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THE PUBLIC DEFENDER AS ADVOCATE: A STUDY IN
ADMINISTRATION, POLITICS, AND CRIMINAL JUSTICE

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**The Public Defender as Advocate: A Study in
Administration, Politics, and Criminal Justice**

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ABSTRACT

There are two major modes for providing free legal services to poor persons charged with criminal offenses: assigned counsel and public defender. In recent years, the legal services provided by public defender attorneys have been seriously criticized. Commentators on public defender representation have concentrated on evaluating defender performance in the process and outcome of criminal defense representation. This paper presents a preliminary analysis of data relevant to several issues involved in the controversy over defender effectiveness. The task performance of a public defender system has analytically been divided into two areas: criminal defense representation in individual cases and activities to improve the general situation of indigent criminal defendants. The Los Angeles County Public Defender Office provided an adequate data base for examining defender activities in both performance areas. Administrative constraints are identified which affect the defender attorneys' defense representation of their clients. These constraints partly explain why a public defender agency's performance in this first area does not surpass that of assigned and private attorneys. A public defender system's activities to improve the general situation of its clientele exacerbate tensions latent in the organization's relations with other justice agencies. As an executive governmental agency, a public defender system occupies a relatively unusual bureaucratic position. It performs an executive task which tends "to hamper" other executive justice agencies in the execution of their tasks. In spite of this organizational dilemma, public defender attorneys enjoy a distinct advantage over other

defense attorneys in this second performance area. The discussion concludes with a suggestion for strengthening the institutional safeguards which protect the independence of public defender systems against external pressure.

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. . . . This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

Gideon v. Wainwright, 1963

Historically, the provision of free legal services to poor defendants has been a contentious issue in American criminal law. The disputed issue has been whether the right to counsel should be uniformly applied to persons accused of criminal violations under all circumstances. At the federal level, guided by the 1938 U.S. Supreme Court's ruling in Johnson v. Zerbst, the right to free representation was obtained for indigents in all felony cases. It was not until 1963, however, in the Supreme Court's landmark decision, Gideon v. Wainwright that the indigent defendant's right to counsel in all state felony cases was upheld. Nearly a decade later in Argersinger v. Hamlin (1972), the Supreme Court further extended the right to counsel to poor persons charged with misdemeanor offenses that might result in their detention.

There are essentially two methods used to provide free legal services to criminal defendants: assigned counsel and public defender. The assigned or appointed counsel system is the oldest method used in the United States. This method involves selection by trial judges of attorneys engaged in private legal practice to represent indigent defendants in criminal court. These attorneys are usually paid from public funds according to a standardized fee scale.

The public defender system is a public office staffed by attorneys who represent poor persons charged with criminal offenses. It was originally conceived as a reform proposal. In the early years of this century, considerable concern was expressed for the poor man charged with violating state criminal laws. During this period, members of the legal community began urging that a public defender system replace the assigned counsel system in representing the accused indigent. Essentially, the argument advanced was that "jailhouse lawyers" would be eliminated and a more aggressive defense posture on behalf of indigent defendants encouraged.

In recent years the adequacy of legal services currently provided by public defender systems has been discussed. It has been argued that, in general, public defenders are not defense lawyers who actively pursue the best legal interests of their clients. Critics of the defender mode of providing legal services have ranged from legal practitioners to social scientists to defender clients. These critical assessments have renewed interest in the relative advantages and disadvantages of the two major provisions for free legal services. Unfortunately, to date there has been no full length, empirical study of a public defender office.

1. RESEARCH PROBLEM

This paper presents a preliminary examination of several issues involved in the debate over whether a public defender system provides effective legal representation for indigent criminal defendants. In studies of free legal services, scholars have consistently compared the defense representation of defender lawyers to that of privately retained defense attorneys (Eckart and Stover, 1975; Skolnick, 1967; Blumberg, 1967; Sudnow, 1965). These studies of defender legal services have limited their analyses to consideration of defender performance in individual cases. While their studies have generated controversy over whether public defender representation is comparable to representation by private defense counsel, a second controversy also related to defender performance has emerged among defender practitioners. They have expressed concern over whether a public defender organization should attempt to influence criminal justice policies which affect the accused indigents.

The Los Angeles County Public Defender Office provided an adequate data base for examining these two controversies. First organized in 1914, it is the oldest and largest public defender organization in the United States today.

Conceptual Framework

Task Performance. A public defender agency's task performance (i.e., delivery of legal services) can be divided analytically into two areas: (1) activities in individual litigation and (2) activities to improve the general situation of the indigent criminal defendant. By activities

in individual litigation, we include all actions pursued by defender attorneys defending their clients against criminal charges. These activities are to be distinguished from actions pursued by defender attorneys in attempting to influence criminal justice policies and practices which affect indigent defendants. By activities to improve the general situation of the indigent, we include all defender activities which have ramification--for the criminal justice system's treatment of indigent defendants--that extend beyond the immediate outcome in individual cases. This distinction may be more easily maintained analytically than in fact. In reality it is quite possible that a defender system would be involved in legal activities that simultaneously affect its performance outcome in individual cases and the more general situation of indigent defendants in the criminal justice system.

The distinction between defense representation in individual cases and activities to improve the indigent accused's general situation is purposely drawn in order to direct attention to a neglected area of legal services which public defender systems may provide. Previous studies of defender legal services have more narrowly focused on the performance of defender attorneys in individual cases. Discussion of defender activities (e.g., class action suits and/or injunctions) to improve the general status of accused indigents is entirely absent. The activities which defender organizations could pursue in seeking to improve the criminal justice system's treatment of indigent defendants have not been described nor the possible consequences and implications of such activities explored. By analytically dividing the defender organization's task performance, it is possible to pursue a factual examination of the agency's activities in both performance areas.

Organizational Perspective. This paper presents an organizational perspective of defender legal services. In general, previous studies have only marginally considered the organizational aspects of defender legal services.¹ Scholarly discussion has conventionally been limited to an unsubstantiated assertion that the bureaucratic nature of public defender systems has consequences which affect their task performance. Students of defender legal services have concentrated on evaluating defender performance in the process and outcome of criminal defense representation. Early studies concentrated on the orientation and behavior of defender attorneys (Skolnick, 1967; Blumberg, 1967; Sudnow, 1965). More recent studies have utilized court records to examine the conviction and sentencing outcomes of defenders in representing their clients (Eckart and Stover, 1975; Lehman and Oaks, 1970).

In the following analysis of defender legal services, we go beyond the assertion that the bureaucratic nature of a defender system has consequences for its task performance. Discrete organizational features of a public defender system are related to its delivery of legal services. The performance (i.e., nonconviction) outcome of public defender attorneys in criminal defense representation is also examined.

Substantive Issues

Maintaining the distinction between defender representation in individual cases and defender activities to improve the indigent defendant's general situation, three disputed issues relevant to a public defender system's task performance are discussed. The Los Angeles data provides evidence relevant to the present controversies over whether:

1. defender attorneys are as successful as privately retained and assigned defense lawyers in criminal defense representation;
2. intensified administrative control (e.g., tighter supervision and procedural regulations) would improve defender representation in individual cases; and whether
3. a defender system has the ability to initiate litigation aimed at improving the general situation of the indigent accused.

Variables

The dependent variable is the task performance of a public defender organization. Five independent variable sets have been identified. These sets of variables are: organizational structure, operational procedures, clientele, relations with other justice agencies and the political environment. Each of these sets consist of several discrete variables. Organizational structure encompasses four relatively stable attributes: formal administrative hierarchy, task specializations, divisions of labor and institutional resources. Operational procedures include communication patterns, budgetary processes and internal organization relationships. Clientele characteristics consist of the race, age and prior criminality of indigent defendants represented by defender attorneys. Relations of the public defender organization with other justice agencies include probation, police and prosecution. In the political environment, the defender system's relations with Los Angeles County's legislative/executive body, the Board of Supervisors

and the legislative activities of individual defender attorneys are related to the organization's performance as well.

Data Base

Six months were spent studying the activities of the Los Angeles defender organization between December 1975 and June 1976. At that time, the agency had a staff of 389 defender attorneys, plus 54 investigators. The analysis of this organization's task performance is based on three major data sources: observation, interview² and statistical data on all felony dispositions in 1973.³ These sources were supplemented by a survey questionnaire⁴ distributed to all defender attorneys handling felony, misdemeanor and juvenile matters.

2. PRELIMINARY FINDINGS

Defense Representation in Individual Cases

The legal representation of privately retained defense lawyers is the most common performance standard against which the defense representation of defender attorneys is measured. In early studies of defender legal services, defender attorneys were criticized for failing to measure up to the performance standard of private defense attorneys (Skolnick, 1967; Blumberg, 1967; Sudnow, 1965). Public defender lawyers were characterized as unassertive and frequently ineffectual defense advocates. By and large these studies were based on observation and interview data. More recent studies of defender representation contend that defender lawyers obtain as good results for their clients as private

defense attorneys (Eckart and Stover, 1975). These studies have relied on court data pertaining to the disposition of cases. The preliminary findings presented here indicate that the performance picture is more complex than either the earlier or recent studies suggest.

In Los Angeles County the public defender system represented 54.6 percent of the felony defendants whose cases reached final disposition in 1973. The assigned attorneys represented 10.4 percent. They were appointed to represent indigent defendants for whom defender representation was disqualified because of conflicting interest.⁵ Privately retained defense lawyers represented 35 percent of the defendants. We will examine the nonconviction outcomes of these three attorney-types in six felony offense categories: homicide, assault, rape, robbery, theft and forgery and checks.

Clientele Characteristics: Prior Criminality. To compare the performances of the three attorney groups, it must be determined whether their clienteles are comparable. Several defendant characteristics including economic status, age, race and prior criminality are important, however, the present discussion considers only prior criminality. This defendant attribute has been singled out as the most important factor affecting the likelihood and severity of conviction (Greenwood et al., 1973; Oaks and Lehman, 1970). In some offense categories there exist statutory requirements that the mandatory minimal sentence be increased if a prior record exists.

Table 1 presents the mean average of prior criminality for defendants represented by defender, assigned and private defense lawyers respectively. This mean average score is based on a four-point ordinal

scale ranging in seriousness of prior record from none to prison detention.⁶ From Table 1 we learn that the prior records of defendants represented by private defense counsel are only slightly lower than those of other defendants charged with these offenses. The defendants represented by defender and assigned lawyers tend to have quite similar prior records, excluding rape. In the latter category, rape defendants represented by assigned counsels have significantly lower prior records (.8) than the rape defendants represented by public defenders (1.6) and privately retained attorneys (1.4).

To summarize, these results indicate that the prior criminality of defendants represented by the three attorney groups are substantially similar.

Nonconviction. Table 2 shows the overall nonconviction rates of defender, assigned and private lawyers. The nonconviction rate as a performance indicator for defense representation is based on the percentage of defendants for whom the respective attorney-types succeeded in either (1) having criminal charges against their clients dismissed or (2) securing an acquittal for them in trial proceedings.

The first readily discernable pattern in Table 2 is the consistently better nonconviction rate of assigned attorneys in all offense categories, excluding rape. The nonconviction rates for defender and privately retained attorneys are more varied. The defender attorneys achieved a higher nonconviction rate for their clients charged with assault than private defense lawyers while the latter were more successful than defender attorneys in representing defendants charged with property-related offenses.

By looking at the three attorney-types' acquittal and dismissal rates we obtain a more precise picture of their performances.

Table 1
 Average Prior Record of Defendants by Type
 of Defense Attorney (by mean)^{a,b}

Offense Category	Type of Defense Attorney		
	Defender	Assigned	Private
Homicide	1.4 (153)	1.6 (47)	1.8 (162)
Assault	1.5 (598)	1.5 (73)	1.2 (400)
Rape	1.6 (96)	.8 (22)	1.4 (81)
Robbery	1.8 (657)	1.7 (221)	1.7 (245)
Theft	1.7 (941)	1.5 (125)	1.3 (430)
Forgery & Checks	1.6 (588)	1.7 (39)	1.2 (243)

^aMean scores are based on four categories of prior criminality in which 0=no prior record; 1=minor; 2=major; 3=prison.

^bBase: The numbers in parentheses represent the base totals.

Table 2
 Nonconviction Rate by Type of Defense Attorney
 (in percent)^a

Offense Category	Type of Defense Attorney		
	Defender	Assigned	Private
Homicide	23.8 (244)	27.3 (88)	25.1 (255)
Assault	25.9 (993)	27.3 (128)	17.9 (672)
Rape	26.2 (149)	8.1 (37)	24.3 (136)
Robbery	13.3 (1128)	20.3 (374)	15.8 (444)
Theft	16.6 (1586)	30.6 (219)	20.9 (766)
Forgery & Checks	8.6 (962)	16.7 (84)	9.4 (392)

^aBase: The numbers in parentheses represent the base totals.

(a) Dismissal. Table 3 presents the dismissal rate of the three attorney groups. The dismissal rate is an indicator of the successful use of legal motions to have a charge dropped against a client. When a criminal case is dismissed, the defendant exits from the criminal justice process without a formal adjudication of the charges brought against him.

From the percentages shown in Table 3, we observe that the defender attorneys' dismissal rate is highest only in homicide. The assigned counsel tends to have the highest dismissal rate. This result is consistent with our understanding that the assigned attorneys normally represent clients whose fact situations are not as incriminating.⁷ The private defense lawyers' dismissal rates tend to fall in the middle with the defender attorneys having the lowest rates. A possible explanation for the low dismissal rates of the public defenders is the fact that the least experienced defender attorneys represent clients during the preliminary hearing stage where many dismissals occur.

(b) Acquittal. Table 4 presents the acquittal rate of the three attorney types. The acquittal rate represents an **adjudicated** determination of the criminal defendant's innocence. It is an important indicator of the attorneys' successful representation of their clients. Examination of the acquittal rate reveals no discernable pattern in the attorneys' performances. The assigned and defender attorneys equally share the distinction of having the best acquittal rates for the six offense categories. The assigned attorneys achieved the best acquittal rates in homicide, robbery and forgery and checks; the defender attorneys had the best rates for assault, rape and theft. The private defense

Table 3

Dismissal Rate by Type of Defense Attorney

(in percent)^a

Offense Category	Dismissal Rate by Attorney		
	Defender	Assigned	Private
Homicide	8.6 (244)	6.8 (88)	5.9 (255)
Assault	7.8 (993)	11 (128)	7.3 (672)
Rape	8 (149)	2.7 (37)	10 (136)
Robbery	5.1 (1128)	7.8 (374)	6.8 (444)
Theft	7 (1586)	18.7 (219)	11.7 (766)
Forgery & Checks	5 (962)	10.7 (84)	6.8 (392)

^aBase: The numbers in parentheses represent the base totals.

attorneys had the lowest acquittal rates for assault, theft and forgery and checks. These acquittal rates strongly suggest that an evaluation of defender representation may be more complex than the clear-cut-statements of previous defender studies indicate.

Conviction.

(a) Guilty Plea. A defendant's guilty plea brings a complete halt to the formally contested adjudication process. Consequently, it is an indicator both for performance outcome and how actively defense attorneys challenge their clients' criminal charges. Table 5 shows the guilty plea rate for the three types of attorneys. Briefly, the defender and private attorneys tend to enter guilty pleas on behalf of their clients more frequently than the assigned counsels. The defender attorneys plead their clients charged with more serious violent crimes less frequently than the private defense attorneys.

(b) Severity of Conviction. Table 6 presents the mean average for severity of conviction by type of attorney.⁸ This mean score is based on three subcategories for conviction: misdemeanor, lesser felony and original felony charge. A low score represents a less severe conviction. Table 6 shows no distinct relationship between severity of conviction and any attorney type. The assigned attorneys' previous performance edge all but disappears here. The defender attorneys achieve the best performance outcome in only one offense category, theft.

Defense Advocacy. Central to a comparison of criminal defense representation is an assessment of how actively the attorneys contest the charges brought against their clients. The trial rate and trial forum, as

Table 4

Acquittal Rate by Type of Defense Attorney

(in percent)^a

Offense Category	Acquittal Rate by Attorney		
	Defender	Assigned	Private
Homicide	24.8 (149)	28.1 (64)	32 (153)
Assault	44.1 (408)	41.2 (51)	32.6 (218)
Rape	39.7 (68)	10.5 (19)	33.3 (60)
Robbery	24.7 (372)	35.9 (131)	28.8 (139)
Theft	40.2 (378)	39.4 (66)	38.9 (180)
Forgery & Checks	31.8 (107)	50 (10)	26.7 (57)

^aBase: The numbers in parentheses represent the base totals.

Table 5
 Guilty Plea Rate by Type of Defense Attorney
 (in percent)^a

Offense Category	Guilty Plea Rate by Attorney		
	Defender	Assigned	Private
Homicide	30.3 (244)	20.5 (88)	34.1 (255)
Assault	51.2 (993)	49.2 (128)	60.3 (672)
Rape	46.3 (149)	45.9 (37)	46.3 (136)
Robbery	61.9 (1128)	57.2 (374)	61.9 (444)
Theft	69.2 (1586)	51.1 (219)	64.8 (766)
Forgery & Checks	83.8 (962)	77.4 (84)	79.1 (392)

^aBase totals are in parentheses.

Table 6

Average Severity of Conviction by Type of Defense Attorney

(by mean)^{a,b}

Offense Category	Severity of Conviction by Attorney		
	Defender	Assigned	Private
Homicide	2.5 (186)	2.7 (45)	2.5 (191)
Assault	2.6 (736)	2.3 (93)	2.5 (552)
Rape	2.3 (110)	2.3 (34)	2.3 (103)
Robbery	2.6 (978)	2.6 (298)	2.7 (374)
Theft	2.5 (1323)	2.6 (152)	2.7 (606)
Forgery & Checks	2.9 (879)	2.9 (70)	2.9 (355)

^aMean scores are based on three levels of conviction: 1=misdemeanor; 2=lesser felony; 3=felony as charged.

^bBase totals are in parentheses.

well as the guilty plea rate of the attorneys are important indicators for active defense advocacy.

(a) Trial Rate. Table 7 shows the trial rates of the defender, assigned and privately retained lawyers. These trial rates are an indicator of how actively the attorneys defend their clients against criminal charges. The defendants charged with forgery and check offenses are least frequently defended in trial proceedings by the three attorney groups. Once more, the assigned attorneys achieve the highest performance rates among the three attorney-types. The defender attorneys tend to go to trial less often than assigned lawyers, but slightly more often than privately retained attorneys. In five of the six offense categories, excluding forgery and checks, the trial rates of the privately retained lawyers are lower than either the assigned or defender attorneys.

Financial incentive may explain the difference in the attorney groups' trial rates. Private defense attorneys are usually hired on a fixed fee or retainer basis. Consequently, they have a strong financial incentive to handle their cases rapidly so that they can increase their case volumes and thereby their incomes. The assigned attorneys, on the other hand, are usually paid according to a general fee scale for each particular type of legal action. Under these circumstances, the longer their cases are litigated, the more the assigned attorneys are paid. The defender attorneys fall between assigned and private defense attorneys in trial rate.

Unlike either the assigned or private defense lawyers, public defenders receive no direct financial benefit from adopting a high or low trial rate strategy. A more plausible explanation for the defenders' trial rate is

the pressure arising partly from court administrative requirements that felony criminal cases be rapidly processed and partly from the defender agency's sheer workload volume.

(b) Trial Forum. In Los Angeles Superior Court, defense attorneys have their choice of three different trial forums: jury, court and submission on the transcript (SOT) trials. The principal distinction between these forums is one of trials conducted before a judge and jury panel and court trials conducted without a jury. The three trial forums involve legal proceedings of varying complexity and duration: (1) a jury trial constitutes the most involved proceeding; (2) a court trial involves a full adversary proceeding conducted in the absence of a jury but is frequently shorter in duration than a jury trial; (3) a submission on the transcript or SOT trial is an abbreviated adjudication before a trial judge. In a SOT trial, the judicial officer bases his determination of guilt or innocence primarily on a review of the earlier preliminary hearing transcript.

Table 8 shows the attorneys' preference (by frequency count) for and acquittal rates in the three trial forums.

Some Implications. Preliminary examination of the performance data shows the assigned counsel consistently performing better than either the deputy public defenders or privately retained lawyers. Further, it is inaccurate to claim that defender attorneys are as successful as privately retained or assigned lawyers. The data refute the defender attorneys' own assessment of their performance. In response to my survey question, fully 80 percent of the defender respondents answered that defender attorneys "get better results for their clients than either private or assigned attorneys."

Table 7

Trial Rate by Type of Defense Attorney

(in percent)^a

Offense Category	Trial Rate by Attorney		
	Defender	Assigned	Private
Homicide	61 (244)	72.7 (88)	60 (255)
Assault	37.5 (993)	39.8 (128)	32.4 (672)
Rape	45.6 (149)	51.4 (37)	44.1 (136)
Robbery	33 (1128)	35 (374)	31.3 (444)
Theft	23.8 (1586)	30.1 (219)	23.5 (766)
Forgery & Checks	11.1 (962)	11.9 (84)	14.5 (392)

^aBase totals are in parentheses.

On the other hand, the performance data show that in certain offense categories and proceedings the defender attorneys do better than either assigned or private defense lawyers. For instance, the public defender lawyers achieved the highest trial acquittal rates in assault, rape and theft. Their defense representation is better than critical studies of defender legal services have contended.

In sum, preliminary analysis of defense representation indicates a fluctuating performance picture. The data demonstrate that the actual performance of defender attorneys is considerably more differentiated than indicated by present conflicting assessments of defender representation.

Administrative Constraints on Defender Representation

Recently in Los Angeles the County Board of Supervisors authorized the County Administrative Office (CAO) to conduct a management audit study of the public defender office. The CAO study concluded that the administrative supervisors of the defender agency exercised inadequate controls over the actions of their attorneys. Further, the CAO report recommended that the defender agency develop and issue an operations manual to all defender personnel.

Bureaucratic Organization. The above incident aptly illustrates the fact that a public defender system is a bureaucratic organization staffed by appointed personnel and ultimately dependent on a sovereign political authority. A defender system has three organizational features common to all bureaucracies: (1) hierarchy, (2) differentiation or specialization and (3) qualification or competence (Heady, 1966). Preoccupation with legal professionalism has led defender attorneys to understate the effects which organizational factors have on their performance.

Table 8

Attorney Acquittal Rates by Type of Trial Forum

(in percent)^a

Offense Category	Jury			Court			SOT		
	Defender	Assigned	Private	Defender	Assigned	Private	Defender	Assigned	Private
Homicide	15.3 (72)	23.4 (47)	28.2 (78)	52.6 (38)	41.7 (12)	54.8 (42)	15.4 (39)	40 (5)	12.1 (33)
Assault	42.7 (103)	46.7 (15)	36.7 (60)	72.5 (142)	55.6 (9)	43.8 (64)	20.2 (163)	33.3 (27)	22.3 (94)
Rape	22.6 (31)	0 (9)	30 (30)	50 (18)	56.7 (3)	56.3 (16)	11.1 (9)	0 (7)	14.3 (14)
Robbery	21.6 (139)	38.5 (52)	21.3 (61)	58.2 (67)	47.8 (23)	63.3 (30)	13.9 (166)	28.6 (56)	16.7 (48)
Theft	39.13 (69)	28.6 (14)	33.3 (39)	50.5 (97)	58.8 (17)	51.2 (43)	35.8 (212)	34.3 (35)	35.7 (98)
Forgery & Checks	18.8 (16)	50 (2)	33.3 (9)	48.1 (27)	25 (4)	42.9 (14)	28.1 (64)	75 (4)	9.7 (34)

^aBase totals appear in parentheses.

Administrative Constraints. Administrative constraints on the organization's performance are generally those factors subsumed previously under the labels of two independent variable sets: organization structure and operational procedures.

(a) Organizational Structure: Hierachy. Hierachy is a generally accepted organization feature common to all bureaucracies. A constraint on the performance of defender attorneys stems from the hierarchical authority relationships within a public defender system. These attorneys tend to orient their actions in terms of the expectations (both actual and anticipated) of their supervisors. The trial attorneys are dependent on the defender administrators for their performance evaluations and appraisals for promotability. Consequently, the defender attorneys seek to perform in a manner which they anticipate will be rewarded.

In the Los Angeles defender organization, the trial attorneys orient their behavior to suit the expectations of middle-level administrators. Largely due to this agency's geographic dispersion, the top defender administrators are too remote from the trial deputies to directly monitor their activities.⁹ The middle-level administrators (i.e., branch head deputies and division chiefs) strongly endorse the idea that defender attorneys can do more for their clients over the long run through accommodation and cordial relations with their prosecutorial counterparts and the judicial officers.¹⁰ Their expectations are that the trial attorneys observe the standards of legal professionalism in representing their clients and avoid open conflicts with other actors in the criminal justice system. This tendency of middle management to favor stability and avoid conflict is typical of administrative behavior at this level of hierachy. Similar

behavior has been described for middle management in other organizations, for instance, bureau chiefs in the federal government (Seidman, 1970). Trial attorneys are generally rewarded for meeting their supervisors' expectations and penalized for rejecting them. An abrasive defender who calendared and actually tried a large percentage of his cases found his career advancement slowed. The account of this individual's experience in addition to several other stories of defenders being reassigned to minor courtrooms after acrimonious encounters with judges or prosecutors was sufficient to induce general compliance with the administrators' expectations.

Recognition that a defender attorney may face administrative reprisals for not adhering to the defense posture favored by his supervisors can potentially inhibit his exercise of initiative in pursuing ways to effectively protect clients' legal rights. These attorneys are understandably hesitant to adopt controversial defense postures. Given these circumstances, there is a potential conflict between the client's interest and the organization's interest.

(b) Operational Procedures. There is an absence of formal criteria for evaluating the Los Angeles public defender system's performance. As a result, it is not possible to objectively assess the organization's provision of legal services. The agency does not maintain records of trial attorneys' dispositions, trials and verdicts. It is, therefore, not possible for administrators to monitor how individual attorneys handle their assignments. In order to identify the defender attorneys who are having problems i.e., not moving their cases, avoiding all trial work, repeatedly pleading clients to bad plea bargains--administrators tend to rely on impressions gathered from judges, prosecutors and other trial attorneys.

The incompetent private lawyer is usually identified by his failure to survive economically in the practice of criminal law. Incompetency among defender attorneys can not be similarly identified. The economic survival factor is absent. With the absence of formal criteria, a defender organization has no objective base for identifying incompetent lawyers. Thus, the lack of formal evaluation criteria is a constraint on the organization's task performance.

This problem was discussed by the CAO study group in their report on the public defender office. The CAO group contended that the absence of formal evaluation criteria adversely affected the quality of defender representation and proved financially costly to county government. Consequently, their report contained the recommendation that the defender agency be required to develop and follow an operations manual. It was also recommended that the public defender more fully exercise his professional supervision over subordinate personnel when the best interests of the organization and clients would be served. The CAO report was ambiguous, however, in outlining the practical effects such a manual would have. Top administrators in the defender agency interpreted the CAO recommendation to mean that an operations manual would instruct defender supervisors to intervene in the trial attorneys' handling of their cases.

It is questionable whether an operations manual would be in the best interest of the organization and the client. While it may facilitate the political executive's administrative controlling of the public defender office, it could have adverse consequences for relations between the defender attorneys and their clients. A defender attorney frequently has to contend with clients who are suspicious of his link to a public bureaucracy.

Indigent defendants represented by defender attorneys have often expressed uncertainty about their lawyers' commitment to protecting their legal interests (Casper, 1971; Wilkerson, 1972). Studies of defendant attitudes toward their attorneys reveal that defendants represented by public defenders frequently confused their lawyers with the prosecutors. There is a tendency among defender clients to assume that a defender attorney is not accountable to them. Instead he is seen as doing what the prosecutor or judge wants him to do.

Additional administrative controls reducing a defender attorney's autonomy and freedom of action could substantially erode his credibility as a "real" defense attorney. To the extent that an operations manual would hamper the independence of a defender attorney to act on behalf of his clients, the argument could be made that indigent defendants represented by public defenders are being denied the full services of a defense attorney.

Some Implications. A public defender office must cope with administrative/management problems common to all bureaucracies. Defender administrators face the challenge of providing legal services which satisfy two different and (as we have seen) at times conflicting sets of performance standards. The defender organization's performance is evaluated, on one hand, by criteria based on organizational norms of efficiency, effectiveness, and productivity. On the other hand, the agency's performance is evaluated by criteria based on the legal profession's ethics and rules of conduct. Defense attorneys in private practice do not confront this dilemma.

In the Los Angeles defender office, the top administrators failed to recognize that the administration of a public defender system differs from that of a private law firm. This failure kept them from responding constructively to administrative constraints on defender performance. These

constraints at least partly explain why this agency's performance, despite its public resources, does not surpass the performance of private attorneys.

Activities to Improve Clientele's General Situation

In previous empirical studies of the modes of criminal defense representation, the base unit for comparison has been the performance outcome in individual cases. The possibility that a defender organization could and would pursue litigation to improve the general situation of indigent defendants has not been investigated. The experience of the Los Angeles defender organization confirms that considerable controversy can result when a defender agency attempts to influence criminal justice policies affecting the treatment of its clientele. The major variables affecting the agency's activities in this task performance area are: (1) the organization's relations with other justice agencies and (2) its relations with the political executive.

Legal Actions. The Los Angeles defender organization initiated three separate legal actions which attempted to improve the general situation of indigent defendants. These legal actions--as distinct from the various actions pursued by defenders in representing individual clients--had policy implications for the administration of criminal justice. Each litigation was undertaken to alter an existing practice in the criminal justice system which defender attorneys perceived as adversely affecting their clients in particular and criminal defendants in general.

(a) Housing of Juvenile Defendants. In 1974, the agency sought an injunction against the removal of juvenile defendants from an overcrowded juvenile housing facility to an adult male prison. This suit was brought

against another executive justice agency, the County Probation Department. The legal action of the defender organization was not successful in halting the transference of juvenile defendants. If the agency had succeeded in having this injunction sustained, all youthful defendants awaiting a disposition hearing would have been exempted from transference to any adult prison facility.

(b) Attorney-Client Correspondence. In a second lawsuit, the defender agency sought an injunction against the County Sheriff's Department. The defender organization sought to halt the deputy sheriffs' practice of reading all correspondence sent to jail inmates. The screened correspondence included all written communiques between attorneys and their clients. The defender agency won their suit. This successful legal action had the policy outcome of protecting all correspondence between detained defendants and their attorneys.

(c) Jury Selection Method. The Los Angeles defender office also initiated a class action suit on behalf of the people of Los Angeles County against the Superior Court judges. In this suit the agency sought to challenge the constitutionality of the jury selection method used in the county. The defender suit argued that the predominantly white racial composition of juries in the Los Angeles Central Court District was not representative of the large percentage of blacks in the residential pattern of the area. Although the agency lost its class action suit, the organization's sustained legal challenge to the jury selection method eventually led to the desired policy change. While the defender organization carried forward its lawsuit, the California legislature approved and passed into law a bill changing the method of jury selection in Los Angeles County. In large measure, the public

attention which became focused on the jury selection system as a consequence of the defender suit prompted this action by the state legislature.

Criticism. Looking at the experience of the Los Angeles agency, the three legal actions which the office initiated against other justice agencies resulted in major interorganizational conflicts. These conflicts, unlike conflictual situations which arise during defense representation, pitted organization against organization. In each instance, the dispute also extended beyond the agencies involved to become a matter of concern for the Board of Supervisors.

Individual board members publicly expressed criticism of the defender agency for initiating legal actions against other county justice agencies without prior consultation of the Board. In the immediate aftermath of the defender office's legal action against the County Probation Department, the supervisor directly responsible for overseeing the county's criminal justice agencies angrily accused the defender office of acting in clear violation of its mandate as an administrative unit of the county's criminal justice system.

Aftermath: Four Events. The events which followed in the wake of the agency's three lawsuits substantially confirm the vulnerability of a defender system to external pressure. Four significant events took place. First, the Board of Supervisors authorized the County Administrative Office to conduct an audit-management study of the public defender office. Second, the Chief Public Defender submitted a letter of retirement to the Board; effective January 1976. Third, the CAO study released in November 1975 contained praise for the performance of defender trial attorneys but serious criticism of the agency's management policies. Fourth, the Board appointed a new Chief Public Defender only after a protracted selection process.

Even prior to the Board's authorization of the CAO report, the Supervisors had withheld approval of any salary increase for the Chief Public Defender. This action was taken in order to indicate their displeasure with the way the head public defender was administering the agency. In this context, the Board's authorization of the CAO investigation can be interpreted as a deliberate effort to obtain enough information to justify reprimanding the activities and policies of the defender organization. There was general consensus among the defender attorneys that the Supervisors sought the resignation and/or retirement of the head administrator in retaliation for the controversies stirred up by the public defender agency.

The job of Chief Public Defender is an appointive position. When the former Chief announced his intention to retire, he also expressed his concern that the next appointee be chosen from among eligible candidates inside the Los Angeles defender organization. The Board of Supervisors declined to implement this recommendation. Instead, they announced their intent to appoint someone from outside to head the agency. They eventually selected a candidate from a northern California defender organization. This candidate following an initial acceptance of the position later requested that his appointment be withdrawn for personal reasons. After several months of additional deliberation, the Board finally announced their selection of a candidate from inside the Los Angeles defender agency.

Some Implications. The events which followed the defender agency's lawsuits bring into sharper focus the fundamental dilemma underlying the defender mode of representation for indigent defendants. As one of the executive agencies involved in the criminal justice system, the defender organization inevitably operates at cross purpose to the goals of the other agencies. These agencies, e.g., prosecution, police, and probation are

faced with the implementation of criminal laws. They are agencies executing tasks which further the curtailment of crime and maintenance of the social order. By contrast, the defender organization is an executive agency which has the responsibility for ensuring that indigent defendants are properly defended and their legal rights safeguarded. In effect, the defender agency hampers the efforts of other justice organizations to execute their functions.

The concept of coalignment (Thompson, 1967) is useful in explaining the organizational dilemma of a defender system. While the process of exchange and coalition have often been emphasized in analyses of relations among individual members in an organization, coalignment describes the processes of exchange that occur between organizations. In short, coalignment emphasizes the coalitional nature of complex organizations.

As organizations strive to reduce uncertainty in their external environments, they frequently seek to coalign themselves with other organizations. These relationships are based on exchange transactions. Through coalignment, complex organizations are better able to secure scarce resources in exchange for providing some function and/or service which other organizations deem valuable. In this instance, the public defender system is coaligned with other executive justice agencies. These various organizations are linked by their status as auxiliary units of the criminal justice system and as subordinate governmental organizations.

Coalignment offers an explanation for a defender system's conflicting relationships with other justice agencies and its political executive. Looking at the task performance area of defender representation in criminal proceedings, a public defender system performs a task which contributes to the effective administration of criminal justice. The organization's representation of individual clients is viewed as an efficient, economical mode of

meeting the indigent person's mandated right to counsel in criminal proceedings. This is a service which other justice agencies and the political executive recognize as valuable. In exchange for providing defense representation to indigent defendants, a defender organization's survival is assured. Increases in staffing and budgeting levels may occur and intangible rewards such as professional prestige may accrue to organization members.

In spite of the valued task performed by a defender system, tensions between the coaligned organizations seem inevitable. When a defender organization is effective in representing the interests of its clients, the agency may be perceived as an obstruction frustrating the goals of controlling crime and maintaining social order. In carrying out the task of defending indigent persons, defender attorneys must challenge the appropriateness of actions taken by members of other executive agencies (e.g., police arrest reports, prosecution charges, probation recommendations).

A defender system's activities to improve its clientele's general situation exacerbate tensions latent in the organization's relations with other justice agencies. The opposition which develops against defender efforts to extend the scope of its legal services (as shown in L.A.) represents the agency's failure to renegotiate the terms of the exchange agreements which exist among the coaligned organizations. In this task performance area a defender agency seeks services, i.e., changes in criminal justice policies, from its coaligned organizations. In exchange for these services, a defender agency offers reforms in the administration of criminal justice. The opposition to such attempts to influence policies affecting the treatment of its clientele attests to the coaligned organizations' rejection of the public defender agency's exchange proposal.

The National Advisory Commission on Criminal Justice Standards and Goals in their 1973 report recognized this organizational dilemma of the public defender system.

The public defender's dilemma is that the more he fulfills his duty to represent the indigent--and usually unpopular--accused with the maximum possible zeal, vigor and professional skill, the more public irritation (and even wrath) he may engender, and the greater the danger that pressure may mount to curb his effectiveness.¹¹

The Commission suggested that the defender system actively undertake a program to educate the public as to the nature and importance of its function within the criminal justice system. Their recommendation seems woefully inadequate. Given the public's genuine and continuing concern with crime control, protecting the legal rights of poor criminal defendants has not been an issue which inspires or sustains broad public support. The past furor generated by the Warren Supreme Court's efforts to extend constitutional protection to the criminal defendant's exercise of certain procedural rights plus recent public comments of Chief Justice Berger confirm this point.

3. SUMMARY AND CONCLUSIONS

Confronted with a potentially hostile environment, the public defender system lacks strong, reciprocal relations with its coaligned justice organizations. It occupies a relatively unusual and unenviable bureaucratic position. The defender agency performs an executive task which tends to obstruct

other executive justice agencies in the performance of their tasks. In spite of this organizational dilemma, the public defender system is a viable mode of providing legal representation to poor criminal defendants.

As this study has shown, the outcome for felony defendants represented by public defender attorneys is not seriously affected by their mode of defense. Further, we have found the public defender system capable of initiating and sustaining lengthy legal actions aimed at improving the indigent accused's general situation in the criminal justice system. In this second task performance area, the public defender system enjoys a distinct advantage over private defense attorneys. The resources of such an organization could enable public defender attorneys to sustain lengthy and potentially costly legal actions. Few retained defense attorneys, and even fewer assigned counsels, could afford to undertake similar legal actions. Defender lawyers have the additional advantage of occupying a strategic position from which they can identify problems and suggest reforms in the administration of criminal justice.

Finally, this study offers an empirical base for arguing that it is necessary to reduce a public defender system's vulnerability to external pressure. Changes can be instituted in the organizational coalignment of the defender agency. It need not be administratively grouped with other executive justice organizations. In some instances where an organization's task controls or tends to obstruct the performance of other governmental functions, institutional safeguards protect the agencies' independence against external pressure. Examples are the judiciary and the federal General Accounting Office.

The independence of the judiciary resulted from the recognition that judicial neutrality and impartiality could not be sustained in the face

of political pressure (Vile, 1967). As originally formulated, the separation of powers doctrine envisaged a two-fold government of legislature and executive. It was only later that the judiciary emerged as the third branch of government. Similarly, in the interest of protecting the General Accounting Office (GAO) from political pressure, several legal safeguards have been granted to the agency and its administrative head, the comptroller general (Brown, 1970). The GAO is authorized to conduct studies of executive programs at its own initiative. Regarded as the administrative watchdog for the legislature, its organizational jurisdiction lies between the executive and the legislature. A public defender system's position could be shifted closer to these administratively more independent organizations. Consideration of the possible constitutional ramifications of doing so, however, is beyond the scope of this discussion.

NOTES

¹A major exception is the study by J.G. Taylor et al., 1972.

A Comparison of Counsel for Felony Defendants. Arlington, Va.: Institute for Defense Analysis.

²I conducted 44 formal, semi-structured interviews with trial attorneys (23), investigators (5) and administrators (16).

³Data Source: California Bureau of Criminal Statistics.

⁴Questionnaire return rate was 60%.

⁵In Los Angeles County, the assigned attorneys are appointed only in multiple defendant cases where a deputy public defender is already representing one client or in cases where a defender is already representing the defendant in some other matter before the court.

⁶These categories are used by the California Bureau of Criminal Statistics.

⁷Reported in Greenwood (1973) at 54.

⁸These categories for level of conviction are used by the California Bureau of Criminal Statistics.

⁹The Los Angeles agency provides defender services from 37 locations in the county.

¹⁰There was only one middle level administrator who expressed opposition to this idea.

¹¹National Advisory Commission on Criminal Justice Standards and Goals, 1973. Courts. Washington D.C.: U.S. Government Printing Office at 272.

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