

# **OPERATING A DEFENDER OFFICE**

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**MANUAL**

U.S. DEPARTMENT OF JUSTICE  
NATIONAL INSTITUTE OF JUSTICE

U.S. Department of Justice  
National Institute of Justice  
Henry S. Dogin, Acting Director

**OPERATING A DEFENDER OFFICE**

**MANUAL**

Prepared by:

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For

**CRIMINAL JUSTICE RESEARCH UTILIZATION PROGRAM**

Frederick J. Becker, Jr.  
Program Manager  
National Institute of Justice

April 1980

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## FOREWORD

The materials included in this manual are for the "Operating A Defender Office" training program and were chosen for their strengths in addressing and supporting sound management techniques developed throughout the program. The individual articles stand on their own; in some situations they have been published previously. All were intended as additional aids for defenders to evaluate current management practices against present standards of the field and to assist in making managerial adjustments where required.

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## CASELOAD

Paul Ligda  
Public Defender  
Solano County, California

When I was appointed as Public Defender, I issued two statements of policy. One required the attorneys on the staff to adhere to the Rules of Professional Conduct of the American Bar Association while providing their clients with proper professional representation. The second made it clear that we accept referrals of cases from the courts.

In the five years which have passed, those policies rarely conflicted. There was a reason. The initial study which resulted in the Board of Supervisors establishing the office assumed the average annual caseload would be 350 cases per attorney per year. Our experience over the first few years indicated this figure was too low and I said so in my annual report to the Board of Supervisors in 1971 (when I suggested 400 would be a more accurate figure) and in 1972 and 1973 (when I suggested 420 would be appropriate). While we operated between the 350 and 420 levels, we found we had adequate time to discharge our responsibilities, best characterized by the California Supreme Court in Smith versus Superior Court (1968) 68 C. 2d 547, 561, 68 C.R. 1, in observing that the attorney-client relationship:

"... involves not just the casual assistance of a member of the bar, but an intimate process of consultation and planning which culminates in a state of trust between the client and his attorney. This is particularly essential, of course, when the attorney is defending the client's life or liberty. Furthermore, the relationship is independent of the source of compensation, for an attorney's responsibility is to the person he has undertaken to represent rather than to the individual or agency who pays for the service ...."

In the past year, however, our workload climbed to 506 cases per attorney per year (20.5% more work than I believe the amount of time our attorneys were required to be in court and a reduction in the time left in the work week to attend to the out-of-court work each referral required). For the first time there were serious complaints about the situation as overtime, and then weekend, work became routine rather than occasional. Secretaries fell behind in getting briefs typed because the paperwork in preparing and closing files and maintaining the calendar occupied more and more of their time. For the first time, we were hit with resignations. Two of the four attorneys who have left told me recently that one of the major factors in reaching their decision was the loss of professional pride they could feel in the representation they were providing at the caseload levels the work had reached. Still the work grows and now there are frequent conflicts between carrying out our professional responsibilities and continuing to accept all the cases we are sent.

It has become clear to me that if I expect the people on my staff to adhere to the standards of representation the Supreme Court adheres to in Smith, I certainly have the responsibility to do everything in my power to provide working conditions within which that can be done. It is wrong when our secretarial staff have so much work they feel they cannot take coffee breaks (at least one secretary, in Vallejo, rarely leaves the office even for lunch), and they rightfully resent it when other county employees take extended coffee breaks. It is wrong when dedicated attorneys feel compelled to spend Sunday in the office to prepare for Monday's calendar because a trial the previous week eliminated all possibility of prior preparation. It is wrong when the routine of overtime creates an atmosphere for potential domestic strife between an employee and the family. It is wrong when the pressures of work are so great, the fun in working is absent.

The Supreme Court recently observed, in Geiler versus Commission on Judicial Qualifications (1973) 10 C. 3d 270, 286:

"No more fragile rights exist under our law than the rights of the indigent accused; consequently, these rights are deserving of the greatest judicial solicitude."

And so I turn to you for your understanding and support. I have a careful study of the workload problem. For the reasons outlined in my annual report I've concluded the cases per attorney per year is a poor statistical standard for measuring what an attorney can do, for his ability to discharge his professional responsibilities is much more controlled by his then existing caseload. Accordingly, I've looked to this standard. It is not a new idea as these precedents would indicate:

(1) After issuing a policy statement which required attorneys on the staff to comply with minimum standards designed to provide adequate, effective, and zealous representation for every client, the Sacramento Public Defender imposed pending caseload limits of 45 cases in lower courts (with a limit of 12 new cases assigned in a week) and of 25 cases in Superior Court (with a limit of 4 new cases assigned in a week).

(2) In the only court decision which dealt with the problem, after a suit by clients of the defender office, a federal district judge imposed a limit of 40 pending cases per attorney to assure each client received proper representation. See Wallace versus Kern (5/13/73) 13 CrL 2243.

(3) After an exhaustive study which included an analysis of a defender's time over a 30-day period with a felony caseload of 30 cases, the Board of Trustees of the Public Defender Service for the District of Columbia imposed caseload limits of 30 at the felony level (assuming 20 would be active) and 38 at the lower level (assuming 23 would be inactive).

With these figures in mind, it was shocking to discover what the attorneys on our staff were doing:

<u>ATTORNEY</u>	<u>COURT</u>	<u>PRESENT ACTIVE CASELOAD*</u>
Marvin Brookner	Fairfield	161
Bob Calvert	Juvenile, Rio Vista, Benicia	82
Steve Camden	Vallejo	78
Osby Davis	Vallejo	78
John Aye	Vallejo	78
Jon Blegen	Vacaville, Dixon	67
Rick Minkoff	Superior	49
Otto Pisani	Superior	49

After discussing the problem with the staff, all conceded they were not complying with American Bar Association standards of representation because their present caseload was too great. They nonetheless felt they could do more than the Sacramento or Washington standards required. They are to be commended for their efforts and positive attitude.

We then set some tentative figures which I've discussed with other defenders and people from the National Legal Aid and Defender Association. With their counsel and my own experience, I have set these figures as representing caseload levels within which I expect compliance with ABA standards of representation:

<u>COURT</u>	<u>MAXIMUM ACTIVE CASELOAD</u>	
	<u>Without Student Help</u>	<u>With Student Help</u>
Superior	30	35
Fairfield	50	60
Vallejo	50	60
Juvenile	50	70
Vacaville & Justice	40	50

Aside from the availability of student help, the most significant factor to be considered is the amount of time an attorney is required to spend in court. The longer he is held on a calendar, the less time he has available to attend to his out-of-court responsibilities. That is why the deputy assigned to the Vacaville and Justice Courts (who is in court up to 3½ days of every week) cannot process as many cases as the deputy in the Fairfield Court. Judges help by taking this into consideration in handling a calendar.

There are other factors which, though not constant, greatly affect the individual attorney's ability to discharge his responsibilities:

1) The length of time in which cases turn over. The shorter the period available to complete a case, the greater the percentage of his available time the attorney must spend on that case, which reduces his ability to handle other work. Quick trial settings, though at times desirable and even necessary to protect an accused's rights, have a devastating effect on the attorney's ability to adjust the workload.

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\*Does not include open cases which are inactive, e.g., bench warrants, progress reports, 1358 PC findings, diversion cases.

2) The number of cases which are actually tried. Our records indicate a jury trial will take as much time as four cases disposed of by plea bargain. When a case is in trial, there is practically no chance to do work on other cases and the number of cases an attorney can handle is reduced.

3) The rate of flow of cases into the system at one time. When 10-20 people are arrested at one time and all referred to our office (as happens whenever the grand jury indicts large numbers of suspected drug offenders), we are faced with an immediate demand which must be met to the exclusion of all other responsibilities. Those responsibilities usually include preparation for cases already calendared for the next day and we are too often faced with a situation in which somebody has to be neglected. There is no potential for adjusting time when the time available to act has run out.

4) The number of homicides or other complicated cases pending. A properly handled homicide case requires anywhere from 50-350 attorney work hours. The average felony requires from 2-9 hours. One homicide is roughly equivalent to 20 other cases and necessarily reduces the number of other cases the attorney can handle.

I have advised the Board of Supervisors of the problem our caseload presents and requested that they act.

In the meantime, each week we will compile our figures and let each attorney know what his caseload is. Each attorney knows he can come to me for relief if it exceeds the figure I've set. I will initially attempt to reduce the load by using other help. But if that is not possible, I will ask the judge to appoint private counsel under Penal Code Section 987.2. This is the procedure approved by the Court in Ligda versus Superior Court (1970) 5 C.A. 3d 811, 828, 85 C.R.

744:

"The public defender should proceed to place the situation before the judge, who upon a satisfactory showing can relieve him and order the employment of private counsel ... at public expense ...."

**CASE CUTOFF MECHANISM--  
DOCUMENTATION REQUIRED\***

Harold S. Jacobson  
Legal Aid Society  
New York City, N.Y.

The Legal Aid Society of New York City follows, by contract, the procedures prescribed by the Association of Legal Aid Attorneys regarding workload and individual limitation of workload. The Association describes the process for individual workload limitation as follows:

Individual Limitation--attorneys may request relief from their present workload from their office supervisor. If the issue is not resolved at that stage, the attorney may file a written grievance with the Attorney-in-Charge. The form that is attached will be used to represent the facts to the Committee designated under 1(a).

As Special Assistant to the Attorney-in-Charge for Planning and Management for the Society, I appoint a representative to this committee. Our representative, the office supervisor, and two representatives of the Association then consider the grievance and prepare a written decision.

In order for that committee to meet the five-day deadline and to make a decision based on full documentation, it is important that the form be completed in its entirety.

By use of the form, the present status of the initiating attorney's caseload and workload can be evaluated to see if relief is warranted and, if so, to what extent. To meet these objectives, we require a case-by-case analysis by the two individuals most familiar with those cases, with the local court process, and with district attorney policies and practices.

The factors that are considered in the evaluation are:

Attorney experience level, which would include the overall time with the Criminal Defense Division, and the proportion of time spent in the Supreme Court.

The total caseload being carried by the attorney, and what proportion of that is for sentencing only.

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\*The author wishes to thank William J. Gallagher for his assistance in preparing this article.

For what proportion of the cases are defendants out on bail, and what proportion are in detention. This factor would note the ability of the attorney to work defendant interviews into his available time or whether the attorney would be restricted in having to interview defendants in detention.

The "age" of the caseload and assignment date. This factor would indicate, relative to the county, how many cases, because of time they have been in the system, are ready for disposition, and will also give the evaluator an idea of how long the attorney had had to prepare those cases.

Case evaluation of the fact pattern and legal issues with respect to their simplicity or complexity. The amount of time it takes to prepare a case is related to fact pattern and legal issues. The supervising attorney reviewing caseload with the attorney and the attorney should both make this evaluation on each case.

Applicability of mandatory minimum sentences provisions. Starting September 1, an additional factor to be noted is whether or not the mandatory minimum punishment is applicable. This would be one method of seriousness weighting the caseload.

Evaluation of potential for trial. The analysis should include some limited prediction of the probability of trial or pleas and their differential preparation and workload burden.

The number of previous trials in the past 60 days by the attorney. This figure would indicate previous attorney burden that might have limited his ability to prepare his other cases.

Relationship of the attorney's caseload to that of the office. This factor would indicate potential problems relative to other attorneys in the office who are carrying similar caseloads, and who might also claim an analogous situation.

Relationship of the attorney's caseload to that of other attorneys in that office who have comparable experience level, which would indicate the range of caseload relative to experience level.

The attorney statement on a case-by-case basis of the relative degree of preparation completed and further preparation on the case. This statement would give the attorney's evaluation of the status of his workload and how long it would take him to come to a state of readiness if no new cases were assigned to him. The supervisor's evaluation will provide the comparative framework for analysis.

In submitting to the Attorney-in-Charge those attorney grievances not resolved at the field office level, office supervisors should provide a covering letter noting the reasons for rejecting the attorney's request for case intake cutoff. A separate monthly report should also be included that lists those requests by attorneys to invoke the cutoff mechanism which were resolved without recourse to the grievance procedure.

Grievances are then forwarded directly to the Attorney-in-Charge with a copy to the designated representative.

In our organization, as in others, the Planning Unit and the office supervisor serve as the Attorney-in-Charge's representative to investigate and evaluate the status of the field office's pending caseload.



CASELOAD LITIGATION

STATE OF COLORADO  
OFFICE OF THE PUBLIC DEFENDER

Rollie R. Rogers  
State Public Defender

718 State Social Services Building  
Denver, Colorado 80203  
303-892-2661

September 1, 1977

TO: ALL MEMBERS OF THE DEFENDER COMMITTEE

and

Dorothy Richardson  
Dan Cullen  
John R. Simmons, Liaison Representatives

Like most defender systems, we are experiencing funding difficulties. We had asked the state legislature (our funding authority) for nine additional lawyers and nine additional investigators to enable us to keep up with our caseload on the basis of the National Advisory Council of Criminal Justice Standards and Goals standard of 150 felony equivalents per year. The funding authority did not give us any additional positions but in turn took away three lawyer positions and five investigator positions.

Obviously, this causes us all kinds of problems in being able to handle all of the clients that are entitled to our services and give them the kind of representation they are entitled to, which is higher than "mere effective assistance of counsel." We picked our spot and in the Weld County District and County Courts we refused to accept further appointments because of the case overload. There are three district (felony) judges in that jurisdiction. One judge, a former public defender, held two of our deputies in contempt and at the contempt hearing exonerated our people from contempt and ruled that he would no longer appoint public defenders in his division until our caseload was manageable within the standards. A copy of his ruling is included herein marked as document No. 1.

The other two district judges held a hearing on our motions to refuse further appointments and after having taken the matter under advisement, they ruled against us in document No. 2. At that hearing, we called the Chief Judge of the Intermediate Appellate Court, the Clerk of the Intermediate Appellate Court, the Chief of our Appellate Division, the Deputy in charge of the Greeley office, and three private practitioners to testify that they could not handle 150 felonies per year, and myself.

Document No. 3 is a copy of our Memorandum that was filed in the Weld County District Court in support of our position. After the two district judges denied our request, we immediately filed an original proceeding in the Colorado Supreme Court and that document is attached hereto as No. 4. Simultaneously with refusing to accept further cases, we filed a civil suit entitled a "Complaint for Declaratory Judgment and Injunctive Relief" (No. 5) and "Notice of Claim of

Unconstitutionality" (No. 6) in Weld County District Court; and that matter remains as yet unresolved; further action in that case will depend upon what our Supreme Court does in connection with our original proceeding.

I felt all of you should be advised of this problem and how we are grappling with it. I enclose all of these documents in hopes they may be of assistance to you in your own office or in helping other offices that face this same financial problem. If the Supreme Court refuses to issue an order to show cause and decide the matter, we intend to go directly to the Federal Court, and there may be some serious question as to the Federal Court's jurisdiction at this point to hear and resolve the matter. I would appreciate any suggestions that any of you might have and I will look forward to seeing all of you in Detroit.

Yours very truly,

s/ Rollie

---

t/ ROLLIE R. ROGERS

RRR:ls  
Encl.

Larry Berner  
Director of Defender Services

Wilbur F. Littlefield, Chairman

Terrence F. MacCarthy, Vice Chairman

John M. Young, Secretary

John J. Cleary  
Howard B. Eisenberg  
James Hennings  
Bettye H. Kehrer  
Ben Lerner  
Dorothy Richardson  
Dan Cullen  
John R. Simmons  
Shelvin Singer  
Jeffrey Isralsky

IN THE DISTRICT COURT  
 IN AND FOR THE NINETEENTH JUDICIAL DISTRICT  
 COUNTY OF WELD AND STATE OF COLORADO  
 Miscellaneous Civil Action No. 28917

DISTRICT COURT, NINETEENTH )  
 JUDICIAL DISTRICT, STATE OF )  
 COLORADO, AND JONATHAN W. HAYS, )  
 DISTRICT JUDGE, )  
 )  
 Plaintiff )  
 )  
 vs. )  
 )  
 BRYAN D. SHAHA and CARY C. )  
 LACKLEN, Deputy State Public )  
 Defenders. )  
 )  
 Defendants )

REPORTER'S TRANSCRIPT

BE IT REMEMBERED, that on August 9, 1977, the same being a regular juridical day of the January 1977, Term of the District Court of the Nineteenth Judicial District of the State of Colorado, the above-entitled cause came on for hearing before the HONORABLE JONATHAN W. HAYS, District Judge, presiding in Division IV of the District Court in and for the County of Weld, State of Colorado.

APPEARANCES

For the Defendants:

Mr. Harold A. Haddon  
 HADDON, MORGAN & SHELLEY  
 730 Seventeenth Street  
 Suite 350  
 Denver, Colorado 80202

(Whereupon, only the Court's findings appear herein, pursuant to direction of ordering counsel.)

\* \* \* \* \*

THE COURT: I'm going to find that the standards of the National Advisory Council on Criminal Justice, as testified to by Mr. Rogers, are prima facie reasonable, and beyond that have been corroborated by Mr. Shaha's and Mr. Lacklen's testimony respecting the fact that they are currently operating at 144 percent, or 44 percent in excess of those standards; that their average work week is about seventy hours, and for the past three weeks, at least, they have been working seven-day weeks, almost eighteen-hour days.

I'm satisfied that the standards are reasonable and that the strain that's been placed on these two defendants by virtue of their workload, runs a substantial probability of rendering them incapable of effectively assisting as counsel in any additional cases.

I will find that under the circumstances, their withdrawal from the cases, or their refusal to accept the cases were appropriate and that they are not in contempt.

One final matter that I wanted to consider, partly for the record and partly to dispel any misunderstandings: The Court was advised that the Public Defender system was possibly bringing some original proceedings concerning this latest budgetary matter, and suggestion was made that local public defenders might be asked to withdraw or to refuse cases. Apparently, it was understood by Mr. Shaha and Mr. Lacklen that the Court did not object to this; and apparently it was understood by the Court that this was a prospective and possible action that they might take. I was frankly unprepared for Mr. Shaha's announcement at yesterday's motion day that he wasn't going to take any more cases.

I think in view of the misunderstanding, I will resolve that dispute in favor of the defendants, but will observe that in previous cases, according to Mr. Roger's testimony, the question of caseload and the rejection by the office of the acceptance of future cases until the caseload drops, has always been considered in consultation with the chief judge of the district in advance of their refusal.

The reason I suggest this to counsel, and to Mr. Rogers, is that there are three judges in this district who try felony cases and I can't guarantee that they will make the same findings that I do. Perhaps, counsel has made other arrangements in those courts, but I would suggest, to avoid future problems of this nature, that you have joint meetings with other judges and the Public Defender's Office.

In the future, unless I'm otherwise ordered by the Colorado Supreme Court, the Public Defender will not be required to accept any appointments in this Court in criminal cases, unless and until his caseload falls down to the standards set forth in Mr. Roger's testimony: 150 felonies, 400 misdemeanors, 200 juveniles, or any combination of those which add up to the equivalent of 150 felonies.

My order and finding of yesterday with regard to the three criminal cases is vacated and set aside. We will be in recess.

\* \* \* \* \*

REPORTER'S CERTIFICATE

I, Dianne Karamelas, do hereby certify that the above and foregoing is a true and correct transcript of my shorthand notes taken at the time and place as set forth on page one hereof.

Dates this 9th day of August, 1977.

s/ Dianne Karamelas

t/ Dianne Karamelas

IN THE DISTRICT COURT IN AND FOR THE  
COUNTY OF WELD AND STATE OF COLORADO

Criminal Action No. 10229

IN RE THE MATTER OF REPRESENTATION )  
OF INDIGENT DEFENDANTS IN FELONY ) RULING  
CASES IN DIVISIONS 2 and 3 )

This matter came on for joint hearing by the undersigned judges as a result of a number of motions filed in Divisions 2 and 3 of this Court by the Public Defender requesting appointment of private counsel in felony cases for indigent defendants on the grounds of case overload in the office of the State Public Defender. Also under consideration were motions filed in the respective divisions relative to request for appointment of private counsel on appeal in cases in which the defendant had been represented in this Court by the Public Defender. In reaching the following conclusions, the undersigned Judges have considered not only the evidence presented at the hearing held on August 23, 1977, but have also considered their observations of the performance of Deputy Public Defenders in the normal course of their court business. Based upon these conclusions, the undersigned Judges will enter orders in the various cases in which the motions referred to above have been filed.

Our conclusions are as follows:

I. A problem does exist in the local Office of the State Public Defender in that that office appears to be understaffed.

II. We are not convinced that the standard adopted by the State Public Defender of 150 felony equivalent cases per lawyer per year should be taken to be an absolute criterion or that this standard is fully applicable to local conditions.

III. There is not now any local emergency concerning the representation of felony defendants in our respective divisions, and that the felony cases in our respective divisions which are being handled by the Public Defender are being conducted in a competent, effective, thorough, and professional manner.

To the extent that an emergency did exist, it has been alleviated by the actions of other divisions of this Court and of the County Court of this County in reducing the caseload of the Public Defender.

IV. We will watch carefully the conduct of felony cases in our divisions by the State Public Defender. If we detect ineffective representation by the State Public Defender, we will take appropriate action; however, that determination must be made on the basis of practical and realistic observations rather than the application of abstract standards of questionable validity. This course is required both by our duty to assure competent representation to indigent

defendants and by our duty to prevent improper and unnecessary expenditures of public funds.

V. The evidence presented by Chief Judge Harry S. Silverstein, Jr., indicated that the Court of Appeals can likewise make practical observations of the competency of the representation by the State Public Defender on cases on appeal from this judicial district to the Court of Appeals, and that in the event ineffective representation is observed in that Court, it can return such cases to this Court for corrective action. For that reason, we will not, as an initial matter, appoint private counsel on appeal in public defender cases.

VI. We recommend to the State Public Defender that to the extent it is necessary to reduce his caseload in this judicial district he seek to be relieved from the handling of matters of lesser complication and severity than felony offenses such as misdemeanor and routine juvenile offenses, since appointment of private counsel in those cases may be made at lesser expense to the public than in felony cases. We further recommend to the State Public Defender that efforts be redoubled to strictly enforce the prescribed indigency standards to the end that the services of the State Public Defender may be accorded only to those entitled to receive them. Finally, we recommend to the State Public Defender that he withdraw from areas in which he is not statutorily required to give service, and that he carefully consider whether the requirements of Anders versus California, 386 U.S. 738 (1967) can be met in a less time-consuming manner.

VII. It is our belief that a difficult situation is now on the way to resolution without the drastic steps proposed by the State Public Defender. The situation arose over an extended period of time, and will no doubt require a period of time for full rectification.

VIII. We point out to the legislature the fact that it is much more expensive to secure the representation of indigent defendants by the appointment of private counsel than by the use of the Office of the State Public Defender, and we suggest that more adequate funding of the office of the State Public Defender may well result in longer range economy.

For the reasons set forth above, it will be the policy of each of the undersigned Judges that the State Public Defender will not be relieved of his statutory obligation to represent indigent felony defendants in our respective divisions on the ground of case overload at this time. Naturally, we will continue to consider applications for appointment of private counsel on other grounds, such as conflict of interest, on a case-by-case basis.

Dated August 25, 1977.

BY THE COURT:

\_\_\_\_\_  
District Judge

\_\_\_\_\_  
District Judge

IN THE DISTRICT COURT  
IN AND FOR THE COUNTY OF WELD  
STATE OF COLORADO

IN RE THE COLORADO STATE  
DEFENDER

) PUBLIC DEFENDER'S MEMORANDUM PUBLIC  
) BRIEF IN SUPPORT OF REQUEST TO  
) DECLINE APPOINTMENTS AND TO  
) WITHDRAW FROM APPEALS  
)

INTRODUCTION

The Colorado State Public Defender's Office in Weld County has asked to withdraw from appeals and to decline new appointments due to the fact that its present caseload has already reached a point where the individual defenders are in danger of rendering ineffective assistance of counsel to their clients. Any further cases imposed upon these attorneys may well result in their rendering ineffective assistance to all of their clients and could cause such clients to be denied their constitutional rights to a speedy trial and an expeditious appeal. It is the position of the Public Defender's Office that cause to appoint private counsel has been shown pursuant to C.R.S. 1973, 21-1-105.

EFFECTIVE ASSISTANCE OF COUNSEL

Elementary considerations require that the defendant be entitled to the assistance of counsel. And the assistance of counsel encompasses the right to the assistance of effective counsel. The standard for measuring effective assistance of counsel has been variously stated by the Colorado Supreme Court. Thus, in LaBlanc versus People, 177 Colo. 250, 493 P.2d 1089 (1972), the Court stated that a defendant in challenging his representation "must demonstrate palpable malfeasance, misfeasance or nonfeasance." The "mockery sham or farce standard" though often enunciated by the Court has generally served as lip service only in cases involving trial strategy. Since LaBlanc, the Colorado Supreme Court has decided three cases finding counsel incompetent due to lack of trial preparation. People versus Moya, 180 Colo. 228, 512 P.2d 1155 (1973); White versus People, 514 P.2d 69 (1973); People versus Herrera & Romero, 534 P.2d 1199 (1975). A review of the cases in Colorado leads one to the conclusion that the Colorado Supreme Court will not tolerate actions taken by trial counsel when such actions are made without adequate information and preparation. Although not clearly enunciated in the opinions, the Colorado Supreme Court seems to have adopted the standard of reasonable competency with regard to trial preparation and investigation. Also see Kidder versus People, 115 Colo. 72, 169 P.2d 181 (1946). Other jurisdictions support this rule and in the Moya opinion the Court cited Moore versus United States, 432 F.2d 730 (3d Cir. 1970) and Brubaker versus Dickson, 310 F.2d 30 (9th Cir. 1962), both of which cases rested on a standard of normal competency. At the very least counsel is compelled by this standard to interview witnesses prior to trial and to call witnesses whose testimony could be relevant. The Herrera & Romera decision suggests that interviewing witnesses is one task that cannot be



delegated and must be done by the trial attorney himself. Therefore, it is clear that a trial attorney must personally investigate his cases, adequately prepare for trial, competently try a case, and must make himself available for all of these tasks. Obviously the amount of cases that an attorney has relates in direct proportion to his ability to fulfill these obligations.

#### SPEEDY TRIAL AND EXPEDITIOUS APPEAL

The right of a defendant to a speedy trial and appeal also relates in direct proportion to the amount of cases that his attorney is handling. If a public defender's caseload, taken in conjunction with the turnover rate of his cases, is in excess of the statutory and regulatory provisions regarding speedy trial, and he in fact is being forced to ask for extensions of time in cases due to his caseload, he is denying his clients as well as the public the right to a speedy trial or appeal.

In Colorado, Rule 38(b)(1) and C.R.S. 1973, 18-1-405 require that a defendant be brought to trial within six months from the entry of the plea of not guilty. The right to a speedy trial is not only for the benefit of the accused but also for the protection of the public. Jaramillo versus District Court, 174 Colo. 561, 567, 484 P.2d 1219 (1971). The Colorado Commission on Criminal Justice Standards and Goals, Task Force Recommendations and Standards, Standard 9-2.2 recommends a reduction in the period of delay prior to trial from the present six months and also recommends that the time commence running "from the date of the arrest."

#### STANDARDS FOR MEASURING CASELOAD

Standards have been set forth by various public and quasi-public agencies concerning the workload of public defenders. The Colorado Commission on Criminal Justice Standards and Goals, Task Force Recommendations and Standards, Standard 5-11.2, Workload of Public Defenders, sets forth the following standard:

No public defender, officer, or individual attorney should accept a workload so great that in attempting to process it an individual client will be denied effective representation, or which the office or attorney is in imminent danger of violating any ethical canon governing the practice of law. To this end, the State Public Defender should have the responsibility of establishing a maximum workload formula for the staff he is provided. Such formula should be sufficiently specific and definite in application to objectively and credibly demonstrate when a workload is approached.

If the State Public Defender determines that because of excessive workload the assumption of additional cases or continued representation in previous accepted cases might reasonably be expected to lead to ineffective representation in cases handled by him, he should bring this to the attention of the court. If the court accepts such assertion the court should direct the public defender to refuse to accept or retain additional cases for representation by his office.

The National Advisory Commission on Criminal Justice Standards and Goals in their volume entitled, "Courts," Standard 13.12, also covers the workload of public defenders. That standard reads as follows:

The caseload of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.

For purposes of this standard, the term case means a single charge or set of charges concerning a defendant (or other client) in one court in one proceeding. An appeal or other action for post-judgment review is a separate case. If the public defender determines that because of excessive workload the assumption of additional cases or continued representation in previously accepted cases by his office might reasonably be expected to lead to inadequate representation in cases handled by him, he should bring this to the attention of the court. If the court accepts such assertions, the court should direct the public defender to refuse to accept or retain additional cases for representation by his office.

The basic difference between the Colorado and National Standards is that in the Colorado Standards the State Public Defender is to set the standards for caseload requirements. The Colorado Public Defender has adopted the National Standards.

#### ETHICAL CONSIDERATIONS

D.R. 2-1110 (b)(2) requires mandatory withdrawal when a lawyer "... knows or it is obvious that his continued employment will result in violation of a disciplinary rule ...." D.R. 6-101 requires a lawyer to act completely with adequate preparation and without neglect. D.R. 7-101 requires that a lawyer represent a client zealously. Included within this rule is the requirement that a lawyer may not intentionally prejudice or damage his client during the course of the professional relationship. D.R. 7-101 (3); People versus Hoyer, 176 Colo. 188, 489 P.2d 1042 (1971). If a lawyer's caseload dictates that he cannot adequately prepare his cases nor render effective counsel or that his actions may require a waiver of his client's right to a speedy trial he will be subject to disciplinary proceedings. Under such circumstances the Court must allow a lawyer to withdraw from cases until the lawyer's caseload has reached the point where he can competently represent his clients.

A lawyer should not accept more employment than he can discharge within the spirit of the constitutional mandate for speedy trial and the limits of his capacity to give each client effective representation. ABA Standards Relating to the Defense Function 1.2(d).

As required by the disciplinary rules and Colorado Standards, and pursuant to C.R.S. 1973, 21-1-195, the State Public Defender has now brought the matter to

the attention of this court. The Standards set an absolute maximum of cases and no attorney should be required to handle any more cases than the Standards set forth.

### THE CASELOAD

The remainder of this brief will concern itself with summarizing court actions in other jurisdictions regarding public defender caseload.

In U.S. versus Chatman, D.C. Super. Ct. 5771, 15 Crim. L. 2157 (D.C. Super. Ct. 1974) the District of Columbia's Superior Court found that the originally appointed counsel for two defendants charged with second degree burglary were "simply not capable of rendering diligent and conscientious representation." The standard used by that court was 120 felony cases per year. Counsel for Mr. Chatman had 51 pending criminal cases. Counsel for Mr. Crawford, the other defendant in the case, had 58 active cases. Moreover, Crawford's lawyer handled 174 appointed cases between April 1973 and March 1974. (More than 50 cases over the guideline.) Crawford's attorney handled as many, if not more, clients in retained cases during that period. The Court found that other competent counsel were not available to represent the two defendants in this action. The Court considered Chief Justice Burger's statements that "the high purposes of the Criminal Justice Act will be frustrated unless qualified advocates are appointed to represent the indigent." Burger, Special Skills of Advocacy; Are Specialized Training and Certification Essential to our System of Justice? 27 Ford. L. Rev. 227 (1973). The Court noted that the Chief Justice also recognized that "qualified advocates" is not synonymous with "the regulars" who wait in the courtroom for appointments and undertake the representation of far more defendants than they can effectively defend. The D.C. Court stated that it would be unreasonable to appoint members of the bar whose trial experience is minimal or nonexistent, and that any request on the part of the Government for open continuances would also be unreasonable. The D.C. Court then took the ultimate action of dismissing the charges against the two defendants due to the failure of the system to provide available competent counsel for these defendants.

In Bradshaw versus Ball, 487 S.W.2d 294 (Ct. of App., Ky. 1972) a consolidated action was brought for judgment directing the Commissioner of Department of Finance or State to pay awards for attorneys' fees to persons who had served as court-appointed attorneys in criminal cases. The fees were not awarded but the Kentucky Appellate Court ruled that Kentucky attorneys would no longer be required to accept court appointments to represent indigent criminal defendants and would not be subject to sanction if they declined such appointments. Kentucky previously had a system wherein counsel were appointed but were not compensated by the Court. The opinion noted that the Kentucky Public Defender Act appeared to provide means adequate to observe the required standards for providing defense counsel to indigent defendants. The Court recognized the need for such action under Gideon versus Wainwright, 372 U.S. 335 (1963) and its progeny. The Court also noted that:

In the context presented, we are persuaded that it is the duty of the Executive Department to enforce the criminal laws, and it is the duty of the Legislative Department to appropriate sufficient funds to enforce the laws which they have enacted. The proper duty of judiciary in the constitutionally ideal sense, is neither to enforce laws or

appropriate money. The judiciary reason for existence is to adjudicate.

The primary point of this case is that criminal defendants are entitled to effective representation of counsel. By analogy to this case, if the public defenders cannot provide effective representation of counsel, they should not be required by the courts to represent any more indigent defendants than can be handled competently.

In Lidga versus Superior Court of Solano County, 5 Cal. App. 3d 811, 85 Cal. Rptr. 744 (1970), the public defender moved for a Writ of Prohibition to require the vacation of an order directing a deputy public defender to attend trial of a criminal defendant and to assist him through sentencing. The matter revolved around the defendant's desire to represent himself and the desire of the Court to have a public defender present. Again, the Court noted the right of defendant to counsel and to the effective assistance of counsel. Powell versus Alabama, 287 U.S. 445, 72 (1932). The Court also noted that under the California Public Defender legislation a public defender is required to defend a client and the word "defense" is clearly interpreted as embracing "the assistance of counsel for his defense" as specified in the Sixth Amendment. Finally, the Court in noting that a public defender not only serves as an attorney, but is an administrative officer of the Court, formulated the following proposition:

When a public defender reels under a staggering workload, he need not animate the competitive instinct of a trial judge by resistance to or defiance of his assignment orders to the public defender .... The public defender should proceed to place the situation before the judge, who upon a satisfactory showing, can relieve him and order the employment of private counsel ... at public expense. Such relief, of necessity, involves a constitutional injunction to afford a speedy trial to the defendant. Boards of supervisors face the choice of either funding the cost of feeding, housing, and controlling a prisoner during postponement of trials; or making provision of funds, facilities, and personnel for a Public Defender's Office adequate for the demands placed upon him.

This case recognizes that both the right to a speedy trial and to effective assistance of counsel are directly related to an attorney's caseload and that those constitutional interests prevail in the face of monetary influences.

In Iacona versus United States, 343 F. Supp. 600 (E. D. Penn. 1972) proceedings on a motion to convene a three-judge court to hear a request for injunction against prosecutions was brought; however, the motion for the three-judge court failed. The Court considered several questions raised by the defendant but then came to the issue brought forward by the Defender's Association of Philadelphia:

Finally, the Plaintiff Defender's Association of Philadelphia has raised an additional objection. It alleges that it is overburdened by the many prosecutions, pending and threatened, under the Act. At the oral argument of the motion to convene a three-judge court, the Defender's Association indicated a fear that some defendants who are

innocent may find it necessary to plead guilty because of the burden and pressures under which the Defender's Association is operating. This allegation does not provide a basis for equitable relief; that Defender's Association may at any time decline an appointment and should decline to accept an appointment if the association is not in a position to properly defend the action. There is an alternative; private counsel may be appointed under the Criminal Justice Act to represent the indigent accused.

Therefore, although the motion for a three-judge court was denied in this case, the Court held unequivocally that a public defender association may decline an appointment under circumstances where it is overburdened.

The most apposite of all cases is Wallace versus Kern, 392 F. Supp. 834 (E. D. N. Y. 1973), vacated on jurisdictional grounds, 481 F.2d 621 (2d Cir. 1973). In that case a federal district judge ordered the New York Legal Aid Society to refrain from accepting additional cases until the average caseload per attorney was reduced to 40 pending felony cases:

The Court is convinced, and finds, that an average caseload of 40 felony indictments pending in a trial part strains the utmost capacity of a Legal Aid attorney under existing conditions, that the present average caseload is substantially in excess of that number, and that acceptances of any additional felony indictments by Legal Aid would prevent it from affording its existing clients their constitutional right to counsel.

This case was reversed on constitutional grounds, but not on the merits, the Second Circuit holding that because the Legal Aid Society was a private organization there was no "state action" warranting federal intervention. The Second Circuit added, however, that "the members of this panel were entirely sympathetic with the purposes which the district judge sought to accomplish by his order." 481 F.2d at p. 622. The Wallace case, therefore, stands as both condemnation of overburdened defender systems and an affirmation that the right to effective assistance of counsel requires reasonable caseload standards.

CONCLUSION

The public defender has shown that without an order granting his request to decline appointments, his clients will be denied their constitutional right to effective assistance of counsel. Furthermore to force a public defender to accept an unreasonable caseload would also cause that attorney to subject himself to possible disciplinary proceedings. Such circumstances make mandatory an order granting leave to decline appointments. The Public Defender's Office, therefore, prays that this Court grant the request to decline future appointments until such a time as the Public Defender's caseload comports with prescribed standards.

Respectively submitted,

HADDON, MORGAN & SHELLEY

By

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Harold A. Haddon, No. 1596  
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Defender's Office  
350 Equitable Building  
730 Seventeenth Street  
Denver, Colorado 80202  
Phone: 629-1327

IN THE SUPREME COURT  
FOR THE STATE OF COLORADO

No. \_\_\_\_\_

ROLLIE ROGERS as State Public )  
Defender; THE STATE PUBLIC DEFENDER, )  
an agency of the State of Colorado; )  
LEE J. BELSTOCK as Director of the )  
Appellate Division, State Public )  
Defender; BRYAN SHAHA, CARY LACKLAN, )  
and JOHN RICHILANO, as Deputy Public )  
Defenders of the Greeley Office of )  
the State Public Defender; and )  
THEODORE DASHNAW, RUBEN LOPEZ, )  
WILLIAM HUNT, and MELVIN BELL, )

Petitioners, )

versus

THE DISTRICT COURT IN AND FOR THE )  
NINETEENTH JUDICIAL DISTRICT, STATE )  
OF COLORADO, and ROBERT A. BEHRMAN )  
and HUGH H. ARNOLD, two of the )  
judges thereof, )

Respondents. )

PETITION FOR RELIEF IN THE NATURE OF A WRIT  
OF PROHIBITION AND MANDAMUS

ATTORNEYS FOR PETITIONERS:

Harold A. Haddon, No. 1596  
Bryan Morgan, No. 3388  
3350 Equitable Building  
730 Seventeenth Street  
Denver, Colorado 80202  
Phone: 629-1327

The above-named Petitioners respectfully pray that this Court assume jurisdiction of this cause and order the Respondents to show cause why the relief prayed for herein should not be granted. As grounds for this Petition, the following is alleged.

1. Petitioners Theodore Dashnaw and Ruben Lopez are persons accused of felony crimes in the District Court for the Nineteenth Judicial District and have requested that counsel be appointed to represent them. Petitioners William Hunt and Melvin Bell have been convicted of felony crimes at the trial court level in the Nineteenth Judicial District and have requested that counsel be appointed to represent them on appeal.

2. Petitioner Rollie R. Rogers is the Colorado State Public Defender. Petitioner Lee Belstock is the head of the Appellate Division of the Public Defender's Office. Petitioners Bryan Shaha, Cary Lacklan and John Richilano are Deputy Public Defenders assigned to the Nineteenth Judicial District.

3. Respondents Hugh H. Arnold and Robert A. Behrman are District Judges in the Nineteenth Judicial District, State of Colorado.

4. Acting on administrative order from Petitioner Rogers, Petitioners Shaha, Lacklan and Richilano requested Respondents to appoint private counsel to represent the above-named criminal defendants. The ground for this request was that due to an excessive caseload, the Public Defender's Office was so understaffed that its attorneys could not render effective assistance of counsel to these defendants.

5. On August 23, 1977, a hearing was held before the Respondents on the request to appoint private counsel. At this hearing, the following facts were proven:

A. The Public Defender's Office in the Nineteenth Judicial District is staffed by three attorneys, one secretary, and a part-time investigator.

B. The total pending caseload of these three public defenders is 469 cases.

C. Each of these public defenders will handle the equivalent of at least 215 felony cases in fiscal year 1977-78 if they continue to accept appointments at the present rate.

D. The individual public defenders are of the opinion and have so testified under oath, that because of their excessive caseloads, they are presently rendering ineffective assistance of counsel to their clients.

E. Rollie E. Rogers, the State Public Defender, has directed the deputy defenders to request the appointment of private counsel until their caseloads are reduced to felony equivalent of 150 cases per year.

F. The 150-case standard is a maximum figure derived from Petitioner Roger's experience in administering the Colorado Public Defender system and from Standard 13.12, National Advisory Commission on Criminal Justice Standards and Goals, which provides as follows:



The caseload of a public defender office should not exceed the following: Felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; ... and appeals per attorney per year: not more than 25.

G. The caseload of the appellate division of the Public Defender's Office is so great that in the opinion of Petitioner Belstock and the Chief Judge of the Colorado Court of Appeals, the Appellate Division is presently rendering ineffective assistance of counsel.

H. In the opinion of several attorneys engaged in the private practice of criminal law, a caseload in excess of 75 felonies per year is too great for an attorney to competently handle and render effective assistance of counsel.

I. The Public Defender's Office has a statewide caseload which is so excessive that transfer of attorneys to other offices will not alleviate the problem.

6. On August 25, 1977, the Respondents denied the request to appoint private counsel in the pending felony cases and in the felony appeals described in paragraph 1, above. The Respondents cited, as their reason for denying this request, a finding that "there is not now any local emergency." The Respondents further found that "a problem does exist in the local Office of the State Public Defender in that that Office appears to be understaffed." Another district judge in the Nineteenth Judicial District considered the same evidence and granted similar motions to withdraw approximately ten days before this hearing.

7. The ruling of the Respondents constitutes an abuse of discretion and is in excess of their jurisdiction for the following reasons:

A. The caseload of the public defenders is excessive and results in ineffective assistance of counsel. The criminal defendants who are Petitioners herein have a right to effective assistance of counsel pursuant to Article II, Section 6 of the Colorado Constitution; and they have the right to equal protection of the laws pursuant to the Fourteenth Amendment to the United States Constitution. These rights are denied them because of the public defender's excessive caseload.

B. The caseload standards ordered by Petitioner Rogers are reasonable and it is within his inherent power as an attorney and as State Public Defender, and is mandated by his duties as such, to direct his deputies to decline appointments where there is a substantial possibility that they will render ineffective assistance of counsel. See D. R. 2-1110 (b)(2), 7-101(3) and 7-101 Code of Professional Responsibility. Pursuant to ABA Standards Relating To The Defense Function Section 1.2(d),

A lawyer should not accept more employment than he can discharge within the spirit of the constitutional mandate for speedy trial and the limits of his capacity to give each client effective representation.

C. The Respondents had no discretion to refuse the request to appoint private counsel under the circumstances proven, because the courts have a constitutional duty to do so where the public defender's caseload is excessive. See Ligda versus Superior Court of Solano County, 85 Cal. Rptr. 744 (Cal. App. 1970); Iacona versus United States, 343 F. Supp. 600 (E.D. Pa. 1972); Wallace versus Kern, 392 F. Supp. 834 (E.D.N.Y. 1973), vacated on jurisdictional grounds, 481 F.2d 621 (2d Cir. 1973).

D. Budgetary limitations imposed upon the public defender are constitutionally invalid if they cause the public defender to render ineffective assistance of counsel. The right to effective assistance is fundamental and the legislature has the ministerial duty to provide the funding necessary to insure this right. Gideon versus Wainwright, 372 U.S. 225, 83 S. Ct. 792 (1963); Argersinger versus Hamlin, 407 U.S. 25, 92 S. Ct. 2006 (1972); In Re Gault, 387 U.S. 1, 87 S. Ct. 1428 (1967); see Bradshaw versus Ball, 487 S.W.2d 294 (ky. 1972) (legislature has duty to appropriate sufficient funds for counsel appointed to represent indigents); Smith versus Miller, 153 Colo. 35, 384 P.2d 738 (1963) (courts have inherent power to set salaries of judicial employees and county commissioners must approve them); United States versus Chatman, 15 Crim. Law Rptr. 2157 (D.C. Superior Ct. 1974) (indigent felony cases dismissed where public defender is overburdened and no competent private counsel available).

E. The relief requested by Petitioners below, and in this Court, does not seek additional funding for the Public Defender, but solely a withdrawal from current cases. This relief has been expressly authorized by statute in Colorado, to wit:

For cause, the court may, on its own motion or upon the application of the State Public Defender or the indigent person, appoint an attorney other than the State Public Defender to represent the indigent person at any stage of the proceedings or on appeal. C.R.S. 1973, 21-1-105, as amended.

8. This situation alleged in this Petition is a matter of great and immediate public necessity. No plain, speedy or adequate remedy exists other than the invocation, by this Court, of its supervisory powers by means of original jurisdiction.

This Court has, in recent past, granted relief in the nature of prohibition in the exercise of its supervisory powers in spite of the fact that the trial court did not act clearly in excess of its jurisdiction, when a precedent for settling future controversies was needed for the trial courts of the state. See Cameron versus District Court, \_\_\_\_\_ Colo. \_\_\_\_\_, 565 P.2d 925 (1977); Rocky Mountain Association of Credit Management versus District Court, \_\_\_\_\_ Colo. \_\_\_\_\_, 565 P.2d 1345 (1977).

As shown by the evidence presented in the Nineteenth Judicial District, the excessive caseload is a statewide problem for the State Public Defender, and the issues posed by this litigation can be most efficiently resolved now, rather than in the context of numerous post-conviction applications for relief. We submit the issues posed for review are at the heart of the orderly administration of criminal justice in the State of Colorado, and should be resolved at the earliest opportunity.

WHEREOF, Petitioners pray for the following relief:

1. That this Court issue an Order and Rule to Show Cause directed to the Respondents, requiring them to show cause why the relief herein requested should not be granted; and
2. That this Court enter an Order directing the Respondents to appoint private counsel for the criminal defendants who are party to this proceeding; and
3. That this Court enter an Order directing the Respondents to appoint private counsel for all indigent persons accused of crime in the Nineteenth Judicial District until such time as the Public Defender's caseload has been reduced to the point where his deputies can render effective assistance of counsel.

Respectfully submitted,

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Harold A. Haddon, No. 1596

---

Bryan Morgan, No. 3388

Attorneys for Petitioners  
350 Equitable Building  
730 Seventeenth Street  
Denver, Colorado 80202  
Phone: 629-1327

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on August 30, 1977, a copy of this Petition was mailed to the Respondents named herein, at the Weld County District Court, Weld County Courthouse, Post Office Box 789, Greeley, Colorado 80631; and a copy thereof hand-delivered to David Robbins, Esq., Office of the Attorney General, State of Colorado, 1525 Sherman Street, Third Floor, Denver, Colorado 80203.

IN THE DISTRICT COURT  
IN AND FOR  
THE COUNTY OF WELD  
AND THE STATE OF COLORADO

Civil Action No. \_\_\_\_\_ Div. \_\_\_\_\_

ROLLIE ROGERS, State Public Defender )  
THE STATE PUBLIC DEFENDER, an agency )  
of the State of Colorado; and BRYAN )  
SHARA, CARY LACKLAN, and JOHN )  
RICHILANO, Deputy Public Defenders of )  
The Greeley Office of the State Public )  
Defender System, )

Plaintiffs, )

SUMMONS )

vs. )

ROBERT A. BEHRMAN, HIGH H. ARNOLD, and )  
JONATHAN W. HAYS, as the District Judges )  
in and for the Nineteenth Judicial District )  
of Colorado; and ALVIN A. BORG, JR., SCOTT )  
CLUGSTON, and WILLIS K. KULP, as County )  
Judges in and for the Nineteenth Judicial )  
District of Colorado, )

Defendants. )

THE PEOPLE OF THE STATE OF COLORADO  
TO THE ABOVE NAMED DEFENDANTS, GREETING:

You are hereby summoned and required to file with the clerk an answer to the complaint within 20 days after service of this summons upon you. If you fail so to do, judgment by default will be taken against you for the relief demanded in the complaint.

If service upon you is made outside the State of Colorado, or by publication, or if a copy of the complaint not be served upon you with this summons, you are required to file your answer to the complaint within 30 days after service of this summons upon you.

Warning: If this summons does not contain the docket number of the civil action, then the complaint may now now be on file with the clerk of the court. The complaint must be filed within ten days after the summons is served, or the action may be dismissed without notice upon your proper request to the court. Information from the court concerning this civil action may not be available until ten days after the summons is served.

This is an action\* for declaratory judgment and injunctive relief as more fully described in the Complaint attached hereto.

Dated August 12, \_\_\_\_\_, 19 77

HADDON, MORGAN & SHELLEY

\_\_\_\_\_  
Clerk of said Court

By \_\_\_\_\_  
Attorney for Plaintiff

By \_\_\_\_\_  
Deputy Clerk

Harold A. Haddon, No. 1596  
730 17th Street, Suite 350  
Address of Attorney  
Denver, Colorado 80202  
Phone: 629-1327

(Seal of Court)

\*This summons is issued pursuant to Rule 4, C.R.C.P., as amended. If the summons is published or served without a copy of the complaint after the word "action" state the relief demanded. If body execution is sought the summons must state. "This is an action founded upon tort".

IN THE DISTRICT COURT  
 IN AND FOR THE COUNTY OF WELD  
 STATE OF COLORADO

Civil Action No. \_\_\_\_\_

ROLLIE ROGERS, State Public  
 Defender; THE STATE PUBLIC  
 DEFENDER, an agency of the  
 State of Colorado; and BRYAN  
 SHAHA, CARY LACKLAN, and JOHN  
 RICHILANO, Deputy Public  
 Defenders of the Greeley  
 Office of the State Public  
 Defender System,

Plaintiffs,

vs.

ROBERT A. BEHRMAN, HUGH H.  
 ARNOLD, and JONATHON W. HAYS,  
 as the District Judges in and  
 for the Nineteenth Judicial  
 District of Colorado; and ALVIN  
 A. BORG, JR., SCOTT CLUGSTON,  
 and WILLIS K. KULP, as County  
 Judges in and for the Nineteenth  
 Judicial District of Colorado,

Defendants.

COMPLAINT FOR  
 DECLARATORY JUDGMENT AND  
 INJUNCTIVE RELIEF

COME NOW the Plaintiffs, by and through their attorneys, Haddon, Morgan & Shelly, and as grounds for relief allege the following:

GENERAL ALLEGATIONS

1. Rollie R. Rogers is an attorney licensed to practice in the State of Colorado, the duly-appointed State Public Defender of the State of Colorado, and as such, is responsible for the discharge of all duties and responsibilities of the State Public Defender prescribed by state statutes, by the Colorado and United States Constitutions and by the Code of Professional Responsibility in representing indigent persons accused of crimes.

2. Bryan Shaha, Cary Lacklan, and John Richilano are attorneys licensed to practice in the State of Colorado, are duly-appointed Deputy State Public Defenders for the Nineteenth Judicial District of Colorado in the Greeley regional office of the State public defender system, and are similarly responsible for discharging all duties and responsibilities prescribed by state statutes, by the Colorado and United States Constitutions, and by the Code of Professional Responsibility in representing indigent criminally-accused persons in the Nineteenth Judicial District of Colorado.

3. Among the duties and responsibilities prescribed for Plaintiffs are:

(a) The Sixth Amendment to the United States Constitution, which provides: "In all criminal prosecutions the accused shall enjoy the right ... to have the assistance of counsel for his defense."

(b) Article II, Section 16 of the Colorado Constitution, which provides: "In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel ...."

(c) C.R.S. Section 21-1-104 (1973), which provides:

(1) When representing an indigent person, the state public defender shall:

(a) Counsel and defend him, whether he is held in custody, filed on as a delinquent, or charged with a criminal offense or municipal code violation at every stage of the proceedings following arrest, detention, or service of process; and

(b) Prosecute any appeals or other remedies before or after conviction that he considers to be in the interest of justice.

(d) Ethical Consideration 2-30 of the Code of Professional Responsibility adopted by the Colorado Supreme Court, which provides: "Employment should not be accepted by a lawyer when he is unable to render competent service ...."

(e) Disciplinary Rule 6-101 of the Code of Professional Responsibility, which provides: "(A) A Lawyer shall not: ... (2) Handle a legal matter without preparation adequate in the circumstances, (3) Neglect a legal matter entrusted to him."

4. The Defendants in this cause are the duly-appointed district and county judges of the Nineteenth Judicial District of Colorado, generally charged with responsibility for the administration of justice therein, and specifically charged with the responsibility of appointing Plaintiffs to represent the indigent criminally accused persons brought before their respective district and county courts, both for trials and for appeals from final judgments of conviction.

**FIRST CLAIM FOR RELIEF**  
**(Injunction/Supervisory Powers)**

1. Plaintiffs repeat and reallege all general allegations herein before set forth.

2. Plaintiff Rogers, in the discharge of his duties, has prescribed maximum caseload standards for deputy public defenders to secure the effective representation of counsel for the indigent ~~criminally-accused~~, all as required by constitutional, statutory, and professional responsibility mandates.

3. The maximum caseload standards are reasonable and have been determined by Plaintiff Rogers from his lengthy experience as a trial lawyer and as the chief administrator for the past seven years of the state public defender system, and by reference to various national and state studies and recommendations.

4. The caseload presently assigned to Plaintiffs Shaha, Lacklan, and Richilano, each deputy public defenders in the Greeley regional office, and to the appellate division of the State Public Defender's Office, greatly exceeds the maximum caseload standard, and based on reasonable projections of future case intakes and disposition rates, will continue to do so for the indefinite future.

5. Plaintiff Rogers has sought to remedy the excessive caseload problem by requesting additional funds from the legislature for more deputy public defenders, and by all reasonable and practical internal administrative efforts, but represents to the Court that relief from the excessive caseload problem cannot be obtained by any of these methods.

6. Plaintiffs state that the excessive caseload prevents Plaintiffs from giving the effective assistance of counsel to their clients, and places Plaintiffs in jeopardy of violating the requirements of the Code of Professional Responsibility.

7. Plaintiffs further state that the excessive caseload assigned to them may render any conviction or legal prejudice suffered by their clients vulnerable to post-conviction or collateral attack on the grounds of ineffective assistance of counsel.

8. C.R.S. Section 21-1-105 (1973) provides that this Court may appoint attorneys other than the public defender to represent indigent persons, on application of the public defender and for cause shown.

9. Plaintiff Shaha has recently been cited for contempt of court by one of the Defendants herein for refusing to accept an appointment of representation on the grounds of his excessive caseload. All Plaintiffs will, in the immediate future, again be placed in substantial jeopardy of contempt citations, as their duties require them to appear daily in the courts of the Defendants. To reduce their excessive caseloads to a reasonable level allowing them to render effective representation, Plaintiff Rogers has promulgated reasonable standards, and Plaintiffs Shaha, Lacklan, and Richilano must and will decline new appointments, both at the trial level and on appeal.

10. Plaintiffs have no reasonable, speedy, and adequate remedy in the ordinary course of law whereby they can discharge their respective duties as enumerated herein, before controversies with regard to those duties lead to the invasions of rights or the risk of additional contempt citations and the injury to Plaintiffs will be irreparable.

WHEREFORE, Plaintiffs pray that the Court:

(1) Enter an order in the exercise of its powers of supervision to assure the orderly administration of justice prohibiting all judges of the Nineteenth Judicial District of Colorado from appointing the State Public Defender to represent any new clients, at trial level or on appeal, until such time as Plaintiffs represent to the Court that the caseload is within the standards set by the State Public Defender, and new clients can be effectively represented;

(2) Or, in the alternative, grant an injunction, applicable to all judges of the Nineteenth Judicial District of Colorado, enjoining them from appointing the state public defender to represent any new clients, on appeal or at the trial level, until such time as Plaintiffs represent to the Court that the caseload is within the standards set by the State Public Defender, and new clients can be effectively represented.

#### SECOND CLAIM FOR RELIEF: DECLARATORY JUDGMENT

1. Plaintiffs hereby repeat and reallege all general allegations of the First Claim for Relief.

2. On or about June 10, 1977, the state legislature enacted, and the Governor subsequently signed, a law of the State of Colorado commonly known as the General Appropriations for the State Public Defender for Fiscal Year 1977-78. A copy of the relevant portions of this legislation is attached as Exhibit A to this Complaint, and is hereby incorporated by reference as if fully set forth herein.

3. The legislative history of this Act, and particularly the official narrative document explaining the legislation, specifies that the appropriation for the State Public Defender is based upon the requirement that all assistant and Deputy Public Defenders shall carry and dispose of a certain caseload. A copy of the narrative document is attached as Exhibit B to this Complaint, and hereby incorporated by reference as if fully set forth herein.

4. The State Public Defender's caseload requirement established by this Act significantly exceeds the State Public Defender's promulgated maximum caseload for effective representation of his clients, was established in an arbitrary and capricious manner without rational relationship to the requirement of effective representation of clients, and the legislature by attempting to establish it usurped and unlawfully invaded the province of the State Public Defender.

5. The State Public Defender's caseload requirement established by this Act further constitutes, on its face and as applied, a derogation of the State Public Defender's present and future clients' federal and state Constitutional rights to effective representation by counsel in criminal proceedings, in that:



a. Under the Act, the State Public Defender is required to dilute the effectiveness of his representation of his current clients by taking additional cases to the excessive caseload level established by the Act;

b. Under the Act, the State Public Defender is required to carry the excessive caseload level established by the Act for the rest of the current fiscal year; or until June 30, 1978;

c. The State Public Defender cannot provide effective representation to the number of clients contemplated by the excessive caseloads established by the Act.

6. If the State Public Defender seeks to withdraw from, or declines to accept, new trial or appellate level cases so that the caseload is not in his judgment excessive, the State Public Defender will violate the requirements of the Act, and the Deputy Public Defenders will be in substantial jeopardy of contempt citations.

7. The Public Defender is bound by federal and state constitutional requirements, and by the Code of Professional Responsibility, to provide effective representation to his clients, acts in a judiciary relationship for his clients, and is the only party who can practically assert the constitutional rights of his clients, present and future, in these proceedings.

8. Plaintiff Shaha has recently been cited for contempt of court by one of the Defendants herein for refusing to accept an appointment of representation on the grounds of his excessive caseload. All Plaintiffs will, in the immediate future, again be placed in substantial jeopardy of contempt citations, as their duties require them to appear daily in the courts of the Defendants. To reduce their excessive caseloads to a reasonable level allowing them to render effective representation, Plaintiff Rogers has promulgated reasonable standards, and Plaintiffs Shaha, Lacklan, and Richilano must and will move to withdraw from certain cases, and they must and will decline new appointments, both at the trial level and on appeal.

9. Plaintiffs have no reasonable, speedy, and adequate remedy in the ordinary course of law whereby they can discharge their respective duties as enumerated herein, before controversies with regard to those duties lead to the invasions of rights or the risk of additional contempt citations and the injury to Plaintiffs will be irreparable.

10. Plaintiffs' rights, status, and other legal relations, specifically their professional responsibilities, reputations, and their duties to their clients, are thereby directly affected by the statute in question herein, and they are entitled to a determination of the validity of the statutes and a declaration of their rights, status, and legal obligations thereunder.

11. The State Attorney General has been served with a copy of these pleadings, pursuant to Rule 57(j), Colorado Rules of Civil Procedure, and is entitled to be heard herein.

WHEREFORE, Plaintiff Rogers prays that this Honorable Court by declaratory judgment construe and determine the validity of the statute mandating caseload requirements for the public defender system and the duties of the State Public

Defender, all as measured by the constitutional requirement of effective representation, and declare the rights, powers, duties, and liabilities of the State Public Defender, and further declare that insofar as the statute appropriating funds to the State Public Defender purports to establish mandatory and excessive caseload requirements, said statute is unconstitutional.

Respectfully submitted,

HADDON, MORGAN & SHELLEY

By

---

Harold A. Haddon, No. 1596  
Attorneys for Plaintiffs  
350 Equitable Building  
730 Seventeenth Street  
Denver, Colorado 80202  
Phone: 629-1327

IN THE DISTRICT COURT  
IN AND FOR THE COUNTY OF WELD  
STATE OF COLORADO

Civil Action No. \_\_\_\_\_

ROLLIE ROGERS, State Public Defender; )  
THE STATE PUBLIC DEFENDER, an agency of )  
the State of Colorado; and BRYAN SHAHA, )  
CARY LACKLAN, and JOHN RICHILANO, )  
Deputy Public Defenders of the Greeley )  
Office of the State Public Defender )  
System, )

Plaintiffs, )

versus )

ROBERT A. BEHRMAN, HUGH H. ARNOLD, and )  
JONATHON W. HAYS, as the District Judges )  
in and for the Nineteenth Judicial )  
District of Colorado; and ALVIN A. BORG, JR., )  
SCOTT CLUGSTON, and WILLIS J. KULP, as County )  
Judges in and for the Nineteenth Judicial )  
District of Colorado, )

Defendants. )

NOTICE OF CLAIM  
OF UNCONSTITUTIONALITY

To: John D. MacFarlane, Esq.  
Attorney General of the State of Colorado

Please take notice that the named Plaintiffs in the above-captioned action have claimed, pursuant to the Complaint attached hereto, that a portion of the general appropriation bill for the 1977-78 fiscal year is unconstitutional as more fully set forth in the Second Claim for Relief.

Dated: August 12, 1977.

Respectfully submitted,

HADDON, MORGAN & SHELLEY

By \_\_\_\_\_

Harold A. Haddon, No. 1596  
Attorneys for Plaintiffs  
350 Equitable Building  
730 Seventeenth Street  
Denver, Colorado 80202  
Phone: 629-1327

CERTIFICATE OF HAND DELIVERY

I hereby certify that on this 12th day of August, 1977, a true and correct copy of the above and foregoing Notice of Claim of Unconstitutionality was hand-delivered to the office of John D. MacFarlane, Esq., Attorney General of the State of Colorado, 1525 Sherman Street, Third Floor, Denver, Colorado.

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IN THE DISTRICT COURT  
 IN AND FOR THE COUNTY OF WELD  
 STATE OF COLORADO

Civil Action No. \_\_\_\_\_

ROLLIE ROGERS, State Public  
 Defender; THE STATE PUBLIC  
 DEFENDER, an agency of the  
 State of Colorado; and BRYAN  
 SHAHA, CARY LACKLAN, and JOHN  
 RICHILANO, Deputy Public  
 Defenders of the Greeley  
 Office of the State Public  
 Defender System, )

Plaintiffs, )

versus )

ROBERT A. BEHRMAN, HUGH H.  
 ARNOLD, AND JONATHON W. HAYS,  
 as the District Judges in and  
 for the Nineteenth Judicial  
 District of Colorado; and ALVIN  
 A. BORG, JR., SCOTT CLUGSTON,  
 and WILLIS K. KULP, as County  
 Judges in and for the Nineteenth  
 Judicial District of Colorado, )

Defendants. )

APPLICATION FOR  
 PRELIMINARY INJUNCTION AND  
 FOR ADVANCEMENT AND  
 CONSOLIDATION OF INJUNCTION  
 HEARING WITH  
 TRIAL ON THE MERITS

COME NOW the Plaintiffs, by and through their attorneys, Haddon, Morgan & Shelley, and pursuant to Rule 65 of the Colorado Rules of Civil Procedure, hereby apply to this Court for a preliminary injunction, to be heard at the earliest possible date, and for advancement and consolidation of trial on the merits in this cause with the hearing on the preliminary injunction. As grounds therefore, Plaintiffs show the Court:

1. A Complaint has been filed herein, and the allegations thereof and relief requested herein indicate the issues to be decided by this Court are of grave import for the orderly administration of justice in the Nineteenth Judicial District of the State of Colorado.

2. Until such time as the issues are resolved, Plaintiffs are in substantial jeopardy of violating the Code of Professional Responsibility, or rendering ineffective assistance of counsel to their clients, and of contempt citations.

3. The injuries and harms recited above are irreparable.

WHEREFORE, Plaintiffs request this Court set a hearing forthwith for this applicaton for preliminary injunction, and further consolidate the hearing on the merits with the hearing on the injunction.

Respectfully submitted,

HADDON, MORGAN & SHELLEY

By

---

Harold A. Haddon, No. 1596  
Attorneys for Plaintiffs  
350 Equitable Building  
730 Seventeenth Street  
Denver, Colorado 80202  
Phone: 629-1327

Exhibit A

Community Corrections is funded at \$254,336, of which \$40,028 is for purchase of service from new community corrections programs and \$192,193 is for increased utilization of existing programs. The remaining \$22,115 funds the community corrections specialist and related expenses.

The recommendation for the Public Defender's office eliminates three lawyers on the basis of increased productivity achieved in 1975-76. The budgeted workload for 1977-78 is 14,652 felony equivalents. Clerical support is maintained at a continuing level. Investigative paralegal support is increased by one FTE for a total of 16 FTE: six of these are to be paralegals whose salaries are to be funded from a federal grant. No vacancy savings are taken on salaries.

Operating and travel expenses are adjusted for inflation, FTE, and workload. \$1,650 in operating expenses is for rental of an automatic typewriter. Capital outlay funds provide \$4,050 for five typewriters and seven file cabinets. Office space is provided at an average of approximately 170 square feet per FTE. Contractual services funds are at the requested level: of these funds, \$3,695 is provided to pay for 22% of the financial aid grants made to the CU law students working in the Boulder office. Training seminars are at requested level.

It is anticipated that Xerox services will continue to be supplied to the Public Defender's offices by the appropriate Judicial department and offices.

PUBLIC DEFENDER APPROPRIATIONS

Funds Type	Appropriations		Increase	
	1976-77	1977-78	Dollars	Percentage
General	\$2,781,961	\$2,785,824	\$ 3,863	.1%
Cash	53,246	48,543	(4,703)	(8.8%)
Federal	-0-	72,067	72,067	100.0%
Total	\$2,835,207	\$2,906,434	\$71,227	2.5%

Full-time employees for 1976-77 were 134; for 1977-78, they were 132.

**PUBLIC DEFENSE STATISTICS**

- A. Total general expenditures, and expenditure for criminal justice activities, by type of activity, State, and level of government, fiscal year 1975**
  
- B. Employment and payroll for public defense activities, by State and level of government, October 1971 - October 1975**

**Sourcebook of Criminal Justice Statistics,  
1977**



Sourcebook of Criminal Justice Statistics 1977

Total general expenditures, and expenditure for criminal justice activities, by type of activity, State, and level of government, fiscal year 1975.

(dollar amounts in thousands - represents zero or rounds to zero)

State and level of government	Total general expenditure	Total criminal justice system		Legal services and prosecution		Public defense	
		Amount	Percent of total general expenditure	Amount	Percent of total criminal justice system	Amount	Percent of total criminal justice system
States-local, total-----	\$170,119.961	\$15,060.987	8.9	\$755,851	5.0	\$193,253	1.3
States-----	138,302.913	5,321.378	3.8	219,247	4.1	73,127	1.4
Local, total-----	85,048.297	10,501.604	12.3	542,440	5.2	127,938	1.2
Counties-----	32,744.225	3,896.347	11.9	319,540	8.2	102,280	2.6
Municipalities-----	54,283.380	6,696.801	12.3	223,282	3.3	26,036	0.4
Alabama-----	2,303,895	149,497	6.8	6,424	4.3	1,396	0.9
State-----	2,049,795	64,070	3.1	3,097	4.8	1,243	1.9
Local, total-----	744,491	95,654	12.8	3,341	3.5	191	0.2
Counties-----	252,348	34,230	13.6	1,984	5.8	79	0.2
Municipalities-----	534,473	61,926	11.6	1,360	2.2	111	0.2
Alaska-----	979,189	67,877	6.9	5,588	8.2	1,304	1.9
State-----	797,754	56,327	7.1	4,070	7.2	1,302	2.3
Local, total-----	360,101	12,694	3.5	1,518	12.0	2	(d)
Boroughs-----	184,341	2,475	1.3	601	24.3		
Municipalities-----	177,915	11,958	5.7	917	7.7	2	(d)
Arizona-----	1,549,836	201,958	13.0	10,145	5.0	3,535	1.8
State-----	1,459,718	63,660	4.4	1,745	2.7		
Local, total-----	737,644	142,873	19.4	8,400	5.9	3,535	2.5
Counties-----	310,005	71,108	22.9	5,636	7.9	3,247	4.6
Municipalities-----	434,234	72,093	16.6	2,775	3.8	288	0.4
Arkansas-----	1,092,731	70,353	6.4	2,763	3.9	452	0.6
State-----	1,135,590	34,288	3.0	944	2.8	20	0.1
Local, total-----	300,629	40,792	13.6	1,829	4.5	475	1.2
Counties-----	135,162	18,652	13.8	1,176	6.3	474	2.5
Municipalities-----	166,828	22,599	13.5	655	2.9	8	(d)
California-----	18,131,786	2,234,343	12.3	137,385	6.1	40,255	1.8
State-----	15,271,687	636,845	4.2	21,628	3.4	1,878	0.3
Local, total-----	10,625,620	1,685,301	15.9	115,757	6.9	39,152	2.3
Counties-----	6,569,270	987,457	15.0	88,479	9.0	38,096	3.9
Municipalities-----	4,228,620	719,902	17.0	27,200	3.8	1,056	0.1
Colorado-----	1,854,008	188,406	10.2	12,876	6.8	2,977	1.6
State-----	1,616,188	84,322	5.2	2,760	3.3	2,794	3.3
Local, total-----	840,732	115,379	13.7	10,116	8.8	183	0.2
Counties-----	299,070	23,144	7.7	5,375	23.2	20	0.1
Municipalities-----	555,092	92,415	16.6	4,852	5.3	163	0.2
Connecticut-----	3,190,625	205,342	6.4	8,989	4.4	2,024	1.0
State-----	1,930,237	111,660	5.8	5,659	5.1	2,007	1.8
Local, total-----	1,715,113	99,831	5.8	3,480	3.5	17	(d)
Municipalities-----	1,750,200	100,034	5.7	3,480	3.5	17	(d)

Total general expenditures, and expenditure for criminal justice activities, by type of activity, State, and level of government, fiscal year 1975.

(dollar amounts in thousands - represents zero or rounds to zero)

State and level of government	Total general expenditure	Total criminal justice system		Legal services and prosecution		Public defense	
		Amount	Percent of total general expenditure	Amount	Percent of total criminal justice system	Amount	Percent of total criminal justice system
Delaware-----	\$ 510,072	45,341	8.9	1,949	4.3	560	1.2
State-----	514,979	32,377	6.3	1,346	4.2	540	1.7
Local, total-----	117,501	14,187	12.1	603	4.3	20	0.1
Counties-----	37,666	4,768	12.7	186	3.9	20	0.4
Municipalities-----	80,010	9,420	11.8	418	4.4		
District of Columbia-----	1,328,336	200,378	15.1	6,736	3.4	1,935	1.0
State-----	x	x	x	x	x	x	x
Local, total-----	1,328,366	200,378	15.1	6,736	3.4	1,935	1.0
Municipalities-----	1,368,780	200,378	14.6	6,736	3.4	1,935	1.0
Florida-----	4,985,835	634,052	12.7	29,541	4.7	10,068	1.6
State-----	4,528,405	268,454	5.9	20,741	7.7	9,041	3.4
Local, total-----	2,313,696	376,634	16.3	8,803	2.3	1,028	0.3
Counties-----	1,118,721	182,680	16.3	3,709	2.0	921	0.5
Municipalities-----	1,212,583	194,120	16.0	5,105	2.6	134	0.1
Georgia-----	2,956,316	282,758	9.6	10,632	3.8	2,854	1.0
State-----	2,764,481	115,805	4.2	3,478	3.0	1,316	1.1
Local, total-----	998,769	182,342	18.3	7,157	3.9	1,638	0.9
Counties-----	569,347	97,405	17.1	5,284	5.4	1,570	1.6
Municipalities-----	528,899	87,268	16.5	1,875	2.1	87	0.1
Hawaii-----	1,349,514	58,777	4.4	4,039	6.9	1,269	2.2
State-----	1,082,473	20,569	1.9	1,655	8.0	1,269	6.2
Local, total-----	295,270	39,745	13.5	2,384	6.0	3	(d)
Counties-----	74,755	10,354	13.9	644	5.9	3	(d)
Municipalities-----	220,515	29,397	13.3	1,770	6.0		
Idaho-----	553,416	40,979	7.7	2,357	5.8	681	1.7
State-----	536,390	18,348	3.4	628	3.4		
Local, total-----	153,457	23,928	15.6	1,729	7.2	681	2.8
Counties-----	98,475	13,158	13.4	1,248	9.5	685	5.2
Municipalities-----	73,487	11,066	15.1	481	4.3	1	(d)
Illinois-----	7,370,931	778,322	10.6	35,892	4.6	7,393	0.9
State-----	7,119,197	217,121	3.0	10,183	4.7	1,712	0.8
Local, total-----	2,811,203	589,564	21.0	27,204	4.6	5,681	1.0
Counties-----	16,923	172,166	23.1	18,133	10.5	5,660	3.3
Municipalities-----	2,114,513	423,997	20.1	9,072	2.1	21	(d)
Indiana-----	2,882,074	223,626	7.7	10,406	4.7	1,797	0.8
State-----	2,706,998	91,121	3.4	4,214	4.6	252	0.3
Local, total-----	1,275,938	146,431	11.5	6,232	4.3	1,545	1.1
Counties-----	544,022	48,797	9.0	3,479	7.1	1,335	2.7
Municipalities-----	751,446	97,923	13.0	2,761	2.8	214	0.2

## Sourcebook of Criminal Justice Statistics 1977

Total general expenditures, and expenditure for criminal justice activities, by type of activity, State and level of government, fiscal year 1975.

(dollar amounts in thousands - represents zero or rounds to zero)

State and level of government	Total general expenditure	Total criminal justice system		Legal services and prosecution		Public defense	
		Amount	Percent of total general expenditure	Amount	Percent of total criminal justice system	Amount	Percent of total criminal justice system
Iowa-----	\$1,968,287	125,689	6.4	6,607	5.3	1,736	1.4
State-----	1,770,611	54,040	3.1	1,836	3.4	18	(d)
Local, total-----	869,758	77,428	8.9	4,771	6.2	1,718	2.2
Counties-----	442,718	35,406	8.0	3,310	9.3	1,746	4.9
Municipalities-----	440,042	43,302	9.9	1,495	3.4		
Kansas-----	1,478,810	121,155	8.2	8,557	7.1	1,507	1.2
State-----	1,228,422	58,127	4.7	3,745	6.4	1,337	2.3
Local, total-----	604,728	69,869	11.6	4,813	6.9	170	0.2
Counties-----	256,009	30,518	11.9	3,376	11.1	153	0.5
Municipalities-----	379,982	40,589	10.7	1,438	3.5	18	(d)
Kentucky-----	2,120,812	154,555	7.3	9,074	5.9	1,083	0.7
State-----	2,032,510	67,785	3.3	4,007	5.9	1,890	2.8
Local, total-----	538,170	97,601	18.1	5,067	5.2	444	0.5
Counties-----	183,676	46,342	25.2	3,066	6.6	450	1.0
Municipalities-----	370,051	52,353	14.1	2,001	3.8	45	0.1
42 Louisiana-----	2,532,052	226,362	8.9	10,862	4.8	1,169	0.5
State-----	2,585,136	86,974	3.4	5,420	6.2		
Local, total-----	776,215	153,850	19.8	5,442	3.5	1,169	0.8
Parishes-----	333,507	62,609	18.8	2,784	4.4	691	1.1
Municipalities-----	470,860	91,527	19.4	2,667	2.9	484	0.5
Maine-----	857,188	45,911	5.4	2,020	4.4	411	0.9
State-----	736,675	25,300	3.4	1,423	5.6	150	0.6
Local, total-----	323,208	22,612	7.0	598	2.6	261	1.2
Counties-----	12,235	6,827	55.8	225	3.3	259	3.8
Municipalities-----	324,403	16,149	5.0	374	2.3	2	(d)
Maryland-----	4,924,111	346,097	7.0	12,977	3.7	5,579	1.6
State-----	3,136,475	190,250	6.1	1,791	0.9	5,569	2.9
Local, total-----	3,123,957	192,679	6.2	11,186	5.8	10	(d)
Counties-----	2,118,591	97,447	4.6	6,194	6.4	10	(d)
Municipalities-----	1,060,529	95,592	9.0	4,991	5.2		
Massachusetts-----	6,683,017	472,711	7.1	16,567	3.5	5,100	1.1
State-----	4,360,315	143,465	3.3	5,216	3.6	3,095	2.2
Local, total-----	4,169,978	345,327	8.3	11,355	3.3	2,083	0.6
Counties-----	129,579	68,172	52.6	2,883	4.2	2,074	3.0
Municipalities-----	4,174,804	278,911	5.7	8,472	3.0	9	(d)
Michigan-----	7,431,578	675,409	9.1	34,012	5.0	12,490	1.8
State-----	6,499,624	200,962	3.1	7,422	3.7	6,532	3.3
Local, total-----	3,181,356	513,311	16.1	26,593	5.2	11,437	2.2
Counties-----	1,224,834	191,686	15.6	17,254	9.0	9,559	5.0
Municipalities-----	2,102,570	328,763	15.6	9,384	2.9	1,878	0.6

Total general expenditures, and expenditure for criminal justice activities, by type of activity, State and level of government, fiscal year 1975.  
(dollar amounts in thousands - represents zero or rounds to zero)

State and level of government	Total general expenditure	Total criminal justice system		Legal services and prosecution		Public defense	
		Amount	Percent of total general expenditure	Amount	Percent of total criminal justice system	Amount	Percent of total criminal justice system
Minnesota-----	\$3,142,140	203,024	6.5	11,323	5.6	2,172	1.1
State-----	2,918,245	64,505	2.2	1,934	3.0	335	0.5
Local, total-----	1,615,262	148,760	9.2	9,389	6.3	1,838	1.2
Counties-----	854,050	71,500	8.4	5,544	7.8	1,920	2.7
Municipalities-----	809,090	79,962	9.9	3,858	4.8	113	0.1
Mississippi-----	1,439,665	87,209	6.1	3,581	4.1	594	0.7
State-----	1,433,630	43,440	3.0	1,788	4.1	594	1.3
Local, total-----	525,305	46,815	8.9	1,793	3.8	551	2.7
Counties-----	311,916	20,275	6.5	1,123	5.5	551	2.7
Municipalities-----	215,837	26,699	12.4	670	2.5	42	0.2
Missouri-----	2,569,004	272,022	10.6	11,350	4.2	2,067	0.8
State-----	2,219,820	86,276	3.9	1,551	1.8	1,781	2.1
Local, total-----	996,879	197,702	19.8	9,799	5.0	286	0.1
Counties-----	285,850	54,056	18.9	4,983	9.2	36	0.1
Municipalities-----	743,522	144,429	19.4	4,819	3.3	250	0.2
Montana-----	545,700	38,793	7.1	2,541	6.6	381	1.0
State-----	476,517	16,858	3.5	655	3.9	381	1.6
Local, total-----	186,906	23,300	12.5	1,886	8.1	370	2.8
Counties-----	174,774	12,985	7.4	1,483	11.4	370	2.8
Municipalities-----	73,495	10,503	14.3	403	3.8	11	0.1
Nebraska-----	1,097,325	77,467	7.1	4,702	6.1	975	1.3
State-----	821,592	32,992	4.0	417	1.3	975	2.0
Local, total-----	510,721	48,507	9.5	4,285	8.8	976	4.9
Counties-----	229,970	19,898	8.7	2,940	14.8	976	4.9
Municipalities-----	294,334	29,019	9.9	1,346	4.6	3	(d)
Nevada-----	574,148	76,371	13.3	5,217	6.8	1,222	1.6
State-----	411,571	24,715	6.0	1,062	4.3	161	0.7
Local, total-----	285,056	54,295	19.0	4,155	7.7	1,094	2.0
Counties-----	208,535	39,099	18.7	3,081	7.9	1,081	2.8
Municipalities-----	99,634	25,794	25.9	1,074	4.2	13	0.1
New Hampshire-----	602,860	37,411	6.2	1,342	3.6	230	0.6
State-----	433,954	14,970	3.4	638	4.3	230	1.5
Local, total-----	253,452	23,878	9.4	704	2.9	---	(d)
Counties-----	28,648	5,864	20.5	249	4.2	---	---
Municipalities-----	225,439	18,060	8.0	454	2.5	---	(d)
New Jersey-----	5,918,486	646,367	10.9	42,264	6.5	10,930	1.7
State-----	4,325,766	188,912	4.4	7,189	3.8	10,547	5.6
Local, total-----	3,296,993	484,539	14.7	35,075	7.2	383	0.1
Counties-----	1,295,093	153,029	11.8	25,696	16.8	236	0.2
Municipalities-----	2,033,838	332,304	16.3	9,379	2.8	147	(d)

Sourcebook of Criminal Justice Statistics 1977

Total general expenditures, and expenditure for criminal justice activities, by type of activity, State and level of government, fiscal year 1975.  
(dollar amounts in thousands - represents zero or rounds to zero)

State and level of government	Total general expenditure	Total criminal justice system		Legal services and prosecution		Public defense	
		Amount	Percent of total general expenditure	Amount	Percent of total criminal justice system	Amount	Percent of total criminal justice system
New Mexico-----	\$ 784,556	63,050	8.0	3,722	5.9	1,845	2.9
State-----	857,584	32,247	3.8	2,543	7.9	1,813	5.6
Local, total-----	239,069	33,886	14.2	1,179	3.5	32	0.1
Counties-----	77,708	8,131	10.5	202	3.6		(d)
Municipalities-----	162,851	25,976	16.0	802	3.4	32	0.1
New York-----	24,328,192	2,061,406	8.5	94,632	4.6	26,295	1.3
State-----	15,704,675	522,396	3.3	23,607	4.5	4,004	0.8
Local, total-----	17,358,634	1,647,893	9.5	71,310	4.3	22,291	1.4
Counties-----	3,698,083	363,254	9.8	25,134	6.9	8,106	2.2
Municipalities-----	13,865,371	1,292,371	9.3	46,176	3.6	14,185	1.1
North Carolina-----	4,397,185	290,414	6.6	7,818	2.7	4,965	1.7
State-----	3,226,479	166,620	5.2	5,230	3.1	4,965	3.0
Local, total-----	2,624,609	133,917	5.1	2,588	1.9		
Counties-----	2,126,032	54,286	2.6	1,037	1.9		
Municipalities-----	547,638	80,564	14.7	1,550	1.9		
North Dakota-----	473,588	23,775	5.0	1,726	7.3	205	0.9
State-----	464,387	10,163	2.2	522	5.1		
Local, total-----	133,875	15,559	11.6	1,204	7.7	205	1.3
Counties-----	78,007	7,289	9.3	952	13.1	205	2.8
Municipalities-----	71,108	8,492	11.9	252	3.0		
Ohio-----	6,674,781	611,165	9.2	32,136	5.3	4,282	0.7
State-----	5,449,408	228,454	4.2	11,302	4.9	50	(d)
Local, total-----	3,188,359	428,567	13.4	20,834	4.9	4,235	1.0
Counties-----	1,254,945	147,915	11.8	10,309	7.0	3,548	2.4
Municipalities-----	1,995,557	286,337	14.3	10,586	3.7	695	0.2
Oklahoma-----	1,733,396	115,964	6.7	6,674	5.8	739	0.6
State-----	1,536,607	57,278	3.7	4,542	7.9		
Local, total-----	614,062	66,944	10.9	4,499	6.7	739	1.1
Counties-----	204,329	20,485	10.0	2,899	14.2	704	3.4
Municipalities-----	427,175	46,589	10.9	1,605	3.4	35	0.1
Oregon-----	1,746,158	165,492	9.5	13,260	8.0	2,660	1.6
State-----	1,499,491	68,182	4.5	5,924	8.7	113	0.2
Local, total-----	626,653	104,826	16.7	7,336	7.0	2,547	2.4
Counties-----	333,817	58,811	17.6	5,597	9.5	2,472	4.2
Municipalities-----	310,517	46,954	15.1	1,740	3.7	77	0.2
Pennsylvania-----	7,919,397	751,287	9.5	31,217	4.2	7,168	1.0
State-----	7,933,758	300,691	3.8	5,517	1.8		
Local, total-----	2,588,204	531,280	20.5	25,700	4.8	7,168	1.3
Counties-----	764,816	128,344	16.8	11,818	9.2	4,042	3.1
Municipalities-----	1,919,591	404,730	21.1	13,883	3.4	3,125	0.8

Sourcebook of Criminal Justice Statistics 1977

Total general expenditures, and expenditure for criminal justice activities, by type of activity, State and level of government, fiscal year 1975.

(Dollar amounts in thousands - represents zero or rounds to zero)

State and level of government	Total general expenditure	Total criminal justice system		Legal services and prosecution		Public defense	
		Amount	Percent of total general expenditure	Amount	Percent of total criminal justice system	Amount	Percent of total criminal justice system
Rhode Island-----	\$ 943,034	55,042	5.8	1,978	3.6	420	0.8
State-----	656,013	29,784	4.5	1,172	3.9	420	1.4
Local, total-----	421,691	27,665	6.6	806	2.9	-----	-----
Municipalities-----	424,007	27,665	6.5	806	2.9	-----	-----
South Carolina-----	1,789,437	146,297	8.2	3,453	2.4	1,049	0.7
State-----	1,854,946	74,288	4.0	1,875	2.5	608	0.8
Local, total-----	426,740	77,606	18.2	1,577	2.0	442	0.6
Counties-----	286,769	45,719	15.9	1,025	2.2	429	0.9
Municipalities-----	143,404	32,061	22.4	564	1.8	13	(d)
South Dakota-----	497,730	29,425	5.9	2,780	9.4	267	0.9
State-----	406,779	14,637	3.6	1,336	9.1	-----	-----
Local, total-----	153,420	16,119	10.5	1,444	9.0	267	1.7
Counties-----	64,412	8,364	13.0	1,154	13.8	261	3.1
Municipalities-----	90,234	8,188	9.1	290	3.5	6	0.1
Tennessee-----	3,488,725	212,016	6.1	7,419	3.5	1,669	0.8
State-----	2,187,759	80,616	3.7	4,511	5.6	955	1.2
Local, total-----	1,947,810	144,956	7.4	2,908	2.0	714	0.5
Counties-----	1,028,585	55,280	5.4	1,012	1.8	469	0.8
Municipalities-----	1,063,445	91,477	8.6	1,896	2.1	244	0.3
Texas-----	6,568,763	594,175	9.0	33,027	5.6	4,020	0.7
State-----	5,754,523	192,732	3.3	7,272	3.8	-----	-----
Local, total-----	2,511,373	428,631	17.1	25,773	6.0	4,020	0.9
Counties-----	825,030	169,487	20.6	18,427	10.9	4,020	2.4
Municipalities-----	1,701,967	260,480	15.3	7,347	2.8	15	(d)
Utah-----	778,027	56,974	7.3	3,398	6.0	395	0.7
State-----	809,336	27,507	3.4	1,353	4.9	-----	-----
Local, total-----	230,880	34,195	14.8	2,318	6.8	395	1.2
Counties-----	115,808	13,467	11.6	1,579	11.7	382	2.8
Municipalities-----	116,652	20,827	17.9	739	3.6	13	0.1
Vermont-----	404,220	26,913	6.7	1,581	5.9	628	2.3
State-----	411,128	20,110	4.9	1,291	6.4	628	3.1
Local, total-----	71,283	6,932	9.7	290	4.2	-----	-----
Counties-----	407	245	60.2	-----	(d)	-----	-----
Municipalities-----	71,366	6,775	9.5	290	4.3	-----	-----
Virginia-----	4,734,459	293,836	6.2	10,868	3.7	4,068	1.4
State-----	3,040,962	156,994	5.2	3,425	2.2	3,850	2.5
Local, total-----	2,668,479	160,350	6.0	7,598	4.7	218	0.1
Counties-----	1,340,962	62,875	4.7	3,348	5.3	111	0.2
Municipalities-----	1,372,459	98,517	7.2	4,261	4.3	107	0.1

Sourcebook of Criminal Justice Statistics 1977

Total general expenditures, and expenditure for criminal justice activities, by type of activity, State and level of government, fiscal year 1975.  
(dollar amounts in thousands - represents zero or rounds to zero)

State and level of government	Total general expenditure	Total criminal justice system		Legal services and prosecution		Public defense	
		Amount	Percent of total general expenditure	Amount	Percent of total criminal justice system	Amount	Percent of total criminal justice system
Washington-----	\$2,762,245	228,506	8.3	13,132	5.7	3,425	1.5
State-----	2,665,762	91,843	3.4	4,557	4.7	416	0.5
Local, total-----	913,159	145,846	16.0	9,103	6.2	3,009	2.1
Counties-----	442,226	73,062	16.5	6,150	8.4	2,580	3.5
Municipalities-----	536,136	76,351	14.2	2,954	3.9	434	0.6
West Virginia-----	1,162,287	64,385	5.5	3,254	5.1	71	0.1
State-----	1,230,731	31,614	2.6	913	2.9		
Local, total-----	225,101	35,959	16.0	2,342	6.5	71	0.2
Counties-----	79,602	19,037	23.9	1,848	9.7	71	0.4
Municipalities-----	146,845	17,128	11.7	494	2.9		
Wisconsin-----	3,800,820	262,721	6.9	13,693	5.2	2,687	1.0
State-----	3,406,685	90,727	2.7	3,878	4.3	286	0.3
Local, total-----	2,117,540	182,372	8.6	10,499	5.8	2,407	1.3
Counties-----	894,804	72,527	8.1	6,188	8.5	2,407	3.3
Municipalities-----	1,258,556	110,550	8.8	4,329	3.9		
Wyoming-----	328,684	20,185	6.1	1,367	6.8	253	1.3
State-----	300,645	9,953	3.3	435	4.4		
Local, total-----	110,882	11,835	10.7	932	7.9	253	2.1
Counties-----	100,794	5,670	5.6	677	11.9	250	4.4
Municipalities-----	42,476	6,237	14.7	255	4.1	2	(d)

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Employment and payroll for public defense activities, by State and level of government, October 1971-October 1975

(Dollar amounts in thousands. - represents zero or rounds to zero.)

State and level of government	Employment and payroll									
	October 1971		October 1972		October 1973		October 1974		October 1975	
	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll
States-local, total----	3,458	\$3,351	4,068	\$4,267	5,069	\$5,575	5,965	\$6,979	6,172	\$7,898
States-----	985	878	1,406	1,410	2,102	2,244	2,625	2,950	2,547	3,057
Local, total-----	2,473	2,474	2,662	2,857	2,967	3,331	3,340	4,029	3,625	4,841
Counties-----	2,259	2,281	2,503	2,700	2,822	3,180	3,161	3,849	3,423	4,629
Municipalities----	214	193	159	155	145	151	179	180	202	212
Alabama-----	1	1	1	1	6	5	7	5	3	2
State-----	1	1	1	1	4	3	3	3	3	2
Local, total-----	1	1	1	1	2	4	2	2	3	2
Counties-----	1	1		(b)	2	1	3	2	3	2
Municipalities----	--	--	1	1	--	(b)	1	1	--	--
Alaska-----	20	30	29	51	23	40	39	62	40	78
State-----	20	30	29	51	23	40	39	62	40	78
Local, total-----	--	--	--	--	--	(b)	--	--	--	--
Boroughs-----	--	--	--	--	--	--	--	--	--	--
Municipalities----	--	--	--	--	--	(b)	--	--	--	--
Arizona-----	65	67	64	69	92	106	118	147	146	185
State-----	65	67	64	69	92	106	118	147	146	185
Local, total-----	65	67	64	69	92	106	118	147	146	185
Counties-----	65	67	64	69	91	106	117	147	145	184
Municipalities----	--	--	--	--	1	1	1	1	1	1
Arkansas-----	--	--	13	10	34	26	24	22	19	22
State-----	--	--	13	10	34	26	24	22	19	22
Local, total-----	--	--	13	10	34	26	23	21	19	22
Counties-----	--	--	13	10	34	26	23	21	19	22
Municipalities----	--	--	--	--	--	(b)	--	--	--	--
California-----	1,138	1,507	1,231	1,726	1,337	1,975	1,438	2,279	1,564	2,676
State-----	1,138	1,507	1,231	1,726	1,337	1,975	1,438	2,279	1,564	2,676
Local, total-----	1,138	1,507	1,231	1,726	1,337	1,975	1,438	2,279	1,564	2,676
Counties-----	1,099	1,447	1,186	1,661	1,297	1,894	1,395	2,193	1,500	2,575
Municipalities----	39	61	45	65	50	91	53	96	64	101
Colorado-----	100	95	107	117	118	145	152	150	125	179
State-----	99	94	107	117	118	145	152	159	125	179
Local, total-----	1	1	--	--	--	(b)	--	--	--	--
Counties-----	1	1	--	--	--	(b)	--	--	--	--
Municipalities----	--	--	--	--	--	--	--	--	--	--

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Characteristics of the Criminal Justice Systems

Employment and payroll for public defense activities, by State and level of government, October 1971-October 1975-  
Continued

(Dollar amounts in thousands. - represents zero or rounds to zero.)

State and level of government	Employment and payroll									
	October 1971		October 1972		October 1973		October 1974		October 1975	
	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll
Colorado-----	100	\$ 95	107	\$ 117	118	\$ 145	152	\$ 159	125	\$ 179
State-----	99	94	107	117	118	145	152	159	125	179
Local, total-----	1	1	--	--	--	(b)	--	--	--	--
Counties-----	1	1	--	--	--	(b)	--	--	--	--
Municipalities--	--	--	--	--	--	--	--	--	--	--
Connecticut-----	114	97	65	73	59	76	93	116	89	127
State-----	114	97	62	70	57	74	91	114	89	127
Local, total-----	--	--	3	3	2	2	2	2	--	--
Municipalities--	--	--	3	3	2	2	2	2	--	--
Delaware-----	23	17	17	17	25	25	29	27	33	34
State-----	23	17	17	17	25	25	29	27	33	34
Local, total-----	--	--	--	--	--	--	--	--	--	--
Counties-----	--	--	--	--	--	--	--	--	--	--
Municipalities--	--	--	--	--	--	--	--	--	--	--
District of Columbia:										
Local-----	65	50	--	--	--	--	--	--	--	--
Florida-----	350	237	361	347	559	577	677	705	675	721
State-----	210	151	305	311	538	559	649	680	650	695
Local, total-----	140	86	56	35	21	18	28	25	25	26
Counties-----	102	64	50	30	19	17	21	19	20	22
Municipalities--	38	22	6	5	2	2	7	6	5	4
Georgia-----	20	16	38	32	47	50	63	60	52	61
State-----	--	--	--	--	3	3	3	3	6	6
Local, total-----	20	16	38	32	44	46	60	57	46	55
Counties-----	19	15	38	32	37	40	56	52	39	49
Municipalities--	1	2	--	--	7	6	4	5	7	6
Hawaii-----	22	23	26	28	30	33	40	45	46	67
State-----	22	23	26	28	30	33	40	45	46	67
Local, total-----	--	--	--	--	--	--	--	--	--	--
Counties-----	--	--	--	--	--	--	--	--	--	--
Municipalities--	--	--	--	--	--	--	--	--	--	--
Idaho-----	20	10	20	10	27	14	23	14	25	21
State-----	--	--	--	--	--	--	--	--	--	--
Local, total-----	20	10	20	10	27	14	23	14	25	21
Counties-----	20	10	20	10	27	14	23	14	25	21
Municipalities--	--	--	--	(b)	--	(b)	--	--	--	--



Employment and payroll for public defense activities, by State and level of government, October 1971-October 1975-  
Continued

(Dollar amounts in thousands. - represents zero or rounds to zero.)

Employment and payroll

State and level of government	October 1971		October 1972		October 1973		October 1974		October 1975	
	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll
Maryland-----	12	\$ 11	198	\$ 196	234	\$ 244	249	\$ 313	271	\$ 368
State-----			193	193	233	244	249	313	270	367
Local, total-----	12	11	5	3	1	(b)			1	1
Counties-----	12	11	5	3	1	(b)			1	1
Municipalities----										
Massachusetts-----	74	60	85	74	124	117	158	165	175	184
State-----	74	4	85	74	124	117	148	156	132	142
Local, total-----							10	10	43	43
Counties-----							10	10	43	43
Municipalities----										
Michigan-----	8	4	73	47	65	62	129	148	161	219
State-----			40	24	30	35	83	109	104	150
Local, total-----	8	4	33	23	35	27	46	39	57	68
Counties-----	8	4	33	23	35	27	45	38	53	64
Municipalities----				(b)			1	1	4	4
Minnesota-----	42	29	45	33	63	48	104	96	108	140
State-----	5	5	9	8	10	9	10	10	10	11
Local, total-----	37	24	36	24	53	38	94	86	98	129
Counties-----	33	22	35	24	53	38	94	86	98	129
Municipalities----	4	2	1	1		(b)				
Mississippi-----			32	56	10	5	20	16	9	5
State-----										
Local, total-----			32	56	10	5	20	16	9	5
Counties-----			30	55	8	4	12	13	4	3
Municipalities----			2	1	2	1	8	3	5	2
Missouri-----	39	35	38	36	102	98	102	97	98	98
State-----					102	98	100	96	98	97
Local, total-----	39	35	38	36		(b)	2	1		
Counties-----	39	9	38	8		(b)	1	1		
Municipalities----	29	25	30	28		(b)	1	1		
Montana-----	11	7	10	6	22	17	22	15	15	15
State-----										
Local, total-----	11	7	10	6	22	17	22	15	15	15
Counties-----	11	7	10	6	22	17	21	15	15	15
Municipalities----						(b)	1	1		

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Characteristics of the Criminal Justice Systems

Employment and payroll for public defense activities, by State and level of government, October 1971-October 1975-  
Continued

(Dollar amounts in thousands. - represents zero or rounds to zero.)

Employment and payroll

State and level of government	October 1971		October 1972		October 1973		October 1974		October 1975	
	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll
Nebraska-----	21	\$ 19	35	\$ 31	45	\$ 44	40	\$ 58	44	\$ 68
State-----										
Local, total-----	21	19	35	31	45	44	49	58	44	68
Counties-----	21	19	35	30	45	44	49	58	44	68
Municipalities---	-	-	-	(b)	-	(b)	-	-	-	-
Nevada-----	36	35	45	47	51	59	62	79	64	95
State-----			4	4	4	5	5	7	6	10
Local, total-----	36	35	41	42	47	54	57	73	58	85
Counties-----	36	35	41	42	47	54	57	73	58	85
Municipalities---	-	-	-	-	-	-	-	-	-	-
New Hampshire-----	2	1	-	(b)	-	(b)	-	-	-	-
State-----			-	-	-	-	-	-	-	-
Local, total-----	2	1	-	(b)	-	(b)	-	-	-	-
Counties-----	2	1	-	(b)	-	-	-	-	-	-
Municipalities---	-	-	-	(b)	-	(b)	-	-	-	-
New Jersey-----	366	355	466	454	512	547	614	762	536	643
State-----	366	355	460	448	506	539	637	760	517	629
Local, total-----	-	-	6	6	6	7	4	2	19	14
Counties-----	-	-	6	6	6	7	4	2	10	9
Municipalities---	-	-	6	6	6	7	4	2	9	6
New Mexico-----	2	1	1	1	-	-	42	38	59	62
State-----					-	-	40	42	58	61
Local, total-----	2	1	1	1	-	-	2	1	1	1
Counties-----					-	-				
Municipalities---	2	1	1	1	-	-	2	1	1	1
New York-----	126	92	132	109	152	127	175	159	170	176
State-----										
Local, total-----	126	92	132	109	152	127	175	159	170	176
Counties-----	126	92	132	109	152	127	174	159	170	176
Municipalities---	-	-	-	-	-	-	1	-	-	-
North Carolina-----	13	13	16	16	90	108	103	120	54	60
State-----	13	13	16	16	90	108	103	120	54	60
Local, total-----	-	-	-	(b)	-	-	-	-	-	-
Counties-----	-	-	-	(b)	-	-	-	-	-	-
Municipalities---	-	-	-	-	-	-	-	-	-	-

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Characteristics of the Criminal Justice Systems

Employment and payroll for public defense activities, by State and level of government, October 1971-October 1975-  
Continued

(Dollar amounts in thousands. - represents zero or rounds to zero.)

State and level of government	Employment and payroll									
	October 1971		October 1972		October 1973		October 1974		October 1975	
	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll
North Dakota-----	19	\$ 10	7	\$ 5	15	\$ 11	4	\$ 4	3	\$ 3
State-----										
Local, total-----	19	10	7	5	15	11	4	4	3	3
Counties-----	19	10	7	5	15	10	4	4	3	3
Municipalities---	-	-	-	-	-	-	-	-	-	-
Ohio-----	26	14	20	12	15	10	38	33	44	35
State-----							5	5	5	4
Local, total-----	26	14	20	12	15	10	33	28	39	31
Counties-----	26	13	20	12	13	7	22	16	31	24
Municipalities---	-	1	-	(b)	2	2	11	12	8	7
Okishoma-----	36	17	6	3	27	36	32	32	34	37
State-----										
Local, total-----	36	17	6	3	27	23	36	32	34	37
Counties-----	36	17	6	3	25	21	34	30	32	35
Municipalities---	-	-	-	-	2	2	2	2	2	2
Oregon-----	12	11	36	25	19	15	16	18	26	29
State-----	8	7	11	10	12	10	10	11	17	17
Local, total-----	4	4	25	16	7	5	6	7	9	12
Counties-----	3	3	25	15	7	4	6	7	9	12
Municipalities---	1	1	-	(b)	-	(b)	-	-	-	-
Pennsylvania-----	222	135	265	174	326	225	355	270	410	323
State-----										
Local, total-----	222	135	265	174	326	225	355	270	410	323
Counties-----	222	135	265	174	326	225	355	270	410	323
Municipalities---	-	-	-	(b)	-	-	-	-	-	-
Rhode Island-----	11	10	16	16	20	19	27	30	31	35
State-----	11	10	16	16	20	19	27	30	31	35
Local, total-----	-	-	-	-	-	-	-	-	-	-
Municipalities---	-	-	-	-	-	-	-	-	-	-
South Carolina-----	11	6	19	13	20	13	11	9	33	29
State-----										
Local, total-----	11	6	19	13	20	13	11	9	33	29
Counties-----	11	6	19	13	20	13	11	9	33	29
Municipalities---	-	-	-	-	-	(b)	-	-	-	-

Characteristics of the Criminal Justice Systems

Employment and payroll for public defense activities, by State and level of government, October 1971-October 1975-  
Continued

(Dollar amounts in thousands. - represents zero or rounds to zero.)

State and level of government	Employment and payroll									
	October 1971		October 1972		October 1973		October 1974		October 1975	
	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll	Full-time equivalent employment	October payroll
South Dakota-----	7	\$ 3	8	\$ 5	11	\$ 8	9	\$ 6	7	\$ 6
State-----										
Local, total-----	7	3	8	5	11	8	9	6	7	6
Counties-----	7	3	8	5	11	8	9	6	7	6
Municipalities-----	-	-	-	-	-	-	-	-	-	-
Tennessee-----	34	24	40	32	55	40	58	58	79	91
State-----					9	5	10	8	21	25
Local, total-----	34	24	40	32	46	35	48	50	58	66
Counties-----	27	21	28	23	27	24	31	31	41	46
Municipalities-----	7	4	12	9	19	11	17	19	17	19
Texas-----	33	19	49	28	29	22	17	15	9	10
State-----										
Local, total-----	33	19	49	28	29	22	17	15	9	10
Counties-----	33	19	49	28	29	22	17	15	9	10
Municipalities-----	-	-	-	-	-	-	-	-	-	-
Utah-----	2	1	3	1	3	2	3	2	2	1
State-----										
Local, total-----	2	1	3	1	3	2	3	2	2	1
Counties-----	2	1	3	1	3	2	3	2	1	1
Municipalities-----	-	-	-	-	-	(b)	-	-	1	-
Vermont-----	-	-	-	-	9	9	4	4	36	38
State-----					9	9	4	4	36	38
Local, total-----	-	-	-	-	-	-	-	-	-	-
Counties-----	-	-	-	-	-	-	-	-	-	-
Municipalities-----	-	-	-	-	-	-	-	-	-	-
Virginia-----	-	-	-	(b)	11	10	11	9	17	11
State-----					11	10	11	9	11	11
Local, total-----	-	-	-	(b)	-	-	-	-	6	-
Counties-----	-	-	-	(b)	-	-	-	-	-	-
Municipalities-----	-	-	-	(b)	-	-	-	-	6	-
Washington-----	23	16	28	23	32	26	39	41	51	53
State-----										
Local, total-----	23	16	28	23	32	26	39	41	51	53
Counties-----	23	16	28	21	31	26	39	41	51	53
Municipalities-----	-	-	-	2	1	(b)	-	-	-	-



**PUBLIC DEFENDER AGENCY  
PLAN**

**MAY '78 (F.Y. '80 - '84)**

**Office of the Public Defender  
State of Maryland  
Equitable Building  
Baltimore, Maryland 21202**

- Alan H. Murrell  
Public Defender**
- Alfred J. O'Ferrall III  
Deputy Public Defender**



PUBLIC DEFENDER AGENCY

Plan MAY '78 (F. Y. '80 - '84)

T A B L E O F C O N T E N T S

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I. EXECUTIVE SUMMARY

## THE PUBLIC DEFENDER ROLE

The Public Defender is mandated to provide the representation of indigents in accordance with constitutional guarantees of counsel, including all related necessary services and facilities, in all criminal, juvenile, or other judicial or quasi-judicial proceedings where incarceration is possible within the State of Maryland, and to assure effective assistance and continuity of counsel to the indigent accused in those proceedings.

The size of the Public Defender Program is not within the control of Agency, as every indigent defendant must be supplied counsel at State expense.

With no control over the size of our caseload, efforts to prepare realistic long-range plans are extremely difficult and subject to abrupt change. We cannot control the increased activity of the various components of the law enforcement units comprising the prosecution. We cannot control legislative changes in the criminal law statutes. We cannot control the Courts. In summary, we have no control over our workload quantity, and only limited control over operating expenses. The standard applied to each expenditure is that every item must be reasonable and necessary for the constitutionally required representation of our clients.

We believe that the Public Defender System has been successful to date in meeting its statutory requirements and constitutional mandates to provide representation to indigents qualified for our services throughout the State of Maryland.

The major thrust of this year's plan is the development into four separate programs operations of the Public Defender System and the increasing of staff attorney positions vis-a-vis utilization of private attorneys under our panel system. The breaking down of our present single program for the Public Defender budget into programs for Administration, District Operations, Appeals and Inmate Services, and Public Defender Mental Health services, will allow us to better allocate both our personnel and fiscal resources to specific areas in these separate programs.

Experience has taught us that appellate matters, inmate concerns and mental health related matters are better dealt with on a statewide basis. The separation of these services from our District operations, as well as the separation of statewide administrative cost, will increase our management controls significantly.

Developed within the plan are staff increases over the five-year period. These staff increases are the result of the adoption by the Legislature of our 10 percent Budget Reduction Plan submitted with our 1979 Budget in conformance with HJR 119. This Plan puts into operation a suggestion made by Legislative Auditors on February 6, 1976, for additional staffing for the Public Defender System. Their study, plus our own fiscal data, reveal that the cost per case when completed by staff is from 50 percent to 200 percent less expensive than when handled by panel attorneys. Trend projections continue to show an increase in our workload and the additional staffing should go a long way toward offsetting the increase in funding necessitated by such workload. Without the additional staff,

any increase in workload would have to be absorbed by private attorneys at double to quadruple cost.

During the 1979 fiscal year, 32 percent of the plan submitted under HJR 119 will be implemented. Allowing for an analysis of the utilization of staff and study of caseload data, the remainder of the plan is projected to be completed in fiscal years 1981 and 1983.

Outside of our overall problem of our inability to control the size of our caseload and the concomitant difficulty of staying within our budget constraints, the areas which appear to be future problems concern: (1) Patient Advocacy and Mental Retardates in the Mental Health area, (2) expanded representation for inmates incarcerated in our penal institutions, (3) and increased representation (the result of legislative changes and new court rules) in juvenile proceedings involving children in need of supervision or assistance.

Our present inclination is to resist the absorption of these matters by the Public Defender system. The particular area of Patient Advocacy is not presently in the ambit of the Public Defender statute.

Steps are being taken to increase our services to inmates by additional staff and the development of intern and clinical programs with local law schools.

The increase in juvenile matters will be dealt with by staff attorneys or by special contractual arrangements with local private attorneys. To date such arrangements have brought about what is still a manageable fiscal burden to the Agency.

In the area of mental health, the entire matter is still completely up in the air and no plans at the present have been formulated to meet additional workload burdens which later may be thrust upon us by the Legislature or Court decisions such as the pending litigation in the Circuit Court for Anne Arundel County, Baur et. al. versus Mardel (a class action challenging constitutionality of procedures governing admission, retention and treatment of mental retardates).

	FY 80	FY 81	FY 82	FY 83	FY 84
Positions	<u>288</u>	<u>303</u>	<u>303</u>	<u>314</u>	<u>314</u>
Salaries & Wages	\$5,012,123	\$5,540,903	\$5,600,408	\$5,957,234	\$6,165,737
Technical & Special Fees	1,187,695	964,112	1,422,130	1,465,769	2,017,941
Operating Expenses	842,890	887,047	913,610	950,154	988,161
Total General Fund	<u>\$7,042,709</u>	<u>\$7,392,062</u>	<u>\$7,935,148</u>	<u>\$8,373,157</u>	<u>\$9,171,239</u>

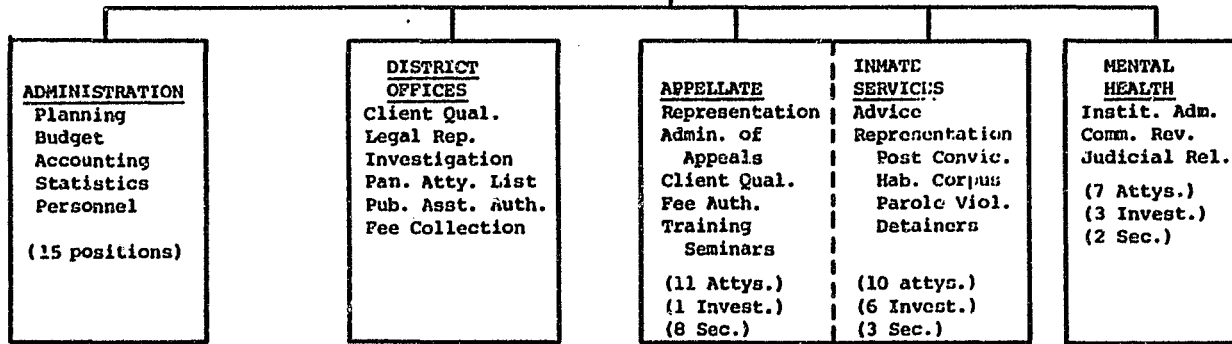
Operating Expense:					
Increase over Prior Year	\$ 81,738	\$ 44,157	\$ 26,563	\$ 36,544	\$ 38,007
Percentage Increase	10.74	5.24	2.99	4.0	4.0
Budget Increase	\$ 130,246	\$ 349,353	\$ 543,086	\$ 438,009	\$ 798,082
Percentage Increase	1.84	4.96	7.35	5.52	9.53

The following changes are projected for our workload and production:

Fiscal Year	Workload Received	Total Cases Completed	Non-Trial Cases Completed	Total Workload Completed
1980	105,814	54,885	46,445	101,330
1981	112,058	57,189	50,285	107,674
1982	118,797	59,669	54,441	114,110
1983	126,072	62,338	58,941	121,279
1984	133,924	65,211	63,813	129,024

MARYLAND PUBLIC DEFENDER SYSTEM  
 ORGANIZATIONAL CHART  
 FISCAL YEAR BEGINNING 7/1/78

BOARD OF TRUSTEES  
 PUBLIC DEFENDER  
 DEPUTY PUBLIC DEFENDER



DIST. 1	DIST. 2	DIST. 3	DIST. 4	DIST. 5	DIST. 6	DIST. 7	DIST. 8	DIST. 9	DIST. 10	DIST. 11	DIST. 12
Balto. City	Dor. Co.	Q.A. Co.	Char. Co.	P.G. Co.	Mont. Co.	A.A. Co.	Balto. Co.	Har. Co.	How. Co.	Fred. Co.	Alleg. Co.
(47 Attys.)	Wic. Co.	Tal. Co.	St. M. Co.	(9 Attys.)	(17 Attys)	(9 Attys.)	(7 Attys.)	(4 Attys.)	Car. Co.	Wash. Co.	Garr. Co.
(27 Invest.)	Som. Co.	Cec. Co.	Cal. Co.	(3 Invest.)	(4 Invest.)	(4 Invest.)	(2 Sec.)	(1 Invest.)	(3 Attys.)	(4 Attys.)	(1 Atty.)
(12 Sec.)	Worc. Co.	Carol. Co.	(4 Attys.)	(4 Sec.)	(4 Sec.)	(4 Sec.)		(2 Sec.)	(3 Invest.)	(2 Invest.)	(1 Invest.)
(12 Clerks)	(4 Attys)	Kent Co.	(1 Invest.)	(1 Clerk)	(3 Clerks)				(2 Sec.)	(2 Sec.)	(1 Sec.)
	(1 Invest.)	(3 Attys.)	(4 Sec.)								
	(2 Sec.)	(1 Invest.)	(1 Clerk)								
		(2 Sec.)									

II. INTRODUCTION

The legal reference for the Office of the Public Defender is Article 27A of the 1957 Annotated Code of Maryland, and the 1976 Cumulative Supplement. We presently have only one program; Program 22.02.00.01--The Office of the Public Defender is described below:

The Public Defender System came into legislative existence July 1, 1971, providing for the Office of the Public Defender and statewide legal and supportive personnel to take effect January 1, 1972.

By enactment of Article 27A, the Maryland Legislature turned its back on the old ways and embarked upon a new order of things in the legal representation of the poor, for whom in the past equal justice under the law was indeed a mockery, and the adversary system of criminal justice in its traditional form either was ineffective or did not work at all.

In brief, under the Act, the Governor of the State of Maryland is vested with the exclusive authority to appoint a Board of Trustees, consisting of three members, to oversee the operation of the Public Defender System, and who in turn appoint the Public Defender.

The Public Defender, with the approval of the Board, has the power to appoint the District Defenders, and as many Assistant Public Defenders as may be required for the proper performance of the duties of the office, and as provided in the Budget. All of the Assistant Public Defenders serve at the pleasure of the Public Defender, and he serves at the pleasure of the Board of Trustees, there being no tenure in any of the legal positions in the System. The State is divided into 12 operational districts, conforming to the geographic boundaries of the District Court, as set forth in Article 26, Section 140, of the Annotated Code. Each District is headed by a District Defender, responsible for all defense activities in his District, reporting directly to the Office of the Public Defender.

With the District Defenders given almost complete autonomy in their individual jurisdictions, problems peculiar to the locality can be more speedily and satisfactorily handled, while still adhering to the same basic standards governing the provision of effective Public Defender services, from time of arrest through to the ultimate disposition of the case.

This most unusual operational chain of command permits, among other things, the employment throughout the entire system of both staff and panel trial lawyers selected for their proven expertise in the criminal law field, thus equalizing the professionalization of legal services for the indigent accused at a level of that afforded a defendant financially able to employ his own counsel. As viewed by this office, the role of defense counsel involves multiple obligations. Toward his client he is counselor and advocate; toward the State prosecutor he is a professional adversary; and toward the Court he is both advocate for his client and counselor to the Court; his obligation to his client in the role of advocate, whether as a member of the Public Defender staff, or as panel attorney, requires his conduct of the case not to be governed by any personal views of rights and justice, but only by the fundamental task of furthering his client's interest to the fullest extent that the law permits. Functioning within this professional code, the Maryland Public Defender System is simply a single "law firm" devoting its entire efforts exclusively to the representation of the indigent accused.



**The scope of the Public Defender Operations includes:**

1. To provide legal representation for eligible indigents in criminal and juvenile proceedings within this State requiring Constitutional Guarantees of Counsel in the following:
  - a. Prior to presentment before a Commissioner or Judge.
  - b. Arraignments, preliminary hearings, suppression hearings, motions, trials, and sentencings in the District and Circuit Courts.
  - c. Appeals and Writs of Certiorari in the Court of Special Appeals of Maryland, the Court of Appeals of Maryland, and the U.S. Supreme Court.
  - d. Post-conviction proceedings under Article 27, Annotated Code of Maryland, habeas corpus, and other collateral proceedings.
  - e. Any other proceeding where possible incarceration pursuant to a judicial commitment of individuals in institutions of a public or private nature may result.
2. The Public Defender may represent an eligible indigent in a Federal Court under certain circumstances, and the expenses attached to the representation will be an obligation of the Federal Government.
3. The Public Defender may provide staff and technical assistance to any panel attorney appointed to represent an indigent person.
4. The Public Defender will make investigations to determine the eligibility to receive legal services from the Public Defender.
5. The Public Defender will obtain reimbursement for legal services when resources are available.
6. The Public Defender will execute liens to protect the interests of the State of Maryland.

**Major changes since the last Plan Submission:**

The Federal Grant programs entitled "Inmate Services" and "Certiorari Review" have both been terminated. The positions provided by those grant programs have been absorbed by general funds. The allocation of these positions by the Maryland Legislature provides the Public Defender system with additional full-time generally funded staff of 8 Assistant Public Defenders, four secretaries, and four legal assistants. Additionally, for fiscal year 1979, the Legislature, under a plan developed in accordance with requirement of HJR 119, has allocated additional positions of ten Assistant Public Defenders and two secretaries.

On July 1, 1977, new rules of criminal procedure were adopted by the Court of Appeals of Maryland. These new rules mandate disposition of all motions including, particularly, the suppression of evidence prior to trial. Also the exchange of evidentiary material between the prosecution and the defense has been greatly expanded by the implementation of the new rules of criminal discovery.

The impact of these rules upon this Agency has brought about a substantial increase in pretrial paperwork and additional in-court appearances for the disposition prior to the actual trial.

The Public Defender's activities may be functionally categorized in the following program areas:

**A. General Administration:**

The Public Defender, Deputy Public Defender, District Public Defenders, and the administrative staff:

1. Establish guidelines for the qualification of clients.
2. Establish procedures for the handling of clients' cases by staff and panel attorneys.
3. Establish qualifications for panel attorneys and fee schedules.
4. Handle all personnel and fiscal matters.
5. Make legislative proposals.
6. Supervise all training.

**B. District Office:**

Each of the twelve (12) District Offices as established by Article 27A:

1. Qualifies indigent clients for Public Defender defense services.
2. Provides representation to qualified clients in District Courts, Juvenile Courts, Circuit Courts, police custody (line-ups, interrogations, etc.), post-convictions, habeas corpus, bail hearings, probation violations, and appeals by staff and by assigning panel attorneys.
3. Establishes the panel attorney lists for its District, assigns the cases to panel attorneys, and authorizes the payment of fees to panel attorneys.
4. Provides investigative services for staff and panel attorney assistance.
5. Sets fees for clients required to reimburse for legal services and collects such fees and executes liens.

**C. Special Divisions:\***

Statewide divisions serving District clients in specialized areas:

1. Appellate Division:
  - a. Administers all work in the Appellate Court in conjunction with the District Public Defenders.

- b. Qualifies indigent clients who seek appellate relief.
- c. Provides representation to indigent clients.
- d. Assigns appellate cases to panel attorneys when needed.
- e. Provides continuing training by seminars and newsletters.

(The Appellate Division deals primarily with the Criminal Division of the Attorney General's Office and the Courts of Appeal).

2. Public Defender Mental Health Services:

- a. Provides representation to indigents upon admission to mental institutions.
- b. Provides six-month and annual reviews to persons committed to mental institutions.
- c. Provides representation to indigents seeking judicial release from mental institutions.

3. Inmate Services:

- a. Provides advice and assistance to indigent inmates of Maryland penal institutions regarding their criminal convictions.
- b. Represents indigent inmates in habeas corpus, post-conviction proceedings, parole violations, and detainer matters.

"Other Defense Services" include all categories of representation provided by the Public Defender other than actual trials concerning the issue of guilt or innocence under a criminal charge and are almost exclusively provided by staff. They include representation at police line-ups, interviews, and case preparation for clients who later rejected our services, habeas corpus proceedings, and post-conviction proceedings.

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\*The Appellate Division, Mental Health Services, and Inmate Services are located in Baltimore City under the direct control of the Public Defender and his Deputy.

III. GOALS

## AGENCY'S PRIMARY GOALS

Provide effective defense representation to all indigents involved in the criminal justice adjudication system, criminal justice legal services to indigent inmates in State correctional facilities, and the assistance of counsel to indigent persons involuntarily confined to a facility under the jurisdiction or license by the State Department of Health and Mental Hygiene pursuant to Article 59 of the Maryland Annotated Code.

- a. Providing effective defense counsel within twenty-four (24) hours of arrest throughout the entire State of Maryland.
- b. Assuring effective representation at all stages of adjudicative process.
- c. Assuring the speedy disposition of all pending matters in behalf of Public Defender clients.

## SHORT-RANGE GOALS

1. To provide sufficient staffing of each of the District Public Defender offices to assure that effective legal representation is available within twenty-four (24) hours of arrest.

Criminal defendants who have sufficient funds to obtain their own legal counsel are but a phone call away from assistance. Indigent persons in similar positions must wait until their publicly provided services are available. Round-the-clock availability of Public Defender services is unnecessary and prohibitively expensive. Our goal is to assure sufficient availability of counsel so as not to affront the constitutional rights of indigent defendants.

2. To provide sufficient staff and funding to each District Office for the competent legal representation of Public Defender clients in line with constitutionally required standards of effective counsel.

The mandate of Article 27A and a plethora of recent Supreme Court decisions clearly indicate that competent legal representation must be provided criminal defendants if the State is to proceed to bring such persons to trial. Our goal must be to have such counsel available for any indigent defendant when needed.

3. To assure effective legal representation in all appellate cases.

Appellate cases require considerable expertise. To better service the Appellate Courts and our clients, our goal is to develop a staff and panel of experts for these cases.

**CONTINUED**

**1 OF 3**

4. To provide legal assistance and advice to inmates at State correctional facilities in the areas of writ of habeas corpus, post-conviction remedies, appeals and speedy disposition of detainers lodged against them.

Recent Federal Court decisions have clearly mandated that the State must provide legal assistance to State inmates in correctional facilities. Our goal is to provide the necessary legal assistance required by these decisions.

5. To reduce the number of frivolous appeals, habeas corpus, and post-conviction procedures through appropriate counseling to inmates.

The problem of frivolous appeals and writs constitutes a considerable waste of the judges' and lawyers' time. Although this is a meaningful goal, its solution is a by-product of the provision of effective legal assistance and advice to inmates.

6. To assure that all persons involuntarily admitted to State mental institutions are appropriately committed thereto.

By court decision and the rules of the Department of Health and Mental Hygiene, persons involuntarily admitted to State mental hospitals must be afforded legal representation. Our goal is to provide that representation.

7. To provide all necessary investigative services related to the defense of Public Defender clients; to assure the appropriate determination of eligibility for Public Defender assistance; and to provide for the recovery of cost from those persons able to pay.

An invaluable tool in criminal representation is the proper investigation of our clients' cases. Our goal is to provide the necessary personnel to investigate our cases. The mandate of Article 27A requires that we determine the eligibility for Public Defender assistance. We must, therefore, interview clients and investigate their financial status. Article 27A further has provisions for the reimbursement to the Public Defender for its cost by persons provisionally represented who are financially able to repay all or part of those costs.

#### LONG-RANGE GOALS

1. To develop an acceptable system of automatic processing for Public Defender cases.

All Public Defender record keeping is presently recorded manually and all statistics are computed manually. The automatic processing of these statistics would both be more efficient and allow the retrieval of greater detail.

2. To reduce the storage of client records through the installation of microfilming and purge files that no longer need to be retained.

The Public Defender System, now six years old, has on file the case histories of every defendant it has represented since its inception. This represents some 350,000 files stored in the various Public Defender offices throughout the State. The retention of these files in their complete state creates a serious space problem.

3. To establish a fiscally responsible balance between expenditures for cases handled by staff vis-a-vis cases handled by panel attorneys.

The cost of representation of a Public Defender client by a panel attorney is considerably higher than that of staff representation as evidenced by the report of the Legislative Auditors dated February 6, 1976, and recent analysis of Public Defender case costs. The absolute necessity of providing counsel upon need with limited staff resources and the resulting use of a panel attorney make it extremely difficult to stay within budget constraints.

4. To urge the decriminalization of minor traffic offenses and domestic desertion litigation.

Traffic offenses and the non-support cases are a considerable burden upon Public Defender services since they presently carry criminal sanctions with penal commitments. It is the belief of many modern thinkers that it is not necessary to enforce the laws in these areas by criminal sanctions. There are available other means of enforcement. The decriminalization of these offenses would free Public Defender services for more intensive representation in needed areas.

5. To develop separate programs for operations and our Special Divisions (Appeals, Inmate Services, and PDMHS).

To better allocate the agencies resources to specific areas, separate programs need to be developed. Appellate matters are now generally dealt with on a statewide basis. Collateral proceedings, which exclusively concern convicted defendants (usually Prison Inmates) and all mental health



related matters are handled completely on a state-wide basis. The commingling of the resultant workloads at the present time with the individual District operations does not provide necessary management controls.

IV. CONDITIONS, TRENDS, AND PROJECTIONS

1. Our Agency, being a service agency reacting to the number of persons charged with crimes or committed to State institutions at any one time, has absolutely no control over the size of our caseload, which essentially makes efforts to prepare a realistic long-range plan most difficult, to say the least. Some of the conditions facing us in even trying to estimate a prospective caseload and demands for our services from year to year were set forth in our Multi-Year Plan for Fiscal 1976-1986. Economic conditions have always been used as the rationale for many persons turning to criminal acts and the recent economic downturn undoubtedly does have an impact on the Criminal Justice System; but it must be borne in mind that the average client, with the exception of the juvenile, is a recidivist, and started into his or her life of crime during more affluent years. This is another reason why we are unable to make any more than an educated guess on the future volume of defense services, let alone prepare true evaluation and monitoring programs of past, present, and future workload. The same economic conditions also place more defendants in a position where they cannot obtain competent legal assistance with their own financial resources. The result is that more persons now seek Public Defender assistance than ever before. Cases received appeared to have stabilized during Fiscal Year 1977, the increase over Fiscal Year 1976 being only 2 percent. But, projections based upon Fiscal Year 1978 figures indicate an increase of 7 percent over Fiscal Year 1977. This, coupled with efficiencies in case handling methods, has increased our case completion rate, the net result being additional workload absorbed by staff.

2. We cannot control the increased activity of the various components of the law enforcement units comprising the prosecution. While crime rates adjust according to population shifts, and some decreases in reported crimes appear, the actual arrest rate increases at a rate faster than the decline. Arrests continued upward statewide during Fiscal Year 1978, increasing again the number of trials. Also, necessarily as the arrest rate increases with each additional law enforcement officer, so does the demand for our services in the collateral matters such as line-ups, interrogations, preliminary hearings, bail reviews, etc. Furthermore, we are now furnishing representation to all indigent inmates of the correctional institutions under our Inmate Services Division, fulfilling a void of constitutional magnitude which has been clearly established by Court decisions.

Legislative changes in the criminal statutes create a flux in our case flow beyond our control. Proposals that we have made to relieve a portion of the defense burden by decriminalizing desertion, non-support cases, and minor traffic law violations have not been enacted.

Juvenile Causes sub-title of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, as modified by the 1975 General Assembly, provides under Section 3-821 headed "Right of Counsel" that, "A party is entitled to the assistance of counsel at every stage of any proceedings under this sub-title." This has been construed, particularly in connection with Section 1 of Article 27A, the Public Defender Statute, to mandate a constitutional guarantee of counsel in all juvenile proceedings, including children in need of supervision (CINS), or who are neglected or retarded. Court of Special Appeals decisions have reinforced the principle that in CINS cases, a child who is removed from his or her own home and placed in a community center or foster home is indeed entitled to representation of

counsel. In March 1978, Chief Judge Robert C. Murphy, of the Court of Appeals of Maryland, by memorandum to all trial judges of the State of Maryland, directed that the appointment of counsel is required in all juvenile cases where parents cannot afford to employ an attorney or are unwilling to do so. He pointed out that Rule 906 implements the statutory provisions and specifies that independent parties in juvenile proceedings are entitled to be represented by the Public Defender. Further, that the right to counsel is not limited to children alleged to be delinquents but applies as well to children alleged to be in need of assistance (CINA) or in need of supervision (CINS) and that it applies to all stages of waiver, adjudicatory, and disposition proceedings. The recent clarification of right to counsel in juvenile causes has led to significant additional juvenile cases being thrust upon the Office of the Public Defender.

House Bill 1476 (Post-Conviction Review--Newly Discovered Evidence) of the 1978 General Assembly, amends Article 27 "Crimes and Punishments." Section 645A, provides that persons convicted of a crime may institute proceedings to set aside or correct their sentence under certain circumstances upon the basis of newly discovered evidence. Previously, the law of Maryland allowed for the granting of a new trial upon the grounds of newly discovered evidence only within the period of 90 days after the imposition of sentence. This time restriction, by virtue of this new provision, is removed and although the Bill restricts the retrospective application of the new Act, it opens up a considerably new area for all cases in the future. The probable result will be attempts to rehash our clients' cases through the alleged discovery of new evidence. This back-breaking caseload will have to be absorbed by our Inmate Services Division. This, coupled with other factors recently brought to light in new court decisions, will inevitably lead to the necessity of expanding the personnel and resources for providing services to inmates incarcerated in Maryland penal institutions.

4. Caseload increases mandated by the courts and the following cases are illustrative:
  - a. The Supreme Court decision, Argersinger versus Hamlin, June 12, 1972, wiped out Section 2 of Article 27A, which limited representation by this Office only to those indigents accused of a crime for which the penalty involved the possibility of confinement for more than three months, or a fine of more than \$500, and threw open for representation all indigent persons accused of any crime, whether misdemeanor or felony in which there was any possibility of confinement for any period. This decision alone added an overall workload increase of 82 percent, i.e., thousands of cases of disorderly conduct, desertion, and non-support, and moving traffic violations under Article 66½, etc., etc.
  - b. Lagony versus State, Court of Special Appeals of Maryland, January 29, 1973, mandating representation for all persons charged with probation or parole violation, adding an additional annual caseload of between 2,000-2,500 cases.
  - c. Decision of the Circuit Court of Baltimore City, February 28, 1975, ordering the Office of the Public Defender to furnish competent legal representation to those persons involuntarily committed to mental

institutions, pursuant to Article 59, effective date July 1, 1975, retroactive to all persons committed without counsel since October 1, 1973. This added to the annual caseload 3,500-8,000 initial administrative commitment hearings; 200-300 annual Court certification hearings, and 120-150 annual appeals from determination hearings.

Recent legislative study has shown a great deal of interest in the mental health field. A task force is presently contemplating patient advocacy legislation. The purpose behind patient advocacy is to assure that patients committed to our State mental institutions will be provided with legal representation not limited only to the legality of their commitment, but to afford protection for all their civil and property rights, and more importantly, their right to treatment. Among the solutions for providing such representation is to amend the Public Defender statute to include patient advocacy. Furthermore, there is pending in the Circuit Court for Anne Arundel County a "Class Action Suit" alleging that persons admitted to institutions for the mentally retarded are entitled to counsel. This Agency has been informed by reliable sources that the likelihood is that the suit will be settled in favor of the plaintiffs. If these two contemplated additional rights are afforded as set forth above, again an additional burdensome workload will be thrust upon the Office of the Public Defender and in particular our Mental Health Division.

- d. The Court of Appeals of Maryland has by its Rules Order, effective July 1, 1977, adopted new 700 Criminal Rules of Practice and Procedure applicable to all criminal causes. The implementation of these new rules has had a far reaching effect upon the criminal practice from the moment of arrest and issuance of a charging document through to trial, sentence, and appeal. The fiscal impact upon future budgets must be taken into consideration because of the possible need for additional administrative personnel to effectively handle the voluminous paperwork which will be entailed in the preparation, among other things, of mandatory written motions, election of court or jury trial, answers to mandatory discovery by the State upon the defendant, etc. Failure to comply with the rules could lead to sanctions against the parties, dismissal of charges involved, and claims of incompetency and/or ineffective assistance of counsel. The end result of meticulous adherence to the rules has created a slowdown in the progress of the individual defendant through the criminal justice system until such time that all of the agencies affected can meet the contingencies of implementation.
- e. The Court of Appeals of Maryland in Johnson versus State #70 of the SEPTEMBER TERM 1977 decided April 6, 1978, held that a criminal defendant's voluntary incriminatory statement will be inadmissible against an accused in a trial when such statements were obtained by police following an "unnecessary delay" in producing the accused before a judicial officer in violation of former Maryland District Rule 709a, a now M.D.R. 723a. The Court concluded that the waiver of Miranda rights by an accused does not automatically waive his rights to a prompt initial hearing. The significance of this decision is that every incarcerated individual whose conviction was the result of evidence which included the admission at trial of a statement given by the defendant will now seek to challenge the admissibility of that statement because there was

"undue delay" in producing him before a District Court Commissioner or Judge. Undoubtedly the vast majority of these allegations will be unfounded but nonetheless it provides another ground for criminal defendants to challenge their convictions and incarceration.

It could be expected that several hundred new proceedings will be initiated in the immediate future which will have to be handled by our Inmate Services Division.

5. Analysis of our caseload history projects an annual rate change of 8.6 percent increase in incidents of representation from 51,000 in 1973 (our first full year of operation) to over 90,000 incidents for Fiscal Year 1978.

During Fiscal Year 1978 we controlled our expenditures to stay within budget allocations for the first time in our six-year history by:

- a. Cutting panel attorney fees to the bone and beyond.
- b. Assigning more cases to staff.
- c. Depleting other budgeted items by twisting funds.

This method of operation has become our way of life. Long-suffering, competent panel attorneys are refusing to accept our cases, while our full-time staff are handling a caseload far in excess of the standards set for felony and misdemeanor cases per attorney per year, and other budgeted items being at minimum levels of funding are no longer available for transfer.

The American Bar Association Project on Minimum Standards for Criminal Justice, and recommendations from the National Study Commission on Defense Service Draft Report and Guidelines for Defense of Eligible Persons, Volume II, sets the minimum standards for Public Defender attorneys at no more than 150 felony cases per attorney per year. In juvenile proceedings no more than 200 cases per attorney per year. In appellate cases no more than 25 cases per attorney per year. In misdemeanor cases (excluding traffic) no more than 400 cases per attorney per year. In mental health cases no more than 200 cases per attorney per year.

The average lawyer trying felony cases in Baltimore City exceeds 340 cases. The average Public Defender handling juvenile proceedings exclusively completes in excess of 400 cases per year. Our appellate lawyers average slightly more than 50 cases per year. Mental health lawyers handled more than 500 proceedings each during the last fiscal year. In the metropolitan districts, lawyers handling exclusively misdemeanor cases each provided representation in more than 600 cases.

6. Finally, legislation had been proposed during the 1973 General Assembly to restrict Public Defender activities to only Public Defender work thereby eliminating the private practice of law. The amendment to Article 27A was voted down. In the 1974 General Assembly, an attempt was made to emasculate, if not eliminate, Public Defender staff attorneys completely by an amendment requiring all cases to be panelled to privately employed counsel, the only limitation being the availability of the attorney. This Bill was passed by the legislature, but vetoed by the Governor, as it was estimated

the increased cost of handling criminal cases would be \$2,000,000 over the budgeted sum for panel attorneys. In 1975, the Joint Committees of the Maryland Judicial Conference and Maryland State Bar Association, which had been formed to implement the American Bar Association standards, recommended that District Public Defenders should not engage in the private practice of law. This particular recommendation was ultimately deleted, but it definitely indicates a trend which, ironically, while previously applicable to many Public Defender activities in other states, is now being gradually abandoned, and as set forth in the Report of the National Conference on Criminal Justice in its section on Selection and Retention of Attorney Staff Members, "Hiring, retention, and promotional policies regarding Public Defender staff attorneys should be based upon merit. Staff attorneys, however, should not have Civil Service status ... providing tenure or its equivalent would have unfortunate effects ... the disadvantages of a tenure system outweigh its advantages."

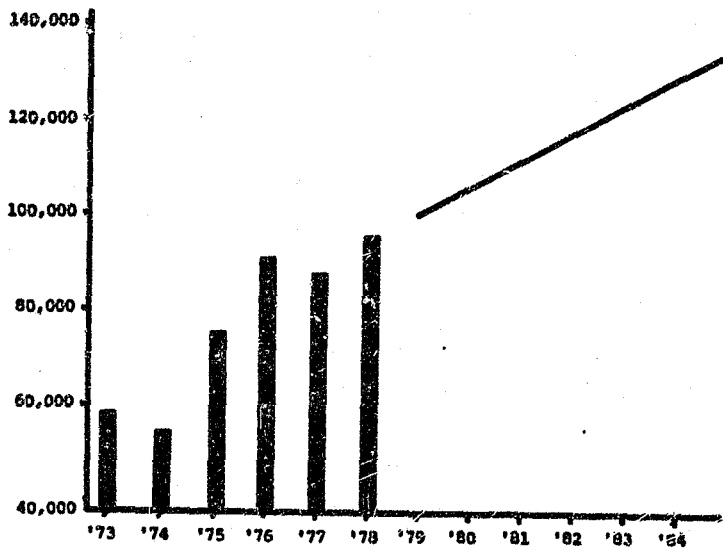
The fiscal effect of mandating that Public Defender attorneys abandon the private practice of law would be tremendous. The quality of representation would most certainly suffer. If we ask our present staff to reduce their annual income, most would resign. Replacements would be available largely from those just beginning their careers in law. Generally the tyro is seeking experience to develop a career as a private practitioner.

Many vacancies will appear as the attorneys exit en masse from the Public Defender Agency.

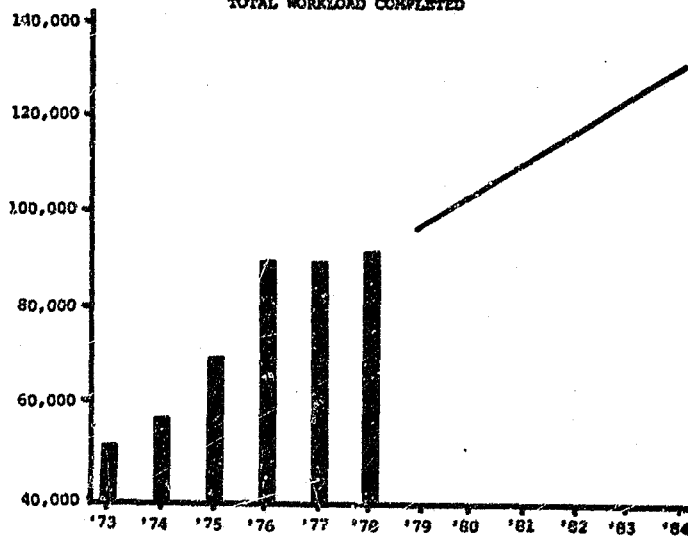
The ability to handle the present caseload will be impaired as finding competent replacements will be most difficult.

An alternative to the probable exodus is the upgrading of salaries; however, this alternative is expensive. It is estimated that the increased cost would be approximately \$400,000 at the present salary structure.

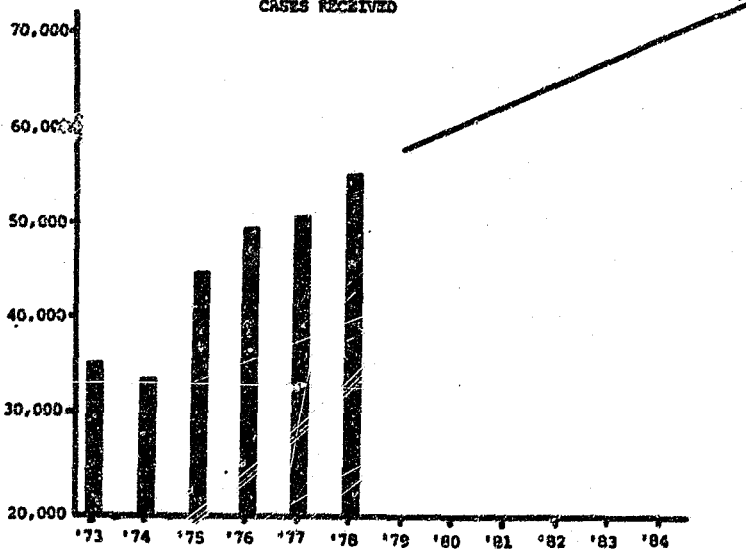
TOTAL WORKLOAD RECEIVED



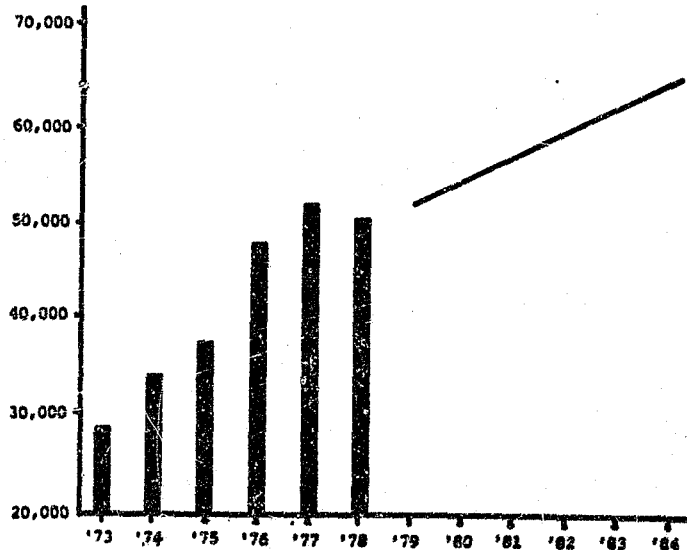
TOTAL WORKLOAD COMPLETED



CASES RECEIVED

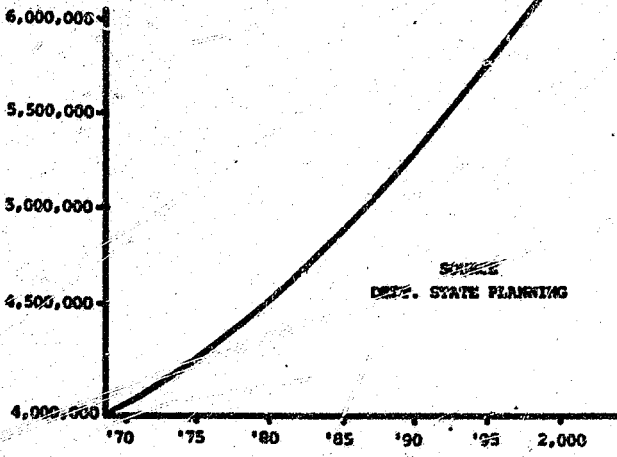


CASES COMPLETED - TOTAL

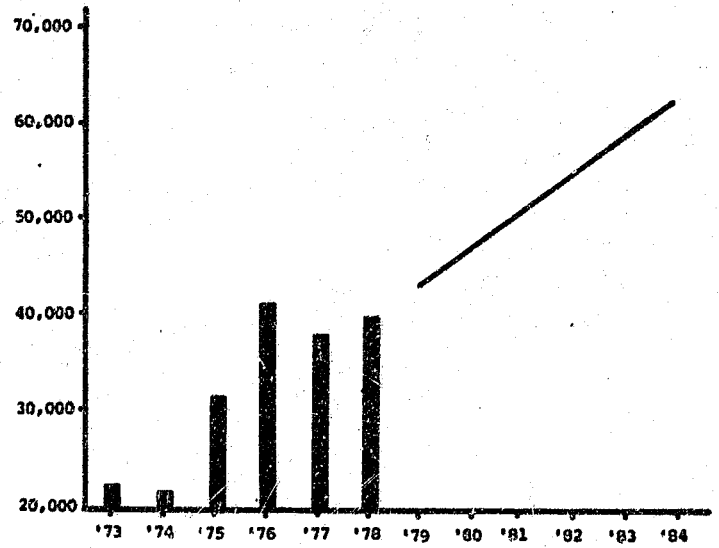




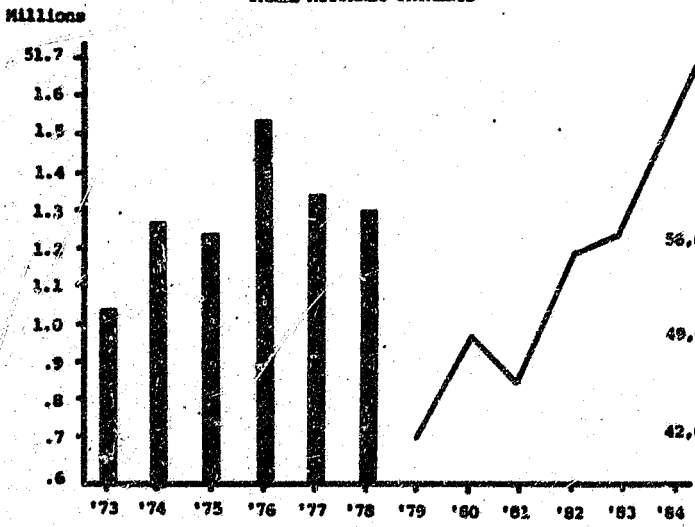
POPULATION DATA  
STATE OF MARYLAND



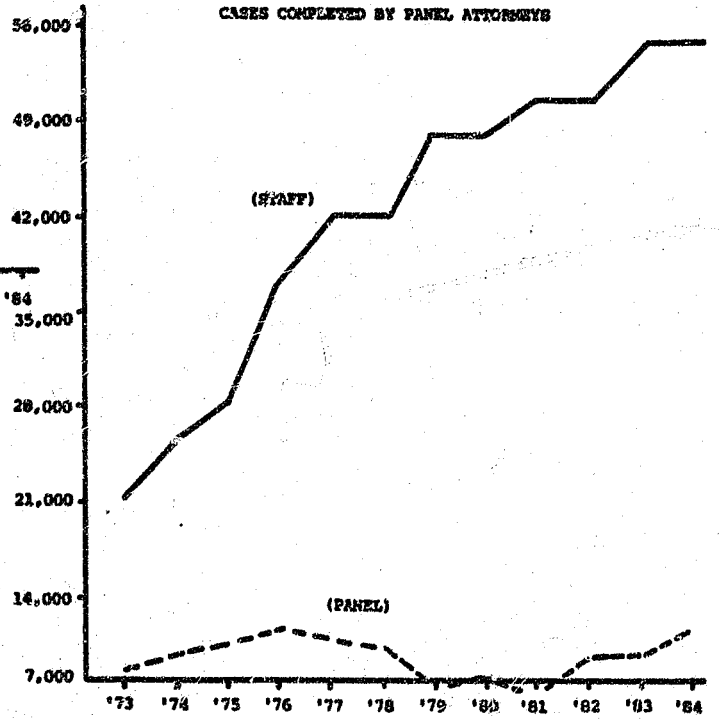
NON-TRIAL SERVICES RENDERED BY STAFF



PANEL ATTORNEY PAYMENTS



CASES COMPLETED BY STAFF  
CASES COMPLETED BY PANEL ATTORNEYS



V. OBJECTIVES

## SHORT-RANGE OBJECTIVES

Each of the short-range goals of the Public Defender System is a principle mandated by law, either by statute or Court decision. It is constitutionally guaranteed that persons faced with criminal charges or a deprivation of liberty, who cannot afford competent legal representation, must be provided counsel at the expense of the State. Thus, our major thrust is to assure that indigent persons are afforded due process and equal protection of the law by providing them with legal representation. Our objectives are met simply by requiring that counsel is immediately available when needed and this must be in accordance with the law, without regard to expense. Each item of representation is provided by an attorney. We are professionals who give each case all the necessary time to adequately prepare and try that case, in fact, perhaps more time than private attorneys, as our clients are normally suspicious of lawyers paid by the State rather than by the client himself, and we cannot, and will not, apply assembly-line methods to the legal services we render. In the first instance, staff lawyers are utilized. When they are not available and/or there is a possibility of conflict with multiple defendants, then the case is assigned to a panel attorney. All our attorneys, staff or panel, are fully qualified and competent and may be called upon to handle any of our case workload. In order to give more effective and efficient representation, staff specialists have been assigned to assist the District Defender in areas of appeals, inmate counseling, and mental health. The accomplishment of our short-range goals cannot be measured within time frames. We cannot predict whom we will represent or how long it will take the system to dispose of any one case. The goals of the Public Defender are the concern of every attorney connected with the system, but under the mandate of Article 27A, the primary responsibility for meeting the objectives rests upon the shoulders of the Public Defender and the Deputy Public Defender.

## LONG-RANGE OBJECTIVES

### 1. Automatic Data Processing:

The Public Defender has financial and personnel resources to develop automatic processing systems. We continue to seek help from State experts and are presently receiving minimal assistance in this area.

### 2. Record Storage:

The problem of storage of Public Defender clients' records has been addressed with the Hall of Records Administration. Plans for the rules for the retention schedules of those records have been developed and storage facilities have been provided for our records. Microfilming activities have not been developed in view of both the lack of appropriate facilities and the expense involved.

### 3. Fiscal Responsibility:

Day-by-day analysis of our expenses of legal representation continues to be our only means of maintaining fiscal responsibility. The problem is that we are mandated to provide counsel as needed.

We cannot refuse representation because funds are not available. Our present objective is to see that sufficient funding be given us in each

fiscal year to reasonably anticipate what our expenditures may be. Our history indicates that this is a matter of great flux and of almost no predictability. In the present fiscal year, it appears we will have a balance available at termination which will be retained to pay for panel cases on hand for which private attorneys with whom we have contracted have not submitted bills, while in past fiscal years we have often had to seek deficiency appropriations. In many other fiscal years, we had to hold bills for legal services for payment until the next fiscal year.

4. Legislation:

We have urged the decriminalization of minor traffic offenses at each session of the Legislature. At this time, the General Assembly has not fully followed our recommendations.

5. Court Caseload Efficiency:

We have consistently urged the General Assembly to amend Section 591 of Article 27 to provide for mandatory preliminary hearings, when requested by the defendant, on those charges beyond the jurisdiction of the District Court. Such an amendment would screen out of the system hundreds of unfounded charges which clog Criminal Court trial dockets, only later to be stetted or nolle prossed. So far the General Assembly has failed to follow that recommendation.

6. Programs:

After nearly seven years of operation, it appears that the management of the Public Defender system can best be served by developing our operations into four major programs as set forth under Section III, "Goals."

## SUMMARY OF OBJECTIVES

By July 1, 1978, to provide competent legal representation to approximately 96,000 eligible indigents who have been charged with a criminal offense or who face a deprivation of liberty for the ensuing fiscal year.

By July 1, 1978, to develop an automatic data processing system for greater case control and data information retrieval.

By October 31, 1978, to submit recommendations to the Governor urging decriminalization of minor traffic offenses, domestic desertion and non-support of children cases, reducing disorderly conduct penalties to fines only, and making preliminary hearings mandatory in all charges beyond the jurisdiction of the District Court.

By June 30, 1979, to fully implement our agreement with the Hall of Records Management accepting closed case files and other records for care and conservation.

By July 1, 1978, to establish a ceiling of \$1,129,908 in general funds for payment to panel attorneys.

Before July 1, 1979, to reorganize Agency into four programs.

Before July 1, 1979, to develop educational programs for pre-service and in-service training and upward career mobility of all Public Defender employees.

Before July 1, 1980, to develop a system to determine the actual cost per workload unit completed.

VI. MAJOR POLICY DIRECTIONS AND ACTIONS

In performance of its legislative mandate, it is the policy of the Agency to interview all persons who seek Public Defender assistance or who appear to need Public Defender assistance (e.g., persons incarcerated in jail) to determine in the first instance their eligibility for Public Defender services. It is required that such person be an indigent charged with a pending criminal case or related matter subject to the possible loss of liberty. To appropriately meet this requirement, the Agency has attempted to provide that each office of the Public Defender be sufficiently staffed with investigators or other like personnel. It is incumbent that the Agency assure that it provides only qualified indigents with its services to maintain fiscal responsibility.

Once it is determined that an indigent is qualified for Public Defender services, immediate investigation begins into the client's background and the basis for the charges lodged against him. Pertinent data and reports are gathered and a file is processed for the Public Defender attorney who will be assigned to represent the client.

Both staff and panel attorneys are to provide representation to the client in the same manner as if they had been privately retained and thus reach our constitutional and moral mandate to provide competent legal representation.

The Agency has been faced with a concurrent increase in both caseload and case cost. Fees submitted by panel attorneys continue to rise with the current inflationary rate. In order to stay within present budget limitations, it is the policy of this Agency to first assign all cases possible to staff. The average statewide caseload of the individual Assistant Public Defender is presently 364 cases per year. As noted in Section IV, "Conditions, Trends, and Projections," this caseload is far above any standards recommending maximum caseloads for any one attorney in a year. The resultant overflow of cases has been assigned to panel attorneys and inevitably has resulted in amounts in excess of budget allocations in Fiscal Years 1976 and 1977.

The legislative mandate that panel attorneys be utilized insofar as is practical, Section 6(b), Article 27A, has been somewhat altered by the advent of the legislative action taken in conjunction with HJR 119. It had always been difficult to maintain fiscal responsibility, particularly in areas of payments to panel attorneys under recent budget constraints. Developed within this five-year plan is a projected increase in staff in accordance with our plan as submitted with our 1979 budget proposal to meet the ten percent reduction requirement of HJR 119. This plan was developed along the lines of the recommendations of the Legislative Auditors in their report dated February 6, 1976, which calls for systematic increases in staff attorney positions over five years. The employment of additional personnel should result in considerable savings accruing to the State for the reduction of cost of payments to panel attorneys. Our experience and fiscal records indicate that representation by panel attorneys exceeds staff costs by two to four times.

This Agency has initiated budget constraints by cutting panel attorney fees to the bone and beyond, assigning more cases to staff, and by depleting other budget items by twisting funds to little avail. To maintain fiscal responsibility, this Agency has assumed the major policy direction of increased staff.

In order to more efficiently handle all pending matters before the Agency, the following administrative divisions have been developed.

1. **General Administration Program**
  - a. **Grants**
  - b. **Planning**
  - c. **Fiscal**
  - d. **Statistics**
  - e. **Personnel**
  - f. **Procurement**
  
2. **District Operations Program**
  - a. **Trial Representation**
  - b. **Post-Convictions**
  - c. **Investigation**
  - d. **Other Defense Services**
  
3. **Statewide Service Units--providing expert representation in specialized areas.**
  - a. **Appellate Division**
    - (1) **Appellate Administration**
    - (2) **Appellate Case Handling**
    - (3) **Training**
  
  - b. **Inmate Services**
    - (1) **Advice to Inmates**
    - (2) **Collateral Representation**
    - (3) **Detainer Disposition**
  
  - c. **Public Defender Mental Health Program**
    - (1) **Involuntary Commitments**
    - (2) **Defective Delinquency Proceedings**

In order to establish better fiscal control, budgets have been established for each District; quarterly comparison of actual expenditures to budget estimates of expenditures and stringent examination of any material variance between the two amounts have been initiated. The responsibility areas have enabled the office to achieve greater efficiency through the development of experts in different areas as well as to provide better budgetary controls.

It is the policy of the Public Defender that Assistant Public Defenders are full-time employees and that they are required to give a minimum of 35½ hours per week toward their Public Defender duties. All Assistant Public Defenders maintain weekly logs of their professional duties and a survey of those records indicates that each serves as a true professional giving as many hours as are necessary to accomplish the defense of clients to whom they have been assigned. Interviews of clients and witnesses are regularly done in the evening hours and on weekends. The net result is that the typical Public Defender lawyer gives in legal service many hours in excess of the minimum requirements of the State.



Sections 3(a) and (b) of Article 27A delineate the appointment and qualification of the Public Defender, Deputy Public Defender, District Public Defenders, and Assistant Public Defenders. None has any tenure in office and only the Public Defender is prohibited from engaging in the private practice of law, while salaries for legal personnel are provided in the State Budget and subject to legislative approval. All of the legal staff serve at the pleasure of the Public Defender and he in turn at the pleasure of the Board of Trustees.

Legislative action, Bar Association Committee reports, and ABA Standards often urge that all Public Defender staff personnel should be prohibited from engaging in the private practice of law. None of these surveys or reports specifically indicates either the basic need for such drastic changes, or what the record discloses in those jurisdictions which have adopted career service, tenure in office, prohibition from engaging in the private practice of law, and the whole gamut of merit system bureaucracy applied to a statewide Public Defender Program. More importantly, no effort appears to have been made to publicize the outstanding operational efficiencies obtained by the office of the Maryland Public Defender System in its six years of functioning under the mandate of Article 27A.

Statistical data maintained by the Agency clearly demonstrate the effectiveness of this office. An across-the-board average of trial staff attorneys shows that the average staff Public Defender is handling 364 cases per year. It is clearly evident that the average caseload of the Public Defender staff attorney is a burdensome one in excess of national standards. (See footnote in Section IV, "Conditions, Trends, and Projections.") In all, a survey of the caseload of our staff lawyers in actuality justifies an increase in staff and, more tellingly, demonstrates that the so-called full-time merit system employee without any outside civil practice is, at least, unnecessary, if not foolhardy.

The implications that are involved with tenured and full-time required positions should be considered at this point. In actuality, tenure means security and its full application tends to establish a haven for the mediocre and the timid, who are primarily interested in a job. Full time is equally a misnomer in that its application within the Merit or Civil Service System means only that an office holder has a time card or record establishing that he or she has completed the prescribed daily or weekly hours of activity. Both tenured and full-time office holders have at least one thing in common--they cannot be removed from office except for cause and a full hearing, thus guaranteeing, in the majority of instances, a job until retirement or death.

The test is, therefore, not what nomenclature is used to identify the legal position, but whether or not the absence of tenure and the permitting of private practice brings to and maintains in a Public Defender Program a higher degree of experienced, professional competence than the lure of job security and freedom from reprisal from superiors as embodied in the Civil or Merit System status.

The size or number of staff lawyers is the most important institutional variable affecting program efficiency and is, of course, basically controlled and related to budget limitations. Based upon data from the National Center for State Courts Survey (1973), of the total Public Defender Systems nationwide which were analyzed, only one-third of the full-time staff defenders viewed their positions as careers, and over three-fourths of the staff remained with the office only two to three years. Reasons assigned were largely that of inadequate

compensation (absent any financial return from private practice) by the older and more experienced lawyers, and disenchantment with the "system" by the young members. In contrast, the Maryland Public Defender System shows practically no turnover of our legal staff since the System's inception.

A National Survey (Current Realities of Public Defender Programs and Analysis, Criminal Law Bulletin, March 1974) indicates that in five of the nine Public Defender Programs, over 50 percent of the "career" staff lawyers had less than three years experience, many having been employed directly from law schools. One of the Urban Public Defender Career Programs refuses to hire any lawyer directly out of law school, requiring eight to eleven years of trial experience, and barring any private practice. Comments relative to the professional competency of the persons secured as a result of this employment policy were to the effect that the program was really attracting lawyers who had failed in attempts to earn a decent living away from the security of public service.

The Report of the National Conference on Criminal Justice (1973), Selection and Retention of Attorney Staff Members notes: "Hiring, retention and promotion policies regarding Public Defender staff attorneys should be based upon merit. Staff attorneys, however, should not have Civil Service status ... disadvantages of a tenure system outweigh its advantages."

Our experience during the past six years of operation under Article 27A clearly establishes that able, experienced trial lawyers can only be attracted to remain in staff positions provided they are permitted to retain a private civil practice. That such a professional will devote less energy to his public office than private civil practice is disproved completely by the caseload and Defense Services now being handled, while the overall effectiveness of the System is increased by the ability to be able to immediately enforce disciplinary or removal procedures for any breach of professional duties.

Probably the greatest advantage of the staff attorney maintaining his or her ties with the private practice lies in the many positive values inuring to the system from NOT severing professional contacts with the organized Bar. Furthermore, many of the problems of the administration of criminal justice at all levels of government have resulted, in part, from the absence of involvement with the private practitioner by the staff "specialist." An indispensable condition to fundamental improvement of the Public Defender System is the active and knowledgeable support of the Bar as a whole. Thus, the results obtained for the Maryland Public Defender client reflect the consolidated effort of professional advocates, operating in the highest traditions of the Bar.

It is submitted that with all of the objectives of criminal justice actually being met today by the Office of the Public Defender of Maryland within the framework of the present Article 27A, there appears to be no need now or in the immediate foreseeable future for changes which could only be detrimental to the indigent accused in the creation of a monolithic legal bureaucracy and another fiscal nightmare for the Maryland taxpayer.

VII. IMPLEMENTATION '80 - '84

The objectives and/or goals and the implementation thereof by the average agency are relatively easy to plan, define, and work toward. Unfortunately, the Office of the Public Defender is exclusively engaged in furnishing mandated legal services. We are not operating a production line wherein we can refuse material or shut down, decrease or increase productivity in accordance with any clearly defined management plans. Our sole justification for funding (continuing and additional) is the caseload which we cannot reject and must accept irrespective of cost handling. This is why we have placed so much emphasis on the factual fiscal statistics while identifying the most effective means of handling through assignment of professional and supportive personnel. It is hoped that the information and data submitted will have some meaningful use in justifying future budget requests.

The actions, activities, resources, and personnel required to provide competent legal representation to all eligible indigents are shown on the following pages:

	FY 80	FY 81	FY 82	FY 83	FY 84
Positions	<u>288</u>	<u>303</u>	<u>303</u>	<u>314</u>	<u>314</u>
Salaries & Wages	\$5,012,123	\$5,540,903	\$5,600,408	\$5,947,234	\$6,165,737
Technical & Special Fees	1,187,696	964,112	1,422,130	1,465,769	2,017,941
Operating Expenses	842,890	887,047	913,610	950,154	988,161
Total General Fund	<u>\$7,042,709</u>	<u>\$7,392,062</u>	<u>\$7,935,148</u>	<u>\$8,363,157</u>	<u>\$9,171,239</u>

Operating Expense:					
Increase over Prior Year	\$ 81,738	\$ 44,157	\$ 26,563	\$ 36,544	\$ 38,007
Percentage Increase	10.74	5.24	2.99	4.0	4.0
Budget Increase	\$ 130,246	\$ 349,253	\$ 543,086	\$ 438,009	\$ 798,082
Percentage Increase	1.88	4.96	7.35	5.52	9.53

6  
5 The following changes are projected for our workload and production:

Fiscal Year	Workload Received	Total Cases Completed	Non-Trial Cases Completed	Total Workload Completed
1980	105,814	54,855	46,425	101,330
1981	112,058	57,189	50,285	107,474
1982	118,797	59,669	54,441	114,110
1983	126,072	62,338	58,941	121,179
1984	133,924	65,211	63,813	129,024

The following changes are projected for our workload and production:

	FY 80	FY 81	FY 82	FY 83	FY 84
Total Workload to be completed	101,130	107,474	114,110	121,279	129,024
Total Fund Requirement	\$7,042,709	\$7,392,062	\$7,935,148	\$8,373,157	\$9,171,239
Average Cost Workload Unit (Includes P/A)	69.50	69.78	69.54	69.04	71.08
Total Fees for Panel Attorneys	1,000,000	811,783	1,196,591	1,234,178	1,698,601
Average Cost per Panel Attorney case	145.25	147.57	149.93	152.33	154.77

The changes from one fiscal year to the next are summarized below:

	FY 80	FY 81	FY 82	FY 83	FY 84
<u>Causes:</u>					
Program increase					
Workload Growth	X	X	X	X	X
Mandatory Salary Increments	X	X	X	X	X
Rental Increases	X	X	X	X	X
Price Increases	X	X	X	X	X
Position Growth	12	15	-0-	11	-0-
Increase %	4.35	5.21	-0-	3.63	-0-

Unit	Square Footage Leased	F.Y. 78				Facilities Requirements					
		Officer Leased	Officer Gratis	Staff Attys.	Staff Support People	Total Staff	FY 80	FY 81	FY 82	FY 83	FY 84
Dist. 1	16,588 sq. ft. at Balto *	1	3	52	49.5	101.5					
Dist. 2	762 sq. ft. at Salisbury	1		3	3	6					
	Use of Private law offices		2				?	?	?	?	?
Dist. 3	567 sq. ft. at Centerville	1		3	3	6					
	Use of Private law offices		2				?	?	?	?	?
Dist. 4	719 sq. ft. at LaPlata	1		2	3	5					
	208 sq. ft. at Prince Frederick	1									
Dist. 5	577 sq. ft. at Leonardtown	1		1	2	3					
	1,877 sq. ft. at Upper Marlboro	1	2	6	8	14					
	864 sq. ft. at Oxon Hill	1		1	1	2					
	Use of Private Law Offices		3				?	?	?	?	?
Dist. 6	2,890 sq. ft. at Rockville	1	3	6	9	15					
	Use of Private Law Offices		5				?	?	?	?	?
Dist. 7	1,112 sq. ft. at Glen Burnie	1		9	8	17					
	3,145 sq. ft. at Annapolis	1									
Dist. 8	1,420 sq. ft. at Towson	1	2	7	2	9					
Dist. 9	1,047 sq. ft. at Belair	1		3	3	6					
Dist. 10	992 sq. ft. at Ellicott City	1		3	4	7					
	554 sq. ft. at Westminster	1	1	1	1	2					
Dist. 11	761 sq. ft. at Frederick	1		2	4	6					
	412 sq. ft. at Hagerstown	1		1	1	2					
Dist. 12	795 sq. ft. at Cumberland	1		1	2	3					
Hdqts.	2,370 sq. ft. at Balto *		(DPS)	1	13.5	14.5					
I.S.	1,634 sq. ft. at Balto *			3	7	10					
M.H.	2,125 sq. ft. at Balto *			7	6	13					
A.P.P.	2,942 sq. ft. at Balto *			10	8	18					

\* 25,659 sq. ft. shared proportionately.

It is difficult for the Agency to project our space needs beyond F.Y. 79. Our present utilization of space, leased or otherwise, appears to be sufficient for our immediate and future needs as we now operate.

It has been the policy of the Public Defender to make use of all available space in State controlled facilities; secondly, to use leased space most convenient to the Courts; and lastly, since our staff attorneys spend the majority of their work day in court and conferring with clients, the attorneys's own private office.

If our staff attorneys are forbidden in the future from private practice, as outlined in "Conditions, Trends and Projections" the prohibition of private practice would immediately result in the need for considerable additional office spaces.

**OBJECTIVE**

By July 1, 1979, to provide competent legal representation for the ensuing fiscal year to approximately 96,000 eligible indigents who have been charged with a criminal offense or who face a deprivation of liberty.

**ACTION STEP 1**

Examine court time schedule as issued for each court.

**ACTION STEP 2**

Determine the legal services available viz:

- a. By use of staff attorneys.
- b. By use of panel attorneys.

**ACTION STEP 3**

Each day monitor service requirements.

**ACTION STEP 4**

Make adjustments when necessary to have legal services available where required.

OBJECTIVE

On July 1, 1978, to develop an automatic data processing system for greater case control and data information retrieval.

ACTION STEP 1:

Identify needs.

ACTIVITIES:

- 1) Determine information required.
- 2) Establish utility of information.
- 3) Identify the process flow which the information is producing.

ACTION STEP 2:

Meet with Comptroller.

ACTIVITIES:

- 1) Determine if Comptroller can furnish data:

"NO"

Meet with Budget Analyst for guidance in selection of process to meet Agency needs:

"YES"

- 2) Establish whether or not organizational structure changes are required.
- 3) Agree upon a coding system.
- 4) Establish the cost to furnish required data.
- 5) Identify any equipment necessary.
- 6) Obtain an agreement to furnish required data.

ACTION STEP 3:

Meet with Director, Central Payroll Bureau.

ACTIVITIES:

- 1) Determine if Central Payroll Bureau can furnish the data:

"NO"

Meet with Budget Analyst for guidance in selection of process to meet Agency needs.

"YES"



- 2) Establish whether or not organizational structure changes are required.
- 3) Agree upon a coding system.
- 4) Establish the cost to furnish required data.
- 5) Identify any equipment necessary.
- 6) Obtain an agreement to furnish required data.

**ACTION STEP 4:**

Meet with Budget Analyst.

**ACTIVITIES:**

- 1) Discuss costs relation to use of data furnished by both Comptroller's Office and Central Payroll Bureau.
- 2) Examine alternative processes.
- 3) Present Agency financial position.
- 4) Present projection of Agency financial needs.
- 5) Present Agency plan for utilization of the data as follows:
  - a. For evaluation of progress toward targets in Agency Plan.
- 6) Obtain financial assistance.

"NO"

Move objective target date to July 1, 1980, and continue with Action Step 5.

**ACTION STEP 5:**

Process data.

**ACTIVITIES:**

- 1) Prepare records for data to be gathered.
- 2) Assign records maintenance task.
- 3) Code data.
- 4) Submit data for processing.

**ACTION STEP 6:**

Receive information from automated system.

**ACTIVITIES:**

- 1) Examine data and compare to records.
- 2) Maintain old and new systems temporarily.
- 3) Evaluate system.
- 4) Change to system.
- 5) Utilize data:
  - a. For evaluation.
  - b. Management control.

OBJECTIVE

By June 30, 1979, to obtain an agreement from the Hall of Records Management to accept the Agency records of prior years for care and conservation. COMPLETED

ACTION STEP 1:

By April 30, 1978, identify agenda storage needs. COMPLETED

ACTIVITIES:

- 1) Classify records by degree of utility, viz, by 12/15/77
  - a. Likely to be used in near future. )
  - b. Definitely a storage item for possible use as a reference sometime in the far distant future. ) COMPLETED
  - c. The retention schedule status of the record )  
2/28/78.
- 2) Determine the quantity of records which may be sent to storage by 9/30/78.
- 3) Establish a maximum time allowable for recall of the records by 9/30/78.

ACTION STEP 2:

By May 31, 1978, meet with Hall of Records management. COMPLETED

ACTIVITIES:

- 1) Present facts and circumstances. )
- 2) Discuss alternates. )
- 3) Discuss delivery and recall procedures. ) COMPLETED
- 4) Obtain agreement. )

ACTION STEP 3:

Prepare presentation for inclusion in Agency Fiscal Year 1980 budget request.

ACTION STEP 4:

Establish by May 31, 1979, commencement date if funds appropriate.

ACTIVITIES:

- 1) Develop index and cross index.
- 2) Order necessary equipment.
- 3) Gather records for storage.

**ACTION STEP 5:**

Begin storage of records.

**OBJECTIVE**

By July 1, 1978, to establish a ceiling of \$1,129,908 in general funds for the payment to panel attorneys.

**ACTION STEP 1:**

- 1) Allocate panel attorney funds to each unit as required.
- 2) Establish monthly panel attorney payments standard for each unit.
- 3) Examine any significant variance between standard and actual payments.
- 4) Determine corrective action, if required.

## OBJECTIVE

Before September 1, 1978, reorganize Agency into four programs.

### ACTION STEP 1:

Classify all required Agency operations into four programs.

### ACTIVITIES:

- 1) List all output items.
- 2) Relate each output item to a function.
- 3) Group together related functions.
- 4) Restrict the number of groups to four major functions.

### ACTION STEP 2:

Develop a program for each major function, i.e., identification of the output desired.

- 1) Management to prepare a formal set of planning assumptions for each program concerning expenditure levels, people to be served, salaries and wage levels, etc.
- 2) Define the role of the program.
- 3) Establish the areas of operation.
- 4) Identify secondary functions which contribute significantly to the major function.
- 5) Establish separate units to perform the secondary functions.
- 6) Estimate program workload of trial work and non-trial (Std.)
- 7) Formulate goals.
- 8) Prepare objectives.
- 9) Prepare a program statement summarizing items 1-5 above.
- 10) Establish the authority necessary to achieve program objective goals.

### ACTION STEP 3:

Determine program staff size.

- 1) Appoint a Program Director.
- 2) Delegate the authority established for the advancement of program goals and objectives.

- 3) Decide upon staffing pattern, i.e., line attorneys quantity, investigator quantity, interviewer quantity, clerical quantity, administrative quantity, etc., for each unit within the program.
- 4) Determine position classifications required to accomplish program goals and objectives.
- 5) Prepare a program organization chart.
- 6) Select specific employees for program.

ACTION STEP 4:

Establish a budget for each program for the fiscal year ending June 30, 1980, i.e., identification of the input required.

ACTIVITIES:

- 1) Calculate funds required for salaries and wages for each unit within the program.
- 2) Calculate funds required for Technical and Special Fees for each unit within the program.
- 3) Determine program facilities requirements for each unit within the program.
- 4) Calculate funds required for operating expenditures for each unit within the program.
- 5) Prepare a FYE June 30, 1980, budget for each unit within the program.
- 6) Prepare a fiscal year ending June 30, 1980, budget for the entire program.

ACTION STEP 5:

Implement Agency reorganization.

- 1) Advise Agency personnel section of required changes to reflect new assignments of Agency personnel on Agency records.
- 2) Advise each employee of new duties and new responsibilities which become effective July 1, 1979.
- 3) Develop Management Reports to monitor program activities.
- 4) Establish the records which are necessary for the preparation of Management Reports.
- 5) Select time periods for submission of Management Reports to Agency management.

## OBJECTIVE

Before July 1, 1979, to develop educational programs for pre-service and in-service training and upward career mobility of all Public Defender employees.

### ACTION STEP 1:

Establish the training program goals.

### ACTIVITIES:

- 1) Examine the Agency needs for the carrying out of the Agency mission, goals, and objectives.
- 2) Identify the positions to benefit from the training.
- 3) Determine the benefits expected from training.
- 4) Formulate standards and measures to evaluate the training program.
- 5) Establish goals for the training program.

### ACTION STEP 2:

Develop a course of training.

### ACTIVITIES:

- 1) Obtain skilled assistance in conducting training courses, e.g.,
  - a) Management Development Center of Maryland, Department of Personnel.
  - b) Courses offered by Law Enforcement Educational Program.
  - c) Courses offered at community colleges.
  - d) Correspondence courses.
- 2) Determine the length of training time.
- 3) Determine the number to attend training during a given period of time.
- 4) Select subjects.
- 5) Prepare a training schedule of courses, course date, and class type.
- 6) Estimate the cost of the training programs.

### ACTION STEP 3:

Obtain management approval for the training program to be implemented beginning July 1, 1980.

**OBJECTIVE**

Before July 1, 1980, to develop a system to determine the actual cost of services rendered to each eligible indigent.

**ACTION STEP 1:**

Gain staff acceptance through seminars that time spent on behalf of each client is essential to the determination of cost of services.

**ACTION STEP 2:**

Determine the total funds appropriated to operate the Public Defender Agency for the fiscal year ending June 30, 1981.

**ACTION STEP 3:**

Establish an hourly rate for employees engaged in chargeable legal work.

**ACTIVITIES:**

- 1) Determine the overhead or support expenses attributable to each position engaged in chargeable legal work.
- 2) Determine the compensation for each position engaged in chargeable legal work.
- 3) Determine the number of billable hours available for each position engaged in chargeable legal work, e.g.,

Total days per year		365
Less: Weekends	104 days	
State Holidays	14 "	
Personal leave days	3 "	
Average Annual leave	10 "	
Average Sick leave	5 "	(136)
		<u>229 Days</u>
Work day hours (7 hrs. 6 mins.)		7.1
Work hours per employee		1625 hrs.
less administrative time, 10%		(162.50)
Billable hours for each position engaged in chargeable legal work		<u>1462.50 hrs.</u>

- 4) Determine the sum of overhead and compensation attributed to each position engaged in chargeable legal work; divide the sum by the billable hours to arrive at an hourly rate for each position engaged in chargeable legal work.



#### ACTION STEP 4:

Develop an improved system to determine the quantity and the status of all legal work by an Agency unit during a fiscal year.

#### ACTIVITIES:

- 1) Establish within each unit a work control record for all legal work.
- 2) Establish within each unit an assignment control record.
- 3) Establish within each unit a staff legal-work register; one register for cases and actions in process and one register for all cases and actions completed.
- 4) Establish within each unit a panel attorney legal-work register; one register for all cases not yet completed and one register for all cases completed.
- 5) Design a "new client" memorandum notice to be circulated periodically to all staff attorneys.
- 6) Prepare a seminar to explain the system to determine the quantity and the status of all legal work by an Agency unit during a fiscal year.

#### ACTION STEP 5:

Develop an improved time record system to determine the billable hours chargeable to each client.

#### ACTIVITIES:

- 1) Establish a standard time unit.
- 2) Establish codes for type of cases and actions.
- 3) Design for each position engaged in chargeable legal work a time record sheet to capture pertinent information, namely, date, client's name, case number, service performed, time employed, etc.
- 4) Design for each client a service record to assemble information as follows: date, service performed, position employed, time charged, any charges to date, etc.
- 5) Prepare seminar to explain the design, the purpose, and the use of the time record sheet and the client service record.

Year	Staff Atty.	P/A	Total Workload	Total Trial Work	Total Non- Trial	Staff Non- Trial	Staff Average	Staff Trial Work	Staff Average	P/A Trial	P/A Average	Total Staff Average Workload
1973	85	994	50,827	28,330	22,497	22,497	265	21,106	248	7,224	7	513
1974	95	1,221	56,404	34,810	21,594	21,594	227	26,108	275	8,702	7	502
1975	101	987	69,518	39,753	29,765	29,765	295	30,649	303	9,107	9	598
1976	122	1,071	90,701	49,863	40,538	40,838	335	38,634	317	11,229	10	652
1977	122	941	88,465	51,156	37,309	37,309	306	41,569	341	9,587	10	647
1978	122	1,005	90,380	50,756	39,624	39,624	325	41,708	342	9,048	9	667

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SUMMARY

	1973	1974	1975	1976	1977	1978
Staff trial averages	248	275	303	317	341	342
Staff Non-Trial Averages	265	227	295	335	306	325
Total Staff Average Work Completed	513	502	598	652	647	667

VIII. STATUS OF PROPOSALS SUBMITTED

The 10% budget reduction plan included in the budget alternatives submitted with our F.Y. 1979 Budget Request to comply with the 1977 Legislative Session HJR 119 was accepted.

The 5% budget increase alternative was ignored.

32% of the 10% budget reduction plan will be implemented during fiscal year ending June 30, 1979.

We plan to implement the remaining 68% of the savings plan as follows:

Fiscal year ending June 30, 1981	39%
" " " " " 1982	<u>29%</u>
	<u>68%</u>

SCHEDULE OF IMPLEMENTATION

F.Y.	ADDTL. ATTS.	ADDTL. SUPPORT	NEW POS. TOTAL	ADDTL. PRODUCTION	PRODUCTION VALUE PER CASE	TOTAL PRODUCTION VALUE	LESS COST OF NEW POSITIONS	ESTIMATED SAVINGS
81	10	5	15	3,640	\$147.57	\$537,154.80	\$223,475.00	\$313,679.80
82	7	4	11	2,548	152.33	388,136.84	160,812.00	227,324.84

A schedule is attached which dramatically sets forth the full impact of the entire savings plan.

HJR 119 IMPLEMENTATION FUNDS IMPACT

	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>
Completed trial cases	52,744	54,885	57,189	59,699	62,338	65,211
Attys. - No. HJR 119	122	122	122	122	122	122
Average Production per Atty.:						
(as of 3/31/78-342)						
Estimated Future Years Production	364	364	364	364	364	364
Staff Completions:						
line #3 x 364	44,408	44,408	44,408	44,408	44,408	44,408
Panel Atty. Completions:						
line #2 less line #8	8,336	10,477	12,781	15,261	17,930	20,803
Average Cost per P/A Case						
(Average cost as of 3/31/78-\$143.75)	\$142.96	\$195.25	\$147.57	\$149.93	\$152.33	\$154.77
Attys. With HJR 119	132	132	142	142	149	149
Line #13 x 364	48,048	48,048	51,688	51,688	54,236	54,236
P/A Completions (line #2 less line #14)	4,696	6,837	5,501	7,981	8,102	10,975
P/A Fees Required:						
No HJR 119 less #10 x line #11	\$1,191,714.56	\$1,521,784.25	\$1,886,092.17	\$2,288,081.73	\$2,731,276.90	\$3,219,680.31
With HJR 119-line #11 x line #15	671,340.16	993,074.25	811,782.57	1,196,591.33	1,234,177.66	1,698,600.75
Line #17 less line #18	520,374.40	528,710	1,074,309.60	1,091,490.40	1,497,099.24	1,521,078.56
Less funds for carryover cases	458,568	6,925.75	-0-	-0-	-0-	-0-
Net difference	61,806.40	521,784.25	1,074,309.60	1,091,490.40	1,497,099.24	1,521,079.56
Difference % of line #17	5.19%	34.29%	56.96%	47.70%	54.81%	47.24%
Salaries & Wages	\$5,012,123	\$5,540,903	\$5,600,408	\$5,957,234	\$6,165,737	
Technical & Special Fees	1,187,696	964,112	1,421,130	1,465,769	2,017,341	
Operating Expenses	<u>842,890</u>	<u>887,047</u>	<u>913,610</u>	<u>950,154</u>	<u>988,161</u>	
Funds Required for HJR 119	\$7,042,709	\$7,392,062	\$7,935,148	\$8,373,157	\$9,171,239	
Less Addt'l. Employees	(200,092)	(430,570)	(445,640)	(622,049)	(643,821)	
Plus line #21 difference	521,784	1,074,310	1,091,490	1,497,099	1,521,075	
Funds Required Without HJR 119	7,364,401	8,035,802	8,580,998	9,248,207	10,048,493	
Change %	4.57%	8.71%	8.14%	10.45%	9.57%	

IX. EVALUATION

We believe that through our Planned Management by Objective System we will establish standards to measure our organizational effectiveness. Definite evaluation techniques are being developed as shown below:

1. We monitor monthly, evaluate, and provide estimates for the following:
  - a) Cases to be received.
  - b) Cases to be assigned to the staff.
  - c) Cases to be assigned to panel attorneys.
  - d) Cases to be completed by the staff.
  - e) Cases to be completed by panel attorneys.
  - f) Non-trial services to be completed by the staff.
  - g) The collections to be received.
  - h) The average cost for the panel attorney cases.
2. All Districts prepare a report each month concerning cases received and assigned to either panel or staff attorneys, and the cases completed by panel attorneys in the various courts throughout each District.
3. We assemble this information and make projections to the end of the period.
4. We compare our estimated figures to the actual figures.
5. Any material variance will be examined to determine what action is necessary and whether or not the Agency can change the situation.

Presently, we strive to deliver maximum services at the most reasonable costs. We have no control over our workload quantity, but we can maintain limited control over operating expenses. The standard applied to such expenditure is that the item must be ordinary and necessary for the proper representation of the client.

We believe that we have been successful in the satisfaction of the need which led to the creation of our Agency. The constitutional mandate to provide representation is being met by the Public Defender Agency in all cases of clients accepted by the Agency.

**TOWARD A BETTER ATTORNEY-INVESTIGATOR RELATIONSHIP\***

by

**James Ford**

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An area of critical importance in providing effective assistance of counsel is the relationship between defense attorney and defense investigator. The interaction between these individuals will have a direct bearing on the quality of representation provided to clients. Unfortunately, in many defender and legal aid offices this relationship is not what it could be. It is too often taken for granted and may take a back seat to other, more obvious, problems.

In many offices, the relationship is treated as a "skeleton in the closet." Attorneys and investigators, in their own peer groups, reveal their frustrations over lack of enthusiasm and skills, poor or minimal work product, and the general hassle they have with each other, but do not bring their feelings and disappointment to a forum where corrective dialogue can take place.

There are a few offices that do deal directly with the issues through staff meetings and comprehensive training programs on all levels. These offices construct realistic models of effective team work, identify work deficiencies and set standards and goals for each specialist to clearly state the kind and quality of services each should provide.

This article will identify areas, attitudes, and ways of improving the relationship between the attorney and the investigator. Many suggestions presented here are simple, requiring common sense and respect. Others require a critical evaluation of existing relationships, individual attitudes, background experience, and deep-rooted problems which are often harder to address. It is difficult but necessary to see if we still have the enthusiasm and dedication for our job and the people we serve.

If its members take the time and effort to communicate with each other, the team may render service to clients that is equal, if not better, than that provided by private counsel. The defense team is just that--a team--each member having his or her own specific area of expertise.

The nature of our roles in the criminal justice system requires a professional, cooperative working relationship sparked with quality work, dedication, and confidence in each other. The duties of attorneys and investigators are separate and distinct, yet merge into a smooth team effort on behalf of the client. Within the last ten years, we have seen an emphasis on defense skills and growth in the public defender field per se. In the past, investigative training, standards, and goals have lagged behind. With the creation of a national organization--the National Defender Investigators Association--it is hoped that more positive steps in this direction will be taken.

The attorney is the legal strategist, trial technician, and team leader, and carries the ultimate responsibility for all that is done for the client. The investigator is the information specialist, gathering factual evidence, background information, and performing all the field work necessary in the case. The investigator is the eyes, ears, and legs of the attorney and plays an essential role in providing effective representation. Each member of the team must rely upon the other, have confidence in his or her work product, and trust the other as a responsible professional.

The team relationship operates primarily in connection with specific cases, beginning with the first contact with the client and continuing throughout preparation, presentation, and disposition of the case. (See check list at end of

article.) However, the necessity for trust, confidence, enthusiasm, and dedication is not restricted to work on individual cases and should permeate the entire office environment.

Trust gives team members the freedom to work without having to account for every action and every minute spent on a case. Comfort and familiarity with an individual's work and competence in any given situation help bring about an effective relationship between the attorney and investigator. An attorney must be able to trust the integrity, judgment, and work of the investigator, and not have to question whether the work was actually performed or how skillfully an assignment was handled. If there is a lack of confidence, the attorney would feel the need to double check the completed investigation--and this is most often a waste of valuable time.

On the other hand, the investigator must be able to feel that he has received all information necessary to competently complete an assignment. It is frustrating to get out on the street and then discover that either the attorney did not supply enough information because of a too narrow, legalistic view of the case, or that the attorney did not understand the full ramifications of the assignment as they related to the people, environment, and situation. This can lead to an uncomfortable and tense situation for the investigator and cause part of the investigation to be fruitless because of insufficient information and preparation. It is unfortunate, for momentary opportunities are hard to recapture.

Confidence is a quality that comes with time and experience working together. Investigators build confidence by providing a thorough and competent investigation. The attorney-investigator's conference is the starting point to insure that all information is given and priorities are defined.

It is obvious that, in accepting the full challenge of the adversary system where our limited resources are pitted against unlimited prosecutorial resources and power, we must have this dynamic, team relationship. We must always keep in mind that a human being is relying on that unified team to carry his or her case to a successful completion, and we do not have the time for internal discord or individual ego trips.

### Training

Proper training is an essential part of building confidence. Through continuing education institutes, the National College of Criminal Defense Lawyers and Public Defenders and other training efforts, attorneys have a number of excellent resources to aid in developing skills and methods for criminal defense practice. The National Defender Investigator Association is attempting to address the need for investigators' training through regional workshops and seminars which will cover basic skills, advanced techniques, and managerial skills.

Some offices have established in-house training programs for the defense team. There should be intensive indoctrination courses for investigators and attorneys. These can be separate, but should be jointly held when covering such important areas as the defense team relationship. Smaller offices could coordinate training on a county or statewide basis. Such indoctrination courses are ideal to instill in new personnel a regard for proper attitudes and realistic perceptions of the team relationship. There should also be courses on the exact responsibilities, skills, techniques, and problems of each team member so that

the attorneys and investigators have a better understanding of the role each will play. Joint sessions would help foster valuable give and take between the two groups. A course taught by the experienced trial staff will help to show what can be done and how to utilize our resources.

Periodic refresher courses are an important feature of any program's continuing education commitment. Besides dealing with new techniques and trial strategies, they enable attorneys and investigators to better coordinate their activities. Staff meetings can deal with any other immediate or specific day-to-day problems.

### Communication

There is nothing more helpful to the attorney-investigator relationship than communication, yet this can be too easily lost in a pressurized, rushed environment. A lack of honest, open give-and-take may do immeasurable harm, not only to the client's case, but also to the growth and awareness of both attorneys and investigators. Our work situation, however, is not ideal for establishing stable lines of communication. Attorneys are either in court, at jail interviews, preparing cases, etc. The investigator also has a caseload he or she is working on, either in the office or out in the field. It is difficult to structure or set aside time for conferences, but it must be done. The check list at the end of this article is offered as a possible guide to interaction between the investigator and the attorney on a given case. Not all cases or investigative assignments will lend themselves to each point, but a check list like this, used with flexibility, can be very valuable as a starting point for other ideas and better service.

I cannot emphasize too much the importance of the initial and follow-up conferences between attorneys and investigators. The investigator's participation from the initial steps will make for a smooth follow-through. Too often, investigators receive scattered assignments with no explanation or understanding of the ways in which their work fits into the total scheme of the case. Valuable leads or information can be missed because of lack of knowledge. It is, therefore, important that the attorney take time to explain the case to the investigator, discuss theories of defense and prosecution, the charge, its elements and proof, and to set priorities and time limits on the investigative work.

Continual exchange of information helps alleviate misunderstandings and gives a good background for the written investigation request. It fosters valuable discussion on what can realistically be accomplished and avoids wild goose chases which make little sense to the major issues of the case. The information and impressions in the attorney's mind must be understood by the investigator, otherwise investigation priorities will not coincide.

On the managerial level, there should be open dialogue between the supervisors of both investigative and attorney staffs on how to set up efficient systems to allow for a close working relationship that is not restrictive. There should be reciprocal evaluation of both staffs for deficiencies, problem areas, good points, and positive suggestions for improvement. Standards and goals should be established to clearly state the kind and quality of work expected. Methods to foster interaction socially, as well as work to bring the entire staff closer together and avoid isolating specific groups, are also essential.

Communication helps build confidence, raise awareness, and establish direction.

### Personal Qualities and Problem Attitudes

There are numerous things we can do individually to create a better relationship and a healthy working atmosphere. We need to take an honest look at ourselves, our attitudes, and our approach to work; how do we personally handle representing clients accused of crimes, and do we have the proper defense attitudes, dedication to the purpose of our offices and to the clients?

Attorneys and investigators must develop an aggressive attitude that puts them out in the street digging up information or in the courtroom challenging the prosecutor's case. We must also develop an attitude that does not let us stop if the first few steps are negative, but assures that we accept the full challenge of defense advocacy. The client does not need a defense team that simply goes through the motions; he or she deserves professionals delivering a service to the best of their ability.

It is not our job to pass judgment on anyone, and if we do, the ability to adequately defend someone is impaired to some degree. This is very different from passing judgment on someone's effectiveness as a witness .... The fact remains that we are human beings and not machines and because of this we are likely to do a better job for our client when we are emotionally committed to that person as a human being.<sup>1</sup>

There are inherent problems within the public defender system that may drain our dedication and enthusiasm. The caseload that attorneys and investigators work under is a nationwide, frustrating problem. After a period of years, both attorneys and investigators can become burned out. Many will leave for a more rewarding practice. Others will stay but begin to become ineffective because of lack of enthusiasm and pressures that can create cynicism. Opposing philosophical views may clash: to some, all clients are more than likely guilty; to others, they are all innocent and charged unjustly. There are many variations of these positions, some healthier than others.

Some individual attitudes should be discussed and handled administratively in order to create a healthy approach instead of a rigid set of rules.

Occasionally, the self-image of attorneys is out of line with reality making it difficult for support staff. The attorney may feel that he or she is the only one who has all the knowledge and right answers, and that there is not too much to learn from an investigator. But it is the investigator who is out in the streets and who, through experience, develops a sixth sense about witnesses, case strategies, and tactics.

Often investigators are relegated to a minimal or menial position in offices. They are only allowed to play minor roles in case preparation for fear

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<sup>1</sup>Paper on "Investigation" by Roger A. Lowenstein presented at a Federal Public Defender Investigator's Workshop in Washington, D.C., November, 1976.

they will blow it; no attempt is made to educate or instruct the investigator so he or she can develop into a more competent and reliable part of the team.

It is simple, but more important, to give praise for a job well done in presenting a special piece of evidence or locating a vital witness, and to develop the ability to share the spotlight with other persons who help win a case or see it through to a good disposition. A letter to an investigator's supervisor could give encouragement for continued good performance.

Under the pressure of a trial, an attorney may lose sight of what an investigator can realistically accomplish, or he will want ten things within a period of time in which only five or six could be accomplished well. Because few attorneys have ever really done any full-time investigation, they are not aware of, or do not understand, the difficulties that may be encountered.

Attorneys can help create the investigators' awareness of their role and assist in their growth as a valuable part of the team by, (a) involving the investigators in the case at an early stage--that is, at the time of trial, hearings, pleas, sentencing, etc., (b) checking on how the investigation is developing and assisting through constructive suggestion and supportive direction, and (c) allowing the investigators the freedom to follow leads they discover.

In order to better perform their jobs, attorneys must concern themselves with some of the problems of investigators. They must be concerned about the type of training the investigators receive, compensation for overtime, salaries, and working conditions which make for a more productive environment and retention of qualified people. As they become sensitive to investigators, respect and a supportive attitude will develop.

Investigators must share an active role in the defense team and realize the full potential of their position. Attorneys are very often under the gun and will welcome the aid of an active investigator, not one who does only what is necessary. An active part means digging for information and following up leads, much of which cannot be done during the normal work day. It requires evening work, early mornings, or occasional weekends to get the job done. The investigator can assist in tightening up loose ends for a smooth case. The ideal goal is to have investigated the case thoroughly from both sides so that the attorney is in control of all facts, good and bad. There should be no surprises in the case.

Some investigators have the attitude that, "It's only a job"; they do just what is requested of them and nothing more, and they have no real interest in where and how their work will be used. This attitude cannot foster the professional status we deserve and is not a rewarding way to view our work.

Investigators often view working with inexperienced attorneys as difficult and frustrating. New attorneys overprepare and want to know all the minor ins and outs of cases as well as major points. Investigators must realize that there is nothing wrong with preparation, but we must seek through communication to prioritize to insure that all critical issues are properly dealt with.

Experienced investigators can play a vital role in the growth of attorneys through guidance and valuable advice. As time goes on, the attorneys will feel more at ease with themselves and their ability to focus on issues and direct a

defense team. A thorough investigation will give them a command of the facts and enable them to feel comfortable.

Some investigators try to take too many shortcuts and thus miss valuable leads or do not attain a full understanding of all areas of the case. Others become armchair investigators who will get halfway through a case, then sit back and theorize the rest because they believe they have figured it out. A variation is the investigator who reviews the police report and becomes convinced of the client's guilt instead of testing the prosecution's proof. He or she may therefore, not chase down the obvious information, let alone uncover the not-so-obvious. The investigator must be a self-starter with an inquisitive mind which will move him to pursue the investigation to its completion. Attorneys want to know what the case is about, not guess or theorize from a half-completed investigation.

Investigators should be highly ethical because of the side of the fence on which we operate. To do our job properly, we must develop and employ contacts in all areas of the community. Lazy or apathetic attitudes or moods must change.

Administratively, the office should be structured so that a free flow of communication is the norm and closeness can develop between and among investigators and attorneys.

Although formalized procedures are important for efficiency and accountability, the team must insure that it does not create walls of non-communication or an impersonal assembly line attitude about the work. Supervisors should attempt to find the best team combinations for a smooth relationship. Rotation of teams on a periodic basis is helpful in balancing out personalities, problems, or inequitable workload.

The following may help develop a better relationship between attorney and investigator: 1) a real effort to understand and show consideration for each other with respect to duties, difficulties, and pressures; 2) the ability to listen and have an open mind with regard to what others say and feel about a case; 3) respect for each other as professionals in a learning process; 4) proper appreciation for a job well done; 5) a supportive, honest, and candid view of the total relationship.

Defense investigators must strive to be the best we can--creative and resourceful defense team members actively involved, doing more than is asked of us with enthusiasm and imagination: real partners in and assets to the team.

\* \* \* \* \*

Many investigators have found that working with a limited number of attorneys enables both team members to become accustomed to each other's work style and encourages a closer working relationship. Numerous offices assign one investigator to a team of two attorneys so that the team concept is formalized. Where there is a breakdown in communication and abrasive attitudes develop between attorneys and investigators, offices have employed open staff meetings to get problems and differences out in the open. This provides a mechanism for constructive resolution of such problems and fosters a total staff recommitment to effective and comprehensive legal representation.

When we sense problems we must identify them and locate the roots, not just the symptoms. The pressurized environment in defender offices often creates understandable problems in interpersonal relationships. The essence of a better relationship is greater cooperation, positive and constant communication, recognition and respect for others and their jobs. Efforts to develop a more effective relationship through honest evaluation and personal dedication will create confidence and trust which will lead to effective and competent legal representation and investigation. No one is perfect, but together we can help each other grow. We can build bridges instead of walls.

In the words of Lao Tzu: "A journey of a thousand miles begins with the first step."

**CHECK LIST OF INVESTIGATOR'S DUTIES**  
(in chronological order)

**I. Preparation and Background for Investigation**

Once a client is assigned by the court, the investigator must gather and assimilate much background information before actually going out into the field.

**A. Review office file on client**

The investigator should be thoroughly familiar with all relevant information in order to intelligently discuss the case with the attorney and so that he/she will understand all the legal, as well as factual, dimensions of the case.

**1. Review indictment and complaint**

Thoroughly understand the charges against the client. Be familiar with the elements of the crime and prosecution's proof, which will set forth dates, places, names of witnesses and unindicted co-conspirators, overt acts of the crime, and other information that is helpful.

**2. Review discovery on the Federal level**

On the Federal level, discovery is very limited and almost non-existent. Become familiar with any policy reports, statements, documents, and other physical evidence turned over by the prosecution. Review all other discovery as it comes into the office, and make certain the attorney keeps you up-to-date.

**3. Clients' initial interview**

Ideally, the investigator should be present during the initial interview of the client by the attorney, although this is not always possible because of pending work and time schedules. This builds confidence, rapport, and trust in a total defense team in the client. In the course of the interview, the investigator can get a good sense of the case, pick up helpful leads, and identify contact people who would be of assistance. If he or she is unable to be present, the investigator should review the client's interview completely.

**4. Make copies of necessary information that the investigator file should contain**

The case file carried in the field by the investigator should contain all pertinent materials for easy reference, for piecing leads together, and for immediate follow-through.



## B. Conference with attorney

This is an essential element of a good working relationship, effective representation of clients, and a well-directed investigation. The initial conference will yield strategies, tactics, and theories of both defense and prosecution. It's an educational process for both attorney and investigator and communication should be free and open. The attorney should outline the case's advantages and difficulties; the investigator can define and alert the attorney to foreseeable problem areas. There should be periodic update conferences to advise the attorney of developments and, problem areas, and to obtain advice.

1. Initial investigation request At the initial conference the investigation should be mapped out, with time limits and priorities indicated. It is to everyone's advantage that the investigator understands what is needed and how it fits the case. This will make him or her more sensitive to other leads that may appear in the course of the investigation.
  - a. Supplemental request As the case continues and more discovery and other investigational information is received, it may become necessary to add new requests and rearrange priorities. But any shift in theory and priorities should be made clear to the investigator and discussed at joint meetings.
2. Sense of defense theory of case The attorney should be able at this point to outline the direction and thrust of the defense so the investigator has an understanding of how and where information gathered will fit into the case. This makes for a better and more thorough investigation.
3. Sense of prosecution theory of case More than understanding the crime charged, the elements and proof, this is a practical application of what witnesses, documents, and tactics the prosecution will present in their case. It will help give the investigator a sense, when out in the field, of the actual strengths and weaknesses in the prosecutor's case.
4. Bail information See how you might aid in securing and verifying information for bail motions. During the entire representation of a client, be aware of and collect information that may be used to secure bail or in the presentence preparation.

## C. Map out investigation

1. Attorney's investigation request
2. Other investigation necessary This would include different sources of information, contacts, and anything else that would make the entire investigation proceed smoothly.
3. Set priorities Using the attorney's priority structure, in conjunction with other investigation background work, organize the tasks that must be performed. This is extremely important because

an investigator carries a caseload also, and the ability to organize each case and to work on several cases at the same time without confusion or omissions will be critical.

5. Investigational file

This file should contain all the necessary paperwork (as contained in Points 1 and 2). An itemized check list of things to do is helpful to insure full completion. A brief fact sheet containing names, addresses, dates, times, and other relevant information can also be kept for easy reference. A case log sheet documenting what was done and when: i.e., interviews, telephone contacts, unsuccessful attempts to contact witnesses or serve subpoenas, etc. is useful as well.

Update your file with any new discovery, additional requests, original notes of interviews, and copies of submitted reports and memos.

II. Investigation Field Work

A. Interview client

It is always advisable to interview a client from an investigational standpoint in order to focus on securing information needed and the names of people who could be of assistance in the case and for bail. The investigator should have ongoing contact with the client, but not to the point where it interferes in the attorney-client relationship.

B. Visit crime scene

The scene of a crime or any scene relevant to the case should be visited as soon after the incident as possible. Attorneys, too, should make it a practice to view a scene so they will be better able to interpret photos, diagrams, and testimony.

The following steps should be taken on the scene:

1. The area should be photographed and diagrammed;
2. Physical evidence may be collected;
3. Interview people who are routinely in the area at a particular time and who could have seen something.

C. Interview all witnesses

1. Fact witnesses
2. Government witnesses
3. Defense witnesses

4. Other witnesses with knowledge or information on the case or about the people involved.

D. Documentary records

Attorneys and investigators should carry blank authorization forms for clients or witnesses to sign. This would include authorization to review:

1. Medical records
2. Business and other records, files, and documents relevant to the case
3. Criminal records of witnesses.

E. Review government's physical evidence (attorney's, too)

1. Photos
2. Diagrams and exhibits
3. Records, books, file documents
4. Physical evidence (gun, mask, fingerprint, handwriting, etc.)

F. Coordinate defense experts

1. Coordinate experts in arranging viewing time and examination of evidence: i.e., fingerprints, questionable documents, laboratory analysis, etc.
2. Arrange appointments for psychiatric and other medical exams.

G. Final investigation (wrap up)

Tie up loose ends that may result from defense or government experts, or physical evidence.

III. Pre-trial Preparation

A. Trial conference with attorney

It is crucial to hold this conference at the completion of an investigation in order to evaluate the direction of the case, trial, or other alternatives.

1. Submit all investigation reports, interviews, statements, photos, diagrams, etc.
2. Discuss case: government's case, defense direction, views of case (pros and cons)
3. Jointly discuss and prepare final defense witness list and any physical evidence or exhibits necessary for court.

B. Witness checklist

Prepare a working witness list with addresses and telephone numbers for easy contact.

C. Subpoena all witnesses

1. Make out Rule 17 or other court order for issuance of subpoenas Ad Testificandum/Duces Tecum. Serve your own subpoenas locally; it gives control of your witnesses. Out-of-state subpoenas should be teletyped by the Marshall's Office.
2. Be sure all criminal justice forms are filled out and filed for expert witness fees.

D. Trial preparation interview

1. Witnesses' testimony
2. Experts' testimony
3. Work out appearance schedule, approximate date, and time frame. Work out any difficulties witnesses may have with prior commitments, dates or time.

E. Jointly organize trial file

Large cases: attorney and investigator organize file into different sections for legal research, exhibits, investigation, witnesses, etc., for easy access.

IV. Actual Trial Work

A. Government case

Take notes of testimony and evidence actually produced at trial. Turn over to attorney.

B. In-trial conference

Review Government's testimony and evidence.

C. Defense cases

1. Schedule defense witnesses
  - a. Cooperative witnesses can be kept on call with notice--difficult witnesses should be brought in at a specific time.
  - b. Insure witnesses are prepared and on time.
  - c. After testimony, make sure all witness fee forms are properly executed.

2. Notes

- a. Take notes on testimony of defense witnesses.
- b. Turn these over to attorney along with significant thoughts and ideas for preparation of summation.

3. Actual trial testimony

- a. Interview and statements taken
- b. Photos and diagrams
- c. Subpoenas and records obtained, etc.

V. Post-Trial Assistance

- A. Presentence supplemental report for judges.
- B. Employment and other appropriate program referrals.
- C. Letters of appreciation to defense witnesses for their assistance and cooperation.

## DEFENDER OFFICE TRAINING PROGRAMS

- District of Columbia
- San Diego, California
- Criminal Defense Consortium (Illinois)
- University of New Mexico Law School

DISTRICT OF COLUMBIA  
PUBLIC DEFENDER SERVICE

Training Program

Traditionally, new attorneys with the Service begin practicing in the Family Division of the D.C. Superior Court. The attorneys handle delinquency cases based on alleged law violations, and there is no provision for jury trials. The first part of the outline below is aimed at preparing them for that type of practice.

After approximately nine months, the attorneys move into the Criminal Division of the Superior Court and begin their practice with misdemeanor cases. The second part of the outline reflects the training given at that stage.

Training Program Schedule  
Family Division

- |       |   |
|-------|---|
| Day 1 | Introduction - Courthouse tours   |
| Day 2 | Interviewing client<br>(a) morning lectures<br>(b) exercises                        |
| Day 3 | Investigations<br>(a) ethics<br>(b) practical                                       |
| Day 4 | Direct, Cross, use of documents<br>(a) law (overview)<br>(b) exercises              |
| Day 5 | Detention hearings, probable cause hearings<br>(a) courtroom observation<br>(b) law |
| Day 6 | Probable cause and detention exercises  |
| Day 7 | Discovery exercise  |
| Day 8 | Discovery (morning); general exercises (afternoon)                                  |
| Day 9 | Fourth Amendment (prepare motion)   |

- Day 10 Fourth Amendment lectures  
 (a) law  
 (b) tactics
- Day 11 Fourth Amendment exercises
- Day 12 Prepare identification suppression motion
- Day 13 Medical Examiner
- Day 14 Identification law--lectures
- Day 15 Identification suppression exercises
- Day 16 Prepare confession motion
- Day 17 Confession law lecture
- Day 18 Confession suppression exercise
- Day 19 Plea Bargaining
- Day 20 Plea Bargaining exercises
- Day 21 Direct Examination  
 (a) law  
 (b) exercise
- Day 22 Cross-Examination  
 (a) law  
 (b) exercise
- Day 23 Demonstrative Evidence  
 (a) law  
 (b) exercise
- Day 24 Childrens Center Tour
- Day 25 Impeachment, Character Evidence  
 (a) law  
 (b) exercise
- Day 26 Jencks Act  
 (a) law  
 (b) exercise
- Day 27 Substantive criminal law; Motion for judgment of acquittal;  
 Family Division legal issues
- Day 28 Sentencing; dispositional alternatives for juveniles
- Day 29-30 Family Division practice hints



**Training Program Schedule**  
**Part 2 - Misdemeanors**

(Because our staff attorneys are carrying a caseload at the time this portion of the training program is given, we normally do it after office hours and on weekends. Accordingly, although the topics are listed for each training "day," they might be more accurately described as a training session of approximately 2-3 hours for each "day.")

- Day 1      Bail Advocacy, Arraignment court procedures
- Day 2      Competency to stand trial and the insanity defense; law and tactics
- Day 3      Substantive criminal law
- Day 4      Motions practice
- Day 5      Sentencing - Code provisions  
              (Recidivists, Bail Offenders, etc.)  
              Sentencing alternatives; Tactics
- Day 6      Trial - Voir Dire and opening; Instructions and objections thereto; Closing argument; Jury deliberation, Mistrial, Jury poll
- Day 7      Practice hints for misdemeanors

SUGGESTED ORIENTATION PROGRAM

(one week)

MONDAY

Preparation of a Trial Plan

Lecture  
Exercises

Voir Dire

Lecture  
Demonstration  
Exercises

TUESDAY

Motions

Lecture

Opening Statements

Lecture  
Exercises

Evidence

Younger Videotapes  
Exercises

WEDNESDAY

Evidence

Younger Videotapes  
Exercises

THURSDAY

Cross-Examination

Lecture  
Exercises

The Identification Case

Lecture

FRIDAY

Closing Arguments

Lecture  
Exercises

Questions and Discussion

The above is a program for beginning attorneys and should be supplemented by programs on weekends or evenings covering particular subjects such as search and seizure, strategy for particular types of cases, etc.

MEMORANDUM

TO: J.J. Cleary

FROM: C.M. Sevilla  
San Diego, California

RE: Staff Attorney Training

A staff attorney training program for an office of 15 persons or fewer should not be difficult to set up or maintain. Because of the small nature of the staff, the training program may be a community effort involving all of the attorneys in each training session. I believe a program modeled after the one currently in operation in our own office would be an effective approach to staff attorney training. It should be noted, of course, that of the 12 attorneys currently in the office, only one has been an attorney in this office for less than a year. On the other hand, only three of the attorneys in the office have in excess of five years' experience. Thus, we have an office of young attorneys with an average experience of from one to three years. The following itemization sets forth in order of importance the components of our training program.

1. The weekly staff meeting. Each week, usually Tuesday from 5:00 to 6:00 p.m., the attorney staff meets in the conference room for the purpose of discussing new developments which would be of interest to the balance of the attorney staff. The idea behind these meetings is a mutual sharing of information so that newly learned ideas or procedures may be quickly grasped by the entire attorney staff as soon as possible. This would include shifts in procedure by the prosecutor, probation officer, judge, or law enforcement agents. The meeting is also used as a forum for attorneys to throw out particular questions concerning their cases in order to achieve feedback from the staff on different approaches to a particular problem. The staff meeting provides an excellent opportunity for the Director of the office to explain any administrative policies or changes in the office and to respond to questions. If the staff have feedback on such administrative actions, they are encouraged to present that at the staff meeting for group discussion. In this manner, the staff meeting serves as an open line of communication not only between individual staff members, but between the staff and the administrator of the office. Keeping the channels of communication open in this way eliminates feelings that individual staff attorneys are "left out" of what is happening in the office. It is a definite key to maintaining a high morale and esprit de corps in the office.

The staff meeting is open to all personnel in the office as a forum for problem discussion. It is mandatory for the heads of the investigative and secretarial staffs to attend these meetings in order to give relevant feedback to persons serving the office in those capacities. In addition, the latter may offer suggestions to enhance office efficiency to the attorneys for their consideration and discussion.

2. The weekly training session. After the conclusion of the staff meeting, we have found it most convenient to hold our weekly training session. This

session lasts between 30 minutes and two hours depending on the complexity of the subject covered. Because the vast majority of the staff has substantial experience in excess of one year, the training sessions are geared toward consideration of advance problems in substantive criminal law or procedure. Usually, a training phase lasts 10-12 weeks concentrating on one particular subject. Thus, we have had phases dealing with the Rules of Evidence, Ethical Considerations in Criminal Defense Work, and Amendments of the Federal Rules of Criminal Procedure.

The approach to training sessions is to avoid the lecture format and stress the seminar approach. For a particular training phase, each attorney in the office will be assigned a topic and a presentation date. The attorney is expected to prepare written materials and to be prepared to orally present the topic to the staff on the assigned date. This attorney will moderate discussion on the topic and throw out questions for group consideration. At the end of each training phase, a compilation of the materials results in a comprehensive written analysis of the subject matter.

Continuous staff attorney training is a necessity for all Defender Offices. Criminal Law is a fast-paced, quickly changing area of the law. By keeping abreast of the latest case law and literature in the field, each attorney will be better able to grapple with cases and to field the many issues arising out of the day-to-day representation of the indigent defendant. The weekly training program is the opportunity to share newly received information of this sort with the balance of the staff.

3. The Thursday lunch speaker. Occasionally, we invite speakers from various vocations to address the staff. Usually, the speakers are from community resource programs such as drug rehabilitation projects, employment opportunity programs, or individuals offering expertise in a variety of areas related to the criminal law. Speakers are selected on a basis of their ability to share information with the staff attorneys in a manner which may prove helpful to clients. We have also used the luncheon for inviting prosecutors, probation officers, and judges to meet with us to share perspectives on particular issues.

4. Current case law. In order to keep all the staff apprised of the latest developments in the law of the Circuit, the Chief Trial Attorney prepares a monthly Newsletter describing all Ninth Circuit criminal appeals opinions. Also, the office subscribes to all of the major criminal law periodicals such as the Criminal Law Reporter, Law Week, etc. Summaries of the weekly periodicals are passed throughout the office each week. If an attorney discovers a new case of interest, the latter may resort to the full text in the periodical which is located in the library. Needless to say, the library is an important component of any training program. Our office has all of the proper services relevant to federal practice and in addition all of the California reporters. Reference works such as Wigmore on Evidence are also in ample supply to provide guidance in particular areas of criminal practice.

5. Videotape. Videotapes are used in the office for two purposes: a) to videotape the newer attorneys in mock oral presentations for the purpose of subsequent analysis. This technique is used any time a new attorney is about to

argue a case before the Ninth Circuit Court of Appeals. A mock panel of three senior attorneys will hear the presentation and review the taped results with the attorney presenting argument. The tape is also used for similar purposes with student interns who present arguments before magistrates in misdemeanor cases; (b) we also have four mock trial videotapes which are used for attorney training purposes. These trials include a misdemeanor illegal entry trial, a felony marijuana smuggling trial, a multi-defendant alien transportation conspiracy trial, and a tape involving the direct and cross-examination of defense and prosecution psychiatrists in an insanity defense trial. Written analyses are prepared for the three full-scale trials emphasizing different aspects of trial procedures such as objections and motion analysis.

6. Seminars. Each year, it has been the practice of this office to send attorneys to the more important criminal law seminars in the nation. Thus, we send two attorneys each year to the yearly meeting of the NLADA, the Northwestern Short Course on Criminal Law for defense attorneys, various statewide seminars conducted by the National College of Criminal Defense Attorneys and Public Defenders. While attending such conferences, state attorneys are encouraged to visit local federal correctional institutions and public defender offices in the area of the seminar. After a visit to such penal institutions or defender offices, the attorneys are expected to report to the office staff their findings as well as to inform the other attorneys of important concepts learned at the seminar.

7. Language training. We currently have in the office Spanish language training books, tapes, and an appropriate language training desk complete with recorder and foot pedal to allow interested staff to learn the Spanish language. This is imperative because of the vast number of clients who speak only Spanish. Participation in this program is strictly voluntary.

8. Jury trial memoranda. At the conclusion of each jury trial, the staff attorneys must prepare a short memorandum on points of interest concerning the trial for distribution to all other staff attorneys. The purpose of the memorandum is to communicate important trial techniques on either side which would be of interest to staff attorneys. The memorandum also provides a record for the staff attorney of all jury trials for specialization purposes.

9. Individual attorney training. Because the weekly training session is geared toward experienced criminal law practitioners, new attorneys in the office are given individualized attention. This is possible because of the small number of attorneys in the office and the limited turnover of staff. Individual attention includes having the Chief Trial Attorney monitor the videotapes with the new attorney, having a senior attorney sit in on all bench and jury trials until the new attorney feels comfortable and by the "open door" policy by which all experienced attorneys give of their time, to answering questions from the new attorney.

A fortunate by-product of the training programs has been the generation of a wealth of written materials. We have been able to sponsor three seminars open to the entire Bar concerning such topics as appeals procedure, immigration law, and two lengthy conferences covering all aspects of federal criminal practice.

Memo  
Page Four

Written materials were produced for each of these seminars which, for the most part, were composed of writings from the various staff attorney training programs. In addition, several of the senior staff are frequently invited to lecture on criminal law at seminars throughout the nation. The written materials generated from these lectures are also distributed throughout the office.

The key concept to the success of our training program is the spirit of community participation. As long as training is aimed at practical and relevant aspects of the practice of criminal law, it will stimulate interest. The quality of the training programs will depend upon the ability of the director to maintain high standards of performance.

CMS:sp

**TRAINING PROGRAM FOR ATTORNEYS  
WITH CRIMINAL DEFENSE CONSORTIUM**

Concept

The program will emphasize the technique of student exercises, conducted at a level of sophistication appropriate to a lawyer with approximately two years of trial experience. The exercises will be related to specified transcripts which will remain constant throughout the program. It is contemplated that the trial transcripts contained within the volume Morrill on Trial Diplomacy will be used for this purpose. However, different transcripts may be selected at the option of the Program Director.

The format of the presentation will draw heavily upon the experiences of the National Institute for Trial Advocacy (NITA) in Colorado and of the National College of Criminal Defense Lawyers and Public Defenders (NCCDLPD) at Houston, Texas. Each segment of the program will be related to the proceeding and subsequent segments, so as to create the greatest possible realism of atmosphere. At the commencement of each program, a short orientation will be delivered by the instructor staff. The participants will then be separated into three groups of eight, and will perform the exercise assigned for that day, each section being under the direct supervision of one of the instructors. Each program will conclude with a thirty-minute demonstration by the instructor.

During the exercise phase of the programs, each student will perform at least once as defense counsel, conducting the appropriate portion of the trial reflected by one of the demonstration transcripts. Other students will take the roles of prosecutor, witness, and on many occasions, judge (although the last role will normally be performed by the instructor). The witness role will contribute to the witness's feel for the impact of questions. The prosecutor role will provide the student with a view of the trial from the other side of the table, contributing very substantially to his development and to the avoidance of many tactical errors.

A total of four instructor personnel will be needed: Three section leaders and one supervising instructor. It will be the role of the supervisor to orient and brief the section leaders, in advance of each segment, concerning the goals to be achieved and the techniques to be pursued.

Instruction Schedule

Instruction will be delivered for a six-hour period on one Saturday per month and for a three and one-half hour period on one Wednesday evening each month. In advance of the first formal session on November 6, each participant will be given copies of the transcripts to be used, and directed to familiarize himself with those transcripts. He will also be advised of the nature of the assignment required to be prepared for the first session: A plan for discovery, and for the handling of the case, centered upon a defense theory and employing a coherent theme. Future assignments will be given at the conclusion of each segment.

The schedule of subjects to be covered during each presentation is appended.

### Schedule of Subjects

Saturday, November 6	Client interviews, initial development of facts. Planning the case. Development of case theme and theory. Preparation of witnesses and exhibits. Jury instructions (tentative).
Wednesday, November 17	Investigation and pre-trial motions.
Saturday, December 4	Motions in limine and jury selection.
Wednesday, December 15	Opening statements.
Saturday, January 8	Occurrence witness: Prosecution direct and defense cross.
Wednesday, January 19	Police witnesses: Prosecution direct and defense cross.
Saturday, February 5	Forensic scientists, direct and cross.
Wednesday, February 16	Demonstrative and summary exhibits in cross and direct.
Saturday, March 5	Direct examination: Defendant and occurrence witnesses.
Wednesday, March 16	Character Evidence.
Saturday, April 2	Hearsay, Confrontation, Relevance, and Special Evidence Problems.
Wednesday, April 20	Jury Instructions (final process)
Saturday, May 7	Summations
Wednesday, May 18	Post-trial motions
Saturday, June 4	Mock trials
Wednesday, June 15	Mock trials



**PROPOSED  
ALL-INCLUSIVE MODEL  
DEFENDER TRAINING PROGRAM**

**Professor Michele Hermann  
The University of New Mexico School of Law**

**I. OFFICE BASICS**

Purpose  
Organization  
Policy  
Lawyer's Duties

**II. COURT WATCHING**

Role and Relational Analysis

**III. PRE-COURT (CRIME-ARREST-PREARRAIGNMENT)**

Process  
Decisionmaking  
Forms  
Defendant Experience  
Ride with Police

**IV. BAIL**

Law  
Significance (Tied to plea, trial, sentence)  
Arraignment Watching  
Simulated Interviews  
Discuss Investigation and Resource Gathering  
Simulated Bail Arguments  
Bail Appeals

**V. INTERVIEWING**

Fact-Law Integration  
Roles and Relationships  
Choice and Decisionmaking  
Techniques  
Code of Professional Responsibility  
Simulated Interviews

**VI. DISCOVERY**

Informal - Field Investigations  
Significance and Techniques  
Formal - Motions  
Assignment - Write Motion and Supporting Memo of Law  
Simulated Argument of Motion  
Code of Professional Responsibility

**VII. SUBSTANTIVE CRIME ANALYSIS**

Case and Statutory Discussion  
Typical Facts  
Typical Lines of Investigation  
Typical Defenses

**VIII. AFFIRMATIVE DEFENSE ANALYSIS**

Case and Statutory Discussion  
Typical Facts  
Typical Lines of Investigation  
Special Problems

**IX. CRIMINAL PROCEDURE**

Search and Seizure  
Statements  
Pretrial Identification  
Right to Counsel  
Standing  
Fruits  
On All Discuss:  
    Rule and Exceptions  
    Analysis of Elements in Context  
    Case/Fact Analysis  
    Interviews and Investigations  
Assignment:  
    Research and Write Motions  
    Memos of Law  
Simulate:  
    Hearings and Oral Arguments

**X. NEGOTIATIONS**

Law  
Theory  
Case Evaluations  
Code of Professional Responsibility  
Simulate:  
    Plea Bargaining Sessions  
    Client Counselling Sessions

**XI. FILES**

Contents Organization  
Significance

**XII. MORE ON THE CODE OF PROFESSIONAL RESPONSIBILITY**

**XIII. EVIDENCE**

**XIV. TRIAL**

Voir Dire  
Opening  
Direct  
Cross  
Exhibits and Demonstrative Evidence  
Impeachment  
Experts  
Summations  
Motions at Trial  
Requests to Charge

**XV. SENTENCING**

Preparation  
Role of Probation  
Client Counselling  
Allocution  
Simulated Sentencing Arguments

ATTORNEY'S NAME:

CRIMINAL DEFENSE CONSORTIUM

Training Needs Examination

To the new Consortium attorney: The following is not a test in the law school sense. No grade will be assigned to it, nor will any attempt be made to score the results. Its purpose is twofold: to ascertain your present and future training needs, and to form the basis for an initial discussion of these needs. Please answer on the basis of your present knowledge; do not attempt to research the questions. Do not spend a great deal of time on the test.

1. When is the earliest stage/proceeding when you may seek to get a defendant out on bond?  
\_\_\_\_\_
2. When might you seek to get the bond reduced?  
\_\_\_\_\_
3. At what proceeding would you first file your motion for discovery?  
\_\_\_\_\_
4. Explain how discovery procedures differ in misdemeanor and felony cases.  
\_\_\_\_\_  
\_\_\_\_\_
5. State the holding of Wardius v. Oregon with regard to discovery of alibi witnesses.  
\_\_\_\_\_  
\_\_\_\_\_
6. Briefly explain the speedy trial rules applicable in Illinois.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. When should you answer ready for trial, and why?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. At what stage(s) does plea bargaining take place?  
\_\_\_\_\_
9. Assume the following facts. You are handling a fairly serious misdemeanor case. You have done your investigation and research, and are thoroughly prepared. You go to trial. The state puts on its case and before you can call any witnesses, the judge calls you and the prosecutor into chambers and offers to give your client probation if he pleads to the charges. If not, he will sentence him to one year in jail if he is found guilty. You believe your client to be innocent. Your client is afraid that if he goes to jail, his wife will divorce him. What do you do?  
\_\_\_\_\_  
\_\_\_\_\_

10. What basic resource would you use in preparing jury instructions?

\_\_\_\_\_

11. When is a witness competent to testify to a given piece of evidence?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Name some exceptions to the Hearsay Rule. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

13. Of what types of facts may a court take judicial notice? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

14. When are you prohibited from asking leading questions? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

15. When are you allowed to ask leading questions? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

16. Explain the use of a hypothetical question. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

17. Explain what "chain of custody" is and why it is important. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

18. At what point in the proceedings would you make a motion to suppress a confession, an illegal search, etc. (e.g., preliminary hearing, arraignment, trial court, etc.) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

19. How and when do you get to see the police report? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

20. Assume the following fact situation. List the issues arising from the problem. State the outcome of the issues in light of your understanding of current case law. Use this page (and, if necessary, the reverse side) for your answer.

John Doe parked his automobile in an illegal zone. After one hour, the police gave him a ticket. After a second hour, the police had his car towed away. The car was impounded. Once the car was impounded, the police searched his car and found marijuana in the glove compartment. John Doe is charged with possession of marijuana. John Doe was not present during the ticketing; he did not find out that his car had been towed and searched until well after these incidents.

21. Describe below, in very basic outline, the steps which you would go through in preparing a case for trial.

PERSONNEL POLICIES

State Appellate Defender Office  
State of Michigan  
James R. Neuhard  
State Appellate Defender



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## 1. COMPENSATION POLICY

### Compensation Schedule

The State Appellate Defender shall establish and approve a compensation schedule covering all positions and compensate employees according to such schedule. The salary rates used shall be selected from the current State of Michigan, Department of Civil Service pay rates for positions in State Classified Service.

- A. Schedule Amendments: Any change in rates of compensation authorized by the Department of Civil Service, with budgetary restrictions permitting, may also apply to the compensation schedule of the State Appellate Defender Office where these pay ranges are being utilized.

### Pay Period

The basic period for every employee shall be biweekly and shall consist of ten work days beginning on Friday.

- A. Completed Pay Period: An employee must be paid for all work days to receive credit for a completed biweekly pay period.
- B. Pay Day: Pay days shall be every other Thursday, unless those days fall on a holiday wherein it would be the next working day.

### Project Rates of Pay

For employment on a project basis not involving continual employment and where application is made in advance of employment, the State Appellate Defender may establish alternative rates of pay other than those included in the compensation schedule.

### Operation of Compensation Schedule

- A. Employee Pay Rate: No employee shall be paid a salary less than the minimum nor greater than the maximum of the salary range for the class fixed by the compensation schedule.
- B. Starting Pay Rate: A new employee shall be paid at the minimum rate in the salary range.
- C. Pay Rate Upon Transfer: When an employee is transferred to a position, the person may be paid at the salary which the person received or at the rate lower as agreed upon by the State Appellate Defender.
- D. Pay Rate Upon Schedule Revision: In case of a revision in the compensation schedule, an employee shall be paid at the salary step corresponding in length of service to the step at which the person was being paid in the previous salary range for the class.

- E. Pay Rate Upon Promotion: When an employee is promoted, the person shall be paid at the lowest salary step in the range for the higher classification which provides a salary increase.
- F. Effective Time of New Pay Rate: The new pay rate for an employee replacing another employee shall begin on the date on which the person assumes full responsibility in the position, i.e., when the former employee vacates position.
- G. Pay Rate Upon Demotion: When the position of an employee is demoted, the person shall be paid at the rate for the lower classification appropriate to their length of combined creditable service.

### Step Increases

Pay increases in the amount and at the intervals provided for in the compensation schedule for the specific class may be granted to employees upon the satisfactory performance of their work. The step increases shall be effective at the beginning of the pay period after the employee's anniversary date unless otherwise authorized by the State Appellate Defender.

- A. Anniversary Date: An employee's anniversary date shall be the date the employee is hired.
- B. Changes in Anniversary Date: When an employee is promoted, the anniversary date shall be changed to the date the employee was promoted.
- C. Notice of Step Increases: Supervisors shall be notified of their employees' pending step increases from the Personnel Department prior to the employees' anniversary dates. An employee's step increase shall be granted only upon the recommendation of his/her supervisor to the State Appellate Defender for his/her approval.
- D. Successive Step Increases: Advance in pay from the minimum to the maximum rate shall be by successive steps of the range of pay unless otherwise authorized by the State Appellate Defender.
  - 1. The computation for raise to Defender II is: Two years appellate experience or the equivalent: a) 1/2 time for time spent as a researcher (either part-time or full-time in this Office); b) 3/4 time for time spent as a research attorney; c) full credit for time taking caseload, and a minimum of one full year as a staff attorney.

### Payment at Employee's Death

In case of death, an employee's earned wages shall be paid to the beneficiary or estate.

### Probation

For every person hired there will be a 60-day probationary period which will serve as an "orientation" period. During this time individuals can be released without the steps taken under the grievance policy.

During the probationary period, usage of sick time, vacation time, and personal time must first be approved by the administrative assistant. Usage in excess of time being earned will result in loss of pay.

New employees will not be penalized while on probation by working in a lower classification, and thus their annual increase will come one year from their date of hire.

## 2. OVERTIME POLICY

### Definition

Overtime is authorized work performed in excess of 35 hours in a work week.

### Eligibility for Overtime

- A. Non-exempt\*: Employees in non-exempt positions will be eligible to receive time off for working overtime.
- B. Exempt\*\*: Employees in exempt positions shall not be eligible to receive payment for working overtime. Executive, Administrative, and Professional type positions are compensated on a salary basis to include potential job requirements of working more than a standard work week and for job requirements which allow work to be done outside of the office. The present practice of allowing, when practical, exempt employees flexibility as to office hours worked and time off without using leave will be continued to offset the number of hours worked.

### Method of Compensation

- A. Overtime in Excess of 35 Hours: Only overtime worked in excess of 35 hours per week will be compensated at the rate of one and one-half times in compensatory time to the employee for each hour of overtime worked (i.e., if a sick day is taken during the week which requires that overtime be worked, the compensatory time rate of one and one-half will not be used until the total hours worked exceeds 35. This will NOT apply to shortened work weeks due to approved holidays).

Overtime shall not be earned until such time as the total hours of unpaid leave taken during the fiscal year have been worked at regular pay.

- B. Overtime in Excess of Five Work Days: Any overtime work required in excess of five days in a seven day work week shall be compensated at the rate of one and one-half times off for each hour of overtime worked.
- C. Notification of Overtime Due: All non-exempt employees are responsible for recording their overtime worked on the time sheets biweekly. These hours will then be recorded on the employees' individual Attendance and

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\*Non-exempt Employees--Receptionist, Xerox clerk, legal secretaries, administrative clerk, senior secretary, administrative secretary, case administrator, and such other classifications as may at a future time be designated.

\*\*Exempt employees--Defender, Deputy Defender, fiscal analyst, attorneys, research attorneys, investigator, paralegals, Project Director, and such other classifications as may at a future time be designated.

Leave Record by the administrative assistant. Further, it is the individual's responsibility to notify the administrative assistant when any of the overtime hours have been used. Again, the overtime used should be indicated on the time sheets biweekly.

### 3. WORKING HOURS POLICY--NON-EXEMPT EMPLOYEES

#### Work Day

For pay computation purposes, the State Appellate Defender Office work day is seven hours, excluding lunch period.

#### Work Week

The work week shall begin on Friday and end on Thursday, and consist of five days of work in a seven day period (35 hours excluding lunch).

#### Office Hours

The regular office hours for the State Appellate Defender Office are Monday through Friday from 9:00 a.m. to 5:00 p.m., with one hour for lunch.

#### Lunch Hour

All employees are entitled to a one hour lunch period each day. This hour may not be used to shorten the work day, nor add to overtime, unless prior approval is first obtained through the administrative assistant.

#### Work Schedule

To accommodate employees requiring schedules other than 9:00 a.m. to 5:00 p.m., the State Appellate Defender Office has provided to these employees the option of adjusted work hours. These hours, however, must be within reason and all employees requesting adjusted work hours must realize they are to be in the office during the hours of 10:00 a.m. to 3:00 p.m., with a basis of a 35-hour week.

Before the adjusted schedule will be implemented, the individual must first secure approval with his/her immediate co-worker(s), and finally obtain approval from the administrative assistant. Any hours different from the regularly scheduled work hours (9:00 a.m. to 5:00 p.m.) must be recorded on the individual's time sheet biweekly.

Should the adjusted schedule be abused, or if the workload is such that we can no longer provide same, all adjusted schedules are subject to revocation and the regular hours of 9:00 a.m. to 5:00 p.m. once again instituted for all non-exempt employees.

#### Work Hours

Any non-exempt employees taking it upon themselves to begin work earlier or work through their lunch hour will not be compensated with overtime or leaving early unless prior authorization has been obtained.

#### 4. FRINGE BENEFITS POLICY

##### Insurances

Health and life insurance will be available to full-time employees in accordance with the approved benefit program of the State Appellate Defender Office.

##### Retirement

Employees are automatically enrolled in the Michigan State Employees' Retirement System and are subject to the rules and regulations therein.

##### Savings

Savings through payroll deductions can be obtained through deferred compensation plan or credit union. (See administrative assistant in charge of personnel for more information.)



## 5. LONGEVITY PAY POLICY

### Eligibility

Following completion of an aggregate of six years of continuous full-time service and continuing in subsequent years of such service, each employee shall receive annual longevity payments as provided in the schedule currently in use by the State of Michigan, Department of Civil Service. In order to make this schedule applicable to court employees, they will be assigned a class level that corresponds to the Civil Service classification for their pay range. To be eligible for an annual longevity payment after the initial payment, an employee must have completed continuous full-time service equal to the service required for original eligibility plus a minimum of one additional year.

### Time of Payment

An annual longevity payment, payable in June of each year, in addition to salary is provided for all eligible employees.

### Length of Service

For longevity purposes, employee's length of service shall be based on the number of years of service with the State Appellate Defender Office and any prior employment with the State of Michigan, the Michigan Judicial System, and up to five years of active military service.

### Computational Procedures

- A. An employee will be eligible for longevity payment upon completion of six or more years of service by June 30. The employee will receive payment in June of that same year.
- B. An employee's length of service will be rounded off to the nearest number of completed full years. The formula will be 21 or more biweekly pay periods equals a full year.
- C. To be eligible for longevity payment, an employee must have a minimum of six years of service which is full-time (or its part-time equivalent) and continuous. Continuous service is defined as six years or more of service without a break in employment. This may be obtained by either working six years for the State Appellate Defender Office or a total combination of six years of prior creditable employment and the State Appellate Defender Office where the employee started with the State Appellate Defender Office immediately after separating from the other creditable employment. Active military service (up to five years) is credited immediately upon employment with the State Appellate Defender Office. Once the employee has completed the required six years of continuous service, then all prior creditable employment will be counted in determining the total length of service.

Payment Upon Employee Retirement or Death

An employee who retires prior to June of any year shall receive payment on a pro rata basis according to the number of pay periods completed during the year. In case of death, the beneficiary or the estate shall receive the pro rata amount.

## 6. STATE HOLIDAY POLICY

### Paid Holidays

The following are regularly scheduled paid holidays:

- |                           |  |
|---------------------------|--|
| 1. New Year's Day         | January 1                                |
| 2. Martin Luther King Day | The Monday most contiguous to January 15 |
| 3. Lincoln's Birthday     | February 12                              |
| 4. Washington's Birthday  | 3rd Monday in February                   |
| 5. Memorial Day           | Last Monday in May                       |
| 6. Independence Day       | July 4                                   |
| 7. Labor Day              | 1st Monday in September                  |
| 8. Columbus Day           | 2nd Monday in October                    |
| 9. Veteran's Day          | November 11                              |
| 10. Thanksgiving Day      | 4th Thursday in November                 |
| 11. Christmas Day         | December 25                              |

Whenever one of the above holidays occurs on Saturday, time off with pay is allowed on the preceding Friday.

Whenever one of the above holidays occurs on Sunday, time off with pay is allowed on the subsequent Monday.

### SADO "Preferred" Holidays

- |                              |             |
|------------------------------|-------------|
| 1. New Year's Eve            | December 31 |
| 2. Friday after Thanksgiving |             |
| 3. Christmas Eve             | December 24 |

The above SADO preferred holidays are substituted for the authorized State holidays which fall in February, October, and November (Lincoln's Birthday, Washington's Birthday, Columbus Day or Veteran's Day).

No one person may have all preferred holidays, but must take at least two of the four State holidays either on the day on which they fall or a day nearby should the workload require you to work the holiday.

**CONTINUED**

**2 OF 3**

Since the SADO preferred holidays are not authorized State holidays, 1/2 staff coverage must be obtained in the Office. Therefore, a meeting prior to the SADO preferred holidays will be held with all people concerned to insure that coverage is obtained on these holidays.

Records from the prior year will be referred to in order to insure that the same employees do not get the same preferred holidays each year.

The prior year's records and seniority will be used to determine choice of days when sufficient staff coverage is in jeopardy.

If an employee does not come to work on a holiday when scheduled, that person must either furnish a verified excuse or risk losing a day's pay and/or the privilege of the next State holiday.

## 7. ANNUAL (VACATION) LEAVE POLICY

### Annual Leave (Vacation)

- A. Accumulation: Employees earn 1/2 day of annual leave for each completed biweekly pay period, equivalent to 13 work days a year.
- B. Usage: Vacation days may be taken as desired by the individual. However, sufficient notice should be given to both co-worker(s) and administrative assistant. No more than 25 percent of secretarial staff may take annual leave at the same time.
- C. Unpaid Vacation: Any person desiring to take more than the number of accrued vacation days will do so without pay, and only upon approval of immediate supervisor and administration.
- D. Holiday Occurring During Vacation Time: Any holiday falling during vacation time of an employee shall not count as a vacation day.
- E. Notice of Vacation: All desired vacation requests must be in writing and given to the administrative assistant so as to determine the number of people gone at the same time. Requests will be honored in the order they are received. If conflicts then arise, seniority will prevail.
- F. Additional Annual Leave: In recognition of an employee's length of service, additional annual leave is earned for continuous service at the rate of five days after five years service, and two days after ten years service, 15 days of which may be taken at one time.
- G. Length of Service: An employee's length of service shall be based on the number of years of service with the State Appellate Defender Office and any prior employment with the State of Michigan, the Michigan judicial system, and up to five years of active military service.
- H. Credit of Additional Annual Leave: Employees shall be credited annually with the five days additional leave upon completion of their 5th anniversary. At the time of retirement or death the leave will be credited on a pro rata basis according to the number of pay periods completed during the year.
- I. Computational Procedures
  1. An employee will be eligible for and credited with additional annual leave upon completion of five years of service.
  2. To be eligible for length of service annual leave, an employee must have a minimum of five years of service which is full-time (or its part-time equivalent) and continuous.

Continuous Service is defined as five years or more of service without a break in employment. This may be obtained by either working five years for the State Appellate Defender Office or a

total combination of five years of prior creditable employment and State Appellate Defender Office service where the employee started with the State Appellate Defender Office immediately after separating from other creditable employment. Active military service (up to five years) is credited immediately upon employment with the State Appellate Defender Office. Once the employee has completed the required five years of continuous service, then all prior creditable employment will be counted in determining the total length of service. (For effects of leave absence, see Policy 10.)

3. Accumulation: No annual leave (vacation time) shall be authorized, accumulated, or credited in excess of 30 days.
4. Separation: An employee who has completed three months of service, upon separation from the State Appellate Defender Office shall be paid at the individual's current rate of pay for unused credited annual leave, not to exceed 30 days.

## 8. SICK LEAVE POLICY

### Allowance

Employees earn 1/2 day of sick leave for each completed biweekly work period, equivalent to 13 work days for a completed year.

### Utilization

Sick leave may be used by an employee for any of the following reasons:

- A. In the event of illness, injury, or temporary disability.
- B. Illness, injury, or temporary disability in the immediate family which necessitates your absence from work. "Immediate family" includes the employee's spouse, children, parents or foster parents, parents-in-law, brothers, sisters, or any persons for whose financial or physical care the employee is principally responsible.
- C. Absence necessitated by the death of a relative or person for whose financial or physical care the employee has been principally responsible.
- D. For attendance at the funeral of a member of the "immediate family."
- E. For appointments with a doctor, dentist, or other recognized practitioner.

For any of the above, personal time may be used if not previously used.

### Notification

It is the employee's responsibility to notify the administrative assistant whenever taking sick time and give the reason.

### No Advance Credit

Sick leave shall not be allowed in advance of being earned. If an employee has insufficient sick leave and annual leave credits (vacation time) to cover a period of absence, a payroll deduction for lost time shall be made.

### Accumulation

Sick leave is carried over from year to year and not lost while employed at the State Appellate Defender Office. There is no limit to the number of days which can be accrued.

### Payment at Retirement or Employee's Death

When employees retire from the State Appellate Defender Office they shall be paid for one-half of unused sick leave at their current rate of pay. In case of death, such one-half payment shall be made to the beneficiary.



### Certification of Fitness

It may be requested that an employee present medical certification of physical fitness to continue working or return to work.

### Payment at Separation Other Than Retirement or Death

Effective October 1, 1977, upon separation from the State Appellate Defender Office for any reason other than retirement or death, the employee shall be paid for a percentage of unused sick leave, as follows:

Payment shall be made at the employee's last rate of pay. An employee's sick leave balance shall be computed by subtracting the total number of sick leave days transferred under the provisions of section below entitled "Transfer of Sick Leave Earned Elsewhere." This payment applies to all employees except attorneys, research attorneys, investigators, researchers, and paralegal personnel.

<u>Sick Leave Balance (Days)</u>	<u>Percent Payoff</u>
Less than 13	0
13 - 26	10
26½ - 52	20
52½ - 78	30
78½ - 104	40
104½ - or more	50

### Separation with Retirement System Vesting

If an employee separates with retirement system vesting (10 years or more of service), is paid for unused sick leave in accordance with the above described rates, and subsequently files for retirement, he/she will be entitled to an adjusted sick leave payoff if the original payoff at separation was less than 50 percent. Payment shall be made at the employee's last rate of pay.

### Payment for a Leave of Absence

There will not be a sick leave payoff at the commencement of any leave of absence. Upon the expiration of any leave of absence, where the employee does not return, payoff will be made in the normal fashion.

### Transfer of Sick Leave Earned Elsewhere

An employee may transfer up to a maximum of 90 days of unused sick leave earned during prior employment with the State of Michigan and the Michigan Judicial System. Sick leave shall not be transferable if an employee received a sick leave payoff under the provisions of his/her former employer's plan. Sick leave credited under this policy shall not be subject to the payoff provisions provided for in section above entitled "Payment at Separation Other Than Retirement or Death."

Return of a Separated Employee

- A. Separation Prior to October 1, 1977: A former employee upon return to full-time employment with the State Appellate Defender Office shall be credited all unused sick leave.
- B. Separation After October 1, 1977: A former employee who received a sick leave payoff under the provisions of section entitled "Payment at Separation Other than Retirement or Death" shall not be credited with unpaid sick leave balances upon return to full-time employment with the State Appellate Defender Office.

## 9. ATTENDANCE AND LEAVE (SICK AND VACATION) POLICY

### Authorization

The administrative assistant shall be responsible for tracking and approving attendance and leave usage (sick and vacation time) for all non-exempt employees.

### Leave Approval--Vacation and Sick Time

The administrative assistant shall review and approve all usage of sick and vacation leave in accordance with current Personnel Policies.

### Attendance and Leave Report

- A. Preparation: At the end of each biweekly work period the administrative assistant will approve and submit a completed Attendance and Leave Report covering all employees to the Personnel Department.
- B. Leave Records (Vacation and Sick Time): An Employee Leave Record shall be maintained for each employee based on leave usage as indicated by the Attendance and Leave Reports and in accordance with Personnel Policies.
- C. Payroll Changes: An employee's biweekly pay will be adjusted in accordance with the actions noted on the Attendance and Leave Reports and with Personnel Policies.
- D. Notification of Leave Balances: There will be semi-annual reconciliation between records kept by individual employees and the administrative assistant.

There will be notification prior to end of the year if there is more than a 30-day accumulation of annual leave days for either exempt or non-exempt employees.

It is the duty of the individual to reconcile errors in the computation of sick and annual leave days.

## 10. LEAVE OF ABSENCE POLICY

### Leave of Absence Without Pay

- A. Authorization: An employee may be allowed leave of absence without pay upon approval of the Defender/Deputy Defender. Except in extraordinary circumstances, leaves of absence shall not be considered for longer than six months, to be determined by the Defender/Deputy Defender. Such leave shall be reported to the State Court Administrator.
- B. Limitation: Leave of absence without pay shall not be granted to an employee for longer than six months unless recommended by the Defender/Deputy Defender. No leave of absence will be granted for time otherwise covered by vacation or sick time until such accrued vacation and sick time have been utilized.
- C. Continuous Service: An employee granted a leave of absence without pay shall not be considered still in the employment of the State Appellate Defender Office for continuous service purposes, and will not earn annual and sick leave nor will this time be utilized in determining longevity pay, length of service, annual leave, or compensation schedule step increases.
- D. Effects of Leave: When an employee is granted a leave of absence without pay the following occurs:
1. If the leave is longer than a pay period, the employee shall be removed from the State Appellate Defender Office payroll which will result in:
    - o loss of employer's contribution toward health, life, and/or long term disability insurance premiums. The employee will need to make arrangements to pay insurance premiums directly to Accounting, if the employee wants to retain insurance coverage.
    - o loss of any payroll deductions to Credit Union. Employee will need to make arrangements to pay Credit Union loan payments and/or insurance premiums directly to the Credit Union.
    - o loss of contribution to State Employees' Retirement System.
  2. No earned annual and sick leave during any period(s) involved.
  3. No accrual of service credit during pay period(s) involved which may affect a calculation of longevity pay, additional annual leave, and salary step increases.
- E. Return From Leave: When an employee returns from an approved leave of absence without pay that was longer than a pay period, it is necessary to complete payroll forms treating the employee like a new hire to put

him or her back on the payroll. The following will need to be prepared:

1. New W-4 cards for federal, state, and local tax withholding.
2. New insurance cards to cover enrollment in Blue Cross/Blue Shield, life insurance, and long-term disability. (This is necessary only if the employee did not continue insurance coverage by not personally paying the premiums while on the leave of absence without pay.)
3. Cards for any payroll deductions, such as Credit Union.

## 11. MATERNITY LEAVE POLICY

### Maternity Leave

Women desiring to take a maternity leave have the option of first using all of their accrued sick and vacation time. Any amount of time taken is included in the two-month maternity leave for exempt\* employees and the six-month maternity leave for non-exempt\*\* employees.

Any maternity leave shall be arranged in an agreement beforehand with the individual and the Defender/Deputy Defender.

### Effects of Maternity Leave

During the unpaid maternity leave those who wish to continue with their present insurance coverage will have to contact Frank Mills, Supreme Court Administrator's Office, 517/373-0052, and obtain the amount to be paid biweekly to retain insurance benefits.

During the maternity leave, no sick or vacation days or seniority credit is earned. The annual increase in pay is delayed for each month on leave.

### Return from Maternity Leave

Once an employee returns from an approved maternity leave, it is necessary to complete payroll forms before being placed back on the payroll. New W-4 cards for federal, state, and local taxes are necessary. New insurance cards are also needed to cover enrollment in Blue Cross/Blue Shield, life insurance, and long-term disability. (This is only necessary if the employee did not continue insurance coverage while on the maternity leave.)

### Termination

If the employee does not return to work after the allotted time for the maternity leave, she will no longer remain on maternity leave status, and, thus, will be taken permanently off the payroll.

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\*Exempt Employees - Defender, Deputy Defender, Fiscal Analyst, attorneys, research attorneys, investigator, paralegals, Project Director, and such other classifications as may at a future time be designated.

\*\*Non-Exempt Employees - Receptionist, Xerox clerk, legal secretaries, administrative clerk, senior secretary, administrative assistant, case administrator, and such other classifications as may at a future time be designated.

## 12. MILITARY LEAVE POLICY

### Regular Military Leave

Any full-time employee who enters military service in the armed forces of the United States under the provisions of the selective service law by call to duty or by voluntary entrance in lieu thereof shall be entitled to a military leave of absence without pay for the period of time required to fulfill their military obligation. The leave and right to restoration to the person's former position shall automatically terminate if the employee voluntarily remains in military service beyond the period of time required by the selective service law.

### Temporary Military Leave

Any full-time employee who is a member of a reserve component of the armed forces of the United States shall be entitled to a temporary military leave of absence when ordered, whether voluntarily or involuntarily, to active or inactive duty training. A temporary military leave of absence for active duty training shall be with pay equivalent to the difference between the employee's military pay and his regular salary for each day of absence from scheduled court employment, if the person's military pay is less for those same days. Such leave shall not exceed 15 calendar days of absence from scheduled employment in any calendar year. Continuous State Appellate Defender Office service shall be allowed for the period of temporary military leave of absence.

- A. Duty in Excess of 15 Days: If active duty training exceeds 15 days in any calendar year, the employee may elect to be placed on regular military leave of absence without pay, or utilize annual leave for the remainder of the period of training. The leave and right to restoration to the person's former position shall terminate, if the employee fails to return to his position within 15 days of release from training duty and/or from date of discharge from hospitalization incident to that training. State Appellate Defender Office service credit shall be allowed for the period of the military leave of absence without pay.
- B. Holidays Occurring During Temporary Military Leave: An employee shall be entitled to holiday pay for a designated holiday which occurs or is observed during the period of the person's temporary military leave of absence. Military pay earned on a holiday shall not be considered in determining the amount of state salary for the holiday.

### Emergency Military Leave of Absence

Any full-time employee who is a member of a reserve component of the armed forces and is ordered to perform state emergency duty, by compulsory call of the Governor or the President, shall be entitled to an emergency military leave of absence. Such leave shall be with pay equivalent to the difference between the employee's military pay and their regular salary for each day of absence from scheduled court employment, if the person's military pay is less for those same days, but shall not exceed 30 consecutive calendar days. Holiday pay shall be handled as prescribed in Section 12B. Should the period of state emergency duty exceed 30 consecutive calendar days, the employee may elect to be placed on

regular military leave of absence without pay or utilize annual leave for the remainder of the duty period. Upon release from state emergency duty the employee shall be restored immediately to the person's former position. Continuous State Appellate Defender Office service credit shall be allowed for the period of emergency military leave of absence. State Appellate Defender Office service credit shall be allowed for the period of military leave of absence without pay upon return to the person's position.



### 13. MILITARY SERVICE CREDIT POLICY

#### Service Credit

Credit for up to five years of active military service shall be used in computing an employee's longevity pay and additional annual leave for length of service. This service shall be credited immediately upon hire with the State Appellate Defender Office.

#### Eligibility

The criteria for military service is as follows:

- A. Only military service in the United States Armed Forces.
- B. Only active military service up to a maximum of five years is creditable. Duty time in a reserve unit does not qualify for credit.
- C. Active military service is considered active duty similar to conditions in which a military leave of absence would have been granted had the veteran been employed by the State Appellate Defender Office.
- D. A veteran must have received an Honorable Discharge.
- E. The dates of active service indicated on any of the following documents shall be used to determine military service credit:
  1. Certificate, certified or photostatic copy, of Honorable Discharge
  2. Certificate of Honorable Active Military Service
  3. Certificate of Service or photostatic copy
  4. Report of Separation.

## 14. AFFIRMATIVE ACTION POLICY

### Equal Opportunity

The State Appellate Defender Office is committed to the concept of equal opportunity employment as a necessary element in its basic personnel and administrative policy. This commitment will be supported by positive, practical efforts to work continually toward improving recruitment, employment, development, and promotional opportunities for minorities and women.

### General Objectives

- A. To establish and maintain employment levels for women and minorities commensurate with their respective population ratios.
- B. To distribute this employment proportionately throughout the various job classifications, whenever possible.
- C. To make a continuous effort to eliminate and prevent occurrences of arbitrary discriminatory hiring and promotional practices.

### Commitment

All administrative personnel and employees are hereby committed to support the Affirmative Action Program as a matter of policy.

## 15. PROFESSIONAL ORGANIZATION MEMBERSHIP POLICY

### Membership in State Bar of Michigan

- A. Active Member Requirement: An attorney on the staff of the State Appellate Defender Office, licensed to practice law in Michigan, shall register as an active member of the State Bar of Michigan in accordance with Rule 3 of the Supreme Court Rules concerning the State Bar of Michigan.
- B. Dues: Payment of annual State Bar membership dues is the responsibility of each attorney and shall not be paid by the State Appellate Defender Office.
- C. Prohibition to Practice Law: No attorney on the staff of the State Appellate Defender Office shall continue to engage in the practice of law except in the performance of the duties of his/her position. The Court, by its designated agent, or the State Appellate Defender may authorize an exception to this policy for a staff attorney in connection with a specified matter.

## 16. DISCIPLINARY ACTIONS POLICY

### Responsibility for Administering Disciplinary Action

- A. Administrative assistant/Deputy Defender shall be responsible for:
1. Keeping the employees informed of Personnel Policies, Court rules, laws, procedures, and standards of conduct related to their work.
  2. Taking all possible steps to prevent situations from developing to a point where disciplinary action is required.
  3. Directing and disciplining employees under their jurisdiction by taking such action as may reasonably be expected to correct the employee(s) and maintain general discipline and morale.
- B. Personnel Director: The administrative assistant/Deputy Defender of the State Appellate Defender Office shall be responsible for providing advice and assistance on disciplinary actions and for assuring that proposed actions are consistent with Personnel Policies and past practices.

### Types of Disciplinary Actions

Disciplinary actions fall into several categories. The sequence of the list is presented as a general guide and does not require a step-by-step procedure which must be followed in each case. An offense may be so flagrant that suspension or dismissal may be the only type of action warranted. Before taking action, the following should be considered:

- Degree of effect the offense had on the client
  - Degree of effect the offense had on the efficient operations of the office and morale
  - Seriousness of the offense in terms of the employee's duties and responsibilities, employee's level in the organization, and any impact on maintenance of proper order, employee morale, public relations, or ethics of the Appellate Defender Office
  - Circumstances surrounding the offense
  - When a cumulative problem exists, the previous actions taken to correct the problem.
- A. Oral Reprimand: An informal means by which the administrative assistant/Deputy Defender may call to an employee's attention certain deficiencies in the person's conduct or work performance. The reprimand is normally given by the administrative assistant/Deputy Defender and will not be made a matter of record in the employee's Personnel File.

- B. Written Reprimand: A formal reprimand issued as a memo or letter in which the administrative assistant/Deputy Defender writes out the action or behavior which the employee should change, cease, or begin. The reprimand should cite specific incidents, give direct and concrete instructions for the future, and point out the consequences of not following the instructions. A copy of the written reprimand shall be presented to the employee and a copy included in the employee's Personnel File.
- Employee written response: An employee has the right to make a statement in writing regarding all matters included within the written reprimand. The employee's statement shall be permanently affixed to the written reprimand.
- C. Demotion: The Defender or Deputy Defender may demote an employee for not rendering satisfactory performance in his or her position. This action will result in the employee's salary being reduced, or in denial of an employee's step increase. The reasons for the demotion shall be presented in writing to the employee and to the Personnel Department. A completed and State Appellate Defender approved Personnel Employment Change Report is necessary to initiate the action.
- D. Suspension: This is an action in which the Defender or Deputy Defender recommends that an employee be temporarily suspended from employment and from the State Appellate Defender Office payroll for a definite period of time. The three primary reasons for suspension are: (1) a disciplinary lay-off, (2) last attempt to correct employee prior to dismissal, and (3) pending an investigation of a serious offense which may result in dismissal. A suspension carries with it the following penalties:
- Loss of pay
  - Loss of annual and sick leave during the pay period(s) involved
  - No accrual of service credit which may affect the calculation of longevity pay, additional leave, and salary step increases
  - Loss of use of annual and sick leave while on suspension
  - Loss of contribution to State Employees' Retirement System.

The reasons for the suspension shall be presented in writing to the the employee and to the Personnel Department. A completed and State Appellate Defender approved Personnel Employment Change Report is necessary to initiate this action.

- E. Dismissal: This action permanently removes an employee from employment with the State Appellate Defender Office and from the payroll. A dismissed employee shall only be paid for actual time worked and for unused accumulated annual leave. The reasons for the dismissal shall be presented in writing to the employee and to the Personnel Department. A completed and State Appellate Defender approved Personnel Employment Change Report is necessary to initiate the action.
  
- F. Actions taken under this Policy are subject to the Grievance Procedure outlined in Policy 17.

## 17. GRIEVANCE PROCEDURE POLICY

### Purpose

The purpose of this grievance procedure is to provide an orderly system of resolving employee grievances in an equitable and timely manner without fear of reprisal. Every effort shall be made to reach a clear understanding of the exact nature and facts of the grievance, the relief requested, and to provide an equitable resolution of the grievance.

#### A. Definitions

1. Grievance: A grievance shall mean a complaint of a violation of personnel standards, policy, rules, regulations, procedures, condition of employment, past practice or agreement or dispute over its application and interpretation, or a claim of discipline without just cause.
2. Weekdays: Time limitations for the grievance procedure shall be counted in terms of weekdays which are defined as Monday through Friday, excluding State holidays.

#### B. Time Limitations

1. Time limits may be extended by mutual agreement in writing.
2. Late appeals at any step may be filed only upon showing a good cause for delay.
3. Any unanswered grievance not appealed within the time limit is deemed closed upon basis of last answer.

#### C. Administrative Leave for Grievance Meetings

The grievant shall be granted administrative leave for necessary and reasonable absence from work for scheduled meetings during the grievance procedure.

#### D. Claims for Back Wages

All claims for back wages shall be limited to the amount of wages that the employee otherwise would have earned by virtue of the person's employment with the State Appellate Defender Office had he/she not been suspended or discharged. Employees shall have a duty to mitigate the amount of damages they may suffer from such discharge or suspension by the employer.

### Grievance Procedure

- A. Step 1: An employee who has a grievance shall first attempt to resolve it with the individual involved. After discussion with the individual involved, and no resolution has been met, the employee has five (5)

weekdays from the date of the incident that created the grievance to discuss it with the Defender/Deputy Defender.

**B. Step 2:** If not satisfied with the answer at Step 1, the employee shall explain the grievance in writing and submit it to the Defender/ Deputy Defender within five (5) weekdays of receiving the Step 1 oral answer. The written grievance should include the following information:

1. Employee name
2. Brief statement of the grievance
3. What should be done to solve the grievance
4. Date the employee received the oral answer under Step 1
5. Date given to Defender/Deputy Defender
6. Signature of employee.

Within ten (10) weekdays of receiving the written grievance, the Defender/Deputy Defender shall review the grievance, hold an oral conference with the employee and issue a decision in writing to the employee.



## 18. PERSONAL TIME POLICY

### Personal Time

Each employee is entitled to two personal days, or the equivalent of 14 hours each fiscal year (fiscal year begins July 1 and ends June 30). Sufficient notice, whenever possible, should be given to the administrative assistant prior to taking personal time.

### Recording Personal Time

Each employee is responsible for recording their personal time on their time sheets biweekly.

### Personal Time Usage

Personal time cannot be carried over from one year to the next, but must be used within that fiscal year. Any personal time not used will be lost at the beginning of the next fiscal year.

### New Employees

Employees hired during the months of July through December would be entitled to two personal days or 14 hours. Employees hired during the months of January through June would be entitled to one personal day of seven hours.

## 19. EMPLOYMENT POLICY

### Purpose

It is the policy of the State Appellate Defender Office to recruit and employ the best available persons on the basis of merit and to place them, according to their qualifications, in positions that make full use of their abilities while at the same time providing maximum personal satisfaction. It shall be a consideration of the hiring committee that in recognition of the various styles attorneys bring to their work, vacancies in attorney positions be filled with regard to past experiences, both professional and personal, of the applicant.

### Vacancies

- A. Definition: An employment opening in an existing position which is or will be vacant or a newly created position. A vacancy may be filled by means of promotion or transfer of a State Appellate Defender Office employee or the hiring of an applicant from outside the organization.
- B. Approval: All vacant positions shall be evaluated and approved for filling by the State Appellate Defender before the employment process shall begin.

### External Recruiting

Every reasonable effort shall be made by the State Appellate Defender Office to attract outside qualified persons to compete in the selection process. Job opening announcements may be sent to other courts, educational institutions, professional and vocational societies, minority organizations, newspapers, and such other individuals, organizations, and media consistent with obtaining qualified applicants and meeting the objectives of the Affirmative Action Policy.

### Reclassification Promotion

- A. Definition: An employee promotion attained by the reclassification of the employee's position. A position may be reclassified upward when it is determined that the duties and responsibilities of the position have changed to the extent of warranting a higher salary range. A reclassification is not considered an employment opening if the position is occupied at the time of the action.

## 20. SECRETARIAL WORKLOAD POLICY

### Daily Status

Each day secretaries are to communicate through use of the "Daily Status Report" to the administrative assistant their workload for that day in order to determine whether:

1. They are available to assist another secretary, or
2. They will need assistance from someone who is available that particular day.

### Workload Problem

Any secretary having difficulty with a particular attorney either because of workload or personality conflict, after discussing it with that person, may advise the administrative assistant and request that a meeting be held to try to resolve the problem.

### Secretarial Workload Problem

Any secretary who feels another secretary has a lighter workload than she/he should discuss this with that person. Hopefully, the discovery might be that the secretary in question has as much work but a better system of doing things which could be passed on. However, if this is not the case, contact the administrative assistant and a resolution will be attempted, either by meeting with that particular secretary or calling a secretarial meeting to resolve the problem.

## 21. SNOW DAY POLICY

In the event of a natural emergency such as excessive snow, flood, etc., making it impossible for employees to get to work, it is necessary for non-exempt employees to call either the Defender (or his secretary), or the Deputy Defender, (or his/her secretary) to inform said person they will not be in the office that day. Also, said employee should speak with the attorney/attorneys he/she works with to relay said information.

It is the policy of this office that an accrued vacation or personal day may be used or, in the alternative, the time shall be made up by working through lunch hours, before or after regular working hours or on the weekend, within four weeks of the day missed. The employee shall first inform the person in charge of tracking time before said hours are made up. Accrued sick time may not be used in this instance.

**22. SUPREME COURT "MITCHELL" CASE POLICY**

Applications for Leave to Appeal **MUST** be filed within six months of the Supreme Court Order of Appointment.

Occasionally there will be exceptions; i.e., the due date **MAY** be six months from the date of the trial Court Order of Appointment (e.g., following indigency hearing) or six months from the date of receipt of the transcript.

Anyone failing to meet this six-month deadline will most likely be held in contempt and fined by the Supreme Court. Fines will be paid by the individual attorney.

**THE MANAGER'S JOB: FOLKLORE AND FACT**

by

**Henry Mintzberg**

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## The Manager's Job: Folklore and Fact

Henry Mintzberg

The classical view says that the manager organizes, coordinates, plans, and controls; the facts suggest otherwise.

Just what does the manager do? For years the manager, the heart of the organization, has been assumed to be like an orchestra leader, controlling the various parts of his organization with the ease and precision of a Seiji Ozawa. However, when one looks at the few studies that have been done--covering managerial positions from the president of the United States to street gang leaders--the facts show that managers are not reflective, regulated workers, informed by their massive MIS systems, scientific, and professional. The evidence suggests that they plan a complex, intertwined combination of interpersonal, informational, and decisional roles. The author's message is that if managers want to be more effective, they must recognize what their job really is and then use the resources at hand to support rather than hamper their own nature. Understanding their jobs as well as understanding themselves takes both introspection and objectivity on the managers' part. At the end of the article the author includes a set of self-study questions to help provide that insight. Some of the material in this article is condensed from the author's book, The Nature of Managerial Work, published by Harper & Row.

If you ask a manager what he does, he will most likely tell you that he plans, organizes, coordinates, and controls. Then watch what he does. Don't be surprised if you can't relate what you see to these four words.

When he is called and told that one of his factories has just burned down, and he advises the caller to see whether temporary arrangements can be made to supply customers through a foreign subsidiary, is he planning, organizing, coordinating, or controlling? How about when he presents a gold watch to a retiring employee? Or when he attends a conference to meet people in the trade? Or on returning from that conference, when he tells one of his employees about an interesting product idea he picked up there?

The fact is that these four words, which have dominated management vocabulary since the French industrialist Henri Fayol first introduced them in 1916, tell us little about what managers actually do. At best, they indicate some vague objectives managers have when they work.

The field of management, so devoted to progress and change, has for more than half a century not seriously addressed the basic question: What do managers do? Without a proper answer, how can we teach management? How can we design planning or information systems for managers? How can we improve the practice of management at all?

Our ignorance of the nature of managerial work shows up in various ways in the modern organization--in the boast by the successful manager that he never spent a single day in a management training program; in the turnover of corporate planners who never quite understood what it was the manager wanted; in the computer consoles gathering dust in the back room because the managers never used the fancy on-line MIS some analyst thought they needed. Perhaps most important, our ignorance shows up in the inability of our large public organizations to come to grips with some of their most serious policy problems.

Somehow, in the rush to automate production, to use management science in the functional areas of marketing and finance, and to apply the skills of the behavioral scientist to the problem of worker motivation, the manager--that person in charge of the organization or one of its subunits--has been forgotten.

My intention in this article is simple: to break the reader away from Fayol's words and introduce him to a more supportable, and what I believe to be a more useful, description of managerial work. This description derives from my review on how various managers have spent their time.

In some studies, managers were observed intensively ("shadowed" is the term some of them used); in a number of others, they kept detailed diaries of their activities; in a few studies, their records were analyzed. All kinds of managers were studied--foremen, factory supervisors, staff managers, field sales managers, hospital administrators, presidents of companies and nations, and even street gang leaders. These "managers" worked in the United States, Canada, Sweden, and Great Britain. Beginning on the next page is a brief review of the major studies that I found most useful in developing this description, including my own study of five American chief executive officers.

A synthesis of these findings paints an interesting picture, one as different from Fayol's classical view as a cubist abstract is from a Renaissance painting. In a sense, this picture will be obvious to anyone who has ever spent a day in a manager's office, either in front of the desk or behind it. Yet, at the same time, this picture may turn out to be revolutionary, in that it throws into doubt so much of the folklore that we have accepted about the manager's work.

I first discuss some of this folklore and contrast it with some of the discoveries of systematic research--the hard facts about how managers spend their time. Then I synthesize these research findings in a description of ten roles that seem to describe the essential content of all managers' jobs. In a concluding section, I discuss a number of implications of this synthesis for those trying to achieve more effective management, both in classrooms and in the business world.

### Research on Managerial Work

Considering its central importance to every aspect of management, there has been surprisingly little research on the manager's work, and virtually no systematic building of knowledge from one group of studies to another. In seeking to describe managerial work, I conducted my own research and also scanned the literature widely to integrate the findings of studies from many diverse sources with my own. These studies focused on two very different aspects of managerial work. Some were concerned with the characteristics of the work--how long managers work, where, at what pace and with what interruptions, with whom they work, and through



what media they communicate. Other studies were more concerned with the essential content of the work--what activities the managers actually carry out, and why. Thus, after a meeting, one researcher might note that the manager spent 45 minutes with three government officials in their Washington office, while another might record that he presented his company's stand on some proposed legislation in order to change a regulation.

A few of the studies of managerial work are widely known, but most have remained buried as single journal articles or isolated books. Among the more important ones I cite (with full references in the footnotes) are the following:

- Sune Carlson developed the diary method to study the work characteristics of nine Swedish managing directors. Each kept a detailed log of his activities. Carlson's results are reported in his book Executive Behavior. A number of British researchers, notably Rosemary Stewart, have subsequently used Carlson's method. In Managers and Their Jobs, she describes the study of 160 top and middle managers of British companies during four weeks, with particular attention to the difference in their work.
- Leonard Sayles's book Managerial Behavior is another important reference. Using a method he refers to as "anthropological," Sayles studied the work content of middle- and lower-level managers in a large U.S. corporation. Sayles moved freely in the company, collecting whatever information struck him as important.
- Perhaps the best-known source is Presidential Power, in which Richard Neustadt analyzes the power and managerial behavior of Presidents Roosevelt, Truman, and Eisenhower. Neustadt used secondary sources--documents and interviews with other parties--to generate his data.
- Robert H. Guest, in Personnel, reports on a study of the foreman's working day. Fifty-six U.S. foremen were observed and each of their activities recorded during one eight-hour shift.
- Richard C. Hodgson, Daniel J. Levinson, and Abraham Zaleznik studied a team of three top executives of a U.S. hospital. From that study they wrote The Executive Role Constellation. These researchers addressed in particular the way in which work and socioemotional roles were divided among the three managers.
- William F. Whyte, from his study of a street gang during the Depression, wrote Street Corner Society. His findings about the gang's leadership, which George C. Homans analyzed in The Human Group, suggest some interesting similarities of job content between street gang leaders and corporate managers.

My own study involved five American CEOs of middle- to large-sized organizations--a consulting firm, a technology company, a hospital, a consumer goods company, and a school system. Using a method called "structural observation," during one intensive week of observation for each executive I recorded various aspects of every piece of mail and every verbal contact. My method was designed to

capture data on both work characteristics and job content. In all, I analyzed 890 pieces of incoming and outgoing mail and 368 verbal contacts.

### Some Folklore and Facts About Managerial Work

There are four myths about the manager's job that do not bear up under careful scrutiny of the facts.

1. **Folklore:** The manager is a reflective, systematic planner. The evidence on this issue is overwhelming, but not a shred of it supports this statement.

**Fact:** Study after study has shown that managers work at an unrelenting pace, that their activities are characterized by brevity, variety, and discontinuity, and that they are strongly oriented to action and dislike reflective activities. Consider this evidence:

- Half the activities engaged in by the five chief executives of my study lasted less than nine minutes, and only 10 percent exceeded one hour.<sup>1</sup> A study of 56 U.S. foremen found that they averaged 583 activities per eight-hour shift, an average of 1 every 48 seconds.<sup>2</sup> The work pace for both chief executives and foremen was unrelenting. The chief executives met a steady stream of callers and mail from the moment they arrived in the morning until they left in the evening. Coffee breaks and lunches were inevitably work related, and ever-present subordinates seemed to use up any free moment.
- A diary study of 160 British middle and top managers found that they worked for a half hour or more without interruption only about once every two days.<sup>3</sup>
- Of the verbal contacts of the chief executives in my study, 93 percent were arranged on an ad hoc basis. Only 1 percent of the executives' time was spent in open-ended observational tours. Only 1 out of 368 verbal contacts was unrelated to a specific issue and could be called general planning. Another researcher finds that "in not one single case did a manager report the obtaining of important external information from a general conversation or other undirected personal communication."<sup>4</sup>
- No study has found important patterns in the way managers schedule their time. They seem to jump from issue to issue, continually responding to the needs of the moment.

Is this the planner that the classical view describes? Hardly. How, then, can we explain this behavior? The manager is simply responding to the pressure of his job. I found that my chief executives terminated many of their own activities, often leaving meetings before the end, and interrupted their desk work to call in subordinates. One president not only placed his desk so that he could look down a long hallway but also left his door open when he was alone--an invitation for subordinates to come in and interrupt him.

Clearly, these managers wanted to encourage the flow of current information. But more significantly, they seemed to be conditioned by their own workloads. They appreciated the opportunity cost of their own time, and they were continually aware of their ever-present obligations--mail to be answered, callers to attend to, and so on. It seems that no matter what he is doing, the manager is plagued by the possibilities of what he might do and what he must do.

When the manager must plan, he seems to do so implicitly in the context of daily actions, not in some abstract process reserved for two weeks in the organization's mountain retreat. The plans of the chief executives I studied seemed to exist only in their heads--as flexible, but often specific, intentions. The traditional literature notwithstanding, the job of managing does not breed reflective planners; the manager is a real-time responder to stimuli, an individual who is conditioned by his job to prefer live to delayed action.

2. **Folklore:** The effective manager has no regular duties to perform. Managers are constantly being told to spend more time planning and delegating, and less time seeing customers and engaging in negotiations. These are not, after all, the true tasks of the manager. To use the popular analogy, the good manager, like the good conductor, carefully orchestrates everything in advance, then sits back to enjoy the fruits of his labor, responding occasionally to an unforeseeable exception.

But here again the pleasant abstraction just does not seem to hold up. We had better take a closer look at those activities managers feel compelled to engage in before we arbitrarily define them away.

**Fact:** In addition to handling exceptions, managerial work involves performing a number of regular duties, including ritual and ceremony, negotiations, and processing of soft information that links the organization with its environment. Consider some evidence from the research studies:

- A study of the work of the presidents of small companies found that they engaged in routine activities because their companies could not afford staff specialists and were so thin on operating personnel that a single absence often required the president to substitute.<sup>5</sup>
- One study of field sales managers and another of chief executives suggests that it is a natural part of both jobs to see important customers, assuming the managers wish to keep those customers.<sup>6</sup>
- Someone, only half in jest, once described the manager as that person who sees visitors so that everyone else can get his work done. In my study, I found that certain ceremonial duties--meeting visitings dignitaries, giving out gold watches, presiding at Christmas dinners--were an intrinsic part of the chief executive's job.
- Studies of managers' information flow suggest that managers play a key role in securing "soft" external information (much of it available only to them because of their status) and in passing it along to their subordinates.

3. **Folklore:** The senior manager needs aggregated information, which a formal management information system best provides. Not too long ago, the words total information system were everywhere in the management literature. In keeping with the classical view of the manager as that individual perched on the apex of a regulated, hierarchical system, the literature's manager was to receive all his important information from a giant, comprehensive MIS.

But lately, as it has become increasingly evident that these giant MIS systems are not working--that managers are simply not using them--the enthusiasm has waned. A look at how managers actually process information makes the reason quite clear. Managers have four media at their command--documents, telephone calls, scheduled and unscheduled meetings, and observational tours.

**Fact:** Managers strongly favor the verbal media--namely, telephone calls and meetings. The evidence comes from every single study of managerial work. Consider the following:

- In two British studies, managers spent an average of 66 percent and 80 percent of their time in verbal (oral) communication.<sup>7</sup> In my study of five American chief executives, the figure was 78 percent.
- These five chief executives treated mail processing as a burden to be dispensed with. One came in Saturday morning to process 142 pieces of mail in just over three hours, to "get rid of all the stuff." This same manager looked at the first piece of "hard" mail he had received all week, a standard cost report, and put it aside with the comment, "I never look at this."
- These same five chief executives responded immediately to two of the 40 routine reports they received during the five weeks of my study and to four items in the 104 periodicals. They skimmed most of these periodicals in seconds, almost ritualistically. In all, these chief executives of good-sized organizations initiated on their own--that is, not in response to something else--a grand total of 25 pieces of mail during the 25 days I observed them.

An analysis of the mail the executives received reveals an interesting picture--only 13 percent was of specific and immediate use. So now we have another piece in the puzzle: not much of the mail provides live, current information--the action of a competitor, the mood of a government legislator, or the rating of last night's television show. Yet this is the information that drove the managers, interrupting their meetings and rescheduling their workdays.

Consider another interesting finding. Managers seem to cherish "soft" information, especially gossip, hearsay, and speculation. Why? The reason is its timeliness; today's gossip may be tomorrow's fact. The manager who is not accessible for the telephone call informing him that his biggest customer was seen golfing with his main competitor may read about a dramatic drop in sales in the next quarterly report. But then it's too late.

To assess the value of historical, aggregated, "hard" MIS information, consider two of the manager's prime uses for his information--to identify problems

and opportunities<sup>8</sup> and to build his own mental models of the things around him (e.g., how his organization's budget system works, how his customers buy his product, how changes in the economy affect his organization, and so on). Every bit of evidence suggests that the manager identifies decision situations and builds models not with the aggregated abstractions an MIS provides, but with specific tidbits of data.

Consider the words of Richard Neustadt, who studied the information-collecting habits of Presidents Roosevelt, Truman, and Eisenhower:

It is not information of a general sort that helps a President see personal stakes; not summaries, not surveys, not the bland amalgams. Rather ... it is the odds and ends of tangible detail that pieced together in his mind illuminate the underside of issues put before him. To help himself he must reach out as widely as he can for every scrap of fact, opinion, gossip, bearing on his interests and relationships as President. He must become his own director of his own central intelligence.<sup>9</sup>

The manager's emphasis on the verbal media raises two important points:

First, verbal information is stored in the brains of people. Only when people write this information down can it be stored in the files of the organization --whether in metal cabinets or on magnetic tape--and managers apparently do not write down much of what they hear. Thus the strategic data bank of the organization is not in the memory of its computers but in the minds of its managers.

Second, the manager's extensive use of verbal media helps to explain why he is reluctant to delegate tasks. When we note that most of the manager's important information comes in verbal form and is stored in his head, we can well appreciate his reluctance. It is not as if he can hand a dossier over to someone; he must take the time to "dump memory"--to tell that someone all he knows about the subject. But this could take so long that the manager may find it easier to do the task himself. Thus the manager is damned by his own information system to a "dilemma of delegation"--to do too much himself or to delegate his subordinates with inadequate briefing.

4. Folklore: Management is, or at least is quickly becoming, a science and a profession. By almost any definitions of science and profession, this statement is false. Brief observation of any manager will quickly lay to rest the notion that managers practice a science. A science involves the enactment of systematic, analytically determined procedures or programs. If we do not even know what procedures managers use, how can we prescribe them by scientific analysis? And how can we call management a profession if we cannot specify what managers are to learn? For after all, a profession involves "knowledge of some department of learning or science" (Random House Dictionary).<sup>10</sup>

Fact: The managers' programs--to schedule time, process information, make decisions, and so on--remain locked deep inside their brains. Thus, to describe these programs, we rely on words like judgment and intuition, seldom stopping to realize that they are merely labels for our ignorance.

I was struck during my study by the fact that the executives I was observing --all very competent by any standard--are fundamentally indistinguishable from their counterparts of a hundred years ago (or a thousand years ago, for that matter). The information they need differs, but they seek it in the same way--by word of mouth. Their decisions concern modern technology, but the procedures they use to make them are the same as the procedures of the nineteenth-century managers. In fact, the manager is in a kind of loop, with increasingly heavy work pressures but no aid forthcoming from management science.

Considering the facts about managerial work, we can see that the manager's job is enormously complicated and difficult. The manager is overburdened with obligations; yet he cannot easily delegate his tasks. As a result, he is driven to overwork and is forced to do many tasks superficially. Brevity, fragmentation, and verbal communication characterize his work. Yet these are the very characteristics of managerial work that have impeded scientific attempts to improve it. As a result, the management scientist has concentrated his efforts on the specialized functions of the organization, where he could more easily analyze the procedures and quantify the relevant information.<sup>11</sup>

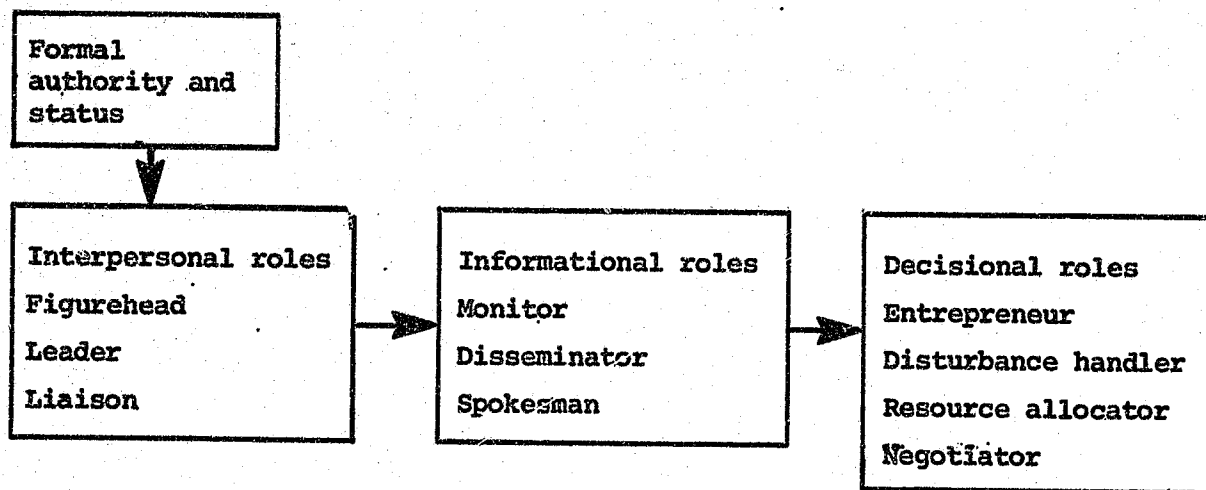
But the pressures of the manager's job are becoming worse. Where before he needed only to respond to owners and directors, now he finds that subordinates with democratic norms continually reduce his freedom to issue unexplained orders, and a growing number of outside influences (consumer groups, government agencies, and so on) expect his attention. And the manager has had nowhere to turn for help. The first step in providing the manager with some help is to find out what his job really is.

#### Back to a Basic Description of Managerial Work

Now let us try to put some of the pieces of this puzzle together. Earlier, I defined the manager as that person in charge of an organization or one of its subunits. Besides chief executive officers, this definition would include vice presidents, bishops, foremen, hockey coaches, and prime ministers. Can all of these people have anything in common? Indeed they can. For an important starting point, all are vested with formal authority over an organizational unit. From formal authority comes status, which leads to various interpersonal relations, and from these comes access to information. Information, in turn, enables the manager to make decisions and strategies for his unit.

**EXHIBIT I**

**The Manager's Roles**



The manager's job can be described in terms of various "roles," or organized sets of behaviors identified with a position. My description, shown in Exhibit I, comprises ten roles. As we shall see, formal authority gives rise to the three interpersonal roles, which in turn give rise to the three informational roles; these two sets of roles enable the manager to play the four decisional roles.

### Interpersonal Roles

Three of the manager's roles arise directly from his formal authority and involve basic interpersonal relationships.

1. First is the figurehead role. By virtue of his position as head of an organizational unit, every manager must perform some duties of a ceremonial nature. The president greets the touring dignitaries, the foreman attends the wedding of a lathe operator, and the sales manager takes an important customer to lunch.

The chief executives of my study spent 12 percent of their contact on ceremonial duties; 17 percent of their incoming mail dealt with acknowledgments and requests related to their status. For example, a letter to a company president requested free merchandise for a crippled schoolchild; diplomas were on the desk of the school superintendent for his signature.

Duties that involve interpersonal roles may sometimes be routine, involving little serious communication and no important decisionmaking. Nevertheless, they are important to the smooth functioning of an organization and cannot be ignored by the manager.

2. Because he is in charge of an organizational unit, the manager is responsible for the work of the people of that unit. His actions in this regard constitute the leader role. Some of these actions involve leadership directly--for example, in most organizations the manager is normally responsible for hiring and training his own staff.

In addition, there is the indirect exercise of the leader role. Every manager must motivate and encourage his employees, somehow reconciling their individual needs with the goals of the organization. In virtually every contact the manager has with his employees, subordinates seeking leadership clues probe his actions: "Does he approve?" "How would he like the report to turn out?" "Is he more interested in market share than high profits?"

The influence of the manager is most clearly seen in the leader role. Formal authority vests him with great potential power; leadership determines in large part how much of it he will realize.

3. The literature of management has always recognized the leader role, particularly those aspects of it related to motivation. In comparison, until recently it has hardly mentioned the liaison role, in which the manager makes contacts outside his vertical chain of command. This is remarkable in light of the finding of virtually every study of managerial work that managers spend as much time with peers and other people



outside their units as they do with their own subordinates--and, surprisingly, very little time with their own superiors.

In Rosemary Stewart's diary study, the 160 British middle and top managers spent 47 percent of their time with peers, 41 percent of their time with people outside their unit, and only 12 percent of their time with their superiors. For Robert H. Guest's study of U.S. foremen, the figures were 44 percent, 46 percent, and 10 percent. The chief executives of my study averaged 44 percent of their contact time with people outside their organizations, 48 percent with subordinates, and 7 percent with directors and trustees.

The contacts the five CEOs made were with an incredibly wide range of people: subordinates; clients, business associates, and suppliers; and peers--managers of similar organizations, government and trade organization officials, fellow directors on outside boards, and independents with no relevant organizational affiliations. The chief executives' time with and mail from these groups is shown in Exhibit II on the following page. Guest's study of foremen shows, likewise, that their contacts were numerous and wide ranging, seldom involving fewer than 25 individuals, and often more than 50.

As we shall see shortly, the manager cultivates such contacts largely to find information. In effect, the liaison role is devoted to building up the manager's own external information system--informal, private, verbal, but, nevertheless, effective.

### Informational Roles

By virtue of his interpersonal contacts, both with his subordinates and with his network of contacts, the manager emerges as the nerve center of his organizational unit. He may not know everything, but he typically knows more than any member of his staff.

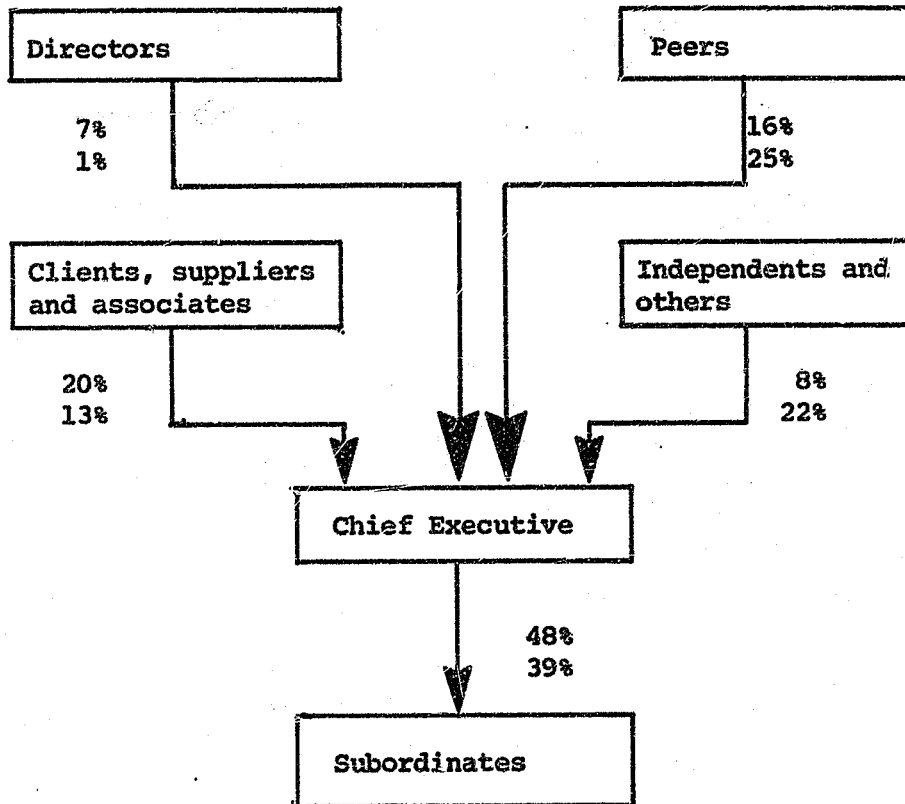
Studies have shown this relationship to hold for all managers, from street gang leaders to U.S. presidents. In The Human Group, George C. Homans explains how, because they were at the center of the information flow in their own gangs and were also in close touch with other gang leaders, street gang leaders were better informed than any of their followers.<sup>12</sup> And Richard Neustadt describes the following account from his study of Franklin D. Roosevelt:

The essence of Roosevelt's technique for information-gathering was competition. "He would call you in," one of his aides once told me, "and he'd ask you to get the story on some complicated business, and you'd come back after a couple of days of hard labor and present the juicy morsel you'd uncovered under a stone somewhere, and then you'd find out he knew all about it, along with something else you didn't know. Where he got this information from he wouldn't mention, usually, but after he had done this to you once or twice you got damn careful about your information."<sup>13</sup>

We can see where Roosevelt "got this information" when we consider the relationship between the interpersonal and informational roles. As leader, the

**EXHIBIT II**

**The Chief Executive's Contacts**



**Note:** The top figure indicates the proportion of total contact time spent with each group and the bottom figure, the proportion of mail from each group.

manager has formal and easy access to every member of his staff. Hence, as noted earlier, liaison contacts expose the manager to external information to which his subordinates often lack access. Many of these contacts are with other managers of equal status, who are themselves nerve centers in their own organization. In this way, the manager develops a powerful data base of information.

The processing of information is a key part of the manager's job. In my study, the chief executives spent 40 percent of their contact time on activities devoted exclusively to the transmission of information; 70 percent of their incoming mail was purely informational (as opposed to requests for action). The manager does not leave meetings or hang up the telephone in order to get back to work. In large part, communication is his work. Three roles describe these informational aspects of managerial work.

1. As monitor, the manager perpetually scans his environment for information, interrogates his liaison contacts and his subordinates, and receives unsolicited information, much of it as a result of the network of personal contacts he has developed. Remember that a good part of the information the manager collects in his monitor role arrives in verbal form, often as gossip, hearsay, and speculation. By virtue of his contacts, the manager has a natural advantage in collecting this soft information for his organization.
2. He must share and distribute much of this information. Information he gleans from outside personal contacts may be needed within his organization. In his disseminator role, the manager passes some of his privileged information directly to his subordinates, who would otherwise have no access to it. When his subordinates lack easy contact with one another, the manager will sometimes pass information from one to another.
3. In his spokesman role, the manager sends some of his information to people outside his unit--a president makes a speech to lobby for an organization cause, or a foreman suggests a product modification to a supplier. In addition, as part of his role as spokesman, every manager must inform and satisfy the influential people who control his organizational unit. For the foreman, this may simply involve keeping the plant manager informed about the flow of work through the shop.

The president of a large corporation, however, may spend a great amount of his time dealing with a host of influences. Directors and shareholders must be advised about financial performance; consumer groups must be assured that the organization is fulfilling its social responsibilities; and government officials must be satisfied that the organization is abiding by the law.

### Decisional Roles

Information is not, of course, an end in itself; it is the basic input to decisionmaking. One thing is clear in the study of managerial work: the manager plays the major role in his unit's decisionmaking system. As its formal authority, only he can commit the unit to important new courses of action; and as its nerve center, only he has full and current information to make the set of

decisions that determines the unit's strategy. Four roles describe the manager as decisionmaker.

1. As entrepreneur, the manager seeks to improve his unit, to adapt it to changing conditions in the environment. In his monitor role, the president is constantly on the lookout for new ideas. When a good one appears, he initiates a development project that he may supervise himself or delegate to an employee (perhaps with the stipulation that he must approve the final proposal).

There are two interesting features about these development projects at the chief executive level.

First, these projects do not involve single decisions or even unified clusters of decisions. Rather, they emerge as a series of small decisions and actions sequenced over time. Apparently, the chief executive prolongs each project so that he can fit it bit by bit into his busy, disjointed schedule and so that he can gradually come to comprehend the issue, if it is a complex one.

Second, the chief executives I studied supervised as many as 50 of these projects at the same time. Some projects entailed new products or processes; others involved public relations campaigns, improvement of the cash position, reorganization of a weak department, resolution of a morale problem in a foreign division, integration of computer operations, various acquisitions at different stages of development, and so on.

The chief executive appears to maintain a kind of inventory of the development projects that he himself supervises--projects that are at various stages of development, some active and some in limbo. Like a juggler, he keeps a number of projects in the air; periodically, one comes down, is given a new burst of energy, and is sent back into orbit. At various intervals, he puts new projects on-stream and discards old ones.

2. While the entrepreneur role describes the manager as the voluntary initiator of change, the disturbance handler role depicts the manager involuntarily responding to pressures.

Here change is beyond the manager's control. He must act because the pressures of the situation are too severe to be ignored: strike looms, a major customer has gone bankrupt, or a supplier reneges on his contract.

It has been fashionable, I noted earlier, to compare the manager to an orchestra conductor, just as Peter F. Drucker wrote in The Practice of Management:

"The manager has the task of creating a true whole that is larger than the sum of its parts, a productive entity that turns out more than the sum of the resources put into it. One analogy is the conductor of a symphony orchestra, through whose effort, vision, and leadership, individual instrumental parts that are so much noise by themselves become the living whole of music. But the conductor has the composer's score;

he is only interpreter. The manager is both composer and conductor."

14

Now consider the words of Leonard R. Sayles, who has carried out systematic research on the manager's job:

"(The manager) is like a symphony orchestra conductor, endeavouring to maintain a melodious performance in which the contributions of the various instruments are coordinated and sequenced, patterned and paced, while the orchestra members are having various personal difficulties, stage hands are moving music stands, alternating excessive heat and cold are creating audience and instrument problems, and the sponsor of the concert is insisting on irrational changes in the program."<sup>15</sup>

In effect, every manager must spend a good part of his time responding to high-pressure disturbances. No organization can be so well run, so standardized, that it has considered every contingency in the uncertain environment in advance. Disturbances arise not only because poor managers ignore situations until they reach crisis proportions, but also because good managers cannot possibly anticipate all the consequences of the actions they take.

3. The third decisional role is that of resource allocator. To the manager falls the responsibility of deciding who will get what in his organizational unit. Perhaps the most important resource the manager allocates is his own time. Access to the manager constitutes exposure to the unit's nerve center and decisionmaker. The manager is also charged with designing his unit's structure, that pattern of formal relationships that determines how work is to be divided and coordinated.

Also, in his role as resource allocator, the manager authorizes the important decisions of his unit before they are implemented. By retaining this power, the manager can ensure that decisions are inter-related; all must pass through a single brain. To fragment this power is to encourage discontinuous decisionmaking and a disjointed strategy.

There are a number of interesting features about the manager's authorizing others' decisions. First, despite the widespread use of capital budgeting procedures--a means of authorizing various capital expenditures at one time--executives in my study made a great many authorization decisions on an ad hoc basis. Apparently, many projects cannot wait or simply do not have the quantifiable costs and benefits that capital budgeting requires.

Second, I found that the chief executives faced incredibly complex choices. They had to consider the impact of each decision on other decisions and on the organization's strategy. They had to ensure that the decision would be acceptable to those who influence the organization, as well as ensure that resources would not be overextended. They had to understand the various costs and benefits as well as the feasibility of the proposal. They also had to consider questions of timing. All this was necessary for the simple approval of someone else's proposal. At the same time, however, delay could lose time, while quick approval could be ill-considered and quick rejection might discourage the subordinate who had spent months developing a pet project.

One common solution to approving projects is to pick the man instead of the proposal. That is, the manager authorizes those projects presented to him by people whose judgment he trusts. But he cannot always use this simple dodge.

4. The final decisional role is that of negotiator. Studies of managerial work at all levels indicate that managers spent considerable time in negotiations: the president of the football team is called in to work out a contract with the holdout superstar; the corporation president leads his company's contingent to negotiate a new strike issue; the foreman argues a grievance problem to its conclusion with the shop steward. As Leonard Sayles puts it, negotiations are a "way of life" for the sophisticated manager.

These negotiations are duties of the manager's job; perhaps routine, they are not to be shirked. They are an integral part of his job, for only he has the authority to commit organizational resources in "real time," and only he has the nerve center information that important negotiations require.

### The Integrated Job

It should be clear by now that the ten roles I have been describing are not easily separable. In the terminology of the psychologist, they form a gestalt, an integrated whole. No role can be pulled out of the framework and the job left intact. For example, a manager without liaison contacts lacks external information. As a result, he can neither disseminate the information his employees need nor make decisions that adequately reflect external conditions. (In fact, this is a problem for the new person in a managerial position, since he cannot make effective decisions until he has built up his network of contacts.)

Here lies the clue to the problems of team management.<sup>16</sup> Two or three people cannot share a single managerial position unless they can act as one entity. This means that they cannot divide up the ten roles unless they can very carefully reintegrate them. The real difficulty lies with the informational roles. Unless there can be full sharing of managerial information--and, as I pointed out earlier, it is primarily verbal--team management breaks down. A single managerial job cannot be arbitrarily split, for example, into internal and external roles, for information from both sources must be brought to bear on the same decisions.

To say that the ten roles form a gestalt is not to say that all managers give equal attention to each role. In fact, I found in my review of the various research studies that

... sales managers seem to spend relatively more their time in the interpersonal roles, presumably a reflection of the extrovert nature of the marketing activity;

... production managers give relatively more attention to the decisional roles, presumably a reflection of their concern with efficient work flow;

... staff managers spend the most time in the informational roles, since they are experts who manage departments that advise other parts of the organization.

Nevertheless, in all cases the interpersonal, informational, and decisional roles remain inseparable.

### Toward More Effective Management

What are the messages for management in this description? I believe, first and foremost, that this description of managerial work should prove more important to managers than any prescription they might derive from it. That is to say, the manager's effectiveness is significantly influenced by his insight into his own work. His performance depends on how well he understands and responds to the pressures and dilemmas of the job. Thus managers who can be introspective about their work are likely to be effective at their jobs. The paragraphs on pages 229-30 offer 14 groups of self-study questions for managers. Some may sound rhetorical; none is meant to be. Even though the questions cannot be answered simply, the manager should address them.

Let us take a look at three specific areas of concern. For the most part, the managerial logjams--the dilemma of delegation, the data base centralized in one brain, the problems of working with the management scientist--revolve around the verbal nature of the manager's information. There are great dangers in centralizing the organization's data bank in the minds of its managers. When they leave, they take their memory with them. And when subordinates are out of convenient verbal reach of the manager, they are at an informational disadvantage.

1. The manager is challenged to find systematic ways to share his privileged information. A regular debriefing session with key subordinates, a weekly memory dump on the dictating machine, the maintaining of a diary of important information for limited circulation, or other similar methods may ease the logjam of work considerably. Time spent disseminating this information will be more than regained when decisions must be made. Of course, some will raise the question of confidentiality. But managers would do well to weigh the risks of exposing privileged information against having subordinates who can make effective decisions.

If there is a single theme that runs through this article, it is that the pressures of his job drive the manager to be superficial in his actions--to overload himself with work, encourage interruption, respond quickly to every stimulus, seek the tangible and avoid the abstract, make decisions in small increments, and do everything abruptly.

2. Here again, the manager is challenged to deal consciously with the pressures of superficiality by giving serious attention to the issues that require it, by stepping back from his tangible bits of information in order to see a broad picture, and by making use of analytical inputs. Although effective managers have to be adept at responding quickly to numerous and varying problems, the danger in managerial work is that they will respond to every issue equally (and that means abruptly) and that they will never work the tangible bits and pieces of informational input into a comprehensive picture of their world.

As I noted earlier, the manager uses these bits of information to build models of his world. But the manager can also avail himself of the models of the specialists. Economists describe the functioning of markets, operations researchers simulate financial flow processes, and behavioral scientists explain the needs and goals of people. The best of these models can be searched out and learned.

In dealing with complex issues, the senior manager has much to gain from a close relationship with the management scientists of his own organization. They have something important that he lacks--time to probe complex issues. An effective working relationship hinges on the resolution of what a colleague and I have called "the planning dilemma."<sup>17</sup> Managers have the information and the authority; analysts have the time and the technology. A successful working relationship between the two will be effected when the manager learns to share his information and the analyst learns to adapt to the manager's needs. For the analyst, adaptation means worrying less about the elegance of the method and more about its speed and flexibility.

It seems to me that analysts can help the top manager especially to schedule his time, feed in analytical information, monitor projects under his supervision, develop models to aid in making choices, design contingency plans for disturbances that can be anticipated, and conduct "quick-and-dirty" analysis for those that cannot. But there can be no cooperation if the analysts are out of the mainstream of the manager's information flow.

3. The manager is challenged to gain control of his own time by turning obligations to his advantage and by turning those things he wishes to



do into obligations. The chief executives of my study initiated only 32 percent of their own contacts (and another 5 percent by mutual agreement). And yet to a considerable extent they seemed to control their time. There were two key factors that enabled them to do so.

First, the manager has to spend so much time discharging obligations that if he were to view them as just that, he would leave no mark on his organization. The unsuccessful manager blames failure on the obligations; the effective manager turns his obligations to his own advantage. A speech is a chance to lobby for a cause; a meeting is a chance to reorganize a weak department; a visit to an important customer is a chance to extract trade information.

Second, the manager frees some of his time to do those things that he--perhaps no one else--thinks important by turning them into obligations. Free time is made, not found, in the manager's job; it is forced into the schedule. Hoping to leave some time open for contemplation or general planning is tantamount to hoping that the pressures of the job will go away. The manager who wants to innovate, initiates a project and obligates others to report back to him; the manager who needs certain environmental information establishes channels that will automatically keep him informed; the manager who has to tour facilities commits himself publicly.

### The Educator's Job

Finally, a word about the training of managers. Our management schools have done an admirable job of training the organization's specialists--management scientists, marketing researchers, accountants, and organizational development specialists. But for the most part they have not trained managers.<sup>18</sup>

Management schools will begin the serious training of managers when skill training takes a serious place next to cognitive learning. Cognitive learning is detached and informational, like reading a book or listening to a lecture. No doubt much important cognitive material must be assimilated by the manager-to-be. But cognitive learning no more makes a manager than it does a swimmer. The latter will drown the first time he jumps into the water if his coach never takes him out of the lecture hall, gets him wet, and gives him feedback on his performance.

In other words, we are taught a skill through practice plus feedback, whether in a real or a simulated situation. Our management schools need to identify the skills managers use, select students who show potential in these skills, put the students into situations where these skills can be practiced, and then give them systematic feedback on their performance.

My description of managerial work suggests a number of important managerial skills--developing peer relationships, carrying out negotiations, motivating subordinates, resolving conflicts, establishing information networks and subsequently disseminating information, making decisions in conditions of extreme ambiguity, and allocating resources. Above all, the manager needs to be introspective about his work so that he may continue to learn on the job.

Many of the manager's skills can, in fact, be practices, using techniques that range from role playing to videotaping real meetings. And our management

**schools can enhance the entrepreneurial skills by designing programs that encourage sensible risk taking and innovation.**

**No job is more vital to our society than that of the manager. It is the manager who determines whether our social institutions serve us well or whether they squander our talents and resources. It is time to strip away the folklore about managerial work, and time to study it realistically so that we can begin the difficult task of making significant improvements in its performance.**

**Self-Study Questions for Managers**

- 1. Where do I get my information, and how? Can I make greater use of my contacts to get information? Can other people do some of my scanning for me? In what areas is my knowledge weakest, and how can I get others to provide me with the information I need? Do I have powerful enough mental models of those things I must understand within the organization and in its environment?**
- 2. What information do I disseminate in my organization? How important is it that my subordinates get my information? Do I keep too much information to myself because dissemination of it is time-consuming or inconvenient? How can I get more information to others so they can make better decisions?**
- 3. Do I balance information-collecting with action-taking? Do I tend to act before information is in? Or do I wait so long for all the information that opportunities pass me by and I become a bottleneck in my organization?**
- 4. What pace of change am I asking my organization to tolerate? Is this change balanced so that our operations are neither excessively static nor overly disrupted? Have we sufficiently analyzed the impact of this change on the future of our organization?**
- 5. Am I sufficiently well informed to pass judgment on the proposals that my subordinates make? Is it possible to leave final authorization for more of the proposals with subordinates? Do we have problems of coordination because subordinates in fact now make too many of these decisions independently?**
- 6. What is my vision of direction for this organization? Are these plans primarily in my own mind in loose form? Should I make them explicit in order to guide the decisions of others in the organization better? Or do I need flexibility to change them at will?**
- 7. How do my subordinates react to my managerial style? Am I sufficiently sensitive to the powerful influence my actions have on them? Do I fully understand their reactions to my actions? Do I find an appropriate balance between encouragement and pressure? Do I stifle their initiative?**
- 8. What kind of external relationships do I maintain, and how? Do I spend too much of my time maintaining these relationships? Are there certain types of people whom I should get to know better?**
- 9. Is there any system to my time scheduling, or am I just reacting to the pressures of the moment? Do I find the appropriate mix of activities, or do**

I tend to concentrate on one particular function or one type of problem just because I find it interesting? Am I more efficient with particular kinds of work at special times of the day or week? Does my schedule reflect this? Can someone else (in addition to my secretary) take responsibility for much of my scheduling and do it more systematically?

10. Do I overwork? What effect does my workload have on my efficiency? Should I force myself to take breaks or to reduce the pace of my activity?
11. Am I too superficial in what I do? Can I really shift moods as quickly and frequently as my work patterns require? Should I attempt to decrease the amount of fragmentation and interruption in my work?
12. Do I orient myself too much toward current, tangible activities? Am I a slave to the action and excitement of my work, so that I am no longer able to concentrate on issues? Do key problems receive the attention they deserve? Should I spend more time reading and probing deeply into certain issues? Could I be more effective? Should I be?
13. Do I use the different media appropriately? Do I know how to make the most of written communication? Do I rely excessively on face-to-face communication, thereby putting all but a few of my subordinates at an informational disadvantage? Do I schedule enough of my meetings on a regular basis? Do I spend enough time touring my organization to observe activity at first hand? Am I too detached from the heart of my organization's activities, seeing things only in an abstract way?
14. How do I blend my personal rights and duties? Do my obligations consume all my time? How can I free myself sufficiently from obligations to ensure that I am taking this organization where I want it to go? How can I turn my obligations to my advantage?

## FOOTNOTES

<sup>1</sup>All the data from my study can be found in Henry Mintzberg, The Nature of Managerial Work (New York: Harper & Row, 1973).

<sup>2</sup>Robert H. Guest, "Of Time and the Foreman," Personnel, May 1956, p. 478.

<sup>3</sup>Rosemary Stewart, Managers and Their Jobs (London: Macmillan, 1967), see also Sune Carlson, Executive Behaviour (Stockholm: Strombergs, 1951), the first of the diary studies.

<sup>4</sup>Francis J. Aguilar, Scanning the Business Environment (New York: Macmillan, 1967), p. 102.

<sup>5</sup>Unpublished study by Irving Chorán, reported in Mintzberg, The Nature of Managerial Work.

<sup>6</sup>Robert T. Davis, Performance and Development of Field Sales Managers (Boston: Division of Research, Harvard Business School, 1957); George H. Copeman, The Role of the Managing Director (London: Business Publications, 1963).

<sup>7</sup>Stewart, Managers and Their Jobs; Tom Burns, "The Directions of Activity and Communication in a Departmental Executive Group," Human Relations 7, no. 1 (1954): 73.

<sup>8</sup>H. Edward Wrapp, "Good Managers Don't Make Policy Decisions," HBR September-October 1967, p. 91; Wrapp refers to this as spotting opportunities and relationships in the stream of operating problems and decisions; in his article Wrapp raises a number of excellent points related to this analysis.

<sup>9</sup>Richard E. Neustadt, Presidential Power, (New York: John Wiley, 1960), pp. 153-154; italics added.

<sup>10</sup>For a more thorough, though rather different, discussion of this issue, see Kenneth R. Andrews, "Toward Professionalism in Business Management," HBR March-April 1969, p. 49.

<sup>11</sup>C. Jackson Grayson, Jr., in "Management Science and Business Practice," HBR July-August 1973, p. 41, explains in similar terms why, as chairman of the Price Commission, he did not use those very techniques that he himself promoted in his earlier career as a management scientist.

<sup>12</sup>George C. Homans, The Human Group (New York: Harcourt, Brace and World, 1950), based on the study by William F. Whyte entitled Street Corner Society, rev. ed. (Chicago: University of Chicago Press, 1955).

<sup>13</sup>Neustadt, Presidential Power, p. 157.

<sup>14</sup>Peter F. Drucker, The Practice of Management (New York: Harper & Row, 1954), pp. 341-342.

<sup>15</sup> Leonard R. Sayles, Managerial Behavior (New York: McGraw-Hill, 1964), p. 162.

<sup>16</sup> See Richard C. Hodgson, Daniel J. Levinson, and Abraham Zaleznik, The Executive Role Constellation (Boston: Division of Research, Harvard Business School, 1965), for a discussion of the sharing of roles.

<sup>17</sup> James S. Hekimian and Henry Mintzberg, "The Planning Dilemma," The Management Review, May 1968, p. 4.

<sup>18</sup> See J. Sterling Livingston, "Myth of the Well-Educated Manager," HBR January-February 1971; p. 79.

**SUMMARY OF RECOMMENDATIONS**

**NATIONAL STUDY COMMISSION ON DEFENSE SERVICES**

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NATIONAL STUDY COMMISSION ON DEFENSE SERVICES

SUMMARY OF RECOMMENDATIONS\*

I. AVAILABILITY OF REPRESENTATION

1.1 Nature of Cases and Proceedings for Which Counsel Should Be Provided

Effective representation should be provided to all eligible persons:

(a) In any governmental fact-finding proceeding, the purpose of which is to establish the culpability or status of such persons, which might result in the loss of liberty or in a legal disability of a criminal or punitive nature: and

(b) In any proceeding to take affirmative remedial action relative to the scope of services set forth in part (a) of this section.

1.2 Time of Entry

Effective representation should be available for every eligible person as soon as:

(a) The person is arrested or detained, or

(b) The Person reasonably believes that a process will commence which might result in a loss of liberty or the imposition of a legal disability of a criminal or punitive nature, whichever occurs earliest.

1.3 Procedures for Providing Early Representation: Program Responsibilities

In order to ensure early representation for all eligible persons, the defender office or assigned counsel program should:

(a) Respond to all inquiries made by, or on behalf of, any eligible person whether or not that individual is in the custody of law enforcement officials;

(b) Establish the capability to provide emergency representation on a 24-hour basis;

(c) Implement systematic procedures, including daily checks of detention facilities, to ensure that prompt representation is available to all persons eligible for services;

(d) Provide adequate facilities for interviewing prospective clients who have not been arrested or who are free on pre-trial release;

(e) Prepare, distribute, and make available by posting in a conspicuous place in all police stations, courthouses, and detention facilities a brochure that describes in simple, cogent language or languages the rights of any person who may require the services of the defender or assigned counsel and the nature

and availability of such services, including the telephone number and address of the local defender office or assigned counsel program; and

(f) Publicize its services in the media.

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\*In these recommendations, words used in the masculine gender include the feminine.

Upon initial contact with a prospective client, the defender or assigned counsel should offer specific advice as to all relevant constitutional or statutory rights, elicit matters of defense, and direct investigators to commence fact investigations, collect information relative to pre-trial release, and make a preliminary determination of eligibility for publicly provided defense services.

Where the defender or assigned counsel interviews a prospective client and it is determined that said person is ineligible for publicly provided representation, the attorney should decline the case and, in accordance with appropriate procedure, assist the person in obtaining private counsel. However, should immediate service be necessary to protect that person's interest, such service should be rendered until the person has had the opportunity to retain private counsel.

#### 1.4 Procedures for Providing Early Representation: Law Enforcement Responsibilities

In order for defenders and assigned counsel to meet their responsibilities in providing early representation, it is also essential that it be the initial responsibility of the law enforcement authority having custody of any person to:

(a) Determine whether such person is represented by counsel and if said person is so represented to immediately contact his attorney; or

(b) If said person is not represented by counsel, to immediately contact the local defender office or assigned counsel program.

All employees of government who come into contact with any person who is without counsel should inquire into whether the initial responsibility of the custodial authority has been properly discharged. If it has not, this responsibility should extend, but should not be limited to, courts, prosecutors, parole and probation officers, personnel of pre-trial release programs, and their agents.

#### 1.5 Financial Eligibility Criteria

Effective representation should be provided to anyone who is unable, without substantial financial hardship to himself or to his dependents, to obtain such representation. This determination should be made by ascertaining the liquid assets of the person which exceed the amount needed for the support of the person or his dependents and for the payment of current obligations. If the person's liquid assets are not sufficient to cover the anticipated costs of representation as indicated by the prevailing fees charged by competent counsel in the area, the person should be considered eligible for publicly provided representation. The accused's assessment of his own financial ability to obtain competent representation should be given substantial weight.

(a) Liquid assets include cash in hand, stocks and bonds, bank accounts, and any other property which can be readily converted to cash. The person's home, car, household furnishings, clothing and any property declared exempt from attachment or execution by law, should not be considered in determining eligibility. Nor should the fact of whether or not the person has been released on bond or the resources of a spouse, parent, or other person be considered.

(b) The cost of representation includes investigation, expert testimony, and any other costs which may be related to providing effective representation.

#### 1.6 Method of Determining Financial Eligibility

The financial eligibility of a person for publicly provided representation should be made initially by the defender office or assigned counsel program subject to review by a court upon a finding of ineligibility at the request of such a person. Any information or statements used for the determination should be considered privileged under the attorney-client relationship.

A decision of ineligibility which is affirmed by a judge should be reviewable by an expedited interlocutory appeal. The person should be informed of this right to appeal and if he desires to exercise it, the clerk of the court should perfect the appeal. The record on appeal should include all evidence presented to the court on the issue of eligibility and the judge's findings of fact and conclusions of law denying eligibility.

#### 1.7 Partial Eligibility

If the accused is determined to be eligible for defense services in accordance with approved financial eligibility criteria and procedures, and if, at the time that the determination is made, he is able to provide a limited cash contribution to the cost of his defense without imposing a substantial financial hardship upon himself or his dependents, such contribution should be required as a condition of continued representation at public expense.

(a) The defender office or assigned counsel program should determine the amount to be contributed under this section, but such contribution should be paid directly into the general fund of the state, county, or other appropriate funding agency. The contribution should be made in a single lump sum payment immediately upon, or shortly after, the eligibility determination.

(b) The amount of contribution to be made under this section should be determined in accordance with predetermined standards and administered in an objective manner; provided, however, that the amount of the contribution should not exceed the lesser of (1) ten (10) percent of the total maximum amount which would be payable for the representation in question under the assigned counsel fee schedule, where such a schedule is used in the particular jurisdiction, or (2) a sum equal to the fee generally paid to an assigned counsel for one trial day in a comparable case.

## II. STRUCTURE OF SYSTEMS FOR DEFENSE OF ELIGIBLE PERSONS

### 2.1 Administrative Structure for Mixed Systems

Where a jurisdiction is served by both a defender office and an assigned counsel program, there are two acceptable methods of coordinating these components:

(a) The Defender Director may also serve as the assigned counsel administrator and bear the responsibility, in cooperation with the private bar, and with the guidance of an advisory board, for the establishment, maintenance, and training of the panel, and for all other administrative and support functions for the assigned counsel component; or

(b) The defender office and the assigned counsel program may exist as two independent entities, but coordinate their efforts in such matters as training and support services to the extent that it is feasible and in the allocation of caseload. Where necessary to facilitate coordination, an advisory board should be utilized.

### 2.2 Allocation of Cases

In a mixed defender and assigned counsel system, the percentage of cases handled by each component of the system should depend upon the relative sizes, expertise, and availability of the defender staff and of the panel of private lawyers.

Cases should be allocated in accordance with a fair and well-promulgated plan. The administrator should be responsible for developing, promulgating, and implementing this plan.

The plan should allocate a substantial share of cases to each component of the system and should not a priori preclude allocation of any specific type or types of cases from assignment to either component. Provision should be made for cases involving multiple defendants, conflicts of interest, and matters requiring special expertise.

### 2.3 Ad Hoc Appointment of Counsel

Appointment of counsel on a random or ad hoc basis is explicitly rejected as an appropriate means of furnishing legal representation in criminal cases.

### 2.4 State-Level Organization with Centralized Administration

Defender services should be organized at the state level in order to ensure uniformity and equality of legal representation and supporting services, and to guarantee professional independence for individual defenders. The defender system should provide services by means of city, county, or multi-county programs to every jurisdiction in the state.

(a) Except in the case of preexisting agencies, the planning and creation of local or regional defender offices should be undertaken by a state defender office which is responsible for providing all defender services.

(b) The role of the State Defender Director with respect to offices throughout the state should be as follows:

(1) The State Defender Director should appoint Deputy Defenders to head the local and regional offices and should set general policy and guidelines regarding the operation of such offices and the handling of cases; however, the daily administration of the local and regional offices and the handling of individual cases should be the responsibility of the Deputy Defenders.

(2) The State Defender Director should ensure that on-site evaluations of each defender office or assigned counsel program in the state, whether organized as part of the state defender system or as a preexisting entity, are conducted not less than once a year. The State Defender Director should be authorized to contract with outside agencies where necessary for this purpose.

(3) The State Defender Director should visit all offices and programs around the state on a frequent basis.

(4) The Office of State Defender should provide initial training for all new defender staff attorneys and conduct seminars for the continuing education of the staff of all defender offices and coordinated assigned counsel programs in the state.

#### 2.5 Preexisting Agencies in a State Defender System

The State Defender Director should be permitted to contract with preexisting qualified entities to provide defense services.

The State Defender Director should be responsible for ensuring compliance by contracted programs with national standards.

Where the ongoing program has been determined to be in full compliance with national standards, it should be eligible to receive state funding for its program and the Office of the State Defender should provide any necessary back-up services.

Where the ongoing defender or coordinated assigned counsel program fails to comply with national standards, that program should have 120 days in which to comply. If, upon reevaluation after that time, the program continues to fall short of national standards, the Office of State Defender should itself replace the prior program.

#### 2.6 Private Defender Organizations

Where a defender organization provides services pursuant to contract, in order to maintain continuity and attract qualified personnel to the position of Defender Director, provision should be made, either by law or by contract, for the continuation of the defender service beyond the contract period.

The scope of the services to be provided should be stated explicitly in the contract.

Contracts for defender services should not be let on the basis of competitive bidding.

The contract should specify the workload anticipated as it relates to the amount of funds being provided in order to provide a formula in the event that the anticipated workload is exceeded.

## 2.7 Location of Defender Offices

In a state-level defender system, the principal office should ordinarily be located in the state capital, and other offices should be located with reference to population and caseload factors and access to trial and appellate courts and penal institutions.

Local defender offices should be located near the appropriate courthouses, but never in such proximity that the defender offices become identified with the judicial and law enforcement components of the criminal justice system. Defender offices should maintain interview and waiting rooms in the courthouse.

Regional, metropolitan, and single-county defenders should establish branch offices whenever operational efficiency, defender access to courts, or clients' access to defenders would be significantly enhanced thereby.

## 2.8 Regionalization of Defender Services

In states which have not yet established the Office of State Defender, local political subdivisions having a sufficient number of cases to occupy two or more attorneys on a full-time basis should be required to establish an organized defender system. If a local political subdivision lacks a sufficient number of cases to occupy the full-time services of at least two attorneys, it should be required to combine with other political subdivisions to establish a regional, organized defender system.

Statewide regulations should be established in conformity with national standards governing the staffing and budgetary requirements of local and regional defender offices to ensure provision of uniformly high quality defender services and to protect the independence of the office from political and judicial influence. Staffing requirements for regional offices should be related not only to travel time for attending court and jail facilities but also to approved caseload standards.

In the absence of full state funding, participating local governments should allocate costs among themselves. Alternative bases for allocation should include, but not be limited to, population, caseload, and equal sharing.

## 2.9 Full-Time Defenders and Minimum Staff Size

Defender Directors and staff attorneys should be full-time employees, prohibited from engaging in the private practice of law. No defender office should be staffed by less than two full-time defenders. Where this cannot be accomplished by regionalization, it should be accomplished by merging the criminal and civil legal aid functions.

## 2.10 The Defender Commission

A special Defender Commission should be established for every defender system, whether public or private.



The Commission should consist of from nine to thirteen members, depending upon the size of the community, the number of identifiable factions or components of the client population, and judgments as to which non-client groups should be represented.

Commission members should be selected under the following criteria:

(a) The primary consideration in establishing the composition of the Commission should be ensuring the independence of the Defender Director.

(b) The members of the Commission should represent a diversity of factions in order to ensure insulation from partisan politics.

(c) No single branch of government should have a majority of votes on the Commission.

(d) Organizations concerned with the problems of the client community should be represented on the Commission.

(e) A majority of the Commission should consist of practicing attorneys.

(f) The Commission should not include judges, prosecutors, or law enforcement officials.

Members of the Commission should serve staggered terms in order to ensure continuity and avoid upheaval.

#### 2.11 Functions of the Defender Commission

The primary function of the Defender Commission should be to select the State Defender Director. The Commission should also:

(a) Assist the State Defender Director in drawing up procedures for the selection of Assistants or Deputies;

(b) Receive possible client complaints, initiate statistical studies of case disposition, and monitor the performance of the Defender Director;

(c) Maintain a continuing dialogue with the State Defender Director in order to provide input and advice;

(d) Assist in ensuring the independence of the defender system by serving as a buffer and educating the public regarding constitutional requirements and the functions of the defenders;

(e) Serve as liaison between the legislature and the defender system upon request of the Defender Director; and

(f) Remove the Defender Director from office in the event that good cause is shown.

The Commission should not interfere with the discretion, judgment, and zealous advocacy of defender attorneys in specific cases.

The Commission should meet on a regular basis and should be presided over by a chairperson elected by its members.

travel and other reasonable expenditures incurred as a result of membership.

A majority of Commission members should constitute a quorum, and any resolution, policy adoption, or motion should require a vote of a majority of those present. However, selection of the Defender Director should require the vote of each member due to the importance of that decision. Voting by proxy should be prohibited.

#### 2.12 Qualifications of the Defender Director and Conditions of Employment

The Defender Director should be a member of the bar of the state in which he is to serve. He should be selected on the basis of a non-partisan, merit procedure which ensures the selection of a person with the best available administrative and legal talent, regardless of political party affiliation, contributions, or other irrelevant criteria.

The Defender Director's term of office should be from four to six years in duration and should be subject to renewal. The Director should not be removed from office in the course of a term without a hearing procedure at which good cause is shown.

#### 2.13 The Governing Body for Assigned Counsel Programs

An assigned counsel program should be operated under the auspices of a general governing body. The majority of the members of the governing body should be attorneys but should not be judges or prosecuting attorneys. Its composition should conform to the criteria established for the Defender Commission.

The functions of the governing body should include the following: designing the general scheme of the system; specifying the qualifications for the position of administrator of the system; defining the function of the administrator and authorizing sufficient staff to support that function; prescribing salaries and terms of employment; adopting appropriate rules or procedures for the operation of the governing body itself, as well as general guidelines for the operation of the system; acting as a selection committee for the appointment of an administrator, or in the alternative, providing for a special selection committee; exercising general fiscal and organizational control of the system; seeking and maintaining proper funding of the system; ensuring the independence of the administrator and assigned counsel; and encouraging the public, the courts, and the funding source to recognize the significance of the defense function as a vital and independent component of the justice system.

#### 2.14 Qualifications, Conditions of Employment, and Role of the Administrator

An assigned counsel program should be administered by a qualified attorney licensed to practice in the jurisdiction where the system operates. In addition, the qualifications of the administrator should include, but not be limited to, the following: extensive experience in the field of criminal defense; experience in administration; ability to work cooperatively with other elements of the criminal justice system while retaining an independence of attitude to promote and protect the proper rendering of defense services; ability to maintain proper

relations with the private bar; and, where the assigned counsel program co-exists with a defender system which has a separate administrator, the ability to maintain a cooperative working relationship with the defender system.

The functions of the administrator should include, but not be limited to, the following: developing and executing operational policy and control of the system; assisting the governing body in the development of the budget, and in planning and establishing fee schedules and fiscal controls; acquiring such staff as is necessary to carry out the mission of the system; designing the internal operational and administrative controls necessary for the orderly disposition of cases; designing and implementing orientation and training programs for assigned counsel; and developing access to supporting services.

The administrator should have the authority to select the attorneys who will comprise the assigned counsel panel; to suspend or dismiss panel members for cause, subject to the review of the governing body; to hire and discharge such staff as is necessary to operate the system; to monitor the quality of the services being rendered and to take appropriate measures to maintain a competent level of services; to approve expenditures for the acquisition of supporting services; and to approve the payment of attorney fee vouchers. However, requests for fees exceeding the recommended maximum, or appeals from the administrator's action, should be received by a panel of attorneys appointed by the governing board.

The following terms of employment should apply to the assigned counsel administrator. The administrator's salary should be sufficient to attract a capable person and should be at least as high as that of the chief prosecutor in the area served. The administrator and staff should be allowed reasonable expenses to participate in continuing education programs and bar association and defender association functions. The administrator should serve for a definite term of years which should be no less than three nor greater than six years and should be eligible for reappointment for successive terms. The administrator should not be subject to removal from office in the course of a term without good cause shown and should be afforded a hearing before the governing body.

#### 2.15 Establishing the Assigned Counsel Panel

In establishing the assigned counsel panel, the administrator should solicit all members of the practicing bar in the area to be served by the system. The administrator should appoint all of those attorneys who display a willingness to participate in the program and manifest the ability to perform criminal defense work at a competent level. Provision should also be made for attorneys who are willing to learn criminal defense work, or to become more proficient in such work, to be inducted into the program upon completion of an appropriate training regime.

Standards of performance and conduct should be developed and disseminated among all panel members and potential panel members. In the event that those standards are disregarded or breached, it should be cause for either admonishment, suspension, or removal from the panel.

## 2.16 Assignment of Cases to Panel Members

Although methods of assigning cases may vary with local procedures and conditions, the administrator, in designing the system and making assignments, should adhere to the following goals:

(a) The cases should be distributed in an equitable way among the panel members to ensure balanced workloads through a rotating system with allowances for variance when necessary;

(b) The more serious and complex cases should be assigned to attorneys with a sufficient level of experience and competence to afford proper representation; and

(c) Apprentice members of the panel should only be assigned cases which are within their capabilities; however, they should be given the opportunity to expand their experience gradually under supervision.

## 2.17 Sources of Funding for Defense Systems

The primary responsibility for funding of defense services should be borne at the state level. Each state should provide adequate funding for all defense services within its jurisdiction regardless of the level of government at which those services are administered.

The federal government should provide financial aid to the states for the purposes of establishing organized defense services where none exist and of ensuring uniformity in the quality of the services being provided in existing programs. This aid should take the form of long-term direct matching grants.

Defense systems should be empowered to seek and receive private funds. However, private funding is not a stable source of funds and should not be relied upon except for capital expenditures such as library acquisitions and equipment.

The private bar should not be required to provide defense services on a pro bono basis either as the primary delivery agent or for cases involving a conflict of interest with or overflow from the defender office.

## 2.18 Administration of Defense System Funds

### (a) Defender Systems

The defender system should be an independent agency and, as such, should prepare its own budget and submit its budget directly to the appropriating authority. Its budget should not be presented as part of the judicial or executive branch budgets, nor should it be subject to diminution or alteration by any branch of government other than the appropriating authority. The Defender Commission should review and advise the Defender Director on the budget before its submission and provide support for the budget request.

The defender system should operate under an annual or biennial lump sum appropriation which would enable the Defender Director to reallocate funds without prior approval of the appropriating authority. The payment of the defender on a case-by-case reimbursement basis, the direct provision of in-kind services

or facilities to the defender system by the government, and other substitutes for providing a complete and sufficient budget are explicitly rejected as means of funding defender systems.

(b) Assigned Counsel Programs

The financial administration of assigned counsel program funds should be in the form of an open-ended budget whereby compensation would be paid in accordance with caseload and the nature and extent of the services rendered.

### III. THE COST OF PROVIDING COUNSEL

#### 3.1 Assigned Counsel Fees and Supporting Services

Assigned counsel should be adequately compensated for services rendered. Fees should be related to the prevailing rates among the private bar for similar services. These rates should be reviewed periodically and adjusted accordingly.

Funds should be available in a budgetary allocation for the service of investigators, expert witnesses, and other necessary services and facilities.

In developing a fee schedule, the effect of the fee schedule upon the quality of representation should be considered. Fee structures should be designed to compensate attorneys for effort, skill, and time actually, properly, and necessarily expended in assigned cases.

Fee schedules, whether provided by statute or policy, should be designed to allow hourly in-court and out-of-court rates up to a stated maximum for various classes of cases, with provision for compensation in excess of the scheduled maximum in extraordinary cases.

#### 3.2 Defender System Salaries

The Defender Director's compensation should be set at a level which is commensurate with his qualifications and experience, and which recognizes the responsibility of the position. The Director's compensation should be comparable with that paid to presiding judges, be professionally appropriate when compared with the private bar, and be in no event less than that of the chief prosecutor.

The starting levels of compensation for staff attorneys should be adequate to attract qualified personnel. Salary levels thereafter should be set to promote the Defender Director's policy on retention of legal staff and should in no event be less than that paid in the prosecutor's office. Compensation should be professionally appropriate when analyzed or compared with the compensation of the private bar.

In order to attract and retain qualified supporting personnel, compensation should be comparable to that paid by the private bar and related positions in the private sector and should in no event be less than that paid for similar positions in the court system and prosecution offices.

#### 3.3 Projecting Defense System Personnel Needs

Defense system personnel needs should be projected by means of detailed resource planning. Such planning requires, at a minimum, detailed records on the flow of cases through the criminal justice process and on the resources expended on each case at each step in the process.

#### 3.4 Nonpersonnel Needs in Defender Offices

Defender offices should have a budget for operating expenses that provides for a professional quality office, library, and equipment comparable to a private law firm of similar size. Facilities and resources should be at least comparable to, and in no event less than, those provided for other components of the justice

system with whom the defender must interact, such as the courts, prosecution, and the police.

Defender office facilities should include separate offices for management, legal and social work staff, shared space for investigators, paraprofessionals, and other support staff; secure space for confidential records, equipment, and petty cash; and reasonable allocations of ancillary space related to staff size for reception and client waiting areas, conference rooms and library, mailroom and reproduction, supplies and storage. Separate toilet facilities should be provided for staff. Parking should be provided for staff who require the use of an automobile for field tasks.

Defender office budgets should include funds for procurement of experts and consultants, ordering of minutes and transcripts on an expedited basis and for the procurement of other necessary services. Defender offices should not be required to seek prior approval or post-expenditure ratification of payments for such services except in those limited cases where the expenditure is extraordinary.

Defender offices should be equipped with quality communications and reproduction equipment. Where data requirements so warrant, defender offices should have data processing facilities and services on lease or contract which are designed for defender requirements. If the defender office is included in a criminal justice information system, the system should be required to meet defender specifications regarding reporting frequency, data definition, and format.

Defender offices should be exempt from governmental public bidding requirements for purchasing where the public bidding process cannot be completed for timely acquisition of services or equipment.

#### IV. TAILORING SPECIFICATIONS TO DIVERSE DEFENDER PROGRAMS

##### 4.1 Task Allocation in the Trial Function: Specialists and Supporting Services

Defender organizations should analyze their operations for opportunities to achieve more effective representation, increased cost effectiveness, and improved client and staff satisfaction through specialization. The decision to specialize legal and supporting staff functions should be made whenever the use of specialization would result in substantial improvements in the quality of defender services and cost savings in light of the program's management and coordination requirements; provided that attorney tasks should never be specialized where the result would be to impair the attorney's ability to represent a client from the beginning of a case through sentencing.

Proper attorney supervision in a defender office requires one full-time supervisor for every ten staff lawyers, or one part-time supervisor for every five lawyers.

Social workers, investigators, paralegal and paraprofessional staff, as well as clerical/secretarial staff should be employed to assist attorneys in performing tasks not requiring attorney credentials or experience and for tasks where supporting staff possess specialized skills.

Defender offices should employ investigators with criminal investigation training and experience. A minimum of one investigator should be employed for every three staff attorneys in an office. Every defender office should employ at least one investigator.

Professional business management staff should be employed by defender offices to provide expertise in budget development and financial management, personnel administration, purchasing, data processing, statistics, record-keeping and information systems, facilities management, and other administrative services if senior legal management are expending at least one person-year of effort for these functions or where administrative and business management functions are not being performed effectively and on a timely basis.

The primary responsibility for managing, evaluating, and coordinating all services provided to a client should be borne by the attorney. The attorney should conduct the initial interview with the client and make an evaluation of the case prior to entry by specialists and supporting staff into the case with the exception of specific ministerial duties necessary to start the attorney's file.

Except where an assigned counsel plan provides such services, defender organizations should provide appointed counsel with specialist and supporting services in cases not involving a present or potential conflict of interest.

Defender offices should employ staff to gather and maintain information on all aspects of the available pre-trial diversion options and to assist defense counsel and defendants both in determining the suitability of any given program and in expediting the client's entry into a program when the client so desires.



#### **4.2 Task Allocation and Supporting Services in Rural Programs**

Defender programs in rural areas which are staffed by only two or three attorneys should meet standards prescribed for larger programs except that specialization should be avoided and case assignments and routine administrative and public relations duties should be rotated to ensure that each staff attorney is fully familiar with the operation of the program and with all components of the criminal justice system.

#### **4.3 Relationship of Appellate and Trial Functions: Task Allocation**

The appellate and post-conviction functions should be independent of the trial function in order to accomplish free and unrestricted review of trial court proceedings.

Where the appellate office is part of a defender system which includes both trials and appeals, the appellate function should be as organizationally independent of the trial function as is feasible.

(a) Counsel on appeal should be different from trial counsel and capable of exercising independent review of the competence and performance of trial counsel.

(b) An appellate defender should not have responsibility for any trial work while in an appellate capacity and should remain in appellate work for a substantial period of time in order to provide continuous representation to a client throughout the appellate process.

(c) While the appellate function should be separate from the trial function, under certain circumstances the trial attorney should be permitted to handle the appeal provided that there is an independent review of the record by appellate personnel.

Where the appellate defender office is separate from the trial office, it is essential to ensure the following coordination:

(a) Appellate counsel should contact and fully discuss the appeal with trial counsel; and

(b) The trial defender office should have the capacity to process interlocutory and emergency appeals.

Where paraprofessionals and law students are utilized in the appellate process, the defender assigned to a client should establish a personal relationship with the client through personal interviews and continued contact.

A copy of all pleadings affecting the merits of the case filed for a client by the defender should be automatically forwarded to the client. Because the client is not present at most appellate proceedings, the client should be informed of the occurrence of all substantial hearings, rulings, and decisions affecting the case.

The responsibility for handling a case on appeal should be borne by the attorney. The attorney should supervise all supporting staff who work on a case.

The following services and facilities should be available to appellate defender offices:

(a) Adequate resources for the hiring of expert witnesses and investigative services;

(b) Administrative personnel to maintain docket control cards, open files, accumulate all court records before the case is assigned to a defender, and set up initial appointments with and explain the appellate process to clients;

(c) Word processing systems and equipment; and

(d) An adequate library and brief bank with access to a complete resource library.

(1) Adequate personnel should be available to operate the library and maintain and index the brief bank.

(2) Individual staff attorneys should be provided with a functional working library for their own offices..

(3) All slip sheet opinions released by the jurisdiction's appellate courts should be obtained by the office upon release, indexed, and immediately distributed to the appellate attorneys.

#### 4.4 Use of Law Students

Although law schools throughout the nation should be encouraged to establish closely supervised clinical criminal law courses in cooperation with local defender offices, it is deplorable that law students are now filling gaps that should be filled by the practicing bar. Law student programs should not be viewed as a long-term answer to the problem of adequately meeting the needs of defendants in the criminal justice system.

Law students utilized as supporting personnel in defender agencies should be carefully supervised, given a broad range of experience and, where appropriate, adequately compensated for their work.

Law students functioning as subcounsel in criminal matters should be thoroughly prepared in criminal law and procedure, ethics, and court practice before being permitted to handle actual courtroom appearances.

A law student should be permitted to handle as lead counsel motions, hearings, and trials only after the student has been certified under a student practice rule and provided that the supervising lawyer has determined that, to the best of his knowledge and belief, the student will not bias either the court or the jury against the defendant. The student should not be permitted to handle the case unless the client has consented in writing to student representation; however, the consent of the trial judge should not be required. The client's consent should be indicated on the court record prior to any courtroom proceeding.

Law students should not conduct initial substantive client interviews without the presence of a supervising lawyer.

Law students should not handle as lead counsel criminal cases in which the charges against the accused involve complex legal, evidentiary, or tactical decisions, or where there is a likelihood of a substantial deprivation of liberty upon conviction.

The requirement of close supervision necessitates that the supervising lawyer have a complete understanding of the case, be available to the student prior to any court appearance for consultation, and be physically present and immediately available for consultation during the time the student is presenting a matter in court.

#### 4.5 Prisoner Legal Assistance Programs

Every defender system should make an assessment of the availability of post-conviction representation of the criminally confined in its jurisdiction and, if indicated, establish a separate division to deliver that representation in a comprehensive fashion.

The defender system should seek to utilize and incorporate existing community resources including, but not limited to, law students, paraprofessionals, jailhouse lawyers, and volunteers to assist in delivering the services. These individuals, however, should be carefully selected, properly trained and supervised, and their duties precisely defined.

Since the legal claims of prisoners may require of defender staff attorneys many skills and/or substantive law knowledge not necessarily possessed by criminal law practitioners, this fact should be reflected in the program's hiring policies, training programs, law library content, and internal office structure.

In the event that the defender system opts, due to lack of available resources, lack of expertise, or for other reasons, to limit its inmate representation to certain specified types of cases, the Defender Director should identify and coordinate with alternative prison legal services programs and initiate an effective referral system for inmate requests.

## V. CORE QUESTIONS RELATING TO INTERNAL OPERATIONS

### 5.1 Establishing Maximum Pending Workload Levels for Individual Attorneys

In order to achieve the prime objective of effective assistance of counsel to all defender clients, which cannot be accomplished by even the ablest, most industrious attorneys in the face of excessive workloads, every defender system should establish maximum caseloads for individual attorneys in the system.

Caseloads should reflect national standards and guidelines. The determination by the defender office as to whether or not the workloads of the defenders in the office are excessive should take into consideration the following factors;

(a) objective statistical data;

(b) factors related to local practice; and

(c) an evaluation and comparison of the workloads of experienced, competent private defense practitioners.

### 5.2 Statistics and Record-Keeping

Every defender office should maintain a central filing and record system with daily retrieval of information concerning all open cases. The system should include, at a minimum, an alphabetical card index system with a card containing detailed and current information on every open case, and a docket book or calendar which contains future court appearance activities.

Every Defender Director should receive, on a weekly or monthly basis, detailed caseload and dispositional data, broken down by type of case, type of function, disposition, and by individual attorney workload.

### 5.3 Elimination of Excessive Caseloads

Defender office caseloads and individual defender attorney workloads should be continuously monitored, assessed, and predicted so that, wherever possible, caseload problems can be anticipated in time for preventive action.

Whenever the Defender Director, in light of the system's established workload standards, determines that the assumption of additional cases by the system might reasonably result in inadequate representation for some or all of the system's clients, the defender system should decline any additional cases until the situation is altered.

When faced with an excessive caseload, the defender system should diligently pursue all reasonable means of alleviating the problem, including:

(a) Declining additional cases and, as appropriate, seeking leave of court to withdraw from cases already assigned;

(b) Actively seeking the support of the judiciary, the Defender Commission, the private bar, and the community in the resolution of the caseload problem;

(c) Seeking evaluative measures from the appropriate national organization as a means of independent documentation of the problem;

(d) Hiring assigned counsel to handle the additional cases; and

(e) Initiating legal causes of action.

An individual staff attorney has the duty not to accept more clients than he can effectively handle and should keep the Defender Director advised of his workload in order to prevent an excessive workload situation. If such a situation arises, the staff attorney should inform the court and his client of his resulting inability to render effective assistance of counsel.

#### 5.4 Supervision and Evaluation of Defender System Personnel

The professional performance of defender staff attorneys should be subject to systematic supervision and evaluation based upon publicized criteria. Supervision and evaluation efforts should be individualized, and should include monitoring of time and caseload records, review and inspection of case files and transcripts, in-court observation, and periodic conferences.

#### 5.5 Monitoring and Evaluation of Assigned Counsel Program Personnel

All evaluations of panel attorneys should be conducted by the administrator of the program. The results of evaluations should be reported to the attorney upon request of the attorney or in the discretion of the administrator.

A system of performance evaluations based upon personal monitoring by the administrator, augmented by regular inputs from judges, prosecutors, other defense lawyers, and clients should be developed. Periodic review of selected cases should be made by the administrator.

The criteria of performance utilized in evaluations should be those of a skilled and knowledgeable criminal lawyer.

#### 5.6 Accreditation and Specialization

An accreditation program for defender offices and assigned counsel programs should be developed within the appropriate national professional organization to encourage compliance with national standards and to promote the general improvement of defense services.

A certification program for criminal law specialists should be considered.

#### 5.7 Training Staff Attorneys in a Defender System

The training of defenders should be systematic, comprehensive, and at least equal in scope to that received by prosecutors. Every defender office should provide an orientation program for new staff attorneys. Intensive entry-level training should be provided at the state or local level and, to the extent possible, defender hiring practices should be coordinated to facilitate an entry-level training program during which newly hired attorneys are not assigned to regular office duties.

Inservice training programs for defender attorneys should be provided at the state and local level so that all attorneys are kept abreast of developments in criminal law, criminal procedure, and the forensic sciences. As a part of inservice training, defender attorneys should be required to read appellate slip opinions, looseleaf services, and legal periodicals.

Every defender office should seek to enroll staff attorneys in national and statewide training programs and courses that have relevance to the development of trial advocacy skills.

Defender offices should provide training for investigative staff.

#### **5.8 Training Assigned Counsel**

A single person or organization should assume the responsibility for training of assigned counsel panel members. Where there is an administrator, that individual should bear the responsibility.

Training programs should take into consideration the prior experience and skills of the attorneys. Special programs should be established for those less experienced attorneys who wish to qualify for the assigned counsel panel.

Formal training programs stressing lectures, demonstrations, and supervised participant involvement should be regularly scheduled. Joint sponsorship of such programs by defender organizations, local bar groups, and/or national organizations should be encouraged.

Reasonable attendance at training programs should be required of attorneys in order to remain on the panel.

If the operating budget is not sufficient, funds should be requested from outside sources to initiate formal training or to further develop formal training programs.

Assigned counsel should be encouraged to periodically attend other criminal law-related seminars in addition to the regular formal training programs.

Facilities for training programs should include audio and videotapes. Further, a national organization should consider providing, as a service, such tapes to defender offices and bar associations concerned with training attorneys who regularly accept appointments in criminal cases.

In addition to formal training programs, those responsible for the adequacy of assigned counsel performance should make the following resources available: an apprenticeship program, an initial handout or package of materials, an evaluation procedure, a motion and brief bank, a complete law library, information on experts, a newsletter, access to other attorneys for consultation, and law student assistance.

#### **5.9 Recruitment, Hiring, Promotion, and Removal of Defender Office Personnel**

Defender offices should actively recruit the best qualified attorneys available for staff positions by advertising on the local, state, and national levels, and by formulating and promulgating hiring criteria and policies. Recruiting

should include special efforts to employ attorney candidates from minority groups which are substantially represented in the defender office's client populations.

A national referral and placement service should be instituted in order to facilitate nationwide defender recruitment and placement.

Defender staff attorney appointments should be made by the Defender Director, based upon merit, entirely free of political and other irrelevant factors. Upon appointment, staff attorneys should be required to make a time commitment of from two to five years to defender work.

Defender promotion policies should be tied to merit and performance criteria, and removal of staff attorneys should be only for cause, except during a fixed probationary period which an office may employ for newly hired attorneys.

#### 5.10 Attorney-Client Relationships in a Defense System

Defenders and assigned counsel should be mindful that their primary loyalty is to their clients. They should seek to instill an attitude of trust and confidence in clients, and should scrupulously adhere to ethical dictates regarding confidentiality.

The defense attorney should frequently consult with his client so that the client fully understands the nature and scope of the legal representation which will be provided to him. Particular emphasis should be placed upon informing the client of the following:

- (a) The nature and frequency of court appearances;
- (b) The possibility of delays in the legal process; and
- (c) The factual and legal bases for recommendations made by counsel to the client concerning pleas or trials.

Defense systems should devise means of obtaining feedback from clients in a systematic way. Information thus developed should be used for tenure and promotion purposes and to enhance the system's sensitivity to client needs and improve the general quality of representation.

#### 5.11 Continuity of Representation

Defender offices should provide for continuous and uninterrupted representation of eligible clients from initial appearance through sentencing up to, but not including, the appellate and post-conviction stages by the same individual attorney. Defender offices should urge changes in court structure and administration to reduce fragmentation and to facilitate continuous representation.

If necessary, the procedures for early representation, including initial contact, should permit a limited exception to continuous representation. However, the defender office should implement procedures for early case assignment and for informing the client of the name of the attorney who will represent him after the initial period covered by the exception.

### 5.12 Choice of Counsel in Defense Systems

In a mixed system where both defender and assigned counsel programs exist, the client should be given the option of selecting either system.

The initial assignment of attorneys in defender and assigned counsel programs should be an internal administrative function. However, to the extent administratively feasible and consistent with the overall effectiveness of the system, the client should be afforded an opportunity to choose a particular attorney.

Whenever an attorney-client relationship has been established between an eligible accused and his attorney, the defense system should not terminate or interfere with that relationship without great justification, and the attorney should resist efforts by the court to terminate or interfere with that relationship.

Whenever it reasonably appears to counsel for an eligible accused that he is unable, for any reason, to furnish effective representation to a particular client, he should withdraw from the case with the consent of the client and the approval of the court, and should assist the client in securing new counsel. The defense system should not seek to prevent the individual attorney's withdrawal under these circumstances.

Whenever an eligible accused requests that different counsel be assigned to his case, the defense system should investigate the grounds for the request and should assign new counsel if (1) this constitutes the client's first such request, or (2) the investigation discloses that the attorney, for any reason, is unable to provide effective representation to the client. In all other cases the defense system should refuse to reassign the case, and should inform the client of his right to petition the court for reassignment of counsel.

### 5.13 Role in the Community and the Criminal Justice System

Every defense system should strive to instill in its members a high standard of professionalism and excellence.

The relationship between defense system attorneys and prosecuting attorneys should be characterized by the same high level of professionalism that is expected between other responsible members of the litigating bar.

Defense system attorneys should be especially sensitive to the image that they project to clients, and should accordingly refrain from demonstrations of camaraderie in and around the courthouse, the police station, and the detention facility with prosecuting attorneys and other law enforcement personnel.

Defense system attorneys should consult regularly with members of the judiciary in order to promote understanding and resolution of problems. However, they should be subject to judicial influence and supervision only in the same manner and to the same extent as are lawyers in private practice.

The defense system should strive to eliminate areas of conflict and to develop areas of mutual cooperation with fellow members of the legal community and organized bar, recognizing that bar support can assist the defense system in



securing an appropriate budget, resisting political pressures, instituting criminal justice reforms, and gaining the support of the legal community. Defense system attorneys should involve themselves in programs and committees of the bar.

Subject to procedures for early representation, defense systems should scrupulously decline to represent defendants who are ineligible for defender services as determined by prevailing standards. Adherence to this policy is designed to minimize the economic impact of the defense system upon the private bar and to avoid thereby unnecessary conflict with this important source of potential support. Where the accused has been determined eligible for defender services, the attorney should withdraw from the case in deference to private counsel only upon request of the accused.

The defense system's Director should educate the community about the purpose and function of the defense system. He should develop and maintain relations with community organizations to promote understanding of program operations and to assist in improving defense services. He should include police, judges, prosecutors, and corrections personnel in training programs. The defense system should make speakers available for school and community organizations and should encourage media coverage and issue regular press statements. Every defense system should have an official among whose responsibilities is press liaison and should have a procedure by which media requests for information are channeled to the appropriate official.

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