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EVALUATION OF DEFENSE SERVICES
DALLAS COUNTY, TEXAS

Final Report

May, 1979

Consultant Team

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BACKGROUND AND HISTORY

Dallas County, Texas is the second most populous county in the state, and includes both the City of Dallas and surrounding areas. The estimated present population of the county is 1.5 million persons. The county is governed by a Commissioner's Court, which consists of a county judge and four elected commissioners. The county judge exercises the authority of a county administrator or a county executive, while the entire Commissioner's Court is the legislative branch of county government. Under Texas Law, local counties are given only limited authority to appropriate and spend money. One of the areas which is funded by county government is the provision of legal representation to indigent accused in criminal and juvenile cases.

The judicial system in Dallas County consists of 8 County Criminal Courts, which have jurisdiction over misdemeanor cases; 12 Criminal District Courts, with jurisdiction over felony cases; and 2 Family District Courts, with jurisdiction over juvenile cases. There is no organized defender system in Dallas. Indigent persons who are entitled to the appointment of counsel in criminal and juvenile cases are provided a private attorney appointed by the court having jurisdiction over the case. Each judge in Dallas County maintains his or her own list of attorneys, and appoints them on a random, ad hoc basis. The one exception to this was one juvenile court judge who assigned counsel by rotation from a large panel list. Counsel is compensated pursuant to Article 26.05 of the Texas Code of Criminal Procedure, which provides that an attorney receive a minimum of \$50.00 for every

appearance other than trial, and \$250.00 to \$300.00 for each day of trial. The Attorney General of the State of Texas, however, has determined that an attorney may be compensated for only one appearance per day - regardless of the actual number of such appointments (Op. Atty. Gen. 1974 No. H-298, H-330). The attorney's bill is approved by the judge and is then sent on to the Commissioner's Court for payment.

Although the number of cases in which counsel has been provided has remained relatively constant in recent years, the amount paid to counsel has increased dramatically in the same period. The following table includes the number of cases in which counsel was assigned and the total amount spend by Dallas over the past 5 years:

| | <u>Number of Attorneys Assigned*</u> | <u>Total Amount Paid Counsel**</u> |
|------------------|--|--|
| 1974 | 3,495 | \$810,954 |
| 1975 | 4,898 | \$901,480 |
| 1976 | 4,422 | \$1,022,000 |
| 1977 | 4,435 | \$1,325,000 |
| 1978 | 4,155 | \$1,769,427 |
| 1979 to April 30 | 1,581 | ----- |

* Includes only District Courts and Annex Courts

** Includes all courts

The increase in the cost of providing counsel resulted in the creation of an Indigent Defense Committee in Dallas County. The chair of that committee is one of the County Commissioners, Jim Jackson. Also on the committee is District Judge John Mead, as well as representatives of the bar and the public. The committee's mission was to analyze the present system of providing legal representation in Dallas County and to ascertain whether such representation could be produced in a more

effective and cost-efficient manner. The Indigent Defense Committee requested that the National Center for Defense Management (NCDM) undertake an evaluation of the present services in Dallas County to aid it in answering these questions (Appendix A). This report is NCDM's evaluation of the services in Dallas County.

II

METHODOLOGY

Howard Eisenberg, the Director of the National Center for Defense Management, met with the Indigent Defense Committee in November, 1978 in Dallas. At that time it was determined that a request would be made by the Indigent Defense Committee through the Texas LEAA State Planning Agency for NCDM to do a plenary evaluation of the services in the county (Appendix A). At that time too, Mr. Eisenberg requested that he be supplied with all available statistics regarding workload, cost per case, and other critical information in order to adequately perform the evaluation. On the basis of the material supplied, it was determined that a very small number of persons were afforded counsel in the misdemeanor courts. In order to ascertain the reason for this low level of appointment, Mr. Eisenberg again visited Dallas on February 26 and 27, 1979 to review the procedures followed in misdemeanor (County Criminal) courts and to take a sampling of the recently-closed files from the County Criminal Courts.

The actual evaluation of the Dallas County System took place on March 26 through 30, 1979. The evaluation team consisted of Benjamin Lerner, the Chief Defender of Philadelphia; John Young, the Public Defender of Richland County (Columbia), South Carolina; and Mr. Eisenberg. The resumes of the consultant team are attached to this report as Appendices B, C, and D. Prior to the on-site visit, each member of the consultant team reviewed the statistical data supplied to it by Dallas County. The on-site visitation consisted of interviews

with members of the judiciary, private bar, community persons, support staff, and others involved in the provision of legal services in Dallas County. In addition, felony case files were reviewed by Mr. Eisenberg during the site visit, while other members of the consultant team observed the courts to ascertain the procedures which are actually followed.

The consultant group understood its task in Dallas County was to report on any problem areas in providing defense services in the jurisdiction; to make recommendations regarding these problem areas; and to set out for the Committee the options which are now available for providing defense services in Dallas.

III

THE BASIC PROBLEM - MONEY

It became clear to the consultant team that the primary problem identified by the Indigent Defense Committee was the dramatic increase in the cost of the providing counsel in Dallas County. Indeed, the "cost-effectiveness" of the system or any projected system is an overwhelming concern of a number of persons within the community, particularly those in a position to approve and allocate funding.

It is our conclusion that the amount of money being spent for the provision of legal counsel in Dallas County is not inappropriate. While we will make recommendations which may stabilize, or possibly slightly reduce the cost of providing counsel, we must emphasize at the outset that while there has been a significant rise in the cost of providing counsel, the present amount of money being spent is comparable to, or less than, that being spent in jurisdictions of similar size.

| <u>COUNTY</u> | <u>POPULATION</u> | <u>TYPE OF SYSTEM</u> | <u>CRIMINAL DEFENSE EXPENDITURES, 1978</u> |
|------------------------|-------------------|-----------------------|--|
| Nassau County, N.Y. | 1.38 million | PD | \$1.6 million |
| Middlesex County, Mass | 1.38 million | PD | \$1.25 million |
| Dallas County, Texas | 1.47 million | AC | \$1.8 million |
| Dade County, Fla. | 1.50 million | PD | \$3.9 million |
| Cuyahoga County, Ohio | 1.54 million | PD | \$1.8 million |
| San Diego, Calif. | 1.74 million | AC | \$4.7 million |

PD--Public Defender system using both staff attorneys and assigned, private counsel. Costs include both public defender and assigned counsel costs.

AC--Assigned Private Counsel, no public defender system.

IV

MISDEMEANOR REPRESENTATION

Out of the approximately 40,000 cases going through the County Criminal Courts each year, only slightly over 1,000* received court assigned counsel. This ratio struck the consultant team as exceedingly low, but upon further evaluation, we were unable to document the denial of counsel in misdemeanor cases. In February, 1979, Mr. Eisenberg spent two days viewing the actual procedures in the misdemeanor courts, and then spent a half-day reviewing approximately one hundred closed files in misdemeanor cases. During the March site visit, a number of attorneys and judges were interviewed specifically regarding misdemeanor representation.

Based upon this analysis, it would appear that a very large number of defendants in misdemeanor court have retained counsel, and that only approximately 10 percent have court assigned counsel. We were informed by various members of the bar that a significant number of defendants in misdemeanor cases were not represented by counsel and that the problem was particularly severe in the cases in which the defendant was retained in custody pending trial. These assertions were supported by neither our in-court observations nor by a random review of court files. On the other hand, an insufficient number of cases involving defendants held in custody pending trial were reviewed to discount the possibility that those defendants appearing in court on "jail chains" were more frequently denied counsel.

We do note that certain types of inappropriate procedures are followed in some of the County Criminal Courts. In at least one County Criminal

* This reflects an estimate made by local officials, the evaluation team determined it to be about 4,000.

Court, the judge will not appoint counsel for any person who is on bond and requires the defendant to be in custody before counsel will be appointed. In other courts, the indigency standards seemed much more liberal, to the point that some of the judges seem to err on the side of finding all defendants indigent, upon a simple assertion of indigency. In still other courts, the assignment of counsel is made immediately before disposition from among the lawyers present in or near the courtroom. If our several days "court watching" in Dallas was typical, this practice is prevalent and requires correction. While we commend the courts for insuring that counsel is provided, such provision must be made in ample time to allow adequate preparation and consultation.

Our observation of the courts, and a review of the court files, reveals that approximately 80 percent of the defendants have retained counsel, 10 percent court appointed counsel, and 10 percent waive counsel in writing after a colloquy with the court. A review of the files further indicates that court assigned counsel are usually paid less than \$100 for services in misdemeanor cases.

Since relatively few defendants are actually sentenced to jail, an argument can be made that the right to counsel does not apply in view of the decisions in Argersinger v. Hamlin, 407 U.S. 25 (1972) and Scott v. Illinois, 99 S. Ct 1158, 59 L.Ed.2d. 383 (1979). We do note, however, that those persons who are unable to make bail are often sentenced to time served, which raises the undecided question of whether under such circumstances the right to counsel attaches.

The majority of the publicly compensated representation in the

misdemeanor courts is supplied by recently-admitted attorneys who actively seek such appointments from the courts. Most of these attorneys either "graduate" to felony assignments or curtail court appointed work altogether as their retained practices develop. Dallas has a significant number of trials in misdemeanor cases - most are trials to the court without a jury, but with a notable number of jury trials as well. Some of the judges made special efforts in cases that went to trial to make certain that the young attorney was "assisted" by a more experienced lawyer. The Dallas County Criminal Courts are significantly more ordered than many other urban misdemeanor courts observed by the consultant team, and the quality of justice dispensed does appear to be good. While it is always difficult to make a qualitative judgment of other attorneys' work, the evaluation team heard little criticism of the quality of the representation in the misdemeanor courts. Under all of the circumstances, we believe that misdemeanor representation presently being afforded in Dallas is appropriate and cost-efficient.

V

THE NUMBER OF TRIALS IN DALLAS COUNTY

Dallas County has a very significant number of jury trials. It is not unusual to have one of the misdemeanor courts handling as many as 100 jury trials a year, or to have the felony courts handling as many as 50 jury trials per year. The number of cases disposed of with a jury trial is impressive, and is a primary factor in the handling of cases in this county.

The 1978 report of the Texas Judicial Council and Office of Court Administration indicates that 7.5% of the cases in Dallas County District Courts are disposed of through trials, while in Harris County (Houston) only 3.5% of the dispositions are with trial. This high rate of trial in Dallas has an obvious relationship to the cost of disposing of cases within the jurisdiction.

VI

THE DISTRICT ATTORNEY'S OFFICE

In order to understand the dynamics of the criminal justice system in Dallas County, it is necessary to understand the substantial authority and power of the District Attorney, Henry Wade. Mr. Wade has been the District Attorney of Dallas County for 29 years, and by all accounts he is the dominant political force in the county. His office has the respect not only of the judiciary, but of virtually all of the criminal defense lawyers in the jurisdiction. Indeed, the evaluation team was impressed with the Office of the District Attorney. The Dallas County District Attorney is a zealous, hard-nosed prosecutor's office. All attorneys are promoted within the office on the basis of the number of jury trials they successfully complete. In addition, the office is quite restrictive on plea negotiations, and will rarely dismiss a case against a defendant.¹ A large majority of the County Criminal Court and District Court judges have worked for Henry Wade in the prosecutor's office at some time in their career. It is clear to the evaluation team that the district attorney's office has substantial leverage over the judges, both for historical reasons and because that office keeps detailed statistics on the work production of each of the judges. There can be little question but that the substantial number of trials in Dallas County is directly related to the policies of the district attorney's office. The consultant team does not mean to be critical of these policies, but they are important factors in the overall scheme of things in Dallas

¹We were informed, however, that the grand jury declines to indict defendants in approximately 30% of the cases presented. It is widely believed that this high rate of "no bills" indicates that the district attorney uses the grand jury process as a means to dispose of cases which in other jurisdictions might never be issued or, if issued, might be dismissed by the prosecutor without presentment.

County. In at least some of the criminal courts in Dallas County, the assistant district attorney was the person who had primary control over the caseload, and that the setting and adjournment of cases was basically done by the district attorney, with the acquiescence of the judge. We were also informed by many sources that the district attorney's staff do not return telephone calls nor are they available in their offices so as to necessitate a good deal of negotiation and pre-trial of cases being accomplished in the courtroom.

VII

THE PRIVATE BAR

In most urban areas the practice of criminal law by the private bar has been left to two types of practitioner. The first type is the well-known lawyer who has relatively few court assigned cases. This attorney's primary clientele will be criminal defendants who are able to retain counsel; persons charged with drug-related offenses; persons alleged to have organized crime connections; persons charged with white collar offenses, etc. Many of these cases will be prosecuted in federal court and many will actually go to trial. Only rarely will such an attorney appear in state court representing a defendant charged with a street crime. This attorney might well be assigned a capital murder case or other serious offense, particularly if the case receives significant publicity. The second type of practitioner is the attorney who does a high volume of state court street-crime-type representation. This attorney will receive a significant number of court assignments. Few of this lawyer's cases will go to trial. Such an attorney may be quite adept at quickly disposing of cases in a way favorable to his or her client. He or she does not usually file motions or do extensive investigation.

In Dallas both of these types of attorneys exist. In addition, however, there is another, larger, group of attorneys who are not found in most other urban areas. That attorney is one who does a significant amount of criminal representation - perhaps half of his or her practice. This attorney does handle the more mundane offenses and street crimes as well as serious state and federal offenses. He or she (usually) has more retained criminal

clients than court assigned. He or she knows criminal law and procedure and thinks of him or herself as "a criminal lawyer." There are approximately 500 such attorneys in Dallas County most of whom are members of the Dallas County Criminal Bar Association, and approximately 250 are members of the Texas Criminal Defense Lawyers Association. To some extent these organizations have been organized to protect themselves "against" a public defender system being created in Texas, but that aspect should not be overstated. Clearly there is a significant number of competent practitioners in Dallas who are ready, willing and able to accept court assigned cases. This is a valuable resource in the community which is *not* usually present in most jurisdictions.

In evaluating the quality of representation, it must be noted that virtually no one spoken to was critical of the representation afforded by the Dallas Bar. One community person was quite critical of the attorney who had represented her son, but after further discussion it developed that the mother herself had retained that attorney. It is also clear to us that attorneys in Dallas are not afraid to try cases, and are fairly successful. Considering the strength of the prosecutor's office, the prosecution orientation of the judiciary, and the low compensation for counsel, the Dallas Bar does a good job of trying criminal cases - both retained and assigned. *Motion practice and discovery procedures are not well developed in Dallas.* It is apparent that motion practice is quite informal and that written motions are often not filed. We are concerned by this, particularly when such a motion might be required for the preservation of error. We are also concerned by the lack of discovery available to counsel prior to trial. Other than the

constitutionally-required right to discovery of exculpatory material², defense counsel in Texas has no right to discovery of the prosecution's case. This almost certainly results in more trials and in multiple delays in processing a case. During our site visit, we were informed of efforts being made to work with the district attorney's office towards developing a discovery procedure, and we would certainly encourage such an effort.

Based upon our evaluation we would conclude that the representation afforded indigent defendants in the Dallas County courts by the private bar is equal to that afforded a retained defendant by the same lawyer. There may be differences in such areas as expert assistance and investigation, but the basic quality of representation is present.

²See Brady v. Maryland, 373 U.S. 83 (1963)

VIII

THE MANNER IN WHICH COUNSEL IS ASSIGNED

As noted above, there are approximately 500 criminal defense lawyers in Dallas County. A survey undertaken by a bar group in the county, however, reveals that 21 attorneys received 60 percent of the total amount spent for indigent representation in 1978.

We are extremely concerned with the process by which the judges in Dallas County determine which lawyers are to be assigned which cases. While members of the bar in the county asserted that some of the judges were motivated by political reasons, we generally felt this was not a fair statement. Rather, our observation is that the judges are appointing lawyers whom they feel can best "move the cases along efficiently" according to the judges' particular standards and procedures. There is unquestionable resentment on the part of many attorneys to the fact that they have been excluded from the list of attorneys appointed, although they hold themselves out to be, and we assume they are, competent criminal defense lawyers. Under any set of circumstances, it is clear to us that the ad hoc assignment of counsel followed by the judges in Dallas County is not an appropriate way to provide representation in these cases. As will be noted below, we believe that there should be a substantial change from the present method wherein the judge now has the authority to make ad hoc decisions on a random or unarticulated basis.

IX

PROBLEM AREAS

The consultant team identified three primary areas of concern in Dallas County which should be corrected by the authorities, either in Dallas County, or, if necessary, in Austin.

Early Representation

When a person is arrested in Dallas County, he or she is taken to the municipal jail of the city in which the arrest took place. In the City of Dallas, this is the Dallas City Jail, located approximately 1 mile from the county jail. Within 12 hours of arrest the defendant is brought before a municipal court judge for the purpose of being informed of his or her constitutional rights. While the municipal judge will set bail and inform the defendant of his or her right to counsel, the municipality has no authority to pay counsel, so that counsel is not appointed by the municipal court judge. A number of attempts have been made by the bar, the municipal judges, and the district judges to deal with this problem, but as of today there are no attorneys regularly assigned at the municipal court level. The Criminal Bar Association in Dallas has volunteered to supply attorneys at the critical stage, but the municipal court judges have not taken advantage of the offer.

The police report and other information are then transmitted to the district attorney's office for the purpose of preparing "charging papers." These documents form the basis for retaining the defendant in custody prior to an indictment from the grand jury. When these papers are prepared, the defendant is transferred to the county jail. This might be within a few hours - but often it is a few days - following arrest.

Prior to indictment the defendant has the right to an Examining Trial (preliminary hearing) in the Justice of the Peace Court, which is a county-funded tribunal. It appears that counsel is rarely appointed at this level, and that a defendant without counsel does not know about this right, does not demand an examining trial, and forfeits the right at the time the indictment is returned. The defendant will appear in the District Court for the first time subsequent to the return of a true bill by the grand jury. It is only after that initial appearance in the District Court that counsel is generally appointed. From our review of case files, it would appear that in a large majority of cases counsel is not assigned until ten days or more following arrest. Indeed, it is not unusual to have a delay of as much as three weeks between the time of arrest and the assignment of counsel.

It is universally agreed that a defendant should be provided counsel as soon after arrest as possible; see Guidelines for Legal Defense Systems in the United States, National Study Commission on Defense Services (1976) pp. 48-71.³

³In accord: American Bar Association, Standards Relating to the Administration of Justice, Providing Defense Services, Standard 5-5.1 (Second Tentative Draft, 1978); National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standard 13.1 and 13.3 (1973); National Conference of Commissioners of Uniform State Laws, Model Public Defender Act sec. 2(b)(1); National Legal Aid and Defender Association, Standards for Defender Services sec. 2.2.

There can be little doubt but that the procedures in Dallas County are inadequate to provide effective representation immediately following arrest. Indeed, the period between arrest and assignment of counsel is not only lengthy, but works to deny the defendant certain basic rights, including the right to an examining trial, the right to argue for the reduction of bail, the ability to submit mitigating evidence to the grand jury, and other pre-indictment rights which may accrue to a defendant.

We are informed that the reason counsel is not provided at an earlier stage in the proceedings is the inability of the City of Dallas to compensate counsel appointed by the Municipal Court, and the fact that the case is not under the jurisdiction of the District Court until subsequent to the return of an indictment.

We believe that the problem of early representation and access to counsel before indictment can easily be solved in Dallas County. At the very least, the authorities should avail themselves of the offer of the Dallas County criminal defense bar to provide counsel without charge at this early stage. We also noted that some District Court judges were appointing counsel for the purposes of proceedings in the Justice of the Peace Court, while other attorneys were appointed by the Justice of the Peace and continued to provide representation into the District Court. It would appear, therefore, that some District Court judges have exercised jurisdiction prior to indictment and that the Justice of the Peace can appoint and compensate counsel. We were informed by a number of attorneys that between the time of arrest and indictment the District Attorney's office may be very active in a case, and may attempt to obtain not only

statements, but forensic evidence, from a defendant. Of particular concern to us is the practice of the District Attorney in attempting to obtain psychiatric examinations of the defendant in a serious case prior to the assignment of counsel. We believe that if the procedures in Dallas County are such as to preclude counsel until after indictment, the District Attorney should never questions the defendant or secure any other evidence from the defendant prior to the assignment of counsel.

We believe that adequate procedures can be designed to insure that counsel is assigned at the Municipal Court level and in the Justice of the Peace Court. We believe that the District Court could enter an order appointing counsel for the purpose of providing representation at those levels, even prior to the District Court obtaining jurisdiction over the case. We see no jurisdictional bar to such assignments.

In view of the asserted difficulty in assigning counsel prior to indictment, we wondered how Dallas County complies with Miranda⁴ and the other cases which necessitate the provision of counsel prior to arraignment or indictment. No one we asked could answer this question. Indeed, several persons asserted that they had never heard of a case in which a defendant had requested counsel prior to giving an in-custody statement which would require counsel under Miranda.

Recommendation 1

Adequate procedures should be established for ensuring that each defendant is afforded counsel as soon after arrest as possible. The procedures for

⁴Miranda v. Arizona, 384 U.S. 436 (1966)

assigning counsel only after indictment should be abolished, and replaced with a procedure whereby counsel is appointed no later than the first appearance before a judge or magistrate.

Assignment of Counsel

We were generally impressed with the quality of counsel available in Dallas who are willing and able to provide representation in criminal cases. In view of the unusual method of compensating counsel, however, we are surprised that there are a few attorneys in the jurisdiction who have been able to earn between \$30,000 and \$40,000 annually from publicly-compensated cases. Simple mathematics would demonstrate that such return can only be achieved through high volume and short appearances. When one considers the fact that an attorney can not get paid for an appearance in more than one court on a single day, the amounts received by some of these attorneys is truly startling.

We attempted to ascertain the basis upon which counsel is assigned in a given case. While there was a good deal of dissatisfaction among the bar as to the procedures, we do not discern that there is widespread political cronyism or other such patronage involved. Rather, we conclude that those attorneys appointed by the court are those whom the judge has identified as "efficient." This means that the attorneys are able to expeditiously dispose of cases in their courts according to the particular judge standards and procedures.

We are struck by the lack of any type of criteria for the assignment of counsel. While each of the judges indicated that in capital cases an effort is made to assign an experienced attorney, this same concern is not evident in less serious matters. Only in the juvenile court does

there appear to be a rotating list of attorneys who receive appointments. Under the juvenile court procedure an attorney would receive only 1 or 2 cases a year, while in the felony courts it is not unusual for an attorney to receive dozens of cases in a calendar year.

We are concerned that given the substantial number of criminal practitioners in Dallas that the judges have chosen to limit the appointments to a handful of persons who apparently are able to "move the cases" to the satisfaction of the judges. It is clear that the judges are under substantial pressure to expedite the disposition of cases in their courts. This pressure comes from several sources including the Commissioner's Court, the media, the prosecutor, as well as peer pressure within the judiciary.

The ad hoc or random assignment of counsel which is employed in Dallas County has been criticized by every group which has studied the methods of providing defense counsel, including the American Bar Association the President's Commission on Law Enforcement and the Administration of Justice, and the National Legal Aid and Defender Association. It has been explicitly rejected as an appropriate method of providing legal representation in criminal cases.

We believe that whatever else Dallas County does, it should significantly modify the present method of providing counsel to ensure that all qualified members of the bar receive a fair share of the assignments, that the judges are not inappropriately excluding or appointing attorneys, and that the process is open and free of even the appearance of impropriety.

Recommendation 2

We recommend that a coordinated assigned counsel panel system be established in Dallas County.

It is our anticipation that this coordinated assigned counsel system will be administered by a person, appointed by the administrative judge of the District Court, or by all of the judges in Dallas County. This person will establish panels of attorneys qualified to provide representation in certain classifications of cases. Examples of classifications of cases would be Juvenile, Misdemeanor, Minor Felonies, Serious Felonies, Capital Cases and Appeals. We suggest that a survey be taken of all members of the bar in Dallas County to ascertain which attorneys are interested in providing representation in which type of case. A committee of lawyers, judges, and the public should establish criteria and screen the applicants for inclusion on the panel. Any attorney who desires such work and is found to be qualified to provide representation in such cases should be included, and the attorney should not be excluded from the list because he or she is felt to be "uncooperative" with the judiciary. The criteria for inclusion on each of these panel lists should be made public, as should the names of the attorneys who are so certified. *This coordinator should have the ability to determine indigency immediately following arrest, and to assign counsel at the earliest possible stage in the proceedings.* Consideration should ultimately be given to allowing this coordinator to provide investigative personnel to the private attorneys who are assigned, and to monitor continuing legal education for the panel attorneys. The administrator of the coordinated assigned counsel system should have the authority to

compensate counsel, according to a schedule adopted by the judges of that court.

While we could find no case in which the assignment of counsel was predicated upon a political contribution or other inappropriate type of consideration by the attorney, there is a widespread belief in Dallas County that there is a relationship between the political support given by an individual attorney to a judge and whether that attorney will be appointed in the future. Our conclusion is that the main criterion used by the judiciary to determine which lawyers are appointed in felony cases is whether that lawyer is "cooperative" in the movement of cases, and is not basically a political decision. On the other hand, we believe that it is essential that, whatever system is established in Dallas County, it avoids not only impropriety but all appearance of impropriety. There is no question in our minds but that the present system in Dallas County contains many of the elements of a political patronage system, and is certainly the type of ad hoc, random appointment system which has been condemned by all leading authorities on the matter. For that reason, we strongly recommend the establishment of a coordinated assigned counsel system, administered by a non-lawyer, appointed by the judges, but subject to public scrutiny. We also believe it is essential that the criminal defense bar in Dallas County have a voice in the criteria for selection to the panel lists, as well as the opportunity to apply for inclusion on the lists.

Method of Compensation

Article 26.05 of the Texas Code of Criminal Procedure provides:

Sec. 1. A counsel appointed to defend a person accused of a

felony or a misdemeanor punishable by imprisonment, or to represent an indigent in a habeas corpus hearing, shall be paid from the general fund of the county in which the prosecution was instituted or habeas corpus hearing held, according to the following schedule:

(a) For each day or a fractional part thereof in court representing the accused, a reasonable fee to be set by the court but in no event to be less than \$50;

(b) For each day in court representing the accused in a capital case, a reasonable fee to be set by the court but in no event less than \$250;

(c) For each day or a fractional part thereof in court representing the indigent in a habeas corpus hearing, a reasonable fee to be set by the court but in no event to be less than \$50;

(d) For expenses incurred for the purposes of investigation and expert testimony, a reasonable fee to be set by the court but in no event to exceed \$500;

(e) For the prosecution to a final conclusion of a bona fide appeal to the Court of Criminal Appeals, a reasonable fee to be set by the court but in no event to be less than \$350;

(f) For the prosecution to a final conclusion of a bona fide appeal to the Court of Criminal Appeals in a case where the death penalty has been assessed, a reasonable fee to be set by the court but in no event to be less than \$500.

Sec. 2. The minimum fee will be automatically allowed unless the trial judge orders more within five days of judgment.

Sec. 3. All payments made under the provisions of this Article may be included as costs of court.

Sec. 4. An attorney may not receive more than one fee for each day in court, regardless of the number of cases in which he appears as appointed counsel on the same day.

This statute has been construed by the State Attorney General to mean that an attorney can be compensated for only one appearance per day, regardless of the actual number of appearances he or she makes. No payment is made for out-of-court work. The Dallas County Criminal Bar Association and a member of the Commissioner's Court have separately reviewed the payments to the private bar and have ascertained that approximately 21 lawyers received 60 percent of the funds from the county in the last two years. In addition, several attorneys are being compensated in excess of \$30,000 per year on court-assigned cases. A review of the billings discloses that few of the billings paid to such attorneys are for substantial litigation in death cases, but rather that the large majority of payments are for appearances in mine-run cases which ultimately are disposed of on pleas of guilty. We are frankly shocked by the statutory method of compensation of counsel in Texas. We are surprised that this has not been a matter of primary concern for those Commissioner's Courts in the state that are obligated to compensate counsel. It is pellucid to us that the present method of compensating counsel in the State of Texas penalizes the efficient attorney who does research, investigation and negotiation out of court and who may dispose of a case in a brief appearance, while it rewards the attorney who makes multiple short court appearances. Simple arithmetic would demonstrate that those attorneys who are receiving a substantial amount of money from publicly-compensated cases are doing so on the basis of high-

volume, short appearances, and not in the trial of the cases. Indeed, the review of the billings undertaken by the Criminal Bar Association supports this supposition.

While we are certainly sensitive to the desire of the state and county governments to place a lid on the amount paid to counsel, we believe that the statutory method applied in Texas is cost-inefficient. We also believe that the statute's failure to compensate counsel for out-of-court time is a short-sighted prohibition which almost certainly works to the detriment of the system. In short, the amount paid bears little relationship to the work actually done or services rendered in a given case.

Recommendation 3

Serious consideration should be given to a modification of the Texas statutes relating to the compensation of counsel. We suggest that counsel be compensated on an hourly basis for reasonable in-court and out-of-court time. If necessary, ceilings may be placed on each of the types of representation provided. Appearances for the purpose of adjourning a case by the defendant should not normally be compensated.

Many of the attorneys to whom we spoke said that they refused to accept court-assigned cases because of the method of compensation. They felt that they were forced either to pad their bills with unnecessary court appearances or to take substantial losses on such cases. An attorney who receives \$50.00 for a brief appearance in court may actually be receiving upwards of \$200.000 an hour for his or her time. Similarly, some judges order lump-sum payments under the statutory framework which greatly exceed

any reasonable hourly rate. It would appear to us that for the small number of attorneys who receive the substantial number of appointments, the present method of compensation has become quite lucrative. For the large majority of other lawyers, however, the present method of compensating counsel in Dallas County not only is cost inefficient, but unquestionably results in counsel being unable to provide fully effective representation.

X

TWO RELATED PROBLEM AREAS

We also believe it appropriate to identify two other areas which impact on the provision of counsel: Indigency standards and bail bonding.

Indigency Criteria.

A national phenomenon is the problem with indigency or eligibility standards in the criminal courts. In Dallas County we were told that indigency criteria were a serious problem, inasmuch as non-indigent persons were found to be indigent by the criminal courts in felony cases. Some of the members of the private bar speculated that this was because the district court judges were desirous of moving cases along, and assigned counsel simply of expediting the disposition of the case.

Frankly, we are surprised at the low level of indigency in the district courts in Dallas. The percentage of indigent defendants in felony cases has remained at approximately 30 percent in recent years. This number compares with approximately 75 percent or more indigents in virtually every metropolitan court system outside the State of Texas.⁵ While we do believe that it is appropriate to have written eligibility standards, we do not believe that there is a significant problem in the jurisdiction with non-indigent persons being assigned public-compensated counsel.

⁵See, National Legal Aid and Defender Association, The Other Face of Justice: A Report of the National Defender Survey (1973), Appendix I-C, pp. 109-128. Indeed, the percentage figures in the report are lower than that actually computed in subsequent studies by NLADA.

We would recommend that the assigned counsel coordinator, as provided in Recommendation 2, be given the responsibility of determining the indigency of criminal defendants, based upon a written form which will coordinate with the indigency standards. We believe that a significant hidden cost in Dallas County is the amount of judge and court coordinator time spent on the assignment of counsel.⁶ We urge the county to shift this responsibility to the assigned counsel coordinator, recommended above.

Bail Bonding.

Bail bonding is obviously big business in Dallas. The blocks surrounding both the county and municipal courthouses and jails are crowded with bail bonding storefronts. While we understand that Texas is committed to private enterprise, we have grave reservations about the present bail bonding system⁷. Clearly, the present system denies the county or state a substantial source of revenue.

An indigent person is required to pay a bondsperson to get out of jail. The amount spent on bond could otherwise be used to retain counsel or could revert to the county to offset appointed counsel fees. The bond premium

⁶In Michigan, for example, the National Center for Defense Management conducted a judicial survey which disclosed that judges themselves were spending an average of 20 minutes per day on issues regarding the assignment of counsel; NCDM, Michigan Statewide Study, Phase 1, Survey (December 1978). This is in addition to the time spent by court personnel and the lost time in court required for such procedures.

⁷The position expressed here is consistent with that found in the American Bar Association Standards Relating to the Administration of Criminal Justice, Pretrial Release, Standard 10-5.5 (Second Tentative Draft, 1978), which flatly recommends that "compensated sureties should be abolished." We concur in that view and adopt the ABA's reasoning.

is simply kept by the bondsperson as his or her fee. We seriously suggest that consideration in Texas be given to allow the defendant to put up 10 percent of the bond with the county, rather than the bondsperson. When the bond is discharged, the county could keep some percentage of this 10 percent. Not only would this save the defendants some money, it would generate sufficient income to pay for the system of providing counsel in Dallas.

We are sophisticated enough to know that this is a subject which is certain to be controversial because there is a large amount of money involved and because those who have an interest in maintaining the present system are quite powerful. On the other hand, the system suggested here works in other places⁸ and could work in Texas. Given the legitimate concern for the cost of the criminal justice system, this should certainly be an option to consider.

⁸Such a system has been adopted in the states of Illinois, Kentucky, Michigan, New Jersey, Oregon, Pennsylvania, and in Marion County (Indianapolis), Indiana.

DOES DALLAS COUNTY NEED A PUBLIC DEFENDER?

Section 5.1-2 of the American Bar Association Standards Relating to the Administration of Criminal Justice, Standards Relating to Providing Defense Services (2d ed., 1979) recommends that each jurisdiction have both a fulltime public defender organization and a coordinated assigned counsel system. While we believe that this is the appropriate standard, we must consider whether, in view of all the facts and circumstances in Dallas County, a public defender system should be set up.

By and large, public defender systems have been established in the United States for one of two reasons: The assigned counsel system was costing too much money or private counsel were not providing effective representation. We are persuaded that the private criminal defense bar in Dallas County is capable of providing effective representation in publicly assigned cases for the compensation that is now paid. We do believe, however, that the three primary recommended changes must be implemented in the county in order for any system to work effectively. This is, there must be early entry of counsel; the establishment of an independent coordinated assigned counsel system; and the method of compensation of counsel must be modified. We believe that if these recommendations are adopted, or even if the first two are adopted, the criminal defense bar in Dallas County is capable of providing effective and quality representation at a reasonable cost. We do not see the necessity of establishing a public defender system based upon the quality of representation now available and actually being provided in the criminal courts of Dallas County.

The question of cost effectiveness is more difficult to project. Based upon the 1978 level of indigency and appointments by the felony, misdemeanor and juvenile courts, we are satisfied that a public defender system could be somewhat less costly than the present method of assigning counsel. Our projections would be that a 100-percent public defender system⁹ would cost Dallas County approximately \$1.5 million per year. Going to a 75-percent-public defender/25-percent-private-bar would raise the cost only slightly, to approximately \$1.6 million. In 1978 Dallas County spent \$1.77 million for indigent defense. It is clear, however, that by the middle of the 1980's, assuming a continued rise in the cost of private-bar representation, a public defender system in Dallas would save the county as much as \$2 million per year. If the crime rate or the rate of compensation paid the private bar increases, the cost savings of a public defender would be even more dramatic. (See page 41, infra.)

In determining whether a public defender system is appropriate for Dallas County, we have two basic concerns. The first is that we are extremely uncomfortable with the present level of indigency in both the felony and misdemeanor courts. While we have been unable to ascertain any examples of abuse of the indigency determination, we are so struck by the low levels of appointment in Dallas County that we must express a concern that should a public defender system be set up that the office will be inundated with cases which are not now assigned to publicly-compensated counsel. While this would probably mean that the present indigency standards are overly

⁹Due to conflicts of interest and multiple-defendant cases, no public defender system could represent 100% of the indigent accused; see Holloway v. Arkansas, 435 U.S. 475 (1978).

restrictive, this is a factor which must be considered. We must emphasize, however, that as of this time and based upon our evaluation, we have not detected any inappropriate determination of indigency. On the other hand, we cannot readily explain the low levels of appointment in these cases. Indeed, in the standard reference on assignment of counsel, The Other Face of Justice, the average indigency rate was found to be 65 percent in the felony courts and 47 percent in the misdemeanor courts.¹⁰ This compares to the Dallas County figure of 39 percent in the felony courts and 10 percent in the misdemeanor courts.

The second and more critical issue for us is the political independence which would be essential for any meaningful public defender system in Dallas. By an "independent" public defender we mean an office which is supervised by an independent board, chosen by virtue of the members' concern for the provision of quality defense services. Judges, prosecutors, and others with different interests in the criminal justice system could not be on such a board.¹¹ While the program would be county-funded, the office would also be insulated from the Commissioner's Court by the independent board.

We have grave reservations as to whether an independent public defender could be established in Dallas County. We base this on a number of observations that were made during our evaluation. The first is the extraordinarily

¹⁰The Other Face of Justice (see footnote 5), p. 83.

¹¹See footnote 12, page , infra.

close scrutiny given to the expenditure of funds by the Commissioner's Court. The second is the very conservative attitude of the community on issues of criminal justice. The third is the overriding emphasis of the judiciary on the movement of cases in the courts. Each of these elements militates against the establishment of a public defender system in Dallas County. While we certainly believe that this is an option for the county, at the present time the political reality may well be that such a system is not viable.

XII

NEED FOR ADDITIONAL INFORMATION

We received outstanding cooperation from all of the various agencies in Dallas County involved with this study. We were disappointed, however, and somewhat surprised to find that Dallas County lacks basic information and statistics regarding the criminal justice system. For example, we were unable to obtain a cost breakdown for the appointment of counsel in felony, misdemeanor, and juvenile cases. The present management information systems utilized in Dallas County generate only a lump-sum figure, and then only for district and annex courts; thus we were unable to obtain a more accurate cost breakdown for the appointment of counsel in Dallas. Dallas does have access to a management information system, and we would suggest that contact be made with the National Center for State Courts to ascertain whether one of the pre-packaged software programs presently made available through the National Center and LEAA could be utilized in Dallas County to gain more information on the criminal justice system without substantial cost to the taxpayers of the county. We believe that this type of information would be of significant value to the county in assessing the costs of the court system. Such a system would also be invaluable to the judiciary.

Another difficulty is in computing the cost per hour of publicly-compensated counsel in Dallas and the actual number of hours devoted to cases by counsel. The reason this is so difficult is that the attorneys do not generally submit itemized vouchers for payment, nor is time broken down by attorneys requesting compensation. While this is understandable in view of the manner in which counsel is compensated, from an evaluation point of

view it is not possible to determine how much the system in Dallas is costing on an hourly basis or how much work is represented by the payment. We were told by several judges that the amount of compensation represents the judge's own estimate of what the case is worth. It is clear that the lack of any itemized billing and the lack of any clear criteria results in some lawyers being paid \$100.00 or \$150.00 for thirty minutes' work, while other attorneys are paid that same amount for five or ten hours' work. We would at a minimum suggest that an improved vouching system be developed to allow the courts to better evaluate payment and to allow the public to have a better idea of the actual cost efficiency of the system.

XIII

COMMUNITY INVOLVEMENT

To the best of our perception and observation, the client community plays no role whatsoever in the criminal justice system in Dallas County. Indeed, those persons from the community with whom we spoke indicated a strong belief that there was little interest on the part of the county government or judiciary to involve the community in the problems facing the criminal justice system. This position was expressed particularly by the nonwhite and Spanish-speaking community persons to whom we spoke. On the other hand, however, we must admit that the client community seemed less than concerned with the problems of the criminal justice system in the county. Despite our rather significant efforts to obtain input from the community, we found it difficult to obtain any meaningful information from representatives of the client eligible groups in Dallas County. While this apathy could be an indication of the general satisfaction with the system in Dallas County, we are inclined to believe that the lack of concern reflects either frustration or a lack of focus. This is particularly true in view of the fact that without exception every black or Spanish-speaking community person to whom we spoke had strong feelings on the inadequacies of the present system, although few persons were able to articulate specific objections.

XIV

SUMMARY

We were pleasantly surprised with what we found in Dallas. The politics of the adversary system in Dallas both form its strongest and weakest points. It is clear to us that by having a strong prosecutor and a strong, independent bar, cases are well tried in Dallas County. On the other hand, the judiciary has responded to the cost consciousness of the Commissioner's Court, and perhaps the public, by utilizing procedures which, while designed to "move cases along," may result in less than effective representation being provided, and may well be cost-inefficient. We do recommend that Dallas County explore alternatives to the present system. We will now proceed to outline the options we believe are viable.

XV

OPTIONS AVAILABLE FOR DALLAS COUNTY

One of the primary responsibilities given to the National Center for Defense Management was to outline various options which are now available to Dallas County for providing representation of criminal cases. We also understand that our responsibility is to approximate the cost of such options. From our evaluation of Dallas County, we believe there are three options which should be explored. Each of these options has within it alternatives which will impact on the provision of legal services.

OPTION 1 - MAINTAINING THE PRESENT SYSTEM

The first option available to Dallas County is to do nothing. That is, to maintain the present system.

Advantages to Option 1. There are obvious advantages to maintaining the status quo. Basically, doing nothing is the easiest thing to do.

Disadvantages to Option 1. We believe there are substantial problems with maintaining the present system of providing defense counsel in Dallas County. Perhaps the primary problem is that the "system" is not a system at all, but is rather a series of systems employed by each of the various judges in the county criminal and district courts. The viability of the system depends almost entirely on the good faith and sensitivities of each of the judges implementing each separate system. We believe that in a number of instances in Dallas the system fails to operate in an effective or appropriate manner, and that both the defendants and the taxpayers of the

county are the losers. Due to the lack of detailed billings submitted by counsel, we were unable to pinpoint the cost-per-hour of representation, but our perception is that in a significant number of instances the cost-per-case and per-hour of the present system is considerably higher than that under other systems. That leads us to suggest a second major problem with the present method of providing counsel. It depends to a large extent on the arbitrary slashing of bills or upon the provision of less than effective representation in order to maintain its cost-effectiveness. While the system continues to be cost-effective, the trend over the past five years has been a steep incline in the cost. There is little question but that the costs will continue to increase at a significant level if no steps are taken to better manage the system. For the reasons set forth in the first section of this report we suggest that there are very significant disadvantages to the present system, both from a management and political point of view, which must be considered.

Costs. Over the past four years the number of cases in which counsel has been assigned has actually declined slightly, from a high of 4,900 in 1975 to 4,155 in 1978. In that same period, however, the cost of publicly compensated counsel has doubled, from \$900,000 in 1975 to \$1.8 million in 1978. While some of this increase can be attributed to a statutory increase in the level of compensation, a review of the data suggests that the bulk of this change cannot be attributed to the statutory change. The cost of counsel has crept up at a level exceeding 20% per year since 1974. If a twenty-percent increase continues into the 1980's, the annual expenditure for counsel will be:

| | |
|------|---------------|
| 1979 | \$2.1 million |
| 1980 | \$2.5 million |
| 1981 | \$3.1 million |
| 1982 | \$3.7 million |
| 1983 | \$4.0 million |
| 1984 | \$4.8 million |
| 1985 | \$5.8 million |

It must be noted that the data for the first quarter of 1979 suggests that the total caseload for this year will be approximately 8% over 1978 and would thus further increase the projected costs.

Given the method of compensation and the high rate of inflation, we cannot anticipate that the cost of providing private counsel will decline. Given only a most modest 5% annual increase, the level of expenditure will be:

| | |
|------|---------------|
| 1979 | \$1.9 million |
| 1980 | \$2.1 million |
| 1981 | \$2.2 million |
| 1982 | \$2.3 million |
| 1983 | \$2.4 million |
| 1984 | \$2.5 million |
| 1985 | \$2.6 million |

In all probability, unless some major overhaul of the system is undertaken, the actual level of expenditure will be between the two figures, but closer to the higher figure. We believe that it is quite likely that by 1985 Dallas County will be spending in excess of \$4,000,000 for private indigent-defense counsel.

Variations on Option. We think that there are several variations on the present system which could be implemented with relatively little difficulty. An effort could be made by the judiciary to coordinate the assignment of

counsel, even while retaining each judge's authority to appoint counsel in each case. Under such a system, the judges as a group would develop criteria and possible lists of attorneys who are appropriate for assignment. This would be a variation on Option 2 relating to the establishment of a coordinated assigned counsel system. The second variation on the present system would be the requirement that counsel submit itemized bills outlining the number of hours spent on each case, and also detailing the number and purpose for each appearance in court. Under present procedures, often there is no billing in the court file at all, and the court pays on an apparently arbitrary basis, based upon a "horseback judgment" as to what the case is worth. This observation was confirmed through our interviews with the judiciary in Dallas County. A third consideration within the present system would be to place a ceiling on the number of cases that could be received by any one lawyer in any calendar year. This would force the judiciary to spread the assignments out to a greater number of lawyers who desire the cases.

We finally suggest that whatever system is followed in Dallas County, that serious efforts be made to correct the manifest delays in involving counsel in cases. Thus, even if the present system is maintained, we very strongly urge the judiciary and the bar to arrive at an acceptable method of providing representation as soon after arrest as possible.

Finally, we strongly urge the Commissioner's Court and other persons in positions of responsibility in Dallas to recognize the inherent problems with the state-mandated system for compensating counsel. We would urge that even if the present system is maintained, that efforts be made to abolish the statute which mandates a per-appearance payment to counsel.

OPTION 2 - COORDINATED ASSIGNED COUNSEL SYSTEM

The second option available to Dallas County is the development of a coordinated assigned counsel system. By this we mean the judicial appointment of an administrator who would: Develop lists of attorneys qualified and desirous of handling court assigned cases; develop criteria for the various lists; supervise the determination of indigency; ensure the assignment of counsel at an early point; and compensate counsel. This person need not be a lawyer. All of these functions would be under the direction of a committee comprised of members of the judiciary, the criminal defense bar, and the public. All decisions of the coordinator would be subject to judiciary review, but it is anticipated that such review would be unusual.

Advantages to Option 2. We believe that this option has the potential of overcoming most of the problems presently being experienced in Dallas County. The system would be open to public scrutiny, and would thus eliminate even the appearance of impropriety which presently exists. In addition, early entry, appropriate determination of indigency, and consistent compensation of counsel could be achieved through this suggestion. This option would also allow for the maximum involvement of the criminal defense bar in Dallas County, without the possibility of counsel being excluded for inappropriate reasons.

Disadvantages to Option 2. The primary disadvantage to this option is that it will diminish the individual prerogatives of the district and county criminal court judges. If there are judges in the jurisdiction who are now utilizing the appointments for patronage purposes, such patronage would be abolished. Thus there may be some political opposition to this option. Moreover, there

will be some initial costs involved with the implementation of this option. While we do believe that this option will have the result of containing costs better than the present system, we do acknowledge that it will be necessary to compensate the coordinator, and to supply the administration and overhead for such a system. The viability of this system also depends on the effort put forth by those members of the advisory committee who will be intimately involved with the development of criteria for selection, appointment, and compensation of counsel. While the coordinator will be a person who can administer and coordinate the program, the basic professional input and judgment will have to come from the advisory committee.

Costs. By itself the creation of a coordinated assigned counsel system will not result in the county spending less money. Indeed, such a system will cost the county approximately \$75,000 per year. On the other hand, there are significant hidden costs in the present system in the time spent by the judges and court personnel on the assignment of counsel. A recent study in the State of Michigan revealed that judges themselves spend approximately 5% of each day dealing with matters relating to the assignment of counsel. It is clear that considering the cost of the judges, court personnel, and attorney time, the cost of \$75,000 is far less than is now being spent by the taxpayers for less efficient service. On the other hand, this saving will not be reflected in a budget reduction, but only in a hoped-for increase in productivity.

The real cost savings in a coordinated system will be the coordinator's ability to screen billings better to insure consistency and fairness. This will result in some bills being increased, but many decreased as well. Due to the inadequate nature of the present payment vouchers, it was not possible to develop

any accurate data on the cost per hour, although in many cases the cost was quite high, based upon the work reflected in the court file and voucher. We would recommend that during a trial period that a goal be set of a twenty-percent reduction of costs. This reduction must be achieved by applying objective criteria adopted by the advisory board, and not simply by slashing bills to achieve this goal. Without more accurate data than is presently available in Dallas, we cannot project cost figures more accurately, except to estimate that a twenty-percent savings is realistic, given the nature of the system and method of compensation.

Possible Modifications of Option 2. There are many obvious modifications of this option which can be devised. The individual responsibility of the judge can be reinstated at virtually any point in the process. It might well be possible, for example, for the judge to still assign counsel working from the coordinator's list or for the judge to compensate counsel after the assignment is made by the coordinator. While we caution against such bifurcated responsibility, this may be one way of overcoming any political opposition which is encountered. The second major modification of Option 2 is to remove the coordinator from the judicial branch of government altogether, and place his or her function under the executive or legislative branch of county government. We again do not advocate such change because we believe that it is essential that this coordinator have the confidence and support of the judiciary, and that judges and bar perceive that this is a system run in the best manner possible.

There may well be wisdom in establishing this coordinator for some of the courts on an experimental basis. Throughout the evaluation and preparation of this

report, we have been handicapped by the lack of hard data on the precise payment habits and procedures in Dallas County. It would be of significant value to establish a coordinated system to compare the cost payouts to counsel, while gaining reliable information on the actual amount of time being spent in the courts. Such an experimental program, however, would have to encompass at least four separate courts in order to make the study viable. We do not suggest that a coordinator be established in only one or two courts. Ideally, if such an experiment were to be tried, it should include half of the county criminal courts and half of the district courts, while the present system remains in place in the remaining courts.

OPTION 3 - PUBLIC DEFENDER

The third option available to Dallas County is the establishment of a public defender system in addition to the coordinated assigned counsel system maintained under Option 2. Under such an option a public defender office would receive a percentage of the assigned cases. The attorneys in the public defender office would be salaried, full-time, and prohibited from any other type of work. Our reservations regarding the establishment of a public defender office in Dallas have already been indicated. For these same reasons it is imperative that if such an office is created, it be supervised by an independent board of directors, made up of lawyers and members of the public. We do not advocate the inclusion of the judiciary on such a board¹², but we believe that it is essential that the judiciary have significant input without control into the day-to-day operations of the office. We further believe that under no

¹²See ABA Standards Relating to Providing Defense Services, Standard 5-1.3 "Professional Independence" (Second Edition, Tentative Draft, 1978). See also, District of Columbia Code § 2-2223, and Wisconsin Statutes §§ 15.78 and 977.04 (1979).

circumstances should the public defender office receive more than 50 percent of the total number of court-assigned cases. Indeed, in its initial two-year period we would strongly urge that if a public defender is created that its percentage of cases remain at or below the 25 percent level. At that point a detailed evaluation should be undertaken to determine qualitative comparison of the work between the private and public bars, as well as the cost-effectiveness of the public defender in Dallas County.

Advantages to Option 3. We believe that a mixed system, utilizing a coordinated assigned counsel system and a public defender system is the best possible manner in which to provide legal representation. This is also the position taken in the recently-adopted second draft of the American Bar Association's Standards Relating to Providing Defense Services. We further believe that the development of a public defender system in Dallas is the best long-term hope of achieving some cost containment. While we do believe that the second option suggested above will result in a leveling off of costs due to better administration, we do not believe that the cost savings of the second option will be substantial. We further believe that short-run small savings can be achieved through a coordinated assigned counsel system, while in the long run the county can maintain a substantial check on the cost of indigent representation through a properly administered public defender system.

Disadvantages to Option 3. Simply stated, a public defender system in Dallas County which is not independent would be a disaster. We believe that it is absolutely essential that every step be taken at the outset to ensure the independence of such an office. *If such independence cannot be ensured, then a public defender system should not be set up.*

A second major problem we anticipate in Dallas County is the relationship between the private bar and the public defender office. There is very significant antagonism now to even the basic concept of a public defender being established in the jurisdiction, and we are quite concerned that if even a small public defender office is set up there would be significant competition and antagonisms between the private bar and the public defender. For that reason we would urge a maximum cooperation of the bar in the establishment and implementation of any defender system. A third problem which is related is the general philosophical opposition that we found in Dallas to a public defender, and the general belief that "private enterprise" is superior to that which can be provided through a public law office. As public defenders we believe such a position to be unwarranted, but we do recognize that there is significant political and philosophical opposition to the establishment of a public defender in Dallas which would have to be overcome. Indeed, the establishment of civil legal services in Dallas was occasioned by significant political opposition which has not yet been overcome.

Modifications of Option 3. There are other modifications which we have considered which relate to the establishment of a public defender system in Dallas County. These modifications include the establishment of a public defender who would handle the majority of cases, perhaps as many as 80 or 90 percent; the development of a public defender system on a court-by-court basis, similar to that found in Fort Worth and Atlanta, Georgia; a public defender system administered directly by the judiciary, while not on a court-by-court basis; or a public defender system which is administered as a county agency by the Commissioner's Court. For various reasons we totally reject each of these alternatives as being inconsistent with the provision of high-quality defense

services. Our primary judgement is that such systems lack the necessary independence to provide effective representation. In addition, we believe that the political situation in Dallas is such so as to militate strongly against a system in which the majority of cases are assigned to public defenders. While it may be that over time this will become a viable alternative, at present we are impressed with the size and quality of the private defense bar and the very significant problems that would be encountered by a public defender.

As with the assigned counsel coordinator, we do believe that there may be some advantage to utilizing a public defender in some of the courts in Dallas, to determine whether it is a viable and cost-efficient option. Due to the lack of the most appropriate type of statistical documentation, we are unable to estimate with any degree of confidence the fiscal ramifications of any major modifications in the system. We emphasize this because in the past inadequate data have been kept, and not because the economies cannot be computed once such data are known.

However, any such experiment would have to be significantly broadly-based so that it is a viable indication of the economies and qualitative performance of the office in the jurisdiction.

The present cost per case in Dallas County is approximately \$430. It is clear to us that at virtually any funding ratio in which a public defender receives 25% or more of the caseload, the public defender cost will be at least \$100 per case less than the private bar. This saving is created both by the inefficient present method of compensation and the economies of scale that can

be realized by a public defender. Given the present caseloads, we would estimate that a public defender with eight attorneys could handle one-quarter of the caseload; with sixteen attorneys, half of the caseload; and with twenty-five attorneys, three-quarters of the cases. The cost of such a public defender system would be \$360,000; \$720,000; and \$1,125,000 respectively, in addition to the private bar cost of the additional caseload. These figures are computed based on the assumption that all assigned cases are felonies and that the NLADA standard caseload of 150 cases per attorney per year is appropriate. Since some of these cases are not felonies, the public defender cost may even be less due to the possibility of increased caseloads. This same saving would not be applicable for the private bar since the cost per case is computed on the basis of actual present cases, and thus these costs already take into consideration the case differences.

We project the annual costs of various systems to be as follows:

[millions of dollars]

| Year | <u>100% Private Bar</u> | <u>75% Private Bar- 25% Public Defender</u> | <u>50% Each</u> | <u>25% Private Bar- 75% Pub. Defender</u> |
|------|-------------------------|---|-----------------|---|
| 1979 | \$1.9-\$2.1 | \$1.8-\$2.1 | \$1.7-\$2.1 | \$1.6-\$1.7 |
| 1980 | \$2.1-\$2.5 | \$1.9-\$2.5 | \$1.8-\$2.2 | \$1.7-\$1.9 |
| 1981 | \$2.2-\$3.1 | \$2.1-\$3.0 | \$2.0-\$2.6 | \$1.9-\$2.2 |
| 1982 | \$2.3-\$3.7 | \$2.2-\$3.5 | \$2.1-\$3.0 | \$2.1-\$3.5 |
| 1983 | \$2.4-\$4.0 | \$2.3-\$3.9 | \$2.3-\$3.5 | \$2.2-\$2.9 |
| 1984 | \$2.5-\$4.8 | \$2.5-\$4.8 | \$2.4-\$4.1 | \$2.4-\$3.3 |
| 1985 | \$2.6-\$5.8 | \$2.6-\$5.8 | \$2.6-\$4.8 | \$2.6-\$3.8 |

The variations in the figures are entirely attributable to the uncertainty regarding the costs of the private bar. If the present rate of increase for the private bar was to continue through 1985, however, the highest figures will hold true. The public defender figures in the equation remain constant in each

category, computed at a 10% budgetary increase each year; this rate of increase may well prove too great.

As with the other cost estimates, any significant change in the number of cases or level of indigency will result in a similar change in cost estimates. A public defender system can better absorb a small increase in cases, while a decrease in cases would result in the greatest savings with private assigned counsel.

XVI

CONCLUSION

Dallas and Houston remain the two largest jurisdictions in the country to have no organized defender system. Until the recent increases in the cost of private counsel, no one advocated such a system in Dallas. Today it would appear that given the rapid escalation in costs of assigned private counsel, a public defender system might well be less expensive for the county than the present system. It is quite clear to us, however, that without substantial changes in the criminal justice system in Dallas, a public defender would be a disaster. Such a program would be strongly opposed by the private bar and by most of the judiciary; it would be supported primarily by those who are concerned only with reducing the cost of providing representation. We doubt that an office can remain independent in Dallas in view of the many pressures upon the court systems. In short, we can not now recommend the establishment of a public defender in Dallas.

We are impressed with the quality of the private bar in Dallas and with the real possibility that a model assigned counsel system can be established and save the county some money. We would hope that through such a system the problems identified in this report can be solved and the best possible representation afforded.

We received outstanding cooperation from everyone in Dallas. We particularly would like to acknowledge Commissioner Jim Jackson; Judge John Mead; Cheryl Jerome, of the County Planning Office; and Felix Saucedo, of the County Budget Office, for their help. We recognize that many persons will take exception to

some of the conclusions reached in this report and will be disappointed by our analysis of the Dallas County situation. We can only hope that even with whatever flaws may exist in this report, it is helpful to the criminal justice community and taxpayers of Dallas County.

APPENDIX A

Technical Assistance Request Correspondence



DEPARTMENT OF PLANNING, RESEARCH AND GRANTS

JAMES C. COOKSEY, DIRECTOR

623 RECORDS BUILDING
DALLAS, TEXAS 75202

(214) 749-6211

May 9, 1978

Mr. Joe Pearce
Administrative System and Control
Criminal Justice Division
411 West 13th Street
Austin, TX 78701

Re: Indigent Defense Systems

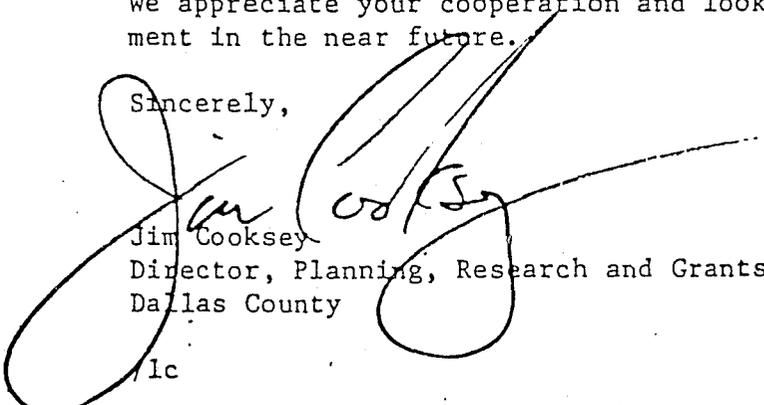
Dear Mr. Pearce:

The Dallas County Commissioners' Court has determined the need to conduct a feasibility study in the area of indigent defense systems for the county. At present Dallas County operates on a court appointed attorney basis as provided for by statute. Any reform effort would involve a major systemic change of broad impact.

Attached herewith is a general outline of proposed areas for inclusion in the study. We are requesting technical assistance from LEAA for the purpose of carrying out this feasibility study to create the most cost effective and beneficial legal defense for indigent defendants.

We appreciate your cooperation and look forward to a favorable endorsement in the near future.

Sincerely,


Jim Cooksey
Director, Planning, Research and Grants
Dallas County

lc

Attachment

cc: Mr. Larry Craddock, CJD
Mr. Gregg Brady, LEAA

INDIGENT DEFENSE FEASABILITY STUDY

- I. Evaluation of current system:
 - A. Number of attorneys appointed annually;
 - B. Actual payment schedule;
 - C. Business generated from court appointed clients;
 - D. Number of clients received annually;
 - E. Amount of time spent on court appointed case;
 - F. Comparison of indigent defense to defense of paying client;
 - G. Comparison of courtroom time of indigent to paying clients;
 - H. Comparison of business generated from two classifications.

- II. Develop a description of various models for indigent defense service delivery to be used to communicate with interested parties:
 - A. Current court appointed attorney system with appropriate administrative modifications to increase efficiency;
 - B. Service contract with one or more firms to provide defense services for indigents;
 - C. Public Defender System;
 - D. Other.

- III. Input from various entities regarding the existing system, public defender system, and any other alternative as recommended by the entity:
 - A. Input from Dallas Bar Association;
 - B. Input from Texas Bar - to see if program being used in any other counties in state; if not;
 - C. Input from Public Defender Offices elsewhere - preferably southwest or west to get similar client distribution;
 - D. Input from District Attorney's Office;
 - E. Organizational input from legal services;
 - F. Input from judges regarding present system and any future suggestions;
 - G. American Bar Association
 - H. Practicing Law Institute;
 - I. May want to contact law enforcement agencies for cooperation as defense attorney's need good working relationship with jails, etc.;
 - J. Input from County Auditor.

- IV. Make specific recommendation:
 - A. The type of system which should be used by Dallas County including its design, structure, and financing.
 - B. An analysis of state statutes regarding:
 1. existing limitations;
 2. recommended revisions.
 - C. Draft proposed legislation.



OFFICE OF THE GOVERNOR
CRIMINAL JUSTICE DIVISION

DOLPH BRISCOE
GOVERNOR

ROBERT C. FLOWERS
DIRECTOR

June 5, 1978

Mr. Jim Swain
Division Director
Judicial Division
Law Enforcement Assistance Administration
633 Indiana
Washington, D.C. 20521

Dear Mr. Swain:

Mr. Joe Parker, who is the LEAA state representative for Texas, has informed me that you are the appropriate party to receive the enclosed technical assistance request.

Expeditious handling will be appreciated.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Larry J. Craddock".

Larry J. Craddock
Courts Specialist

LJC/lc
Enclosure

cc: Jim Cooksey
Joe Parker

Copy in local [unclear]

AREA OF CONCERN
POLICE _____
COURTS' X _____
SYSTEMS _____
CORRECTIONS _____
NARCOTICS _____
MANPOWER _____
ORG CRIME _____
Other _____

U. S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
Dallas Region VI
500 S. Ervay St., Suite 313C
Dallas, Texas 75201
(214/749-7211)

T/A No. _____
City/Co. _____
Date Rec'd _____
SPA Apvd _____
Cy-Opns _____
Date of T/A _____
T/A Compl _____
Rpts to: _____
Req Agcy _____
SPA _____
Opns _____
Prog Chief _____
Critique _____

FOR LEAA USE ONLY

REQUEST FOR TECHNICAL ASSISTANCE

DATE OF REQUEST: 5/9/78

TITLE OF REQUEST: Indigent Defense Systems

* CONTACT PERSON: Jim Cocksey

TITLE: Director TELEPHONE NO. (214) 749-6211

AGENCY'S NAME Department of Planning, Research & Grants

ADDRESS: 623 Records Building

Dallas, Texas ZIP CODE: 75202

1. Describe, in summary form, the nature of the problem and specific type of technical assistance needed. Include specific areas of specialty required, and approximate date(s) of assignment. (Attach additional page if necessary)

Attached herewith is a general outline of areas to be covered by proposed study of the needs of Dallas County in the area of indigent defense. Dallas desires the study as soon as possible.

2. Describe extent to which technical assistance resources have been sought from other agencies within the state. If competent assistance does not exist, so indicate.

Competent assistance does not exist to fully service this request. The proposed study would go into an area not presently provided for under state law - a public defender system. No one in the state has experience with such a system.

* Forward original and one copy to your state Criminal Justice Planning Agency, of RODAL Form 6900/1B.



UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
WASHINGTON, D. C. 20531

June 20, 1978

JUN 21 1978

Dean John F.X. Irving
Consultant/Director
National Center for Defense Management
2100 M Street, N.W., Suite 601
Washington, D.C. 20037

Re: Grant No. 77-DF-99-0054

Dear John,

Enclosed is the request for TA from Dallas County, Texas which we have been expecting. Please give me a call after you have had an opportunity to review it.

Best regards,

Gregory C. Brady
Courts Specialist
Adjudication Division, OCJP

Enclosure

*Double with Irving - was done a year ago
from him - he should say in discussion
for this project as well as Irving
G.C.B.*



CRIMINAL DISTRICT COURT No. 4
DALLAS, TEXAS 75202

JOHN MEAD
JUDGE

August 29, 1978

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

Dear Mr. Eisenberg:

On behalf of the Indigent Defense Committee of Dallas County, it is my pleasure to extend to you an invitation to meet with our committee.

It is my understanding that this initial meeting with you, or your designee, would be in the nature of an exploratory session, in which we could better understand your program.

Our committee has been formed by the Commissioner's Court of Dallas County as an official body to study indigent defense services, both criminal and juvenile. The committee is a cross section of individuals representing the entire spectrum of those concerned with the problem.

I would suggest a Thursday or Friday afternoon for the meeting with your people, but if this is not convenient, we can adjust to your schedule.

We are excited about the prospect of working with your organization and I look forward to hearing from you. Should you need further information, let me know.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John Mead".

cc: Commissioner Jim Jackson

JM/tj



DEPARTMENT OF PLANNING, RESEARCH AND GRANTS

JAMES C. COOKSEY, DIRECTOR

623 RECORDS BUILDING
DALLAS, TEXAS 75202
(214) 749-6211

RECEIVED JAN 2 1978

December 29, 1978

Mr. Howard Eisenberg, Director
National Legal Aid and Defender Association
2100 M Street NW, Suite 601
Washington, D.C. 20037

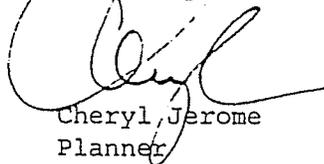
Dear Howard,

Enclosed you will find a copy of a letter requesting technical assistance from LEAA.

I apologize for not getting this off to you sooner.

Hope you had a nice holiday.

Sincerely,


Cheryl Jerome
Planner

Enclosure

OFFICE OF THE GOVERNOR
CRIMINAL JUSTICE DIVISION

DOUGLASSON
12/12/78

RECEIVED JAN 2 1978

December 12, 1978

Mr. Gregory Brady
Adjudication Division
Law Enforcement Assistance Administration
655 Indiana Avenue, N.W.
Washington, D.C. 20531

Dear Mr. Brady:

We are forwarding herewith a request for technical assistance from Dallas County in the area of Criminal Defense for Indigents.

As you are probably aware, Texas operates on a court appointed counsel system with some of the larger counties beginning to study the efficiency of their system as compared to the public defender systems which exist in other areas of the country.

Dallas County would like someone with expertise in the area of operation of indigent defense to review and make suggestions on improvement of their present way of handling the indigent accused. Because defense of indigents is handled on an ad-hoc court appointment basis throughout the state, we do not have technical assistance available in-state to service a request of this nature and recommend approval of the request.

Yours very truly,

Larry J. Craddock, Director
System Program Management

cc: Aldo Hill

APPENDIX

TECHNICAL ASSISTANCE REQUEST QUESTIONNAIRE

Name and Title of Primary Contact Person:

Jim Cooksey, Director

Agency:

Dallas County Department of Planning, Research and Grants

Address:

623 Records Building

(Number, Street)
Dallas, Texas 75202

(City, State, Zip Code)

Telephone: Area Code (214) 749-6211

T.A. Request was initiated by the client on November 17, 19781. A Brief Statement of the Problem:

The costs of the Dallas County Indigent Defense system have grown drastically in the last few years. The growth in court appointed attorney fees paid has increased 77% or \$138,597 from 1976 to 1978. In addition, the percentage ratio of attorney appointments to total cases disposed has remained approximately 30% from 1976-1978, with total appointments and cases disposed remaining constant and even decreasing.

This, coupled with the question as to quality of indigent defense, has prompted Dallas County, in the form of The Indigent Defense Committee, to seek an evaluation of the cost efficiency and service effectiveness of the indigent defense system. The Committee is disposed at this time to seek professional expertise in this type evaluation and possible recommendations as to procedural and structural improvements.

2. Expected Outcome:

The expectations of the Indigent Defense Committee is a critical evaluation of the Dallas County Indigent Defense System with appropriate recommendations as to improving the cost efficiency of the system as well as determining, and improving if necessary, the effectiveness of the system.

3. Services, Products, and Resources Needed:

a. From the T.A. contractor:

A comprehensive study with recommendations for the Dallas County Indigent Defense System. An on-site evaluation by professional staff with the necessary expertise and experience in this field. The travel and other related costs to support this task.

b. From requesting agency:

Statistical and support data. Clerical and professional staff support. Cooperation on the part of county elected and appointed officials.

c. From SPA or LEMA:

Request of the National Center for Defense Management, Howard, B. Eisenberg, Director, to provide said technical assistance for the Indigent Defense Study and related expenses.

d. From other sources:

N/A

4. Steps Taken by Agency to Solve Problem:

The initial step taken by Dallas County was the establishment of the Indigent Defense Committee headed by a county commissioner represent the district and county judges, the local Bar Association and the District Attorney's Office. Southern Methodist University, the area law school, was also included.

The Committee directed the Planning, Research and Grants Department and the Office of the Budget to provide staff to make an initial study of the system. cursory conclusions indicated a need for a comprehensive study of the Dallas system requiring expertise, and staff support, not available in Dallas County.

5. Recipients of T.A.:

| Name | Title | Agency | Division | Unit |
|-----------------------|----------------------|----------------|----------------------|-------|
| The Hon. Jim Jackson, | County Commissioner, | Dallas County, | Commissioners' Court | - N/A |

6. Coordination of Effort With:

The Dallas County District Court Judges, County Criminal Court Judges, District Attorney's Office, County Clerk's Office, District Clerk's Office, Commissioners' Court, other line departments, the Dallas Bar Association and the Dallas Criminal Bar Association.

7. State Planning Agency Contact:

Office of the Governor
Criminal Justice Division
Ed Ford, Grant Manager

8. Time Frame for T.A. Delivery:

January 1979 to commence the study.

APPENDIX B

Resume

Howard B. Eisenberg

RESUME

HOWARD B. EISENBERG

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

Home:
10116 Gravier Court
Gaithersburg, Maryland 20760
(301) 258-9718

Personal Data

Born: December 9, 1946, Chicago, Illinois
Son of Dr. & Mrs. Herman L. Eisenberg
Married: August 25, 1968 to Phyllis T. Borenstein
Son: Nathan, born July 24, 1972
Son: Adam, born June 6, 1975
Daughter: Leah, born January 15, 1979

Professional Data

Bar Admissions:

State of Wisconsin (1971)
District of Columbia (pending)
United States Supreme Court
United States Court of Appeals for the Seventh Circuit
United States Court of Appeals for the District of Columbia
United States District Courts, Eastern and Western Districts of Wisconsin

Present Position

Director, Defender Division, National Legal Aid and Defender Association
Director, National Center for Defense Management

Previous Positions

State Public Defender, State of Wisconsin, by appointment of Wisconsin
Supreme Court, December, 1972 - September, 1978
Acting State Public Defender, State of Wisconsin, November 1 - December 12, 1972
Assistant State Public Defender, State of Wisconsin, July 1 - October 31, 1972
Law Clerk to late Justice Horace W. Wilkie, Wisconsin Supreme Court
July 1, 1971 - June 30, 1972

University Faculty

Lecturer in Law, University of Wisconsin Law School, September 1972 -
January, 1973
Course: Appellate Advocacy

Course: Internship Seminar, January, 1974 - June, 1977. Summer, 1974
Courses: Law and Constitutional Problems; directed research.

Course, 1975: Independent Research - Lecturer, University of Wisconsin
Law Extension

Course: Defense of Criminal Cases, Spring and Fall, 1975

Continuing Legal Education Faculties

Wisconsin Judicial Education Programs:
Criminal Law Institute Faculty, 1975-78
Judicial College, 1977-78
Judicial Writing Seminar, 1977

University of Wisconsin Continuing Legal Education:
Criminal Law Programs (five program Spring, 1975
Criminal Law Programs (four program Spring, 1976
Criminal Law Telelecture, Spring, 1977
Criminal Law Telelecture (three programs), Spring, 1978

Advanced Training Seminars, State Bar of Wisconsin
Mental Health Law, January, 1977
Three-Day Criminal Law Institute, August, 1978
Appellate Practice Seminar, September, 1978

American Academy of Trial Lawyers
Criminal Appellate Procedure, April, 1976

National College of Criminal Defense Lawyers and Public Defenders
Appellate Advocacy Program, August, 1978

Ex-officio member, Board of Regents, National College of Criminal Defense Lawyers
and Public Defenders

Professional Memberships

National Legal Aid and Defender Association
Elected to Defender Committee, 1976-1978; Vice-Chairman, 1978; Board of
Directors, 1977-78; Executive Committee, 1977-78

American Bar Association
Associate Member, Gavel Awards Committee, 1976-1979
Criminal Law Section
Section on Individual Rights and Responsibilities
Committee on Rights of Accused and the Public
Section on Judicial Administration
Family Law Section
Young Lawyers Section

State Bar of Wisconsin
Member, Committee on Corrections, 1973-1975; Chairman, 1974-1975

Section on Individual Rights and Responsibilities, Member of Section Board, 1974-1976
Criminal Law Section
"Project Inquiry", Participant, 1972-1973
Young Lawyers Division
Representative to ABA/YLS on Prisoners' Rights
Special Committee on Statewide Legal Services, 1975-1976

Dane County Bar Association
Criminal Law Committee, 1972-1978

Appointed by Supreme Court to Judicial Planning Committee, 1977-1978

Wisconsin Defender Association
Acting Chairman, 1974
President, 1974-1976

Special Committee on Criminal Justice Standards and Goals, Wisconsin Counsel on Criminal Justice, 1976

Judicial Counsel, Special Committee on Appellate Practice and Procedure, by Appointment of Supreme Court, 1976-1977

Judicial Planning Committee, appointed by Supreme Court, 1977

American Judicature Society

National Association of Criminal Defense Lawyers

National Counsel on Crime and Delinquency

Bibliography

"No Merit Briefs in the Wisconsin Supreme Court," 45 WI Bar Bulletin 28
(April, 1972)

"Post-Conviction Remedies in the 1970's." 56 Marquette Law Review, (69), 1972

Contributor and Advisor, Defense of Criminal Cases in Wisconsin, University of Wisconsin Law Extension, (1974), Ch. 15

"The Duties of Trial Counsel After Conviction," Wisconsin Bar Bulletin,
(April, 1975)

"Pre-Trial Identification: An Attempt to Articulate Constitutional Criteria,"
with Ruth C. Fuestal, 58 Marquette Law Review, 659, (1975)

"The Long Arm of the Library: Prison Law Collections," 51 Wilson Library Bulletin, 514 (#6, February, 1977)

"Criminal, Juvenile, and Mental Commitment Appeals," Chapter 27, pages 159-192, in Martineau, Wisconsin Appellate Practice (September, 1978)

Legal Education

University of Wisconsin Law School - Degree: J.D., June, 1971, with honors.
Rank: Approximately top 10%

Honors: 1971

International Academy of Trial Lawyers Award for Advocacy
Mathys Memorial Award for Appellate Advocacy
Milwaukee Bar Foundation, Moot Court Prize, 1st Prize

1970

Captain, University of Wisconsin Moot Court Team, Championship Team of law school in Indiana, Illinois and Wisconsin
Writer, Best Brief, Regional Moot Court Tournament
Milwaukee Bar Foundation, Moot Court Prize, 1st Prize

1969

Member, 1969 National Moot Court Championship Team (Best team among 128 competing law schools)
Member, 1969 Regional Moot Court Championship Team (Law Schools in Nebraska, Kansas, Iowa, North and South Dakota, Minnesota and Wisconsin)
Writer, Best Brief, Regional Moot Court Tournament

Law-Related Employment While in Law School

Wisconsin Judicare OEO Legal Services Agency, Madison, Wisconsin, April, 1969 - June, 1971

Undergraduate Education

Northwestern University, Evanston, Illinois - B.A., June, 1968
Rank: Approximately top 1% (Rank not officially computed)
3.8 Average out of a possible 4.0
Major: Russian Area Studies
Honors: Degree with Highest Distinction
Departmental Honors in Russian
Phi Beta Kappa; National Honorary Society
Illinois State Scholarship, 1964 - 1968
National Defense Education Art Fellowship, Summer, 1967 (for study at University of Michigan and travel to Soviet Union in August, 1967)

Secondary Education

Austin High School, Chicago, Illinois

Primary Education

Robert Emmet School, Chicago, Illinois (public)

Community Responsibilities

Chairperson, Capital Area Chapter, Wisconsin Civil Liberties Union, 1974-76

Member, Board of Directors, Beth Israel Synagogue, Madison, Wisconsin,
1971-75; Financial Section, 1976-77; Vice-President, 1977-78

Chairperson, Dane County Phone-a-Thon Program, Northwestern University
Alumni Association, October, 1975 - October, 1976

APPENDIX C

Resume

Benjamin Lerner

February 1, 1979

RESUME

I. Personal Data

NAME

Benjamin Lerner

DATE AND PLACE OF BIRTH:

Philadelphia, Pennsylvania
February 2, 1941

ADDRESS AND TELEPHONE NUMBER:

Business: Defender Association of Philadelphia
121 North Broad Street
Philadelphia, Pa. 19107

Home:

Apt. 4B, 312 So. 24th St.
Philadelphia, Pa. 19103
(215) 546-0213

II. Education

LAW SCHOOL: University of Pennsylvania Law School
Philadelphia, Pa. 1962-1965
LL.B. Magna Cum Laude 1965; Law Review;
Order of the Coif; Chairman, Student
Honor Committee

COLLEGE: Brandeis University, Waltham, Mass.
1960-62 - B.A. Cum Laude, 1962
(Majored in Political Science)

University of Pennsylvania
Philadelphia, Pa.
1958-60

HIGH SCHOOL: Central High School
Philadelphia, Pa.
1954-58

III. Employment

PRESENT POSITION: Chief Defender,
Defender Association of Philadelphia

Duties: Supervise office of approximately 100 at-
torneys and 110 investigative, social
service and clerical personnel who rep-
resent indigent defendants in state and
federal criminal courts. Responsible

RESUME

Page 2

for overall administration of office, including preparation of budget and securing of funds for office, hiring and termination, personnel supervision, evaluation of professional staff's performance, over-all policy determinations, etc. Serve as Defender Association representative on various Commissions, Boards and Committees involved in the Criminal Justice system.

FORMER POSITIONS:

1. Pennsylvania Department of Justice, Deputy Attorney General
Chief, Office of Criminal Law
June, 1973 to February, 1975

Duties:

Supervised statewide Office of Criminal law; Counsel to Bureau of Correction; Pennsylvania State Police, Pennsylvania Judicial Inquiry and Review Board, supervised activities of the Bureau of Investigations of the Department of Justice, provided legal advice on criminal law and related matters for Pennsylvania Board of Probation and Parole, Pardons Board, other State Departments and Agencies, local and municipal government bodies and law enforcement agencies; assisted in drafting and/or commenting on proposed legislation relating to criminal law and criminal justice system; advise Governor on extradition matters.

2. Associate with law firm of:
Ballard, Spahr, Andrews & Ingersoll
Philadelphia, Pa.
September, 1968 to June, 1973

Duties:

Associate in Litigation Department. Responsible for handling various types of commercial and business litigation including antitrust and securities litigation; also during this period active in the trial of criminal, Selective Service and civil liberties cases.

3. Graduate Intern:
Defender Association of Philadelphia/
University of Pennsylvania Law School.
September, 1966 to September, 1968

RESUME

Page 3

Duties: Responsibilities included:
Trial of criminal cases for the
Defender Association and super-
vision of law students working in
Defender's office.

4. Law Clerk to:
Honorable Stanley A. Weigel
Judge, United States District Court
for the Northern District of California
San Francisco, California

IV. Employment Related Activities and Awards

Member of Pennsylvania Criminal Procedure Rules Committee,
1977 - present (appointed by Chief Justice of Pennsylvania
Supreme Court).

Member of Defender Committee of National Legal Aid and
Defender Association, 1976 - present (elected by Public
Defenders in national election); Chairman of Federal
Funding Subcommittee of Defender Committee.

Member of Philadelphia Regional Planning Council of
Pennsylvania Governor's Justice Commission, 1975-1978,
(appointed by Governor).

Member of Philadelphia Managing Director's Criminal
Justice Coordinating Commission (successor to Philadel-
phia Regional Planning Council), 1978-present. (appointed
by Mayor).

Member of Advisory Committee of American Judicature
Society's Evaluation of Court Delay - Reduction Programs
Project, 1978 - present.

University of Pennsylvania Law School, Lecturer in Law,
1977 - present (teach Trial Advocacy).

Rutgers University Law School (Camden, N.J.),
Adjunct Professor, 1975-1977 (taught Trial Advocacy).

National Institute for Trial Advocacy (Boulder, Colo.),
Teaching Team Member, 1975 77, 78.

Winner of Philadelphia Bar Foundation "Hon. Gerald F.
Flood Memorial Award" for Distinguished Service to the
Profession, 1978.

APPENDIX D

Resume

John M. Young

John M. Young

RECEIVED OCT - 6 1977

RESUME OF JOHN M. YOUNG

Secretary, Defender Committee, NLADA

President, South Carolina Public Defenders Association

Public Defender, Columbia, South Carolina

Member, Governor's Committee (SPA)

Team Captain, Evaluation of Georgia Defender System

Chairman, South Carolina Bar Criminal Law Section

NLADA Liaison to Hodson Committee (ABA, Administration of Criminal Justice Committee)

Permanent Chairman, Defender Standards Subcommittee

Lecturer at Law, University of South Carolina Law School (Criminal Trial Practice, Moot Court Judge)

Admitted to Practice South Carolina and Ohio Supreme Courts (By Exam)

Admitted to Practice Federal District Court-South Carolina and Ohio-Plus Fourth Circuit Court of Appeals

Admitted to Practice United States Supreme Court

Charter Class, National College of Criminal Defense Lawyers and Public Defenders and Participant for the College at Numerous Defender Management Workshop Institutes

Trial Lawyer

Author of Chapter 9, Public Defender Sourcebook (PLI)

END