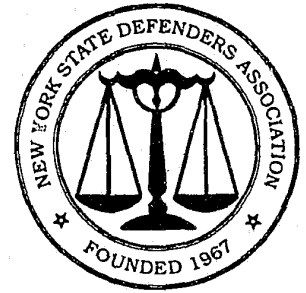


Systems Improvements for Enhanced Community Safety

PUBLIC DEFENSE STATE I REPORT



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John J. Poklemba
Director of Criminal Justice and
Commissioner, Division of Criminal Justice Services

JULY 1990

Systems Improvements for Enhanced Community Safety

PUBLIC DEFENSE
STATE I REPORT



130118

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John J. Poklemba
Director of Criminal Justice and
Commissioner, Division of Criminal Justice Services

JULY 1990



New York State Defenders Association, Inc.

Public Defense Backup Center
11 North Pearl Street, 18th floor, Albany, NY 12207

Telephone (518) 465-3524
FAX (518) 465-3249

July 11, 1990

John J. Poklemba
Director of Criminal Justice and
Commissioner
NYS Division of Criminal Justice Services
Executive Park Tower
Stuyvesant Plaza
Albany, New York 12203

Dear Commissioner Poklemba:

In September of 1989, you invited us to participate in the SIFECs State I Study for Defense. At that initial meeting you asked us to use the State I process to identify the information and automation needs for public defense providers. For the past eight months, the functional review team closely studied nine representative public defense providers producing analyses of the information system requirements of these offices, and of the public defense system as a whole.

Because of our fundamental concern for the rights of poor people to quality legal services, we did not undertake this very challenging task lightly. We believe that this report reflects the sincere and professional efforts of all of the members of the State I functional review team and your staff. We are confident that after reviewing this report, you will take the necessary steps to implement the recommendations contained in it. Clearly, the findings in this report underscore the work which still needs to be done to appropriately automate public defense providers. The report reveals that defense services for the poor, an integral part of our criminal justice system, have been inadequately funded and insufficiently supported by state and local governments. We look forward to working with you to better provide for and fully integrate defense services into the state's program of supporting and improving the quality of our criminal justice system.

John J. Poklemba
July 11, 1990
Page Two

Finally, this letter would not be complete without the expression of our sincere gratitude to Suzanne Silverstein, William Hogencamp and Elaine Christiano for all of their dedicated and friendly assistance.

Sincerely yours,



Jonathan E. Gradess
Chair, Public Defense
Executive Sponsor Committee

FOR:

Sean Byrne
Counsel to the Director
of Criminal Justice
New York State

Archibald R. Murray
Executive Director and
Attorney-In-Chief
New York City Legal Aid Society

Martin Cirincione
Public Defender
Schenectady County

Edward J. Nowak
Public Defender
Monroe County

Terrence M. Connors
Chairman, Criminal
Justice Section
New York State Bar Association

Linda S. Reynolds
Executive Attorney
Legal Aid Bureau of Buffalo

SYSTEMS IMPROVEMENTS FOR ENHANCED COMMUNITY SAFETY

PUBLIC DEFENSE STATE I REPORT

JULY 1990

PUBLIC DEFENSE

EXECUTIVE SPONSOR COMMITTEE

Jonathan E. Gradess, Executive Director, New York State Defenders Association

Sean Byrne, Counsel to the Director of Criminal Justice

Martin Cirincione, Public Defender, Schenectady County

Terrence M. Connors, Chairman, Criminal Justice Section, New York
State Bar Association

Archibald R. Murray, Executive Director and Attorney-In-Chief,
New York City Legal Aid Society

Edward J. Nowak, Public Defender, Monroe County

Linda S. Reynolds, Executive Attorney, Legal Aid Bureau of Buffalo, Inc.

PUBLIC DEFENSE
FUNCTIONAL REVIEW TEAM

Charles F. O'Brien - Team Leader	NYS Defenders Association
Theodore Clements	Schenectady County Public Defender's Office
John Garrity, Jr.	Dutchess County Public Defender
Michael J. Hall	Nassau County Assigned Counsel Defender Plan
Jonathan Oberman	New York City Legal Aid Society
Michael Padden	New York City Legal Aid Society
Richard Rosen	NYS Div. of Criminal Justice Services
David Schopp	Legal Aid Bureau of Buffalo, Inc.
Joseph A. Shifflett	Erie County Court
Brian Shiffrin	Monroe County Public Defender's Office

SIF ECS REPRESENTATIVES

Leo P. Carroll	Director, Integrated Systems Development
Daniel M. Foro	Assistant Director, SIF ECS
William H. Hogencamp	Local Criminal Justice Systems Coordinator
Suzanne Silverstein	Legal Systems Coordinator
Elaine Christiano	Support Staff Coordinator

STATEMENT OF APPRECIATION

The accomplishments of the Public Defense Functional Review Team of the Systems Improvements for Enhanced Community Safety project are the result of an exceptional effort put forth by the team members and the cooperation and support we received from the New York State Defenders Association and the public defense providers offices visited during the study process.

Our sincere thanks to the following people whose offices served as walk-through sites:

Edward Bracken - Former Administrator, Nassau County Assigned Counsel Plan and the staff of the Nassau County Assigned Counsel Plan

Martin Cirincione - Schenectady County Public Defender and the staff of the Schenectady County Public Defender's Office

Archibald R. Murray - Executive Director and Attorney-In-Chief, New York City Legal Aid Society and the staff of the New York City Legal Aid Society

Frank J. Nebush, Jr. - Oneida County Public Defender and the staff of the Oneida County Public Defender's Office

Edward J. Nowak - Monroe County Public Defender and the staff of the Monroe County Public Defender's Office

Linda Reynolds - Executive Attorney, Legal Aid Bureau of Buffalo, Inc. and the staff of the Legal Aid Bureau of Buffalo, Inc.

Carl Silverstein - Executive Director, Sullivan County Legal Aid Society and the staff of the Sullivan County Legal Aid Society

Jeffrey Squires - Steuben County Public Defender/Assigned Counsel Program Administrator and the staff of the Steuben County Public Defender's Office and Assigned Counsel Program

Robert Zimmerman - Chairman, Ontario County Assigned Counsel Plan and the staff of the Ontario County Assigned Counsel Plan

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PART I - EXECUTIVE SUMMARY

I. EXECUTIVE SUMMARY

The findings in this report are critical to the future of criminal defense work and the entire criminal justice system in the State of New York. This statement is based upon the poor state of automation found throughout defenders offices in the state. The incredible volume of cases and the increased necessity for coordination and information sharing among all of the segments of the criminal justice system make changes in this area a high priority for the State of New York.

The defense study team pointed to the following areas where change was most important and would provide maximum benefit to the delivery of defense services throughout New York:

- a. **There is a need for timely access to case information which is essential to providing effective representation.**

Timely access to case information such as criminal histories, would result in greatly improved quality of representation. At present, the delay in receiving essential case information results in increased rates of incarceration which could be lower if defense counsel was afforded timely access to such information. Furthermore, this would allow for the expeditious handling of cases and increased efficiency of the criminal justice system.

- b. **The level of resources for automation found in most defenders offices is inadequate.**

Automation would serve to maximize the limited resources under which public defense providers traditionally labor. Automation would eliminate the multiple and diverse methods and procedures necessary to maintain current manual information systems.

- c. **There is a need to standardize client and case information for the purposes of collection, retrieval and exchange.**

Because defense services have been considered an adjunct, rather than an integral part of the criminal justice system, and because the provision of defense services continues to be provided by different delivery systems unique to each county, there has been no impetus, either statewide or locally, to produce standardized defense case dispositional information. The natural result has been the inadequate funding and coordination of the public defense system in this state.

- d. **There is a lack of communication and coordination among public defense providers.**

Based upon a failure to share information routinely among defense providers, there is a tremendous duplication of effort resulting in the waste of limited legal resources.

- e. **There is a need to train all defenders' staffs on how to develop, implement and utilize appropriate office automation and information systems.**

Out of necessity, defenders are forced to attempt to develop their own case information systems without adequate time or expertise. In some instances, they are required to use existing county systems which are designed for other purposes and do not lend themselves to adaptation for defense services.

Based upon these clearly identified problems and the critical need for their solutions, the following are the major recommendations contained in the body of this report:

- 1. The work begun by this defense study team should be continued by members of the review team, SIF ECS personnel and consultants with expertise in the creation of standardized automation systems for defenders' offices in order to develop and implement a comprehensive defense information system.**
- 2. The criminal history information, "rapsheets", maintained by the Division of Criminal Justice Services should be made available to all public defense providers.**
- 3. State funding should be allocated to public defense providers in order to enable them to acquire the necessary computer equipment to meet each office's specific automation needs.**
- 4. The State should fund a new initiative within the New York State Defenders Association for the position of a systems analyst who would provide advice and consultation services to public defense providers. Such centralized assistance would enhance uniformity and standardization of information systems across the range of public defense systems.**
- 5. The State should allocate sufficient funding to provide for automated access for all defense providers to the New York State Defenders Association's brief banks, motion catalogs, case summaries and all other clearinghouse information.**

It is the firm belief of the Executive Sponsors and members of the Functional Review Team that a serious and careful consideration of this report will result in the appropriation of sufficient state funds to implement the recommendations and improvements described in this report.

PART II - INTRODUCTION

II. INTRODUCTION

This Defense State I Report has been prepared to provide a basis of study and analysis upon which recommendations can be made to the Governor and the Legislature for improving and upgrading public defense information systems.

This part of the State I Study Report provides an overview of the Systems Improvements for Enhanced Community Safety (SIF ECS) Task Force and the State I Study process. For those unfamiliar with the role and function of public defense services in the State's criminal justice system, a brief history of public defense services and a description of criminal defense representation can be found at Sections 3 and 4 of this part. Part III of the report sets forth the major findings and recommendations of the Functional Review Team, based upon the office evaluation walk-throughs. The remainder of the report is documentation that describes the public defense offices studied, including charts of information flow and case processing, the information problems found and the solutions proposed. A glossary is provided to define general criminal case processing terms and concepts as well as some terms unique to particular jurisdictions studied.

1. SIF ECS History

New York has long recognized the importance of integrated and well-coordinated criminal justice information systems. This recognition prompted official action in April of 1982, when an executive order established the Executive Advisory Commission on the Administration of Justice (the Liman Commission). In 1983, the Governor issued an executive order establishing the Office of the State Director of Criminal Justice. These steps, together with additional years of work developing a comprehensive criminal justice strategy to improve existing criminal justice information systems, led to the formation of the Systems Improvements for Enhanced Community Safety (SIF ECS) Task Force in 1985. The Task Force is responsible for the coordination, development and implementation of improved information systems. The review and study of existing information systems has been accomplished through an evaluation and analysis process referred to as the State I Report.

Since 1983, SIF ECS has completed State I studies of the information systems of several criminal justice functional areas, including: Corrections, Department of Probation, Division for Youth, Department of Parole, Jails, Law Enforcement and Prosecution.

The SIF ECS program has funded this study and report preparation. SIF ECS staff have provided technical assistance and logistical support and generally have attempted to facilitate a thorough and expert study process.

2. State I Process for Defense

The State I Study for Defense began in October 1989, with the formation of an Executive Sponsor Committee. The Committee, chaired by the Executive Director of the New York State Defenders Association, consists of heads of public defense, legal aid and assigned counsel offices, Counsel to the Director of Criminal Justice, Chairman of the Criminal Justice Section of the New York State Bar Association and other criminal justice officials. The Executive Sponsor Committee is charged with the task of providing direction and approval to the State I Study process. The Committee designated a Functional Review Team, which is chaired by the Managing Attorney of the New York State Defenders Association and is composed of representatives from the defense community as well as Division of Criminal Justice Services staff. The review team was responsible for conducting the State I Study with the capable assistance of SIF ECS staff. This Study Report is the product of an eight month effort that directly involved nine representative public defender, legal aid society and assigned counsel offices from across the state.

a. Site Selection

The particular public defense providers involved in the study represent the various types of public defense delivery methods and their differing information systems. The degree of office automation, geographic and demographic characteristics, and size of the office were also factors considered in choosing the sites. The following offices were selected as study sites: Sullivan County Legal Aid Society, Schenectady County Public Defender, Monroe County Public Defender, Ontario County Assigned Counsel Plan, Nassau County Assigned Counsel Defender Plan, Steuben County Public Defender/Assigned Counsel Program, New York City Legal Aid Society (Brooklyn Office), Oneida County Public Defender and the Legal Aid Bureau of Buffalo, Inc.

b. Functional Review Team and the Walk-through Process

Public defense practitioners, primarily from the office sites, and SIF ECS staff comprised the Functional Review Team. The review team made site visits, or "walk-throughs" of the designated offices after reviewing information flow and case processing

documentation prepared by the public defense provider. As part of this walk-through process, the review team interviewed the head of the office, staff lawyers, office managers, secretaries and clerks to gain a complete understanding of the information and automation needs of the particular office. The nature and function of information systems were assessed and an evaluation of data inputs and outputs for the system were determined. This afforded an opportunity to compare the efficiencies and inefficiencies of an office's information system. Recommendations and proposed solutions to identified information system problems were ultimately made by the review team and are set forth in this report.

3. Public Defense Services in New York

The provision of public defense representation in New York is founded upon the right to counsel under both the federal and state constitutions. The primary goal of public defense services is the effectuation of this constitutionally mandated service -- counsel for poor persons charged with crimes.

The State of New York has long been in the forefront in affording defendants the assistance of counsel, as demonstrated by a 1777 constitutional commitment. That constitutional mandate, which has "been coexistent with colonial and constitutional government in this State,"¹ is today found in New York State Constitution Article I, section 6. This provision of the constitution provides New York criminal courts with inherent authority to appoint counsel.²

In 1961, New York State began developing a system for providing public defense services. The State passed non-mandatory legislation permitting designated counties to establish public defender offices (L.1961, c.365). Then in 1963, the Sixth Amendment right to counsel under the federal constitution was made applicable to the states through the Fourteenth Amendment in the Supreme Court decision Gideon v. Wainwright,³ which held that the appointment of counsel to a felony defendant is both fundamental and essential to a fair trial. This right to counsel was extended further in 1965 when the

¹ People ex rel. Acritelli v. Grout, 87 App. Div. 193, 195 (1903), aff'd 177 N.Y. 587 (1904).

² People v. Price, 262 N.Y. 410 (1933).

³ 372 U.S. 335 (1963).

New York Court of Appeals made explicit that a defendant charged with petit crimes must be informed as to the availability of assigned counsel.⁴

In that same year, nearly two centuries after the constitutional establishment of New York's right to counsel, the State Legislature passed County Law Article 18-B. That article, designed to "provide the machinery" for ensuring to the poor their constitutional right to the appointment of counsel,⁵ requires each county and the City of New York to develop and implement a plan for providing defense counsel to poor persons accused of having committed a crime. In § 722 of Article 18-B, the State gave counties the option of: 1) creating a public defender office, 2) contracting services with a private legal aid society or bureau, 3) establishing a bar association plan for the assignment of private counsel, or 4) utilizing any combination of the three options.

A public defender, as provided in the County Law, is a county government official appointed by the county board of supervisors. The term and compensation for a public defender varies from county to county. In many smaller jurisdictions, the public defender serves in a part-time capacity.

A legal aid society or bureau is a charitable not-for-profit corporation which contracts with the county to provide legal representation to criminal defendants unable to pay for the services of a lawyer.

An assigned counsel program is a plan of a bar association under which private attorneys practicing within the county are assigned by the court to provide representation. The services of these appointed attorneys are to be rotated and coordinated by an administrator. Bar association plans must be approved by the administrator of the courts before implementation.

Exercising these options and given the geographic and demographic diversity among localities, counties have adopted a variety of responses to the constitutional and statutory mandate to provide public defense services. Currently, 34 counties have public defender offices combined with assigned counsel plans, 13 counties have legal aid societies combined with assigned counsel plans, and 15 counties have assigned counsel plans as their sole public defense delivery system.

⁴ People v. Witenski, 15 N.Y.2d 392, 395 (1965).

⁵ Governor's Bill Memorandum in Support of L. 1965, c. 878; Governor's Bill Jacket.

Throughout this report the term "public defense provider" will be used to describe any or all of these three types of public defense offices -- public defender office, legal aid society, or assigned counsel program.

Under all of these different systems for providing public defense representation, any person charged with a crime⁶ and financially unable to obtain counsel⁷ is absolutely entitled to the appointment of a lawyer. Public defenders, legal aid societies and assigned counsel also represent individuals in family court matters,⁸ parole proceedings,⁹ probation hearings and on appeal.¹⁰ In most counties of New York State, despite the constitutionally mandated nature of public defense services, widespread disparity persists between the financing of public defense providers and prosecutors. Many grievous problems uncovered by the review team were not so much a consequence of poor information systems, but of inadequate staffing and underfunding of public defense providers. In addition to a burgeoning criminal caseload, public defender and legal aid society offices work under heavy and increasing parole and family court caseloads, leaving too little time for adequate case preparation. At the same time, assigned counsel programs battle the effects of unrealistically low statutory assigned counsel rates and unconscionable caps on compensation.¹¹ In most counties, assigned counsel panels are shrinking and part-time administrators can do little to monitor the quality of services. Increases of both the state and county funding resources for public defense providers are long overdue.

⁶ County Law § 722-a defines a crime "as a felony, misdemeanor, or the breach of any law of this state or any law, local law or ordinance ... other than ... a 'traffic infraction.'"

⁷ County Law § 722

⁸ Family Court Act § 262

⁹ Executive Law § 259-i et seq.

¹⁰ County Law § 722

¹¹ See County Law § 722-b.

4. Public Defense Representation Generally

Public defense services primarily involve criminal defense representation. Representation on felony cases begins in the lower courts (where a preliminary hearing may take place) or in superior court (after indictment or the filing of a superior court information). Representation on misdemeanors and petty offenses is provided in town, city, village and district courts.

Assignment of counsel can commence at arrest. However, most public defense lawyers are appointed at or after arraignment, which is a defendant's first court appearance. The extent and duration of defense representation will vary depending upon the nature, complexity and gravity of a case. In some cases, if an indictment is sought, representation before a grand jury may be necessary. In all cases, however, after a defendant is charged by indictment or by some other accusatory instrument, investigation of the case, discovery and motion practice are essential to prepare for pretrial negotiations, hearings and eventually for trial. If a defendant decides not to exercise his right to a trial, defense counsel will engage in plea negotiations with the prosecutor in an effort to reach an agreed upon disposition of the case.

If a defendant pleads guilty or is found guilty by a judge or jury, defense counsel will represent the defendant at sentencing. Prior to sentencing, defense counsel will review a presentence investigation report (PSI), prepared by the probation department, and may submit a presentence memorandum.

After sentencing, defense counsel will, upon defendant's request, serve and file a notice of appeal and make an application to the appellate court for assignment of counsel. Thereafter, defense counsel will prepare an appellate brief and may argue the case before an appellate court.

In addition to the representation described above, public defense providers are also required to represent individuals on parole revocation matters and parole appeals. Public defense offices also provide family court representation to eligible individuals. In recent years, with the great increase in family court cases, this family court representation is demanding ever greater resources from public defense offices.

In the course of providing representation to poor individuals in all these varying capacities, public defense providers have contact with and obtain information from a number of criminal justice agencies, including: the courts, the district attorney's office, the jail, the Division of Parole, and county probation and social services departments.

PART III - PROBLEMS AND SOLUTIONS

III. PROBLEMS AND SOLUTIONS OF INFORMATION MANAGEMENT AND PROCESSING IDENTIFIED BY THE WALK-THROUGH PROCESS

Public defense providers are underutilizing law office automation technology that is currently available. While word processing was a common sight in most offices, use of databases to manage information on cases, use of computer-aided research (e.g. Westlaw, Lexis) for legal research, and document generation systems for motion practice were absent from most offices.

Despite the fact that a formal system of public defense services is a relatively recent phenomenon, most public defense providers' administrative and case records are maintained manually, in whole or in part, without the benefit of automation. The problems of case and client information flow varied, with some problems being unique to particular offices. However, the information and automation problems evident in all offices studied can be placed in five general categories -- a need for timely access to case information essential to providing effective representation; the underutilization of office automation by public defense providers; lack of standardization of client and case data definition, collection, retrieval and exchange; poor communication and coordination among public defense providers and other parts of the criminal justice system; and inadequate planning, management and utilization of existing automation resources.

What follows is a discussion of the more significant findings of the problems present in public defense providers' information systems and corresponding recommendations for remedial action.

A. LACK OF TIMELY ACCESS TO ACCURATE CASE INFORMATION ESSENTIAL TO EFFECTIVE REPRESENTATION

In all offices visited, public defense providers are routinely asked to provide constitutionally mandated representation with scant information about the criminal case or their client, or their client's prior involvement in the criminal justice system. The delay in obtaining crucial case information is particularly acute at the arraignment stage of a criminal prosecution.¹²

1. Criminal History or DCJS Criminal History Report (Rapsheet)

Access to defendants' criminal history, DCJS (formerly known as NYSIIS) report or "rapsheet" was by far the most pressing information problem identified by public defense providers. Their access to criminal history records was described as extremely limited and even nonexistent in some cases. Currently, public defense providers must rely on district attorneys, police departments and judges for access to their clients' criminal histories.

While statute provides for the disclosure of the defendant's criminal history at arraignment, it was reported that this frequently does not happen. Criminal Procedure Law 530.20(2)(b)(ii) requires that when the court has been provided with a DCJS or police department report of a defendant's criminal record, the judge must furnish a copy of the report to the defendant's attorney or to the defendant, pro se. Formal compliance with this statute has been less than complete and punctual.

A criminal history or DCJS report contains information needed for effective representation at bail proceedings, for considering the merits of plea offers, and for meaningful trial preparation. Without a defendant's criminal history, public defense attorneys cannot ensure that an accurate description of the client's past record is presented at bail applications. More significantly, most judges, particularly in justice

¹² All national standards concerning the provision of defense services urge the early entry of defense counsel into a case. See, American Bar Association, Standards for Criminal Justice (2 ed.), Standard 5-5.1; National Legal Aid and Defenders Association Standard II (2)(e); NLADA, National Study Commission Recommendation Standards 1.2, 1.3 and National Advisory Commission Criminal Justice Standards and Goals, Court Standard 13.1; 13.3.

The rationale for early entry of counsel is a fairer and quicker disposition of the case. If such early entry is to occur, it is of little value if important case information upon which decisions must be based is lacking.

courts, will not permit bail applications in the absence of a rapsheet. It is impossible to advise a client accurately of the risks and consequences of accepting or rejecting a plea offer. Without a defendant's criminal history being made available early in the case, early efforts at plea bargaining that might quickly and fairly dispose of the matter are futile, since a judge will decline to accept an agreed-upon plea negotiated without the benefit of a defendant's rapsheet. Apart from plea negotiation, the lack of timely criminal histories slows other aspects of defense case processing. For example, for those few public defense providers having an alternative to incarceration program, only preliminary work can be undertaken on a case without reviewing a defendant's criminal history. Only then can a determination be made as to whether an alternative to incarceration sentence is appropriate or if an individual is eligible for such a sentence. It is likewise impossible to prepare for Sandoval hearings or fully prepare for trial without a rapsheet, since defendants often cannot accurately recall their own criminal history.

With the notable exception of New York City, all of the public defense providers receive criminal histories either too late in the proceedings to use them meaningfully in counseling the defendant, or not at all.

Paralleling the need to obtain a defendant's criminal history early in a case, is the need for direct access to trial witnesses' DCJS reports. Knowledge of a prosecution witness's criminal history is critical to the preparation of cross examination. The review team learned that there have been occasions where prosecutors have accepted, without verification, that a prosecution witness does not have a criminal record. It was later revealed that in some instances, this reliance was wholly erroneous.¹³

Ready access to criminal histories will benefit the defense and positively impact the efficiency of the criminal justice system. As stated, the lack of a criminal history prevents fully informed and intelligent bail applications. The unsurprising consequence of such inadequate bail advocacy is the remanding of individuals to jail and the setting of an amount of bail too high to be met. These bail decisions result in an inordinate number of pretrial detainees in the already overcrowded jails throughout the state. The unavailability of direct access to DCJS criminal history reports by public defense providers imposes a tremendous cost, both in dollars and, more significantly, in wasted days of unnecessary and avoidable incarceration of indigent defendants. If our criminal justice system is to avoid the injustice and waste associated with unnecessary

¹³ The 1990 Report of the Advisory Committee on Criminal Law and Procedure to the Chief Administrator of the Courts of the State of New York (December 1989) recommends that CPL § 240.20(1)(j) be amended to require the prosecution to provide criminal histories of its witnesses to the defense.

incarceration of indigents accused of crimes, public defense providers must be given direct access to DCJS criminal history reports.

RECOMMENDATION: Article 35 of the Executive Law authorizes the Division of Criminal Justice Services to provide criminal histories pursuant to Section 837, subdivision 6 thereof to persons and agencies listed in the definitional section as "Qualified Agencies." Therefore, Section 835, subdivision 9 of the Executive Law should be amended to add "Public Defenders, Legal Aid Societies and Assigned Counsel Administrators" to the definition of "Qualified Agencies."

2. Jail Inmate Lists

Public defense providers are largely dependent upon the courts and the local jail for information concerning who has been incarcerated and upon what charges. In some cases, particularly at the justice court level, if an individual has been initially arraigned without counsel, public defense providers may not be notified of the pending case until several days after arraignment. The existing systems for communicating this information include obtaining copies of the charging papers by mail from the arraigning court or receiving information from the jail that an individual has been recently admitted. This latter method of notification is usually effected through the daily, manual retrieval of jail lists by an employee of the public defense provider. More detailed and precise information as to the basis for new incarcerations would enable public defense attorneys to initiate more timely, appropriate legal steps on behalf of incarcerated indigents.

RECOMMENDATION: Implementation of speedier methods for transmitting initial case information from the courts. Daily jail admission lists should be received by facsimile copy (faxing) or by instituting computer access for public defense providers to the jail admissions database.

3. Pre-sentence Investigation Report

Another stage of the criminal proceeding where needed defense information is either sorely lacking or delayed is sentencing. Prior to sentencing, the county probation department will typically prepare a presentence investigation report. Pursuant to statute, that report is required to be accessible to the defense at least one day prior to sentencing.¹⁴ Routinely, these reports are only provided to the defense hours or minutes before sentencing, when there is little time to review, comment, or correct inaccuracies in the report.

RECOMMENDATION: Investigate and implement practices to expedite the process of preparing and filing presentence investigation reports.

4. Case Scheduling and Obtaining Other Case Information from the Courts

Public defense providers would clearly benefit from more timely, automated case calendaring information. Presently, a majority of public defense providers studied obtain court dockets by sending a staff person over to the court each day to pick up a copy of the court case docket. This inefficient practice should be replaced or substituted by other means that provide greater availability of court docket information to public defense attorneys. It would be cheaper, considerably faster and, thus, more valuable to the attorneys who need time to act upon the information contained in the dockets, to transmit this information by either fax or modem. It should be noted that one site visited by the review team currently enjoys the benefits of computerized direct access to court dockets and case tracking records.

In February 1990, the Office of Court Administration (OCA) announced a statewide policy governing access to the court system's centralized databases and a schedule of charges to cover administrative costs of providing information from the databases. The policy authorizes public agencies whose participation in case processing is directly related to day-to-day efficiency and effectiveness of the court to install computer

¹⁴ Criminal Procedure Law 390.50(2)(a) provides that presentence investigation reports shall be made available by the court for examination and for copying not less than one court day prior to sentencing. See also 9 NYCRR 350.11(a)(2)(i).

A discussion of the extent of the delay in the preparation and submission of presentence investigation reports is contained in the New York State Bar Association Report of Joint Committee on Presentence Information, pp. 14-17 (Jan. 1990).

terminals to access the OCA computer, provided that the public agency assumes the cost for the equipment and communications.

RECOMMENDATION: It is clear that public defense providers' direct and regular access to court docket and scheduling information would improve defense management capabilities. Therefore, sufficient funds should be allocated for computer equipment and communication costs for public defense providers.

An additional problem affecting efficient case management in some jurisdictions concerns the scheduling of criminal trials. In many counties, trials are calendared at the convenience of the court and the prosecution without regard to the defense.¹⁵ It was reported that it is not uncommon for defense counsel to receive only two or three days notice that a case is scheduled for trial. Consequently, required case preparation and investigation cannot be properly performed and avoidable adjournments must be requested. This not only works to deprive a defendant of a speedy trial, but exacerbates the problem of the courts' already overburdened docket of cases.

RECOMMENDATION: Public defense providers should have greater input in the calendaring of criminal trials.

Basic, but essential information, if provided to public defense providers by the courts, would further reduce needless delay and expenditures of time occurring in the early stages of assignment of criminal appeals.

For example, in one Appellate Division, when a public defense provider is assigned to represent an individual on appeal, the assignment order of the court does not provide enough information to enable the public defense provider to contact the appellant. Despite the fact that the court may have the most current address of the appellant, generally only the appellant's name and the case or indictment number will be provided. Before taking any action on the case, defense counsel's first task is to locate the appellant in the correctional system. The problem of searching for enough information to contact an incarcerated appellant is compounded by some of the policies of the Department of Correctional Services (DOCS).

¹⁵ Standard 11.1 of the National Advisory Commission on Criminal Justice Standards and Goals (1973) calls for the input of the court, the prosecutor and public defender for more effective case scheduling. (Emphasis supplied).

While a public defense provider may be assigned by the court to represent 20 or more individuals at a time, DOCS presently restricts the number of inmates who can be located in the system on a daily basis. Since each appellate counsel can only request the location of five inmates per day, repeated daily telephone calls to DOCS become necessary.

RECOMMENDATION: Appellate Division orders assigning public defense providers to criminal appeals should provide the last address of the appellant to facilitate locating and contacting the individual.

RECOMMENDATION: Department of Correctional Services should not restrict the number of requests that public defense providers can make for the location of inmates in the DOCS system.

NOTE: The Director of Criminal Justice has intervened to improve this procedure without waiting for publication of this report or the next budget cycle. The new procedure allows attorneys to fax the names of up to ten inmates each day to DOCS Classification and Movement Unit. DOCS expects to provide same day turnaround on fax requests.

Another informational problem discovered in the context of criminal appellate representation was transcript delay. It was found that public defense providers are often sent apparently complete sets of transcripts that may, in fact, be missing pages of testimony. When this occurs, public defense office staff is required to carefully review the "complete transcripts" to ensure that portions are not missing. If portions are missing, court stenographers must be contacted and further preparation of the appeal must be delayed until the completed record has been transcribed and assembled.

RECOMMENDATION: Investigate and implement practices to expedite the process of producing complete criminal case transcripts.

5. Prosecutorial Notices

Clearly, case information relied upon by public defense providers must be accurate, complete and specific to a particular case. It was noted, however, that rather than providing accurate statutory notice to public defense providers of their intention to offer specific evidence in a particular case, prosecutors ostensibly comply with statutory notice requirements by routinely specifying all types of notices for a case. Absent any good faith effort to distinguish which notices are actually pertinent to a particular case, the notice provided fails to inform public defense providers about the nature of the case and is ineffectual.

RECOMMENDATION: Statutory notice provisions should be amended to require prosecutors to proffer only those notices that, in good faith, are actually appropriate and relevant to a particular case.

B. UNDERUTILIZATION OF OFFICE AUTOMATION BY PUBLIC DEFENSE PROVIDERS

1. Case Management System

Most offices studied did not maintain a computerized database of client and case information. Many labor and time intensive manual office operations need to be automated. The existing case management systems of most public defense providers require duplicative inputting of client and case information. Even in those offices where the case management systems are partially automated, office support staff continue to manually collect and record case opening information and maintain client log books and index cards. Similarly, case closing procedures remain for the most part a manual operation. Also, the collection of case statistics for various reports is generally done manually. Given the heavy caseload of public defense providers, manual, case-by-case retrieval of such information consumes substantial personnel resources.

An automated case information system will expedite the collection, retrieval and review of management and operational data within an office. It would also provide public defense providers with certain types of information not now available, enabling them to make better staffing and budgeting decisions, while at the same time enhancing the quality of representation provided. Finally, it would provide more accurate, detailed and comprehensive statistical data to funding and oversight agencies.

A separate but related component to an effective case management system is the ability to easily identify conflicts of interest which would require public defense providers to withdraw from further representation of a particular client or clients. No office visited had an efficient procedure for discovering such conflicts. To the extent that conflicts are identified, this is generally accomplished through a manual search of card or case files. Clearly, as additional witnesses for the defense or prosecution become known, additional manual file searches are required to disclose other potential conflicts.

Although offices were watchful of obvious conflicts such as those present in multiple defendant cases, it is quite possible for an office to discover well into the representation of an individual that it must be relieved from the case due to an ethical conflict. The present conflict identification procedures are inadequate for insuring that persons who are complainants in one pending case of the public defense provider are not simultaneously represented by the provider in an unrelated case. This causes delay in that there must be reappointment of new counsel. Also, it is extremely wasteful to

expend what could be many hours of time on a case prior to learning of a conflict of interest that necessitates a change of counsel.

Similarly, present case management systems are inadequate for ensuring that attorneys are aware of all charges -- especially misdemeanors and violations -- pending against an individual client in one or more courts. This lack of information inhibits the ability of defense attorneys to fully and efficiently "package" and dispose of all pending charges.

It is clear that the implementation of improved automated case information systems could dramatically improve the efficiency of public defense providers.

RECOMMENDATION: Develop and implement a comprehensive defense information management system. A design document should be prepared by members of the State I Defense Review Team, SIFECs personnel and others with expertise in the area of automated systems for defender offices. The document should adhere to criminal justice data standards as defined by the Statewide Criminal Justice Data Dictionary. The document should be reviewed by the chief defenders and the New York State Defenders Association.

Such a system, at a minimum, should have the capability to monitor workload through a case weighting system, generate calendar information and provide notice of speedy trial and motion deadlines, etc. and list assignments of attorneys, courts and prosecutors and other pertinent data.

Additionally, the information management system must provide a mechanism to routinely and systematically screen new case assignments against current and closed case files for potential conflicts of interest.

2. Assigned Counsel Information Management System

In view of the fact that assigned counsel programs serve as the primary public defense services delivery system in many counties and as a secondary delivery system in many more, a very distinct case information and management system is needed for public defense providers who operate assigned counsel programs. Rather than requiring a detailed client and calendaring information system, assigned counsel programs need a case information system capable of recording and tracking attorney assignments and case disposition information and monitoring voucher payments.

RECOMMENDATION: Develop and implement a comprehensive defense information management system for assigned counsel programs capable of tracking case and attorney assignments and the processing of payment vouchers.

A design document should be prepared by members of the State I Defense Review Team, SIF ECS personnel and others with expertise in the area of automated systems for assigned counsel programs. The document should be reviewed by local assigned counsel administrators and the New York State Defenders Association.

3. Word Processing and Document Assembly Systems

While most, if not all, offices were using word processing, it was often the case that more trained word processing support staff was needed. In an extreme case, attorneys assigned to one word processing clerk confront a turn around time for word processed material of approximately eight days. Many of the offices visited needed augmented and upgraded word processing capabilities, together with increased trained staff.

The use of document assembly technology for production of motions, subpoenas and other case-related documents is also underutilized by public defense providers. In some offices, motions continued to be produced on electric typewriters with no or limited memory. In those offices using word processing, inefficient and ad hoc procedures are followed to generate frequently-used motions. Rather than a streamlined system, an attorney's standard motion will be reproduced, manually edited by the lawyer and then given to the secretary or word processing clerk to have the additions and deletions inputted. The use of available computer software that can construct motions or legal documents from a library of relevant paragraphs would reduce production time and

minimize staff effort. Document assembly continues to be one area of law office automation where the private bar is years ahead of public defense providers.

4. Computer-aided Legal Research

Computer-aided legal research (e.g. Westlaw, Lexis) can be an invaluable tool to public defense providers. However, due to expense, this technology is almost completely unavailable to public defense providers. Of those offices that do have access to these services, access is generally either extremely limited or shared with some other county agency or department, which makes its ready use impractical. In many instances, the savings in legal research time alone would justify the cost of computer-aided legal research services. Moreover, such services would elevate the level of practice because it would enable attorneys to discover and present to the court very recent relevant legal precedent not as readily discoverable by manual legal research.

RECOMMENDATION: Funding should be appropriated to enable public defense providers to obtain and regularly utilize computer-aided legal research services.

For those counties where the small size of public defense provider office makes such an allocation impractical, additional resources, specifically for the provision of computer-aided legal research services to these small offices, should be provided to a centralized defense entity such as the New York State Defenders Association.

C. LACK OF STANDARDIZATION OF CLIENT AND CASE DATA DEFINITION, COLLECTION AND RETRIEVAL

1. Standardization of Information Systems and Procedures, Data Definitions and Data Collection Forms

The site visits disclosed widely varying methods of recording client, case and statistical information, of maintaining those records and of implementing and utilizing computerized recordkeeping.

There is a wide discrepancy in the type of information that is maintained and can be retrieved from non-computerized databases. For example, certain offices do not record information concerning the number and types of hearings held, the race or ethnicity of clients, or which judges are presiding over a case. Moreover, the methods and manner in which offices maintain felony and misdemeanor case information and dispositions vary widely.

The lack of standardized procedures for information and data collection has resulted in the implementation of partially, if not wholly, redundant information systems.

Most public defense providers are just now beginning to develop and implement sophisticated case management information systems. Consequently, standardization of these local information systems is critical to the development and study of a comprehensive system of public defense services.

Since the public defense providers were established on a county-by-county basis, it is not surprising that their independent operation from one another has resulted in an absence of any standardized data definitions and data collection procedures.

Even something as fundamental as deciding what constitutes a "case" has yet to be uniformly defined by public defense providers. For example, for reporting purposes, some offices treat one defendant with multiple indictments as one "case," while other offices treat separately indicted charges against a single defendant as separate "cases". In the area of family court representation, one public defense provider, for the purpose of internal case management, counts one neglect petition with more than one child as one case, whereas the family court and Office of Court Administration consider each individual child cited within a petition as a single case. Uniform terminology and procedures regarding data collection must be established, agreed upon and implemented.

Public defense providers must have the resources and support to implement information and data collection systems that will accurately generate data which can be compared to data from other criminal justice agencies. Statistical information that would be available from the standardized, computerized database described above would provide caseload data far superior to that presently available. Without reliable statistical data, the needs of a major component of the state's criminal justice system will continue to be inadequately accessed and little will be learned to improve public defense services.

RECOMMENDATION: Uniform data collection forms with standardized data definitions for public defense providers need to be developed and implemented.

2. Lack of Adequate Case Statistical Collection Practices

A critical function the Division of Criminal Justice Services performs is the collection and analysis of case data concerning the criminal justice system. Both the state and county governments base significant funding decisions upon this data. Yet, public defense providers have only minimal input into this data collection process. Rather than the public defense provider, a county's district attorney has been traditionally relied upon for defense case disposition data. It should not be surprising that the district attorneys, who have little time to generate their own statistics have little incentive to accurately collect and report this defense information.

A cursory review of such statistical data by the team and a closer examination by the New York State Defenders Association has disclosed that defense case data gathered by the district attorneys is generally inaccurate. In some instances, reported data varied by as much as 50% from the actual statistics. DCJS also obtains information on case dispositions from the courts; this data is also often inaccurate and incomplete.

The Division of Criminal Justice Services and the Legislature use statistical information reported by district attorney's offices to inform statewide funding decisions for such programs as Aid to Defense. Reliance on statistical information generated by district attorneys' offices and courts is misplaced. These sources have generated defense case data that is both incomplete and understated, leaving public defense providers unable to obtain funding levels commensurate with their actual caseload. Defense workload and the corresponding resources continue to be incorrectly determined by the prosecution or the courts. Defense case data is not collected directly, but merely extrapolated from prosecution workload.

RECOMMENDATION: DCJS should seek and obtain statistical information concerning the work performed by public defense providers from public defense providers.

D. DEVELOPMENT, IMPLEMENTATION AND STANDARDIZATION OF PUBLIC DEFENSE PROVIDERS' IN-HOUSE AUTOMATED RESEARCH DATABASES

Throughout the state public defense attorneys work under the handicap of inadequate systems for sharing case information and research between attorneys working in one public defense office.

Due to the decentralized nature of public defense offices, databases of client and case information, motions and appellate briefs are generated on word processing programs that are incompatible. Stored information is usually in non-standardized, incompatible formats. Computer sharing of non-confidential case information and motions and briefs is not feasible, and comparison of offices' statistical information is meaningless. Trends over time or between discrete periods (e.g. an enhanced sentencing pattern for predicate felons) cannot be identified. Offices can expend attorney and staff resources producing a work product that exists elsewhere.

Offices that do maintain some sort of informal "brief bank," use differing methods of indexing and categorizing appellate briefs and motions, all of which are not computerized. In addition, even where such resources are partially maintained on a computer and are generic enough that they could be readily utilized by another office, the lack of standardization and adaptability in offices' computer resources makes sharing of such data in a computer-usable format, at best, impractical. At a minimum, each office should attain a computer capability sufficient to allow basic sharing of motions and briefs by the simple exchange of word processing files on computer diskettes. Consequently, offices should reach an agreement as to the standardized form for file exchange.

RECOMMENDATION: A standardized format for recording case information and maintaining briefs and motions should be developed to establish a uniform computerized database of case information and office work product. Such a system should be developed with the cooperation of the New York State Defenders Association, public defenders, legal aid societies directors and assigned counsel administrators throughout the state.

A centralized computer database containing research information in the areas of criminal law and procedure should be established and maintained at the New York State Defenders Association Public Defense Backup Center, which would allow offices throughout the State to retrieve by computer information on selected subjects.

To further facilitate the exchange of legal research work product, public defense providers must be encouraged to continue to contribute to a centralized public defense clearinghouse.

The New York State Defenders Association, among other services it provides, functions as clearinghouse of information for public defense providers. The Association's Public Defense Backup Center has created and distributed a subject matter index and collects briefs, motions and memoranda from public defense providers that are available for dissemination statewide. Enhancing the exchange and distribution of these materials would reduce the duplication of legal research efforts and maximize current staff resources. However, due to lack of resources, NYSDA lacks the capabilities to offer greater access to this research information. Placement of appellate briefs, motions, memoranda and case summaries on an electronic bulletin board which could be accessed by modem, would encourage greater use and exchange of these resources and more direct (through the bulletin board) communication between defense providers.

RECOMMENDATION: Funds should be appropriated to the New York State Defenders Association specifically for the installation and maintenance of a computer bulletin board system (BBS). In addition to a part-time system operator, sufficient resources will need to be allocated to train public defense providers on how to access and utilize the BBS.

E. POOR COMMUNICATION AND COORDINATION BETWEEN PUBLIC DEFENSE PROVIDERS AND OTHER CRIMINAL JUSTICE COMPONENTS

The current system of public defense in New York State suffers from systemic problems involving inadequate communication and coordination. As detailed in this report, these problems exist both within public defense agencies and in the relationships between public defense providers and other components of the criminal justice system. As a necessary and legitimate part of the criminal justice system, effective interaction with other criminal justice actors necessitates the use of standard data conventions and compatible communications equipment. The cumulative result of the lack of communication and coordination is an inefficient system of public defense in which scarce resources are unduly expended on recreating available information. Ultimately, this duplication of efforts is costly, not only to public defense providers and the clients they serve, but to the criminal justice system as a whole.

A tragic consequence of the lack of an efficient communication system is that many poor people often serve unnecessary time in jail. For example, the failure of a public defense provider to learn immediately that an indigent person has been incarcerated might result in three or four days passing before any efforts can be made to facilitate the person's release from custody. Substantial changes in the methods and systems for communication and coordination within public defense agencies and between such agencies and other components of the criminal justice system are essential to the achievement of an efficient system of public defense able to provide timely required defense services to its clients.

In most counties there are at least two different providers of defense services. Communication and coordination between providers is essential to ensure quality criminal defense representation. In some counties this is not occurring. The systems of public defense adopted by some counties provide for one public defense provider to represent persons on misdemeanor and felony charges before the local courts and another, different provider to represent persons on felony charges, post-indictment in superior court. In these counties, in cases with felony charges, there is a critical need for coordination between the two public defense providers. The danger exists, and indeed is documented in this report, that the change in counsel without proper coordination may result in periods in which neither provider is actively representing the indigent accused. These gaps in representation can be extremely prejudicial to the accused, in derogation of an individual's right to counsel.

RECOMMENDATION: It is essential that the existing systems of representation be reviewed and modified to ensure that public defense providers can provide effective representation at every stage of the criminal case without any gaps in representation.

F. INADEQUATE PLANNING, MANAGEMENT AND UTILIZATION OF EXISTING AUTOMATION RESOURCES BY PUBLIC DEFENSE PROVIDERS

In many of the offices evaluated, some aspects of an office were automated but, with few exceptions, comprehensive plans for automation and information management did not exist. In those offices that do operate automated systems, none engaged in any formal request for proposal (RFP) process to ensure that the devised information system met all their specific information needs. The development of automated information systems was generally ad hoc. The lack of any comprehensive approach to data management was in large measure due to the meager resources available to public defense providers.

With one exception, the public defenders, legal aid societies and assigned counsel programs studied did not have management information system personnel on staff. The development and implementation of automated information systems were often accomplished through the use of part-time consultants or by legal staff with an interest in computers, but with no experience in system design.

Some public defender offices, as county departments, opted to use county mainframes for automated case management systems because of the technical support available to them through the county data processing department. The promised support from the county data processing departments is indeed attractive to public defense offices that do not have staff with computer expertise or the resources to retain the services of computer consultants. In some counties, however, it appeared that the demands of other county departments have made the accessibility of county data processing support sporadic at best. Additionally, offices relying upon the county for services were at times constrained to purchase hardware and software supported by the county data processing department rather than products that might be better suited to that office's individual needs.

As part of any comprehensive automation office plan, staff training on the office's computer systems must be considered a high priority for public defense providers. Word processing, database management programs and other computer applications were not being used to their fullest potential due to a lack of staff training.

With the large volume of cases and the limited resources available to public defense providers, well-planned information systems and trained staff are essential for expeditious and effective case management.

RECOMMENDATION: An appropriation for computer training should be made to the New York State Defenders Association, as a statewide defense organization, to coordinate and extend training to public defense providers in various computer applications, information systems and office automation.

To provide this training and support, resources should be allocated to the New York State Defenders Association for a systems analyst who would provide office automation advice and consultation services to public defense providers. The analyst would work in conjunction with SIF ECS personnel to coordinate training on computer applications, hardware and software acquisition, installation and maintenance. Such centralized assistance would enhance uniformity and standardization of information systems across the range of public defense offices.

PART IV - WALK-THROUGH DOCUMENTATION

OVERVIEW

The Legal Aid Bureau of Buffalo, Inc. is a charitable not-for-profit corporation that was founded in 1912 to provide legal representation and assistance to individuals who are unable to pay for the services of a lawyer. The Legal Aid Bureau currently employs 85 persons organized into three divisions: the Division of Family Services, the Division of Criminal Services, and the Division of Cooperative Services. The Family Services Division consists of the Family Services, Housing and Law Guardian Units. The Criminal Services Division is made up of a Public Defender Unit which represents indigent persons on criminal matters in Buffalo City Court and an Appeals Unit which represents persons on appeal from felony convictions. In 1989, the eight attorneys in the Public Defender Unit were assigned to 11, 534 cases, and the eight attorneys in the Law Guardian Unit were assigned to 4,184 family court petitions. Many of the problems within these areas, as documented in the report, are attributable to the significant understaffing of these two Units due to insufficient funding. Inadequate attorney-client contact is the direct result of this insufficient staffing.

Over the past several years, the Legal Aid Bureau has rapidly automated each of its Divisions, and now a uniform automated records keeping system is used throughout the agency; however, within some units, a manual record keeping system is also maintained. Further computer training is needed to overcome some resistance on the part of both the attorney and support staff to utilizing the computers. The Bureau also would benefit from internal networking of its computer system. Finally, as with most sites visited, the Legal Aid Bureau also experiences problems obtaining necessary information from government agencies. Direct access to information such as NYSIIS reports and court records would improve the Bureau's delivery of legal services.

1989
AGENCY FACT SHEET

ORGANIZATION: The Legal Aid Bureau of Buffalo, Inc.

CONTACT: Linda S. Reynolds, Executive Attorney

TELEPHONE: (716) 853-9555

WALK THROUGH DATE: January 17-18, 1990

CURRENT OFFICE STAFFING:

Attorneys	31
Law School Graduates	2
Investigators	5
Paralegals	1
Legal Stenographers	8
Office Clerks	2

POLICE DEPARTMENTS: 3

Buffalo Police Dept.
Erie County Sheriff, New
York State Police

SATELLITE OFFICES: 2
Drug Abuse Prevention Focus
Public Defender Unit

CITY COURTS: (13 parts) 1
CITY COURT JUDGES: 12
SUPREME COURT JUDGES: 23
COUNTY COURT JUDGE: 5

COUNTY SQUARE MILES: 1,046

COUNTY POPULATION: 966,100

SOURCES OF FUNDING:

Local:	County of Erie
State:	Aid to Indigent Defense Appeals Backlog Grant Fast Track Drug Program Office of Court Administration

1989
AGENCY FACT SHEET

PUBLIC DEFENDER UNIT:

Total Cases Assigned:	11,534
Violent Felony Assignments:	1,175
Felony Assignments through October 31, 1989:	1,209
Misdemeanor Assignments through October 31, 1989:	8,938
Court Appearances:	21,000

APPEALS UNIT:

Open Cases on January 1, 1989:	196
New Assignments in 1989:	195
Case Perfected in 1989:	322
Open Cases on December 31, 1989:	357
Open Cases/No Brief Submitted on December 31, 1989:	159

LAW GUARDIAN UNIT:

Child Abuse and Neglect Assignments:	967
Family Offense Assignments:	45
Custody and Visitation Assignments:	69
Paternity Assignments:	37
Juvenile Delinquency Assignments:	538
Persons in Need of Supervision (PINS) Assignments:	1,972
Foster Care:	516
Other:	<u>40</u>
Total Petitions	4,184

(Total Numbers of Clients Served) 9,025

Appeals taken	35
Other action	<u>47</u>
Total Other Court Proceedings	82

NOTE: Violations, misdemeanors and felonies in the various justice courts and post-indictment felonies as well as appeals from violations and misdemeanor convictions in Erie County are handled by a panel of 18-B attorneys set up by the Erie County Bar Association.

1989
AGENCY FACT SHEET

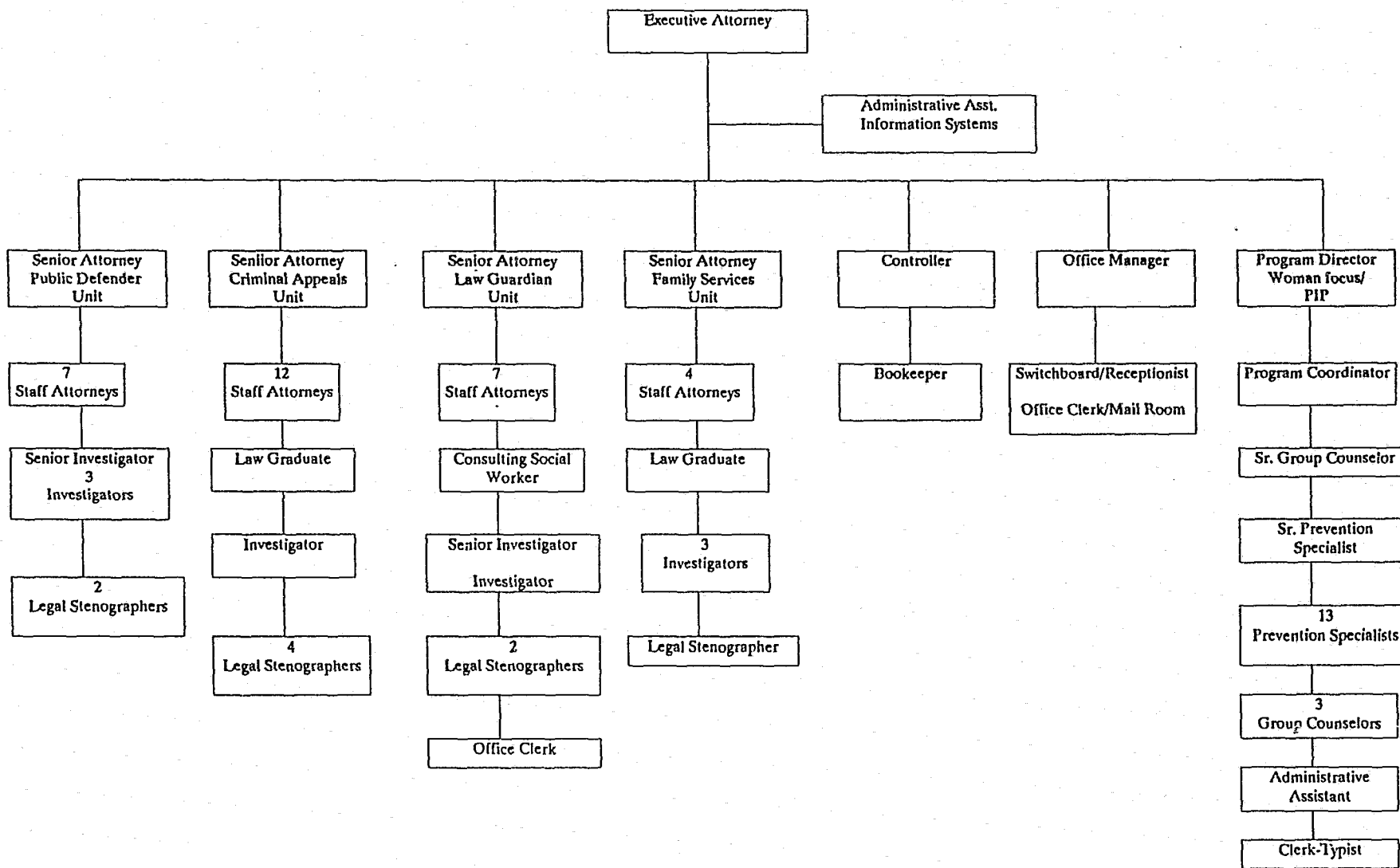
DEGREE OF AUTOMATION:

- 14 - Micro computers
- 2 - Word Processors
- 17 - Printers (11 -Laser Jet / 6 - Dot Matrix)

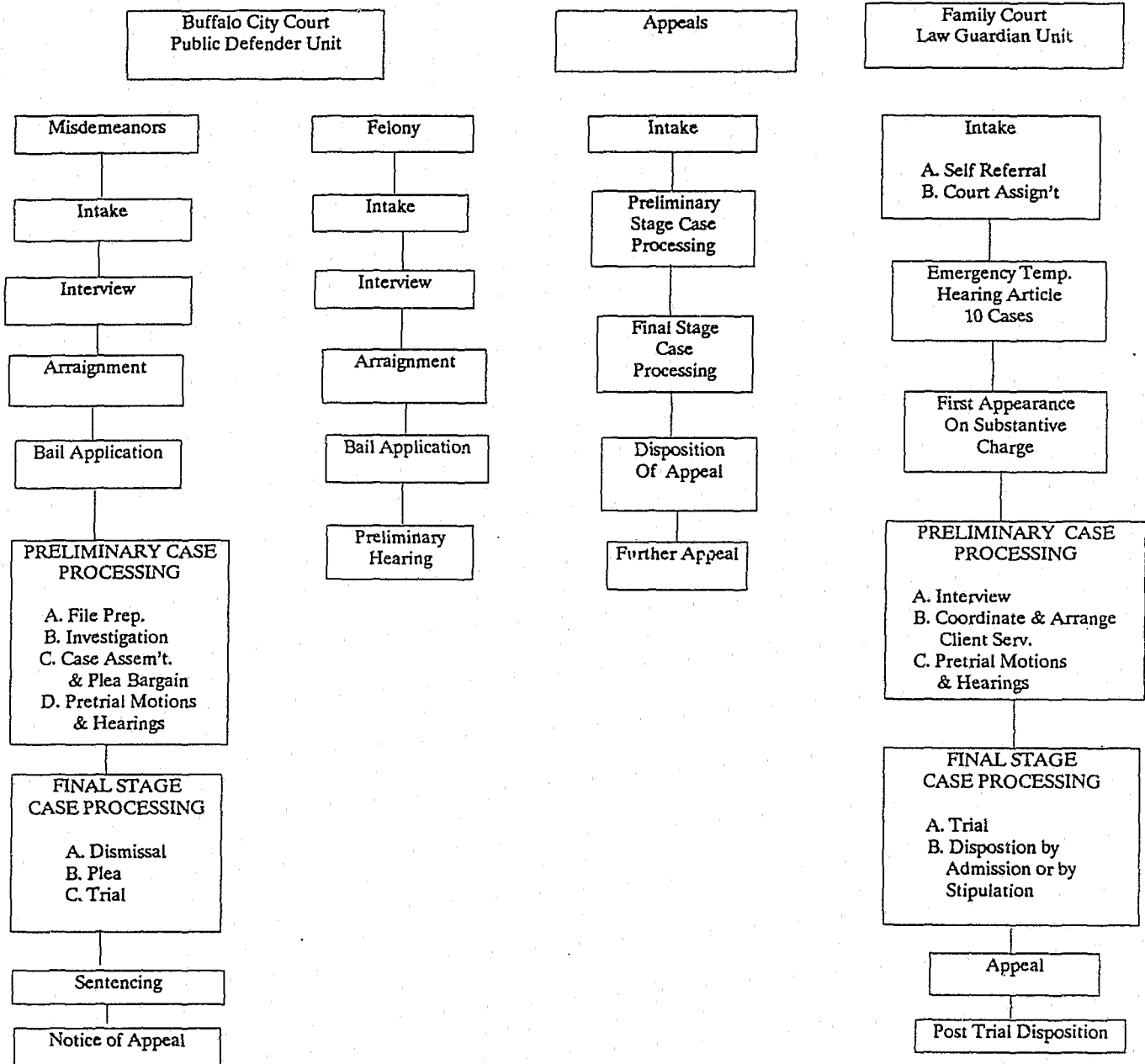
PROGRAMS:

- Notebook: Relational Database
- WordStar: Word Processing
- WordPerfect: Word Processing
- Lotus 123: Spread Sheet
- Symphony: Spread Sheet

December 1989



LEGAL AID BUREAU OF BUFFALO, INC.



The attorneys who work in the Public Defender Unit represent all indigent persons arraigned in the Buffalo City Court -- those charged with both felonies and misdemeanors. Felony defendants are represented through arraignment and preliminary hearing. Misdemeanor defendants are represented through all stages of the criminal proceedings, pre-trial hearing, plea negotiations, trials, and sentencing.

**PUBLIC DEFENDER UNIT
CITY COURT
CASE INTAKE, CLIENT INTERVIEW
ELIGIBILITY AND ARRAIGNMENT**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input:

-Accusatory Instrument including supporting depositions

-Prepare basic file
-NYSIIS report received from District Attorney

Pre-trial Release Program
Buffalo Police Dept.
City Court Clerk's Office
DA's Office

NYSIIS

Output:

-File
-Client post card
-Client notification card

NOTES:

- We receive no information until the arrestee is arraigned before the intake judge. This takes place in Part I if the person is in custody, otherwise Part II. The arrainging judge usually questions the defendant as to employment, income, etc., as a preliminary to determine whether the public defender should talk to the person further. When eligibility is determined, a file is opened and a new date is set. The client is given a card with all the necessary information for the next court date.
- The public defenders must rely on the good will of the DA's office to receive the NYSIIS report in a timely fashion.

PROBLEMS:

1. It is frequently very difficult to determine eligibility in open court, just a few feet from the judge and district attorney. Many clients attempt to discuss facts regarding the case and are upset when time constraints and lack of privacy make this impossible. Court calendar prohibits acquiring important and needed information from client interview before determination can be made.

Solution 1: There is a need for confidential interview rooms.

2: Pre-arraignment interviews would assist attorneys obtaining case information.

3: Increase attorney staff to cover arraignment parts.

2. We currently have no system for determining conflicts that we may have other than the obvious cases involving co-defendants.

Solution 1: An automated case tracking system would provide quick inquiry capability for determining case conflicts. Implementing an improved record keeping program would involve hardware and software, and training on new procedures.

**CITY COURT
BAIL APPLICATION**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input/Output:

-No new documents

-Court reviews NYSIIS
Requests recommenda-
tion from pre-trial
release.

Pre-trial Release
District Attorney's
Office
Court

NOTES:

- If NYSIIS is available, court and public defender rely heavily on this; if Pre-trial Services makes a recommendation, the court will usually follow it.

PROBLEMS:

1. Due to a lack of adequate staffing there is no ability to provide an attorney to do Superior Court bail applications. Although these applications are now being done by Pre-trial Services, this is a neutral county agency staffed by persons who are not attorneys. Thus, defendant may sit in jail, which contributes to overcrowding and increased costs to the county.

Solution 1: Increase attorney staff to make an attorney available for appearances in Superior Court.

**CITY COURT
PROCESSING**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Investigation

Output:

- | | | |
|-------------------------------|--|-----------------------------------|
| -Basic File | -File entered in computer | Defendant |
| -Client notification postcard | -Clients in custody are seen by investigators at Erie County Holding Center. | Erie County Holding Center |
| | -Clients not in custody are notified to appear for investigation (by mail) | Erie County Correctional Facility |

NOTES:

- Files are returned to the office by the attorneys in intake and entered into the computer by the secretaries. The files for those in custody are separated from the non-custody clients and distributed to the investigators by the chief investigator. Postcards are sent to those clients not in custody to come to the office for an interview.

PROBLEMS:

1. When the Erie County Holding Facility is overcrowded, prisoners are sent to Wende Correctional Facility, 28 miles from Buffalo. We are unable to interview clients at this facility due to insufficient staffing and inadequate funds for travel.

Solution 1: Increase investigative staff to meet the interview needs of incarcerated defendants.

2: Arrangements should be made for a defendant production agreement with the Sheriff's Department, for interviews at Holding Center.

2. Because of restrictions on attorney visiting hours at the facility, there is often inadequate time to see the client before court appearance.

Solution 1: There is a need to change the visiting hours schedule to do interviews at the Holding Center.

2: Additional investigative staff or attorneys are needed to cover interviews at the Holding Center.

3. If a client fails to respond to our notification, we are not aware of this until the day of the court proceeding. This leaves the attorney in the unenviable position of negotiating with the district attorney without the benefit of a full interview with the client.

Solution 1: An automated notification system would generate notice to remind client of court appearance and notice to attorney that client has not responded to notification of court appearance.

**CITY COURT
CASE PROCESSING**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input:

-Investigation

-Investigator has a confidential interview with the client.

Defendant
DA's Office

-Discovery from DA's Office

-Discovery and motions are sometimes processed at this stage.

Output:

-Motions

-Memorandums of Law

PROBLEMS:

1. As a result of each attorney's heavy caseload, there usually is no contact between client and attorney between initial arraignment and the first court date. Therefore, clients do not obtain information from their attorney.

Solution 1: Establish contact between attorney and clients before court date by scheduling phone availability for attorneys.

- 2: Additional attorney staff is needed to adequately meet the needs of the clients.

2. Investigators who are not attorneys interview the clients and are unable to offer any legal advice as to the possible outcome of the case. Because investigators are not attorneys, they frequently are unable to ascertain all relevant legal information.

Solution 1: Attorneys should be the principal client interviewers. Increase staff attorneys to accomplish this.

3. Currently, there is no mechanism for LAB attorneys to know of other pending cases in other jurisdictions for the same client.

Solution 1: There is a need for a county-wide automated case tracking system to determine if clients have concurrent pending cases.

**CITY COURT
FINAL STAGE CASE PROCESSING**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input: -Answers to motions and requests from discovery from DA's Office	-Client appears in court for Pre-trial Conference and: 1. Take a guilty plea to a lesser charge.	DA's Office Court Agencies such as
Output: -Motions -Memorandums of Law -Subpoenas	2. Is given an ACD. 3. Case is dismissed for various reasons. 4. Case is adjourned for trial, hearing or other disposition.	First Time Last Time Youth Council Buffalo Area Council on Alcoholism Womens Residential Resources Center

NOTES:

- Many cases are adjourned after the first court date -- sometimes for a motion or a witness; sometimes the District Attorney's Office is not ready. Other times the case is adjourned for trial.

PROBLEMS:

1. Throughout the disposition period, because of the large case load, the attorney often does not have time to speak to the client until the case is called in court. This results either in plea negotiations with the client going on practically at the bench or the necessity to adjourn the case.

Solution 1: Additional attorney staff is needed to adequately meet the needs of the clients.

- 2: Form contact between Attorney and clients before court date by scheduling phone availability for attorneys.
- 3: Provide adequate funding to enable the LAB Bureau to accept collect calls from clients.
- 4: Attorneys should be principal client interviewer. Increase staff attorneys to accomplish this.

2. Presently, due to staffing constraints, attorneys must frequently serve subpoenas themselves.

Solution 1: Better utilization of volunteers/student interns to serve subpoenas.

- 2: Increase investigative staff to serve subpoenas.
- 3: Develop an automated case tracking system that includes a tickler system to assist in scheduling service of subpoenas.

**CITY COURT
SENTENCING**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input:

-Pre-sentence investigation by Probation Department

-Except for A misdemeanors, clients promised probation and mandatory YO's, most sentencing is done without a pre-sentence investigation.

DA's Office
Court
Probation Department

Output:

-Notice of Appeal

-Most judges will give sentence consideration in return for a plea.

PROBLEMS:

1. Pre-sentence investigations are not available until the day of sentencing. Frequently there is not enough time to discuss the report with the client for errors and/or additional information.

Solution 1: Utilize statutory provision and ask for a 24 hour adjournment to review Pre-sentence report and discuss material with client.

MISCELLANEOUS REMARKS

NOTES:

- All felony charges are handled initially in the same manner as misdemeanors. If a hearing takes place and the case is held for the grand jury, our representation ceases. If the case is reduced to a misdemeanor either before or after a hearing, it follows the same procedure as other misdemeanor cases.
- Clients are informed of their right to appeal their convictions at sentencing. The Legal Aid Bureau Attorney prepares and files the Notice of Appeals.

PROBLEMS:

1. The Legal Aid Bureau's representation ceases after a case is held for the Grand Jury. Ordinarily, no attorney is assigned to represent the client until after the case is held for grand jury.

Solution 1: The Legal Aid Bureau's contractual responsibilities should be expanded to cover representation of clients from arraignment presentation to the grand jury.

2: The defendant should be notified that grand jury action is pending pursuant to CPL § 190.50 (5)(a) Notice served upon the District Attorney.

3: Provide a letter for client to Court regarding representation.

2. When an appeal is taken from a Buffalo City Court conviction, a gap in representation exists until the client contacts the Assigned Counsel Program for assignment of an attorney.

Solution 1: Prepare a form letter to County Court asking for assignment of counsel along with a Notice of Appeal.

APPEALS UNIT

The attorneys in the Appeals Unit represent indigent persons upon their appeals from judgments of conviction entered in the superior courts (Erie County Court and New York Supreme Court). With a few exceptions, all the persons represented have been convicted of felonies.

INTAKE

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input:

- | | | |
|---|--|--|
| <ul style="list-style-type: none"> -Client correspondence -Appellate Division order of assignment -Notice of appeal -Dept. of Corrections information -Questionnaire from client -Create Card file (manual record of assignments) -Notebook (computerized record of new assignments) | <ul style="list-style-type: none"> -This is one of the most critical stages of the entire process for errors made at this juncture can get carried through and result in delays. For example, if a questionnaire is sent to the wrong client (identically named), the proper appellant is effectively denied the right to his appellate counsel | <ul style="list-style-type: none"> Client Trial Counsel Appellate Division Dept. of Corrections Erie County Clerk |
|---|--|--|

Output:

- Correspondence to client as to whether Legal Aid Bureau assigned; directions as to apply for assignment; or date case assigned
- Check of County Clerk's records
- Correspondence to Department of Corrections
- Appeals assignment log (manual notebook of orders of assignment)
- Questionnaire to client

NOTES:

- Client correspondence on pending and miscellaneous cases inquiring as to whether Legal Aid Bureau yet assigned to case.
- Sometimes trial attorney sends the LAB a copy of notice of appeal and poor person motion.
- Paralegal checks the records at Erie County Clerk's Office to ascertain if case is plea or trial.
- File opened by secretary (new numbering system implemented January 1, 1990 whereby Appeals Unit files -- while separately numbered -- will be part of larger Legal Aid Bureau numbering scheme; file number indicates whether case is plea or trial).
- Opening of file entails locating client (by contacting Department of Corrections) and sending him a form letter advising of our representation and a questionnaire to complete and return; questionnaire seeks information concerning hearings, sentence, possible issues.

PROBLEMS:

1. No requirement in Erie County for trial attorneys (assigned and retained) to transmit to Legal Aid Bureau a copy of notice of appeal, "poor person motion" and a letter advising of possible appealable issues; accordingly, the assignment of the case usually represents LAB's first contact with appellant; no forewarning that the case exists, absent an unsolicited letter from potential client.

Solution 1: Require 18-B panel attorneys, as part of the program, be required to transmit Notice of Appeal and Poor Person Motion to the Legal Aid Bureau.

2: Request the 18-B Administrator to provide to the Legal Aid Bureau a list of those cases in which an assigned attorney has filed a Notice of Appeal.

2. Appellate Division order rarely contains address for client or other identifying information; therefore, we cannot open a file or send client his letter and questionnaire until we write to Corrections to secure address. Corrections is often slow to respond and has been known to provide incorrect inmate numbers and addresses in cases where client has common name; where client is not in state system, extra work created in having to contact local authorities. Delays in opening file have been known to cause delays in resolving case, especially where seeking to conclude case quickly (i.e. soliciting stipulation).

Solution 1: Request that the Appellate Division 4th Department include client address, and other identifying information on order of assignment.

3. The Department of Corrections will only give information for five or fewer inmates per phone inquiry.

Solution 1: Request that the Appellate Division, 4th Department include client address, and other identifying information on Appellate Order of assignment.

2: Change DOCS policy to permit more information be provided over the phone.

4. There is duplication of effort in creating the card file and doing data entry. There is heavy a reliance on card file system for source of current case load rather than by computer data, due to insufficient number of computers for attorneys to have access, since available computers are in use most of the time for word processing and data entry.

Solution 1: Change the existing computer system to generate documentation and additional terminals for access to system.

2: Provide training for attorney staff in use of computer system.

**APPEALS UNIT
CASE PROCESSING
PRELIMINARY STAGE**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input:

<ul style="list-style-type: none"> -Client correspondence -Postcards from court regarding status of transcripts -Transcripts filed by court reporters in Erie Co. Clerks' Office -Pre-sentence report -Indictment and court decisions on pre-trial motions 	<p>Client correspondence is an important obligation of every staff attorney. The sooner a case can be assigned to a staff attorney, the sooner there is a permanent "contact" for the client. In addition to enhancing the perfection of the appeals, such essential communication is evidence to client of his individual importance.</p>	<p>Client Appellate Division Court Reporters Erie County Clerk Trial Counsel</p>
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Output:

- Correspondence to client.
- Correspondence to court reporters.
- Ex parte motion for pre-sentence report.
- Record completed/Filing deadline determined and put on file.
- Assignment of cases to staff attorneys.

NOTES:

- At same time as orders of assignment are received by Legal Aid Bureau they are transmitted to court reporters who begin preparing transcripts in every case to which the Legal Aid Bureau is assigned. Paralegal monitors daily the transcripts filed with Erie County Clerk's Office. (Legal Aid Bureau's 120 days in which to perfect appeal commences upon filing of the last transcript in any given case; therefore it is vital that the LAB be aware of precisely when a record is complete.)

- As a check on the transcripts which the County Clerk and court reporter believe comprise the record, paralegal reads and makes a copy of the official clerk's notes to insure that minutes of all relevant pre-trial, trial, and post-trial proceedings have been ordered.
- Paralegal copies from the official court file the indictment and all court decisions on pre-trial motions (e.g., Wade, Huntley, etc.).
- After all transcripts are gathered, a form ex parte motion is filed to secure a copy of the pre-sentence report (for use by staff attorney in drafting an excessive sentence point).
- The case is then ready for assignment by Senior Staff Attorney who makes assignments of files based on individual staff attorneys' work loads, expertise and (where possible) interest; a balance is sought between pleas and trials.

PROBLEMS:

1. Legal Aid Bureau has no control over court reporters' progress on cases; knowledge thereof is difficult to obtain, depending on cooperativeness of court reporter.

Solution 1: Require the administrative court reporter to issue transcript status reports to the Legal Aid Bureau.

2: To the extent that the Appellate Division maintains status of Legal Aid cases, an automated link should be provided to allow Legal Aid attorneys inquiry access for case status.

2. There is a difficulty in ascertaining precisely what transcripts to order; a preliminary decision is made by Erie County Clerk; time consuming for paralegal to read clerk's minutes in every case as a check on thoroughness of transcript order. Risk is that transcript of vital proceeding may not be ordered and omission discovered by staff attorney at much later date and after Appellate Division has already affixed 120-day deadline.

Solution 1: Directly request that the Appellate Division issue an order to the administrative court reporter that every proceeding in each case be transcribed unless specifically directed to the contrary by the Appellate Division upon stipulation of counsel.

2: Additional staff are needed to review court clerk's minutes.

3: An automated link to the court reporter's records of ordered transcripts would enable attorneys to check as to thoroughness of transcript orders.

3. There is no uniformity in filing of papers in Erie County Clerk's Office; some files very complete, others missing routine pre-trial motions and decisions.

Solution 1: Have the administrative judge require filing of duplicates of all papers in the County Clerk's Office.

4. Currently, there is no computer tickler system for approaching 120-day deadlines in all cases to know what to watch for at a certain time, or in monitoring attorneys' caseload and in making new assignments.

Solution 1: Implement an automated case management system to keep track of dates and generate tickler reports prior to deadlines.

5. There is an insufficient number of computers available for professional staff.

Solution 1: Increase the number of computers available to attorneys.

APPEALS UNIT
CASE PROCESSING
FINAL STAGE

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input:

<ul style="list-style-type: none"> -Miscellaneous client correspondence. -District Attorney's motion to dismiss appeal in response to be relieved on grounds of abandonment. -Notice from Appellate Division advising of 120-day deadline. -Correspondence from trial counsel to staff attorney. -District Attorney's brief. -Client's copy of letter seeking permission from Appellate Division to file supplemental <u>pro se</u> brief. -Appellate Division's order requesting transmittal of transcript to client filing supplemental <u>pro se</u> brief. -Date of argument. 	<p>The promulgation by the Appellate Division of the 120-day rule has resulted in a change of attitude and operation: instead of looking to one specific deadline date every six weeks, attorneys and clerical staff are now steadily engaged in the process of preparing and filing appellate briefs.</p>	<p>Client Erie County Clerk Trial counsel Appellate Division</p>
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Output:

- Case assignment from Senior Staff Attorney to individual staff attorneys.
- Miscellaneous correspondence to client and to trial counsel.
- Correspondence to Appellate Division seeking relief from assignment on grounds of conflict.

LEGAL AID BUREAU OF BUFFALO, INC.

- Substantive and Crawford briefs to District Attorney and Appellate Division.
- Client copy of brief including directions as to how to seek permission for supplemental pro se brief.
- Record filing of brief in database.
- Oral argument calendar.
- Letters to clients advising of date of argument and enclosing copy of District Attorney's brief.

NOTES:

- Individual staff attorney assigned to a given file reviews same to ascertain deadline, client status (incarcerated, paroled, on probation) and existence of possible conflicts either between co-defendants or in Legal Aid Bureau representation; inasmuch as LAB Law Guardian Unit represents children in Family Court and Civil Unit represents indigent divorce clients, there is a possibility that LAB represents the criminal case victim/complainant; if so, staff attorney writes to Appellate Division, seeking to be relieved.
- Staff attorney begins correspondence with client; reviews clerk's notes to insure that record is complete; in event that transcripts of additional proceedings need to be ordered, staff attorney places request with paralegal who contacts court reporter.
- Staff attorney reads transcript, contacts trial attorney, discerns legal issues, researches the law, drafts brief or, where appropriate, Crawford motion and brief.
- Senior Staff Attorney reviews brief, making substantive and stylistic suggestions as necessary.
- Corrections to brief implemented and brief turned over to paralegal who is responsible for photocopying final briefs, serving them on District Attorney's Office and mailing to Appellate Division with appropriate proofs of service; paralegal also mails copy of completed brief to client with form letter setting forth manner in which client can apply for permission to file a supplemental pro se brief.

- Approximately ten days after service of District Attorney's respondent's brief, Appellate Division Term calendar received.
- Individual staff attorneys responsible for sending their respective clients copy of District Attorney's brief and notice of argument.
- All cases with substantive issues argued by staff attorneys.

PROBLEMS:

1. Difficulty in ascertaining conflicts occasioned by other Legal Aid Bureau units having represented victim/complainant in criminal case; at present, review of records is performed manually.

Solution 1: Implement a Bureau-wide data base between the various units.

2. Automated legal research is not available to the LAB due to a lack of funding.

Solution 1: Allocate funds for Legal Aid to acquire an automated legal research capability.

3. Current hardware constraints prevent the use of the in-house automated brief bank.

Solution 1: Provide additional computers and training in use of in-house legal brief bank.

4. Staff are not adequately trained in use of existing automated systems. For those who are trained there are not sufficient computers.

Solution 1: Provide training for staff on use of existing automated system.

2: Provide additional computers for use by staff who are trained.

APPEALS UNIT
DISPOSITION OF APPEAL

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input:

- | | | |
|--|---|---|
| <ul style="list-style-type: none"> -Appellate Division order of dismissal pursuant to stipulation to discontinue. -Booklet of Appellate Division decisions -Appellate Division orders of affirmance, reversal or modification. -Same set of Appellate Division orders served upon Legal Aid Bureau by District Attorney's Office. -Client correspondence -Court of Appeals notification of judge to which leave application assigned. -Order denying leave to appeal to Court of Appeals. | <p>Approximately eight weeks following argument during a given Appellate Division term, a booklet of decisions is received from the Appellate Division. No individual copies of the courts memoranda exist. The court does, of course, send individual orders. Each staff attorney is responsible for notifying his/her clients of the outcome and for service of order the DA in cases in which appellant has prevailed, individual staff attorneys prepare applications for leave to appeal in their cases.</p> | <p>Client
District Attorney
Appellate Division
Court of Appeals</p> |
|--|---|---|

Output:

- Correspondence to client advising of outcome of appeal.
- Service upon District Attorney of copies of Appellate Division orders in cases in which appellant prevailed in Appellate Division.
- Application for leave to appeal to Court of Appeals, copies to DA and client or, in case where dissenting judge in Appellate Division, application for leave made by motion to this dissenting judge.

- Close file (with close-out letter to client) in cases where no leave application is filed.
- Record appeal outcome on file cover and in file.
- Close-out letter to client upon denial of leave application.
- Close file and mark cards re: denial of leave application.

NOTES:

- Upon receipt of Appellate Division memoranda and order, staff attorneys notify clients; in cases where no further appeal possible (e.g., where only issue was that of excessive sentence) file is closed and transcripts returned to Erie County Clerk's Office.
- In all other cases, an application for leave to appeal to Court of Appeals is prepared by staff attorney as case may be, within 30 days of service of order upon Legal Aid Bureau by District Attorney.

**APPEALS UNIT
FURTHER APPEALS**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input:

- Clients correspondence
- Court of Appeals order granting leave.
- Order of assignment
- Postcard acknowledging receipt of jurisdictional statement.
- Twenty-day notice
- District Attorney's brief.
- Argument notice.
- Court of Appeals order.

The procedure for perfecting an appeal to the Court of Appeals is much the same as that followed in the Appellate Division. Because of its having been deemed worthy of Court of Appeals review, the case does not, however, take on a certain importance.

Client
District Attorney
Court of Appeals
Erie County Clerk

Output:

- Client correspondence
- Motion for assignment
- Jurisdiction statement
- Brief and Appendix

NOTES:

- Upon receipt of order granting leave, staff attorney files with the Court of Appeals a jurisdictional statement and a motion that Legal Aid Bureau be assigned as counsel for indigent appellant.
- Staff attorney prepares brief and appendix; certifies record.
- Brief required to be prepared within 60 days of order granting leave; if brief not so served and filed, Court of Appeals sends a "twenty day" letter advising that brief must be filed within 20 days or a request for extension made within that time.

LAW GUARDIAN UNIT

The Law Guardian Unit represents children in Erie County Family court, as assigned by the Court. Children are represented who are involved in child protection proceedings, guardianship and custody proceedings, and proceedings to determine persons in need of supervision or juvenile delinquency. In addition, attorneys may be assigned to represent children in paternity proceedings, family offense proceedings, matters regarding the education of handicapped children, and hearing regarding violations and modifications of prior court orders. An appeals component provides appellant advocacy in appropriate cases.

FAMILY COURT
INTAKE

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Output:

- Open new file
- Prepare index card
- Enter information on computer
- Master card file
- Temporary orders
- Final orders

Secretaries record data, prepare files for return to court on adjourn date.

Law Guardians are supplied with petition and supporting documents.

Presentment Agency
Petitioner:

- Parent or Guardian
- Aggrieved Party
- Board of Education
- Probation Intake
- Mental Health
- Hospitals
- Assigned Counsel Program
- Interpreter
- Family Court Clerk
- Juvenile
- Private attorney
- Panel Law Guardians
- Compass House
- Counseling agencies
- Local police agencies
- Judges
- Neighbors
- Department of Social Services
- Relatives
- Child Protection
- District Attorney
- Shelters
- Legal Division
- Child care agencies
- Social workers
- Foster parents.
- Natural parents

Input:

- Petition and supporting affidavit/papers
- Information from client and parent/guardian
- Medical reports

NOTES:

- Family Court Intake is the responsibility of the Law Guardian assigned to the Intake Park of Family Court. The Law Guardian opens a file upon receipt of copy of petition from the presenting agency. Sometimes, the Law Guardian may receive a petition and referral in advance of the initial appearance. If so, the office will open a file, assign a file number, prepare an index card and enter information into the computer prior to the first court appearance. We do not always receive the petition and referral in advance of the initial appearance.

- There is a separate part of Family Court that hears all new paternity petitions. We receive a call from the court officer advising us that the judge/hearing officer has assigned us to a case. A Law Guardian then goes to the Paternity Part where he receives a petition and opens a file.

PROBLEMS:

1. Petitions are not always received in advance of initial hearing; therefore, the attorney has very little time to familiarize himself with the case prior to initial appearance.

Solution 1: Court personnel should give papers to LAB in advance of case being called for first appearance.

2. Support staff and attorneys are situated in different buildings and if information in a file is unexpectedly needed during the day, someone has to carry it to the court.

Solution 1: Provide Fax capabilities in both offices.

FAMILY COURT
FIRST APPEARANCE

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Output:

<ul style="list-style-type: none"> -Oral motions for the following: Dismissal, ACD, Determine Capacity, Release, Referral to Probation Service, Probable Cause Hearing, Convert Case to Neglect Proceeding -Temporary orders -Referral to agencies -Final orders -New file -Index card 	<p>Law Guardians meet client for the first time and familiarize themselves with the case.</p>	<p>Same as Intake</p>
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Input:

<ul style="list-style-type: none"> -Information provided by client, petitioner, teacher, representative from school, parent/guardian, Social Service worker, Co. Attorney -Notice of Alibi -Petition and supporting affidavit/papers -CPL 710.30 Notice -Motion for 1028 hearing 	<p>An initial interview is done with client and other interested parties who are present in court.</p>
---	--

NOTES:

- First appearance is synonymous to "initial appearance" as defined in Article 3 of the Family Court Act. Except for conflict situations, the intake process and first appearance are one and the same. Preliminary matters are taken care of at this juncture if they were not resolved earlier. Counsel is assigned to respondents. Temporary orders are entered.

- We accept assignments of putative fathers under the age of 18. We advise clients of nature of the proceedings. Advise clients of rights/responsibilities and ramifications of Order of Filiation. We do not represent a client on this type of matter past the first appearance.

- We also accept assignments from Family Court of those Respondents/Petitioners under the age of 18 in family offense proceedings. We advise clients of nature of the proceedings and possible ramifications of entry of an order of protection under §842 F.C.A. Where advisable, we enter into consent or stipulated orders of disposition, otherwise we do not continue representation past the first appearance stage.

PROBLEMS:

1. Increased volume of new cases makes it difficult to expend sufficient time on each case.

Solution 1: Increased attorney staff and investigative staff.

2. Courthouse lacks sufficient interview space for client/attorney confidential conference.

Solution 1: Court should make space available for interviews at courthouse.

3. Because we are still in early stage of case development, when we represent a child in a neglect or abuse proceeding, the respondents do not have attorneys as yet; so, possible plea bargain/disposition cannot be accomplished.

Solution 1: Provide for expedited assignment of respondent's counsel by the court.

4. There may not be a complete file available at this time, and there probably has been no investigation into history of case or interview with our client.

Solution 1: Increase investigative staff.

5. No modem connecting courthouse and main office computers.

Solution 1: Provide fax capability at the courthouse and the LAB main office.

FAMILY COURT
EARLY STAGE
CASE PROCESSING

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Output:

- Memorandum of Law
- Investigation
- Subpoenas
- Motions for Discovery
- Bill of Particulars
- Pre-trial motions pursuant to 332.1 F.C.A.
- Written motions
- Temporary orders
- Referral to other agencies
- Discovery
- Answers
- Motions

Investigators do intensive interviews-prepare motions-see witnesses-prepare subpoenas.

- Petitioner
- Presentment Agency
- Counseling agencies
- Local police agencies
- Interpreters
- Department of Social Services
- Witnesses
- Probation Services
- Complainants
- Co-counsel
- Child care agencies
- County Attorney
- Doctors
- Nurses
- Hospitals
- Natural parents
- Foster parents
- Private attorneys
- Assigned Counsel Program
- Relatives
- Mental Health Agencies
- Counselors
- Experts

Input:

- Investigation
- Information from client, natural parent, foster parents, caseworker
- Reports from counselors, schools
- Discussion with prospective witnesses
- Supporting affidavits
- Dispositional plans
- Medical reports/records
- Motions/orders to show cause
- Agency records
- Uniform case record
- Previous files
- Prior court records
- Social/psychological

Data is collected and an appropriate plan is prepared for the next court appearance.

psychiatric records or reports

- Service plan
- Previous orders/decrees
- Clinical evaluations
- Probation reports

Input/Output:

- Motions
- Discovery

NOTES:

- This is the stage at which we complete information gathering. Final decision on plea/trial are made. Investigators contact clients, social workers, relatives, etc. and prepare notes for attorney.
- This is often the first opportunity for in-depth investigation into the facts and circumstances of the petition. There is a review of events at the initial appearance. Discovery and pre-trial motion practice takes place at this stage.
- Adjournment from respondent's first appearance date are short in duration. Court lawyers can monitor progress and implement temporary orders.

PROBLEMS:

1. Heavy volume of new cases makes it difficult to gather all the information available about a particular client and his circumstances.

Solution 1: Increase attorney and investigative staff.

2. Compliance with strict time limitations for motion practice is difficult because the attorney who "opened" the file is still in the Intake Part of Family Court and still occupied with new cases when motions, etc. are due.

Solution 1: Increase attorney and investigative staff.

**FAMILY COURT
FINAL STAGE
CASE PROCESSING AND DISPOSITION**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Output:

- Evaluation from social worker
- Dispo. alternatives/plans
- Final orders
- Proposed dispositions
- Proposed pleas
- Permanency plans
- Service plans
- Recommendations

This stage culminates the Family Court referral process.

- Probation
- Child Mental Health Clinic
- Department of Social Services
- Division for Youth Presentment Agency
- Child Protection
- Witnesses
- Foster parents
- Natural parents
- Child care agencies
- Relatives
- Counselors

Input:

- Probation report
- Clinical evaluation
- Placement report
- Counselor's summaries
- Client input
- Parent input
- Family Court records
- Progress reports
- Dispositional plan
- Medical reports
- Final orders
- Permanency plans
- Service plans

All reports are reviewed - consideration is given to wants and needs of the child as well as what is in the child's best interest and an appropriate plan is prepared for submission to the judge.

- Experts
- Interpreters
- Local police agencies
- Drug/substance abuse
- Complainants
- Mental health agencies
- Substance abuse agencies
- Private attorneys
- Assigned Counsel
- Social workers
- County Attorney

Input/Output:

- Progress reports
- Final orders

NOTES:

- This area covers the post fact-finding stage up to an including disposition. It is our opportunity to evaluate the dispositional alternative chosen by the judge.
- Trial or plea proceedings are completed. Focus is now on dispositional alternatives.
- The objective here is to take all the information obtained through investigation and subsequent trial and develop a permanent plan for the child taking into account the child's best interests, needs and wishes.

PROBLEMS:

1. Diagnostic reports are generally not available prior to scheduled disposition date. Again, the lack of communication before hand puts the Law Guardian at a disadvantage.

Solution 1: Court should provide access to diagnostic reports prior to appearance.

**FAMILY COURT
APPEALS**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Output:

- 760 F.C.A. notice
- 354.2 notice
- Notice of appeal
- Briefs
- Motions to Appellate Division

Counsel for Dept.

Court reporters
Court clerks
Appellate Division

of Social Services
Presentment Agency

Input:

- Receive request to appeal
- Obtain transcripts

Input/Output:

- Correspondence with attorneys
- Briefs/Reply briefs

NOTES:

- The Legal Aid Bureau of Buffalo, Inc., has a full-time staff attorney who is responsible for the perfection of all Law Guardian appeals.

PROBLEMS:

1. Obtaining transcripts in a timely fashion is sometimes difficult.

Solution 1: Administration Court Reporter should require that transcripts be done in chronological order of request.

FAMILY COURT
POST TRIAL DISPOSITION

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Output:

- Independent evaluations
- Orders to Show Cause
- Notice of Motion
- Letters to judge
- Responses to inquiries from client
- Motions
- Motions for modification/enforcement

If a disposition needs to be changed or modified, law guardians are usually notified by the client and motions and/or orders are done.

Child Care Agencies
Board of Education
Counselors
Mental Health Agencies
Dept. of Social Svcs.
Division for Youth
Parents/relatives
Drug Treatment Agencies
Foster parents
Relatives
Experts
Assigned Counsel Program
Attorneys
Counselors
County Attorney
Social Workers

Input:

- Petitions for extension of placement.
- Reports from child care agencies.
- Final orders
- Petition alleging violation of orders.
- Evaluations
- Progress reports
- Information from foster parents, clients, family
- 392. S.S.L. Petition
- Motions
- Adoption proceeding
- Periodic reports
- Motions for modification/enforcement

In Family Court, a final order is not necessarily final. Many changes can be obtained from a judge if good cause is shown.

Assigned Counsel Program
Attorneys
Counselors
County Attorney
Social Workers

NOTES:

- Law Guardian continues to monitor case after disposition. We routinely handle inquiries from our clients and their parents. We check final orders received from the court clerk against our file.

PROBLEMS:

1. Legal Aid Bureau does not receive progress reports from child care agencies, probation offices or counselors. Therefore, the practice tends to be reactive rather than active. The Law Guardian is not made aware of allegations of violations or pending problems until the case actually returns to court.

Solution 1: Agency should provide Legal Aid with progress reports.

OVERVIEW

The Monroe County Public Defender's Office, which currently consists of 49 attorneys plus support staff, provides the full range of legal services which indigents are entitled to receive pursuant to the County Law, Executive Law and Family Court Act. Specifically, the Monroe County Public Defender represents indigents accused in Monroe County of offenses punishable by imprisonment in every local and superior court in Monroe County, at all phases of proceedings. Additionally, the Monroe County Public Defender represents (1) indigents on appeals pursuant to the Criminal Procedure Law, (2) indigent parolees alleged to have violated parole, and (3) indigents entitled to assigned representation in Family Court proceedings. The Monroe County Public Defender, which represents more than 12,000 clients a year, would benefit from improvements in information systems in two primary areas. First, as documented in the report, the Monroe County Public Defender's Office suffers from numerous inefficiencies as a result of its current reliance on a manual records keeping system, which requires repetitive entry of data and which hinders the ability to retrieve needed information. The Monroe County Public Defender is in the process of installing an automated records entry system on a networked computer system which hopefully will reduce and ultimately eliminate these problems. The second primary area of information flow inefficiencies involves the problems the Monroe County Public Defender experiences in obtaining needed information from other governmental bodies, such as NYSIIS reports, court dockets, and daily custody lists. Changes are needed to enable the office to obtain these reports directly and more efficiently.

1988
AGENCY FACT SHEET

ORGANIZATION: Monroe County Public Defender

CONTACT: Edward J. Nowak

PHONE: (716) 428-5210

WALK THROUGH DATE: December 13 - 14, 1989

OFFICE STAFFING:

SUPPORT STAFF:

of Lawyers: 49*

of Secretaries: 7

of Paralegal: 3

of Data Entry Clerks: 5

of Investigator: 7

of Legal Interns: 0

of Social Workers: 0

of Volunteers: Varies

of PDs:

12 plus NYS Police

of Town Village Courts:

23

of Town Village Justices:

46

of City Courts:

1

of City Court Judges:

7

of Sup./Criminal Ct. Judges:

16

of County Court Judges:

6

COUNTY SQUARE MILES: 673

POPULATION: 750,000

*There is a freeze on 2 Attorney positions

1988
AGENCY FACT SHEET

SOURCES OF FUNDING:

<u>Source</u>	<u>Type</u>
Local:	County
State:	T.C.I. Aid to Defense Parole Violation Grant Appeals Backlog Grant Fast Track Drug Program
Federal:	

ALL INFORMATION FROM 1988 ANNUAL REPORT:

CRIMINAL CASELOAD:

# of Total Assignments:	12,778
# of Felony Assignments:	2,562
# of Misdemeanor Assignments:	7,009
# of Felony Indictments & SCIs:	
# of Misdemeanor Trials:	119
# of Felony Trials:	83
# of Misdemeanor Closed other than by Trial:	2,405
# of Felonies Closed other than by Trial:	712

APPEALS:

# of Assignments:	174
# of Cases Pending: End of 1988	250
# of Briefs: Filed in 1988	123

1988
AGENCY FACT SHEET

PAROLE REVOCATION HEARINGS:

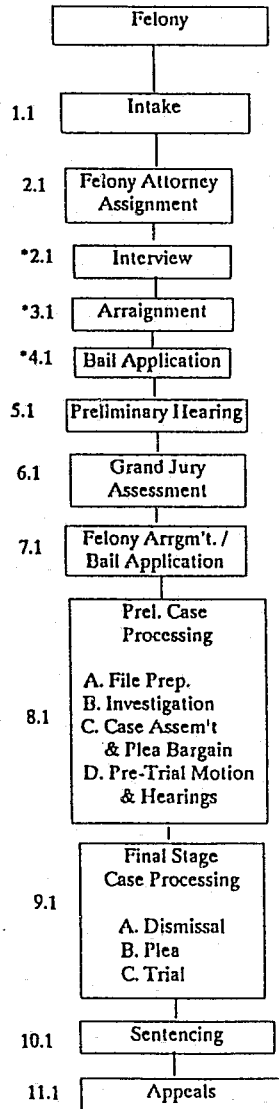
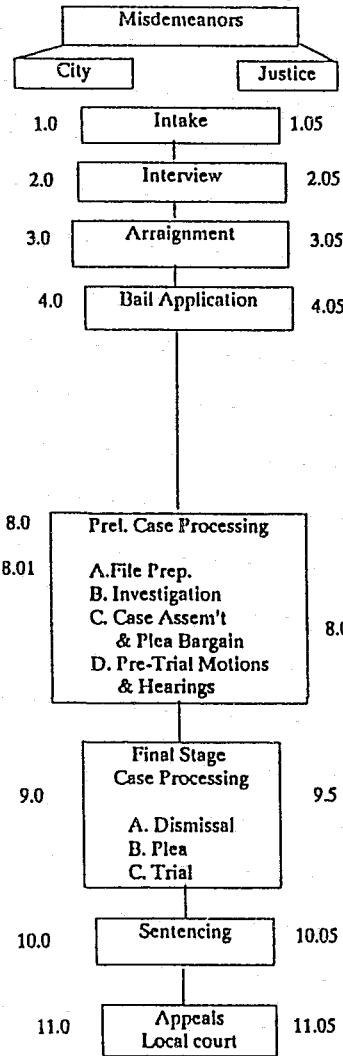
of Assignments: 304
of Revocation Hearings: 372

FAMILY COURT:

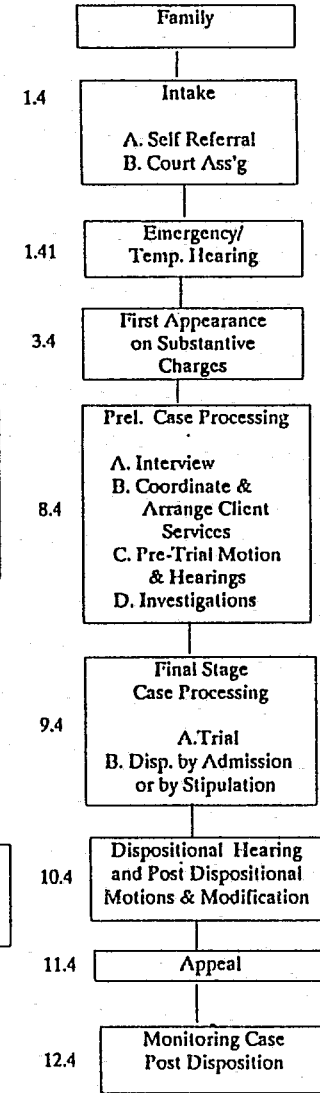
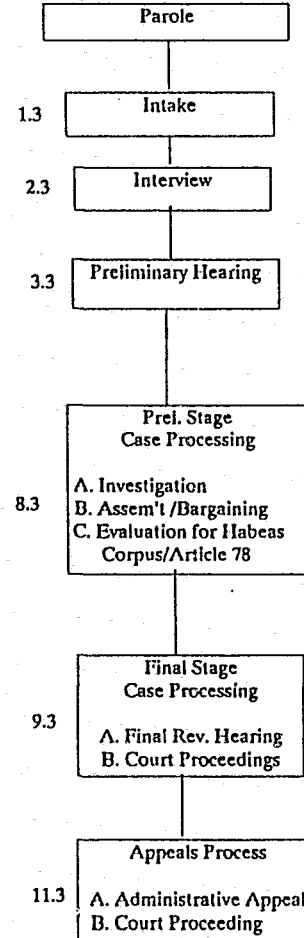
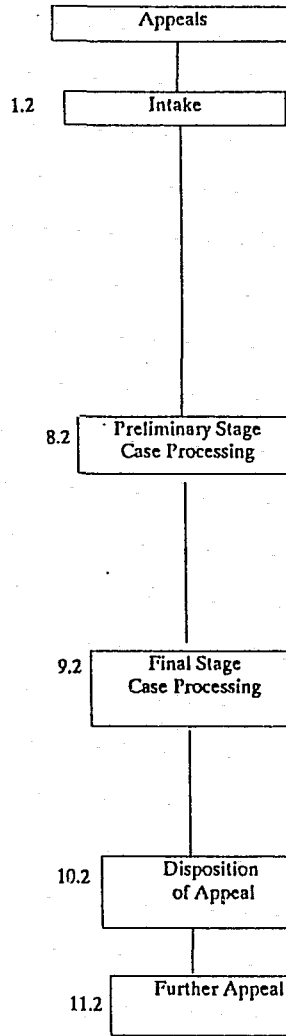
of Child Abuse & Neglect Assignments*: 534
of Support Violation Assignments: 35
of Family Offense Assignments**: 273
of Custody & Visitation Assignments: 136
of Paternity Assignments: 97
of Juvenile Delinquency Assignments: 2
of Persons in Need of Supervision (PINS) Assignments: 0

*Including modification of dispositional orders, extensions of foster care placement, foster care review, violations of dispositional orders, termination of parental rights, and Article 10 interventions.

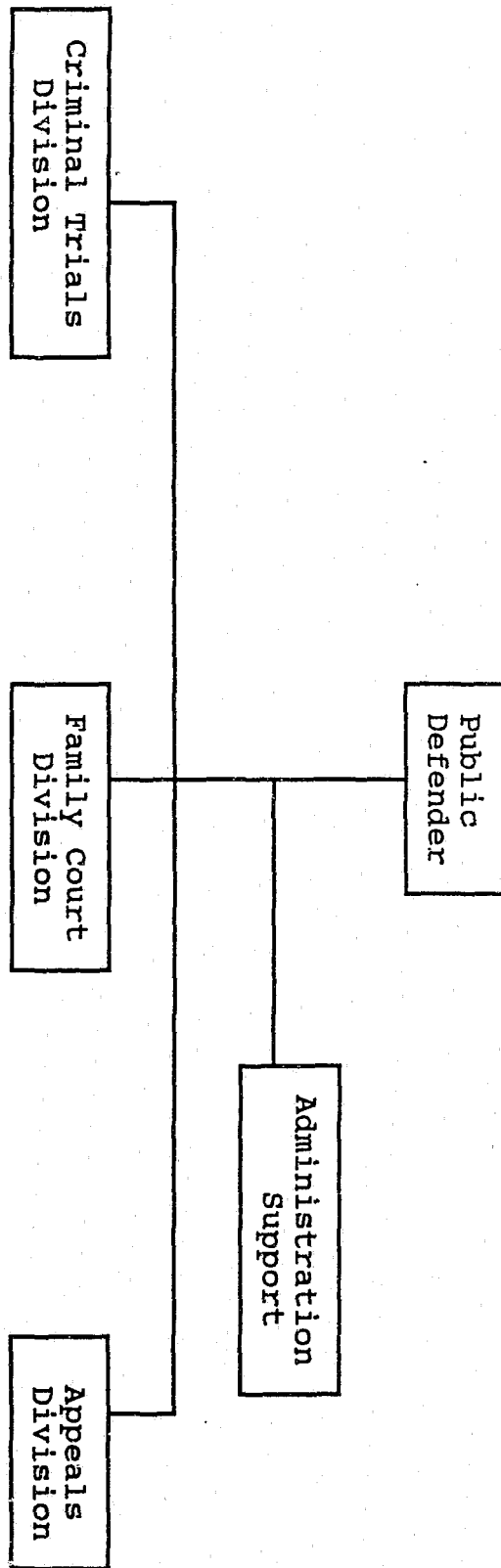
**Including violation of Family Court orders of protection.



* 1.1 to 4.1 same as 1.0 to 4.0



MONROE COUNTY PUBLIC DEFENDER



**CITY COURT
CASE INTAKE 1.0**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Custody list from Monroe County Transport
- Docket - arraignment
- Accusatory instruments including supporting depositions

- Prepare a basic file on each person in custody file.

Monroe County Sheriff
Dept. Transport
Rochester PD
City Court Clerk Off.
Pre-trial Release
DA's Office
NYSIIS

Output

- Eligibility of client.
- Confidential History - PD
- Waiver for pretrial release
- Accusatory instrument
- Supporting deposition
- NYSIIS

- Check each file for eligibility and conflict.

NOTES:

- The paralegal staff with the student interns arrive at the arraignment part of Rochester City Court approximately 1 1/2 hours before court starts. They get the custody list from the Sheriff's Department, the docket from Rochester Police Department and the accusatory instrument from the clerk's office and the NYSIIS from the District Attorney's office. They collate the accusatory instruments, NYSIIS (when available from the DA) and prepare an eligibility and confidential history and pretrial release waiver on each person in custody.
- The City Court of Rochester maintains a "white card" system which is a history of activity for individuals.

Opening file includes:

1. Noting on large, central file card the basics of client's personal history and the arrest (charges, court, attorney). One card per client contains all representation there by providing the client's history and current representation status.
2. The same information is entered in the computer, often with a several day delay.
3. A small card is opened for each charge. This is maintained in the section to allow easy access to the client's next court date and the status of the charges.
4. A file folder is provided to maintain paperwork.

PROBLEMS:

1. The rapsheets are rarely available to the defense at the time of intake.

Solution 1: Change the law to allow the Public Defender timely access to the rapsheet

2. Due to poor interviewing conditions we receive inaccurate and/or inadequate information. Interviewing conditions are inappropriate. Transport will not let the defender staff use the confidential provisions available.

Solution 1: Arrangements should be made to permit defender staff use of the secure private interview booths available in City Court.

3. Conflicts are difficult to ascertain because the arraignment docket is not close to the central file system. Defender staff often have to carry the docket from the court to the office and then back to court before arraignment.

Solution 1: An automated client history system would allow inquiry for conflict determination.

2: Place a computer terminal in City Court accessible by defense via modem.

3: Modem access to City Court dockets.

4. Secretaries may have to look four different places to answer a client's question due to redundant or incomplete recording of case information.

Solution 1: An automated case tracking system with terminals accessible to secretaries for inquiry purposes, would centralize case information and eliminate searching numerous card files to answer client questions.

5. Staff maintains a statistic log which is a manual record of violent felony cases. There is no quick way of retrieving statistics.

Solution 1: An automated case tracking system could generate statistical reports to better meet the needs of the Public Defender and save staff time in maintaining manual statistical log.

6. The 3x5 cards which are used to answer inquiries as to case status are not kept up to date.

Solution 1: An automated case tracking system with terminals accessible to secretaries would eliminate the need for creation of cards and could print out case summary information as needed.

7. Considerable secretary time is spent with calls from "in custody" clients.

Solution 1: Increase secretary to attorney ratio.

2: A voice mailbox and answering machine system would limit time the secretaries must spend handling these calls.

**CITY COURT
CLIENT INTERVIEW
ELIGIBILITY 2.0**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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<p>Output:</p> <ul style="list-style-type: none"> - completed eligibility - confidential history - waiver for pretrial release 	<p>-Interview prisoners for eligibility for assigned counsel, brief background interview for pending charges, personal references, waiver for pretrial release.</p>	<p>Pretrial Release Monroe County Sheriff</p>
<p>Input</p> <ul style="list-style-type: none"> - Pretrial release sheet obtained after interview 		

NOTES:

- Prisoners are interviewed in a non-confidential setting. There are often fifty prisoners to be interviewed by four student interns and two paralegals.

PROBLEMS:

1. There is a lack of confidential interview space in the City Court to carry out a meaningful interview in a confidential setting - often there is a prisoner standing between the interviewer and the person being interviewed. This is due to space constraints and overcrowding. Consequently, inadequate or inaccurate information is obtained during interviews.

Solution 1. Increase the amount of non-secure confidential interview space in the City Court.

**CITY COURT
ARRAIGNMENT 3.0**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

No new documents. Basic file from intake and interview used by the defense.

-Court advises defendant of charges, asks about attorney, asks Public Defender's Office if person is eligible for Public Defender's representation.

Court
DA's Office

NOTES:

- City Court will arraign about 50 to 70 people each day. Arraignments are held between 9:30 am and approximately 11:30 am.
- City Court uses a card system for historical information.

**CITY COURT
BAIL APPLICATION 4.0**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

No new documents. Basic file from intake and interview used by the defense.

Court asks for:
 1. Recommendation from DA.
 2. If defendant is eligible for release to Pretrial Release.
 3. Recommendation from defense.

Pretrial Release
 DA's Office

NOTES:

- NYSIIS may not be available and if available may not be accurate. There are three agencies having input - DA - Pretrial Release - Defense. Each agency relies on its own information which is not available to the other. The court, in addition, relies on its own records.

PROBLEMS:

1. The DA's office relies on its own documents which are not available to the defense.

Solution 1: Develop a uniform system of making the defendant's priorrecord (rapsheet) available to the defense. Change the law to allow defense timely access to the rapsheet.

2. City Court relies on the court records (City Court history card), which documents are not available to the defense.

Solution 1: Change the law to provide the defense timely access to the rapsheet.

3. The rapsheet is not available in 50% of the cases.

Solution 1: Change the law to provide the defense timely access to the rapsheet.

**CITY COURT
PROCESSING 8.0**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Output:

- | | | |
|---|--|--|
| <ul style="list-style-type: none"> -Basic file from case intake, file folder. -Big card marked. -Little card made and marked. -VFO referral sheet | <ul style="list-style-type: none"> -Misdemeanors, violations, non-violent felonies; opened file to attorney, big card marked, little card made and marked. -Drug case, A & B felony; opened file to attorney, big card marked, little card made and marked. -VFO; basic file and completed VFO referral sheet to VFO assignment attorney. -Vertical non VFO; basic file and completed referral to non VFO assignment attorney. -Big card contains historical record of client with the office. This big card is sometimes refered to as the "Tub Card". | <ul style="list-style-type: none"> DA Court Defendant |
|---|--|--|

NOTES:

- The paralegals bring the basic file along with the arraignment docket to the office. The paralegals separate the files to the 4 classifications noted in output. Output #1 (misdemeanors, etc.), are given to the clerk, the clerk opens the file, makes and marks the cards, and gives the file to the attorney. Output #2 (the drug cases), the paralegal assigns a county court attorney, completes a notification slip. The basic file is given to a city court secretary to open, create both cards, and given to the attorney. Output #3 (VFO's), the paralegal checks the case for conflicts and prepares a VFO referral sheet. The VFO referral sheet and basic file is given to the VFO assignment attorney. Output #4 (vertical non VFO's), are opened the same as output #1. When the attorney sees the client is on parole, the attorney then refers the case to the non VFO assignment attorney.

PROBLEMS:

1. The client's name, address, charges, and date of birth are written three times, on the file, big card, and little card. This redundancy is a waste of support staff's time and contributes to errors.

Solution 1: An automated case tracking system with a sufficient number of terminals for data entry and inquiry would eliminate this costly duplication of effort and reduce errors.

2. Marking and updating the little cards involves a tremendous amount of support staff time. The little cards are necessary because the files are kept by the attorney in date order. The cards are necessary to retrieve a court date if the client forgets, or if someone wants to find a file and does not know the next court date.

Solution 1: An automated case tracking system would eliminate the need for the card system.

**CITY COURT
CASE PROCESSING 8.01**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input:

- Investigation:
PD's Office
- Discovery: from
DA's Office

Output:

- Notice of motion and
motions
- Memoranda of law

-The attorney has a confidential interview with the client, where they review the allegation against the client and any investigations done by the PD's office. The client is advised of the relative strength or weakness of the DA's case along with the plea and sentence bargain. The client either accepts the negotiated plea and/or sentence or the case is scheduled for trial.

DA's Office
Court

CITY COURT
FINAL STAGE CASE
PROCESSING 9.0

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Output:
-Motions
-Memoranda of law

Categories of disposition:
1. Charges dismissed by
court on defense charges.
2. Client pleads guilty to
lesser offense.
3. Case proceeds to trial.

DA's office
Court

NOTES:

- Most City Court misdemeanors are scheduled for pretrial conference between the Court, District Attorney and defense attorney. If a disposition is suggested and is agreed to by the defendant, the case will be disposed of per the pretrial conference.

PROBLEMS:

1. The number of cases in City Court usually requires that the Court schedule up to 50 cases per day for pretrial conferences. This number in turn makes it impossible to effectively explain 50 conferences to 50 clients per day. The result is requests for adjournments to allow time to meet with clients to explain the proposed disposition. The problem is not in achieving a disposition, but rather in finding the time to explain it to the client so the client can make an informed decision about his case.

Solution 1: Increase attorney staff to better meet the needs of City Court caseload.

2. An automated link between the DA and Public Defender Offices would allow the DA to inform the defense of their plea offer in advance of the court date and allow communication to client prior to court date. This would reduce attorney time spent explaining offer in court.

**CITY COURT
SENTENCING 10.0**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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<p>Input: -Presentence investigations by Probation Department.</p>	<p>-There are two types of sentencing in City Court. First is negotiated sentencing on misdemeanor charges when most judges have indicated what the sentence will be at the time of the plea of guilty. The other type is the open sentence on a felony charge reduced to a misdemeanor for guilty plea.</p>	<p>DA Court Probation Dept. Community Services on Sentencing</p>
<p>Output: -Presentence memorandum by defense.</p>		

NOTES:

- The negotiated sentence is rarely changed from the pretrial conference and change of plea to the sentencing date. In most cases the negotiated sentence is imposed immediately after the guilty plea is entered. The open sentence results from the City Court judges refusing to make sentence promises on reduction from felony charges to misdemeanor pleas.

PROBLEMS:

1. Given current resources, treatment alternatives to incarceration are not optimally explored. The most serious case handled in City Court may be the felony charge reduced to a misdemeanor for plea and sentencing. The District Attorney has input through the Probation Department. However, the defense has little input in the presentence investigation. The paralegal's time is used in the case intake and case processing procedures. The attorney's time is used up by case evaluation and case disposition. This leaves little time for preparation of defense presentence memoranda and alternatives to incarceration. The courts look favorably on alternatives to jail.

Solution 1: Increase staffing for Defender Based Advocacy Service.

2: Expand Alternatives to Incarceration program funding.

APPEALS - CITY COURT 11.0

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input: -Transcript	-City Court appeals are recorded in County Court.	DA County Court
Output: -Notice of appeal -Brief		

NOTES:

- City Court attorneys are responsible for appeals from City Court to County Court.

**JUSTICE COURT
CASE INTAKE 1.05**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Intake:

- Accusatory Instrument
- Pretrial release form

Court
Police
Jail
DA

Output:

- Statistical sheet
- Secretary does entry on Statistical sheet.

NOTES:

- The vast majority of cases opened in the Town Court section are referred by the local courts. Sometimes a defendant will come to us on his own or through law enforcement agency referrals. Paralegal does intake interview in the jail.
- Each police department has a list of Public Defenders' phone numbers.

PROBLEMS:

1. Determining the exact nature of the charges is sometimes difficult as accusatories may not be available for several days until mail arrives. (The criminal information can be defective).

Solution 1: When accusatory instruments are filed with court, the court clerk should, where available, fax/modem them to Public Defender Office.

2. The office is dependent on the jail to determine when a client has just been picked up on charges. The jail intake is not always accurate. Thus, clients may spend a day in jail before being interviewed.

Solution 1: The jail's custody list should be more detailed and more precise to enable attorneys to discover if a new detainer has been lodged or if a person is newly incarcerated.

**JUSTICE COURT
CLIENT INTERVIEW/ASSIGNMENT 2.05**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Output:

- | | |
|--|--|
| <ul style="list-style-type: none"> -Eligibility interview form -Small card for each charge -Big (tub) card for each client. -File folder | <ul style="list-style-type: none"> -Attorney, paralegal or intern completes financial affidavit and background. -Attorney completes file and statements and gathers all possible information re: bail -Town Court attorneys are assigned. -File is opened. |
|--|--|

NOTES:

Opening file includes:

1. Noting on large, central file card the basics of client's personal history and the arrest (charges, court, attorney). One card per client contains all representation history and current representation status.
 2. The same information is entered in the computer, often with a several day delay.
 3. A small card is opened for each charge. This is maintained in the section to allow easy access to the client's next court date and the status of the charges.
 4. A file folder is provided to maintain paperwork.
- Each town court attorney is assigned to several town courts and represents all indigent defendants with crimes in those towns. Therefore all charges arising in any town are automatically referred to the attorney assigned to that town court.

MONROE COUNTY PUBLIC DEFENDER

- Certain types of felony cases are automatically assigned to superior court attorneys (most notably violent felony offenses and class A & B drug felonies). All other cases are assigned as above.
- In custody clients are usually seen by a paralegal for a screening interview, and then if eligible, an attorney follows up as soon as possible.

PROBLEMS:

1. Difficulties in verifying employment/school/housing information for bail papers.

Solution 1: Additional defender based advocacy staff capable of performing this function.

2. There is duplication in the recording of information on the various cards and files.

Solution 1: An automated case tracking system would eliminate the need for costly duplication of effort in creating the various card systems.

3. Due to inadequate space in the jail for attorney/paralegal interviews with clients attorneys often wait long periods to get in jail or are turned away unable to meet with client.

Solution 1: Make use of the attorney/client visiting booths in the contact visiting area of the jail.

**JUSTICE COURT
ARRAIGNMENT 3.05**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input: Accusatory	-Formal reading of charges by Judge.	Court DA
	-Plea is entered	
Output: -Case file -Docket for Justice Court	-Notations by attorneys on case file	
	-Attorneys note events on docket	

NOTES:

- In the vast majority of cases a not guilty plea is entered.
- Initial plea bargaining begins: often minor cases and first-time misdemeanor offenders have their cases disposed of.
- Attorneys maintain case files in their offices.
- Attorneys rely on clerical staff for updating cards.

PROBLEMS:

1. Persons are arraigned in Justice Court without the presence of assigned counsel, and often without notice to the Public Defender. Courts do not notify Public Defender of the pendency of the charges.

Solution 1: The Justice Courts should use fax or modem to transmit the arraignment information for indigents to the Public Defender's office.

2. Dockets with notations for each Justice Court are not returned to secretaries for followup recording of events.

Solution 1: Additional training for attorneys to return the updated event information on the docket to the secretaries.

- 2: An automated link at the Justice Court level to the Public Defender's office would allow transfer of event information directly to the Public Defender's office.

3. The Assistant Public Defenders do not have access to the rapsheet. This makes it difficult to prepare for arraignment.

Solution 1: Change the law to allow the Public Defender timely access to the rapsheet.

**JUSTICE COURT
BAIL APPLICATION 4.05**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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No New Documents are opened at this time.

-Bail applications to the town court judge are phoned. -Bail may be reviewed through an application in County Court.

Pre-Trial Services Corp. Court DA Social Service Agency

NOTES:

- Most bail applications are from intakes received through the mail. The bail situation is generally resolved prior to the formal arraignment.

PROBLEMS:

1. There is a problem obtaining sufficient reliable information regarding the client's living, employment, mental health and other background to convince a judge to release him or lower bail.

Solution 1: Increase defender based advocacy funding and Alternatives to Incarceration funding to allow for additional staffing for these programs.

2. Attorneys have time constraint problems in assisting clients with their needs to obtain services of social treatment agencies (such as arranging drug treatment) to change living situations. Additionally, attorneys lack the time to best deal with clients in need of longer - term emotional support.

Solution 1: Increase defender based advocacy funding and Alternatives to Incarceration funding to allow for additional staffing for these programs.

3. Attorneys experience difficulty contacting friends and relatives of the client to try to arrange posting bail if bail is set.

Solution 1: Increase defender based advocacy funding to allow for additional staffing for these programs.

4. Difficulties frequently arise when clients have multiple charges in several courts. These include: (1) more than one judge holding a client in custody; (2) duplication of effort in attempting to arrange bail or release dealing with multiple district attorneys; (3) the logistical difficulty of finding out what charges in which court are detaining a client and then contacting all the relevant people.

Solution 1: The jail list should more accurately reflect every detainer which is lodged.

2: An automated Defendant Status System would assist attorneys in knowing which defendants are out on bail or ROR.

3: Change the law to allow the Public Defender timely access to the rapsheet.

5. The lack of the rapsheet requires relying on the large cards (office client history) to make bail application.

Solution 1: Change the law to allow the Public Defender timely access to the rapsheet.

**JUSTICE COURT
PRELIMINARY
CASE PROCESSING 8.05**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Output: -Motions -Requests for investigation -Investigation reports	-Majority of plea bargaining occurs during this period. -Attorneys attempt to divert clients with non-criminal justice problems from system.	Court DA Witnesses Social Services Agency
Input: -Statements from witnesses -Discovery -Responses to motions	-Extensive information gathering from any source available. -Case assessment and client advisement are the basis of any action. -Most legal research occurs then. -Notes for each step in the proceedings are based on the file folder. -The next court date is also recorded on the small card.	

NOTES:

- The processing stage mainly concerns gaining all possible information regarding a case and a client, and then attempting to settle the case, if possible, short of trial. The steps include detailed client interviews, witness interviews and review of discovery materials prepared by the District Attorney's Office.
- Attempts are made throughout the period to settle cases through non-criminal means. These include:
 - Pleas to non-criminal violations.
 - Diverting clients with mental health, drug, alcohol, emotional or social problems from the criminal courts to the appropriate agency or people for assistance.
 - Dismissing improper charges.

- Preliminary pre-trial steps begin with the omnibus motions by attempting to learn all evidence available to the prosecution and to suppress all illegally obtained evidence.
- Hearings are often held as part of the pre-trial process, both to attempt to suppress evidence and to sharpen the issues for trial.
- Witness interviews, photographs, diagram measurements and other fact-gathering is done by the investigations section.

PROBLEMS:

1. Attorneys have difficulties in gaining enough information regarding the charges to prepare omnibus motions since most documents (discovery, accusatories, etc.) move by mail.

Solution 1: Institute the use of fax or modem for sending information to attorneys where possible.

2. The case loads are too high for beginning attorneys. This makes training more difficult. (Town Courts workload is approximately 500 - 600 cases per attorney per year closed).

Solution 1: Increase attorney staff to better handle caseloads.

3. The town court staff, since it handles misdemeanors, have requests for investigations handled as a low priority.

Solution 1: Increase investigative staff to better handle requests for investigations from the town court attorneys.

4. There is difficulty in maintaining client contact as cases are placed on trial calendar and are sometimes not settled for months.

Solution 1: An automated notification system would streamline the process of maintaining client contact by generating letters to clients.

5. The Public Defender has a problem gaining access to reports maintained in law enforcement agencies, such as calibration documents, tests, hospital records, accident reports, or other agencies. This is sometimes difficult and always time consuming.

Solution 1: Expand defendant rights to discovery material to accelerate disposition of case.

6. Much time is spent recording on the small index cards the next court date for every charge.

Solution 1: An automated case tracking system could reduce time and costly duplication of effort for secretarial staff responsible for creating and maintaining the card system.

7. Current staffing constraints limit use of paralegals on such things as bail applications, social work etc.

Solution 1: Increase paralegal staff to provide additional paralegals to work on bail applications and social work needs.

MONROE COUNTY PUBLIC DEFENDER

**JUSTICE COURT
FINAL STAGE CASE PROCESSING 9.05**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input: -Court decisions	-When acceptable to a client a plea may be entered to the charge, or to a lesser charge.	Court DA Pre-trial Services Corp.
Output: -Trial memoranda -Requests to charge -Trial documents	-If neither disposition or dismissal occurs, a trial is held to settle the issues. -Trial memoranda and requests to charge are prepared by the attorney and formally submitted. -The attorney personally prepares written exhibits, notes, evidence, etc. necessary for trial and maintains the trial file.	

NOTES:

- When a client successfully completes a diversion program his case is disposed of according to the terms of his Pre-Trial Diversion contract, usually by a lower plea or ACDs.
- First time offenders with minor misdemeanors (e.g., petit larceny) usually are granted ACDs.
- The majority of the cases involve a negotiated settlement involving the judge, DA, attorney and client. In these cases it is vital to spend time with the client discussing his or her options and rights and explaining the court proceedings.
- Trials often occur a year or more after the charges are brought.

PROBLEMS:

1. The Public Defender does not have timely access to the rapsheet. Thus, there is a problem determining whether a plea may affect a client's previously imposed sentence of probation or parole.

Solution 1: Change the law to allow the Public Defender timely access to the rapsheet.

2. Court dockets are rarely available more than a day before court. Consequently, this creates problems in the plea bargaining process, which is usually done on a last minute basis on the day the client is due in court.

Solution 1: The use of fax machines in the courts to transmit the court docket to the Public Defender would allow the Public Defender time to prepare for plea bargaining.

3. It is difficult keeping track of clients during many months of waiting for a trial to be set.

Solution 1: An automated notification system could generate letters to clients, on a regular basis, without greatly impacting on secretaries' time.

**JUSTICE COURT
SENTENCING 10.05**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input: -Pre-Sentence Investigation (PSI)	-Probation Department prepares PSI. -Final disposition of the case is noted on the file folder.	Court DA Jail Probation Department
Output: -Large tub (history) card -Small card -Case file	-Once the file is closed the ultimate disposition is recorded on the client's large (history) card and the small card is placed in the file.	

NOTES:

- Generally the defense gathers all information which would be helpful to the client including treatment reports, work reports, restitution proof or the like, then presents the information to the court orally on the sentencing date.

PROBLEMS:

1. There is a problem in closing case files in that the duplicate recording of information makes it difficult to change/remove all the various cards.

Solution 1: An automated case tracking system would reduce the duplication of effort in updating information on the various cards.

**FELONY
ATTORNEY ASSIGNMENT 2.11**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input:

- Referral from local court attorney
- Referral form to attorney from assigning attorney
- Open file folder with case information
- Big and small cards

Court
Defendant

Output:

- Enter file information onto computer
- Referral back to arraignment court for assignment to private attorney due to Public Defense having conflict

NOTES:

- All Class A and B felony drug cases; all violent felony offenses (VFO) cases, and all non-VFO cases that are pending Grand Jury action are assigned to an experienced felony court attorney on a vertical basis.

PROBLEMS:

1. Insufficient information from court, Public Defender files, and the District Attorney results in cases being processed and assigned in-house that should be assigned out of the office due to a conflict. Conflicts are sometimes not discovered until the day of the preliminary hearing which results in an adjournment of hearing.

Solution 1: An automated client history system with a terminal accessible via modem in City Court, would assist in conflict resolution.

**FELONY
PRELIMINARY HEARING 5.1**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Output:

- Investigation request police reports and witness statements
- Bail papers
- Referrals to support counseling services
- Feedback from such services

- Court
- DA
- Bail Bondsman
- Pre-Trial release
- Pre-Trial Diversion
- Defendant's family
- Defendant's employer

PROBLEMS:

1. Often an attorney has only a two-day notice before a hearing is held. Due to limited investigating resources, witness interviews prior to hearing are rarely done. Numerous clerical steps cause delay in getting paperwork to proper attorney. Preparation time could be saved if attorney had access to information concerning client's custody status and the existence of other detainer lodged against client. Attorney often does not get copy client's statement to police or witness statements from court or District Attorney until the time of hearing.

- Solution 1:** Increase investigative staff to perform witness interviews prior to hearings.
- 2: An automated case tracking system with a link to the court system to allow the Public Defender inquiry access to client's custody status and any other detainer lodged against him.
 - 3: Accelerate case disposition by giving broader discovery.

**GRAND JURY
ASSESSMENT 6.1**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Plea offer received from DA
- Report from investigator
- Discovery
- Grand Jury notice
- Notice of Intent to Testify
- Waiver of immunity form if testifying

DA

- Defendant
- Counseling/Treatment agencies
- Pre-Trial Diversion
- Defendant's employer
- Defendant's family

Output:

- Notifying DA CPL 190.50 (5)(A)

Input/Output:

- Pre-Trial diversion

PROBLEMS:

1. There may be delays in getting Grand Jury notices to the proper attorneys because the front desk receptionist does not have current information on attorney assignment.

Solution 1: Attorney staff need training on the procedures to inform the receptionist of new case assignments.

**FELONY ARRAIGNMENT
BAIL APPLICATION 7.1**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Output:

- Copy of indictment and 710.30 notice
- Client interview (if new case to office) for eligibility
- Pre-trial release information
- Notify client of arraignment date
- Bail status information

Court

- DA
- Pre-trial felony
- Social agencies
- Probation
- Monroe County Court
- Arresting agency

Input:

- Grand Jury rising
- Court dockets

NOTES:

- Initial intake and file preparation procedures will be followed on cases assigned for first-time to Public Defender's Office in superior court. They are primarily Violation of Probation (felony), fugitive matters and sealed indictments.
- For cases that were "vertically assigned" prior to Grand Jury action, the assigned attorney will appear at indictment arraignment and make bail application at arraignment.

PROBLEMS:

1. Due to a lack of direct access to court clerk's computerized docketing procedures, there is not much prior notice of matters originating in superior court. Daily, a paralegal goes to and from court at 5:00 pm to get the next day's dockets, which is the first notice of next day's cases for arraignment.

Solution 1: Arrange to have the court transmit the next day's docket via modem or fax to the Public Defender's office.

2. When person is arrested on a violation of probation or an indictment warrant, Public Defender will usually not be alerted until case is docketed. Consequently, a person might sit 2-4 days in jail without representation.

Solution 1: The jail's list of the custody status of inmates should provide more precise and detailed information.

**FELONY PRELIMINARY CASE
PROCESSING 8.1**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input: -Discovery - from DA	-The attorney has a confidential interview with client where they review the allegation against client and any investigations done by the PD's office. The client is advised of the relative strength or weakness of the DA's case along with the plea and sentence bargain. The client either accepts the negotiated plea and/or sentence or the case is scheduled for trial. We contact social agencies in an effort to improve plea/sentence offers.	DA Court Social Agencies Defendant's employer
Output: -Notice of motion and motions -Memoranda of law -Investigation from PD's office -Referrals to social agencies		

NOTES:

- For the "vertically" assigned felony cases, initial attorney/client conferences have already been held to discuss contents of case and possible pre-indictment dispositions. After indictment, such conferences generally related to motions, hearings, and trial strategy, as well as post-indictment plea possibilities.

PROBLEMS:

1. There is a problem maintaining updated locations and phone numbers of out-of-custody clients.

Solution 1: An automated client notification system would assist the Public Defender in maintaining updated client addresses.

2. There is a loss of contact with social agencies working with defendant (such as when defendant drops out).

Solution 1: Social service agencies should provide feed back to the Public Defender as to when a client drops out.

- 2: Increase Defender Based Advocacy program funds for corrections.

**FELONY
CASE PROCESSING 9.1**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

<p>Input:</p> <ul style="list-style-type: none"> -DA's response to motions Court decision on pre-trial motions. <p>Output:</p> <ul style="list-style-type: none"> -Motions -Memoranda of law 	<p>Categories of disposition:</p> <ol style="list-style-type: none"> 1. Charges dismissed by court on defense motions. 2. Client pleads guilty to lesser offense. 3. Case proceeds to trial. 4. Client pleads guilty as charged with sentence promise. 5. Client picks up new charges, plea negotiations reopened. 	<p>DA Court</p>
---	---	---------------------

PROBLEMS:

1. Due to some statutory restrictions on plea bargains, many indicted cases which could be disposed of through plea bargains are forced to go to trial.

Solution 1: Amend the non-violent felony 2nd offender laws to eliminate the plea bargaining restrictions.

**FELONY
SENTENCING 10.1**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

-Pre-sentence Investigation
(PSI)

Probation
Court

Output:

-Defendant's Pre-Sentence
Memorandum

DA
Defendant

Input/Output:

-Letters for and against
defendant

Defendant's Employer
Defendant's Family
Social Agency

PROBLEMS:

- The Pre-sentence Report (PSI) is not given to defense counsel until moments before sentencing, which limits opportunity to correct misinformation. Probation does not seek input from defense in preparation of PSI. Probation provides copy of PSI directly to court and usually on the day before sentencing.

Solution 1: The Public Defender asks that local Probation Departments comply with the law and provide a copy of the Presentence report at least a day before sentencing.

MONROE COUNTY PUBLIC DEFENDER

**FELONY
APPEALS 11.1**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Output:

- Notice of Appeal form filed
- Waiver of Appeal signed by client
- File closed

Defendant
Court

INTAKE - APPEALS 1.2

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Client correspondence
- Appellate Division Order
- Notice of Appeal
- Letter from Administrative Court Reporter
- DOCS information
- DOCS information

- Client correspondence to get assigned.
- Order of the Appellate Division, Fourth Dept.
- Photocopy of Notice of Appeal from private attorney

- Client
- Private Attorney
- Appellate Division
- Dept. of Correctional Services (DOCS)
- Administrative Court Reporter

Output:

- Defendant's Affidavit
- Letter re: assignments
- Appeals Assignment Log
- Case Data Entry
- Case file
- Letter to Appellate Division: conflicts
- Letters to client
- Master Card System updated

- Letter from Administrative County Court Reporter detailing case.
- Department of Correctional Services (DOCS) information re: client location.
- Send Client Defendant's Affidavit relating to his appeal.
- Write to Administrative Court Reporter regarding information of new assignments.
- Attorney assigned for correspondence.
- Enter assignments in appeals log book in chronological order.
- Enter data in computer database.
- Open file.
- If conflict, letter to Appellate Division, Fourth Dept.
- Letter to client.
- Entry of information on central master card system in Monroe County Public Defender's Office

NOTES:

- The assignment of attorneys is done on a strict rotating basis by secretary.
- The letter to the client includes a memorandum which explains appellate process.
- Upon receiving order of assignment, we check our records and record all relevant information as to case and determine if conflict exists.
- The attorney assigned for correspondence purposes is not necessarily the attorney who will brief the case. Rather, brief assignments are based on one master list, with cases ordered by due date.
- Although this report refers to the Appellate Division, Fourth Department as the appellate court, in appeals from local criminal courts the Monroe County Court is the intermediate appellate court with which the Monroe County Public Defender deals.
- This chart does not include People's appeals.
- About 20% of the appellate clients of the Monroe County Public Defender were not represented by the Monroe County Public Defender at the lower court.

PROBLEMS:

1. The Appellate Division order does not contain sufficient information, such as location of client and nature of conviction to open a file, thereby creating a delay.

Solution 1: The Appellate Division order should provide sufficient information to enable the Public Defender to open a case file without undue delay.

2. Appellate Division recently switched from one order for many clients to an individual order for each client. This causes unnecessary paperwork and increases the likelihood of the Public Defender missing an order.

Solution 1: The return to the use of one order for many clients would allow for a decrease in unnecessary paper work and reduce the likelihood of the Public Defender missing an order.

3. There is duplication of effort and greater margin for error in dual entry of information on computer database and central master card system of the Monroe County Public Defender's Office.

Solution 1: An automated case tracking system networked with sufficient terminals for update and inquiry purposes would reduce costly duplication of effort used in creating the card files and updating the existing computer data base.

4. DOCS will only provide information on the locations of three inmates per request for information. The Appellate Division will not provide the location of an inmate on Order.

Solution 1: Provide the Public Defender inquiry only access to the DOCS computer.

- 2: Providing more information regarding the location of more inmates on Appellate Division Order would save valuable time for the Public Defender.

APPEALS CASE PROCESSING - PRELIMINARY STAGE 8.2

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- | | | |
|---|--|--|
| <ul style="list-style-type: none"> -Miscellaneous correspondence from client -Administrative Court Reporter notification of filing of transcript -Court's notification of filing of transcript -Pre-sentence Investigation Report -Order granting stay -Information from correctional facility re: client achievements -Court order regarding summary reversal | <ul style="list-style-type: none"> -Summary Reversal Motions where transcript is not filed by one year after conviction date a motion is made for reversal of conviction. | <ul style="list-style-type: none"> Client Appellate Division Court reporters DA Private attorneys |
|---|--|--|

Output:

- Correspondence to client
- Record transcript filing date on computer database
- Notify client of due date
- Pre-sentence Investigation Motion
- Stay application
- Letter to court reporter regarding status of transcript
- Summary Reversal Motions
- Contact private attorney who represented client below to obtain relevant papers

NOTES:

- Stay applications are done only where we know of potential meritorious issues or if a short term of sentence would result in appeal being relatively meaningless, unless stayed.

- Corresponding attorney is responsible for insuring that the case is ready to be perfected by briefing attorney without undue delay.
- Summary Reversal Motion, although not granted, results in the Appellate Division applying pressure on court reporter to file transcript.

PROBLEMS:

1. There is unnecessary extra clerical work created by duplicate notification of filing of transcript.

Solution 1: An automated case tracking system could generate notifications of filing of transcripts without creating extra clerical work.

2. Transcripts are filed missing important dates. Briefs' due dates are incorrectly set based on these premature filings.

Solution 1: Administrative Court Reporter for the judicial district should develop an automated system for insuring that all court dates are transcribed before minutes are filed.

3. The variance in efficiency of court reporters results in transcript filings and brief due dates out of sequence with dates of conviction.

Solution 1. The Appellate Division should implement transcript filing requirements and deadlines to parallel its requirements for the filing of briefs by assigned counsel.

MONROE COUNTY PUBLIC DEFENDER

APPEALS CASE PROCESSING - FINAL STAGE 9.2

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input:

- | | | |
|--|---|--|
| -Miscellaneous Correspondence | -Motion to Preclude is made if District Attorney is very late in filing respondent's brief. | Client
DA |
| -Stipulations of Discontinuance | | Appellate Division
Administrative Court |
| -Letter of Appellate Division extending time to file brief | | Reporter |
| -District Attorney's brief | | |
| -Date of argument | | |

Output:

- Miscellaneous correspondence
- Stipulations of Discontinuance
- Letter requesting extension of due dates
- Letter advising court reporter of missing transcript dates
- Briefs (including Anders briefs)
- Stipulations as to records
- Motion to Preclude District Attorney's brief
- Record filing of brief in brief log book
- Record filing of brief in database
- Generation of oral argument list
- Indexing of briefs for brief bank
- Preparation and filing of brief for brief bank
- Mailing of briefs to client
- Notice to the Appellate Division of brief filings and stipulations
- Oral argument

NOTES:

- There is usually oral argument of each appeal, except in those cases in which the only issue is length of sentence.
- Although most of the appellate assignments require the Public Defender to write a brief, review of the record occasionally reveals either that there are no issues to be briefed or that there are no issues to be appealed. In those cases the office will seek a Stipulation of Discontinuance.
- In 1989, the Appellate Division changed rules to require briefs to be filed within 120 days from the filing of the transcript. Consequently instead of eight filing deadlines a year there are now over 100.

PROBLEMS:

1. After a client stipulates to discontinue his appeal, the stipulation goes to the District Attorney for signature. The Public Defender's request that the District Attorney return stipulations to us instead of forwarding to the court is sometimes ignored. This results in the Monroe County Public Defender not knowing the status of the case.

Solution 1: The Public Defender's request that the District Attorney return stipulations to the Public Defender instead of forwarding them to the court where they are sometimes not speedily acted upon.

- 2: The District Attorney could notify the Public Defender of case status via fax or modem link.

2. The Appellate Division does not meet in the summer months which causes long delays in arguing cases and rendering decisions.

MONROE COUNTY PUBLIC DEFENDER

DISPOSITION OF APPEAL 10.2

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- | | | |
|---|---|--|
| -Order of dismissal pursuant to stipulation | -If conviction affirmed we seek permission to appeal to the Court of Appeals. | Client
Appellate Division
Court of Appeals |
| -Order of remittitur | -If the result of the appeal | DOCS |
| -Order of affirmance, modification or reversal | is that further proceedings are ordered we obtain order | DA |
| -Order granting denial of leave to appeal | bringing client back to Monroe County Jail. | Trial Judge |
| -Body order | | |
| -Letter from Court of Appeals as to which judge will decide leave application | | |

Output:

- Miscellaneous correspondence with client
- Leave applications
- Application for a body order
- Certified copy of order to District Attorney, correctional facility and/or parole
- Close file
- Record information on computer database
- Record information on central master card system
- Record information in appeals log book

NOTES:

- Appeals that are perfected can result in one of four types of Orders of the Appellate Division: affirmance, modification, reversal, or remittitur. Depending on the court's resolution of the appeal different steps need be taken by the Monroe County Public Defender.

- If Appellate Division orders further hearings at trial court level, will represent client at hearing.

FURTHER APPEALS 11.2

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input:

-Order granting leave	-The Court of Appeals sends	Client
-Order of assignment	counsel notice when there	DA
-Postcard acknowledging	are twenty days left to	Court of Appeals
jurisdictional statement	perfect an appeal. If not	County Clerk
-Twenty day notice	timely perfected within 20	Trial Judge
-District Attorney's	days an automatic	Supreme Court
brief	preclusion.	DOCS
-Date of argument notice	-If Court of Appeals dis-	Parole
-Order of disposition	position requires further	
-Order denying/granting	local court proceedings,	
writ of certiorari	we seek order returning	
-Body order	client to Monroe County Jail	

Output:

- Miscellaneous correspondence with client
- Motion for assignment
- Jurisdictional statement
- Stipulation as to record
- Brief
- Petition for a Writ of Certiorari
- Motion for body order

NOTES:

- In approximately five to ten cases per year, leave is granted to the Court of Appeals. In those cases the appellate process starts again, including reassignment of counsel, the preparation of a new brief and additional oral argument.

INTAKE INTERVIEW - PAROLE 1.3, 2.3

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

-Jail list	-Record information on	Parole
-Notice of Violation and	parole book and on	County Court
Violation of Release	computer in chronological	Monroe County Jail
Report from the	order and database.	Client
Division of Parole		

Output:

- Entry of name on parole logbook
- Interview assignment
- Eligibility form
- Assign to attorney
- Notice of Appearance
- Open file
- Mark large card file of Monroe County Public Defender's Office
- Contact County Court judge for assignment

NOTES:

- In the process of opening parole cases the office checks for existence of conflict of interest. If a conflict exists, private counsel is assigned if parolee is financially eligible.

PROBLEMS:

1. There is duplication in entry of assignment in large card and computer database.

Solution 1: An automated case tracking system would eliminate the costly duplication of effort in entry of case information on the large card and in the computer data base.

MONROE COUNTY PUBLIC DEFENDER

2. An attorney must manually pick up jail list on a daily basis.

Solution 1: An automated link or use of fax between the jail and the Public Defender could facilitate daily pick up of the jail list.

3. There is inadequate space in jail for attorney/paralegal interviews. Attorneys often must wait a long time to get in jail or are turned away unable to meet with client.

Solution 1: The jail should make use of the contact visiting rooms for attorney/defendant interviews.

PRELIMINARY HEARING - PAROLE 3.3

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input:

- Notice of Violation
- Violation of Release
- Finding of probable cause determination
- Police reports

Parole
Client
Witnesses

Output:

- File notes
- Letter to parole office "unwaiving" preliminary hearing
- Subpoena/Department of Correctional Services evidence

NOTES:

- The preliminary parole hearing is an informal hearing to determine if there is probable cause that the parolee has committed one or more violations of his parole. The parole office may proceed on any of the charges. If probable cause is found on any one charge, there is no need to continue.

PAROLE CASE PROCESSING - PRELIMINARY STAGES 8.3

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- | | | |
|---|---|--|
| <ul style="list-style-type: none"> -Receive Transcript -Body order -Letter to drug/alcohol treatment facility -Certification of Conviction -Attorney General's response to Habeas Corpus/Article 78 petition -Court order with respect to Habeas Corpus/Article 78 petition | <ul style="list-style-type: none"> -Order to bring individual to be evaluated by drug/alcohol treatment facility. -Where deemed appropriate, Monroe County Public Defender initiates Habeas Corpus/Article 78 proceedings to challenge lawfulness of continued detention. | <ul style="list-style-type: none"> Client Parole Monroe County Jail Treatment Facility |
|---|---|--|

Output:

- Letter of Drug/Alcohol Treatment Facility
- Application for body orders
- Request for transcript
- Investigation request
- Habeas Corpus/Article 78

PROBLEMS:

1. The Division of Parole relies on the Monroe County Public Defender's Office to discover if there exist any drug/alcohol treatment programs for parolee, at the cost of jail space and attorney time and money.

Solution 1: There is a need for a defender based advocate solely responsible for needs of parole clients.

2. The Public Defender's resources are insufficient to meet parole related needs.

Solution 1: Increase funding for parole related cases to reflect the actual amount of work done on parole cases.

CASE DISPOSITION/PAROLE 9.3

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Decision of Parole Board
- Attorney General's response to Habeas Corpus/Article 78 proceeding
- Court order regarding Habeas Corpus/Article 78 proceeding
- Parole Review Board appeals decision
- Transcript

Attorney General
County/Supreme Court
Parole Review Board

Output:

- Notice of Appeal
- Writ of Habeas Corpus/Article 78
- Administrative appeal/brief

NOTES:

- The decision to seek administrative appeal of parole revocation decision is entirely the client's.
- The decision to initiate Habeas Corpus/Article 78 proceeding is the attorney's.

PROBLEMS:

1. The administrative parole appeal process has no firm deadline for the rendering of a decision. Often the parolee has served the entire sentence before receiving a favorable, but meaningless, decision from the Parole Review Board.

Solution 1: Expand the Appellate Bureau at the Division of Parole.

2: Amend Executive Law to require decision on parole appeal within 30 days.

**FAMILY COURT
INTAKE 1.4**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Output:

- Financial Affidavit
- Card file
- Case file
- Large card file

Input:

- Dockets
- Petitions

Input/Output:

- Orders to Show Cause

Child Protective
 Adult Protective
 Family Court Clerk
 Prosecution Intake
 Judges, D.A.
 Legal Aid Society
 Private Attorneys
 Counseling Agencies
 Shelter, hospitals
 Domestic Violence
 Bureau, Hearing
 Examiners, Prisoner's
 Self referral by Client
 Right's
 Organizations

NOTES:

- Family Court Bureau intake of cases occurs by assignment of the case by a judge in court, referral to our office by other individuals listed above, or by client selfreferral.
- All intake is handled by an intake attorney, who determines client financial eligibility. The Family Court Secretary is given information drawn up by that attorney, and opens a file card and a case file. The office opens a master file card for each case.

PROBLEMS:

1. Staff shortage is a multi-part problem. One secretary is responsible for work from six attorneys. Six attorneys cover five Family Court judges, three Hearing Examiners, and the appellate court. Attorneys are generally in court and not available in the office. The secretary may not have a file opened for the attorney's first appearance in court.

Solution 1: Increase attorney and support staff to better meet the needs of growing caseloads.

2. Incomplete information is often given from the Department of Social Services at intake, and may not be corrected in the system at a later date. Legal papers and petitions are often not available at the first court appearance. Complete dockets are not available prior to court each morning to check for Public Defender conflicts, and appearance of prior Public Defender clients.

Solution 1: Have the court transmit the petition via fax or modem to Public Defender when clerk prepares calendar.

3. Accessibility of the client's rapsheet would allow for better preparation of case.

Solution 1: Change the law to allow the defense timely access to the rapsheet.

**FAMILY COURT
EMERGENCY/TEMPORARY HEARING 1.41**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input:
-Petitions

Output:
-Temporary Orders
-Referrals to other agencies

Child Protective
Private Attorneys
Judges
Counsel Agencies
Foster Care

NOTES:

- Family Court Act Article 10 and Article 8 hearing for temporary orders occur within minutes of the attorney's assignment to a case in court. These are critical stages in the proceeding. Children are removed from parental care, individuals are ordered by the courts to remove themselves from premises, or have orders of protection drawn against them.

PROBLEMS:

1. Often there is no petition available to the attorney. Client indepth interviews are virtually nonexistent as the office is assigned just minutes before the case is called. Potential witnesses are not available or are unknown to us. There is no investigation available before this critical stage in the proceedings.

Solution 1: Amend the law to require the petition be provided to the Public Defender within 24 hours or children will be returned.

2. There is no office in the courthouse for attorneys to speak privately to clients; there are no phones available in the courthouse for Public Defender staff.

Solution 1: Provide office space and phone for Public Defenders' use in the courthouse.

**FAMILY COURT
FIRST APPEARANCE 3.4**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Output:

- Answers
- Cross Petitions
- Temporary Orders

Judges

- Private Attorney
- Child Protective
- Foster Care

NOTES:

- Even though the office has been involved in an emergency hearing prior to this stage, petitions and show-cause orders are generally available only at this stage. Public Defender is formally assigned by the court at this stage. Oral answers are given in court with very little prior client interview. Dispositional plans are requested. Visitation and predisposition services are discussed at/in court.

PROBLEMS:

1. When Child Protective Intake workers are transferred to case management workers, and Public Defender is not informed of the change in status of worker. The Public Defender is not informed of the change in status of worker. Dispositional plans, to be used for plea-bargaining, are not yet available.

Solution 1: Improve communication between the Office of Social Services and the Public Defender.

**FAMILY COURT
EARLY STAGE
CASE PROCESSING 8.4**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input:

- Petitions
- Dispositional Plans

Output:

- Orders to Show Cause
- Referrals to agencies
- Material re: experts
- Client Release of Information
- Subpoenas

Input/Output:

- Orders
- Motions
- Discovery
- Interrogations: EBT's
(examination before trial)

- Experts
- Physicians
- Child Protective
- Foster Care
- Private Attorneys
- Hospitals
- Mental Health Agencies
- Drug Treatment Program
- Welfare Dept.
- DA
- Family Court

NOTES:

- Traditionally, adjournments given are of short duration; case appears on the court's calendar weekly or bi-weekly so that the court can monitor progress towards pre-trial disposition. Attorneys also return cases to court often to address problems that clients are experiencing with visitation, obtaining services, etc. Discovery, as governed by the CPLR, is liberally and often sought. Attorneys seek out and employ experts as needed, releases are obtained, and subpoenas are sent for medical, social and other information. Preparation is geared for trial of the matter.

PROBLEMS:

1. The paper work generated by attorneys is voluminous and does not follow any consistent format so as to easily be reduced to a form that the secretary can "fill in the blanks".

Solution 1: Increase secretarial staff to better meet the needs of growing caseloads.

- 2: Improved word processing applications would allow secretaries to maintain a wide assortment of document formats which could be quickly accessed.

2. The flow of information from numerous agencies involved with clients is great. Telephone contact with counselors and the like is essential. However, because of the great amount of each attorney's time spent in court, telephone contact is difficult, and vital information is often delayed. The secretary cannot handle the phone demands of each attorney. Clients also have many problems reaching attorneys during the day.

Solution 1: Increase secretarial staff to better meet the needs of growing case loads.

**FAMILY COURT
FINAL STAGE
CASE PROCESSING AND DISPOSITION
9.4 (a & b), 10.4**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Output:
 -Motions
 -Briefs
 -Dispositional Alternative
 -Petition seeking modification
 -Subpoenas

Child Protective
 Foster Care
 Mental Health
 Agencies
 Drug Treatment
 Program
 Court
 Witnesses

Input:
 -Client Evaluation
 Report of Treatment
 -Final Orders

NOTES:

- At this stage, discovery is being completed, counselors are being generated. The attorney must assess with client what dispositional route to take. Plea negotiations, which have been ongoing are entered into with more information and intensified. Witnesses are contacted for trial dates and reinterviewed by defense in preparation for trial.

PROBLEMS:

1. Case load is generally high. Intake by an individual attorney continues throughout his/her rotation with the court.

Solution 1: Increase attorney staff to better meet the needs of growing case loads.

2. Presently, no paralegals or social workers are assigned to assist the Family Court attorney staff.

Solution 1: Increase paralegal and social worker staff to better meet the needs of growing case loads.

**FAMILY COURT
APPEALS 11.4**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:
-Compilation of transcripts

Court Reporter
Attorneys

Output:
-Notice of Appeal
-Briefs
-Motions to Appellate Division

NOTES:

- The Family Court staff handles its own appeals. Attorneys do all the compilation, requesting of transcripts, and pre-brief motions.

PROBLEMS:

1. Time is a problem in that attorneys with active demanding caseloads must also handle appeals.

Solution 1: Increase attorney staff to better meet the needs of growing case loads.

2. Court reporters have a large backlog of transcript orders. (Private cases pay more than \$2 per page while assigned family court cases pay \$1.50 per page). Consequently, filing deadlines for appeals have to be delayed upon motion to the Appellate Division. Once time has passed the removed child will have spent so much time with new family that the outcome will be affected.

Solution 1: The Administrative Court Reporter should direct that minutes be transcribed in chronological order of request, not by amount of payment.

**FAMILY COURT
POST TRIAL
DISPOSITION 12.4**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Output:

- Letters to agencies
- Motions
- Orders to show cause

Input:

- Client evaluation reports

Mental Health
 Dept. of Social
 Services
 Drug Treatment Agency
 Welfare Department
 Attorneys
 Family

NOTES:

- Family Court attorneys monitor cases after the file is technically "closed" by receipt of a final order. Continued client contact to address ongoing problems with ordered services is frequent; problems that arise are often extremely difficult to work out and require much attention by the attorneys to unravel.

PROBLEMS:

1. This ongoing involvement is on a "closed" file. There are a great number of these cases being maintained with no statistical credits being kept.

Solution 1: An automated case tracking system could maintain statistical records as any work is done on a case.

NASSAU COUNTY ASSIGNED COUNSEL DEFENDER PLAN

OVERVIEW

Nassau County provides public defense services by both a legal aid society and an assigned counsel office. The Legal Aid Society is the primary public defense provider. The Assigned Counsel Defender Plan, pursuant to Article 18-B of the County Law, handles conflict cases and all homicides.

The Assigned Counsel Defender Plan staffs two District Court Parts on a daily basis, one arraignment part and a general purpose "felony conference" part. Each day an attorney is assigned to the arraignment part to handle arraignments only. The attorney in the conference part may be assigned as many as 6-8 cases from the bench.

At present, there are approximately 425 attorneys on the 18-B list covering 7 courts. These attorneys are the only group in the State currently required to obtain Continuing Legal Education credits (CLE). A minimum of 6 credit hours per year is required to maintain good standing on the criminal court panels. (The Family Court has its' own requirements through the Law Guardian Program.) The Assigned Counsel Defender Plan sponsors seminars that allow the attorneys to meet the CLE requirements. Recent seminars have included, forensics, Driving While Intoxicated, and updates on evidence and constitutional law.

The Nassau County Assigned Counsel Defender Plan hosts AssigNet, an on-line computer bulletin board system available to all participating 18-B attorneys. Access is granted to other public defense providers. On this system, attorneys can read or download motions, briefs, articles, or decisions.

NASSAU COUNTY ASSIGNED COUNSEL DEFENDER PLAN

1989
AGENCY FACT SHEET

ORGANIZATION: Nassau County Assigned Counsel Defender Plan

CONTACT: Michael J. Hall - Computer Operations

PHONE: (516) 747-8448 - Voice
(516) 873-8032 - Modem

WALK THROUGH DATE: January 31 - February 1, 1990

OFFICE STAFFING:

Lawyer Administrator
Administrative Assistant
Paralegal running computer operations

SUPPORT STAFF:

2 Part-time clerical and data-entry persons

COUNTY AREA: 290.17 Square miles

POPULATION: 1,328,948 (As of 5/1/90)

SOURCES OF FUNDING:

<u>Source</u>	<u>Type</u>
Local:	Nassau County
State:	None
Federal:	None

NASSAU COUNTY ASSIGNED COUNSEL DEFENDER PLAN

1989
AGENCY FACT SHEET

TOTAL:

Total Vouchers: 5044

CRIMINAL CASELOAD:

Felony Vouchers: 2079

Misdemeanor Vouchers: 1343

Felony Trials and Misdemeanor Trials: 402

APPEALS:

Appellate Vouchers 143

FAMILY COURT:

Family Court Vouchers 556

LOCAL COURTS:

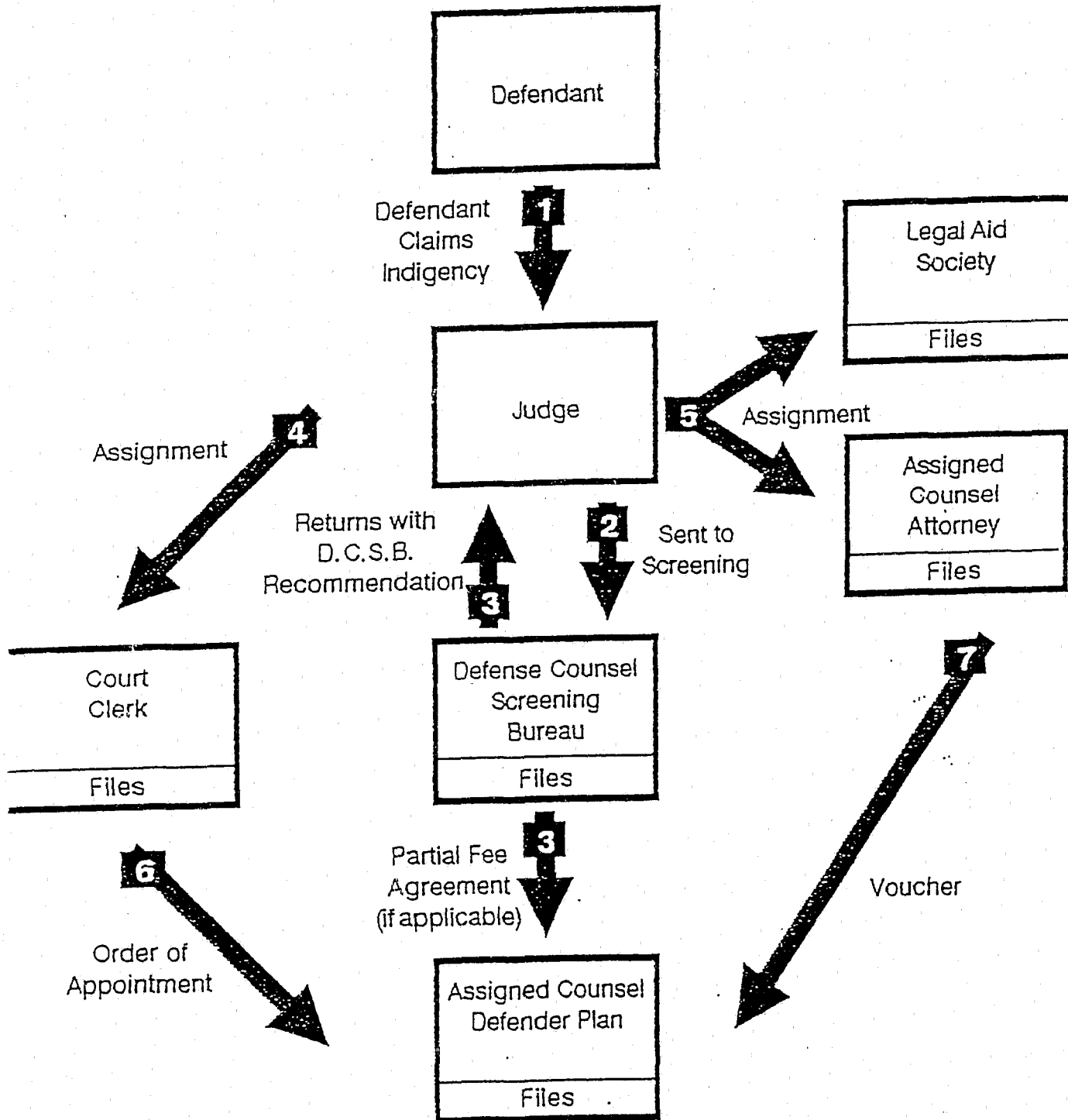
Village/Town Court Vouchers 316

SURROGATE'S COURT:

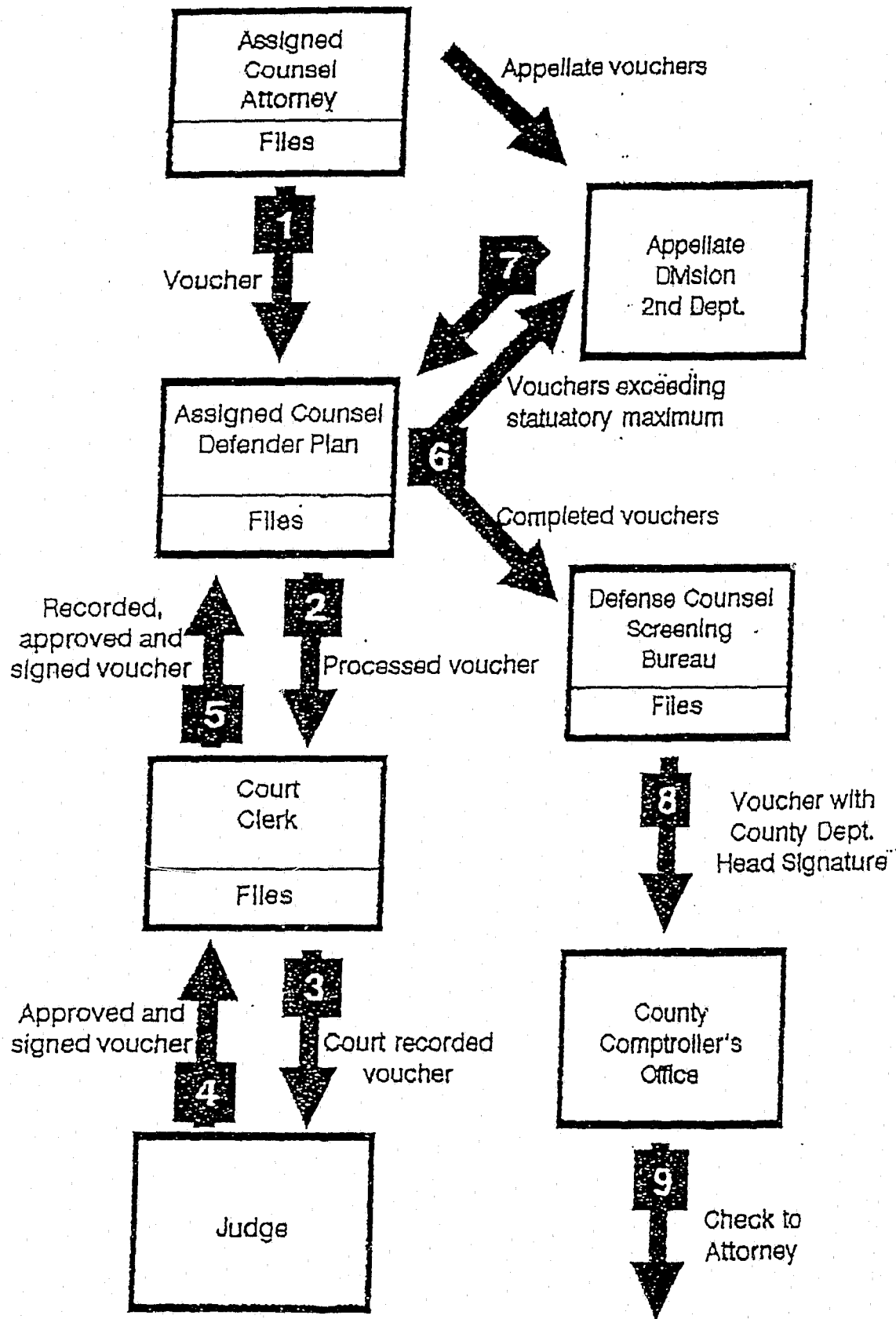
Surrogate's Court: 53

These figures cover the period 5/1/89 - 5/1/90.

Assignment Overview



NASSAU COUNTY ASSIGNED COUNSEL DEFENDER PLAN



ELIGIBILITY/SCREENING
OVERVIEW

An individual is arrested, taken before a judge for arraignment and asked if he will be able to retain private counsel. If the defendant claims he cannot, the judge issues "screening papers"--a court authorization to be interviewed so that the defendant's claim of indigency may be corroborated. Assuming the defendant is not an occupant of a correctional facility, these papers give him the locations of the screening bureau offices.

At the Defense Counsel Screening Bureau office, located in the County, District and Family Courts, the defendant is interviewed. If the defendant is under 21 years old, the parents or guardians must be interviewed. If the defendant is married, the spouse must be interviewed. The Screening Bureau attempts to telephone the legal guardians of incarcerated minors to notify them that they must appear at the Screening Bureau office before a determination can be made. If the parents or guardians or spouse are unreachable via telephone, a letter is mailed stating the time and place to appear. Failure of parents to appear for incarcerated minors usually results in the judge appointing an attorney from the bench forthwith.

The data is collected and entered onto a worksheet. The examiner decides whether or not the defendant can pay for legal services.

After the screening process the defendant is found to "eligible", "ineligible" or "partially eligible" for a publicly funded attorney. If eligible, a defendant is referred to the Legal Aid Society. In a multiple defendant situation, the second and any ensuing defendants will be assigned to an 18-B attorney to avoid conflicts.

If the applicant is only partially indigent, an 18-B attorney will be assigned and a partial fee agreement will be signed. (The 18-B attorneys function under the Assigned Counsel Defender Plan.) This is a contract between the defendant, the county and the attorney as an agent of the Assigned Counsel Defender Plan. The Defense Counsel Screening Bureau determines how much they presume a defendant can afford to pay and a judge orders that he pay that amount directly to the attorney. Usually, it is requested that half the fee be disbursed at the initial meeting and the rest in a manner to be determined between the defendant and the attorney.

NASSAU COUNTY ASSIGNED COUNSEL DEFENDER PLAN

All homicides are assigned to 18-B attorneys according to County contracts.

If the applicant is incarcerated, the bureau sends staff examiners to the correctional facility as well as interviewing in the detention areas in the courts. Ordinarily, incarcerated persons who are unable to make bail are assigned an attorney at the County's expense.

NASSAU COUNTY ASSIGNED COUNSEL DEFENDER PLAN

PERFORMED BY: INDIVIDUAL ATTORNEY

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Output:

- | | | |
|------------------------------|--|----------|
| -A.C.D.P. Voucher | -Worksheet containing case information. | Attorney |
| -County NUMIS Voucher | -County claim form | |
| -Rider | -Detailed breakdown of hours spent on case both in and out of court. | |
| -Synopsis | | |
| -Affirmation (if applicable) | | |

NOTES:

- There are two formal public defense systems in the County: the Legal Aid Society and the Assigned Counsel Defender Plan (A.C.D.P.).
- The term "voucher" will be used to describe the compilation of the above mentioned items.
- Each individual attorney is responsible for preparing his/her own vouchers.
- The time spent on voucher preparation is not billable time.
- All parts of vouchers are to be submitted in duplicate.
- The voucher is submitted to the Assigned Counsel Defender Plan via mail or personal delivery.
- See Article 18-B of the County Law.

PROBLEMS:

1. A.C.D.P. is not always aware of 18-B assignments by the court.

Solution 1: The court should notify the A.C.D.P. of all attorney assignments by the court.

NASSAU COUNTY ASSIGNED COUNSEL DEFENDER PLAN

PERFORMED BY: ASSIGNED COUNSEL DEFENDER PLAN

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- | | | |
|-----------------------|--|-------------|
| -A.C.D.P. Voucher | -Worksheet containing case information. | Attorney |
| -County NUMIS Voucher | -County claim form | A.C.D.P. |
| -Rider | -Detailed breakdown of hours spent on case both in and out of court. | Court Clerk |
| -Synopsis | -Narrative of case. | |
| -Affirmation | -Explanation of claim if statutory maximum is exceeded. | |

Output:

- | | |
|---|--|
| -Copy for file | -Copy of A.C.D.P. voucher, rider synopsis and affirmation. |
| -Cover sheets | -A cover is produced for each "voucher". |
| -Sorted, itemized and Classified vouchers | -Vouchers, once processed and computed are grouped as to court. An inventory accompanies the pile. |

NOTES:

- As vouchers arrive at the A.C.D.P. they are grouped and labeled by date.
- Data from the A.C.D.P. voucher and the County NUMIS voucher are entered into a database.
- Amount of payment is calculated and recorded on the A.C.D.P. voucher.
- Cover sheets are generated for each individual voucher.
- Vouchers then go to the A.C.D.P. Administrator for approval and signature.

NASSAU COUNTY ASSIGNED COUNSEL DEFENDER PLAN

- Vouchers are then sorted by court. An itemized cover sheet is generated for each set of vouchers and they are sent to the courts.
- Vouchers to District Court, Family Court, and County Court are delivered by hand.
- Vouchers to City courts are mailed.
- Appellate vouchers are to be sent directly to the Appellate Division, Second Department by the attorney.

PROBLEMS:

1. In situations involving incarcerated juveniles, there is a potential gap in legal representation. If parents do not appear at the Screening Bureau for eligibility determination, counsel is not assigned and juveniles may sit in jail for undue periods without benefit of counsel. This is in violation of the right to counsel.

Solution 1: If there is a question regarding eligibility of a minor due to the parents or guardians failure to appear for screening, the judge should appoint an 18-B lawyer pending screening. The failure of parents to appear for screening should not be used as a basis for denying assignment of counsel for an individual.

2. There is inadequate integration within/among the various components of the criminal justice system consequently, cases fall through the cracks. There are gaps in legal services while clients sit in jail.

Solution 1: An information system needs to be developed to allow all agencies involved with the representation of indigent clients to "share" information.

3. Currently, assigned counsel is not aware of cases opened in the system until a voucher is received in the office. There is no centralized recording of assignment information. Frequently, assigned counsel must call the District Attorney to find out which 18-B attorney has been assigned. Orders are received from the Court on individual slips, at times these Orders are not legible in their entirety.

NASSAU COUNTY ASSIGNED COUNSEL DEFENDER PLAN

Solution 1: When the court appoints counsel, that information should be provided to assigned counsel office. Currently orders that are received are not legible in their entirety. These orders are not in a "usable" format the way they are presented.

4. While the office has an automated attorney tracking system the program is dependent upon only one person who is familiar with the system. The system is not fully documented. Other staff members could not maintain it or serve as system administrators.

Solution 1: Have the system fully documented and provide adequate training on the system.

NASSAU COUNTY ASSIGNED COUNSEL DEFENDER PLAN

PERFORMED BY COURT CLERKS

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

-Sorted, itemized and
classified vouchers
-"Voucher"

-A "voucher" consists of:
A.C.D.P. Voucher, County
NUMIS voucher, Rider,
Synopsis and affirmation.

Clerks
Judges

NOTES:

- Court Clerks record information from vouchers and then submit them for judges' signatures.

NASSAU COUNTY ASSIGNED COUNSEL DEFENDER PLAN

PERFORMED BY JUDGE

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

-Sorted, itemized and classified vouchers -"Voucher"	-A "voucher" consists of: A.C.D.P. Voucher, County NUMIS voucher, Rider, Synopsis and affirmation.	Clerks Judges
---	---	------------------

NOTES:

- Judges review vouchers and either approve them for initial amount of claim or modify the amount as they see fit.

- In all courts, except District Court, the voucher is submitted to the judge of disposition.

- In District Court, the Supervising Judge and his clerk review all vouchers to that court.

NASSAU COUNTY ASSIGNED COUNSEL DEFENDER PLAN

PERFORMED BY COURT CLERKS

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Output:

- Sorted, itemized and classified vouchers
- "Voucher"

-A "voucher" consists of:
A.C.D.P. Voucher, County
NUMIS voucher, Rider,
Synopsis and affirmation.

Clerks
Judges

NOTES:

- The Judges return the vouchers to the clerks who record the date the judge signed the voucher, as well as any changes in amount of payment.

NASSAU COUNTY ASSIGNED COUNSEL DEFENDER PLAN

PERFORMED BY ASSIGNED COUNSEL DEFENDER PLAN

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input\Output:

-Vouchers	-See previous description	Clerks
-----------	---------------------------	--------

Output:

-Cover Sheet	-List of enclosed vouchers	D.C.S.B.
-Partial Fee List	-List of partial fees collected	A.D. 2d Department
-Copy for File	-Copy of Vouchers with Judge's signature.	
-Letter to A.D.	-List of vouchers over the statutory maximum.	

NOTES:

- When vouchers are returned to the Assigned Counsel Defender Plan they are recorded (that they have been approved and any change in the amount is so noted).

- If the voucher returns from court with an amount in excess of the statutory maximum, it must be sent to the Appellate Division, Second Department for signature by the Presiding Justice.

NASSAU COUNTY ASSIGNED COUNSEL DEFENDER PLAN

PERFORMED BY DEFENSE COUNSEL SCREENING BUREAU

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Output:

-Vouchers

See previous

A.C.D.P.

NOTES:

- The Assigned Counsel Defender Plan is not a "County" agency and in order for the Comptroller's office to process claim vouchers, vouchers must be signed by a "County Department Head".
- The Defense Counsel Screening Bureau (DCSB) submits the vouchers to the County.

NASSAU COUNTY ASSIGNED COUNSEL DEFENDER PLAN

PERFORMED BY COUNTY COMPTROLLER OFFICE

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Output:

-Vouchers

See previous

A.C.D.P.

D.C.S.B.

Attorney

NOTES:

- The vouchers are submitted to the Comptroller for payment.
- The Comptroller audits each voucher to verify accuracy in mathematical calculations.
- A check is issued directly to 18-B Attorney.

PROBLEMS:

1. There can be a long delay before checks are issued to 18-B attorneys. The assigned attorneys are required to incur out of pocket expenses on cases and will not receive payment for months.

Solution 1: Amend article 18-B of the County Law to provide payment of vouchers during pendency of cases upon judicial order.

OVERVIEW

The Brooklyn Office of The Legal Aid Society's Criminal Defense Division represents clients at the trial stage in both Criminal and Supreme Court. Under a system of continuity of representation, the same lawyer generally represents a client from the initial Criminal Court arraignment to trial court disposition. Attorneys are grouped into 5 teams of approximately 35 trial lawyers each headed by supervisory attorneys and supported by a staff of investigators, legal services assistants and secretaries.

Records are maintained centrally in a non-automated system. However, access to the Office of Court Administration's records for Brooklyn cases is gained through a computer terminal in the Legal Aid Society office. A plan for greater automation of the office is presently being developed.

Attorneys in the Criminal Defense Division also handle parole violations when the client has a pending criminal case. More technical parole violations are handled by the Society's Parole Revocation Defense Unit. Family Court matters and Appeals are also handled by separate divisions of The Legal Aid Society.

1989
AGENCY FACT SHEET

ORGANIZATION: The Legal Aid Society of New York City
Criminal Defense Division
Kings County Office
175 Remsen Street
Brooklyn, N.Y. 11201

CONTACT: Michael P. Padden

PHONE #: (718) 237-2000

FAX #: (718) 237-3787

WALK THROUGH DATES: February 27 - March 1, 1990

OFFICE STAFFING:

Lawyers: 1 Attorney-in-Charge
1 Deputy Attorney-in-Charge
20 Supervising Attorneys
172 Staff Attorneys

Support Staff: 1 Borough Administrator
1 Assistant Borough Administrator, 1 Central File Supervisor
1 Administrative Assistant

14 Secretaries
6 Secretarial Supervisors
7 Word Processor Operators
9 Social Workers and Field Counselors
plus 1 Supervisor, 3 Prison Legal Assistants,
plus 1 Supervisor
10 Legal Interns (Volunteers/Part-time)
30 Investigators, plus 5 Supervisors

THE LEGAL AID SOCIETY OF NEW YORK CITY

1989
AGENCY FACT SHEET

5 Central File Clerks
2 Microfiche Clerks
5 Arraignments Clerks: 3 Full-time (2 day, 1 night)
2 Part-time
5 Legal Service Assistants:
3 (175 Remsen St.)
1 (120 Schermerhorn St.)
1 (360 Adams St.)
1 Senior Clerk (120 Schermerhorn St.)
3 Messengers
4 Receptionists

Police Departments: 3
Criminal Court Parts/Judges: 18
Supreme Court Parts/Judges: 46

COUNTY SQUARE MILES: 74.4

POPULATION: 2.5 million

SOURCES OF FUNDING: Contract with City

CRIMINAL CASELOAD:

Total Assignments: 57,771
Felony Assignments: 27,866
Misdemeanor Assignments: 29,905

Felony Indictments: 4,128

Misdemeanor Trials: 75
Felony Trials: 149

1989

AGENCY FACT SHEET

Parole Revocation Hearings

Assignments: Statistics not kept

Hearings: Statistics not kept

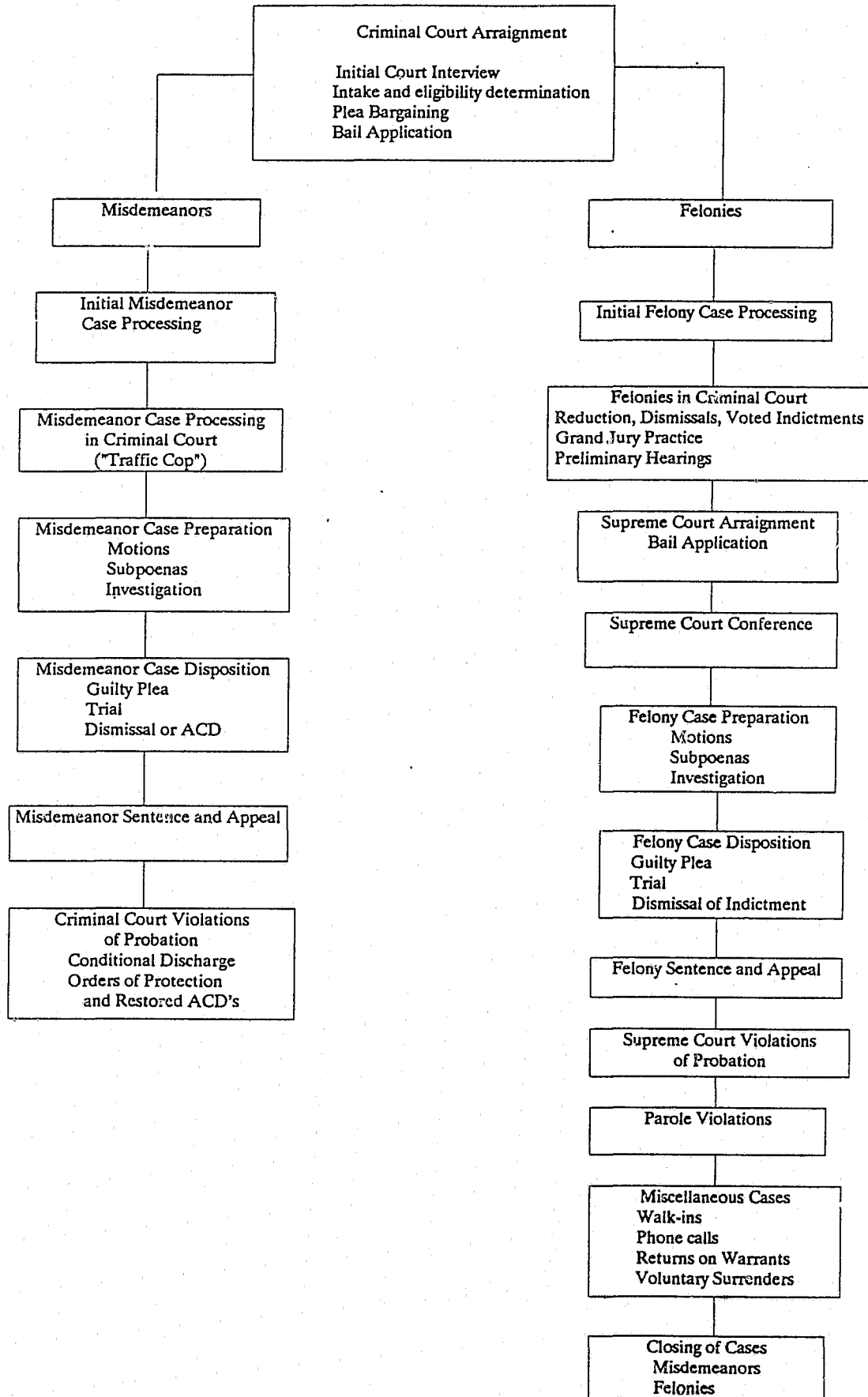
Degree of Automation:

Micro Computers: 2

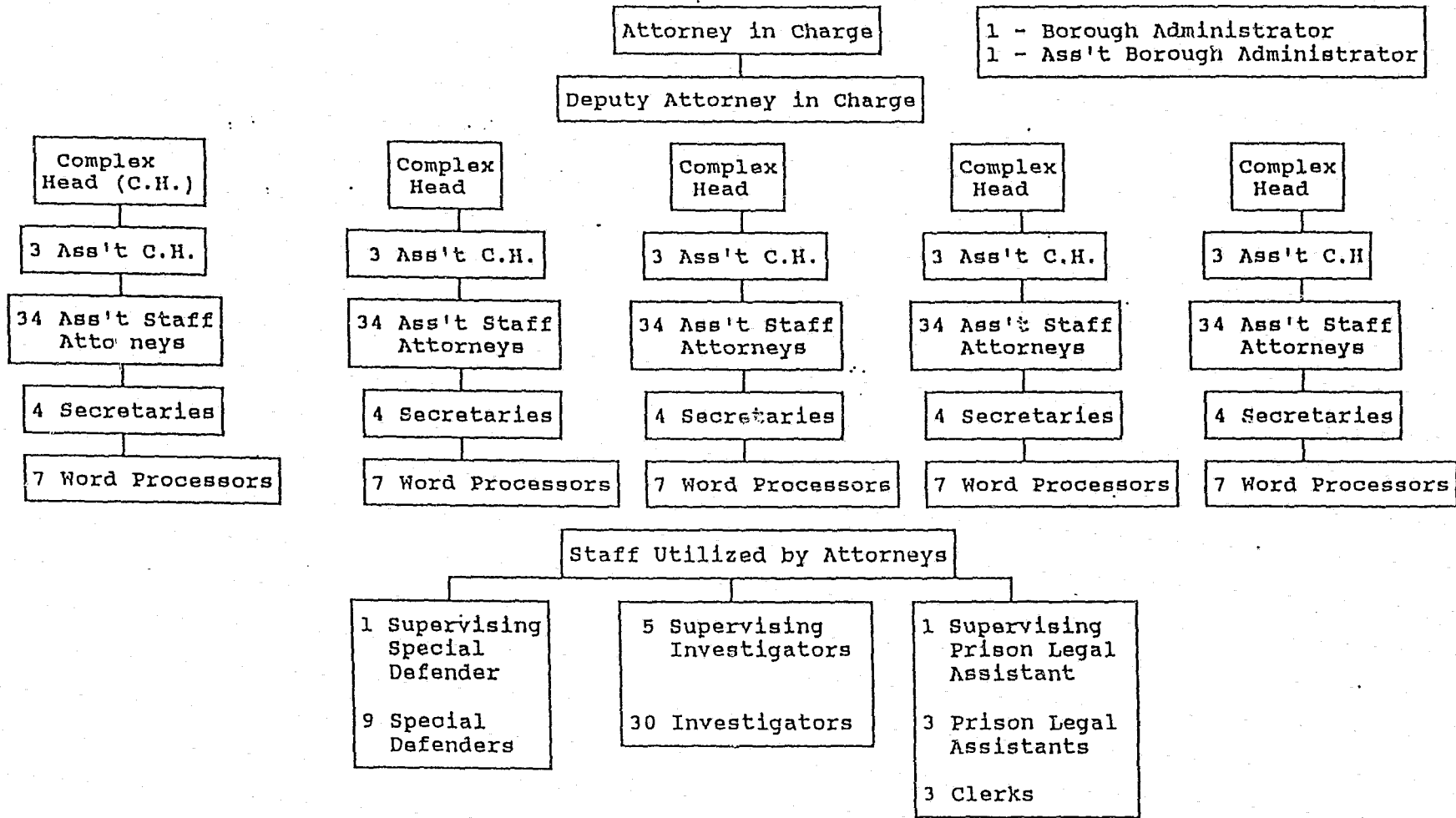
Word Processors: 7

THE LEGAL AID SOCIETY OF NEW YORK CITY

OVERVIEW



ORGANIZATIONAL CHART



1. CRIMINAL COURT ARRAIGNMENT

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Criminal Court Complaint
- CJA Interview Report
- NYSID Sheet
- Notices from Prosecutor
(710.30,190.50,450.10,240.30,
250.20)

- Judge
- DA'S Office
- Court Reporter
- Official Court
Interpreter
- Uniformed Court
Officers
- Court Clerk
- NYPD
- NYC Department of
Corrections

Output:

- Legal Aid File and Write-up
- 3 x 5 Index Card
- Reciprocal Grand Jury Notice
- Notice of Appearance
- Attorney's Business Card
- Adjourn Date and Part note
- Carfare note

NOTES:

- The Legal Aid Society operates with a vertical system of representation. Exceptions are made for training purposes.
- There are generally two arraignment parts in session day (9 AM - 5 PM) and night (5 PM - 1 AM) staffed with Legal Aid and 18-B attorneys.
- A Legal Aid clerk prepares case folder and 3 x 5 index card for each case.
- Attorney writes adjourn date, part and bail status on file and clerk enters information on 3 x 5 card. The card is the basis of the Legal Aid Society's record system. A Legal Aid Society messenger picks up files and cards and brings them back to the office.

PROBLEMS:

1. 18-B lawyers are assigned to arraignment parts for conflicts only, but court personnel control distribution of cases and often give non-conflict cases to 18-B lawyers.

Solution 1: The Legal Aid Society (LAS) should control the flow of all cases to determine any conflict of interest.

2: Enforce the contract with the City of New York which requires LAS to get all non-conflict cases.

3: Instruct the judges to inform court officers to direct all cases to the LAS attorney for conflict determination.

2. While interview facilities in one arraignment part are "adequate," the other part has a phone booth at the gate making confidential interviews difficult. Better facilities are available but we encounter resistance from police to moving clients to utilize the existing facilities.

Solution 1: Enforce the rule which allows LAS attorneys to use the private interview facilities.

2: Redesign the interview facilities to accommodate LAS interview needs.

3. Court papers do not always match prisoners produced causing wasted time waiting for cases to be called.

Solution 1: An automated defendant status system could locate and assist in producing defendants.

2: Create more efficient information flow at the court.

4. Papers are not supplied to attorneys until the prisoner is already in the holding pen, preventing any work from being done before interview, such as ascertaining status of open cases or creating file folders.

Solution 1: Greater care should be taken by court personnel to supply papers to LAS attorneys in a more timely manner.

2: Quicker receipt of papers by LAS would allow preparation time for attorneys.

5. Court personnel, at Judges' instruction, sometimes attempt to hurry interviews.

Solution 1: Judges should be more mindful of the importance of the attorney client interview.

6. CJA interview sheets do not always contain accurate or complete information and require attorney to duplicate process over telephone.

Solution 1: CJA interview procedures should be more thorough.

2: CJA staff should receive better training in the importance of completion of the interview sheets.

7. Once bail is set, clients are "whisked" away without any opportunity to speak to attorney.

Solution 1: There should be some mechanism in place to allow post arraignment time for LAS attorneys to speak to their clients in the courthouse.

8. Some 18-B attorneys take cases "for arraignment only" and Legal Aid Society attorney to subsequently handle the case.

Solution 1: Eliminate the Arraignment Only practice for 18-B attorneys.

9. Clients' odyssey from arrest to arraignment does not put them in the best frame of mind to discuss details in interview.

Solution 1: Shorten the time spent from arrest to arraignment to reduce the number of delays and transfers experienced by clients.

10. NYSIIS Sheet often fails to report dispositions of prior cases and includes many arrests that should have been sealed. These cases are often inappropriately considered by the court in making bail determinations.

Solution 1: Improve the accuracy of information on the rapsheet.

11. Routinely, NYC Criminal Justice Agency interview report information is used by prosecution. The defendant is not told of the non-privileged status of CJA material.

Solution 1: Advise defendant of non-privileged status of interview.

12. Currently, there is no system to determine open case conflicts in arraignments.

Solution 1: Implementation of an automated case management system would assist in determination of case conflicts.

13. The current card system utilizes docket, age and address as a means of identifying defendants. This creates potential difficulty in retrieving case information.

Solution 1: The card system should include date of birth and NYSIIS number as should the planned automated system.

2. INITIAL MISDEMEANOR CASE PROCESSING

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

-Transferred Case File

18-B Panel
Court Clerks

Output:

-Transfer Sheets
-Daily Activity Sheets
-Bench Warrant Log

NOTES:

- Case files and 3 x 5 cards are brought to office by messenger. Central Files Unit logs in cases by keeping one copy of 3 x 5 card and sending other copy and file to individual attorney's clerk. Clerk retains 3 x 5 card and gives case file to attorney's supervisor for review. Cases closed at initial appearance are returned to clerk except when supervisor needs to speak to attorney about disposition. Open case files are given to attorneys.
- Individual attorneys are responsible for both the determination of potential conflicts of interest and the transfer of new clients with open prior cases to attorneys already representing the clients.
- Attorneys keep files while case is open.
- Clerks maintain daily activity logs and give attorneys a daily activity sheet.

PROBLEMS:

1. Although "in-house" transfers of clients with open cases are easily accomplished, attorneys are frequently not diligent about transferring clients. Additionally, locating 18-B lawyers who are representing clients on open cases can be extremely difficult because there is no central system for recording 18-B assignments.

Solution 1: An automated case management system which records all case assignments and transfers would assist in obtaining information regarding attorney case assignments.

2. Inaccuracies often occur on daily activity sheets as a result of reliance on attorneys' handwritten information.

Solution 1: Eliminate attorney responsibility for recording this information. Arrange to have a clerk in the court to record case events.

2: An in-court automated system for entering data would assist clerk in maintaining updated case information.

3. Attorneys often do not complete and return daily activity sheet to clerk.

Solution 1: Eliminate attorney responsibility for recording this information. Arrange to have a clerk in the court to record case events.

2: An in-court an automated system for entering event data would assist clerk in maintaining updated case events information.

4. Transfers are sometimes done informally by attorneys with no record made.

Solution 1: Eliminate attorney responsibility for recording this information.
Arrange to have a clerk in the court to record case events.

2: An in-court an automated system for entering event data would assist clerk in maintaining updated case events information.

3. MISDEMEANOR CASE PROCESSING IN CRIMINAL COURT ("TRAFFIC COP")

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

-Court Papers

Regular Court
Personnel

Output:

-Notes to "Traffic Cop"
-Notes from "Traffic Cop"
to assigned attorney
-Notes to clients

NOTES:

- A staff attorney called a "Traffic Cop" is assigned to each of the all-purpose parts in Criminal Court to handle cases for attorneys who cannot be present for calendar calls and to "stand up" on other miscellaneous matters, particularly returns on warrants. Legal Aid Society attorneys handle many cases everyday for which they do not receive "credit".

PROBLEMS:

1. "Traffic Cop" is not always given adequate information by the assigned attorney to handle case.

Solution 1: Improve communication between the attorney assigned and the "Traffic cop".

2. "Traffic Cop" does not always know if or when assigned attorney is going to appear on case.

Solution 1: Improve communication between the attorney assigned and the "Traffic cop".

3. Court sometimes calls cases at inappropriate times and forces "Traffic Cop" to stand up on cases without adequate information to handle cases.

Solution 1: Greater cooperation from the court would allow the attorney to adequately prepare case.

4. "Traffic Cop" often has to stand up on cases when 18-B appeared "for arraignment only" or simply fails to appear.

Solution 1: Eliminate the "arraignment only" process for 18-B attorneys.

5. If "Traffic Cop" picks up a case, it is sometimes difficult to obtain copies of the court papers.

Solution 1: When an assignment is made, there should always be copies of court papers readily available for newly assigned attorneys.

6. Flow of cases sometimes prevents "Traffic Cop" from speaking with client after case is adjourned (both incarcerated and non incarcerated defendants)

Solution 1: Court must allow time for such conversations.

7. "Traffic Cop" has responsibility of providing client with information about adjourn date and part and is not always careful enough to ensure client understands.

Solution 1: Each defendant on the way out of court should be provided with a written form notice of the next court date. Court personnel should be responsible for this, not the attorney.

8. "Traffic Cop" often disposes of cases and makes no record of disposition. (Note: We handle many cases every day that we do not get "credit" for.)

Solution 1: A LAS clerk in the court should record this information.

4. MISDEMEANOR CASE PREPARATION

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Open file discovery
- Answers to Motions and
Discovery Demands
- Subpoenaed Documents
- Rosario/Consolazio/Brady
material
- Motions by Prosecution
- Decisions/Opinions of Court
- Memos of law by Prosecution
- Statements of People's readiness
- Investigators reports

- Court Personnel
- DA's Office
- Police Departments
- Hospitals
- Board of Education
- Department of
Corrections

Output:

- Demand for Discovery
- Omnibus Motions
- Subpoena request form
- Subpoenas
- Investigation requests
- Special Bail Applications
- Writs of Habeas Corpus
- Article 78 petitions
- alibi notice
- notice of psychiatric defense
- court orders
- special motions (30.30, etc.)

NOTES:

- LAS operates on a vertical representation system so that attorney assigned at arraignment stays with case throughout with exceptions for transfers to attorneys representing clients on previous open cases and for "training" purposes.

PROBLEMS:

1. Attorneys keep their own motion schedule and sometimes miss deadlines.

Solution 1: An automated case management system could maintain a record of pending dates and generate daily tickler reports.

2. The current method for generating motions is cumbersome. Motions are generally done by deletions and additions to a form which is then given to word processor staff.

Solution 1: Expand and improve the word processing system to generate motions and other documents as needed by attorneys.

3. The word processing staff generally has time to prepare only one draft of a document. Any revisions or corrections returned to the unit are low priority and turnaround time is lengthy.

Solution 1: Expand and improve the word processing system to generate motions and other documents as needed by attorneys.

4. Volume of Word Processors work delays completion of Motions (word processors are not aware of individual deadlines).

Solution 1: Expand and improve the word processing system to generate motions and other documents as needed by attorneys.

2: Provide additional word processing staff.

5. Frequently attorneys are late in their requests for subpoenas.

Solution 1: Expand and improve the word processing system to generate motions and other documents as needed by attorneys.

2: An automated case management system would maintain a record of pending dates and generate daily tickler reports.

6. Responding agencies often delay response causing cases to linger beyond necessary time.

Solution 1: Responding agencies should be more responsive to delays in court proceedings caused by their failure to comply in a more timely fashion.

7. 911 Tapes are destroyed 90 days after recording and attorneys sometimes miss opportunity to subpoena them.

Solution 1: An automated case management system could maintain a record of pending dates and generate daily tickler reports to remind attorneys to subpoena 911 tapes prior to the 90 day deadline.

8. Investigations are not always ordered early enough by attorneys.

Solution 1: Decentralize the investigative staff. Investigator should be in closer proximity to the complex that they are assigned to.

9. Investigators and attorneys do not always communicate sufficiently before investigation.

Solution 1: Decentralize the investigative staff. Investigator should be in closer proximity to the complex that they are assigned to.

10. There is no automated brief bank for Legal Aid Society cases. Consequently, attorneys in one borough are not aware of existing briefs in the other boroughs.

Solution 1: Creation of an internal automated brief bank would provide LAS attorneys quick access to existing materials.

2: Create a network with other public defender and LAS brief banks through Defenders Association.

11. Currently, secretaries do not have word processing capabilities. This limits the ability of secretaries to prepare lengthy legal documents and to utilize materials previously prepared.

Solution 1: Secretaries should have word processing capabilities.

5. MISDEMEANOR CASE DISPOSITION

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Rosario/Conzolazio material
- Prior Crime Offender statement
- Pre-pleading Investigation order by Court

- Court personnel
- Probation Department
- Victim Services Agency
- Court Employment
- Brooklyn Community Services Sentencing Project
- Police Departments

Output:

- Reciprocal Discovery
- Special Defender Services
- Pre-pleading reports

NOTES:

- Jury and non-jury trials are conducted in Criminal Court. Judicial Hearing Officers conduct some pre-trial hearings.

PROBLEMS:

1. Dispositions often occur without complete discovery.

Solution 1: Change the discovery law to require earlier and better discovery.

2. Pleas are often pushed by prosecutor when complainant wants to drop charges.

Solution 1: Prosecutors should be more responsive to complainants' wishes.

3. Violations of Probation are not generally filed in a timely fashion making disposition of pending case difficult.

Solution 1: A mechanism should be in place allowing for coordination with the court and probation department for disposition of violation of probation with pending cases.

6. MISDEMEANOR SENTENCE AND APPEAL

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Probation Report

Probation Department
Court and DA's Office
Victim Services

Output:

- Special Defender Services
Pre-sentence reports
- Notice of Appeal
- Trial Sheet

Agency
Legal Aid Society
Appeals Bureau

NOTES:

- Once Notice of Appeal is served, case is transferred to Legal Aid Appeals Bureau.

PROBLEMS:

1. Client must request assignment of counsel for appeal.

Solution 1: Courts should either provide sentenced defendants with the paper work required to request assigned counsel for an appeal or allow attorney to make this request for defendant.

- 2: The rules should be changed to eliminate a new showing of indigence at appeal where there has been no changed circumstances. A check off area should appear on the Notice of Appeal to request an attorney and indicate eligibility.

2. Probation reports generally not available until day of sentence.

Solution 1: Comply with statute requiring 24 hour advanced availability of probation reports.

3. Volume of cases sometimes prevents Special Defender Services from doing presentence reports in Misdemeanor cases.

Solution 1: Increase Special Defender Services staff meet demand for misdemeanor case sentencing reports.

**7. CRIMINAL COURT VIOLATIONS OF PROBATION,
CONDITIONAL DISCHARGES, ORDERS OF PROTECTION AND RESTORED ACD'S**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Probation Specifications
- Notice of Restored Cases
- Probation Report updates and progress reports

Probation Department
Court Personnel

Output:

- SDS reports

NOTES:

- Original attorney handles case unless new arrest, in which case new attorney generally handles everything.

PROBLEMS:

1. Attorney and/or client often are not notified of restoral of case to calendar.

Solution 1: Better notification efforts by the court to require proof of notice of court date prior to issuing bench warrant.

2. Attorneys are rarely notified of violations of probation.

Solution 1: LAS attorneys should be notified of violations of probation.

8.INITIAL FELONY CASE PROCESSING

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

-Transferred Case File

18-B Panel
Court Clerks

Output:

-Transfer Sheets

-Daily Activity Sheets

NOTES:

- Case files and 3 x 5 cards are brought to office by messenger. Central Files logs in cases by keeping one copy of 3 x 5 card and sending other copy and file to individual attorney's clerk. Clerk retains 3 x 5 card and gives case file to attorney's supervisor for review. Finished cases are returned to clerk except when supervisor needs to speak to attorney about disposition. Open cases files are given to attorneys.
- Individual attorneys are responsible for both the determination of potential conflicts of interest and the transfers of clients with open prior cases to attorneys already representing the clients.
- Clerks maintain daily activity logs and give attorneys a daily activity sheet.
- Transfers of Felonies limited to attorney's felony certification level.

PROBLEMS:

1. While "in-house" transfers of clients with open cases is easily accomplished attorneys are not always diligent about it and locating 18-B lawyers who are representing clients on open cases can be extremely difficult. It is also difficult to ascertain which 18-B attorney represents a client since there is no central system for recording 18-B assignments.

Solution 1: An automated case management system which records all case assignments and transfers would assist in maintaining attorney case assignments.

2. Inaccuracies often occur on daily activity sheets as a result of reliance on handwritten information.

Solution 1: Eliminate attorney responsibility for recording this information. Arrange to have a clerk in the court to record case events.

2: An in-court an automated system for entering event data would assist clerk in maintaining updated case events information.

3. Attorneys often do not complete and return daily activity sheet to clerk.

Solution 1: Eliminate attorney responsibility for recording this information. Arrange to have a clerk in the court to record case events.

2: An in-court an automated system for entering event data would assist clerk in maintaining updated case events information.

4. Transfers are sometimes done informally with no record made.

Solution 1: Eliminate attorney responsibility for recording this information. Arrange to have a clerk in the court to record case events.

2: An in-court an automated system for entering event data would assist clerk in maintaining updated case events information.

9. FELONIES IN CRIMINAL COURT

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Certification of Voted Indictment
- Preliminary Hearing Minutes

Court
DA's Office
Grand Jury

Output:

- Written notice of defendant's intention to testify in the Grand Jury

NOTES:

- Preliminary hearings are extremely rare except when complainants are in hospital situations.
- Felony complaints are calendared in Criminal Court until indictment is voted, case is reduce or dismissed or further examination is waived to the Grand Jury.

PROBLEMS:

1. Prosecutors occasionally misrepresent "voted" indictments.

Solution 1: More care should be taken before representation of grand jury vote.

2. Felony waiver offers are decided on with little or no discovery.

Solution 1: Institution of statutory requirements for turning over discovery materials.

3. Cases are second-called on 180.80 day when prosecutor has no intention of presenting.

Solution 1: Court congestion could be avoided if prosecutors made earlier announcements that cases were not being presented on 180.80 day.

10. SUPREME COURT ARRAIGNMENT

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Indictment
- Voluntary Disclosure Form
- Prosecutors Notices

Court
DA'S Office
NYS Dept. of
Correctional
Services

NOTES:

- Legal Aid assigns a staff attorney referred to as the "miscellaneous person" to each Supreme Court Arraignment session to do arraignments only.
- Supreme Court arraignments take place Monday through Friday at 2:00 P.M.

PROBLEMS:

1. Attorneys and clients are often not notified of Supreme Court Arraignment date.
Solution 1: Courts should take better care notifying attorneys of Supreme Court arraignment dates.
2. Legal Aid Society attorney often has to do "stand-up" arraignments on cases where assigned attorney is not present.
Solution 1: If there was a better notification process for attorneys, this stand up process could be eliminated.

11. SUPREME COURT CONFERENCE

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

-Results of early investigation

Court

DA's Office

Output:

-Investigations requests

Court Employment

Project

ATI Program

NOTES:

- Cases go to Conference Part before assignment to Individual Calendar Part.

PROBLEMS:

1. Conference dates are set by court with little room for change making it sometimes difficult for attorneys to appear.

Solution 1: There should be more flexibility on the part of the court regarding conference dates.

2. If plea is turned down in conference part, there is a tendency not to re-offer it.

Solution 1: Plea bargaining should be less arbitrary.

3. Pleas are taken in conference part without adequate discovery.

Solution 1: Earlier discovery would allow better plea bargaining.

12. FELONY CASE PREPARATION

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Open file discovery
- Answers to Motions and
Discovery Demands
- Subpoenaed Documents
- Rosario/Consolazio/Brady
material
- Motions by Prosecution
- Decisions/Opinions of Court
- Memos of law by Prosecution
- Statements of People's readiness
- Investigators reports

- Court Personnel
- DA's Office
- Police Departments
- Hospitals
- Board of Education
- Department of
Corrections

Output:

- Demand for Discovery
- Omnibus Motions
- Subpoena request form
- Subpoenas
- Investigation requests
- Special Bail Applications
- Writs of Habeas Corpus
- Article 78 petitions
- alibi notice
- notice of psychiatric defense
- court orders
- special motions (30.30, etc.)

NOTES:

- Each Legal Aid Complex has a corresponding cluster of Parts in Supreme Court.

PROBLEMS:

1. Attorneys keep their own motion schedule and sometimes miss deadlines.

Solution 1: An automated case management system could maintain a record of pending dates and generate daily tickler reports.

2. The current method for generating motions is cumbersome. Motions are generally done by deletions and additions to a form which is then given to word processors

Solution 1: Expand and improve the word processing system to generate motions and other documents as needed by attorneys.

3. The word processing staff does only original work, any revisions or corrections returned to the unit are low priority and turn around time is lengthy.

Solution 1: Expand and improve the word processing system to generate motions and other documents as needed by attorneys.

4. Volume of Word Processors work sometimes results in late motions (word processors are not aware of individual deadlines).

Solution 1: Expand and improve the word processing system to generate motions and other documents as needed by attorneys.

5. Attorneys generate their own subpoenas and sometimes wait too long.

Solution 1: Expand and improve the word processing system to generate motions and other documents as needed by attorneys.

2: An automated case management system could maintain a record of pending dates and generate daily tickler reports.

6. Agencies often delay in responding to subpoenas, causing cases to linger beyond necessary time.

Solution 1: Responding agencies should be more responsive to delays in court proceedings caused by their failure to comply in a more timely fashion.

7. 911 Tapes are destroyed 90 days after recording and attorneys sometimes miss opportunity to subpoena them.

Solution 1: An automated case management system could maintain a record of pending dates and generate daily tickler reports to remind attorneys to subpoena 911 tapes prior to the 90 day deadline.

8. Investigations are not always ordered early enough.

Solution 1: Decentralize the investigative staff. Investigator should be in closer proximity to the complex that they are assigned to.

9. Investigators and attorneys do not always communicate sufficiently before investigation.

Solution 1: Decentralize the investigative staff. Investigator should be in closer proximity to the complex that they are assigned to.

10. Calendaring of cases in different parts causes problems when each judge expects attorneys in their part at the same time.

Solution 1: More flexibility on the part of the court would better enable attorneys to cover courts.

11. There is no automated brief bank for Legal Aid society cases. Consequently, attorneys in the borough are not aware of existing briefs in the other boroughs.

Solution 1: Creation of an internal automated brief bank would provide LAS attorneys quick access to existing materials.

2: Create a network with other public defender and LAS brief banks, through the Defenders Association.

12. Currently, secretaries do not have word processing capabilities. This limits the ability of secretaries to prepare lengthy legal documents and to utilize materials previously prepared.

Solution 1: Secretaries should have word processing capabilities.

13. FELONY CASE DISPOSITION

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Rosario/Consolazio Material
- Second Felony Offender
Statement
- Pre-pleading Investigation

- Court personnel
- Probation Department
- Victim Services
Agency
- Court Employment
Projects
- Brooklyn Community
Services Sentencing
Project
- Police Departments

Output:

- Same as "Misdemeanor Case
Disposition"

PROBLEMS:

1. Dispositions often occur without complete discovery.

Solution 1: Change the discovery law to require earlier and better discovery.

2. Pleas are often pushed by prosecutor when complainant wants to drop charges.

Solution 1: Prosecutors should be more responsive to complainants' wishes.

3. Violations of Probation are not generally filed timely making disposition of pending case difficult.

Solution 1: A mechanism should be in place allowing for coordination with the court and probation department for disposition of violation of probation with pending cases.

4. Information about out-of-county and out-of-state pending matters such as convictions is often difficult to obtain.

Solution 1: Development of an automated and standardized case tracking system accessible by defense providers from various counties for inquiry purposes.

14. FELONY SENTENCE AND APPEAL

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Probation Report

Probation Department
Court and DA's Office

Output:

- SDS Pre-sentence reports
- Notice of Appeal
- Trial Sheet

Victim Services
Agency
Legal Aid Society
Appeals Bureau

NOTES:

- Once Notice of Appeal is served, case is transferred to Legal Aid Appeals Bureau.

PROBLEMS:

1. Probation reports generally not available until day of sentence.

Solution 1: Comply with statute requiring 24 hour advanced availability of probation reports.

2. Client must request assignment of counsel for appeal.

Solution 1: Courts should provide sentenced defendants with the paper work required to request an appeal or allow attorney to make this request for defendant.

- 2: The rules should be changed to eliminate a new showing of indigence at appeal for no change circumstances. A check off area should appear on the Notice of Appeal to request an attorney and indicate eligibility.

3. The 21 day limit from conviction to sentence makes preparation of SDS presentence reports difficult.

Solution 1: There is a need to have the 21 day rule modified upon request of LAS attorneys.

2: Increase SDS staff to better meet the reporting needs of felony caseloads.

15. SUPREME COURT VIOLATIONS OF PROBATION

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Specifications
- Updated Investigation and Sentence Reports Progress reports

Probation Department
Court Personnel

Output:

- SDS reports

NOTES:

- Original attorney handles violation of probation unless client has a new in-county arrest.

PROBLEMS:

1. 18-B and out-of-county attorneys often take pleas on new cases without covering violations of probation.

Solution 1: 18-B attorneys should take greater responsibility to coordinate with LAS attorneys.

2. Violations of probation are often not calendared until months after the new case is disposed of.

Solution 1: Probation department should improve their policies and procedures for calendaring violations of probation.

3. Attorneys and clients are not always notified of violations of probation.

Solution 1: The court should institute better notification efforts regarding violations of probation.

16. PAROLE VIOLATIONS

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Parole Specifications
- Parole Hearing Minutes

Division of Parole
Parole Revocation
Unit of LAS

Output:

- Notice of Appearance to
Parole

NOTES:

- CDD attorney handles parole problem of client if new arrest is one of the alleged violations of parole. Otherwise LAS Parole Revocation Defense Unit handles them.

PROBLEMS:

1. Parole Hearings are usually held at Rikers Island or Long Island City Courthouse and often tie up attorney for full day.

Solution 1: Decentralize parole hearings to more convenient locations for attorneys.

2. Parole officers often withdraw new case specification at hearing and proceed on technical specifications.

Solution 1: LAS attorneys should receive advanced notification of new case status withdrawal to technical specifications.

3. No statistics are kept for handling of parole matters by CDD attorneys.

Solution 1: An automated case management system could maintain an ongoing record of case status.

2: Improve the record keeping procedures and require attorneys to keep track of parole cases.

17. MISCELLANEOUS CASES

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

-Case folder

Police Department
DA's Office

Output:

-Line-up reports

NOTES:

- We handle walk-in cases and calls on a daily rotating basis among complexes.

PROBLEMS:

1. Formal records are not kept of miscellaneous cases

Solution 1: An automated intake process used to initiate case tracking system would maintain a record of all cases.

2. Majority of Miscellaneous cases are not criminal in nature and result in referral to different agencies, wasting attorney's time.

Solution 1: Institute a non-attorney case screening process to channel non-criminal cases to appropriate agencies.

18. CLOSING OF CASES

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Case file folder
- Bench Warrant

Output:

- Daily Activity Sheet

NOTES:

- Attorney is supposed to turn in files when case is finished. Bench warrants are closed and turned in after 30 days.

PROBLEMS:

1. Attorneys often hold on to finished cases and bench warrants longer than they should.

Solution 1: An automated case management system which includes a tickler report capability would allow attorneys to file closed cases and be informed of future events if previously entered in the system.

2. Cases disposed of by "Traffic Cop" usually do not get recorded.

Solution 1: Arrange to have LAS clerk in court keeping record of case events.

3. Attorneys are often lax about filling out and turning in daily activity sheets.

Solution 1: Arrange to have LAS clerk in court keeping record of case events.

4. There is inadequate staff and a lack of storage space and poor copy quality for proper, timely recording of cases on microfiche. It takes two years to complete microfiche for one years worth of closed cases.

Solution 1: The current record retention system should under go a comprehensive study to improve current processes.

OVERVIEW

The Oneida County Public Defender was created in 1965 by the Board of Legislators pursuant to Article 18-B of the County Law of the State of New York and is chartered by the County of Oneida to provide representation to indigent defendants in criminal cases and other offenses where there is a substantial likelihood of imprisonment. During 1989, the office processed 3,881 new cases in all categories - from felonies to appeals. The office is comprised of nine attorneys, two investigators, and three secretaries. Two attorneys are assigned to the Appellate Unit and do not perform any other services. In the Trial Unit, five attorneys assigned to the felony caseload and the remaining two attorneys are assigned to city court caseloads. The Trial Unit is also responsible for all of the local criminal courts in the county.

1989
AGENCY FACT SHEET

ORGANIZATION: Oneida County Public Defender's Office

CONTACT: Frank J. Nebush, Jr., Public Defender

PHONE: (315) 798-5870

WALK THROUGH DATE: March 26 & 27, 1990

OFFICE STAFFING:

- # Lawyers: 9 (full time)
- # Paralegal: 0
- # Investigators: 2
- # Interns: 4 (1 Law student, 3 college students summer only)
- # Social Workers: 0
- # Satellite offices: 0

SUPPORT STAFF:

- # Secretaries: 3
 - # Police Departments: 16
 - # County Courts: 3
 - # Town Village Courts: 37
 - # Town Village Justices: 54
 - # City Courts: 3
 - # City Court Judges: 6
- APPEALS:**
County Court, Appellate Division,
Fourth Department: Court of Appeals.

COUNTY SQUARE MILES: 45 Square miles

POPULATION: 250,000

1989
AGENCY FACT SHEET

SOURCES OF FUNDING:

<u>Source</u>	<u>Type</u>
Local:	Oneida County
State:	Target Crime Initiative Program (Aid to Defense) Stop-DWI Program Corrections Law §606
Federal:	

CRIMINAL CASELOAD:

# Total Assignments:	
# Felony Assignments:	856
# Misdemeanor Assignments:	2,545
# Violations	353
# Felony Indictments & SCIs:	343
# Misdemeanor Trials to Verdict:	11
# Felony Trials to Verdict:	13
# Extraditions:	25
# Habeas Corpus	1

APPEALS:

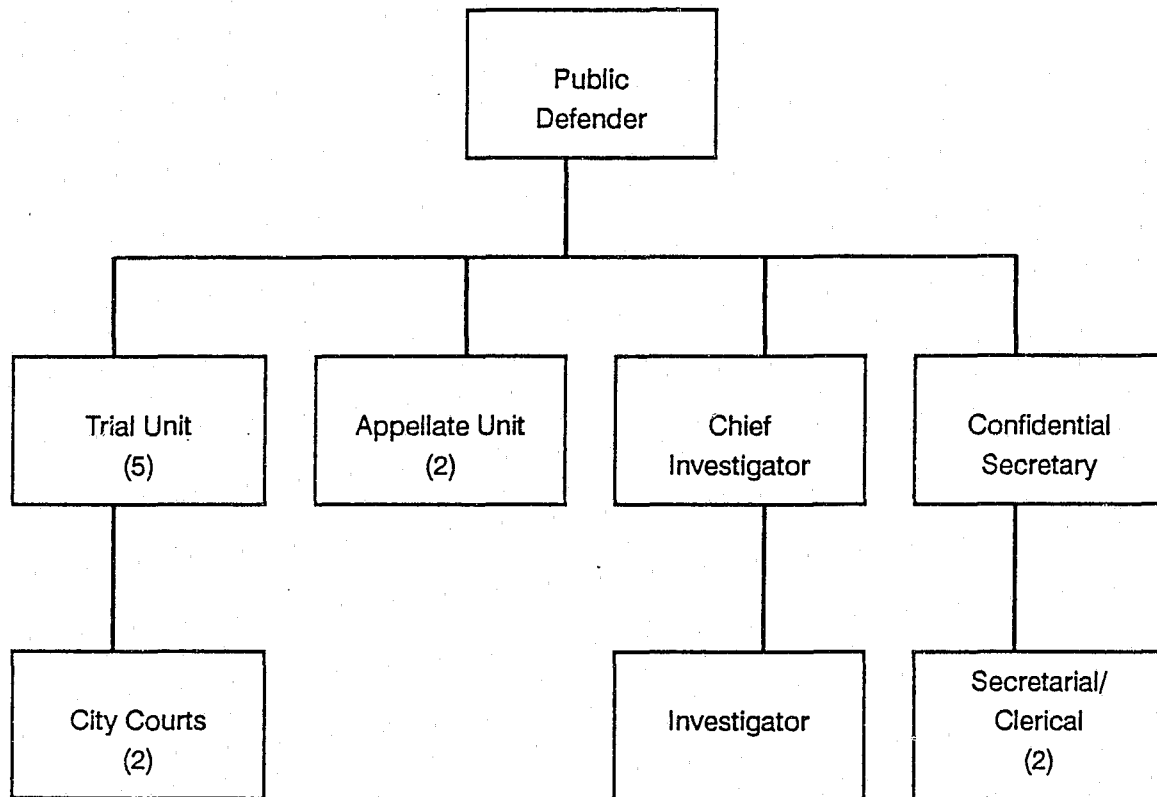
Assignments: 21

PAROLE REVOCATION HEARINGS:

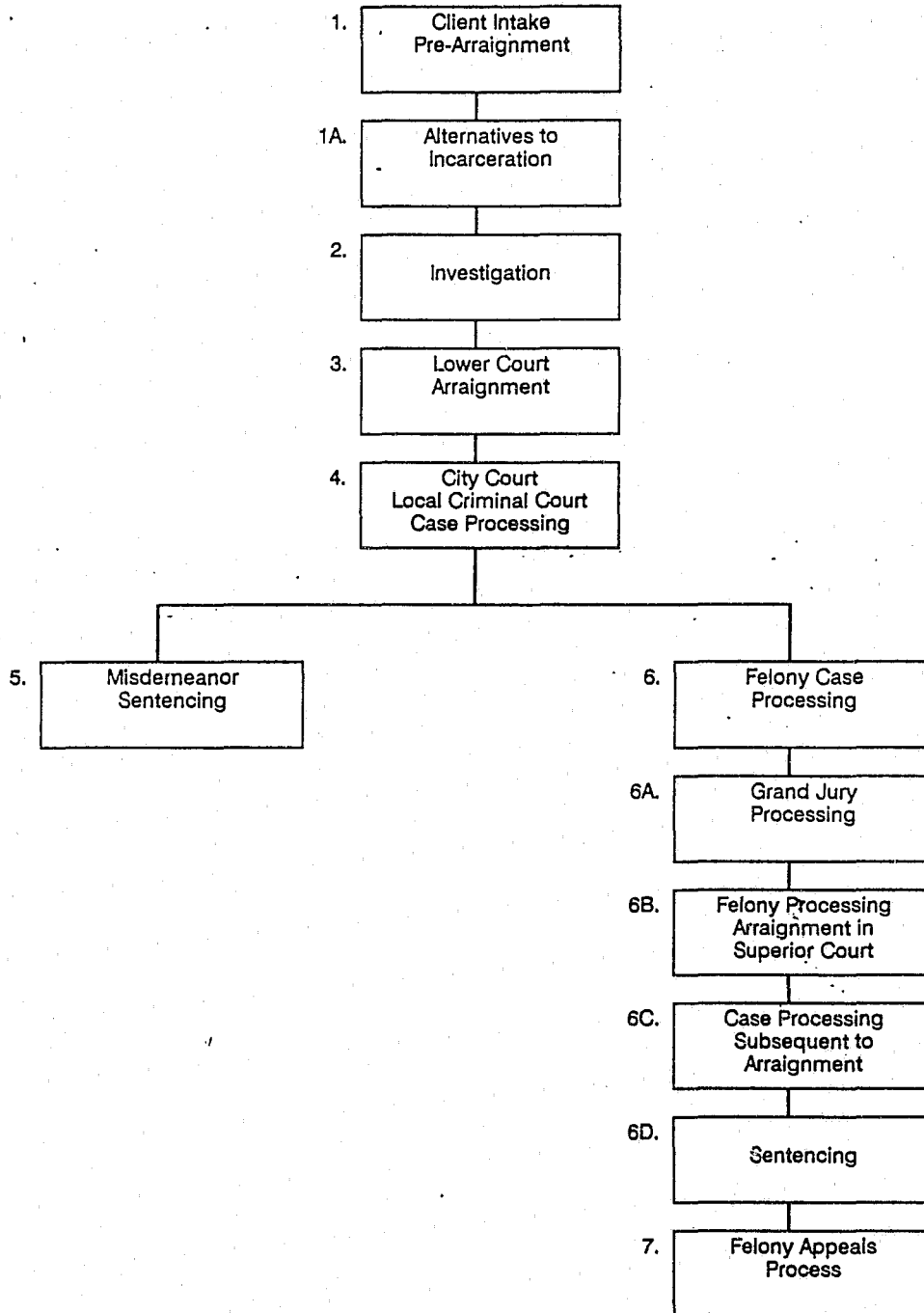
Assignments: 79

PROBATION VIOLATIONS: 80

ORGANIZATION CHART



CASE MANAGEMENT



1. CLIENT INTAKE/OVERVIEW

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Police Court

Input:

- Criminal complaint and supporting affidavits
- 710.30 Notice

Output:

- Income Eligibility/ Client Intake, Application for Defense Services
- Case information and bail request
- 3x5 card file
- Case file folder
- Investigator's or Attorney's notes
- Reply to 190.50
- Case log sheet
- Referral to Forensic Mental Health Institute (FMHI)

- Defendants unable to make bail are placed in holding area for transport to jail.
- Attorney investigator or intern performs initial intake.
- Attorneys create the packet of case information.
- Income eligibility and ROR consideration form completed.
- Secretaries create 3x5 card, assign number, enters date in calendar book and types label for file folder for each defendant on which information is received.
- Referral to Forensic Mental Health Institute where appropriate, for evaluation.

- Police
- Defendant
- Assistant DA
- Probation (ROR)
- Mental Health Evaluator

Local Criminal Court

Input:

- Complaint/Information
- Supporting Deposition
- 710.30 Notice

- Defendant
- Assistant DA
- Court Clerk

NOTES:

- City Court - Prior to arraignment, Public Defender is not officially appointed at the time of initial screening. (The Public Defender makes the determination of eligibility, however). The Public Defender maintains a small office at Utica City Court. The Assistant Public Defender (APD) arrives at court at 9:00 a.m. and reviews the arraignment calendar and interviews each defendant in the lock-up with regard to their eligibility for representation by the Public Defender's Office. At the initial screening, the defendants are informed of their bail or release options. The Public Defender uses AMICAS (a manual system of record keeping) and a mainframe based IMS for client data. The County Department of Central Services is in the process of implementing the MAPPER system to enhance case tracking in lieu of the IMS system presently being used. The MAPPER system runs off the county mainframe system.
- All defendants requesting the services of the Public Defender are required to complete and sign an initial short form affidavit of eligibility. The investigator, intern or attorney then interviews the defendant concerning the charge, possibility of bail and witnesses. This information is placed on the caselog sheet for the attorney to review if he is not performing the initial intake himself.
- The judge commences his arraignment calendar after the interviewing has been completed. Referrals to the probation department's ROR program and the Forensic Mental Health Institute are made at this time as appropriate for either initial or further screening. Pre-trials are then scheduled within ten days of the arraignment. The bulk of the cases in city court are disposed of at these pre-trial proceedings.

Local Criminal Courts

- The one attorney assigned to each Town or Village Court has complete responsibility for that court. In the busier courts, an APD is scheduled every week or every two weeks and provides the same intake services as city court. In the majority of courts, the judge informs the defendants of their right to counsel at arraignment and instructs them to contact the Public Defender's office if they cannot afford counsel. The judges also either call or send in the return dates of defendant's arraigned in their courts. Any felony arraignment's or misdemeanor committed to jail are also called into the APD's assigned to that court. Usually

these calls are made by the judge himself who discusses the case and the return date with the APD.

- The investigators interview all defendants requesting the services of the Public Defender at the jail. Investigators also check the jail list each day to determine if new inmates are in need of counsel. Reports on their interviews are given to the APD assigned the case or the originating court. Referrals are also made by the investigators to the probation department ROR personnel and to the Forensic Mental Health Institute, Inc. for treatment alternatives recommendations.
- Defendants can appeal and APD's finding of eligibility to the Public Defender by filing a long form financial statement with the Public Defender. A judge can also overrule an adverse eligibility determination. However, the Public Defender retains the power to seek recoupment from those defendants or parents whose financial condition indicates an ability to pay for services.

PROBLEMS:

1. The rapsheet is not always available to the Public Defender at the time of intake. This slows down case processing. Some judges will not set bail without the rapsheet. Attorneys cannot enter into plea bargaining. A number of cases go to Pre-Sentence Investigation stage without benefit of the rapsheet.

Solution 1: Amend the law to provide the Public Defender access to the rapsheet.

2. The current automated system (IMS) is slow. Secretaries do manual inquiry to respond to calls. County Central Computer Services is responsible for support of this program. The Public Defender's requests for assistance implementing the MAPPER system in the office has taken an inordinate length of time, this conversion process is causing another level of redundancy in file handling.

Solution 1: The County should devote more support and training to assist in getting the new MAPPER system implemented.

- 2: In the event that the MAPPER system does not prove adequate, consideration should be given to exploring use of a mini-computer based case tracking system.

3. The County mainframe computer is not available after 5:00 PM. The system utilizes batch processing. Consequently, requested reports are not processed until the next business day.

Solution 1: The County should make the mainframe available after 5:00 PM.

4. There is duplication of effort in recording case information on the cards, case file labels, and court calendar.

Solution 1: An automated case management system would generate cards, labels, and allow for computerized case tracking.

5. The current automated system does not have the capability to check for possible case conflicts.

Solution 1: The Public Defender's office should have an automated case management system with a name search capability which would allow a check for any previous contact with the Public Defender's office.

6. There is no structured training program for the Public Defender's staff on use of the new County mainframe system (MAPPER).

Solution 1: Arrangements should be made for staff to receive training on the use of the new MAPPER system.

7. There is a lack of flexibility and support from County Computer Services in the acquisition of personal computers hardware and software for the Public Defender's office.

Solution 1: The County should recognize the needs of each user and be flexible enough to accommodate the individualized hardware and software necessary for the Public Defender's office.

1A. ALTERNATIVES TO INCARCERATION

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Case log sheet
- Client interview
- Relatives/friends interview

-Request from attorney for services of the Forensic Mental Health Institute, Inc. evaluation services and treatment alternatives

Court
ADA
FMHI evaluator/
psychiatrist
Probation Department

Output:

- Judge's order for evaluation services

NOTES:

- Referrals to the Forensic Mental Health Institute, Inc. are through the court and the court must define the defendant's problem for the evaluator. The evaluator then interviews the defendant and refers him to an appropriate agency for further screening if appropriate. If further psychiatric information is needed, the Forensic Mental Health Institute, Inc. calls in one of its consulting psychiatrists for a written evaluation. Based on the information collected from the referring agency and the psychiatrist, the evaluator will arrange placement in a suitable agency for the defendant. The evaluation and recommendation are then given directly to the judge at the pre-trial and the evaluator appears to explain the evaluation and recommendation to the court, ADA and APD. If the court and defendant accepts the placement, the defendant is placed with the recommended agency and monitored by the evaluator. Any violations of the conditional discharge are either reported by the probation department or the evaluator.

2. INVESTIGATION

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

City Court

Output:

- Written/oral request to the Investigator
- Investigation report
- Case file

- Attorney completes investigation report.
- Investigator completes report.

Police
DA
Witnesses

Town/Village Courts

Output:

- Written/oral request to the Investigator
- Case File

- Investigation report including files and physical evidence provided to Assistant Public Defender.

NOTES:

Utica City Court

- As stated previously, the Investigator may complete the initial intake in City Court and continues with any further investigation the attorney feels necessary and appropriate. All investigator's reports are made on the caselogs in the files or in separate investigator's reports placed inside the files. The only information on the outside of case jackets is the client's name and case number and initials of the court in which the action is pending.
- Investigators are also responsible for tracking down defendants and witnesses who fail to show up for court appearances. Attorneys are responsible for notifying their client's of court dates. This is usually done by letter. TCIP cases are assigned only to the chief investigator who tracks them along with § 606 cases.

Local Criminal Court

- Requests for investigation made from Town or Village Courts are made in writing and occasionally orally, to the chief investigator describing the information sought. A written report is then placed in the file.

PROBLEMS:

1. The Public Defender is impeded from making adequate bail negotiations due to his ability to obtain rapsheets.

Solution 1: Amend the law to provide the defense access to the rapsheet.

2. Lack of timely access to rapsheets delays plea negotiations.

Solution 1: Amend the law to provide the defense timely access to the rapsheet.

3. LOWER COURT ARRAIGNMENT

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Police Court

Input:

- Complaints/information supporting depositions
- Information from City Court

- Case information maintained in case file folder.

- Court
- ADA
- Defendant
- Probation Department or FMHI evaluators

Output:

- Case notes, adjourn date
- Referrals to Probation, Forensic Mental Health, Inc., and other alternatives programs.
- Felony assignment/review

Local Criminal Court

Input:

- Complaints/informations supporting affidavits and depositions

Output:

- Case notes, adjourn dates
- Referrals to Probation, Forensic Mental Health Institute, Inc., and other alternatives programs
- Felony assignment and review

NOTES:

City Court

- An oral bail request is made in both misdemeanor and felony cases at arraignment. Bail is fixed and the amount of bail is noted in the file. Preliminary hearings in felony cases are requested orally and that information is noted in the file. Custody status is noted in the file. Pre-trial dates are set in misdemeanor cases within 3-10 days depending on bail status.

Local Criminal Courts

- Same procedure as above.

PROBLEMS:

1. Most City and Local Criminal Courts have inadequate rapsheet information needed to make bail applications and plea decisions.

Solution 1: Amend the law to provide defense timely access to the rapsheet.

4. CITY COURT AND LOCAL CRIMINAL COURT CASE PROCESSING

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Police Court

Input:

-Offer from DA

Output:

- Case File
- Investigation notes
- Acceptance or rejection of offer by defendant
- Counter offer from defendant or indication of defendant's position
- Date for further pre-trial or trial calendar

-Pre-trial proceedings usually result in a disposition of the case. If the case is not disposed of, the matter is set for further pre-trial or placed on the trial calendar. In misdemeanor cases where the defendant has a felony pending in County Court, the case is marked "felony pending" and sits on the trial calendar until the felony is disposed of.

DA
Court
Probation Department
Forensic Mental
Health Institute
evaluator

Local Criminal Court

-Same as above

NOTES:

City Court and Local Criminal Court

- All information is contained inside the case jacket and kept confidential. Any case unresolved at the pre-trial may be assigned for further investigation or preparation for trial or the defendant may be sent for evaluation to an alternative treatment program.

PROBLEMS:

1. As with all pre-trial situations, the ADA relies on the court documents and APD maintains his own separate file. Rapsheet availability therefore make more sense to the defense than it does to the ADA since the incompleteness of most of the rapsheet requests necessitates further checking with the defendant or the originating court in questionable cases.

Solution 1: Amend the law to provide the defense timely access to the rapsheet.

5. MISDEMEANOR SENTENCING

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

City Court

Input:

- Probation pre-sentence investigation
- Forensic report from FMHI

- Court decides between penal sanctions or alternatives to incarceration or a combination of court sanctioned alternatives.

DA
Court
Probation Department
FMHI evaluator

Output:

- ATI recommendation from Probation Dept. or FMHI
- Notice of Appeal

Local Criminal Court

- Same as above

NOTES:

City Court

- Negotiation process is intensified at sentencing when a presentence investigation or mental health evaluation has been ordered and will form the basis of sentencing.

6. FELONY PROCESSING

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

City Court

Input:

- Felony complaint
- Supporting dispositions or affidavits

Output:

- Attorney's notes
- Preliminary hearing date
- Investigator's bail report
- Assignment to felony trial attorney and designation as TCI or § 606 case
- Review by trial attorney

-Felony cases are not assigned to City Court attorneys, therefore cases originating in City Court are handled at County Court level by felony trial attorneys. In Local Criminal Court cases, the attorney assigned to that court is generally assigned the felony case except in the busier town and village courts where it would unduly burden the attorney.

ADA
Court
Probation Department

Local Criminal Court

- Same as above

NOTES:

- All requests for preliminary hearings are made at the time of arraignment. Normally the hearing date is set. If it is later decided that the hearing should be waived, it is waived on the adjourned date in exchange for a bail reduction. The investigator's office is charged with obtaining a plea offer from the DA prior to indictment or at least the DA's position on the case is placed in the file and reviewed by the attorney. SCIs are generally negotiated in the lower grade felony cases where the defendant has no or a minor record.

PROBLEMS:

1. The PD has to rely on the DA's office to provide client information on our own clients. This slows the process down especially in minor cases where our position can be formulated prior to negotiating with the DA.

Solution 1. Amend the law to provide the defense timely access to the rapsheet.

6A. GRAND JURY PROCESSING

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Grand Jury Action
- Indictment
- Return to Lower Court

County Court

DA

Defendant

Input/Output:

- Waiver of Immunity

NOTES:

- If the defendant chooses to testify, a waiver of immunity is signed. The defense attorney makes notes for the file during the defendant's testimony and notes weaknesses and strengths in the defendant's testimony.

6E. FELONY PROCESSING ARRAIGNMENT IN SUPERIOR COURT

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input: -Guilty/not guilty plea entered -710.30 Notice produced with notice of readiness -Pre-trial date set -Motion date set	-Secretaries prepare notices using word processing	DA Court
--	--	-------------

Input/Output:
 -Superior Court Information (SCI)

NOTES:

- The PD does not have a rapsheet at the time of arraignment and one is not provided unless a request is made in the Omnibus Motion. The DA will then attach a copy of the rapsheet to his answering affidavit.

PROBLEMS:

1. The Public Defender does not have the rapsheet at the time of County Court arraignment and one is not provided unless a request is made in the Omnibus Motion.

Solution 1: Amend the law to provide the Public Defender access to the rapsheet.

6C. CASE PROCESSING SUBSEQUENT TO ARRAIGNMENT

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- DA's answering affidavit
- Bail requests from the DA
- Reply to Discovery Demand
- Bill of Particulars
- Judge's decisions
- \$730 requests where applicable

DA
Court
Witnesses

Output:

- Demand for Discovery
- Request for Bill of Particulars
- Omnibus Motion
- Bail Motions
- Requests for hearings
- Hearings take place.

NOTES:

- On arraignment, a case is set for a pre-trial date and motion date. Offers are made and conveyed at the pre-trial. Tight calendar control guides the case through the judge's calendar until trial or sentencing.

PROBLEMS:

1. Lack of timely information concerning the client's prior record slows the negotiation process.

Solution 1: Amend the law to allow the defense timely access to the rapsheet.

6D. SENTENCING

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Pre-sentence investigation
- Alternative treatment reports from probation or other alternative to incarceration source

Probation
DA
Court

Output:

- Notice of Appeal

NOTES:

- Most plea bargains are tightly drawn to include as many aspects of the sentence as possible. The right to withdraw is provided for the defendant in the event the judge feels that he cannot go along with the plea bargain after reading the pre-sentence investigation.

PROBLEMS:

1. Since the rapsheet may not have been available at the time of the plea or was incomplete, the PSI provides a much broader picture than the rapsheet causing the judge to change his mind concerning the sentence offer and refusing to honor the plea promise.

Solution 1: Amend the law to provide the defense timely access to the rapsheet.

7. FELONY APPEALS PROCESS

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input:

- Case File
- Letter of appointment from Appellate Division
- Court Order and Assignment
- Transcript
- DA's Answering Brief
- Schedule of Argument
- Decision
- Order of Decision
- Signed order received
- Order granting or denying Leave

- Notice of Appeal by Defense: Explains appeals process and what the defendant must do and provides a form letter for doing it.
- Appellate Division letter received and filed.
- Court Order and Assignment received and filed.
- Copy of Appellate Division Order and request for transcripts.
- Motions: Applications for extensions.

Appellate Division
or Court of Appeals
Defendant
DA
County Court Clerk
County Clerk

Output:

- Notice of Appeal
- Letter or visit to defendant
- Motions
- Defense Brief/Appendix
- Defense Reply Brief
- Letter of transmittal
- Appeal to Court of Appeals

- Visit with defendant to review brief and appellate points.
- Schedule of Argument from Appellate Division
- Order received
- Application for Leave to Appeal sent to Court of Appeals

OR

- Application for Leave to Appeal

Input/Output:

- Record on Appeal

ONTARIO COUNTY ASSIGNED COUNSEL PLAN

OVERVIEW

The Ontario County Assigned Counsel Plan is the exclusive vehicle for the delivery of quality legal services to eligible indigent persons who possess a statutory right to assigned counsel pursuant to Article 18-B of the County Law, the Family Court Act, the Surrogate's Court Procedure Act and the Executive Law (parole violations). The plan is administered by an attorney or other qualified person responsible for insuring that effective counsel is promptly assigned to all eligible indigent persons who require legal representation. Participation as a panel attorney is limited to those lawyers who reside or maintain a law office in Ontario County and are admitted to practice in the courts of the State of New York. In 1989 the Assigned Counsel Program handled 1,593 cases at a total cost of \$421,041.95 for an average cost per case of \$264.31. Panel attorneys represented indigent litigants before 19 local courts, Ontario County Court, the Division of Parole, Ontario County Family Court, Ontario County Supreme Court and the Appellate Division Fourth Department.

ONTARIO COUNTY ASSIGNED COUNSEL PLAN

1989 FACT SHEET

ORGANIZATION: Ontario County Assigned Counsel Plan

CONTACTS: Robert W. Zimmerman, Esq. - Administrator

PHONE: (716) 289-9870
(716) 289-4043 - Fax

WALK THROUGH DATE: March 13 & 14, 1990

STAFFING:

Lawyer as Administrator, Part-time
Administrative Assistant, Part-time

OTHER STAFF:

One part-time clerical and data-entry person in the office of Commissioner of Human Services, County of Ontario.

SOURCES OF FUNDING:

<u>Sources</u>	<u>Type</u>
Local:	Ontario County
State:	Aid to Defense
Federal:	None

ONTARIO COUNTY ASSIGNED COUNSEL PLAN

1989
FACT SHEET

CRIMINAL CASELOAD:

Total Vouchers: 1,264

APPEALS:

Appellate Vouchers: 39

COUNTY COURT:

County Court Vouchers: 217

LOCAL COURTS:

Local Court Vouchers: 398

COUNTY COURT:

County Courts Vouchers: 217

CITY COURT:

City Court Vouchers: 610

FAMILY COURT:

Family Court Vouchers: 329

These figures represent 1/1/89 - 12/31/89

ONTARIO COUNTY ASSIGNED COUNSEL PLAN

PERFORMED BY: INDIVIDUAL ATTORNEY

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Output:

-Voucher -Affirmation	-Case information -County claim form -Detailed breakdown of hours spent on case both in and out of court -Explanation of claim if statutory maximum is exceeded	Attorney
--------------------------	---	----------

NOTES:

- Each individual attorney is responsible for preparing his own voucher.
- The time spent on preparation is billable time.
- All parts of vouchers are to be submitted on NCR form.
- The term voucher will be used to describe the compilation of the above-mentioned items.
- The voucher is submitted to the appropriate court via mail or personal delivery.

ONTARIO COUNTY ASSIGNED COUNSEL PLAN

PERFORMED BY: JUDGE OR COURT CLERK

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Output:

-Sorted, itemized and approved vouchers

-A "voucher" consists of, voucher and affirmation, if necessary

Judges
Clerks

NOTES:

- Judges review vouchers and either approve them for initial amount of claim or modify the amount as they see fit.
- The judges/clerks return the approved vouchers to the Assigned Counsel Administrator together with any changes in the amount of payment.
- In all courts the voucher is submitted to the judge of disposition.

ONTARIO COUNTY ASSIGNED COUNSEL PLAN

PERFORMED BY: ASSIGNED COUNSEL PLAN

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- Voucher
- Affirmation

- Case information
- County claim form
- Detailed breakdown of hours spent on case both in and out of court
- Explanation of claim if statutory maximum is exceeded

Attorney
Judges
A.C.P.

Output:

- Sorted, itemized and classified vouchers

NOTES:

- Vouchers go to the Administrator for approval and signature and designation as Aid to Defense Case.
- Vouchers are delivered by hand to Human Services office.

ONTARIO COUNTY ASSIGNED COUNSEL PLAN

PERFORMED BY HUMAN SERVICES SUPPORT STAFF

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Output:

-Vouchers

See previous

Human Services

NOTES:

- As vouchers arrive at Human Services they are grouped by court/attorney.
- Data from vouchers are entered into data base - court, attorney, amount of payment.
- Human Services sends Aid to Defense worksheets to attorney for completion and return to Human Services in appropriate cases.
- The Assigned Counsel Plan is not a County agency and in order for the Treasurer's office to process claim vouchers, they must be approved by the Treasurer's office.
- Human Services submits the vouchers to the County Treasurer.

ONTARIO COUNTY ASSIGNED COUNSEL PLAN

PERFORMED BY: COUNTY TREASURER'S OFFICE

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Output:

-Vouchers

See Previous

A.C.P.

Human Services

Attorney

NOTES:

- The vouchers are submitted to the Treasurer's office for payment.
- The Treasurer's office audits each voucher to verify accuracy in mathematical calculations.
- A check is issued directly to 18-B attorney.
- A printout of checks issued by cases is generated by the County Treasurer's office. Both Human Services and A.C.P. each get a copy of the printout.

PROBLEMS: Individual Attorney

1. Some judges assign 18-B attorneys without informing the Assigned Counsel Administrator. The Administrator will not know of these assignments until a voucher is received.

Solution 1: Encourage improved communication between the Court and the 18-B Administrator.

2: The court should inform the Assigned Counsel Administrator of assignments.

3: Require any attorney assigned, upon acceptance, to inform the Administrator of assignment.

2. Expert witness fees are not sufficient to retain experts with credentials.

Solution 1: Propose a change in legislation to increase the fees for expert witness services.

3. In some cases, judges are not granting applications for expert services.

Solution 1: Judges should be "encouraged" to comply with § 722-c of the County Law.

4. The current case management system is manual. To respond to case inquiries, secretaries must sort through papers and files.

Solution 1: An automated case tracking system would allow quick inquiry for case specific information.

PROBLEMS: Judge or Court Clerk

1. There is a delay in notification to Assigned Counsel of execution of parole detainers for defendants in jail.

ONTARIO COUNTY ASSIGNED COUNSEL PLAN

- Solution 1:** Improve communication between the local Corrections Administrator and the Assigned Counsel Administrator.
- 2: The jail should provide newly incarcerated inmate with the name, address and phone number of the Assigned Counsel Administrator.
 - 3: Make use of volunteer criminal justice student interns to pick up the daily jail list.
 - 4: Arrange to have the jail FAX the daily jail intake list to the 18-B Administrator.

SCHENECTADY COUNTY PUBLIC DEFENDER

OVERVIEW

Schenectady County provides representation for indigent persons accused of crimes in all the courts in Schenectady County as well as most Family Court matters and all Parole and Probation violations. The office is staffed with four full time attorneys and six part time attorneys as well as two law clerks who are third year law students, three investigators and one alternatives to incarceration, "defender based advocacy" coordinator and two secretaries. Schenectady County is the second smallest geographic county in the State of New York having a total of six police departments and only six local justice courts. The office receives funding through the AID Program (formally TCIP) the Justice Assistance Act and the Department of Probation and Correctional Alternatives. In 1988 the office received 2,643 assignments with 628 felonies, 2,115 misdemeanors, 12 appeals, 38 parole revocation hearings and a total of 332 Family Court cases.

The main problems present in this office stem from the lack of a computerized data base system which makes it impossible to track individual cases, identify trends in arrest or conviction, or to compile any meaningful data except on a manual basis. Additionally, lack of timely access to rapsheets was determined to cause delays for almost all proceedings resulting in longer periods of incarceration. Lastly, the inability to do any computerized research or to have access to a brief bank results in significant delays.

1989
AGENCY FACT SHEET

ORGANIZATION: Schenectady County Public Defender's Office

CONTACT: Martin Cirincione, Public Defender

PHONE: (518) 374-5475

WALK THROUGH DATE: November 28-29, 1989

OFFICE STAFFING:

- # Lawyers: 10 (4 full time - 6 part time)
- # Paralegals: 2 law clerks
- # Investigators: 3 (2 full time - 1 part time)
- # Social Workers: 1 Alternative Sentencing Coordinator
- # Satellite offices: 0

SUPPORT STAFF:

- | | |
|------------------------|---|
| # Secretaries: 2 | # Police Departments: 6 |
| # Data Entry Clerks: 2 | # Town Village Courts: 6 |
| # Legal Interns: 0 | # Town Village Justices: 10 |
| # Volunteers: 0 | # City Courts: 1 |
| # Senior Aide: 1 | # City Court Judges: 2: 1 full time and 1 part time - also judges from other counties on rotating basis assigned for trial work only. |

COUNTY SQUARE MILES: 207.5 square miles

POPULATION: 156,000

SCHENECTADY COUNTY PUBLIC DEFENDER

1989 AGENCY FACT SHEET

SOURCES OF FUNDING:

<u>Source</u>	<u>Type</u>
Local:	Schenectady County
State:	Target Crime Initiative Program (TCIP) (Aid to Defense)
Federal:	Justice Assistance Act (JAA) - disbursed through Division of Criminal Justice Services.
	Senior Aide Program - 2 year limit for Senior Aide 20- 26 hrs per week.

CRIMINAL CASELOAD:

# Total Assignments:	2,743
# Felony Assignments:	628
# Misdemeanor Assignments:	2,115
# Felony Indictments & SCIs:	182
# Misdemeanor Trials to Verdict:	12
# Felony Trials to Verdict:	6

APPEALS:

# Assignments:	12
# Cases Pending:	11
# Briefs:	8

PAROLE REVOCATION HEARINGS:

# Assignments:	38
# Final Revocation Hearings:	36
# Preliminary Hearings:	17

1989
AGENCY FACT SHEET

FAMILY COURT:

# Total Assignments:	332
# Child Abuse & Neglect Assignments:	108
# Support Violation Assignments:	32
# Family Offenses Assignments:	17
# Custody & Visitation Assignments:	143
# Paternity Assignments:	42
# Juvenile Delinquency Assignments:	0

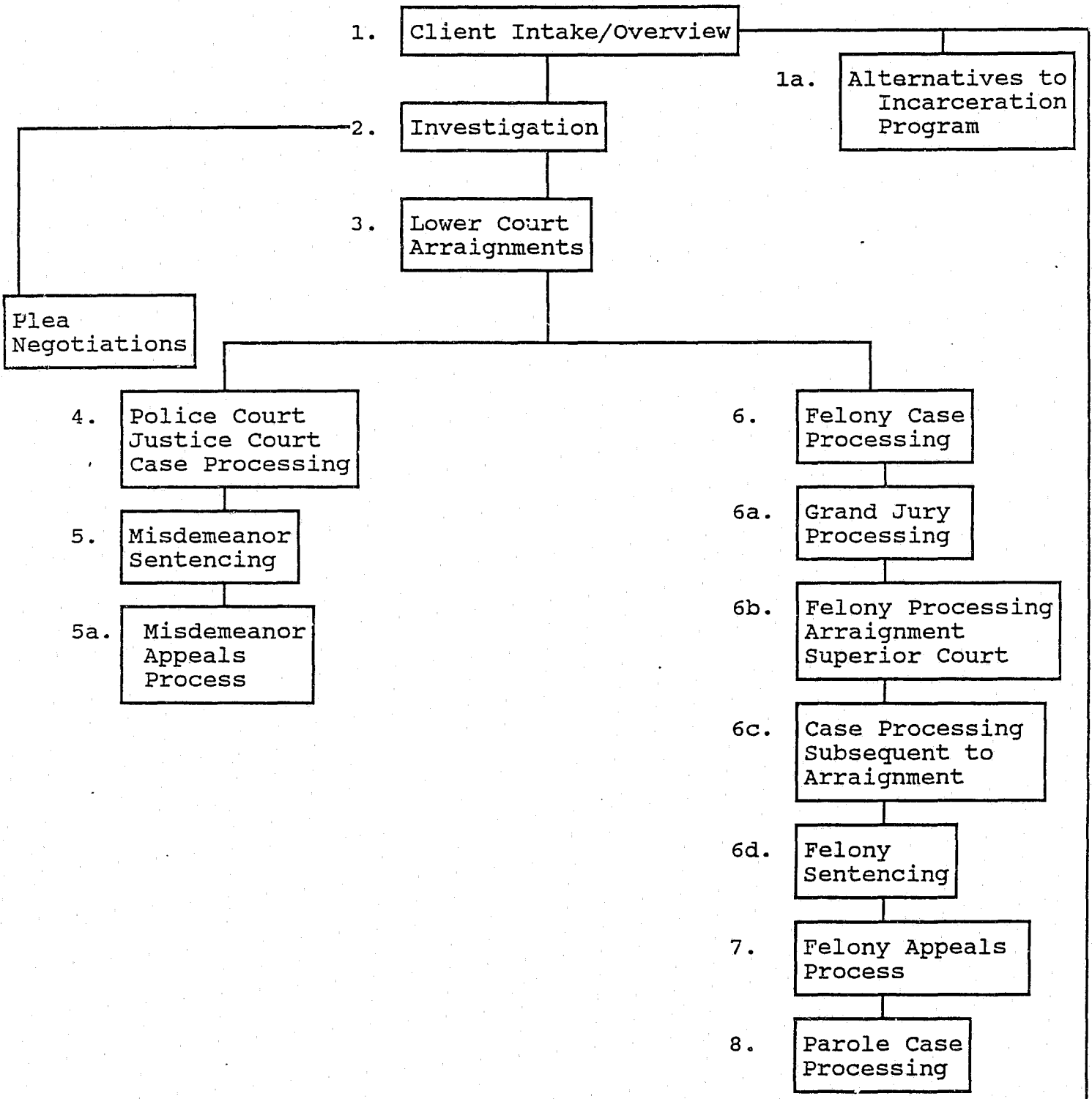
(we do not receive J.D. or PINS Assignments)

There is some overlapping with Family Offenses, Custody and Visitation and Abuse and Neglect.

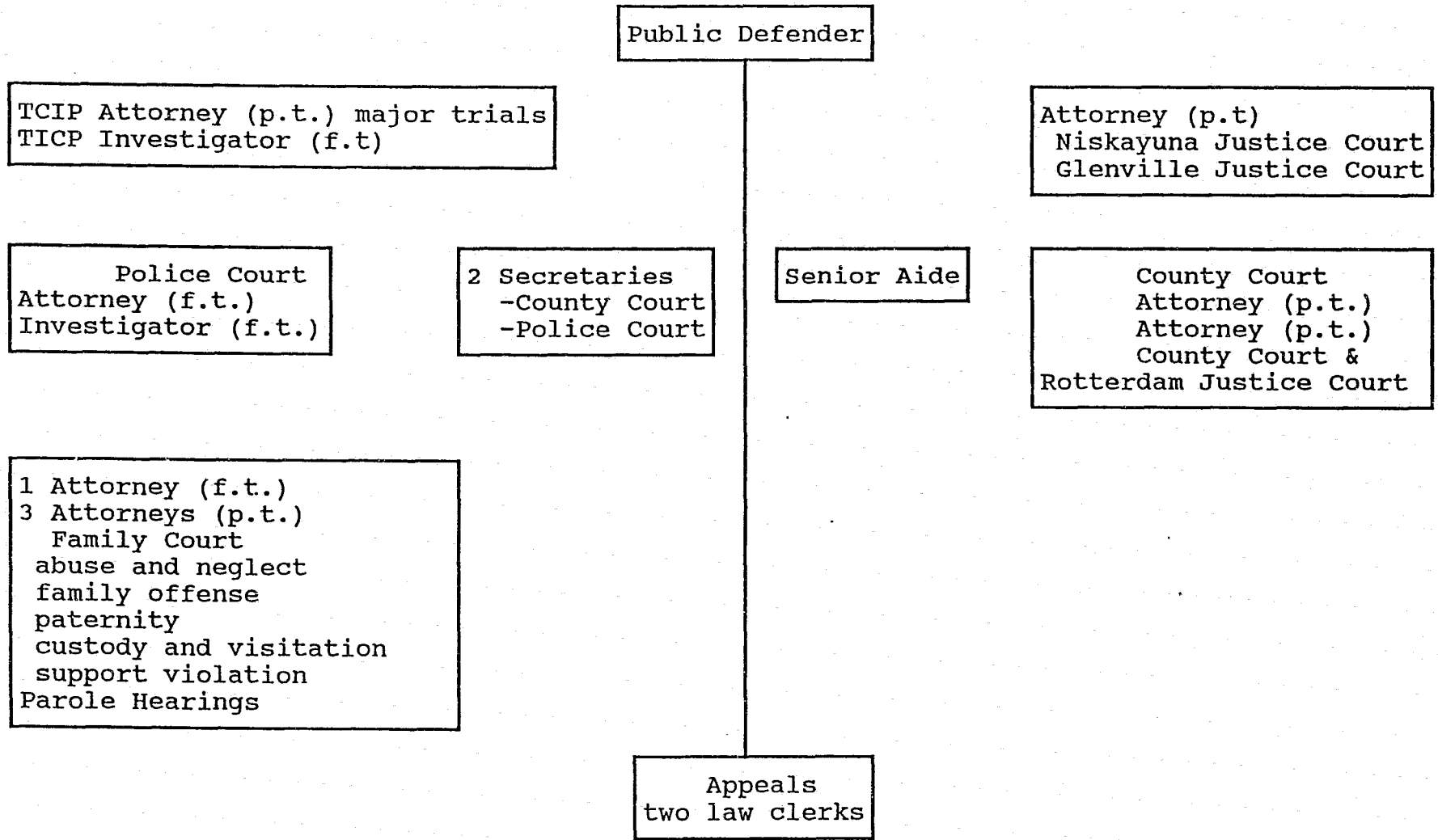
NOTES:

# Civil Cases:	0
# Social Services Fair Hearings:	0
# Social Services Referrals:	0
# Senior Citizen Cases:	0

OVERVIEW - CASE PROCESSING



ORGANIZATION CHART



SCHENECTADY COUNTY PUBLIC DEFENDER

1. CLIENT INTAKE/OVERVIEW

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Police Court

Input:

- Criminal complaint and supporting affidavits
- 190.50 Notice

Output:

- Income Eligibility/ Client Intake
- Case information and bail request
- 3x5 card file
- Case file folder
- Investigation notes
- Reply to 190.50

- Defendants unable to make bail are placed in Lock Up.
- Arraignments held next morning.
- Attorneys create packet of case information.
- Income eligibility and ROR consideration form completed.
- Secretaries create 3x5 card for each defendant on which information is received.

Police
Defendant
Assistant DA
Probation (ROR)

Family Court

Input:

- Family Court Assignment
- Sheet and Intake
- Family Court Petitions

Family Court Judge
Clerks

Justice Court

Input:

- Complaint/Information

Defendant
Assistant DA
Court Clerk

NOTES:

Police Court - Prior to arraignment, Public Defender is not officially appointed at the time of initial screening. The Public Defender has a small office at Police Court. The investigators arrive at Police Court at 7:00 a.m. and review the police blotter to find all persons arrested between the last morning in court and the present morning. The investigators then go back into the lock-up and interview each person in the lock-up in regard to their eligibility for representation by the Public Defender's Office. At this time,

SCHENECTADY COUNTY PUBLIC DEFENDER

the defendants are initially informed of their bail or release options and referrals are then made to the Law, Order and Justice Center (L.O.J) which has a bail fund and the person from Probation who does ROR. There is no actual form for referral, it is done orally to the ROR person who is also there with the Investigators and it is done directly to the person from L.O.J. who comes to the Court at approximately 8:30 a.m.

For those who are eligible, an affidavit is filled out and signed by the client. The Investigator then does an initial intake of the client finding out any information concerning the charges, any possibility that they will be able to make bail and potential witnesses in the case.

The Investigators report the information to the Attorney who then speaks with the clients. Both the Attorney and Investigators will now make notes concerning the file, and they will begin the case investigation.

At approximately 8:30 a.m. the Assistant District Attorney, in the company of the Investigators and the Assistant Public Defender meet with the Judge and go over the morning's calendar. The Public Defender tells the Judge all of the cases that he has screened and that he will be taking for that day. Plea negotiations begin at this time, and there is a strong effort made by the Public Defender's to negotiate cases or to refer them to alternative agencies upon initial appearance. Information is orally given to the Judge and Assistant District Attorney which has been obtained from conversations with the defendant and possibly with any witnesses that the defendant may have brought to Police Court. The District Attorney frequently informs the Public Defender of additional opened cases.

Family Court - Family Court cases are only received upon written assignment of the Family Court Judge, except in a small number of cases where the Judge will make an assignment by oral request if there is an immediate application for temporary order of removal.

The respondent appears in Family Court (or the petitioner in some cases), requests an attorney, and the Judge then adjourns the matter for approximately one or two weeks for the Public Defender's Office to appear. The client is given, by hand before he leaves court, an assignment sheet directing him/her to come to the Public Defender's Office which is located across the street from the Family Court. It is the client's responsibility to appear with the sheet. Once the assignment sheet is received in the office, the secretary has the client fill out an eligibility form and initial client intake sheet. The secretary then opens the file (places a chronological number on the file) and initiates a

SCHENECTADY COUNTY PUBLIC DEFENDER

3x5 card. Next, the Public Defender in charge of assignments assigns the case. The case information is then data entered into the computer data base. The system provides a list of clients names, adjourn dates and their attorney's name. The client is then asked to call back in a day to set up an appointment with their attorney. At the initial interview, the attorney notes any pertinent information on an interview sheet and notes if an investigation is requested. He will contact an investigator for the case.

Justice Court - The one attorney assigned to each Justice Court has complete responsibility for that Court. At arraignment or afterwards, if the defendant requests a Public Defender, the Judge informs the defendant from the bench to contact the Public Defender. For incarcerated defendants, the Court Clerk will contact the Assistant Public Defender assigned to that Court regarding the incarcerated defendant who has been assigned to him.

The defense attorney will interview the defendant at the jail and make arrangements for bail, including referral to ROR or to the Law Order and Justice Center (LOJ) for bail consideration.

Defendants can appeal decisions on representation to the Public Defender. The Public Defender's decision not to accept a case can be overridden by a Judge.

To date, County Electronic Data Processing has not been effective in efforts to automate the office.

PROBLEMS:

1. Intake is often incomplete (clients provide erroneous information). This results in a lack of case file information. This may be due to unavailable information or different people doing intake.

Solution 1: The lack of rapsheets and automated case information makes verification of information difficult. Standardizing intake forms may help to minimize mistakes.

2. Public Defense attorneys do not have direct timely access to the rapsheet. This causes delays in setting bail and in case processing, in that some judges will not set bail without the rapsheet.

Solution 1: Change law to allow access to rapsheets.

3. There is a problem identifying conflicts which preclude the Public Defender from representing individuals.

Solution 1: Automate data collection. This will allow for comparison of name of client to names in the existing databases.

4. The current card file system is inadequate in that not enough information is recorded for each defendant, particularly in instances of multiple charges or potential conflict situations.

Solution 1: Automate data collection.

5. Closed files are archived, and information contained therein is not easily accessible.

Solution 1: Automate data collection and maintain information on closed cases.

6. Attorneys do not always create a case file folder for cases settled in justice court. This makes it impossible to gather accurate statistics, determine conflict management, or workload management.

Solution 1: Strengthen internal controls.

7. Justice Court attorneys report cases to the office on a weekly basis. This delay causes problems. (i.e, incomplete reference information and conflict information.)

Solution 1: Strengthen internal controls and automate.

8. The Schenectady City Court does not always have a court stenographer present (only for preliminary hearings and trials). This creates difficulties when disputes arise regarding bail, adjournment dates, conditions of sentence or whether the CPL § 190.50 notice was given.

Solution 1: Recommend legislation to mandate that all city court procedures are recorded stenographically.

SCHENECTADY COUNTY PUBLIC DEFENDER

9. There is no mechanism for keeping running totals of case statistics. Consequently, compilation of this information requires undue manual retrieval efforts by staff.

Solution 1: Automate data collection and develop appropriate statistical reports.

10. The Public Defender does not receive a daily jail intake list. This results in defendants in custody without legal representation which costs the county additional money.

Solution 1: Have jail administrator share information from automated jail information system. Sheriff could provide daily admission list.

11. There are no interview facilities in Family Court for the Public Defender.

Solution 1: Provide adequate interview facilities.

12. There are limitations in the current Sperry system in that there is inadequate technical support resulting in loss of data when the system brakes down and long delays in obtaining service.

Solution 1: Automate data collection and upgrade hardware in office.

13. The Public Defender is doing non-lawyer fiscal management work manually.

Solution 1: Automate data collection and budget to reduce work involved in managing and tracking agency budget.

1A. ALTERNATIVES TO INCARCERATION PROBLEMS

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Input:

- Alter. intake sheet
- Alter. release recommendation
- Alternatives pre-sentencing client specific plan

-Request from attorney for alternatives coordinator intervention.

Court
Treatment Alternative to Street Crime
Social Services
Alcohol Treatment Center

Output:

- ATI Intake Summary Sheet

NOTES:

Due to limitations placed on this program by the Division of Probation and Correctional Alternatives, we are limited to fifty clients per year. The referral is made directly from one of the Assistant Public Defenders to the alternatives coordinator. Before interviewing the client, the alternatives coordinator discusses the suitability of the client with the Public Defender. If the client is deemed suitable a limited intake is done. If the alternatives coordinator feels the client is appropriate for the program, a more involved intake and assessment is completed with evaluations and referrals. The alternatives coordinator works closely with Probation and treatment programs to formulate a client specific plan. If necessary, a request for release from jail to a treatment program is placed on the calendar.

PROBLEMS:

1. The alternatives coordinator cannot obtain a rapsheet. This often causes delays in judges' release of defendants and the loss of available facility space for defendants.

Solution 1: Amend the law to permit the defender to have access to rapsheets.

SCHENECTADY COUNTY PUBLIC DEFENDER

2. There is a lack of cooperation from Parole in working with the Public Defender to formulate alternatives programs. Parole tends to misuse the services of the Alternatives to Incarceration Program in instances when Parole should have utilized treatment instead of incarceration.

Solution 1: The NYS Division of Parole should utilize more alternatives before incarceration on a violation of parole and should develop a greater treatment network.

2. INVESTIGATION

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
<u>Police Court</u> Output: -Written/oral request to the Investigator -Investigation report -Case file	-Attorney completes investigation request. -Investigator completes report including files and physical evidence.	Police DA Witnesses
<u>Family Court</u> Output: -Written/oral request to the Investigator -Case file	-Investigation report including files and physical evidence provided to Assistant Public Defender from Investigator.	
<u>Justice Court</u> Output: -Written/oral request to the Investigator -Case File	-Investigation report including files and physical evidence provided to Assistant Public Defender from Investigator	

NOTES:

Police Court - As stated previously, the Investigator does the initial intake in Police Court and continues with any further investigation he feels appropriate. Notes are made on the outside of the file, or if they are of a confidential nature, they are placed on a legal size sheet of paper inside the file with notations. Several of the investigators provide typewritten investigation sheets in the file.

Investigators also track down defendants who do not appear for court and provide them with a letter informing them of the next court appearance. TCIP Investigator continues with selected cases, interviewing witnesses and the defendant and will follow through by actually sitting with the Assistant Public Defender at trial. All case notes are placed in the file either on a legal size sheet of paper or a typed sheet of paper.

Family Court - Requests for investigation are made orally by the Assistant Public Defender to the Investigator describing the information that they request to be investigated. A report is then provided to the attorney.

Justice Court - Requests for investigation are made orally by the Assistant Public Defender to the Investigator describing the information that they request to be investigated. A report is then provided to the attorney.

PROBLEMS:

1. The Public Defender is impeded from making adequate bail negotiations, due to his inability to obtain a rapsheet.

Solution 1: Amend the law to allow access to rapsheets.

2. There is difficulty in completing Target Crime Initiative Program (TCIP) forms without the rapsheet.

Solutions 1: Amend the law to allow access to rapsheets.

3. There is no formal investigation request sheet; consequently, statistics are not available as to the number of investigation requests generated.

Solutions 1: Develop a new investigation request sheet, and enter data regarding investigation requests.

3. LOWER COURT ARRAIGNMENT

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Police Court

Input:

- Complaints/information supporting affidavits
- Information from Police Court

-Case information maintained Court

in case file folder

DA
Defendant

Output:

- Case notes, adjourn date
- Referrals to Probation, LOJ and other alternatives
- TCIP chart
- Felony chart

Family Court

Justice Court

Input:

- Complaints/information supporting affidavits

Output:

- Case notes, adjourn dates
- Referrals to Probation, LOJ and other alternatives

NOTES:

Police Court - An oral bail request is made. Bail is fixed, and the amount of bail is noted on the file. A preliminary hearing is requested orally, and that information is noted on the file if the case is a felony. If the defendant is incarcerated on a misdemeanor, a short adjournment date is requested. Custody status is noted on the outside of the file.

Family Court - Before arraignment on the charges, the attorney has discussed the case with the client and will meet with the other attorney or the case workers from social services in an attempt to resolve the matter at the initial appearance. Case notes are generated and placed in the file if they are of a confidential nature and if not, are placed on the outside of the file.

PROBLEMS:

1. The Public Defender cannot make adequate bail requests without the rapsheet. Some courts refuse to accept bail negotiations without a rapsheet.

Solution 1: Amend law to permit access to rapsheets.

4. POLICE COURT AND JUSTICE COURT CASE PROCESSING

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
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Police Court

Input:

- DA's reply
- Offer from DA

Output:

- Case File
- Investigation notes
- Counter offer from defendant or Public Defender
- Omnibus motion demands, Bill of Particulars
- Motion to preclude

Family Court

Output:

- Investigation and file notes motions and demands
- Motion to preclude

Input/Output:

- Answer
- Psychological/psychiatric and other evaluations for children, clients and other parties

Justice Court

NOTES:

Police Court, Family Court, and Justice Court - Further investigation and attempts at negotiations with all information noted either on sheet on inside of file and if not confidential, on outside of file.

5. MISDEMEANOR SENTENCING

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Police Court

Input:
Probation Investigation

Family Court

Input:

Justice Court

Input:
-Probation Investigation

Output:

- Alternatives to Incarceration Report
- Notice of Appeal
- Sentencing Memorandum

NOTES:

Police Court - Intensive negotiations take place up to and including the time of sentencing with any changes noted on the file.

Family Court - Justice Court - Intensive negotiations take place up to and including the time of sentencing with any changes noted on the file.

6. FELONY PROCESSING

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Police Court and
Justice Court

Output:

- Notice of Intention to testify before Grand Jury
- Case File
- Preliminary Hearing notes

Police Court
Family Court
Justice Court

Input:

- Plea Bargain Sheet

NOTES:

Request for preliminary hearing is made at the time of arraignment. Every felony arraigned at justice court results in a Notice of Intention to Testify Before the Grand Jury given to the District Attorney's Office. An effort is made to negotiate the case with the District Attorney's Office before indictment. By giving the District Attorney notice of intention to testify, no case can be presented to the District Attorney without our notification. The District Attorney's Office informs the Public Defender when a case is to be presented to the Grand jury. The time is noted on the file. The Public Defender then proceeds to the Grand Jury with our client and attempt to negotiate the case or further discuss it with our client, at this time. If the case is successfully negotiated, the District Attorney's Office sends a plea bargaining sheet to the Court and the defense. If the District Attorney is unable to indict the case prior to the preliminary hearing, either the preliminary is held, or the client is released from jail on his own recognizance. The resulting notes are placed in the file, and a request for the preliminary hearing transcript is automatically made to the stenographer who provides the Public Defender with a copy of the preliminary hearing minutes.

PROBLEMS:

1. The County Court Calendar is generated by the District Attorney at 4:00 pm each afternoon. The Public Defender picks up the calendar each afternoon. If changes occur in scheduling cases after 4:00 pm, the Public Defender is not apprised of these additions or deletions.

Solution 1: Provide automated access to court calendar, or "Fax" calendar to Public Defender's office.

6A. GRAND JURY PROCESSING

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:
 -Grand Jury Action
 -Indictment
 -Return to Lower Court

County Court
 DA
 Defendant

Input/Output:
 -Waiver of Immunity

NOTES:

If the defendant chooses to testify, a waiver of immunity is signed, and the defendant is informed of any plea offer made which the District Attorney intends to withdraw if he testifies. The defense attorney makes notes during the defendant's testimony and attempts to interview police and witnesses present, noting their statements in the file.

PROBLEMS:

1. The lack of immediate notice of Grand Jury action causes delays in processing cases.

Solution 1: District attorney should be required to report Grand Jury actions immediately.

6B. FELONY PROCESSING ARRAIGNMENT IN SUPERIOR COURT

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:	-Secretaries prepare	DA
-Guilty/not guilty plea entered	. notices using word processing	Court
-710.30 Notice	-710.30 Notice provided with indictment.	

Output:
-Voluntary disclosure
agreement

Input/Output:
-Superior Court Information
-Voluntary disclosure

PROBLEMS:

1. There are delays in the District Attorney reporting indictments.

Solution 1: District Attorney should be required to report Grand Jury action immediately.

2. The Public Defender does not have the rapsheet at the time of County Court arraignment.

Solution 1: Amend law to allow Public Defender access to the rapsheet.

6C. CASE PROCESSING SUBSEQUENT TO ARRAIGNMENT

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- District Attorney's answer
- Bill of Particulars
- Further Discovery from the District Attorney
- Judge's decision/answer

Output:

- Further Discovery by Defense
- Omnibus Motions
- Reply to District Attorney's answer
- Requests for hearings

Input/Output:

- Monthly Bail Applications

NOTES:

Upon arraignment, a case is marked "ready" and there is no calendar control thereafter. Subsequent to arraignment plea negotiations are continued throughout the proceedings up to and including the time of trial. Continued offers from the District Attorney are communicated by writing them on the outside of the file and noting the day and Assistant District Attorney who made the offer. The offer is conveyed to the client, and the client's acceptance or rejection of the offer is conveyed to the District Attorney. This is noted on the outside of the file.

The county court stenographer uses a computer aided transcription (CAD) system.

PROBLEMS:

1. The Public Defender does not get adequate prior notice from county court as to the order of cases to be tried.

Solution 1: An additional county court judge should be provided for the County of Schenectady which will alleviate case pressures caused by the tremendous volume of trials.

6D. SENTENCING

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

-Presenting investigation

Probation
Court

Output:

-Defense pre-sentence report
-ATI presentence memorandum
-Notice of appeal

NOTES:

If there is an open ended plea bargain, the defense may provide a written report highlighting a defendant's good points and why a specific sentence should be ordered. Contact is made with the investigating probation officer so that oral input can be had by the Assistant Public Defender to the probation office as he is writing his report.

7. FELONY APPEALS PROCESS

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- | | | |
|--|--|---|
| <ul style="list-style-type: none"> -Case File -Letter from Appellate Division -Court Order and Assignment -Transcript -DA's Answering Brief -Schedule of Argument -Decision -Order of Decision -Signed order received -Order granting or denying leave | <ul style="list-style-type: none"> -Notice of Appeal by Defense: Explains appeals process and what the defendant must do and provides a form letter for doing it. -Appellate Division letter received and filed. -Return letter sent to Appellate Division. -Court Order and Assignment received and filed. -Copy of Appellate Division Order and request for transcripts. -Motions: Applications for extensions. -Schedule of Argument from Appellate Court shows date/time of Argument. -Letter to Appellate Division. -Order received. -Application for Leave to Appeal sent to Court of Appeals. | <ul style="list-style-type: none"> Appellate Division Defendant DA Court of Appeals County Court Clerk |
|--|--|---|

Output:

- | | | |
|---|--|--|
| <ul style="list-style-type: none"> -Notice of Appeal -Letter to Defendant -Letter accepting case to Appellate Division -Letter to Court Clerk -Motions -Defense Brief/Appendix -Defense Reply Brief -Letter of transmittal -Appeal to Court of Appeals | <ul style="list-style-type: none"> -Application for Leave to Appeal | |
|---|--|--|

OR

- Application for Leave to Appeal

Input/Output:

- Record on Appeal

NOTES:

The Public Defender's office has an 800 number available for defendants. This increases accessibility of the client to the Public Defender at minimal cost.

Two law students from Albany Law school work under the direction of Assistant Public Defenders in researching and writing the appeals.

PAROLE CASE PROCESSING - PRELIMINARY STAGES 8

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- receive transcript of preliminary hearing
- receipt of evaluation

Client
Parole
Schenectady Co. Jail
Treatment Facility

Output:

- letter to drug/alcohol treatment facility for evaluation

PROBLEMS:

1. The Division of Parole relies on the Schenectady County Public Defender's Office to discover if there exists any drug/alcohol treatment programs for the parolee. The Alternatives to Incarceration Program must formulate a plan, make referrals and develop treatment options which in the first instance should be the responsibility of the Division of Parole.

Solution 1: There is a need for a defender based advocate solely responsible for needs of parole clients.

2. Any plea negotiations made with the Administrative Law Judge's and the Parole Officer cannot bind the Parole Board Member reviewing the Hearing Officer's dispositional recommendations. Therefore, a parolee can make an admission for a plea bargained sentence which may not be imposed by the Board Members. This admission and the sentence has only a limited avenue of appeal, and the fact that the parolee made a bargain with the Administrative Law Judge was overturned is not grounds to vacate an admission.

Solution 1: Parole Board should honor any plea bargained disposition entered into by the parolee, Administrative Law Judge and Parole Officer.

INTAKE INTERVIEW - PAROLE

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- open file
- assign to attorney
- eligibility form

Parole
Schenectady Co. Jail

PROBLEMS:

1. It is not uncommon for the request for representation to be received after the date scheduled for the preliminary hearing, necessitating a request to the Board of Parole for rescheduling of the hearing.

Solution 1: Timely notice of parole proceedings should be served upon the public defender's office for all scheduled hearings.

PRELIMINARY HEARING - PAROLE

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Input:

- notice of violation
- violation of release
- finding of probable cause determination
- police reports

Parole
Client
Witnesses

Output:

- file notes
- letter to parole withdrawing waiver of preliminary hearing

PROBLEMS:

1. The hearing officer is an employee of the New York State Division of Parole, in fact a parole officer; consequently, there is no appearance of neutrality.

Solution 1: Non-divisional hearing examiners should be utilized in parole proceedings.

2. No effective plea negotiations can take place because the parole officer who is responsible for prosecuting the parole violation does not have the ability to bind the Division of Parole.

Solution 1: The Parole Board should honor any plea bargained disposition entered into by Hearing Examiner and Parole Officer.

3. It is common for the parole officer to convince the client to waive the preliminary hearing requiring a letter withdrawing the waiver.

Solution 1: Timely notice of Parole proceedings should be served upon the public defender's office for all scheduled hearings.

STEUBEN COUNTY PUBLIC DEFENDER/ASSIGNED COUNSEL PROGRAM

1989
AGENCY FACT SHEET

ORGANIZATION: Steuben County Public Defender/Assigned Counsel Program

CONTACT: Jeffrey E. Squires, Public Defender and Assigned Counsel Administrator

PHONE: (607) 776-2158

WALK THROUGH DATE: March 14, 1990

OFFICE STAFFING:

4 Part-time Assistant Public Defenders - Misdemeanors

1 Full-time Assistant Public Defender - Family Court

1 Full-time Secretary for the Full-time Assistant Public Defender

COUNTY SQUARE MILES: 1,409

POPULATION: 99,217

SOURCES OF FUNDING:

Source

Type

Local:

Steuben County
STOP DWI

State:

Target Crime Initiative Program
(TCIP) (Aid to Defense)

STEUBEN COUNTY PUBLIC DEFENDER/ASSIGNED COUNSEL PROGRAM

1989
AGENCY FACT SHEET

CRIMINAL:

Misdemeanor and Violation Cases: 921

FAMILY COURT:

Total Cases: 432
Child Abuse & Neglect Assignments: 62
Support Violation Assignments: 108
Family Offense Assignments: 32
Custody & Visitation Assignments: 194
Paternity Assignments: 22

ASSIGNED COUNSEL:

Total Assignments: 766
Felony Assignments: 430
Misdemeanor Assignments: 237
Family Court Assignments: 52
Felony Indictments and SCIs 169

APPEALS:

Assignments: 11
Case Pending: 3

PAROLE REVOCATION HEARINGS:

Assignments: 11
Final Revocation Hearings: 11
Preliminary Hearings: 0

STEUBEN COUNTY PUBLIC DEFENDER/ASSIGNED COUNSEL PROGRAM

CLIENT INTAKE/OVERVIEW

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Output:

- Income eligibility/Client Intake
- 5x8 Card File
- Case file folder
- Ledger manual

NOTES:

- Defendant is given an Affidavit of Financial Status by the judge/justice of the local court at the initial appearance if the defendant requests a public defender. The defendant completes the affidavit and returns it to the assistant public defender who is assigned to that particular court. The assistant public defender reviews the Affidavit of Financial Status to determine if the defendant is eligible for a public defender. The defendant is then notified, by mail, of the Public Defender's decision and if determined to be eligible, is instructed to make an appointment to discuss the matter with the assistant public defender prior to the next court appearance.
- A client can appeal a decision that he is ineligible to the Public Defender.
- Assistant public defenders are responsible for a monthly caseload report and a Disposition Report which is kept by the Public Defender's Administrator's Office. This information is then furnished in a monthly report to the County Legislature.
- Each part time public defender uses his private office for public defense work. The public defender's office in the County building is used for family court cases only.

STEUBEN COUNTY PUBLIC DEFENDER/ASSIGNED COUNSEL PROGRAM

PROBLEMS:

1. Public defenders do not have direct timely access to the rapsheet.

Solution 1: Amend the law to provide the defense access to the rapsheet.

2. There is a failure by the local court justices to notify the Public Defender's Office of new cases. The Public Defender is not informed of a case until initial appearance.

Solution 1: Improve communication between the local court justices and the Public Defender.

- 2: Fax or modem capability between the local courts and the Public Defender's Office would allow immediate notification of new cases.

3. The maximum amount allowed to retain an expert witnesses \$300. This amount is not sufficient to retain an individual with credentials:

Solution 1: Propose legislation to increase fees for expert witness services.

4. The Public Defender's Office does not have investigative employees. Therefore, attorney time is spent doing investigations, or needed investigations are not done or not performed in the best possible manner.

Solution 1: Increase funding to allow for investigative staff.

5. There is no case conflict identification system in the Public Defender's Office. At times, part-time assistant public defenders may be representing the same client simultaneously.

Solution 1: The Public Defender should meet regularly with the assistant public defenders or hold conference calls regarding possible conflicts.

- 2: An automated case tracking system would provide conflict identification capability.

STEUBEN COUNTY PUBLIC DEFENDER/ASSIGNED COUNSEL PROGRAM

6. Currently, there is no systematic way to notify the Public Defender of newly incarcerated individuals.

Solution 1: Improve communication between the local Corrections Administrator and the Public Defender.

2: The jail should provide newly incarcerated inmates with the name, address and phone number of the Public Defender.

3: Make use of volunteer criminal justice student interns to obtain the daily jail list.

4: Arrange to have the jail fax the daily jail intake list to the Public Defender.

7. There is no centralized records system for maintaining an historic account of cases in the Public Defender's Office.

Solution 1: An automated case tracking system would maintain an account of open as well as closed cases.

8. Given the separate offices for the part time public defenders, there are gaps in the information flow and communication between the assistant public defenders.

Solution 1: The Public Defender should meet regularly with the assistant public defenders or hold conference calls regarding possible conflicts.

2: An automated case tracking system would provide case conflict identification capability.

STEUBEN COUNTY PUBLIC DEFENDER/ASSIGNED COUNSEL PROGRAM

**ASSIGNED COUNSEL
CLIENT INTAKE/OVERVIEW**

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
---	-------------	--

Output:

- Assignment Letter to Attorney, DA and Judge
- 5x8 Card file
- Ledger manual
- Record information on computer

NOTES:

Local Courts

- Judge or court clerk notifies the Administrator's Office by mail or phone of a pending felony matter. The administrator then assigns an attorney from the area, if possible. All efforts are made to make assignments on a rotating basis.
- The attorney is contacted by phone of the assignment, if necessary, and the assignment is then confirmed by the assignment letter. It is up to the assigned attorney to determine the defendant's financial status and to notify the defendant of his decision to accept the case.
- After the case has been disposed of, the attorney completes the Assigned Counsel Voucher and Schedule A time sheet and sends them to the Administrator's Office for approval. Upon approval, the voucher is returned to the attorney to forward to the judge/justice for approval. The voucher is then returned to the attorney to once again forward to the Administrator's Office. The information is then recorded in a ledger and the voucher is submitted to the County Auditor. If the Auditor approves the voucher, it is then forwarded to the County Treasurer for payment. The County Treasurer sends a computer print-out of all vouchers which have been processed for payment back to the Administrator's Office, and the claim number, check number and audit

STEUBEN COUNTY PUBLIC DEFENDER/ASSIGNED COUNSEL PROGRAM

date is recorded in the ledger. Cards from the 5x8 card file are also noted of the payment and removed from the current file.

County Court

- The procedure is basically the same in County Court. The most significant difference is that the County Court judge usually assigns an attorney to represent a defendant.

PROBLEMS:

1. It is difficult getting attorneys to take 18-B assignments.

Solution 1: Change legislation to increase the rates of payment for assigned counsel attorneys.

- 2: Offer free training to attract attorneys to the assigned counsel program and encourage attorneys to remain with the program.

2. Assigned Counsel rates are too low. Consequently, the Assigned Counsel panel has limited number of members.

Solution 1: Change legislation to increase the rates of payment for assigned counsel attorneys.

- 2: Eliminate the statutory cap for specific type cases.

3. Attorneys frequently cannot afford to "front" disbursements in representing assigned clients.

Solution 1: Payments should be made as incurred by means of a court order directing payment to experts or providers of expert services.

STEUBEN COUNTY PUBLIC DEFENDER/ASSIGNED COUNSEL PROGRAM

4. The County Auditor requires documentation of paid disbursements prior to issuing payment.

Solution 1: The County Auditor should accept a court order from the Assigned Counsel Administrator authorizing payment for expert witnesses or auxiliary services.

- 2: The Assigned Counsel Program should have a pool of money to advance to attorneys for payment for expert services.

5. Currently, there is no systematic way to track the status of vouchers during processing.

Solution 1: A system should be developed to track the status of vouchers.

6. Assigned Counsel vouchers are not submitted in a timely manner after a case is disposed.

Solution 1: Enforce the existing voucher submission time limit.

7. There is a duplication of effort in entering case information on the cards, case files and entering the same information on the computer system.

Solution 1: Provide for an automated case tracking system which would eliminate this duplication and allow quick access to case status.

8. The current case management system is manual.

Solution 1: An automated case management system would reduce duplication of effort, allow quick access to case information, and generate needed reports.

9. Local judges adjourn their courts for a month at a time. When a pre-trial release is received, the judge will not release defendant without having the assistant district attorney and assistant public defender present. As a result, if the defendant cannot make bail, he remains incarcerated.

STEUBEN COUNTY PUBLIC DEFENDER/ASSIGNED COUNSEL PROGRAM

Solution 1: The Public Defender should meet with the Local Administrative Judge for the criminal courts of the district to discuss a change in policy to permit the release of defendants upon presentation of bail.

2: Provisions should be made that require the local justices to attend mandated training (the Office of Court Administration offers training.) which should include bail release procedures.

10. Public Defense attorneys do not have direct timely access to rapsheets.

Solution 1: Amend the law to provide public defenders timely access to the rapsheet.

11. Public Defender is not informed of defendants incarcerated on a daily basis.

Solution 1: Improve communication between the local Corrections Administrator and the Public Defender.

2: The jail should provide newly incarcerated inmates with the name, address and phone number of the Public Defender.

3: Make use of volunteer criminal justice student interns to pick up the daily jail list.

4: Arrange to have the jail Fax the daily jail intake list to the Public Defender.

OVERVIEW

The Legal Aid Society of Sullivan County, Inc. is a not-for-profit corporation, incorporated in 1973. Representing indigents in criminal and civil cases, the Society has 18 staff members -- eight full-time attorneys, three paralegals, an investigator and support staff. Approximately 75 percent of the Legal Aid Society's cases are criminal and 25 percent civil.

Legal Aid represents defendants in criminal proceedings from justice courts up to and including the Court of Appeals. In civil cases, eligible individuals are represented on any non-fee-producing case. Senior citizens are also represented through a contract with the Office for the Aging. The Legal Aid Society is 100 percent funded by the county of Sullivan. In 1989, the office handled 2341 criminal cases (477 felonies) and approximately 650 civil cases.

With regard to case information, the present office system requires that an initial record of the case be kept by index card. After case files are made up, the basic case data is inputted into a database. This inputting of case data would often take place up to 10 days after the initial case record was made. At the suggestion of the Defense Review Team, a computer and printer was obtained and located where case data is initially collected. This permits immediate data inputting and the generation of a complete case file, including file label.

A computer consultant has designed and installed a customized data retrieval program that generates needed statistical reports. Since the names of witnesses and co-defendants are included on the system, conflicts of interests are readily identifiable. The system has also greatly reduced the duplication of effort in collecting and recording case opening data. With the system, the other office computers can now be used for word processing and other secretarial work.

Aside from the normal problems arising from not having sufficient monies to do all that the office needs to do, the State I Study Process has pinpointed a number of unique information problems and their possible solutions. Some of the other problems identified by the review team still exist. Attorneys must track their own cases, a lack of funds prevents the implementation of a office-wide case tracking system, and there is no formal computer training for staff. These and the other problems outlined in the report will be remedied if the recommendations and solutions urged by the review team are implemented.

SULLIVAN COUNTY LEGAL AID SOCIETY

1988
AGENCY FACT SHEET

ORGANIZATION: Sullivan County Legal Aid Society
CONTACT: Carl J. Silverstein, Executive Director
PHONE: (914) 794-4094

WALK THROUGH DATE: November 15-16, 1989

OFFICE STAFFING:

Lawyers: 8
Paralegals: 3
Investigators: 1
Social Workers: 0 (1 PT paralegal works with Dept. of Social Services)
Satellite Offices: 0

SUPPORT STAFF:

# Secretaries: 3	# Police Departments: 5
# Recept./Data Entry Clerks: 1	# Town Vill. Courts: 19
# Legal Interns: 2-5 (10 wks-summer)	# Town Vill. Justices: 38
# Volunteers: 2	# City Courts: 0
	# City Court Judges: 0
	# Supreme Court Judge: 1
	# Criminal Court Judge: 1
	(also judges from other counties on rotating basis)

POPULATION: 60,000 October-March
600,000 April-September

SQUARE MILES: 1,011

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SOURCES OF FUNDING:

<u>Source</u>	<u>Type</u>
Local:	Sullivan County Criminal Justice Funds Sullivan County Office of Aging Funds
State:	TCIP IOLA (Interest on Lawyers Accounts) Application pending - civil cases only
Federal:	

CRIMINAL CASELOAD:

# Total Assignments:	2,341
# Felony Assignments	477
# Misdemeanor Assignments:	1,864
# Felony Indictments & SCIs:	165
# Misdemeanor Trials:	15
# Felony Trials:	11
# Misdemeanors Closed Other Than by Trial:	1,849
# Felonies Closed Other Than by Trial:	466

APPEALS:

Assignments: 30
Cases Pending: 20
Briefs: 30

PAROLE REVOCATION HEARINGS:

Assignments: 25
Revocation Hearings: 15-17

1988

AGENCY FACT SHEET

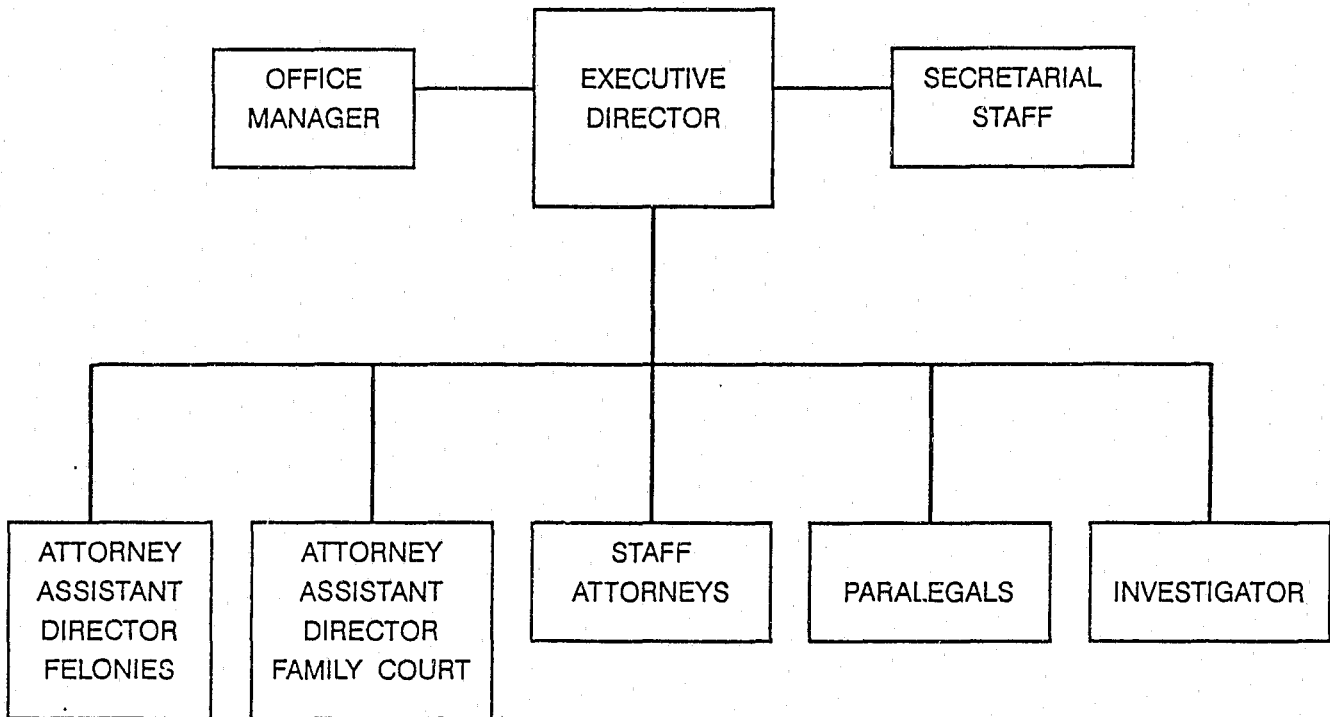
FAMILY COURT: (250 - 300 cases)

- # Child Abuse & Neglect Assignments:
- # Support Violation Assignments:
- # Family Offenses Assignments: (represents either def. or petitioner)
- # Custody & Visitation Assignments:
- # Paternity Assignments:
- # Represents Parents in PINS Petitions

NOTES:

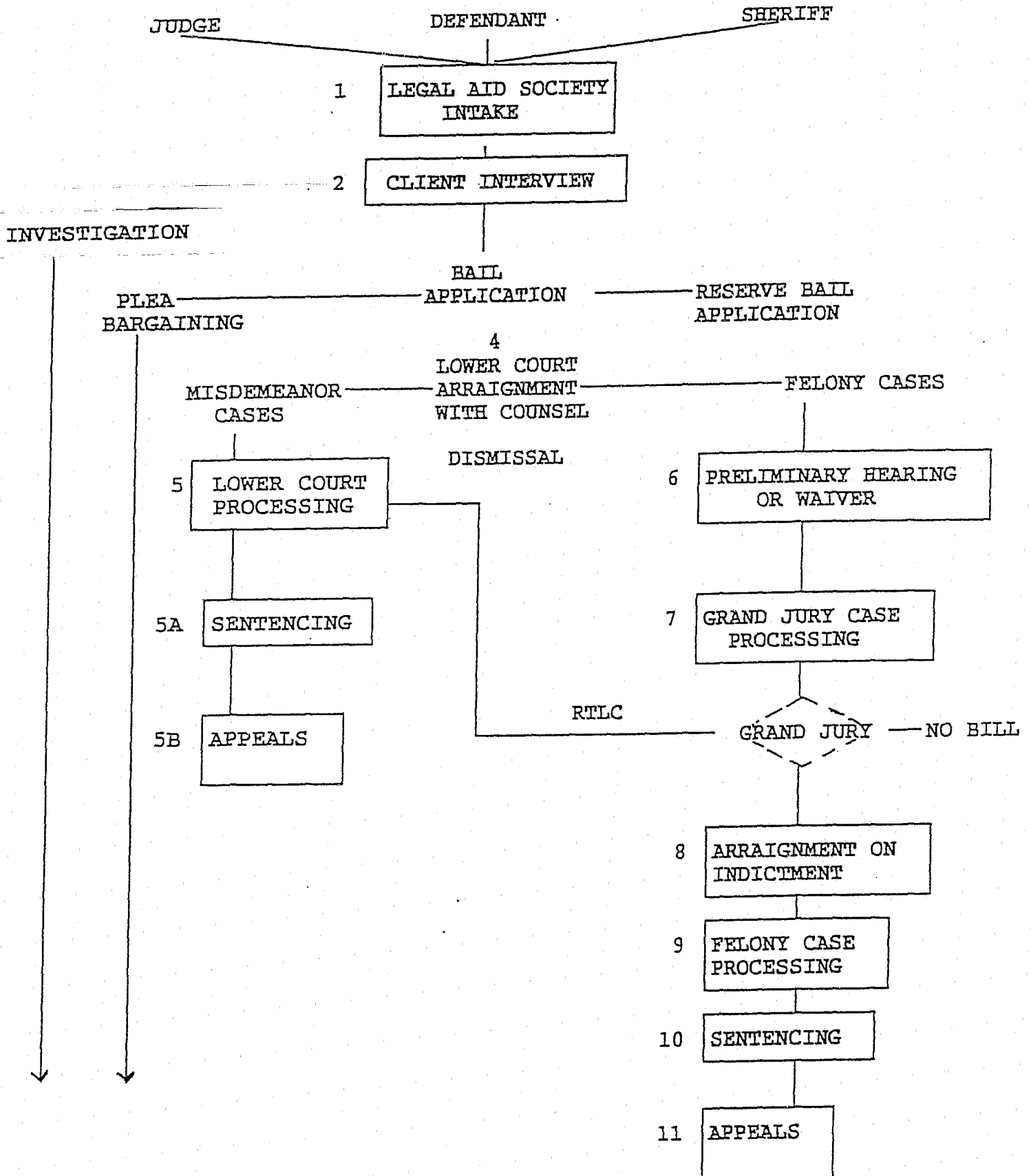
- # Civil Cases: 650 (including Family Court cases)
- # Social Services Fair Hearings: 50 - 60
- # Social Services Referrals: 200 - 300
- # Senior Citizen Cases: 35

ORGANIZATIONAL CHART



SULLIVAN COUNTY LEGAL AID SOCIETY

OVERVIEW -- CASE PROCESSING



1. LEGAL AID SOCIETY INTAKE

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
Input: - Judge assignment form - Substitution of attorney - Order of substitution Output: - Case open form - Log of cases - Card file - Case file folder - Notice to attorney	- Case file initiated. - Receptionist completes form, card, log, with client specific information. - Substitution of attorney form filed. - Order of substitution filed.	Court Jail Defendant DA

NOTES:

Legal Aid's main source of initial case information is the judge. The defendant or his family and/or the Sheriff and occasionally the District Attorney also contact Legal Aid to initiate a case.

- The receptionist records the date, case name, case number and attorney for all incoming cases on a log. (Separate logs for Criminal and Civil are maintained.)
- The receptionist creates a 3x5 file card for each case with pertinent information (name, address, attorney etc.). The card file is a base for the new microcomputer system used to create statistical data for future administrative reports. The Executive Director currently uses a system generated caseload report, which includes case numbers, case types, courts, and assignments.
- At any point in the process, Legal Aid may be assigned to or relieved from a case.
- Attorneys maintain all open case files.

PROBLEMS:

1. Currently, there is a 15 day backlog of data entry due to attorney workload and time/staff constraints which may result in duplicate case files being opened. In certain instances, a search of the system will not reveal that the defendant has an open case.

Solution: Place data entry at the receptionist's desk. Automate initial data entry.

2. The inconsistent flow of new cases due to seasonal changes in population size makes it difficult to predict caseloads.

Solution: Automate data collection and use data to make comparisons to predict workload changes.

3. Incomplete and/or inaccurate information (clients provide erroneous information) at the point of intake results in a lack of case file information. This may be due to unavailable information, or different people doing intake. The lack of rapsheets and automated case information makes verifying of information difficult.

Solution: Standardizing intake forms may minimize mistakes.

4. Legal Aid attorneys do not have direct timely access to the DCJS criminal history report (rapsheet). This causes delays in setting bail and in case processing, in that some judges will not set bail without reviewing the defendant's criminal history.

Solution: Amend the law to allow the Legal Aid Society access to rapsheets.

5. The current mechanism for Legal Aid attorneys to know of new admissions to jail and/or detainers from other jurisdictions requires that the attorney go to the jail to obtain a list of new admissions. If the defendant has indicated he will retain counsel and if the judge does not notify the Legal Aid Society, defendants may sit in jail without having defense counsel assigned for undue periods.

Solution: Have Sheriff share information from automated jail system. Sheriff could provide daily admission list.

6. There is a problem identifying conflicts which would preclude the Legal Aid Society from representing individuals.

Solution: Automate case data collection. This will allow for comparison of name of clients and witnesses to names in the existing database.

7. There is a problem receiving criminal complaints from justice courts.

Solution: Provide FAX capability from local court to Legal Aid.

8. Support staff do not have access to general case information (status of case); there is no case tracking system.

Solution: Automate data collection and include case tracking capability.

9. Information from defendants is impeded by the new jail phone system (defendants are permitted to call collect only). Consequently, excessive attorney time is spent at the jail and because they cannot converse on the phone, defendants are denied access to counsel.

Solution: Replace jail collect phone call system or explore use of an 800-type number for use by clients in jail. This would significantly reduce expense of collect calls.

10. With the current limited number of computers, in which data processing and word processing is done on the same computers, there are undue interruptions in work, whether it be data entry and retrieval, or preparation of motions or other work.

Solution: Increase amount of hardware and investigate use of local area networks to increase efficiency and effectiveness of staff.

11. There is duplication of effort in the creation of the case opening sheet, case log, case 3x5 card, case intake sheet and case data entry.

Solution: Automated case tracking system would eliminate duplicate work.

12. Knowledge of the office computer system is limited. Attorneys do not know how to access information on the computer system.

Solution: Provide computer system training to the attorneys on staff.

13. Attorneys have limited access to automated legal research. Automated legal research, if available, would be helpful adjunct.

Solution: Provide access to computer aided legal research. Explore computer access to materials and information maintained at the New York State Defenders Association, Public Defense Backup Center.

14. The County Court calendar must be picked up daily by a Legal Aid staff person.

Solution: Encourage the court to FAX calendar to the Legal Aid office.

2. CLIENT INTERVIEW

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
Input: - Criminal complaint Output: - Interview sheet - Case file folder - Bail information form - Bail application - Bail order - Investigation request assignment sheet	- Defendant or court may provide complaint. - Counsel completes interview sheet with financial aspects for eligibility determination. - Notations on file folder contain case information. - Bail information recorded on form maintained in file folder. - Written bail application presented to court. - Bail order signed by judge after formal application. - Investigation request may be completed with date needed. - Approval for bail received and noted on case file folder.	Defendant DA Court Prosecutor Alter. to Incarceration Agency Jail

NOTES:

Criminal Case: Client interviews can take place in the jail or at the Legal Aid Society.

- At the client interview defense counsel will decide whether to make application for bail.
- Plea bargaining begins at this point.
- Informal discovery begins at this point resulting in notations in file folder.
- A case investigation may be initiated.
- Bail orders are frequently oral with notation as to results kept on case file folder. At other times oral or written applications result in a bail order prepared by defense counsel, signed by the judge and distributed to Sheriff and DA.
- Attorneys check with the jail on a daily basis for new admissions.

PROBLEMS:

1. Incomplete and/or inaccurate information provided at client interview in areas of information on contacts, financial eligibility and health information.

Solution: Increase staff conducting client interviews, standardize collection forms and train staff to help increase accuracy.

2. There is a lack of sufficient private interview space at the jail.

Solution: Have Sheriff provide more adequate space to conduct private interviews.

3. INVESTIGATION

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
Input: - Investigation request/ assignment sheet - Police reports - Statements - DMV abstract Output: - Subpoenas - Waiver of confidentiality - Request for expert reports	- Investigations may begin at various points during the defense process. - The investigation process parallels case processing. - Results of investigation placed in case file folder. - Defendant waives confidentiality.	Witnesses Defendant State Lab Police Department Experts DMV

NOTES:

Sullivan Co. Legal Aid Society has one staff investigator to cover all case investigations. Several investigation requests may be generated at various points during processing of a single case.

PROBLEMS:

- Investigative resources are understaffed for defense purposes.

Solution: Increase investigative staff to improve investigations by permitting more time to be spent on case.

- Legal Aid has no way to verify the results of police lab work at initial stages of case processing.

Solution: Increase funding to conduct independent lab testing.

- Legal Aid is ineligible to have free access to Department of Motor Vehicle abstracts (\$4 per abstract).

Solution: Allow modern access to DMV records at no cost to Legal Aid, access which is currently available to public defender offices.

4. There is a problem in the availability of expert witnesses or analysis due to county's lack of proximity to a major metropolitan area.

Solution: Use FAX transmission of information to experts for initial evaluation. This will allow preliminary case screening.

4. LOWER COURT ARRAIGNMENT

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
Input: - Complaint - Rapsheet Output: - Case notes - Omnibus motions	- Complaint becomes part of case file. - Notations on case file. - Misdemeanor omnibus motions generated for discovery purposes.	Court DA Defendant DCJS

NOTES:

- Bail application is made at this point.
- By this time, full or partial arraignment could have occurred without benefit of defense counsel.
- In the majority of courts, it is not necessary for all parties to appear to schedule an adjournment.

PROBLEMS:

1. Legal Aid attorneys do not have direct timely access to the clients' criminal history. This causes delays in setting bail in that, some judges will not allow bail application without the rapsheet.

Solution: Modify the law to permit the defender access to rapsheets.

5. LOWER COURT CASE PROCESSING

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
HEARINGS: Input: - Decision and order - Transcript Output: - Case file - Omnibus motions Input/Output: - Memorandum of Law	- Misdemeanor omnibus motion generated for discovery purposes. - Attorneys note events/results on case file. - Court stenographer produces transcript for defense and DA. - Memorandum of law argues either facts and/or law. - Jury selection chart shows a profile of jurors. - Notation of evidence maintained in case file.	Court DA Defendant Witnesses
TRIAL WORK: Input: - Transcript Output: - Jury selection chart - Trial notes - Case file		

NOTES:

- Hearings are held on suppression motions. At the time of the hearings all information should have been furnished.
- The jury selection process provides a profile of each prospective juror, which defense can use to determine if a challenge for cause or peremptory challenge should be brought.
- Copies of all case correspondence is maintained in separate chronological logs (criminal and civil).
- An omnibus motion is completed by defense to request all discoverable information from the DA.
- The DA responds with a reply affidavit and after that a decision is handed down by the judge, who would then set any hearings. The judge determines if additional documents are needed from the DA, such as scientific reports, DCJS criminal history report, defendant statements, calibration certificates, hospital records, and Brady material (any information favorable to the defendant).

PROBLEMS:

1. There is a need for a formal mechanism to inform the judge of charges for the jury. A pre-trial conference should be required for both the DA and defense to present the judge with written charges of law being charged to the jury to eliminate trial error and focus on the issues of the trial.

Solution: Use word processing to automate the development of "Requests to Charge."

2. There is no formal automated process for preparing motions with word processing.

Solution: Use word processing or database to develop motions using an automated litigation bank.

3. A problem exists in that there is a lack of timely delivery of transcripts.

Solution: Encourage the use of computer-aided transcription software by court stenographers or other technology to expedite transcript production.

4. Cases in justice courts can run past midnight. This is against case law (absent consent of parties) and causes cases to be bifurcated. This contributes to a backlog in justice court case processing and a possible lack of a fair trial.

Solution: Work with courts and District Attorney to reschedule trials at earlier time.

5A. MISDEMEANOR SENTENCING

INPUT (I)/OUTPUT (O) DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
Input: - Probation Victim Impact Statement and Pre-Sentence Report (PSI)	- Case file updated. - Probation completes Pre-Sentence Report. - Defense completes Pre-Sentence Report.	Court DA Defendant Victim
Output: - Case File - Defense Pre-Sentence Report - Notice of Appeal - Letter to Defendant	- Defense prepares notice of appeal, files it with court.	Probation

NOTES:

- Defense Pre-Sentence report indicates reasons an alternative or a lesser sentence should be considered by the court.

PROBLEMS:

1. Legal Aid cannot obtain a copy of the PSI (Pre-Sentence Report) prior to sentencing. Legal Aid attorneys can only review the PSI at the time of sentencing. Consequently, time spent on review is limited making it difficult to respond to inaccuracies. Erroneous information may be used against the defendant by probation and parole authorities.

Solution: The court, in accordance with the Criminal Procedure Law, should provide access to the Pre-Sentence Report at least 24 hours prior to sentencing.

5B. MISDEMEANOR APPEALS WORK

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
<p>Input:</p> <ul style="list-style-type: none"> - DA Answering Brief - Document of Return <p>Output:</p> <ul style="list-style-type: none"> - Notice of Appeal - Affidavit of Error - Appeals Brief 	<ul style="list-style-type: none"> - Notice of appeal completed/filed with courts and served on DA. - Affidavit of error by defense is a claim as to errors that require reversal or dismissal. - Appeals brief prepared by defense and filed with court and DA. - DA's brief filed in case file. - Document of return prepared and is sent to judge and DA. 	<p>Appellate Court (County Court) Trial Court (Justice Court)</p>

NOTES:

- The misdemeanor appeals process is before the County Court Judge, who renders a decision and order. The judge can reverse, affirm or dismiss, and may order a new trial or modify the original decision.

6. PRELIMINARY HEARING

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
Output: - Case File Folder - Transcript/tape	- Case notes recorded on file folder.	Court DA Defendant Witnesses

NOTES:

- A preliminary hearing may be requested by the defense to determine if a crime was committed and if there is sufficient evidence to indicate that the defendant committed the crime.
- The law requires a prompt preliminary hearing. The defense can file a motion to release the defendant in his/her own recognizance if the speedy trial clock runs out.

7. GRAND JURY PROCESSING

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
Input: - Letter from DA Output: - Notice to DA - Case File Folder - Waiver of Immunity	- Defense receives letter from DA regarding defendant testifying. - Defense prepares a response to DA if defendant is to testify. - Defense interviews defendant. - Defendant signs waiver if decision is made to testify.	Defendant Witnesses DA Court
GRAND JURY PRESENTMENT: Input: - Return to lower court (RTL)C) - No Bill - Indictment		

NOTES:

- Defense counsel conducts an interview with the defendant regarding advisability of the defendant testifying before the Grand Jury.
- DA has 45 days to present case to Grand Jury.
- Grand Jury presentment can result in further investigation, return to lower court (RTL)C), a No Bill or an Indictment.

8. SUPERIOR COURT ARRAIGNMENT ON INDICTMENT

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
Input: - Indictment/SCI - Letters from DA (not guilty plea) - Witness - Tangible Evidence - Statements (710.30 Notice) - Notice of Readiness - Notice of Identification Procedure for Wade Hearing - Order for Discovery Output: - Waiver of Indictment - Guilty/Not Guilty Plea Entered	- Notation in file of plea. - Letters from DA filed. - Court issues order for discovery. Copy maintained in case file. - Copy of SCI in file.	Court Defendant DA

NOTES:

- Defendant must be charged by an indictment unless he/she consents to a Superior Court Information (SCI). SCI is not permissible for class A felonies.
- Waiver of Appeal recently deemed permissible by Court of Appeals only in plea bargaining situations.
- 99.9% of SCI's are accompanied by a guilty plea. 99.9% of indictments are accompanied by pleas of not guilty.

PROBLEMS:

1. There is a problem caused by the DA's premature filing of a Notice of Readiness which results in the burden to shift to the Defense. This also impacts speedy trial (CPL 30.30) time.

Solution: DA's notice of readiness for trial should only be permitted to be filed if the prosecution is, in fact, prepared to proceed to trial.

9. FELONY CASE PROCESSING

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
<p>Input:</p> <ul style="list-style-type: none"> - DA's answer to judge's discovery order - DA's answer - Judge's decision and order - Bill of Particulars - Further discovery from DA <p>Output:</p> <ul style="list-style-type: none"> - Demand for further discovery - Answer to judge's discovery order by defense - Omnibus motion by defense - Reply to DA's answer 	<ul style="list-style-type: none"> - DA's answer filed in case file. - Demand by defense of the DA for further discovery. - DA's response to defense motion. - Defense prepares a reply. - Omnibus motion: application for various types of relief by defense. - Judge's decision and order generates hearings and information from DA. - Attorneys note evidentiary information for case file. - Court stenographer produces transcript. - Notation of evidence status maintained in case file. - Notes on dispositional hearing in case file folder. - Jury selection chart shows profile of prospective jurors. - Pretrial memoranda by both defense and DA. - Notes of evidence maintained in case file. 	<p>DA Defendant Court Witnesses</p>
<p>HEARINGS:</p> <p>Input:</p> <ul style="list-style-type: none"> - Memorandum of Law by DA - Transcripts <p>Output:</p> <ul style="list-style-type: none"> - Memorandum of Law by defense - Case files 	<ul style="list-style-type: none"> - Court stenographer produces transcript. - Notation of evidence status maintained in case file. - Notes on dispositional hearing in case file folder. - Jury selection chart shows profile of prospective jurors. - Pretrial memoranda by both defense and DA. - Notes of evidence maintained in case file. 	
<p>DISPOSITIONAL CONFERENCE:</p> <p>Input:</p> <ul style="list-style-type: none"> - Court decisions and orders on hearings 		
<p>TRIAL/DISPOSITION:</p> <p>Input:</p> <ul style="list-style-type: none"> - Transcript <p>Output:</p> <ul style="list-style-type: none"> - Jury selection chart - Case file - Trial notes <p>Input/Output:</p> <ul style="list-style-type: none"> - Pretrial Memoranda - Request to Charge 		

NOTES:

- At the time of the hearings all information should have been furnished.
- The jury selection process should provide a profile of each prospective juror, which defense can use to determine if a challenge for cause should be brought.
- Copies of all correspondence are maintained in separate chronological logs (criminal and civil).

Omnibus motions cover numerous issues:

- Motion to dismiss, could cause release of Grand Jury minutes.
- Demand for bill of particulars.
- Discovery of any items not furnished pursuant to judge's order.
- Motion for suppression of evidence (tangible evidence, admission and/or confession, identification testimony, and transcript).

10. FELONY SENTENCING

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
Input: - Probation Victim Impact Statement - Pre-sentence report Output: - Defense pre-sentence report	- Probation completes pre-sentence report. - Defense completes pre-sentence report.	Court DA Defendant Victim Probation Department Reference Person for Defendant

NOTES:

- Defense pre-sentence report indicates reasons why an alternative or a lesser sentence should be considered by the court and contains letters attesting to favorable aspects of defendant's life and character.

PROBLEMS:

1. Legal Aid cannot obtain a copy of the PSI prior to sentencing. Legal Aid attorneys only get to review the PSI at the time of sentencing. Consequently, time spent on review is limited, making it difficult to respond to inaccuracies. Erroneous information may be used against the defendant by probation and parole authorities.

Solution: Comply with law to allow timely access to PSI.

11. FELONY APPEALS PROCESS

INPUT/OUTPUT DOCUMENTS FROM DEFENSE VIEWPOINT	DESCRIPTION	AGENCIES/PERSONS INVOLVED OTHER THAN DEFENSE
<p>Input:</p> <ul style="list-style-type: none"> - Case file - Letter from Appellate Division - Court order and assignment - Transcript - DA's Answering Brief - Schedule of argument - Decision - Order on decision - Signed order received - Order granting or denying leave <p>Output:</p> <ul style="list-style-type: none"> - Letter of appeal - Letter to defendant - Letter accepting case to Appellate Division - Letter to court clerk - Motions - Defense Brief/Appendix - Defense Reply Brief - Letter of Transmittal - Appeal to Court of Appeals <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> - Application for Leave to Appeal <p>Input/Output:</p> <ul style="list-style-type: none"> - Record on Appeal 	<ul style="list-style-type: none"> - Letter to defendant: <ul style="list-style-type: none"> - Explains appeals process and what the defendant must do and provides a form letter for doing it. - Notice of Appeal - Appellate Division letter received and filed. - Return letter sent to Appellate Division. - Court order and assignment received and filed. - Copy of Appellate Division order and requests for transcripts. - Motions: applications for extensions. - Schedule of argument from appellate court shows date/time of argument. - Letter to Appellate Division. - Order received. - Application for Leave to Appeal sent to Court of Appeals. 	<ul style="list-style-type: none"> Appellate Division Defendant DA Court of Appeals County Court Clerk

NOTES:

- The felony appeals process is initiated by a defendant's formal request to the Appellate Division for an appeal. The Legal Aid Society receives a letter from the Appellate Division asking Legal Aid to accept the case if there are no conflicts. Legal Aid then returns a response to the Appellate Division.
- Obtaining the County Court transcript may cause delays which require requests for extensions. The defense attorney prepares a brief (legal argument) and appendix (pertinent parts of record) and prepares record. Defense then files the record with the Appellate Division and serves the original record on the DA, with the brief and appendix.
- Defense should receive transcripts within 30 days. However, this rarely happens causing defense counsel to request frequent court extensions. The DA has 30 days to file his Answering Brief and usually gets one extension of 30 days. Next, the case is scheduled and defense counsel submits papers to the Appellate Division indicating either an oral argument or paper submission only. This determination is at defense counsel's discretion, guided by courtesy to the court.

PROBLEMS:

1. Requirements for oral arguments on appeals and applications for bail and motions in Albany causes Legal Aid attorneys to spend considerable time in transit to and from Albany.

Solution: None proposed.

2. Perfecting an appeal requires the County Court transcript, but defense attorneys must frequently file extensions because they have not received the County Court transcript within the 60 day time frame.

Solution: Increase speed at which transcripts are produced by court stenographers.

PART V - GLOSSARY

- ACCUSATORY INSTRUMENT** An accusatory instrument is a written document which charges one or more defendants with the commission of one or more offenses. It is brought in the name of the People of the State of New York and serves to initiate the criminal court proceedings against the defendant(s).
- ACD** Adjournalment in contemplation of dismissal. This is a possible disposition of a criminal case where no conviction results. The court will adjourn the case for a short period of time, no more than six months, with the understanding that if the defendant stays out of trouble during the period of adjournment, the charge(s) will be dismissed at the end thereof. See, CPL 170.55. Additional conditions may be imposed where specified felonies are involved. See, CPL article 215.
- AFFIRMANCE, ORDER OF** An appellate court order which upholds the judgment being appealed either in every respect or as modified.
- ANDERS BRIEF** A brief is a written legal argument. An Anders brief is a request to an appellate court to let defense counsel withdraw from the case because, in counsel's opinion, an appeal would be "wholly frivolous". See, Anders v. California, 386 US 738 and People v. Gonzalez, 47 NY2d 606.
- APPEARANCE, NOTICE OF** A formal document filed with a court, an administrative body and/or an opposing party in a case which states that a named party in the case is represented by the attorney who files it.
- APPELLATE COURT/APPEAL** An appellate court is one which has the authority to review the actions of a lower court. Such review occurs only if one side in a case files an appeal, in effect complaining to the appellate court that there were legal errors committed in the lower court which warrant a change in the order or judgment being appealed.

**ARTICLE 78
PROCEEDING**

This is a court proceeding brought to review the decision(s) of an administrative body or of a public officer, or to prevent such body or officer from acting outside the scope of its/his/her lawful authority.

ATI/A.T.I.P.

Alternatives to Incarceration Program. Such a program provides the sentencing court with options for fashioning an appropriate sentence other than jail/prison in cases where incarceration is not mandatory. These options might include community services, in-patient substance abuse programs and the like.

**CERTIFICATE
OF
CONVICTION**

This is a document issued by a criminal court, or the court clerk, certifying that a judgment of conviction has been entered on a certain date, for certain offenses, against a named defendant.

**CERTIORARI,
WRIT OF**

An appellate court order which is used where that court has discretion whether to hear an appeal. If granted, it directs the lower court whose actions are to be reviewed to certify the record in the case and send it up to the higher court. In current practice, such order is generally issued only by the United States Supreme Court.

CLOSED FILE

This is the status of the folder containing everything pertinent to a client's case, once all proceedings in the case have been concluded.

C.P.L./C.P.L.R.

The Criminal Procedure Law and the Civil Practice Law and Rules. Each is a comprehensive statute containing all of the general rules of procedure pertaining to criminal and civil cases.

**CRIMINAL
COURTS**

The criminal courts of New York are comprised of local criminal courts and superior courts. Superior courts -- supreme and county courts -- have authority to try all criminal offenses. Local criminal courts -- town and village justice courts -- have authority to try all offenses except felonies. However, preliminary proceedings in a felony case may be conducted in a local criminal court and then, if a grand jury issues an indictment, the case will be handled to conclusion in a superior court.

- D.M.V.** Department of Motor Vehicles
- D.O.C.S.** Department of Correctional Services
- E.B.T.** An examination before trial. This is a formal proceeding where a witness or one or more of the parties to a lawsuit is asked questions under oath about the case some time in advance of the trial.
- HABEAS CORPUS** This is a proceeding brought to test the legality of the detention of a person being held in custody. Initially, it directs whoever has custody of the person to produce him/her before a court so that the issue(s) concerning legality may be argued.
- J.D.** Juvenile Delinquent. This term in the Family Court Act [FCA] refers to a person over 7 and under 16 years of age "who, having committed an act that would constitute a crime if committed by an adult, (a) is not criminally responsible for such conduct by reason of infancy, or, (b) is the defendant in an action removed from a criminal court to the family court" (FCA §301.2; subd 1). Juvenile delinquency proceedings are governed by FCA article 3.
- MODIFICATION, ORDER OF** An appellate court order which in some way mandates changes in the judgment being appealed, but which does not overturn it completely. In most cases, the modification would involve reducing the sentence imposed on a defendant, reducing to a lower degree one or more crimes for which defendant was convicted, or dismissing one or more but not all of such crimes.

MOTION TO PRECLUDE

This is a request to a court to forbid the other side in the case from filing further papers, making further argument, presenting certain evidence or something of a similar nature.

N.Y.S.I.I.S.

New York State Identification and Information System. (See Rapsheet)

**OMNIBUS MOTION/
MOTION**

A motion is a request to a court to grant the relief sought. It can be either oral or written. An omnibus motion is a written motion in a criminal case made by a defendant seeking several different types of relief at the same time.

OPEN FILE

This is the process by which the prosecutor gives free access to the defense attorney about all the facts of the case which are in his/her possession. Such a practice reduces or eliminates the need for pre-trial motions and demands that the prosecutor tell the defense what the case is all about from the prosecutor's perspective.

P.I.N.S.

Person In Need of Supervision. This term in the Family Court Act [FCA] refers to children less than 16 years old who do not attend school as required by law, or who are "incorrigible, ungovernable or habitually disobedient and beyond the lawful control of parent or other lawful authority" or who unlawfully possess marijuana. See, FCA §712(a). PINS proceedings are governed by FCA article 7.

PRE-TRIAL DIVERSION CONTRACT

A performance contract signed by a defendant and counselor with a pre-trial diversion organization, and on occasion by defense counsel and/or an assistant district attorney, describing the terms and obligations of the defendant to the pre-trial diversion organization, and the consequences of a successful completion (such as reduction of charge) or a failure to fulfill these obligations.

**PRE-TRIAL
SERVICES
CORP.**

This organization provides bail investigations for recent arrestees and makes recommendations to courts on the question of bail. Organizations providing such services may, depending upon the county, also provide supervision of defendants released on specified conditions while their cases are pending [a Release Under Supervision, or "R.U.S.", program].

**P.S.I./P.S.I.
REPORT**

Pre-sentence investigation. This is the background investigation done by a probation department for a court in order to obtain information about a defendant relevant for sentencing. The investigation results in a written report to the court which contains factual data and an evaluative analysis of the defendant.

**RAP, RAPSHEET,
NYSIIS/
NYSID RAP**

These are colloquial terms which refer to a defendant's criminal history or report. Within the criminal justice system, such reports are prepared by the Division of Criminal Justice Services based upon information supplied to it by other agencies, and disseminated in accordance with the statute. See, CPL 160.30 and 160.40.

**REMITTITUR,
ORDER OF**

The sending back from an appellate court to the court from which an appeal arose, of the record and proceedings in the case, after the appeal has been decided, so that the appellate court's order can be complied with and any other necessary action taken.

**REVERSAL,
ORDER OF**

An appellate court order which says, in effect, that the judgement being appealed was affected by legal error to such an extent that it must be completely overturned. Such an order will contain a direction either dismissing the case or ordering a new trial.

R.O.R.

Release on Recognizance. This is the release by a court of a person taken into custody on criminal charges upon his/her promise to appear in court for all future proceedings. If such release is granted, no bail is set. See, CPL 500.10, subd 2.

**ROSARIO
MATERIAL**

Under People v. Rosario, 9 NY2d 286, the prosecutor must turn over to the defense copies of any prior statement(s) given by a witness whom the People intend to call at trial. This must be done after the jury has been sworn and before the prosecutor's opening, and no defense request is required. The defense has a similar obligation to disclose immediately prior to presenting its case. See, CPL 240.45.

R.T.L.C.

Return to lower court. The Grand Jury's direction to the prosecutor, after hearing evidence in a felony case, that the matter be sent back to a local criminal court for prosecution as a misdemeanor.

S.C.I.

Superior Court Information. This is a written accusatory instrument filed by a district attorney which charges one or more defendants with the commission of one or more offenses, at least one of which is a felony, and which serves as the basis for prosecution. See, CPL 1.20, subd 3-a.

**SDS AND SDS
REPORTS**

Special Defense Services is an in-house unit of the New York City Legal Aid Society. Social workers and support staff assist attorneys, especially in setting up diversion programs and preparing defense pre-sentencing reports.

**STAND-UP
ARRAIGNMENTS**

This term refers to an attorney appearing at arraignments on behalf of a defendant without the benefit of having talked to him/her before.

**STAY
APPLICATION/
STAY**

This is a request to a court to stop the happening of something that has been previously ordered. In a criminal case, usually this is a request that the defendant not have to serve the sentence imposed upon him until after his appeal is heard and decided. An order granting a stay is a direction holding a prior order in abeyance under whatever terms and conditions the court deems appropriate.

STIPULATION OF DISCONTINUANCE An agreement by defendant, defense counsel and the prosecutor to end the case without any further legal proceedings.

SUMMARY REVERSAL MOTION This is a request made to an appellate court asking that defendant's conviction be immediately reversed [see, above] because there is no record, or an inadequate record, upon which to write and argue an appeal in the case. See, People v. Glass, 43 NY2d 283 and People v. Strickland, 151 AD2d 979 [AD4].

T.C.I. Target Crime Initiative program. This is a funding and reporting program which provides resources to local criminal justice agencies to utilize in prosecuting and defending those accused of serious crime. This program is now called Aid to Defense.

VERTICALLY ASSIGNED A vertically assigned case is one in which a single attorney will handle all proceedings from prior to indictment through the end of trial, including sentencing. In some instances, that same attorney may also handle the appeal, if there is one.

V.F.O. Violent felony offense. Certain felony level crimes which have been singled out by the legislature for enhanced sentencing upon conviction therefore and with respect to which various plea restrictions have been imposed. See Penal Law § 70.02 and CPL § 220.10, subd 4 (d).

VIOLATION, NOTICE OF This is a formal document prepared by the parole or probation department, as appropriate, stating that a defendant has failed to comply with the terms and condition of his/her parole or probation, and that action to revoke parole or probation is being started.