

IMPROVING CRIMINAL JUSTICE SYSTEMS THROUGH EXPANDED STRATEGIES AND INNOVATIVE COLLABORATIONS

**REPORT OF THE
National Symposium on Indigent Defense**

February 1999



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REPORT OF THE
National Symposium on Indigent Defense

February 25–26, 1999
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Foreword

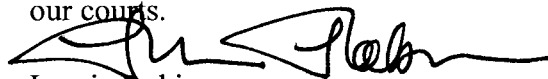
Although our Constitution guarantees defendants the right to a lawyer in criminal cases, the implementation of this constitutional right is applied unevenly across the nation. The Bureau of Justice Statistics reports that in 1992 nearly 80 percent of defendants charged with felonies in the nation's 75 largest counties relied on a public defender or assigned counsel for legal representation. But too many jurisdictions lack the financial capital—or the political will—to provide adequate funding, staffing, training, and access to technology that can establish guilt or innocence such as DNA analysis, and other resources to ensure that every defendant receives effective assistance of counsel.

The rule of law and fairness in our adversarial system demand that one side in the justice process not be fundamentally disadvantaged by a lack of resources. The scales of justice must be balanced if we are to overcome the common perception—held by about 90 percent of Americans according to an American Bar Association poll—that you get only as much justice as you can afford.

The National Symposium on Indigent Defense marked the first time in almost 40 years that the Department of Justice has assembled a conference to address the critical issue of equal justice for all those charged with a criminal offense, especially those who cannot afford to pay the cost of representation. This symposium would not have been possible without the fearless and steadfast leadership of Attorney General Janet Reno. The idea for this symposium resulted from a conversation the Attorney General had at a meeting she hosted in January 1998 with eight representatives of the criminal defense bar. The meeting focused on the lack of resources for indigent defense and the need for collaboration among the components of the adjudication process to improve indigent defense services. At that meeting, the Attorney General asked the American Bar Association (ABA) to put together a report on collaborations currently underway in various jurisdictions among public defenders, prosecutors, and other criminal justice system agencies. The ABA found that a number of local jurisdictions are making good use of limited justice system resources by implementing projects that depend on successful collaborative, interagency planning.

The National Symposium on Indigent Defense was convened to further explore ways in which the leaders of indigent defense systems can effectively forge alliances, build and strengthen innovative partnerships, and otherwise collaborate in ways that enhance the representation of indigent criminal defendants. In addition to defense attorneys, symposium participants included prosecutors, judges, and victim advocates, as well as legislators and representatives of key national organizations to ensure that all those who can have an impact on indigent defense were represented.

We are pleased to present this report on the proceedings of this important symposium in the hope that these discussions will contribute to advancing justice for all. As Martin Luther King once observed, "Peace is not just the absence of violence, it is the presence of justice." We look forward to continuing to work within the Department of Justice and with our colleagues at the federal, state, and local levels to ensure the presence of justice for all those who come before our courts.



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Acknowledgments

The report of the National Symposium on Indigent Defense is the product of a joint effort involving the principal author, Professor Richard J. Wilson of the Washington College of Law at the American University in Washington, D.C., and technical support provided through text enhancements by Scott Wallace, director of Defender Services at the National Legal Aid and Defender Association, and Patricia Puritz, director of the American Bar Association Juvenile Justice Center.

Executive Summary

The obligation of the States to provide legal representation to people accused of crime who are too poor to retain their own counsel was established by the U.S. Supreme Court as a matter of Federal constitutional law in 1963, in the case of *Gideon v. Wainwright*. The attorneys general of 22 States joined in urging the Court to do so.

In the intervening three and a half decades, States have responded to *Gideon* in various ways. Some have shouldered the responsibility themselves, establishing and funding statewide agencies to provide indigent defense. In others, counties bear the burden. Three service-delivery models have evolved: governmental public defender agencies, bulk contracts with private lawyers, and case-by-case appointments. National standards have been promulgated and have been implemented by States and localities in different ways, covering issues such as maximum annual caseloads, staffing ratios, resource parity with prosecution and courts, training, attorney qualifications and performance, and defender independence from the political forces and judicial branches.

But the extent to which States and localities are succeeding in fulfilling the promise of *Gideon* varies widely. Overall, despite progress in many jurisdictions, indigent defense in the United States today is in a chronic state of crisis. Standards are frequently not implemented, contracts are often awarded to the lowest bidder without regard to the scope or quality of services, organizational structures are weak, workloads are high, and funding has not kept pace with other components of the criminal justice system. The effects can be severe, including legal representation of such low quality to amount to no representation at all, delays, overturned convictions, and convictions of the innocent. Ultimately, as Attorney General Janet Reno states, the lack of competent, vigorous legal representation for indigent defendants calls into question the legitimacy of criminal convictions and the integrity of the criminal justice system as a whole.

In 1997, the Attorney General and officials of the Office of Justice Programs and the Bureau of Justice Assistance convened a focus group of 35 leaders of the indigent defense community and identified 6 areas in which the U.S. Department of Justice (DOJ) could play an effective role in promoting strong and stable indigent defense systems.

- Using the DOJ's leadership role to call attention to the importance of quality indigent defense services.
- Promoting independence in indigent defense structures.
- Allocating resources equitably among indigent defense and other criminal justice system components.
- Focusing on these challenges in the juvenile justice system.
- Promoting standards for indigent defense programs.
- Building a capacity for computer technology in indigent defense.

In the DOJ's continuing dialogue with the indigent defense community and examination of potential reforms, attention was also focused on the importance of collaborations between indigent defense and other justice system agencies in planning, managing, and budgeting for the system as a whole. The National Symposium on Indigent Defense was organized around these six issues and the goal of collaboration. Themes emerging from the symposium include the following:

Forging Consensus: Indigent defense is an integral, interdependent part of the criminal justice system. Advocacy strategies for indigent defense must be addressed systemically, in coordination and balance with the rest of the system. The symposium's multidisciplinary attendance—including defenders, prosecutors, judges, police, legislators, county officials, and bar representatives—similarly was designed to foster dialogue, a recognition of symbiosis, and a collaborative search for solutions.

Independence: The ethical imperative of providing quality representation to clients should not be compromised by outside interference or political attacks. Indigent defenders should be subject to judicial supervision only to the same extent as lawyers in private practice. The primary means of ensuring defender independence is to provide for oversight by an independent board or commission, rather than directly by judicial, legislative, or executive agencies or officials.

Statewide Structure: The trend supported by national standards has been toward statewide indigent defense structures. Organizing defense services through a centrally administered program promotes quality and uniformity of defense services, as well as cost-efficiencies, cohesive planning, and accountability. Statewide organization commonly results from an imminent indigent defense funding crisis, which spurs collaborative planning, study, and action by bar associations, funding agencies, and the courts.

Equitable Allocation of Resources: Salary parity between prosecutors and defenders is a central component of all national standards and is an important means of reducing staff turnover and avoiding related recruitment/training costs and disruptions to the office and case processing. The concept of parity encompasses all resource allocations, including staffing and workloads, support staff, investigative and expert services, and technology, as well as access to Federal grant programs and student loan forgiveness options.

Juvenile Justice: Comprehensive, effective juvenile interventions can help avert future criminality and the substantial costs of future encounters with the adult courts and correctional systems. Holistic juvenile team defense includes social workers and mental health professionals, as well as attorneys, and involves the parents of juvenile clients.

Indigent Defense Standards: Standards are the most effective means of ensuring uniform quality of indigent defense services. States and localities have adopted standards in a variety of ways, including by court decision, statute, court rules, and incorporation into indigent defense services contracts; enforcement mechanisms include requiring local compliance as a condition of supplemental State funding.

Technology: Technology is increasingly critical to the fast, efficient, and cost-effective processing of cases. Technology integration and information sharing between indigent defense and other justice system agencies, as well as parity of technological resources, reduce redundancy, improve the efficiency of the entire system, and promote earlier disposition of cases and more appropriate, individualized, and effective sanctioning of convicted offenders.

Successful Collaborations: Indigent defense as a full partner in the criminal justice system already exists in a number of areas.

- *Criminal justice coordinating committees* are a forum for collaborative justice system problem-solving, planning, and innovation and can address special areas such as drug treatment, domestic violence, docket management, and indigent defense funding.
- *Juvenile justice collaborations* with community-based services for offenders in the juvenile justice system can help avert recidivism. When juveniles are subject to adult prosecution, coordination among agencies such as courts, police, probation, mental health and family services, social services, and schools can reduce delays in case processing and ensure more accurate assessments of amenability to treatment in the juvenile system.
- “*Fill the Gap*” collaborations among adjudication agencies (courts, prosecutors, defenders, and court administration) can help them obtain the funding necessary to keep up with the extra caseloads generated by major funding infusions for other components of the system, such as police and corrections.
- *Drug treatment courts* are one of the most common type of adjudication partnership. These courts replace the defender’s traditional adversarial role with a collaborative orientation toward the long-term interests of the client.
- *Joint weighted caseload studies* are collaborations among courts, prosecutors, and public defenders on a shared methodology for projecting caseloads and resource needs, which can improve planning and budgeting for the entire system.
- *Juvenile defenders and dependency cases* increase defender responsibility for noncriminal matters, such as representation of both children and parents in dependency, abuse, and neglect matters, and require new partnerships with other entities, including family courts, family law bar associations, government agencies, and planning bodies responsible for protecting juveniles.
- *Mental health courts*, like drug treatment courts, are an example of an adjudication partnership of courts, prosecutors, defenders and treatment providers, emphasizing placement in community-based residential treatment facilities as an alternative to jail.
- *Early entry team defenses*, like community policing and community courts, are community-based defender programs—storefront offices providing a broader range of representation than conventional programs—and are oriented toward early intervention and crime prevention.

The unifying themes of the symposium were 1) the necessity of maintaining core values, civility, respect, and trust, not only within indigent defense programs but in interactions with other components of the criminal justice system; 2) the challenge of reconciling adversarial defense skills with the imperative of collaboration in a complex, increasingly interconnected system; 3) the importance of increasing availability of affordable technology and interagency information sharing to make all agencies more efficient and effective; and 4) the movement toward holistic defense services focused less on isolated episodes of legal representation and more on recidivism prevention and long-term improvement of clients’ lives.

Message From the U.S. Attorney General

Never before in the history of the U.S. Department of Justice (DOJ) has there been a meeting like this historic national symposium on indigent defense. The Department of Justice has brought together representatives from all levels of government and from every part of the criminal justice system to explore how we can better collaborate to strengthen indigent defense services and, by extension, the criminal justice system as a whole. I applaud the efforts of Assistant Attorney General Laurie Robinson; Nancy Gist, Director, Bureau of Justice Assistance (BJA); and everyone in the Office of Justice Programs (OJP) and the Bureau of Justice Assistance, all of whom worked extremely hard to bring this extraordinary group together.

My experiences as a prosecutor and as Attorney General have taught me just how important it is for every leg of the criminal justice system to stand strong. Indigent defense is an equally essential element of the criminal justice process, one which should be appropriately structured and funded and operating with effective standards. The reality is that despite the U.S. Supreme Court's decision 36 years ago in *Gideon v. Wainwright* that every defendant, rich or poor, has the right to be represented by a lawyer when charged with a serious crime, many adult and juvenile offenders are not receiving effective assistance of counsel. But it is not just poor defendants who have a stake in our system of indigent defense. Just ask a prosecutor, an arresting officer, or even a victim of crime. Would they rather face a vigorous defense at trial or risk an overturned conviction and retrial? When the conviction of a defendant is challenged on the basis of inadequate representation, the very legitimacy of the conviction itself is called into question. Our criminal justice system is interdependent: if one leg of the system is weaker than the others, the whole system will ultimately falter.

I believe that all of us, regardless of our position in the criminal justice system, have the responsibility to work to improve the quality of criminal defense for the poor. Our system of justice will only work, and will only inspire complete confidence and trust of the people, if we have strong prosecutors, an impartial judiciary, and a strong system of indigent criminal defense.

I firmly believe that the Justice Department, as the Nation's leading Federal law enforcement agency, is uniquely positioned to call needed attention to indigent defense issues and play an important role in strengthening indigent defense. The Department of Justice has supported improvements in indigent defense and fostered collaboration among all parts of the criminal justice system by committing our resources and using our influence to promote adequate and efficient indigent defense systems. The Office of Justice Programs, the sponsor of the symposium, and the Department of Justice's Office of Policy Development have developed a comprehensive plan for the Justice Department's work on indigent defense that comprises six building blocks.

First, our strategy starts with the need for an understanding of the scope and nature of the most important problems facing indigent defense. I have been engaged in an ongoing dialogue with the leadership of national defender organizations to get their perspective on what issues and

problems should be addressed. At our meetings, we have had wide-ranging, open discussions of the issues, including the need for reasonable rates of compensation for public defenders and assigned counsel, increased access to technology for indigent defense lawyers, more opportunities for professional training, and workable standards for indigent defense.

Also, for the first time since 1983, the Justice Department's Bureau of Justice Statistics (BJS) is collecting comprehensive, national data on indigent defense systems. These data will provide current information about how different jurisdictions operate and identify indigent defense models that work.

Second, we have made a commitment to educating the public and the criminal justice community about the importance of a strong system of indigent defense. I firmly believe that, as the Nation's top law enforcement agency, we have a responsibility to explain that a strong system of indigent defense is good for prosecutors, police, victims, the public, and the pursuit of justice.

To further this goal, I have encouraged governors, chief justices, bar association presidents, and others to use their positions of leadership to play a role in improving indigent defense services. This year, for example, the Assistant Attorney General for the Criminal Division, Jim Robinson, spoke about indigent defense issues at the annual meeting of the National Association of Criminal Defense Lawyers. When Department of Justice officials speak about the importance of indigent defense, they send a message that every part of the criminal justice system should be concerned about indigent defense.

Third, the Department of Justice has supported efforts to increase funding for indigent criminal defense. Disparities in resources among different parts of the criminal justice system have had a corrosive effect on the ability of poor defendants to secure effective representation. At the Federal level, we have called on Congress to provide the funds necessary to enable Criminal Justice Act (CJA) Attorneys to earn the \$75 per hour rate that they are authorized to receive. We have also urged State Byrne Program administrators to include defenders on their policy boards and consider the needs of indigent defense in their planning and funding decisions. Wherever it is appropriate, we identify defenders as eligible applicants in grant announcements. For example, under the open solicitation issued by the Bureau of Justice Assistance in 1998, the public defender in Vermont received a \$150,000 grant so that developmentally disabled defendants could be evaluated by medical specialists to determine when necessary accommodations should be made consistent with the Americans with Disabilities Act. These types of programs ensure that everyone gets treated fairly by the criminal justice system.

While we have supported increased funding for indigent defense, we also have been working with the Administrative Office of the U.S. Courts, States, and localities to appropriately contain the costs of these services. Every part of the criminal justice system, indigent defense included, must work to deliver quality services at a reasonable cost. Even though indigent defense services are the most poorly funded part of the system, there are ways, such as sharing technology and pooling resources, to make the system operate more efficiently and effectively. By doing so, we will be better able to make the case for increased funding.

Fourth, I strongly believe that, not only can prosecutors and defenders work together to improve the system, they can also learn together through joint training. My prosecutors in Miami told me time and again that some of their best training experiences were at the University of Florida, where they trained together with public defenders. That is why the Justice Department is actively exploring possibilities for joint training programs for Federal prosecutors and defenders.

We have also made grants to provide training and technical assistance to State and local indigent defense service providers. For example, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is establishing a Juvenile Defender Center to provide resources, training, and technical assistance through the American Bar Association (ABA). And the Bureau of Justice Assistance awarded grants to the Vera Institute to train senior managers of indigent defense services, and to the National Legal Aid and Defender Association (NALDA) to provide technical assistance and training to State and local defenders.

Fifth, the Justice Department is working to ensure that we bring the tools of technology to every part of the criminal justice system. Technology creates incredible opportunities for accessing and exchanging information, managing cases, investigating crimes, and improving the efficiency and quality of our work. To that end, the Bureau of Justice Assistance announced a series of awards to support indigent defense training and case management, with an eye to emerging technological and evidentiary aids.

The sixth building block in our comprehensive plan for indigent defense is improving the quality of indigent defense by encouraging the development and dissemination of minimum standards and best practices. I believe this effort is essential if our Nation is to fulfill our obligation under *Gideon* to provide competent counsel to every criminal defendant charged with a serious crime. With a lot of input from the defense bar, we are in the process of developing links to the Office of Justice Programs Web site—which will be accessible through the Justice Department Web site at www.usdoj.gov—to enable all who are interested to download “best practices documents” and other useful materials.

Also, we are collecting information on standards for indigent defense programs and representation from around the country. An advisory board of practitioners will review these standards, and the Bureau of Justice Assistance will publish a compendium of those standards that represent the best in criminal defense practice today. We should evaluate how well best practices work by identifying a local jurisdiction in which leaders in the court system, the bar, and the local government will commit to becoming a model jurisdiction for indigent defense by adopting best practices and minimum standards.

Finally, I would like to go back to where I began and touch again on the important work taking place at this symposium to improve our indigent defense systems through collaboration. Collaboration is the motor that drives the engine of progress on indigent defense, and many powerful models of that motor are represented here today.

- The effort in Fulton County, Georgia’s to improve indigent defense by bringing together every player in the system to develop a criminal justice plan.

- Nebraska's statewide study of indigent defense by a broad-based task force including representatives from all three branches of State government, leading prosecutors, defenders, academics, and county officials.
- Florida and Arizona's efforts to "fill the gap" in funding so that the adjudicatory phase of the process is as well funded as the enforcement and corrections phases.
- Delaware's project to create a statewide computer system to link all components of the criminal justice system, including indigent defense.

These examples, and many others, should inspire us to do more.

While we at the Department of Justice have been working to improve indigent defense, those who provide indigent defense services around the country are the real heroes and heroines on this issue. I commit to building our partnership with you. Our efforts at the Justice Department depend on every other part of the criminal justice system, at every level of government, working together to provide full luster and sound to Gideon's trumpet.

Janet Reno

February 1999

I. Historical Background on Indigent Defense Services in the United States

Roots of the modern right to counsel for the indigent defendant can be found more than a century ago. Indiana Supreme Court Justice Frank Sullivan, Jr., cited *Webb v. Baird*,¹ a case decided by Indiana's high court in 1853, in his remarks at the symposium. He noted that *Webb* recognized a right to an attorney at public expense for an indigent person accused of crime, grounded in "the principles of a civilized society," not in constitutional or statutory law. He quoted *Webb*'s enduring message: "It is not to be thought of in a civilized community for a moment that any citizen put in jeopardy of life or liberty should be debarred of counsel because he is too poor to employ such aid. No court could be expected to respect itself to sit and hear such a trial. The defense of the poor in such cases is a duty which will at once be conceded as essential to the accused, to the court, and to the public."

The sixth amendment to the U.S. Constitution states, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The right to counsel in Federal proceedings was well established by statute early in this country's history and was reaffirmed by the U.S. Supreme Court long ago in *Johnson v. Zerbst*.² The *Webb v. Baird* decision, however, was the exception rather than the rule in the States. Well into the 20th century, most States relied only on the volunteer pro bono efforts of lawyers to provide defense for poor people accused of even the most serious crimes. Although some private programs, such as the

New York Legal Aid Society, were active as early as 1896 in providing counsel to needy immigrants and the first public defender office began operations in Los Angeles in 1914, such services were nonexistent outside the largest cities.

The Court developed the sixth amendment right to counsel in State proceedings gradually and somewhat haltingly in this century. In *Powell v. Alabama*,³ the famous "Scottsboro Case" from the Depression era, the Court held that counsel was required in all State capital proceedings. Only a decade later, however, in *Betts v. Brady*,⁴ the Court declined to extend the sixth amendment right to counsel to State felony proceedings. It was not until 1963, 21 years after *Betts*, that the Court again addressed the issue of the right to counsel in State proceedings involving serious noncapital crimes. In a dramatic series of decisions, the Court firmly established the right to counsel in virtually all aspects of State criminal proceedings.

The most significant decision on the right to counsel in U.S. Supreme Court history was *Gideon v. Wainwright*,⁵ which overruled *Betts v. Brady*. The Court held that an indigent person accused of a serious crime was entitled to the appointment of defense counsel at State expense. In an unprecedented early collaboration between defense counsel and prosecutors, 22 State attorneys general joined petitioner Clarence Earl Gideon in arguing that sixth amendment protection be extended to all defendants charged with felonies in State courts. Four years later, with its

¹ 6 Ind. 13 (1853).

² 304 U.S. 458 (1938).

³ 287 U.S. 45 (1932).

⁴ 316 U.S. 455 (1942).

⁵ 372 U.S. 335 (1963).

decision in *In re Gault*,⁶ the Court built on the *Gideon* decision to extend to children the same rights as adults by providing counsel to an indigent child charged in juvenile delinquency proceedings. The right to counsel in trial courts was significantly expanded again when the Court, in *Argersinger v. Hamlin*,⁷ extended the right to counsel to all misdemeanor State proceedings in which there is a potential loss of liberty.

The decisions in *Gideon*, *Gault*, and *Argersinger* are the best known of the right-to-counsel cases in the U.S. Supreme Court, but they were part of a broader array of decisions rendered by the Court in the past three decades, all of which protect the right to counsel for poor persons. The Court recognized the indigent defendant's right to counsel at such critical stages of criminal proceedings as postarrest interrogation,⁸ lineups and other identification procedures,⁹ preliminary hearings,¹⁰ arraignments,¹¹ and plea negotiations.¹² After conviction, the indigent defendant is constitutionally guaranteed the right to counsel in sentencing proceedings,¹³ appeals of right,¹⁴ and, in some cases, probation and parole proceedings.¹⁵ In addition, the right to counsel for indigent defendants often extends, under State or Federal law or practice, to collateral attacks on a conviction as well as a range of what might be called "quasi-criminal" proceedings involving loss of liberty, such as mental competency and commitment proceedings, extradition, prison disciplinary proceedings, status hearings for juveniles, and some family matters such as nonpayment of court-ordered support or contempt proceedings, as well as child dependency,

abuse, and neglect situations. Finally, in any criminal proceeding in which counsel appears, the defendant is entitled to counsel's *effective* assistance.¹⁶ These diverse Federal requirements under the U.S. Constitution, often supplemented by more stringent State standards, created enormous pressures on the lawyers who provided indigent defense. The mandate of the *Gideon*, *Gault*, and *Argersinger* decisions, as well as the Court's requirement to provide counsel at all critical stages of a prosecution, meant that government would have to assume vastly increased costs for providing counsel to the poor. Policy-makers began to think in earnest about more systematic ways to deliver constitutionally required defense services.

The first significant collaboration in the justice sector occurred in 1974, when then-Attorney General Richard Kleindeinst lent his own and his office's support to a project called the National Study Commission on Defense Services. The National Study Commission, with ongoing guidance from the Justice Department, published its final report, *Guidelines for Legal Defense Systems in the United States*, in 1976. Those enduring guidelines built on an equally influential set of standards developed in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals (NAC). It was NAC that proposed public defender caseload standards, which have formed the basis for all current workload standards at the Federal, State, and local levels.¹⁷ NAC proposed that a public defender office should handle the following average number of cases, per attorney, per year:¹⁸

⁶ 387 U.S. 1 (1967).

⁷ 407 U.S. 25 (1972).

⁸ *Miranda v. Arizona*, 384 U.S. 437 (1966); *Brewer v. Williams*, 430 U.S. 387 (1977).

⁹ *United States v. Wade*, 388 U.S. 218 (1967) (lineups); *Moore v. Illinois*, 434 U.S. 220 (1977) (one-person showups).

¹⁰ *Coleman v. Alabama*, 399 U.S. 1 (1970).

¹¹ *Hamilton v. Alabama*, 368 U.S. 52 (1961).

¹² *Brady v. United States*, 397 U.S. 742 (1970); *McMann v. Richardson*, 397 U.S. 759 (1970).

¹³ *Townsend v. Burke*, 334 U.S. 736 (1948); *United States v. Tucker*, 404 U.S. 443 (1972).

¹⁴ *Douglas v. California*, 372 U.S. 353 (1963).

¹⁵ *Mempa v. Rhay*, 389 U.S. 128 (1967).

¹⁶ *Strickland v. Washington*, 466 U.S. 668 (1984).

¹⁷ National Legal Aid and Defender Association, 1992, *Indigent Defense Caseloads and Common Sense: An Update*, Washington, DC.

¹⁸ National Advisory Commission on Criminal Justice Standards and Goals, 1973, Standard 1312.

Felonies—not more than 150.

Misdemeanors (excluding traffic)—not more than 400.

Juvenile Court cases—not more than 200.

Mental Health cases—not more than 200.

Appeals—not more than 25.

The NAC and National Study Commission standards, along with a subsequent generation of indigent defense standards, continue to provide clear, comprehensive guidance to defenders, legislators, policymakers, and other criminal justice system officials throughout the United States. Specific areas covered include juvenile justice (ABA and the National Advisory Committee for Juvenile Justice and Delinquency Prevention, 1980), appellate defense services (NLADA, 1980), contracting for defense services (NLADA, 1984), death penalty cases (NLADA, 1988, and ABA, 1989), assigned counsel systems (NLADA, 1989), performance guidelines for criminal defense representation (NLADA, 1995), and defender training (NLADA, 1997). A third edition of the well-recognized ABA *Standards for Criminal Justice on the Defense Function* (1993) and *Providing Defense Services* (1992) drew on many of these standards.

More developed standards in the field of juvenile representation in abuse and neglect proceedings followed in 1996. These standards have been implemented in various ways in the

States, including statutes, court rules, court decisions or settlement of law suits, endorsement or adoption by bar associations, incorporation into contracts for defense services, adoption after self-evaluation, or outside evaluation by national technical assistance providers. Standards were the subject of a panel discussion that are summarized in this report (see appendix 8).

The era of the personal computer and the Internet allows major improvements both within indigent defense systems and in their integration into comprehensive criminal justice information networks. Governments at every level are learning that parity of technological resources and shared access to essential case information are essential to reducing the costs and redundancy of criminal justice operations, improving the efficiency of the entire system, and promoting earlier disposition of cases and more appropriate, individualized, and effective sanctioning of convicted offenders. The Federal Government is leading the way in the inclusion of indigent defense in these technology integration efforts through criminal justice information integration initiatives at the national and international levels. Information networking, case management systems, and computerized case processing are three strong tools for defender program managers to use in the increasingly sophisticated provision of defense services, whether in large city or State defender offices or loosely networked local systems.

II. Indigent Defense Services Today

There are three basic models for the delivery of defense services: the *staffed public defender* model, with employees on salary; the *assigned counsel* model, in which private attorneys are appointed to provide defense services either from an ad hoc list maintained by the courts or through some more systematic organization of services; and the *contract* model, whereby individual attorneys or firms contract to provide some or all of a jurisdiction's indigent defense services. Today, the majority of indigent defense in the United States is provided through a staffed public defender model, particularly in larger urban jurisdictions. More than half of the Nation's counties still use the assigned counsel model. Most States have organized some form of statewide defender services, whether in oversight, funding, or both. Some States provide statewide services for a particular kind of representation, such as appeals or capital representation. The chief defender is often selected by a commission or independent board, but many chief defenders at the State level are chosen by governors, and a few are chosen or approved by the judiciary.

Conclusions on the current state of indigent defense are difficult to draw because the last comprehensive national survey of indigent defense services occurred in 1982. Although the data in the appendixes are helpful for State-by-State analysis, a new comprehensive national study is now under way with Justice Department funding through the Bureau of Justice Assistance. An interim report prepared for BJA by the

National Legal Aid and Defender Association in December 1997 identified the following examples of significant changes in indigent defense since the last national survey:

1. More States have adopted a State public defender system.
2. State offices have expanded in some jurisdictions that use a hybrid of State and local defense systems.
3. The use of contract defense systems has increased in many parts of the country.
4. Defender services are expanding to address the broader needs of clients, including concepts of client-centered representation and incorporation of civil and administrative matters related to a client's case.
5. Experiments have occurred in the creation of community-based defender offices, as opposed to traditional city, county, or State agencies.
6. Defender performance guidelines have emerged that describe the tasks of representation more clearly than ever before.
7. Public defenders have made increased use of technology to share information and research and to keep case data.¹⁹

Indigent defense today, in terms of funding, caseloads, and quality, is in a chronic state of crisis.²⁰ Indigent defense ranks consistently low on legislative agendas that focus on popular

¹⁹ National Legal Aid and Defender Association, *National Survey of Indigent Defense System*, (Interim Report, December 15, 1997), Washington, DC.

²⁰ American Bar Association, May 1982, *Criminal Defense Services for the Poor: Methods and Programs for Providing Legal Representation and the Need for Adequate Financing*, Chicago, IL; Special Committee on Criminal Justice in a Free Society, American Bar Association, 1988, *Criminal Justice in Crisis*, pp. 35–43, Chicago, IL; *Report of the Federal Courts Study Committee*, pp. 157–160; Timothy R. Murphy, 1991, "Indigent Defense and the U.S. War on Drugs: The Public Defender's Losing Battle," *Criminal Justice* 14(Fall); American Bar Association, 1993, *The Indigent Defense Crisis*, Chicago, IL; Stephen B. Bright, 1994, "Counsel for the Poor: The Death Sentence not for the Worst Crime but for the Worst Lawyer," 103 *Yale Law Journal* 1835; Robert L. Spangenberg and Tessa J. Schwartz, 1994, "The Indigent Defense Crisis Is Chronic," *Criminal Justice* 13(Summer); "Crisis in the Legal Profession: Rationing Legal Services for the Poor," *Survey of American Law* 837; National Association of Criminal Defense Lawyers, October 1997, *Low-Bid Criminal Defense Contracting: Justice in Retreat*, Washington, DC.

anticrime measures such as more police and prisons, longer sentences, mandatory minimums, death penalties, and other initiatives that significantly increase the number and complexity of indigent defense cases but commonly fail to accommodate for the impact on already-stressed public defender programs. The increasing adjudication of children as adults puts new stress on indigent defense resources and creates new challenges for defenders and their criminal justice system partners to provide broader, holistic representation and services in a child's earliest encounters with the justice system.

Indigent defense services suffer widely from the combined forces of weak organizational structures, heavy caseloads, underfunding relative to other components of the criminal justice system, and general political hostility to poor people facing criminal charges. The effects can be severe.

- Capital defendant George McFarland's lawyer, John Benn, slept through much of his 1992 trial. "His mouth kept falling open and his head lolled back on his shoulders . . . again. And again. And again," wrote a newspaper reporter. "It's boring," the lawyer told the judge.²¹ But the constitutional right to counsel was not violated, according to the trial judge, because "[t]he Constitution doesn't say the lawyer has to be awake." The Texas Court of Criminal Appeals upheld McFarland's death sentence, and the U.S. Supreme Court denied review.
- In one California county last year, a three-attorney firm provided representation in more than 5,000 cases in 1 year under a fixed-fee contract. A single attorney was responsible for handling all misdemeanors—more than 3,500 per year, compared with the cap of 400 recommended under

national standards. The firm filed no discovery motions, took only 12 cases to trial, and retained one part-time investigator 10 hours per week. The contracting lawyer acknowledged that there is an "inherent conflict" that every dollar spent on an investigator or an expert means one less dollar in compensation for him, but regards this as a "political reality."²²

- In 1998, detainees in Fulton County, Georgia, waited up to a year to be indicted for simple crimes such as burglary. Defendants awaiting trial often languished for more than a year in a county jail so crowded that inmates slept shoulder to shoulder on the floor. A Federal class action suit to improve indigent defense services was settled this year.
- In juvenile courts across the country, children are often left literally defenseless, because overburdened juvenile defenders do not have the time or the resources to attend to the particulars of their cases. As a result, far too many children languish in the Nation's overcrowded juvenile detention and correctional facilities.

In her Law Day remarks this year, Attorney General Reno stated that "if we do not adequately support criminal defense for poor Americans, people will think that you only get justice if you can afford to pay a lawyer. This perception would undermine confidence in our system. Skimping on adequate representation also hurts effective law enforcement by creating delays and leading to the reversal of convictions on appeal."

The Justice Department began a dialogue with the indigent defense community in September 1997, when the Attorney General and officials from OJP and BJA convened a focus group of 35

²¹ "Asleep on the Job? Slaying Trial Boring, Lawyer Says," *Houston Chronicle*, August 14, 1992.

²² Deposition of defendant Jack Suter in *Fitzmaurice-Kendrick v. Suter*, Civ. S-98-0925 (E.D. Cal.).

prominent representatives of the indigent defense community. The focus group identified six general themes in the field of indigent defense that must be addressed.

- Advocating for indigent defense services.
- Building an independent indigent defense structure.
- Allocating resources equitably.
- Meeting these challenges in the juvenile justice system.
- Developing standards for indigent defense programs.
- Building the capacity for using technology.

These themes have continued to guide the Justice Department's efforts to promote strong and stable indigent defense systems, including the National Symposium (see appendixes 1 and 2).

When the Attorney General and OJP/BJA officials met with eight prominent indigent defense representatives in January 1998, one goal was to identify successful indigent defense programs involving collaborations of public defenders with other representatives from the criminal justice community. The group also identified major challenges to improving representation for indigent criminal defendants.

- Ensuring that State and local indigent defense systems have access to Edward Byrne Memorial State and Local Law Enforcement Assistance Program grants (Byrne grants), Violence Against Women Act (VAWA) funds, and other Federal funds available to the various components of the criminal justice system.
- Managing increasing caseloads of public defenders.
- Providing indigent defenders with the same advanced technology available to prosecutors.

- Promoting the development of indigent defense institutions in jurisdictions where indigent defense is unstructured and reliant on ad hoc assigned counsel.

Attorney General Reno asked the Bar Information Program of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants (SCLAID) to prepare a report on collaborations between indigent defenders and other criminal justice system actors. That report was published as a BJA Indigent Defense Series monograph entitled *Improving State and Local Criminal Justice Systems: A Report on How Public Defenders, Prosecutors, and Other Criminal Justice System Practitioners Are Collaborating Across the Country* (October 1998). The monograph identified seven examples of collaboration in local jurisdictions: criminal justice planning commissions; cooperation in programs receiving Federal funds; task forces; Fill the Gap coalitions (i.e., the funding gap created when resources are directed to law enforcement at the start of the criminal justice process and corrections at the end, without attention to the concomitant effect on the adjudication components in the middle, such as indigent defense); joint prosecutor/public defender unions; cooperation in case tracking and criminal history systems; and fiscal impact statements. Each example was explored at the National Symposium (see appendixes 3, 4, and 5 for additional resources).

In July 1998, at the request of the Attorney General's staff, The Spangenberg Group, a leading private consulting firm in the field of indigent defense, developed comprehensive, current, State-by-State data on the structure and operation of indigent defense systems in the United States (see appendixes 6 and 7).

Other efforts to improve indigent defense services are already under way. Since 1993, OJJDP has funded the American Bar Association Juvenile Justice Center to conduct activities

aimed at improving the access to counsel and quality of representation that children receive in delinquency proceedings. In 1998, OJJDP provided funds to ABA to create the National Juvenile Defender Training, Technical Assistance, and Resource Center to provide ongoing support to juvenile defenders. BJA funded the Vera Institute to conduct the National Defender Leadership Project to train defender managers on leadership skills both within the criminal justice system and in the community. The Harvard University John F. Kennedy School of Government received an ABA grant to convene an Executive Session on Indigent Defense Systems to discuss the future direction of defense services.

Against this backdrop, OJP collaboratively planned this first National Symposium on Indigent Defense. The symposium was an unprecedented gathering of participants from all components of Federal, State, and local criminal justice systems and beyond, including defenders,

prosecutors, judges, private practitioners, police, academics, legislators, court personnel, victim representatives, policy analysts, technology experts, social workers, mental health professionals, and child and family protection officials. Teams of criminal justice personnel from the same jurisdiction all spoke of the advantages of collaboration with indigent defense. This collaborative context created a unique opportunity to exchange views and showcase innovative defender programs that are taking big first steps toward bringing indigent defense into full partnership in the criminal justice system.

The remainder of this report is divided into three sections. Section III uses the six priorities identified by the Office of Justice Programs focus group as the lens through which to review the sessions of the National Symposium. Section IV lists examples of successful collaborations that were presented at the symposium, and Section V provides a summary and conclusion.

III. Expanded Strategies for Collaboration by and With Indigent Defense Systems

A. A Diversity of Voices Moving Toward Consensus on Indigent Defense

Knowledge about the problems facing indigent defense is not necessarily shared throughout the criminal justice and policymaking systems, but those most familiar with the problems encountered in indigent defense recognize that the issues must be addressed systemically. Dialogue can breed commonality of interest, and a recognition of symbiosis can lead to solutions.

The symposium's opening plenary on "Systemic Problem Solving" was typical of the breadth of perspective on the problems facing indigent defense. The panel, made up of 10 participants from diverse components of the criminal justice system, responded to hypothetical questions posed by Professor Charles Ogletree from Harvard University's Law School:

The panelists' answers to this problem were creative and diverse. Some, like Detroit Mayor Dennis Archer and Cook County Commissioner

"We have to make sure we don't put 100,000 police officers on the street and not increase funding for the public defenders to make sure that cases are heard and indigents are fairly represented."

**—Bobbie Steele, Commissioner,
Cook County, Illinois**

Bobbie Steele, saw the problem as one that could only be addressed by direct action through support for quality indigent defense services. Others, such as Milwaukee District Attorney Mike

Trouble in the State of Bliss

There is some consternation in the land. A few years ago there was a hue and cry to protect the interests of all citizens in the State of Bliss, because there was so much rampant crime. The legislature has gotten tough, passing many anticrime measures. More financial support has been given by the government to law enforcement, judges, prosecutors, and corrections. As a result of that support, the number of serious crimes has gone down and there's comfort in the land that the criminal justice system is working. However, we start to see some cracks because one part of the criminal justice system, the representation of indigent defendants, is exploding and about to fall apart—not enough lawyers, not enough resources, not enough training—and clients, who may or may not be guilty of the charges, are not able to raise their claims and present all of their legal issues. So, there is a crisis. Is there a way that all of these disparate parts of the criminal justice system can respond to what we see as a problem in the indigent defense system in our land? What can be done?

McCann, saw the opportunity for political compromise through support by prosecutors for indigent defense and vice versa. Others noted the broader implications of failure to support the defense component of the justice system.

“In our jurisdiction there’s a very civil relationship between the defense and the prosecution. . . . It is so tempting in a political campaign to rip a public defender . . . but I want to support the public defender’s funding. I hope the public defender will support our funding. . . . I think there’s nothing unethical in quid pro quo.”

**—E. Michael McCann,
District Attorney,
Milwaukee Wisconsin**

Eleventh Circuit U.S. Court of Appeals Judge Rosemary Barkett noted that constitutional protections were “put in place not by a lobby of criminals, but by people who recognize that if we ignore some of these constitutional precepts, the things that democracy holds dear are going to be eroded.” Systemic approaches that ignore the provision of constitutionally adequate defense services are also shortsighted. A leading victims advocate from Washington, D.C., Anne Seymour, noted that intimate relationships exist between victims and offenders, however dysfunctional some of them may be. Systemic approaches find both victim and defense representatives concerned about justice. District of Columbia Police Chief Charles Ramsey noted that “no one is served when a system breaks down. . . . There is a tendency to try to jail our way out of our problems, . . . [and] it becomes even more dysfunctional as you start to throw massive numbers of people into the system.”

Others noted that the failure to provide adequate defense services has an impact outside the criminal justice system as well. Cook County Commissioner Steele found links between the failure to address issues in the criminal justice system and the schools, whereas another victim advocate noted the strong generational link between drug abuse and criminal justice history, which affects families’ health, housing, and education. Other influences can exacerbate the crisis. A member of the Maryland House of Delegates, Peter Franchot, candidly noted that public defense is “at the bottom of the barrel” in legislative priority lists but concluded his remarks by stating that he would return to the legislature that afternoon to propose additional funding for indigent defense. A law professor saw indigent defense as a means of redressing disparities between the rich and poor in criminal case processing.

A crisis like the one in the State of Bliss “would cause mayors to begin a dialogue with everyone, including our bar associations and others, to rally around our lawyers who are giving good quality work, defending those who have every right to be defended.”

**—Dennis Archer, Mayor,
Detroit, Michigan**

Subsequent panels expanded upon the advantages of including indigent defense representatives in systemic discussions on criminal justice, as well as the consequences of failure to include them. Among the representatives of indigent defense were those who come from successful defender programs, often well established in local communities and State or Federal governments. Officials from throughout the criminal justice system spoke of their collaborations with indigent defense services to produce efficient and effective institutions and fairer and more just outcomes.

B. Building an Independent Indigent Defense Structure

The primary objective of a defender program is “to assure that quality legal representation is afforded to all persons eligible for counsel” (ABA *Standards for Criminal Justice on Providing Defense Services*, Standard 5–1.1). This requires that the defender function be independent—that is, able to make the appropriate decisions about the most effective means by which to defend a particular client, insulated from outside interference or political attacks motivated by public hostility to a particular client or class of clients (NAC Standard 13.9). “The legal representation plan for a jurisdiction should be designed to guarantee the integrity of the relationship between lawyer and client,” directs the ABA *Standards on Providing Defense Services*, Standard 5–1.3. “The plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice.”

The core mission of defense services programs is “high quality, effective, and zealous advocacy for the indigent.”

—**Michael Judge,**
Chief Public Defender,
Los Angeles County, California

The primary means of ensuring defender independence is to provide for oversight by an independent board or commission, rather than direct oversight by judicial, legislative, or executive agencies or officials. The National Study Commission on Defense Services recommended that a special defender commission “should be established for every defender system,” that the “primary consideration” in constituting the commission “should be the independence of the Defender Director,” and that its membership

should include a diversity of interests and branches of government—mostly attorneys, but under no circumstances judges, prosecutors, or law enforcement (Guideline 2.10). A particularly important aspect of defender independence is budgetary: national standards require defender systems to prepare their own budgets and submit them directly to the appropriating authority, rather than allow the judicial or executive branch to cut or change them before submission (Guideline 2.8).

Independence is a hallmark in the structure and operation of the Indiana Public Defender Commission, an 11-member committee that oversees some aspects of indigent defense in that State. There are two significant aspects to the commission’s independence. First, its members are appointed from a sufficiently diverse community to guarantee its independence. Three are appointed by the chief justice, three by the governor, two by the speaker of the house, two by the head of the senate, and one by the Indiana Criminal Justice Institute. The political appointees must be from different political parties. Second, and more important, in a State such as Indiana, where county control is strong, the commission holds the power to reimburse, with State funds, the costs of indigent defense at the local level, at 50 percent of the costs in capital cases and 40 percent of the cost in noncapital cases. For the counties to qualify for the funding reimbursement, they must establish an independent county indigent defense board to preserve the independence of the defense function. Of the 92 counties in Indiana, 20 have chosen the funding reimbursement option, and the trend is becoming increasingly popular each year.

C. Advocating for Statewide Indigent Defense Structures

Some of the most effective defender collaborations have occurred in the development of new statewide systems for the delivery of defense services. The trend over time has been toward

statewide structures, whether in integrated, staffed offices or through statewide reorganization of discrete components of defense services such as central budgetary control, administrative oversight, training and other support, or specific types of representation such as appeals or death penalty cases.

Statewide organization is a consistent theme of national standards. In 1967, in the wake of *Gideon v. Wainwright*, the President's Commission on Law Enforcement and the Administration of Justice recommended that "each State should finance assigned counsel and defender systems on a regular and statewide basis." In 1970, the National Conference of Commissioners on Uniform State Laws, whose members are appointed by the governors of every State, promulgated the Model Defender Act, which recommended that every State establish a statewide defender system under the direction of a Defender General, "to assure better coordination and consistency of approach throughout the State, [provide] better consultation with several branches of State government, . . . reduce the administrative burden on court personnel, and provide more efficient and more experienced defense counsel services to needy persons accused of crime." The 1976 guidelines of the National Study Commission on Defense Services call for a statewide organization with a centralized administration to "ensure uniformity and equality of legal representation and supporting services and to guarantee professional independence for individual defenders" (Guideline 2.4). They provide that "primary responsibility for funding of defense services should be borne at the state level" (Guideline 2.17). ABA *Standards on Providing Defense Services*, Standard 5-1.2(c) suggests simply that "[c]onditions may make it preferable to create a statewide system of defense." The commentary to that section notes the trend toward statewide organization and lauds "the flexibility of the model" in its more recent iterations. There is substantial value in organizing defense services through some form of efficient

and consistently administered central program that provides cost-effective services that meet constitutional requisites for quality representation.

At the National Symposium, representatives from three States spoke of diverse sources of collaboration to develop statewide defense services. In Minnesota, Nebraska, and Mississippi the processes of statewide organization were quite distinct, yet the three programs shared issues. Each dealt with different local histories and attitudes, and each approached the challenge of evolution differently. All achieved their goals.

Minneapolis trial court Judge Kevin Burke and Minnesota's Chief Administrator of Indigent Defense Services Richard Scherman described the transition to State structures. In the mid-1980s, only 2 of the State's 10 judicial districts and 2 of the largest urban areas had separate public defender agencies. The main reason for considering a switch to a statewide system was the risk of a long, serious criminal trial in a small county, because all counties financed their operations with local property taxes, which produced a relatively small budgetary base.

In addition to financial considerations, those who promoted statewide organization argued for longevity and stability in the program, as well as an identifiable mission. They promoted State financing as the first step toward funding of a State-integrated justice system. For a legislative champion, they approached a legislator with a teaching background, who had no knowledge of defender systems but was concerned about equal treatment and understood the financial aspects of State services.

Years of effort resulted in legislation establishing the Minnesota Board of Public Defense, with three nonattorney members appointed by the governor and four members appointed by the State supreme court. The board is an independent agency under the judicial branch's budget. The program now has 5 "public defense corporations" with 720 employees, a \$48 million annual budget

from the State legislature, and 200,000 cases annually. About 65 percent of employees are part time, but all are paid full State benefits. A notable collaboration within the program is between attorney and nonattorney staff. The State public defender, a lawyer, oversees operations and deals with legislation. A nonlawyer administrator deals with personnel and budgets. Key collaborations contributing to the Minnesota program's success include building a broad political base of support with local commissioners in the counties, working with local county organizations, working with unions (the State's staff defenders are unionized), tying technology to other statewide systems such as the courts, and working in collaboration with prosecutors and the media.

In Nebraska, the coalition for creation of a State public defender office involved a nationally known senior partner in a large law firm, Harold Rock of the Omaha firm Kutak Rock, and Federal funding through the Byrne formula grant program to study the development of a statewide defender system. The impetus for reform was provided by several lengthy trials in unexpected major cases in a small rural county.

A task force to study the possibility of starting a State-funded public defender program began with Mr. Rock as chair. The task force had representation from the State bar association, the county commissioners, the State legislature, and judges from all levels of the courts. The task force engaged a consulting firm in the field of indigent defense services, The Spangenberg Group, to design a study of indigent defense in the State. The study, which included a survey of various justice system actors, totaled 150 pages and was submitted with legislative recommendations to the Nebraska Supreme Court.

James Mowbray, director of the Nebraska Commission on Public Advocacy, the statewide body that eventually resulted from the Spangenberg report, told National Symposium attendees that the report had found "some good

offices" but, "generally, a very dysfunctional system." The advantage of using an outside consulting firm was that it presented a report with "credibility and data" to Nebraska judges and legislators. In approaching the legislature, the task force decided that the "right to effective assistance of counsel" argument, although constitutionally compelling, would carry little weight in convincing legislators of the wisdom of statewide financing and organization. Instead of taking its bill to the Judiciary Committee, the task force took it to the Revenue Committee, where it was called the "County Revenue Assistance Act." The bill passed the legislature handily because it provided property tax relief to the counties.

The Nebraska Commission on Public Advocacy was proposed to defend only first-degree capital murder charges, which are still its only charge. However, with additional Byrne grant funds, the commission was able to fund additional attorney positions to help the counties with other serious violent felony and drug offenses. The program's budget is under the executive branch of the State government.

In Mississippi, where the battle for State funding began almost 10 years ago, two key actors were former Mississippi Supreme Court Justice James L. Robertson and the public defender in Jackson County, Mississippi, Beth Davis, who now serves as the executive director of the new State system for indigent defense. Work on a statewide system began in earnest in the wake of a 1991 decision by the Mississippi Supreme Court in *State v. Wilson*, 574 So.2d 1338 (Miss. S.C. 1991). That decision found both the structure and funding of indigent defense in Mississippi to be inadequate. By statute, the maximum fee for any court-appointed criminal case was \$1,000 plus out-of-pocket expenses, and there were "plenty of circuit judges," Justice Robertson told symposium attendees, "who prided themselves on never approving the full \$1,000." When the court effectively struck down the fee maximum, he said, "many counties were

hit with five-figure bills from court-appointed lawyers.”

In 1993, the Mississippi Judicial Advisory Study Committee, working under the mandate of the State legislature, named a subcommittee to explore alternatives to the structure and funding of indigent defense services in the State. At the same time, the Mississippi Criminal Defense Lawyers Association used State bar IOLTA money to fund a statewide study by The Spangenberg Group, similar to the study done for Nebraska. A major issue for the committee was who would be in charge of any proposed State agency. Thus, the composition of the board that would select and oversee the State’s public defender was crucial. Ultimately, the State ended up with a nine-member board with “each person appointed by a separate public official or constituency,” including the Mississippi Bar Association, the Magnolia Bar Association (an African-American lawyers association), and the Public Defenders Association. The State Defender Office was organized on July 1, 1998.

According to Ms. Davis, executive director of the Office of the Mississippi State Defender, much of the early success of the defender’s office can be attributed to participation in the Vera Institute’s National Defender Leadership Project. There she met and collaborated with public defenders with similar programs and problems. The importance of pay parity for public defender, to “attract the brightest and youngest people to come into this system and lend us their talent, their intelligence, and their enthusiasm” was stressed at the Leadership Project.

Each of these three successful collaborations in the creation of statewide systems was developed through different processes, and the resultant organizations differ in structure and scope of services. However, these States’ experiences share four aspects in common. First, each moved to a statewide structure under the guidance of a diverse planning body. Second, each State began

its mission out of a local funding crisis, whether that crisis was a criminal trial that could or did bankrupt smaller counties or a severe funding shortage requiring judicial intervention. Third, each State conducted a systematic study of defense services, using outside consultants, before moving into the legislative arena. Finally, when legislative action was called for, each State knew which arguments would most likely persuade its legislators to adequately fund defense services.

D. Allocating Resources Equitably

Salaries in public defender offices have historically suffered by comparison with those of prosecutors, other State employees or contractors performing similar legal work, and the private bar. Salary parity between prosecutors and defenders at all experience levels is an important means of reducing staff turnover and avoiding related recruitment/training costs and disruptions to the office and case processing. Concomitant with salary parity is the need to maintain comparable staffing and workloads—the notion of equal pay for equal work. The concept of parity includes all related resource allocations, including support, investigative and expert services, physical facilities such as a law library, computers, and proximity to the courthouse, as well as institutional

“In the National District Attorney’s Association (NDAA), we are looking to get some rolling back of student loans for public service, and we have included public defenders in our proposal.”

—William Murphy, Prosecutor and Immediate Past President, NDAA

issues such as access to Federal grant programs and student loan forgiveness options. National standards affirm these principles. ABA *Standards on Providing Defense Services*, Standard 5–4.1

states: “The chief defender and staff should be compensated at the rate commensurate with their experience and skill sufficient to attract career personnel and comparable to that provided for their counterparts in prosecutorial offices.” This standard recognizes that all employees in the office are entitled to parity, that skill and experience should be compensated adequately, that short-term employment is a drain on any office, and that prosecutorial salaries are the best measures against which to compare the pay rates and scale in the public defender program. ABA Standard 5–1.4 makes clear that, in addition to attorney salaries, adequate resources should be provided for investigatory, expert, and other services necessary to quality legal representation, not only at trial but “in every phase of the [criminal] process.” Both ABA Standard 5–4.3 and the National Study Commission Guideline 3.4 call for adequate facilities and other material, including technology, to permit quality representation.

“Indigent defense services could be funded as a percentage of the total amount we spend for some other component of the criminal justice system, such as prosecution or prisons.”

**—Ron Goldstock, Former Prosecutor
and Immediate Past Chair,
ABA Criminal Justice Section**

Symposium panelists recognized that defining the scope of and limits on parity can be difficult. Parity can apply to attorney and nonattorney staff, to entry-level salaries and salaries for experienced staff, and to assigned counsel and contract rates of pay. It may apply to staffing, staffing ratios (attorneys to support staff or attorneys to investigators), or caseloads. It may be affected by such procedural questions as the source of payment (State or county funding, for example), the capping of payments at a certain maximum, or

the timing of payment. Panelists observed that no comprehensive formula yet exists for calculating true comparability of resources for both sides in a criminal case.

Federal public defenders generally have salary parity with Federal prosecutors. By statute, they are to be paid at a rate not to exceed prosecutors’ salaries; salaries of assistant Federal defenders are set by the Defender Services Division of the Administrative Office of the U.S. Courts at levels “consistent with” comparable positions in U.S. Attorney’s Offices. The Defender Services Division, a 30-person office with an annual appropriation of about \$400 million, coordinates all Federal indigent defense programs. It administers a budget and grant process for about 100 Federal public defender programs across the country. In recent years, the division began a project called the Defender Organization Classification System, which set pay levels for qualifications and standards for all types of positions in Federal defender offices. The Federal public defender program authorizes staffing on a caseload-per-attorney basis, and caseloads are based on the number of cases closed by each attorney in a given year. Caseloads of the staff attorneys in the program vary widely, from as few as 35 closed cases per year to as many as 300. A proposed weighted caseload system for Federal defenders seeks an average of from 65 to 90 case closings per attorney, per year.

Payment levels for private attorneys appointed to represent indigent Federal defendants in Federal cases, however, whether measured against attorneys in private practice or against rates that the Federal Government pays for work other than indigent defense, are significantly low. The rate for private attorneys appointed to criminal cases in the Federal system is generally \$45 an hour for out-of-court time and \$65 for the 1 out of 6 hours on an average case that are spent in court. Average law office overhead in the Nation, however, is about \$57 per hour. Attorney General

Reno recently urged Congress to provide funding for an across-the-board \$75 hourly rate, as Congress itself authorized 15 years ago but never fully funded. In addition to the issue of hourly fees, compensation for Federally appointed counsel is further limited by a \$3,500 presumptive case maximum, or cap, in felony cases and by similar caps on investigative expenses and appeals (see appendix 9).

Other programs have struggled successfully with parity issues. The Office of the Public Defender of the State of Connecticut has dollar-for-dollar parity with prosecutors' salaries, as described by the State's Chief Public Defender Gerard Smyth. The State legislative debate on this issue reflected the concern that paying public defenders less than prosecutors may pose a constitutional problem. Parity is based on a rough staffing formula by which the public defender is allocated two-thirds the number of staff positions that prosecutors' offices have. Prosecutor salaries are determined by union negotiations, then endorsed by the Public Defender Commission.

In New Mexico, the State Public Defender Department was suffering significant attrition when its attorneys took prosecution and other government jobs because the office could not maintain parity. The attrition rate in the Albuquerque felony unit exceeded 50 percent of the 30 felony attorneys in a single year. State Public Defender Phyllis Subin began meeting regularly with the governor's chief of staff and working with the State personnel office and personnel board to develop a market-pricing study of pay scales for all other State lawyers. She hired an Assistant Public Defender with a Master's degree in public administration and a human resources officer who had just left the State personnel office. Together they developed additional market-pricing studies vis-a-vis the private bar in New Mexico and public defenders in neighboring States. The legislature took note of the program's cost-effectiveness as well as the destabilizing

effect and case backlogs across the whole criminal justice system caused by public defender turnover. The legislature ultimately enacted the Balanced Justice Act, providing that, whenever a new judgeship is created, staffing must be comparably increased in the public defender and district attorney offices.

E. Meeting Systemic Challenges in the Juvenile Justice System

Any successful criminal justice system must include a firm commitment to a comprehensive program of juvenile justice, with sufficient resources allocated for performance of the defense function. Effective intervention with troubled young people can yield lasting benefits in their lives and save the system from the enormous costs and time of dealing with those same people in the adult courts and correctional systems. Panels on

"Client-centered lawyering works for the client, who sees himself as somebody worth fighting for; it works for the criminal justice system when the public has confidence that our young people are being adequately represented and fairly treated; and it works for public safety because it translates into less crime."

**—Jo-Ann Wallace, Director,
Public Defender Service
Washington, D.C.**

juvenile justice noted the dramatic shifts in the issue of indigent defense in the juvenile justice system in recent years. John J. Wilson, the deputy administrator of the Justice Department's Office of Juvenile Justice and Delinquency Prevention, noted that the stakes are higher now for juvenile offenders than ever before, with some 17,000 juveniles transferred to adult criminal courts every year. He drew on findings of an OJJDP study

conducted by the ABA and published in 1995, *A Call for Justice*, which concluded that “significant numbers of juveniles were being incarcerated without benefit of counsel . . . [and] that many juveniles were not receiving the quality of representation to which they were entitled.” The resource issues for juvenile defenders are most dramatically posed in the study’s conclusion which stated that the most pervasive problem in juvenile defense is “exceedingly high caseloads, with some attorneys carrying 500 cases a year, 300 of which are juvenile cases.” Fees for assigned counsel in juvenile cases, too, are a feature of inadequate resources. Maximum fees of \$100 for appointed counsel to handle any juvenile case in Virginia, for example, are lower than the adult misdemeanor fee cap of \$132 per case.

Defender programs for young people also suffer from difficulty in the recruitment and retention of staff attorneys who can provide their juvenile clients with capable, compassionate representation. The New York Legal Aid Society recently reformed its entire organization to more effectively serve its clients. Under the leadership of Columbia Law School Professor Jane Spinak, and with advice from an outside consulting firm, each Juvenile Rights Division (JRD) office in the five boroughs of New York reorganized itself into what were called “delinquency teams.” Teams were composed of the attorneys, social workers, support staff, and parents of JRD clients. “What that meant,” said Professor Spinak, “was that there was greater joint staff decisionmaking; there was clearer identification of client needs; and there was greater openness to a team model of representation to identifying what the lawyers do, what the social workers do, what parents can do, what support staff does.” The lawyer team members sought more training, and the appeals unit of the office provided backup, especially on delinquency issues, thereby permitting the office to bring back greater use of impact litigation. Perhaps the strongest sign of its success was that

the new JRD design was later emulated by family court judges as a model for court restructuring.

JRD also presented another aspect of resource collaboration in juvenile defense. Working with the law schools at New York and Columbia Universities, JRD is collaborating on employing law students from clinical programs in innovative ways. Whereas students normally work on a single case or small numbers of cases in a typical clinical program, the focal point of this experimental collaboration, said Monica Drinane, Professor Spinak’s successor at JRD, “is to learn what a public interest law practice is and also to be doing things that help the public interest lawyers manage their large caseloads more effectively and comprehensively.”

A new collaboration with juvenile defenders is being forged by the Department of Justice’s Special Litigation Section of the Civil Rights Division. The Special Litigation Section works under two mandates regarding juveniles: the 20-year-old Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. §1997 and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. §14141 (see appendix 12). There are more than 1,000 juvenile detention and correctional facilities nationwide, according to Section Deputy Director Robinson Frohboese, with more than 0.5 million juveniles detained in the past year. Two-thirds of these juveniles are minority children, a proportion vastly in excess of their representation in the Nation’s population. Some 60 to 70 percent have mental health needs of some sort, and the vast majority come from low-income families. With 21 attorneys, the Special Litigation Section is stretched thin with current investigations of juvenile facilities in 8 jurisdictions and active monitoring of settlement agreements in 66 facilities.

In Louisiana, the section is actively involved in conditions litigation in four secure confinement juvenile facilities, including the Tallulah

Correctional Center for Youth in Madison. The director of the Juvenile Justice Project of Louisiana, who is working with the section on the Tallulah litigation, noted that “Louisiana now has the distinction of being the only State in the country where Justice had to actually file a lawsuit under CRIPA.”

The section is also in the preliminary stages of exploring the use of Federal law to identify the inadequacy of defense representation for juveniles. Although exploratory at the time of the National Symposium, such litigation, were it to occur, would be part of an increasing number of litigative challenges to the systemic inadequacy of indigent defense services, but the first such systemic litigation to be pursued by Federal prosecutors.

Another effective collaboration for juvenile defense is the use of mental health experts with special expertise in working with children. A clinical psychologist who often collaborates with defenders in juvenile cases, Marty Beyer, told symposium attendees that juvenile competency is not the same as that of adults, which is only based on mental illness or low IQ. Instead, juvenile incompetency may be based on immaturity, including children’s “lack of long-range perspective; their difficulty in seeing more than one choice at a time; their problems in trusting adults; their moral code that says the absolute wrong thing to do is to snitch, which is just an adolescent loyalty form of morality; their serious misunderstandings of defense counsel’s role; their not seeing legal rights as entitlements because of childhood experiences; and their learning disabilities.”

Dr. Beyer urged a “reframing” of arguments by child advocates. When children return again and again to juvenile court, she suggested, attention should be given not only to the child but to the lack of services that followed previous arrests. Steve Harper, creator of the Sentencing Advocacy Project for juveniles in Miami, Florida, urged

deeper collaborations of defenders with psychologists. Defenders need to use mental health experts before trial, not only to help them evaluate their juvenile clients, but to advocate. The clinical expert can go with the defender to the prosecutor’s office to explain the full psychological framework of the accused juvenile to the prosecutor.

Additional innovative approaches to enhancing resources and building collaborations in the juvenile justice area are discussed in Section IV, Collaborations: Indigent Defense as a Full Partner in the Criminal Justice System, including coordinated transfer of juveniles to adult criminal courts in the Baltimore Youthful Defender Unit; holistic sentencing advocacy for children in Miami; early entry of social workers in the Maryland Detention Response Unit; and postadjudication advocacy for children in Kentucky.

F. Developing Standards for Indigent Defense Programs

National standards for indigent defense are comprehensive, dealing with virtually every aspect of representation, as well as the recommended structures for defense services. State and local jurisdictions increasingly have adopted their own versions of standards for defense representation and defense systems, much as local ethical and disciplinary rules are adopted from national models (see appendix 8). However, many State and local indigent defense systems either have

“You’ve got to have enough confidence in yourself and in your office to say that we are as good as you all. And we are going to be a part of this, and you’ve got to treat us as equals, and they eventually will.”

**—Karl Dean, Public Defender,
Nashville, Tennessee**

not adopted local standards or have not taken full advantage of those standards that do exist.

The first national standards for indigent defense were developed almost 30 years ago by the National Advisory Committee on Criminal Justice Standards and Goals, appointed by Attorney General Richard Kleindeinst. Those standards were followed by the publication of the *Institute for Judicial Administration/American Bar Association Standards Relating to Juvenile Justice*. Dennis Keefe, Lancaster County public defender in Lincoln, Nebraska, and chair of the Bar Information Project of the American Bar Association, noted that although national standards are not binding on any State or local programs, national and local standards have served widely as both “minimums” and “models” in court decisions, statutes, court rules, and indigent defense service contracts. The Law Enforcement Assistance Administration in the 1970s required any applicant for indigent defense funding to implement the requirements of *Argersinger v. Hamlin*, the U.S. Supreme Court case extending the right to counsel to any misdemeanor case involving a potential loss of liberty, and follow the caseload standards of the National Advisory Commission. In 1998, an ABA resolution called upon all States, bar associations, and courts to adopt enforceable standards relating to the operations of indigent defense systems and to make substantial compliance with those standards a necessary predicate to funding.

A good example of the effective use of standards is in Indiana. The Indiana Public Defender Commission proposed, and the State supreme court adopted, a rule on capital defense, Indiana Criminal Rule of Procedure 24, which drew heavily from prevailing national standards on the provision of defense services in capital cases. As explained by Indiana Law School Dean Norman Lefstein, chair of the Public Defender Commission, the rule requires two qualified attorneys and sets forth experiential requirements for lead counsel as well as co-counsel. It also requires

continuing legal education (CLE) for capital defense representation, with a minimum of 12 hours of experience within 2 years of the date of appointment. A special duty is imposed on judges to assess the defense lawyers’ workload to determine whether the lawyer can handle the capital case, and the lawyer is also required to assess workload. A public defender cannot be appointed in a capital case if the defender, at any time during the pendency of the capital case, has more than 20 open felony cases, and no felony case can be set for trial within 30 days of the date of trial in a capital case. Lawyers are paid \$70 an hour, in and out of court, with no cap on fees, and counsel must be provided with adequate funds for investigative, expert, and other services necessary to prepare and present an adequate defense, including the sentencing phase. In Indiana, as discussed above, compliance with standards is a condition of State funding in both capital and noncapital cases.

G. Building a Capacity for Using Technology

Case management, computerization, and technology issues all are aspects of long-term program stability for indigent defense services and are increasingly critical to the fast, efficient, and cost-effective processing of cases—not only by the defender program but by the criminal justice system. A significant problem is that many defender programs lack technology altogether. This section describes some of the innovations in technology by indigent defense programs and summarizes new partnerships between defenders and other justice system components.

Significant technology innovation and assistance comes from the Federal Government. OJP General Counsel Paul Kendall described a major OJP initiative to develop an intergovernmental justice information protocol that would permit information sharing among all components of the criminal justice system. Indigent defense services are included because the Omnibus Crime Control

and Safe Streets Act defines “criminal justice” as “activities of the courts having criminal jurisdiction and related agencies, including, but not limited to prosecutorial and defender services.”

Today, OJP spending on technology integration has three targets identified by Attorney General Reno. First, it seeks a greater measure of cooperation between Federal, State, and local governments and private industry. Second, it seeks to prevent “smokestack” development, whereby isolated and unlinked efforts of individual agencies occur but no information is shared among agencies or across jurisdictions. Third, it draws attention to privacy and security concerns as systems grow larger and more integrated. The overall objective is to improve the effectiveness and fairness of the criminal justice system through better information sharing.

“Information technology has changed and will continue to change the paradigm of our current notions of the practice of law. It will change your office and the criminal justice system in almost every way imaginable.”

—Jeff Gale, Chief Deputy State Public Defender of California

In addition to nationally coordinated efforts of technology collaboration, local programs have shown great skill and creativity in implementing technology integration. In the 12th Judicial Circuit in Sarasota, Florida, as described at the symposium by Toby Hockett, chief assistant public defender, and Janice Lovern, executive director, State Attorney’s Office, who collaborated on the project at the request of the chief judge of the circuit, meetings began with the circuit’s court clerk, the sheriff, the State attorney, and the public defender (see appendix 10). Their mission was more efficient operations through systemic approaches. After surveying the office

staff, they found duplicate data entry was frequent and delays in information transfer were chronic. Their solution was to put out bids for a computer company to provide the whole system with hardware and software that would eliminate duplicate data entry, increase accuracy of information, and make the system run smoother. The initial contract, signed in October 1994, was for nearly \$6 million.

Three basic components exist in the system now. There is a module, or data packet, for the sheriff’s department, the clerk, the State attorney, the public defender, and the corrections department. Access to data in the system is provided to each agency based on its role in the criminal justice process; some information may be kept confidential based on role division. The public defender office has added systems for conflicts checks and mental health issues. The system permits the sheriff to enter standard data every time a person is arrested. After using those data, posted to networked computers, to conduct intake at the State Attorney’s Office, the information is passed through the network to the public defender’s office, where the intake staff can click on the entered data. The office decides whether to accept the case for assignment and, if accepted, passes the file on to the attorney’s desktop computer. A single body of baseline data is consistently kept throughout this process. Future possibilities include the use of scanned documents and electronic signature, which would significantly reduce paper pleadings.

H. Establishing Case Management

Case management approaches in defender programs can vary widely. The approaches to case management and work overload in New York City’s Legal Aid Society and Miami’s Dade County Public Defender programs could not be more different. One of the most sophisticated case management systems in a large defender office is that of the Legal Aid Society of New York, which, despite its size and longevity, has only recently

begun systematic development of a predictive case-weighting system. The model was developed because of two significant shifts in the organization's structure in the past 5 years: a downward spiral of funding in a competitive market for defense services and a dramatic shift in the office's caseload toward misdemeanors. The Legal Aid Society maintained data that counted and minimally tracked only assignments and dispositions of over 2 million cases during the prior 10-year period, but it needed a system that would permit predictive decisionmaking for staffing and budgetary purposes.

The Legal Aid Society decided to track three primary elements of cases: first, the size of the entire pool of indigent defendants in New York City; second, the number of anticipated misdemeanor and felony arraignments that went to the office from that pool; and third, its staffing resources to deal with those assignments. Michelle Maxian, attorney-in-charge, Criminal Division, called the resulting system "an interactive computer model that is premised on variable assumptions and actual past performance for the past 3 years that predicts, within a range of reliability, what our intake and caseload will be for the next 12 months." That information is available for estimates of anything from one attorney's caseload to estimates of caseloads for the entire division of 400 lawyers. She noted that any system that is developed must be simple. "The more sophisticated your use of the data, the less related it is to what I can ballpark as a manager . . . And to the extent that it seems unreal, it also seems unreliable to me."

With the new system in place, David Newhouse, an outside consultant working on computer issues in the office, noted that the office was able to anticipate that if it had 4 "fully certified" felony attorneys in court every day, those attorneys would pick up an average of 4.6 felonies and 5.4 misdemeanors per day. Although there are some seasonal variations in caseload

and some distortions caused by particular events such as higher arrest rates in some locations, the system is accurate over time. The new system has been operating for about a year. During the last fiscal year, estimates were accurate to within 3 or 4 percentage points when compared with the actual work of the office.

Bennett Brummer, the public defender for Dade County, Miami, Florida, had a more hard-line perspective on case management. "What works out there," he argued, "is raw political power." From his perspective, case management must be seen from both the management and litigation points of view. His response to case overload, when it first occurred in 1989, was to visit the chief judge of his circuit and ask the judge what to do with the excess cases that his office could no longer handle. Although that request resulted in new staffing for the office, the problem of case overload continued. He returned to the judge with the same issue, and this time told the judge that his office would have to consider motions to withdraw due to case overload. Although the judge ultimately must decide the limits on caseload, the threat of litigation may be necessary to accomplish caseload limits.

This view comports with prevailing national standards, which contemplate refusal of additional appointments. Standard 5-5.3 of the ABA *Standards on Providing Defense Services* says that defenders "must take such steps as may be appropriate to reduce their pending or projected caseloads, including the refusal of further appointments" when that caseload "will lead to the furnishing of representation lacking in quality or to the breach of professional obligations." The commentary to that standard states that in a defender program with excessive workload, "additional cases must be refused and, if necessary, pending cases transferred to assigned counsel." National Study Commission Guideline 5.1 urges setting maximum pending workload limits for defender offices, with suggested criteria to

determine if workload is excessive. Drastic steps such as refusal of appointments, withdrawal from pending cases, or the threat of litigation on

caseloads have sometimes been the last resort of severely overloaded defender services programs.

IV. Collaborations: Indigent Defense as a Full Partner in the Criminal Justice System

Several initiatives have attempted to make the best use of limited justice system resources by implementing projects that depend on collaborative interagency planning. This section provides descriptions of successful programs.

A. Criminal Justice Coordinating Committees: Los Angeles County, California, and Fulton County, Georgia

The Los Angeles County Criminal Justice Coordinating Committee was created by the Los Angeles County Board of Supervisors in 1981 to provide a forum for improving the efficiency and the effectiveness of the justice system by bringing together leaders from each of its components. The committee's 40 members include traditional actors in the criminal justice system as well as city officials, educators, directors of the mental health and alcohol and drug programs, and representatives from Federal law enforcement agencies (see appendix 15).

The committee operates in one of the largest urban jurisdictions in the United States. The 5-member county board of supervisors controls an annual budget authority of more than \$13 billion. Michael P. Judge, chief public defender for the County of Los Angeles, runs a countywide operation with 40 offices and more than 600 lawyers; the chair of the board acts as his immediate supervisor. The Criminal Justice Coordinating Committee, in turn, operates with about 30 different subcommittees and working groups. Representatives from the public defender office serve on all of these subcommittees. The public defender's office has held a seat on the committee since its inception. In describing his vision for the role of indigent defense representatives in the

committee's operations, Mr. Judge said that he seeks "a dynamic kind of collaboration, the notion that the public defender can and should be a leader in the process, bringing our values and perspectives to the criminal justice initiatives that do occur. My vision is not to expand my office unless it's absolutely necessary. My vision is to achieve better outcomes."

Mr. Judge believes that the committee's best program has been the drug treatment program run in conjunction with the drug courts. The role is not the classic adversarial one for the defenders, but the design of drug court permits defenders to be, in Mr. Judge's words, "responsible for life outcomes." He points to the fact that Los Angeles developed the quickest settlement rate in drug felonies in the Nation, in some instances within 2 days of arrest. The quick settlement allows clients to gain access to diversion and treatment programs that provide longer term solutions for them. The defender office also was able to have an effective impact on a diversion program from the three-strikes law in California. Another recent success came in the area of domestic violence courts. The public defender program obtained a grant to hire licensed clinical social workers to identify community-based resources and gain access to them for the office's clients.

The committee also provided a forum for the public defender to resist undesirable initiatives, such as proposals for nonunanimous and 6-person juries, elimination of juries in cases with a punishment of 6 months or less, professional jurors, and a proposed option for prosecutors to eliminate the potential of jail time from lesser misdemeanors, which would therefore eliminate

not only the right to a jury but also the right to a counsel.

The justice system budget for Fulton County, Georgia, is the largest aggregate budget in the county (see appendix 16). What became the Fulton County Justice System Coordinating Committee, however, grew not from a general effort to coordinate the various components of the justice system, as in Los Angeles, but from a single issue: shortcomings in the public defender office.

Steve Kinnard, now chief circuit mediator for the 11th Circuit Federal Court of Appeals in Atlanta, served from 1991 to 1998 as facilitator for a group that became known, in 1995, as the Fulton County Justice System Coordinating Committee. In October 1990, an outside consulting group came in at the request of the Fulton County Superior Court and the county manager to analyze and write a report on the operations of the public defender program of Fulton County. The report concluded that the indigent defense system was “disjointed and fragmented, there was a lack of communication and coordination among the various agencies, the attorney caseloads were way too high, and the office was underfunded.” It urged an emergency appropriation for the office and appointment of a Blue Ribbon Committee by the president of the Atlanta Bar Association to look into the situation and make further recommendations. The Fulton County Justice Commission was the result of those efforts.

The commission had 21 members, named by the Atlanta Bar Association. In March 1991, it began its work, meeting not only about the public defender’s office but also about Fulton County criminal justice issues in general. It met with the county commissioners, noting that the public defender office’s budget at the time was less than \$1.8 million. The county commissioners told the commission to go to the State for funding, an effort that proved unsuccessful. However, the commission’s local negotiations with the Budget

Subcommittee of the County Commission resulted in a 1992 budget that raised salaries of all public defenders. Over time, the budget increases for the public defender program continued, and today the office’s budget has climbed to about \$5.5 million.

Between 1992 and 1995, a growing group of criminal justice officials, known as the Fulton County Justice System Ad Hoc Committee, continued to meet monthly to discuss budgets for the public defender and justice system operations in general. “People began to understand the problems of the other components,” Mr. Kinnard noted. “They began to develop a common language.” No such dialogue had taken place before in the justice system, particularly between public officials and criminal justice participants. In October 1995, the Fulton County Justice System Coordinating Committee was institutionalized to implement a master plan for the county’s justice system. The new coordinating committee, now made up of representatives from 19 city, county, and State agencies, publishes press advisories and a monthly newsletter and is developing a comprehensive case management system with outside consultants. It has developed various teams studying preindictment issues, postindictment issues, clerk’s office support, forms, data management and information, and backlog reduction. During the past year, the committee allocated approximately \$2 million for a new pretrial services unit and another \$2 million for a new complaint room for the prosecutor’s office. The program received its full budget request of \$19.6 million for fiscal year 1999, after receiving only \$4.2 million of an \$8 million request in 1998. The committee has attracted more than \$28 million for new projects to date, 96 percent of which are locally funded.

B. Defending Juveniles Charged as Adults: Maryland and Chicago

Juvenile transfer to adult courts experienced a precipitous rise in the past decade. In the past

8 years, 40 States expanded transfer, lowered the age for transfer, or expanded the categories of offenses making juveniles eligible for transfer to or for original jurisdiction in the adult court. The State of Maryland and the city of Chicago have developed successful collaboration strategies to deal with this trend.

The Youthful Defender Unit in the Maryland State Public Defender Office in Baltimore was created in July 1995 and is staffed by two attorneys. It was created when Maryland law was changed to require that a much broader category of juveniles be prosecuted in the adult courts. In attempting a systematic response to the problem, the original goal of the unit was total vertical representation—that is, once one of its lawyers becomes involved in a juvenile case, that lawyer follows it wherever it goes, throughout the adult or juvenile process. The unit’s attorneys are allowed discretion in limiting caseload to permit the movement with cases that vertical representation requires.

Collaboration with others in this newly revised process grew out of another mandate to the Youthful Defender Unit. The unit was charged with examining the process by which new cases were being handled, and if defects or shortcomings in the system were discovered the unit’s supervisor, David Addison, was allowed to work on those issues as well. As Mr. Addison worked in the system, he discovered that there were significant delays in the process of consideration of motions to transfer cases out of the adult courts and back to juvenile court. To attack the problem, he had an undergraduate intern from Johns Hopkins University develop a timeline of how long it took for each link in the consideration of such motions to be accomplished. If the law had been followed, 2 months should be required from the time the case came to circuit court until it was ready for a transfer hearing. The study showed, however, that the actual time was 7 months to 1 year. This was a serious shortcoming;

time is crucial when dealing with juveniles because one of the criteria for deciding whether transfer is appropriate is age and delays work to the prejudice of clients who may age a year before being heard.

As a result of the unit’s findings, the Ad Hoc Task Force on Juvenile Transfers was created. The task force was made up of Mr. Addison, the judge in charge of the Criminal Division, and representatives from the Medical Services Office, the Department of Juvenile Justice, the clerk’s office, and the State Attorney’s Office, particularly its Juvenile Court Division. Working together, the group members came up with several innovations. First, they devised a standard motion to trigger the request for transfer. Second, they modified the form used by the Medical Services Office to include more useful information for them and for other recipients of the report. Third, all motions were filed directly with the judge, rather than with the clerk, so that copies could be sent from there to the clerk, the Department of Juvenile Justice, and the Medical Services Office. In certain expedited situations involving vulnerable juveniles detained in adult facilities, the process of transfer to a juvenile facility can be completed in as few as 7 days.

In Chicago, there are two significant difficulties in getting information about children threatened with transfer to adult proceedings, according to Carl Bell, a psychiatrist and president of the Community Mental Health Council. First, the juveniles are likely to have multiple problems and may be involved with several agencies such as public health, family services, police departments, and schools. The problem of getting accurate and complete information about children for court assessments by doctors is daunting. Second, the reports that are provided by social services and psychiatric evaluative personnel are often filled with what Dr. Bell called “psycho-babble” and are not helpful to the court in assessing a course of action.

Dr. Bell suggested two collaborations for defenders: to work closely with mental health centers and schools of psychology to get better evaluations of their clients and to work with treatment providers to develop alternatives to punishment for children. In Chicago, defenders and doctors are linking clients with specially trained youth officers—not line police officers but people trained in children’s issues and vested with significant discretion to implement programs with public schools, probation, social services, mental health, and family services. When the child leaves the police department, someone will follow up to make sure that the child and his or her family receive useful services. According to Dr. Bell, research shows that such linkages help prevent the child from repeated delinquent behavior.

C. The Arizona Fill the Gap Program

Arizona began its Fill the Gap Program in 1997. The “gap” refers to a gap that has developed in resources and programs for the criminal justice system’s middle component—the courts, prosecutors, defenders, clerks, and other adjudication system employees—in the face of recent major infusions of State and Federal funding for the beginning and end of the system—police and corrections. Extra funding at both ends of the system leaves the middle weakened (see appendix 13).

Judges organized an initial meeting about the project with the Attorney General’s Office, the county attorneys, the public defender office, and the judges and their clerks. Group members first discussed their common problems, then devised a plan to go to the Arizona legislature for additional funding. They proposed a program that would appropriate \$19.5 million from the general fund to “reengineer” the court system in all counties and reduce case-processing time.

The overloaded Arizona courts found that the average time to process a case from arrest to trial

had increased from a statewide average of 195 days in 1991 to an average of 290 days in 1977. The goal of the Fill the Gap Program was to reduce the average time to trial to fewer than 100 days for 90 percent of the cases and to 180 days for the remaining 10 percent. Case delay, it was argued, affects all of the actors in the criminal court. Defendants languish in overcrowded facilities with no treatment or rehabilitation; victims are affected by increased stress and frustration from lengthy waits for outcomes; prosecutors, defenders, and court workers are plagued by excessive caseloads; and court clerks drown in a sea of paperwork, averaging 25,000 pages of new documents a day in Maricopa County alone. And the cost to taxpayers for additional time of incarceration of those awaiting trial is approximately \$40 a day for each inmate.

The legislature rejected the program’s large funding request and instead provided initial funding for the program of about \$350,000, permitting it to proceed in 7 counties. Arizona Supreme Court Justice Charles Jones gave an example of what reengineering would look like in a typical county. First, it required a commitment of cooperation and hard work among all of the criminal justice agencies. Second, an expert consultant was retained to help the judges with case management. Third, firm dates were established for significant events in each case, which were to change only under “extreme good cause.” Justice Jones asserted that these dates were held firm while still maintaining constitutional protections for criminal defendants. Meg Wuebbels, from the Maricopa County Public Defender’s Office, noted that although the trial rate in her office had gone up dramatically in each month, the win rate in the office held steady at about 40 percent after commencement of the new system. Fourth, systems were automated to provide all participants with consistent, more current information.

Justice Jones noted that the average number of days served prior to trial dropped from 173 to

55 in Coconino County over a 4-year period. But he concluded that there are obvious limitations to what reengineering can do without the broader financial and human resources necessary to improve the court system in all respects and that ensuring funding for the Fill the Gap Program is always a challenge.

D. Public Defenders and Drug Courts: Montana, California, Connecticut, Florida, and Oregon

Public defenders from Montana, California, Connecticut, Florida, and Oregon discussed the ways in which collaborations had occurred in treatment drug courts, an increasingly popular alternative to traditional adjudication in drug cases. Such courts present real challenges to the traditional adversarial role played by defense counsel but create opportunities for defenders to play a role in devising long-term positive direction to their clients' lives. On the whole, defenders find that the benefits to their clients, such as dismissal of charges and life-changing treatment, outweigh the risks of a change in the lawyers' role.

Margaret Borg, chief public defender in Missoula, Montana, has been working with drug courts for about 2 years. A local judge was the first proponent of the treatment drug court. Participants in the Missoula program, other than the defendant, are the judge, the prosecutor, the public defender, and a youth court representative, either a case manager or a probation officer dedicated to the court. As design of the program progressed, Ms. Borg became aware that the treatment option would require compromises of traditional adversarial roles, not only her own but those of the prosecutor and judge as well. She was willing to change her role so that treatment options would be made available to her clients. "I have always thought," she said, "that treatment was a very important component and a very underplayed resource in our youth system." She felt that, in the long run, she did not have to make many serious concessions because the prosecutor

was willing to implement preadjudication procedures for admission to the treatment program. "All of our kids that are in the drug court," she said, "enter denials and go through the program."

James Egar is the Yolo County public defender in Woodland, California, by his own account a small, relatively poor county of about 150,000 people (see appendix 18). When he arrived, the county had no juvenile drug treatment facilities. After obtaining a modest grant from the county of \$40,000 for drug-testing and related services, interested participants were able to put together a volunteer network. Mr. Egar built partnerships by working closely with the sheriff, participating in ethnic diversity training for the sheriff's deputies, training local law enforcement officers how to testify, speaking to local civic and school groups, and building alliances with national groups such as the National Drug Court Institute. The National Drug Court Institute provided national data showing that participants in drug court programs experienced an 80-percent success rate, with success defined as completion of treatment and no further contact with the courts. Mr. Egar rejects the concern that drug courts require defenders to sell out clients. Work in the drug courts requires a different approach to advocacy, but successful completion of the program can be as important as a successful defense and acquittal in court because the attorney actually helps to change the defendant's life. The "social worker aspect" of defense in drug court, he suggested, "should not be spoken of with embarrassment but with pride, boasting that you're doing the finest work in criminal defense."

In New Haven, Connecticut, a drug court was started 3 years ago as a result of State legislation introducing drug courts in five locations across the State. Assistant Public Defender James Chase described the operation of the drug court in New Haven. The drug court accepts cases involving felony and misdemeanor defendants, excluding violent criminals and drug sellers. Participants enter treatment programs lasting from 12 to 15

months, depending on how well they respond. The drug court also helps with housing and other social programs and permits home visits by police. Because of Mr. Chase's concern about letting police officers into his clients' homes, the New Haven program gives advance notice of police visits. Mr. Chase expressed respect and trust for the judge and prosecutor who work with him and his clients in the drug court. Even the police have become willing participants. After 3 years of participation in the program, Mr. Chase concludes that the drug court is a success. "My view as a public defender has to be a long-term view," he said. "I need my drug court clients to succeed."

Theda James is Misdemeanor/Juvenile Bureau chief in the Office of the Public Defender in Tampa, Florida. She works with a voluntary, prediversion juvenile drug court. A contract for participation is signed by the parent, the child, the prosecutor, and the defense attorney. For all of the participants, training in the model is crucial because adversarial style is sacrificed to a cooperative effort to ensure the client's success. Treatment is the focal point. She concludes that "if a child completes this program, then we've all won."

Paul Newton is a staff attorney with the Metropolitan Public Defender's Office in Portland, Oregon. He is supervisor of Portland's adult drug court and the community court. After some resistance to abandonment of adversarial representation of his clients, he found that he could figure out ways to present his position without litigating. Now his narrow goal is dismissal of the charges because, if clients succeed in either community court or drug court, their cases are dismissed. From a broader perspective, however, he is trying to get and keep clients out of the system. "I'm trying to keep them out of a system that dehumanizes, humiliates, and treats them badly," he said.

E. Detention and Sentencing Advocacy for Juveniles: Baltimore and Miami

Defender programs representing juveniles often embrace a more holistic philosophy based on the premise that children are fundamentally different from adults in all ways: socially, emotionally, cognitively, and developmentally. It is not enough, said Patricia Puritz, director of the Juvenile Justice Center of the ABA, to merely represent children. "You really have to get to know who your client is," she said. Defenders must ask themselves, "who is this child before you?"

In juvenile detention facilities in Maryland, children are generally locked in their rooms and receive poor educational services inside the facility. About 80 percent are represented by the public defender. The Detention Response Unit of the Office of the Public Defender in Baltimore, Maryland, was created to deal with children who are detained not because they are accused of serious crimes but because they are bothersome. These juveniles, said Mary Ann Scali, an attorney and social worker with the unit, "who have gotten into a fight with their sister and the parents called the cops; their mom got a new boyfriend and decided that she didn't want the child at home any more; a girl who decided that she needed to steal diapers for her baby; or girls who don't want to be home because they can't get along with either of their parents."

The unit was designed to deal with two related issues: the overrepresentation of minorities in juvenile facilities and the provision of effective assistance of counsel to detained juveniles. Funding for the program came from a joint grant proposal by the public defender office and the Juvenile Justice Advisory Council, under which the public defender hired an attorney and a social worker to work specifically on these two issues. Later, the grant was doubled to two social

workers and two attorneys working in all of the juvenile facilities statewide. One of the benefits of collaboration with the Juvenile Justice Advisory Council is that its name gives public defenders and social workers immediate access to clients in any facility.

By having the kind of early intervention the Detention Response Unit can provide, Ms. Scali said the attorneys are able to gain the trust of the child and provide a much-needed service. “Having the child removed from the facility and actually wrapping those community-based services around them and putting them back in a better environment makes a huge difference,” she concluded. “We see many fewer of our clients coming back” (see appendix 17).

Florida law permits the prosecutors unfettered discretion in the transfer of children as young as 14 from juvenile to adult court, and a grand jury can indict at younger ages. As a result, Steve Harper, a Dade County public defender, said that in the Miami Public Defender’s Juvenile Section, a separate unit in the public defender’s office, they now have about 1,300 cases transferred from the juvenile to the adult system. The office represents children ranging in age from 11 to 17. Although the adult court assumes jurisdiction, in a number of cases the child can be sentenced as a juvenile, and transfers back to the juvenile court can occur on a negotiated plea.

Working from the premise that the mandate of the office is not just to provide representation but to try to have meaningful effects on the lives of clients, the program obtained more than \$100,000 in grants from BJA to fund two social workers and a full-time lawyer who, in addition to two attorneys contributed by the office, worked with outside consultants hired to put together a juvenile sentencing project.

The program has assessment, advocacy, and programming components. The initial objective

of the program is to get a clinically based assessment of children transferred to the adult system. “We wanted to provide a very comprehensive and thorough assessment of who they are, what they need, what their strengths are,” said Mr. Harper. The office then proposes a sentencing outcome for the child that includes a recommendation for a particular program. Of the 1,300 juveniles who were waived in during the past year, only 23 received juvenile sanctions in the adult system, a result that supports the need for the sentencing advocacy program.

Marty Beyer, a clinical psychologist from Great Falls, Virginia, who has worked with children and families in the juvenile justice system for more than 20 years, discussed issues of adolescent development, offering not just new strategies but new moral insights into defender representation in that context (see appendix 14). Dr. Beyer urged a developmental perspective in juvenile representation. These theories can be applied at waiver hearings, at the hearing or trial, or later at the dispositional stage. Overall, the developmental perspective holds that children do not think in the linear style of adults. First, she said, “adolescents don’t anticipate. They don’t plan well. They have a lot of accidents because of their cognitive, not their intellectual, limitations.” Second, children take a lot more risks than adults. Third, adolescent thinking can be inflexible. Adolescents only have the capacity, she asserted, for a “plan A, not a plan B.” In addition, adolescents have not completed their moral development. Loyalty and fairness are the moral rules that kids operate by, and loyalty is the stronger of the two. She finds that one of the most difficult things to assess is a child’s remorse. “It’s too easy,” she concluded, “to take at face value a kid’s lack of shame and not recognize that their ability to talk about their victim has to do with their feelings of guilt and their immaturity in handling those guilt feelings rather than a lack of remorse.”

F. The Tennessee Weighted Caseload Study

The Tennessee General Assembly created a statewide system of public defense in 1989. Before that time, the two largest cities, Memphis and Nashville, had locally funded public defender programs whereas the rest of the State used assigned counsel. After a successful pilot project creating four new public defender offices in the State promoted by the Tennessee Bar Association in 1986, the legislature was convinced that a public defender system would provide more systematic defense services and hold down costs. As originally adopted, the legislation created staffing levels defined by statute as one-half the number of attorneys in the district attorney's offices.

But from the start, public defender caseloads were a major problem. In 1991, caseloads rose 26 percent, mostly because the office had been given appellate as well as trial responsibility for cases. In 1992, it had risen to crisis levels: 653 cases per attorney, including all types of cases from felony to misdemeanor and appeals. As described by State Public Defender Andrew Hardin, the program had two significant methods by which to control caseloads: conflicting out and work stoppage. The first alternative was of limited utility, so the second alternative finally was invoked by the Knox County public defender in 1992, when he decided that his office could not take any more cases and render effective assistance of counsel. The trial judges shut down the general sessions courts from public defender representation and started appointing everyone in Knox County who had a law license, including U.S. Senator Howard Baker and U.S. Department of Education Secretary Lamar Alexander. After prominent members of the bar complained of receiving appointments, the legislature started to listen.

In part because of the staggering caseload figures, the legislature gave the office 41

additional full-time attorneys statewide. After consistent increases in both 1994 and 1995, the office was able to get help from a Byrne grant to employ private counsel to handle some appeals. With a sharp increase in the number of capital cases in 1996, caseloads again rose to more than 670 cases per attorney. That situation repeated itself in the 1997–98 fiscal year.

Judges and prosecutors were pressing the legislature for additional funding. Homicides and capital prosecutions were creating serious stresses on small county systems not accustomed to long and expensive trials. The legislature, tired of dealing with the three unconnected, apparently subjective sets of requests, started asking for an objective, fact-driven formula that could be relied upon over time to link and project workloads and budgets for all three agencies. The result was the agencies' proposal for a joint weighted caseload study. To develop a funding formula for equitable and proportionate funding among the agencies in the future, all three agencies' workloads were examined, incorporating shared assumptions about the number and type of cases, the workload weight attached to different types of cases, the workload capacity of staff, and the inherent interdependence of all agencies' workloads.

The Tennessee legislature made clear that until such a study was complete, there would be no funding for any additional judicial resources. An amendment was added in the general appropriations act authorizing payment for a judicial weighted caseload study to be prepared under the auspices of the State comptroller's office and completed by April 1, 1999, in time for consideration during the fiscal year 2000 appropriations process.

G. Juvenile Defenders and Dependency Cases: District of Columbia and Maryland

Defender programs have increasingly taken on civil matters that grow out of their criminal

caseload. This happens because there is often a loss of liberty at stake, because there is no other agency available, and because the clientele are, like criminally charged clients, indigent and entitled to the services of counsel. Examples of such civil matters are representation of children and parents in dependency, abuse, and neglect matters. Although national standards suggest that defender offices should be limited in their representation to proceedings “arising from or connected to the initiation of criminal action against the accused” (*ABA Standards on Providing Defense Services*, Standard 5–5.2), the line between civil and criminal matters is increasingly blurred when personal or familial losses of liberty are at stake.

Attorneys in abuse and neglect matters in the District of Columbia are controlled by the Council for Child Abuse and Neglect (CCAN) program of the D.C. Superior Court. Director Lori Parker and her 3-person staff administer CCAN as a branch of the Family Division. About 400 attorneys take cases as assigned counsel, representing parents and children in abuse and neglect cases. For the past 3 years, an average of 1,500 petitions for abuse and neglect have come into the D.C. Superior Court. Children are automatically entitled to counsel, but parents must prove financial eligibility. She estimated that 95 to 99 percent of the parents qualify for counsel, even though income and asset levels to qualify for appointment are very low. The program never has a problem with recruiting new attorneys, who are required to participate in a 2-day training program and 16 hours of continuing legal education a year. They also hold bimonthly brown bag lunch training sessions on areas most desired by the panel attorneys.

Lawyers for children are guardians ad litem, and counsel must agree to represent either party in proceedings. Every year, the program brings on about 50 to 60 new attorneys. Lawyers in the program are affiliated in the Family Trial Lawyers Association. Whereas recruiting and training

new lawyers is fairly easy, maintaining attorneys on the list and holding them accountable is more difficult. The D.C. Bar has no formal continuing legal education requirements, so attorneys in the program resist more rigorous standards.

The Maryland public defender initially took cases of parents in abuse and neglect proceedings if they met financial eligibility guidelines. Some 90 to 95 percent were indigent. However, the number of clients rose and the State never supplemented the office’s budget for this representation, so the program asked to be relieved of representation of abuse and neglect matters because they were not part of the office’s statutory mandate. The office agreed to take on the cases when the government supplemented the budget, and in 1991 the office set up the Children in Need of Assistance (CINA) Unit to handle these matters.

As in the District of Columbia, the program works with assigned counsel panel attorneys. Recruitment for the program is not difficult because the young lawyers take the job “and within 2 months you’re in court and the case is yours,” according to CINA Chief Attorney Vanita Taylor. However, because fees for these cases are \$30 an hour for out-of-court work and \$35 an hour for in-court work, with fee caps in the cases, retention in the program is a big problem. Lawyers, once trained, often quit the program, so the CINA Unit began using staff attorneys.

An example of collaboration within a large public defender office began when the Maryland CINA Unit joined with the juvenile, appellate, misdemeanor, and felony units to create the Family Justice Committee, which meets every 3 months. That committee watches for changes in the law and prepares positions for the office to take on proposed legislation. One example of its work was a proposal to hold parents criminally responsible for their children’s wrongdoing when the children are adjudicated by the drug treatment court. The program simply refused to participate, an option which Ms. Taylor said it had because it

exclusively control the contract for provision of counsel to parents in CINA cases. Another example was legislation that permanently removed children from the custody of a parent who is convicted of certain offenses, permitting only supervised visitation. After consultation among the members of the Family Justice Committee, the office opposed the legislation. Collaboration permitted a unified approach by diverse units in a larger program.

H. Mental Health Court in Broward County, Florida, and Neighborhood Defender Services in Harlem

Some defender programs are so unique and innovative that they stand alone in their structure and organization. Such is the case with the Mental Health Court in Broward County, Florida, and Neighborhood Defender Services (NDS) in Harlem.

The largest provider of indigent mental health services in most areas is the local jail, due in part to the gradual shift in recent years away from institutionalization and toward criminalization of the mentally ill. Nationwide, it is estimated that about 10 percent of incarcerated people are mentally ill; approximately 200,000 on any given day. The percentages are 5 percent among women and 20 percent for juveniles. In Broward County, Florida, about 20 percent of all clients coming through the system are clients of the local provider of mental health services. The Broward County jail has almost twice the number of mentally ill inmates as the State hospital in Broward County, a facility that serves a four-county area.

The development in the 1960s of drugs that allowed management of serious psychiatric illnesses resulted in a vast movement, supported by liberals and conservatives alike, toward deinstitutionalization of the mentally ill, with a commensurate reduction in the number of beds in State institutions. However, systemic costs are

much greater for the mentally ill in jail. First, their average length of stay in jail can be as much as five times as long as that of nonmentally ill inmates. Additional costs include psychiatrists, special jail cells, and medications. In addition, the medications that mentally ill inmates receive in jail may not be as effective in treating their illnesses as medications they could get in medical facilities.

Doug Brawley, chief assistant public defender in charge of courts, Broward County Public Defender Office, Fort Lauderdale, Florida, was instrumental in creating the first Mental Health Court in the Nation. Because so much of the initial contact with the mentally ill is made by police or caseworkers, he said, "if the police diverted all the minor misdemeanors with mental health problems and didn't put them in custody, or the caseworkers were more active, there would be very little need for a criminal justice system." When he focused his representation on the mentally ill about 7 years ago, before creation of the Mental Health Court, he felt that his job as a defender was to get mentally ill defendants out of the system as quickly as possible by having them plead guilty to time served. But that created an endless cycling of people in the system.

As a partial solution, he and others began to press for competency exams, arguing that the office would not plead guilty when the client was incompetent. However, many people actually stayed in custody longer with that argument. Mr. Brawley conducted a publicity campaign using 30 or 40 articles that highlighted mentally ill people in jail, showing how misguided that policy was. When the press coverage of the issue ceased, the public defender's office began its own newspaper, the *Mental Health Court News*, which was sent to judges and local hospitals and was posted on the office's Web site.

As a result of the campaign, a local legislator helped the office get funding for residential treatment. The courts responded by creating the

Mental Health Court, in which the judge dispenses what she calls therapeutic jurisprudence. If a defendant wants a trial, the case is returned to the trial division, but the judge's knowledge of local service providers has made her quite effective in obtaining treatment alternatives, supported by ample resources to make mental health assessments. Because the court is focused on keeping mentally ill offenders out of jail, treatment providers are available and there is information about noncustodial alternatives. The court also uses psychology interns; local college students finishing a doctoral program in psychology have volunteered to develop a screening instrument that could get more people into the program.

Unlike a traditional public defender office that reacts to criminal charges by waiting for appointments from the courts, Neighborhood Defender Services (NDS) of Harlem was created to try to rethink the provision of indigent defense services. Traditional public defender offices, said NDS Director Leonard Noisette, are structured more for the convenience of judges, prosecutors, and lawyers—everyone but the defendant. The structure of the traditional office is to respond to the needs of the court by providing representation to qualified people who appear before the court without representation. Client focus was one of the reasons that the Harlem office was community based. Harlem was chosen for a number of reasons. First, it had the most in-borough prosecutions, so office personnel were not stretched by having to travel to several courthouses. Second, it had a rich political history and a strong network of other service providers, which would be important for full-service delivery. The office represents only people who reside within a defined geographic area in Harlem.

A second feature of the office is early entry into representation of its clients, with service provided on request, even at the police precinct and before formal charging. The office prefers to accept cases prior to the first court appearance, but it will accept cases up to the sixth day after

the first appearance. Early entry has its greatest impact on the office's ability to conduct early and effective factual investigation. For instance, the office very aggressively seeks and finds witnesses and tries to take written statements, and there have been a number of instances in which its teams have contacted witnesses before the district attorney's office. Although early entry into cases did not cut down on case-processing time or pretrial release rates in statistically significant ways, the positive effects of early entry are most notable in ultimate results. Research conducted by the office shows that as a result of early entry, its clients serve significantly fewer days of incarceration overall.

The third major component of the program is team defense. Rather than assigning a single lawyer a caseload, the office makes a group of people collectively responsible for representation. The teams are composed of a supervising attorney, four staff attorneys, an investigator, a social worker, and an administrative assistant. One lawyer is assigned lead representation. The method has proved to be effective in helping the investigator and social worker on the team understand their roles and how their work relates to the overall representation.

A fourth component is comprehensive representation of clients in civil matters that arise out of criminal proceedings, such as forfeiture proceedings related to drug charges; eviction proceedings as a result of a family member being arrested and charged with a crime; family court proceedings if a family member is accused of abuse and neglect and is also facing termination of parental rights proceedings; or police misconduct cases in which a client in a criminal case has alleged police abuse. In assessing the success of the Neighborhood Defender Services, Mr. Noisette recommended that defenders and others in the system expand their definition of the notion of value. "We really have got to begin to define value differently than how much it costs to process how many cases." Some very significant

components of the value of a system of defender services may be difficult to quantify. “What is the value of working with someone after their case is over? What is the value of keeping a family together? What is the value of providing job

placement in terms of reducing the number of people coming back into the system?” An accessible office in one’s own community and the ability to choose one’s own lawyer, Mr. Noisette observed, have benefited clients significantly.

V. Conclusion

Collaborations, partnerships, affiliations, or coalitions—no matter what the name, the clear message of the National Symposium on Indigent Defense was the value of working in community. At least four themes ran through an agenda of coalition building and systemic thinking. First was the necessity of maintaining core values, civility, respect, and trust, not only within the program but in interaction with other components of the criminal justice system. Second, although the role of systemic actor is not new to many successful public defender systems, a shifting national terrain requires more effort in combining the political skills of the manager with the classic defense skills of the advocate. True leaders must also be good managers. Third, that same shifting national terrain includes a shared commitment by the justice system to the efficiencies of information sharing and economies of scale in technology use. The options created by reasonably priced new computers and other technologies, combined with new cooperation agreements across the justice system, put these assets within reach of virtually all organized defender programs. Fourth, and perhaps most important, there is a change in the vision of the role of the public defender in providing legal services to the office's clients. Instead of seeing an endless succession of individual cases moving through the assembly line of the courts, defenders are beginning to see and develop new programs that treat their clients more holistically, focusing on their grounding in families and the broader community. Diversion and treatment alternatives to prison are sprouting up in public defender programs mostly on behalf of children, who are the most vulnerable, impressionable, and fragile of our community assets.

The fact that so many of the innovative programs target populations of color also speaks to deeper societal divides in need of attention. “Long-term impact” on clients’ lives was mentioned as a goal of many collaborations by defender programs, in contrast to “repeated representation.” Prevention, focusing on strengthening family and community, is seen as an important part of the defender’s role.

“If you go into a collaborative effort as a defender to batter down the doors, you are going to fail. But if you go into the collaborative effort understanding what your values are and where you’re not going to give, but also understanding that the other parties at the table also have their own core values, then you can find areas of common work where you’ll succeed.”

**—Jim Hennings, Executive Director,
Metropolitan Public Defender Service,
Portland, Oregon**

Attorney General Reno and her Justice Department staff, in demonstration of their own commitment to collaboration, continue to hold regular meetings with the representative of the defense bar to discuss ongoing concerns. Plans are already under way for a Second National Symposium on Indigent Defense that will build on the 1999 symposium’s profiled programs and successes. At the close of the symposium, BJA Director Nancy Gist urged defenders to write a

letter to her if they were interested in learning more about BJA's programs or resources.

"We will serve as a broker and hook you up with what it is that you are looking for—the information or the technical assistance," she said. She

also noted that OJP is in the process of putting together a special Web site with information resources available within OJP for defender organizations.

Appendixes

Appendix 1

Agenda: National Symposium on Indigent Defense

AGENDA

***Office of Justice Programs
and Bureau of Justice Assistance***

***National Symposium on Indigent Defense:
Improving Criminal Justice Systems Through
Expanded Strategies and Innovative
Collaborations***

***February 25–26, 1999
Washington, D.C.***



Thursday, February 25, 1999

7:30 a.m.

Registration

8:30 a.m.–8:45 a.m.
(East Room)

Welcome

Overall Moderator:

Norman Lefstein
Dean and Professor of Law
Indiana University School of Law
Indianapolis, IN

The Honorable Laurie Robinson
Assistant Attorney General
Office of Justice Programs
Washington, D.C.

The Honorable Nancy Gist
Director
Bureau of Justice Assistance
Office of Justice Programs
Washington, D.C.

8:45 a.m.–10:15 a.m.
(East Room)

Plenary Session: Systemic Problem Solving

Moderator:

Charles Ogletree
Professor
Harvard University Law School
Cambridge, MA

Panelists:

The Honorable Dennis Archer
Mayor
Detroit, MI

Angela Jordan Davis
Professor of Law
Washington College of Law
The American University
Washington, D.C.

Charles Ramsey
Chief of Police
Washington, D.C.

The Honorable Rosemary Barkett
U.S. Circuit Judge for the 11th
Circuit
Miami, FL

Peter Franchot
House of Delegates
Maryland General Assembly
Annapolis, MD

Anne Seymour
Victim Advocate
Washington, D.C.

Judy Clarke
Executive Director
Federal Defenders of Eastern
Washington and Idaho
Spokane, WA

E. Michael McCann
District Attorney
Milwaukee, WI

Carol Shapiro
Project Director
La Bodega de la Familia
New York, NY

Bobbie Steele
Cook County Commissioner
Chicago, IL

10:15 a.m.–10:30 a.m.

Break

10:30 a.m.–11:45 a.m.
(East Room)

**Plenary Session: Showcasing Strong Public Defender
Leadership in Effective Collaborations**

Moderator:

The Honorable Nancy Gist
Director
Bureau of Justice Assistance
Office of Justice Programs
Washington, D.C.

Panelists:

Karl Dean
Metropolitan Public Defender
Nashville, TN

Michael Judge
Chief Public Defender
Los Angeles, CA

Larry Landis
Executive Director
Indiana Public
Defender Council
Indianapolis, IN

11:45 a.m.–12:00 noon

Break

12:00 noon–1:30 p.m.
(State Room)

Working Lunch Presentation

Moderator:

The Honorable Laurie Robinson
Assistant Attorney General
Office of Justice Programs
Washington, D.C.

Keynote Speaker:

The Honorable Janet Reno
Attorney General
U.S. Department of Justice
Washington, D.C.

Panelists:

The Honorable Bennett Brummer
Public Defender of Dade County
Miami, FL

The Honorable Gerald Wetherington
Judge, Retired
Miami, FL

1:30 p.m.–2:30 p.m.

**Concurrent Workshop Sessions: Examples of
Effective Programs That Encourage Collaboration**

| Session | Location |
|---|---------------------|
| Arizona: "Fill in the Gap" Program | South Carolina Room |
| California: Los Angeles County Criminal Justice Coordinator Forum | Virginia Room |
| Georgia: Fulton County Justice System Coordinating Committee | New York Room |
| Oregon: Portland Collaborative Effort | Massachusetts Room |
| Tennessee: Weighted Caseload Study | New Hampshire Room |

(South Carolina Room)

Arizona: "Fill in the Gap" Program

Moderator:

Jill Beres
Program Manager
Drug Courts Program Office
Office of Justice Programs
Washington, D.C.

Panelists:

Margot Wuebbels
Attorney
Maricopa County Public Defenders Office
Phoenix, AZ

The Honorable Charles E. Jones
Vice Chief Justice
Arizona Supreme Court
Phoenix, AZ

(Virginia Room)

**California: Los Angeles County Criminal Justice
Coordinator Forum**

Moderator:

Bud Hollis
Chief, Adjudications Branch
Bureau of Justice Assistance
Office of Justice Programs
Washington, D.C.

Panelists:

Michael Judge
Chief Public Defender
Los Angeles, CA

Robert Mimura
Executive Director
Countywide Criminal Justice Coordination Committee
Los Angeles, CA

(New York Room)

**Georgia: Fulton County Justice System
Coordinating Committee**

Moderator:

Jennifer Knobe
Program Manager
Bureau of Justice Assistance
Office of Justice Programs
Washington, D.C.

Panelists:

Steve Kinnard
Chief Circuit Mediator
11th Circuit Federal Court of Appeals
Atlanta, GA

Tom Ulbricht
Justice System Coordinator
Atlanta, GA

(Massachusetts Room)

Oregon: Portland Collaborative Effort

Moderator:

Carol DeFrances
Statistician
Bureau of Justice Statistics
Office of Justice Programs
Washington, D.C.

Panelists:

James Hennings
Executive Director
Metropolitan Public Defender Services
Portland, OR

Michael Schrunk
District Attorney
Portland, OR

(New Hampshire Room)

Tennessee: Weighted Caseload Study

Moderator:

Andy Hardin
Executive Director
District Public Defenders Conference
Nashville, TN

Panelists:

Phil Doss
Project Director
Weighted Caseload Study
Nashville, TN

Matthew Kisber
Chair
House Finance Committee
Nashville, TN

Elizabeth Sykes
Director of Statistical Service
Nashville, TN

2:30 p.m.–2:45 p.m.

Break

2:45 p.m.–3:45 p.m.
(East Room)

Plenary Session: Developing Allies

Moderator:

Noël Brennan
Deputy Assistant Attorney General
Office of Justice Programs
Washington, D.C.

Panelists:

Ron Goldstock
Immediate Past Chair
Criminal Justice Section
American Bar Association

Gerald Lefcourt
Immediate Past President
National Association of Criminal
Defense Lawyers

William Murphy
Immediate Past President
National District Attorneys
Association

3:45 p.m.–4:00 p.m.

Break

4:00 p.m.–5:00 p.m.

**Concurrent Workshop Sessions:
Examples of Defender System Innovations**

| Session | Location |
|---|---------------------|
| Adjudication Partnerships | Virginia Room |
| Specialty Defender Programs: Neighborhood Defender Services and Mental Health Court | Massachusetts Room |
| Case Management | South Carolina Room |
| Salary and Resource Parity | New York Room |

(Virginia Room)

Adjudication Partnerships

Moderator:

Marilyn McCoy Roberts
Director
Drug Courts Program Office
Office of Justice Programs
Washington, D.C.

Panelists:

Margaret Borg
Chief Public Defender
Missoula, MT

James Egar
Yolo County Public Defender
Woodland, CA

Paul Newton
Staff Attorney
Metropolitan Public Defender's Office
Portland, OR

James Chase
Assistant Public Defender
New Haven, CT

Theda James
Misdemeanor/Juvenile Bureau Chief
Office of the Public Defender
Tampa, FL

(Massachusetts Room)

**Specialty Defender Programs: Neighborhood
Defender Services and Mental Health Court**

Moderator:

Kristine Orlando
Resident Practitioner
Bureau of Justice Assistance
Office of Justice Programs
Washington, D.C.

Panelists:

Doug Brawley
Assistant Public Defender
Fort Lauderdale, FL

Sebastian Cotrone
Assistant Public Defender
Fort Lauderdale, FL

Leonard Noisette
Director
Neighborhood Defender Services
New York, NY

(South Carolina Room)

Case Management

Moderator:

Jo Ann Wallace
Director
Public Defender Service for the District of Columbia
Washington, D.C.

Panelists:

The Honorable Bennett Brummer
Public Defender of Dade County
Miami, FL

Elaine Kurtz
Chief Operating Officer
The Legal Aid Society
New York, NY

Michelle Maxian
Attorney in Charge
Criminal Defense Division
The Legal Aid Society
New York, NY

(New York Room)

Salary and Resource Parity

Moderator:

Scott Wallace
Director
Defender Legal Services
National Legal Aid and Defender Association
Washington, D.C.

Panelists:

Steve Asin
Deputy Chief
Defender Services Division
Administrative Office of the U.S. Courts
Washington, D.C.

Gerard A. Smyth
Chief Public Defender
Hartford, CT

Phyllis Subin
Chief Public Defender
Santa Fe, NM

Friday, February 26, 1999

8:30 a.m.–9:30 a.m.
(East Room)

Plenary Session: Juvenile Justice System Reform— Approaches That Work

Moderator:

John Wilson
Deputy Administrator
Office of Juvenile Justice and Delinquency Prevention
Office of Justice Programs
Washington, D.C.

Panelists:

Jo Ann Wallace
Director
Public Defender Service for
The District of Columbia
Washington, D.C.

Rebecca Ballard DiLoreto
Post Trial Services Director
Department of Public Advocacy
Frankfort, KY

Jane Spinak
Edward Ross Aranow
Clinical Professor of Law
Columbia University
New York, NY

9:30 a.m.–9:45 a.m.

Break

9:45 a.m.–10:45 a.m.

Concurrent Workshop Sessions: A Closer Look at Successful Juvenile Defender Collaborations

| Session | Location |
|---|---------------------|
| Defending Juveniles Charged as Adults | New York Room |
| Detention and Sentencing Advocacy for Juveniles | South Carolina Room |
| Issues in Juvenile Detention Institutional Conditions Cases | Massachusetts Room |
| Juvenile Defenders and Dependency Cases | Virginia Room |

(New York Room)

Defending Juveniles Charged as Adults

Moderator:

Randy Stone
Clinical Professor of Law
University of Chicago Law School
Mandel Legal Aid Clinic
Chicago, IL

Panelists:

David Addison
Assistant Public Defender
Youthful Defendant Unit
Baltimore, MD

Carl Bell
CEO/President
Community Mental Health Council
Chicago, IL

(South Carolina Room)

Detention and Sentencing Advocacy for Juveniles

Moderator:

Patricia Puritz
Director
Juvenile Justice Center
American Bar Association
Washington, D.C.

Panelists:

Dr. Marty Beyer
Psychologist
Great Falls, VA

Steve Harper
Coordinator
Capital Litigation Unit
Miami, FL

Mary Ann Scali
Social Worker
Detention Response Unit
Office of the Public Defender
Baltimore, MD

(Massachusetts Room)

Issues in Juvenile Detention and Institutional Conditions Cases

Moderator:

James Bell
Staff Attorney
Youth Law Center
San Francisco, CA

Panelists:

Robinsue Frohboese
Deputy Director
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David Utter
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New Orleans, LA

(Virginia Room)

Juvenile Defenders and Dependency Cases

Moderator:

Howard Davidson
Director
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Washington, D.C.

Panelists:

Monica Drinane
Attorney in Charge
Juvenile Rights Division
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New York, NY

Vanita Taylor
Chief Attorney
Public Defender—Children in
Need of Assistance Division
Baltimore, MD

Lori Parker
Director
Council for Child Abuse
and Neglect
D.C. Superior Court
Washington, D.C.

10:45 a.m.–11:00 a.m.

Break

11:00 a.m.–12:15 p.m.
(East Room)

**Plenary Session: Partnerships That Improve
the System**

Moderator:

Robert Spangenberg
President
The Spangenberg Group
West Newton, MA

Panelists:

The Honorable Kevin Burke
District Court Judge
Minneapolis, MN

James R. Mowbray
Chief Counsel
Nebraska Commission on Public
Advocacy
Lincoln, NE

Harold Rock
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Dick Scherman
Chief Administrator
State Board of the
Public Defender
Minneapolis, MN

12:15 p.m.–1:30 p.m.
(State Room)

Working Lunch

**Plenary: Improving the Criminal Justice System
Through Defender Standards**

Moderator:

Norman Lefstein
Dean and Professor of Law
Indiana University School of Law
Indianapolis, IN

Panelists:

Dennis Keefe
Lancaster County Public Defender
Lincoln, NE

The Honorable Frank Sullivan, Jr.
Associate Justice
Indiana Supreme Court
Indianapolis, IN

1:30 p.m.–2:45 p.m.
(East Room)

**Plenary Session: Technology as a Tool—Getting
There Through Information Sharing**

Moderator:

The Honorable Jeremy Travis
Director
National Institute of Justice
Office of Justice Programs
Washington, D.C.

Panelists:

Paul Kendall
General Counsel
Office of Justice Programs
Washington, D.C.

Fern Laethem
State Public Defender of California
Sacramento, CA

Jim Neuhard
State Appellate Defender
Detroit, MI

2:45 p.m.–3:00 p.m.

Break

3:00 p.m.–4:00 p.m.

**Concurrent Workshop Sessions: Examples of
Sharing Information/Sharing Technology**

| Session | Location |
|--|---------------------|
| Countywide Integrated Criminal Justice Systems | Massachusetts Room |
| Technology for Beginners: What Is Out There and Where Do I Begin? | New York Room |
| Technology for the Intermediate to Advanced | Virginia Room |
| Video Conferencing | South Carolina Room |

(Massachusetts Room)

Countywide Integrated Criminal Justice Systems

Moderator:

Arnold Hopkins
Special Assistant to the Assistant Attorney General
Office of Justice Programs
U.S. Department of Justice

Panelists:

Toby Hockett
Chief Assistant Public Defender
Sarasota, FL

Janice Lovern
Executive Director
State Attorney's Office
Sarasota, FL

(New York Room)

Technology for Beginners: What Is Out There and Where Do I Begin?

Moderator:

Deb Goelman
Program Manager
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Office of Justice Programs
Washington, D.C.

Panelists:

Fern Laethem
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Sacramento, CA

Isaac Merkel
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Mark Stephens
District Public Defender
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(Virginia Room)

Technology for the Intermediate to Advanced

Moderator:

Janice Munsterman
Program Manager
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Office of Justice Programs
Washington, D.C.

Panelists:

Jeff Gale
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David Newhouse
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(South Carolina Room)

Video Conferencing

Moderator:

Paul Petterson
Indigent Defense Coordinator
National Association of Criminal Defense Lawyers
Washington, D.C.

Panelists:

Gail Rohm
Criminal Justice Coordinating Committee
Wilmington, DE

Lawrence Sullivan
Public Defender for the State of Delaware
Wilmington, DE

4:00 p.m.–4:15 p.m.

Norman Lefstein
Dean and Professor of Law
Indiana University School of Law
Indianapolis, IN

Closing Session

The Honorable Nancy Gist
Director
Bureau of Justice Assistance
Office of Justice Programs
Washington, D.C.

4:15 p.m.

Adjourn

Appendix 2

Symposium Participants and Contact Information

**Office of Justice Programs
and Bureau of Justice Assistance**

**National Symposium on Indigent Defense:
*Improving Criminal Justice Systems
Through Expanded Strategies and
Innovative Collaborations***

February 25–26, 1999 • Washington, D.C.

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Appendix 3

Bibliography of Key Documents on Indigent Defense

Bibliography of Key Documents in Indigent Defense

I. National Studies on Indigent Defense

BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUST., SELECTED FINDINGS: INDIGENT DEFENSE (1996).

BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUST., BULLETIN: CRIMINAL DEFENSE FOR THE POOR 1986 (1988).

BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUST., NATIONAL CRIMINAL DEFENSE SYSTEMS STUDY (1986).

BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUST., SPECIAL REPORT: CRIMINAL DEFENSE SYSTEMS (1984).

NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, THE OTHER FACE OF JUSTICE (1973).

II. Selected Materials on Indigent Defense

BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUST., KEY ELEMENTS OF SUCCESSFUL ADJUDICATION PARTNERSHIPS (1999).

American Bar Association, Bar Information Program, *Rates of Compensation for court-appointed counsel in Capital Cases at Trial: A State-By-State Overview* (1998) (unpublished manuscript, on file with The Spangenberg Group).

BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUST., IMPROVING STATE AND LOCAL CRIMINAL JUSTICE SYSTEMS: A REPORT ON HOW PUBLIC DEFENDERS, PROSECUTORS, AND OTHER CRIMINAL JUSTICE PRACTITIONERS ARE COLLABORATING ACROSS THE COUNTRY (1998).

American Bar Association, Bar Information Project, *Public Defender Application Fees: An Update* (1997) (unpublished manuscript, on file with The Spangenberg Group).

NATIONAL LEGAL AID & DEFENDER ASSOCIATION, NATIONAL SURVEY OF INDIGENT DEFENSE SYSTEMS (interim report, 1997).

Robert L. Spangenberg & Marea L. Beeman, *Indigent Defense Systems in the United States*, 51 LAW & CONTEMP. PROBS. 31 (1995).

Robert L. Spangenberg & Tessa J. Schwartz, *The Indigent Defense Crisis is Chronic: Balanced Allocation of Resources Is Needed to End the Constitutional Crisis*, 9 CRIM. JUST. 13 (1994).

NATIONAL LEGAL AID & DEFENDER ASSOCIATION, INDIGENT DEFENSE CASELOADS AND COMMON SENSE: AN UPDATE (1992).

Robert L. Spangenberg, *We Are Still Not Defending the Poor Properly*, 6 CRIM. JUST. 11 (1989).

III. Juvenile Justice and Indigent Defense

AMERICAN BAR ASSOCIATION CENTER ON CHILDREN AND THE LAW, PUBLICATIONS AND PROGRAMS (1998).

COALITION FOR JUVENILE JUSTICE, A CELEBRATION OR A WAKE? THE JUVENILE COURT AFTER 100 YEARS (1998).

N. Lee Cooper et al., *Fulfilling the Promise of In Re Gault: Advancing the Role of Lawyers for Children*, 33 WAKE FOREST L. REV. 651 (1998).

AMERICAN BAR ASSOCIATION JUVENILE JUSTICE CENTER, MORE THAN MEETS THE EYE: RETHINKING ASSESSMENT, COMPETENCY AND SENTENCING FOR A HARSHER ERA OF JUVENILE JUSTICE (1997).

AMERICAN BAR ASSOCIATION JUVENILE JUSTICE CENTER ET AL., A CALL FOR JUSTICE: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS (1996).

Appendix 4

Resource Organizations for Indigent Defense

Resource Organizations for Indigent Defense

1. U.S. Department of Justice – Office of Justice Programs
www.ojp.usdoj.gov/
Includes the Bureau of Justice Statistics, the US's primary source for criminal justice statistics, and the Bureau of Justice Assistance, which supports innovative programs that strengthen the Nation's Criminal Justice System by assisting state and local governments in combating violent crimes and drug abuse
2. U.S. Department of Justice – Office of Juvenile Justice and Delinquency Prevention
ojjdp.ngrs.org
Primary federal agency dealing with juvenile issues.
3. National Criminal Justice Reference Services (NCJRS)
www.ncjrs.org
Searches Federal sources for crime and justice information, research, statistics, and funding opportunities
4. National Legal Aid & Defender Association (NLADA)
1625 K Street, NW
Suite 800
Washington, D.C. 20006-1604
(202) 452-0620
(202) 872-1031 (fax)
www.nlada.org (maintains links to many state and local defense organizations)
e-mail: info@nlada.org
NLADA provides a wide range of services and benefits to its individual and organizational members. It works to improve the American system of justice by seeking adequate funding and promoting high standards for the delivery of legal assistance
5. National Association of Criminal Defense Lawyers (NACDL)
1025 Connecticut Ave., NW
Suite 901
Washington, D.C. 20036
(202) 872-8600
(202) 872-8690 (fax)
www.nacdl.org/ www.criminaljustice.org
e-mail: assist@nacdl.com
Ensures justice and due process for persons accused of crime; fosters the integrity, independence, and expertise of the criminal defense profession; and promotes the proper and fair administration of criminal justice

6. The Association of Federal Defenders of America
8530 Wilshire Blvd, Suite 404
Beverly Hills, CA 90211
www.afda.org
e-mail: defense@afda.org
Provides attorneys with the educational resources and support that are essential to effectively represent defendants in federal district and appellate courts
7. ABA- Criminal Justice Section
740 15th Street, NW
Washington, D.C. 20005-1009
(202) 662-1500
(202) 622-1501 (fax)
www.abanet.org/crimjust/home.html
e-mail: crimjustice@abanet.org
Plays an active leadership role in bringing ABA views to the attention of state and federal courts, and other judicial, legislative, and executive policy making bodies
8. ABA- Standing Committee on Legal Aid and Indigent Defense
www.abanet.org/legalservices/sclaid.html
Advocates for effective civil legal aid and indigent defense services
9. Death Penalty Information Center
1320 18th Street, NW
Washington, D.C. 20036
(202) 293-6970
(202) 822-4787 (fax)
www.essential.org/dpic/
Serving the media and the public with analysis and information on issues concerning capital punishment
10. The Sentencing Project
918 F Street, NW
Suite 501
Washington, D.C. 20004
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(202) 628-1091 (fax)
www.sentencingproject.org
e-mail: staff@sentencingproject.org
Provides resources and information for news media and the public concerned with criminal justice and sentencing issues. Promotes defense- based alternative sentencing program services nationwide

Appendix 5

Office of Justice Programs Indigent Defense Grants, Fiscal Years 1998 and 1999

**OFFICE OF JUSTICE PROGRAMS INDIGENT DEFENSE GRANTS
FISCAL YEARS 1998 AND 1999**

No. Of Grants = 20

Total Amount of Awards= \$5,686,887

Technical Assistance and Training

| Funding Source | Project Title | Grantee | Amount |
|----------------|--|--|------------------------|
| OJJDP | Juvenile Defender Center | ABA Juvenile Justice Center | \$299,973 |
| BJA | Staff Trng. & TA | NLADA | 250,000 |
| OJJDP | Legal Representation Education Courses | Suffolk University Law School | 1,300,000 (Earmark) |
| BJA | Juvenile Automatic Transfers To Adult Criminal Courts | The Sentencing Project | 199,439 |
| BJA | State Commission Project | ABA Standing Committee on Legal Aid and Indigent Defendants | 170,066 |

Open Solicitation Program-Emerging Issues

| | | | |
|----------------|---|--|---------|
| BJA | Sentencing Pilot Project for Juveniles Sentenced As Adults | Public Defender, Miami, FL | 150,000 |
| BJA | Develop Policies to Minimize Racism in Justice System | King Co WA Public Defender | 146,000 |
| BJA 150,000 | Establish Triage System to Identify ADA Clients | Office of Defender General, VT | |
| BJA | Special Court Session to Address Homeless Person Cases | Office of Public Defender San Diego, CA | 105,725 |

Emerging Issues Solicitation-Management Technology

| | | | |
|-----|---|------------------------------|--------|
| BJA | Courtroom Presentation Systems | TN District Public Defenders | 80,000 |
| BJA | Update Computer-Based Case Management System | NY Legal Aid Society | 80,000 |
| BJA | Computer Case Management Equipment Purchase | Navajo Co AZ | 34,633 |
| BJA | Legal Seminars on DNA and Genetics | El Paso, TX Public Defender | 50,791 |
| BJA | Purchase Office/Computer Management Software | Rosebud Sioux Tribe | 12,050 |

Research and Studies

| Funding Source | Project Title | Grantee | Amount |
|----------------|---|-------------|-----------|
| BJA/BJS | National Survey of Indigent Defense Systems | NORC | \$270,473 |
| NIJ | Standards Impact Study | NLADA | 48,221 |
| BJA | Compendium of Best Practice Standards | IL&J | 59,941 |
| BJA | State Commission Project | ABA/SCLA&ID | 170,066 |

Leadership Development

| | | | |
|-----|---|---------------------------|-----------|
| BJA | Executive Session on Indigent Defense Systems | Harvard Law School | 790,695 |
| BJA | National Defender Leadership | Vera Institute of Justice | 1,086,000 |

Appendix 6

The Spangenberg Group,

***Indigent Defense in the United States:
A State-by-State Overview***

INDIGENT DEFENSE IN THE UNITED STATES: A State-by-State Overview

| State (FY '97 Indigent Def. Expenditure) | Primary Funding Source | Primary Provider of Indigent Defense Services | Statewide Oversight Commission | | Statewide Public Defender Agency | | Assigned Counsel Hourly Compensation Rates at Trial (Felony Only) | | | | | |
|--|--|---|--------------------------------------|----|-------------------------------------|----|--|----------|----------------------|---|----------|--|
| | | | Yes | No | Yes | No | Non-Capital | | Capital | | | |
| | | | | | | | Out-of- Court | In-Court | Maximum | Out-of- Court | In-Court | Maximum |
| Alabama | Court Filing Fees; Some State Funding | Assigned Counsel & Contract Defenders | | X | | X | \$20 | \$40 | \$1,000 | \$20 | \$40 | \$1,000 for out-of- court; No maximum for in-court |
| Alaska | State | Public Defender | | X | X | | \$50 | \$60 | \$4,000* | Non-Death Penalty State | | |
| Arizona | County | Public Defender, Assigned Counsel & Contract Defender | | X | | X | Varies | Varies | Varies* | Varies from county to county, ranging from \$45-\$100 | | Varies |
| Arkansas | Primarily State; Some County Funding | Public Defender & Assigned Counsel | X | | X | | Varies; \$50 is typical. | | Varies | Varies from judge to judge, ranging from \$75-\$100 | | None |
| California | County | Public Defender & Contract Defender | X | | X | | Varies; In San Francisco: \$65 for felonies and \$80 for serious felonies | | Varies | Varies from county to county, ranging from \$50-\$150+ | | None |
| Colorado (\$26,444,260) | State | Public Defender | X | | X | | \$40 | \$50 | \$1,750- \$5,000* | \$40 | \$50 | \$5,000- \$10,000* |
| Connecticut (\$20,814,611) | State | Public Defender | X | | X | | \$20 if case is appointed to a non-contract attorney | | None | \$50 | \$50 | None |
| Delaware (\$6,902,126) | State | Public Defender | | X | X | | N/A | N/A | N/A * | Varies depending on the case. | | None |
| District of Columbia | Federal | Public Defender & Assigned Counsel | X | | X | | \$50 | \$50 | \$2,400* | Non-Death Penalty Jurisdiction | | |
| Florida (\$163,950,000) | Primarily State; Some County Funding | Public Defender | X | | X | | Varies; In Dade County: \$40 \$50 | | \$2,500- \$3,000* | Varies from circuit to circuit, ranging from \$40-\$100 | | None |
| Georgia (\$31,000,000) | Primarily County; Some State Funding | Primarily Assigned Counsel & Contract Defender with some Public Defenders | X | | X | | \$35 in the 141 of the 159 counties that meet Georgia Indigent Defense Council standards | | \$1,000- \$2,500* | Varies from county to county, but on average: \$45 \$55 | | None |

* = Per case maximums may be waived.

INDIGENT DEFENSE IN THE UNITED STATES: A State-by-State Overview

| State (FY '97 Indigent Def. Expenditure) | Primary Funding Source | Primary Provider of Indigent Defense Services | Statewide Oversight Commission | | Statewide Public Defender Agency | | Assigned Counsel Hourly Compensation Rates at Trial (Felony Only) | | | | | | |
|--|---|--|--------------------------------------|----|-------------------------------------|----|--|----------|----------|--|----------------|---|--|
| | | | Yes | No | Yes | No | Non-Capital | | Capital | | | | |
| | | | | | | | Out-of- Court | In-Court | Maximum | Out-of- Court | In-Court | Maximum | |
| Hawaii | State | Public Defender | X | | X | | \$40 | \$60 | \$3,000* | Non-Death Penalty State | | | |
| Idaho | County | Public Defender, Assigned Counsel & Contract Defender | | X | | X | Varies; Typical rates are: \$40 \$50 | | None | Varies from county to county, but on average: \$50-\$75 \$40-\$ \$100 | | | None |
| Illinois | County | Public Defender, Assigned Counsel & Contract Defender | X | | X | | \$30 | \$40 | \$1,250* | Varies from county to county. | | | \$1,250 in Cook County. None elsewhere |
| Indiana (\$30,876,105) | Primarily County; Some State Funding | Public Defender, Assigned Counsel & Contract Defender | X | | X | | \$60 in those counties that meet Indiana Public Defender Commission Standards | | None | Varies, but \$70 for those counties that comply with R.Crim.P. 24 | | None for those counties in compliance | |
| Iowa (\$27,855,490) | State | Primarily Public Defender with assigned counsel and contract defenders | X | | | X | \$45 | \$45 | None | Non-Death Penalty State | | | |
| Kansas (\$13,774,470) | Mixed State & County Funding | Public Defender, Assigned Counsel & Contract Defender | X | | X | | \$50 | \$50 | \$5,000* | \$90- \$100 | \$90- \$100 | None | |
| Kentucky (\$16,627,328) | Primarily State; Some County Funding | Public Defender & Contract Defender | X | | X | | \$25 | \$35 | \$1,250* | N/A | N/A | N/A | |
| Louisiana (\$23,000,000) | Primarily County; Some State Funding | Public Defender & Contract Defender | X | | | X | Varies; \$42 is a typical rate. | | None | \$57.65 | \$57.65 | \$78,000 for two attorneys.* | |
| Maine | State | Assigned Counsel | | X | | X | \$40 | \$40 | \$2,500* | Non-Death Penalty State | | | |
| Maryland (\$36,588,453) | State | Public Defender | X | | X | | \$30 | \$35 | \$1,000* | \$30 | \$35 | \$12,500 | |
| Massachusetts (\$63,555,000) | State | Public Defender, Assigned Counsel & Contract Defender | X | | X | | Murder Cases: \$54 Felonies & Juvenile: \$39 All others: \$30 | | None | Non-Death Penalty State | | | |

* = Per case maximums may be waived.

INDIGENT DEFENSE IN THE UNITED STATES: A State-by-State Overview

| State (FY '97 Indigent Def. Expenditure) | Primary Funding Source | Primary Provider of Indigent Defense Services | Statewide Oversight Commission | | Statewide Public Defender Agency | | Assigned Counsel Hourly Compensation Rates at Trial (Felony Only) | | | | | |
|--|---|---|--------------------------------------|----|---|----|---|----------|--|---|----------|-----------|
| | | | Yes | No | Yes | No | Non-Capital | | Capital | | | |
| | | | | | | | Out-of- Court | In-Court | Maximum | Out-of- Court | In-Court | Maximum |
| Michigan | County | Public Defender, Assigned Counsel & Contract Defender | X | | X | | Varies widely. | | Varies | Non-Death Penalty State | | |
| Minnesota (\$41,000,000) | State | Public Defender | X | | X | | \$50 | \$50 | None | Non-Death Penalty State | | |
| Mississippi | Primarily County; Some State Funding | Primarily Contract Defender & Assigned Counsel with some Public Defenders until state-wide felony public defender system is in place. | X | | X (System implementatio n underway, effective July 1998) | | Varies between counties. | | \$1,000 plus overhead expenses | Varies from county to county. | | |
| Missouri (\$23,169,886) | State | Public Defender | X | | X | | N/A | N/A | N/A* | N/A | N/A | N/A |
| Montana | Primarily County; Some State Funding | Public Defender, Assigned Counsel & Contract Defender | X | | X | | Varies; \$60 is a typical rate. | | None | Varies from county to county. | | |
| Nebraska | Primarily County; Some State Funding | Public Defender, Assigned Counsel & Contract Defender | X | | | X | Varies; \$60 is a typical rate. | | None; Except Omaha: \$3,500* | Varies from judge to judge, ranging from \$40-\$100 | | |
| Nevada | Primarily County; Some State Funding | Public Defender, Assigned Counsel & Contract Defender | | X | | X | \$75 | \$75 | \$2,500 if facing less than life without parole.* | \$75 | \$75 | \$7,500* |
| New Hampshire | State | Public Defender & Contract Defender | X | | X | | \$60 | \$60 | \$3,000* | \$60 | \$60 | \$15,000* |
| New Jersey (\$57,295,000) | State | Public Defender | | X | X | | \$15 | \$22.50 | None | \$50 | \$50 | None |
| New Mexico] (\$17,956,300) | State | Public Defender & Contract Defender | | X | X | | N/A | N/A | N/A | N/A | N/A | N/A |
| New York | Primarily County; Some State Funding | Public Defender, Assigned Counsel & Contract Defender | | X | | X | \$25 | \$40 | \$1,200* | Lead Counsel: \$175 Co-Counsel: \$150 | | None |

* = Per case maximums may be waived.

INDIGENT DEFENSE IN THE UNITED STATES: A State-by-State Overview

| State (FY '97 Indigent Def. Expenditure) | Primary Funding Source | Primary Provider of Indigent Defense Services | Statewide Oversight Commission | | Statewide Public Defender Agency | | Assigned Counsel Hourly Compensation Rates at Trial (Felony Only) | | | | | |
|--|---|---|--------------------------------------|----|-------------------------------------|----|---|----------|----------------------|--|----------|-----------|
| | | | Yes | No | Yes | No | Non-Capital | | Capital | | | |
| | | | | | | | Out-of- Court | In-Court | Maximum | Out-of- Court | In-Court | Maximum |
| North Carolina (\$51,756,903) | State | Primarily Assigned Counsel & Contract Defender with some Public Defenders | | X | | X | Varies widely. | | None | \$85 | \$85 | None |
| North Dakota | Primarily State; Some County Funding | Public Defender, Assigned Counsel & Contract Defender | X | | | X | N/A | N/A | None | Non-Death Penalty State | | |
| Ohio (\$56,333,359) | Mixed State & County Funding | Public Defender | X | | X | | Varies; \$28 is a typical rate. | | \$1,500- \$2,000 | Varies from county to county, ranging from \$30-\$50 | | \$12,500* |
| Oklahoma | Mixed State & County Funding | Public Defender & Contract Defender | X | | X | | \$40 | \$60 | \$3,500* | \$60 | \$80 | \$20,000 |
| Oregon (\$53,258,841) | State | Public Defender, Assigned Counsel & Contract Defender | | X | | X | \$40 | \$60 | None | Lead Counsel: \$55 Co-Counsel: \$40 | | None |
| Pennsylvania | County | Public Defender | | X | | X | Varies | Varies | None | Varies | Varies | Varies* |
| Rhode Island (\$4,003,769) | State | Public Defender | | X | X | | Felony 1: \$50 Felony 2: \$35 | | \$2,500- \$5,000* | Non-Death Penalty State | | |
| South Carolina (\$14,213,281) | Mixed State & County Funding | Public Defender | X | | | X | \$40 | \$60 | \$3,500* | \$50 but may be increased by a judge. | \$75 | \$25,000* |
| South Dakota | County | Primarily Assigned Counsel & Contract Defender with some Public Defenders | | X | | X | \$55 | \$55 | None | \$55 | \$55 | None |
| Tennessee (\$33,102,428) | Primarily State; Some County Funding | Public Defender | X | | X | | \$40 | \$50 | \$1,000* | Lead Counsel: \$75-\$100 Co-Counsel: \$60-\$80 | | None |
| Texas | County | Assigned Counsel & Contract Defender | | X | | X | Varies widely. | | Varies | Varies from county to county | | Varies |
| Utah | County | Primarily Contract Defender with some Public Defenders | | X | | X | Varies | Varies | Varies | Varies from county to county | | None |

* = Per case maximums may be waived.

INDIGENT DEFENSE IN THE UNITED STATES: A State-by-State Overview

| State (FY '97 Indigent Def. Expenditure) | Primary Funding Source | Primary Provider of Indigent Defense Services | Statewide Oversight Commission | | Statewide Public Defender Agency | | Assigned Counsel Hourly Compensation Rates at Trial (Felony Only) | | | | | |
|--|---|--|--------------------------------------|----|-------------------------------------|----|---|----------|----------------------|---|---|---------|
| | | | Yes | No | Yes | No | Non-Capital | | | Capital | | |
| | | | | | | | Out-of- Court | In-Court | Maximum | Out-of- Court | In-Court | Maximum |
| Vermont (\$5,355,000) | State | Public Defender & Contract Defender | | X | X | | \$40 | \$40 | \$1,000- \$5,000* | Non-Death Penalty State | | |
| Virginia | State | Public Defender & Assigned Counsel | X | | | X | \$40 | \$60 | \$265 - \$575 | Varies from judge to judge, but generally: \$40 | Varies from judge to judge, but generally: \$60 | None |
| Washington | Primarily County; Some State Funding | Public Defender, Assigned Counsel & Contract Defender | X | | | X | Varies | Varies | Varies | Varies from county to county, but generally: \$60-\$125 | Varies from county to county, but generally: \$60 | None |
| West Virginia (\$20,400,137) | State | Public Defender & Contract Defender | | X | | X | \$45 | \$65 | \$3,000* | Non-Death Penalty State | | |
| Wisconsin (\$56,045,000) | State | Public Defender | X | | X | | \$40 | \$40 | None | Non-Death Penalty State | | |
| Wyoming | Primarily State; Some County Funding | Public Defender | | X | X | | \$25-\$50 | \$50 | None | \$30 | \$50 | None |

* = Per case maximums may be waived.

Appendix 7

The Spangenberg Group,

***Statewide Indigent Defense Systems:
Organization and Structure***

STATEWIDE INDIGENT DEFENSE SYSTEMS

| STATE Type of Program | Commission | Commission Duties & Responsibilities | Public Defender Selection Process, Terms & Qualifications | Public Defender Duties & Responsibilities |
|---|--|--|--|--|
| ALABAMA | None | Not applicable | None | Not applicable |
| ALASKA State Public Defender Agency (Executive Agency, Department of Administration) | None | Not applicable | Appointed by Governor from nominations of judicial council. Confirmed by majority of legislature in joint sitting. Four-year term; renewal requires legislative confirmation. Member of bar. Governor can remove for good cause. | Appoint, supervise and control assistant public defenders and other employees. Submit annual report to legislature & Supreme Court on number and types of cases, dispositions and expenditures. Full-time; private practice prohibited. |
| ALASKA Office of Public Advocacy (Executive Agency, Department of Administration) | None | Not applicable | Public Advocate appointed by Governor. Serves at will of Governor. | Provides Guardians Ad Litem for abused and neglected children and status offenders. Provides representation in conflict cases from the Alaska Public Defender Agency. Acts as Public Guardian and conservator for citizens with disabilities. |
| ARIZONA | None | Not applicable | None | Not applicable |
| ARKANSAS Arkansas Public Defender Commission (Executive agency) | Seven members appointed by Governor: at least four licensed Arkansas attorneys experienced in criminal defense; at least one county judge. Governor designates one member as Chair. No more than two residents of same congressional district. No two members from same county. Serve five- year terms. | Establish policies and standards for Public Defender System. Approve budgets for trial public defender offices. Require annual reports from trial public defender offices. Appoint Executive Director. Evaluate performance of Executive Director, Capital, Conflicts & Appellate Office, trial public defenders and private assigned counsel. Maintain list of private attorneys willing and qualified to accept capital case appointments. Authorize contracts with trial public defenders. | Executive Director appointed by Commission. Must have experience in defense of capital cases. Serves at will of commission. | Supervise capital conflict and appellate office. Maintain records of operation of public defender system. Prepare budget for commission. Implement attorney performance procedures pursuant to commission's standards. Maintain court opinions, statutes, etc. for use by trial public defenders and court-appointed counsel. Maintain appellate brief bank. Convene training program related to public defender system. Prepare annual report. |
| CALIFORNIA California Habeas Resource Center (Judicial Branch) | Five-member Board of Directors confirmed by the Senate. Each of the state's five Appellate Projects shall appoint one board member; all must be attorneys. No lawyer working as judge, prosecutor or in a law enforcement capacity is eligible. Four year terms. | Appoint Executive Director. | Executive Director appointed by Board of Directors. Must be member of California state bar during the five years preceding appointment and possess substantial experience in the representation of accused or convicted persons in criminal or juvenile proceedings during that time. Serves at the will of the board. | Hire up to 30 attorneys to represent any indigent person convicted and sentenced to death in California in postconviction actions in state and federal courts. Work with the supreme court to recruit attorneys to accept death penalty habeas case appointments and to maintain a roster of attorneys so qualified. Employ investigators and experts to provide services to appointed attorneys in capital postconviction cases. Develop and maintain brief bank for use by appointed counsel. Review case billings and recommend compensation of members of the private bar to the court. Prepare annual report on the status of appointment of counsel for indigent prisoners in capital postconviction cases. |

STATEWIDE INDIGENT DEFENSE SYSTEMS

| STATE Type of Program | Commission | Commission Duties & Responsibilities | Public Defender Selection Process, Terms & Qualifications | Public Defender Duties & Responsibilities |
|--|---|--|--|--|
| FLORIDA Florida Public Defender Association (FPDA); Florida Public Defender Coordination Office (FPDCO) | None per se, but the FPDA is governed by a Board of Directors comprised of the 20 elected public defenders in Florida, two representatives of the assistant public defender staff and one representative apiece from public defender investigative and administrative staff. The FPDCO works with the FPDA. | The FPDA engages in activities that promote and develop the public defender system in Florida. The FPDCO coordinates FPDA meetings; collects caseload and budget information from public defenders; analyzes public defender workload; prepares annual funding formulae which are based on caseload and attorney unit cost and used by the three branches of government and the circuit public defenders in the budget request process; monitors pertinent legislative developments; conducts training for public defender staff; and circulates pertinent case law to the elected public defenders. | Not applicable | Not applicable |
| GEORGIA Georgia Indigent Defense Council (separate agency within Judicial branch) | Fifteen member council. Supreme Court selects members: ten lawyers; three lay persons; and two county commissioners. Selected for four year terms. | Recommend standards and guidelines for local programs. Administer state funds to local public defender programs that comply with standards. Support local defenders. Provide local attorneys with technical, clinical help and training. Prepare budget. | Director selected by Council. | Duties and responsibilities not contained in statute. |
| HAWAII Office of State Public Defender (Executive agency, Department of Budget and Finance) | Five member Defender Council. Appointed by Governor. Serve at Governor's pleasure. One member from each county. Chairman selected by members. | Council shall be governing body of Office of State Public Defender. Shall appoint Public Defender. Approve employment decision of Public Defender. | State Public Defender appointed by Council. Four-year term. Qualified to practice law in Hawaii. Full-time position. | Subject to approval of Council: employ assistant public defenders, investigators and other support personnel. Assistant public defenders may be part-time and engage in private practice other than criminal law. |
| IDAHO State Appellate Public Defender (The Department of Self- Governing Agencies) | None | Not applicable | State Appellate Defender appointed by the governor with advice and consent from the senate from a list of 2-4 persons recommended by a committee comprised of the president of the Idaho state bar association, chairmen of the senate judiciary and rules committee, and a citizen at large appointed by the governor. The chief justice of the Idaho supreme court, or her designee, is ex officio member of the committee. Public defender must be attorney licensed to practice in Idaho with at least five year experience practicing law. Four-year term; removed only for good cause. | Provide appellate and postconviction representation to indigent defendants convicted of felony offenses in those counties which participate in the capital crimes defense fund; prepare annual report. Employ deputy state appellate defenders and other employees. Adopt necessary policies or rules. |

STATEWIDE INDIGENT DEFENSE SYSTEMS

| STATE Type of Program | Commission | Commission Duties & Responsibilities | Public Defender Selection Process, Terms & Qualifications | Public Defender Duties & Responsibilities |
|---|--|--|--|---|
| ILLINOIS Office of State Appellate Defender (agency of the Judicial department) | Board of Commissioners. Nine members. Appointed by various courts and bars. Governor appoints Chair. Serves one six- year term. | Approve budget. Advise Appellate Public Defender on policy. Can recommend dismissal of the Appellate Public Defender. | State Appellate Defender appointed by Illinois Supreme Court. Four-year term. Qualified to practice law in Illinois. | Provide representation in criminal appeals. Establish offices around the state. Train and assist trial level defenders. |
| INDIANA Public Defender Commission (Policy board for capital and non-capital representation) (Judicial agency) | Public Defender Commission: Eleven members: three appointed by Governor; three appointed by Chief Justice; one appointed by Board of Indiana Criminal Justice Institute; two House members appointed by the Speaker of the House; two Senate members, appointed by Speaker Pro Tempore of the Senate. Four-year term. No law enforcement officers or court employees. Members designate one member Chair. | Set standards for indigent defense services in capital and non-capital cases. Adopt guidelines and fee schedule under which counties may be reimbursed. Make recommendations concerning the delivery of indigent defense services in Indiana. Prepare annual report on operation of public defense fund. | Not applicable | Not applicable |
| INDIANA Public Defender of Indiana (State post- conviction public defender) (Judicial agency) | None | Not applicable | Public Defender appointed by Supreme Court. Four-year term. Resident. Practicing lawyer in Indiana for three years. | Represent all indigent defendants in post- conviction proceedings. |
| IOWA Office of the State Public Defender (independent agency within Executive branch) | None | Not applicable | State Public Defender appointed by Governor. Four-year term. Licensed to practice law in Iowa. | Oversee all 18 public defender offices. Coordinate non-public defender indigent defense program. Contract with attorneys when public defender unable to take case. |
| KANSAS State Board of Indigent Defense Services (Executive branch agency) | Nine members: five lawyers, four non- lawyers. Appointed by Governor and confirmed by Senate. Two members from First Congressional District, one of whom is a registered Kansas lawyer, and at least one member from each other Congressional District. At least one (and up to five) registered Kansas lawyer from each county with over 100,000 population. No members may be judicial or law enforcement personnel. Three-year terms. | Appoint Director and public defenders. Maintain statistics on indigent defense representation. Conduct training programs. Establish public defender offices. Enter into contracts with attorneys to provide indigent defense representation and with cities or counties for misdemeanor representation. Provide technical assistance to public defenders and private attorneys. | Board appoints Director who must be licensed in Kansas and demonstrate commitment and ability in criminal law. | Serve as Chief Executive Officer of Board. Supervise operation, policies, procedures of Board. Prepare annual report. |

STATEWIDE INDIGENT DEFENSE SYSTEMS

| STATE Type of Program | Commission | Commission Duties & Responsibilities | Public Defender Selection Process, Terms & Qualifications | Public Defender Duties & Responsibilities |
|--|---|--|--|---|
| KENTUCKY Department of Public Advocacy (independent state agency within Executive branch) | Nine appointed members plus deans of Kentucky law schools. Two members appointed by Governor. One by speaker, one by president of the senate, two by Supreme Court; two criminal lawyers appointed by Governor from list of five submitted by Bar Association, one appointed by Governor from list submitted by Kentucky Protection and Advocacy Advisory Board. Four-year term. No prosecutors or law enforcement officials. Chair elected by Commission to one-year term. Also a 17-member citizen advisory board appointed by the Public Advocate. | Recommend to Governor three attorneys as nominations for Public Advocate. Assist Public Advocate in selecting staff. Provide general supervision of Public Advocate and review performance. Engage in public education and generate political support. Review and adopt annual budget. Not interfere with handling of cases. | Public Advocate appointed by Governor from nominations submitted by Commission. Member of Kentucky Bar with five years experience. Four- year term. | Appoint Deputy Public Defender. Appoint assistant public defenders and other personnel. Serve as ex officio, non-voting member of Commission. Appoint 17-member Advisory Board for Protection and Advocacy Division. |
| LOUISIANA Louisiana Indigent Defender Program (separate agency within Executive branch created by Supreme Court Rule) | Seven to fifteen members. Appointed by Chief Justice of Supreme Court with concurrence of majority of justices. Renewable three-year terms. One member from each of the six Supreme Court districts. One additional member from First Supreme Court District. Not more than three non- lawyer members. At least three experienced criminal lawyers. | Members elect Chair. Establish uniform standards and guidelines for statewide program. Subdivide state into regions. Select most appropriate system for delivery in each region. Select regional full-time public defenders. Set policy for the Expert Witness/Testing Fund and the District Assistance Fund. Set eligibility standards and guidelines for district defender boards to receive Expert Witness/Testing and District Assistance Funds. | Chief Executive Officer selected by Board. Attorney with five years prior experience in criminal practice. Board sets term. | Supervise attorneys in Appellate Division and Capital Litigation programs. Manage monies in Expert Witness/Testing Fund and District Assistance Fund. Assist Board in enforcing its standards and guidelines. |
| MAINE | None | Not applicable | None | Not applicable |
| MARYLAND Office of the Public Defender (Executive agency) | Three-member Board of Trustees; two must be active attorneys. Appointed by Governor. Three-year term. Chair designated annually by Trustees. | Study and observe operation of Public Defender office. Coordinate activities of district Advisory Boards. Appoint Public Defender. Advise Public Defender on all relevant matters. | Public Defender appointed by Board of Trustees. Term is at the pleasure of Trustees. Attorney admitted in Maryland plus five years in practice. | Appoint Deputy Public Defender with Board approval. Appoint First District Defender in each judicial district. Appoint assistant public defenders with advice of District Defenders. Appoint other employees. Maintain at least one office in each district. General responsibility for operation of all offices. Maintain records. Supervise district defenders' maintenance of local attorney panels. |
| MASSACHUSETTS Committee for Public Counsel Services (independent agency; Judicial branch for budget purposes only) | Fifteen members. Appointed by Justices of Supreme Judicial Court. Three-year term. Chair elected by the Committee. | Establish standards for public counsel and private counsel divisions. Establish uniform standards of indigency. Establish guidelines for training and for qualification and removal of counsel in public and private divisions. Prepare annual report. Appoint chief counsel and two deputies. Extensive list of other duties and responsibilities enumerated by Statute. | Chief Counsel appointed by Committee. Attorney. Serves at pleasure of Committee. | Overall supervision of various divisions of committee. Perform duties as defined by the Committee. Authorize all payments certified by judges for private counsel. |

STATEWIDE INDIGENT DEFENSE SYSTEMS

| STATE Type of Program | Commission | Commission Duties & Responsibilities | Public Defender Selection Process, Terms & Qualifications | Public Defender Duties & Responsibilities |
|---|---|---|--|--|
| MICHIGAN State Appellate Defender Office, Appellate Defender Commission (agency of Judicial branch) | Seven members appointed by Governor. Two recommended by Supreme Court; one recommended by Court of Appeals; one recommended by Michigan Judges Association; two recommended by State Bar; one non-attorney. Four-year term. No member a sitting judge, prosecutor or law enforcement officer. | Choose State Appellate Defender. Develop appellate defense program. Develop standards for program. Maintain list of attorneys willing and qualified for appointment in indigent appellate cases. Provide CLE training for attorneys on list. | State Appellate Defender chosen by Commission. Can only be removed for cause. | Provide appellate representation. Maintain a manageable caseload. Prepare and maintain brief bank available to court-appointed attorneys who provide appellate services to indigents. |
| MINNESOTA State Board of Public Defense (separate agency within Judicial branch) | Seven members. One district court judge appointed by Supreme Court. Four attorneys familiar with criminal law but not employed as prosecutors, appointed by Supreme Court. Two public members appointed by Governor. | Elect chair and appoint State Public Defender. Chair may appoint Chief Administrator. Prepare annual report. Recommend budget for Board, Office of State Public Defender and public defense corps. Establish procedures for distribution of funds for public defense. Set standards for state and district public defenders and court-appointed system. | State Public Defender appointed to four-year term. Full-time position. | Provide appellate and post-conviction proceeding representation in all indigent cases. Assist in trial representation in conflict of interest cases when requested by a district public defender or appointed counsel. Conduct training programs. |
| MISSISSIPPI Public Defender Commission of the State of Mississippi | Nine members, no active prosecutors may serve. The Governor, Lieutenant Governor, Speaker of the House of Representatives, Chief Justice of the Supreme Court of Mississippi, Conference of Circuit Judges of the State of MS, Conference of County Judges of the State of Mississippi, President of the Mississippi Bar, President of the Magnolia Bar and the President of the Public Defenders Association each appoint one member. The Chairman of the Senate Judiciary Committee and House of Representatives Judiciary B Committee, or their designees, serve as legislative liaisons and non-voting members. Members serve three-year terms. | Appoint an Executive Director of the Statewide Public Defender System; establish, implement and enforce policies and standards for a comprehensive and effective public defender system throughout the state of Mississippi. The Commission may delegate to the Executive Director, in whole or in part, these duties. | Executive Director shall be an experienced criminal lawyer, licensed to practice law in Mississippi for four years prior to appointment. | Commission's duties, which it may delegate to the Executive Director, include: appoint a District Defender in each circuit court district; supervise the Conflicts and Appellate Divisions; develop indigency eligibility and caseload standards; establish qualification and performance standards for all attorneys working for the statewide system; re-assign conflict or overload cases from one district office to another; maintain lists of attorneys willing and able to accept appointments to individual cases, including capital cases; provide CLE and training seminars; compile and maintain a law library and brief bank for district defenders and private attorneys participating in the Statewide Public Defender System; assume all budgeting and reporting responsibilities for the System. |
| MISSOURI Office of State Public Defender (independent department in Judicial Branch) | Public Defender Commission: Seven members: four lawyers; no more than four from same party. Appointed by Governor with advice and consent of Senate. Six-year term. State Public Defender is ex officio member without vote. Chair elected by members. | Select director and deputies. Establish employment procedures. Review office performance and monitor director. Public education to ensure independence of system. Advise on budgetary matters. Contract with private attorneys. Approve fee schedule for assigned counsel. | Director appointed by Commission. Four-year term. Attorney with substantial criminal law experience, also experienced in personnel administration. | Administer and coordinate operation. Direct and supervise work of employees. Submit annual report to budget to Commission. Supervise training. Contract out for legal services with approval of Commission. |

STATEWIDE INDIGENT DEFENSE SYSTEMS

| STATE Type of Program | Commission | Commission Duties & Responsibilities | Public Defender Selection Process, Terms & Qualifications | Public Defender Duties & Responsibilities |
|--|--|--|--|---|
| MONTANA State Appellate Public Defender (Executive branch agency) | Five members. One trial level judge, nominated by Judges Association. Three attorneys, nominated by State Bar, who must have criminal defense experience. One lay person nominated by Governor. Staggered terms, one or two years. | Appoint Appellate Public Defender. Help gather attorney list for appointments of counsel at trial and state post-conviction. Draft criminal defense standards for counsel. | State Appellate Defender hired by Commission. No term limit. | Provides representation in state post-conviction or appeals if defendant claims ineffective assistance. Help in or assume responsibility in appeals. Assume case if trial or Supreme Court judge appoints. |
| NEBRASKA (Executive branch agency) | Commission for Public Advocacy. Nine members: six members for each judicial district; chair and two positions at large. Governor appoints from list prepared by State Bar. Non-salaried. Qualified attorneys with criminal defense experience or demonstrated commitment. Budget is from general funds and recovery of one-third of expenses from Nebraska's counties. | Provide legal services and resources to assist counties in providing effective assistance to indigent persons through its capital litigation, appellate and felony resource center divisions. Select a chief counsel. | Chief Counsel selected by Commission. Serves at will of Commission. Five years Nebraska practice. Criminal defense experience including capital case defense. | Overall supervision of appellate, capital and major case divisions and litigation support fund. Prepare budget and annual report. Establish and administer projects and programs for the operation of the commission. Oversee training programs. |
| NEVADA State Public Defender (Judicial branch agency) | None | Not applicable | Four-year term. Selected by Governor. Nevada Bar member. | Establish statewide system for all counties who choose to be part of state system. Oversee activities of these programs. Prepare annual budget. Annual report to legislature. |
| NEW HAMPSHIRE Judicial Council (Judicial branch agency) | State-level Judicial Council. Fourteen members. One selected from each court level: Supreme, Superior, Probate; President of the New Hampshire Municipal and District Court Justices Association (ex officio); Attorney General (ex officio); President of New Hampshire Bar Association (ex officio); representative from Superior Court Clerks; seven others appointed by Governor, four of whom must be attorneys. | The Judicial Council's responsibilities related to indigent defense include contracting with local defender corporations and individual attorneys for provision of defense services and general supervision of indigent programs in regard to: allocation of cases between public defender program and assigned counsel; performance of counsel; competence of counsel; fiscal and budgetary matters. | See below. | Executive Director's responsibilities are contained in a contract with the Judicial Council. |
| NEW HAMPSHIRE New Hampshire Public Defender (Judicial branch) | The New Hampshire Public Defender is a private non-profit corporation under contract with the Judicial Council and has an oversight Board of Directors. | Select Executive Director. | The Executive Director of the New Hampshire Public Defender is selected by the corporation's board of directors. | Represent indigent defendants in criminal cases or juveniles charges as delinquents in the district, municipal, superior and supreme courts. |
| NEW JERSEY Office of the Public Defender (Executive Agency, Part of Division of the Public Advocate) | None | Not applicable | Appointed by Governor with advice and consent of Senate. Five-year term. Attorney, experienced in practice in New Jersey. | Appoint deputy and assistant public defenders as well as support personnel. Establish State Public Defender system for all counties. Engage and compensate assigned counsel. |

STATEWIDE INDIGENT DEFENSE SYSTEMS

| STATE Type of Program | Commission | Commission Duties & Responsibilities | Public Defender Selection Process, Terms & Qualifications | Public Defender Duties & Responsibilities |
|---|---|---|--|--|
| NEW MEXICO State Public Defender (Executive department) | None | Not applicable | Chief Public Defender appointed by and serves at pleasure of Governor. Attorney active for five years prior to appointment and is experienced in defense or prosecution. | Manage all operations of department. Set fee schedule for assigned counsel. Establish local public defender districts. Appoint district public defenders who serve at his/her pleasure. |
| NEW YORK Capital Defender Office (independent agency in Judicial branch) | Three-member Board of Directors: one appointed by the chief judge of the Court of Appeals; one by the temporary president of the Senate; and one by the Speaker of the Assembly. Three-year terms. | Appoint a Capital Defender. Determine, with the Capital Defender, the number of attorneys, investigators and other staff necessary to the office. | Capital Defender selected by Capital Defender Office Board of Directors. | In consultation with Board of Directors, hire attorneys as deputy capital defenders, investigators and other staff. The Capital Defender Office provides both direct representation and consultation services; it also has responsibility for determining, in consultation with the administrative board of the judicial conference, attorney qualification standards. |
| NORTH CAROLINA Appellate Defender Office (Judicial branch agency) | None | Not applicable | Appellate Defender appointed by Chief Justice. | Provide appellate representation to indigents. Maintain appellate brief bank. Provide CLE training. Consult with attorneys representing defendants in capital cases. Recruit qualified, willing attorneys for state and federal death penalty post-conviction proceedings. |
| NORTH DAKOTA North Dakota Legal Counsel for Indigents Commission (Judicial agency) | Eight members. Chief Justice appoints: one county government representative recommended by North Dakota Association of Counties; one judge recommended by Chief Presiding Judge; three recommended by State Bar; and two recommended by Attorney General. Three-year terms. Chief Justice appoints Chair. State Court Administrator provides staff. | Review cost and caseload data. Prepare annual report and budget. Provide planning, guidelines and technical assistance to counties and judicial districts re: indigent defense services. Adopt guidelines for indigent defense services. Review disputed fee decisions of trial judges. | None | Not applicable |
| OHIO Ohio Public Defender Commission (independent commission within the Executive branch) | Nine members. Chair appointed by Governor. Four appointed by Governor; two of whom are from each political party. Four members appointed by Supreme Court. Chair and at least four members are bar members. Four-year terms. | Provide, supervise and coordinate legal representation. Establish rules for Public Defender such as compensation, indigency standards and caseloads. Approve budgets. | State Public Defender appointed by Commission. Attorney with minimum of four years experience. State bar member. | Appoint Assistant State Public Defender. Supervise maintenance of Commission standards. Keep records and financial information. Establish compensation procedures. |
| OKLAHOMA Oklahoma Indigent Defense System Board (Executive branch agency) | Five members for five-year terms. Appointed by Governor, subject to advice and consent of Senate. At least three lawyers. Governor designates Chair. | Make policies for indigent defense programs. Approve budget. Appoint advisory council of indigent defense attorneys. Establish policies on maximum caseloads. Appoint Executive Director. | Executive Director appointed by and serves at pleasure of Board. Licensed as Oklahoma attorney for four years. Experienced in criminal defense. | Develop state system, with exception of Oklahoma and Tulsa counties. Prepare system budget. Keep list of private attorneys for capital and non-capital case appointments. Advisor to indigent defenders. Act on system's behalf in legislative efforts. Conduct training. |

STATEWIDE INDIGENT DEFENSE SYSTEMS

| STATE Type of Program | Commission | Commission Duties & Responsibilities | Public Defender Selection Process, Terms & Qualifications | Public Defender Duties & Responsibilities |
|--|--|---|--|---|
| OREGON State Public Defender Office (agency of Judicial branch) | Six-member Board appointed by Chief Justice of Supreme Court for four-year terms. | Make policy for statewide appeals. Selects state Public Defender. Chairman chosen by committee. Responsible for establishing policy of program. | Selected by independent committee under Judicial branch. Four-year term. Full-time; private practice prohibited. | Two levels - appellate (on-staff) and trial (contract provider). Report to Legislature biannually. |
| PENNSYLVANIA | None | Not applicable | None | Not applicable |
| RHODE ISLAND Office of the Public Defender (agency of Executive branch) | None | Not applicable | Appointed by Governor with advice and consent of Senate. Three-year term. Attorney with five years experience. | Appoint, supervise and direct assistants as necessary. Develop and oversee statewide system by regions. |
| SOUTH CAROLINA Office of Indigent Defense (independent agency within Executive branch) | Commission on Indigent Defense. Seven members appointed by Governor on recommendation of South Carolina Public Defender Association. One from each congressional district. One from state at- large who serves as Chair. Four-year terms. | Appoint Executive Director of Office of Indigent Defense. Supervise operation of Office of Indigent Defense. | Executive Director appointed by Commission. | Administer Office of Indigent Defense. Distribute state funds to counties. Compile statistics on indigent defense statewide. Report to General Assembly on indigent defense. Maintain list of attorneys qualified to accept appointments in death penalty cases. Administer collection and distribution of public defender application fees and surcharge fines imposed on specified criminal offenses. Supervise staff and carry out requirements of Commission. |
| SOUTH CAROLINA Office of Appellate Defense (independent state agency within Executive branch) | Commission on Appellate Defense: Dean of the University of South Carolina Law School; President of the South Carolina Public Defenders Association; President of the South Carolina Bar Association; President of the South Carolina Trial Lawyers Association; Chairman of the South Carolina Judicial Council; Chairman of the Senate Judiciary Committee or his designee; and Chairman of the Judiciary Committee of the House of Representatives or his designee. Commission elects Chairman for one-year term. | Appoint Chief Attorney. May, subject to rules of Supreme Court, recommend or establish policies for the operation of the Office of the Appellate Defense. Approve annual budget. Establish indigency criteria. | Chief Attorney appointed by Commission to four- year term. Licensed to practice law in South Carolina. | Submit budget to Commission. Establish training for employees. Represent indigent defendants in appeal of a conviction in trial court or decision of any proceeding in civil commitment or other involuntary placement |
| SOUTH DAKOTA | None | Not applicable | None | Not applicable |
| TENNESSEE District Public Defenders Conference (agency of the Judicial branch) | Not applicable, but see below. | Not applicable, but see below. | The District Public Defender Conference has an Executive Secretary who is elected by the Conference for eight-year term. | Assist district public defenders to coordinate their responsibilities. Serve as liaison among various branches of state government. Prepare budgets for each district for submission to state. Provide public defenders with minimum law libraries. |

STATEWIDE INDIGENT DEFENSE SYSTEMS

| STATE Type of Program | Commission | Commission Duties & Responsibilities | Public Defender Selection Process, Terms & Qualifications | Public Defender Duties & Responsibilities |
|---|---|---|---|---|
| TENNESSEE Tennessee Indigent Defense Commission of the Supreme Court of Tennessee (Judicial branch) | Tennessee Indigent Defense Commission of the Supreme Court of Tennessee. Eleven members appointed by Supreme Court from recommendations made by petitioner organizations who pushed for creation of Commission through Supreme Court rule. Three-year terms. Chair appointed by Supreme Court. | Appoint officers. Adopt rules for operation of Commission. Develop a comprehensive plan for indigent defense services in state court system. Collect case information; determine reasonable caseload for district defenders; set standards for criminal defense attorneys representing indigent defendants; set compensation schedule for assigned counsel; set annual budget for court-appointed counsel expenditures; and develop voucher review process. | Not applicable, but see above. | Not applicable, but see above. |
| TENNESSEE Office of the Post- Conviction Defender and Post-Conviction Defender Commission | Nine members: two appointed by the Governor; two appointed by the lieutenant governor; three appointed by the speaker of the House of Representatives; three appointed by the Supreme Court of Tennessee. Serve four- year terms. | Appoint Post-Conviction Defender; prepare annual budget for the Office of Post-Conviction Defender. | Post-Conviction Defender appointed by Post- Conviction Defender Commission. Four-year term. Must be lawyer in good standing with Supreme Court of Tennessee and possess demonstrated experience in capital case litigation. | Provide legal representation to indigent persons convicted and sentenced to death, hire assistant post-conviction defenders, investigators and support staff; maintain clearinghouse of materials and brief bank for public defenders and private counsel who represent indigents charged or convicted of capital crimes; provide CLE training and consulting services to lawyers representing defendants in capital cases; recruit qualified members of the bar to provide representation in state death penalty proceedings. |
| TEXAS | None | Not applicable | None | Not applicable |
| UTAH | None | Not applicable | None | Not applicable |
| VERMONT Office of the Defender General (agency of Executive branch) | None | Not applicable | Defender General appointed by Governor with advice and consent of Senate. Four-year term. | Operates program thru public defenders and deputy public defenders or by contracting out to private attorneys. May establish local offices headed by a public defender. Contract with member of bar to serve as assigned counsel coordinator. |
| VIRGINIA Public Defender Commission (agency of Judicial branch) | Nine members. Appointed by Speaker of the House in consultation with Senate and House Courts of Justice Committees. Three judges, three practicing attorneys, three lay people. Three-year terms. | Oversee administration of Public Defender Commission. Select Executive Director and individual head public defenders. | Commission selects Executive Director who serves at pleasure of Commission. Member of Virginia State Bar and experienced. | Statute sets up office. Hire staff. Establish and oversee local public defender offices mandated by state legislature. |

STATEWIDE INDIGENT DEFENSE SYSTEMS

| STATE Type of Program | Commission | Commission Duties & Responsibilities | Public Defender Selection Process, Terms & Qualifications | Public Defender Duties & Responsibilities |
|--|---|---|---|---|
| WASHINGTON Office of Public Defense (independent agency of the Judicial branch) | Advisory Committee has nine members: three persons appointed by the chief justice; two non-attorneys appointed by the governor; two senators and two members of the house of representatives; one person appointed by the court of appeals executive committee; and one member appointed by the Washington State Bar Association. | Submit three names to the Supreme Court for Director of the Office of Public Defense. | Director serves at the pleasure of the supreme court, which selects from list of three names submitted by Advisory Committee. Director must have practiced law in Washington for at least five years, represented criminal defendants, and possess proven managerial or supervisory experience. | Administers all criminal appellate defense services; submits to state legislature a biennial budget for costs related to appellate indigent defense; recommends indigency standards; collects information and reports to the legislature on indigency cases; coordinates with the supreme court and judges of each division of the court of appeals to determine how attorney services should be provided. The Office of Public Defense does not provide direct representation. |
| WEST VIRGINIA | None | Not applicable | None | Not applicable |
| WISCONSIN Wisconsin State Public Defender (independent agency within Executive branch) | Nine members. Appointed by Governor, approved by Senate. At least five must be attorneys. Three-year terms. Chair is elected by Board. | Appoint state Public Defender and establish salary. Approve budget and submit to Governor. Promulgate standards of indigency. Promulgate rules for assignment of private counsel in regard to standards, payments and pro bono programs. Perform all other duties necessary and incidental. Contract with federal agencies and local public defender organizations for provision of services. | State Public Defender appointed by Board. Member of Wisconsin Bar. Five-year term. | Supervise operation of all state and regional public defender offices. Maintain data and submit biennial budget to Board. Delegate cases to any member of Wisconsin Bar. Negotiate contracts out for representation as directed by Board. Appoint staff. |
| WYOMING State Public Defender (Executive agency) | None | Not applicable | State Public Defender appointed by Governor. No term specified. Member of Wyoming Bar with experience in defense or prosecution. | Administer public defender program in districts and oversee operation of public defender system statewide. Assistant public defenders appointed by Governor and serve at pleasure of Public Defender. Public Defender may require them to be full-time. Public defender in each district appointed by Governor upon recommendations from district judge and county commissioners. |

Appendix 8

Standards for Indigent Defense

Standards for Indigent Defense

Spangenberg Group, *Indigent Standards and Guidelines Index* (1998) (state and local standards index, available on the web from <<http://www.NACDL.org>>).

NATIONAL LEGAL AID & DEFENDER ASSOCIATION, DEFENDER TRAINING AND DEVELOPMENT STANDARDS (1997).

AMERICAN BAR ASSOCIATION, STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING ABUSED AND NEGLECTED CHILDREN (RESOLUTION, 1996).

NATIONAL LEGAL AID & DEFENDER ASSOCIATION, PERFORMANCE GUIDELINES FOR CRIMINAL DEFENSE REPRESENTATION (1995).

AMERICAN BAR ASSOCIATION STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES (3RD ED.1992).

NATIONAL LEGAL AID & DEFENDER ASSOCIATION, STANDARDS FOR THE ADMINISTRATION OF ASSIGNED COUNSEL SYSTEMS (1989).

AMERICAN BAR ASSOCIATION, DEATH PENALTY (1989).

NATIONAL LEGAL AID & DEFENDER ASSOCIATION, STANDARDS FOR THE APPOINTMENT AND PERFORMANCE OF COUNSEL IN DEATH PENALTY CASES (1988).

NATIONAL LEGAL AID & DEFENDER ASSOCIATION GUIDELINES FOR NEGOTIATING AND AWARDED GOVERNMENTAL CONTRACTS FOR CRIMINAL DEFENSE SERVICES (1984).

AMERICAN BAR ASSOCIATION JUVENILE JUSTICE STANDARDS (1980).

NATIONAL ADVISORY COMMITTEE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION, STANDARDS FOR ADMINISTRATION OF JUVENILE JUSTICE (1980).

NATIONAL LEGAL AID & DEFENDER ASSOCIATION, STANDARDS AND EVALUATION DESIGN FOR APPELLATE DEFENDER OFFICES (1980).

NATIONAL LEGAL AID & DEFENDER ASSOCIATION GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES: NATIONAL STUDY COMMISSION ON DEFENSE SERVICES (1976).

NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, COURTS (1973).

Appendix 9

**Administrative Office of the U.S. Courts,
Defender Services Division,**

***Compensation of Federal Defenders and Staff:
Parity With U.S. Attorney Office Compensation***

COMPENSATION OF FEDERAL DEFENDERS AND STAFF -- PARITY WITH U.S. ATTORNEY OFFICE COMPENSATION

Framework of Compensation Systems for Federal Defender Staff

For compensation purposes, there are three categories of employees in federal defender organizations, and each category has its own separate system of compensation. The three categories are:

- (1) the Defender (Federal Public Defender or Executive Director of a Community Defender Organization);
- (2) assistant federal defenders (staff attorneys, all of whom are un-graded); and
- (3) "graded" employees (everyone else).

Compensation of the Defender

1. Federal Public Defenders (FPDs)

The Criminal Justice Act (CJA), 18 U.S.C. 3006A, provides that each FPD's salary shall be determined by the court of appeals of the circuit in which the federal public defender organization (FPDO) is located, at a rate not to exceed the salary of the U.S. attorney in the same district(s).

Accordingly, each circuit court of appeals has established its own policy regarding how the FPD's salary is to be determined. Six of the twelve circuits have policies requiring that all FPDs in the circuit be paid the same salary as the U.S. attorney in the same district. Four circuit policies require their FPDs' salaries to be set at some specified amount less (e.g., \$500 less) than the U.S. attorney's salary. The two remaining circuits use formulas for determining FPD salaries based on a combination of factors including the salary of the U.S. attorney, the salary of the highest paid assistant U.S. attorney, and/or the maximum allowable salary payable to a court unit head in the same district.

Whenever there is a change in the U.S. attorney's salary or in any other factor that dictates a change in FPD salaries pursuant to a circuit's FPD compensation policy, the Defender Services Division (DSD) requests the AO's Human Resources Division (HRD) to adjust each affected FPD's salary accordingly. HRD processes the payroll for all FPDO staff.

Note that all U.S. attorneys within the 48 contiguous United States earn the same salary. For 1999, that salary is \$118,400. The salary for U.S. attorneys in Alaska, Hawaii and U.S. territories is \$118,400 plus a "non-foreign COLA" adjustment of between 10 - 25% depending on location.

2. Community Defender Organization (CDO) Executive Directors

The CJA does not address compensation for CDO employees. However, DSD policy requires that CDO Executive Director salaries are to be determined by the CDO's board of directors, subject to the restriction that the Executive Director's salary may not exceed that of the U.S. attorney in the district. This restriction is intended to maintain consistency between the salaries of Executive Directors and FPDs.

Each CDO manages its own payroll and cuts paychecks for its employees.

Compensation of Federal Defender Organization Staff

1. Generally

The CJA provides that compensation paid to FPDO employees shall be determined by the FPD at a rate not to exceed that paid to employees in the U.S. attorney's office having "similar qualifications and experience." U.S. Judicial Conference policy states that FPDO staff salaries should be consistent with those of U.S. attorney's office employees having "similar qualifications, experience, and responsibilities."

In its March 1993 report, the Judicial Conference stated that the CJA contemplates equal pay between FPDO staff and comparably experienced and qualified staff in the U.S. attorneys' offices. The Conference said that such parity will reflect the importance of the work performed in defender offices and will assist in recruiting and retaining qualified and diversified personnel.

Accordingly, DSD has established policies for compensation of AFDs and other staff which are consistent with the compensation policies applicable to staff in U.S. attorney's offices. Because the Judicial Conference's Committee on Defender Services evaluates and approves CDO grants based upon the assumption that CDO employees will be compensated in accordance with the policies applicable to FPDO employees, all compensation policies are applicable to both FPDOs and CDOs.

FPDOs and CDOs use DSD's policies and salary charts to make all salary determinations.

2. Assistant Federal Defenders (AFDs)

DSD's policies on compensation of AFDs are generally identical to those applicable to assistant U.S. attorneys. These policies primarily include: (1) the use of charts for determining AFD starting salaries and annual performance-based increases, and salary "cap" charts (see samples attached), all of which are basically identical to the charts used in U.S. attorney offices; and (2) written policies for applying these charts, which are consistent with those used in U.S.

attorney offices. DSD also authorizes the same annual cost of living increases for AFDs as those authorized for comparable assistant U.S. attorneys.

By using the same salary charts and compensation policies as those used in U.S. attorney offices, defenders are assured that their AFDs' salaries are consistent with those of comparable assistant U.S. attorneys in the same district.

3. Graded Employees

Graded employees are compensated pursuant to a prescribed range of grades available to their job classification. The graded pay tables applicable to these employees (showing the salary amount of each grade and step -- see attached sample) are identical to the "GS" scales used in U.S. attorney offices. However, due to the many differences between the responsibilities of graded employees in federal defender organizations as compared to those in U.S. attorney offices, a job classification system has been developed for graded personnel in federal defender offices which is significantly different from the classification system used in U.S. attorney offices. In fact, there are several job classifications in the defender organization classification system (DOCS) that are not available in U.S. attorney's offices because the specific responsibilities do not exist in U.S. attorney offices. E.g., defender organizations employ their own investigators while U.S. attorney offices do not (they rely on investigators from the FBI and other federal agencies.) Attached is a chart showing all DOCS position classifications and the grade ranges assigned to each.

In developing the DOCS classifications and the grade ranges assigned to each, every reasonable effort was made to promote consistency between the salaries paid to employees having comparable responsibilities in federal defender and U.S. attorney offices. In addition, all policies regarding grade promotions, step increases, and other aspects of graded compensation are identical to those in the U.S. attorney's office. Annual cost of living increases authorized for graded staff are the same in both offices.

One significant advantage in terms of compensation for graded employees in U.S. attorneys offices is that they may receive cash awards. Federal defenders declined to institute an awards program for their employees.

Attachments

1999 LINE AFD SALARY CHARTS*

Enter the Applicable 1999 Locality Rate:** **5.6** %

Office Location(s)***

with this locality rate:

| Starting Salary Chart Calendar Year 1999 | | | | |
|---|------------------------------|---|-----------|------------------------|
| AD Level | Years of Attorney Experience | | | Starting Salary Ranges |
| | At Least | | Less Than | |
| AD-21 | 0 | - | 4 | 40,125 - 55,211 |
| AD-24 | 4 | - | 5 | 43,989 - 60,505 |
| AD-25 | 5 | - | 6 | 48,224 - 66,328 |
| AD-26 | 6 | - | 7 | 52,882 - 72,733 |
| AD-27 | 7 | - | 8 | 57,964 - 79,720 |
| AD-28 | 8 | - | 9 | 63,575 - 87,396 |
| AD-29 | 9+ | | | 69,662 - 95,812 |

| APR Increase Chart (and AD level maximums)**** Calendar Year 1999 | | | | | |
|--|------------------------------|---|-----------|--|---|
| AD Level | Years of Attorney Experience | | | SALARY RANGES | |
| | At Least | | Less Than | for "Meets or Exceeds Expectations" AFDs | for "Substantially Exceeds Expectations" AFDs |
| AD-21 | 0 | - | 4 | 40,125 - 55,211 | 45,154 - 60,240 |
| AD-24 | 4 | - | 5 | 43,989 - 60,505 | 49,494 - 66,010 |
| AD-25 | 5 | - | 6 | 48,224 - 66,328 | 54,258 - 72,362 |
| AD-26 | 6 | - | 7 | 52,882 - 72,733 | 59,499 - 79,350 |
| AD-27 | 7 | - | 8 | 57,964 - 79,720 | 65,216 - 86,972 |
| AD-28 | 8 | - | 9 | 63,575 - 87,396 | 71,515 - 95,336 |
| AD-29 | 9+ | | | 69,662 - 95,812 | 78,397 - 104,494 |

* Use these charts to determine starting salaries and APR salary increases for non-supervisory/non-senior litigator AFDs (Line AFDs) for all such salary actions effective between January 4, 1999 and January 2, 2000. All policies necessary for the proper use of these charts are found in the October 1, 1998 AFD Appointment and Compensation Policies document.

** Each organization located within the conterminous United States must enter the appropriate locality percentage rate in this space, pursuant to the instructions provided with these charts.

*** If your organization has office locations in more than one locality rate area, a separate version of these charts should be prepared for each applicable locality area, pursuant to instructions provided in the WordPerfect memorandum accompanying this chart.

**** Shaded amounts in the right hand column represent the maximum allowable salary for each AD-level. Any AFD salary that exceeds the applicable AD-level maximum is subject to the "red-circled rate" policies found in section II.B.4. of the AFD Appointment and Compensation Policies document.

1999 SALARY CAPS*
FOR SUPERVISORY AND SENIOR LITIGATOR AFDs
IN PAY PLAN B AREAS**

Enter the Applicable 1999 Locality Rate***: 5.7% %

Office Location(s)
 with this locality rate: San Antonio, Texas, District 10

| <u>Pay Cap Level</u> | | <u>Salary Cap#</u> |
|---|-------|--------------------|
| Level 1 (First Assistants) | | \$117,569 |
| Level 2 (Second Level Supervisors) | | 112,752 |
| Levels 3 & 4 (All Third Level Supervisors and all Senior Litigators) | | 108,358 112,752 |

* This chart is applicable to salary actions effective January 4, 1999 through January 2, 2000. Policies to be used in applying this chart are found in the October 1, 1998 AFD appointment and compensation policies document.

** Pay Plan B areas include all districts EXCEPT: CA-C, DC, FL-S, NY-S&E, IL-N, TX-S, PA-E, and NJ.

*** Each organization located within the conterminous United States (except in districts listed in footnote ** above) must enter the appropriate locality percentage rate in this space, pursuant to the instructions provided with these charts.

Cap amounts reflect the full 1999 ECI increase and any applicable locality adjustments, except when such adjustments would result in a cap that exceeds the 1999 "ceiling" of \$118,300. In such cases, reduced adjustment(s) are applied so that the cap amount is held to \$118,300.

[illegible][illegible]

Appendix 10

Sarasota County, Florida,

Criminal Justice Information System: Outline

SARASOTA COUNTY, FLORIDA
CRIMINAL JUSTICE INFORMATION SYSTEM
OUTLINE

1. Agency Structure
 - a. Chart
 - b. Agreement
 1. Selection of CJIS Team Members
 - a. Duties
 - b. Knowledge
 - c. Cooperation
2. Selection of Working Groups
 - a. Users
 1. Individuals with knowledge of system
 2. Technical staff
 - b. Interviewing
 - c. Cooperation
 - d. Consultant
 - “Thinking outside the box”
3. Questionnaire to Users
4. Request for Proposal
 - a. Functional Specifications
 - b. Technical Specifications
5. Selection of Vendor
 - a. Qualifying Vendors
 1. Written Responses
 2. Demonstrations
 - b. Contract Negotiations
 - a. Mediator
6. Design of System
 - a. Applications
 1. Sheriff
 2. Courts
 3. Compound Documents
 4. Software Components
 - b. Electronic Document Exchange
 1. System Generated Images
 2. Scanned Documents
 3. Electronic Signature

Outline - Page 2

7. Development of Uniform Report
 - a. Probable Cause Affidavit
 - b. Data Collection for State Tracking System
 - c. Standard Code Tables between Agencies
8. System Testing and Implementation
 - a. Module Testing
 - b. Bug Testing
 1. Report Form
 - c. Security Testing
 2. User Roles
 - d. Workflow Testing
 - e. Partial Implementation
 1. Sheriff's Modules
9. Initial System Training
 - a. User Training
10. Office Processes
 - a. Inter-Agency Workflow
 - b. Workflow between Agencies
 - c. Security of Information
11. Final System Implementation
 - a. Plan for failure
 1. Disaster Recovery Plan
 - b. Final User Training
 1. Super-Users
 2. End Users
 3. Technical Staff
 - c. Final Conversion
12. System Maintenance
 - a. Project Director
 - b. Team Members

CURRENT CJIS SYSTEM

AVERAGE CASELOAD FOR ALL AGENCIES

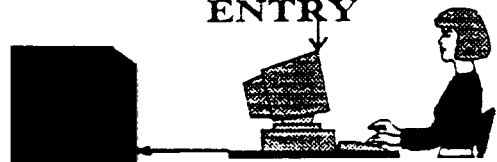


SHERIFF

1973
18,500

1991
57,500

DUPLICATE
ENTRY



CLERK of the CIRCUIT COURT

DUPLICATE
ENTRY



STATE ATTORNEY

DUPLICATE
ENTRY



PUBLIC DEFENDER

DUPLICATE
ENTRY



PROBATION

TOTAL VIRTUAL CASELOAD
DUE TO DUPLICATION

1973
92,800

1991
287,500

SARASOTA COUNTY CRIMINAL JUSTICE INFORMATION SYSTEM
QUALITY IMPROVEMENT TEAM

STATEMENT

In April, 1991, representatives who comprise the criminal justice agencies for Sarasota County, and members of the Sarasota County Management Information Systems Department met and formed the Sarasota County Criminal Justice Information System Quality Improvement Team.

The Quality Improvement Team is comprised of delegates from the following offices:

Sheriff
Clerk of Circuit Court
State Attorney
Public Defender
Court Administrators Office
Department of Corrections
Management Information Systems

The team determined that its mission should be to review, discuss and recommend a mechanism that will bring representatives of all the criminal justice agencies in Sarasota County together in order to provide the best possible information sharing capabilities.

The Quality Improvement Team has been meeting over the last five months to review the current procedures, problems, and goals of the agencies involved. At the bi-weekly meeting, held September 6, 1991 the team concurred on the following observations and goals:

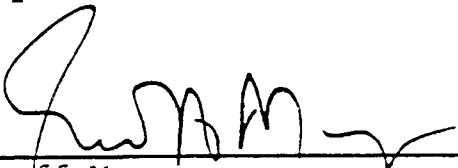
1. All the criminal justice agencies agreed to work together to outline a long term approach to enhancing the local criminal justice information system, whether it be through a totally new system or a re-write of existing system.
2. While a long term approach is being developed, the agencies agreed to define and implement short term goals that will enhance the exchange of information, even though duplication of some information will have to be maintained until the long term goals can be implemented.
3. Financial savings, whether through personnel time or operating costs, could be achieved for all agencies through a joint information sharing venture. Information sharing would eliminate the need for duplication or re-entry of information required by each agency.

Information sharing would allow common data element information entered by one agency to be used by any other agency requiring the same information, if the agency has a legal right by law to receive the information.

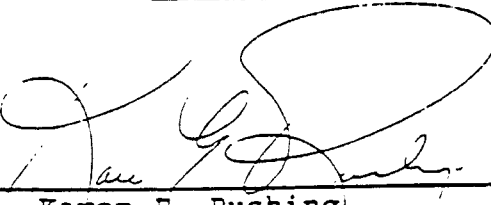
4. Resources could be shared between agencies. Resources could include personnel, software, and hardware. However, any system, whether software or hardware, must be responsive to users, provide for rapid modification capabilities, and provide day to day performance to all agencies, without degrading the ability of any one agency to obtain vital information 24 hours per day, 7 days per week.

Any resources allocated to the CJIS project would have to be in compliance with any legal or statutory obligations for obtaining, reviewing or disseminating information.

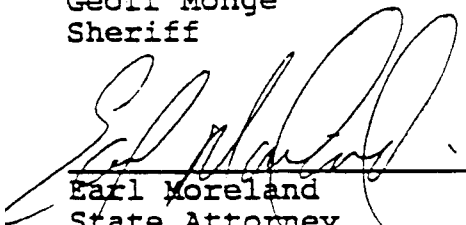
Submitted and approved for dissemination this 30TH day of September, 1991.



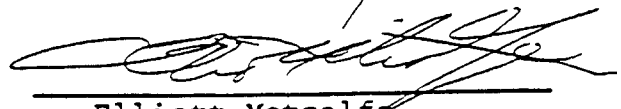
Geoff Monge
Sheriff



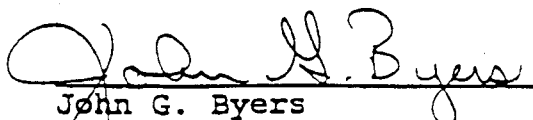
Karen E. Rushing
Clerk of Circuit Court



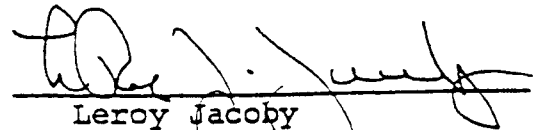
Earl Moreland
State Attorney



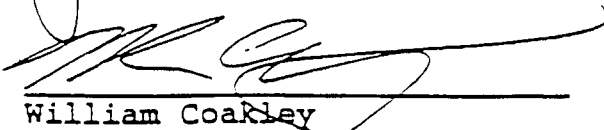
Elliott Metcalfe
Public Defender



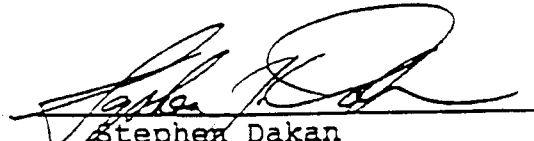
John G. Byers
Court Administrator



Leroy Jacoby
Department of Corrections



William Coakley
Management Information Systems
Sarasota County



Stephen Dakan
Chief Judge
Twelfth Judicial Circuit

Appendix 11

***Technology for Beginners: What Is Out There
and Where Do I Begin?***

**National Symposium on Indigent Defense:
*Improving Criminal Justice Systems Through Expanded
Strategies and Innovative Collaborations***

Technology for Beginners: What Is Out There and Where Do I Begin?

February 26, 1999

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Introduction

The following materials are prepared in response to the question, Technology for Beginners: What Is Out There and Where to Begin? The materials assume that there is some base level of funding, and the policy makers for your particular district or system have made a commitment to a technology investment.

Assuming for the purposes of this presentation that those two hurdles have been cleared, these materials address trial level attorneys and attempt to point out a few ways that technology can assist and improve the effectiveness of the representation we provide our clients.

Unfortunately, due to the subject of this document, it may get slightly technical at times. We have tried to explain as much as possible as we go along. If you have a technically inclined employee or outside help, they will have no difficulty in assimilating the information that follows. We suggest that you find a good local computer consultant to work with you, not only to acquire and install your hardware and software, but also to help design an information system specifically for your office. Ask for client references and follow up with them, and you should have no difficulty finding a consulting firm you can rely on.

Using Computers to Increase Your Office's Capability

In a legal office of any size, it is becoming more important than ever to automate common tasks with the use of computers in a networked environment. Due to the increase in caseloads of most public defense offices it is becoming more difficult to provide quality client representation. Office automation can help staff members accomplish more work in less time, expending less effort.

Office automation includes the use of high-speed computers, quality case management and research software, and a network to allow sharing of information between attorneys, their secretaries, and support staff.

With the advent of the Internet and CD-ROM-based research materials, it is easier than ever to find and make use of valuable information. Quality research equals quality representation. Most attorneys, especially Public Defenders, have such heavy caseloads that it is not really feasible to spend hours poring over books, looking for obscure references that may help your current client. Computers, legal software, and the varied research materials now available to Public Defenders make it much easier to maintain your case files, do research, and manage your court docket.

What is a Network?

A network is simply an arrangement whereby several computers are connected together using a special cable. Through this cable files can be shared, stored, and printed.

Using the network, a group of computer users can share a single or multiple printers, scanners, research tools, etc. A network makes it possible to use and share information on an office-wide basis.

What Brand of Computers Should We Buy, and From Whom?

There are many different brands of computer systems currently on the market. Each company will tell you, at great length, why their computers are better than their competition's. Don't be overly concerned, though, about brand names. The truth is that they are all fairly similar.

It makes little difference where you buy your computer, as long as you buy the most powerful you can afford. There are literally hundreds of brands, but there is very little to differentiate between them. Most computers use the same components internally. More important than brand choice is forming a relationship with a computer vendor that you can depend on to help you keep your computers running smoothly.

The best course of action in choosing a vendor is to ask others in your area for their experience with local computer companies. Like buying a car, you'll eventually find someone with a good reputation. Ask potential vendors for references. If a dealer can provide good references, you can feel confident about doing business with him or her.

Beware the temptation to buy low-cost superstore-type computers. These are the sort generally sold in office supply houses and consumer-oriented department stores. These are not really suitable for use in a networked environment, as they have limited upgradability, and have been designed for use in a "home" environment. Some of the lower-cost superstore computers are very, very difficult to setup on a network. In general, you will have better results from a well-established local computer store or consulting firm that sells "generic" or dealer-brand computers. These systems are designed for network use, component by component, and can accept a wide variety of upgrades and expansions.

Mail-order computers from companies like Dell or Gateway are generally acceptable for networked use, but if you have a failure in a computer component, it can take days or weeks to get a repair done. In most cases it is preferable to use local computer consultants or stores, as you can establish a face-to-face relationship with the vendor, and repairs can generally be effected in a more timely fashion.

How Much Will Computers Cost?

The cost of your computers will vary more with their power level than with their brand name or vendor. You may have heard that it is best to use one type of processor (the computer's brain) over another. According to whom you are speaking with, this can develop into a discussion approaching religious fervor. So, should you buy a computer with a Pentium II, a Celeron, an AMD, a Cyrix, or some other type of processor?

Intel Pentium II processors are premium, and will serve you well. If you can afford the extra \$100 to \$200 per computer, then you would do well to buy Intel Pentium II processor-based systems. Generally, you will do just fine with an AMD or Cyrix processor, though, and will save significant money in the process. The Intel Celeron processor is not as powerful as an AMD or Cyrix processor, and the performance decrease is more significant than the money you would save.

An Intel Pentium II processor-based computer will cost \$1,300-\$1,500 with a processor in the 350MHz speed range. An AMD processor-based computer will cost from \$1,000 to \$1,300 for the same level of power, while a Cyrix processor-based computer will cost from \$800 to \$1,000. We have found very little difference in the processing power of these three processor brands. The Intel Celeron processor generally costs about the same as an AMD processor, but displays inferior performance compared to any of the other processors.

Keep in mind that prices and power levels are continually changing. Within ninety days of the day you read this, these same computers will probably cost less and more powerful processors will have moved into their places. Historically, the power level of computers doubles about every eighteen months. There is no use waiting for a better computer; you'll not have the use of a computer while you are waiting, and when you find the one you consider the better computer, it, too, will be outperformed by newer machines within ninety days. Don't despair, though; you can get three to five years of use out of any good computer system without worrying about upgrading or buying new systems. With yearly upgrades, the system will serve you for a very long time indeed.

How Fast Should Our Computers Be?

As of this writing, it is best to buy computers that are at or above 300MHz speed in terms of processor speed. 350 to 450MHz processors are now available, with those over 350MHz costing significantly more. The 350MHz speed and below are the most cost effective for the next several weeks. Several of the processor manufacturers are in the process of releasing processors that exceed 500MHz barrier, but you can expect to pay \$2,000 or more for machines with these processors. Unless you are really strapped for funds and have found a great deal, do not buy computers that have processor speeds less than 300MHz. New 300MHz computers are available for less than \$1,000 each, and a 266MHz

system may only save you \$10 to \$20 per workstation. Sub-300MHz processors are not worth their cost, unless you can get some good used computers. Beware of buying any used system that has a processor speed of less than 200MHz, since Windows 95/98 slows down considerably on systems slower than 200MHz.

What Other Criteria Can Be Used to Judge a Computer?

The storage capacity of a computer's hard disk deserves a little attention, as well, since it dictates how much software can be installed on the computer, how much data it can store locally, and, to a limited extent, the speed of the machine. We recommend that you do not buy computers with hard drives smaller than 3.2 gigabytes, with 4.3 gigabytes or more being preferable.

Make sure that your new computer has at least 32 megabytes of SDRAM memory, with 64 megabytes or more being preferable.

The video card provides the computer with the ability to display information and graphics on the monitor. An underpowered video card can slow down the computer's performance significantly. At a minimum, you will want a PCI bus video card with 4Mb of memory. Video cards with more memory or AGP bus architecture are preferable.

What Are the Minimum Specifications for a Network Workstation?

- ✓ 300 MHz speed using one of the following processors: Intel Pentium II, an AMD K6/2, or a Cyrix 6x86 MII
- ✓ Pentium-level motherboard with 512K Cache and a PC-100 (100MHz) bus, AT or ATX form factor
- ✓ A minimum of three PCI slots and two ISA slots, with more slots and/or an AGP slot preferable
- ✓ 32 Megabytes SDRAM in 168-pin DIMMs, 100Mhz, 7 nanosecond
- ✓ 3.2 Gigabyte hard drive, UltraDMA, EIDE, 8-10 millisecond seek time
- ✓ SuperVGA PCI or AGP bus Video Card (prefer AGP) with 4 to 8 megabytes of memory onboard
- ✓ PCI Network Card with either 10 or 100BaseT, or 10Base2 interface (according to the network wiring scheme)
- ✓ 1.44 Megabyte 3.5" Floppy Drive
- ✓ 14" monitor (larger preferred) SuperVGA, .28 mm dot-pitch, non-interlaced

- ✓ Keyboard, mouse, and mousepad
- ✓ Minitower or desktop case with 230 or 250 watt UL power supply
- ✓ Windows 95/98 or Windows NT 4.0 Workstation operating systems

Networking Small Law Offices

In a small legal office, with one to five attorneys and their support staff using up to five computers, it may be most reasonable to build implement a peer-to-peer network scheme.

A peer-to-peer network is the most basic network architecture. It simply connects all the computers together so that they can share files and printers. A tape backup unit can be installed on one of the computers so that mission critical data may be backed up nightly for each terminal on the network.

Some use a peer-to-peer network and make one of the computers a non-dedicated file-server. This file-server computer can be used as a normal network workstation, but everybody on the network stores his or her files on this computer. This is a safer since all data files are in one place and are more easily backed up on tape.

A peer-to-peer network normally uses one of two wiring schemes: 10Base2 (Coaxial cable) or 10BaseT (Category 3 Twisted Pair – like phone wire except with 8 wires).

10BaseT is more up-to-date and is preferable for more than two computers. Expect to pay around \$80 to \$100 per computer for network wiring and labor in addition to buying a network hub to connect all the systems together and direct network traffic. The hub should cost between \$150 and \$300, and should have up to eight network ports.

If you only have a couple of computers to network together, a 10base2 coaxial network is fine and should cost about \$100 to install, depending upon the physical distance between the computers. No hub is required for a 10Base2 network.

Example costs of a five terminal 10BaseT peer-to-peer network

| | | |
|---------------------|----------|----------|
| Per terminal wiring | \$100.00 | \$500.00 |
| 8-Port hub | | \$200.00 |
| ----- | | |
| | \$700.00 | |

Make sure that any computers you purchase have network cards preinstalled or you will need to price one network card per computer at around \$50 per card.

As of this writing, 100BaseT networks (Category 5 UTP) are becoming feasible. These networks cost about twice what a 10BaseT network costs to install, but can run up to ten times faster.

If you do new network wiring it is a good idea to request "Category 5" wiring since that scheme will support both 10BaseT and 100BaseT, permitting you the option of upgrading to 100BaseT at a later date without having to run new network cable. The extra cost in a 100BaseT network comes from the price of the hub and network cards; they are significantly more expensive than their 10BaseT counterparts.

10BaseT (10 Megabits per second) generally provides more than enough speed for a small peer-to-peer network.

Networking Medium to Large Legal Offices

When you exceed five to ten computers, your network is going to have significantly more traffic, reducing overall network performance. It is no longer feasible to use the peer-to-peer arrangement; instead, it is preferable to install a 100BaseT network in larger systems. This affords you the extra speed you will need.

It also becomes necessary to put in place a special, dedicated computer called a server. This computer will cost from two to five times what a normal computer costs. As you get into networks from 25 to 50 computers, it is necessary to increase the power of the server, and, in most cases, add more than one server to the network.

For optimal performance, it is recommended that you have one server for each twenty-five computers in your network.

What Are the Minimum Specifications for a Network Server?

- ✓ 400 MHz speed incorporating one or two Intel Pentium II or Pentium III processors (prefer dual-processor system)
- ✓ Pentium-level motherboard with 1024K Cache and a PC-100 (100MHz) bus, AT or ATX form factor
- ✓ A minimum of three PCI slots and two ISA slots, with more slots and/or an AGP slot preferable

- ✓ 128 Megabytes SDRAM (per processor) in 168-pin DIMMs, 100Mhz, 7 nanosecond
- ✓ Two 9.5 Gigabyte hard drives, UltraWide SCSI, 8 to 10 millisecond seek time, with RAID level one (disk mirroring)
- ✓ Adaptec 2940 Ultra Wide SCSI adapter (prefer using two SCSI adapters, one for each hard drive to allow not only disk mirroring, but also disk duplexing – one SCSI adapter per hard drive with mirroring)
- ✓ SuperVGA PCI or AGP Video Card (prefer AGP) with 4 megabytes of memory onboard
- ✓ PCI Network Card with either 10BaseT or 100BaseT network interface (according to the network wiring scheme). Use a very high quality card such as a 3Com Fast EtherLink card with parallel processing)
- ✓ 1.44 Megabyte 3.5" Floppy Drive
- ✓ 32X CD-ROM drive
- ✓ Keyboard, mouse, mousepad
- ✓ 14" SVGA Monitor, .28 mm dot-pitch, non-interlaced
- ✓ Full-tower case with 250 or 300 Watt UL power supply (prefer dual redundant power supplies)
- ✓ Four high-efficiency cooling fans
- ✓ Windows NT 4.0 Server operating system (Novell NetWare 4.x could be considered as an alternative, but NetWare is losing popularity for new installations due to its complexity)

What Sort of Network Architecture is Recommended for Larger Networks?

The wiring scheme for larger networks needs to be of the 10BaseT or 100BaseT Category 5 UTP level with a hub. It is not advisable to use 10Base2 (coaxial) wiring on a network over five terminals. A 10Base2 network is similar to a strand of Christmas tree lights - if one computer loses its connection to the network, all of the computers lose their network connections. On a 10BaseT or 100BaseT network, if one terminal breaks its connection, only that terminal is affected and the network continues to function normally.

Larger networks will require hubs with more capacity, or multiple hubs. Do not exceed four hubs on your network, since that could cause some instability in the network. Each hub should be connected with a backbone wire to each other hub.

This will permit multiple hubs to function as one, eliminating timing problems in the direction of network traffic.

Keep in mind that the wiring scheme you use requires you to match the computers network cards to that scheme. Decide what type of wiring scheme you will use before buying your computers. If you already own the computers, make sure that the hubs and network cards you order match your wiring scheme; they cannot be mixed and matched

What Will a Larger Network Cost?

It is harder to examine the cost of a larger network since there are so many variables. Generally, each network connection to a computer will cost from \$80 to \$100 for the network wiring itself. Each hub will cost from \$300 to \$1000 according to the brand, warranty, quality, and capacity of the hub unit. You can buy hubs with four to forty-eight ports of capacity (one is occupied by each computer on your network). Most networks use twelve to twenty-four port hubs and stack them (with a maximum of four hubs in a stack).

What is Windows NT 4.0, and What is Its Significance?

Windows NT 4.0 is today's operating system of choice for business use. This powerful operating system allows use of server systems like the Intel Pentium II or Pentium III fileserver. NT can manage up to four processors, giving you room for future expansion of your servers. NT is very simple to administrate. One person could be appointed as Network System Administrator, and would oversee the file-server security, user files, etc. NT makes it very simple to do these things. The entire NT file-server user interface is based on the easy-to-use Windows 95 look and feel. If you are comfortable with Windows 95, then NT will feel very familiar to you. There are other network operating systems available, but NT is outselling them two to one. There are very good reasons for this, and one of them is ease-of-use.

Windows NT 4.0 is a C-Level Secure Network Operating System, as specified by the federal government. This means that you can set up security to protect critical office information, both from theft by break-ins and from the prying eyes of those who do not need access to critical data. You will be able to segregate all sensitive information such as payroll data, so that only those who are allowed access can see the files. No one else will be able to access the directory containing the protected information.

NT also includes several very powerful features that you may find useful. One is the Remote Access Service, which allows those with authorization to log in to the server from a home computer by dialing in with a modem. The authorized person will have full access to company files and data. The actual methodology for using data while connected through an offsite computer is no different from working

while in the office; the same actions are used to open and save files. In effect, you have extended the office network right into your home, through the phone lines.

Another of NT's powerful features is interoffice e-mail. E-mail gives you the ability to send important notes, documents, or images back and forth between key members of your staff without leaving your computer terminal. It is very simple with Windows NT to establish e-mail connections to the outside world through the Internet.

NT allows you to assign different levels of power to different users. One employee may be able to only view certain files; another will be able to view and make changes to those files. One user may be able to work with sensitive data, while another employee cannot even see that data in any way. It is all controlled by the user database, setup by the administrator as the server is installed, and then maintained as employees come and go. NT makes the entire network system simple to administer.

With NT you have the capability to connect to almost any other type of network system through the use of common networking protocols such as NetBEUI, IPX/SPX, TCP/IP, NetBIOS, and others. Connections may be established between workstations, servers, and standalone devices through the network via network cabling or modem dialup.

Windows NT 4.0 has become the preferred operating system for network servers and even desktop workstations. It is easy to use, and very powerful. It works directly with Windows 95/98.

Case Management

The computer's greatest strength is the ability to store, retrieve, and sort through staggering amounts of data, quickly and accurately. This capability is perfectly suited to the law office, where files burgeoning with memos, reports, and Post-It notes cover every available flat surface. A good case management application can serve as your digital assistant, making the contents of every file in your office accessible in an instant. There are two approaches you may take towards acquiring a case management system.

Your first alternative is to purchase one of the several commercially available case management systems. You will find that all case management systems will incorporate certain core features, such as the ability to store various types of information regarding individuals, charges, and cases. Your choice of case management systems must therefore be made based upon other features and factors. Here are a few suggestions:

Operating System Support

It is always safest to insist upon software designed specifically for your operating system. Remember that MS-DOS software may have incompatibility issues with contemporary operating systems like Windows 98 and Windows NT 4.0.

Data Export Support

You should verify that the case management system has the capacity to export its data to a generic format, such as comma-delimited text. If, for some reason, you decide later that you want or need to switch to a different case management system, it will be of utmost importance to you that your existing data can be transferred to the new system. Without data export support, you may find yourself stuck with a system that doesn't work for you.

Year 2000 Compliance

As threadbare as the term is quickly becoming, Y2K compliance is of paramount importance, particularly in data warehousing software such as a case management system. Believe it or not, many software applications (and even operating systems) currently on the market are not Y2K compliant.

Workgroup Capabilities

One of the biggest benefits of implementing a case management system is the ability to work together more easily and efficiently. We have a number of different ways that our attorneys work together on cases, including vertical representation and defense teams. A good case management system can simplify this sort of teamwork by allowing multiple attorneys to be associated with a case within the system, permitting attorneys to contribute jointly to a central Trial Notebook, providing a case journal that attorneys and support staff can access and contribute to, and facilitating workgroup scheduling and task assignment.

Reporting Functionality

For many indigent defense offices, funding is based upon documented caseload. Providing accurate statistics can be a daunting task, particularly if much detail is required. A good case management system will provide flexible reporting functions that will permit you to extract the data you need in the format you need it. Reporting functions are often treated as an afterthought in case management systems; remember that the data in

your system is no good to you if you can't make it work for you, on your terms.

If none of the existing case management systems fit your needs, your second alternative is to have a case management system designed specifically for your office. This is not as unattainable a goal as it may sound at first; new rapid application development tools and a glut of young computer professionals make such a project feasible in terms of both time and money. Depending upon the size and workload of your office, the resources expended in the development of custom software may well be dwarfed by the amount that would have been wasted in trying to accommodate the eccentricities of an existing case management system.

Computerized Legal Research

Computerized legal research is the standard for lawyers today. Both CD-ROM systems and the multitude of research opportunities available on the Internet need to be utilized by attorneys in order to stay on top of rapidly developing case law and legislative actions. In offices with more than one or two attorneys, sharing research disks or setting up one terminal to serve as a research tool is burdensome. Networking these systems makes the information immediately retrievable at each individual workstation.

Computerized legal research generally permits you to search through a large number of documents to locate search terms of your choosing. These searches are instantaneous and result in concise listings of references pertinent to your issues.

Premise

The Premise CD-ROM system, published by the West Publishing Co., includes state and federal case law reporters, digests and legal codes. In our network, we have established several CD-ROM servers whose sole function is to house multiple CD-ROM drives that can be shared across the network. Each attorney can access the materials from any network terminal at any time. Research projects can be saved by topic or client name. Entire cases can be printed and attached to briefs and memoranda. Selected sections can be copied and inserted directly into the body of a manuscript. Links within cases can be followed from one reporter or digest or code system to another, permitting attorneys to complete projects that would have previously required moving from one book to another, without leaving the computer screen. Updates to the materials are sent on a quarterly basis, with online access to the newest materials provided at no additional cost.

Shepard's Citations

In order to assure that the case law being cited is current, Shepard's Citations can be added to the server system. The Shepard's system not only displays cases which have interpreted, approved or reversed the legal issue the attorney is researching, but permits one to move from case to case to follow the history of the case or the legal issue involved.

The Internet

State bar associations and court administrations organizations often provide up-to-the-minute case law as it is released by the appellate courts. The Tennessee Bar Association provides such a service. Attorneys who subscribe to the TBA's Opinion Flash program receive a short digest of every new case released by the Tennessee Supreme Court, Court of Appeals and Court of Criminal Appeals on their internet server daily. Links at the end of the digest can be followed to receive the full text of the opinion and the opinions can be searched for terms. Similar releases are made by the Administrative Office of the Courts and can be access at their web site at no cost but are not searchable.

The Tennessee Legislature provides up to the minute information about new legislation pending before the House and Senate and the results of legislative actions on new bills. Other state administrative offices provide similar information that can be of assistance to lawyers. Specialized bar associations, both on the state and national levels, provide links to sites of interest to their members and information about training opportunities. Scholarly works on just about any subject an attorney might encounter in handling his caseload can be accessed on the Internet from various professional organizations and universities across the nation.

Most of the federal district courts and federal circuits courts also provide copies of their opinions on internet sites. The United States Supreme Court makes opinions and briefs available at their official web site and Cornell University provides a free service which sends short digests of US Supreme Court cases to subscribers via e-mail as soon as they are released.

Extras

Once you have a basic computer network in place, there are many varied hardware devices you may find beneficial to your practice. These items vary in price, complexity, and utility. Several ideas are listed below. (Bear in mind, though, that the world of specialized computer hardware is virtually infinite; if you can imagine an application, chances are that at least one piece of hardware is available for specifically that purpose.)

Distributed Internet Connectivity

Once your individual workstations are connected in a Local Area Network, they can share devices and resources. Rather than install modems connected to dedicated phone lines at each individual terminal, you can distribute Internet connectivity from a communications server with multiple shared modems or from a single dedicated high-bandwidth Internet connection. By localizing internet connectivity to a single server, high-speed access can be provided to all users with minimal hardware and simplified administration, while facilitating network-wide sharing of a single internet account as well as usage auditing.

Videoconferencing

With the addition of a small video camera and video capture card to a standard networked workstation, you can videoconference with similarly equipped colleagues across the Local Area Network (or across town, if you have a high-bandwidth connection). Various combinations of hardware and software permit videoconferencing with audio or chat.

Digital Still Cameras

Digital photography has both advantages and disadvantages as compared to traditional photographic processes. On the plus side, digital photos do not require developing or processing; the camera interfaces directly with the computer, making images immediately available for viewing, e-mailing to colleagues, or storing on disk for transportation or cataloging. Digital "film" occupies less space and is significantly less sensitive to environmental conditions than 35mm film. On the negative side, digital photos are of lower resolution than regular photos. They are intangible; if you want a hardcopy, you must print one out on a color printer. Digital cameras are slightly more sensitive to lighting conditions, making the perfect photo a little more elusive. We have chosen to employ a combination of digital and 35mm photography in our investigations.

Digital Video Cameras

VHS-quality video is usually adequate for internal use, but sometimes you will be recording material that may prove useful in court. Rather than hire a videographer with production-quality equipment, you might want to consider purchasing your own digital video equipment. With digital video, you are assured of CD-quality audio and crisp, high-definition video. Non-linear editing can be effected on a computer workstation, and the edited final product can be laid down on digital videotape, S-VHS tape, or VHS tape. The end result is first-generation, broadcast quality video that can be used to make striking in-court presentations. Digital video cameras are

smaller and lighter than their VHS, VHS-C, or Hi8 counterparts, and provide a richer feature set. Digital video cameras also incorporate the functionality of digital still cameras, allowing you to record an hour and a half of digital video, several hundred digital still photos, or any combination thereof to a single, compact digital videotape.

Digital Data Projectors

If you often give presentations inside or outside the office, a digital data projector can be a powerful asset in getting your point across. The projector displays images from a computer workstation or laptop on a large screen, facilitating multimedia presentations, digital slideshows, and group software training. A digital data projector can also be an effective tool in a courtroom. Exhibits can more effectively be displayed to the jury and witness examinations are more meaningful in conjunction with the visual display.

Laptop Computers

In the courtroom, when you are away from your office, or visiting a client at a detention facility, a laptop computer can offer you access to your documents, your Internet connection, and your case management system. Laptop computers have distinct advantages (such as portability and connectivity) and disadvantages (like expense and non-upgradability). Docking stations with port replicators permit the laptop to be attached to full-size hardware (monitor, mouse, and keyboard) while in the office, allowing the same computer to be used in the office or on the go.

Personal Digital Assistants

A cross between laptop and calculator, Personal Digital Assistants (commonly called PDAs) are fairly small and reasonably inexpensive. A PDA gives you access to your contacts, appointments, to do lists, and notes while you are away from your computer. When you get back to your office, you place the PDA in a special cradle, signaling it to synchronize its data with the data in your computer's Personal Information Manager (or PIM, like Microsoft Outlook). PDAs offer dynamic data access without the expense or bulk of a laptop, though power and versatility are sacrificed.

Scanners

A powerful tool for digital data storage, scanners allow you to take printed material and capture a digital image of it within the computer. Once inside the computer, photos can be cropped, enlarged, enhanced, and saved on disk. Documents can be analyzed with Optical Character Recognition

(commonly referred to as OCR) software and translated into editable text within your word processor.

Supplemental Funding Sources

While our co-presenter, Fern Laethem, addressed funding issues in detail, we wanted to briefly address three specific supplemental funding mechanisms that are specific to our system, but have been a wonderful source of funding for our office. While our office is a state-supported office, we receive “local money” as a supplement to our state budget.

In 1992, the Tennessee State Legislature passed a public defender reform bill that addressed questions of funding and staffing for the thirty-one district public defender offices in Tennessee. In that legislation, a provision was inserted to help maintain a “balance of power” between the district attorney general (usually possessing sufficient political influence resulting in funding) and the district public defender (usually possessing insufficient political influence resulting in funding deficits). The Tennessee Legislature passed Tennessee Code Annotated §16-2-518, requiring local governmental bodies to increase funding to public defender offices by 75% of any increase in local funding for positions or office expenses provided to the local district attorney general’s office. The state legislature did not send a “funding mandate” to local governments. The local governmental bodies have the option of supplementing the budget of their district attorney general’s office, which is a state office, receiving state funding. The effect of the legislation, however, is to preclude local governmental bodies from shifting the appropriate state determined balance of power with regard to staffing and other funding by supplementing the district attorney’s budget and refusing to supplement the same district’s public defender office. The legislation required that a “base year” be established and the existing local funding for the district attorney’s office be exempted. However, any subsequent year increase in local funding to the district attorney office must be accompanied by a 75% contribution to the district public defender office to the extent that those supplemental funds go for staffing or office expenses. (T.C.A. §16-2-518 is included in the Appendix, Document 1).

Additionally, the Tennessee Legislature passed Tennessee Code Annotated §40-14-210, allowing any county, in misdemeanor and felony prosecutions to collect a fee of \$12.50 for the purpose of defraying the costs of legal representation and support services provided indigent defendants in criminal proceedings. Following the passage of that legislation, the Knox County Commission authorized the assessment and collection of such a fee. Further, the County Commission specified that all funds collected pursuant to that legislation “...shall be provided to the Public Defenders Office for the Sixth Judicial District and that in no event shall those funds be used for any purpose other than providing representation and support services to indigent defendants in criminal proceedings.” (T.C.A. §40-

14-210 and Resolution R-94-6-133 contained in Appendix, Collective Document 2).

In 1983, (amended in 1985) a Private Act, (Original House Bill 1221, Amended House Bill 1052) was passed by the Tennessee Legislature providing the sum of \$1.00 (later amended to \$2.00) "...shall be added to the litigation tax on each warrant in Knox County General Sessions Court and shall be used for the disbursement to attorneys who are appointed to represent indigents in Knox County General Sessions criminal cases." Further, the Act provided that a uniform, fixed fee of no more than \$50.00 per defendant should be payable to appointed attorneys for services rendered in the representation of indigent defendants at the General Sessions Court level. The Knox County Commission passed Resolution 85/5/F, ratifying the private act.

The Knox County Law Director opined in 1991 that the Public Defenders Office for the Sixth Judicial District should be considered an "appointed attorney" for the purposes of allowing us to draw on the funds collected pursuant to the Private Act. (House Bill 1221 and 1052 as well as Resolution 85/5/F contained in Appendix, Document 3).

Appendix 12

**Special Litigation Section, Civil Rights, Division,
U.S. Department of Justice,**

***Federal Constitutional and Statutory Rights
of Confined Juveniles***

**FEDERAL CONSTITUTIONAL AND STATUTORY RIGHTS OF
CONFINED JUVENILES**

**THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT
OF 1994, 42 U.S.C. § 14141 (copy attached), AS IT APPLIES
TO JUVENILE DETENTION AND CORRECTION FACILITIES AND THE
ADMINISTRATION OF JUVENILE JUSTICE**

**SPECIAL LITIGATION SECTION, CIVIL RIGHTS DIVISION
P.O. BOX 66400
WASHINGTON, D.C. 20035-6400
(202)514-6255**

OVERVIEW:

- Enacted in 1994 as part of the Violent Crime Control and Law Enforcement Act.
- The Act prohibits a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of their Constitutional or federal statutory rights.
- Gives the Attorney General authority to initiate a lawsuit to obtain equitable and declaratory relief to eliminate the pattern or practice when she has reasonable belief that one exists.
- In the context of juvenile corrections, the types of conduct covered would include abuse of confined juveniles as well as conditions of confinement that violate the Constitution or federal statutes, such as the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Acts, and the Americans with Disabilities Act. Also covered are violations of juvenile federal rights during the arrest and delinquency process.

Police Misconduct Provision of The Violent Crime Control and Law Enforcement Act 1994

42 USC § 14141

Current through P.L. 105-165, approved 3-20-98

§ 14141. Cause of action

(A) Unlawful conduct

It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(B) Civil action by Attorney General

Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1) has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

**FEDERAL CONSTITUTIONAL AND STATUTORY RIGHTS OF CONFINED
JUVENILES**

**CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT (CRIPA)
42 U.S.C. § 1997 (copy attached)**

**SPECIAL LITIGATION SECTION, CIVIL RIGHTS DIVISION
P.O. BOX 66400
WASHINGTON, D.C. 20035-6400
(202) 514-6255**

OVERVIEW:

- Enacted in 1980 in response to national concern about institutional conditions
- Gives the Attorney General standing to redress unlawful conditions in publicly operated residential institutions, including juvenile detention and training facilities, facilities serving people with mental retardation and other developmental disabilities, mental health facilities, nursing homes, jails, and prisons
- Jurisdiction under CRIPA includes all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. territories, counties, and cities
- Gives the Attorney General pattern or practice authority to enforce constitutional and federal statutory rights, including: Individuals with Disabilities Education Act; Section 504 of the Rehabilitation Act; and Americans with Disabilities Act
- Focus is on systemic deficiencies rather than individual, isolated problems

INVESTIGATIONS:

- Initiated by complaints from parents, residents, staff, advocates, media reports, U.S. Attorneys, and other sources
- Investigations are conducted by expert consultants, attorneys, and paralegals
- On-site tours of facility and observation of conditions; interviews with administrators, staff, residents, relatives, and advocates; review of records and other documents
- Broad range of inquiry, including adequacy of basic care, medical services, psychiatric treatment, training, rehabilitation, education, protection from harm and abuse, freedom from undue restraint, staffing, sanitation, and fire safety

OUTCOME OF INVESTIGATIONS:

- Report of findings and legal conclusions in "49 day letter" sent to the jurisdiction
- Resolution occurs most frequently through consent decree filed in federal court detailing remedial steps the jurisdiction agrees to take
- Consent decree is monitored by Special Litigation staff in conjunction with experts, monitors or special masters; contempt actions filed for non-compliance if the jurisdiction is unwilling to agree to further remedial actions
- Attorney General is authorized to file suit when necessary; adversarial litigation is used only as a last resort

Appendix 13

**Administrative Office of the Courts,
Arizona Supreme Court,**

***Reengineering: Projects To Improve
Criminal Case Processing***



REENGINEERING

PROJECTS TO IMPROVE CRIMINAL CASE PROCESSING



Presented by the
Administrative Office of the Courts
Arizona Supreme Court

December 1, 1998

EXECUTIVE SUMMARY

Recent emphasis on funding the "front end" of the criminal justice system - the police - has resulted in substantial statewide increases in the number of arrests and court filings. This pressure on the "middle part" of the system - prosecutors, public defenders and the courts - has resulted in significant delays in case processing times.

For justice to be meaningful, it must be swift and fair. Arizona standards establish that 90% of criminal cases should be disposed of within 100 days, and 99% within 180 days.

Projects to "reengineer" the criminal case processing system - collaborative efforts involving all the criminal justice stakeholders in a county, have been developed and implemented in an attempt to manage these ever increasing caseloads and delays. Expansion of these projects across the state has been facilitated by the enactment of 1998 legislation that provided funding for this purpose. This report provides information on these reengineering efforts.

Significant findings of the projects include:

- Reengineering is a **proven concept**. The projects have resulted in substantial reductions in case processing times, with the associated savings in staff and jail costs. For example, Coconino County, the first county to complete a reengineering project, reduced the average number of jail days per defendant from 173 to 55 days. The Yavapai County reengineering effort resulted in a decrease of 95 days in the median case processing time.

- Implementation of the projects has been greatly enhanced through utilization of **automation**. Automated court databases allow for management of caseloads and provide accountability measures.
- There are **limits** to the improvements that can be realized through reengineering alone. Some additional resources are needed to fully implement and sustain the case flow volume once reengineering takes place.
- As the criminal caseloads continue to increase, "**slippage**" of the improvement in the case processing time will occur, if additional resources are not added.
- Prompt resolution of cases is dependant upon the improvements that can be realized through reengineering projects and **adequate resources** for the "middle part" of the system.

BACKGROUND

Between fiscal years 1992 and 1996, local, state and federal funding initiatives resulted in a 21% increase in the number of police officers on the streets in Arizona. Additional law enforcement officers have contributed to a corresponding increase of almost 25% in the statewide arrest rate for all offenses and an increase of more than 22% in the criminal felony filings in the Superior Court. During that same time period, the length of time to process criminal cases increased significantly. For example, between 1991 and 1997, case processing time for 90% of the criminal cases in the Superior Court in Maricopa County increased by 95 days. Although Arizona standards establish that 90% of criminal cases should be handled within 100 days, by 1997 it took 290 days to process 90% of the cases in the Superior Court in Maricopa County. This delay in case processing time has an adverse impact on jail populations, victims, the processing of civil cases, and on the general public who expect timely handling of criminal cases to protect their safety and well-being.

Under the leadership of Supreme Court Chief Justice Thomas Zlaket, the Arizona criminal justice community proposed the "Fill the Gap" legislative initiative during the 1998 legislative session to address this problem. The goal of this effort, to provide *swift, fair justice* by processing 90% of the criminal cases within 100 days and 99% within 180 days, is a component of *Justice 2002*, Chief Justice Zlaket's strategic plan for the judicial department. The "Fill the Gap" effort resulted in the Legislature establishing the Criminal Case Processing Improvement Fund and appropriating \$350,000 to the fund for criminal "reengineering" projects to improve the processing of criminal cases in the Superior Court and justice courts. Senate Bill 1378, Chapter 182, Laws 1998, directed the Arizona Supreme Court to allocate monies in the fund to counties for the planning and implementation of collaborative projects to improve the processing of criminal cases. The legislation also specified that in order to be eligible for funding, a county must submit a

plan to the Supreme Court that demonstrates how the criminal justice entities in the county will work together to address problems with criminal case processing. The new statutory provisions also direct the Administrative Office of the Courts to submit a report to the Legislature, Governor, each county board of supervisors and the Arizona Criminal Justice Commission on the progress of the projects by December 1, 1998.

Reengineering is a collaborative process involving the public defenders, prosecutors, courts and other criminal justice stakeholders in each county to improve the processing time of criminal cases. The process typically consists of three stages:

1. Analyzing existing problems in processing criminal cases,
2. Developing innovative methods to more efficiently and effectively dispose of cases, and
3. Implementation of these new methods. A critical component is the establishment of benchmarks to measure the current case processing time and improvements realized through the reengineering process.

Pursuant to the statutory provisions, the Administrative Office of the Courts developed and distributed to each county information regarding the application process for funding. The application specifies that courts that receive funding must establish a consistent statistical reporting method that will provide information on the success of the reengineering project. Included in the required information are statistics on the number of criminal filings, pending criminal cases, and disposed criminal cases.

During the summer of 1998, the Administrative Office of the Courts also conducted meetings with judges and court administrators from around the state to provide information and assistance on successful case management techniques and reengineering projects. Although there are different needs and problems in each county in regard to the

processing of criminal cases, there are also similarities. The Administrative Office of the Courts has encouraged and facilitated the sharing of information and ideas among the counties and will continue to perform this role as the reengineering projects are developed and implemented.

To assist the counties with their reengineering projects, the Administrative Office of the Courts issued a Request for Qualifications (RFQ) to identify qualified consultants to conduct criminal case flow studies. Maureen Solomon, a nationally recognized expert on case processing, was retained and is currently working with identified counties. Ernie Friesen and Harvey Solomon, other nationally recognized experts in this field, are currently working with some of the other counties.

Appendix 14

Development Assessment of Delinquents

DEVELOPMENTAL ASSESSMENT OF DELINQUENTS

1. What are this young person's strengths?
2. How mature are this young person's thought processes? At the time of the offense, to what extent was this young person able to anticipate? reacting to threat? minimizing danger? seeing only one choice? Could this young person foresee the outcome of his/her actions? Was this young person able to plan like an adult, and under stress, how did he/she react if things did not occur as planned? If the young person was carrying a weapon, to what extent had he/she envisioned using the weapon to cause injury? What else is informative about this young person's intent at the time of the offense?
3. What moral values was this young person brought up with in his/her family? What is this young person's understanding of fairness, rights, and responsibility? Does this young person consider loyalty a higher moral principle than conventional views of right and wrong? How does this young person view the wrongness of the offense, and how does he/she explain it if the offense was a violation of his/her moral values?
4. Who is this young person most attached to? Does he/she feel a sense of belonging?
5. Who does this young person show the most empathy for? What are the young person's feelings for his/her victim? Could this young person's adolescent bravado and/or his/her view of the offense as accidental be misinterpreted as a lack of remorse?
6. What connections, if any, exist between his/her childhood trauma and the offense? Does this young person need help recognizing that he/she is not to blame for childhood neglect, physical or sexual abuse, or domestic violence? Does he/she need help getting out of a victim role? How much loss has the young person experienced? To what extent has the young person grieved these losses? Is this young person unusually controlling because of early victimization?
7. What connections, if any, exist between this young person's history of school failure and the offense? Is this young person primarily an auditory learner, a visual learner, or someone who learns best by doing? Is he/she aware of this learning style? Does he/she need to develop compensatory skills for difficulties in processing visual or spoken information? What is this young person's current reading and math skill level? What is this young person's school history, including most recent IEP objectives? Does he/she require special teaching techniques to follow instructions or to organize material? What specifically are the triggers of school behavior problems for this young person-- does he/she have difficulty concentrating? does he/she feel picked on by teachers or students? Is school non-attendance caused by boredom or being embarrassed by lack of skills? Does this young person have sports/music/art or other special interests that should be built on?

8. Is this young person's delinquent behavior a method of getting attention? Is this young person's delinquent behavior a method of gaining control? Does this young person's delinquent behavior express anger?

9. To what extent is this young person's delinquency driven by a need for peer approval? What is this young person good at? Does he/she need to be taught to appreciate self more?

10. Does this young person have an anger cycle or a fear cycle? Does this young person over-react to perceived hostility from others? Does this young person need to improve his/her ability to regulate specific behaviors? Does this young person need to improve his/her ability to express what he/she wants in effective, non-aggressive ways? In what ways, if any, was this young person's anger cycle or fear cycle operating during the offense?

11. What connections, if any, exist between this young person's substance abuse and the offense? What is the extent of this young person's use of alcohol and drugs? Does this young person use substances to relieve depression or hopelessness?

12. Does this young person have a positive view of him/herself in the future? What type of vocational instruction and/or employment assistance would fit this young person?

13. Having identified the young person's strengths and clarified what additional areas of development remain for this young person, what are the specific services that would meet his/her emotional, educational and other developmental needs and build on those strengths? What kind of a setting is likely to have the identified services to meet these needs and build on those strengths? What kind of a setting would not meet this young person's needs or would be harmful to this young person?

14. How amenable is the young person to the services recommended? What is the prognosis for this young person if these services are provided?

Marty Beyer, Ph.D.
703-757-0292
73243.1605@compuserve.com

10/98

Appendix 15

County of Los Angeles, California,

***Countywide Criminal Justice
Coordination Committee 1981–1999***

COUNTY OF LOS ANGELES

***COUNTYWIDE CRIMINAL JUSTICE
COORDINATION COMMITTEE***

1981 – 1999

*County Criminal Justice
Coordination Committee
Kenneth Hahn Hall of Administration
500 West Temple Street
Room 520
Los Angeles, CA 90012
(213) 974-8398*

THE COUNTYWIDE CRIMINAL JUSTICE COORDINATION COMMITTEE

The Countywide Criminal Justice Coordination Committee (CCJCC) is an advisory body established in 1981 by the Los Angeles County Board of Supervisors to improve the effectiveness and efficiency of the local criminal justice system. Originally created as part of a comprehensive program to reduce violent crime, the 40-member Committee brings together virtually all of the top leaders in criminal justice and local government to form a unique policy-level forum whose overall purpose is to strengthen interagency coordination, communication, and cooperation.

The CCJCC is a voluntary organization. It has no statutory powers or legal authority, nor does it have independent authority to set policies or determine resource allocations. Yet, the Committee is able to play a leadership role in addressing a variety of countywide justice issues because of the commitment and support of its members. This membership reflects the support of municipal, county, state, and Federal jurisdictions, and includes law enforcement executives, prosecutors, judges, court administrators, criminal justice agency heads, as well as elected officials and key leaders from the disciplines of health services, mental health, and education.

COMMITTEE ORGANIZATION

The CCJCC organization reflects the size and complexity of the countywide criminal justice system in Los Angeles. Covering an area twice the size of the state of Delaware with a population exceeded by only seven states, this system reflects multi-jurisdictional problems and planning issues that are more typically associated with statewide justice systems. Within the County of Los Angeles, there are 47 law enforcement agencies, 24 independent municipal courts, 10 regions of the Superior Court, and a County jail system that is capped by a Federal court order of 20,000 inmates. The County is also the major part of some of the nation's largest and most complex Federal law enforcement and judicial regions.

Mirroring the complexity of the County jurisdiction, the CCJCC now consists of 40 members, including elected officials from the County and city government, judges representing the Superior and Municipal courts, the District Attorney, the Los Angeles City Attorney, the Public Defender, and the Chief Probation Officer. Law enforcement is represented by the Sheriff, the Los Angeles Police Department Chief, and the elected representative of the County's 47 police chiefs. Federal law enforcement is represented by the United States Attorney, local heads of the Federal Bureau of Investigation, the Drug Enforcement Agency, and the Immigration

and Naturalization Service. Also, reflecting the growing recognition of the interdependencies between criminal justice and other elements of the larger community, the CCJCC membership now includes top level executives from health services, mental health, and education.

The Committee, which meets monthly and is always chaired by the Chairperson of the County Board of Supervisors, encourages the support and personal involvement of its principal members. The Board of Supervisors also supports the Committee by providing full-time professional staff, who are administratively assigned to the Board's Executive Office. **(See Attachment A for Committee Organizational Rules)**

SUMMARY OF MAJOR ACCOMPLISHMENTS

Working largely through an organization of subcommittees and specialized task forces, the CCJCC has been successful at creating a wide variety of new programs and at forging partnerships to address issues of countywide importance. These high-level working groups are an essential part of the CCJCC. Typically reflecting a cross-section of agency perspectives and expertise, these groups are organized around specific justice system issues and problems or around much broader subject areas with long-term strategic importance. **(See Attachment B for CCJCC Subcommittees)**

Whatever the subject area, the underlying goal of these high-level subcommittees and working groups is to build consensus and promote interagency coordination and resource sharing. Their cooperative planning and problem solving efforts have generated over the years a wide range of new programs, policy and legislative recommendations, multi-agency plans, and long-term countywide strategies.

Jail Overcrowding

Overcrowded jails and juvenile halls have severely impacted the local justice system for many years. The overcrowding of the County's detention facilities is the result of numerous systemwide issues that transcend agency and jurisdictional boundaries. Solutions to alleviate the congested conditions of the facilities require approaches calling for extensive cooperation and coordination of every organization within the justice community. The CCJCC has developed and implemented a wide range of strategies to help bring relief to our adult and juvenile detention systems. Some of these strategies, such as those targeting own recognizance releases and diversion (which strengthened the release criteria for defendants), have helped to reduce the number of pre-trial inmates entering the jail system. Other efforts, such

as expedited arraignment programs (where case disposition is provided at the earliest possible court proceeding) and accelerated probation reports (which reduce the in-custody time of the defendant from conviction to sentencing), have quickened the processing of court cases involving in-custody, pre-sentenced inmates.

Criminal Aliens

The Committee has also been instrumental in documenting the impact of criminal aliens on jail overcrowding and local justice system costs. In May 1990, the CCJCC conducted the first comprehensive study of deportable foreign-born inmates in the County jails. This research determined that over 11% of the County's jail population consisted of deportable aliens. A follow-up study completed in July 1992 further documented that approximately 40% of the deportable aliens were rearrested within one year of their release from jail. Through these studies it was estimated that deportable criminal aliens account for over \$75 million in County justice system costs. A third study completed in 1997 revealed that the proportion of deportable aliens in the jail had increased to 17% and that one-year re-arrest rates had gone up to 45%. The CCJCC is now actively working within the County to develop and support aggressive legislative and operational strategies to address the problem of criminal aliens.

Street Gangs

Established in 1981 and added to the CCJCC as a subcommittee in 1985, the Interagency Gang Task Force provides a countywide forum for the development of cooperative strategies to combat gangs and gang-related crime. The Task Force has become known throughout the State as a model for multi-agency coordination and cooperation as a result of its reports to the Board of Supervisors, projects related to community mobilization, and a number of other activities including gang prevention publications such as the "Networker" and the "Gang Prevention Resource Guide".

Data Processing and Video Technology

In the area of technology, the CCJCC has played a major leadership role in creating a model approach for the coordinated development of justice information systems. Through the Information System Advisory Body (ISAB), numerous individual justice agencies are willing partners in cooperative systems development, resource sharing, and development of countywide standards for data exchange and reliability. The Committee, through ISAB, created the County's first comprehensive,

long-range information systems master plan in 1983. The plan provided the "blueprint" for an integrated countywide network of 20 independent criminal justice information systems and system interfaces, and included a plan for long-term financing and systems development. Now known as the Los Angeles Justice Information System (LAJIS), this system will arguably be the largest integrated system of local government computer applications in the world. **(See Attachment C)**

ISAB also provided the leadership to develop plans for a high-speed countywide digital communications network to serve the local criminal justice system. When completed, this network will interconnect every major County justice facility and be capable of supporting a wide range of telecommunication services including data, voice, fax, e-mail, image, and video.

In the area of video communication, the CCJCC has been at the forefront in developing cooperative approaches to video arraignment and video conferencing systems. The Committee has implemented five major pilot projects and in 1992 developed the County's first long range strategic plan for criminal justice video-conferencing systems.

Legislative Strategies

The CCJCC has been active in supporting a wide range of critical State and Federal legislation to improve the local justice system. The Committee has also played a leadership role in developing statewide measures for County sponsorship to improve the criminal justice system. Most noteworthy of these efforts was a comprehensive bill on computer crime. The bill was developed by the Committee, approved by the Board as a County-sponsored measure, and signed into law in 1987. Additionally, the CCJCC has originated legislative proposals in areas of revenue collection, child abuse, and video arraignment, and currently advocates a number of legislative proposals regarding the apprehension and deportation of criminal aliens.

Special Projects

The CCJCC has been especially successful in promoting cooperative strategies to solve specific justice system problems. Of particular importance are projects involving drug treatment courts, jail-based drug treatment, emergency response planning, electronic monitoring home detention, regional vehicle theft enforcement, and local implementation of the "3-Strikes" legislation. These projects have brought justice agencies together into working partnerships that have tested new ideas and

innovative programs as well as increased awareness and understanding of systemwide issues.

Summary

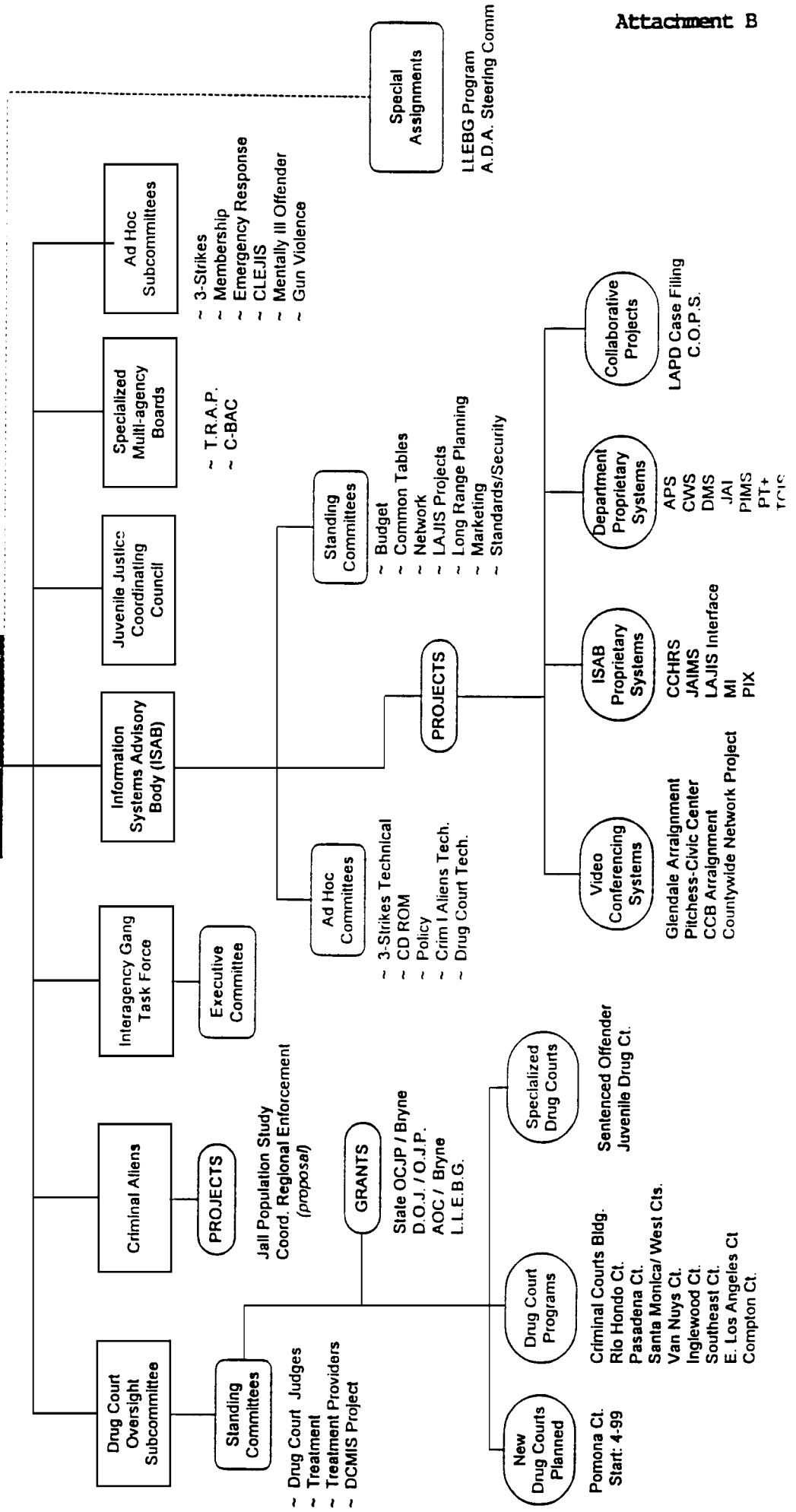
The Committee's accomplishments since 1981 have reaffirmed the Board's original belief that cooperation, coordination, and communication are vital to the effectiveness and efficient operation of our local criminal justice system. The CCJCC has provided an effective forum for systemwide discussions of critical issues and common problems that have produced innumerable improvements in the administration of justice in Los Angeles County.

Countywide Criminal Justice Coordination Committee

SUBCOMMITTEES & PROJECTS

February 1999

Board of Supervisors
County of Los Angeles
500 W. Temple St., Room 520
Los Angeles, California



Appendix 16

Collaborative Efforts Involving Indigent Defense: Fulton County, Georgia's Experience

COLLABORATIVE EFFORTS INVOLVING INDIGENT DEFENSE

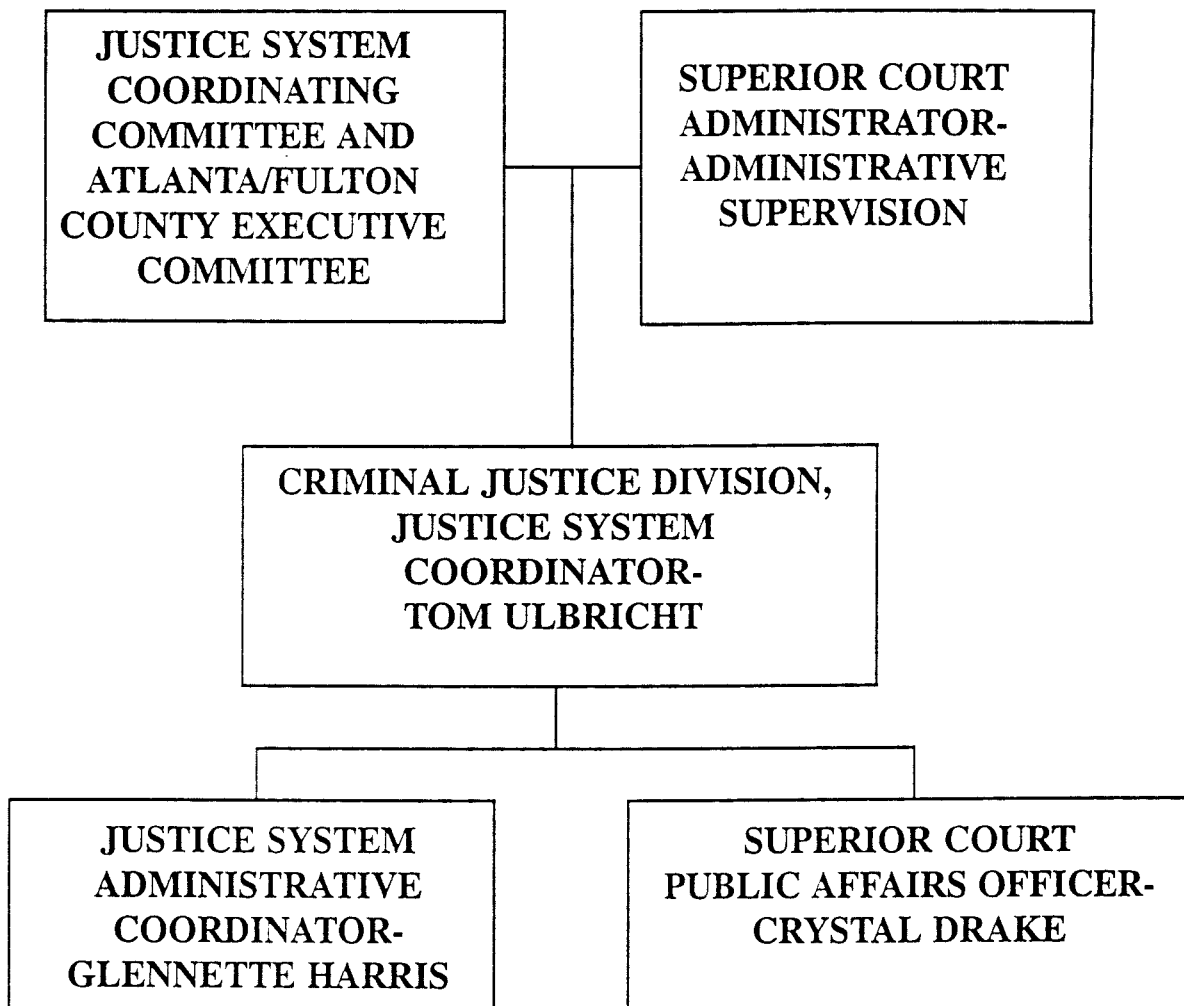
FULTON COUNTY, GEORGIA'S
EXPERIENCE



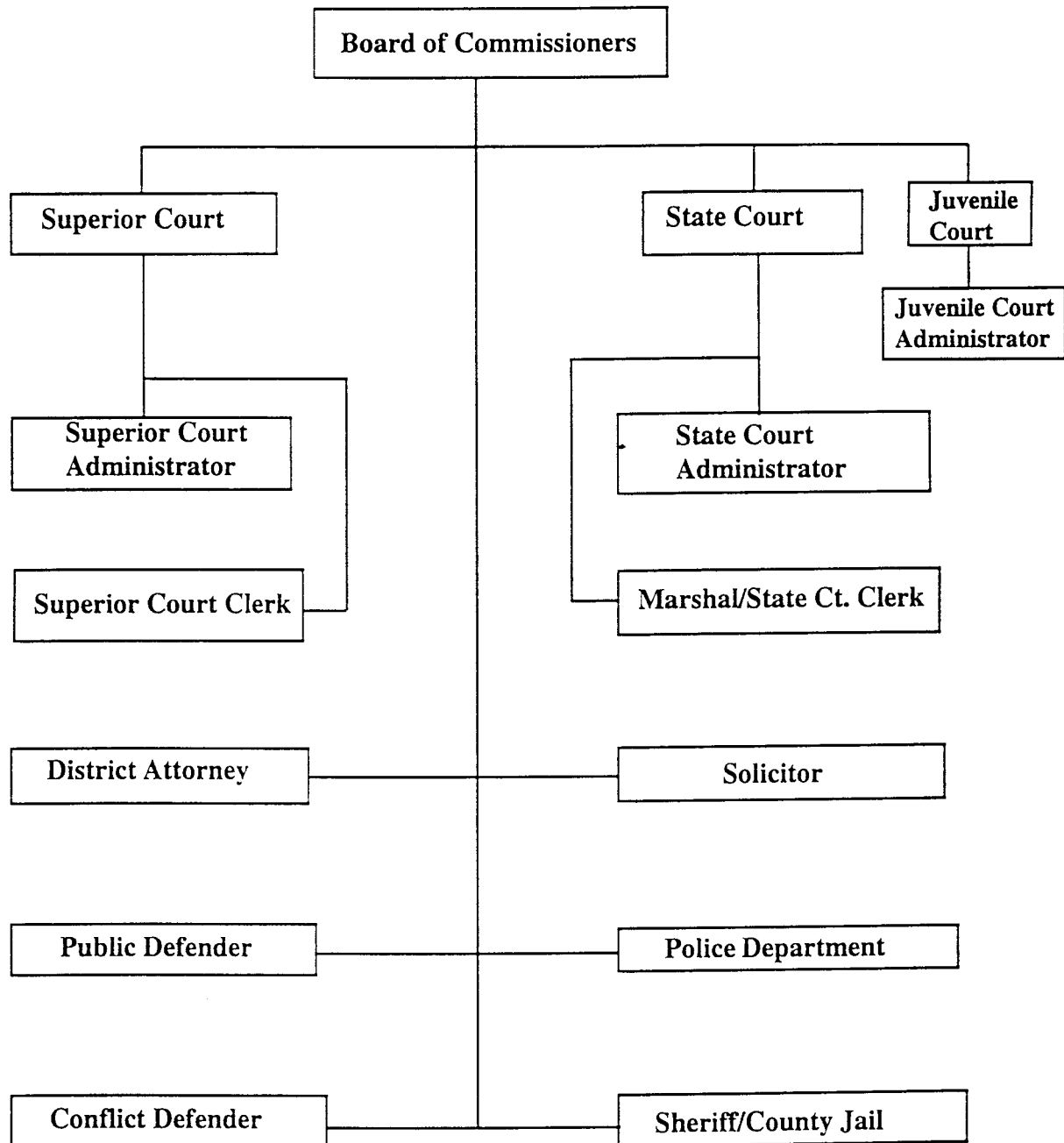
STEPHEN O. KINNARD, CHIEF MEDIATOR
11TH CIRCUIT COURT OF APPEALS

TOM C. ULBRICHT, JUSTICE SYSTEM COORDINATOR
FULTON COUNTY SUPERIOR COURT

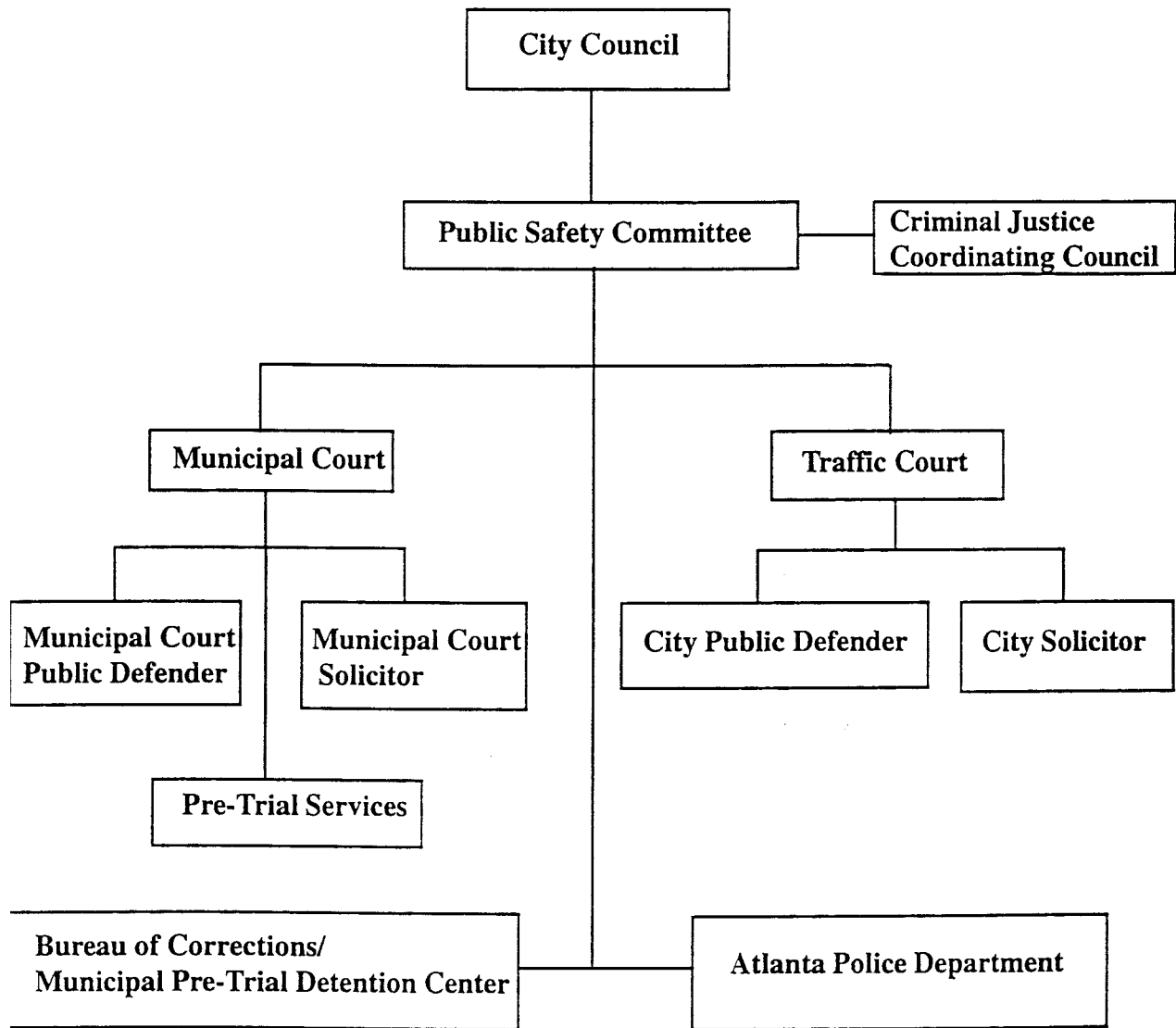
**ORGANIZATION CHART
JUSTICE SYSTEM COORDINATOR AND STAFF**



FULTON COUNTY JUSTICE SYSTEM MAJOR COMPONENTS

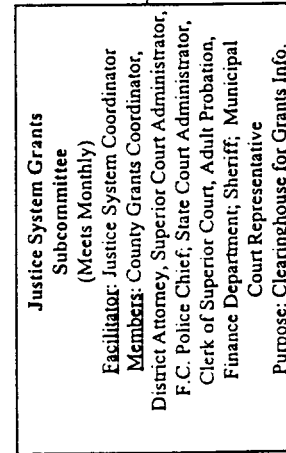
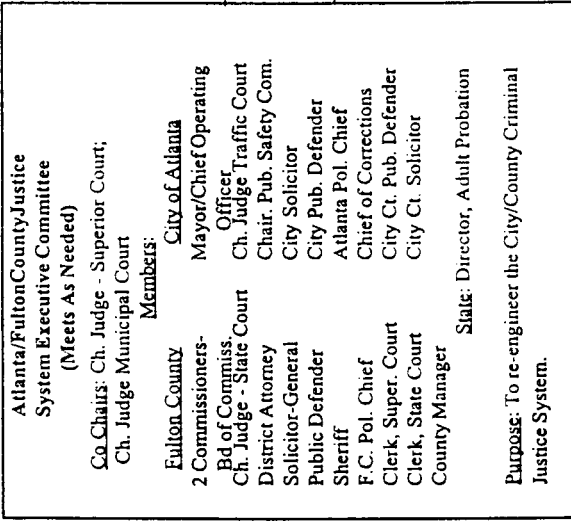


CITY OF ATLANTA JUSTICE SYSTEM MAJOR COMPONENTS

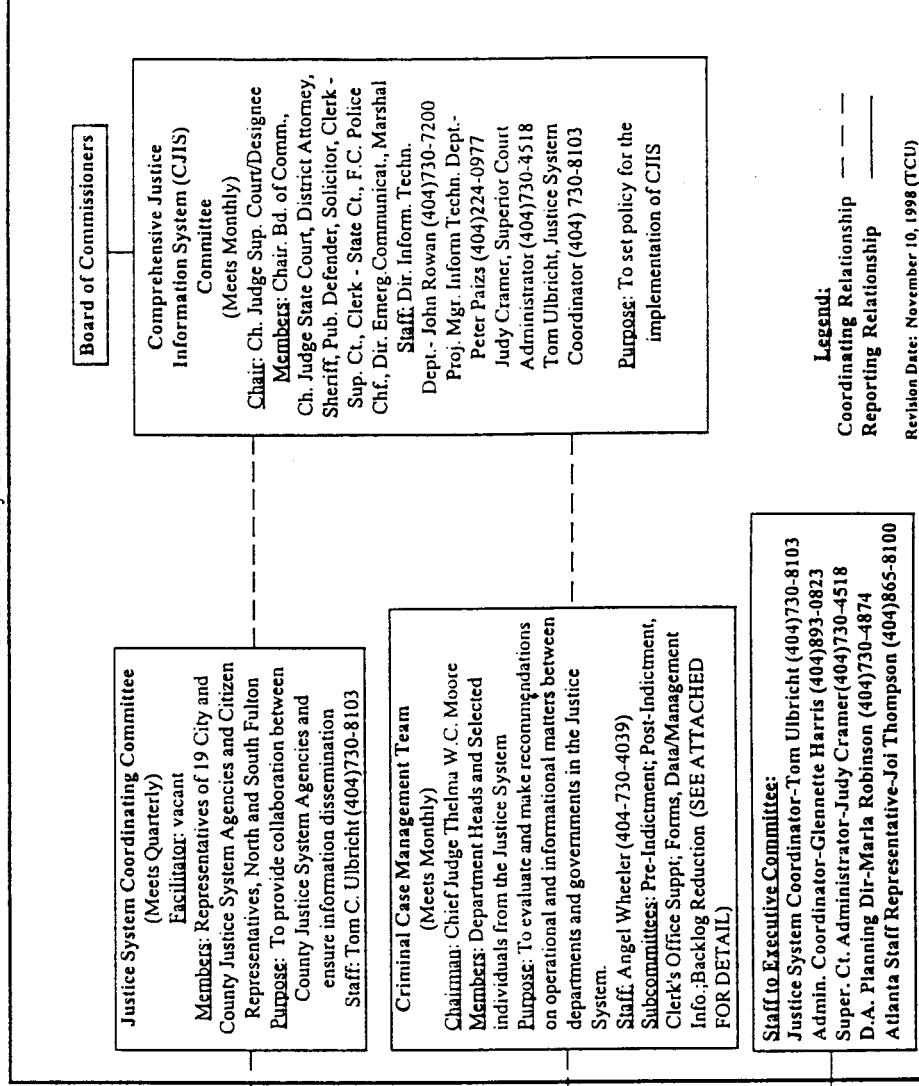


FULTON COUNTY JUSTICE SYSTEM ORGANIZATIONS

Atlanta/Fulton County Committees:



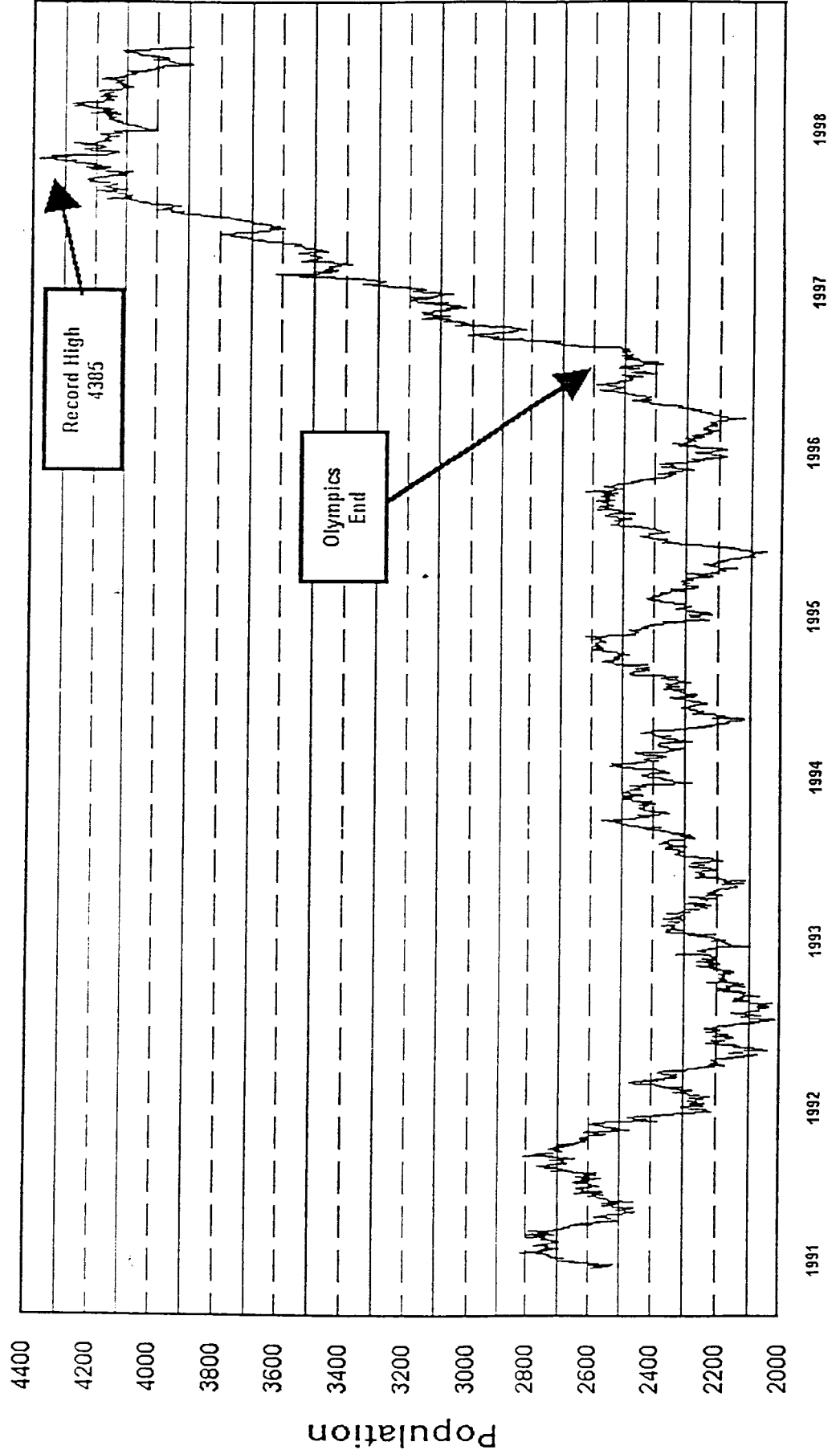
Fulton County Committees:



Fulton County Jail

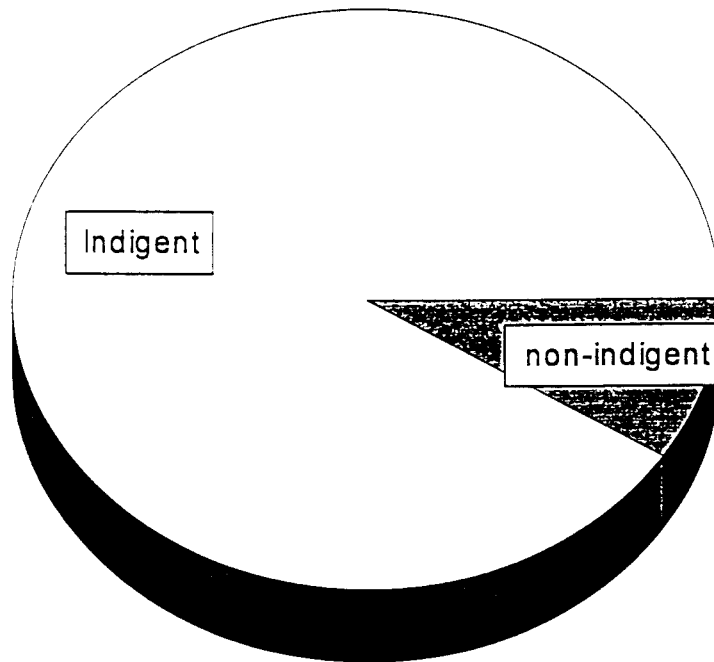
Daily Inmate Population

For the Period of 01/01/91 through 06/30/98



INDIGENT DEFENDANTS

FULTON COUNTY, GEORGIA

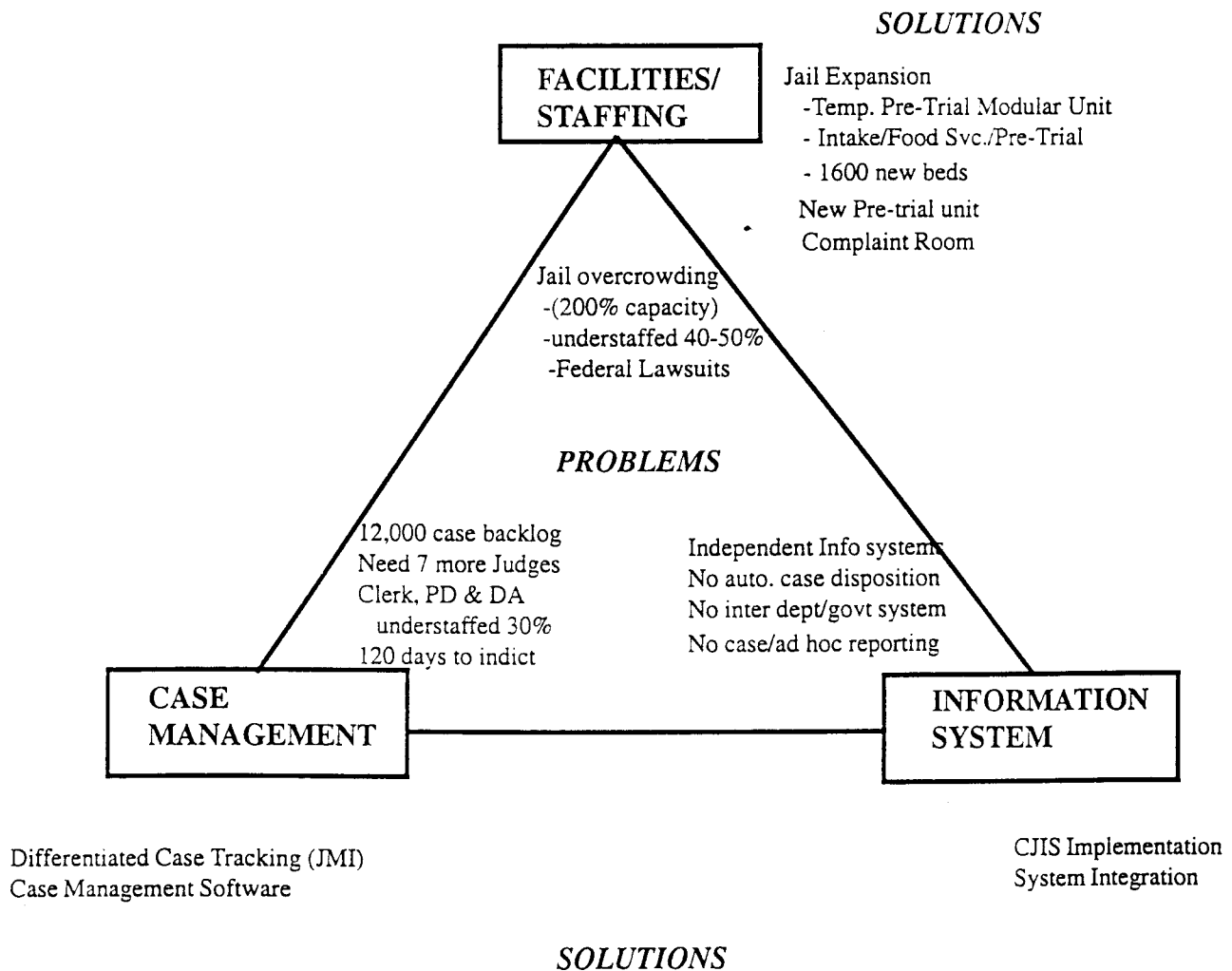


91%



9%

FULTON COUNTY JUSTICE SYSTEM PROBLEMS AND SOLUTIONS



SUCCESS TO DATE FROM COLLABORATION

1. Created Atlanta/Fulton County Justice System Executive Committee
2. Created Comprehensive Justice Information System (CJIS) Policy Board
3. Attracted \$26 million for CJIS Projects
4. Collaborated on Information Sharing between City and County
5. Supported effort to fund and create a Complaint Room. Attracted \$2 million for the effort, to date.
6. Brought the jail population down from 4350 to 3500.
7. Have created a new Pre-trial Services Unit staffed with 30+ individuals. Have created a supervision unit with over 200 clients. Projected to be 3500 by end of the year.
8. Obtained bond funds for jail expansion and new pre-trial facility with 2 court rooms.
9. Have obtained funding for 4 consulting contracts for planning and implementation programs. (Pre-trial, Superior Court Clerk, Case Management, and Justice System Implementation Program).
10. Have helped put Public Defender and Conflict Defender on equal basis with Prosecution.
11. Have helped streamline the bindover information flow process and moving toward paperless information flow.
12. Have created a new Drug Court, Drug Treatment Facility, and a new Family Court

LESSONS FROM THE FULTON COUNTY JUSTICE SYSTEM COORDINATING COMMITTEE INITIATIVE

1. A high percentage of defendants in a local criminal justice system are indigent.
2. Some problems that impact on indigent defense do not directly involve the public defender's office.
3. The public defender needs to be at the table and needs to be seen as an equal, not a stepchild.
4. There is no public awareness of the problems confronted by a local criminal justice system. It is out-of-sight and out-of-mind for most of the public. Many public officials are not aware of these problems. For example, none of these problems have become part of the ongoing debate about the response to crime and what to do about it.
5. Local criminal justice systems generally address problems only in response to a crisis. Justice planning needs to become institutionalized in local government.
6. There is no identifiable public constituency for the problems in the local criminal justice system. The components of the local justice system must be their own constituency.
7. There needs to be coordination of the various segments of the local criminal justice system for there to be any change. You need some type of forum (committee) that is actively engaged in addressing all the needs of your local justice system. It needs to meet regularly. It needs to have its own staff. It needs to establish short-term and long-term goals. It needs to develop an evolving "justice system plan."
8. You need a strong administrative infrastructure to support the components of your local justice system. In addition to the key justice system departments, the information technology department, finance department, and city or county manager's office, need to be actively involved with whatever committee is established.

9. Judges need to understand the dynamics and challenges of the entire local justice system and need to lead as a group.

10. Involvement of the appropriate local public officials is crucial to any change. Public officials will fund the local criminal justice system appropriately when:

- they understand that it is an interrelated system;
- they appreciate the total budget impact of the local criminal justice system and the increasing demands made on that system and their respective budgets;
- they appreciate that it is in their economic self-interest to insure that their local criminal justice system, including the defense function, has the resources and administrative support needed to address its tasks;
- they are presented with solid information on which to make sound fiscal decisions.

11. When you present a unified front you can be successful.

12. "Problems in indigent defense" is probably not the theme that will lead the charge to an improved overall justice system. We suggest "a rising tide raises all boats." Indigent defense has its best long-term chance of improvement when you improve the entire local justice system.

Appendix 17

**Office of the Maryland State Public Defender,
Juvenile Court Division,**

The Detention Response Unit



PARRIS N. GLENDENING
GOVERNOR

OFFICE OF THE PUBLIC DEFENDER

DISTRICT #1 BALTIMORE CITY
JUVENILE COURT DIVISION
201 SAINT PAUL PLACE, SUITE 200
BALTIMORE, MARYLAND 21202

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CHIEF COUNSEL, ADMINISTRATION
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MICHAEL GAMBRILL
DISTRICT PUBLIC DEFENDER
(410) 333-4835

The Detention Response Unit

In July of 1994, the Juvenile Justice Advisory Council of Maryland (the local State Advisory Group) awarded the Office of the Public Defender a federal grant from the Office of Juvenile Justice and Delinquency Prevention to establish the Detention Response Unit (DRU). The DRU is now funded through the joint efforts of the Office of the Public Defender and the Department of Juvenile Justice. The DRU is designed to address the over-representation of minority youth in secure detention and to improve the quality of representation for detained youth.

The DRU staff consists of two attorneys and two licensed social workers who work at the detention facilities and in the courts throughout Maryland. The DRU attorneys and social workers receive cases through screening the secure detention population and from juvenile court attorneys. The DRU has offices at three of the state's secure detention facilities which allows them to maintain direct contact with youth and the facilities' staff. Maintaining a presence at the facilities enables the DRU to concentrate its efforts on the target population by talking to youth and helping them access community programs, by locating family resources and by working with the Department of Juvenile Justice to develop appropriate placements for committed youth.

Through the collaborative efforts of the DRU attorneys and social workers the unit seeks immediate reviews of detention orders when alternative family or community resources are accessed; advocates for holistic dispositions by doing psychosocial evaluations and providing expert testimony; minimizes both pre-disposition and post-disposition time in secure detention by advocating for less restrictive environments and by bringing court reviews to expedite release. The social workers act as both information gatherers and sources of expert opinion for the attorneys. The attorneys then use this information and/or expert testimony to advocate for alternatives to secure confinement.

This intensified approach to representation of detained youth has successfully reduced the duration of detention and increased the use of appropriate alternatives to secure detention in a substantial number of cases. Consequently, the DRU has begun to accomplish its goals of reducing the over-representation of minority youth in secure confinement and improving the quality of their representation.

Appendix 18

Planning and Implementing a Drug Court or Community Court



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COURT**

There are few absolute rules that apply in all situations when it comes to establishing drug or community courts. However, having made mistakes as well as having success has been a good teacher. It is with this experience in mind that the following suggestions are respectfully offered for your consideration.

1. Don't depend on outside funding unless necessary and then only to the extent required by your particular circumstances.

Yolo County began its drug court operation based upon the cooperation of the criminal justice partners and a small appropriation (\$40,000) from the County for drug testing. A great deal was accomplished by re-organizing the court calendar and the part time assignment of a prosecutor, defender and probation officer. County Alcohol and Drug department personnel provided the initial treatment component. The mutual inter-dependance of local participants together with a strong commitment to succeed enabled the drug court and later the domestic violence court to be implemented.

2. Avoid adversarial relations that are not absolutely necessary (don't have fights you don't have to engage in).

Remember this is a collaborative process. Rarely, will any party have all things their way. For example, California law changed to require guilty pleas before enrollment in drug diversion programs unless the prosecutor agrees to the contrary. However, laboratory results and police reports are often not available for some time

after arraignment. Therefore, defenders could not competently plead their clients guilty without review of the evidence. All this combined to significantly delay the prompt identification and enrollment of eligible drug court participants as recommended in the Key Components of Drug Courts published by the Department of Justice. Local prosecutors and defenders compromised to allow enrollment in drug court immediately after arraignment without a guilty plea to encourage and promote treatment aspects. Prosecutors concerns for cases becoming stale were met by mandating deferred pleas for all participants who had not completed the treatment program within nine (9) months of enrollment. This arrangement addressed and reconciled competence of counsel issues, stale prosecution issues and speedy treatment issues.

3. Training is critical for all participants.

Judges, prosecutors, defenders and probation officers are all skilled professionals in their fields. However, that expertise doesn't automatically confer competence concerning treatment, substance abuse or psychological components of abuse. Remember, these collaborative courts are a marriage of legal and treatment/therapeutic components. They are successful because both criminal justice and treatment issues are incorporated. There is no substitute for education. Many organizations including the Office of Justice Programs of the U.S. Department of Justice, National Association of Drug Court Professionals and National Drug Court Institute offer outstanding training programs for all of the various players in the collaborative courts.

4. Non traditional approaches may be required to achieve success.

The traditional adversarial criminal justice system approach to substance abuse and domestic violence has resulted in limited results. Drug courts have demonstrated markedly better achievements with this same population. How can ethical responsibilities be reconciled with treatment needs?

For instance, defense attorneys often voice concerns about confidentiality requirements or fiduciary obligations which may be infringed on by drug court models. These concerns are both valid and appropriate. Perhaps they can be addressed by true informed consent in advance of enrollment. Attorneys and clients must confer and be

aware that drug court is not for everyone and that once enrolled the attorneys approach may change from traditional advocate to counselor (at law). It may be appropriate to divulge certain information about a client. This should only be done after fully advising the client in advance of enrollment in drug court and agreement with this practice. It is in essence a waiver of some traditional ethical responsibilities. Informed consent is a key.

5. Reach out and involve diverse groups in planning and implementing drug courts.

The temptation is to rely on traditional criminal justice participants in planning and implementing drug and community courts. It is true that they are key players who must be involved. However, there are many other entities who can be involved to develop a stake in the success of these programs.

Police departments can be powerful allies who are likely to be supportive upon learning of increased supervision and diminished recidivism resulting from drug courts. School districts may be involved and have a strong incentive to support drug courts. The clergy and religious community are usually willing participants in programs designed to ameliorate substance abuse. The corporate and business communities may provide support and resources and often provide valuable assistance.

Local governmental entities such as cities, districts and associations should be involved if possible. They will probably be relieved to learn of the drug courts functions and will be among the principal beneficiaries of its work.

These suggestions are by no means a comprehensive list. Your jurisdictions may require different attention. Please feel free to contact our office if we can be of any assistance with your courts.