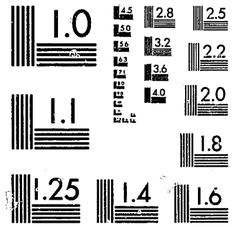

FINAL EVALUATION

of the

ARKANSAS APPELLATE PUBLIC DEFENDER

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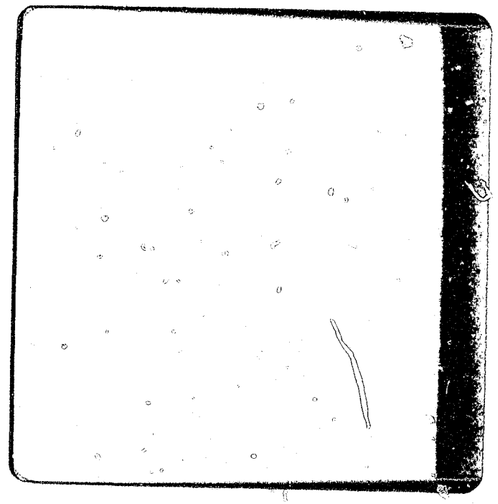

NATIONAL LEGAL AID & DEFENDER ASSOCIATION

FINAL EVALUATION

of the

ARKANSAS APPELLATE PUBLIC DEFENDER

RICHARD J. WILSON
Director, Defender Division
National Legal Aid & Defender Association

THEODORE A. GOTTFRIED
State Appellate Defender of Illinois

NATIONAL LEGAL AID & DEFENDER ASSOCIATION

Howard B. Eisenberg, Executive Director
Malcolm C. Young, Staff Attorney
Susan Sharp, Administrative/Editorial Assistant

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I. INTRODUCTION

The National Legal Aid and Defender Association administered the Appellate Defender Development Project, which was funded through a grant from the Law Enforcement Assistance Administration (LEAA) of the United States Department of Justice. The principal objective of the Project was to establish and fund four new appellate defender offices in the states of Arkansas, Iowa, New Hampshire, and North Carolina. The Association and Project staffs provided each appellate office with administrative and managerial assistance, reviewed briefs filed by each office, and was responsible for providing each office substantive training and technical information as required. The grant provides that a final evaluation of each appellate office be conducted by the Project Director and outside consultants. The design and format of the evaluation is consistent with that described in the Standards and Evaluation Design for Appellate Defender Offices, National Legal Aid and Defender Association, 1980 (hereafter cited as Evaluation Design).

In March of 1981, the Arkansas House voted 45 to 12 against having the state take over financial responsibility for the Arkansas Appellate Public Defender (AAPD) office. The office closed on May 1, 1981. One of the purposes of this evaluation is to describe the operations of the AAPD during its existence. An equal, if not more important, objective is to instruct other appellate defender offices, including those funded through this grant, as to the reasons for the demise of the AAPD. All of the offices established by NLADA are experimental, and all seek to improve appellate defender services provided to their clients and the general quality of defense services provided in each state.

The Association expresses its appreciation to the staff of the AAPD who contributed to a significant improvement in appellate services in Arkansas during the all-too-short experiment there. These people are:

- Arkansas Appellate Public Defender E. Alvin Schay;
- Deputy Appellate Public Defender Ray Hartenstein;
- AAPD Administrator Eddy Montgomery;
- Staff Attorneys Jackson Jones, Linda Boone, Debby Cross and Jack Kearney, Debbie Sallings, and Matt Fleming;

- Staff Secretaries Martha Williamson, Marilyn Youngblood, and Sherry Brannon; and
- Investigator Mike Carlson.

NLADA also expresses its appreciation to all other individuals who supported the continuation of the AAPD, and who were willing to donate their time and effort to attempt to convince the legislature and the administration that this program was worthy of continuation.

II. METHOD

A. Background and Preparation

NLADA staff and consultants visited the AAPD on more occasions than any of the other appellate defender programs. Visits to Arkansas were made in February, April, July and October of 1980, prior to the final evaluation visit in April of 1981. The October visit resulted in a document entitled " 'Short-Term' Evaluation of the Arkansas Appellate Public Defender," and was conducted by Malcolm Young, of the ADDP staff, and David C. Thomas, a private practitioner from Chicago, Illinois.

In the final evaluation, we elected to focus our attention primarily on the areas regarding Arkansas's refusal to adopt an appellate defender office and office activity during the life of the AAPD.

No detailed review of quality of briefs produced was undertaken in the final evaluation, this having been done on more than one occasion previously. Staff attorneys were not interviewed regarding their practices and procedures on particular cases. The final evaluation includes a history of the office, a summary of office activity during its existence, and an assessment of the failure of Arkansas to adopt an appellate defender office.

Prior to the evaluation, Association staff reviewed monthly reports submitted by the Arkansas office. These reports contain basic statistical information on office caseload and case flow and selected budget figures. This review provided us with a number of questions which we asked Mr. Schay and Mr. Montgomery during our visit.

B. Evaluation Design

The evaluation design was based on that proposed in the Evaluation Design. That publication sets forth questions to be asked and data needed by evaluators to describe the extent and quality of the services rendered by an appellate defender office, its administration and procedures, and its adherence to standards. With the exception of the particular inquiries based upon our review of the information provided NLADA, the evaluation team had the responsibility for defining the scope and subject areas to be covered in this evaluation.

The format of the section entitled "Arkansas Appellate Public Defender Activity During the Grant Period" will follow that of the Evaluation Design, parallelling the structure and areas of concern set forth there.

C. Conduct of Evaluation and Site Visit

This evaluation report is based on two sources: 1) statistical and historical data kept by the Association, much of which was provided by the Arkansas Appellate Public Defender in monthly reports, up to and including the report submitted for April 1981; and 2) observations and interviews at the AAPD office, and interviews with other Arkansas officials.

Richard Wilson, Project Director for the ADDP grant, and Theodore A. Gottfried, State Appellate Defender of Illinois, visited the Arkansas Appellate Public Defender on April 1 and 2, 1981. The site visit included examination of the office's case tracking system, and a review of the work-unit process as utilized by AAPD.

During the April visit, interviews were conducted with the following individuals:

- E. Alvin Schay, Director, AAPD
- Eddy Montgomery, Financial Officer, AAPD
- The Honorable Richard Adkisson, Chief Justice, Arkansas Supreme Court
- Phil Carroll, President, Arkansas Bar Association
- Dennis Mollock, Chief of the Criminal Justice Division, Arkansas Attorney General's Office
- William Simpson, Public Defender of Pulaski County (Little Rock)
- Howard Koopman, Staff Attorney, Public Defender Office, Pulaski County
- Doug Wood, State Representative, sponsor of Arkansas Appellate Public Defender bill, and Private Attorney, North Little Rock
- Jim Shaver, Arkansas Representative and Attorney
- Josephine Hart, Attorney, Batesville, Arkansas
- David Blair, Attorney, Batesville, Arkansas
- William Clark, Attorney, Conway, Arkansas.

After the visit, Mr. Gottfried wrote a report summarizing his notes and submitted it to the Association. Richard Wilson then reviewed Mr. Gottfried's report and completed the final evaluation report. Mr. Gottfried reviewed the report for accuracy.

III. REPORT

A. Capsule Description of Arkansas Indigent Defense System

1. Relevant General Statutes

Arkansas has a State Public Defender Act which allows any judicial district (there are 20, with two to six counties in each) to petition the Governor to create a Public Defender Commission. Ark. Stats., Sec. 43-3301 et seq. The Commission appoints Public Defenders to four-year terms. At least six public defender offices now exist in Arkansas.

In other cases, any judge may appoint and compensate private counsel. Sec. 43-2419. No attorney is to be appointed who certifies that he has not attended or taken a prescribed course in criminal law within 25 years prior to the date of appointment, does not "hold himself or herself out to the public" as a criminal lawyer, and does not regularly engage in the criminal law practice. Ibid.

Arkansas has the death penalty. Ark. Stats., 41-803(2). As of August 20, 1981 there were 17 persons on Death Row.

Correctional institutions are located in Tucker (about 40 miles), Grady (about 70 miles) and in a women's unit in Pine Bluff (about 40 miles). Most clients were at Grady.

2. Appellate Procedure

The Arkansas Supreme Court has seven members and sits in Little Rock. Ark. Stats., Sec. 22-201. Since July of 1979, a six-member Court of Appeals, also sitting in Little Rock, has handled all criminal appeals of first instance except: 1) where the penalty is death, life imprisonment or more than 30 years imprisonment; 2) where the validity of a provision of the Arkansas Constitution or an Act of the General Assembly is questioned; or 3) where an appeal is taken from denial of a petition under Rule 37 (see below). Guilty plea appeals are prohibited. Rules of Crim. Pro., 36.1. The Supreme Court may transfer any case from or to the Appellate Court.

By rule, trial counsel, whether appointed or retained, continues as appellate counsel unless the trial court or Supreme Court allows withdrawal from the case. Rules of Crim. Pro., 36.26.

Basic statutory time frames for filing are as follows:

- o Notice of Appeal -- within 30 days from sentencing and entry of judgment;
- o Record on Appeal -- within 90 days of filing of Notice of Apeal (extensions permitted; seven-month maximum limit);
- o Appellant's Brief -- within 30 days of "lodging of transcript";
- o Appellee's Brief -- within three weeks of filing of Appellant's Brief;
- o Reply Brief -- within 10 days of filing of Appellee's Brief.

(See generally Criminal Rules, 36.9; Rules of Appellate Procedure, 5(a) and (b); and Supreme Court Rule 11(a).)

Oral argument is mandatory if requested within two weeks before submission of the case. Supreme Court Rule 18(a).

Briefs of the Appellant are accompanied by a "first person" and "impartial" condensation of the trial record, called an Abstract. Supreme Court Rule 9(d).

Bail pending appeal is permitted. Ark. Stats., Sec. 43-2715; Supreme Court Rule 36.5.

Withdrawal by appellate counsel on grounds that the appeal lacks merit is permitted. Supreme Court Rule 11(h).

Collateral attack is permitted under Section 37 of the Rules of Criminal Procedure. Grounds include: 1) a violation of the U.S. or Arkansas Constitutions; 2) lack of jurisdiction of the trial court; 3) a sentence in excess of the statutory maximum; or 4) a sentence "otherwise subject to collateral attack." Permission to file in the trial court must be obtained from the Supreme Court, and appointment of counsel and fees are the same as in criminal trial cases. Rules, 37.5.

The "plain error" doctrine is not recognized in Arkansas. Wicks v. State (October 1980).

3. Compensation of Counsel

In 1980, it was estimated that Arkansas spent $1,367,500 on indigent defense (including the LEAA-funded Appellate Public Defender). This ranks Arkansas 48th among all states in per capita expenditures on indigent defense. All expenses, save the Appellate Defender, are funded through

the counties. Almost $666,000 went to public defender offices, while the remainder went to assigned counsel.

Fees are limited by statute to not more than $350 per case in the trial court ($25 minimum) with investigative expenses not to exceed $100. These fee limits were upheld by the Arkansas Supreme Court. See State v. Riuz and Van Denton, ____ Ark.____, 602 S.W. 2d. 625 (1980), and State v. Conley, ____ Ark. ____, 602 S.W. 2d. 415 (1980).

No limits are set on fees for appellate counsel. Customary limits were $350 per appeal prior to the Arkansas statewide office. (See Section ___, supra.)

B. History of the Arkansas Appellate Public Defender

1. Administrative Aspects

In response to requests from Pulaski County (Little Rock) Public Defender John Achor, an LEAA technical assistance team visited Arkansas on June 6 and 7, 1979 to determine the need and support for an appellate defender program. The technical assistance team was composed of Howard Eisenberg, NLADA; Ted Gottfried, Appellate Defender of Illinois; Mark Wolfson, Adjudication Division of LEAA; and Jerry Shelor, President of Studies In Justice, Inc.

The team recommended an 18-month budget of $573,812. Of this amount, $472,500 was to be spent on personnel. Staff was projected to include a chief defender and six assistants, an adminstrative assistant, four secretaries, an investigator, and three law clerks. Salaries for the attorney positions were to be keyed to those of the highest-paid deputy within the Attorney General's office, although the evaluation team noted that this level of compensation was exceedingly low.

The evaluation team projected a total caseload of 120 appeals during the first year of the office's existence, and recommended approximately 20 cases per attorney, due to factors including the following: 1) there are no guilty plea or sentencing appeals in Arkansas; 2) Arkansas Rules of Court require the preparation of an abstract of testimony; and 3) a new two-level appellate court system was to begin functioning on July 1, 1979, necessitating the filing of review petitions from the intermediate appellate court to the Arkansas Supreme Court. It was anticipated that 20 cases per attorney was a reasonable number of appeals given these restraints.

The team also projected approximately forty Rule 37 motions (post-conviction petitions) would be handled by the office during the first year of its existence, based on project figures from the number of Rule 37 motions handled in Pulaski County during 1978. Other staffing requirements were projected based upon national standards. Finally, a travel budget allowing 18,000 miles of intra-state travel was included, to allow for trips to the state correctional institutions and for investigation and other professional staff travel to various courts in the state. The consultant team recommended that one word processing typewriter be leased by the appellate defender office.

In the fall of 1979, the National Legal Aid and Defender Association was awarded the Appellate Defender Development Project (ADDP) grant from the Law Enforcement Assistance Administration. As a condition of the grant, the Arkansas Appellate Public Defender was incorporated into the ADDP. The Arkansas budget, as reflected in the grant application, reduced the grant period to 15 months, with a total budget of $474,920. Total federal funds requested, after inclusion of a cash match from Arkansas ($118,730), amounted to $356,190. Staff size and all other items remained the same as in the original proposal, but were scaled down to conform to the 15-month grant period.

On January 31, 1980, NLADA entered into a contract with Arkansas, through the Honorable Bill Clinton, Governor, for a 15-month grant beginning on February 1, 1980 and terminating on April 30, 1981. Total funds allocated for the project amounted to $435,116. Arkansas agreed to provide a cash match and rent-free quarters for the AAPD during the grant period. The Arkansas Crime Commission contributed $75,694, with a federal expenditure of $359,152. Staff size was amended to eliminate one of the secretarial positions and one of the law clerk positions. The only other significant adjustment in the contracted budget included reduction in the number of typewriters (from four to one) and an increase from one to two word processors. A line item entitled "Library Books, Subscriptions, Professional Associations" was reduced from $10,000 to $8,000. No caseload maximum was designated in the contract. (A copy of the grant budget is attached as Appendix A.)

Alvin Schay, a local attorney with prior experience in the Attorney General's Appeals Division, was chosen by Governor Clinton to head

the office. Initial staffing of the office was completed as described in the contract by April of 1980, with the exception of the position of investigator. Two law clerks were permitted to fill attorney positions upon admission to the Bar. In October of 1980, Arkansas made a request to NLADA to hire an additional attorney in order to handle a caseload in excess of that anticipated at the time of the signing of the original contract. In fact, Arkansas surpassed the caseload originally projected by the evaluation team (120) by mid-November of 1980, and by April of 1981, the caseload of the AAPD had reached 180.

In April of 1980, NLADA staff visited the Arkansas Appellate Public Defender. Primary purposes of that visit were to monitor the accounting system implemented by AAPD and to explore and confront what appeared to be a growing tension between the AAPD office and the local public defender, John Achor.

A written report followed this visit. The accounting system was found to be adequate for accountability purposes. Moreover, during the visit, a face-to-face meeting was arranged between Mr. Achor and Al Schay.

The upshot of the meeting was an application by AAPD to the Arkansas Crime Commission for funds to hold a seminar for interchange of ideas between AAPD and trial-level public defenders. The application was successful.

In October of 1980, the public defender seminar was held in Little Rock. Some funds for the appellate/trial conference were provided through the grant, and some were made available through the local Arkansas Crime Commission. The seminar was held in conjunction with the "short-term" evaluation of the AAPD by Malcolm C. Young, NLADA Staff Attorney, and David C. Thomas, a criminal trial practitioner and law professor from Chicago, Illinois. The consensus of the AAPD staff and the evaluation team was that the seminar was a success. The evaluation revealed few serious problems in the administration and morale of the office.

Following the October short-term evaluation, administrative aspects of the program remained stable. Political activity was stepped up locally. No further site visits were paid by the ADDP staff until the final evaluation.

2. Political History

During the first visit to Arkansas, the LEAA technical assistance team interviewed a number of individuals, including Governor Clinton, the Attorney General, the Chief Justice of the Arkansas Supreme Court, the Director of the Arkansas Crime Commission, and other individuals concerned with criminal justice. Support for a statewide appellate defender program was strong from all quarters. At the time of the visit, all state officials and individuals involved with the establishment of the program stated firmly that Arkansas would obtain state or local funding for the appellate defender program when LEAA support was terminated. It was the strong perception of the evaluation team that support for an appellate defender was firmly established throughout all governmental branches.

Almost from the start, however, the Appellate Defender program experienced a series of political setbacks which would ultimately affect whether or not the program would be adopted by the Arkansas legislature and Governor.

In June, the Arkansas Supreme Court decided State v. Ruiz and Van Denton, 269 Ark. 331, 602 S.W. 2d. 625 (1980). The Court ruled that the legislature had acted within its power in setting a maximum fee of $350 per case for appointed counsel in trial cases, and that the fees were not unconstitutional. (The text of the opinion is attached as Appendix B.) While this decision did not directly affect the AAPD, it provided little hope that fee payments in appointed appellate cases would ever exceed the $150-to-$200 per case customarily awarded prior to the existence of the AAPD. Without support for reasonable fees from the Arkansas Supreme Court, the AAPD was faced with an extremely difficult situation in mounting a persuasive cost-effectiveness argument to the legislature the following Spring.

In August of 1980, the Public Defender of Pulaski County (Little Rock), John Achor, resigned. Achor had been considered one of the staunchest political allies of the Appellate Defender, and was also recognized as influential in both local party politics in Little Rock and state legislative matters. Prior to his resignation, Achor had voiced some criticism of the AAPD, complaining that there was not enough communication between the two offices, and that frivolous issues, including

arguments charging his lawyers with ineffective assistance of counsel, had been raised by the AAPD. While the Appellate Defender Development Project arranged for a direct, face-to-face meeting by Achor with the AAPD staff, and later arranged for a state-wide meeting of trial and appellate counsel, the friction between the two offices continued, and still existed at the time of Achor's resignation.

The greatest single blow to the program, however, occurred in the general election of November 1980. In that election, Republican Frank White, a fiscal conservative, defeated Democrat Bill Clinton, the supposedly unbeatable first-term incumbent. Governor Clinton's support had been crucial to the program, and his influence with the Arkansas Crime Commission and the legislature had led supporters of the AAPD to believe that the adoption of the program by the state was a virtual certainty. Election of Governor White changed this picture entirely. From the outset, Governor White announced his commitment to "no new federal programs." None were included in his budget, and even before legislative consideration of the AAPD, Governor White had vetoed several federally-funded projects requested for state pick-up.

In addition to Governor Clinton's defeat, Arkansas voters soundly defeated, for the second time in the past seven years, an attempt to amend the Arkansas Constitution. While these amendments included a number of comprehensive changes for Arkansas, the new provisions would have required the legisla ·ire to create a "statewide public defender system." Defeat of the constitutional amendments also was a setback to any statewide coordinated program, including an AAPD.

3. Making the Case For an Arkansas Appellate Public Defender

Almost immediately after the opening of the office, the AAPD made itself known, at least to the state bar. In March of 1980, a short piece appeared in the bar association News Bulletin, describing the staff of the AAPD, and the scope of the grant. Accompanying the article was a publication of a per curiam order of the Arkansas Supreme Court, dated March 3, 1980, allowing the appointment of the AAPD to represent "all indigent persons on appeals to the Court of Appeals and to the Supreme Court in criminal cases." (A copy of the order is included as Appendix

C.) The caseload of the AAPD quickly snowballed, and by mid-October of 1980, only nine months into the grant, the office had surpassed the number of appointments it had promised to take under the contract, 120. In October of 1980, the AAPD had added an additional attorney to its staff to handle the caseload anticipated under the grant. Review of the briefs filed by the AAPD, conducted by NLADA staff in Washington, revealed no significant problems in format or content, with the possible exception of concern over the disproportionately large percentage of motions to withdraw pursuant to Anders v. California.

Arkansas Appellate Defender Alvin Schay was aware that the Arkansas legislature would begin a 60-day session on January 16, 1981. Anticipating the shortness of the session, Schay turned to both the state bar association and local bar associations for support in lobbying for the AAPD. At about the time of the November elections, Schay began the process of seeking endorsement of a state appellate public defender office through the state bar association committee structure. In addition, Schay sent letters to all of the local bar associations in Arkansas, approximately 80, describing the office and offering to meet.

Before final approval by the state bar association, Schay appeared before three separate committees of the bar. All of the committees were unanimous in their support of a statewide appellate defense office. The only amendment to the legislation was to allow the AAPD to accept appointments for interlocutory appeals, as well as all other appeals provided for in the legislation. All three bar committees, as well as the full board of directors of the state bar, approved the appropriation proposed for the AAPD at approximately $800,000 over the next legislative biennium. The state bar association also agreed to lend the assistance of its own lobbyist to introduce the bill and support it throughout the legislative process.

In addition to the state bar association, Schay received invitations from 16 of the 80 local bar associations to which he had written. He spoke to each of these associations between November 20 and January 2, 1981. At that point, according to Schay, 56% of the cases on appeal came from private lawyers withdrawing after trial representation. Schay asserted that he was received well by all of the groups, that several adopted resolutions in support of the bill, and that all voted for it.

Support of the local associations was made known to either the Governor or to local representatives of the Arkansas legislature. (Appendix D is the original substantive and appropriation bills.)

During December of 1980, Schay also sought the active support and lobbying assistance of the Supreme Court of Arkansas, which had personally informed him of its support for the work of the office and of its belief that the office's performance was a significant improvement over that rendered by private counsel. Schay appeared privately before both the Supreme Court and the Court of Appeals to present information on the activities of the office, and to seek support of the judges for state funding of AAPD.

On December 31, Schay received a letter from the Honorable John A. Fogelman, Chief Justice of the Supreme Court of Arkansas, advising him of the support of the Court, but also informing him that "the Court is in no position to endorse any particular legislative proposal for the creation and funding of the office." While Schay was aware that the Supreme Court rarely involved itself in political issues, he had been hopeful that more active support from the Court would be forthcoming during the legislative session.

In January, Schay attempted to contact Governor White directly to seek his support. Schay spoke to a staff person regarding the possibility of a meeting with the Governor to urge inclusion of the AAPD in the Administration's budget for the coming biennium. Schay's overtures received short shrift. On January 7, 1981, Schay received a letter from the Governor advising him that "it is with regret that I must report that the current financial picture has forced us to cut back on many worthwhile programs and does not allow for the addition of any new programs." The Governor made clear that the AAPD was not to be included in his budget.

Schay continued his efforts to cultivate legislative support by getting a list of all the lawyers in the legislature, a total of 22. Schay contacted each of these legislators directly, either by phone or mail. Schay also obtained the names of the individuals on the legislature's Joint Budget Committee, where the legislation would originate. In many cases, Schay requested that the lawyer-legislator members of the legislature contact members of the Joint Budget Committee to seek their

support. Schay is doubtful that any of those people followed up on his request.

In January, the 60-day legislative session started. Upon inquiry to the paid state-bar lobbyist, Schay was informed that none of the bar's bills, including the AAPD, had been pre-filed. Upon asking for an explanation, Schay was informed that the lobbyist felt that the legislation was doomed because it was not included in the Governor's budget package.

Shortly after the opening of the session, Schay went with the bar lobbyist to visit Senator Max Howell, an influential legislator and member of the Joint Budget Committee. Howell was considered key to the passage of the AAPD bill. During their visit, Schay was shocked to find that Howell had changed from his neutral position of previous months to a violently opposed position. Neither Schay nor the bar lobbyist were able to dissuade Howell from his new but strongly held opinions.

During this same time period, Schay sought active political support from the staff of the Attorney General's office, which had privately praised the work of the office and recognized the administrative advantages of a centralized appellate office. In fact, much of Schay's staff had come from the Attorney General's Appeals Division.

Schay was disappointed to find that he got little legislative assistance from the Attorney General's office.

Prior to consideration by the Joint Budget Committee, Schay states that he was "in contact" with the budget staff, but that he was unable to obtain copies of their reports to the Committee. The first order of business in the Joint Budget Committee entailed passage of what was described as a "supplemental budget" bill. This legislation was designed to allow "emergency" funding for the office during the short gap between the end of the legislative session in February and the termination of federal funding in April of 1980. This legislative approval was required because Arkansas law requires prior legislative approval for all federally-funded projects, despite the fact that the federal funding for the program had been approved by LEAA through April. Upon first consideration by the Committee, the supplemental budget bill received no motion for its passage, and thus died. Immediately after the Committee meeting, Schay went to both the Governor and the Supreme Court to ask for direct

assistance. None was forthcoming from the Governor, but newly-elected Supreme Court Justice Steele Hayes spoke to Senator Howell, urging extension of the program for the two-month period. Howell (and eventually the Governor) relented, a motion was made, and the supplemental budget was passed.

The only other expression of support for the AAPD came from the House Judiciary Committee, where a "do pass" recommendation was made on the authorization bill for the AAPD.

The appropriation bill for the next biennium was modified at the time of its introduction to the Joint Budget Committee to reduce funding during the biennium to approximately $600,000. This revision was made by Schay and the bar lobbyist in response to concerns from legislators that the program would not be implemented at the funding level originally imposed. (A copy of the amended bill is appended hereto as Appendix E.)

Before final consideration by the Joint Budget Committee, the bill was modified a third time to include a budget of only four staff attorneys and total funding of $400,000 (Appendix F). Under this plan, the office was designed to handle a reduced caseload, and all appeals from public defender offices would be handled by public defenders themselves. None of these financial modifications appeared to have an effect on the Joint Budget Committee. Consideration of the bill came suddenly one evening, and was undertaken without testimony from any source. The appropriation bill died for lack of a motion.

The authorization bill, which had proceeded to the House floor, was subsequently defeated by a vote of 45-12, with two present and 44 not voting.

The deep-seated hostility of the legislature to any appropriation for appellate defense of the indigent was demonstrated by a subsequent request directly from the Supreme Court for $120,000 for the biennium to pay the cost of court-appointed attorneys on appeals, due to the denial of funding to the AAPD. The Supreme Court budget included only a small fund of money from the prior biennium, and no new money, due to the anticipated funding of the AAPD. The Committee deferred action on the bill, guaranteeing its defeat, and Sen. Knox Nelson was quoted as saying that the request "galls my gut." This Committee action was

taken despite the fact that testimony from the Chief Judge of the Arkansas Court of Appeals indicated that failure to appropriate adequate fees for counsel on appeal might subject convictions to reversal in federal courts.

C. Arkansas Appellate Public Defender Activity During the Grant Period

This section follows the topical outline used in the Evaluation Design. Cross-reference is made to the relevant Appellate Standards, found in Appendix A of the Evaluation Design.

1. Organizing Services

A. Eligibility (Standards, II-F)

The AAPD did not conduct eligibility determinations, and by the terms of its contract, did not provide service to all eligible defendants.

Under Arkansas rules, the trial attorney must continue as counsel on appeal unless the trial court or Supreme Court allows withdrawal. Rules of Crim. Pro., 36.26. The March 3, 1980 per curiam order of the Supreme Court requires counsel to request withdrawal and appointment of the AAPD. Implicitly, indigency determinations have been made by the trial court. (See Appendix C.) Although the AAPD was assigned 174 appointments during the existence of the office, while the contract called for the acceptance of only 120 cases, not all indigent appeals were assigned to the AAPD. According to records retrieved from the Office of the Executive Secretary of the Judicial Department, 36 appeals were assigned to private counsel between February 1, 1980 and February 16, 1981.

While the office did not maintain records confirming the indigency of its clients, the fact that most clients were incarcerated, and that prior indigency determinations had been made by the Court, militated against the necessity for this review.

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

AAPD offered less than the full range of services, partially due to its large caseload.

A chart describing the activity of the AAPD follows this page (Chart A). As this chart shows, activity by the office in the areas

CHART A

	MONTH	Appoint-ments	Closed	Total Open	Briefs Filed	Anders Briefs	Withdrew/ Dismissed	Reply Briefs	Petitions Rehearing	Pet Review Cert	Oral Argue.	Misc. Motions	Reversed	R&R	Affd Part/ Revd Part	Affirm.	Modified	Rule 37	Work Units*
1980	FEB	3	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	-
	MAR	10	0	13	3	1	0	0	0	0	0	0	0	0	0	0	0	0	-
	APR	21	1	33	8	1	1	0	0	0	0	0	0	0	0	0	0	1	-
	MAY	18	0	51	6	2	1	1	0	0	0	0	0	0	0	0	0	0	-
	JUN	18	2	67	15	0	0	3	0	1	1	0	1	0	0	1	0	0	-
	JUL	17	4	80	9	0	1	4	0	0	0	0	1	1	0	3	0	1	-
	AUG	14	1	93	13	1	1	3	2	0	0	0	0	0	0	0	0	1	-
	SEP	10	17	86	16	4	2	3	2	0	0	2	2	2	0	13	2	2	-
	OCT	14	12	88	13	1	1	7	3	0	0	0	2	1	1	5	1	0	33.5
	NOV	16	15	89	11	1	0	7	1	0	0	0	2	1	1	9	0	0	31
	DEC	12	18	83	12	2	1	7	1	0	0	0	2	2	0	15	0	0	16
1981	JAN	14	9	88	9	2	1	5	1	0	1	1	0	0	1	9	1	0	29
	FEB	5	24	69	7	5	2	4	1	1	1	0	0	0	1	15	0	1	20
	MAR	2	6	65	10	2	0	6	0	1	0	0	0	3	1	3	0	0	21.5
	APR	0	65	45	8	2	3	2	1	1	1	0	0	2	0	13	2	0	-
	TOTALS	174	174	0	140	24	14	52	12	4	4	3	10	12	5	86	6	6	151.0

Additionally, during the last week of April 1981 a Motion to be Relieved was filed in each individual case.

*Work unit data was monitored by NLADA beginning in October of 1981.

of briefs filed, Anders briefs, reply briefs, and petitions for rehearing can be considered normal by most appellate office standards. While only a few petitions for review by certiorari, oral arguments, and miscellaneous motions are indicated on the records, this data frequently requires a longer time period, due to the slowness of the progress of appeals through the appellate system. Many of the cases processed through to decision in the Arkansas Supreme Court simply had not reached the certiorari or oral-argument stage.

Special note should be given to the number of Rule 37 motions (post-conviction petitions) filed by the office during its existence. While projected caseloads for Rule 37 motions set the figure at approximately 40 during the life of the grant, only six were actually filed. The reason for the low number of Rule 37 petitions lies, according to AAPD, in the fact that: 1) Rule 37 petitions require a motion to the Supreme Court prior to their commencement, and such motions are not routinely granted; and 2) because of the shortness of staff, the office filed Rule 37 petitions in only the most difficult or clear cases meriting such action.

The office undertook no interlocutory appeals during its existence, and filed few if any appeal bond motions. While the former is understandable, the latter should not have occurred. While AAPD attorneys felt that bond motions would have been frivolous, attempts should have been made to obtain appeal bond in appropriate cases.

No formal action was taken by the staff in assisting prison inmates with institutional grievances. However, a procedure of regular visits by the office investigator served as an informal mechanism to handle these issues during the existence of the project.

C. Timeliness (Standards, II-G(1), I-E(1) to (5))

While extensions of time were frequently sought by AAPD, such extensions were not of great length, and did not interfere with the efficient operation of the office.

Since approximately November of 1980, appellate counsel worked with a 40-day time limit for the filing of a brief, following notification of the appointment.

AAPD frequently used a procedure known as a "7-day oral extension," by which an informal request for an extension of time could be obtained

by notification to the court and the Attorney General, without the filing of a motion. These were frequently obtained, but the brief was ordinarily filed following a single such extension of time.

Data collected at the close of the operation of the office indicate that motions for extensions of time were made on 120 different occasions. While this number of extensions seems large, the average length of extensions was 16 days. Given the high caseload of the office, this average time delay in the filing of briefs and other pleadings is not excessive. Both the Arkansas Supreme Court and the Attorney General felt that the AAPD was conscientious in filing its briefs on time.

D. Conflict of Interest Cases (Standards, II-E)

AAPD did not adequately handle the question of conflict of interest, and should have had a more specific procedure for such instances.

Records indicate that during its entire existence, only one withdrawal was made due to conflict of interest by appellate counsel. This is an extremely small number, given the total number of appointments at 174.

During the entire existence of the office, few attorneys seemed to have a sensitivity to the question of conflict of interest, particularly when that issue had not been raised at trial. Because such issues may have provided fruitful grounds for appeal, more strict procedures for withdrawal due to conflict of interest should have been developed.

2. Ensuring Quality Of Services

A. Staffing (Standards, I-A(D))

The AAPD should have been independently selected, and failure to follow recommended standards in this regard may well have damaged the future of the program.

By the terms of the contract between ADDP and Arkansas, all employees of the AAPD were within the Governor's administration. The director of the office was chosen by the Governor. All additional staffing was conducted by the Appellate Defender. As is demonstrated throughout this report, the Appellate Defender proved to be a capable administrator who carried a substantial caseload himself. However, the method of his selection did not follow recognized standards, which

require selection on the basis of merit by an independent committee or board consisting of both lawyers and non-lawyers.

The Appellate Defender chosen by Governor Clinton had all of the qualifications suggested by relevant appellate standards. However, the close affiliation with the Governor himself may well have been damaging to the program, due to the defeat of Governor Clinton in November. The fact that the program was closely associated with a Governor of one party makes it a highly visible target for a succeeding governor of another party. While this factor was never directly stated as an issue in the choice not to continue the program, several persons interviewed, including AAPD staff, suggested that this may have been a factor in denial of state funding for the program.

While close alliance with a single branch of government may well prove to be a benefit to the program, political insulation and independence have almost always proved to be the best path. The results of failure to follow recognized standards for selection of the appellate defender speak for themselves.

Staff selection by the Appellate Defender was uniformly good, and frequently included highly-experienced appellate advocates. The director of the program wisely anticipated heavy caseloads, and requested an additional staff position prior to the time the caseloads surpassed those expected. The hiring of an investigator also proved to be of significant benefit to the program.

Efforts to obtain salary parity with attorneys of comparable experience in the Attorney General's office were never achieved. In fact, attempts to include salary parity in the proposed bill to create a state-funded office may have done damage to the legislation. Several local lawyers expressed their resentment and skepticism at a proposal by AAPD to pay its starting attorneys at rates of $4,000 to $5,000 more than those paid by private practitioners in the local area for new associates. While attempts to achieve salary parity with the Office of the Attorney General were admirable, a saleable package might have included salaries at a reduced rate.

B. Training (Standards, I-K(1) and (2))

The AAPD made highly commendable use of available training for staff.

As eventually adopted, the AAPD budget included training funds of approximately $5,500. The AAPD made exemplary use of this money during its existence.

AAPD sent several staff to an ABA-sponsored appellate advocacy program in the District of Columbia shortly after the office began. In October, a seminar sponsored by the AAPD for appellate and trial lawyers was held in Arkansas, with additional assistance from the Arkansas Crime Commission. Outside faculty attended that conference, which proved to be immensely successful. Finally, the director and one of his staff members attended the NLADA Annual Conference in November, at which time appellate problems were discussed both formally and informally among the representatives of appellate defender offices.

The director enouraged outside review of briefs from NLADA, as well as from the consultant to the "short-term" evaluation. Within the office, a well-developed, informal system of discussion, review, and instruction existed. Periodic meetings to discuss issues were held throughout the life of the grant, and the size of the office lent itself to this informal system for discussion of issues.

No formal review by a single attorney existed prior to the filing of briefs. Such a system should have been used to guarantee uniformity of issues and content in briefs filed.

C. Caseload (Standards, I-F, I-G)

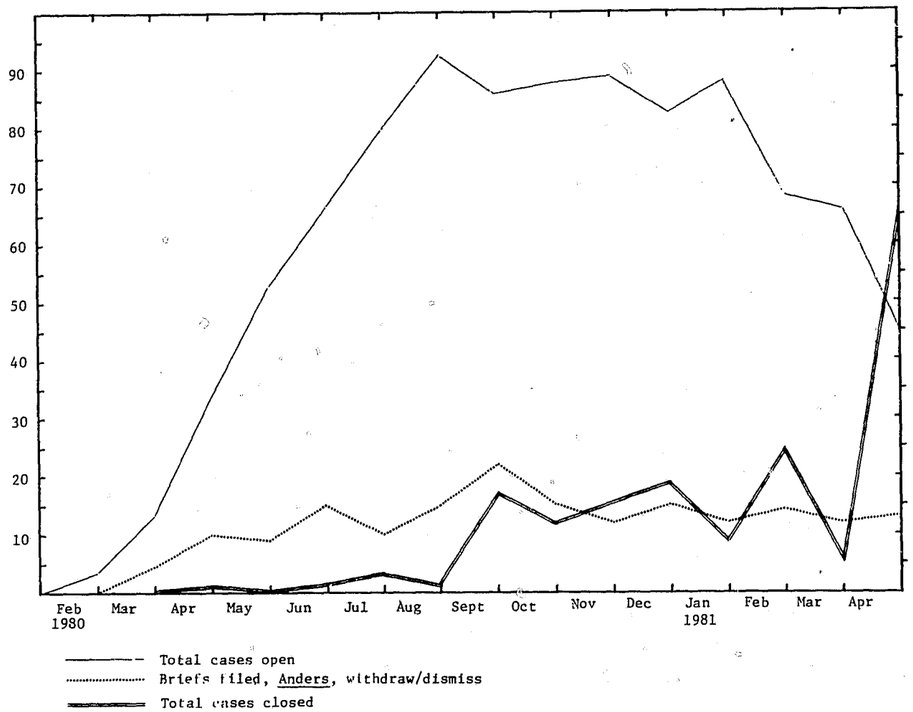
Caseload handled by the AAPD far exceeded that recommended by national standards and the norm in similar offices.

As previously noted in this document, the original contract with the AAPD called for a caseload limitation of 120 cases. Ultimately, the office undertook representation in 174 cases. This number of cases resulted in an approximate caseload per attorney of 23 per year, based on a staff of 7.5 attorneys.*

*7.5 attorneys is calculated by including the director as a full-time attorney, and by counting the additional staff attorney added in August as one-half during the grant period.

This caseload-per-attorney somewhat exceeds that recommended at the outset of the grant of 20 cases per attorney, which also comports with national standards. (Standards, I-H(1).)

Figure A, below, depicts caseload development over the life of the grant.



No accurate data of caseload by attorney was kept by the office. During October, the director commenced usage of a document entitled "Weekly Caseload Status Report." (A copy of that document is appended hereto as Appendix G.) While that document indicated cases pending and briefs filed during a week-long period, no cataloging of this information was made on a systematic basis by the director or by the secretary. Such information should have been kept in order to accurately track individual attorney activity.

No appointments were refused for caseload reasons. As is demonstrated most graphically in the succeeding section on work-unit activity, the output of the project attorneys was monumental. While their dedication is to be admired, the heavy caseload undertaken by the office would have resulted in nearly impossible workloads when additional activity would have been required, particularly in the area of oral argument, petitions for review by certiorari, and Rule 37 petitions.

Gross calculations of cost-per-case are always deceptive and potentially misleading, depending on the statistics used. However, the highest possible cost-per-case for the AAPD is calculated by dividing the total grant budget by the number of initial dispositions during the life of the grant.*

The total grant budget was $435,000, divided by 178 total dispositions. This yields a cost-per-case of $2,444.

D. Case Weighting and Staffing Ratios (Standards, I-F, I-H)

Use of projected case weighting methods through measurement of work units reveals that project attorneys produced a quantity of work 2½ times that recommended by national standards.

Work-unit measurement at the AAPD began in October. Accurate work-unit measurements were kept until the close of the grant period. Using the work-unit measurements set forth in the Standards for Appellate Defender Offices, AAPD produced 151 work units between the months of October 1980 and March 1981, a sixth-month period. During the same period, the office filed approximately 80 initial dispositions, or approximately 45% of the total initial dispositions filed during the life of the grant.

Projecting this total into work-unit measurement yields a total work-unit production during the life of the grant of 336.** This figure is particularly significant as it relates to cost per work-unit, a more accurate measurement of the operating costs of the office. Using the total work-unit figure of 336, divided by the total project grant of $435,000,

*"Initial disposition" is defined as the filing of a brief, a motion to withdraw pursuant to Anders, or a motion to withdraw or dismiss on other grounds.

**Such figures could, of course, drastically fluctuate with appointment to one of more cases in which the death penalty had been imposed.

yields a cost-per-work-unit of $1,295. Although this method yields lower costs than cost-per-case, it still could not politically compete with costs of $150 to $200 per case before AAPD's existence.

E. Library and Resources (Standards, II-G(2))

The AAPD had the minimum appropriate library materials recommended for appellate offices.

The office has a few treatises not considered absolutely necessary in an appellate office and lacks only a couple of those which are recommended: a state law encyclopedia if one exists, local law reviews, ABA Standards, and a legal dictionary.

The AAPD reports that even though Arkansas provided the appellate office with a set of statutes and Arkansas Reports at no cost to the office, the library represents an investment of more than $9,000. This expenditure is consistent with the experience of other appellate offices.

F. Case Assignment (Standards, II-B and C)

The informal case assignment method was adequate for AAPD, given the size of its staff, but better case flow management was needed during the life of the grant.

Informal assignment on a regular rotation basis, with informal allowances made for workloads and schedules or particularly difficult cases, was the rule used by AAPD. While this system may not prove to be effective in larger offices, it resulted in no drastically heavy caseloads per attorney during the life of the grant.

However, AAPD did not establish an accurate form for measurement of case flow until October, when the "weekly caseload status report" was adopted. Even this document does not adequately measure case flow, however, because no centralized person was asked to log the numerical results of the caseload status report.

3. Providing Quality Services

A. Client Contact (Standards, I-1)

The AAPD maintained minimal personal client contact.

Attorneys at AAPD relied heavily on the investigator to interview clients who raised questions regarding appeals. 155 client interviews

were conducted by the investigator. Indications were that few clients were personally visited by attorneys, and that most attorney-client communication was by mail. Again, this situation was brought about as a result of heavy caseloads and long distances to prisons. However, national standards strongly recommend that client visits be a part of effective appellate representation.

B. Trial Counsel Contact (Standards, I-J)

Rapport with trial counsel improved over the existence of AAPD, and was greatly enhanced by a conference involving trial and appellate attorneys in Arkanasas.

Unfortunately, no systematic efforts were made to guarantee contact with trial counsel, such as the use of a form letter indicating the willingness of AAPD to discuss the case with trial counsel, or some other such mechanism. AAPD attorneys uniformly appreciated contacts by trial lawyers prior to their preparation of briefs. AAPD should have adopted a formal procedure to guarantee constant contact with trial counsel on a routine basis.

Ineffective assistance of counsel issues were raised by the office on only four occasions. Two reasons were offered for this. First, such attacks in Arkansas lie only under Supreme Court Rule 37, the collateral attack rule. This procedure requires prior approval by the Supreme Court and lengthy trial court proceedings. Second, there is no "plain error" in Arkansas. The Arkansas Supreme Court instructed the office not to raise issues not objected to by counsel at trial. State v. Wicks, #CR 79-194 (Ark. S.Ct., Oct. 20, 1980). Unfortunately, this small number of claims does not demonstrate an aggressive posture by AAPD in seeking relief for its clients, particularly insofar as such claims may give rise to relief on federal habeas corpus. Active pursuance of claims of ineffective assistance of counsel may well have given rise to an argument that inadequate fees, at both the trial and appellate level, would result in greater systemic cost in the long run.

C. Brief Preparation (Standards, I-L)

Briefs filed by the AAPD were consistently prepared and filed in an average to above-average professional manner.

(The topic of "brief preparation" was dealt with extensively at pp. 19-23 of the "short-term" evaluation. Those comments and observations are applicable here, and will not be repeated.)

No written policies or procedures existed for issues conferences or review and screening of briefs. However, standards procedure included an issues conference and final review and screening by either Ray Hartenstein, the First Assistant, or the Appellate Defender himself.

Comments from the Attorney General's office, the court and trial attorneys led the evaluators to conclude that the briefs filed by AAPD were a vast improvement over those previously prepared by either the public defender or private counsel. With few exceptions, praise for the major work product of the AAPD was uniform.

While certainly not the definitive measure for the effectiveness of briefs prepared, favorable decision rates in the office provide some measure of the persuasiveness of the work produced. (This is particularly so given the small number of oral arguments undertaken by the office. See Section D, infra.) Of the 119 cases in which decisions were rendered during the life of the office, the Appellate Defender achieved some relief in 33 cases, or 28% of the total dispositions. This success rate reflects very favorably upon the quality and persuasiveness of the briefs prepared.

D. Oral Argument (Standards, I-M)

Oral arguments were not used effectively during the life of the grant.

Oral argument is mandatory if requested. Supreme Court Rule 18(a). Only four cases, or 3% of the total cases decided during the life of the grant, were orally argued by the AAPD. Whatever the reasons for failure to orally argue, this is simply too few cases.

This small number reflects a general reluctance by many of the staff attorneys to undertake oral argument. While senior staff seemed to share an opinion that oral argument in cases might do more harm than good, national standards strongly recommend the use of oral argument,

and sound policy predicates these standards. Basically, oral argument serves the dual purpose of educating the court and "humanizing" the case, while also providing an opportunity for appellate counsel to explain any questions which may have been left unanswered by the written brief. While staff seemed to understand this principle in theory, practice indicated very little attention to this aspect of appellate advocacy.

E. Anders Cases (Standards, I-O)

Serious problems concerning both the number and quality of Anders briefs filed continued to occur throughout the life of AAPD.

NLADA grant staff expressed its concern over the use by AAPD of Anders motions almost from the outset of the office's operation. Extensive time was spent during both the April office visit and the October short-term evaluation in discussion of this topic with senior staff. Several alternative approaches were discussed. Despite these discussions, little change took place in the number of Anders motions filed.

In all, 24 Anders briefs were filed by AAPD, representing approximately 13% of the total initial dispositions filed by the office. This number is too high. Moreover, those motions which were filed tended to reflect a confusion by the attorney as to the purpose of an Anders brief. Not uncommonly, it appeared to NLADA staff that arguable issues were included in Anders briefs. Moreover, although AAPD staff indicated that the absence of plain error and a strict ineffective assistance of counsel standard prevented them from filing briefs on direct appeal, little evidence exists that collateral attacks were aggressively pursued in lieu of the direct appeal. While this may reflect again the heavy caseload of the office, the failure to pursue collateral attack appears to have accompanied the unusually high number of Anders motions filed.

F. Discretionary Appeals (Standards, I-N)

Because of the short life of the project, and slow disposition of cases, not enough discretionary appeals were taken to develop valid conclusions in this area.

Petitions for review by certiorari were filed in four cases during the life of the grant. Three of these were filed in the last three months. Thus, it appears likely that, had the project continued, more opportunities for petitions for review would have occurred and been pursued.

4. Relationship with the Legal Community (Standards, II-H)

AAPD'S relationship with the legal community was stronger than any of its other outside contacts, including the administration, the legislature and the public.

AAPD's relationships with the legal community were strong at the outset of the grant, and improved as time went on. This was true with the courts, the Attorney General, the private bar and public defenders. The training session during the middle of the grant contributed greatly to this, as did Mr. Schay's efforts to cultivate private bar support for continuation of the project. Resistance to the project existed primarily in the political community, as well as among the public. AAPD was simply unable to capitalize on the respect which it had earned among the legal community to gain a political foothold in the legislature.

5. Office Administration

A. Internal Structure (Standards, II-D-2)

Internal supervisory structure during the life of the grant was informal, but adequate. Internal budgetary structure was excellent.

As described elsewhere in this evaluation, internal supervisory structure provided for discussion and review of cases by either the First Assistant or the Appellate Defender. This structure was logical, due to the experience of those individuals. Moreover, the small size of the office staff lent itself to a less-formalized supervisory methodology.

Budgetary decisions during the life of the grant, such as were needed, were made based on firm financial data provided by the administrative assistant, whose primary duties related to finance. Because a sound financial structure was implemented at the outset of the grant, few problems occurred in this area.

B. General Procedures (Standards, II-A)

No general office procedures were developed during the life of the grant, but were unnecessary due to the size of the staff.

No office manual was developed during the life of the grant. Had the project continued or staff been expanded, the need for such a manual would have become greater, but the evaluators are unable to say that such a manual was necessary during the life of the grant.

Forms used in the appellate practice of the office were neither so complicated nor so extensive as to require development of a form book. Most attorneys and secretaries understood the rules of practice, as well as forms, well enough to operate without the necessity of a form book.

C [illegible]sonnel (Standards, I-A, I-C)

The staff selected by the office met high standards of professionalism, despite moderate salaries.

All office staff, with the exception of an additional attorney and the investigator, were selected shortly after the opening of the office. During the life of the grant, only one secretary was dismissed for failure to adequately perform. All office staff were selected competitively.

Two of the staff attorneys were originally hired as law student interns and were later admitted to practice in Arkansas. This is typical for appellate offices, and provided the office with a new and highly-dedicated component at the staff-attorney level.

Staff salaries were never close to comparable prosecutorial salaries. In fact, one of the political difficulties encountered by the bill proposing a continued operation was an attempt by the Appellate Defender to create salary parity between the AAPD and counterparts on the Attorney General's staff. While parity with the Attorney General appeared justified, many local attorneys criticized the office for proposing salaries for new assistants which were up to $4,000 higher than those received by new attorneys in the local private market.

Sexual and racial mix within the office was adequate given local conditions. Three of the eight staff attorneys were women, and one was black.

D. Information Management (Standards, II-B)

AAPD did not develop an adequate system for information management.

AAPD did not adopt any of the recommended forms offered to each of the appellate offices by NLADA staff. Instead the office used a ledger book into which each case was entered on a horizontal line,

and information for all cases recorded in columns. The information recorded for each case was:

1) APD number in sequential order
2) Case name and court
3) Trial: County and presiding judge
4) Trial court and appellate court number
5) Name of defense counsel
6) Name of prosecutor at trial
7) APD attorney assigned
8) Appellate prosecutor
9) NLADA copy of brief sent
10) Date of notice of appeal filed
11) Transcript due date
12) Reviewer's initials
13) Appellant's brief due and filed dates
14) Appellee brief due and filed dates
15) Reply brief due and filed
16) Decision: date and author
17) Petition for rehearing due and filed date.

This book was AAPD's method of recording office case flow and watching for filing and brief due deadlines. While a number of recommendations were made to improve tracking of cases, few of these recommendations were adopted by the office. In general, attorneys were left to keep track of important due dates on their own.

In October of 1980, the Appellate Defender instituted a "Weekly Caseload Status Report" (see Appendix G). This form was adopted to assist the Appellate Defender in tracking the number of cases currently carried by office attorneys, and to provide a method for checking on attorney activity during each week. While copies of the separate forms were kept, no central log was maintained to monitor individual attorney performance during any given period. Therefore, the Appellate Defender was without any effective method for accurately assessing staff trends in performance, or in overall staff strengths and weaknesses.

No attempts were made to track the amount of time spent in the preparation of cases.

E. Facilities (Standards, II-G-1)

While initial office facilities were abysmal, office space eventually taken over by AAPD was more than adequate to promote professionalism among the staff.

At the outset of the grant, all office staff shared one crowded room with head-high dividers separating the attorneys and secretaries from each other.

Several months later, the office was able to expand across the hall. In addition to individual, fully-walled, private offices for each attorney, the secretaries used a common space centrally located, and attorneys were able to use additional space for a meeting room and library.

The office was conveniently located across the street from the Supreme Court, and distances to local correctional facilities were not onerous.

Security, heating and lighting were above average, and these quarters were comfortable and attractive.

F. Equipment (Standards, II-G-4)

Equipment utilized by AAPD was eventually adequate to serve all staff needs.

The only equipment difficulty experienced by AAPD during the life of the grant was the need for an additional word processor. One proved inadequate for the output of the office. This request was eventually honored, and two word processors were used during the remainder of the grant.

Each of the office attorneys was equipped with dictating equipment which appeared to be used sporadically but effectively.

D. Arkansas' Refusal to Adopt an Appellate Defender Office

The failure of the Arkansas legislature to create and fund an Appellate Defender Office appears to be based on an inextricable combination of politics and economics. As is demonstrated elsewhere in this report, the office performed its functions well and achieved a respected status among trial and appellate counsel and judges. Some criticism can be leveled at the office's failure to adequately make its own case,

but little negative can be said about the client advocacy or administrative aspects of the program.

I. The greatest single factor in the refusal to continue the Appellate Public Defender lies in the defeat of Governor Bill Clinton in November, 1980.

In the general election of November 4, 1980, Frank White, a Republican and fiscal conservative, defeated Democrat Bill Clinton, the ostensibly popular first-term incumbent. Governor Clinton had offered his personal support, and virtually guaranteed legislative backing, to the creation of a cost-effective state-wide appellate defender office since its inception in November of 1979. The Governor lent the support of the Arkansas Crime Commission in the set-up of the office and personally signed the contract creating the office in January of 1980.

After the announcement of the dismantling of the Law Enforcement Assistance Administration (LEAA) in April of 1980, Governor Clinton continued his active support, by allowing the transfer of much of the Crime Comission's furniture to the new office for its use.

Clinton's defeat in November came as a surprise to political analysts. National news coverage predicted his easy victory early in the evening of November 4th. However, Clinton was defeated by Frank White, who came to office on a wave of national concern with excessive governmental spending and suspicion of federal bureaucracy.* These national sentiments were reflected particularly intensely in Arkansas, where the new Governor promised "no new federal programs," and appeared to have the support of the legislature.

On January 7, 1981 the office was informed by the new Governor that the office would not be included in his legislative package. The Governor stated, "The current financial picture has forced us to cut back on many worthwhile programs and does not allow for the addition

*A constitutional referendum which would have required the legislature to create a "statewide public defender system" was also soundly defeated on November 4. This is not seen as a strong signal against continued funding, however, for two reasons. First, the provision requiring statewide public defense was part of a comprehensive constitutional amendment process. Second, this was the second unsuccessful attempt to amend the Arkansas Constituton in the last seven years.

of any new programs." Without the active support of the Governor's office, much of the momentum and support from the legislature also dwindled.

The Governor's opposition to spending and pick-up of federal programs was demonstrated repeatedly during his administration. Local newspaper articles demonstrate the seriousness of the Governor's intentions. In early March, he vetoed the pick-up of a federally-funded position for Judicial Council coordinator, and later in the month vetoed 25 other spending bills (see Appendix H for articles from the Arkansas Gazette of March 3, 1981 and April 1, 1981). This opposition virtually guaranteed that, even with legislative approval, a veto override would have been required to establish the office with state funds. The lack of strong support for the program made this prospect virtually impossible.

II. Because of the existing fee structure and practices in Arkansas, the AAPD could not mount a persuasive cost-effectiveness argument.

Prior to the existence of the AAPD, fees in appellate cases were awarded to appointed counsel on a discretionary basis from a fund administered by the Supreme Court. Public Defender offices in nine areas handled their own appeals, at county expense. No accurate data exists as to the total cost to the state and counties of indigent criminal appeals prior to the establishment of the AAPD.

Estimates from the Chief Justice of the Arkansas Supreme Court put the average award for an appellate representation at approximately $150 to $200 per case. The AAPD estimated the average award to private counsel during the existence of the office at approximately $700 per case. The increase came from the existence of money in the Supreme Court's account which had been appropriated prior to the establishment of the Appellate Public Defender.

These dismally inadequate fees for appointed private counsel, even during the AAPD's existence, made a cost-effectiveness argument very difficult. Such arguments are particularly difficult because of increased short-term starting expenses and the short life of the federal grant period.

Matters were not helped by an unforeseen and unexpected decision of the Arkansas Supreme Court upholding the $350 statutory maximum

for appointed counsel in trial cases. In State v. Ruiz and Van Denton, 269 Ark. 331, 602 S.W. 2d. 625 (1980), the Arkansas Supreme Court ruled that the legislature acted within its power in setting the maximum fee, and that the fees were not unconstitutional. In its decision, the court noted:

> Let it be said now that there is no question that the present statute, as we interpret it, does not allow for adequate compensation of competent appointed attorneys in many cases. State v. Ruiz and Van Denton, supra, 269 Ark. at 333.

Elsewhere the court said:

> We do not imply that the present stautory allowances even come close to providing adequate compensation for the services performed in this case. Id., at 335.

Despite these statements, the court felt bound by the legislature which amended the fee schedule as recently as 1977.

While Supreme Court rules allow the award of appointed counsel's appellate fees in the court's discretion, the legislature controls the amount to be included in the Supreme Court's budget. To date, the court has not seen fit to confront the legislature on the amount appropriated and instead seems content to divide the amount appropriated between all appointed counsel. The court will be severely limited in this respect during the coming biennium.

III. National and local economic conditions and mood made funding of the office extremely difficult.

The greatest single economic factor in refusal to adopt the AAPD is set forth in Conclusion II above. Howver, other economic factors played critical roles in the defeat of the office.

First is the general economy of Arkansas. In 1978, Arkansas ranked 49th among all states in both per capita and household incomes. This extremely low standard of living makes all allocations of governmental funds especially difficult from the outset.

Second, the loss of national support for continued funding of LEAA had immeasurable local impact. The short grant period made initial costs of the program especially high, and the "leveling" effect of continued operation could not be demonstrated. In addition, the elimination of federal support to law enforcement programs conveyed a sense of

change in funding priorities to local officials, however efficient the office might prove to be.

Third, local funding priorities were further aggravated by deep-seated legislative hostility to underwriting any costs of court-appointed counsel. This is most graphically demonstrated by one legislator's statement that a Supreme Court request for additional funds to compensate appointed counsel on appeal after elimination of the AAPD "galls my gut." (See Appendix I, article from Arkansas Gazette of March 6, 1981.)

Finally, the AAPD may have tried for too much, too soon. The initial budget for the office, as presented to the State Bar Association, called for approximately $800,000 for the 1981-82 biennium. After significant negotiation, the budget was amended to a total of $400,000 for the biennium, with all appeals by public defender offices to be handled and paid for locally. A substantial number of persons questioned during the final evaluation felt that the budget of the office was more than the legislature could swallow, even in its final amended form. Even the legislation's sponsor, a lawyer from North Little Rock, stated his opposition to starting salaries of $18,000 when local law firms were offering $14,000 to $15,000.

IV. Failure to achieve state funding was not related to the quality of work performed by AAPD.

As noted elsewhere in this report, the quality of work performed by AAPD was universally perceived as above average to excellent. During legislative debate as to the continuation of the office, and behind the scenes, no significant criticism surfaced as to the effectiveness, management, or quality of the work product of the office as factors in state funding. In fact, every indicator is that the legislature focused entirely on the cost and "constituency served" issues, acting in complete ignorance of quality of services performed by AAPD.

V. Some responsibility for failure to achieve state funding lies with AAPD, which failed to adequately make a case for its continued existence by use of readily available data, education of the bar and public, and effective legislative advocacy.

When faced with difficult obstacles to continued funding, AAPD seemed more resigned to its fate than willing to try every possible avenue

for funding support. The office seemed to be particularly short on advance information as to cricual legislative votes. Moreover, while AAPD decided early on a "low-profile" approach, not enough was done to cultivate active legislative support through written materials and grass-roots efforts. Finally, education of media, bar and legislature was almost totally lacking.

The Appellate Defender expressed some surprise at the lack of knowledge among the bar, the legislature and the general public about the work, or even the existence, of the AAPD office. Publicity included a short announcement in the bar newslsetter, a per curiam order of the Supreme Court of the same month (March 1980), notification of trial judges by the Supreme Court, and two lengthy articles in the Arkansas Gazette which appeared during the year.

More important than public exposure, however, was the failure of the office to make its case by using some of the extensive statistical information upon which it could have relied. The office did not make use of its own workload information in making its case, nor did it attempt to retrieve any data from the court or clerk on work performed on appeals by the private bar and the various public defenders. The office used only a single form to collect its attorney caseload information, called "Weekly Caseload Status Report," which was commenced in October of 1980.

The office did produce a proposed statute and appropriation, which the State Bar Association unanimously agreed to sponsor at a funding level of $800,000 for the biennium.

Appendices

A. Grant budget (as adopted by AAPD)

B. Opinion in State v. Ruiz and Van Denton

C. Per Curiam order of Arkansas Supreme Court, 3/3/80

D. Original draft AAPD bill ($800,000 appropriation)

E. Amended budget bill ($600,000 approp.)

F. Amended budget bill ($400,000 approp.)

G. Weekly Caseload Status Report form

H. Arkansas Gazette articles, 3/3/81 and 4/1/81

I. Arkansas Gazette article, 3/6/81

APPENDIX A

ARKANSAS STATE APPELLATE DEFENDER

15 Month Budget
February 1, 1980 - April 30, 1981

PERSONNEL	Date of Hire	5 mo. base Annual pay	5 mo.pay	10 mo.base Annual pay	10 mo.pay	15 Month TOTAL
Chief Defender	2-1-80	$ 28,000	$ 11,665	$ 29,960	$ 24,960	$ 36,625
Chief Deputy Defender	2-1-80	26,500	11,040	28,090	23,400	34,440
Deputy I	2-1-80	23,500	9,790	24,910	20,750	30,540
Deputy II	2-1-80	22,500	9,375	23,850	19,870	29,245
Deputy III	3-17-80	21,500	6,269	22,790	18,990	25,259
Deputy IV	4-14-80	18,642	3,883	19,656	16,380	20,263
Deputy V	5-12-80	17,680	2,209	18,668	15,550	17,759
Administrative Asst.	2-1-80	18,148	7,560	19,162	15,960	23,520
Investigator	5-12-80	13,884	2,892	14,664	12,220	15,112
Secretary	3-1-80	11,128	4,635	11,752	9,790	14,425
Secretary (20 9,500)	2-1-80	19,000	7,915	20,644	17,200	20,585
Law Clerk (20 10,426)	3-1-80	20,852	6,944	21,996	18,320	25,264
				TOTAL SALARIES		$ 293,037

F. I. C. A. (6.13%)
State Retirement (12%) TOTAL 18.13% = $ 53,127

Health Insurance
$23 month x 7 employees x 15 months 2,415
$23 month x 91 months for 7 employees
at staggered hiring dates 2,093

TOTAL FRINGE $ 57,635

TOTAL PERSONNEL $ 350,672

NOTE: 1981 salaries reflect increase based on the past history of merit and cost-of-living increases in the State of Arkansas.

CONTRACT SERVICES

Expert Witnesses	TOTAL	$ 5,000

TRAVEL

Intra-State: 15,000 miles x .18 per mile		$ 2,700
Inter-State:		
Management Training Workshops		
1 trip x 2 persons x 3 days each trip		
Airfare, 2 x 230	$460	
Per Diem, 2 x 3 x $50/day	300	
Ground Transportation, 2 x $20	40	
	$800	
Continuing Legal Education		
7 trips, 4 days each		
Airfare, 7 x $250	$1,750	
Per Diem 7 x 4 x $40/day	1,120	
Ground Transportation, 7 x $20	140	
Tuition, 7 x $250	1,750	
	$4,760	
		$ 5,560
TOTAL TRAVEL		$ 8,260

SUPPLIES

Consumable, $25/month x 14 employees x avg. 14 months	$ 5,200
Postage, $300 month x 15 months average	4,500
TOTAL SUPPLIES	$ 9,700

EQUIPMENT

1 IBM Selectric Typewriter	$ 900
7 Legal File Cabinets @ 150 each	1,050
5 Secretarial Desks @ 300 each	1,500
5 Secretarial Chairs @ 100 each	500
8 Executive Desks @ 400 each	3,200
8 Executive Chairs @ 100 each	800
20 Side Chairs @ $50 each	1,000
3 Library/Student tables @100 each	300
10 Library/Student chairs @ 35 each	350
6 Dictating/Transcriber units @ 450 each	2,700
6 Desk set-ups @ 25 each	150
10 Book shelves @ 200 each	2,000
2 Word processors, leased @ 625 month x 14 months	8,750
Library books, Subscriptions, Professional Associations	8,000
TOTAL EQUIPMENT	$ 31,200

OTHER

Lease Photocopy Equipment		
Brief copying, 165 briefs x 40 pages each, 25 copies each @ .04 page	$ 6,600	
Miscellaneous copying $240 month x 15	3,600	
		$ 10,200
Space Rental		
1892 square feet x 5.50 square foot (includes janitorial and utilities)		
5 months	$ 2,178	
10 months	10,406	
		$ 12,584
Telephone		
$500 month x 15 months		$ 7,500
TOTAL OTHER		$ 30,284

BUDGET TOTALS

Personnel	$ 350,672
Contract Services	5,000
Travel/Training	8,260
Supplies	9,700
Equipment	31,200
Other	30,284
	$ 435,116
Federal Disc. Funding	$ 359,152
Cash Matching	63,380
Rent (Match)	12,584
	$ 435,116

that a well drilled would not be productive because of the gas cap. Nor did he want any adjacent property owners to share in the production. Amoco had a choice, after the permit was granted to Murphy, to either drill the well or permit Murphy to drill it at an extreme penalty to Amoco. Either way, Amoco lost and Ware lost. Nobody wanted the well, only the benefits if the field were unitized. Ware argues that Amoco's loss was diminished when the unitization agreement was approved; that unitization cut Amoco's losses. That may be true, but that alone is insufficient to support a finding of self-dealing. If unitization had not been approved and if the case had been appealed to a court of last resort, whatever that court may be, it could have worked to a greater detriment to both Amoco and Ware. Furthermore, it would obviously have worked to the detriment of other parties, including Ware, who had an interest in the field. The evidence indicates that the reasonable and prudent thing to do is exactly what Amoco did.

Ware argued at the trial level and on appeal that Amoco acted in bad faith throughout this entire period of time. At one point Ware argued that Amoco damaged him by delay in appealing the decision of the Oil and Gas Commission. Now Ware is arguing that it was wrong not to appeal the decision of the Oil and Gas Commission. There were numerous allegations of bad faith and misconduct on the part of Amoco but there was no evidence to support those allegations. Ware testified that any promises that were made were brought out in the testimony before the Oil and Gas Commission. We have examined the record and we can find no promise Amoco made that Amoco had the power to fulfill that was not done or diligently pursued.

For the reasons stated, we must conclude the findings are clearly erroneous and the decree is reversed.

Reversed.

STATE of Arkansas, Appellant,

v.

Paul RUIZ and Earl Van Denton, Appellees.

No. 80-10.

Supreme Court of Arkansas.

June 23, 1980.

Rehearing Denied Aug. 25, 1980.

State appealed from a decision of the Circuit Court, Conway County, Charles H. Eddy, J., awarding reasonable attorney fees to attorneys representing indigent criminal defendants and holding statute limiting such payments unconstitutional. The Supreme Court, Purtle, J., held that statute limiting payments to attorneys representing indigent criminal defendants to $100 for investigation expenses and $350 for attorney fees did not violate provision of Constitution providing for separation of powers and therefore trial court was bound by such statute.

Reversed and remanded.

1. Constitutional Law ⇐48(1)

Acts of legislature carry strong presumption of constitutionality.

2. Constitutional Law ⇐48(1)

If it is possible to construe an act to be constitutional, Supreme Court must do so.

3. Attorney and Client ⇐131
Constitutional Law ⇐52

Statute limiting payments to attorneys representing indigent criminal defendants to $100 for investigation expenses and $350 for attorney fees did not violate provision of Constitution providing for separation of powers and, therefore, trial court was bound by such statute.

Steve Clark, Atty. Gen., by Joseph H. Purvis, Deputy Atty. Gen., Little Rock, for appellant.

Lessenberry & Carpenter by Thomas M. Carpenter, Little Rock, for appellees.

PURTLE, Justice.

The style of this case may be misleading because it involves only the attorneys' fee portion of the second trial of Ruiz and Denton. This opinion does not attempt to reach any part of the trial in chief on its merits.

After the second Ruiz and Denton trial was completed, the attorneys, Ike Laws, Joseph Cambiano and Thomas M. Carpenter, petitioned the court for appropriate attorneys' fees. The fees were to be paid by Logan County, even though the trial was held in Conway County on change of venue.

The trial court considered the claim for attorney's fees on the merits of the claims by the respective attorneys. The trial court held that Ark.Stat.Ann. § 43-2419 (Repl. 1977) violated Art. 4 § 2 of the Arkansas Constitution. The court took into consideration all the factors which determine reasonable attorney's fee. We do not consider the reasonableness of the fees awarded to the attorneys in this case. All three of the attorneys are capable and respected. The question is whether the fees were legally awarded.

Ark.Stat.Ann. § 43-2419 (Repl.1977) states in part as follows:

> Whenever legal counsel is appointed by the court of this State to represent indigent persons accused of crimes, whether misdemeanors or felonies, such court shall determine the amount of the fee to be paid the attorney and an amount for a reasonable and adequate investigation of the charges made against the indigent and issue an order for the payment thereof. The amount allowed for investigation expense shall not exceed One Hundred Dollars ($100.00) and the amount of the attorney's fee shall not be less than Twenty-Five Dollars ($25.00) nor more than Three Hundred and Fifty Dollars ($350.00), based upon the experience of the attorney and the time and effort devoted by him in the preparation and trial of the indigent, commensurate with fees paid other attorneys in the community for similar services.

Let it be said now that there is no question that the present statute, as we interpret it, does not allow for adequate compensation of competent appointed attorneys in many cases. Who then should pay for these services? Should it be the state, the county, or the attorneys? These are the only sources of payment in cases of indigents who have the constitutional right to be represented by counsel but have no means for payment of the fees.

[1-3] At common law there were no provisions for payment for those attorneys appointed to defend indigents. Neither the state nor the federal constitutions make provisions for payment of attorneys in such cases. The General Assembly has enacted the foregoing statute which will adequately pay attorneys for trials lasting no more than one day. The monetary limits are expressly stated in the statute to be between $25 and $350 even though other language in the statute implies that the attorneys should be paid a fee commensurate with fees paid other attorneys in the community for similar services. The acts of the legislature carry strong presumption of constitutionality. *Jones et al. v. Mears et al.*, 256 Ark. 825, 510 S.W.2d 857 (1974); *Pulaski Co. ex rel. Mears v. Adkisson, Judge*, 262 Ark. 636, 560 S.W.2d 222 (1978). If it is possible to construe an act to be constitutional, we must do so. *Stone v. State*, 254 Ark. 1011, 498 S.W.2d 634 (1973). We have dealt with a question very closely related to this in *Mears v. Adkisson*, supra, 262 Ark. at 638, 560 S.W.2d at 223, where we stated:

> We hold this order was entered without judicial authority because it determines and orders payment of salaries and expenses for the Public Defender's office. Such action is a legislative and not a judicial function. The order . . . which authorizes the circuit court to set salaries—are in violation of the separation of powers doctrine of the Arkansas Constitution. Ark.Const., Art. 4, § 2.

The above quotation was from a decision where we held the circuit judges did not have the authority to set the salaries of public defenders. Public defenders are full-time appointed attorneys to defend indigents; therefore, if the courts had no power to set salaries for full-time public defenders, they do not have the power to set salaries for part-time public defenders.

The last sentence in the oath of one who is admitted to practice law in Arkansas reads:

> I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. SO HELP ME GOD.

It would appear then that each of these attorneys took an oath which would require them to perform the services in this case without any money if necessary. The practice of representing indigents for little or no fee dates back many centuries prior to the establishment of a government in the United States. In the present case the trial court, in appointing the attorneys to defend these indigents, was merely requiring the lawyers to perform an obligation which they had sworn to perform upon their entry into the legal profession.

It has been argued in another case that requiring an attorney to furnish services for little or no fee is a taking of property in violation of the due process clause of the United States Constitution. This argument was rejected in the case of *United States v. Dillon*, 346 F.2d 633 (9th Cir. 1965) cert. denied, 382 U.S. 978, 86 S.Ct. 550, 15 L.Ed.2d 469 (1966). Finding no common law or statutory or constitutional authority establishing payment of attorney's fees, we are left only with the sources provided by the legislature. The only other source is the services being furnished by the attorneys themselves. Lawyers clearly have an obligation to represent indigents upon court orders and to do so for existing statutory compensation or for no remuneration at all.

We do not imply that the present statutory allowances even come close to providing adequate compensation for the services performed in this case. However, this question of adequate compensation is not a matter to be addressed by the court but is within the province of the legislature. It is obvious that most counties are unable to pay the type of fee required in such cases. The counties did not do anything to incur the obligation; and, no doubt, every county would prefer that if a crime is to be committed that it be done elsewhere. It would appear logical that the state owes an obligation to pay under circumstances such as presented here; however, this is a matter which must be left to the sound discretion of the General Assembly.

Although there are no requirements relating to the residences of appointed counsel, it would seem to be preferable that the court appoint competent attorneys within its jurisdiction or those attorneys who regularly practice before the court.

We hold that the trial court was bound by the provisions of the legislature and that each of the attorneys in the present case cannot receive more than $350 each for their services plus $100 each for investigation expense, and in doing so we necessarily hold Ark.Stat.Ann. § 43–2419 to be constitutional.

Reversed and remanded with directions to proceed in a manner consistent with the opinion rendered herein.

Reversed and remanded.

WEST KEYNUMBERSYSTEM

SHARP COUNTY Arkansas, Appellant,

v.

NORTHEAST ARKANSAS PLANNING AND CONSULTING COMPANY, Appellee.

No. 80–75.

Supreme Court of Arkansas.

June 23, 1980.

Rehearing Denied Aug. 25, 1980.

Suit was brought to enforce agreement made by county judge with professional

APPELLATE PUBLIC DEFENDER:

The Per Curiam order of the Supreme Court of March 3, 1980 read: " There is now an Appellate Public Defender for the State of Arkansas whose duty is to represent all indigent persons on appeasl to the Court of Appeals and to the Supreme Court in criminal cases. Any attorney, who has been retained or appointed, and any public defender, who represents a person who is, or has become, indigent, shall have the responsibility for seeing that a notice of appeal is given and a transcript ordered in the trial court, if that person desires to take an appeal. If counsel was retained he shall, prior to the giving of notice of appeal, be responsible for showing his client's indigency in the trial court. Trial counsel may be relieved only by applying to the Supreme Court or Court of Appeals, whichever may be appropriate, for permission to withdraw and for substitution of the Appellate Public Defender for prosecution of the appeal. The motion to withdraw shall be filed simultameously with the filing of the transcript."

State of Arkansas
73rd General Assembly
Regular Session, 1981

A BILL

FOR AN ACT TO BE ENTITLED

"AN ACT TO CREATE THE ARKANSAS APPELLATE PUBLIC DEFENDER'S OFFICE."

BE IT ENACTED BY THE General Assembly of the State of Arkansas:

SECTION 1: Office Created. The Arkansas Appellate Public Defender's Office, hereafter the Appellate Defender, is hereby created as an independent state agency.

SECTION 2: Duties. The Appellate Defender shall prepare appeals for indigent appellants in all cases where it is appointed by the Arkansas Supreme Court or the Arkansas Court of Appeals. It shall also be eligible for appointment in interlocutory appeals or on collateral appeals and in certiorari petitions to the United States Supreme Court, where appropriate.

SECTION 3: Governing Commission. The Appellate Defender's office shall be governed by the Arkansas Appellate Public Defender Commission. The Commission shall be made up of five persons appointed by the governor. Each of the state's four congressional districts shall be represented on the Commission, and the fifth member shall be an at-large selection. The first Commission shall be made up of two members appointed for four years, one member appointed for three years, one member appointed for two years and one member appointed for one year. Subsequent

appointments to the Commission shall be for a term of four years. The membership of the Commission shall include two attorneys licensed in the State of Arkansas, and shall not include sitting judges, prosecuting attorneys or their deputies, the Attorney General or his employees, or law enforcement officers. The Commission shall elect one of its members to serve as chairman for a term of one year. The Commission shall meet quarterly and will serve without pay. The members shall be reimbursed their necessary and actual expenses for attending Commission meetings.

SECTION 4. Appellate Defender, Appointment. The Appellate Defender shall initially be appointed by the governor, who shall also set the salary for that position. The Commission shall make subsequent appointments to the position of Appellate Defender, and shall set the salary therefor. Further, the Commission shall be able to dismiss the Appellate Defender upon a majority vote for good cause shown, and after a public hearing. The Appellate Defender shall be licensed to practice law in the State of Arkansas, and shall have been admitted to practice law in Arkansas or another jurisdiction for at least three years. The Appellate Defender shall not engage in the private practice of law.

SECTION 5. Employment of Deputy Defenders and others. The Appellate Defender shall employ those persons required to perform the duties of the office. The employees will be full time state employees whose salaries shall not exceed the authorized line-item maximum salaries for positions within the Attorney General's office involving similar duties. The Deputy Appellate Defenders shall not engage in the private practice of law.

SECTION 6. Assignment of office to cases. The Arkansas Supreme Court or the Arkansas Court of Appeals, shall, upon motion of the trial attorney, appoint the Appellate Defender to represent indigent appellants. Trial counsel shall have the duty of filing notice of appeal, designating the record of proceedings, seeking a determination of indigency if such a determination has not been previously made and lodging the record with the Arkansas Supreme Court or the Arkansas Court of Appeals. A motion to be relieved as appellant's counsel and substitute the Appellate Defender shall be filed at the time the record is lodged. Determination of indigency shall be made only by the trial court.

SECTION 7. Transcript costs. The cost of preparing a transcript of the proceedings for the indigent appellant shall be borne by the county from which the appeal emanated.

SECTION 8. Emergency Clause. It has been found and is hereby declared by the 73rd General Assembly that because an Arkansas Appellate Public Defender's office is currently in operation under a federal grant which expires April 30, 1981, and is preparing a large number of indigent appeals, an emergency is hereby declared to exist, and this act is necessary for the immediate preservation of the public peace, health and safety, that it be in full force from and after May 1, 1981.

BILL

A Bill to make an Appropriation for Personal Services and Operating Expenses of the Arkansas Appellate Public Defender for the Period of May and June, 1981, and for other Purposes.

Be it Enacted by the General Assembly of the State of Arkansas:

SECTION 1. Regular Salaries. There is hereby established for the Arkansas Appellate Public Defender for the two-month period of May and June, 1981, the following maximum number of regular employees whose salaries shall be governed by the provisions of the Uniform Personnel Classification and Compensation Act, and all laws amendatory thereto, and by the provisions of the Regular Salary Procedures and Restrictions Act. Provided, however, that any position to which a specific maximum annual salary is set out here in dollars, shall be exempt from the provisions of said Uniform Personnel Classification and Compensation Act, but shall not be exempt from the provisions of the Regular Salary Procedures and Restrictions Act.

ITEM NO.	TITLE	MAXIMUM NO. OF EMPLOYEES	MAXIMUM ANNUAL SALARY RATE 1980-81
(1)	Director	1	$29,960
(2)	Chief Deputy	1	28,090
(3)	Deputy	1	24,910
(4)	Deputy	1	23,850
(5)	Deputy	1	22,790
(6)	Deputy	1	21,000
(7)	Deputy	1	19,656
(8)	Deputy	1	19,656
(9)	Fiscal Officer	1	19,162
(10)	Investigator	1	14,664
(11)	Legal Secretary/Supv.	1	11,752
(12)	Legal Secretary	1	10,500
(13)	Legal Secretary	1	10,500
(14)	Law Clerk	1	10,500
(15)	Law Clerk	1	10,500

MAXIMUM NUMBER OF EMPLOYEES 15

SECTION 2. APPROPRIATIONS. There is hreby appropriated, to be payable from the Constitutional and Fiscal Agencies Fund Account, for personal Services and operating expenses of the Arkansas Appellate Public Defender for the two-month period ending June 30, 1981, the following:

ITEM NO.		FISCAL YEARS 1980-81
(1)	Regular Salaries	$ 41,375
(2)	Personal Service Match Costs	9,261
(3)	Maintenance and Gen. Operation	6,910
TOTAL AMOUNTS APPROPRIATED		$ 57,546

SECTION 3. EMERGENCY CLAUSE. It is hereby found and determined by the 73rd General Assembly that the Arkansas Appellate Defender has previously been funded by a federal grant which expires on April 30, 1981, and that the effectiveness of this Act on May 1, 1981, is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of a delay in the effective date of this Act beyond May 1, 1981, could work irreparable harm upon the proper administration and providing of essential services. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace,

health and safety, shall be in full force and effect from and after May 1, 1981.

APPROVED: _____

State of Arkansas
73rd General Assembly
Regular Session, 1981

A BILL
FOR AN ACT TO BE ENTITLED

"AN ACT TO CREATE THE ARKANSAS APPELLATE PUBLIC DEFENDER'S OFFICE."

BE IT ENACTED BY THE General Assembly of the State of Arkansas:

SECTION 1: Office Created. The Arkansas Appellate Public Defender's Office, hereafter the Appellate Defender, is hereby created as an independent state agency.

SECTION 2: Duties. The Appellate Defender shall prepare appeals for indigent appellants in all cases where it is appointed by the Arkansas Supreme Court or the Arkansas Court of Appeals. It shall also be eligible for appointment in interlocutory appeals or on collateral appeals and in certiorari petitions to the United States Supreme Court, on those cases where it was previously appointed by the Arkansas Supreme Court or the Arkansas Court of Appeals.

SECTION 3: Governing Commission. The Appellate Defender's office shall be governed by the Arkansas Appellate Public Defender Commission. The Commission shall be made up of five persons appointed by the governor. Each of the state's four congressional districts shall be represented on the Commission, and the fifth member shall be an at-large selection. The first Commission shall be made up of two members appointed for four years, one member appointed for three years, one member appointed

for two years and one member appointed for one year. Subsequent appointments to the Commission shall be for a term of four years. The membership of the Commission shall include at least three attorneys licensed in the State of Arkansas, and shall not include sitting judges, prosecuting attorneys or their deputies, the Attorney General or his employees, or law enforcement officers. The Commission shall elect one of its members to serve as chairman for a term of one year. The Commission shall meet quarterly and will serve without pay. The members shall be reimbursed their necessary and actual expenses for attending Commission meetings.

SECTION 4. Appellate Defender, Appointment. The Appellate Defender shall initially be appointed by the governor. The Commission shall make subsequent appointments to the position of Appellate Defender. Further, the Commission shall be able to dismiss the Appellate Defender upon a majority vote for good cause shown, and after a public hearing. The Appellate Defender shall be licensed to practice law in the State of Arkansas, and shall have been admitted to practice law in Arkansas or another jurisdiction for at least three years. The Appellate Defender shall not engage in the private practice of law.

SECTION 5. Employment of Deputy Defenders and Others. The Appellate Defender shall employ those persons required to perform the duties of the office. The employees will be full time state employees whose salaries shall not exceed the authorized line-item maximum salaries for positions within the Attorney General's office involving similar duties. The Deputy Appellate Defenders shall not engage in the private practice of law.

SECTION 6. Assignment of office to cases. The Arkansas Supreme Court or the Arkansas Court of Appeals, shall, upon motion of the trial attorney, appoint the Appellate Defender to represent indigent appellants. Trial counsel shall have the duty of filing notice of appeal, designating the record of proceedings, seeking a determination of indigency if such a determination has not been previously made and lodging the record with the Arkansas Supreme Court or the Arkansas Court of Appeals. A motion to be relieved as appellant's counsel and substitute the Appellate Defender shall be filed at the time the record is lodged. Determination of indigency shall be made by the trial court.

SECTION 7. Transcript costs. The cost of preparing a transcript of the proceedings for the indigent appellant shall be borne by the county from which the appeal emanated.

SECTION 8. Emergency Clause. It has been found and is determined by the 73rd General Assembly that because an Arkansas Appellate Public Defender's office is currently in operation under a federal grant which expires April 30, 1981, and is preparing a large number of indigent appeals, an emergency is hereby declared to exist, and this act is necessary for the immediate preservation of the public peace, health and safety, that it be in full force from and after May 1, 1981.

BILL

A Bill to make an Appropriation for Personal Services and Operating Expenses of the Arkansas Appellate Public Defender for the Period of May and June, 1981, and for other Purposes.

Be it Enacted by the General Assembly of the State of Arkansas:

SECTION 1. Regular Salaries. There is hereby established for the Arkansas Appellate Public Defender for the two-month period of May and June, 1981, the following maximum number of regular employees whose salaries shall be governed by the provisions of the Uniform Personnel Classification and Compensation Act, and all laws amendatory thereto, and by the provisions of the Regular Salary Procedures and Restrictions Act. Provided, however, that any position to which a specific maximum annual salary is set out here in dollars, shall be exempt from the provisions of said Uniform Personnel Classification and Compensation Act, but shall not be exempt from the provisions of the Regular Salary Procedures and Restrictions Act.

ITEM NO.	TITLE	MAXIMUM NO. OF EMPLOYEES	MAXIMUM ANNUAL SALARY RATE 1980-81
(1)	Director	1	$29,960
(2)	Chief Deputy	1	28,090
(3)	Deputy	1	24,910
(4)	Deputy	1	21,000
(5)	Deputy	1	19,656
(6)	Deputy	1	19,656
(7)	Fiscal Officer	1	19,162
(8)	Legal Secretary/Supv.	1	11,752
(9)	Legal Secretary	1	10,500
MAXIMUM NUMBER OF EMPLOYEES		9	

SECTION 2. APPROPRIATIONS. There is hereby appropriated, to be payable from the Constitutional and Fiscal Agencies Fund Account, for personal services and operating expenses of the Arkansas Appellate Public Defender for the two-month period ending June 30, 1981, the following:

ITEM NO.		FISCAL YEARS 1980-81
(1)	Regular Salaries	$28,414
(2)	Personal Service Match Costs	6,231
(3)	Maintenance and Gen. Operation	5,819
TOTAL AMOUNTS APPROPRIATED		$40,464

SECTION 3. EMERGENCY CLAUSE. It is hereby found and determined by the 73rd General Assembly, that the Arkansas Appellate Defender has previously been funded by a federal grant which expires on April 30, 1981, and that the effectiveness of this Act on May 1, 1981, is essential to the operation of the agency for which the appropriations in this Act are provided, and that a delay in the effective date of this Act beyond May 1, 1981, could work irreparable harm upon the proper administration and providing of essential services. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after May 1, 1981.

APPROVED: _____

BILL

A Bill to make an Appropriation for Personal Services and Operating Expenses of the Arkansas Appellate Public Defender for the Biennial Period Ending June 30, 1983, and for other Purposes.

Be it Enacted by the General Assembly of the State of Arkansas:

SECTION 1. Regular Salaries. There is hereby established for the Arkansas Appellate Public Defender for the two-year period ending June 30, 1983, the following maximum number of regular employees whose salaries shall be governed by the provisions of the Uniform Personnel Classification and Compensation Act, and all laws amendatory thereto, and by the provisions of the Regular Salary Procedures and Restrictions Act. Provided, however, that any position to which a specific maximum annual salary is set out here in dollars, shall be exempt from the provisions of said Uniform Personnel Classification and Compensation Act, but shall not be exempt from the provisions of the Regular Salary Procedures and Restrictions Act.

ITEM NO.	TITLE	MAXIMUM NO. OF EMPLOYEES	MAXIMUM ANNUAL SALARY RATE 1981-82	1982-83
(1)	Director	1	$32,357	$34,945
(2)	Chief Deputy	1	30,337	32,763
(3)	Deputy	1	26,902	27,819
(4)	Deputy	1	22,680	23,678
(5)	Deputy	1	18,199	22,395
(6)	Deputy	1	18,199	22,395
(7)	Fiscal Officer	1	20,628	22,278
(8)	Legal Secretary/Supv.	1	12,692	13,414
(9)	Legal Secretary	1	11,340	12,247
MAXIMUM NUMBER OF EMPLOYEES		9		

SECTION 2. APPROPRIATIONS. There is hereby appropriated, to be payable from the Constitutional and Fiscal Agencies Fund Account, for personal Services and operating expenses of the Arkansas Appellate Public Defender for the two-year period ending June 30, 1983, the following:

ITEM NO.		FISCAL YEARS 1981-82	1982-83
(1)	Regular Salaries	$193,334	$211,934
(2)	Personal Service Match Costs	43,882	47,667
(3)	Maintenance and Gen. Operation	44,529	45,481
TOTAL AMOUNTS APPROPRIATED		$281,745	$305,082

SECTION 3. EMERGENCY CLAUSE. It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981, could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1981.

APPROVED: _____

BILL

A Bill to make an Appropriation for Personal Services and Operating Expenses of the Arkansas Appellate Public Defender for the Period of May and June, 1981, and for other Purposes.

Be it Enacted by the General Assembly of the State of Arkansas:

SECTION 1. Regular Salaries. There is hereby established for the Arkansas Appellate Public Defender for the two-month period of May and June, 1981, the following maximum number of regular employees whose salaries shall be governed by the provisions of the Uniform Personnel Classification and Compensation Act, and all laws amendatory thereto, and by the provisions of the Regular Salary Procedures and Restrictions Act. Provided, however, that any position to which a specific maximum annual salary is set out here in dollars, shall be exempt from the provisions of said Uniform Personnel Classification and Compensation Act, but shall not be exempt from the provisions of the Regular Salary Procedures and Restrictions Act.

ITEM NO.	TITLE	MAXIMUM NO. OF EMPLOYEES	MAXIMUM ANNUAL SALARY RATE 1980-81
(1)	Director	1	$29,960
(2)	Deputy	1	28,090
(3)	Deputy	1	24,910
(4)	Deputy	1	18,656
(5)	Fiscal Officer	1	19,162
(6)	Legal Secretary/Supv.	1	11,752
(7)	Legal Secretary	1	10,500
MAXIMUM NUMBER OF EMPLOYEES		7	

SECTION 2. APPROPRIATIONS. There is hereby appropriated, to be payable from the Constitutional and Fiscal Agencies Fund Account, for personal services and operating expenses of the Arkansas Appellate Public Defender for the two-month period ending June 30, 1981, the following:

ITEM NO.		FISCAL YEARS 1980-81
(1)	Regular Salaries	$19,805
(2)	Personal Service Match Costs	4,609
(3)	Maintenance and Gen. Operation	4,121
TOTAL AMOUNTS APPROPRIATED		$28,535

SECTION 3. EMERGENCY CLAUSE. It is hereby found and determined by the 73rd General Assembly, that the Arkansas Appellate Defender has previously been funded by a federal grant which expires on April 30, 1981, and that the effectiveness of this Act on May 1, 1981, is essential to the operation of the agency for which the appropriations in this Act are provided, and that a delay in the effective date of this Act beyond May 1, 1981, could work irreparable harm upon the proper administration and providing of essential services. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after May 1, 1981.

APPROVED: _____

BILL

A Bill to make an Appropriation for Personal Services and Operating Expenses of the Arkansas Appellate Public Defender for the Biennial Period Ending June 30, 1983, and for other Purposes.

Be it Enacted by the General Assembly of the State of Arkansas:

SECTION 1. Regular Salaries. There is hereby established for the Arkansas Appellate Public Defender for the two-month period of May and June, 1981, the following maximum number of regular employees whose salaries shall be governed by the provisions of the Uniform Personnel Classification and Compensation Act, and all laws amendatory thereto, and by the provisions of the Regular Salary Procedures and Restrictions Act. Provided, however, that any position to which a specific maximum annual salary is set out here in dollars, shall be exempt from the provisions of said Uniform Personnel Classification and Compensation Act, but shall not be exempt from the provisions of the Regular Salary Procedures and Restrictions Act.

ITEM NO.	TITLE	MAXIMUM NO. OF EMPLOYEES	MAXIMUM ANNUAL SALARY RATES FISCAL YEARS 1981-82	1982-83
(1)	Director	1	$32,357	$34,945
(2)	Chief Deputy	1	30,337	32,763
(3)	Deputy	1	26,902	29,054
(4)	Deputy	1	25,758	27,818
(5)	Deputy	1	24,613	26,582
(6)	Deputy	1	22,680	24,494
(7)	Deputy	1	21,228	22,926
(8)	Deputy	1	21,228	22,926
(9)	Fiscal Officer	1	20,694	22,349
(10)	Investigator	1	15,837	17,103
(11)	Legal Secretary/Supv.	1	12,692	13,707
(12)	Legal Secretary	1	11,340	12,247
(13)	Legal Secretary	1	11,340	12,247
(14)	Law Clerk	1	11,340	12,247
(15)	Law Clerk	1	11,340	12,247
MAXIMUM NUMBER OF EMPLOYEES		15		

SECTION 2. APPROPRIATIONS. There is hereby appropriated, to be payable from the Constitutional and Fiscal Agencies Fund Account, for personal Services and operating expenses of the Arkansas Appellate Public Defender for the two-year period ending June 30, 1983, the following:

ITEM NO.		FISCAL YEARS 1981-82	1982-83
(1)	Regular Salaries	$299,686	$323,655
(2)	Personal Service Match Costs	68,548	73,425
(3)	Maintenance and Gen. Operation	48,534	51,585
TOTAL AMOUNTS APPROPRIATED		$416,768	$448,665

SECTION 3. EMERGENCY CLAUSE. It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper admin-

istration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1981.

APPROVED:_____

BILL

A Bill to make an Appropriation for Personal Services and Operating Expenses of the Arkansas Appellate Public Defender for the Biennial Period Ending June 30, 1983, and for other Purposes.

Be it Enacted by the General Assembly of the State of Arkansas:

SECTION 1. Regular Salaries. There is hereby established for the Arkansas Appellate Public Defender for the two-year period ending June 30, 1983, the following maximum number of regular employees whose salaries shall be governed by the provisions of the Uniform Personnel Classification and Compensation Act, and all laws amendatory thereto, and by the provisions of the Regular Salary Procedures and Restrictions Act. Provided, however, that any position to which a specific maximum annual salary is set out here in dollars, shall be exempt from the provisions of said Uniform Personnel Classification and Compensation Act, but shall not be exempt from the provisions of the Regular Salary Procedures and Restrictions Act.

ITEM NO.	TITLE	MAXIMUM NO. OF EMPLOYEES	MAXIMUM ANNUAL SALARY RATE 1981-82	1982-83
(1)	Director	1	$30,821	$33,595
(2)	Deputy	1	28,209	29,760
(3)	Deputy	1	23,998	25,317
(4)	Deputy	1	18,199	19,655
(5)	Fiscal Officer	1	19,310	20,372
(6)	Legal Secretary/Supv.	1	12,692	13,414
(7)	Legal Secretary	1	11,340	12,247
MAXIMUM NUMBER OF EMPLOYEES		7		

SECTION 2. APPROPRIATIONS. There is hereby appropriated, to be payable from the Constitutional and Fiscal Agencies Fund

Account, for personal Services and operating expenses of the Arkansas Appellate Public Defender for the two-year period ending June 30, 1983, the following:

ITEM NO.		FISCAL YEARS 1981-82	1982-83
(1)	Regular Salaries	$144,569	$154,360
(2)	Personal Service Match Costs	32,949	34,942
(3)	Maintenance and Gen. Operation	35,975	39,147
TOTAL AMOUNTS APPROPRIATED		$213,493	$228,449

SECTION 3. EMERGENCY CLAUSE. It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981, could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1981.

APPROVED: _____

APPENDIX G

ATTORNEY_____ WEEKLY CASELOAD STATUS REPORT
Week Ending_____

	CASES PENDING	CASE #	DUE DATE	COURT
1.				
2.				
3.				
4.				
5.				
6.				

	BRIEFS FILED	DATE FILED	LENGTH OF TRANSCRIPT
1.			
2.			
3.			

	REPLY BRIEF FILED	DATE FILED
1.		
2.		
3.		

	EXTENSIONS REQUESTED	DAYS REQUESTED	DATE FILED	DAYS GRANTED
1.				
2.				

OTHER ACTIVITY (CLIENT VISITS, MOTIONS, PETITIONS, ETC.)

(Arkansas Gazette, 3/3/81)

Veto Called Example Of Warning

Governor Frank White vetoed a bill Monday that would have created the position of state Judicial Council co-ordinator, which has been a federally funded job the last two years.

The bill, SB 175 by the Joint Budget Committee, called for the position to be created July 1. Although it made no appropriation, Mr. White said the bill "provides the framework for picking up this grant with state general revenues," which he said the state couldn't afford. He estimated the cost at $93,000 during the next biennium.

The federal grant, from the federal Law Enforcement Assistance Administration, will expire at the end of June. The Judicial Council co-ordinator has handled training and continuing education programs for the circuit and chancery judges. Jim Hankins of Pine Bluff is the co-ordinator.

Mr. White called it a "worthy program," but he said it was an example of what he has been warning legislators about — pressure to use state funds to pick up federal programs that will be eliminated as a result of federal budget cuts. "The state simply does not have the financial flexibility to assume funding of discontinued federal programs," Mr. White said in his veto message to the Senate.

★ Defeated, by a vote of 12 for to 45 against, HB 554 by Representative Doug Wood of Sherwood to have the state take over financial responsibility for the Appellate Public Defenders Office, which represents indigents in appeals. Federal funds for the office will run out in April.

Funds for Staffing Correction Facilities Vetoed Along With 25 Other Bills

Governor Frank White vetoed 26 bills Tuesday and made line-item vetoes in several appropriation bills. His veto messages were sent to Secretary of State Paul Riviere.

Among those vetoed was SB 436, a Joint Budget Committee bill for a supplemental appropriation to staff two state Correction Department facilities — the new Wrightsville Unit and the Diagnostic Unit at Pine Bluff — and to pay for a contract for inmate medical care, all for the current fiscal year.

Mr. White's aides said he vetoed the bill because of an amendment, added late in the legislative session by Senator Knox Nelson of Pine Bluff, to relieve the Correction Department of having to repay a $1.6 million loan to the state's Budget Revolving Fund.

However, the provision could not be vetoed as a line item, the aides said, so the governor had to veto the entire bill — although he supported the supplemental appropriation. Aides said other legislation authorizes the governor to establish the positions that would have been created by SB 436, and that the governor would exercise it.

Also vetoed was SB 297, which would have required that the University of Arkansas Board of Trustees eventually be made up of members who are graduates of the various schools in the university system. Mr. White said he vetoed the bill because current geographical requirements for U of A Board membership require that each current congressional district be represented, which he called sufficient.

He also vetoed SB 602, which would have appropriated more than $200,000 to the Historic Preservation Commission to be used in the event of federal funding losses. Mr. White said the state couldn't afford this now.

He also vetoed SB 600, the Senate version of the congressional redistricting bill. Mr. White said he would allow the House version, HB 848, to become law without his signature April 7.

Other Bills

Among other bills vetoed were:

★ HB 482, which would have required the Correction Department to obtain certified records of all prior incarcerations of inmates to be used in parole considerations. Mr. White said the bill would have placed a hardship on prosecuting attorneys and that he had directed the Correction Department to furnish the information administratively.

★ HB 84, which would have raised the tax liability threshold for declarations of estimated taxes.

★ HB 296, which would have authorized the Arkansas Supreme Court reporter to advertise and award contracts for publishing the Arkansas Reports, which are volumes containing the Court's decisions. Mr. White said he vetoed the bill because it would have removed that printing from the state purchasing law.

★ HB 341, which would have required 10 per cent of the money collected for ordinance violations at Little Rock and three other large cities to go to the Police Pension and Relief Fund. Mr. White said that would place a hardship on some cities' maintenance and operation budgets.

★ HB 510, which would have appropriated $75,000 to the West Side School District in Cleburne County as compensation for territory lost to the Heber Springs School District as the result of 1979 legislation. Mr. White said a settlement already had been reached in court.

★ HB 536, which among other things would have allowed the Highway and Transportation Department to borrow up to $10 million from the Budget Revolving Fund. Mr. White said that would allow the Highway Department to use the state's general revenues.

★ HB 677, which would have set up a $1 million state fund to match local money for the purchase of emergency medical service supplies, vehicles and equipment.

★ HB 864 and SB 498, which would have established regulations for coin-operated amusement machines.

The line items vetoed included:

★ Sections of SB 550 that would have expanded dental coverage under Medicaid.

★ A section of SB 570 that would have created the job of associate director for research and planning in the Higher Education Department at a salary of $45,000 in 1981-82 and $38,500 in 1982-83.

★ A section of the University of Arkansas at Little Rock appropriation, SB 489, that would have provided $123,000 next year and $135,000 in fiscal 1982-83 for maintenance of the Old Postoffice Building, which is part of the UALR Law School.

★ Sections of HB 945 expanding jobs in the Parks and Tourism Department.

(Arkansas Gazette, 3/6/81)

Request for $120,000 to Pay Cost Of Indigents' Attorneys Deferred

Chief Justice Richard B. Adkisson of the Arkansas Supreme Court asked the Joint Budget Committee Thursday for an additional $120,000 for the next two years to pay the cost of court-appointed attorneys for appellants. The Committee deferred action after Senator Knox Nelson said the request "galls my gut."

Justice Adkisson said the money was needed because a federal grant of $400,000 a year for the appellant public defender's office is to expire soon and the United States Supreme Court has ruled that criminal defendants have a right of appeal. Associate Justice M. Steele Hayes explained that when a person convicted in circuit court has been determined by the court to be an indigent, the Supreme Court has no alternative but to appoint an attorney to prepare the appeal and pay the fees.

Nelson was not happy about that. "When I need a lawyer, I have to work 12 to 14 hours a day to pay for him. Now, if a guy robs me, I have to pay for his lawyer, too," Nelson said.

Some Committee members asked what would happen if the state simply refused to pay for the appeals. Chief Judge Melvin Mayfield of the Arkansas Court of Appeals said all convictions could then be thrown out in federal court.

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