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STUDY AND RECOMMENDATIONS
FOR KENTUCKY STATEWIDE
PUBLIC DEFENDER SYSTEM

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ACQUISITIONS

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February 5, 1973

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I. INTRODUCTION

On March 8, 1972, the Kentucky General Assembly passed H.B. No. 461, which established a statewide public defender system to be administered by an independent state agency, the Office of Public Defender. The act further provides for the establishment of an Office of District Public Defender in judicial districts with ten or more circuit judges.

According to the statute, it is the obligation of each judicial district -- regardless of the number of circuit judges -- to submit for approval to the State Public Defender a specific plan for the defense of indigent persons. This plan can include the following:

- (1) The creation of a Public Defender Office with a full-time staff of defenders.
- (2) Provision for an appropriate appointment of counsel system for the defense of indigents.
- (3) Provision for the defense of indigents through a contract with the fiscal court of that county, or the fiscal courts of that judicial district, under the supervision of a local nonprofit organization, or
- (4) An appropriate combination of numbers (2) and (3) above.

In the event no plan is submitted, the Public Defender is authorized to establish an Office of District Public Defender staffed by a full-time attorney whom he appoints.

The scope of responsibility entrusted to the State Public Defender by the statute includes both administrative and evaluative functions.

For example, he is directed to:

- (1) Administer a statewide public defender system.
- (2) Provide technical aid to local counsel representing indigents.
- (3) Assist local counsel in taking appeals or take appeals in the same manner as the Attorney General does for the Commonwealth.
- (4) Develop and promulgate standards, regulations, rules and procedures for administration of the defense of indigents in criminal actions.

- (5) Appoint district public defenders where counties fail to undertake a plan for defense of indigents.
- (6) Review local plans for providing counsel for indigents.
- (7) Conduct research into methods of improving the operation of the criminal justice system.
- (8) Issue rules, etc., reasonably necessary to carry out the provisions of KRS Chapter 31, other applicable statutes, and the rules of the Kentucky Court of Appeals and other applicable courts. (See Appendix A for the complete text of the act.)

Funding for the Kentucky Public Defender Program contemplates both state and local contributions. The state appropriation for FY73 and FY74 is \$1,287,000, which covers the salaries of the State Public Defender, a Deputy Defender, Assistant Public Defenders, and the local district appropriations calculated at a rate of \$14,000 per district circuit judge. Facilities for the public defender program are to be provided by the local county Fiscal Court. Expenses in excess of the state contribution must be paid by the county or other local agencies. In addition, the State Public Defender is authorized to seek funds from outside public and private sources to cover the costs of operating the program.

To assist the Public Defender in carrying out his responsibilities under the statute, the Kentucky Crime Commission (SPA) requested through LEAA technical assistance channels that the services of the National Legal Aid and Defender Association be secured to study the Kentucky Defender legislation and advise the Public Defender and other officials as to the most feasible way to organize statewide defender services, with particular attention to the differential requirements of urban and rural jurisdictions. Following endorsement of this request by the LEAA regional and national offices, the American University Criminal Courts Technical Assistance Project subcontracted with NLADA

for a 15 man-day level of effort to provide the needed services.

NLADA selected a technical assistance team comprising Professor Shelvin Singer, Professor of Law and acting Chief of the Cook County Public Defender Appellate System; and Rollie R. Rogers, Colorado State Public Defender. (Resumes are in Appendix C.) Marshall J. Hartman, National Director of Defender Services for the National Legal Aid and Defender Association, and NLADA staff provided coordinating and supportive services to the consulting team.

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Field investigation was conducted during December 17-22, 1972. Conferences were held by the following public officials:

Anthony M. Wilhoit, Esq.	-State Public Defender
David E. Murrell, Esq.	-State Chief Deputy Public Defender
William C. Ayer, Jr., Esq.	-Assistant Public Defender
Larry Crigler, Jr., Esq.	-Spokesman for Public Defender Plan submitted to Mr. Wilhoit for Kentucky's 15th Judicial District (Boone, Carroll, Gallatin, Grant and Owen Counties)
Robert Lawson	-Acting Dean, University of Kentucky Law School
Jack Grosse	-Dean, Salmon P. Chase School of Law
Paul Tobin, Esq.	-District Public Defender for Louisville
Robert Ewald, Esq.	-President, Board of Trustees of Louisville Legal Aid Society
Charles Owen, Esq.	-Kentucky Council on Criminal Justice
William Gant	-Chairman of State LEAA Planning agency supervising Kentucky Criminal Justice Council

II. KENTUCKY CRIMINAL JUSTICE BACKGROUND

A. Judicial Organization

The State of Kentucky consists of 120 counties divided into 53 Judicial Districts (See Appendix B). General trial jurisdiction is vested in the Circuit Court. There is at least one Circuit Court Judge for each district and a number of districts have two or more judges. Preliminary hearings and misdemeanor jurisdiction is vested in a number of minor courts, such as county courts, city courts and other local tribunals. Jurisdiction over county financed corporate and welfare matters is exercised by County Fiscal Courts, presided over by a Fiscal Judge and composed of a number of commissioners -- counterparts of county commissioners. Although the Fiscal Court Judge is called Judge, he is not usually an attorney and his duties are generally those of the Chief Administrative Officer, with some minor judicial duties in addition. Many of the judges in the lower state trial courts are also without legal training. The trial courts in the various districts are unstructured and are not unified. There is no line of authority among the courts. However, a misdemeanor conviction may be appealed to the District Court through a trial de novo as a matter of right. There is one appellate court in the state, the Kentucky Court of Appeals.

The prosecutor's office operates as two separate entities: the county attorney and the commonwealth's attorney. The county attorney is elected county-wide and prosecutes misdemeanors and probable cause hearings. Both the county attorney and the commonwealth

attorney are part-time positions, with each able to maintain a private practice.

B. Previous Provision for Public Defender Service

Prior to enactment of the State Defender Legislation, the State of Kentucky operated under a criminal justice system whereby indigent persons were defended by members of the Bar appointed by the court with the defense attorney receiving no compensation for his services, nor any reimbursement for expenses incurred. In spite of the financial hardship to the appointed lawyers, there are many fine examples of excellent indigent representation (see The Kentucky Lawyer, Swinford, Anderson Co., 1963). However, our study has also revealed that occasionally the appointed defense counsel solicited and obtained funds from the accused, his friends or relatives. There were also incidents, the consultants were informed, where clients were excessively pressured to enter a quick plea of guilty, although the client maintained his innocence and wanted a trial.

C. Implementation of State Defender Legislation as of December 18, 1972.

The present State Public Defender legislation became effective June 16, 1972, although appointment of the State Defender, Anthony Wilhoit, by the Governor was delayed until October 17, 1972. The State Public Defender Office opened one week later, October 25, 1972. Mr. Wilhoit, admitted to the Kentucky Bar in September, 1963, had been a County Prosecutor.

Pursuant to the legislation, the Public Defender was directed to enter into agreement with the Fiscal Courts

for the operation of the local defender program, and the Fiscal Courts were designated recipients of the defense program funds for their respective circuits. Responsibility for the district defender program was, therefore, vested in the County Fiscal Courts. Accordingly, upon assuming office Mr. Wilhoit directed each of the local circuits to prepare and submit to him a plan by December 29, 1972 for providing defense services to indigents. Because many of the districts comprise more than one county, it is necessary in such districts for the counties to agree on a multi-county plan. Since nothing in the legislation prevents districts from cooperating in the development of such regional plans, the writers see no impediment to counties in different districts or a group of entire districts submitting a regional plan.

In accordance with the provisions of the Public Defender statute, Mr. Wilhoit has requested that these public defender plans operate along the lines of one of the four alternatives noted above. In the event a Fiscal Court fails to provide a plan acceptable to the Public Defender, Mr. Wilhoit has stated that he will appoint a District Public Defender for that local area and, hopefully, convince the county or district to provide a contribution sufficient to operate the office effectively.

As of December 18, 1972, approximately 35 of the 53 judicial districts had submitted a plan to the State Public Defender. A large majority of these plans provide for a non-profit organization to supply private attorneys on a rotation basis, often upon appointment by the court, for the indigent criminally accused. The attorneys are to be paid on a per case basis at the levels called for in the legislation until the funds are exhausted. A few plans provide for the attorneys to submit

their bills on a per case basis, but with payment delayed until the end of the year. At that time, each attorney would be paid proportionately, to the extent permitted by the law, if the funds available did not cover fully each of the billings. Only three districts have submitted plans which call for a defender office with the district or county providing contributions. These three districts are: Jefferson County, a separate circuit which includes the city of Louisville; the 32nd District, a one-county district; and Fayette County, a separate circuit which includes the city of Lexington.

At present, only Jefferson County operates a full-time defender organization. Its public defender program was funded by the State Law Enforcement Assistance Administration Planning Agency and has been approved by the State Defender as the defense delivery system for that circuit. The public defender office in Jefferson County has been in operation since April 1972 under a grant from LEAA of \$145,000 for one year. The County's share of state funds for public defender under the approved plan operations will be \$224,000, based on the statutory formula of \$14,000 for each Circuit Court judge, of which there are 16 in Jefferson County. The only local contribution required is the provision of preliminary hearing transcripts to the agency in appointed cases. The defender staff is headed by Mr. Paul Tobin, a retired army colonel from the Judge Advocate General Corps. His staff consists of eleven attorneys and four investigators. At present, he has an active caseload of approximately 150 cases at all levels. All attorneys are full-time. The defender office is operated by a non-profit corporation and Mr. Tobin was selected by and is responsible to the Board of that corporation.

The plan submitted by the 32nd District also calls for a full-time organized defender office with the following staff and salaries:

one Public Defender, paid \$20,000 per year

one Assistant Public Defender, paid \$15,000 per year

one secretary, paid \$5,000 per year

one investigator, paid \$10,000 per year

All staff members will be full-time employees. The District will contribute the funds needed to operate the program over the state contribution. The District will also provide the necessary office space, furniture, utilities and telephone, postage and supply expenses or sufficient funds to satisfy such needs.

Fayette County will also provide public defender services through an organized defender office, although its staff attorneys will work only on a part-time basis. The county Fiscal Court has submitted a plan to expand the present defender staff of four part-time attorneys to 14 part-time attorneys. Since these attorneys are part-time they are permitted to engage in private practice. This plan has already been approved by Mr. Wilhoit and the plan is presently being put into operation. The budget for this Fayette County program is \$102,000, contributed by the following sources: \$84,000 from the State of Kentucky; \$9,000 from Fayette County; and \$9,000 from the City of Lexington. The following part-time attorney salaries are provided:

Director - \$8,400 per year

each Circuit Court Lawyer - \$7,800 per year

Each lawyer assigned to Juvenile Court - \$5,400 per year

Each lawyer assigned to other lower courts - \$5,400 per year

The office will also maintain a staff of three attorneys who will receive \$6,000 per year each to undertake representation of indigents in civil matters. The \$18,000 from the county and city contributions will be used to pay these attorneys. All of the attorneys will share one full-time secretary who will be paid a salary of \$6,000 per year and one part-time secretary who will be paid \$3,600 per year, as well as two part-time law student coordinators at a total expense of \$1,200 per year. Office expenses are set at \$7,200 per year.

In addition to the three public defender programs described above, the consultants learned of a Model Cities funded defender office in Bowling Green. Time did not permit a visit to that office.

All of the remaining plans submitted to date call for an assigned counsel system. It is anticipated that more plans will be submitted, with most of the additional plans providing for an assigned counsel system. A few plans may present a part-time defender proposal.

D. Problems in Implementing A State Public Defender Program

Several immediate problems challenge the efficient operation of the newly enacted State Public Defender program in Kentucky.

First, the consultants noted an attitude on the part of members of the private bar that they do not want to be excluded from receiving compensation for defending indigents. The prevailing sentiment is "we have done this for years for nothing, or very little compensation, and we are now entitled to state money." While this attitude may be understandable, the consultants believe it will be a substantial

hindrance to the development of an effective defense service delivery system.

Second, the Public Defender program is already in a financial bind for several reasons. One major problem is that the proponents of the state defender bill anticipated that the counties would supplement the state contribution of \$14,000 per circuit court judge. However, one of the difficulties that has developed is that very few of the circuits have actually made any contribution and have looked to the State to fund the entire program. At this juncture, according to the State Public Defender, it will be impractical to expect local counties in all but a very few instances to provide any additional funds. The present state contribution totals \$1,287,000 through June 30, 1973 and the same amount is allocated for the period July 1, 1973 through June 30, 1974. The money is to be distributed to the various circuits at the rate noted above of \$14,000 per circuit court judge. Most circuits have one circuit court judge. Of the total budget, \$125,000 per year is allocated for the operation of the headquarters office, the staff of which consists of the State Defender, his deputy, an assistant defender and two secretaries. A second assistant defender will soon be hired.

Another financial problem has developed because the scope of public defense services has been significantly enlarged since passage of the public defender legislation as a result of the decision in Argersinger vs. Hamlin, which extended representation to indigents accused of misdemeanors where any jail sentence may be imposed. As

a result of the Argersinger decision and the unwillingness of the local communities to contribute any of their resources to the operation of the defender program, the State Public Defender organization immediately experienced a financial crisis.

Third, in many areas of the state, resources are lacking to support an effective public defender program. Eastern Kentucky, for example, consists of counties which are economically poverty stricken. In addition, most of Kentucky is predominately rural in nature. In most of these areas there simply are no attorneys available who could undertake the position of District Defender on a full-time basis, even if a full-time defender office were contemplated.

Finally, one of the most difficult impediments confronting the State Defender in reviewing local plans is the total lack of court criminal statistics reporting. Although there is a central court administrative office in Frankfort, operated under the direction of the Kentucky Appellate Court, there simply is no data on court criminal caseload, nor are there any records available in many instances from which data could be readily compiled. The problem is compounded by the numerous minor trial courts which, in many areas of the state, are manned by judges totally without legal training. Moreover, since no compensation was previously paid by the Districts for the defense of the indigent criminally accused, there is not even data that can be accumulated to determine the number of court appointments. Obviously, in that context, planning with any degree of precision is impossible, and one of the most important objectives of the State Defender in the early years must be the gathering of

such data -- an essential ingredient to planning.

In the midst of this difficulty in evaluating local needs regarding public defender service, the late start in the development of the program in Kentucky has resulted in pressure to develop programs quickly. All 1972-73 funds must be exhausted by June 30, 1973 or they revert back to the State.

III. RECOMMENDATIONS

A. AN ORGANIZED DEFENDER OFFICE SHOULD SERVE ALL AREAS OF KENTUCKY.

This recommendation, which admittedly imposes considerable alteration on most of the district proposals submitted, is based on the following advances which such a system provides:¹

1. A sufficient number of attorneys is provided to meet public defense needs.

Since 1963, when the Court mandated that the poor must be provided with counsel when charged with a felony,² state responsibility in providing defense services to criminally accused indigents has steadily expanded. Today, in addition to representation at misdemeanor and felony trials where any confinement may be imposed, an indigent accused has a right to counsel during police interrogation immediately after arrest,³ at post-indictment lineups,⁴ at probation revocation proceedings,⁵ at preliminary hearings,⁶ at juvenile

¹ The material included herein is based on "Defense Standards," submitted by the National Legal Aid and Defender Association to the Courts Task Force of the National Advisory Committee on Criminal Goals and Standards, William Higham and Shelvin Singer, consultants, with the assistance of NLADA staff, 1972.

² Gideon v. Wainwright, 322 U.S. 436 (1966).

³ Miranda v. Arizona, 384 U.S. 436 (1966).

⁴ Wade v. United States, 338, U.S. 218 (1966).

⁵ Mempa v. Rhay, 389 U.S. 128 (1967).

⁶ Coleman v. Alabama, 399 U.S. 1 (1970).

delinquency proceedings,⁷ and in prosecuting an appeal.⁸ With such an extensive representation required, it is impractical to expect private practitioners to undertake the bulk of the representation of the indigent criminally accused. Moreover, in many localities, particularly rural areas, there are not sufficient attorneys available in the private bar to meet the need.

2. Adequate supervision and expertise are possible.

It is unrealistic to assume that private counsel, most of whom are non-criminal law practitioners, and are assigned only occasionally to represent the indigent accused, can undertake such complex representation competently. Moreover, a considerable number of private attorneys participating - often infrequently - in the public defender program, makes it difficult to exercise adequate supervision as well as provide sufficient training in the specific areas of expertise required of a public defender. Line authority within the office, control of caseloads and expeditious disposition of criminal cases are more efficiently conducted where the staff attorneys do not have a dual allegiance. Moreover, effective representation of an indigent accused requires experienced, dedicated counsel. It is difficult for an attorney who is interested in developing a private civil practice to provide the expertise and dedication where his tenure in the defender organization at the

⁷In Re Gault, 387 U.S. 1 (1967).

⁸Douglas v. California, 372 U.S. 353 (1963).

outset is considered temporary and there is no career orientation.

3. Cost savings are incurred.

There is considerable evidence that an organized defender office can provide high quality defense at considerably less expense than an assigned counsel system offering the same range of services. Some comparative costs, listed below, illustrate this point.

TABLE OF COMPARATIVE CASE COSTS⁹
SELECTED JURISDICTIONS

<u>Jurisdiction</u>	<u>Appointed Counsel</u>	<u>Public Defender</u>	<u>Year</u>
Santa Clara, California	\$302.00	\$ 73.00	1971
Cook County, Illinois	\$250.00	\$ 95.00	1971
Denver, Colorado	\$486.00	\$ 108.00	1970
Rhode Island	\$130.00	80.00	1970
New Jersey	\$232.00	\$ 165.00	1970

A recent Virginia Bar Association study,¹⁰ indicates that in two

⁹ Memorandum to Committee on Public Defender System and Judiciary, Junius Allison, Professor of Law, Vanderbilt University School of Law (National Legal Aid and Defender Association, Chicago, Illinois, 1972).

¹⁰ "A Study of the Defense of Indigents in Virginia and the Feasibility of a Public Defender System". Report of the Board of Governors, Criminal Law Section, Virginia State Bar to the Governor and the General Assembly of Virginia, December 1971, pp. 27-28.

districts with defense of indigents provided only by assigned counsel the following costs per case were incurred during 1970:

14th Judicial District (population 131,362) - \$185.60

26th Judicial District (population 352,006) - \$176.60

In contrast, in two districts where an organized public defender office undertook indigent criminal defense, the following cost per case was reported for the same year:

12th Judicial District (population 222,692) - \$103.10

18th Judicial District () - \$ 94.40

4. Court backlog can be reduced and eventually eliminated.

The Virginia Bar Association study discussed above also indicated that the defender districts showed a higher proportion of dismissals, convictions given probation or suspended sentences, and trials terminated during the same period than did the two assigned counsel districts.

5. Recent criminal justice studies indicate additional advantages of organized public defender systems.

The superiority of organized public defender systems over assigned counsel systems is also supported by recent literature in the field of legal aid. The 1966 Report of the National Conference on Manpower stated that the organized defender system has the advantage of "economy and efficiency" over the assigned counsel.¹¹ This was also the

¹¹ "Legal Manpower Needs of Criminal Law," Report of the National Conference on Manpower. 1966, p. 407.

conclusion of the President's Commission on Law Enforcement.¹²
Similarly, the Institute of Court Management in its examination of
felony processing in Cuyahoga County, Ohio, in 1970 recommended "the
implementation of a strong public defender system for Cuyahoga County"
because of the efficiency and effectiveness of such a system.

"A Public Defender office is better able to organize training programs for staff, develop manuals and guides to criminal procedure and practice, monitor current cases handed down daily by local, state and federal courts. A public defender office is better able to arrange strong investigative staff, to contract with psychiatrists and other experts, obtain a range of laboratory tests and other necessary defense procedures. Just as we rely on the office of prosecuting attorney to prosecute all felonies rather than relying on a system whereby courts appoint individual prosecutors for individual felonies, so do we believe a defense delivery system has a superior capability under a centralized public office than today's system counsel."¹³

¹² "The Challenge of Crime in a Free Society" Report by the President's Commission on Law Enforcement and Administration of Justice, 1967, pp. 150-151.

¹³ "Felony Processing System, Cuyahoga County, Ohio" The Institute for Court Management, U. of Denver Law Center, Denver, Colorado. 1971, p. 54.

B. ALL ATTORNEYS DEFENDING THE INDIGENT SHOULD BE FULL-TIME STAFF OF AN ORGANIZED DEFENDER OFFICE.

In Kentucky, most of the plans submitted indicate that the private bar has offered to provide representation at the level of funding available from the state, which, in many instances, is admittedly less than what it would cost to maintain a full-time defender office for the particular district involved. In short, for the \$14,000 available, certain private lawyers will undertake to provide the representation. Discussions regarding other local plans suggest that many districts are considering utilizing a part-time defender who will be free to maintain a private practice, since the \$14,000 available to the District will not support a full-time office and the counties of the District will not or cannot supplement the state contribution.

Both approaches should be discouraged as quickly as possible for several reasons:

1. There are not sufficient funds to compensate private counsel.

While the funds available for fiscal 1972 were originally to have been stretched for a full year, the delay in implementing the Kentucky defender legislation has resulted in funds budgeted for a full year being needed for only six months or less. Thus, the \$14,000 per District Judge state allotment appears more adequate to private counsel this year than it will appear next year when the same budget will have to sustain operations for a full year.

2. The mixing of a private practice with an indigent defense caseload presents the attorney with frequent conflicts of interest.

Part-time defenders run into a dangerous conflict of interest when they have an outside practice. For example, when a conflict in court dates arises between a client paying a large fee and a public defender client, the public defender client may have to give way to the fee paying client.

3. Full-time public defenders can develop needed specialization.

In light of the increasing complexities of criminal law and the protracted nature of much litigation, the need for specialization in legal service is essential. A defender who also has an extensive private practice will substantially dilute the efficiency and effectiveness of specialization because of the expertise he must also develop in civil law.

4. Caseload warrants full-time public defenders.

At one time it could be argued that caseloads would not warrant a full-time defender attorney in many areas. However, today with the requirements of Argersinger v. Hamlin as well as other decisions extending defense responsibilities for Juvenile Court, Appellate Court, and post-conviction process, it is difficult to visualize a community where full-time defenders would not be needed if the community provides the representation demanded by our United States Constitution.

5. Existing system of part-time prosecutors should also be changed to a full-time system.

Another potential argument against a full-time defender staff is that the prosecutors in Kentucky are not full-time. What has been said about the defenders is equally applicable to the prosecutor. Prosecutorial function should be full-time, and private practice should be forbidden. The fact that this situation does not exist in Kentucky is a substantial detriment to the Kentucky Criminal Justice System. However, there is no reason why the defender movement must await the leadership of the prosecutors in developing full-time staffs. Indeed, it would be hoped that with the implementation of full-time defender offices throughout the state of Kentucky the development of similar prosecutorial offices will follow.

6. A full-time defender system is appropriate in Kentucky.

Some critics of a full-time defender system allege that such a system is inappropriate in view of the numerous and diverse trial courts existing within the state, with most courts spending only a few hours or minutes a week on a criminal caseload. Our rebuttal to such an argument is that, hopefully, cooperation will develop among the various trial courts so that scheduling of set court cases will permit defenders to ride the circuit.

7. Sufficient number of attorneys can be recruited to staff defender offices throughout the state on a full-time basis.

Some areas of Kentucky do not have attorneys who would accept

a full-time appointment. There will have to be importation of attorneys into such areas. With the law schools producing graduates at the current rate, there will be an ample supply of attorneys for the next several years. Of course, it is always desirable to have a local person as the defender, if that is possible. However, if a local person is not available, one who is new to the community -- who moves in as a permanent resident -- should be accepted. It is not as though a stranger were coming into the community to try one case and leave.

Accordingly, it is strongly urged that the full-time defender office organized in the 32nd District be utilized as a model for future programs in other rural districts, while the Jefferson County (Louisville) Circuit be utilized as a model urban defender office. The program for Lexington, Kentucky (Fayette County) which consists of 14 part-time defenders, 3 of whom undertake civil indigent litigation, should as quickly as possible develop into an office with a full-time professional staff. Efforts should begin immediately to coordinate court schedules so that that goal may be achieved.

C. LOCAL PLANS SUBMITTED BY THE FISCAL COURTS TO THE STATE PUBLIC DEFENDER SHOULD BE APPROVED INITIALLY ON A SIX MONTH EXPERIMENTAL BASIS.

We urge that plans not be approved initially for longer than six months, and in no event for longer than one year, for the following reasons:

1. Basic data of criminal and indigent caseloads in the felony or misdemeanor courts are not presently available.

After the program has been in operation six months, some data will have been accumulated, hence permitting more intelligent planning.

2. Current funds available for the remaining portion of FY73 may prove inadequate for a full-year operation in FY74.

Full year allotments of state funds to districts can be expended in the remaining six months or less period because the program which should have begun on July 1, 1972, the beginning of the fiscal year, did not begin until this winter. In fiscal year 1973-74, the money now available for six months or less will have to be budgeted over a full year.

3. The hurried response to the call for local plans may not have permitted adequate time for local planning.

Furthermore, experience indicated that with the abrupt

departure from the assigned counsel, non-compensated system to the present state plan with local options as the delivery system of defense services to the poor, a six month experience may provide more foresight for future planning.

4. In some areas, assigned counsel programs may be the most expeditious way of providing immediate defense services to the indigent. Such assigned counsel programs should be replaced as quickly as possible by organized defender offices with assigned counsel utilized only in conflict of interest situations and in exceptional circumstances.

D. WHERE THE LOCAL DECISION IS INITIALLY TO UTILIZE AN ASSIGNED COUNSEL SYSTEM, IT SHOULD OPERATE THROUGH A NON-PROFIT ORGANIZATION OR CORPORATION FORMED BY THE LOCAL BAR ASSOCIATION:

1. Such a system should operate with specific guidelines:

- (a) One member of the association or corporation should be designated as the administrator for a specific duration.
- (b) The administrator's office should be listed prominently in the telephone directory, at police stations, and at jails as the number for indigent criminal legal assistance, and the administrator should be available on a round-the-clock basis. Assignments should be made so that representation can begin immediately after an arrest.
- (c) All participating attorneys should be assigned in rotation, by

the administrator, unless a particular case requires a more experienced attorney than the next in line for appointment, or in the event illness or private commitments make it necessary to pass over the next in line. In any event, judges should not make the appointments and appointments should be distributed equitably.

(d) In no event should judges participate in the management of the organization that operates the assigned counsel system.

(e) Complete records should be maintained covering manner of disposition of each assigned case, hours spent out of court in preparation and time in court.

Although a state-wide defense organization is desirable in the long run, the local Fiscal Courts will initially opt, in most instances, for an assigned-counsel system. In such a system it is essential that competent attorneys participate, that cases be distributed fairly, and that both the administrator as well as the assigned attorneys be insulated from the courts and remain independent to the same extent as private counsel representing more affluent clients. Accordingly, the administrator should be assigned and should have exclusive authority to make appointments without interference from the judiciary. This administrator should be appointed by a supervisory board which does not

include judicial representatives. The duty of this board should be to make general policy, and to appoint the administrator for a specific, renewable term. Neither the administrator nor the board should interfere with an individual attorney representing a client, except in instances of obvious incompetence, clear conflict of interest or gross non-feasance. In these cases, such interference should be made by the administrator with the concurrence of the board.

2. Counsel should be appointed on the basis of the availability and particular expertise of the participating panel attorneys according to the discretion of the administrator.

While the ABA standards suggest that an assigned counsel program utilize a rigidly controlled rotation system in order to avoid the appearance of impropriety,¹⁵ the consultants believe that a competent and insulated administrator should exercise some discretion in order to avoid overburdening panel attorneys at inopportune times. Moreover, the administrator will be better able to select the more appropriate attorney for a particular case because he will be familiar with the panel attorneys, their work schedule, and their particular capabilities and inclinations. With an independent administrator making the appointment, the appointive system may be more flexible, without fear of abuse. The end result should be that cases are disposed of more quickly, efficiently, and effectively because panel attorneys who should not undertake

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"Standards Relating to Criminal Defense," American Bar Association, 1968, Sec. 2.3a p. 29.

an assigned matter at a particular time can easily be bypassed and the case be assigned to one who is able to provide proper representation.

3. The client should have the option of rejecting the assigned counsel.

Providing the client with some choice will assist in alleviating the dehumanizing process of the criminal justice system, make the client more responsible for his own destiny and instill more faith in our system. (See "ABA Standards Relating to Defense Services," Sec. 2.3a pp. 29-30). The administrator can function as a third party without fear of conflict of interest to determine if there is a genuine question of rapport between assigned counsel and the client, or if the client is attempting to delay the proceedings by intentional uncooperativeness and unresponsiveness. Where the court or its agent does the appointing of counsel such an inquiry would be difficult because of the impartial posture that must be maintained by the court.

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4. Representation should begin before the initial court appearance.

The Kentucky State Defender Act wisely provides that the right to representation for an indigent begins "with the earliest possible time when a person providing his own counsel would be entitled to be represented by an attorney..." (Sec. 11, 2a). Paragraph 1 of that section provides

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Much of the supportive material here is taken from the NLADA Defense Standard, Op. Cit., see footnote #1.

that an indigent has a right to representation when he is "detained by a law enforcement officer." Accordingly it will be necessary for both the defender office and the assigned counsel to make their own preliminary determination of indigency and not wait until the court appointment. This is a forward-looking provision, for those engaged in criminal defense representation are aware that to delay appointment of counsel until the first court appearance sharply reduces the effectiveness of counsel. (For example, appointing an attorney at the first court appearance is comparable to locking the barn door after the horses are gone.)

The administrator or an alternate must be reachable at all times so that an attorney can be appointed promptly. The administrator, with the assistance of the local bar association and the state defender, must educate the police and jailors so that his office location and telephone number will be prominently displayed and his availability communicated to an accused who does not have an attorney and appears to be indigent.

- E. AN INTENSIVE ENTRY-LEVEL TRAINING PROGRAM SHOULD BE ESTABLISHED TO ENSURE THAT ALL ATTORNEYS ASSIGNED TO REPRESENT INDIGENT ACCUSED HAVE THE BASIC DEFENSE SKILLS NECESSARY TO PROVIDE ADEQUATE AND EFFECTIVE REPRESENTATION.

The State Defender Should Conduct a Criminal Law Seminar at the Earliest Possible Time, and thereafter at Regular Intervals.

The traditional view that any licensed lawyer is capable of handling any type of case has rapidly eroded in the face of increased

specialization within the legal profession. One runs to the tax specialist when confronted by the IRS, to the personal injury defense specialist when sued. Yet nowhere is the need for a specialized talent more compelling than in the defense of the criminally accused. The high value placed upon personal liberty in a free society demands the most skilled practitioner to defend that liberty in the adversary process. That skill, acquired through the fusion of experience and knowledge, must necessarily be at the defense lawyer's instant command in the heat of courtroom battle. As the President's Commission on Law Enforcement and Administration of Justice has emphasized in discussing the problem of recruiting competent defense lawyers under an assigned counsel system:

Often the lawyer in general practice feels incapable of handling a criminal matter skillfully. It is commonly known that criminal courts function under a system of rules and practices familiar only to insiders, which in some cases supersedes the written codes of criminal procedure. The non-specialist legitimately doubts his capabilities in the practice of criminal law, a field that received little attention in his formal education.¹⁷

That a law degree and a license to practice no longer qualify one as a criminal defense lawyer is perhaps most clearly shown by a recent Virginia study of indigent defendants represented by assigned counsel which revealed that over 40% of the criminal appeals before the Virginia Supreme Court of Appeals during the October, 1970 term were affirmed without consideration of the constitutional issues because of

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"Task Force Report: The Courts," p. 58.

18
the failure to make proper objections at trial. Such results not only work injustice upon indigent defendants, but also further clog the criminal justice system with attempts at collateral relief.

To assure that public defenders acquire basic defense skills, systematic and intensive basic training programs for new defenders are imperative in order to provide even the minimum degree of specialized skill necessary for adequate criminal defense representation. 19

In Kentucky, a training seminar at the earliest possible time is essential. It was the observation of the writers that the panels of assignment attorneys will consist primarily of younger, inexperienced lawyers, because they generally have more time than have older attorneys with established practices and reputations. Larger law firms will also pass off firm appointments to their youngest associates for the same reasons that courts will appoint younger attorneys. While many young, inexperienced lawyers approach such appointments seriously and with diligent preparation, their inexperience cannot be entirely overcome by commitment to the client. Hence, their quality of representation is often inadequate. 20

Moreover, Kentucky is introducing an entirely new defense service into its criminal justice system. There is a critical need to instill

18

Defense of Indigents in Virginia, Op. Cit., p. 10.

19

See "Defense Standards," Op. Cit., footnote #1.

20

"ABA Defense Services," Op. Cit., pp 24-25.

in the participating attorneys some esprit de corps for the defender movement. A statewide seminar would permit Kentucky defenders and assigned counsel to come together, exchange ideas and views and communicate with each other and persons from outside of the state who are experienced defenders. The writers believe that the initial program should be planned for presentation no later than April 15, 1973, and earlier if possible.

The writers contacted the staff of the National Legal Aid and Defender Association for their availability to plan such a program and an estimation of its cost. NLADA has experience in presenting such seminars and estimated the cost at approximately \$7,000 for a three-day program. This amount would cover the distribution of a handbook, lodging and food for the participating Kentucky lawyers, travel and honorarium for speakers, and expenses of NLADA. The writers suggest the utilization of an outside firm to plan the program because presently the State Defender and his staff are taxed to the utmost with the implementation of the statewide program. However, thereafter the State Defender should develop his own periodic systematic training program at both the entry and advanced level. Such programs are urgently needed because there is no active continuing legal education activity in the state.

F. THE PUBLIC DEFENDER SHOULD ESTABLISH AN APPELLATE DIVISION AS QUICKLY AS POSSIBLE TO HANDLE APPEALS RESULTING FROM THE CONVICTION OF INDIGENT PERSONS THROUGHOUT THE STATE.

The writers recommend that, under the supervision of Mr. Wilhoit, the duties of the appellate division should include the following:

1. Entry of the case for appeal.

After local counsel has filed and argued the motion for new trial, filed the notice of appeal, properly designated the record on appeal, and the case is docketed in the appellate court, the state defender's appellate division should enter the case.

2. Compilation of a Briefbank.

The appellate division should gradually put together a Briefbank with proper indexing system so that the Briefbank can be available to all district and deputy defenders in the state system, as well as all members of the bar who accept assigned cases.

3. Preparation of a trial manual.

The Appellate Division should prepare and compile a trial manual for use by all deputy defenders, setting forth all Kentucky and Federal laws pertinent to the defense of criminal cases. The manual should be in loose leaf form to facilitate periodic updating.

4. Periodic publication of a digest containing significant developments in criminal law.

The Appellate Division should periodically send out a newsletter to all deputy defenders digesting current significant

criminal case decisions from Kentucky, Federal and state jurisdictions, with an indexing system keyed into the Briefbank index.

We have urged that ultimately all district defenders be full-time employees of the state public defender system, and we have set forth certain documentation supporting that recommendation. It is respectfully submitted that further support of the concept of full-time public defenders, under the supervision and control of the state public defender, is to be found in what has been discussed regarding the function of the appellate division. The appellate function presents an opportunity to review the adequacy of trial counsel. It would be hoped that in a state-wide system defenders would learn to work as a team under the guidance of the state public defender with the assistance of the appellate division, the Briefbank, the training seminars, etc., and will develop pride and professionalism in their services for the indigent accused.

G. THE STATE DEFENDER SHOULD IMMEDIATELY DEVELOP THE STRUCTURE AND SALARY SCALES FOR REGIONAL AND DISTRICT DEFENDER OFFICES SO THAT THEY ARE PREPARED FOR A FULL-TIME DEFENDER SYSTEM.

1. Career opportunities in the public defender system should be provided.

While it must be recognized that many lawyers look to service in a defender office as a method of gaining experience and a reputation as preparation for entry into private practice, a defender office should offer career opportunities and be able to hold and attract more experienced lawyers in order to provide high quality representation. It is uneconomical to lose lawyers after two or three years, since it is only with experience and training that they become competent.

While the overwhelming majority of districts appears to be choosing an assigned counsel system for the present, the state defender must be prepared for an immediate change to an organized defender office. Preparation for such change will be an added incentive to change, for change follows easily from preparation.

2. Salaries should be scheduled to compensate ability and experience.

The present plan of state distribution to the districts, we believe, encourages uniformity in compensation. While \$14,000, the amount of money paid to districts per district judge, is inadequate compensation for the experienced practitioner, it is too much to pay the beginning lawyer in Kentucky. Uniformity of payment, without regard to

ability, is comparable to running an army with only one salary level.

3. Promotion should be independent of judicial control.

By requiring the State Defender to develop salary levels, the reliance of local defenders upon fiscal judges for pay raises will be lessened. Most fiscal judges in Kentucky are not lawyers. Many are not yet accustomed to the concept of providing defense services to the indigent criminally accused at government expense. Moreover, when a defender vigorously represents an unpopular client, he may be fearful that he will fail to receive a promotion or pay raise because of such representation if such matters are controlled locally. Dual allegiance -- to local judges for promotion and to client for his best interests -- is totally inconsistent with the canons of professional ethics and serves to weaken our adversary system. As far as possible, local defenders must be as independent of outside control as private counsel representing fee clients.

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This principle is in full accord with the American Bar Association's "Standards Relating to Providing Defense Services," Op. Cit.

H. A MINIMUM OF THREE REGIONAL OFFICES SHOULD BE ESTABLISHED TO PERFORM THE FOLLOWING FUNCTIONS UNDER THE SUPERVISION OF THE STATE PUBLIC DEFENDER:

1. Assisting district defenders and assigned counsel within the region in the preparation and the trial of more serious felonies.
2. Providing investigative services for district defenders and assigned counsel.
3. Coordinating all defender activities within the region.

This coordination should include regional continuing legal education programs, temporary transfer of defenders between the districts in emergency situations, and appellate and post-conviction proceedings.

4. Encouraging and assisting in the formation of full-time defender offices throughout the region, and effecting regional cooperation where appropriate.

Kentucky is unique in that it has undergone such an abrupt change of direction in its indigent defense delivery system. Prior to 1972, there were no organized defender offices in the state. Assigned counsel were not even minimally compensated nor provided with expenses. Then, in 1972, the State Defender Legislation became effective, creating a modified state defender system, with local option as to the method of delivery. It must not be expected that the transition will be made easily.

Indeed, a multitude of serious problems can be anticipated that will make it impossible for a single state office with a limited staff adequately to cover the entire state, particularly a state like Kentucky with its remote mountainous regions and approximately 350 mile width.

Unfortunately, from the observation of the writers and from the information obtained, it appears that the bulk of the indigent criminal defense work will initially be undertaken by young inexperienced lawyers. Although compensation will now be available, the amount will not be sufficient to attract the established practitioner. As a result, it will be necessary to provide closer supervision and assistance and to have at hand supportive services for underfinanced defender offices and assigned counsel. We understand that a limited amount of state law enforcement assistance funds from LEAA can be made available to aid in the establishment of these offices.

The regional offices should include a minimum of an experienced criminal lawyer, an investigator, and a secretary.

One office should be located in western Kentucky, another in southeastern Kentucky, and a third in Covington, Kentucky, immediately across the river from Cincinnati, Ohio. We mention specifically Covington, Kentucky because the Salmon P. Chase Law School recently moved from Cincinnati to Covington, and is anxious to develop a clinical program under the Kentucky Senior Law Student Practice Rule. Since the administration of the Law School indicated a willingness to establish such a program with the state defender, a defender office in Covington would be able to utilize faculty and students at the school.

While the regional defenders will be expected to provide assistance to local defenders and assigned counsel, they will also be required to remain in close contact with the fiscal courts, other local judges and persons in the political power structure. These involved citizens should be urged to develop full-time defender offices, to assist in coordinating court dates among the various independent trial courts exercising criminal jurisdiction, and to develop cooperative programs between districts where caseloads warrant such cooperation.

Regional offices can also provide an information-dispensing service and can accumulate criminal court statistics for the region, for which a need has been demonstrated in this report.

As the Kentucky Defender Program becomes accepted, and if full-time organized offices are developed, the need for the regional offices described herein should fade.

I. THE STATE DEFENDER SHOULD PROVIDE REPRESENTATION FOR PRISON INMATES.

During our visit to Kentucky we learned that, like those of most other states, Kentucky communities with prisons situated therein are having problems (1) providing adequate review for convicted inmates, (2) screening applications for post-conviction relief and pursuing those cases wherein convicted persons are likely entitled to post-conviction relief, and (3) defending indigent prison inmates for offenses that allegedly occur within the prison walls. The Kentucky State Penitentiary is situated in Eddyville; the Kentucky State Reformatory is situated near LaGrange; and the Kentucky Correctional Institution for Women is situated in Pee Wee Valley.

The local defender office in Eddyville should be strengthened.

We were advised that a number of alleged criminal offenses occur in the Kentucky State Penitentiary -- probably considerably more than occur in the other two state penal institutions, since Eddyville is a maximum security facility. It is recommended that the State Public Defender employ sufficient staff defenders in the state headquarters office to assist the defender or assigned counsel in Eddyville in handling the caseload of indigent accused prisoners. It would be advisable for the local defender office in the Eddyville region to be strengthened so that its defender office could properly handle the caseload resulting from criminal filings for conduct within the institution as well as the filings resulting from the general local population.

J. THE STATE DEFENDER LEGISLATION SHOULD BE AMENDED.

Elimination of the local option plan should be made in favor of an organized defender office and more authority for the state defender to hire, or at least approve, the local defender.

IV. CONCLUSION

It is the sincere feeling of the technical assistance team that the Kentucky Bar and the Kentucky Judicial System face a tremendous challenge in the implementation of the Statewide Public Defender Act. Pursuant to the mandate in the Argersinger case, and the new Public Defender Act, Kentucky's criminal justice system is changing almost overnight from an archaic system that provided no compensation for those dedicated lawyers who answered the call of their profession and defended indigent persons, to a system that provides such compensation and that further provides for the creation of a public defender system designed to meet this most pressing social need on a greatly enlarged scope. It is easy for an outsider to look at a judicial system that did not provide compensation to those who defended the indigent in the past and suspect that cases were probably not investigated and prepared thoroughly, and assume that many persons would probably be forced to plead guilty because the court-appointed lawyers were too busy with their own private law business. Yet one has only to read Judge Winford's "The Kentucky Lawyer" to appreciate what tremendous sacrifices have been made by many, many members of the Kentucky Bar in providing excellent defense of the accused indigent. Fortunately, under the newly created public defender system, one should not have to worry about the inattentive defense lawyer who receives no pay or about the tremendous sacrifices without compensation to be made by concerned members of the Bar.

Throughout this report, we have provided numerous arguments in support of this state-wide public defender program and have demonstrated that our position is supported by many recent studies in the field of legal aid. An important observation in this area was made by the President's Advisory Commission on Intergovernmental Relations, which, in August 1971, recommended that the states assume direct responsibility for financing and administering statewide defender services. Under the patchwork response of local option plans, such as exist in Kentucky, the quality of defense representation can vary greatly. In some areas defendants enjoy excellent representation, but in many cases indigents can be represented by inexperienced and disinterested counsel assigned at random by the court. Therefore, the commission concluded, only a statewide organization can assure a uniformly high caliber of indigent defense representation.

Financial support is a critical element in providing the effective defender services. Local governments are less capable fiscally than are the State. In Kentucky, many counties are poverty-stricken and many pressing local needs remain unfulfilled because of the shortage of public funds.

On the other hand, there are many counties in Kentucky that are wealthy. Usually those counties that have a higher tax base have less indigency, while counties with a lower tax base have a high rate of indigency. Thus, where the defender caseload will be heaviest, the county is least able to meet the need; in the wealthiest counties, there will be least need.

Moreover, since county officials are often more susceptible to the insensitivity of many citizens regarding the rights of the accused, it is politically impossible to provide adequate funding for the protection of those rights on the local level in many areas.

We are hopeful that our foregoing recommendations will be valuable in the implementation of the Kentucky Defender System and that they will result in a corps of defenders who will be dedicated to the cause of the defense of the indigent accused and will develop greater skill as defense lawyers.

We express our gratitude for the personal courtesies and significant contributions made to this study by state and local officials, members of the Kentucky Bar, Acting Dean Robert Lawson of the University of Kentucky Law School and Jack Gosse and L. Buttafoco, Professors of Law of the Salmon P. Chase Law School.

APPENDICES



COMMONWEALTH OF KENTUCKY
GENERAL ASSEMBLY
REGULAR SESSION, 1972

HOUSE BILL NO. 461

WEDNESDAY, MARCH 8, 1972

The following bill was reported to the Senate from the House and ordered to be printed.

AN ACT relating to a state-wide public defender system.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 Section 1. KRS Chapter 31 is hereby established and a new
2 section thereof created to read as follows:

3 There is hereby established as an independent agency of
4 state government the Office of Public Defender, in order to pro-
5 vide for the establishment, maintenance and operation of a state
6 sponsored and controlled system for the defense of indigent per-
7 sons in certain criminal cases.

8 Section 2. A new section of KRS Chapter 31 is created
9 to read as follows:

10 The Office of Public Defender shall consist of the Public
11 Defender, Deputy Public Defender, such Assistant Public De-
12 fenders as the Public Defender shall deem necessary, and such
13 secretarial and other personnel as the Public Defender shall deem

1 necessary.

2 (1) The Public Defender shall be chosen by the Governor
3 from a list of names of five attorneys submitted to the Governor
4 by the Kentucky Bar Association. Should none of the persons
5 on the list be suitable to the Governor he may call for a new
6 list which shall be provided by the Kentucky Bar Association.
7 The Public Defender shall be compensated at a rate not greater
8 than \$27,000 per year, and shall serve a term of four years, unless
9 removed by the Governor.

10 (2) The Deputy Public Defender shall be an attorney and
11 shall be appointed by the Public Defender and shall serve at his
12 pleasure. He shall be compensated at a rate not greater than
13 \$17,000 per year.

14 (3) The Assistant Public Defenders shall be attorneys,
15 shall be appointed by the Public Defender, shall be under civil
16 service, and shall be compensated at a rate not greater than
17 \$16,500 per year.

18 (4) Secretarial, clerical, and other personnel shall be ap-
19 pointed by the Public Defender, shall be under civil service, and
20 shall be compensated at appropriate rates determined by the
21 public defender.

22 Section 3. A new section of KRS Chapter 31 is created
23 to read as follows:

24 The duties of the Office of Public Defender shall include,
25 but are not limited to:

26 (1) Administering the statewide public defender system
27 created by this Act or by any other appropriate legislation or
28 court decision; and

1 (2) Providing technical aid to local counsel representing
2 indigents; and

3 (3) Assisting local counsel on appeals or taking appeals
4 for local counsel, in the same manner as such appeals for the
5 Commonwealth are presently handled by the Attorney General;
6 and

7 (4) Developing and promulgating standards and regula-
8 tions, rules, and procedures for administration of the defense of
9 indigent defendants in criminal cases which the public defender,
10 statutes, or the courts determine are subject to public assistance;
11 and

12 (5) Appointing district public defenders; and

13 (6) Reviewing local plans for providing counsel for indi-
14 gents; and

15 (7) Conducting research into methods of improving the
16 operation of the criminal justice system with regard to indigent
17 defendants and other defendants in criminal actions; and

18 (8) Issuing such rules, regulations, and standards as may
19 be reasonably necessary to carry out the provisions of this Act,
20 the decisions of the United States Supreme Court, the decisions
21 of the Kentucky Court of Appeals, and other applicable court
22 decisions or statutes; and

23 (9) Do such other things and institute such other programs
24 as are reasonably necessary to carry out the provisions of this
25 Act, or those decisions or statutes which are the subject of sub-
26 section (8) of this section.

27 Section 4. A new section of KRS Chapter 31 is created
28 to read as follows:

1 (1) The Public Defender may create in any circuit court
2 district containing less than ten circuit judges, an office of Dis-
3 trict Public Defender, which shall be staffed by a District Public
4 Defender who shall be an attorney, shall be appointed by and
5 serve at the pleasure of the Public Defender, and who shall re-
6 ceive an annual salary of no less than \$14,000.

7 (2) For the purposes of this section when a judicial district
8 contains more than one circuit judge each judgeship shall be
9 considered as a separate district for the purposes of assignment
10 of district defenders, that is, if the district contains two circuit
11 judges there shall be two district defenders, if the district con-
12 tains three circuit judges there shall be three district defenders,
13 and if the district contains four circuit judges there shall be four
14 district defenders, and so on.

15 (3) The said office may be created only if the county or
16 counties in the district do not initiate and undertake a plan for
17 defense of indigent persons in specified criminal cases which
18 is suitable to and approved by the Public Defender.

19 Section 5. A new section of KRS Chapter 31 is created
20 to read as follows:

21 (1) The Public Defender shall review and approve or deny
22 or suggest modifications to all plans which are submitted to
23 the Office of Public Defender for defense of indigent persons.

24 (2) If the plan for defense of indigent persons is approved
25 the Public Defender may allot a sum not exceeding \$14,000 to
26 the county or counties in the judicial district involved for the
27 purpose of assisting the said plan. The moneys shall be divided
28 among the counties in the district as provided by the plan which

1 is submitted. At the end of each funding period any moneys not
2 expended shall revert to the state Office of Public Defender.
3 Counties and other units submitting applications under this Act
4 shall be obligated to pay and shall pay all costs incurred in their
5 own defense of indigent programs which are in excess of \$14,000,
6 or other maximum amount of grant as specified in this Act.

7 (3) In any judicial district which contains more than one
8 circuit judge each judgeship shall be considered as a separate
9 district for purposes of funding, that is, if the district contains
10 two judges the total amount which may be allotted to the district
11 is \$28,000, if the district contains three judges the total amount
12 which may be allotted is \$42,000, and if the district contains
13 four judges the total amount which may be allotted is \$56,000,
14 and so on.

15 Section 6. A new section of KRS Chapter 31 is created
16 to read as follows:

17 Each county with a judicial district containing ten or more
18 circuit judges shall establish and maintain an office of District
19 Public Defender and submit a plan for the operation thereof
20 to the Office of Public Defender. If the plan submitted is ap-
21 proved by the Office of Public Defender the Public Defender
22 shall grant to the county the amount of \$14,000 multiplied by
23 the number of circuit judges in the district which shall be used
24 as the Commonwealth's share in defraying the expenses of the
25 program in that district. The county and other units contributing
26 to the costs of the program shall be obligated to pay and shall pay
27 all costs incurred in the operation of the defense of indigents
28 program which are in excess of the state contribution. Any ex-

1 excess of moneys remaining at the end of the funding period shall
2 be returned to the Office of Public Defender.

3 Section 7. A new section of KRS Chapter 31 is created
4 to read as follows:

5 If a judicial district, through the county or counties therein,
6 adopts a plan involving appointed counsel the Public Defender
7 is hereby authorized to pay reasonable and necessary fees and
8 expenses subject to the following limitations:

9 (1) No fee shall be paid in excess of \$500 for any de-
10 fense of a single person in any case; and

11 (2) In the case of multiple defendants no fee shall be paid
12 in excess of \$500 for each defendant in the case; and

13 (3) Each fee plus expenses incurred in the defense shall
14 be presented by the defense attorney to the Circuit Court Judge
15 who shall review the fee and expenses request and shall approve,
16 deny, or modify the amount of compensation and fee listed there-
17 in. After final approval of the fee and expenses the Circuit Judge
18 shall, if state compensation is desired, certify the amount and
19 transmit the document to the Public Defender who shall review
20 the fee and expense request and shall approve, deny, or modify
21 the request. The request as approved or modified shall then be
22 paid. Requests for payment of assigned counsel by the state shall
23 be denied if the district has exceeded the amount of funds which
24 may be allotted to it, if the district plan has not been approved,
25 or if the Public Defender finds that compensation is otherwise
26 not warranted. The decision of the Public Defender in all mat-
27 ters of fee and expense compensation shall be final.

28 Section 8. A new section of KRS Chapter 31 is created

1 to read as follows:

2 The Public Defender is hereby authorized to seek and apply
3 for and solicit funds for the operation of the defense of the
4 indigent program from any source, public or private, and to re-
5 ceive donations, grants, awards, and similar funds from any legal
6 source. Said funds shall be placed in a special account for the
7 Office of Public Defender and said funds shall not lapse.

8 Section 9. A new section of KRS Chapter 31 is created
9 to read as follows:

10 In the event of funding deficiencies the amount of awards,
11 grants and similar funding by the state of local efforts shall be
12 reduced on an across the board percentage basis, all areas being
13 reduced by an equal amount.

14 Section 10. A new section of KRS Chapter 31 is created
15 to read as follows:

16 With regard to the District Public Defender and approved
17 local programs of providing counsel for indigents the following
18 terms and standards shall apply, subject to further definition
19 and regulation by the Office of Public Defender.

20 (1) "detain" means to have in custody or otherwise deprive
21 of freedom of action;

22 (2) "expenses," when used with reference to representation
23 under this Act, includes the expenses of investigation, other
24 preparation, and trial, together with the expenses of any appeal;

25 (3) "needy person" means a person who at the time his
26 need is determined is unable to provide for the payment of an
27 attorney and all other necessary expenses of representation;

28 (4) "serious crime" includes:

- 1 (a) a felony;
- 2 (b) a misdemeanor or offense any penalty for which in-
- 3 cludes the possibility of confinement for 6 months or more or a
- 4 fine of \$500 or more; and
- 5 (c) an act that, but for the age of the person involved,
- 6 would otherwise be a serious crime.

7 Section 11. A new section of KRS Chapter 31 is created
8 to read as follows:

9 (1) A needy person who is being detained by a law en-
10 forcement officer, on suspicion of having committed, or who is
11 under formal charge of having committed, or is being detained
12 under a conviction of, a serious crime, is entitled:

13 (a) to be represented by an attorney to the same extent
14 as a person having his own counsel is so entitled; and

15 (b) to be provided with the necessary services and facilities
16 of representation including investigation and other preparation.
17 The courts in which the defendant is tried shall waive all costs.

18 (2) A needy person who is entitled to be represented by
19 an attorney under subsection (1) is entitled:

20 (a) to be counseled and defended at all stages of the matter
21 beginning with the earliest time when a person providing his
22 own counsel would be entitled to be represented by an attorney
23 and including revocation of probation or parole;

24 (b) to be represented by any appeal; and

25 (c) to be represented in any other post-conviction proceed-
26 ing that the attorney and the needy person considers appropriate.

27 However, if the counsel appointed in such post-conviction
28 remedy, with the court involved, determines that it is not a

1 proceeding that a reasonable person with adequate means would
2 be willing to bring at his own expense, there shall be no further
3 right to be represented by counsel under the provisions of this
4 Act.

5 (3) A needy person's right to a benefit under subsection
6 (1) or (2) is not affected by his having provided a similar benefit
7 at his own expense, or by his having waived it, at an earlier stage.

8 Section 12. A new section of KRS Chapter 31 is created
9 to read as follows:

10 (1) The determination of whether a person covered by
11 Section 11 is a needy person shall be deferred until his first ap-
12 pearance in court or in a suit for payment or reimbursement under
13 Section 17, whichever occurs earlier. Thereafter, the court con-
14 cerned shall determine, with respect to each proceeding, whether
15 he is a needy person. However, nothing herein shall prevent
16 appointment of counsel at the earliest necessary proceeding at
17 which said person is entitled to counsel, upon declaration by
18 said person that he is needy under the terms of this Act. In
19 such event the person involved may be required to make re-
20 imbursement for the representation involved if he later is de-
21 termined not a needy person under the terms of this Act.

22 (2) In determining whether a person is a needy person
23 and in determining the extent of his inability to pay, the court
24 concerned may consider such factors as income, property owned,
25 outstanding obligations, and the number and ages of his de-
26 pendants. Release on bail does not necessarily prevent him from
27 being a needy person. In each case, the person, subject to the
28 penalties for perjury, shall certify in writing or by other record

1 such material factors relating to his ability to pay as the court
2 prescribes.

3 (3) To the extent that a person covered by Section 11 is
4 able to provide for an attorney, the other necessary services and
5 facilities of representation, and court costs, the court may order
6 him to provide for their payment.

7 Section 13. A new section of KRS Chapter 31 is created
8 to read as follows:

9 At any stage, including appeal or other post-conviction pro-
10 ceeding, the public defender may for good cause assign a sub-
11 stitute attorney. The substitute attorney has the same functions
12 with respect to the needy person as the attorney for whom he
13 is substituted. The court shall prescribe reasonable compensation
14 for him and approve the expenses necessarily incurred by him in
15 the defense of the needy person, and shall, if state compensation
16 is desired, forward the request to the office of Public Defender.

17 Section 14. A new section of KRS Chapter 31 is created
18 to read as follows:

19 (A person who has been appropriately informed under Sec-
20 tion 12 may waive in writing, or by other record, any right pro-
21 vided by this Act, if the court concerned, at the time of or after
22 waiver, finds of record that he has acted with full awareness of
23 his rights and of the consequences of a waiver and if the waiver
24 is otherwise according to law. The court shall consider such
25 factors as the person's age, education, and familiarity with Eng-
26 lish, and the complexity of the crime involved.

27 Section 15. A new section of KRS Chapter 31 is created
28 to read as follows:

1 (1) The county attorney, on behalf of the county, or any
 2 other contributing agency in its behalf, may recover payment
 3 or reimbursement, as the case may be, from each person or his
 4 estate who has received legal assistance or another benefit under
 5 this Act:

6 (a) to which he was not entitled;

7 (b) with respect to which he was not a needy person when
 8 he received it; or

9 (c) with respect to which he has failed to make the cer-
 10 tification required by Section 12 (2);

11 and for which he refuses to pay or reimburse. Suit must be
 12 brought within 10 years after the date on which the aid was
 13 received.

14 (2) The county attorney, on behalf of the county, or any
 15 other contributing agency in its behalf, may recover payment or
 16 reimbursement, as the case may be, from each person, other than
 17 a person covered by subsection (1), who has received legal assis-
 18 tance under this Act and who, on the date on which suit is
 19 brought, is financially able to pay or reimburse the county for
 20 it according to the standards of ability to pay applicable under
 21 Sections 10 (3), 11 (1) and 12 (2), but refuses to do so. Suit must
 22 be brought within 10 years after the date on which the benefit
 23 was received.

24 (3) Amounts recovered under this section shall be paid into
 25 the county general fund, or to any other contributing agency.

26 Section 16. A new section of KRS Chapter 31 is created
 27 to read as follows:

28 (1) The Fiscal Court of each county, except in counties

1 wherein the judicial district is required to maintain a public de-
2 fender under this Act and in such case the county shall con-
3 tribute to the funding of the District Public Defender in such
4 amounts as the Office of Public Defender shall deem reasonable
5 and necessary, may provide for the representation of needy per-
6 sons who with respect to serious crimes are subject to proceed-
7 ings in the county or are detained in the county by law enforce-
8 ment officers. They may provide this representation by:

9 (a) establishing and maintaining an office of public de-
10 fender;

11 (b) arranging with an appropriate non-profit organization
12 to provide attorneys;

13 (c) arranging with the courts of criminal jurisdiction in
14 the county to assign attorneys on an equitable basis through a
15 systematic coordinated plan and, if the county contains a city
16 of the first or second class under the guidance of an admin-
17 istrator; or

18 (d) adopting a combination of these alternatives.

19 (e) if a county chooses none of the alternatives set forth
20 herein, the state shall provide a District Public Defender as pro-
21 vided by this Act.

22 (2) The Fiscal Court of a county may join with one or
23 more other counties in its judicial district or elsewhere or with
24 any cities located within the said county or counties in providing
25 this representation; said agreements to be made pursuant to the
26 provisions of KRS Chapter 65.

27 (3) If it elects to establish and maintain an office of public
28 defender, and if the appropriate legislative authorities and fiscal

1 courts concerned respectively agree on qualifications, term of
2 office, compensation, support and appointment under Section 17
3 (1), and the Fiscal Court of a county may join with cities within
4 said county and with the Fiscal Court of one or more other coun-
5 ties to establish and maintain a joint office of District Public
6 Defender. In that case, the participating counties shall be treat-
7 ed for the purposes of this Act as if they were one county. Said
8 agreements shall be made pursuant to the provisions of KRS
9 Chapter 65.

10 (4) If the Fiscal Court of a county elects to arrange with
11 the courts of criminal jurisdiction in the county to assign attor-
12 neys, a court of the county may provide for advance assign-
13 ment of attorneys, subject to later approval by it, to facilitate
14 representation in matters arising before appearance in court.

15 Section 17. A new section of KRS Chapter 31 is created
16 to read as follows:

17 (1) If the Fiscal Court of a county elects to establish and
18 maintain an office of public defender, they shall:

19 (a) Appoint the District Public Defender and any number
20 of Assistant District Public Defenders necessary to adequately
21 perform the functions of said office.

22 (b) Prescribe the qualification of the District Public De-
23 fender, his term of office which may not be more than 4 years
24 and fix the rate of annual compensation for him and his assist-
25 ants. In order to be qualified for appointment as Public Defender
26 a person must have been admitted to the practice of law and
27 licensed to practice in the Commonwealth of Kentucky and be
28 competent to counsel and defend a person charged with a crime.

1 During his incumbency neither the Public Defender nor any of
2 his assistants shall engage in the practice of law other than in the
3 discharge of his duties.

4 (c) Provide for the establishment, maintenance and sup-
5 port of his office.

6 (2) If the Fiscal Court of a county elects to arrange with a
7 non-profit organization to provide defenders, the county and
8 any cities involved may reimburse the organization for such ex-
9 penses as the Fiscal Courts respectively concerned have deter-
10 mined to be necessary in the representation of needy persons
11 under this Act, or may provide facilities described in section 18
12 (2) (a) in addition to or in lieu of said reimbursement.

13 (3) If a court assigns an attorney to represent a needy per-
14 son it shall prescribe a reasonable rate of compensation for his
15 services and shall determine the direct expenses necessary to
16 representation for which he would be reimbursed. The county
17 shall pay the attorney the amounts so prescribed.

18 (4) An attorney under subsection (3) shall be compensated
19 for his services with regard to the complexity of the issues, the
20 time involved, and other relevant considerations. However, he
21 may be compensated at a rate no higher than \$30.00 an hour
22 for time spent in court and no higher than \$20.00 an hour for
23 time spent out of court subject in each case to a maximum total
24 fee of \$1000 in case of a felony and \$500 in any other case, un-
25 less the court concerned finds that special circumstances war-
26 rant a higher total fee.

27 Section 18. A new section of KRS Chapter 31 is created
28 to read as follows: (1) If an office of public defender has been

1 established, the public defender may employ, in the manner and
2 at the compensation prescribed by the Fiscal Court, as many
3 assistant public defenders, clerks, investigators, stenographers
4 and other persons as the Fiscal Court considers necessary for
5 carrying out his responsibilities under this Act. A person em-
6 ployed under this section serves at the pleasure of the public
7 defender, unless his position is under a civil service system in
8 which he may be removed only for cause.

9 (2) If an office of a public defender has been established,
10 the Fiscal Court shall:

11 (a) provide appropriate facilities (including office space,
12 furniture, equipment, books, postage, supplies and interviewing
13 facilities in the jail) necessary for carrying out the public de-
14 fender's responsibilities under this Act; or

15 (b) grant the public defender an allowance in place of
16 those facilities.

17 (3) Any defending attorney operating under the provisions
18 of this Act is entitled to use the same state facilities for the
19 evaluation of evidence as are available to the attorney represent-
20 ing the Commonwealth. If he considers their use impractical,
21 the court concerned may authorize the use of private facilities
22 to be paid for on court order by the county.

23 Section 19. A new section of KRS Chapter 31 is created
24 to read as follows:

25 (1) The Fiscal Court of each county together with any
26 cities involved shall annually appropriate enough money to ad-
27 minister the program of representation that it has elected under
28 Section 16.

1 (2) If the Fiscal Court of a county elects to establish and
2 maintain any of the alternative plans provided for in section 16,
3 the county or non-profit corporation may accept private or pub-
4 lic contributions toward the support of the program.

5 Section 20. A new section of KRS Chapter 31 is created
6 to read as follows:

7 (1) Subject to Section 19, any direct expense, including
8 the cost of a transcript (or bystander's bill of exceptions or other
9 substitute for a transcript) that is necessarily incurred in repre-
10 senting a needy person under this Act, is a charge against the
11 county on behalf of which the service is performed.

12 (2) If 2 or more counties jointly establish an office of pub-
13 lic defender, the expenses not otherwise allocable among the
14 participating counties under subsection (1) shall be allocated, un-
15 less the counties otherwise agree, on the basis of population ac-
16 cording to the most recent decennial census.

17 Section 21. A new section of KRS Chapter 31 is created
18 to read as follows:

19 (1) A defending attorney shall keep appropriate records
20 respecting each needy person whom he represents under this Act.

21 (2) The public defender, non-profit organization, or person
22 administering a court-assigned defender plan, as the case may
23 be, shall submit an annual report to the Fiscal Court showing
24 the number of persons represented under this Act, the crimes
25 involved, the outcome of each case, and the expenditures (totalled
26 by kind) made in carrying out the responsibilities imposed by
27 this Act. A copy of the report shall also be submitted to each
28 court having criminal jurisdiction in the counties that the pro-

1 (2) If the Fiscal Court of a county elects to establish and
2 maintain any of the alternative plans provided for in section 16,
3 the county or non-profit corporation may accept private or pub-
4 lic contributions toward the support of the program.

5 Section 20. A new section of KRS Chapter 31 is created
6 to read as follows:

7 (1) Subject to Section 19, any direct expense, including
8 the cost of a transcript (or bystander's bill of exceptions or other
9 substitute for a transcript) that is necessarily incurred in repre-
10 senting a needy person under this Act, is a charge against the
11 county on behalf of which the service is performed.

12 (2) If 2 or more counties jointly establish an office of pub-
13 lic defender, the expenses not otherwise allocable among the
14 participating counties under subsection (1) shall be allocated, un-
15 less the counties otherwise agree, on the basis of population ac-
16 cording to the most recent decennial census.

17 Section 21. A new section of KRS Chapter 31 is created
18 to read as follows:

19 (1) A defending attorney shall keep appropriate records
20 respecting each needy person whom he represents under this Act.

21 (2) The public defender, non-profit organization or person
22 administering a court-assigned defender plan, as the case may
23 be, shall submit an annual report to the Fiscal Court showing
24 the number of persons represented under this Act, the crimes
25 involved, the outcome of each case, and the expenditures (totalled
26 by kind) made in carrying out the responsibilities imposed by
27 this Act. A copy of the report shall also be submitted to each
28 court having criminal jurisdiction in the counties that the pro-

1 gram serves.

2 Section 22. A new section of KRS Chapter 31 is created
3 to read as follows: This Act applies only to representation in the
4 courts of this state, except that it does not prohibit a defending
5 attorney from representing a needy person in a federal court
6 of the United States, if:

7 (a) the matter arises out of or is related to an action pend-
8 ing or recently pending in a court of criminal jurisdiction of the
9 state; or

10 (b) representation is under a plan of the United States Dis-
11 trict Court as required by the Criminal Justice Act of 1964 (18
12 U. S. C. 3003A) and is approved by the Fiscal Court.

13 Section 23. A new section of KRS Chapter 31 is created
14 to read as follows: The protections provided by this Act do not
15 exclude any protection or sanction that the law otherwise pro-
16 vides.

17 Section 24. A new section of KRS Chapter 31 is created
18 to read as follows:

19 In the area of relation of local programs to the state program
20 the following are permitted:

21 (1) Each county or counties in a district may compensate
22 District Defenders, under their own employ at rates greater
23 than the state District Defender but must pay from their own
24 funds all amounts in excess of the state contribution.

25 (2) Each county or counties in a district may adopt their
26 own plan of aid to the indigent provided all plans in a district,
27 viewed as a whole, are approved by the Office of Public
28 Defender.

1 (3) Each county or counties providing for assigned counsel
2 may compensate them at rates provided for in Section 17 of
3 this Act, however, the state contribution to such compensation
4 shall not be greater than is provided for by Section 7 of this Act.
5 The county or counties shall be obligated to pay and shall pay all
6 amounts in excess of the state contribution. No county shall be
7 required to pay the maximum amounts provided for in section 17
8 of this Act unless the amounts be approved by the circuit judge.

9 Section 25. If any provision of this Act or the application
10 thereof to any person or circumstance is held invalid, the in-
11 validity does not affect other provisions or applications of the
12 Act which can be given effect without the invalid provision or
13 application, and to this end the provisions of this Act are
14 severable.

15 Section 26. For the purposes of this Act there is ap-
16 propriated the sum of one million two hundred eighty-seven
17 thousand dollars (\$1,287,000) for the Fiscal year 1972-73 and a
18 like amount for the Fiscal year 1973-74.

APPENDIX C

Biography of Shelvin Singer

10 North Franklin Street

Chicago, Illinois 60606

DEGREES

B. S. E. Northern Illinois University 1954

M. A. (Sociology) University of Illinois, 1960

J. D. De Paul University College of Law, 1960

Licensed to practice Law, Illinois, 1960

Positions Held

1960-1961 Assistant Professor of Business Law, Northern Illinois University. Private practice of Law, De Kalb, Illinois

June 1961-Mar. 1964 Attorney, United States Securities and Exchange Commission

1962-present Illinois Institute of Technology, Chicago-Kent College of Law; Associate Professor

June 1964-present Office of the Cook County Public Defender - presently, acting Head of Appeals Division.

Professional Involvement

Chairman, Board of Commissioner, Illinois Defender Project; The Project provides a statewide defender service.

Secretary and Member of the Board, Illinois Public Defender Association.

Board member, and a member of Executive Committee, National Legal Aid and Defender Association.

Member, American Bar Association, Illinois and Chicago Bar Associations.

Biography of Rollie R. Rogers
Suite 718
1575 Sherman Street.
Denver, Colorado 80203

DEGREES

B.A. University of Denver 1949 (Philosophy)
LLB. University of Denver 1951

Positions Held

1951-1969 Private practice of law in Denver, Colorado,
specializing in trial work both criminal and civil

October 1969-present Appointed first Colorado State Public
Defender

Professional Involvement

President, Western Regional Defender Association. This
group is an association of all Public Defenders in the
thirteen western states.

Member, Defender Committee of National Legal Aid & Defender
Association.

Member, State Council on Criminal Justice, Colorado.

Member, American Bar Association, Colorado and Denver Bar
Associations.

END