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Public Defender Salary and Caseload Review

A Report to the Seattle City Council

August 19, 1987

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## EXECUTIVE SUMMARY

This study, conducted by City Council Central Staff at the request of the City Council, reviews salaries and caseloads of public defenders practicing in Seattle Municipal Court. The study includes a comparison of local public defender caseloads with local and national standards, as well as a limited survey of public defender salaries in Washington and elsewhere in the country.

Representation of indigent defendants in Seattle Municipal Court is primarily provided by two non-profit agencies: The Defender Association (TDA), and the Associated Counsel for the Accused (ACA), under the auspices of the King County Public Defense Program (PDP). Through PDP, which is responsible for screening clients for financial eligibility and for agency contract administration, the City provides approximately 30% of the County public defense budget.

The major findings and conclusions of this study show that local public defenders, especially those at TDA, are paid salaries that are low by both local and national standards. The study also shows that Seattle's public defenders are not only carrying heavy caseloads, but that the nature of their work has become more complex in recent years. However, the study also shows that these problems cannot be rectified by the City alone. Because public defenders serve in a variety of local courts and because it would be inadvisable to set up public defender agencies solely to serve Municipal Court, the City and the County must work together to develop uniform caseload and salary standards for public defender agencies.

Other major recommendations of this study are as follows:

- 1) The City should increase its payment for Municipal Court appeals, at an additional cost of approximately \$63,000.
- 2) The City and the PDP should research public defender staffing of Municipal Court arraignments because the City may be overestimating the cost of providing this service.
- 3) The City and the PDP should establish a contract guideline designating the maximum number or ratio of interns that it is acceptable for a public defender agency to assign to Municipal Court.
- 4) The public defender agencies should develop a two-tiered salary schedule so that experienced attorneys are encouraged to work in Municipal Court.

## FINDINGS AND RECOMMENDATIONS

Finding 1: The City's contracting guideline of 400 Municipal Court cases per lawyer annually is excessive.

Finding 1a: Seattle's public defender caseload standards and actual caseloads exceed local and national caseload standards. All caseload standards involved are subjective, and therefore should be used cautiously.

Finding 1b: The City's caseload standard is slightly lower than the County's although the two are not strictly comparable. City misdemeanor practice is more complex than County practice. Staff found that cross-jurisdictional caseload comparisons have limited relevance.

Finding 1c: The workload and the complexity of Municipal Court practice have increased in recent years, creating a need for lower caseloads for public defenders.

Finding 1d: Local public defenders appear to carry higher caseloads than their counterparts in the private bar.

Recommendation 1: The City should lower its budgeting assumption of 400 cases per FTE public defender attorney.

Finding 2: There is some question as to whether or not the data provided to PDP regarding the amount of attorney time spent on each case are completely accurate.

Recommendation 2: Methods for keeping staff time records should be improved. If it is not possible to increase the accuracy with which these records are kept under the current system, PDP and the agencies should explore other methods for obtaining this information, such as periodic sampling.

Finding 3: The City's reimbursement rate for Rules of Appeal from Courts of Limited Jurisdiction (RALJ) cases is too low. This has required the public defender agencies to supplement the cost of doing appeals by taking away from actual Municipal Court representation.

Recommendation 3: The City should increase its reimbursement rate for RALJ appeals so that it more accurately reflects the actual cost per case.

Finding 4: Salaries paid to TDA attorneys are low when compared to the salaries paid to public defenders elsewhere in Washington and in comparable public defender programs elsewhere in the country.

Finding 4a: There is a significant difference between the starting salaries for local public defenders and their counterparts in both the City Attorney's Office and the King County Prosecutor's Office. This gap remains for TDA lawyers, but diminishes over time for ACA lawyers.

FINDINGS AND RECOMMENDATIONS

Finding 4b: Lower salaries and a lack of a career path appear to affect the ability of the public defender programs to recruit and retain lawyers, particularly minority lawyers. The lower salaries of TDA make it especially vulnerable to turnover and recruitment problems.

Recommendation 4a: Public defender salaries should be increased so that they are more comparable to those paid to Assistant City Attorneys. Because most of the public defenders assigned to Municipal Court are at the lower end of the salary scale, additional funds paid to the agencies for salary enhancement should be used to increase salaries for the lowest paid attorneys.

Recommendation 4b: Both public defender programs should explore the creation of a two-tiered salary schedule.

Finding 5: Seattle's public defender system is not typical of programs where public defenders have salary parity with prosecutors. Even if salary parity were a goal for the City, it could not occur without County participation.

Recommendation 5: Based upon the type of public defender system in place in King County, salary parity with the City Attorney's Office is not appropriate.

Finding 6: TDA is very dependent upon interns for the provision of representation in Seattle Municipal Court.

Recommendation 6a: TDA should devise a plan that will enable them to place more experienced attorneys in Seattle Municipal Court.

Recommendation 6b: PDP, along with OMB and the public defender agencies, should establish a contract guideline regarding the use of Rule 9 interns in Municipal Court. This guideline should designate the maximum ratio of interns acceptable to use in the staffing of Municipal Court.

Finding 7: The City appears to be over-budgeting for the cost of providing representation for the weekday arraignment calendar.

Recommendation 7: PDP and OMB should explore the staffing needs of the Municipal Court for the arraignment calendar and, if necessary, make adjustments in the amount budgeted for this purpose.

## Public Defender Salary and Caseload Review

### I. Introduction

The Seattle City Council, during its 1986 budget proceedings, voted to increase funding for services for indigent defendants who are prosecuted in the Seattle Municipal Court. Based upon information presented during the 1986 budget deliberations the Council adopted the following Statement of Legislative Intent:

In approving the increased appropriation for Indigent Defense Services, it is the intent of the City Council to recognize the issues of caseload and salary. This increment of \$75,000 is to address salary comparability with the City Attorney and caseload standards adopted by the County and State Bar Associations. In an attempt to effect a more balanced justice system and work toward meeting these goals, it is the Council's intention that the Public Safety Committee will review and make recommendations.

City Council Resolution 27687 which outlined the Council's 1987 work program, prioritized study of public safety issues, stating that:

The Council has developed a comprehensive public safety agenda designed to create a climate for . . . the administration of justice for all Seattle citizens.

The City Council then asked its Central Staff to perform an audit/survey on the issues of public defender caseloads and salary comparability as part of its 1987 work program. Specifically, this report explores the following issues:

- o Caseloads: Are local public defender caseloads too high and should they be reduced? How do local public defender programs' caseloads compare with national caseload standards and with the caseloads of other public defender programs?
- o Salaries: Are local public defender salaries adequate? How do they compare with the salaries of other public defenders and other public trial attorneys? Should local public defenders receive salary parity with Assistant
- o Representation Issues: Are public defenders able to provide adequate representation to their clients given the caseloads that they carry?

### Scope

To gather information for this report, Council staff interviewed relevant Court and City Attorney's Office staff, judges, representatives from the Public Defense Program, representatives of the local bar, and public defenders. Additionally, staff observed the Municipal Court arraignment calendar, examined background materials from national studies and other jurisdictions, and conducted a limited salary survey of other public defender programs in Washington and elsewhere in the country. While all of the people interviewed were very helpful, staff would especially like to thank Esther Bauman and Forrest Gamble of the Seattle Municipal Court for taking extra time to delve into the Court's statistical information.

## II. Background

An indigent person who is accused of a felony has had a right to free legal counsel ever since the 1963 U.S. Supreme Court decision in *Gideon v. Wainwright*<sup>1</sup>. This right was expanded to include misdemeanor cases involving possible incarceration in *Argersinger v. Hamlin* in 1972<sup>2</sup>.

The City of Seattle has provided public defense services in Seattle Municipal Court since 1969, three years before these services were mandated. In 1968 the City Council appropriated \$25,000 in City funds to start a public defender program. Later that same year the City approved a five year Model Cities program which included \$258,000 for a public defender project. Using these funds, The Defender Association (TDA), a non-profit corporation, was formed in early 1969. TDA initially provided all of Municipal Court's indigent defense services including both client representation and screening for indigency. The system is now more complex and involves another non-profit defender agency, private assigned counsel, and a County program -- the Public Defense Program (PDP).

The Public Defense Program, formerly called the Office of Public Defense, is a program of the King County Department of Human Resources. PDP has three major functions: 1) it screens clients for financial eligibility, 2) it negotiates and administers contracts with the non-profit defender agencies, and 3) after screening clients, it refers them to the appropriate defender program.

The City of Seattle contributes approximately 30% of the funds that PDP passes on to the agencies. The County contributes the remainder for such services as representation of indigents in juvenile, felony, district court, and involuntary commitment screening services and contract administration.

Associated Counsel for the Accused (ACA) was formed in 1973 and began to provide services in Municipal Court in 1976. At that time TDA received 85% of the cases in Municipal Court and ACA the remainder. ACA's share has grown over time and presently, it provides nearly half of Municipal Court's public defense services.

### **Major Methods of Providing Public Defense Services**

Public defense services are provided primarily in three ways, 1) a public defender program, 2) an assigned counsel system, or 3) a contract system. Examples of all three were surveyed in preparation of this report. A brief discussion of each of the methods follows:

#### **Public Defender Program**

A public defender program is generally characterized as a program in which full or part-time salaried staff provide representation to indigent defendants in a particular jurisdiction. Services can be provided through either an independent non-profit corporation or through an in-house government program. In addition to attorneys and support staff such as secretaries and paralegals, public

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<sup>1</sup>*Gideon v. Wainwright*, 372 U.S. 335, 83 S.G. 792, 9L d. 2d 799 (1963).

<sup>2</sup>*Argersinger v. Hamlin*, 407 U.S. 25, 92 S Ct. 2006, 32 L Ed. 2d 530 (1972).

defender programs may employ specialized staff such as social workers and translators.

While public defender programs are the primary providers of indigent defense in only 34% of the nation's counties, they are the predominant service providers in 43 of the largest 50 counties in the U.S. and serve 68% of the nation's population<sup>3</sup>.

### Assigned Counsel System

Sometimes private attorneys are assigned to represent individual defendants on a case-by-case basis; this arrangement is known as an assigned counsel system. The "system" can be as simple as one in which a list of attorneys willing to take these cases is developed and an individual judge appoints a lawyer from this list. Or, the system can include an administrator who first determines the financial eligibility of individual defendants and, if they are eligible, refers them on to attorneys.

Assigned counsel systems are present in 60% of the counties in the United States, but they are most likely to be found in smaller counties which can not support a full-time public defender<sup>4</sup>.

### Contract Systems

Contract public defense systems are the newest means of providing indigent defense services. Such systems exist in about 6% of the counties in the nation, most of which have populations under 50,000<sup>5</sup>. A jurisdiction may contract with an individual attorney, a law firm, a local bar association, or a non-profit corporation to provide services to the indigent. A 1982 Department of Justice survey found that in half of the contract programs surveyed, the contract was awarded through a competitive bid process. The same survey found that the most common type of contract awarded is a block grant<sup>6</sup>.

Some of the literature distinguishes public defender systems from contract systems by the source of payment for the attorneys; if the attorneys are on salary with the local or state government, the program is considered to be a public defender program<sup>7</sup>. Other authors distinguish public defender programs from contract systems based on such criteria as the existence of specialized support staff and whether or not the contract is awarded through competitive bidding.

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<sup>3</sup>Gaskins, Carla, Criminal Defense Systems: Bureau of Justice Statistics Report, Washington, D.C. 1984.

<sup>4</sup>Ibid.

<sup>5</sup>Ibid.

<sup>6</sup>Spangenberg, Robert et al., National Criminal Defense Systems Study, U.S. Department of Justice, Bureau of Justice Statistics, Washington, D.C. 1982.

<sup>7</sup>Gaskins, Carla, Criminal Defense Systems: Bureau of Justice Statistics Report, Washington, D.C. 1984.

Low-bid contract systems have been widely criticized because they tend to lack quality control. Such systems have been the subjects of successful legal challenges elsewhere in the country. For instance, the Arizona Supreme Court invalidated Mohave County's contract system in 1984, citing that this system violated a defendant's due process rights and right to counsel because it did not control for such things as the competency of attorneys, the reasonableness of their caseloads, or their need for adequate support staff. The Court referenced the NLADA caseload standards as appropriate standards for public defenders, saying:

Of course, these recommendations are the "maximum allowable" and do not take into account differences in practice in a particular jurisdiction, such as the percentage of cases that are plea bargained and the number that actually go to trial. Both the amount of time spent investigating a matter to determine what is a fair plea bargain and the time in preparing for trial can vary greatly from case to case<sup>8</sup>.

### King County

King County's public defender system is administered by PDP and is actually a hybrid of several of the systems mentioned above. Services are primarily provided by three non-profit agencies, ACA, TDA, and Society of Counsel Representing Accused Persons (SCRAP). Two of the three, ACA and TDA, contract to provide services to both Seattle Municipal Court and the County. (The City provides approximately 30% of PDP's budget.) King County uses a negotiated contract process rather than bids. Services provided by the non-profits are supplemented by an assigned counsel system which is used for conflict cases. A conflict case is one in which several defendants are faced with charges arising out of the same incident. They cannot be represented by the same agency because the interests of one defendant might be adverse to the interests of another<sup>9</sup>.

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<sup>8</sup>State v. Smith, 681 P2d 1374.

<sup>9</sup>ABA Project on Standards for Criminal Justice, Standards Relating to the Prosecution and Defense Function, Defense Function 3.5, New York, 1970.

### III. Public Defender Caseload Capacity

Finding 1: The City's contracting guideline of 400 Municipal Court cases per lawyer annually is excessive.

When the City of Seattle began contracting for public defense services in 1969 there were no caseload standards built into the contract. 1983 was the first year that caseload standards were built into PDP contracts at all and according to PDP, they are used as a "contracting guideline," not as an actual caseload regulator. The 1983 caseload guideline was 500 cases per attorney. That was dropped to 400 cases per attorney in 1984, a standard which has remained since that time. Neither PDP, nor the public defender agencies could recall how either the original figure of 500 cases per attorney or the subsequent one of 400 cases per attorney was derived. Changes in the level of practice now required in Municipal Court suggest that this figure should be revised once again.

(Findings 1a, 1b, 1c, and 1d are sub-findings of Finding 1.)

Finding 1a: Seattle's public defender caseload standards and actual caseloads exceed local and national caseload standards. All caseload standards involved are subjective, and therefore should be used cautiously.

Local, State, and national bar associations have issued standards for public defenders. The driving force for the creation of these standards has been a concern that public defenders provide effective representation for their clients. These standards generally cover such things as attorney qualifications, supervision and support staff ratios, and attorney caseloads.

National guidelines have been developed by the National Legal Aid and Defender Association (NLADA), and endorsed by the American Bar Association (ABA). These guidelines cite that the maximum allowable caseload for an attorney handling misdemeanors should be 300 cases per year. This figure is echoed by both the Washington Defender Association (and endorsed by the Washington State Bar Association) and the Seattle-King County Bar Association (SKCBA) in their caseload standards for public defenders.

Although all of the above standards are based upon information about reasonable caseloads for public defenders, they are not based upon exhaustive scientific research. However, they are the best measures available in the field today and serve as a good reference point for discussions regarding appropriate caseloads for local public defenders.

Table 1 summarizes caseload standards developed locally and nationally, and compares them to budgeted and actual local caseloads.

Table 1

Caseload Standards Compared With Actual Local Caseload Information

Local and National Standards /Budgeted Caseloads/ Actual Caseloads

	<u>NLADA</u> <sup>10</sup>	<u>SKCBA</u> <sup>11</sup>	<u>WSDA</u> <sup>12</sup>	<u>City Contract</u>	<u>ACA Actual</u>	<u>TDA Actual</u>
<u>cases/yr</u>	300	300	300	400	400-450	360

As shown in Table 1, all of the caseload standards, both local and national, are 300 cases per attorney/year. The caseload benchmark that the City uses for developing public defender budgets is 400 cases per attorney. ACA attorneys carry higher caseloads than the budgeted standards -- up to 450 cases each per year, and TDA lawyers carry 360 cases each per year.

Finding 1b: The City's caseload standard is slightly lower than the County's although the two are not strictly comparable. City misdemeanor practice is more complex than County practice. Staff found that cross-jurisdictional caseload comparisons have limited relevance.

Staff gathered caseload data from public defender organizations both locally and nationally. A review of this data made it apparent that caseloads simply are not comparable between jurisdictions. Varying local practices or attitudes make it difficult to draw parallels across jurisdictions. For example, a public defender in a jurisdiction where the prosecutor is willing to make plea bargain agreements that don't include jail time is more likely to handle a large number of cases than one in a jurisdiction with a "hard-nosed" prosecutor. It is difficult to compare caseloads across jurisdictions because different prosecutors, judges, etc. create different environments. This conclusion was also reached by staff who recently conducted a major King County study comparing public defense models.

The County uses a different caseload standard than the City for its contracts for misdemeanor representation. In the County each public defender is expected to maintain a caseload of 450 and to put in 40 billable hours per week or 1920 billable hours per year. (The City chose to use the lesser billable hours standard of 1650 in 1981 and a caseload standard of 400 in 1984.) While no research has been done comparing the amount of time it takes to complete a misdemeanor case in the County as compared to the City, City practice appears to be more complex. For instance, during 1986 nearly half of all City misdemeanor cases involved jury requests (and therefore pre-trial hearings and case preparation). In the County system, a little over one quarter of all cases involved jury requests. Gross closed case data collected by PDP also show that

<sup>10</sup>NLADA, Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts, Guideline III-5, 1983 draft.

<sup>11</sup>SKCBA Indigent Defense Services Task Force, Guidelines for Accreditation of Defense Agencies, Guideline I-A, Seattle, WA 1982.

<sup>12</sup>WSDA, Standards for Public Defense Services, Standard I, Seattle, WA 1984.

the average City misdemeanor took public defender agencies nearly 20% longer to complete than a King County District Court misdemeanor. Therefore, while the City's caseload standard is lower, City cases take longer due to their complexity.

Finding 1c: The workload and the complexity of Municipal Court practice have increased in recent years, creating a need for lower caseloads for public defenders.

Municipal Court workload has increased in recent years for a number of reasons. For example, in 1981 (after the bulk of the SKCBA report on public defense guidelines and caseload standards had been completed) Municipal Court became a Court of Record. Prior to that time a defendant who was convicted in Municipal Court was automatically entitled to a new trial in Superior Court. In 1981 this changed and defendants convicted in Municipal Court may now appeal only on technical, legal grounds. Thus, it became more important to make a good record in Municipal Court in order to preserve any grounds for appeal in case of a conviction.

Other examples of the increasing complexity of Municipal Court representation include the explosion in DWI (driving while intoxicated) litigation and the concomitant increase in requests for jury trials because of the mandatory jail time attached to a conviction. Also, the impact of increasing numbers of mentally ill defendants and non-English speaking defendants processed by the criminal justice system contribute significantly to increased caseload complexity.

An offshoot of the increase in the number of jury trial requests has been a growth in the number of pre-trial jury hearings required. As shown in the Table 2, while the number of jury trials heard has remained fairly constant there was a more than four-fold increase in requests for jury trials between 1981 and 1986. Even though the vast majority of these cases are disposed of prior to trial, each must be prepared for as if it were going to go to jury trial. Jury trials require a great deal more case preparation than bench trials (trials held before judges without juries). For example, a case set for a jury trial usually involves at least one pre-trial hearing. A case set for a bench trial will skip this intermediate step.

**Table 2**  
Jury Trial Requests Vs. Actual Numbers of Jury Trials Heard

	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
<u>Jury Trials Requested</u>	1,459	3,497	4,376	6,043	6,386	8,145
<u>Jury Trials Heard</u>	392	465	504	445	459	370

(Source: Seattle Municipal Court)

Municipal Court staff believe that the ballooning caseloads of both public defenders and Assistant City Attorneys have had a tremendous impact on the func-

tioning of Municipal Court. Administrative staff and judges feel that because of overloads public defenders and Assistant City Attorneys are frequently unprepared and must seek continuances. As illustrated in Table 3, these perceptions are borne out by the statistics; during a six-month period in 1987 the Court experienced nearly a 300% increase in continuances over the same period in 1985. If a continuance is granted the Clerk's Office must reschedule the case, requiring additional paperwork, clerical time, and the reservation of additional court time which could otherwise be used for another case.

Table 3

Municipal Court Jury Trial Continuances

<u>Time Period</u>	<u># of Continuances</u>	<u>% Increase since 1985</u>
1/85-6/85	149	---
1/86-6/86	279	87%
1/87-6/87	592	297%

(Source: Seattle Municipal Court)

Finding 1d: Local public defenders appear to carry higher caseloads than their counterparts in the private bar.

The City's contract with the public defender agencies is based upon the expectation that each FTE public defender will carry a caseload of 400 cases annually. This assumes that the average case will take four hours to complete. Based on this assumption public defender caseloads appear to be much higher and the number of hours devoted per case lower than in the private sector. Staff contacted the Washington Trial Lawyers Association (WSTLA) for information regarding criminal defense lawyer caseloads in the private sector. WSTLA estimated that an experienced trial attorney would devote approximately seven hours to a non-jury case and 25 or more hours to a case requiring a jury trial in Municipal Court. The average caseload for an experienced private attorney practicing primarily in Municipal Court would be about 150-175 cases per year.

As a rule, public defenders expect to work evenings and weekends. One practicing public defender who was interviewed for this study described her "typical" work week as consisting of 12 hour days, Monday through Friday, and if she "was lucky," only one day during the weekend. She did not believe that her schedule was atypical of public defenders in King County. (It is important to note that nearly everyone who was interviewed for this study believed Seattle's public defenders to be both overworked and severely underpaid.)

Recommendation 1: The City should lower its budgeting assumption of 400 cases per FTE public defender attorney.

Staff research has shown that while the City's caseload standard has remained unchanged in recent years, the complexity and time required in order to provide representation in Municipal Court has increased. While caseload standards are not strictly comparable, Seattle public defenders do carry a higher caseload than national and local standards recommend. Finally, it is almost universally

recognized by those familiar with public defender caseloads that Seattle's public defenders carry an unacceptably high caseload, and in fact, available statistics support these conclusions.

Finding 2: There is some question as to whether or not the data provided to PDP regarding the amount of attorney time spent on each case are completely accurate.

PDP develops its standards for attorney caseload based upon average closed case data. PDP staff believe the data to be accurate and thus support maintaining lawyer caseload standards at their present level. However, staff at the King County Department of Human Resources, which oversees PDP, believe that public defender time records lack accuracy. This belief is based on a conclusion that estimated time values are applied to most cases. This perception was supported by the director of ACA who feels that it is difficult to keep accurate time records due to attorney time constraints. Therefore, it appears that these caseload measures may not be totally accurate. (TDA believes the information to be "in the ballpark.") Since both agencies rotate attorneys through the Municipal Court unit fairly regularly, the only way to determine the actual time required to provide representation to indigent defendants in Municipal Court is through accurate reporting of attorney time per case. In fact, accurate data would probably support lower caseloads. Because budgeting assumptions are based upon public defender closed case data, it is important that staff time records be accurate.

Recommendation 2: Methods for keeping staff time records should be improved. If it is not possible to increase the accuracy with which these records are kept under the current system, PDP and the agencies should explore other methods for obtaining this information, such as periodic sampling.

Finding 3: The City's reimbursement rate for Rules of Appeal from Courts of Limited Jurisdiction (RALJ) cases is too low. This has required the public defender agencies to supplement the cost of doing appeals by taking away from actual Municipal Court representation.

In addition to contracting with the agencies for actual representation of indigent defendants in Municipal Court, the City also contracts separately for appeals. This area, known as RALJ appeals (Rules of Appeal from Courts of Limited Jurisdiction), is one area in which the practice of both agencies is fairly parallel. TDA reports that it took their attorneys nearly 25 hours for each RALJ appeal filed in 1987. ACA reports that while their figures for RALJ appeals vary, during the last quarter of 1986 ACA attorneys also spent an average of nearly 25 hours per RALJ appeal. The average for both agencies for 1986 was 20.5 hours per case. The difference between the City's reimbursement rate for RALJ appeals and the cost to the agencies to provide this service is approximately \$63,000. (See Appendix B for formula.) Because the agencies are undercompensated for RALJ case costs, they must supplement this function with funds earmarked for trial court representation. This drives salaries down and caseloads up.

Recommendation 3: The City should increase its reimbursement rate for RALJ appeals so that it more accurately reflects the actual cost per case.

If the City's RALJ case reimbursement rate is to adequately compensate for the cost of these cases to the agencies, it will have to increase its reimbursement

rate from \$487.50 to approximately \$885 per case. This is an additional cost to the City of approximately \$63,000 and would provide enough funds for TDA to increase salaries by over \$1500 per lawyer. ACA should be able to provide an additional .3 FTE for Municipal Court, allowing it to drop caseloads further.

## IV. Public Defender Salary Issues

### Introduction

Local public defenders have long been concerned that their salaries do not measure up to either the salaries paid to prosecutors and Assistant City Attorneys or to public defenders elsewhere in the nation. This concern has been shared with the City Council, particularly by TDA whose salaries are substantially lower than salaries paid either to Assistant City Attorneys, deputy prosecutors, or even other local public defender programs like ACA and Society of Counsel Representing Accused Persons (SCRAP).

One question that has been raised numerous times is whether public defenders should have salary parity with Assistant City Attorneys. According to Bob Spangenberg, of Spangenberg Associates (a consulting firm specializing in issues related to public defense), salary parity is "not widespread, but the trend towards it is increasing. At the present time 10-20% of public defender programs have salary parity. Five years ago there were only a couple of programs in the entire country where public defenders had parity." Mr. Spangenberg stated that parity usually occurred as a result of one of the following factors: unionization of public defender and prosecutorial staff; legislation; or contract negotiation with the County.

In order to determine how salaries paid to Seattle's public defenders compare with salaries paid to public defenders elsewhere, a small salary survey was conducted of Washington public defender programs and several public defender programs elsewhere in the country.

Four of the public defender programs surveyed for this report have salary parity with their prosecutors. In one case this was required by state legislation. In another the non-profit public defender program designed its salary schedule so that it was able to pay the same salary as the prosecutor for beginning attorneys. The other two programs were "in-house" programs --part of the local county government. In-depth information about each of the programs surveyed is included in Appendix A.

Finding 4: Salaries paid to TDA attorneys are low when compared to the salaries paid to public defenders elsewhere in Washington and in comparable public defender programs elsewhere in the country.

Of all of the public defender programs surveyed, The Defender Association has one of the lower starting salaries. However, by and large all of the programs have very low starting salaries. As shown in Table 4, the one exception is the Hennepin County public defender's office in Minnesota where attorneys not only have salary parity with prosecutors per state law, but also belong to the same union. ACA's starting salary was in the mid-range for all of the programs surveyed.

Table 4

Starting Salaries for Public Defender Programs Surveyed\* (as of 5/1/87)

Pittsburgh, PA	\$17,700**
Snohomish County, WA	18,000
The Defender Association, Seattle	18,500
Dade County, FLA	19,000***
San Diego, CA	20,000****
Spokane County, WA	21,288+
Everett contract law firm	20,000-22,000
Associated Counsel for the Accused, Seattle	21,500
Multnomah County, OR	21,700
Pierce County, WA	21,832+
Hennepin County, MN	27,500+

\* This salary survey was not a representative sample and therefore is not statistically significant.

\*\* This salary is based on a part-time (four-day work week) schedule. Attorneys in the Pittsburgh PD office are encouraged to maintain a part-time civil practice. Leshner Nauhaus, the director, estimates that "most people make at least \$10,000 a year in their outside practices."

\*\*\* The San Diego Board of Supervisors recently voted to give public defenders salary parity with San Diego's prosecutors, whose starting salary is \$29,100, but this policy hasn't been implemented yet.

+ Each of these public defender agencies has parity with its local prosecutor's office. All of them have in-house defender systems.

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Because TDA has not yet concluded its union contract negotiations it has not instituted a new salary scale for 1987. TDA anticipates, however, that once negotiations are completed, all attorneys will get a pay raise and attorneys on the lower end of the salary scale will get an increase of approximately \$2000.

(Findings 4a and 4b are sub-findings of Finding 4.)

Finding 4a: There is a significant difference between the starting salaries for local public defenders and their counterparts in both the City Attorney's Office and the King County Prosecutor's Office. This gap remains for TDA lawyers, but diminishes over time for ACA lawyers.

As shown in Table 5 below, salaries at ACA start off in the middle range for public sector criminal trial lawyers, but their annual step increases are approximately twice those of any of the organizations listed with the exception of the King County Prosecutor's Office. ACA attorney salaries eventually catch up and (for an Assistant City Attorney who decides to stay in Municipal Court) pass most of the Assistant City Attorneys in the Criminal Division because Assistant City Attorney I's hit a salary cap at \$32,531.

Attorneys at TDA are at the bottom end of the salary scale for public attorneys in King County. Attorney salaries at TDA never catch up with any of the other programs. After five years, a TDA lawyer is still making \$4,000 less than a beginning Assistant City Attorney. Based upon TDA's salary schedule, it would take a TDA lawyer seven years to reach a salary level that is equivalent to the starting salary for an Assistant City Attorney.

Table 5

Salary Comparisons for Public Criminal Trial Attorneys in King County (5/1/87)

<u>Experience Level</u>	<u>City Atty.*</u>	<u>King Co.*</u>	<u>ACA</u>	<u>SCRAP+</u>	<u>TDA</u>
0-1	\$27,833	\$24,000	\$21,500	\$22,000	\$18,500
1-2	28,918	26,600	23,500	23,100	19,500
2-3	30,067	29,600	26,000	24,420	20,750
3-4	31,320	32,700	29,000	27,106	22,200
4-5	32,531	35,700	31,500	30,087	23,800

\*Both the King County Prosecutor and the City Attorney's Office have several salary classifications for attorneys, with step increases in each category. The salary classifications provided above are for the Assistant City Attorney I and Deputy Prosecutor I classifications. Once the top of the range has been reached, an employee has moved to the top of the range, he must be reclassified and given another job in order to get a salary increase. In the defender agencies, however, there is only one salary schedule. Each year the employee will move up one more rung. At TDA he will top off at year ten. At ACA the salary increases flatten out after year nine, but continue nonetheless.

+ Society of Counsel Representing Accused Persons (SCRAP), is a non-profit public defender organization that primarily provides representation to juveniles, adults charged with felonies, and adults facing involuntary commitment proceedings.

Another way to look at the issue of public defender salaries is to compare them with the starting salaries for their counterparts in local prosecutor's offices. Table 6 shows the percentage difference between starting salaries at local prosecutor's offices and public defender agencies.

Table 6

Differences in Starting Salaries Between Seattle Public Defenders, King County Deputy Prosecutors, and Assistant City Attorneys (as of 5/1/87)

<u>PD Program</u>	<u>Jurisdiction</u>	<u>% that PD Salary is Lower than Prosecutor's</u>
TDA	Sea. City Attorney	33%
ACA	Sea. City Attorney	23%
TDA	King County Prosecutor	23%
ACA	King County Prosecutor	10%

Table 7 shows the differences between public defender and prosecutor starting salaries in some of the other jurisdictions surveyed. In most cases outside of King County, there was not a great difference between the starting salaries of the two offices. A comparison of Tables 5 and 6 illustrates that starting salaries at TDA are more than \$9000 lower (a 33% difference) than those of their counterparts in the City Attorney's Office. ACA's starting salaries are a little closer -- resulting in a \$6000 (23%) difference. Only one of the jurisdictions surveyed showed as great a difference in salary levels as those between TDA and the City Attorney's Office. That was San Diego, which was the subject of a lawsuit for its low-bid contracting system. Salaries in San Diego should be increasing because its Board of Supervisors recently voted for salary parity.

Table 7

Salary Differences Between Public Defender and Prosecutor Starting Salaries in Jurisdictions Surveyed: \*

<u>Jurisdiction</u>	<u>% that Public Defender Salary was Lower than Prosecutor's</u>
Spokane Cty., WA	0%
Pierce Cty., WA	0%
Multnomah Cty., OR	0%**
Hennepin Cty., MN	0%
Dade Cty., FLA	5%
Snohomish Cty., WA	19%
San Diego Cty., CA	31%

\* This survey was not a representative sample of jurisdictions. Thus, the information presented is for illustrative purposes only and has no statistical significance.

\*\* Salaries are identical for first three years. After that prosecutor salary increases at a faster rate than PD's.

Finding 4b: Lower salaries and a lack of a career path appear to affect the ability of the public defender programs to recruit and retain lawyers, particularly minority lawyers. The lower salaries of TDA make it especially vulnerable to turnover and recruitment problems.

The public defender agencies charge that their low salaries make it difficult for them to recruit top lawyers and that it is especially difficult for them to recruit minority attorneys. They also maintain that low salaries and high case-loads make it difficult for them to retain experienced attorneys. Retention and recruitment of experienced attorneys appear to be a bigger problem for TDA than for either ACA or the City Attorney's Office.

TDA is particularly concerned because recently a number of minority attorneys have left TDA for better-paying jobs with public agencies, such as the City Attorney's Office and the EEOC. TDA's minority representation as reflected in its 1987 contract with PDP is 17%; ACA's is 27%. Thirty per cent of the City Attorney's Office staff are minorities. Because there are fewer than 40 minority law graduates in Washington each year, and many law students must borrow substantial amounts of money in order to graduate, public agencies frequently must compete with well-paying private law firms for the services of minority law graduates. Agencies that cannot offer competitive compensation have difficulty recruiting minority lawyers.

While TDA believes that it is able to recruit quality law graduates, it reports that it has been unsuccessful at recruiting lateral transfers. TDA cited one recent example to illustrate this point -- an ad was placed in the National Legal Aid and Defender magazine advertising for an experienced attorney -- it received one response. ACA, on the other hand, has been able to recruit some attorneys with prior experience, but reports that it occasionally loses experienced lawyers to the City Attorney's Office because of salaries. This was confirmed by the City Attorney's Office.

Of the other public defender programs surveyed, those that had salary parity with their local prosecutor's offices experience some degree of lateral transfers between programs -- public defenders move to prosecutor's offices, and vice versa. The programs that do not have salary parity have experiences that parallel Seattle's; lawyers move from the public defender program to the prosecutor's office, but the reverse does not occur.

Most lawyers leave the Criminal Division of the City Attorney's Office after about three years. TDA reports that, in the past, they lost attorneys once they had three to five years of experience, but recently they have been losing attorneys with significantly less experience than that. They believe that their attrition rate is due primarily to their low salaries. As was shown in Table 5 on page 13, Assistant City Attorneys have substantially higher starting salaries than new attorneys at either of the two public defender agencies. However, the step increases for attorneys in this classification (Assistant City Attorney I) are rather flat. They stop entirely after year five.

The City Attorney's Office reports that most lawyers who leave the Criminal Division either go to the Civil Division where they will be moved to a new salary schedule, or if they want to stay in criminal law, they move to the King County Prosecutor's Office where their salaries will continue to increase. It is important to note that the City Attorney's Office has this internal mechanism for professional growth and increased earnings -- a move to the Civil Division. An attorney who moves to the Civil Division can gain experience that can enable

movement into a private law firm (at greater remuneration). Lawyers in the two public defender programs can move from misdemeanors to felonies, a job requiring greater skill and responsibility, but their agencies have only one salary track along which they make incremental progress. As mentioned earlier, TDA has a salary cap at 10 years of experience. ACA does not have a cap, but its salary schedule flattens out after year nine. Attorneys wishing to make more money must either become supervisors or they must leave the agencies. Neither agency has a second higher salary schedule for "journey" level attorneys that would entice experienced attorneys to stay.

As is shown in Table 8 below, attorneys in the City Attorney's Office practicing in Municipal Court have the highest average salary as well as the highest starting salary. TDA's salaries remain quite a bit lower than salaries in the City Attorney's Office; the large differences reflected in starting salaries carry over into average salaries as well. ACA, however, due to both its more generous annual increases and also to its deployment of experienced attorneys in Municipal Court, makes headway when average salaries between the agencies are compared.

Table 8

Average Salaries for Public Attorneys Practicing in Municipal Court (5/1/87)

Agency	<u>TDA</u>	<u>ACA*</u>	<u>City Attorney's Office</u>
	\$22,144	\$27,375	\$30,615
% Lower than City Atty.	28%	11%	--

\*ACA's highest paid lawyer is not included in these calculations because his salary skewed the average so greatly.

Recommendation 4a: Public defender salaries should be increased so that they are more comparable to those paid to Assistant City Attorneys. Because most of the public defenders assigned to Municipal Court are at the lower end of the salary scale, additional funds paid to the agencies for salary enhancement should be used to increase salaries for the lowest paid attorneys.

Staff believes that the salary disparity experienced by public defenders, especially TDA lawyers, ought to be mitigated to some degree. Staff agrees that it is particularly important that public defender programs be able to recruit and retain minority attorneys so that agency attorneys are more representative of the population they serve. ACA and the City Attorney's Office have been better able to attract and retain minority law graduates than TDA. It appears that if TDA is to do so as well, it must offer more competitive salaries.

If additional City funds are added to the public defense budget, staff feels that they will have the largest impact on Municipal Court representation if they are used first to boost the bottom end of the agencies' (particularly TDA's) salary scales.

Recommendation 4b: Both public defender programs should explore the creation of a two-tiered salary schedule.

Such a schedule could allow experienced attorneys who return to Municipal Court to receive additional remuneration for being team leaders for less experienced attorneys. A two-tiered schedule could enable the agencies to lure experienced attorneys back to Municipal Court, thus enhancing Court functioning. It could also allow the agencies to lure experienced attorneys with the incentive of a career path -- permitting them to develop supervisory skills.

Finding 5: Seattle's public defender system is not typical of programs where public defenders have salary parity with prosecutors. Even if salary parity were a goal for the City, it could not occur without County participation.

As mentioned earlier in this report, public defender programs that have salary parity with their local prosecutor's offices are usually in-house programs. Those that aren't may be regulated by state law or may be governed by the same collective bargaining agreement as attorneys in the local prosecutor's office. Still others may have contract agreements with their counties that give them salary parity.

The City of Seattle is in a unique position with its public defender programs; it contributes approximately 30% of the overall public defense budget for King County, and varying proportions of the budgets of the two agencies serving Seattle Municipal Court. Neither of the agencies has a separate Municipal Court Division in which attorneys stay on a long term basis. Instead, both agencies rotate attorneys through their Municipal Court units. Thus, even if the City were to attempt to provide salary parity with Assistant City Attorneys, the effect of such an infusion of funds would be diluted and the City would be not be guaranteed that all of the funds would be used for attorneys serving in Municipal Court. This is particularly true for TDA, whose salaries are controlled by a collective bargaining agreement.

Recommendation 5: Based upon the type of public defender system in place in King County, salary parity with the City Attorney's Office is not appropriate.

Because City public defense services are provided by non-profit agencies, the City does not have control over the agencies' budgeting decisions. If one agency chooses to provide higher salaries and the other lower caseloads, those are internal agency decisions. A better argument could be made for salary parity if: 1) the City and the County were to agree on such a policy for the entire public defense program, and 2) agency independence regarding budgeting decisions (such as caseloads, staffing levels, etc.) were greatly curtailed. Otherwise, any substantial infusion of City funds, absent a concomitant County commitment, would only provide subsidy to the County.

## V. Issues Regarding Representation

TDA and ACA are independent non-profit agencies that contract with the City and the County to provide public defense services. As such, they have different methods for providing the same services. For example, while both agencies use investigators for Municipal Court cases, TDA also has a social worker assigned to Municipal Court, but ACA does not.

Although PDP's contract caseload "benchmark" for public defenders in Municipal Court is 400 cases per attorney annually, the two agencies approach caseload (and salary) distribution very differently. TDA believes that its attorneys cannot provide adequate representation for their clients if each attorney must carry a caseload of 400, and has instituted the lower internal caseload maximum of 360 cases per attorney. TDA's union contract limits attorney caseloads to 375. Thus, TDA has chosen to hire more attorneys to represent the Municipal Court caseload than PDP's contract would anticipate with the 400 cases per attorney "benchmark," and therefore pays its attorneys a lower salary. ACA, on the other hand, pays higher salaries and requires its attorneys to carry over 400 cases a year.

ACA and TDA are able to use different internal caseload standards because their approach to caseload management differs. One Municipal Court judge has likened the difference in their approaches to basketball's defense strategies; man-on-man defense versus zone defense. Using this analogy TDA relies on a man-on-man defense (or vertical case management), assigning each client to a single attorney. This attorney is then responsible for representing the client at every stage in the client's case, including all pre-trial hearings. ACA uses a modified zone defense (or horizontal case management). Instead of being assigned to an individual client early on in the process, ACA's lawyers are assigned to courtrooms. Each attorney then has the responsibility for representing all ACA clients whose cases are assigned to his courtroom. After the pre-trial jury hearing clients are assigned to individual attorneys who will represent them at trial. This method of case management enables ACA attorneys to maintain higher caseloads. However, ACA's director believes that ACA's method of practice is moving further towards vertical case management. He would like to continue this trend even though it will mean that the number of hours spent per case will rise if he can continue to pay competitive salaries. (\* Evidence of ACA's changing level of practice is evident from their closed case data: in 1983, the average case took ACA attorneys 3.04 hours to complete. By 1986, ACA attorneys were spending 3.78 hours per case, an increase of 20%. PDP expects that because of ACA's evolving philosophy of practice, in 1987 its average case will take even longer to complete.)

Another area where the two agencies differ is in their deployment of specialized support staff in Municipal Court. Both agencies use investigators to do such things as interview witnesses. ACA uses a ratio of one investigator to every four lawyers. TDA has four staff investigators assigned to Municipal Court. In addition to these, TDA also has four trained volunteer investigators assigned to assist Municipal Court public defenders and thus has a ratio of one investigator to every four lawyers. TDA has four staff investigators assigned to Municipal Court. In addition to these, TDA has four trained volunteer investigators assigned to assist Municipal Court public defenders and thus has a ratio of one investigator to every three attorneys. Use of volunteers allows TDA to provide more investigative services at a lower cost than would be possible if it used staff investigators. TDA has also chosen to assign a social worker to Municipal

Court cases. It is his responsibility to find appropriate treatment programs for public defense clients, with a particular focus on developing deferred prosecution alternatives for indigent defendants charged with DWIs. ACA does not have a social worker for Municipal Court.

Finding 6: TDA is very dependent upon interns for the provision of representation in Seattle Municipal Court.

It was noted by judges and others who were interviewed for this study that TDA's attorneys assigned to Municipal Court tend to be less experienced lawyers than those supplied by ACA and the City Attorney's Office. They complained that TDA's reliance on inexperienced lawyers for Municipal Court tends to impede the Court's functioning. Table 9 below compares the experience levels of attorneys assigned to Municipal Court by the two agencies and the City Attorney's Office. For the public defender organizations, it includes attorneys at the trial level, attorneys who do RALJ appeals, Municipal Court supervising attorneys, and for TDA, their training coordinator. Exclusive of attorneys practicing on the trial level, TDA has 5 FTE's assigned to Municipal Court, all of whom are experienced attorneys. This leaves roughly half of TDA's attorneys who are assigned to Municipal Court in the 0-1 year category.

Table 9

Experience Level of Attorneys Assigned to Municipal Court\*

Program	(# of Years of Experience)									total
	0-1	1-2	2-3	3-4	4-5	5-6	6-7	7-8	8+	
City Atty.	n=2 13%	n=5 31%	n=5 31%	n=0 0%	n=0 0%	n=0 0%	n=1 6%	n=1 6%	n=2 13%	N=16 100%
ACA	n=1.5 11%	n=4.76 36%	n=3 23%	n=0 0%	n=0 0%	n=0 0%	n=1 7.5%	n=2 15%	n=1 7.5%	N=13.26 100%
TDA	n=10 38%	n=5 19%	n=1 4%	n=1.8 7%	n=2 7%	n=1 4%	n=.5 2%	n=1.6 6%	n=3.6 13%	N=26.5 100%

\* as of 5/87

According to TDA, at any point in time half of the lawyers in the 0-1 year category are actually "Rule 9" interns. "Rule 9" interns can be: a) law students who have completed their second year of law school, b) law graduates who are either waiting to take the bar exam, or who have taken the exam, but are awaiting their results. Rule 9 interns can practice law under the supervision of an experienced attorney. The interns represented in Table 9 are law graduates.

TDA also uses student "Rule 9" interns in Municipal Court through its regular internship program and defender clinic. TDA estimates that approximately 450 Municipal Court cases per year (a little more than the equivalent of the case-load handled by one full-time lawyer) are handled by these interns, most of whom are supervised by the coordinator of the internship program, a lawyer with 17 years of experience.

Neither ACA nor the City Attorney's Office relies on interns as extensively as TDA does. In fact, as of May, 1987, no attorney in the City Attorney's Office had less than six months of experience.

TDA depends upon its internship program as a training and recruiting ground for its lawyers. TDA argues that due to the high quality of training received as interns, new TDA lawyers are more experienced than lawyers of similar tenure elsewhere. While staff cannot speak to the quality of new TDA lawyers, it is apparent that TDA's internship program is a very important recruiting device for the agency.

Recommendation 6a: TDA should devise a plan that will enable them to place more experienced attorneys in Seattle Municipal Court.

In addition to providing representation to indigent defendants in Seattle misdemeanor cases, ACA provides similar services in a number of King County District Courts. The City currently reimburses the agencies at \$162.50 per misdemeanor case. The County pays a flat dollar amount for a range of cases, averaging \$129-\$134 per case, depending upon the exact number of cases assigned. Because the City provides a higher rate of compensation for misdemeanor cases than the County, ACA reports that it makes an effort to place more experienced attorneys in Seattle Municipal Court. TDA, on the other hand, has only two King County District Court contracts -- one for Seattle District Court, requiring one lawyer; and one for Shoreline District Court, requiring three attorneys. TDA cycles experienced attorneys who need a break from felony work through Shoreline District Court, rather than through Seattle Municipal Court because TDA believes that inexperienced attorneys would be more difficult to supervise at Shoreline than in Seattle Municipal Court. Thus, the County gets the benefit of experienced lawyers (at a lower reimbursement rate) at Shoreline District Court, and Municipal Court is the sole training ground for TDA's legal interns.

Hennepin County's public defender program assigns attorneys to defense teams. Each team includes a complement of new and veteran lawyers. The teams are regularly rotated through all the courts served by the public defender program. Municipal Court would benefit if TDA were to develop a similar program because it is currently the training ground for all of TDA's new lawyers. As such, Seattle Municipal Court has a constant cycling of inexperienced lawyers and interns. A program such as Hennepin County's would allow for close supervision of new lawyers and interns and would regularly cycle experienced lawyers through Municipal Court.

Recommendation 6b: PDP, along with OMB and the public defender agencies, should establish a contract guideline regarding the use of Rule 9 interns in Municipal Court. This guideline should designate the maximum ratio of interns acceptable to use in the staffing of Municipal Court.

It is reasonable to assume that once the ratio of legal interns/lawyers goes beyond a certain point, the Court's functioning will be impaired. Present contract language does not specify how the agencies will provide staffing to Municipal Court. A contract guideline regarding the use of interns in Municipal Court should allow the agencies to continue to use Municipal Court as a training ground for interns. However, this guideline should also establish a ceiling for the number of interns and/or the maximum ratio of interns that each agency should be allowed to deploy in Municipal Court. Such a guideline could lead to smoother Municipal Court functioning.

Finding 7: The City appears to be over-budgeting for the cost of providing representation for the weekday arraignment calendar.

The in-custody arraignment calendar takes place every morning, six days a week. (TDA has the contract for the Saturday arraignment calendar, ACA for weekdays.) The out-of-custody arraignment calendar is scheduled for 18 hours a week, but both calendars frequently run over. ACA, by contract, must provide two lawyers and support staff to staff in-custody arraignments, and one lawyer and support staff to staff out-of-custody arraignments. Since the in-custody calendar usually takes all morning to complete, the equivalent of one FTE attorney should be assigned to this calendar. Given the amount of time scheduled for the out-of-custody arraignment calendar, it could require up to one FTE attorney as well. (ACA initially estimated that it was using 1.5 FTE attorneys to provide this service.) Therefore, it appears that PDP's budget estimates for the cost of staffing the arraignment calendar are excessive. PDP confirms that it has not conducted any empirical research into the level of staffing necessary to conduct the arraignment calendar. Instead, this budget item has been incrementally adjusted each year to reach its current budget level of \$217,465. (See Appendix C for further explanation.)

In response to the draft of this report ACA conducted an internal inquiry and provided additional information that indicates that more than two FTE attorneys are necessary to provide staffing for arraignments. (Please see Appendix E for ACA's comments.) While this later information answers some of the questions regarding the arraignment calendar, it demonstrates that ACA ought to be providing at least one additional FTE trial attorney in Municipal Court under the current contract. ACA recognizes this problem and indicates that in September it will be hiring at least one additional FTE attorney for Municipal Court.

Recommendation 7: PDP and OMB should explore the staffing needs of the Municipal Court for the arraignment calendar and, if necessary, make adjustments in the amount budgeted for this purpose.

It appears, based upon the calculations laid out above and in Appendix C, that the City has budgeted for 3.3 FTE attorney (plus support) positions to run the weekday arraignment calendars. However, the staffing assumptions in ACA's contract and the number of hours scheduled for arraignments each week point to a need for slightly less than 2 FTE attorneys. (Because other internal agency budget assumptions have been made based on the present City contract rate, the dollar amount for this line item should not be adjusted until the 1988 budget.)

## VI. Budget Impact of Recommendations

Staff has made a number of recommendations that have possible budget impacts. These recommendations are as follows:

- 1) Adjust the rates of payment for RALJ cases and for the arraignment calendar.
- 2) Lower attorney caseloads/raise salaries (depending upon the agency).

Staff recommends that the City adjust the rates of payment for RALJ cases and for arraignment calendar representation to reflect their cost to the agencies more accurately. This should take place during the planning for the 1988 budget. As mentioned earlier, readjusting the rate of payment for RALJ cases should cost an additional \$63,000. The City might save a similar amount of money once the arraignment calendar costs are reworked.

Staff does not, however, recommend readjusting our caseload/salary assumptions immediately. Prior to making any additional changes, the City and the County should develop a unitary standard for public defender reimbursement.

In prior years the City Council has added more money to the public defense budget hoping to increase the salaries and lower the caseloads of attorneys practicing in Municipal Court. Because the public defense system is a county-wide system and because the City provides only 30% of the public defense budget overall, the City cannot rectify this problem if the County chooses not to participate equally. If the City continues to put large amounts of additional funds into public defense without similar County participation, the City will be subsidizing the County. While the agencies can make some adjustments in their staffing levels, salaries, etc. in order to ascertain that the City receives some benefit from its generosity, the public defender programs serve all of King County and must make management decisions that are rational for their entire agencies. The other alternative would be for the agencies to set up in-house "mini-agencies" whose sole purpose would be to provide services to Seattle Municipal Court. The agencies do not want to do this because it would be divisive and would probably encourage attorney stagnation. Further, TDA might be prevented from pursuing such a strategy because it is unionized.

Staff agrees that the agencies should not set up "mini-agencies" to serve Municipal Court. Rather, staff recommends that the City and County Councils set up a mechanism to discuss and develop uniform caseload and salary standards for the public defender agencies.

If the County and the City are unable to develop a uniform policy regarding public defender salary issues the City may still choose to provide additional funds for public defense. However, if the City chooses to do so, it must recognize that Municipal Court will not experience the full benefit of this increased funding contribution.

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## VII. APPENDICES

## Appendix A

### Public Defender Salary Comparisons

The following are the results of a small salary survey of public defender programs in Washington and elsewhere in the country. Although it is not a representative sample, and therefore not statistically significant, an attempt was made to choose areas elsewhere in the country that had similar characteristics, such as size, demographics, to Seattle.

#### Washington Programs

##### Snohomish County (contact: Al Lyons)

Snohomish County, exclusive of Everett, uses a non-profit public defender program to provide defense services. This program provides comprehensive public defense services, including representation in misdemeanors, felonies, juvenile proceedings, and mental health commitment proceedings. The County reimbursement rate for district court misdemeanor representation is \$140 per case. Public defender salaries start at \$18,000 per year for a beginning attorney, and range up to the mid 30s. Deputy prosecutors at the Snohomish County Prosecutor's Office start at \$22,000 a year. Mr. Lyons reports that their mid-range salaries are fairly comparable, but that "there is a big difference at the high end," where deputy prosecutors receive much higher salaries than public defenders. Despite these salary differences, Mr. Lyons also reports that he has fairly low staff turn-over, and departing attorneys do not ordinarily move to the Prosecutor's Office.

##### City of Everett (contact: Royce Fergusson)

Royce Fergusson is a private attorney whose law firm contracts with the City of Everett to provide representation to the majority of Everett's indigent misdemeanants. He reports that his firm represents approximately 1200 persons per year and is reimbursed at \$87 per case. The firm has two full-time and three part-time lawyers assigned to provide this representation. Mr. Fergusson stated that only experienced attorneys do jury trials, but the firm has very few of these because the "City Attorney is very willing to plea bargain." Mr. Fergusson believes that an inexperienced attorney hired to work in Everett Municipal Court would be paid \$20,000-22,000 per year.

##### Spokane (contacts: Dick Cease, Don Westerman)

Spokane County has a county-wide in-house public defender system, and has had one since 1970. Its public defenders are County employees and are on the same salary schedule as deputy prosecuting attorneys, and have been so since 1976. Compensation is determined based on merit and experience. For salary purposes there are three classifications of attorneys:

<u>Classification</u>	<u>Salary Range</u>
Attorney I	\$21,288-23,520
Attorney II	\$26,652-34,212
Attorney III	\$35,964-46,164

Beginning attorneys start at \$21,288. After six months they receive a 5% step increase, placing them at \$22,352. Excluding the Municipal Court Supervisor, all public defenders practicing in Spokane Municipal Court are in the Attorney I salary classification, and have at least one year of experience.

Mr. Westerman reports that most attorneys stay at the Attorney I classification for two to three years, and then move up. He also reports that salary parity with the Prosecutor's Office has enabled attorneys who wish to do so, to make lateral transfers between the two agencies.

(Although the public defender program is a County program, it provides services to the City of Spokane, for which it is reimbursed by the City.)

#### Pierce County (contact: Jack Hill)

In Pierce County, public defense is provided by the Pierce County Department of Assigned Counsel (DAC), a County department which has been in existence since 1974. DAC has a contract with the City of Tacoma to provide services in Tacoma Municipal Court. Mr. Hill reports that his program is funded on a staff attorney model rather than a per case reimbursement model. If, during the year, the DAC finds that they cannot handle the caseload with their present staff, they will make a supplemental budget request for additional staff.

Pierce County public defenders have had salary parity with local prosecutors since the office's inception in 1974, and uses the same attorney salary classification system. All public defenders assigned by DAC to the Tacoma Municipal Court are in the County Attorney I classification. Salaries for the County Attorney I classification range from \$21,832-33,781, in a series of five step increases. Mr. Hill reports that people generally move up one step each year. In order to move into the County Attorney II classification (with a range of \$33,854-45,711), the attorney's job responsibilities must change and he must be reclassified.

#### Programs Outside of Washington

##### Hennepin County, MN. (contact: Bill Kennedy)

Bill Kennedy, the director of Hennepin County's 100 lawyer, in-house public defender office, reports that public defenders in Minnesota are entitled to salary parity with county prosecutors by state law. As are prosecutors, public defenders are hired through a competitive examination process. Their salaries range from \$27,500 per year for a beginning attorney, to \$70,000 per year for the director. Mr. Kennedy reports that attorneys do not automatically move up the salary scale; they must get good evaluations.

Mr. Kennedy reports that salary parity allows for lateral transfers between his office and the Prosecutor's Office, but that most of the transfers are one way -- from the Prosecutor's Office to his office. (He states that his attrition rate is growing, but that he loses people to private law firms, which can pay substantially higher salaries.)

One interesting feature of Hennepin County's system is their staff deployment model; attorneys are assigned to teams. Each team includes a range of experienced and inexperienced lawyers. The teams are rotated through the County's courts periodically so that all lawyers become experienced in all facets of defense work including misdemeanor, felony, involuntary commitment,

and juvenile work. This team concept allows for closer supervision of new lawyers and does not overload any portion of the court system with inexperienced attorneys. (Mr. Kennedy also reports that his office has an exchange program with one local prosecutor's office allowing attorneys from each office to better understand how the other side works.)

Multnomah County, OR (contact: Jim Henning)

The Multnomah County public defender's office provides services to indigent defendants throughout Multnomah County's court system. Its attorneys handle 11,000 cases per year, approximately 25% of which are misdemeanors. Jim Henning, the program's director, estimates that attorney caseloads are approximately 400 cases per year. Mr. Henning believes that this is possible for two reasons. First, Multnomah County has the highest support staff ratio of any public defender office surveyed: each attorney is backed up by .5 of an investigator, .5 of a secretary, and .5 of a trial assistant. (Trial assistants function primarily as social workers, doing such things as arranging treatment programs for clients, etc.) Additionally, the office has an outreach coordinator, who is responsible for keeping the office up-to-date about such things as new community resources and treatment programs.

San Diego, CA (contact: Alex Landon)

San Diego was the site of a 1983 lawsuit which alleged that San Diego's low-bid contract public defender system resulted in inadequate representation for indigent defendants. The County settled the suit and San Diego has been switching over to a system which contains a mix of an in-house felony program, non-profit public defender programs, and contract offices. Mr. Landon is the director of a non-profit public defender office. Starting salaries for attorneys in his office are \$20,000, with an adjustment to \$21,200 after six months. Annual increases of approximately \$3,000 take place annually thereafter.

Mr. Landon reports that his office suffers from a high attrition rate. He loses attorneys to the Prosecutor's Office and to other public defender offices that can pay higher salaries than he can. He reports that the starting salary for prosecutors is \$29,100. He believes that it is this wide disparity which makes it so difficult for him to retain attorneys. (Mr. Landon also stated that the San Diego Board of Supervisors recently passed a resolution calling for salary parity between prosecutors and public defenders, but that the funds haven't been allocated yet.)

Pittsburgh, PA (contact: Lester Nauhaus)

Pittsburgh has a county-wide public defender program. There is no municipal court system in Pennsylvania, so all misdemeanor criminal cases are handled through the county courts. Pittsburgh's public defender system is one in which there are no public defenders. All attorneys are hired by the public defender program with the understanding that they are being hired for part-time jobs. Lester Nauhaus, the director, estimates that the average public defender works four days a week as a public defender, and maintains a part-time civil practice on the side. Mr. Nauhaus estimates that most people "make at least \$10,000 a year in this outside practice."

The starting salary for a public defender in Pittsburgh is \$17,700 a year. Mr. Nauhaus reports that Assistant District Attorney's starting salaries are higher, but they top off at about \$24,000 as do public defender salaries.

## Appendix B

### Formula for Deriving Reimbursement Rate for RALJ Cases

Contract Estimate for # of RALJ Cases for 1987: 178

Contracted Reimbursement Rate for RALJ Cases for 1987: **\$487.50/case**

OMB Assumption of Average Cost of One Attorney (includes attorney salary, support staff, rent, etc.): **\$65,000**

City's Estimate for Annual # of Billable Hours/Attorney: 1650

Total Amount Allocated for RALJ cases for 1987: **\$86,648**

The formula used for determining the # of hours allowed per case under the current budget is:

$$\begin{aligned} \# \text{ of hours/case} &= \frac{\text{per case rate}}{\text{Total Budget}} = \frac{X}{\text{Total annual \# of billable hours/atty.}} \\ \frac{487.50}{86,648} &= \frac{X}{1650} = 9.3 \text{ hrs/case} \end{aligned}$$

If the average RALJ case takes 20.5 hours, as reported by the agencies, then a full attorney caseload would be:  $1650/20.5 = 80$  cases per attorney annually.

Thus, 2.3 attorneys would be required to represent 178 clients:  $178/80 = 2.3$

Therefore, if it costs an average of \$65,000 to support each attorney position, then the cost of RALJ appeals to the agencies is:  $2.3 \times 65,000 = \$149,500$

The difference between this figure and the budgeted amount is \$62,852.

## Appendix C

### ACA Staffing of Arraignment Calendar

#### Contract guidelines:

A) no less than two attorneys and one support staff one hr. prior to & during **in-custody arraignment calendar.**

B) no less than one attorney and one support staff one hr. prior to & during **out-of-custody arraignment calendar.**

Total # of weekday hrs. scheduled for in-custody calendar (plus one additional hour for consultation): 20 hrs/wk\*

Total # of weekday hrs. scheduled for out-of-custody calendar (plus one additional hour for consultation): 23 hrs/wk\*

Budget assumptions: unit cost of one FTE attorney (plus overhead)= \$65,000  
annual caseload for one FTE attorney= 400 cases

Amount budgeted for ACA's portion of arraignments: \$217,465

Therefore, OMB assumes that ACA will provide 3.3 FTE attorneys to staff Municipal Court arraignments.

\*According to Municipal Court staff, the arraignment calendar, particularly the out-of-custody arraignment calendar, frequently runs longer than the time allocated for it.

## Appendix D

### Issues For Further Study

Some issues which were identified during the course of this study that deserve further inquiry, but do not come under the scope of this study per se. They are as follows:

1. The City's Arraignment Process: According to Seattle Municipal Court statistics, in 1983 50% of all cases (both in-custody and out-of-custody cases) were disposed of at arraignment. By 1985 that proportion had grown to 65%. A recent one-month study showed that 73% of all in-custody cases were disposed of at arraignment. Municipal Court statistics also show that the average arraignment takes two minutes of court time to complete.

According to one public defender who regularly handles in-custody arraignments, indigent defendants are faced with two choices: a) they can plead guilty and will usually be released with credit for time served and a criminal record, or b) they can insist upon their right to trial and stay in jail for two weeks or longer awaiting trial because they will be unable to make bail. Court statistics show that the average amount of time an indigent defendant spends in custody while awaiting a bench trial is seven days. However, pre-trial jail stays of up to three weeks also occur. A 1981 study by NLADA criticized the City's arraignment and pre-trial release process because indigent defendants spent one week in custody awaiting trial. That problem does not appear to have been ameliorated since then. Therefore, the question that must be asked is:

Is the City's system so overloaded (and/or are our pre-trial release procedures so much more restrictive than those in other jurisdictions) that indigent defendants are being punished for insisting upon their due process right to trial?

2. Impact of New Police Officers on the Municipal Court System: Almost all of the interviewees: public defenders, judges, court personnel, and City Attorney's Office staff, expressed concern about the impact that the 70 new police officers who have been added to the City's patrol staff will have on the local criminal justice system. They believe that the impact of these new officers will begin to be felt by the criminal justice system starting in the autumn of 1987. All are concerned that the local criminal justice system is already taxed to its utmost and will have great difficulty handling the increased workload.

Appendix E  
Agency Comments

## THE MUNICIPAL COURT OF SEATTLE



August 17, 1987

Ms. Susan Wilder Crane  
Legislative Analyst  
Seattle City Council  
Seattle Municipal Building  
Seattle, Washington 98104

Dear Ms. Crane,

I am responding to your draft report on Public Defender Salary and Caseload Review. I compliment you on an excellent report - very well researched and written. However, I do take exception to Finding 7 and Recommendation 7 of your report which deal with attorney staffing on Seattle Municipal Court arraignment calendars. I believe you may have underestimated the attorney time necessary to staff these calendars.

In your calculations, you used the amount of time scheduled for arraignments plus the additional hour per day specified in the contract to determine the amount of attorney time required to staff the arraignment calendars. Your calculations used 20 hours per week for the in-custody calendar and 23 hours per week for out of custody. Court statistics kept for the first six months of 1987 indicate that in-custody arraignments averaged at least four hours and 15 minutes per day. I stress that this figure is a minimum because our statistics cover only the time the judge is actually on the bench. As you know the judge may not be on the bench during recesses taken to allow attorneys time to confer with defendants or while waiting for prisoners to be delivered. These recesses can easily extend the arraignment calendar by an hour or more. At any rate, at an absolute minimum, attorney time for in-custody arraignments, including the additional hour for consultation should be budgeted at 26-1/4 hours per week per attorney.

The court does not have bench minute statistics only for the out of custody arraignment calendars, but as you note in your report, out of custody arraignments frequently run beyond the scheduled time.

The activity level on both in-custody and out of custody arraignment calendars is very high. From January - April, 1987, the in-custody calendar scheduled 6,382 defendants an average 1595 per month. The out of custody calendar scheduled 7,272 defendants during the same time period, an average of 1,818 per month. The court expects a 15% increase in criminal filings during 1987 so both averages will be higher by year's end. Arraignments will take more time as caseloads increase. Already, two attorneys are generally present during out-of-custody arraignments even though only one is specified in the City's contract with the Office of Public Defense.

Ms. Susan Wilder Crane  
August 17, 1987  
Page Two

Judge Stephen Schaefer, who normally presides at out-of-custody arraignments, believes at least two and ideally three attorneys should be present at the proceedings. Using only one attorney would according to Judge Schaefer, slow the arraignment proceedings considerably and virtually overwhelm the unfortunate attorney assigned to the calendar. Representation of defendants would suffer as well. Two attorneys, working as a team, gain efficiencies when one interviews defendants and victims outside the courtroom while the other represents defendants in the court. Obviously, arraignments would be much slower if one person had to shuttle constantly in and out of the courtroom.

As you know, in 1981, the National Legal Aid and Defender Association (NLADA) wrote a report in which the Seattle Municipal Court's arraignment process was roundly criticized for the speed at which it operated (among other complaints). Although the court took seriously the report's criticism and implemented some changes, most of the progress made at that time has been eroded over the years as volume has continued to increase. The court has requested in its 1988 budget submittal an additional half time court to do in-custody arraignments. The court believes this addition is necessary to improve the quality of the arraignment process. The court cannot afford to lose attorney coverage for the arraignment process - a distinct possibility if the budget is reduced. Defender agencies may feel compelled to "abide by the budget" and withdraw attorneys from the courtrooms even though arraignments have not been completed.

Again, I compliment you on an excellent draft report. If you have any questions about my comments, please contact me.

Sincerely,



Esther L. Bauman  
Court Administrator  
Seattle Municipal Court

LAW OFFICES OF  
THE PUBLIC DEFENDER  
810 THIRD AVENUE  
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SEATTLE, WASHINGTON 98104  
447-3900

RECEIVED  
AUG 17 1987  
SEATTLE CITY COUNCIL

August 17, 1987

Susan Wilder Crane  
Legislative Analyst  
Seattle City Council  
11th Floor, Municipal Building  
Seattle, Washington 98104

Dear Susan:

Thank you for sending to us for comment your draft report "Public Defender Salary and Caseload Review." We appreciate the thoughtful recommendations you have made. We do have a few corrections and suggestions.

First, we agree with your finding that the 400 case per lawyer guideline is excessive. One clarification -- our union agreement specifies a ceiling of 375 cases per year per lawyer. We are aiming at 360, with a maximum of 375. I'm sorry if I misled you on those numbers. I have been stressing the 360 so much I may have underemphasized the higher number in the contract.

You mention that the 300 standard developed by the Bar, NLADA, and WDA is not "based upon exhaustive scientific research." One additional buttress for the standard is the quality and experience of the people on the SKCBA task force, which unlike WDA and NLADA was not comprised mostly of current defender attorneys. The task force included former prosecutors, a former judge, a current judge, and several private practitioners. They talked with defenders and drew on their own collective experience to develop the standard.

In addition, in 2,807 cases we have closed this year in Municipal Court, we have averaged 6.4 hours per case. As you point out, the practice has become more complex and trials often take longer than in previous years, making the 300 standard realistic. Other misdemeanor courts around the country often have a much lower trial rate than Seattle's.

Susan Wilder Crane  
August 17, 1987  
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We also agree that the district court practice is less time consuming than the Municipal Court work.

We agree wholeheartedly with your recommendation about RALJ funding. On 53 cases closed this year, we have averaged 23.05 hours per case. This figure would increase the additional funding needed under your formula by approximately \$13,000.

With regard to our expected salary increase, we expect it to be between 3 and 4 per cent. Four per cent would yield an increase of about \$740 for starting attorneys, not the \$2,000 mentioned in your draft. One small point -- I don't believe that SCRAP handles any involuntary commitment proceedings, as indicated in a footnote on page 12.

On the question of lateral transfers, we have not been totally successful. We recently hired an attorney with several years experience doing felony level work in the Navy JAG corps. But it is a problem, particularly with minority attorneys. Councilmember Rice referred to us a minority attorney working as a prosecutor in California, who did not pursue his interest here once he knew the salary. With regard to affirmative action, I am pleased to note that a new black attorney started in our Municipal Court section last week. He is a 1987 graduate who worked in our clinical program.

I am concerned about the implications in Finding 5, that the City would not be sure that all of the funds added for salary would be used for attorneys serving in Municipal Court. We have been quite careful to allocate City funds to City work, and would continue to do so. We could explore options with the union if the City provided substantially increased funds for attorneys on the lower end of the scale, and the idea which we have been considering and which you mention of experienced team leaders would be another way of infusing the funds into the City program. The idea of emphasizing the low end of the scale might perpetuate the problem of attorneys leaving after two years as the gap with other public sector attorneys would continue to exist.

We disagree with Finding 6, that we are "very dependent upon interns for the provision of representation in Seattle Municipal Court." It is important to distinguish between Rule 9 interns who are graduates of law school and those who still are in law school. While we assign caseloads to graduates, we do not assign substantial numbers of cases to students still in school. In general, students who are assigned to jury trials

Susan Wilder Crane  
August 17, 1987  
Page 3

handle them in teams of two, with an experienced attorney supervising them.

We do not depend on students to meet our contract requirements. I would point out that the 450 estimated cases handled by students represent only seven per cent of our Municipal Court caseload. As you note in the report, intern supervisor Bob Bock supervises most of those, and he has 17 years of experience. Alan Kirtley, the clinic supervisor, is thoroughly involved in the approximately 80 cases which his students handle, and he has 15 years of experience. The quality of work on these cases is high.

We expend a great deal of energy and training on the intern program. It is a crucial part of our attorney development, and the fact that our new lawyers have been in the intern program often means that they have tried one or more jury trials even before graduation, giving them a big advantage over other graduates and even lawyers with no trial experience. The intern program has several graduates who have become important parts of the justice system outside of the Defender office. Judge Rosselle Pekelis of the Court of Appeals and Margaret Klockars, administrative law judge for the City, are two graduates of the program.

Your draft states that neither ACA nor the City Attorney uses interns. In fact, both do; we had a trial involving a city attorney intern last week.

As you note, the number of Rule 9 interns on staff who have graduated varies. A month ago we had none in that category. We now have two who are awaiting bar results, both of whom worked as interns in our office and in that sense already have had several months of experience. Our policy is that these Rule 9 lawyers will be directly supervised by either the misdemeanor supervisor, the assistant supervisor, the training coordinator, the assistant director, or the director, with no more than two being supervised by each at any given time. The supervisor has a case conference with the intern on each case and a minimum of two jury trials are co-counseled including at least one DWI Data Master case before the Rule 9 intern appears in jury trial alone.

Our more extensive support system which you describe allows more inexperienced attorneys to handle caseloads effectively. I also would note that in your Table 9, the figures indicate that as of May, 1987, we had 57 per cent of our SMC attorneys

Susan Wilder Crane  
August 17, 1987  
Page 4

in the 0-2 year range, and ACA had 47 per cent. In the more than three year range, ACA had 30 per cent and we had 39 per cent.

It is important to note that our training coordinator spends substantial time with the new lawyers, including a twice yearly week long trial advocacy training program. We have an extensive two volume set of jury instructions and a two volume manual on DWI practice. Our office has generated numerous appeal cases concerning Municipal Court practice and mounted successful challenges on issues such as "AGN" test in DWI cases. Our number of inexperienced attorneys may be somewhat higher, but they handle fewer cases per attorney.

Of the 18 attorneys currently assigned to caseloads in Municipal Court, eight have one year or less experience. Of these, six were legal interns with the office and one of those also was an investigator intern here and an intern in the UPS clinic. Recent additions to the staff include a lawyer with two years experience at the Washington Appellate Defender Association.

With regard to Recommendation 5a, we actually contract for cases both in Shoreline and Seattle District Courts. We have one attorney in Seattle District. Also, the County is paying for the more experienced attorneys at Shoreline, in the sense that other divisions (not SMC) subsidize any deficit produced there. We also use Rule 9 student interns as assistant in felonies and juvenile as well as in misdemeanors.

Not all of our new lawyers start in Municipal Court. One lawyer who now has two years of experience and is transferring to SMC later this month obtained his training in the civil commitment division. We also start attorneys in juvenile.

We urge strongly that the Council readjust the caseload/salary assumptions as well as the RALJ payment rate which you recommend. While we agree that the County also should raise compensation, we do not agree that the City should wait before it moves further forward. The first steps can be taken in the 1988 budget regardless of County action, and we can make some adjustments in response to City investment. The two governments can establish a schedule for further progress.

Your memo represents one of the most thoughtful studies of Seattle's public defense program in recent years. We

Susan Wilder Crane  
August 17, 1987  
Page 5

appreciate the opportunity to comment on your draft, and would  
be pleased to answer any questions you might have.

Thank you for your consideration.

Sincerely,

*Robert C. Boruchowitz*  
Robert C. Boruchowitz  
Public Defender Director

RCB:wp

7719C

TO: SUSAN CRANE  
FROM: RNH - A.C.A.  
RE: COMMENTS REGARDING DRAFT REPORT ON PUBLIC DEFENDER ISSUES

The following comments are directed primarily toward finding #7 contained on page 18A of your report (originally omitted from the draft report sent to us). In particular, the amount of personnel committed to handling arraignments is incorrectly stated. A.C.A. is currently providing the services of at least 2 attorneys at each arraignment calendar. This is more than required by contract and something we believe to be necessary in order for those calendars to be handled expediently during the times scheduled. In order to understand how this is currently handled it is necessary to review the process to some extent.

1. The statement that A.C.A. uses a modified "zone defense" or modified "horizontal system" (page 16) is correct. We currently provide a primary attorney to each department. This attorney is primarily responsible for all matters (particularly bench trials set within that court). We assign jury trials to all attorneys except those primarily responsible for arraignment calendars and night court. The coverage is "horizontal" through pre-trial matters and "vertical" through trial. It is entirely "vertical" through many trials which do not have pre-trial motions scheduled or needed.

2. The statements regarding the contract requirements for arraignment coverage are correct.

3. The primary attorney in both Department 1 and 7 (arraignment courts) is assisted by a "back up" second attorney obtained from the unique scheduling of bench and jury trials in Municipal Court (see coverage sheets previously provided). Specifically:

Department 1.: (out-of-custody) The primary attorney is given assistance by a different individual each morning and afternoon. These persons are "assigned" that coverage but may "trade" with another attorney if a conflict with a scheduled trial arises.

Department 7: (in-custody) The primary attorney is assisted by one of two attorneys assigned to this position. The two attorneys alternate in two week intervals. That is, they are assigned to jury trials for two weeks and arraignment coverage for two weeks.

In addition our attorneys attempt to assist each other and assist the court by making themselves available for assistance to whichever calendar appears in need of extra support at any time that their own schedule will permit without detracting from their primary duties to clients. In other words, if an attorney

had planned for a 3 hour trial and that trial becomes unnecessary because of a dismissal or late plea negotiation and the attorney therefore realizes a time saving, he/she may elect either to utilize that time in client contact, preparation for an upcoming trial or may elect to assist with the arraignment process. Whenever possible our attorneys lend their assistance to the arraignment process.

4. While the arraignment calendars are scheduled for certain times, they quite often exceed those hours and in addition the court has occasion to schedule "special" calendars which were not originally contemplated at the time of contract. These may be "special" friday calendars, night calendars or holiday calendars. A.C.A. routinely covers those calendars.

5. I have previously provided to you material attempting to determine the F.T.E. provided by our coverage of 2 attorneys for each scheduled calendar (excluding the "gratis" time of additional attorneys) Assuming a 40 hour per week availability that equivalent is approximately 2.7 F.T.E. We believe we have not only exceeded our contract obligations, but also met the time expectations originally budgeted for. We believe the recommendation to examine the arraignment time is appropriate but that it should examine the "actual" as opposed to "scheduled" time of all calendars and should examine our perceived need for at least 2 attorneys to be present at both calendars.

6. I have previously noted that in examining our coverage on an F.T.E. basis we believe we need to hire an additional attorney at this time and in fact are doing that as of September.

7. I have also provided to you statistics relating to closed case dispositions for 1986 and for the first two quarters of 1987 which I believe demonstrate a very high "favorable result" ratio in the areas of cases dismissed, pleas to lesser charges, acquittals and findings of "guilty" to lesser charges than originally filed. I do not suggest that statistics are in any way the measure of quality representation, but we provide them as one factor (and perhaps the only totally objective one) to be considered. Despite these statistics, we maintain our view that the preferable system (if it can be achieved while maintaining good salaries encouraging experience) is a vertical system. We would prefer the vertical system in part because of the advantages it provides to the client in working with the same counsel at all stages.



**King County**  
**Community Services Division**  
Department of Human Resources  
414 Smith Tower  
Seattle, Washington 98104  
(206) 344-7689

August 17, 1987

Susan Crane, Legislative Analyst  
Seattle City Council  
11th Floor, Seattle Municipal Building  
Seattle, WA 98104

RE: Public Defender Salary and Caseload Review

Dear Susan,

I appreciate the opportunity to comment on your draft report entitled Public Defender Salary and Caseload Review. To provide a context for my comments, I would like to set out the current basis for the County's Public Defense Agreement with the City of Seattle, and its contracts with The Defender Association and Associated Counsel for the Accused:

- ° Both our Agreement with the City of Seattle and our contracts with the agencies are fee-for-service, where the parties have agreed to a definition of units of service and payment is based on delivery of the services. They are not based on reimbursement for actual costs incurred by the contractors.
- ° Because these are fee-for-service contracts, not cost reimbursement contracts, the County does not directly control the salary scales of the agencies. The County and the City have both made significant efforts since 1982 to raise the salaries of defenders by increasing the per case fees to the agencies.
- ° The County also does not control the use of attorneys within the agency. Agency management may shift attorneys among program areas so long as attorneys practicing in each area meet the minimum practice requirements in the County contract.
- ° County policy has been to encourage agencies to find more efficient methods of doing business within the service requirements of the contracts. This has meant that caseload standards are advisory, not mandatory. Since they are the basis for budgeting, the agencies are assumed to have funds to staff to these standards. The significant unplanned variations in actual caseload that have been experienced in recent years have highlighted the need to retain maximum management flexibility if demands for public defender service are to meet in an efficient manner.

Susan Crane  
August 17, 1987  
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My specific comments on the report follow:

1. When the Department of Human Resources was created in 1983, the name of the County agency was changed from the Office of Public Defense to the Public Defense Program. The references to the program should be changed to reflect this. The report also erroneously describes the program as a Department; instead it is a program within the County's Department of Human Resources.
2. Finding 1: The City's contracting guideline of 400 municipal cases annually is excessive.

In 1983, both City and case areas were set at 450 cases annually. The drop to 400 cases in 1984 was requested by the City's Office of Management and Budget. There was some controversy over this change, since the County was not convinced that practice in the Municipal Court at that time was more complex than in the District Courts. That controversy highlighted a theme that is still something of a problem in this report. Changes in operating assumptions for Municipal Court do affect other parts of the system, given that we are contracting with agencies which must serve the needs of both jurisdictions. Your report does a good job of making this point in Section VIII. Any changes in the municipal contract need to be negotiated with the County, with sensitivity for the benefits to the City participating in the regional system.

3. Finding 4: Salaries paid to TDA attorneys are low when compared to the salaries paid to public defenders elsewhere in Washington and in comparable public defender programs elsewhere in the country.

While it is true that TDA has a very low starting salary, the extent to which it is lower than that of ACA and SCRAP is the result of policy decisions made by TDA. Within the provisions of the County contract with TDA, the agency has chosen as a consistent management strategy to staff below the contract's recommended caseload standard. This has meant that increases in unit price for cases made with the intent of increasing attorney salaries have been used instead to lower the number of cases each attorney handles. TDA ends up spending the additional money for salaries, but primarily for the salaries of additional attorneys.

4. Recommendation 5a: TDA should devise a plan that will enable them to place more experienced attorneys in Seattle Municipal Court. TDA should use any additional provided by the City to raise salaries.

As a technical point of correction, the County's 1987 payment for District Court misdemeanors is based on a range of cases. When this range is translated to individual case prices, agencies will receive between \$129 and \$134 per case depending on the exact number of cases assigned, not \$154.45.

Susan Crane  
August 17, 1987  
Page 3

5. Recommendation 7: OPD and OMB should explore the staffing needs of the Municipal Court for the arraignment calendar and, if necessary, make adjustment in the amount budgeted for this purpose.

I concur with your recommendation that says change in arraignment calendar funding be done for the 1988 contract. The agency budgets and fees for all case areas have been established for 1987 and considerable renegotiation affecting caseload areas for both the City and the County would be required to accomplish this change.

In conclusion, I find many of your findings useful to us in future negotiation and management of our contracts.

Sincerely,

Susan Carter  
Manager

SC:BWS:kg

cc: Gerald M. Lorentson, Administrator, Public Defense Program  
Roy Howson, Director, Associated Counsel for the Accused  
Bob Boruchowitz, Director, The Defender Association