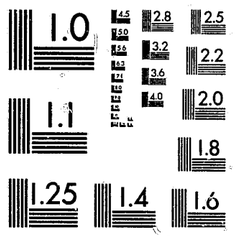

EVALUATION OF THE STATE PUBLIC DEFENDER

STATE OF CALIFORNIA

Final Report

December 1982

NLADA
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ACKNOWLEDGEMENTS

The evaluation team would like to sincerely thank the many people who cooperated in the evaluation of the State Public Defender office. We would like to acknowledge the time and effort of the many persons interviewed, including judges, court staffs, deputy attorneys general, trial level public defenders, trial and appellate private practitioners, as well as the staff and clients of the State Public Defender.

Judges interviewed include the following: Supreme Court Chief Justice Rose Bird, and Associate Justices Allen Broussard, Frank Richardson, Stanley Mosk and Otto Kaus; First Appellate District Administrative Presiding Justice John Racanelli and Presiding Justice Clinton White, Division Three; Justice Allison Rouse, Division Two; Presiding Justice Thomas Caldecott, Division Four; Associate Justice Winslow Christian, Division Four; Second Appellate District Administrative Presiding Justice Joan Dempsey Klein, Division Three; and Presiding Justice Vaino Spencer, Division One; Associate Justice Donald Gates, Division Two; Presiding Justice Arleigh Woods, Division Four; Associate Justice Robert Kingsley, Division Four; Associate Justice Clarke Stephens, Division Five; Third Appellate District Presiding Justice Robert Puglia; and Associate Justices Coleman Blease, Keith Sparks and Hugh Evans; Fourth Appellate District Associate Justice Robert O. Staniforth, Division One; Associate Justice Howard B. Weiner, Division One;

Fifth Appellate District Associate Justices Pauline Hanson, Kenneth Andreen, Donald R. Franson and George Zenovich.

I. Introduction

The California State Public Defender [SPD] was created by statute in 1975. The statutory mandate of the agency has remained largely unchanged since the adoption of the original statute. (A copy of the current legislation governing the State Public Defender is attached as Appendix B.)

As noted in the original evaluation, the SPD has several additional responsibilities in addition to provision of direct and collateral representation in the Court of Appeal and Supreme Court. Currently, these responsibilities include:

1) Mentally disordered sex offender extension hearings (trial level), Welfare and Institutions Code, Sec. 6316.2;

2) Not Guilty by Reason of Insanity acquitees extension hearings (trial level), Penal Code, Sec. 1026.5.

3) Rendering advice to trial counsel and clients regarding legal issues on appeal. Penal Code, Sec. 1240.1;

4) Representation of accused prisoners facing new criminal charges where the county public defender declares a conflict. Government Code, Sec. 15421(d);

5) Preparation of amicus curiae briefs and letters in the Appellate and Supreme courts. Government Code, Sec. 15423.

In late 1978 and early 1979, the National Center for Defense Management performed an evaluation of the newly operational State Public Defender (hereafter, NCDM Evaluation). The final report of the evaluation team, filed in April of 1979, contains a background and history of the program, a program description, and 23 recommendations regarding the operations of the office. (A copy of the NCDM Evaluation is included as Appendix A.)

Following the evaluation in 1979, the State Public Defender adopted an action plan to address each of the recommendation areas. This action plan resulted in significant programmatic change.

In the summer of 1982, the State Public Defender's office contacted the National Legal Aid and Defender Association, requesting that a follow-up evaluation be conducted. This evaluation provides NLADA with an opportunity unique in the history of statewide indigent defense programs. First, the follow-up evaluation allows for systematic study of the extent of the measurable impact of the initial evaluation of the office. The three and one-half year period since the initial evaluation allows this process to occur on a carefully measured basis. This evaluation, of course, will attempt to interrelate

the initial recommendations with those which are made in this report.

Second, the evaluation will include, as did the first report, a series of findings and recommendations for future improvement of delivery of services through the State Public Defender Office of California. However, these recommendations, unlike those of the 1979 evaluation, will make reference to standards for appellate practice adopted in 1980, NLADA's Standards and Evaluation Design for Appellate Defender Offices. The findings and recommendations will focus on the ultimate reason for the office's existence--the delivery of quality legal services to the indigent in the criminal courts of California.

II. Performance Findings

PRIMARY FINDING--THE CALIFORNIA STATE PUBLIC DEFENDER OPERATES ONE OF THE FINEST STATE-FUNDED DEFENDER PROGRAMS IN THE COUNTRY, INCLUDING ITS INTERNAL ADMINISTRATION, ITS SERVICE TO THE LEGAL COMMUNITY, AND ITS DELIVERY OF QUALITY LEGAL SERVICES TO THE INDIGENT IN THE CRIMINAL COURTS OF THE STATE OF CALIFORNIA.

The evaluation team was unanimous in this basic conclusion. It must be kept in mind that this finding results from the combined experience of four evaluators in dozens of evaluations throughout the United States. The team was struck, throughout its visit, by the fact that the office is favorably viewed by virtually everyone whom we interviewed. The almost universal conclusion is that the office does excellent or above average work. Most importantly, our perception is that the work product of the office--briefs and arguments, other written materials, and assistance to the bar and bench--are all strong and admired. Within the office, rapport and morale are excellent.

Outside of the office, both the judiciary and the bar in general perceive the office to be intellectually honest and completely professional in its dealings with all components of the criminal justice system. There is strong trust and credibility in the field for both the office leaders and the line

attorneys. Attorneys presenting cases in court are respected for their ability to present their client's cause with an appropriate balance of zealous advocacy and careful consideration of valid claims. Many of these comments will be catalogued in more detail under the individual findings and recommendations which follow in this report, but the evaluation team felt that it is important to give recognition for the excellent overall job now being performed by the office.

FINDING TWO--THE QUALITY OF WORK PRODUCT, BASED BOTH ON ACTUAL OBSERVATION AND REPORTS THROUGH INTERVIEWS, INDICATES DILIGENT EFFORT AND SUPERIOR ADVOCACY BY THE STATE PUBLIC DEFENDER, GROUNDED IN THOROUGH RESEARCH AND WRITING.

Praise for the quality of the work performed by the State Public Defender was virtually universal. Representative comments of judges included the following:

- "I don't know what we could do without them."
- "Lawyers are prudent and selective in their arguments."
- "The office is morally good in its meticulous care for the interest of clients."
- "The office has a strong sense of professionalism."

- Individual lawyers were described as "marvelous advocates" and "absolutely brilliant."

- The State Public Defender is "trustworthy" and "the best."

- SPD lawyers are "not impassioned amateurs."

- The SPD is "consistently better than most assigned counsel."

- The office is "institutionally important" in serving as a resource for other lawyers, filing amicus briefs, and requesting publication of cases.

- "The office provides excellent representation."

- "I am impressed with the oral and written work done by the office."

- The office is "far superior to the private bar."

- The office has "performed beautifully." It is staffed with "very bright people."

- "The quality is absolutely excellent. It is a joy to the court to have them on a case."

- "Their work is superior and very substantive."

- "The office is doing an outstanding job."

The evaluators also reviewed dozens of briefs from the district offices, provided on a random basis prior to and during the evaluation's on-site phase. Both our specific examination and the almost universal praise accorded to the work product of the State Public Defender lead us to the conclusion that briefs prepared by the office are superior in quality.

Our examination of briefs ranged from cases involving minor offenses to those in which the death penalty was imposed. Format and quality, regardless of the nature of the issue, was uniformly high throughout.*

Generally, the briefs filed by the office have few typographical errors, few misspellings, and were neat in overall appearance. Citations were done properly, and without excess. Authorities cited were generally plentiful, and federal authority was often included. The same observations can be made with regard to the inclusion of law review articles and references to treatises.

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* A few briefs were copied improperly, so that the pages were out of order or askew, and in a few briefs the print was smudged. These things should be checked by the person responsible for copying.

Attorneys in the offices seemed attuned to persuasive legal approaches to particular judges, and were well aware of the concerns of the individuals before whom they were practicing.

It was the consensus of the appellate judges and practicing lawyers that the briefs filed by the State Public Defender are of the highest quality. Many lawyers credited the office with raising the level of advocacy in criminal appeals. Many felt that the professional attitude of the office has improved since its inception.

In the work which is currently performed, it is clear that the State Public Defender does its job well.

The following charts show the comparative outcomes for all criminal appellate work and the work of the State Public Defender:

Judicial Council Figures
1980/81 Fiscal Year

	DCA		Supreme Court		All Courts	
	No.	%	No.	%	No.	%
Affirmances	3018	78	7	37	3025	77
Reversals	385	10	10	53	395	10
Modifications	488	12	2	10	490	13
Totals	3891	100%	19	100%	3910	100%

State Public Defender Figures
1980/81 Fiscal Year

	DCA		Supreme Court		All Courts	
	No.	%	No.	%	No.	%
Affirmances	662.1	67	3	34	665.1	67
Reversals	137.5	14	3	33	140.5	14
Modifications	188	19	3	33	191	19
Totals	987.6	100%	9	100%	996.6	100%

Non-State Public Defender Statistics
1980/81 Fiscal Year

	DCA		Supreme Court		All Courts	
	No.	%	No.	%	No.	%
Affirmances	2356	81	4	40	2360	81
Reversals	248	9	6	60	254	9
Modifications	300	10	0	0	299	10
Totals	2904	100	10	100	2913	100

A comparison of these outcomes indicates that some relief is obtained in all courts in approximately 23 percent of all cases. This work includes appointed and retained counsel work. The State Public Defender is successful in obtaining some relief for its clients in approximately 33 percent of all cases. Relief rates by other counsel, by comparison, show 19% overall. The defendant's opportunity for relief is nearly doubled by SPD representation.*

* These relief rates also contribute to decreased state expenditures for incarceration, which average, on the national level, approximately $15,000 per year per inmate. Thus, assuming conservatively that improved relief rates result in 50 years less incarceration for all clients of the agency per year tax savings would amount to $225,000 annually.

FINDING THREE--THE STATE PUBLIC DEFENDER MEETS OR EXCEEDS NATIONAL APPELLATE STANDARDS FOR WEIGHTED CASE LOAD ASSIGNMENTS AND DISPOSITIONS, AND UTILIZES A SOPHISTICATED AND ACCURATE CASE WEIGHTING FORMULA. PURSUANT TO THESE STANDARDS, ATTORNEYS HANDLING ONLY DEATH PENALTY CASES SHOULD ACCEPT NO MORE THAN THREE SUCH ASSIGNMENTS PER YEAR.

Recommendation 23 of the NCDM Evaluation urged the adoption of a uniform equivalent unit system for evaluating each type of case and proceeding handled by the office. It was recommended that caseload and budgeting be expressed in terms of workload units. The original attempt to articulate a work unit formula is contained in Part 2, XII of the agency's policy manual. Because of complications which arose in the interpretation of this formula, a supplemental memorandum on office work standards was issued in February of this year. (The memorandum is attached hereto as Appendix B.)

The work unit formula adopted by the office essentially is in conformity with the case weighting ratios set forth in the Appellate Standards (Standards, I-F). The California experience represents one of the most sophisticated efforts in the country to articulate work unit standards for both assignment and filings. It is not recommended that the State Public Defender spend significantly more time in their development.

Some agency attorneys expressed dissatisfaction with a work unit expectation of 24 opening pleadings per year. In the experience of the evaluators, this is an appropriate allocation of work, and should not be amended. Appropriate adjustment has been allowed for new attorneys, as well as for those who take on additional responsibilities.

Attorneys handling death penalty cases agree to accept three death penalty appointments per year. With regard to death penalty appeals, the Appellate Standards state as follows:

> In cases in which the defendant has been sentenced to death, the preparation of the brief shall constitute ten (10) work units and the procedures specified in subparagraphs f., g., h., and i. shall constitute ten times the work units specified in those subparagraphs.
>
> Standards, I-H

For purposes of the Appellate Standards, a work unit is defined as a brief-in-chief or no-merit (Anders) brief filed in a case in which the court transcripts are 500 pages or less. The standards suggest completion of 22 work units per year for each full time attorney. Thus, the California death penalty case load standard slightly exceeds the national standards.

While available data indicate compliance with national standards, the lack of coherent collection of data militates strongly toward the adoption of a more comprehensive data

collection system with more usable reports for decision making. (See Recommendations on Information Management, infra, pp. 25-32.)

FINDING FOUR--THE STATE PUBLIC DEFENDER HAS PROVEN ITS COST EFFECTIVENESS, NOT ONLY IN ITS OWN OPERATIONS, BUT IN ITS POTENTIAL IMPACT THROUGHOUT THE APPELLATE SYSTEM.

The State Public Defender has achieved a number of successes in providing cost effective delivery of services since the first evaluation, not only to the clients of the agency, but to the entire legal community in the State of California. One judge expressed his belief that private counsel actually costs more in difficult and long cases, and that the State Public Defender is much more efficient than assigned counsel. Moreover, several justices stated that the work product of the State Public Defender makes the decision-making process easier for judges than it does when it comes from private appointed counsel, in that the judges are less suspect of the work, and more likely to rely upon the research of the veteran staff of SPD.

The office's cost-efficiency is nowhere more apparent than in the areas of training, representation in death penalty appeals, and legislative advocacy.

The training function is one of the areas in which the State Public Defender has made immense strides since the initial evaluation. Only two of the recommendations in that document dealt with training at all. (NCDM Evaluation, Recommendations 7 and 14.) The office has met and exceeded the national standards in this area (Standards, I-K), not only with its own staff, but in sharing its acquired skills and experience with private practitioners and other appointed counsel as well.

Each office is assigned a specific training coordinator, whose responsibilities require significant devotion of time to training activities, and a slightly reduced caseload. These responsibilities include planning for and presenting of speakers in the office, for those attorneys who desire to hear oral presentations on particular topics. Frequently, these "brown-bag speaker programs" are videotaped and distributed to other offices. The training coordinator also keeps track of CLE events, and other inexpensive seminars throughout California. These events are posted on bulletin boards throughout the offices, and attorneys are frequently permitted to attend training events. Registration fees are paid by the SPD, while other expenses are borne by staff.

The training officer is also responsible for serving as a resource person to all staff in the office, and for the coordination of all training manuals which are used by office staff.

The training officer is responsible for the orientation of new people, as well as an assessment of the needs of new staff with regard to training. The State Public Defender's Criminal Appellate Practice Manual, in its most recent edition, is one of the finest training manuals in the country for appellate practitioners. The manuals are given to each new staff attorney and are made available at SPD Seminars. It gives factual information with regard to appellate practice, as well as in depth tactical and strategic advice. These materials are constantly updated by papers written by experienced staff attorneys with the State Public Defender. Recently, for example, Jonathan B. Steiner, Chief Assistant in the Los Angeles office, completed an excellent article on brief writing for use by all appellate attorneys in the state.

In addition to the written manuals and monographs, the office maintains an extensive microfiche system entitled ARSNL (Automated Research System: Network and Library). This system reduces briefs done by State Public Defender attorneys to microfiche and is available for use by the private bar. At present, the ARSNL network incorporates 80,000 pages of quality briefs and indexed case annotations. In addition, the system contains separate manuals on specific areas such as sentencing and the death penalty. These manuals are keyed to the materials contained in the ARSNL system. Money provided through a federal grant has allowed the installation of ARSNL systems in 35 Public Defender offices throughout the State of California.

This grant has contributed to present dollar savings in these offices, as well as future savings in elimination of costly and duplicative research.

The office holds seminars to train private lawyers on how to handle appeals. The State Public Defender has sponsored 5 statewide events in 1982 for training staff and private counsel handling criminal cases on appeal, drawing 500-600 attorneys.

The office also has adopted an exchange program. In this program, attorneys from the Appellate office with approximately two years of experience qualify for a six month term of service with a local public defender office, usually trying misdemeanor cases. Trial level public defenders, in exchange, serve six months in the Appellate office preparing briefs. While programs of this type have been encouraged in many jurisdictions throughout the United States, they have been implemented in very few. Benefits from the cross-fertilization of trial and appellate practice are wide-reaching.

Finally, the agency has established an efficient and far-reaching system for "duty day" service by each attorney with the agency. Under this system, a specific staff attorney is designated to handle calls, visits or correspondence from outside of the agency regarding any matter, legal or non-legal. The policy manual of the SPD sets forth a duty day log, in which such requests for assistance are to be documented. This

service is one more example of the agency's conscientious attempts at outreach to improve skills in the legal community.

Recommendation 14 of the NCDM Evaluation suggested the appropriateness of secretarial training. This issue has been addressed in the preparation of a manual, by the Los Angeles office, for training secretaries and attorneys in the use of word processing equipment. This manual has been distributed throughout all offices of the State Public Defender.

The SPD's efforts in death penalty representation also demonstrate the far-reaching cost effectiveness of agency programs. This effort reflects Recommendation 15 of the NCDM Evaluation suggesting that the State Public Defender scrutinize those functions mandated by statute, and "determine which can be done most effectively by specialists within the statewide system or within each office." The agency currently handles 27 death penalty cases directly, while providing assistance far beyond those cases.

The SPD produces work of the highest quality in the death penalty area. First, the office has produced a four volume Death Penalty Manual. This manual is distributed in conjunction with the California Public Defender Association. Each volume is approximately 700 pages in length, and is replete with information of use to attorneys litigating death penalty issues throughout California. Second, the office has

prepared seminars on the death penalty. Third, a publication entitled "Death Penalty Update," is produced twice a month. All the attorneys in the office doing death penalty work get a copy of it, and it is placed in office libraries and sent to all attorneys who are handling appointed death penalty appeals. The update also goes to every public defender office in the state. Fourth, the ARSNL system includes the death penalty brief bank. In it are included briefs, cases and law review articles. It has a separate index that is distributed to Public Defender offices throughout the state and to those who are working on death penalty assignments. Fifth, the death penalty coordinator helps find private attorneys to handle death penalty appeals. Sixth, agency attorneys frequently consult and give feedback on the sentencing or penalty phase of the trial to outside attorneys handling capital appeals.

Private practitioners interviewed by the evaluators uniformly praised, in the highest terms, the quality of agency briefs and the availability of materials in the death penalty area. Private practitioners frequently use SPD attorneys as resources for advice as well as for motions and other written materials.

Attempts to seek the death penalty are extremely costly to taxpayers, and these costs are distributed throughout the criminal justice system. In the defense component, the specialized representation in death penalty cases unquestionably

saves money. The accumulation of coordinated approaches to death penalty cases prevents the repetition of investigation of legal issues which inevitably recur in many cases. Moreover, the availability of staff personnel to the private bar extends the timesaving on research far beyond the walls of the offices.

Private appointed counsel are paid $40 an hour for virtually every hour they work, and the Supreme Court permits appointed counsel to associate other counsel, who are also paid at the $40 rate.

It is estimated that the information and briefing provided these attorneys through the State Public Defender's newsletter and information bank result in a direct savings of several hundred hours of attorney research time per appeal, with a resulting saving of perhaps $10,000 or more per appeal. High quality representation is provided at a reasonable cost when assessed simply in terms of the cases in which SPD is counsel, but any assessment of cost-effectiveness must include the enormous savings to the overall operation of the system resulting from the decrease in compensable time spent by private appointed counsel.

The SPD's work in death penalty cases was also uniformly praised by justices of the California Supreme Court. For most of the justices, it was felt that they could be certain that the work performed by the State Public Defender was thorough

and complete; it required no extensive additional independent investigation by the court itself. Moreover, it is felt by the judges that the clear identification of issues contributes to the smooth operation of the system after the filing of the initial brief by the appellant. As a result, the brief in response by the Attorney General can focus on specific and clear issues, and similarly, the opinion of the court can be drafted to respond to the most significant issues raised.

Ultimately, of course, high quality representation in death penalty cases goes a long way toward making California's judicial system equal and fair. This alone is justification for this specialized effort.

Finally, the office has had significant impact in the legislative and rulemaking areas. Strong legislative contacts have resulted in the views of the SPD being known on many criminal law substantive issues pending before the California legislature. Of even more direct significance, the agency has had significant influence in the adoption of appellate rules which contribute to the operational efficiency of the entire appellate system, particularly as it affects indigent criminal appeals. Recommendations 16, 20 and 21 of the NCDM Evaluation suggest amendment of the rules of appellate procedure to allow for streamlined processing of cases. The SPD has been influential in the amendment of Rules 22, 33, 35 and 39 and their

efforts have been noted by the Judicial Council of California. (Report of the Judicial Council of California, 1982, p. 30)

One cautionary note should be injected here. It is noted elsewhere in this evaluation that the SPD should undertake the hiring of a systems analyst to assess the information collection aspects of the agency, and to insure accurate collection and dissemination of data regarding its operations. This data collection is particularly important in the areas mentioned above, where greater efforts should be undertaken to collect specific data regarding the number of requests for assistance by outside attorneys, the number of attorneys assisted by outside training, and successful legislative efforts.

FINDING FIVE--THE STATE PUBLIC DEFENDER HAS DEVELOPED STRONG WORKING RELATIONSHIPS WITH JUDGES, CLERKS, PROSECUTING ATTORNEYS, AND THE LEGAL COMMUNITY IN GENERAL.

In the first evaluation, it was noted that a number of judges and clerks found it difficult to get along with attorneys from the State Public Defender, and asserted that many were overtly hostile or overly aggressive. That opinion has significantly changed during the past three and one-half period, largely due to a sense of growing professionalism within the agency.

This change in perception of the agency is perhaps best demonstrated by the outpouring of support for the agency during 1982 hearings before a Senate Finance Subcommittee. Many senior members of the judiciary spoke in the most supportive terms of the value of the agency and the need for retention or expansion of its scope. (Samples of these letters are attached to this report as Appendix C.)

In addition, the direct contact by the director of the agency, Quin Denvir, with judges on the appellate court has gone a long way toward development of trusting and open relationships. Judges were deeply appreciative of Mr. Denvir's concerns for the office's relationship with the courts.

Much of the change in attitude coming from judges and clerks has to do with careful attempts by office staff to cultivate strong working relationships with these individuals. Chief assistants in the various offices frequently meet with the judges to discuss administrative matters. The written resources available through SPD have also contributed to their enhanced image in the legal community. This is especially so with trial counsel. The availability of duty day attorney, the extensive training materials--especially in the death penalty area--and other resources of the office make the SPD a vital arm in the continuing legal education of practicing private attorneys throughout the state.

One frequent complaint by the trial bar was that of the raising of claims of ineffective assistance of counsel by staff of the SPD. Many trial attorneys and judges felt that the issue was indiscriminately raised. The office has developed a standard procedure to govern trial counsel contact. Policy Manual, Part II, V.

The evaluators requested information on the percentage of cases raising the issue of ineffective assistance of counsel, using the most recent quarter of 1982. Of the 361 cases surveyed, 36 raised the claim, approximately 10 percent of all cases. In nine of these cases, a habeas corpus writ was filed pursuant to the procedures set forth in People v. Pope, 23 Cal. 3d 412 (1979). This constituted about 2.5 percent of all cases. In 13 other cases (3.6 percent) the issue was raised specifically in the opening brief. In 10 cases (2.8 percent) the issue of ineffective assistance was raised in a footnote or some other summary manner merely to respond to a possible argument that a different substantive issue was not properly preserved in the trial court. Thus, ineffective assistance claims are raised, at most, as a separate issue in approximately 6 out of 100 opening briefs.* The evaluators feel that trial counsel's sensitivity to this issue has exaggerated their sense of the frequency of its occurrence.

In the NCDM Evaluation, Recommendation 8 suggested that attorneys with the state public defender sought motions to augment the record in order to obtain more time in which to file an opening brief. Upon inquiry, this issue no longer appeared to be a problem with the office. While several of the judges and clerks acknowledged that extensions from the agency are not infrequent, no one suggested that the number of extensions sought is inappropriate. Moreover, most acknowledged that the SPD has been more efficient than the Attorney General's office in not seeking extensions for abnormally long time periods.

Recommendation 7 of the NCDM Evaluation noted some difficulty in the relationship between the office and clerks of the Appellate Court. This situation seems to have been almost totally overcome. Most clerks had nothing but praise for the office. Nonetheless, to insure that relationships between the office and clerks are cemented, and that procedures are followed, clerks should be included on the agenda of SPD training programs.

* * *

There is, of course, a negative side to the issue of institutionalization services. The office, during its short life, has had to come to grips with issues which exist in every large

* These figures, of course, do not reflect the cases handled by the SPD in which no opening brief is filed at all, including abandonments.

office. Most fundamentally, the office has had to deal with the delicate balance of providing cost efficient services in an area mandated by both federal and state constitutions, against the need to maintain independence from other sectors of the criminal justice system, and from the very sources to whom the office owes its existence.

The evaluation team observed some of the tensions of institutionalization during our office visits. Internally, these issues manifest themselves in the dilemma felt by managing attorneys who wish to be good administrators but also wish to continue to represent individual clients. The entire staff grapples with the question of maintaining trust among themselves, and not simply following anonymous procedures which come down from an invisible administrative office above. The office is aware of the issue of becoming too top-heavy with the business of administration, while losing sight of essential purposes. Staff attorneys feel more anonymous in larger offices, and sometimes feel overwhelmed by regulations and paper. Some feel that they are being "spoon fed" with forms and procedures, and that much of the personalization and intimacy in the early days of the office have been lost in the face of rising case loads and increased expectations for the office's performance. Many of the office's more experienced staff, both attorney and support, have begun to deal with the issue of specialization versus generalization. For the attorneys, this means grappling with the difficult question of

handling only one particular type of case, such as death penalty work, as opposed to handling the general cases as they come in. For support staff, this raises the dilemma of becoming a word processing operator all day long as opposed to handling the general work of the office as it develops.

Within the greater community, the State Public Defender deals with the annual question of whether it can continue to grow, or even maintain its current size, in an era of diminishing government resources and the perception (usually erroneous) that bureaucracy somehow equals evil. In both the legislature and with the judiciary before which it practices, the agency walks a delicate line between independence and cooption.

These issues are not unusual, nor are they unique to the State Public Defender. Virtually every large, state funded defender office in the country has come to grips with these issues. The solutions provided by the State Public Defender have been thoughtful, and in many instances unique. As the findings above demonstrate, the office has proved to the satisfaction of the evaluation team that it is among the highest quality and most conscientious programs in the United States.

III. Recommendations for Improvement

Having established the fundamental soundness of the operation of the State Public Defender, the following section of this evaluation will contain recommendations for improvement in its operations. These recommendations will be divided between internal operational issues and "external" issues, including those observations of the evaluation team which go to the quality of representation for the indigent in the appellate process outside of the operation of the State Public Defender.

Obviously, not all areas in the operation of the office have been covered. There were many areas reviewed by the evaluators in which our general consensus was that no additional improvement was required. The recommendations which follow are keyed directly to the appellate standards, as well as to the recommendations contained in the original evaluation by the National Center for Defense Management.

A. Internal Operational Issues

1. Information Management (Standards, II-B)

RECOMMENDATION I--THE STATE PUBLIC DEFENDER SHOULD OBTAIN THE SERVICES OF A PROFESSIONAL COMPUTER SYSTEMS ANALYST TO DEVELOP MECHANIZED INFORMATION RETRIEVAL METHODS AND REPORT FORMATS NECESSARY FOR PROGRAM MANAGEMENT AS WELL AS PUBLIC INFORMATION NEEDS.

THE MANAGEMENT SYSTEM ADOPTED SHOULD REFLECT DATA THAT ARE ANALOGOUS TO THE NLADA AMICUS SYSTEM DEVELOPED FOR TRIAL LEVEL REPRESENTATION AND SHOULD RELATE CASELOAD AND PRODUCTION DATA TO ATTORNEY TIME AND WORKLOAD REPORTS.

One of the primary recommendations of the NCDM Evaluation was that the SPD "should immediately adopt uniform statistical and case docketing procedures." Recommendation 2, page 18. The evaluators found improvement since the last evaluation, but much work needs to be done. While numerous statistical reports are being kept by the office, most information flows into the administrative office without relevant data interpretation or reported back to the district offices. Moreover, readily understandable statistical information could and should be developed for response to the legislature and the Judicial Council. We urge the office to continue the progress made and to focus their next stage of development on central capture and storage of data consistent with data flow principles developed in the NLADA Amicus Systems, discussed below.

NLADA has done the most extensive work in the country on manual and automated management information systems through four different grants from the Justice Department's Bureau of Justice Statistics. These studies have produced several significant documents, including the four volume Defender Management Information Systems Feasibility Study, published in 1979,

and the two volume Amicus System, an actual management information system for trial-level public defender offices. Some adaptation of the Amicus System would be required, since its principal focus is on felony and misdemeanor representation at the trial level.

Until such analyst is available, we recommend that work begin on implementing the following recommendations, which are core requirements for an efficient system.

RECOMMENDATION 2--EFFORTS SHOULD BE MADE TO SIMPLIFY AND CENTRALIZE THE INFORMATION MANAGEMENT PROCESS WITH ALL DELIBERATE SPEED. REPORTS SHOULD BE GENERATED FROM THE LEAST AMOUNT OF ENTRIES AND INFORMATION POSSIBLE, AND FROM THE MOST EFFICIENT PERSONNEL POSSIBLE. DOCKETING CARDS SHOULD BE THE PRIMARY SOURCE OF ALL INFORMATION GOING IN AND OUT OF THE OFFICE RELATING TO WORK PRODUCT. THE DOCKET CARD SHOULD BE GENERATED AT THE POINT OF CASE OPENING, AND ALL MAJOR EVENTS SHOULD BE RECORDED ON IT. THIS INFORMATION SYSTEM SHOULD BE GENERATED FROM INFORMATION CAPTURED FROM THE DOCKET CARD.

The evaluation team was limited by time in making extensive observations regarding the information system now in operation. The following findings are not a complete systems analysis, but are representative of current shortcomings.

These observations point to shortcomings in the information system which will require indepth consultation by a professional systems analyst. Some of our observations were as follows:

- o The current central docket card does not contain data from which agency-wide reports can be generated on the work performed by the office.
- o Some team leaders do not keep active records by team. In these cases, there are no reports which are meaningful to the team itself.
- o Although statistical summaries are prepared, no narrative interpreting the statistical information is provided for easy summary, and in many instances the data are reported on forms containing abbreviations which are meaningless to those outside of the agency.
- o There does not appear to be an effective tickler system for the non-receipt of records once they have been ordered. The central docket clerk should have a record of the date of request for records and a follow-up system to ensure that records are received in a timely manner.

- Mail which comes into the Los Angeles office could go through the central docket clerk for recording of court action before distribution to the attorneys.

- Copies of proofs of service on all outgoing pleadings should go through central docketing for recording.

- Historical records for the office essentially have been generated from attorney monthly reports. The Chief Assistant keeps a record of the number of assignments received by the office and generates reports from his or her individual records. The team leader reports the monthly activity of individual attorneys from reports filed by the attorneys.

- In those situations where timesheets are kept, there is a policy that they should be filled out daily at half hour increments. However, many timesheets are filled out at the end of the month with miscellaneous information being filled in on the back.

- Both monthly reports and timesheets kept by attorneys amount to "dream sheets" which may not accurately capture information, and are not kept by the most efficient and appropriate staff member.

- The Amicus System's case closing sheets may capture additional data useful to the office, but not captured on the central docket card.

- Reports using the weighted-work-unit theory should be on a preprinted form to be checked off. Because the weighted-work-unit theory deals largely with the length of the record, much of the information could be kept by docket clerks.

As has been noted elsewhere in this evaluation, a number of significant efforts by the office are not adequately documented and reported to outside sources. The agency could factually demonstrate the scope of its effectiveness by reporting its activities with the legal community, such as distribution of ARSNL materials, responses by the duty day attorney, and requests for assistance to private counsel and local public defenders by agency attorneys handling death penalty cases.

RECOMMENDATION 3--THE STATE PUBLIC DEFENDER SHOULD PREPARE AN ANNUAL STATISTICAL REPORT CONTAINING INFORMATION ABOUT ITS OWN ACTIVITIES, AS WELL AS THE SERVICES WHICH IT PERFORMS ON BEHALF OF THE LEGAL COMMUNITY.

Many persons interviewed suggested that the number of appeals has risen dramatically in the past several years, allegedly due to the existence of the right to appointed counsel

on appeals. On several occasions, we heard comments indicating that "everyone appeals because they have nothing to lose." This is just one example of areas in which the State Public Defender could give additional perspective on the dimensions of appellate practice by the preparation of an annual report summarizing its statistical information in a way which is digestible by the legal community. Publication of an annual report would also allow the agency to document its extensive efforts toward education and impact among private counsel on appeal.

The need for an annual report is demonstrated by statistics encountered by the evaluators in the 1982 Annual Report of the Judicial Council of California. For example, the Council reports in Table 7 on page 52 that 4,730 criminal appeals were filed in 1980-81. The report goes on to say that appeals equalled "110.3 percent of convictions after contested trials in Superior Court". The report states that this figure "continues to suggest that many appeals raise sentencing questions after guilty pleas." On page 53, the report goes on to say that "although guilt cannot normally be reviewed on appeal after a guilty plea (Pen. Code, §§ 1237, 1237.5), issues relating to the sentence can be raised."

While the report professes objectivity, the statistical information reported exaggerates two aspects of appellate work

unnecessarily: first, the report strongly suggests that excessive numbers of appeals are being filed from the trial court in general; second, the report suggests that "many" appeals raise only sentencing issues after guilty pleas. Both of these assertions may be subject to dispute, based on accurate factual recordkeeping by the SPD. As regards the first, it should be noted that the same reports indicate that there were 45,082 convictions by guilty plea in 1981. Table XIX, page 79. If this number is added to the total number of felony trial and misdemeanor convictions obtained in the Superior Court in that year, the total number of appeals actually equals less than 10 percent of the total number of convictions.

With regard to appeals from pleas of guilty, the only ground set forth in the report of the Judicial Council is that of sentencing. Appeals from pleas of guilty are also permitted in California based on preservation of limited pre-trial issues, such as the validity of a search and seizure, as well as challenges to the propriety of the plea itself, under Boykin v. Alabama, 395 U.S. 238 (1969).

The Judicial Council's report demonstrates the need for another perspective in the development of accurate statistical information regarding appeals in California.

2. Client Contact (Standards, I-I)

RECOMMENDATION 4--EVERY CLIENT REPRESENTED BY THE STATE PUBLIC DEFENDER SHOULD RECEIVE AT LEAST ONE PERSONAL INTERVIEW FROM THE ATTORNEY REPRESENTING THE DEFENDANT IN THE APPEAL. THIS IS PARTICULARLY TRUE WHERE A LARGE PERCENTAGE OF CLIENTS ARE SPANISH SPEAKING OR USE ENGLISH AS A SECOND LANGUAGE, ARE POORLY EDUCATED, OR HAVE DIFFICULTY WITH THE WRITTEN AS OPPOSED TO THE SPOKEN WORD.

This recommendation is a virtual reiteration of Recommendation 10 of the NCDM Evaluation. Obviously, little progress has been made in this area. The Appellate Standards specifically state, "all appellate defender clients shall be personally interviewed by the attorney who will actually be handling the case." The standards detail the need for written office policies in this regard.

SPD has a policy regarding client contact in Part 2, IX of the policy manual. That section states:

> Preferably each client in custody should receive at least one personal interview from his or her appellate attorney. Unfortunately, the State Public Defender does not have the resources, given our present funding levels, to always accomplish this worthwhile objective due in large part to the lack of propinquity between offices and prisons. Therefore, this decision is left to the individual discretion of each attorney depending upon the needs of the case.

The evaluators reject this policy as an adequate protection of the attorney-client relationship on appeal. While many staff attorneys stated that they visit most of their clients, an equal or larger number of attorneys stated that since office policy did not require a visit, they were not inclined to take the trouble to make a trip. Many flatly asserted that they conduct all of the necessary business with clients by correspondence. These responses are unacceptable.

The evaluators will not develop a detailed analysis of the need for individual attorney-client contact in the appellate process. Suffice it to say that from the client's perspective, the failure of the attorney to establish any personal relationship during prolonged representation constitutes a reaffirmation of the cold, impersonal and inhumane aspects of the criminal justice system. That client's only positive link to the criminal justice system, the State Public Defender, should not be a contributor to that attitude.

A number of justifications for the failure to make client visits were offered by agency staff and administrators. The foremost of these was finances. Second most prominent was distance to the institutions. Keeping these factors in mind, the evaluators suggest the following possible solutions, recognizing that the only way in which this policy will be implemented, ultimately, is through direct mandate from the administrative offices. The office may wish to explore:

- The possible coordination of visits at diagnostic centers, which are more proximate to offices than the maximum security institutions at which most inmates are ultimately located;

- The possibility of "exchange visits" in which one office visits the clients of another office in an institution more proximate to it;

- Exploration of the possible availability of state cars for carpooled multiple visits by attorneys. In many instances, prison visits can be coordinated to allow the attorney to visit several clients in one day;

RECOMMENDATION 5--THE STATE PUBLIC DEFENDER SHOULD WORK WITH PRISON AUTHORITIES TO FACILITATE PERSONAL INTERVIEWS WITH AGENCY STAFF.

In the experience of the evaluators, prison authorities resist intervention by any outside agency to obtain access to prisoners. However, over time, prison authorities learn to trust agency attorneys and agree to cooperate.

When prison visits are increased, the agency should be sensitive to the need for minority and Spanish-speaking attorneys, set forth elsewhere in this evaluation.

3. Internal Structure (Standards, II-A, D and G)

RECOMMENDATION 6--THE STATE PUBLIC DEFENDER SHOULD CONTINUE TO WORK TOWARD THE GOAL OF ONE LEGAL SECRETARY FOR EVERY TWO ATTORNEYS WITHIN THE OFFICE. THIS IS IN ADDITION TO SUCH OTHER SUPPORT STAFF AS SHALL BE NECESSARY.

Since the time of the first evaluation of the SPD, the office has made significant strides in its internal structure. First, in compliance with recommendation 17 of the NCDM Evaluation, the State Public Defender has fully integrated the San Diego office into the structure of the larger agency. This integration has been accomplished without the loss of several of the unique and positive features of the San Diego system, which will be described elsewhere in this report.

The agency has also adopted a comprehensive policy manual setting forth office procedures in detail. The manual also covers the maintenance of files, and a description of responsibilities of team leaders, chief assistants and the chief deputy. Accurate job descriptions have also been developed for every position in the office.

The office has fully integrated itself into the California State Civil Service structure. This has both good and bad effects on the office. It guarantees merit selection, and also requires that the office be attentive to issues of

equal employment. It also guarantees salary parity with comparable positions for lawyers throughout state government.

The major drawback, however, exists in the cumbersome structure by which personnel must be hired on a once-a-year basis. These procedures lack the flexibility to allow for hiring of the most qualified individuals when vacancies occur. However, no viable alternative appears to be available.

Agency size now stands at 101 attorneys and 56 1/2 support staff. Breakdown by office is as follows:

	Administrative	Sacramento	Los Angeles	San Diego	San Francisco
Attorneys	2	25	38	7 3/4	27
Support Staff	4	15	19	3 1/2	15

At first blush, these numbers indicate that the agency has achieved compliance with Recommendation 12 of the NCDM Evaluation. However, as the office has grown, its need for support staff to perform functions other than actual typing of work product has expanded concomitantly.

Throughout the SPD, the evaluators found a shortage of secretaries whose principal duties include the typing of briefs and other work product. The administrative office should undertake a close examination of the attorney-to-secretary

ratio, and should work toward a two-to-one balance. This balance can also be achieved by the purchase of additional word processing equipment with recomposition capability. Secretaries whose principal duties include typing should be free to perform these duties, and some consideration should be given, particularly in the larger offices, to the possibility of hiring a support person for the sole purpose of copying, binding, and delivery of work product to the clerk's offices in the various courts of appeal.

RECOMMENDATION 7--THE STATE PUBLIC DEFENDER SHOULD UNDERTAKE ADDITIONAL EFFORTS TO RECRUIT MINORITY ATTORNEYS TO ACHIEVE STAFFING REFLECTIVE OF THE LOCAL COMMUNITY, THE LOCAL BAR, AND THE AGENCY'S CLIENTS.

Race and sex characteristics for the office break down as follows:

Composition by Race

	White		Black		Asian		Hispanic		Other	
	#	%	#	%	#	%	#	%	#	%
Attorneys	78	(77)	6	(6)	5	(5)	9	(9)	4	(4)
Support Staff	23	(39)	13	(22)	5	(9)	12	(20)	6	(10)

Composition by Sex

	L.A.		SAC		S.D.		S.F.		Statewide	
	M	F	M	F	M	F	M	F	M	F
Attorney	23	15	16	9	3	4	15	14	57	42
Clerical	3	18	1	12	-	5	1	13	5	48

As can be immediately ascertained, attorneys with the agency are overwhelmingly white. This can be a distinct problem, particularly if the agency follows the evaluators' recommendations with regard to increased client contact.

The evaluators do not have demographic data on racial composition in the various communities served by the agency, nor as to the racial composition of the local bar in each of these communities. However, the agency should strive to improve the balance of racial composition among its attorney staff.

It should be noted that the office's overall male-female ratios are excellent among attorney staff.

RECOMMENDATION 8--IT IS RECOMMENDED THAT JOB DESCRIPTIONS BE WRITTEN CONSISTENT WITH THE UNION CONTRACT, PARTICULARLY WHERE SUPPORT STAFF ROTATE INTO ABSENT OR UNFILLED POSITIONS. IF A PERSON TRANSFERS INTO A HIGHER PAYING JOB TEMPORARILY OR FOR A PERIOD OF DAYS OR WEEKS, THIS SITUATION SHOULD BE CONSIDERED AND A CONSISTENT POLICY SHOULD BE DEVELOPED FOR PAYMENT OF THE PERSON WHO HAS ACCEPTED ADDITIONAL RESPONSIBILITY.

Civil Service provisions may cover work performed outside of the classification described. However, because many of the agency's staff have recently joined a union, there is an increased need for clear delineation of job descriptions and responsibilities, as well as contingencies for handling the necessity of transfer on a temporary or part-time basis.

RECOMMENDATION 9--THE OFFICE SHOULD SYSTEMATIZE ITS SLIP OPINION SYNOPSIS SYSTEM AND CIRCULATE THESE OPINIONS ON A REGULAR BASIS TO ALL ATTORNEYS, BOTH WITHIN THE AGENCY AND IN PUBLIC DEFENDER OFFICES THROUGHOUT THE STATE. DISTRIBUTION OF THIS SYNOPSIS COULD BE ACCOMPANIED BY DEVELOPMENT OF A "HOT ISSUES" LIST FOR TRIAL PUBLIC DEFENDERS.

Office facilities and equipment appear to be adequate, though space is approaching maximum usage everywhere. Library facilities in each of the offices are excellent, and include access to the extensive materials documented in ARSNL.

The evaluators note the expense of circulation of extensive advance sheets to staff throughout the agency. This method of circulation does not highlight cases by issue. Many state appellate defender offices have developed effective newsletters which synopsize recent cases on a monthly basis,

cataloguing them by subject matter. These materials, developed from the most recent case law, can be of immense assistance to both agency attorneys and to public defenders and private counsel at the trial level.

Staff assigned to this task might also be able to develop a list of "hot issues." This list would be of great assistance to trial attorneys, who could become attuned to making a record on a particular argument which stands a good chance of success.

4. Brief Preparation--(Standards, I-L)

RECOMMENDATION 10--BOTH DIRECT CLIENT ADVOCACY AND TRAINING FUNCTIONS OF THE STATE PUBLIC DEFENDER SHOULD EMPHASIZE THE SHARP FOCUSING OF CASES ON ISSUES OF GREATEST IMPORTANCE TO THE REVIEWING COURT, WHETHER THROUGH EFFECTIVE STATEMENTS OF FACT, WRITTEN ARGUMENTS OR ORAL ARGUMENTS. THE APPELLATE COURT'S CONCERN ABOUT LENGTH OF STATE PUBLIC DEFENDER BRIEFS APPEARS UNFOUNDED IN LIGHT OF STATISTICAL INFORMATION.

Although the work product of the office was generally praised, as noted above, there were some criticisms. Most prominent was the observation that some briefs were too long, and that some briefs raised too many issues or issues which had been decided adversely to the SPD's position. In fact, several of the briefs from San Francisco and Sacramento included Statements of Fact which seemed unnecessarily long and included facts which were not necessary to a thorough understanding of the issues.

Virtually every judge interviewed made observations regarding the length of briefs filed by the office. Most judges interviewed, when asked what their strongest criticism of the office was, stated that the briefs which were filed were too long. In San Diego, by contrast, the judges interviewed made the opposite observation. There, judges stated that some briefs filed by the SPD were short, and lacked the intellectual development of issues which could assist judges with useful indepth analysis for decision making. Perceptions as to length and brevity appear inaccurate in light of statistical information gathered by the evaluators.

The evaluation team requested a survey of opening briefs filed during the most recent quarter of 1982 (May, June and July). During that period, the four offices filed 361 opening briefs. Breakdowns by office were as follows:

	Total Briefs Filed	Average Issues Per Brief	Average Page Length of Briefs
Los Angeles	157	2.36	20.4
Sacramento	84	2.08	17.4
San Diego	45	2.70	21.9
San Francisco	75	2.68	27.8
Total	361	2.45	21.9

Based on this sample, and judging from the shared experience of the evaluators, the office can hardly be criticized for excessive length or brevity in its briefs, or for excessive numbers of issues. All offices fall within close proximity. A common experience among the evaluators is that there is a "lag time" between the judges' perceptions of brief length, particularly excessive length, and actual length. In all probability, the early briefs of the State Public Defender were longer than those currently filed, which further reflects the experience gained by staff attorneys in presentation of issues.

The underlying concern of judges and writ clerks lies with the volume of work performed by the appeals courts, and the corresponding need for focused advocacy by an office doing high volume filings.

Because of these criticisms and the evaluators' review of briefs filed, it is recommended that attention be given to shorter, focused statements of fact, arguments, reply briefs and oral arguments. The office must simply give constant close attention to making its best points with the most effect, whether in words or in time.

RECOMMENDATION 11--BECAUSE OF THE PREVALENT RELIANCE BY REVIEWING COURTS ON CONCEPTS OF HARMLESS ERROR AND PREJUDICE, IT IS RECOMMENDED THAT THESE ISSUES BE CONCENTRATED ON IN THE OPENING BRIEF AND NOT RESERVED FOR THE

REPLY BRIEF. NO USEFUL PURPOSE IS SERVED BY DELAYING RESPONSE IN THESE AREAS.

The evaluators note that reply briefs were prepared in the majority of cases reviewed. In some cases, reply briefs seem to simply reiterate issues which were dealt with in the opening brief, or raise issues regarding prejudice and harmless error for the first time. These practices should be avoided.

5. Timeliness of Briefs Filed (Standards, I-E; II-H(1))

RECOMMENDATION 12--IN HANDLING AN INDIVIDUAL ATTORNEY'S UNBRIEFED CASES, SUPERVISORY STAFF SHOULD DETERMINE A UNIFORM NUMBER, AND WHENEVER THAT NUMBER IS PASSED, THE SUPERVISING ATTORNEY SHOULD ENTER INTO A CONTRACT WITH THE STAFF ATTORNEY WHICH WOULD DETAIL THE ATTORNEY'S SPECIFIC RESPONSIBILITIES WITH REGARD TO DATES UPON WHICH BRIEFS WILL BE COMPLETED, AND SUPERVISORY RESPONSIBILITY WITH REGARD TO HOLDING BACK ASSIGNMENTS. IN THE EVENT THAT THE CONTRACT IS BREACHED, SPECIFIC CONSEQUENCES SHOULD BE DETERMINED, SUCH AS A PROBATIONARY PERIOD REQUIRING MORE HOURS IN THE OFFICE, OR ANOTHER SUCH SOLUTION.

As noted above, the office was successful in obtaining salutary amendments to Rule 33 of the California appellate rules. This amendment, combined with improving relations with

the court and clerk's offices, works in the agency's favor in preparing timely briefs.

Internally, some supervising attorneys felt that there were not sufficient controls on staff to guarantee timely performance of duties. For this reason, some attorneys take on more new assignments than they are able to complete. In some cases, supervisors look for a particular number, usually six to ten briefs due, and "look into the situation" when that point is passed. Within the SPD, this procedure can take on a more formal aspect by the supervisor's review of quarterly reports and the selection of a particular number after which the contract process would commence. This process may help to eliminate untimely performance by some staff members.

6. Conflict of Interest (Standards, II-E)

RECOMMENDATION 13--THE STATE PUBLIC DEFENDER SHOULD ADOPT A WRITTEN POLICY REGARDING THE CIRCUMSTANCES IN WHICH A CONFLICT OF INTEREST REQUIRES THE WITHDRAWAL OF THE AGENCY DUE TO CONFLICT OF INTEREST.

National standards provide that written definitions of situations which constitute a conflict of interest should be set forth in office policies. No such policy exists within the SPD.

In practice, this issue appears to raise no significant problems. This occurs primarily because trial offices are particularly careful to assure that codefendants obtain representation by separate counsel, and as a corollary, that the public defender can only represent one of several codefendants. This policy simply carries forward into the appellate level. Moreover, the unwritten policy of the office suggests that codefendants ordinarily cannot be effectively represented by the office. Therefore, this area presents only a need for written articulation of current policy.

7. Case Assignment (Standards, II-C)

RECOMMENDATION 14--TEAM LEADERS SHOULD BE THE FOCUS FOR THE ASSIGNMENT OF CASES TO INDIVIDUAL STAFF ATTORNEYS. DISTRIBUTION TO TEAMS SHOULD BE HANDLED ON A PURE ROTATION BASIS FROM CLERICAL STAFF OR THE CHIEF ASSISTANT DEFENDER. ASSIGNMENT TO TEAM MEMBERS SHOULD BE BASED ON WORKLOAD, NATURE OF THE CASE, EXPERTISE OF THE INDIVIDUAL ATTORNEY, AND OTHER FACTORS.

The policies and practice of the SPD indicate that Recommendation 9 of the NCDM Evaluation has been adopted throughout the agency. That recommendation set out an elaborate "team concept" for supervision of new and experienced staff. (See Appendix A, pp. 32-36.)

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Recommendation 3, however, dealing with the method by which assignments should be made, does not appear to be current practice. That recommendation suggests random assignment on a rotation basis to team leaders, who would then make individual assignments. (See Appendix A, pp. 18-20.) In fact, the policy manual of the agency does not speak directly to the issue of who is ultimately responsible for case assignments. This has led to ambiguity, misunderstanding, and occasional delays in client's cases in some offices.

Apparently, case assignments in two offices are now handled almost completely in the discretion of the individual staff attorney. The chief assistant reviews case files upon arrival in the office, and makes known their availability. Staff attorneys in need of additional cases may select from those in which the transcript has been received.

While this process admirably puts responsibility where it ultimately resides--with the individual attorney--it could theoretically lead to difficulties. These include the possibility of attorneys avoiding long and difficult records; the repeated selection of short and arguably "easy" appeals; and a lack of knowledge by the team leader as to the assumption of new responsibilities.

This recommendation seeks to strike a balance between the total autonomy of the staff attorney and the placing of

total responsibility of case assignments on the chief assistant. Because reports regarding the attorney work production go to team leaders, the evaluators feel it appropriate that work assignments should come through the team leaders as well.

RECOMMENDATION 15--THE STATE PUBLIC DEFENDER SHOULD ARTICULATE SPECIFIC POLICIES REGARDING THE STAFF ATTORNEY'S RESPONSIBILITY FOR COMPLETION AND TRANSFER OF WORK UPON TERMINATION OF EMPLOYMENT.

The evaluators perceived some potential problems in the completion and redistribution of work outstanding at the time of termination of agency attorneys. This area presents sensitive ethical questions regarding the continuity of an established attorney-client relationship.

At the least, staff attorneys should be meticulous in the preparation of detailed transfer memoranda regarding open cases. Specific written policies should be developed to guarantee the careful and equitable completion and redistribution of caseloads upon termination.

8. Oral Argument (Standards, I-M)

RECOMMENDATION 16--DESPITE GENERAL RESISTANCE BY THE COURT OF APPEAL TO ORAL ARGUMENT, ATTORNEYS FROM THE STATE PUBLIC DEFENDER SHOULD CONTINUE TO EXERCISE CAREFUL BUT ASSERTIVE

JUDGMENT IN THE SELECTION OF CASES TO BE ARGUED. ORAL ARGUMENTS THEMSELVES SHOULD CAREFULLY FOCUS ISSUES TO THE MOST ESSENTIAL POINTS IN THE APPEAL.

As noted in the NCDM Evaluation, the problem with oral arguments does not appear to lie within the State Public Defender but with the Court of Appeal. Recommendations 18 and 19 suggested the adoption of uniform rules regarding the waiver of oral argument and scheduling thereof. These practices appear to have been adopted by the Court of Appeal, but interviews with judges indicate that oral argument is generally disfavored.*

Much of the articulated resistance to oral arguments from judges came as a result of their feeling that nothing is learned from the oral argument process, and that attorneys tend to simply give rote recitations of the contents of the written brief. If this perception is true, the actions of agency attorneys must be refocused to guarantee attention to the most essential issues on the appeal. Techniques of oral persuasion should be studied at agency conferences, to guarantee maximum impact. Several Appellate Court judges noted that there are attorneys within the SPD who are known for their persuasion in

* The exception to this appears to be the Fifth Appellate District in Fresno, where judges interviewed uniformly stated that they encourage oral argument by SPD attorneys.

oral argument. For these judges, it was a pleasure to hear articulate and challenging presentations.

RECOMMENDATION 17--NO ORAL PRESENTATION SHOULD BE MADE IN THE CALIFORNIA SUPREME COURT WITHOUT PREPARATION FOR THIS EXPERIENCE BY MEANS OF A MOCK ORAL ARGUMENT. SIMILAR PRACTICE SHOULD BE USED WITH NEW AND INEXPERIENCED STAFF ATTORNEYS AT THE COURT OF APPEAL LEVEL.

Because of the far-reaching impact of decisions of the California Supreme Court, particularly in death penalty cases, no oral argument should be conducted there without a mock oral argument before a "panel" composed of senior staff in the administrative offices. This presentation should not merely go over the intended points to be covered during oral argument, but should constitute an actual presentation of the case. This method of preparation is not only valuable for the staff attorney, but guarantees the best possible presentation on behalf of the client.

Mock oral arguments are used regularly with new or inexperienced attorneys at the Court of Appeal level. This practice should be continued.

9. Withdrawal and Abandonment of Appeals (Standards, I-O)

RECOMMENDATION 18--ARTICULATED OFFICE PROCEDURES STRONGLY DEMONSTRATE THE NEED FOR A PERSONAL VISIT WITH THE CLIENT BY THE STATE PUBLIC DEFENDER IN THE EVENT OF THE FILING OF A "WENDE" BRIEF.

Criteria for the abandonment of frivolous appeals are set forth in Anders v. California, 386 U.S. 738 (1967) and People v. Wende, 25 Cal. 3d 436 (1979). The State Public Defender policy provides that an attorney is not to file a brief which raises only frivolous issues, even if one is requested by the client. Policy Manual, Part 2, XIV. The term "frivolous issue" is not defined, but is left to the best professional judgment of the attorney.

Office policy is to have the case read by another attorney, and if neither can find an issue of merit, the client is to be informed. The client is then advised of the right to abandon the appeal or to file a supplemental brief when a "no-merit" brief is filed by the State Public Defender. If the client desires to pursue the appeal, the office procedure is to:

1. Submit a brief summarizing the case and facts, stating the principal issues at trial;

2. Make no argument either that the case is frivolous or that it is not;

3. Ask the court to conduct an independent review of the entire record to determine whether the case contains arguable issues;

4. Submit a declaration asserting advice to the defendant of the nature of the brief, personal service, and the client's option to file a supplemental brief on his own;

5. Indicate that the attorney is not asking leave to withdraw, but that the client has been advised that he or she may ask the court to have the attorney relieved if he or she so desires.

6. Make certain the client has a copy of the record on appeal in order to file the supplemental brief.

The Policy Manual includes a sample brief.

The above procedures simply reemphasize the recommendations of the evaluators regarding client contact. The decision to withdraw or abandon a frivolous appeal is particularly sensitive, and is frequently misunderstood by clients. Attorneys

choosing to withdraw from appeals should therefore take great care in explaining this process to the client.

RECOMMENDATION 19--THE STATE PUBLIC DEFENDER POLICIES SHOULD SPECIFICALLY STATE THAT NO-MERIT BRIEFS WILL NEVER BE FILED IN CASES IN WHICH THE CLIENT RECEIVED THE DEATH PENALTY OR A SENTENCE OF LIFE WITHOUT PAROLE.

This recommendation is made, not because of the evaluators' perceptions that the State Public Defender would ever file a no-merit brief under these circumstances, but in order to articulate a policy which has implications for all assigned appellate counsel in the State of California. Unfortunately, some lawyers consider the filing of no-merit briefs in even the most serious of cases.

10. Discretionary Appeal (Standards, I-N)

RECOMMENDATION 20--THE STATE PUBLIC DEFENDER SHOULD ADOPT WRITTEN PROCEDURES FOR DETERMINING HOW CASES SHOULD BE REVIEWED AND WHAT STANDARDS SHOULD BE APPLIED WHEN DECIDING WHETHER A DISCRETIONARY APPEAL TO EITHER STATE OR FEDERAL COURT SHOULD BE TAKEN.

This recommendation is taken verbatim from the National Standards. No current office policy exists, and decisions as to discretionary appeals are left to individual attorneys.

This process should be articulated clearly, particularly for complex cases with a high potential of federal court collateral attack, as well as for new and inexperienced attorneys making decisions as to their first discretionary options.

As is emphasized elsewhere in this report, every effort should be made to assure client input in the option to pursue discretionary review.

The adoption of specific criteria, as well as the development of statistics to reflect the number of appeals filed may help to answer a criticism from several judges that too many petitions for hearing are filed by the State Public Defender. This criticism, however, is unfounded in light of statistics which indicate that the office filed petitions in less than 25% of the cases to which it was assigned between 1979 and 1981. These figures compare favorably with rates of other appellate offices and private attorneys throughout the country.

11. Training (Standards, I-K)

RECOMMENDATION 21--CLERKS SHOULD BE INCORPORATED INTO ORIENTATION AND TRAINING PROGRAMS OF THE STATE PUBLIC DEFENDER. ALL NEW AND SENIOR ATTORNEYS SHOULD REGULARLY BE REFRESHED AS TO THE CURRENT WRITTEN AND UNSPOKEN POLICIES AND ARRANGEMENTS MADE BETWEEN CLERK'S OFFICES AND THE

CALIFORNIA STATE PUBLIC DEFENDER. SOME CONSIDERATION SHOULD ALSO BE GIVEN TO THE INVITATION OF WRIT CLERKS TO SPEAK TO STAFF.

As noted in the section of this evaluation on cost effectiveness of the State Public Defender, training is one of the office's strongest aspects. The current training programs could be improved by inclusion of staff from clerks' offices, as well as writ clerks on the agenda of SPD training programs.

B. External Recommendations for the Improvement of Indigent Defense Services on Appeal

1. Selection of the Director (Standards, I-A(1))

RECOMMENDATION 22--THE STATE PUBLIC DEFENDER LEGISLATION SHOULD BE AMENDED TO PROVIDE THAT THE DIRECTOR BE CHOSEN ON THE BASIS OF MERIT BY AN INDEPENDENT COMMITTEE OR BOARD CONSISTING OF BOTH LAWYERS AND NON-LAWYERS. THE PUBLIC DEFENDER SHOULD NOT BE A GUBERNATORIAL APPOINTEE.

This recommendation is virtually identical to the first recommendation of the NCDM Evaluation. Moreover, it reflects the language of the first standard of the Appellate Standards. Perhaps no other issue is as sensitive, nor as important to the long-term operation of the State Public Defender.

The standards also provide that the chief defender shall not be selected on the basis of political affiliation, but on the basis of merit alone. The evaluators wish to emphasize that they have found no evidence that the current appointee has been selected on any basis other than merit, nor that the current director is not adequately performing his job. In fact, all evidence points to the contrary. However, leaving the appointment of the director of the office to a political process of gubernatorial appointment subjects the office to long-term instability.

2. Scope of Services (Standards, I-D)

RECOMMENDATION 23--THE LEGISLATURE SHOULD EXPAND THE APPROPRIATION OF THE STATE PUBLIC DEFENDER TO ALLOW IT TO REPRESENT AT LEAST 50% OF THOSE PERSONS FILING DIRECT APPEALS AND TO MORE FULLY PERFORM ITS STATUTORY FUNCTIONS.

During fiscal year 1981, approximately 35 percent of all criminal appeals resulted in the appointment of the State Public Defender. The percentage of cases in which the office becomes involved is directly related to the operational workload standards, as well as the total budgetary allocation for the office from the state legislature. It is strongly recommended that the state consider expansion of the State Public Defender office, because of clear indications that their work is both superior to and more efficiently prepared than that of

private appointed counsel. (See Recommendation 23, supra.) Due to increases in the compensation of private counsel, some judges felt that their costs now exceed those of the State Public Defender.

Because of the scope of services which it provides, the office is in substantial compliance with national standards, and the dimensions of its services exceed those generally available in most appellate offices throughout the United States. (See Introduction.) However, the California legislature has set forth this broad statutory mandate for the office while withholding the funds to allow complete implementation of this mandate. The legislature should allow additional funds for these statutorily prescribed services.

3. Performance of Private Appointed Counsel

RECOMMENDATION 24--LEGISLATION OR COURT RULE CHANGES SHOULD CREATE UNIFORM PROCEDURES FOR THE APPOINTMENT OF ATTORNEYS FROM THE LIST OF PRIVATE COUNSEL HANDLING APPEALS. THESE STANDARDS SHOULD INCLUDE PUBLICLY ARTICULATED CRITERIA FOR THE ASSIGNMENT OF CASES TO COUNSEL, AND SHOULD EVALUATE COUNSEL'S ABILITY TO HANDLE MORE SOPHISTICATED AND COMPLEX CASES. ATTORNEYS WHO FAIL TO ADEQUATELY PERFORM SHOULD BE NOTIFIED AND REMOVED FROM THE LIST.

In the NCDM Evaluation, Recommendations 4 and 6 suggested that the Courts of Appeal should adopt uniform procedures such as those recommended here. The evaluators were disturbed to find that little progress has been made in this area, and that procedures for the assignment and compensation of private counsel are still largely discretionary and variable throughout the state. This creates serious constitutional questions of denial of equal protection of the law to the defendant.

This variability affects provision of quality representation to the indigent in criminal appeals. Judges and attorneys alike expressed growing concern with the overall disparity in the quality of work performed by the State Public Defender as opposed to that performed by private assigned counsel in criminal appeals. All of the evidence suggests that the indigent defendant may be playing a kind of appellate Russian roulette in the random and arbitrary system by which he or she ends up with either the SPD or private assigned counsel. While the SPD's efforts to assist in the improvement of advocacy skills of private attorneys are admirable and far-reaching, they are not sufficient answers.

Some efforts have been made by judges and Appellate Courts, individually, to adopt uniform procedures for the assignment of private counsel to indigent appeals. In San Francisco, Alameda, and Santa Clara counties local bar programs

screen cases, generally referring the more serious and complex cases to the State Public Defender because the county programs are unable to handle them. The State Public Defender is actively involved in those programs and has formal arrangements to assist in recruiting and training appellate counsel to handle the remaining caseload. The agency has helped establish systems in these counties to classify cases according to their complexity and seriousness and to find lawyers competent to handle the cases. The State Public Defender has agreed to review some briefs prepared by participating local counsel, to conduct training programs for private appellate lawyers, and to confer with and assist local administrators in implementing the programs.

The procedure utilized in the Fourth District, First Division, has been used successfully for many years, and has worked to the complete satisfaction of the Appellate Court there. (The system is described in detail in a memorandum of November 15, 1982, attached as Appendix D.) The system works as follows:

First, <u>all</u> notices of appeal are referred to the San Diego SPD office;

Second, the SPD mails a letter and declaration of indigency to the defendant and a letter to trial counsel;

Third, when responses are received, a recommendation is submitted to the court indicating whether the defendant has retained counsel, whether the office intends to keep the case, or whether it should be assigned to a member of the independent panel;

Fourth, the court may accept or reject the recommendation of the State Public Defender.

Selection of an appointed attorney outside of the SPD is handled largely on a rotational basis. That list contains approximately 150 names, solicited from throughout the state. Attorneys are requested to submit a resume, as well as a cover letter indicating their appellate experience. These letters and resumes are kept in the office's files. The attorney's name is then placed on a 3 by 5 card and included in a file box. Assignments to outside counsel are made largely on a rotational basis, by selection of the attorney whose card is at the front of the box. After a new assignment, the attorney's card is moved to the back of the box.

A second list of 100-120 private attorneys is also maintained by the San Diego office. These attorneys come almost exclusively from the San Diego area, and work under the supervision of the State Public Defender on State Public Defender cases. About half of the cases handled by the San Diego office are handled solely by staff attorneys, while the

other half are assigned to panel attorneys for supervision by staff.

The evaluators believe that the San Diego system or the system used in the San Francisco area are excellent alternatives to those used in the other appellate districts, and commend the legislature and Supreme Court to consider adoption of either system on a statewide basis. In the event that statewide adoption is accomplished, of course, additional staffing of the State Public Defender may be required to administer this program, and appropriate funds should be allocated by the legislature for this purpose.

The San Diego system, as described, is not without problems. First, greater control should be exercised in the criteria by which attorneys are selected for inclusion on the panel. Second, appointments are sometimes made on a basis other than rotational selection, particularly with difficult cases or with attorneys capable of handling multiple appeals. These procedures are not wrong, but should be reviewed and reduced to writing to assure uniformity of administration. Third, some uniform procedures should be adopted for the removal of attorneys, which might require the periodic review of attorney work product by SPD staff or the completion of evaluation forms by the Appellate Court judges or court staff attorneys.

RECOMMENDATION 25--COMPENSATION PAID TO PRIVATE COUNSEL SHOULD BE UNIFORM AT $40.00 AN HOUR FOR WORK PERFORMED. TOTAL COMPENSATION SHOULD NOT BE DIMINISHED ON THE BASIS OF ARBITRARY STANDARDS OF INDIVIDUAL JUDGES.

Because of the announced policy of the California Supreme Court to pay a standard rate of $40.00 per allowable hour for all court-appointed criminal work, most Districts and Divisions of the Court of Appeal have nominally set the rate of compensation at $30 to $40.00 an hour as well. Unlike the previous evaluation, this evaluation will be unable to present an indepth analysis of bills submitted, as judges and clerks were reluctant to share information about specific bills. Enough information is available, however, for the evaluation team to draw conclusions.

The average payment to the private bar has apparently increased since the $500-600 noted in the NCDM Evaluation (p. 25), but is, as in that instance, inadequate to afford counsel sufficient funds to provide adequate representation. Again, several private practitioners expressed their view that the low level of compensation has resulted in low quality work and less qualified attorneys willing to participate on panels.

In San Diego, where specific compensation rates are kept in the office, in the FY 1981-82 average rate paid to attorneys is approximately $20 per hour to private appointed

counsel, and $17 or $18 per hour to supervised panel attorneys. Judges throughout the state overwhelmingly responded to the question of their cutting of expense vouchers by asserting that "we are not here to pay for the education of attorneys".

Some of the methods of calculation of payment by judges were not only unique, but bizarre. They included the following:

- o The justice looks at the briefs and at the opinion, and makes a calculation from these, rather than from the vouchers submitted;

- o The justice pays a flat rate of 50 pages of transcript an hour for reading, and one hour per page for opening brief and reply brief;

- o The justice believes that no brief can be prepared in less than 6 hours or for under $250, although "sometimes lawyers don't ask that much";

- o With any case over 90 hours, the justice is "bothered", and is unlikely to make the entire award;

- o One judge calculates 20 pages an hour for the record but discounts some pages. He also looks at the complexity of the issues and knows how some people

operate. "Some are [working] in their homes. I keep personal notes."

These methods are unconscionable. Judges, by indulging in these processes, either disbelieve claims made by counsel under penalty of perjury or arbitrarily cut claims by personal fiat. Either alternative is unacceptable.

As noted elsewhere in this report, criticisms of private appointed counsel's work by the court and clerk's offices suggest that the Court of Appeal does substantially more work in these cases than in those which have been adequately briefed and argued, which overwhelmingly come from the SPD. Thus, the lower rates of compensation to counsel result in the proverbial robbing of Peter to pay Paul by raising costs elsewhere in the system.

Courts in other states have recognized the need for reasonable compensation. For example, the Iowa Supreme Court concluded that its "reasonable compensation" statute means appointed counsel should be reimbursed on the same basis as privately-retained counsel. Hulse v. Wifvat, 306 N.W.2d 707 (1981); see also People v. Johnson, 429 N.E.2d 497 (Ill. 1981); State v. Boykin, 637 P.2d 1193 (Mont. 1981).

The court should consider the adoption of uniform criteria for the payment of counsel, guaranteeing that rates

are not so routinely cut as to drastically undercompensate privately assigned counsel.

4. Eligibility (Standards, II-F)

RECOMMENDATION 26--THE APPELLATE COURTS OF CALIFORNIA SHOULD ADOPT UNIFORM STANDARDS REGARDING ELIGIBILITY DETERMINATION BY INDIGENT DEFENDANTS ON APPEAL. APPEALS SHOULD NOT BE DISMISSED BASED ON FAILURE TO RETURN A COMPLETED AFFIDAVIT OF INDIGENCY AFTER A SECOND MAILING.

The eligibility determination process on appeal is that the Appellate Clerk's office mails an declaration of indigency to the defendant for completion. (In San Diego, the SPD mails the declaration of indigency.) Upon receipt of the completed declaration, it is reviewed by the judges and a determination of eligibility is made. Apparently, the court rarely questions a defendant's claim of eligibility, and few cases have arisen in which the determination of eligibility by the appellate court has been challenged by the allegedly non-indigent defendant.

The major shortcoming in this process comes when the defendant does not respond with a completed declaration after a second mailing. The evaluators were informed that under these circumstances, the appeal is dismissed without further contact with the defendant under the provisions of Rule 17(a). For

defendants who are illiterate or otherwise unable to complete the forms, this process is unfair.

The evaluators offer three alternative solutions to this problem. First, the Appellate Court Clerk could call the institution after noncompliance with the second mailing to inquire as to the defendant's desires. Second, non-responding defendants could be referred to the State Public Defender for a similar process. Either of these solutions, of course, might call for additional staffing of the clerk's office or the SPD.

A third alternative includes delegation of contact with the defendant to the SPD, as is currently done in the San Diego office. Even that delegation process, however, should guarantee verbal contact with the defendant prior to dismissal. (See memorandum of November 15, 1982, attached as Appendix D.)

IV. Evaluation Methodology

At the time of its original request to NLADA, the State Public Defender sought the involvement of as many members of the initial evaluation team as possible. The reasons for this were twofold: first, the original evaluation team consisted of experienced public defenders in other states, in similar positions, who could provide the type of evaluation and assistance needed by the office; and two, inclusion of members from the original evaluation team would provide continuity in the two detailed examinations of the office.

Richard J. Wilson, Director of NLADA's Defender Division, made preliminary arrangements for evaluation team membership and evaluation logistics with Robert Gray, Deputy Director of the program. The Defender Director selected a team consisting of Theodore A. Gottfried, Appellate Defender of the State of Illinois; James R. Neuhard, Appellate Defender of the State of Michigan; Adjoa Aiyetoro, a staff attorney with the ACLU National Prison Project and former Justice Department attorney; and himself, Richard J. Wilson, Defender Director of NLADA and former Deputy Appellate Defender with the Appellate Defender Office of the State of Illinois. (Resumes of each of the team members are attached hereto as Appendix E.) Both Neuhard and Gottfried were members of the original evaluation team in 1979.

Basic structure for the evaluation included the division of the evaluation team members into two teams of two. Each team visited two offices, which were divided geographically. The northern team, consisting of Newhard and Gottfried, visited the offices in San Francisco and Sacramento (both district and administrative offices). The southern team, consisting of Wilson and Aiyetoro, visited the district offices in Los Angeles and San Diego.

Following several days of intensive interviews and literature review by the two teams at each of the offices, the teams were reunited on the final day of the evaluation in Sacramento. The morning of the final day was spent in a team debriefing and discussion of major preliminary findings.

In the afternoon meeting, the evaluation team orally presented its preliminary findings to the administrative staff of the office, and the chief assistants of each of the district offices.

Basic sources for the recommendations included in this evaluation, as well as factual findings, come from a combination of oral interviews and review of written materials provided by the office staff. Interviews were conducted with the Chief Justice of the California Supreme Court, several Associate Justices of the Supreme Court; several Presiding and Associate Justices of each of the districts and divisions of

the California Court of Appeal; members of the Attorney General's staff in Los Angeles, San Diego, Sacramento and San Francisco; members of the private bar handling criminal appeals on a retained and appointed basis; trial level public defenders whose cases are handled by the State Public Defender office; court clerks in both the Supreme Court and Court of Appeal; several current and former clients of the office; and numerous members of the State Public Defense legal and support staff in each district office and the administrative office.

In addition, the evaluation team was provided with random samples of dozens of briefs written by staff attorneys within the recent past, as well as written materials provided by the office to its staff and the private bar.

V. Appendices

A. 1979 NCDM Evaluation Text.

B. State Public Defender Legislation

C. Memorandum setting forth current weighted caseload standards.

D. Letters from judges opposing reductions in SPD budget.

E. Memorandum setting forth San Diego assignment system.

F. Resumes of Evaluation Team

APPENDIX A

1979 NCDM Evaluation

EVALUATION OF THE STATE PUBLIC DEFENDER
STATE OF CALIFORNIA

Final Report
April, 1979

Consultant Team

Howard B. Eisenberg
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ACKNOWLEDGEMENTS

The evaluation team would like to sincerely thank State Public Defender, Quin Denvir, each office head, and the entire staff of both the State Public Defender and Appellate Defender, Inc. for their complete cooperation with us. We would also like to acknowledge the cooperation and time of the many persons interviewed, including the justices of the Supreme Court and Courts of Appeal, the Court Staff, the Deputy Attorneys General, and members of the bar.

We particularly note the assistance provided us by Hon. Donald R. Wright, former Chief Justice of the California Supreme Court. Justice Wright met eith the evaluation team and assisted us in understanding the history of the public defender legislation as well as California appellate procedure.

I

BACKGROUND AND HISTORY

The State of California has a two-tier appellate court system for felony cases. The first level - the Courts of Appeal - sits in five districts with courts located in San Francisco (District I), Los Angeles (II), Sacramento (III), San Diego and San Bernardino (IV), and Fresno (V). The Court of Appeal is a high-volume court in which the large majority of appeals terminate. With the exception of cases in which the defendant is sentenced to death, all felony cases are initially appealed from the Superior Court to the Courts of Appeal. In the 1977-78 fiscal year, 3,947 criminal appeals were filed.[1] The California Supreme Court has discretionary jurisdiction to review decisions of the Courts of Appeal. Applications for review to the California Supreme Court are called "Petitions for Hearing." In the 1977-78 fiscal year, the California Supreme Court denied 2,867 Petitions for Hearing, while granting 273.[2] In that period, 8.3 per cent of the Petitions for Hearing in criminal cases were granted.[3] In addition, the Supreme Court hears all appeals from cases in which the defendant is sentenced to death.

Following the decision of the United States Supreme Court which mandated the right to counsel to indigent defendants who appeal their convictions, Douglas v. California,[4] the California appellate courts appointed private counsel to represent indigent criminal defendants on appeal. These were in addition to representation provided by appellate divisions of county public defender offices. Private counsel were compensated at an extremely low level, averaging initially about $300.00 per case

until the last few years; today the statewide average has increased to approximately $675.00.[5] Privately retained counsel in California would charge a client between $2,500 and $10,000 for appellate representation. Within a short time, it became apparent that poorly compensated private counsel provided, at best, wide variations in the quality of representation and, at worst, ineffective representation to defendants. In 1965 the California Judicial Council began studying alternative methods for providing counsel to indigents on appeal. It was proposed at that time that the state consider establishing an appellate defender to handle the large majority of cases reaching the Courts of Appeal to which private counsel was then being assigned. In 1971 legislation passed the California legislature to establish an appellate public defender, but the governor vetoed the legislation. In 1972, however, the local bar association in San Diego established a non-profit corporation, Appellate Defenders, Inc. This unique agency provides direct representation to indigents on appeal and supervises private panel lawyers in preparing appellate briefs. Most cases from the San Diego appellate court are appointed to Appellate Defenders, Inc., who, in turn, assigns the case either to private counsel or retains the case within the staff. In those cases that are assigned to private counsel, the staff attorneys assist the private counsel, edit their briefs, and supply secretarial assistance for the preparation of the briefs.

The efforts of the California Judicial Council to secure passage of legislation which would create a state public defender were spearheaded

by the Chairman of the Council, then California Chief Justice Donald Wright. Justice Wright led the support for the legislation during the 1970, 1971 and 1972 sessions of the legislature.

The public defender legislation was presented as having two distinct advantages to the citizens of the State of California. The primary advantage, and that advanced by Chief Justice Wright and other members of the appellate judiciary, was that the quality of representation would be markedly improved. It was also asserted by some that a statewide appellate defender would be cost effective and would thus save the taxpayers of the state money. It is not clear whether this argument was made in relation to the cost of counsel then being assigned or to the cost of privately retained attorneys.

Legislation establishing the California State Public Defender was created by Chapter 1125 of the Statutes of 1975. It is not entirely clear what was expected of the new agency. Some persons within the appellate court system clearly gained the impression that the office would handle all of the indigent criminal appeals reaching the Courts of Appeal, except those which require the appointment of independent counsel due to a conflict of interest. Other persons anticipated that, due to inadequate funding, the office would be able to take only a portion of these appeals then being assigned to private counsel. As will be noted below, this difference in perception has worked to the detriment of the State Public Defender's Office.

Under the legislation, which is attached to this report as Appendix A, the governor of the State of California appoints the state public defender

with the advice and consent of the State Senate. Governor Brown appointed Paul Halvonik as the first state public defender. Mr. Halvonik had a wide-ranging legal experience, which included tenure in the Attorney General's office, acting as lobbyist for the American Civil Liberties Union, and most recently, being a member of the Governor's staff with the responsibility of legislative liaison to the State Assembly. Mr. Halvonik took the position as state public defender anticipating to stay approximately six months to one year in the position so that he could direct the establishment of the office. He did not intend to serve the full four-year term established by statute, and his name was never submitted to the Senate for confirmation. Mr. Halvonik served approximately a year and a half as the interim public defender. During this initial period chief assistant public defenders were hired to run the offices of the state public defender in Los Angeles, San Francisco, and Sacramento. A determination was made to contract with Appellate Defenders, Inc., which has continued to provide appellate representation in the San Diego Division of District IV of the Court of Appeals.

In view of the very broad statutory mandate afforded the state public defender (see Appendix A), many of the attorneys entering the office believed they would be doing substantial affirmative law reform litigation and not a high volume of criminal appeals. While the office's primary statutory mandate is clear from the statute and the materials accompanying the legislation, Mr. Halvonik did not discourage the notion that the office would be heavily involved in such areas as mental health, county jail reform and prison litigation.

Almost immediately upon the commencement of actual appellate litigation, early in 1977, the state public defender began raising issues and utilizing procedures in the Court of Appeal which heretofore had not been raised or used. A primary example is the numerous requests to augment the appellate record which were filed by the state public defender. In accordance with Court Rule 33,[6] the normal record on appeal in a criminal case does not include transcripts of pre-trial evidentiary hearings, voir dire of the jury, opening statements of counsel, oral jury instruction, or the closing argument of counsel. The state public defender took the position that many of these proceedings were required in order to afford counsel the opportunity to completely review the appellate record and to search for any issues of possible merit. The procedure outlined in Rule 33 is to file a motion to augment the record. These motions, filed in the appellate courts, make significant work for the courts' staff and the justices of the court. This motion practice caused substantial tension between the court personnel and the public defender. Ultimately, in People v. Gaston, 20 Cal. 3d 476, 143 Cal. Rpt. 205, 573 P. 2d 423 (1978), and People v. Silva, 20 Cal. 3d 489, 143 Cal. Rpt. 212, 573 P. 2d 430 (1978), the California Supreme Court upheld the position of the state public defender that such augmentation of the record was necessary and appropriate in order for appellate counsel to fulfill their obligations. It is also clear that the nature of the briefs filed by the state public defender were quite different than those filed by the private bar in indigent cases. The court was required to review lengthy briefs raising multiple issues which were briefed in great detail. In the formative 18 months of the State

Public Defender's Office, these issues and other resulted in friction between the courts and the public defender's office which still remain, though to a lesser degree.

It at once became clear that the state public defender would not be able to assume responsibility for providing representation anywhere close to every appellate case involving indigent defendants. Indeed, the actual number of cases accepted by the state public defender has varied by district from a high of slightly more than 50 per cent to a low of less than 33 per cent of all indigent appellate cases.

Mr. Halvonik was appointed to a seat on District I of the Court of Appeal in the spring of 1978. The three directors of the office in the state public defender system each had applied for the position of state public defender, as did a deputy state public defender in the Sacramento office, Quin Denvir. Governor Brown appointed Mr. Denvir state public defender and he took office in June, 1978. In August, 1978 the Cal.Tax News, published by the California Taxpayers Association, featured a front-page article (see Appendix B) attacking the cost-effectiveness of the state public defender and suggesting that it had not met its "promise" -- to do all of the assigned appeals.

A further suggestion has been made by the legislative analyst (see Appendix C) that the office either be run more efficiently or be abolished.

In the late summer and early fall of 1978 Public Defender Denvir requested that the National Center for Defense Management (NCDM) undertake an evaluation of his office to determine whether it was providing quality and effective representation in a cost-efficient manner. This evaluation was further requested by the Office of Criminal Justice Planning of the State of California. This is the report of the evaluation undertaken by NCDM.

II

METHODOLOGY

The Director of NCDM, Howard Eisenberg, had meetings in the Sacramento office of the State Public Defender in September 1978 and early February 1979. These meetings with Mr. Denvir, the heads of each of the offices, and the Deputy Director of the program, Robert Gray, were established to outline the specific needs of the program. It was decided that an evaluation team consisting of experienced appellate defenders in other states would be the most effective vehicle for providing the type of evaluation and assistance needed by the office and by the state generally. The Director of NCDM, with the approval of the Law Enforcement Assistance Administration (LEAA), selected a team consisting of Theodore A. Gottfried, the Appellate Defender of the State of Illinois; James R. Neuhard, the Appellate Defender of the State of Michigan; and himself, Howard B. Eisenberg, the Director of NCDM and the former Appellate Defender and State Public Defender of the State of Wisconsin. The resumes of each of the team members are attached hereto and designated Appendices D, E, and F. Due to the limited funding available to NCDM, it was decided that the evaluation effort would be limited. No effort was made to review the briefs or oral arguments of either private counsel, State Public Defender staff, or Appellate Defenders, Inc. In addition, a decision was made not to interview any clients represented by either private counsel, the State Public Defender, or Appellate Defenders, Inc.

The basic method of preparing this evaluation was to meet with the presiding justice of each of the districts and divisions of the Court of

Appeal. No justices on the Court of Appeal Division that sits in San Bernardino were interviewed, while in San Diego two associate justices on the Court were interviewed. In addition, four associate justices of the California Supreme Court were interviewed; several associate justices of the California Courts of Appeal; members of the Attorney General's staff in Los Angeles, San Diego, Sacramento and San Francisco; and numerous members of the State Public Defender's legal and support staff in each office and the staff of the Appellate Defenders, Inc. Members of the private bar, court clerks, and a representative of the California Taxpayers Association were interviewed by the consultant panel. The purpose of this evaluation is to bring to the attention of the State Public Defender and others with positions of responsibility within the state, matters which impact on the operation of the office and of the appellate justice system in general.

III

WHAT IS THE STATE PUBLIC DEFENDER?

It is appropriate at the outset to discuss and outline the responsibilities of the State Public Defender in California and the responsibilities of an appellate defender generally. Pursuant to Rule 31 of the California Rules of Court, a defendant in a felony case must file with the Clerk of the Superior Court a Notice of Appeal within 60 days of the rendition of judgment. At the time of judgment, the defendant is informed by the convicting court of his or her rights to appeal. Under Rule 31, the Clerk of the Superior Court is required to notify the Clerk of the Court of Appeal that this criminal appeal has been taken. If the defendant is indigent, he or she then petitions the Court of Appeal for the appointment of appellate counsel. Under current practice in California, the appellate attorneys is appointed prior to the filing of the reporter transcripts and court record (referred to as the "Clerk's Transcript"). At that time the attorney also reviews the transcripts to ascertain whether the entire appropriate record is contained in the appellate court file. It has been the experience of the State Public Defender in California that often such matters as pre-trial evidentiary hearings, opening statements, voir dire of the jury, oral jury instructions, and closing arguments are not found in the record. Indeed, Rule 33 of the Court Rules specifies that the foregoing material need not be included in the normal record on appeal (See Section entitled "Augmentation of Record, page 55, infra.) In the event additional material is required, the public defender is required to file a Motion to Augment the Record.

Augmentation significantly adds to the cost of an appeal and slows down the appellate process.

Once an augmented record is obtained and the public defender is satisfied that he or she has sufficient materials to review to afford the defendant adequate appellate representation, it is necessary to make a detailed reading of the entire record and all the documents in the case. Some of the issues which are viable on appeal will have been identified by trial counsel, while others may not. Appellate counsel's obligation is to search the record looking for any issue of arguable merit. The extent to which the State Public Defender searches the record is an issue which will be discussed in subsequent sections of this report.

Once the issues to be raised are identified, it is the obligation of appellate counsel to prepare a detailed Statement of Facts for presentation to the Appellate Court. This Statement of Facts must be a fair summary of all of the evidence introduced at trial that is relevant to the appeal, and it becomes an important part of the Appellant's Opening Brief (A.O.B.) which the appellate defender must prepare, arguing each issue raised in the appeal. It should be noted that while the Attorney General, representing the people of the State of California, has a similar obligation to prepare a brief in the case, the Attorney General need respond only to those issues raised by the appellant. Appellate counsel also has the obligation of contacting the defendant and the defendnat's trial counsel to ascertain precisely what occurred at trial, should that become an issue in the appeal.

Once the state has submitted the Respondant's Brief, the public Defender

again has the obligation of reviewing the record, the A.O.B. and the Respondant's Brief to determine whether a Reply Brief should be filed. Again, this is an obligation only of the appellant in such a case, inasmuch as the respondant has no right to file a Reply Brief.

Subsequent to the filing of all necessary briefs, the matter may be orally presented to the appellate court or may be submitted on the basis of the briefs already written. If the Court of Appeal sustains the conviction, appellate counsel must then review the case once again to determine whether a Petition for Rehearing in the Court of Appeal or a Petition for Hearing to the California Supreme Court should be filed.

For the purposes of cost comparison between the Office of the State Public Defender and either the private bar or the Attorney General's office, several points must be emphasized. First, the attorney for an appellant will have substantially more work to do than a respondant's attorney in the average criminal case. This additional work includes closer scrutiny of the appellate record, searching for possible errors, developing the entire record for appeal, searching for new evidence, contacting the defendant, preparation of a Statement of Facts, more affirmative research, preparation of a Reply Brief, and considering the filing of a habeas corpus petition. In addition, since a large majority of criminal appeals will be affirmed under any circumstances, a public defender will have substantially more Petitions for Rehearing and Hearing to the Supreme Court than will the representative of the prosecution.

As will be noted in this report, many private attorneys do not provide the full measure of representation, due primarily to the low level of compensation

afforded them on appeal.

In addition, it must be noted that the California State Public Defender has several additional responsibilities in addition to providing representation in the Courts of Appeal. These responsibilities include:

1. Death penalty assignments from the California Supreme Court on automatic appeal from Superior Court under Penal Code 1239. Government Code, Sec. 15421(c).

2. Mentally disordered sex offender extension hearings (trial level), Welfare & Institutions Code, Sec. 6316.2.

3. Penal Code, Sec. 1240.1 contacts -- rendering advice to trial counsel and clients concerning legal issues on appeal.

4. Prisoner trials. Government Code, Sec. 15421(d) mandates State Public Defender to represent an accused prisoner facing new criminal charges where county public defender declares a conflict. There have been budgeted position for this responsibility.

5. In re Roger S., 19 Cal. 3d 921 (1977). The California Supreme Court declared that all hospitalized juveniles, aged 14-17, committed by parents have a right to a hearing to determine fitness for continued hospitalization. State and county public defenders given responsibilities for interviewing the juveniles and filing, where appropriate, the writ.

6. In re Moye, 22 Cal. 3d 457 (1978), held that persons acquitted by reason of insanity and committed to a hospital could be held no longer than the maximum term of confinement if found guilty and sent to state prison. Extension hearings pursuant to Welfare and Institutions Code, Sec. 6316.2 are available to extend the commitment for violent individuals, Negotiations are underway as to who shall represent the committees; probably the State Public Defender.

IV

CREATION OF PROGRAM AND ESTABLISHMENT OF PROGRAM OFFICES

Shortly after the passage of the Public Defender legislation, Paul Halvonik was approached by the Governor's office to ascertain whether he would accept the initial appointment as State Public Defender. Justice Halvonik informed our consultant team that he had no interest in being the permanent State Public Defender, but that he did agree to accept an interim appointment for a period of "six months or a year" to help establish the program. Mr. Halvonik's name was never submitted by the governor to the Senate for appointment as permanent Public Defender, and he served until his appointment to the Court of Appeal in the spring of 1978. We think it was unfortunate that the governor considered an interim appointment as State Public Defender at such a critical time and that Mr. Halvonik accepted the position on that basis. It is clear to us that many of the problems which have developed within the program are the direct result of the lack of any long-term planning, management or goal setting within the office. Indeed, this very problem points out the wisdom in creating an independent public defender commission which would then appoint the most qualified person as State Public Defender. [See Guidelines for Legal Defense Systems in the United States; Report of the National Study Commission on Defense Services (Final Report, 1976), National Legal Aid and Defender Association (NLADA), page 228.] While it may well be that Mr. Halvonik was a highly qualified candidate, it is exceedingly unlikely that any independent commission whould have

accepted an initial State Public Defender who was interested in the job for only "six months or a year."

Recommendation 1. The State Public Defender legislation should be amended to provide that the Defender is chosen by an independent board or commission. The Public Defender should not be a gubernatorial appointee.

The State Public Defender was represented to be different things to different people. From our discussion with senior members of the legal staff within the State Public Defender Office, it is clear that representations were made that the State Public Defender Office would be heavily involved in law reform in addition to appellate litigation. As will be noted below, this perception has caused substantial morale problems within the office due to the heavy workload of non-"law reform" cases. It is further clear to us that some persons represented the State Public Defender legislation as a "cheaper" way of providing representation for all indigent persons who desired to appeal their criminal cases to the Courts of Appeal. While simple mathematics and fiscal responsibility demonstrate that such an expectation was unwarranted, we conclude that these representations were made to both persons in the legislature and in the appellate court system. While former Chief Justice Donald Wright was one of the primary motivating persons behind the creation of the Appellate Defender, his concern was solely in ensuring high-quality representation. Other persons within the political framework of the state made additional representations regarding the office which could not then, and cannot now, be justified based upon the number of cases and the cost of operating any quality defense system.

Public Defender offices were established in Los Angeles under the direction of Chief Assistant Charles Sevilla; in Sacramento under the direction of Professor Gary Goodpaster, who resigned in the spring of 1978 to return to teaching and was replaced by Ezra Hendon; and in San Francisco under the direction of Clifton Jeffers. Appellate Defenders, Inc. in San Diego was continued and eventually was contracted with by the state. Apparently the State Public Defender's thinking initially was that each office should adopt its own administrative and internal procedures. Thus, four relatively independent offices developed, each following its own docketing system, case management system, statistical system, and record keeping. Prior to the appointment of Mr. Denvir as State Public Defender, it was virtually impossible to gain any system-wide statistics because each of the offices were keeping statistics in a different way and retaining different information. The consultant team believes that, while flexibility is important and while public defender offices should have a minimum of bureaucratic procedures, the development of separate management systems in each of the three offices was an unfortunate occurrence and has hindered the system's ability to demonstrate its effectiveness or to adequately plan for the future. An additional indication of the autonomy which was given to each of the three program offices is that now there are different types of personnel are utilized by each office. Thus, the attorney/secretary ratio varies from two-to-one to three-to-one in the offices, while one office has additional docketing clerical staff which is not available to other offices. The difference in clerical/professional ratios and the availability of additional clerical staff in some offices have created morale problems

within the support staff which continue to this day. We believe that the establishment of different docketing procedures and different support staff functions has not materially improved the operation of any of the offices. We believe that uniform procedures should be adopted in this area as well.

Recommendation 2. The four offices of the State Public Defender should immediately adopt uniform statistical and case docketing procedures. The State Public Defender, in conjunction with the chief assistants and senior support staff should determine the most appropriate statewide docketing system which meets his needs as well as the needs of staff within the offices.

The team was also struck by the amount of time spent by attorneys on determining who is assigned each case. Each office has adopted some variation of the "team" system whereby each of the Deputy State Public Defenders works under a team leader. The team leader in each of the offices assigns individual cases to members of his or her team. It was our observation that a good deal of unnecessary time is spent discussing which team should accept which case, when in reality this is done basically on rotation basis. We believe that unnecessary time is now being spent in the determination of which team should receive which case.

Recommendation 3. As each case enters the State Public Defender's office, it should be assigned by a clerical staff member to a team, based entirely on a rotation basis. The team leader would then assign each case to a team member based on workload, nature of case,

and other factors. In the event a team has insufficient or too many cases, an adjustment could be made through the chief assistant for an increase or a decrease in case numbers. Discussion among team leaders of which team should receive which case should be abolished, except for very unusual or time-consuming cases (e.g., death penalty cases).

V

SUMMARY OF INTERVIEWS

The following is a summary of the interviews conducted by the consultant team. The summaries are designed to not only include fact assertions, but also the team's perception as to the evaluation of each of the persons identified.

Summary, Comments, and Perceptions of Interviews with Supreme Court Justices. Four Associate Justices of the California Supreme Court were interviewed individually by Howard Eisenberg. The four members of the court were agreed on the high quality of representation provided by the State Public Defender. All members of the Court also agreed that the creation of the State Public Defender had resulted in some increase in the number of Petitions for Hearing filed in criminal cases, although the justices disagreed on the proportion of the increase.[7] One member of the Court felt that the State Public Defender filed a significant number of frivolous Petitions for Hearing and that even in those petitions that had some merit, a number of frivolous issues were raised. A second member of the Court agreed with the latter point, believing that there were no frivolous cases filed, but that the State Public Defender did not exercise sufficient discretion to weed out those issues which would be inappropriate for inclusion in a Petition for Hearing. Two other members of the Court found no problem with the types of Petitions for Hearing being filed.

The members of the Court seemed entirely insulated from any of the political or administrative problems identified by others. Each of the

Associate Justices looked to the Chief Justice for guidance on any administrative problems and, frankly, seemed less than enthusiastic about becoming involved in any administrative matters relating to the Courts of Appeals. Two of the justices specifically remarked that if the Courts of Appeals felt strongly about matters that they should decide cases and that the Supreme Court would decide appropriate cases in due course.

Thus, the justices on the Supreme Court were of the belief that the work done by the State Public Defender in briefing and oral argument was of high quality, but that some improvement might be undertaken to refine those issues which are presented to the Court in Petitions for Hearing.

Summary, Comments, and Perception of Courts of Appeal Justices. As would be anticipated, the comments of the presiding and associate justices of the various districts and divisions of the Courts of Appeal vary quite broadly. There was only one point on which everyone agreed: the attorneys in the State Public Defender Office do quality legal work, which is better than the work done by the average private attorney who is appointed by the Court. Beyond this base-line assessment, there was wide variation in the justices' comments regarding the representation by the State Public Defender.

A significant number of the justices interviewed felt that the State Public Defender "overbriefed" cases. The justices meant that frivolous issues were often raised in briefs, nonmeritorious issues were often argued at great length, and issues which had already been decided by the Court of Appeal or Supreme Court were re-briefed and argued. Intertwined with

these issues was the practice of the State Public Defender staff of routinely requesting augmentation of appellate court records. Initially, this caused great consternation on the part of the appellate court justices who had not been accustomed to receiving many requests for the inclusion of pre-trial hearings, voir dire, opening statements, oral jury instructions, and closing arguments. The matter was ultimately decided by the California Supreme Court in the cases of Gaston and Silva, supra, in which the Supreme Court agreed that the State Public Defender did have the right to request such augmentation of record. The second source of irritation on the part of some of the Courts of Appeal justices was the State Public Defender's desire to orally argue a significantly higher number of cases than did private counsel. The consultant team was frankly shocked by the practices followed in some of the Courts of Appeal, which strongly discourage oral argument. Indeed, in at least one division of District II in Los Angeles, the oral argument calendar has become little more than a motion calendar in which less than five minutes on the average is taken to argue a case. Each of the presiding justices indicated that initially the State Public Defender seldom waived oral argument, but that increasingly cases briefed by the State Public Defender are not orally argued.

Among those justices more sympathetic to the State Public Defender was the belief that, with maturity and with additional experience, many of the problems which were identified by the other justices during the initial two years of operation would no longer be serious. In fact, most of the justices interviewed reported that since Mr. Denvir had become State Public Defender and as the program matured, there did seem to be a change in direction on many of the issues and problems which have caused irritation.

Some of the problems identified by the justices of the Courts of Appeal were the result of inappropriate responses to inquiries from court personnel and communications by the State Public Defender staff. A significant number of justices commented on the "attitude" of public defender staff. The word "ideologue" was used by a number of justices to describe attorneys in the State Public Defender's office.

The words most frequently used by the appellate court justices to describe the State Public Defender attorneys were "dedicated," "zealous," and "competent." Even those most critical of the office conceded that the quality of representation provided by the State Public Defender was better than that provided by the average private lawyer appointed by the court. More justices indicated that identification of important issues and trends in the criminal law was of assistance to the Court and did result in better dispositions for the State Public Defender clients.

It was also generally agreed by the appellate court justices that publicly compensated counsel did not provide quality representation. The most favorable comment directed towards the private bar was that such representation was "spotty" or "uneven." Some of the justices interviewed asserted frankly that the representation afforded by appointed private counsel was "horrible." All of the justices interviewed admitted that the rate of compensation paid to the private bar is too low. The team was surprised, however, to find that a number of justices believe that, while low, the compensation afforded counsel was adequate to allow the attorney to break even. All of the justices asserted that a certain hourly rate was paid to the private bar based upon the Court's evaluation of how many hours should actually have been spent on a given case. Each of the courts

employs its own system to compensate counsel. In some courts, the justice who wrote the opinion reviews the attorney billing; in other courts, the presiding judge reviews the billing; in other courts, a justice other than the presiding justice reviews all the billings; in another court, the principal staff attorney reviews the billings; while in another court, the clerk of the court reviews the billings. The evaluation team reviewed the attorneys' billings in several locations and could not find any wholesale padding of bills as was suggested by many of the justices. Indeed, many of the bills submitted appeared to be quite reasonable in view of the record and briefs submitted. It is interesting to note that many of the presiding justices on the Courts of Appeal had difficulty articulating precisely how the private bar was paid. The justices indicated that the rate of compensation paid varied from approximately $20.00 to as high as $40.00 per hour. Several justices acknowledged that the appellate courts often reduce fees paid to Court-assigned counsel in order to come within the budget allocated by the legislature. The evaluation team reviewed attorneys' billings in San Francisco and found that the average rate of compensation paid the attorney was $11.16 an hour, ranging from a high of $15.10 an hour to a low of $7.17 an hour. This payment covers all secretarial services. While the justices on the Courts of Appeal asserted that they attempted to adjust the billings to reflect the amount of time taken by an experienced lawyer, we noted no case in which the attorney's billing was not very substantially cut. This would lead one to conclude either that there are no experienced lawyers involved in the cases which were reviewed by the evaluation team, or that the justices do not actually make the computations suggested. Considering the fact that the statewide average paid to the private

bar by the Courts of Appeal is approximately $500.00 to $600.00 and considering further that a number of justices told us that they had a "goal" of compensating this average amount, we are persuaded that in actual fact attorneys' billings are simply slashed across the board. While there is obviously some deference paid to the amount of work put into a case, the amount paid to attorneys in every case is simply inadequate to afford counsel sufficient funds to provide adequate representation. (See comments of the private bar, infra.) Several private attorneys told us that they viewed the low level of compensation as a "message" from the Court as to the quality of work that was expected.

Recommendation 4. The Courts of Appeals should adopt uniform procedures for the appointment and compensation of counsel, including publicly articulated criteria for the assignment and compensation of counsel.

Recommendation 5. Compensation paid to private counsel appointed by the Courts of Appeals should be substantially increased. The rate paid should approximate $30.00 to $40.00 an hour for work actually done on the case, unless the Court of Appeals determines that work was unnecessary for the case. It is the anticipation of the evaluation team, based upon its review of attorneys' billings, that such an increase in the rate of compensation paid to private counsel will result in between a 300 and 400 per cent increase in the amount actually paid.

In making the foregoing recommendations, we recognize that the cost to the taxpayers of the State of California will be substantial. We

must underscore the fact, which will be discussed later (see comments of the private bar), that the present rate of compensation paid to private counsel results in routinely poor representation being provided and also requires the Court of Appeals to do substantially more work in a case than it would in a case which was adequately briefed and argued. It is also clear to the team that under the present method of compensation, virtually the only attorneys who are willing to do this work are either young, inexperienced attorneys, or older attorneys who are unable to find work elsewhere. While there are attorneys who are skilled criminal appellate counsel, these are the exceptions and not the rule. Indeed, virtually everyone we spoke to agreed that the bulk of the attorneys who accepted court appointments were either young or "hungry." We believe that it is absolutely essential that the amount paid counsel be substantially increased to reflect present economics and to better ensure that quality representation is provided.

Summary, Comments and Perception of Clerks of Courts Interviews. The clerks of the Courts of Appeal in Los Angeles, Fresno, Sacramento, and San Francisco were interviewed. The clerks of court were negative regarding the cost-effectiveness and efficiency of the State Public Defender. Each of the clerks reported that the advent of the State Public Defender system rather dramatically increased their office's work, particularly as it relates to the filing of Motions to Augment Appellate Records and the filing of late briefs. While only one clerk reported that the State Public Defender had been occasionally delinquent in filing briefs, the perception of each of the clerks was that the State Public Defender

had no great concern for filing timely briefs. Additionally, the clerks perceived that at time Motions to Augment the Record were used to delay the filing of the appellant's opening brief. The clerks also reported that some members of the State Public Defender's staff are very difficult to deal with on administrative matters, such as the timely filing of briefs. One clerk reported that when he called a Deputy State Public Defender to remind the attorney to file the brief, the attorney argued that the Rules of Court were unreasonable and that he should not be required to follow them. Variations on this theme were repeated at each clerk's office. The clerks did report that most of the members of the staff were easy to get along with.

We were struck with the fact that each of the clerks of court had ready access to information showing the comparison of the cost of the State Public Defender as compared to the cost per case of appeals assigned to the private bar. Indeed, most of the public information which had been obtained by the California Taxpayers Association in its article critical of the state Public Defender came from the clerks of court. While it is certainly laudable that the clerks of court are concerned about spending as little public funds as possible, several other observations must be made. First, none of the clerks of court, all of whom are non-lawyers, had any perception as to the qualitative difference in the representation provided by the State Public Defender as compared to the private bar. Indeed, most of the clerks asserted that the private attorneys who were appointed were highly qualified and did acceptable work and that those who were found on the initial appointment to be ineffective were weeded out. This evaluation differs from that of the

appellate court judges and staff, who believe that the quality of representation is, at best, "spotty." When the clerks of court were asked questions regarding the necessity of preparing materials not usually found in the appellate record under Rule 33, the clerks of court uniformly asserted that such materials were not routinely necessary. When pressed on the point of such documents as transcripts of suppression hearings, the clerks asserted that since those had not been requested by the private bar, they assumed they were not necessary for State Public Defenders.

Each of the clerks has his or her own system for determining who gets appointed in which case. Each month the Chief Assistant State Public Defender notifies the clerk of court as to how many cases the State Public Defender will accept that month. The ratios are set forth in the Appendix to this report. Those cases not taken by the Public Defender are assigned to the private bar. The procedure for being added to the list of assigned counsel for the appellate courts varies and seems to be applied inconsistently. For example, the justices on the Court of Appeal in Los Angeles asserted to the team that attorneys were asked to submit a resume outlining their experience and background before they were added to the list. The clerk of the court, the person who actually does the assignment of counsel, however, asserted an entirely different procedure in which there is no list or pool, but rather the attorney assigned depends on who had made a request most recently and the clerk's perception of whether the case should be assigned to a given attorney. In other courts, the appointment was made on a rotating basis with no attempt to screen or classify the attorneys. While this was recognized as a problem in

some cases, the clerks asserted that attorneys who do a poor job were identified by the justices and were excluded from the list. With the exception of the Court at Fresno, each of the courts indicated that they have sufficient private lawyers to assign cases to. Considering the lack of adequate screening by the clerks of court and the obvious failure of the clerks to perceive the qualitative difference in representation, it is quite possible that the clerks are not in the best position to evaluate the needs of the system or the quality of representation which is being provided.

Recommendation 6. The justices of the Courts of Appeal should establish criteria for inclusion of attorneys on the list of counsel who are appointed by the Court on appeal. These criteria should also evaluate counsel's ability to handle more sophisticated and complex cases. This list should be publicly available, as should the criteria for assignment. Attorneys who fail to provide adequate representation should be removed from the list.

Recommendation 7. As part of the general orientation of attorneys entering the State Public Defender's Office, staff should be trained on the appropriate manner in which to deal with clerk's staff and other persons within the appellate justice system.

Recommendation 8. Attorneys in the State Public Defender Office should not file Motions to Augment the Record in order to obtain more time in which to file the Opening Brief.

Summary, Comments and Perceptions of the State Public Defender's Legal Staff. All three members of the consultant team were extremely impressed

with the high quality of the attorneys employed by the State Public Defender in all four offices. Many of the attorneys have been directors of other legal services and defender programs and bring to the office a wealth of previous experience. It is a testament to the hiring skills of Mr. Halvonik as well as the directors of the four offices that such extraordinarily qualified people have been found.

Having said that, however, it is clear that a number of the attorneys joined the office under the mistaken belief that they would be doing primarily law reform litigation. There is no question but that a morale problem has been created by the fact that these attorneys are not doing primarily law reform litigation but are rather doing the day-to-day work of an appellate defender. Some of the staff attorneys resent the fact that they are now expected to produce their share of appellate briefs in mundane, as well as significant, cases. In recent months, pressure has been applied by Mr. Denvir and the chief assistants of each office to obtain two "work units" per month from each attorney. The problem of defining "work units" will be discussed later in this report. Many of the attorneys believe that this means they are now required to produce two Appellant's Opening Briefs each month or face the possibility of termination or lack of promotion. Indeed, some of the attorneys are under the impression that certain members of the staff have been denied advancement due to the lack of productivity. These same attorneys complain that when they were hired they were not informed of the necessity for high output and that they took the job primarily under the impression that they were to become involved in a criminal and prison law reform program. While these attorneys are quite gifted

and zealous advocates, it may well be that they do not appropriately fit into a public defender operation which requires high volume, as well as high quality. We also note a substantial disparity in the amount of work done by each attorney in the office.

Each of the offices is set up under a "team" concept in which four, five or six attorneys are supervised by a team leader. In San Francisco attorneys are further divided into "mini-teams" with the entire team being directed by a senior supervisory attorney, and the subteam being directed by a team leader. The level of supervision provided by the team leader varies quite significantly within the offices. A number of the team leaders exercise virtually no supervision whatsoever, being content to simply edit the briefs, if that. Other supervisors attempt to read each record handled by the deputies on their team, or at least review the transcript notes of the record, discuss the case with the attorney handling the matter, and review and edit the brief. When an attorney enters the office, he or she is naturally subjected to closer scrutiny and supervision, although this has not been well articulated in the office. There is little formal training for attorneys entering the office, and they are immediately given cases to handle under the supervision of a team leader.

It is also clear to us that the type of supervision required in the offices changes as the attorney matures and grows. Initially, the supervision must be intense, including both review of the record for the purpose of issue identification and review of the work product for substantive and style review. At this initial period the supervising attorney will play a

greater role in the actual formulation of issues and the development of the brief than after the staff attorney has had experience in reading trial records and preparing briefs. As the attorney gains more experience the type of supervision will change, first from less direct review of the record and then from less direct input into the work product. Ultimately an experienced attorney will be able to know when his or her assistance is required on the development of an issue or the phrasing of an argument. After some point the supervision might well be only "as needed," while the supervisor will continue to review not only the staff attorney's work, but also the briefs submitted by opposing counsel and the courts' ultimate decisions to ensure that the factual and legal arguments are appropriate.

It is the conclusion of the evaluation team that the present team concept of supervision in the Public Defender Office is not an effective tool for ensuring quality and supervision. Accordingly, we make the following recommendation.

Recommendation 9. The "team concept" of supervision should be modified in the following respects: When an attorney enters the office on a staff level, he or she should be assigned to a senior staff member who will closely scrutinize and supervise the work done by the new staff member. No senior staff member should have more than two attorneys to so supervise. Ideally, this initial supervision should be on a one-to-one basis. This supervision should include review of the court record or transcript notes, discussion of legal issues with the Deputy State Public Defender, and close scrutiny of the issues briefed and the brief itself. This close scrutiny should continue for a period of no less than 90 days for

an attorney with previous experience and no less than 180 days for an attorney entering the office directly from law school. Such supervision should continue until, in the judgment of both the supervising attorney and the chief assistant, the attorney is able to undertake additional responsibilities with the caseload. At the point at which the attorney is deemed to be sufficiently experienced, he or she should be transferred to a team consisting of between eight and 12 lawyers. This team will be supervised by an attorney who has a very small individual caseload and who can devote the necessary time to issue identification and brief editing. The "mini-team" concept, as employed in San Francisco, should be abolished.

The perception of the attorneys in the offices is that it is their obligation to search the record for issues of possible merit. The evaluation team agrees that this is their responsibility. While a number of persons outside the office, including both Courts of Appeal justices and members of the Attorney General's staff, suggested that the State Public Defender is more "issue oriented" than he is "client oriented," the evaluation team doubts the validity of this notion. It is our conclusion that an appellate defender has the obligation and duty to conscientiously review the entire court record to ascertain whether there is any issue of arguable merit. On the other hand, several members of the State Public Defender's staff indicated understanding that the office procedure was not to file Anders-Feggans briefs[8], in which they report to the assigning court that there is no issue of arguable merit in the case. At least one attorney suggested that she would brief and argue a frivolous

issue, rather than file an Anders-Feggans brief. The consultant team understands the difficulty with applying the standards of Anders v. California, supra. On the other hand, we believe that if, in the judgment of the Deputy State Public Defender handling the case and that attorney's supervisor, there is no issue of arguable merit, and if any further proceedings on behalf of the defendant would be wholly frivolous and without arguable merit, the attorney is under no obligation to press an appeal where there is no issue to raise. The California Supreme Court has made clear the fact that appellate counsel has the obligation to make arguments in support of the change in existing law, if that change is reasonably supportable,[9] but in no case has either the United States or California Supreme Courts suggested that an attorney's obligation includes the pressing of frivolous issues. We have been assured by both Justice Halvonik and Mr. Denvir that it was and is the office's policy to file Anders-Feggans briefs in cases which warrant such submission, after close internal scrutiny. We do note, however, that no such brief has ever been filed by the San Francisco office and that the Los Angeles and Sacramento offices have filed such reports in very few cases. Since there is an obvious misconception of the policy in the office, we urge the State Public Defender to issue a reminder to his staff on the policy. We must emphasize, however, that we are not at all suggesting that the number of no-merit, Anders-Feggans briefs should increase significantly but only that this is an alternative which is adequately understood by the staff. It must be noted that it is doubtful that the filing of an Anders-Feggan brief saves either the court or counsel any substantial time. We also suggest that no Anders-Feggan brief be

filed or "withdrawal" letter be obtained from a defendant until the attorney meets with the defendant personally. The office does obtain "abandonment" letters in which the defendant agrees to abandon his/her appeal after being informed by the deputy state public defender that the case lacks sufficient merit to pursue. We recommend that such letters not be solicited until the defendant has discussed the matter personally with counsel. We also suggest that appropriate in-house procedures be followed to ensure that cases truly lack merits prior to obtaining such letter and that no pressure is applied to encourage such abandonment.

We are very concerned that very few of the State Public Defender's clients are seen by their attorneys. Indeed, several deputy defenders indicated that they had never been in a prison! The articulated reason for this is that many of the clients are far away from the public defender's office. It is not unusual for a defendant convicted in the northern part of the state to be incarcerated in the southern part of the state, or vice versa. While we are mindful of the logistical problems presented by the necessity of seeing clients, and the possible fiscal implications that such client visits might have, it is the strong feeling of the consulting team that the State Public Defender attorneys should routinely see their clients. It is somewhat surprising to us, in view of the zealous nature of the representation provided by the office, that the attorneys within the State Public Defender Office have not themselves recognized the inherent problem in not seeing clients.

It is certainly conceivable that personal visits with the clients will result in some defendants abandoning the right to appeal after being informed of the lack of possible merit, and it is further possible that

additional appeals and appealable issues will be generated by such attorney-client contact. In any event, it is the considered judgment of the evaluation team that personal contact between the attorney and the client is essential in order to enable the attorney to have a detailed discussion with the defendant of the possible issues for appeal and for there to be an exchange of ideas which may or may not impact on the issues identified. This establishes the role of the client in the appellate process, and increases client satisfaction. While many of the attorneys in the office thought it a generally good idea to see clients, several thought the interview would not be of significant value. The experience of the counsultant team members is that in a surprising number of cases the attorney-client interview in the prison is of value to either eliminating or identifying issues for appeal.

Recommendation 10. Every client represented by the State Public Defender should receive at least one personal interview from the Deputy State Public Defender who is representing the defendant in the appeal.

In the San Francisco office the docket clerk records each piece of mail which arrives in the office as well as each brief and legal pleading which is received or filed. In Los Angeles, on the other hand, the attorneys' secretaries handled the management of case files, and there was no central docketing system. We were generally struck by the lack of concern for file management on the part of Deputy State Public Defenders. This lack of concern was reflected in the occasional failure to meet court-imposed deadlines or to request extensions in a timely manner.

We would encourage the enhancement of the attorney-secretary relationship so that the secretary more adequately monitors due dates and files so that cases are kept in an orderly fashion and so that all due dates are met. We note that all case files are kept in attorneys' offices. We would suggest that consideration be given to removing the files from the attorneys' offices and placing them in an area that is more convenient for the secretarial staff.

Recommendation 11. The individual attorney's secretary should be given the responsibility for maintaining orderly case files and for ensuring that due dates are properly adhered to. The State Public Defender should implement such policies as to afford adequate support staff for such additional responsibilities and to ensure that procedures be adopted in the office to implement this recommendation.

Summary, Comments, and Perceptions of Interviews with Support Staff.

The legal support staff is supervised by a person in each of the offices. A problem has arisen in San Francisco regarding an ability to find an appropriate person to be the support staff supervisor. The legal secretaries in the office are high-level civil service employees who have considerable experience and who appear to be quite qualified for their position. Indeed, the evaluation team believes that some of the secretaries' skills are not being adequately used in the office. We think it is unfortunate that some of the secretaries do little more than type all day, while other management responsibilities which could be handled by the secretaries go undone or are being done by other clerical em-

ployees. As noted above, we recommend that additional administrative responsibilities be given to the legal secretaries to manage "their attorneys'" files. Presently, one secretary is assigned to two or three attorneys. We believe that the three-to-one ratio is too high, particularly if these additional administrative and management responsibilities are shifted to secretaries. Indeed, the Attorney General has four secretaries for every five lawyers.

Recommendation 12. State public defenders should work towards the goal of one legal secretary for every two attorneys within the office. This is in addition to such other support staff as shall be necessary.

A universal complaint of the secretarial staff was the state-imposed requirement that Olympia typewriters be used in the offices, as opposed to self-correcting typewriters manufactured by IBM. We were informed that the state would not approve the purchasing of IBM typewriters due to their higher costs. From our observations of the Olympia machines, however, we found them to be extraordinarily sluggish and noisy machines. From our interviews with support staff, we would estimate that at least ten per cent of the secretaries' time is lost due to the differences in machines. This is particularly important in an appellate defenders office in which most "work product" is typed, as is final-copy material. It is our conclusion that even if the Olympia machines are significantly cheaper than self-correcting IBM typewriters, this difference in cost is far exceeded by the wasted time necessitated by the basically sluggish nature of the Olympia machines, the time required to make corrections

on the Olympia, and the rather significant "down time" which has been experienced on these machines.

Recommendation 13. The Olympia typewriter machines used in each of the four state public defender offices should be phased out and replaced with self-correcting IBM typewriters. Additional research should be done by the legal and support staff to ascertain whether automated typewriters can be installed in the office in a cost-efficient manner.

There was also a considerable feeling among secretarial staff that they received insufficient training in the office, beyond being handed a secretarial manual.

Recommendation 14. A coordinated secretarial training program should be adopted by the State Public Defender on a statewide basis, to be implemented through the support staff supervisors in each office.

Summary, Comments, Perceptions of Interviews with Deputy Attorneys General. As was the case with the Supreme Court and Courts of Appeal justices, the Deputy Attorneys General handling criminal appeals agreed that the average work produced by the State Public Defender is of significantly higher quality than the average work produced by the private bar appointed by the Appellate Courts. In at least two of the offices of the California Attorney General, we received the impression that there was significantly more antagonism between the Public Defender and Attorney General than should be the case in a normal adversarial/lawyer relationship. In one office we were informed that the State Public

Defender had not been routinely sending the Attorney General copies of communications with the court, so that now the appellate court requires an affidavit or admission of service on each of the letters. Additionally, several of the members of the Attorney General's staff reported that they were treated with disdain by members of the State Public Defender's staff.

While we are not unmindful of the normal antagonism that develops in a healthy adversarial relationship, our impression is that some attorneys in both the State Public Defender and Attorney General offices have gone well beyond this normal professionalism and have been personally insulting to opposing counsel. This, as with the relationship between the Public Defender's staff and the clerks of court, is simply not an appropriate manner in which to conduct the affairs of the office. As we suggested in Recommendation 7, additional attention should be given to establishing appropriate relationships between the State Public Defender's staff and others with whom they interact.

While a few members of the Attorney General's staff complained that the State Public Defender filed briefs on frivolous issues, overbriefed, and briefed repetitively, there was significantly less criticism from the Attorney General's staff than there was from the Courts of Appeal justices. Indeed, many of the Assistant Attorneys General were sympathetic with the State Public Defender and understood well why issues were briefed in the manner they are. This was not seen as a significant problem by the Attorney General's staff.

Both the California Taxpayers Association and the California legislative analyst who criticized the cost-efficiency of the State Public Defender

compared the Public Defender's operation in cost-per-case to that of the court assigned private counsel. For our comparison, we attempted to pin down precisely the number of briefs written by members of the Attorney General's staff. We were not successful in ascertaining this information. It is apparant that the Attorney General has adopted a sophisticated "units" system for determining "cost-per-unit," and that those costs cannot easily be compared with the cost-per-opening-brief or cost-per-case figures for the State Public Defender. From speaking with present and past members of the Attorney General's staff, however, it is clear that the "unit" includes additional material much less time consuming than a Respondant's or Opening Brief in an appellate case. Indeed, it is our conclusion that because of the difference in "units" any comparison between the cost-per-case of the State Public Defender and the cost-per-unit of the Attorney General is meaningless. (See section on Cost Data, infra, page 64.)

Summary, Comments, and Perceptions of Interviews with the Private Bar.

The private bar was unified in strenuously objecting to the low level of compensation afforded them by the Courts of Appeal. Several attorneys said frankly that they were losing money on the appellate cases but wanted to work simply for the experience. A significantly greater number of attorneys, however, said that the low level of compensation coupled with the communications received from the court were looked upon as a message from the appellate courts to provide inferior representation. We are offended by some of the communications which came from the appellate courts at the time of appointments and subsequently. These letters are incorporated within the Appendices to this reports as Appendices G - J.

Particularly unfortunate is the wording used by the Third Appellate District in Sacramento which reads:

> Many court-appointed attorneys are relatively inexperienced, interested in handling these appeals as a means of improving their professional competence. Inexperienced brief writers tend to spend excess time pursuing false leads and in overelaboration of routine points. . . . While the attorneys' statement of time expended will receive consideration, fees will be based on the court's independent estimate of the time required by an experienced criminal attorney.

An attorney in Sacramento informed the evaluation team that in the first case in which he had been appointed, he spent a considerable amount of time reviewing the record, requesting augmentation of the record, and doing the same type of professional job he would have done for a retained client. When the compensation received turned out to be approximately one quarter of that which the attorney felt warranted, this attorney changed his procedure in handling court-assigned cases. Now, in order to break even on the case, this attorney conceded that he no longer raises any issues which require any change in existing law, he does not request augmentation of the record, does not request oral argument, and does not do any research in a case which he does not know in advance has viability. While this single attorney was somewhat more candid in his self-criticism, variations on this same theme were heard repeatedly across the state. It is absolutely clear to the evaluation team that, due to the low level of compensation, the communications from the court (including the attempts to have counsel waive oral argument), and the general attitude of some of the courts regarding criminal defendants, the private attorneys appointed by the court are, in many instances, providing routinely ineffective representation. We also spoke to a number of attorneys who had resigned from the attorney list specifically for these reasons.

It must be emphasized that the attorneys we talked to do not anticipate receiving a substantial fee from the appellate court for work rendered. On the other hand, many of the attorneys are simply not in an economic position to sustain the substantial loss on cases assigned by the appellate courts. The consultant team believes it is a great tragedy that, given the high quality of legal talent available in the private bar in California, the Courts of Appeals have adopted procedures which have a distinct chilling effect on zealous and competent representation. What is particularly of concern is that either the appellate courts do not recognize this as a problem or simply do not care.

The consultant team must reassert the recommendations made above that attorneys be screened before they are appointed and that they be adequately compensated for their work. (See pages 23 - 26, supra.)

It should also be emphasized that there are still a significant number of attorneys in California who are willing to take a limited number of these cases on a limited payment basis. These are generally attorneys who have a successful practise and who enjoy providing this type of representation from time-to-time. It is clear to us, however, that there are nowhere near enough attorneys who are able to provide such effective representation at little cost so as to ensure quality representation on appeal. Indeed, exactly the opposite has routinely been the case.

It should further be noted that, in addition to failing to follow through on various procedures due to the lack of adequate compensation, several of the attorneys indicated that they feared filing motions to augment the

record, longer briefs, or petitions for hearing because they were afraid they would be deleted from the list of attorneys appointed by the court. In view of the comments made by justices of the court and court staff, this does not appear to be an unwarranted fear. Again, it points out the unfortunate state of affairs in California regrading the assignment of the private bar.

QUALITY OF REPRESENTATION PROVIDED BY THE STATE PUBLIC DEFENDER

While we found a good deal of difference of opinion among the various persons interviewed in California regarding the appellate justice system and the State Public Defender, there was total unanimity on one point: the State Public Defender of the State of California is providing extremely high-quality representation. Even those most critical of the State Public Defender's office conceded that the representation afforded by that office was of higher quality than that heretofore supplied by the average appointed private lawyer. While some of the appellate court justices felt that the higher quality of representation made no difference in the disposition of the case, that was not the prevailing viewpoint.

It was clear, however, that even within the general positive reaction of the courts, prosecutors and private bar to the representation of the State Public Defender, there are variations among attorneys in the office. One staff attorney working for an appellate court told the evaluation team that there were at least "one or two" attorneys within the office who did not do particularly good work, although even that work was better than the average work done by the private bar.

Based upon our interviews with a significant number of the attorneys within the office as well as with the members of the Courts of Appeal, Supreme Court, and staffs of the courts, we conclude that quality of representation is not a problem in California. The hope of Chief Justice

Wright that the quality of representation afforded criminal defendants on appeal would be dramatically improved has been realized. While we do believe that additional training and scrutiny is always essential, we are satisfied that the office is providing a high level of outstanding representation on appeal to indigent criminal defendants.

VI

COSTS OF PROVIDING REPRESENTATION

The California Taxpayers Association and the legislative analyst have attacked the State Public Defender for a much higher cost-per-case than the private bar. The cost-per-case for the State Public Defender for the last fiscal year was approximately $2,450, while the cost for the private bar was approximately $600 per case. The Attorney General reports that in that office the cost-per-work-unit is approximatley $1,700, while the cost-per-appeal is $1,957.

With all due respect, the consultant team concludes that these types of cost comparisons are absolutely meaningless. As noted above, the private bar costs are so low for two reasons. First, the attorneys are not providing effective representation, and secondly, they are not paid adequately even for the ineffective representation that is provided. Further, as noted above, the Attorney General does not compute statistics based upon cost per case, but rather on cost per work unit. While the evaluation team believes that this is the appropriate way to divide time, this is not the way it is done in the State Public Defender's office. Thus, the figure for the State Public Defender of $2,450 per case may well include more than one work unit. Indeed, it is our observation that, using the Attorney General's unit system, the cost per unit for the State Public Defender may well be less than that of the Attorney General.

We believe that a more appropriate comparison is the cost per case for a privately retained client handled by a private lawyer. In our conversations with private lawyers, we were informed that a <u>minimum</u> cost for doing a felony appeal simply to the Court of Appeals would be $2,500, with the

possibility of going as high as $10,000. In statewide surveys that have been done elsewhere, an average cost of approximately $5,000 would not be unusual.[10]

The evaluation team, comprised of individuals who are or have been appellate defenders in state government, is not unmindful of the very real pressure being brought upon government to reduce spending. Having said that, however, we must conclude that the present attacks upon the State Public Defender, based on a cost per case figure, simply are inappropriate. The cost comparisons are simply not fair and they do not give an accurate picture of the efficiency of the office. As was noted throughout the evaluation, we do believe that there are certain procedures which can be changed within the office to make it more efficient. To attack the office on the basis of the figures presented, however, strikes us as inappropriate.

VII

EXPANSION OF THE SAN DIEGO APPROACH

We were impressed with the system for handling appeals followed by the San Diego court. In that division cases are assigned to Appellate Defenders, Inc. (ADI), unless there is a conflict or trial counsel is appointed. ADI then either retains the case in-house to be worked on by a staff attorney or assigns the case out to a private attorney on ADI's panel. The panel attorney is supervised by a staff member who assists in the research and briefing, edits the brief, and then has the brief typed and duplicated at ADI. This system has the advantage of ensuring that the private bar is screened and supervised, but that the private bar remains involved in the appellate justice system. Many private attorneys in other parts of the state said such a system would be welcomed as they could have experienced attorneys "back them up" so they would not miss a critical point of law.

We would suggest that the San Diego approach be expanded. In making this recommendation we would caution that the costs of this system are apt to be quite high. Today the costs of this system in San Diego is less per case than the State Public Defender case elsewhere in the state. The difference in cost is almost entirely the result of the lower salaries paid to ADI staff. Indeed, if the ADI staff were paid on a par with the State Public Defender's staff -- and we think they should be -- and if the private bar were paid a fair rate of compensation, the cost of the San Diego panel system would be approximately 50 per cent higher than that of the State Public Defender alone. We think the system merits expansion, but the costs must be anticipated adequately. We also must express

some surprise that ADI is able to find private attorneys willing to undergo the training and supervision required. This is a testament to the quality of the bar in the jurisdiction and the ADI management under Perry Langford.

VIII

SUGGESTION FOR IMPROVED EFFICIENCY IN THE STATE PUBLIC DEFENDER'S OFFICE

In the foregoing sections of this report we have made specific recommendations for improving the efficiency of the State Public Defender's operation. These recommendations include eliminating wasted professional time at the time the case enters the office and is assigned to a team, tightening up the team approach to handling supervision of Deputy State Public Defenders, and expanding the secretarial involvement in the management and administration of case files.

In addition to the foregoing recommendations, we respectfully make the following recommendations and observations:

Amicus Briefs. The State Public Defender annually files twenty to thirty amicus curiae briefs in the California Supreme Court. It is the perception of the State Public Defender that these briefs are appreciated by the Supreme Court. There is an amicus brief coordinator in each office of the State Public Defender. While we can certainly understand the desire of the State Public Defender to have each important issue adequately briefed and presented to the California Supreme Court, we must admit some surprise that in this number of cases an amicus brief is necessary. We believe that a considerable amount of effort is being spent by the State Public Defender on amicus briefs which might well be directed towards handling assigned cases. While we do not wish to be understood to advocate the elimination of amicus briefs from the State Public

Defender's work, we do note that more than one fulltime-equivalent attorney is devoted strictly to amicus work. We question whether that is an appropriate utilization of attorney resources within the office. It might well be more appropriate to meet with the members of the Supreme Court to ascertain whether the State Public Defender could be appointed in a higher percentage of Supreme Court cases, if, indeed, the representation afforded the criminal defendants before that court is so inadequate as to require the filing of amicus briefs in such a high percentage of cases. Independently of that observation, we suggest that the idea of having an amicus brief coordinator in each of the offices be re-examined. We would suggest that screening of the amicus briefs be done through the chief assistant in each office, rather than utilizing time of a Deputy State Public Defender.

Death Penalty Cases. The State Public Defender handles all of the appeals on behalf of defendants who have been sentenced to death. Such appeals go directly to the California Supreme Court. The procedure followed in the office is that there is one statewide death penalty coordinator, working out of the San Francisco office. In each of the death penalty cases handled by the State Public Defender, two senior staff attorneys are assigned to the case. In this way the record receives minute scrutiny and careful briefing and preparation.

The evaluation team wholeheartedly supports the concept of the two-attorney approach. We believe that this is an appropriate vehicle for ensuring the highest quality of representation in such cases. We question, however, whether it is an appropriate utilization of resources to

have a separate statewide death penalty coordinator, particularly when this attorney is now handling only one of the approximately eight death penalty cases in the office. While these cases must receive a high level of concern by the State Public Defender's office, we are hard pressed to identify the particular activities which warrant such a coordinator. We do understand that the death penalty coordinator works with trial counsel in developing records and ensuring quality representation at trial, but we must question whether this is within the appropriate scope of the work to be done by an appellate defender.

We think it is an important function of an appellate defender to provide information and back-up assistance to trial attorneys who request it. On the other hand, we are not certain that it is appropriate to search out death penalty cases and spend a considerable amount of time on nurturing cases at the trial court level so that the record on appeal may be more adequate. We suggest that particular scrutiny be paid to the issue of whether a death penalty coordinator is a necessary part of the appellate defender's office.

Non-Appeal Responsibilities. The California State Public Defender has been given additional responsibilities by both the legislature and the Supreme Court for providing representation for other than appeal cases. (See pages 13 - 14, supra.) We believe that these are appropriate functions to be done by a post-conviction/appellate defender. On the other hand, these functions have not been funded by the California legislature. We believe the time has come to seriously consider whether the State Public Defender should continue to attempt to do these non-funded

activities. These are matters which the State Public Defender should be doing, but they must be funded by the legislature.

Departmentalizing Staff. We were particularly struck in the San Francisco office with the fact that every senior supervising attorney and even some staff attorneys have some additional responsibility beyond simply supervising attorneys and carrying a personal caseload. These responsibilities included death penalty case coordinating, writ filing, trial representation, etc. To a lesser extent this same type of specialization was found in the other offices visited. We question whether all such specialization is appropriate or cost-efficient within the present framework of the State Public Defender. While it may well be appropriate to have a team or an individual deputy handling particular types of trial representation which is mandated by statute and funded by the legislature, we do not believe that it is an efficient use of personnel to divide the staff as it has been.

Recommendation 15. The State Public Defender should scrutinize those functions which have been mandated by statute or court decision and funded by the California legislature and determine which can be most effectively handled by specialists within the statewide system or within each office. Only such functions as can be efficiently handled in a statewide or office manner by specialists should be continued. All other work should be divided among the general teams.

IX

AUGMENTATION OF RECORD

The consultant team was struck with the cumbersome procedures required by Rule 33 of the Appellate Rules of California for the Augmentation of Records. For some time the State Public Defender has led a movement within the California Judicial Council to amend the rule to expand the material which must be included in an appellate record. We urge the California Judicial Council to speedily adopt such a rule after adequately consulting with the court reporters, court clerks, Superior Court judges, appellate court judiciary, State Public Defender and Attorney General.

Recommendation 16. Rule 33 of the California Rules of Court should be amended to expand the normal record on appeal to include those items which are routinely necessary to afford the defendant complete representation. Those items include all pre-trial evidentiary hearings, all jury instructions, and closing arguments. The rule should further be amended to require the preparation, upon request of appellate counsel, of opening statements and voir dire of the jury. All other materials should be available upon motion to the trial court for the expansion of the record. Proceedings in the Court of Appeals should not be required under any circumstances, unless the trial court denies the request to augment the record.

X

SAN DIEGO APPELLATE DEFENDERS, INC.

We perceived a genuine separation between the three offices of the State Public Defender and the office of Appellate Defenders, Inc. in San Diego. We think that this is an unfortunate development which should be corrected. In the present session of the legislature efforts are being made to include the staff members of Appellate Defenders, Inc. within the state civil service system and to make them more integral parts of the State Public Defender system. Due to the ramification of Proposition 13, however, this appears unlikely to occur.

Attorneys in the Appellate Defenders office are faced with the delicate and difficult task of supervising private counsel, while at the same time handling an individual caseload. We think it important that they be recognized as going a quality job. We were concerned that some members of the State Public Defender's staff felt that the work product coming from San Diego was of a lower quality than that produced by the State Public Defender. We suggest that more interaction between the two agencies will help to alleviate these impressions and improve the work quality of both organizations.

Recommendation 17. The State Public Defender should take all necessary action to ensure that the San Diego Appellate Defenders, Inc. is included within all decision-making functions and administrative and management conferences of the State Public Defender.

XI

ORAL ARGUMENT

Under Rule 22 of the California Rules of Court, each side has thirty minutes to argue before the Courts of Appeal. From our Evaluation, however, none of the Courts of Appeal routinely allows such a length of time in cases presented. Indeed, each of the Courts of Appeal has its own policy of discouraging oral arguments in all or some of the cases. The average time varies from approximately five minutes per case in Los Angeles to as long as fifteen minutes per case in Fresno. While extraordinary cases are afforded a significantly longer length of time to argue, in the usual appeal the oral argument takes no more than 15 minutes.

The evaluation team was struck by the difference in procedures between the various districts and divisions of the appellate court. It is apparent to us that in Los Angeles the Court of Appeal placed an extraordinarily high value on expediting the processing of appeals so that oral argument has virtually been abandoned in one division. In other courts oral argument is utilized to a greater extent, but all justices seem to agree that many cases could and should be submitted without oral argument.

Each of the Courts of Appeal has adopted the policy of sending letters to counsel in some cases inviting the waivers of oral argument. These letters are seen "as a message" by the State Public Defender that the case will be affirmed, and thus oral argument is often requested simply as the last opportunity to obtain reversal of the criminal conviction.

It is the conclusion of the evaluation team that oral argument is now not an effective vehicle in most of the appellate court districts in the State of California. In Los Angeles oral argument has all but been eliminated. The procedure used to induce counsel to waive oral argument simply has the impact of increasing the number of oral arguments.

We were impressed with the procedure being tested in two divisions of District I of the Court of Appeal in San Francisco. In each of those courts, letters are sent out to counsel in every case asking if counsel wants to orally argue the case. All counsel need do is request oral argument and the case is scheduled for oral argument. Additionally, if the court itself deems oral argument necessary to a full understanding of the issues presented, the court can schedule the case for oral argument regardless of the desires of counsel. From the team's discussion with Presiding Justice Wakefield Taylor, we are informed that the number of waivers under this system has increased over that which were obtained by sending letters encouraging waiver. Additionally, Justice Taylor felt that oral argument had become more meaningful in those cases which are still argued, and more time was being afforded for those cases. It should be noted that in several states the appellate courts have adopted a procedure of requiring counsel to indicate in the briefs whether oral argument is required, and if so, why.[11] While we do not advocate requiring counsel to explain the need for oral argument, we do think that a valid purpose is served in allowing oral argument on request, rather than in the court seeking waivers of argument.

Recommendation 18. The Courts of Appeal should adopt uniform rules regarding the waiver of oral argument and the time to be afforded for oral argument. These rules should be adhered to. The Court of Appeal should adopt a procedure whereby counsel is afforded the opportunity of requesting oral argument, either at the time the brief is submitted or subsequent to the filing of all briefs. Those attorneys who request oral argument should have the right to have their cases heard.

Recommendation 19. The Courts of Appeal should adopt a procedure of flexible oral argument times based upon the specific circumstances of the case. The oral argument time should be communicated to counsel in advance of the day of oral argument at the time the case is set for argument. The court should also consider limiting oral argument to those issues which the court deems essential to the disposition of the case.

XII

PROCEDURE FOR FILING A NOTICE OF APPEAL

Under present California procedure the trial attorney files a Notice of Appeal subsequent to the rendition of judgment. From our observations of the appellate court records in California, from our discussions with trial counsel, and from our discussions with persons within the appellate court system, it seems obvious to us that there is a major problem with the procedure now followed in California. It would appear that Notices of Appeal are routinely filed following trials in the court system. Several attorneys told the evaluation team that they file Notices of Appeal routinely, even in cases in which they feel there is no issue of arguable merit. The American Bar Association Standards Relating to the Administration of Criminal Justice, The Defense Function, Standard 4-8.2(a) (Second Edition, 1979) makes clear that the decision of whether to appeal must be the defendant's own choice, after consultation with counsel and after counsel has advised the defendant of any issue of possible appealable merit. It is clear from our evaluation that this standard is not complied with in a significant number of California cases, in which the Notice of Appeal is filed without consultation with the defendant and merely as a way for the trial attorney to close the case.

We suggest that trial counsel in California be cognizant of the obligations imposed by the standard cited above and that the routine filing of Notices of Appeal be discouraged. It is our observation that the filing of Notices of Appeal in cases which have no issue of

apparent merit results in cases entering the appellate court system which should not enter the system and then have a very difficult time ever getting out of the system.

There is no question in our minds but that the entry of these cases into the appellate court system results in cases of little merit being assigned to counsel, and then counsel attempting to identify issues not heretofore recognized for the purposes of pursuing the appeal. While we believe that every defendant should have the right to seek post-conviction review and appeal, the right should not be forced upon a defendant and should only be undertaken after the various remedies which are available have been explained to the defendant.

While there are inherent problems in the assignment of new counsel on appeal, this evaluation team is firmly committed to the concept of having separate trial and appellate counsel, one entirely independent of another. We are also mindful of the ethical and legal obligations of trial counsel in protecting the defendant's post-conviction rights.

We would suggest that the appellate rules be studied to consider the possibility of having the Notice of Appeal filed subsequent to the appointment of appellate counsel and the filing of the trial transcripts. Specific reference is made to Rule 809.30 of the Wisconsin Rules of Appellate Procedure, which affects appeals in felony cases. Under such a system the defendant has options of filing motions in the trial court or of appealing, but that decision is not made until after the transcripts are entirely prepared. It is clear from our observation

of the California appellate system that many appeals enter the court system which are without substantial basis, which may or may not be the desire of the defendant, and which ultimately lack substantial merit.

We must emphasize, however, that we are not at all suggesting that the right to appeal be in any way, shape or form diminished. Indeed, we believe that the State of California should adopt more flexible post-conviction remedies which would allow review in the trial court prior to appeal. We believe that the procedure of filing an original habeas corpus is an inefficient remedy and should be replaced by a plenary post-conviction remedy modeled on the Federal Statute 28 U.S.C. Sec. 2255.

Recommendation 20. Appropriate authority within the State of California should give consideration to amending the Appellate Rules so as to provide for the filing of the Notice of Appeal subsequent to the preparation of the trial transcripts.

Recommendation 21. The State of California should adopt a plenary post-conviction procedure for motions in the trial court which would eliminate the need for the filing of writs of habeas corpus.

XIII

PETITIONS FOR REHEARING IN COURT OF APPEAL

Rule 29(b) of the California Rules of Court requires that a Petition for Rehearing be filed in the Court of Appeal before a Petition for Hearing can be filed in the Supreme Court in which it is alleged that the Court of Appeal incorrectly stated or did not consider substantial issues of fact or law. Since virtually every request for review to the Supreme Court will be based on either an incorrect statement of law or fact, this rule appeals to require such a Petition for Rehearing prior to filing the Petition for Hearing with the Supreme Court.

While we can understand the rationale for such a requirement - allowing the appellate court to correct its own errors - as a practical matter the large majority of such motions - 91 per cent - are denied. We submit that the cost and delay necessitated by this procedure outweighs the slight advantage that may accrue in those small number of cases in which the decision is modified in light of a rehearing motion. It is our recommendation that if an issue was raised in the briefs presented by the Court of Appeal, it is fairly before the Supreme Court, whether or not the appellate court specifically decided the matter or correctly stated the law or facts, although a motion might still be filed within the discretion of counsel.

Recommendation 22. Rule 29(b) of the California Appellate Rules should be modified to omit that requirement for rehearing in order to raise certain issues on a Petition for Hearing. Any issue raised in the breifs in the Court of Appeal should be considered disposed of by that court.

XIV

BUDGETING AND DATA-GATHERING IN THE FUTURE

In the original budget submitted to the legislature at the time the State Public Defender was first funded, it was anticipated that the office would do "forty (40) units of work" per attorney per year. Apparently this number and terminology had its genesis in the terminology utilized by the California Attorney General, who based his budget for his criminal appellate division on the completion of 35 work units per year per attorney. The thinking was that if the Attorney General could do 35 work units per year, surely a public defender could do 40 units per year. As discussed above (see pages 10 - 12, supra) this reasoning is inaccurate inasmuch as appellant's counsel in any appellate case has significantly more work to do than does the respondent. Moreover, what has happened subsequently is that the 40-work-unit standard has been interpreted to be a 40-opening-briefs-per-year standard. This has placed the Public Defender in an extremely bad posture, inasmuch as some attorneys in the office are producing only 15 to 20 opening briefs per year.

It is apparent to us that the State Public Defender must revise its statistical and accounting systems to reflect work units, as opposed to opening briefs. As noted throughout this report, the State Public Defender has considerably greater responsibilities than simply the filing of opening briefs or simply the provision of representation in appellate cases. All of the work done by the State Public Defender must be assigned a unit value, determined by the amount of work required. This should be

the measure by which the legislature, the taxpayers, and all others measure the effectiveness of the State Public Defender. We believe it has been unfortunate that the State Public Defender has not recognized this problem in its initial three years, so that it is now attacked on the basis of efficiency projections which were never accurately stated or made.

XV

WHAT IS AN APPROPRIATE WORKLOAD?

The State Public Defender has attempted since last September to urge his staff to produce 24 briefs or work units per year, averaging two per month. We found in the offices significant misunderstandings about the 24 cases per year, with some attorneys believing that they were expected to produce 24 appellants' opening briefs, while others understood the 24 to mean work units or equivalents of work units. It is clear, however, that the State Public Defender is attempting to reach the delicate balance between adequate production and appropriate quality, even though this has been done to the dissatisfaction of some of the staff attorneys.

The recommended annual caseload for an appellate public defender is 25 cases per year;[12] obviously, the number would vary by jurisdiction and type of case. In California, for example, there are relatively few guilty pleas or sentencing appeals, and the vast majority of cases handled by the State Public Defender are trials, some extremely lengthy. For this reason, the number 25 would probably be a high outside limit, while the actual number of appellant's opening briefs which could be produced would be somewhat lower.

The consultant team believes that it is essential for the office to adopt an equivalent unit system in which all work done is related to a norm, perhaps the average time required for the preparation of an appellant's opening brief. In this way, the true workload of the office can be

accurately reflected in a manner which has meaning to both the staff and outside observers. While the 24 equivalent work units per year does not strike the evaluation team as being unreasonable, it might well be less. The actual number should depend on the good-faith review by the State Public Defender of the work that is being produced and can be produced. We noted the rather sustantial disparity in the amount of work done by various staff members, and we point out that it is important that the staff understand that it is essential to produce to the maximum possible in the given time, while maintaining high quality, and that ultimately if the office is not producing enough cases it cannot be continued as a viable part of the appellate justice system.

Recommendation 23. The State Public Defender should adopt a uniform equivalent unit system for evaluating each type of case and proceeding handled by the office. All caseload factors and budgeting should be expressed in these equivalent workload units.

XVI

STAFF MORALE

We believe it is appropriate to comment on several issues which impact on the morale of the deputy state public defenders. A major problem, as noted above, has been the pressure by the Public Defender to increase the output of the staff lawyers. We are impressed that Mr. Denvir and his senior staff are sensitive to this problem and the morale ramifications such pressure has on staff.

We do feel that the Public Defender should more regularly seek input from staff on such issues as caseloads and office management. Indeed, we think there would be a distinct benefit to conducting more statewide staff meetings for the attorneys in all four offices. These meetings could be joint training and policy meetings. Due to the size of the office and distances involved, we can understand why this cannot be done every month, but such meetings once or twice a year would be an appropriate vehicle for obtaining staff input, doing staff training and improving staff morale.

Several of the attorneys interviewed expressed confusion about the civil service promotion procedures, feeling that they were not adequately explained and were too cumbersome. This also relates to the feeling that there is little salary parity among the lawyers doing similar work in the three State Public Defender offices.

We, finally, are concerned that the attorneys in the office are becoming little more than in-house brief writers. Inasmuch as the attorneys do not

visit clients, waive oral argument on appeal, and do little trial court work, we are concerned that the cloistered existence of the staff will have detrimental morale implications. There is also the concern that by remaining in their offices so much, the attorneys will lose contact with the real world of the criminal justice system.

XVII

CONCLUSION

It is the conclusion of the evaluation team that the California State Public Defender is providing outstanding legal representation to those defendants who appeal their cases from the Superior Court to the Court of Appeal. We do believe, however, that many problems were created in the initial two years of the State Public Defender by virtue of (1) the autonomous development of individual systems in each of the offices; (2) the lack of any clear direction or leadership from the interim State Public Defender; and (3) the basic problem of starting a large and complex multi-office system from scratch. The team is satisfied, however, that the governor has now appointed an appropriate person as State Public Defender and that he is in a position to cure many of the defects identified in this report and which have now been raised publicly.

As is the nature of these types of evaluations, many of the most positive aspects of the office are not reported. It is the distinct impression of this evaluation team, however, that the California taxpayers are getting a quality service at a reasonable price. While we do believe that the cost efficiency and effectiveness of the office can be improved, it must be re-emphasized that representation that is being provided today is of extremely high quality at a cost which is certainly less than the cost required for the private bar to provide the same level and quality of representation.

FOOTNOTES

1. California Judicial Council
2. Ibid.
3. Ibid.
4. 372 U.S. 353 (1963)
5. California Legislature, Analysis of Budget Bill (1979-80), p. 1322.
6. Rule 33. Contents of Record on Appeal from Judgment or Order on Motion for New Trial.

   (a) [Normal record] If the appeal is taken by the defendant from a judgment of conviction, or if the appeal is taken by the People from an order granting a motion for a new trial, the record on appeal, except as hereinafter stated, shall include the following (which shall constitute the normal record):

   (1) A clerk's transcript, containing copies of (a) the notice of appeal, any certificate of probable cause executed and filed by the court and any request for additional record and any order made pursuant thereto; (b) the indictment, information or accusation: (c) any demurrer; (d) any motion for a new trial; (e) all minutes of the court relating to the action; (f) the verdict; (g) the judgment or order appealed from; (h) written instructions given or refused indicating on each instruction the party requesting it.

   (2) A reporter's transcript of (a) the oral proceedings taken on the trial of the cause, including jury instructions given which cannot be copied by the clerk, and proceedings at the time of sentencing or granting of probation; and (b) oral proceedings on the hearing of the motion for a new trial, and on the entry of any plea of guilty or *nolo contendere:* the transcript shall normally exclude proceedings on the voir dire examination of jurors, opening statements, and arguments to the jury.
7. The California Judicial Council reports that the number of Petitions for Hearing in criminal cases has increased as follows: 1973-74, 915; 1974-75, 1029; 1975-76, 1077; 1976-77, 1033 and 1977-78, 1170.
8. Anders v. California, 386 U.S. 738 (1967); People v. Feggans 67 Cal. Rptr. 419, 432 P.2d 21 (1967).
9. People v. Feggans at 67 C.2d 447.
10. See, Wisconsin State Public Defender private bar survey, 1977-78.
11. Wisconsin Statutes, sec. 809.19(1)(c) (1979)
12. National Advisory Commission on Criminal Justice Standards and Goals, Courts Taskforce Report, Standard 13.12, p. 276 (1973).

APPENDIX B

State Public Defender Legislation

Senate Bill No. 1018

CHAPTER 1125

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

[Approved by Governor September 28, 1975. Filed with Secretary of State September 28, 1975.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1018, Song. Counsel in criminal cases.

Existing law makes no provision for a State Public Defender.

This bill would authorize the appointment of a State Public Defender by the Governor subject to confirmation by the Senate. The appointment would be for a 4-year term, commencing January 1, 1976. The position would require membership in the State Bar for five years preceding appointment, with substantial experience in the representation of accused or convicted persons in criminal or juvenile proceedings, and would provide for the same annual salary as the Attorney General. The bill would authorize the State Public Defender to appoint deputies and other employees, to contract for the services of nonprofit corporations and private attorneys in certain instances, and to enter into reciprocal or mutual assistance agreements with counties.

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

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

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

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

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

PART 7. STATE PUBLIC DEFENDER

CHAPTER 1. GENERAL PROVISIONS

15400. The Governor shall appoint a State Public Defender, subject to confirmation by the Senate. The State Public Defender shall be a member of the State Bar, shall have been a member of the State Bar during the five years preceding appointment, and shall have had substantial experience in the representation of accused or convicted persons in criminal or juvenile proceedings during that time.

15401. (a) The State Public Defender shall be appointed for a term of four years commencing on January 1, 1976, and shall serve until the appointment and qualification of his successor. Any vacancy shall be filled for the balance of the unexpired term.

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

15402. The State Public Defender may employ such deputies and other employees, and establish and operate such offices, as he may need for the proper performance of his duties. All civil service examinations for attorney positions shall be on an open basis without career civil service credits given to any person. The State Public Defender may contract with county public defenders, private attorneys, and nonprofit corporations organized to furnish legal services to persons who are not financially able to employ counsel and pay a reasonable sum for those services pursuant to such contracts. He may provide for participation by such attorneys and organizations in his representation of eligible persons. Such attorneys and organizations shall serve under the supervision and control of the State Public Defender and shall be compensated for their services either under such contracts or in the manner provided in Penal Code Section 1241.

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

15403. The State Public Defender shall formulate plans for the representation of indigents in the Supreme Court and in each appellate district as provided in this article. Each plan shall be adopted upon the approval of the court to which the plan is applicable. Any such plan may be modified or replaced by the State Public Defender with the approval of the court to which the plan is applicable.

15404. The State Public Defender may issue any regulations and take any actions as may be necessary for proper implementation of this part.

CHAPTER 2. DUTIES AND POWERS

15420. The primary responsibility of the State Public Defender is to represent those persons who are entitled to representation at public expense in the proceedings listed in subdivisions (a), (b), and (c) of Section 15421. This responsibility shall take precedence over all other duties and powers set forth in this chapter.

15421. Upon appointment by the court or upon the request of the person involved the State Public Defender is authorized to represent any person who is not financially able to employ counsel in the following matters:

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

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

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

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

15422. Where a county public defender has refused, or is otherwise reasonably unable to represent a person because of conflict of interest or other reason, the State Public Defender is authorized to represent such person, pursuant to a contract with the county which provides for reimbursement of costs, where the person is not financially able to employ counsel and is charged with the commission of any contempt or offense triable in the superior, municipal or justice courts at all stages of any proceedings relating to such charge, including restrictions on liberty resulting from such charge. The State Public Defender may decline to represent such person by filing a letter with the appropriate court citing Section 15420 of this chapter.

15423. The State Public Defender is authorized to appear as a friend of the court and may appear in a legislative, administrative or other similar proceeding.

15424. A person requesting the appointment of counsel shall make a financial statement under oath in the manner provided in rules adopted by the Judicial Council.

15425. The duties prescribed for the State Public Defender by this chapter are not exclusive and he may perform any acts consistent with them in carrying out the functions of the office.

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

27706. The public defender shall perform the following duties:

(a) Upon request of the defendant or upon order of the court, he shall defend, without expense to the defendant, except as provided

by Section 987.8 of the Penal Code, any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the superior, municipal or justice courts at all stages of the proceedings, including the preliminary examination. The public defender shall, upon request, give counsel and advice to such person about any charge against him upon which the public defender is conducting the defense, and shall prosecute all appeals to a higher court or courts of any person who has been convicted, where, in his opinion, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction.

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

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

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

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

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

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

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

27707.1. The boards of supervisors of two or more counties may authorize their respective public defenders to enter into reciprocal or mutual assistance agreements whereby a deputy public defender of one county may be assigned on a temporary basis to perform public defender duties in the county to which he has been assigned in actions or proceedings in which the public defender of the county to which the deputy has been assigned has properly refused to represent a party because of a conflict of interest.

Whenever a deputy public defender is assigned to perform public defender duties in another county pursuant to such an agreement,

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

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

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

1239. (a) Where an appeal lies on behalf of the defendant or the people, it may be taken by the defendant or his counsel, or by counsel for the people, in the manner provided in rules adopted by the Judicial Council.

(b) When upon any plea a judgment of death is rendered, an appeal is automatically taken by the defendant without any action by him or his counsel.

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

1240. (a) When in a proceeding falling within the provisions of Section 15421 of the Government Code a person is not represented by a public defender acting pursuant to Section 27706 of the Government Code or other counsel and he is unable to afford the services of counsel, the court shall appoint the State Public Defender to represent the person except as follows:

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

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

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

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

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

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

1241. In any case in which counsel other than a public defender has been appointed by the Supreme Court or by a court of appeal to represent a party to any appeal or proceeding, such counsel shall receive a reasonable sum for compensation and necessary expenses, the amount of which shall be determined by the court and paid from any funds appropriated to the Judicial Council for that purpose. Claim for the payment of such compensation and expenses shall be made on a form prescribed by the Judicial Council and presented by counsel to the clerk of the appointing court. After the court has made its order fixing the amount to be paid the clerk shall transmit a copy of the order to the State Controller who shall draw his warrant in payment thereof and transmit it to the payee.

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

APPENDIX C

Memorandum Setting Forth Current Weighted Caseload Standards

State of California

Memorandum

To : ALL ATTORNEYS

Date: February 19, 1982

From : State Public Defender – QUIN DENVIR
Sacramento Office

Subject: Office Work Standards

It is understood that the attorneys working in the Office of the State Public Defender are hard-working, dedicated professionals. We have always produced and will continue to produce high quality work. Our individual productivity standards are demanding but attainable. The purpose of this memo is to clarify office policy on this issue.

It is important for everyone to recognize that the reason this memo talks in terms of assignments taken and opening pleadings filed is that the legislature, the courts, and the Judicial Council measure our participation in the appellate process in this manner. While all of the other work which attorneys in this office do on their cases is valued and respected, the bottom line will always be how many cases the office has handled. Everyone has to contribute their fair share to the total office product.

A. ATTORNEY WORKLOAD STANDARDS.

1. Attorneys new to the office or otherwise inexperienced in criminal law are expected to accept at least 22 case assignments in their first year and are expected to file 16 to 18 opening pleadings (or the equivalent) during that year.

2. The Chief Assistant will determine whether an incoming attorney is "new" (i.e., either just admitted to the bar or inexperienced in criminal work) when that attorney is hired. An exchange attorney is considered "new". An attorney is only in this category for one year.

3. The standard expectation for all other attorneys, as it has been since 1978, consists of taking 24 case assignments per year and filing 24 opening pleadings (or the equivalent) per year. Each attorney is expected to take primary responsibility for managing his or her caseload to accommodate vacations, administrative leave, minor illnesses, or other foreseeable interruptions in order to meet this workload standard.

4. The State Public Defender, the Chief Deputy and the Chief Assistants will each be expected to handle a one-quarter caseload per year (6 cases).

B. ASSIGNMENT CREDITS.

1. Team Leaders.

Every six months, the Chief Assistant will determine the amount of credit which each person who is supervising another attorney will receive against their own caseload. The two potential categories of attorneys to be supervised are (1) new, and (2) experienced.

For the work of supervising a new attorney, the team leader will receive 4-5 assignment credits, as determined by the Chief Assistant. For the work of supervising an experienced attorney, the team leader will receive 1-2 assignment credits, as determined by the Chief Assistant.

2. Amicus Coordinators.

Each of the four office coordinators will receive two assignment credits per year.

3. Training Coordinators.

Each of the four office training coordinators will receive two assignment credits per year. Additional assignment credits will be credited for special training projects as approved by the Chief Deputy State Public Defender.

4. Student Coordinators.

Each of the four office student coordinators will receive one assignment credit, and the Chief Assistant can award up to one additional credit as merited.

5. Death Penalty Coordinators.

The Statewide Death Penalty Coordinator is expected to handle one-third of a full caseload (1 death penalty case) in addition to other duties. Each full-time death penalty attorney is to take three such cases per year, less any adjustment for special projects and/or local coordinating as approved by the Statewide Coordinator.

6. Legislative Advocate.

The legislative advocate is credited with five-sixths of a caseload and thus is expected to handle four cases per year.

7. An attorney who goes on the county exchange program is allowed two extra credits for winding down his or her caseload before leaving the office for six months.

8. A trial will constitute an assignment credit. However, where quick dispositions occur, the Chief Assistant will negotiate this credit downward according to the time invested in the case. Likewise, the Chief Assistant will negotiate credits upward for exceptionally lengthy trials.

9. An extraordinary writ or return to a People's writ constitutes an assignment credit, but only once. Thus, if filed in the superior court, one credit is awarded. If the writ is denied and the same basic pleading is filed in the Court of Appeal (or Supreme Court, or federal court, etc.), no additional assignment credits are given, except as approved by the Chief Assistant in advance.

However, where a writ is filed in connection with an appeal, no assignment credit for the writ is given unless it is a substantially different work product.

"Spin-off" writs from appeals (e.g., mandate to get an augment granted) are not ordinarily awarded additional assignment credits, nor are the "blown appeal" writs filed by duty day attorneys. The Chief Assistant can approve up to one-half credit where justified in advance.

10. Death penalty cases are awarded 16 assignment credits for the average 4,000-5,000 page case. Thus, each of the two staff attorneys on the case is awarded 8 credits. Adjustments made for longer records or exceptionally involved writs are to be worked out with the Death Penalty Coordinator and Chief Assistant and approved by the State Public Defender.

LWOP cases are entitled to an additional .5 assignment credit, in addition to any credits under paragraph (11) below.

11. Exceptionally long record cases will be awarded assignment credits as follows: An additional .5 credit will be given for each full 500 pages after 1,000. (E.g., 1,500-1,999 pages gets an extra .5 credit; 2,000-2,499 gets 1 extra credit, etc.) The size of record for long case credit will be based on the initial record on appeal (without augmentation).

Exceptionally complex or difficult cases can be awarded an additional .5 assignment credit by the Chief Assistant.

12. Amicus briefs, if approved in advance by the Chief Assistant, constitute one assignment credit. If two attorneys work on one brief, .5 credit is awarded to each attorney.

C. WEIGHTED WORK UNITS.

Case assignments and opening pleadings filed are the major determinants of individual and office production. However, to more fully portray total office performance, the weighted work unit (WWU) system was devised. WWUs will be used solely to explain total office output to the Legislature, Department of Finance, and the Governor, as well as the public, and will not be calculated for individual attorneys.

D. CHIEF ASSISTANT SUPERVISION RESPONSIBILITIES.

1. Each Chief Assistant will submit a monthly report to the State Public Defender and the Chief Deputy regarding whether the workload standards are being met by the particular office as a whole and by each individual attorney, using substantially the attached form.

Any failure to meet the workload standard by an individual attorney shall be discussed with that attorney prior to sending the report.

2. Each Chief Assistant will obtain a sufficient number of short record cases to allow each attorney to have an adequate share of such cases in his or her caseload.

3. The State Personnel Board's policy is that merit salary increases are not automatic but require the Chief Assistant to certify in writing that the attorney "Meets the level of quality and quantity expected by the agency at this stage of an employee's experience in the position and therefore I recommend that the employee be granted a merit salary adjustment." (See State Personnel Board Form No. 609.)

Each Chief Assistant shall discuss eligibility for a merit salary increase with the attorney involved before deciding whether to grant the increase.

4. State Personnel Board policy requires that all promotions be approved by the appointing power, i.e., the State Public Defender. In order to approve a promotion, the State Public Defender must have a written recommendation from the Chief Assistant stating

that the attorney has met his or her workload standard or explaining why, based on total work production, he or she should be promoted in spite of not meeting the standard. The State Public Defender will then decide on the promotion.

5. Unless an attorney is meeting productivity and quality goals, he/she should not be given a death penalty case, a coordinator, team leader, or county exchange position, or an amicus assignment.

E. ADMINISTRATIVE LEAVE.

Policy regarding administrative leave (formerly called comp time) shall remain as set forth in the 1979 Office Policy and Procedure Manual, part 1, pp. 2-3.

F. OFFICE HOURS.

All attorneys are expected to work at least an eight hour day in the office. Starting time is flexible between 7:00 and 9:00.[1]

Where advisable, an attorney can work in a law library to accomplish work that cannot be done at the office. However, the attorney shall notify his/her team leader, secretary and receptionist in advance and, if the library is one where the attorney cannot readily be reached by phone, the attorney should call the office at midday and at the end of the day for messages.

If an attorney is meeting or exceeding his/her applicable office output standard, the Chief Assistant can authorize working out of the office and not at a law library, for up to 12 days per year for reading lengthy transcripts.

Any other deviations from the normal schedule must be justified in writing to the Chief Assistant, who will then forward the request (with the Chief Assistant's recommendation) to the State Public Defender for decision.

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1. Where on an irregular basis an attorney is required to work late at night or for most of the weekend, the Chief Assistant can give approval for a dispensation from this schedule to be taken immediately after the extra work.

CONTINUED

2 OF 3

that the attorney has met his or her workload standard or explaining why, based on total work production, he or she should be promoted in spite of not meeting the standard. The State Public Defender will then decide on the promotion.

5. Unless an attorney is meeting productivity and quality goals, he/she should not be given a death penalty case, a coordinator, team leader, or county exchange position, or an amicus assignment.

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1. Where on an irregular basis an attorney is required to work late at night or for most of the weekend, the Chief Assistant can give approval for a dispensation from this schedule to be taken immediately after the extra work.

APPENDIX D

Letters from Judges Opposing Reductions in SPD Budget

GEORGE A. BROWN
PRESIDING JUSTICE

CHAMBERS OF
Court of Appeal
FIFTH APPELLATE DISTRICT
5002 STATE BUILDING
FRESNO, CALIFORNIA 93721

March 1, 1982

The Honorable Ralph Dills
Senator
State of California
State Capitol, Room 5050
Sacramento, California 95814

Dear Senator Dills:

As Presiding Justice of the Fifth Appellate District, I am dismayed to learn that the Senate Finance Committee voted to radically reduce the State Public Defender's budget (item 8140). This will cause a reduction in their work force of 35-40 attorneys.

As you know, the Sacramento office of the State Public Defender handles a substantial percentage of the criminal appeals in this court. The balance of the indigent defendants are represented by private counsel appointed by this court. Because private attorneys cannot be adequately compensated for such work, the court has a continuing problem of finding competent counsel who will accept such appointment. In fact, at least half of the attorneys we appoint are located outside this district in the metropolitan communities of the Bay Area, Sacramento, and elsewhere. A reduction of the work force for the State Public Defender's office would have a vital adverse impact on what is already a difficult problem for us.

Moreover, having been in the judiciary, I am sure you appreciate that the quality of the work product varies immensely with individual attorneys. I want to say on the State Public Defender's behalf that the quality of the work product of the State Public Defender's office is consistently superior, even though we reserve our more difficult cases to assign to that office.

I urge a reconsideration and restoration of their budget request.

Yours very truly,

George A. Brown
Presiding Justice

GAB:gw

1270 Escobar
Martinez, CA 94553

March 4, 1982

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SACRAMENTO

Senator Ralph C. Dills
State Senate, Room 5050
State Capitol
Sacramento, CA 95814

Dear Senator Dills:

In January, 1982 I retired as Presiding Justice of Division Two of the First Appellate District, Court of Appeal. I am therefore quite familiar with the work of the Office of the State Public Defender and take this opportunity to share with you my concern about the proposed reduction in that office's budget.

Attorneys in the Public Defender's Office have regularly appeared before me since the creation of the office in 1976. The office consistently produces high quality work that is generally superior to that provided by appointed private counsel. It therefore serves the very important function of greatly assisting the Court in more expeditiously accomplishing its work by reducing the amount of time that must be spent on each case by staff attorneys and judges alike.

The Public Defender's Office is already understaffed. The reduction recommended by your sub-committee would have an adverse impact on the work of the Court and the caseload congestion it faces. I would therefore urge you to support the public defender budget as submitted to your Committee.

Very truly yours,

WAKEFIELD TAYLOR

FIRST DISTRICT
DIVISION ONE

JOHN T. RACANELLI
PRESIDING JUSTICE

STATE OF CALIFORNIA
Court of Appeal
STATE BUILDING—CIVIC CENTER
SAN FRANCISCO

March 8, 1982

Senator Ralph C. Dills
California State Senate, Room 5050
State Capitol
Sacramento, Ca. 95814

Dear Senator Dills:

I have read with concern of the proposed reduction in the budget of the State Public Defender. If implemented, this cutback could have a serious impact on the efficient operation of our appellate courts.

The continuing and difficult problem of finding private attorneys willing and capable of providing adequate representation in indigent appeal cases not handled by the State Public Defender will be exacerbated by the proposed budget cut and resulting staff attrition.

The high level of expertise of the State Public Defender's Office work often reduces the amount of time required in review by research attorney and judge alike. Moreover, the office serves a very important public purpose in sharing its collective expertise with the private criminal appellate bar through its training seminars, manuals, briefbank access, consultative and other services.

My continuing interest in the fair and efficient administration of justice, including reduction of court delay, underscores my concerned request that the sub-committee's recommendation be reconsidered and the proposed budget cut restored.

Respectfully submitted,

JOHN T. RACANELLI
Presiding Justice

cc: Quin Denvir
State Public Defender
455 Capitol Mall, Suite 360
Sacramento, Ca. 95814

COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION FOUR
FOURTH FLOOR
3580 WILSHIRE BOULEVARD
LOS ANGELES 90010

GORDON L. FILES
PRESIDING JUSTICE

March 2, 1982

Honorable Ralph C. Dills
State Capitol
Sacramento, California 95814

Dear Senator Dills:

I am writing in support of an adequate budget for the State Public Defender. Adequate funding and staffing for that office has the effect of saving time (and therefore money) of the appellate courts.

As Administrative Presiding Justice of the Second Appellate District for the past eleven years I have followed closely the work of the State Public Defender as compared with the work of the volunteer attorneys whom we appoint to represent indigents. The State Public Defender's office does a thoroughly professional job for its clients, whether the case is a winner or a loser. The lucid carefully researched and intellectually honest briefs which come from that office aid the court in arriving at a just decision promptly.

I regret that the Public Defender does not handle all of my criminal appeals and I hope the Legislature does not curtail their important service to the court.

Sincerely,

GORDON L. FILES

GLF:va

cc: Jonathan Steiner

COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION THREE
THIRD FLOOR
3580 WILSHIRE BOULEVARD
LOS ANGELES 90010

JOAN DEMPSEY KLEIN
PRESIDING JUSTICE

March 3, 1982

Senator Ralph C. Dills
California State Senate
State Capitol, Room 5050
Sacramento, California, 95814

Re: Proposed Budget Cut-Backs For Office of State Public Defender.

Dear Senator Dills:

We write to you to express our concern about the proposed 1982-83 budget for the Office of the State Public Defender. It is our belief that the major cutbacks now envisioned would have a substantial adverse impact on the appellate courts of this state.

Before the creation of the Office in 1976, the Courts of Appeal experienced continued difficulty in finding attorneys who were both willing and competent to handle criminal appeals for indigent defendants. Although the number of such appeals has increased yearly since 1976, that problem has been greatly alleviated by the State Public Defender's Office. It would certainly resurface in a massive way were the Office to be cut back in any significant degree.

In addition to its caseload, that Office also takes a number of cases in which the court has had to relieve appointed counsel doing an inadequate job. The Office is also frequently appointed on "special" cases, for example, pro per writs in which this Court has issued an order to show cause. Its attorneys also handle the bulk of the longest and most complex cases, because of their expertise and competency.

Through years of experience, this Court has found that it can rely to a greater degree on the consistent high quality work product of the Office's staff attorneys. That

fact cuts down the amount of time spent on each case by research attorneys and justices alike. Importantly, the Office also shares its expertise with the entire private criminal appellate bar, through training seminars, a training manual and other services.

We have no doubt that cutting back the Office of the State Public Defender would serve to slow down the work of the court and add to the already serious problem of court congestion, and thus be penny-wise and pound-foolish.

In short, our concern is that criminal appeals be handled as expertly, yet as expeditiously, as possible. It is for these reasons that we urge you to reconsider your sub-committee's decision to reduce the budget of that Office 17.5% below the 5% reduction already recommended.

Very truly yours,

Joan Dempsey Klein
Presiding Justice

Rodney K. Potter
Associate Justice

Elwood Lui
Associate Justice

cc: Senator Alan Sieroty

JDK:efp

Court of Appeal
Fourth District-Division One
5010 State Building
San Diego, California 92101

Chambers of
Gerald Brown
Presiding Justice

March 5, 1982

Hon. Ralph C. Dills
California State Senate
State Capitol, Room 5050
Sacramento, CA 95814

Dear Senator Dills:

I strongly support a budget for the State Public Defender which will allow that office to maintain a high level of performance. Any reduction in the services offered to this Court would have very serious detrimental effects upon our operations.

We have been fortunate to have the San Diego office of the State Public Defender and its immediate predecessor, Appellate Defenders, Inc., practicing before this Court for over nine years. The office performs valuable administrative and legal services for us. It processes all notices of appeal from the superior court in criminal cases and makes arrangement for counsel in all criminal cases requiring appointment, unless there is a conflict of interest. It assists the Court in monitoring the work of private attorneys who take cases the office is unable to accept. It helps to upgrade the work of the appellate bar generally, by offering training seminars; publications on appellate practice, procedure and substantive law; research assistance; and an extensive brief bank-legal research system.

By far the most important contribution the State Public Defender makes, however, is in the quality of its work. The office has an outstanding staff of skilled and conscientious lawyers who know how to argue cases

succinctly and clearly. Before the office began operations in 1972, we had had many years' experience with the system of appointing only private attorneys to handle criminal cases. The available pool of experienced and well-trained attorneys was small, indeed. As a result, an unacceptably high number of cases were poorly briefed and argued. This situation put unnecessary burdens on our Court and the Attorney General. The presence of the State Public Defender has improved the quality of the practice before us enormously, and I hardly exaggerate in saying a return to the old system, or even a significant reduction in the State Public Defender's proportionate share of the appointed caseload, would have calamitous effects.

I urge your subcommittee to oppose any efforts to cut back the budget of the State Public Defender.

Sincerely,

Bruce Brown

GB/lh

APPENDIX E

Memorandum Setting Forth San Diego Assignment System

State of California

Memorandum

To : Keenan Casady

Date: November 15, 1982

Elaine Alexander

From : State Public Defender
San Diego Office

Subject: System for Providing Representation to Criminal Appellants in the Fourth District, Division One.

I. SELECTION OF COUNSEL

The system used for selection of appointment of counsel in criminal cases in the Fourth District, Division One, is, we think, unique in this state. Basically, under it the San Diego office of the State Public Defender makes contact with all criminal appellants in order to determine their need and desire for appellate counsel. If appointment of counsel is required, the State Public Defender either accepts the case itself or locates an attorney willing to handle it, then submits a recommendation for the appointment to the Court.

The specific steps in this process are as follows:

1. Copies of all notices of appeal going to the Court of Appeal are sent to the State Public Defender office by the clerk of the Court of Appeal.

2. Our office sends letters and forms to the defendants and their trial counsel, seeking background information about the case and inquiring into the defendants' needs and wishes with regard to counsel on appeal. At the same time we send the defendants a form (with declaration of indigency) for requesting appointment of counsel.

3. When the responses are returned to us, we send to the Court our advice concerning counsel on appeal, in one of the following ways:

a. If the defendant has retained counsel, we so notify the Court.

b. If we perceive a conflict of interest in our further involvement in the case, and if appointment will be required, we recommend to the Court that it select an attorney from its conflicts list.

c. If the trial attorney wishes to handle the appeal and the defendant consents, we recommend appointment of the trial attorney.

d. If neither (a), (b), nor (c) applies and our office wishes to handle the appeal, we send to the Court a recommendation for appointment of the State Public Defender.

e. If the defendant needs appointed counsel and neither trial counsel nor our office can handle the appeal, we contact a private attorney from the State Public Defender independent appointment list and, if that attorney can accept the case, we submit that attorney's name to the Court. (This system is described in more detail below.)

4. After receiving our recommendation, the Court orders appointment of counsel. The Court may, of course, choose not to follow our recommendation, but in practice that has not happened.

In cases where the defendant does not respond in a reasonable time to our initial inquiry, we send a follow-up mailing. The pro per defendant also receives mailings from the Court, including notice of the filing of the record and a notice under Rule 17(a), both of which are accompanied by forms for requesting counsel.

Because of our involvement throughout the early stages of these cases, we are able to prevent a number of 17(a) default dismissals that would otherwise occur.

Our system for selecting attorneys to handle those cases which we cannot accept should be explained in more detail. We have a list of approximately 150 attorneys from all areas of the state. Many of these names were given to us a couple of years ago by Division Two of this district; others have been recruited, have made inquiries to us, have been referred to us after inquiries to the Court, have been chosen from our supervised panel (described in section II, below), or have come to us in other ways. On the basis of experience with the attorney, his or her reputation, a resume, and other sources, we have identified among these individuals a smaller, informal "blue ribbon" group to handle the more difficult cases.

After our office head designates the cases to be assigned to a private attorney, our independent appointments co-ordinator selects an attorney from the list, using basically a rotational system, but also making an effort to screen the list for experience, demonstrated reliability and availability, and other relevant factors. If the case is of unusual difficulty, she selects one of the "blue ribbon" group. 1/ She then contacts the attorney to determine whether he or she will accept the appointment. Upon

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1/ We are now planning to refine the system for matching cases with attorneys. We will attempt to "grade" attorneys by such methods as resumes, review of selected briefs sent to us, feedback from the Court and others involved in the cases, etc. We will also assess the difficulty of the cases, by length of sentence, transcript size, complexity of identifiable issues, and other criteria, and then assign a "grade" to the case, as well.

acceptance we submit the attorney's name to the Court of Appeal and send the attorney any transcript and other materials relating to the case that are in our possession. From that point on, our office has no further formal connection with the case.

Both the preliminary case processing and the location of independent appointments are very time-consuming efforts. They require careful internal record keeping, extensive phoning in order to obtain current addresses of clients, mailings to defendants and attorneys, screening of cases to determine appropriate appointment, and other operations involving State Public Defender executive/attorney and clerical time. We have processed between 500 and 600 notices of appeal annually in recent years, and have arranged about 220-260 independent appointments annually in the same time. I would estimate that the clerical services alone require between one-half and one full position in our office.

II. STATE PUBLIC DEFENDER PANEL SYSTEM

The San Diego office of the State Public Defender maintains a second list of about 100-120 private attorneys, almost exclusively from the San Diego area, who work on State Public Defender cases under the supervision of a staff attorney. This is our "panel system," an integral feature of the Appellate Defenders, Inc., pilot program which was established in 1972 and continued through 1980, when Appellate Defenders formally became part of the State Public Defender, as its San Diego regional office. It is specifically authorized by Government Code section 15402, which was drafted with the Appellate Defenders example in mind.

About half of the cases to which our office is appointed are handled solely by staff attorneys; the other half are assigned to the staff attorneys and reassigned by them in turn to a panel attorney The working arrangements are highly variable, but in general the

panel attorney drafts an opening brief and other documents, orally argues, contacts the client, and handles all aspects of the case under the supervision of the staff attorney to whom the case is assigned. The staff attorney reviews and edits all filings and has ultimate authority over the case. The briefs are submitted in the name of the State Public Defender, who at all times remains official counsel of record; the staff and panel attorneys are also identified on the briefs. Compensation is awarded by the Court of Appeal directly to the panel attorney under Penal Code section 1241, as if the attorney had been independently appointed.

The panel system is designed to expand the State Public Defender's proportional share of the appointed caseload, without expanding its permanent staff; to train private attorneys; and to help integrate the private and public defense bars. It has operated highly successfully in the Fourth District, Division One, for over ten years and has won the enthusiastic support of the Court, the panel attorneys, and the clients represented under this system.

APPENDIX F

Resumes of Evaluation Team

RESUME

RICHARD J. WILSON
Director, Defender Division
National Legal Aid and Defender Association
1625 K Street, NW
Washington, DC 20006
(202) 452-0620

Present address: 813 North Carolina Avenue, S.E.
Washington, D.C. 20003

Born: November 18, 1943; Dayton, Ohio

Admitted to Practice:
Illinois State Bar, May 1972
United States District Court for the Northern District of Illinois, 1973
United States Court of Appeals, 7th Circuit, 1974
United States Supreme Court, 1975

Memberships:
American Bar Association:
Criminal Justice Section
- Vice Chairman, Economics of Criminal Law Practice Committee
- Member, Criminal Appellate Issues Committee
- Member, Defense Function and Services Committee

American Civil Liberties Union
National Legal Aid and Defender Association
National Association of Criminal Defense Lawyers

EDUCATION

University of Illinois College of Law, Champaign, Illinois, J.D., January, 1972.
DePauw University, Greencastle, Indiana, B.A., June 1965.
Major: English Literature
Minors: Political Science, Economics

EMPLOYMENT

National Legal Aid and Defender Association, Washington, D.C.
Director, Defender Division — April 1, 1980 to present
Employer: Howard B. Eisenberg, Executive Director

Office of the State Appellate Defender of Illinois, Springfield, Illinois.
Deputy Defender — July 1974 to April 1, 1980
Employer: Theodore A. Gottfried, State Appellate Defender

Office of the State Appellate Defender of Illinois, Elgin, Illinois.
Assistant Defender — March 1972 to July 1974
Employer: Ralph Ruebner, Deputy Defender

Peace Corps Training Instructor/Language Teacher, Arecibo, Puerto Rico. January 1969 to December 1969.

Peace Corps Volunteer, Republic of Panama. November 1966 to January 1969.

TECHNICAL ASSISTANCE PROJECTS

NLADA Staff Director, National Criminal Defense Systems Survey, grant from Bureau of Justice Statistics to NLADA and Abt Associates, Inc. — January 1, 1982 to present.

Project Reviewer, Alternative Sentencing/Sentencing Advocacy Project, grant from The Edna McConnell Clark Foundation — October 1, 1981 to present.

Project Director, Appellate Defender Development Project. Grant from LEAA to establish appellate defender offices in Arkansas, North Carolina, Iowa and New Hampshire; develop a national briefbank; coordinate and provide technical assistance to new and existing appellate defense offices. July 1980 to November 1, 1981.

Staff Director, Defender Management Information Systems, grant from Bureau of Justice Statistics — August 1, 1980 to present.

California State Public Defender, Evaluation Team Leader, Evaluation of Appellate Representation in California — June, 1982 to December 1, 1982.

Oklahoma Appellate Public Defender System, Evaluation Team member, February-April, 1982.

Kentucky Southeast Rural Public Advocacy Region, evaluation team member — June-December, 1981.

Public Defense Services in Seattle Municipal Court, evaluation team member — March 1981.

Pierce County (Tacoma), Washington, Office of Assigned Counsel Evaluation, evaluation team member — January 1981.

Puerto Rico Legal Aid Society (Indigent Defense), technical assistance — October 1980.

San Diego County Defense Services Evaluation, team member — October 1980.

Florida Criminal Defense Study, on-site evaluation of proposal design — July 1980.

Special Consultant to Design of Evaluation Model for Appellate Defender Offices and Test Evaluation of Seattle-King County (Washington) Appellate Defender — April-July, 1980.

Evaluation of Appellate Division, Cuyahoga County (Cleveland), Ohio Public Defender — January 1980.

ACTIVITIES AND HONORS

Ex-Officio member, Board of Regents, National College for Criminal Defense

Faculty, National Appellate Defender Conference, Indianapolis, Indiana, April 1981.

Faculty, Symposium on Pretrial Services, Toronto, Ontario, July 1981

Faculty, National Conference on the Death Penalty, Atlanta, Georgia, November 1981.

Faculty, Florida State Public Defender Association Seminar, July 1982.

Speaker, "The Many Faces of the Legal Career," DePauw University, October 1982

Fellowship Recipient, National Endowment for the Humanities Programs for Professionals: "Lawyers and Justice in American Society," Harvard Law School, Cambridge, Mass., June-July, 1979.

Chairman, Appellate Council, National Legal Aid and Defender Association, September 1975 to October 1978.

Amicus Brief Subcommittee and Editorial Advisory Board, National Legal Aid and Defender Association, 1976-1979.

Board Member and Treasurer, Kane County, Illinois Council for Economic Opportunity, 1973-1974.

Witness - Congressional Hearings
House Judiciary Subcommittee on Criminal Justice, June 1980
House Judiciary Subcommittee on Criminal Justice, April 1982
Senate Judiciary Subcommittee on Courts, November 1981

AMICUS CURIAE

Morris v. Slappy (U.S. Supreme Court, 1982) — Author of brief on continuity of representation by a public defender.

Polk County v. Dodson (U.S. Supreme Court, 1981) — Co-author of brief on public defender liability for violations of Civil Rights Act.

Wakulla County v. Davis (Florida Supreme Court, 1980) — Co-author of brief challenging constitutionality of statutory fee schedule limitations.

PUBLICATIONS

Monograph, "Contract-Bid Programs: A Threat to Quality Indigent Defense Services," March 1982

"Serving Too Many Masters: The Public Defender's Institutional Schizophrenia," 38 NLADA Briefcase 38, Fall, 1981

Book Review: Privacy and the Press: The Law, the Mass Media and the First Amendment (1973); Media and the First Amendment in a Free Society (The Georgetown Law Journal ed., 1973) reviewed in 23 DePaul L.Rev. 1155-1160 (1974).

Regular contributor: "Appeals" column, NLADA Briefcase, 1976.

REFERENCES

Available upon request.

RESUME

THEODORE A. GOTTFRIED

Office:
Office of the State Appellate Defender
300 East Monroe, Suite 100
Springfield, IL. 62701
217/782-7203

Home:
R. R. #2, Box 22
Sherman, IL. 62684
217/566-2137

Personal Data:
Born: November 4, 1940
Married: May 11, 1973 to Nancy Ann Ringer
Children: Son, William Theodore, born 12/21/79

Legal Education:
John Marshall Law School, Chicago, Il.
Degree: J.D., June, 1966

Law-Related Employment while in Law School:
Law Clerk, Meyers & Mathias, Chicago, Il.
Law Clerk, Frank J. Makey Law Offices, Chicago, Il.

Undergraduate Education:
Roosevelt University, Chicago, Il. - Degree: B.A., June, 1963 Major: History

Secondary Education:
Proviso East High School, Melrose Park, IL., June, 1959

Professional Data:
Bar Admissions:
State of Illinois (1966)
United States Supreme Court
United States Court of Appeals for 7th Circuit
United States District Court, Northern District of Illinois

Present Position:
Director, Office of the State Appellate Defender, Springfield, IL.

Previous Positions:
Executive Director, Illinois Defender Project
District Defender, Illinois Defender Project
Assistant Public Defender, Cook County Public Defender's Office

Professional Memberships:

American Bar Association
Member, Criminal Justice Section Committee on Appellate Issues

National Legal Aid and Defender Association
Member, Defender Committee; Chairman, Defender Awards Committee; Past Member, Executive Committee, Board of Directors, Budget Committee; Past Chairman Resolutions Committee

Illinois State Bar Association
Member, Special Committee on Legislation; Past Member Legislative Committee; Past Member and Past Chairman Criminal Justice Section Council; Past Member Assembly

Criminal Defense Consortium of Cook County
Member, Board of Directors

Illinois Defender Project
Member, Board of Directors

Illinois Public Defender Association
Member, Board of Directors and First Vice-President

Governor's Advisory Council on Criminal Justice Legislation

National Assoication of Criminal Defense Lawyers

American Civil Liberties Union
Member and Past Board Member, Springfield, Il. Chapter

Defender Services Evaluations:

Study and Evaluated State of Illinois; Team Member, Report Issued, 1969

Study and Evaluated Massachusetts Defender Committee; Team Member, Report Issued, 1972

Study and Evaluated Minnesota Defender System; Team Member, Report Issued, 1973

Study and Evaluated Vermont Defender System; Team Captain, Report Issued, 1974

Study and Evaluated Wisconsin State Appellate Defender; Team Member, Report Issued, 1975

Defender Services Evaluations (Continued)

State of North Dakota, Feasibility Study for North Dakota Supreme Court; Team Member, Report Issued, 1975

Study and Evaluated North Dakota Defender System, Team Captain, Report Issued, 1975

Study and Evaluated Columbus, Ohio Defender Services; Team Member, Report Issued, 1976

Study and Evaluated Bay City, Michigan Defender Services; Team Captain, Report Issued, 1978

Study and Evaluated State Public Defender of California; Team Member, Report Issued, 1979

State of Arkansas, Feasibility Study for possible State Appellate Defender Office; Team Member, Report Issued, June, 1979

Study and Evaluated State Appellate Defender Program of Iowa, Team Member, Report Issued, March, 1981

Study of Appellate Defender Program of Arkansas; Team Member, Report Issued, March, 1981

Study and Evaluated Southwest Texas Defender Project; Team Member, Report Issued, June, 1982

Law-Related Activities:

Lecturer for Illinois State Bar Association; Illinois Institute for Continuing Legal Education; National College of Criminal Defense Lawyers; Northwestern Short Course; Illinois Defender Project Seminars; National Legal Aid and Defender Association Seminars; Sangamon State University; Ad Hoc Committee to Implement ABA Standards

Non-Law-Related and Community Activities:

Professional Scuba Diver Instructor
Member and Past President Central Illinois Divers
Member Big Brother-Big Sister of Sangamon County, Il.

Bibliography:

"Preparation and Trial of A Criminal Appeal", Illinois Criminal Practice, co-authored with Sherman Magidson, 1980

"How has Illinois met the Challenge of Gideon v. Wainwright?", Illinois Bar Journal, co-authored with C. Paul Bradley, July, 1972

"Today's Institute Report on Criminal Law", Chicago Bar Journal, Series of Articles, 1976-77

Honors:

Meritorious Service Award presented by Richard B. Ogilvie, Governor of the State of Illinois, May 1972

RESUME

James R. Neuhard

Director, State Appellate Defender Office
1200 Sixth Avenue
Third Floor, North Tower
Detroit, Michigan 48226
(313) 256-2814

Home: 25660 Southfield Road
Southfield, Michigan 48075
(313) 559-6847

Single; birthdate: 5-21-44

Education:

University of Detroit High School, 1962
B.S., 1966, University of Notre Dame, South Bend, Indiana
J.D., 1969, University of Michigan Law School, Ann Arbor, Michigan

Employment:

1969-1971, Law clerk for Justice
Thomas Giles Kavanagh, Michigan Supreme Court, Lansing, Michigan
1971-1972, Staff attorney, State Appellate Defender Office
1972-present, Director, Michigan State Appellate Defender Office

Bar Memberships:

Michigan Bar Association, 1969
Detroit Bar Association, 1969
Eastern District of Michigan, 1969
National Lawyers Guild
National Legal Aid and Defender Association
Criminal Defense Attorneys of Michigan
United States Supreme Court Bar

Bar Activities, Chairmanships and Committees:

Michigan State Bar:
Criminal Law Section, Board of Directors, 1974-1975
Defender Systems and Services Committee 1975 to 1979
Chairman, Defender Systems and Services Committee, 1975-1977
State Bar Representative, Board of Directors, Wayne County Neighborhood Legal Services, 1977-1979

Detroit Bar Association:
Criminal Jurisprudence Committee, 1974 to present
Public Advisory Committee for Judicial Selection, 1976, 1978, 1980 and 1982

Supreme Court:
Advisory Committee on Court Reporters, 1975 to present
Judicial Planning Committee, 1977 to present

Criminal Defense Attorneys of Michigan, founding member, 1977 to present, Treasurer, 1977-1978, 1980 to present, President, 1978-1980, Education Committee, 1977 to present

National Legal Aid and Defender Association
Appellate Council, 1975 to present, Chairman, founding member, 1975-1976
Board of Directors, 1975 to 1979, 1980 to present
Defender Committee, 1977 to present
Defender Committee Chairman, 1980 to 1981
Executive Committee, 1978-1979
Amicus Committee Chairman, 1977-1980
Host Committee Chairman - NLADA National Convention - 1977
Appellate Defender Evaluation Design, 1979-1980
Advisory Board, Defender Management Information Systems Project, 1978-1980

National Center for Defense Management, Consultant to South Dakota on Defense Services Study, 1976; Consultant, Ada County, Idaho on defense services, 1978; Consultant to University Research, Washington, D.C. "Operation of a Defender Office" management seminars, 1978; Consultant, evaluation of the California Appellate Defender Office, 1979; Consultant to North Carolina Appellate Defender Office, 1981; Consultant for Appellate Training Conference, Indianapolis, Indiana, 1981; Consultant; evaluation of the California Appellate Defender Office, 1982; Consultant, Indiana Public Defender Office, Management Systems, 1982

National Lawyers Guild, Committee Chairman: prison reform, criminal law, Ad Hoc Committee on Bail Bond Reform and Elections

National Defender Institute, Board of Directors, 1978 to present

Office of Criminal Justice Programs, Adjudication Committee, 1975-1979

Articles, Lectures and Study Reports:

Commissioner, National Study Commission on Defense Services Task Force, 1976-1977

Author, Computer Analysis on Sentencing Practices, Journal of Urban Law, University of Detroit Law School

Editor, Michigan Speakers Manual Against the Death Penalty

Produced film re: defender office management

Lectured:

On criminal law, appellate practice, anti-death penalty, defender office management, court reporter reform and prison reform at University of Michigan Law School, Wayne State University Law School, University of Detroit Law School, Detroit College of Law, Cooley Law School, the Center for Criminal Justice in Michigan and Ohio, University of Oklahoma, Chicago, Illinois and various civic and educational groups throughout Michigan. Appeared on television and radio on various criminal justice topics. Taught substantive Criminal Law at training sessions for: National Legal Aid and Defender Association, Criminal Defense Attorneys of Michigan, Michigan Trial Lawyers Association, American Association of Law Librarians, and Michigan Association of Prosecutors

Testified:

United States House of Representatives, prison reform, 1973
Michigan House of Representatives and Senate, criminal law and prisons on numerous occasions

Project director and creator:

Appellate practice course, University of Michigan Law School
Legal Resources Project and Newsletter, State of Michigan
Appellate Practice and Procedure Manual for State of Michigan
Defense Training Project for Michigan

Appeared and argued before Michigan trial courts, Michigan Court of Appeals, Michigan Supreme Court, Federal District Court and United States Supreme Court.

7/82

RESUME

ADJOA ARTIS ASANTEWAAH AIYETORO
8614 Manchester Rd. #5
Silver Spring, Maryland 20901
(301) 587-9253

Personal: Born - April 1, 1946; Married; No Dependents

Employment:

Legal Work

April 1982 - Present	Staff Attorney ACLU National Prison Project 1346 Connecticut Ave. N.W. Washington, D.C. 20036
January 1982 - April 1982	Staff Counsel National Alliance Against Racist and Political Repression 27 Union Square West #306 New York, New York 10003
November 1978 - January 1982	Trial Attorney United States Department of Justice Civil Rights Division Special Litigation Section Washington, D.C. 20530
March 1978 - October 1978	Law Intern/Legal Assistant London, Greenberg & Fleming 100 N. Broadway St. Louis, Missouri 63101
September 1977 - March 1978	Legal Research and Writing Mary Beth Ortbals, Law Clerk Illinois Appellate Court 5th District 6 Ladue Meadows St. Louis Missouri 63141
May 1977 - August 1977	Law Intern Husch, Eppenberger, Donohue, Elson & Cornfeld 100 N. Broadway St. Louis, Missouri 63101

Mental Health Work

October 1971 - June 1977	Mental Health Coordinator Yeatman Union Sarah Health Center 4731 Delmar Blvd. St. Louis, Missouri 63108
June 1969 - August 1975	Social Service Department Malcolm Bliss Mental Health Center St. Louis, Missouri 63104 Beginning: Psychiatric Social Worker I Ending: Supervisor, Community Outreach Services

Educational Background

Law School	Saint Louis University St. Louis, Missouri J.D., May 1978 Cum Laude
Graduate School	Washington University George Warren Brown School of Social Work St. Louis, Missouri M.S.W., 1969
College	Clark University Worcester, Massachusetts A.B., 1967

Licenses

Member, Missouri Bar, 1978

Summary of Employment Responsibilities

1. Staff Attorney, National Prison Project

I am responsible for investigating prison/jail conditions and preparing and bring suits against thoses prison/jail facilities which are allegedly violating the rights of persons confined within them. Additionally, I supervise the legislative work of the Project. In that capacity I review legislation, draft testimony and language for legislative enactments and testify before legislative bodies.

2. Trial Attorney, Department of Justice

I worked within the Special Litigation Section which has responsibility for investigating and litigating cases involving violations of the rights of institutionalized persons. My work

included matters involving prisons and jails, mental retardation and mental health facilities. I participated as counsel for the United States in all levels of pre-litigation and litigation work.

I did actual trial work in four major cases: Ruiz v. Estelle, Texas Department of Corrections, presentation of inmate witnesses; Stewart v. Rhodes, Ohio Department of Corrections, participated in pre-trial discovery, organized and had the main responsibility for a preliminary injunction hearing on the uses of four-way restraints and racial segregation, 473 F.Supp. 1185, and participated in settlement negotiations; Kendrick v. Bland, Kentucky Department of Corrections- participated in discovery and settlement negotiations, had main responsibility for permanent injunction hearing on guard harassment, became primary attorney for the United States in September 1980 and conducted compliance reviews and negotiations, participated in several hearings; Halderman v. Pennhurst, Pennsylvania mental retardation facility - primary attorney for post-trial compliance work which included participation in numerous hearings and drafting numerous memoranda.

3. Staff Counsel, National Alliance Against Racist and Political Repression (NAARPR)

For three months I assumed the temporary position of staff counsel for this organization on whose board I sit. I represented an individual in federal district court in Illinois who was charged with a felony of interfering with an immigration officer in the performance of his duties. I worked with another attorney on this matter and we were able to get the charges dismissed.

Additionally, I was one of a team of attorneys who represented the National Executive Director of the NAARPR and her husband in the State Court of Hall County, Gainesville, Georgia. These persons were charged and convicted of public drunkenness and resisting arrest, after being forcibly removed from an Amtrak train. We are now awaiting a decision on our motion for a new trial. We will pursue appellate review if necessary.

4. Legal Intern Positions

Both positions entailed legal research and drafting of memoranda for partners in the law firms on issues presented in the cases in which they were involved.

5. Legal Research and Writing

I worked for an appellate judge's law clerk and researched and drafted judicial decisions.

6. Mental Health Coordinator (Part-Time)

I coordinated the community mental health program for the Yeatman Union Sarah Health Center, a health center in a lower income Black community in St. Louis, Mo. I developed preventive mental health projects, e.g., school consultation and tutoring projects developed services for persons previously

receiving mental health services at the state mental health center; supervised a staff of contract psychiatrists and a psychologist and non-professionally trained direct service deliverers. While in law school, I developed a grant proposal for the Mound City Bar Association of St. Louis, providing legal services to the mentally disabled. This proposal was funded by the Mental Disability Section, American Bar Association in 1977.

7. Social Services Department

I entered this department as a Psychiatric Social Worker I and worked on the Children's Inpatient Unit where I developed social services plans for children and did individual and family therapy. I transferred to the community program in January 1970 as coordinator for the Yeatman Health Center and developed mental health services for that community and supervised non-professionally trained staff. In 1974 I was promoted to supervisor for the Social Services Community Outreach staff that was responsible for delivering community mental health services to five model city communities. I supervised a staff of professionally and nonprofessionally trained service delivers.

Organizational Affiliations

National Association of Black Social Workers

National Alliance Against Racist and Political Repression
Member of Board of Directors
Co-Chair,National Legal Support Committee

National Conference of Black Lawyers

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