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THE DEFENSE OF INDIGENT PERSONS ACCUSED OF CRIME IN WASHINGTON—A SURVEY

RICHARD B. AMANDES* and GEORGE NEFF STEVENS**

Eight months before the decision of the United States Supreme Court in *Gideon v. Wainwright*[1] the American Bar Association, in accordance with its long existing concern with the problem of indigent defendants, authorized the appointment of a special committee with associate subcommittees in each state "to study present practices and to initiate, coordinate and accelerate efforts to assure adequacy of the defense provided indigent persons accused of crime in the United States. . . ."[2] The work of state subcommittees was coordinated and directed by the American Bar Foundation. This article is based upon the report prepared by the Washington subcommittee, and follows in general the form of the report requested by the American Bar Foundation.[3]

Each state was requested to provide background information, such as population, the number of counties and the judicial structure. Relevant data for Washington in the summer of 1963, the date of the study, included the following: an estimated population of 3,005,100; and thirty-nine counties organized into twenty-seven judicial districts of the Superior Court, which is the court of general civil and criminal jurisdiction. Each district has one or more judges.[4] Each county has its own prosecuting attorney.[5]

The factual data for this report was collected from contacts in each county in the state. In addition, six counties were selected for intensive study.[6]

Judges representing each of the twenty-seven judicial districts and

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[1] 372 U.S. 335 (1963).

[2] 87 A.B.A. REP. 468 (1962); also reported in 48 A.B.A.J. 988 (1962).

[3] The Project Director for the American Bar Foundation was Lee Silverstein. The members of the Washington subcommittee were Lester Voris, Bellingham, Chairman; Murray B. Guterson, Seattle; James Healy, Tacoma; Paul N. Luvera, Jr., Mount Vernon; Theodore D. Peterson, Pasco; and Clarence P. Smith, Spokane. The field work for the project was done by Assistant Dean Richard B. Amandes and Neal Shulman, then a third year law student and presently a member of the Seattle bar. The authors were the Reporters for the project.

[4] For details, see BISE, 7TH ANN. REP., ADMINISTRATORS FOR THE COURTS, STATE OF WASHINGTON 16-20 (1963). For authority, see WASH. REV. CODE (hereinafter cited as RCW) chs. 36.04 and 2.08.

[5] RCW ch. 36.27.

prosecuting attorneys from each of the thirty-nine counties were contacted, as were attorneys who had represented indigents in the six counties selected for intensive survey during the period in question, 1962. More specifically, the study included interviews with seven superior court judges in the six selected counties plus informal discussions with several other superior court judges.[7] In addition, mail questionnaires were sent to judges in each of the remaining counties. Replies were received from eighty-five per cent. Five prosecuting attorneys and the chief criminal deputy in King County were interviewed. Mail questionnaires were sent to the remaining thirty-three prosecuting attorneys in the state. Replies were received from twenty-two. Since most of the larger counties were included in the six sample counties, only two of those responding by mail were full-time prosecuting attorneys.[8] The remaining twenty are permitted to and do engage in the private practice of law.[9] Responses from attorneys from the six counties were obtained by mail questionnaire and, with the exception of the smallest county (Kittitas), approximately the same number of counsel (between 16 and 24) responded from each of the remaining counties. In toto, responses were received from 101 attorneys who had represented indigents during the survey year, 1962.

[6] *County*	*1960 Population in Thousands*	*Location in State*	*Remarks*
Cowlitz	58	southwest	Agriculture; paper and pulp mills in cities
King (D)	935	west central	Commercial center; industry; education
Kitsap (D)	84	west central	Agriculture; contains Naval shipyard
Kittitas (D)	20	central	Agriculture
Spokane	278	east central	Inland commercial center; light industry
Yakima (D)	145	south central	Agriculture

(D) indicates that a docket study was made.

[7] Several members of the supreme court were also interviewed during a judicial seminar at the University of Washington in the summer of 1963. The seminar dealt with the same subject matter as our study, the representation of indigent defendants, as raised by a series of cases decided by the Supreme Court of the United States on March 18, 1963. Townsend v. Sain, 372 U.S. 293 (1963); Gideon v. Wainwright, 372 U.S. 335 (1963); Douglas v. California, 372 U.S. 353 (1963); Fay v. Noia, 372 U.S. 391 (1963); Lane v. Brown, 372 U.S. 477 (1963); and Draper v. Washington, 372 U.S. 487 (1963).

[8] RCW 36.27.060. "The prosecuting attorneys of class A counties and counties of the first class and their deputies shall not engage in the private practice of law." Class A counties are counties with a population of over 210,000, and first class counties are those with between 125,000 and 210,000. RCW 36.13.010.

[9] Subject to the limitation that he shall not "be engaged as attorney or counsel for any party in an action depending upon the same facts involved in any criminal proceeding." RCW 36.27.050. Callahan v. Jones, 200 Wash. 241, 93 P.2d 326 (1939). See also, CANONS OF PROFESSIONAL ETHICS, Canon 6, RCW Vol. 0.

Criminal Procedure and the Indigent Defendant. The information set forth below is a summary of interviews with judges and prosecuting attorneys in the six selected counties, plus information taken from the mail questionnaires referred to above. The procedures described are based upon statutes and court rules in effect during the survey year.

Jurisdiction to try felony cases in Washington is vested exclusively in the superior court.[10] Informations rather than indictments are invariably used.[11] In King County the prosecutor recalled one indictment in 1957.

The vast majority of felony cases begin with the arrest of the suspect.[12] In Kittitas and Yakima Counties an information may be filed and warrant for arrest issued as the first step.[13] In all of the counties studied, except King, the first appearance usually is arraignment in superior court.[14] The Spokane County prosecutor files a justice court complaint in most felony cases,[15] but then usually immediately files an information directly in superior court and dismisses the justice court complaint.[16] Arraignments in superior court are held daily in Spokane and Yakima Counties, immediately whenever one is needed in Kittitas

[10] WASH. CONST. art. IV § 6 (amend. 28) and RCW 2.08.010.

[11] RCW 10.37.010 permits the use of indictments, informations and complaints in criminal proceedings. See also, RCW 10.37.026. RCW 10.37.015 reads "No person shall be held to answer in any court for an alleged crime or offense, unless upon an information filed by the prosecuting attorney, or upon an indictment by a grand jury, except in cases of misdemeanor or gross misdemeanor before a justice of the peace, or before a court martial." See also, WASH. CONST. art. 1, § 25, which permits the use of the information as a substitute for the indictment.

[12] RCW 10.16.010 and 10.04.010. And see, WASH. CRIMINAL RULES FOR COURTS OF LIMITED JURISDICTION, J. CRIM. R. 2.02.

[13] RCW 10.31.010.

[14] *But see* RCW Ch. 10.16 Preliminary Hearings, and particularly RCW 10.16.030, 10.16.040, 10.16.070, 10.16.080 and 10.16.130.

[15] WASH. J. CRIM. R., 2.01-2.02.

[16] The validity of this practice today is questionable. Under Washington law, as indicated in note 11, *supra*, the prosecuting attorney has an election to proceed by an information filed in superior court, or by a complaint filed in justice court or before a justice of the peace. If the prosecutor elects to start by the complaint route, the Washington Supreme Court Rules for Courts of Limited Jurisdiction, specifically WASH. J. CRIM R. 2.03 (e) (2) provides that defendant has a right to a preliminary examination, and WASH. J. CRIM R., 2.03(f) provides for waiver of this right only by the defendant. The reason why a defendant arrested under the complaint procedures is entitled to a preliminary examination is because the arrest procedures under this approach do not require preliminary investigation by any branch of the judicial machinery. The purpose of the preliminary examination is to look into the question of probable cause to believe that an offense has been committed and that the person arrested has committed it. The preliminary hearing is not employed under indictment procedures because the grand jury has performed that function, nor is it employed under information procedures because the prosecuting attorney has made the necessary preliminary investigation. Where, however, the prosecuting attorney elects to start by the complaint route, and has taken advantage of that approach to place the defendant in custody, he should not be allowed to deprive defendant of his rights under the Rules and to avoid the preliminary examination by filing a complaint in superior court.

County, but only weekly in Kitsap (Mondays) and Cowlitz (Thursdays) Counties.[17] In King County the first court appearance is usually at a preliminary examination before one of five justices of the peace, all of whom are attorneys.[18] Since no provision exists for compensating counsel at any level below that of superior court, no mention is ever made of providing counsel at county expense.[19] A defendant may or may not be informed of his right to counsel at his first appearance after arrest upon the warrant.[20] A bail schedule exists in King County and is generally followed.[21] In other counties, informal schedules exist, often no more than providing the "usual" bail for a "typical" felony, subject to alteration for lesser or more serious crimes, or the personal circumstances of the accused.[22]

First appearances in King County before a justice of the peace usually take place within thirteen to twenty-four hours after arrest.[23] Pre-

[17] RCW 10.40.010.

[18] The King County Prosecuting Attorney's Office uses the complaint approach. See WASH. J. CRIM R. Chap. 2.

[19] RCW 10.40.030 requires the superior court to inform a defendant without counsel at arraignment of his right to counsel, and, if indigent, of his right to counsel at public expense. If the proceeding is before a Washington court of limited jurisdiction, under the complaint procedure, the judge must inform the defendant that he has a right to counsel at the preliminary hearing. WASH. J. CRIM. R., 2.03(e)(2). Some Washington justice court judges are appointing counsel for indigents at this stage even though no Washington statute, such as RCW 10.01.110, presently provides for payment of such appointed counsel at public expense. It seems clear in the light of Hamilton v. Alabama, 368 U.S. 52 (1961) and White v. Maryland, 373 U.S. 59 (1963) that the preliminary examination is "a critical stage in a criminal proceeding" and that the indigent defendant must, therefore, be provided with counsel at that time if he wants one. See also, *In re* Pettit v. Rhay, 62 W.2d 515, 383 P.2d 889 (1963). Furthermore, by virtue of the interpretation of WASH. CONST. art. 1 § 22 (amend. 10) in McClintock v. Rhay, 52 Wn.2d 615, 328 P.2d 369 (1958), that an accused person is entitled under this constitutional provision to have an attorney appointed at public expense if he is without funds, the court should require payment of lawyers so appointed. Chap. 133, Laws of 1965 (S.B. No. 61), which will become effective 10 June 1965, provides for appointment of counsel at time of defendant's first appearance, or possibly earlier, and for payment of a reasonable fee and reimbursement of actual expenses necessarily incurred.

[20] *But see*, WASH. J. CRIM R. 2.03(e)(2), and RCW 10.40.030. The statutes covering preliminary hearings, RCW Chap. 10.16, do not require the judge to tell the accused of his right to counsel. It would seem, under the reasoning of Hamilton v. Alabama, 368 U.S. 52 (1961); White v. Maryland, 373 U.S. 59 (1963); and Escobedo v. Illinois, 378 U.S. 478 (1964), that in this respect the statutes do not measure up to constitutional requirements.

[21] A new approach to bail in Washington came into existence with the promulgation of the Washington Supreme Court Rules for Courts of Limited Jurisdiction in 1963. See WASH. J. CRIM. R., 2.03(a) and 2.03(b), which were drafted to implement WASH. CONST. art. I, § 20 and § 29. The new rule with respect to bail is both a codification of the best and an extension into better practices than were previously available under Washington statutes. The Superior Court of King County is also experimenting with a wider use of the release on one's own recognizance. Attention should also be directed to the possibility of the avoidance of bail problems by a wider use of the summons in criminal cases as authorized by WASH. J. CRIM. R., 2.02.

[22] See note 21 *supra*.

[23] RCW 10.16.010 requires the arresting officer to bring the person arrested before a magistrate "forthwith." The statute does not define the term "forthwith." See also

liminary hearings are also used regularly in King County where the prosecutor generally makes a full presentation, rather than just enough evidence to bind the defendant over to superior court.[24] The prosecutor thus uses the preliminary hearing to test the strength of his case. Elsewhere in Washington, preliminary hearings are rarely held. In Cowlitz county an analogous informal proceeding is used by the prosecutor in questionable sex cases "in an attempt to save the accused from unjustified publicity." (Newspaper reporters do not cover those proceedings.)

The first appearance in counties other than King, arraignment, usually occurs within twenty-four hours of arrest in Kittitas, Spokane, and Yakima Counties, but takes place perhaps as much as a week after arrest in Cowlitz and Kitsap Counties due to the weekly arraignment calendar.[25] In King County, where a first appearance in justice court and a preliminary hearing both usually precede the filing of the information, from four to five weeks commonly elapse before arraignment on the information. Arraignment in the above context means first appearance after the filing of the information.[26] If the accused is without counsel at this time, counsel is then appointed for indigents, usually from a list of the attorneys in the county, who are seldom present in court when appointed.[27] The case is put over a week, or for such lesser or additional time as counsel may desire, before the accused's plea is entered.[28] The presiding judge in King County at the time of the survey appointed as counsel for indigents only those who had requested such appointments and only if they were present in court upon arraign-

RCW 10.04.010. WASH. J. CRIM. R., 2.03(a) requires an officer making an arrest under a warrant with bail fixed thereto to take the person "directly and without delay" before a judge or person authorized to take bail; Rule 2.03(b)(1) requires an officer making an arrest without a warrant or on a warrant where bail has not been fixed thereon to take the person to the county or municipal jail, and, if his physical condition warrants, and the offense is bailable, to permit him to deposit bail as soon as practicable; Rule 2.03(d) defines "directly and without delay" as "as soon as reasonably practicable." The Washington Judicial Council, in its original recommendations to the supreme court, had recommended a more specific time schedule. Considering the reasoning of the Supreme Court of the United States in Escobedo v. Illinois, 378 U.S. 478 (1964), there would seem to be no reason whatsoever for the arresting officer to delay bringing the arrested person before a magistrate or person authorized to accept bail. On the contrary, failure to do so may make eventual conviction of a person who did in fact commit a crime either more difficult or even impossible.

[24] See note 18 *supra*.

[25] For bail procedures, see note 21 *supra*, and RCW Ch. 10.19.

[26] *But see* RCW 10.40.010.

[27] RCW 10.40.030.

[28] RCW 10.40.060 specifies that the defendant is entitled to one day after arraignment in which to answer if he demands it. WASH. J. CRIM. R., 2.03(e)(4) provides that the judge at the preliminary hearing shall allow the defendant reasonable time and opportunity to consult counsel. See also, State v. Hartwig, 36 Wn.2d 598, 219 P.2d 564 (1950), holding that the right to have the assistance of counsel carries with it reasonable time for consultation and preparation.

ment. Appointed counsel then conferred with the accused, entered a plea of not guilty, and was encouraged to return with the defendant for a change of plea, if such was to be forthcoming, as soon as practicable.[29] Other King County judges also select counsel from a list of those who have requested such appointments, but do not require that they be present in order to qualify. With these other judges, the defendant's plea may be made at any reasonable time.

As is to be inferred from the above discussion, the appointed counsel system is employed throughout Washington, with one exception. The Benton-Franklin Counties Judicial District in 1963 appointed a public defender to be paid from county funds. This plan is still in operation. A report on the success or failure of the experiment will no doubt be made to the Washington Judicial Conference and to the Washington State Bar Association in due course.

If the accused is without counsel at either a preliminary hearing before a magistrate or at arraignment before a superior court judge, the magistrate or judge is required to inform the accused of his right to counsel.[30] The Washington Supreme Court has held that while "There are no 'magic words' which fit all situations as to what the trial court must say in advising an accused person of his constitutional rights,"[31] constitutional guarantees and Washington statutes impose upon the court three duties: . . .

(1) to inform the defendant that it is his right to have counsel before being arraigned;

(2) to ascertain whether because of the defendant's poverty he is unable to employ counsel, in which event the court must inform the defendant that the court shall appoint counsel for the defendant at public expense if he so desires; and

(3) to ask whether the defendant desires the aid of counsel.[32]

To determine eligibility of the indigent for appointment of counsel, the judge asks a series of questions about his financial status. Usually, this is the only test employed.[33] In one or two counties, the judge will

[29] For steps available to defendant at arraignment see RCW 10.40.060 through 10.40.190.

[30] WASH. J. CRIM. R. 2.03(e)(2); RCW 10.40.030, and 10.01.110. See also WASH. CONST. *art.* 1, § 22 (amend. 10).

[31] *In re* Ritchie v. Rhay, 63 Wn.2d 508, 387 P.2d 967 (1963).

[32] *Ibid.*

[33] Although not directly in point, since it involves costs of perfecting an appeal, the language of State v. Rutherford, 63 Wn.2d 949, 953-54, 389 P.2d 895, 898-99 (1964), should serve as a helpful guide:

1. Indigency is a relative term, and must be considered and measured in each case by reference to the need or service to be met or furnished.

2. Consideration must, of necessity, revolve about and be given to the existence,

then ask the prosecutor if he's satisfied that the accused is indigent, and if the prosecutor indicates a desire to pursue the matter further, he may—but this rarely happens. Counsel is then appointed. One judge in a small county indicated that for young, old or mentally infirm defendants, he automatically appoints an attorney and asks him to report regarding the defendant's financial situation. The only time an affidavit is regularly employed in determining indigency is in Spokane County when counsel is requested for an appeal. The judge then requires the defendant to certify that he is without funds.

As mentioned above, there is no provision for compensation of counsel appointed to represented indigent defendants except in felony cases in superior court.[34]. A Washington statute provides for compensation not to exceed twenty-five dollars a day for each lawyer (a maximum of two is allowed) for each day of trial and twenty-five dollars for services in preparing for trial or plea.[35] There is some difference among judges in the interpretation of this provision. Some allow $25 through the first day of trial, most allow $25 to the first day of trial (plus of course $25 per day thereafter). In Cowlitz and Kitsap Counties the judges allow $50 as the basic fee for a guilty plea. In addition, Cowlitz County may allow more than $25 per day for additional trial days. Pierce County judges allow an average fee of $75, $25 each for arraignment, plea and sentencing. No provision is made for compensation at an earlier stage of the proceedings than arraignment (although one superior court judge during the period of the survey requested a judge of the justice court to appoint counsel, and indicated that he "would find a means of reimbursing counsel somehow"). Similarly no provision is made for reimbursement of investigatory or out-of-pocket expenses other than the $25 for preparation, nor for compensation on appeals to the supreme court, although several counsel indicated reimburse-

nature and extent of (a) the defendant's separate and community assets and liabilities; (b) the defendant's past and present occupation and earning capacity; (c) the defendant's credit standing; and (d) any other factors tending to substantially impair or materially enhance the defendant's ability to advance or secure the necessary costs.

3. Mere innuendo, suspicion, or conjecture that a defendant may be able to secure or advance the costs is insufficient.

See also Carter & Hauser, *The Criminal Justice Act of 1964*, 36 F.R.D. 67 (1964).

[34] See text accompanying note 19 *supra*. Ch. 133, Laws of 1965 (S.B. No. 61) provides that the section shall apply to "other proceedings" as may be constitutionally required. This is broad enough to cover misdemeanors if defendants so charged are held constitutionally entitled, as indigents, to appointed counsel.

[35] RCW 10.01.110. This statute has been superseded by legislation enacted by the 1965 legislature and signed by the Governor which provides for the payment of reasonable attorney fees and actual expenses necessarily incurred. S.B. 61. Laws of 1965, Ch. 133, effective 10 June 1965.

ment for the former, and most judges and attorneys indicated some compensation had been paid for the latter. However several counsel indicated that they received no compensation for their work on appeals "because there is no statutory provision for it."[36] All judges interviewed indicated that psychiatrists and other doctors are provided at state expense where it seems appropriate.[37] Their compensation comes from the witness fee fund, although it is doubtful whether that fund was intended to cover such fees.

As a general rule counsel is not provided for indigents charged with misdemeanors in any of the counties sampled, although if a serious misdemeanor is to be tried in superior court, appointment may be made.[38] In four of the selected counties counsel is usually not appointed for a defendant charged with a felony if he pleads guilty, the plea being regarded as a waiver of counsel.[39] Counsel will be appointed at that stage in all counties if the defendant requests it.[40] If a defendant has been convicted, his counsel is always present at sentencing.[41] Most judges in the selected counties do not appoint counsel for a probation revocation hearing.[42] However, some of those who do not appoint counsel have some qualms about the fact that they have not done so. Either the judge or prosecutor in each of the six counties indicated that counsel is provided for sexual psychopath hearings, whereas it is usual in only three of the counties (King, Kittitas and Spokane) to appoint counsel

[36] Rule 101.24W, R. WASH. PLEAD., PRAC. & PROC., provides that whenever the trial judge authorizes the expenditure of county funds on behalf of an indigent defendant to perfect a review to the supreme court, he shall at the same time appoint an attorney to represent the defendant unless the defendant already has counsel. The Washington Judicial Council has sponsored a bill to provide compensation for and reimbursement of expenses to attorneys who are appointed to handle the appeals of indigent defendants for several years. The effort has finally borne fruit. See S.B. 61, *supra* note 50.

[37] This, of course, is in addition to defendant's right to compulsory process to compel the attendance of witnesses in his behalf. WASH. CONST. art. 1, § 22 (amend. 10). For witness fees, see RCW Ch. 2.40, and RCW 10.01.130, 10.01.140, 10.46.050 and 10.52.040. See also, RCW Ch. 10.55, Witnesses Outside the State (Uniform Act).

[38] This practice should be extended in view of Gideon v. Wainwright, 372 U.S. 335 (1963). And see, note 19 *supra*.

[39] The validity of this practice is very questionable, unless preceded by the procedures outlined in the text at note 30. See, *e.g.*, such waiver cases as State v. Dechmann, 51 Wn.2d 256, 317 P.2d 527 (1957); Wakefield v. Rhay, 57 Wn.2d 168, 356 P.2d 596 (1960); State v. Angevine, 62 Wn.2d 980, 385 P.2d 329 (1963); and, Ritchie v. Rhay, 63 Wn.2d 508, 387 P.2d 967 (1963). See also Escobedo v. Illinois, 378 U.S. 478, at 490 n. 14 (1964).

[40] RCW 10.01.110.

[41] The defendant must be present for conviction of an offense punishable by imprisonment. RCW 10.64.020. The defendant is entitled as a matter of right to have counsel present both when the jury returns its verdict and when sentence is pronounced; he may also waive this right. State v. Washington, 39 Wn.2d 517, 236 P.2d 1035 (1951); and *In re* Eskridge v. Rhay, 58 Wn.2d 556, 364 P.2d 819 (1961). Annot., 20 A.L.R. 2d 1240 (1952).

[42] See, in support of the validity of this practice, *In re* Jaime v. Rhay, 59 Wn.2d 58, 365 P.2d 772 (1961) and State v. Shannon, 60 Wn.2d 883, 376 P.2d 646 (1962).

in the commitment of the mentally ill, although a guardian, often an attorney, may be appointed to look after the estate of the person committed.[43]

If an appeal is requested, trial counsel usually continues through the appellate process. In fact, one judge insists that counsel retained for the trial continue as appointed counsel on appeal. However, for good cause, trial counsel may be relieved and other counsel appointed for appeal.

The usual post conviction remedy in the State of Washington is habeas corpus.[44] Petitions may be filed in the superior court of the county where the prisoner is incarcerated[45] or in the supreme court.[46] At present counsel is not provided for those incarcerated in the reformatory or penitentiary who want to take postconviction action in either the superior or supreme court.[47] A superior court judge in Walla Walla County, where the penitentiary is located, suggested that he would favor appointing counsel in some habeas corpus cases, if a constitutional screening process can be devised. The judge in the county containing the reformatory presents an opposite philosophy. He felt that habeas corpus petitions should not be encouraged, and that we must assume the accused had a fair trial. One prosecutor indicated that prisoners often prefer not to have counsel appointed; they say that they can do a better job themselves. One deputy attorney general is assigned to present all habeas corpus petitions before the supreme court, more or less as an impartial evaluator, rather than as an advocate. A member of the Washington Supreme Court indicated he could not remember the last time an indigent had been represented by counsel on habeas corpus before that bench.[48]

Comments of Judges, Prosecuting Attorneys, and Attorneys Who Have Represented Indigents, Regarding Criminal Procedure in Washington. The views expressed below, as well as much of the factual

[43] For an excellent discussion of the problems of this area see LINDMAN & MCINTYRE, THE MENTALLY DISABLED AND THE LAW, (1961), a study conducted under the supervision of the American Bar Foundation.

[44] RCW Ch. 7.36, and WASH. CONST. art. 1 § 13.

[45] RCW 2.08.010, WASH. R. PLEAD., PRACT. PROC., 96.08W, and WASH. CONST. art. 4, § 6 (amend. 28). For an excellent example of the use of habeas corpus, see *In re* Pettit v. Rhay, 62 Wn.2d 515, 383 P.2d 889 (1963).

[46] RCW 2.04.010, WASH. SUP. CT., R. ON APPEAL, 56, RCW Vol. 0, and WASH. CONST. art. 4 § 4.

[47] That this practice is presently widely followed, see Comment, *Right to Counsel in Criminal Post-Conviction Review Proceedings,* 51 CALIF., L. REV. 970 (1963). For an example of contrary practice and reasons see, Mazor, *The Right to be Provided Counsel: Variations on a Familiar Theme,* 9 UTAH L. REV. 50, 72-74 (1964).

[48] *Contra, In re* Pettit v. Rhay, 62 Wn.2d 515, 383 P.2d 889 (1963).

data referred to above, were obtained by means of interviews and mail questionnaires. In addition to requesting answers to specific questions dealing with many particular aspects of criminal procedure, each interviewee was presented with an open ended question at the beginning and at the close of each interview, designed to elicit his basic thoughts and feelings regarding criminal procedure. Each mail questionnaire presented a similar opportunity and a significant number of responders in all categories took the opportunity to express themselves generally on the subject of criminal procedure as it existed in 1963. Because many of these comments deal with the specific items discussed above, some repetition of subject matter is inevitable. However, an effort has been made to cover comment and opinion, as distinguished from fact.

Indigency.[49] On the basic question, "Who is an indigent?," judges and prosecuting attorneys were presented with a list of eight factors and asked whether or not any of the eight were taken into account in determining indigency. These factors were:

1. Wages or salary of the accused.
2. Ownership of an automobile or other personal property.

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[49] The following table indicates the extent of the problem faced by the six counties studied in depth:

County	Felony Def'ts 1962	Percent Indgt. (a)	Percent Indigent who Waived (a)	Lawyers in Practice	No. of felony apptmts.	No. of lawyers who served	Max. No. of asgmts. per attorney	Typical payment for felony guilty plea
Cowlitz	90	80	30	39	49	19	6-9	$50
King	1010	50	5	1705	468b	87	30	25
Kitsap	134	45	15	45	60b	28	6	50
Kittitas	57	55	57	12	16b	3	6	25
Spokane	592	80	25	388	124	112	2	25
Yakima	292	80	25	125	135b	48	6	25

(a) These figures are averages of the estimates of judges and prosecutors in each county.
(b) These figures are estimates based on the response of attorneys. The specific figures for Cowlitz and Spokane were obtained from a docket count.

* * * *

It will be noted that consistency with respect to estimates of percentage of indigency and waiver of counsel is not particularly apparent. Judges' estimates on both factors varied widely. There was no apparent pattern between rural and urban areas, nor between the estimates of junior and senior judges. (Judges who had been on the bench for less than ten years were considered junior; those with more than ten years of judicial experience in superior court were considered senior). Estimates on the percentage of indigency ranged from 33% to 95%, and on waiver of counsel by indigents from 2% to 85%. The averages were a 61% rate of indigency and a 31% rate of waiver. Similarly, the prosecuting attorneys' estimates of the percentage of indigent defendants, charged with felonies, varied widely with no observable pattern between rural and urban areas. Estimates on the percentage of indigency ranged from 15 to 98, and on waiver of counsel by indigents from 0 to 50%. The averages were close to those of the judges, a 61% rate of indigency and a 26% rate of waiver.

3. Ownership or interest in real property.
4. Any stocks, bonds or bank accounts.
5. Any pension, social security or unemployment compensation.
6. Was he out on bail.
7. The financial resources of parents or spouse.
8. Financial resources of other relatives.

Virtually all of the judges indicated that they considered all eight factors. However, several judges stated that they did not include items 6 and 8. The answers of a great majority of the judges indicated that no single item standing alone would preclude a finding of indigency. Approximately one-third of the judges indicated that the financial resources of the defendant's spouse were considered and might prevent a finding of indigency, but several of them indicated that the issue had never arisen.

Prosecuting attorneys were asked specifically what they thought of the present system for determining indigency. Eight of the twenty-eight felt that the present system was too lenient. On the other hand, three from smaller counties (two of which had less than ten thousand population) said that the system was too strict.

No judge interviewed in this study felt that a defendant who could pay a moderate fee should have counsel appointed. The consensus was that he could find an attorney to defend him for that fee, even though it be little more than that provided by the state. Several judges indicated that they felt it an obligation of the Bar to handle such cases for whatever fee was available. On the other hand, at the judicial seminar at the University of Washington in the summer of 1963, there was strong indication that all doubts should be resolved in favor of a finding of indigency and that a man who is just barely managing to get by on his pay check, though he have a small equity in his home, should have counsel appointed for him.[50] As a practical matter, several judges felt that appointed counsel would be and usually are the ones most likely to discover available funds. In that circumstance, in at least two counties, counsel seek no funds from the county and collect from the defendant. In one county it appeared that at least some counsel collected from the county if there was a difference between what they would have charged and what they had been able to collect. A few attorneys felt that because they had been appointed they were

[50] Accord: Report of the Judicial Conf. of the U.S. on the Criminal Justice Act, 1964, 85 Sup. Ct. 12 (1965).

ethically estopped from receiving any money from the defendant who had not selected them, even though they were unable to collect from the state because their client was not indigent.[51]

Indigency having been established, all the judges interviewed indicated that they explained the significance of the arraignment and informed the accused of the fact that he is entitled to counsel at no cost to him.[52] In addition, judges in Kitsap and King County urged, or virtually urged, the acceptance of counsel. All the judges were in agreement that a defendant under twenty-one must accept counsel, whether he wants it or not.[53]

Should the defendant be found ineligible to have counsel appointed, most judges merely tell the defendant that, if he wishes, he may and should retain his own lawyer.[54] The interviews produced a further statement that the accused is given a reasonable time to employ counsel, if he so desires.[55] One judge indicated that a week was usual but that he would balk at a month.

Sources of Appointed Counsel. Counsel for indigents in Washington are almost invariably selected from a judge's list of attorneys' names. In the vast majority of cases, this list includes the names of all the attorneys in the county, subject to exceptions for age, infirmity, etc. King County is an exception to this rule, as explained above. At the time of the study, King County was contemplating an attempt to broaden the list from which attorneys were to be selected, as a result of an inquiry into this subject by the federal district judges in western Washington and the appointment during the latter part of the summer of 1963 of some of Seattle's leading attorneys to represent indigents. By the time the original report of this study was presented to the American Bar Foundation, in the latter part of 1963, the federal court had commenced making its appointments from a list which included all King County attorneys who had been admitted to the Washington Bar during the preceding twelve years.[56] Since the period of the study,

[51] There are bar association ethics committee rulings to this effect. See DRINKER, LEGAL ETHICS 62-63 (1953), which includes a suggested solution.

[52] See text at notes 30 & 31 *supra*.

[53] For an excellent discussion of the waiver point see State v. Angevine, 62 Wn.2d 980, 986-87, 385 P.2d 329, 333 (1963); annot., 71 A.L.R. 2d 1160 (1960).

[54] WASH. CONST. art. 1, § 22 (amend. 10) assures the right of the accused to appear and defend in person if he so desires after having been adequately advised of his right to counsel under his particular circumstances.

[55] See note 28 *supra*.

[56] This practice is presently under review by the Federal District Court because of the new Criminal Justice Act, which became law on 20 August 1964 Pub. Law 88-455, 18 U.S.C. 3006A, and which provides for compensation of assigned counsel in criminal

and at present, the King County superior court has made, and is making, its appointments from a list of attorneys prepared by the Seattle-King County Bar Association. The list contains the names of attorneys who volunteered, as well as those who were drafted for service by the bar committee. Presence in court is not required. The superior court judges use the list not only as a source of names for appointment, but also as a means of equalizing the burden on the bar. The Kittitas County list includes only three of the county's ten lawyers in private practice. This is the result of an agreement between the bench and bar under which one attorney from each of the law firms in the county is assigned the responsibility of defending indigents accused of crime. Cowlitz County has had a problem arising out of an ethics opinion issued by the Washington State Bar Association, which states that it is unethical for an attorney who serves as a city attorney to accept the defense of persons accused of crime in superior court, and that partners and associates of the city attorney are also disqualified.[57] In a county with only thirty-nine practicing lawyers, this opinion resulted in a very serious limitation on those available to represent indigents. It put the entire burden on some twenty lawyers. The superior court judges of Cowlitz County have wanted to appoint city attorneys or their associates, only to encounter this ethical block. Apparently, neither the judges in Cowlitz County nor the attorneys felt that the slight change of position taken by the Washington State Bar Association in late 1960 was sufficient to eliminate the problem and to permit city attorneys, and particularly their partners and associates, to accept appointments by the court to represent indigent persons accused of crime in either superior or justice of the peace courts.[58]

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cases. For an excellent and succinct explanation of this new federal policy see Shafroth, *The New Criminal Justice Act,* 50 A.B.A.J. 1049 (1964). For proposals as to implementation see Report, *supra* note 50.

[57] It is believed that the reference is to Wash. State Bar Assoc. Op. 68, on the matter of City Attorneys of Third Class cities accepting the defense of criminal actions, which was based upon the A.B.A. Op. 34 (Mar. 3, 1931). (A third class city is one having at least 1500 inhabitants. RCW 35.01.030.)

[58] See Wash. State Bar Assoc. Op. 112, in 14 WASH. STATE BAR NEWS 58, 62 (Dec. 1960). The opinion is based upon a modification of the earlier A.B.A. opinion and recognizes an exception under circumstances where the defendant would otherwise find it difficult or impossible to secure counsel. The opinion does not take into account the burden imposed on other members of the bar by the disqualification of the city attorney and his associates, nor does it stress and distinguish, as it might, the difference between the representation of persons accused of crime for a consideration and representation of indigents at the request and under the supervision and control of the court. In A.B.A. Op. 55 (Dec. 14, 1931), it was expressly stated that Op. 34, see note 57 *supra,* did not apply to the defense of indigent prisoners. It would seem, in the light of the growing burden on attorneys in this area, that a review of these two Washington opinions is in order.

For serious or complicated cases, such as murders or insanity pleas, most judges make special provision in some manner, either by appointing an experienced attorney, or by appointing two, one with considerable criminal experience, and another younger attorney for the leg work. Judges from five counties indicated that they did not make special provision for a serious case. The reason is obvious. The largest of the five counties has only thirty-nine lawyers and most of them have some criminal practice. In Kittitas County the three attorneys selected for assignment handle virtually all the criminal work of the county and are experienced counsel for the occasional serious case, "about one every four years."

Only one judge indicated that attorneys asked to be excused from appointments to defend indigents more than ten percent of the time, and most of these requests were for good cause.[59] Several indicated they had never been presented with such a request, and another indicated "we do not entertain such requests." Yet, when requests are made for good cause, the judges' answers indicated that they are invariably granted. This was not a problem in Washington in 1963, but it may well become one in the future as the burden of defense imposed by recent United States Supreme Court decisions takes the need for counsel back to the accusatorial stage.[60]

Stage of the Proceedings for Appointment of Counsel. The most significant difference of opinion among the judges, prosecutors, and defense attorneys involved the time suggested for appointment of counsel. Since this was the only point of significant difference of opinion among the three groups, the phrasings of the particular questions are of some importance and are set out in the footnotes.[61]

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[59] CANONS OF PROFESSIONAL ETHICS 4, 5, RCW vol. O.

[60] Massiah v. United States, 377 U.S. 201 (1964) and Escobedo v. Illinois, 378 U.S. 478 (1964).

[61] Judges and prosecutors were asked the following questions:

101. a. *Under an ideal system,* at what stage in a criminal case do you think the indigent person should first be provided with a lawyer if he wants one?

1. Between arrest and first appearance before a magistrate.
2. At first appearance before a magistrate.
3. Between first appearance and preliminary hearing.
4. At preliminary hearing.
5. After preliminary hearing but before the filing of an indictment or information.
6. After the filing of an indictment or information but before arraignment thereon.
7. At arraignment on indictment or information.
8. After arraignment on indictment.
9. At trial.
10. Other (state below).

(Ed. note: Because the questions were prepared for a national survey, all categories are not applicable in Washington or any particular state)

All but two of the judges contacted by questionnaire felt that appointment of counsel should be at an earlier stage than at present.[62] All of the judges interviewed also agreed that appointment should be earlier.[63] One indicated that there was no more "critical stage" than the time of arrest, and that counsel should most appropriately be made available at that time. Three others thought that the appointment should be made between arrest and first appearance, thereby allowing the police some time to talk to the defendant. Two of the remaining three felt that counsel should be appointed at the first appearance; the third indicated that "speaking as a former deputy prosecutor, the case couldn't be processed if the lawyers get in the case too early," and suggested the preliminary hearing as the appropriate stage for appointment of counsel. He was the only one of the seven judges interviewed who felt that lack of counsel at the stage he selected would not be unfair. Eleven of the seventeen judges, responding to the mail questionnaire, indicated that counsel should be appointed at or prior to first appearance, four suggested appointment at the preliminary hearing and two chose the period after the filing of the information and before arraignment, the current practice. Twelve of the seventeen thought it would be unfair if the defendant did not obtain counsel at the stage selected by him for appointment under an ideal system; three thought it would not be unfair at the stage he selected; and two said it depended upon the experience of the defendant. All but one thought the procedure he suggested could be financed, although some recognized that it would be an additional burden on the county. The financial problem was mentioned often in the interviews with judges. (All the comments must be interpreted in light of the 1963 practice of providing no more than $25 or $50, $75 in Pierce County, for counsel in any case unless the trial lasted more than one or two days.) With these statutory limits upon compensation, appointment in all cases would not appear to be an insurmountable financial burden. Finding a sufficient number of lawyers to handle all cases would be another matter, however.

101. b. Do you think it is unfair to the indigent person if he does not get a lawyer at this stage?

Defense attorneys were presented with the same list of nine alternatives, but were asked to indicate at what stage they were appointed in the *last* case in which they represented an indigent during the survey here in 1962. After selecting one of the nine categories, defense attorneys were then asked, "were you appointed in time to represent the accused person adequately?"

[62] See text at note 30 *supra.*

[63] It should be remembered that the survey was conducted prior to the decisions in *Massiah* and *Escobedo.*

The responses of the prosecutors can be divided essentially into two groups. Each of the twenty-eight responding, orally or by mail, considered the ideal system to be one which would best protect the accused and thought that appointment should take place between arrest and first appearance. Twelve selected either "after the filing of the information," or "at arraignment." Several others mentioned "at the first appearance before a magistrate." Two of the six prosecutors interviewed selected the latter time, but indicated that the first appearance in their county was usually, if not invariably, at the arraignment on the information. Consequently, what originally appeared as two somewhat divergent views resolved themselves into two less disparate but nevertheless distinctive views. Those who believe that counsel should be appointed before the first appearance recognized that an accused's rights will not be fully protected if counsel is not appointed almost immediately upon arrest. The majority, selecting arraignment as the time for appointment of counsel, tended to stress that the vast majority of the defendants were guilty in fact and that, in many cases, they would not be convicted if counsel were obtained too soon. In essence, the status quo (in the more populous counties, *i.e.,* King, Spokane, and Yakima, usually involving arraignment or other court appearance within twenty-four hours) was felt to be as fair a procedure as an accused was entitled to have.

Five of the twenty-eight prosecutors thought it not unfair if the defendant did not have the benefit of counsel at the stage he had selected under an ideal system. Six prosecutors expressed doubt whether such a system could be financed, but relying on our twenty-five dollars per day or per appearance statute, the majority felt that the added burden would not be much of a problem.

Because no provision is made for payment of attorneys prior to arraignment in superior court in Washington, the vast majority of attorneys responding indicated that they had been appointed either at arraignment or after the filing of the information and before arraignment. Seventy-five of the 101 indicated these two stages as the time of their appointment, thirty-four indicating just before arraignment, and forty-one at arraignment. Actually no significant difference is presented by these two groups of answers. Appointment is usually made when the defendant first appears in superior court, which may be called arraignment by some attorneys, while others consider that arraignment does not take place until a plea is entered. In addition

to the seventy-five mentioned above, an additional ten indicated appointment at or before first appearance before a magistrate. In light of the practice in the state, it is reasonable to believe that they also meant at or just before arraignment, which is the usual first appearance.[64] Of the remaining sixteen, eight indicated appointment prior to the filing of the information, and eight after arraignment and before trial.

On the important point, whether appointment was sufficiently early to allow adequate representation of the accused, seventy-eight of the ninety-eight responding attorneys answered in the affirmative. However, several of the seventy-eight indicated that, while their response was affirmative regarding the technicalities of the defense, appointment is of little value in anything but sentencing if the police and the prosecutor have already talked extensively with the accused.[65] Understandably, several of the twenty negative responders concurred. The fact that counsel might not be as happy with the situation as a majority would indicate is borne out by the answers to the question regarding whether the system is fair to indigents. Only fifty-eight said yes, whereas forty said no to that question. Specifically, thirty-six attorneys thought that counsel should be appointed at an earlier stage of the proceedings, although few suggested exactly when that appointment should be made.

Rate of Compensation. Compensation for the representation of indigents was stated to be inadequate by all but one judge contacted, with numerous and varied adjectives and adverbs thrown in for emphasis. The one dissenter admitted that the statutory rates were inadequate, but stated that in his county they are stretched. Two other judges dissented in part by indicating that they thought the $25 provided counsel where a defendant pleaded guilty was adequate. Every judge who responded indicated that counsel should be reimbursed for his out-of-pocket expenses. Some of the judges interviewed indicated that it was their practice to allow reimbursement in one manner or another. However, attorneys generally seemed to be unaware of this practice. Apparently reimbursement is allowed only occasionally.

Turning to the views of prosecutors on this matter, an interesting distinction appeared between the views of prosecutors who had been

[64] Unless, of course, they were appointed at a preliminary hearing, under RCW Ch. 10.16. Preliminary Hearings. For present practice, see notes 18 and 19, *supra*.

[65] Escobedo v. Illinois, 378 U.S. 478 (1964). The 1965 legislature agreed with the majority. See, *supra* note 35.

such less than ten years and those who had been in office for longer periods. Every one of the newer prosecutors felt that the rates of compensation were inadequate, whereas only half of the senior prosecutors agreed on this point. Among the prosecutors who believed that compensation was adequate, all but one came from counties with populations of less than 40,000, and the largest county involved had a 1960 population of only 62,070. Every prosecutor who answered the question indicated that counsel should be reimbursed for his out-of-pocket expenses.

Understandably, defense attorneys also thought that the rates of compensation for their services were inadequate. In answer to the question requesting recommended changes of procedure, eighty-five of the 101 attorneys responding indicated that counsel should be paid more for their services, and seventy-six thought that out-of-pocket expenses should be paid, indicating by implication that at least that number had received nothing in this regard. In fact, ninety-one of the 101 attorneys were compensated for their services. However, only fifteen were compensated in full for their out-of-pocket expenses, and an additional ten were compensated in part. In answer to the more general question, only a third of the defense attorneys thought the system fair to lawyers, while two out of three answered negatively.[66]

Quality of Appointed Counsel. More than half of the Washington lawyers appointed to represent indigents during the period of this study had been in practice longer than ten years. In the smaller counties where appointed attorneys are regularly selected from the entire bar membership this is quite normal, but, surprisingly, in King County where appointments are made from among those who indicate a willingness to serve the same pattern prevails.

Because attorneys for indigents generally are selected from the bar at large, all but three judges felt that appointed counsel were equal to retained counsel. Two felt that appointed counsel did not do as well. One indicated that they give better service than retained counsel. The latter judge mentioned that appointed counsel have no hidden economic motives, and other judges nodded agreement when this point was

[66] The attention of attorneys appointed to defend indigents is directed to Judge William G. East's opinion in Dillon v. United States, 230 F. Supp. 487 (D. Ore. 1964). in which the court in granting relief to the lawyer applied the theory of government taking of the lawyer's services for public use. See, Note, 16 HAST. L. J. 274 (1964). See also, Ervin, *Uncompensated Counsel: They Do Not Meet the Constitutional Mandate*, 49 A.B.A.J. 435 (1963) and Mazor, *supra* note 44, at 83. *But see*, State v. Johnson, 64 Wn.2d 625, 628, 393 P.2d 284, 286 (1964).

suggested. Similar results appear in the comparison of appointed counsel with prosecutors. Only two judges, responding by mail, thought that appointed counsel were not as good as the prosecutor and his staff, while two who were interviewed thought that appointed counsel were better. Often they are ex-deputy prosecutors who left that office once they had acquired some confidence. One judge requested that his original outburst regarding the incompetency of most deputy prosecutors be tempered to an indication that retained counsel compared "*very* favorably." Some judges, of course, mentioned the tremendous advantage that the prosecuting authority has in the investigative stages. As previously indicated, the only judicial district that has set up a defender program had not, at the time of this survey, had an opportunity to operate under it. The judge from that district indicated that the part-time defender who had been selected had had less experience than the prosecutors in those counties.[67]

The prosecuting attorneys felt that assigned counsel were generally equal to retained counsel. Two or three felt that assigned counsel were better than many counsel who were retained, stating that assigned counsel were more conscientious or experienced. Two or three felt them to be less qualified than retained counsel.[68]

Seven attorneys indicated no criminal practice prior to their first appointment in 1962, and an additional twenty-three indicated less than ten prior criminal cases. Several of these thirty qualified this with the comment that they meant criminal defense; they had been deputy prosecutors. At the other extreme, twenty-four indicated that they had had more than fifty previous criminal cases.

The most common number of appointments per attorney was two, thirty-six of the 101 who responded indicating that number. Twenty-eight responders indicated that they had been appointed in more than three cases, and one attorney received thirty appointments. All of those who indicated appointment to more than nine cases each came from King County. Two attorneys in each of Cowlitz and Yakima Counties indicated appointment in six to nine cases, as did one attorney in Kitsap County. One Kittitas County attorney was appointed in six cases, whereas the largest number of cases allocated to any Spokane attorney was two. Fifteen attorneys indicated that they had repre-

[67] See text *supra* at p. 83.

[68] With respect to the incompetency of appointed counsel as grounds for a new trial see, State v. Davis, 53 Wn.2d 387, 333 P.2d 1089 (1959), and State v. Mode, 57 Wn.2d 829, 360 P.2d 159 (1961).

sented defendants who had been charged with crimes punishable by death or life imprisonment during 1962 in a total of twenty cases.

Miscellaneous Items and Summary Comments. One question directed to prosecutors which produced some variant answers was the following: "Do you disclose to defense counsel such things as confessions, statements of witnesses, reports of expert witnesses, exhibits, etc.? Please specify those things you do disclose and those you do not." Twelve of the twenty-eight prosecutors indicated that they usually disclose everything in their files as a matter of course; three others indicated that they do so if a request is made; ten others indicated that they disclose some things, *i.e.*, confessions, coroners reports, but not witnesses' statements, and other items which might be considered the "work product" of the prosecution. One prosecutor in this group summed up his policy by saying that he "turned over the items which come from the defendant himself." Several of those who hold some things back indicated that it depends a lot on the attitude of defense counsel. If he has been cooperative in the past, he stands a greater chance of receiving similar cooperation from the prosecutor. Another prosecutor who prefers to hold some things back comments that "A defendant can get virtually anything on motion; the courts don't exercise their discretion at all."[69] Another comment illustrative of an idea mentioned more than once was "As I get more experience, I turn over more and more. It's easier to dispose of a case by disclosing." Two distinctive positions also were represented in the replies. One prosecutor disclosed none of the items listed, and two indicated that everything was disclosed to appointed counsel but that some items were held back from retained counsel.[70] In their summary comments, three prosecutors suggested that a public defender system should be adopted; three felt that appointed attorneys should be better compensated, both for their time and out-of-pocket expenses; two felt that the Washington procedures should be altered to allow earlier appointment; three felt that some steps should be taken to force the defendant who has appointed counsel, but who has funds, to assign his funds or compensate counsel in some manner.

[69] For an excellent discussion of pre-trial discovery in criminal cases see, Fletcher, *Pretrial Discovery in State Criminal Cases,* 12 STAN. L. REV. 293 (1960). For the present Washington picture, in law and in practice, see Comment, 39 WASH. L. REV. 853 (1964).

Prosecuting attorneys should study: Note, 15 STAN. L. REV. 700 (1963). And see, State v. Grove, 65 Wn.2d 508, 511-12, 398 P.2d 170, 172-73 (1965).

[70] The duty of the prosecutor is spelled out in CANONS OF PROFESSIONAL ETHICS 5, RCW Vol. O.

Similarly, a few judges added general comments. Several indicated that a public defender system should be instituted. Another, that some means should be found to appoint lawyers from outside the county where it would be advisable, *i.e.*, the practice of a small county lawyer can be seriously hurt by a criminal defense if the crime has inflamed the local citizenry. The county in question has slightly less than 11,000 population and only six attorneys who are not associated with the firm of which the prosecutor is a member, and two of these six are not active practitioners.

CONCLUSIONS AND RECOMMENDATIONS

At the time this report was submitted to the American Bar Foundation, in November of 1963, the authors' conclusions and recommendations were those stated below. *To the extent that they have been implemented,* the original survey will have served its purpose. To the extent that they have not, hopefully this broader dissemination of the essence of the report will be of assistance in accomplishing that end.

In order to fully protect an accused's substantive rights, provision should be made for earlier appointment of consel. The main stumbling block under the current practice is the statutory requirement which provides for the appointment of counsel upon arraignment in superior court, and for compensation in connection with that appointment. There being no specific provision for earlier appointment or compensation, it is only on rare occasions that counsel is appointed at an earlier stage of the proceedings.

Funds for the defense of indigents should be increased, not only to provide adequate compensation for counsel's services, but also to cover his out-of-pocket expenses. Although several suggestions were made that a public defender system should be adopted, the quality of current representation is generally felt to be equal to that supplied by retained counsel. Thus the additional funds could be used either to staff and service a public defender system, or to compensate more fully the counsel now selected under the appointive counsel system. Under either system, funds for investigatory and other out-of-pocket expenses, and for counsel's services in prolonged trials, appear to be the major requirement to bring the current system up to an efficiently functioning level.

If the current system of appointed counsel is continued, a manual, setting forth the responsibilities of appointed counsel, the steps which should be taken or considered in behalf of the accused, and the services

available to counsel in preparing for trial, should be prepared and distributed to all attorneys on the list.[71] In addition it should cover such items as the procedure to be followed if counsel discovers after his appointment that the accused has sufficient funds to compensate counsel, and the fact that compensation may be paid for work on appeals (although the statute on its face makes no specific provision for such compensation). This recommendation, if implemented, will assure a more uniform practice throughout the state. Further it will obviate the dilemma currently facing judges when they sign the order for counsel's compensation, either to approve the inadequate statutory compensation, or to violate the letter of the law in order to compensate counsel adequately.

A uniform reporting system should be developed, at least throughout Washington, so that meaningful statistics can be collected.[72] This applies to everything from docket books and entries to budgetary and bookkeeping entries.

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[71] See, LAW AND TACTICS IN FEDERAL CRIMINAL CASES (1964), and CALIFORNIA CRIMINAL LAW PRACTICE, CAL. PRACTICE HANDBOOK No. 23 (1964).

[72] The Administrator for the Courts, established by RCW Ch. 2.56, has the authority, but lacks the manpower, to do the job. The essential funds should be appropriated so that the Administrator could carry out his responsibilities with his usual efficiency and tact.