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SELECTING A SYSTEM FOR THE LEGAL REPRESENTATION OF PEOPLE WHO ARE UNABLE TO AFFORD RETAINED COUNSEL: A CASE STUDY

Marilyn L. Ray†

INTRODUCTION

The landmark cases, Gideon v. Wainwright¹ and People v. Witenski,² require the appointment of counsel to indigent defendants accused of a crime or faced with a possible sentence of incarceration. Since Gideon and Witenski, New York State has expanded the categories of court related matters requiring appointment of counsel at public expense,³ the number of eligible people requiring public legal representation,⁴ and the number of cases in which judges have discretionary powers to assign counsel.⁵ Dramatic increases in the cost of public representation⁶ have accompanied the burgeoning caseloads. In New

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¹ 372 U.S. 335 (1963) (holding that defendant's right to counsel in a criminal trial is a fundamental right essential to a fair trial).

² 207 N.E. 358 (N.Y. 1965) (extended the right to counsel in New York State to people accused of petit crimes).

³ Since 1965, New York has amended Article 18-B of the County Law to include provision of counsel in designated Family and Surrogate Court cases in addition to representation in criminal matters. N.Y. COUNTY LAW § 722 (McKinney 1991).

⁴ The extent of mandated coverage in New York will be discussed in more detail. See infra section II.A. However, New York statutes requiring the provision of public legal representation extend far beyond the constitutional requirements of public defense in criminal matters and in matters where incarceration is a possible disposition. The term "public representation" has been used throughout this paper rather than the more commonly used term "public defense" because of the association of public defense with criminal matters.

⁵ N.Y. COUNTY LAW § 722 (McKinney 1991).

⁶ Contributing to the rising costs are increases in reimbursement rates for attorneys providing representation. For example, in 1965 attorney reim-
York, which does not have a statewide unified public representation system, the cost and responsibility for providing counsel rest with the counties.7

As the demand and costs for public representation rose, questions surfaced regarding the quality of representation provided by these programs. Article 18-B of the County Laws of New York provides counties with four structural choices, or models, for public representation programs: 1) a legal aid society; 2) a public defender office; 3) a plan of the bar association for representation by private attorneys, known as panel or assigned counsel programs; and 4) a combination of any of the three.8

Of the four models, plans of the bar associations have especially come under fire. In such programs, private attorneys agree to participate on the panel of lawyers available to provide public representation and accept appointments in specific cases. Critics allege, however, that these programs often provide uneven and poor quality representation. In addition, the assigned counsel programs encounter difficulties in fulfilling their obligations to clients due to a dwindling number of participating lawyers.9

7 N.Y. COUNTY LAW § 722 (McKinney 1991). This section provides that each county shall:
place in operation throughout the county a plan for providing for counsel to persons charged with a crime or who are entitled to counsel pursuant to section two hundred sixty-two or section eleven hundred twenty of the family court act or section four hundred seven of the surrogate's court procedure act, who are financially unable to obtain counsel.

Id.

8 Id.

9 For example, between 1986 and 1989 the Administrator of the program, in the County evaluated in this article, reported increased difficulty in locating attorneys to take cases in a timely manner. The result was that defendants incarcerated in the County jail waited up to eighteen days before an attorney was assigned to represent them.
In 1965, the Board of Representatives in one semi-rural County in New York selected a plan put forth by the County Bar Association. The plan established an assigned counsel system, called the Assigned Counsel Plan, which had a $3000 budget allocation to cover anticipated costs for the first year. Fifteen years later, in 1980, the Assigned Counsel Plan provided representation in approximately 350 cases at a cost of just under $60,000. In 1986, the need for public representation more than doubled to 864 cases and the cost increased by approximately 475% to $286,531.12

By 1986, the County Board had become concerned that costs for the Assigned Counsel Plan were unmanageable and that the program failed to meet basic standards for accountability. Furthermore, the Administrator of the Assigned Counsel Plan reported that there was an insufficient number of attorneys participating in the Plan to allow him to make timely assignments. As a result, the Administrator relied extensively on two lawyers, known to the practicing Bar, judges, and legislators for providing inadequate representation; because of the decrease in participating attorneys, these two attorneys handled the vast majority of justice court assignments in the Assigned Counsel Plan, despite their reputations.

In an effort to determine whether another program model, one not dependent upon private attorney participation, would

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10 The Finger Lakes Law & Social Policy Center, Inc. guarantees confidentiality for all of its clients. The county under discussion will therefore remain anonymous and is referred to as the "County" throughout the article to distinguish it from other counties discussed.

11 In this article, "assigned counsel" programs refer to Bar Association plans which provide public representation to all those eligible to receive it; "panel" programs refer to attorney appointments, usually judicial bench appointments, which are not part of a county approved Bar Association Plan, but ancillary to another public representation model for providing services to eligible applicants.

12 The county budgets for the years 1965, 1980, and 1986 contained the budget allocations for the Assigned Counsel Plan. COUNTY BOARD OF REPRESENTATIVES, COUNTY BUDGET (1965, 1980, 1986). The Report to the Unified Court System produced annually by the Administrator of the Assigned Counsel Plan contained the number of new cases that the Plan served in 1980 and 1986. The number of cases the 1965 budget allocation was supposed to cover is now unknown.

13 The town and village courts are labelled the "justice courts." David D. Siegel, General Practice Commentary on the Uniform Justice Court Act and Its Background, in N.Y. UNIFORM JUST. CT. ACT 272, 273 (McKinney 1989).
control costs and increase program accountability, the County Board formed an ad hoc committee with the County Bar Association to scrutinize the costs and benefits of converting to a public defender system. In 1987, the County Board formalized the ad hoc committee into an Advisory Board, empowered the Advisory Board with authority to supervise the County's Assigned Counsel Plan, and charged it with making a recommendation to the County regarding a public defender system. The County Board appointed five lawyers, two legislators, and four representatives of human services agencies to the Advisory Board.

After meeting for approximately one year and failing to make significant progress toward completing its assignment, the Advisory Board published a request for proposals for assistance. The Advisory Board accepted the proposal submitted by The Finger Lakes Law & Social Policy Center, Inc.,\(^{14}\) (the Center) and the Center entered into a contract to work with the Advisory Board to collect and analyze the information it needed to make its recommendation.

This article reports on the Center's program evaluation that assisted the Advisory Board in its cost-benefit and quality of representation analyses. Section I of the article briefly discusses public representation eligibility standards, the types of legal matters requiring publicly provided counsel, and the options in New York statutes for program models. Section II details the Center's program assessment of this County's Assigned Counsel Plan and the public representation systems of nine other New York counties. Sections III and IV discuss the decision-making process and some of the external factors that influenced the Advisory Board's recommendation and the County Board's vote. The article concludes with some policy recommendations for improving the quality of public representation provided in New York.

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\(^{14}\) The Finger Lakes Law & Social Policy Center, Inc. is a small, not-for-profit corporation founded by social scientists and lawyers who share a commitment to improving the quality, accessibility, and availability of services for needy children and families. The Center attempts to fulfill its mission by providing evaluation and consultation services to units of government and other not-for-profit organizations. In addition, the Center conducts research to develop theory about the law, legal institutions and programs, social policy, and their interactions.
I. SETTING THE SCENE IN NEW YORK

A. ELIGIBILITY STANDARD

The eligibility standard to receive legal representation at public expense is commonly referred to as "indigency." The standard of indigency implies a rigid eligibility criterion, applicable to all, without regard to the complexity of the specific case or to geographic variations in the cost of retaining private counsel.

In 1978, in recognition of the need for a flexible standard resulting from variations in the cost of retaining private counsel, the American Bar Association published the following eligibility guideline: "Counsel should be provided to persons who are financially unable to obtain adequate representation without substantial hardship to themselves or their families."15 The National Legal Aid and Defender Association suggested a similar "substantial hardship" eligibility standard in its more recently published draft guidelines for public representation systems.16 The Advisory Board, during the course of its evaluation of the Assigned Counsel Plan and other programs, discovered that use of the term "indigent" to describe persons eligible for the program was not only inaccurate, but also had significant negative public and political repercussions. "Indigence" implies dire poverty. The County, however, has determined that some individuals who are employed or have assets or resources are eligible for assigned counsel in major felony or child abuse cases. Subsequently, both politicians and the public have expressed anger at what they perceive to be a misuse of funds to represent individuals who are not in dire poverty.17

B. NEW YORK STATUTES

New York State does not have a unified, statewide system for public representation; the State has transferred that respon-

16 ASSIGNED COUNSEL ADMIN. STANDARDS Standard 2.3 (Nat'l Legal Aid and Defender Ass'n, Proposed Draft 1989).
17 In recognition of the need to avoid public misunderstandings regarding eligibility, the "Advisory Board on Indigent Representation," as it was originally called, changed its name to the Advisory Board on Assigned Counsel.
sibility to the counties. Articles 18-A and B of the County Laws of New York provide the statutory framework for public representation. Additional New York statutes relating to public representation are found in the Family Court Act, Civil Practice Law and Rules, Criminal Procedure Law, and Surrogate's Court Procedure Act. These statutes go substantially beyond the mandates in Gideon and Witenski. For example, the statutes require the provision of legal counsel not only to respondents, but also to petitioners in a range of designated Family Court matters.

II. INFORMATION GATHERING

In order to evaluate the available public representation models, the County Advisory Board requested two types of information: (1) a comparative analysis of the different types of public representation models used in other counties, and (2) empirical data from an assessment of the Assigned Counsel Plan as it was then operating.

The Center's program evaluation design included the following:
* semi-structured phone interviews with the Chief of the

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25 Public representation is required for (1) petitioners and respondents who are unable to afford retained counsel in Family Court petitions involving allegations of a family offense, and (2) respondents in petitions containing allegations of the abuse or neglect of children, the paternity of children, and the permanent termination of parental rights. N.Y. FAM. CT. ACT § 262 (McKinney 1983 & Supp. 1991). Respondents in adoption proceedings in Surrogate's Court are similarly entitled to representation. N.Y. SURR. CT. PROC. ACT § 407 (McKinney 1992).
26 There are three generally accepted research interview strategies. The first is a structured interview in which each question is worded precisely and asked in pre-determined order. In this strategy, respondents must select their answers from a list of responses. The second, an unstructured or open-ended
public representation systems in nine New York counties;  
* a systematic review of all documents, case files, and program materials in the program office for the period January 1 through June 30, 1989;  
* semi-structured personal interviews with a stratified random sample of County judges, magistrates, and attorneys, both members and non-members of the Assigned Counsel Plan;  
* mailed, self-administered questionnaire surveys of all County magistrates and judges who hear cases in which defendants may be eligible for assigned counsel, and who appoint assigned counsel; and  
* structured personal interviews with a random sample of past Assigned Counsel Plan clients.

A. THE ANALYSIS OF DIFFERENT TYPES OF PUBLIC REPRESENTATION SYSTEMS IN NEW YORK

Initially, the Advisory Board requested a comparative analysis of the different types of public representation programs used in other small, semi-rural counties in New York. First, the Advisory Board requested comparative information only on the cost and caseloads of each type of program. Later, the Advisory Board also requested information on staff training and staff longevity.

The Center selected seven counties for analysis based on certain similarities to the County: county population and population density, size of caseloads for each type of court, and program model. The Center then included an eighth county in the program evaluation design. Although this county was larger than the other counties in the sample, it was included because in 1978, North Country Legal Services, Inc. filed suit in Federal Court against this county alleging that the county's assigned counsel program violated the Sixth and Fourteenth amendment

interview, follows a more conversational format, with frequent follow-up questions. In this strategy, neither the interviewer nor the respondent is constrained by pre-determined questions or answer selections. The third, a semi-structured interview strategy, falls between these methods. Specific questions and a general format are designed before interviewing commences, but respondents are free to use their own words in answering questions. Similarly, the interviewer is free to ask follow-up questions to clarify responses or to get the respondent to elaborate on an answer.
rights of indigent county residents. The Center included this county in its program evaluation design to determine whether, ten years after the suit, the county’s assigned counsel program differed systematically from those in the other sample counties. Finally, the Advisory Board requested that the Center include a county that contracted with private attorneys in the survey, so the Center added a ninth county to the sample. The final sample for the program evaluation design consisted of nine counties: four which used assigned counsel programs, four which used public defender programs (one of which had a contract component), and one which used a legal aid society.

After the Center chose the sample counties, it conducted semi-structured phone interviews with the Chief of the public representation system in each. The purpose of these interviews was to collect the following information about each county:

* caseload size and costs for 1986, 1987, and 1988;
* staff size, job descriptions, and training;
* longevity of professional staff;
* screening procedures, client eligibility criteria, and procedures to standardize such criteria; and
* program quality controls, local political realities, and other general concerns.

Additionally, the Center collected copies of the most recent financial statements, application forms, eligibility guidelines, and attorney handbooks or manuals from each county.

This survey resulted in two significant findings. The first relates to the complexity of and variations within systems, and the second relates to the accountability, or lack thereof, of some of the components in the more complex systems.

1. Complexity of Public Representation Model Analysis

The Center found that published information about the counties’ systems was misleading because the New York State Office of Court Administration tracked a single program model in each county, collecting annual data on caseload, dispositions, approvals and denials of applications, and costs for that program model only. When the Center analyzed the data from the sample counties, however, it found that five of the nine counties

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did not have a discrete public representation model. Rather, each of these five counties had a very complex system comprised of multiple components. Without clearly differentiated models to use as the basis of comparison, and in order to avoid making misleading comparisons of dissimilar systems, the Center had to conduct a descriptive, rather than a comparative analysis as planned.

The many types of legal cases for which public representation is mandatory in New York, together with the need for representation in cases in which a conflict of interest exists, usually prohibit one model of public representation from providing counsel to all eligible persons in the county. Each county, unless it had an assigned counsel program, therefore also had at least a second public representation system to handle the conflict of interest cases. This has resulted in public representation systems in most counties that are complex and varied. These complex public representation systems do not show up in the Office of Court Administration's statistics because the Office tracks only one county public representation program.

The Center's survey revealed that none of the counties in the sample had only a public defender system, only a legal aid society, or only a contract system. Furthermore, the types of cases handled by each component of a multifaceted public representation system within a single county differed in each county. A single public defender office might handle only felonies, or only misdemeanors, or all criminal but no family matters. One of the most complex county systems in the sample had four components: a public defender office that handled misdemeanors and violations; a panel system for felony cases; a legal services program for family court matters; and a separate

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28 Interviews with the Chief of public representation in each sample county uncovered the fact that the survey sample was in reality composed of: five assigned counsel programs, three public defender programs, two legal aid societies, four panel programs, and one contract program with three components. The Center conducted interviews with all 15 of the persons responsible for the respective programs. In four of these programs, that person was a clerk in the Comptroller's office.

29 Public defender offices and legal aid societies cannot provide representation in cases where they are representing another party in the same case or where they have previously represented an opposing party. These cases are called "conflict of interest cases." MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 5-105, 5-108 (1990). Because there can be numerous conflict cases, counties using public defender programs and legal aid societies require an alternate representation system as well.
panel system for conflict of interest cases. The single county in the survey with a legal aid society also had a multi-faceted system. The legal aid society represented eligible persons in both criminal and family cases in separate, specialized units, and a panel program provided representation in all cases in which either unit had a conflict of interest. The county that included a contract component in its public representation system was also complex. It had five components to its system: a public defender office, a panel program, and three separate contract programs. One contract program provided representation to prisoners housed in a local state correctional facility, another handled Family Court cases, and the third contract program undertook conflict of interest cases that arose in any of the other elements of the system.

2. Program Accountability

The accountability, or lack thereof, of the components in more complex public representation systems was also an unanticipated finding. In counties with either a legal aid society or public defender program, the Center’s survey found that no one was responsible for administering the panel component of the county system, even though that component might have handled all conflict of interest cases and all Family Court cases. In these counties, judges approved requests for assigned counsel services and appointed attorneys from the bench. In these panel programs, no one was responsible for rotation of assignments among attorneys, no one kept records of applications, denials, caseloads, or dispositions, and no one supervised the consistent and equitable application of eligibility criteria.

In phone interviews with the Chief Public Defenders of the primary programs in five counties, the interviewees were unable to provide the following information: total budget figures for all public representation within their counties, the name of the person or persons responsible for the panel segment of the system, how those persons operated the panel segment, or where the allocation for the panel segment appeared in each county’s budget. Additionally, it was very difficult to obtain information about the budget and expenses for the ancillary panel segments in these counties.

In these same counties, the budget allocation for the public defender office or legal aid society did not include the budget for the alternative segments of the system, nor were these discrete items elsewhere in the counties’ budgets. Thus, the county
budget item for the public defender office or the contract with the legal aid society reflected only a portion of the true cost to the county of public representation. In some counties, this meant that as much as half of the real cost for the system was hidden within the budget for general administration.

One result of this incomplete budget picture is the perception that a public defender office facilitates cost containment and is less expensive than other program models in providing public representation. Although the Center's survey never produced a complete picture of expenditures for all segments of the public representation systems in counties with either a public defender or a legal aid society, the data that the Center did obtain indicated that those public representation systems were actually more expensive than the panel or assigned counsel programs in the survey.30

3. The Quality of Representation Under Different Systems

The quality of representation under different systems merits serious concern. Not surprisingly, the Center's survey demonstrated that increasing caseloads and inadequate financial support negatively affected the quality of representation provided by all models.

Inadequate funding precludes any public representation system from providing consistently high quality representation. Assigned counsel and panel programs in New York State pay lawyers $25 and $40 per hour for out-of-court work and court appearances, respectively.31 The survey, conducted in rural and semi-rural counties, found that most assigned counsel

30 It was impossible to discover the total costs for the different programs in the survey sample. Contributing to this difficulty was the fact that county budgets differed as to whether they included in the line item for a public defender office costs for such items as fringe benefits, county telephone lines, office space, and money for cases opened in one year and closed in another. Furthermore, if such costs were not included in the budget, program administrators either did not know their value or would not discuss the real costs of the program.

The study found that the average cost per case for assigned counsel programs was $297.25 in 1989. Complete 1989 caseload data was available for only two of the four counties that had complex systems, but for those two counties, the average cost per case was $337.50, exclusive of costs for staff fringe benefits, office phone, and office space.

attorneys are sole practitioners and that these statutory reimbursement rates are insufficient to cover their basic operating costs during the period of representation. Furthermore, no matter how complex the case, there is a ceiling on the amount an attorney can be reimbursed for any single case, unless she receives special permission from the court. Finally, it is also necessary for an assigned attorney to make special application to the court in order to obtain fees for experts necessary for the adequate representation of her client.

Assigned counsel programs are also widely criticized for allowing professionally inadequate lawyers to represent the indigent. In fact, these inadequate lawyers are often the ones most eager to take assigned cases, and struggle to maintain their offices with the proceeds. The unwillingness of their more capable peers to handle "poor people's cases" enables these less capable lawyers to continue to practice law, and allows the assigned counsel or panel program to survive. Clearly, new lawyers can be dedicated and effective advocates. However, more routine matters are likely to receive lower quality legal assistance because, in many counties, the most experienced and capable attorneys represent defendants only in major felony cases.

Although public defender offices and legal aid societies, with their more highly trained and specialized staffs, were generally credited with providing the highest quality representation, these systems were not without serious problems. Underfinancing gravely affected these systems. For example, eight of the nine counties in the survey had a full-time district attorney. In

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32 For example, in cases where the defendant is charged with a crime which is punishable by death,
Compensation shall not exceed two thousand four hundred dollars where one counsel is assigned, and shall not exceed three thousand two hundred dollars where two or more counsel have been assigned.
Where a defendant is charged with one or more other felonies, compensation shall not exceed one thousand two hundred dollars.
Where a defendant is charged with one or more other crimes, compensation shall not exceed eight hundred dollars.

Id. For additional information on ceilings for representation in Family Court or for various other types of matters and appeals, see id.

33 Id.

34 Id. § 722-c.

35 Telephone Interview with Jonathan B. Gradess, Executive Director, N.Y. State Defenders Ass'n (Spring 1989).
addition, four counties had one or more full-time assistant district attorneys plus several part-time assistant district attorneys. The remaining four counties had at least one part-time assistant district attorney. No county in the survey, however, had a full time public defender or any full-time assistant public defenders, and no county had a full-time assigned counsel program administrator.

Budgetary constraints translate into chronically understaffed public defender offices and legal aid societies. This encourages staff attorneys, who are frequently new law graduates, to meet clients in the courthouse hall, batch cases, trade cases, minimize the amount of research, and take to trial only the most egregious cases. During the survey, all the Public Defenders reported that office caseload pressures mean that any client who wants a trial will, in effect, waive the right to a speedy trial and expect a long wait before the commencement of trial.

B. EVALUATING THE COUNTY'S ASSIGNED COUNSEL PLAN

The Center designed the evaluation of the County's Assigned Counsel Plan to assess how close the program was to a Model Defense System as developed by the New York State Defenders Association. The evaluation involved the systematic collection of data to evaluate the Assigned Counsel Plan in the following three regards:

a) how accurately the data management system functioned, and what data for a recent six-month period disclosed about the general procedures and functioning of the system;

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37 PUBLIC DEFENSE BACKUP CENTER, N.Y. STATE DEFENDERS ASS'N, A MODEL PUBLIC DEFENSE SYSTEM AND A MODEL DEFENSE CASE (1984) [hereinafter MODEL DEFENSE].

The Model Defense Case and the Model Defense System incorporates the standards of the American Bar Association, the National Advisory Commission on Criminal Justice Standards and Goals, the National Legal Aid and Defender Association, the National Study Commission on Defense Services, and the Diversion and Pretrial Standards of the National Association of Pretrial Services Agencies. They also reflect the Code of Professional Responsibility.

Id. at 1 n.1.
b) whether and how well the system was structured to ensure that the basic rights of applicants and recipients of services were met; and,
c) how well the Advisory Board worked as liaison between the Assigned Counsel Plan and the community.

The Center also planned to use the evaluation to develop a socioeconomic profile of recipients of program services.

1. Evaluating the Assigned Counsel Plan Data

In order to assess the functioning of the Assigned Counsel Plan in the County, the Center reviewed all the documents, case files and records maintained by the Administrator of the Assigned Counsel Plan for every case opened under the Plan during the six-month period from January 1 through June 30, 1989. This review found that a hand-written log of assigned cases was the only routinely maintained record of applications for services. The Administrator did not routinely collect or retain accurate eligibility data.

During the six-month sample period, 553 applications were approved and each applicant assigned an attorney. The Center's document review found financial eligibility information available for only 125 (22.6%) of these clients. For 307 (55.5%) of these clients, there was no information other than the client's name and the charge against him. With such limited eligibility data on file in the office, it was impossible to develop an accurate socioeconomic profile of recipients of Plan services. No denied applications were on file. Furthermore, although New York statutes require public representation to be provided for certain Surrogate's Court matters and for criminal violations, the review found no records of any application, approved or denied, for a Surrogate's Court case or for a criminal violation in eight of the twenty-two justice courts in the County where violations were routinely heard.

38 Without this information the County could not adequately defend itself against an Article 78 appeal for denial of services. N.Y. CIV. PRAC. L. & R. Art. 78 (McKinney 1991).

39 N.Y. CRIM. PROC. LAW § 170.10 (McKinney 1982); N.Y. SURRE. CT. PROC. ACT § 407 (McKinney 1992).

40 The record keeping procedures failed to track violations of court orders (e.g., violations of probation) separately from violations as a category of minor offense. As far as could be determined, there were no applications on file, nor
Comprehensive annual data on caseload size, case types, or level of panel participation had never been collected or reported to the County Board. Moreover, the annual reports prepared for the State Office of Court Administration were incomplete or inaccurate. These reports failed to include data regarding numbers, costs, and dispositions for cases opened in one year and closed in a subsequent year. The County Board never required or received annual written reports on program activity and expenses beyond that which the Comptroller’s Office provided. The Center’s review also found that data on program expenditures for different types of cases were unavailable.

What the Center’s review did reveal was that the Program Administrator based his annual budget request only on new case expenditures for the first six months of the preceding year; the annual budget request failed to include expenditures for older cases, those opened in one year and closed in a succeeding year. It also failed to project any increase in caseload.

Basing the budget request on program expenditures in the first six months of a year underestimated annual expenditures in two additional ways. First, most reimbursements requested during the first quarter were for cases opened in a previous year and paid from funds reserved solely for that purpose, and thus separate from the annual budget. These cases were not included in the count used to calculate the annual budget request. Second, there were no requirements for lawyers to submit reimbursement vouchers in a timely manner. Lawyers submitted the vast majority of vouchers in the final quarter of a year and therefore left the County Board with only incomplete or inaccurate data to use in determining the annual allocation for the program.

The Center’s review found lawyer participation on the panel insufficient to guarantee quality representation. As stated above, interviews with a random selection of attorneys, magistrates, and judges revealed that there were two attorneys taking were there any approvals or denials of applications for violations as a category of minor offense, even though Article 18-B includes a provision for public representation in these cases. N.Y. COUNTY LAW § 722 (McKinney 1991).

It should be noted here that during the evaluation, the County Board informed the Center that it did not request annual reports because the members of the Board were under the strong (but erroneous) impression that it would somehow violate attorney-client confidentiality for the County to require the Plan to provide aggregate caseload and cost-benefit information in these reports.
large numbers of criminal cases who had a reputation among the interviewees for providing poor quality representation. These same two lawyers were, however, the ones most willing to accept new assignments and enabled the program to assign an attorney to all program-eligible clients.\footnote{After a new data management system was developed in 1990, the Center reviewed attorney participation and found these same two lawyers accounted for over 25% of Plan assignments during the first six months of 1990.}

The Assigned Counsel Plan also failed to collect data on the services actually provided by assigned attorneys, and no one consistently reviewed the vouchers submitted by attorneys for payment for services rendered.\footnote{Respondents to the survey of judges and magistrates reported that they were apt to sign attorney vouchers for reimbursement under the program 33.3\% of the time without having reviewed the voucher.} Without such comprehensive data in the program office, the Comptroller’s office, or the courts, it was impossible to obtain objective data regarding what services these lawyers actually rendered or the quality of representation provided under the Plan.

Furthermore, attorneys who participated in the Plan did not have the benefit of legal update information or continuing legal education programs offered by State or national defense associations. The County did not take advantage of grants or scholarships periodically made available by the New York State Defender’s Association and the U.S. Department of Justice to cover the costs of continuing legal education programs or to assist in defraying basic costs for the Plan.

Finally, the Assigned Counsel Plan never established or distributed clear eligibility standards or procedures for magistrates and judges to facilitate objective, equitable, and consistent determinations on the eligibility of applicants for services. The survey of judges and magistrates found that determination procedures and the financial information considered during the application review process varied greatly from one court to another. The survey also revealed the absence of a standardized procedure for review following a judge’s denial or postponement of the Plan’s services for defendants who were subsequently confined to jail. Applicants denied public representation were usually not advised of their rights to appeal the denial of their applications, or to have an attorney represent them in such an appeal. The County then bore the financial cost of imprisonment for what were possibly inappropriate denials, where, with the aid of a Plan attorney, the applicant might have convinced
the judge to order a lesser bail or to release the applicant on his own recognizance.

2. Evaluating the Plan Structure

To discover whether and how well the system ensured the protection of the basic rights of applicants and service recipients, the Center evaluated the Assigned Counsel Plan structure. At a minimum, a well-structured assigned counsel program should include procedures for the following:

a) early access to assigned counsel, and clear, yet flexible, eligibility standards that are consistently and equitably applied to all potential applicants;\(^4\)
b) appeals, and access to representation in appeals, of denials of applications for the program, requests for a change in assigned attorney, and grievances of program procedures, decisions, or attorney conduct; and
c) a data management system that would facilitate basic accountability.

a. Access to Assigned Counsel and Eligibility Standards

The Advisory Board proposed to the County Board a resolution supporting the immediate assignment of counsel for all the accused who are confined to jail prior to action on their application for counsel or when the bench denies counsel. The County Board passed the proposed resolution in 1989. The Center’s evaluation found that as late as the summer of 1990, however, there continued to be instances of delayed assignment of counsel to incarcerated individuals. The Advisory Board continued to work on addressing this problem.

The Assigned Counsel Plan also failed to establish and distribute clear eligibility standards. Through a comprehensive

\(^4\) In program terms this means that every person who expresses an interest in applying for program services is given an application and, if necessary, assistance in completing the application, and that eligibility determinations are consistently and equitably applied to all applications.
survey of the twenty-two magistrates and the two judges in the County. The Center's evaluation found that the magistrates and judges were using ad hoc standards to determine eligibility. The resulting determinations, across courts, were inconsistent and frequently inequitable. For example, only five magistrates reported giving every defendant who requested assigned counsel an application, and nine magistrates disclosed that they routinely found applicants ineligible without the benefit of a completed application. The survey also revealed that eligibility determinations often included such inappropriate considerations as the ability to make bail, the ability of a non-financially responsible relative to pay for counsel, or hearsay information from court clerks and secretaries.

National standards universally recommend that an applicant's ability to make bail not interfere with the right to counsel

45 Twenty magistrates and both of the judges responded to the survey for a 92.3% response rate.

46 These considerations are inappropriate under standard 5-6.1 of the ABA Standards Relating to the Administration of Criminal Justice. Standard 5-6.1 states "[c]ounsel should be provided to persons who are financially unable to obtain adequate representation without substantial hardship to themselves or their families. Counsel should not be denied merely because friends or relatives have resources adequate to retain counsel or because bond has been or can be posted." STANDARDS FOR CRIMINAL JUSTICE Standard 5-6.1 (1986).

The commentary which follows the articulation of the standard states that "[s]tandard 5-6.1 contains two important recommendations which should be included in all regulations relating to eligibility: neither the financial resources of friends or relatives nor the ability of the defendants to post bond should be used as a basis to deny providing counsel." Id. Standard 5-6.1 cmt.

This statement is supported by the following footnote:
Most recent cases have held that the financial resources of spouse or relatives should not be considered, e.g., Sapio v. State, 223 So. 2d 759 (Fla. App. 1969) (trial court should not have considered fact that defendant's mother posted bond for him); People v. Gustavson, 131 Ill. App. 2d 887, 269 N.E.2d 517 (1971) (trial court erred in refusing to appoint counsel for defendants, ages nineteen and twenty, on the ground that their parents had sufficient funds to hire an attorney); McCraw v. State, 476 P.2d 370 (Okla. Crim. App. 1970) (fact that defendant's son had provided the funds necessary to post bond did not preclude a finding that defendant was financially unable to retain counsel).

Id. Standard 5-6.1 cmt. n.6.

Only one case cited in support of the standard specifically speaks to the question of relatives with a legal financial responsibility (Gustavson). None of the cited cases speak to the appropriateness of expecting a spouse to provide the money with which to retain an attorney.
lest the applicant be forced to give up one constitutional right, the right to pre-trial liberty, in order to take advantage of another constitutional right, the right to counsel.\textsuperscript{47} Yet, in response to a question regarding the frequency with which judges and magistrates consider an ability to make bail during the eligibility determination process, 52.6\% of respondents indicated they \textit{always} or \textit{sometimes} considered the ability to make bail during the determination process. Only 26.3\% of respondents indicated they \textit{never} considered the ability to make bail as indicating an ability to retain counsel. Additionally, 66.1\% of respondents said that they \textit{seldom} or \textit{never} considered the seriousness of the charge, and hence the cost for retaining counsel in a specific case.

Similarly, the right to counsel is personal and, once the defendant has reached the age of majority, is not dependent on the ability of relatives to retain counsel.\textsuperscript{48} Yet, over 75\% of the judge respondents reported considering relatives' resources during determination when the defendant is a dependent of those relatives regardless of the defendant's age, and 25\% considered relatives' resources even when the applicant was not a dependent.

In a rural area, a private car is usually the only transportation available to a family to gain access to medical care, grocery stores, children's activities, and legal counsel. Indeed, even public assistance guidelines have recognized the necessity of car ownership in rural regions.\textsuperscript{49} However, 82.4\% of the judges surveyed reported considering car ownership as an asset that would disqualify an applicant from Plan participation. In this manner, a recipient of public assistance could be denied assigned counsel.

b. \textit{Appeals of Denials and Representation in Appeals, Requests for Change, and Grievances}

The Center's survey found that, in the vast majority of cases, applicants were informed verbally of the determination of their eligibility for assigned counsel. No office retained a record of

\textsuperscript{47} "The ability to make bail is rejected as a basis for denying counsel because it requires the accused to choose between receiving legal representation and the chance to be at liberty pending trial." \textit{Id.} Standard 5-6.1 cmt.

\textsuperscript{48} \textit{Id.} Standard 5-6.1 cmt. n.6.

\textsuperscript{49} N.Y. COMP. CODES R. & REGS. tit. 18, \$ 352.23 (1991).
denials or even of the applications. Applicants denied assigned counsel were not informed of their right to appeal the determination or of their right to assigned counsel for such an appeal. Indeed, a significant majority of magistrates reported they were unaware of an applicant’s right to counsel for an appeal of a decision to deny the application.

The survey of judges and magistrates included questions regarding their understanding of procedures for obtaining representation in appeals of denials of applications for the Plan, for requesting a change in assigned attorney, and for grieving program procedures, decisions, or attorney conduct. The findings indicated that twelve magistrates never informed applicants of their right to appeal denials or of their right to obtain counsel to appeal such a decision. Even fewer magistrates reported that they were aware of the County Bar Association’s grievance procedures or that a recipient of public representation had a right to file a grievance regarding the quality of the representation he received from his assigned counsel.

c. Data Management

The New York State Defender’s Association strongly recommends that every program develop and maintain a comprehensive data management system to facilitate the following: tracking and reporting on caseload size, changes in caseload composition, and on the fair rotation of assignments among panel

50 Based on the responses from 19 magistrates, the average magistrate approved approximately 40% of requests for assigned counsel and denied 47.7% of requests for assignment of counsel without the benefit of a completed application affidavit. These magistrates reported that they do not use the application affidavit regularly as a guide to eligibility. Of the 18 magistrates who responded to the question regarding making determinations without using an application affidavit, only five reported that they give everyone who requests counsel an application. Eight magistrates reported that they sometimes find people eligible and nine magistrates reported sometimes finding people ineligible without the benefit of a completed application. There was no indication that these determinations were made in emergency situations and that application affidavits were completed and reviewed at a later time.

51 The survey of judges and magistrates found that, if a person wants to appeal a denial of an application, 80% of the time the judge or magistrate is likely to tell the person to hire an attorney or make their own arrangements for the appeal. In addition, 12 of 17 judges and magistrates reported that they seldom or never refer someone who complains about their assigned counsel to the Bar Association Grievance Committee.
participants; review of the quality of representation and the development of continuing legal education programs for panel participants; and development of accurate annual budget projections.\textsuperscript{52} As reported above, however, the study found that the Assigned Counsel Plan essentially had no data management system.

3. Evaluating the Advisory Board

A \textit{Model Defense System} recommends the creation of a liaison for several purposes, including: responsibility for planning, organizing and monitoring the public representation system, coordination of the public representation system with other social services systems to bring available human services to assist the public representation system's clients, and advocacy for the public representation system in matters of fiscal and program planning.\textsuperscript{53} The County accomplished this goal of the \textit{Model Defense System} when it established the Advisory Board and gave it policy making authority over the Assigned Counsel Plan.

III. THE DECISION-MAKING PROCESS

After the Advisory Board received and discussed the findings from the evaluation, it split into two committees, one charged with developing a full proposal and budget for a public defender office, and the other for an assigned counsel program.

A. PUBLIC DEFENDER COMMITTEE

The Public Defender Committee (PDC) concentrated on developing the office structure and staffing pattern for a new County public defender office. The PDC based its plan on the caseload guidelines established by the National Advisory Commission on Criminal Justice Standards and Goals.\textsuperscript{54} These


\textsuperscript{53} \textit{Model Defense}, \textit{supra} note 38, at 10.

guidelines recommend that one attorney represent up to 400 misdemeanors, 150 felonies, 200 juveniles, or 25 appeals per year.\textsuperscript{55}

From these guidelines, one of the attorneys from the PDC developed a three-step process to establish the staffing pattern for the proposed public defender office. During Step One of this process, the PDC modified the National Advisory Commission guidelines to accommodate the following: New York State standards, local community standards, and the complexity of some Family Court proceedings vis-a-vis "juveniles." The PDC interpreted local community standards as including New York's mandatory jail sentences, representation in Family Court, and the quality of representation expected within the County. With these standards in mind and with the caseload data from the evaluation, the PDC estimated a public defender office for the County would need seven lawyers and five support persons.

In Step Two, the PDC addressed the question of whether seven lawyers could adequately cover all twenty-two justice courts in a wide geographic area where more than one court is frequently in session at any given time. Underlying this question lies the assumption that in order to facilitate early entry into cases to solve problems quickly, an assistant public defender needed to attend every regularly scheduled justice court session. These calculations increased the PDC's estimate of the number of lawyers needed to seven and one half.

In Step Three, the PDC developed a budget based on an annual projected 10% increase\textsuperscript{56} in cost and caseload, and the cost of an assigned counsel program to handle all conflict of interest cases. The proposed budget would have increased the County's expenditures for public representation by over $200,000 for the program year 1990. The PDC thought receiving such a budgetary allocation politically unrealistic. Therefore, calculations from Step One and Two, on which the staffing recommendations had been estimated, were reviewed and revised. The following staffing design was included in the committee's final proposal: one full-time public defender, one full-time senior assistant public defender, four full-time assis-

\textsuperscript{55} Id.

\textsuperscript{56} During earlier meetings, the Advisory Board voted to base the budget estimate for any program it recommended to the County on the average increase in cost for the Assigned Counsel Plan over the previous three years. This average increase was 10%.
tant public defenders, one investigator, one social worker, four secretaries, and one part-time assigned counsel plan administrator.

The adjusted proposed budget was $540,000 for program year 1990, which represented a $170,000 increase over the 1989 allocation for the existing Assigned Counsel Plan.

**B. ASSIGNED COUNSEL COMMITTEE**

The Assigned Counsel Committee (ACC) developed a new model for an assigned counsel program that incorporated many of the best features of a public defender program. The model was named the "Enhanced Assigned Counsel Program" and consisted of three specific recommendations:

a) clear, yet flexible, eligibility standards and procedures for the timely determination of eligibility;

b) mechanisms to increase attorney participation and the quality of representation; and,

c) development of the program into a County department.

1. *Clear, Yet Flexible, Eligibility Standards and Procedures for the Timely Determination of Eligibility*

To establish these standards, the ACC recommended centralizing the determination process in the assigned counsel program office and identified five underlying goals:

a) to encourage consistent and equitable determinations for all applicants;

b) to provide written notification of determinations to all applicants;

c) to reduce the number of denials that are made without the potential applicant having the opportunity to make formal application and to retain eligibility information on all denied applications;

d) to ensure all denials of applications would include written instructions regarding rights for appeals and the availability of public representation in such appeals; and,

e) to institutionalize and make available information on grievance procedures.

In developing its proposal, the ACC revised and simplified the application form. The ACC drafted new eligibility guidelines in keeping with the five goals it had developed and recommended that all determinations be made in the new office. The
new eligibility guidelines established the following three-step process:

Step 1: the prima facie right to public representation for any applicant who was a recipient of a government needs-based program for which indigence had already been established (e.g., Aid to Families with Dependent Children, Home Relief, Medicaid, Food Stamps, or Supplemental Security Income).

Step 2: for applicants who did not qualify under Step 1, the assigned counsel office would review information on gross income, basic household living expenses, and such non-voluntarily incurred expenses as medical bills, day-care expenses, and child support. If the applicant had net income below 125% of the federally established poverty line, the applicant would be eligible for the program.

Step 3: for applicants who still failed to establish program eligibility, under Step 1 or 2, the office would put income, asset, and liability information into a formula that factored in the liquidity of assets and the average retainer fee for categories of legal matters.

Only if an applicant failed to become eligible under any of the three steps would the application be denied. In addition, to reduce the number of denials that are made without the applicant ever having the opportunity to make a formal application, the ACC recommended procedures for all judges to follow when any person appearing in their court expressed a need for publicly provided counsel.

Centralizing most of the eligibility determinations in the new office was also expected to facilitate the institutionalization of written notifications on determinations, appeal and representation rights in application denials, and grievance procedures.

2. The ACC Developed Mechanisms to Increase Panel

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57 Annually, the Federal Government establishes the income level below which citizens are deemed unable to provide for the basic requirements for living. This figure is called the Federal Poverty Guideline and is used to establish eligibility for many Federal and State needs-based programs.

An income within 125% of the Federal Poverty line is the standard for eligibility for public representation in civil matters set by the Legal Services Corporation. 45 C.F.R. § 1611.3 (1991).
Participation and the Quality of Representation

The ACC integrated attorney support services into the program in order to provide incentives for attorney participation, while at the same time improving the quality of representation. The ACC included the following support services in the proposal: an extensive program for continuing legal education that would include scholarships to conferences or other legal education programs, a mentor program, a brief bank, the development of a registry for back-up investigation, social work and other expert services available in the County, and money to pay for assigned counsel program membership in such major professional organizations as the National Legal Aid and Defenders Association and the New York State Defenders Association.

3. The ACC Recommended that the Program Become a County Department

The ACC recommended that a part-time supervisory attorney, a full-time human services program administrator, and a full time secretary staff the department. Additionally, the ACC recommended that a data management system be designed and implemented to facilitate regular reporting and to establish program accountability.

The proposed budget for the Enhanced Assigned Counsel Program was $463,000 for program year 1990, and represented a $93,000 increase in the budget request over the 1989 allocation for the existing Plan.

C. SELECTING A SYSTEM

Over a three-week period, the Advisory Board scrutinized, debated, and redrafted the proposals from both Committees. Six months after the study began, the Advisory Board voted six to three to recommend that the County Board replace the old Assigned Counsel Plan with the Enhanced Assigned Counsel Program. The Advisory Board also voted to attach the proposal for the public defender office to the recommended proposal upon its submission to the County Board.

The County Administrator supported the proposal for the Enhanced Assigned Counsel Program and recommended one
minor change in the budget request. The County Board voted unanimously to implement the enhanced program, and the new program went into operation in September 1990.

IV. ADDITIONAL CONSIDERATIONS

As the Advisory Board reviewed the survey reports, they debated many of the most salient issues related to defense systems in general and to specific system elements that would enhance the quality of any program model. Over a period of six months, the Advisory Board discussed such major issues as continuing legal education needs for defense and family attorneys; what expert services were necessary for quality representation and should be available through a public representation program; grievance procedures; eligibility criteria; procedures for early entry into cases; procedures to ensure equitable and consistent determinations on eligibility for the program; and, as discussed in more detail below, budgetary issues. All these, and many other concerns as well, were discussed in relation to either an assigned counsel program or a public defender office. Through this process, the Advisory Board reached general agreement on the quality of representation that it wanted in whatever program it ultimately voted to recommend.

The process of sharing information and examining issues extended beyond the Advisory Board. Members of the Advisory Board circulated reports to the County Administrator, the Chair of the County Board, and members of the County Board committee that had oversight authority for the Assigned Counsel Plan. This kept everyone who would eventually be involved in the final decision informed about the progress and results of the evaluation.

This sharing of information continued while the two subcommittees drafted their proposals. By that time, agreement had been reached on the value and quality considerations, and the final debate on the two proposals was short and limited. Not surprisingly, costs for the two types of systems were a determining factor. One of the monetary considerations was the fact that the budget for the proposed public defender office was $77,000 over that for the Enhanced Assigned Counsel Program.

58 The budget request originally included $352,767 for payments on attorney vouchers. The County Administrator recommended the County Board reduce this item by $15,767 to $337,000. Although the County Administrator gave no reason for his proposed change, the County Board adopted it.
Early in the evaluation process, the Advisory Board decided that the budget it submitted for whatever type of program it recommended would reflect as accurately as possible the total projected cost to the County of providing public representation for the fiscal year. Both sub-committees based their proposed budgets on this agreement. This meant that for the first time costs for carry-over cases and for projected increases in case-loads would be included in the budget request. It also meant that even without an increase in the budget for changes to the program structure or for the development and implementation of a data management system, the budget for this item would appear to have increased dramatically.\(^5\)

Financial considerations significantly influenced the final vote near the end of the evaluation process. Just before the Advisory Board planned to make a decision on its recommendation, the County Board decided to vote on the County's budget for fiscal year 1990. This vote would occur the week before the election of a new County Board. Thus, just before the election, the public would know exactly how each candidate voted on this unpopular item and the effect of that vote on the County's budget and on its property tax assessment for the coming year.

CONCLUSION

Whether there is a single "best program" for public representation remains an open question. All model programs in New York have the potential to provide quality services and all have potential shortcomings. Whether the program selected by the process described in this article is the best program for the County has yet to be seen. Those who worked on the project believe the program that emerged from the process has exciting potential. A representative of the New York State Defenders Association says "it's on the cutting edge" and "very innovative."\(^6\) The Association is monitoring the program implemen-

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\(^5\) Over time, the County Board had adjusted to the fact that each year the program would exhaust its budget before the end of the year and an additional, emergency allocation would be required. The Board also became familiar with the annual need to encumber hold-over funds to cover costs for open cases that would be closed in subsequent years. The County Board never addressed these problems previously during the budget process, even though they had annoyed the Board and contributed to its sense that the program was out of control.

\(^6\) Discussion with Jonathan B. Gradess, Executive Director, N.Y. State
tation carefully and looks forward to an evaluation of the program at the end of two years.

Findings from this study yield two recommendations that could improve public representation programs in New York State. First, if New York State continues to leave responsibility for public representation with the counties, the State should implement changes in the way the State Office of Court Administration tracks information about public representation in each county. The number of public representation cases handled and paid for by New York State counties may be drastically under-reported because the Office tracks only a single program model in each county and collects only annual data from that model on caseloads, dispositions, approvals and denials of applications. As discovered in the survey, counties generally have more than one system of public representation, and public representation cases are often opened in one year and carried into the next. The lack of accurate information about costs and caseloads may preclude the State and counties from making any meaningful decisions about improvements in public representation in New York.

New York State should also standardize and mandate the kinds of information collected by the counties with regard to the cases themselves. For example, statistics on the costs of public representation are meaningless, if there is no one accounting for how the money was spent. Counties should be required to report their eligibility criteria for public representation as well as the number of applications accepted or denied. As in a Model Defense Case, attorneys in assigned counsel programs should be required to complete a voucher cover sheet that would provide detailed information on all aspects of the representation practice for each assigned case. Such information is essential to monitoring the quality of public representation and to designing continuing legal education courses targeted to addressing specific weaknesses in this type of practice. The current reimbursement voucher would accompany the cover sheet and continue to provide the number of court and office hours spent on a case, and what services were provided during that time. Counties should then forward this information to the State for assessment.


61 Model Defense, supra note 37, at 32-60.
Second, this study raised questions regarding the quality of legal representation and the problems the County experienced in providing adequate resources for quality public representation. Such findings repeat those from other studies of public representation programs in New York State. The cumulative evidence in these studies leads to the recommendation that New York State should implement a statewide public representation system to be administered by the Appellate Division and funded through the State judiciary budget. The Appellate Division should certify lawyers to provide public representation in the criminal and family courts, and such lawyers should be required to take a specified number of hours of continuing legal education in their area of certification annually.

The prototype for this recommendation is the New York State mandated Law Guardian Program which provides legal representation to children who are parties to or victims in matters petitioned to Family Court. The Appellate Division has statutory responsibility for certifying attorneys who participate on law guardian panels. These attorneys are required by statute to attend a specified number of hours of continuing legal education on subjects related to juvenile law and family court practice per year. Similar certification and continuing legal education requirements would enhance the quality of public legal representation. Furthermore, certification could differ for criminal defense and for family court representation, with continuing legal education requirements for each specialty.

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62 Id. at 104-07; PUBLIC DEFENSE BACKUP CENTER, N.Y. STATE DEFENDERS ASS'N, PUBLIC DEFENSE SERVICES IN ONTARIO COUNTY: A STUDY OF THE ASSIGNED COUNSEL SYSTEM 47-50 (1985); PUBLIC DEFENSE BACKUP CENTER, N.Y. STATE DEFENDERS ASS'N, PUBLIC DEFENSE SERVICES IN CLINTON COUNTY: AN ASSESSMENT OF THE ASSIGNED COUNSEL PROGRAM 53 (1986).


65 Throughout the evaluation, the Center received numerous complaints about the functioning of the Assigned Counsel Plan in relation to Family Court practice in the County. The reported quality of representation provided in many of these cases is particularly troubling and the number of well-trained practitioners willing to take assigned cases is inadequate to provide timely entry into all such matters.

Life and liberty issues connected with criminal defense practice continue to dominate the discussion of public representation. Contributing to this attitude is the fact that family law is not considered a prestigious specialization among members of the Bar. It should be remembered, however, that
The Appellate Division administers the Law Guardian Program which is funded out of the State judiciary budget. A similar approach to public representation programs would insulate public representation budgets from local politics and public opinion, and facilitate the supervision of statewide standards of practice.

The study found that there are many able, qualified and dedicated attorneys who work in public defender offices and legal aid societies, or who are active participants in assigned counsel programs. Those lawyers who try, and often succeed, to provide quality representation to those in need deserve major credit. This study identified some elements essential for a quality program and assisted in developing a new model for the delivery of services. The fiscal considerations and reporting problems discussed are the major impediments to the development of consistently high quality defense systems. Ultimately, these findings point to the need for additional research into alternative funding and quality control mechanisms for public representation systems.

child abuse and neglect, foster care, or other out of home placement during childhood, have a direct and significant correlation with later criminal activity. See Christina Bark, NCYL Staff Profile: Martha Matthews, YOUTH LAW NEWS, Nov.-Dec. 1991, at 6-7.