REVIEW OF THE
STRUCTURE, SCOPE AND ADEQUACY
OF THE PUBLIC DEFENDER SYSTEM
IN LAKE COUNTY, INDIANA
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December, 1974

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Law Enforcement Assistance Administration Contract Number: J-LFAA-043-72
NOTICE TO THE READER

There is a September 30, 1974 contract deadline for completion of all technical assistance assignments conducted under the auspices of The American University Criminal Courts Technical Assistance Project. Consequently, assignment reports received after August 20, 1974, cannot be edited by the project staff prior to their transmittal to the client agencies, as is our usual procedure. The present report is one of those for which our time schedule did not permit editing. We apologize for any inconvenience this may cause.

Joseph A. Trotter, Jr.
Director
Criminal Courts Technical Assistance Project
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I. Introduction

Lake County has the potential for approaching the threshold of a new era in the development of criminal justice in Indiana. The spacious and functional Lake County Government Complex, a 30 million dollar structure, sits in almost isolated splendor on a knoll near the outskirts of Crown Point, challenging policy makers and administrators to enrich the human ingredient which is so critical in every aspect of a legal system. And Indiana has already begun to respond to the challenge: The state has recently adopted a modified Missouri plan for the selection of judges; the Superior Court system has now been unified and the courts for Lake County have a chief judge who has a national reputation, presently serving as chairman of the country's trial judges. There are two full-time court administrators for the ten-judge system. Also there is a "case coordinator", who determines which cases are going to trial. This arrangement is designed to save inconvenience of witnesses and to provide orderly processing of cases. Perhaps more significant for this study is the broad statutory and case law pronouncements on the right to counsel at every stage of the criminal proceedings, from court through appeal. Further support is provided by the Criminal Justice Coordinating Council which was created in 1971 and is staffed by trained personnel. Adequate educational resources are available in East Chicago, Gary, Hammond and nearby Valparaiso. Further, the area is adjacent to Chicago where many educational and research possibilities exist.
This Report presents an evaluation of the system, with suggestions for improvement. We believe the study was objective and carried out with careful use of the limited time the consultants had for the survey. The conclusions we have reached are based upon court observations, statistics taken from dockets and other data from court records, many interviews and conferences with lawyers, judges, court officials and others who have knowledge of the operation of the indigent defense system in Lake County. We have, of course, relied upon our own judgment and experience in making some of the observations, but in these we have been guided by standards set by the American Bar Association, the NLADA and other professional organizations concerned with the effective administration of justice. References to these sources will be found in the footnotes, the Appendices, and in the discussion of the principals and objectives which we are proposing as checkpoints for an improved system.

It should be noted here that Lake County uses the term "pauper attorney" to describe its public defender, but in the following report, the term "public defender" will be used to refer to the Lake County pauper attorney.

In order to get to the central issue quickly, we have summarized the specific recommendations and have left until later in the text, the explanation, interpretation, and general discussion of each recommendation. (See page 32.)
The evaluators wish to give special appreciation for the research performed by two law students from Valparaiso University, Ronald P. Kuker and Donald B. Kempster, who, under Mr. Hennings' supervision, conducted a docket study which provided valuable statistics.
II. SUMMARY OF RECOMMENDATIONS

1. That the indigent defense service be divorced from the judiciary and be given autonomous status, so as to protect the office from political, economic or other influences which might inhibit the professional independence of the public defender in providing full, competent and zealous representation of the accused.

2. That the authority and responsibility for the selection of the Chief Public Defender and for establishing broad policies for the defender plan be vested in a non-partisan commission or board of trustees.

3. That all the pauper attorney staff positions be made full-time and that their compensation be adjusted to make the jobs attractive as careers for able and experienced lawyers.

4. That the Public Defender be appointed for a term of at least four years.

5. That the scope of public defense services be unified and broadened to include county-wide representation of indigents accused in misdemeanor cases where incarceration is a possible sentence, in juvenile delinquency hearings, and in appellate proceedings.

6. That the public defender staff (attorneys, investigators and supporting personnel) be enlarged and better organized, and that an adequate budget be made available for the increased responsibilities of such staff.
7. That guidelines be adopted which will outline office procedures and define eligibility of clients for representation by the public defender.

8. That administrative (and possible legislative) changes be made to assure:
   a. timely fixing of bail,
   b. early determination of eligibility for public defender representation, and
   c. early representation by counsel.

9. That an effective bail system be implemented.

10. That a cooperative plan be worked out with Valparaiso University School of Law for an internship program for second and third year law students.
III. EVENTS LEADING TO THE SURVEY ASSIGNMENT

I. On the 19th of November, 1973, the Hon. James J. Richards, Chief Justice of the Superior Court of Lake County requested by letter to Frank A. Jessup of the Indiana Criminal Justice Planning Agency an evaluation of the public defender services of the county be made by the National Legal Aid and Defender Association, under the auspices of LEAA's Criminal Courts Technical Assistance Project at American University. Judge Richards requested that the evaluation touch upon seven areas:

1. The feasibility of the Court's contracting with an independent body of defender services.
2. Cooperation with the Clinical Program at Valparaiso University School of Law.
3. The number of attorneys and supporting staff needed.
4. Standards relating to caseloads of the attorneys.
5. Full-time vs. part-time defenders.
6. Procedures for getting the public defenders into cases as early as possible, and
7. The processing of appeals.

Judge Richards stated that since the new budget would be effective January 1, 1974, and federal litigation was currently challenging the constitutional adequacy of the present public defender system, the need for technical assistance was urgent.
II. On November 21, 1973, Mr. Jessup forwarded the Lake County request to Nicholas L. Demos, Courts Specialist, LEAA, Des Plaines, Illinois, adding that he supported the request.

III. Mr. Demos, November 28, 1973, relayed Judge Richard's request to Frank Weaver, Project Monitor (Courts Technical Assistance Contract), LEAA of the U.S. Department of Justice in Washington, advising that the proposed evaluation had already been discussed with Marshall Hartman, Director of Defender Services, NLADA.

IV. After some preliminary negotiations between the Technical Assistance Project of American University and the NLADA, Carolyn Cooper, Research Associate, confirmed the agreement with NLADA by letter to Nancy Goldberg, Assistant Director of Defender Services, NLADA, January 7, 1974. Under the agreement, the evaluation was to be made during January and February, 1974. Ms. Cooper stated that "the purpose of this assistance is to evaluate the present system for providing indigent services and to make recommendations for improving the quality of representation.

V. January 16, 1974, Ms. Goldberg replied to Ms. Cooper, advising that the study would be conducted in Lake County February 4-7, 1974.

VI. By letter to Mr. Jessup dated January 18, 1974, (stamped "Filed in Open Court"), the Hon. Andrew V. Giorgi, Senior Judge of the Criminal Division, stated that "... since I am responsible for the efficient operation of both the Court and the Office of Pauper Attorney, I am ... at a loss to understand
why my opinion on the advisability of the study was not sought by the Indiana Criminal Justice Agency through other, more informal channel." Judge Giorgi pointed out that because of the limited physical facilities of the old courthouse, the study would "not be advisable at this time." He indicated that the move to the new Lake County Government Complex would be in "July, August or perhaps September, 1974." Judge Giorgi advised that improvements had recently been made in the Office of Pauper Attorney, saying "These changes include more than doubling the size of the legal staff from four to nine lawyers, adding two investigators and adding more clerical staff support. These improvements, which should be fully implemented by the time the Court moves to its new quarters in the County Complex, will ensure adequate representation to each indigent criminal defendant appearing before this Court. It is my position, therefore that the proposed study is both unnecessary and inappropriate."

VII. On or about January 20, 1974, Marshall Hartman, of NLADA, informed Junius Allison, captain of the team of researchers selected by NLADA to do the evaluation, that because of some internal problems, Judge Richards had asked that the study be set for a later date. Accordingly, Mr. Hartman re-scheduled the survey for the week of July 15, 1974.

VIII. On June 20, 1974, Judge Giorgi wrote Ms. Goldberg (in response to her letter of June 11, 1974 in which she suggested July 15th as the new date of visits by the consultants) that it would be more convenient if the study were conducted after the courts moved to County Complex - after the middle or the last part
of July. He enclosed a copy of a letter from Roy Dakich, Chief Pauper Attorney, requesting that the visits be deferred.

IX. By telephone, Mr. Hartman again postponed the evaluation for everyone concerned and the consultants were requested to arrive Monday, September 9 for a pre-study briefing at a motel chosen as headquarters.

X. The field visits for the evaluation were conducted September 9-15, 1974.
IV. PRE-SURVEY BRIEFING

Several weeks before the on-site visits, the National Legal Aid and Defender Association supplied the researchers with considerable written material for review. Among the documents we studied were the following:

1. A special Handbook (Vol. 1) on "Evaluation Design", "Criminal Caseload and Suggested Questionnaires"
2. Handbook for Analysis and Evaluation of Lake County Public Defender (Vol. 11), containing an organization chart and a biographical resume for each of the Pauper Attorneys, a copy of the Indiana statute establishing the Lake County Superior Court, budgets, summary of case law relating to the right of counsel, and a copy of the unsuccessful bill which provided for a statewide public defender system for Indiana (Senate Bill No. 152)
3. Copies of reports of previous studies:
   a. "A Program for the Improved Administration of Justice in Lake County", by the Institute of Court Management, (October, 1972)
   b. "Criminal Court Calendar Management in Lake County, Indiana", by the American Judicature Society under the auspices of LEAA's Criminal Courts Technical Assistance Project, (May, 1973)
c. "The Structure and Funding for Criminal Defense of Indigents in Indiana" by the NLADA under the auspices of LEAA's Criminal Courts Technical Assistance Project, (May, 1974)

4. ABA and NLADA Standards Relating to Defense Services

5. Copy of pleadings in Noe vs. County of Lake, et al. Civil No. 73 M 157, now pending in the United States District Court for the Northern District of Indiana


7. Miscellaneous correspondence and memoranda relating to Lake County.

In addition, there were numerous conferences between NLADA staff and judges and lawyers in Lake County, members of the Criminal Courts Technical Assistance Project Staff and the chairperson of the present research team.

On the evening before this evaluation (September 9, 1974), NLADA held a briefing session attended by the three researchers; Marshall Hartman, Director of Defender Services; Nancy Goldberg, Deputy Director; and Donald Levinson, a member of the Gary Bar Association, for an oral review of the court structure and practices relating to defense services within Lake County.
V. RESOURCE PEOPLE AND AGENCIES

In order to give some idea of the sources of information and supporting data gathered and analyzed by the team making this study, the following list of individuals interviewed and the institutions visited is submitted:

1. Judges of the criminal courts, the juvenile court, the city courts and the Chief Judge of the Superior Court.
2. Court officials including clerks, court administrators, probation officers and Court Coordinator.
3. Public defenders, investigators, secretaries, city court public defender and members of the various bar associations within Lake County, director of the Legal Aid Society.
4. Law professors concerned with clinical education.
5. Prosecutor and Chief Deputy.
7. Observations and visits: Criminal Justice Planning Agency, Lake County Jail, Criminal Courts, Records Offices, Juvenile Court, City Courts, Pauper Attorneys, Probation Offices.
8. Follow-up information by letters from individuals after on-site study was completed.
10. The evaluators rely heavily upon standards and recommendations promulgated by nationally recognized commissions and associations, including the following:
   a. American Bar Association
      (1) Standards for a Defender System (1966)
      (2) Minimum Standards for the Administration of Criminal Justice
      (3) Standards Relating to Defense Services
   c. Indiana Criminal Justice Planning Agency

e. National Advisory Commission on Criminal Justice, Standards and Goals

f. National Legal Aid and Defender Association
   (1) Other Face of Justice
   (2) Equal Justice for the Accused (study in collaboration with the Association of the Bar of the City of New York
   (3) Guidelines for Adequate Defense System
   (4) How to Organize a Defender Office (1969)

g. Vera Institute of Justice "Proceedings in Criminal Justice Reform" (1972)
VI. PRESENT COURT STRUCTURE AND AVAILABILITY OF COUNSEL

A. Superior Court

Senate Bill 294 (amending IC 1971, 33-5) created a 10-judge unified Superior Court system for Lake County, with centralized management under a Chief Judge and a Court Administrator. The system has three major areas of responsibility: a civil division with five full-time judges, a criminal division with four full-time judges, and a juvenile court with one full-time judge and five referees. The Lake County Coordinating Council has made plans to develop a data processing system which is designed to serve the three divisions. There is also a constitutional Circuit Court ("county court") with one judge who may, with permission of the Superior Court, sit in any civil division.

When the accused is arrested he is taken to a local jail where he remains from 3-5 days. Some time during this period the arresting officer prepares a formal charge which is reviewed by the prosecutor in Crown Point. If the evidence presented by police is deemed sufficient, an affidavit for probable cause is presented, ex parte, to a judicial hearing officer in Crown Point. This step is usually taken 2 or 3 days after the police officer has submitted his evidence to the prosecutor. The signing of the affidavit by the hearing officer is authority for an arrest warrant to issue. The formal charge is then filed with the Court, at which time bond may be posted.

When the case is docketed, the accused is brought to the Lake County jail at Crown Point. The Sheriff provides the Court and prosecutor
with a bi-weekly jail list. The Court determines eligibility for representation by the public defender ten to fifteen days after the case is docketed. Two weeks (or more) may elapse between arrest and arraignment. The procedure was explained by one attorney as follows:

My understanding of the appointment procedure is that within approximately one week to two weeks an individual is brought before the regular Judge for the purpose of arraignment. If he has not retained counsel at that time, he is questioned concerning his status as an indigent and if it is indicated, counsel is appointed for him at that time. The arraignment is then delayed ordinarily for another week to two weeks.

(See Flow Chart in Appendix for a representation of the process)

The Study Consultants desired some statistical documentation for observations and recommendations concerning the work of the public defenders. In the absence of data available from the pauper attorney office, two law students from Valparaiso University (Messrs. Ronald P. Kucker and Donald B. Kempster) were engaged to make a docket study of the assignments and dispositions of cases. Under the supervision of Mr. Hennings, docket sheets for defendants were reviewed for the 13-week period of December 1, 1973 to March 13, 1974. Because of the recent changes in the structure of the courts and the move to the new Courthouse early in 1974, a backlog of cases existed at the time of the evaluation. Virtually all of the matters filed in January and February were still pending when the study was made. For this reason, the evaluators felt that the month of December should be included in the time span to assure a greater degree of validity in the statistical review.
During these 13 weeks, 203 cases were filed in Lake County. Because many of the cases were being processed by the courts, only 113 of the dockets were available for study. However this is 55.7% of the cases filed, and should be a good sample. These 113 cases involved 146 defendants, since several case numbers included multiple defendants.

The defendants studied were in the following categories:

- Retained Counsel: 66
- Pauper cases: 42
- No attorney appointed: 6
- Appeals from Municipal Court: 6
- Defendant still at large: 26

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This study was able to determine that the pauper attorney was involved in 13 of the 90 cases not studied. These involved 16 defendants. Assuming that the other 77 represent cases in which warrants have been filed, at least 77 other defendants were in the system with either retained counsel or no representation. This results in the following estimate regarding defendants whose cases were filed during the study period:

- Retained Counsel: 143
- Pauper cases: 58
- No Attorney: 6
- Appeals: 6
- Defendant still at large: 26

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The study analyzed 42 of the pauper cases (72.4% of all pauper cases in the study) and 66 of the retained counsel cases (46.2% of all retained counsel cases in the study).

However, it is safe to assume that the cases not studied were pending. Therefore, the results of those cases would not have been available.
Also, because of the large samples studies, these cases should not affect the average time figures which appear later in this study.

A remarkably high percentage of cases were still pending as of September 21, 1974, the close of the study. Of the 201 cases involving either retained counsel or the pauper attorney, only 20 cases (10%) were closed. The average time an open case was pending as of September 20, 1974 was 149 days.

Some of this delay can be explained by the court expansion and change of location of the courthouse. However, it is important to note that a higher percentage of the pauper cases were closed and that the open cases had been pending an average of 72 days less than those having retained counsel. The following table shows the average time which pending cases had been open by type of case as of September 20, 1974:

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Average Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private counsel cases</td>
<td>179</td>
</tr>
<tr>
<td>Public Defender cases</td>
<td>107</td>
</tr>
<tr>
<td>Total average</td>
<td>149</td>
</tr>
</tbody>
</table>

The pauper attorneys had closed 11 of their cases (20%), and the retained attorneys had closed 9 of their cases (6%). From these figures, it can be seen that the mere presence of the public defender has aided the court in faster processing.

One other time figure is important. The average time to process a closed indigent case was 107 days, while the average time to process a closed case with private counsel was 166 days. Of the 11 closed pauper cases, only 2 defendants were at liberty at any time prior to sentence (18%), while of the 9 closed private cases only 2 defendants were not at liberty during this time (22%). This obviously is a factor in determining who
is released from jail prior to sentence. The study shows that indigent clients will remain in jail while those with retained attorneys will be released.

Only 6 defendants in the study who retained counsel remained in jail during the processing of their cases (9%), while 24 indigent clients remained in jail during this time (57%). As an adjunct to this, far fewer pauper clients had bench warrants pending (2 or 5%) than did retained attorney clients (8 or 12%).

The following tables show the method of case disposition and result by type of representation:

### Retained attorney cases

<table>
<thead>
<tr>
<th>Defendants</th>
<th>Disposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Nol. Pros.</td>
</tr>
<tr>
<td>B.</td>
<td>Not guilty by reason of insanity</td>
</tr>
<tr>
<td>C.</td>
<td>Plea, guilty, 1 year jail</td>
</tr>
<tr>
<td>D.</td>
<td>Plea, guilty, 2 years probation</td>
</tr>
<tr>
<td>E.</td>
<td>Plea, guilty, 3 years probation</td>
</tr>
<tr>
<td>F.</td>
<td>Plea, guilty, 1-10 years suspended, 2 years probation</td>
</tr>
<tr>
<td>G.</td>
<td>Plea, guilty, 1-20 years suspended, 2 years probation</td>
</tr>
<tr>
<td>H.</td>
<td>Plea guilty, sentence pending</td>
</tr>
<tr>
<td>I.</td>
<td>Plea, guilty, sentence pending</td>
</tr>
</tbody>
</table>

### Pauper attorney cases

<table>
<thead>
<tr>
<th>Defendants</th>
<th>Disposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Dismissed, defendant a juvenile</td>
</tr>
<tr>
<td>B.</td>
<td>Bench/not guilty</td>
</tr>
<tr>
<td>C.</td>
<td>Bench/guilty, 10-25 years</td>
</tr>
<tr>
<td>D.</td>
<td>Jury/guilty, sentence pending</td>
</tr>
<tr>
<td>E.</td>
<td>Jury/guilty, sentence pending</td>
</tr>
<tr>
<td>F.</td>
<td>Plea, guilty, 1 year jail</td>
</tr>
<tr>
<td>G.</td>
<td>Plea, guilty, 1 year jail</td>
</tr>
<tr>
<td>H.</td>
<td>Plea, guilty, 1 year probation</td>
</tr>
<tr>
<td>I.</td>
<td>Plea, guilty, commitment to mental hospital</td>
</tr>
<tr>
<td>J.</td>
<td>Plea, guilty, 10-25 years suspended, 2 years probation</td>
</tr>
<tr>
<td>K.</td>
<td>Plea, guilty, 1-5 years suspended, 3 years probation</td>
</tr>
</tbody>
</table>
These charts indicate that disposition other than by trial is favored. It is interesting to note that only the pauper tried any cases. Repeatedly during the Lake County to trial and lost were sent to the penitentiary, seem to indicate that those who plead guilty receive light sentences or probation, but the sample is too small to make any definite statement.

The study took note of several significant time periods in the processing of a case. These were: a) arrest to initial appearance, b) initial appearance to appointment of counsel, c) appointment of counsel to arraignment, d) initial appearance to arraignment, e) arraignment to finding, f) finding to sentence, g) arraignment to September 20, 1974 for any pending cases, h) total time in the judicial system, and i) total time in jail while in the judicial system.

Averages of all of these periods were obtained. The following chart shows those averages in days and the number of cases considered to obtain them:

<table>
<thead>
<tr>
<th></th>
<th>a</th>
<th>b</th>
<th>c</th>
<th>d</th>
<th>e</th>
<th>f</th>
<th>g</th>
<th>h</th>
<th>i</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retained Attorney</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>average number of days</td>
<td>16</td>
<td>9*</td>
<td>54*</td>
<td>46</td>
<td>95</td>
<td>23</td>
<td>179</td>
<td>232</td>
<td>38</td>
</tr>
<tr>
<td>number of cases</td>
<td>66</td>
<td>10</td>
<td>10</td>
<td>63</td>
<td>9</td>
<td>7</td>
<td>57</td>
<td>66</td>
<td>66</td>
</tr>
<tr>
<td>Pauper Attorney</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>average number of days</td>
<td>38</td>
<td>7</td>
<td>36</td>
<td>42</td>
<td>71</td>
<td>10</td>
<td>107</td>
<td>204</td>
<td>126</td>
</tr>
<tr>
<td>number of cases</td>
<td>42</td>
<td>49</td>
<td>49</td>
<td>52</td>
<td>10</td>
<td>9</td>
<td>42</td>
<td>42</td>
<td>42</td>
</tr>
<tr>
<td>Total Average</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>days</td>
<td>23</td>
<td>--</td>
<td>--</td>
<td>43</td>
<td>82</td>
<td>16</td>
<td>149</td>
<td>221</td>
<td>23</td>
</tr>
<tr>
<td>number of cases</td>
<td>108</td>
<td>105</td>
<td>19</td>
<td>16</td>
<td>99</td>
<td>108</td>
<td>108</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* These cases began as pauper cases but at the time of the study, the defendants had retained counsel.
The following conclusions can be reached from this chart:

a. **Arrest to initial appearance:**

There is a considerable delay in bringing any defendant before the court (23-day average); however, retained counsel can shorten this time substantially (10-day average). This points to the need for pauper attorney involvement prior to initial appearance, since it is obvious that a client able to retain an attorney gets much more prompt service. Some of the clients with private counsel and pauper clients were arraigned within one day. However, one retained case was delayed for 87 days while one case of an indigent client was delayed for 205 days (almost 7 months).

b. **Initial appearance to appointment of counsel:**

The seven-day average for appointment of attorney is primarily due to one case in which there was a 38-day delay. Overwhelmingly, the pauper attorney is appointed the same day as the initial appearance (37 cases or 76%). This appears to be contrary to popular belief in Lake County that there is considerable delay in appointing an attorney once the defendant appears in court.

c. **Appointment to arraignment:**

Once again the rather long average delay of 36 days is accounted for by very few cases, one of which had a delay of 211 days. Again, most indigent clients are arraigned shortly after the day of appointment, and in some cases, on the day of appointment.
d. Initial appearance to arraignment:

This time period applied to both retained cases and public defender cases. The pauper cases average 4 days less than those with retained counsel, the average time of 43 days does seem extreme, especially since most clients of the public defender are in custody. Possibly this long delay may contribute to the 12% bail jump rate for private counsel cases.

These results indicate that the presence of the pauper attorney can speed the early stages of the court process somewhat, but not significantly. Since the public defender is always present in the courthouse, it would be reasonable to expect substantial savings of time at this stage.

e. Arraignment to finding:

The statistics indicate that this is the stage at which the public defender can certainly speed up the court process. For a similar number of cases (11 public defender and 9 retained) and in spite of the fact that 4 of the pauper cases were tried and none of the cases with private counsel were tried, the pauper attorney averaged 24 days less (retained at 95 days, pauper at 71 days). This fact alone demonstrates the benefit of an organized defender system in the speedy processing of cases; and even comparing sentencing results, there is no significant difference between pauper attorney and private counsel. Therefore, it would appear that there is little qualitative difference in the justice received, despite the difference in time periods.

f. Finding to sentence:

Again, there are significant savings due to the immediate presence of the public defender. On the average, the private cases take more than
twice as long to reach sentence (pauper attorney, 10 days; private counsel, 23 days).

g. Arraignment on pending cases to September 20, 1974:

These data merely show the average age of pending cases. As expected, private cases tend to have been open longer than public defender cases (179 days compared to 107 days). However, this greater average can be explained by the large number of cases in which bench warrants are outstanding for private counsel cases. There appears to be no great difference between types of representation in the average time pending cases are open.

h. Total time in system:

This figure is a reflection of the prior section, since most cases were still pending as of September 20, 1974. A more valid comparison is between types of representation for closed cases:

<table>
<thead>
<tr>
<th>Representation</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private counsel</td>
<td>166 days</td>
</tr>
<tr>
<td>Public defender</td>
<td>107 days</td>
</tr>
<tr>
<td>Total Average</td>
<td>134 days</td>
</tr>
</tbody>
</table>

These figures indicate that the public defender closes some cases very rapidly. Although private counsel also close some cases early, the percentage is much smaller (6% private, 20% public defender).

i. Total time in jail:

It is in this category that the major distinction appears between the public defender and private counsel. Not only do a higher percentage of indigent clients remain in jail throughout the process (99%, pauper, 57%
private counsel), but the average number of days is significantly longer for
indigent defendants despite the fact that pauper cases generally are not as old
as the private cases. (126 days custody, average for pauper, 38 days average
for those with retained counsel.) In the light of the 12% bail-jump rate for
private counsel cases, this discrepancy cannot be explained on any ground
other than that a client can buy his way out of jail prior to disposition of the case.

Of more concern is the fact that in 82% of the disposed pauper cases,
the client was never released, while in only 22% of the disposed retainer cases
was the client never released. This raises the question of whether poor clients
are forced to plead guilty to a charge simply in order to get released.

It should also be noted that pauper attorney clients do not receive the
benefit of representation before the probable cause hearing. Clients with re-
tained counsel have the advantage of early discussions with the prosecutor,
which may result in dismissal of their cases for lack of probable cause, but
indigent clients do not. Preliminary negotiations of this type should be available
to all accused persons, if the Constitutional mandate to provide counsel is to
be carried out.

The *ex parte* hearing to determine the probable cause itself raises
serious Constitutional questions. It is not the usual preliminary hearing where
the accused may appear and confront his or her accusers. A long line of cases
from *Pontier v. Texas* 380 U.S. 400 (1965) to *Pugh v. Rainwater* 483 F.2d
778 (1974) should suggest to an alert defense counsel that his client's due
process rights are being violated by this procedure. While this practice may
not appear to be directly related to the structure of the Lake County defender
system, it does reflect on limited scope and effectiveness of the service.
The study made by the Institute of Court management in 1972 recommended changes in this procedure:

1. The first judicial appearance of a defendant should take place within 24 hours of arrest; the hearing should be conducted by commissioners located in Gary, Hammond and Crown Point.

2. At the first judicial appearance, the defendant should be informed of the charges and advised of his rights; the questions of pre-trial release and the need for public counsel should be determined.

3. A program emphasizing release without money bond should be developed.

Defender Office Structure and Facilities

There are nine part-time pauper attorneys appointed by the chief judge (even though under the statute creating the Lake County Superior Court, there is some question about this authority. Burns 33-5-29.5-1 and 4-190). They represent indigent defendants charged with felonies only. These part-time defenders constitute a very loosely-structured group, each operating independently of the others, except that the Chief Pauper Attorney makes assignments of cases on the basis of individual caseload rather than by the type of case or expertise of the lawyer. The offices in the Center next door to the chief judge have almost no books or files. Only the Chief Defender has a private office. The two secretaries and the two investigators are selected by the chief judge. At
the time we visited the Center (September 10-14, 1974) there was a directory notice on the door bearing the names of the secretaries, followed by "Pauper Attorney's Secretaries and Judge Giorgi's Receptionists. R.2659." When asked about this arrangement, one of the secretaries explained that it was only temporary. However, the secretaries performed receptionist services for the Judge.

The Pauper Attorneys have considerable trial experience, with the number of years of practice ranging from 1 to 15 years. The average is almost 7 years. Their ages range from 29 to 57. Five of them have served in the prosecutor's office, two have been "referees", and one has been a "judge". Almost all of them have short tenure as public defenders. They average one year in office, with the length of time ranging from 3 months to two years. Five of them have served 6 months or less. The short period for some can be explained by the recent enlargement of the staff. The Consultants heard complimentary comments about the trial experience and competency of Pauper Attorneys. These remarks were made by individuals who had nothing to gain, and they were in positions to know something of the office—the prosecutor, a former bar president, a director from the Indiana Criminal Justice Planning Agency. However, two criticisms of the pauper attorneys did emerge: that they should put more time into their work, particularly in the way of seeking more types of dispositions; and that they should demonstrate more interest in individual clients and in changing the whole system.

-25-
The name "Pauper Attorney" is an unfortunate choice. It is as
dated as "Home for Friendless Women," and "Home for the Incurable."
Why not use Public Defender? By adding "of Lake County," the service could be distinguished from the state office that handles post conviction matters.

By order entered by the Senior Judges, June 27, 1974, the 1975 budget for the Criminal Division was fixed at $1,325,510, with $183,000 being earmarked for salaries and wages for "Pauper Attorneys and Investigators" - a 13 member staff. (But during the visits to the Center, we were advised that the budget had been reduced by the County Commissioners to $176,920.) Judge Giorgi stated that in 1975 the Chief Pauper Attorney's salary will be increased to $17,840.

Other public defenders will receive $14,300. The part-time investigator's salary is budgeted for $9,350. The judges are paid only $26,500, but they have good retirement plans.

B. City Courts

It does not appear that much attention has been given to the mandate of Argersinger 407 U.S. 25, holding that defendant charged with an offense that could result in imprisonment has a constitutional right to the assistance of counsel.

There are seven municipal courts in the County vested with mis-demeanor jurisdiction in cases where the sentences can range up to six months in jail and/or $500 fines. They are located in Gary, Hammond, East Chicago, Hobart, East Gary, Whiting and Crown Point. The largest of these is in Gary where more than 50% of the total cases are filed.
Of the seven misdemeanor courts, only Gary employs a lawyer to represent indigent defendants - and he is on a part-time basis. The Gary Indigent Defense Project funded by LEAA for one year expired in 1973. After the Legislature did not take action on the state-wide public defender bill, the Indiana Criminal Justice Agency (Region I) earmarked funds for FY 1974 Lake County Plan which would have enabled both Hammond and Gary to provide counsel for the indigent defendants in the city courts. However, the Hammond Court advised Lake County Coordinating Council that it was not interested in utilizing federal funds for such a project. Gary, on the other hand, applied for the grant and a request for $25,000 is now pending with the State Planning Agency. If this is approved, there will be one full-time and one part-time lawyer to represent indigent defendants in Gary.

The Gary City Court appointed the present public defender in October, 1973. He spends 50-60 hours a month in his part-time job. He is in court every Wednesday morning and appears at other times as his assignments necessitate. There appears to be no appoint of private counsel. The public defender keeps no statistics or records other than a brief file on each case. He estimated that there are 250 misdemeanor cases per week, and he is appointed in about five of these. So far he has had no jury trials, and he had taken an appeal (to Superior Court) in only one. The public defender receives $9,000 per year. This includes office and secretarial expenses. He accepts no private cases which would be heard in the City Court.

In an observation of the East Gary night court (7:30 - 12 midnight), one of the Consultants noted that no attorney appeared for any defendant. Nor were the defendants advised of their right to have counsel - except one, a case involving an indigent army deserter. He was told that he had a right to have a
lawyer, but was not informed that one would be appointed if he had no funds. This clearly violated the principle announced in \textit{Argersinger v. Hamlin} 92 S. Ct. 2006, (1972). The soldier was found guilty and sentenced to six months in the county jail. The observer also noted instances where persons were sentenced to jail because they were unable to pay fines; such a procedure probably violates \textit{Tate v. Short} 401 U.S. 395, (1971) and \textit{Williams v. Illinois} 399 U.S. 235, (1970).

C. Juvenile Court

There is also a need for a better plan to provide counsel in the Juvenile Court. (In 1967 the United States Supreme Court said that a juvenile charged with delinquency has a constitutional right to counsel. [\textit{In Re Gault} 387 U.S. 1]) Until recently the Legal Aid Society represented some of the indigent minors in Lake County but this service has been terminated because of budget limitation. (In the country as a whole, according to the \textit{NLADA - The Other Face of Justice}, 72.1\% of defender offices represent juveniles charged with delinquency.) The Judge stated that the Society was not sufficiently interested in representing the juveniles one-by-one but preferred to bring class actions - even against the court itself. In fact, he said that he was a defendant in a case pending in the federal court where the Legal Aid Society was claiming that constitutional rights were being denied juveniles held in a detention home in Lake County. He said that the lawyers at the Society did not subscribe to the traditional concept expressed by the pioneers who created the juvenile court 75 years ago. And further, he said, the Director of the Society wanted the Court to provide County money to enable the Society to continue the service. The Judge added that he was using some of his budget to employ a part-time lawyer selected by the Court. He indicated
that under this plan he would have a person whose concept of the role of a lawyer in the Juvenile Court was more in line with the philosophy of the Judge. He said that he had money to pay the attorney during the present calendar year. By 1974, LEAA funds ($20,000) would be available for the project. (The defense attorney, formerly the Judge's clerk, explained that he was at the Court part of two days a week and was on call at other times. He said that since he had the assignment for only a few weeks he could supply little information on the volume of cases, but he estimated that during the past month he had had 10-12 cases.) Throughout the interview, the Judge, who is in his fifth four-year term, was relaxed and appeared to enjoy reminiscing. But he was tired now - after many years on the bench. Soon he would retire and leave the responsibilities to a more youthful person. One of his few regrets, he said, was the passing image of the kindly judge listening sympathetically to the stories of delinquency and broken homes, and then making decisions solely in the best interest of the child. He was convinced that if Justice Fortas had served as a juvenile court judge - and had seen the many problems created by permissiveness - he would not have written Gault as he did.

A more factual report was given by the Chief Probation Officer, a twenty-two-year veteran who supervises a staff of 38 probation workers. He supplied statistical information about Lake County's one juvenile court which is located in Gary. The volume of cases was enough to keep the Judge and the five referees (2 full-time and 3 part-time) busy every day. At one time there were two branches of the Court, he said, one in Hammond and one in East Chicago. Future plans, he said, call for the Court to be moved from Gary to the Center at Crown Point.
A comparison of delinquency referrals to the court for the past three years, itemized in the statistical reports as including 37 offenses (among them "runaway", "incorrigible", "truancy", and "curfew"), gives the following totals:

- **1971**: 1,873
- **1972**: 1,903
- **1973**: 2,059

Disposition of these cases was made as follows:

<table>
<thead>
<tr>
<th>Dispositions</th>
<th>1971</th>
<th>1972</th>
<th>1973</th>
</tr>
</thead>
<tbody>
<tr>
<td>Official Probation</td>
<td>423</td>
<td>316</td>
<td>413</td>
</tr>
<tr>
<td>Unofficial Probation</td>
<td>439</td>
<td>391</td>
<td>395</td>
</tr>
<tr>
<td>Indiana Girls School</td>
<td>20</td>
<td>19</td>
<td>41</td>
</tr>
<tr>
<td>Indiana Boys School</td>
<td>134</td>
<td>136</td>
<td>128</td>
</tr>
<tr>
<td>Commitment Withheld</td>
<td>133</td>
<td>216</td>
<td>222</td>
</tr>
<tr>
<td>Warned &amp; Dismissed</td>
<td>301</td>
<td>287</td>
<td>326</td>
</tr>
<tr>
<td>Pending</td>
<td>129</td>
<td>233</td>
<td>354</td>
</tr>
<tr>
<td>Transferred to Other Agency</td>
<td>46</td>
<td>65</td>
<td>18</td>
</tr>
<tr>
<td>Held Open - No Action</td>
<td>59</td>
<td>47</td>
<td>42</td>
</tr>
<tr>
<td>Waived to Other Court</td>
<td>36</td>
<td>47</td>
<td>22</td>
</tr>
<tr>
<td>Fine Suspended</td>
<td>2</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Petition Denied</td>
<td>106</td>
<td>98</td>
<td>72</td>
</tr>
<tr>
<td>Jail Suspended</td>
<td>2</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Moved from Jurisdiction</td>
<td>22</td>
<td>66</td>
<td>14</td>
</tr>
<tr>
<td>Penal Farm</td>
<td>21</td>
<td>24</td>
<td>9</td>
</tr>
<tr>
<td>Jail</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Jail as a Condition of Probation</td>
<td></td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>Penal Farm as a Condition of Probation</td>
<td></td>
<td></td>
<td>29</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,873</strong></td>
<td><strong>1,948</strong></td>
<td><strong>2,104</strong></td>
</tr>
</tbody>
</table>

In order to estimate the number of defense lawyers which would be needed to provide adequate representation of juveniles charged with delinquency, several factors will have to be considered and some assumptions must be made. Because most juvenile offenses are closely related to conditions of poverty - substandard housing, inferior educational opportunities, unemployment, and
ineffective parental supervision - the percentage of indigency in the Juvenile Court is probably higher than it is for adults charged with crime. An estimate that 70% of the youths charged with delinquency come from families financially unable to employ counsel is a conservative figure. Applying this to the 2,104 delinquency cases handled by the Lake County court in 1973, we can estimate that 1,472 were indigent. Assuming further that 10-15% of those eligible for public representation will waive counsel, between 1,250 and 1,325 delinquents will need representation. Then by using estimated caseload (maxima suggested by the National Advisory Commission, See Standard 13.12), 200 cases per year for each lawyer, the need for Lake County Juvenile Court may be, conservatively, 6 full-time attorneys.
VII. RECOMMENDATIONS
Recommendation No. 1 THE INDEPENDENCE OF THE PUBLIC DEFENDER

One of the first changes which should be made (and one
dependence of the chief public defender and the other lawyers on
his staff. They should not be selected by the chief judge of the
Criminal Division. (In interviews, this characteristic of the
Lake County plan was sharply criticized by several individuals,
including prominent members of the legal profession, and by former and
present officers of local bar associations.) The term "patronage"
was frequently used to characterize the present arrangement.

Even if all the judges participated in the selection, which is
done in some states, there would be the danger that complete loyalty
to the client - especially in unpopular causes or if the trial
has political overtones - would be diluted.

The situation is different from that where the trial
judge appoints a member of the private bar on an *ad hoc* basis.
In such instances, the lawyer's independence is not threatened because
the appointment is not of great economic consequence. (Indeed, with
the modest remuneration allowed, it may represent a public service.)
And the appointments are few in number.

The close tie with the judge probably affects the public
defender's image with his or her clients. Some of them may already be
suspicious of an arrangement where they have to have free counsel,
whose office is in the Courthouse with the prosecutor, sheriff, and
bailiffs. In the Task Force Report: The Courts, the President's
Commission (1967) in Standard 13.8, commented, "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. (It) will cripple seriously any system providing defender services."

Over the years, communities have experimented with selection methods. These include non-partisan and partisan election, appointment by the governor, by the county board, by independent commission, and by the judiciary. No one method is without drawbacks, but the least desirable method is to leave the choice with the Criminal Court trial judge. What would happen to the concept of fair trial and faith in the integrity of the Court if the judge named the prosecutor and selected jurors, as well as the public defender?

The American Bar Association Standards advise that

"The plan should be designed to guarantee the integrity of the relationship between lawyer and client. The plan and the lawyers serving under it should be free from political influence and be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice."

A study of the Association of the Bar of the City of New York concluded "that the necessary independence could be guaranteed ... only if the system is properly insulated from pressures, whether they flow from an excess of benevolence or from less noble motivations."

In the Commentary on Standard 13.8, the National Advisory Commission on Criminal Justice warned that:
by an independent attorney and 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...

All of these provisions relate to the selection of the chief public defender. The remainder of the staff, deputy public defenders, the investigators and the clerical assistants should be the responsibility of the Chief. He will be handicapped in fulfilling this responsibility, and be frustrated in the administration of his office if he does not have the authority to select his assistants. This will provide vertical unity for the office and will establish an entity that will be more responsive to the broad range of needs. That can easily be ignored by the present loose arrangement.

Some of these methods of selecting a public defender are more subject than others to the influence of politics. Some popular election and appointment or governing body or by judges seem likely to discourage candidates who might otherwise be interested. Costs, the possibility of not re-election or re-appointment, the career possibilities of the office, and even the manner in which the candidate sees the office. In balance, since the public defender essentially a legal specialist rather than a policy making official, a public defender should be neither elected nor appointed by elected officials. Instead, the Defender should be chosen by an independent body or by a combination of officials, as in Minnesota.
the Judicial Council - a state-level, non-political body - appoints local defenders on the recommendation of local judges. Similarly, Las Vegas candidates are initially screened by an advisory board of judges, bar leaders, and laymen who submit three nominees to the county board of commissioners for final selection.9

Clearly there is a need for a defender organization that can speak out against practices that adversely affect the indigent accused - the poor bail program, the pretrial delays, the lack of defense services in juvenile and misdemeanor cases, and the absence of continuing legal education for the defender staff. Further, a strong interested supervisory body can help in matters of budget, public understanding of the role of defense counsel, and in matters related to the constant improvement of the Public Defender system.

A supervisory body could be created to assure a satisfactory measure of objectivity and responsibility. One workable device would provide that the county commissioners name one member, the chief judge of the Superior Court appoint one, and each of the local bar associations select one (or two) to round out the membership of the entity. A more elaborate method might be a commission selected in a manner similar to the statutory provision for the Judicial Nominating Commission for the new Lake County Superior Court. Of course there are other possibilities that could be suggested by those who are more familiar with local conditions. The objective would be to establish a responsible body that would act without favoritism.

The National Commission on Criminal Justice adopts the recommendation of the American Bar Association on this point,
saying: "Only a system designed to guarantee the integrity of the relationship between the lawyer and the client - free from political influences, and subject to judicial supervision only in the manner and to the same extent as are lawyers in private practice - should be adopted. 'One means for assuring this independence . . . is to place the ultimate authority and responsibility for the selection of the public defender in a board of trustees.'"
Recommendation No. 3 ADEQUATE SALARIES AND FULL-TIME POSITIONS FOR PUBLIC DEFENDER AND STAFF ATTORNEYS

With the size of the population served (almost 500,000) and with a high volume of cases requiring public representation, the lawyer in charge should be adequately compensated for full-time service. In order to attract an experienced, competent person, the salary should be comparable to that paid to the prosecutor. We again refer to a recommendation of the National Advisory Commission on Standards and Goals as this represents one of the most objective, thorough and competent studies made concerning the administration of defense services. Standard 13.7 states as follows: "the office of Public Defender should be a full-time occupation. Local units of government should create regional public defenders serving more than one unit of government if this is necessary to create a case-load of sufficient size to justify full-time public defender. The public defender should be compensated at a rate not less than the Chief Judge of the highest trial court of the local jurisdiction."

In explaining the standard, the Commission stated further in the Commentary:

Many Public Defenders at present serve their office only part-time and maintain an outside private law practice. This creates many problems. The attorney who served as a part-time defender is compensated according to law at a fixed rate for his services. The total income of a part-time public defender, therefore, largely is determined by what he can earn in private practice. There is a significant danger that the defender will devote less energy to his public office. There is also a potential conflict of interest in such situations.
The full attention of the defender is needed every working day if all indigent defendants are to have timely and full representation. The public defender is an important component of the criminal justice system, comparable to that of state's attorney and the judges.

If the office is part-time, outside interests not only demand attention, but they are potentials for conflict of interest.

The Honorable R. Donald Chapman of San Jose, California, who served many years as the chief public defender for Santa Clara County, expresses his philosophy as follows:

I view the office of the public defender as a full-time career position, non-political in nature, requiring undivided loyalty and uniform standard of skilled, incorruptible, professional service that is at least on a par with that of the more qualified private attorneys in the community who specialize in the representation of accused persons. This service should be extended without regard to the heinous or unpopular nature of the charge, or the personality of the accused, or to any intuition of probable moral guilt.

The present salary schedule for the public defenders will have to be adjusted upward if the positions are made full-time. Presently, the chief defender is paid $17,000 (to be increased to $17,840 January 1, 1975). The first assistant will earn $15,840 and other attorneys are to be paid $13,840 each.

The chief defender stated that he could not accept a full-time assignment. However, if the salary were increased to $25,000, his answer might be different. (If this were done, the judge's salary [$25,500] should be increased).

As an example of salaries paid in another jurisdiction, the following is a schedule (1970) for New Jersey's state-wide
system: Attorney III (new recruits) $13,430-18,132; Attorney II $17,140-23,139; Attorney I $20,834-28,128; Deputy $25,325-34,187; State Public Defender $35,770. (In the jurisdiction referred to above there are thirty-eight full-time attorneys, fifty-five part-time attorneys, 125 full-time investigators, and 136 full-time secretaries employed in the defender system). NLADA reports that salary ranges for two hundred and one Chief Defenders (rural, urban and metropolitan) are as follows:

<table>
<thead>
<tr>
<th>Salary Range</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under $1,000</td>
<td>1 (rural)</td>
</tr>
<tr>
<td>$1,000 - 4,999</td>
<td>7</td>
</tr>
<tr>
<td>$5,000 - 10,999</td>
<td>54</td>
</tr>
<tr>
<td>$11,000 - 15,999</td>
<td>44</td>
</tr>
<tr>
<td>$16,000 - 20,999</td>
<td>40</td>
</tr>
<tr>
<td>$21,000 - 25,999</td>
<td>23</td>
</tr>
<tr>
<td>$26,000 - 30,000</td>
<td>23</td>
</tr>
<tr>
<td>Over $30,000</td>
<td>9</td>
</tr>
</tbody>
</table>

While these statistics are not up-to-date, they can be projected to present day costs, thereby giving some idea of what an adequate salary schedule should be.

Without knowing what percentage of the working day each Lake County pauper attorney devotes to his or her defender work, it is not possible to say how present salaries compare, but it is obvious that for full-time positions, the pay will have to be increased. (In interviews the lawyers stated that they spent about 50% of their time on defender work.)

As to salaries for defender attorneys, the National Advisory Commission (Standard 13.11) recommends the following: "Salaries through the first five years of service for Public Defender staff attorneys should be comparable to that of attorney associates in local private law firms."
In an explanation of their standard, the Commission makes
the following comment: "It is unrealistic to expect that states
could afford defender salaries equivalent to the income of many
able, experienced practitioners. But by remaining economically
competitive for at least five years, the defender office can
provide the incentive for good attorneys to remain long enough to
experience those satisfactions that may outweigh the financial
advantages of other career patterns and persuade the attorneys
to remain despite the inevitable income differential."
Recommendation No. 4

APPOINTMENT FOR A TERM OF YEARS.

There is no unanimity of viewpoints on the question of tenure for the chief public defender. The Task Force on the Courts (National Advisory Commission on Criminal Justice Standards and Goals 1973) recommends a four year term, with eligibility for re-appointment. This seems to be typical. Certainly there is nothing magic in the number of years as long as the period is definite, and long enough to give some security for the head of the office. Perhaps the lease desirable arrangement is the present system in Lake County -- having the defenders serve at the pleasure of the chief judge of the Criminal Court. It follows that somewhere in the adopted Guidelines there should be a provision for the discharge of the chief defender, for cause.

When a lawyer is asked to give up his or her private practice, there must be some assurance that a tenure provision will prevent an abrupt termination of the employment. It will be easy to get someone less than successful at the bar to switch to a salaried position, even one with an uncertain future. Also it will not be difficult to entice a beginning lawyer to come to the Defender Office for the practical experience he will get. But for the person this responsible position demands, it will be necessary to make commitment as to the length of his or her contract. A four year period is not too long.
Recommendation No. 5  SCOPE OF SERVICES

To meet the minimum constitutional requirements, Lake County will have to extend services for indigent defendants to the City Courts (for misdemeanor cases) Argersinger v. Hamlin, 407 U.S. 25 and to the Juvenile Court In Re Gault 387 U.S. 1. The present arrangement for handling post conviction matters through the State Public Defender appears to be a convenient and workable division of responsibilities. There was a difference of opinion among those interviewed as to the effectiveness of the present plan of appointing lawyers in private practice to represent indigent defendants at the appellate level. Some express the fear that some appointments were being made on a personal basis. We believe that an enlarged, unified defender system should be responsible for all appeals involving indigent defendants.

The Public Defenders in many other jurisdictions provide representation for clients in habeas corpus cases, proceedings to revoke probation and parole and in civil commitment proceedings. However, we are not recommending such a broad service at this time. Certainly this need should be considered in the near future.

While the evaluators are convinced that the Public Defenders are competent at the trial level, an organized Defender office which is separate from the judiciary and under the supervision of a chief defender (as indicated elsewhere in this Report), should provide services at the pre-trial level,
establish a system for keeping and reporting statistics, and develop a training and educational program for the staff. It should also be a resource for the county on matters relating to the delivery of legal services, bail problems, and for information on the over-all operation of an indigent defense system. This means that the chief defender should be given more authority over personnel and the budget, with no influence from the judiciary.

In Recommendation No. 6, we elaborate on the services needed in Superior, City and Juvenile Courts. We must keep in mind the Supreme Court mandate in Gideon 372 U.S. 344 where the Court said "any person haled into court, who is too poor to hire a lawyer, cannot be assured of a fair trial unless counsel is provided." The Model Public Defender Act (National Conference of Commissioners of Uniform State Laws. pp. 8, 9) provides that a needy person is entitled to be represented to the same extent as a person having his or her own counsel. This includes:

A. Counsel at all stages of the matter (including probation and parole)

B. Representation on appeal

C. Representation at any other post-conviction proceedings that the attorney or the needy person considers appropriate, unless the court determines that the matter is wholly frivolous.

A more concise statement of the requirement is contained in the NLADA and ABA Guidelines for Adequate Defense System: "The defender system of every state should provide counsel for every indigent person . . . who faces the possibility of deprivation of his liberty or other serious criminal
sanction." Standard 13.1 (National Advisory Commission) recommends:
"Public representation should be made available to eligible defendants
in all criminal cases . . . beginning at the time the individual is arrested. . . ."

The overwhelming problem of the present pauper's attorney's
office is that its range of services is severely limited. Its first contact
with clients is some several days after arrest and then only after appoint-
ment. The defense thereby loses all potential for investigation which should
be conducted shortly after an incident in order to be effective; this, in turn,
contributes to the disparity between defense services for poor people and
those who can retain counsel.

Also, there are large numbers of individuals who come through
the criminal justice system but are not provided attorneys. In interviews
it was claimed that various municipal court judges discourage accused
persons from seeking counsel, which practice obviously fosters injustices.

Early entry into the case should be encouraged in order to provide
an adequate defense. This would also alleviate overcrowding in the jail,
as so many incarcerated persons are unrepresented. In effect, this leads
to sentencing without any judicial process. We believe this may be
responsible for a fairly high skip rate while on bail (more than 8% for
persons with retained counsel), as well as a general dissatisfaction in
the client community.
Also, entries should be made into misdemeanor and juvenile courts which presently are virtually uncovered by any type of indigent defense services. Misdemeanor courts should be served by top public defender deputies in order to ensure that the benefits of the justice system apply where most citizens have contact with the system, the misdemeanor court. For a similar reason, the juvenile court must be provided with top deputies or the juvenile system will become a mere processing of individuals who will eventually end up in adult court.
Recommendation No. 6  STAFF, OFFICE STRUCTURE AND BUDGET

With the broadening of the scope of services of the Lake County Public Defender system which we are recommending in this report, the staff will have to be enlarged to provide sufficient personpower to meet the demands of the volume of felony cases in the superior court, the misdemeanors in the city courts, and representation in the juvenile court. We also feel that there should be some reorganization of the staff, with the office having

tion of the areas of assignment of cases, supervision, and in-service training. (With the addition of an appellate division and a special staff person in charge of training and education, at least two additional persons may be required.) With this structure, it may be necessary to employ an administrative assistant. The office should be reorganized on the pattern of a law office, with the Chief Defender in the role of the senior partner who has responsibilities for management. He or she would not interfere with the handling of individual cases, but would monitor the work production of each attorney in order to evaluate the overall program. Under the present plan, the title "Chief" does little more than designate the person who assigns cases to lawyers on his or her staff. He or she has no administrative responsibilities such as supervision, budgeting or training.

The internal training is especially important. It should be a con-
tinuing program to keep the defenders abreast of the developments in the criminal law field with special attention given to the new members of the staff.
Also, we wish to point out the need for private offices for the defenders so that confidentiality and privacy of interviews will be assured. A small working library (in addition to the larger courthouse library) should be readily available within the defender unit. It is relevant to note that, according to a recent survey, the most frequent recommendation by both judges and prosecutors for the improvement of indigent defense services in defender jurisdictions was to increase the number of defender staff. 14

These increased services of course will mean an increase in the budget. Such an increase will include items other than those discussed in Recommendation No. 3 where we commented upon the defenders' salary schedule.

Since there are three court levels involved (superior, city and juvenile), the following observations are made concerning each in order to give some idea of adequate defense services for each:

A. Superior Court. The caseload of the various part-time defenders in Lake County is not heavy, if we consider only the record sheets of periodic assignments. Here is a sample indicating the volume of cases assigned to the lawyers as of August 5, 1974:

29 cases to one public defender, representing 27 defendants
28 cases to another, (24 defendants)
29 cases to one, (22 defendants)
27 cases to one, (23 defendants)
8 cases to one, (4 defendants)
37 cases to one, (31 defendants)
35 cases to one, (25 defendants)
32 cases of one, (29 defendants)
13 cases to one, (12 defendants)

The low figure (8) represented cases assigned to a staff member recently employed, and the 13 cases were those taken by the Chief Defender who is reducing his caseload in order to have more time for administrative duties.

However, these statistics do not give us a reliable base for estimating the year's workload. Roy Dakich, the chief defender, explained that this report simply indicates the active cases assigned to the lawyer at the particular date. The volume increases as additional cases are added and diminishes as cases are terminated by trial or transferred to private counsel. Mr. Dakich stated that there are no cumulated statistics which would show the total number of cases handled by a particular defender during the year. This fact makes comparison with other defender offices almost impossible.

Information gathered in interviews with individual pauper attorneys may help in viewing the time spent on defender work and the caseloads:

Mr. A. - Spends 50-60% of his professional time on indigent cases. He said that he works more than 40 hours per week. In 1973 he disposed of 17 jury cases, one bench trial, and approximately 50-60 cases either negotiated guilty pleas or by dismissal. To date (September 19, 1974) he has had 9 trials.

Mr. B. - Approximately 50% of his time is spent on defender cases. So far he has disposed of
eight cases: 2 defendants on one charge each, dismissed after first day of trial; 1 jury case dismissed because defendant was a minor; 1 plea of guilty, on condition that he be sent to a drug diversion program.

Mr. C. - Has 28 or 29 cases pending. Since he joined the staff (January 1, 1974) he has disposed of 15 cases, including three where the defendants were mentally incompetent. Of the other cases, two were disposed of by jury trials. The remaining clients plead guilty. He had no dismissals. He spends 60% of his time on defender work. (It was noted in the files of the clerk of court that one case No. xxx, that the complaint was signed on August 7, 1974, and Mr. C. was not assigned until approximately the end of August.)

Mr. D. - Began as pauper attorney in 1973. He estimated that 25% of his time is devoted to private practice.

The Court Administrator supplied some information on the yearly disposition of Criminal Court Cases (felonies - except a few misdemeanor appeals) from which we can get an idea of the total need for indigent counsel:

<table>
<thead>
<tr>
<th>Year</th>
<th>Pending Cases</th>
<th>Disposed</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970</td>
<td>90</td>
<td>536</td>
<td>626</td>
</tr>
<tr>
<td>1971</td>
<td>122</td>
<td>745</td>
<td>867</td>
</tr>
<tr>
<td>1972</td>
<td>258</td>
<td>645</td>
<td>903</td>
</tr>
<tr>
<td>1973</td>
<td>389</td>
<td>460</td>
<td>849</td>
</tr>
</tbody>
</table>

Grand Total ____________________________ 3,245
Yearly Average __________________________ 811

If we use the national percentage of 65% indigency, there would be approximately 500 defendants who could not afford counsel. By applying the recommended ratio of one lawyer for each 150 felony cases during a year, there would be a need for four full-time defenders to handle cases in the four felony courts.
2 attorneys busy full-time or 3 attorneys moderately busy. From this calculation it appears that the pauper attorney office is now substantially overstaffed.

The low percentage of appointments raises a serious question concerning the validity of the Lake County indigency standard. The national average for defendants unable to pay private counsel is 65%. So, in the estimate of the number of public defenders needed for Lake County, we have anticipated a much larger caseload.
B. City Courts

While there are no complete statistics on the total number of misdemeanor cases in the County, an estimate can be made from the NLADA State study, which reports that there were 11,200 cases. (The date is not indicated, but the report was made in July 1974.)

In an effort to determine how many lawyers will be needed in the misdemeanor courts, we have to make some assumptions. For instance of the 11,000-plus cases, it is not possible to determine the number for those found guilty. (This is the test for constitutional requirement of counsel: Argersinger) If we assume that one out of five will carry imprisonment as a sanction, we have approximately 2,200 cases. Not all of these will be indigent. Using a percentage recommended by NLADA, 40% will be unable to employ counsel. So, we have a projection of 880 indigent defendants charged with offenses which imprisonment is possible. If a defender can handle 400 misdemeanor cases in one year, this number of defendants will require at least 3 full-time lawyers. Some convenient assignment will have to be made so that all the courts will be covered for part of each day.

C. Juvenile Court

(See Part VI, "Present Court Structure and Availability of Counsel", where the needs of the Juvenile Court were discussed, and an estimate made that 3 lawyers would
be required if all eligible juveniles were represented.)

The total needs for the Superior, City and Juvenile Courts, therefore will be:

1. **Defenders**
   - Superior Court: 5 full-time defenders (counting the Chief)
   - City Courts: 3 full-time defenders
   - Juvenile Court: 3 full-time defenders
   - Appellate Unit: 3 full-time lawyers
   - **Total**: 14 full-time lawyers

2. **Supporting Staff**
   - Administrative Assist.: 1
   - Investigators: 3
   - Secretaries: 3
   - **Total**: 7

**D. Budget**

We think that an effort to prepare a line item budget at this time would not be practical. From the guidelines we have recommended concerning salaries, number of staff, and scope of services. County officials will be able to construct an itemized budget to meet the needs.

As we have previously indicated, the Defender budget should be an independent appropriation, separate from the judiciary. There should be annual independent audits of the entire criminal justice system in order to determine the cost effectiveness of the various programs. Management accountability should be vested in the Chief Defender.
Recommendation No. 7 THE NEED FOR GUIDELINES

It is essential that there be an office manual of procedure, containing a set of administrative guidelines and regulations. The supervising board should approve and adopt the statements even though the first draft will probably be made by the Chief Defender. Items included in the manual will, of course, relate specifically to the needs of Lake County. Included in the outline will probably be some or all of the following:

1. Powers of the Advisory Board

2. Personnel practices, covering such matters as responsibilities of the Chief Defender, employment, tenure policy, intra-office relations and employee benefits.

3. Eligibility for defender representation.

4. Scope of Service, referring to types of cases and courts covered: Juvenile, city courts; appeals and other areas where representation is provided.

5. Matters relating to the budget, in cooperation with the Court Administrator.


On the question of eligibility for assistance, it is important that the guidelines be general enough to permit flexibility, but sufficiently specific to encourage uniformity of application. There seems to be no need for the detailed qualification which most Legal Aid Services adopt—dollar income restrictions, etc. Some broad statement should serve the purpose if it contains something definite to guide the Court. One example is Standard 6.1 of the ABA project ("Providing Defender Services") on Standards for Criminal Justice:
Counsel should be provided to any person who is financially unable to obtain adequate representation without substantial hardships to himself and his family. Counsel should not be denied to any person merely because his friends or relatives have resources adequate to retain counsel or because he has posted or is capable of posting bond.

There was some conflict in the reports given to the Consultants regarding the weight placed on the fact a defendant was out on bond. There was some indication that some judges consider that the accused is able to employ private counsel if he or she has made bond. However, Mr. Dakich stated that this was not always the case. In fact, the sheet of assignments for the Chief indicated that six defendants had been released on bail. The position taken by most defender offices on this question is that release on bond is one, but not the controlling, factor to be considered in determining whether or not an accused can afford to pay attorney fees.

Mr. Dakich stated that the adoption of some definite rules would be of great assistance to the Court and would make it more likely that the defendants would be treated alike at eligibility hearings.
Recommendation No. 8 CHANGES NEEDED TO ASSURE (1) timely fixing of bail or release on recognizance, (2) early determination of eligibility, and (3) early appointment of Counsel.

From the many interviews conducted by the Consultants making this study, from a reading of previous surveys, and from court records, it is clear that there are many instances of unnecessary delays in giving the accused an opportunity to make bail. In some cases, the delay is due to a time lapse between the defendant's arrest and the time reports are made to the court. In others it appears that faulty procedures and oversight or carelessness on the part of the police and courthouse officials are responsible. With the new Court Administrator, an individual who enjoys wide confidence among his associates, this procedural bottleneck should have been corrected. Perhaps he has not had sufficient time to speed up the process. One of the significant recommendations of the NLADA National Defender Project was that each jurisdiction develop a systematic review of jails on a daily basis to insure that persons were not improperly detained. This might be a responsibility of the public defender if sufficient funds were made available.

The same criticism is made concerning the determination of indigency and the appointment of Counsel, since they are handled as a package. The Data Processing System now being implemented may offer a solution. This seems to be the hope of the Lake County Criminal Justice Coordinating Council. In the 1973 report to the Indiana Criminal Justice Agency, this observation is made:
In regard to the development of a Data Processing System for the Criminal Division, it will be particularly important to persuade at lease of the four major police agencies within Lake County to engage in on-line booking of all suspects arrested. This will facilitate the resolution of the logistics problem in timing and transportation of defendants from the lock-ups to the central lock-up at Lake County Jail.19

The report continues by saying that the ultimate goal will be the reduction of the time-lag between initial arrest and ultimate adjudication. The statement concludes on this hopeful note: "it is felt that substantial defense-created delays can be eliminated through the implementation of a conflict-free attorney scheduling component."

"We see no good reason why these preliminary matters cannot be taken care of in the local courts near the place of arrest. Such a procedure might assure compliance with the Code provision which sets out the procedures and duties of the magistrates. IC 35-1-1.

"When an officer arrests an accused . . . he shall take the accused before the magistrate issuing the warrant if a warrant has been issued, or before the nearest magistrate if no warrant has been issued. . . ." Under P.18-6112, a person is not to be detained longer than 24 hours: "Whenever any arrest has been made . . . it shall be the duty of the officer . . . forthwith to bring the person arrested" before the court for a hearing. "But no person shall be so detained longer than 24 hours with such examination . . . ."

Under IC 35-4-1-1 a procedure for a preliminary hearing is made. The arresting officer shall forthwith take the accused before the magistrate where the defendant is apprised of the
person making the charge and advised that the accused is entitled to counsel. Even though the Indiana Supreme Court (Fulks v. State) has held that there is no constitutional right to have public counsel prior to the appearance before the court having jurisdiction to provide such, there can be serious questions raised if constitutional rights of a defendant without counsel are violated at the "preliminary" hearing. (We should note that there were two strong dissenting opinions in Fulks.)

From the docket study of 49 cases handled by retained counsel, it was found that an average of 16.2 days elapsed between arrest and initial appearance before court, and an average of 47.4 days from the initial appearance to arraignment. In twenty-nine cases assigned to pauper attorneys, pending at the time of the study, an average of 50.4 days elapsed from time of arrest to the first court appearance to arraignment. The indigent defendants waited, on an average, 59 days after arrest for appointment of counsel.

The Lake County Criminal Court receives a case after the State's Attorney has made a formal complaint. (See Flow Chart in Appendix) There are no grand jury proceedings in most cases, nor is there a formal preliminary hearing where the accused may participate. When the defendant first appears before the Court to be questioned about his finances, the Pauper Attorney is appointed if the Judge finds that the accused is indigent. However, if the defendant is free on bond there is a presumption that he is not indigent. After the appointment of counsel, the case if set for
Arraignment and notice of appointment is sent to the Chief Pauper Attorney, who appears at arraignment. In most instances this is followed by a move to a facility near the new center where access will be easier. (See page 14, Part VI, "Present Structure and Procedure for Appointment of Counsel" for more details).

A view of the representation by counsel at arraignment in the Superior Court is provided by data compiled by two Valparaiso law students (Messrs. Ronald P. Kuker and Donald B. Kempster). The following information was gained by reviewing the daily court calendars for two four-week time periods (April 1 - April 26 and July 15 - August 9, 1974) in order to determine the type of representation at time of arraignment. All calendared arraignments were recorded by case and by defendant under one of four attorney classifications:

1. No Attorney
2. Pauper Attorney
3. Retained Attorney
4. Pauper attorney but retained for case

The following chart provides this information by week. Under each Attorney category the two numbers represent first the number of cases, and second, the number of defendants.
<table>
<thead>
<tr>
<th></th>
<th>No Attorney</th>
<th>Pauper Attorney</th>
<th>Retained</th>
<th>Retained but Pauper Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>4/1-4/5</td>
<td>9</td>
<td>12</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>4/8-4/12</td>
<td>10</td>
<td>7</td>
<td>18</td>
<td>2</td>
</tr>
<tr>
<td>4/15-4/19</td>
<td>15</td>
<td>11</td>
<td>13</td>
<td>4</td>
</tr>
<tr>
<td>4/22-4/26</td>
<td>6</td>
<td>5</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td><strong>Sub-Total</strong></td>
<td><strong>40</strong></td>
<td><strong>35</strong></td>
<td><strong>45</strong></td>
<td><strong>11</strong></td>
</tr>
<tr>
<td>7/15-7/19</td>
<td>4</td>
<td>14</td>
<td>13</td>
<td>1</td>
</tr>
<tr>
<td>7/22-7/26</td>
<td>12</td>
<td>7</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>7/29-8/2</td>
<td>3</td>
<td>5</td>
<td>10</td>
<td>3</td>
</tr>
<tr>
<td>8/5-8/9</td>
<td>12</td>
<td>8</td>
<td>9</td>
<td>4</td>
</tr>
<tr>
<td><strong>Sub-Total</strong></td>
<td><strong>31</strong></td>
<td><strong>34</strong></td>
<td><strong>38</strong></td>
<td><strong>11</strong></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>71</strong></td>
<td><strong>69</strong></td>
<td><strong>83</strong></td>
<td><strong>22</strong></td>
</tr>
</tbody>
</table>

Extrapolation for yearly figures is reached by considering each group separately and then combined. This gives the following results by case and by defendant:

**YEAR ESTIMATE**

<table>
<thead>
<tr>
<th></th>
<th>No Attorney</th>
<th>Pauper Attorney</th>
<th>Retained</th>
<th>Retained but Pauper Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>4/1-4/26</td>
<td>520</td>
<td>455</td>
<td>585</td>
<td>143</td>
</tr>
<tr>
<td>7/15-8/9</td>
<td>403</td>
<td>442</td>
<td>494</td>
<td>143</td>
</tr>
<tr>
<td><strong>Combined</strong></td>
<td><strong>462</strong></td>
<td><strong>449</strong></td>
<td><strong>540</strong></td>
<td><strong>143</strong></td>
</tr>
</tbody>
</table>

**TOTAL** for **4/1 - 4/26**, 1703 | 1430.
**TOTAL** for **7/15 - 8/9**, 1482 | 1417.
**TOTAL COMBINED** 1594 | 1425
Considering these numbers by percentage (case and defendant) leads to the following results:

<table>
<thead>
<tr>
<th></th>
<th>No Attorney</th>
<th>Pauper Attorney</th>
<th>Retained</th>
<th>Retained by Pauper Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>4/1-4/26</td>
<td>30.5</td>
<td>29.1</td>
<td>26.7</td>
<td>34.4</td>
</tr>
<tr>
<td>7/15-8/9</td>
<td>27.2</td>
<td>25.4</td>
<td>29.8</td>
<td>33.3</td>
</tr>
<tr>
<td>Combined</td>
<td>29.0</td>
<td>27.9</td>
<td>28.2</td>
<td>33.9</td>
</tr>
</tbody>
</table>

Using the combined figure and adding those figures for No Attorney and Pauper Attorney, and further assuming that all defendants without an attorney at arraignment are eventually given to the Pauper Attorney, one can conclude that at least 57.2% of the cases are indigent defendant cases and 54.4% of the defendants are indigent. This figure is close to the 65% indigent case statistic which is given as the national percentage.

However, it is likely that not all unrepresented defendants are given to the Pauper Attorney. Further study of individual cases is needed to determine what parts of this 29.0% unrepresented cases eventually are divided among the Pauper Attorney and Private Counsel and what part remains without counsel.

These figures show that it is reasonable to believe that approximately 1600 felony cases involving 1400 defendants are handled in Lake County each year. Of these, 450 - 900 cases involving 380 - 775 defendants are or could be Pauper cases. Using the standard set by the National Advisory Commission (150 cases
per attorney), this number suggests a need for at least four full-time trial attorneys to handle the volume of felony cases.

On the question of what constitutes adequate Miranda warnings and intelligent waiver of counsel, we call attention to U.S. v. Twomey 467 U.S. F. 2d 1248(7th Cir. 1972), as this relates to the practice of Indiana state troopers reading from a pattern advisement card. Since this was held to be inadequate, the public defender should be alerted to any attempt to use statements made by the accused when he or she has not been warned.
The provision for bail and its practice are closely related to the problem of providing adequate defense for the poor. In Lake County, there is a set bond schedule of dollar amounts for each type of offense. Some defendants are released if they can produce 10% of the amount. This may be deposited with the court and later returned to the defendant if he or she appears in Court. Three of the four criminal court judges accept the cast deposit but the Chief Judge requires a surety, which means that the money goes to professional bondspersons and is not, of course, returned to the defendant. There is no provision for release on recognizance (ROR) as is the case in many other states.

The pending suit in the Federal Court (Noe v. County of Lake. Civil No. 73.H.157.N.D.Ind.) raises the issues of lengthy incarceration of defendants prior to trial. Jail visits by the researchers conducting the study confirmed the charge that many indigent inmates sat in jail for inordinately long periods of time before they were given trial. There were no complete statistics available to provide an accurate picture, and information given by individuals differed somewhat.

As to time spent in jail for the period covered in the docket study, defendants (49 in number) represented by retained counsel averages 41.3 days, and clients (42) of the pauper attorney spent an average of 126.4 days in jail.

In the previous study made by the Institute of Court Management, it was found that nearly 50% of the defendants were
in custody at the time the case was docketed. Hardship to the accused (which often negates the principle of presumption of innocence) is only one unfortunate consequence. It is expensive to keep a person in jail. This, plus the fact that there is a loss of earnings which may force another family on welfare, should impress a taxpayer. Reliable studies have demonstrated that more released defendants are ultimately acquitted than those who remain in jail. It seems obvious that one incarcerated can be of little assistance to his or her defense counsel.

Many jurisdictions have established ROR programs with probation officers, employees of the Sheriff, Legal Aid, or law students assisting with the screening procedures. In many places the appearance record is better than for those who pay a professional bondsperson.

The ABA Standards Relating to Pretrial Release states that "It should be presumed that a defendant is entitled to be released on order to appear, or on his own recognizance." The standard goes on to outline how this presumption has been overcome by finding that there is a substantial risk of non-appearance or that there is a need for conditions or prohibitions as provided in the Standards.

Even if the ROR system is not adopted, the present 10% plan should be applied uniformly. The professional bondsperson will continue to prey upon their hapless, captive victims as long as even one judge keeps their business thriving.
Many benefits would come with a cooperative program with the nearby Valparaiso University School of Law. A legal clinic is such an easy, natural and mutually advantageous arrangement that it is difficult to understand why law students are not used to increase the personpower of the Public Defender. The Supreme Court of Indiana has adopted a rule which permits third year students to "practice" under supervision. Some 140 law schools have internship programs in which students do field work with a variety of agencies, more than 70 of them helping to provide defense services for indigent defendants. If the "Pauper Attorney" system were developed into a unified law office, law students serving as interns would be a great asset. Justice Brennan, in his concurring opinion in *Argersinger* 92 S. Ct. 2006, stressed the value of law students as a resource saying, "Law students ... may provide an important source of legal representation for the indigent."

There are so many ways that this law school resource can be used (interviewing witnesses, appearances at preliminary hearings, at some trials, in appellate proceedings, and for research) that the Public Defender can select from a variety of workable possibilities.

There is even financial assistance available. James Walker of Indiana Criminal Justice Agency stated that his agency has $30,000 which could be used for such a program.
Also, the Council on Legal Education for Professional Responsibility provides funds for scores of clinical projects. We learned that the law school received a one-year grant from CLEPR in 1969, but the Public Defender declined to participate.

The existence of the law suit against the County, filed by Valpariso law professors on behalf of Lake County jail inmates, challenging the constitutional adequacy of the public defender system Noe v. County of Lake, Civil No. 73 H. 157, (N.D. Ind.) has created some animosity which may delay or prevent objective consideration of a clinical program. However, if the recommendations of this study were to be implemented, the suit might be mooted.

A similar plan could be worked out with the Prosecutor, even though Henry Kowalczyk, the present prosecutor, stated that he did not approve of a law student program. But he is not seeking re-election, so there is a possibility that his successor might make a different decision. State's attorneys in many other jurisdictions are finding that the students are of great assistance and that many of them later join the staff as full-time employees.
VIII. CONCLUSION

Now that the Report of the study is submitted, who will read it? What part of it will be adopted? This survey represents some long hours and thoughtful efforts. The work was done as a service to Lake County with the hope that the recommendations and comments might encourage further improvements in the Defender system. There have been a number of other studies of various aspects of criminal justice in Indiana. But they reach similar conclusions, thereby re-inforcing each other.

The leaders of the legal profession should take the ball at this point. Regrettably, there is no county-wide bar association to assume a leadership role. The several local organizations, jealous and defensive, cannot be expected to press for county-wide change. So, it remains for a few individual lawyers and judges who have vision and stature to give serious thought to the suggestions made in this Report.
IX. FOOTNOTES
Footnotes

1. The Indiana Supreme Court has held that the right of counsel attaches at every stage of the proceedings against the accused. Monroe v. State 242 Ind. 14, 175 N.E.2nd 692. Ind. Code of Criminal Procedure, § 35-6.1-1-4. Sec. 4 states: "In all criminal prosecutions, an accused shall have the right to be represented by and to consult with counsel at every stage of the proceedings as required by law." Balkovac v. State 229 2nd. 295 (1951). The right may also be present before any criminal charge is brought. Harris v. State 203 Ind. 505, 181 N.E. 33. Certainly there is an immediate right to consult with counsel when the accused is taken into custody before any investigation may be conducted. Miranda v. Arizona 384 U.S. 43b. Following arrest, if the police wish to subject the accused to a police line-up, he must be afforded counsel. U.S. v. Wade 388 U.S. 219. There is an absolute right to counsel during the trial and appeal of every criminal case. Turner v. State 249 Ind. 533, 233 N.E. 2nd 473. The right of counsel on appeal is based upon both state and federal constitutions, and if the defendant is financially unable to employ counsel, the court must appoint competent counsel. State ex rel. Grecco v. Allen Cir Ct., 238 Ind. 571. It is the duty of trial counsel to take all necessary steps preparatory to the taking of an appeal, including the filing of a motion for new trial in order to preserve error. State ex. rel. Macon v. Orange Cir Ct. 243 Ind. 429. On appeal, an indigent defendant must be afforded both counsel and a transcript at public expense. State ex rel. Walder v. Youngblood 255 Ind. 375. If counsel is
in a position of conflicting interest, the result may be that the accused is denied effective assistance of counsel, and hence a denial of his constitutional rights. A serious conflict of whose defense theories are inconsistent. Lloyd v. State 241 Ind. 192.

2. The Calumet Campus of St. Joseph's College is located in East Chicago. The Northwest Campus of Indiana University is in Gary. In Hammond there is a branch of Purdue University. Valparaiso University School of Law is in an adjoining county. This University offers a varied curriculum in Criminology at the graduate and undergraduate levels. See Existing Law Enforcement Systems and Available Resources, Lake County, Indiana (Aug. 1, 1973) Vol. II. Indiana Criminal Justice Planning Agency. In nearby Chicago the educational resources are almost unlimited.

4. One pauper attorney stated that he had worked in Judge Gorgi's political campaign prior to his appointment. Another had served as a court official, appointed by the Judge. One had been associated with Judge Gorgi's brother in private practice. One investigator had previously been a worker in the Democratic organization.

5. The Other Face of Justice, p. 17. The National Legal Aid and Defender Association. Chicago.

7. Equal Justice for the Accused, 61, 67, 71, 74-75. A similar recommendation (No. 4) was included in 1965 NLADA Standards which were adopted by the House of Delegates of the ABA in 1966.

8. Benchbriefs, published by the Center for Judicial Education, is a good example of what can be done in research back-up material.

9. How to Organize a Defender Office. 1967. p. 31, 32.


13. Id., p. 33, 53.


15. The Other Face of Justice, p. 83.

16. See note 13 - "Legal Manpower Needs of Criminal Law."

17. One man (Mr. S.) interviewed stated that he remained in jail (in Gary) three days after he was arrested. He was then transferred to the jail in Crown Point. Here he slept on the floor with forty others in the same area. Two days later, he was served with a warrant and was informed that his bond was $15,000. He was taken to a line-up, but had no counsel. So far he had had no hearing where he was present, and determination of
eligibility for public counsel, and, of course, no appointment of counsel. He said that he was not permitted to make a phone call for more than two weeks. When he gave this information, he was still in jail—and had been incarcerated for twenty days at that date. He said he had a job, if he could get the bond reduced. The prisoner advised the interviewer that another defendant, Mr. A. who was housed with Mr. S. had been in jail for two weeks with no hearing. Another in the same cell, (R.P.) had been there two months without arraignment. Another prisoner, Mr. P. advised one of the evaluators that he was held in jail approximately three weeks before he was taken to a judge. Arraignment was about two months after his arrest. After the appointment of the Pauper Attorney, he waited three weeks for an interview with his counsel.


20. 255 Ind. 81, 1970.

21. See footnote No. 18.

22. See generally Bail in the United States.

23. Progress in Criminal Justice Reform. See also Vera Institute of Justice Ten-Year Report 1961-1971, The Vera Foundation reports (1972) "...60% of those pending trial the first year eventually were acquitted or had their cases dismissed, compared with only 23% of the control group. And only 16% of
the released defendants who were convicted were sentenced to
prison, where 96% of those convicted in the control group
received prison sentences." See also Memorandum submitted by
App. Div., 1st Dept. This is discussed in Criminal Procedure,


26. Pretrial Release, Standard § 51, p. 17. See also Bail and
Summons: 1965. Proceedings, Institute on the Operation of
National Conference on Bail and Criminal Justice (Co-sponsored
by the U.S. Dept. of Justice and the Vera Foundation) p. 15.

27. Supreme Court Rule 2.1, adopted in 1969. For copies of Rules
of the other 42 states that have similar provision, see State
Rules Permitting the Student Practice of Law. Institute of

28. "The Evaluation of a Clinical Legal Education Program: A

29. Information given by Mr. Walker to Junius Allison is an inter-
view September 12, 1974.

30. From an interview with Prof. Ivan Bodenstein, Prof. of Law,
Valpariso University, September 11, 1974.

31. See generally, Clinical Education for the Law Student. Council
on Legal Education for Professional Responsibility. 1973
Conference Proceedings.
Biographical Information on Evaluators
FLOW CHART: Criminal Cases in Superior Court

ARREST

CHARGES FILED

INITIAL APPEARANCE

WARRANT ARREST

PAUPER ATTORNEY APPOINTMENT

ARRAIGNMENT/PLEA

PLEA OF GUILTY

PRE-TRIAL MOTIONS

DISMISSAL

JURY TRIAL

NOT GUILTY

GUilty

SENTENCE

BENCH TRIAL

GUilty

NOT GUILTY
X. APPENDIX
Junius L. Allison, AB, JD.

Shelvin Singer

Illinois Institute of Technology
Chicago-Kent College of Law
10 North Franklin
Chicago, Illinois 60606

(312) 263-1273

Home: 2790 Grace Road
Northbrook, Illinois 60062

Professional Employment
1962 to present:

Professor of Law: Illinois Institute of Technology, Chicago-Kent College of Law. Initial years as a part-time instructor followed by a series of promotions to tenure- full professor rank, effective September, 1973. Major areas - - - criminal law and procedure, appellate practice, clinical training. Developed Appellate Practice Clinical Intern Program. Presently serving on the law school's Budget and Planning Committee; Financial Aid Committee, as its chairman, special Law School Dean Search Committee; University Faculty Senate Advisory Committee in the Search for a new President of the University.

Formerly Associate Director of the Institute for Criminal Justice, Illinois Institute of Technology, Chicago-Kent College of Law. The Institute provides criminal law training for law enforcement personnel in periodic two-day and three-day programs throughout the year. Assisted in implementing the program in 1968-1969. Presently, member and faculty liaison Advisory Board, of the Institute.

1966 to June 1972

Cook County Public Defender's Office---Special cases and projects, training and education; Supervised lawyers in Appellate Division; Prepared well over 100 appellate and collateral attack cases at all court levels, state and federal. Spring, 1972 served as acting head of the appellate division consisting of twenty-five attorneys; organized the division; established lines of authority and supervisory policy and training and education program within the division; coordinated cooperative program with Illinois Defender Project in the establishment of their Appellate Program in Cook County.

March 1964 to 1966:

Cook County Public Defender's Office; trial assistant--Represented indigent criminally accused in all stages of defense; from misdemeanors to major felonies, including numerous murder prosecutions.

1961-1964:

1960-1961:

Private practice of law in De Kalb, Illinois. Northern Illinois University: Assistant Professor of Business Law.

Consultantships

1974:

to examine the defender office for the Parish of Orleans, Louisiana, contracted through the Technical Assistance Project, American University, Washington, D.C.

1973:

1. Consultant to Courts Task Force of the President's Advisory Commission on Criminal Justice Standards and Goals; assisted in the preparation of standards for criminal defense delivery systems to the indigent accused.

2. Consultant to the State of Kentucky Criminal Justice Planning Agency to assist in implementing state legislation creating Kentucky's State Defender Agency.

3. Georgia. Assisted in the establishment of an LEAA funded defender project. Advised as to structure, reporting forms, client intake, and case loads.

4. Virginia. Consultant for development of design for the State Public Defender Project, an LEAA funded project.

5. City of Cincinnati, Ohio: Evaluation of criminal defense delivery system to the indigent accused: Head of a four-person evaluation team.

June to September, 1972:

Department of Development, administration of Justice Division, the Ohio LEAA State Planning Agency; Surveyed Ohio to determine method utilized for providing defense services to the indigent criminally accused.

Education:

1. J. D. 1960 DePaul University, College of Law, Chicago, Illinois.

2. M.A., 1960 (Sociology). University of Illinois, Champaign, Urbana, Illinois. Master's thesis - "Structural Functional Analysis of Two Micro-Social Movements Toward an Adult Education Program." The study consisted of a field examination in two smaller towns of the institutionalization of an adult education program in each community. Methodology included the use of statistical analysis of questionnaires and structured interview resources, and a testing of hypotheses by the statistical method.


4. Licensed to practice law in Illinois 1960; also licensed to practice before United States Supreme Court.
Board and Committee Memberships:

1. Board of Regents, National College of Criminal Defense Laywers and Public Defenders, Vice Chairman of Board and Member of Executive Committee.

2. Board of Directors, and member of Executive Committee, National Legal Aid and Defender Association.

3. Chairman, Board of Commissioners, Illinois Defender Project. This project is funded by the Federal Law Enforcement Assistance Administration through the State of Illinois planning agency in the amount of $2.7 million dollars over a three-year period. It is a statewide defender program consisting of eight offices with the following components: Appeal representation of the indigent convicted throughout the state—a model rural multi-county trial project; a collateral attack division in Cook County; law schools programs and continuing legal education; participated in hiring principal staff and the establishment of the operative components of the project.


Publications:

1. "Standards for Delivery of Defense Services to the Indigent Criminally Accused": Co-author with William Higham to be published this spring by the National Legal Aid and Defender Association.


Personal Data:

Born - April 9, 1931, Chicago, Illinois
Married, three children, ages 13, 11, 8
Military Service: United States Army, 1954-1956, Honorable Discharge
Personal references available upon request.