

P U B L I C H E A R I N G

before

ASSEMBLY JUDICIARY COMMITTEE

in accordance with Assembly Resolution
No. 3 directing the Committee to study
the office of PUBLIC DEFENDER.

Held:
May 15, 1970
Assembly Chamber
State House
Trenton, New Jersey

Members of Committee present:

Assemblyman Peter W. Thomas [Chairman]

Assemblyman James M. Turner

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ASSEMBLYMAN PETER W. THOMAS [Chairman]: I would like to call this public hearing to order. This public hearing is convened as a result of Assembly Resolution Number 3, which directed the Judiciary Committee of the House of Assembly to study the organization, administration and the amount of support afforded by the State in the operation of the Office of Public Defender.

Mr. Joseph Hayden is here from the State Bar and because he has a court commitment this morning, I would like to have him appear to testify first.

If there is anybody here that has not indicated that they wish to participate as a witness in this hearing and would like the opportunity to do so, I wish they would come up at some convenient time and sign our roster so that we know you are here and we can schedule you to testify in turn.

Mr. Hayden.

J O S E P H A. H A Y D E N: Mr. Chairman and members of the Committee: I appreciate your kindness in permitting me to address the committee first. I am one of a number of lawyers involved in an all-day proceeding before Federal Judge Barlow in the Federal Court House in Trenton and they said they would wait in the hope that I could be heard first and go back to the courtroom.

I appear before this committee as the Chairman of a committee of the New Jersey State Bar Association which is called upon to look into the performance of the Office of Public Defender.

I have discussed what I would represent to the committee as being the position of the State Bar Association with its officers and I have had the opportunity of trying to sound out sentiment as far as possible among many members of the Bar. We have had committee meetings and I will try as briefly as possible to indicate what our Bar Association feels and I think some of the possible erroneous beliefs which have developed with regard to this office.

Perhaps I have a little better insight into this whole situation because I had the honor to become President of the Essex County Bar Association on June 1st, 1967, and had just about begun to rest on my laurels, having attained that high office, when the riots struck the City of Newark. By coincidence, it was on July 1, 1967, that the creation of the Office of Public Defender became effective and, as you all recall, Peter Murraray of very happy memory became the first Public Defender.

The unfortunate part about that development is that the then brand-new Public Defender with little to go on by way of guidelines found himself thrown into the morass of, of course, one of the most disastrous human catastrophes that has ever stricken the State of New Jersey and he found himself with the duty of representing, it is my recollection, between 1500 and 1600 defendants, most of whom came within the category for whom the very office was created.

The then President of the New Jersey State Bar Association and I in my capacity were called upon by the

Governor to enlist the aid of volunteer lawyers throughout the State and it will always be one of my proudest boasts that the lawyers came forward in great numbers. But as always, sooner or later we closed our files and we then left a tremendous load on the brand-new Office of Public Defender.

If I may say so without the slightest intention of offending anybody, it is the firm belief of many of us who lived with this problem that this office was never properly placed in its proper nitch. From our standpoint, the only office that we feel is superior to it in its field is, of course, the Office of the Attorney General. I feel that would be so even before the recent legislation that so greatly enlarged his jurisdiction.

It is our feeling that under no circumstances should the Office of Public Defender be any lower than that of the Prosecutors of the various counties of the State and in our opinion because of the great volume of work, the almost monthly additional duties which are imposed upon it, that it must be considered by the Legislature in a much more important light and I respectfully submit that it is the view of our members that this perhaps is one of the difficulties and it is why the Legislature seems to feel that having been good to the Office of Public Defender he comes back always with his hat in his hand and this should not exist.

It is the desire of our committee that I to the

extent that is possible in a brief appearance such as this try to dispell an ever-increasing belief that this office is engaging in practices that are of its own devices, namely, representing people who are not qualified to be represented and thereafter representing them before judicial forums where it should not undertake to represent them.

The reason for this is that all of us, and particularly you members of the Legislature who are also members of the Bar, must realize that in the last 15 years and even less than the last decade, we have seen imposed - and I use the word with all of its most serious connotation - there have been imposed on the several states by the United States Supreme Court absolute obligations to represent people accused of crime, and here is the area where there seems to be a lack of knowledge on the part of most of us, in other areas where the result of what they are accused of would serve to deprive them of their liberty. For example, I think no one ever seriously ever questioned the necessity of the Office of Public Defender initially going in, preparing a defense for trial, and adequately trying a defendant. This was accepted I think in the minds of most people. This was the reason for the creation of this office. But then we have had a whole series of United States Supreme Court decisions which have not only enlarged but have made absolutely obligatory the duty of the states to furnish in some means further protection of these people's rights, these people who have been convicted. That brings in the

vast, the expensive and the time-consuming appellate process.

I have found even among lawyers that there still exists a belief that an appeal is not a matter of right - it is merely a matter of a rather nebulous desire on the part of a defendant and that some of the offices, such as the Office of Public Defender, go in either on a "goody-goody" basis or a "new social concept" basis and undertake the appeals.

If I can do nothing else in appearing before you as a lawyer and as a spokesman for our Association, I would like to dispel the notion that there is any longer any discretion, any discretionary at all, in declining to take an appeal all the way when it is requested by the defendant.

I will give you two examples of methods that were chosen by different states to try and limit or avoid the terrible impact of this imposed obligation. Right here in New Jersey, I think under our present Public Defender, Mr. Van Ness, when his staff saw the obvious lack of merit to many appeals and feeling that in conscience and with a feeling that they had fulfilled their duty of properly protecting the defendant, they tried methods of informing the appellate courts that they were in effect appealing at the request of the defendant, but as experienced lawyers they found no merit to the appeal.

Our courts in our State have taken the position that this is not a proper appeal. If there is to be an appeal, it must be an appeal the same as anyone with the means to

afford an appeal would perfect.

So that there is no longer any doubt that that is the rule throughout the United States, the State of Oklahoma adopted a practice of drawing up a procedure whereby there would be an evaluation of these appeals and if a highly-qualified judge handling the evaluation of these appeals found they should not be taken, he would reject them on the basis of no merit. That procedure was taken up to the United States Supreme Court - I believe it was in '68 or '69 - and the United States Supreme Court left no doubt that it does not consider that a proper appeal.

So I would like to conclude this category of my remarks by asking you to please look at this whole picture as it being one of performance by this office where it is obligatory. I would like to see anything that they do that is not obligatory perhaps curtailed.

The other field in which our Association would like to be on record is that we do not believe that there is adequate compensation for the staff of this office. Again I am loath to color my remarks by experiences of my own, but I also happen to be a trustee of the Essex County Legal Services project and the Newark Legal Services project and I am on the Personnel Committee. For the last three years we have had the greatest difficulty in staffing our two projects even though we can and are permitted by Federal law and Federal grant to go far beyond what the Public Defender is permitted by the law and his guidelines to offer. I made inquiry of Mr. Van Ness as to what the

starting salary was for young lawyers and if my recollection serves me right he told me it was now, with an increase of 5 per cent, \$9450.

I say to you gentlemen that it is unthinkable that any man who has passed the Bar of the State of New Jersey would apply for a position as a lawyer at \$9450. I understand that the office of Prosecutor of first-class counties, the salary of the Prosecutor is \$24,000, which will probably be increased if the formula in the Judges' Salary Bill becomes effective, although that may or may not have been signed by the Governor. I made inquiry of the Prosecutor of Essex County and I am informed that the starting salary of new men coming into his office is \$12,000. They are presently part time. I hasten to add that if legislation becomes effective in these Prosecutors' Offices that they be full time, there will be a commensurate or proportionate increase in their salaries.

I would like to recommend, as authorized by our committee, that the starting salaries of lawyers being hired by the Office of Public Defender be not less than \$12,000.

It will accomplish two purposes. One, it will attract more young men. But even of greater importance to that office, it will allow the Public Defender to rely on them staying with him several years. As it is now, he gets the youngsters at \$9400. As soon as they get over their initial fear of appearing in court, they go to some other

agency or they go to some office which will pay them two or three thousand dollars more. So he just about has them used to the work they have to do and they are gone from his office.

I would like - and I do it with some hesitancy because he is sitting beside me, but I make my reference to the office of Public Defender, whoever might be the incumbent - to respectfully submit that the salary of the Public Defender is totally inadequate. I opened my remarks by suggesting that the Legislature consider this office to be superior to that of Prosecutor - of course, inferior to the office of Attorney General. I think that the salary, since it is a position in which the law requires that he devote full time, ought to be higher than Prosecutors of the first class and perhaps lower than the Attorney General.

It is my understanding that Prosecutors of first-class counties, if they go full time, their salary will be tied into that which is to be paid to County Judges and, if the bill presently passed by the Legislature is signed by the Governor, their salaries will become \$37,000.

It is the recommendation of our committee that the salary of the Public Defender of this State be not less than the amount paid to Prosecutors of first-class counties.

Thank you. I will be more than happy to answer any questions that might be within my field.

QUESTIONS BY ASSEMBLYMAN THOMAS:

Q Mr. Hayden, it is my understanding that the

deputies are not full time. Is that right?

A Full time again is somewhat of a fluid term. I and some people of our committee went to the extent of making some inquiry. They are not full time in the sense that the law requires the Public Defender to be full time and will require Prosecutors to be full time. But the tremendous volume and the tremendous load plus, I may say and I hope they don't resent my saying it, the pressure imposed by the appellate courts to have these appeals heard and disposed of for practical purposes makes it full time. I am told that the statistics kept by the office show that they work not less than 5/6ths of the time that generally is put in in the Prosecutor's Office, that they cannot in the sense of having any free time arrange to have cases tried. Of course, I am talking about the populous counties. To answer your question directly, while it is not full time in the sense of being required by law, it is close to full time in the practical handling of the volume of work in their office.

Q So if we adopted your recommendation on a starting pay scale, don't you feel then that they should be required to work full time and devote no activities to private practice?

A No. Mr. Chairman, if you required that they be full time, then I think you would be duty bound to tie their salaries into what you will have established as the full-time salaries for Assistants in the Prosecutors' Offices.

Q Well, that will be under the new system, 30 to 90 per cent of the Prosecutors - salary \$30,000 - which would mean that a starting Assistant in the Prosecutor's Office could start at the level of about \$11,000.

A I am in no position to contradict you, but I was told only yesterday that the present starting salary in the Essex County Prosecutor's Office is \$12,000 and this is not intended to be full time. It is not under the law full time. And I am told in a couple of the counties where by recent appointment of Prosecutors by the Governor where it is obligatory that they be full time that the starting salary of the Assistants is \$14, \$15 and \$16 thousand. I don't think, Mr. Chairman, that the evil that we feel exists would be overcome by merely raising the starting salary to \$12,000 and make it full time. It just would be continuing the same difficulty in getting men to stay with the agency.

Q Well, my experience in hiring associates, new associates for a law firm, has been that \$12,000 for a full-time associate would be on the high side and this would be somebody who came from a top-notch law school with a high academic standing and had probably spent at least a year of service with a judge before he came to the law firm. Do you think we have to get into that kind of competition for a part-time job?

A Let me give you the other side of the coin. Either through great negotiation - and I don't resent them having accomplished it because I perhaps know half of the men involved - but the detectives and investigators

in the Essex County Prosecutor's Office - there may be 40 or 50 of them - they just negotiated a two-year agreement with the Board of Freeholders of Essex County, as the result of which their salary is \$12,300, retroactive to January 1, 1970, and automatically goes up \$1,000 January 1, 1971, and will be, therefore, \$13 thousand, three or four hundred.

Now to me it is either inordinate pride in my profession or knowledge of what I had to go through to get there and the age I was before I made my first dollar of income - but to me it would be an anomaly that the men in the back room are paid \$13,300 who help you prepare your case and the man with the responsibility of prosecuting the case gets a couple of thousand less. I just don't feel that you can get these men. I think when you get to firms like yours, there is always the hope and expectation of moving upward.

ASSEMBLYMAN TURNER: The big case.

MR. HAYDEN: Well, it's a great firm.

Q On another subject entirely, you mentioned the Newark riots and there were some 15 to 16 hundred defendants that had to be processed through the system immediately and that overwhelmed the new office which you just created as of July 1, 1967. Do you know if any investigation has been undertaken to determine if we could adopt a better process of handling the lesser-offense type case so that you wouldn't be involved with this tremendous amount

of paper work, bail, assignment of lawyers? Has anything been done in this way to try to streamline the system so to speak? A I think a great deal has been done. Certainly the riots were a shock to everybody. We pride ourselves up in Essex as having a very fine judicial body. With all of the sincerest efforts, the riots came as a shock. Nobody expected it. We found that one of the great difficulties was not the lack of judicial power or even prosecutorial or even defense counsel; it was the very paper work that overwhelmed us. Since then, I know that our Assignment Judge Giuliano and I am sure Mr. McConnell with their staff, they have worked out systems that would go into effect should such a thing materialize again. But the reason I feel pessimistic and don't know what the answer is is because every time you think you have put a new system into effect where with downgraded offenses they can be handled at the lowest court level, the Supreme Court comes up with something and says if the man who might be subject to 10 days or 20 days or no incarceration at all, if he says, "I want a full jury trial," it seems to me this is what we are coming to.

Q Well, that would only be in the case of something above a petty offense. We downgraded that last year to take care of that situation.

A The only thing that I think - and it is something I have a personal feeling on and I have never been able to understand why it hasn't been accomplished is the abolition of our four or five

hundred magistrates courts and not put in a very, very workable type of a district criminal court system.

Q This is a very interesting subject and one dear to my heart. Do you personally advocate this?

A Absolutely.

Q Does this represent the feeling of the Bar Association.

A No. Excuse me. Let me get myself clear. I cannot answer whether it does or not because I have had no reason to explore it. But I have lived somewhat in the field of criminal law. I have been an Assistant Prosecutor and I have had a lot on the other side and the evils of the magistrate system are just inbred and until they are abolished, they are never going to be overcome.

Q Again this is not really on the topic, but what would you suggest as its alternative?

A A system of criminal district courts with the same power, of course, in the Chief Justice without these theoretical lines that say, "You have got to only operate within this area of Essex County," or whatever. I think they should be physically set up where most needed but with the right in the Chief Justice to do what he has the right to do with judges now, put five more here if the occasion arises or create temporary courts where he can bring a man down from Warren County perhaps to Essex. Let's assume there was - I was going to say a riot - I believe under the plans that have been adopted that many judges would be immediately made committee magistrates and what not, so that is no problem. But I

think we have got to have a system of courts where we don't have the evils of the same magistrates sitting every day and the same policemen coming in and the same court clerks and what not. They are all fine people. I have grown up with most of them. But they are all human beings and as long as that exists you are going to have all the evils of magistrates courts.

Q Would you do this through the present court system and through the present district court? A Well, we only have a district court on the civil level. There may be counties that have a criminal district court. I don't know. But the only district court I am aware of now would be our civil district court. My thought would be an entirely new lower criminal court system.

For example, in a county like Essex, the way people go to work in shifts and what not, we would have to perhaps follow some of the New York City system. They have courts going 24 hours a day. In some of the courts people don't have to appear until eleven or twelve o'clock at night. But I think we have to come to that. I think there is neither rhyme nor reason for us to continue the old magistrates court. We certainly got rid of the old Justice of the Peace system and nobody regrets it.

BY ASSEMBLYMAN TURNER:

Q Sir, as a member of the Bar, you have very kindly testified here today and I appreciate it. But you did in discussing the abolishment of the magistrate court

system express those views as being solely yours.

A Solely. I want to emphasize that.

Q And when you said, sir, - and I ask you these questions as a layman. You did in fact say that it was the same magistrates and the same police officers. Many times it is the same defendants and many times it is the same counsel that appear in those courts, is it not? A It generally is, yes.

Q And you realize the philosophy of taking from the municipality and the county and again turning the sovereignty of that court over to one entity, the state, do you not? A Yes, sir.

Q As a member of the Bar, you are undoubtedly aware of the statistics and you have mentioned the 15 hundred to 16 hundred defendants that unfortunately found themselves without counsel and the need therefor as a result of the riots in Newark. You are aware of the philosophy that this system that has been developed has removed from the Bar the responsibility of assisting anyone who is not able to assist himself and finds himself before the court, are you not? A I would not be able to agree with that because the present problem confronting our Appellate Division is that there is even now such a large volume of appeals taken as a matter of right, and again I keep using these words, so that it takes it out of the category of somebody just stirring people up to take appeals. There are so many appeals pending that I was assigned one two weeks ago

by the Chief Judge of the Appellate Division and at our committee meeting the other day I think every lawyer there told me that somebody in his firm within the past month has been assigned one of these.

BY ASSEMBLYMAN THOMAS:

Q Excuse me. You have been assigned an appeal in Essex County for an indigent? A I have been assigned an appeal to the Appellate Division, yes.

Q That's what I mean. A Yes.

Q You have been assigned to represent an indigent appeal in Essex County? A Well, when you say Essex County, you kind of throw me off. The offense was in Essex County but the assignment comes from the Chief Judge of the Appellate Division, Judge Goldmann, because of the fact that there is now a large volume of appeals, rightfully taken, that are confronting the Appellate Division; that is, I should say, the notice of appeal is filed. Again because of the lack of adequate staff on the appellate level in the Office of Public Defender, the Appellate Division of necessity had to go back to the lawyers and on kind of a guideline set by our Supreme Court in the Rush Case assigns us with these appeals. My whole appeal is at the printer's now to be filed Monday.

BY ASSEMBLYMAN TURNER:

Q Then what you are saying, sir, is that the system is not doing what it is supposed to under the law and the fact is the Bar has to augment its abilities. Is

that what you are saying? A I would not agree with it in the way that you have stated it. I would say that the system, as far as I have been able to see, is doing an excellent job, but that the Legislature - the Legislature - must be made aware of the fact that the obligations being imposed upon it I don't think were ever considered by the State because they didn't exist. And one of the reasons I appeal to this committee is to augment the office with the necessary funds to properly staff itself.

Q I recall your statement, sir, when you said, "imposed obligations," and as a layman I have some conscious realization as to what you are saying. But I have heard also your testimony where you took exception to the present salary levels of these persons and you made very clear recommendations as to their increase. Obviously your testimony failed to reflect that you reviewed their competency or their insight or their skill or their experience. And now you are saying that because of the absence thereof, you and others must so act in appellate work. Now is that a fact or is it not a fact? A No, I don't say that

at all. I say as far as I have been able to ascertain, those on the staff are doing a thorough job. The office to the extent that it is staffed and is budgeted by the Legislature is doing an excellent job, but because of developments quite beyond the control of the Legislature and quite beyond the control of the states has had new volumes of compulsory appeals that have to be taken care of.

Since the Office of Public Defender does not have an adequate staff numerically or financially, then the courts must - and again our courts have no choice when the Supreme Court speaks - so our courts say to the lawyers, "We designate you to handle this appeal. You to handle this." This is the way it must be until the Legislature is able to provide funds for the further staffing of this agency.

Q Then what you are saying is the fact we have no control other than offer the additional aid in your opinion.

A I'm sorry.

Q You are saying, sir, that the Legislature has no responsibility other than giving the aid.

A No, I didn't say that at all.

Q Do you have any opinion in your obvious vast experience in reviewing this system as to what you would describe as one without funds to carry his responsibilities or indigent? Where do you find the line there?

A In the first place, I don't frankly know what you mean by my vast experience in this field. The office was created on July 1, 1967, and I don't know who has any vast experience in it. Secondly, I have no idea what the budget requirements would be, except to recommend that the agency be adequately staffed with a budget provided by the Legislature.

Q Well, you indicated that you were a lawyer and you, in fact, practiced in the criminal courts so you must have some experience by your own knowledge in your own practice of law as to the cost of handling these cases and similarly you must realize that these costs now

are accepted by the State with, as you so well expressed it, increased imposed obligations. What I am calling upon from you is, in your experience as a lawyer have you any opinion as to what you would construe, you personally, as one who is unable to pay for his counsel fees and one who should seek the guidance of this system? Where do you draw the line? Who is indigent and who is not, if you know?

A I don't know.

Q Do you feel -- A If you just give me the opportunity, I'll try to answer. It is perhaps the one flaw in the system that subjects this agency to a great deal of criticism and as I have found out in talking to some of their people, most of the cases are isolated. We have in some other projects some guidelines set by the Federal government which in turn are predicated upon income, number of dependents and so on and so forth. We do have under the Public Defender's Act the right of the Public Defender to file a lien for the reasonable or perhaps the actual cost of having handled the case. I have no idea - I am sure Mr. Van Ness in turn would be able to answer it - whether or not that has resulted in any reimbursement to the agency. But in any event, it certainly serves as a lien.

Q I understand that, sir. That is leading up to the question. You as able counsel are anticipating my layman's attempt to ask a question. I would like to phrase it this way. You are aware that the present budget for this

responsibility of government is more than \$3 million at the present time? A Yes, sir.

Q And if I were to tell you, sir, that it is presently in excess of \$3 million a year and a figure - I am not sure as to its accuracy - of \$60,000 was recouped from these persons during that period, would you say that that is a fair return for such an investment? A I don't think if there wasn't a dollar recovered that it would change what is the main thrust of my appearing here. It seems to me if it cost you \$3 million or many times more than that and if as the result of all the liens filed, there was not a cent of recoupment, it still wouldn't change the absolute obligation of every one of those persons being defended with, as I must confess, certainly an isolated case here and there that perhaps becomes glaring in that this person never should have been represented. But excluding that, I think infinitesimal percentage, I don't think the agency would have any choice but to do it.

Q May I say to you, sir, with your suggestions here today and the increases necessary to carry Mr. Van Ness's department of government, if we were to follow the guidelines of your testimony and I were to use a figure, there would be approximately some \$5 million a year expended in the State of New Jersey for this purpose, would you agree that that is a reasonable figure? A Do I agree it is a reasonable figure?

Q Yes. A I will accept that it is, but

I still must say at the risk of perhaps overemphasizing it, if it were \$10 million, I don't see how it could be escaped by the State of New Jersey.

Q All right, sir. Then may I use your figure and propose to you this question: You have used the figure of \$10 million. You are undoubtedly aware that if this system were not in being, \$10 million of legal services would be carried by the Bar of the State of New Jersey. Do you agree to that? A Yes.

Q Can you tell me then why the Bar should not carry its moral responsibility? A Well, let me go beyond that. I think we always did carry our moral responsibility but I really was going to use the argument you just made as my argument. As the result of our Supreme Court's opinion in the State against Rush, the court found that the obligation was a sovereign obligation. But the court added that it felt that part of that should be borne by the members of the Bar and the court then set specific guidelines for the compensation of attorneys who were assigned by the court to handle these cases. So that as we sit here now, assuming that the Office of Public Defender were abolished, assuming it were abolished at the end of this year, and all of this again, if you will pardon my emphasis, the imposed or obligatory work were to be handled by the Bar under the guideline of the Supreme Court's decision, State against Rush, I unhesitatingly make the prediction that it could not be handled as low as it will be handled

by an agency constituted solely to process these cases. I am sure - I will not demean myself - but after 30 years of practice, I certainly would expect to be compensated higher by any judge passing on my bill than a young man in the Office of Public Defender working full time and this is what it would come to.

Q I appreciate your statement in that regard but I will step from that subject for a moment. You mentioned about the men in the back room, the investigators. You failed to consider any of their experience or longevity in service when you equated them with a young man who has been a member of the Bar for six months or a year. I would like to go back to the subject at hand, sir. Are you saying that the decision that you just quoted could be interpreted as saying that the Bar, itself, should carry rather than the State of New Jersey a portion of this? A They do. They have to carry 40 per cent of it.

Q Forty per cent of this \$3 million. A Under the guidelines of State against Rush, the court decided that the reasonable value of the services performed by assigned counsel --

Q As an individual they decided, but not as a Bar, they didn't decide it. Isn't that a fact that if you try a case, your fees are cut commensurately? But you are not saying that the Bar of the State of New Jersey should carry their proportionate 40 per cent of this \$10 million that we propose. A We have no choice. If we abolish

the Office of Public Defender and if the same quantum of cases and collateral costs were to be handled by the Bar and we put our bills in, even with the guideline of the Supreme Court, which is our superior - the Supreme Court decides on what lawyers can do within reason - certainly it is an estimate, somewhat speculative - but I guarantee you that it could not be done as cheaply as it is done by a full-time, constituted office like the Public Defender.

Q I accept that statement that it couldn't be done as cheaply. But isn't it a fact that under your standards of 30 years of experience, you could offer more to that client than the young man with six weeks' experience? A Yes, sir. I may have 30 years' experience but the legs don't stand up any more. I am not being facetious. As a practical matter, from now on the less I have to appear in court all day, the happier I am.

Q You want some of that ivy-tower practice that you inferred a few minutes ago. A I want to go to Mr. Thomas's firm.

ASSEMBLYMAN TURNER: Thank you, sir.

BY ASSEMBLYMAN THOMAS:

Q With respect to upgrading the status of the office, would you recommend that the Public Defender be a member of the cabinet? A I would, sir.

Q You mentioned that you have just been assigned an appeal by Judge Goldmann. Who is going to pay you for it? That is not going to be part of the Public Defender's

budget, is it? A Again, accompanying your assignment, are certain instructions that have been prepared by the court because this apparently has become so voluminous and they make it quite clear that you fill out a form as to all the hours of research and appearance and meeting with the defendant down in prison and what not. And whatever that reasonable cost comes to, you get 60 per cent of it, with a very, very low limit.

Q But who is going to pay it? That's what I am trying to find out. Is the county going to pay it or is it coming from the Public Defender's budget? A I don't know - I really don't. It is the first one I have had. I can't honestly say who pays it.

Q Because under the old system of referral, the county paid that. A I can't escape the nodding of ---

ASSEMBLYMAN TURNER: I can tell you that the system pays it.

MR. HAYDEN: Apparently the Public Defender pays it.

ASSEMBLYMAN TURNER: -- after Judge Goldmann jots it down.

Q There is provision under the Public Defender statute for the creation of a pool of trial lawyers who are not per se on the Public Defender's staff. Now I don't know whether it has been considered that this statute is sufficiently broad to consider that you could have a pool of appellate attorneys. Is there such a thing in Essex

County or any place in the state for that matter? A I don't know. But if I may be brash enough, I would see little merit to it as compared to the full-time experienced men who all day long work on the appellate work. A lot of these things look good on paper, but the human equation comes into it and you don't have the results you seek. All of us, Mr. Thomas, as you know -- speaking for myself, I like the court. That's my ballfield. The library I can live without. There are other fellows that love research. They love to get up a masterful brief. When you talk about these pools, who supervises them? Who is watching all the time that their work product is as good as it should be? Certainly now, I assume, if Mr. Van Ness's staff don't come up to par, aside from anything he may say, our Appellate Judges aren't above spanking lawyers for work that they don't think is well done. It seems to me it would require too much supervision as compared to people who know they are employed by this agency and if their work isn't good, he calls them in and fires them.

Q One other question: Now under the Public Defender system, as you have testified, an indigent defendant as a matter of right must be assigned an attorney and has a right of appeal and all the various steps of appeal, regardless apparently of whether there is apparent merit to his appeal. Doesn't this defendant then actually have a preferred position in the law as opposed to somebody who is allegedly not indigent and must balance the cost of appeal against the merits of his appeal and the advice of

his privately-retained attorney? A Well, there is a lot of merit to your argument. It is a philosophy that in the era we are in now it seems to me perhaps at times to be indigent is better than to be less than affluent. I am in a case now for a man. It is going to be an extended case and the chances are that if he didn't have a job of some annual income, he could go to the courts and be assigned for this long trial and sit there every day and not worry about the days passing. Right now, both he and I are scared to death that the case is going to go on so long, we will both end up broke. The courts say in effect, whatever is available to those who can pay must be available to all. It's a fairly simple ---

Q Wouldn't it follow then that the same valuation that the person must make who can afford to pay should be made with respect to the person who can't afford to pay?

A I would agree to that.

ASSEMBLYMAN TURNER: Would you state
that answer again, sir?

MR. HAYDEN: I agree to that.

ASSEMBLYMAN TURNER: Thank you.

BY ASSEMBLYMAN TURNER:

Q I would like to ask you one question in that regard. Many times one finds himself incarcerated serving a term and still his appeal is continued and rightfully so under the edicts of the court. Do you feel that, as oftentimes happens, when counsel advises his client as to the value of

the appeal, when it is nothing but a continual staying action to attempt to fray at the law and hope for its change at the higher court level, that one who does use this facility for that purpose, even if he is in prison and making a dollar a week, should pay for the privilege to whatever his abilities are? A I have got to confess that I don't follow the thrust of your question.

Q It used to be, sir, under the old system that the guard house lawyer and those who were familiar with the jail house library at least were to collect cigarettes for helping those create appeal. Today society is carrying the load without cigarettes. And I am just wondering if we shouldn't find some way to make those who are incarcerated or stand before the bar clearly realize what society is doing for them under the court edicts and see that they pay as fairly as they can their share. I would just like your endorsement of that. A I'll endorse it.

ASSEMBLYMAN TURNER: Thank you.

ASSEMBLYMAN THOMAS: Thanks, Mr. Hayden.
We will take a short break at this time.

[Short Recess]

After Recess

ASSEMBLYMAN THOMAS: All right, we will reconvene.

Mr. Van Ness --

S T A N L E Y V A N N E S S: Mr. Chairman and Assemblyman Turner, I welcome the opportunity of appearing before this committee to explain the operation of the Office of Public Defender, to give an accounting of my stewardship as the administrative head of that agency, and describe the progress and some of the problems of that office.

At the outset, I feel obliged to point to Assembly Resolution Number 3 which directed this study and to suggest that that resolution creates certain erroneous impressions. The resolution correctly points out that this office has received in the last two and one-half years some \$1.3 million in supplemental appropriations. It does not mention the fact that \$550,000 of those supplemental appropriations were occasioned by the Legislature directing this agency to enlarge its jurisdiction so as to represent certain juveniles, nor does the resolution point out that some \$175,000 of those supplemental appropriations were to cover the cost of two extraordinary murder cases - the Gleason murder case in Plainfield and the "Milkman" murder case in Camden.

ASSEMBLYMAN THOMAS: How much was that?

MR. VAN NESS: The total was \$175,000 for those two cases alone.

Finally, the resolution tends to create an erroneous

impression in suggesting that we seek to double the existing staff. It does not mention that 62 of the positions which we request were temporary positions which were given to the agency when we were given the obligation of representing juveniles and we are requesting that those 62 temporary positions be made permanent.

Despite those erroneous impressions, I would not dispute the fact that the operating costs of this agency have increased markedly since its inception. The appropriation in the first year was \$2 million. In the current year, the appropriation, including the supplemental appropriation, will be \$3.6 million. And next year, the cost of operating this agency will be \$5.1 million.

Among the many other questions which the committee may have, I am sure they are interested in knowing why these increases and I would submit at this time that the simple answer to that inquiry is that the caseload for this organization was originally underestimated and has been growing steadily.

But if the Committee would permit, before I go into the present operation of the program, I would like to just briefly look at the history of representation of indigents in the State of New Jersey.

Now this State long before a Federal constitutional basis for representation of indigents was established recognized that fundamental fairness required that a man who could not hire a lawyer be given representation - thus the assigned counsel system under which the members of the

Bar as part of their professional responsibility represented indigents both at trial and on appeal. Now that system would have met constitutional muster under the famous Gideon case which held that counsel must be assigned in all of the serious crimes.

But while the system might have met constitutional muster, it still was an extremely controversial system. Many members of the Bar felt that they were being asked to shoulder a burden that was properly a public burden and numerous commentators on the system suggested that the indigent defendants were not getting the kind of representation to which they were entitled since in many instances people were being assigned to represent indigents who had very little, if any, criminal experience.

All of this controversy culminated in the State Supreme Court deciding in State v Rush that assigned counsel would thereafter be compensated and would be compensated by county government for representation of indigents.

I happened to be around the Legislature at the time and I recall that there was an immediate reaction from the Freeholders and their professional association and that within six months after Rush had been decided, Chapter 43 of the Laws of 1967 was enacted and that chapter created the first statewide, state-financed Public Defender program in the country.

We estimate that at the end of this fiscal year, the operation of the Office of the Public Defender will have

saved county government, if they were obliged to pay under Rush, some \$11 million.

But let me come back to the question of cost of operation and I would like to submit that it is more helpful to consider the cost per case as opposed to the increase in the total budget of the Office of the Public Defender. The cost per case handled in the three years of the existence of this office has been steadily decreasing. In the first year, the cost was in the neighborhood of \$345 per case. In the second year of operation, it was \$242 per case. In this current fiscal year, we estimate that the cost will be \$206 a case.

It might also be useful to compare the budget for this office and the budget of the County Prosecutor's Office throughout the State. In 1968, the County Prosecutors collectively received appropriations of some \$6.2 million. In the same year, the budget for the Public Defender was \$2 million. In 1969, \$7.5 million was appropriated to the various prosecutor offices. The amount expended by the Public Defender in that year was \$2.67 million. And statistics from the New Jersey Association of Chosen Freeholders for the current calendar year indicate that \$8.7 million will be appropriated to the respective prosecutor offices and that figure does not include the estimated half million dollars which will be necessitated by the Legislature having created full-time prosecutors in nine counties.

Converting our budget to a calendar year, we

estimate that we will have approximately \$4.3 million to operate within a comparable period of time.

I would like to go back and say something about the workload. From the very beginning the office has struggled with a caseload far in excess of that anticipated and far in excess of that for which appropriation was made. Now I have laid out in my annual report and in the budget request for next year's budget the details of those problems and I won't take the committee's time in prolonged repetition.

I would point out, however, that in our budget request - and that was compiled in September of last year - we estimated that some 18,590 cases would be assigned to the Office of the Public Defender during the current fiscal year. Based on our 10-month experience, annualized, projected for two additional months, we estimate that we will receive 18,580 cases in the current year. Now I don't hold that figure out as important as an indication of our accuracy of prediction but rather as a clear demonstration of the problem we have been confronted with. These 18,000 cases approximates an increase of 300 per cent over the estimates that were given in 1967 for annual intake. And if the workload has gone up 300 per cent, it might be interesting to note that the budget for the current year is only 80 per cent higher than it was in the first year of operation.

I would like to try and predict some of the questions that I am sure the committee has and to respond to them in advance.

There have been numerous suggestions raised among some members of the Legislature that we could do something about our appellate costs. Mr. Hayden had something to say about that, but I think it bears some repetition.

Earlier in the year in response to the same kind of inquiry, I provided a memorandum to the Honorable Alfred Schiaffo, the Chairman of the Joint Appropriations Committee. It is my understanding that that memo has been made available to this committee. If it has not, I would be glad to provide copies. In that memo we tried to set out an explanation of our appellate functions and I won't read it to you but I would merely summarize it as follows:

I think that the memo demonstrated conclusively that the existing case law would indicate that an individual has an absolute right to take an appeal. I think the memo further indicates that while we might advise a defendant that his likelihood of success is minimal, if in the final analysis he still wished to appeal, we would have no choice but to represent him.

Further, it is my recollection that the memo suggested that some of these complaints about the volume of appeals might be exaggerated. When we first heard them, we undertook a study of our appellate operation and we found that of the cases that we had disposed of that potentially could have been appealed, no more than 12 per cent were in fact appealed.

Finally, as I think I indicate in the memo, the cost of appeals handled by the Office of the Public Defender through a centralized appeals mechanism located in Newark has been less than \$800 per case. Now that is to be contrasted with the going rate in excess of \$2,000 for handling of an appeal by a private attorney. Included within the \$800 figure is the cost of ordering the trial transcript and that has averaged out to about \$120 per case. So we feel that the costs in the appellate area have not been excessive.

There have been other questions raised about indigency investigations. It has been suggested that many of the people we represent are not indigents. I think that part of that criticism is a result of a misunderstanding as to what indigency is under Chapter 43 of the Laws of 1967. There is no rigid guideline established in that law, rather the statute - and I think quite properly so - recognizes that indigency is a flexible determination, depending upon the nature of the charges against an individual, the probable cost of expense and his present ability to pay.

We have in addition, I think, the need to explain our intake procedure. It bears on this same question of indigency or nonindigency. We do not represent anybody who has not been assigned to the office by the court. Those persons are assigned to the office by the court only after they have executed an affidavit which is provided by the court and scrutinized by the court and some tentative

conclusion reached by a judge that the person is entitled to representation in our office.

Thereafter when the form is referred to the office, the statute contemplates that we take an in-depth examination into the question of indigency in every case. We have not been able to do that in every case. What we have done is to spot check indigency. For instance, in Essex County last summer when we had almost a full complement of investigators, we spot-checked one out of five applications for services and found no one to be ineligible. In addition, if there is a question that arises on the face of the affidavit, an in-depth investigation is conducted. Or if information comes to our attention from whatever source, an in-depth investigation is conducted.

But I wish to be completely candid with the committee. We do not have the capabilities to investigate indigency in every case that comes before us. I frankly don't feel that we have had sufficient investigative staff to thoroughly investigate the operative facts arising out of the criminal charges against people in every case. Certainly, if that is true, I don't have the staff to undertake indigency investigations in every case. I think my primary responsibility is to see that adequate representation is given and under present staffing patterns, I can't justify assigning or spending more investigative time than we have already to the question of indigency investigations.

Up to now I have attempted to predict the concerns

of the committee and to offer some answer to questions they might have and I would like at this point to take the opportunity of expressing some of my own concerns.

In the first instance, I think the Public Defender system is in substantial jeopardy because of a salary schedule that can be described in no other fashion by me but as ridiculous. We are presently offering people \$9,000 a year to start with us on a prime-time basis.

ASSEMBLYMAN THOMAS: On what?

MR. VAN NESS: On a prime-time basis. Where a person has been with the office for a while and has had the benefit of an across-the-board raise or two, which have been given to all State employees for the last two years and then resigns, we have been in a position to hire someone to replace him at a salary above \$9,000. Actually the most frequently used salary because of that 5 per cent increase is \$9,450 now.

In the supplemental appropriation that was passed this year, we had some \$54,000 which could have been used for modest increases and for the establishment of ranges for our attorneys because as it presently stands there is no possibility of giving anyone a raise unless there is an across-the-board raise given all State employees. But while that bill was passed by the Legislature and signed by the Governor, we have not yet been able to obtain the permission of the administration to use the money for that purpose and that despite some continuous efforts on our part.

A special committee appointed by the New Jersey Supreme Court to study the operation of this office slightly more than a year ago described our salary structure as penurious. Since that time the only relief has been the 5 per cent across-the-board raise in July of 1969. In the meantime, the salaries for prosecutors have been increased. As Mr. Hayden pointed out earlier, a full-time prosecutor in a first-class county - or not in a first class county - in one of the nine counties covered by the legislation passed earlier this year is to receive \$32,000. Now scaled down under the statute - and I am not sure what has happened with the most recent statute but under the one that was passed earlier in the year which set the salary at \$32,000 -- if that were scaled down under the statutory requirements for the assistant prosecutors, the minimum salary would be \$12,800 in those counties. Now I have recently heard that in those counties that have gone full time, the actual salaries for assistants have been in the area of \$15,000 - \$16,000. That is on a full-time basis, granted. But I don't think that the disparity between the current hiring salaries of assistant prosecutors and that which we are able to pay is in any way explainable on the basis of a full-time as opposed to a prime-time obligation.

We have instituted a time-keeping system in the office. That system has shown us that our assistants working on a prime-time basis over the last six months have averaged thirty hours per week. Now it is true that they are not

precluded from having an outside practice as long as it does not conflict with the operation of our office. But it is also true that that comes very close to being a full-time work week and I can't justify their being paid on what is at best a part-time salary.

I would like to, before I conclude, tell you what my primary concern is. It is not the cost of operation. It is not indigency investigations. It is not how effective we are as a collection agency. Those things are important. But the primary concern that I have is whether we are providing quality representation for people. We have been told by judges and lawyers that the level of performance is superior, some say vastly superior, to that which was achieved under the assigned counsel system. We have been told that many of our lawyers are equal to any lawyer that could be hired. We know that in the cases that have gone to trial that we have been successful in some 37 per cent of the cases. But none of those factors are enough to assure me that we are giving quality representation when I know as a matter of fact that the workload pressure has been such that we are handling cases without adequate investigation and our attorneys are trying cases without an adequate opportunity to prepare them.

Recently an inmate of the Camden County Jail wrote Governor Cahill a letter complaining that he had not been seen by the Public Defender. That letter was referred to our attention. We sent our Chief Investigator down to

see this particular individual in the Camden County Jail. And when he returned he told me about his interview with the young man. He also told me how he had dutifully explained the severe work pressure on our regional office in Camden, to which the inmate had replied, "That's not my problem." And he is absolutely right. That wasn't his problem. He had enough of his own.

Now I have probably rambled long enough. But I would like to conclude my remarks with just some observations. I think we are all in this room troubled by a rising incidence of crime, a rising incidence of violence. I know I am troubled by it. But I am more troubled by the fact that I sense that there are more and more people that are ready to jettison the next fellow's constitutional rights in response to those problems of crime and violence. Usually the next fellow is poor, he is a member of a minority group or he is young. We can pass preventive detention laws. We can pass "no-knock" laws. We can talk about severe mandatory prison sentences. We can knock a program that is designed to represent indigents and these things might be popular. But I think they tend to divert our attention in a way that I think is disastrous from real problems of poverty, urban blight, an antiquated prison system, an overwhelmed criminal justice system, etc. I think not a smaller commitment is needed in these areas, but clearly a greater commitment.

I am prepared to submit to the Committee's questions.

QUESTIONS BY ASSEMBLYMAN THOMAS:

Q The previous witness suggested that your office should have cabinet rank. Do you agree with that?

A It would seem immodest for me to say so. I do think there ought be autonomy for the office. We are presently attached to the Department of Institutions and Agencies for housekeeping purposes only and I think that was done because of an interpretation of the New Jersey Constitution that has endured for some time to the effect that any agency must be assigned to a principal department of government whether for housekeeping purposes only or not. I don't quarrel with that interpretation of the Constitution. I guess I was around when it was at least being implemented.

I do think that attaching this agency to the Department of Institutions and Agencies may have been a mistake. Whether we have to be attached to a department or not, it seems to me that we are somewhat in an antagonistic position. I don't mean to say that we don't get along with the people in Institutions and Agencies. We do. But their interest, at least part of their interest, is in maintaining a prison system and discipline in the prison system. Their interest is not in a defendant as an individual. I think we might better be located elsewhere.

Q Do you think you should be a separate department?

A I think it should be a separate department, yes.

Q Now both of you have recommended higher salaries for your professional staff and that's what you have been talking about in terms of salaries, have you not?

A Yes. I should have made some mention of the investigative problem that we have also. Presently we are hiring investigators at a beginning salary of \$8124. The civil service requirements for that job are a college degree and one year of criminal investigation experience. They permit the substitution of practical police work for those requirements. But it works out so that an individual must have had eight years' experience as a police officer to meet the requirements to take the examination for investigator in our office. It is pretty common knowledge that patrolmen in even some of the small communities are making \$10,000 and above a year now. When the Hay Committee came out with its recommendation that no salary increases be made for investigators in the Office of Public Defender the results were predictable. I expect that if that judgment holds, we will get mass resignations and I will certainly have extreme difficulty in filling positions which have been created in the next year's budget.

Q Are your investigator positions full time?

A They are full-time civil service.

Q If you were to secure the increased salary for your professional staff, and the starting salary recommended by Mr. Hayden was \$12,000, would you then feel that the individual should go on a full-time basis or continue on a prime-time basis?

A I don't think that \$12,000 on a full-time basis is inappropriate for someone right out of law school, assuming there were ranges that would

enable me to move him up without depending on whether the Legislature or the Governor was going to decide, well, we would give across-the-board raises this year, but regular increments that might take him up to about \$15,000 a year with the passage of time.

I still think that we have a need to continue some people on a prime-time basis. For one, you are apt to get more experienced people interested on that basis. In some parts of the State, we don't need the full-time person because the volume is not that high. I think that we ought to be moving toward the establishment of a system in which perhaps half of the people would be on a full-time no other interest basis and the remaining half on a prime-time basis such as we have now.

Q Are any of your Deputy Public Defenders now on a full-time basis? A I am the only one person in the system that is precluded from having any outside legal business. There are a number of people in the organization that are working on a full-time basis without doing any outside work. But presently we do not have any prohibition against those people doing a will or a contract matter as long as it does not interfere with the operation of the office.

Q Are you able to tell me from the records that you keep how much time each individual is spending on his job? A I could tell you how much time each individual is spending, yes. We have a reporting system which indicates on a weekly basis the hours of time spent

by the individual in the matters that he works on. I don't have any ready reference that I could hand over to tell you that x worked so many hours. It would require some computation.

Q Do you have any of the record forms that you use for this time-keeping process with you? A I am sorry I did not bring a copy, but I will be pleased to forward a copy.

Q Would you make available for the committee copies of all the forms that your office uses - I don't care what capacity it is - from the time the person comes in and you process them through, together with your internal administrative records and your time records? A All right. I think I have here all of the forms that would be filled out by the office in connection with a defendant, his initial interview forms and his reimbursement agreement and lien forms.

Q I want those, but in addition I would like to have the administrative forms. A We will provide you with the internal forms certainly.

Q For instance, can you tell me whether or not Mr. Ronco in Essex works full time? A Mr. Ronco in Essex has been averaging in excess of 40 hours a week in our business, which means it is full time by any ordinary standard.

Q You know lawyers don't use ordinary standards when it comes to time. A He may have done something

outside but I would consider him a full-time employee.

Q Well, wouldn't you consider the salaries that your Deputy Defenders are presently receiving to be more than adequate? A No, I would not. Let's take Mr.

Ronco since you mentioned him. In Essex County we have 90 per cent of the criminal business. The County Prosecutor who is not presently full time is paid \$24,000 a year. Mr. Ronco is paid \$19,120 or something like that. When the Prosecutor, if he does, elects to go full time, his salary will be \$32,000 a year. Mr. Ronco's will still be \$19,000, whatever it is. Not only is Mr. Ronco asked to administer an office handling 90 per cent of the criminal business, he is asked to do it with a staff less than half that available to the Prosecutor. There are eight authorized investigators in the Essex Region. I think we had eight for a total of two weeks. We have been operating with three or four. Now the Prosecutor has available investigators and county detectives that number in excess of forty. He has, in addition, the police departments in every municipality in Essex County available to him if he needs them. It seems to me Mr. Ronco, if he is to be used as an example, has been operating under substantial handicap at a greatly reduced compensation.

Q Do you have the ability to shift your Deputies and Assistant Deputies from one area to another, to use them where the caseload would require an influx of additional attorneys? A We certainly have the authority. We

have done it. The practical extent to which it is possible is something else. When we put the time-keeping in, we were able to see that the Morris County Office was perhaps overstaffed. We removed one of the positions from Morris County. We were able to see that while Bergen County was handling a high volume of business, the time expended was not equal to that expended some other places. We removed a position from Passaic County and put both of those into Essex County. But you run into practical limitations when you are dealing with people who are working on a prime-time basis. If I am paying somebody \$9,450 and he is interested in the job because he thinks he can supplement that income by two or three thousand dollars operating out of his own office doing his own work, that means that he has to be pretty close to his own office to supplement his income. If I suggest to him, now tomorrow you are going to be working in Camden County as opposed to Essex County, then I can expect his resignation. If we were able to develop the kind of cadre of full-time people, we would certainly have greater flexibility in that regard.

Q Wouldn't it be reasonable then to assume if you put your Deputies and Assistant Deputies full time, that you might be able to reduce the number that you had and get more of a workload out of them? Of course, at the same time increase their salary to what you would need to attract them.

A I don't think that there is a possibility of reducing the number. I think that if we had full-time

people, we might be able to reduce the need for increased numbers or at least not need so many additional people. In addition to the caseload, you have a situation in which a judge expects his court to be manned regardless of caseload considerations and, if the assignment judge decides that nine judges are going to sit criminal and he is going to stop the civil list, as happened in Passaic County last year, then nine courts have to be manned whether it is five hours or six hours a day or whether it is two hours a day. So there is another factor involved in here and, that is, the number of judges that are sitting criminal and the number of bodies that are necessary to man that court. So if we were to have everybody working full time that we presently have, it would still not answer the total need.

Q Do you keep a central calendar of cases?

A Do I in the State Office?

Q Yes. A No, we do not.

Q Is there any place where a central calendar of all the cases is kept? A No, the calendar is

maintained at the regional level. We do have some contact with our regions and we do know when the calendar is going haywire, if you will, in terms of additional cases. But I do not have in my office a calendar which would show that I have ten cases being tried in Essex County on May 15th.

Q Do your time records show where each individual attorney is on each hour of each work day? A The time

records are broken down into certain categories of service -- on trial, awaiting trial, research in the office. I don't remember them all. There are blocks provided for the hours of the day and there is an indication given on the time sheet as to how much time that particular day was spent in each of the various activities of the office.

Q Could you, for instance, look back through the records and say where Allan Kirby was on May 15th, 1970?

A I might be able to; I might not be able to, depending on the accuracy of his report on that particular day.

Q Well, assuming that he is accurately reporting --
A Oh, yes, I could tell where he was on that day.

Q Then your time sheets are kept on a daily basis.
A They are submitted on a weekly basis, but for each day.

Q Right. So that he would show on May 15th he was in a certain court before a certain judge on a certain case, doing a certain type of work. A He would indicate that on that day he was in Municipal Court and the name of the case that he was involved in. He would not indicate the name of the judge or whatever else you asked me.

Q Do the Deputy Public Defenders go to court?
A Yes, it depends on the region and how much administrative burden there is. Mr. Ronco has tried a half a dozen murder cases in the last year. He is the deputy in the Essex Office. He has a substantial administrative responsibility to run an office that size. In our smaller offices the

Deputy takes his turn just like every Assistant does.

Q Do you have any full-time professional help with you in your office and by that I mean a Deputy Public Defender?

A I have two Administrative Assistants, one in charge of the northern region, one in charge of the southern region who ride circuit, so to speak. Both of them have the ability of maintaining an outside practice.

Q If you had all of your professional people, all of your lawyers on a full-time basis, wouldn't it be better to run this office in effect like a large single law office?

A We think that we are doing that now or we are trying to. I am not sure that I follow you.

Q Well, any large law office that has an extensive trial coverage keeps in effect a trial calendar as well as a calendar of all other activities related to the trial of cases, taking of depositions, appearances on motions, and so forth. And there is a great deal of flexibility because there is a need for flexibility on the assignment of the particular appearance on any particular case, depending on who is available on that day. It doesn't seem to me that with this regional setup and part-time basis that you have the flexibility to run this like a single office and get the maximum number of hours out of your attorneys.

A I don't know that there is a law office in the entire country that does extensive trial practice in more than one county on a regular basis. The calendar is going to be handled principally by the assignment judge of

that county. To remove that ability to respond from a local regional office to the assignment judge means that I am going to be trying to handle the calendar in 21 counties at one time and, frankly, it is not a prospect that I relish. I think with a regional office and a regional deputy in contact with the prosecutor in that county and in contact with the assignment judge who has responsibility for that county that the calendar can be managed. And we do, particularly in the big counties, take people on an availability basis. In other words, you may find one attorney that appears at an arraignment and another attorney that appears at trial and another attorney that appears at sentence. There are certain disadvantages in that also. You know, we could mechanize this and put it all into a computer but we are still dealing with human beings who feel that they are entitled, and I agree that they are entitled, to know who their lawyer is, to have that same opportunity to consult with him that they would have if they were able to hire a lawyer. So I think we can go too far towards mechanizing this thing, if you will.

Q Do you have records that would indicate the number of cases - that would break down the number of types of cases that you have? A Yes.

Q For instance, into arson, rape and burglary and so forth? A Yes. One of the problems - we have all that information - we have a retrieval problem. I have asked for authorization to go into some data processing

which would enable us to retrieve that information on a ready basis. Right now it involves people going back through cards. All the information is there, but it would take some time to put it together currently.

Q Then I understand you don't have it available. In other words, you couldn't say what for 1969 the number of arson cases was.

A I could say for 1969 the number of arson cases. I could not tell you as of today we have handled x number of arson cases. The retrieval is accomplished on a regular basis but it is always behind. For instance, I can tell you we had 128 murder cases last year. I could not tell you how many murder cases we have had in the first ten months. But given a couple of days or so if it were needed, I could give you that.

Q May I make the suggestion as a part of your yearly report - and it may be in here but I don't think it is --

A No, it is not.

Q [Continuing] -- the breakdown of the types of cases. In connection with this, do you have a system whereby if somebody is going in to try an arson case, he has available to him from some central pool whatever the law is in that case. Or even take it one step further, if there is an appeal in an arson case, is there something like a master brief that you have?

A On the appellate level we have a brief bank, if you will, so that if an appeal is assigned and the charge is arson, the person to whom it is assigned can go to a central file and see if

they have had another brief filed in a similar case and can use that other brief for a substantial part of the research. It would have to be updated. On a day to day basis in a trial region, no, there is no centralized research facility available for trial counsel. Frankly, if we had one in some of our busy counties, I don't know if the lawyers would have time to take advantage of it. We have instances in which people are walking out of one trial into another trial. That's the kind of thing that I am trying to emphasize here today. When we get to that point, then I have to wonder whether we are doing what I think the statute intended be done, and that is giving an indigent the same break that he would have if he had money.

Q How do you handle your brief production on appeals? Is there some central committee or group or is there a group of attorneys that do nothing but turn out briefs on appeal?

A We have a centralized appellate section that operates out of 1100 Raymond Boulevard under the direction of two Deputy Public Defenders.

Q Will they turn out a brief for Cape May as well as Bergen County?

A Yes, regardless of where the case comes from.

Q And is that where you have your brief bank?

A Yes.

Q Has anything been prepared by your office to give to each of your Assistants that are out in the field in the form of a master or standard law reference - and again

I am coming back to, for instance, what the law in New Jersey is in arson - so that he could pick this up and in a moment have what the law on arson is and with, backing that up, somebody continually reading the New Jersey Advance Sheets and whatever Federal Advance Sheets are necessary to keep it up to date and supplement it from time to time

with whatever new cases come out? A It is customary for our appellate section to forward or to circulate - or to forward to me and in turn me circulate - any recent cases of substantial importance. We do that on a customary basis. In terms of what the law is in a particular crime, there are available text books that are geared to New Jersey which tell you what the elements in the offense of larceny are. Schlosser, I think, has an excellent book. Those are available. I would hate to say that we have provided that book for every office, but I am sure that our deputies are aware of its existence and can make use of it.

In terms of a regular - just repetition of what the law is or what we think it is going to be, no, we do not have that kind of service.

Q What happens today if you go in on a motion to suppress on an allegation of illegal search and seizure? You have to have a brief. Now we are not on the appellate level here. Yet your brief here could almost be a standard brief in every case with a change here and there as the facts would dictate. Do you have that kind of thing?

A Yes, that is being utilized in our regional offices. The

motions are being handled by our trial attorneys. I should point out though that there are a number of judges who object to the canned brief approach on a motion to suppress, if you will, and have taken the time to let me know that that is the case.

ASSEMBLYMAN TURNER: Could you submit their names?

MR. VAN NESS: No, I wouldn't submit their names.

Q Do you see anything wrong with the canned brief approach? I am not trying to put you on the spot now. That genuinely interests me because there is just so much on the law of illegal search and seizure that you can have. I mean, what do you need to know? A If you have the same issues in an identical fact situation, there is nothing wrong with using a brief or plagiarizing from a brief, if you will, that has been filed before.

Q I mean, judges do that in their decisions.

A I wouldn't accuse them of that.

ASSEMBLYMAN THOMAS: Do you want to take over some questions while I look over my notes?

ASSEMBLYMAN TURNER: Yes.

BY ASSEMBLYMAN TURNER:

Q Mr. Van Ness, first I would like to make a statement, sir. I appreciate your candid statements and your explanation, even your anticipation. You have weakened, shall I say, my cross examination. But I am concerned about the particular question of society recovering the money spent, and I ask you, as to your honest statement of checking out and spot-checking one out of five applications, whether or not you feel that this is a good practice - to which I presume the answer would be no. I think, if I may continue, you would substantiate your position by saying you were not adequately staffed.

In that regard, sir, and referring to prior conversations with reference to a present bill which I sponsored in the Legislature, I am wondering whether or not you would agree with me that as we have the facilities in each of the counties, the County Adjuster's Office, whether it wouldn't be proper to remove that responsibility and function from your department, though I may be presuming in that regard, and allow the counties to review these applications and to be responsible for the recouping of what moneys they can and thus take the benefit.

A Well, let me say this: I think that if there has been one area of criticism that has come at this agency more frequently than any other, it is on this question of indigency and I guess I should be quick to say let somebody else worry about it and have our people get on with the business at hand of providing representation. In terms of the collection effort, which I think was part of your suggestion, I see no problem if there is

going to be some effort made to collect. I might question the wisdom on a cost benefit basis but I would welcome anybody else undertaking that collection effort. I think it is somewhat incompatible with our providing representation for an individual and then in turn dunning him.

A Unless you are truly practicing law as an individual rather than as a representative of the State -

A On the former part of your suggestion though, the determination of indigency, I see certain practical problems with it. I don't reject it out of hand; I do think that the courts might be consulted in terms of how that would affect their handling of the calendar and knowing when a person was going to be represented and by whom. I think there are some very practical problems.

Q Someone kindly forwarded to me a copy of the application and, under paragraph G which is the question of workmen's compensation suits pending under Title 34 - expressing my ignorance of the law - I am wondering whether or not you have a right to attach those moneys. Do you in fact?

A That is a form that is prepared by the Court. We have been asked to comment from time to time. I think we might have a right to attach it. But I would not want to give you a legal opinion on it. I would rather the court defend its own form, if you will.

Q With reference to this application, are there any other paragraphs that, if you were to give someone a legal opinion, you would question?

A There is some reference there to the assets of spouse which would raise some question in my mind as to the legal obligation of a spouse to provide representation for her counterpart. I

might find some other problems in there if I looked at it, too.

Q What about the juvenile? Is any effort made to determine the financial ability of parents to pay?

A Yes, there is. We ask the parents to provide us with the same kind of information. The court provides a form for the parents also. You start to run into different legal problems here. For instance, in many instances the complaining witness against the juvenile may be the parent. The parent may have some means. In those circumstances we feel obliged to represent the juvenile who doesn't have means of his own. It has been suggested that, having done so, the court might enter an order requiring the parent to pay notwithstanding their antagonistic position under the common law doctrine of necessity. That has not been tested out to my knowledge.

BY ASSEMBLYMAN THOMAS:

Q Well, the statute permits that. It permits you to go after the parent for the money, doesn't it? A Well, we can go after the parent for the money, yes, and do.

Q The question is, do you? A Yes, we have filed a lien against the parents in cases where we have represented a juvenile. I was talking about a particular situation as to indigency and not whether we go after the money -

BY ASSEMBLYMAN TURNER:

Q If I may, sir, I would like to go back to the application and I would like to formally request of you

that you serve upon the Committee when the opportunity arises a copy of the application that covers juveniles.

A Yes.

Q And additionally I would like you to give me a breakdown, when the opportunity again arises, referring to your letter of April 15 and that portion thereof that reflects that the State has recouped in excess of \$60,000. I would like to know what kind of cases, if you can basically give me some understanding, and particularly how many cases that represents and what portion of the fee that your agency -

A Well, I can offer some information on that now.

Q I think in fairness to your agency, if I may refer to it in that light, I would really like to know some statistics rather than generalities.

A I think maybe I can give you some statistics. Of the \$64,000 - slightly in excess and I will provide you with the exact figure - of the some \$64,000 that has been recovered as of the 1st of May from the beginning, \$35,000 of that has been by way of satisfaction of liens. Now outstanding is some 1.3 million dollars worth of liens which you can relate to \$30,000.

Q Can I stop you at that point, because you have given me now the ammunition for the next question.

A All right,

Q You mention 1.3 million dollars?

A Outstanding in liens, yes.

Q How can you equate only having 1.3 million dollars in liens in lieu of the money that your agency

has spent. And if I may interrupt you and speak in generalities for a moment, when one commonly practices law as a law firm they consider, you know, heat, light, the senior partner, the law clerk, and all those things it takes to make that organization capable of practicing law as it should. My question is, is that the basis of your evaluation of services in an individual case or are you just saying "Mr. X for 3 hours - \$10.00 an hour," and that is his service? I want an explanation. A The latter is the case. We do not attempt to put in the fixed expenses or to make any allocation of those expenses in our preparation of lien forms. In addition, I should say that during the initial stages of the operation of this office, I think for good and sufficient reason, attention was given to other aspects than the filing of the lien.

Q I can appreciate that. A We have been attempting to catch up with the filing of those liens. That would not be a current figure. In addition, we prepared and this Legislature enacted a law last year which facilitated the docketing of those liens. Prior to the enactment of that law, it required a special court appearance with the defendant. The liens were not being filed by trial counsel in all cases. With the amended law it is possible now to docket the liens automatically, advise the defendant of the amount of the lien, and give him an opportunity to come forth and contest it.

Q My associate counsel here today used the word "canned," so I may use the word "canned" in another respect.

I presume that when you meet your client, whoever your representative may be, he has many canned statements, including advising him about the Fifth Amendment, and interrogating him as to what he has done and explaining to him the relationship that exists only between client and counsel. I am wondering if there is a record in that man's file, not the discussions but the occasions when he has visited him or he has acted as counsel, the occasions when an investigator has acted on this case, and if there is an accurate and complete record as to the cost on a manpower basis in preparing this man's defense. Is there such a record? A There should be. It is our policy to require it. I would not be so foolhardy as to say it has been done in every case.

Q I understand that, sir, but the purpose of my question is to create that, and I am aware that it will increase, shall we say, the expense of handling that case, but I think the time has gone in your agency and it has survived such a period of time that it should now be done. Would you review my request in that regard and comply with it? A Yes, sir.

Q Now, sir, I would like to ask you some questions about the prime time that you mentioned. You are, I am sure, personally familiar with most of the people who actually try cases on your staff. A Certainly with most of them. There are some people that I have just met.

Q Mr. Ronco? A Yes.

Q Well, according to your records, his salary is \$19,152. A \$19,152? \$19,175.

Q Does he have a law office of his own? A I

think he has his name on the door of a law office, yes, sir.

Q As a partner or as an individual? A As an individual, I believe.

Q Could you tell me how many of those who act as public defenders do not have similar law offices?

A I would have to consult the deputies in each region and perhaps even the individual. For instance, in our Appellate Section the vast majority do nothing else.

Q Could you tell me, from the limited existence of the Public Defender's Office, the rate of turnover of these people? A Right. In the past year we have had a turnover of 30 per cent. In the first nine months that I was there, and that overlaps the past year, the rate was 25 per cent.

Q Are you aware of the turnover in Assistant Prosecutors similarly? A No, I am not.

Q I have heard the testimony of the gentleman, Mr. Hayden, who testified before you, in substantiation of increased monetary consideration, and have similarly taken note of yours - a 300 per cent increase in your trial work and only an 80 per cent increase in your budget. A Yes, sir.

Q But even with those statistics, I would like to ask you some questions: You are aware that the Prosecutor's Office investigates many offenses that don't come before the bar or become public knowledge, are you not?

A Oh, yes, they may have obligations before the Grand Jury.

Q They certainly do, and in many cases that Grand Jury stays until you become involved. Isn't that true?

A We have certain obligations that the Prosecutor doesn't have.

Q And you are not trying to then equate or to say that your responsibilities are the same as his, are you?

A Oh, no, I don't mean to equate the responsibilities. I just point out what I think is a vast disparity in the public response to his functions as opposed to public response to our own.

Q Now, with reference to Camden County, if I may use that as an example for the moment, the Camden County Office cares for the Camden, Gloucester and Salem region, does it not? A Yes.

Q Your records indicate that the Deputy Public Defender has a salary of \$14,700. A That is correct.

Q If I were to tell you that the Prosecutor of Gloucester County has a salary of \$12,000, would you feel that - A I would not dispute that. I think that would be factual.

Q Then would you say that her salary is fair and equal as compared to his? A If she were representing people only in Gloucester County, I would say definitely so, but she isn't.

Q Now I would like to ask you about some of these people of that region, if you are familiar with them. Do you have any knowledge of their experience, how long they have been out of law school? A Immediate, at my fingertips, knowledge, I would have to say no. Several are very recent graduates of law school.

Q Then would you be kind enough to submit to me more substantiation of your recommendations of increased

salaries? I would like to know more about the pay scales as compared to experience and, when you talk about someone who is in municipal court on one charge or handling an appeal on a murder charge, certainly there is a different valuation of services. I would like, when the opportunity arises, a written opinion about the salary scales, if you would.

A I think I could provide you with some correspondence that I have forwarded to Mr. Wechsler in the Budget Division and to Mr. Cornell in Civil Service to be forwarded on to the Hay Committee which would reflect our thinking on salaries.

In further response to your question, there are a couple of examples that I might point to; for instance, people who are being hired as clerks to Appellate Division Judges have to have completed law school; they need not have been admitted to practice law. Their salary is \$10,800 per year.

Q Will you be kind enough to let the record also note that their scholastic standing when they leave institutions of higher learning- I think it's very high, is it not?

A All right, but I would not lightly say that people who are coming into our Appellate Division, for example, are not of comparable intellectual ability and have demonstrated that.

Q Because I represent mediocracy I have a right to ask that question. I would like to ask you about your report, this report that you submitted. Can you tell me how many copies of that were printed?

A One thousand copies of it were printed.

Q Can you tell me the cost of that? A The total cost was \$3100 for printing those thousand copies.

Q It cost \$3.10 apiece? A I guess that would work out to be \$3.10 apiece. I might also point out that it is the first annual report, there having been none filed after the first year of the operation, so if we wanted to put it on an annual basis it would work out to about \$1500. a year.

Q I would like to make a request upon you, sir. I heard you state earlier and I know it to be a fact that you have been around here for some time. Would you kindly familiarize yourself with the reports put out by the Assembly Committees and see if you can't save a few taxpayers' dollars in that regard? A I would, but I might also compare it to some of the reports that are put out by executive agencies from time to time, and I think, in comparing it with those, that that is a modestly-priced document.

Q I appreciate your statement but as a new broom I am a little concerned about the taxpayers in that regard. A I'm sure of that, sir.

Q I have a few other questions if I may. With the question of services, you do agree that the cost of the agency should be such that the people who get the services should in fact pay for them or at least liens should be filed. A Well, certainly the statute requires that a lien be filed and I am sworn to abide by the statute, and I think we have tried. If you are asking me for a personal opinion, I would have to say

this, that serious question has been raised as to the constitutionality of that, as I may have mentioned before, and serious question exists in my mind as to the cost benefit basis under which we are attempting to collect this money, but I would not give you a final judgment on that until we had some further experience with a going procedure that we are trying to work out.

Q If I may retort, you kindly did advise me of that and I would like to say, not unkindly, that sometimes lawyers make bad laws, or Judges do. But the case that you refer to is in fact a California case which was a part of the sentence given down by the court. A Right.

Q And it's not in fact the same as what I am proposing here. Isn't that so? A No two cases would in fact be the same. I would point to some rather broad language that was used by the California Supreme Court.

Q But I think it is unfair to allow those who may read the record to construe that it is not constitutional.

A I would correct that. Certainly the ruling of a California Supreme Court would have no bearing upon the constitutionality of the statute that I am operating under, and we would await judicial evaluation in New Jersey before -

Q Thank you, sir. Now there is one other question that I would like to ask you. In reference to the courts assignment judges suddenly deciding they have to get rid of this criminal list which is the concern of all, not just

the judges, is there any dialogue between you and the upper courts as to how best we can serve the citizenry and justice in this regard? A I think I would say there has been dialogue. In the final analysis though, it is the court that is going to control its own calendar. We have consulted with many of the assignment judges from time to time and made suggestions as to how we might handle a backlog. But again, in the final analysis, they have to do what they think is required of them.

Q Do you from your experience construe that we should have continuing criminal trial courts? A They are continuing now with the exception of the month of August which is a light month. They are now operating under an eleven month basis. I would hesitate to say that it ought to be going 12 months a year, 24 hours a day, or what. I know of some areas in Philadelphia where they run a municipal court 24 hours a day. I think, as I indicated to Assemblyman Thomas before, we can go too far in making this an effective and efficient streamlined system and ignore the human elements that are involved.

BY ASSEMBLYMAN THOMAS:

Q Mr. Van Ness, you indicated that you can't give a raise unless there is an across-the-board raise for all State employees. Can't you determine under the statute what your Deputies are to get? A I can determine what they should get but unless I take it out of my own pocket -

Q That isn't what I mean. You have a budget of necessity, but you can assign salaries as you see fit

within the confines of that budget, can you not?

A Within the confines of the budget, yes.

Q The budget doesn't provide a line item that binds you to a particular salary for a particular individual, does it? A No but the budget does provide a lump sum that may be used for salaries and then it is incumbent upon me to divide the bodies into the lump sum and it comes out to the same thing.

Q I understand that but then you indicated you had some fifty some odd thousand dollars at some recent period of time but you didn't feel you could use it because there had not been salary increases given by the State. A No, no. Let me clarify that. As part of the supplemental appropriation request, we requested some \$54,000 which would have done two things. It would have enabled us to go from a no-range to a range conditioned for our attorneys, and it would have in addition created certain full-time positions at an increased emolument. That was enacted into law. But that's not the end of it, although I thought that that might have been the end of it initially. We were then obliged to go to Civil Service to get approval of the range that we had set out.

Q For your lawyers? A Oh, yes, for lawyers.

Q Why do you have to do that? Excuse my ignorance.

A That's the way it operates around here. That's the only answer I have. I mean, we are a State agency and subject to the same restrictions and regulations as other State agencies are.

Q If the statute says you can hire Deputies and Assistant Deputies at such salaries as you shall set, now if you appoint a brilliant guy from some great law school who was Number 1 in his class and in the Law Review and all the rest, and if you want him for your Appellate Section and in order to get him you need to pay him \$15,000, you can do it under the statute, can you not? You don't have to consult with any Civil Service people, do you? Or do you? That's what I'm trying to find out. A The answer is that I do, and I think you would find analgous language in many other statutes relating to State agencies which suggest that the agency head has the authority of establishing salary. But the fact of the matter is that that is somewhat illusory because it involves civil service approval and budget approval.

Q Why do you have to have civil service approval to hire a lawyer? A I don't have to have civil service approval to hire a lawyer -

Q I don't mean that - to pay him a salary - approve his salary. A This is going to sound rather - because that's the way it's done.

Q But the statute says - A I think you might ask frankly people in the Budget and Civil Service why that's the case more properly than here.

Q Maybe that's some of our problem around here.

ASSEMBLYMAN TURNER: Pardon me, Mr. Chairman, but you're reflecting the fact that you're a lawyer.

A It has been pointed out to me that there is a budget

statute which apparently overrides some of this general language.

Q Would you let me have that budget statute that overrides this, please? A All right.

Q Because this says, "They shall serve at the pleasure of the Public Defender and shall receive such salaries as he shall from time to time designate." That is 2A:158A-6. A Some of my attorneys have a difficult time reconciling this apparent inconsistency also.

Q O.K. But I would like to know what this budget reference is. Have you established a salary schedule or salary ranges for various grades of attorneys? Could you give us that, too? A I can give you a copy - again "established" is not the right word. "Requested" is the right word.

Q Well whatever you have. A Right.

Q For instance, if I came to you and asked you for a job, I would want to know what my salary was going to be, and you would pull out your schedule and say, "Here's the salary range for your particular position. You're a brand new man" - A I couldn't do that at this moment. If the authorization that we have sought is given us, then perhaps I might be able to do it.

Q Well, again, do you have a schedule of salary ranges for each type of job that you have available?

A That is presently being considered by the Hay Committee. I will give you what I have given them.

Q All right, fine.

BY ASSEMBLYMAN TURNER:

Q So the record will be clear, I, sir, am an investigator and I think you are entitled to equal privileges under the law, but I would like to refer you to this very fine production. I notice, sir, the pages aren't numbered, and that similarly I will make a part of my request for the following year. In this day and time when we are concerned with the rights of all, I would like you in your next year's breakdown to break it down by county. It has a value not particularly to you but to those concerned in other aspects of law enforcement. We would like to know, in addition to the cases handled, how many are won and how many are lost. Would you be kind enough to clarify it by the counties?

A Per county. I could have given you more information but I was trying to keep the cost down.

Q If you mimeograph it, sir, it is not as expensive.

A I do have some additional information that would not meet all of your requirements but it would give you more information.

Q I want to make it very clear that my questions not only concern your department but also the question of the Prosecutor's Office which has come up here today, and similarly we are concerned with all aspects of law enforcement.

BY MR. THOMPSON:

Q Do you have a per case record of the time and the

type of time that is spent on each particular individual case? A No. That probably could be deduced from the time records. It has never come up before. I would think it would be a considerable problem.

Q Why would that be a problem? A Well, it would involve going back through all of the time reports.

Q I am not asking you now. Suppose you were to have a per case record kept from now on. Would that pose an insurmountable administrative problem in your office? A Not an insurmountable administrative problem, no. You do run into this situation in which, for instance, one lawyer may handle sentences on a particular day. There may be fifteen or twenty files that he will handle at that time. He is starting to break down his time in rather minute fractions as opposed to the very need for that in a private law firm where you are going to bill and you are not handling that volume of cases. We have had some question as to whether it really makes sense to break things down that finely.

Q Well, do you assign a particular number of every case that comes into your system? A Yes.

Q Wouldn't it be a relatively simple thing for an attorney to have his bundle of files and on a Friday, when he's got motions on 12 different cases, just to make a note on his record for that day that 1, 2, 3 case, motion, X amount of time and it all go into a central filing office.

A If we had some capacity to handle this on a machine basis, I think it might be useful.

Q What do you mean by capacity on a machine basis?
I mean services are available now. A We are talking about more paper than we are presently accumulating and we're going to be soon overwhelmed with that which we are presently accumulating.

Q That's not what I'm talking about now.

A You are talking about the notation on a file?

Q Not on the file itself, but on a daily time record basis so that for each day of time that an attorney spent he would indicate each case, the amount of time he spent on it and what he did on it, and then that would go to your central bookkeeping section and this could all be kept on a computer basis. A Well, I was referring to a computer. That's possible. What we did do when we devised our form was frankly to compromise the kind of detailed time record-keeping system that you are talking about on the one hand, where I think the undesirable feeling on the part of professionals and the others is that they don't wish to keep time. We have a middle ground.

BY MR. TURNER:

Q A law firm loses money if it doesn't keep time, sir, and maybe those who enjoy the pleasure and the amnesty of not having to openly practice law in your organization feel that way, but there is one thing that does concern me. Additionally, not only does this keep a record of the time the client is entitled to pay back to the State but, as well, it gives those who review the records an opportunity to know that Mr. X was in

fact in court and he did in fact appeal this case and he was or was not successful. Now whether he had one or seven appeals - if it were a private client maybe each client would pay individually, and that's not the question - the question is whether or not there should be some record kept so that the cost of this exercise not only could be applied but also that someone would know in fact that these activities were performed as they should be.

A I don't want to leave the Committee with the impression that no records are presently being kept. I think we are talking here about the difference between the records as kept and some more refined system. We do have a record of who appeared when and for whom, and we do have a record as to how much time was spent in a particular case. Those records are available.

ASSEMBLYMAN TURNER: Maybe if Mr. Thomas, with no disrespect to the chair, had invoked the right of res ipsa loquitur, we would have the answers to those questions by duces tecum, shall we say.

ASSEMBLYMAN THOMAS:

Q How do you figure out now the cost on a case basis in order to file a lien? A On the basis of the time spent by the attorney with reference to the fee schedule that we use for pool attorneys.

Q Now would you supply us with that fee schedule?

A Yes, I have a copy of that here which I will leave with you.

Q Let's say that I handled - I don't know why I pick on arson as a crime - but an arson case, and I spent 30 hours

on a case. Would that be the only criteria, the number of hours that were spent? Do you have a scale for the type of case? Do you have a scale for the attorney who handles it, or what? A No, it is a scale only on time spent.

Q Is the same time scale assigned for every case, regardless of the type of case? A No. This is by way of affidavit, if we are talking about how much time they spent. Maybe not an exact but certainly a good approximation is determined from the amount of time spent in relationship to the type of case; for instance, you certainly don't expect a murder case to be handled in the same amount of time as an arson case.

Q Well, if I spend 30 hours handling your arson case, what do you file on the lien for that. A On the lien, if you were -

Q I'm your lawyer. I'm not a pool lawyer. A All right. Well, we use the pool fee schedule reference. We pay \$125 now a day at trial. So let's say you were in trial one day and you received \$125 for that. The rest of the time was out-of-court preparation which we pay at \$15 an hour.

Q Well then you do break it down on that basis?

A Oh, yes.

Q So it's \$125 per day at trial and \$15 an hour on other preparation. A Yes, out-of-court preparation is broken down - in municipal court we are paying \$7.00. The whole schedule can be made available.

BY ASSEMBLYMAN TURNER:

Q How do you face \$125 a day or substantiate that with minimum bar schedules? A Remember, we operate throughout the State. The minimum fee schedule in our urban counties is \$200 a day. We were paying \$100 a day until about six or seven weeks ago when we increased it. We increased it in response to complaints and our inability to get people to take pool cases, and on the 60 per cent figure of Rush, the \$125 approximates it.

BY ASSEMBLYMAN THOMAS:

Q You gave us a figure before of the cost per case to your office of \$206. A For the current year.

Q How do you figure that? The total number of cases divided into your budget, is that the way that is figured or arrived at? A That is the Appellate cost.

Those are the trial costs. I have given you a separate figure for the cost of appeal which is under \$800.

Q Well then, if I took the total number of trials you had and multiplied it by 206 and the total number of appeals you had and multiplied it by 800, I would come up with your total budget? A Pretty close to it I would think it would work out.

BY ASSEMBLYMAN TURNER:

Q How could you substantiate the fact that for one arson case you spend \$20 worth of time and it doesn't go any farther, versus the other one goes to 14 days of trial. You are not saying you charge -

A One may be more complicated than the other.

Q Yes, but would the fee be the same? A Oh, no, depending again on the amount of time. We do not

pay by the case but by the time spent, and we file our lien based on the time spent.

Q You are saying you have how many million dollars worth of liens? A I think it is 1.3 outstanding and filed.

Q That will cover all of your budget since the time that the law was changed? A No, it doesn't cover all of my budget as I explained before that there was a lag in the filing of liens. Those files certainly do not represent all those cases closed at the moment. That is something we are working at, the filing of the lien -

Q I feel the fine edge of knowledge that flows from you and the understanding that you have and the direction that you give these people who serve the clients - I think similarly they should pay for that, just the same as they would in any other - A I'm sorry, you lost me on that.

Q Well, I think that they should pay for those who supervise and direct. A The overhead cost then.

Q Right. They certainly would if they were represented by counsel in the other circumstances, would they not? A They would and I guess reasonable men might differ on whether it ought to be part of the cost or not. We are talking in terms of the actual service to them and I guess part of that service is the overhead cost. I think if we were to split our overhead costs among all of the people that we serve, it would not represent an appreciable increase in their obligation to repay.

ASSEMBLYMAN THOMAS: We shall break for lunch and be back at two.

[Recess]

(Afternoon session)

ASSEMBLYMAN THOMAS: Are you ready to proceed, Mr. VanNess?

MR. VAN NESS: Yes, sir.

BY ASSEMBLYMAN THOMAS:

Q I understand from your testimony this morning that your own office staff has been the one doing whatever investigation is done as to the monetary qualifications of your clients. Have you given any thought to retaining some outside service for doing this?

A You are talking in terms of a credit agency or something of that nature?

Q Right. A Yes, we did make inquiries at one time. It was a serious question in our minds as to whether it made sense, monetarily for what they wanted to do it for and, having seen a sample of the kind of report that they were prepared to give us, I had some question as to whether it would be very productive. It is something that perhaps could be explored further but we did make one pleading effort in that regard.

Q Can you tell me with what agency you made your inquiry?

A I don't recall the name of it. I am sure that somewhere we have some correspondence or some communication that would indicate the name of the organization.

Q I am not trying to in effect cross examine you

on this. It's just that what I'm interested in exploring is the possibility of using some outside agency which you can under the statute, instead of using your professional investigators to go out and do this.

A Right, but I think - and I want to emphasize this again, I think the number of people that may have abused this program - and I am sure there have been some persons who have - I think the number is extremely small and I think we ought to consider whether it is a wise expenditure of public funds to spend as much as is necessary to ferret out those few that have snuck through.

Q I was not just thinking in terms of whether somebody qualifies as an indigent but I was also thinking in terms of whether or not a determination could be made as to whether a particular individual has the capacity to make some payment, even though it may not be the full amount that you would put in your lien claim. And this might be a means of determining that.

A That's a possibility, yes.

Q Now you have the right, under the statute, to have access to governmental records that might reveal something with respect to a person's worth, motor vehicle records, social security, income tax, and so forth. Do you actually get these records?

A I think there may have been some small number of instances in which we have made inquiry. Again

emphasizing my feeling, perhaps erroneous but my feeling nonetheless, that we could very well spend amounts of money that would not make sense in terms of trying to ferret out the non-indigents. And those people who have executed reimbursement agreements and pay pursuant to them are reasonably identifiable. If they have regular employment, you can call their employer and that has occurred and does occur. We could go through some other elaborate procedures here but I have some very serious doubt in my mind whether they would be particularly productive.

Q Well another reason why I raise this question is that the report that the original Commission filed back on December 22, 1966 that was the predecessor to the recommendation for this statute suggested that there might be some social feeling about an individual making some payment or contribution toward his defense even though it would not come anywhere near approaching that which was the dollar value of the services given to him. And I think this is something which Assemblyman Turner was referring to before, even about the person that was in jail if he were made to pay even the most modest type of contribution toward his defense that it would have some redeeming features, not the most important one of which being to recoup some of the money but some social features. A I would recognize the validity of a position that would suggest that there

are some redeeming features in having people pay as much as they can. If I can particularly go back to the jail situation, one of the most serious problems that we confront and that the entire law enforcement bodies confront is the problem of recidivism, people that have once gone the route of our so-called rehabilitative process once again getting into difficulty. It has been my experience in the brief time I've been in the office that one of the major problems facing a man when he comes out of prison is the fact that he is given \$25.00 gate money which is sufficient to give him a bus ticket to Newark, or from whence he came, to get a night's lodging somewhere, and then to try to find a job, which is not a very easy thing for an ex-convict to do. Rather than depriving him of his dollar a day, if you will, - I think it's five dollars a day, at least that's the way they charge it off against the time which must be served, - it would seem to me that that money might better be accumulated, given to him upon his release, and hopefully start some efforts on the State level toward replacing that guy in gainful employment. These are the kind of things that I frankly think this Committee ought to be concerned with. We can talk about time-keeping, we can talk about any number of efficiencies that might be introduced in our operation, but I think we ought to be talking about methods that might be employed to reduce

the incidence of crime so that this guy doesn't come back through the doors three or four times.

Q Well, I do agree that that should be one of the principal concerns of everybody that's involved in the law enforcement area. It is not something that particularly this Committee was designated to inquire into but I would say this, that under the statute I would think this would be one of the things that your office would want to establish some sort of a dialogue on. But I suspect that you and your predecessors have just been so overwhelmed with the day to day job of trying to keep the office going that you really haven't had an opportunity to do any longrange planning or to open avenues of discussion on these, what I would call, social problems rather than the administrative problems of the office itself.

A Well, that's largely true and I have constantly felt the need for doing more than we have been able to do. We have gotten involved in a couple of programs that hold promise. One is operating here in the City of Trenton at the Mercer Street Friends Center and it is designed to be a community based correction institution - institution is not the correct word, just a substitute for an institution. There are a number of things that we have not had the time to do that I think would be more productive in the long run. And frankly the introduction of some of the efficiencies that are perhaps

needed and perhaps not, that seem to be suggested here today.

Q While we're on this social area and this report that was filed back in 1966, one of the recommendations they made at the time was the establishment of a board of trustees to your Public Defender system to act in some advisory capacity. Do you have such an advisory board?

A No, there is no such a board nor did the statute create one.

Q Do you think there should be? It was their recommendation that there should be and I know the statute doesn't provide for it, but do you think you should have it?

A I certainly would have no objection to having a board to consult with. I think I've tried to consult with members of the Bar and judges now. No, I obviously couldn't say that I don't need any consultation opportunities.

Q Well, I don't sense a feeling of enthusiasm for such a board.

A No, you sense it correctly. I don't really see where that would serve the ends that I am interested in serving. I want to get on with the representation of people, if you will, in the best way that we possibly can and it would be nice to have a board of people to talk to, but that's not my problem, it's not an absence of people to talk to that I'm confronted with.

Q What is your problem besides money?

A Well, I don't think anything can be reduced to a single word but it is largely financial and it is largely the fact that I think this program has, unfortunately, been viewed as a welfare program when it is not a welfare program; it is just one way of several possible ways to afford people their constitutional rights. And I think because it has been labeled a welfare program it has tended to occupy a lower priority in the scheme of things than I think it ought to be accorded.

Q Let's get back to a little different area. Do the people that you represent qualify for your assistance if they are able to provide bail?

A Yes. Yes, bail is frequently provided by friends, by relatives who would not pay the cost of representation of an individual. In fact a brother-in-law might very, not happily but nonetheless agree to bail out someone but he's not going to go the additional cost of providing the representation and true investigation and pay the cost of appeal.

Q Is a determination made by your office as to the source of bail for an indigent? A When it appears that the individual has been able to come up with a substantial bail of his own then I think a question arises on the face of his affidavit and an investigation is supposed to be conducted and I would think is conducted in all of those cases. But again, the fact that a man can make bail is not a condition -

or the fact that he cannot make bail is not a condition precedent to representation by this office.

BY ASSEMBLYMAN TURNER:

Q In whose opinion, sir? A In my opinion.

Q Any other opinion? A I don't know. I can only speak for myself.

BY ASSEMBLYMAN THOMAS:

Q You know, it used to be, under the old assignment system if you could make bail you didn't get a lawyer, at least that was my experience in Essex County.

A That may have been the case but I still don't think that you can justify saying that a person must make a choice as to whether he will --

Q I'm not saying that's right or wrong. It may be better to have the man out working and his family not on relief. A That frequently would be better, I'm sure.

Q What is the practice with respect to pleas? Is there any attempt at negotiation with the prosecutor's office on pleas? A Well, as you know, there is no formalized plea bargaining in the State of New Jersey.

Q I realize that. A Yes, there are instances in which one of our lawyers might talk to the prosecutor and get some idea as to what he thought his exposure would be. That varies from prosecutor

to prosecutor and from public defender to public defender, what kind of relationship has been developed there.

BY ASSEMBLYMAN TURNER:

Q Can you give us a percentage?

A Oh, of plea bargains? No. I can tell you how many pleas there have been.

Q Let me ask you this question, if I may interrupt the Chairman's thought for a moment. You testified earlier that some 35% of your cases are won. Is that true?

A Those that are tried; those that go to trial.

BY ASSEMBLYMAN THOMAS:

Q 75%? A 37%.

Q 37%. A 37%.

BY ASSEMBLYMAN TURNER:

Q 37%. I'm sorry. Do you have any record as to - when your trial counsel turns in his report as to his activities in that regard, the negotiations - of course, that's not the right word, but contacts to see whether --

A Certainly. If he spent time talking with the prosecutor or reviewing the file, that would be reflected if he has reported accurately.

Q And are those discussions also reflected, that a discussion has been held with the client and what his opinion is?

A On what now? On the

record that he turns in to me, does he tell me when he has talked to the client and when he talked to the prosecutor?

Q The question is, I believe there are occasions when the State doesn't feel so proud of its case that they would consider some lesser charge. Is there any reflection or any record as to the percentages of your cases that after counsel has talked to the prosecutor and then talked to the client whether the client makes a decision to the contrary?

A No, I couldn't tell you that. I could tell you the number of cases where a plea has been entered to a lesser charge. But the reason why it has been entered to a lesser charge, I can't tell you and my records would not show that.

BY ASSEMBLYMAN THOMAS:

Q At what point do you pick up a case?

A When the individual is formally charged. He's brought before a magistrate and formally charged.

Q Would you represent him at the preliminary hearing stage?

A Yes, we would represent him at the preliminary hearing stage.

Q Well that's just one extra step if he doesn't want to waive then in this whole proceeding.

A That's true. That's true and I couldn't offhand tell you the percentage of cases in which a preliminary hearing is held. Frequently it is waived.

Q Well, that's what I was going to ask you. I wondered about that.

A Frequently it is.

Q Now, on appeal, can you tell us what procedure is followed in determining whether a case should be appealed or not?

A Well, the very first thing is it's done by the trial judge if he's following the rule and that is to notify the defendant that he has a right to appeal in any case in which a conviction has been obtained, even where there is a plea of guilty. He is notified by the trial judge under the new rules that he has a right to appeal. He then talks to his trial counsel who reaffirms that he has a right to appeal, indicates whether in his opinion he thinks there ought to be an appeal. If the individual elects to appeal then the notice is filed to preserve the running of time. The transcript is ordered upon the filing of the notice. When the transcript is received the case is assigned to one of our appellate lawyers who would then communicate with the defendant and after he looks at the transcript he might suggest to the defendant that there are no grounds for appeal but, again, if the defendant wishes to go forward then a brief is prepared and eventually argued.

BY ASSEMBLYMAN TURNER:

Q Sir, can I ask you a question then at this point?

A Yes.

Q Of course the State has no right of appeal so we can forget about that 37%, can't we?

A Pardon me?

Q The 37% of the cases that --

A Oh, yes, those that have been tried before a jury and found not guilty - no appeal from them.

Q What statistics can you give me that tell me what percentage of appeals does your office cause on the other 63%?

A You're confusing me, now.

Q All right. It wasn't my intent, sir. On those cases where the client is found guilty as charged, what percentage of appeals are there on those cases and what statistics do you have with you or available?

A It would involve going back and tracking the appeal back to find out whether it was from a jury trial as opposed to a guilty plea. We could give you that statistic but I don't have it at my fingertips.

Q Then can you tell me on those individual cases in which the client is found guilty as charged how many more appeals there are than one?

A It is our procedure to file the first appeal as a right and --

Q Pardon me. I appreciate that and I don't wish to interrupt your answer but as a right - do you discuss that with the client first?

A It is

discussed with the client.

Q Do you inform him that you are not only protecting him under the law but that similarly his lien will increase and he will ultimately be forced to pay

the monies that it's costing for that? A You know, we're going to handle 20,000 cases this year. You're asking me whether in every instance that's happening? As a policy, he should be informed.

Q You certainly inform him of his rights under the law? A And inform him that he --

Q Wouldn't you inform him of his obligations under the law? A As a policy that should occur but I certainly can't tell you that it has occurred in every case that we've handled.

Q But then, can you give me -- I should allow you to answer the question but due to my interruption maybe I should phrase it again. Can you tell me, in the percentage of cases in which one is found guilty, what percentage of appeals there are?

A I just told you that I don't have that statistic at my fingertip. It can be developed and we would give it to the Committee.

Q You will supply us with that? A Yes, we will.

Q And can you tell us how many appeals there are on any one case? What is your record for appeals?

How many appeals? A How many times has it been appealed?

Q On one case. A Well, there is only one appellate route, you know. If he appeals to the appellate division and that judgment of conviction is

affirmed, we will file a petition for certification to the Supreme Court if he wishes to go that far. If that is denied, that is the end of it. If it's granted then we, of course, prepare another brief or at least prepare a full petition incorporating the lower court brief and it is argued before the State Supreme Court. That's still one appellate process.

Q Right. The question is the functions. If he is denied you're saying - and I ask as a layman, are you saying that once you file the appeal and it's denied you then discuss it again with the client?

A If he wishes to go the next step to the State Supreme Court and seek petition for certification. He then no longer has appeal as of right, it is discretionary with the Supreme Court unless there is a constitutional issue and a couple of other narrow instances in which he might get to the Supreme Court.

Q Then you would again consult with him before you proceeded.

A We would inform him with a copy of the court's opinion in the appellate division that this is the court's opinion, your conviction has been affirmed, do you wish to have a petition for certification filed in this case.

Q Is that done in person or in writing?

A No, it is probably done more frequently by mail.

Q Can you tell me what percentage of letters flow back to you requesting you to proceed?

A I suspect - I can't tell you the percentage but I suspect that the vast majority would wish to go the other route. If they felt strong enough about the case in the first instance to have an appeal, I can think of nothing that would happen in prison that would encourage them to abandon that feeling.

BY ASSEMBLYMAN THOMAS:

Q How many appeals did you have in 1969, if you know? Is that in -- A It's in the report. Appeals filed, 305.

Q Do you know how many, as of the present time how many appeals you have pending? At the present moment. A At this moment?

Q Yes. A No, I do not know as of this moment.

Q From your records can you tell whether or not the number has increased or will be up this year as opposed to last year? A Oh, it has increased and in our 1971 budget request we predict an increase during this year and in 1971.

Q What is your prediction for 1971?

A I think it's 600 in 1970 and 900 in 1971.

Q What has been the experience of success on these appeals? A We have been successful in no more than five percent of the cases if you measure success in terms of a reversal.

Q That's what I mean by success.

A But that is not the only viable purpose for an appeal, or at least it may not be unsuccessful in every instance even though the verdict is sustained.

Q What do you mean by that? A Well if the question is one that has not yet been resolved by the courts of this State.

Q You're talking about making law now, right?

A Well, I'm talking about protecting the rights of the individual where the question of law is not clear. For instance, does a juvenile, after the Gault decision, have a right to jury trial? This is something that has to be determined. The only way it's going to be determined is through the decisional process of the appellate court. So it may be that the court will say, no, he does not have a right to jury trial, but I don't know that you would then view that appeal as unsuccessful.

Q Do you agree that the court is the only one that can make that decision? A In the Anglo Saxon legal tradition it has been that way. Perhaps there is a legislative function but I would think not. The courts are designed to interpret the Constitution.

Q Sir, I would like to speak to you about the question of juveniles for a moment. I know that it has added a burden to, shall we say, both sides of those who are advocates in court and I'm not satisfied that it is truly serving its function but that's my own

opinion as well, but I would like to ask you a question about this. Who decides about appeals of juveniles?

A If it is a situation in which the parents have been friendly toward the juvenile throughout the proceeding, we would consult with the parents; but in the final analysis it is the juvenile whose rights are at stake. And if there has been any antagonism between the parents and the juvenile --

Q As an officer of the court, don't you have prerogatives to, regardless of how the juvenile feels, exercise all due course to protect them, regardless?

A Yes, we do.

Q Do you invoke that rule or --

A That situation has not occurred to my knowledge here.

Q Is there any written authorization in a juvenile case by a parent, a guardian, or the juvenile himself authorizing this appeal? Why I say that is you would write this letter to the adult and he's in prison and he says, do what you can for me. The answer to that is yes.

A Yes.

Q Why I ask is, I will give you an example. I don't have all of the facts here in front of me. An Attorney in Woodbury several weeks ago was assigned in the matter of appeal for a juvenile. A day or two after he was so assigned he went to the location where the child was incarcerated only to find out that he had

been on probation for 60 days. He inquired at once on returning to his community as to where the boy was and found he was home, and the mother and the child both claimed they had no knowledge whatsoever of this appeal. So I am just wondering if there is a weakness in the system or I'm misinformed on it, or what.

A I will not dispute the facts of that case. I don't know that case. That would not be a normal situation.

BY ASSEMBLYMAN THOMAS:

Q To change the subject again for a minute, do you have any opinion with respect to the political partisanship of appointments. What I mean is --

A Are you asking me, do I think I've made partisan political appointments?

Q No. What I'm really trying to get at is whether you feel there should be something in the statute comparable to the statute on the appointment of certain judges where the appointments must be made on a bipartisan basis.

A I recall that there was legislation introduced to that end a couple of years ago. The position I took at that time - contrary to the situation of judges where a person has been out of law school for ten years would not be eligible for consideration, we are dealing with a lot of people right out of law school who may or may not have made any sort of political judgment and,

if they made one, it may not have been reduced to voting in a primary for one party or another. As I pointed out in our salary problems, we are forced to look primarily to recent law school graduates because nobody else is interested in working for that kind of salary. So my objection to the bill was that I thought it was going to foreclose the major source of our attorneys who would then not be eligible for appointment because they had not voted in a primary.

BY ASSEMBLYMAN TURNER:

Q I can assist you, sir, by telling you if they will go to a board of elections and inform them that they reside there and they wish to join one party or the other, they can be so declared. A Well, they can do that also, but I don't know that all of them wish to do that at this point. You know there are a substantial number of people who maintain independence.

Q That also is his right and I agree with that.

BY ASSEMBLYMAN THOMAS:

Q So you don't feel there should be such a statute? A Not under the present circumstances, no I don't, because I don't know where I would look for lawyers and I certainly am not going to suggest that I ought to direct the lawyers to become one thing or another.

Q Well I hope that they are not all one way and I can pick some out here just by knowing the

names. We have some famous predecessors of people here. Can you tell me how much time Mr. Foley spends on his job, if you know? A 50 to 55 hours a week, I would guess. Gerald Foley, you are talking about?

Q Yes. He's head of your Appellate Section.

A Yes, he does nothing except head that Appellate Section. He has no outside practice.

Q He has no outside practice. Is he affiliated in any way with any law firm? A To my knowledge, he is not, although Mr. Foley is here and if I have misstated that I'm sure he can correct me.

Q How about Bill Reiss? A Bill Reiss has a practice of his own.

Q Can you tell me what his duties are as the Northern Administrator? A He is supposed to exercise general supervisory authority over the deputies assigned to the Northern Region. It involves his calling on that office, seeing that they are complying with the regulations that we promulgate, discussing any particular problems that they may have in the representation of a case or in any personnel situation they have. He acts in my stead.

BY ASSEMBLYMAN TURNER:

Q You said he's supposed to, are you inferring that he does not? A No, I am not inferring that he does not.

BY ASSEMBLYMAN THOMAS:

Q Does he actively try cases? A He has, on occasion, tried cases but not on a regular basis.

Q Do you know how much time he spends on a weekly hourly basis, how many hours a week he spends on the job? A I would say probably around the average of 27 hours a week.

BY ASSEMBLYMAN TURNER:

Q Sir, I have here a list of salaries of the members of the Bar who are a part of your staff. I do not have a list of salaries of those other employees of your staff. Could that be provided for my perusal?

A Yes.

Q Additionally, I don't have any - I presume that these employees of the State do incur expenses on occasion, do they not? A You mean, do they have an expense account of some kind?

Q Yes. A No, they do not have an expense account. They will be paid for mileage traveled, out-of-pocket expenses - travel, meals the normal situation; if an individual is obliged to eat out because of performance of his duties, that's compensated, and travel is compensated. There is no expense account in the general accepted use of expense account to spend what they feel they must and then seek reimbursement, no.

Q Is there any statement available as to the

expenses incurred by the individual employees on your staff?

A I am told yes.

Q Could that also be made available to me?

A Yes.

Q That includes investigators as well as all other members of the staff, in toto.

A Right.

Q May I ask you another question because I don't know how it's handled and before I get records that aren't complete - the question is, well about how many times one must talk to his client or talk to others, consult with them on the phone, how is that handled? is that by expense account, credit card, or what?

A No. The phones are used - you know, there is a State phone billing. I am on centrex and in Newark the office is on centrex. The other offices are on regular telephone lines and the bill is submitted and paid on a monthly basis.

Q Even in Newark there is an individual bill?

A The Essex region has an individual phone.

Q In other words, if I were to look at your total telephone bill, that's the total for the State. Is that right?

A Yes.

Q Do you have any record that tells you and similarly submitted would tell me how many cases, take Judy Berman for example, how many cases she has handled in the last year, how many she supervised?

A Yes.

Q And how many she has tried? A Yes.

Q How many days she has been in court?

A Yes.

Q How many briefs she has filed?

A Well, the briefs, you mean in terms of a trial level?

Q Well even if someone else has to prepare it, someone has to get the skeleton and go over the file and do a review letter to Newark before it can be done.

A Oh, how many briefs have been filed out of her operation?

Q Right. A Yes, we can tell you that.

Q In other words, I could look at these records and know exactly what she has done for your department in the last year. A Exactly? You can get a very good idea, I don't know that we ever know exactly.

Q Would that be similar for the rest of the members of that staff? A Yes.

BY ASSEMBLYMAN THOMAS:

Q Mr. VanNess, can you tell me why there is a difference in the number of deputies assigned to various counties, and I give you one example. In Passaic, with a caseload of slightly over 2,000, there are 8; and in Union, with approximately the same caseload, there are 6. This appears in several different instances. Is there some reason for this?

A Well one is, these are circumstances that are not within our control. For instance, in Passaic County there should be more than 8, even though the ultimate might be the same in Union.

Q You mean because of what happened up there?

A Because of the number of judges. There are variations throughout the system based on things that we have no control over in terms of how many judges are going to be sitting.

Q Well, again, I see that in the Mercer-Somerset District there are 6, and in the Hudson District there are 8, and again the caseload is the same. Do you have some means of recordkeeping so that it shows the --

A The number of cases?

Q It would appear that your Mercer-Somerset District is handling its caseload in a manner where they get away with two less lawyers. A Well, again, no two counties are functioning the same way in the courts or the prosecutors or the public defenders. If you have two judges sitting in Somerset County and nine sitting in Hudson County, then you are going to have to service nine courts whether or not the same volume of cases are handled in each individual court. I don't know that I'm making that clear but what I am suggesting is that we have to adapt our operation to an existing operation.

Q Are you subject to the different requests of

assignment judges who say, we want you to have so many defenders available to try cases in this county?

A Are we amenable to it?

Q No. Are you being directed by assignment judges to have X number of attorneys available?

A No. We are not being directed by it but in the operation of his calendar he can make it pretty much necessary that we do so.

Q Well, I realize that you have nine courts that are working on criminal cases, you've got to have nine attorneys available. A Right.

Q But are you having a situation where the assignment judge is telling you, all right, we've got nine courts working on criminal cases and we want a back-up man for every one of those courts to pick up the next case? A He could tell me

to do it but there would be no way possible for me to do it.

Q OK. Can you tell me how you arrive at - well, let's take Mr. Foley's salary, which is one of the three top salaries other than your own, - how that was arrived at. In other words, how do you justify that in terms of what he does and what, I understand, Ronco does? A I think they are of equal

significance in terms of the operation of the program. I think the burden on each is as equal as burdens can be.

Q All right. Now how about Mr. Reiss?

A Mr. Reiss' salary - I look to him as more or less the first assistant, which is what he was when I took over that operation. He has been helpful in assisting me understand the operation at the beginning. He is an experienced trial lawyer and is knowledgeable about not only this program but the Essex County program before it.

Q Do you keep time records on a per-lawyer basis so that if I asked you, let me have Mr. Reiss' time records up to the present time you could give them to me so we could see how much time he spent in 1970 to the present time on his job, or would you have to cull through all of your records to pick this out?

A I would have to cull through the records, although in both instances, Mr. Reiss and Mr. Walsh, who have administrative responsibilities, I have not required any kind of reporting from them that I have at the trial because I am in constant contact with them. The primary reason for putting it in at the trial was so I would always have some understanding of who was doing what. I am in personal contact with them on a day-to-day basis and can form my own evaluation as to how much time they are putting in.

Q Then I would take it your answer is no, you couldn't tell me how many hours Mr. Reiss has put in

on the job? A Right, the answer is no, I could not tell you that.

Q All right. Let's take a trial situation in Essex County. You have three men, Curry, Kerby and McMahan, who are Assistant Deputy Defenders.

A I can tell you how much time they've put in based on the time records that come into the office, yes. But I am wondering and I am a little bit leery about this singling out of people. I mean, is there something that you are trying to tell me about somebody or are you trying to find out whether I have the information about our lawyers generally?

Q I'm trying to find out if you have the information because I know in the running of a law firm, and I conceive of your office as the running of a large law firm, at least at the moment that's my feeling it's the way it should be run, and it would seem to me, in evaluating an individual when it comes - for many reasons, salarywise as well as his worth to the over-all working of the office, you would want to know how much time he's putting in, where he's putting it in, and if he as effective as the same guy who is receiving the same salary and sitting alongside of him. I pick out no particular individuals here. I only picked those three because they happen to - obviously they should be trial attorneys, they are all receiving the same salary and they are all in the

same office. And that's the only reason I picked out those three.

A The answer to your question is, I can tell you how much time each of them has spent.

Q I would want to know, for instance, if somebody is goofing off.

A So would I.

Q And I wondered, do you have the kind of records that would enable you to make that analysis.

A Well, we can put it all on paper and still not be certain that somebody isn't goofing off. You know that there are lawyers that have greater experience than other lawyers, that somebody is going to take a half hour to do something that it would take an inexperienced lawyer four or five hours to do.

Q That's true, but you don't pay him as much.

A Why not?

Q You pay the man who can do the same job in half an hour more than you do the man who can do the job in three hours.

A All right. But then if I just look at his time records I don't know that I get a completely accurate picture. It is a guide and we try to use it as a guide.

Q That's what I was going to ask next. Do you use this in trying to determine how efficient your staff is and in determining whether they justify the pay that they are receiving, the pay level they're receiving?

A We do use these records to

try to find out how efficient they are and it really hasn't been necessary to concern ourselves with whether the pay - whether or not enough is being done to earn the pay in light of the very small pay that's being offered.

BY ASSEMBLYMAN TURNER:

Q In your opinion, sir. A That's all you're asking me for, I take it.

Q May I ask you then, do you have any process of review, any evaluation of these persons? A Yes.

Q You have already made your recommendations as to what you in your opinion would do in the way of salary increases. A Yes.

Q Then what do you have to substantiate that in the way of review processes that go from the time you came with the State agency till today to substantiate your position? A Again I'm not sure what you mean. How do I know whether somebody is doing the job or not?

Q Well do you have any formal review processes of these individuals? You know, Turner is doing a good job on this case, he did a bad job on that case?

A I talk to the deputies that are directly responsible for them. I get communications from disgruntled clients which we make inquiry about, ask for justification. Do I have a formalized review procedure, I think the answer to that has to be no, if you're talking about like the 201 thing in the military.

Q Can we use the disgruntled client as part of the process?

A It depends upon what his complaint is. Certainly it may bear some examination by our office.

Q I presume that there are more disgruntled in the 63% than there are in the 37%?

A Certainly there are.

Q Then in referring to the 63%, what percentage could you give, if any?

A Are disgruntled?

Q Right?

A I don't know.

Q All right, sir. If I may again refer you to this very nice \$3.10 per copy brochure and a page which is not numbered which says "Crime Prevention." I would like you to spell out for me what you interpret, as the Public Defender of this State, as your responsibilities in crime prevention.

A The very first

responsibility I think is providing adequate representation because I happen to think, in my opinion, that a person who is given adequate representation even though found guilty is aware that people have gone to bat for him and his step along the rehabilitative process I think is furthered. I think that as part of my responsibility in the prevention of crime that there is a great deal we can do in terms of suggesting alternative approaches to the handling of offenders. I think that our present institutions are not reducing crime but increasing it, potentially, and that there ought to be

experiments with particularly young people that might divert them from the traditional criminal process, hopefully with some supportive services, to be made into productive citizens.

Q Well, as you are obviously reflecting the pilot head philosophy and I'm somewhat of the hickory stick philosophy, what could you give me to allow me to understand what you're saying in this regard?

A That may not be possible. I am trying to suggest to you that in my opinion there are instances in which a hickory stick must be used but particularly in youthful offenders that we ought to try some different approaches to handling somebody who has gone off the deep end.

Q Sir, do you think when we formalize, as we have now under the law, the juvenile offender by even the question of a jury trial, even the question of a prosecutor, even the question of a public defender, do you think we are going down the right road in that regard?

A I think we are, although I do not say that without some reservations. If we are going to talk about the juvenile law, you perhaps know that there are two categories, at least two categories, of juveniles that are handled under that law. The one category is those who have committed an offense that would be a crime but for the fact they are juveniles. Then there is another whole host

of categories that would have to be lumped together as non-criminal, truancy, incorrigibility, not taking care of his own welfare, growing up in idleness, - these are things that I don't even think ought to be handled under a juvenile delinquency setup; there ought to be some sort of supervisory agency to treat people in need of supervision without labeling them as delinquent.

Q Have you formalized any recommendations in that regard?

A We have had communications with the Chairman of the Committee that is studying substantive juvenile law. Those are the thoughts that we have passed on to him and we continue to pass on to him. But in complete answer to your question, when you go back to the juvenile who is being handled as a juvenile only because of his age and not because of what he has done, then I am of the opinion that he ought to be entitled to the same protections, if you will, that we would attach to an adult trial.

Q Again referring to this question of crime prevention and to the activities of a public defender having cooperated with the Mercer County Board of Freeholders and obviously others as those who wish to develop programs of crime prevention, what commitment of your staff's time have you decided to commit to this service?

A I could not give you a percentage of time committed. It has been on a catch-as-catch-can basis. I've devoted a substantial amount

of my time to these efforts. My deputy in charge of juveniles has been involved in a number of these efforts. But there is no firm allocation of time, nor do I think there could be.

Q Knowing your keen insight in State Government -

A I should be on my guard now.

Q Pardon me, sir? A I should be on my guard now.

Q Well that's setting me up, right? A Yes.

Q I would like to know, as I believe you were very close to this august building at the time the Department of Community Affairs was created and augmented to, I think up to now, some \$35 millions, if my mind serves me right, or thereabouts, - do you feel that your activities and that of your Department in anyway conflict or should there be a delineation there of some of their activities in this regard? A I think not. The only possible point of contact would be in their juvenile program there. Now I am not sure where that came down. I know it was in some state of flux, but they are the recipient of the Federal Grant under the Law Enforcement Planning Act.

Q Well, this is what disturbs me, the question of dual commitment or absence of coordination in trying to develop such a program. A Well, we have had communication with the Department in this narrow ares. I think we approach it from different vantage

points too. If the problem is delinquency, we are frequently concerned with what is available for an individual, where does this particular person get the kind of service that he ought to have. I am sure that their's is a broader approach to the problem.

Q And isn't it a fact, sir, that after this application that is surrendered to you by one who claims he is indigent and is out on bail needs your's or someone's courage and assistance to guide him down the path away from the door of the jailhouse, that it is only your's and your subordinate's opinion that he can be taken care of by your facilities based on this question of bail bond; isn't it only your opinion and that of your staff that makes that decision?

A Again you are losing me. We're not guiding anybody down the path toward righteousness. I don't want to leave that impression with you.

Q You infer that by your crime prevention philosophy.

A We are attempting and I think maybe some more people ought to be attempting to do that. But I hold out no promise of success.

Q But then the question is, is that your responsibility? is that your true responsibility?

A Unless the language of the statute is nothing more than legislative rhetoric, I think that it is my responsibility to be involved.

Q Then don't you think there is a question of

conflict between those two facilities of government, the Department of Public Affairs and your Department, in this regard? A No, I don't. I think I've answered that question.

Q Well they control a vast amount of funds and you've indicated you could use some, up here today.

A Our role in this has been primarily advisory, prodding, offering some advice to people who are interested in doing this thing. We are not operating any programs.

Q Do you give the Department of Public Affairs advice? A Community Affairs?

Q Community Affairs. A I don't know whether it would rise to the level of advice. We have had consultation with the Department of Community Affairs.

Q Well, would that person with whom you had consultation be a member of the Bar? A Yes, on occasion he has been a member of the Bar; on other occasions he has not.

BY ASSEMBLYMAN THOMAS:

Q Do you have in any of the various regions or counties a pool of trial attorneys that you can call on when the overflow is such that your office can't handle it? A In every region.

Q Now I don't know myself whether the statute is sufficiently broad to bring appellate work under

that heading of a pool of attorneys. Is there such a pool?

A We have attempted to put together a pool of persons who would handle appellate work on an assigned basis from us. I don't know exactly how many cases have gone out but it has only been in effect for two or three months at the most and it was not put into effect before that time because we had no expectation that we would be able to pay pool counsel.

Q Well, for instance, Mr. Hayden was here this morning and he testified and apparently he's receiving assignment of an appeal. Is he a pool lawyer?

A No. Let me explain what has happened. We have developed a substantial backlog in our appellate work and I think if you look at the number of people that have been available to us in our appellate section and the number of appeals that they have had to work on, you might conclude that a backlog was almost inevitable. But the court's action, Judge Goldmann's action, in relieving the public defender of some 240 cases that had backed up was done because the court could no longer tolerate the delay that was resulting. That was done on the court's own motion. We were relieved. The original thought was that those cases would be paid for by the counties. The only reason that we are able to suggest that we can pay for them is that the supplemental appropriation did come through.

When it was questionable whether it would or not, we started to hold back on the file cases that were assigned out, and assigned out were not many beyond those that were actual conflicts. So that there is a source of money available now for us to pay. But the court's original intention was to take those cases from us and to return to Rush and seek payment from the counties for the handling of those appeals.

Q Well, do you have a pool of trial attorneys in Essex County, for instance? A Yes, we do.

Q Is there some reason why they weren't assigned to the appeals of these cases, to handle the appeals?

A Because we have no authority to require a lawyer to take a case. They are operating as pool attorneys because they wish to. They are under no obligation.

Q I realize that, but was an attempt made to have them handle the appeals before they were assigned out on the old basis? A We had attempted

to put together, as I said before, a pool of lawyers to handle appeals. Now Mr. Foley may be able to tell exactly how many cases went out that way. But it was obviously not sufficient and it came too late in the day to avoid the court having to reach out for the assignment.

Q Well, who made the determination that this was not sufficient? A The court, I presume. They are the ones that assigned it out.

Q Well then, the court in the assignment of appellate attorneys for indigents, in this manner, is actually operating outside the Public Defender Statute and going back to the operation under Rush as we knew it at that time.

A That's true, the only wrinkle being that we obtained supplemental moneys to pay.

Q Rather than the county.

A Right.

Q Do you think that the court has the authority to do that with this Public Defender Statute in existence?

A Yes, I do.

Q And they have the authority to do that based upon their feeling that a backlog of 240 cases is too many?

A Yes, I think they do.

Q And do you know whether the court has made any evaluation of the time lapse between the finding of guilty and the time that the appeal can be heard?

A I'm sure that they did, yes, and that they found that time to be too long in their opinion.

Q Well while these appeals are pending these men aren't in jail, are they? or are they?

A Most of them are, yes.

Q Most of them are.

A Yes. The vast majority of them are.

Q That reminds me of another question that I forgot to ask you before. Do you handle other types of relief for criminal indigents, like certain forms

of post-conviction relief? For instance, if a man feels that his sentence is too stiff and he wants to appeal that.

A Well, that might not fall within post-conviction relief but if he, for instance, felt that he had received an illegal sentence he could file an application for post-conviction relief; that application would be received by the court and referred to our trial region and they would handle the application.

Q Now suppose you had somebody that was found guilty and there was an appeal and it was sustained and after he had served his sentence he wanted to have his record expunged and there was some means of making that kind of application, would you handle that?

A We have not had that occasion arise. I would have question as to whether I have jurisdiction under the statute to do so.

Q Do you have trial pools in other counties other than Essex?

A All the regions.

Q All the regions have them?

A All the regions have them.

Q What about appellate pools? Do you feel that the statute is broad enough for you to create an appellate pool the same way you do a trial pool?

A Yes, and I indicated I did so already.

Q Do you have these appellate pools in the various regions?

A Well we only operate appeals out of one office.

Q So that would be just one appellate pool?

A One pool of people, they necessarily don't all come from Essex County.

Q Right. Do I gather then you have not been able to attract a sufficient number of attorneys who would be willing to participate in an appellate pool and that's why we've gone back to the old system now of assignment?

A That is part of the problem but, as I said, this came at a very late date and only when we thought we had money sufficient to pay for the pool handling.

Q But wouldn't it have been better, since you had the money, to hire additional members of your staff to do it rather than going back to the assignment system?

A Well, I hate to go back to a situation in which I picture myself as powerless but I do not have the authority to determine that I will hire 50 people tomorrow because the need arises.

Q Well, if you don't have that power - in other words, we're circumventing the statute by having the court appoint counsel because you don't feel you have the power to put on enough personnel to do the job under the statute.

A Not that I don't feel that I don't have the power, I don't have the power.

Q Well somebody is telling you you don't have.

A All right, if you want to put it that way.

Q The money was there -- A No, the money

wasn't there.

Q The money was created to the point where the court went ahead then and appointed outside counsel because they knew they had the money to reimburse outside counsel through your funds. A They did not know that when they made the assignment. I submitted an application or a request for a supplemental appropriation in November of last year. That bill was ultimately passed and signed into law in late March of this year. Under that supplemental appropriation request we asked for - I mentioned the salary situation before -- we asked for 16 additional attorney positions, we asked for 10 additional investigator positions. Now, when the bill was ultimately signed into law it was in the midst of a freeze that had been created, not by our office but by the Governor, on the hiring of all new personnel. So I had money to hire 16 additional lawyers, if I could have found them at that time of the year but I could not do it at the time the freeze was in effect. The freeze, as far as using the money for salaries, is still in effect.

Q Who is freezing the money for salaries?

A The Administration is freezing the money for salaries.

Q I may be confused here. I'm talking about money that is already appropriated. A It has been appropriated and is presumably in our salary account. I do not have the authority to use that money

as I see fit; I must have the approval of the Budget Bureau before I can create any new position. There is a form that goes through and please don't have me describe all of these forms because, after this period of time, I still don't know. But there are forms that have to go in and have to be approved before I can hire.

BY ASSEMBLYMAN TURNER:

Q I admonish you, sir. You've been sitting around this house a long time, you said so yourself, so that's not a proper answer. Now I would like to interject and ask this question for a moment. You said you have a list of people, who prepared those lists?

A I have advertised in the Bar Journal for people who are interested in handling appellate work. In talking to Bar Associations, I have suggested that anybody who is interested in doing our work should come forward. Our Lawyers, who happen to know other lawyers, have asked them to come in and do some of the appellate work. I think at last count there were some 650 Lawyers in the State of New Jersey who have handled at least one of the cases for the appellate trial.

Q Were these people who did this work for you - are they authorized to do it by you or one of your subordinates in the region?

A They are authorized by one of my subordinates to do it, if you wish to put it that way. I do not and could not, on

a day-to-day basis say that in Essex County you will assign this guy as opposed to that guy, or you will assign this case as opposed to keeping it. I have had to delegate that responsibility to my deputies.

BY ASSEMBLYMAN THOMAS:

Q But the court doesn't have to get anybody's approval for the expenditure of money for assigned counsel, does it?

A To my knowledge, no. They certainly don't have to get my approval. And as I interpret the statute, it does not remove the inherent authority that the court has in the operation of its system.

Q Do assigned appellate counsel have the advantage of your brief pool or brief bank, or can they have somebody prepare a brief for them?

A You mean those that we have assigned?

Q Yes. No, no. The court assigns somebody, like Mr. Hayden. Does your office prepare his brief for him?

A Oh, no.

Q He has to prepare them too.

A That's the purpose of assigning him, to relieve us of the burden of preparing the brief in that particular case.

Q Well if there's an exact brief in your brief bank to the one that he has to prepare, he is in effect duplicating the work.

A Well, when I say a brief bank, there are no briefs that you can take the cover off and put the next defendant's name on it

and submit. You've got research on points, you have the brief that was filed before, you can look at that brief and somehow facilitate your research but in the final analysis it's more than just switching covers.

BY ASSEMBLYMAN TURNER:

Q As a layman, sir, I'll just ask you this question. Isn't it a fact that one who is familiar and does nothing but prepare briefs, particularly on specialized subjects, such as your people do, they would cut the time in more than half?

A Certainly.

Q And I am sure that he would be able to put his hand on the xerox copies of Judge X's opinion on this point and that point. A I do not suggest that the assignment of counsel is a more efficient system .

BY ASSEMBLYMAN THOMAS:

Q Would you suggest the alternative, that it is a wasteful means of handling the situation in terms of the money that's available? A No, I can't say that when I know that we have cases in our appellate section that have been backed up too long, where a person is sitting in jail without having his day in the appellate court, if you will.

BY ASSEMBLYMAN TURNER:

Q You must describe to us what is too long, sir? A Well, certainly when we get to 8 months before we have filed a brief in a man's case

it's too long. But I can't draw you --

BY ASSEMBLYMAN THOMAS:

Q What you are saying is, regardless of - 8 months is too long, but you are spending the money on assigned counsel instead of spending the money on a full-time staff, and a full-time staff should be able to handle more 8 month jail sentences than assigned counsel.

A I think I have made that abundantly clear at every opportunity I've had.

Q Then why isn't the money being spent for permanent staff rather than being spent for assigned counsel? Because you've got some problem with the people not authorizing you to pay them?

A No, no, not at all. First, I would suggest that you ask yourself that, in terms of what you've provided to spend. Secondly, within what you've provided to spend, which is not sufficient, and I think I've made that abundantly clear as I possibly can, there is what I think is only a temporary situation with a new administration getting a good look at the way things are going, I do not think it unusual that they would freeze the hiring of personnel or that they would say, let's stop and take a look. It has operated to our detriment because we have been behind the eight ball from the beginning. That's the problem.

Q We, you know, are trying to help you on this, too, because I think you should have the staff to do

the full job and there shouldn't be this assignment outside of your office. A Certainly it can be done cheaper and I think more effectively.

BY ASSEMBLYMAN TURNER:

Q When Mr. Thomas says "we", he's speaking for himself at the moment. A I thought he was.

Q But let me ask you this, sir. I am aware of the executive philosophy at the moment, which I support 100%, but have you submitted to the Executive Branch any specialized request, have you informed them of that?

A Yes, I have.

Q Well I won't follow that line of questioning.

BY ASSEMBLYMAN THOMAS:

Q I'll change the subject entirely. What about reimbursement? What efforts are made once a case is done with, whether he wins or loses, whether he has finished his jail term or not, to go after a lien claim?

A To be perfectly honest with you, with exception of a monthly billing program that we have set up experimentally in two counties, to see whether it would increase the incidence of payment, a program which incidentally took three girls a month to start in one region - we have no way of knowing when an individual comes into money after he has gotten into circumstances you describe. He goes out and some great aunt leaves him \$100,000 - that information does not come to us. Our lien would operate only if he had some property that he

wished to dispose of, then it would come to our attention. We have frequently been in foreclosure actions because of our liens. But I think you have to understand that many of the people that we represent, whether they are acquitted or found guilty and do their time and subsequently released, are on the move. You know, you can't always find this guy. You can't go back and say he's going to be living at such and such a boarding house five years from now. There is a very difficult problem in terms of tracking down. When we send out bills in a county like Morris, which is a much more stable county than some of the others we deal in, 30 - 40% come back, not here, not at this address.

Q I'm wondering, for instance, if some system couldn't be set up so that if one of your former clients purchased a car the Motor Vehicle Department couldn't alert you to that fact. I don't know. Have things of this sort been thought of? A This is again, and maybe it's coming back to the non-hickory stick approach, - I forget just how that was described. A guy does his time, right. Somebody ought to be interested in seeing that he gets moving in the right direction again. Now I don't view it to be my role to have an investigator following him around to find out whether he has gotten hold of a hundred dollars to buy a jalopy.

Q Yes, but how about the 37% that you acquit?

A You have even then a different problem. We probably get more money from those that we acquit than from those that are found guilty.

Q So do other lawyers. A But now these are the guys that have been arrested, spent time in jail, are eventually exonerated, so the presumption is that they should not have been arrested in the first instance. They were found guilty of nothing anyhow. So that we are coming down harder on the guy who has been exculpated than we are on the guy who has been found guilty.

Q Only because he has been determined to be indigent in the first place. A Only because he has been determined to be indigent.

Q I mean, the same thing happens to the guy who has got the money to defend himself. A Certainly.

Q Do you employ any sort of non-legal outside service in any capacity for any reason? A No.

BY ASSEMBLYMAN TURNER:

Q That means investigators as well?

BY ASSEMBLYMAN THOMAS:

Q Anybody. A That's what caused the pause for thought. We do hire private investigators on occasion.

BY ASSEMBLYMAN TURNER:

Q On what basis? A I would put that under legal.

Q Would you explain that to me?

A When we have had insufficient investigative help, we think that the statute permits us to contract for that help outside of the office, just as we maintain a pool of attorneys we would engage on a temporary basis --

Q And your description of your investigative staff causes me to presume that could be continuing all the time.

A No, it has not been continuing. I don't know, I suppose we could tell you how much has been spent for private investigators.

Q Would you be kind enough to submit to me the names and addresses of those agents or agencies that have acted in that capacity and the amount of cases for each and the amount of money spent, please.

A I presume we can do that, yes.

Q Sir, I notice on your application it says nothing about the registration of any automobile under question B, paragraph 2, question B, and it doesn't say anything about a driver's license.

A It's hard to translate that into money.

Q Well it may not be because you brought up the subject, sir, not I, when you mentioned the fact you know he's here today and gone tomorrow and that is a fact and sometimes persons change their names but it is not as easy to change other identification, such as social security, particularly when we are getting awfully

close to the subject of uninsured drivers when we talk in this field and I am just curious what you can do in thickening up this application in that regard. It may give you an opportunity to find those you are seeking.

A Perhaps we can discuss with the Administrative Director whether they would wish to amend the court form to include the driver's license. Or are we talking about the court form?

BY ASSEMBLYMAN THOMAS:

Q This form then is the court's and not yours?

A Oh, yes. Yes, I thought I made that clear earlier.

BY ASSEMBLYMAN TURNER:

Q You did, but you also earlier made it clear that you weren't satisfied with some of those questions, particularly when I asked you about compensation, and I am sure as a lawyer you know you have no right of lien, or at least I presume so, as a layman. A Well, it has been an area that I have not had very much dealings with, and if I was incorrect --

Q There is no right, to my knowledge. I think that is the law. But if you have such a form that would be different than this, would you be kind enough to allow me an opportunity to look at that, too? It may be that --

A I don't have a form that is different than that. That is the form that's used.

BY ASSEMBLYMAN THOMAS:

Q Again changing the subject entirely, I would suspect that you must have some percentage of your clients that are Spanish speaking? A That's true.

Q And therefore do not have a fluent use of our language. Do you have a means of adequately taking care of this segment of your clients? A Not that I would consider adequate. We are constantly seeking Spanish speaking personnel to work in the offices where the high volume of this business comes. But at the moment we have one Spanish speaking lawyer in the entire system. I have offered a job to another young man who I hope will come with us in July. There may be two or three secretaries in the system that speak spanish. Where it has been necessary we have gone to community action programs to get people who could interpret for us. It is not satisfactory, in my opinion.

Q Again, is it a question of money, not being able to get enough to take care of this particular area?

A It's a question of money and a question of availability of people who are interested. I have right now a woman out of Jersey City who is a Cuban refugee who was a Judge in Cuba who would be interested in coming to work for us as an investigator if our salaries were somewhat better. She would be ideal. There is the additional problem of whether Civil Service would let her sit for an examination, she not being a citizen.

But that's another problem that you might wish to take up when you're investigating Civil Service sometime.

Q Now this is very important, I think. This is becoming more of an area of developing concern, for the rights of these people too. And Civil Service is going to be a bar to hiring somebody of what would appear to be on the surface obvious competency of this person?

A I have not received a formal opinion from Civil Service. It is my understanding that she would not be eligible to sit for an investigator's examination if she were not a citizen.

Q Is there anyway of getting around it?

A I can hire her temporarily.

BY ASSEMBLYMAN TURNER:

Q And fire her every six months and hire her back.

A Well, you run into a problem then in that as long as you have a temporary employee on your rolls, Civil Service will hold an examination and as soon as there is an eligible person on the examination list he is entitled to the job.

BY ASSEMBLYMAN THOMAS:

Q Can't they create a new job category so that she could qualify?

A That is a possibility that frankly we have not explored. It's something that occurred to me when this situation arose. It may be possible for us to do so.

Q Your patience with the bureaucratic system is amazing.

BY ASSEMBLYMAN TURNER:

Q Well, I just wonder what the Legislature can do to help him in that regard. And also I would like, sir, to ask you a question in reference to investigators, who are very tender to my heart, do you feel that the standards that are set, the experience, four years of college, are such that allow you to get people?

A Not at the present salary we are able to pay. It is unrealistic.

Q Well I understand we can increase the salary to \$20,000 a year and we can get a lot of investigators.

A Right.

Q The question is, we also talk about Spanish speaking persons - is there any such thing as an on-the-job training program, facilities where people could come into your department and start to live with the attorneys, grasp the problems and get the answers for them?

A There is not, although this is something that we've discussed from time to time particularly in the area of investigators. I know my chief investigator is very high on the idea of trying to develop a group of people who might be indigenous to some of the communities we serve, that would serve as kind of a para-professional bridge between the investigator and the community that hopefully

could be brought on a career ladder and made an investigator eventually. But, believe me, we have not had the flexibility to deal with in these types of programs that I think warrant a lot of consideration.

Q Well, maybe this is the opportunity to discuss them. A I hope so.

Q We are creating a little dialogue in that regard, right? A Right.

Q Now can I hear from you in that regard, as to your recommendations? A You certainly may.

ASSEMBLYMAN THOMAS: I don't have any other questions. Do you?

ASSEMBLYMAN TURNER: No.

ASSEMBLYMAN THOMAS: We, obviously, are going to have to continue this hearing beyond today and we have other witnesses who are going to come. I would trust that you would be available, perhaps, to come back. Some other questions may arise as a result of having talked with them.

MR. VAN NESS: I would be please to do that.

ASSEMBLYMAN TURNER: In all fairness to the Committee, as well as Mr. VanNess, I would like to have the privilege of reviewing some of the memoranda that I asked for.

MR. VAN NESS: Yes. I believe that your secretary has made a list of things you have asked for, I think we have a list, they will reconcile it and we will make this available to you.

ASSEMBLYMAN TURNER: Yes. Then if I could have the privilege to review it and then discuss it with you then I think we can get to the meat and the artery of the question and so on.

MR. VAN NESS: I'm at your disposal.

ASSEMBLYMAN TURNER: I want to thank you for your courtesies and your tolerance.

MR. VAN NESS: Thank you very much.

ASSEMBLYMAN THOMAS: Thank you very much for your time. You have been very helpful.

Let me just ask you one more question, is there anybody in your office who reviews the expense vouchers that are put in?

MR. VAN NESS: Yes.

ASSEMBLYMAN THOMAS: Thank you.

Mr. McConnell, please.

For the record, could you give us your full name and your title, Mr. McConnell?

E D W A R D B. M c C O N N E L L: Edward B. McConnell, Administrative Director of the Courts. I will try to keep my remarks brief.

I, first of all, want to indicate the concern of the Judiciary for the Office of the Public Defender. It is an important part of the Criminal Justice System, an indispensable part at the present time. It has been and is substantially interfering with the operation of the courts because of the inadequate funding that has resulted in inadequate staffing. This prompted the Court, in winter a year ago, to appoint a special committee of which Judge Guiliano was Chairman. On it were Judge Artaserse, Vincent Biunno, Victor Carton, Judge Crane, Peter Devine, John Francis, Jr., Theodore Geiser, Judge Goldmann, Judge Halpren, Judge Hetfield, David Lucas, Judge Schalick, and John Tollan.

That Committee was appointed by the Supreme Court in view of what it considered to be a critical situation facing the courts in the handling of criminal business. It submitted a report to the court in March which was transmitted to the Governor and the Legislature, in which it indicated that the Public Defender's Office was in danger of total collapse and, with it, the Criminal Justice System in this State unless substantial assistance were given both in the way of providing additional staff, both investigators and attorneys, and in upgrading the general status and

caliber of the office so it could properly perform its duties.

At that time it was estimated that the office was underfunded in its request, which had been submitted by the previous Public Defender by, my recollection is, approximately one-third, in other words, it needed at least another million dollars to meet even absolute minimum standards.

Since submission of that report, the Supreme Court has continued on every occasion to indicate its concern for the situation. The assignment judges have notified the Freeholders in every county that unless something was done Counsel would again have to be assigned to supplement the Public Defender system. Those views have also been communicated to the Governor and they have also been communicated to the Legislature.

As you know, at the meeting the Supreme Court had with the Legislative leaders in early January, this was one of the items that was top on the list that was called to the Legislature's attention.

The recent situation in the Appellate Court highlights the problem. That happens to be on the appellate end but the problem is also serious at the trial level. When those cases were pulled off, after constant effort, in which the calendar on the appeals were falling further and further behind, 273 cases

were taken and assigned to individual lawyers with the understanding, Freeholders were so notified in each county, that the counties would be expected to pay under the old State against Rush formula.

Incidentally, the Public Defender's Act did not repeal any other statutes that were previously used as the basis for payment under Rush. You know Rush indicated in that case - the name is a little deceiving because State against Rush is the title of a criminal case, but what it stands for is the subsequent application by an attorney for a fee for having represented, on assignment, an indigent criminal defendant. And the Court held that he was entitled to be paid and that is one of the essential costs of prosecution, and accordingly under our Statute this is to be borne by the county.

The other thing I want to mention is that I think that the staffing problem that the Public Defender has is sometimes blamed on the action of the Public Defender in taking unnecessary appeals, unnecessary trials, unnecessary post conviction applications. About a year ago I was at a meeting of the National Legal Aides and Public Defenders Association in Washington, at which Chief Justice Burger spoke.- he had not yet taken the position as Chief Justice at that time - in which he indicated there were four things that every defendant could decide for himself -

1. What his plea was; 2. Whether he would waive a jury trial; 3. Whether he would take the stand as a witness in his own defense; 4. Whether he would take an appeal. Those four aspects of litigation were not within the control of the attorneys.

So that to what extent these various rights are exercised by the defendant are not ones that can be controlled by the Public Defender Attorney who is representing him.

But the fact of the matter is also that the Public Defender's office has not resulted in any reduction in the number of pleas. Let me just indicate, in 1967 - that's for the year ending August 31, 1967 - criminal dispositions in New Jersey were 22% by trial, 41% by plea, 37% by dismissal. Now that ended that period two months after the creation of the Public Defender's office, so that those figures do not reflect the activity of the Public Defender. For the last full court year, ending August 31, 1969, the percentage of cases that went to trial and were disposed of by trial was 20%; 2% less than in 1967. And the percentage of cases that were disposed of by pleas was 47%, a 6% difference in the disposition by pleas. So that if you look at those figures it's obvious that, contrary to what I think is public impression and I know it's contrary to Attorneys' impressions, the Public Defender's office has actually increased the percentage of pleas.

Now I don't know whether there is any cause and effect in there but certainly it indicates that there is not a reverse cause and effect.

The other thing I want to indicate is that for a variety of reasons the length of trials has been going up. In the last five years the average length of a trial has increased on the criminal side by 40% and the average length of a juvenile hearing by 50%. The time spent is still very low. The average juvenile case in this State takes only 16 minutes per hearing. The room for any improvement in these time periods, I think, is negligible because of the fact that the duration of these hearings, if anything, is going to be extended, and it's affected by the cumulative decisions spelling out the constitutional rights of defendents.

Now we are also concerned about the increase in the over-all volume of criminal business. Let me mention some figures. In 1968, the year ending August 31, 15,090 criminal indictments and accusations were added; in 1969 there were 19,472, an increase in one year of 29%. If you go back to 1967, the year before the Public Defender's office was created, you were down to approximately 12,000 criminal cases. So that there has been a substantial increase in the volume of business. The ability of the court --

ASSEMBLYMAN THOMAS: Let me ask you a question here. Are you using the same sources to make your statistical determinations? In other words, in 1967 --

MR. McCONNELL: There is no change in the statistical base here, it's the indictment.

ASSEMBLYMAN THOMAS: Those are indictments.

MR. McCONNELL: Those are indictments and accusations.

ASSEMBLYMAN THOMAS: OK.

MR. McCONNELL: Now the difficulty that the courts are having is only partly due to the Public Defender's Office. Last year, while 19,472 indictments and accusations were added, only 15,459 were disposed of. And that was almost 2,000 more than had been disposed of the previous year but, as you will see, fell 4,000 short of matching the intake. The result is one which makes it appear that in New Jersey the criminal justice system, as a whole, is close to falling flat on its face.

ASSEMBLYMAN TURNER: Sir, may I interrupt you a moment? I don't wish to fracture your presentation but you said in 1968 there were 15,900 cases?

MR. McCONNELL: 15,090.

ASSEMBLYMAN TURNER: And you said in 1969 there were -

MR. McCONNELL: 19,472.

ASSEMBLYMAN TURNER: Yes, sir, but what I am

concerned about, there is a time lapse between the time of indictment and the time of trial.

MR. McCONNELL: Inevitably.

ASSEMBLYMAN TURNER: Right. Now I am just wondering then if we figured those indictments in 1968 were tried in 1969, we're only 90 cases off, are we not?

MR. McCONNELL: The 15,090 are cases added during 1968; the 19,472 are cases added during 1969. They have no relation to each other. They are different cases. The dispositions in 1969 were 15,459.

ASSEMBLYMAN TURNER: Yes, sir, but so that I may understand your statistics, how long does it take on a statewide basis, as you are quoting, from the time of indictment to the time of trial?

MR. McCONNELL: Well, it ranges - but the mean in the State is somewhere between four and five months. The mean is that figure in which half of the cases take longer to be disposed of and half take shorter than that period of time to be disposed of.

ASSEMBLYMAN TURNER: Proceed.

MR. McCONNELL: The gap that exists has existed between cases coming in and cases coming out has resulted in a backlog on the criminal side, and this is what has been of concern to the courts.

On April 30, 1967, this was just a few months before the Public Defender's Office was established,

there were 5,379 active criminal indictments pending in the County Superior Courts throughout the State. 1,821 of those had been pending for more than six months, the rest were less than six months old. As of April 30, 1970, the end of last month, there were 10,288 active criminal cases pending and 6,140 of those have been pending for over six months.

Now this situation has resulted from a variety of factors. One, there is an over-all shortage of judges and we've made recommendations for an increase in judicial manpower; two, in many places there has been a shortage of prosecutors and prosecutors' detectives, in addition the shortage of public defenders and public defender investigators; with the results that even though the Chief Justice has indicated that maximum top priority must be given to the criminal calendar, in many instances the assignment judges have not been able to put on as many judges on criminal as they could use by reason of the calendar because there are neither prosecutors to prosecute the cases or public defenders to defend the cases, and the bulk of cases are public defender cases.

There is, in my opinion, a substantial shortage of personnel throughout the whole criminal justice system that needs to be remedied. And I want to emphasize that while I'm convinced that there are always improvements that can be made, there is no improvement that can be made of dimensions that would

deal with this problem other than manpower.

You may have been reading in the New York Times about the problems in New York, which are similar to our own. There is a lack of coordination over there just as there is at the county level in this State but there is also a severe shortage of personnel.

ASSEMBLYMAN TURNER: I don't wish to break your presentation, sir, but I would like a more adequate explanation about what you say is the absence of county coordination.

MR. McCONNELL: In none of the large counties do we have a smoothly functioning criminal justice system, in my opinion, because of the lack of the necessary machinery to coordinate the numerous offices that are involved in the criminal justice system. You have at the county level the courts, which means the assignment judge and the criminal assignment clerk; you have the grand jury, you have the prosecutor, you have the sheriff, you have the jail, you have the probation department, and you have the various municipal courts that range in some counties as high as 70. All of those are part of the criminal justice system in terms of prosecution of offenders. I'm not even mentioning the juveniles because you add in additional ones if you get in there.

The volume of this and the need to coordinate among these various offices is difficult, at best, because

of the different jurisdictional elements that are involved in this. The offices aren't all under the same tent. But the machinery is lacking. Now we've had a study made in Passaic County out of a State Law Enforcement Planning Grant to design an information system for that county. It is not funded. We had a study made in Essex County a couple of years ago to set up a judicial data center that was to coordinate the information requirements in Essex County and it was never funded.

So that that's what I'm referring to, the lack of time to gather all of the many pieces.

ASSEMBLYMAN TURNER: If I may, sir, this is the first time I've met you but I think it's true for me to say that you serve as the right hand and you are the gentleman who coordinates with the assignment judges of the State of New Jersey, the activities, and I think it is also fair to say that the assignment judge - he who walks and all the counties do listen -- and I am just startled by that statement. I thought we had a very fine system, other than in yours and some others opinions as to the municipal courts which --

MR. McCONNELL: I think we have a very fine system. I am just unhappy that it doesn't work better than it does, and it doesn't work better than it does because it doesn't have the money that it needs to work. And this is exactly why you saw New York, within the

last two weeks, that the administrative judge responsible for the operation of the criminal courts in New York City quit as an administrative judge. And another judge in New York within the year quit because he said he could no longer stomach having less than 60 seconds to spend per case. We're not that bad. By comparison, we're good. But our system is undernourished in terms of personnel.

ASSEMBLYMAN TURNER: Sir, you have made some recommendations as to judges and I am sure you are aware that there are some bills pending in this and the other House as to additional judgeships. Are you saying that in some areas of the State this is more critical than others?

MR. McCONNELL: Yes, the situation varies from county to county. The volume of criminal business varies very substantially from county to county, and the situation is worse in some counties than it is in others.

ASSEMBLYMAN TURNER: You also started to state about the amount of people that were indicted and the amount of people that were brought before the bench but you didn't continue with that long enough so that I could get any kind of a pattern, and I'm curious about patterns. It does, admittedly, take someone to prepare his case and he does need, regardless of whether he is an employee of the State or private

counsel, some opportunity and that takes time. And I am just wondering, when you talk about cases that it takes more than six months to prepare and bring before the court.

MR. McCONNELL: A criminal case?

ASSEMBLYMAN TURNER: Yes.

MR. McCONNELL: In my opinion, all criminal cases, with the customary exceptions for the unusual case, should be tried within two months. And this is a requirement in the State of California.

ASSEMBLYMAN TURNER: You stated that was your opinion. Is there anyone else in the State who so states, sir?

MR. McCONNELL: I can't say precisely whether there is but I think it would fairly well reflect what the picture should be. It is a requirement in the State of California that if a case is not tried, a felony, within 60 days, it's dismissed. And they stay up to do it. And they have prosecutor offices that are staffed. They can move the judges in to try it. Within 60 days they had over - I think it was over, either over 3,000 or over 5,000 indictments, for example, felony indictments arising out of the Watts case and they were all disposed of, except less than 100, within the 60 day period, and those there were special reasons for. We still have Newark riot cases around that haven't been disposed of, and that was what --

ASSEMBLYMAN TURNER: Why not?

MR. McCONNELL: For a variety of reasons. But our whole system is not geared to move cases expeditiously on the criminal side and it is becoming increasingly less geared to move them on the civil side. Now, we have as of last month, and this we got curious about as to the particular figures, because the Second Circuit Court of Appeals in New York, which has litigations involving the question of the right to a speedy trial asked the New York Courts for a report on how many defendants they had in jail that hadn't been tried that had been in jail for more than three months - we got similar information here, when we saw that, and we had 536 defendants, last month, who had been in jail for more than three months. The Chief Justice has asked the Assignment Judges to see that all jail cases are tried within three months and to assign whatever number of judges, appoint whatever number of special prosecutors, or authorize whatever number of special prosecutors that needs to be appointed, and assign whatever number of defense counsel needed to be assigned in order to do that.

ASSEMBLYMAN TURNER: You are not inferring, sir, that if someone spends more than three months in jail on certain misdemeanors that he should be let free to take the pressure off the system, are you?

MR. McCONNELL: I'm not suggesting that anyone

should be let free to take the pressure off the system; I'm suggesting that the system should be geared to dispose of cases promptly because the situation that you get if a man's in jail - and remember that one-third of these cases that went to trial, 37%, that the Public Defender represented, were acquitted. I don't know how many of those were jail cases but those people are entitled to be out. A person who is in jail is entitled to be tried and tried speedily. The Constitution guarantees him that right. The person who is on bail, the public has a very real interest in getting that case speedily disposed of, for two reasons, one is so that the enforcement example will be a meaningful one and because that man out on the street may be committing other offenses, and we have had that situation happen. That bail and ROR program is only effective if you get the cases tried and disposed of quickly. I won't get into the fourth aspect of the criminal justice problem, which is your institution problem, which is another one where we're --

ASSEMBLYMAN TURNER: May I interrupt your presentation once more, sir?

MR. McCONNELL: It's not much of a presentation, it's not organized much anyway.

ASSEMBLYMAN TURNER: I can tell you that Mr. Thomas and myself have both submitted bills to this Legislature with reference to new judges and I yet have

not moved my bills and I would like, particularly in reference to Gloucester and Camden Counties, for you to submit, if you will, such memoranda that will assist me when I stand in this House and make these requests to substantiate the need for additional members of the bench. Would you be kind enough to do that for me?

MR. McCONNELL: Yes. We've already submitted memoranda to the Governor's office.

ASSEMBLYMAN TURNER: Well, I'm in a different branch of government.

MR. McCONNELL: We'd be glad to send you copies. It's all done.

The thesis that I have here today - I just want to make one other few figures. There were 1,032 guilty verdicts resulting from trials and the dispositions during 1969; there were only 305 direct appeals to the Appellate Division during that year, so that less than one-third of the cases which are tried and result in a conviction are being appealed.

ASSEMBLYMAN TURNER: But that doesn't delineate between those who pay and those who don't pay.

MR. McCONNELL: No, we don't have any way of knowing, but if you assume a substantial percentage of the guilty verdict in public defender cases the percentage of appeals can't be very bad when you think of the fact that every defendant has the right to take an appeal and only he can make that determination.

The thesis that I have, and I don't intend to use this as a forum for asking and seeking support in terms of judicial manpower but I did want to do it to illustrate the fact that the public defender is now an important part of our system and it is interfering, because of the fact that it is not adequately staffed, with the operation of the courts even though they are presently inadequately staffed in terms of judges and prosecutors.

And the other is that the public defender is not responsible, according to the data that our reports indicate, for any increase in trials, any increase in not guilty pleas because the dispositions, as you have seen, have risen. And its request ought to be viewed in that light.

That's all I have to say.

BY ASSEMBLYMAN TURNER:

Q Sir, I am basically trying to conduct this investigation from my chair as the result of Assembly Resolution 3 and yet I do take the opportunity to go beyond that to understand the total scope of the problem. But in view of the fact that you have mentioned generally the public defender's ability not to be able to be in court with his client when the time arrives, I wondering if you can give me some statistics beyond that of dealing with the State of New Jersey and name various counties or regions that

you failed to get this cooperation in, as compared to others where you do because we, reviewing the entire process, should know where the weaknesses lie other than just generally in the systems themselves. And we would appreciate the assistance of your office in that regard. I am sure that information flows to you from the assignment judges throughout the State and that you know where the problems are. You're the man in charge of problems, I understand. A I am not in charge of the prosecutors and public defender's problems, nor am I in charge of the court problems. I have more bosses than anyone else in the State.

Q So if you would give me some information in that regard, I would appreciate it. We would truly like to know what these problems are and where they do exist. A Let me just mention on that. The information that we have available on the criminal side is very slim. And our statistical system, although we do have a good deal of information, is very elementary, so that many of these problems we do not have meaningful statistical data on them. And if I could just put a little dig in, we have been unable to get the money to supplement our statistical system to get the information that we think we need in order to get at some of these problems. We had hoped that this would come about through the uniform crime reporting system, with which we've cooperated very

strongly, but, while it may be filling the State Police needs, because of lack of funds our informational requirements basically had to be dropped out of the system.

Q Sir, you sat here very quietly and very patiently today while we talked to Mr. VanNess.

A Quietly, not patiently.

Q Well, I shall not retort. The point is this, sir, you heard Mr. VanNess, particularly in reference to the fact that he had a lady, a Cuban refugee, who had been a member of the judiciary in that State, would you tell me whether or not you feel the Civil Service rules are such that they are proper or whether or not we should change the standards and bring these people into this and other agencies to serve a purpose?

A Well, I don't pretend to be an expert on Civil Service. I was interested in some of the colloquy that went on with respect to how you fill positions, and the Chairman indicated that Mr. VanNess was very tolerant of the bureaucratic system, red tape. I don't know that we are tolerant, I think we are frustrated in many regards by some of the procedures. I have a statute too that provides that I can appoint people in the administrative office and fix their salaries and that they shall not be under Title 11 of Civil Service, but I can,'t, either, add a person to the payroll without going through all the same channels

that Mr. VanNess has to go through.

BY ASSEMBLYMAN THOMAS:

Q Do you have to go through this same triumvirate?

A Yes, sir.

Q Is there some statute that --

A In the Appropriations Act.

Q In the Appropriations Act? A So that

the statutes on their face don't give you the authority.

And I have a problem right now, for example, in which

I have responsibility for reporting services in the

various courts. I have a man who supervises 160

reporters and 160 sound installations, and another 100

going in, who is outpaid by almost everyone he super-

vises, and I have been unable to get his salary re-

classified. So that we aren't able to make our own

determinations and when we disagree with Civil Service

determinations there is no other place to go.

BY ASSEMBLYMAN TURNER:

Q Except by changing the law, isn't that the fact?

A Well, I forget now, somebody had another question I intended to answer.

BY ASSEMBLYMAN THOMAS:

Q I have some questions. Did you finish on that point?

A Oh, on Civil Service about the investigators, that was your question. I think what can be used throughout the system - I assume that the Public Defender, for example, could use help in this regard, say for investigators, I'm not sure, I know we

could use it in probation, for example, and that's the so-called para-professional, the person who doesn't meet the ordinary standards. Now in that type of program you just can't recruit people where they have got to take examinations, where you can't guarantee them jobs. These are generally non-exam takers. Now our office being not under Civil Service, in the sense of not having people in the classified service, we don't have that particular problem because if we find someone that fits the bill, we can appoint them without having to worry about whether they are going to pass an examination, and so forth. We can't adjust the salary. We can't even - if we have a range, say, that runs from ten to thirteen, or something like that, and we have to get somebody say at twelve in order to hire them, we can't do it, we have to get the Salary Adjustment Commission, composed of the President of Civil Service, the Director of the Division of Budget & Accounting, the State Treasurer, and the Legislative Budget Director, all to agree, and by the time that happens the guy is no longer interested in your job.

BY ASSEMBLYMAN TURNER:

Q Well, sir, as I have never had a chance to have a dialogue with you before, and you have touched on a very interesting subject, that of probation, then would it be your recommendation that we should review the construction of the probation departments of the

State and find another way to bring in people who could augment us? A We have made recommendations of that sort. We have several programs that are pending before the State Law Enforcement Planning Agency which would make substantial efforts in that regard. There was a program that was put in legislative form that would have provided for our office having a number of probation aides that would then be assigned out to probation departments but the bill provided that they be selected through Civil Service means which quite changed the sort of system from the one that we were contemplating.

The problem again there is you've got a dollar sign on it, though. You can't scrap the system you've got in order to move into these other areas.

BY ASSEMBLYMAN THOMAS:

Q You said that our system, and I understood that you were talking about the court system, was not geared to move cases. What did you mean by that?

A We don't have the people.

Q So it isn't the system, we don't have enough people in the system to make it move. A That's right. And at the county level there is a lack of modern means of information exchange among the various offices at the county and municipal level that are concerned with the criminal justice system. One hand doesn't know what the other hand is doing. There is

a lot of duplication. For example, there have been cases in Essex County where say a prosecutor might move to dismiss a case because he says he can't find his chief witness. The chief witness may be in another court but nobody would know it because nobody can get the information tied together. And there are, as I say, recommendations that have been made in this regard but they cost money to implement.

Q Are there enough public defenders now to keep the number of judges that we have working on criminal cases busy? Or is there just a mutual adjustment that's made?

A They don't put more judges in criminal than they can keep busy. But they can put more judges into criminal, and they should be put into criminal, than the public defender can keep busy.

Q Then under our existing number of judges, we would have to take them away from the civil side and you would only develop problems there.

A Exactly. That's why last year in Passaic County all the judges were on the criminal and juvenile and domestic relations and other work like that, there were none on the regular civil calendar and we are approaching that in some of the other counties. Essex County today has 14 judges sitting on criminal.

Q Well, I was just about to say that. It seems to me that in almost every county the emphasis is on

clearing the criminal calendar and the civil is going to get hurt.

A In terms of relative public importance the criminal and juvenile calendars must be given priority, in the public interest.

BY ASSEMBLYMAN TURNER:

Q Well, let me ask you, sir, you made your views very clear on the question of adding to the bench, can you tell me what the lag is on civil cases at this time?

A Well, in the larger counties, in Essex County it's up to about 30 months.

Q How about down in the farm country, Judge Schalick's bailiwick?

A Well, it varies. Camden County - I couldn't tell you offhand what it is because I didn't bring along any of the civil material, but it would be up in the two year area.

Q Well we also have to serve these citizens of our State who have a right for a plea to be in court. Then would you, in sending to me those statistics, in reference to Gloucester and Camden Counties - would you furnish me with that information?

A Yes.

BY ASSEMBLYMAN THOMAS:

Q Do you feel that the Public Defenders, and I mean the deputies under the chief, should be full time as opposed to this prime time setup that we have now?

A I think the judges feel they should be. I would just like to say, the prosecutors should be full time.

BY ASSEMBLYMAN TURNER:

Q In all counties? A Yes, sir.

BY ASSEMBLYMAN THOMAS:

Q Do you feel that the Public Defender should be a separate agency rather than a part of the Department of Institutions and Welfare now.

A In my opinion, yes. I think that it's necessary in terms of, one, the stature of the office; and, second, in my opinion it doesn't belong in I&A anyway, not only for the conflicts reason by because I think it is a neglected stepchild in the Department of Institutions and Agencies.

Q I gather that - it had been my opinion that the court was disturbed by the number of appeals that the public defender was taking, but I gather that percentagewise the number of appeals is not something that's disturbing the court. A No. The court is disturbed by the number of appeals, just like it's disturbed by the volume of litigation. But we don't control - you can be disturbed about something even though it is nothing you can do anything about.

Q When I said disturbed, I meant in some way the creation of the office of the Public Defender had created an increase, a percentage increase that had not been present before. A I suspect that's so. I didn't run the appellate calendar. All appeals have gone up, criminal appeals, I suspect, although I

haven't run that out separately, have gone up more than others. There were only last year 359 criminal appeals taken to the Appellate Division.

Q That's one-third of the total number of convictions and that doesn't seem to be of alarming proportions.

A No, that's what I say. The volume has gone up, of appeals. The volume of everything has gone up. The Appellate Division itself is backlogged. Now criminal cases get priority on appeals too and yet we need an additional part of the Appellate Division.

Q But the feeling was that with the creation of the Public Defender's office we had increased the percentage of appeals, not the volume; the volume nobody has any control over, but the percentage of appeals because of the new concept that you have a right of appeal.

A Yes. I don't think the Public Defender's office increased it. The various decisions giving people counsel automatically - there is no such thing, you know, of a review of whether you can take an appeal.

Q Do you think there should be that kind of review, forgetting for a moment the constitutional question that may be raised? Do you think there should be that kind of review in the Public Defender area, the indigent appeal area? A On initial direct appeal?

Q Yes, forgetting for the moment the legal question of whether you could do it or not. A It is sort of like speculating on whether I am going to be president tomorrow because it is not going to happen.

Q I don't know. A couple of these reports indicate that there should be some kind of review panel on appeals with recommendations as to whether there should be an appeal in a certain case or not. A I don't see how you

can --- Let me put it this way: The problem that existed before you had an automatic right of appeal with an attorney from a conviction - if the defendant wants to appeal, someone has got to pull this thing together. This is why on some of these matters counsel, even though a man, let's say if he makes an application to the Supreme Court in which the court ordinarily as I understand it asks the Public Defender to take the matter because they don't want to be counsel to the defendant and have to pull his stuff together and read his transcript and decide whether he has any rights - they want somebody to do it for them.

BY ASSEMBLYMAN TURNER:

Q I just wonder what the cost of printing all these records is in itself, whether we could find some other

way to still give each his right. A Well, if you are talking about the letter-type printing, that has been out for a long time in the court. Most all the stuff is just Xeroxed or reproduced in the cheapest possible form.

BY ASSEMBLYMAN THOMAS:

Q I have a proposed recommendation that there be created a special panel to review an application for appeal to determine whether or not the appeal is justified, in other words, just the same way a privately-retained attorney would make an evaluation of his client's case. And if it was the determination of this special panel that the appeal was not justified, no appeal would be taken by the Public Defender, there would be no further responsibility of the Public Defender to represent the indigent.

A You are going to amend the United States Constitution to so provide? That's the problem.

Q I would take it that you are familiar with the regional setup that the Public Defender has now.

A Roughly, yes.

Q Do you feel that his office would be more efficient if it were handled on a more centralized basis, in other words, like a large law firm so that there could be more flexibility in the assignment of counsel to places of greatest need? I get the feeling from the testimony today of Mr. Van Ness that there doesn't appear to be that degree of flexibility there should be in the system to get lawyers to the places where they are most needed. A Yes, and

I recall that he indicated the problem is that these aren't one hundred per cent full-time people. This is a problem, incidentally, on getting lawyers. It is not unique again to the Public Defender's Office. The Attorney General is having problems getting peak lawyers. We have problems getting lawyers.

Q And does this all resolve itself down to the question of money, do you think? A Well, it doesn't all resolve itself down to a question of money. But when you have a shortage of people, that's an important factor. I think myself - and I think this reflects pretty much the view of the judges - that the Public Defender is getting an awful lot of work for his money. The caliber of people by and large that they have, equated in terms of the money they are paying, are very good. The problem is the one that has been touched on; the problem throughout the whole New Jersey governmental system, in my opinion, is that you don't have people stay long enough to really get to be professionals. Now I referred to this national meeting of the Legal Aid and Defenders' Association. In some of these well-staffed offices elsewhere that seem to be doing a good job, they have attorneys that have been around for a number of years. This is their career. And their salaries go up quite well in the early years. The difficulty with so many of our positions - I think it is true probably in the Public Defender's Office - I don't happen to know their particular personnel problem - is that people don't become

career attorneys in New Jersey. They get experience in order to move on somewhere else and this is one of the reasons why in some of these areas you have even non-New Jersey attorneys that have been employed because we don't have skilled professionals in this State. And I think that this is penny wise and pound foolish because I would be willing to guess that if you got - the longer the lawyer stays with the Public Defender's Office and the better his stature is, and remember they are dealing with the same people over and over again - the client they have today, they'll have again two years from now. They know who these people are.

Whether that defendant takes his attorney's advice on some of these critical factors will depend upon his regard for him, how he is viewed professionally, in my opinion. If you have someone who has just graduated from Law School and you are charged with a serious offense and he tells you something, you are not going to put too much stock in that, but if he's a man you know is experienced, he has a reputation that has been developed over a period of time, I think you would find that would be a dampening influence. If they told somebody you've got a frivolous appeal and are not going to get anywhere, he might not take it,

Q But it seems to me that our most qualified people in this Public Defender system get into the administrative end instead of trying cases. The three highest paid people don't try a case a year. A I would have to comment

that that happens everywhere even in the administrative

Office.

Q Has any study been made or any look at perhaps changing our rules so that law students could - we could institute some kind of program starting in law school that would encourage an individual at that level to start in the criminal justice system to become a career employee and permit him at an early age to be able to represent in a professional capacity these people? A Well, I don't know. Of course, in New Jersey law students are given permission under the rules to do as much as they are in any other state in the United States in terms of appearing in court. But this doesn't get into the criminal business where a man is constitutionally entitled to counsel. The most that the law student could be would be associated, you know, as assistant to the attorney who is handling the case.

Q He could do anything except try a case under the statute, couldn't he? A In the past efforts have been made - we used to get every year a list of students from the law schools who would volunteer to serve as assistants to assigned counsel. But the program never worked very well just like a lot of these programs now for use of law school students don't work very well because the court schedule and their schedules in the university don't jibe too well and when exam time comes - I can't say that anymore - it used to be when exam time came, they all ran away so they weren't available when you needed them. Now whether

more can be done to promote their interest in a meaningful way, I don't know. The deans of your law schools would be able to tell you. I think there is much in the way of clinical work that is trying to be done and promoted and the court, as you know, approved all of these programs that have been submitted for them working and getting clinical experience. A lot of that is in the municipal courts, for example. They are authorized to appear in Municipal Courts and Juvenile and Domestic Relations Courts but in cases where a man is not constitutionally entitled to counsel.

Q Well, I was thinking of the internship program that the Department of Community Affairs has at the present time where they take students and they are paid during their vacation time to work in various departments, but there is some promise of continuing to work within the governmental framework once they graduate from college. You mentioned that you wanted to encourage a professionalism.

A I read the other day that one out of every seventeen lawyers graduated from law school last year applied for a job with VISTA. I was amazed - one out of every seventeen - and those are jobs that are very low salary jobs. But you don't keep those people very long and they are not enough of them to go around and they want to get in a place that is exciting. I don't mean that the Public Defender's Office isn't exciting, but you don't build up permanent staff of the sort you need by people under some special program.

Q Did you hear Mr. Van Ness's statement about the objection of some judges to canned briefs today?

A I heard some talk about canned briefs. I may have been nodding at that time.

Q I raised the question of whether or not almost a standard brief couldn't be gotten out that would be varied based upon the facts on an application, for instance, to suppress on a question of illegal search and seizure. He told me that many of the judges were objecting to their canned brief approach. I think there is just so much law in the area of illegal search and seizure and you apply the facts to the law that we have and that should be it.

A I suspect what is being referred to as a "canned brief" - if its a clip and paste job, just like a clip and paste set of jury instructions, I don't think the judges would like that. The brief has got to relate the law to the facts of that case.

Q No question about that. A As I understand it, to the permissible extent, this is what their brief bank is trying to do, just like in the Attorney General's Office or in your office. But it only goes so far.

Q Do you have in your office a central record-keeping system so that you know what every judge is doing on every day in a particular case? A No, but after the fact, we do, because we get a weekly report from each judge other than Municipal Court judges. We get a monthly report from them. We get a weekly report that shows his

activities in court each day - the name of the case and so forth.

Q Do you have a retrieval system so that you could say Judge X during the year 1969 spent so many hours on the bench in this type of case and that type of case?

A No, because ours is a manual system and we have been unable to get funds to convert it into a meaningful system. We are back at the dollar sign.

ASSEMBLYMAN TURNER: You mean, a more expensive mechanical system.

MR. MC CONNELL: Well, the difficulty, you see, the way we get reports, as far as statistical reports, is we get no reports on what I call an individual case-card basis, on an individual case. Our reports from the clerks on the volume of business are the inventory-type reports - how many cases they have pending, how many they dispose of. There is a limited amount of breakdown you can get in that sort of a manual-reporting system punched up and put together in the end, but the reports are in gross terms. This means we cannot go through and run out, for example, and see if there is a peculiar problem with your arson cases that you were talking about. Now we should be able to do this and the same is true on the civil side. But we have been unable to get the funds - we ask for them in each budget -

to convert our system. The result is we are trying to run a modern court system with outmoded equipment. Your law firm has what we can't get for an office that is responsible for the administration of all the courts in the State.

ASSEMBLYMAN TURNER: What is that?

MR. MC CONNELL: A modern information system, and this is what our counties don't have by and large. They are gradually converting on the civil side because the problems are less there.

Q Let me ask you an unrelated question. Do you think there would be any merit to developing attorneys that had a particular expertise with a particular type of case, say an arson trial expert, and shipping him around to try every arson case that we had in the State or a murder expert, what have you, whatever type of case? A I suspect there might be some advantage and it would be very short lived.

Q You mean, he would be so sick of doing it. A You wouldn't get anybody any good that would want to work on one problem. I remember Eli Jarmell told me when he was in a New York law firm, he was an expert on clause this of section that of the Taft Hartley Law. He used to wake up every morning wondering what would happen to his career if they repealed that section. So he quit. I think

this would be the problem. It is the problem when you have a judge that becomes overly specialized. That's the reason you don't have the same judge who is good on settlement conferences, for example, always having settlement conferences. He won't do it and you can't ask him to do it.

BY ASSEMBLYMAN TURNER:

Q Do you think you need judges for settlement conferences? A Well, that's another debate.

Q Sir, I would like to ask you one question in reference to the question of bail and the question of those who may continue to violate the law while on bail. Do you have any recommendations as to changing the statutes in that regard? A Well, the best answer I know is a speedy trial because that cuts down the time period within which they can commit these other offenses and to me that is much more effective than preventive detention - to try them and make whatever disposition is available. You see, we multiply our problems when we have these delays, particularly in the criminal side. Now we are starting a program in Essex County - it's actually going to be in Newark - to try and set up a meaningful ROR program, release on recognizance program, where defendants awaiting trial will have people that live in the neighborhood keeping tabs on them, not on probation, but an office not connected with the courts. Contracts have been entered into for them to have people to keep tabs because this is the problem in the mobility of the population. When you come to get

the man for trial, nobody can find him. He doesn't get the notices. These ROR programs started out very well with the Vera Foundation studies in New York that indicated that the number of skips were no different basically than they were for people who were on bail and percentagewise were very low. But when these programs have been transferred into mass programs as part of a general system, I think you read in New York - and it is true in the District of Columbia which I have had a little information on - that they break down because of the lack of contact. We are setting up this program. It is really a pilot-type program to try and provide this contact with the defendant in the community while he is awaiting trial. If this works - and I am convinced it can work - then it ought to be expanded, at least into your major metropolitan areas. But still ROR is no substitute for a speedy trial.

BY ASSEMBLYMAN THOMAS:

Q I have one other question. You have indicated that the 273 appellate cases that the court pulled out from the Public Defender were being paid, that the representation was being paid for, by the counties. A That was the way it was set up to be handled initially. As I understand it now, because the Public Defender has moneys that will be available, in effect, these people may become something like pool attorneys.

Q Well, wouldn't it be better to get this money into at least prime-time attorneys on the Public Defender's

staff rather than paying pool attorneys? A Well, the problem is - this has been a situation that has been accumulating - and the determination was made that we would take all of those in which no brief had been filed and assign them out because these defendants really had a right to get their appeals on, and the regular volume, even if the Public Defender was able to staff up to where he should be, his staff would be occupied with the new stuff but if they had to carry this accumulated load on their back, they couldn't work their way out of it within a reasonable period of time. So the determination was made and the Appellate Division was asked to do this.

Q This is a catch-up thing on an emergency basis.

A It is hoped that the Public Defender's Office as new appeals are coming in or any in which they had already been doing work on would be staffed in order to handle them and this would be a one-shot proposition. But if it doesn't get staffed, there will be the same problem. Now you are going to have the same problem at the trial level.

BY ASSEMBLYMAN TURNER:

Q Sir, may I ask you a question? This application - did you prepare it? A The indigency form, yes.

Q Did you hear my questions in reference to ---

A I heard your questions but frankly I am not an expert on that form. Our office has hundreds of forms and I don't ---

Q I thought you were the author of this form.

A I am not the author of it, but our office promulgates

these forms, a variety of forms under the rules, and frankly I can't answer all the questions about all forms. In fact, I usually find I can answer very few questions about anything.

Q Sir, would you do me a kindness. When the opportunity arises, will you review Assembly Bill 860 and be kind enough to inform this Committee whether in your opinion --- A A-8 ---

Q A-860. [Continuing] --- whether you feel this would be an improvement over the system as it now exists? A Is this a bill that deals with the Public Defender's Office?

Q Yes. It deals with the Public Defender and it basically recommends that where the Public Defender fails to try to recoup the public moneys that are used to defend this party that the County Adjuster proceed to --- A I can give you an opinion right now without looking at the bill. It ought to be in some place other than the Public Defender's Office. It shouldn't be a collection agency. Second of all, I think by and large all of these efforts that are seeking to get reimbursement from defendants who have been represented by the Public Defender are pouring money down a rat hole. I am convinced that you will spend more money than you will ever get back. Even if you include the deterrent aspect of it and quite aside from any constitutional questions that there may be or even just plain questions of fairness, I wonder when a man is indigent and

charged with crime and you provide him with an attorney, if then you should hound him for the rest of his life to get the money back. I think you ought to treat him like you do in a bankruptcy situation, let him get a clean start.

Q Well, what about the man who is not indigent and has to stand before the bar and take the same exposure and the same jeopardy? Do you think society should carry him too? A You mean everybody?

Q Yes, sir. A Well, this gets into the old debate - you can get into the same question on education and everything else - do you want to provide everybody with an attorney? No, I am not in favor of providing everybody with an attorney, but I do think that those people who are presently unable to pay should be provided with an attorney in criminal cases and I think economically - and I have no basis for this - but if you want my opinion, I think it is economically a waste of time to try and go after them. And for myself, I don't think it is the fair thing to do.

Q Well, if Aunt Mary dies next week and shortly thereafter he receives a hundred thousand dollars as a part of her estate --- A He's a lucky man then. But there are not very many of those. You see, I think when you are dealing with a system, whether it is the Public Defender system or the court system or any other system of this sort, you are really talking the law of averages and I think the law of averages in this area is against the utility of this sort of effort. I can't resist referring to

a little thing that was sent around Mercer County, a reprint of an Art Buchwald article, in which Governor Maddox was quoted as saying, the only trouble with the penal system in Georgia was that they had a very low-grade person in their institutions. Basically, you see, this is the problem with the indigent. They are poor and you are wasting money, in my opinion, to try and collect from them now or in the future.

BY ASSEMBLYMAN THOMAS:

Q This has nothing to do with the Public Defender system. Does the court know that there is apparently going out on a stamped summons form from some of the District Courts the statement, "If you cannot afford to pay for a lawyer, free legal service is available from the Legal Services Office"? A Not only know it, but we provided the form and asked the clerks to include it.

Q What we are apparently coming to then is, anybody who can't afford a lawyer, civil or criminal, is going to get one for nothing. A Well, you said it. You are right.

BY ASSEMBLYMAN TURNER:

Q Do you think that's the court's responsibility to so inform these people? A I certainly think it is. I think if there are legal services available in the community that have been established by the government for that purpose, that they ought to be told about it and that's all this is.

BY ASSEMBLYMAN THOMAS :

Q Do you think this is contributing to our court congestion?

A If it is - you see, this is the problem. There are a lot of things that contribute to court congestion. If you want to solve court congestion, cut out the crimes, repeal all the acts like they have repealed them in fact at the universities - if you repealed them in law, you wouldn't have any more criminal offenses and you wouldn't have any more court problems. The courts ought to be staffed to deal with whatever problems society feels should be dealt with in the courts and it shouldn't be the other way around. The same is true whether you are talking about a criminal calendar problem or a civil calendar problem. You ought not to decide, for example, whether you are going to have jury trials or not have jury trials on the grounds of whether the courts are congested or not congested. It ought to be on the basis of whether that's the way it ought to be. The same is true of the law of negligence, whether you should have comparative negligence or criminal negligence. I am very happy to see, for example, the Criminal Law Revision Commission taking a look, as it is, at the criminal laws. Certainly the juvenile laws need even more of a look at. And I think these developments in all of these areas, while you may quarrel about individual ones, are basically going in the right direction. There is no question that the nature and availability of legal services is changing and I think it should because I think there are many people who just

from a practical standpoint have not had the benefit of legal advice just as they have not had the benefit of medical services.

BY ASSEMBLYMAN TURNER:

Q Sorry, but I just can't help but take the opportunity to ask you this question. You have talked about juries somewhat today and even mentioned the fact whether juveniles are entitled to jury trials. There seems to be a general trend for some to turn their back on the jury system. What is your opinion in that regard? A Well now, you are talking about it in what context?

Q The question of civil trials. Let's put it that way. A I happen to feel that the jury system is a good thing. I would not eliminate it and I certainly wouldn't eliminate it on the grounds of court congestion. The best estimates that I have heard - I should say the highest estimates - is that you would save somewhere in the neighborhood of a third of the time of a trial if it is tried before a judge without a jury as against the same case tried before a judge with a jury. No one will ever know because you never try the same case twice. Although there are people who have suggested that we ought to try defendants two out of three times, three out of four, four out of seven, like they do in athletics to see how it comes out. But if you save a third of the time on civil trials, only 40 per cent roughly of the judge's time is spent on civil trials, and let's say, roughly 30 per cent of the time is spent

on jury trials. Well, if you save a third of 30 per cent, you are saving 10 per cent of the time of the judges.

Q There are other factors that cause you to express this feeling besides just the saving of time.

A I am just saying, you would save 10 per cent of the time of the judges. Now with the calendars going up, the volume of business increasing at about 5 per cent a year on the civil side, all you have gotten is a moratorium for two years. So you have made a major change in the system to solve a calendar problem, but in two years you are right back where you were only now you are stuck with something you did as an expediency unless you do it for the right reasons. I happen to feel personally that the jury system, whether it is in criminal or in civil, is a good thing because I think it gives some of the flexibility to the law that the law requires and the other thing, it gives, I think, a protection to a person who feels he needs it against what I would call unknown biases.

Q Sir, do you have any opinion as to whether the State should incur the expense of the jury system, the cost thereof?

A Of the jury system?

Q Yes. A Well, I think it has got to bear the major part of the expense. But we have been recommending for some time that legislation be enacted that would provide for a jury fee of \$60. That is presently just the per diem cost of 12 jurors for one day. Now there is no charge for a jury in the upper courts and the reason for this is to

avoid the very thing we have been talking about on the criminal side, asking for a jury without thinking, where it is done in every case regardless of whether that is a case where you feel you need it. This would do two things: It would cut down indiscriminate jury demands. And, two, it would provide some revenue to help meet the cost of the jurors that are needed. Now this is done in some places. In California, for example, you put cash on the barrel-head every morning if you have demanded a jury trial or you have posted a bond to cover it. And if you happen to live in San Bernadino County and they bring a jury in from a county that is 250 miles long, you pay the travel and hotel expenses of the jurors too. If the third day of trial you show up and you don't have the money, you go on with a non-jury trial.

Now I don't think you ought to get it up to the point where it becomes an obstacle. So the courts recommended that you pay \$60. And while you are on the jury, you ought to pay them more than \$5 a day too.

Q Do you think the State should take over the cost of paying the jury panels? A I think the State should take over the entire cost of the justice system because it works ---

Q But you haven't drawn a line there. You are talking also about municipal courts, aren't you, sir?

A Well, if you just want to talk about the county courts, one of the problems that we have in our court system is

it is financed partly at the State level and partly at the county level. The counties that are least able to pay have the biggest tab. Bergen County which is probably in terms of its citizens better able to support some criminal courts has one judge sitting on criminal. And Essex County which has a lot of economic problems has 14 judges sitting on criminal. The same thing is accentuated if you look at the probation departments. I think you would have a fairer distribution of the burden of the justice system if it were picked up by the State. And you also would be able to introduce some efficiency that is not now possible. It is very difficult to get an administrative coordination between two counties which are operating the courts completely independently and our trial courts, except for the Chancery Division, are totally financed at the county level. This is one of the reasons you don't have these information systems. It is the one reason you have problems in probation. The counties say every man you keep out of a State institution by placing him on probation, you save the State money but the county taxpayer gets hit. So I would put the whole works in.

Q And that includes the Prosecutors Office?

A Yes, sir. Incidentally, the Musto Commission has so reported.

Q I am aware of that. I just wanted your opinion.

A To have Senator Musto on my side of the question is a position I am not ordinarily in.

ASSEMBLYMAN TURNER: I am glad to hear you say that too. I have nothing further.

ASSEMBLYMAN THOMAS: I have no further questions. Mr. McConnell, I appreciate your taking your time to come and help us out today.

MR. MC CONNELL: Thank you.

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STATEMENT OF THE PUBLIC DEFENDER
BEFORE THE ASSEMBLY JUDICIARY COMMITTEE

May 15, 1970

Mr. Chairman:

I welcome the opportunity of appearing before this Committee to explain the operation of the Office of the Public Defender, to give an accounting of my stewardship as the administrative head of that agency and to describe the progress and the problems of that Office.

At the outset, I must point out that Assembly Resolution No. 3 which directed this study creates certain erroneous impressions. While the Resolution correctly states that supplemental appropriations in the amount of \$1.3 million have been made to this Office in the past 2-1/2 years, it fails to state that \$550,000 of that amount was necessitated by a legislative directive that the Office undertake the representation of certain juveniles. Nor does the Resolution mention that \$175,000 was appropriated to cover the cost of two extraordinary murder cases -- the Gleason murder case in Plainfield and the "Milkman" murder case in Camden. Finally, in noting that a request has been made to double the existing staff of 132 budgeted positions, the Resolution fails to mention that 62 of the positions requested are not new positions, but rather, represent

a request that temporary positions created when this Office was given the responsibility of representing juveniles be made permanent.

Nevertheless, it cannot be disputed that the operating costs of the Office of the Public Defender have increased markedly since its inception -- rising from an initial appropriation of \$2 million to an appropriation in the current year, including supplemental appropriation, of \$3.6 million. In the next fiscal year the cost will be \$5.1 million. Among any other questions which the Committee may have must be the question, why these increases. We submit that the answer to that question is that over-all costs have gone up because the number of cases assigned to the Office greatly exceeded original estimates and is increasing every year.

BACKGROUND

To understand the present workings of the Public Defender program, it is necessary to take a brief look at the history of representation of indigents accused of crime. The State of New Jersey recognized many years before a federal constitutional basis for the representation of indigents was established, that fundamental fairness required that persons unable to hire a lawyer be given representation. Thus, the assigned counsel system was created whereby each attorney, as part of his professional responsibility, was called upon to represent indigents. Representation was

given at trial and on appeal at no cost to the public and was sufficient to meet the federal constitutional requirements of the famous Gideon case.

Despite its constitutional sufficiency, the assigned counsel system stirred considerable controversy. Some members of the bar felt that they were being asked to shoulder a burden that was properly the burden of society at large. It was pointed out by numerous commentators that too often lawyers assigned to defend criminal indigents lacked expertise. Finally, in 1966, the New Jersey State Supreme Court held that lawyers assigned to represent defendants would be compensated at the expense of county government. Within six months of the Rush decision, and after an extensive study by a legislative commission, chapter 43 of the Laws of 1967 was enacted, creating the first State-wide, State-financed Public Defender program in the country.

That statute contemplates the complete representation of indigents at trial and through appeal, including investigative services and the assistance of experts in the same manner and with the same quality as if the defendant were able to hire private counsel.

We estimate that the creation of the Office of the Public Defender will have saved county government approximately \$11 million by the end of this fiscal year.

WORKLOAD

From the very beginning, the Office of the Public Defender struggled with a caseload far in excess of that anticipated and far in excess of that for which appropriation had been made. The details of the problems encountered are contained in the General Statement appended to the Budget Request for 1971 and are repeated in the Annual Report of this agency. Both documents are available to the Committee and I will not prolong this hearing with a repetition of that information. I would point out, however, that we projected in our Budget Request that 18,590 new cases would be assigned to the Office during the current fiscal year. Based on our actual experience for the first 10 months of this fiscal year, 18,530 cases will be received. This latter figure is less important as an indication of our accuracy of prediction than it is as a clear demonstration of our problem. The more than 18,000 cases approximates an increase of 300 per cent over the original estimated number of assigned cases in 1967. The budget for 1970, however, is only 80 per cent higher than the 1967 budget.

In no year has this Office been able to dispose of as many cases as have been assigned during that year. Beginning with 5,200 open cases at the end of 1968, the backlog has been growing steadily, although at a declining rate. At the end of the current fiscal year it is anticipated that 13,400 cases will be pending.

COST OF OPERATION

Returning to the question of costs, I submit that, in light of the burgeoning caseload, it is more useful to consider cost per case than total budget in assessing efficiency of operation. The cost per case has been steadily decreasing.

In the first year of operation the average cost per case was \$340.14. In the second year, the cost per case had been reduced to \$242.60. In the current fiscal year, the average cost will be \$206.57. (It should be noted that as of April, 1969, this Office represented juvenile offenders whose representation is usually less expensive than an adult case.)

It may also be useful to compare the budget for this Office and the budgets of the respective county prosecutors. In 1968, the total appropriated to county prosecutor offices was \$6.2 million. In the same year, the budget for the Public Defender was \$2 million. In 1969, \$7.5 million was appropriated for the various prosecutors' offices. The amount expended for the Public Defender in that year was \$2.67 million. Statistics from the New Jersey Association of Chosen Freeholders for the current calendar year indicate that \$8.7 million will be appropriated, not including \$500,000 necessitated by the Legislature's creation of full-time prosecutor offices in 9 counties. The Public Defender will have a budget of \$4,350,000 to operate over an equal period of time.

Seventy-five per cent of the criminal cases handled in the courts of New Jersey are originally assigned to the Office of the Public Defender. To handle that volume of work the Public Defender has been given less than one half of the money provided to the respective prosecutors.

In short, the cost of both prosecuting and defending criminal cases has increased considerably, but then so has the number of cases which must be processed.

APPELLATE COSTS

Numerous questions have been raised among members of the Legislature about the volume of appeals handled by this Office and the cost of the same. Earlier this year I forwarded to the Chairman of the Joint Appropriations Committee, the Honorable Alfred D. Schiaffo, a memorandum explaining this portion of our operation and I have attached a copy of that memorandum to this Statement. In summary, the memorandum highlights the fact that a criminal defendant is entitled to appeal a conviction. While this Office might recognize and inform the defendant that the likelihood of success is minimal, in the final analysis, if he wishes to appeal, we have no choice but to represent him. Further, the memorandum points out that complaints about the volume of appeals seem to be exaggerated since no more than 12 per cent of the cases disposed of by this Office which

could have been appealed were in fact appealed. Finally, the memorandum suggests that the average cost of an appeal handled by this Office, including the cost of transcript, has been less than \$300. This amount should be contrasted with the generally accepted cost of appeal by private counsel which approximates \$2,000 to \$3,000 per case.

While no more than 5 per cent of our appeals have resulted in reversals of convictions, it should not be forgotten that that percentage encompasses some 50 people who would have been wrongfully deprived of their liberty. One such person was a young man who was convicted of sale of heroin and sentenced to the New Jersey State's Prison for 5-7 years. Through the actions of one of our appellate attorneys, which involved communication with officials in the Commonwealth of Puerto Rico and investigation on the part of those officials, it was proven that the young man in question was being treated as an out-patient in a hospital in Puerto Rico on the day that he was supposed to have been in the City of Paterson. All charges against him were ultimately dismissed.

INDIGENCY INVESTIGATION AND REIMBURSEMENT

On occasion, it has been suggested that non indigents are being represented by the Office of the Public Defender.

We believe that this criticism arises in part through a misunderstanding of the meaning of "indigency" under chapter 43 of the Laws of 1967. Under the statute, a person need not be a pauper to be eligible for the services of the Office. Rather, the statute recognizes that indigency is a flexible concept and will vary from case to case depending upon the seriousness of charges against an individual, the probable cost of representation and that individual's present ability to pay. Considering the cost of private representation and the fact that most criminal lawyers, for sound pragmatic reasons, wish to receive a substantial retainer in advance, a flexible guide for the determination of indigency is believed to be entirely proper.

Additionally, some of the critics do not fully understand our intake procedure. Each person represented by the Office of the Public Defender is assigned by the court. Only after he has executed an affidavit provided by the court, and scrutinized by the court, does the case come to the Office. The statute contemplates that the Office then make further in-depth investigation. In furtherance of that policy, full background investigations into indigency have been performed on a spot-check basis. For example, in Essex County, for a three-month period when a full complement of investigators was

available, one out of every five applications was checked thoroughly and none of the persons involved were found to be ineligible. In addition, complete investigation is made where, on the face of the affidavit, some question arises, or where information suggesting non-indigency comes to our attention from whatever source. As a result of these activities, the Office has been relieved in some 11 per cent of our closed cases.

I would not be so foolhardy as to suggest that no person has managed to abuse this program. The number of investigators available to this Office are not sufficient to fully investigate the operative facts arising out of criminal charges in every case. The number is clearly insufficient to do a complete financial background on every defendant.

If any person has slipped through the screening process of the court and of this agency, then I of course accept responsibility, but my primary responsibility, as I see it, is to do everything possible to see that those persons represented by this Office receive adequate representation. I cannot justify, under existing staffing patterns, the expenditure of more investigator time than we have already expended on indigency investigations.

It should be noted that the services which this Office provides are not free. To the extent that a person can pay, he must.

We require that a reimbursement agreement be executed and have accepted installment payments pursuant to such agreements in amounts as small as \$.50 per week. Furthermore, pursuant to statute, a lien is filed against a defendant which operates against after-acquired property for a period of 10 years. Last year, at the request of this Office, legislation was enacted to simplify the lien filing procedure and to eliminate unnecessary court appearances. As of the first of May of this year, some \$64,000 was recovered under the reimbursement agreement and lien procedures.

Serious questions have arisen over (1) the constitutionality of the reimbursement and lien procedures as placing a premium upon the free exercise of a constitutional right to counsel and (2) whether the amount recovered is worth the collection effort. To more adequately test the cost-benefit argument, we are experimenting with a monthly billing of clients in two of our regions to ascertain whether there will be any increase in payments. As to the constitutionality of these procedures, we can only await judicial evaluation.

To this point I have tried to touch on what might be the Committee's concerns. I cannot let this opportunity pass without expressing some of my concerns. In my opinion, the continued existence of the Public Defender system is jeopardized by a salary structure which can only be described as ridiculous.

At present, the beginning salary for an Assistant Deputy Public Defender is \$9,000 per year, on a "prime time" basis. Where persons have received the benefit of one or more across-the-board salary increases of 5 per cent and resign thereafter, it is possible to hire at a slightly higher salary. Absent such across-the-board raises, it is impossible to give any attorney a raise. A special committee appointed by the New Jersey Supreme Court, in an evaluation of this program slightly more than a year ago, described our salary structure as "penurious". The only improvement since that evaluation was a 5 per cent across-the-board raise in July 1969. The recently-enacted supplemental appropriation contained \$54,602 which would have provided modest raises and established ranges for attorneys. Yet, despite continuous efforts on our part, we have been unable to obtain permission from the Administration to use the funds.

In the meantime, the salaries of Assistant Prosecutors have been increased to a statutory minimum in 9 counties of \$12,800, with an actual hiring rate frequently in the area of \$15,000 per year. Attorneys right out of law school are being hired in private law firms at \$12,000 per year and upward and clerks, who need not be admitted to the bar, are being hired for Appellate Division judges at \$10,300 per year. The result has been high turnover in attorney positions (estimated to be 30 per cent

this year), poor morale on the part of those that stay and a constriction of our practical recruiting ability to the point that few other than immediate law school graduates are interested in employment with this agency.

The non-competitive salary schedule for investigators has also caused extreme difficulty, resulting in continuous turn-over of personnel and frequent vacant positions. For example, during the past fiscal year we had an average strength of 23 investigators out of an authorized investigative staff of 46 for the entire State. We are presently able to offer a man with 8 years professional police experience -- the requirement established by Civil Service which may be used to substitute for a college degree and one year criminal investigative experience -- \$8,124. At the same time, salaries for patrolmen in even our smaller communities are in the area of \$10,000 per year. When the Hay Committee recently recommended that no salary increases be given our investigators, the results were predictable. I anticipate that numerous resignations will be tendered and I expect great difficulty in filling the new positions which were recently authorized.

Similarly, we have experienced extreme difficulty in retaining competent secretarial help, particularly in the urban areas, such as Essex, Hudson and Passaic Counties. Not only are salaries non-competitive, but the location and condition of

some of our offices are such as to deter many applicants. The Legislature should reconsider the prohibition in chapter 43, Laws of 1967 against the placing of Public Defender offices in county or municipal buildings. Removal of the prohibition would be of immediate assistance in Essex County.

QUALITY OF REPRESENTATION

My over-riding concern is not cost of operation, it is not indigency investigations, it is not whether we are an effective collection agency, it is whether we are providing quality representation in every case. It is not enough that we are told by judges and lawyers that our level of performance is superior to that of the assigned counsel system or that many of our lawyers are the equal of any retained counsel. It is not enough to point to statistics showing a 37 per cent rate of acquittals at trial. None of these things are enough when I know that because of workload pressure some of our cases are being handled without adequate investigation or attorney preparation.

Recently an inmate of the Camden County Jail wrote the Governor complaining that he had not been seen by a Public Defender. The letter was referred to my attention and I sent our Chief Investigator to see him. In reporting the results of his interview, Our Chief Investigator told me that he had dutifully explained to the defendant the severe strain then on our

Regional Office, to which the defendant replied, "That's not my problem." He was absolutely right. It was not his problem, he had enough of his own.

CONCLUSION

As I said at the outset, I welcome this opportunity to appear before the Assembly Judiciary Committee and I will gratefully receive any suggestions which improve the efficiency and economy of operation of the Public Defender program. I should perhaps conclude this already-lengthy presentation at this point and I will do so with these final observations.

I think all of us are troubled by a rising incidence of crime and an increase in violence. The boat indeed is taking on water. But as troubled as I am about crime and violence, I am more troubled about what I sense to be a tendency on the part of more and more people to treat those problems -- to lighten the load -- by jettisoning the constitutional rights of the next fellow. Usually the next fellow is poor, a member of a minority group, or young. The passage of preventative detention, no-knock laws, and harsh mandatory prison sentences -- may have certain popular appeal but in the final analysis they tend to divert our attention from the real problems of poverty, urban blight, an antiquated prison system and an overwhelmed

criminal justice system. In short, the answer lies not in a smaller public commitment in any of these areas, but indeed, in a greater one.



State of New Jersey

OFFICE OF THE PUBLIC DEFENDER

HEADQUARTERS OFFICE
10-12 NORTH STOCKTON STREET
TRENTON, N. J. 08625

STANLEY C. VAN NESS
PUBLIC DEFENDER
TEL. 609 292-7037

RICHARD A. WALSH
DEPUTY PUBLIC DEFENDER

EMIL J. MAFFEI, CHIEF
ADMINISTRATIVE SERVICES
TEL. 609 292-7087

C. RAY FALLS
CHIEF INVESTIGATOR
TEL. 609 292-7046

March 9, 1970

TO: Honorable Alfred D. Schiaffo
Chairman
Joint Appropriations Committee

FROM: Stanley C. Van Ness
Public Defender

I am offering this memorandum as a response to certain questions which newspaper accounts of the Joint Committee's deliberations suggest have arisen in regard to the operation of this Office. Those newspaper accounts indicate that among the problems with which the Joint Committee is concerned is the frequency of appeals taken by this Office on behalf of indigent defendants; the cost of the same, and whether the Office of the Public Defender should or could do something to reduce the number of "non-meritorious" appeals.

Right to Appeal

The convicted criminal defendant's right to appellate review of that conviction is bottomed upon the New Jersey Constitution and the Constitution of the United States. In explaining the provisions of the New Jersey Constitution, Article VI, Section V, paragraphs 1, 2 and 3, Mr. Justice Brennan, writing for the New Jersey Supreme Court in Midler v. Heinowitz, 10 N.J. 123 (1952) stated:

"Our new judicial structure is modeled after the federal court system. Our system, too, contemplates one appeal as of right to a court of general appellate jurisdiction. This is afforded usually in the Appellate Division of the Superior Court."

The United States Supreme Court has stated on numerous occasions, but most recently in the case of Williams v. Oklahoma City, U. S. , 89 S. Ct. 1818 (1969) that:

"This Court has never held that the States are required to establish avenues of appellate review but it is now fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts." (citations omitted)

While the aforementioned United States Supreme Court case might suggest that a State could eliminate appellate review within its jurisdiction, it is clear that it could not provide a review mechanism for the rich and eliminate or unduly restrict such a mechanism for the poor. See Griffin v. People of State of Illinois, 351 U. S. 12, 76 S. Ct. 585, 100 L. Ed. 891.

Further, the United States Supreme Court has made unmistakably clear its position that the 6th Amendment requires counsel at every critical step of a criminal proceeding, including appeal. See Arsenault v. Commonwealth of Massachusetts, 393 U.S. 5, 6, 89 S. Ct. 35, 36 (1968), where the Court said:

"The right to counsel at the trial (Gideon v. Wainwright, 372 U. S. 335, 83 S. Ct. 792, 9 L.Ed. 2d. 799) on appeal (Douglas v. People of State of California, 372 U.S. 353, 83 S. Ct. 814, 9 L. Ed. 2d. 811) and at other 'critical' stages of the criminal proceedings (Hamilton v. State of Alabama, supra.) have all been made retroactive since the 'denial of the right must almost invariably deny a fair trial'. See Stovall v. Denno, 388 U.S. 293, 297, 87 S. Ct. 1967, 1970, 18 L.Ed. 2d. 1199."

It seems patently clear that the convicted defendant has a constitutional right to appeal.

Non-Meritorious Appeal

With increasing frequency we hear the complaint that the Public Defender is bringing "frivolous" appeals. If a won-loss ratio which shows that our attorneys have secured reversals in no more than 5 percent of the cases is the sole criteria, then there is some surface validity to the assertion that non-meritorious appeals are being taken. Indeed, the Appellate courts on rare

occasion have used the term "frivolous" in rejecting a defendant's argument. But a thorough understanding of the Public Defender's role requires that consideration be given to the following factors:

1. The ratio of appeals taken to the number of cases concluded.

In recognition of the public's interest in economy in government and this Joint Committee's specific interest in the same, a review of our Office's activities in the Appellate area was conducted. That review leads us to believe that complaints regarding the frequency of appeal are grossly overstated. Our records indicate that from the inception of the Office until December 31, 1969, a period of some 2-1/2 years, 1,026 appeals were docketed. In that same time the Office disposed of 8,346 cases which contain appealable issues. In other words, 12 percent of appealable dispositions in fact resulted in appeal.

2. The possibility and propriety of administrative action to separate meritorious from non-meritorious appeals.

Suggestion has been made in some quarters that the Public Defender might administratively cull out and appeal only those cases which are "meritorious". Assuming that an administrative official would feel himself competent to make such an important decision, there is serious question whether he could constitutionally do so. In Lane v. Brown, 372 U.S. 477 (1963) the Supreme Court held that a procedure under which a State official, a public defender, exercised unreviewable discretion not to appeal a denial of relief failed to meet the constitutional requirements of due process. Moreover, the California procedure whereby the court-appointed counsel was permitted to conscientiously determine that there was no merit to an indigent appeal and so advised the appellate court was examined by the Supreme Court in Anders v. State of California, 386 U.S. 738, 87 S. Ct. 1396 (1967). The Court held:

"The constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate in behalf of his client, as opposed to that of amicus curiae. The no-merit letter and the procedure it triggers do not reach that dignity. Counsel should, and can, with honor and without conflict, be of more assistance to his client and to the court. His role as advocate requires that he support his client's appeal to the best of his ability. Of course, if counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw. That request must, however,

be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel's brief should be furnished the indigent and time allowed him to raise any points that he chooses; the court -- not counsel -- then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds, it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned or proceed to a decision on the merits if State law so requires. On the other hand, if it finds any of the legal points arguable on their merits (and therefore not frivolous) it must, prior to decision, afford the indigent the assistance of counsel to argue the appeal." 386 U.S. at 744, 87 S. Ct. 1400

It should be noted that the procedure recognized in Anders -- preparation of a brief to accompany a "no-merit" letter -- was given a limited trial by this Office and found to save neither time nor effort on the part of our Appellate Section or the Courts.

3. Aspects of the appellate process which cannot be measured by "wins and losses".

Concern over the number of non-meritorious appeals should not obscure the fact that more than 50 persons have had criminal convictions against them reversed during the life of this Office. This figure might be higher were it not for the fact that trial attorneys have won 36 percent of the cases tried to a jury in the same period of time. One recent example of success at the Appellate level was a case in which a young man finally secured his freedom after 15 months in New Jersey State's Prison where he had been incarcerated on a sentence of 5 to 7 years for sale of narcotics. An Appellate lawyer, believing the defendant's testimony that he had in fact been in the Commonwealth of Puerto Rico at the time that the offense allegedly occurred in New Jersey, elicited the assistance of Commonwealth authorities. After an investigation involving an exhaustive search of hospital records, it was discovered that the defendant was being treated as an out-patient in a Puerto Rican hospital at the time he was supposed to be in New Jersey. All charges were ultimately dropped against this defendant.

This example is not held out as a common-place occurrence but it does point up the fact that but for an Appellate Section in this Office an innocent young man would be languishing in State's Prison.

An active Appellate Section also assists the courts in clarifying murky areas of the law. For example, the Gault decision regarding the rights of juveniles has left many unanswered questions such as right to jury trial, the availability of motions to suppress, the constitutionality of portions of the juvenile defender law, etc. The only way that these questions will be resolved and the courts and lawyers given guidance is through the decisional process of appellate review.

Conclusion

The State of New Jersey has long been a leader in steps taken to assure the constitutional rights of indigents accused of crime. For example, the assigned counsel system provided representation for indigents in New Jersey long before a federal constitutional basis for such representation was established in Gideon v. Wainwright. Moreover, the enactment of chapter 43, P.L. 1967 marked the creation of the first State-wide, State-financed Public Defender system in the United States. That law, providing as it does for full and complete representation from formal charge through appeal, is still the finest law of its kind in the country.

This Office is not unaware that its operating costs have increased markedly since its inception. We believe, however, that such increases are purely and simply a function of an increase in criminal activity. If we are correct in this assumption, then we must conclude that representation at trial and on appeal would have been necessary whether or not a Public Defender system existed. Such representation would have cost county government considerably more than it has cost the State government as evidenced by the fact that the average cost per Public Defender case at trial has been \$275 and the average appeal cost was less than \$300. A conservative estimate, based on our experience with private attorneys and private investigators, is that a per cost case of at least \$375 would have been incurred by county government. And, finally, it is common knowledge that the going price for a privately-handled appeal is in the neighborhood of \$2,000.

In brief, then, it is our opinion that legislative retrenchment in the Public Defender Program, whether in its Appellate or other functions, will necessarily be at the expense of the constitutional rights of indigents or at the expense of property taxpayers and will, in all probability, be at the expense of both.


STANLEY C. VAN NESS
Public Defender

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