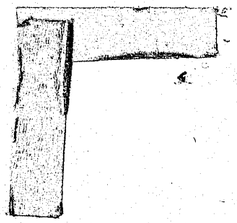

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Indigent Defense In Iowa

FALL 1980

IOWA CRIME COMMISSION

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Des Moines, Iowa 50319

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Introduction

The declaration of policy and purpose of the Iowa Crime Commission as stated in Chapter 80C of the Code of Iowa, 1979, reads, in part, as follows:

> "To prevent crime, to insure the maintenance of peace and good order, and to assure the greater safety of the people, law enforcement, judicial administration, and corrections must be better co-ordinated, intensified and made more effective at all levels of government."

Regarding Commission functions, the Code also states that "the Commission may conduct inquiries, investigations, analyses and studies of all State, county, and city departments and agencies concerned with the problems of crime."

The Iowa Crime Commission has undertaken an assessment of indigent defense in Iowa consistent with the above policy, purpose and functions. The intent here is to provide a neutral, comprehensive assessment of indigent defense in Iowa and, based on this analysis, to offer recommendations designed to improve the coordination among components of the existing indigent defense effort and the overall effectiveness of this effort.

The Iowa Crime Commission has made a concerted effort during the past decade to improve the quality of justice in Iowa, offering assistance to prosecution, defense, and judicial components alike. Given the increasing concern in Iowa with the issue of how to provide quality defense for indigents accused of criminal acts in a cost-effective manner in all counties, regardless of population size or criminal caseload, the Iowa Crime Commission undertook this very time-consuming but necessary task of assessing Iowa's current situation. The Iowa Crime Commission will continue to offer its services to all interested parties following the release of this report in

an effort to assist all jurisdictions in determining how they can improve their particular system of indigent defense.

The report will be divided into three major sections following this introduction. The first section will focus on relevant background material. Included in this section will be information regarding indigent defense and United States Supreme Court decisions, indigent defense and Iowa Supreme Court decisions, a history of indigent defense in the United States, and contemporary issues regarding indigent defense. The second section of the report will focus on the current status of indigent defense systems. Included in this section will be information regarding indigent defense systems in the United States, indigent defense systems in Iowa, a review of existing public defender offices in Iowa, a review of court-appointed counsel systems in Iowa, juvenile indigent defense in Iowa, and appellate defense of indigents in Iowa. The last section of the report will focus on recommendations. Included in this section will be a brief review of recommendations found in the national indigent defense literature, a review of alternative systems implemented in other states, and a set of recommendations for Iowa.

The assessment and the recommendations are both designed to be a systems-level analysis. Particular jurisdictions or issues relevant to only one jurisdiction or agency will not be the focus of this report. The problems addressed and the recommendations offered pertain to the State of Iowa. The report is designed to be both comprehensive and constructive in nature, serving the needs of all Iowans involved with and concerned about indigent defense.

Section 1

Background Information

I. A. Indigent Defense and U.S. Supreme Court Decisions

Introduction

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense. (Sixth Amendment to the Constitution of the United States)

The right to assistance of counsel is clearly stated in the above cited amendment to the Constitution. Neither qualifications nor reservations are included above; no American is excluded. Nevertheless, the right to assistance of counsel in criminal prosecutions has not been enjoyed by many citizens since its inclusion in the U.S. Constitution.

The Fourteenth Amendment to the U.S. Constitution has also been cited in decisions attempting to remedy this. Section 1, in part, states:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

"Right to counsel" or "due process" have been at best "academic" or lofty principles that have been unobtainable for those financially unable to retain private counsel until recent decades. Discrimination related to one's socio-economic status is hardly foreign to American soil, as various social movements during the 1960's and 1970's clearly revealed; however, in recent decades the United States Supreme Court through a series of decisions has offered interpretations of right to counsel and due process which attempt

to apply these principles to all Americans, regardless of social class or income.

At the same time, these decisions to be reviewed below have required State and local jurisdictions to assume increasingly heavier burdens. The provision of effective and efficient counsel for indigents charged with a criminal offense is the subject of subsequent sections of this report. Despite these related problems, let us keep in mind that we are not discussing a "poor fund" here. Providing counsel for indigents, or assuring due process and equal protection of the laws for all citizens simply cannot be categorized with charitable services provided for the needy in many communities. At issue here are Amendments to the Constitution of the United States; of concern here is the provision of certain rights for all, regardless of income.

Let us review the most significant decisions of the U.S. Supreme Court during the twentieth century in order to understand better these Constitutional rights. Following this, unresolved issues and questions will be analyzed. Subsequently, recent Iowa Supreme Court decisions which shed light on these issues and questions will be reviewed.

Key U.S. Supreme Court Decisions

The first U.S. Supreme Court decision to be reviewed here, in which the Court addressed right to counsel as it applies to indigents, is Powell v. Alabama, 287 U.S. 45 (1932). The decision has been interpreted to mean that for all capital cases, counsel should be assigned for those unable to retain counsel, whether requested or not. The key issue raised in this case by defendants was that they were denied adequate consultation with their counsel; consequently, defendants argued, they were denied an adequate opportunity to prepare their case. In fact, counsel had been appointed in the case; however, the appointment did not occur until the morning of the one day trial.

The Supreme Court in this case held that, with the above described procedures, the trial court violated the due process clause of the Fourteenth Amendment. This case, then, in essence marked the beginning of an effort to address Sixth and Fourteenth Amendment rights as they apply to indigents.

In Johnson v. Zerbst, 304 U.S. 458 (1938), the right to counsel for indigent defendants was held to apply to all federal cases. Once again, the Court made reference to the due process clause of the Fourteenth Amendment in arguing that appointment of counsel for indigents should be made in all federal cases, not just capital cases as argued in Powell v. Alabama, 287 U.S. 45 (1932). This, of course, did not affect appointment of counsel in state cases; for state courts, appointment of counsel was still required only for capital cases.

Although reversed by the U.S. Supreme Court approximately twenty years later, the Court decided in Betts v. Brady, 316 U.S. 455 (1942) that appointment of counsel is not essential to a fair trial. The case did not involve a capital offense; therefore, the trial court refused to provide an attorney. The appeal to the Supreme Court was based on the argument that the Sixth Amendment should be applied through the Fourteenth Amendment. Three Justices dissented with the majority in this case. Justices Black, Douglas, and Murphy argued that the Fourteenth Amendment does make the Sixth Amendment applicable to states.

The next Supreme Court decision relevant to this issue of indigents' right to counsel is the first in a series of decisions in the 1960's that have had a major impact on contemporary criminal justice practices. In Gideon v. Wainwright, 372 U.S. 335 (1963), the Supreme Court held that states and localities are required to furnish counsel for indigents charged with a felony. Although the arguments in this case are similar to those in Betts

v. Brady, 316 U.S. 455 (1942), the Court reconsidered and reversed the 1942 decision. Still unanswered following the Gideon v. Wainwright decision were several issues. In particular, the Court had not decided at what point in time an indigent defendant is entitled to counsel.

Rulings by the Supreme Court in several subsequent cases have helped clarify some unanswered issues. In Douglas v. California, 372 U.S. 353 (1963), for instance, the Court ruled that an indigent defendant cannot be denied counsel on first appeal. In Escobedo v. Illinois, 378 U.S. 478 (1964), the Court held that counsel must be permitted when the process of police investigative efforts shifts from merely investigatory to that of accusatory. As stated in the Court's ruling, "when its focus is on the accused and its purpose is to elicit a confession - our adversary system begins to operate, and, under the circumstances here, the accused must be permitted to consult with his lawyer." In Miranda v. Arizona, 384 U.S. 436 (1966), a case which has received a great deal of publicity regarding its impact on police procedures, the Court held that police interrogation of any suspect in custody, without his consent, unless a defense attorney is present, is prohibited by the self-incrimination provision of the 5th Amendment. This decision therefore requires that the accused be apprised of right to counsel and the availability of counsel appointed by the court.

When or at what stage the right to counsel applies for indigents has been clarified further in Mempa v. Rhay, 389 U.S. 128 (1967). Here, the Court ruled that "appointment of counsel for an indigent is required at every stage of a criminal proceeding where substantial rights of a criminal accused may be affected. In Orozco v. Texas, 394 U.S. 324 (1969), the Court ruled that right to counsel attaches when a defendant is arrested or otherwise has his/her freedom of action deprived or infringed in any significant

way. Regarding this same issue, in Coleman v. Alabama, 399 U.S. 1 (1970), the Court ruled that counsel, whether retained or appointed, must be available in every "critical stage" of the proceedings, including a preliminary hearing where a preliminary hearing is a critical stage (as in Iowa).

Perhaps the most significant case in terms of both additional clarification and fiscal impact on states and counties is Argersinger v. Hamlin, 407 U.S. 25 (1972). In this case, an indigent was charged with carrying a concealed weapon (with a possible sentence of up to 6 months imprisonment and a $1,000 fine), tried before a judge without counsel and without jury, and convicted of the charge receiving a ninety day jail term. The Florida Supreme Court denied the defendant's appeal, arguing that the federal constitutional right to counsel extends only to trials for non-petty offenses punishable by more than six months imprisonment. The U.S. Supreme Court reversed this ruling, stating in the opinion that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial."

In summary, several issues that remained unanswered in early Supreme Court decision have been clarified. Clearly, any defendant must be informed at the time of his/her arrest of his/her right to have counsel present at all interrogations. Likewise, defendants cannot be interrogated without being permitted to consult with counsel. In terms of when one's right to counsel is attached, counsel, whether retained or appointed by the court, must be available in every critical stage. Finally, regarding the types of crimes to which right to counsel must be applied, a defendant cannot be imprisoned for any offense unless he/she was represented by counsel at the trial. The impact of the Argersinger v. Hamlin, 407 U.S. 25 (1972) case, reflected in the last point above, will be discussed in more detail in a later section of the report.

I. B. Iowa Supreme Court Decisions Regarding Indigent Defense

Introduction

As is true of all states in our country, U.S. Supreme Court decisions represent interpretations of the U.S. Constitution that must be respected in Iowa. As already pointed out, states and jurisdictions within states are obligated to respect the U.S. Constitution including all U.S. Supreme Court rulings. We will review below additional clarification offered in decisions handed down by the Iowa Supreme Court, although we will not attempt to review all cases in this substantive area.

Iowa Supreme Court Decisions

The implementing statute in Iowa (R.CR. P. 26 (1)) concerning appointment of counsel for indigents reads as follows:

> Every defendant who is an indigent as defined in §336A.4 shall be entitled to have counsel appointed to represent him or her at every stage of the proceedings from the defendant's initial appearance before the magistrate or the court through appeal, including probation and parole revocation hearings, unless the defendant waives such appointment.

Iowa's statute which specifies the right to assistance of counsel by anyone, whether indigent or non-indigent appears in §804.20 of the Code of Iowa 1979. In summary, it guarantees the right of an arrested person to communicate with an attorney without unnecessary delay after arrival at the place of detention. The full text is as follows:

> Communications by Arrested Persons: Any peace officer or other person having custody of any person arrested or restrained of his or her liberty for any reason whatever, shall permit that person, without unnecessary delay after arrival at the place of detention, to call, consult, and see a member of his or her family or an attorney of his or her choice, or both. Such person shall be permitted to make a reasonable number of telephone calls as may be required to secure an attorney. If a call is made, it shall be made in the presence of the person having custody of the one arrested or restrained. If such person is intoxicated, or a person under eighteen years of age, the call may be made by the person having custody. An attorney shall be permitted to see and consult confidentially with such person alone and in private at the jail or other place of custody without unreasonable delay. A violation of this section shall constitute a simple misdemeanor.

We should note here that according to State v. Vietor, 261 N.W. 2d 339 (Iowa 1970), the Iowa Supreme Court held that trial counsel must be appointed for indigents charged with felonies and indictable misdemeanors, unless waived. In regard to the appointment of counsel for indigents, the Iowa Supreme Court held in State v. Williams 285 NW 2nd 248 (Iowa 1979) that the trial court did not abuse its discretion by denying the defendant's request that out-of-state co-counsel be appointed to represent him.

Perhaps the most important fiscal issue faced by states and counties or municipalities is the determination of indigency status. In §336A.4 of the Code of Iowa 1979, an indigent is defined as follows:

> For the purpose of this chapter, an indigent shall be any person who would be unable to retain in his behalf, legal counsel without prejudicing his financial ability to provide economic necessities for himself or his family.

The Iowa Supreme Court has clarified indigency or at least what factors can be utilized to determine indigency in several different cases. In Bolds v. Bennett, 159 N.W. 2d 415 (Iowa, 1968), the Iowa Supreme Court in its decision set out some factors a trial court may properly consider in determining a person's indigency status. These factors include the following:

> (1) real or personal property owned; (2) employment benefits; (3) pensions, annuities, social security and unemployment compensation; (4) inheritances; (5) number of dependants; (6) outstanding debts; (7) seriousness of the charge; and (8) any other valuable resources not previously mentioned

Impermissable factors are set out in both State v. Wright, 82 N.W. 1013 (Iowa, 1900) and State v. Van Gorder, 184 N.W. 68 (Iowa, 1921) and include

resources of a defendant's relatives and the fact that the defendant was able to post bail respectively. Finally, the Iowa Supreme Court in State v. Thompson, 253 N.W. 2d 608 (Iowa, 1977) held that trial court "may require a reasonable showing of inability to pay." In terms of the trial court's discretion in refusing to appoint counsel, the Supreme Court held in this same case that there was no abuse of such discretion by reviewing certain facts.

> The record shows defendant was steadily employed making $140 a week. He is married and has three children. For reasons not explained in the record, the family is receiving ADC assistance in the amount of $19 a month. Defendant is also receiving $100 a month on a contract for the sale of real estate.

Despite the clarification offered regarding indigency status by the above cited cases, trial level judges face a difficult task in ruling on a person's indigency or non-indigency. How to weigh this or that factor or which factors must or should be considered somehow are simply not prescribed. No doubt an indigency index could be developed empirically and utilized with the assistance of computerized statistical analysis, but we have no assurance this would represent a "better" means of determining indigency. This issue will be pursued in a later section of the report.

In summary, Iowa Supreme Court decisions have clarified various issues relating to the right of counsel, particularly for indigents, and defining indigency. What is clear from both the U.S. Supreme Court cases cited as well as the Iowa Supreme Court cases cited is that indigents in most criminal cases covering all degrees of seriousness must be provided competent counsel. Whether this provision is financed by state, county, or municipal funds, whether a full-time public defender or a court-appointed private attorney provides the required service, and exactly who is defined as indigent are all subject to the choice or discretion (with statutory guidelines in the case of indigency status) of the state and/or counties. We will begin to

pursue these issues in the next chapter of the report. We turn now to the history of public defender offices in the United States.

II. History of Indigent Defense in the United States

Introduction

The United States of America has a consistent history of attempting to provide legal counsel to those unable to pay for this service. In this section of the report, we will review briefly the efforts made to provide such services. We will then review the history of public defender offices nation-wide as well as in the state of Iowa. Finally, we will describe the contemporary efforts nation-wide to provide adequate legal counsel for indigents.

History of Aid to Indigents

Traditionally, in America, legal assistance for indigents was provided by private practitioners who felt morally and professionally obligated to undertake a certain amount of charity work. With the growth of industrial populations and specialization within the legal profession, accompanied by greater pressures of work on more successful counsel, the adequacy of indigent services which relied on charity work began to be questioned. The first recorded reference to public defenders as a means to provide indigents legal representation was in 1893, when Clara Foltz spoke in San Francisco about this subject. The first public defender office as we know it was established in 1914 in Los Angeles County.

As Arthur Wood notes, in his book entitled Criminal Lawyer, "legal systems of the United States have long recognized the need for methods of supplementing the charity work of private practitioners for defending indigents accused of crime" (Wood, 1967, 185). Thus, we should not be surprised to find public defender offices being suggested and established well before the

U.S. Supreme Court began to require as a constitutional right provision of counsel for indigents. Mayer C. Goldman, in his book published in 1917 entitled The Public Defender: A Necessary Factor in the Administration of Justice, summarizes particularly well the argument offered by Professor Wood.

> Since the beginning of time, the world plea has been for justice. Yet, because of that strange irony which has run through all the ages, man has apparently been forced to struggle for this beneficient right. More especially have the destitute of every land been deprived of the privilege of impartial hearing. Now, after this long and costly denial of human rights, comes a tangible antidote in the form of a public defense, which gives every man, regardless of his race, creed or purse, an actual "equality before the law." Such is the significance of the office of Public Defender to represent indigent accused persons. It means the democracy of justice.....Although many persons believe that, under our present system, persons accused of crime are already too carefully protected by various legal presumptions and technicalities, the prevailing sentiment undoubtedly is, that the administration of our criminal law is unsatisfactory, expensive and inadequate. There is sound basis for this criticism. If, however, by the establishment of this office, criminal jurisprudence and the principles of human justice can be placed upon a more solid foundation, the suspicion now lurking in the public mind, that a discrimination exists between different classes of accused persons, will give way to a realization that the theory of "equality before the law" means exactly that.
>
> The idea contemplates giving life and vitality to this much neglected theory and actually securing to all the people equal opportunities to protect their legal rights. It means the "square deal" in the courts." (Goldman, 1917, 1-3).

Wood summarizes succinctly this general argument by suggesting that it is "essential for an ideal typical system of criminal justice in a democratic society to maintain adequate legal counsel available for all those accused of crime irrespective of the ability to pay the usual fees" (Wood, 1967, 185). Justice George Sutherland, in the famous decision of the U.S. Supreme Court, known as "the Scottsboro case" of 1932, stated the following about this principle:

> ...The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even

> the intelligent and educated laymen has small and sometimes no skill in the science of law. If charged with crime he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted on incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence... (Powell v. Alabama, 287 U.S. (1932), at 68-69).

Interest in public defender offices was first expressed in Iowa in October, 1914 when Frank D. Wasson of Cedar Rapids advocated a public defender proposal. During the same month in 1914, Wes Fiala, member-elect of the Legislature, also advocated a public defender proposal. In November of 1914, the Cedar Rapids Gazette joined the previous advocates of a public defender proposal. By December of 1914, a public defender bill had been prepared by Senator Francis A. Heald and County Attorney Guy P. Linville, both of Cedar Rapids. Finally, in terms of the early history of public defenders in Iowa, a public defender proposal was advocated at a meeting of county attorneys in the State in June 1915.

Despite this interest in public defender offices at the turn of the century throughout the country, including Iowa, most existing defender systems in the country were initiated in the 1960's or 1970's. Clearly, U.S. Supreme Court decisions have been a continuing influence on the development of systems to provide legal counsel for indigents. As we will see when we review the increase in costs by state through the 1970's, the Argersinger v. Hamlin (1972) case led to significant expansion of services throughout the country. The Iowa Crime Commission first funded a public defender office in Iowa in 1972 for Polk County. Since 1972, eight additional offices have been funded at least in part with Crime Commission

funds with a total of twelve offices now in existence in the State.

As we have already indicated above, at least two systems to provide legal counsel to indigents accused of crime are available. The public defender office, first proposed at the turn of the 20th century, is one and the hope or expectation that members of the bar will offer their legal counsel to indigents as a community service is the second. As a matter of fact, the methods currently employed in the United States do not include charity work but may be grouped into four general categories. These include the following: (1) ad hoc appointment of counsel; (2) [illegible]c defender offices; (3) assigned counsel programs; and (4) a mixture of defender offices and assigned counsel programs. Let us review each of these categories briefly.

Ad hoc or random appointment of counsel by the court is clearly the oldest method among the four listed and typically involves appointment from among those practitioners practicing in the locale served by the court. However, many jurisdictions, appointments are made not from a list compiled by the court or bar association but from attorneys present in the Courtroom when the occasion arises.

The second method involves public or quasi-public officials being appointed or elected to render defense services on a salaried basis. Although public defender offices have spread throughout the country during the past twenty years, few if any jurisdictions utilize defender offices exclusively because of conflict of interest cases and the subsequent need for ad hoc appointments.

The third method is the coordinated assigned counsel system. This differs from a strictly ad hoc approach in that a systematic method of selecting panel members and designating case assignments is utilized in an attempt to establish a competent level of representation. Within this

framework, systems vary from having loosely structured controls to having a highly structured, formally organized system.

Finally, the fourth type of system is the mixed defender and assigned counsel system. Although any jurisdiction with a public defender office must rely on court-appointed counsel to handle conflict of interest cases, the mixed system suggests an effort to coordinate the services of defender offices and members of the private bar in a structured and organized way. A mixed system should be more than simply the use of appointed counsel to augment an existing defender office staff (Guidelines for Legal Defense Systems in the United States, Final Report 1976, NLADA, part III).

Which of these systems is most suitable or is likely to be most effective will vary from jurisdiction to jurisdiction depending on a number of factors. The situation in Iowa will be described in the next major section of the report.

III. Contemporary Issues Regarding Indigent Defense

Introduction

The rapid increase in the number of jurisdictions throughout the country that have adopted some type of public defender service has given rise to much discussion regarding issues related to providing counsel to indigents including the advantages of various systems. In this section of our report, we will describe and assess issues raised in the literature regarding indigent defense. We will then weigh these issues and arguments in terms of their applicability to Iowa.

Statement of General Issues

Determining who is and who is not indigent is a matter that has remained problematic. We have already reviewed U.S. Supreme Court and Iowa Supreme Court decisions and, although the Iowa Supreme Court has offered some guidance as to what factors may or may not be considered, the process of establishing indigency remains difficult.

One concern regarding the determination of indigency expressed in the literature is that some people attempt to waste taxpayers' money by requesting a court-appointed attorney or public defender when in fact they could hire their own attorney (Neubauer, Criminal Justice in Middle America, 1974, ch. 7). While we can assume that some abuse occurs in regard to indigent defense just as it occurs in any system or program, the empirical evidence available suggests that most people who are determined to be indigent are in fact poor. For instance, Skolnick, in his article entitled "Social Control in the Adversary System", reports that public defender clients included in his study scored lower on all available indicators of

socio-economic status. Public defenders clearly represented a particularly disadvantaged class of defendants (Skolnick, "Social Control in the Adversary System," 1967).

Although we have reason to believe that people are not abusing public defender systems and therefore can dismiss this as a major concern in states similar to Iowa at least, we can not so easily dismiss the lack of uniform standards across jurisdictions even within a state. The fact is, indigency is defined variously throughout the country. In some jurisdictions, the ability to make bail is interpreted to mean one is able to afford counsel. This, of course, has been rejected in Iowa based on an Iowa Supreme Court decision decades ago and reviewed previously. In other jurisdictions, a defendant must choose between pre-trial freedom and legal counsel without charge. We have already expressed our concern regarding the difficulty in developing a reliable and fair indigency index which would incorporate all relevant factors; nevertheless, this clearly remains a relevant issue deserving careful attention throughout the country as well as in Iowa .

Another general issue that has been difficult to resolve throughout the country involves defining adequate representation. As expressed by Oaks and Lehman in A Criminal Justice System and the Indigent, the question of what is "adequate representation" is perhaps a question best not asked.

> Once asked, the only socially acceptable answer is, as the Court bravely declared in Griffin v. Illinois, that 'there can be no equal justice where the kind of trial a man gets depends on the amount of money he has.' (Griffin v. Illinois, 351 U.S. 12, 19, 76 Sup. Ct. 585, 591 (1956)). The next logical step, unless we are to concede that we will settle for less than 'equal justice,' is to deny all criminal defendants the right to use any private resources in their own defense. This seems to be the only way to meet the Griffin standard, for no matter how little the state elects to furnish in the way of counsel or other assistance, it will be more than some nonindigent persons can afford; and no matter how much the state elects to furnish, persons with money can buy more. (Oaks and Lehman, A Criminal Justice System and the Indigent, 1968, 151)

Clearly, defining adequate representation is a difficult task; however, we do not necessarily share the implicit hopelessness in the above statement. We will be addressing this issue again when we discuss our assessment of existing public defender offices in Iowa.

Having introduced some general issues that apply to any system of indigent defense which attempts to provide adequate counsel to indigents, we will now review issues particular to public defender offices. We will again present both the issues and the available empirical support related to each issue.

Most of the criticism of public defender offices during the past twenty years has been directed at large, urban offices in metropolitan areas typically with excessive caseloads. Nevertheless, all concerns that have been expressed will be reviewed here. Their applicability to Iowa will be assessed in a later section of the report.

Several interrelated issues have been raised in the literature regarding public defender services which, we would argue, apply to all systems which provide legal services to indigents. These issues revolve around the quality of defense offered by public defenders (or, we would argue, anyone).

Cole, in chapter nine of The American System of Criminal Justice, presents these issues very clearly. One argument against public defenders reviewed by Cole is that their independence is undermined by daily contact with the prosecutor and the judge. As Edward Bennett Williams has said,

> ...the public defender and the prosecutor are trying cases against each other every day. They begin to look at their work like two wrestlers who wrestle with each other in a different city every night and in time get to be good friends. The biggest concern of the wrestlers is to be sure they do not hurt each other too much. They don't want to get hurt. They just want to make a living.
> (Edward Bennett Williams, The Law Interview by Donald McDonald, N.Y.; Center for the Study of Democratic Institutions, n.d., pg 10)

Neubauer offers a similar argument in Criminal Justice in Middle America when he points out that a typical complaint by defendants is that public defenders simply sell out their clients. P.D. becomes an abbreviation, not for Public Defender, but for prison deliverer. Other studies paint a similarly uncomplimentary picture. Blumberg has argued that defense lawyers have closer ties to the prosecution than to their clients. As a result, clients feel a sense of betrayal because their lawyer is more interested in going along with the prosecution on a guilty plea than fighting the charge. (Blumberg, Criminal Justice, 1967; and Blumberg, "The Practice of Law as a Confidence Game," 1967) David Sudnow offers the same argument in "Normal Crimes: Sociological Features of the Penal Code in a Public Defense Office (1965). He states that public defenders from the beginning seek to obtain a plea and are simply not geared to gaining acquittals. Public Defenders, according to Sudnow, seldom cause serious trouble for the routine motion of the court conviction process.

Casper offers the views of defendants who have been represented by public defenders, based on interviews with the actual consumers of this legal service. As one defendant stated regarding the public defender representing him,

> ...he just playing a middle game. You know, you're the public defender, now you, you don't care what happens to me really...you don't know me and I don't know you...this is your job, that's all...so, you're gonna go up there and say a little bit, you know, make it look like you're trying to help me, but actually you don't give a damn. Casper, ("Did you Have a Lawyer When You Went to Court? No, I Had a Public Defender," pg 5)

Casper continues by referring to the gamelike nature of interaction among police, prosecutors, defenders, and judges as perceived by defendants. Casper states, "In particular, most of those who were represented by public defenders thought their major adversary in the bargaining process to be not the prosecutor or the judge, but rather their own attorney, for he was the man with whom they had to bargain. They saw him as the surrogate of the prosecutor - a member of 'their little syndicate' - rather than as their own representative.

As stated by a defendant,

> A public defender is just like the prosecutor's assistant. Anything you tell this man, he's not gonna do anything but relay it back... they'll come to some sort of agreement, and that's the best you're gonna get.
> (Casper, pg 6)

In some jurisdictions, we can point to court procedures and fee schedules as contributors to this perception of the defense. Cole reports that until changes were made in the late 1960's, Seattle lawyers collected a "preparation fee" of $25 when their indigent client pleaded guilty. This made it more profitable to convince a client to plead guilty, simply because a lawyer could handle a large number of cases with this approach and would only be paid $75 for spending an entire day in trial.

An equally compelling concern expressed regarding public defender offices involves the tendency to routinize decision-making. Being confronted with overwhelming caseloads, an attorney (perhaps a public defender) may develop strategies that will facilitate decision-making with a minimal expenditure of resources. One such strategy might be to standardize cases as much as possible, thereby conducting a defense according to repetitive or routinized processes, reducing individualized treatment.

As we stated at the beginning of this section of the report, all of the issues raised regarding public defense in the literature can be applied to court-appointed counsel also. Court appointed counsel as well as public defenders may offer a less than vigorous, aggressive defense, may routinize their work, and may choose to plea bargain every possible case. One factor that would seem to apply more to public defender offices than to private counsel is having an overwhelming caseload. However, even this exists as a possible cause for a private attorney to offer a less than adequate defense.

The question of the quality of legal services is typically asked in comparing defendants who can afford to retain their own counsel and those who cannot. As Cole concludes, "the available evidence is certainly not definitive" (Cole, The American System of Criminal Justice, 1975, 268). Perhaps the most comprehensive study completed in the last two decades offers us the most reliable conclusion. Following his national study of legal services for the poor, Silverstein affirmed, "no firm conclusions can be drawn as to whether assigned counsel systems are better than defender systems, or vice versa" (Silverstein, Defense of the Poor, 1965, 73).

Turning to issues that have been raised in regard to the inadequacy of court appointed counsel systems, we find that the major concern involves inexperienced or inadequate counsel. Mayer Goldman, in his book The Public Defender, offers his observations regarding assigned counsel systems in 1917. Although conditions have changed since 1917, we can still benefit from Goldman's arguments.

> Occassionally, the accused has the good fortune to have an experienced and capable attorney assigned to him. Busy lawyers have neither the time nor the inclination to neglect their more lucrative practice for the privilege of basking in the atmosphere of the criminal court. Therefore, the court usually assigns counsel from among the attorneys in attendance at the time, or who are present for the purpose of being assigned.
>
> Frequently young and inexperienced attorneys are assigned. They are usually honest and painstaking and devote much time to the preparation of their cases. While they are glad to take unpaid assignments, the benefit they get from the experience is probably greater than that which their clients receive. Entrusting one's liberty to the tender care of a novice is fraught with danger. The experience may be most profitable to the young attorney - but extremely costly to his unfortunate client. The young attorney, as a rule, sent on achieving a favorable result, is no match for the adroit, able, powerful and experienced prosecutor (Goldman, The Public Defender, 1917, 10-21).

Cole, in his more recent study of Seattle, Washington, reports that a Seattle judge noted that only recent law school graduates and old "has beens"

are interested in criminal cases involving indigents. Cole also cites a study of lawyers in Oregon which revealed that court-appointed attorneys were younger, less experienced, and rated by other members of the bar as not so competent compared with privately retained counsel. Cole adds that "court house regulars" who accept court-appointments may also become co-opted the organizational needs of the system (Cole, The American System of Criminal Justice, 1975, ch. 9).

Arthur Wood, in his study of criminal lawyers in five cities throughout the nation, concludes that a court-appointed attorney system "does not tend to produce competent legal service." (Wood, Criminal Lawyer 1967, 190) Wood therefore found it surprising that such a large number of his respondents approve of a court-appointed counsel system. He, as Cole did, reports the problem of young, inexperienced lawyers and low fees as typical in court appointed counsel systems. Wood concludes that lawyers are supportive of such systems in part simply because court-appointed counsel systems are the oldest type of system and function in a greater number of jurisdictions. He adds, however, that "it is also evident from some comments that many criminal lawyers believe their practices are benefitted most by this method of providing counsel for needy cases." The benefits referred to include experience as much or perhaps more than fees paid (Wood, Criminal Lawyer, 1967, 188)

Oaks and Lehman, in their study entitled A Criminal Justice System and the Indigent, suggest an additional factor in comparing court-appointed counsel and public defender systems. Court-appointed counsel are less likely to have the services of an investigative staff, which for Oaks and Lehman is one of the most disquieting discriminations. As a possible solution, they suggest that a single investigative agency be created to serve both public defender offices and court-appointed counsel.

In summary, we will review the findings included in Silverstein's Defense of the Poor: The National Report, regarding specific advantages and disadvantages of court-appointed counsel and public defender systems in the United States. We will begin with the advantages and disadvantages of assigned counsel systems. We will provide the reader both the arguments and Silverstein's findings regarding each argument.

Silverstein lists six supposed advantages associated with court-appointed counsel systems. The first argument which he assesses in his study is that "an assigned counsel system preserves the traditional role of the lawyer, whereas a defender system makes the lawyer a public official or social-agency employee who is somewhat removed from the client. Because the defender handles many criminal cases, he cannot give each client the individual attention that an assigned lawyer can." Silverstein's national survey indicates that "the strength or weaknesses of the lawyer-client relationship depends on several factors, of which the system for appointment is a relatively minor one" (Silverstein, 1965, 18).

The second supposed advantage of assigned counsel systems is that "an assigned counsel system affords wide participation of the bar in the administration of criminal justice rather than leaving this important responsibility to a few specialists." Silverstein admits that "to the extent that this argument presupposes competent assigned counsel, the point is well taken." However, he also concludes that as the assigned counsel system actually operates in many counties included in his study, "it is not a widely shared experience but a burden that falls upon a relatively small part of the bar" (Silverstein, 1965, 19).

The third argument reviewed by Silverstein is that "the assigned counsel system provides valuable experience for younger lawyers." Silverstein points out that this argument "comes close to conceding that many assigned counsel systems are inadequate. ... In any event, the argument must have weighed against the vital requirement that the indigent client have competent representation. The proper role of the beginning lawyer is to serve as assistant counsel until he has learned

enough to provide competent representation on his own" (Silverstein, 1965, 19).

The fourth supposed advantage of assigned counsel systems is that "the assigned counsel system is simple to operate compared with a defender system." Silverstein states that the survey results indicate "that this depends more upon the volume of criminal cases than upon whether the court appoints individual counsel or relies on a defender." He adds that some system of administration is essential to any busy court (Silverstein, 1965, 19).

The fifth argument reviewed by Silverstein is that "the assigned counsel system costs little or nothing to operate, whereas a defender system costs a considerable amount." Silverstein agrees that for those jurisdictions where lawyers are not compensated for their assignments, this statement is true. However, comparing counties that either compensate court-appointed counsel or have public defender offices leads Silverstein to a different conclusion. The "financial data gathered in the survey... indicate that the comparative cost per capita of assigned counsel and defender systems varies according to the population to be served and other factors. In many instances the per capita cost of a defender system in one county is less than that of an assigned counsel system in another county of about the same population" (Silverstein, 1965, 20). We will devote a separate section of this report to updating per capita costs by state.

The last advantage of assigned counsel systems reviewed by Silverstein is that "in counties where assigned counsel are compensated, the system provides income to many members of the bar, whereas a defender system would limit such income to one or a few lawyers." Silverstein questions whether this statement is really relevant. "Is it more important to provide income to the bar or to provide the best possible system for defense of the indigent" (Silverstein, 1965, 20)?

Let us now turn to supposed disadvantages of assigned counsel systems reviewed by Silverstein. He reviews a total of eight disadvantages raised by critics of assigned counsel systems. Once again we will state the argument as well as Silverstein's comments based on his national survey.

The first disadvantage reviewed by Silverstein is that "assigned attorneys are often young attorneys or others who lack experience in criminal law, hence they are no match for the prosecuting attorney." Silverstein states the survey disclosed "wide variations among and within the states as to relative experience of prosecution and defense attorneys" (Silverstein, 1965, 20)

The second disadvantage reviewed is that "court-appointed attorneys are more likely to advise their clients to plead guilty than are privately retained attorneys." Although the survey data does provide some support for this statement, Silverstein emphasizes that "the guilty-plea process is complex, and that only when the above (six) factors are fully researched and taken into account can firm conclusions be reached" (Silverstein, 1965, 25)

The third disadvantage reviewed is that "in order to gain trial experience young lawyers who serve as assigned counsel are more likely to advise their clients to plead not guilty than are retained counsel." Silverstein admits that this argument is advanced less frequently than the second disadvantage and at first appears to represent the opposite point of view. While the arguments are put forward by different critics, both arguments "share the tacit premise that assigned counsel are inferior to retained counsel." Silverstein suggests that it "seems proper to conclude that although the proposition stated is true in some counties, it is false for assigned counsel systems considered as a whole" (Silverstein, 1965, 27)

The fourth disadvantage reviewed by Silverstein is that "whatever may be said about the effectiveness of an assigned counsel system in rural and medium-sized counties, it is not suitable for counties of 400,000 or more people." Silverstein states that the survey results "support the proposition in some counties but not in others....From the various survey materials it appears that the proposition about metropolitan counties is probably true for some

but not true for metropolitan counties considered as a whole" (Silverstein, 1965, 29).

The fifth disadvantage is that "assigned counsel are not reimbursed for out-of-pocket expenses for investigation and preparation." At the time Silverstein conducted the study, this statement was clearly supported by the data. "Only nine states and the District of Columbia specifically provide for reimbursement of expenses....The result of the variations among systems is that most appointed lawyers are forced to subsidize the administration of justice by paying such costs, while other appointees are reimbursed in part, and still others are repaid in full" (Silverstein, 1965, 31).

The sixth supposed disadvantage reviewed by Silverstein is that "the methods of selecting attorneys to be appointed are not fair to the attorneys." Silverstein reports some support for this argument. Some attorneys claimed they were called upon too often. Others claimed that older, more experienced lawyers were excused on request or by courtesy of the court. Still other attorneys claimed that appointments too often go to friends of the judges (Silverstein, 1965, 32). As is true of other issues, this problem varies among and within states and counties.

The seventh disadvantage reviewed by Silverstein is that "attorneys are not appointed early enough in the criminal proceeding." Silverstein points out that "this criticism applies to all the systems of providing counsel, but especially to assigned counsel systems." This, then, is a problem that may be more typical of assigned counsel systems but is applicable to all systems.

The final disadvantage reviewed is that "attorneys are paid little or nothing for their services." Silverstein found in his study that "most states using the assigned counsel system provide little or no payment for those who are assigned, especially in non-capital cases." We would assume this problem

has been rectified throughout the country at least to some degree. Nevertheless, this is a very important issue that must be considered in 1980 as well.

Finally, Silverstein reviews a series of six advantages of defender systems. We will again provide what proponents of defender systems have argued are advantages as well as Silverstein's findings regarding these supposed advantages. The first advantage reviewed is that "a defender system provides experienced, competent counsel." At the time of the survey, Silverstein found it difficult to establish that defenders were either more experienced or more competent. Regarding experience, he concludes that "merely creating a defender office, without also providing attrative salaries and the like, does not assure that defense counsel for the poor will be experienced." Regarding the question of competence, Silverstein concludes that "the defender is as able as retained counsel" and adds that the public defender "is often more experienced" (Silverstein, 1965, 46).

The second advantage of defender systems is that "a defender systems assures continuity and consistency in the defense of the poor, whereas an assigned counsel system results in great variations from one case to another." Silverstein suggests that the "truth of this proposition depends on how well the two kinds of systems are operated." A key advantage in defender offices is that "attorneys in the office learn to work together and they build up files of pleadings, motions, and briefs that can be used in later cases." While an assigned counsel system is not likely to have these advantages, Silverstein suggests that "a well administered assigned counsel system may well be better than a loosely run and poorly financed defender office. ...Under either system it is desirable to have uniformity in such matters as criteria for eligibility, quality of representation and record keeping. Which kind of system can better achieve such standards depends

on the individuals involved, on local practices and traditions, and possibly other factors" (Silverstein, 1965, 47).

A third supposed advantage of defender systems is that "the defender office, being a law office with a staff, is better able to screen for eligibility." In addition, a defender office makes it easier to establish and keep records. Silverstein states that this argument is closely related to the second argument above and therefore does not require further discussion.

The fourth advantage reviewed by Silverstein is that a defender system is more economical to operate in metropolican areas. Without getting into an elaborate discussion here, Silverstein concludes that "the statement is true for most counties, but there are some in which assigned counsel costs are unusually low or defender costs are unusually high" (Silverstein, 1965, 48).

The fifth advantage reviewed is that the "institution of a defender system eliminates the likelihood of the undesirable practice sometimes found in assigned counsel systems, whereby the attorney attempts to get a fee from the defendant or his family, and if he receives none or only a small amount, he does little work for the defendant." Silverstein found no evidence to support this contention but acknowledges the literature indicates that it used to be a problem in several large cities " (Silverstein, 1965, 48).

The final advantage reviewed by Silverstein is that "in a defender system, the defender and the prosecutor have a continuing relationship, thus assuring better cooperation between them than is possible between an assigned counsel and a prosecutor." Although Silverstein found very little support for this argument, he reminds us that establishing such good terms with the prosecutor creates the possibility that the defender cannot be completely independent and zealous in representing the defendant (Silverstein, 1965, 49).

Silverstein reviews the issue of independence separately from the above advantages. The suggestion that a public defender lacks independence must surely be taken as a disadvantage inherent in the system. However, Silverstein, as is true of other researchers, found no support for this statement. Relying on responses from judges, prosecutors, and defenders, Silverstein states that "the answers from all three groups indicated almost unanimously that this statement is not true."

This completes our review of the literature in terms of contemporary issues and concerns expressed regarding indigent defense systems. We have provided the best arguments and documentation on all sides of the issues that is available in the literature. Our concern now shifts to assessing the current status of indigent defense, first in the United States, and then and more importantly in Iowa. We will begin the next major section of the report with a comparison of states in terms of their means of financing indigent defense services and their respective per capita costs for these services.

Section 2

Current Status of Indigent Defense Systems

IV. Indigent Defense Systems in the United States

Introduction

As we have already indicated in Section 1 of our report, a dramatic increase has occurred in the number of states which have implemented state public defender systems during the past two decades. For those states that do not have a statewide defender system, county level defender systems or assigned counsel systems are likely to predominate. In chapter III of the report, we defined briefly the four categories of systems that are utilized in the United States today. These included ad hoc appointment of counsel, public defender offices, assigned counsel programs, and a mixture of defender offices and assigned counsel programs.

In this chapter of the report, we will present information regarding the status of public defender systems by state, the per capita public defense costs by state, the percent change in public defense total expenditures by state for fiscal years 1971-1977, indigent defense per capita costs, ranked by state, and the index crime rate per 100,000 by state. We are providing this information in order to assess at the national level the comparative costs of types of systems. This information can provide us only with an overview of indigent defense systems throughout the country. We will discuss in greater detail modifications of the four basic types of systems as found in various states when we present our recommendations in Section 3 of the report.

Indigent Defense Systems By State

Table 1 reveals the extent of public defender services throughout the United States in 1976. States are grouped by region of the country. For

TABLE 1

Extent of Public Defender Services:

By State

Entire State

Region/State	State Administered	Locally Administered	Local Area Only
N.E.			
Maine			
New Hampshire			3 county programs
Vermont	Yes		
Massachusetts	Yes		
Rhode Island	Yes		
Connecticut	Yes		
M.A.			
New York			County-based
New Jersey	Yes		
Pennsylvania			County-based
E.N.C.			
Ohio			
Indiana			County-based
Illinois	Appellate		
Michigan			
Wisconsin	Appellate		
W.N.C.			
Minnesota	Appellate		County or district
Iowa			County-based
Missouri		Large judicial circuits	
North Dakota			
South Dakota			County or district
Nebraska			District
Kansas			
S.A.			
Delaware	Yes		
Maryland	Yes		
D.C.	Yes		District
Virginia			
W. Virginia			2 districts
North Carolina			County-based
South Carolina			County-based
Georgia		Judicial circuits	
Florida			

Entire State

Region/State	State Administered	Locally Administered	Local Area Only
E.S.C.			
Kentucky	Yes		
Tennessee			
Alabama			County-based
Mississippi			
W.S.C.			
Arkansas			
Louisiana			3 districts
Oklahoma			County-based
Texas			County-based
Mt.			
Montana			
Idaho			County-based
Wyoming			County-based
Colorado			County-based
New Mexico	Yes		
Arizona	Yes		
Utah			County-based
Nevada	Remaining counties		
			County-based
Pac			
Washington			
Oregon	Appellate		County-based (trial)
California			County-based
Alaska	Yes		
Hawaii	Yes		

Source: Guidelines for Legal Defense Systems in the United States, NLADA, final report, 1976, chapter nine, Table A.

each state, the table indicates whether the entire state, or local areas only, has a public defender system and if one exists for the entire state whether the system is state or locally administered.

According to the information provided in Table 1, thirteen states have state-wide public defender systems administered at the state level. These states include Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, the District of Columbia, Kentucky, Colorado, New Mexico, Alaska, and Hawaii. In addition, at least four states have state administered appellate defender services but do not have state administered trial level defender services. Eight states have district-based systems which are controlled at the district level and one state has predominantly county-based offices with a state administered office to cover those counties without offices. Finally, sixteen states have exclusively county-based defender services. This leaves only eleven states that have no record of defender offices in 1976.

In Table 2, we report indigent defense per capita costs by state for 1976. Included in this table are the 1976 population for each state, the public defense costs in 1976 for each state, and the per capita public defense costs for each state. We have also noted using single or double asterisks whether 50-89% (one asterisk) or 90-100% (two asterisks) of the total costs are financed by the state.

"Public Defense Costs" reported in Table 2 "includes legal counsel and representation as provided by public defenders and other government programs that pay the fees of court-appointed counsel. These include court-paid fees to individually retained counsel, fees paid by the court to court-appointed counsel, government contributions to private legal aid societies and bar association sponsored programs, and the activities of an established public defender office or program" (Sourcebook of Criminal Justice Statestics - 1978. Appendix 2, pg 724).

TABLE 2

Indigent Defense Per Capita Costs

By State

Region/State	1976 Population (in thousands)	1976 Public Defense Costs (in thousands)	Per Capita Public Defense Costs
N.E.			
Maine	1,070	446	.42
** New Hampshire	822	491	.60
** Vermont	476	879	1.85
* Massachusetts	5,809	5,149	.87
** Rhode Island	927	521	.56
** Connecticut	3,117	2,076	.67
M.A.			
New York	18,084	26,657	1.47
** New Jersey	7,336	10,724	1.46
Pennsylvania	11,862	8,347	.70
E.N.C.			
Ohio	10,690	5,451	.51
Indiana	5,302	2,454	.46
Illinois	11,229	9,843	.88
Michigan	9,104	13,439	1.48
Wisconsin	4,609	3,901	.85
W.N.C.			
Minnesota	3,965	2,784	.70
Iowa	2,870	3,028	1.06
* Missouri	4,778	2,219	.46
North Dakota	643	200	.31
South Dakota	686	558	.81
Nebraska	1,553	1,160	.75
** Kansas	2,310	1,965	.85
S.A.			
** Delaware	582	610	1.05
** Maryland	4,144	6,847	1.65
D.C.	702	4,807	6.85
** Virginia	5,032	4,822	.96
W. Virginia	1,821	27	.01
** North Carolina	5,469	4,840	.88
* South Carolina	2,848	1,158	.41
Georgia	4,970	3,300	.66
* Florida	8,421	11,161	1.33

Table 2 (continued)

Region/State	1976 Population (in thousands)	Public Defense Costs (in thousands)	Per Capita Public Defense Costs
E.S.C.	3,428	1,281	.37
* Kentucky	4,214	2,246	.53
* Tennessee	3,665	1,122	.31
** Alabama	2,354	774	.33
Mississippi			
W.S.C.	2,109	572	.27
Arkansas	3,841	1,581	.41
Louisiana	2,766	918	.33
Oklahoma	12,487	5,223	.42
Texas			
Mt.	753	589	.78
Montana	831	726	.87
Idaho	390	294	.75
Wyoming	2,583	3,020	1.17
** Colorado	1,168	2,414	2.07
** New Mexico	2,270	4,669	2.06
Arizona	1,228	530	.43
Utah	610	1,526	2.50
Nevada			
Pac	3,612	4,411	1.22
Washington	2,329	3,335	1.43
Oregon	21,520	49,317	2.29
California	382	1,324	3.47
** Alaska	887	1,648	1.86
** Hawaii			

* State finances at least 50% of total cost.
** State finances at least 90% of total cost..

Source: Sourcebook of Criminal Justice Statistics - 1978, Criminal Justice Research Center, Albany, N.Y., June 1979 (U.S. Dept. of Justice, L.E.A.A., National Criminal Justice Information and Statistics Service).

We will not repeat here all of the information included in Table 2. However, we will report various ranges in terms of other key variables. Among all states, the per capita public defense costs range from a low of .01 in West Virginia and .27 in Arkansas to a high of 6.85 in the District of Columbia and 3.47 in Alaska. Among states that finance at least 90% of public defense costs, the per capita costs range from a low of .31 in Alabama and .56 in Rhode Island to a high of 3.47 in Alaska and 2.07 in New Mexico. Finally, among states that have a state administered public defender system, the per capita costs range from a low of .56 in Rhode Island and .67 in Connecticut to a high of 3.47 in Alaska and 2.07 in New Mexico.

These per capita public defense costs reported here reveal a wide range of costs, regardless of type of financing or type of indigent defense system. As we have stated in previous chapters of the report, indigent defense costs will vary according to several factors. The data in Table 2 support the contention offered in the literature review that having a state-financed system or having a state-administered public defender system will not necessarily increase or decrease the per capita costs of indigent defense services. This table and tables to follow also indicate that a consideration of costs alone without a careful study of other key factors such as the quality of counsel provided does not provide a substantial basis on which to decide which system of providing indigent defense services is preferable. We will continue this discussion in section 3 of the report which includes alternatives and recommendations.

In Table 3, we report the percent change in public defense total expenditures by state for the fiscal years 1971-1977. Public defense expenditures reported in Table 3 include the same costs listed in the definition of "public defense costs" which was presented in conjunction with Table 2. Thus, court-paid fees to retained counsel, fees paid by the court to court-appointed counsel, government contributions to legal-aid and bar association programs, and public

defender offices and programs are included here.

The data included in Table 3 reveals that among all states, the range in percent change in indigent defense costs between 1971 and 1977 is very broad. The state of Maine had the lowest percent change during this period with a decrease of 13.4 percent. On the other hand, Alabama experienced an increase during this period of 5,250.0 percent. We should note here that some of the extremely large increases reflect the impact of the Argersinger v. Hamlin, (1973) U.S. Supreme Court decision, as previously discussed.

Among states that financed in 1976 at least 90% of all indigent defense costs, the lowest increase during this period was experienced by New Hampshire, with 70.6 percent. The greatest increase among these states during this period was in Alabama, with 5,250.0 percent. Finally, among states with state-administered state-wide public defender offices, the lowest increase was experienced by New Jersey with 142.6 percent, although Colorado was very close with 146.3 percent. The state in this category with the greatest increase was New Mexico, with 1,235.6 percent.

We will not repeat our observations here which were expressed in regard to Table 2. However, we should note that most states with state-administered public defense systems had relatively low percentage changes compared with all states. New Mexico, with a 1,235.6 percent increase, and Maryland, with a 749.1 percent increase are the only notable exceptions. Although we will not calculate the percent change in total expenditures controlling for inflation, we recognize that this must be taken into account if one is to understand fully the percentage change for a given state. For those who care to pursue this with the information provided in Table 3, the Consumer Price Index for all items changed from 121.3 in 1971 to 181.5 in 1977, with 1967 = 100 (Statistical Abstract of the United States, 1979, 483).

TABLE 3

Percent Change in Public Defense

Total Expenditure By State

Fiscal Years 1971-1977

State	Total Expenditures 1971 (in thousands)	1977	Percent Change 1971 to 1977
N.E.			
Maine	149	129	-13.4
** New Hampshire	163	278	70.6
*** Vermont	-	992	-
Massachusetts[1].	1,116	4,292	284.6
*** Rhode Island	221	623	181.9
*** Connecticut	1,141	2,789	144.4
M.A.			
New York	8,834	32,364	266.4
*** New Jersey	5,102	12,379	142.6
Pennsylvania	3,015	9,723	222.5
E.N.C.			
Ohio	1,293	9,498	634.6
Indiana	635	2,920	359.8
Illinois	2,559	11,479	348.6
Michigan	2,631	14,646	456.7
Wisconsin	831	4,519	443.8
W.N.C.			
Minnesota	825	4,187	407.5
Iowa	587	2,915	396.6
Missouri	236	2,256	855.9
North Dakota	70	252	260.0
South Dakota	150	578	285.3
Nebraska	384	1,187	209.1
** Kansas	701	2,075	196.0
S.A.			
*** Delaware	195	674	245.6
*** Maryland	790	6,708	749.1
D.C.	1,256	4,254	238.7
** Virginia	123	5,273	4,187.0
W. Virginia	4	36	800.0
** North Carolina	1,619	4,944	205.4
South Carolina	430	1,162	170.2
Georgia	481	2,316	381.5
Florida	3,641	14,120	287.8

TABLE 3 (continued)

State	Total Expenditures (in thousands) 1971	1977	Percent Change 1971 to 1977
E.S.C.		1,358	3,570.3
Kentucky[2].	37	2,523	390.9
Tennessee	514	1,819	5,250.0
** Alabama	34	912	2,124.4
Mississippi	41		
W.S.C.		614	1,515.8
Arkansas	38	1,690	240.0
Louisiana	497	1,016	88.8
Oklahoma	538	5,473	296.3
Texas	1,381		
Mt.		639	618.0
Montana	89	749	253.3
Idaho	212	396	1,137.5
Wyoming	32	3,554	146.3
*** Colorado	1,443	2,137	1,235.6
*** New Mexico	160	5,448	646.3
Arizona	730	658	1,362.2
Utah	45	1,882	294.5
Nevada	477		
Pac		5,962	938.7
Washington	574	3,918	458.1
Oregon	702	62,811	217.0
California	19,817	2,002	259.4
*** Alaska	557	1,890	436.9
*** Hawaii	352		

** State finances at least 90% of total cost, 1976.
*** State finances at least 90% of total cost, 1976, and state administers state public defender system, 1976.

1. Massachusetts finances between 50-89% of indigent defense costs and has a state administered public defense system.
2. Same as footnote #1 for Kentucky.

Source: Trends in Expenditure and Employment Data for the Criminal Justice System 1971-1977, issued January 1980, U.S. Dept. of Justice and U.S. Dept. of Commerce

Finally, we include Table 4 in order to provide additional information which is readily available and can contribute to a better understanding of per capita indigent defense costs and, perhaps more importantly, the complexity inherent in analyzing criminal justice related information. In Table 4, the total number of index crimes and index crime rate (per 100,000) are reported for 1976. In addition, we have included in parentheses next to each state the index crime rate ranking from high to low and the per capita indigent defense costs ranking by state from high to low.

Although we do not suggest here that a high index crime rate (a greater number of serious crimes controlling for population size) will necessarily cause a higher indigent defense per capita cost, we would assert that a higher index crime rate is likely to mean more cases are prosecuted and subsequently more people are defendants. The majority of defendants faced with criminal charges are indigent, according to various assessments of indigency. We want to emphasize that this is at best a correlational argument, not necessarily a causal argument.

A cursory comparison of index crime rate by state and per capita indigent defense cost by state leads one to conclude that the correlation is far from perfect. States with comparatively high index crime rates do not necessarily have comparatively high per capita defense costs. By comparing rankings on these two measures, we found that twenty-nine states had a higher ranking in index crime rates than in per capita indigent defense costs while nineteen states had a higher ranking in per capita indigent defense costs than in index crime rates. Two states had the same ranking in each measure, with one unknown. Although this information offers some support for our suggestion above, the findings perhaps more importantly illustrate the weakness of this hypothesized correlation.

TABLE 4

Index Crime Rate

Per 100,000

By State

1976

Region/State	1976 Population (in thousands)	Total: Index Crime	Index Crime Rate Per 100,000
N.E.			
Maine (35/41)*	1,070	43,703	4,084
New Hampshire (41/34)	822	29,685	3,611
Vermont (46/8)	476	15,195	3,192
Massachusetts (13/23)	5,809	338,136	5,821
Rhode Island (16/35)	927	52,377	5,650
Connecticut (21/32)	3,117	155,993	5,005
M.A.			
New York (10/11)	18,084	1,125,739	6,225
New Jersey (18/12)	7,336	396,182	5,401
Pennsylvania (44/31)	11,862	396,184	3,340
E.N.C.			
Ohio (23/37)	10,690	528,962	4,948
Indiana (27/38)	5,302	247,776	4,673
Illinois (19/20)	11,229	567,629	5,055
Michigan (6/10)	9,104	589,779	6,478
Wisconsin (38/25)	4,609	179,782	3,901
W.N.C.			
Minnesota (30/30)	3,965	171,727	4,331
Iowa (36/17)	2,870	116,276	4,051
Missouri (20/39)	4,778	240,527	5,034
North Dakota (48/49)	643	16,167	2,514
South Dakota (47/26)	686	18,113	2,640
Nebraska (42/28)	1,553	55,317	3,562
Kansas (26/24)	2,310	110,382	4,778
S.A.			
Delaware (9/18)	582	36,459	6,264
Maryland (15/9)	4,144	234,732	5,664
D.C. (-/1)	702		
Virginia (34/19)	5,032	211,501	4,203
W. Virginia (50/51)	1,821	42,241	2,320

TABLE 4 (continued)

Region/State	1976 Population (in thousands)	Index Crime	Index Crime Rate Per 100,000
S.A. (continued)			
North Carolina (39/21)	5,469	212,264	3,881
South Carolina (24/44)	2,848	139,749	4,907
Georgia (25/33)	4,970	239,032	4,810
Florida (4/14)	8,421	590,880	7,017
E.S.C.			
Kentucky (45/45)	3,428	113,016	3,297
Tennessee (33/36)	4,214	179,448	4,258
Alabama (40/48)	3,665	139,573	3,808
Mississippi (49/46)	2,354	58,104	2,468
W.S.C.			
Arkansas (43/50)	2,109	71,847	3,407
Louisiana (29/43)	3,841	167,508	4,361
Oklahoma (28/47)	2,766	123,941	4,481
Texas (17/42)	12,487	682,340	5,464
Mt.			
Montana (32/27)	753	32,092	4,262
Idaho (31/22)	831	35,488	4,271
Wyoming (37/29)	390	15,503	3,975
Colorado (5/16)	2,583	175,189	6,782
New Mexico (12/5)	1,168	72,591	6,215
Arizona (2/6)	2,270	179,021	7,886
Utah (22/40)	1,228	61,127	4,978
Nevada (1/3)	610	50,667	8,306
Pac			
Washington (14/15)	3,612	209,280	5,794
Oregon (7/13)	2,329	148,097	6,359
California (3/4)	21,520	1,566,757	7,234
Alaska (11/2)	382	23,763	6,221
Hawaii (8/7)	887	56,076	6,322

* The numbers in parentheses following each state indicate the rank from high to low in 1976 index crime rates and, following the slash, the rank from high to low in 1976 indigent defense per capita costs.

urce: Crime in the United States 1976, Uniform Crime Reports, issued by Clarence M. Kelley, Director, FBI, for release September 28, 1977.

Summary

The national data reviewed in this chapter clearly indicate that a person is on very shaky ground if he/she attempts to offer categorical responses to questions that have to do with the comparative costs of indigent defense systems. We have seen that some states with state-administered public defense systems have relatively low per capita indigent defense costs while others in this category have relatively high costs. While we observed that states with state-administered public defender systems generally did not experience drastic increases in total costs between 1971 and 1977, some states in this category did experience significant change. Finally, the predicted correlation between high index crime rates and high per capita indigent defense costs would seem to be far from perfect; this, however, poses an empirical question which is easily answered by computerized statistical analysis which we hope to complete in the near future.

In summary, this information supports the argument we found in the literature review - that the type of indigent defense system one uses does not necessarily dictate either the cost or the success of the system. Rather, a series of factors is likely to determine these outcomes. Per capita indigent defense costs simply do not provide us with a convincing argument either to accept or reject a particular indigent defense system. This information should, however, inspire us to be inventive and to pursue various possibilities and combinations which meet the needs of a given jurisdiction. Given that our main concern is the State of Iowa, let us now review the indigent defense systems in Iowa in order to pursue subsequently alternative solutions to Iowa's needs.

V. Indigent Defense Systems in Iowa

Introduction

We turn our attention in Chapter V to existing indigent defense systems in Iowa. In this chapter, we will review existing statutes pertinent to indigent defense in Iowa first. We will follow this with a brief review of Iowa Criminal Justice Standards and Goals: Courts as it pertains to indigent defense. Finally, we will review indigent defense systems by county, including an assessment of per capita costs by county.

Code of Iowa: 1979

Four sections of the Code of Iowa: 1979 are particularly pertinent to our assessment of indigent defense systems. These include Rule 26 of the Rules of Criminal Procedure, Section 815.7 of the Code, and chapters 336A and 336B of the Code. Although we have referred to Rule 26 in an earlier section of the report, we will review briefly this rule as well as these other sections of the Code below.

Rule 26 of the Rules of Criminal Procedure addresses the "right to appointed counsel." Regarding representation, the rule states that "every defendant who is an indigent as defined in Section 336A.4 of the Code shall be entitled to have counsel appointed to represent him or her at every stage of the proceedings from the defendant's initial appearance before the magistrate or the court through appeal, including probation and parole revocation hearings, unless the defendant waives such appointment." Regarding compensation, Rule 26 states that "when counsel is appointed to represent an indigent defendant, compensation shall be paid as directed in chapter 815 of the Code."

Turning to Section 815.7 of the Iowa Code, we find regarding fees to attorneys that

> "An attorney appointed by the court to represent any person charged with a crime in this state shall be entitled to a reasonable compensation which shall be the ordinary and customary charges for like services in the community to be decided in each case by a judge of the district court, including such sum or sums as the court may determine are necessary for investigation in the interests of justice and in the event of appeal the cost of obtaining the transcript of the trial and the printing of the trial record and necessary briefs in behalf of the defendant. Such an attorney need not follow the case into another county or into the appellate court unless so directed by the court at the request of the defendant, where grounds for further litigation are not capricious or unreasonable, but if such attorney does so his or her fee shall be determined accordingly. Only one attorney fee shall be awarded in any one case except that in class "A" felony cases, two may be authorized."

Chapter 336B of the Code specifies what is required in terms of financial statements whether a person is represented by a public defender or court-appointed counsel. Section 336B.2 states that "before an attorney is appointed... to represent any person charged with a crime in this state, the court shall require the client... to complete under oath a detailed financial statement." Section 336B.3 states that "any person requesting the assistance of a public defender under the provisions of chapter 336A shall be required to complete a financial statement."

Finally, chapter 336A of the Code provides for the establishment of public defender offices. According to 336A.1, "in any county, the board of supervisors may establish or abolish, by resolution of the board, the office of public defender. A county may join with one or more other contiguous counties within its judicial district to establish one office of public defender to serve those counties." Abolishment of the office, contributions to funds, and nomination and appointment are specified in the remainder of Sections 336A.1, 336A.2, and 336A.3, respectively. We will not quote these sections of the chapter here, however, the full text can be found in Volume II of the 1979 Code. Two additional sections in this chapter that are of

particular interest to us involve "indigent defined" and "report to the court," Sections 336A.4 and 336A.8, respectively. Regarding indigent defined, Section 336A.4 states that

> "for the purpose of this chapter, an indigent shall be any person who would be unable to retain in his behalf, legal counsel without prejudicing his financial ability to provide economic necessities for himself or his family. Before the initial arraignment or other initial court appearance, the determination of indigency shall be made by the public defender within criteria set by the board of supervisors. At or after arraignment or other initial court appearance, the determination shall be made by the court."

Regarding "report to court," Section 336A.8 requires that "the public defender shall make an annual report to the judges of the district court sitting in any county he serves, the attorney general and the board of supervisors of any county he serves reporting all cases handled by him during the preceding year." Sections 336A.5, 336A.6, 336A.7, 336A.9, 336A.10 and 336A.11 address the compensation, duty of defender, other attorney appointed, office, time devoted to office, and prohibited conduct; the full text of these sections can be found in Volume II of the Code.

In summary, our review of the Code of Iowa: 1979 as it relates to indigent defense clarifies what indigent defense systems are possible at the present time in Iowa. The Code states that indigents are entitled to counsel, that court-appointed counsel are entitled to reasonable compensation for their services, that indigents must file a financial statement whether counsel is provided by court-appointed attorneys or public defenders, and that one or more counties that are contiguous and within the same judicial district may establish a public defender office. We will now review how indigent defense services are provided by county in Iowa. We will comment on recommended legislative changes in the recommendations sections of this report.

County Indigent Defense Systems

At the present time, twelve public defender offices exist in the State of Iowa serving a total of fifteen counties. Two of these offices are multi-county offices although one of these is still in the process of being established and staffed. The remaining 84 counties in Iowa rely on a court-appointed counsel system. In Table 5, we list the counties served by public defender offices and the size of their legal and support staffs.

The Polk County Offender Advocate Office has the largest legal and support staff among public defender offices in the state. On the other hand, three public defender offices have a legal staff of one attorney who is not full-time. Among the five counties in Iowa with a population greater than 100,000, three are served with public defender offices; these counties include Polk, Black Hawk, and Woodbury. The two counties in this population category that are not served by a public defender office are Linn and Scott counties. Among the ten largest counties in terms of population, six are served by a public defender office. Among the fifteen largest counties, nine are served by a public defender office.

Before turning to separate assessments of public defender offices and the assigned counsel system in Iowa which will follow this chapter in the report, we will review the costs of indigent defense in Iowa by county. We emphasize here, as we have previously, that the cost of a given system alone is insufficient information with which to assess its adequacy. At the same time, costs must be included in any assessment as well as in a set of recommendations.

Per Capita Indigent Defense Costs By County

Counties throughout the State of Iowa, both large and small in population, are experiencing increasing costs for indigent defense service that

TABLE 5

PUBLIC DEFENDER OFFICES

IN IOWA: 1980

Office*	Counties Served	Legal Staff	Support Staff
Black Hawk County Public Defender (1B)	Black Hawk	4	3(b)
Cerro Gordo County Public Defender (2A)	Cerro Gordo	2	1
Story County Public Defender (2B)	Story	3	1
Ida County Public Defender (3B)	Ida	1(a)	-
Woodbury County Public Defender (3B)	Woodbury	3	2(b)
Pottawattamie County Public Defender (4)	Pottawattamie	3	3(b)
Polk County Public Defender (5A)	Polk	9	5(b)
Benton/Tama Counties Public Defender (6)	Benton, Tama	1	1
Clinton County Public Defender (7)	Clinton	1(a)	1
Muscatine County Public Defender (7)	Muscatine	1(a)	1
8B Judicial District Public Defender (8B)	Des Moines, Henry, Louisa	3	2½(b)
Lee County Public Defender (8B)	Lee	1-1/2	1

* Listed by Judicial Election District, which is indicated in parentheses.
** Funding has been awarded but the staff has not been hired.
a. Public Defender is not full-time.
b. Includes at least one investigator.

for many smaller counties are also unpredictable. The information to be provided below reported by Judicial Election District will help document both problems. The per capita cost figures have been derived from information included in the appendix of the Resource Planning Corporation report submitted to the Iowa Legislative Council on August 6, 1980, entitled Iowa Court Financial and Personnel Information Profile.

The Resource Planning Corporation utilized county audit reports and county financial statements as sources for the information they provide in their report. These reports and statements no doubt are the best sources with which we have to work. Nevertheless, because of inconsistencies in budget categories and reporting practices among counties, this information should not be assumed to be totally accurate at face value and should not be used as the sole basis for assessing indigent defense systems in Iowa. At the same time, as we have already indicated, this information does illustrate the key problems faced by counties and provides a general comparison of costs of types of systems used in Iowa.

Turning first to the issue of high and variable costs for indigent defense in smaller counties, the per capita costs reported in Table 6 clearly illustrate the nature of this problem. Each judicial election district includes one or more counties that have experienced this problem. In District 1A, both Clayton and Delaware Counties experienced dramatic per capita cost increases during the 1977-79 period. In District 1B, both Fayette and Howard experienced similar fluctuations in per capita costs. In District 2A, Bremer, Cerro Gordo, Floyd, Franklin, Winnebago, and Worth had per capita costs that virtually doubled during the period for at least one year. In District 2B, Hamilton, Hardin, Pocahontas, and Wright counties had similar experiences. In District 3A, Buena Vista, Cherokee, Emmet,

TABLE 6

Judicial Election District 1A

Per Capita Indigent Defense Costs

County	Year	Total Indigent Defense Costs	Per Capita Costs
Allamakee	1977	7,802	.51
Allamakee	1978	10,714	.70
Allamakee	1979	12,063	.78
(15,400)*			
Clayton	1977	10,235	.43
Clayton	1978	9,845	.42
Clayton	1979	30,451	1.29
(23,678)			
Delaware	1977	12,388	.65
Delaware	1978	23,488	1.22
Delaware	1979	24,246	1.26
(19,200)			
Dubuque	1977	88,388	.97
Dubuque	1978	112,850	1.24
Dubuque	1979	137,334	1.50
(91,348)			
Winneshiek	1977	8,321	.38
Winneshiek	1978	14,516	.67
Winneshiek	1979	8,848	.41
(21,700)			

* Denotes population base used to calculate per capita costs for each county.

Judicial Election District 1B

Per Capita Indigent Defense Costs

County	Year	Total Indigent Defense Costs	Per Capita Costs
Black Hawk	1977	219,680	1.55
Black Hawk	1978	218,703	1.54
Black Hawk (142,000)*	1979	339,367	2.39
Buchanan	1977	28,074	1.28
Buchanan	1978	15,393	.70
Buchanan (21,999)	1979	19,631	.89
Chickasaw	1977	20,543	1.36
Chickasaw	1978	7,502	.50
Chickasaw (15,120)	1979	8,643	.57
Fayette	1977	13,967	.54
Fayette	1978	26,243	1.02
Fayette (25,800)	1979	35,752	1.39
Grundy	1977	7,373	.52
Grundy	1978	8,366	.59
Grundy (14,100)	1979	11,898	.84
Howard	1977	9,945	.90
Howard	1978	15,488	1.41
Howard (11,000)	1979	7,272	.66

* Denotes population base used to calculate per capita costs for each county.

Judicial Election District 2A

Per Capita Indigent Defense Costs

County	Year	Total Indigent Defense Costs	Per Capita Costs
Bremer	1977	3,311	.14
Bremer	1978	4,313	.18
Bremer (24,329)*	1979	8,481	.35
Butler	1977	4,236	.24
Butler	1978	6,616	.38
Butler (17,300)	1979	6,742	.39
Cerro Gordo	1977	31,463	.65
Cerro Gordo	1978	31,931	.66
Cerro Gordo (48,300)	1979	62,730	1.30
Floyd	1977	8,471	.42
Floyd	1978	8,380	.42
Floyd (20,000)	1979	16,121	.81
Franklin	1977	4,420	.33
Franklin	1978	3,381	.25
Franklin (13,502)	1979	12,336	.91
Hancock	1977	8,997	.64
Hancock	1978	12,013	.86
Hancock (14,000)	1979	10,892	.78
Mitchell	1977	4,051	.32
Mitchell	1978	6,410	.51
Mitchell (12,600)	1979	3,197	.25
Winnebago	1977	2,005	.15
Winnebago	1978	2,412	.18
Winnebago (13,624)	1979	5,984	.44
Worth	1977	3,860	.42
Worth	1978	806	.09
Worth (9,200)	1979	1,890	.21

* Denotes population base used to calculate per capita costs for each county.

Judicial Election District 2B

Per Capita Indigent Defense Costs

County	Year	Total Indigent Defense Costs	Per Capita Costs
Boone	1977	19,792	.76
Boone	1978	21,510	.82
Boone	1979	29,176	1.12
(26,100)*			
Calhoun	1977	5,968	.44
Calhoun	1978	10,452	.77
Calhoun	1979	6,451	.47
(13,600)			
Carroll	1977	6,279	.27
Carroll	1978	5,750	.25
Carroll	1979	6,819	.29
(23,400)			
Greene	1977	13,271	1.04
Greene	1978	14,616	1.15
Greene	1979	18,343	1.44
(12,716)			
Hamilton	1977	14,705	.84
Hamilton	1978	12,935	.73
Hamilton	1979	32,195	1.83
(17,600)			
Hardin	1977	28,913	1.32
Hardin	1978	48,120	2.20
Hardin	1979	40,751	1.86
(21,900)			
Humboldt	1977	5,526	.44
Humboldt	1978	9,464	.75
Humboldt	1979	11,492	.90
(12,700)			
Marshall	1977	41,046	.96
Marshall	1978	57,896	1.35
Marshall	1979	69,268	1.62
(42,800)			
Sac	1977	3,615	.31
Sac	1978	33,719	2.93
Sac	1979	4,021	.35
(14,800)			

Judicial Election District 2B (continued)

Per Capita Indigent Defense Costs

County	Year	Total Indigent Defense Costs	Per Capita Costs
Story	1977	61,352	.89
Story	1978	95,453	1.38
Story	1979	169,939	2.46
(69,200)			
Webster	1977	41.076	.87
Webster	1978	47,840	1.02
Webster	1979	60,520	1.28
(47,100)			
Wright	1977	15,053	.91
Wright	1978	8,872	.54
Wright	1979	9,031	.55
(16,500)			

* Denotes population base used to calculate per capita costs for each county.

Judicial Election District 3A

Per Capita Indigent Defense Costs

County	Year	Total Indigent Defense Costs	Per Capita Costs
Buena Vista	1977	10,381	.51
Buena Vista	1978	8,436	.41
Buena Vista (20,400)*	1979	16,985	.83
Cherokee	1977	1,618	.10
Cherokee	1978	4,071	.25
Cherokee (16,200)	1979	10,958	.68
Clay	1977	1,816	.10
Clay	1978	7,265	.38
Clay (19,000)	1979	6,404	.34
Dickinson	1977	22,751	1.64
Dickinson	1978	9,615	.69
Dickinson (13,907)	1979	21,358	1.54
Emmet	1977	8,349	.60
Emmet	1978	14,889	1.06
Emmet (14,008)	1979	51,815	3.70
Kossuth	1977	10,125	.44
Kossuth	1978	6,553	.29
Kossuth (22,760)	1979	11,934	.52
Lyon	1977	2,665	.20
Lyon	1978	3,910	.29
Lyon (13,300)	1979	7,229	.54
O'Brian	1977	5,498	.32
O'Brian	1978	5,479	.32
O'Brian (17,300)	1979	8,114	.47
Osceola	1977	2,564	.29
Osceola	1978	2,713	.31
Osceola (8,761)	1979	3.080	.35
Palo Alto	1977	4,558	.34
Palo Alto	1978	13,246	1.00
Palo Alto (13,289)	1979	13,067	.98

* Denotes population base used to calculate per capita costs for each county.

Judicial Election District 3B

Per Capita Indigent Defense Costs

County	Year	Total Indigent Defense Costs	Per Capita Costs
Crawford	1977	9,909	.53
Crawford	1978	6,113	.33
Crawford (18,600)*	1979	14,777	.79
Ida	1977	8,857	1.01
Ida	1978	7,931	.90
Ida (8,800)	1979	21,833	2.48
Monona	1977	8,761	.72
Monona	1978	7,211	.59
Monona (12,196)	1979	6,390	.52
Plymouth	1977	2,518	.10
Plymouth	1978	5,054	.20
Plymouth (25,000)	1979	6,940	.28
Sioux	1977	3,837	.13
Sioux	1978	4,977	.17
Sioux (29,400)	1979	19,124	.65
Woodbury	1977	212,657	2.03
Woodbury	1978	219,031	2.09
Woodbury (104,771)	1979	327,222	3.12

* Denotes population base used to calculate per capita costs for each county.

Judicial Election District 4

Per Capita Indigent Defense Costs

County	Year	Total Indigent Defense Costs	Per Capita Costs
Audubon	1977	3,365	.35
Audubon	1978	3,217	.33
Audubon	1979	3,749	.39
(9,709)*			
Cass	1977	4,171	.24
Cass	1978	4,796	.28
Cass	1979	2,893	.17
(17,307)			
Fremont	1977	3,698	.41
Fremont	1978	7,278	.81
Fremont	1979	7,436	.83
(9,000)			
Harrison	1977	5,679	.34
Harrison	1978	4,638	.28
Harrison	1979	5,071	.31
(16,524)			
Mills	1977	5,869	.45
Mills	1978	7,254	.56
Mills	1979	16,373	1.26
(13,000)			
Montgomery	1977	2,580	.20
Montgomery	1978	2,514	.19
Montgomery	1979	2,902	.22
(12,978)			
Page	1977	5,078	.27
Page	1978	13,162	.70
Page	1979	7,384	.39
(18,703)			
Pottawattamie	1977	131,982	1.48
Pottawattamie	1978	134,957	1.51
Pottawattamie	1979	169,160	1.89
(89,297)			
Shelby	1977	9,140	.58
Shelby	1978	5,555	.35
Shelby	1979	8,142	.52
(15,731)			

* Denotes population base used to calculate per capita costs for each county.

Judicial Election District 5A

Per Capita Indigent Defense Costs

County	Year	Total Indigent Defense Costs	Per Capita Costs
Dallas	1977	13,340	.49
Dallas	1978	8,823	.32
Dallas	1979	38,415	1.41
(27,223)*			
Guthrie	1977	3,572	.29
Guthrie	1978	6,947	.57
Guthrie	1979	9,223	.76
(12,200)			
Jasper	1977	30,100	.83
Jasper	1978	31,388	.87
Jasper	1979	28,325	.78
(36,200)			
Madison	1977	4,890	.38
Madison	1978	6,447	.50
Madison	1979	3,350	.26
(13,000)			
Marion	1977	4,252	.15
Marion	1978	6,163	.22
Marion	1979	7,352	.27
(27,480)			
Polk	1977	422,596	1.42
Polk	1978	447,836	1.51
Polk	1979	474,515	1.60
(296,881)			
Warren	1977	22,066	.66
Warren	1978	29,330	.88
Warren	1979	34,073	1.03
(33,189)			

* Denotes population base used to calculate per capita costs for each county.

Judicial Election District 5B

Per Capita Indigent Defense Costs

County	Year	Total Indigent Defense Costs	Per Capita Costs
Adair	1977	3,644	.39
Adair	1978	5,484	.58
Adair	1979	7,628	.81
(9,383)*			
Adams	1977	1,541	.26
Adams	1978	1.997	.34
Adams	1979	1.967	.33
(5,900)			
Clarke	1977	14,089	1.79
Clarke	1978	7,672	.97
Clarke	1979	7,102	.90
(7,881)			
Decatur	1977	5,998	.62
Decatur	1978	8,287	.85
Decatur	1979	11,017	1.13
(9,737)			
Lucas	1977	8,945	.91
Lucas	1978	7,690	.78
Lucas	1979	11,644	1.19
(9,800)			
Ringgold	1977	7,756	1.27
Ringgold	1978	3,561	.58
Ringgold	1979	4,378	.72
(6,100)			
Taylor	1977	2,222	.28
Taylor	1978	5,712	.72
Taylor	1979	4,301	.54
(7,900)			
Union	1977	12,333	.94
Union	1978	22.192	1.69
Union	1979	25,615	1.96
(13,100)			
Wayne	1977	786	.10
Wayne	1978	2,865	.35
Wayne	1979	6,004	.74
(8,100)			

* Denotes population base used to calculate per capita costs for each county.

Judicial Election District 6

Per Capita Indigent Defense Costs

County	Year	Total Indigent Defense Costs	Per Capita Costs
Benton	1977	8,095	.34
Benton	1978	17,636	.75
Benton	1979	19,995	.85
(23,600)*			
Iowa	1977	2,412	.16
Iowa	1978	4,757	.31
Iowa	1979	6,103	.39
(15,500)			
Johnson	1977	96,581	1.24
Johnson	1978	99,778	1.28
Johnson	1979	110,683	1.42
(78,100)			
Jones	1977	13,960	.71
Jones	1978	28,773	1.46
Jones	1979	15,390	.78
(19,700)			
Linn	1977	221,747	1.33
Linn	1978	233,852	1.40
Linn	1979	316,383	1.90
(166,900)			
Tama	1977	14,881	.76
Tama	1978	25,100	1.27
Tama	1979	34,366	1.74
(19,700)			

* Denotes population base used to calculate per capita costs for each county.

Judicial Election District 7

Per Capita Indigent Defense Costs

County	Year	Total Indigent Defense Costs	Per Capita Costs
Cedar	1977	10,081	.57
Cedar	1978	10,990	.62
Cedar	1979	11.475	.65
(17,655)*			
Clinton	1977	80,934	1.35
Clinton	1978	79,791	1.33
Clinton	1979	79,333	1.32
(60,000)			
Jackson	1977	8,888	.43
Jackson	1978	13,876	.67
Jackson	1979	10,665	.51
(20,839)			
Muscatine	1977	25,280	.65
Muscatine	1978	24,204	.62
Muscatine	1979	25,667	.66
(39,000)			
Scott	1977	137,365	.87
Scott	1978	107,116	.68
Scott	1979	126,123	.80
(158,000)			

* Denotes population base used to calculate per capita costs for each county.

Judicial Election District 8A

Per Capita Indigent Defense Costs

County	Year	Total Indigent Defense Costs	Per Capita Costs
Appanoose	1977	18,306	1.21
Appanoose	1978	14,208	.94
Appanoose	1979	11,746	.78
(15,100)*			
Davis	1977	8,007	.92
Davis	1978	14,793	1.70
Davis	1979	2,264	.26
(8,700)			
Jefferson	1977	17,595	1.10
Jefferson	1978	17,360	1.10
Jefferson	1979	15,396	.96
(16,000)			
Keokuk	1977	6,007	.46
Keokuk	1978	5,140	.39
Keokuk	1979	3,729	.28
(13,200)			
Mahaska	1977	18,969	.87
Mahaska	1978	19,137	.87
Mahaska	1979	39,027	1.78
(21,900)			
Monroe	1977	4,391	.45
Monroe	1978	2,448	.25
Monroe	1979	5,819	.59
(9,800)			
Poweshiek	1977	22,919	1.14
Poweshiek	1978	19,254	.96
Poweshiek	1979	16,259	.81
(20,100			
Van Buren	1977	9,288	1.08
Van Buren	1978	6,883	.80
Van Buren	1979	15,851	1.84
(8,600)			
Wapello	1977	36,000	.89
Wapello	1978	41,495	1.03
Wapello	1979	60,247	1.49
(40,400)			
Washington	1977	20,764	1.10
Washington	1978	24,378	1.30
Washington	1979	29,322	1.56
(18,800)			

* Denotes population base used to calculate per capita costs for each county.

Judicial Election District 8B

Per Capita Indigent Defense Costs

County	Year	Total Indigent Defense Costs	Per Capita Costs
Des Moines	1977	107,628	2.41
Des Moines	1978	169,949	3.80
Des Moines	1979	178,470	3.99
(44,700)*			
Henry	1977	27,992	1.57
Henry	1978	17,510	.98
Henry	1979	25,332	1.42
(17,800)			
Lee	1977	63,736	1.51
Lee	1978	23,177	.55
Lee	1979	83,566	1.98
(42,300)			
Louisa	1977	10,219	.77
Louisa	1978	6,673	.51
Louisa	1979	1,778	.13
(13,200)			

* Denotes population base used to calculate per capita costs for each county.

Lyon, and Palo Alto have experienced this problem. In District 3B, Ida, Plymouth, and Sioux Counties have experienced extreme fluctuation. In District 4, Fremont, Mills, and Page Counties have all experienced this problem. In District 5A, Dallas and Guthrie Counties experienced this extreme fluctuation. In District 5B, Clarke, Ringgold, Taylor, and Wayne Counties all experienced this problem. In District 6, Benton, Iowa, and Jones experienced this problem. In District 7, Jackson County experienced the most extreme fluctuation; however, the per capita cost increase for Jackson County was not of the same magnitude of other counties listed here. In District 8A, Mahaska and Van Buren Counties experienced relatively extreme fluctuations. Finally, in District 8B, Lee and Louisa Counties both experienced considerable fluctuation.

This listing of smaller counties that have experienced approximately 100% change in per capita cost for indigent defense from one year to another represents those counties experiencing extreme fluctuation during this three year period. Many more counties than those listed above also experienced an unpredictable fluctuation in indigent defense costs but this fluctuation was not as extreme. The above list should demonstrate the significance of this issue. Both the unpredictability and the actual cost that in some cases is three times greater than the previous year are matters that affect a large number of counties throughout Iowa. In fact, in this listing we have not addressed this problem as it affects larger, urban counties in Iowa. These counties are not immune from this fluctuation in cost either, although the percentage increase from year to year typically will not be as dramatic.

Per capita costs are aggregated using Judicial Election Districts for 1979, 1978, and 1977 fiscal years in Tables 7A, 7B, and 7C respectively. As reported in Table 7A, the 1979 per capita costs for judicial election districts range from a high of 2.45 in 8B to a low of .74 in 2A.

TABLE 7A

Per Capita Costs by Judicial Election District

Summary: 1979

District	Population	Cost	Per Capita Cost
1A	171,326	212,942	1.24
1B	230,019	422,563	1.84
2A	172,855	128,373	.74
2B	329,916	465,776	1.41
3A	158,925	150,944	.95
3B	198,767	396,286	1.99
4	202,249	223,110	1.10
5A	446,173	595,253	1.33
5B	77,901	79,656	1.02
6	323,500	502,920	1.55
7	295,494	253,263	.86
8A	172,600	199,660	1.15
8B	118,000	289,146	2.45
State	2,897,725	3,919,892	1.35

TABLE 7B

Per Capita Costs by Judicial Election District

Summary: 1978

District	Population	Cost	Per Capita Cost
1A	171,326	171,413	1.00
1B	230,019	291,695	1.27
2A	172,855	76,262	.44
2B	329,916	372,472	1.13
3A	158,925	76,177	.48
3B	198,767	250,317	1.26
4	202,249	183,371	.91
5A	446,173	536,934	1.20
5B	77,901	65,460	.84
6	323,500	409,896	1.27
7	295,494	235,977	.80
8A	172,600	165,096	.96
8B	118,000	217,309	1.84
State	2,897,725	3,052,379	1.05

TABLE 7C

Per Capita Costs by Judicial Election Districts

Summary: 1977

District	Population	Cost	Per Capita Cost
1A	171,326	127,134	.74
1B	230,019	299,582	1.30
2A	172,855	70,814	.41
2B	329,916	265,637	.81
3A	158,925	70,325	.44
3B	198,767	246,539	1.24
4	202,249	171,562	.85
5A	446,173	500,816	1.12
5B	77,901	57,314	.74
6	323,500	357,676	1.11
7	295,494	262,548	.89
8A	172,600	162,245	.94
8B	118,000	209,575	1.77
State	2,897,725	2,801,767	.97

The state per capita average cost for 1979 was 1.35. Not only do we find a relatively wide range of per capita costs among judicial election districts which is consistent with the per capita costs reported by county above, but we also find noteworthy per capita cost increases from year to year when comparing the three years in question. We do not find the dramatic doubling of per capita costs here that we found for so many counties in Iowa; however, we should note that the state average per capita cost increased approximately 29% from 1978 to 1979.

As we have reiterated throughout this report, the cost of indigent defense will be affected by many factors. The number of cases per jurisdiction, at what stage cases are assigned, whether investigative work is available or funded, what the fee schedule is per district, how much or how frequently fee bills are reduced by the judiciary, how many lawyers are available by jurisdiction, and how much experience court-appointed counsel have are all factors that will affect the per capita cost of indigent defense. An additional factor that is occasionally mentioned as a cause of increased cost is the existence of a public defender office in a given jurisdiction. We will review briefly the relationship, if any, between per capita cost and the existence of a public defender office.

In Table 7A, in which the 1979 per capita costs by judicial election district are reported, we find that among the six judicial election districts that contained public defender offices in 1979 (1B, 3B, 4, 5A, 7, 8B), three of these districts have per capita costs that are below the State per capita cost average. Judicial election districts 4, 5A, and 7 had capita costs in 1979 of 1.10, 1.33, and .86, respectively, compared with the State average of 1.35. Among the seven judicial election districts that do not contain public defender offices, two have per capita costs that are higher than the State average. These two districts are 2B

and 6, with 1979 per capita costs of 1.42 and 1.55, respectively. Among the five judicial election districts that do not have public defender offices and have per capita costs that are lower than the State per capita cost, four of these districts are quite rural in nature.

If we consider the information provided in Table 6 once again, we find that among counties with public defender offices in 1979, the per capita cost ranges from a low of .66 in Muscatine to a high of 3.99 in Des Moines County. Polk County, which has had a public defender office longer than any other county in Iowa, has the highest volume of crime and index crime rate among all Iowa counties, yet its per capita cost was 1.60 in 1979. Pottawattamie County, which has ranked second in recent years in index crime rate in Iowa, had a per capita cost of 1.89 in 1979. We will not attempt to analyze in detail the costs of public defender offices in this section of the report. However, we feel it is important to address the issue of cost and type of system used. The information reported here is consistent with the comparison among states in an earlier section of the report. We concluded then, and now, that type of system does not automatically produce either a higher or lower cost. We will have more to say about the cost-effectiveness of public defender offices in the next two sections of the report.

VI. Review of Existing Public Defender Offices in Iowa

Introduction

In this section of the report, we will continue our assessment of indigent defense systems in Iowa by focusing on the existing public defender offices in greater detail. Having reviewed the per capita costs for counties and judicial election districts in Iowa, we will now consider the objectives and performance of public defender offices in Iowa. We will begin this section with our review of the stated goals and objectives of public defender offices as found in grants funded through the Iowa Crime Commission. We will then summarize the results of our interviews with all chief public defenders in Iowa, chief judges of Judicial Districts in Iowa, district judges recommended by chief judges who are particularly familiar with criminal cases, court administrators of all Judicial Districts, and bar association representatives. We will then review all evaluations that have been conducted to date of public defender offices, including a sample chapter of an evaluation which illustrates some of the difficulties in comparing types of indigent defense systems.

Goals and Objectives of Public Defender Offices

Public defender offices in Iowa have been established with the intent of providing quality defense for indigents accused of criminal offenses in a cost-effective manner. Although each county or grouping of counties that has established a public defender office may have a series of reasons for this action, the concern for providing competent defense cost-effectively has been a pervasive concern. Both increasing and unpredictable costs and an inadequate supply of lawyers specializing in criminal defense have typified the impetus for establishing defender offices in recent years in

counties such as Cerro Gordo, Story, and Tama/Benton.

To illustrate typical goals and objectives of public defender offices in Iowa, we will review the goals and objectives of a representative office. Specific goals include: (1) providing county citizens with access to a publicly financed full-time public defender resource for indigent clients; (2) facilitating the effective and efficient delivery of legal and supportive services to all county persons who need and qualify for public defender representation in criminal and related proceedings; (3) insuring that the representation of clients is of high quality; and (4) assisting in the exposition and improvement of the adversary process within the criminal justice system.

The specific objectives related to each of these goals clarify further the intent and operation of public defender offices. Regarding the first goal, the specific objective is to implement a public defender office. Objectives tied to the second goal include: (a) making representation available on an immediate basis - at time of arrest or when requested during an investigation; (b) providing representation to any individual who is eligible and desires representation; (c) making representation available throughout all criminal and related proceedings at which an individual is faced with the possible deprivation of liberty or continued detention; and (d) making available representation until all reasonable avenues of relief are exhausted. Objectives related to the third goal listed above include: (a) providing competent representation on behalf of clients; (b) providing zealous representation on behalf of clients; (c) providing representation on behalf of clients that is free from political influence; (d) providing representation on behalf of clients that is free from improper judicial control; and (e) providing representation of the same or higher quality than that provided through court-appointed attorneys at a lower cost. Finally,

specific objectives related to the fourth goal include: (a) defenders contributing to the knowledge of the community about the adversary process and the role of counsel, and (b) defenders seeking to improve the criminal justice system and other components therein. For Iowa Crime Commission funded offices, such objectives are subsequently translated into measurable criteria that can be used to monitor and evaluate the project.

Iowa Public Defenders

On-site visits were conducted in all public defender offices for the purpose of reviewing the operation and procedures of each office and interviewing each chief public defender. In addition, a meeting of all chief public defenders was held in Des Moines for the purpose of discussing the various issues raised in the on-site visits and reviewing both the results of the interviews and the direction of the overall study.

At the time of the on-site visits and interviews, nine of the twelve offices listed in Table 5 were fully operational. The Story County Public Defender Office and the Tama/Benton Counties Public Defender Office were not yet established, although the Chief Public Defender of Story County has been interviewed and the office visited. Ida County, although listed as having a public defender office in Table 5, does not have an operational office or a full-time defender with whom we have been unable to make contact.

The on-site visits revealed that all public defender offices are accessible to the public, located in adequate office structures, and well-organized to serve the respective counties in the intended fashion. All chief public defenders displayed a thorough understanding of the tasks to be performed in a public defender office and of the operation of their respective offices. All chief public defenders were experienced in criminal law before assuming the responsibilities of public defender. Most of the offices were very stable in terms of staff turnover, particularly in the

chief public defender position. In summary, both the office structures and operations and the chief appellate defenders were evaluated positively.

Interviews with the chief public defenders and the subsequent meeting of all chief public defenders revealed several issues considered particularly relevant. All public defenders agreed that a state appellate defender office was needed in Iowa and would prove very beneficial to Iowa counties. Although some chief public defenders expressed an interest in handling an occasional criminal appeal, all agreed they could provide better trial level defense and be more cost-effective without having to handle appeals. They strongly supported, both individually and collectively, the Crime Commission's effort to establish a state appellate defender office.

Another issue raised by the chief public defenders was the fiscal burden on county boards of supervisors regarding indigent defense. This, of course, is one reason why the group so strongly favors a state appellate defender office. Nevertheless, with the cost of competent trial-level defense rising yearly, public defenders are concerned that there will be pressure applied not to pursue an active and aggressive defense. As we have indicated previously, a plea-bargained guilty plea will be considerably less costly than a jury trial involving multiple motions before and during the trial. Even with public defender offices, jury trials reduce the total number of cases that can be handled in a given year. The public defenders are quite sympathetic with county boards of supervisors and the fiscal concerns they face; at the same time, the public defenders are professionals committed to providing competent counsel to their clients regardless of who pays the bill.

While the public defenders express concern regarding the financial burden on counties, they also are concerned about sufficient remuneration for court-appointed counsel. If Iowa is to have an active private criminal defense bar, court-appointed counsel must receive adequate compensation for

their effort. As we will emphasize later, however, even with adequate compensation, many areas of Iowa do not have an adequate supply of attorneys available who specialize in criminal defense.

Another issue raised by the chief public defenders has to do with statewide uniformity in the quality of defense offered indigents. In particular, appointment of counsel seems to vary by county or district in terms of who is appointed, when they are appointed, and, as indicated above, what they are paid for their services. Regarding time of appointment, many of the chief public defenders indicated that, despite their effort to speak with an accused as soon as possible, the clients they represent sign confessions without necessarily realizing the resultant difficulty in developing a defense. For court-appointed counsel, the problem is all the more exacerbated if appointment does not occur until or after initial appearances.

Finally, some of the chief public defenders expressed concern regarding the process of selecting public defenders in Iowa. In particular, the defenders questioned whether the judiciary should perform the screening function in recommending candidates to boards of supervisors for appointment as public defenders. According to the defenders, not only will a public defender have to work regularly with a judiciary that was instrumental in the defender's appointment yet is supposed to be a neutral body, but the judiciary may also recommend for appointment candidates who may not develop the most aggressive defense or file the necessary motions, in hopes of streamlining court procedures. As an editorial comment, we would like to note that while we see this concern as theoretically possible, we do not believe the appointing procedures have posed such problems to date in Iowa.

In summary, then, the chief public defenders are particularly concerned with the fiscal burden faced by county boards of supervisors. At the same time, many defenders are somewhat wary of establishing a state bureaucracy

that would not be in the counties' best interest either in terms of not providing cost-effective service or in terms of reducing further the active private criminal defense bar. A state appellate defender office is strongly recommended by the defenders who see the office as providing necessary financial relief for counties while at the same time improving the quality of appellate defense in the state. Such an office is also seen as providing a useful coordinating function among public defender offices and members of the private bar specializing in criminal defense.

The Judiciary's View of Public Defender Offices

All chief judges of Iowa's judicial districts were interviewed as part of our effort to assess indigent defense in Iowa. In addition, all court administrators and selected district judges were interviewed for the same purpose. We will include here a summary of their views regarding public defender offices only and will offer summaries of other relevant comments in later sections of the report.

Without exception, the chief judges of Iowa's judicial districts who have worked with public defender offices have been favorably impressed. The chief judges indicated that the public defenders were both professional in their conduct and quite competent in their work as defense counsel. Several members of the judiciary who were interviewed stated that their initial reticence regarding support of the public defender concept was changed to a very strong advocacy once they worked with the new system. The experience for those who have worked with public defender offices has been quite positive; no negative comments or reactions were received among the judiciary. For those judges who had not worked with public defender offices in their districts, they were typically not opposed to public defender offices but felt that their respective election district had a sufficient supply of private attorneys to function well without a defender office.

Members of the judiciary also expressed concern regarding the rising cost of indigent defense costs. Here again, those exposed to public defender offices felt that such offices clearly stabilized the cost of indigent defense for counties. Judges having experience with public defender offices felt that cost-effectiveness was definitely a benefit to be derived from having a public defender office in their district. At the same time, the judiciary recognized the problems posed by the geographical size of Iowa. District judges, of course, face a demanding travel schedule as a necessary part of their work; therefore, they are sensitive to the travel difficulties inherent in some districts, particularly in terms of providing representation at time of interrogation or arrest of indigents. We will pursue this and other issues in the court-appointed counsel section of the report.

Court administrators in Iowa's judicial districts also responded favorably to questions regarding public defender offices. Those who have worked with public defenders all find the offices to be well run and very beneficial. Particularly in terms of scheduling, having a public defender's office simplifies and streamlines the administrative tasks of the court administrators. The court administrators also found the public defenders to be both professional and competent, providing aggressive and dedicated defense for their clients. As we found with the judges interviewed, those court administrators who have not been exposed to the work of public defenders questioned whether defender offices would be needed in their election districts; however, other administrators admitted that initial doubts they had about defender offices before they were established were quickly eliminated once they began working with the public defender offices.

In summary, district judges and court administrators who have worked with public defenders in Iowa review the public defender's work favorably. Although some admit to having questioned the merits of public defender offices when the issue was discussed initially, these respondents changed their views once they began working with the established offices. The most significant reservation expressed by the judges and administrators involved the delivery of service in rural areas of Iowa. We will have more to say about the judiciary's reactions to Iowa's court-appointed counsel system in the section by that name.

Iowa Bar Association Views

A survey was conducted by the Iowa Bar Association's Committee on Methods of Appointment and Compensation for Court Appointed Counsel in September, 1979, in which bar association members were questioned regarding the delivery of indigent defense services in Iowa. A total of 1,084 lawyers responded out of approximately 5,000 attorneys licensed to practice in Iowa. Although the response rate does not allow us to have much confidence in any conclusions drawn from the data gathered, we will summarize key aspects of the findings for informational purposes, offering insight regarding the reaction of the private bar to public defender offices. We will utilize here both the report of Mr. Lewis B. Hendricks, Chairman of the Committee on Methods of Appointment nad Compensation for Court Appointed Counsel, Iowa State Bar Association, to the Court Study Joint Subcommittee meeting held on December 11, 1979, and the survey results provided to the Iowa Crime Commission by the Iowa State Bar Association.

Nine questions were asked in the survey conducted by the Bar Association. We will review briefly the results of responses to two of these questions. These have to do with the provision of "professional, experienced, and well-trained public representation" in all criminal proceedings and the

desire to have additional information regarding implementation and use of the full-time public defender organization and coordinated counsel system. We will report the results by Judicial Election District with reference to particular counties when necessary for clarification. If the reader would like more detailed information, we would refer you to the Iowa State Bar Association.

Question No. 7 in the Bar Association survey is written as follows:

> "In your best judgment, are the indigents accused of crime in your county being provided 'professional, experienced, and well-trained public representation' in all criminal proceedings?"

The response to this question in most Judicial Election Districts is yes, as indicated in Table 8. Only three election districts have fifteen or more percent of the respondents checking no to this question. These districts are 1A (15%, no), 6 (17%, no), and 7 (24%, no). All three of these election districts include relatively large urban areas with no public defender office. A review of the county totals within these three Judicial Election Districts reveals that the majority of no votes in the district are from attorneys located in these urban counties. In District 1A, six of the nine no votes came from Dubuque County attorneys. In District 6, thirteen of the eighteen no votes came from Linn and Johnson County attorneys. In District 7, fourteen of twenty-four no votes came from Scott County attorneys. We should point out, at the same time, that the lowest percentage of yes votes by District was 73. The most favorable votes were in Districts 8B and 5A, with 95% and 94% yes votes, respectively.

Question No. 8 in the Bar Association survey is written as follows:

> "Do you desire additional information regarding implementation and use of the full-time public defender organization and a coordinated assigned counsel system?"

We summarize the responses to this question by Judicial Election District in Table 9. In this case, we would expect more no votes than yes votes given the responses to other questions in the survey. Nevertheless, relatively strong interest

TABLE 8

Iowa State Bar Association Survey Results

Question No. 7

"In your best judgment, are the indigents accused of crime in your county being provided 'professional, experienced, and well-trained public representation' in all criminal proceedings?"

Judicial Election District	Responses			
	Yes		No	
	N	%	N	%
1A	50	85%	9	15%
1B	61	90%	7	10%
2A	52	91%	5	9%
2B	103	92%	10	8%
3A	56	93%	4	7%
3B	68	89%	8	11%
4	62	87%	9	13%
5A	171	94%	11	6%
5B	29	88%	4	12%
6	88	83%	18	17%
7	66	73%	24	27%
8A	57	86%	9	14%
8B	37	95%	2	5%

is expressed in some Judicial Districts. Attorneys in District 5B indicate the greatest interest, with 40% checking yes to the question. In District 1A, the percentage checking yes is thirty-one; in District 7, the percentage checking yes is thirty. Districts 2B and 3A have percentages of twenty-eight and twenty-five, respectively, of total votes checking yes to this question. We would conclude from this information reported in Table 9 that there is a substantial core of interest in pursuing a public defender system, particularly in areas where such a system presently does not exist.

Comments written on some surveys and summarized by Mr. Hendicks at the Court Study Joint Subcommittee hearings indicate support for an appellate defender office in the State. In addition, comments also indicated support for the continued existence of court-appointed systems with public defender offices if established. Finally, some respondents questioned whether public defender offices could be operated more efficiently and effectively than court-appointed assigned counsel systems.

In summary, we remind the reader that the response rate for this Bar Association survey is such that the information provided should be considered helpful in offering valuable insight but by no means final or completely reliable in reflecting the views of the Iowa Bar. This information offers certain suggestions and tentative indications of attorneys' views. The Bar Association should be commended for this effort and the staff of the Iowa Crime Commission greatly appreciates their sharing this information.

The Public Defender Literature in Retrospect

Before completing this section of the report with a review of the cost-effectiveness of public defender offices, we will reiterate the issues, advantages and disadvantages discussed in the contemporary issues section of the report and assess them in terms of assessment in Iowa public defender offices. We will not explain these issues here but simply will remind the reader of these issues and respond to them in light of our assessment.

CONTINUED

1 OF 2

TABLE 9

Iowa State Bar Association Survey Results:

Question No. 8

"Do you desire additional information regarding implementation and use of the full-time public defender organization and a coordinated assigned counsel system?"

Judicial Election District	Responses			
	Yes		No	
	N	%	N	%
1A	18	31%	41	69%
1B	7	10%	64	90%
2A	6	11%	49	89%
2B	32	28%	84	72%
3A	15	25%	45	75%
3B	19	24%	61	76%
4	12	17%	58	83%
5A	36	18%	159	22%
5B	12	40%	18	60%
6	23	18%	106	22%
7	27	30%	63	70%
8A	11	19%	47	81%
8B	5	13%	33	87%

The key issues raised in the literature regarding public defender offices involved the question of independence, the likelihood of serving as a prison deliverer, the tendency to be plea-oriented, and the likelihood of routinizing decision-making. Regarding independence, we have found no evidence that public defenders in Iowa have been co-opted by "the system" or have in any way diminished their independence. Likewise, we have discovered no reason to believe public defenders are prison deliverers. Our review suggests public defender offices provide aggressive and competent defense for all clients. Regarding the issue of plea-orientation, we have found no indication that public defenders are more likely to plead guilty for their clients, compared with court-appointed counsel. Clearly, offices differ in the approach they take regarding various types of cases but excessive plea bargaining is not practiced by any public defender office in Iowa. Regarding the issue of routinization of decision-making, we again found no evidence that this applies to offices in Iowa. As we stated when we reviewed this literature, Iowa does not have the problems other states face in terms of excessive caseloads and inadequate staffing of offices. For this reason, the typical problems faced by large urban defender offices are not experienced in Iowa.

Turning to the advantages reported in the current issues section of the report, a total of six advantages of public defender offices were reported by Silverstein. The first is that public defender offices provide experienced and competent counsel. Our assessment clearly supports this for Iowa. The second advantage is that public defender offices assure continuity and consistency in defense. We found that all public defender offices assign counsel to handle a given case throughout the proceedings (lateral defense) and that, as indicated above, defense is consistentin quality. The third advantage is that public defender offices are better able to screen for eligibility. While we found this to be true, we also found that screening indigents is a difficult process for all concerned and that criteria used

may vary throughout the state. Regarding the fourth advantage, we found that larger jurisdictions are more likely to be able to utilize their resources better and therefore, can be more economical; however, we will have more to say about this below. The fifth advantage regarding the elimination of fee demands from defendants or families of defendants was found to be applicable. Finally, the advantages involving better cooperation between prosecutor and defender was not found to be particularly applicable. In Iowa, the caseload is such that both public defenders and private appointed counsel can get to know and develop a cooperative attitude with the prosecutor. This, of course, can become a disadvantage if such cooperation deteriorates the independence of the public defender. As we indicated above, this was not the case in Iowa.

In summary, the typical problems experienced by public defenders throughout the country are not problems for public defenders in Iowa. This should allow public defender offices in Iowa to maximize the potential advantages and, at the same time, minimize the disadvantages. This is essentially what our review of these issues reveals. Before assessing in greater detail the court-appointed counsel system in Iowa, we will pursue the issue of cost-effectiveness of public defender offices.

Cost Effectiveness of Public Defender Offices in Iowa

Having presented per capita cost information for both counties and judicial election districts within Iowa and states throughout the nation, we will now assess the cost-effectiveness of public defender offices as revealed in evaluation reports completed during the last decade in Iowa. One advantage of public defender offices, as reported previously, is that indigent defense can be provided more economically, particularly in large jurisdictions. We concur with this position and, at the same time, recognize the difficulty in determining the cost-effectiveness for either public defender or court-appointed counsel systems.

A list of evaluations and systems development studies is included in the appendix of this report. We will not restate the findings included in these studies here. Rather, we will summarize these findings and highlight the conclusions drawn from the evaluations. The offices that have been evaluated in Iowa include the 8B Judicial District Office (1979), the Pottawattamie County Public Defender's Office (1978), the Clinton County Public Defender's Office (1977), the Woodbury County Public Defender's Office (1977), and the Polk County Offender Advocate Office (1974). In addition, two systems development studies were conducted in 1976 in which cost projections were presented for Black Hawk County and Cerro Gordo, Des Moines, Henry, Lee, Louisa, and Webster Counties (presented as a six-county report). The most comprehensive assessment of cost-effectiveness is contained in the 8B evaluation completed in 1979. We will reproduce the chapter of this report which contains the cost analysis as the next section in our report.

We want to reiterate that the information used in these evaluations, as was true of our per capita cost assessment, is less than desirable for our purposes. Nevertheless, we will utilize all information available to us now while we work to improve the data that is collected throughout the state.

The evaluations of Pottawattamie, Clinton, Woodbury, and Polk counties all indicate a cost savings when comparing the county defender system with the projected costs if the system only involved court-appointed counsel. For Pottawattamie County, the fiscal year 1976-77 was used to develop cost savings and projected cost savings. For this year, if all cases had been assigned to private attorneys, the cost would have been approximately $108,518. On the other hand, the cost of the combined system was $100,935. The projected savings by having a mixed system in subsequent years is significantly greater, based on the assumption that nearly all cases in future years would be assigned to the public defender office (in the year reported only one-third were handled

by the office) and that the cost of court-appointed attorneys would increase significantly. Thus, the projected costs for the subsequent years indicate both a stabilization of costs corresponding with increased savings using a mixed system.

For Clinton County, average cost per case estimates were used for the 1976 calendar year to evaluate the cost-effectiveness of the Public Defender Office. As we have indicated throughout, the assessment was made with limited information, a qualification which is explicit in the cost comparison for Clinton County. The available information for 1976 indicates that the average cost per case for court-appointed counsel in Clinton County was $552.01. On the other hand, the average cost per case for the Public Defender Office during this same period was $361.23. What we would also want to know is the nature of the cases handled by the court-appointed counsel and public defender office as a minimum. However, we will address the inadequacies inherent in the available indigent defense data in our recommendations section of the report.

For Woodbury County, the cost comparison is based on a memo sent to the Woodbury County Board of Supervisors from Jerry Hanson, Public Defender, on April 1, 1977. As indicated in the evaluation, however, the information provided was not considered accurate because a significant number of cases remained open at the end of the reporting period. At the same time, figures for court-appointed counsel seem to include only closed cases during the period. This, of course, simply exaggerates the kinds of problems faced by evaluators when attempting to assess the relative costs of systems that do not represent comparable services. In any case, the available information in Woodbury County suggest an hourly cost of $18.81 for the Public Defender Office and $25.00 for court-appointed attorneys. In terms of a cost per charge

comparison, the Public Defender Office during this period had an average cost per charge closed of $159.33; the court-appointed counsel program had an average cost per charge closed of $240.13.

A comparison of the effectivenss of the offender advocate office and court-appointed counsel system in Polk County was completed in 1974 using 1973 information. Once again, difficulties were encountered and reported in the evaluation. The average costs per case were compared with no control for seriousness of cases or length of time necessary to adjudicate cases. The findings indicate an average cost per case for court-appointed counsel of $193.74; the average cost per case for the Offender Advocate Office was $124.70. A more valid comparison would take into account the seriousness level of cases handled. Comparing felonies, indictable misdemeanors, and simple misdemeanors handled by court-appointed counsel and the Offender Advocate Office, the evaluators still found that the Offender Advocate Office had a lower cost per case. For felonies, the costs were $211 and $127 for court-appointed counsel and the Offender Advocate's Office, respectively. For indictable misdemeanors, the respective costs were $145 and $131. For simple misdemeanors, the respective costs were $127 and $103.

Briefly, we will summarize the cost-effectiveness projections included in the systems development studies conducted for six Iowa counties. The key finding throughout these studies is that a sufficient caseload is necessary for a public defender/court appointed counsel system to be cost-effective in a given jurisdiction. This is consistent with the Crime Commission findings and we will address this issue in our recommendations. For Black Hawk County, for instance, the evaluators concluded that, depending on how the caseload would be distributed, a mixed system would be the most cost-effective. This is based on a comparison of the present assigned counsel system, a coordinated assigned counsel system, a defender system, and a mixed system. They also

concluded that a defender system alone would be least expensive; however, with conflict of interest cases as a minimum in addition to the questionable wisdom of eliminating the participation of private counsel in the system, a public defender system cannot and perhaps should not (if it could) handle 100% of the indigent defense cases in a jurisdiction.

Regarding the remaining five counties studied, the evaluators concluded that based on the costs and caseloads at the time of the study, a defender system could be a cost-effective alternative to the existing court-appointed counsel systems in Des Moines and Webster Counties immediately. For Lee, Cerro Gordo, Henry and Louisa Counties, they concluded that a county public defender system would not be a cost-effective alternative to the existing systems unless or until significant increases occur in actual caseloads or other resource-consuming variables. With such changes, reconsideration of a mixed system in these counties would be in order. (We should note here that in both Lee and Cerro Gordo Counties, significant increases in caseloads have occurred, thereby precipitating the creation of public defender offices.)

Summary

Public defender offices operating in conjunction with a court-appointed counsel system does provide high quality defense and can be cost-effective. Despite all the difficulties and questions raised with efforts to assess the cost-effectiveness of public defender offices in Iowa, we conclude that a public defender/court-appointed counsel system can be the most cost-effective alternative for many jurisdictions in Iowa. At the same time, if not properly administered, or if caseloads are insufficient, a public defender may not be a cost-effective alternative for a given jurisdiction. This issue will be a major concern to be addressed in our recommendations section of the report.

We are including for illustrative purposes, Chapter III of the Evaluation of 4 County Public Defender Project for the Eight B Judicial District, Iowa, conducted by the National Defender Institute and published in March 1979. This chapter explains thoroughly the complexity of comparing court-appointed counsel and public defender systems and, at the same time, offers a sound estimate of relative costs for a multi-county office.

VII. An Example of Comparative Cost Calculations: Comparative Costs of Defender and Assigned Counsel Representation*

One of the primary areas pinpointed for this evaluation was the cost of representation. The evaluator was requested to determine the average cost per case for both public defender and assigned counsel representation and to compare the two.

A. Sources of Cost Information

Several sources of data were utilized for this analysis. One of these was a study of county auditor records and files conducted by students using a preprinted survey instrument. The students utilized the information obtained directly from attorney fee vouchers and court orders. Listed therein were hours spent on each case, the type of case and charge, total dollar cost of each case, costs for expenses other than attorney time, and types of recources used other than attorney time. The survey instrument may be found in Exhibit 2 of this report. As a result of tallying the data obtained from these questionnaires, the evaluators were able to ascertain the number and types of cases handled by assigned counsel, case costs, and the scope of services provided.

Two other sources of data were used to determine defender case costs. One of these was the computer print-outs received from the Des Moines County Auditor's office, which processes all requests for payment relating to the four-county defender office. These print-outs were believed to be more accurate than the figures shown in the defender's annual grant application, in that they represented actual expenditures as opposed to proposed

*Source: Chapter III of Evaluation of 4 County Public Defender Project for the Eight B Judicial District, Iowa (National Defender Institute).

expenditures. In addition, they were able to be derived in six-month rather than annual increments.

Data regarding the number and types of cases handled by the public defender, for purposes of comparison with assigned counsel caseload as shown in county auditor records, were derived from the monthly and quarterly statistical reports compiled by the defender office. These show, by type of case, the monthly totals for cases closed. This source of closed case information for defender cases was preferred over docket data because it depicts the entire range of matters handled, whereas the court dockets studied were limited to a smaller portion of the cases handled.

B. Comparability of Defender and Assigned Counsel Data

For purposes of this inquiry, the data examined and compared were mainly for the six month period ending on December 31, 1977. This avoided utilizing the data from the first six months of 1977 which were thought to be skewed because the defender office was only beginning to gear up during that period.

While it was possible to ascertain the actual case costs for particular types of assigned counsel cases from the auditor data, there were no such breakdowns for defender cases inasmuch as the defender office operates on a budget. From a tally of the assigned counsel case costs, it was determined that the case costs were considerably higher for felonies than for all other types of cases. Similarly, the hours spent in handling felony cases by assigned counsel were several times the number of hours spent in handling other types of cases.

It was also determined that the caseload composition of defenders and assigned counsel in the six month period was dissimilar in that defenders handled a much greater ratio of felonies to total caseload than did assigned counsel. Thus, if the procedure used to compare assigned counsel and defender costs were simply to divide total costs for each component by the total number

of cases handled by each component, the results would be skewed. In order to determine the relative costs of the two systems, it was necessary to perform a weighted caseload analysis. Assigned counsel costs were obtained by actually tallying the costs of assigned counsel felonies and nonfelonies and dividing the totals by their respective numbers of cases to obtain average cost/case.

C. Comparative Costs of Representation

Three alternate procedures were used for weighted caseload analyses. In one procedure, the assumption was made that defender costs per average felony were constant for assigned counsel costs per average felony. In a second procedure, the assumption was made that defender costs for all nonfelony cases were the same as assigned counsel costs for all non-felony cases. In the third procedure, a ratio was taken between the cost of assigned counsel felonies and nonfelonies, and this ratio was applied to the actual number and total costs of defender felonies and nonfelonies. All these procedures were based upon the assumption that defenders were likely to spend proportionately as much time on their felony cases, given the greater complexity and consequences for the defendant of a felony, as would assigned counsel.

Figure 1 on page 94 depicts, in summary fashion, some of the data obtained and the projections made therefrom. It will be readily seen from the figures presented that, using any of the three methods of analysis, certain cost savings accrue to the defender component.

1. Procedure #1 -- Nonfelony Costs as a Constant

Using the cost of nonfelony cases handled by assigned counsel as a constant, it can be seen that the assigned counsel felony case cost is $425.22 per case as opposed to a lesser cost of $390.57 for felonies handled by the public defender office.

Assuming the figures as shown in Figure 1, it may be asked, what would the total cost be for the six month period if assigned counsel had handled the defender office's caseload as well as the caseload that they did, in fact, handle during that period?

The computation would be as follows:

100 felonies @ $425.22	= $42.522.04
161 nonfelonies @ $110.82	= $17,842.02
Projected cost of defender cases	= $60,364.02
Actual cost of assigned cases	=+$41,580.36
Projected cost of all cases if handled by assigned counsel	$101,944.38

Thus, if assigned counsel had been the exclusive mode of representation for indigent cases during the six month period in all four counites, the cost would have been $101,944.28, or approximately $203,888.76 for a year's period.[1]

To compare this cost for assigned counsel representation with the cost that would have been incurred had the defender services been the exclusive mode of indigent criminal representation, the computation would be as follows:

54 felonies @ $390.57	= $21,090.78
168 nonfelonies @ $110.82	= $18,618.22
Projected cost of assigned cases	= $39,699.00
Actual cost of defender cases	=+$56,899.04
Projected cost of all cases if handled by defenders	$96,598.04

Thus, if defender services were the exclusive mode of providing representation, the total cost of the cases for which counsel was provided by the four counties would have been $96,598.04 for the six month period. This annualizes to approximately $193,196.08. If we hypothesized that all assigned counsel cases and defender cases had been handled by the defender system, it might have resulted in an annual cost savings to the counties in the amount of $10,692.68, the difference between $203,888.76 and $193,196.08 for the

[1]This figure does not take into consideration an increase in assigned counsel hourly fees which has since gone into effect.

Figure 1

COMPARATIVE DEFENDER/ASSIGNED COUNSEL CASE COSTS FROM JUNE 30 - DEC. 30, 1977

8B JUDICIAL DISTRICT

Type of Case	Assigned Counsel				Defender			
	No. of Cases Handled	% of Case-load	Cost per Case	Total Cost	No. of Cases Handled	% of Case-load	Cost per Case	Total Cost
All Cases Handled	222	100%	N/A	$41,580.36	261	100%	N/A	$56,899.04
Felony	54	24.3%	425.22	22,962.14	100	38.3%	390.57* 425.22** 400.81***	$39,057.02* 42,522.00** 40,081.00***
Other	168	75.7%	110.82	18,618.22	161	61.7%	100.83* 89.30** 194.46***	17,842.02* 14,377.33** 16,818.06***

*This assumes that the assigned counsel nonfelony case cost is a constant for defender cases, as well.

**This assumes that the assigned counsel felony case cost is a constant for defender cases, as well.

***This assumes that the ratio of the cost for felony and nonfelony cases is the same for defenders as it is for assigned counsel.

1977-1978 fiscal year.

2. Procedure #2 -- Felony Costs as a Constant

It is perhaps even more valid to assume that felony rather than nonfelony costs are constant for both defenders and assigned counsel, since the nonfelony cases are composed of a mix of matters including indictable misdemeanors, simple misdemeanors, civil and criminal delinquency matters, extraditions, post-conviction cases, parole and probation violations, appeals, commitment proceedings, and so forth. Therefore, it was decided to compute comparative case costs using the assigned counsel's felony case costs as a constant.

As will be seen from the following computations, the cost savings potential utilizing felony costs as a constant are a great deal higher than in the previous procedure.

The computation for this procedure would be as follows:

ASSIGNED COUNSEL COSTS	DEFENDER COSTS
154 (total felonies in period) x 425.22 (felony cost constant)	154 (total felonies in period) x 425.22 (felony cost constant
= $65,483.88 (total felony cost)	= $65,483.88 (total felony cost)
329 (total nonfelonies) x 110.82 (assigned counsel cost)	329 (total nonfelonies) x 89.30 (defender cost)
= $36,459.78 (total assigned counsel nonfelony case cost) $65,483.88 + $36,459.78 = = 101,943.66	= 28,379.70 (total defender nonfelony case cost) $65,483.88 + $28,379.70 = = $93,863.58

Cost Savings for 6 months = $101,943.66
- 93,863.58
$ 8,080.08

Cost Savings for 12 months = x 2
$ 16,160.16

Thus, if we assume that all appointive cases in the system were to be handled by defenders as opposed to assigned counsel, and we further assume that

both components expended the same amount for felony cases, the total cost savings to the four counties for a year would be $16,160.16.

These figures, of course, are not intended to suggest that either assigned counsel or defenders ought to handle 100% of the eligible cases. A mixed defender and assigned counsel system is valuable for other non-cost reasons, such as the immediate availability of counsel and the ability to avoid conflicts of interest situations in cases involving codefendants.

3. Procedure #3 -- Using the Ratio Between Assigned Counsel Felony and Nonfelony Costs to Ascertain Defender Costs.

This third procedure, using the ratio between the assigned counsel felony and nonfelony costs, is in some ways the most reliable test of all. However, this assumes that assigned counsel nonfelony cases are composed of a mix of cases that are similar to the assigned counsel's mix. At the least, it serves as a test of the reliability of the two previous procedures.

Under this procedure, we shall let x = the cost of a nonfelony defender case. The cost of a felony defender case will be determined by the ratio between the cost of assigned counsel felony and nonfelony cases times x. Thus,

$$425.22 \div \$110.82 = 3.837$$

$$3.837x = \text{the cost of a defender felony case.}$$

The total cost of all defender cases during the six month period was $56,899.04. This included 100 felony and 161 nonfelony cases. Thus,

$$\$56,899.04 = 100\ (3.837x) + 161(x)$$

$$= 383.7x + 161x$$

$$\$56,899.04 = 544.7x$$

$$x = \$104.46 \text{ (cost of a nonfelony defender case)}$$

$$3.837x = \$400.81 \text{ (cost of a felony defender case)}$$

Note that the unit cost of a single defender felony under this analysis is $400.81 as compared to $425.22 for an assigned counsel felony and the unit

average cost of a single defender nonfelony case would be $104.46 as compared to $110.82 for the average assigned counsel nonfelony matter.

Again, if we compute and compare systemwide costs for each component's handling of the entire indigent caseload, we obtain the following results:

154 felonies @ $400.81 = $61,724.75
329 other cases @ $104.46 = $34,367.34
Cost if defender handled all cases = $96,092.08
Cost if assigned counsel handled all cases = $101,943.66
Cost savings for 6 months = $5,851.58
Projected cost savings for 12 months = $11,703.16

In sum, the projected cost savings attributable to using solely defender services for handling eligible criminal matters would have been, under the three alternate procedures for analysis:

Procedure #1 -- $10,692.68

Procedure #2 -- $16,160.16

Procedure #3 -- $11,703.16.

These figures are provided for the purpose of enabling the reader to grasp, in a concrete form, the annual cost differential of providing defender as opposed to assigned counsel services, and are not intended as a recommendation that the system be converted from a mixed defender and assigned counsel system. Indeed, as the U.S. Supreme Court has mandated in the recent case of Holloway v. Arkansas[2], it is essential to provide counsel other than the public defender where the public defender's representation of more than one codefendant would prejudice the cases of other codefendants.

4. Future Costs of Providing Representation

Assigned counsel cost data were not compiled for 1978 cases. However, some data regarding defender case costs were available for the first six months of 1978 from the statistical reports maintained by the defender office and from the actual expenditure data maintained by the Des Moines County Auditor. These figures show a decrease in both total defender caseload over the previous six

[2]435 U.S. 475 (1978).

month period and in the proportion of felony to nonfelony cases. They also show an increase in unit costs per case, which increase does not appear to be solely attributable to the relatively small salary increases afforded.

Inasmuch as no comparable data were compiled from the county auditor files, no comparisons can be drawn at this point with assigned counsel costs for 1978. However, several observations may be made. First, it is possible that seasonal adjustments in the rate of crime account for a lower defender caseload, and that figures from the last half of 1978 would be greater. Secondly, the reduced caseload may be related to the new criminal code that went into effect in January 1978; this may have required retraining of lawyers and adjustments in criminal procedures. Finally, although defender costs may have risen, assigned counsel costs have been substantially increased due to the increase in hourly fees as a result of Section 815.7 of the new Iowa Code. This provision requires that lawyers be provided "a reasonable compensation which shall be the ordinary and customary charges for like services in the community." Most judges have interpreted this to mean that assigned counsel hourly rates have increased from a previous rate of $25/hour to $40/hour.

Thus, it can be concluded with certainty that the defender system was less expensive than assigned counsel representation during the last half of 1977. No data are available to assess comparability of costs during 1978, but defender costs have increased for at least the first half of 1978. It must also be assumed that, due to the increase in assigned counsel rates, the assigned counsel costs have also increased. It may further be hypothesized that, if one of the causes of an increase in defender costs was due to changes in the criminal code, assigned counsel would also share this difficulty.

D. Scope of Services Provided

In addition to cost information, the auditor study produced information regarding the services provided for criminal and criminal-related cases other than attorney time. This information was examined in order to determine whether or not the

lesser cost of defender services was due to the defender system's failure to provide services as comprehnesive as those provided by the court-appointed private lawyers. Indications from an examination of this data, on the contrary, point to the defender system as providing more extensive services.

In no instance was there any request by assigned counsel for reimbursement of investigative costs. It should be noted that, while investigators are generally paid at a lower hourly rate than are attorneys, they often possess specialized skills. These skills were apparently not utilized by assigned counsel.

In only three cases during the 1977 calendar year did assigned counsel request payment for outside expert assistance. These included one murder case where doctors and psychiatrists were employed, one felony matter where counsel paid for research and conferred with an expert, and one case where polygraph testing was done. The remainder of non-attorney costs consisted of xerox, telephone, travel, printing of briefs, and service of subpoenas.

By comparison, the defender office's services include a full-time investigator. Although data were not obtained for actual public defender expenditures relating to the use of experts, a line item is included in the public defender office, the investigator has been utilized, on occasion, to assist in obtaining sentencing alternatives for defender office clients. Thus, it must be concluded that the public defender system has provided a greater range of services than were provided by assigned counsel.

Statistical information regarding the comparative quality of public defender and assigned counsel services was derived from data compiled in the court docket study. While these data are discussed in a subsequent chapter, it may be noted here that the docket information showed that the public defenders are at least comparable in quality of services with the assigned counsel. The quality, for purposes of this discussion, was indicated by such factors as trial activity vs. plea bargaining, findings of guilty to original charge vs.

more favorable findings, results of sentencing, and frequency of filing and success in pre-trial motions.

E. Limitations of the Data

It should be noted that defender costs used for the comparative analysis are, to a small extent, underestimated in that they do not include the cost to Lee County of furnishing office space in kind, nor do they include approximately $100 per county for expenses which were ultimately disapproved, and therefore, not reimbursed by the Des Moines County Auditor. In addition, it is not known whether or not the cases derive from precisely the same time periods for defenders and assigned counsel, since the defender cases were actually closed within the time period selected, while the assigned counsel cases were closed and subsequently processed for payment of attorney fees.

III. Review of the Court-Appointed Counsel System in Iowa

Introduction

Our review of court-appointed systems in Iowa centered on an assessment of costs as reported in an earlier section, and an assessment of the quality of defense provided through court-appointed counsel systems. We will describe the typical organization of court-appointed counsel systems. We will then summarize the results of interviews conducted with chief judicial district judges and court-administrators. Finally, we will review briefly the issues raised in the national literature regarding court-appointed counsel systems in light of our findings regarding Iowa.

Court Appointed Systems in Iowa

A total of eighty-four counties in Iowa have a court-appointed counsel system with no public defender office to complement it at the present time. Given this large number of counties, we would expect to find variation in the arrangements of the court-appointed counsel systems throughout the state. Who appoints attorneys to cases, how appointments are made, how many attorneys are available for appointment, and how much compensation is paid appointed counsel are just a few factors that may differ from county to county or district to district.

Nevertheless, we can offer a description of the typical court-appointed counsel system in Iowa while noting how county systems are likely to vary. Throughout the state, the court-appointed counsel systems are not coordinated in the sense that there is no organized screening or assignment of attorneys and no centralized records-keeping of performance. Assignment is usually handled directly by the judiciary or by court administrators using a list of attorneys who have indicated a willingness to accept court-appointments.

In rural counties, it is not unusual for the court to seek attorneys from outside the county, given that many attorneys within the county are associated one way or another with the county attorney, creating a conflict of interest.

The court-appointed attorney fee is likely to be somewhat higher in larger urban areas compared with rural areas. The typical approach to setting this fee is to assume $50 is the going rate for attorneys and to reduce this to $35 for court-appointed work with the suggestion that the attorney should contribute something to the community and that the attorney is assured of being paid for the work. At the time of the interviews, at least, the typical rate was $35 per hour. Most counties certainly fell within the $30 - $40 range.

A matter that proved to be somewhat controversial is the practice in most jurisdictions of reducing the fee bill submitted by court-appointed counsel. In some jurisdictions, almost all fee bills are reduced while in others, perhaps only major, very expensive cases will be reduced. In some jurisdictions, district judges sit as a body to review all fee bills submitted for the month. In other jurisdictions, individual judges may review the fee bills involving cases heard by them. In some cases, county attorneys may be asked to comment on fee bills based on the work performed by the county attorney's office. In all jurisdictions, the boards of supervisors pay the fee bill as reviewed and authorized by the judiciary. This process places a heavy burden on the judiciary, who must concern themselves with the attorneys' and boards of supervisors' positions at the same time. We will have more to say about this below.

With an adequate supply of attorneys who specialize in criminal defense and are compensated fairly for their work, counties can provide indigents with competent counsel. As indicated in the public defender office review, a court-appointed counsel system may also be cost-effective, depending on the caseload of the jurisdiction. However, we cannot take for granted the conditions specified above regarding supply and compensation. Let us now

review the interview results regarding court-appointed counsel systems in Iowa.

Views of the Judiciary and Court Administrators

Interviews with chief judges of Iowa's Judicial Districts as well as other district judges indicate that the court-appointed counsel systems can and should be improved. One of the most pressing problems expressed during the interviews involves a lack of attorneys in many areas who can afford to take the time and effort to specialize in criminal defense and subsequently develop an expertise in criminal defense proceedings. Without adequate caseloads to justify such specialization, otherwise competent attorneys cannot develop the expertise that is typical of public defenders throughout the state. Although this may not apply in areas with a sufficient population concentration to attract an adequate supply of attorneys who can develop a sufficient caseload to keep busy, most of Iowa's counties are not standard metropolitan statistical areas (U.S. Census classification) and, therefore, do not have such a population concentration.

A second issue raised consistently during the interviews involves the process of reviewing the fee bills submitted and the rising costs of indigent defense in general. The chief judges indicated that the process of reviewing bills was both time-consuming and unpleasant. Knowing that the county boards are under significant fiscal pressure and, at the same time, knowing that attorneys should be able to expect a day's pay for a day's work, poses a dilemma for the judiciary. If bills are reduced in order to stabilize the cost to counties, the result could be an exaggeration of the bill by attorneys in anticipation of such a reduction or a reduction in the number of attorneys willing to accept work under such conditions. No one benefits from this condition yet no one interviewed could offer an alternative that didn't involve restructuring the court-appointed counsel systems.

In at least some districts, the district judges sit as a group to discuss fee bills. This is one way to make sure fee bills are treated consistently throughout the district; however, this also is a significant demand on the judiciary's time. This also does not address the impact on an attorney of having his/her time and effort challenged in the process of a review of his/her bill. If such a process doesn't contribute to exaggerations in subsequent billing or lead to the attorney turning to other types of work, this surely discourages aggressive and thorough defense work. In addition to the issues of supply and expertise, this issue also deserves careful consideration in our recommendations.

Other concerns expressed during the interviews included the geographical size of Iowa and its impact on providing necessary services, the need to begin the defense effort at the interrogation stages of criminal proceedings, and the unpredictability of indigent defense costs. The chief judges and other members of the judiciary interviewed were all concerned about indigent defense in Iowa and were very cooperative in arranging and completing the interviews.

The court administrators in Iowa indicated many of the same concerns as expressed by the judiciary. We should note, however, that some chief judges and court administrators are more satisfied with indigent defense services provided in their jurisdictions than others. Some court administrators indicated that court-appointed counsel in their jurisdiction was typically inexperienced and that such appointments were both traditional and quite appropriate. Most administrators, however, expressed a concern regarding both the supply and adequate expertise in many areas and the fee bill review process. We should note that the position of district court administrator is relatively new to the Iowa Courts System and the responsibilities associated with the position may vary from District to District.

Court Appointed Counsel Literature in Retrospect

Our approach here will be the same as our approach regarding the public defender literature reviewed in light of the interviews. We will repeat the key issues, advantages and disadvantages reported previously and assess Iowa's court-appointed counsel system in light of these issues. A complete review of the literature can be found in the Contemporary Issues Section of the report.

The most significant issues raised in the national literature regarding court-appointed counsel systems involved the likelihood of having inexperienced, inadequate counsel with such a system and the likelihood of not having investigative work performed with such a system. Due mostly to the geographical size and low caseload in much of the state, Iowa is typical of other states with court-appointed counsel systems. As we have indicated above, attorneys in many areas of the state cannot afford to specialize in criminal defense and, therefore, will not gain the experience and expertise that an attorney in a large urban area will likely possess. Counsel may, therefore, be inadequate in terms of attorneys not having a complete and ready command of defense motions and trial tactics that may facilitate a successful defense. The competence of such counsel is not in question; to the contrary, the problem is a matter of being able to devote the time and effort to gain the expertise and at the same time, make a decent living. As we also have indicated above, inadequate fees can contribute negatively to this same problem.

A second issue raised in the literature involves the likely lack of investigative work with assigned counsel systems. Once again, we would point out that if an attorney is not likely to be paid for all services provided and time spent in a given case, the defense effort including thorough investigative work may be less than what it might otherwise be. Investigative work is feasible and will be funded if requested for major cases throughout the state; nevertheless, we have reason to be concerned about both availability of good investigators

and the fiscal pressure felt throughout the state in regard to indigent defense.

The advantages of court-appointed counsel systems reviewed previously totalled six, some of which are more pertinent than others. One advantage argued is that such a system preserves the traditional role of lawyer as a private, independent professional. We have found that being a public defender in Iowa does not jeopardize or negatively affect the integrity, competence, or professionalism of the attorneys employed in these offices; therefore, this argument would seem to be moot. The second advantage reviewed involves assuring a wide participation of the private bar. As indicated, Iowa's public defender offices are all part of mixed systems designed to encourage and maintain the participation of the private bar. Our concern here involves an insufficient supply of attorneys; at no time have we suggested or will we entertain any system that will discourage participation of the private bar in criminal defense activities.

The third advantage involves providing experience for younger attorneys. At least in some areas of the State of Iowa, this is practiced and defended. Our position is that any defendant, regardless of who pays the bill, should be provided an aggressive, thorough defense. While we recognize the need for attorneys to gain experience, we feel that this experience can be gained without reducing the quality of defense for indigents facing lengthy prison terms. Thus, we do not consider this an advantage to be pursued in Iowa.

The fourth and fifth advantages reviewed previously are related, involving the simplicity in operating a court-appointed counsel system and the associated low cost. In Iowa as well as elsewhere, these can be advantages as long as the quality of defense is not affected. Once again, because of low caseloads and geographical size in Iowa, these advantages are irrelevant in many areas. Even where court-appointed counsel systems can function adequately in Iowa, we believe that administrative improvements and some standardization may be

called for making the systems somewhat less simple to operate and perhaps somewhat more costly.

The last advantage reviewed by Silverstein involves the provision of income for attorneys. We would point out once again that a mixed system helps fulfill this objective. More importantly, however, we would argue that this advantage, if taken alone, totally ignores the intent of the Supreme Court decisions which is to assure that one's socio-economic status in society does not negatively influence the quality of justice one receives. This advantage is simply not very convincing or impressive.

Silverstein included a relatively lengthy list of disadvantages regarding court-appointed counsel systems. We will repeat these disadvantages below and react to each in terms of our review of Iowa's court-appointed counsel systems. Perhaps the most pertinent disadvantage involves lack of experience. Our findings have been presented in this regard, indicating this is relevant in Iowa. The second and third disadvantages reviewed previously, although they appear to be contradictory, are not as explained by Silverstein. More importantly in this context, we do not have sufficient information to determine with any accuracy whether court-appointed counsel in Iowa are either more likely (second disadvantage) or less likely (third disadvantage) to plead guilty for their clients. Data collection forms that will be included in our recommendations section can help resolve this inadequacy.

The fourth disadvantage reviewed previously can be dismissed immediately as irrelevant to Iowa. This involved the position that court-appointed counsel systems are not appropriate for counties with 400,000 or more people. No county in Iowa has more than 400,000 people; we also have no reason to anticipate that any county will achieve this population size in the near future. The fifth disadvantage was raised above as a general issue. This involves not reimbursing attorneys for out of pocket or investigative expenses. Given that public defender offices in large jurisdictions typically have an

investigator on the staff or readily accessible and paid for as part of the annual budget, defender offices are more likely to provide these services compared with court-appointed counsel systems. This, of course, is not to say that investigators are totally unavailable to court-appointed attorneys. The eighth disadvantage is pertinent here, involving court-appointed counsel being paid little or nothing. Our position here is that adequate compensation is necessary if a competent and aggressive defense is to be provided for indigents. This position holds whether the attorney is acting in the role of public defender or court-appointed counsel.

The sixth disadvantage of court-appointed counsel systems involves the method of selection of court-appointed counsel being unfair. Our assessment and interviews revealed no evidence to indicate this disadvantage is applicable to Iowa's systems. This does not mean that the methods of selection used are either adequate or desirable. We simply have no indication that the methods are particularly unfair, at least to the attorneys.

Finally, the seventh disadvantage involves attorneys not being appointed early enough. If one accepts the position that counsel should be available at the first "critical stage" of criminal proceedings, then it is very likely that inadequately organized and administered court-appointed counsel systems will include delayed appointments or appointments following the first "critical stage." This is one reason why coordinated court-appointed counsel systems are desirable yet more expensive. Our position is that providing indigents with competent counsel when the focus of investig tion switches from inquisitorial to accusatorial in nature (Escobedo v. Illinois, 378 U.S. 478 (1964)) is extremely important to developing a defense and is difficult enough when a public defender's office is available. Court-appointed counsel systems make it very difficult to assign counsel before an initial appearance at the earliest; this possible delay represents a very significant disadvantage in our view.

In summary, through no fault of participants in Iowa's court-appointed counsel systems in most cases, many disadvantages and key issues raised in the national literature are quite pertinent in Iowa. Our recommendations will be designed to address these issues and disadvantages while at the same time, to keep intact the overall structures and associated advantages that currently exist. Before presenting these recommendations, however, we will assess very briefly juvenile indigent defense and appellate defense in Iowa.

IX. Juvenile Indigent Defense in Iowa

Introduction

Legal defense of indigent juveniles charged or about to be charged with criminal behavior is a matter of both substantive and fiscal concern to many Iowans. Indigent defense involving juveniles is particularly relevant now in light of Iowa's new Juvenile Code which assures due process for juveniles accused of delinquent acts. We have not attempted a comprehensive assessment of indigent defense for juveniles at this time. First, we felt it would be inappropriate to comment on or to criticize the new Juvenile Code or required services related to it before the State and affected agencies had sufficient time to adjust to it. Second, the Bureau of Children's Services, Department of Social Services, has been monitoring juvenile justice expenditures since July 1979 in an effort to assess the fiscal impact on counties of the new Code. We did not want to interfere with or duplicate in any way this effort.

Our assessment of juvenile indigent defense in Iowa will, therefore, be very brief and quite general. We will comment on what would appear at this time to be inevitable problems or needs associated with the new Code. We will also offer general suggestions regarding how such issues might be approached. However, any final recommendations will not be offered at this time.

Right to Counsel

In one respect, the new Juvenile Code has reduced the burden of some criminal justice officials by excluding status offenders from formal prosecution and possible incarceration in jails. At the same time, however, due process provisions have been assured for all juveniles suspected of criminal behavior as defined by the Iowa Criminal Code. In particular, right

to counsel exists for juveniles throughout criminal proceedings. Right to counsel exists for the following:

(1) from time of taking into custody and during any questioning by a police officer or probation officer for any delinquent act other than a simple misdemeanor (counsel may be retained for intake and interrogation even if a simple misdemeanor, according to Section 11.6);

(2) for all detention or shelter care hearings under Section 44;

(3) for all waiver hearings under Section 45;

(4) for all adjudicatory hearings under Section 47;

(5) for all dispositional hearings under Section 50; and

(6) for all hearings to review and modify dispositional orders under Section 54.

The child's right to counsel under Sections 44, 45, 47, 50, and 54 is unwaiverable. Right to counsel is waiverable at intake and interrogation by the child with written consent of parent, guardian, or custodian.

For Child in Need of Assistance and Termination proceedings, appointment of counsel is required for the child upon filing of petition. Parents must also be advised of their right to (separate) counsel at these proceedings to be appointed by the Court if parents are unable to pay. Finally, for Family in Need of Assistance hearings, court must appoint counsel or a guardian ad litem for the child at the time of the hearing, unless the child already has counsel. The court must also appoint (separate) counsel for the parent at the hearing if the parent desires counsel but is financially unable to hire such. (See Iowa Juvenile Code Manual, Juvenile Justice Advisory Council of the Iowa Crime Commission.)

Very simply, right to counsel is an important addition to the Iowa Juvenile Code. As indicated above, for some proceedings parents also have a right to counsel which would be counsel other than that assigned to the child. Thus, the need for counsel that is available and knowledgeable regarding juvenile proceedings and the new Criminal Code should be obvious.

Providing Counsel to Indigent Juveniles and Parents

Having indicated above the potential impact of the new Code on current indigent defense systems, we will now summarize related problems and what might be done to comply with the increased demands for counsel. Perhaps the key complicating factor is the need for different counsel for parents and a juvenile in many proceedings or for co-defendants or multiple defendants involved in the same act. Law offices, including public defender offices, would only represent one of two or more defendants in a case or would represent either the juvenile or the parents but not both, all because of conflict of interest. This greatly increases the demand for attorneys and, in those areas where an inadequate supply of attorneys is the case, may be a problem that is extremely difficult or at least costly to solve.

Many of the existing public defender offices in the state have specialists who handle only juvenile cases. In other offices, the staff has agreed to handle juvenile cases although the caseload may not be sufficient to assign one attorney to these cases. Either way, public defender offices offer both expertise in regard to the new Code and some relief for the counties in terms of the financial burden.

The same arguments apply here that were reviewed in regard to adult indigent defense. With a sufficient caseload, a public defender's office may be both preferable in terms of quality defense and more cost-effective compared with a court-appointed counsel system. Given the greater potential for multiple counsel needs for juveniles and parents, however, a public defender office does not provide a complete solution. For those areas that do not have a sufficient caseload to support a public defender office, such an office simply would not be cost-effective.

Our recommendations will take into account the particular needs created by the new Juvenile Code as identified above. Again, we remind the reader that we are not willing at this time to be more specific in this area, but will conduct a more comprehensive assessment following the upcoming legislative session.

X. Appellate Defense of Indigents in Iowa

We will restrict our comments here to a summary of the support for a state appellate defender office and a progress report regarding its present operation. Any additional information may be obtained from the State Appellate Defender Office (Lucas State Office Building, Des Moines).

The existing State Appellate Defender's Office is the product of a coordinated effort. The Iowa Crime Commission for several years has included such an office in the State plan and in fact was responsible for procuring the funding for the first year of operation. Likewise, the Cost of Litigation Study Committee (established by the Iowa Supreme Court), the Court Study Joint Subcommittee, the Iowa Bar Association, the Iowa Trial Lawyer's Association, and the Criminal Appeals Division of the Attorney General's Office, all indicated a need for such an office and offered strong support for its creation.

Legislation was passed creating a State Appellate Defender pilot program during the 1980 session of the State Legislature and signed by Governor Robert Ray. Funding for the first year's operation was obtained from the National Legal Aid and Defender Association which was contracted by L.E.A.A. to implement four appellate defender offices and award grants to accomplish this on a competitive basis. Iowa, therefore, was one of four states to receive funding to implement a state appellate defender office.

The office has been established to handle criminal appeals of indigent defendants from all counties in Iowa. For the first year of operation, the office will restrict its effort to a maximum of one hundred fifty appeals. Once established and running smoothly, the office will begin to handle post-conviction relief cases as well. However, this task will necessitate increased staffing to cover all ninety-nine counties.

With a minimum of administrative overhead, the State Appellate Defender Office should be able to handle criminal appeals and post-conviction relief cases of indigents throughout Iowa as well as assist existing public defender offices and private attorneys who are pursuing appeals. The state office is not intended to deprive attorneys interested in criminal appeals of pursuing this work. To the contrary, this office is designed to improve the overall criminal defense effort in Iowa by filling an existing gap and strengthening public defender and private attorney efforts.

The State Appellate Defender Office, therefore, should provide a needed service for the state without creating a large bureaucratic structure that is both unnecessary, given the rural nature of the state, and unduly expensive. In addition, we will suggest, as part of our recommendations, how this State Appellate Defender's Office could be utilized to help solve trial-level indigent defense problems.

Current staffing for the State Appellate Defender's Office includes a chief appellate defender, five assistant appellate defenders, one administrative assistant and one legal secretary. The office is expected to be fully staffed and operational by November 1, 1980. The National Legal Aid and Defender Association staff will provide technical assistance throughout the first year of operation and will conduct an ongoing evaluation of the office. This effort represents a needed improvement in the quality of criminal appeals for indigents and a needed cost-savings for Iowa counties. The office has been well received to date, and can be expected to be very beneficial to the criminal justice system and to the counties of Iowa.

Section 3

The Future of Indigent Defense in Iowa

XI. Recommendations

Introduction

The recommendations to be presented here reflect a careful consideration of all information collected and reviewed. Our purpose is to assess the overall indigent defense effort in Iowa and offer suggestions and recommendations which, if implemented, should improve this effort. Supreme Court decisions, the history of indigent defense in the United States, contemporary issues raised in the national literature, contemporary defense systems in use throughout the country, and indigent defense systems in Iowa have been incorporated in this assessment. We will, in this final chapter, summarize briefly recommendations offered in the national literature and describe the alternative systems that are in use throughout the country. Finally, we will present our suggestions and recommendations for Iowa.

Recommendations Found in the Indigent Defense Literature

In order to complete our review of the relevant indigent defense literature, we will present here the recommendations of two authors. Sue Titus Reid, author of Crime and Criminology, 2nd Edition (1979) and former professor at Cornell and Coe Colleges in Iowa and graduate of the University of Iowa College of Law, offers suggestions in regard to improving indigent defense systems. In addition, Lee Silverstein, author of Defense of the Poor in Criminal Cases in American State Courts (1965), offers a set of recommendations for Iowa based on his national research. Although significant changes have taken place since Silverstein developed his recommendations, we feel it is useful to reflect on all suggestions that can contribute to our understanding of Iowa's system and how it might be improved.

Reid, in Crime and Criminology, (2nd Edition) notes that "a court-appointed attorney with a large case load, low compensation, low status, and inadequate resources cannot be expected to defend clients adequately". She continues by suggesting the following:

> "The burden of improving this situation rests clearly in two places. The legal profession should be challenged to discover ways to attract even more qualified attorneys into criminal defense work, including greater prestige and reward for such work as well as better preparation in law school for criminal trial work. But, society must also assume its responsibility of providing the money and resources necessary to make the system work as conceptualized." (Pg. 475)

Turning to Silverstein's comments, we want to emphasize that the Argersinger v. Hamlin (1972) Supreme Court ruling was released several years after Silverstein completed his study. Consequently, caseloads and costs for indigent defense are not now what they were in 1965. Nevertheless, we will summarize Silverstein's findings here to determine what, if any, issues pertinent in the mid-sixties are still problematic today.

We will present the conclusions and recommendations offered by Silverstein (Defense of the Poor in Criminal Cases in American State Courts, 1965) verbatim. However, we want to reiterate that these are not our recommendations. His suggestions will be considered in light of the context and treated similar to all other material reviewed. The conclusions drawn by Silverstein in 1965 are as follows:

> 1. A uniform system of making attorney available at the preliminary stages of criminal procedure should be provided. In many areas a defendant who expresses a desire for appointment of counsel and a preliminary hearing conducted by counsel on his behalf is denied this opportunity. There is no statutory provision for appointment of counsel prior to district court arraignment or for payment of attorney fees for work done in justice or municipal court. As noted previously, the district court in one county appoints the lawyer who participated in the case at the preliminary stages. This is a worthy example of progressive judicial attack on this problem. A standard procedure for appointment of counsel at the magistrate level, with adequate financing, should be developed.

> 2. The prescribed fees for felony representation should be increased and funds should be made available for reimbursement of the cost of investigation and preparation. In certain larger counties consideration should be given to suggestions that a defense investigator be retained to assist defense counsel, on either a full-time or part-time basis as local conditions require.
>
> 3. In conformity with the opinions of judges, county attorneys, and defense counsel throughout the state, the appointed lawyer system should be retained. The establishment of a public defender system, even on the basis of one office for each judicial district, is not a practical solution to the problems of indigent defense. Improvement of the existing system appears to be preferable.
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> 4. Evidence indicates that indigent cases have not been appealed with the frequency of cases involving retained counsel. Perhaps this is a justifiable situation based upon the merits of the individual cases involved. This matter should be studied, however, and efforts made to standardize appeal practice to insure the right of counsel-conducted appeal to indigent defendants.
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> 5. The current practice in several counties is to place the onus of criminal assignments on the junior members of the bar. Because of the inexperience of appointed counsel in these instances, it is suggested that the state bar association undertake a program of clinical study and practical training in criminal law in cooperation with the law schools of the state. Establishment of a legal internship program, with actual case participation by the involved students, will better equip those younger members of the bar for the duties of appointed counsel which fall so frequently upon them.

Neither Reid's nor Silverstein's suggestions require any comment on our part, although it is interesting to note that the suggestions were offered fourteen years apart. We will now review briefly recent efforts in other states involving alternative indigent defense systems, leading to the presentation of our recommendations for Iowa.

Contemporary Efforts in Other States

A total of 234 abstracts of documents received from the National Criminal Justice Reference Service regarding public defenders were reviewed as part of our assessment. From these sources, key documents were selected and analyzed in more detail. States covered in these selected documents included Virginia, Indiana, Tennessee, North Carolina, New Hampshire,

New Mexico, Georgia, Texas, and Vermont. We will present brief descriptions of five of these efforts here; a complete listing of all sources is available on request.

In the study of El Paso County, Texas, the most interesting and perhaps most pertinent feature described involved the creation of an independent advisory board. The project was undertaken in response to steadily increasing county expenditures. Following an on-site study, a mixed defense system was recommended consisting of a defender office and a coordinated assigned counsel program with 75% of the clients referred to the defender office. The independent advisory board would not only appoint the chief defender and administrator of the coordinated assigned counsel system, but also provide general supervision of the system. The board is composed of representatives from the judiciary, the private bar, the commissioners court and the client community.

Regarding the study of Virginia's public defender program, one of the more interesting findings involves the estimated increase in cost for court-appointed counsel and public defender offices from 1973 to 1976. The operational costs of the public defender offices increased approximately 7.5 percent while court-appointed counsel costs increased 128 percent during the same period. The report also notes that the judiciary has been enthusiastic about the quality of representation and has found that on-call defenders have improved the speed of the court process.

In the document regarding New Mexico, questions involving quality of service, including contract service, are particularly interesting. Contract public defenders were assessed and found to be providing effective defense services. However, the part-time nature of employment and the fact that defenders were not entering a case until after formal appointment both were cited as problems. At the same time, the evaluators concluded that the quality of court-appointed counsel representation was being jeopardized by inadequate compensation. In recommending a state-wide public defender system, the

authors refer to three key advantages of a defender system. These include the provision of effective legal representation at all levels of the judicial process, widespread geographic availability of indigent defense counsel, and the potential for training and close supervision of young attorneys.

The last two state efforts to be reviewed here also include reference to contract public defender services. In San Diego County, California, an interesting alternative to either a public defender or court-appointed counsel system was recommended as part of an assessment of the county's indigent defense needs. The recommended system includes an office of defender services which is responsible for contracting with attorney groups to handle most misdemeanors and light felonies, and selecting experienced attorneys from a special panel to handle all serious felonies. Prior to adoption of this system, appointed attorneys were paid for court appearances but generally were not paid for out-of-court time.

The details of this system need not be presented here. However, the effort is designed to achieve a cost savings while improving the quality of defense and compensation for services provided. The results of this effort are not yet available. We also should note that San Diego County is not comparable in most if not all respects to counties in Iowa. Nevertheless, their system represents an innovative alternative to traditional indigent defense delivery systems.

Finally, the state of Vermont has a state public defender system that also involves innovative efforts. In an attempt to increase efficiency and reduce attorney turnover in the state system, Vermont implemented two programs which worked well. One program involved allowing defenders to accept civil cases on a contract basis. The other program involved hiring three attorneys to handle a two person office (at two-thirds salary each), thereby allowing each to have time to handle additional duties. Both programs have kept

competent defense attorneys in the state public defender system without sacrificing the quality of defense or area covered by the system.

We offer these five examples in order to illustrate both what other states have experienced and what new efforts have been attempted. These examples should serve to broaden the reader's thinking regarding alternatives, just as it has contributed to our assessment and development of recommendations for Iowa.

Recommendations for Iowa

The recommendations to be presented here are offered as steps that can be taken to improve indigent defense services in Iowa. Throughout this report, we have offered a systems level analysis making a conscious effort to avoid focusing exclusively on a particular individual's comment or a particular jurisdiction's problem. We present our recommendations here using this same approach. The issues to be addressed and changes to be recommended apply statewide and are, therefore, not directed at a particular jurisdiction, agency, or office. We believe all the recommendations to be presented here would, if implemented, have a positive and measurable impact on Iowa indigent defense systems. Thus, we will not prioritize these recommendations here but will be pleased to discuss them with anyone in the state in order to assess the specific application of such recommendations in a given jurisdiction.

One of the most basic improvements that should be implemented immediately involves the collection of necessary information. A recurring problem faced by evaluators when attempting to determine the cost-effectiveness of court-appointed counsel and public defender programs has been the absence of similar information for each type of program. If accurate comparisons are to be made or if reliable cost-estimates are to be produced, basic information must be collected. We have included in the appendix forms that we would recommend be used when comparing a public defender office and court-appointed counsel system in a given county. Such information could be easily keypunched and

subsequently analyzed using pre-programmed computer software packages. With such information collected, we could be certain that any comparisons made involve similar service.

The second recommendation involves the definition of indigency used in Iowa. Although we have suggested that it is probably not feasible to develop an objective measure or index of indigency to be used throughout the state, we do believe that it would be beneficial to have a representative of the Iowa Supreme Court, Iowa State Bar Association, and Iowa Public Defender's Association meet to review the relevant Iowa Supreme Court decisions and develop a set of informal guidelines to be used throughout the State. While we acknowledge that monetary needs will vary from area to area in the state, we also believe that the procedures and general guidelines used to determine indigency can and should be uniform throughout the state. Even as an informal set of guidelines, this would be very helpful to all involved in this process.

The third recommendation involves the setting of court-appointed counsel fees. Based on the example offered from El Paso County, Texas regarding the court-appointed counsel advisory board, we believe the burden placed exclusively on the judiciary could be alleviated by establishing a judicial district court-appointed counsel fee review committee. This could be comprised of a district court judge from the district, a representative from the Iowa State Bar Association who is a member of the Joint Committee on Methods of Appointment and Compensation for Court-Appointed Counsel and who resides in the district, and a representative of the Iowa Public Defender's Association who resides in the district. The review process could be conducted monthly with a detailed bill submitted by all attorneys with written comments possible from the judge who handled the case, if so desired by the judge.

Our recommendation here reflects our position that all involved in this review would be professionals who should share a concern for providing effective counsel for indigents with adequate compensation paid the attorneys. We believe the creation of such a committee would not only relieve the burden placed on the judiciary but would also encourage attorneys to be accurate in their billing. As is the case now, the recommendation would be submitted to the board of supervisors with a review available through the courts if requested by the attorney. We have reviewed in detail the possible consequences of inadequate compensation for court-appointed counsel and note that this has been an issue both nationally and in Iowa for many years. We, therefore, believe that this issue is very significant and must be addressed in our effort to improve the delivery of indigent defense in Iowa.

The fourth recommendation involves an equally important issue that could be considered the complement of the compensation issue. A major concern to all parties involved in indigent defense in Iowa is the rising and unpredictable costs of indigent defense for counties in Iowa. We have indicated that numerous counties, not just a few, have experienced dramatic fluctuations in their indigent defense costs during the 1977-1979 period. For this reason, we believe that a fund should be established at the state level to pay for all indigent defense costs that exceed the county average. This, of course, emphasizes the need for accurate and similar information from all counties regarding indigent defense costs. Perhaps the best approach in determining this average would be to use three of the previous four years' costs, eliminating the most expensive year. This would provide an average that is not inflated by one extreme year and, therefore, should reflect the typical costs. The average could be calculated every two years, thereby avoiding a yearly calculation that would be unlikely to reflect any measurable change.

This approach should allow both the state and all counties to predict accurately yearly costs of indigent defense. Thus, both increased stability in

budgeting and a shared responsibility for a Constitutionally mandated service is created without an unwanted additional state bureaucracy in the form of a state public defender office.

The fifth recommendation involves the State Appellate Defender Office. As indicated in the report, the creation of the State Appellate Defender Office received strong support from all parties involved in Iowa's indigent defense system. The office does not add to state government a large, expensive bureaucratic structure; rather, this office provides a needed state service in a cost-effective manner which reduces much of the financial burden on counties. Having strongly recommended this office in the past, we continue to recommend the State Appellate Defender Office in Iowa.

Once fully established, this office is designed to handle post-conviction relief cases if requested in any county in the state. As we have stated in the report, the office is designed to fill an existing gap in appellate defense services and will not interfere with existing successful efforts in any county. In conjunction with our fourth recommendation, we believe the financial burden on both state and counties could be reduced, while at the same time relieving the inadequate supply of attorneys problem in rural counties, by having the State Appellate Defender Office provide co-counsel in Class A felony cases or simply handle other major felony cases. The staff of post-conviction relief attorneys will be located throughout the state and could provide experienced counsel in such cases at no additional cost to either the state or counties involved. This recommendation is, therefore, directed at both the issue involving costs in smaller counties and the issue involving an inadequate supply of attorneys. Some criteria would no doubt have to be developed with this program to assure that available local services are not being supplanted. We believe that the availability of experienced attorneys interested in handling criminal indigent defense cases can be documented easily and used as a guideline.

The sixth recommendation involves providing an alternative to court-appointed counsel and public defender operations. For perhaps medium-sized jurisdictions in Iowa, we believe that the alternative illustrated in the San Diego County and Vermont examples may be viable. This involves contracting with certain law firms or lawyers to handle a certain number of cases at a certain cost in a given year. Such an arrangement would stabilize the cost of indigent defense, provide experienced counsel, and maximize participation of the private bar. An alternative, which we will discuss below, involves allowing public defenders to engage in some contracted civil law practice. Where a full-tie public defender's office cannot be justified because of inadequate caseload, providing contractual services as illustrated in the San Diego example may represent the most cost-effective means of providing experienced, committed defense. This alternative is worthy of experimentation and monitoring in Iowa.

The seventh recommendation involves improving existing court-appointed counsel systems in Iowa. These systems are typically not coordinated in any meaningful sense. Attorneys are typically not systematically screened for appointment, adequate records are not kept regarding appointments and performance, and assignments have not been centrally administered. We therefore believe, as indicated in others' recommendations in the defense literature, that the court-appointed counsel systems would be improved significantly by organizing and carefully administering this effort. The court-appointed counsel fee review board, as recommended above, is the first step in establishing an organized structure which involves the active participation of the bar as well as other parties who should share a commitment to improved indigent defense.

The eighth recommendation involves utilizing public defender office structures wherever the need exists and the caseload can justify it. We have no doubt that public defender offices can provide competent, aggressive defense and be cost-effective in Iowa. However, a sufficient caseload is necessary for this to be accomplished. Although the specific caseload may vary, the workload

must be such that all staff attorneys have a full workload. Various national organizations suggest approximately 150 felony cases, or 200 juvenile court cases, or 200 mental health act cases, or 25 criminal appeals as a maximum caseload. (The National Legal Aid and Defender Association and the National Advisory Commission on Criminal Justice Standards and Goals have offered estimates.) Although these caseloads can be followed when establishing an office, cost-effectiveness can be reduced for a period of time when additional staff are hired. It is simply not possible to wait until the existing staff is handling a full additional caseload before hiring additional staff.

In addition to caseload, a second factor that is important in terms of cost-effectiveness is the percentage of cases handled by a public defender office. For maximum cost-effectiveness, a public defender office should handle the highest percentage of cases possible. Of course, other factors must often be considered in a given jurisdiction so this is not always possible. To the degree that cost-effectiveness is a central objective, this factor should be considered.

The staff of any public defender office should be comprised of experienced, competent attorneys who are committed to the defense of indigents. Creating a public defender office itself does not assure quality or cost-effective service unless the people that staff the office possess the necessary qualities. This, we should add, is true of court-appointed counsel systems as well. The system or the structure used in a given jurisdiction is only part of the necessary mix of ingredients which produce effective and efficient indigent defense services.

Finally, we recommend for jurisdictions that may have borderline caseloads for one or two attorneys programs similar to those developed in Vermont. Allowing public defenders to engage in contracted civil work, or allowing three public defenders to work two-thirds time in a given jurisdiction are both ways to keep experienced, committed, and hard-working people working in the indigent

defense system. Where full-time public defenders are justified by caseload, we would not necessarily recommend this approach. However, such programs are certainly worth trying where the conditions would seem to dictate.

Summary

This ends our presentation of recommendations directed at improving Iowa's indigent defense systems. By national standards, Iowa does not face the problems typical of more densely populated states. At the same time, Iowa has not unified its effort in regard to indigent defense. Many of our recommendations should serve to encourage the courts, private bar, and public defenders to work together and complement each other's effort. We believe the overriding goal of all concerned should be the provision of quality defense for indigents in Iowa in a cost-effective manner when possible. We strongly encourage the private criminal defense bar and the Public Defender's Association to work together to improve our indigent defense system.

Our recommendations, taken in whole or in part, should prove beneficial to the defense system. The Iowa Crime Commission has a history of seeking to improve both sides of the adversary process as well as the neutral arbiter in this process. We believe we are continuing this effort here by assessing our existing indigent defense system and offering constructive system-wide recommendations. The Iowa Crime Commission will continue to provide knowledgeable but neutral input in an effort to improve and strengthen Iowa's criminal justice system.

Appendix A

Evaluations and Needs Assessments Conducted in Iowa, 1970-1980

Evaluations and Needs Assessments

National Defender Institute, Evaluation of 4 County Public Defender Project for the Eight B Judicial District, Iowa, Evanston, Illinois, March 1979.

Iowa Crime Commission, Evaluation Report of the Pottawattamie County Public Defender's Office, Des Moines, Iowa, May 1978.

Iowa Crime Commission, Preliminary Evaluation : Clinton County Public Defender Program , Des Moines, Iowa, July 1977.

Iowa Crime Commission, Preliminary Evaluation : Woodbury County Public Defender Program, Des Moines, Iowa, May 1977.

Steggerda, Roger O., and Allan L. McCutcheon, Legal Defense for the Indigent Defendent : A Comparison of the Effectiveness of the Offender Advocate and Court Appointed Counsel in the Defense of Indigents - Polk County, Iowa, Des Moines: Des Moines/Polk County Metropolitan Criminal Justice Center, August 1974.

National Center for Defense Management, Systems Development Study of Indigent Defense Services for Black Hawk County, Iowa, Washington, D.C., April 1976.

National Center for Defense Management, Systems Development Study of Indigent Defense Services for Six Iowa Counties, Washington, D.C., July 1976.

Appendix B

Recommended Case Information

Data Collection Instrument

CASE INFORMATION

Case Number _____

Dates

	Month	Day	Year
Date of Initial Appearance	_____	_____	_____
Date Public Defender/Court Appointed Counsel Assigned	_____	_____	_____
Date of Final Disposition	_____	_____	_____

Proceedings and Charges

Type of Proceeding (circle type involved)

Felony, trial level	01
Serious Misdemeanor, trial level	02
Simple Misdemeanor, trial level	03
Alcohol-related or Mental Health-related Commitment	04
Extradition	05
Habeas Corpus	06
Post Conviction Relief	07
Criminal Appeal	08
Juvenile Delinquency	09
Civil Juvenile	10
Other (specify) _____	

Original Charge (Information/Indictment)

Chapter of 1979 Iowa Code and Degree, if applicable (Indicate only the most serious offense, if more than one, for which the defendant is charged*)

Chapter of Iowa Code _____

Specific Offense _____

Degree, if applicable (circle)

1st degree	01
2nd degree	02
3rd degree	03
4th degree	04
5th degree	05
other (specify) _____	

*if more than one offense, indicate total number ____

Case Information
Page 2

Proceedings and Charges (continued)

Method of Disposition (circle)

Dismissal - other than due to client's failure to appear	01
Dismissal - due to client's failure to appear	02
Plea of guilty	03
Bench trial	04
Jury trial	05
Other (specify) _____	

Motions Filed

Indicate below whether the motion was filed and, if filed, the outcome

Motions	Filed Yes	Filed No	Outcome Granted	Outcome Denied	Outcome No Action Taken	Outcome Not Applicable
Reduce Bond						
Dismiss Indictment						
Quash Indictment						
Suppress Confession						
Suppress Evidence						
Suppress Identification						
Other (specify)						

Case Information
Page 3

Outcomes

Finding : Check appropriate box above tables below, then indicate outcome in appropriate column

If Plea of Guilty ____

Plea to original charge	____
Plea to reduced charge	____
Plea to some, but not all charges	____
Other (specify) _____	
Not applicable	____

If: Jury Trial ____ / Bench Trial ____

Guilty of original charge	____
Guilty of lesser charge	____
Guilty of some, but not all charges	____
Not guilty	____
Other (specify) _____	
Not applicable	____

Type of Sentence, if Guilty (circle)

Deferred sentence	01
Deferred sentence with fine or restitution	02
Suspended sentence	03
Suspended sentence with fine or restitution	04
Suspended sentence with term of incarceration	05
Restitution only	06
Fine only	07
Incarceration	08
Incarceration plus fine or restitution	09
Other (specify) _____	
Not applicable (not guilty)	88

Term of Incarceration - if imposed, indicate length; if not imposed, indicate not applicable

Number of months _____

Not applicable (circle) 88

Case Information
Page 4

Professional Services

Activities in hours/costs

Legal research - total hours _____

Travel time - total hours _____

Conference and interviews - total hours _____

Other out-of-court time - total hours _____

Pre-trial court time - total hours _____

Actual trial time - total hours _____

Expenses incurred - total dollars

internal (office) _____

external _____

Sum : fair and reasonable expense for case - total dollars _____

Pre-trial Activity	Counsel Present Yes	No	Not Applicable
Arrest/Booking	_____	_____	_____
Interrogation(s)	_____	_____	_____
Line-up(s)	_____	_____	_____

Appeal Activity

List all appeal activity and outcome

Appeals	Outcomes

Comments regarding appeals:

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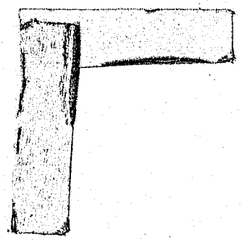

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