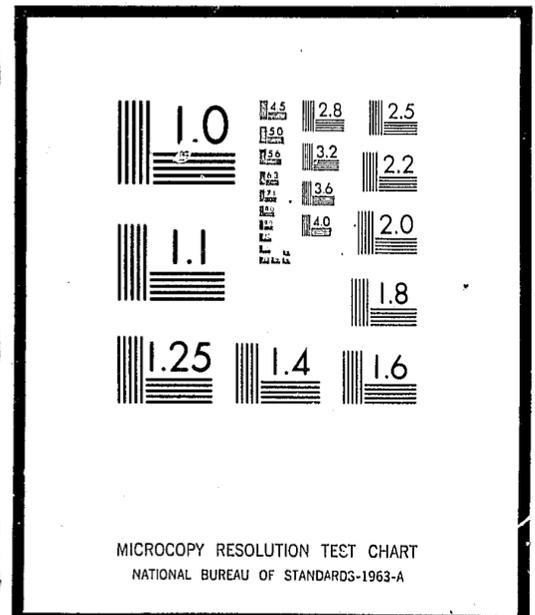


NCJRS

This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U.S. Department of Justice.

U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE
WASHINGTON, D.C. 20531

9/8/76

Date filmed

34359

U.S. DEPARTMENT OF JUSTICE

SYSTEMS DEVELOPMENT STUDY
FOR
ALTERNATIVE LEGAL DEFENSE SERVICES
FOR
EL PASO COUNTY, TEXAS
--Final Report--

Consultants:

Gustav Goldberger, Esq.
Prescott Eaton
Ovid C. Lewis, Esq.
Fred S. Lucero, Esq.
Raymond A. Saulino

February 1976

NCJRS

MAY 10 1976

ACQUISITIONS

NATIONAL CENTER FOR DEFENSE MANAGEMENT
2100 M Street, N.W.
Washington, D. C. 20037
202-452-0620

Law Enforcement Assistance Administration Contract #75-DF-99-0008

This report was prepared by the National Center for Defense Management, a project of the National Legal Aid and Defender Association, pursuant to a grant from the Law Enforcement Assistance Administration of the United States Department of Justice.

Organizations undertaking such projects under a federal government sponsorship are encouraged to express their own judgement freely. Therefore, points of view or opinions stated in this report do not necessarily represent the official position of the Department of Justice. The grantee is solely responsible for the factual accuracy of all material presented in this publication.

TABLE OF CONTENTS

Preface i
Foreword iii
Executive Summary v

I. INTRODUCTION

A. Background 1
B. Statement of the Problem 5
C. Nature of the Request 6
D. Objectives of the Study 6

II. METHODOLOGY

A. The Planning Process 9
B. Investigative Procedures 10

III. DESCRIPTION

A. El Paso County Court System 13
B. Criminal Justice Process 17
C. Court Appointments 21

IV. ASSESSMENT OF DEFENSE SERVICES AS PERCEIVED BY--

A. The Judiciary 23
B. The Private Bar 24
C. The Client Community 26
D. Survey of the Private Bar 27

V. INFLUENCES ON THE FUTURE WORKLOAD OF INDIGENT DEFENSE SERVICES
IN EL PASO COUNTY

A. General Influences on Criminal Caseload 29
B. Trends in Indigency Rate 34

VI. PROJECTED COST OF THE PRESENT ASSIGNED COUNSEL SYSTEM 37

VII. ALTERNATIVE OPTIONS

A. Description 43

1. Defender-Advisor Plan 43
2. Coordinated Assigned Counsel System 44
3. Defender System 46
4. Mixed System 48

B. Projected Budgets 49
C. Capability of Providing Effective Defense Services . . . 60
D. Cost-Effectiveness 86

VIII. RECOMMENDATIONS 91

IX. STATEMENT OF TRANSFERABILITY 95

APPENDICES

A. Resumes of the Study Team
B. Request for Technical Assistance from the County Judge
of El Paso, Texas, March 27, 1974
C. Request for Technical Assistance from the West Texas
Council of Governments, June 6, 1974
D. Sample Voucher Forms
E. Standards for Certification of a Criminal Law Specialist

- F. List of Interviewees
- G. Private Bar Survey Questionnaire
- H. Private Bar Survey Results
- I. Client Community Survey Questionnaire
- J. Client Community Survey Results
- K. Manpower Management Application
- L. Fee Schedule for San Mateo County
- M. El Paso County Court Caseload, 1974

PREFACE

The National Center for Defense Management (NCDM) is grateful to the Honorable T. Udell Moore, El Paso County Judge, for providing active cooperation to the consultant team by making available court staff and office space; this substantially facilitated the study effort.

Thanks are also due Charles R. Sibley, Executive Assistant to the Office of the El Paso County Judge; William R. Starling, Metropolitan Criminal Justice Planner; and Dr. Joseph B. Graves, Jr., Director of Criminal Justice Studies at the University of Texas, El Paso. The time and effort of these gentlemen proved invaluable.

We would also like to thank the many persons throughout the El Paso Criminal Justice System who were most generous with their time and offered opinions and advice to the consultant team. A list of interviewees is contained at Appendix F.

The study team specifically extends its thanks to staff attorney Terry A. Selzer for his dedicated work in connection with this report.

FOREWORD

The National Center for Defense Management (NCDM) was founded late in 1974 through a grant from the Law Enforcement Assistance Administration (LEAA) to the National Legal Aid and Defender Association (NLADA). NCDM was born out of the need to enhance and improve the efficiency of systems for the defense of the poor through sound planning, management assistance and management training, and to maximize the quality of such systems while maintaining their cost-effectiveness.

Under the terms of the LEAA grant awarded to NLADA, the principal goals of the National Center for Defense Management are as follows:

- To conduct management studies and analyses of the operations of existing defender offices and other defense delivery systems, with a view to making practical recommendations which will assist such offices and systems in achieving goals of improved effectiveness, and conduct evaluations of such offices and systems;
- To provide management consultation and technical assistance for defender offices and organized defense systems requesting such services, assisting these offices and systems in their efforts to design and implement improved management systems and procedures;
- To provide management training programs designed specifically for defender managers; and
- To furnish technical assistance to organizations, communities, states or other groups which desire to establish new or improved systems (including defender systems) for the provision of legal representation to eligible criminally accused or convicted persons, or persons facing juvenile court proceedings.

In addition to producing this systems development study for El Paso County, NCDM is available for providing management and technical assistance in implementing any indigent defense systems selected by El Paso County. We are also available to provide assistance in the development of training programs for attorneys who will be representing the criminally accused indigent.

EXECUTIVE SUMMARY

The implication of judicial opinion on the availability of legal defense services to indigent criminal defendants pursuant to the Sixth Amendment of the U. S. Constitution has had a significant impact on communities throughout the United States which are attempting to provide such quality representation in a cost-effective manner. El Paso County has attempted to come to grips with this problem through the provision of outside technical assistance by the National Center for Defense Management (NCDM). The Honorable T. Udell Moore, County Judge for El Paso, through a request to the Law Enforcement Assistance Administration (LEAA), communicated the need for a legal systems development study to address such problems unique to that county.

Nature of the Request

In a letter prepared on March 27, 1975 to the Director of Defender Services, National Legal Aid and Defender Association (NLADA), Judge Moore alluded to the fact that El Paso County was at a crossroads in providing criminal indigent defense services through a court-appointed attorney system; the rising expenditures prompted him to ask NLADA for a public defender study. The request was transmitted through the Criminal Justice Division of the State of Texas, the LEAA Regional Office in Dallas, Texas and the Courts Division Office of Regional Operations, LEAA, in Washington, D. C. The request was forwarded to NCDM for necessary action.

The problem was identified as follows:

County expenditures for criminal indigent defense through court-appointed attorneys is steadily rising. This leads to investigation of effectiveness per dollar of various methods of providing this service.

The request was forwarded because no such assistance was available within El Paso County.

The National Center for Defense Management established two major study goals:

- To assess the quality and cost-effectiveness of the present court-appointed counsel system; and
- To identify alternative legal defense systems available to El Paso County and to analyze the capability of these systems for provision of quality representation to indigent criminal defendants at a reasonable cost to the taxpayers.

Procedures

A preliminary visit to El Paso was made on July 21, 1975 by two NCDM staff members to determine the qualitative and quantitative parameters of the study. A consulting team of attorneys--including one well-versed in constitutional law and another who spoke Spanish--and systems analysts visited El Paso during the period September 9-12, 1975. They performed the necessary interviews and gathered the requisite data. Subsequent to the site visit, NCDM contracted for the administration of the El Paso County private bar and client community surveys.

Report Preparation

A report was prepared which addressed these areas:

- The constitutional requirements and legal precedents for quality representation to indigent criminal defendants;
- The major legal defense systems which could be employed in providing such representation. These included

- A Defender-Advisor Plan,
- A Coordinated-Assigned Counsel (CAC) System,
- A Defender System, and
- A Mixed Defender-CAC System;

- The qualitative and cost benefits which could be accrued through the use of either of these systems;
- The manner for determining attorney man-year requirements to accommodate the caseload requirements present and projected; this aspect of the study culminated in the development of prototype budgets for each of the systems identified; and
- The resolution of the above into recommendations to El Paso County as to viable options they might pursue.

Summary of Recommendations

The National Center for Defense Management makes the following recommendations:

- THAT EL PASO COUNTY ESTABLISH A MIXED DEFENSE SYSTEM, CONSISTING OF A DEFENDER OFFICE AND A COORDINATED-ASSIGNED COUNSEL PROGRAM TO PROVIDE DEFENSE SERVICES TO CRIMINALLY ACCUSED INDIGENTS;
- THAT EL PASO COUNTY ESTABLISH AN INDEPENDENT ADVISORY BOARD, COMPOSED OF REPRESENTATIVES FROM THE JUDICIARY, THE PRIVATE BAR, THE COMMISSIONERS COURT AND THE CLIENT COMMUNITY, WHOSE FUNCTION WOULD BE TO APPOINT THE CHIEF DEFENDER AND THE ADMINISTRATOR OF THE COORDINATED-ASSIGNED COUNSEL PROGRAM AND PROVIDE GENERAL SUPERVISION OF THE SYSTEM;
- THAT THE ADVISORY BOARD DELEGATE 75% OF THE INDIGENT CASELOAD TO THE DEFENDER OFFICE AND 25% OF THE INDIGENT CASELOAD TO THE COORDINATED-ASSIGNED COUNSEL PROGRAM;
- THAT THE ADVISORY BOARD SUPERVISE THE DEVELOPMENT OF FAIR STANDARDS FOR DETERMINING INDIGENCY OF DEFENDANTS AND THE CONSISTENT APPLICATION OF SUCH STANDARDS TO ALL DEFENDANTS;
- THAT THE DEFENDER OFFICE DEVELOP AND IMPLEMENT INTENSIVE ENTRY-LEVEL

TRAINING, IN-SERVICE TRAINING AND CONTINUING LEGAL EDUCATION PROGRAMS FOR ALL STAFF ATTORNEYS AND PRIVATE ATTORNEYS INTERESTED IN HANDLING ASSIGNED CASES;

● THAT THE CHIEF DEFENDER AND THE CAC ADMINISTRATOR DEVELOP COORDINATED PROCEDURES WHICH WILL ASSURE THAT ALL INDIGENT CRIMINALLY ACCUSED WILL HAVE IMMEDIATE ACCESS TO COUNSEL;

● THAT THE DEFENDER OFFICE SHOULD PROVIDE FULL-TIME INVESTIGATION AND OTHER SUPPORT CAPABILITIES TO BOTH STAFF ATTORNEYS AND ASSIGNED COUNSEL;

● THAT DEFENDERS AND ASSIGNED COUNSEL RECEIVE ADEQUATE COMPENSATION FOR THEIR SERVICES; and

● THAT EL PASO COUNTY MAKE APPLICATION TO THE CRIMINAL JUSTICE DIVISION, OFFICE OF THE GOVERNOR, STATE OF TEXAS (STATE PLANNING AGENCY) FOR A GRANT TO ASSIST IN THE IMPLEMENTATION OF THIS RECOMMENDED PILOT PROGRAM.

To allow for a full consideration of possible defense systems suitable for El Paso County, NCDM has presented in this report a number of alternative systems complete with budget projections; the recommendation expressed should serve as a focal point for such consideration.

INTRODUCTION

A. Background

The Sixth Amendment to the U. S. Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right. . .to have the Assistance of Counsel for his defence." The United States Supreme Court has defined the Sixth Amendment right to appointed counsel as applicable to "any person hailed into court, who is too poor to hire a lawyer",¹ and has held that this Sixth Amendment right is incorporated into the due process clause of the Fourteenth Amendment and thus is applicable to state prosecutions to the same extent as to Federal prosecutions. Since Gideon involved a felony charge, the question remained whether the Sixth Amendment's "all criminal prosecutions" language included misdemeanors as well as felonies. On June 12, 1972, the U. S. Supreme Court finally answered this question by holding that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor or felony, unless he was represented by counsel at his trial."² This ruling has imposed substantial new burdens upon the criminal justice system throughout the country to the extent that legal defense services must be provided to all indigents accused of crime--whether felony or misdemeanor--where imprisonment is a possible penalty.

Prior to the Argersinger case, lower courts throughout the nation were required only to provide legal counsel to indigents accused of felony offenses. In Texas, however, the requirement to provide counsel in

¹Gideon v. Wainright, 273 US 334, 344 (1963).

²Argersinger v. Hamlin, 407 US 23, 37 (1972).

misdemeanor cases preceded the Argersinger decision. Like the U. S. Constitution, the Texas Constitution provides, "In all criminal prosecutions, the accused. . . shall have the right of being heard by himself or counsel, or both. . ." ³ The Texas Code, which antedates Argersinger, requires appointment of counsel whether the accused is charged with a felony or "a misdemeanor punishable by imprisonment". ⁴ This provision, enacted in 1965, was virtually mandated by the Fifth Circuit, which in Harvey v. Mississippi ⁵ held that appointed counsel must be provided for an accused charged with a misdemeanor punishable by incarceration. Thus, the Texas requirement may go beyond Argersinger in that even if the trial court determines prior to trial that it will not incarcerate the accused if convicted; nonetheless, if the misdemeanor is of a type that may be punishable by incarceration, then counsel must be appointed. Although authoritative clarification of this distinction still requires a judicial decision, the Texas Attorney General states that appointment of counsel is necessary in cases of "misdemeanors carrying a possible jail sentence". ⁶

Since 1963, many jurisdictions have made substantial progress in responding to the mandate of Gideon and its progeny. In numerous criminal courts, however, the defense of indigents remains substandard. The Argersinger decision brought about a realization, even to jurisdictions that were effectively responding to the earlier mandates of the U. S. Supreme Court or their own local requirements, that the existing defense systems should be examined for their effectiveness and capability of handling the additional demands.

Today, courts have become more attuned to the need to provide

³Texas Constitution of 1876, Art. I, §10.

⁴Texas Code of Crim. Proc., Art. 26.04.

⁵340 F.2d 263 (5th Cir. 1963).

⁶Op. Atty. Gen. No. C-598 (Tex. 1966).

quality representation and the client community, likewise, has become more aware of their right to effective legal representation. There is an awareness not only that counsel is necessary for trials, but also that a lawyer has a duty to involve himself with the investigation stages of a client's case, with preliminary hearings, post-conviction remedies, appeals and other collateral matters. The procedural requirements and opportunities for defense counsel to assist his client have increased significantly.

When an individual is charged with commission of a crime, he is confronted with the awesome power of the state manifested by its agents-- prosecutors, investigators, bailiffs, etc.--and its legal code, often containing complex and technical language. Without assistance of counsel the layman, unfamiliar with legal language, institutions and processes, is unable to appreciate the significance of the relevant law, both as to the charge and affirmative defenses; much less know the appropriate course of action to take to defend himself against the charges. The Supreme Court has commented as follows:

"The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of the law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he has a perfect one. He requires the guiding hand of counsel at every step of the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence."⁷

The President's Commission on Law Enforcement and the Administration

⁷Powell v. Alabama, 287 US 45, 68-69 (1932).

of Justice stated on this point the following:

"An individual forced to answer a criminal charge needs the assistance of a lawyer to protect his legal rights and to help him understand the nature and consequences of the proceedings against him. . .Ours is an adversary system of justice, which depends for its vitality upon vigorous and proper challenges to assertions of governmental authority and accusations of crime. Reliance upon the judge or prosecutor to protect the interests of defendants is an inadequate substitute for the advocacy of conscientious defense counsel. Limiting the right to counsel gravely endangers judicial search for truth."⁸

An excellent overview of the role of the lawyer in our adversary system is provided by Professor Barton L. Ingraham:

"Based on the presumption of innocence, the adversary model seeks to force the state to establish the defendant's guilt only by the introduction of competent evidence fairly obtained through constitutional procedures. . .What is at issue, as much as the factual question of whether defendant committed the acts charged, is whether he has been fairly arrested, investigated and charged and whether he ought to be punished. The ideal role of defense counsel in the adversary process, therefore, is not merely that of investigator and presenter of facts in court; his role includes the function of challenging the constitutionality of law and proceedings which have brought his client before the bar. Even when the "facts" are not in dispute, he is also supposed to present facts in mitigation of the crime, to persuade the adjudicator that, though his client may technically be guilty, he ought not to be punished."⁹

It is clear then that both from the defendant's and the government's perspectives, lawyers in the adversarial criminal justice system are "necessities, not luxuries."¹⁰

The U. S. Supreme Court, while ruling that counsel had to be made available to any indigent facing a possible jail sentence, did not specify

⁸Task Force Report: The Courts, p. 52.

⁹Ingraham, The Impact of Argersinger--One Year Later, 8 Law & Society Review 615, 635 (1974).

¹⁰Gideon v. Wainright, 372 US 335, 344 (1963).

the method by which such service should be rendered. Instead, it left to the state and/or local jurisdiction the responsibility and fiscal burden for developing and paying for the defense system that would best meet their local needs.

There are three basic indigent defense delivery systems currently being used in the country:

- 100% use of court-appointed counsel;
- Primary use of defenders; and
- A mixed system employing substantial use of both of the above.

These three systems for the delivery of indigent criminal defense services will be analyzed and discussed in greater detail later in this report in context of the El Paso County situation.

B. Statement of the Problem

El Paso County currently uses a 100% court-appointed counsel system to provide defense services to indigents. Over the past few years, as a result of increased population, rising crime rate, the impact of landmark decisions of the Supreme Court and other factors, the cost of this system has risen rapidly.

In 1973, "El Paso County. . .spent about 250% what it spent in 1972 on appointed counsel. Still, many individuals eligible for appointed counsel are not receiving it even though the number of appointments is rapidly increasing--too rapidly for the number of interested lawyers to handle the caseload."¹¹

The County Judge of El Paso stated that this rapid increase of "county expenditures for criminal indigent defense through court-appointed

¹¹See supporting documents to West Texas Council of Governments Request for Technical Assistance, June 6, 1974, at Appendix C.

attorneys leads the County to investigate the effectiveness per dollar of various methods of providing this service."¹²

C. Nature of the Request

The West Texas Council of Governments on June 6, 1974 requested technical assistance in the form of a feasibility study to determine whether a defender program of some type was needed in El Paso County. This assistance never materialized. The request for assistance, however, appeared to increase local awareness about the increasing cost of the existing system.

Prompted by this awareness, the Honorable T. Udell Moore, County Judge for El Paso, formally requested technical assistance for El Paso County on March 27, 1975. The request invited the National Legal Aid and Defender Association (NLADA) to conduct a systems development study.

The Law Enforcement Assistance Administration approved this request for technical assistance on June 23, 1975 and directed the National Center for Defense Management, a project of NLADA, to conduct the study.

D. Objectives of the Study

The National Center for Defense Management (NCDM) set two major goals for this study:

- To assess the quality and cost-effectiveness of the present court-appointed counsel system; and
- To identify several alternative defense systems and analyze their capability of providing quality representation to indigent defendants at a reasonable cost to the taxpayers.

¹²See Request for Technical Assistance by County Judge of El Paso, Texas, March 27, 1975, at Appendix B.

The realization of these two objectives should provide El Paso with the necessary information to make rational choices in future planning for the provision of defense services to indigents.

II
METHODOLOGY

A. The Planning Process

Planning is an analytical process in which an organization attempts systematically to make "rational choices for the future." The first emphasis is on the process by which those choices are made, rather than on the choices themselves.

The second characteristic of the planning process is the orientation to the future, making choices now for implementation in the future, and therefore uncertain, world. This uncertainty does not preclude the use of analytical techniques of statistical estimation.

The third principal emphasis on the planning process is on the need to make choices. This involves a combination of forecasting, prediction of impact and estimation of the costs of an action; these must be compared to the benefits it might provide.

The planning process of "making rational choices for the future" involves the following steps:

- Describe the current system;
- Project the future environment;
- Develop alternatives among which to choose;
- Analyze the impact of the alternatives ("pre-evaluation");
- Allocate resources to the choices and implement them;
- Evaluate the impact ("post-evaluation"); and
- Repeat the process on a regular and continuing basis.

This report concerns itself with the first five steps in the planning process. First, the El Paso County criminal court system, criminal justice

process and court appointment procedures are described. The present defense services, then, are assessed from the perspectives of the judiciary, the private bar and the client community. Second, influences on the future workload of the El Paso County criminal court system are discussed and cost projections for the present assigned counsel system are made. Third, four alternative defense systems are described and projected budgets are presented. Fourth, each alternative defense system is analyzed as to its capability of providing effective defense services and as to its cost-effectiveness. Finally, the report has made certain recommendations which in their implementation should represent a substantial improvement in the provision of defense services to the indigent criminally accused in El Paso County.

B. Investigative Procedures

In conducting this study, the consultant team sought to explore all aspects of the El Paso County assigned counsel system. The administrative structure and cost implications of that system were examined, as was the effectiveness of assigned counsel working within that system.

A pre-site visit was conducted by NCDM staff on July 21, 1975. Its purpose was to meet with the County Judge and a number of other key persons vitally interested in and knowledgeable about the criminal justice system in El Paso County. Additionally, there was a need for understanding the existing circumstances and gathering statistical and other relevant data.

Following this visit, the NCDM staff made extensive preparation for the site visit. This included the preparation of a consultant handbook containing orientation material, preparation of an interview list of persons involved with the El Paso County criminal justice system,¹³ arranging a

¹³A list of persons interviewed can be found at Appendix F.

time schedule for such interviews, and designing appropriate survey instruments¹⁴ in connection with the private bar and client community. Also, prior to the site visit, the study team met for an orientation session and specific assignments were discussed and coordinated.

The study team performed the on-site visit September 9-12, 1975. The technical assistance visit focused on the administrative structure of the present assigned counsel system and the cost implications related thereto. Also, the effectiveness of indigent services being provided by said system was examined with regard to the quality and scope of those services.

The special professional skills¹⁵ which were brought to bear on the study were as follows:

- A Spanish-speaking public defender who could bring his bilingual skills and defender expertise to address the special perceptions of the client community;
- A constitutional law professor who could provide the objectivity and perception necessary to address the issue of quality and scope of services; and
- Systems analysts who could identify the present costs and project future costs of systems designed.

The study team concluded the field visit with a comprehensive discussion of all material, notes, observations and opinions derived from their on-site experience and certain team recommendations were formulated.

Following the field visit, the NCDM staff collected and analyzed the results of the private bar survey, interview notes, consultant reports

¹⁴Copies of questionnaires are attached at Appendix G and Appendix I.

¹⁵Resumes of study team are attached at Appendix A.

and other data.¹⁶ One of the major methodological issues faced by the study team was how to compare objectively the cost-effectiveness of the existing court-appointed counsel system with various alternative defense systems. To resolve this issue, the study team developed a Manpower Management Application.¹⁷

This application enabled the study team to employ a systems approach to deriving the staffing requirements for indigent legal services at key stages of the El Paso County criminal justice process. The caseload data, indigency rate and attorney man-hour estimates were inserted into this vehicle to compute the resource requirements for each alternative system. Based on the derivation of such requirements, sample budgets were prepared which should allow comparative cost analysis of each one of the alternatives.

¹⁶Due to circumstances beyond our control the client community survey was not completed in time to be included in this report.

¹⁷A detailed discussion of this model is included at Appendix J.

III

DESCRIPTION

A. El Paso County Court System¹⁸

The present court system of El Paso County, Texas is a subpart of the state system established by the constitutional amendment of 1891, which provides for a Supreme Court, which is the highest state appellate court in civil matters, and a Court of Criminal Appeals, which is the highest state appellate court in criminal matters. It has fourteen intermediate courts of civil appeals. There is no intermediate court for criminal appeals from trial courts, such appeals going directly from the trial courts to the Court of Criminal Appeals in Austin, Texas.

The state trial courts of general jurisdiction are the District Courts. There are eight such State District Courts in El Paso County. They are designated as the 41st, 65th, 120th, 168th, 171st, 34th, 205th and 210th. All are courts of general jurisdiction (civil and criminal); however, the 34th and 205th handle practically all of the criminal cases. The 34th District Court, in addition to its jurisdiction in El Paso County, also presides in Hudspeth and Culberson counties.

The District Courts have general jurisdiction over all civil cases and criminal cases of a felony nature. They also have appellate jurisdiction over all probate cases originally heard in the County Court. Some of the more numerous criminal cases of a felony nature which are heard by the District Court are murder, robbery, assault, burglary, theft over \$200,

¹⁸The following description of the El Paso County Court System has been adapted from accurate, detailed descriptions prepared both by the Texas Judicial Council and the West Texas Council of Governments. See Regional and Metropolitan Criminal Justice Plan, 1976, West Texas Council of Governments; Forty-Sixth Annual Report, Texas Judicial Council.

rape and the distribution and/or possession of narcotics. It should be noted that geographical jurisdiction of each individual District Court is established by the specific statute creating that court, and such jurisdiction does not necessarily correspond to any previously established court. Each court has one judge.

In addition to the above state courts, the Texas Constitution provides for a county court in each county presided over by a county judge. To relieve the calendar congestion of the single constitutional county courts, the legislature has established probate courts and county courts-at-law in certain counties having large populations. El Paso County has three (3) County Courts-at-Law. These courts have original and exclusive jurisdiction of all misdemeanors, provided that exclusive original jurisdiction is not given to the Justice of the Peace Courts, and provided further that the fine to be imposed exceeds \$200.

The Texas Constitution also provides for Justice of the Peace Courts (JP) in each county. Since 1953, these JP courts also serve as small claims courts. There are five (5) JP courts in El Paso County. These courts have jurisdiction in all criminal case matters where the penalty or fine to be imposed by law is not more than \$200. JP's can send an offender to jail only if the fine is not paid. All appeals from the JP courts are made to the County Courts-at-Law.

The state legislature has by statute created Municipal Courts in each incorporated city. These courts have concurrent criminal jurisdiction with the Justice of the Peace Courts limited to the geographic confines of the municipality. Under the City Code of El Paso, there exist three (3) Municipal Courts with jurisdiction as is conferred on corporation courts by the General Laws of the State of Texas--those being offenses

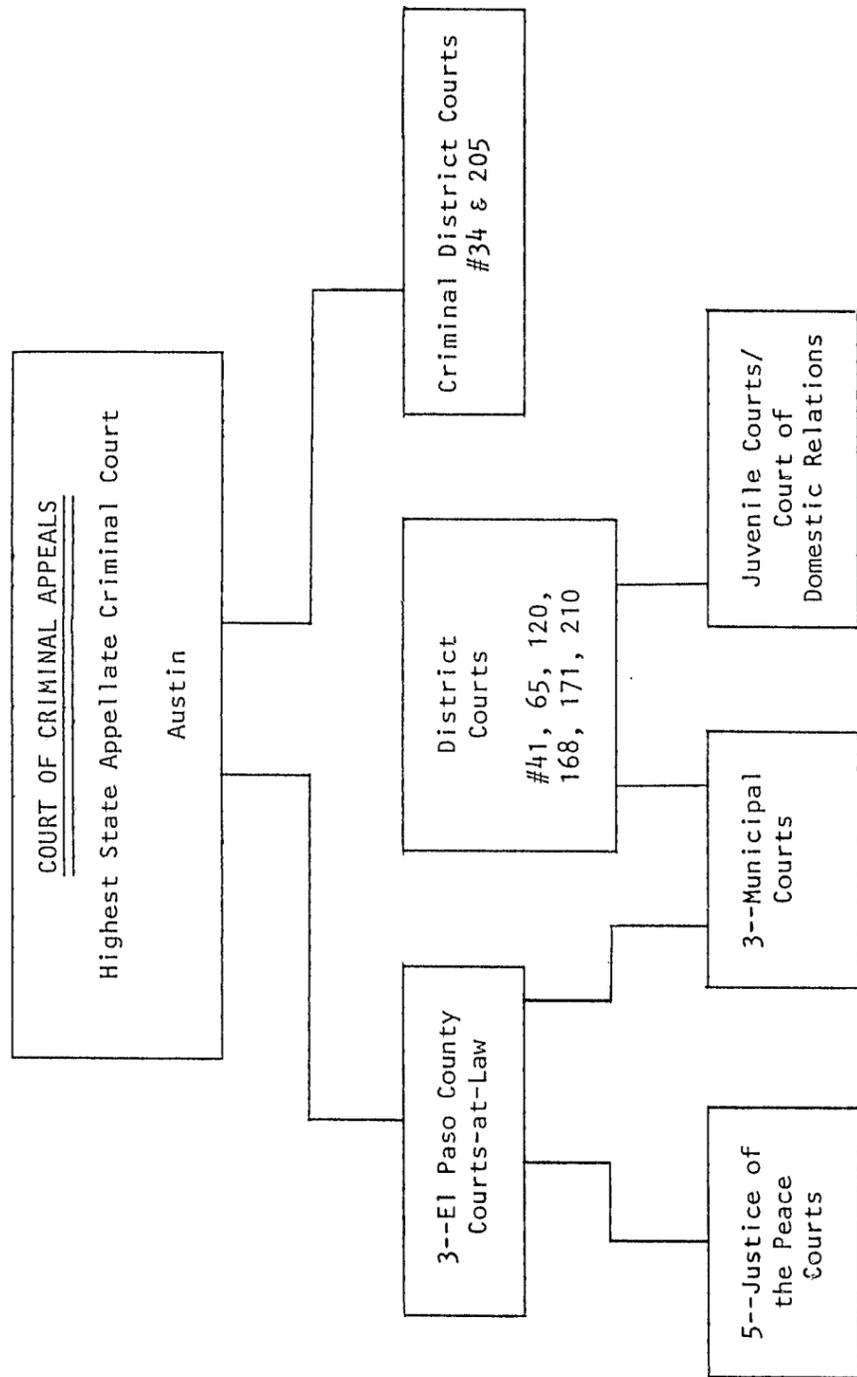
not to exceed a \$200 fine. Approximately 70% of the activities of the three Municipal Courts consist of traffic matters; the other 30% is devoted to other Class C misdemeanors.

El Paso County is served by one Juvenile Court which is also the Court of Domestic Relations. The court is staffed by a clerk, a deputy clerk and a legal secretary. The jurisdiction of the court as set forth in the 1973 Juvenile Court Code of Texas extends to children up to age 18, involving delinquent conduct and conduct indicating a need for supervision; the majority of these cases involve the former.

State, county and municipal governments all contribute to the financing of the judicial system in Texas. The State finances the appellate courts and pays a base salary to all Justices of the Civil Court of Appeals and District Court judges. Counties pay the costs of "constitutional" county courts, justices of the peace, and operating costs of district courts except the judge's basic salary. The cities finance the municipal courts.

The following is a diagram of the El Paso criminal court system.

DIAGRAM OF
EL PASO CRIMINAL COURT SYSTEM

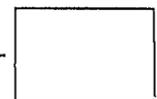
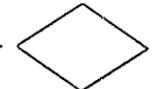
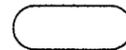


B. Criminal Justice Process--El Paso County

The NCDM staff has prepared a graphic display depicting the process wherein the defendant follows the criminal justice system of El Paso County from arrest to case disposition. Separate charts have been developed for the following:

- Adult System--District Court
- Adult System--County Courts-at-Law
- Juvenile System

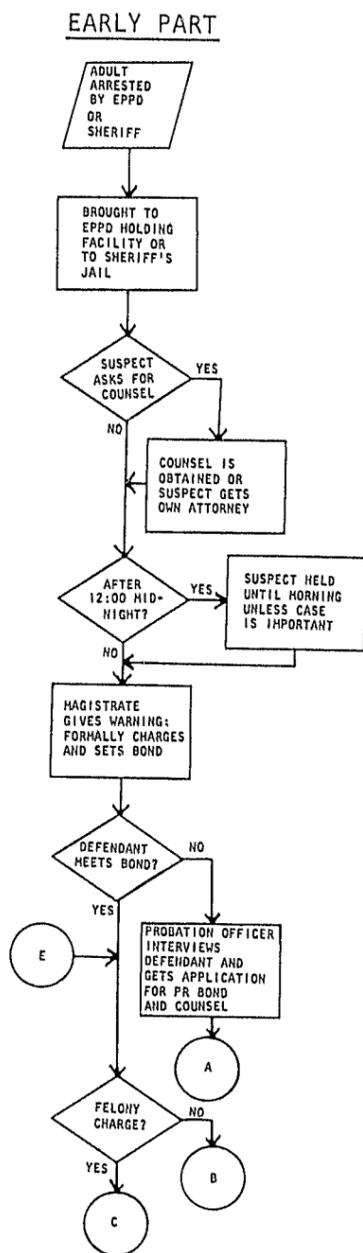
The flow chart display is designed to show the following:

- Where the accused enters the system-- 
- Where the accused goes through some processing-- 
- Where a decision is required which will determine where the defendant will proceed next-- 
- Where the defendant will leave the criminal justice system-- 
- Where the defendant will transfer to another subsection of the criminal justice process or where the display will recommence in the same subsystem-- 

For example, Chart A-1 represents the adult accused felon who is arrested either by the El Paso police or other law enforcement officials. It describes the process of booking and the manner in which counsel is obtained. Key steps are accounted for and described in the symbols. As the defendant proceeds through the system, he is referred to a lettered subsystem. For example, at A-1 there is a designation letter "C", which signifies that if the case is a felony, the defendant moves on to "C" at A-1 and so on through to final disposition at Column 3 of A-3.

CHART A-1

EL PASO COUNTY
ADULT COURT SYSTEM



COUNTY COURTS

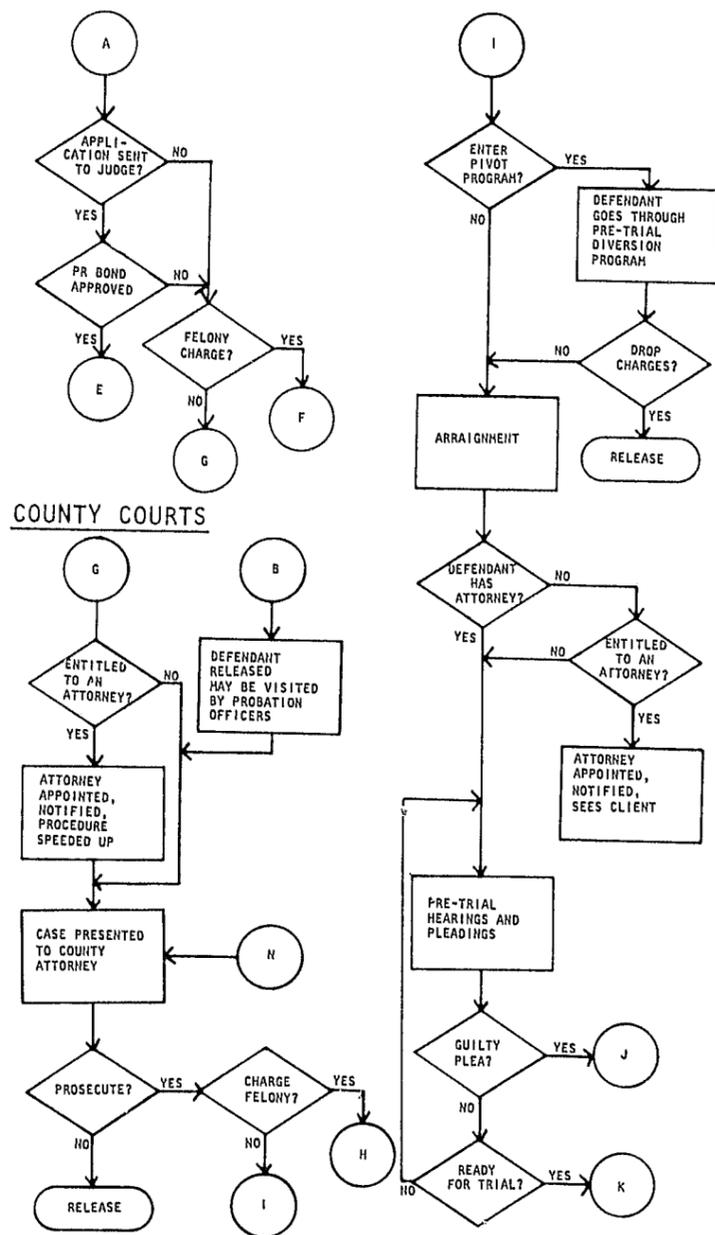


CHART A-2

EL PASO COUNTY
ADULT COURT SYSTEM

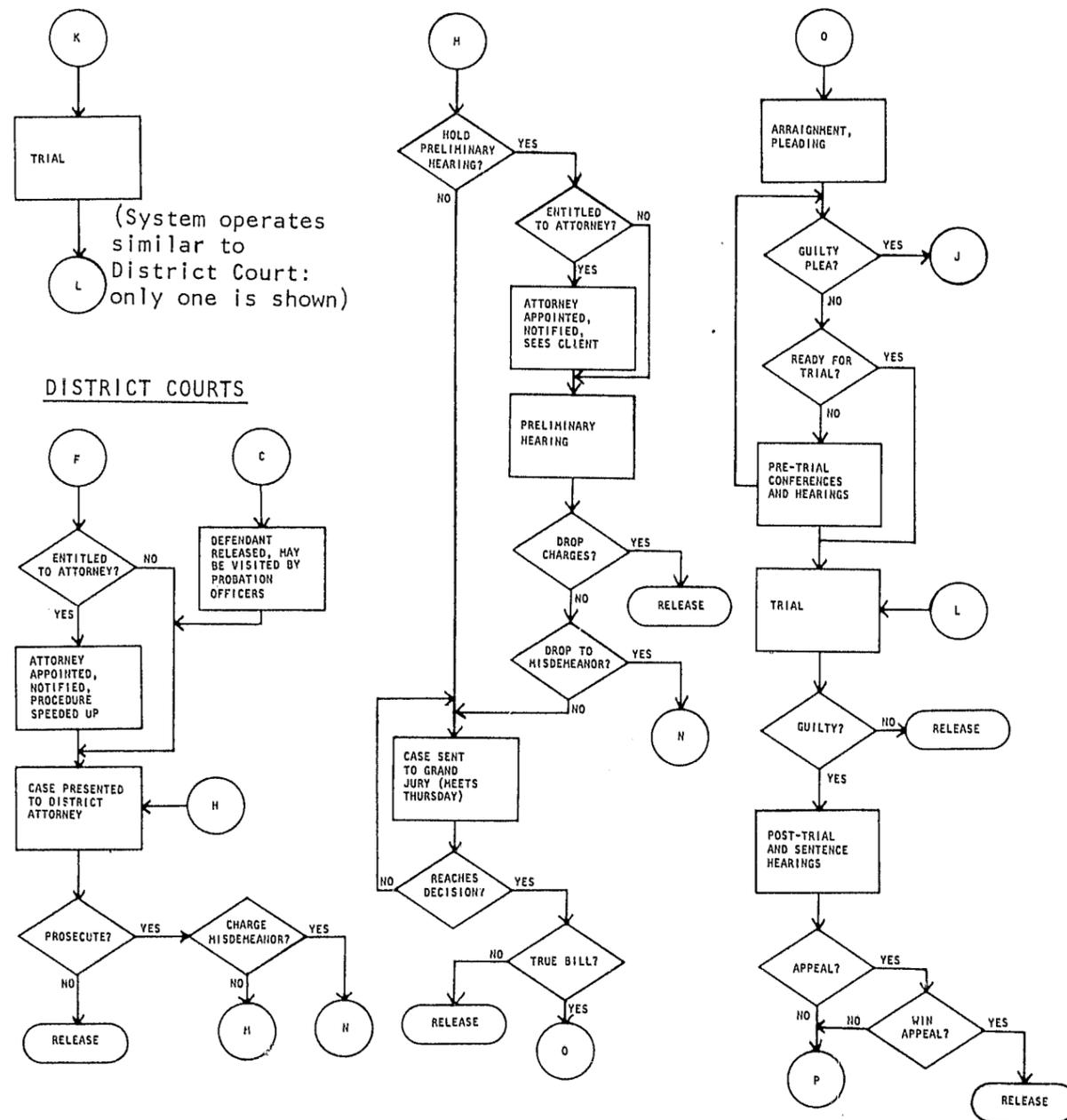
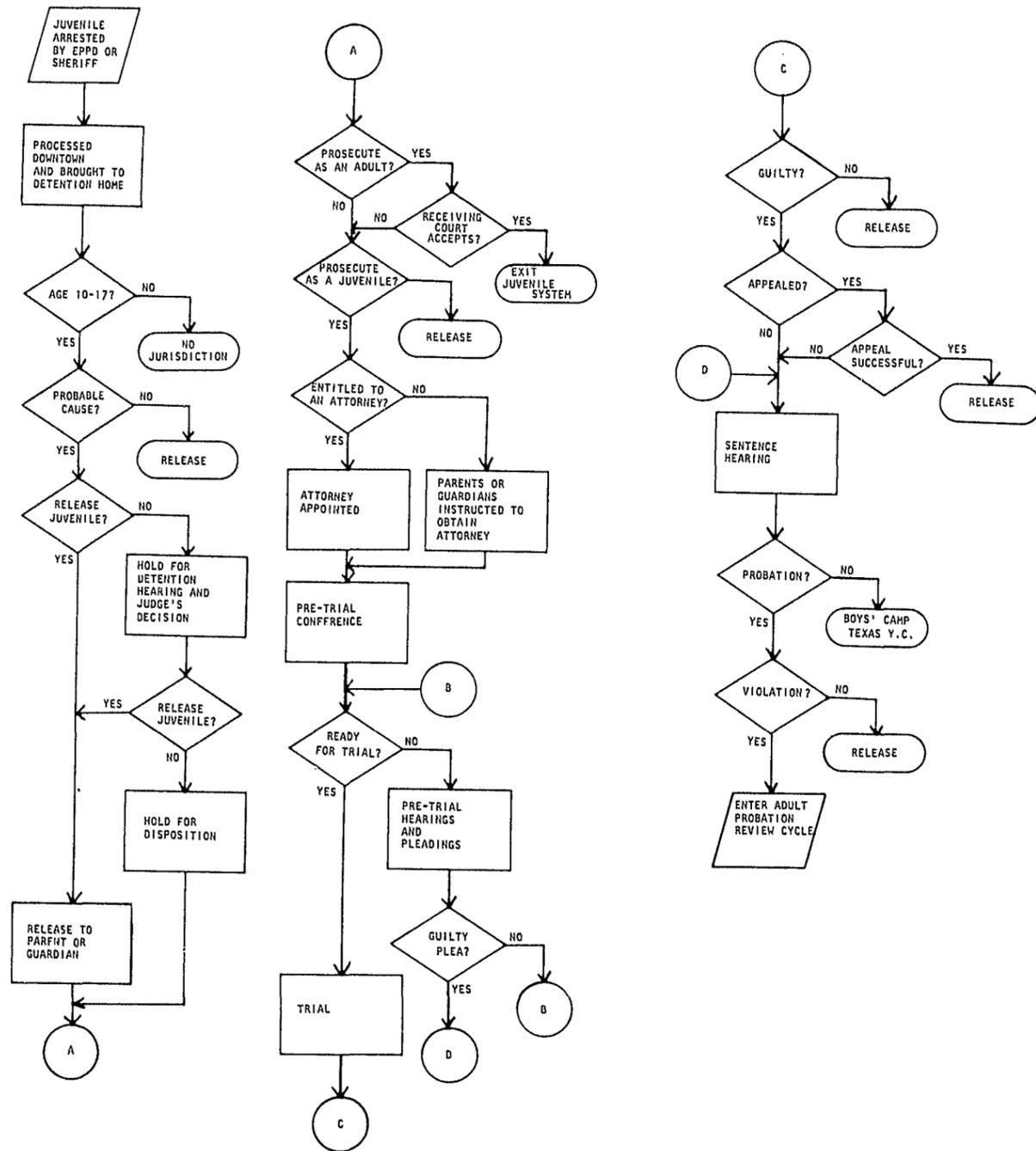


CHART A-3

EL PASO COUNTY
JUVENILE COURT SYSTEM



C. Court Appointments

At the present time in El Paso County, indigent defendants obtain counsel through court appointment of attorneys from the private bar on a round-robin basis. These court appointments are the responsibility of the trial court to which the case is referred, but they are, for all practical purposes, arranged through the Court Administrator. The Court Administrator compiles a list of such attorneys, which has three subdivisions:

- Spanish-speaking--only attorneys who are fluent in Spanish are included;
- First felony crimes--attorneys regarded as criminal law experts by the court are included;
- General--all other participating attorneys are included in this division and may handle lesser felonies and misdemeanors.

The procedure for an indigent defendant obtaining a court-appointed counsel is as follows: On normal working days (i.e., excluding Saturdays, Sundays and holidays), the Probation Department sends its representative to check the jail for persons arrested within a 24-hour period. This representative then determines the eligibility of recent arrestees for release on "personal recognizance" (PR) bond and arranges for release of those found to be eligible. Those not so eligible are encouraged to post a commercial bond. Finally, if the arrested person qualifies for neither a PR bond nor a commercial bond, the probation officer has the person fill out a financial statement on the basis of which the Court Administrator will later determine whether a state of indigency exists. If the administrator is in doubt, the matter goes to the judge for final determination; otherwise, an appointment is arranged through the Court Administrator.

Once the appointment is made, the Court Administrator mails a notice of the appointment to the attorney. The court rules require the appointed attorney to see his client within 48 hours of receipt of such notification.

Upon completion of the case, the court-appointed attorney submits a voucher to the court requesting compensation for his services. Copies of sample vouchers are contained at Appendix D.

IV

ASSESSMENT OF DEFENSE SERVICES AS PERCEIVED BY--

A. The Judiciary

The study team interviewed several members of the El Paso County judiciary. They addressed a number of problems inherent in the present assigned counsel system while expressing certain fears about the establishment of a defender office that would handle the major portion of the indigent criminal caseload.

Perhaps uppermost in the minds of the judges interviewed was their concern for the lack of expertise on the part of many court-appointed attorneys. Their comments ran as follows:

"The quality of defense services is considerably uneven since only about 15 of the attorneys available for appointment are experienced in criminal practice."

"Many of the attorneys are not up-to-date on the criminal rules."

"The worst single factor of the present system is that there is no program for training attorneys as defense counsel."

The judges expressed a need for greater involvement by the private bar in connection with the defense of indigent defendants.

"Compelling attorneys to accept court-appointed cases creates a beneficial social impact. It reinforces civil lawyers' desire to see that defendants receive their full rights under the law."

There was agreement that a defender system would assure the development of expertise in the area of criminal defense; full-time defenders, they said, would be more attuned to the special needs of indigent defendants. This would particularly be true in juvenile and mental competency cases.

On the other hand, the judges raised fears about defenders losing

their professional independence as they would appear day after day before the same judge.

"You just cannot come before the same judge constantly without bending to his way of thinking. Under the present system, a lawyer can come and spit in the judge's eye if he wants and feels it is right, whereas a defender comes in before the same judge day after day."

Another fear expressed was that a defender could become embroiled in politics.

"I am concerned [about] who hires these defense lawyers . . . because there is a danger that the office will be used for politics."

"A defender interested in a higher position might use the office as a political stepping-stone to the detriment of courtroom serenity and the rights of the accused."

One judge interviewed suggested the hiring of a defender-advisor.

This person would be a criminal law expert and would serve as co-counsel to court-appointed lawyers, advise them on the developments in the law and so on.

"Under this plan, the competence of representation would be upgraded, while also preserving the independence of the defense bar."

The defender-advisor plan will be explored and discussed in a later section in this report.

It should be stressed that judicial opinion derived from interviews covered a wide spectrum; nevertheless, there appeared to be a common desire for the exploration of new ideas.

B. The Private Bar

The study team observed that the judges with whom they spoke appeared less disturbed about the present assigned counsel system than did many members of the private bar. The personal interviews of some private attorneys

revealed a stronger preference for the creation of a defender system. They felt that defenders would have a more current knowledge of criminal law and procedure and would possess greater expertise in criminal trial techniques.

"The biggest fault with the present system is that the courts are appointing attorneys who do not have significant trial experience. Sure, attorneys can fairly quickly learn the relevant cases and statutes for a case, but it's in the trial work where you have to react under pressure that many court-appointed attorneys are weak."

"With a defender office, attorneys would have the trial skills and all the other skills that are necessary in providing adequate services."

"With a defender system, an attorney would not have to waste time updating himself in the criminal code. It's just not effective for the court system to try to take a civil attorney and have so much start up time before he can become an effective counsel."

Some private lawyers expressed strong dissatisfaction with the present fee structure for court-appointed counsel. They pointed out that they are only paid for court appearances and not for time involved with investigation, research, preparation of witnesses, plea-bargaining, etc. There was little incentive for them to do much preparatory work; yet it would be financially advantageous for them to request continuances requiring two or three appearances to dispose of a case on a plea basis.

"I get no money for any effort on behalf of my client, even if it results in a dismissal, without a court appearance. . . . There is an economic incentive to stretch a case out in order to cover one's expenses."

"A fee schedule, like in Federal Court, that pays lawyers an hourly rate both for the preparation as well as in-court time--something like \$20 or \$30 an hour [would be better]."

A number of private attorneys were most critical of the appointment process. They stated that there is a considerable time lag between the time of arrest and the notification of appointment, which can cause strain in

the attorney-client relationship.

Some lawyers expressed strong feelings in connection with the funding of a criminal defense system in El Paso County. They thought that the State of Texas and the Federal government should pay their fair share for such a program because a large proportion of criminal defendants in El Paso County are Mexican aliens and not residents of El Paso County. They believed that El Paso County was carrying an undue financial burden in this regard.

"There is an awful lot of indignation about taxpaying El Paso citizenry paying court costs and legal fees for Mexican nationals. A federally-funded defender program should be set up to handle these cases."

C. The Client Community

The consultant team obtained valuable information from jail inmates who were interviewed in both English and Spanish. Jail personnel were requested to select inmates at random. Questions related to the nature of charges, length of incarceration, appointed counsel and how soon after arrest counsel was available for first consultation.

Previously, this report, in discussing the process of court appointment of counsel, pointed out that the court rules require attorneys to see their clients within 48 hours after notification of appointment. The jail inmates interviewed, however, stressed that often one remains in jail anywhere from two to six weeks after the arrest before seeing his attorney for the first time.

"I was here [in jail] almost a month and a half before I saw my attorney."

"The thing says he [the court-appointed attorney] is supposed to come within 72 [sic] hours; my attorney, it was a week. It's been another three months and my attorney has been up to see me one time."

This information was corroborated to some extent by other personnel in the Sheriff's Department and the Probation Office. It was mentioned that the Sheriff's Office receives a high number of complaints that attorneys have not seen the inmates. The log of attorney calls and visits maintained at the jail facility would, in part, reflect the accuracy of such complaints.

"A lot of inmates complain that they have a court-appointed attorney and he has not seen them."

"Attorneys are supposed to come see the defendant within 48 hours after the appointment, but it is not unusual for some defendants to remain in jail from three to six weeks without anyone seeing them."

"Most attorneys try to make the 48-hour rule, but notification goes by mail so it still can be over a week after the arrest before even a conscientious attorney gets to see his client."

D. Survey of the Private Bar

The NCDM study team conducted an extensive survey of the private bar in El Paso County. Questionnaires were sent to 250 practicing attorneys, of which 93 responded. The survey was designed to elicit views relative to the existing indigent criminal defense system in El Paso and related opinions.¹⁹ The complete results of the survey have been compiled and can be found at Appendix H.

The following responses are listed separately, however, for purposes of presenting an overview of the more significant results:

- 50% of the attorneys polled were of the opinion that the average court-appointed counsel is not fully competent to provide high quality representation to indigent criminal clients (Question 21).

- When questioned about their own qualifications, 37% responded that

¹⁹A copy of the questionnaire can be found at Appendix G.

they were not well qualified when they accepted their first court appointments (Question 6).

- 5% of those surveyed claimed a specialty in the practice of criminal law (Question 2).

- 5% of those surveyed claimed a specialty in trial work--whether criminal or civil (Question 2).

- 31% of the bar polled expressed dissatisfaction with the appointment system and felt it was not equitable (Question 16).

- 8% of attorneys surveyed appeared to represent the largest proportion of indigent cases (Question 12(a)).

- 47% surveyed believed that a defender system with full-time staff attorneys would be preferable to the existing defense system (Question 25).

- 53% claimed preference to a mixed assigned counsel-defender system (Question 26).

- 87% felt that the Chief Defender salary should be on par with the District Attorney (Question 32).

- 70% were of the opinion that a defender office should supervise a training program for all defense attorneys who handle criminal defense work (Question 33).

V

INFLUENCES ON THE FUTURE WORKLOAD OF INDIGENT DEFENSE SERVICES IN EL PASO COUNTY

In order to compare and evaluate alternative defense systems which may be utilized in El Paso County in the future, it is first necessary to project the indigent caseload in the El Paso County court system. Factors affecting this caseload can be categorized as general influences on criminal caseload and changing trends in indigency rates. This section describes several factors in these categories and their effect on indigent caseload in the adult felony, adult misdemeanor and juvenile court systems.

A. General Influences on Criminal Caseload

Because the act of criminality is the primary factor influencing the workload of the criminal justice system, the study team examined crime data to determine if any major changes can be expected in the caseload of the El Paso County court system. Table 1 presents data on reported crime for the year 1971-74. It contains data on the seven index crimes identified by the Federal Bureau of Investigation.

TABLE 1--Reported Crime, 1971-74*				
	1971	1972	1973	1974
Criminal homicide	59	46	57	48
Forcible rape	75	91	104	127
Robbery	398	514	586	818
Assault	1,661	1,220	1,404	1,722
Burglary	7,621	4,994	5,587	6,804
Larceny	11,830	10,942	10,453	12,919
Auto theft	2,136	2,579	2,592	2,650
TOTAL	23,780	20,386	20,783	25,088

*Source: Return B, Uniform Crime Reports, El Paso, 1971-74

Relative to 1971, the overall number of reported crimes in 1974 was 5.5% higher. However, according to the U. S. Census Bureau estimates, the population of El Paso County increased approximately 5-10% during those years. Thus it can be concluded that the crime rate, or number of crimes per 1,000 population, has remained fairly constant.

A more direct impact on overall criminal caseload to be handled by the courts is the number of arrests. Table 2 shows the number of persons arrested between 1971 and 1974 separated into Adult and Juvenile Part 1 (felonies) and Part 2 (misdemeanors) categories.

	1971	1972	1973	1974
Adult Part 1	1,941	1,800	1,641	2,129
Adult Part 2	6,106	5,077	6,194	6,607
Juvenile Part 1	1,310	1,613	1,745	2,153
Juvenile Part 2	1,598	1,496	1,309	1,253
TOTAL	10,955	9,986	10,899	12,142

*Source: Return C, Uniform Crime Reports, El Paso, 1971-74

Interestingly, although the number of reported crimes dropped substantially in 1972 and 1973 relative to 1971, the number of arrests did not significantly change in those years. The adult categories actually are rather steady between 1971 and 1974, with the drop in 1972 and 1973 reflecting the decrease in reported crimes during those years. The Juvenile Part 1 category reflects a steady increase between 1971 and 1974, however, and the number of Juvenile Part 1 arrests in 1974 is over 74 percent higher than the number in 1971. This increase is due primarily to a dramatic increase in the number of youths arrested for larceny.

The arrest data from 1971 to 1974 also indicates that the age of people arrested for criminal offenses may be decreasing. Table 3 presents the number of people arrested for the crimes listed in Table 1, by age groups. The increase in the number of arrests occurring in the 17 and under and 18-24-year-old categories is significant. In 1970, 123,000 people in El Paso County or 34% of the total population were under the age of 15. The El Paso County criminal justice system is likely to feel the impact of this group for several years in the future.

Category	1971	1972	1973	1974
17 and under	2,908 (Base)	3,119 (+ 7%)	3,154 (+ 8%)	3,406 (+17%)
18-24-year-old	3,462 (Base)	3,073 (-11%)	3,237 (- 6%)	3,891 (+12%)
25-34-year-old	1,884 (Base)	1,593 (-15%)	1,819 (- 3%)	2,064 (+10%)
35-44-year-old	1,342 (Base)	1,069 (-20%)	1,286 (- 4%)	1,360 (+ 1%)
45 and over	1,359 (Base)	1,142 (-16%)	1,483 (+ 9%)	1,421 (+ 5%)

*Source: Uniform Crime Reports, El Paso, 1971-74

This arrest data is, for the purpose of investigating caseload in the court system, more important than the number of actual or reported crimes. Arrests represent the actual input into the court system. Several conclusions can be drawn from the above data. First, excluding year-to-year variation, it appears that the increase in reported crime is following a general increase in the population of the county. Looking to the future, El Paso can expect a continuing increase in crime, particularly in juvenile crime, simply because there will be more people in the county. Additionally, the population of Juarez, Mexico, just across the border from El Paso, is expected to increase, further adding to El Paso County's crime problem. Again, it appears that

most of the increase will be felt in the juvenile crime area and in the young adult (18-24) group. The impact of this upon the court system will be to overload the juvenile court and correction system. Additional resources will be needed to handle the increased workload.

In addition to the general trend in population growth, crime rate and number of arrests, there are several characteristics of the El Paso court system which, if changed, could dramatically affect the criminal caseload. For example, in 1974, 1,105 felony cases were filed in El Paso as well as 3,512 misdemeanor and 281 juvenile cases.²⁰ While the arrest data in Tables 2 and 3 and the data on cases filed is not entirely generated from the same population, some inferences can be made from these figures concerning the percentage of arrests which result in criminal case filings. These figures show the following:

- Adult felony filings represent 52% of the arrests for such offenses;
- Adult misdemeanor filings represent approximately 53% of the arrests for such offenses; and
- Juvenile cases filed represent approximately 8% of the arrests of juveniles.

Thus, even if arrests were not to increase in the future, a procedural change whereby either the county or district attorney's offices accepted more cases could affect the court system's caseload.

A second procedure which could affect caseload is a drop in the resolution of cases by pleas. In 1974 there were only 607 trials. If defendants exercised their right to trial, the court system could easily

²⁰See data obtained from Raymond H. Zitur, Director of Data Processing, El Paso County, Texas at Appendix M.

become overburdened.

Along similar lines, data from 1974 shows relatively few appeals. If defendants begin to exercise their right to appeal in a great number of cases, the workload of the courts will rise dramatically, especially since appeals can be long, drawn-out procedures.

To summarize, the general influences on the El Paso County court system all seem to be causing an increase in the criminal caseload for the near future. For the purposes of this report, the estimates given in Table 4 will be used as sample data for El Paso County in the near future. The estimates reflect the judgment of the study team after its analysis of El Paso County population, crime and arrest trends.

The study team considered making low and high projections of arrests and caseloads, but believed that presenting two sets of estimates would confuse discussion. It is important to note that the total workload and system costs are relatively insensitive to the estimated percent increase in the number of arrests. This is because the base number of arrests in 1974 is large relative to the changes forecasted.²¹

TABLE 4--Estimates of 1975-80 El Paso County Arrests and Criminal Caseload Per Year			
	Arrests	Cases Filed	Approx. % increase over '74
Adult Part 1	2,400	1,272	12
Adult Part 2	7,600	4,028	15
Juvenile Part 1	2,600	208	20
Juvenile Part 2	1,600	128	30

²¹For example, assume some jurisdiction has 10,000 arrests in one year and the number of arrests is forecasted to rise 10%. If the number of arrests actually rises 20%, the forecast appears to be very bad--only 50% of actual. But, the forecasted number of arrests (11,000) is 92% of the actual number of arrests (12,000). Thus, the difference between forecasted and actual values is relatively insensitive to the estimated percent increase.

B. Trends in Indigency Rate

Although the general influences on criminal caseload discussed above greatly affect the number of cases requiring court-appointed counsel, the greatest effect on this workload is the indigency rate. As discussed earlier in this report, recent Supreme Court decisions and changing social beliefs have fostered the concept and activity of providing legal assistance to indigent defendants.

The study team's data on indigency rate in El Paso County covers a 14-month period from July 1, 1974 to August 31, 1975. Table 5 shows a breakdown of the caseload for each court, the number of attorneys appointed and the indigency rate implied by dividing the number of attorneys appointed by the number of cases filed.

	Cases Filed**	Attorneys*** Appointed	Attorneys appointed/cases filed
(Fel) District	1,234	702	57%
(Mis) County	4,185	436	11%
ADULT TOTAL	5,419	1,138	21%
JUVENILE	392	268	68%

*Indigency rate is used to mean the percent of the total caseload which is referred to assigned counsel.

**Source: County of El Paso court records obtained from Ray Zitur, Director, Data Processing Center.

***Source: County of El Paso County Clerk voucher sheets from Willis Sample, County Auditor.

Nationally, the percent of criminal cases tried by publicly provided attorneys is approximately 65% for felonies and 47% for misdemeanors in 1973.²²

²²The Other Face of Justice (A report of the National Defender Survey), p. 72.

Looking at Table 5, one can see that, in El Paso County, very few adults arrested for a misdemeanor have used a court-appointed attorney. Because El Paso County should be closer to the national average in light of the average income in the county relative to national standards, the study team assumed that in the near future the percent of adult misdemeanor cases requiring a publicly provided attorney will rise to 30 percent, and probably continue to rise to 50 percent by 1980. The percent of adult felony and juvenile cases requiring court-appointed counsel is also likely to increase, although only slightly. For the purposes of this report, we assume that in the near future, 60 percent of adult felonies and 70 percent of juvenile cases will require court-appointed counsel. These indigency rate assumptions are applied to the caseload projections from Table 4 to get estimates of indigent caseload for El Paso in the near future. The calculations are summarized in Table 6.

	Caseload	Indigency Rate	Indigent Caseload
Adult felony	1,272	60%	763
Adult misdemeanor	4,028	30%	1,209
Juvenile	336	70%	235

The estimates in Table 6 are the study team's best forecast of the indigent caseload in El Paso County for the near future, given the data concerning the present system and local and national trends in public defense. In the following sections of this report, these estimates are used to determine the cost of providing defense services to indigent criminally accused in El Paso County under the existing assigned counsel system. Later in this

report, each of the presented alternative defense systems is evaluated in the context of these caseload estimates.

VI

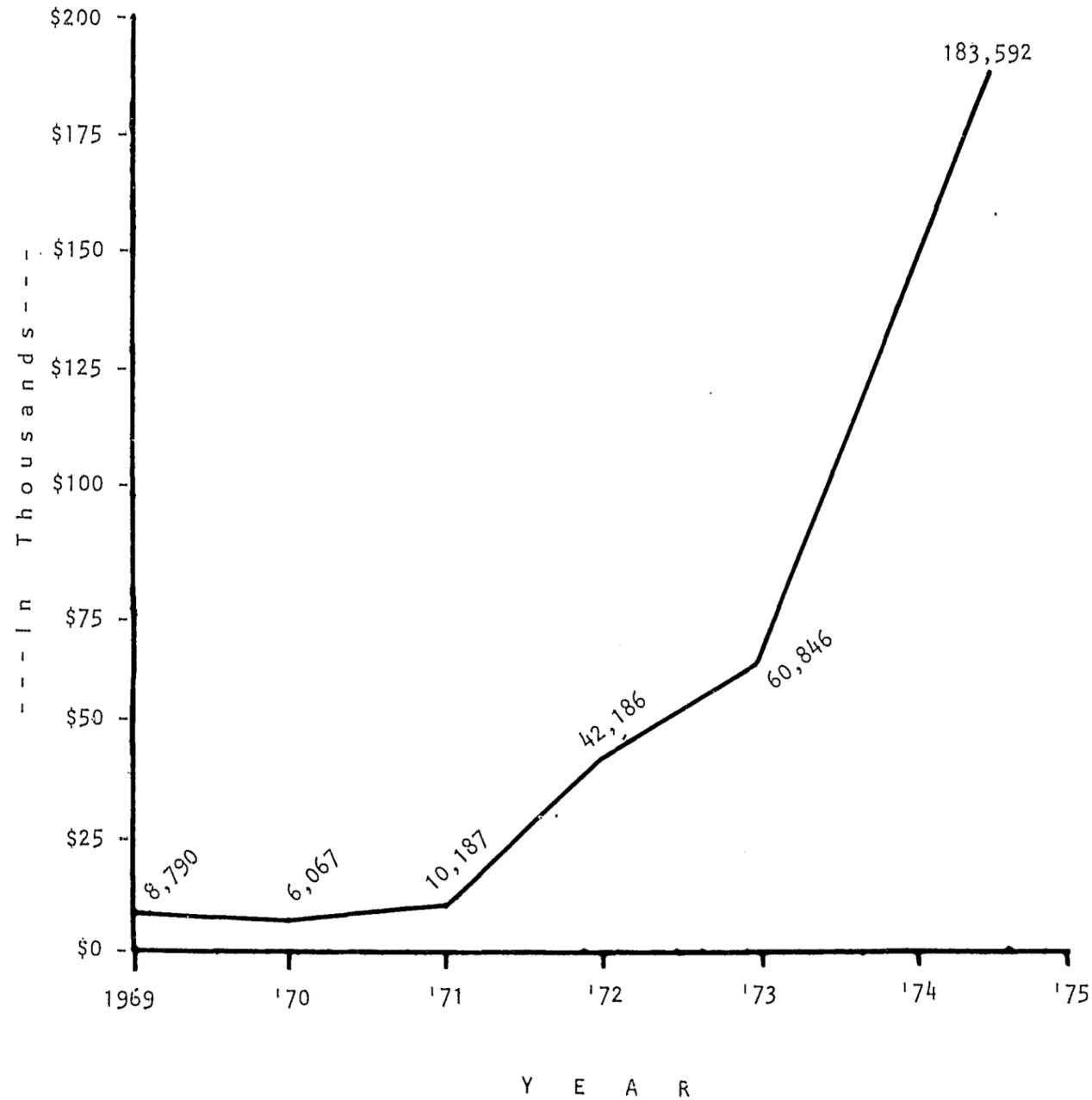
PROJECTED COST OF THE PRESENT ASSIGNED COUNSEL SYSTEM

Earlier sections of this report described the El Paso County court system and its current method of providing indigent defense service with an assigned counsel system. Additionally, the quality of that system was assessed through the use of questionnaires which were administered to the judiciary, private bar and criminal defendants. This section examines the cost of the assigned counsel system at present and in the near future. The projection of future cost is made to provide a base against which the costs of alternative systems can be compared.

The cost of appointed counsel, El Paso County's current method of providing legal assistance to indigent defendants, has increased a hundred-fold since 1970, apparently as a result of the indigency rate variable. In 1970-72, the El Paso court system provided attorneys in only about 1% of the adult misdemeanors; by 1975, this had increased to 10-12%. Similar changes have occurred in the adult felony system where over 50% of all cases now have court-appointed attorneys. Figure A graphically presents the cost of assigned counsel during the last six years. The heavy increase during 1973 may be attributed to the implementation of the Argersinger decision. Therefore, the trend occurring between 1972 and the present may not continue into the future.

By far the largest component of the total system costs displayed in Figure A is the amount expended for attorney fees. As discussed previously, attorneys are compensated by the courts for handling indigent defense. The amounts expended for attorneys fees for each court in El Paso for the 14-month period from July 1, 1974 to August 30, 1975 are presented in Table 7.

Figure A--Cost of Assigned Counsel



The 1969-73 cost estimates appearing in Figure A were obtained from a study done by Andrea Bond, formerly of the El Paso Legal Aid Society. The fiscal 1974-75 figure was obtained from Willis Sample, El Paso County Auditor.

TABLE 7--Attorney Fees Paid, 1974-1975

Court	Total \$ Paid	# Cases	Average Cost Per Case	Equivalent Annual Expense
District	\$116,109	702	\$165	\$99,528
County	51,865	436	119	44,460
Juvenile	26,175	268	98	22,440
TOTAL	\$194,149	1,406	\$138	\$166,428

While the attorney fees are the most sizable and visible costs of the assigned counsel system, it is important to note that there are other significant costs involved. These include expert testimony, medical/psychological examinations, investigations and other costs. During the period from July 1, 1974 to August 30, 1975, \$21,557 was expended in the El Paso Court System for such other costs. Table 8 presents the costs in these categories for the District Courts.

TABLE 8--Other Costs in the District Courts, 1974-1975

Category	Total \$ Paid	# Cases	Average Cost Per Case	Equivalent Annual Expense
Expert Witness	\$4,964	17	\$292	\$4,260
Medical/Psych Exam	4,329	27	160	3,708
Investigation	7,019	23	305	6,012
Other	1,627	29	58	1,392
TOTAL	\$17,939	96	\$187	\$15,372

These other costs in the District Courts are larger than their counterparts in the County and Juvenile courts. However, those systems also incurred such costs as presented in Tables 9 and 10.

Category	Total \$ Paid	# Cases	Average Cost Per Case	Equivalent Annual Expense
Expert Witness	\$100	1	\$100	\$ 84
Medical/Psych Examination	120	1	120	108
Other	615	7	88	528
TOTAL	<u>\$835</u>	<u>9</u>	<u>\$ 93</u>	<u>\$720</u>

Category	Total \$ Paid	# Cases	Average Cost Per Case	Equivalent Annual Expense
Mental/Psych Exam	\$2,583	12	\$215	\$2,220
Guardian Ad Litem	200	2	100	168
TOTAL	<u>\$2,783</u>	<u>14</u>	<u>\$315</u>	<u>\$2,388</u>

It is important to note that, although these costs are small relative to the attorney cost, the average cost per case for such items as expert testimony exceeds the average cost per case for attorney fees. Further, although the court may be able to control increases in compensation to attorneys, it is unlikely that it could hold down the cost of such items as expert testimony if more cases required it.

To project the future cost of the assigned counsel system, the cost per case data presented here was multiplied by the projected caseload developed earlier. No attempt was made to account for inflationary increases in the cost per case of attorney fees or other items. Therefore, the estimates developed here are moderate. Table 11 presents estimates for system

costs for attorney fees for each court system.

Court	Attorney Fees Per Case	Caseload	Total Cost
District	\$165	763	\$125,895
County	119	1,209	143,871
Juvenile	98	235	23,030
TOTAL	<u>\$138</u>	<u>2,207</u>	<u>\$292,796</u>

Although these costs make up the largest component of total system costs, the other costs presented above must also be forecasted. Indeed, if the percent of cases requiring other costs increases, they will become a significant proportion of total system costs. In the 14-month period from July 1, 1974 to August 31, 1975, only 14 percent of all District Court indigent cases required costs other than attorney fees. As defendants become more aware of their rights, and as attorneys begin to use expert witnesses and investigation resources more frequently, this percentage is bound to increase. For the purpose of this study, it is assumed that only slight increases will occur in the percentage of indigent cases requiring resources other than attorneys, although this assumption is conservative. Table 12 presents the projected cost of other resources for each of the three courts.

Court	Total Caseload	Percent Requiring Other Resources	Caseload Requiring Other Resources	Cost Per Case	Total Cost
District	763	15	114	\$187	\$21,318
County	1,209	3	36	93	3,348
Juvenile	235	5	12	199	2,388
TOTAL	<u>2,207</u>		<u>162</u>	<u>\$167</u>	<u>\$27,054</u>

An estimate of the future costs of the present assigned counsel system is derived by adding the projected cost of attorneys' fees to the projected costs of other resources. This results in a projected cost of \$319,924. It should be noted, however, that this figure excludes hidden costs, such as the work of the probation office in screening and interviewing defendants to determine indigency, the work of the Court Administrator's office in notifying attorneys of their appointment to cases, and minor costs relating to equipment and supplies currently being used to provide indigent defense services. To arrive at a base figure which would be valid for analytical purposes to compare with the cost of the alternative options, the study team quantified some of these hidden costs.

The adult probation officer presently spends 30% of his time interviewing and screening defendants to determine if they are indigent and eligible for court-appointed counsel. Since his salary is \$10,464 per year, 30% of this--\$3,140--can be applied to the existing court-appointed counsel system. The District Court Administrator for El Paso County spends 80% of her time on administration duties related to court appointments and one of her secretaries spends 100% of her time on such duties. Therefore, 80% of the Court Administrator salary of \$14,700--\$11,760--and 100% of her secretary's salary--\$6,000--can be attributed to the cost of the existing court-appointed counsel system.

A grand total of hidden salary costs for indigency related administration, therefore, is estimated at \$20,900. While such a figure lacks precise accuracy, it does identify the magnitude of the hidden costs. A valid total projected costs can be gained by adding these quantified hidden costs to earlier identified costs of attorney fees and other services. This results in a total projected cost of \$340,750.

VII

ALTERNATIVE OPTIONS

The study team considered four alternative options for improving the existing system of El Paso County for providing legal defense services to criminally accused indigents. The first option, the Defender-Advisor Plan, was proposed to the study team by a member of the El Paso County judiciary. The other three options, the Coordinated Assigned Counsel System, Defender System and Mixed System are variations of the basic defense systems employed throughout this country.

The structure of each alternative option is described in Section A. This is followed by projected budgets for each system, which display the start-up costs and yearly operating expenses, in Section B. Alternative options are subsequently analyzed as to their capability of providing competent and cost-effective defense services in Sections C and D.

A. Description

1. Single Defender-Advisor Plan

Under the Single Defender-Advisor Plan, El Paso County would hire one full-time attorney who would serve as an advisor to appointed attorneys under the present assigned counsel system. This defender-advisor would be selected for his expertise in criminal law and his ability to coordinate and supervise the activities of the appointed attorneys. He would arrange for entry-level training programs for newly licensed attorneys desirous of participating in the appointed counsel system. This would assure that assigned counsel have the basic defense skills necessary to provide effective representation. In addition, the defender-advisor would provide in-service

training and continuing legal education programs for the assigned counsel panel.

Under this plan, it is envisioned that the defender-advisor serve, in effect, as co-counsel to the appointed attorney in particular cases where that may be deemed necessary or advisable. The assigned counsel, however, would remain at all times the attorney of record and would assume full responsibility for the disposition of the case.

It would further be expected that this defender-advisor could assist the bench and bar in developing (1) a fair and equitable procedure for determining when a defendant is functionally indigent; (2) a follow-up procedure that assures prompt and immediate appointment of competent counsel; (3) a method of assuring that all defendants are properly advised of their constitutional rights at the earliest moment possible after arrest; and (4) a fee distribution more consistent with the actual time expended by appointed counsel.

2. Coordinated Assigned Counsel System (CAC)

The term "assigned counsel system" is used here to describe the current practice in El Paso County where attorneys are appointed by the court to represent indigent defendants on a case-by-case basis. The innovation proposed under the CAC System is the appointment of an administrator whose function it shall be to coordinate the activities of the court and private bar with respect to such appointments.

More specifically, the Administrator and his staff would be responsible for (1) compiling a comprehensive list of all attorneys available for appointment; (2) adopting a rating system based on attorneys' trial experience and familiarity with criminal practice; (3) adopting an equitable

rotation system to ensure equal distribution of cases; and (4) designing and administering a fee distribution plan which compensates, on an equitable basis, the actual attorney time consumed in the disposition of appointed cases.

The CAC Administrator should establish certification standards and co-counseling arrangements for new attorneys seeking appointments and, in that connection, arrange for an appropriate training program. On-going training for all participating attorneys should be encouraged and perhaps be made mandatory to ensure continued effectiveness of counsel.

A system of monitoring the performance of appointed counsel should be developed and implemented through the Administrator's office. Effective machinery for hearing and ruling on complaints against all appointed attorneys also should be established. Attorneys that consistently do not measure up to standard performance should be stricken from the appointment list.

The CAC program staff, in cooperation with the courts, probation office, law enforcement officials and other criminal justice component agencies, should develop a uniform procedure for the effective determination of indigency to be applied consistently with respect to all defendants. The staff should assure that determination of indigency is expedited and, where required, coordinate the immediate appointment of counsel.

The CAC program should have sufficient staff and resources to provide the necessary support to assigned counsel. To assist the investigation of cases, the staff should include a full-time investigator. When needed, the Administrator should contract for additional investigative personnel, expert witnesses and social services.

The Administrator of the CAC program should be appointed by an

independent board or commission. This would insulate the appointment of counsel from unwarranted judicial or political influence. It is suggested that such a board or commission include representatives of local government, the judiciary, the bar and the community served, especially low-income and minority groups.

3. Defender System

The term "defender system" describes a method of providing indigent defense services where an attorney or group of attorneys, through a contractual arrangement or as public employees, provide legal representation for indigent criminal defendants on a regular basis.

Under this plan, qualified defense lawyers are hired to represent all criminally accused persons who are determined to be indigent and who request legal representation, to include the handling of felonies, misdemeanors, juvenile cases, post-conviction remedies, appeals, extraordinary appearances and advice relating to all of these. Necessary support facilities, including adequate office space, equipment, investigatory capability and access to expert witnesses, are absolute prerequisites to ensure the indigent defendant both equal justice under the law and effective assistance of counsel. It would be expected, from time to time, that conflicts of interest might arise, particularly in connection with co-defendants. When such conflicts arise, the private bar would be called upon for appointments.

Staff attorneys would be assigned to different courts on a rotating basis in order to equalize their experience. This would also tend to prevent a relationship or accommodation that often develops when one attorney routinely appears before the same judge.

It would be the responsibility of the defender office (1) to arrange for a method of assuring immediate representation; (2) to develop a mechanism

whereby the determination of indigency, in the first instance, can be made by the defender staff or other non-judicial personnel; (3) to develop an obligatory in-service and advanced training program for staff attorneys dealing with tactics, techniques and new laws which affect the day-to-day criminal practice.

In planning for a Defender System, the NAC Standards provide that the line item in the defender office budget for supporting personnel and facilities

"...should be substantially equivalent to, and certainly not less than, that provided for other components of the justice system with whom the public must interact, such as the courts, prosecution, the private bar and the police."²³

The budget should, therefore, include such items as rent, copying equipment, telephone, postage, tape recording and photographic as well as other investigative equipment, funds to employ experts, travel and library books. Additionally, the office should employ an adequate number of secretaries, investigators and other support personnel.

As in the case of the Coordinated Assigned Counsel System, the Chief Defender should be appointed by an independent supervisory board or commission. The NAC Standards²⁴ stress the importance of this requirement and in its commentary states that defenders should not be elected to office due to the strong need to insulate the defender from political influences. Also warned against is the policy control and supervision of the judiciary, in order to avoid unwarranted judicial interference in the defense of criminal cases. It is suggested that such a supervisory board or commission include representatives of local government, the judiciary, the bar and the community served, especially low-income and minority groups. Its legal structure should

²³The National Advisory Commission, Ch. 12, Courts Section 13.14.

²⁴Ibid., Courts Section 13.8 et seq.

conform to the status of a non-profit corporation.

4. Mixed System

A mixed criminal defense system would include the establishment of a coordinated assigned counsel program and a separate defender office. Each component of this system would handle and be responsible for a certain percentage of the indigent criminal caseload.²⁵ The division of that caseload into the various categories of crime such as felonies, misdemeanors, juvenile and appeal should be left to the respective administrators. For example, it may be more practical to utilize the defender office exclusively for juvenile and appeal matters, in which event the private bar could handle a greater percentage of adult felony and misdemeanor cases at the trial level.

It is suggested that under the Mixed System, many of the functions earlier outlined in connection with the CAC program should be performed by and through the defender office. Accordingly, the CAC program requires only a half-time administrator whose primary function is the coordination of court appointments, the development and administration of an equitable fee distribution plan and the monitoring of attorney performance. This will require the services of a full-time administrative secretary, as reflected in the sample budget which follows.

The defender office, in addition to the duties directly incident to the day-to-day representation of indigent defendants, should be responsible

²⁵In the budget projection, the study team assumed that defenders would handle 75% of the caseload and assigned counsel 25%. The reason for this division is that 47% of the private bar surveyed responded that full-time defenders should handle 75% or more of the caseload (Question 27, Appendix H). Also, currently there is a lack of training programs and only 5% of the private bar surveyed has a specialty in the criminal practice (Questions 2 and 4, Appendix H). As the Mixed System and its training program develop, and if there is a greater interest among the private bar, the assigned counsel component could handle a greater percentage of the caseload.

for the following:

- Conducting in-service and advanced training program(s) for staff attorneys as well as assigned counsel;
- Implementing the process of determining indigency for all defendants at or near the time of arrest;
- Providing for immediate access to counsel for all those primarily determined to be indigent; and
- Providing for investigative and other support resources for itself and for assigned counsel.

B. Projected Budgets

In an earlier section, the cost of continuing the present assigned counsel system was projected to be \$340,750 for a typical year between 1975 and 1980. In this section, the study team's projection of the costs for operating each of the four alternative systems is presented. Each cost is broken into two categories--start-up costs and operating budget. Most of the equipment requirements were determined by the study team's judgment and law office management standards. The cost per item of various equipment is given in Table 13.

Additionally, the following estimates were made:

- Recruitment costs--\$1,000 for Chief or Assistant Chief Public Defender, \$500 for other attorneys;
- Rental cost--150 square feet per person at \$7 per square foot;*
- Investigator trips--\$10 per trip, 52 weeks per year;
- Defender staff salaries--Chief \$32,000
Assistant Chief \$24,000
Senior Associate \$21,000
Associate \$19,000
Staff \$16,000
Investigator \$13,000
Exec. Secretary \$ 9,500
Secretary \$ 9,000

*May be reduced according to facilities used.

- Each system is designed to handle 765 adult felony cases, 1,209 adult misdemeanor cases and 234 juvenile cases.

TABLE 13--Cost of Office Equipment	
Item	Per Unit Cost
desk	\$200
executive chair	125
desk chair	75
sec. chair	55
side chair	75
file cabinets	130
bookcases	50
dictaphones	500
projector	130
screen	55
typewriter	700
photo. equipment*	520
tape recorder**	140

*Olympus, Model OM-135 camera (\$325), f 1.4, 35mm lens (\$100), strobelight (\$70), tripod (\$25).

**With shoulder strap and carrying case

The first sample budget is for the Defender-Advisor System. This budget provides for a small law library, an executive secretary to support the Defender-Advisor attorney and operating expenses to cover communication costs. Since it is assumed that the Defender-Advisor will not try any cases himself, the professional services category assumes all the attorney and other costs borne by the Assigned Counsel System are also faced by this alternative.

The second sample budget is for the Coordinated Assigned Counsel System. This budget provides for a small law library and training equipment in addition to routine office equipment. The system operates with an

Attorney-Manager,²⁶ an investigator, and an office manager who is also the executive secretary. It assumes that the investigator makes four trips per week. It also provides \$1,500 for training conferences and seminars. Communications expenses are about 30% higher for this system than for the Defender-Advisor. Additionally, the system's budget provides for contracted medical and expert testimony and additional investigatory requirements. Thus, the professional services category contains only the projected cost of attorneys' fees from the Coordinated Assigned Counsel System.

A full defender office would require nine attorneys,²⁷ five secretaries, and two investigators. They would make use of nearly \$26,000 worth of office equipment, including an \$8,000 law library. It is assumed that the investigator will make seven trips per week, and that communications expenses will total \$16,800--almost double the cost of the Coordinated Assigned

²⁶While professional legal competence is the principal skill an attorney should be expected to bring to a law office, nevertheless, when the size of the office requires managerial skills, the attorney should be capable of bringing such skills to an Attorney-Manager position. The managerial skills he should possess should include, but not be limited to, the following:

1. Planning--He should be able to identify what goals the office must accomplish over a given period of time and plan what resources he would need and how his office might best use them to accomplish the identified goals;
2. Organizing--As a step in implementing his plans, he should be able to organize his office functionally, in a way best suited to accomplish identified goals;
3. Directing--He should be able to add a dimension of dynamics to the structure he has devised by assigning responsibilities for the accomplishment of his identified goals;
4. Coordinating--He should assure that the office is cross-trained through structured written and oral communications for the maximization of the utility of all the resources available;
5. Controlling--He should devise a scheme for tying all of the above together in a design for measuring how they are contributing to process toward identified goals and be able to assess the total progress toward each goal periodically, or, at best, at any given moment in time.

²⁷See Appendix K for discussion of how the number of attorneys needed was arrived at.

Counsel System. Since the defender office staff would include two full-time investigators, the defender office would not require the extent of contract investigatory services as the Coordinated Assigned Counsel System would require. Therefore, the line item for contract services in the Defender and Mixed Systems is less than it is in the CAC System.

The final budget is for a Mixed System with approximately 75% of the cases handled by the full-time staff and 25% handled by an assigned counsel. The full-time staff consists of seven attorneys, an investigator and two secretaries. They have the same law library and communications expenses as the full defender office. Table 14 shows how the professional services of assigned counsel fees were determined. The total caseload was divided between the full-time staff and the assigned counsel; the average cost per case for assigned counsel was multiplied by their caseload. The cost of professional services, therefore, was estimated to be \$72,350.*

Court	Total Caseload	Number Handled By Staff	Number Handled By Assignment	Cost Per Case	Total Cost
District	763	613 (4)	150	\$165	\$24,750
County	1,209	809 (2)	400	119	47,600
Juvenile	235	235 (1)	0	98	---
TOTAL	2,207	1,657 (7)	550	---	\$72,350

*The budget for the Mixed System does not include the cost of part-time Attorney Manager and secretary to administer the Coordinated Assigned Counsel program. It appears appropriate for the El Paso County Bar Association to assume this expense.

BUDGET DETAIL

Sample Budget #1--The Defender-Advisor

A. Start-Up Costs

<u>Equipment</u>		\$4,510
2 desks	400	
1 executive chair	125	
1 secretary chair	55	
1 typewriter	700	
2 side chairs	150	
1 file cabinet	130	
1 bookcase	50	
2 dictaphones	1,000	
law library	2,000	
<u>Recruitment</u>		1,000
<u>TOTAL</u>		<u>\$5,510</u>

B. Operating Budget

<u>Personnel</u>		\$47,725
Defender-Advisor Attorney	32,000	
Executive Secretary	9,500	
Fringe Benefits (15%)	6,225	
<u>Travel, Transportation & Subsistence</u>		1,500
<u>Supplies & Other Operating Expenses</u>		
general office supplies	1,500	
office space	2,100	
postage	1,500	
telephone	3,500	
duplicating	2,000	
<u>Professional Services*</u>		319,924
attorneys' fees	292,870	
other costs	27,054	
<u>TOTAL</u>		<u>\$379,249</u>

*Estimated to be equivalent to projected cost of assigned counsel.

BUDGET DETAIL

Sample Budget #2--The Coordinated Assigned Counsel System

A. Start-Up Costs

Equipment \$7,115

4 desks	800
2 executive chairs	250
1 desk chair	75
1 secretary chair	55
1 typewriter	700
4 side chairs	300
3 file cabinets	390
2 bookcases	100
3 dictaphones	1,500
law library	2,500
2 slide projector	130
1 screen	55
misc. training equipment	100
photographic equipment	520
tape recorder	140

Recruitment 2,000

TOTAL \$9,115

B. Operating Budget \$65,309

Personnel

Attorney-Manager	32,000
Investigator	13,000
Office Manager*	11,790
Fringe Benefits (15%)	8,519

Travel, Transportation & Subsistence 3,580

training conferences, seminars	1,500
4 investigator trips/week	2,080

Supplies & Other Operating Expenses 14,150

general office supplies	2,500
office space	3,150
postage	2,000
telephone	3,500
duplicating	3,000

Contract Services (expert witnesses, medical examinations, investigation) 35,000

Sample Budget #2--The Coordinated Assigned Counsel System, cont.

Professional Services (attorneys' fees) \$292,870

TOTAL \$410,909

*Compensation Survey (Western U. S.), Association of Legal Administrators, January 1974, prepared by Altman & Weil, Inc.

BUDGET DETAIL

Sample Budget #3--Defender Office

A. Start-Up Costs

<u>Equipment</u>		\$25,875
16 desks	3,200	
9 executive chairs	1,125	
2 desk chairs	150	
5 secretary chairs	275	
5 typewriters	3,500	
16 side chairs	1,200	
16 file cabinets	2,080	
10 bookcases	500	
10 dictaphones	5,000	
law library	8,000	
1 slide projector	130	
1 screen	55	
photographic equipment	520	
tape recorder	140	

<u>Recruitment</u>		5,500
--------------------	--	-------

<u>TOTAL</u>		<u>\$31,375</u>
--------------	--	-----------------

B. Operating Budget

<u>Personnel</u>		\$293,825
1 Chief Defender	32,000	
1 Assisnat Chief Defender	24,000	
2 Senior Defenders	42,000	
2 Associate Defenders	38,000	
3 Staff Defenders	48,000	
2 Investigators	26,000	
5 Secretaries (1 Executive)	45,500	
Fringe Benefits (15%)	38,325	

<u>Travel, Transportation & Subsistence</u>		12,390
training conferences, seminars	8,750	
7 investigator trips/week	3,640	

<u>Supplies & Other Operating Expenses</u>		38,600
general office supplies	5,000	
office space	16,800	
postage	5,000	
telephone	6,300	
duplicating	5,500	

Sample Budget #3--Defender Office, cont.

<u>Contract Services</u>	25,000
<u>TOTAL</u>	<u>\$369,815</u>

BUDGET DETAIL

Sample Budget #4--A Mixed Defender-Assigned Counsel System

A. Start-Up Costs

<u>Equipment</u>		\$22,355
13 desks	2,600	
7 executive chairs	875	
2 desk chairs	150	
4 secretary chairs	220	
4 typewriters	2,800	
13 side chairs	975	
13 file cabinets	1,690	
8 bookcases	400	
law library	8,000	
1 slide projector	130	
1 screen	55	
training equipment	200	
photographic equipment	520	
tape recorder	140	

Recruitment 4,500

TOTAL \$26,855

B. Operating Budget \$240,925

Personnel

1 Chief Defender	32,000
1 Assistant Chief Defender	24,000
1 Senior Defender	21,000
2 Associate Defenders	38,000
2 Staff Defenders	32,000
2 Investigators	26,000
4 Secretaries (1 Executive)	36,500
Fringe Benefits (15%)	31,425

Travel, Transportation & Subsistence 10,640

training conferences, seminars	7,000
7 investigator visits/week	3,640

Supplies & Other Operating Expenses 34,650

general office supplies	4,200
office space	13,650
postage	5,000
telephone	6,300
duplicating	5,500

Sample Budget #4--A Mixed Defender-Assigned Counsel System, cont.

<u>Contract Services</u>	22,000
<u>Professional Services</u> (attorneys' fees)	72,350
<u>TOTAL</u>	<u>\$380,565</u>

C. Capability of Providing Effective Defense Services

In order to provide quality representation to indigent criminally accused, an effective defense system should meet several basic criteria, as follows:

- 1) Provide counsel with expertise in the criminal practice;
- 2) Assure defendants immediate access to counsel;
- 3) Provide counsel with investigative and other support capabilities;
- 4) Develop fair standards for determining indigency;
- 5) Monitor attorney performance;
- 6) Provide equitable compensation for attorney time;
- 7) Assure professional independence of defense counsel;
- 8) Assure widespread involvement of the private bar; and
- 9) Resolve conflict of interest situations.

Each of these basic criteria is analyzed and discussed below in the context of the alternative defense systems presented previously. The objective of this procedure is to determine the capability of each alternative for meeting each criterion. Following the discussion of each criterion is a figure which displays each alternative defense system's capability of meeting that criterion; rating is on a 1-to-5 scale (1 reflects least capability, 5 reflects greatest capability).

While all of these criteria are important for providing effective defense services, in the context of El Paso County some of them require greater consideration than others. For example, presently there is a greater need in El Paso County to provide training programs to assure that appointed counsel have expertise in the criminal practice than there is to resolve conflict of interest situations. Therefore, the study team has weighted each

criterion on a 1-to-5 scale (5 being most important, 1 being least important). At the conclusion of these nine analyses is a summary table (Exhibit 1) which displays the design used to arrive at the weighted value of each criterion by type of defense system and the total net value allocated to each system. Column A describes each criterion, column B identifies the weighted value of each criterion, and columns C through F identify the rating for each criterion within each system and the net score for each (weighted value X rating = score). The total net scores are displayed at the bottom of columns C through F.

1. Providing Counsel with Expertise

Providing indigents with counsel has often meant simply providing the accused with a lawyer no matter how lacking in experience or competence. In today's complex legal world, a license to practice law alone does not qualify a person to be a criminal defense attorney. Courtroom procedure is highly technical. Legal experts in trial practice have written volumes on the complexities of the rules of evidence, on techniques for cross-examination and on the manner and strategy of selecting jurors, just to mention a few areas. Such expertise is an essential component of effective representation in the criminal court arena. The Texas Bar Association has recognized this need for specialization and recently established the Texas Board of Legal Specialization. Standards for certification of a Criminal Law Specialist in the State of Texas are contained at Appendix E.

Unlike the civil lawyer, who generally engages in little litigation practice, the criminal lawyer needs to have recent decisions of the U. S. Supreme Court, lower federal courts and state appellate courts on the tip of his tongue in order to argue frequently and persuasively before the court.

The criminal defense attorney must be a specialist in a number of areas; in motion writing as well as trial practice.

Many attorneys handling indigent cases, both defenders and assigned counsel, have received their first training in the criminal practice by "practicing" on actual defendants in criminal trials. The survey of the El Paso County bar indicated that when representing their first indigent clients, one-third of the attorneys had been licensed to practice less than three months; two-thirds, less than a year.²⁸ Chief Justice Warren Burger, one of the most outspoken critics of this practice, has stated,

"...defenders often learn advocacy skills by being thrown into trial. Valuable as this may be as a learning experience, there is a real risk that it may be at the expense of the hapless clients they represent--public or private. The trial of an important case is no place for on-the-job training of amateurs except under guidance of a skilled advocate."²⁹

In addressing the matter of criminal expertise, the National Advisory Commission proposed that intensive entry-level programs be established to ensure that defenders and assigned counsel have the basic defense skills necessary to provide effective assistance of counsel before representing indigent clients.³⁰ They stress the point that such training be "systematic and comprehensive."

An ideal entry-level training program should consist of a four- to six-week curriculum, during which time trainees are not assigned to courts or to cases. Instruction should include lectures, seminars and reading assignments covering statutory and case law materials and practice and procedure. Field visits and court observation should be included. New attorneys

²⁸See Survey, Question 5 at Appendix H.

²⁹Burger, Advocacy on Trial: A Challenging Proposal, 1 LEARNING AND THE LAW 26, 30 (1974).

³⁰NAC Standards, Courts Section 13.16.

should be involved in simulated client and witness interviews and simulated trial situations. Role-playing exercises should be videotaped and discussed. Many offices are too small to provide comprehensive entry-level training and must rely on programs conducted at the state and national level.

Defenders or appointed counsel in El Paso County easily could take advantage of training programs conducted by the National College of Criminal Defense Lawyers and Public Defenders, located at the University of Houston's Bates College of Law.

The NAC also recommends that "in-service training and legal education programs should be established on a systematic basis. . ."³¹ for both defenders and assigned counsel. Defense attorneys need to keep abreast of developments in criminal law and procedure and in the forensic sciences. Defender offices or assigned counsel programs must maintain adequate law libraries and pleading banks. Copies of slip opinions of the U. S. Supreme Court and the state's appellate courts and national publications such as the Criminal Law Reporter should be readily available to all defense attorneys. Periodic lectures by senior attorneys, forensic science experts and community agency personnel should be utilized.

It is clear that the development of a program for training and continuing legal education for criminal experts requires a good deal of planning and attorney manpower. Both the Coordinated Assigned Counsel and the Defender Systems are independently capable of undertaking this responsibility, as is the Mixed System.

The Defender System would be particularly well suited for this task. Full-time defenders devote their entire working day to the criminal practice;

³¹NAC Standards, Courts Section 13.16.

they develop the requisite expertise and easily exchange information, consultation and assistance with each other. In the Mixed System, the defender office component is ideally suited to satisfy the training needs for itself as well as for the assigned counsel panel, thereby eliminating duplication of effort. Also, the defender office could develop brief and motion banks for the use of both defenders and assigned counsel. In a Mixed System, the facility exists for assigned counsel to exchange information and consult with full-time defenders. In sum, the Defender and Mixed Systems have inherent within them the atmosphere and capability of providing counsel with expertise in the criminal practice.

The CAC System has the staff capability of providing counsel with the requisite expertise, but it is not as easy for assigned counsel to exchange information, consult and seek assistance from colleagues as it is for full-time staff attorneys in a defender office. The Defender-Advisor Plan, however, could not hope to achieve much success in the area of training, because of its built-in limitations of professional staff. With his many other duties and responsibilities earlier outlined, the defender-advisor would have to place training low in order of priorities and the objective would in all probability be lost.

Figure 1 displays the rated capability of each system to meet the criterion "Providing Counsel with Expertise in the Criminal Practice" (1 reflects least capability, 5 reflects greatest capability).

Figure 1: PROVIDING COUNSEL WITH EXPERTISE IN THE CRIMINAL PRACTICE (5)

	1	2	3	4	5
Defender-Advisor Plan		X			
Coordinated Assigned Counsel System				X	
Defender System					X
Mixed System					X

2. Assuring Defendants Immediate Access to Counsel

The National Advisory Commission recommends that

"...representation should be made available to eligible defendants...beginning at the time the individual either is arrested or is requested to participate in an investigation that has focused upon him as a likely suspect."³²

They recognize four benefits of early representation:

- "1. The presence of counsel at the critical stages of the proceedings will help safeguard constitutional rights and will help reduce court congestion.
2. The defense will be able to undertake a complete investigation.
3. The necessary plea bargaining and negotiating can take place.
4. Defense counsel will be better prepared at the initial appearances."

Early contact by the attorney with the accused can mean the difference between effective and ineffective legal assistance. A prompt determination of all relevant facts enables the attorney to initiate investigation, secure a release of the accused from custody and provide legal advice for the protection of the accused's constitutional and legal rights. The American Bar Association, in its Standards for Criminal Justice, points out that

"[m]any important rights of the accused can be protected and preserved only by prompt legal action. The lawyer

³²NAC, Courts Section 13.1.

should inform the accused of his rights forthwith and take all necessary action to vindicate such rights. He should consider all procedural steps which in good faith may be taken, including, for example, motions seeking pretrial release of the accused, obtaining psychiatric examination of the accused when a need appears, moving for a change of venue or continuance, moving to suppress illegally obtained evidence, moving for severance from jointly charged defendants, or seeking dismissal of the charges."³³

The need for early appointment is strengthened by the fact that a great percentage of cases are disposed of without trial. These dispositions often come about through guilty plea negotiations or non-negotiated pleas of guilty. At the initial stages, the presence of defense counsel could be decisive in helping the prosecutor decide whether he will make a formal charge. In its Task Force Report The Courts, the President's Commission on Law Enforcement and the Administration of Justice summed up the arguments for early representation when it said,

"Early provision of defense counsel is essential to satisfy the concerns of the accused and of the system for the fairness and accuracy of the guilty plea process. Counsel can provide the defendant with a reasoned basis for considering the advantages and disadvantages of the negotiated disposition. He can enlist the acceptance and support of the defendant's family, employer, or other persons whose cooperation may be imperative. He can help the defendant to understand the rightness and fairness of what is happening and thereby help to avoid the destructive sense with which many uncounseled or ill-counseled defendants are left after . . . they have either 'conned' the system or been treated unfairly by it."³⁴

The ABA Standards further state,

"It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to guilt and degree of guilt or penalty. . .
. . . The duty to investigate exists regardless of the

³³ABA Standards, Defense Function, Section 3.6, Approved Draft, 1971.
³⁴Task Force Report: The Courts, p. 53.

accused's admissions or statements to the lawyer of facts constituting guilt or his stated desire to plead guilty."

Under the best of circumstances, the actual posture of defense counsel, from the standpoint of an adversary, is that he is already behind when he begins his efforts in behalf of his clients. The police have made an arrest based on either an on-the-scene view of the alleged criminal activity or they have conducted an investigation leading to the arrest of the accused. Time has had its effect on the scene of the alleged crime and on the memories of the witnesses for and against the accused. More often than not, the names of prosecution witnesses are preserved but witnesses that could be favorable to the defendant are either not interviewed by the police or the names not preserved, as they are not perceived as valuable to the prosecution's case against the defendant.

The non-indigent criminally accused is able and free to call in private counsel for immediate consultation. The defendant, under these circumstances, can discuss the nature of the charge and evaluate with counsel the implications that the charge may have on all the concerns that prey on his mind, such as family considerations, employment status, health factors and so on. It is fair to say that many of these considerations bear directly on the chances for quick rehabilitation and consequent favorable disposition; they are therefore crucial to the process of effective representation and should be given immediate attention. The indigent counterpart should be afforded similar treatment and should be assured immediate access to counsel.

Experience has shown that a defender office is best capable of providing immediate access to counsel. It is simply a matter of assigning one or more staff attorneys to the jail on a 24-hour on-call basis. The practice in most defender jurisdictions is that the staff attorney will visit the

jail facility prior to arrangements each day for the purpose of counseling those who appear to be in need of counsel. To ensure immediate counsel to those arrested during weekends and to others who have perhaps not yet been formally arrested, phone facilities are made readily available to them allowing for initial contact and immediate follow-up. Additionally, the defender office could respond to inquiries from eligible persons who believe that they are "under suspicion of a crime, or [believe] that a process will commence resulting in a loss of liberty or the imposition of a legal disability."³⁵

The Coordinated Assigned Counsel System can develop a method for early representation, but it must rely on private attorneys who are willing or imposed upon to serve on a rotation basis. It is difficult at best to monitor the effectiveness of providing for immediate representation in this manner but it can be done. In this regard, the Defender-Advisor Plan can devise a method similar to the Coordinated Assigned Counsel System.

The Mixed System would turn over the function of providing immediate access to counsel to the defender office component. Appropriate distribution of cases to defenders and assigned counsel would take place of the initial contact. The Chief Defender and the CAC administrator should develop "systematic procedures for early case assignment and for informing the client of the name of the attorney who will represent him after the initial period."³⁶

Figure 2 displays the rated capability of each system to meet the criterion "Assuring Defendants Immediate Access to Counsel" (1 reflects least capability, 5 reflects greatest capability).

³⁵National Study Commission on Defense Services, Draft Report, p. 105.
³⁶ibid., p. 106.

Figure 2: ASSURING DEFENDANTS IMMEDIATE ACCESS TO COUNSEL (5)

	1	2	3	4	5
Defender-Advisor Plan		X			
Coordinated Assigned Counsel System			X		
Defender System					X
Mixed System				X	

3. Providing Counsel With Investigative And Other Support Capabilities

The appointment of even the most skilled trial attorney to defend an indigent accused is no more than a token gesture if the defense hinges upon the location of a missing witness or the testimony of a ballistics expert and such assistance is not available. The importance of adequate investigation and the specialized assistance of psychiatrists, forensic pathologists and other scientific experts is universally recognized as an essential component of an effective defense capability. Yet in most instances, the indigent accused goes into court without this assistance. Rarely will he have the benefit of an independent investigation conducted in his behalf to challenge the investigative machinery available to the prosecutor, which can include the local police department, the sheriff's office, the state police and the FBI.

Both the American Bar Association and the National Advisory Commission call for a defense system to provide adequate support services.³⁷ The NAC Standard 13.14 specifically provides that the support services

³⁷See ABA Standards for Providing Defense Services, Subsection 15.

for a defense system "should be substantially equivalent to, and certainly not less than, that provided for other components of the justice system."³⁸

The National Study Commission on Defense Services recommends that

"...[s]ocial workers, investigators, paralegal and paraprofessional staff should be employed to assist attorneys in performing tasks not requiring attorney credentials or experience and for tasks that support staff bringing special skills and experience to performing."³⁹

Given the caseload demands on defense attorneys, the use of support specialists is essential to providing effective assistance of counsel. Investigators are a fundamental staff resource because investigations are required in every case where there is a factual question not subject to objective determination. Proper trial preparation demands verification of evidence and information developed by the prosecutor and other law enforcement personnel, as well as interviewing potential defense witnesses. An attorney can use both investigative and social work talent to help him advise the defendant regarding diversion programs. Social workers, also, can develop sentencing alternative programs for the clients.

The failure to provide supporting services for defense counsel is also wasteful in terms of the efficient allocation of resources, since it is simply uneconomical for attorneys to carry out supportive functions. The above standards recognize both the cost-savings accomplished by having paraprofessionals handle functions for which lawyers are not necessary and the crime-reducing potential of having a defense system coordinated with community social service agencies in working toward the rehabilitation of the offender as early as possible.

³⁸NAC Standards, §13.14.

³⁹National Study Commission on Defense Services, Draft Report, p. 577.

The described Coordinated Assigned Counsel, Defender and Mixed Systems are all equally capable of meeting the demands for investigative and support services. In the respective budgets of each system there are included funds for full-time investigator(s) and additional money for consultant services as needed. The Defender-Advisor Plan is seriously deficient in this regard. The attorneys appointed would have to rely on motions to the court requesting funds for investigative and other miscellaneous expenses on a case-by-case basis. This is a slow and cumbersome arrangement and most discouraging in its practice.

Figure 3 displays the rated capability of each system to meet the criterion "Providing Counsel with Investigative and Other Support Capabilities" (1 reflects least capability, 5 reflects greatest capability).

Figure 3: PROVIDING COUNSEL WITH INVESTIGATIVE AND OTHER SUPPORT CAPABILITIES (5)

	1	2	3	4	5
Defender-Advisor Plan	X				
Coordinated Assigned Counsel System					X
Defender System					X
Mixed System					X

4. Developing Fair Standards for Determining Indigency

No indigent defense system is effective unless it in fact serves all those who are entitled by law to be served. The study team has previously reported that the indigency rate in El Paso County is unusually low as pertains to the criminal justice process. Defendants who are able to raise bail money are presumed not indigent without regard to their present ability

to obtain counsel. The determination of indigency is at present left to the initial discretion of the probation department. This determination is guided essentially by subjective considerations consistent with what the court and prosecution will tolerate rather than based upon objective universal standards which address the defendant's real ability to pay for counsel.

The federal constitutional standard of indigency minimally includes those persons who. . .

"...because of their impecunity. . .[are] completely unable to pay for some desired benefit, and as a consequence, they [sustain] . . .an absolute deprivation of a meaningful opportunity to enjoy that benefit."⁴⁰

The Supreme Court, in discussing the right to appointed counsel, speaks of not having funds to obtain counsel,⁴¹ but has never explicitly defined what constitutes indigency beyond the minimal functional indigency referred to in Rodriguez, supra. Indeed, as Justice Powell has pointed out, the

"...line between indigency and assumed capacity to pay for counsel is necessarily somewhat arbitrary, drawn differently from State to State and often resulting in serious inequities to accused persons."⁴²

The American Bar Association has recommended that

"[c]ounsel should be provided to any person who is financially unable to obtain adequate representation without substantial hardship to himself or his family."⁴³

The language of the relevant Texas statute requires appointment of counsel when the accused is "too poor to employ counsel."⁴⁴ The case law appears to interpret this language as establishing a standard similar to the ABA's. Thus, the fact that an accused can make a \$5,000 surety bond is not in itself sufficient justification to deny appointment of counsel.⁴⁵

⁴¹Miranda v. Arizona, 384 US 436, 473.

⁴²Argersinger v. Hamlin, 407 US 25, 44, 50 (1972).

⁴³ABA Standards, Providing Defense Services §6.1 (1968).

⁴⁴Texas Code of Criminal Procedure, Art. 26.04.

⁴⁵Simmons v. State, 511 SW 2d 308 (Tex. Cr. App. 1974).

Further, when the accused indicates that he is indigent, "a duty then devolves upon the trial court to hold a hearing to determine such question."⁴⁶

The language of Foley v. State is as specific, and as vague, as any in the reported Texas cases:

"In the instant case, the trial court considered appellant's release on appeal bond to be a primary factor in determining that appellant was not indigent. While making the appeal bond may well be a factor, it is not absolutely per se determinative of appellant's status as a non-indigent. . .However, the fact that appellant made appeal bond, plus the fact that he approached an attorney for the purpose of retaining him for appeal, clearly indicated to the trial court that there may have been a change of condition requiring a re-evaluation of appellant's status as an indigent."⁴⁷

It appears that whether an accused is "too poor to employ counsel" is a determination to be made by the trial court, and that if there is evidence in the record to support a finding of non-indigency, the trial court's determination will be affirmed.⁴⁸

The National Study Commission on Defense Services made the following recommendations concerning financial eligibility of defendants for counsel to the National Colloquium on the Future of Defender Services in January 1976:⁴⁹

"4. FINANCIAL ELIGIBILITY
a. Eligibility Criteria

Effective representation shall be provided to anyone who is financially unable, without substantial hardship to himself or to his family, to obtain such representation. This determination shall be made by ascertaining the liquid assets of the person which exceed the amount needed for the payment of current obligations and which are not needed for the support of the person or his family. Liquid assets include cash in hand, stocks and bonds, bank accounts and any other property which can be readily converted to cash. The person's home, car, household furnishings, clothing and any property declared exempt from attachment or execution by law, shall not be considered. The eligibility

⁴⁶Simmons v. State, supra, at 310.

⁴⁷514 SW 2d 449, 451 (Tex. Crim. App. 1974).

⁴⁸Sifford v. State, 511 SW 2d 526, 527 (Tex. Crim. App. 1974).

⁴⁹Draft Report and Guidelines for the Defense of Eligible Persons, 155, 160.

determiner shall not consider whether or not the person has been released on bond, or the resources of a spouse, parent or other person. If the person's liquid assets are not sufficient to cover the anticipated cost of effective representation, the person shall be eligible for public representation. The cost of representation, for purposes of determining eligibility, shall include investigation, expert testimony, and/or other costs which may be related to providing effective representation.

4.b. Method of Determination

The financial eligibility of a client for public representation shall be made initially by a defender subject to review by a court on a finding of ineligibility. Eligibility shall be determined by means of an affidavit which shall be considered privileged under the attorney-client relationship. The client shall be notified that he may be required to reimburse the state or county for all or part of the cost of representation. A decision of ineligibility which is affirmed by a judge shall be reviewable by an expedited interlocutory appeal. The defendant shall be informed of this right to appeal and if he desires to exercise it, the clerk of the court shall perfect the appeal. The record on appeal shall include all evidence presented to the court on the issue of eligibility and the judge's findings of fact and conclusions of law denying eligibility."

The advantage of the Commission's recommendation is that it considers both the realistic ability of the accused to pay for his defense and the estimated cost of that defense if private counsel has to be retained. The comments to these recommendations cite three considerations which lead to the conclusion that a public defender (or, in a Mixed System, the defender or private lawyer to whom the case is assigned) should be the initial arbiter of eligibility.

"First is the need to establish a lawyer-client relationship at an early time. Second is the desirability of creating that relationship in a direct manner which most closely resembles the private lawyer-client model. Thirdly, it is believed that the public defender is in the best position to determine eligibility. The system here proposed calls for determination by the defender subject to review by the court on a finding of ineligibility and subject to inspection by the court at the close of the proceedings. As proposed, the system thus

includes checks and balances."⁵⁰

New forms and interview techniques consistent with the above must be developed allowing for an initial determination of indigency at the earliest possible moment after arrest, reviewable by the Court at the time of arraignment. In order to expedite this process, defense counsel should be authorized to make such initial determination and proceed with the rendering of legal service to those that qualify.

Developing fair standards for determining indigency requires the full cooperation of bench and bar. Raising the indigency rate has the actual or illusory effect of suggesting that the private bar will suffer a financial loss. For that reason, the Coordinated Assigned Counsel System would appear best capable of developing new standards for the determination of indigency. The large involvement of the private bar in the CAC System will ensure the support necessary to make such a modification workable.

The Defender System may at first have some difficulty in implementing the development of new indigency determination standards. In time, however, as the defender office becomes more established and as its adversary role on behalf of indigent clients becomes better known and understood, systematic changes recommended by that office will be given more credibility and acceptance.

A Mixed System is ideally capable of supporting a new procedure for the determination of indigency. Under this plan, the assigned counsel component could well design and introduce the modified procedure and the defender component would assist with its implementation.

The Defender-Advisor Plan would at best be capable of suggesting a change in the present method of determining indigency, and serve as a catalyst to implement such change. It could not, however, implement such

⁵⁰ National Study Commission on Defense Services, Draft Report, p. 160.

a process for lack of sufficient staff.

Figure 4 displays the rated capability of each system to meet the criterion "Developing Fair Standards for Determining Indigency" (1 reflects least capability, 5 reflects greatest capability).

Figure 4: DEVELOPING FAIR STANDARDS FOR DETERMINING INDIGENCY (4)

	1	2	3	4	5
Defender-Advisor Plan		X			
Coordinated Assigned Counsel System					X
Defender System			X		
Mixed System					X

5. Monitoring Attorney Performance

In addition to providing counsel with expertise in the criminal practice, an effective defense system should provide a systematic procedure for monitoring the performance of defense counsel. This continual review of the work performance of attorneys handling indigent cases ensures that only the qualified and industrious attorneys remain actively involved. Those who do not maintain minimum standards of defense representation should be removed from indigent criminal practice work. Further, the review procedure should encompass a method for dealing with complaints and grievances by clients.

The monitoring of attorney performance requires the attention of a full-time staff to keep adequate administrative records. Court appearances must be audited and the opinions of judges and other court officials solicited regarding the performance of the attorneys being monitored. The

court files should be spot-checked to determine whether attorneys are doing quality work in their pleadings and brief material.

The National Study Commission on Defense Services has recommended that systematic procedures be developed to monitor and evaluate the performance of assigned counsel and staff defenders.⁵¹ With a Coordinated Assigned Counsel System, the Commission recommends that the administrator, who should be an attorney with experience in criminal defense practice and administration, make "performance evaluations based on personal monitoring, augmented by regular inputs from judges, prosecutors, other defense lawyers and clients. . . and periodic review of" case files. The feedback of those directly involved with the attorney is essential to get appropriate and effective measurements of the attorney's performance.

The very fact that regular evaluations are being made should serve as an incentive for attorneys to constantly upgrade their quality of representation. The evaluation, which must be made confidentially, should. . .

"consider the attorney's preparation, legal and factual, his knowledge of criminal law, procedure, and evidence, his ability to make pre-trial motions and to discuss the case with the prosecutor prior to trial, his ability to conceive trial strategy, the actual case disposition, the person's knowledge of sentencing procedures and sentence alternatives, his ability to relate to clients, and his zeal, demonstrated motivation for self-improvement and interest in the field."⁵²

In a defender office, the chief defender periodically should make similar evaluations of all staff attorneys. In addition, procedures for individualized supervision on a systematic basis should be developed. These procedures are necessary to facilitate more effective representation and merit promotions. An additional function of a program of supervision in a

⁵¹National Study Commission on Defense Services, Draft Report, p. 289, 750.
⁵²ibid., p. 90-91.

defender office is the monitoring of workload so that no person has either an excessive or an insufficient amount of work.

The Defender System is, without a doubt, best capable of monitoring attorney performance. The chief defender has full control over the staff he hires and by virtue of his authority (to fire personnel), he can monitor performance and deal with deficiencies in a very effective manner.

The Coordinated Assigned Counsel System is certainly capable of monitoring attorney performance except that the efficiency factor is reduced considerably. It will require a great deal of time to monitor the private attorneys handling the thousands of indigent cases in El Paso County, and, as a result, the monitoring will necessarily be less intense.

In a Mixed System, the assigned counsel panel would be reduced by about one-half that of the CAC System, which would improve the chance for effective monitoring. The defender component would do well in this area as pointed out above.

The Defender-Advisor Plan could conceivably develop a monitoring system. The limitation of staff, however, would curtail the chances for effectiveness by carrying out such a plan. At best, this system would be capable of dealing with complaints and grievances by clients, as well as monitoring on a reactive rather than a proactive basis.

Figure 5 displays the rated capability of each system to meet the criterion "Monitoring Attorney Performance" (1 reflects least capability, 5 reflects greatest capability).

Figure 5: MONITORING ATTORNEY PERFORMANCE (3)

	1	2	3	4	5
Defender-Advisor Plan	X				
Coordinated Assigned Counsel System			X		
Defender System					X
Mixed System				X	

6. Equitable Compensation for Attorney Time

An indigent criminal defense delivery system should provide for a method that adequately compensates attorneys for their services, and in the case of assigned counsel, facilitates the prompt payment of such compensation. The commentary to the National Study Commission's recommendation on this point identifies several compelling reasons:

"First, with the expansion of the right to counsel and the higher effective assistance standards, attorneys are required to perform in a much greater capacity than ever before. Secondly, since the provision of counsel to the legally indigent is a societal burden, taxpayers should bear the cost to fairly compensate counsel for their performance of necessary services, instead of requiring counsel to shoulder all or a disproportionate share of the burden. . . Finally, and perhaps most significantly, counsel should be adequately compensated to ensure that eligible persons receive quality representation. Regardless of counsel's moral or professional obligation, it is too much to expect that the adequacy of compensation will not affect an attorney's performance."⁵³

The National Study Commission further recommends that

"[t]he amount of assigned counsel fees should be related to the prevailing rates among the private bar for similar services. These rates should be periodically reviewed and adjusted accordingly."⁵⁴

Such adequate compensation is necessary in order to consistently attract competent private attorneys to represent indigent criminal defendants.

⁵³National Study Commission on Defense Services, Draft Report, p. 365.
⁵⁴ibid., p. 311.

Similarly, it is important to offer attractive salaries to defenders in order to assure competent staff and equally important, to minimize the turnover problem that otherwise would set in. In this connection, NAC stated,

"The financial rewards of private law practice can be large. In order to attract qualified people, public office should hold reasonable financial rewards as well. Where defenders devote their full energies and resources to their office, they should receive adequate compensation. The public defender is an important component of the criminal justice system, comparable to the prosecutor and the chief judge of the highest trial court of the jurisdiction. For purposes of salary, therefore, he should be treated in a similar manner."⁵⁵

On the issue of compensation, it would appear best to have a greater involvement of the private bar. Their participation would ensure an awareness of and appreciation for the problem, and surely, they would support any effort to upgrade the compensation level for their own work. Accordingly, the Defender-Advisor Plan and the Coordinated Assigned Counsel System would do well in this category. The Defender System would have the greatest difficulty in this regard, for without the participation of the bar, the tendency would be to underestimate the worth of a defender. The Mixed System probably offers the best balance with respect to the development of a fair compensation base for both appointed attorneys and defenders. The active involvement of the private bar provides an effective lobby for the adequate financing of a defender office, and would enable the defender to work effectively with the CAC administrator in developing a fair and equitable fee structure for assigned counsel.⁵⁶

⁵⁵NAC, Courts, p. 267.

⁵⁶Included at Appendix L is a sample fee schedule used by the Coordinated Assigned Counsel System in San Mateo, California. San Mateo County expended during fiscal 1974-75 \$939,700.00 for that system's operation. Of that amount, \$678,028.45 was paid in attorney fees for representation in 12,324 cases. Under that system, even with their equitable fee schedule, the average cost per case was only \$76.25.

Figure 6 displays the rated capability of each system to meet the criterion "Providing Equitable Compensation for Attorney Time" (1 reflects least capability, 5 reflects greatest capability).

Figure 6: PROVIDING EQUITABLE COMPENSATION FOR ATTORNEY TIME (3)

	1	2	3	4	5
Defender-Advisor Plan					X
Coordinated Assigned Counsel System					X
Defender System			X		
Mixed System					X

7. Professional Independence of Counsel

Every defense attorney has a high legal and ethical duty to provide effective assistance of counsel to his client. This obligation exists even where the attorney is compensated by public funds instead of by his client. Where public funds are used to provide defense counsel, a basic dilemma arises: While selection, policy recommendations and monitoring of the defense function is necessary to ensure that the highest quality of representation capable will be provided, such necessities must never operate to inhibit the defense attorney's loyalty to his clients or his zealous advocacy of and dedication to their legal causes.

The National Advisory Commission has commented that

"[a]dequate defense services can be provided only by an independent attorney who is free to defend his client without threat to his position because of popular or political pressures. Appointment of the defender by a judge may impair the impartiality of the defender, because the defender becomes an employee of the judge. Moreover, such a system will create a potentially dangerous conflict, because the defender will be placed in a position where occasionally he must urge the error of

his employer on behalf of his client. Such dual allegiance, to judge and client, will cripple seriously any system providing defender services."⁵⁷

The American Bar Association stresses that

"[c]ounsel should have professional independence from the court, the prosecuting arm, and the funding source, as well as any political influence in his jurisdiction."⁵⁸

To insure professional independence, the National Legal Aid and Defender Association concluded that

"[t]he most appropriate method of assuring independence modified with a proper mixture of supervision is to create a board of directors representing various segments of the community. . . Moreover, a strong argument can be made for the proposition that a defender office should not be a governmental agency, but a private, not for profit corporation."⁵⁹

In describing the various defense systems, it was suggested in each that the respective head person be appointed by an independent board or commission composed of representatives of the courts, the bar, the client community and the funding source. Such an approach should virtually eliminate even the appearance of external subtle pressures.

Despite this, the Coordinated Assigned Counsel System may always remain vulnerable to the charge that the private clientele is a strong competing influence upon the private attorney; that between the two, the paying client will receive the most favorable attention. By contrast, the full-time defender has no private clients and, therefore, is able to devote his entire professional life to indigent clients. Suffice it to say that no system is perfect, and as presented, each of the alternatives should be capable of assuring the requisite professional independence.

⁵⁷NAC, Courts, Standard 13.8, Commentary.

⁵⁸ABA Standards, Providing Defense Services §1.4.

⁵⁹NLADA, Proposed Standards for Defender Services, Standard 3.1, Commentary to Standards 1.8 to 16.

Figure 7 displays the rated capability of each system to meet the criterion "Assuring Professional Independence of Counsel" (1 reflects least capability, 5 reflects greatest capability).

Figure 7: ASSURING PROFESSIONAL INDEPENDENCE OF COUNSEL (2)

	1	2	3	4	5
Defender-Advisor Plan					X
Coordinated Assigned Counsel System					X
Defender System					X
Mixed System					X

8. Assuring Widespread Involvement of the Private Bar

The private bar, because of its prestige and influence in a community, can be an effective force in protecting the rights of the criminally accused and lobbying for reforms in the criminal justice system. To do this, however, they must be knowledgeable of the problems existing in the system. This requires either their active involvement in the criminal justice system or, in the case of a full defender system, a close relationship between the bar and defenders.

The National Advisory Commission has concluded that, "An indispensable condition to the fundamental improvement of the defense system is the active and knowledgeable support of the bar as a whole."⁶⁰ There is probably no better way of developing an interest and awareness of the criminal justice system and its problems than providing wide opportunities for attorneys to participate in criminal litigation at reasonable rates of compensation.

The CAC System offers the capability of assuring the greatest

⁶⁰NAC, Courts, p. 264.

involvement of the private bar. In fact, one of the biggest advantages of an appointment system is that it forces members of the bar to become involved in the criminal justice system, and hopefully work to reform it. By coordinating the appointment of cases, the CAC program can equitably assign them to the entire panel of attorneys. The Defender-Advisor Plan could also meet this criterion.

The major drawback of the full Defender System is that it usually fails to involve the private bar in the defense of the criminally accused indigent. This often results in the inability of the defender office to achieve reforms in the system or to obtain sufficient funding to adequately meet the demands of the system. The Mixed System provides the best of both worlds; it ensures the involvement of the private bar while providing the benefits derived from the defender component as well.

Figure 8 displays the rated capability of each system to meet the criterion "Assuring Widespread Involvement of the Private Bar" (1 reflects least capability, 5 reflects greatest capability).

Figure 8: ASSURING WIDESPREAD INVOLVEMENT OF THE PRIVATE BAR
(1)

	1	2	3	4	5
Defender-Advisor Plan					X
Coordinated Assigned Counsel System					X
Defender System	X				
Mixed System					X

9. Resolving Conflict of Interest Situations

In the criminal justice system, the most common situation where a conflict of interest may arise for an attorney is where he would be

representing co-defendants charged with crimes involving the same factual circumstances. This conflict might be expressed by either of the co-defendants or by the attorney himself. In either case, such a circumstance should be avoided whenever possible and as a rule, the courts, upon motion, are quick to appoint other counsel.

Another aspect to this discussion relates to the conflict that may exist in relation to the establishment of good rapport between counsel and client. It is not unusual for a defendant, for whatever reason, to take a dislike to his attorney or vice-versa. Under these circumstances, although there is insufficient reason at law to move for withdrawal of counsel, still it makes sense to free-up the relationship and attempt a better one whenever possible.

In either situation, a defense system should have the flexibility to allow for the immediate substitution of qualified attorneys whenever the need arises. The Defender System is the least flexible in handling this particular problem. The defender staff works out of one office and is considered as part of one law firm. Conflicts would have to be resolved out of the system and the court would have to seek the assistance of private attorneys. The defender office could prearrange for these conflicts and coordinate a list of attorneys with the court. It is not, however, an ideal solution.

As envisioned, the Defender-Advisor Plan has the potential of a conflict situation where there are co-defendants, since it calls for the Defender-Advisor to serve, in effect, as co-counsel to each assigned counsel. Where a conflict arises, the plan offers no solution other than the Defender-Advisor's refusal to assist any of the attorneys representing co-defendants.

The Coordinated Assigned Counsel and Mixed Systems have equal capability in resolving conflict of interest matters. With the CAC System, it is merely a matter of drawing upon the next attorney on the assigned counsel panel. In the Mixed System, the assigned counsel component can cover any conflict matter that arises with the defender office.

Figure 9 displays the rated capability of each system to meet the criterion "Resolving Conflict of Interest Situations" (1 reflects least capability, 5 reflects greatest capability).

Figure 9: RESOLVING CONFLICT OF INTEREST SITUATIONS (1)

	1	2	3	4	5
Defender-Advisor Plan			X		
Coordinated Assigned Counsel System					X
Defender System		X			
Mixed System					X

D. Cost-Effectiveness

A cost-effectiveness analysis is essentially an investment criterion which indicates whether the effectiveness of a system is worth its costs. Before discussing the cost-effectiveness of the alternative defense system, two questionable assumptions which underlie this definition should be highlighted and kept in mind throughout the discussion which follows: (1) Whether all relevant costs and benefits can be enumerated and converted into a monetary figure; and (2) if a cost-benefit analysis is the result of an objective process.

For example, while a system may be effective in providing immediate

access to counsel, how does one measure that benefit in terms of dollars and cents in comparison to a system which allows a defendant to sit in jail two to four weeks before seeing counsel. To overcome such problems, the study team focused its discussion on the effectiveness of each system in meeting certain criteria and only on those costs (such as salaries, professional services, equipment, etc.) which could objectively be converted into monetary figures.

The previous section discussed the capability of each defense system to meet nine basic criteria for providing effective defense services. Exhibit 1 at the conclusion of this section shows that the Mixed System has the greatest capability (total score 137), the Coordinated Assigned Counsel System and the Defender System have equal capability (total score 124), and the Defender-Advisor Plan has the least capability (total score 69).

Exhibit 2 compares the projected yearly cost of the present Assigned Counsel System, with the projected yearly operating budgets for each alternative option. The start-up costs for each option, which are a one-time expense, have not been included to allow for a fair comparison with the existing system. It shows that the Defender-Advisor plan would cost \$38,499 more than the present Assigned Counsel System. The Coordinated Assigned Counsel System has almost double the capability for providing effective defense services as does the Defender-Advisor Plan, yet it would cost an additional \$31,660. While it may be unclear as to whether or not it would be cost-effective to spend this additional amount, it is clear that both the Defender and Mixed Systems are more cost-effective than the Defender-Advisor Plan. Each of them has almost double the capability for providing effective defense services, but the Defender System would cost

less than the Defender-Advisor Plan, and the Mixed System would only cost \$1,316 more than the Defender-Advisor Plan.

The Coordinated Assigned Counsel System would be the most expensive method of providing defense services to the criminally accused indigent in El Paso County. It would cost \$70,159 more than the existing system. The Defender System, with an equal capability of providing effective defense services, would be more cost-effective, since it would cost \$41,094 less than the CAC System. The Mixed System, with a greater capability, would also be less expensive, costing \$30,344 less than the CAC System.

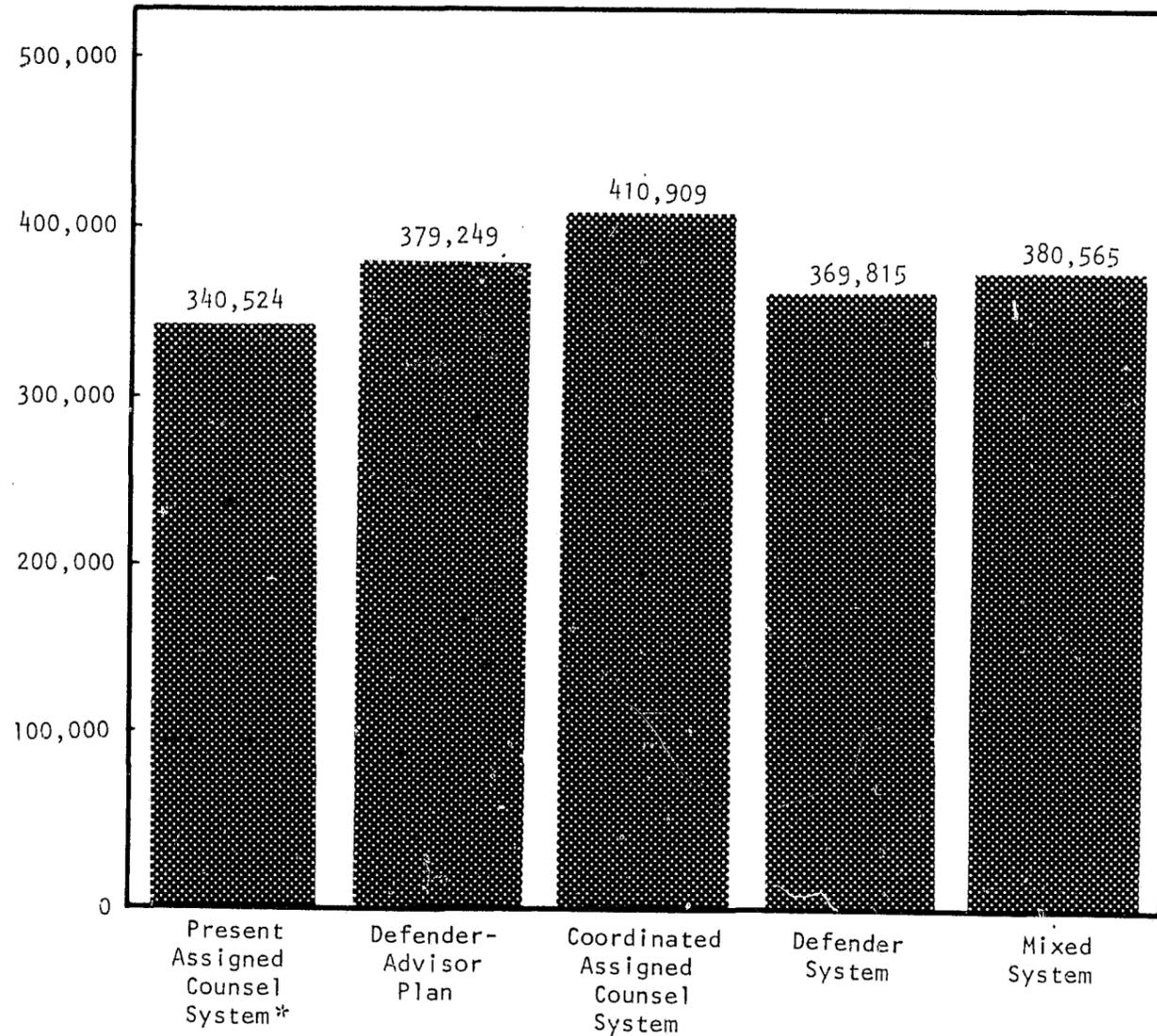
The Defender System is the least expensive alternative option, costing only \$29,065 more than the present system. It is clear from the discussion and figures above that the Defender System is more cost-effective than either the Defender-Advisor or the Coordinated Assigned Counsel Systems. Also, given its high capability of providing effective defense services, it is probably more cost-effective than the existing system in El Paso County. The question which remains is, "Is the Defender System more cost-effective than the Mixed System?"

The Mixed System is the alternative which would have the greatest capability of providing effective defense services. Its total capability of 137 is 13 higher than either the CAC or Defender Systems and 68 higher than the Defender-Advisor Plan. The Mixed System would cost \$39,815 more than the existing system, but only \$10,750 more than the Defender System. The cost per capability score indicates that, although the Mixed System would cost more than the Defender System, the Mixed System is more cost-effective.

EXHIBIT 1: CAPABILITY OF PROVIDING EFFECTIVE DEFENSE SERVICES

A CRITERION	B Weighted Value	C DEFENDER ADVISOR PLAN		D COORDINATED ASSIGNED COUNSEL SYSTEM		E DEFENDER SYSTEM		F MIXED SYSTEM	
		Rating	Score	Rating	Score	Rating	Score	Rating	Score
1) Providing counsel with expertise in the criminal law practice	5	2	10	4	20	5	25	5	25
2) Assuring defendants immediate access to counsel	5	2	10	3	15	5	25	4	20
3) Providing counsel with investigative and other support capabilities	5	1	5	5	25	5	25	5	25
4) Developing fair standards for determining indigency	4	2	8	5	20	3	12	5	20
5) Monitoring attorney performance	3	1	3	3	9	5	15	4	12
6) Providing equitable compensation for attorney time	3	5	15	5	15	3	9	5	15
7) Assuring professional independence of defense counsel	2	5	10	5	10	5	10	5	10
8) Assuring widespread involvement of private bar	1	5	5	5	5	1	1	5	5
9) Resolving conflict of interest situations	1	3	3	5	5	2	2	5	5
TOTAL SCORE	-		69		124		124		137

EXHIBIT 2: COMPARISON OF PROJECTED COSTS FOR PROVIDING DEFENSE SERVICES TO CRIMINALLY ACCUSED INDIGENTS IN EL PASO COUNTY



*Includes hidden cost estimation of \$20,900 identified at page 48.

VIII
RECOMMENDATIONS

THE NATIONAL CENTER FOR DEFENSE MANAGEMENT RECOMMENDS THE FOLLOWING:

- I. THAT EL PASO COUNTY ESTABLISH A MIXED DEFENSE SYSTEM, CONSISTING OF A DEFENDER OFFICE AND A COORDINATED ASSIGNED COUNSEL PROGRAM TO PROVIDE DEFENSE SERVICES TO INDIGENT CRIMINALLY ACCUSED.

This study has demonstrated that the Mixed System appears to have the greatest capability of providing effective defense services in El Paso County. Additionally, it appears to be the most cost-effective method for El Paso County to use in providing such services to indigent criminally accused. The structure and budget of this recommended system is presented earlier in this report.

- II. THAT EL PASO COUNTY ESTABLISH AN INDEPENDENT ADVISORY BOARD, COMPOSED OF REPRESENTATIVES FROM THE JUDICIARY, THE PRIVATE BAR, THE COMMISSIONERS COURT AND THE CLIENT COMMUNITY, WHOSE FUNCTION WILL BE TO APPOINT THE CHIEF DEFENDER AND THE ADMINISTRATOR OF THE COORDINATED ASSIGNED COUNSEL PROGRAM AND PROVIDE GENERAL SUPERVISION OF THE SYSTEM.

The advisory board should be an independent body, in order to assure that the required professional independence of attorneys is maintained. While its primary function is to select and appoint the directors of the two components of the Mixed System, the advisory board could continue to monitor the performance of the defense system and advise the Chief Defender and the CAC Administrator on improving the quality of defense services. The Chief Defender would be responsible for hiring the balance of the staff.

- III. THAT THE ADVISORY BOARD DELEGATE 75% OF THE INDIGENT CASELOAD TO THE DEFENDER OFFICE AND 25% OF THE INDIGENT CASELOAD TO THE COORDINATED ASSIGNED COUNSEL PROGRAM.

The study indicates that a 75%-25% distribution of the caseload would be realistic at this time. Also, it appears to reflect the wishes of the El Paso County private bar.

- IV. THAT THE ADVISORY BOARD SUPERVISE THE DEVELOPMENT OF FAIR STANDARDS FOR DETERMINING INDIGENCY OF DEFENDANTS AND THE CONSISTENT APPLICATION OF SUCH STANDARDS TO ALL DEFENDANTS.

The advisory board, because of its representative composition, is best suited to supervise the development of fair standards, in order to assure that all defendants who cannot afford retained counsel receive competent defense services.

- V. THAT THE DEFENDER OFFICE DEVELOP AND IMPLEMENT INTENSIVE ENTRY-LEVEL TRAINING, IN-SERVICE TRAINING AND CONTINUING LEGAL EDUCATION PROGRAMS FOR ALL STAFF ATTORNEYS AND PRIVATE ATTORNEYS INTERESTED IN HANDLING ASSIGNED CASES.

The study indicated that training programs could be extremely useful in attempting to upgrade the quality of defense services in El Paso County. The defender office would be the most appropriate body to develop and supervise such training programs. (NCDM has prepared a report on this subject for the State of Vermont entitled, "Development of an In-Service Training Program for the Office of the Defender General, State of Vermont." A copy is available upon request.)

- VI. THAT THE CHIEF DEFENDER AND THE CAC ADMINISTRATOR DEVELOP COORDINATED PROCEDURES WHICH WILL ASSURE THAT ALL INDIGENT CRIMINAL ACCUSED WILL HAVE IMMEDIATE ACCESS TO COUNSEL.

Such procedures should call for a defender staff attorney to be detailed to the jail to provide initial interview of all defendants. In addition to providing access to counsel upon arrest, the defender office should respond to inquiries from eligible persons who believe that they are under suspicion of a crime or that a process will commence resulting in a loss of liberty or imposition of a legal disability. Appropriate distribution of cases to defenders and assigned counsel with the defendant being informed of the name of the attorney who will be representing him should follow this initial period.

- VII. THAT THE DEFENDER OFFICE SHOULD PROVIDE FULL-TIME INVESTIGATION AND OTHER SUPPORT CAPABILITIES TO BOTH STAFF ATTORNEYS AND ASSIGNED COUNSEL.

The sample budget of the Mixed System presented earlier in this report provides funds for such capabilities.

- VIII. THAT DEFENDERS AND ASSIGNED COUNSEL RECEIVE ADEQUATE COMPENSATION FOR THEIR SERVICES.

It is suggested that the salaries for defenders identified in the sample budget for the Mixed System be followed. The CAC Administrator should develop a fee schedule for assigned counsel which equitably compensates for their time.

IX. THAT EL PASO MAKE APPLICATION TO THE CRIMINAL JUSTICE DIVISION, OFFICE OF THE GOVERNOR, STATE OF TEXAS (STATE PLANNING AGENCY) FOR A GRANT TO ASSIST IN THE IMPLEMENTATION OF THIS RECOMMENDED PILOT PROGRAM.

IX
STATEMENT OF TRANSFERABILITY
PROACTIVE IMPLICATIONS FOR TECHNOLOGY TRANSFER

The system design and analysis techniques used in deriving the manpower staffing application for this report have been comprehensively explained for a better understanding of how the results were derived; it also provides the capability for other communities to input data from their own unique criminal justice process for the derivation of similar data applicable thereto. A similar description is also included for the less complex analysis of the basic criteria which assist in the derivation of the comparative value of alternative legal defense services systems. Communities could, following this procedure, engage in comparative analyses for possible alternatives available to them and derive similar value judgments.

APPENDIX A

Resumes of the Study Team

GUSTAV GOLDBERGER
2100 "M" Street, N.W.
Suite 601
Washington, D. C.
20037
202-452-0620

5/1/75

PERSONAL DATA

Born: Czechoslovakia, April 28, 1934
Height: 5'7-1/2"
Weight: 155 lbs.
Wife: Betty (Friedman) Goldberger, B.A. - N.Y.U.
Children: Earl 15; Emanuel 12; Elana 10; Elisa 4.

EDUCATIONAL DATA

Elementary Schools: Public Schools
Copenhagen, Denmark 1940-43
Gothenburg, Sweden 1943-45
Montreal, Canada 1946-47
Secondary Schools: Matriculated High School
McGill University - Montreal, Canada
Attended Private School - Montreal, Canada
Colleges: McGill University
Montreal, Canada 1951-53
Sir George Williams University
Montreal, Canada
B.A. 1957
Post-Graduate: Rutgers - The State University
School of Law
New Jersey 1957-61
J.D. Degree
Northwestern University
School of Law
Short Course for Prosecutors 1965

PROFESSIONAL EXPERIENCE

City of Akron: Assistant Law Director 1963-64
City of Akron: Chief Prosecutor 1964-66
Summit County Ohio: Assistant County Prosecutor 1966-67
Private Practice: Erickson, Sheppard, Goldberger & Wheeler
Akron, Ohio 1966-67
Goldberger, Thomasson, Lane & Rosenblithe
Akron, Ohio 1970-75

PERSONAL RESUME

PRESCOTT EATON

Project Director: O.E.O. Legal Services
Summit County, Ohio
September 1967-70

Deputy Director: Summit County Public Defender Office
Akron, Ohio 1974-75

Associate Director: National Center for Defense Management
National Legal Aid and
Defender Association
Washington, D. C. 1975 to present

6/18/75

Personal Biography

Born January 29, 1930 in Seattle, Washington. Lived in Seattle, Washington to age 23. Entered U. S. Army October 2, 1953 and served until voluntary retirement June 2, 1975 as Lieutenant Colonel. Served in positions of responsibility at military installations throughout the United States, in Greenland, Europe, Vietnam and Laos.

Education

High School: Shawnigan Lake, British Columbia (graduated 1949)

College: Washington State College (1949-1951)
University of Washington (1951-1953)
Bachelor of Arts in Anthropology
Eastern Washington State College (1965-1967)
Master of Science in Psychology

MEMBERSHIP

American Bar Association
Ohio Bar Association
Akron Bar Association
A.T.L.A.
Judicature Society

ADMITTED TO PRACTICE

Ohio Bar 1963
U. S. District Court
(Northern District of Ohio) 1964
U. S. Supreme Court 1968

AWARD

Public Service Award: Summit County Prosecutor 1968

PUBLICATION

Legal Aid Divorces - A Practical Approach
American University Law Review
Vol. 20, No. 1, Aug. 1970

Book Review
Insanity Defense: by Richard Arens
University of Akron Law Review
Vol. 7, No. 3, Spring 1974

Relevant Positions Held

Associate Director, Management Programs, National Center for Defense Management, 2100 M Street, N.W., Washington, D. C. (4/21/75 to present)

Assistant Comptroller, Military District of Washington, Washington, D. C. (June 7, 1974 to April 20, 1975)

Executive Officer, Support Element, Defense Attache Office, Vientiane, Laos (January 16, 1974 to June 6, 1974)

Executive Assistant (Secretary of the General Staff), Commander, U. S. Army Criminal Investigation Command (April 15, 1973 to December 15, 1973)

Graduate Faculty Member, U. S. Army Command and General Staff College, Fort Leavenworth, Kansas (June 6, 1970 to May 15, 1972)

Professional Training

Automatic Data Processing/Theory Applications (January--June 1970/
October 1970)

Operations Research/Systems Analysis Executive Course (November--December 1973)

Personal Resume
Prescott Eaton
Page Two

Professional Training, continued

Application of Behavioral Science Models for Management,
U. S. Department of Agriculture Graduate School (October 1974)

Organizational Memberships

American Psychological Association
American Society of Military Comptrollers
Association of Legal Administrators
Psi Chi (Psychology Honorary)

Awards

Legion of Merit, Bronze Star
Meritorious Service Medal
Air Medal
Army Commendation Medal

RESUME

Raymond A. Saulino

EXPERIENCE:

Work

July 1975--
present

Office of Budget and Management Systems
Washington, D. C.

Program Analyst responsible for implementing part of a city-wide Performance Monitoring System in the Metropolitan Police Department, Fire Department and Department of Corrections. Also working on special productivity projects.

September 1974--
July 1975

Urban Systems Institute
Pittsburgh, Pennsylvania

Project Manager of study into carpooling. Responsible for project planning, personnel management and final report.

January 1974--
May 1975

Educational Management Development Center
Pittsburgh, Pennsylvania

Management Consultant to local school districts on PPBS, Citizen Feedback Systems and program evaluation.

May 1973--
January 1974

School of Urban and Public Affairs
Pittsburgh, Pennsylvania

Research Associate studying Presidential Primary elections. Responsible for statistical analyses and calibration of voter behavior models.

Consulting

October 1974

Carnegie-Mellon Action Project
Pittsburgh, Pennsylvania

Prepared a statistical analysis of a minority student program.

September 1974

Northside Committee on Human Resources
Pittsburgh, Pennsylvania

Prepared proposals for funding Community Action Projects.

EDUCATION

Graduate

May 1975 Master of Science in Urban and Public Affairs and Industrial Administration.
This degree was the first ever to be awarded jointly by the School of Urban and Public Affairs and the Graduate School of Industrial Administration, Carnegie-Mellon University.

Undergraduate

May 1973 Bachelor of Science in Engineering and Public Affairs
Carnegie-Mellon University

May 1972 Bachelor of Science in Civil Engineering
Carnegie-Mellon University

PERSONAL

Birthdate: July 30, 1950
Birthplace: New York City
Marital Status: Married, no children
Address: 1400 20th Street, N.W.
 Apartment 303
 Washington, D. C. 20037
Telephone: 202-296-2768 (home)
 202-629-5076 (office)

RESUME

FRED S. LUCERO

111 N. Market Street
San Jose, California 95113
Telephone: 408-998-5121

Age: 43 Date of Birth: March 7, 1932

Law School Information

School: Hastings College of Law, University of California

Degree: Bachelor of Laws--June 1959

Undergraduate Information

School: University of California, Berkeley, California

Degree: B.A. in Psychology--June 1959

Legal Experience

Admitted to California Bar January 15, 1963

Private Practice: January 1963 to March 1965

Santa Clara County Public Defender's Office: April 1965 to present

Present Position: Assistant Public Defender in charge of
Municipal Court Division

Previous Position: Senior Trial Attorney

Activities

Member: Board of Trustees, Santa Clara County Bar Association

Member: California State Bar Committee on Disadvantaged Persons
and the Law

Member: Task Force on Alcohol Detoxification of the Corrections
Reform and Criminal Justice Committee, Santa Clara
County Bar Association

Special Projects

Project on the Use of Social Workers in a Public Defender office,
funded by an LEAA Grant, May 1969--October 1970 (study on use of
community resources in proposals for sentencing alternatives in
the Superior Court, Santa Clara County).

CURRICULUM VITAE

OVID C. LEWIS

PERSONAL DATA

Home Address: 2320 Loyola Road
University Heights, Ohio 44118
Phone: 216-381-7123

Business Address: School of Law
Case Western Reserve University
Cleveland, Ohio 44106

Birthdate: August 6, 1932
Birthplace: Shelby, North Carolina
Height: 5'11"
Weight: 175 lbs.

Wife's Name: Clare M. Lewis
Education: AB Psychology, Case Western Reserve University
Employment: Executive Secretary to President of
Continental Bank, Cleveland, Ohio

EDUCATION

AB--Chemistry Major, Duke University (1954); AB in Psychology, Rutgers University (1962); JD, Rutgers University (1960); LLM, Columbia University (1962); JSD (Dissertation on Systems Theory and Judicial Behavioralism), Columbia University (1970).

HONORS

Editorial Board, Rutgers Law Review; Chairman, Moot Court Board; Order of the Coif; Omicron Delta Kappa; Resident Scholar, Columbia University (1964-65); selected as one of four "Scholars Under Forty", Case Western Reserve University (1963).

BAR ADMISSIONS

New Jersey, New Jersey and Ohio Federal Bars, Sixth Circuit Court of Appeals, Tax Court and United States Supreme Court.

CURRICULUM VITAE

OVID C. LEWIS

Page Two

WORK EXPERIENCE

Judicial Clerk, Passaic County Courts (1960-61); Assistant to the Director, Legislative Drafting Fund, Columbia University (1962); Assistant Professor of Law, Case Western Reserve University (1962-64); Associate Professor of Law, Case Western Reserve University (1965-68); Professor of Law (1968-to date); Instructor in Government, Oberlin College (1971-72); Hearing Examiner for the Ohio Civil Rights Commission (1964-75); Senior Consultant, Behavior Modification Wards, Brecksville Veteran's Administration Hospital (1972-74); Pro bono Federal Law Practice (1970-73).

LAW-RELATED ACTIVITIES

Co-Chairman, Automated Data Retrieval Committee, American Trial Lawyers Association (1970-71); Jurimetrics Committee, AALS; Interdisciplinary Seminars for School of Applied Social Sciences, Case Western Reserve University; Consultant to Youth Outreach Program, Cleveland, Ohio; numerous talks including speech on "Computers and the Law" at the National Convention of the American Trial Lawyers Association, Las Vegas (1971); The Fifth Amendment and the Taking of Private Property at the ALI Conference, Washington, D. C. (1972); Constitutional Law and Rights of the Handicapped, Convention for Rehabilitation, Columbus, Ohio (1972); participant and speaker at American Institute of Architects Conference on ANSI standards, Washington, D. C. (1973). Chairman, Ohio Bar Outline Revision Committee for Constitutional Law (1973-74).

PUBLICATIONS

Part of Books: "Restrictions on the Use of Animals and Persons in Scientific Research," in Law and the Social Role of Science, ed. by Harry W. Jones. New York: Rockefeller University Press, 1966.

Articles: Civil Procedure, 1962 Survey of Ohio Law, 14 Western Res. L. Rev. 394 (1963).

The High Court: Final. . .but Fallible, 19 Case Western Res. L. Rev. 528 (1968).

Law, Language, and Communication: Introduction to Symposium, 23 Case Western Res. L. Rev. 307 (1972).

CURRICULUM VITAE
OVID C. LEWIS
Page Three

Articles, cont.

Ohio Supreme Court Appellate Jurisdiction,
14 Western Res. L. Rev. 505 (1963).

Parry and Riposte to Gregor's "The Law, Social
Science, and School Segregation: An Assessment."
14 Western Res. L. Rev. 637 (1963). Reprinted
in De Facto Segregation and Civil Rights, ed. by
Oliver Schroeder, Jr. and David T. Smith.
Buffalo, N. Y.: W. S. Hein, 1965.

Phase Theory and the Judicial Process,
1 Calif. Western L. Rev. 1 (1965).

Systems Theory and Judicial Behavioralism.
21 Case Western Res. L. Rev. 361 (1970).

Universal Functional Requisites of Society;
The Unending Quest, 3 Case Western Res. J. of
International Law 3 (1970).

Book Reviews:

Mellinkoff, The Language of the Law, 29 Missouri
L. Rev. 249 (1964).

Schubert, Judicial Behavior, 20 Rutgers L. Rev.
162 (1965).

Fuller, The Morality of Law, 17 Case Western Res.
L. Rev. 349 (1965).

Davis, Discretionary Justice, 21 Case Western Res.
L. Rev. 164 (1969).

Friedman and Macaulay, Law and the Behavioral
Sciences, 22 Case Western Res. L. Rev. 144 (1970).

COURSES OFFERED AT CASE WESTERN RESERVE LAW SCHOOL

Civil Procedure, Constitutional Law, Political and Civil Rights, Judicial
Behavioralism, Jurisprudence, Legal Method, Legal Process, Legal Philosophy
(Oberlin College), Legal History, Systems Theory.
Fall 1975--Course in Legal Theory for Social Scientists at School of Applied
Social Sciences, Case Western Reserve University.

CURRICULUM VITAE
OVID C. LEWIS
Page Four

REFERENCES

Professor Walter Gellhorn, School of Law, Columbia University, 435 W. 116th
Street, New York 10027
Professor Harry Jones, School of Law, Columbia University, 435 W. 116th Street,
New York 10027
Professor Maurice Culp, Case Western Reserve University, School of Law,
Cleveland, Ohio 44106
Dean Willard Heckel, School of Law, Rutgers University, 180 University Avenue,
Newark, New Jersey 07102

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

TO : Greg Brady, ONPP

DATE: June 5, 1975

FROM : R06/Director, PDTAD

SUBJECT: Request for technical assistance

Attached is a request for technical assistance from El Paso County for a Public Defender Study.

We recommend that this request be forwarded to the American University Court Contractor for action.

If there are any questions on this request, please contact Fred Lander, Courts Specialist, in this office.

Fred W. Graffweg
Fred W. Graffweg
Director, Program Development and
Technical Assistance Division

Enclosure

6/23 Approved.

*Gregory C. Brady
Project Monitor*

APPENDIX B

Request for T/A from the County Judge of El Paso

AREA OF CONCERN
 POLICE _____
 COURTS X
 SYSTEMS _____
 CORRECTIONS _____
 NARCOTICS _____
 MANPOWER _____
 ORG CRIME _____
 Other _____

U. S. DEPARTMENT OF JUSTICE
 LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
 Dallas Region VI
 500 S. Ervay St., Suite 1010
 Dallas, Texas 75201 - LEAA
 (214/749-7211) Dept. of Justice

T/A No. 041-75-TX
 City/Co. El Paso
 Date Rec'd 5-16-75
 SPA Apvd _____
 Cy-Opns _____
 Date of T/A 3-27-75
 T/A Compl _____
 Rpts to: _____
 Req Agcy _____
 SPA _____
 Opns _____
 Prog Chief _____
 Critique _____

LEAA FORM 1331/8 (8-72)

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE
 LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

Memorandum

TO : Greg Brady, Courts Specialist, ORO

DATE: July 3, 1974

T/A 002-75-CRT-TX

FROM : Fred L. Lander, Courts Specialist
 ORO Region VI, Dallas

SUBJECT: Request for Technical Assistance - West Texas Council of Governments
 and the El Paso, Texas Legal Aid Society.

I am forwarding a technical assistance request from El Paso, Texas, for a feasibility study to determine the need of a Public Defender Program in El Paso. Joe Trotter is aware that this request is forthcoming and can supply the technical assistance.

Please forward this request to American University immediately. My reason for the urgency is that this represents a tremendous breakthrough for LEAA in Texas in the Public Defense Area. There are none in Texas at this time. Please expedite this request.

Sincerely,

Fred L. Lander

FRED L. LANDER
 Courts Specialist

Enclosure

THE AMERICAN UNIVERSITY
 LAW INSTITUTE

JUL 18 1974

RECEIVED

MAY 14 1975
 AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

REQUEST FOR TECHNICAL ASSISTANCE

DATE OF REQUEST: 3/27/75

TITLE OF REQUEST: Public Defender Study

* CONTACT PERSON: T. Udell Moore

TITLE: County Judge TELEPHONE NO. 915/543-2818

AGENCY'S NAME: El Paso County

ADDRESS: City-County Bldg.

El Paso, Texas ZIP CODE: 79901

- Describe, in summary form, the nature of the problem and specific type of technical assistance needed. Include specific areas of specialty required, and approximate date(s) of assignment. (Attach additional page if necessary)

County expenditures for criminal indigent defense through court appointed attorneys is steadily rising. This leads to investigation of effectiveness per dollar of various methods of providing this service.

- Describe extent to which technical assistance resources have been sought from other agencies within the state. If competent assistance does not exist, so indicate.

No such assistance exists.

* Forward original and one copy to your state Criminal Justice Planning Agency, of RODAL Form 6900/1B.



County of El Paso

T. UDELL MOORE
COUNTY JUDGE

OFFICE OF COUNTY JUDGE
CITY-COUNTY BLDG. EL PASO, TEXAS 79901
TELEPHONE 915/543-2818

CHARLES R. SIBLEY
EXECUTIVE ASSISTANT
LISA PETICOLAS
SECRETARY
MARY LOU LUJAN
SECRETARY
EDWARD J. DALEY
EL PASO COUNTY
PROJECT DIRECTOR

March 27, 1975

Mr. Marshall J. Hartman
Director of Defender Services
National Legal Aid and Defender Association
1155 East 60th Street
Chicago, Illinois 60637

Dear Mr. Hartman:

I do appreciate your offer of assistance to El Paso County in the area of a public defender study.

El Paso County is at somewhat of a crossroads in this field. Our expenditures for criminal indigent defense through court appointed attorneys is steadily rising. This leads us to investigate the effectiveness per dollar of various methods of providing this service.

I would greatly appreciate your office conducting a feasibility study for El Paso County at your earliest convenience.

If you need further information from the county, please contact Mr. Charles R. Sibley in my office.

I hope to hear from you soon on this matter.

Very truly yours,

T. UDELL MOORE

TUM/lp

El Paso Herald-Post
EL PASO, TEXAS
D. 47,450

MAY 8 1975 *Byfield*

**Moore Asks
Legal Aid
Cost Study**

County Judge T. Udell Moore has requested a federally-funded study into the feasibility of setting up a public defender system in El Paso County.

Moore requested the study in March in a letter to Marshall J. Hartman, director of the defenders service National Legal Aid and Defenders Assn. in Chicago. The request in turn was forwarded to the Texas governor's office of the Criminal Justice Council as the first step towards getting the study done.

The county's interest in a public defender came when County Auditor Willis Sample disclosed that the county spent \$218,626 for indigents the eight district courts and \$27,121 in the three county courts at law.

NATIONAL CENTER FOR
DEFENSE MANAGEMENT
APR 27 1975
ROUTE 10 FOR
THRU 10: FOR
COPIES 10: FOR

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

DALLAS REGION VI

REQUEST FOR TECHNICAL ASSISTANCE

IA Req No	002-75=CRT-TV
Cy to Ops	7-3-74
Assgd to	F Lander
TA comp	
Rpt to Agcy	
Rpt to SPA	
Rpt to TAD	
Rpt to Ops	
Crit Recd	

REQUESTING AGENCY (To be filled out in duplicate by the person or agency requesting LEAA technical assistance. Send original to your state Criminal Justice Planning Agency, and duplicate copy to LEAA Regional Office.) Use short answers.

Agency Name: West Texas Council of Governments Date: June 6, 1974

Full Address: 2000 N. Mesa

El Paso, Texas Zip Code: 79902

APPENDIX C

Request for T/A from the West Texas Council of Governments

1. Area of Concern: Police Courts Corrections Systems
Narcotics Manpower Organized Crime Other

2. Describe in summary form, the nature of the problem and specific type of technical assistance needed. Include specific areas of specialty required, and approximate date(s) for assignment. (Attach additional page if necessary.)

PLEASE SEE ATTACHED

3. Describe extent to which technical assistance resources have been sought from other agencies within the state. If competent assistance does not exist, so indicate.

No other technical assistance resources have been sought.

TO BE COMPLETED BY STATE PLANNING AGENCY IF LEAA ASSISTANCE REQUIRED

(SPAs are encouraged to provide technical assistance directly to the requesting agency if at all possible, through the use of SPA or other state agency staff personnel -- in which case this form should not be forwarded to LEAA.)

1. SPA Contact Person: Willis Whatley Phone: (512) 476-7201

2. State Planning Agency recommendations re TA request:

Recommend approval for appropriate technical assistance consultant or team experienced in public defense sector. It is to be noted that there is no statutory authority for a public defender's office in Texas. Further, this request is not submitted by the County of El Paso who by statute is responsible for indigent defense.

3. Recommended technical assistance resources:

a. LEAA Regional Office Staff RECOMMEND APPROVAL - SEND TO

JOE TRATNER AT AMERICAN U. HE HAS BEEN ALERTED THIS IS COMING

b. LEAA HQ Staff Frank Lawrence

c. Other Agencies, Organizations, Institutes, Individuals _____

4. Indicate reasons why technical assistance cannot be provided by the SPA or another State or local agency at this time:

As noted above, there being no public defender system in Texas, no expertise is available in this area. No provision for public defenders is included in the current Criminal Justice Plan for Texas.

5. Mail this completed form to:

Mr. N. T. Fisher
Technical Assistance Coordinator
U. S. Department of Justice
Law Enforcement Assistance Administration
500 South Ervay, Suite 313C
Dallas, Texas 75201
(214/749-7211)

Over the past three years, the El Paso Legal Assistance Society and, more recently, the Young Lawyers' Association of El Paso have been attempting to determine El Paso County's need for a public defender program.

As an initial effort, employees of El Paso Legal Assistance Society and VISTA volunteers conducted their own study in regards to this problem. Their conclusions, though concerned only with felony cases, can be summarized as follows:

1. According to the 1970 United States Census, 17.4% of El Paso County Families, (or 22% of the County population) fall below the federal poverty guidelines (defined in 1969 as an annual income of less than \$3,743.00 for a family of four). Of cities with populations larger than 250,000, El Paso, according to these standards, was in 1970 the second poorest city in the Country.

2. Crime Rate (from the FBI Uniform Crime Report, 1971, and from El Paso City and County police statistics, 1972):

	1971	1972
Population	365,000	376,062
Crime Index	13,671	11,457
Rate per 100,000	3,742.5	3,049.7

3. Cost of Appointed Counsel (Presently all indigent defendants have counsel appointed by the Court, and the figures below indicate only felony cases and juvenile cases):

1969	-	\$8,780.00
1970	-	6,067.00
1971	-	10,187.00
1972	-	42,186.00
1973 (First 1/2 of yr.)	-	60,846.00

4. The number of appointments of counsel in felony cases in 1972 was approximately 450, and by July, 1973, approximately 365 appointments had been made for that year.

Although the above figures are sketchy, at the very least this study indicates there is a large number of poor people in El Paso County; there is a fairly large crime rate; the number of criminal attorney appointments is increasing rapidly; and the cost of such appointments has greatly increased.

These conclusions, when considered in light of the Supreme Court Argersinger decision (Counsel required in misdemeanor cases where the defendant could be imprisoned), reinforce our belief that a public defender program of some type is needed in El Paso County.

Again we realize that the above-cited study may not have been 100% accurate, and by now, due mainly to the passing of time, a new feasibility study is necessary to corroborate or question that first study's conclusions. We also realize that many people, for different reasons, in the El Paso County are opposed to, if not afraid of, the establishment of a public defender program. Therefore, the need for a defender program should be shown and proven by means of a thorough empirical study. (This is not to say we want a biased study, but rather it shows our confidence that any fair study will reinforce our beliefs and studies).

Due to the ideological situation presently existing in El Paso County, and due to the conclusions of the study mentioned above, we believe a thorough empirical feasibility study in regards to a public defender program must be conducted - and should be conducted as soon as possible.

We would propose as a model for part of this study the research work noted in the attached Arkansas Law Review article. The comparison between appointed and retained counsel is an extremely important element of the Arkansas study, and is an area that has not been researched here. We believe the conclusion reached in the Arkansas study, would also hold true for El Paso County, namely:

...indigents (those with appointed counsel) plead guilty more frequently, receive fewer dismissals and receive suspended sentences or probation less frequently than defendants who are able to hire counsel.

As important as the type of study to be done here, is the consultant who will conduct the research. Certain minimum qualifications for this individual must be met in order to assure the study is conducted in the proper manner.

The consultant should be an attorney. But even more important, he or she must be knowledgeable of public defender programs, and must have some experience in this area of the law. The consultant must be objective and be able to listen and relate a wide spectrum of personalities, for the consultant will be required to meet and speak with people who run the gamut of philosophical and political approaches to a public defender program. There are judge, county and district attorneys, private members of the bar, and other interested non-lawyers, who maintain diametrically-opposed, and often vehement, positions in regards to the establishment of a public defender program. The consultant will have to listen to all of these viewpoints without being swayed by an individual's ideological position. The consultant must be an individual who will always remember that proper and competent legal representation for the indigent defendant is the goal of his or her research, and whatever best furthers that goal is the desired system of representation.

We cannot stress enough the need for a vigorous, experienced, and objective consultant. For without those qualities, the research he or she does will amount to little.

We hope this request for technical assistance will be granted and the research can begin as soon as possible.

July 31, 1973

Marshall J. Hartman
 National Director of Defender Services
 National Legal Aid and Defender Association
 1155 East 60th Street
 Chicago, Illinois 60637

Dear Mr. Hartman:

I spoke to you by phone Monday, July 23, at which time you agreed to assist us in developing a plan for an El Paso Public Defender System which we could present to the local government. You also mentioned the possibility of funds for a feasibility study. I am sending the statistics which you requested on indigency rate, crime rate, county expenditures for appointed counsel, and 1972 criminal filings. I am also including some other information which I have compiled while working on this project. Since I will no longer be working with El Paso Legal Assistance after next week, I am using this letter as a summary of what I have done so far and will distribute copies to various individuals in El Paso.

Indigency The best indicator is from the 1970 census. According to that report, 17.4% of El Paso County families, or 22% of the population fall below the federal poverty guidelines (defined in 1969 as an annual income of less than \$3743 for a family of 4). Of cities with populations larger than 250,000, El Paso by these standards was in 1970 the second poorest city in the country.

Crime rate (From the FBI Uniform Crime Report, 1971 and from city and county police statistics, 1972).

	1971	1972
Population	365,000	376,062
Crime Index	13,671	11,457
Rate per 100,000	3,742.5	3,049.7

Cost of Appointed Counsel

	1969	1970	1971	1972	Jan.- June 1973
County Courts (misdemeanors, civil...)	1,450	1511	1833	1543	3,715

District (felony, juvenile)	7,330	6067	10,187	42,186	60,846
Total	38,780	7,578	12,021	43,729	63,562

In 1972, approximately 450 appointments of counsel were made in felony cases. During the first six months of 1973, 365 appointments have been made.

This increase in number of appointments is due largely to the attitude of the 34th District Court Judge who handles all felonies and to the efforts of the year old Personal Recognizance Bond staff who has the authority to appoint counsel. Their appointments are made before arraignment and thus can be more expensive. Until January, 1973, there were consistently (but for one month) more lawyers appointed at arraignment than before. The reverse is now true.

	June, 1972	June, 1973
Pre arraignment Appointments	10	42
Arraignment appointments	35	26

We can expect the number of appointments and their cost to the county to continue to increase and at an even more rapid rate. As the personal recognizance bond staff gains experience, manpower, and recognition, they will appoint more lawyers. During the first two weeks of July, they appointed 50 lawyers: more pre-arraignment appointments than in any entire previous month. An additional factor is that the Probation Department recently received funding for a pre-trial diversion program (PIVOT). Its staff will work 24 hours and will interview all arrested persons immediately after booking. At present, estimates the PIVOT supervisor, 75% of those arrested bond themselves out before being interviewed by personal recognizance staff. In doing so, they decrease their chances for having counsel appointed to them. As the PIVOT program develops, virtually every-one eligible could receive a lawyer and at a very early stage in the proceedings.

The "round-robin" system is not used in the appointment of counsel. Of some 325 El Paso lawyers, 74 have participated as appointed counsel in felony cases during the first six months of 1973. A score of eleven of these have handled 254 of the 365 cases, or 70% of the total appointments. Of these eleven lawyers, three have each been carrying a caseload over the last three months equal to one-half that of a full-time public defender. These eleven are appointed so often because they want to be. In them, the Judge feels that he has a

"modified public defender system" and that this arrangement is superior to an alphabetical appointment method. He would prefer a bona fide defender system, however, this group of eleven could not handle a much larger caseload. Even at present, despite their best intentions, could it be possible to not sacrifice their assigned cases to retained ones given a conflict of time?

<u>Criminal Filings</u>	1972		1973 (Jan.-June)
	<u>Arrests</u>	<u>Filings</u>	<u>Filings</u>
Felonies	2455	1627	546
Misdemeanors	7533	2935	1079

Doubtless there are indigents not receiving counsel to which they are entitled. The 1967 report of the President's Commission on Law Enforcement and the Administration of Justice estimated that 50% of all criminal defendants were indigents and required the services of appointed counsel. "Today, according to NLADA Briefcase, July, 1972, "this figure has climbed to approximately 60%." (Indigent is not defined.) Given El Paso's high proportion of poor, the indigent rate must be at least the national average. Even at 50%, this would mean that in 812 of the felony cases filed in 1972, defendants qualified for appointed counsel. A total of about 450 appointments were made, and some of these doubtless in cases dismissed before filing.

Subsequent to the Argersinger decision of 1972, more appointments should be made to misdemeanor cases than are being made as reflected by the amounts paid for appointments in the county courts where misdemeanors are tried. Assuming that in each assigned case the lawyer filed for the minimum fee, the 1972 total of \$1543 represents only 30 appointments. Some appointed counsel do refuse payment. Nevertheless, the total reflects an inadequate representation of those charged with misdemeanor offenses: only about 1%. Already in the first six months of 1973, the amount paid for counsel appointed to misdemeanors has about doubled, representing appointments to 5% of the cases filed this year. Still, this is grossly inadequate.

That the county will spend \$150,000 on appointed counsel by the end of 1973 is not an unreasonable projection. That sum would almost staff an office of six lawyers, 3 secretaries, and 2 investigators. (Studies show, too, that implementation of public defender systems reduces time waiting in jail, thus saving the county jail costs.)

6 Defenders	1 at \$15,000	\$15,000
	5 at 12,000	60,000

2 Investigators	at 7,000	14,000
3 Secretaries	at 6,000	18,000
Space		12,000
Supplies		3,000
Equipment and Furniture Rental		4,500
Library (heaviest expense 1st year)		12,000
Phone		3,600
Transportation		3,000
Insurance		800
		<u>\$155,900</u>

This is a minimal budget, based on the budget of the El Paso Legal Assistance Society. To attract experienced personnel demands better salaries. The offices of the District Attorney and the County Attorney have a combined staff of 21 attorneys, 8 secretaries, 2 receptionists, 3 investigators, and 1 records clerk. Their 1973 budgets combined total \$323,184. A defendant, regardless of economic status, is entitled to a defense equal to that provided by the prosecutor. In recent years, interpretations of the 4th, 5th, and 14th Amendments have strengthened the defendant's position and demand an attorney well versed in criminal procedures. Can appointed counsel compete with the resources of the County and District Attorney offices?

NLADA estimates that a full-time defender caseload would be 150 felonies or 300 misdemeanors, (of filed cases; public defenders could expedite in addition the dismissals of cases not filed). Therefore, an office of 6 defenders could handle 900 felonies that reach trial. The assigned counsel are presently handling fewer total cases at the same cost.

An eight lawyer office would be an optimal beginning for El Paso. Studies show that public defender systems do not compete with private practice. Their clients are people for whom the price of a private lawyer is an unreasonable burden. An "indigence" standard must be developed. PIVOT, with its immediate access to those arrested, provides a ready means of referral to the public defender office. An investigator there would be responsible for confirming their eligibility. The following are examples of standards used locally by different agencies.

"Indigence" Standards

Annual Income:

Family Of:	OEO	El Paso Legal Aid	El Paso Housing Authority
1	\$2100	1800	4200
2	2725	2400	4400
3	3450	3000	4900
4	4200	3600	5200
5	4925	4200	5500
6	5550	4800	5700
7	6200	5400	5900
8	6850	6000	6100
12 or more			6600

Both the assigned counsel and the public defender systems "are capable of providing indigents with adequate representation, although the organization of the public defender system provides inherent advantages over assigned counsel. Concentration of defense work in one office promotes economy and efficiency, and makes some specialization possible." Stanford Law Review, 1961, p.564). Studies show that time awaiting trial is reduced, that a higher proportion of dismissals, convictions given probation or suspended sentences, and acquittals are given defendants represented by public defenders than by assigned counsel, and that fewer appeals are overlooked by defenders.

By the end of 1973, El Paso County will have spent about 350% what it spent in 1972 on appointed counsel. Still, many individuals eligible for appointed counsel are not receiving it even though the number of appointments is rapidly increasing---too rapidly for the number of interested lawyers to continue to handle the caseload. Considerations of cost, quality of defense, and the availability of defense to all those eligible for it, argue strongly in favor of an organized system of legal representation for indigents in El Paso.

Thank you very much for your assistance. For future communications, please contact David Maroski.

Sincerely,

Andrea M. Bond

Andrea M. Bond

AMB/dg

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS
JUDICIAL DISTRICT

THE STATE OF TEXAS
V.

NO. _____

DECLARATION OF FINANCIAL INABILITY TO EMPLOY COUNSEL

I, _____, am a defendant in the above entitled action. I am not represented by counsel in this proceeding. I have no assets except the following:

1. My earnings are (Name, address of employer, and amount of weekly or monthly earnings) _____

2. I have other income in the amount of (Source of income and amt. per wk. or Mo.) _____

3. I am/am not married, and support _____ children, and/or other dependents who are _____ (name and relationship)

4. Earnings of my spouse and/or children are (Name of employer and amt. of weekly or monthly earnings) _____

5. I own the following property: (Address where located, payment balance owed, and value)

- a. Home _____
- b. Automobiles _____
- c. Furniture _____
- d. Other land/bldgs. _____
- e. Notes, mortgages, trust deeds _____
- f. Motorcycles _____
- g. Other vehicles _____
- h. War bonds _____
- i. Stocks and bonds _____
- j. Animals _____
- k. Jewelry _____
- l. Other personal property _____

6. I have the following money:

- a. In jail \$ _____
- b. At Home \$ _____
- c. Checking accounts \$ _____
- d. In savings account \$ _____
- e. In safety deposit Box \$ _____
- f. Being held or owned to me \$ _____
- g. Other \$ _____

7. I have the following debts and/or expenses in addition to those listed above: _____

8. I have the following relatives and/or friends who would be interested in my defense and might lend me money to hire an attorney: _____

9. I am/am not free on bail. Amount of bail \$ _____, Name of person who paid for bail bond _____
Name of Bondsman: _____

10. I do/do not speak English.

11. My permanent mailing address is: _____

12. I have been in jail _____ days.

I have no ability to obtain credit to raise funds with which to employ an attorney and desire the court to assign an attorney to defend me. I declare under penalty of perjury that the foregoing is true and correct.

Dated this _____ day of _____, 1974, at El Paso, Texas.

SWORN TO AND SUBSCRIBED TO BEFORE ME this _____ day of _____, 1974.

My Commission Expires: _____

NOTARY PUBLIC in and for
El Paso County, Texas

APPENDIX D

Sample Voucher Forms

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS
THIRTY-FOURTH JUDICIAL DISTRICT

THE STATE OF TEXAS

VS.

NO. _____

MOTION FOR APPOINTMENT OF COUNSEL

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes _____, the defendant in the above
entitled and numbered cause and states upon his oath that he is too poor to
employ counsel and requests the Court to appoint an attorney to represent him,
and in support of his request would show the Court the following:

____ I am unemployed and have no income.

____ I receive financial assistance from _____
in the amount of \$ _____.

____ I am employed by _____ and my monthly
income is \$ _____.

____ My monthly expenses are \$ _____.

____ I have assets valued as follows:

Car) _____ Other Property) _____

Home) _____ Savings Account) _____

____ I have _____ dependents living at my place of residence or elsewhere.

____ My permanent mailing address and telephone are _____

DEFENDANT

SUBSCRIBED and SWORN to before me this _____ day of _____, 19____.

NOTARY PUBLIC in and for
El Paso County, Texas

My Commission Expires _____

ORDER

On this day came on to be considered the foregoing motion and the Court
after having considered the same, is of the opinion that the same is in order
and should be granted.

It is, therefore, ORDERED that _____, a prac-
ticing attorney in El Paso County, Texas, be appointed to represent the above
named defendant in the above entitled and numbered cause.

Signed this the _____ day of _____, 197____.

JUDGE

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

_____ JUDICIAL DISTRICT

THE STATE OF TEXAS

VS.

NO. _____

Y
I
Y
I
Y

ORDER

On this day came to be considered the defendant's Declaration
of Financial Inability to Employ Counsel and the Court after
having considered the same, is of the opinion that the same
is in order and should be granted.

It is therefore, ORDERED that _____
a practicing attorney in El Paso County, Texas, be appointed
to represent the above named defendant in the above entitled
and numbered cause.

Signed this the _____ day of _____, 19____.

JUDGE

205TH JUDICIAL DISTRICT

THE STATE OF TEXAS
VS.

NO: 28707-205

DATE: _____

The Defendant in the above styled cause, having filed an affidavit stating that he is too poor to employ counsel, and _____, a practicing attorney of El Paso County, Texas was appointed by the Court to represent him. Said Attorney has performed such service and is entitled to receive a fee of \$ 350.00 (Including \$ _____ for investigation and expert testimony) to be paid from the General Fund of El Paso County, Texas.

Jamir Alban
J U D G E

ATTESTED:

STEVE SIMMONS
District Attorney

By: Chris B. Riva, Jr.
Assistant District Attorney

I Certify that I represented the Defendant _____, in Court on the following occasions:

DATE	APPEARANCE	EXPENSES INCURRED
<u>5-2-75</u> ✓	<u>Arraignment</u>	<u>50</u>
<u>5-14-75</u> ✓	<u>Pre-trial Conference</u>	<u>50</u>
<u>5-22-75</u> ✓	<u>Motion to Suppress Conference</u>	<u>50</u>
<u>6-18-75</u> ✓	<u>Motion for Severance</u>	<u>50</u>
<u>7-7-75 & 7-8-75</u> ✓	<u>Trial</u>	<u>100</u>
<u>9-4-75</u> ✓	<u>Sentencing</u>	<u>50</u>

Attorney for Defendant

Address

VOID IF NOT PRESENTED FOR PAYMENT WITHIN 15 DAYS FROM ISSUE DATE

RECEIVED SEP 9 1975

IN THE COUNTY COURT AT LAW NO. TWO
OF EL PASO COUNTY, TEXAS

THE STATE OF TEXAS

vs

No. 7074 2

EL PASO COUNTY
CLERK
J. W. FIELDS
DEPUTY

75 SEP 3 2:23

FILED FOR RECORD
IN MY OFFICE

The Defendant in the above styled and numbered cause having made known to the Court that he is too poor to employ counsel, _____ a practicing attorney, was appointed by the Court to represent him. Said attorney has performed such service and is entitled to receive a fee of \$ 50.00 (*including \$ _____ for investigation and expert testimony) to be paid from the General Fund of El Paso County, Texas.

ATTESTED:

J. W. FIELDS, County Clerk,

By Larry Cassir
Deputy

John H. Forley
Judge

I certify that I represented the Defendant in the trial court for 1 days (*Court of Criminal Appeals) and incurred said expenses. (hours 4)

Attorney for Defendant

Address of Attorney

*Strike if not applicable.

289-2-75

119

RECEIVED SEP - 3 1975

IN THE JUVENILE COURT
OF EL PASO COUNTY, TEXAS

IN THE MATTER OF:

- X ORDER FOR PAYMENT OF ATTORNEY'S FEES
- X
- X NO. _____

Parents name: _____

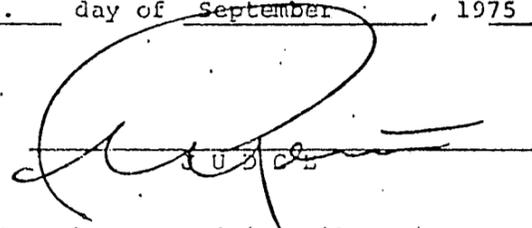
Address: _____

IN ACCORDANCE with the provisions of Section 51.10, Title Three, Family Code and Article 26.05 C.C.P., _____ a practicing attorney, was appointed by the Court to represent said juvenile. Said attorney has performed such services and is entitled to the following:

1. \$ 100⁰⁰, attorney's fee.
2. \$ _____, expenses incurred for purposes of investigation and expert testimony.
3. \$ _____, for the prosecution to final conclusion of appeal.

The above sum(s) shall be paid from the general fund of El Paso County, Texas, as provided for under the provisions of Section 51.10, Title Three, Family Code.

SIGNED AND ENTERED this 4th. day of September, 1975



JUDGE

I certify that I represented the above named juvenile and performed such services (*and incurred the above expenses).

Attorney: _____
Address: _____

*Strike if not applicable

NOTE TO ATTORNEY: Original must be submitted to County Auditor at Room 206.

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

205th JUDICIAL DISTRICT

THE STATE OF TEXAS

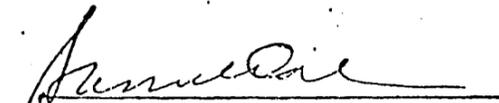
vs.

X
X
X
X
X

NO. 28311-205
DATE 9-5-75

The COURT having appointed _____ a disinterested qualified expert to examine the defendant with regard to his present competency to stand trial and as to his sanity, and to testify thereto at any trial or hearing in connection to the accusation against the accused,

It is therefore ORDERED, that such appointed expert be paid the sum of \$ \$750.00 from the General Fund of El Paso County, in compliance with Article 46.02, Section 2, of the Texas Code of Criminal Procedure.



JUDGE
205th District Court

CARCEL DEL CONDADO DE EL PASO

EL PASO, TEXAS

AUTORIZACION PARA EL MANEJO DEL CORRESPONDENCIA Y PROPIEDAD

Por la presente autorizo al Alguacil (Sheriff) del Condado de El Paso, Texas, o su representante autorizado, a que abra y examine toda correspondencia y express u otros paquetes que se dirijan a mi direccion y que firme mi nombre como endoso en los cheques, ordenes postales, o giros bancarios, para ser depositados a mi credito en el Fondo de Seguridad de los Presos, mientras yo sea un preso en esta Carcel.

En el caso de que yo muriera, quiero que mi _____
Relacion civil

cuyo nombre es _____

y cuya direccion es _____
Calle Numero

_____ Ciudad y Estado Nacion

sea notificada, y que todos mis efectos personales, incluyendo cualquier cantidad de dinero a mi credito, o que se me aduede de tal institucion, sea inmediatamente remitida a el o ella.

Ademas estoy de acuerdo que se disponga de mi propiedad personal, incluyendo mi ropa, de acuerdo con el reglamento de la Carcel del Condada de El Paso.

Fecha este _____ dia de _____ 197____.
fecha Mes Ano

_____ nombre y numero

I hereby certify that the above and foregoing was read and fully explained by me to the above named prisoner before he/she signed the same, and that he/she signed the same voluntarily in my presence, this _____ day of _____ 197____.

Record Clerk

Witness

In case of serious illness or emergency the above named may be contacted by (telephone call) (wire) as follows _____

PROPIEDAD DE LA CARCEL: Ropa de cama, toallas, traje blanco y otros articulos o equipo asignado a usted pertenecen a la carcel y debe devolverlos en buena condicion antes de salir. No debe usted cambiar este equipo o articulos con otros reclusos. No debera danar la plomeria, tuberia instalaciones electricas o cualquier otra parte del edificio o equipo. Se le podran hacer cargos por destruir propiedad de la carcel.

Fecha: _____ Pagina: _____ Libro: _____ Estacionado: _____
Nombre completo: _____
Firma: _____

El Paso Center for Mental Health
and Mental Retardation Services
4821 Alameda
EL PASO, TEXAS 79905

Phone 532-6961

DATE: July 29, 1975
NUMBER:

TERMS

PLEASE DETACH AND RETURN WITH YOUR REMITTANCE

DATE	CHARGES AND CREDITS	BALANCE	
	BALANCE FORWARD		
	Expert testimony in Court on		
1- 9-75	Testimony in court by both doctors	150	00
1-31-75	Testimony in court by only	50	00
		200	00
2-14-75	Payment by for testimony	50	00
		150	00
4- 3-75	Testimony in court cancelled on same day	150	00
4-24-75	Testimony in court by both doctors	600	00
		900	00
4-25-75	Payment for April 3, court day cancelled	150	00
	Balance	750	00

Please make check payable to:

El Paso Center for M&MR Services

El Paso Center for Mental Health
and Mental Retardation Services

Thank You PAY LAST AMOUNT IN THIS COLOR

PERSONAL BOND RELEASE INFORMATION

- I. You may be eligible for a Personal Recognizance Bond (at no cost) administered by the West Texas Regional Adult Probation Department if:
- A. You do not have an extensive record of arrests (evaluation by PR representative)
 - B. You have been a U.S. resident of El Paso County for 6 months or more
 - C. You have a verifiable address and references
 - D. You are 17 years or over
- II. You do not qualify if:
- A. Your present charge is any of the following:
 1. Rape
 2. Murder or Attempted Murder
 3. Robbery
 4. Any other type of violent crime (evaluation by PR representative)
 - B. You are addicted to drugs or alcohol
 - C. You are charged with a Federal offense
 - D. You are an illegal alien or transient
- III. If you believe you qualify for Personal Recognizance Bond, please notify your jailer.
- IV. Because of personnel limitations, operation hours for PR Bond are Monday-Friday, 8:00 a.m. to 6:00 p.m. No PR personnel are available on Saturdays, Sundays, or holidays.
- V. If you cannot afford an attorney, please fill out the bottom portion of this application OR if you believe you qualify for a PR Bond, please fill out the bottom portion of this application and give it to the jailer.
- I. Ud. califica para fianza personal (sin costo) administrada por el West Texas Regional Adult Probation Department si llena los siguientes requisitos:
- A. Ud. no tiene un record extensivo de arrestos (evaluacion por el representante de PR)
 - B. Ud. ha residido legalmente en el Condado de El Paso por 6 meses o mas
 - C. Ud. tiene un domicilio permanente y conoce personas para informes o recomendacion
 - D. Ud. es mayor de 17 años
- II. Ud. no califica si:
- A. Su cargo presente es uno de los siguientes:
 1. Estrupo o Rapto
 2. Homicidio o Atentado de Homicidio
 3. Robo
 4. Cualquiera otro tipo de crimen violento (evaluacion por el representante de PR)
 - B. Ud. es adicto a las drogas o el alcohol
 - C. Su cargo es una ofensa Federal
 - D. Ud. esta en este pais ilegalmente
- III. Si Ud. cree que califica para una fianza personal (Personal Recognizance Bond) por favor pida mas informes al carcelero.
- IV. Por falta de personal, las horas de operacion son de lunes a viernes, 8:00 a.m. a 6:00 p.m. El personal de PR no opera los sabados, domingos, o dias festivos.
- V. Si Ud. no puede ocupar abogado defensor, o si Ud. cree que califica para una fianza personal, favor de llenar la parte inferior de esta application y desala al carcelero.

(Cut along dotted line and give to jailer) (Corte línea perforada y desalo al carcelero)

Name _____ Tank # _____
 # Tanque _____
 U.S.A. _____ Date of Arrest _____
 fecha de nacimiento _____ Fecha de arresto _____
 S.S. # _____ Address _____
 # Seguro Social _____ Domicilio _____
 Charge _____
 Cargo _____

RULES FOR PRISONERS

THE RULES STATED BELOW WILL EXPLAIN WHAT IS EXPECTED OF YOU AND WHAT WE CAN DO FOR YOU WHILE YOU ARE IN THIS JAIL. THEY ARE INTENDED TO INSURE SAFE CUSTODY, DECENT LIVING CONDITIONS, AND FAIR TREATMENT FOR ALL INMATES.

MANAGEMENT: THIS JAIL IS MANAGED AND CONTROLLED BY THE SHERIFF AND HIS STAFF. NO INMATE HAS THE RIGHT TO ASSIGN WORK TO OTHER INMATES OR TO HAVE ANY CONTROL OR SUPERVISION OVER THEM. KANGAROO COURTS, SANITARY COURTS, AND ALL OTHER INMATE ORGANIZATIONS ARE FORBIDDEN.

PERSONAL CLEANLINESS: YOU ARE REQUIRED TO BATHE AS SOON AS YOU COME INTO THE JAIL AND AT LEAST TWICE A WEEK WHILE YOU STAY HERE. YOU MUST LAUNDRY ALL OF YOUR WASHABLE GARMENTS AT LEAST ONCE A WEEK.

PERSONAL PROPERTY: YOU ARE NOT PERMITTED TO KEEP CASH OR VALUABLE ARTICLES IN YOUR POSSESSION. YOU WILL BE GIVEN A RECEIPT FOR YOUR PERSONAL PROPERTY AND MONEY AND YOU SHOULD KEEP THIS RECEIPT FOR CHECKING YOUR BELONGINGS WHEN YOU ARE BEING RELEASED. YOU ARE NOT PERMITTED TO TRANSFER YOUR CLOTHING OR OTHER PROPERTY TO ANOTHER INMATE. GAMBLING IN ANY FORM IS FORBIDDEN.

JAIL PROPERTY: BEDDING, TOWELS, CLOTHING, AND OTHER ITEMS OF EQUIPMENT ASSIGNED TO YOU BELONG TO THE JAIL AND YOU MUST RETURN THEM IN GOOD CONDITION WHEN YOU LEAVE. YOU MUST NOT TRANSFER ANY OF THE EQUIPMENT ASSIGNED TO YOU TO ANOTHER INMATE. DO NOT DAMAGE PLUMBING OR LIGHTING OR ANY OTHER PART OF THE JAIL BUILDING OR EQUIPMENT. YOU CAN BE PROSECUTED FOR DESTRUCTION OF JAIL PROPERTY.

CARE OF LIVING QUARTERS: WHETHER YOU ARE SERVING SENTENCE OR HELD FOR TRIAL OR OTHERWISE, YOU ARE REQUIRED TO CLEAN THE QUARTERS IN WHICH YOU LIVE AND SHARE IN MAINTAINING CLEANLINESS THROUGHOUT THE JAIL.

CONDUCT: YOU MUST OBEY ALL OF THE JAIL RULES AND THE JAILER'S INSTRUCTIONS, AND CONDUCT YOURSELF IN AN ORDERLY, DECENT MANNER WITH RESPECT FOR THE RIGHTS OF OTHER INMATES. IF YOU FAIL TO CONDUCT YOURSELF PROPERLY, YOU MAY LOSE THE PRIVILEGES WHICH ARE PERMITTED TO INMATES IN GOOD STANDING.

MAIL: IF YOU WISH TO RECEIVE MAIL OR SEND IT OUT, YOU MUST GIVE THE JAILER WRITTEN AUTHORITY TO OPEN AND INSPECT YOUR MAIL.

VISITS: REGULAR VISITING HOURS ARE FROM 9:30AM TO 10AM AND 1PM TO 3PM SATURDAY ONLY. YOU MAY HAVE VISITS FROM MEMBERS OF YOUR IMMEDIATE FAMILY, A MINISTER OF YOUR CHOICE, AND SUCH OTHER PERSONS AS MAY BE APPROVED BY THE SHERIFF. IF YOU ARE NOT UNDER SENTENCE, YOU MAY HAVE AS MANY VISITS FROM YOUR ATTORNEY AS ARE NECESSARY TO HELP YOU PREPARE YOUR CASE.

PACKAGES/MONEY: YOU WILL NOT BE PERMITTED TO RECEIVE PACKAGES. IF ANY ARE DELIVERED FOR YOU, THEY WILL BE RETURNED TO THE SENDER. IF YOUR FAMILY OR FRIENDS WISH TO PROVIDE MONEY FOR YOUR USE WHILE IN JAIL, THEY MAY DEPOSIT IT IN THE JAIL OFFICE WHERE IT WILL BE CREDITED TO YOUR ACCOUNT.

COMMISSARY: THERE IS A COMMISSARY IN THE JAIL, WHERE YOU MAY BUY SUCH THINGS AS CANDY AND TOBACCO AND CERTAIN OTHER ITEMS NOT PROVIDED BY THE JAIL. THE JAILER WILL TELL YOU WHAT ARTICLES ARE AVAILABLE AND HOW YOU CAN BUY THEM.

MEDICAL SERVICES: A PHYSICIAN IS EMPLOYED TO GIVE YOU MEDICAL TREATMENT WHEN IT IS NEEDED. IF YOU THINK YOU NEED MEDICAL ATTENTION, INFORM THE JAILER.

BONDSMEN: TELEPHONE NUMBERS OF ALL LICENSED BONDSMEN ARE POSTED ON THE 5TH AND 6TH FLOORS. NO RECOMMENDATION FOR BONDSMAN CAN BE MADE TO YOU BY ANY EMPLOYEE OF THE SHERIFF'S DEPARTMENT. YOU MAKE THE CHOICE.

ESCAPE-CONTRABAND: ANY INMATE WHO ESCAPES OR ATTEMPTS TO ESCAPE OR ASSISTS ANOTHER INMATE TO ESCAPE, OR WHO IS RESPONSIBLE FOR BRINGING INTO THE JAIL ANY WEAPON, SAW, NARCOTIC DRUG OR OTHER CONTRABAND, WILL BE PROSECUTED.

REGLAS PARA PRISIONEROS

LAS SIGUIENTES REGLAS SON PARA EXPLICAR LO QUE SE REQUIERE DE USTED Y QUE NOSOTROS PODREMOS HACER POR USTED EN ESTA CARCEL. ESTAS REGLAS SON PARA ASEGURAR SU CUIDADO, CONDICIONES DECENTES DE ALOJAMIENTO Y TRATAMIENTO JUSTO PARA TODOS RECLUSOS.

MANEJO DE CARCEL: ESTA CARCEL ES SUPERVISADA Y CONTROLADA POR EL ALGUACIL (SHERIFE) Y SU PERSONAL. NINGUN RECLUSO TIENE DERECHO DE ASIGNAR TRABAJO A OTRO RECLUSO O TENER CONTROL O INTERVENCION SOBRE ELLOS. PROCEDIMIENTOS DE CORTE ILEGAL, CORTES DE SALUBRIDAD, Y TODAS OTRAS ORGANIZACIONES POR RECLUSOS SON PROHIBIDAS.

LIMPIEZA PERSONAL: SE REQUIERE BANARSE EN CUANTO ENTRE A LA CARCEL Y CUANDO MENOS DOS (2) VECES POR SEMANA MIENTRAS PERMANESCA EN LA CARCEL. DEBE LAVAR TODA SU ROPA LAVABLE, CUANDO MENOS UNA VEZ POR SEMANA.

PROPIEDAD PERSONAL: NO SE LE PERMITE TENER DINERO O ARTICULOS DE VALOR EN SU POSESION. SE LE DARA UN RECIBO POR SUS ARTICULOS PERSONALES Y DINERO Y DEBERA RETENER SU RECIBO PARA RECTIFICAR SU PROPIEDAD PERSONAL AL SER DADO DE ALTA. NO ES PERMITIDO CAMBIAR SU ROPA U OTRAS PERTENENCIAS CON OTROS RECLUSOS. JUEGOS DE APUESTA EN CUALQUIER FORMA SON PROHIBIDOS.

USO DEL TELEFONO: INMEDIATAMENTE DESPUES DE SER INTERNADO EN LA CARCEL PUEDE LLAMAR A UN ABOGADO, COMPANIA DE FIANZAS, PARIENTE INMEDIATO, Y SU PATRON. DESPUES QUE HAYA HECHO LA LLAMADA INICIAL, SI ES NECESARIO, PUEDE HACER LLAMADAS TELEFONICAS ENTRE 8AM Y 3PM UNICAMENTE.

PROPIEDAD DE LA CARCEL: ROPA DE CAMA, TOALLAS, ROPA, Y OTROS ARTICULOS O EQUIPO ASIGNADO A USTED PERTENECEN A LA CARCEL Y DEBE USTED DEVOLVERLOS EN BUENA CONDICION ANTES DE SALIR. NO DEBE USTED CAMBIAR ESTE EQUIPO O ARTICULOS CON OTROS RECLUSOS. NO DEBERA DANAR LA PLOMERIA, TUBERIA, INSTALACIONES ELECTRICAS O CUALQUIER OTRA PARTE DEL EDIFICIO O EQUIPO. SE LE PODRAN HACER CARGOS POR DESTRUIR PROPIEDAD DE LA CARCEL.

CUIDADO DE HABITACION: SEA QUE ESTE USTED CUMPLIENDO SU SENTENCIA O DETENIDO EN ESPERA DE SU CASO, O CUALQUIER OTRO MOTIVO, SE REQUIERE QUE MANTENGA LIMPIA SU HABITACION Y AYUDAR A MANTENER LA LIMPIEZA EN LA AREA DE LA CARCEL.

CONDUCTA: DEBERA OBEDECER TODAS LAS REGLAS DE LA CARCEL E INSTRUCCIONES DEL CARCELERO, Y DEBE CONDUCTIRSE EN UNA MANERA ORDENADA CON RESPECTO A LOS DERECHOS DE OTROS RECLUSOS. SI USTED NO SE COMPORTA DEVIDAMENTE, PERDERA LOS PRIVILEGIOS OTORGADOS A LOS RECLUSOS DE BUENA CONDUCTA.

CORRESPONDENCIA: SI DESEA RECIBIR O ENVIAR CORRESPONDENCIA, DEBERA DAR AUTORIZACION POR ESCRITO AL CARCELERO DE ABRIR E INSPECCIONAR DICHA CORRESPONDENCIA.

VISITAS: HORAS NORMALES DE VISITAS SON DE 8AM A 10AM Y DE 1PM A 3PM LOS SABADOS UNICAMENTE. PUEDE RECIBIR VISITAS DE PARIENTES INMEDIATOS, MINISTRO RELIGIOSO DE SU PREFERENCIA, Y CUALQUIERA OTRA PERSONA AUTORIZADA POR EL ALGUACIL (SHERIFE). SI USTED NO ESTA BAJO SENTENCIA, PUEDE RECIBIR TODAS LAS VISITAS NECESARIAS DE PARTE DE SU ABOGADO PARA PREPARAR SU CASO.

BULTOS-DINERO: NO SE LE PERMITE RECIBIR PAQUETES. CUALQUIER PAQUETE RECIBIDO A SU NOMBRE SERA REGREZADO AL REMITENTE. SI SUS FAMILIARES Y AMISTADES DESEAN PROPORCIONARLE DINERO DURANTE SU ESTANCIA, DEBERA DEPOSITARLO EN LA OFICINA DE LA CARCEL DONDE SERA ACREDITADO A SU CUENTA.

TIENDA: HAY UNA TIENDA EN LA CARCEL DONDE PODRA COMPRAR ARTICULOS COMO DULCES, TABACO Y CIERTOS ARTICULOS NO PROVISTOS POR LA CARCEL. EL CARCELERO LE INDICARA QUE ARTICULOS ESTAN DISPONIBLES Y QUE PUEDE COMPRAR.

SERVICIOS MEDICOS: HAY UN MEDICO A SU DISPOSICION PARA DARLE TRATAMIENTO MEDICO CUANDO SEA NECESARIO. SI CREE QUE NECESITA ATENCION MEDICA, INFORME AL CARCELERO.

COMITE DE FIANZAS: LOS NUMEROS DE TELEFONO DE TODOS LOS AGENTES DE FIANZA AUTORIZADOS ESTAN EN EL TABLERO DEL QUINTO Y SESTO PISO. LOS EMPLEADOS DEL DEPARTAMENTO DEL ALGUACIL (SHERIFE) NO PODRAN RECOMENDARLE NINGUN AGENTE DE FIANZA. USTED ESCOJALO.

ABOGADOS: HAY UNA LISTA DE ABOGADOS A SU DISPOSICION EN EL QUINTO & SESTO PISO. LE ESTA PROHIBIDO A LOS EMPLEADOS EL RECOMENDAR ABOGADOS. USTED ESCOJALO.

FUGA-CONTRABANDO: CUALQUIER RECLUSO QUE SE ESCAPE O INTENTE ESCAPARSE O ASISTA A OTRO RECLUSO A ESCAPAR, O QUE SEA RESPONSABLE DE INTRODUCIR A LA CARCEL ARMAS, DROGAS, NARCOTICOS, O CUALQUIER OTROS CONTRABANDOS, SE LE HARAN CARGOS.

APPENDIX E

Standards for Certification of a Criminal Law Specialist

**STANDARDS
FOR CERTIFICATION
OF A
CRIMINAL LAW
SPECIALIST**

**TEXAS BOARD
OF
LEGAL SPECIALIZATION**



**A PROGRAM OF
THE STATE BAR OF TEXAS**

STANDARDS FOR CERTIFICATION

OF A CRIMINAL LAW SPECIALIST

Pursuant to the authority vested in the Texas Board of Legal Specialization (the "Board"), the Board prescribes the following standards and requirements for certification of criminal law specialists in accordance with the Texas Plan for Recognition and Regulation of Specialization in the Law.

I. GENERAL REQUIREMENTS AND DEFINITIONS

- A. No standard shall in any way limit the right of a certified specialist in criminal law to practice in all fields of law. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though he is certified as a criminal law specialist.
- B. No lawyer shall be required to obtain a certificate as a criminal law specialist before he can practice in the field of criminal law. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in the field of criminal law, even though he is not certified as a specialist in criminal law.
- C. Every applicant for certification as a specialist in criminal law shall be an active member in good standing of the State Bar of Texas, currently maintaining an office in the State of Texas, and shall meet the requirements for certification prescribed by the Board.
- D. Certification as a criminal law specialist is individual and voluntary. Requirements for and benefits derived from certification may not be fulfilled or attributed to a law firm of which the specialist is a member.
- E. Forms, documents, applications, questionnaires, and examinations involved in the certification process, as well as fees required of an applicant for certification or recertification as a criminal law specialist shall be as approved by the Board.
- F. Certification shall be for a period of five (5) years, at the end of which time recertification shall be permitted upon the terms and conditions established by the Board.
- G. Criminal law is the practice of law dealing with, by way of definition not limitation, matters involving legal aspects of pretrial release; examining trial, indictment, information and complaint; change of venue; continuance;

severance; discovery; speedy trials; jeopardy; immunity; confessions; search and seizure; identification; competency to stand trial and culpable mental state; jury voir dire; rules of criminal evidence (e.g. impeachment, extraneous offenses, etc.); procedure and rules of evidence at punishment hearings; law of sentences; legal aspects of plea bargaining and guilty pleas; motion for new trial; appeals; post conviction remedies; probation and parole granting; probation and parole revocation; executive clemency; substantive criminal offenses and defenses; and juvenile crimes.

- H. Applicant shall furnish satisfactory evidence of his good character and reputation. He shall also furnish a statement as to whether or not he is now or has ever been subject to an investigation, complaint, inquiry or other disciplinary proceedings by any segment of the Bar, including, but not limited to, any local, state or district grievance committee of an organized bar; and if so, the details of such investigation, complaint, inquiry or proceedings including whether or not he has ever been reprimanded, suspended, disbarred or otherwise disciplined by any court or grievance committee.

The Board may deny certification on a finding of a grievance committee or a court that the applicant has been guilty of professional misconduct. However, the Board will consider the seriousness of the underlying fact of the grievance and will consider the passage of time since such discipline and applicant's conduct since that time. Failure to disclose such information is a material misrepresentation and may be cause for rejection.

- I. Applicant shall furnish a statement as to whether or not he has ever been convicted, given probation or fined for a serious crime as hereinafter defined, whether the above resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise and regardless of the pendency of an appeal. The term "serious crime" shall include any felony. It shall also include any lesser crime, a necessary element of which as determined by the statutory or common law definition of such crime, involved improper conduct of an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy of solicitation of another to commit a "serious crime."

The Board may deny certification if applicant has been convicted, given probation or fined for a serious crime as defined in this section.

- J. The applicant for certification shall submit the names and addresses of five (5) lawyers, not partners or associates of the applicant, to be contacted as references to attest to the applicant's competence in the practice of criminal law. Three (3) shall be lawyers, chosen by the applicant, who practice in the same geographic area as the applicant and are familiar with his practice; one shall be a judge of any court of record in Texas, chosen by the applicant, before whom the applicant has appeared as an advocate in a criminal law case within the two (2) years immediately preceding application; and one (1) shall be a Texas lawyer with whom or against whom applicant has tried a criminal law case within the two (2) years immediately preceding application. In addition to the five (5) names of references supplied by the applicant, the Board may, at its option, send statement of reference forms to other attorneys and judges.

The Board may deny certification based upon information received from statements of reference.

- K. The applicant for certification shall submit the names and addresses of all judges before whom he has appeared in criminal law matters during the two (2) years immediately preceding application.
- L. Applicant shall furnish a statement as to whether or not he has ever been found by any court to have rendered inadequate representation in a criminal law case.

The Board may deny certification upon such finding by any court. However, the Board will consider the passage of time since such finding and applicant's experience since that time.

II. MINIMUM STANDARDS FOR CERTIFICATION

A. REQUIRED PERIOD OF LAW PRACTICE

An applicant shall have been engaged in the practice of law for a period of at least five (5) years on a full time basis. Practice of criminal law is as defined in Section I, G, herein. "Practice of law" means full-time legal work done primarily for the purpose of legal advice or representation. Service, after admission to the bar of any state or the District of Columbia, or as a judge of any court of record shall be considered practice of law. Corporate or government service, including military service, after admission to the bar of any state or the District of Columbia, shall be considered

practice of law if the work done was legal in nature and primarily for the purpose of legal advice to, or representation of, the corporation or government agency or individuals connected therewith. Practice of law which otherwise satisfies these requirements but which is on a part-time basis will satisfy the requirement if the balance of the applicant's activity is work such as law teaching or legal editorial duty which is legal in nature although not the practice of law. Years of practice need not be consecutive.

B. SUBSTANTIAL INVOLVEMENT AND SPECIAL COMPETENCE

1. The applicant must show his substantial involvement and special competence in criminal law practice within the three (3) years immediately preceding application by providing such information as may be required by the Board regarding criminal law cases participated in by applicant in each of the following categories:
 - a. State felony jury trials;
 - b. county court misdemeanor jury trials;
 - c. federal jury trials;
 - d. state and federal non-jury trials;
 - e. state and federal pleas of guilty;
 - f. state and federal appeals;
 - g. state and federal post-conviction remedies;
 - h. juvenile proceedings;
 - i. dismissals;
 - j. grand jury no bills;
 - k. cases decided on pre-trial motions where evidence was presented (such motions to suppress evidence);
 - l. probations or parole revocations;
 - m. others.
2. The applicant must show that within the two (2) years immediately preceding application he has devoted a minimum of twenty-five percent (25%) of his time practicing criminal law in Texas, as defined in Section I, G, herein, or that during all or a proportionate part of that period he has served as a judge of a court of record actually adjudicating criminal law matters.

C. EDUCATIONAL EXPERIENCE

The applicant must demonstrate to the Board satisfactory educational experience within the three (3) years immediately preceding application by either:

1. Attendance at and completion of programs of study for criminal law specialists approved by the Board; or
2. Substantial involvement in continuing legal education in the broad field of criminal law through such activity as:
 - a. Teaching a course in criminal law;
 - b. completion of a course in criminal law;
 - c. participation as a panelist or speaker on a symposium or similar program in criminal law;
 - d. attendance at a lecture series or similar program, concerning criminal law, sponsored by a qualified educational institution or Bar group;
 - e. authorship of a book or article on criminal law, published in a professional publication or journal;
 - f. active participation in the work of a professional committee dealing with a specific problem of substantive or procedural criminal law; and,
 - g. such other educational experience as the Board shall approve.

D. PAYMENT OF FEES

The applicant shall timely pay the fees as established from time to time by the Board, including but not limited to the filing fee, the examination and/or certification fee.

E. FAILURE TO FURNISH INFORMATION: MISREPRESENTATION

Certification may be denied because of applicant's failure to furnish the requested information or because of applicant's misrepresentation of any material fact requested by the Board.

III. EXAMINATION

The applicant must pass a written examination applied uniformly to all applicants, and in addition, an oral examination that may be required of some or all of the applicants, to be determined by the Board prior to certification, to demonstrate sufficient knowledge, proficiency and experience in criminal law to justify the representation of special competence to the legal profession and to the public.

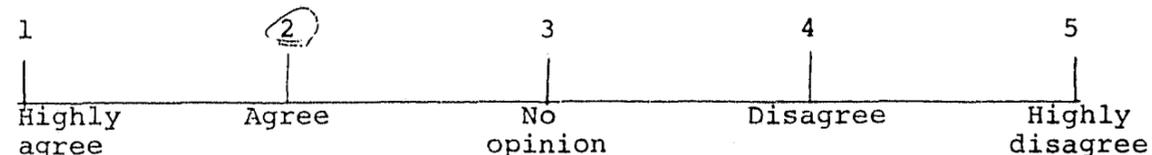
APPENDIX F

List of Interviewees

LIST OF INTERVIEWEES
EL PASO, TEXAS

1. ALVARADO, Richard - Law student
2. Hon BOYD, Jaime - U.S. Magistrate, El Paso Division
3. Hon CALLAN, Sam W. - District Court Judge
4. Hon CAMPBELL, Lucien B. - Federal Public Defender
5. CHACON, Alicia - El Paso County Clerk
6. CROSS, Clinton - Attorney-at-Law, El Paso Legal Aid
7. Atty. DUNCAN, William - Pres. El Paso Bar Association
8. DURAN, Alejandro - Attorney-at-Law, City of El Paso
9. EDDER, Ronald - US Attorney's Office, El Paso
10. ESPARAZA, Ricardo - Probation Department, El Paso County -
Personal Bond Technician
11. GALINDO, Israel - Director Legal Aid, El Paso
12. Hon GALVAN, Robert - Judge County Court-at-Law #1 County of El Paso
13. GIBSON, Michael R. - Attorney-at-Law, City of El Paso
14. Dr. GRAVES, Joseph B., Jr. - Director, Criminal Justice Studies,
UTEP - Political Science Dept.
15. JAMIEOL, Jeo - Attorney-at-Law, Houston, Texas
16. Sgt. JOHNSON, Alvin - El Paso County Sheriff's Office - Jail Division
17. JOHNSON, J. W. A. - El Paso District Clerk
18. LANGFORD, John - Attorney-at-Law, City of El Paso
19. LOZITO, Frank - Director, El Paso County Adult Probation
20. Sgt. LUDLOW, Ben - City of El Paso Police Department
21. MAXON, Carol - Statistical Planner, El Paso County
22. Hon MOORE, Udell T. - El Paso County Judge
23. Lt. PACILLIAS, Raul -
24. PARSON, Sue - Dep. Dir., D.P. Department, El Paso County
25. Ms. PETACOLIS, L. - Secretary, Office of County Judge, El Paso
26. REYES, Hector - Attorney-at-Law, City of El Paso
27. Hon ROGRIGUES, George, Jr. - El Paso County Attorney
28. SAMPLES, Denver - Probation Department, El Paso County
29. SAMPLE, Willis H. - El Paso County Auditor
30. SESSIONS, William S. - Federal District Court - El Paso Division
31. SIBLEY, Charles R. - Executive Assistant, Office of the El Paso
County Judge
32. Hon SIMMONS, Stephen W. - District Attorney, El Paso County
33. SIPES, Doris - Court Administrator, El Paso County
34. STARLING, William R. - Metropolitan Criminal Justice Planner
35. SULLIVAN, Mike, Jr. - Sheriff, El Paso County
36. Sgt. TRASK,
37. VOGEL, Ted H. - Asst. Chief El Paso Police Department
38. Hon WOODARD, Jerry - Judge, 34th District Court, El Paso County
39. ZAVALETA, _____ - President Young Lawyer's Association,
El Paso County
40. ZITUR, Raymond H. - Director, Data Processing, County of El Paso

16. The distribution of court appointments to the private bar membership is equitable.



17. During the last year you received the following court-awarded fees for criminal legal defense services (fill in the blanks).

a. Fees received per client in felony cases:

- (1) Highest fee \$ _____
- (2) Lowest fee \$ _____
- (3) Average fee \$ _____
- (4) Total felony fees \$ _____

b. Fees received per client in misdemeanor cases:

- (1) Highest fee \$ _____
- (2) Lowest fee \$ _____
- (3) Average fee \$ _____
- (4) Total felony fees \$ _____

c. Fee received per client in juvenile cases:

- (1) Highest fee \$ _____
- (2) Lowest fee \$ _____
- (3) Average fee \$ _____
- (4) Total felony fees \$ _____

d. Total fees for all clients \$ _____

18. The fees described in the previous question are (circle one letter, fill in blank if appropriate).

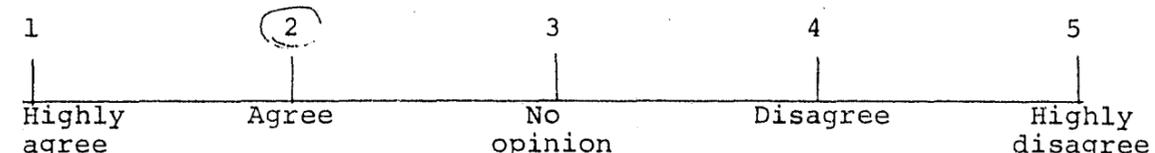
a. Adequate

b. Inadequate, the average client fee should be raised _____%.

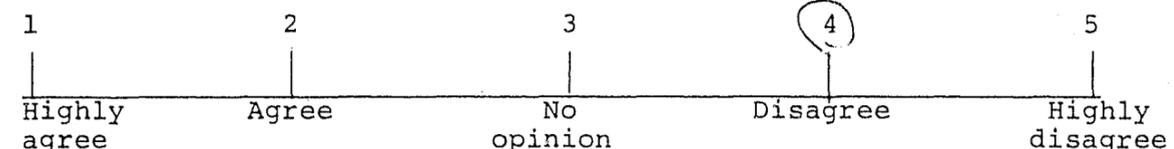
19. A substantial decrease in the number of court appointments would have the following effect on the gross income of private attorneys practicing in this jurisdiction. (Please give us your best estimate. Insert appropriate percentage figures after each category, percentages should total to 100%).

- a. No effect on gross receipts 50 % of private bar.
- b. 0 - 10% drop in gross receipts 15 % of private bar.
- c. 10 - 20% drop in gross receipts 35 % of private bar.
- d. 20 - 30% drop in gross receipts _____ % of private bar.
- e. 30 - 40% drop in gross receipts _____ % of private bar.
- f. 40 - 50% drop in gross receipts _____ % of private bar.
- g. Over 50% drop in gross receipts _____ % of private bar.

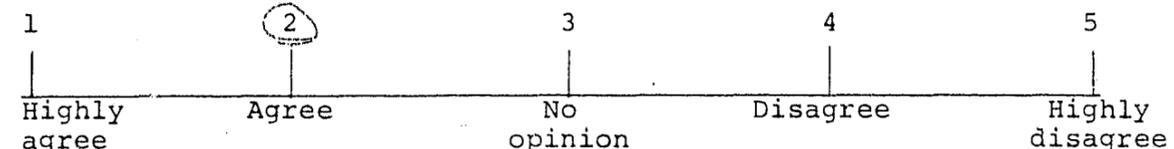
20. Counsel is available to indigent criminal clients at an appropriately early stage of the criminal justice system.



21. The average court-appointed counsel is fully competent to provide high quality representation to indigent criminal clients.



22. The average court appointed counsel provides representation for indigent criminal clients which is of a quality at least as high as that provided for his/her private clients.



DATA--OPINION SURVEY--PRIVATE BAR COMPONENTS

EL PASO COUNTY

1. Responses of 93 attorneys:

a.* You have been practicing law since:

1970-75	24%
1964-69	32%
1958-63	19%
1952-57	10%
1946-51	8%
before 1946	7%

b. In this jurisdiction since:

1970-75	25%
1964-69	32%
1958-63	22%
1952-57	11%
1946-51	5%
before 1946	5%

2. Your law speciality is:

None/Left Blank	26%
General Practice	25%
Miscellaneous	14%
Corporate	6%
Civil Law	6%

Criminal	5%
Trial	5%
Estate	4%
Tax	4%

3. The jurisdiction in which you practice is:

El Paso County	39%
Texas or West Texas	34%
Left Blank	22%
Texas and New Mexico	4%
Miscellaneous	1%

4. a. Criminal defense is _____% of total time you spend in your practice:

0 or blank	20%
1 - 25%	67%
26 - 50%	8%
51 - 75%	1%
76 - 100%	4%

b. Comprised of:

(1) 0 - 50%	22%) private clients
51 - 100%	8%	
(2) 0 - 50%	26%) court-appointed
51 - 100%	3%	
(3) 0 - 50%	34%) free public (pro bono)
51 - 100%	0%	
Blank or None	7%	

* Questionnaire statements are summarized or shortened.

5. You defended your first indigent client _____ months after being licensed:

1 - 3 months	32%
4 - 6 "	17%
7 - 12 "	12%
12 - 24 "	11%
2 yrs. or more	15%
Blank/N.A.	13%

6. You were reasonably well-qualified to serve when you accepted your first court appointments:

Highly agree	16%
Agree	38%
No opinion	8%
Disagree	21%
Highly disagree	16%
Left blank	1%

7. Indigent clients are represented in all non-federal criminal cases:

(a) By court-appointed private counsel	75%
(b) By private counsel offering free services	2%
(c) By no one	2%
a and b above	7%
a and c above	3%
a, b, and c above	4%
Left blank	7%

8. The current system of appointed counsel for indigent clients is fair:

(a) To the defendant -

Highly agree	8%
Agree	48%
No opinion	8%
Disagree	18%
Highly disagree	12%
Left blank	6%

(b) To the private bar -

Highly agree	3%
Agree	38%
No opinion	10%
Disagree	28%
Highly disagree	17%
Left blank	4%

9. Separate lists are maintained by the court to select more competent attorneys for special cases such as:

(a) Homocide	12%
(b) Serious felonies	4%
(c) Serious juvenile	1%
(d) Other	13%
(e) Unknown	3%
a and b above	14%
a, b and c above	9%
Left blank	44%

Comments include:

- No such list exists
- No knowledge of such a list

10. Appointment list is compiled by:
- (a) Soliciting participation from private bar 17%
 - (b) Random requests for listing from attorneys 14%
 - (c) Other 42%
 - Left blank 27%
- Comments include:
- Alphabetical order
 - Telephone directory
 - List includes all lawyers
 - No list exists
11. Court became aware of your willingness to accept appointments through which procedure alluded to in previous question:
- (a) 14%
 - (b) 14%
 - (c) 27%
 - Blank 44%
 - a and b 1%
- 12(a) As court-appointed counsel, how many clients have you represented over the past three years?:
- None or left blank 26%
 - 1 - 10 46%
 - 11 - 20 17%
 - 21 - 30 3%
 - 30 or more 8%

- 12(b) How many of these are now pending?:
- Zero or left blank 63%
 - 1 - 10 36%
- 13(a) How many criminal defendants have you represented over the past three years on a voluntary public service basis?:
- None or left blank 81%
 - 1 - 10 11%
 - 11 - 20 3%
 - 21 - 30 1%
 - 30 or more 4%
- 13(b) How many of these are now pending?:
- None or left blank 94%
 - 1 - 10 6%
14. The present system of determining indigency insures that only those who qualify receive this service:
- Highly agree 1%
 - Agree 15%
 - No opinion 30%
 - Disagree 34%
 - Highly disagree 16%
 - Left blank 4%
15. Present system ensures that no defendant who desires counsel is denied this right:
- Highly agree 27%
 - Agree 43%
 - No opinion 19%
 - Disagree 2%
 - Highly disagree 1%
 - Left blank 8%

16. The distribution of appointments to the private bar membership is equitable:

Highly agree	2%
Agree	27%
No opinion	38%
Disagree	17%
Highly disagree	14%
Left blank	2%

17. During the last year you received the following court-awarded fees for criminal legal defense services:

a. Fees received per client in felony cases:

(1) highest fee (averages)	\$342.40
(2) lowest fee	\$200.00
(3) average fee	\$282.50
(4) total	\$919.00

b. Fees received per misdemeanor case:

(1) highest fee (averages)	\$173.00
(2) lowest fee	\$ 48.60
(3) average fee	\$ 84.75
(4) total	\$327.60

c. Fees received per client in juvenile cases:

(1) highest fee (averages)	\$135.42
(2) lowest fee	\$ 46.87
(3) average fee	\$ 97.22
(4) total felony (sic)	\$528.57

TOTAL ALL CLIENTS *\$1151.60

*This mean reported total includes wide range of total amounts (0 - 6000).

18. Fees described above are:

(a) Adequate	24%
(b) Inadequate	15%
(c) Left blank	30%
(d) Inadequate and should be increased by:	
0 - 50%	6%
51 - 100%	11%
101 - 150%	1%
151 - 200%	3%
Over 200%	10%

19. A decrease in the number of appointments would have following effect on gross income of private attorneys in your area:

a. No effect on gross receipts 0 - 50% of bar	10%
" " " " " 51 - 100% " "	9%
b. 0 - 10% drop in gross receipts 0 - 50% of bar	15%
" " " " " " 51 - 100% of bar	2%
c. 10 - 20% drop in gross receipts 0 - 50% of bar	16%
" " " " " " 51 - 100% of bar	.5%
d. 20 - 30% " " " " " 0 - 50% of bar	9%
" " " " " " 51 - 100% of bar	.5%
e. 30 - 40% drop in gross receipts 0 - 50% of bar	9%
" " " " " " 51 - 100% of bar	0
f. 40 - 50% " " " " " 0 - 50% of bar	8%
" " " " " " 51 - 100% of bar	0
g. Over 50% drop in gross receipts 0 - 50% of bar	6%
" " " " " " 51 - 100% of bar	0
Left blank	16%

20. Counsel is available to indigent clients at an early stage in the criminal justice system:

Highly agree	13%
Agree	51%
No opinion	9%
Disagree	14%
Highly disagree	3%
Left blank	10%

21. The average appointed counsel is fully competent to provide high-quality representation to indigent criminal clients:

Highly agree	3%
Agree	19%
No opinion	15%
Disagree	41%
Highly disagree	9%
Left blank	13%

22. Appointed counsel provides representation for indigent clients which is of quality at least as high as that provided for by his/her private clients:

Highly agree	6%
Agree	38%
No opinion	10%
Disagree	18%
Highly disagree	8%
Left blank	20%

23. Clients plead guilty more frequently when represented by private counsel:

Highly agree	2%
Agree	4%
No opinion	35%
Disagree	47%
Highly disagree	6%
Left blank	6%

24. List principal reasons for above answers. Representative answers include:

- Court-appointed attorneys get client to plead guilty more often.
- All lawyers give 100% to effort.
- Most defendants plead guilty anyway.
- Appointed attorneys get to issue more quickly; do not wish to waste office time.
- No difference between the two.
- Each case must stand on its own merits.
- Appointed attorneys do not produce equal quality since they are not paid as well.

25. The present system of appointments is preferable to a PD system employing full-time salaried attorneys:

Highly agree	13%
Agree	23%
No opinion	14%
Disagree	28%
Highly disagree	19%
Left blank	3%

26. The present system is preferable to a PD system employing full-time salaried attorneys combined with court-appointed system:

Highly agree	10%
Agree	20%
No opinion	15%
Disagree	38%
Highly disagree	15%
Left blank	2%

27. If a PD system were to be established, indigent criminal cases should be represented ___% by PD's and ___% by court-appointed attorneys:

100 and 0%	24%
90 and 10%	8%
85 and 15%	7%
75 and 25%	6%
60 and 40%	4%
50 and 50%	13%
20 and 80%	7%
Left blank	23%
Miscellaneous	3%

28. List the qualifications of a chief PD:

Most frequently mentioned:

- prior trial experience
- prior experience as prosecutor
- prior experience with defender/criminal law

- should be independent
- good administrator
- dedicated
- Two to five year's criminal experience
- competency
- industrious
- desire to improve system
- licensed five to ten years

29-30. Who should be involved in selection of PD?:

Most frequent order of priority

1. County bar association
2. District court judges
3. Criminal judges
4. All practicing attorneys

Also

- prosecutor's office
- criminal bar
- legal services
- county Commission Court
- the public
- the Governor

31. If a PD system were established, it should be staffed by:

- a. full-time salaried attorneys, equal to numbers currently employed by DA and County Attorney combined: 27%
- b. above, 1/3 as many 17%
- c. above, 1/2 as many 19%

d. above, 2/3 as many . 13%

e. a mix 13%

100% 4 respondents

75% 2 respondents

67% 1 respondent

50% 2 respondents

25% 1 respondent

20% 2 respondents

Left blank 11%

32. If a PD system were established, its attorneys should be paid on equal basis with DA:

Highly agree 33%

Agree 54%

No opinion 2%

Disagree 2%

Left blank 9%

33. The PD office should supervise a training program for all defense attorneys who handle criminal defense work:

Highly agree 29%

Agree 41%

No opinion 6%

Disagree 14%

Highly disagree 3%

Left blank 7%

34. What persons would best comprise a supervisory board designed to establish a PD office?

Most frequent responses

attorneys and private citizens

bar associations

judiciary

criminal judges

representatives from Legal Aid and Public Welfare

criminal defense bar

trial lawyers association

lay people

35. List special interest groups who have expressed opinions

concerning PD selection:

civil liberties groups

legal aid attorneys

some attorneys

minority groups

NATIONAL CENTER FOR DEFENSE MANAGEMENT (NCDM)

DATA/OPINION SURVEY

CLIENT COMMUNITY COMPONENT (Re: El Paso County)

In support of on-site technical assistance for the above captioned project, the National Center for Defense Management will need a firm data base, both objective and subjective; accordingly, we would be pleased if you would answer all the following questions. Should you be unsure of the exact response required, please offer your best estimate. Where insufficient space is provided, please attach a continuation sheet keyed to the lettered/numbered response. All information which you provide in this questionnaire will be treated in the strictest confidence.

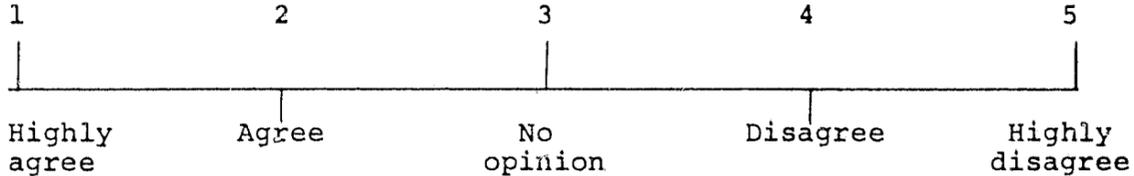
APPENDIX I

Client Community Survey Questionnaire

1. How many times have you needed an attorney to represent you in a criminal cases?

2. How many times have you actually been represented by an attorney who you retained and paid a fee for his/her services?

3. The relationship that you had with the attorney that represented you in any and all criminal cases was a satisfactory one as far as you are concerned.



(Please follow the above scheme for identifying your opinion on the question, wherever it appears. Subsequently, the narrative explanation of each one of the numbers will not appear; only the numbers will appear and you are requested, in each case, to circle the number that reflects your opinion on this scale).

4. If the response in question 3, above, related to more than one case, indicate the percentage of satisfaction or dissatisfaction as shown below.

- a. _____ % satisfied
- b. _____ % dissatisfied

5. If you were represented by an attorney who was appointed for you by a court please furnish the following details (if more than one case is involved, respond according to the details in most of the cases).

a. When was the attorney appointed for you (for example: at time of arrest, initial hearing, etc.)?

b. How did you learn about the availability of an attorney through court-appointment?

c. How soon after your arrest did you receive the services of this attorney (hours, days, etc.)?

d. Did your case go to trial? (Circle one number).

(1) Yes

(2) No

e. If your case did not go to trial, was it because of your plea? (Circle one number).

(1) Yes

(2) No

6. What is wrong with the way attorneys are being appointed to represent indigent defendants (clients who can't afford to retain an attorney)?

7. List the problems you identified in the previous question, in the order of their importance to you.

a.

b.

c.

d.

8. List improvements you would recommend to make the appointment system work better for the client (try to key these to your list in the previous question).

a.

b.

c.

d.

9. The attorneys that have represented you in the past, regardless of whether they were retained (paid) by you or court-appointed, have given you sufficient/insufficient service (strike out the wrong word) because:

10. List the problems you identified in the previous question in order of their importance to you

a.

b.

c.

d.

11. List your recommendations as to how the problems you identified in the previous question could be solved.

a.

b.

c.

d.

12. Explain what you understand to be the meaning of the term "public defender".

13. There should/should not (strike out inappropriate word) be a public defender office in this community because:

14. Based on your response to the previous question you believe you can receive better representation from (circle one letter).

a. A public defender.

b. A court-appointed attorney.

15. If you selected "a." (public defender), in the previous question, please list the ways you think he/she could improve the way an indigent defendant is represented in criminal cases.

a.

b.

c.

d.

16. If you think the court has not been fair with you in connection with your case(s) list the reasons for your feeling this way.

a.

b.

c.

d.

17. Describe in your own words what you think is wrong with the criminal justice system as you know it.

18. You were put in jail for _____ (fill in the number of hours, days, etc.) prior to your initial appearance in court. The reason given for the delay was:

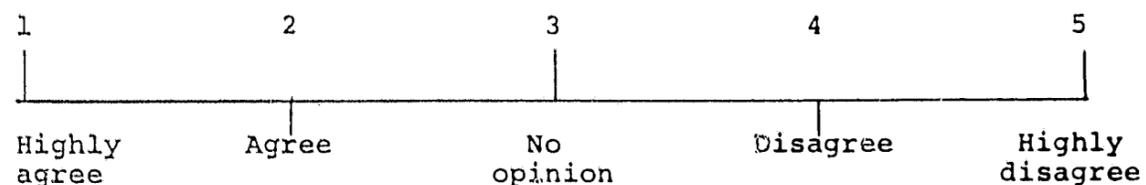
This reason was given to you by

(Identify position of person conveying this information to you).

19. To the best of your knowledge what difference can you describe in the approach taken by the court when dealing with less serious (misdemeanors as opposed to felonies) cases?

20. Describe what you understand by "the plea bargaining process".

21. I always get a better "bargain" when I am represented by a privately retained attorney rather than by a court appointed attorney.



(Please circle the number which corresponds to your opinion; in subsequent questions only the number will appear).

CONTINUED

2 OF 3

22. List your reasons, in order of their importance to you, as to why you responded the way you did in the previous question.

a.

b.

c.

d.

23. What information was given to you by the police concerning your right to an attorney and how and where you could get one at no cost to you?

24. Of the _____ (enter the appropriate number) criminal cases in which you have been charged, you have waived your right to an attorney (that is, you have told the court you don't need one) in _____ of those cases.

25. If you have ever waived counsel please explain why.

26. In your conversation with other accused or convicted persons, the subject of attorneys has/has not (strike out inappropriate word) been discussed; if it has, these discussions can generally be summarized as follows:

NATIONAL CENTER FOR DEFENSE MANAGEMENT (NCDM)

ESTUDIO DE OPINION Y DATOS

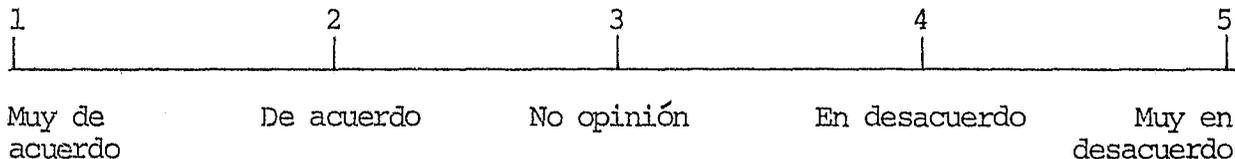
CONJUNTO CLIENTE COMUNIDAD (RE: Condado de El Paso)

Para apoyar la asistencia técnica en el sitio y para el proyecto arriba mencionados, el National Center for Defense Management necesita una base firme de datos, tanto objetivos como subjetivos; de acuerdo con eso nos gustaría que usted contestara todas las preguntas que siguen. Si usted no estuviera seguro de la respuesta exacta que se le pide, por favor, denos su mejor opinión. Si no tiene espacio suficiente, por favor, añada otra página y ponga en la página la letra o el numero de la pregunta. Toda la información que usted nos de en este cuestionario será tratada en el más estricto secreto.

1. ¿ Cuántas veces ha necesitado usted un abogado para representarle a usted en casos criminales?

2. ¿ Cuántas veces, de hecho, ha sido usted representado por un abogado a quien usted contrató y pagó honorarios por sus servicios?

3. En cuanto usted se refiere, la relacion que usted tovo con el abogado que le represento en alguno o todos sus casos criminales fue satisfactoria.



(Por favor, siga ese esquema para identificar su opinión en la pregunta, dondequiera que esta aparezca. En adelante la explicación de cada uno de los números no volverá a aparecer; solamente los números aparecerán y se le ruega, en cada caso, que ponga un círculo alrededor del número que indique su opinión según esa escala)

4. Si la respuesta a la pregunta 3, arriba, se refería a más de un caso, indique el porcentaje de satisfacción o insatisfacción según se muestra a continuación.

a. _____ % satisfecho

b. _____ % insatisfecho

5. Si usted fue representado por un abogado que la corte nombró para usted, por favor, denos los detalles siguientes (si hubo más de un caso responda según los detalles en la mayoría de los caso).

a. ¿ Cuándo le nombraron el abogado (por ejemplo, al tiempo del arresto, durante la audiencia inicial, etc.)?

b. ¿Cómo se enteró usted que había un abogado a su disposición por medio del nombramiento de la corte?

c. Después de ser arrestado ¿cuándo recibió usted los servicios de un abogado (horas, días, etc.)?

d. ¿Fue su caso llevado a juicio? (ponga un círculo en uno de los números?)

(1) Sí

(2) No

e. Si su caso no fue llevado a juicio, fue debido esto a su despulpa (ponga un círculo en uno de los números)

(1) Sí

(2) No

6. ¿Qué está mal con la forma en que los abogados son nombrados para representar a los demandados indigentes (clientes que no pueden pagar a un abogado)?

7. Enumere, por orden de importancia para usted, los problemas que usted identificó en la pregunta anterior.

a.

b.

c.

d.

8. Enumere las mejoras que usted recomendaría para el sistema que tiene la corte para nombrar abogados para los que no pueden pagarlos resultara mejor para el cliente (procure ordenar las respuestas con la lista en la pregunta anterior).

a.

b.

c.

d.

9. Los abogados que le han representado en el pasado, tanto lo que fueron contratados (pagados) por usted como los que fueron nombrados por la corte para usted, le han prestado suficientes servicios (borre la palabra que no sea correcta) porque: insuficientes

10. Enumere los problemas que usted identificó en la pregunta anterior por orden de importancia para usted

a.

b.

c.

d.

11. Enumere las recomendaciones que podrían, en su opinión, solucionar los problemas que usted señaló en la pregunta anterior.

a.

b.

c.

d.

12. Explique qué entiende usted por el término "defensor público".

13. Debería haber ^{haber} no haber (borre lo que sea incorrecto) un defensor público en esta comunidad porque:

14. Basado en su respuesta a la pregunta anterior usted cree que usted podría recibir mejor representación de (ponga un círculo en una de las letras).

a. Un defensor público

b. Un abogado nombrado por la corte

15. Si usted eligió "a" (defensor público) en la pregunta anterior, por favor, enumere las maneras en que usted cree que él podría mejorar la forma en que un demandado pobre es representado en casos criminales.

a.

b.

c.

d.

16. Si usted cree que la corte no ha sido justa con usted respecto de su caso o casos, enumere las razones que la hacen pensar así.

a.

b.

c.

d.

17. Describa en sus propias palabras qué le parece mal con el sistema de justicia criminal, según usted lo entiende.

18. Usted fue puesto en la cárcel durante _____ (escriba el número de horas, días, etc.) antes que lo presentaron con un juez. La razón dada por la tardanza fue:

Esa razón le fue dada a usted por

(Identifique la posición de la persona que le dio esa información a usted)

19. Según su entendimiento ¿qué diferencia hay o existe en la forma en que la corte aborda los casos cuando se trata de casos meno serios (Delitos menores en oposicion a delitos mayores)?

20. Describa usted que entiende por "Proceso de negociación" (arreglar con el procurador la causa - llegar a un acerdo con el procurador.)

21. Yo siempre consigo mejor "negociacion" cuando soy representado por un abogado contratado privadamente que cuando soy representado por un abogado nombrado por la corte.

1	2	3	4	5

Muy de acuerdo	De acuerdo	No opinion	En desacuerdo	Muy en desacuerdo

(Por favor, ponga un círculo en el número que corresponda a su opinión; en las preguntas que siguen solamente el número volverá a aparecer).

22. Enumere sus razones, en orden de importancia para usted, de porqué usted contestó en la manera que lo hizo en la pregunta anterior.

a.

b.

c.

d.

23. ¿ Que información le fue dada por la policía respecto de su derecho a tener un abogado y de cómo y dónde usted podría conseguir uno gratis?

24. De los _____ (escriba el número apropiado) casos criminales de los que usted ha sido acusado, usted ha renunciado a su derecho a tener un abogado (es decir, usted ha dicho a la corte que usted no necesitaba uno) en _____ de esos casos.

25. Si usted ha renunciado a abogado, por favor, explique porqué.

26. En sus conversaciones con otros acusados o convictos, el tema de los abogados ha sido discutido o no ha sido discutido (borre la frase que no sea correcta); si ha sido, esas conversaciones pueden, en general, resumirse así:

27. Los abogados representan bien la mayoría de sus clientes, tanto los que son contratados como los que son nombrados por la corte. (Vea la pregunta 21 para saber el significado de los números).

28. Enumere las maneras en que usted piensa que cualquier abogado podría ayudarle mejor cuando usted es arrestado y acusado de un crimen.

a.

b.

c.

d.

29. El resultado de su caso o casos habría sido mucho mejor si su abogado hubiera usado investigadores profesionales.

1

2

3

4

5

30. Los jueces tratan a los clientes indigentes de diferente manera a como tratan a los clientes que tienen abogados pagados.

1

2

3

4

5

APPENDIX J

Client Community Survey Results

Due to circumstances beyond our control, the Client Community Survey Results cannot be included in this report.

APPENDIX K

Manpower Management Application

MANPOWER MANAGEMENT APPLICATION .

ESTIMATION OF THE NUMBER OF DEFENDERS NEEDED
TO PROVIDE FULL-TIME DEFENSE SERVICES FOR
EL PASO COUNTY

In order to objectively compare the cost-effectiveness of the existing court-appointed system with various alternative defense systems, it was necessary for the study team to estimate the manpower needs of a full-time defender office for El Paso County, since that was one alternative system under consideration.

A straightforward method of estimating the number of attorneys required is to use the recommendations of the National Advisory Commission* that an attorney limit his/her caseload as follows:

- Felonies - - - - - No more than 150 cases per year
- Misdemeanors - - - - No more than 400 cases per year
- Juvenile Cases - - - - No more than 200 cases per year

If these standards are applied to the projected workload for indigent defense developed in this study, the estimated number of attorneys required is 9.

The requirement is derived as follows:

763 felonies - - - - divided by 150 cases/year - - - requires 5 attorneys
1,209 misdemeanors - - divided by 400 cases/year - - - requires 3 attorneys
235 juvenile cases - divided by 200 cases/year - - - requires 1 attorney
TOTAL number of ATTORNEYS REQUIRED equals - - - - - 9

The study team explored attorney requirements in more detail, because gross application of standards does not allow an examination of actual activities in which an attorney will be engaged. Therefore, an attempt was made to quantify criminal defense services, thus providing decision-makers with

*NAC Standard 13.12.

a logical method for determining the number of attorneys required to provide adequate indigent defense services. This method can also be used to derive data for internal analysis of a defender office. After a defender service has operated for some time, data can be collected to analyze just how the legal staff allocated their spent time; thus identifying problem areas and helping the staff forecast its requirements to meet a changing workload.

The study team developed this manpower staffing method specifically for El Paso County. While the structure of the application is general and can be applied anywhere, the estimates of time required to perform a particular activity in the criminal-justice process were judgmentally derived for El Paso County.

The application identifies nine stages of the El Paso County criminal justice process. They are as follows:

- Arrest to booking;
- initial interview;
- bond hearing;
- investigative work;
- preliminary hearings/motions;
- arraignment;
- pre-trial motions;
- trial; and
- post-trial and sentencing.

Estimates of the number of defendants to be processed at each of these stages, in a typical year between 1975 and 1980, were made based on the total caseload projections stated in the section of this report titled, "influences on the Future Workload of Indigent Defense Services in El Paso County". For felony cases, the following assumptions were made:

- During the first three stages, 60% of those arrested (1440) would be represented by the defender office;

- investigative work would be required in 50% of the 763 indigent cases filed;

- preliminary hearings and arraignments would occur for all 763 indigent defendants;

- approximately 40% of all cases would be dropped prior to pre-trial hearings, leaving 458 defendants;

- only 13% of cases which have pre-trials would go on to trial (based on study team data from 1974-75);

- the total number of defendants found guilty either by plea or by trial would be 54% of those arraigned or 412 (based on study team data from 1974-75). The projected workload, thus estimated, is multiplied by the study team's judgmentally-derived estimates of minutes required to accomplish each stage of the process.

A similar procedure was followed for misdemeanors, using the following assumptions:

- During the first three stages, 30% of those arrested (2280) would be represented by the defender office;

- investigative work would be required in 50% of the 1209 indigent cases filed;

- arraignments would occur for all 1209 indigent defendants. There would be no significant number of preliminary hearings;

- about 40% of all cases which are arraigned would be settled prior to a pre-trial hearing;

- about 50% of cases which have pre-trials would go on to trial (based on study team data from 1974-75);

• the total number of defendants found guilty either by plea or by trial would be 50% of those arraigned or 605 (based on study team data from 1974-75).

The model was not developed for juvenile cases, but the study team assumed one full-time defender would be required to handle the 235 juvenile cases.

At Exhibits A and B are summaries of computation procedures used to derive attorney hours required for felonies and misdemeanors respectively. The aforementioned stages are contained in column 1, the caseload data are displayed in column 2 and the minutes required for each stage are displayed in column 3. Column 4 is derived by multiplying columns 2 and 3, while column 5 is derived by dividing column 4 by 60.

The total attorney time requirement for felonies and misdemeanors is 11,394 hours. Assuming attorneys have seven productive hours each working day (which allows time for moving from one case to another), the Defender System requires 1628 attorney days to handle adult felony and misdemeanor cases. Since there are approximately 210 working days in a year, eight attorneys are necessary to handle the caseload.* This, plus the one attorney assumed necessary to handle juvenile cases, equals a nine-attorney staff.

Thus, both the study team's application and the NAC Standards yield nine attorneys as the number required to handle the projected caseload. The study team's application gives a more detailed picture of what will be required at various stages of the court process. If a full-time defender office recorded the time it spends in each of the nine stages, it could compare its actual performance to the estimates derived herein. That may

*The figure of 8 attorneys was rounded off from the actual calculation arrived at of 7.7. This reflects the fact that the Chief Defender would spend much of his day performing managerial and supervisory functions rather than representing individual clients.

prove helpful in pointing out ways to better allocate scarce attorney resources or to justify an increase in staff, if total caseload or caseload mix changes.

EXHIBIT A--Manpower Staffing Application to Felony Cases				
1	2	3	4	5
criminal justice stage	projected workload	minutes per process stage	total minutes per process stage	total hours per process stage
Arrest to booking	1,440	30	43,200	720
Initial interview	1,440	60	86,400	1,440
Bond hearing	1,440	15	21,600	360
Investigative work	382	60	22,920	382
Preliminary hearings/ Motions	763	90	68,670	1,144.50
Arraignment	763	15	11,445	190.75
Pre-trial hearings/ Motions	458	60	27,480	458
Trial/Post-trial	60	900	54,000	900
Sentence hearing	412	60	24,720	412
TOTAL WORKLOAD			360,435	6,007.25

EXHIBIT B--Manpower Staffing Application to Misdemeanor Cases				
1	2	3	4	5
criminal justice stage	projected	minutes per process stage	total minutes per process stage	total minutes per process stage
Arrest to booking	2,280	30	68,400	1,140
Initial interview	2,280	45	102,600	1,710
Bond hearing	2,280	15	34,200	570
Investigative work	605	60	36,300	605
Arraignment	1,209	15	18,135	302.25
Pre-trial hearings/ Motions	726	15	10,890	181.50
Trial/Post-trial	363	120	43,560	726
Sentence hearing	605	15	9,075	151.25
TOTAL WORKLOAD			323,160	5,386

APPENDIX L

Fee Schedule for San Mateo County, California

FEE SCHEDULE

MUNICIPAL COURT

1. APPEARANCE AS ASSIGNED COUNSEL ON ARRAIGNMENT CALENDAR

- A. Arraignment calendar (two hours or less) \$40.00

Should a case be assigned and closed on the same day, the assigned attorney is entitled to bill \$40.00 per closed case in addition to the arraignment calendar fee up to a maximum of two closed cases per arraignment calendar. Please submit bills for cases closed at arraignment calendars even if the number of closed cases is in excess of two.

Bills for closed cases are to be submitted separate from the bill for the arraignment calendar.

- B. Appearance on arraignment calendars in all municipal courts may be billed at \$65.00 if the assigned attorney is required to spend more than two hours on said calendars and if said attorney is unable to bill for closing an assigned case on the same day as the arraignment calendar. 65.00

2. NON-TRIAL, NON-PRELIMINARY HEARING FEES

In the event a case is disposed of without trial, preliminary hearing or motions. 40.00

NOTE

Only those attorneys specifically assigned to arraignment calendars are entitled to receive arraignment calendar fees.

NO ADDITIONAL FEES WILL BE ALLOWED WHERE FELONIES ARE REDUCED TO MISDEMEANORS.

All attorneys are again advised that fees on closed cases should be billed promptly.

"NO PAYMENT WILL BE MADE FOR ATTORNEY'S BILLS SUBMITTED AFTER SIXTY DAYS AFTER PROFESSIONAL SERVICES ARE CONCLUDED UNDER THE ASSIGNED COUNSEL PROGRAM." (Board of Directors Resolution - August 8, 1969)

Fee Schedule

-2-

3. 1538.5 P.C. MOTION

Separate hearings on 1538.5 motions (i.e. not combined with a preliminary hearing) during which a witness is sworn and testifies can be billed as follows:

A. Hearing requiring two hours or less	60.00
B. Hearing requiring more than two hours	
Half Day	75.00
Full Day	110.00
C. 1538.5 motion, written points and authorities only	50.00
D. 1538.5 motion, with points and authorities, combined with Preliminary Hearing, plus preliminary hearing fee	25.00

4. PRELIMINARY HEARING

A. Hearings requiring two hours or less	60.00
B. Hearings requiring more than two hours	
Half Day	75.00
Full Day	110.00

5. PRE-TRIALS

Appearance at a pre-trial or setting conference may be compensated at the rate of \$25.00 under the following circumstances:

A. The appearance consumes in excess of an hour, <u>AND</u>	
B. A further appearance or appearances are required subsequent to the day of the conference to conclude the case (e.g. sentence, dismissal)	25.00

6. TRIAL FEES

A. One-half day of court trial	75.00
B. One day of court trial (not to exceed total of \$330.00 per case without prior approval by the Private Defender Office)	110.00

Fee Schedule

-3-

- C. One-half day of jury trial 75.00
- D. Jury trials are payable at the rate of \$130.00 per day for trial for the first five full days. (Not to exceed a total of \$600.00 per case without the prior approval by the Private Defender Office) 130.00
- E. Separate appearance for sentence following trial 25.00

When a case originating in the municipal court is certified to the superior court (e.g. mental competency, MDSO, juvenile) for further proceedings, it is not in a condition to be billed as a muni matter until one of the following occurs:

- A. It is finally disposed of in the superior court;
- B. It is remanded to the municipal court, and thereafter finally disposed of in said court;
- C. It remains under superior court jurisdiction for in excess of 30 days after a commitment is effected.

7. MISCELLANEOUS

- A. Return for alleged violation of probation or diversion conditions:
 - Within 91 days 25.00
 - After 91 days 40.00
- B. Miscellaneous motions supported by written points and authorities 25.00
Extended hearings will be at the same rate as provided for 1538.5 motions in lieu of above fee.

NUMBER OF APPEARANCES

In those instances in which an attorney must make more than three appearances in addition to the arraignment appearance, to dispose of a case, he may bill the additional total sum of \$25.00 for the subsequent appearances in excess of three, providing the appearances in excess of three are not in themselves billable under other provisions of this schedule. The application of this section relates to cases in which the attorney could not reasonably avoid the repeated appearances.

The recommended maximum fee to be billable for any one case, in the event a case is closed without trial (court or jury) including all motions and appearances 125.00

The administrator is authorized to approve fees exceeding the maximum up to \$50.00 where circumstances warrant; fee beyond the maximum allowed by this schedule must be approved by the Special Fee Committee.

A further suggestion is that assigned counsel remember that their fellow assigned attorneys are appearing in all courts in the county and would be able to make special appearances on behalf of their fellow assigned attorneys if the client, district attorney, and the court have been properly advised, and if the matter entails nothing more than a routine continuance.

SUPERIOR COURT

1. NON-TRIAL APPEARANCE FEES

A. All arraignments will be handled by the office of the Administrator. Routine continuances will also be covered by this office provided ample notice is given to this office and the defendant. All first appearances for PC 1367-68 (appointment of doctors) and WI 3050-51 will be covered by this office, as will PC 859a only when the P.O. advises his report is not available and must request a continuance. In all instances a Superior Court Memo must be provided to this office with instructions. All attorneys are expected in Superior Court at the time a plea of guilty is entered and at the time of sentence.

B. 995 P.C. MOTION

Separate appearances on 995 motions supported by written points and authorities 50.00

C. 15385 P.C. MOTION

Separate hearings on 1538.5 motions during which a witness is sworn and testifies may be billed as follows:

Fee Schedule

-5-

- | | |
|---|--------|
| 1. Hearing requiring two hours or less | 60.00 |
| 2. Hearing requiring more than two hours | |
| Half Day | 75.00 |
| Full Day | 110.00 |
| 3. 1538.5 motion, written points and authorities only | 50.00 |

2. PRE-TRIALS

A fee of \$25.00 is allowable to attorneys who must attend pre-trial conferences in superior court. The \$25.00 fee is the maximum allowed for pre-trial conferences regardless if the attorney has to attend one or more pre-trial conferences. (If combined with another proceeding, e.g. 1538.5 P.C., 995 P.C. motions, which itself is compensated, the pre-trial fee is not payable unless additional separate pre-trial appearance or appearances are necessary. 25.00

3. TRIAL FEES

- | | |
|--|--------|
| A. One-half day of court trial | 75.00 |
| B. One day of court trial. (Not to exceed total of \$330.00 per case without prior approval of the Private Defender Office) | 110.00 |
| C. One-half day of jury trial | 75.00 |
| D. Jury trials are payable at the rate of \$130.00 per day for trial for the first five full days. (Not to exceed a total of \$650.00 per case without the prior approval of the Private Defender Office) | 130.00 |
| E. Separate appearances for sentence following trial. | 25.00 |
| F. <u>Only in those instances when a case goes to trial</u> , a fee of \$25.00 is payable to an attorney if through <u>no fault</u> of his own, he is forced to trail and must appear on a date, or dates, other than the date originally set for trial. | 25.00 |

Fee Schedule

-6-

4. MISCELLANEOUS

- A. Return of defendant to court following suspension of proceedings under 1203.03, 1367-68, 3050-51 and 1168 PC, 6300 et. seq W&I Code, revocation of probation, revocation of diversion:

If more than 91 days after commitment requiring new appointment 40.00

If less than 91 days after commitment, not requiring new appointment 25.00

- B. Miscellaneous motions supported by written points and authorities 25.00

Extended hearings will be at the same rate as provided for 1538.5 motions in lieu of above fee.

NUMBER OF APPEARANCES

In those instances in which an attorney must make more than three appearances in addition to the arraignment appearances to dispose of a case, he may bill the additional total sum of \$25.00 for the subsequent appearances in excess of three, providing the appearances in excess of three are not in themselves billable under other provisions of this schedule. The application of this section relates to cases in which the attorney could not reasonably avoid the repeated appearances. 25.00

The recommended maximum fee to be billable for any one case, in the event a case is closed without trial (court or jury) including all motions and appearances is: 150.00

The administrator is authorized to approve fees exceeding the maximum up to \$50.00 when circumstances warrant; fees beyond the maximum allowed by this schedule must be approved by the Special Fee Committee.

5. MISCELLANEOUS SPECIAL APPEARANCES

Special appearance for line-up or interrogation (when not an assigned case) 40.00

Fee Schedule

-7-

Special appearance, counseling and appearance for testimony for a witness 40.00

Special assignments by direct designation from Private Defender Office (when not assigned case) including consultation with prisoners and prospective clients, investigation hold, etc.:

A. Less than one hour 20.00

B. One hour or more 40.00

MENTAL-INEBRIACY PROCEEDINGS

1. Attorneys scheduled to appear on the Mental Calendar may bill as follows:

A. Two hours 50.00

B. More than two hours 75.00

C. Return appearance on one or more specific cases 25.00

D. Trials: Same rate as in criminal matters.

JUVENILE

CASES CANNOT BE BILLED UNTIL CASE IS CLOSED

1. JURISDICTIONAL HEARINGS

A. Two hours or less 50.00

B. More than two hours
Half Day 75.00
Full Day 110.00

C. Return for dispositional hearing on one or more specific cases 25.00

D. Return for review after dependency hearing, if necessary 25.00

2. DETENTION CALENDAR

A. Detention calendar only, regardless of number of cases. (May be billed in addition to jurisdictional and dispositional hearings on same day):

1. Two hours or less 50.00

2. More than two hours 75.00

Fee Schedule

-8-

3. FITNESS HEARINGS

A. Fitness hearings may be handled by the Assistant Administrator at Hillcrest unless the assigned attorney feels his presence is necessary due to complicated facts, etc. Fitness hearings should be reported to this office. Assistant Administrator can be reached at 573-2127. 25.00

MAXIMUM allowance on any one juvenile case regardless of number of companion cases or appearances (without multiple day hearing) 125.00

EXTRAORDINARY SERVICES

- A. WRITS (\$15.00 per hour, up to maximum of \$125.00)
- B. APPEALS from muni. court to appellate department \$15.00 per hour to maximum of \$150.00
- C. EXPUNGEMENT and sealing of record 40.00
- D. CIVIL CONTEMPTS and petitions to declare minor free from parental custody and control:
- 1. Basic Fee 50.00
 - 2. More than two appearances required 75.00
 - 3. Motion supported by declaration, points and authorities, add 25.00
 - 4. Extended hearing (In excess of two hours)
 - Half Day 75.00
 - Full Day 110.00
 - 5. Maximum Fee 200.00

APPENDIX M

El Paso County Court Caseload 1974

from
Raymond H. Zitur
Director of Data Processing
El Paso County, Texas

10/14/75

COUNTY OF EL PASO

PAGE 1 OF 1

COURT AND JAIL CASE LOADS
 JAN 1974 THRU AUG 1975

MONTH /YEAR	CASES FILED					U.S. JAILED			ALIEN JAILED			TOTAL JAILED
	FEL	MIS	JUV	M/H	TOTAL	FEL	MIS	TOTAL	FEL	MIS	TOTAL	
JAN 74	99	359	1	36	495	289	13	302	64	10	74	376
FEB 74	112	186	4	16	318	361	198	559	80	35	115	674
MAR 74	126	300	19	21	466	402	270	672	158	86	244	916
APR 74	68	202	19	21	310	372	230	602	191	136	327	929
MAY 74	107	385	33	30	555	103	95	198	447	324	771	969
JUN 74	71	263	23	20	377	63	74	137	548	391	939	1,076
JUL 74	84	424	43	20	571	397	182	579	262	228	490	1,069
AUG 74	108	236	31	23	398	467	314	781	105	86	191	972
SEP 74	66	229	24	10	329	496	285	781	97	88	185	966
OCT 74	106	369	34	30	539	540	353	893	81	84	165	1,058
NOV 74	62	250	30	25	367	510	387	897	115	74	189	1,086
DEC 74	96	309	20	18	443	503	383	886	88	74	162	1,048
JAN 75	66	312	25	14	417	603	273	876	81	61	142	1,018
FEB 75	60	178	21	21	280	567	236	803	108	45	153	956
MAR 75	79	344	28	26	477	617	242	859	130	37	167	1,026
APR 75	65	380	20	26	491	650	208	858	85	18	103	961
MAY 75	141	178	31	19	369	664	412	1,076	133	71	204	1,280
JUN 75	119	165	24	20	328	727	451	1,178	128	85	213	1,391
JUL 75	103	306	35	31	475	613	422	1,035	124	78	202	1,237
AUG 75	79	495	26	19	619	641	499	1,140	114	144	258	1,398
TOTALS	1,817	5,870	491	446	8,624	9,585	5,527	15,112	3,139	2,155	5,294	20,406
20 MONTH AVERAGES:												
	91	294	25	22	432	479	276	755	157	108	265	1,020