

PUBLIC HEARING

before

N. J. Legislature, Senate,
SPECIAL (SENATE) COMMITTEE TO DETERMINE THE
ADVISABILITY OF PROVIDING FOR THE ESTABLISHMENT
OF A PUBLIC DEFENDER SYSTEM IN THE SEVERAL
COUNTIES, [created under Senate Resolution No. 3]

OK 8825

PROPERTY OF
RECEIVED

SEP 18 1965

Held at: State Library
September 18, 1965
Assembly Chamber
State House
Trenton, New Jersey

DEPOSIT COPY

Do Not Remove From Library

Members of Committee present:

Senator Nelson F. Stamler [Chairman]

Senator John A. Lynch

Senator Richard R. Stout

Senator William F. Kelly, Jr.

Also:

Philip Dean Cohen, Special Counsel

* * * *

974.96

2866

19656

copy!

	<u>Page</u>
James H. Wallwork Assemblyman, Essex County	1
William F. Tompkins U. S. Attorney	4
Albert C. Wagner, Director Division of Correction & Parole N. J. Dept. of Institutions & Agencies	9
Norman Heine Prosecutor, Camden County	12
Leopold Frankel Paterson, New Jersey	17
Joseph H. Stamler, Trustee Essex County Legal Aid Society	20
Peter N. Murray Essex County Legal Aid Society	22
George Hillman, President N. J. State Bar Association	30
Eugene T. Urbaniak Deputy Attorney General State of New Jersey	36
Joseph Harrison Newark, New Jersey	39
Arthur J. Sills Attorney General State of New Jersey	45
Nicholas T. Fernicola County Counsel, Essex County	57
Arnold Trebach, Director Human Rights Program Howard University, Washington, D. C.	68
Robert L. Olson, Director Board of Chosen Freeholders Bergen County	80
Herbert F. Meyers, Jr. Bergen County Bar Association	83

	<u>Page</u>
George A. Bariscillo, Jr. President, Monmouth County Bar Association	1 A
Robert J. Novins Ocean County Bar Association	2 A
Roger Baron Vera Foundation	6 A
C. Willard Heckel Dean, Rutgers University Law School	9 A
George Hetfield President, Union County Bar Association	18 A
Robert Knowlton Professor, Rutgers University Law School	20 A
M. Gene Haeberle Camden County Bar Association	25 A
Frank Bright President, Sussex County Bar Association	35 A
Miss Barbara Morris Associate Counsel, NAACP	37 A
Raymond Brown Member, Board of Control Department of Institutions and Agencies	42 A
Harold Valentine Chairman, Passaic County Indigent Committee	57 A
Stephen Maskaleris Reporter	59 A
Vincent P. Biunno Newark, New Jersey	63 A

SENATOR NELSON F. STAMLER [Chairman]: This is a public hearing called under Senate Resolution No. 3 for the purpose of studying the possibility of setting up a system for providing counsel to represent indigent defendants in criminal matters and, generally, for the establishment of a public defender system throughout the counties.

We are going to attempt to keep this in some orderly fashion, despite the fact that most of us are lawyers, and I would hope that those who have registered their names and who do not really and truly desire to testify would let us know later on.

I want to introduce Senator Stout of Monmouth County, a member of the Committee, and Philip Dean Cohen who is acting as Special Counsel to the Committee.

PHILIP DEAN COHEN: Senators, ladies and gentlemen, we are about to open this hearing and I am going to call the first witness. The first witness will be Assemblyman Wallwork.

J A M E S H. W A L L W O R K: Senator Stamler, Senator Stout, I am James H. Wallwork, Assemblyman from Essex County and, parenthetically, I might add, probably the only non-lawyer in the group.

Although I am a sponsor of Assembly Bill A-368, which sets up a system to provide counsel for the indigent, I am not here advocating this or any other bill.

I am here as an interested legislator, because I believe there is an urgent need in this State for a workable system to provide counsel for an indigent person accused of crime. The need is two-fold. The right to counsel has been decreed by

the United States Supreme Court in Gideon v. Wainwright and subsequent decisions. But even more importantly, New Jersey with its historic pride in liberty and justice, has the moral and ethical responsibility to see that every citizen - rich or poor - gets equal justice under law.

It is plain that an accused person cannot adequately defend himself. Even the intelligent and educated layman lacks both the skill and knowledge to adequately prepare his defense. An indigent person has even greater difficulty. He is almost always in jail, unable to make bail.

Without counsel, an accused person cannot weigh the lawfulness of his arrest; he does not know whether a search or seizure has been lawful, or whether a confession is admissible; he cannot determine whether he is responsible for the crime charged or a lesser offense. At a trial, he cannot object to evidence or cross examine witnesses. The list of problems which confronts a person without counsel is almost endless. But even these few indicate that innocent citizens may be subjected to increased dangers of conviction merely because of poverty.

I believe that if indigent persons, accused of crime, are to be adequately represented, the State of New Jersey must be involved in a program which provides for their defense. The State cannot duck its responsibilities and leave the burden of an indigent accused system up to the counties. The State must participate both financially and in other ways. State funds, standards, and supervision will provide fair and uniform legal counsel for an indigent accused.

Unless we have such a program we could be confronted

with chaos which could result from a flood of appeals being filed by indigents convicted without proper representation. Without such a program, we are also confronted by the very real possibility of injustice being heaped upon very real poverty.

It is my earnest hope that the reports from this hearing will enable us to set up an indigent accused system as soon as possible. Justice is a daily need and cannot wait. We must enact a system flexible enough so that we can work out the kinks as we go along. But we must act, not just talk about acting.

May I say in closing that, in addition to providing legal counsel for the indigent accused, we also need in New Jersey a progressive program of rehabilitation for convicted persons and grass roots work to erase the causes of crime. A total and coordinated program is absolutely essential for growth and ordered liberty. We are meeting today on one aspect of the whole problem of crime and punishment. Our job today is to provide counsel for indigents, but when this is done we must continue working to remove the causes of crime and to teach and rehabilitate those who have been convicted.

Thank you very much.

SENATOR STAMLER: Thank you very much, Mr. Assemblyman.

Any questions, Senator Stout?

SENATOR STOUT: No.

SENATOR STAMLER: Thank you, Mr. Wallwork.

ASSEMBLYMAN WALLWORK: Thank you, sir.

MR. COHEN: Our next speaker, former Assemblyman,

U. S. Attorney William F. Tompkins.

W I L L I A M F. T O M P I N S: Mr. Chairman, Senator Stout, there can no longer be any doubt that the satisfaction of federal constitutional standards for the providing of counsel to the indigent requires that the problem be approached in a systematic way. The subject is extremely complicated, and the Senate has certainly acted wisely in establishing this Special Committee to gather the facts.

At the outset I would like to point out that the American Bar Association has formed a Special Committee on Minimum Standards for Criminal Justice. It's a 3 year project. The pilot project was commenced in 1963. It's headed by the Chief Judge of the Second Circuit, Judge Lumbard, a former United States Attorney, and this Committee has six advisory committees. The advisory committees cover the police function, pre-trial proceedings, prosecution and defense functions, the trial, sentencing and review, fair trial and free press.

And I might say to the Committee that in the course of the 3 year study, which is being assisted by the Institute for Judicial Administration, this subject of providing counsel for the indigent will be very thoroughly covered. As a matter of fact, the portion assigned to the prosecution and defense function is presently at work in this area.

I can say, it is my belief that the federal courts will not consider the constitutional standards to have been met unless the representation provided is effective and of high quality. This has been made abundantly clear in the

cases, with which I'm sure the Committee is familiar, and as they have progressed from merely requiring counsel at the important stages of the trail down to the view that a confession may not be admissible as voluntary unless the defendant had the benefit of counsel to advise him.

The criminal law is quite a technical subject to start with. The new requirements have made it even more technical. If we are to have any reasonable expectation of meeting these standards, it must be recognized that the object can be accomplished only by having a competent, trained staff. This work cannot be effectively performed, certainly, by amateurs.

I say this because I know, from my experience as Assistant Attorney General in charge of the Internal Security Division of the Department of Justice. I found that it was certainly not feasible to attempt to assign security cases to attorneys in the Department along with their other work. And I might say that the Department of Justice today is guided throughout by this concept. Within a relatively short period of time a specialized staff was gathered and organized, with provision for training and for proper supervision of their work. And I dare say that if that problem had not been approached on that basis, we would certainly not have gotten the results we did and the cases couldn't have been processed as promptly as they were and, incidently, one that you are very well aware of, the cost of that entire operation would have been considerably higher. I am sure the Committee is aware of the possible cost of this.

The same thing is true, in my opinion, of setting up a new system to provide counsel to the indigent accused at the State level. With a proper organization, the work can be done effectively and by a much smaller number of people and at lower cost. This is largely due to the supervision, to the dividing of different functions, and to the centralization of that work which is common to all the parts.

A properly organized system will centralize its basic legal research. Perhaps two people on the basic staff are enough to prepare reliable manuals on the procedures of criminal law and to summarize the basic law and points that should be checked by the trial pool. These same men can follow the new decisions and statutes in the field and notify all concerned about the impact of the new materials. To a very large extent, the centralization of research is bound to improve quality and eliminate the waste of repetitious effort.

Flexibility of staff is another benefit from good organization. Calendars in various parts of the State, where the case load is not heavy, can be scheduled to enable the trial staff to cover them with a minimum of conflict. In addition, where a case involves a special subject, members of the trial pool who are expert in that subject can be assigned to handle it in any part of the State.

Most important of all, a well organized system will be capable of playing an important part in the general effort to reduce the incidence of crime, to improve the programs for correction and rehabilitation, and generally to be a strong and good influence in reforming our criminal laws and procedures.

It will have this capability because such a system will be getting a comprehensive view of events in this field and so will have the basic facts which are always essential to intelligent action.

I realize that there are various points of view on such questions as whether the system should be a public defender or one of the several types of private defender, or a combination; also whether the system should be statewide or on a county basis or on a regional basis. My own view is that these differences are not vital questions so long as the basic essentials of a good system are provided. And I might add that the Committee on Trial, the ABA committee, is working on it basically from that approach. Now, if the Committee approaches the problem first for the purpose of defining the elements essential to an effective and efficient system, I am certain that it will find it relatively easy to decide the other questions.

A final suggestion is that thought should be given to designing a system so that its operation can be tied in with the federal program now being put into effect under the Criminal Justice Act. Whether we look at state court or federal court workload, the fact is that there are just so many professionally trained people available to do this kind of work. If a system is to make the best possible use of their time and talents, it should have the flexibility to permit the operation to cover both sets of courts. Of course, under such an arrangement, the funds provided by the federal system would be available to meet that part of the work.

Mr. Chairman and Senator Stout, I am most appreciative

[You Are Viewing an Archived Report from the New Jersey State Library](#)
for this opportunity to appear before the Committee.

SENATOR STAMLER: Thank you, Mr. Tompkins.

Any questions, Senator?

SENATOR STOUT: No.

SENATOR STAMLER: I have two questions.

How do you think this should be paid for, Mr. Tompkins?

MR. TOMPKINS: I, of course, prefer the cost being shared possibly by the State and counties.

SENATOR STAMLER: State and counties?

MR. TOMPKINS: Yes.

SENATOR STAMLER: And do you believe that persons who are charged with federal offenses should be represented by the State public defender?

MR. TOMPKINS: Well, I think, Mr. Chairman, that there should be some method arrived at where the State public defender could undertake that work. I think there ought to be some rapport between the State and federal systems, instead of setting up two separate systems. And I think if the State public defender did the work you might have the benefit of getting some federal funds.

SENATOR STAMLER: Thank you very much, Mr. Tompkins.

Gentlemen, this is Senator Kelly from Hudson County.

MR. COHEN: Mr. Wagner, Albert C. Wagner, Director of Division of Correction and Parole.

A L B E R T C. W A G N E R: Mr. Chairman, I am certainly not competent to discuss the detailed provisions of the bills before the Senate and the Assembly, nor the means proposed to establish a public defender system, the recruitment and remuneration of counsel, and certainly am not prepared to comment on the efficiency or the effectiveness of the several proposals made, nor even that the proposals are a practical means of accomplishing the objective sought. I can speak, however, on the need of the accused to feel that he has had a fair and adequate hearing; that he has had access to all remedies and defenses provided by the Constitution, by statute, and the community's sense of fair play for all its citizens.

But irrespective of his legal and moral rights, the accused has need to feel that he has had a fair hearing and a fair trial, if he is to have a fair chance at rehabilitation and return to society, so that he does not offend again.

There is no doubt that the offender who feels aggrieved by what has transpired at his trial is not a good prisoner when he is confined to the institution. The defendant, on the other hand, who feels that he has had the benefit of all available safeguards is more likely to accept his guilt and thus becomes a better subject for rehabilitation.

In the institution we place a great deal of emphasis on change. We try to get each of the individuals confined to our care to come to the realization that something is wrong somewhere which must be corrected, and that this becomes possible only when the offender is drained of much of the hostility and resentment he feels, some of which is

inevitably directed to the court and its procedures. When the procedures themselves are such as to occasion none or a minimum of such resentment, the subject then is in a better position to enter into a meaningful relationship for rehabilitation.

The institution people do get close to at least some of their charges and do develop significant insights into the problems of offenders. There are prisoners in our New Jersey institutions who do feel that they were inadequately represented at hearing and trial. 1. They say because counsel did not give the case the time and effort the accused felt it deserved. In the case of assigned counsel, because he is not paid. Secondly, because counsel lacked experience to qualify him to advise in criminal matters, to say nothing of the ability to conduct a criminal trial. Others say that counsel has not been really interested in their case and they have been persuaded to plead guilty when they have felt that they had an adequate defense with which to go to trial.

I need not say to a group like this that I am sure these complaints are raised not only with reference to unpaid assigned counsel but certainly, at least on occasion, with respect to counsel retained by the prisoner himself or by his family.

A persistent plea heard by prison administrator is the plea for a new trial, usually on the basis that evidence in the case was not adequately presented to judge and to jury, not that the evidence would lead to a "not guilty" verdict but

which, if cogently presented, would tend to mitigate guilt or lighten the sanction imposed.

If a procedure such as that proposed in these bills under consideration would result in the accused feeling that his side of the story has been well presented and considered, it would be useful, in my judgment, to the individual's eventual readjustment in society.

Thank you, Senator.

SENATOR STAMLER: Any questions, Senator Stout?

SENATOR STOUT: Mr. Wagner, are you familiar with Assembly Bill 368, Mr. Wallwork's bill, which would establish an indigent accused system in the Department of Institutions and Agencies?

MR. WAGNER: Yes, I am.

SENATOR STOUT: Would you feel that would be the place for it, in the Department of Institutions and Agencies?

MR. WAGNER: I think the Attorney General will later present the Department's point of view on this subject. I would not feel that this was the proper place for it.

SENATOR STOUT: You don't feel it is the place?

MR. WAGNER: No, sir.

SENATOR STOUT: That's all I have.

SENATOR STAMLER: Senator Kelly?

SENATOR KELLY: No questions.

SENATOR STAMLER: Mr. Cohen?

MR. COHEN: I have no questions.

SENATOR STAMLER: Thank you very much for taking your time to appear here.

MR. COHEN: The Honorable Prosecutor of Camden

County, Norman Heine.

N O R M A N H E I N E: Mr. Chairman, Senator Stout and Senator Kelly, I am Norman Heine, Camden County Prosecutor. I appear in my individual capacity, as well as on behalf of the County Prosecutors Association of New Jersey, of which all of the Prosecutors of New Jersey are members.

I have long advocated that some form of defender system be adopted, the details of which must, of necessity, be tailored to meet the needs and requirements of the various counties, large and small, within the bounds of whatever financial resources can be made available by the county and/or the State government.

The system should, so far as practicable, parallel the system of the prosecutor's office in the respective counties, with a chief public defender, such assistant public defenders as the volume of work requires, together with investigators, clerical help, etc. The limitations as to number and salaries to be paid can be patterned after the existing statute on prosecutors which is based on the population in each county.

Now let me tell you why I reached this opinion. First, as you all know, our highest court, the United States Supreme Court, has made it a constitutional requirement that defendants accused of crime must be furnished counsel. By subsequent decisions, this has been extended to include those charged with misdemeanors as well as felonies. We haven't, as yet, any decision in our jurisdiction where all of the crimes

are misdemeanors, applying this into the municipal court level.

It may be considered as being further extended to require the furnishing of counsel to defendants before trial. The question of how far prior to trial an accused must have counsel is continuously before the courts. At present, it appears to extend from that time when the interrogatory stage ceases and the accusatory stage begins, - whatever that means - which places the matter to a period shortly after the commission of the crime. This leads to one inescapable conclusion, that there will be a greatly increased demand and requirement of free counsel to those charged with crime. If it is not supplied, no valid conviction can result. And since representation by counsel is now a constitutional prerequisite to the right of the State to try a defendant, something has to be done about it.

The burden of providing a system for the representation of indigent defendants, it seems, must be borne by the general public, the State and/or the county government, for these reasons:

The obligation and benefit is theirs - to the public. It is the problem of our whole society;

An individual bar association, or group of lawyers, even with the assistance of the court, can no longer satisfactorily cope with the ever-increasing demand for legal representation of indigent defendants.

As has already been stated, relatively few lawyers are experienced in criminal practice.

If the constitutional provision of "assistance of counsel," required by the Constitution, is to mean anything, it would seem unfair to the defendant to be represented by inexperienced or incompetent counsel.

The present system casts an unfair burden on the prosecutors who are concerned with fair trial and rights of defendants to place them in the uncomfortable seat of presenting the State's case and at the same time seeing to it that the defendant has the effective assistance of counsel.

It is unfair to the lawyers, who form a small segment of the profession, to be expected to bear the burden which belongs to the whole profession.

It is unfair to lawyers inexperienced in criminal practice, as well as their clients, to be compelled to represent defendants in criminal cases.

Simply stated, the Bar just cannot donate the time and effort needed to provide the volume of service now demanded.

I would like to point out that our criminal trial lists are becoming increasingly congested with many more appeals, post-conviction proceedings and re-trials at a greatly increased cost to the public. Lack of adequate representation of indigent defendants, the necessity for the assignment of counsel at an early stage in criminal process, the present procedure of petition and order for the assignment of counsel, with the attendant burden of assignment of counsel by the court in addition to its normal duties of the trial of cases, all add up to an extremely costly and,

at the same time, cumbersome system for the administration of criminal justice under today's legal requirements.

Since the representation by counsel is now a legal prerequisite to the right of the State to try an indigent defendant, it is up to the State to provide some defender system. Whether it be public, quasi-public, public-private, or private, I don't know. I do not enter the arena to advocate or criticize any of the suggested systems or those provided for in the several pending bills. All that I am saying is that, for the reasons expressed, some adequate system should be provided.

MR. COHEN: Any questions?

SENATOR STAMLER: I have two, Prosecutor. Do you believe, as a Prosecutor, that the establishment of a public defender system in the Camden County Court House would be a competitive operation with the Prosecutor's?

MR. HEINE: Competitive? In what respect?

SENATOR STAMLER: The term has been used that the argument against the public defender is that it would be competitive - in competition with the Prosecutor.

MR. HEINE: Well, if you mean by competitive that it will become an adversary proceeding, I would think yes. I see no reason why a defender system could not be a truly adversary system. I can already visualize that the convicted criminal might scream after conviction that he was defended by a defender or system provided for by the State and, therefore, he still didn't have a fair crack.

SENATOR STAMLER: Do you have any idea - if you don't

have the figures it's perfectly all right - what the costs were to Camden County for assigned cases to capital indictments in, let's say, the past year?

MR. HEINE: Camden County only pays assigned counsel in capital cases. The fees range from an average of \$1500 to possibly \$2,000 for those cases where guilty pleas are entered, for the investigation and the like. This is, of course, in addition to any out-of-pocket expenses for investigation, etc. Fees for the trial depend on the length of the trial, the effort exerted, and the like, and they have ranged from about \$2500 up to about \$4500 in a long case.

SENATOR STAMLER: Well, taking those figures, do you have any idea - take one year, pick one year.

MR. HEINE: Well, I can't speak with any definiteness about any particular year but with those figures I mentioned we run about 12 to 15 murders a year, which will give you some idea of just the assigned counsel cost. I would dare say that the fees plus the investigation usually run about \$2,000 to \$2,500 in every case.

SENATOR STAMLER: Any questions? (No questions.)

MR. HEINE: If you would like, Mr. Chairman, I will be glad to furnish the Committee with our costs in several years.

SENATOR STAMLER: I'd appreciate it. I think this would be an important factor in, at least, the evidence in this hearing.

MR. HEINE: I'll furnish the Committee with our costs over a couple of years.

MR. COHEN: Mr. Leopold Frankel of Paterson.

L E O P O L D F R A N K E L: Mr. Chairman and members of the Committee, I am a member of the New Jersey and Federal Bars. I do not speak for any association or professional group. My remarks are, therefore, to be construed as representing one lawyer's opinion.

The battle for effective, meaningful representation to indigents accused of a crime is nothing new in this State. Bills have been introduced in the Legislature of this State but never have been put to a vote. The State of New Jersey is now seeking to correct the wrong committed against low income persons accused of crime on the one hand, and unpaid assigned counsel on the other.

In the opinion of this speaker:

1. Legal representation for the indigent accused, to be effective, should be compensated representation, and not the subject of the bar's charity, nor tribute exacted from the bar, in time or money;

2. The New Jersey criminal assignment system thrusts upon an indigent defendant unpaid, unwilling counsel, not of his choice, and denies both to the indigent and his counsel, due process of law and equal protection under the laws;

3. The effect of the assignment system as presently practiced is that:

a. It operates discriminatorily against the indigent defendant, and in favor of the accused defendant of means;

b. It creates an unequal battle between the State of New Jersey which can use resources which are denied the indigent and his unpaid counsel.

c. It imposes a system of involuntary servitude upon assigned, unpaid counsel contrary to the Thirteenth Amendment to the Federal Constitution, It abridges the rights of assigned counsel, guaranteed under the Fifth Amendment to the Constitution of the United States that there shall be no taking of property without due process made applicable to the States by the Fourteenth Amendment; and violates parallel constitutional rights granted him by the New Jersey Constitution, viz.: Article I, pars. 1 and 20.

d. It permits compensation explicitly to attorneys in capital cases thus making a classification that has no rational basis under Gideon v. Wainwright, the United States Supreme Court Case decided in 1963. The citation is found in my prepared statement which I will submit to the Committee at the conclusion of my remarks. The court of this State has stated that it is powerless to provide for compensation. See State v. Horton, State v. Donaldson, In re Steinback, and State v. Rush.

e. It denies the indigent counsel at the time of his arrest and then assigns counsel in some instances 2 or 3 days before trial when the damage has already been done.

f. It prejudices the indigent defendant accused of a crime. There is a tendency, dictated by economics, to plead an assigned client as guilty when he claims he has a defense which should be passed upon by a jury. On appeal, the fact

that the indigent had counsel prejudices him. Under such a state of facts the indigent is better off without counsel. There is a further tendency to deprive defendant of zealous and sympathetic advocacy which works a subversion of right to counsel.

I am opposed to the public defender system. There is too much State in it. The judge, prosecutor and public defenders would then all be appointed by the State. What the Legislature should do is to permit an indigent accused to choose his attorney, who would be paid by the State under a fixed fee schedule and an allowance made for approved expenses.

Thank you, gentlemen.

SENATOR STAMLER: How long have you been practicing, Mr. Frankel?

MR. FRANKEL: 35 years.

SENATOR STAMLER: And how many assigned cases have you gotten?

MR. FRANKEL: I would say about 7 or 8.

SENATOR STAMLER: You got one recently.

MR. FRANKEL: Oh, yes, very, very recently. I see the Committee is aware of it.

SENATOR STAMLER: Are there any further questions?

(No questions.)

Thank you very much.

MR. COHEN: Senator Stamler will introduce the next speaker.

SENATOR STAMLER: Out of line, really and truly,

but within family prejudice, I want to call my brother who is a member of the Essex County Bar and representing the Essex County Legal Aid Society. I'm just doing this for family peace, that's all.

J O S E P H H. S T A M L E R: Mr. Chairman, Senator Stout, Senator Kelly, Counsel to the Committee, I appear here as a Trustee of the Essex County Legal Aid Society.

SENATOR STOUT: What's your name?

MR. STAMLER: My name is Joseph H. Stamler. I practice in Newark, New Jersey.

The Essex County Legal Aid Society was formed in 1920. The purpose for which that Society was formed, and it appears in its certificate of incorporation, is: "In all lawful ways to render assistance, financial or otherwise, in the enforcement or defense of legal rights to persons deserving and needful thereof, to prevent disparity of persons before the law arising out of financial inequality, to alleviate the consequences of such disparity, to remove the cause thereof, and to promote such reform in the substance and administration of the law as will tend to realize the foregoing objects."

So that in 1920 we anticipated Gideon and Escobedo but it wasn't until 1963 that the Essex County Legal Aid Society had undertaken a criminal division. Up to that time we had handled between five and six thousand civil cases for the poor, each year.

In 1963 a plan was created and began its operation

then. The first Plan Administrator, as I recall it, was Miss June Strelecki. She was subsequently to become Commissioner of Motor Vehicles and was replaced by Peter N. Murray.

We of the Essex County Legal Aid Society, 16 Trustees, are in agreement that something must be done. We tried this plan - it's presently in operation in Essex County under the administration of Mr. Murray - as a temporary stopgap measure. It is not to be construed as the permanent solution to all the problems. It was declared, when started, to be experimental. It has had now about 2 years of experience. I think that this Committee would be interested in hearing from Mr. Murray as to the details of the number of cases that have been handled by Mr. Murray and his staff and by counsel assigned.

The Essex County Legal Aid Society believes that a public defender system in and of itself is not the answer. We anticipate that cases may arise where a conflict of interest on the part of a number of defendants to the same indictment may exist or where, because of an on-rush of post-conviction matters or indictments, the public defender just can't handle it. And we think that a combination, whereby the public defender could be replaced under circumstances by the assignment judge with assigned counsel to be paid for his services rendered in special cases, should be considered. We also feel that it should not be discretionary on the part of any county to be without either paid assigned counsel or a public defender.

I would respectfully ask this Committee to consider

the very fine [report submitted to the American Bar Foundation](#), a lengthy report, Defense of the Poor in Criminal Cases in American State Courts. It is an analysis, state by state, of a variety of systems and I think it would be very helpful.

I ask this Committee to hear Peter Murray, who is here in this courtroom, now, who has the facts and figures of the only operating "Legal Defender Plan" in New Jersey.

Thank you.

SENATOR STAMLER: Any questions? (No questions.)

MR. STAMLER: Will you hear Mr. Murray?

SENATOR STAMLER: Not immediately but we are going to hear Mr. Gibbons and then probably Mr. Murray, because we have to respect the Essex Bar.

MR. COHEN: John J. Gibbons.

MR. GIBBONS: I think it would be more appropriate to hear from the President of the New Jersey State Bar Association rather than from me.

SENATOR STAMLER: Do you want to waive your appearance?

MR. GIBBONS: Yes.

SENATOR STAMLER: All right, we will call Mr. Murray.

MR. COHEN: Mr. Murray, please.

P E T E R N . M U R R A Y: Mr. Chairman, Senator Stout, Senator Kelly, Mr. Cohen, I welcome the opportunity to report on the activities of the Essex County Legal Aid Association, Criminal Division, on its defense of the indigent program, experimental program, which has now been in operation for some two years.

This was a combined effort of the Assignment Judge of

Essex County and the leaders and members of the Bar in Essex who have devoted themselves to the task of attempting to provide a workable solution to the problems raised by the needs of indigents accused of crimes or other offenses conviction for which might result in deprivation of their liberty.

The so-called Essex County Plan is a unique departure within the State from the present system of unpaid assigned counsel which is based upon the alphabetical rotation of attorneys practicing within the several counties which system has been in effect here in New Jersey since 1950.

Today, and since the fall of 1963, instead of following this system of alphabetical rotation, the Essex County Bar Association, in conjunction with Legal Aid, Criminal Division, offers an option to all assignable attorneys within the County, and that option is this:

Upon donation of \$50.00 to support the operation of the office, counsel are assigned instead of the assigned counsel - this under the authority of Revised Rule 112-9.

The Criminal Division of Legal Aid is operated by an administrator and two full time trial attorneys. In addition to this, there are some 40 to 50 members of what we call a trial pool. These are members who will take assigned cases, according to their office calendars, and receive in turn the sum of \$50.00 per case regardless of the time and effort expended.

In addition, to meet the ever-growing need for representation of the indigent at the local level, Legal Aid

provides an attorney on two days of each week in the Newark Municipal Court. Other municipalities are supplied counsel for representation of the indigent on request. And this is also the case with the Essex County Juvenile and Domestic Relations Court.

Since its inception, the Essex County plan has yearly increased its participation in the defense of the indigent to the point where in the court term about to commence it is anticipated that some 1,000 indigent defendants will be represented in the county courts by the Criminal Division.

Some idea of the magnitude of the problem, at least in our county, can be appreciated when one considers the recent report of the Criminal Assignment Clerk in Essex. It is estimated that of all defendants charged upon indictment in the County, 85 to 90% can be classified as indigent, that is, unable to afford an adequate legal defense. In the court term just concluded there were 2,358 indictments or accusations filed; there were 47 criminal appeals taken; and the newly enacted application for post-conviction relief numbered 114.

From all of these figures one can easily and legitimately conclude that a great burden rests on the Bar by virtue of the continued practice in this State of the system of unpaid counsel. Yet, even more importantly, a closer look at the situation causes concern and questions whether our present system statewide can continue to meet the constitutional requirements of adequate and competent counsel.

No one can doubt the conscientious and diligent service

rendered by the members of the Bar of this State in the defense of the indigent over these many years. Every attorney who has entered into such work has done so, many times, with reluctance but always in obedience to the time-honored practice of his profession to help those in need.

As the New Jersey Supreme Court indicated in Horton, the recent case decided in 1961, the assigned counsel system has frequently come in for criticism on several grounds, many of which have considerable merit from the standpoint of accomplishment of the primary object, that is, providing a timely and thorough defense for indigents as a matter of community, as well as professional, responsibility, especially in the urban areas where the magnitude of the case load is so great.

In Steinback, the court invited serious study, as we have today, and possible revision of the present method of assignment in the light of contemporary conditions and needs.

A review of the experimental program in Essex, now entering its third year, we think shows the inherent value of the organized centralized approach to the problem, at least in the urban areas where the crime rate inevitably is of a greater magnitude.

The end result of two years of operation has been the creation of what we like to consider a pool of knowledge and experience which cannot but help make real the fundamental guarantees of competent and adequate counsel and, hence, equal justice for all.

Rather than have one infrequently exposed to the intricacies of the criminal law in practice called upon to defend the indigent, there is now available a pool of attorneys learned in the varied and developing practices and concepts of criminal defense. Additionally, the central administrative office appears essential, at least in the areas of the greatest volume. Many man-hours of work are unnecessary when it is realized that the assistance of such an office can be rendered in the drafting and preparation of pleadings, such as motions for the reduction of bail, motions for production of grand jury minutes, motions for dismissal of indictments, for the suppression of evidence, for the appointment of investigators and experts, for the preparation of bills of particulars, and requests to charge.

Seminars are conducted in Essex County to make the members of the trial pool, and any others interested in criminal law, aware of the changing cases and laws in this field. Each of the attorneys that work for our office are supplied with a manual of some 200 criminal law cases, kept right up to date, which they have in court with them at all times. Moreover, the problem of calendar control and alleviation of court congestion is more readily solved with existence of a central administration for the legal defense of the indigent.

In this connection, it is noteworthy that already we have had discussions with Chief Judge Madden and with the Clerk of the District Court in Newark to prevent any calendar problems with the operation of the newly enacted Federal Criminal

Justice Act Plan in our County.

All of what has been said has, of course, been directed to the immediate problem of the defense of the indigent accused of criminal behavior. However, any legislative step would be less than adequate if it did not relate this problem to the larger questions posed, to wit: the causes of crime, measures to prevent crime, and a proper follow-up and rehabilitation program. These additional goals would, of course be immeasurably aided by the existence of the centralized office with the ability to easily gather data useful in the areas of crime reduction and modernization of the criminal law.

As Mr. Stamler has already pointed out, the Essex County Legal Aid Association does not today take any particular view with regard to any particular bill pending in either House in Trenton here, but we do ask that genuine consideration be given this year. This is the second time in the last 3 years that a legislative committee has concerned itself with the problem, certainly since the case of Gideon and Douglas and, lately, since the case of Escobedo which portends even a greater burden being placed upon the attorneys of the State, and we think the time has come for some legislative action to be taken.

As Attorney General Kennedy's Committee on Poverty and the Administration of Criminal Justice pointed out in 1963, the problems we are concerned with today do not reflect matters dealing with welfare objectives but involve matters of fundamental justice to the individual accused and the adversary

system.

If adequate finances stand in the way of providing the defense with active and creative challenges to the assertions of governmental power in the criminal area, the adversary system and the public interest dependent upon it are placed in jeopardy.

Thank you.

MR. COHEN: Are there any questions?

SENATOR STAMLER: Mr. Murray, where is the physical office of the Legal Aid?

MR. MURRAY: We are located directly across the street from the Hall of Records at the County Court House in Newark.

SENATOR STAMLER: Does your Society supply defense for persons charged with federal offenses?

MR. MURRAY: No, we don't. But as I pointed out, we are in contact with Mr. Locascio of the Federal District Court and Chief Judge Madden to work out a harmonious relationship and assignment practice between the county assignments and federal assignments in the Newark vicinage.

SENATOR STAMLER: You used the figures 85 to 90% of persons charged with criminal offenses are to be put in the classification "poor." How many of those 85 or 90%, if you know, were able to make bail?

MR. MURRAY: Offhand I do not have that figure. However, I wouldn't consider that an indication of whether a man was able to retain an adequate legal defense.

SENATOR STAMLER: I just asked the question. If

they can pay one fee, it seems to me they might be able to pay the other.

MR. MURRAY: Well, since the bail law has now been revised, maybe they can pay the other.

SENATOR STAMLER: And do you have any idea what fees have been paid in Essex County on capital cases, let's say in the past year?

MR. MURRAY: I believe that the County Counsel, who is here, has estimated it as over \$100,000.

SENATOR STAMLER: Thank you.

MR. COHEN: Senator Stout?

SENATOR STOUT: Under the system under which you have been operating who pays for the investigation?

MR. MURRAY: There is no provision at the moment for paid investigation. The only method of obtaining that is by application to the court and then payment out of county funds. Mr. Fernicola, I believe, is prepared to give the Committee all those figures.

SENATOR STOUT: Have the applications been granted?

MR. MURRAY: Of late, applications in non-capital cases have been granted in the more serious offenses.

SENATOR STOUT: That's all I have.

MR. COHEN: Senator Kelly?

SENATOR KELLY: How many lawyers are involved in your group, Mr. Murray?

MR. MURRAY: Approximately 50.

SENATOR KELLY: And they receive \$50.00 for each matter they handle.

You Are Viewing an Archived Report from the New Jersey State Library
MR. MURRAY: That is correct.

SENATOR STAMLER: How many members of your Essex County Bar - how many lawyers are there on this rotating list?

MR. MURRAY: How many assignable attorneys in the County? 2100.

SENATOR STAMLER: What's the membership of the Bar?

MR. MURRAY: There are approximately 2900 attorneys in the county but 2100 would be what we term assignable.

SENATOR STAMLER: That's all I have. Thank you, Mr. Murray.

MR. MURRAY: Thank you.

MR. COHEN: George Hillman, President of the New Jersey State Bar.

SENATOR STAMLER: This is Senator Lynch of Middlesex County.

G E O R G E M. H I L L M A N: Mr. Chairman, Senators Lynch, Stout and Kelly, and Mr. Cohen: My name is George Hillman and I am speaking for the State Bar of New Jersey, an organization of approximately 5000 practising attorneys, which has long considered the problems of defense of the indigent. Extensive studies and reports by the Association's Junior Section, and by its Criminal Law Committee, have pointed out that the present arrangement, assignment of counsel to indigent defendants in criminal cases on a rotating basis, has afforded to these defendants less than the full measure of skilled investigation, preparation and trial to which all

citizens are entitled. These admonitions from the Bar have, however, been disregarded by government, apparently in the mistaken belief that the legal profession was trying to escape an obligation. Nothing could be further from the truth. Our concern has been that the State, relying on the system of rotating assignment of uncompensated attorneys, has been short-changing the indigent defendant. These expressions of concern by the Bar anticipated the trend of decisions in the Supreme Court of the United States. In Gideon v. Wainwright the Court said, and I quote:

"Governments, both state and federal, quite properly spend vast sums of money to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defense. That government hires lawyers to prosecute, and defendants who have the money hire lawyers to defend, are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours."

Our point is that just as the State would be derelict in its duty if it relied, for prosecution of offenders, on assignment of uncompensated rotating lawyers, so it is derelict in its duty to the indigent defendant in relying on such a system for the protection of his fundamental rights.

The scope of required participation in the defense process was, in Escobedo v. Illinois, greatly enlarged. Counsel must now be afforded at every step of the proceedings.

Such representation by counsel is a legal prerequisite

to the right of the State to try an indigent accused of crime. The State must, therefore, accept and efficiently implement its corresponding obligation of providing such counsel and defraying the costs of investigation, preparation and trial. Otherwise, future cases will arise in which the inadequacy of the present rotation system will afford grounds for setting aside convictions. Legislation to afford indigent defendants the full protection of the law which is their right is, we believe, a prerequisite to the continued orderly functioning of our system of criminal justice.

Although we cannot prescribe the final form the legislation should take, particularly with respect to financing, we suggest that the proper criteria to provide an effective defender system could be summarized as follows:

1. The establishment of tax-supported, professionally competent legal defender offices is by far the best way to insure effective counsel to all indigent persons accused of serious crimes, at least in metropolitan areas, and probably throughout the State on a County basis. Such Public Defenders can best secure the desired objectives if they have permanent, public status, with adequate staff, including investigators. Such Defenders would then be able to represent indigent at all steps in the process of accusation and trial on an equal footing with Prosecutors. Any other system would tend to be inherently unequal in providing justice for indigents, and would never be wholly satisfactory to all lawyers or accused persons.

2. Voluntary, private defender systems must, in one way or another, fall short of guaranteeing effective represen-

tation for the poor and will only tend to perpetuate the lip service which we have for so long been giving to the whole problem of providing justice for those who cannot afford private counsel in criminal matters.

3. Possibly the sheer magnitude of the duty imposed on the State by Escobedo v. Illinois, may require the continued assistance to the Public Defenders, of lawyers in private practice. But if this is the case, those lawyers should be compensated, and should be selected not on a rotation basis, but for their special competence in the criminal law.

4. If Public Defender Officers cannot be appointed in all counties, provision must be made for compensation of assigned counsel in those areas where that system must still be retained, and for assignment of counsel not on a rotating basis, but with regard to special competence.

5. Almost of equal importance with adequate legal representation is the need for a permanent machinery for investigation in preparation for the defense of indigents. Mere provision for payment of investigatory expenses by Court order is insufficient, because assigned counsel usually does not have and cannot find such trained and adequate personnel available to him on a piece-meal basis.

6. Since either system, or any system, will require public financial support, cost cannot be a major factor in the preference for an assigned counsel system over a Public Defender System. Indeed, there may be sound reason to believe that a Public Defender System will be less costly, as well as more effective than any other system.

In order to implement these criteria, we urge legislation for the establishment of one of the following plans, some one of which must be mandatory in every county:

A. A Public Defender Office.

B. A system providing compensated counsel through private legal aid societies, county bar associations, or such other county defender associations as may be established.

C. A system providing compensated counsel and investigations under a Court-approved Bar Association plan under which lawyers will be assigned from a list of lawyers well qualified in the criminal law.

D. A combination of the foregoing plans.

However difficult or burdensome the implementation and financing of such a program may be, the State of New Jersey cannot delay facing up to its obligations any longer. Continued delay will inevitably result in a legal morass of uncertainty in criminal trials, expensive appeals and overloaded courts, as well as a denial of essential justice to indigent accused.

The Bar of New Jersey, which has for so long contributed its time and efforts to shoulder this problem alone, cannot longer by itself discharge this obligation of society. The Bar, however, remains ready and anxious to do all it can to provide adequate legal service to all who cannot afford to provide for their own defense.

Now, on behalf of the State Bar, I wish to thank you people for the opportunity of allowing the State Bar to present its thoughts in this matter.

MR. COHEN: Do you have any questions, Senator Stout?

SENATOR STOUT: You seem to indicate that the smaller county would not have a full-time public defender staff. Is that right?

MR. HILLMAN: Yes, I think that's possibly so, sir.

SENATOR STOUT: And you wouldn't have full-time public defenders.

MR. HILLMAN: Well, I don't know. I think that's subject to study. I don't know whether there would be a need for it or whether it would have to transcend the geographical limits of counties. I don't know what the figures would show. Mr. Marshall for Essex County said that - I think he said 85% of those accused of crime were indigent. And if that's the case, possibly we would need a full-time public defender, if that case load is as heavy as the prosecutor's load.

MR. COHEN: Senator Kelly or Senator Lynch?

(No questions)

SENATOR STAMLER: I have one question, Mr. Hillman. Who is going to pay for all of this?

MR. HILLMAN: Well, I would think it would come out of general revenues derived.

SENATOR STAMLER: State or county?

MR. HILLMAN: Out of the State.

SENATOR STAMLER: And do you believe that the need for a public defender in a specific county should be at the request of the, let's say, assignment judge? Would that alleviate the question?

MR. HILLMAN: No. I think it's an obligation of the

State just as much as the State has obligations for building roads and other things. I think this is a function of the State to provide proper protection for the indigent accused.

SENATOR STAMLER: Thank you. Mr. Cohen?

MR. COHEN: I have no questions.

SENATOR STAMLER: Thank you very much, Mr. Hillman.

MR. COHEN: The Honorable Deputy Attorney General, Eugene Urbaniak.

E U G E N E T. U R B A N I A K: May it please the Committee, I want to address myself to a limited phase of this and principally responsive to a question raised by Senator Stout to a previous witness, Mr. Wagner.

Perhaps a great number of members of the Bar don't appreciate the fact that the Department of Institutions and Agencies very often finds itself as a defendant. Within that Department is the Parole Board. Within that Department are the institutions that have to confine inmates who are convicted.

We have now pending in the United States District Court perhaps 12 cases against the institutions, the wardens, the superintendents, on the basis of denial of civil liberties. We have some in the Third Circuit and we have some in the United States Supreme Court.

Speaking now on behalf of Commissioner McCorkle, I would respectfully suggest, in response to Senator Stout's question, that the Department of Institutions and Agencies could not consistently maintain within itself a public defender system and at the same time attempt to run these institutions that rehabilitate these individuals and then, subsequently,

parole them and then supervise them through a parole bureau. For example, if an inmate, no matter how well defended by the public defender, feels that he's got a bum rap, he didn't have proper representation, then this resentment, I think, would naturally flow to the people who were operating the institutions who are now trying to change his viewpoint and trying to show him a different side of life, and he might then feel that this is all a part of one scheme against him.

The Attorney General is going to represent the official view of the Department of Law and Public Safety. He is conversant with my experience in the defense of these habeas corpus cases over the years. But I would strongly urge, if legislation is to be enacted, that consideration be given to placing this function in a department that is not involved, as we are, in confining, rehabilitating, paroling, supervising on parole, etc. It just seems inconsistent to me because in this situation the public defender in those cases which have come before the Appellate Division - I know the Committee is familiar with them - White v. The Parole Board, Mahoney v. The Parole Board, Leer v. Zink, Fox v. Zink, - the former Chairman of the Board - we have perhaps 30 or 40 recorded cases involving alleged improprieties of action of prison officials in calculating commutation time, and this sort of thing, - so that we would actually, the Department and our personnel would be defendants in many of these cases, aside from the assignment of counsel at the local level.

SENATOR STAMLER: Therefore, what you are saying, Mr. Urbaniak, is that you oppose Assembly Bill 368?

MR. URBANIAK: No, no. I merely suggest that the public defender system, if it's established, be in a State agency, if it's statewide, that is not identified with the prisoner subsequently. No, we do not oppose the legislation. The Attorney General will speak and present the official position of the Department of Law and Public Safety, and Mr. Wagner has indicated, on behalf of the Commissioner also, the difficulty which arises when an inmate feels that he has not had proper representation. No, we do not oppose the creation of a more adequate or better system, or a different type of system.

SENATOR STAMLER: Well, 368 puts the public defender in the Department of Institutions and Agencies.

MR. URBANIAK: Oh, is that the one that does it? All right. To the extent that -- in response to Senator Stout's question - to the extent that I think it would intermingle inconsistent situations, and the members of the Legislature realize that the Commissioner of the Department must of necessity appear to request the appropriation, the public defender would pass on to him, I need X thousands of dollars, and maybe we may feel that we got a bum rap on some case against the Parole Board and I don't suggest we wouldn't push the request but it just seems to me that it should be an independent in some department and it's always easy to say, don't put it in our department, put it somewhere else, but where else, we have no thought.

SENATOR STAMLER: You couldn't put it in the Attorney General's Department very well.

MR. URBANIAK: I think the Attorney General will respond to that question.

SENATOR STAMLER: Any questions? (No questions.)

Thank you, Mr. Urbaniak.

MR. URBANIAK: Thank you very much.

MR. COHEN: Joseph Harrison.

J O S E P H H A R R I S O N: Senator Stamler and members of the Committee, my name is Joseph Harrison. My office is at 744 Broad Street, Newark, New Jersey.

I will curtail my oral presentation because some of the contents of my prepared statement has already been expressed by other speakers. I would submit to this Committee that there is an urgent need for an adequate public defender system to furnish competent legal services to indigents accused of crime in this State.

In principle, it cannot be argued in the mid-20th century that there is one brand of justice for the rich or those who can afford to retain experienced counsel and another for those who have no funds to do so. The bench and bar of New Jersey have long recognized the obligation to supply counsel to indigents accused of crime. For many years prior to March 18, 1963, members of the New Jersey bar were assigned to render such services on a voluntary basis in criminal cases involving all sorts of charges except homicides. Further, prior to March 18, 1963, the type of criminal cases in which legal services for indigent defendants was deemed essential was relatively restricted compared to the area in which legal services to indigents in the criminal law field

On March 18, 1963, the United States Supreme Court came down with this decision in the celebrated case of Gideon v. Wainwright - and Mr. Hillman read to you a pertinent excerpt from that opinion which indicates that so far as the United States Supreme Court is concerned and this interpretation of the Constitution of the United States, there must be counsel supplied to an indigent accused of crime.

Now, on May 18, 1964 in the case of Massiah v. United States the same Court, the United States Supreme Court held, among other things, at page 249 that:

"A Constitution which guarantees a defendant the aid of counsel at such a trial could surely vouchsafe no less to an indicted defendant under interrogation by the police in a completely extrajudicial proceeding. Anything less, it was said, might deny a defendant 'effective representation by counsel at the only stage when legal aid and advice would help him.'"

On June 22, 1964, the United States Supreme Court in the case of Escobedo v. Illinois held as follows:

"It is argued that if the right to counsel is afforded prior to indictment, the number of confessions obtained by the police will diminish significantly, because most confessions are obtained during the period between arrest and indictment, and 'any lawyer worth his salt will tell the suspect in no uncertain terms to make no statement to police under any circumstances.' Watts v. Indiana, 338 U. S. 49, 59, 93 L ed 1801, 1809, 69 S Ct 1347 (Jackson, J., concurring in part and dissenting in part). This argument, of course, cuts two ways. The fact that many confessions are obtained during this period points up its critical nature as a 'stage when legal aid and advice' are surely needed. Massiah v. United States, supra 377 U. S. at 204, 12 L ed 2d at 249. Hamilton v. Alabama, supra; White v. Maryland, supra. The right to counsel would indeed be hollow if it began at a period when few confessions were obtained. There is necessarily

a direct relationship between the importance of a stage to the police in their quest for a confession and the criticalness of that stage to the accused in his need for legal advice. Our Constitution, unlike some others, strikes the balance in favor of the right of the accused to be advised by his lawyer of his privilege against self-incrimination."

Now, the net effect of these Supreme Court decisions, for all practical purposes, is that every person, affluent or indigent, has the right of counsel from the moment of arrest.

Whether or not one agrees with the principle that a poor man should have counsel to help him defend himself in a criminal prosecution is now of little moment. The recent decisions of the Supreme Court of the United States have made it crystal clear that a legal defender must be made available to every indigent from the time of his arrest and prior to his interrogation by the police.

The magnitude of the field requiring legal defenders in criminal cases created by the Supreme Court decisions has put the problem of supplying adequate, competent legal services beyond the capacity of the voluntary efforts of the bar. For instance, in Essex County alone, according to the report of the Administrative Director of the Courts, for the period ending August 31, 1964, in Essex County alone there were over 20,000 criminal cases just in the municipal courts alone.

Most authorities in the field of legal services to indigent defendants in criminal cases agree that the voluntary assigned-counsel system is entirely inadequate.

If the guarantees of the 6th and the 14th amendments of the United States Constitution are to have any meaning for

indigent defendants; if the mandate of the United States

Supreme Court is to be honestly obeyed; if indigent defendants are to be defended by competent, experienced lawyers qualified to meet fairly the legal talent and resources of the prosecutor's office in a mutual quest for truth in criminal cases; if the people of this State are to be saved from the hazards of criminals freed because their right to competent counsel was denied to them, then we must have positive legislation that will establish an effective public defender system with an adequate appropriation for sufficient personnel and facilities.

Standards for an effective public defender system are summarized in a report of a distinguished committee of the Association of the Bar of the City of New York in cooperation with the National Legal Aid and Defender Association. The report has been published under the appropriate title "Equal Justice for the Accused." The standards suggested in this report are:

1. The system should provide counsel for every indigent person who faces the possibility of the deprivation of his liberty or other serious criminal sanction.

2. The system should afford representation which is experienced, competent, and zealous.

3. The system should provide the investigatory and other facilities necessary for a complete defense.

4. The system should come into operation at a sufficiently early stage of the proceedings so that it can fully advise and protect and should continue through appeal.

5. The system should assure undivided loyalty by

defense counsel to the indigent defendant.

6. The system should enlist community participation and responsibility.

I am convinced that the public interest in its broadest sense will be best served by the early passage of legislation by the New Jersey Legislature that will meet the standards and criteria recommended by the experts in this field and recommended by the State Bar Association, as presented by Mr. Hillman.

Thank you.

MR. COHEN: Any questions, Mr. Chairman?

SENATOR STAMLER: Mr. Harrison, taking your own figures, if a public defender system were to be set up in Essex County, how many members of the staff, legal staff, would be required?

MR. HARRISON: I haven't made the calculation, Senator Stampler. You may recall that when the Escobedo case came down the presiding magistrate in Newark either made a ruling or required that every defendant brought before him have the right to counsel. I think the language of the Supreme Court decisions, particularly in Escobedo, as they've come along have indicated or shown very clearly that there can't be any doubt that if competent counsel isn't provided to an indigent defendant ultimately the Supreme Court will definitely make the pronouncement that unless you have competent counsel you have no counsel and maybe you'd be better off if you had none rather than to have incompetent counsel.

Now, the number of attorneys that would be necessary,

I don't know, but I believe there is a system for having -
or a suggestion made that you have counsel right in the
Court and take up each case as it came along. But you wouldn't
necessarily have to have as great a staff as 20,000 cases a
year might indicate to you.

SENATOR STAMLER: Those were just in municipal court.

MR. HARRISON: Those are the figures for the
municipal courts in Essex County.

SENATOR STAMLER: And taking Mr. Murray's figures of
85 to 90% of those charged in Essex County were in the "poor"
group, therefore, there would be that much of a greater staff
necessary.

MR. HARRISON: Of course his figures are related to
those cases that get to the county court.

SENATOR STAMLER: Indictable, that's right.

MR. HARRISON: Yes, sir. But I mean, this is the
prospect and not a tenuous prospect. It is a condition, not
a theory that faces the State. And I think this is a State
responsibility, just as the prosecution is a State responsibility.

SENATOR STOUT: The term "indigent" is going to be a
difficult one to prove at this early stage, isn't it, when this
representation is most needed? How do we do this?

MR. HARRISON: It's really getting more difficult
to define the word "indigent." If you start with the definition
in some quarters it means \$3,000 a year or less income. But
I am quite sure that this is not an insuperable problem. The
assignment judges, the bar, the Legislature could well set up
the standards as to when it is indigent. There have been

suggestions made that possibly notes be given, that he buy his defense or legal services on the same basis as he buys his automobile or his refrigerator or his television set and ultimately have payments made.

SENATOR STAMLER: You mean, have him sign a note and then have the public defender defend him for that note which he signed?

MR. HARRISON: This isn't altogether funny.

SENATOR STAMLER: No, I know.

MR. HARRISON: But I merely mention that to show there is some way of getting compensation from all defendants which can be devised, and the definition of "indigent" is one that has plagued us even with the present system.

SENATOR STAMLER: Any other questions? (No questions.)

Thank you, Mr. Harrison.

MR. COHEN: The next speaker is the Honorable Arthur J. Sills, Attorney General of the State of New Jersey.

A R T H U R J. S I L L S: Good morning, Senators. I have prepared a statement, first of all, which I would be pleased to read to the Committee.

I am, in fact, pleased to be with you this morning to offer my views on the vital question of providing adequate legal counsel to indigent defendants in New Jersey. Your specific concern, of course, is with the advisability of establishing a public defender system in our State. Whatever your eventual determination might be, the course of your deliberations should reflect, in my opinion, an awareness that the present method by which counsel is provided to indigent,

criminal defendants is outdated and, as such, requires remedial action.

This system is outdated because it reflects a decided failure of our criminal processes to keep pace with the recent growth of two concepts which are revolutionizing contemporary thought with regard to poverty as it relates to the law.

The first of these concepts is evidenced by those court decisions which have broadened our duty to make counsel available to the indigent defendant earlier and more often than had previously been thought necessary. Thus, the courts have come to regard due process to mean the furnishing of legal advise at the first critical stage in the criminal proceeding.

The second factor affecting the current stiatuion is that society has more and more begun to realize that poverty should not be a handicap to a criminal defense. Thus, the belief has grown that the poor, as well as those of means, should have equal access to those guarantees and safeguards embodied in our federal and state constitutions. It is further understood that the need for legal assistance continues beyond the original trial and actually includes appeal and various post-convictions relief proceedings. The retroactive effect of some court rulings has compounded the difficulty by requiring that counsel be afforded to many who are presently in jail and who, may in fact, have been incarcerated for lengthy periods of time.

In light of these two concepts - the broadening of judicial standards regarding the right to counsel and the gradual realization that poverty is an impediment to the

equitable administration of justice - it is not difficult to conclude that the existing rotation method of assigning counsel to defend the indigent is outdated, if not inequitable and discriminatory.

Our adversary system of justice ideally presupposes a battle between equals, but under present criminal procedures such thinking is unrealistic. There is no comparison between the facilities available to the county prosecutor and those which assigned counsel might utilize.

Even if facilities were available in individual cases, there still remains serious doubt as to whether the present system affords necessary protection to the maximum number of poor defendants. We know that last year there were 143,516 proceedings, excluding traffic offenses, heard in our various superior, county, municipal and juvenile courts. It is reasonable to assume that a very substantial portion of these proceedings involved indigent defendants. Nonetheless, counsel was assigned in only 2,727 cases in the county courts last year.

It must be stressed at the outset, however, that there is very little data readily available about the functioning of the criminal process in New Jersey as it relates to the poor. Although much has been written about the public defender system throughout the country, we must presently rely on works by such authors as Lee Silverstein and Arnold Trebach for information on the New Jersey situation. Obviously, a great deal more investigation is necessitated if we are to know what there is to be done in this State.

It is anticipated, in fact, that a subcommittee of the recently created Governor's Committee on Law and Poverty, of which I am the Chairman, will conduct a thorough investigation of our system of defending the poor. Additionally, I expect that all of us would want to analyze Mr. Silverstein's latest two-volume work which will be released on the 15th of this month. This study, I am advised, will collate and set forth whatever has been done in this area to this date.

With regard to further comment by me, I must advise you that my statistics are necessarily derived from the limited sources which I have indicated are available. This consideration, however, should not preclude us from making certain general observations about the system now operating in New Jersey.

I do not intend to suggest that our lack of information about defense of the indigent means the present system needs no reform. To the contrary, I have already said I believe our rotation method is deficient.

New Jersey is one of 31 states relying on an assigned counsel system. Our system is essentially an extension of the Essex Plan which was initiated in Essex County in 1946. As is the case in other jurisdictions, the inadequacies of the assigned counsel system result not only from the system itself, even in its idealized form, but from circumstances which deter its desired effectiveness.

Perhaps these inadequacies can be considered in four broad areas. Generally speaking, it is argued that (1) counsel, even when assigned, is provided too late in the proceedings, (2) many assigned counsel are relatively inexperienced,

(3) the present system fails to cover such an important area as juvenile proceedings, and (4) the investigatory provisions for an assigned counsel are totally inadequate.

Considering the first of these deficiencies, we find that counsel is not usually assigned until an indictment or accusation is filed. Mr. Arnold Trebach, who I understand will testify before you later, found in 1963 that an average of 35 days elapse between arrest and the accused's first private interview with assigned counsel. In another study, it was determined that 40% of New Jersey's attorneys believe an earlier appointment of counsel is needed, while only 19% felt assignments are made at the proper time. Over half of New Jersey's judges and prosecutors agreed with the former conclusion.

Perhaps the overriding consideration in this regard is that guilty pleas are often a result of a defendant's ignorance of the law. While he may know the facts of his particular case and honestly believe he has broken the law, a defendant may be totally in error and, without a lawyer, may invite his own downfall. This ignorance very often involves fundamental considerations.

Mr. Trebach has indicated, in fact, that 24% of prisoners sentenced to jail believe they had to answer all questions posed by the police and had to sign a confession. Additionally, Silverstein has shown that throughout the country in most counties the rate of guilty pleas is substantially higher when counsel is not provided than when it is assigned or retained. In an inconclusive but suggestive sample taken

of 73 defendants in Elizabeth, it was found that 100% of those defendants without counsel pleaded guilty, whereas 82% with assigned or retained counsel and 43% with retained counsel pleaded guilty, respectively.

In addition to the question of delay between a defendant's arrest and assignment of counsel, we should be equally concerned with the all-too prevalent practice of assigning inexperienced lawyers to handle criminal cases of the poor. The New Jersey State Bar Association indicated in 1963 that less than 1% of the State's lawyers reported criminal law as a primary source of income. Furthermore, only 1.8% considered criminal law as a secondary source of income.

It is also common knowledge that the criminal courts are often seen as a training ground for young lawyers. While these lawyers may be intelligent and eager, it still remains that their lack of experience may well prejudice the case of their client, particularly in view of the seasoned, full-time prosecutor representing the State.

Another serious defect in the present system derives from the number of cases which it fails to cover. As I indicated earlier, in 1963-1964, counsel was assigned in only 2,727 cases in the county courts. Yet there was a potential clientele of 60,277 during that period, - that comes from 42% of 143,516, as indicated by Mr. Silverstein. Some people may consider many of these 60,277 cases too minor to demand our attention. But when we are considering that segment of the community which is plagued by poverty and despair, even the smallest fine for a minor offense may be catastrophic. Last

year more than 26,000 persons went to jail. Of this total about 12,000 were incarcerated because they could not afford to pay their fines. More than 5,800 of these were for traffic offenses. The fact that only about 14,000 other persons were sent to jail in addition to the 12,000 who could not afford fines may well evidence the fact that our penal institutions are overburdened by those who find poverty to be a punishable crime. The effect of a 30-day sentence on a marginally unemployed person should not be underestimated, and neither should the effect on welfare costs when a family of the convicted is forced to seek relief.

It is likewise ironic that of the 25,000 youngsters confronted with juvenile proceedings last year, the poor among them were not afforded counsel. In light of contemporary patterns, where the first conviction of a juvenile may begin a life of crime, it would be unrealistic not to question a system which provides counsel for an adult on the theory that he cannot handle his own case, while we allow certain minors to fend for themselves.

While I am considering what I find to be inadequate coverage in the present system, I would refer this Committee to New York State's recently enacted public defender bill which will provide counsel for all criminal offenses except traffic violations.

The fourth deficiency which I outlined to you earlier, relates to the inadequate investigatory staff afforded assigned counsel. Our present system is not designed to encourage the use of trained investigators. There is obviously no incentive

in a system which usually requires the assigned lawyer to bear the cost of extra staff. When added to the free time contributed and the fact that normally it is the young, low-income lawyer who is assigned to such cases, the extra burden can be disproportionate. Certainly this should have an adverse effect on the defense provided the indigent, particularly, as I say, in view of the full-time staff afforded the prosecutor.

It should be noted that 88% of New Jersey lawyers surveyed thought the present system unfair to them and 64% felt the system unfair to the poor.

It is my belief that the four areas of concern I have discussed with you constitute a solid basis for reform. While I endorse fully the need for change, I suggest, however, the system we ultimately adopt must promise improvement. Since we are here to consider a public defender system, we should be convinced that this system will better represent the interests of the indigent accused than the assigned system.

While we cannot compare the public defender system with the present system in New Jersey, there is evidence that the results of assigned counsel cases compare unfavorably with those of retained counsel cases in at least the cities of Camden and Newark. In these cities clients of assigned counsel received prison sentences in 79 and 68% of the cases, respectively, while clients of retained counsel were sentenced to jail in only 60 and 38% of the cases, respectively. Similarly, retained counsel succeeded in getting probation almost twice as often in both cities.

Once again I must reiterate my hesitance to endorse any one proposal to remedy deficiencies in the present system. I urge that findings of the Committee on Poverty and the Law and particularly the Subcommittee on the Criminal Process within that Committee be given your serious attention. This subcommittee provides a forum for a discussion of the entire spectrum of cases where the poor are accused of criminal actions. For instance, the Committee has already calculated how the State and county governments could save approximately \$2,600,000 every year simply by instituting certain pre-trial release programs which may be familiar to you as the Manhattan Bail Project and the Manhattan Summons Project. The importance of this estimate can best be seen in the fact that one bill presently before the Assembly creates a fund of \$2 million a year to provide for a public defender system. Consideration of these two programs by the same body, should make the relationship of one to the other readily apparent. There is no reason why the funds saved by a pre-trial release program could not be used to finance, at least somewhat, a public defender program.

It might even be advisable for two members of your Committee and two members of the Assembly to become members of the Governor's Committee on Poverty and the Law, ex officio. Perhaps in this manner, we can avoid the pitfall of considering separately what in fact are interrelated aspects of the poverty and law question.

I have read with interest the bills presently before the State Assembly and Senate. I have also reviewed the New York

Law and the Federal Public Defender Law which allow counties and districts, respectively, to select among different alternatives.

All of these proposals, I believe, have merits and demerits, but it remains for this Committee to evaluate each in light of further information which I have indicated is forthcoming shortly. It should also be pointed out that the Committee on Uniform Laws has prepared a model public defender law which will be distributed soon.

At the outset I indicated the growth of two concepts which are having a momentous impact on our thinking regarding the place of the indigent in our system of criminal justice. These trends make it difficult to state categorically whether or not the same system for defending the poor is best for every community and population with different patterns of criminal activity.

There still remains the necessity of adopting any one of the proposed systems to the State of New Jersey or a county in New Jersey or, for that matter, one of our cities. It may well be that different plans throughout the State would be more desirable, since the needs of rural areas are somewhat different from urban areas.

It should be made clear in any event that it is the opinion of my office that the present system for assigning counsel to indigent defendants must be changed and that a more satisfactory one based upon the needs of this State should be instituted.

And may I say, Gentlemen, that I have with me a

written statement of John C. Bullitt, Director of New Jersey Office of Economic Opportunity, which he asked me to transmit to this Senate Committee, setting forth his views on this subject. (See p. 70 A)

And I want to thank you gentlemen for your time and consideration. I recognize your task, and mine, to be a difficult one, but I am sure that the ingenuity of this Committee and I hope my own, and all of us concerned with the equitable administration of justice will not find it insurmountable.

Thank you.

SENATOR STAMLER: Senator Stout, have you any questions?

SENATOR STOUT: I had a question concerning Assembly Bill 368 which recommends that a public defender system be established in the Department of Institutions and Agencies. I was wondering how you felt about that suggestion and where you thought it might properly go.

GENERAL SILLS: For the moment, I don't know where it would properly go but I would say that in my opinion it neither belongs in the Department of Institutions and Agencies nor the Attorney General's Office, which was suggested by one of the other bills. And the reason for that is this, within the Department of Institutions and Agencies you have obligations today concerning themselves with parole and probation which might, in a sense, prejudice the attitudes and minds of the people in Institutions and Agencies. And within the office of the Attorney General there is a certain amount

of supervisory conduct over the prosecutors and, as a matter of fact, the Attorney General is called upon from time to time to supersede when certain statutory situations are met by prosecutors. And it would seem to me, then, that the same prejudices might be present in the Office of the Attorney General. I should think that, in any event, a public defender system should be distinct from either the Office of the Attorney General or the Department of Institutions and Agencies.

SENATOR STAMLER: The only question I have, General, is do you believe that a public defender system established under any statute would be in competition with the prosecutor?

GENERAL SILLS: Possibly. Of course, the word "competition" is very broad and we have competition today among lawyers in any event. I know that when I practiced law there was always a desire on my part to win the case. That, in a sense, is a form of competition. And I would assume that the public defender would put his best foot forward and the prosecutor would put his best foot forward and in that sense you would have competition.

SENATOR STAMLER: Well, in the establishment of such a system, were the system established, I would assume it would have to be housed in a court house since it would be a public system, and being housed in a court house, possibly on a different floor or on the same floor with the prosecutor's office, would it not raise some questions with the indigent defendant as to whether or not he was being properly represented? Do you understand what I mean?

GENERAL SILLS: Oh, yes, definitely. Of course that could be but I don't think, at the moment, that should be considered a major consideration. I think the important thing is to determine that we need a system superior to the one which we have today. And even though there might be some defects, and I would consider this to be a minor one, in a public defender system, if it is superior to the assignment system then we should adopt it in some form or fashion. Of course, it could be possible for the public defender to have his office near but outside of the county court house. Some prosecutors are housed in separate buildings from the court house. I believe in Middlesex the prosecutor has been moved from the court house itself to the adjoining administrative building. Isn't that correct, Senator Lynch?

SENATOR LYNCH: That's correct.

SENATOR STAMLER: Thank you, General, very much.

MR. COHEN: The next speaker is Nicholas Fernicola, County Counsel of Essex County.

N I C H O L A S T. F E R N I C O L A: Mr. Chairman, pursuant to the instructions which I received, I have prepared a written statement, and then I have prepared some other information anticipating that the Chairman and the Committee may want this additional information. So I will proceed with the statement first.

No county has a greater interest, measured in terms of human needs or public investment, in the matter of a public defender system than the County of Essex. At the present time it is costing the citizens of Essex County \$125,000 a year in

lawyer fees alone paid by the County of Essex in providing legal defense to indigents accused of capital crimes alone.

This cost does not include other expenses involved, including the cost paid by the County for the services of judges, their staffs, court attendants and other expenses incidental to the conduct of trials of indigents in capital cases.

The financial cost of indigent capital cases has been generally on the rise since the system was first widely adopted in 1962. In 1964, the original cost amounted to some \$90,000, and the year previous \$70,000. There is no reason to doubt that in the years to come the cost in capital cases will increase as will all other costs incidental to the trials involved.

In the course of my testimony I am prepared to give detailed information on these costs, but in this formal statement I wish to pledge the support of the Essex County officials to the principle of establishing a public defender system.

There are many questions to be answered before my county can give official approval to the specific form which this public defender should take. But in any case, I would certainly exhort and encourage legislation to this end - that the State of New Jersey authorize the establishment of a public defender system and, furthermore, that this public defender system be an agency of the State government and be financed by State funds.

The reason why I believe it should be a State agency

and State financed is a very important one.

We do not believe that Essex County alone should bear the burden of the indigent. It is a federal problem - it is a State problem - it is a problem of every responsible citizen of the State of New Jersey, no matter where he or she may reside.

The question of the indigent defender, whether it be in a capital case or as it appears to be more likely in every type of criminal case, is centered in a large measure in and around Essex County where the greatest proportion of the indigent reside.

We feel that the federal guarantee of due process and a fair trial is the responsibility of all citizens and we, therefore, feel that from a moral point of view this responsibility should be the financial responsibility of all citizens of our State.

Among other factors which I feel this Committee must think out in great detail is how far the responsibilities of the public defender must or should go.

So far in my statement I have only considered the matter of capital cases but if the precedent which has started in the federal courts, specifically in the case of Gideon v. Wainwright, the landmark decision of the Supreme Court, it may well be that the public defender's role will apply to every type of charge levied against an indigent and these cases run as high as 40 times that of our present capital cases.

What I am trying to highlight here is the fact that instead of the county paying \$125,000 a year plus for

indigent capital cases, it may well be that the over-all cost of indigent defense will be many times greater. There has been some intimation on the part of the American Civil Liberties Union that in an effective public defender system a county may or must budget the approximate amount for a public defender as it does for the prosecutor's office.

In the case of Essex County this would mean a doubling of the present budget which approximates \$865,000 a year given to the prosecutor's staff or at least the percentage of this amount involved in indigent cases.

Another basic matter for your consideration is to what level of court jurisdiction should the indigent defender be entitled to representation, and also whether representation should be applied to post-conviction relief applications which are now piling up in my county.

Moreover, we will also have to face up to just what constitutes an indigent. Does a man have to be an out-and-out proved pauper or simply a defendant who just doesn't have the extras to provide for a defense which he feels is too costly.

But these matters which I have raised are matters of technical adjustment. The main point is the principle involved and there is no doubt in my mind, or the people of Essex County, that sooner or later in New Jersey we are going to have to install a public defender system. In my way of thinking, it is the best way of insuring due process of law for the really indigent who cannot pay his way. Therefore, the sooner we adopt the principle of a public defender system, supported by State funds, the speedier and more efficient will

be the invocation of due process of law.

Now, anticipating that perhaps this Committee might be interested in costs - and I heard the Chairman and other members of this Committee request some information from previous witnesses as to cost, I have brought you a breakdown which we were able to incorporate or correlate since 1961, and I have broken it up into five categories and the categories run: counsel fees; counsel, for miscellaneous expenses; expert testimony; medical examinations in service; transcript of testimony. And starting in 1961 those categories totaled \$60,741.94. In 1962, when we first took cognizance of the problem and I sent our men into the courts to attempt to hold down the expenses which Essex County was being asked to bear, we reduced it to \$49,345.35. But in 1963, notwithstanding any efforts on the part of the County Counsel's Office, it jumped to \$90,052.21.

In 1964, the same expenses which in 1961 totaled \$60,741.94, now jumped to \$105,752.85. The estimation and approximation for 1965 - and our expenditures to date are \$60,884 as of July 1. Our applications and orders which are pending and vouchers we are now awaiting indicate that we have the biggest year in expense and that they will amount to in the neighborhood of \$125,000.

Now, these figures that I have given you - you will be interested in one other type of item that I have brought to you. The 1965 total assignments by the County Court Judges were 32 in number. Of the 32, 10 were actual trials, to date, there were 14 pleas and there were 2 appeals, and there were 6

Those figures for those particular items that I gave you totaled the figures which I previously read.

In 1964 we had a total of 35 assignments with 15 trials out of the 35 assignments, 13 pleas and 7 appeals. There were no post conviction applications in that year.

In 1963 we had 42 total assignments on capital cases alone resulting in 20 trials and 22 pleas.

In 1962 there were 20 total assignments, 6 trials, 11 pleas, and 3 appeals.

Now we find also that the tendency of the Court, in their endeavor to file all of the decisions which arise, both from the federal and State level, - that we are now bearing the terrific expense of investigators, psychiatrists, and other medical experts, including ballistics experts, handwriting experts, and fingerprinting experts. And we find that the condition and cost in Essex County, and I think this will be prevalent and will arise in other counties besides Essex County, is one which is mushrooming and we have a terrific time attempting to determine where and how much responsibility does the public have to an indigent and who is going to carry the freight and pay the bill.

And for the reasons which I have assigned and given to this Committee today, it is my recommendation, and it will be our recommendation to our Legislators from Essex County, that this be a State bill which incurs State expense and is supported entirely by the State.

I want to point out one thing, that when a man is

convicted in Essex County or Union County or Middlesex or Hudson County of a crime, he may come from Virginia, he may come from Trenton, he may come from any county of this State. Crime, in my judgment, has no boundaries.

Thank you very much.

SENATOR STAMLER: Any questions?

SENATOR LYNCH: Mr. Fernicola, the figures that you have given us have mostly been based on capital cases. Is that correct?

MR. FERNICOLA: Yes, sir.

SENATOR LYNCH: Do you have any notion or idea how many assignments there were in Essex County for ordinary criminal cases in the year 1964?

MR. FERNICOLA: I have some information here but I don't know whether it is readily available, but it would be approximately the figures which Mr. Murray gave you previously. I'll see if I can get that right away for you. Al, do we have that information here?

MEMBER OF AUDIENCE: Approximately 2500 cases.

SENATOR LYNCH: Have the courts in your county, so far, been assigning lawyers to municipal court hearings?

MR. FERNICOLA: Not that I know of, except the magistrate in the Municipal Court may. The few cases that I've heard of, they are the type of what I call "hit-or-miss" system where some lawyers may be standing in the court room and some indigent needs counsel - and when I was a magistrate I did the same thing, I would point out Mr. Jones and say, take over the representation or defense of this man. I don't

know that they have a system in the sense that it's a system where there are groups of lawyers that do that.

SENATOR LYNCH: Under these United States Supreme Court cases we are going to come to that, aren't we?

MR. FERNICOLA: Well, this is the reason I incorporated in my statement -- I am greatly concerned as to the large number of magistrate courts that are hearing - well, I think in Essex County I would say they would run about fifteen to eighteen thousand a year. Now, that is the reason why I also raised the question of how much defense - where does the defense begin and how far up the line does it go. And also, remember that the defendant who comes before the magistrate for arraignment, say on a capital case, in many instances he starts off from police headquarters to the magistrate's court without a lawyer. And then it develops, for example, when he's held for the Grand Jury, unless the judge now says, "represent this man," and whether he's got a man who can truthfully and honestly represent him in this type of case and knows what to do, is another matter. We deem that every counsel is competent to start with but I'm of the firm opinion, such as the Attorney General said, that criminal law is a specialized field, most of the lawyers don't earn their living in that area and they don't keep up with it, and I would think if we are going to give proper representation we should give them qualified people.

Now, I would like one area to be investigated or studied by this Commission, which I haven't heard here, and that is this, whether the public defender system, if it is

installed and if the Legislature and the Governor approve, whether or not that should be within the confines of Civil Service.

The California system has some Civil Service regulation about it. I haven't gone into it in detail but they do prepare their men, their men study, they are qualified criminologists or people who are fully acquainted with criminal law and it may well be that, if a public defender system is installed by the Legislature, they may look into whether or not it should come under the category or jurisdiction of Civil Service.

SENATOR LYNCH: Thank you.

SENATOR STAMLER: Mr. Fernicola, in California are the prosecutors under Civil Service?

MR. FERNICOLA: I don't know about the prosecutors, Senator. I don't know.

SENATOR STAMLER: In line with your statement about the State should pay the freight -

MR. FERNICOLA: Right.

SENATOR STAMLER: The State now pays part of the freight for the county court, does it not?

MR. FERNICOLA: Not for the county courts or the superior courts.

SENATOR STAMLER: They pay part of it.

MR. FERNICOLA: Yes. The superior courts.

SENATOR STAMLER: Of the superior courts - what is it, 60-40.

MR. FERNICOLA: Well, we have an arrangement - I can't

give you the exact percentages but we have an arrangement on the stenographers, etc. I didn't bring that in.

SENATOR STAMLER: Well, there would be no particular argument with the county paying part of the freight of the public defender system.

MR. FERNICOLA: Well, if it had to come to that, your figures on the public defender system in California for a county the size of Essex County runs about 25% per capita. So on that basis, with Essex County having approximately one million people, I would imagine it would run about \$225,000 to \$250,000, if that figure would be able to be used in Essex County or in any other county.

SENATOR STAMLER: Therefore, about one-third of what the prosecutor's office now is.

MR. FERNICOLA: Approximately.

SENATOR STAMLER: So that it wouldn't have to be necessarily matching.

MR. FERNICOLA: Well, I don't think my freeholders would get mad if we had to make a contribution but still save some money.

SENATOR STAMLER: Thank you.

MR. COHEN: Mr. Fernicola, are you familiar with the Los Angeles Public Defender cost? Can you give us a breakdown of the --

MR. FERNICOLA: I had them but I left one file home. I came directly from the office. I have a textbook which contains a great deal of this information and I could either loan the textbook to the Committee or refer them to

it, and I think you will find some very valuable information on cost there.

MR. COHEN: Mr. Fernicola, I'm trying to recollect where I got this information from but I'm under the impression that it was \$36.00 a case. Is that true?

MR. FERNICOLA: I won't be quoted because I can't honestly say.

SENATOR STAMLER: Well, if you have those figures could you make them available?

MR. FERNICOLA: Oh, sure, I will be happy to send them, Senator.

SENATOR STAMLER: Thank you very much.

MR. COHEN: Senator Stamler and Honorable Senators, when I was informed that you as a group privileged me to become Special Counsel to this Committee, I took it upon myself to invite Arnold Trebach. He was referred to by the Attorney General. And at this posture of the hearing, because of the long distance that he has come, may I have the privilege of asking him to testify next.

Arnold Trebach has a fine background. He was an Attorney for the State, he's been with the Administrator's Office, and he is also an author of a well-known book referred to by the Attorney General, The Rationing of Justice. He was with the American Bar Association and, because of his studies, I think he's particularly well fitted to testify at this time.

SENATOR STAMLER: Go ahead, Doctor.

A R N O L D S. T R E B A C H: Mr. Chairman, Members of the Committee, and Mr. Cohen: I am very happy to appear before you on this important subject today.

The New Jersey Legislature, in my opinion, has missed the boat in one very important sense. It has not taken advantage of the great opportunity that existed some years ago to move this State into the forefront of all American jurisdictions. The Judicial Article of the 1947 Constitution established a unified judicial system that was the envy of much of the civilized world. That system has had the benefit of a fine Administrative Office of the Courts. When the Essex Plan of rotating assigned counsel was put into state-wide operation by a rule of the New Jersey Supreme Court, again the eyes of the American Bar looked with favor upon this promising experiment. At that time, over ten years ago, this assignment plan was something new and it was on the frontiers of American Law.

But now, times have changed. In the past decade history has moved with amazing rapidity in the field of the law and human relations. The evidence has reached mountainous proportions for those who will look at it - and here I disagree with those who say the evidence is not yet strong enough. I think we can gather more evidence, a lot more, but I think we are up to our eyeballs in evidence for those who will look at it, - demonstrating that there are serious deficiencies in any system of unpaid assigned counsel for the poor in criminal cases.

This State legislature has not acted on this

evidence and has not passed any of the numerous defender bills presented to it in recent years, bills which had the promise of remedying many of these defects. There was a time, moreover, when passage of some of these bills would have again placed New Jersey far out in front among the states in terms of its judicial system. Such is not the case today, in my opinion.

Now, public defender systems are nothing revolutionary. They are not risky ventures. True, only a minority of states have them - most prominently California and Illinois, in terms of numbers of counties covered, but the thinking of many leaders of the law and government throughout the Nation today has reached the point where, to be frank, public defenders are considered a minimal type of program, even old hat. If the Legislature passes this bill now, in one sense it will be simply be catching up with the times.

To understand why this is true, we must look at developments in the law, but not only in the law. We must also look at explosive and revolutionary developments in the broader society. I think we cannot consider this bill today without looking at these broader developments.

When I took a summer job in 1955, the subject of legal aid was hardly headline news, and for me to come back to Trenton and New Jersey at this time is kind of an interesting comparison in contrast because I've been away for a while and I can reflect on what the situation was then and what it is now. At that time I was not overly impressed with legal aid even though as a lawyer I had a concern for it.

But I took the job. I needed a summer job at that time and I conducted two surveys, one in civil and one in criminal legal aid in New Jersey and I went around, incidentally, to every county in this State, all 21 counties to gather information from each of them. And, if you will permit me to say, I am rather amazed at the contrast between the opinions I heard expressed then in every county of this State and the opinions I heard expressed today from this rostrum. Times have indeed changed, and that is in terms of the opinion of the Bar.

Now, for me the problem of legal services has become a major concern. I devoted my doctoral dissertation in Princeton to it and I have recently published a book on it.

We now find ourselves looking on a different national situation and a different world situation in many ways. Civil Rights demonstrations and Negro riots have brought attention to the minds of the comfortable, as nothing else could, that down there at the bottom of our rich society people are miserable, they are suffering and they don't like it a darn bit. American racial problems now make world headlines.

Since 1960 this nation has become concerned about the poor and the downtrodden as it never has before, with the possible exception of the 1930's. The Negro revolution produced a national commitment to eradicate racial injustice. National power is clearly behind that national commitment. As it happened, I was in Washington when I saw that dramatic

change take place, a change from pious platitudes to a point where at Washington cocktail parties people were saying, "this guy means this." And since national power is committed, it is a political matter in both the good and the bad sense. Careers have risen and fallen on the extent to which a man is committed to helping the disadvantaged, as Mr. Goldwater learned.

Building on the base of a concern for downtrodden Negroes, the present national administration has broadened its target area to include the injustices and miseries of all those who sit at the bottom of our socio-economic structure. Thus we now have the War on Poverty. I think it's important to remember it was triggered largely by the racial revolution. But this War on Poverty, I think, fortunately, is aimed at all citizens who sit down there at the bottom - and as it happens most of them are white.

As the nation could not endure half free and half slave, we have now determined that it will not be allowed to exist four-fifths affluent and comfortable, and one-fifth poor and miserable. Indeed, as the riots in Los Angeles, which of course were racial, and similar disturbances throughout the country suggest, we may now have reached that point in history when our country simply cannot endure with that economic division.

We are seeking to produce social change because we must and we are seeking to do it in a rapid time. Millions of our people are simply not prepared to accept racial discrimination and economic misery any longer.

You Are Viewing an Archived Report from the New Jersey State Library
This is a broad program and it is a program which

fits within such diverse traditional categories as voting, housing, welfare, education, and law. Now, it is because the legal field is considered such a vital part of this broader attack, with national power behind it, that I mention this broader situation. Rather than being a virtually isolated program to improve a state legal system, any legislation aimed at upgrading legal services for the poor must now be considered part of a nationwide campaign to improve American society. It is not isolated because it fits in with programs to improve other services for the poor.

When I first started studying legal aid in New Jersey, so far as I could see, it was very much an isolated program with strictly legal ramifications. It was a lawyers' bill. This is no longer a lawyers' bill, it goes much beyond that.

All of this suggests why, in another sense that I mentioned, a public defender bill still presents a great opportunity for the Legislature. But there are other reasons which I would like to bring to the attention of this Committee. There is a legal service phase of the War on Poverty coordinated out of Washington. As it happens, that legal service phase of most community action programs is still in the very earliest stages. You find, in going around the country, that they are having a rocky time getting these legal service programs under way. This is everywhere in the country. There are only a few places where they have really done well.

Now, as you know, and has been mentioned today by

the Attorney General, there is now a Governor's Committee on Poverty and the Law to study legal problems of the poor and to coordinate programs aimed at remedying them.

Now, if the legislature passes a defender bill now, it will be saying to the country that New Jersey intends to start now, in earnest, a full scale attack on the legal problems of the poor, as part of the broader program to improve our society. Passage now, then, would give initial impetus to a campaign to eradicate the poverty and its attendant ills in this State. There must be a solid beginning in this broader attack, and here it is.

I intended to talk about the legal reasons for enacting a defender bill. I feel they have been covered. Let me sum up in this fashion.

I think if you look at all of the decisions that have been handed down by the United States Supreme Court in recent years, - I believe you can make out a case by saying flatly that the assigned counsel system simply does not live up to the Constitution. It's a statement that may be somewhat uncomfortable, I must confess, but it's a statement that I believe can be supported.

To demonstrate some of the inequalities of the present system, let me cite just a few points from my book, *The Rationing of Justice*. As you know, this was done primarily by reasearch done during the late 1950's. There have been some changes in the practice in New Jersey but none of an essential nature to my knowledge. I think the most outstanding example is the experiment in Essex County.

First, I will simply point out that there is, in my opinion, a serious problem in New Jersey and in many other states whereby cases are really won at the police level before the case ever reaches court. And this is in part due to the fact that the police play a very important role in the administration of justice, frequently it's a very proper role. But I have found that the biggest thing is to get confessions. And, again, there is nothing improper about getting confessions but, as it happens when you have a situation where the assigned counsel system does not begin to operate until after the police have secured a confession, until after, really, the most important part of the case is over in many respects, I think you have a serious problem of inequality.

Most of the men who could afford counsel saw them right after arrest. They got in, and this is a large number, within one day after arrest. From their own words, this is what they told me. You know, if you can afford counsel you get them soon. On the other hand, as the Attorney General pointed out, my study showed it was over a month, on the average. That was the median average, incidentally, - let me point that out. If you took the entire sample, 50% of them saw their attorneys, those who could not afford a counsel and were assigned a counsel, saw them about 35 days after arrest. But the mean average, that is the simple arithmetic average, ran almost 2 months for the entire sample. You had some men waiting around in jail 6 months before they saw an attorney.

Second, - no, that's the point I just made.

Third, we must cast our eyes behind the walls of our

prisons. Just five minutes from where we sit there are men sitting in the New Jersey State Prison, which is one of the oldest prisons in the country, incidentally. I've been in a lot of prisons - I've never served time but I've done a lot of research in prisons - and I found the New Jersey State Prison to be the oldest institution I've ever been in, anywhere in the country, but I found it reasonably clean and well run but still I can only call it an antiquated fortress. And in that antiquated fortress men sit, spending substantial parts of their lives. At least when I was there I met men who had been there for 10 years and I was the first lawyer to whom they had spoken. I don't have any delusions about the type of characters who are there but what I say is, as many of the lawyers here know, they have rights and they tend to be cut off pretty much when they get into prison.

However, I hope that neither the book, nor my testimony today, is taken as a general indictment of the New Jersey Bar. Nothing could be farther from my intention. If anything has kept this New Jersey system from being a complete disaster, it has been the efforts of those dedicated lawyers who have gone into the breach time and time again. Incidentally, I've met lawyers in New Jersey who have even paid for the expenses of an investigation out of their own pockets. If they had a capital case, as we know, they could probably get the judge to allow them. But there are many serious non-capital cases, like robbery, where I've met lawyers who have paid the expenses of the investigation out of their own pockets.

Those New Jersey lawyers who have given so much of their time and talent freely under this system deserve the

gratitude of the people and of the State Legislature. It is now time, however, for the Legislature, representing the people, to produce something more than gratitude.

Why should a decent, law-abiding man who sits in the legislative chamber of an American state be concerned with passing a bill that in one sense will help criminals? That man would vote for the bill because he sees the broader picture. He would understand - that legislator would understand that defense of the poor man accused of crime is, at base, defense of the American Constitution. He would understand that this nation has now undertaken a campaign to rid itself of poverty, along with its attendant ills, and that success in that campaign requires a long-range view for dealing with fundamental causes of the vicious cycle of poverty and crime. He would understand that among those fundamental causes is a sense of hopelessness among millions of our people - for they feel that there is no dignified place for them in this society. That legislator would also understand that he supports defender legislation not for criminals but for himself and his family because, in the long run, such measures will make this society better and safer for him and his children.

Finally, let me say that I do not appear before you as an advocate of what is called a public defender system, that is, a system whereby all defense of the poor is centralized in one county office supported by government funds. Rather, I am an advocate, as so many of the previous witnesses were, of adequate legal services for all of our citizens. In some communities, such as in Los Angeles, you find that the public

defender has done an adequate job. I have visited - oh, I don't know, - 3 or 4 dozens of these places in a study made of them, and have found the public defender doing a darn good job in many places. Incidentally, the budget for the Los Angeles public defenders runs a little over a million a year.

Now, other systems have shown promise, however. You have private defender systems which are totally supported by private funds; and you have combinations of these. It is now clear, however, - and this is one thing, again, that's happened since I started work in this field some 10 years ago - that leaders of the American Bar who used to look upon public moneys in this, going into defense, as something pretty horrible, now support openly the need for public moneys. And this is accepted. So there must be public moneys in it.

Whatever system this State decides to adopt, it should have the following attributes: It should provide zealous, independent, competent adversaries for the rights of the poor. It should come into operation within the first day after arrest. It should continue to the point when the defendant has become a convict. It should provide facilities for investigation.

I might also point out, in somewhat carrying on the previous discussions with other witnesses, that the federal legislation would certainly allow one defense system to operate. That's clear. I know this is the intent of the men who framed this thing, that you could well have a single system working with both federal and state courts. To me that makes an awful lot of sense. However, I would urge that you do not pass

a bill - and I hope I'm not stepping outside the bounds of my invitation here when I urge this on you - that this bill not be a discretionary bill, that it be a mandatory bill requiring each county to adopt some system of payment and organization within a given period of time, the same way that the federal bill did. The federal bill was a completely open option but it said that by a given date, some 9 months from now, every federal district must adopt one of these systems. This is the important thing.

It is my sincere hope that the Legislature of New Jersey does not pass by the historic opportunity presented by some form of modern defender legislation today.

Thank you.

SENATOR STAMLER: Any questions? (No questions.)

I want to thank you very much, Dr. Trebach. I'm sorry we kept you as long as we did and we do appreciate your information. The only question I have - I notice you don't discuss Connecticut at all.

DR. TREBACH: Yes.

SENATOR STAMLER: That system is not a good one?

DR. TREBACH: Well, I spent some time in Connecticut, as a matter of fact I appeared before an assembly somewhat like this one, recently, and my feeling is that Connecticut is a pretty good system. My major criticism of it is that it's a pennypinching system. They haven't put enough money into it. I think it is underbudgeted. At least - oh, I would say the last time I was in Connecticut was about 8 months ago, 10 months ago, and at that time I felt it was severely

underbudgeted. I think that's one of the problems they have.

SENATOR STAMLER: Don't you feel that any public defender system is better than none?

DR. TREBACH: No.

SENATOR STAMLER: In other words, you would rather have none than have one that was underbudgeted.

DR. TREBACH: Let me put it this way. Under the present system there is at least the opportunity, in New Jersey, for a sense of - I'll put it this way- many lawyers, as you know, the only reason they are defending this guy is because they feel somebody has to do it. So there's a sense of concern for some poor joker down there in the county jail who needs help, - you know, he may really kind of disgust the defense attorney who is handling it but personally he feels that somebody's got to step in here. There's room for idealism to have its play under this system. If you were to set up a public defender system that was underbudgeted you would have all the cases channeled into this one fellow who would be overworked and probably not doing a very good job. I won't mention any places I've gone to but I've been to places where I would rather have seen no public defender system at all.

SENATOR STAMLER: Thank you, Doctor.

MR. COHEN: The next speaker is Robert L. Olson, Director of the Board of Chosen Freeholders of Bergen County.

R O B E R T L. O L S O N: Senator Stangler, Senator Lynch, Senator Stout, Senator Kelly, I represent a little different thought here. I just represent the people from Bergen County who spent \$31 million on a budget last year and I think those people have to be represented.

The members of the Bergen County Board of Freeholders have discussed the question of the establishment of a public defender system and have authorized me to convey to this Committee the following thoughts:

While the Board is sympathetic toward the need to supply indigent defendants in criminal cases with proper representation, it is gravely concerned with the matter of the costs involved in the establishment of a public defender system.

We have, for example, been setting up a line item in the budget for the past few years to provide specifically for expenditures in capital cases.

It includes payment for court-appointed attorneys and investigators and for the expenses of sequestering juries.

The expenditures have varied. In capital cases we spent in 1961 only \$3,568.00; in 1962 it was \$12,726.00; in 1964 it was \$35,253.00. And in the first few months of 1965, it was a little over \$10,000.00.

With that in mind, I would like to suggest to this Committee that its final report include proposals on the methods of financing and staffing such a system.

Who, for instance, will provide the funds to staff the office?

Who will make the appointments to the office of public defender?

How will the number of attorneys, investigators and clerical workers be determined?

Now, I realize that I am discussing housekeeping details with a Committee which is essentially concerned with making a philosophical and moral examination of an admitted defect in the operation of our judicial system.

But, unfortunately, in Bergen County we have found out the hard way that if we don't put a word in early in some of these matters we find ourselves faced with the unpopular task of raising the tax rate to provide a new service voted on in Trenton - 60 highway miles and a million light years removed from the voters and taxpayers.

We have noticed, frankly, that there is a growing tendency on the part of state government to ease onto the shoulders of the counties, responsibilities which have traditionally been state responsibilities.

For instance, counties have been asked to take over the field of public health - a statutory state and municipal responsibility, and an expensive responsibility.

For another instance, counties have been asked to bear a greater share of the welfare load - formerly a state, federal and municipal responsibility.

There are other examples, but these suffice to explain why I am here today to raise the eternal question I learned as a boy in New England - "Who pays?"

I point out to you that in Bergen County the office

You Are Viewing an Archived Report from the New Jersey State Library
of the Prosecutor of Pleas requires \$500,000.00 a year to operate.

We would be interested to know whether the proposal is for a state public defender system or one which, like the prosecutor, is a state-appointed office operated with county funds.

Let me clarify one other point. Those of us in county government are quite willing to undertake new responsibilities. We think the county has a tremendously vital function in meeting public needs which are beyond the individual capacities of the local municipalities.

We are even willing to take on what have traditionally been state functions, but only if there is a need and only if the county is, in fact, the logical tool of government to handle a particular problem.

Thank you.

SENATOR STAMLER: Director, you're kidding when you say that the people in Bergen County consider themselves to be a million light years away and removed from Trenton.

MR. OLSON: Well, let's say that the tax problem is getting to be a million light years away from Bergen County.

SENATOR STAMLER: Oh, all right.

Any questions?

SENATOR LYNCH: Just one questions. Director Olson,--

MR. OLSON: Yes, Senator Lynch.

SENATOR LYNCH: Your remarks were directed toward the finances of Bergen County. Are you opposed to the public defender system generally or just opposed to the County of

Bergen picking up a bill for it?

MR. OLSON: I am not opposed to the public defender system. I am in favor of the public defender system. But I believe it should be a State function as to its cost.

SENATOR LYNCH: Thank you.

SENATOR STAMLER: Do you think that the prosecutor should be too?

MR. OLSON: The prosecutor has been traditionally, for an untold number of years, a county responsibility. While I think it is slightly unfair that so much a part of it is charged against the county, I feel that that's a moot question now and it could be left alone.

SENATOR STAMLER: Thank you very much.

MR. COHEN: The next speaker is Herbert Meyers of the the Bergen County Bar. He is their representative on the Indigent Defendant's Committee.

H E R B E R T F. M E Y E R S, Jr.: Senators, I welcome this opportunity to testify before your Committee.

As I sat here and listened to the various prepared statements read and the remarks made and the questions and the answers to some of the questions put, I have somewhat in my mind revised my modus operandi of presentation to you. I follow Mr. Olson, Director of Bergen County Board of Chosen Freeholders, and I am a practicing member of the Bergen County Bar for over 30 years. May I respectfully point out that I have with me the Vice Chairman of my Committee and the Secretary

of our Committee who, if there are details that I cannot answer and you desire same, I will refer you to them.

May I respectfully point out that as I have been sitting here I have listened to philosophies, I have listened to platitudes, I have listened to figures, and this is the revision of my thinking.

I am a practicing criminal attorney for 30 years. The good Doctor, when he said those of us who have put our licks in as assigned counsel - you are looking at one in the State of New Jersey who has put in more or as much as anyone else, and I appreciate his recognition of this.

On the other hand, insofar as the Director of the Board of Freeholders is concerned, the plan that I have to submit for your consideration and for your study would take in many of the things that were queries, so far as he was concerned.

I was appointed Chairman, two years ago, of the Committee for the Assignment of Counsel to the Indigent, and served on such a committee for some 5 years theretofore. And I am sure that you have all experienced the same situations in your bar associations where everyone wishes to serve on a committee, are absolutely slighted if they are not put on a committee, but then call 5 minutes before and say they have a closing. So that by arrangement with Mr. Roger Breslin, who had a sincere desire to see something overt accomplished, he asked me if I would take the chairmanship and I told him I would provided I could pick my own committee, which I did. And I am very pleased and proud to say that I picked all

younger members of the Bar, reasonably experienced, if not excellently for their years before, as criminal lawyers.

Now, gentlemen, if you had a committee here on trusts and great real estate and corporate organizations, I wouldn't consider myself qualified. I am perfectly qualified to take care of the ordinary \$350 corporate deal but, aside from that, I don't think I'm qualified. And this is also true in the converse with those who profess to be criminal lawyers.

I didn't hear one person come before you and say that they had practiced criminal law for 30 years, that they had handled narcotic addicts, that they had handled people that were criminals, that they had talked to them, interviewed them and knew what the score was. I think I am reasonably competent to say that I do.

And we, on the Committee, have spent endless hours, and I am very proud of the work the Committee has done, least of all me, in the report that we made to the Bergen County Bar Association, and our plan was almost unanimously approved. I would say that there were two who voted against it, which, to me, would be an endorsement of our plan for your consideration.

Insofar as Mr. Olson's query is concerned, I told him, when I met him back there and he gave me a copy of his statement, that I would be very happy to sit down with the Board of Freeholders and go over our plan which, incidentally, does not have any concept of asking them for any money, at the moment, anyway. So that should help him with his concern

and I'm sure that this takes in an element of the situations that have been brought to your attention and I wish that the Senator who asked one of the testifiers what he thought an indigent was, I wish he would ask me that question and I welcome any questions from you people because I think they are gravamen to the issue.

The report that was rendered to the Bergen County Bar Association and adopted is as follows:

The purpose or objective of this Committee was to study, assess and evaluate the system presently in use in Bergen County for affording counsel to indigent persons accused of crime. In order to assess or evaluate, the Committee undertook to educate and familiarize itself with the various systems in effect, including the system now in use in Bergen County. Sources from which this information was obtained are innumerable, but the Committee relied heavily on individual reports of Committee members and on the following printed sources: Defense of the Poor in Criminal Cases in American Courts, A Preliminary Summary, American Bar Foundation (1964); Criminal Justice Act Hearing Before Committee on the Judiciary, H.R., Serial No. 3, U. S. Gov't. Printing Office, 1963; Equal Justice for the Accused, Doubleday & Company, Inc., (1959); Public Law 88-455, 88th Congress, S. 1057 (1965).

It is noted at the outset of this report that the underlying philosophy of the Committee was that there should be no change made in the present system of providing counsel for an indigent merely for the sake of change alone.

The survey of the various systems in existence revealed that there are basically four different plans in existence: 1. Assigned-Counsel System, which we are presently operating under; 2. Public Defender System, which has been very much discussed here; 3. Voluntary Defender System, which is somewhat similar to assigned counsel system; and 4. Mixed Private-Public System.

Though the objective of each plan is to provide better than adequate representation for an indigent, the philosophies and means used vary from plan to plan. The following are capsule descriptions of each plan.

The Assigned Counsel System is characterized by an ad hoc or case-by-case approach to its problems. Counsel are assigned to represent defendants who allege that they are without funds - who allege, gentlemen, that they are without funds - to retain counsel. This assignment may occur at the time of arraignment or prior to arraignment when the system is more sophisticated. Usually counsel is uncompensated monetarily for either his labors or his expenditures. Control of assignments normally is within the jurisdiction of a judge sitting for criminal sessions.

The Public Defender System consists of the regular appointment of a lawyer who is compensated from the public treasury on a salary basis. The staff also subsists on public funds and are either appointed or elected. The office of the public defender undertakes to represent all indigent persons charged with crime. This system can be characterized by stating that it is the counterpart of the prosecutor's office.

You Are Viewing an Archived Report from the New Jersey State Library
In other words, the public defender system, as such, is the prosecutor's office in reverse.

The voluntary or private defender system is a private, non-governmental organization - non-governmental organization - which is privately controlled and supported. Financial support is sought either through independent efforts to secure charitable donations or through participation in cooperative charitable organizations such as the Community Chest and other such like organizations. The system is operated by private citizens as opposed to public officials -- the system is operated by private citizens as opposed to public officials.

The mixed Private-Public System is a combination of the public defender and private systems. It is a privately operated organization which receives substantial support from public funds.

In attempting to fairly evaluate the respective systems, the Committee adopted the objective standards used by a committee appointed by the Bar of the City of New York in its study of the same problem, which study was the basis for the aforementioned booklet, Equal Justice for the Accused. These standards were:

1. The system should provide counsel for every indigent person who faces the possibility of the deprivation of his liberty or other serious criminal sanction.

2. The system should afford representation which is experienced, competent and zealous -- The system should afford representation which is experienced, competent and

zealous.

3. The system should provide the investigatory and other facilities necessary for a complete defense.

4. The system should come into operation at a sufficiently early stage of the proceedings so that it can fully advise and protect, and should continue through appeal.

5. The system should assure undivided loyalty by defense counsel to the indigent defendant.

I presume that I can pass that and leave it by inference.

6. The system should enlist community participation and responsibility.

Although meant to be objective in nature, these standards were exposed to subjective interpretations by each member of the committee when they were applied to each individual plan. Therefore, the following conclusions are not necessarily the views of each individual member of the Committee nor are they infallible and beyond the area of honest disagreement. They are merely the opinions of the Committee based upon its study - and, gentlemen, I assure you it was study, told and retold, - of the various plans and the conclusions reached when the foregoing standards were applied to each plan. Furthermore, inasmuch as each plan has numerous features which are of merit, the opinions and conclusions stated hereafter relate only to the negative aspects of each system.

After applying the foregoing standards to the Assigned Counsel Plan, the Committee was of the opinion that the system

did not adequately meet the standards required of same.

It is limited in the scope of representation since it usually does not assign counsel to represent indigents who appear before the Juvenile and Domestic Relations Court or criminal or quasi criminal matters. Neither does it afford counsel to the indigent charged with a misdemeanor when same is within the jurisdiction of a municipal court; nor when the indigent appears for the sole purpose of a preliminary hearing or examination. It also fails to provide for experienced, competent and zealous counsel in many cases. The Committee believes that lawyers who have had little or no experience in the trial of criminal cases are, as a consequence, not qualified to represent persons charged with crime.

The foregoing conclusion is a generality and, as such, is always subject to an exception, but this Committee feels that an excellent defense must be afforded in every case and not just in the exception, whatever percentage that may be. Inherent with every excellent defense is an investigatory system. In this area, the present assigned counsel program totally fails except in capital cases. Without documented facts and proofs, it is nigh to impossible to present an excellent defense for the indigent.

Lastly, the system does not provide counsel early enough in the criminal proceeding. It is true that, when practical, counsel is provided prior to arraignment in Bergen County. However, it does not provide counsel at the preliminary hearing or preliminary examination proceedings when competent counsel may have had the matter disposed of in favor of a

defendant, thus preventing any period of incarceration pending arraignment.

With regard to the Public Defender System, this Committee best sums up its opinion by stating that in no event does it want the State representing both the prosecution and the defense. Although the system in theory favorably meets the aforesaid standards, the Committee believes that in practice it falls short of the required standards.

The Committee further believes that this opinion is supported to some degree by the fact that the Congress of the United States - and I would ask you to specifically note this -- The Committee believes that this opinion is supported to some degree by the fact that the Congress of the United States refused to create a federal public defender system after extensive hearings on the matter.

With regard to the voluntary defender system and the mixed private-public system, the Committee holds the opinion that both plans adequately fulfill the criteria as contained in the six aforementioned standards. It is for this reason that the Committee suggests that Bergen County adopt a plan of this nature. A proposed plan is annexed to this report.

The reasons for each specific recommendation in the proposed plan are obvious, and for that reason they are not elaborated on in detail.

In conclusion, it is noted that the original intention of the Committee was solely to study and report on the problem of representation for the indigent. However, after studying the problem, it decided that a change was imminent. The

Committee strongly recommends that a plan of this nature be adopted so that an indigent person in Bergen County can be afforded the best possible defense available, and, furthermore, so that Bergen County can be recognized as a leader in the protection of its citizens' rights.

The Committee further hopes that this plan can be expanded in the future to include legal aid for indigents in civil matters as well as in criminal matters.

I would also like to call to the Senators' attention that we have formulated in Bergen County, pursuant to the recommendation of the Committee, - and as I think I stated heretofore, it was passed by 99% of the members present, and it was a full meeting, incidentally, - I think there were two who voted "nay" - that we have formulated, and I have here a copy, a certificate of incorporation of the Bergen County Defender Foundation. I will not encumber you with all the details of it but I would like to hit the high spots and I think, at least by inference, I can cover some of the matters that were brought out by some of the other testifiers.

First of all, it would be supported by public funds.

Number two, there is an advisory committee which is comprised of the Assignment Judge, the current President of the Bar Association, the immediate Past President of the Bar Association, the President of the Bergen County Lawyers' Club, and 2 members elected from the Bar to be in an advisory capacity.

These gentlemen, in turn, elect a board of trustees who are entirely laymen. And this is all set forth in here. The theory or thought being, in this situation, that there is a necessity for public participation, therefore inducing public trust and public confidence, and that no one can say the lawyers of Bergen County were doing this their way or be criticized as being half legal, as they have been before in respect to representation of indigents.

We have, I am pleased and proud to say, a representation, which is included right in the incorporation, of a newspaper publisher, labor, women's clubs, - incidentally, we do not have a woman yet but we have 8 of the 9 trustees named and I am sure that forthwith there will be a woman of high calibre and standards appointed.

I am pleased to say that the trustees now serving are very enthusiastic and have given us a great deal of support and a great deal of help, and we look for it in the future, even moreso, and they are: Mr. Donald Borg, Publisher of the Bergen Record and Call; Fairleigh S. Dickinson, Jr., an Industrialist, Philanthropist and Educator, with whom I am sure you are all acquainted; Brice R. Eldridge, Executive Vice President of the Bergen County Chamber of Commerce; Dr. H. W. Clemmons, Medical Representative and Psychiatrist; - and this was done, gentlemen, because I believe it was Judge Francis, - I may be in error - who stated at one time in obiter, if it was not an exact opinion, that the psychiatrists should donate their time to indigents the same as lawyers did, so we thought that was a fair indication of at least what a

high judiciary member desired; Mr. John H. Moles, who is a Labor Representative and head of the Labor Council of Bergen County; Rabbi Judah Washer; Father R. J. Holmes who, incidentally, is also the Chaplain of Bergen County institutions and has worked very diligently with juvenile delinquents, Narcotics Anonymous, etc.; and the Rev. Joseph E. Osborne.

I might state, and I realize that it is almost lunch time, that the important thing - and I wish you would pay particular attention to this, gentlemen - Senators, I beg your pardon (laughter) -- both - that we have set up here a -- we have a \$75,000 a year budget and we have set up a Chief Counsel, 2 Assistant Chief Counsels - who may not practice criminal law if they accept this job - that, I am sure if you are lawyers you know, will eliminate a lot of people, that's number 1.

Number 2, in order to get a degree of competence, the Chief Counsel and either of his assistants must have practiced law 10 to 12 years. A staff, besides investigatory and secretarial, of 10, which could be enlarged or lessened according to the budget, of assistants who may be younger lawyers who can practice law with an eye for the older practitioners teaching them as they go along.

Now, I say this academically and in all due modesty, I think this is inclusive and exclusive of many of the points that have been raised right here. You don't have to worry about money. We don't^{want}/politics in this, we don't want somebody's brother Joe to be appointed to this - I beg your pardon, I am making mistakes, Senator, (laughter).

I'm glad you know me and I know you.

We don't want somebody's brother appointed without any experience, and I'm sure you are all people of practicality. We want the best system that we can have and if you don't do it this way, we respectfully recommend that you are defeating the entire purpose as expressed by the Chief Justice and other men in high judicial places so that the indigent may not, to the slightest degree, say that they are not properly represented.

I also might add in closing that we have waited on the Chief Justice, we have gone over the plan in detail with him, and he has been highly complimentary of the plan and endorsed it.

SENATOR STAMLER: Thank you for your report from the State of Bergen.

Senator Stout, do you have any questions?

SENATOR STOUT: He wants me to ask him one.

SENATOR STAMLER: Well, ask it.

SENATOR STOUT: You asked me to ask the question, what's an indigent.

MR. MYERS: I disagree with what I have heard here that an indigent is not readily defined. I think the accepted or the most accepted definition of the indigent is one who does not have the apparent and present ability to pay. As far as I am concerned, there have been people here with a philosophic attitude who talk about the rich and the poor. There are those who in my opinion, unequivocally, from personal experience as well as study, do not fall within the

category of an indigent. It isn't that they can't pay, it's that they don't want to pay.

Did I answer your question?

SENATOR STAMLER: Senator Kelly? Senator Lynch?

(No questions.)

SENATOR STAMLER: Thank you very much, Mr. Myers.

We are going to have to adjourn for lunch for one hour but if there is anybody in the room who wants to file with the Committee a statement, we will accept it as being testimony, but we will adjourn now until about 10 after 2.

(Adjourned for lunch)

Afternoon Session

SENATOR STAMLER: We will call this public hearing back to order. If there are any statements to be offered rather than have testimony, I would appreciate, if you have extra copies, that you hand them in so that we can give it to the press who apparently wants it and the stenographer who can use it.

Prior to the calling of the next witness, I want to put in the record a resolution of the Hudson County Bar Association, represented by Harold J. Ruvoldt, supporting the position of the necessity for the establishment of a public defender system; and that of Robert Del Tufo, Assistant Prosecutor of Morris County, on behalf of the Morris County Prosecutor's Office, and on behalf of Mr. Mills, Mr. Egan and Mr. Jeffers of the Morris County Bar Association, supporting the system of a public defender plan, no specific plan.

Do you want to call the first witness, Mr. Cohen, so that we can get the show on the road.

MR. COHEN: Mr. George A. Bariscillo, Jr., President of the Monmouth County Bar Association.

G E O R G E A . B A R I S C I L L O , J R . : Mr. Chairman, Senator Lynch, Senator Kelly and counsel to the Committee: My name is George Bariscillo. I am President of the Monmouth Bar Association, representing approximately 400 lawyers practicing in Monmouth County.

I will take just one moment of the Committee's time this afternoon, with your permission, to read into the record the resolution adopted by the trustees of the Monmouth Bar Association

at a duly constituted special meeting of the trustees of the Bar on Tuesday, August 31, 1965. The resolution reads as follows:

"WHEREAS, the Monmouth Bar Association is cognizant of its solemn obligation to act and ever advance toward the goal of 'equal justice for all,' and

"WHEREAS, it is the opinion of the Monmouth Bar Association that the adoption of a defender-type system for New Jersey would provide:

"1. The best method of achieving for indigent defendants the goal of 'equal justice for all,'

"2. The most adequate indigent defense at the lowest cost to the public, and

"3. A system that can most efficiently and effectively service the vastly increased requirements for free criminal legal and related service to guarantee Constitutional Rights to indigent defendants.

"NOW THEREFORE BE IT RESOLVED that the Trustees for the Monmouth Bar Association recommend that a mandatory, adequate, publicly financed defender type system be established in New Jersey."

That is the resolution, gentlemen, and there is no further statement.

SENATOR STAMLER: Thank you. Any questions?

[No response.]

MR. COHEN: Robert J. Novins of the Ocean County Bar.

R O B E R T J. N O V I N S: Mr. Chairman, Senator Lynch and Senator Kelly: The name is Robert J. Novins and I am from

Toms River, representing the Ocean County Bar Association.

We too have passed a resolution favoring the adoption of this defender system, a copy of which will be forwarded to the Committee.

I have listened and I feel that perhaps at the present moment I am an indigent attorney appearing before this group because I have been deprived of most everything that I had thought of saying before I came here. However, there are a few remarks that I would like to make, particularly regarding the scales of justice that we all know about. Scales of justice are always at equipoise and most of the time they are at equipoise in the lawyer's office because they sit on the shelf and nobody does anything with them.

You can very well imagine, for example, if we were to put myself on one side of the scale at 210 and our poet laureate, Cassius Clay, on the other side, it would not be a very fair match.

I bring that to your attention merely for the purpose of showing to you that the scales of justice are not weight; they are quality. They are the type of justice that must be disseminated among all the people regardless of race, color or creed or their ability to pay for the same, because in order to make that scale a level scale, you cannot put the prosecutor on one side and put court-appointed attorneys on the other side. The scale does not balance.

It is very simple, especially in those counties today that have the type of appointment that is called alphabetical roulette, where the names are chosen alphabetically and helter-

skelter, you are assigned to any particular case that may have come up at that particular moment. If your name is next on the list, you are appointed to represent that indigent defendant. It may very well be that you as an attorney have never appeared in a courtroom or that you have had a complete real estate practice and never have tried a criminal case before. And there you are faced with someone who is charged with a very serious crime perhaps and you are to go into this courtroom and give him the type of defense that he warrants as a citizen of these United States and are opposed by a very capable prosecutor, a detective staff, investigators and everything else. The scales certainly wouldn't balance.

It would appear to me that unless we adopt a public defender system and provide adequate, well-trained staff, well-trained lawyers in the trial of criminal cases, a complete secretarial force, separate and apart completely from the prosecutor, but on an equal status with the prosecutor - that until that day is reached, our efforts in behalf of the indigent defendants are just lip service. We must do this in order to provide these people with the type of representation and the quality of representation that they deserve in this country.

It is, therefore, our feeling in Ocean County that this public defender system, whatever method is chosen by the Legislature, one that is uniform throughout the State, one perhaps that is contributed to by both the State and county - until that is adopted, we will not have served our purpose as legal representatives of all the people.

We thank you for the opportunity of having been heard and

we sincerely hope that you will look into this matter and that at a soon date pass a public defender system for all the people of this State.

SENATOR STAMLER: Mr. Novins, we appreciate your not being repetitive. It is important to us.

You have handled a lot of criminal work, haven't you?

MR. NOVINS: Yes, I have appeared on both sides of the fence. I have been a prosecutor and then a defense counsel for criminal cases as well.

SENATOR STAMLER: How often are you assigned in Ocean County?

MR. NOVINS: Right now, of course, with the system of letter roulette, my name beginning with "N", I never get assigned because my nephew is the judge. So I don't get assigned. Once in a while I do on a special occasion.

SENATOR STAMLER: You're lucky.

MR. NOVINS: As a matter of fact, I was assigned recently - and it might very well interest this Board - I was assigned recently to look into a case where the fellow had been incarcerated for a long number of years. He had had an original defender appointed by the court when he was first put in jail. Some years later he was again given a defender counsel who then looked into the matter and he returned to jail. Now when I say a long period of years, I am not meaning five, six or ten years. He was there longer. We looked into it and found that his original incarceration was illegal and as a result thereof on a motion before the court his sentence was revoked and he was allowed to go free after having spent more than ten years in jail.

This, I think, is a perfect example for the need of

people qualified in the field of criminal law. Certainly you can envision a real estate expert - and some of our attorneys are fine real estate experts - going into court and pleading the statute de donis and the rule in Shelley's Case and perhaps the judge, after listening to that, would invoke the rule against perpetuity and give him life and 21 years.

My theory is that we must have competent people on the side of the defense because there have been and are competent people on the side of the prosecution.

SENATOR STAMLER: Competent people and people who are not related to the court.

MR. NOVINS: That's right. That is why I stay away from it.

SENATOR STAMLER: Any questions, Senator Kelly?

SENATOR KELLY: No.

SENATOR STAMLER: Senator Lynch?

SENATOR LYNCH: No.

SENATOR STAMLER: Thank you very much, Mr. Novins.

MR. COHEN: Roger Baron of the Vera Foundation.

R O G E R B A R O N: Senator Stamler and members of the Committee: I am Roger Baron, the Field Coordinator of the Vera Foundation, a nonprofit, charitable institution, whose principal purpose is to further equal protection of the laws for the indigent accused through research into neglected aspects of criminal law and procedure. My office is located at 100 Centre Street, New York City.

The first area to interest the Foundation was that of bail. Every year, many defendants are held in pre-trial detention

for weeks and even months, not because they are guilty or unlikely to appear in court when required, but simply because they cannot afford to post bail. The deprivation of liberty resulting from pre-trial detention is only one of the undesirable consequences of present bail practices. The cost to the public of confining the accused is a substantial consideration. Of much greater significance is its adverse effect on the defense of the accused. Sometimes it is only the accused who can locate and induce reluctant witnesses to come forward. Pre-trial detention often results in the defendant's loss of income, and sometimes of employment, and thus lessens his ability to pay counsel to represent him. Available statistics also indicate a striking correlation between conviction and pre-trial detention.

During a three-year period ending August 31, 1964, the Vera Foundation's Manhattan Bail Project showed that many persons charged with misdemeanors and felonies can be successfully released without bail pending trial if verified information about their roots in the community is presented to the court. 3,508 people were released on their own recognizance and only 58 (or 1.7 percent) wilfully failed to appear in court when required. This compares with a 3 percent forfeiture rate on bail bonds.

In April, 1964, the Vera Foundation, in cooperation with the New York City Police Department, launched its second major experimental project, the Manhattan Summons Project. This project has established that many defendants charged with the less serious crimes, the misdemeanors, can be safely released in the very first instance by converting an arrest into a simple summons to appear. So far, over 530 defendants have been issued

summonses, and only 11, approximately 2 per cent, have failed to appear in court.

As Field Coordinator, it is my responsibility to help other cities throughout the country establish pre-trial release projects. In the course of my work, I have had the opportunity of observing several systems of representation for indigent accused. On the basis of this experience, I strongly recommend some type of well-organized, paid system of providing counsel for indigent accused.

I feel that a system of justice that attempts to meet the needs of the indigent accused through reliance on the uncompensated services of counsel will prove unsuccessful and inadequate. A system which regularly makes such demands of lawyers is unfair to the legal profession and unjust to the indigent defendants. Several recent studies show that defendants with appointed counsel enter guilty pleas much more often than those with their own attorneys. They stand less chance of getting a dismissal or acquittal. If convicted, they have less chance of receiving a suspended sentence.

My experience has also indicated that to insure protection of the defendant's interests, counsel should be appointed at a time not later than his first court appearance.

As Attorney General Sills has indicated, the vast amount of money that can be saved by the establishment of pre-trial release projects in New Jersey, could be used to fund a defender system. Thank you.

SENATOR STAMLER: Mr. Baron, you say at his first court appearance?

MR. BARON: Right.

SENATOR STAMLER: You have heard other testimony to the effect that there should be some counsel prior to a court appearance.

MR. BARON: I said no later than his first court appearance.

SENATOR STAMLER: Can you tell the Committee who supports the Vera Foundation, not specifically, but where the funds come from? Are they by solicitation?

MR. BARON: Well, the funds originally came from a Mr. Louis Schweitzer who started the Foundation and subsequently our funds come from the Ford Foundation and from the Federal Government.

SENATOR STAMLER: But you don't solicit funds from the public generally?

MR. BARON: No.

SENATOR STAMLER: Any questions? [No questions.]

Thank you very much.

MR. COHEN: Our next speaker will be C. Willard Heckel, Dean of the Rutgers Law School.

C. W I L L A R D H E C K E L: Mr. Chairman and fellow Senators: I am Willard Heckel, Dean of Rutgers University Law School, the State University of New Jersey. But I think I really speak to you gentlemen this afternoon not so much in my role as Dean of the State University Law School, but as a citizen of the largest and most complicated city in our State, the City of Newark, and I speak to you from the experiences and insights that I have obtained as being president of the Community Action Corporation in Newark, the United Community Corporation,

which has brought me in very direct contact with many facets of the community. I would say that certainly we are struggling in Newark to preserve that city from facing a crisis such as faced the City of Los Angeles not so many weeks ago and many of us are spending many hours in seeking solution to peace in that community.

As a lawyer and as a concerned citizen, I am convinced that much depends upon our ability to convince the minority groups of the city that the law and legal processes will guarantee justice to them because if we are to avoid civil disobedience and a breakdown of law enforcement, which is occurring so frequently, in my opinion it can only be accomplished if we are able to make sure that the processes of law and order can bring to everyone throughout our State and certainly particularly in our big cities an element of justice. I think we as lawyers believe that is the function of law, to bring about justice, and we are dedicated to that.

Now today we are talking exclusively about the criminal side of justice, although there is an important civil side and we now have in Washington a proposal from the City of Newark to set up neighborhood legal clinics because we are convinced that this is an important way of restoring confidence in law and the legal processes on the part of the people of the poor sections of our city.

But speaking directly to the question before us, the criminal justice side, certainly the aftermath of the Gideon Case - and I don't have to belabor that - I am sure this morning you heard it mentioned many times and you, yourselves, as lawyers

know of it - the thrust of the Gideon Case has put upon the State of New Jersey and other states the tremendous responsibility of not only insuring that the laws are enforced, but also that defendants have equal justice in our courts. Now it seems to me in the first place, Senators, that this ought not to be a matter of discretion on a county by county basis. There are some aspects of this problem that I see pretty clearly; others I do not see clearly at the moment and I am trying to seek clarity. But I am clear in my own mind that this is now an absolute social obligation of every sovereign state to insure adequate legal representation in criminal cases.

I think, therefore, the State of New Jersey should assume this responsibility, not make it a matter of local option on the county level. I think that means that the State of New Jersey ought to assume the financial responsibility, and it is a fairly staggering one - I don't know anyone - I certainly haven't totalled up the bill, what it would be. But it would be a large one because, I think, Mr. Novins said a moment ago or some one of the speakers that it is not just really a matter of legal services, it is a matter of investigatory services, in some cases a matter of retaining competent medical advice and getting professional insights in many areas and this can all add up to an impressive sum of money. But since this is now a U.S. constitutionally-guaranteed right, I think the full burden, whatever that may be financially, should be borne by the State. Now I think this because I think it is a State responsibility and the second level, I do not think our present public finance system by which the county as I understand it must rely heavily upon the

real property tax as a method of raising money - I think that it would be unfair and perhaps would cause many counties to hesitate to take on a very serious financial burden when that burden would fall under our present tax structure primarily upon real estate as the source of county funds.

We also have the problem, if you make it discretionary, that there is wide-scale public concern, and we must face up to this, with regard to many of the judicial decisions, particularly the United States Supreme Court, dealing with the rights of persons charged with criminal offenses. Now I happen to be one hundred per cent in favor of the United States Supreme Court decisions. I have waited as a constitutional lawyer for some time to get some of these results and I personally hail them. But I also would be indeed blind if I was not aware of the fact that there is grave concern that the alleged criminal has advantages under these decisions. Therefore, I am worried that if we leave this on a discretionary basis, it will be very difficult to have our counties face up to the problem of increasing the tax burden by incurring these expenses when from the public's point of view that increase is to defend persons charged with crime. Because to non-lawyers very frequently, there is little difference between charging a man with a crime and calling him a criminal. We, as lawyers, certainly understand the great difference. But this is not something that laymen generally seem to be able to comprehend. These are the reasons why I feel this ought to be a non-discretionary matter and ought to be handled on the State level.

Now, Senators, when it comes to the particular kind of

program, here is where I do not see as clearly. I have the privilege of being a member of the Governor's Committee on Law and Poverty, of which our Attorney General is Chairman, and we are considering among other matters what is the best method of handling this difficult problem of defending indigent persons charged with crime. I hope to learn a good deal as a member of that Committee and perhaps contribute a little bit towards reaching some conclusion, which I hope will be done with reasonable speed so that this recommendation could be available to the Legislature of our State as well as to the Governor of our State. My own inclination at the moment is to be in favor of the public defender system as contrasted with another system which, I believe, is the subject matter of some of the bills before the Legislature, namely, the State contracting with a private entity, whether that be a Bar Association or whether it be a Legal Aid Society, and handling it in that fashion. My own inclination at the moment is to favor a public defender system with full-time, public people on the public payroll handling these important matters. But I would leave that open in my own mind before I reach a final conclusion.

I am very sure, Senators, that the present system must stop, must end. In the first place, it presents an insufferable burden upon the legal profession. If the Gideon Case is to be really implemented, I think it has to be implemented in the municipal courts as well as in the State courts and I think it has to be implemented from the moment of the man's arrest all the way through the end of his trial. I think he must have

legal assistance all along the whole process. This is a staggering thing to put upon the private lawyers practicing law. This is a social responsibility and not just a professional responsibility. Therefore, I think the present system which relies upon that and places this heavy burden on the legal profession must end and also, as has been pointed out by other speakers, it means that the defendant does not get the best possible lawyer because let's face it, gentlemen, we are in the age of specialization in law and general practitioners are disappearing gradually and almost every lawyer has a certain area of expertise. Certainly a man who spent all his time in real estate matters or trust matters, to expect him to go in and serve well a man who is an indigent in one of our criminal courts is to not look at the situation as realistically as I think we should.

Thank you very much for this opportunity to speak to you and I would like to be followed, if possible, by my colleague Professor Knowlton from the faculty of our Law School, who is an authority in the field of criminal law and criminal procedure.

SENATOR STAMLER: We can't quite follow up that way, Dean, but we will try as soon thereafter as we can to call him.

There are a couple of questions I wanted to ask you, Dean. You keep talking about a social obligation. Isn't this now a legal obligation since it is a decision of the court?

DEAN HECKEL: It is a legal obligation, but, you see, I think Senator, our obligations are even more important if they are social because they are the obligations that one human owes to another. I think now the Gideon Case makes it a legal obligation, but I

think it pre-existed that as a social obligation.

SENATOR STAMLER: On these neighborhood, legal clinics, they won't solicit litigation, will they?

DEAN HECKEL: Now the answer to that, Senator, is - to a certain extent they will. This matter has been discussed with the Supreme Court of this State by the Essex County Bar Association's Committee on Civil Rights. That committee has been working closely with those of us in the Law School. It has been discussed in conference with the members of the Supreme Court and they realize as decisions of the United States Supreme Court recently have realized that this is a different world in which we are living and that a man who goes about informing poor people that they have legal rights and if they go to 242 X Street, there's a neighborhood legal clinic that can help them is not ambulance chasing in the historic sense of the term.

SENATOR STAMLER: But it will require a change in the Supreme Court's code of ethics.

DEAN HECKEL: It will require a reinterpretation.

SENATOR STAMLER: You are a member of our Bar.

DEAN HECKEL: Yes, sir.

SENATOR STAMLER: When were you last assigned a criminal case?

DEAN HECKEL: I have never been. I doubt if the indigent would have a good lawyer.

SENATOR STAMLER: Well, let's say they would have a good constitutional lawyer.

Are the instructors or the professors at the Law School barred in some way from receiving assignments?

DEAN HECKEL: No. Well, we have now a rule of the Supreme Court, Senators, that permits a member - I can't quote it exactly - my recollection is that a member of a law school faculty in this State who has been five years a member of the faculty and is a member of the Bar of another jurisdiction is admitted on motion. Now I think that is more or less correct. Those lawyers, therefore, who are admitted on motion - and I believe that there are about six to seven members of our faculty in Newark who have been admitted in this fashion - they presumably, as I presumably as far as I know - we were on the rotation system. Now, of course, in Essex County we have a different method of handling this than the rotation system. But I have never been assigned a case. Professor Knowlton who will follow me sooner or later handled one of the most important criminal law cases in New Jersey, State against Hoag, in which he handled it on the appellate level and before the United States Supreme Court. He should have won, but he didn't.

SENATOR STAMLER: By assignment?

DEAN HECKEL: By assignment.

SENATOR STAMLER: Well, that defendant had pretty good counsel.

DEAN HECKEL: He had excellent counsel.

SENATOR STAMLER: How did he do?

DEAN HECKEL: I said the case was not won by Hoag, but it should have been. I think today the Supreme Court of the United States, at least, might decide a bit differently.

SENATOR STAMLER: Senator Kelly?

SENATOR KELLY: No questions.

SENATOR STAMLER: Senator Lynch?

SENATOR LYNCH: One question - Dean, under our present United States Supreme Court opinions, is it not a fact that once a suspect is arrested he is entitled to a lawyer whether he is rich or poor?

DEAN HECKEL: I believe, Senator Lynch, that is so, although I am not aware that that has been specifically so held at the point of arrest. In other words, it is a question of taking the Gideon Case and putting it alongside of the Escobedo Case to determine at what point the constitutional right to a lawyer begins. Now certainly it is clear that if the prosecution wants to get a successful conviction and if they want to use a confession or something else that is to be obtained in that early period, they had better make sure that a lawyer has been assigned the defendant because there is a grave question whether any confession obtained during that period where the defendant is unrepresented could stand up.

SENATOR LYNCH: What do you think of the Russo Case that came out of the Third Circuit Court of Appeals last spring?

DEAN HECKEL: Well, I personally happen to be in favor of the Court of Appeals' disposition of the matter rather than the Supreme Court of New Jersey's disposition, but I don't want to get caught in that cross fire.

SENATOR LYNCH: Thank you.

SENATOR STAMLER: Any other questions?

Thank you very much, Dean.

MR. COHEN: George Hetfield, President of the Union

County Bar.

G E O R G E H E T F I E L D: Mr. Chairman, my name is George Hetfield, President of the Union County Bar Association. Senators Lynch, Stout and Kelly and Mr. Cohen: I am here today to inform this Committee that the Union County Bar Association has gone on record again I think for the third successive year, urging that this Committee bring about the necessary legislation which will permit counties to set up a public defender system supported by public funds.

It would serve no purpose to be repetitive and recite all the advantages of a public defender system. I would like to refer you to the 1964 prize essay on the public defender system that was published in the Fall, 1964, issue of the New Jersey Bar Journal, an article by Stephen Lee Skillman who has done an excellent job in analyzing the public defender system as it would apply and the need of it in the State.

I would like to call to your attention a few statistics that were made in our county which bears upon our problem. In 1964, the total number of indictments handled was 457 and the total assignments, 364, of which 23 were in the Matrimonial Division and 341 in the Criminal Division. Of those in the Criminal Division, 17 were on post-conviction relief applications. It must be borne in mind that in some cases the matters were dismissed by the Grand Jury and in some other cases appearances were only for the purpose of sentencing. Assignments percentagewise amounted to 74.6 per cent. Up to June 1, 1965, we had total assignments numbering 175, of which

18 were post-conviction applications and 10 in the Matrimonial Division.

Now referring to the eligibility status of the members of the Bar of Union County for assignments to indigents, we canvassed the members of the Bar of our county concerning their personal status to determine eligibility. This canvass indicated that there were 652 members of the Bar of Union County. Of this number, 406 were found to be eligible; 229, ineligible; and the status of 17 is yet to be determined because of the difficulty of location in securing the desired information.

Now those ineligible were broken down in the following categories: 86 were found not to be actively engaged in the practice of law and having full-time employment in other fields. 28 are practicing in other counties of the State, eligible for assignment in those counties. 14 were employed by the Attorney General's Department, Prosecutor's Office and County Attorney's Office of Union County. 16 are magistrates in the various municipal courts of Union County. 11 are on the Ethics Committee or Committee of Character and Fitness. 37 have a physical disability or are over-age or retired. It would be interesting to know what percentage of the 406 who are deemed eligible consider themselves competent criminal practitioners.

In conclusion, it is the feeling of the Union County Bar that the counties should have a choice in the plan that is ultimately set up. You probably would have to have mandatory basic requisites for the public defender system. But as to the particular plan, you could have several plans which they could choose from or any combination of plans. But they should be able

to choose a plan which is set forth in the statute which would best fill the needs of that particular county. Of course, you have rural counties and very heavily populated counties and I think this should be kept in mind. The statute that was recently passed in New York State does this particular thing and I think it has much to be commended.

SENATOR STAMLER: Mr. Hetfield, you said that members of the Character and Fitness Committee were not assignable?

MR. HETFIELD: I am reading a report, Senator, that I have no legal basis why they should be excused. But apparently they are excused by someone.

SENATOR STAMLER: I thought maybe their competency was in question.

MR. HETFIELD: I note on this survey - I imagine maybe the judges do excuse them. For what reason, I can't justify.

SENATOR STAMLER: Senator Kelly?

SENATOR KELLY: No questions.

SENATOR STAMLER: Senator Lynch?

SENATOR LYNCH: Don't you think a State Senator should be excused from assignments?

MR. HETFIELD: Absolutely, Senator.

SENATOR STAMLER: Thank you very much.

MR. COHEN: Professor Robert Knowlton.

R O B E R T K N O W L T O N: Mr. Chairman, Senator Kelly and Senator Lynch: Most of the things that I wanted to say have been said a number of times. But I did want to say that in my opinion the defense of an indigent criminal has to be institutionalized for at least four different reasons:

In the first place, I think that only when you have an institution operating will you be able to give the counsel to the man at the earliest possible stage of the proceedings. In my opinion, incidentally, since the question was raised when Dean Heckel was here, it is perfectly clear that as soon as the inquiry ceases to be a general inquiry and focuses upon the individual, to use Justice Goldberg's phrase, he has a constitutional right to a lawyer. As a matter of fact, Justice Goldberg said in Escobedo against Illinois that the Constitution had struck the balance in favor of a man accused of a crime being informed of his right against self-incrimination by his lawyer. I think the question then becomes one of really what sanctions do you employ in the normal case when that right has been violated. Unless there is a confession or something, it will not be grounds for a reversal. But to go to the point of one of the questions that you asked on the bail system, it seems to me that getting the lawyer into the proceedings in time so that he can be present at the bail hearing would be a step in the right direction in terms of greater release upon personal recognizance. The question of what the bail should be is principally or primarily a factual question and what has happened in my opinion has been that the person is informed of what the factual issues are and his right to bail and he doesn't present any facts upon which a magistrate or others could feel that personal recognizance would be desirable. I think that is demonstrated by the Vera Foundation experience where when the facts were brought forward and recommendations were made, then greater bail

was granted. Then a lawyer, of course, would be in a position to ascertain these facts and to present them to the magistrate or the trial judge, whomever was setting the bail, and to point out to them the significance of the facts in the light of the criteria.

Secondly, I think that only through an institution can you provide adequate means of investigation. We all know, as a matter of fact, that 95 per cent of the criminal cases are factual in nature. But if you have appointed counsel, you cannot give them a blank check on the treasury, so they have to get prior approval and it is my understanding in New Jersey today that in things other than, for instance, psychiatric testimony in a murder case where he is claiming a defense of insanity, the possibilities of getting investigation just to find out what the facts are, are extremely limited.

Thirdly, I think for the same reason a number of other people have said that only when you have an experienced trial lawyer, a man who is both experienced in trial work and experienced in the criminal law area, will you be able to have an adversary system that operates efficiently and effectively and truly. This, of course, is the basis of many of the Supreme Court decisions in this area - a great reliance upon the adversary system as a method of proceeding.

Finally, to go to your question, I think that it is both a social and a legal obligation. The reason that I think that it is a social obligation is that the system of criminal justice that we have today is established to protect each and every one of us as individuals within the society from an

arbitrary arrest, an arbitrary prosecution and an arbitrary conviction. As members of society, we benefit in terms of greater individual security, at least from arbitrary governmental action. Since we benefit, it seems grossly unfair to me to place the primary obligation for financing such a system, whether it is in terms of time spent or in terms of money donated, upon the legal profession. The system wasn't devised for the benefit of the legal profession. It was devised for the benefit of each of us as members of a society. So I think that the Escobedo against Illinois, Gideon against Wainwright, Douglas against California line of cases have merely established as a legal right what has been a social obligation. Therefore, it seems to me that the cost for this system should be allocated on a wider basis.

Now one other point that I wanted to make is that I agree with the Dean, which as you all know in academic life is a good, safe procedure to take - I agree with the Dean that I think that it requires a statewide, uniform system. Each and every one of the reasons that I have stated - the four reasons why I think that an institutionalized program is essential - apply with a greater or lesser extent to each one of the counties. Even in the more rural counties in New Jersey, I am sure that these reasons still continue to apply. Certainly the investigative reason is relevant to all counties. For that reason I would think that we would prefer not - I would prefer not to have a system where a county could continue with an assignment system, a system which I happen to think is fatally deficient in the area.

SENATOR STAMLER: In other words, you are saying this should be a State system and not on a county basis?

PROF. KNOWLTON: That is correct.

SENATOR STAMLER: Well, why would a county system be inoperative if the prosecutor system is operative?

PROF. KNOWLTON: Well, what I was thinking about primarily was to the extent that you allow the county to continue on an assignment basis, which is what I gather one of their options is - to that extent, I think that they will providing inadequate representation for the defendants. In each county they do have a man with this responsibility in the prosecutor's system. It is true that the county prosecutor has a great deal of autonomy. But nonetheless, they have a man who is primarily responsible for this. He does have an investigative staff that he can utilize, which would not be true if the assignment system were continued on the county level in any one of the counties. That is the point that I was hoping to make.

SENATOR STAMLER: On the social point - were you here this morning?

PROF. KNOWLTON: No, sir, I was not.

SENATOR STAMLER: The Director of the Bergen County Board of Freeholders testified rather icily about the cost of court-appointed attorneys and investigators in Bergen County, which is a county of some 800,000 people, and said that the cost was about \$35,000 in 1964 and up to this date it has been \$10,000. Immediately prior to his testimony, I believe Mr. Fernicola who is corporation counsel or county counsel

testified that in Essex County which has about one million people more or less, 100,000 more - 150,000 more - that the cost was four or five times that amount. How can you account for that with the difference in the people?

PROF. KNOWLTON: Well, this is a question of first impression. I think that in the first place you mentioned before the meeting there is a difference in terms of the constituency of the county. There is Newark in Essex County and Newark has a rather severe crime problem. Secondly, is that I would suppose that the compensation paid - I'm not sure - but my present understanding is that in Essex County there are payments made to lawyers in every case when they are assigned off the list and I don't know but what Bergen County is operating under the system where only assigned counsel to murder cases are paid, which is the general rule in the State of New Jersey. Therefore, there would be a great number of cases where there would be no compensation for the lawyer in Bergen County where a similar case would have at least a \$50 reimbursement for the lawyer in Essex under their plan. That might account for some of the difference too.

SENATOR STAMLER: Any questions? [No questions.]

Thanks very much, Professor,

MR. COHEN: The next speaker is M. Gene Haeberle of the Camden County Bar.

M. G E N E H A E B E R L E: I am Gene Haeberle of the Camden County Bar Association. I am here on behalf of

the Camden County Bar Association as chairman of our Committee on the Defense of the Indigent. Our report and resolution of the Camden County Bar was adopted May 24th and was published in the Law Journal of June 3rd. Therefore, I won't go through the whole report. It is 88 N.J.L.J. Index Page 364 and I will give it to the secretary.

There was a point in our report which I think might be helpful to highlight, that Los Angeles County has had a defender system since 1912. In the fiscal year of 1963 to 1964, the defender system handled 30,526 cases. This figure represents 60 per cent of all defendants tried in Los Angeles County and was at a cost of \$1,020,160 or about \$35.00 per case. There are other citations in the Committee report.

The resolution of the Camden County Bar Association adopted May 24th was:

"WHEREAS, the Camden County Bar Association is cognizant of its solemn obligation to act and ever advance towards the goal of 'equal justice for all' and,

"WHEREAS, it is the opinion of the Camden County Bar Association that the adoption of a defender type system for New Jersey would provide:

"1. The best method of achieving for indigent defendants the goal of 'equal justice for all,'

"2. The most adequate indigent defense at the lowest cost to the public, and

"3. A system that can most efficiently and effectively service the vastly increased requirements for free legal and related service resulting from the decisions of the United States

Supreme Court.

"THEREFORE, BE IT RESOLVED, that the Camden County Bar Association recommends that an adequately financed and staffed defender type system be established in New Jersey."

In that regard, the Assignment Judge of Camden County, Hon. Orvyl Schalick, yesterday gave me some statistics for June '64 to June '65, relating to assignments in his vicinage of Camden, Burlington and Gloucester Counties. I want to point out this is only a partial listing because it does not include juvenile and domestic relations. It does not include municipal court practice, which generally speaking in those three counties is done on a more or less ad hoc basis, as the magistrate may feel, for instance, in a drunken driving or death by auto - individual magistrates might appoint assigned counsel. In Camden County for the fiscal period, June '64 to June '65, there were 159 assignments. There was paid out \$5800 of counsel fees. I talked to Norman Heine on that and I think in all fairness you ought perhaps require statistics for a three or four-year period because the year before there was a great deal more - I think it was more like \$20,000 with the Ordog and Rush murder cases which went up and down a couple of times. In Gloucester County there were 57 assigned counsel; Burlington County, 66; and the total payment in Burlington County was \$9,000 for only, of course, capital cases. Camden County is the same way - only capital cases - \$5800.

If I may, I would like to make some observations on saving money in which the Committee may be interested.

SENATOR STAMLER: That will be a switch.

MR. HAEBERLE: My credentials, such as they are, are this: Since 1957 I have been Chairman of the Camden County Indigent Defense Committee. In 1963 I was appointed by the Supreme Court under its committee. I have joined with Steve Maskaleris and some other members of the junior section of the young attorneys and we got the State Bar to finally take some action on a defender type program. I think that it might be well to look first at your bill, Senator Stamler, 68, the precursor of which, I think, was the late Senator Crane's bill. In that regard, when that bill was prepared in connection with the junior section of the criminal law section, it was, of course, prior to Gideon versus Wainwright. So at that time the bill - it really was a compromise, I think, in the approach of the junior section. But, at least, we wanted to get something before the Legislature. We offered it as an alternative on a trial basis because at that particular time it was not mandatory to provide counsel. Gideon versus Wainwright hadn't been decided. I think now you have to relook at it.

There are now bills presently pending which do not make some systems mandatory. I think the answer to that is quite simple. I think that if such a system were set up by New Jersey, one county may not have it. If one county didn't have it and someone was convicted in that county, he could appeal on the basis of invidious constitutional discrimination in that the State did not provide equal justice for all and thus strike down the convictions in the counties that didn't provide it. Or, on the other hand, somebody might try the

reverse. If there is not an equal system of handling this representation throughout the State, I think there would be a good legal basis for a person in a non-represented county to claim that it was constitutionally unfair.

You have also asked, Senator, about the public defender in California. I have some material here which I will turn over to you and your Committee and you can get additional copies from the American Bar Association. But you asked about civil service. In the brochure prepared by Edward T. Mancuso, who is the present public defender in Los Angeles County - it is called "The Public Defender System in the State of California" - it states: "The public defender is appointed by the board of supervisors on the basis of competitive examinations. Deputy public defenders and all other personnel are appointed by the public defender and all are covered by civil service provisions."

This goes into a county and municipality step-by-step breakdown with population, investigators, salary ranges and everything else. I think it might be helpful.

I think too in looking at these statistics, the salary schedules for 1961-62 - from all that has been said today, and Senator Lynch brought up the case which hasn't been mentioned so far today, the Russo Case, it would seem quite clear that the question is not whether counsel has got to be provided when the phase of questioning goes from investigatory to accusatory. I would think the Russo Case makes that absolutely clear as I think Escobedo did itself. The question of the Russo Case is whether it is going to be applied retroactively.

We are going to have to start applying Escobedo here and now or there is going to be another massive wave of reversals.

That is another point in saving money. I think the State of New Jersey is going to save a lot of money if it starts doing something now with an adequate system. You are going to be retrying these defendants and it won't be State v Johnson; it will be "Here comes Joe again," and "Here's Harry," and you are going to need a monorail system to get these defendants back and forth to courtrooms and appellate procedures.

There was discussion of the New York statute which was passed, which has a modified system. Actually it is somewhat similar to what the Federal government, the Congress and the Senate, finally enacted. It is sort of a three-part bill and it provides a minimum compensation of \$10 an hour for out-of-court time; \$15, for in-court time. The New York bill is a mandatory bill. The counties have to provide one of these three system. But I would like to point out that Governor Rockefeller in his memorandum filed with the bill in his approval specifically points out that the New York State Legislature has already adequately increased the amount of money provided to the counties so that they would not be asked out of county taxes to pay the additional services of one of these different types of bills.

I think, as a number of other people have pointed out, the way of handling this problem now would be better facilitated by a defender type system. Camden County, of course, made it clear - it's a defender type system. We didn't say public or

private. We left that up to the political entities to make that decision. I think Union County adopted the same resolution. What I read to you was adopted by Union County.

I think too that it might be well to recall some of the words of Judge Madden, the chief judge of New Jersey. In discussing this, he expressed to me his own opinion and that of other judges and other members of the U.S. Attorneys Office, that the present system that is now in operation in the federal courts in New Jersey and throughout the federal system is one of assigned counsel with payment of fees. It is their feeling that this is not going to stay that way. It is going to develop into a defender system if for no other reason than the reason of cost. The type of investigation - it has been pointed out that you need trained investigators. How do you hire them? When you hire them on an individual basis more time is spent on preparing these cases. Whereas, if it would be done like Los Angeles where they can handle it at \$35 a case - you couldn't beat a price like that, but they can only do it because they are set up on a large-scale basis.

I had one other comment, which I thought had been covered, in California - but it is important that when you set up this system that it be not something held together by blue and mirrors. You have to provide adequate salaries and adequate facilities. To provide less, I think, is going to end up costing the State of New Jersey more money and the taxpayers more money.

I think it is a good idea too to try to keep it open-ended so that if the federal system, when it does develop to

allow provisions for a defender type program, the State can go into it and help defray part of its cost. In that regard, I think too when we are talking about a county-wide system - I wonder whether this isn't the type of area you can approach in a novel way and not require each county to do it. Isn't it sensible for perhaps Cape May or Atlantic County or possibly even adjoining Salem County to have one set of public defenders and perhaps have six or nine or ten offices throughout the State, the heavy areas, where you could have one office complete in itself? Do we really need to have 21 different county setups with all the money that is involved and the repetitious overhead and secretaries and everything else? Isn't it much more sensible to build up a skilled, competent group under public service who could handle it at a limited number of locations rather than do it on a county-wide basis?

I think too that as part of your tremendous deliberations and work that you have - I think it would be well to bear in mind that these cases so far have come down at criminal level from the Supreme Court on the Sixth Amendment - everyone to have the assistance of counsel. But the Federal Government has gone off on another area on this in the Office of Economic Opportunity. There are going to be legal services on the civil side of a large nature. They are going to start these programs now under a 90-10 and maybe 50-50. Maybe the pressure will be on Congress to keep up the appropriations. Maybe it will run out in two years. But in any event, it would seem to me that if we had a criminal setup that was up-ended enough so it could take advantage of this federal money and

the civil side, it would make a more logical way of handling the entire problem.

I will be glad to turn over to the Committee the copies of these various things and, if you wish to have more of them, you may.

SENATOR STAMLER: We would appreciate it. While we are at it, Mr. Haeberle, you said in Los Angeles - Is that Los Angeles County or Los Angeles City?

MR. HAEBERLE: County. The county and the city are contiguous, I believe.

SENATOR STAMLER: They are contiguous. I didn't know that.

MR. HAEBERLE: They keep expanding the county.

SENATOR STAMLER: I assume the board of supervisors there is the equivalent of our board of freeholders.

MR. HAEBERLE: Yes.

SENATOR STAMLER: Therefore, the appointment is made by way of an exam, as you put it, of the public defender.

MR. HAEBERLE: Yes.

SENATOR STAMLER: He then picks his staff.

MR. HAEBERLE: Yes. In other words, an exam is given to those eligible for top appointment of public defender, based on these competitive scores. Then the board of supervisors makes a selection.

SENATOR STAMLER: Do you recommend this system?

MR. HAEBERLE: My personal feeling is - I would rather see more of a system developed along private appointing lines, whether it be like, say, make it automatically the assignment

judge, the president of the Bar Association involved, some other individuals of that stature, rather than make it a political connotation. I think that either system certainly is one million per cent better than the no system we have today.

SENATOR STAMLER: Well, you think, therefore, that if the public defender system is put under, as you put it, civil service, the prosecutors' offices around the State can operate without civil service?

MR. HAEBERLE: Yes. I wouldn't see any requirement to reconstitute the prosecutor's office. It has been a system, as the gentleman said about Trenton being a million light years away in taxes, I think he feels that they are either stuck with it or they have it and they like it and it has been there so long they wouldn't want to change it.

SENATOR STAMLER: You wouldn't want to change that?

MR. HAEBERLE: No. I am happy not to have to advise or recommend anything to do with prosecution.

SENATOR STAMLER: Any questions? [No questions.]

Thank you very much, Mr. Haeberle, and thanks for waiting so long.

MR. HAEBERLE: There is one other thing, I will give you a copy of the second tentative draft of the Uniform Law Commissioners, which was mentioned, which covers a model Defense of Needy Persons Act and also goes into some of those questions about "What is a needy person?" and also covers possible recruitment.

SENATOR STAMLER: Thank you very much.

MR. HAEBERLE: You're welcome.

MR. COHEN: Frank Bright of Sussex County.

F R A N K B R I G H T: I am the president of the Sussex County Bar Association. I don't want to take your time, Senators, with reiterating what a number of other people have said here today. However, I would like to point out that in a rural county, the assigned counsel system just does not work.

We have approximately 43 lawyers in the county. Of those, 22 are ineligible at the present time for assignment by reason of the fact that they are associated with magistrates. They are a prosecutor and an assistant prosecutor. There are people who are too old to try cases who wouldn't accept a trial under any circumstances because of physical conditions and as a result, the rotation of assignments becomes a matter that is impossible to handle on any logical basis. To illustrate that, I would point out that there are eight lawyers in my office. Last year a man in my office was assigned to represent a defendant. No one else in our office could represent the co-defendant who was charged because he and the co-defendant were taking a different position so far as what happened at the time. This immediately eliminates eight more people who are eligible normally for assignment.

Under those circumstances, you can see that it is impossible to administer an assigned counsel system. For that reason, our Bar Association feels that a public defender should be appointed by whatever agency you gentlemen decide.

I would like to second Mr. Haeberle's suggestion that

it might be wise to consider some regional setup in some rural areas because it would not be necessary to have a full-time defender in Sussex County. However, there were 67 assignments last year in Sussex County, of which I received 4. When you take into consideration the small number of lawyers who are available to handle these assignments, it is apparent that some of us are going to get quite a few of them.

To cite a horrible example of having an attorney appointed who was not capable of representing a criminal defendant, I would like to call one case to your attention in which a man I know who happens to live in a rural county, not in Sussex, was on the Bar Association list. He's a member of the Bar Association. He's a member of the Bar of the State of New Jersey. He is a man about 55 years old. He is a very capable lawyer, but he has always practiced before the Interstate Commerce Commission. Now he was assigned to represent a defendant in Morris County and it was the first day he had been in a courtroom in 22 years, the day he went in to represent this defendant. Now it is obvious when you get into these rural areas, if you are going to use a rotation system, that people are going to be appointed who are not capable. There are not so many trial lawyers in those counties. There are many more lawyers doing entirely real estate, that type of thing, so that they don't have occasion to come into court. An assigned counsel system just will not work in a county like Sussex County.

SENATOR STAMLER: In other words, Mr. Bright, you

get appointed about four times a year?

MR. BRIGHT: Yes.

SENATOR STAMLER: Is that the average for lawyers in your county?

MR. BRIGHT: I don't think they all average that many. I think the judge tends to appoint people whom he feels have had trial experience more often than he does the others.

SENATOR STAMLER: Do you exclude the Character and Fitness Committee too?

MR. BRIGHT: No, we don't, Senator. I am a member of the Character and Fitness Committee and I haven't been excluded and I was on the Ethics Committee and I wasn't excluded.

SENATOR STAMLER: Thank you very much and thanks for being so patient.

MR. COHEN: Miss Barbara Morris, an Assistant Attorney of the U.S. Attorney's Office and a member of the New Jersey Bar.

B A R B A R A M O R R I S: Mr. Chairman and Senators, the difficulty with speaking this late in the afternoon is I am sure that everything that one could think of has been said.

I am now associate counsel with the NAACP. We have received some pointed requests for information with regard to the system presently available in New Jersey and some criticism of it.

I belong to the Essex County Bar Association and I have

to admit ahead of time that I am not participating in the indigent cases now because a great number of my clients right now are already indigent and on that basis they have excused me. But I have participated in the program as a student and then subsequently, after I was admitted to the Bar, and I want to speak in favor of a State centralized defender system. I don't think that we need argue whether or not it is necessary at this point. In the light of the law, it is no longer a social problem - it is necessary for the State to provide it. And I think in the long run one of the best points that I have heard made this afternoon, and it was on my own mind, is that it will save the State of New Jersey a lot of money in the long run rather than to have a lot of convictions upset over a number of technical, but constitutional matters.

I want to direct your attention particularly to outlining some sort of a policy or delineation of indigency. We have had a great deal of inquiries and a great deal of trouble from persons who although indigent, upon being able to produce, raise, borrow, steal, etc. bail, were therefore no longer indigent so that the choice they had was one of remaining in jail and having assigned counsel available or getting out of jail and then leaving the definition of an indigent and having to raise money for a lawyer.

I think that the assigned counsel system has very often been unfair both to the accused persons and to the lawyers. I know it from both ends. When you get a rotating system whereby names are just chosen as they come up alphabetically or however it may be, you have to deal with the very real

question of which attorneys have been practicing criminal law for whatever length of time and often this has not been fair to the Bar. Some members of the Bar who have been giving their good time have had to give up other matters to go attend to them and on the same basis accused persons have I know of my own knowledge received somewhat short shrift as far as their rights are concerned.

I don't think that any permissive program at this point can be countenanced in the light of the law and I think it is time the State of New Jersey get a centralized system. I have no feeling as to whether it will be regional or county as long as it is a mandatory system whereby counsel will be assigned to indigents.

SENATOR STAMLER: Finished?

MISS MORRIS: Finished.

SENATOR STAMLER: Are you now associated with the NAACP as counsel.

MISS MORRIS: I am.

SENATOR STAMLER: Do you supply legal services to indigent defendants now?

MISS MORRIS: Yes. By charter, we are supposed to be interested in those cases wherein there is an aspect of racial discrimination, which, of course, is a pretty broad basis. It can deal with jury discrimination or a hostile area in which an accused is indicted, etc.

SENATOR STAMLER: Well, if I were a member of the NAACP and were not involved in a hostile area or in a question of discrimination, but were an indigent defendant, could I come

to you?

MISS MORRIS: No. By charter we are to narrow our services to areas of racial discrimination. They are implicit in the matter itself.

SENATOR STAMLER: Are you supported solely by private funds?

MISS MORRIS: Yes, we are.

SENATOR STAMLER: You were in the United States Attorney's Office?

MISS MORRIS: Yes, I was.

SENATOR STAMLER: And do you believe - I asked one of the witnesses earlier this question. Do you believe that an indigent defendant, being defended by a New Jersey public defender, should defend him on a federal offense too where he is charged with a federal offense?

MISS MORRIS: Now I think that you are going to get me caught between the federal system that they have already --

SENATOR STAMLER: I am trying to.

MISS MORRIS: I know and I am getting ready to get out of it too. [Continuing] -- that they have delineated for federal crimes as opposed to state crimes. I thought we were here concerned with state crimes.

SENATOR STAMLER: Well, we are. But there is some suggestion made that a public defender in New Jersey shall represent an indigent defendant - period - no matter where he is charged.

MISS MORRIS: I am sure that the Senate is more than equipped to handle the problem.

SENATOR STAMLER: But I just thought maybe you had some idea.

MISS MORRIS: No, not as far as -- I think that you are going to be faced there with a matter of comity. There is a Federal system that exists right now which may or may not be adequate. I know as far as remuneration for attorneys, it is considered inadequate by any number of people. But I think the public defender system, as far as the State is concerned, should be generally geared for State crimes to avoid any conflict with whatever Federal courts which are under another system of jurisprudence really, directed by the Federal system.

SENATOR STAMLER: Do you practice in Essex?

MISS MORRIS: I practice in Essex and in New York where my office is.

SENATOR STAMLER: Did you hear Mr. Murray this morning?

MISS MORRIS: I wasn't here this morning.

SENATOR STAMLER: Mr. Murray testified this morning that 85 to 90 per cent of those persons charged with crimes in Essex County were "poor," in the poor group. Do you agree with that figure? Do you know?

MISS MORRIS: I would think that the pattern for those charged with crimes would be the same in New Jersey as it is other places and we have found there are a greater number of both forces of the law and a number of social agencies between the people who are not poor and the law than there are the poor. See if I can clarify that by saying that if a person who has some means or his family has some means gets involved in some sort of a crime, he is less likely to come to grips with the

law at the same posture that the poor does. There are very few forces defending the poor from being right up against the law. I mean, you rarely find - and I don't say this to criticize the police forces at all - but you would rarely find in an upper-middle class area, a blanket arrest problem. You would find it in a poor area.

SENATOR STAMLER: The Attorney General testified earlier that - I believe he said the New York bill - I am not too sure - provided for public defense of all those except in traffic cases. Do you think that a public defender should also be required to defend someone who was charged with a traffic violation, in which he can be deprived of his rights and be sent to jail?

MISS MORRIS: Of course, he can. I think that the magnitude of the crime involved should be considered. You could have a vehicular homicide case growing out of a traffic case, which I think would have to be defended. You could have a traffic ticket - whether or not I overparked in a meter - which I do not think needs to concern the public defender.

SENATOR STAMLER: Senator Lynch?

SENATOR LYNCH: No questions.

SENATOR STAMLER: Thank you very much, Miss Morris.

MR. COHEN: Raymond Brown, a member of the New Jersey Bar; a member of the New Jersey State Board of Control; and President of the Jersey City Chapter of the NAACP.

R A Y M O N D B R O W N: Good afternoon, Senator Stamler, Senator Lynch, Mr. Cohen. Thank you for letting me talk at this bewitched hour.

SENATOR STAMLER: I apologize.

MR. BROWN: No, I apologize for burdening you at this time.

I want to speak with particular reference to Assembly Bill 368 because I do believe that the speakers who preceded me have made so eloquent and forceful a case for the dire need for a broad-based system of providing justice in our courts that I believe that is beyond cavil.

I happened to be counsel in the Russo Case so I thought I might open that gambit for you. I also happen to have been counsel in a few other cases that might be interesting to you in this area. And Peter Murray, you might like to know, was on the other side of the Russo Case. So we have here speaking for the bill both horns of the dilemma. I believe Peter certainly is in favor as you have said - I didn't hear his testimony - of a broad-based, consistently-administered system which would provide for all the citizens of the State of New Jersey the same kind of defense as they certainly are accorded in the administration of justice. I think in this State we have a system of justice, a court system, a system of administration, which is exemplary. It is one of which we must be very proud and you had a hand in developing it and I think you must agree. But I think that on the other side of the picture we do have this inconsistent, uneven attention to the rights of the defendant.

I would agree, of course, with those who stated that the State really has no alternative since the Escobedo, Massiah, Russo Cases and the others, and that something must be done.

The issue apparently is how and what.

I would first urge that in the instance of Federal charges that a citizen of the State is entitled to precisely the same kind of defense in a Federal case as he is in a county case. What difference does it make since he faces a very definite penalty? This too I think would apply to the question as to traffic tickets. I think where there is no penalty which provides directly for incarceration, certainly a public defender should not be concerned with that kind of case because here again justice would be denied, nobody could handle this volume and nobody could possibly cope with it. Therefore it is an untenable thing.

But 368 intrigues me because as a member of the Board of Control and as a member of the Alexander Commission that studied the structure of this famous umbrella of services which we provide in this State - our Department of Institutions and Agencies is unique. There are many criticisms which may, I think, be levelled at it with some cogency. But most assuredly in this umbrella we have been able to provide services in our divisions of attention to the plight of those who have mental retardation, those suffering from mental diseases. Even the definitions have become important and this Department has been instrumental in defining and in allocating to the various diseases and the areas of misfortune the proper care.

I can remember hearing a learned controversy as to whether or not, for example, the division of the retarded should be supervised by a person who had educational abilities and training - whether it should be one who is in the field of

psychology or one in the field of psychiatry. All of these things within this great umbrella have been defined and set forth in an orderly manner without the competition of intra-departmental controversey.

Now under this umbrella of services I say comes consistently and very logically the business of providing this other service to those who are in need. And I would agree with Peter Murray, except that I think he understates the case, that the vast majority of those who are charged are the truly indigent, those who have no one to come to their aid. I am particularly interested because a vast number of them are among minorities, Porto Ricans and Negroes, as anyone who has been at sentencing day or heard the calendar knows. There is a tremendous overplus of Negroes and Porto Ricans who come into the courtroom to be tried.

I would recommend to the Committee that if it has time, its staff consult Korn and McCorkle, which is a book written by the present Commissioner of the Department of Institutions and Agencies, along with Mr. Korn, which in terms of, I think, valid data points out that those who are without the protection of middle-class status or of political status, which Porto Ricans and Negroes definitely don't have as yet - that person is more likely to be arrested by the police. And I don't defend the police as Miss Morris did. I think they do this. They are more likely to arrest a Negro and to take him in than they are the White person whom they think they can reason with and whom they can take home. I am not going to attack the rationale of this. I just say that I believe that it has been statistically

You Are Viewing an Archived Report from The New Jersey State Library
demonstrated that it is true. Therefore, I believe that this is a service which comes under this tremendous umbrella which has been, I think, one of the proudest products of this State, this complete and consistent attention to the needs of every citizen in every county with an equal concern, except that the counties as the current practical unit of government - and I think that is what the counties have become in our State and across the Nation - are given local autonomy in our ADC program and all the other programs. The freeholders and the others who represent the county are given a very important voice. As a matter of fact, the system couldn't operate without the county as a unit displaying its concern and wielding its influence.

But I feel that the bill as it stands - and I understand Mr. Urbaniak thought it was impractical. I have respect for him. He is certainly a most capable professional and he is on the staff of the Attorney General, but certainly gives full time, I believe, to our Department in a manner which I certainly appreciate as a lay member of the Board of Control. In fact, we are all lay members of the Board of Control, except for the Commissioner who is our agent.

Now if one of the major concerns is to understand the nature of crime and its prevalence in a particular area at a particular time, certainly this institution which deals with the beginning and the end - the beginning in this sense, that under the aegis of the Department of Institutions and Agencies comes supervision of all the welfare, the county welfare administrations. This is where much of the crime begins with those

who do not have, who are disadvantaged. I think this has been recognized nationally. I think there is not room for debate on this point. But this is the beginning, and then we have our Division of Correction which takes care of those who are incarcerated. Then, of course, even parole comes under the aegis of the Department, while probation is under that of the court.

I understand that there has been some concern about a conflict of interest. I don't see any conflict whatsoever. This bill provides for one of the most important functions, I think, of those who are concerned with the administration of justice and that is the business of the constant improvement of the system of justice, investigation into the causes. We are building Yardville at a tremendous sum. Certainly Senator Stamler and Senator Lynch are familiar with the money we are going to put into this institution which is going to try to determine why these young men between 17 and 24, contributing as they do to 50 per cent of the crime in the country, do this and how we can prevent recidivism - how we can keep them from coming back.

Well, I say that justice is embodied in every one of these concepts. It is embodied in the cause of those who are deprived and therefore need welfare. It is embodied in those who are what we now call delinquent-retarded. This is a phrase used in the jargon of those who are concerned. Will you send him to New Lisbon or will you send him to Annandale? Is the cause of his anti-social act rooted in the fact that he is retarded? How can we divide the citizens who need services and say a person is not as much the object of our concern when he stands

before the bar as when he suddenly winds up in one of our institutions like New Lisbon where we have disciplinary problems and every kind of problems in the world because we have the most difficult people in the world, young people possibly handicapped physically or mentally? I should say "mentally." We have no physically handicapped there as a part of selection. That is no criteria.

I say that this bill, 368, is a progressive bill. It is a bill which is so far in advance of any of the thinking which I have seen reduced to writing in the United States that if the Senators can consider it and perhaps have hearings based more on the intimate concerns of it, because I certainly can't go into them at this hour unless your questions indicate particular interest, that you will find that this bill is indicative of concern with the citizen in the complete sense. How does it make sense to have someone concerned with his representation before the court and the bar where perhaps he pleads guilty to an offense and then this particular Department has no more concern with him again until they are called in five years later to defend him again? Unfortunately the number of repeaters is so profound that this is actually what will happen. This group of skilled professionals will soon become aware of the fact that about ten per cent of their clientele will be steady customers and I suppose the tragedy is that the percentage would probably be even higher.

The other thing which I find most helpful about it - and I am sure this would be incorporated in any bill - is the concept of training. Much has been said about the skill of those

members of the Bar who come in to defend those charged with crime. I would suggest, because by circumstance about fifty per cent of my practice is in this area - I'd love to have some estates. I hate to go to court in the morning too, but I don't have them. So I am in the pit almost every day. And I can tell you this: When you go in there, you see an awful lot of fellows who shouldn't be there, who don't know. If you mention the Gideon Case, they would think you were quoting the Bible because they just don't know. Now I have had the unfortunate responsibility to handle some of the appellate work with respect to these cases. I am sure that you as members of the Bar would with me say, "My God, if only he had read such and such a case - if he had picked up the Law Review that day," because I am afraid today if you don't read the Law Journal for this week and read the New York Times for this morning, you don't know what you are doing in court in this field because it is changing. It has in the last ten years become the most exciting, the most interesting and the most volatile field in the law as far as I know. It just has provoked the imagination and, of course, controversy in the entire Bar from the American Bar Association down. You can get a debate on - what do you think of the trend of the law in criminal cases? - at any time.

The point that I would like to emphasize in closing is that if the entire Bar and if the bench is so concerned with this vital and changing section of the law, is it not as needed that we have a specialized section as we have with the Patent Lawyers Section and the Admiralty Section of the ABA? I know I wouldn't dare walk into an admiralty discussion and consider myself

competent at all. But I dare an admiralty lawyer to walk into this jungle of decisions and of attitudes and of concepts and come out alive. He will have a heart attack before the second week is passed because this is rough business. I testify as a worker in the vineyard. If you haven't the blessing of a constitution that can take abuse from client, bench and prosecutor - and all of them, believe me, are not interested in justice, but are interested in winning in many cases - and I would say, yes, Senator Stamler, the prosecutors ought to be under State rule too. It is kind of spotty, as you have found in your vast experience as I judge by the history of your being called onetime to supersede certain gentlemen. And if you weren't coming in under State aegis, I don't know who sent you in. But I think your own experience indicates how badly we need it on the prosecutor's side and certainly we need it on the defendant's side in order that we have even-handed justice. This is what we want. We don't want one kind of justice in Hudson County. Senator Kelly left us a moment ago. We don't want one kind of justice in Hudson County and another kind in Cape May and there have been some nasty rumors. Now I don't hold with this. I think in Hudson we try as well. The assignment judge and everybody else is alert to it. But it doesn't come out even somehow.

For example, in Essex County which has done so much through the Junior Sections of the Bar, Mr. Maskaleris and others, Mr. Peter Murray - and I could just go on naming them - June Strelecki and the others - Essex County has just led in my opinion the State in its concern and its devoted attention

to this problem, long before the cases that we have all cited here forced the State to say, "What are we going to do? Are we going to spend dollar after dollar on post-conviction relief?" Are we going to be embarrassed, as the State of New Jersey may be in the Russo Case, where as you know the Chief Justice has taken a particular position? Are we going to go through this or are we going to have a system of professionals who are just as concerned in Ocean County as they are in Sussex? Are we going to have a system where people with your responsibility can call, let's say, Institutions and Agencies hopefully, the administrator of this Department, and say, "What's going on here?" You certainly do it in the Senate and in the House when something goes wrong up at one of our mental institutions. You know recently we have had a lot of it. But you pick up the telephone and call one guy and he'd better know or you want to know why he doesn't.

I think experience has shown all of you that the Department of Institutions and Agencies is a responsible agency and that the people are deeply concerned.

My last pitch for this bill is this, Urbaniak and the rest be damned: I think that citizen participation in this State has been so unusual in that the Board of Control has real power. It is not an advisory council. It is not a bunch of guys and ladies who come down and sit and listen to pretty talk, but it has real power. In the past, beginning historically with Dwight Morrow, who was one of the most distinguished citizens this State has ever had - has intervened on behalf of the oppressed and those kept in jail and has said, "Politics aside, this thing

needs attention.⁴⁷

Now the Board of Control is composed of members who have eight-year terms. It is rumored that this was designed to prevent any Governor from destroying the Board because they run seriatim and therefore you can't get rid of a majority unless you are really industrious. But this group of citizens will sit there and say, "This is where it stops."

Now my objection to the Attorney General's supervision is that he is a politician. We happen to have an unusual man in General Sills. I think he is one of the rarest persons I have ever met. I admire him personally and in every way. But I say to you we might not have a Sills next time and he might say, "Look, fellows, soft pedal that business." You talk about a conflict of interest. It is not in Institutions and Agencies. This Department is concerned with those who need across the board. The Commissioner is a man who is not a pro. He is not a lawyer necessarily and this one is not and I don't think we have ever had a lawyer. But I say the Attorney General's Office is subject to change and the kind of invidious approach which every citizen has to be concerned about in political difference. But the stable, continuing, citizen-studded department in this State is Institutions and Agencies, which I consider one of the most useful areas of citizen, non-salaried participation that any state has. And I think if you review the kind of people on that Board, perhaps with the exception of yours truly, you will find that they are really unusual folks who give the kind of time you couldn't buy and the kind of attention that you just pray for. So I make as strong a pitch as I can for 368.

SENATOR STAMLER: Thank you. Are there any questions?

SENATOR LYNCH: I take it you are in favor of a Public Defender system?

MR. BROWN: You might assume that, yes.

SENATOR STAMLER: When you were designated as assigned counsel in that federal case, which I recall not too long ago, were you then relieved of an assignment in Hudson County?

MR. BROWN: No, sir. They adjourned the case, and when I finished with Petanko I went back and tried an assigned case in Hudson.

SENATOR STAMLER: I was just trying to get this question of cooperation between the federal system and the -

MR. BROWN: I don't think there would be any conflict, Senator Stamler, because the same people wind up trying them. In the first place, you wind up in the serious federal cases with the certain and sure attempt on the part of the federal bar to avoid the kind of Texas debacle we had in that unfortunate case where Mr. Belli and others came in and there were all kinds of problems. There, I think and I hope, we get select counsel as we do frequently in murder cases and, incidentally, of course, we know that murder cases are the only ones in which the county freeholders vote payment for services in any of the counties, and some of us have gotten the highest fees ever given. I think we got five thousand in one case, for a case that took five weeks. I

don't suppose that will ever be voted out again. But there in that area of assignment in the federal court of a certain type of cases and in the county court of a certain type of cases, I would suggest that occasionally there is an attempt to get the best men who can do it. Frequently, it is used, in my opinion - the county assignment to murder cases is a kind of political award. I must say that and I say that with great sorrow, but I have seen people get the assignments who just shouldn't have them and wouldn't get any other kind. But after all, you get a fee when it's all over, whether you plead or not, you know, and there's not much strain in a plea. But in the federal system, I don't think there would be any conflict whatsoever. The same people would do the job, and as in my case where there was an assignment waiting in Hudson when I got through with nine weeks in the federal court, then I went back to Hudson and tried one for two weeks by assignment.

I don't think there would be any conflict whatsoever and I assure you that if you had these professional people they would be rendering services as citizens of the State whether it was federal or county courts.

SENATOR STAMLER: Taking your county professionally, about how many criminal lawyers are there in Hudson?

MR. BROWN: That's an unfortunate phrase.

SENATOR STAMLER: How many lawyers are there who practice criminal law?

MR. BROWN: Well, I would say that if you go about the courts you see about 25 fellows regularly. Some

of them who are outstanding like Abe Miller and Maurice Krivit, and in the old days Bennett Robbins and some of the others who are really outstanding people, you see regularly. But I would say about 25 members of our bar are regularly seen. Usually, of course, you know, you see them at pleading time; that is, the initial pleading. This is where on Friday morning you see pretty much the guys who have more than five or six cases in their office and in the field. And this would not detract from those who come in and try who have not been trying cases in the criminal court. As a matter of fact, I would like to state this, that I think our criminal bar can stand a tremendous improvement. I think that the concept -

SENATOR STAMLER: You ought to change that tune.

MR. BROWN: I said it before the Association - the Prosecutors' Convention, and I repeat it. Those who try criminal cases in this State need a tremendous education and a great deal more dedication before the criminal before the bar on the so-called charge gets his day in court. There is one thing that's wrong. Frequently cases are run into the lawyer and frequently by the bondsmen. Now, this little game is deadly because the accused does not select counsel. He is the recommendation as the counsel. And in the Russo case, one of the salient points is that when you are picked up and you are in custody, you need somebody to explain your rights; you need somebody to tell you that you need not open your mouth; you need ~~it~~ then and you need

it there, because if you get it later it is much too late. But this is an area, the station house and the magistrate's court, as you know, I'm sure, which is a little world all its own, and I have no hesitancy to say that the bar has for too long considered the men who are lawyers and operate in this area as people whom they just assume are not concerned with it but they are going to have to be, because it is now a highly-specialized field where you have to know your business, and it doesn't matter whom you know, so far as having the matter referred to you. You had better know your business or the case is going to bounce back, because nobody now can avoid the strictures which are put on for the first time, I think - the Constitution of the United States being realized in the sense of safeguards afforded individuals.

I say that, yes, I think that this professional group should raise the level of the bar and its concern with criminal causes to that which they say we accord to those who are specialized in state matters, to those who are specialized in admiralty and in some of our very skilled areas such as patent law and that kind of thing. Now, it's terribly needed. I wish the criminal bar were a section which I could praise. I cannot, and I'm a part of it, and I'll take the same criticism I'm delivering to others.

SENATOR STAMLER: Mr. Brown, on behalf of the Committee, I want to thank you very much for your frank and very important testimony.

MR. BROWN: Well, thank you for letting me come.

MR. COHEN: There are two short statements to be made into the record before calling on Mr. Biunno of the Essex County Bar. Passaic would like to make a short statement, and that statement will be made by Mr. Valentine.

H A R O L D V A L E N T I N E: Senator Stamler, Senator Lynch, and Counsel Cohen, in view of the lateness, I am going to make a brief statement and I might answer one or two points. It seems the Committee is interested in statistics.

I am Chairman of the Passaic County Indigent Committee and we have been studying this matter, appointed by the President of the Passaic County Bar, Milton Werksman, who is present here today and, after investigation, one of our members, Sam Yucht, made a proposal to the Paterson Task Force. I think Senator Stamler has been up there and knows something about the work going on.

I am going to leave this with your Committee and refer you to page 2, paragraph 4, in which you will find references made to the indigent criminal problem in Passaic County. I will read into the record, if you please, some figures regarding caseloads which are very interesting.

In the first eight months of 1964, 545 indigent criminal offenses were assigned to counsel in Passaic County, indicating about 850 assigned cases for the calendar year of 1964. Of the total 2,000 cases referred to the Grand Jury from the municipal courts in the county, over 57 per cent of them originated in the City of Paterson. Considering the concentration of poverty in Paterson, it is estimated

that the proportion of assigned criminal cases originating in Paterson exceeds 57 per cent, or an estimated 65 or 75 per cent of all assigned cases in the county. The great majority of these cases for crimes of an indictable nature, if tried, require at least two days in court. In a municipal court in the City of Paterson, the Committee might be interested to know that 214 matters were processed by one part-time Judge in the violation bureau in the year period ending August 1964. I want to amend my figure - over 100,000 matters were processed. Of these, 9,241 involved traffic violations punishable by imprisonment or fine.

Now, the point is this, that in Passaic County it is interesting to know that the members of the bar - and I have been practicing for almost 18 years - are getting almost two cases a year, assigned cases. My office alone, Albert Levy and myself, have handled in one year almost four assignments. One was an appeal which we had to devote our almost entire office staff to handle. The amount of work that we devoted in this year would be estimated, based on billing of our regular clients, at about \$3,000. So in the past year, our firm of two lawyers have donated a great percentage of our income to assigned criminal matters.

I just want to say, Senator Stamler, that we in Passaic County are watching you and your Committee. We are proud of the work we are doing and we say get us relief on this, both in justice to the indigent criminal and in justice to the practicing members of the Bar of the State of New Jersey.

SENATOR STAMLER: Thank you.

MR. COHEN: Thank you.

Steve Maskaleris, one of the reporters that assisted Lee Silverstein.

SENATOR STAMLER: You're not going to read that book, are you, Steve?

S T E P H E N M A S K A L E R I S: No. Thank you very much, Phil, and Senators. It's good to be back. I remember being here several years ago when there were only six of us testifying before an Assembly Committee on the same type of bill. I think you will remember that Philip Dean Cohen testified, as did you, and I know I did. I remember one of the things that I said at that time was that the indigent accused reaches into a grab bag when he goes to get a lawyer in our assigned counsel system. Today it's even worse than that. I think his chances of getting a good lawyer by the assigned system are worse than those in trying to win the Irish sweepstakes or in trying to win the New Hampshire lottery, because he is just about sure to end up with an expert in real estate law, as you heard mentioned here before by many others, and perhaps one so good that he specializes only in riparian rights rather than criminal cases. And, as Mr. Brown has testified, this practice of criminal law, as a practitioner in that field, today is so specialized that all of us who do this work must look into the New York Times or the Herald Tribune or the Law Journal every week to be familiar with current criminal developments.

I do not want to speak for a long time, and in fact,

while sitting here everything has just about been said, but I think that you should know that the committee that I am the co-reporter for, with Professor Alexander Brooks of the Rutgers Law School, and on which committee are Judge Alexander Waugh; Brendon Byrne, Prosecutor of Essex County; Philip Dean Cohen; Edward McConnell, the Administrative Director of the Courts of New Jersey; Thomas O'Neill; Judge Bertram Polow, and Bertram M. Sachs, have come up with this recommendation among others:

We recommend the assigned counsel system in its original form be replaced unequivocally by another plan and that consideration be given to the adoption of the public defender plan, or a mixed private-public defender plan along the lines of the Essex County Plan in substitution of this archaic plan.

I think you should know - Pete Murray gave this to me earlier - that New Jersey stands practically alone in this country, together with the states of Georgia, Kentucky, Louisiana, South Carolina, and parts of Pennsylvania, where we still have a system of unpaid assigned counsel in non-capital cases, and that is pretty tragic company to be in, especially since we've been trying for so many years, Senator, to come across with a proper bill to protect the public. And that's what we are here for. We want to protect the indigent, protect the public, and protect all of the citizens of this State.

I think one thing cannot go unsaid. I think you remember Mr. Fernicola, the County Counsel of Essex, who said

that \$125,000 is to be spent this year on capital cases. Do you know that in Essex County there is an average of sixty capital cases a year? And he multiplied that figure by forty to come up with the same figure that Mr. Murray came up with as to the number of indictments that are returned per year in Essex, of which ninety per cent, or about twenty-two or twenty-three hundred of them are assigned. Do you know that in all of these other cases, if we multiplied the amount of money, \$125,000, by forty, we would come out with a five million dollar figure. And this is the way figures can be misleading. If it is fact that it would take that much money to handle these other cases, then that money is being put up solely by the practicing lawyer - not by the public, not by anyone but those lawyers of the hundred or so who were here today and all of the other 6,000 practicing lawyers in this State who are also vitally interested in this. They are the only ones being charged with the tab. From their standpoint it is also unfair.

I say we need this sytem of legal care, gentleman. I don't want to coin a phrase. It's for an indigent defender; it's for the indigent; it's only for the poor; they must qualify. But legal care is as necessary as Medicare on the federal level. Why? Because incompetent counsel puts the breadwinner of a family in jail, forcing that family to break up, forcing the family to go on welfare, forcing him to spend years and years in jail just because of incompetent counsel when all of this could be avoided by a proper plan which you have in your hands. I think the answer speaks for

itself.

Now, in conclusion - somebody asked Senator Lynch whether or not Senators should get assigned cases. My answer to that is yes. I think if you get a three-week rape case, where you go in and try a case for three weeks, and you prepare for three weeks before that, and you get paid absolutely nothing and you can't attend to your responsibilities and you can't attend to your own business as a lawyer, and one of the best lawyers I know in the State, you might change your thinking just on a personal basis about how bad this system is. Those three-week rape cases can ruin a lawyer.

SENATOR LYNCH: I get them.

MR. MASKALERIS: Do you?

SENATOR STAMLER: Three week rape cases?

MR. MASKALERIS: A three-week rape trial with maybe four or five defendants and four or five assigned lawyers and the like.

I will be very happy to refer to the book again that has been referred to - Defense of the Poor, the National Report - Lee Silverstein being the author, in which our State report is mentioned. This is a Special American Bar Association Committee on the Defense of the Indigent Accused, of which I am the co-reporter and on which we all worked so hard to come up with this Report.

Thank you.

SENATOR STAMLER: Thank you very much, Steve.
And thank you for waiting. You were very patient.

MR. COHEN: Our next speaker has been very patient. He has a vital message to deliver. Mr. Vincent P. Biunno.

V I N C E N T P. B I U N N O: I would like first to direct the Committee's attention to a statement which was delivered to it this morning. Retired Justice William A. Wachenfeld had hoped to be able to come down but could not make it. He sent a statement which he asked to be included in the record.

MR. COHEN: It will be included. [See page 72 A]

SENATOR STAMLER: Is the statement for the firm or for the Justice?

MR. BIUNNO: For himself. As you know, he has had some more than forty years' experience in the Prosecutor's Office and on the bench and as a practitioner.

Second, I would like to ask leave of the Committee, if I may, for a number of witness who could not come today to submit statements within a reasonable period of, say, a week or two.

SENATOR STAMLER: You have it.

MR. BIUNNO: For the rest, most of what needs to be said has been said and I will try to limit myself to a few points which I believe need emphasis. First, on the matter of where a statewide organization, if one is established, should be placed. As you know, this is the result of a technical requirement of the State Constitution that every such agency must be within one of the principal

departments. If we exclude, as has been suggested by some, Law and Public Safety and Institutions and Agencies, we can't put it in Treasury, we can't put it in Health; it certainly doesn't belong in Civil Service or Public Utilities or Highways or Agriculture or Conservation, Banking and Insurance, Education, Labor, or Secretary of State. All we have left is the Department of Defense, which would fit in name only. I suggest that where it does belong is in the Department of Institutions and Agencies.

The problem of conflict that was mentioned this morning, I don't think is a real one. To appreciate what is meant here, it is necessary to keep in mind any operation of this kind will involve a division between administrative functions and field operations. Now, naturally the work at trial will have to be handled from the standpoint of sheer housekeeping out of conveniently located offices. In the large counties with a heavy work load, there is no doubt there will be separate offices under such a system in the separate counties. In the smaller counties, as has been pointed out, there simply is not the number of men available in that local profession and it would seem to me to make sense there to have a regional office. But none of this has anything to do with the administrative operation, questions of basic research.

When Miss Strelecki was administrator of the Essex County plan she began a very useful handbook for the trial attorneys in the pool. That has been continued by Mr. Murray. This gives them what they need to have day in

and day out, for the run-of-the-mill case. As might be imagined, something like a dozen or eighteen types of offenses take care of 90 per cent of the volume. You don't need to research these points over and over again if the key statutes and the key cases have been carefully analyzed and noted. Now, once a handbook like this is done for Essex County, it is obviously just as good for any other county in the State and you don't need to repeat this kind of basic working tool either on a county basis or a regional basis.

On the question of whether a system to be adopted should be designed to serve both state and federal courts, I would say the answer is probably yes. In the first place, you are talking about a single group of men forming the profession. In the second place, the type of offense which involves the indigent in the federal courts is very much like the type of offense that involves the indigent in the state courts. The large volume is in auto theft but it happens to cross the state line and narcotics. You don't get income tax cases for indigents.

Now a third reason for saying that there should be a single operating system is this: A case is tried in a state court and goes up on appeal with an adverse result. The next step is habeas corpus proceedings in the federal court. Should a new attorney now take on the chore of familiarizing himself with that entire record, or would it make more sense to have the same man who already knows the record in the case to take on the federal proceedings? This

You Are Viewing an Archived Report from the New Jersey State Library
kind of question I think is a practical day-to-day type of problem that will tend to answer that question.

The suggestion that there be a statewide system does not by any means involve the concept that the profession itself will no longer be involved. A very dramatic example is furnished by the very recent history out in Watts, California - in Los Angeles. Los Angeles County, as we know, has had a public defender system for many years, but what happened in Watts has resulted in more than four thousand arrests and even the public defenders couldn't handle it, and it became necessary for the local bar association to pitch in, and they have, with the help, however, the guidance, the technical supervision, of the trained staff to make that chore a lot less onerous than it might have been, and the report is that they are now handling three hundred arraignments a day. I shudder at the thought of how long the trials will take.

I would not place too much reliance on the estimate of average cost in California of \$35.00 a case. I don't know what they call a case. Is it a case when a man is represented at the municipal court level, and is it another case when the same man appears at trial in the trial court? I don't know. What they have obviously done is to take a total cost and divide it by a number, which is called "number of cases," but I don't know how they got the number of cases, and I think this would be quite significant.

A reason to keep in mind for possibly favoring a mixed public-private system is that the Federal Criminal

Justice Act is geared to work with such a system but not with the public defender system. There are express provisions in the act for handling federal matters through a legal aid agency and, of course, a mixed private-public system would be that. There is express provision in that same act for payment to the legal aid agency of what would otherwise be paid to assigned counsel, so that the federal system would pay its share, pay its way.

There is another element that I do not think has been given much emphasis and that is very much related to the matter of defining who is indigent. I think that the answer here lies in the concept that there is not a dividing line but rather a zone, and the concept of indigency should be thought of more in terms of can the defendant contribute something within his means to the fund which finances this operation to the extent that he reasonably can be expected to contribute something, even though it is far less than what it would cost to hire private counsel. Number 1, he should be obliged to do so, even if it is only token. This approach not only adds dignity but it helps to meet the difficult problem of defining who is indigent. Interesting enough, this is a basic principle adhered to by the late Dr. Schweitzer who insisted that anyone entering his hospital for medical care had to make some payment that he could afford, even though it were only an egg or two.

Now, again, here the federal bill ties in very closely and provides in subsection (f) that where the

court finds that funds are available for payment from or on behalf of the defendant, the court may authorize or direct that such funds be paid, depending upon the system, to the appointed attorney or to the Legal Aid Agency.

Lastly, I would like to join in the views expressed by Mr. Brown that a sound system will go far beyond merely providing a lawyer to represent the defendant. It must be organized to play a part in the entire system of criminal justice and even welfare, if it is not to be unduly wasteful.

Thank you.

SENATOR STAMLER: I have but one question. Do you think it possible that this public defender could be put under the control of the Director of the Courts?

MR. BIUNNO: Well, you get the problem there - wouldn't it be an executive function?- and now you get into the problem of having the wrong branch of government.

SENATOR STAMLER: Well, the Department of Institutions and Agencies is, I think, an executive function.

MR. BIUNNO: Yes, executive, but if you put it under an Administrative Director you would be in the Judicial Department.

SENATOR STAMLER: Oh, I see. In other words, you mean it must be controlled within the Executive?

MR. BIUNNO: Within the Executive, I think, is the case. It's a tempting suggestion but I don't think it's the answer.

Thank you very much.

SENATOR STAMLER: Thank you. This hearing stands adjourned, and thank you for your patience.

[A D J O U R N E D]

Statement of John C. Bullitt
Director, N. J. Office of Economic Opportunity
Transmitted to the Senate Committee on
a Public Defender System

Senators Stamler, Ozzard, Stout and Deamer:

I am very pleased to add a few words to the comments of the Attorney General. My concern over this question stems from two sources: As an attorney myself I am personally interested in the traditional obligations of the Bar to provide counsel for the indigent criminal accused. As director of New Jersey's drive to eliminate poverty I am further concerned that the legal problems of the poor be resolved in a comprehensive and imaginative manner.

This state has as much of a responsibility to defend the citizen accused of crime as to convict the criminal. Unless this responsibility is met we weaken the presumption of fairness upon which respect for law is based. We cannot allow any segment of our population to suffer under the illusion that law and its institutions favor one segment of society over another.

A public defender system -- whatever its nature -- is an important step forward in meeting the legal needs and enforcing the legal rights of the poor. But it is only a step. Defense of the public is an outlook as well as a program. For instance, we are confronted with the problem that excellent legislation often goes unenforced due to inadequate staffing. Thus, there are three attorneys in the Consumer Frauds Division to service the needs of our 6,700,000 citizens. Over 2,000 Migrant Labor Camps must be inspected by only 13 investigators. Our Civil Rights Commission all too often must rely on the initiative of private

complaints. Our housing and health codes are notoriously under-enforced.

My point is that New Jersey must find the means to "defend" the poor -- and the public at large -- more thoroughly and efficiently out of court if we are to avoid continuing to defend them in court. I urge that this Committee consider the problem of the indigent defendant in context of the general problem of poverty -- not as one of its isolated incidents. The need for a public defender in part arises from causes we cannot combat. But it also stems from attitudes and circumstances that we can modify and improve by a broad and comprehensive attack on the frustrations of poverty.

It seems to me that in the Governor's Committee on Poverty and the Law, under the able chairmanship of the Attorney General, we have an ideal vehicle for such a comprehensive approach. Its various subcommittees on the criminal process, administrative procedures, civil law, and statutory and common law review have already begun their work. My office is working closely with the Committee on developing ways and means of carrying out its objectives. I have urged all state community action organizations to work closely with local Bar and legal aid organizations in developing local legal service programs.

With the development of an adequate public defender system through the joint efforts of all those present here today we will have taken a major step in giving New Jersey the means with which to assure justice to all its citizens.

Thank you again for allowing me to share my thoughts with you.

WILLIAM A. WACHENFELD
605 BROAD STREET
NEWARK 2, NEW JERSEY

September 7, 1965.

Hon. Phillip Dean Cohen
Counsel to the Special Committee
State House
Trenton, N.J.

Re: SR-3 (Indigent Accused)

Dear Mr. Cohen:

I had hoped to be able to attend the public hearings of September 8, 1965, but find that I cannot be present.

The subject of the hearing is of such importance, however, that I felt I should submit some observations in writing, with the permission of the Committee, that I believe will be helpful to it in its work.

If there should be any question arising in the minds of any member of the Committee on which it is felt that I might be of further assistance, please do not hesitate to send it on and I will answer to the best of my ability.

Sincerely,


William A. Wachenfeld.

WAW ab

September 7, 1965.

To the Honorable, the Special Committee of
the Senate of the State of New Jersey,
constituted under SR-3 (1965):

There is probably no subject of greater importance under today's unsettled conditions than that with which your hearing is concerned -- the proper representation of the indigent defendant.

I have seen this problem for more than 40 years, from the standpoint of a prosecutor, from the standpoint of a judge, and as a lawyer and private citizen. I have also seen the problem grow, not only in the number of cases but also in their complexity and burden.

In the old days, there was a kind of catch-as-catch-can system. When a defendant came up before a judge to plead and said he had no funds to hire a lawyer, the judge would call on someone in the courtroom to accept the responsibility of handling the defense. As the number of cases grew, this system had to be discarded. Back in 1945-1946, during my last year as Essex County prosecutor, there were 216 different defendants who were assigned counsel on that old basis, and of these 51 went to trial.

Today, we can expect more than 1,500 in Essex County, just for the Superior and County courts. Under recent decisions in the federal courts it may well be necessary to provide counsel from the time of arrest and in the municipal courts as well. They have a considerably larger case load.

The number of cases is enough of a problem, but what is even more important is the absolute need to have these cases handled by lawyers who are trained in the criminal law and in trial work, because when the defense is not handled properly, a convicted defendant may have to be turned free on appeal.

This is the main reason why a rotation system of assignment, which was started in Essex County in 1946 and which was enlarged to the whole State in 1950, simply cannot be used any more.

It is not one of the purposes of providing counsel to help the guilty go scot-free. Criminal justice tries to strike a balance between two different objectives: one, to convict, punish and rehabilitate the guilty and thus deter others; two, never to convict the innocent. This effort can never be perfect, and civilized countries have always felt that it is better to

fail to convict a guilty defendant here and there than to mistakenly convict the innocent. This is an acceptable balance only so long as not too many of the guilty go free.

Now, I have studied a great many trial records in criminal cases, and I can tell you that it is a very difficult and painful experience for a judge to come to the conclusion that there isn't any doubt about the defendant's guilt, but that he was so inadequately represented that the trial was simply not a fair trial. This means a reversal of the conviction, no matter how reluctantly, and a dismissal of the charge or a new trial, depending on the case.

When I say that the defense was inadequate, I do not by any stretch of the imagination intend to imply a criticism of the many lawyers who have served under the assigned system. On the contrary, they have been dedicated and devoted counsel, who have doubtless spent considerable time trying to familiarize themselves with a highly technical legal subject that they don't work with ordinarily. You could have the finest lawyer in such fields as wills and estates, or insurance law, or tax law, or real estate law, or any other of the many large fields that are so complicated that a lawyer has to live with that alone to be any good. We have had such outstanding lawyers, but they just don't and can't know what they must know for criminal cases. Let me put it another way: if a defendant can afford to hire his own lawyer, he wouldn't hire one of these men no matter how outstanding he was in his own fields. You just don't hire a plumber -- even the best plumber in the world -- to fix a leak in the roof.

There is another element in the assigned counsel system which is very disturbing, and this involves cases where the jury acquits the defendant because they feel sorry for him -- his lawyer did such a terrible job that they don't have it in their hearts to convict, even though they know he is guilty as sin. Appellate judges don't see these cases because there is no appeal from an acquittal, but they hear about some of them.

I remember hearing about one some 10 or 15 years ago when an old real estate expert was assigned to represent a defendant charged with burglary. The lawyer was about 70 years old, and one of the best men around on real estate titles. He had spent his whole life at that work. He went to the judge and begged him to cancel the assignment, explaining that he knew nothing about the criminal law, and that it wouldn't be fair to the defendant. The trial judge reassured him, and told him that

the prosecutor would help him and that the judge would try to help in the course of trial. With considerable reluctance, this old lawyer tried the case. And everybody was helpful. The judge would interrupt a question by the prosecutor and say: "Mr. X, do you wish to object to that question?" And the lawyer would say, "Yes," and the objection would be sustained. At the close of the trial, when he summed up, he broke every rule in the book. He told the jury that he was assigned to the case but knew nothing of criminal law. He told them he was deeply grateful to the prosecutor's office because they had been very kind, cooperative, and helpful. He expressed appreciation for the guidance of the trial judge in calling his attention to things he might have overlooked. And he told them that he had talked earnestly to the defendant and knew that he was innocent of the charge. The jury came back with an acquittal, and our old friend, Mr. X, had a 1000% batting average as a criminal law expert.

This sort of thing sounds entertaining, but it is far from a joke. I have no way of knowing whether that defendant was guilty or not, but I can tell you that in that case society did not get a fair trial.

If we had a perfect system, every defendant would have the benefit of a thoroughly competent defense, and every guilty man would be convicted while those who are innocent would be acquitted.

To have any hope of approaching that perfection, this Committee must find a way for making sure that the indigent are properly represented - that criminal trials are fair trials for both society and for the defendant. We do not want the innocent convicted and we do not want the guilty to go free. An effective system for proper representation is the best way to approach that goal.

WILLIAM A. WACHENFELD.

CAMPBELL & CAMPBELL
COUNSELLORS AT LAW
230 MAIN STREET
MADISON, NEW JERSEY 07940

WILLIAM H. CAMPBELL, JR.
WILLIAM H. CAMPBELL, III

AREA CODE 201
FRONTIER 7-9393

September 9, 1965

New Jersey Senate Committee
Public Defender System
State House
Trenton, New Jersey

Attention: Secretary of Senate

Gentlemen:

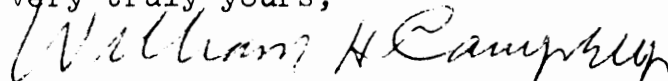
I have just received notice that you will have a hearing on the Public Defender System.

I enter my objection to the enactment of any law which will provide an attorney at public expense for a Public Defender.

I have been a prosecutor of New Jersey County, and from experience I know persons accused of crime receive fair treatment from the courts.

Personally, I believe some corporal punishment of convicts would be a greater deterrent than parole or any other approach. *but I know many of the public would not approve*

Very truly yours,



William H. Campbell, Jr.
A New Jersey Attorney since 1921

WHC:vam

TO: HON. NELSON F. STAMLER, CHAIRMAN OF THE SPECIAL COMMITTEE --
PUBLIC DEFENDER SYSTEM, AND MEMBERS OF THE COMMITTEE

FROM: HUDSON COUNTY BAR ASSOCIATION
REPRESENTED BY HAROLD J. RUVOLDT, TRUSTEE, HUDSON COUNTY
BAR ASSOCIATION.

Hon. James F. Beggans, President of the Hudson County Bar Association, has directed me to appear before this hearing of the Special Committee created by Senate Resolution No. 3 of 1965, for the purpose of the study of the advisability of establishment of a public defender system in the Counties of the State of New Jersey. The Hudson County Bar Association takes this opportunity to let it be known to this Committee that by resolution of the Hudson County Bar Association, with a membership of 1,000 members of the Bar of this State, has definitely established itself as being in favor of the establishment of a public defender system in the Counties of the State of New Jersey.

Characteristic of the members of the Bar of this State, and in keeping with the unselfish dedication of the Bar Associations of this State, the Hudson County Bar has always accepted willingly down through the years assignments to protect the rights of the indigent criminal defendants. As in the history of the entire Bar of this State, members of the Bar of Hudson County accepted assignments, except in capital cases, without any thought of compensation for time, effort or expenditures.

It is, however, evident to all that time has moved forward, and while the character of the members of the Bar in service to their Nation, to their Community and to their fellow-men, will never change, the movement forward in criminal procedures has established the fundamental principal that "assistance of counsel" must be provided for every accused indigent. This fundamental right and the blessing of liberty has made demands upon the legal profession so demanding that it is apparent that legal representation of indigent criminal defendants must now become a part of well-functioning and budgeted government. Government must provide for legal representation for the indigent criminal defendants.

The Constitution of the United States and the enunciated ruling of our United States Supreme Court has established clearly and distinctly that assistance of counsel must be provided for the indigent accused. No longer can the crutch of assigned counsel be utilized by our State and County governments. This is another challenge of the "Sixties" and must be accepted and fulfilled by the governing bodies of our State and County governments.

A real study and analysis of the ever-increasing number of assignment of counsel for the indigent criminal defendants shows

clearly that this condition, the age-old assignment and acceptance by the members of the Bar, is unfair to the members of the legal profession and even sometimes presents situations where assigned counsel, willing and anxious to serve the request of the Court, however, not being familiar with the particular criminal processes involved results in the indigent offender in not having the benefit of counsel knowledgeable in the criminal processes. Results; appeals, post-conviction relief and addition to a back-logging of criminal calendars, and the failure to provide proper defense for the indigent accused.

Weigh, if you will, the actual cost to the assigned counsel, plus additional cost where, by reason of willing but unknowledgeable assignments in criminal matters, bring forth appeals and post-conviction relief, and you see that there is presented a financial operation cost that would represent a far greater cost than the actual cost of the establishment of a public defender system in the Counties of this State.

Logic, therefore, demands that immediate attention be given to legislation that will provide for the appointment of a public defender in the Counties throughout this State.

The Hudson County Bar Association, therefore, urges adoption of such legislation that will result in the public

Defender system being established throughout the Counties of the
State of New Jersey.