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REVIEW OF FIRST YEAR OPERATIONS

of the

JUVENILE DEFENDER SERVICE

WAYNE COUNTY, MICHIGAN

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ACQUISITIONS

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FOREWORD

In April 1973, a juvenile defender program was established in Wayne County, Michigan, to operate for a one year pilot period. The program was designed to provide legal representation for indigent juveniles whose offenses allowed them to be sentenced as adults. The program staff has consisted of eight attorneys and a social worker who have worked in eight neighborhood centers in Detroit.

To determine whether the project was meeting objectives stated in the original grant application for funding and to weigh the impact of the project on the diversion of juveniles from the criminal justice system, the Michigan Office of Criminal Justice Programs requested the Criminal Courts Technical Assistance Project at the American University to provide assistance in evaluating the program's first year operations. It was specifically requested that the evaluation team be composed of persons with expertise in the area of juvenile law and represent both membership in the National Legal Aid and Defender Association as well as activities outside the current scope of NLADA. Accordingly, a team was selected composed of both current practitioners of public defender services as well as specialists in juvenile law who were active in other aspects of juvenile defender work. These team members were Dean John F.X. Irving of Seton Hall Law School; Lewis A Wenzell, of the Federal Defenders of San Diego, Inc.; H. Ted Rubin of the institute for Court Management; and John Darran of the Seattle Public Defender Service. The particular expertise and background of each of these team members is described at length in Section V of this report.

A field visit to Detroit was made during the week of April 8 through 12, 1974, during which time the program operations were observed and discussions were held with most of the staff and others involved in its services. The results of this study and the recommendations of the consultants are discussed in the report which follows.

I. Introduction

This is an evaluation of a federally funded Defender service in the Juvenile Court of Wayne County, Michigan. The year old program, experimental for this court, is energetically striving to achieve several goals at a time of significant potential change in the juvenile justice systems of this country and within a setting beset with considerable problems. Though many of these problems are beyond the control of the Defender service, and pre-date it, they are not beyond its influence.

The Defender Service is therefore seen operating at two levels: as a change agent within Wayne County Juvenile Court and as the source of specialist attorneys for certain juveniles who come within its jurisdiction. Both are vital functions but, as might be expected, the achievements at this early date are limited. Further, the sense of direction is uncertain and the organizational structure needs rethinking. If the recommendations contained in this evaluation are adopted, however, the evaluation team believes the Program can achieve its considerable potential. It could then make a major contribution to Michigan's war on juvenile delinquency and youth crime.

II. THE NATURE OF THE PROJECT

The creation of a separate juvenile justice system in the United States began in Illinois in 1899. It was initiated to a large extent as a reaction against the cruelty and ineffectiveness of processing minors through the adult criminal justice system. Hope ran high that the court would be a helping court; it would dispense "individualized justice"; and would save juveniles from a life of crime. There was also the recognition that juveniles could not have the mens rea usually required for criminal guilt and that they were salvageable precisely because they were still in their formative years.

For the first half of this century, therefore, lawyers rarely appeared in delinquency hearings representing a juvenile. They were likely to be told that there was no role for them if, in fact, they did appear, that this tribunal was not a court of law. With the advent of the federal war on poverty, legal service lawyers began to make appearances; and as delinquency spread more and more to white youths and into the bedroom communities

surrounding urban centers, new interest developed in the juvenile court process. In the fifties and into the sixties, the role of counsel in delinquency hearings was widely debated. In the past few years or so, the role has been clarified and the arrival of the Defenders in the Wayne County Juvenile Court suggests the nature of the role: vigorous representation along traditional advocacy lines during the adjudicatory hearing (trial) on a juvenile delinquency petition.

The Defender Program began more than a year ago under the sponsorship of the long established Legal Aid and Defender Association of Detroit. It was funded under the federal legislation now known as the Crime Control Act with funding authorization proceeding through the Michigan State Planning Agency. That agency is called the Office of Criminal Justice Programs and it approved an initial grant of \$152,112 for the year 1973-74.

The project is under the general supervision of George Matish, General Counsel, for the sponsoring association. Eight attorneys including, Mr. James Zeman, the supervisor, provide representation at preliminary hearings in delinquency matters and throughout the adjudicatory and dispositional phases of these cases.

The office, housed in suitable quarters but inconveniently located for clients who depend on public transportation, accepts 100 such cases each month. The supervisor believes the office can handle 150 cases and this is a matter of obvious importance for the attention of the advisory committee proposed among the subsequent recommendations in this report.

The program has several goals which appear in the Grant Application:

- 1 - Verification of the validity of the vigorous representation role of a defender in juvenile delinquency hearings vis-à-vis the oft-times rehabilitative role of the private attorneys who are assigned in approximately half the delinquency cases;
- 2 - Affording greater access for children to attorneys than previously was possible;
- 3 - Assignment of each of the eight project attorneys to one of the neighborhood juvenile facilities being planned by another organization for Wayne County; and
- 4 - Training for project attorneys and seminars for interested clients.

Of these general goals only the first is being approached in any substantial way. The neighborhood offices have never opened and the office contact and seminars for children have been basically deferred. Project attorneys have lectured in some fifteen high schools but with that exception there appears to be little contact with juveniles beyond what is necessary for case preparation. Training does not exist for project attorneys; each person "does his own thing". Regularly scheduled staff conferences do not exist nor does the supervising attorney critique staff work. Training; policy setting; administration; public education concerning the project; development of priorities and uniformity are all lacking at this stage of the project's evolution. Serious shortcomings, they can be corrected if the recommendations in this evaluation are pursued.

The project has a small support staff consisting of two clericals and an investigator; a social worker is also employed. Law students are not involved as extensively as planned and other resources are not utilized though available and needed. The Graduate School of Social Work at Wayne State University, e.g., can help in the development of dispositional alternatives for the juvenile clients and there is the possibility that a field placement service would be opened by that school within the project's offices. These and other resources should be developed.

III. THE WAYNE COUNTY JUVENILE COURT

A. GENERAL DESCRIPTION

The project can only be critiqued fairly if one understands the dynamics of the court in which the juvenile defenders are functioning. Set in a community in which the government, reportedly, is generally cumbersome and immobile, the juvenile court is a busy metropolitan court (with one branch office) with so many facets that it is difficult to understand and even more difficult for a new project to achieve integration. In fact, the supervising attorney for the juvenile defender project indicated that his main problem is "plugging into the system".

The court has been run for many years by Judge James Lincoln who is deemed to be fair and who enjoys a good reputation in the community. He has the ultimate responsibility for administering the court, its related services, the detention home which adjoins it, and a shelter care facility which is at the other end of the city. The court building is old and inconveniently located outside the active downtown court and commercial areas. This renders the court quite invisible to most attorneys and to the public. The newspapers have no sustained interest in interpreting the court's many needs to a disinterested public. One group interested in the court that should be noted is the court watchers organization. This is an organization of women who work to observe and help the court.

The judge has eight referees to assist in handling the wide range of cases that come into the court. By appearing at preliminary hearings, the project has been able to reduce the court caseload by getting an increasing number of juveniles discharged. The burden remains substantial however, and the evaluating team was distressed at the poor record keeping system, the inadequate statistics, and the arbitrary method by which the court administrator assigns cases to counsel. Resources are limited and alternatives for disposition are weak. In such a context, the careful administration of the juvenile defender project becomes acute. (There are some statistics indicating that a small number of private attorneys in 1973 monopolized the assignments in juvenile court earning some \$200,000 in fees).

Judge Lincoln is supporting a legislative proposal that would replace the referees with juvenile court judges. The primary use of referees as hearing officers is controversial; further, they have been prone to look at social histories of juveniles prior to their adjudication. This is comprehensible only if one recognizes that the prosecuting attorney makes no appearances before the referees and they must themselves assume a prosecutorial role and establish the prima facie case against each juvenile.

The absence of a prosecutor at adjudicatory hearings is a major, inexcusable shortcoming and the Defender Project is absolutely correct in insisting that prosecutors be present.

Fortunately, the project has stopped the abuse of the prejudicial pre-adjudication reading of the social history and this achievement pinpoints the value of the project attorneys as "watch dogs" for due process. But it is at best a holding operation.

Pending is a court management study and any court observer can see much need for it. The project attorneys should enthusiastically support such a study.

A profile of this court will show a severely taxed administration in which communication and policy setting are in short supply. In such a fluid setting, the chance of impairment to the rights of juveniles is very real. Hence, the juvenile defender project becomes even more important.

B. THE PROBATION STAFF

The project attorneys are perceived by many of the court probation staff as being "insensitive". In interviews, the complaints from probation officers centered around the alleged myopia of the project attorneys who try to get the youngsters off at all costs. There is a deep philosophical difference, at least between the older probation workers and the more vigorous project attorneys, and it is a difference that has long troubled lawyers and social workers. The project attorneys argue that they do what the client wants;

the probation personnel argue, with some vehemence, that this is a disservice, and that the lawyers should pursue whatever remedies are "in the best interests of the child".

The evaluation team urges that counsel at the adjudicatory stage must take the role of the vigorous advocate for the child, i.e., doing what the child wants and then, if adjudicated, acting in the best interests of the child during the dispositional phase of the hearing.

The project attorneys should reach a clear decision among themselves about this dilemma, and they should sit down with probation staff and try to explain their roles as counsel for the child. Frequent meetings to create mutual understanding of each discipline's role are recommended.

The probation officers tended to blame the inexperience of the project attorneys in ignoring, what one probation office administrator called, the overriding social values affecting each juvenile. If the charge of inexperience has any validity, then the lack of an advisory committee to the project becomes doubly significant.

C. COURT AND COMMUNITY PERCEPTIONS

The general counsel of the sponsoring association, George Matish, and the supervising attorney, James Zeman, are respected and accepted by court personnel and by the community representatives with whom the evaluators had the opportunity to

communicate. Overall, however, there is little community or bar recognition that the project is underway, and some people close to the project fail to share the enthusiasm of the project attorneys for their accomplishments.

It should also be said the evaluators were quite impressed with the quality of the work of some of the assigned counsel. A comparison with the work of the project attorneys does not persuade the observer that the project specialists are so superior to the assigned counsel that there is no competition. The program is therefore still in a demonstration phase. An intensive measurement of performance; a public information effort; and an appraisal of the work of each project attorney are now in order.

IV. CURRENT DIRECTIONS FOR THE COURT AND COUNSEL

Changes underway in several areas affecting the Wayne County Juvenile Court have a strong bearing on the operation and development of the Defender Project. Many of these are beyond the control of the project personnel but not beyond its influence and the influence of its supervisory board. The project should therefore support those movements referred to in the following paragraphs which will enhance the possibility of goal achievement.

First, however, one might comment on the repeated references made to the team by Detroit citizens about the heavy role that "politics" plays in governmental services at all levels. Though not unique to Michigan or to Detroit, the team was surprised both by the frequency of the references and by the demoralization that political overtones have on many public employees and on other citizens. In such a climate, whether real or imagined, this experimental, reform project is trying to function.

Secondly, as already mentioned, there is a movement in the state legislature in Lansing to add

additional judges to the Wayne County Juvenile Court. The present judge supports this proposal and it deserves the support of the Detroit Legal Aid and Defender Association. Additional judges would upgrade and help improve the court, providing more consistent juvenile justice.

A third movement in Michigan is a legislative bill to create a statewide trial level defender service. Moreover, an appellate defender system now exists and its extension to the original proceedings could ensure continuation of the subject defender service when the federal funding terminates. State financing of the defender movement at the trial level should be encouraged but the team has some concern that any legislative bill not require that the defender be a public employee.

The evaluation team did not share the project personnel's confidence that the Board of County Commissioners would underwrite the project costs at an early date especially if the project engages in the controversial work of appeals and other law reform efforts that are recommended in this report. It is for this reason that we recommend the project support enactment of a statewide trial level defender bill in whatever manner is legally proper.

A final consideration that deserves attention is a proposal for a management study of the Wayne County Juvenile Court. There is a strong possibility however that the federal funds tentatively allocated will be diverted to another use unless the court quickly takes steps to initiate the study. The casual method of record keeping; the apparent underutilization of the time of the referees; and what one local educator calls "the history of defeat" in the juvenile court, are reasons enough for the project to work for the early undertaking of a management study. The implications for the project and for the project clientele are considerable.

V. THE EVALUATION

Scope and Methodology

The initial funding application identifies two levels of evaluation. The first is internal and on-going and is handled by project personnel. It requires the compilation of statistics on the number of cases handled by the project attorneys; the number of referrals made; the types of dispositions utilized and similar quantitative data. These statistics will demonstrate the volume and quality of the work undertaken by the project and ultimately, its impact on the juvenile justice system.

The second level of evaluation resulted in this written report. It is external and intermittent in that an outside team was formed for an appraisal of the project's first year of operation. Under the leadership of the National Legal Aid and Defender Association the four member team assembled in Detroit for the week beginning on Monday, April 8, 1974. The team spent a total of fourteen days collectively on site. It is hoped that its recommendations, coming so early in the life of the project, can easily be adopted.

The team consisted of Dean John F.X. Irving, Seton Hall University School of Law, as Captain; former Denver Juvenile Court Judge, Ted Rubin; Lewis Wenzell, Senior Trial Attorney of the Federal Defenders of San Diego, Inc; and John Darrah,

founder of the Seattle-King County Public Defender. All members of the team brought considerable expertise to the task. The team captain first worked in the defender field in 1962 when he was field director for the National Legal Aid and Defender Association. He later became Executive Director of the National Council of Juvenile Court Judges. Ted Rubin is nationally recognized as one of the few authentic experts in juvenile court process and has performed numerous studies and evaluations of juvenile courts throughout the country. Mr. Wenzel brought the perspective of a defender who functioned in the federal courts, who previously was a prosecutor in the Cook County (Illinois) Juvenile Court and who also worked with the Juvenile Litigation Office of the Chicago Legal Aid Society. Mr. Darrah was director of the Public Defender program in Seattle - King County which has a well regarded juvenile defender section similar in size to the office being evaluated herein.

The team participated in an orientation session the first evening with George Matish, Counsel for the Project, and with James Zeman, the project's chief staff attorney. The on-site visit concluded with an exit conference on the afternoon of April 12, 1974. That conference afforded an opportunity for the evaluation team to report its initial impressions and recommendations to the project representatives and to answer their questions.

The evaluation employed several methodologies. The project attorneys were observed during preliminary (detention) hearings and at adjudication hearings. The team captain observed the appearance of a project attorney before the sole juvenile court judge in Wayne County; the other team members sat in on hearings before the eight referees. Assigned counsel were also observed.

Extensive interviews provided a chief source of information. Every staff attorney was interviewed at length, except one man who was on vacation. Judge Lincoln met with the team, and most of the referees were interviewed in depth. Court personnel, including the administrators of probation services, were given an opportunity to discuss the defender project with a team member. Community representatives and faculty members at Wayne State University were also contacted, as were members of the board of the sponsoring organization, The Detroit Legal Aid and Defender Association. The limited available statistics were studied and the original application for funding was examined, since it spelled out the project's goals.

Finally, the team utilized the Evaluation Design for Defender Systems, and made use of its Rating Schedule.

That Design was prepared by NLADA for such use, and it embodies the national experience to date in the appraisal of defender services.

Each day, the team divided its responsibilities, but convened daily to assess its progress. Prior to the exit conference, the team reached a unanimous decision on the major findings and recommendations. Each member took one facet of the joint findings and made appropriate on-site observations. Thereafter, each agreed to write up his observations and to send them to the team captain, who was charged with responsibility for drafting the official report.

The findings and recommendations follow.

VI. FINDINGS AND RECOMMENDATIONS

A. The Program Should Be Continued and Refunded

Comment: The Defender Program is achieving many successes and deserves to be cultivated and refunded. The team was impressed with the energy and motivation of the top staff personnel and, certainly, these positive characteristics must have an impact on the clients. There is no doubt that the quality of the representation is better than ever previously provided in the Wayne County Juvenile Court and even the assigned counsel are reputed to be more diligent because of the competition induced by this new program.

The various successes include not only the vigorous representation of individual juveniles but also the effectiveness of the watch dog function; the diversion of many juveniles out of the system by obtaining their dismissal at the preliminary hearings; and the beneficial impact on the juvenile court process of the sustained presence of full-time defense counsel.

On the converse side, there are detectable weaknesses in the program. Some are borne of the nature of the task which is experimental for this court; the growing pains which may have precluded the reaching of clear policy on such matters as whether all adjudicated clients ought be advised of the right to appeal; and the disinterest of the bar

in juvenile court generally. It is even alleged that this program is under the supervision of the civil branch of the Detroit Legal Aid and Defender Association because the criminal branch had no interest in a juvenile court project.

In an effort to deal with these weaknesses and in order to aid in the evolution of the Program, further recommendations are made below.

B. The Goals of the Project Should Be Redefined and Promulgated.

Comment: As mentioned earlier in this report, many of the goals originally identified have not been pursued. This is certainly understandable in view of the rapid evolution of the Program and the heavy demands made on it. It is also the result of the failure of the eight neighborhood juvenile centers in Wayne County to open, this failure being beyond the control of project personnel. The absorption of the project staff into the litigation process may be accountable for the short shrift given to the training and public information components of the project.

Whatever the reasons, the existing project is quite different from the blueprint. It is important

that current goals be identified in order that the project be clearly perceived both by the staff and observers.

C. The Detroit Legal Aid and Defender Association should appoint an Advisory Committee to the Project. The Chairman of the Committee should be a member of the Association's Board.

Comment: The project has all the advantages that young leadership can give but lacks the perspective that experienced attorneys can offer. Further, the project needs the aid of well-respected citizens who will give advice on policy, interpret the program to the bar and to the community, and if necessary, run interference for it. Such services can best be furnished by an Advisory Committee. If that committee is inter-connected with the Association Board, the Board will remain advised of the progress and the needs of the project.

The evaluators observed that the Board is not so informed. One key member said frankly, "I don't know anything about it". This has retarded the maturation of the project. Project staff have no group they can consult with on policy matters and on new directions.

D. An Inter-juvenile Justice System Coordinating Mechanism Is Also Needed.

Comment: In concept, the judge; administrators of his legal, probation and detention services; key law enforcement personnel; at least one administrator from the Department of Social Services; the chief juvenile defender and juvenile prosecutor; and perhaps several others, would convene monthly to systematically assess what is happening in Wayne County juvenile justice, what are its goals, its needs, its priorities, its directions, its inter-agency problems. The chairmanship of such a group might be rotated monthly so that the court does not overly dominate such a structure. If achieved and well developed, this vehicle could be useful to defender goals prior to, through, and beyond the juvenile court. The defender personnel should propose such an entity.

E. The Chief Staff Attorney Should Devote At Least Half His Time to the General Administration of the Project.

Comment: In order to inspire the staff, Mr. Zeman, the chief attorney, has been carrying a full case load. This appears to be unwise. There is a resulting lack of administration and direction which he alone can give.

Cases are being assigned to the staff attorneys by the secretary; no record is kept of attorney case-loads or dispositions; few conferences are held; no supervision is given each attorney assessing his performance; meetings with the Bar Association's Juvenile Court committee have not been attended for three months although Mr. Zeman is a committee member; and there are no reports (except for limited statistics) presented to the sponsoring board. Nor is there any attempt to fit data gathering to standards or goals. These are perceived as real deficiencies.

Meetings with project attorneys, with the proposed advisory committee, and with interested resource persons at Wayne State University, will enable the project to develop its policies and philosophies on such matters as: the role of counsel; the policy concerning appeals; and policy concerning outside practice, if any; public speaking, etc.

The chief staff attorney also needs to give time to the development of supportive resources that are eager to be involved. These exist in the Law School and in the School of Social Work at Wayne State University; they exist in the Criminal Justice Institute,

a Regional Training Academy; and they potentially exist within the organized bar. In addition, time should be devoted to conveying information on the project to the legal profession and to the public. Reform of the existing sub-standard Juvenile Code and appellate advocacy would have far-reaching significance for the entire juvenile justice system in Michigan. Such roles for the project also ought to be considered as time permits.

F. The Project Should Become Involved at the Intake Stage of Juvenile Proceedings and Participate at All Stages of a Delinquency Hearing.

Comment: Defenders have focused on decision-making by judicial/referee personnel. Largely unattended has been decision-making at intake, as well as decision-making by probation personnel upon reoffense. How decisions are made at these points is a largely invisible process. The same would apply to police exercise of discretionary decision-making and detention screening practices. The objective should be to make these processes far more visible, to achieve greater uniformity, to maximize diversion, to obtain more thorough preliminary investigations before petitions are formally filed, to obtain more specific guideline

criteria, to secure screening for legal sufficiency by independent prosecution staff, and yet to enhance speedier processing for formal cases.

G. Policy on Practice and Procedure Should Be Established and Promulgated Among the Staff and the Supervisory Board.

Comment: One reason for the earlier recommendation that the chief attorney allot half his time to administration is the strong need perceived to establish clear policy concerning both practice and procedure for the project. Uncertainties now exist in this area; some tensions were reported; and a feeling develops that the project attorneys share office space but have little more cohesiveness than that. Until policy and procedure are established in the delinquency field, no new kind of cases should be accepted; there having been some consideration given to providing representation in non-delinquency petitions.

H. Existing and Potential Community Resources Should Be Utilized.

Comment: While the project grant wisely provided for the employment of a social worker, the evaluators considered the appointed social worker lacking in certain skills, and largely unsupervised and undirected. A

masters-trained social worker is not required for this position, but the present social worker appeared unable to provide defenders with comprehensive assessments of juveniles, family strengths, and alternative resources, particularly useful at waiver, dispositional, and detention hearings. Her skills are good in relationships with juveniles and parents, and she has knowledge, though not enough knowledge, of community resources. She could function better under the supervision of a more highly trained social worker in the same office, or less desirably, if she received stronger direction from the project coordinator. If neither of these alternatives is feasible, then this employee should be replaced by a person whose skills are more useful in complimenting the defenders.

The School of Social Work at Wayne State University might consider opening a field placement office within the project. Such a development would help the staff social worker broaden her capabilities and would give a new dimension to the project. This is especially important because the juvenile court in Detroit is plagued with a shortage of alternatives to incarceration.

There is also the Law School at Wayne State which has a reservoir of talented students who can help. One student is working at the project this summer but the possibility of a credit granting clinic should be explored. Such a clinic under law school faculty supervision might prove mutually beneficial. Also at the Law School is the potential for preparing and trying appeals and an offer has been made to undertake such action on behalf of clients at the Defender Project. The proposed Advisory Committee should explore the several ramifications of such a relationship.

As the Defender project becomes sensitive to the need for more intense community relationships, other resources will become known. These resources are valuable in themselves and in addition, they help publicize the Defender Project within the community. The project can only ignore the value of such public information and resources development efforts at its peril.

Finally, the proposed advisory committee, together with the general counsel and the chief attorney should explore the development of community outreach capability as has been done in the Defender

program in Seattle. The outreach effort aims to find within the client's community resources that can be helpful to him in coping with his problems. The identity of these resources helps convince the court that the client does not need to be incarcerated. Material on this concept is available and is being sent separately to Mr. Zeman for his information.

END