team recommends against the creation of a second defender agency in Maricopa County for assignment of conflict cases.

VI

MAJOR CONCLUSIONS AND RECOMMENDATIONS

BEST OVERALL SYSTEM IS A MIXED DEFENDER OFFICE/COORDINATED ASSIGNED COUNSEL SYSTEM.

1. The principal conclusion of this study is that the assigned private counsel system should be retained.

Recommendations: The system should be modified to a coordinated assigned counsel system that is more structured and supervised. There should be centralized and knowledgeable administration of the assigned counsel system to effect a more careful supervision of assignment of cases and fee charges. Provisions should be made for earlier case entry to comply with the National Study Commission on Defense Services Guidelines, Recommendation 1.2: That publicly provided representation be available at the focus of suspicion state when the suspect is aware that he is wanted by police, and if not before arrest, at the police station immediately after arrest.

SUPPORT SERVICES FOR PRIVATE ASSIGNED COUNSEL ARE INADEQUATE

2. Strong support services such as investigators and law student interns will add to a more effective defense bar and can reduce costs.

Recommendations: The Coordinated Assigned Private Counsel Panel should have its own investigators available for assistance at counsel's discretion, as does the Defender Agency. Development of a law student intern program would provide assistance for the defense bar, as well as valuable training for law students. Also, a special budgetary allotment for payment of experts should be set aside.

CONTINUING LEGAL EDUCATION NECESSARY

3. In-service training programs for all criminal defense attorneys should be provided to ensure that all attorneys are kept abreast of developments in criminal law, criminal procedure and the forensic sciences. Reasonable attendance at such programs should be required. If the operating budget is insufficient, funds should be requested from outside sources to initiate formal training or to further develop formal training programs.

Counsel should be encouraged to periodically attend other criminal law-related seminars in addition to the regular formal training programs.

Recommendation: A systematic, organized continuing legal education program should be implemented for both defenders and attorneys on the coordinated assigned counsel roster. NAC 13.16; NSC Recommendations 5.7 and 5.8.

STRUCTURING OF THE ROSTER NECESSARY

4. Standards should be developed for moving from one category of the panel to another based on experience. The roster should be reviewed annually.

Recommendation: The roster of assigned counsel should be structured according to years of experience and particular expertise. Greater bar association involvement would increase the available expertise and legitimize this process.

ESTABLISHMENT OF A SECOND DEFENDER AGENCY IS INAPPROPRIATE

5. Eliminating a large segment of the private bar from participation

in an assigned counsel program would substantially impair a vigorous private defense bar. Also, a second defender agency would place total reliance on government for defense services adding another bureaucratic structure to county government. A second defender agency could also result in a lack of flexibility and cost competition which would adversely affect the quality of services.

Recommendation: We accordingly recommend against the establishment of a second defender agency.

THE CONTRACT SYSTEM IS NOT RECOMMENDED

6. This system of representation for the indigent accused does not provide for alternative appointed counsel in conflict cases. Also, flat payment for work provides an economic disincentive to adequate representation. Finally, this system presents a conflict of attorney responsibility between private and public practice, because of the inherent lack of flexibility at handle peak periods when short term caseloads are excessive.

Recommendation: We recommend against the adoption of the contract system.

MIDAS

7. The MIDAS Referral System, if properly administered, could greatly reduce county costs.

Recommendation: The eligibility standards should be reevaluated, and extraordinary care taken to assure that MIDAS clients understand their fee obligations to the lawyers who represent them. The County should undertake coordination of payment of fees.

Based on numerous interviews with Public Defender Attorneys, attorneys of the private bar, members of the local law school faculty, and other individuals significantly involved in the criminal justice system, it is the team's conclusion that the necessary community support for the coordinated assigned counsel program does exist. Further, the community has resources with which to implement these innovations. The remaining task is to marshall together these persons and resources. A network of communication should be established, possibly in the form of a task force, to assist the Court Administrator with the implementation of the proposed assigned counsel system changes.

APPENDIX A

Technical Assistance Request

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

SAN FRANCISCO REGION IX

REQUEST FOR TECHNICAL ASSISTANCE

TA Req. No. 711-1291-245 (6)
Cy to St Coord
Assigned to W. J. Miller
TA Compl

RECEIVED

APR 22 1977

REQUESTING AGENCY (To be filled out by the person or agency requesting technical assistance) ASJPA

Agency Name Maricopa County Board of Supervisors Date April 19, 1977

Address Administration Building, Room 603

111 South Third Avenue

Phoenix, Arizona

ZIP 85003

Person to contact: Charles W. Miller, County Manager Phone: (602) 262-3571

1. Area of Concern: Police Courts X Corrections Systems

Narcotics Manpower Org Crime Other X

2. Describe the nature of the problem and specific type of technical assistance needed. Include specific areas of specialty required and approximate date(s) for assignment: (Attach additional page(s) if necessary).

It is proposed that the National Center* for Defense Management
come on site in order to study the existing system of assigning the
Public Defender to criminal cases and the assignment of private counsel
where there is a conflict of interest. It appearing that the assignment
(CONT'D ON ATTACHED SHEET)

3. Describe extent to which technical assistance resources have been sought from other agencies within the State.

To date the County has not attempted to obtain any technical
assistance from any agency within the State.

Charles W. Miller
Signature and Title

4-22-77
Date

NOTE: This request shall be sent to your State Criminal Justice Planning Agency with a copy to the LEAA Regional Office.

Form No. (to be assigned by OMB)

1-73

OVER

TO BE COMPLETED BY STATE PLANNING AGENCY

(SPAs are encouraged to provide technical assistance directly to the requesting agency, if at all possible, through the use of SPA or other State or local agency personnel. This form shall be forwarded to LEAA with disposition.)

SPA to furnish TA: 1 Yes XX No. Recommendations re TA request:

Favorable consideration as written is recommended.

State-level resources of sufficient depth are not available at this time.

Recommended technical assistance resources:

a. LEAA Regional Office Staff

b. LEAA HQ Staff

c. Other Agencies, Organizations or Institutes National Center for Defense Management or other national scope agency with appropriate resources

Indicate reasons why technical assistance cannot be provided by the SPA or other State or local agency:

It is felt that a request of the potential significance represented by this application should be accommodated via the application of considerable background in defense services. Resources of sufficient scope are not available within the state.

M. D. Blakeman, Judicial Specialist
Signature and Title

4/22/77
Date

THIS COMPLETED FORM TO:

Regional Administrator
U.S. Department of Justice
Law Enforcement Assistance Admin.
1860 El Camino Real, 4th Floor
Burlingame, California 94010
Attn: Technical Assistance Division

REQUEST FOR TECHNICAL ASSISTANCE

Page 2

of private counsel is costing Maricopa County approximately \$625,000 per year, it is felt that other methods of providing counsel in cases of conflict of interest could save money.

The County is seeking technical assistance of individuals knowledgeable in the field of courts, Public Defender systems and criminal defense in trial courts of general jurisdiction. Since Maricopa County is in the process of preparing the 1977-78 Fiscal Year budget, a study which could be conducted as soon as possible would be most beneficial.

Maricopa County has slightly more than 15 municipalities, the largest of which is Phoenix, Arizona (population 670,000). The total county's population is 1,300,000.

The judicial system consists of eighteen Justices of the Peace of which seven are responsible for the basic Phoenix Metropolitan area. The trial court of general jurisdiction consists of thirty-five Superior Court Judges and six Court Commissioners. The Superior Court Judges may be broken down as to Civil, Criminal, Juvenile, Probate, Domestic Relations and Presiding Judge functions. There are ten criminal divisions currently, one of which is a Presiding Criminal Judge and nine of which are trial divisions. The Superior Court as of the end of February, 1977, carried an inventory of 2,634 felonies of which 1,113 were active cases set for trial.

The Superior Court operates a courtroom in the County Jail in which a court commissioner conducts "initial appearances" which by Supreme Court rule must be held within twenty-four hours of arrest. It is at this stage that decisions are made regarding whether the defendant should be released on his own recognizance or whether bond should be set and whether there are any conditions of release. This work is done by a Superior Court Commissioner and is done on behalf of the Justice of the Peace in cases of complaints as well as Superior Court Judges for indictments and direct information. The jail court operates seven days a week, 365 days a year.

The Initial Appearance court has processed between 190 and 350 defendants per week. Between 20-25% of these defendants are "scratched" and charges are never filed against them. Experience shows that 76% of the defendants in the Initial Appearance court are determined indigent. In the first quarter of 1977, approximately 1,530 defendants fall into this category in the Initial Appearance court stages. Of this number, we do not have absolute figures but estimate that between 66-75% have the Public Defender appointed for them and that between 25-33% have court-appointed counsel (street counsel) or will ultimately use court-appointed counsel in their case. The Public Defender's office in Arizona is created by virtue of law which is A.R.S. §11-581, et seq.

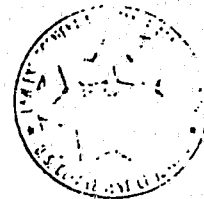
REQUEST FOR TECHNICAL ASSISTANCE
Page 3

The payment of court-appointed counsel is set by the Superior Court judges and attorneys are compensated at a rate of \$20 per hour both in court and out of court. In capital cases, a court-appointed attorney may move for the appointment of a private investigator to assist him in his defense.

Though this process has been relatively satisfactory, it is simply through the growth of the court and the population of the county that it seems feasible to examine new methods of accomplishing this responsibility which would also result in a net savings to the taxpayer.

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

1860 El Camino Real, Burlingame, California 91010



SAN FRANCISCO REGION

DATE: May 4, 1977

REPLY TO
ATTN OF:

Frank R. Weaver, Jr., Courts Specialist, Region IX

SUBJECT:

Technical Assistance Request 77-CT-365 (AZ)
Management Assistance - Maricopa County Board of Supervisors, Phoenix

TO:

J. Robert Grimes, Assistant Administrator
Attention: Greg Brady
Office of Regional Operations, ORO

Attached is a technical assistance request from Maricopa County, Phoenix, Arizona, for help in making their system of assigned counsel for indigent defense more cost effective. The services of the National Center for Defense Management are requested.

We recommend approval of this request.

Gwen M. Monroe
Gwen M. Monroe, Director
Program Development and
Technical Assistance Division

Attachment

5/19/77 Approved.
Gregory C. Brady

NATIONAL CENTER FOR DEFENSE MANAGEMENT	
MAY 20 1977	
ROUTE TO <i>GUS</i>	FOR.
THEN TO.	FOR.
COPIES TO	FOR.

May 4, 1977

Frank R. Weaver, Jr., Courts Specialist, Region IX

Technical Assistance Request 77-CT-365 (AZ)

Management Assistance - Maricopa County Board of Supervisors, Phoenix, AZ

J. Robert Grimes, Assistant Administrator

Attention: Greg Brady

Office of Regional Operations, ORO

Attached is a technical assistance request from Maricopa County, Phoenix, Arizona, for help in making their system of assigned counsel for indigent defense more cost effective. The services of the National Center for Defense Management are requested.

We recommend approval of this request.

Gwen M. Monroe, Director
Program Development and
Technical Assistance Division

Attachment

ROIX:FRWEAVER:aj 5/4/77

Records: TA-77-CT-365 (AZ)

Chron

REGION IX	
NA	
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AZ	
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ADMIN	
3	SEC

ARIZONA STATE JUSTICE PLANNING AGENCY

CONTINENTAL PLAZA BUILDING, SUITE M
5115 NORTH 19TH AVENUE
PHOENIX, ARIZONA 85015
TELEPHONE (602) 271-5466

RAUL H. CASTRO
GOVERNOR

ERNESTO G. MUÑOZ
EXECUTIVE DIRECTOR

April 26, 1977

Mr. Frank Weaver
Courts Specialist
LEAA, Region IX
Dept. of Justice
1860 El Camino Real
Burlingame, CA 94010

Dear Frank:

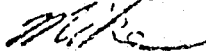
Enclosed you will find a technical assistance request from the Maricopa County Board of Supervisors. As you will recall, we discussed this request during our joint visit to the Maricopa County Superior Court.

The request represents a priority need within the Maricopa County Court system. It is also unique inasmuch as direct financial benefits far in excess of the TA funds may be derived from the assistance effort.

In discussing the request with local personnel, matching funds still pose a problem. We would like to request 100% funding for this reason.

If you have any questions, feel free to call upon me.

Sincerely,



Michael D. Blakeman
Judicial Specialist

MDB:ab

cc: Ernst Jahnke, Maricopa Co.

DEPARTMENT OF JUSTICE
LEAA
SAN FRANCISCO REGION

APR 28 10 15 AM '77

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APPENDIX C

Annual Report 1976-1977

Maricopa County Public Defender

STATISTICAL APPENDIX

7-1-76 through 6-30-77

FELONY TRIAL SECTION

Cases on hand 1 July 1976	1,312
Cases assigned	6,898
Cases closed	6,971
Cases on hand 30 June 1977	1,239

DISPOSITION OF CLOSED CASES

Dismissals

Dismissed in justice court	754
Dismissed in superior court	373

Pleas of Guilty

Pleas to original charges	650
Pleas to lesser felony charges	227
Pleas to fewer than all counts	435
Pleas to open-end charges	398
Pleas to misdemeanor charges	2,103

Trials

Number of trials	289
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<u>Number of jury trials</u>	174
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Defendants found guilty as charged	91
Defendants found guilty of fewer than all counts	16
Defendants found guilty of lesser included offense	27
Defendants found not guilty	39
Directed verdicts	1

<u>Number of trials to court</u>	115
----------------------------------	-----

Defendants found guilty as charged	30
Defendants found guilty of fewer than all counts	16
Defendants found guilty of lesser included offense	45
Defendants found not guilty	24

DISPOSITION OF CLOSED CASES (Continued)

Other Dispositions

Relieved by private counsel	487
Public Defender withdrew (conflict of interest)	262
Prosecution discontinued before complaint filed	993

SENTENCES

Life	7
Death	1
Arizona State Prison	559
Maricopa County Jail	198
Maricopa County Jail and a fine	37
Time served	230
Fine	814
Probation	883
Probation with Maricopa County Jail time	585
Probation with a fine	382
Probation with Maricopa County Jail time and a fine	31
Probation with Maricopa County Jail time and restitution	100
Probation with restitution	203
Restitution ordered	8

PROBATION REVOCATION HEARINGS

Probation revoked	203
Arizona State Prison	184
Maricopa County Jail	19
Probation reinstated	304
Probation terminated	33
Relieved by private counsel	67

OTHER INFORMATION

Informations closed	2,890
Indictments closed	258
Preliminary hearings held	2,342
Preliminary hearings waived	2,608

CHARGES ON FELONY CASES ASSIGNED

Arson	35
Assault and battery	403
Assault with a deadly weapon	405
Burglary	1,370
Drawing checks on insufficient funds or no account	248
Driving while intoxicated	2
Forgery	297
Frauds and cheats	233
Kidnapping	55
Murder	42
Manslaughter	4
Vehicular manslaughter	7
Obstructing	111
Rape	100
Other sex offenses	162
Possession of drugs	2,393
Dangerous drugs	116
Narcotics	144
Marijuana	2,133
Possession for sale or sale of drugs	593
Dangerous drugs	13
Narcotics	425
Marijuana	155
Possession or receiving stolen property	371
Robbery	418
Theft	962
Auto theft	217
Unlawful flight	161
Other felonies	379

APPELLATE SECTION

FELONY APPEALS

Cases on hand 1 July 1976	446
Appeals assigned	366
Cases closed	319
Cases pending 30 June 1977	493

DISPOSITION OF CLOSED CASES

Affirmed	251
Reversed	21
Reversed in part	6
Relieved by private counsel	15
Appeals dismissed	26

POST-CONVICTION RELIEF CASES

Cases on hand 1 July 1976	63
Post-conviction relief cases assigned	134
Cases closed	72
Cases pending 30 June 1977	125

DISPOSITION OF CLOSED CASES

Denied	30
Granted	27
Relieved by private counsel	11
PCR withdrawn	4

JUVENILE APPEALS

Cases on hand 1 July 1976	19
Juvenile appeals assigned	1
Cases closed	19
Cases pending 30 June 1977	1

DISPOSITION OF CLOSED CASE

Affirmed	18
Reversed	1

JUVENILE SECTION

Cases on hand 1 July 1976	451
Delinquency cases assigned	1,162
Delinquency cases closed	873
Incorrigibility cases assigned	523
Incorrigibility cases closed	354

DISPOSITION OF CLOSED CASES

Dismissals

Dismissed by judge	23
Dismissed by county attorney	219

Pleas of Guilty

Pleas to original charge	128
Pleas to fewer than all charges	462
Pleas to lesser charges	67

Trials

Number of trials	145
Juveniles found guilty as charged	69
Juveniles found guilty of fewer than all counts	37
Juveniles found not guilty	39

Other Dispositions

Juvenile cases referred to adult court	29
Relieved by private counsel	11
Public Defender withdrew (conflict of interest)	52

SENTENCES

Probation at home	404
Probation at ranch school	118
Probation at foster home	46
Commitment to Arizona State Department of Corrections	164
Terminated and closed (suspended sentence)	101
Sent to other jurisdiction	5

CHARGES ON ASSIGNED JUVENILE CASES

Arson	4
Assault and battery	170
Assault with a deadly weapon	72
Burglary	448
Carrying a concealed weapon	25
Curfew violation	101
Drawing checks on insufficient funds or no account	3
Drinking while underage	20
Disturbing the peace	46
Driving while intoxicated	3
Incorrigibility	606
Kidnapping	10
Malicious mischief	42
Murder	4
Obstructing	20
Rape	10
Other sex offenses	26
Possession of drugs	71
Dangerous drugs	3
Narcotics	2
Marijuana	66
Possession for sale or sale of drugs	22
Possessing or receiving stolen property	35
Possession of stolen motor vehicle	13
Paint sniffing	7
Robbery	81
Theft	463
Auto theft	78
Grand theft	50
Joyriding	28
Traffic offense	70
Trespass	34
Other	9

MISDEMEANOR SECTION

Cases on hand 1 July 1976	2,483
New cases assigned	6,155
Cases closed	5,901
Cases on hand 30 June 1977	2,737

PHOENIX CITY COURT

Misdemeanor cases assigned	4,303
Misdemeanor cases closed	3,953

DISPOSITION OF CLOSED CASES

<u>Dismissals</u>	502
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Pleas of Guilty

Pleas to original charge	1,259
Pleas to lesser misdemeanor charges	668
Please to fewer than all counts	1,217

Trials

Number of trials	133
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<u>Number of jury trials</u>	82
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Defendants found guilty as charged	38
Defendants found guilty of lesser offense	1
Defendants found guilty of fewer than all counts	7
Defendants found not guilty	32
Directed verdicts	3
Mistrials	1

<u>Number of trials to court</u>	51
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Defendants found guilty as charged	25
Defendants found guilty of lesser offense	1
Defendants found guilty of fewer than all counts	8
Defendants found not guilty	13
Directed verdicts	4

Other Dispositions

Relieved by student defender	4
Relieved by private counsel	107
Public Defender withdrew (conflict of interest)	52
Bond Forfeitures	11

SENTENCES

Fine	1,041
Fine and jail time	247
Fine, jail time and driving school	1
Jail time	242
PACT rehabilitation	125
Probation	274
Probation and fine	96
Probation with jail time	132
Probation with jail time and fine	100
Suspended sentence	61
Time served	739
Time served and a fine	118
Time served and probation	44

CHARGES ON ASSIGNED PHOENIX CITY COURT CASES

Aiding and abetting shoplifting	42
Attempted theft of a motor vehicle	12
Carrying a concealed weapon	88
Child neglect	2
Crossing center line while driving	10
Disturbing the peace	199
Drag racing	17
Driving left of center line	14
Driving while intoxicated	1,516
Driving while under the influence of drugs	63
Escape	20
Failure to stop for red light	52
Failure to control motor vehicle	43
Failure to appear	110
False information to a police officer	43
Failure to yield right of way	32
Frauds and cheats	56
Indecent acts	40
Indecent exposure	60
Leaving the scene of an accident	77
License revoked	27
License suspended	186
Malicious mischief	54
Driving without being licensed to drive	250
Driving without any vehicle registration	46
Petty theft	335
Possession of stolen property	19
Prostitution	370
Public display	5
Public intoxication	9
Reckless driving	24
Selling liquor with no license to sell liquor	2

CHARGES ON ASSIGNED PHOENIX CITY COURT CASES (Continued)

Shoplifting	1,010
Simple assault	16
Simple battery	69
Speeding	211
Trespassing	31
Weaving while driving on roadway	163
Wrong way on one way street	5
Other	1,491

PHOENIX CITY COURT APPEALS ON THE RECORD

Cases on hand 1 July 1976	13
Appeals on the record assigned	18
Appeals on the record closed	20
Cases on hand 30 June 1977	11

DISPOSITION OF CLOSED CASES

Affirmed	13
Reversed	3
Dismissed	2
Relieved by private counsel	2

SENTENCES

Fine	4
Jail time	4
Probation	1

CHARGES ON ASSIGNED APPEALS ON RECORD

Driving while intoxicated	5
Driving while license suspended	1
Malicious mischief	1
Other	4
Disturbing the peace	2
Failure to appear for court appearance	1
Prostitution	2
Simple battery	1
Speeding	1

JUSTICE COURT

Misdemeanor cases assigned	1,652
Misdemeanor cases closed	1,660

DISPOSITION OF CLOSED CASES

<u>Dismissals</u>	364
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Pleas of Guilty

Pleas to original charge	162
Pleas to lesser misdemeanor charges	576
Pleas to fewer than all counts	348

Trials

Number of trials	34
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<u>Number of trials to court</u>	34
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Defendants found guilty as charged	23
Defendants found guilty of lesser offense	1
Defendants found guilty of fewer than all counts	1
Defendants found not guilty	8
Directed verdicts	1

Other Dispositions

Relieved by private counsel	60
Public Defender withdrew (conflict of interest)	15
Bond forfeitures	1
Prosecution discontinued before complaint filed	100

SENTENCES

Fine	607
Fine and jail time	54
Jail time	89
Probation	93
Probation and a fine	89
Probation with jail time	15
Probation with jail time and a fine	13
Suspended sentence	19
Time served	83
Time served and a fine	27
Other	18

CHARGES ON ASSIGNED JUSTICE COURT CASES

Carrying a concealed weapon	12
Child Neglect	2
Contributing to the delinquency of a minor	13
Crossing the center line while driving	16
Disturbing the peace	37
Drag racing	2
Driving while intoxicated	946
Driving while under the influence of drugs	6
Driving while license revoked	25
Driving while license suspended	23
Driving while not licensed to drive	67
Escape	12
Exhibition of speed	8
Failure to appear	14
Failure to provide for minor children	90
Illegal use of telephone	10
Indecent exposure	2
Leaving the scene of an accident	32
Malicious mischief	12
No motor vehicle registration	13
Party to the crime of driving while intoxicated	5
Peace bond	66
Petty theft	36
Possession of prescription only drugs	28
Possession of stolen property	1
Reckless driving	66
Shoplifting	2
Simple assault	10
Simple battery	17
Speeding	94
Trespassing	15
Under influence of a narcotic drug	1
Unlawful use of narcotic drug	7
Vehicular manslaughter	14
Other	524

SUPERIOR COURT

Misdemeanor cases assigned	200
Misdemeanor cases closed	288

DISPOSITION OF CLOSED CASES

<u>Dismissals</u>	71
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Pleas of Guilty

Pleas to original charges	91
Pleas to lesser misdemeanor charges	67
Pleas to fewer than all counts	27

Trials

Number of trials	14
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<u>Number of jury trials</u>	8
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Defendants found guilty as charged	8
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<u>Number of trials to court</u>	6
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Defendants found guilty as charged	4
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Defendants found guilty of fewer than all counts	1
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Defendants found not guilty	1
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Other Dispositions

Relieved by private counsel	6
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Public Defender withdrew (conflict of interest)	3
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Appeals dismissed and case remanded to lower court	8
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Prosecution discontinued before complaint filed	1
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SENTENCES

Fine	40
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Fine and jail time	5
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Jail time	41
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Probation	33
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Probation and a fine	24
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Probation with jail time	26
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Probation with jail time and a fine	10
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Probation with restitution	3
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Suspended sentence	3
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Time served	9
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Time served and a fine	4
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CHARGES ON ASSIGNED SUPERIOR COURT CASES

Disturbing the peace	2
Driving while intoxicated	43
Driving while using drugs	1
Driving while license suspended	1
Failure to provide for minor children	88
Leaving the scene of an accident	2
Petty theft	2
Possession of prescription only drug	3
Shoplifting	4
Simple battery	4
Speeding	4
Trespassing	2
Other	18

MENTAL HEALTH SECTION

Cases on hand 1 July 1976	1
Cases appointed	546
Cases closed	547
Cases on hand 30 June 1977	0

DISPOSITION OF CLOSED CASES

Petitions for Court-Ordered Treatment

Changed to voluntary status	26
Commitments	293
Dismissed	25
Discharged	139

Requests for Judicial Review

Changed to voluntary status	2
Denied	20
Granted	33
Withdrawn	8

BUDGET

7-1-76 through 6-30-77

ACCOUNT	EXPENDITURE
SALARIES	\$1,707,368.95
SERVICES AND SUPPLIES	
Office Space	110,599.01
Postage	3,056.28
Telephone	25,188.62
Notary Bonds	180.00
Liability Insurance	29,955.00
Psychiatric and Psychological	4,820.50
Witness and Interpreter Fees	4,769.51
Transcribing Services	63,158.06
Office Equipment	21,393.84
Duplicating Equipment	8,908.07
Transportation and Travel	436.54
Data Processing Equipment	1,350.00
Printing, Binding and Duplicating Expense	1,758.63
General Office Supplies	5,629.53
Books, Pamphlets and Subscriptions	3,426.10
Chairs, Tables and Miscellaneous	1,428.63
Miscellaneous	36.50
FIXED ASSETS	
Office Furniture and Equipment	609.34
LABOR AND EXPENSE TRANSFER	
Data Processing Charges	2,413.00
Mechanical Equipment Charges	7,357.86
Maintenance Services Charges	97.75
Electronic Maintenance Charges	480.00
TOTAL EXPENDED	2,004,426.72
APPROPRIATION	1,896,149.00

APPENDIX D

Court Administrator's Study
of Criminal Defense Legal Fees in Retained Cases,
including Guidelines MIDAS Recommendations by AID
(September and October, 1975)

STUDY OF LEGAL FEES CHARGED IN PHOENIX AREA

In making a determination whether or not a defendant is indigent, the court should consider such factors as income, source of income, property owned, outstanding obligations, number and ages of any dependents, and other sources of family income; but it should not consider the fact that a person has been released on bail or the ability of friends or relatives not legally responsible for him to obtain services of counsel.

Arizona Revised Rules of Criminal Procedure Rule 6.4A Comment

The above statement spells out those factors that must be considered in the determination of indigency for criminal defendants. The results of a recent study indicate that another factor to be considered is the offense(s) charged against the defendant. The study results would indicate that there could well be defendants who would be considered indigent, if charged with crime X, and non-indigent for crime Y, because of the extreme difference in legal fees the accused would incur for each charge.

Legal Fee Study.

In an effort to obtain data pertaining to legal fees charged for various types of offenses, as well as to gain insight into fees charged by private attorneys in the Phoenix area, a study was conducted. During September and October, 1975, 75 questionnaires were mailed out to a randomly selected group of attorneys whose names appeared on the list of attorneys accepting court appointed cases (See Appendix A). Of the 75 questionnaires mailed out, 30 responses were returned. The 40% response rate is representative of the sample, however, the response rate may have been effected by the random selection process. Some attorneys working for the same law firm received questionnaires and instead of sending individual responses, they sent one representative response from the firm.

It should also be noted that the intent of this study was to provide judicial officers with additional information that might be useful in

determining a defendant's financial ability to retain private counsel. The results of this study should not be taken as a legal fee schedule to be used by attorneys in establishing fees for their firm. The sample population of attorneys used in this study represents a wide variance in legal experience, number of clients represented, age of attorney, etc.

Questionnaire Description.

The questions used in this study were designed to obtain a response for 11 different types of charges ranging in seriousness of the penalty prescribed by criminal statute. Each attorney was asked to indicate a minimum fee as well as the average or standard fee he charged for each type of offense. (It is understandable that each case is unique and requires different amounts of time and work for the attorney. Hopefully, this factor was considered when the attorney indicated his average or standard fee for each charge.)

The attorney was also requested to respond to the hourly charge he requires for out of court and in court work. It was felt that this figure would be helpful in calculating the legal expense on a per hour basis. (A follow-up study is presently being conducted in which expense claims filed by court appointed attorneys are being analyzed to determine hours spent by attorneys working on criminal cases.)

Another question on the form related to retainer fees charged by attorneys prior to accepting a case. The attorney was asked to respond to either a percentage figure or a dollar amount he required before accepting a case. These figures are helpful, after analyzing the defendant's assets, in determining whether or not he has sufficient resources available to meet the the retainer fee required.

Analysis of Data.

The data collected was initially plotted on a graph. The sum of all the responses were added together and an average figure was calculated for each category.

The range of standard fees was calculated by indicating the lowest and highest fee indicated.

The mode score for each category represents that figure that was most often indicated as a standard fee.

An average figure was also calculated from the responses relating to in-court hourly charge, out-of-court hourly charge, percentage of fee required as a retainer, or amount of fee required as a retainer.

<u>CHARGE</u>	AVG. MINIMUM	AVG. STANDARD	FEE RANGE FOR STANDARD FEES	MODE
Petty Theft	332	433	\$ 100- 1,000	\$ 500 (10)
Poss. of Marij.	496	722	100- 1,500	750 (9)
Agg. Assault	832	1,020	200- 3,500	1,000 (9)
Rec. Stol. Prop.	805	1,056	250- 5,000	1,000 (10)
Grand Theft	1,076	1,477	250- 7,500	1,500 (6)
Forgery	1,023	1,575	300- 7,500	1,500 (6)
Poss. w/int. to Sell Narc.	1,438	1,880	250- 7,500	2,500 (9)
Burglary I	1,269	1,888	500- 7,500	1,500 (5)
AWDW	1,614	2,204	500- 7,500	2,000 (6)
Armed Robbery	1,916	2,952	500- 7,500	1,500 (6) 2,500 (6) 5,000 (6)
Capital Offense	5,230	10,852	1,000-20,000	15,000 (5)

RETAINER

Average Out-of-Court hourly charge: \$49.85

Average Percentage: 53%

Average In-Court hourly charge: \$58.52

Average Amount: \$653.00

(2 indicated entire fee before taking case.)

Summary:

The results of this study reveal that there is a wide dispersement in fees a defendant may incur depending on the attorney he retains and the offense(s) he is charged with. It also appears that a defendant should be in a position to provide a substantial sum of cash or collateral to meet retainer fees if he is hiring private counsel. (Note diagram below calculated from the standard fee and the percentage as a retainer).

<u>CHARGE</u>	<u>AVG.STAND.FEE</u>	<u>AVE.% AS RETAINER</u>	<u>AVG. RETAINERS</u>
Petty Theft	433	53 %	229.49
Poss. of Marij.	722	53 %	382.56
Agg. Assault	1,020	53 %	540.60
Rec. St. Prop.	1,056	53 %	559.68
Grand Theft	1,477	53 %	782.81
Forgery	1,575	53 %	834.75
Poss. w/int to Sell Narc. Drugs	1,880	53 %	996.40
Burglary I	1,888	53 %	1,000.64
AWDW	2,204	53 %	1,168.12
Armed Robbery	2,952	53 %	1,564.56
Capital Offenses	10,852	53 %	5,751.56

It is hoped the results of the study will be of assistance to the court. It should be noted that these figures only apply for the period during which the study was completed. Unfortunately, unless a study such as this is not periodically reviewed and updated, the figures can rapidly become obsolete.

C. KIMBALL ROSE
JUDGE

September 18, 1975

TO: ATTORNEYS PRACTICING CRIMINAL LAW

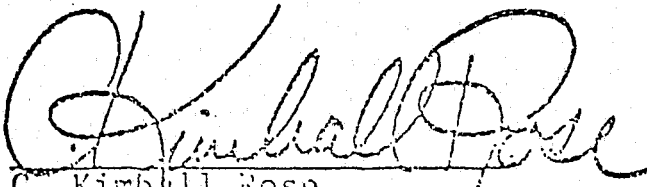
FROM: C. Kimball Rose
Presiding Criminal Judge

SUBJECT: Private Legal Fees

Beginning in October, 1975, a new program entitled AID (Appearance and Indigency Determination) will be assisting the Court Commissioner at the Initial Appearance Court in the County Jail. AID will be interviewing, verifying and presenting recommendations regarding those defendants appearing for their initial appearance. The recommendations will be presented to the Court Commissioner and concern whether or not a defendant is indigent, marginally indigent or able to hire private counsel.

So the AID personnel may gain an understanding of the private fee that a defendant may incur for the cost of his defense, I request that you fill out the enclosed questionnaire. There are numerous factors that determine the fee charged for private representation, so I realize the figures you indicate will probably be estimations from past cases.

The results of this study should be helpful in establishing a more accurate basis from which indigency determinations can be made. Thank you for your assistance.



C. Kimball Rose
Presiding Criminal Judge

CKR/mls

Enclosure

This questionnaire is seeking information relative to cases in which you were retained privately. (Do not confuse with court appointments or MIDAS cases.) Simply represent those figures that are most accurate with regard to the type of charge. This information is confidential and there is no need for you to put your name on the returned questionnaire.

Please return the questionnaire to:

Scott H. Green, AID Director
Court Administrator's Office
5th Floor, Superior Court Bldg.
101 West Jefferson Street
Phoenix, Arizona 85003

AVERAGE OR STANDARD
FEE FOR THIS TYPE
OF OFFENSE

OFFENSE

MINIMUM FEES

Petty Theft

Aggravated Assault or Battery

Receiving Stolen Property

Possession of Marijuana

Possession of a Narcotic Drug
for Sale

Grand Theft

Forgery

Assault With a Deadly Weapon

Burglary I

Armed Robbery

Capital Offense

I charge \$_____ per hour for service outside of court.

I charge \$_____ per hour for service in court.

I will usually charge ____% of the fee, or \$_____ up front before taking a private case.

GUIDELINES FOR MIDAS RECOMMENDATION BY AID

I. Assumptions

- A. Attorneys following MIDAS Guidelines that fees to be charged would conform with court-appointed cases:
 - a. \$20.00 per hour
 - b. \$150.00 per day for trial work
 - c. No fee is to exceed \$1,500 without notification and approval of Presiding Criminal Judge.
- B. Most attorneys will require a retainer prior to accepting a MIDAS case.

II. AID Guidelines

A. Defendant's Income

Must exceed poverty-level guidelines (Exhibit II) unless defendant is not sole supporter in household, and/or present income exceeds basic expenses by more than \$150 monthly. Income must be verified as steady and still available if the defendant is released from custody.

B. Defendant's Assets

Must have (verified) cash available to cover 1/4 of estimated MIDAS fee; or property and possessions with equity to be used as collateral for 3/4 of estimated MIDAS fee.

C. Charge and Estimated Fee

(See Exhibit II and III)

EXHIBIT II

U.S. DEPARTMENT OF LABOR: POVERTY LEVEL GUIDELINES

April, 1976

<u>Family Size</u>	<u>Non-Farm</u>	<u>Farm</u>
1	\$233.00 monthly	\$200.00 monthly
2	308.00 "	263.00 "
3	383.00 "	326.00 "
4	458.00 "	390.00 "
5	533.00 "	453.00 "
6	608.00 "	516.00 "

EXHIBIT III

REVIEW OF ATTORNEY CLAIMS FOR COURT-APPOINTED CASES ACCEPTED PRIOR TO PRELIMINARY HEARING

In an effort to determine the fees that should be requested of defendants as MIDAS referrals, an analysis of claims submitted by court-appointed attorneys was reviewed.

The sample included 76 claims and the variables used were: the charge (or most serious charge if more than one), the hours of work noted by the attorney, and the fee requested. It should be noted that this study evaluated the fee that was requested by the attorney, not what was finally approved by the Court. This procedure was used because the fee requested on the claim should be comparable to that which the attorney would charge a MIDAS referral.

Chart I

<u>Cases</u>	<u>Charge</u>	<u>Avg. Hrs.</u>	<u>Avg. Fee</u>
6	Misdemeanor (DWI, petty theft)	11.5	\$235.00
16	Poss. of Marijuana	7.4	148.00
5	Agg. Assault	8.4	168.00
11	Grand Theft	9.5	190.00
8	Armed Robbery	11.5	230.00
7	Burglary 1st	12.4	247.00
5	*Sale Narc. Drug	14.0	280.00
7	Forgery	16.0	320.00
5	*Rec. St. Property	16.5	330.00
3	Assault with a Deadly Weapon	26.5	530.00
3	*Capital Offense	43.6	872.00
76			

*Only 3 of the 76 claims included trial work and these fees were included in the average fee requested figure. For each day of in-court work 7.5 additional hours were included in computing the average hours figure.

When considering these average figures, the reader should be cautioned that the range in some categories was extremely wide-spread. (Example: The three claims reviewed for Murder I charges showed a low claim of \$220 and a high of \$1,625.)

Summary

The analysis of this sample population reveals that the average fee requested by court-appointed attorneys is less than initially predicted prior to this study. The results of this study also indicate that if these average figures were to be employed when considering MIDAS appointments, a larger population of defendants could be assigned as MIDAS referrals.

EXHIBIT III (Cont'd)

It should again be pointed out that the study results are based on a sample of 76 claims and additional review of claims is being done for those crime categories where less than 10 claims were used in the analysis. However, if the figures above hold relatively constant after additional review, this data could be useful in the alteration of the MIDAS program.

EXHIBIT IV

Based on the average figures identified in the attorney claim study (Exhibit III), the chart below has been designed in conjunction with the proposed guidelines (Exhibit I) for MIDAS recommendations by the AID program.

<u>Charge</u>	<u>Avg. Claim Requested</u>	<u>Cash Needed (1/4 of avg. claim fee)</u>	<u>Property or Possessions Needed (3/4 of avg. claim)</u>
Misdemeanor	235	\$ 58.75	\$176.25
Poss. of Marij.	148	37.00	111.00
Agg. Assault	168	42.00	126.00
Grand Theft	190	47.50	142.50
Armed Robbery	230	57.50	172.50
Burglary 1st	247	61.75	185.25
Sale Narc. Drug	280	70.00	210.00
Forgery	320	80.00	240.00
Rec. St. Prop.	330	82.00	248.00
AWDW	530	132.50	397.50
Capital Offense	872	218.00	654.00

EXHIBIT V

Another option in determining the average fee that a MIDAS referral could expect would be to use the legal fee study conducted in October, 1975. This study attempted to determine an average or standard fee private attorneys were requiring for certain types of offenses. Assuming that the average fee charged on privately retained cases is twice what should be charged a MIDAS referral, the chart below could be used in determining MIDAS recommendations:

<u>Charge</u>	<u>Est. MIDAS Fee ($\frac{1}{2}$ of Identified Standard Fee)</u>	<u>Cash Needed $\frac{1}{2}$ of Est.Fee</u>	<u>Property or Poss. Needed $\frac{3}{4}$ of Est.Fee</u>
Misdemeanor	250.00	60.00	188.00
Poss. Marij.	360.00	90.00	270.00
Agg. Assault	510.00	127.00	383.00
Rec. St. Prop.	525.00	131.00	394.00
Grand Theft	740.00	185.00	555.00
Forgery	785.00	196.00	588.00
Sale Narc. Drug	940.00	235.00	705.00
Burg. 1st	950.00	238.00	712.00
AWDW	1,100.00	275.00	825.00
Armed Robbery	1,500.00	375.00	1,125.00
Capital Offense	5,426.00	1,350.00	4,070.50

END