Recommendations Relating to the Organization and Operation of the Wisconsin Public Defender Program

TECHNICAL ASSISTANCE REPORT

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Recommendations Relating to the Organization and Operation of the Wisconsin Public Defender Program

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June 1989
ASSIGNMENT DATA SHEET

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I. INTRODUCTION

A. Background

In January 1989, the recently appointed State Public Defender for Wisconsin, Nicholas L. Chiarkas, requested the Bureau of Justice Assistance-sponsored Adjudication Technical Assistance Project (ATAP) to review the management structure and procedures applicable to the state's public defender offices for the purpose of recommending appropriate improvements in the utilization of staff resources. It was envisioned that this study would also provide a foundation for a more comprehensive review of the adequacy of the office's manpower resources and their allocation and organization in light of the Public Defender's trial and appellate workload. Mr. Chiarkas identified the following issues as special concerns:

1. the efficiency of the existing attorney supervisory structure, including supervisor/staff attorney ratios and relationships, supervisor/private contract attorney relationships, and overall responsibilities assigned to the supervising attorneys;

2. the role of the central administrative office in Madison vis a vis the field offices, including division of staff responsibilities, adequacy of training and research support, etc.; and

3. the appropriateness of the current budget process for accommodating caseload increases over that originally budgeted for, which requires the State Public Defender to request supplemental funds from the Legislature each year to pay for private counsel to handle these cases. Mr. Chiarkas was particularly concerned that the need to annually request this supplemental funding might overshadow the overall efficiency of the public defender program.

The ATAP assigned two consultants to conduct this study: Marshall Hartman, Esquire, Public Defender for Lake County, Illinois and previously Director of Defender Services for the National Legal Aid and Defender Association (NLADA), and Kim A. Taylor, Esquire, Director of the Public Defender Service for the District of Columbia, who also serves on the Defender Committee of NLADA. Both of these individuals are experienced public defenders as well as knowledgeable about developments nationally in defender office operations. In preparation for the study, Mr. Chiarkas provided the consultants with copies of the Wisconsin Public Defender Office Policies and Procedural Manual, the 1985-87 Biennial Report, the 1989-91 Biennial Budget Request and the State Public Defender Agency Directory of central and field office staff.
B. Focus of this Study

The consultants' site study was conducted April 30 - May 2, 1989. Accompanying them on-site was Caroline S. Cooper, ATAP Senior Staff Attorney and formerly an assistant public defender in Montgomery and Prince George's Counties, Maryland. During the site study, the consultants met with Mr. Chiarkas and other staff of the Administrative Office in Madison. In addition, they visited the field offices in Janesville and in Madison and also met with representatives of the Milwaukee field office. Discussions were also had with representatives of the private bar and state Legislature and the Rock County Circuit Court. A list of the individuals interviewed is provided in the Appendix.

Although the team focused its attention upon the three issues raised by Mr. Chiarkas, significant emphasis was given to issues relating to supervision and training which were also raised by many of the individuals interviewed. Related to these concerns were numerous comments relating to policies governing public defender attorney caseload allocations. Although this latter topic was essentially beyond the scope of the present study, some preliminary comments and recommendations are made in its regard in light of the significant impact which current public defender caseload allocation policies have upon the management issues addressed.

The report which follows summarizes the team's findings and recommendations based on their study of the Wisconsin Public Defender program and their extensive experience with other public defender programs in the country.
II. ANALYSIS OF EXISTING SITUATION

A. Caseload Allocations

At the direction of the Wisconsin State Legislature, attorneys within the state's Public Defender Office are required to handle a caseload that exceeds the maximum caseload standards established by the National Legal Aid and Defender Association (NLADA): the appellate staff caseloads are set at 163% of the NLADA maximum standards and the trial staff caseloads are 123% of the NLADA standards. Multiplying the number of attorney positions by these caseload standards, the Legislature arrives at a caseload figure that the Public Defender must meet each year. This figure, however, does not take into consideration fluctuations in staff levels due to permanent or temporary vacancies and, because the Legislature does not allow for such adjustments, caseloads often exceed these already high levels in order to compensate for those absences.

In a recent report published by the Special Committee on Criminal Justice in a Free Society of the American Bar Association Criminal Justice Section, Criminal Justice in Crisis, the Committee found:

... The right to representation by counsel for criminal defendants is constitutionally mandated and essential to the administration of criminal justice. The defense lawyer, performing in accordance with professional standards, provides a necessary challenge to the prosecution and not withstanding popularly held beliefs, does not cause dysfunction in the criminal justice system. Prosecutors and police appreciate the need for and role of the defense lawyer and do not believe that these lawyers impair their ability to control crime or to prosecute cases effectively. In the case of the indigent defendant, the problem is not that the defense representation is too aggressive, but that it is too often inadequate because of underfunded and overburdened public defender offices.

As the American Bar Association has recognized, when one component of the criminal justice system is overburdened, the system as a whole becomes less efficient. Such a loss of efficiency can be more costly in the long run.

In order to permit local and regional supervisors to perform the variety of duties which are required of them (See Section II B below), the Public Defender has made an institutional decision to relieve them partially of their caseloads. Because the Legislature has not approved a reduction of caseload, the cases which would have been handled by the supervisors are spread among staff attorneys, thereby increasing staff attorney workloads even more. The team supports the Public Defender's decision to provide caseload relief to the supervisors. In order to perform their critical functions adequately, supervisors need time that is not divided between their own individual caseload needs and the needs of the
office. However, some adjustment is also needed in the overall caseload formulas so that other staff attorneys are not forced to absorb their caseloads.

Preliminary interviews with staff of the Wisconsin Defender office indicated dissatisfaction with the present Wisconsin formulas for determining the appropriate caseload maxima in each category, which, as has been noted, are currently considerably higher than the NLADA and NACCJSG projected maxima. Virtually all staff interviewed felt that the existing caseload standards were too high, and that some of the ratios, or points awarded for certain types of cases, were inappropriate. For example, the equating of a misdemeanor "case" to equal only .375 of a felony "case" was thought by many to be unrealistic and not reflective of actual average time spent on misdemeanors.

The team suggests that the Legislature reassess the current caseload allocation formula and consider an alternate method for more realistically and efficiently calculating the number of cases for which the Public Defender staff have responsibility and which also makes adjustment for staff attorney absences or vacancies. Such a method would prevent the current practice of overloading staff attorneys who are required to "pick up the slack" when positions are temporarily unfilled due to attrition or temporary leaves such as maternity leave. The team further recommends that the Legislature exempt specific categories of supervisors from the caseload requirements: regional supervisors, the Training Director, and the proposed deputy assigned to the Appointment of Counsel Program (See Section IIIA).

B. Role of Regional and Local Office Supervisors

1. Organization and Function

The Wisconsin State Public Defender Office is responsible for providing defense services at both the trial and appellate levels to all defendants charged with a crime potentially punishable by a period of incarceration. In addition, the Public Defender provides representation to indigent individuals involved with juvenile matters; paternity actions; probation and parole revocation proceedings and civil mental commitments. For the past several years, approximately 70% of the state's indigent defense services have been provided by staff attorneys with the balance of indigent defense representation provided by private attorneys assigned by the Public Defender to handle public defender cases. In order to provide these services to the 72 counties within the state, the Public Defender has divided the state into 12 regions with a total of 34 field offices operating throughout the state. Each field office of more than two attorneys is administered by a local supervisor who in turn is supervised by one of the 12 first assistant public defenders designated as
regional supervisors. The 12 regional supervisors also serve as local supervisors in their respective offices.

Due to the current fiscal constraints under which the Wisconsin State Public Defender operates, the Public Defender has had to utilize supervisors in a manner that tends to overextend them. The team found that supervisors are needed to perform a myriad of functions, any one of which could constitute full-time responsibility for that supervisor. Indeed, the most noteworthy example of a supervisor that is severely strained is the regional supervisor.

The central administrative office relies on the regional supervisor to act as liaison between the central office and field offices. Through this role, the regional supervisor helps to inform the Public Defender of problems or concerns in the field offices and helps to coordinate the Public Defender's policies throughout those offices. In order to effect this coordination, the regional supervisor must oversee a number of local offices, often separated by great distance. Theoretically, this often can require some regional supervisors to expend a significant amount of time travelling in order to effectively supervise the offices for which they are responsible, although, currently most supervisors do not have the time to make such visits regularly.

As indicated, the regional supervisor is also directly responsible for supervision of the local office in which he or she is located. As with other local supervisors, the regional supervisor must supervise attorneys within the office while still maintaining an active caseload. An active caseload not only involves responsibilities for court hearings and to clients, but also involves the rather time-consuming task of intake. The regional and local supervisors also need to initiate supervision that includes monitoring the attorneys' performance in court, discussing possible resolutions of cases short of trial and discussing potential strategies in the event that a case proceeds to trial. The supervision which the regional supervisor must provide includes -- or should include -- training new lawyers, reviewing cases assigned to the staff of the local offices, consulting with the staff lawyers, planning defense and trial strategies, helping to determine which legal motions to file, which defenses to raise or not raise, which witnesses to subpoena, when to plea bargain, and when to advise the client to "co-operate" with the state in return for immunity or other concession. In addition, the regional supervisors must carry out public defender administrative policies, assure the uniform application of indigency guidelines as well as make hiring and other personnel decisions and, as noted earlier, also administer the appointment of private counsel, review and processes private bar vouchers, and field questions and/or concerns from clients, the bar and the bench.
The regional supervisors recognize that in order to provide quality representation, attorneys on staff and attorneys in the private bar require in-depth supervision. Indeed, during discussions with staff attorneys, the team found that staff attorneys would be receptive to additional supervision, particularly where their advocacy skills might be enhanced. Moreover, regular close supervision not only guarantees that the client will receive quality representation, but it also helps to improve the quality of the criminal justice system as a whole.

However, based on our discussion with several regional supervisors, the it is apparent that supervisors find it exceedingly difficult to allot time within their overburdened schedules to provide the type of supervision which they -- and the study team -- believe is necessary within their offices.

2. Training Responsibilities

Another important responsibility of the regional supervisor is to provide training to staff attorneys and private counsel. Currently, regional supervisors conduct training on an ad hoc basis; they provide a basic training manual to newly hired staff attorneys; they make efforts to second-chair cases with junior attorneys; and they provide informal training through the dissemination of materials from the appellate office. While this effort is commendable, it falls short of the type of regular training that is required to maintain a consistently high level of advocacy.

C. Agency's Relationship with the Private Bar

1. Role of the Private Bar in the Public Defender Program

As noted in the preceding section, the Public Defender currently appoints attorneys from the private bar to handle approximately 30% of the indigent cases in the system. One of the responsibilities of the Regional Supervisors is to designate members of the private bar to represent clients in cases where co-defendants have conflicting defenses, and the State Defender Office represents the defendant. The appointment process involves an evaluation of the case, selection of counsel from stratified lists of available attorneys who have qualified for such an appointment, and then assignment of the case. The process further involves a review of requests for expert services and other support services for a case, approval or disapproval of vouchers for such services and tactical advice in specific cases. This administrative process naturally monopolizes a significant portion of the local supervisor's time, leaving precious few hours for the technical, legal aspects of that position. Moreover, placement of appointment of counsel responsibilities among the duties of the local supervisor can potentially raise question concerning conflicts of interests, especially in co-
defendant cases. If the role of local supervisor includes, as it should, supervision of staff attorneys and private bar, a conflict could well arise with respect to advice given in co-defendant cases.

2. **Potential Conflict of Interest Situations**

There is a considerable body of opinion around the country which tends to suggest that the defender office should be very hesitant about being in the business of appointing the private bar, due to the possibility of conflict of interest. After all, if the Regional Supervisor is involved in the case in his office, as he or she should be, then a legitimate question could be raised as to the propriety of that same person selecting the private lawyer to represent the potentially conflicting co-defendant. The potential for conflict is most highlighted when one co-defendant turns "state witness" against the other, but it also exists in more subtle ways, e.g., when one lawyer wishes to argue during the sentencing phase that a co-defendant is more culpable and influenced his client to commit the crime.

Moreover, in the Wisconsin Defender System, this problem is aggravated by the fact that some of the Regional Supervisors not only appoint the lawyers who will be representing co-defendants, but may spend as much as two hours per day of their time discussing these cases with those lawyers. On the other hand, other Regional Supervisors do not appear to spend sufficient time working with the private bar. For example, there does not appear to be any systematic mechanism for assuring that private attorneys who handle public defender cases receive any specialized criminal training or guidance on these cases from the Regional Supervisor, have access to the Defender Agency's motion forms and memoranda, or receive any regular listing of the cases assigned, with dates of assignment and other relevant case management information.

The fact that some Regional Supervisors make time for the members of the Private Bar is commendable, since the practice no doubt contributes to improved representation for indigent criminally accused. However, the question that must be addressed is not simply the supervisory needs of the private attorneys who handle public defender cases but whether the Regional Supervisor, who may himself be involved with a conflicting co-defendant, is the appropriate person to provide that necessary supervision.

3. **Alternative Mechanisms for Administering Private Bar Services to the Public Defender Program**

There are several alternative possibilities which present themselves, a) an agency other than the State Defender, or b) a person in the Defender agency other than
the Regional Supervisor. Each of these alternatives is discussed below.

a. **Utilizing an agency other than the State Defender**

In Cook County, Illinois, where the annual budget for the Public Defender is currently in excess of $20,000,000 per annum, members of both the Judiciary and the County Board of Commissioners were concerned about burgeoning private bar costs. They considered creating a separate agency to deal with conflicts of interest, but opted instead to create a division inside the Public Defender office to deal with the problem. Although their particular solution was to create a separate staff component, called the "Multiple Defender Division" to deal with the conflicts problem, an analysis of their approach could be useful to Wisconsin in dealing with the conflicts problem here.

Cook County decided that it was too costly and unnecessary to set up a separate bureaucracy to administer the conflicts division, when the existing defender agency already had financial personnel, fiscal checks and balances, and an administrative structure already in place. This is also consistent with the thinking in the State of New Jersey where the problem of how to administer the conflicts cases was resolved in a similar manner. There, the New Jersey State Defender Office administers the private bar component of the program, which primarily handles conflict of interest cases.

Finally, establishing another agency to perform defender services, might also dilute the clear voice with which the State Defender speaks for the indigent accused, when it comes to seeking funds from the Legislature. Another indigent defense agency, seeking funds for the same purpose from the same funding source, might simply result in duplication of effort and wasteful unnecessary competition and confusion in this area.

Therefore, in view of the possible increase in costs and administrate duplication of effort, establishment of a separate agency to deal with the private bar and conflict of interest cases, is not recommended as the most efficient way to administer that program area.

b. **Designating another entity in the Defender Agency other than the regional supervisor to administer the private bar component**

The recommendation of the ATAP Technical Assistance Team is the creation of a new Deputy Director, with adequate staff, reporting directly to the State Defender, who would be responsible for the selection, supervision, training, and administration of the private bar panel of attorneys who participate in the defense of indigent clients who have a conflict of interest with the Defender Agency.
The value of having a separate deputy and administrative line to handle the private bar component of Wisconsin's indigent defense program is three-fold. First, is the avoidance of possible conflict of interest on the part of the Regional Supervisor, who may also be involved in the co-defendant's case being handled by the staff component of the local office, directly under his or her supervision. Second, it frees up the Regional Supervisor to concentrate on training, supervising, and administering the staff offices which are his primary responsibility. Finally, it provides a mechanism to train, supervise, and administer the private bar component in a more cost-efficient and effective manner, consistent with what has been found to be successful in other jurisdictions in the country. The first question that such a Deputy might explore is the question of fees. Other issues might include monitoring the panel lawyers to assure quality control, mechanisms for removal of lawyers from the panel which assure fairness, but at the same time protect clients' interests, increased training for private bar participants, interim billing for forensic and investigative experts, etc. Each of these issues is examined in some detail.

4. Issues Relating to Private Bar Participation Which Need to be Addressed

a. Fees

One of the hardest questions that any indigent defense system which relies on the private bar has to face is developing a system for the equitable payment of fees. Wisconsin, like many jurisdictions, pays private attorneys who handle public defender cases on an hourly basis. Such a system has advantages but can also pose problems. On the one hand, one does not want to disbelieve a lawyer who states that he spent x amount of hours. On the other hand, what if those hours were not as productive as they should have been? Would the less efficient and less knowledgeable lawyer be charging more per case than the more efficient lawyer? One of the methods to solve this problem which is used in San Mateo County, California is to pay attorneys by event as opposed to paying by hour. For example, instead of paying an attorney a specified hourly fee for the number of hours he certifies that he spends on a given case, a set amount is allocated for each event in the criminal process, e.g., $50.00 for the initial bond hearing, $50.00 for the arraignment, $100.00 for conducting a preliminary hearing, $100.00 for a plea of guilty, or in the alternative, if the case results in a trial, $200.00 per day for every day of trial. (The amounts listed are purely hypothetical and each jurisdiction sets the amounts per event according to its own schedule.) The value to the lawyer is that no one questions his or her time spent, and there is a certainty of collecting the amount which is billed. The advantage to the jurisdiction is that there is some predictability to the fees being charged by the private bar. One can calculate the number of preliminary hearings, arraignments, percentage of guilty pleas and
trials, and arrive at some realistic estimate and projection of what private bar fees might be in a given year.

Criticisms of this system are that it does not encourage research or client contact, but these costs can be calculated in determining the cost of the guilty plea or trial, or can be specifically provided for in the fee schedule. But its primary value is the confidence it engenders in the process, i.e., the certainty that the lawyer is performing the services for which the government is being billed.

b. Monitoring the private bar

Some of the interviewees felt the need for monitoring of the private attorneys' performance in the courtroom and disposition of cases. This is unlike the situation where a private client retains an attorney of his choice. If he is dissatisfied, he can simply refuse to pay, or hire another lawyer. Where the defender office appoints members of the private bar to indigent cases for which the defender office is initially responsible, there is a different standard at play. The accused cannot hire another lawyer, nor is his refusal to pay of any real significance. Therefore, it is the responsibility of the defender office to know that the private lawyers they utilize for these appointments are discharging their duties at a standard of high competence. As noted in Section B above, at present, the Regional Supervisors simply do not have the time to perform these monitoring functions with respect to the private attorneys they assign cases.

However, this is a function which could be performed by the proposed Deputy Defender in charge of the private bar function. He or she could review a form summary of the disposition of each case, provide form motions, a briefbank or memobank service for members of the private bar who had a specific inquiry or requested it, and could spot check the performance of lawyers in court. He could also prepare a questionnaire testing client satisfaction with their appointed counsel. (Such a questionnaire was prepared and distributed by the Federal Defender of the Northern District of Illinois.)

If the need for removal from the list of attorneys who are eligible for appointment is suspected, the Deputy could respond through specific procedures established for both eligibility and removal. For example, in some jurisdictions, an annual evaluation of each panel attorney is requested from the Judiciary. In San Francisco, there was a committee composed of prominent criminal defense lawyers and members of the Bar Association, who were responsible for reviewing requests for removal from the assigned counsel panel list.
c. Training

Currently, the only formal training program for private attorneys handling public defender cases is the annual two-day conference. A training program specifically designed for the private bar component of the State Defender system as well as mechanisms to encourage their increased participation in existing and forthcoming proposed training programs, both initial and ongoing, would serve two functions. First, it would serve a training function which could only impact favorably on the representation afforded their private and public clients. Secondly, it would serve a screening function in that those lawyers, who were not genuinely interested in serving the cause of justice by acting as defense lawyers, would not participate, thus excluding themselves from the panel.

Participation in proposed regional as well as increased attendance at annual defender training seminars could be mandated and even those that did participate in such training might still be excluded from handling public defender cases if they either could not grasp the techniques and logic of the Criminal Law and procedure, or could not philosophically accept it. The result might be a smaller panel, but one which was better trained and of the highest possible calibre.

Invitations to private attorneys handling public defender cases to attend monthly training seminars, for example, along with defender staff lawyers would provide ongoing training opportunities to private attorneys as well as opportunities for private attorneys to mix with the staff lawyers and interchange ideas, concepts, and techniques of advocacy. Such interchange could have a salutary effect on morale as well as effectiveness in representation.

Several training programs for private attorneys handling indigent defense cases in Canada may be of interest. In Toronto, a three-day seminar was made a prerequisite for panel eligibility. Another program pioneered by the Ontario Legal Aid Society and the Criminal Defense Bar in Toronto was a "mentor" system where experienced criminal lawyers agreed to be available to consult with newer or less experienced lawyers on their appointed cases. This induced many younger members of the Bar to enroll on the panel, as well as improved representation for the indigent. This is a possible program which the proposed Deputy could explore, and if established, would free up the Deputy for other matters as well.

d. Selection and payment of expert witnesses

One of the functions now performed by the Regional Supervisors is the approval of the use of expert witnesses. This responsibility uses up valuable time better utilized elsewhere by the Supervisor, and if he or someone else in the office is representing a conflicting co-defendant, it may be information that he should not have. The other
problem is that, although the public defender offices may maintain a list of some experts, in many instances others have to be located, and then, if approved, the private lawyer must put up the funds to pay for the expert initially unless the case is deemed complicated by the public defender's office in which case interim reimbursement procedures for expert or investigatory expenses can be arranged.

One of the functions that the proposed Deputy could better perform is to amass a list of experts in various areas, approve them without fear of conflict of interest, and arrange an interim billing procedure for these forensic and investigative experts for all cases.

D. Training

At present, the training director for the state Public Defender Office is housed in the Milwaukee field office where he carries a caseload. His primary responsibility is to plan the annual two-day statewide training conference. A major commitment of the Regional Supervisors is to implement training, both formal and informal, for the lawyers in their offices. Such training may include monthly office meetings where the Regional Supervisor explains new cases, demonstrates some techniques in trial advocacy, or simply answers questions of the staff lawyers and support staff as to policy issues. It may also include working with the Training Director on some proposed regional seminars, and the annual seminar. However, as noted elsewhere in this report, the burden of maintaining an active caseload on both the training director and the regional supervisors makes it impossible for them to simultaneously also conduct a meaningful training program, let alone provide supervision and assistance to staff or private attorneys handling indigent defense cases.

Not only would training improve the quality of representation provided to indigent defendants, but it would also strengthen the agency's relationship with the private bar. The team found that although private counsel occasionally sought advice from the supervisors within the local public defender offices, private counsel often found it necessary to fend for themselves in their attempts to understand and confront issues in their cases. The team further found that private counsel would be receptive to and would benefit from regularly scheduled training session conducted by the local office of the Public Defender. Currently, the local offices maintain a managerial relationship with the private bar through the appointment of counsel process. With the involvement of private bar in training sessions, the Public Defender might be able to develop a more cooperative relationship with the private bar, sharing ideas, strategies and information.
In order to facilitate the development and implementation of this state-wide training, the Administrative Office should consider designating its office as the Training Director's base of operation, with the understanding that the Training Director would travel among the regions to help coordinate the program. Because of the distances involved, the Public Defender may want to consider increasing the training staff to divide the responsibilities. Moreover, the Training Director should work closely with the regional supervisors in developing and operating regional training programs.

Although live training presentations are preferred, it may become necessary to utilize videotaped training materials for certain offices. Videotaped training materials are currently available to the defense bar and the central office could maintain a videotape library which could be distributed throughout the state. However, implementation of such a program would require that the Public Defender provide videotape equipment to regional and local offices. The team recommends that such purchases and provisions be made.
III. RECOMMENDATIONS

A. Agency’s Relationship with the Private Bar

Creation of Separate Appointment of Counsel Division within the Office of the Public Defender and Creation of Position of Deputy Public Defender to Administer the Private Bar Program.

In order to avoid even the appearance of a conflict of interest, the team recommends that the Public Defender consider creating a separate division within the present structure of the agency: an Appointment of Counsel Division. That division, which would be coordinated by a separate deputy public defender, would have the sole responsibility for administering the appointment process. The deputy would continue to report directly to the Public Defender, but would maintain a staff devoted to administering the appointment program. The staff of that division would have responsibility for making initial client eligibility evaluation during intake. The Appointment of Counsel Division would also undertake the responsibility of monitoring private bar performance, supervising cases, providing technical assistance in private bar cases and coordinating training needs of the private bar with the training director in the central administrative office. Members of that staff would also review and process private bar vouchers.

If a separate Appointment of Counsel Division were created for the sole purpose of administering that program, the legal staff within that division could be assigned as supervisors for the private bar. These supervisors would have the opportunity to observe appointed counsel in court in order to make informed assignments of cases. Such in-court observation could promote a mechanism for quality control because the staff would have sufficient information about the qualifications of attorneys on the list to select those who have the expertise to handle specific types of cases being assigned. Moreover, the staff of the Appointment of Counsel Division would be able to weed out attorneys whose performance was less than adequate. Currently, this quality control is virtually nonexistent. Unless the local supervisor personally observes an attorney in court, which is rare because of his or her time constraints, or complaints are made concerning flagrant problems with the performances of specific attorneys, there is no quality control.

The team recognizes that this proposal to create a new division would involve an initial expenditure of funds; however, the team also believes that this separation of responsibilities would produce financial benefits in the future. More in-depth supervision conducted by supervisors unencumbered by potential conflict of interest concerns could facilitate earlier resolution of cases which would avoid costs associated with delays in the system and would limit costs involved with trials. Moreover, employment of eligibility examiners to conduct initial screening evaluations would relieve staff attorneys within the Public Defender Office of those non-legal responsibilities. The removal of those
administrative responsibilities from staff attorneys within the office would enable them to conduct their intake responsibilities in a more efficient, expeditious manner.

B. Caseload Allocations

1. The proposed Deputy in Charge of the Private Bar Function, Regional Supervisors, and the Training Director Should not be Required to Carry a Caseload in Addition to their Administrative, Training, and Supervisory Duties.

There is no way that the proposed Deputy in charge of the private bar division, the regional supervisors or the training director can perform their respective duties and carry a caseload as well. To impose caseload responsibilities would be counterproductive since, by their very nature, these jobs entail full-time functions.

Although the ATAP Team did not interview all of the criminal justice participants throughout the State, in the cross-section of public and private officials interviewed in the target areas of this First Phase Study, there was near unanimity that the Regional Supervisors should not carry a full caseload. This perspective was expressed by Judges, Regional Supervisors themselves, staff trial lawyers, support staff, and private lawyers. Some felt that the supervisors could accept responsibility for some complex matters which required litigation, but certainly not a full caseload.

These views are consistent with the practice in other jurisdictions and recognized national standards. The National Study Commission on Defense Services recommended that:

"Proper Attorney Supervision in a Defender Office Requires One Full-Time Supervisor for Every Ten Staff Lawyers, or One Part-Time Supervisor for Every Five Lawyers." (NLADA, 1976)

In Los Angeles, Chicago, New York, and other organized defender offices throughout the country, supervision of attorneys is considered a necessity. In Lake County, Illinois, for example, there are two supervisors, in addition to the Public Defender, who do not carry caseloads, with a full-time staff of 17 lawyers. These supervisors are assigned to several murder cases along with members of the staff, but are not assigned to a specific courtroom or a specific quota of cases.

The Regional Supervisors should be assigning cases to the rest of their staffs on an equitable basis and ensuring that no single attorney is overloaded, while another attorney is underutilized. They should be reviewing each case before it goes to trial, if it is a trial case. They should be available to suggest cases as authority for suppression motions and motions in limine, and to review strategy and possible defenses, upon request. As in many offices, the Supervisor has far more experience than the new assistant public defender. Typically, the Supervisor may be a career defender, who has been in the agency
a long time. The new staff lawyer may have just graduated law school, and this may be his or her first job. In such a situation, it is essential to have a full-time supervisor, available to train, guide, and assist.

The training director must also be free to prepare training programs for each of the regions and the local offices, as well as for the annual meeting. As noted elsewhere in this report, the training director's responsibilities are critical to the effectiveness of the public defender program and require full-time attention. Similarly, the recommended creation of the Deputy position for handling the private bar functions is in itself a recognition of the special, full-time tasks required to maintain and monitor this aspect of the public defender program. To also require the proposed Deputy to maintain a public defender caseload would defeat the purpose of the position.

2. **The Milwaukee Office Requires a Minimum of Two Full-Time Supervisors in Addition to the Regional Supervisor, all of Whom Should be Exempt from Caseload Responsibilities, and Team Leaders Should Carry Only One Half a Full Caseload.**

Although the team did not review the specific operations of the Milwaukee field office, discussions with staff of that office warrant comment regarding caseload allocations for that office. The office handles from 17,000 to 20,000 cases annually, with at least 5,000-7,000 felony matters. At present there are 50 lawyers in the Milwaukee office of the State Defender Agency. In addition there are 18 secretaries, 7 investigators, and 2 trial assistants. Criminal cases are conducted in two courthouses, and the legal staff is divided into eight teams, each of which has a team leader. It is impossible for one person to effectively supervise 50 lawyers. Currently, the director of the office does not have the time to observe his staff lawyers in Court the way he would like to. He does not have time to discuss pending cases with his attorneys on a systematic basis. He would like to conduct monthly training sessions with his staff, but lacks the time at present, and spends a minimum of 12 hours per week in matters pertaining to the private bar. With the kind of volume which the office handles, it is respectfully suggested that consideration be given to exempting the head of the office and two deputies from the caseload requirements, and to requiring each of the eight team leaders as well as local office supervisors in other regions to carry not more than one half a full caseload.

3. **Existing Caseweights Must be Verified and Modified if they do not Accurately Reflect Time Spent Per Type of Case, and Realistic Caseload Maxima Must be Formulated.**

In 1973, both the National Legal Aid and Defender Association (NLADA Defender Standards, 1972) and the National Advisory Commission on Criminal Justice Standards and Goals (NACCJSG) adopted caseload standards of 150 felonies per lawyer
per year, or 400 misdemeanors, or 200 Juvenile cases, or 25 appeals. (U.S. Department of Justice, Courts, Ch.13, 1973).

In 1988, the ABA established a maximum allowable caseload for public defenders. This caseload of 150 felonies per lawyer or 300 misdemeanors, or 200 other cases, is not only a maximum but could only be expected under ideal circumstances. Presently, the Wisconsin state public defender staff attorneys are expected to exceed this standard by 35%. This is not only counterproductive but alarming.

During the study period, questions were also raised concerning the weighting formulas currently used for the types of cases which the Office of the Public Defender handles. Since staff attorneys appear to be overwhelmed by the current caseload, the team recommends that further inquiry be made that would evaluate whether the formulas accurately reflect the amount of time needed to handle certain categories of cases. Based on a brief review, it appeared to the team that much of the time-consuming work involved in certain cases was not taken into consideration in the weighting formulas. The Public Defender should consider conducting a study that measures the actual time spent on cases which would factor in all of the elements required to dispose of a case.

Rather than engage in "guestimates", the ATAP technical assistance team suggests that a study be conducted for one year in which actual time spent per type of case be tracked on a systematic basis in sample offices by a cross section of the professional staff. Existing case diary forms could be utilized or more sophisticated instruments designed for this study. Once the data is collected and analyzed, there will exist a better foundation and basis for change, if change is indicated.

C. Training

1. The Present Training Program Should Be Expanded at all Levels

As noted in other sections in this report, the team further recommends a substantial expansion of the training program that the Office of the Public Defender presently conducts. The Training Director for the Public Defender Office currently coordinates a two-day training conference annually which is available to public defenders and the private bar across the state. While this conference appears to be a comprehensive program within the existing time limitations, one such program per year is insufficient to meet the continuing training needs of the Public Defender Office and the defense bar.
Standard 13.16 of the National Advisory Commission on Criminal Justice Standards and Goals suggests that,

"Every defender office should establish its own orientation program for new staff attorneys and for new panel members participating in provision of defense services by assigned counsel. Inservice training and continuing legal education programs should be established on a systematic basis at the State and local levels..." (U.S. Department of Justice Publication, Courts, 1973)

The materials that the training director prepares must be geared to the needs of the staff attorneys as well as the private bar. This may involve the production of materials relating to the trial of criminal cases, especially geared to Wisconsin law and practice, it may involve a newsletter highlighting recent decisions of the United States Supreme Court, the local Federal District Court and Circuit Court of Appeals, as well as the State Reviewing Courts, and may even include cases at the trial level handled by members of the office.

Although some entering lawyers have received orientation training, it has not been done on a systematic basis nor has it been a requirement for all entering lawyers. Such a program is essential. Many lawyers enter the Public Defender office right out of school. Although they may have had an academic curriculum, they have not put the theoretical knowledge together in a professional situation involving practical application. For example, knowledge of the law of search and seizure must be translated into a successful motion to suppress. Cross-examination of an eye-witness may require more than knowledge of the caselaw on single identification witnesses. Courses in professional ethics may not prepare the neophyte lawyer for the lying witness or the defendant who wants to give him contraband to hold in his safe. The orientation program can give the new lawyer the practice and confidence to translate the theory into practice and prepare him or her for some of the realistic practical and ethical problems the criminal lawyer may well have to face.

The Public Defender Service for the District of Columbia has a six week orientation program for new lawyers. Cook County, Illinois currently has a three week program, which it is expanding, and requires every new lawyer to go through that program. The Illinois State Appellate Defender Agency conducts week long seminars for new attorneys, concentrating on trial advocacy. The Wisconsin Defender Training Director must prepare such an orientation program and administer it to all new lawyers.

The Training Director should also develop and implement a statewide training program that provides regularly scheduled training sessions directed to local practice. As would be expected, each region has specific concerns and issues that may apply to practice in that area and may be of little or no significance to other regions. The team would, therefore, recommend that the Training Director conduct additional training seminars in each region as part of a more comprehensive training program. With more time in their
schedules, regional supervisors could produce monthly training sessions in conjunction with the Training Director that would focus on issues affecting the practices of the local defense bar. Such training would be consistent with the State of Wisconsin’s recognition that attorneys need to and, in fact, must keep abreast of developments in their fields through continuing legal education. Consideration should also be given to requiring the private bar to participate in at least some of these programs.

The team further recommends that additional formal training sessions should be conducted on the appellate level. With respect to the appellate division, the team found that the division currently provides informal, ad hoc training to staff attorneys. Informal discussions of recent cases and case trends occur within the offices; however, because of time constraints due to workloads, few, if any, formal training and supervision sessions take place. With additional resources and a reduction in caseload for supervisors within the division, the supervisors could conduct training on issue spotting, brief writing, and effective oral advocacy. The appellate supervisors currently review briefs only after they have been completed and filed. With additional time, the appellate supervisor could intervene earlier in the process and assist staff attorneys in identifying important issues and presenting arguments effectively.

Additional training programs should be developed for the public defender investigative and support staff as well (See Recommendation 7 below). The content of these programs should be geared to enhancing the performance of their respective functions as well as addressing relevant policies and procedures of the public defender program.

In light of the proposed duties which the training director should perform, including the conduct of a comprehensive the orientation program, the proposed regional seminars, the annual seminar, and preparation of materials, the training director should not be required to carry a caseload. He can make a real and necessary contribution to the defender agency and every lawyer in it, but he must have the time to do so, and training, done properly, is a full-time job in itself.

2. **The Administrative Office Must be Responsible for Coordinating all Training in the State for Staff Lawyers and Private Bar Attorneys who Accept Indigent Appointments**

The Administrative Office must be responsible for coordinating all training in the state for staff attorneys and private bar who provide indigent defense services. This training program should be comprehensive and include orientation, in-service training, periodic conferences and regular attorney supervision and feedback. At present, the training director is housed in the Milwaukee office, where he also carries a caseload. The situation should be changed. The director should be located in the Administrative office in Madison, where he can report directly to and coordinate with the Deputies and
Supervisors in charge of the trial, appellate, and proposed private bar components. Moreover, as discussed earlier, that person should not be required to carry a caseload. His duties are so important to the success of the mission of the defender agency, that he should be working on training on a full-time basis. In large systems, such as Cook County, Illinois, it is not uncommon for the Director of Training to have a staff of both lawyers and non-lawyers to assist in this vital work.

3. **The Administrative Office Should Prepare Budget Requests to Implement the Comprehensive Training Program**

When choosing where to devote limited resources, it may not be readily apparent that training is a necessary expenditure; however, the importance of a comprehensive training program should not be underestimated. Although development and implementation of a training program would require an additional expenditure of funds, the cost would be justified because such a program would produce financial benefits in the long run. As long as a court system operates with inexperienced, untrained lawyers, that system will operate inefficiently. The ability to utilize capable, well-trained attorneys acts as a protection against further costs that result from delays due to attorney inexperience, challenges to the system, and post-conviction attacks based on ineffective assistance of counsel. Well-trained attorneys perform an essential function within the system, not only in protecting the rights of indigent citizens accused of crimes, but also in facilitating the resolution of the mass of cases that overburden the court system.

The team recommends that the Administrative Office request additional funding from the state legislature specifically designated for the development and implementation of a comprehensive training program such as recommended above. Budget requests should focus on funding for expansion of the annual conference, the implementation of monthly regional training sessions, the institution of an entry level training program for incoming attorneys, and the expansion of training within the local offices on the appellate, trial, and investigative levels. In addition, resources should be provided to prepare periodic newsletter for field offices and others involved with the public defender program, and development and maintenance of brief banks and other standard resources for public defender attorneys.

4. **The Role of the Supervisors Should be Incorporated Into the Agency's Training Program**

The regional and local supervisors play a critical role in the structure of the Office of the Public Defender. Indeed, the regional and local supervisors should have sufficient time allotted to coordinate supervision and training within the local field offices. The team, therefore, recommends that, in addition to relieving the regional and local
supervisors of caseload obligations, that the regional supervisors work with the Training Director in establishing regional training programs which should be made available to the private bar on a regular basis. Similarly, local supervisors should conduct monthly training sessions that specifically focus on issues affecting local practice.

5. **Training Activities Should Also Be Held in the Local Defender Offices**

   Similarly, the team recommends that the trial division conduct regular training sessions within the local offices. This training would supplement the current practice of providing informal training to staff attorneys. Moreover, the team found that training for incoming attorneys, which is sporadic at present, should be formalized. New attorneys do receive more supervision than their more senior colleagues; however, in order to receive the assistance that they require, it is often incumbent on the attorney to first recognize that he/she needs help and then to seek that help. A more formal training plan offered to attorneys when they begin employment would not only give incoming attorneys supervisors to identify the attorney's needs at an early stage in his/her legal career.

   The Regional Supervisors should also be involved in monitoring the performance of the staff lawyers in Court. There is always some improvement that can be suggested to a staff lawyer in court, no matter how experienced, and if there is a problem with a lawyer's performance, it is better to diagnose it and resolve it early before clients suffer, rather than have the lawyer terminated because the situation has gotten out of hand.

6. **Consideration Should be Given to Hiring New Attorneys in Groups to Facilitate Training Scheduling**

   The team would also recommend that the Public Defender consider instituting a staggered hiring process such that he can hire new attorneys in groups of two or more to promote a more systematic training schedule. The Training Director should, at a minimum, develop a one week basic training program for new attorneys which would involve basic trial advocacy training for four days of the program, with at least one additional day devoted to the nuts and bolts of the attorney's local practice.

7. **Training Should be Provided for Investigative and Support Staff**

   Consistent with the need to keep attorneys abreast of developments in criminal defense, there is also a need to provide on-going training to the investigative and support staffs. The team learned that many of the investigators employed by the office have had prior investigative experience. While this has allowed the office to manage relatively well without providing on-going training to date, as developments occur in criminal defense, it is necessary to keep every aspect of the defense team informed. Therefore, the team would
recommend that regular training and supervision occur within the local offices specifically directed towards investigation. Similar programs should be conducted for the support staff to address issues relating to administrative, reporting, clerical, public relations and other functions which the support staff perform.

D. Other Services Which the Administrative Office Can Provide

The Administrative Office Should be Responsible for Providing Computerized Information Concerning Caseloads and Other Information to the Regional and Local Offices

Currently, the Administrative Office receives a monthly computerized account of attorney caseloads from each of its 34 field offices. This information, which includes a list of each individual attorney's pending cases, is necessarily maintained in the central office for accounting purposes; however, periodic distribution of the lists to the regional supervisors as well as to the individual staff attorneys would facilitate a more systematic case assignment process as well as each attorney's ability to track his or her cases more efficiently.

The computers and software in the administrative office are far more sophisticated than the machines now found in the regional and local offices and the Administrative Office possesses the capability to sort all of the cases to which the Defender agency has been appointed by age, by office, by type of case, and by lawyer. Since this information can not easily be obtained by the local offices, it should be sent back to the regional and local offices each month so that each attorney in the system, and each supervisor can see exactly how many cases each lawyer has pending at any given time, how long he or she has had them, how many cases have been assigned to the lawyer during the period, and how many the lawyer has disposed of during the period. Such a computerized printout from the central administrative office would be of great value to the individual attorney's capability to manage and monitor his or her cases assigned as well as to the regional supervisor's performance of his or her supervisory and case assignment functions.

At present, because of time pressures, staff attorneys can only estimate the number of pending cases that they have based on their familiarity with their caseload and a physical review of files in their offices. In the event a file were to be misplaced, there does not appear to be a mechanism to assure that the case is brought to the attorney's attention short of his or her own recall or some external communication in its regard. With the help of the periodic printouts described above from the central office, the assistant public defenders would be able to determine their caseloads precisely, not only in terms of identifying the cases assigned but, in addition, in terms of their status and processing needs. The team strongly encourages the central office to designate the need to provide this
information on a regular basis to both supervisors and individual staff attorneys as a priority.

This type of information is given to the lawyers on a monthly basis in other defender offices which possess a computerized defender system, e.g., Lake County, Illinois*, and allows for a more intelligent basis upon which to make case assignments, personnel assignments, for supervisors to assess the causes of delay, and to avoid situations of case overload.

* The Lake County Public Defender information system has just received a 1989 Achievement Award from the National Association of Counties.
IV. SUMMARY

Wisconsin is fortunate to be served by a Public Defender and staff who are highly committed to maintaining -- and improving -- the quality of representation offered by the office. The recommendations presented in this report are designed to address managerial issues relating to the Office's ability to provide such quality representation: the extent to which supervisors are able to supervise and assist staff; the method for allocating caseload assignments among staff attorneys; the relationship of the private bar to the public defender office program; and the need for a comprehensive and on-going orientation and training program which serves all levels of the public defender office staff. While some of these recommendations can be implemented fairly easily, others will require considerable planning and some outside support, particularly that of the Legislature. It is hoped that this report will therefore provide the basis for development of a short and longer term planning program which will address the issues presented.
APPENDIX

Individuals Interviewed During the Site Study

State Public Defender's Office
Nicholas L. Chiarkas, State Public Defender
Ann Reilly, Deputy State Public Defender
Eric Schulenburg, Chief, Appellate Division
Eileen Hirsch, First Assistant State Public Defender
Raymond M. Dall'Osto, Director of Training (also serves as trial attorney in Milwaukee Public Defender's Office)
Arlene Banoul, Director of Administrative Services

Janesville Public Defender's Office
Barbara Due, Assistant State Public Defender
Paul Charles Merkel, First Assistant State Public Defender
Glen Pehl, Investigator

Private Bar
Jack C. Hoag, Esquire

Rock County Circuit Court
Judge James P. Daley

Madison Public Defender's Office
Stan Woodard, First Assistant State Public Defender
Deborah Smith, Assistant State Public Defender

Milwaukee Public Defender's Office
Patrick J. Devitt, First Assistant State Public Defender
Raymond M. Dall'Osto (also serves as state Director of Training)

Wisconsin State Legislature
Louis Fortis