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CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT
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The American University Law School
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T/A Assignment #258

AN ANALYSIS OF INDIGENT DEFENSE SERVICES IN MARION COUNTY (INDIANAPOLIS), INDIANA

January 1977

Consultants:

National Center for Defense Management
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THE AMERICAN UNIVERSITY
Washington College of Law
INSTITUTE FOR ADVANCED STUDIES IN JUSTICE

NOTICE TO THE READER

Because of a September 30, 1976 contract deadline for completion of all technical assistance assignments conducted under the auspices of The American University Criminal Courts Technical Assistance Project, assignment reports received after September 1, 1976 have not undergone the comprehensive review which is our usual procedure. The present report is one of those for which our time constraints permitted only minimal editing. We apologize for any inconvenience this may cause the reader.

Joseph A. Trotter, Jr.
Director
Criminal Courts Technical Assistance Project

TABLE OF CONTENTS

I. INTRODUCTION

In March 1976, J. Richard Keefer, Executive Director of the Indianapolis Lawyers Commission requested the National Center for Defense Management (NCDM) to provide technical assistance under its LEAA grant to address the following matters relating to the provision of indigent defense services in Marion County (Indianapolis):

(1) evaluation of current public defender services;

(2) assessment of current legal defender costs and costs of alternative plans;

(3) recommendations for improving the quality of defense services provided.

At the time of this request, technical assistance funds available through NCDM were exhausted and the requested was therefore forwarded to LEAA's Criminal Courts Technical Assistance Project at The American University which thereafter provided NCDM's consultant services to the commission.

Site work was conducted during the week of May 17-20 by the following NCDM consultants: Norman Lefstein, former Director of the District of Columbia's Public Defender Service; Louis O. Frost, Public Defender for Florida's Fourth Judicial Circuit; and John D. Shullenberger, Supervising Attorney in the Juvenile Litigation Office, Legal Assistance Foundation of Chicago. During that time, the study team met with judges and other officials of the Criminal, Municipal and Juvenile Courts and other individuals involved in local criminal justice operations relevant to this study.*

This report presents the consultants' analysis of Marion County's indigent defense services based upon the site study. Sections III and IV present the team's analysis of the present services provided in the Criminal, Municipal and Juvenile

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* A list of those interviewed is provided in Section II.

Courts and the perceptions of fifteen Marion County jail inmates regarding the quality of the services available. Sections V and VI identify specific problems noted by the consultants and recommendations for improvement.

II. METHODOLOGY

Prior to commencement of the study, Professor Lefstein met in Indianapolis with J. Richard Kiefer, Executive Director of the Lawyers Commission, D. Robert Webster, Chairman of the Public Defender Committee of the Lawyers Commission, and with members of his Committee to determine the nature of the study sought by the Lawyers Commission, and to plan interviews and areas for investigation. In addition, the consultants were furnished copies of a state-wide report concerning the defense of indigents in Indiana, which was completed in September, 1974.[1]

During May 17-20, 1976, the three consultants visited Indianapolis to gather information. Altogether a total of 56 persons were interviewed as reflected in the following list:[2]

(1) Judges of the Criminal Court: Hon. William J. Dougherty, Hon. Andrew Jacobs, Sr., Hon. John W. Tranberg and Hon. John B. Wilson;

(2) Hon. D. William Cramer, Presiding Judge, Municipal Court;

(3) Judges of the Municipal Court: Hon. Charles W. Applegate, Hon. B. William Keithley and Hon. John B. Rochford;

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[1]Louis O. Frost, Jr., one of the consultants for this report, also served as one of three consultants who prepared the 1974 state-wide study of defense services.

[2]Juvenile Court Judge Valan S. Boring was unavailable to meet with any members of the consulting team during their four day visit. Judge Boring was the only key person in either the juvenile or criminal justice systems with whom an appointment could not be arranged.

(4) Juvenile Court Referees: Patricia Gifford Butsch and Ross P. Walker;

(5) Nancy Britton, Probation Officer, Juvenile Court;

(6) Harriet Cecil, Secretary to Juvenile Court Public Defenders;

(7) Walter Bravard, Coordinator, Municipal Court Volunteer Public Defender Panel;

(8) Frank Clifford, Director, Marion County Community Correction Center;

(9) James B. Droege, Director, Marion County Pretrial Services Project;

(10) James F. Kelly, Marion County Prosecutor;

(11) Lawrence Landis, Office of the State Public Defender, Indianapolis;

(12) Lee Larson, Juvenile Court Administrator;

(13) Peggy Lively, Municipal Court Secretary assigned to the Court's Volunteer Public Defender Panel;

(14) Norman Metzger, Executive Director, Legal Services Organization of Indianapolis, Inc.;

(15) Patrick Mulvaney, faculty member, Indiana University Law School, Indianapolis;

(16) William Thoms, Chairman, Municipal Court Trial Lawyers Committee, Indianapolis Bar Association;

(17) Barbara Williamson, Executive Director, Indiana Civil Liberties Union;

(18) Juvenile Court Public Defenders: John Commons, Irving Pinkus and Richard Turner;

(19) Five part-time public defenders retained by Criminal Court judges to provide representation in felony cases;

(20) Eight private attorneys who are members of the Municipal Court Misdemeanor Volunteer Public Defender Panel;

(21) Two part-time legal interns assigned to the Municipal Court Volunteer Public Defender Panel; and

(22) Fifteen inmates of the Marion County Jail.

The thirteen attorneys interviewed (see numbers 19 and 20) were selected in accordance with a predetermined numerical and alphabetical formula. Hence, the attorneys were not chosen because they were believed to represent any particular viewpoints or practices in their representation of indigent defendants. Of the eight volunteer public defenders who provide misdemeanor representation in Municipal Court, two of them, coincidentally, also serve as part-time public defenders in Criminal Court felony cases. Consequently, information actually was obtained from seven part-time Criminal Court public defenders rather than five such defenders as listed in paragraph 19.[3]

The seven part-time public defenders practice before three of the four Criminal Court judges. Three practice before one of the court's judges, two practice before each of the other two and two before a fourth judge. Due to scheduling conflicts, interviews could not be arranged with lawyers who practiced before the fourth Criminal Court judge. (There was also an eighth defender

[3] As explained later, the four Criminal Court judges each hire five part-time public defenders to provide representation in felony cases; thus, there are a total of 20 part-time public defenders for felony offenses. See pages 11-13, infra.

attorney interviewed by telephone during the latter part of May; although the conversation with this attorney is referred to later in this report, because of the relative brevity of the interview, this attorney is not included among the part-time public defenders listed in item 19.)

The 15 inmates interviewed at the Marion County Jail also were selected at random. The purpose of the interviews was to determine, to the extent possible, whether there were generally held beliefs among the client population concerning public defense representation in Indianapolis. Since it was impossible to identify in advance whether the inmates had counsel, our interviews included inmates who had both retained and appointed lawyers. The inmates were not asked about their pending cases nor for the names of their lawyers.

The study team also observed court processing in the Juvenile, Municipal and Criminal Courts.

In addition to this site study, the consultants have drawn upon the following documents relevant to defense services:

Report on Courts: National Advisory Commission on Criminal Justice Standards and Goals (1973);

The Other Face of Justice, National Legal Aid and Defender Association (1973);

Standards Relating to the Prosecution and Defense Function, American Bar Association (1971);

Standards Relating to Providing Defense Services, American Bar Association (1968);

Challenge of Crime in a Free Society, President's Commission on Law Enforcement and Administration of Justice (1967); and

Task Force Report: The Courts, President's Commission on Law Enforcement and Administration of Justice (1967).

III. PRESENT INDIGENT DEFENSE SERVICES PROVIDED

A. Criminal Courts

1. In General

Four Marion County Criminal Court judges have felony jurisdiction. Each judge is elected as either a Democrat or a Republican for a four year term. The judges are largely autonomous; the Criminal Court has no chief judge, nor do the judges meet regularly among themselves. Each judge can, if he wishes, prepare his own rules of court, and each is responsible for presentation of a budget for the expenses of operating his court division. Periodically, the judges report statistical information to an administrative office for the Indiana judicial system.

Examination of statistical reports kept by each of the four judges reveals that in 1975 1,818 new felony cases were filed in the four Criminal Court divisions. Thus, the average number of new cases received by each judge was 454.5; the highest number of actual cases received by any judge was 474 and the lowest was 412. Many of those prosecutions involved multiple defendants, but it is not possible to determine from current statistics the total number of persons charged with felonies.

Felony cases are prosecuted in the Criminal Court by assistants of the Marion County Prosecutor's office. The vast majority of felony cases are instituted by the prosecutor filing an information, with grand jury indictments accounting for no more than ten to fifteen percent of all new felony

charges. (The Marion County Prosecutor, who is an elected official, is also responsible for the prosecution of cases in the Municipal and Juvenile Courts, which are discussed later.)

The felony cases prosecuted in Criminal Court arrive there primarily through one of two routes: (1) the defendant is arrested and taken to Municipal Court following which, after a preliminary hearing or a waiver of the hearing, he is held for prosecution in the Criminal Court; alternatively, (2) following arrest, the defendant's case (but not the defendant personally) is taken by a prosecutor to one of two felony commissioners, who determine ex parte, with only the prosecution and police represented, that probable cause exists and the defendant shall be held to answer in Criminal Court.[4] The route which is traveled is determined solely by the prosecutor's office; if, for example, a case appears appropriate for prosecution as a felony in Criminal Court, the Municipal Court will be by-passed and the case taken directly to a felony

[4] These are the principal ways felony cases reach Criminal Court. There are variations on these routes, however. For example, cases which are pending before the Municipal Court are sometimes taken before a felony commissioner, who makes an ex parte probable cause determination. Once this has occurred, the Municipal Court proceeding is deemed moot and is dismissed. There also can be a grand jury original indictment pursuant to which a defendant is arrested for the first time and arraigned before a Criminal Court judge. (Throughout this report, "arraignment" refers to the defendant's first appearance before a Criminal Court judge).

commissioner. In fact, the majority of felony cases are handled in this manner; in 1974, according to Municipal Court statistics, a total of 472 cases were "bound over" to the Criminal Court, which means that only about one out of every four felony cases comes through Municipal Court.[5]

When the Municipal Court route is followed, the defendant, if he is indigent, sometimes has a Municipal Court volunteer public defender appointed in his behalf.[6] When the felony commissioner route is followed, the defendant's case typically is heard by a commissioner within twenty-four hours of the defendant's arrest; if probable cause is found, the case is referred to a Criminal Court division for arraignment. For the indigent defendant who does not come through Municipal Court, this arraignment is the first time he is brought before a judicial officer, notified of the charges against him, and arrangements made for the appointment of counsel. The arraignment is also the first time an individualized judicial determination is made concerning the amount

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[5]Statistics for 1974 are used from Municipal Court because 1975 statistics are unavailable. The one to four ratio is derived by comparing the figure of 472 bind-overs in 1974 against 1,818 new felony cases commenced in Criminal Courts during 1975.

[6]Bind-over cases in Municipal Court are discussed later in this report. See pages 22 and 31, infra.

of the defendant's bond.[7] At the earliest, the arraignment is held within approximately forty-eight hours of the defendant's arrest, although on many occasions the delay appears to be considerably more than two days--sometimes four or five days, a week or even longer. In all four Criminal Court divisions, when a defendant appears at arraignment and indicates that he cannot afford to retain a lawyer of his own, a public defender is appointed to provide representation.

2. Public Defender Representation

Each of the four Criminal Court judges hires five private attorneys to work in his court as part-time public defenders; the defenders are each paid $6200.00 per annum for indigent trial representation, as each judge has $31,000 available for this purpose. These attorneys are authorized to maintain a private practice and may handle retained civil and criminal cases.

The public defenders are selected personally by each judge. When a judge is first elected to the Criminal Court, interested Indianapolis lawyers invariably apply for the part-time public defender positions, since it is understood that a new judge

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[7] Although the felony commissioners determine probable cause, they do not fix bond for defendants on an individual basis. Of course, it would be virtually impossible for them to do so, inasmuch as neither the defendants nor anyone representing them appears before the commissioners. Defendants can be released prior to arraignment in Criminal Court if they are able to post the amount of bond listed in approved bond schedules.

will be hiring new defenders. The positions are not advertised, but when a vacancy occurs through resignation, sufficient applicants are usually available to assume the position. Ordinarily, applicants are interviewed by the judge, resumes obtained and references contacted. Where the judge is personally acquainted with the applicant, however, these procedures are not followed.

None of the judges have specific criteria for the selection of the public defenders, although each states that his objective is to hire the most competent persons available. Often the defenders have not had prior felony or misdemeanor criminal defense experience. For example, one judge indicated that two of his public defenders had no prior defense experience, one had prior misdemeanor experience, and two had experience in criminal cases as assistant prosecutors. The length of time the defenders have been members of the bar varies, although most appear to have been admitted for less than five years. Of the seven part-time defenders interviewed personally for this study, the oldest in terms of bar membership had been admitted to practice four years ago, whereas the youngest was admitted to practice only seven months earlier. The average length of time these seven attorneys had been admitted to the bar was approximately two years.

The four Criminal Court judges indicated that they and their public defenders are members of the same political parties.

However, the role which politics may play in the selection of public defenders appears to be more subtle than this statement might suggest. For example, the attorneys do not have to be approved by the local party organization before they can be hired, and the judges, on several occasions, have retained defenders who were members of the opposite political party. On the other hand, few Republican attorneys apply for positions with Democratic judges and vice versa. Several years ago a judge, in response to a request from party headquarters, hired a "recommended" attorney, but such blatant examples of politics appear to be exceptional. Several of the judges admitted, however, that if they did not hire most of their public defenders from their own political party there would almost surely be objections from the party organization.

No standards of indigency have been adopted by any of the four Criminal Court judges. The public defenders receive their cases when a defendant informs the court, usually at arraignment, that he is unable to afford an attorney. Once appointed, the public defender continues to provide representation unless he discovers that the defendant has sufficient funds to retain his own attorney, at which time he is required to notify the court.

Furthermore, no statistics are maintained by the judges on either the number or outcomes of cases assigned to public defenders. Consequently, it is impossible to state how many cases the public defenders receive during a year, whether the

numbers differ in each of the four divisions, and what results are achieved.

Because statistical data was unavailable, each Criminal Court judge was asked to estimate the percentage of the caseload assigned to the public defenders. Two of the judges placed the percentage at 40-50 percent, one judge estimated 40 percent, and the fourth judge estimated 65-70 percent, while conceding that his guess might be a "bit too high." If it is assumed that for all four divisions the average figure is 50 percent, this would mean that during 1975 approximately 900 new cases were assigned to public defenders.[8] Hence, each of the public defenders would have received, on the average, 45 new cases. Such an estimate is not entirely consistent with the calculations of the public defenders, several of whom stated that they are assigned between 60 and 70 new felony cases per year. Whatever may be the precise number of cases assigned to the public defenders, it seems evident that the annual caseload volume is not excessive.[9]

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[8] It was noted previously that in 1975 there were 1,818 new felony cases assigned among the four Criminal Court judges. See page 8, supra.

[9] It has been suggested that a full-time public defender should not receive more than 150 felony cases per year. See Report on Courts: National Advisory Commission on Criminal Justice Standards and Goals 276 (1973 [hereafter cited as Report on Courts]. Among the factors to be considered in assessing the reasonableness of an annual caseload is the amount of work which the attorney does on the cases, complexity of the

The public defenders and the judges also were asked about the number of indigent felony cases which the lawyers usually had pending at any one time. The judges estimated that the defenders generally never had more than 10-20 pending assigned cases. The defenders themselves, however, gave widely varying estimates of the number of their pending assigned cases. For example, one of the five attorneys interviewed reported having 220 retained civil and criminal cases and 40 public defender assignments; a second, 105 retained cases and 15 public defender assignments; a third, 10 retained cases and two public defender assignments; another 20 retained cases and 30 public defender assignments; and still another, 75 retained cases and 10 public defender assignments.[10]

No training is afforded the private attorneys before they become public defenders. If a new defender assumes the caseload of a retiring lawyer, he normally will meet with this defender and review the status of pending cases. Except for such orientation meetings, new public defenders simply commence

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cases, the extent to which support services are available. For a part-time public defender program, it is also important to consider the size of a lawyer's private practice.

[10] Conceivably, the differences in the pending indigent caseloads of the defenders is attributable to the manner in which cases are assigned to the courts and to the lawyers. Each judge receives all of Marion County's new felonies every fourth month. This means that there is considerable caseload fluctuation throughout the year for both the judges and the defenders, with the greatest differences occurring just before and immediately after the new cases are assigned.

providing representation in felony cases. The extent to which the defenders read advance sheets, the Criminal Law Reporter, trial manuals or other relevant materials is entirely an individual matter. No funds are provided to purchase such literature, nor are funds available to finance attendance at either local or national criminal defense training programs.[11]

The public defenders work out of their private offices. The secretarial services available to them are whatever they have in their private practices; no funds for secretarial or clerical assistance are available. Also, the defenders lack public defender stationery and business cards.

During 1975 the four Criminal Court divisions tried a total of 271 jury cases, or an average of 67 jury trials per judge. It is not known how many of these were public defender cases or whether the percentage of jury cases tried by defenders differed from the percentage tried by retained counsel.[12] The public defenders are handicapped in preparing their cases,

[11] Relatively few criminal defense seminars are held in Indianapolis. Nationally, however, a number of programs are available. Probably the two most prominent are sponsored by the National College of Criminal Defense Lawyers and Public Defenders and the National Institute of Trial Advocacy. Both of these organizations conduct summer training seminars aimed at teaching advocacy skills and also sponsor regional institutes periodically throughout the year.

[12] The rate of jury trials in the four divisions in 1975 was 15 percent. This was determined by dividing the 271 jury trials by the 1,818 new felony cases filed in 1975. Both the judges and public defenders agree that bench trials are relatively uncommon.

whether it be for purposes of a jury trial or plea, due to an absence of adequate investigative assistance. Occasionally the attorneys are aided by volunteer students made available to them through the Indiana University Law School; these students, however, are not trained for investigative work, receive no compensation, and are often unavailable during school vacations and summer months. Normally, therefore, the public defenders must investigate their own cases.[13]

In three of the four Criminal Court divisions, public defenders occasionally have asked judges to authorize funds from their budgets for investigators and for expert witnesses. The latter are sometimes essential where there are contested issues concerning psychiatric status, fingerprints, handwriting, etc. Unfortunately, precise information could not be obtained

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[13] Section 4.1 of the Standards Relating to the Defense Function, American Bar Association (1971) [hereafter cited as Defense Function Standards], provides as follows: "It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to guilt and degree of guilt or penalty. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to the lawyer of facts constituting guilt or his stated desire to plead guilty." The Standards also discuss the problem involved when a lawyer interviews a witness by himself. Section 4.3 (d) states: "Unless the lawyer for the accused is prepared to forego impeachment of the witness by the lawyer's own testimony as to what the witness stated in an interview or to seek leave to withdraw from the case in order to present his impeaching testimony, the lawyer should avoid interviewing a prospective witness except in the presence of a third person."

on the amount spent per annum for investigators and experts. Based upon conversations with the judges, in which each was asked to estimate the sum spent annually for investigators and experts, it seems likely that no more than $1500 to $2000 is authorized each year for these purposes, and the actual sum may be considerably less.

All four of the judges were asked whether they believed it was proper for the court to appoint its own public defenders, and whether they felt the public defenders were inhibited in providing representation since they owed their positions to the judges before whom they practiced. Three of the four judges voiced complete satisfaction with having the court choose the public defenders. Indeed, one judge said it was the best of all possible selection methods, because it enabled a judge to make certain that there were not any incompetent defenders practicing in his court. These same judges also expressed confidence that none of their public defenders were in any way inhibited in providing representation. On the other hand, the fourth judge expressed reservations about having the court appoint the public defenders, saying that he hoped the defenders did not harbor inhibitions in presenting their cases but "deep down" some inhibitions might exist. All of the judges stated that they tell their public defenders not to hold back in their representation, and that the defense they provide should be as vigorous for indigent clients as it is for their paid clients.

Unlike the first three judges, three of the seven lawyers interviewed for this study believed that their independence was undermined, at least to some degree, by having been judicially selected. An eighth lawyer, later contacted by telephone, expressed a similar viewpoint. For example, several lawyers said that they were reluctant to file for a change of judge, a right automatically available to the defense under Indiana procedure. They were concerned that the judge would not look favorably upon such requests coming from the very public defenders whom the judge had hired. In recent months, in one of the Criminal Court divisions, a change-of-judge motion has been filed in 42 percent of all pending criminal cases, and 208 such requests were filed during 1975. Although statistics are unavailable, both the judge and the public defenders hired by this judge agree that the overwhelming majority of these requests were made by private lawyers in retained cases. Several public defenders also said that they were reluctant to push for the taking of depositions since broad discovery is available from the prosecutor and judicial hostility to depositions is well known. Although under Indiana criminal procedure the trial court has broad discretion to authorize discovery depositions, depositions are time-consuming for the parties and expensive for the court, as the reporter must be paid from the court's budget. Similarly, one defender explained that requests for court-appointed investigators and experts

were not often made, since court funds to compensate these persons was limited and, as he said, the judge is "kind of touchy" on the subject. Finally, these lawyers stated that because the court was their "boss," there probably were other times when they were not fully aggressive in advocating the position of their clients.

Besides hiring public defenders for trial representation, the five Criminal Court judges also appoint attorneys to handle appeals from convictions returned in their courtrooms. Data on the number of indigent appeals filed after Criminal Court convictions could not be determined. Based upon conversations with the judges, a reasonable guess is that approximately 150 indigent criminal appeals are filed annually from the four divisions.

Each of the four Criminal Court judges has $48,000 annually to spend on indigent criminal appeals. One of the judges assigns all the appeals to his five public defenders, and the defenders share equally the $48,000--$9600 per attorney. These lawyers thus receive a total of $6200 for trial representation and $9600 for handling appeals--a total of $15,800. None of the three other Criminal Court judges follows this policy. Instead, two of the judges give two or three appeals a year to their public defenders and the balance are assigned to private attorneys; the fourth judge assigns all his appeals to private attorneys. The attorneys who handle the appeals for the latter three judges, whether they be public defenders

or private attorneys, are paid $1500 per appeal.

The assignment of appeals to non-public-defender private attorneys is largely a form of patronage. Seemingly no effort is made by any of the judges to identify attorneys who would be effective appellate advocates and brief writers. One judge, for example, candidly acknowledged that he had given appeals to former colleagues, to a lawyer who was "down and out," and to "the man who gave me my start" in the practice of law.

B. Municipal Court

1. In General

Unlike the Criminal Courts, the Marion County Municipal Court has a more unified structure, including rules applicable to all of the judges and periodic judicial meetings. The Municipal Court also has a presiding judge, who devotes nearly all of his time to court administration.

Two courtrooms in Municipal Court--numbers 9 and 10-- are set aside for the handling of misdemeanor cases. In addition, the judge in courtroom 10 also conducts "bindover" hearings, i.e., preliminary hearings in felony cases to determine probable cause. Once probable cause is found, the case is referred to Criminal Court. Traffic offenses are handled in courtrooms 4 and 5, nighttime court is held in courtrooms 3 and 6, and drunk cases are processed in room 842.

The vast majority of defendants ordered jailed from Municipal Court come through courtrooms 9 and 10. During 1974--the last year for which statistics are available--these courtrooms received a combined total of 22,507 cases, and out of this number (and also from cases continued from the previous year) 3,097 persons received sentences of incarceration. From the traffic courts, 817 persons were jailed; from the nighttime courts, 141; and from the drunk court 88 persons were ordered incarcerated.

The Supreme Court of the United States has held that

"absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial." Argersinger v. Hamlin, 407 U.S. 25, (1972).[14] In order to implement the Supreme Court's Argersinger decision, the following rule was adopted by the Municipal Court on October 17, 1974:

> These Rules shall be applicable in all criminal proceedings for offenses which will be punishable by loss of liberty. . . .
>
> The defendant shall not be called upon to plead until the court has advised him of his right to retain counsel and his right to be provided with counsel at public expense if he is financially unable to retain counsel as provided by law.

Notwithstanding the Municipal Court's rule and the Argersinger decision, defendants are sometimes convicted and incarcerated by Municipal Court judges without being advised

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[14] It is arguable that what the Supreme Court held in Argersinger has been the law in Indiana for many years. In Bolkovac v. State, 229 Ind. 294, 98 N.E.2d 250 (1951), the Indiana Supreme Court reversed the conviction of a defendant found guilty of child neglect, because, according to the court, the right to counsel extends to misdemeanor cases and the defendant never waived his right to be represented by an attorney. The Bolkovac case, however, did not address the duty of the state to appoint counsel for a defendant who does not waive his right to an attorney but who lacks funds to hire his own. Subsequent Indiana Supreme Court decisions have neither modified nor overruled the Bolkovac decision.

of the right to counsel and without having entered a knowing and intelligent waiver of representation by counsel. This fact, acknowledged by lawyers who regularly practice in Municipal Court and by the presiding judge, was confirmed by our own courtroom observation. In one courtroom, for example, we witnessed numerous initial presentments of petty offense cases, but none of the defendants who appeared without a lawyer was advised of the right to counsel. In one case, the defendant, a 65-year-old man, was sentenced to 30 days in jail for drunkenness, loitering and failure to appear on a prior charge.

In another courtroom, where we watched initial presentments involving misdemeanor charges, the judge never actually advised unrepresented defendants that they had a right to an appointed lawyer if they lacked funds to hire counsel. Rather, he told them that they could "have a continuance to obtain the services of an attorney or for any reason related to your defense." In none of the observed cases in which defendants proceeded without counsel and were convicted did the court order incarceration. Instead, the defendants in several cases pled guilty--without being advised of the right to counsel--and were sentenced to jail and to pay a fine, with the option of having the jail sentence suspended if the fine was paid immediately. All the defendants in these cases paid the fines; however, if defendants who cannot pay such fines

actually were to be incarcerated, not only would it be a violation of Argersinger and of the court's rules, but also it would be a violation of Supreme Court decisions which prohibit jailing persons because they are poor.[15]

In 1974, when rules were adopted to implement the right to counsel, the Municipal Court also promulgated financial eligibility rules to qualify for an appointed lawyer. The rules contain an income formula but also state that the "eligibility standard is not inflexible." Exceptions to the eligibility rules are authorized "for reasons of existing indebtedness, availability of credit, health, age, estimated cost of legal services required, lengthy period of illness or unemployment, and any other factors affecting the ability of the applicant to provide himself and his family with decent food, clothing and shelter." Although not sanctioned by the court's eligibility rules, one judge expressed the view that a person with limited funds should be required to choose between posting bond and paying an attorney's fee, because having a lawyer is more important than being released from custody. This judge also said that, in his opinion, counsel should not be provided where it appears the defendant has operated an automobile, since anyone who drives a car ought

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[15] Tate v. Short 401 U.S. 395 (1971); see also Williams v. Illinois, 399 U.S. 235 (1970).

not to be deemed indigent.[16] In explaining his position, the judge said that he did not want to "encourage" exercise of the right to counsel or to flood the defender attorneys with requests for representation.

2. Public Defender Representation

Since none of the lawyers is compensated for his work, the public defender representation provided in Municipal Court is voluntary. The program, which was organized in its present form in 1974, does have a part-time coordinator who is paid $7,200 per annum by the Municipal Court. In addition, a Municipal Court secretary devotes an estimated 95% of her time to activities of the volunteer program. There also are six legal interns selected by the Indiana University Law School, who aid the program by conducting interviews of defendants. The interns each work 20 hours per week, and are paid $3.50 per hour out of LEAA funds awarded to the Municipal Court.[17] In

[16] In contrast, the ABA recommends: "Counsel should be provided to any person who is financially unable to obtain adequate representation without substantial hardship to himself or his family. Counsel should not be denied to any person merely because his friends or relatives have resources adequate to retain counsel or because he has posted or is capable of posting bond. (Emphasis supplied). Standards Relating to Providing Defense Services, American Bar Association §6.1 (1968) [hereafter cited as Defense Services Standards]. See also Report on Courts §13.12 (1973).

[17] Theoretically, the legal interns are supposed to spend much of their time assisting Municipal Court judges by drafting legal memoranda, performing legal research, etc. In practice, however, the interns report that relatively little time is devoted responding to requests of judges; instead, most of their work week is taken up with interviewing persons connected with the defender program. In addition to their salaries, the students receive law school credit.

a secretarial area near the presiding judge's chambers, a small office has been set aside for the defender program's use.

A primary responsibility of the program's coordinator is to make certain that a volunteer public defender is assigned to serve every morning, every afternoon and on Saturdays. Thus, for each week there are 11 "duty slots" to fill--one public defender for Monday morning, one for the afternoon, one for Tuesday morning, etc. Since the coordinator frequently handles the Wednesday afternoon slot personally, arrangements must normally be made for 10 different volunteers each week.

The public defender volunteers are drawn from a panel of 118 attorneys who have told the program's coordinator that they are prepared to take either a morning, afternoon or Saturday assignment. On the average, panel members are asked to serve once every two to three months. Currently, the Municipal Court Lawyers Committee of the Indianapolis Bar Association, which played a key role in formulating the volunteer defender program, is attempting to recruit new volunteers. An advertisement soliciting new recruits appeared in the Weekly Bulletin of the Association dated May 17, 1976.

No standards exist governing who may become a member of the public defender panel, and no attorney has ever been removed from the panel list involuntarily.[18] The only requirement

[18] Formal procedures for removing attorneys from the panel do not exist. Informally, however, removal could occur if the coordinator did not phone an attorney for a duty assignment. The issue of removal has arisen in connection with charges that public defenders have sometimes sought

is a willingness to serve. When a new panel member lacks prior Municipal Court experience, the coordinator meets with the attorney and explains to him essential courthouse procedures. No training is available to the Municipal Court volunteers nor are any written materials (e.g., substantive criminal law outlines or procedural guides) given to the attorneys. With 118 current panel members, the experience and backgrounds of the attorneys vary widely. Of those interviewed for this study, several had been members of the bar for less than three years and the balance had been admitted for more than six years.

New cases usually are referred to the defender program in one of two ways. Each morning the Marion County Pretrial Services Project interviews inmates recently arrested and in custody, and asks them whether they can afford to retain counsel or whether they would like to have a public defender appointed. The names of those who indicate they are without sufficient financial resources and desire a public defender are referred to the defender program.[19] At this point a

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to obtain fees from defendants they are appointed to represent. Such conduct, if true, would constitute a violation of the Code of Professional Responsibility adopted in Indiana. See Disciplinary Rule 2-103 (A). It is exceedingly difficult, however, to obtain conclusive evidence of solicitation charges, since it is usually the defendant and/or his family's word against the word of the attorney.

[19] Because of resource limitations, the Pretrial Services Project does not interview all defendants in custody who are

legal intern interviews the defendant to determine whether he is financially eligible for the appointment of counsel. Defendants found to be eligible are asked to sign an Affidavit of Financial Status, following which the intern takes from the defendant a brief factual statement of the case. The public defender on duty then appears with the defendant when he is brought to court later in the day.

Alternatively, the defender program receives cases by court referral. Although defendants often are not advised fully of the right to counsel, as noted previously, occasionally it does occur that an indigent defendant requests an assigned lawyer or a public defender. When this occurs, the judge usually will either attempt to locate the public defender on duty or will continue the case and tell the defendant to report to the defender office. No matter which course is followed, a legal intern will subsequently interview the defendant to determine eligibility, complete the affidavit form and obtain factual information about the case.

The public defender who takes either a morning or afternoon "duty slot" is often responsible for representing 8-12 defendants per appearance. First, the defender must represent persons charged in cases in the misdemeanor and felony bindover

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referred to Municipal Court. During 1975, 10,332 bail/pretrial release interviews were conducted. Each of these defendants was asked about representation by counsel.

courtrooms, and he must also be available in the event referrals are made from the two traffic courtrooms. In addition, this attorney must provide representation for any defendants who were in court previously and whose cases were continued for either the morning or afternoon for which the defender has been assigned. In other words, when a misdemeanor case is continued, the public defender in court with the defendant at the time does not continue as the person's lawyer, regardless of whether the defendant is in custody, except in an unusual case where the defender asks to do so. In most cases, the defender notifies the program's secretary of the next continued date, and she, in turn, sends to the public defender assigned for this date a summary of the legal intern's interview with the defendant, a copy of the prosecutor's charging document, and the executed Affidavit of Financial Status. The defendant is also notified by form letter of the name of the attorney who has been designated to represent him at his next court appearance. Sometimes the new attorney speaks with the client before the scheduled continuance date, but frequently he does not. In the form letter, the defendant is not advised to contact his new lawyer, nor are the public defenders urged to contact their clients. Thus, between continued dates, defendants represented by the public defender program often are, for all practical purposes, without counsel.

In felony bindover cases, defendants may not only receive several different lawyers if their cases are continued several times, but once they are held for action of the Criminal Court they do not have a lawyer at all, either in name or in fact. This gap occurs because the public defenders do not continue to represent defendants once a referral is made to the Criminal Court, while Criminal Court public defenders do not enter cases until the felony arraignment. The time without representation varies, depending on when a defendant is bound over to the Criminal Court and when the arraignment occurs. If the case is referred to the grand jury, the delay may be three months or more; if the prosecutor proceeds by information, the defendant will usually appear before a Criminal Court judge within several weeks.[20]

The quality of the public defender representation provided in Municipal Court obviously depends on the competence and dedication of the individual lawyer. While there undoubtedly are exceptions, lawyers close to the program concede that cases often are tried by defenders "off the seats of their pants." While statistics are unavailable, the estimate is that approximately 20 % of defender cases result in bench trials. Preparation for these trials is minimal, often involving

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[20]The felony bindover procedure is discussed from the Criminal Court's perspective in the preceding section. See pages 9-10, supra.

only hushed conversations with the defendant and witnesses in the courtroom or adjacent hallways. Full-time investigators and other paraprofessional assistance are not available to the defenders; accordingly, necessary witness interviews, and the gathering of any information or materials for the defense, must be done by the lawyers personally. Jury trials in misdemeanor cases are almost never requested and appeals to the Criminal Court are very uncommon. Again, statistics are not available on these subjects; the program's coordinator estimates that perhaps 5-10 appeals have been taken by the volunteer defender program since its inception in 1974. Significantly, a majority of the eight volunteer defenders interviewed conceded that they would probably provide more effective representation for their indigent clients if they were being paid, since the practice of law often becomes a matter of priorities and it is easier to justify spending time for a client who is paying a fee.

Persons familiar with the history of the volunteer defender program--including the presiding judge of the Municipal Court, the chairman of the bar association's Municipal Court Trial Lawyers Committee, and the program's coordinator--agree that the primary motivation for its development was to "save" the private practice of criminal law for the Municipal Court practitioners. The fear was that if the court hired public defenders, which the presiding judge was making plans to do,

there would eventually be a reduced number of retained cases available. Whether this fear was well-founded can be debated, but there seems little doubt that the present volunteer program has not had a significant effect on the volume of retained business, because the program provides representation in only a small percentage of the Municipal Court's misdemeanor and felony bindover cases. The most recent year for which Municipal Court statistics are available is 1974, as noted earlier, whereas the only 12-month period for which public defender statistics could be obtained was for April 1, 1975 - March 31, 1976. During this latter period, the defender program received 1,023 new cases, an average of 85 new cases per month. Meanwhile, in 1974, the misdemeanor and felony bindover courtrooms (numbers 9 and 10) received 22,507 new cases, an average of 1,709 new cases per month.[21] Thus, the public defender program is receiving no more than five percent of the court's caseload. In fact, since courtrooms 9 and 10 are believed to have received more new cases during April 1, 1975 - March 31, 1976, than in 1974, it is likely that the public defender percentage of the cases is less than five percent.

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[21] Municipal Court statistics are also discussed in an earlier part of this section. See page 22, supra.

C. The Juvenile Court

1. In General

The Marion County Juvenile Court, the only full-time, unified Juvenile Court in Indiana, is located on the near East Side of Indianapolis away from the Criminal and Municipal Courts, and encompasses courtrooms, office space for personnel and a detention center complex. During 1975, the Juvenile Court disposed of a total of 17,609 "cases," [1/] not all of which involved formal Juvenile Court petitions. By far the greatest number of matters involved delinquency matters, primarily law violations. The Juvenile Court also handles a significant number of paternity cases and a small number of criminal neglect or abuse matters. The latter are triable by jury if requested by the defendant parents.

During 1975, 6,834 charges of delinquency involving 4,002 children were referred to the Juvenile Court; 4,814 alleged violations of the criminal law and 2,020 fell into the non-crime category. [2/] In addition, there were 133 "waiver" hearings,

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1/ According to "case movement" figures contained in the 1975 Annual Report of the Marion County Juvenile Court, it is unclear as to whether "cases" are defined as number of complaints or number of individuals. Most likely it is the former since multi-count petitions are common.

2/ Current Indiana Legislation, Indiana Code §31-5-7-5 (1976) retains, under Subsection (b), (c) and (d), various categories of "status" offenses such as "incorrigibility", "habitual truancy", etc. (See Appendix A)

and in 125 of these cases the juvenile was waived to Criminal Court for prosecution as an adult. "Denial" hearings, i.e., bench trials, were held in 1,176 cases. Commitments to state institutions in 1975 totaled 232.

The court is administered by an elected, full-time Juvenile Court judge. Eight part-time referees (four on the morning calendar and four on the afternoon calendar), who have been admitted to practice for at least three years are appointed by the judge. The referees are compensated for 20 hours per week of judicial time; all are attorneys with private practice. They may find facts and enter all orders authorized by the Indiana Juvenile Court Act, but orders are not "official" until approved by the Juvenile Court judge.

All proceedings are recorded electronically by court reporters assigned to each referee. The recording system was installed in 1975 with the award of special grant funds, and facilitates judicial review of referee decisions on request by a child's attorney via a Motion for Reconsideration. This trial level review thus does not entail a re-presentation of evidence as in a de-novo appeal and is less formal and time consuming than a written appeal and oral argument to a higher appellate court. Appellate responsibilities of defender attorneys is discussed infra.

2. Public Defender Representation

Until 1972, counsel for indigent minors and parents appearing in Juvenile Court was afforded through an ad hoc appointment system. In 1972, the Legal Services Organization of Indiana (LSO) obtained grant funds for a project involving a two full-time and one part-time lawyer to provide legal representation in Juvenile Court. When the LSO program concluded in 1974, the Juvenile Court received funds from the Community Service Program in order to continue employment of the same attorneys. In 1975, the City-County Council rejected the Juvenile Court's request for funding of a permanent public defender component. The Juvenile Court judge thereupon ordered the city-county government to appropriate the funds, and through a resulting "settlement" another Community Service Program grant totaling about $52,000 was obtained. The court's budget request for the current fiscal year will include funds earmarked for defender services.

All three of the attorneys employed in the Juvenile Court Defender program were on the LSO staff when the project terminated.[3/] Nearly all grant funds are used to defray the salaries of and fringe benefits for these lawyers and the project's

3/ Two of the Juvenile Court's defenders are retained for full-time work; the third attorney is employed on a three-quarter-time basis. The third attorney has a private practice, while at least one of the full-time attorneys also takes a few retained cases.

full-time secretary. All overhead costs (desks, offices, telephone, etc.) are absorbed by the Court. The program is also assisted by six legal interns, selected and supervised by the Indiana University Law School. The interns, who work 25 hours per week, are paid $3.50 per hour from LEAA grant funds awarded to Juvenile Court, and work directly with the defender attorneys, performing whatever research or investigative assignments are assigned on an ad hoc basis. There does not appear to be a formal clinical aspect to the public defender operation.

Until the summer of 1976, the three defender attorneys were assigned offices in an abandoned detention facility to the rear of the main Juvenile Court building. There was no identifying information on the building; and the only direction to the defender office upon entering the building was a hand-written "public defender" sign.

At the time of the field visit, the court and Superintendent of the detention center had offered a residence on the grounds of the complex for use as defender office. This new facility represents a complete improvement over the outdated, inadequate offices previously utilized and offers needed space, privacy and identity to the program.

Since letterhead stationery specifically identifying the program has never been printed, letters sent to persons outside the Juvenile Court are typed on either plain bond or the Court's

stationery.

The defender program also is not provided its own library; advance sheets are not regularly received, and there are no legal digests nor subscriptions to basic publications such as the Criminal Law Reporter or the Family Law Reporter. The attorneys are thus forced to expend their own funds for necessary materials, make an inconvenient trip to a law library or utilize the limited number of volumes maintained by the Juvenile Court judges.

The defenders reported that the vast majority of their cases involve law violation charges, with non-law violations (e.g., curfew and truancy) comprising no more than 5-10% of their workload. The defenders aptly characterized their caseload as "heavy." The Juvenile Court's Annual Report for 1975 indicates that there were 1,482 "cases" (i.e., charges) referred to the defender office. Since the Report states that there is an average of 1.51 "cases" for each child, approximately 981 juveniles actually were assigned to the public defenders for legal representation. On the average, therefore, during 1975 each of the three attorneys received about 327 children who required legal defense.[4/] Although the reports and statistical data maintained and made available by the defender office during

4/ After study and debate, it has been recommended that a juvenile court defender not represent more than 200 children each year. See Report on Courts, National Advisory Commission on Criminal Justice Standards and Goals §13.12 (1973).

the field visit were not specific as to individual attorney caseloads, pending cases and dispositional outcomes, it is highly likely that the two full-time defenders bear more than their proportionate share of cases in light of the part-time status of the third defender. In one instance observed during the field visit, the part-time defender attorney who had been responsible for investigation and trial of a case involving aggravated battery, turned the case over to another defender within a short-time prior to the scheduled trial. The reason given was that the part-time attorney had worked the three-quarter time obligation for that day. Thus, the receiving attorney was left to prepare for an immediate trial of a case with which he had just become familiar. The evaluator was apprised by the defenders that because of the high caseload and difficulties which will inevitably arise because of scheduling conflicts with the part-time attorney, cases are sometimes tried with only brief preparation. It has been noted that the demands upon an over-burdened defender system or appointment as counsel on the eve of trial may create a presumption of a substantial impairment of the right to effective assistance of counsel. See Garland v. Cox, 472 F 2d 875 (4th Cir., 1973); Glasser v. U.S., 315 U.S. 60, 76 (1942); U.S. v. De Coster, 487 F 2d. 1197 (D.C. Cir., 1975). See also ABA Standards relating to the Defense Function, §4.1 Commentary: "The effectiveness of his advocacy is not to be measured solely

by what the lawyer does in the trial; without careful preparation he cannot fulfill his role." "...it is axiomatic among trial lawyers and judges that cases are won not in the courtroom but by long hours of laborious investigation and careful presentation and study of legal points which precede the trial."

The public defenders in Juvenile Court, like their counterparts in the Municipal and Criminal Courts, do not receive training for their work nor daily or periodic supervision, although all three juvenile defenders have three years experience in juvenile matters. The necessity for on-going training, supervision and review of developments in the law is not obviated merely by length of practice before the Juvenile Court, however, particularly where juvenile court decisions in defender cases are rarely subjected to review by a higher court. One observed example involved the failure of the defender to make a standard motion for acquittal at the close of the state's case in order to test whether the burden of offering evidence would shift to the minor respondent. By merely proceeding to offer the testimony of the juvenile defendant (upon which the referee admittedly adjudged him a delinquent) the defender waived the right to argue on appeal that the State's case was insufficient to overcome a reasonable doubt.[5/] The Defender Program has not

5/ See Amsterdam and Segal, Trial Manual for the Defense of Criminal Cases, (ALI-ABA 2nd Ed. 1971) §385.

presented any formal appeals to the Indiana appellate since 1974, when the defender program ceased to operate under LSO's separate grant and came under the court's control. The defenders did not view appeals as part of their function, inasmuch as they operated essentially as independent contractors to the court for trial level representation. The stated rationale of the juvenile defenders is included verbatim:

> First, the judge has been very careful in his decisions upon the office's reconsideration motions and keeps the record relatively free of error in regard to procedural safeguards. Second, by the time an appeal is heard, the juvenile's disposition has run its full course, quite unlike an adult incarceration and the effect of a favorable decision for that client is useless. Third, without a very strong case for the appeal, you run the risk of creating bad law in considering present day juvenile rights, the public's concern and pressure for harsher treatment and therefore this office has not appealed cases for the sake of saying a case has been appealed. With the present make-up of the Indiana Appellate and Supreme Courts, great caution must be taken for fear of creating unfavorable decisions.

3. Defender Relationships with the Court and Court Staff

There is little question that the defender attorneys are well liked by the Court and various court personnel. Referees interviewed believed that attorneys are "necessary and helpful in focusing the Juvenile Court's attention upon issues and in

making the system work smoother. One referee believed that full-time salaried defenders would be a mistake because low salaries would fail to attract experienced attorneys.

Prosecutors are willing to share the prosecution file with defense attorneys and believe there is a good working relationship with the defender office.

The Court also has a large probation staff which effectively controls the case flow and disposition of matters within the Juvenile Court. Probation Officers' opinions are extremely influential in the Court. Also, the probation staff plays an important role in the protection of legal rights.

1. They investigate all cases referred to court; by law, the Juvenile Court has no jurisdiction over a case unless it conducts a preliminary hearing into the facts of the case to determine whether a petition should be filed. In such event the probation officer must conduct a "home and environment study". Finally, only a probation officer may file a petition.

2. Probation officers are given the task of advising minors and parents of constitutional rights. This is done by reviewing a written form which is signed by the child and placed in his file. (See Attachment B). This advice often results in the probation officer calling one

of the defender attorneys to provide representation. Attorney-client contact, however, does not normally occur until the first court date arranged by the probation officer. When the defender files an appearance, financial eligibility for representation is determined by the defender or the secretary. They make recommendations (often controlling) concerning disposition.

It was the opinion of one probation officer, in fact, that probation officers normally give the fullest explanation of a child's rights that he or she is likely to get in the Juvenile Court process. Courtroom observations over a limited period of one day would confirm that little formal admonishment of specific constitutional rights e.g. appeal, is engaged in, in open court. It appeared to be commonly accepted practice that the probation officer's explanation of "courtroom rights" satisfied the constitutionally minimum requirements in this regard. One must question, however, whether the due process requirement that the record demonstrate that the accused minor is adequately apprised of his rights is best left to the Juvenile Court probation staff, particularly since the probation officer, more likely than not, will be in contact with the minor prior to representation by counsel; and, in light of the probation officer's strong influence over the ultimate outcome of juvenile cases.

4. Findings and Conclusions

The issues of primary concern with respect to the delivery of effective defense representation in the Marion County Juvenile Court involve (a) lack of independence from judicial control, (b) lack of sufficient supervision, training, research and investigative support services, (c) lack of consistent and sufficient funding, (d) lack of independent appellate review of Juvenile Court decisions.

a. Judicial Control

Like the Criminal Court defenders, the public defenders in the Juvenile Court are hired and serve at the pleasure of the judge before whom they practice. In fact the Court's Annual Report for 1975 credits its "legal staff" with accepting 1482 cases and disposing of 1282. Yet the operation of this legal staff and presumably, legal representation of indigents on any organized basis, remains contingent upon Community Development grants and not upon any independent, governmental allocation of funds for indigent defense. Such a situation has the inherent potential for impairing the independence, vigor and ultimate ability of the defenders to provide effective representation. We believe that the Juvenile Court defenders, by emphacizing their concerns for maintaining "close working relationships" with the court and its staff[6]; by failing to appeal juvenile

6/ The part-time defender engaged in the private practice of law in association with the law firm of one of the Juvenile Court referees.

adjudications; by being deprived of essential supportive services because of court budget restrictions; and by operating with caseload exceeding nationally recognized standards, are sufficiently hampered in their legal representation to warrant serious concern.

b. Supervision, Training, and Supportive Services

The virtual explosion in the law relating to juvenile rights, responsibilities, care and treatment and court procedures counsels the wisdom of on-going training and supervision for the juvenile defenders. With the type and size of their caseloads it is highly unreasonable to expect these attorneys to adequately keep themselves abreast of developments in the law. Moreover, there is substantial evidence that the admitted experience of the three juvenile defenders has been exclusively within and largely in conformity with the practices demanded by the particular court system. With respect to supportive services, such as scientific evidence gathering on expert witnesses it was commented that a polygraph examination for example, if needed, could be easily obtained from the police department.

The law student interns do not appear to appreciably contribute to the defenders' ability to provide representation because, in their opinion, little supervision is provided by the Law School. Since the primary demand on the attorneys' time is in the courtroom, they have little or no time to invest in student supervision.

Thus, the students are relegated to observation or occasional legal research and investigative activities.

c. Funding

Without an adequate, independent funding source, the position of the juvenile defender program as part of the Court, rather than an independent advocacy program, will continue to be reinforced. Several consequences may be expected to follow: real independence of action (e.g. by filing appeals) is frustrated; professional advancement and adequate compensation are discouraged; and development of necessary expertise is stifled. The uncertainties of funding also cause the diversion of attention and energy away from legal representation and toward seeking financial means for self preservation. Moreover, if the salaries of the defenders are certain only on a year-to-year basis, then the development of an outside practice is encouraged, which can lead to conflicts of interests and may place the attorneys in the untenable position of choosing between income producing cases and defender clients.

d. Appellate Review

Irrespective of the reasons offered by the Juvenile defenders, the failure to file any appeals since the defender program came under the control of the Juvenile Court indicates a failure to implement the legal right of juveniles to appeal any final order

or judgment of the Juvenile Court.[6] This view is substantiated by the defender's own view of their contracts with the Juvenile Court judge to provide trial level representation. See pp. 7-8 supra. Since appellate review is only available from a decision of the Juvenile Court judge and not from a referee, State ex rel Gannon v. Lake Circuit Court, ____ Ind. ____, 61 N.E. 2d 168 (Ind., 1945) the decision to seek informal review by the Juvenile Court judge in practice is left entirely to the defender. The referees observed did not advise minors of their right to seek such review by Motion for reconsideration and thus effectively preclude them from access to the appellate courts.

5. Recommendation

We believe that it is of paramount importance to the fair administration of justice in the Marion County Juvenile Court, that the independence and fiscal integrity of the Juvenile Defender Program be firmly established, and integrated with the overall reforms proposed in our report. Because of the history of full-time experienced defenders in Juvenile Court, however, we recommend that the existing part-time position be converted to full time. Training and supervision should be interfaced with

6/ Indiana Stats. Annot., 31-5-7-22

the recommended "Bar-Defender Program" in order to maximize the experience and input of criminal court defenders. A realistic caseload assessment should be conducted to determine additional attorney and supportive service needs. Finally, some provision for independent review of files and cases should be created in order to fully implement the legal right to appeal.

IV. RESULTS OF INMATE INTERVIEWS

Nine of the 15 defendants interviewed in the Marion County Jail were either currently represented by public defenders or had been represented by public defenders at earlier stages of their cases. With but one exception, these defendants were critical of the public defenders with whom they had had contact in Indianapolis; these inmates also said they would prefer to have a retained lawyer. As one inmate put it, "the public defenders work for the judge."

The reputation of public defenders is frequently unfavorable among jail inmates, perhaps because the defenders are not chosen by the client.[24] That the Indianapolis defenders are held in low regard by their clients, therefore, is not unusual; what is troublesome, however, is the nature of the complaints the inmates register. The most common complaint we heard during our interviews related to the failure of public defenders to visit their clients or to communicate with them in any way. Often the inmates did not know the names of their public defenders or how to contact them, since they had not been given

[24] See e.g., Casper, "Criminal Justce--The Consumer's Perspective," published by the National Institute of Law Enforcement and Criminal Justice (1972); Wilkerson, "Public Defenders As Their Clients See Them" 1 Am. J. Crim. L. 141 (1972). For a favorable view of public defenders expressed by inmates, see Waiting In Jail, published by the Washington Pretrial Justice Program 42 (1974).

a business card or other written document containing their name, address or phone number. One defendant whose case was completed said that he had had witnesses whom he wanted to subpoeana, but he did not see his public defender until the day of the trial and by then it was too late. Other inmates said they did not know whether their public defenders had sought bond reductions for them, and still others expressed confusion over the reasons for delay in their cases.

We also discovered in our interviews several cases which illustrate a fundamental, systemic problem which arises in furnishing representation to the indigent accused in Indianapolis. In one case, a defendant charged with first degree murder was extradited from Texas and presented in Municipal Court on January 15, 1976. He was assigned a volunteer public defender, he appeared at a preliminary hearing, and his case was ordered held for action of the grand jury. The Municipal Court defender ceased to represent the defendant at the conclusion of the preliminary hearing, but counsel was not appointed for the defendant in Criminal Court until the week of May 10. Thus, for approximately four months, while charged with first degree murder, the defendant was entirely without legal representation. In a second case--one which is probably more typical--the defendant was arrested on March 28, 1976, and charged with first degree burglary. Defendant had an

appointed lawyer in Municipal Court with whom he had a whispered conversation in the courtroom. The defendant's case was "bound over" in early April, and on approximately May 5, 1976, defendant was arraigned and given a public defender from Criminal Court. Again, the defendant had a whispered conversation in the courtroom with his lawyer, and his case was continued for trial in June. The defendant said that between March 28 and the date of our interview--May 29--he had never had more than brief conversations in courtrooms with either of his lawyers, and he had never discussed the facts of his case with either of them.

V. FINDINGS AND CONCLUSIONS

This section summarizes the most important problems identified during our study of the Indianapolis justice system and of the manner in which defense representation is provided. We do not suggest that the discussion here necessarily includes every significant problem that exists; our evaluation was limited in time and resources, and consequently there were many areas which could not be explored fully.[25]

A. Systemic Problems

No discussion of indigent defense representation can ignore systemic problems which bear upon the demand for legal services and the effectiveness of their delivery. The following are among the most important such problems we observed:

Inadequate Advice of the Right to Counsel in Misdemeanor Cases. The Supreme Court's Argersinger decision holds that no defendant may be incarcerated unless he has been advised of his right to be represented by counsel and to have counsel appointed if he is indigent. While it has been suggested that the most appropriate method for implementing Argersinger is to offer counsel to all defendants charged with offenses that

[25] To mention just a few examples: we obtained only limited information on the way in which juveniles are advised of the right to counsel, the jailing of defendants for non-payment of fines (which some persons told us occurs regularly), the manner in which financial eligibility is determined in Municipal Court, and the use of high money bonds in lieu of personal recognizance.

can result in a loss of liberty,[26] at the very least counsel must be afforded where incarceration is actually imposed. In Indianapolis, however, jail sentences are sometimes ordered without the defendant ever being notified of the right to an attorney or without receiving from the defendant an effective waiver of counsel. See discussion at pages 23-25, supra. Besides clearly violating the Constitution, the failure to offer counsel to the indigent in such situations obviously reduces the demand for defense services in Municipal Court.

Delays in Criminal Court Arraignments. For the defendant charged with a felony who is not referred to Municipal Court, there is often a delay of 48 hours or more before the defendant is presented personally before a Criminal Court judge. See discussion at pages 10-11, supra. Such delays not only forestall individual bail determinations[27]

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[26] See The Implementation of Argersinger v. Hamlin: An Unmet Challenge, Boston University Center for Criminal Justice, Volume I, 42-3 (1974). This approach avoids informal "predeterminations," whereby the judge seeks to determine before hearing the case whether the defendant is likely to be incarcerated if found guilty. This can be done, of course, by the judge examining a factual statement of the case and the defendant's police record. However, there is a substantial risk with this approach that the judge may become biased against either the defendant or the prosecution before hearing any of the evidence.

[27] A system similar to that used in Marion County, whereby felony commissioners set bonds for defendants according to a fixed schedule and without a hearing, was held unconstitutional in Ackies v. Purdy, 332 F.Supp. 38 (S.D. Fla. 1970). So far as we could determine, the Marion County procedure has not been the subject of a court challenge.

and the early assignment of counsel,[28] they also appear to violate an Indiana statute.[29]

Failure to Advise Juveniles of the Right to Appeals. The right of appeal to an appellate court from adverse juvenile delinquency determinations is guaranteed by Indiana law.[30] However, juveniles and their parents are not advised of this right either by the Juvenile Court or the court's public defenders. See discussion at page 39, supra. Again, this failure to implement a legal right bears directly on the need for indigent defense services.

B. Problems in Representation

Failure of Continuous Representation in Misdemeanor and Felony Bindover Cases. Defendants represented by volunteer public defenders in Municipal Court usually have a different lawyer every time their cases come to court. See discussion

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[28] "Counsel should be provided to the accused as soon as feasible after he is taken into custody, when he appears before a committing magistrate, or when he is formally charged, whichever occurs earliest." Defense Services Standards §5.1 (1968).

[29] "Whenever any arrest has been made..., it shall be the duty of the officer making the arrest forthwith to bring the person arrested before the city court, or court having jurisdiction of the offense, to be dealt with according to law.... But no person shall be detained longer than twenty-four hours without such examination...." Ind. Stats. Annot., §3.35 (1974).

[30] Ind. Stats. Annot., §31-5-7-22 (1971).

at page 30, supra. We believe this change of lawyers for every continued date is a serious deficiency in the system of misdemeanor representation. Since it is often impossible to impart full information from one lawyer to another, the changing of lawyers undermines effective legal representation, and it prevents the establishment of meaningful attorney-client relationships.[31] Similarly, defendants charged with felonies must continuously be represented by counsel; the failure to provide counsel at all times for defendants who are bound over to Criminal Court should be promptly remedied. See discussion at page 31, supra.

Lack of Independence from Judicial Control. In both the Criminal and Juvenile Courts, the public defenders are employed by the judges before whom they practice. We believe that this hiring practice often erodes the zeal and vigor with which the defense lawyers discharge their duties, although admittedly tangible proof of this assertion is difficult to obtain. Nevertheless, we believe there is sufficient evidence to justify

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[31] "Nothing is more fundamental to the lawyer-client relationship than the establishment of trust and confidence. Without it, the client may withhold essential information from the lawyer. The result may be that the case is prepared by counsel without important evidence that might have been obtained, that valuable defenses are neglected and, perhaps most significantly, that the lawyer is not forewarned of evidence which will be presented by the prosecution." Defense Function Standards, Commentary, 201 (1971).

the conclusion, particularly in Criminal Court, that at least some public defenders do not feel entirely independent and are not fully aggressive in advocating the rights of their clients. See discussion at pages 18-20, supra. But whatever the level of proof, it is most important that there be a system which guarantees that the defenders be independent; judicial selection of defenders does not achieve this result.

Insufficient Supervision, Training and Support Services. In all three courts--Criminal, Municipal and Juvenile--supervision of the public defenders' performance is lacking. If an attorney is not preparing his cases or otherwise providing effective representation, it is likely that no one will ever find out. For example, the case files of a public defender are never reviewed by anyone to determine precisely what the attorney has done--or has failed to do--in behalf of a client. In addition, none of the defenders in any of the three courts receives meaningful training for providing representation. Criminal law and procedure are not simple subjects; yet, in Criminal Court, lawyers who have never before tried even misdemeanor cases sometimes jump into the representation of felony cases without receiving either training or supervision. Similarly, support services are inadequate in all the courts, as adequate funds for investigators, expert witnesses and transcripts are

usually not available.[32]

Absence of Standards for Selection of Counsel In Appeals from Criminal Court. The defendant who is convicted of a criminal charge is as much entitled to counsel on appeal as he is in the trial court.[33] The duty of appellate counsel is to serve as the defendant's advocate, and this requires oral and written skills. The current system of having each Criminal Court judge, without standards of any kind, choose the attorneys to handle appeals from convictions returned in his courtroom does not assure the selection of effective appellate advocates.[34] See discussion at pages 20-21, supra.

C. The Funding Problem

Effective systems for the delivery of defense services

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[32] Compare the support services in Indianapolis to those recommended by the ABA; "The plan [for defense services] should provide for investigatory, expert and other services necessary to an adequate defense. These should include not only those services and facilities needed for an effective defense at trial but also those that are required for effective defense participation in every phase of the process, including determinations on pretrial release, competency to stand trial and disposition following conviction." Defense Services Standards. §1.5 (1968).

[33] Douglas v. California, 372 U.S. 353 (1963).

[34] There also is the risk that an appellate lawyer chosen by the trial court may be reluctant to argue on appeal that the judge was guilty of misconduct while trying the case. During our study, we did not have sufficient time to interview attorneys assigned to appeals or to examine briefs which were filed in any cases.

require adequate funding. In our judgment, insufficient funds are allocated for indigent defense in Marion County. Presently, we estimate that $445,000 is spent on representation of the poor, as reflected in the following table:[35]

Criminal Court		
Trial Representation (four judges--$31,000 available to each)	$124,000	
Appellate Representation (four judges--$48,000 available to each)	192,000	
Investigators and Experts (estimate for all four judges)	2,000	
	$318,000	$318,000
Municipal Court		
Part-time Coordinator of Volunteer Public Defender Program	7,200	
Secretary (95% of time allocated to Defender Program)	5,800	
Legal Interns (approximate amount of LEAA grant)	28,000	
	$41,000	$41,000
Juvenile Court		
Public Defender Program (grant funds--three attorneys and secretary)	52,000	
Legal Interns (approximate amount of LEAA grant)	34,000	
	$86,000	$86,000
Total		$445,000
Amount Spent For Defense If Temporary Grant Funds Are Deleted		$331,000

[35]Marion County funds are also spent for defense purposes

The foregoing sums are considerably smaller than what is spent on indigent defense in numerous other jurisdictions of comparable size. In Washington, D.C., for example, a metropolitan area which, like Marion County, has slightly less than 800,000 inhabitants, approximately five million dollars is spent annually on a combination assigned counsel-public defender program. Without additional public monies, it will be virtually impossible to achieve significant improvement in Marion County's defense services.

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when felony cases are transferred out of Criminal Court and tried in neighboring counties. The practice is for defense counsel from the neighboring county to be appointed by the trial judge; at the conclusion of the case, the defense attorney's statement of expenses, after approval by the trial court, is paid by Marion County. Although we were told that the costs for out-of-county defense counsel are occasionally very high, sometimes as much as $50,000-$70,000, we could not, despite repeated efforts, obtain financial data on the subject.

VI. RECOMMENDATION

To remedy the problems detailed in this report, we believe that nothing short of a major overhaul in Marion County's system for indigent defense is required. In this section we propose, in general terms, a plan which we think would greatly improve the effectiveness of defense representation.

The three most common ways of providing representation for the indigent accused is through the use of public defenders, assigned counsel, or a combination of these methods. Presently, Marion County utilizes uncompensated assigned counsel in Municipal Court, part-time public defenders in Criminal Court, and nearly full-time public defenders in Juvenile Court. We propose that Marion County build upon this experience of using assigned counsel and public defenders, and create a county-wide "Bar-Defender Program."

We envision either a quasi-public organization authorized by law or a private not-for-profit corporation, which would have responsibility for providing indigent defense representation in felony, misdemeanor and juvenile cases. The management of this organization should be vested in a governing board, independent of the judiciary, perhaps selected by a combination of persons drawn from elected officials and the Indianapolis Bar

Association.[36] The governing board would select a director who would hire a full-time staff and be responsible for the organization's daily activities.

The functions of the "Bar-Defender Representation Program" would include:

> 1. preparation of panels of assigned counsel who could be appointed to indigent cases in the Criminal, Municipal and Juvenile Courts;
>
> 2. preparation of panels of assigned counsel who could be appointed by the defender organization to indigent appeals from the Criminal Municipal and Juvenile Courts;
>
> 3. training of assigned counsel (e.g., seminars on selected topics of criminal defense), and the preparation for their use of written materials (e.g., trial manuals, sample motions and instructions);
>
> 4. administration of a voucher system, so that attorneys who serve as assigned counsel could be paid for their

[36] This recommendation is not novel; numerous national reports have suggested the use of private boards for the operation of public defender and assigned counsel programs. E.g., the ABA has recommended: "The plan [for defense services] should be designed to guarantee the integrity of the relationship between the lawyer and client. The plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. One means for assuring this independence... is to place the ultimate authority and responsibility for the operation of the plan in a board of trustees." Consider also the National Advisory Commission's comment: "The method employed to select public defenders should insure that the public defender is as independent as any private counsel who undertakes the defense of a fee paying criminally accused person. The most appropriate selection method is nomination by a selection board...." Reports on Courts §13.8 (1973).

representation upon the submission of proper documentation;[37]

5. development of eligibility guidelines for indigent defense for use in Criminal, Municipal and Juvenile Court;[38]

6. hiring, training, and deployment of some full-time defenders to provide representation in Criminal, Municipal and Juvenile Court cases;

7. employment of full-time investigators to assist assigned counsel and full-time defenders in the preparations of their case; and

8. acting as a central repository of information about defense services in the community, and responding to inquiries from inmates concerning their cases and legal rights.

We have not attempted to set forth a detailed blueprint of staffing needs and a projected budget. Obviously, the number of persons employed by the proposed organization depends on how much it attempts to do, on the ratio of use between assigned counsel and public defenders and on the amounts paid to each.

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[37] In our judgment, all assigned counsel should be compensated. Volunteer services by members of the bar are not likely to lead to uniformly high quality legal representation. In contrast to Marion County, assigned counsel in federal misdemeanor cases may receive payment up to $400, and in "extended or complex" cases the compensation may be even greater. The normal federal Court limit in felony cases is $1,000. See 18 U.S.C. §3006A.

[38] Consideration should perhaps also be given to a recoupment procedure pursuant to which a defendant who can afford some of the costs of his representation would be required to make contributions. See, e.g., Defense Services Standards §6.2 (1968).

and on eligibility standards for the appointment of counsel. In addition, we believe considerable statistical information should be obtained before projections are made. As indicated previously, we were not able to ascertain even such basic data as the number of indigent trial and appellate assignments made annually in the four Criminal Court divisions. Accordingly, we hope that this report, at the very least, will encourage the development of record systems which will facilitate the measurement of Marion County's indigent defense needs.

APPENDICES

Juvenile Law

PRINTING CODE—The parts in this style type are additions to the text of the existing section of the law. The parts in ~~this style type~~ are deletions from the text of the existing section of the law. The absence of either of the above type styles in an amendatory SECTION indicates that an entirely new section or chapter is to be added to the existing law.

SENATE ENROLLED ACT No. 173

AN ACT to amend IC 31-5-7 and 35-1-92 concerning juveniles.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 31-5-7-3 is amended to read as follows: Sec. 3. Whenever the words "the court" are used in this chapter, they mean the juvenile court established by law.

(a) The word "judge" means the judge of the juvenile court.

(b) The word "child" means a person under eighteen (18) years of age, ~~except:~~

~~(1) a person who is charged with first degree murder;~~

~~(2) a person sixteen (16) years of age or older who violates any of the traffic laws of the state or any traffic ordinances of a subdivision of the state; or~~

~~(3) a person who has been waived pursuant to IC 1971, 31-5-7-14.~~

(c) The word "adult" means a person other than a child as defined in this section.

(d) The singular shall be construed to include the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of the chapter.

SECTION 2. IC 31-5-7-4.1 is amended to read as follows: Sec. 4.1. The words "delinquent child" shall include any person under the age of eighteen (18) years who:

(a) Commits an act which, if committed by an adult, would be a crime, except:

APPENDIX A.

(1) murder~~;~~ or first degree murder or a lesser included offense in a case in which the offender was charged with first degree murder; or

(2) violations of any of the traffic laws of the state or of any traffic ordinances of a subdivision of the state if committed by a person sixteen (16) years of age or older;

(b) Is incorrigible, ungovernable or habitually disobedient and beyond the control of his parent, guardian, or other custodian;

(c) Is habitually truant; ~~or~~

(d) Being under the age of thirteen (13) years is ~~habitually~~ present upon any street, highway, park, public building or other public place between the hours of 10:01 p.m. and 5:00 a.m. unless he is accompanied or supervised by his parent or legal guardian or other responsible companion at least eighteen (18) years of age delegated by said parent or legal guardian to acompany him; or having attained the age of thirteen (13) years but not the age of eighteen (18) years is ~~habitually present upon~~ wandering, standing or loitering about any street, highway, park, public building or other public place between the hours of ~~1:01 a.m.~~ 11:01 p.m. on Sunday through Thursday and 5:00 a.m. on Monday through Friday or between the hours of 1:01 a.m. and 5 a.m. on Saturday and Sunday, unless he is accompanied or supervised by his parent or legal guardian or other responsible companion at least eighteen (18) years of age delegated by said parent or legal guardian to accompany him. This subsection does not apply to a child while in a public building or place attending or participating in or returning home from a religious, educational, entertainment, social or athletic event or lawful employment; or ~~so long as said event is conducted according to law and supervised by a person at least eighteen (18) years of age.~~

(e) Commits an offense under IC 7.1-5-7.

SECTION 3. IC 31-5-7-5 is amended to read as follows: Sec. 5. The words "dependent child" as used herein, or in any other statute concerning the care, custody or control of children, ~~shall mean any boy~~ under the age of eighteen ~~(18) years or any girl~~ means any child under the age of eighteen (18) years, who is dependent upon the public for support, ~~or~~ who is destitute, homeless or abandoned, or who deserts his home or place of abode.

APPENDIX B

COURTROOM RIGHTS

1. You have the right to have a lawyer with you in the courtroom. If your parents are unable or unwilling to hire a lawyer, and you want one but do not have the money, the court will appoint one for you.

2. You have the right to continue your case to seek the advice of a lawyer.

3. You have the right to be told of the charges against you.

4. You have the right to admit or deny the charges made against you.

5. You have the right to question the people who accused you of this crime.

6. You have the right to question witnesses after they have made their statements.

7. You have the right to take the witness stand in your own defense. You cannot be made to speak against yourself.

8. You have the right to have any witnesses brought to court who will be helpful to your case.

9. You do not have the right to a trial by jury.

10. You do not have the right to bail or bond. The court may release you to your parents or some other responsible person or may detain you in the Juvenile Center.

11. Before the court can find you guilty, the court must decide that you are guilty beyond a reasonable doubt.

12. If you are found guilty and think that the court made a mistake, you may appeal to a higher court.

13. If you are found guilty of a delinquent act, the court may do any of the following:

    a. Close the case and release you to your parents.

    b. Order you or your parents to pay $30.00 court costs.

    c. Place you on probation and release you to your parents. You will be required to obey the rules of probation. You will be supervised by a probation officer in addition to your parents.

    d. Place you on a suspended commitment to Boys' School or Girls' School, place you on probation and release you to your parents. If you violate the rules of probation, the court can send you to the Boys' School or Girls' School.

    e. If you are under 18 years of age, you can be sent to Girls' School until 20 years of age, or Boys' School until 21 years of age unless released sooner by the Department of Correction.

    f. Place you in a foster home, hospital or some private or State institution.

    g. If you are 14 - 17 years of age, your case can be transferred to adult court and, if found guilty, you would pay an adult penalty.

Signing this paper means only that you understand your rights.

_____
Signature of Child

_____
Probation Officer

APPENDIX B.
ATTACHMENT

APPENDIX C

CONSULTANTS' RESUMES

RESUME

Norman Lefstein
411 Granville Road
Chapel Hill, North Carolina 27514

* * *

Date of Birth: July 16, 1937
Member of District of Columbia and Illinois Bar

PRESENT EMPLOYMENT

Associate Professor of Law, School of Law, University of North Carolina, Chapel Hill, North Carolina--Since July 1, 1975.

Principal subject matters: Criminal law, criminal procedure and professional responsibility.

PAST EMPLOYMENT

Director, Public Defender Service (PDS) of the District of Columbia, May, 1972 to June, 1975; Deputy Director from February, 1969 - April, 1972.

The Public Defender Service employed 100 persons, 44 of them attorneys. In February, 1974 the PDS was named by the Department of Justice's Law Enforcement Assistance Administration (LEAA) as an "exemplary project", the only public defender office in the country to be so honored.

Responsibilities as PDS Director extended to all facets of the program, including recruitment and hiring of new attorneys, oversight of litigation, training of attorneys, general office administration and testifying before Congressional committees. There also was personal involvement in criminal litigation.

Office of Criminal Justice, Office of the Deputy Attorney General, U. S. Department of Justice

Staff member from April, 1968 - January, 1969. Focused on improving the criminal justice system: projects included drafting a revised juvenile code for the District of Columbia and amendments to the Criminal Justice Act, preparing plans for the administration of justice under emergency conditions and analyzing proposals for speeding the trial of criminal cases.

National Council of Juvenile Court Judges

Project Director, National Council of Juvenile Court Judges, American Bar Center Building, Chicago, Illinois; August, 1965 - March, 1968. Supervision and administration of a demonstration and research program funded by a $610,000 Ford Foundation grant. Juvenile defender offices were operated in three cities--Chicago, Cleveland and Newark. The total project staff in the three cities numbered about 40 persons.

Office of the United States Attorney

Assistant United States Attorney for the District of Columbia, Washington, D. C., September, 1964 - July, 1965. Prosecution of misdemeanor and felony jury cases, both on trial and appellate levels.

Georgetown Law Center

E. Barrett Prettyman Fellowship in Trial Advocacy, September, 1963 - August, 1964. Representation of indigents in criminal courts of the District of Columbia. Felony cases defended in United States District Court and appeals briefed and argued in United States Court of Appeals. Appointments also accepted for representation of indigents in the then Court of General Sessions and in Juvenile Court.

Kirkland, Brady, McQueen, Martin & Schnell

Private practice of law in twelve-man law firm in Elgin, Illinois; emphasis on trial work, September, 1961 - July, 1963.

EDUCATIONAL BACKGROUND

College

Augustana College, Rock Island, Illinois, 1955 - 1958. Awarded tuition scholarship based on rank in freshman class (third out of approximately 260). Winner of 1957 National Intercollegiate Debate Championship held at United States Military Academy, West Point, New York.

Law School - LL.B. Degree

University of Illinois College of Law, Urbana, Illinois, 1958 - 1961. Awarded tuition scholarship based on rank in freshman law class (fourth out of approximately 120). Elected to Order of the Coif and to membership on Board of Editors, University of Illinois Law Forum. Articles appearing in Illinois Law Forum are listed subsequently under publications.

Post-Graduate Study in Law - LL.M. Degree

Georgetown Law Center, Washington, D. C., September, 1963 - August, 1964. Awarded E. Barrett Prettyman Fellowship in Trial Advocacy.

TEACHING POSITIONS

Lecturer in Juvenile Courts and Delinquency, Northwestern University School of Law, 1965 - 1966 and 1966 - 1967 school years.

Adjunct Professor (Professional Responsibility and the Administration of Criminal Justice), Georgetown University Law Center, Spring 1975.

PUBLICATIONS

Articles appearing in the Illinois Law Forum:

"Conflict of Laws - Dram Shop Keeper Liable Under Common Law of Place of Injury When Liquor Sale Made in Sister State." Waynick v. Chicago's Last Dept. Store, 269 F.2d 322 (7th Cir. 1959). Winter 1959.

"Landlord's Obligation to Mitigate When Tenant Abandons - A Comment." Summer 1960.

"Constitutional Law - Dismissal of Public Employee Who Invoked Privilege Against Self-Incrimination in Refusing to Answer Questions of Legislative Investigating Body Sustained." Nelson v. County of Los Angeles, 362 U.S. 1 (1960). Summer 1960.

"Medical Demonstrative Evidence in Illinois", Illinois Bar Journal, May, 1964. (Annual Lincoln Award Winner - Illinois Bar Journal Essay Contest).

"In Re Gault, Juvenile Courts and Lawyers", 53 A.B.A.J. 811 (1967).

"In the Wake of Gault", Published in Booklet, Edited by Ohio State Legal Services Association (1968).

"In Search of Juvenile Justice: Gault and Its Implementation", 3 Law and Society Review 491 (1969); article was co-authored with V. Stapleton and L. Teitelbaum and has been reprinted in the following publications:

P. Lerman, Delinquency and Social Policy, pp. 206-228 (1970); and

F. Faust and B. Brantingham, Juvenile Justice Philosophy: Readings, Cases and Comments, pp. 420-496 (1974).

PAPER PRESENTED

"Experimental Research in the Law: Ethical and Practical Considerations", presented to the Sociology of Law Section, American Sociological meeting, August 29, 1967, San Francisco.

PROFESSIONAL AFFILIATIONS

Member, Judicial Conference of the District of Columbia Circuit, 1970 - 1975.

Member, Board of Directors, National Legal Aid and Defender Association.

Member, Standing Committee on Legal Aid and Indigent Defendants, American Bar Association.

Member, North Carolina Criminal Code Commission.

Consultant to National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, Washington, D. C.

LOUIS O. FROST, JR.

11788 Jocelyn Road
Jacksonville, Florida 32225

BUSINESS ADDRESS: Room 221
Duval County Courthouse
Jacksonville, Florida 32202

BIRTHDATE: September 19, 1931

GENERAL: Married to the former Shirley Clyde Bush;
Two children: Louis O. Frost, IV, and
Deborah Allison Frost

RELIGION: Episcopalian (member of St. Andrews Episcopal Church)

EDUCATION: Julia Landon High School (National Honor Society and Valedictorian); BSBA University of Florida 1953; Juris Doctor University of Florida 1958

MILITARY SERVICE: Veteran - First Lt., U.S. Army, 1st Infantry Division, June 1954 to March 1956

PUBLIC OFFICES HELD:

Assistant State Attorney for Duval County, 1959-63;
First Assistant Public Defender for the Fourth Judicial Circuit of Florida, 1963-69;
General Counsel for the Florida State Board of Health, 1965-67;
Duval County Democratic Committee, 1960-68;
Public Defender for the Fourth Judicial Circuit of Florida, 1968 to date

PUBLIC OR PROFESSIONAL BACKGROUND:

Entered private practice of law in June 1958 with the firm of Smith, Axtell and Howell; appointed Third Assistant State Attorney for Duval County in November 1959, and resigned as First Assistant State Attorney in June 1963; appointed First Assistant Public Defender in July 1963; served as General Counsel for the Florida State Board of Health from 1965 to 1967; appointed Public Defender in August 1968; engaged in the private practice of law with Gene Durrance under the firm name of Durrance and Frost from 1960 to September 1969; elected Public Defender for the Fourth Judicial Circuit of Florida in November 1968, and became full-time Public Defender October 1, 1969; re-elected

Public Defender for the Fourth Judicial Circuit of Florida in November of 1972; appointed to serve as a member of the Region III Planning Council of the Governor's Council on Criminal Justice by the Honorable Reubin O'D. Askew in May 1971; invited by the Governor to represent Public Defenders from the State of Florida at the National Conference On Criminal Justice held in Washington, D. C., Jan. 23-26, 1973 and re-appointed by the Governor in December 1972 to serve as a member of the Jacksonville Metropolitan Criminal Justice Planning Council; Implemented in conjunction with the College of Law of the University of Florida an Intern-Extern Student Program for Public Defenders.

CIVIL, FRATERNAL, PROFESSIONAL OR OTHER CLUB AFFILIATIONS:

National Legal Aid and Defender Association: Member of the Board of Directors, the Defender Committee and the Executive Committee, 1972-75; Vice Chairman of the Defender Committee, 1973-74; Chairman of the Defender Committee, 1974-75; Member of the National Legal Aid and Defender Association Advisory Board for the National Center For Defense Management, 1975; Participated in many NLADA sponsored training seminars some of which were held in the State of Vermont, Wyoming, New Orleans, La., and Indiana; Consultant for NLADA and participated in the study and publication of a report entitled "The Structure and Funding For Criminal Defense of Indigents In Indiana", 1974; Served as a team member of The Indigent Defense Systems Analysis Project in Las Vegas, Nevada, 1975; Delegate to the National Defender Conference sponsored by the National Defender Project in cooperation with NLADA at Washington, D. C., May 1969; Participated in the Defender Intern Program at Vanderbilt University.

Florida State Public Defender Association: Secretary 1965-66; Treasurer 1966-67; Vice President 1969-70; President Elect 1970-71; President 1971-72; Current Member of the Executive Committee.

Kappa Alpha Order; Jacksonville Alumni Chapter of Kappa Alpha Order (Past President 1964); Phi Delta Phi Legal Fraternity (Past President 1957-58); Jacksonville Bar Association) Past Chairman of the Criminal Law Section); Florida Bar Association (past member of the Executive

Council of the Trial Lawyers Section and Vice-Chairman and current member of the Criminal Law Committee); Vice-Chairman of the Florida Bar Association Criminal Rules Procedure Subcommittee, 1975-76; Florida Council on Crime and Delinquency; University of Florida Alumni Club of Jacksonville (Past President 1965-66); Florida Alumni Association (District Vice-President 1966-68); Jacksonville Jaycees (Legal Counsel 1964-66); Cystic Fibrosis (Board of Directors 1965-68); Current board member of the Probationer's Residence Program; 32nd Degree Mason, Shriner (member of Director's Staff and member and Secretary-Treasurer of the Morocco Temple Wrecking Crew); Rotarian (member and past Sergeant-At-Arms and member of Board of Directors, Arlington Club); current member of The Commission of the Florida Judiciary and The Bar for the Nation's Bicentennial Birthday; current member, representing Public Defenders, of the Multi-Agency Problems in Criminal Justice Committee of the American Bar Association, appointed by the Appellate Judges Conference of the ABA, 1975-76; 1975 recipient of the Reginald Heber Smith Award of the National Legal Aid and Defender Association in recognition of dedicated service to the defender cause.

JOHN D. SHULLENBERGER

EDUCATION:

A.B. with honors in Political Science, Kenyon College 1966

J.D., Northwestern University School of Law 1969.

EMPLOYMENT:

1969-1970 -- Staff Attorney and Assistant to Chairman of the Standing Committee on Legal Aid and Indigent Defendants, American Bar Association.

1970-1971 -- Director, National Defender Project of the National Legal Aid and Defender Association, a $7 million grant program funded by the Ford Foundation to establish and improve systems to provide counsel to the indigent accused.

1971 -- Director of Research and Special Projects National Legal Aid and Defender Association

1971 -- Present -- Attorney, Juvenile Litigation Office, Legal Assistance Foundation of Chicago, a five lawyer office program focusing on impact litigation and appeals in the general area of youth advocacy. Since June, 1973, Supervising Attorney of the Juvenile Litigation Office.

PROFESSIONAL EXPERIENCE:

Representation of indigents in the trial and Appellate Courts of Illinois, Northern District of Illinois, United States Court of Appeals for the Seventh Circuit, United States Supreme Court. Civil Rights litigation in Federal District and Appellate Courts.

Evaluation consultant to the National Legal Aid and Defender Association. Author and Co-author of major evaluation reports on Seattle, Hawaii, Massachusetts and Minnesota Defender Systems.

Project Director (Summer 1971) NLADA Law Student Defender Intern Program: Supervision and coordination of placement of 18 law students from the major American law schools in 18 outstanding Defender Offices throughout the country, made possible by a grant from the

Law Enforcement Assistance Administration

Author and Editor of Juvenile Practice Handbook published by Illinois Institute of Continuing Legal Education (February, 1974).

Co-author of Article entitled "The Crisis in Juvenile Court -- Is Bifurcation an Answer?," Chicago Bar Record, December, 1973.

Coordinator of grant awarded to Juvenile Litigation Office by Center for Studies in Criminal Justice, University of Chicago School of Law

Subcommittee on Advocacy, Governor's Commission to Revise the Mental Health Code in Illinois

NLADA Representative and member, Advisory Committee on Child Abuse, Juvenile Justice Standards Project, Institute of Judicial Administration

Member, National Study Commission on Indigent Defense Services, NLADA. Task Force on Services, Eligibility and Recoupment

Human Rights Committee Study Group, Governor's Commission to Revise the Mental Health Code of Illinois

Court-Appointed Attorney and Advocate for wards of the Illinois Department of Children and Family Services currently institutionalized in mental health facilities

Executive Committee, Chicago Law Enforcement Study Group, Businessmen for the Public Interest

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