

FINAL REPORT

*JOINT INTERIM AD HOC
STUDY COMMITTEE ON
INDIGENT DEFENSE*

February 1996

Arizona State Legislature
FINAL REPORT

**Joint Interim Ad Hoc Study Committee
on Indigent Defense**

• INTRODUCTION •

Establishment:

Following the Forty-second Legislature, First Regular Session, President Greene and Speaker Killian created a Joint Interim Ad Hoc Study Committee on Indigent Defense to study indigent defense representation and prosecution in capital cases, including consideration of a statewide death penalty prosecution and indigent defense office. The Committee was also directed to examine the costs and efficiency of indigent defense cases and make recommendations for improvements in the operation and funding of indigent defense representation.

Membership:

The Committee was comprised of the following eight members:

Senator Patricia Noland, Co-chair	Representative Tom Smith, Co-chair
Senator Marc Spitzer	Representative John Verkamp
Senator A.V. "Bill" Hardt	Representative Jack A. Brown

The Committee was staffed by the following Legislative Research Analysts:

Joni Hoffman, Senate Judiciary Committee

Dominica Minore, House of Representatives Judiciary Committee

Debbie Mosbacher, House of Representatives, Assistant to Judiciary Committee

Meeting:

The Committee met on January 3, 1996.

• COMMITTEE RECOMMENDATION •

The Committee did not produce any formal recommendations. The Co-chairmen expressed interest in a statewide capital defense office, a review of public defender caseloads and financing, and a funding mechanism for public defense consisting of city, county and state contributions.

ARIZONA STATE LEGISLATURE

MINUTES OF THE JOINT INTERIM STUDY COMMITTEE ON INDIGENT DEFENSE

Wednesday, January 3, 1996 - 9:30 a.m.
House Hearing Room 3

RECEIVED
CHIEF CLERK'S OFFICE

JAN 09 1996

Members Present

Senator Noland, Co-Chair
Senator Hardt
Senator Spitzer
Representative Smith, Co-Chair
Representative Brown

Members Absent

Representative Verkamp

The meeting was called to order at 9:35 a.m. by Co-chair Smith and attendance was noted.

The Committee's charge was reviewed by House Assistant Research Analyst Debra Mosbacher who explained the Joint Interim Study Committee on Indigent Defense had been charged with the following issues:

1. Studying indigent defense representation and prosecution in capital cases, including consideration of a statewide death penalty prosecution and indigent defense office.
2. Studying the cost and efficiency of indigent defense cases.
3. Making recommendations for improvements in the operation and funding of indigent defense representation.

Jerry Orrick, Executive Director, County Supervisors' Association, distributed a handout (filed with the original minutes) and emphasized that the issue of indigent defense had become an albatross around the neck of county government. He focused on the financial aspect of the matter, stating at best it was viewed by county boards of supervisors as a classic example of "unfunded mandates," since the total financial responsibility was assigned to counties with no authority to control. Virtually all decisions that affect indigent defense costs are made by others than county boards of supervisors. For example, the Legislature decides what constitutes an illegal act and the penalties for violating that act. The State and local law enforcement agencies decide who is to be arrested. The prosecutors and grand juries decide who is to be charged and who goes to trial. The judges decide who gets free county-paid attorneys to defend them.

Mr. Orrick explained the role of the Board of Supervisors is limited to two decisions:

1. Whether to use the county public defense office or provide for contract private counsel.

Mr. Orrick said most counties are finding that the public defender is the most cost-effective. It is still necessary for them to use private counsel because of workload peaks and conflict of interest issues.

2. The second decision the county board of supervisors must make is where to get the money to pay for those runaway costs.

Mr. Orrick explained there is a very inadequate system for eligibility determination for the use of public defenders. The courts are basically accepting the statement of individuals that they are indigent when perhaps they are not. The counties are concerned that inadequate efforts are made by the courts to try to assign cost reimbursement responsibilities to those who receive counsel. He said some courts are beginning to address that area and he cited Yuma County as an example.

Mr. Orrick stated the counties are frustrated because a celebrated murder case, for example, with a cost of \$100,000 to \$500,000, would bankrupt a small county. He said the counties are also concerned over the potential conflict of interest they face in trying to fund both the prosecutorial side and the defense side. They must decide how much the prosecution is paid and how much the defense is paid and that places them in a conflict of interest situation.

Most frustrating, Mr. Orrick continued, is that costs are increasing so rapidly - much more than the county sources of revenue. He then directed attention to the handout, explaining the percentage of increase in costs over the past ten years. Statewide indigent defense costs have increased 292 percent. In Cochise County indigent defense costs increased by 570 percent and in Navajo County by 541 percent. He stated the revenue growth for all counties was only 94 percent for that ten-year period. The indigent defense costs are outgrowing the revenue. The county attorneys, who represent the prosecutorial side, have had increases of 120 percent during that time.

Senator Noland commented that the figures Mr. Orrick was discussing applied only to the county funded options. She thought they did not apply to other county attorney funding, such as RICO (Racketeering Influenced and Corrupt Organizations) and GITEM (Gang Intelligence and Team Enforcement Mission) funding, etc. Mr. Orrick responded, "That is correct." He explained they had tried to keep the figures as "pure" as possible but because of the way some budgets were put together it was sometimes difficult. Senator Noland emphasized it was important to be sure the Committee was comparing "apples to apples" and explained there are many other funds which go into county prosecution that are not reflected in these figures. Mr. Orrick stated he was trying to establish the relationship between the growth in indigent defense costs and the growth in county revenue sources. He said when the costs of all elements of the criminal justice system are compared with the property tax revenue they consume 70 percent of the entire county property tax collections, and by the year 2001 criminal justice costs will exceed total county property tax collections statewide.

Representative Smith commented that many times it was not possible to control the income. He asked Mr. Orrick to outline the primary reasons for increased costs. Mr. Orrick responded that number one was the general increase in crime and then the increase in rates paid to counsel. Representative Smith mentioned it appears that in some cases there is not a good system to identify those who are able to pay for counsel and that not much effort was put into the area of collections.

He thought perhaps more effort should be made in trying to recoup some of the costs. Mr. Orrick agreed that was an important point but said the boards of supervisors, which are responsible for providing the money, do not have the authority to determine eligibility or to instigate collection procedures. He said that a statewide public defender system had been discussed and he felt it would go a long way in helping to solve the problem. Also needed is a better system of eligibility determination.

Senator Noland asked why increases in law enforcement costs at the county level had not been considered. Mr. Orrick responded that the only reason for not including that figure was that it did not fit their definition of criminal justice, but was more on the law enforcement side of the issue. He offered to obtain those figures if the Committee so desired.

Senator Noland commented when there is more law enforcement funding and more arrests, it impacts the rest of the system. She urged that the city end of the system be looked at since the counties are picking up the tab for the cities for their increase in law enforcement, in arrests and in criminal prosecution. She said the whole picture needed to be looked at, that there is more to the issue than what the Committee was seeing here. She explained four different entities had been given tremendous amounts by the federal government for law enforcement and everyone was in favor of that, but in looking at the back end of the system it had caused a reaction. She asked Mr. Orrick to provide figures on law enforcement at the county level and possibly some figures from the city level could be obtained.

Mr. Orrick stated he had considered including figures showing the federal government impact on the system. He said Phoenix received many more new officers as a result of a federal grant and that also happened in other cities around the State. A lot of money had been poured into the system at the law enforcement end and the counties have had to absorb the costs of all the additional people arrested. He pointed out that every time the Legislature imposes a new sanction it increases the costs on the system.

Nancy Swetnam, Legislative Officer, Arizona Supreme Court, referred to a summary report of "Indigent Defense - Cases, Studies, Reports, Legislation and Projects," which had been previously distributed to members, and offered to answer questions. She then introduced those who would be presenting testimony during the remainder of the meeting.

Michael Kimerer, President, Arizona State Bar, representing the Arizona Supreme Court, explained he had for the past five years sat on the Arizona Judicial Council and was given the task of looking into indigent representation. He stated this issue is of tremendous concern to the court system. He referred to the summary presented to the Committee and pointed out that the process starts with the Supreme Court ruling in the Joe U. Smith case that basically there would be ineffective representation if caseloads of public defenders are too large. A series of studies have been made by the court over the years to consider ways of solving the problem. Since 1984 when the Joe U. Smith ruling came down the problem has gotten worse. Many factors have contributed to that. When a police officer is added to the streets there are more arrests, with more cases in the system needing more public defenders and more prosecutors.

Mr. Kimerer emphasized the need to keep a balance in the system. When the system is out of balance it is perceived by the public as being unfair and unjust. It has reached the point where the public does not have a great deal of confidence in the criminal justice system. He stated people realize those who have committed crimes need to be punished and need to be locked up, but they still want them treated fairly. To be treated fairly they have a constitutional right to have proper and effective representation. The families and friends of those arrested also need to be considered.

Mr. Kimerer pointed out that public defenders are overburdened and overworked but that does not mean they are not good public defenders. The Supreme Court, over the last five years, has looked into some of the problems and considered what could be done to change the situation and to assure there is balance in the system. One recommendation was to have some kind of standards for case-loads. He explained that was not an easy thing to define since one capital case could be as time consuming as 30 cases of a much lesser nature. Another recommendation, coming out of all the committee reports, was that there needed to be a statewide public defenders office, with some coordination and oversight. He said there are not enough statistics to address some of the problems and that is something they have tried to accumulate.

Mr. Kimerer stated he had been put in charge of the death penalty trial issue and had worked on that for a year. Legislation they prepared went down in defeat last year. It had come out of the Supreme Court's concern that one of the things clogging up the justice systems is the death penalty cases. Because the defendants did not have effective representation, cases are coming back over and over again and staying in the system for a great length of time. He explained a statewide trial group, which would be a prototype for a statewide public defenders office, would have experienced staff and would be cost effective in the long run. Another thing they had looked at, which had not been very successful, was to find resources for money. He felt many people in the system can afford private counsel but still end up in the public system.

Referring to the Yuma program, Mr. Kimerer said it had been somewhat successful but the competing interest they run into is the court's speedy trial problems. Once a person is charged and moved into the system things start moving very rapidly but a thorough investigation of a person's ability to pay slows down the system and it becomes more cumbersome. He stressed that mandatory sentencing has had a tremendous impact on the system.

Mr. Kimerer said one of the things which will impact the system in the future is the lack of federal funding even in capital representation projects. The Supreme Court has obtained outside funding for hiring three law clerks who can monitor cases. He stated that standards need to be set. Arizona has been criticized for being behind in indigent representation and the State Bar was criticized for not being involved. Since then a task force has been created to look at indigent representation and set standards. Money is not the answer and many things can be done to improve the system without spending money.

Senator Noland mentioned she had worked with Mr. Kimerer and Mr. Johns and throughout their discussions the problem of indigent representation had come up. She felt if resources were put at

the front end and the defendant had effective counsel, it would not be necessary to spend the funds at the back end. She asked if discussions had been held regarding better funding at the front end so people could have better counsel.

Mr. Kimerer responded that had been discussed and the amount of funding the State Bar could provide would be so limited that at the front end it would have no impact at all. Senator Noland stated that tremendous amounts are paid at the State level with the post-conviction release and the constant appeals. She reiterated that if money was spent at the front end for effective counsel, millions of dollars could be saved down the road. Effective counsel is the key. It will take the Bar Association to look at what happens when ineffective counsel is alleged. She said someone needs to be responsible and if someone alleges ineffective counsel there should be a Bar complaint and those attorneys should be sanctioned. There are no such sanctions and ineffective counsel is used as a means for constant appeals. She emphasized there must be accountability from all sides in a system that is out of control. She asked that the Bar work on this problem so there would be no one purposely giving ineffective counseling so there could be an appeal.

Mr. Kimerer stated that issue is being addressed. In terms of disciplining attorneys, that is a concern of the State Bar and they will be looking at it.

Judge Jeffrey Coker, Presiding Superior Court Judge, Coconino County, stated he was here to present the perspective of rural Arizona. He said he was a Judge for two years before he had a capital murder case but things have changed very dramatically. At the present time he has three capital cases and each of their four Judges has at least one. Criminal case filings have increased 74 percent and they are swamped. Some of the issues which have come up include:

1. **Collection Efforts**. This is a very important part of the process. He said they had received money from the County to help collect some fees and fines but because their data was so poor they were still entering things on cards. They now have computers but have no data to compare their new information with. He emphasized there is money "out there" that could be collected. They do not have time to go through financial statements of everyone who comes before the Judges. This is clearly an administrative job. The counties are in such a jam they are unable to provide personnel for that function.

2. **Increased Law Enforcement**. He said Flagstaff had received three more law enforcement officers through federal grants and that will add tremendously to their burden. He doubts the ability of four Judges to handle the new onslaught of cases.

Judge Coker presented an analogy of a situation when one gear in a machine is overextended and drives all the other gears at a much faster speed than they are designed to go. The two weak links at this point are the judiciary and the public defenders office. He said the formula of one judge for 30,000 people was established in 1912. Now the courts are being faced with greatly increased case-loads. Along with that comes work for the public defender's office, which has not grown in five years. Presently they have a double murder case and have only one person with the capacity to try that case.

Judge Coker realized there is the public sentiment that criminals break the law, do not work, do not pay taxes, etc., and people ask why money should be spent on them. He pointed out that criminals create victims and if criminals are not dealt with in an effective way they will be back on the streets and that generates a lack of respect for the system. The defendants consider the whole thing a game and start writing letters immediately, saying their public defender has not been to see them in a month, claiming ineffective representation and bringing up the appeal issue. When an appeal comes back several years later all the witnesses are gone, etc., and they cannot prove the case.

Judge Coker stressed the importance of having the confidence of the people. The people need to feel that the public defenders are doing a good job. He commented that public defenders are hired young, are burned out quickly and are not paid very much. He emphasized they are human beings and it is not possible to ask any more of them. He said it was not just a matter of money but also the matter of fairness and justice. He stated there are different levels of justice in different counties, depending on the funds available for the public defenders office. He asked why a victim in one county could receive justice but not in another county.

Responding to a concern expressed previously by Senator Noland, Judge Coker agreed that something should be done about attorneys who are ineffective. He said the judges are extremely aware of that issue. In recent years he removed lawyers from cases when they were not competent to try those cases. He explained cases where attorneys are constantly in court and then are assigned a new case, with no time to prepare for that case. There are no bad people in the system - they are simply overburdened and struggling.

Judge Coker pointed out the court, the prosecutor and the public defenders all operate on a team system in Coconino County. He felt it was his duty to speak up when any one of those aspects is weakened which is the reason he was testifying today.

Senator Noland asked the average cost of a capital murder case for the public defenders office. Judge Coker did not know the average but cited one case in his County would cost in excess of \$500,000. Senator Noland inquired whether, because of the number or other outside influences, it was necessary for Judge Coker to appoint defense counsel outside the public defender's office. Judge Coker responded affirmatively and said they were fortunate in having a group of three attorneys (separate from one another) and when there is a conflict they refer the case to one of the three attorneys. They used to hire private attorneys on a random basis but that is not done now. The three attorneys are on contract with the County.

Senator Noland asked if there was a set amount that those attorneys are paid per hour for regular criminal cases or for capital defense. Judge Coker said, "No." The County negotiates with the attorneys who agree, for a set price, to take all the conflict cases. This works very well unless there is a very high profile conflict case, which could break those attorneys who would then refuse to continue. He said fortunately they had been able to keep the high profile cases within the public defender's office. He thought in very small counties the conflict attorneys are hired on a rotating basis.

Judge Coker related that within the past two months they have had eight very, very substantial drug bust cases. With mandatory sentencing, those defendants have nothing to lose by just keeping the case in the system and "twisting" it every chance they get. If the County does not have an equally street smart attorney on the other side, the attorney falls into the trap of doing exactly what the defendant wants.

Senator Noland commented she had been trying to find some areas where they might be able to help in funding on those eight large drug cases and the most recent capital cases. She asked how many of those cases had been referred to the County by the Department of Public Safety (DPS), the Flagstaff Police Department (P.D.) and the Sheriff's Office.

Judge Coker answered that most of the drug cases coming to them off the highway are DPS cases. He explained they have a task force in Flagstaff made up of a multi agency group and it is difficult to say which cases are DPS or Flagstaff P.D. The double murder was from the Sheriff's Department. He said Flagstaff P.D. carries its weight as far as referrals go. He said the longer the Legislature is in session and the more laws it passes making things illegal, the more cases they have. They are now doing more with the same amount of money.

Judge Coker said they had recognized they were getting further and further behind and the County brought in a national expert to completely revamp their criminal case processing system and they are now jamming cases through the system faster than before. They are now identifying cases which need to be tried earlier and those do not languish in the jails. He emphasized that is another area which should be considered - how much money is spent on people in prisons because they were not tried effectively the first time. More and more money is being spent on appeals. He said in Coconino County their public defenders could no longer keep up with them and they will go to the Board of Supervisors to try to get help.

Representative Smith asked if the public defenders were hired on an annual salary basis. Judge Coker responded their public defenders' office has a budget which they submit to the Board of Supervisors, letting the Board know they need a certain number of lawyers, clerks, etc. In very small counties there is not enough business to have a full time public defenders' office so they appoint, on a rotating basis, lawyers who volunteer to do the work. They are generally paid \$40 per hour for work out of court and \$50 per hour in court.

Representative Smith asked a question concerning the contract attorneys and Judge Coker answered that those attorneys are "playing the lottery" and if they get a high profile case they will go down. What normally happens is that even those three attorneys will be "burned out" and every year a new attorney comes into that three-person group. Representative Smith, referring to the capital cases, said some of the lawyers lack the experience necessary to present a good defense and once the trial is completed there are continual appeals. If more experienced people could handle capital cases it would eliminate some of the appeals.

Representative Smith continued that he noted Judge Coker had stated a better job could be done in collecting money if there were people in the system to determine those who could pay and then have

personnel to follow through with the collections. Judge Coker said, "That is correct." He pointed out that a private attorney, in a marijuana possession case, would want possibly \$5,000 to \$10,000 "up front" since under their rule, once an attorney makes an appearance in a criminal case, it is not possible for him to pull out of the case, no matter how long it takes. He said if the Yuma plan was adopted statewide and properly funded there would be some very substantial recovery.

Senator Noland asked if there could not be some kind of modification of the court rules allowing a different person to represent the defendant through the initial appearance or arraignment, etc. and then have the defense counsel get involved with some kind of contractual agreement with the defendant. Judge Coker responded that had been considered but there needed to be the same representation through the case. It would be extremely difficult for an attorney to come into the case midway.

Senator Hardt asked if all the counties have private attorneys they can utilize. Judge Coker thought that was a common practice.

Christopher Johns, Indigent Defense Committee, State Bar, and Training Director Maricopa County Public Defense Office, explained he is still working as a public defender and still has cases, which makes him very familiar with the issues being discussed. He said there is now mandatory sentencing and more laws to deal with problems, legitimately so, but which have had an impact on the system. There has also been a huge influx of money in the prosecutor's office, which is unaccounted for in a sense. He explained that grants last year from the federal crime bill amounted to \$430 million, which went to prosecution for certain types of court processing. They also get money from RICO and from drug related funds, so their budgets really outstrip what they get from the County Board of Supervisors. He stated Phoenix received a \$1.9 million grant to get 26 more police officers and that will have an impact.

Mr. Johns emphasized it is a growing problem. There is a new group of teenagers coming of age in the next four or five years and this may cause an even larger crime spree. The State is in the crisis stage and it will only get worse. He pointed out from his perspective it costs more in the long run not to do the right thing the first time. He stressed the need for street-smart attorneys since people who have been in prison before manipulate the system. Experienced lawyers know how to deal with those kinds of defendants, but unfortunately, because of budget constraints it is necessary to hire young, inexperienced attorneys.

Mr. Johns reiterated that the public defenders are not bad people who are purposely trying to put errors in the cases. That is unethical and the Bar should take action. The public defenders are just overworked and underpaid. He pointed out that in DNA cases the Federal Bureau of Investigation provides services to the prosecution free of charge. The public defenders' offices must pay for those services out of their budgets and the cost could run as high as \$10,000. He said public defenders' offices were not able to control their caseloads as private attorneys can.

In terms of funding, Mr. Johns explained that more than 40 states have some type of statewide funding. Twenty-six states have a statewide system and that is clearly the trend. He related that

Louisiana, with a fairly poor indigent defense system, has put together a statewide oversight system. Nebraska, where public defenders are elected, had a bill to obtain tax money for that office. Arizona is lagging behind many other states.

Mr. Johns referred to collecting payments and stressed that is a very important element. The public defenders' offices do support recoupment, but there is a relatively small group of people who can pay anything. It will be possible to collect some money from the "working poor" or the notch group, but most indigent clients will not pay. He explained in Maricopa County approximately 70 percent of the pretrial people are in custody. When a person is in jail, he is not working and will not be able to afford a lawyer. Recoupment will not be the answer in the long run.

Representative Smith asked the average caseload of the public defenders. Mr. Johns responded that "caseload" does not tell very much. Some attorneys in his office have between 35 and 50 cases at one time. Some cases are "active" or before trial and require more work. He pointed out that "caseload" is different from "workload." Representative Smith then asked the range of salary. Mr. Johns explained that every county is different. The starting salary in Maricopa County is \$35,700 and goes to \$80,000 or \$90,000 for senior counsels.

Senator Hardt commented it would cost about as much money to find out who can pay as could be collected. He felt it was a "losing proposition." Mr. Johns said that was mostly correct but he believed a good system could get some money from the notch group. There needs to be personnel to look at the defendants' tax records, find out whether or not they were on Arizona Health Care Cost Containment (AHCCCS), whether or not they had jobs, etc. That takes a lot of time to verify. It would cost a lot and would not be the total answer.

Senator Noland said she had been working with various groups to find ways to move the system along. She felt people are trying to work together but when it comes to money no one wants to see it taken from them and given to someone else. She said she had some definite ideas that it cannot be all State funded. Capital defense is the "killer" for small counties and she felt the Legislature has a responsibility to look at what it had generated through DPS and increased enforcement. Also the cities should not have a free ride in this system. It should be a shared responsibility. The Legislature needs to look at the following issues:

1. What it has funded.
2. Where it increased and who it put additional loads on.
3. Where there should be shared responsibility.

Ron Morriss, Chairman, Santa Cruz County Board of Supervisors, said he has had first hand experience in budgeting for indigent defense, since this is his twelfth year on the Board of Supervisors. In Santa Cruz County, indigent defense costs have increased six or seven times since 1983. He distributed a handout (filed with the original minutes), which shows that growth. Santa Cruz County does not have a public defender's office. The presiding judge arranges to provide indigent defense from a list of lawyers from which cases are rotated. Those lawyers are paid \$55 per hour.

Mr. Morriss stated that most of the counties in Arizona are at their constitutional levy limit or at their expenditure limit. Santa Cruz County is at its expenditure limit and has been for a number of years. In the border counties in Arizona there is no component in the formula for increasing the levy limit or expenditure limit that takes into consideration the floating border population and the increase in crime because of the floating population. For that reason, property tax funding has about reached its limit for funding indigent defense. He said one big trial in the border counties could devastate them. Every year when they budget they hope there will be no expensive cases. If that happens they will be back to the Legislature because there would be no other way out. He urged the Committee's positive consideration of that significant problem.

Representative Smith recognized the unique problems of the border counties. He thought Santa Cruz County had a population of 35,000 with 250,000 living right across the border. Mr. Morriss agreed and added that they were only separated by a fence.

Senator Noland related she had worked with Santa Cruz County on the problems it was having with mandatory sentencing and with marijuana. Many juveniles were being paid to carry bags across the border and 12- and 13-year-olds were having to be kept in the facilities for very long periods of time. There is now a new juvenile facility. Mr. Morriss commented that 70 percent of the jail population are Mexican nationals and a high percentage of those are there because of drug cases.

Senator Noland asked if the City of Nogales has a city jail. Mr. Morriss replied that it did have until four or five years ago but it became unusable. Santa Cruz County now takes the city prisoners into the county jail and they are compensated on a per diem basis. Senator Noland remarked that being paid on a per capita per day basis did not take into consideration construction costs, etc. Mr. Morriss said, "That is correct."

Senator Hardt referred to Mr. Morriss' statement that the Judge appoints the lawyers, who are paid \$55 per hour. He asked if lawyers could refuse. Mr. Morriss felt that the judge would not force a lawyer to take a case.

Joe Carter, County Manager, Graham County, stated he wanted to disagree with some of the folks who had presented information relative to the "front end" issue of whether a person is eligible for indigent defense. In trying to deal with society they have accepted the fact that if a person stands before a Judge and declares that he makes \$1,000 per month and has \$1,000 in expenses, he is therefore indigent. Having reviewed some cases in the Graham County area, he found that federal workers, Phelps Dodge workers, State and local government workers and those who are extremely indigent, are all getting the same "free ride" rather than having their individual resources assessed up front. He thought approximately 10 - 15 percent of the people would be able to bear a portion of their costs. He hoped this Committee would take a serious look at the front end process as to whether or not a person is truly indigent.

Mr. Carter indicated it was time to look at the shared costs that had been created by a number of State laws. He said Graham County two years ago had an indigent defense budget of \$120,000 and they contracted with attorneys to provide services on a part-time basis. After the Judge, the County

Attorney and the Justices of the Peace met with the Board, that amount was increased to \$180,000, plus another \$20,000 which was set aside for potential conflict cases. Within five months of that budget year, the entire \$200,000 had been spent by a system which was not monitored closely. The Board authorized emergency expenditures of an additional \$100,000, bringing the total to \$300,000 within nine months. The caseload only increased from approximately 240 felony filings to 270 for the same period. By April of that year the Board simply said it could no longer finance this part of the cost of operation. That was followed by court orders, so the remaining three months added another \$95,000, bringing the total cost to \$400,000 as opposed to \$170,000 for the previous year.

Mr. Carter stated there must be a partnership. He said those who had been around for a decade know that this financing dilemma for the court system, and particularly indigent defense costs, are much like the black hole which existed in the 1980's for indigent health care costs. He had heard comments that the State needed to start sharing the cost for some of the things it had created. He commented that in spending \$400,000 in Graham County he did not believe one County law had been violated. It is truly a time to begin to work together. He hoped this Committee would look at this system which is totally out of control in terms of the financing.

Senator Spitzer said he respectfully disagreed with some of the folks who had testified concerning the indigent issue and whether or not the counties can be made whole in this process. It was his opinion that was wishful thinking for some of the reasons stated by Judge Coker. In civil cases the person involved in the court system has some options. He can hire the lawyer he wants if he is willing to pay and he is not compelled to enter the legal system. He said someone charged with a criminal offense does not have that option. He is compelled to enter the legal system. If he has sufficient funds he will obtain the lawyer of his choice. That is a determination that is different from civil litigation. It is not an option and is not a choice. What is potentially a choice is an individual who is a drug trafficker, for instance, whose income is illegally earned and who does not file federal income tax returns. The idea that there can be a determination process based on examining a 1040 federal income tax return is just wishful thinking and is not going to happen. It was his belief that it would be throwing good money after bad to spend time in trying to determine who is able to pay. He thought it would be counter productive and would not be successful.

Mr. Carter commented he had known a lot of families who were not hard core criminals and who were not drug traffickers or murders, but had problems such as domestic violence. They have well-paying jobs, \$30,000 to \$40,000 per year, and he believed when there is a \$50 million problem annually, if there is some way to trim part of that, it should be at least considered.

Senator Spitzer said those who have jobs and good incomes have the option of obtaining private counsel and they should not seek representation from the public defender's office. He suggested when there was a small number of people who have the ability to pay it would not pay the State to go after them. It would not be cost effective. Mr. Carter stated the alternative would be to form a partnership because the counties can no longer afford to finance a system that is out of control.

Senator Hardt explained he had been on a 35-member committee looking into all those costs and as far as he had been able to find out, all that had been done was to appoint a committee and that was some time ago. He suggested the Committee attempt to get a bill through this year.

Mr. Carter agreed Senator Hardt was right - that issue had been studied for a long, long time but from a county perspective in terms of financing, something over which the counties have no control, it needs the attention of the Legislature

Senator Noland stated there was a need for the Committee to get back together in three or four weeks. She felt it should look at the following issues:

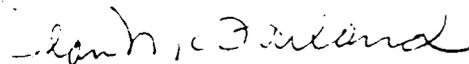
1. Increases in law enforcement.
2. Increases in cases in the various counties.
3. The impact on the system - the prosecution, the defense and the courts.

She stated she would also like figures on jail cost increases. She felt all this information would come together to help the Committee find a mechanism for the funding. She wanted to start drafting a bill with the help of Senator Hardt, Representative Smith and Senator Spitzer to address the issue. Senator Noland said she could really see the impact of capital cases on any county. What the Legislature has done in funding every other system except the courts and the public defenders' offices has caused a great injustice in this State, and the overload has been felt by everyone. She would like to see a co-funding mechanism by cities, counties and the State with all having equal responsibility. She would like to look at a statewide capital defense office. Cases need to be able to be referred to a central office from any county in the State. She concluded the Committee needs to start taking some action.

Representative Smith concurred. He thought there should be a select group of attorneys to deal with capital cases so they would have the best defense possible to avoid so many appeals. Caseloads and financing should be reviewed and determinations should be made.

The meeting adjourned at 11:25 a.m

Respectfully submitted,



Jean McFarland
Committee Secretary

(Attachments and tapes are on file in the Office of the Senate Secretary)