

# Criminal Legal Aid Review Committee

## First Report

# An Examination of the Feasibility of Introducing a Public Defender System for Ireland

October, 1999

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# Chapter 1

## Introduction

### Terms of Reference

The Criminal Legal Aid Review Committee was established by the Minister for Justice, Mrs. Owen, T.D., in late 1996 to review the operation of the Criminal Legal Aid Scheme under the Criminal Justice (Legal Aid) Act, 1962 and to make recommendations as to the manner in which the Scheme might be improved so that it operates effectively and provides value for money. The Terms of Reference of the Committee also include, *inter alia*,

- (i) a review of the levels of fees paid to solicitors and barristers, including any claims for changes to the Scheme made by the Law Society and the Bar Council in relation to the fees payable under the Scheme.
- (ii) an examination of the possibility of introducing an alternative system for providing criminal legal aid, specifically the introduction of a Public Defender Scheme.
- (iii) an examination of the experience of the Legal Aid Board in relation to the delivery of the Civil Legal Aid Scheme.
- (iv) a review of the current practices within the Public Service for determining a person's means with particular reference to proposals being drawn up by the Department of Social Welfare Committee examining the development of an Integrated Social Service System.

### Working Arrangements

At its inaugural meeting on 15 January, 1997 the Committee decided to invite submissions from interested groups, practitioners and the public generally through advertisements in the national press. Twenty four written submissions were received. The Committee wishes to record its appreciation of those who assisted it by responding to its request. A list of the persons / groups from whom submissions were received is set out at Appendix D.

In addition, the Committee initiated investigations into the operation of Public Defender Schemes in other jurisdictions. To this end, delegations of the Review Committee visited Scotland, the United States and Australia, and obtained very valuable insights and resource material. We wish to acknowledge with gratitude the assistance provided to us by the authorities in other jurisdictions in this respect.

We also wish to acknowledge the generous assistance afforded to us by the law officers of the State, court officials and legal practitioners whose incisive views and contributions assisted us greatly in acquiring a deeper understanding of our own system and the requirements any alternative system would have to meet.

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### **The Key Issue**

The key issue which the Committee was requested to examine was the feasibility of introducing an alternative system for providing the criminal legal aid service, specifically a Public Defender System and the Committee has devoted much attention to this matter. While this Report deals solely with this core issue, there are further significant matters which the Committee continues to address.

### **The Tormey Committee**

This present Committee is not the first such group to investigate the possibility of introducing a Public Defender System in Ireland. A Committee, under the Chairmanship of Judge W.A. Tormey, (known as the ‘Tormey’ Committee) established in the mid 1970’s, looked at the possibility of introducing a Public Defender Scheme. Some members of that Committee considered that the objections to such a system, in principle, were such that it should not be introduced in any circumstances. However, others on the Tormey Committee considered that it was an option that must be kept open and that a Public Defender System should be introduced on a limited basis if the costs of the existing “judicare” scheme were to show a substantial upward trend.

### **Context of Review**

The cost of the judicare system doubled in the years 1992 to 1995 and this is what gave rise to the present review.



## **Chapter 2**

# **What is a Public Defender System?**

A Public Defender System is a legal defence scheme operated by salaried lawyers, funded by the State. Such salaried lawyers are employed at public expense on a full-time basis to represent persons charged, or about to be charged, with criminal offences. While there are many variations of Public Defender Systems, the defining characteristic is the employment of full-time staff lawyers to provide representation.

The employment of salaried Public Defenders would represent a break with the tradition in this country whereby the lawyer, as a private professional, provides representation to the individual client, who faces criminal charges, for a fee.



## Chapter 3

# The Existing Criminal Legal Aid Scheme

### Acknowledgement

The Committee would like to point out, at the outset, that the Criminal Legal Aid Scheme has been the subject of little or no criticism in either the submissions made to the Committee or from any other quarter. It is generally recognised that the Scheme, which came into operation on 1 April, 1965, has served accused persons, who would otherwise have been unable to retain their own legal representation, well. Much praise must go to the practitioners — barristers and solicitors — who have operated the Scheme since its inception. The practitioners, judiciary and court staff and the Department of Justice, Equality and Law Reform, which is responsible for the management of the Scheme, have together played a vital part in the administration of justice in this country and the Committee wishes to acknowledge the contributions all parties have made.

While happy to acknowledge that the Scheme has, by and large, provided a good service to accused persons in this country, the Committee is of course mindful of the fact that there are certain aspects of the Scheme which may leave room for improvement. Accordingly, we intend, following publication of the Report, to examine the other terms of reference set for us and consider possible proposals for improving the Scheme.

Prior to 1962 there was no statutory scheme for the provision of legal aid to poor persons and such representation was provided on an *ad hoc* basis. The term ‘poor person’ is referred to throughout this Report and is defined as meaning a person whose means are insufficient to enable him/her to pay for their legal representation in criminal cases. Up to 1962 many barristers and solicitors had undertaken the defence of poor persons on a *pro bono* basis. Legislation for the provision of a statutory scheme of legal aid was enacted in 1962 and the Criminal Justice (Legal Aid) Act, 1962 is still the primary legislation covering the operation of the Criminal Legal Aid Scheme in Ireland today.

Under the provisions of the 1962 Act, legal aid is to be provided free to poor persons if certain conditions are met. No requirement was set out in the Act that the person being charged or being returned for trial should be informed of the existence of the Scheme. Section 2 of the Act states that a certificate is to be granted “...on application being made to [the court] in that behalf.”

Though the Criminal Justice (Legal Aid) Act was enacted in 1962, the implementing legislation was not introduced for another three years. The Criminal Justice (Legal Aid) Regulations, 1965 laid down conditions for the operation of the legal aid scheme. These regulations set out the fees and expenses (including reasonable disbursements) payable to solicitors and fees payable to counsel for work under the Scheme. In addition, the Regulations provide for the payment of certain expenses of defence witnesses.

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### Legal Aid for Summary and Indictable Offences

The application for legal aid may be made to the court orally or in writing by the applicant or his legal representative. Where the charge is one of murder or where an appeal is one from the Court of Criminal Appeal to the Supreme Court, legal aid will be granted once the court is satisfied that the applicant is a person of insufficient means (the accused may be required to complete a statement of his/her means for this purpose). In other cases, the court must be satisfied not only that the accused is a person of insufficient means but that by reason of the “gravity of the charge” or “exceptional circumstances” it is essential in the interests of justice that the applicant should have legal aid in the preparation and conduct of his/her defence or appeal, as the case may be. The court, therefore, has sole responsibility not alone for determining whether or not the means of an applicant are such as to enable him/her to obtain free legal aid, but also for determining whether, having regard to the gravity of the charges etc., s/he should be granted legal aid.

### Fees payable under the Scheme

Solicitors are paid on a fixed and published scale of fees in respect of cases heard in the District Court (S.I. No. 160 of 1998 sets out the fees payable). They are paid an initial brief fee for the first appearance in court and a refresher fee for each subsequent day in court. The system is “competitive” as a number of solicitors have tended to specialise in legal aid work, particularly in Dublin, Cork and Limerick, in recent years. These solicitors compete on quality and reputation.

For indictable cases in the Circuit and higher Courts counsel is assigned in addition to a solicitor. Legal aid certificates for most of the cases which are heard in the Central and Special Criminal Courts generally provide for the engagement of two counsel — one senior and one junior. In addition, two counsel are generally assigned for the most serious cases heard in the Circuit Court.

The fees paid to counsel in the Circuit and higher Courts in respect of indictable offences are determined entirely by the fees which the Director of Public Prosecutions (DPP) pays to the prosecution counsel, through parity agreements introduced by Regulations made under the Criminal Justice (Legal Aid) Act, 1962, in 1976 and 1978. The fees paid to solicitors in respect of their services in the higher Courts are related to the fees payable to the defence counsel which are in turn based on the fees paid to the prosecution counsel as determined by the DPP.

### The ‘Panel’ System

Under the 1965 Regulations (S.I. No. 12 of 1965) as amended by S.I. No. 304 of 1978, County Registrars are required to compile a list of solicitors who have notified the Registrar of their willingness to act for persons to whom certificates for free legal aid are granted. The County Registrar is required to send a copy of the list to;

- the Registrar of the Supreme Court;
- the Registrar of the Court of Criminal Appeal;
- the Registrar of the High Court managing the Central Office of the High Court;
- the Registrar of the Central Criminal Court;

## The Existing Criminal Legal Aid Scheme

- the Registrar of the Special Criminal Court;
- the District Court Clerk for each District Court area (or part of an area);
- the Secretary of the Law Society; and
- the Secretary-General of the Department of Justice, Equality and Law Reform.

Any solicitor not on the list compiled by the County Registrar is not eligible to act for persons to whom certificates for free legal aid are granted.

Under the 1965 Regulations as amended by S.I. No. 304 of 1978, the Bar Council are required to send to the Minister for Justice, Equality and Law Reform the names of the counsel who have notified it of their willingness to act for persons to whom certificates for free legal aid are granted. The Minister is required to forward a copy of the names to;

- the Registrar of the Supreme Court;
- the Registrar of the Court of Criminal Appeal;
- the Registrar of the High Court managing the Central Office of the High Court;
- the Registrar of the Central Criminal Court;
- the Registrar of the Special Criminal Court;
- each County Registrar; and
- each District Court Clerk.

### The State (Healy) v. Donoghue [1976] I.R. 325

Between 1965 and 1976 the Scheme operated at a very low cost to the exchequer. However, a very significant Supreme Court ruling in 1976 had a dramatic impact on the operation, and cost to the exchequer, of the Criminal Legal Aid Scheme. Prior to this decision it was considered that there was no absolute right to legal aid for a poor person. However, O'Higgins C J in *State (Healy) v. Donoghue* stated that if a person is ignorant of his right to legal aid and fails to apply on that account and is not given legal aid then his constitutional right is violated. If the person does not know of his right, he cannot exercise his right. If he cannot exercise his right, his right is violated. The Court also stated that the 1962 Act imposes a constitutional duty on the State, i.e. to provide legal aid to poor persons accused of a serious crime:

If the right to be represented is now an acknowledged right of an accused person justice requires something more when, because of a lack of means, a person facing a serious criminal charge cannot provide for a lawyer for his own defence. In my view the concept of justice under the Constitution...requires that in such circumstances the person charged must be afforded the opportunity of being represented.

Furthermore the Court stated that the Act was a recognition of what is the Constitutional right of a poor person facing a serious criminal charge.

The case had an enormous bearing on legal aid because it substantially altered what appeared to be the widely held understanding of the rights of an accused person in regard to legal aid. The general understanding was that these rights were defined by the Act and the various Regulations made under it. However, the understanding following the Healy case is that an

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accused person who faces serious charges and who cannot afford to pay for legal representation has a constitutional right to legal aid and that it was necessary, in defining the extent of his/her rights, to have regard to the provisions of the Constitution. The *Healy* case made it clear that the accused is entitled to be informed by the Court in which s/he is appearing of his/her possible right to legal aid and the case also made it clear that if legal aid is granted, the case cannot proceed unless the accused is actually represented.

Not surprisingly, this particular judgement had a significant impact on the expenditure on legal aid in the subsequent years; rising from £55,000 in 1975 to £520,000 in 1979. Many more people became aware of their right to legal aid as a consequence of the obligation on the court to inform them of such.

### The position regarding ‘choice’ of lawyer

Regulation 7 of the Criminal Justice (Legal Aid) Regulations, 1965 (S.I. 12 of 1965) provides that:

‘Upon the grant of a certificate for free legal aid, the court granting the certificate shall, having taken into consideration the representations (if any) of the person to whom the certificate was granted, assign to him a solicitor from the appropriate list...’

Another significant High Court decision regarding the operation of the Criminal Legal Aid Scheme was handed down in 1986 by Barr J in *State (Freeman) v. Connellan No. 656 SS*. The outcome of the case was that the court still has discretion to decide what solicitor will be assigned to a successful applicant for legal aid; however, before doing so, the court must first take into account any representations made by the accused as to why s/he wants to have a particular solicitor assigned. Where in any case the court is satisfied, that there is a strong compelling reason for refusing to assign the solicitor of the applicant’s choice, the court should state the reason, and should enquire whether the defendant wishes to nominate any other particular solicitor.

### Non-statutory legal aid arrangement

Towards the end of 1967 an undertaking was given in the Supreme Court on behalf of the Attorney General and the Minister for Finance to the effect that in respect of an application for *habeas corpus* before the Court and in respect of every application for *habeas corpus* made from that time onwards, the State would defray the fees payable to the solicitor and counsel where applicants were not in a financial position to engage such professional representation. This facility would be made available whenever the High Court or the Supreme Court considered it proper that a solicitor and counsel should be assigned to make submissions in support of the application.

The so called Attorney General’s Scheme now applies to the following forms of litigation conducted in the High Court and the Supreme Court and (in relation to extradition cases) in the District Court;

- a. *habeas corpus* applications;
- b. bail motions;

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- c. judicial review proceedings and
- d. applications under section 50 of the Extradition Act, 1965.

The applicant must satisfy the Court that s/he is not in a position to retain legal representation unless s/he receives the benefit of the Scheme. To this end, the applicant must provide such information about his/her means as the Court deems appropriate.

### Cost

The net cost to the exchequer (i.e. the cost exclusive of VAT) of the Criminal Legal Aid Scheme was £12.544 m. in 1998. This works out at a net per capita cost of £3.48. The gross cost of the Scheme was £15.18 m which is £4.22 per capita. This per capita cost is quite favourable when one compares it with other common law countries.





## Chapter 4

# Submissions Received

### Submissions

As a preliminary step, the Review Committee invited interested persons and organisations to make submissions on matters coming within our terms of reference. The response was good and the suggestions contained in the submissions provided us with much useful material. The Review Committee is extremely grateful to all those who took the trouble to make such submissions.

Many of the submissions specifically addressed the issue of whether it would be feasible to introduce a Public Defender System as an alternative delivery model to the Criminal Legal Aid Scheme. The only submission to support the introduction of a Public Defender System was received from Victim Support which suggested that such a system would be “a step in the right direction.” The High Court Bench, in its submission, stated that it would see no difficulty, in principle, with a Public Defender System being introduced and that further consideration should be given to such a system as an alternative to the existing Scheme.

The general consensus emanating from the other submissions was that the Scheme is well established and that it operates effectively. The submissions suggested that the Scheme could be improved in a number of ways so that it runs more efficiently and that this was more desirable than its complete replacement by a Public Defender System.

Public Defender Systems were criticised in the submissions on a number of grounds. His Honour Judge Peter Smithwick, President of the District Court, stated in his submission that:

“I would not favour a Public Defender Scheme. First it would interfere with the independent professional relationship between solicitor and client. Secondly I feel sure it would cost more than the present fees paid to private solicitors. The present system has little or no cost of administration.”

The Association of District Court Judges also considered the concept of a Public Defender but rejected the idea. It stated that, as the Criminal Legal Aid Scheme is well established in our Criminal Court System, a radical change would not be possible.

His Honour Judge Kieran O'Connor, Judge of the Circuit Court, stated in his submission that:

“One of the features associated with and essential for the fair conduct of criminal trials is the availability of the Solicitor and Counsel of the choice of the accused. The absence of such a choice would effectively create a two-tier system of justice — one for the accused with private means who could afford to pay for the legal representation of his choice, the other for those who would qualify for legal aid but who might be denied a real choice should the present panel of available defence Counsel be reduced or replaced by a Public Defender System....

A public Defender System is unlikely to encourage an efficient disposal of cases and the temptation to do less for the same income might become irresistible.”

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The Law Society of Ireland suggested that the main problem with a Public Defender System would be the issue of trust:

“The main problem with this system is that it will not and cannot obtain the TRUST of clients. Persons charged with serious offences have been arrested, questioned, and eventually charged by one group of State officials, remanded by a second group, prosecuted by a third group, may be interviewed and reported on by a fourth group and eventually incarcerated by a fifth group. Defence lawyers are the only group in the whole criminal legal system who are independent of the State. The fact that Solicitor/Client privilege is the only remaining real privilege known to the law underpins this argument and shows the importance with which the law regards the independence of defence lawyers.”

The Bar Council of Ireland in its submission discussed Public Defender Systems in the United States and concluded that:

“On the basis of all the foregoing evidence and arguments, the public defender model should not be established as a system of legal aid provision in Ireland. In particular, the structural rigidities of such a system and its dependence on state funding (which itself is influenced by changing political priorities and the fickle nature of the budgetary prioritisation process) do not recommend it. These points deserve special emphasis for, even if the US system were to be properly resourced, it would still be far from ideal; accordingly, even a properly resourced system with a firm commitment in respect of the maintenance of adequate levels of funding should not be established in the jurisdiction. The most fundamentally flawed aspect of the public defender system is its close association with the State; the fact that it is an emanation of the State. This is also the aspect of the system which is most threatening to the integrity of the criminal justice system. Public confidence in the independence of the system is likely to be seriously undermined. Further, it is an inescapable fact that public defenders will be state employees with career ambitions which may conflict with the best interests of their clients. There is, therefore, an inherent structural fault with the concept of a public defender system.”

In the course of his submission to the Committee on behalf of the Bench of the High Court on a range of issues, the Hon. Mr. Justice Frederick Morris, in respect of the Public Defender issue, submitted that:

“the High Court Bench would see no difficulty in principle with the Public Defender scheme being introduced.”

Following consideration of all the submissions received, the Committee concluded that in order to fulfil the mandate it had been assigned by Government under its terms of reference, that it would be necessary to visit common law jurisdictions where fledgling and well established Public Defender Systems were in operation and to study these systems at first hand. The information gathered and the insights gained from these visits were invaluable to the Committee and, together with research carried out by the Secretariat, has assisted in the preparation of this report.

## Chapter 5

# Foreign Jurisdictions

The Review Committee has undertaken a number of foreign visits in order to study, at first hand, the workings, staffing and economics of Public Defender Systems.

In December, 1997 a delegation of the Review Committee visited Edinburgh, Scotland to acquire information regarding the proposed introduction of a pilot Public Defender System in that city. In September, 1998 delegations of the Review Committee visited the United States (Boston and Philadelphia) and Australia (New South Wales). These study visits provided the Review Committee with a great insight into the operation of Public Defender Systems by allowing members to speak directly to those involved from a wide variety of perspectives and allowed the members of the Review Committee to better appreciate the specific staffing and economic requirements necessary for the operation of a well functioning Public Defender System. The Committee also acquired information on the Public Defender System in operation in Hong Kong.

### 5.1 Hong Kong

In May 1997, an officer attached to the Office of the Director of Public Prosecutions, who had previously worked in Hong Kong for some years made a presentation to the Committee on the Public Defender System in operation in that jurisdiction. The legal system in Hong Kong is broadly similar to that in Ireland.

The Legal Aid Board in Hong Kong provides legal assistance in all areas of law — criminal, civil and family. About one-fifth of the staff of the Legal Aid Board are allocated to criminal work. Legal Aid Board lawyers have limited rights of audience in relation to adjournment applications and bail applications but have no right of audience in criminal trials. This provision was inserted in the relevant legislation at the request of the private Criminal Bar. There are eight lawyers attached to the Criminal Section of the Legal Aid Board and they deal with cases at District Court level and higher. In the Magistrates Court there is a Duty Lawyer Scheme which is administered by the Law Society and funded by the Government. As regards the granting of legal aid in the higher courts, this is a function of the Legal Aid Board which makes an assessment based on the criteria of means and merit (i.e. interest of justice).

In relation to the conduct of cases, the standard practice would be for the officer of the Legal Aid Board to be responsible for the overall management of cases in the District Court — which is similar to our Circuit Court with regard to jurisdiction and which can impose sentences of up to seven years imprisonment — and the conduct of the trial would be briefed out to solicitors and counsel in private practice. Approval would have to be sought from the Legal Aid Board in respect of the employment of expert witnesses or any other disbursements which were outside the normal disbursements in a case.

In relation to cases in the High Court — which would have been sent forward for trial from the Magistrates Court — the case would be assigned to a Legal Aid Officer who would have the accused interviewed and would carry out the usual pre-trial matters including attending at

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Court to fix a date for the hearing of the case. Counsel from private practice would then be briefed to conduct the actual trial. At the trial, counsel would be attended on by a Law Clerk from the Legal Aid Board. In some cases where there was a shortfall of Legal Aid Board staff, an external solicitor would be engaged to conduct the trial and instruct counsel, whereby the Legal Aid Board would maintain overall management of the case and the solicitor or counsel would have to seek approval in relation to the employment of expert witnesses and other such matters.

In the event of an appeal, an applicant would have to apply for legal aid in respect of the appeal. Up to 90% of such applications would normally be refused on the grounds of lack of merit. There was, in general, a very low success rate on cases taken on appeal in Hong Kong.

It was estimated that about 40% of the cases in the District Court would be legally aided and this figure would increase quite substantially in respect of cases in the High Court. This figure is low when one compares it to the proportion of Irish criminal cases that are legally aided.

### 5.2 Scotland

The Scottish criminal legal aid system is one of the most expensive in the world, though it must be stated that it provides a comprehensive range of services, with a *per capita* cost of £16.10 in 1998 as opposed to a *per capita* cost in this country of £4.22 in 1998. The body responsible for administering legal aid in Scotland is the Scottish Legal Aid Board which is an independent body established by the Legal Aid (Scotland) Act, 1986. In Scotland, criminal legal aid consists of legal representation in criminal proceedings in the District, Sheriff and High Courts. When established, the Scottish Legal Aid Board was given the responsibility for awarding legal aid in summary cases as a mechanism to ensure that there was greater consistency in awarding legal aid. The courts were left with the responsibility of awarding legal aid in solemn (indictable) cases and in summary cases where the accused has a previous conviction and is facing a sentence of imprisonment or detention for the first time.

As well as representation, criminal legal aid includes all such assistance as is usually given by a solicitor or counsel in the steps preliminary to or incidental to criminal proceedings.

The establishment of the Scottish Legal Aid Board in 1987 preceded a more than threefold increase in the criminal legal aid bill from £25m. in 1988 to £82m in 1998. Following the visit to Scotland members of the Review Committee expressed concern that the management of the Scottish legal aid scheme by the Legal Aid Board introduced a high level of bureaucracy.

As a result of the significant escalation in the cost of the criminal legal aid scheme the Scottish Legal Aid Board decided to introduce a pilot Public Defender Scheme (Public Defender's Solicitors' Office — PDSO). The pilot Public Defender Scheme commenced in Edinburgh on 1st October, 1998. In order to ensure a certain level of business for the pilot project, the Legal Aid Board decided that it would be necessary to compulsorily direct people to the PDSO so that it could be compared with the current system. People accused of committing a crime are assigned a solicitor from the PDSO by virtue of their date of birth.

The impression that the Review Committee took away from the Scottish visit was that the Scottish legal system was slow and cumbersome and that this gave rise to an expensive criminal

legal aid system. It appeared that the establishment of the pilot project was not only to investigate the feasibility of introducing a full Public Defender System in itself, but also, to assess the cost of criminal defence work so that the Legal Aid Board could determine whether the current system was expensive and, if so, to utilise the information compiled from the project in the context of introducing fixed fees or contracting. It was, therefore, used as a basis for comparison and to inject an element of economic efficiency into the whole criminal legal aid scheme.

Another issue which arose in the context of the visit to Scotland was the fact that there are significant differences between the Irish and Scottish legal systems which hinder the comparison of costs of trials in the two jurisdictions and comparison of the systems in general. A key difference in this regard relates to the rules regarding disclosure of evidence. The cost of precognition of a witness is a significant element of the cost of defence work in Scotland which does not arise in this country. The Scottish system also provides a broader range of legal aid services than those which are provided in Ireland.

### 5.3 United States

#### Right to Counsel

The Sixth Amendment to the United States Constitution states that “[i]n all criminal prosecutions, the accused shall enjoy the right...to have the assistance of Counsel for his defence”, while the Fourteenth Amendment to the Constitution states that no State shall “...deprive any person of life, liberty, or property, without due process of law”. The Supreme Court of the United States, in the case of *Gideon v. Wainwright*<sup>1</sup>, held that an accused person’s Sixth Amendment right to the assistance of counsel not only applies to federal prosecutions<sup>2</sup> but is also made obligatory on the individual States by the Fourteenth Amendment. Therefore, the same constitutional standards apply with respect to both State and federal prosecutions.

In *Gideon v. Wainwright* the defendant was charged with a felony under Florida law. The judge refused to appoint counsel to represent the defendant stating that the only time a court could appoint counsel to represent a defendant was when that person was charged with a capital offence. Request for counsel was denied, the defendant conducted his own defence, was found guilty and was sentenced to five (5) years imprisonment. He appealed on the ground that the trial court’s refusal to appoint counsel for him “denied his rights guaranteed by the Constitution and the Bill of Rights.” Black J, delivering the Supreme Court’s judgement, stated;

“...any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him...The right of one charged with a crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours...This noble ideal cannot be realized if the poor man charged with a crime has to face his accusers without a lawyer to assist him.”

This ruling of the Supreme Court therefore required appointed counsel for every indigent criminal defendant accused of a felony. The guarantee of appointed counsel, which as a result of *Gideon* was held to attach in felony cases at every critical prosecutorial stage was extended

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<sup>1</sup> (1963) 372 US 335

<sup>2</sup> In *Johnson v Zerbst* 304 US 458, the Sixth Amendment to the United States Constitution was construed to mean that in federal courts counsel must be provided for defendants unable to employ counsel unless the right is competently and intelligently waived.

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in *Argersinger v. Hamlin*<sup>3</sup> to all prosecutions which resulted in imprisonment for any term. The Supreme Court stated that no person may be imprisoned for any offence, whether classified as petty, misdemeanour or felony unless he is represented by counsel at his trial. The Court further stated that assistance of counsel is often a requisite to the very existence of a fair trial.

The right to counsel has been held to exist not only at an accused person's trial but, at proceedings for revocation of probation, at appeal and at critical pre-trial stages such as custodial interrogations by law enforcement officers (*Escobedo V Illinois*<sup>4</sup>) and out-of-court identifications at police line-ups (*US v Wade*<sup>5</sup>). In the case of *Miranda v Arizona*<sup>6</sup> the court laid down various rules for the conduct of custodial interrogation. A person must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney and that if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires. Chief Justice Warren stated;

“In order fully to apprise a person interrogated of the extent of his rights under this system then it is necessary to warn him not only that he has the right to consult with an attorney but also that if he is indigent a lawyer will be appointed to represent him. Without this additional warning, the admonition of the right to consult would often be understood as meaning only that he can consult with a lawyer if he has one or has the funds to obtain one. The warning of a right to counsel would be hollow if not couched in terms that would convey to the indigent — the person most often subjected to interrogation — the knowledge that he too has a right to have counsel present...Only by effective and express explanation to the indigent of this right can there be assurance that he was truly in a position to exercise it...In fact were we to limit these constitutional rights to those who can retain an attorney our decision today would be of little significance.”

These cases have ensured that the financial ability of the individual has no relationship to the scope of the rights to which s/he is entitled. They have also ensured that the right to counsel exists for poor persons as well as the affluent.

It has been recognised that an accused's constitutional right to the assistance of counsel may be waived, but it has also been required that a waiver, in order to be valid, must be given voluntarily, knowingly and intelligently and that the accused must be sufficiently forewarned as to his rights.

### 5.3.1 Massachusetts

The types of cases in which legal representation is available to poor persons in Massachusetts are different from many other States in the United States. Massachusetts provides legal representation to poor persons, juveniles as well as adults, in criminal cases from arraignment through appeal. Legal representation is also offered in a variety of categories of civil matters, including, inter alia, mental health commitments, protection of children at risk of abuse and/or neglect and termination of parental rights.

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<sup>3</sup> 407 US 25

<sup>4</sup> 378 US 478

<sup>5</sup> 388 US 218

<sup>6</sup> 384 US 436

The Committee for Public Counsel Services, the body that is responsible for the delivery of legal aid to poor persons in Massachusetts, is composed of a fifteen member appointed body and a State Department of attorneys and administrative staff. The fifteen member body is appointed by the Massachusetts Supreme Judicial Court to oversee the provision of legal representation to indigent persons in the Commonwealth of Massachusetts. The body is the equivalent of the Board of Directors of the organisation and sets policy which is implemented by the executive staff of the State Department.

Most of the legal representation, in approximately 300,000 cases annually, is provided by some 2,400 private attorneys appointed by the courts. The lists of private attorneys willing to undertake indigent work are maintained by county-based organisations known as Bar Advocate Programs, which are also responsible for monitoring the performances of the private attorneys. The fifteen member Board of Directors oversees the operation of a State Department comprised of approximately 120 public staff attorneys as well as administrators and support staff. This State Department provides various legal services to poor persons. The head of the Department is the Chief Counsel and there are two Deputy Chief Counsel — one each for the Public Defender and Private Counsel Divisions. In addition to the main office in Boston there are twelve (12) regional Public Defender Offices in which staff attorneys providing legal services for criminal accused persons are based. The system in Massachusetts has been described as the only State-wide Public Defender system that relies primarily on private attorneys.

The administrative services which the State Department provides include reviewing, paying and auditing the bills submitted by private attorneys for providing legal services to poor persons. They also review and process for payment, invoices for indigent court costs. These costs include other services necessary to provide adequate legal representation to poor persons such as those provided by investigators, interpreters, process servers and expert witnesses.

The system overseen by the Board of Directors and implemented by the staff in the Public Defender's section and private attorneys from the Criminal Bar include criminal defence in the District Courts, the Boston Municipal Court, the Superior Courts, the Juvenile Courts and appeals of criminal convictions in the Appeals Court and the Supreme Judicial Court.

The total budget managed by the Committee for Public Counsel Services for the provision of criminal legal aid to poor persons in the financial year 1998 was in excess of \$54m (£40m), \$36m (£27m) of this was comprised of payments for private attorneys and indigent court costs (expert witnesses, etc.).

### **Court-Appointed Attorneys**

The Committee for Public Counsel Services has established certain guidelines and certification requirements for all private attorneys accepting appointments to represent poor persons in criminal cases. For instance, to be eligible to accept appointments in criminal cases in the District Courts attorneys must complete a four (4) day "Zealous Advocate" programme. The Committee's Training unit also offers a wide range of programmes not just for their staff attorneys but also for private court-appointed attorneys.



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### **Public Defender Division**

This Division is headed by the Deputy Chief Counsel for the Public Defender's Division. The heads of the thirteen (13) trial offices and the head of the Appeals Unit report to the Deputy Chief Counsel, who also occasionally handles litigation and appellate matters.

### **Trial Units**

There are thirteen regional offices in which about one hundred and twenty (120) staff attorneys operate as trial units. The offices range in size from small regional offices with three (3) staff attorneys to the Boston Trial Unit, which has twenty one (21) attorneys assigned to it.

### **Appeals**

There is a separate appeals unit in the Boston office, staffed by a Chief Appellate Attorney and eleven other attorneys.

Generally, staff attorneys responsible for criminal matters handle only felonies in the Superior Courts, although they may begin representation of the poor persons charged with Superior Court felonies when they first appear in the District (lower) Court. Massachusetts District Court cases are assigned to private court-appointed attorneys. However, the Public Defender Division handles only 25% of all major felony cases with private attorneys handling the other 75% as well as misdemeanours/summary offences in the lower courts.

Some members of our sub-committee who visited Boston formed the view that the cases taken on by the Boston Trial Unit were to some extent 'cherry picked'. The Trial Units handle all the high profile cases leaving the others to the private court-appointed lawyers.

### **Quality of Representation**

In a survey carried out on behalf of the Massachusetts Inspector General a number of bodies, including the judiciary, staff attorneys from the Committee for Public Counsel Services (CPCS) and private attorneys, were asked to rate the quality of representation provided by the staff attorneys and to evaluate the performance of staff attorneys and private court-appointed attorneys in specific categories; trial preparation, trial advocacy, written pleadings, proper demeanour and punctuality. The performance of staff attorneys was consistently rated more highly in all categories than their private court-appointed attorneys who appeared to have much higher caseloads.

All strands of the legal profession stated that the CPCS lawyers were seen as the standard bearers with regard to criminal defence in Massachusetts. Our sub-committee was informed that the level and quality of representation provided by them is what private lawyers strive to achieve. While in Boston members of the Review Committee were informed that the staff lawyers employed on criminal matters could increase their caseload (they currently operate with between 30 and 40 active cases) but this was not done as the quality of the representation would deteriorate significantly. The emphasis is on quality rather than quantity.



### 5.3.2 Philadelphia

The Defender Association of Philadelphia is the organisation that provides legal aid to poor persons in Philadelphia County (Philadelphia County basically consists of the City of Philadelphia). The Defender Association is financed by the City of Philadelphia and its work is overseen by a Board of Directors consisting of thirty members. Even though financed by the City, the Defender Association is not a government agency and the defenders are free from governmental and political interests. Indeed, all defender attorneys employed by the Defender Association are barred from political activity.

#### **Staff Composition**

- (i) The executive level of the Defender Association is comprised of the Chief Defender, First Assistant Defender, Deputy Defender, Business Manager and Controller. The Board of Directors selects the Chief Defender and the First Assistant Defender by majority vote. The Chief Defender appoints the remainder of the staff.
- (ii) The Defender Association currently has 196 attorneys. They provide representation in approximately 70 — 75% of all of Philadelphia's criminal cases. Court-appointed attorneys only represent poor persons when a conflict exists barring the public defender. The remaining 25 — 30% of the criminal cases are handled by privately retained criminal defence lawyers (for those persons who can afford to retain counsel privately).
- (iii) The Defender Association also employs 38 investigators, 115 clerical and administrative support staff, 30 social workers, 9 paralegals, 8 law interns, 2 computer specialists, an interpreter, a criminal justice specialist and a human resource administrator.
- (iv) There is also a separate Child Advocacy Unit with 16 attorneys.

#### **Budget**

The budget for the Defender Association in 1997 was \$22m (£16.4m). In 1985 the budget was \$9.6m (£7.2m). This growth in expenditure has come as a consequence of increased caseloads, sentencing guidelines and an increase in the number of crimes where conviction results in a mandatory sentence.

The population of Philadelphia is 1,500,000 people. The Defender Association receives 50,000 new cases each year and at any given time has more than 100,000 cases open/pending.

As well as handling trials, the Defender Association has a separate appellate division. Fourteen senior attorneys are permanently assigned to that division.

#### **Method of handling cases**

The Defender Association mostly staffs by courtroom. One attorney is assigned per day or per week or even per month to the same courtroom and handles all public defender cases listed in that courtroom. If the case is not resolved that day and is continued to a future date another attorney will probably handle the case on the next date. There are exceptions. For instance,

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two attorneys are always assigned to a homicide case and they handle the case throughout the course of its trial. Otherwise a defendant generally sees a new attorney each time.

In Philadelphia there is an Expedited Plea Management Program. Cases are listed for negotiations at an early stage to facilitate quick and reasonable disposition. It is probably the only area in the system where the District Attorney and the Defender offices work amicably for the same goal.

Philadelphia Defender Association attorneys are barred from engaging in private practice while employed by the Association.

The provision of representation on a 'horizontal' basis which involves the defendant being represented by a different lawyer on each appearance, as opposed to the 'vertical' system of representation which operates in this jurisdiction, (and as operates for murder cases in Philadelphia), whereby the lawyer assigned to the case on "day one" almost invariably continues to represent the accused to the point when the case/appeal is completed, was considered by the Committee to give rise to the conditions where the lawyer/client relationship could be compromised because of the potential lack of trust/confidence on the part of the client in the effectiveness of their representation. When invited to comment on this specific matter, our hosts were forthright in stating that **the lack of** client confidence was a factor in Philadelphia and that the "not a real lawyer syndrome" was a perception the Philadelphia office had to contend with. When informed about the structure and operation of our system our hosts observed that it appeared to have sound and indeed admirable features inherent in it.

### 5.4 Australia

#### Right to Counsel

Chief Justice Mason in the Australian High Court<sup>7</sup> case of *Dietrich v The Queen*<sup>8</sup> stated;

"The current law in the United States is that an accused cannot be sentenced, upon conviction, to a term of imprisonment unless the state has afforded him or her the right to the assistance of counsel. However, the development of this right in decisions of the United States Supreme Court is based on the constitutional guarantee of the right to counsel expressed in the Sixth Amendment to the United States Constitution and its incorporation within the right of 'due process' enshrined in the Fourteenth Amendment. These constitutional guarantees have no direct parallel in Australian law."

In Australia an accused has a right to be represented by counsel at his own or someone else's expense. However, an accused does not have a right to be provided with counsel at public expense. The accused has a right to have the procedures of the Legal Aid Commission Act<sup>9</sup> followed, including the hearing of an appeal and review if these are sought. An accused has no absolute right to legal aid. This was laid down in the Australian High Court case of *McInnes v*

<sup>7</sup> The High Court is the final appeal court in Australia and is the equivalent of the Irish Supreme Court.

<sup>8</sup> (1992) 177 CLR 292

<sup>9</sup> This Act sets out the guidelines that the Legal Aid Commission must follow when an accused makes an application for legal aid. It is the Legal Aid Commission, not a judge, who decides whether an accused is eligible or not for legal aid.

*The Queen*<sup>10</sup> by Chief Justice Barwick and has been followed in a number of cases in the intervening years. For instance, in *Dietrich*, Chief Justice Mason stated that the common law of Australia “did not recognise the right of an accused to be provided with counsel at public expense.” He further stated that while a defendant has the right to retain counsel, that the right to retain counsel and the right to have counsel provided at the expense of the State are not the same thing.

While the justices of the High Court have emphasised the importance of representation by counsel or solicitors in serious criminal cases, they have further stated that an accused in Australia does not have the right to present his case by counsel provided at public expense. In an apparent contradiction, it would appear that the importance of representation in serious criminal cases is extolled on the one hand but on the other hand the Courts have been unwilling to grant the accused a right to be provided with counsel at public expense. There has, however, been some support in the High Court Bench for such a right. In *McInnes*, Murphy J provided a very strong and convincing dissenting judgement in favour of the right to counsel at public expense. He engaged in a close scrutiny of other common law jurisdictions and their practices, especially the United States, and came to the following conclusion;

“Every accused person has the right to a fair trial, a right which is not in the slightest diminished by the strength of the prosecutions evidence and includes the right to counsel in all serious cases. The right should not depend on whether an accused can afford counsel. Where the kind of trial a person receives depends on the amount of money he has, there is no equal justice.”

It is now accepted that Australian law does not recognise that a poor person on trial for a serious criminal offence has a right to the provision of counsel at public expense. Instead, Australian law acknowledges that an accused has a right to a fair trial and that, depending on all the circumstances of the particular case, lack of representation may mean that an accused is unable to receive, or did not receive, a fair trial. Such a finding, however, is inextricably linked to the facts of the case and the background of the accused. Contrast this with the position in the United States where it is considered that the assistance of counsel is a requisite to the very existence of a fair trial. Deane J, in *Dietrich*, summarised the position thus;

“The common law does not impose on the government or any section or member of the community, an enforceable duty to provide free legal advice or representation to anyone. What the common law requires is that if the government sees fit to subject an accused person to a criminal trial, the trial must be a fair one.”

Where an accused person is unrepresented, he or she may apply to the court for a stay or adjournment of his or her trial due to a lack of representation. A trial judge faced with such an application for an adjournment or a stay by an unrepresented accused is not bound to accede to the application in order that representation can be secured. The judge is not required to appoint counsel. Chief Justice Mason stated in *Dietrich* that a trial judge who is faced with an application for an adjournment or a stay by an indigent accused charged with a serious offence who, through no fault on his or her part, is unable to obtain legal representation should, in the absence of exceptional circumstances, adjourn, postpone or stay the trial until legal representation is available. If an application that the trial be delayed is refused and, by reason of the lack of representation of the accused, the resulting trial is not a fair one, any conviction

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<sup>10</sup> (1979) 143 CLR 575

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of the accused must be quashed by an appellate court for the reason that there has been a miscarriage of justice on account that the accused has been convicted without a fair trial.

This difference in emphasis between the Irish and Australian courts and their respective stances regarding legal aid for the poor person would appear to have permeated down through the system and into to the mindset of the persons accused of criminal offences such that they appear to view legal aid as a privilege rather than a right to which they are entitled. As a result the Australian defendant is more accepting of a service which would appear to be underfunded and which fails to provide representation at critical points in the criminal process, most notably at the committal stage, which would be considered indispensable in this country.

### 5.4.1 New South Wales

The New South Wales Legal Aid Commission (the “Commission”) is a statutory body established under the Legal Aid Commission Act, 1979 to provide legal aid and other legal services to poor persons in New South Wales. The Commission is the largest legal aid agency in Australia, its head office is located in Sydney and there are another eighteen (18) regional offices situated around the State. The Commission provides grants of legal aid for many civil, family and criminal law matters. Before legal aid is granted, clients must meet the Commissions means and merit test.

A board of ten (10) Commissioners, appointed by the Attorney-General of New South Wales, governs the Commission and determines its policies and strategic direction. The Commissioners represent a range of key groups including the Law Society of New South Wales, the Bar Association of New South Wales and welfare groups. The Commission works in partnership with private lawyers who provided representation to over half of all legally aided people (in all legal matters) in 1996 and 1997.

The Commission has also entered a partnership with the Commonwealth to provide legal assistance arising under Commonwealth law. The necessity to enter a separate agreement with the Commonwealth Government of Australia stemmed from that Governments decision to reduce the funding of the Legal Aid Commission by AUSS\$ 12.5m. (£5.2m.). This shows how vulnerable legal services are to the vagaries of political decision makers. The decision to cut the budget was a unilateral decision on the part of the Commonwealth Government with no prior advice or consultation with the Legal Aid Commission. The Legal Aid Commission in New South Wales has had as a direct result of the cut in funding to cut back on particular services that were previously provided, much to its dissatisfaction and to the detriment of those who either did not qualify for legal aid at all or received a less effective level of representation, as a result. It appeared that the axe fell primarily on the civil and family law elements of the services it provided as distinct from the criminal side in accordance with the Commission’s decision to prioritise the criminal legal aid services.

#### **Staff Solicitors employed by the Legal Aid Commission**

The Legal Aid Commission employs full-time staff solicitors. The Commission has a separate Criminal Law Section with a Manager and solicitors who deal only with criminal matters. The Commission’s policy on the conduct of criminal law matters is that those matters should be conducted by the in-house solicitors unless exceptional circumstances exist. The fact that there is only a short period of time between the date of committal and the trial and that unreasonable

delay could result from non-assignment to the solicitor who conducted the committal, may constitute, exceptional circumstances. Exceptional circumstances also include cases where the Commission has no capacity (usually in rural and remote areas where there is no legal aid office) or where a conflict of interest occurs so that a solicitor from the Commission cannot represent the indigent defendant.

Therefore, the Commission provides legal advice and assistance through two systems. This is referred to as the mixed-model of service delivery, i.e. the Commission employs a staff of full-time solicitors based in metropolitan and regional offices and also utilises private solicitors.

Where appropriate these solicitors, both private and public, will brief the Public Defenders Office. The Public Defenders Office does not have the capacity, at some points in time, to handle all the briefs of accused persons receiving legal aid so both staff and private solicitors brief private barristers also.

While the Commission's formal policy is that an accused does not have choice of legal representation and is assigned such by the Commission, it would appear that the policy and the practice are somewhat different. When a person arrives in custody at a Magistrates Court, if they have no representation the Legal Aid Commission solicitor will represent them at the initial hearing. The Legal Aid Commission will then decide whether to retain the case or to contract that case out. If, however, a person arrives in custody at a Magistrates Court and has his/her own legal advisor the Legal Aid Commission will assign that advisor and will pay them to act for the defendant.

The private practitioner/solicitor must endeavour to engage a Public Defender if one is available. The availability test is used to circumvent this mandatory requirement. A private arrangement is made with a private barrister to confirm their availability for a given trial date. Very close to the trial date the Public Defender Office is asked to provide a Public Defender, which they cannot do at short notice. The accused who has a knowledge of the system can, in certain circumstances, circumvent the procedures regarding assignment of solicitor and create the conditions which allow him/her choice of representation. While it appeared that some accused and/or their solicitors actively sought to circumvent the Legal Aid Commission policy of assigning a Legal Aid Commission solicitor and/or Public Defender barrister, the actual extent to which this practice was pursued was difficult to gauge. This is not perceived by the authorities in New South Wales as an abuse given that the Public Defenders have commitments to cases on a continuous basis and the case may well end up with a private barrister.

### **New South Wales Public Defenders Office**

When referring to Public Defenders in New South Wales one is referring to salaried barristers. Under the Public Defenders Act of 1995, Public Defenders are appointed by the Governor of New South Wales. The Public Defender has tenure and can only be removed from office as a result of misconduct or incompetence, bankruptcy or mental illness or undertaking practice outside his or her functions. The Senior Public Defender and the Deputy Senior Public Defender are appointed for a term. In the case of the Senior Public Defender, this term may be for up to seven years and be renewed. The Deputy Senior Public Defenders term can be up to five years and it can also be renewed. In order to be eligible to be appointed as a Public Defender a person must be a legal practitioner. Up to 1995 a Public Defender had to be a

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barrister. Under the 1995 Act a Public Defender can be on either the roll of barristers or solicitors.

A Public Defender's functions include appearing for and advising persons who have a grant of legal aid from the Legal Aid Commission of New South Wales and who have been charged with criminal offences or have appealed against a conviction or sentence in relation to a criminal offence. This means that a Public Defender can appear in the Magistrates Court, in trials or sentence hearings in the District and Supreme Courts and on appeals in the Court of Criminal Appeal and the High Court. As stated, Public Defenders can be instructed by either solicitors employed by the Legal Aid Commission of New South Wales or private solicitors who act for persons who have a grant of legal aid from the Commission.

The Public Defenders Office in New South Wales works as a chambers-type operation. Unlike the situation in Ireland barristers in Australia are permitted to establish chambers. The Public Defenders Office has a Clerk-to-Chambers who is responsible for the allocation of briefs to Public Defenders, including answering enquiries from Legal Aid Commission staff and private practitioners and maintaining the court diary. The Clerk also attends to all administrative and personnel tasks and prepares reports and other submissions. There is also a legal research officer who is responsible for legal research and the provision of professional assistance to the Public Defender, primarily on criminal law and procedure.

At the end of 1996 there were 21 Public Defenders in the New South Wales Public Defenders Office. The Public Defenders Office is a stand alone, independent body but it is funded by the Legal Aid Commission.

### **Duty Solicitor Scheme**

The Legal Aid Commission of New South Wales also operates a Duty Solicitor Scheme in the Magistrates Courts (equivalent of our District Courts). The Duty Solicitor must take a full written application for legal aid from all accused persons requesting legal aid representation and this application is then forwarded on to the Legal Aid Commission for consideration.

The establishment of the Duty Solicitor Scheme bridges the gap between the application and the granting of legal aid and it is designed to ensure that the accused persons rights are not infringed early in the process.

## **5.5 Analysis of Visits**

It was emphasised during our visits that there is no one Public Defender model that will suit every legal system and jurisdiction. The fact that a model works effectively in one location does not necessarily mean that it will be successful in another jurisdiction. Each legal system has its own individual traits and requirements and these have to be taken into account when considering the introduction of a model.

The four jurisdictions that the Review Committee visited (Scotland, Massachusetts, Philadelphia and New South Wales) provided a very good cross section of Public Defender Systems to study and analyse.

Scotland provided an insight into the work required to introduce a Public Defender System into a jurisdiction where there is already a well established criminal legal aid system and the consequent difficulties that are encountered.

Massachusetts and Philadelphia provided a good contrast of the type of Public Defender models that operate in the United States. Massachusetts is a mixed delivery model with private lawyers doing the vast majority of the representation. The Public Defender Office undertakes approximately 25% of the indictable criminal matters with all other criminal matters being dealt with by private attorneys. In Philadelphia, on the other hand, Public Defenders handle approximately 75% of all criminal matters. Private attorneys are used only where there is a conflict of interest or where a Public Defender is unavailable. The visit provided members of the Review Committee with the opportunity to compare and contrast two very different systems.

In New South Wales there is a mixed delivery model with salaried lawyers being supported by colleagues in private practice. The legal system in New South Wales is more akin to the Irish legal system than that of the United States as New South Wales operates a two branched legal profession with barristers and solicitors as opposed to the single branch profession in the US. As such, it was easier to compare our present system with that in operation in New South Wales.

What emerged very clearly from our visits to the United States and Australia is that unless a delivery system for legal aid is adequately funded then that system will always face difficulties. It does not matter how good the lawyers working within the system are or how good the delivery model is — if the funding is not sufficient, difficulties will arise. Lack of financial resources was shown to be a significant weakness in all fixed budget legal aid systems.

In the context of the circumstances which have given rise to our own review, it is considered that no matter what system of delivery is in operation, costs are going to increase on a continuous basis and this is recognised internationally. Factors which contribute to this include, inter alia, mandatory sentencing, more complex legislation and a significant increase in the use of forensic evidence.

Many systems in the US and Australia are now seriously underfunded, some almost to the point of breakdown. For instance, we were informed by The Spangenberg Group, which is a nationally recognised research and consulting firm specialising in improving justice programmes in the United States, that in Virginia court-appointed lawyers are paid a maximum of \$845 (£600) per case (except for capital cases). This situation is likely, over time, to lead to major problems in relation to the quality of representation that a poor person can expect to receive. If lawyers are paid low levels of fees there is little incentive to spend much time on the investigation and preparation of cases and thereby a strong incentive to plead the case out as quickly as possible as a lengthy trial would not be to the lawyers advantage.

As stated earlier, the Legal Aid Commission in New South Wales is also going through a funding crisis and as such has been forced to cut back on services that would ordinarily have been provided. There are certain critical aspects of the criminal procedure for which legal aid is no longer available — the committal procedure being the most important of these. The Committee considers that such critical gaps in representation would not be acceptable in



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Ireland where legal aid is viewed as a very important constitutional right rather than a privilege which can be altered or removed at the whim of the Government.

When we discussed our Criminal Legal Aid System with lawyers and administrators during our visits to the other jurisdictions they were very impressed with our model and particularly with certain aspects of our model, viz, the minimal level of bureaucracy which exists in relation to the administration of our Scheme, the parity system which operates in relation to the payment of fees between lawyers for the prosecution and the defence and the fact that the Court assigns a solicitor to an accused having had regard to the wishes of the accused in the matter.

Many of the systems we studied operated “horizontal” representation where the defendant had a different lawyer representing them at each stage of the case. Individual lawyers, who worked in the Public Defenders Office in Philadelphia, expressed dissatisfaction with this method of representation. However, due to funding and budget constraints the Chief Public Defender informed us that “vertical” representation was not possible. Many lawyers we encountered were greatly in favour of the “choice” element in our system.

5.6 Per Capita Cost of Criminal Legal Aid in Common Law Jurisdictions

This table shows that our legal aid scheme, which provides choice and vertical representation, is less expensive than international comparators.

Comparison of Gross Per Capita Cost of Criminal Legal Aid

Country	Population	Cost of Criminal Legal Aid	Per Capita Cost (£)
	m	£m	
Ireland	3.6	15.18	4.22
Australia	18.5	127.10	6.87
England/Wales	52.2	384.20	7.36
Canada	30.0	276.30	9.21
N Ireland	1.7	17.55	10.32
Hong Kong	6.1	84.60	13.87
Scotland	5.1	82.09	16.10

Table 1



## Chapter 6

# Analysis of Statistical Information on Irish System

In setting about our task of constructing and costing a Public Defender model the Committee drew on information from the following sources;

- the experience in the Legal Aid Board
- the April, 1994 Report produced by the Department of Finance, on the Criminal Legal Aid System
- information gleaned from our study trips abroad
- data provided by different Divisions of the Department of Justice, Equality and Law Reform and
- discussions with practitioners and court personnel in Dublin, Cork, Limerick, Portlaoise and Naas.

The main sources of data on criminal legal aid in Ireland are the Courts and the Finance and Courts Divisions of the Department of Justice, Equality and Law Reform. Some difficulties were experienced in collating the data received from the different sources due to the different formats in which it was stored.

### 6.1 The Legal Aid Board

The Legal Aid Board was established in 1979 to administer the scheme of Civil Legal Aid and Advice. The purpose of the Scheme was to make the services of solicitors and, where necessary, barristers available to persons of modest means at little cost. The service continued on an administrative basis until 1996 when the Civil Legal Aid Act, 1995 was brought into effect. The Act incorporates the main provisions of the non-statutory Scheme. It provides a statutory entitlement to all applicants for civil legal aid and advice who satisfy the eligibility requirements contained in the Act.

Civil legal aid services are administered by a Board appointed by the Minister for Justice, Equality and Law Reform and consists of a Chairman and twelve ordinary members of whom at least two are practising barristers and two are practising solicitors. The day to day administration of the Act is carried out by staff employed by the Board.

The Board employs in the region of ninety salaried solicitors in addition to approximately one hundred administrative/support staff in thirty full-time Law Centres throughout the country as well as providing legal services at fourteen part-time Law Centres. The Law Centres tend to be situated in areas of high population, such as county towns. The Board operates a scheme in which private solicitors are engaged to deal with family law matters in the District Court. The purpose of the involvement of private practitioners is to make the service more accessible in cases of geographical remoteness, conflict of interest cases and to assist in reducing waiting times in Law Centres.

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The Board's solicitors, where necessary, brief barristers in the normal way. The services of counsel are provided on the basis of an agreement entered into between the Legal Aid Board and the Bar Council. This agreement may be revised from time to time.

The Civil Legal Aid Act, 1995, unlike the Criminal Justice (Legal Aid) Act, 1962, provides that an applicant must satisfy a financial eligibility test and is required to pay a contribution towards the services provided by the Board. Every applicant is required to complete financial assessment forms and to give details of his/her means and capital assets. The amount which s/he is required to pay as a contribution depends on his/her disposable income and/or disposable capital. The present disposable income limit is £7,350. The figure is arrived at by deducting from the gross income, the statutory allowances granted under the Act. The disposable capital limit is £200,000. In practice, the capital provisions of the Act do not apply in the vast majority of cases.

During 1998, the latest year for which figures are available, 13,740 persons received legal assistance from the Legal Aid Board — 5,444 were provided with legal aid and 8,296 were provided with legal advice. The total expenditure of the Board amounted to £9.39m.

The operation of the Civil Legal Aid Scheme and its management by the Legal Aid Board is of particular interest to the Review Committee because it is an example of a legal service provided by full-time, salaried solicitors and support staff. It essentially involves the provision of a legal aid service by salaried solicitors who are funded directly by the State. These solicitors, who can on occasion be supplemented by private solicitors, brief barristers in private practice. The examination of the operation of the Legal Aid Board and its administration of the Civil Legal Aid Scheme has been invaluable in helping the Secretariat to appreciate better what is involved in the establishment and management of a salaried service.

### 6.2 Department of Finance Report, 1994

In April 1994, the Department of Finance, Analysis and Operations Research Section, compiled a report entitled "Criminal Legal Aid in Ireland: Estimated Cost of Full-time Solicitors and Counsel." The report was part of an examination of the feasibility of using full-time, salaried solicitors, barristers and support staff to provide criminal legal aid in Ireland. The report was cost driven and focussed on estimating and comparing the cost of the present system with two alternatives, *viz.*:

- (a) complete replacement of the present system with full-time staff, and
- (b) partial replacement of the present system, where full-time staff would be introduced in the Dublin area, with existing arrangements retained in the rest of the country.

The conclusions reached by the Finance Report were as follows:

- the use of full-time, salaried solicitors, barristers and support staff to provide criminal legal aid would be 70% more expensive than the current system;
- the greatest element of expense in replacing the system would be the provision of criminal legal aid in the courts outside Dublin; and

## Analysis of Statistical Information on Irish System

- the cost of operating a full-time, salaried system for the Dublin Courts only and maintaining the existing judicare system for the rest of the country would be very close to the cost of the existing system.

The 1994 Department of Finance Report was presented to the Review Committee on June 9, 1997. The Report and analysis contained therein was found not to have had regard for the totality of the service which is provided under the existing criminal legal aid scheme, which, if taken into account, would have added to the costings of the full-time salaried system identified. Specifically, the Report was considered to have underestimated the number of solicitors and barristers necessary to properly staff a full-time Public Defenders Office in Dublin and rural areas.

The Department of Finance Report did not take cognisance of the provisions of the non-statutory Attorney General's Scheme which applies to *habeas corpus* applications, bail motions, judicial reviews and applications under s. 50 of the Extradition Act, 1965. The Committee considers that it would be remiss to conduct any analysis regarding the introduction of a Public Defender System without incorporating the Attorney General's Scheme into the costing, on the basis that it would be impractical for a defendant to be represented by a Public Defender for trial hearings but to have to acquire separate representation for a bail application. The Committee includes this costing without prejudicing any future decision that the Review Committee may reach regarding the present and future operation of the Attorney General's Scheme. The cost of the Attorney General's Scheme will, of course, be added to that of the existing Criminal Legal Aid Scheme for the purpose of comparison with the Public Defender model developed. The cost of the Attorney General's Scheme for 1998 was £320,000.

Despite its perceived shortcomings, the Finance Report was nonetheless considered by the Committee to have identified many matters which are pertinent to our examination of the Public Defender issue and is, accordingly, considered as a useful reference point for our enquiry. In the circumstances, the Committee decided that it would conduct a fresh examination of the staffing requirements of a Public Defender system.

### 6.3 Department of Justice, Equality and Law Reform

#### Courts Policy Division

Courts Division of the Department of Justice, Equality and Law Reform is responsible for the administration of the Criminal Legal Aid Scheme in the areas of policy, legislation, funding and accountability to the Dail. In terms of the resources devoted to such matters, and having particular regard to the numbers of staff engaged in the management of the Scottish and New South Wales Legal Aid Board and Commission respectively, four (4) staff have functions in relation to the operation of the Scheme with no individual head of staff assigned to work relating to the Scheme on a full-time basis.

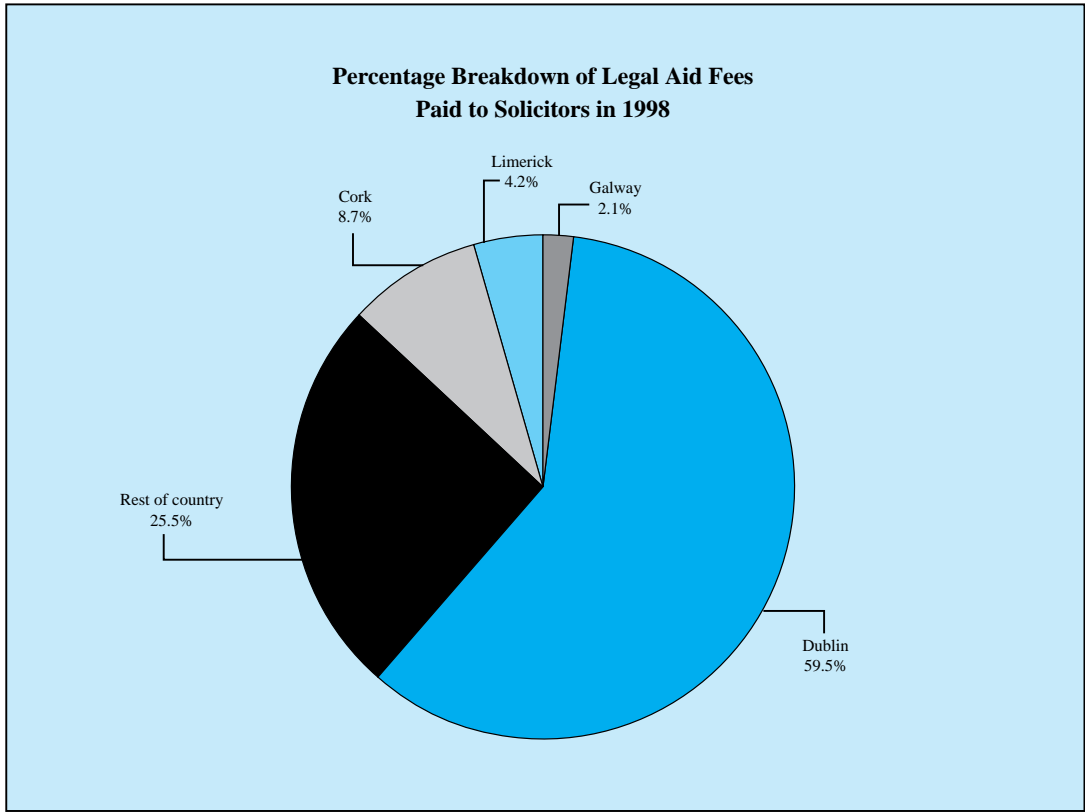
Details of the total number of legal aid certificates granted and the total number of people granted legal aid certificates was obtained from Courts Division. In the legal year 1997/98, 26,930 legal aid certificates were granted throughout the country to a total of 26,960 persons. For the purposes of constructing a Public Defender Model the Committee considers that the number of persons in respect of whom a legal aid certificate was granted represents the number of "units of representation" which must be provided by a Public Defender's Office. See Appendix A.

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## Finance division

Finance Division of the Department of Justice, Equality and Law Reform is based in Killarney, Co. Kerry. The Legal Aid Section, which has a staff of eight (8), deals with all payments made to solicitors and barristers and also the payment of witness expenses under the Criminal Legal Aid Scheme. A breakdown of the information available from this Section is of interest regarding legal aid in general and also for the purposes of this Report.

The Committee considers that a national statutory scheme costing £17m per annum should be the subject of best practice audit and accounting procedures in accordance with guidelines set down by the Comptroller and Auditor General. While the current scheme has relatively straightforward and user friendly payments systems, the Committee considers that all aspects of the payment/accounting systems should be reviewed and enhanced, if deemed appropriate, and particular consideration should be given to bringing about any necessary improvement in the context of the major Information Technology systems currently being developed across the Justice areas.



Graph 1

Currently, five (5) firms of solicitors account for approximately 73% of the total fees paid to solicitors under the criminal legal aid scheme in Dublin. It is understood that at the beginning of 1998, these firms employed a total of thirty-three (33) solicitors. A further eighteen solicitors account for approximately 22% of the total fees paid to solicitors in Dublin under the legal aid

## Analysis of Statistical Information on Irish System

scheme. Therefore, 95% of the legal aid work in Dublin is carried out by fifty one (51) solicitors. For a further breakdown and analysis of the fees paid to solicitors — see Appendix B.

### 6.4 Consultations with Practitioners and Court Staff

Over the period of our examination of the matter the Review Committee held a number of meetings with officials working in the Courts and legal practitioners, in order to gain an insight into

- the level and nature of criminal business processed by all courts exercising criminal jurisdiction,
- the legal aid service currently provided, and
- an analysis of the numbers of salaried staff that would be required to provide a similar level of service on a salaried service basis.

To this end, the Committee consulted court staff at all levels, viz., District Court, Circuit Court, Central Criminal Court, Special Criminal Court and the Court of Criminal Appeal. We did not just confine our discussions to Dublin, travelling to Portlaoise, Naas, Cork and Limerick. In addition, we consulted a number of practitioners. These visits were very productive and provided the Committee with an indication of the volume and workload of some of the rural areas.



# Chapter 7

## Determination of Business Volumes

In order to develop a Public Defender Model for Ireland, the Committee considered it necessary to establish two things, viz

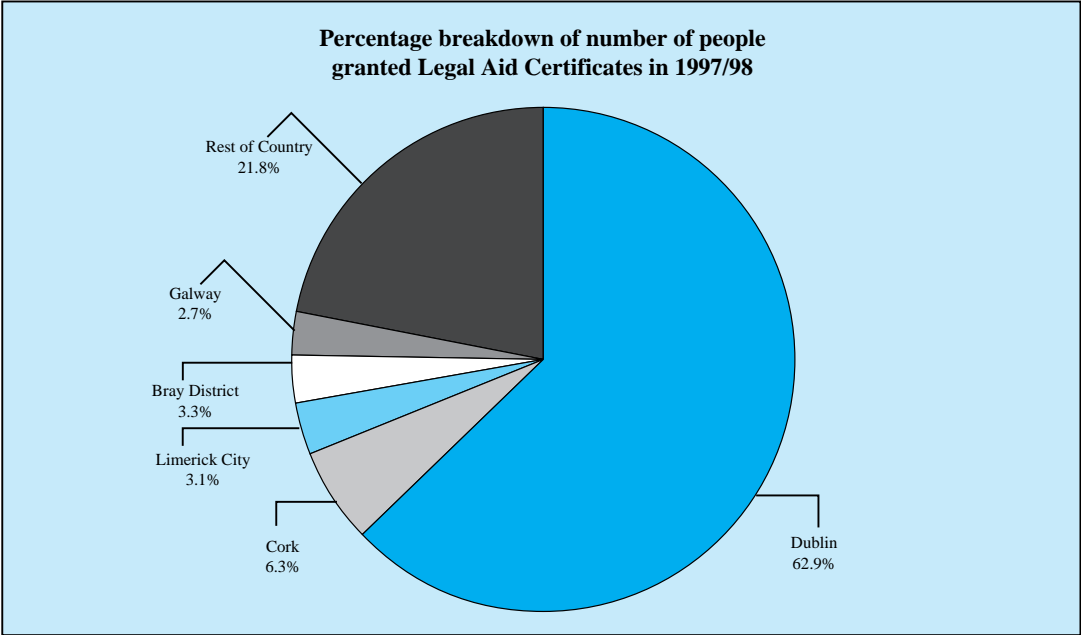
- a profile of the level and nature of criminal cases which are processed by every court in the land which exercises criminal jurisdiction, and
- a clear description of the type of legal service in terms of quality of representation, reasonable caseloads, continuity of representation, etc., which we considered crucial to the provision of a decent criminal defence service so that the determination of the staffing requirements of a Public Defender Model would have proper regard to the above core fundamentals.

These two issues are discussed in some detail in this Chapter and the next.

### Workload of the District Court

In 1997/98, there were 26,930 legal aid certificates granted to 26,960 persons throughout the country. The reason that the number of certificates granted is less than the number of persons granted certificates is that there is a practice which has developed within some Districts, to grant only one legal aid certificate where a number of people are charged in relation to an offence.

Of the 26,960 persons granted certificates in 1997/98, 16,952 were granted certificates in the Dublin Metropolitan District. This amounts to 62.9% of the total number of persons who were granted legal aid certificates in the country. In Cork City 1,685 (6.3 %) persons were granted legal aid certificates. Further details can be seen from the graph below and Appendix A.



Graph 2

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Although it is difficult to come up with a scientific method to estimate the total amount of persons receiving legal aid, the Committee regards the number of persons in respect of whom a legal aid certificate(s) was granted as representing the number of ‘units of representation’ which must be provided.

Dublin Metropolitan District

The venues and scheduled sittings in the Dublin Metropolitan District are as follows;

District Court Venues

Venue	Court No.	Days per week
Chancery Street (Bridewell)	44	5½
	45	5
	46	5
Richmond Hospital	50	5
Smithfield (Children)	55	5
Tallaght Swords Balbriggan		2 + 2 per month 1 1 (mixed)
Dún Laoghaire		4 (mixed)
Kilmainham		5

Table 2

Tallaght District Court sits every Monday, Wednesday and every second Friday. Swords District Court sits every Tuesday and Balbriggan District Court sits every Thursday. This means that the three above venues would be the equivalent of one full-time District Court venue and, for the purposes of estimating the number of solicitors required in Dublin, all three will be treated as one venue. Swords, Balbriggan and Dun Laoghaire District Courts are mixed courts in that they deal with civil matters as well as criminal matters. Tallaght deals with custody cases and summonses.

So, in reality a Public Defender’s Office would be required to service a total of eight District Courts on any given day. In addition, Court No. 44 sits on Saturday mornings. Some of these courts will be substantially busier than others. For instance, in the legal year 1997/98 there was a total of 3,100 legal aid certificates issued from the Richmond, Tallaght and Kilmainham courts. Courts Nos. 44, 45 and 46 could reasonably expect to issue well over three thousand legal aid certificates per court in a legal year. Indeed, in October 1998 Court No. 44 (sitting 5 and a half days per week) made 334 legal aid assignments, Court No. 45 made 242 legal aid assignments and Court No. 46 made 283 legal aid assignments. If this figure is taken as average then these three courts alone would grant legal aid in respect of approximately 10,000 poor persons in any one legal year.



## Determination of Business Volumes

### Rural District Courts

If one takes a look at the figures in Appendix A it also becomes apparent that some Districts are busier than others. For instance, in 1997/98 District One (Donegal and Letterkenny) granted legal aid certificates to 692 persons whereas in District Thirteen (Listowel), only 63 persons were granted legal aid certificates. If a Public Defender System was to be introduced the number of solicitors per District would necessarily vary depending on the size and level of business in that particular District. This matter is discussed later in the Report.

### Circuit and higher Courts

As stated previously, we have figures for the number of legal aid certificates granted by the District Courts. We do not, however, have details of the certificates granted in the Circuit and higher Courts. The number of such certificates granted is very small. Most persons who are charged in the District Court with an offence and sent forward for trial to the Circuit, Central or Special Criminal Courts will be granted legal aid in the District Court.

In analysing the requirement for staff we looked at the actual number of cases in the Circuit Court/Special Criminal Court in Michaelmas 1998.

In the period 1992 to 1998, there has been a substantial increase in the number of cases being returned for trial to the Dublin Circuit Criminal Court and the Central Criminal Court, viz, 58% and 118%, respectively. The complexity and length of Circuit and higher Court cases has increased due largely though not exclusively to advances in forensic science and the increased use of scientific evidence.

No. of Cases Returned for Trial to the Central Criminal Court

YEAR	MURDER	RAPE	TOTAL
'92	23	49	72
'93	17	41	58
'94	12	46	58
'95	23	58	81
'96	27	45	72
'97	28	72	100
'98	27	130	157

Table 3

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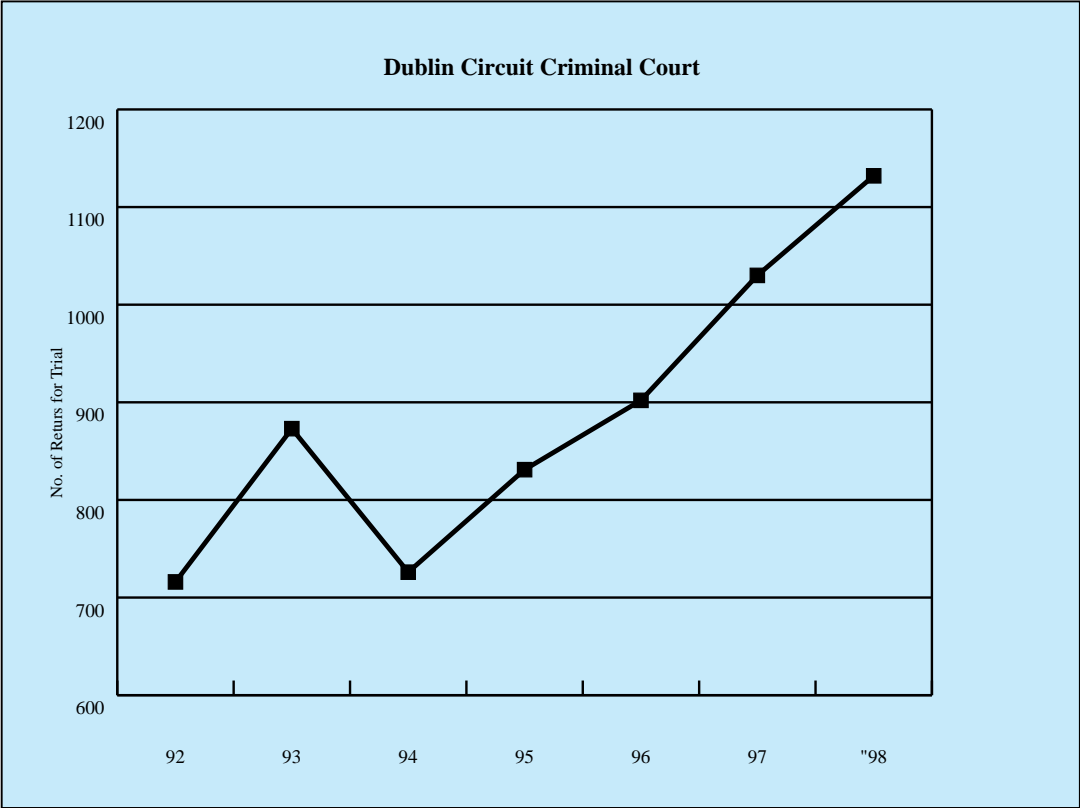
Graph 3

**Number of Cases Returned for Trial  
to the Dublin Circuit Criminal Court**

Year	No. of Cases
1992	716
1993	873
1994	726
1995	831
1996	902
1997	1,030
1998	1,132

Table 4

## Determination of Business Volumes



*Graph 4*

In Dublin there will be up to five Circuit Criminal Courts and up to four Central Criminal Courts sitting on any one day — it is understood that it is intended to have as many of these courts sit as is possible. The Special Criminal Court will also sit each day. The Court of Criminal Appeal sits for a full day every Monday hearing appeals against sentence and conviction. This means that on a Monday there may be eleven criminal courts sitting in Dublin (the Bail Motion List in the High Court is also heard on Mondays) — with up to ten courts sitting on the other days of the week.

There is no other Circuit which has a full-time Circuit Criminal Court. Cork, which is the busiest Circuit outside Dublin, has two Circuit Court judges sitting for half the legal year. Other Circuits would not be as busy. For instance, the South Western Circuit (Limerick, Clare and Kerry) will have a Circuit Criminal Court sitting for between ten and twelve weeks this legal year in total. It is considered that it would be very difficult to justify employing full-time barristers to cater for the Country Circuits if they are only going to represent legal aid defendants in Court for ten or twelve weeks of the year on the grounds that it would not be cost effective.



## Chapter 8

### Definition of Service

The identification of the number of salaried staff required to operate a Public Defender System can only be derived on the basis of an analysis of the workload involved in conjunction with the nature and scope of the service provided.

While the Committee does not intend to produce quality guidelines for providers of the legal aid service or indeed a charter of legal aid recipients' rights at this juncture, the Committee considers it important to define, in broad terms, what the provider of the criminal legal aid service should provide and what the recipient should expect to receive.

In setting out the principles we regard as important, we have had regard to the perceived strengths of our own criminal defence system and what we regarded as best practice principles we encountered in the jurisdictions which we visited. What is discussed below applies to both the existing Scheme and the Public Defender model identified. The quality of service aspired to should be identical for both models. It would be unacceptable to expect one level of service from one particular delivery model while being willing to accept a lesser standard of service under an alternative model.

Representation of the individual does not begin when the defendant enters the courtroom and cease when the defendant is granted bail, remanded in custody or ultimately convicted or acquitted. There is more to it than that and it is envisaged that the Public Defender model developed would provide much more. The solicitors and barristers operating under the Scheme provide a comprehensive service and any changes to the Scheme or any alternative system introduced must ensure that the level of service provided does not deteriorate as this would have a negative impact on public and client confidence in the administration of justice in this country.

If a person detained in a Garda station requires the presence of a solicitor then it would be desirable that the system in operation would enable that person to be provided with a solicitor. If a person is detained for a number of days, as recent legislation provides for, that person may need access to a solicitor on a number of occasions. Visits to Garda stations by solicitors are not remunerated under the current Criminal Legal Aid Scheme.

Whether released or remanded in custody, ongoing consultations with the client may arise in order to properly prepare the defence. If remanded there may be the extra task of talking to the accused person's family to get background information on the accused. If remanded, the solicitor may also need to travel to the prison for consultations.

It is important when the individual appears in court that s/he receives a proper level of representation. This will not be achieved if the solicitor is carrying an unacceptably heavy/high caseload as sufficient time could not be devoted to preparatory work. Under the model developed it has been attempted to keep the average caseload to a reasonable level in order to provide a quality service. Also the solicitors have to be available to attend identification parades, bail applications, appeals to the Court of Criminal Appeal, judicial review proceedings

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etc. For trial on indictment, the solicitor has to be afforded the time to properly prepare the defence of the client, who must be properly represented in court throughout the course of the trial. The same goes for barristers, who would not be expected to go from one trial to the next without proper preparation time. The numbers provided to staff the various offices should have adequate regard for the provision of a quality service as has been outlined above.

### **Quality Standards for Public Defender System Developed**

It is considered important that the Public Defender model be such as would allow for the provision of a quality level of service and must certainly reach the level of quality provided by the Scheme.

The jurisdictions that were visited by the Review Committee in the United States, particularly Philadelphia, and Australia practised “horizontal” representation for the majority of criminal cases, whereby each time that the defendant appeared in court s/he was represented by a different lawyer, with no continuity of representation. Under the models which have been developed it is envisaged that there would be continuity of representation, such that the lawyer who takes on a case will remain with it to the point of its conclusion. Lack of continuity of representation could compromise the level of trust which is a necessary part of the client/lawyer relationship.

## Chapter 9

# Analysis of Requirement for Solicitors and Barristers

### Requirement for Solicitors

#### Dublin

It is estimated that the number of full-time, salaried solicitors required to staff a Public Defenders Office in the Dublin Metropolitan District (DMD) would be 80. As stated earlier these solicitors would have to cover the equivalent of eight District Courts as well as the Circuit, Central and Special Criminal Courts.

There is no scientific formula available to help us decide the number of solicitors who would be required. However, it is possible to estimate the requirement. At the moment, approximately 95% of the work is being done by 51 solicitors. Extrapolations from this figure indicate that, theoretically, 55 private solicitors could do 100% of the legal aid work within the DMD.

Solicitors involved in the Scheme currently

- operate in a market-driven environment, where there is a direct correlation between the number of cases that a solicitor takes and the fees that a solicitor earns from the legal aid scheme — this gives an incentive to take on a heavier caseload;
- attend Garda stations and prisons for consultations with persons remanded in custody, sometimes after hours;
- consult with accused persons before they appear in court;
- obtain and analyse experts reports; and
- in the case of trial on indictment, have regular consultations with counsel.

The salaried solicitors under the Public Defender models developed, would be paid for a 40 hour week in which they would be required to attend court, consult with clients and counsel and attend to other matters as they arise. While the hours worked by salaried Public Service legal practitioners regularly exceeds 40 hours per week, the market environment in which private solicitors/barristers operate in must be taken into account.

Accordingly where, theoretically, 55 solicitors could currently do 100% of the legal aid work in Dublin, it would nonetheless appear unlikely that 55 salaried solicitors, working 40 hours per week could provide the same level or quality of service. These salaried solicitors would either have to work a substantial amount of overtime to handle the workload or be supplemented by an additional number of solicitors.

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It is considered, therefore, that in order to provide the same level and quality of service as that which is currently provided, 55 salaried solicitors would be required to work additional hours per week. As they would only be paid on the basis of a 40 hour week, requirements to take annual leave, sick leave, parental and maternity leave and training days, etc. it is estimated that a further 25 solicitors would be required. This brings the requirement to 80 solicitors.

We have also analysed the requirement from a different perspective, viz, by reference to the numbers required to staff each court. It is estimated that on any one day up to 40 solicitors would be required to staff all the courts sitting in Dublin.

Dublin District Courts and Staffing Requirements

Courts	Staffing Requirement
No. 44	4
No. 45	4
No. 46	4
Richmond	2
Kilmainham	4
Dun Laoghaire	2
No. 55 (Juvenile)	3
Tallaght Balbriggan Swords	3
Circuit Criminal	6
Central Criminal	4
Special Criminal	2
Court of Criminal Appeal/High Court	2
Total	40

Table 5

It is estimated that, to provide a level of representation on a par with that currently provided, solicitors operating in a Public Defender’s Office would have one day’s preparation for every day spent in court, based on a forty hour working week. This time scale allows solicitors sufficient time to prepare cases for court, hold consultations, visit prisons, interview witnesses etc. This would, therefore, bring the number of solicitors required to 80.

Hierarchy within the office

The grades and salary scales used in this exercise are equivalent to the grades and salary scales applicable to the Chief State Solicitor’s Office (CSSO). It is considered that in order to attract suitable staff it is important to provide a good career structure so that a young solicitor entering the office is aware that promotional opportunities will arise if s/he performs well. The salary levels shown are the midpoint from each scale. The following structure, which reflects the current structure in the CSSO, is used as a basis for costing:



## Analysis of Requirement for Solicitors and Barristers

Hierarchical Structure in Public Defenders Office in Dublin	
Grade	Number
Chief Public Defender	1
Assistant Chief Public Defender	2
Deputy Asst. Chief Public Defender	4
Principal Solicitor	8
Senior Assistant Solicitor	20
Assistant Solicitor	45

Table 6

The following is the estimated cost of employing a solicitor at each relevant grade:

Cost of Employing Individual Solicitors at Various Grades

Grade	Actual Salary	Total Salary Cost <sup>11</sup>	Total Staff Cost <sup>12</sup>
	£	£	£
Chief Public Defender	86,691	101,142	148,679
Assistant Chief P. D.	50,125	58,481	85,967
Deputy Asst. Chief P.D.	45,966	53,629	78,835
Principal Solicitor	42,781	49,913	73,372
Senior Asst. Solicitor	32,395	37,795	55,559
Assistant Solicitor	21,913	25,566	37,582

Table 6A

Total Costs of Employing Solicitors for Dublin

Grade	Cost of one person at that grade	No. at that grade	Total Cost
	£		£
Chief P.D.	148,679	1	148,679
Asst. Chief P.D.	85,967	2	171,934
Dep. Asst. Chief	78,835	4	315,340
Principal	73,372	8	586,976
Senior Asst.	55,559	20	1,111,180
Assistant	37,582	45	1,691,190
<b>Total:</b>		<b>80</b>	<b>4,025,299</b>

Table 7

The cost of employing 80 solicitors in the DMD is £4.025m. (excluding PRSI).

<sup>11</sup> Total Salary Cost is defined as actual salary cost plus an imputed pension contribution. Employing civil/public servants normally results in the creation of entitlements to pensions which are payable in the future. Therefore, in estimating the total cost of employing a civil servant, allowance must be made for this deferred cost. This is calculated at 16.67% of the officer's actual salary. The pension contributions are based on actual salary.

<sup>12</sup> Total Staff Cost is defined as Total Salary Cost plus an allowance for overheads. Each officer requires office space, materials, use of telephones, fax, postage services, etc. In addition, security services have to be provided, recruitment and training expenses are incurred, personnel services are provided and so on. It is estimated that an addition of 47% to total salary cost is required to recover overheads.

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Support Staff

It is estimated that the number of support staff required will be 107. Each solicitor in the office should be assigned one head of staff who would act as a personal assistant. For the Chief, Assistant Chief and Deputy Assistant Chief Public Defenders that person would be a Legal Clerk, while for the other solicitors the supporting staff would be at the grade of Clerical Officer.

It is envisaged that there would be a unit headed up by a Principal Officer which would be responsible for the Finance, Information Technology, Training and Human Resource Management functions for the Dublin offices and for the rest of the country. The structure of this office would be as follows:

Hierarchical Structure for Support Staff in Public Defenders Office in Dublin	
Grade	Number
Principal Officer	1
Assistant Principal	3
Higher Executive Officer	7
Legal Clerk	7
Executive Officer	7
Clerical Officer	78
Receptionist	4

Table 8

So within the administrative side of the office promotional opportunities are available. Four receptionists/telephonists would also be employed and would be at a Clerical Officer Grade. The salary levels shown below are the midpoint from each scale.

Cost of Employing Individual Support Staff at Various Grades

Grade	Actual Salary	Total Salary Cost	Total Staff Cost
	£	£	£
Principal Officer	43,107	50,293	73,931
Assistant Principal	32,613	38,050	55,934
H. Executive Officer	23,492	27,408	40,290
Executive Officer	16,807	19,609	28,825
Clerical Officer	13,018	15,188	22,326
Legal Clerk	18,669	21,781	32,017

Table 8A

## Analysis of Requirement for Solicitors and Barristers

**Total Cost of Employing Support Staff**

Grade	No. of Persons at that Grade	Cost of employing persons of that Grade	Total Cost
		£	£
P.O.	1	73,931	73,931
A.P.	3	55,934	167,802
H.E.O.	7	40,290	282,030
E.O.	7	28,825	201,775
LEGAL CLERK	7	32,017	224,119
RECEPTIONISTS	4	22,326	89,304
C.O.	78	22,326	1,741,428
<b>TOTAL</b>			<b>2,780,389</b>

Table 9

The cost of support staff for the DMD region is just over £2.780m. (excluding PRSI). Therefore the total cost for full-time salaried solicitors, with support staff in the Dublin area (excluding PRSI) is £6.805 m.

### Library Costs

It would be necessary to have a library stocked with the necessary text books, law reports and journals.

In order to properly staff the library, it would be necessary to employ three full-time librarians and two clerical officers. This would cost the following;

**Cost of Employing Individual Librarians**

Grade	Actual Salary	Total Salary Cost	Total Staff Cost
Librarian	£24,669	£28,781	£42,309

Table 9A

**Cost of Employing Library Staff**

Grade	Cost of employing one person at that Grade	No. of persons at that Grade	Total Cost
	£		£
Librarian	42,309	3	126,927
C.O.	22,326	2	44, 652
<b>Total</b>			<b>171,579</b>

Table 9B

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It would be necessary to have an annual budget for purchasing text books, law reports and journals. The budget would be £150,000. The total cost of maintaining a library would be £0.322m. (excluding PRSI).

Full-Time Salaried Solicitors Outside Dublin

(A) Analysis of requirement based on Solicitor/Caseload ratio.

The analysis of the number of solicitors required for rural Districts is based on the caseload volumes and on the number of solicitors provided for in Dublin and the caseload that the solicitors in Dublin are required to carry. In Dublin, the solicitor/case ratio is 1:212 whereas, under the proposed figures for rural Districts, the ratio works out at 1:164. The ‘country’ caseload is therefore, substantially less than that of Dublin. However, in larger urban areas there are certain economies of scale which would not exist in smaller rural offices. The level of business in some Districts would not sustain full-time solicitors, so, where this occurs Districts have been amalgamated with adjoining Districts. Each office is given a grading structure so as to provide some hierarchical structure and also promotional opportunities within the office. The structure is as follows:

Full-time Salaried Solicitors and Support Staff outside Dublin

District Court Area	Deputy Asst. Chief	Principal Solicitor	Senior Asst. Solicitor	Asst. Solicitor	Support Staff
No. 1	1	1	2		3 C.O.
Nos. 2/3/4		1	2	2	4 C.O.
No. 5		1		1	2 C.O.
No. 6		1	1	1	3 C.O.
No. 7		1	2	1	4 C.O.
No. 8		1	1	1	3 C.O.
No. 9		1	1	1	3 C.O.
No. 10		1		1	2 C.O.
No. 12		1			1 C.O.
Nos. 13 & 17		1	1	1	3 C.O.
No. 14		1	3	2	1 E.O. 4 C.O.
No. 15		1		1	2 C.O.
No. 16		1	2	1	4 C.O.
Nos. 18, 19 & 20 [CORK CITY AND COUNTY]		2	5	4	1 H.E.O. 1 E.O. 8 C.O.
Nos. 21 & 22		1	3	2	1 E.O. 4 C.O.
No. 23		1		1	2 C.O.
TOTAL		17	23	20	1 H.E.O. 3 E.O. 52 C.O.

Table 10

## Analysis of Requirement for Solicitors and Barristers

### Total cost of employing solicitors and support staff outside Dublin

Grade	Cost of employing one person of that Grade	No. of persons of that Grade	Total Cost
	£		£
DEPUTY ASST. CHIEF	78,835	1	78,835
PRINCIPAL SOLICITOR	73,372	17	1,247,324
SENIOR ASST. SOLICITOR	55,559	23	1,277,857
ASST. SOLICITOR	37,582	20	751,640
H.E.O.	40,290	1	40,290
E.O.	28,825	3	86,475
C.O.	22,326	52	1,160,952
<b>TOTAL</b>			<b>4,643,373</b>

Table 11

The cost of employing full-time solicitors and support staff outside Dublin on the basis of a solicitor/caseload ratio (excluding PRSI) is £4.643m. Combined with the figure for the Dublin region this amounts to a total of £11.448m.

### (B) Analysis of requirement based on Solicitor/Geographical Area Coverage.

The number of solicitors identified as being required in table 10 is an estimation of the numbers of solicitors that would be required to staff the rural Districts based on the solicitor/caseload ratio used for the Dublin Metropolitan District. However, the Committee recognises the inherent difficulties which arise by adopting the approach used in the Dublin Metropolitan District for the rural Districts. The Committee recognises that, for a number of reasons, the figure of 61 solicitors identified by the solicitor/caseload ratio approach to the rural Districts to be unrealistic for the following reasons:

- it is necessary to provide access to an individual's constitutional rights on a local basis, and therefore, undesirable to have accused persons travelling considerable distances in order to consult with a Public Defender. For instance, if a Public Defender's Office for District One was located in Letterkenny, a legally aided person in the south of Co. Donegal would have to travel considerable distance to consult with their solicitor.
- it is desirable that persons in custody would have reasonably immediate access to a solicitor. However, if someone is arrested in the middle of the night in a town without a Public Defender it may well be several hours before a Public Defender can attend upon such a person. The intervening period between arrest and attendance by a Public Defender at the Garda Station may be crucial in that an accused person may have given a statement without the benefit of legal advice. Such a scenario is much less likely to occur under the current Scheme as almost every town has a solicitor who practices criminal law and is in a position to attend a Garda Station promptly.
- at any one time several people may be arrested and taken into Garda custody for questioning arising from the same incident. Such scenarios have become more prevalent in recent times with regard to, for example, drug offences. Where upwards of six or seven individuals are arrested at the same time, it is very likely that a conflict

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of interest may arise between those arrested and each person may require separate representation. However, in smaller rural Districts, under the model proposed in Table 10, the Public Defender's Office would not be able to provide separate representation for each accused and would have to call on Public Defenders from other Districts — thus leaving other Districts short-staffed, which would not be desirable — or, alternatively, private solicitors would have to be utilised to cater for the overload and this would necessarily add to the costing of the Public Defender system.

- it is considered that if a Public Defender system was introduced that the Public Defender would provide vertical representation and would stay with the case from beginning to end. This may entail the Public Defender having to attend the Central or Special Criminal Courts for a lengthy trial, the High Court for bail applications and judicial review hearings and also the Court of Criminal Appeal. While this is ongoing the Public Defender is necessarily absent from his/her designated District to the detriment of his/her colleagues, who are under extra pressure, and to the detriment of his/her “clients”.

The Committee recognises that substantially more solicitors would be necessary to staff the rural Districts than the figure of 61 which is identified in Table 10. The Committee considered the extent of the additional requirement to provide a service covering attendance at the District and Circuit Courts locally, the Central and Special Criminal Courts and the Court of Criminal Appeal, albeit less frequently, the High Court (for matters provided for under the current Attorney General's Scheme), visits to Garda Stations, visits to custodial centres which would generally be some distance away from most Districts, the need to have a solicitor available on-call and to cover staff illness, annual leave etc., and felt that perhaps the numbers set out in Table 10 would need to be substantially increased for a salaried solicitor service outside Dublin and the cost of providing such a service could be as much as £9.286m.

### **Requirement for Barristers**

#### *Dublin*

It is estimated that the number of full-time barristers required to staff a Public Defenders Office in Dublin would be 60 *i.e.* 20 Senior Counsel and 40 Junior Counsel. As with solicitors, there is no formula into which information and data can be inputted so that a final number can be derived.

The model developed will not only cover the range of cases which currently come within the ambit of the existing Scheme, it will also encompass the Attorney General's Scheme so additional barristers will have to be provided to deal with this particular area.

At present in Dublin there is the capacity to have up to ten Circuit or higher courts hearing criminal matters on any particular day — five Circuit Criminal Courts, four Central Criminal Courts and one Special Criminal Court. During the 1999 Hilary Law Term there were days when 11 or 12 Senior Counsel appeared in criminal matters. This is an exceptional number and would occur only very occasionally.

On a Monday the Court of Criminal Appeal sits requiring the presence of a small number of Senior Counsel. The Bail List in the High Court is also heard on a Monday requiring the

## Analysis of Requirement for Solicitors and Barristers

presence of a Senior Counsel. However, as a result of these sittings not all Central Criminal Courts sit on that day.

A factor which must be taken into account is that when counsel operating in a Public Defender's Office finish one particular case they could not ordinarily be expected to begin another trial the following day. They would have to prepare for the next trial and could not appear in court unprepared to defend someone facing imprisonment. Therefore, preparation time is vital so that the brief can be fully analysed, the defendant interviewed and consultations held with the instructing solicitor.

All these factors have been taken into account in coming to the conclusion that 20 Senior Counsel would be required for the office in Dublin. This would give these barristers adequate preparation time before they appear in court.

The number of Junior Counsel which will be required will obviously be greater. Junior Counsel will do the majority of the Circuit Court trial work and will also, for the most part, service Court No. 24 (the "call-over" Court) — although a Senior Counsel may be required to appear occasionally. They will also be required, of course, to attend Senior Counsel whenever a Senior Counsel is appearing in trials in the Circuit, Central and Special Criminal Courts and in respect of bail motions, judicial review proceedings, appeals to the Court of Criminal Appeal and other such matters.

Based on discussions with practitioners and court staff, it is considered that the following numbers would have been required to service a Public Defenders Office during last term.

**Requirement for Senior and Junior Counsel in Dublin**

	No. of Senior Counsel Required	No. of Junior Counsel Required
Dublin Circuit Criminal Court	4	14
Central Criminal Court	5	5
Court of Criminal Appeal	2	2
Special Criminal Court	2	1
Attorney General's Scheme	1	6
SUBTOTAL:	14	28
MARGIN:	6	12
<b>TOTAL</b>	<b>20</b>	<b>40</b>

Table 12

So it is proposed that the above figures are those that would be necessary to adequately staff a Public Defender System in Dublin on any given day.

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Structure of the ‘Chambers’

It is more difficult to structure a full-time salaried office consisting of barristers as there is no equivalent structure in the State. It is envisaged that when the barristers are employed they would operate something akin to a ‘chamber’ system and there would be little or no hierarchical structure within the office. However, it would be necessary to have a Chief Defending Barrister who would be paid the same salary as the Chief Public Defender (Solicitor). The other Senior Counsel would be paid a salary equivalent to a Deputy Secretary General of a Government Department and Junior Counsel would be paid the same amount as a Deputy Assistant Chief Public Defender.

Cost of Employing a Barrister at each Grade

Grade	Actual Salary	Total Salary Cost	Total Staff Cost
	£	£	£
CHIEF	86,691	101,142	148,679
SENIOR COUNSEL	69,419	80,991	119,057
JUNIOR COUNSEL	45,966	53,629	78,835

Table 13

Total cost of employing full-time barristers for the Dublin region

Grade	Cost of employing one person at that Grade	No. of persons at that Grade	Total Cost
	£	£	£
CHIEF	148,679	1	148,679
SENIOR COUNSEL	119,057	19	2,262,083
JUNIOR COUNSEL	78,835	40	3,153,400
TOTAL			5,564,162

Table 14

The cost of employing full-time, salaried barristers for the Dublin area would be £5.564m. (excluding PRSI).

Support Staff

It is estimated that the support staff requirement for the Barrister Division would be less than the support staff requirement for the Solicitor Division. A number of factors contribute to reaching this conclusion, viz.;

- at the moment barristers operate without the aid of administrative staff
- the “paperwork” and research requirement for a solicitor is generally more than it is for a barrister, and
- the accounting and IT and HRM functions in operation in the Solicitor Division will also support the Barrister Division.



## Analysis of Requirement for Solicitors and Barristers

It is proposed that a pool of Legal Clerks and Clerical Officers should be available for the barristers to draw from. This pool would consist of 10 Legal Clerks and 20 Clerical Officers. These would be paid the same as their counterparts in the Solicitor Division. This would cost the following:

Support Staff for Barristers in Dublin

Grade	Cost of employing one person of that Grade	No. of persons at that Grade	Total Cost
LEGAL CLERK	32,017	10	£ 320,170
CLERICAL OFFICER	22,326	20	446,520
TOTAL			766,690

Table 15

The cost is £0.767m. (excluding PRSI). The combined cost of employing full-time barristers and support staff in the Dublin area amounts to £6.331m.

### Barristers — Circuits outside Dublin

The largest Circuit outside Dublin capable of independently sustaining a separate office of full-time, salaried barristers is Cork. However, one problem arises which would have to be addressed before setting up such an office. At the moment in Cork, two Circuit Criminal Courts sit simultaneously for 16 to 18 weeks of the year. This is equivalent to approximately half the legal year. If this remained as it was and full-time barristers were employed, they would have no courtroom work for half of the year. So, the employment of full-time barristers would be contingent upon the court timetable being altered so that there would be one Circuit Court sitting for the full legal year. If this was to be the case it is estimated that the office would require one Senior Counsel, six Junior Counsel, one legal clerk and three clerical officers and would cost the following:

Cost of Employing Barristers and Support Staff in Cork

Grade	Cost of employing one person of that Grade	No. of Persons of that Grade	Total Cost
	£		£
SENIOR COUNSEL	119,057	1	119,057
JUNIOR COUNSEL	78,835	6	473,010
LEGAL CLERK	32,017	1	32,017
C.O.	22,326	3	66,978
TOTAL			691,062

Table 16

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The cost of providing full-time, salaried barristers and support staff for the Cork Circuit would be £0.691m. (excluding PRSI).

No other circuit would be able to sustain full-time counsel. For instance the South Western Circuit (Counties Limerick, Kerry and Clare) hears criminal cases for a total of 10 to 12 weeks of the year. For these sittings, three or four junior counsel would be required to service the courts, but outside of this short period there would be no cases coming before the Court. Other circuits would have similar, and in some cases lower, levels of sittings. Consequently, it would seem that the only economically viable way to deal with this situation would be to employ a panel of barristers who would service the other circuits.

The number of barristers which would be required to service the other six circuits would be 12 Junior Counsel with a support staff of 8 Clerical Officers. This would cost:

**Cost of Employing Barristers and Support Staff outside Cork and Dublin**

Grade	Cost of employing one person of that Grade	No. of persons of that Grade	Total Cost
	£		£
JUNIOR COUNSEL	78,835	12	946,020
C.O.	22,326	8	178,608
<b>TOTAL</b>			<b>1,124,628</b>

Table 17

The cost of providing counsel and support staff for circuits other than Dublin and Cork would be close to £1.125m. (excluding PRSI). This brings the total cost for providing barristers and support staff throughout the country to £8.147m.

## Expenses

### Witness Expenses

Currently under the legal aid scheme the amount paid for witness expenses is close to £167,000 (1998 figure). If a Public Defender Scheme was introduced this figure would not be expected to increase substantially. Therefore, for the purposes of this exercise the figure mentioned above will be the one that we will use in the costings.

### Travelling and Subsistence

The solicitors and barristers outside Dublin will be required to do a certain amount of travelling. Travelling and subsistence expenses paid to solicitors under the Legal Aid Scheme amounted to more than £480,000 in 1998. However, solicitors would be travelling greater distances under the model developed. Barristers on circuit will also be entitled to travelling and subsistence expenses. Therefore, it is envisaged that this category of expense would be closer to £2m. and this is the figure that will be used for the purposes of this exercise.

The total figure for expenses for the proposed Public Defender system is £2.167m.

# Chapter 10

## Identification of Models

It is possible, from the information and costings that have been compiled for this report, to cost several different models for the delivery of a legal aid service in Ireland as follows;

### Model 1 — Full Public Defender Model

Total number of barristers and support staff necessary to provide nationwide service:

21	Senior Counsel
58	Junior Counsel
42	Support Staff (various grades)

This would cost: £8.147m.

Total number of solicitors and support staff necessary to supply nationwide service:

141-202	Solicitors (various grades)
163	Support Staff (various grades)

This would cost from: £11.448m. to £16.091m.

**Expenses:**

Witness Expenses	£0.167m
Travel and Subsistence	£2m to £2.5m

This would cost from: £2.167m to £2.667m (depending on No. of solicitors).

Library cost: £0.322m.

**Total Cost of Public Defender Model (excluding PRSI): £22.084m. to £27.227m.**

Model 2 — Public Defender Solicitor — Private Barrister

If it was decided to introduce full-time, salaried solicitors on a nationwide basis who would then brief barristers who would continue to act in a private capacity, the cost would be as follows:

Total cost of Employing Support Staff for Solicitors

Grade	No. of Persons at that Grade	Cost of employing 1 person of that Grade	Total Cost
		£	£
P.O.	1	73,931	73,931
A.P.	2	55,934	111,868
H.E.O.	5	40,290	201,450
E.O.	5	28,825	144,125
LEGAL CLERK	7	32,017	224,119
RECEPTIONISTS	2	22,326	44,652
C.O.	76	22,326	1,696,776
TOTAL			2,496,921

Table 18

Dublin Solicitors	£4.025m
Dublin Support Staff	£2.497m
Country Solicitors & Support Staff	£4.643m to £9.286m
Cost of employing full-time solicitors and support staff:	£11.165m to £15.808m

During 1998, barristers were paid a total of £4.824m. under the legal aid scheme. This figure is exclusive of VAT. The cost of the Attorney Generals Scheme for barristers was £160,000 in 1998. The total cost for barristers was £4.984m.

It is estimated that the expenses would be: £1.467m. to £1.967m  
(Solicitors — £1.3m. to £1.8m and Witness Expenses — £0.167m.).

Library cost: £0.322m.

The total cost would be:

Salaried solicitors and support Staff	£11.165m to £15.808m
Private barristers	£4.984m
Expenses	£1.467m to £1.967m
Library	£0.322m
Total (excluding PRSI):	£17.938m. to £23.081m

Model 3 — Public Defender Barrister — Private Solicitor

Alternatively, if it is proposed to employ full-time salaried barristers to be briefed by solicitors who will continue to act in a private capacity the cost would be as follows:

Cost of employing full-time barristers and support staff: £8.147m.

During 1998, solicitors were paid a total of £7.514m. under the legal aid scheme. This figure is exclusive of VAT. The cost of the Attorney General’s Scheme for solicitors in 1998 was £160,000. The total for solicitors was £7.674m.

Cost of Employing Administrative Staff for Barristers

Grade	No. of Persons at that Grade	Cost of employing 1 person of that Grade	Total Cost
P.O.	1	£73,931	£73,931
A.P.	1	£55,934	£55,934
H.E.O.	2	£40,920	£81,840
E.O.	2	£28,825	£57,650
RECEPTIONISTS	2	£22,326	£44,652
C.O.	2	£22,326	£44,652
TOTAL			£358,659

Table 19

Extra support staff will be required for this model to oversee the accounting, IT and personnel functions as previously these functions were positioned within the solicitors office. It is estimated that this would cost another £0.359m.

It is estimated that the expenses would be: £1.367m.

(Barristers — £0.7m., Solicitors — £0.5m. and Witness Expenses — £0.167m.)

Library cost: £0.322m.

So the total cost for this particular model would be:

Salaried barristers and support staff	£8.147m
Private solicitors	£7.674m
Administrative staff	£0.359m
Expenses	£1.367m
Library	£0.322m
<b>Total (excluding PRSI):</b>	<b>£17.869m</b>

Model 4 — Rural/Urban Divide

If it was decided to have Public Defenders (solicitors and barristers) in the two largest urban areas, Dublin and Cork, the cost would be as follows:

Total cost of Employing Solicitors and Support Staff — Cork

Grade	No. of Persons at that Grade	Cost of employing one person of that Grade	Total Cost
		£	£
Deputy Asst. Chief	1	78,835	78,835
Principal Solicitor	2	73,372	146,744
Senior Solicitor	5	55,559	277,795
Assistant Solicitor	4	37,582	150,328
H.E.O.	1	40,290	40,290
E.O.	1	28,825	28,825
C.O.	8	22,326	178,608
TOTAL			901,425

Table 20

Solicitors and support staff in Dublin:	£6.805m
Barristers and support staff in Dublin:	£6.331m
Solicitors and support staff in Cork:	£0.901m
Barristers and support staff in Cork:	£0.691m
Cost of full-time Public Defender in Cork and Dublin:	£14.728m.

With regard to solicitors for the remainder of the country, approximately 70% of the total fees paid to solicitors under the legal aid scheme are paid to solicitors in Dublin and Cork, meaning the other 30% goes to solicitors in the rest of the country. In 1998, the total fees paid to solicitors under the scheme was £7.514m. If 30% was paid to solicitors outside the two largest urban areas, this equates to £2.254m. It is estimated that the Attorney Generals Scheme will cost approximately £48,000.

During 1998, barristers were paid a total of £4.824m. under the Legal Aid Scheme. It is estimated that outside of Cork and Dublin, the rural areas account for approximately 20% of the work, which equates to £0.965m. It is estimated that the Attorney Generals Scheme will cost approximately £32,000.

It is estimated that the expenses would be: £0.817m.  
(Private Solicitors — £0.5m., Public Defenders — £0.15m. and Witness Expenses — £0.167m.)  
Library cost: £0.322m.

## Identification of Models

The total cost of this particular model would be as follows:

Cork and Dublin — PD	£14.728m.
Rural solicitors — Private	£2.254m.
Rural barristers — Private	£0.965m.
Attorney General's Scheme	£0.080m.
Expenses	£0.817m.
Library	£0.322m.
<b>Total:</b>	<b>£19.166m.</b>

Model 5 — Dublin Only

If it was decided to have Public Defenders (solicitors and barristers) in Dublin, the cost would be as follows:

Solicitors and support staff in Dublin:	£ 6.805m
Barristers and support staff in Dublin:	£ 6.331m
Cost of full-time Public Defender in Dublin:	£13.136m.

With regard to solicitors for the remainder of the country, approximately 60% of the total fees paid to solicitors under the legal aid scheme are paid to solicitors in Dublin. In 1998, the total fees paid to solicitors under the scheme was £7.514m. If 40% of the fees were paid to solicitors outside Dublin, this equates to £3.006m.

It is estimated that the Attorney Generals Scheme will cost approximately £64,000.

During 1998 barristers were paid £4.824m. under the Scheme. It is estimated that outside of Dublin, the rural areas account for approximately 30% of the work, which equates to £1.447m.

It is estimated that the Attorney Generals Scheme will cost approximately £48,000.

It is estimated that the expenses would be £0.767m.

(Solicitors — £0.5m., Public Defender — £0.1m., Witness Expenses — £0.167m.)

Library cost: £0.322m.

The total cost of this particular model would be as follows:

Dublin — PD	£13.136m.
Rural solicitors — Private	£3.006m.
Rural barristers — Private	£1.447m.
Attorney Generals Scheme	£0.112m.
Expenses	£0.767m.
Library	£0.322m.
<b>Total:</b>	<b>£18.790m.</b>



Model 6 — Salaried Solicitors in Dublin Only

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If it was decided to have salaried solicitors only in Dublin, with private solicitors operating in the rural areas and private barristers operating throughout the country the cost would be as follows:

Solicitors and support staff in Dublin    £6.805m.

With regard to solicitors for the remainder of the country, approximately 60% of the total fees paid to solicitors under the current Scheme are paid to solicitors in Dublin. In 1998, the total fees paid to solicitors under the Scheme was £7.514m. If 40% of the fees were paid to solicitors outside Dublin, this equates to: £3.006m. It is estimated that the Attorney General’s Scheme will cost approximately £64,000.

During 1998, barristers were paid a total of £4.824m. under the legal aid scheme. This figure is exclusive of VAT. The cost of the Attorney General’s Scheme for barristers was £160,000 in 1998. The total cost for barristers was £4.974m.

It is estimated that the expenses would be £0.767m.

(Solicitors — £0.5m., Public Defender — £0.1m., Witness Expenses — £0.167m.)

Library cost:    £0.322m.

The total cost of this particular model would be as follows:

Dublin Solicitors and Support Staff:	£6.805m.
Rural Solicitors:	£3.006m.
Barristers:	£4.824m.
Attorney General’s Scheme	£0.224m.
Expenses:	£0.767m.
Library:	£0.322m.
<b>Total:</b>	<b>£15.948m.</b>



## Chapter 11

# Analysis of Models Profiled and Comparison with Existing Scheme

The Committee analysed the models identified in this Report with regard to the underlying assumptions upon which they were based and compared them to the Criminal Legal Aid Scheme under a number of headings as follows:

### General

The organisational structure of the Public Defender Offices profiled in the models is broadly similar to that which is currently in operation in the Chief State Solicitor's Office (CSSO).

The remuneration for solicitors employed in the Public Defender models profiled is based on the salary scales applied in the CSSO. For example, the salary which it is proposed to pay to those at the Assistant Solicitor grade, is the same as that which is currently paid to that grade in the Chief State Solicitor's Office and the Legal Aid Board. At that level of remuneration — which, it is understood, is below that currently paid on the open market — both the CSSO and the Legal Aid Board currently find it difficult to attract candidates for vacancies and, as a result, vacancies can remain unfilled for substantial periods on occasion. The Committee considers that substantial increases in salary may be necessary to attract candidates of the requisite expertise for a Public Defender's Office but is conscious of the difficulties which could arise if Public Defender solicitors were to have a higher pay scale than CSSO solicitors.

The Committee is also concerned about the possibility of attracting high calibre solicitors on the basis of the career structure for Assistant Solicitors set out in the proposed Public Defender models.

Taking barristers into employment, with the intention that they should continue in practice, would involve a major alteration in the structure and traditions of the Bar.

It may prove difficult to attract 20 Senior Counsel to work in a Public Defender's Office. Most Senior Counsel would have a lucrative private practice in addition to the work performed under the Criminal Legal Aid Scheme and, it is understood, earn substantially more than would be offered under the proposed Public Defender model. Although the salary for a Public Defender may be similar to that for the holder of judicial office, appointment as a Public Defender is unlikely to have the same prestige as a judicial appointment. Therefore, the 'drop' in income might be less attractive to many Senior Counsel. The salaries offered to Junior Counsel may be attractive to some of the younger, recently graduated barristers but these may not have the requisite experience. The salaries would be less attractive to some of the 'senior' Juniors who earn substantially more under the Criminal Legal Aid Scheme.

Total Staff Cost includes an allowance for overheads. The percentage is calculated at 47% of the Total Salary Cost and is that which is used by the Department of Finance in 'Costing of Civil Service Staff Time'. Some members of the Committee felt that this figure may be insufficient to

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cover overheads in rural offices, which would not have the same economies of scale as a Dublin Office. Other members of the Committee were of the view that 47% was adequate and that what was saved by economies of scale in relation to the Head Office in Dublin would adequately cover any extra expense which may be incurred in the rural offices.

We have given much consideration to the appropriateness of using the solicitor/caseload ratio to determine the requirement for provincial Districts and we have reservations about the merit of such an approach particularly where, for the purpose of developing a model, we have amalgamated some District Court Districts which have a low level of business and which would not justify a staffing complement of their own. We concluded that the size of the areas created, where Districts were amalgamated for this purpose, would make it very difficult to properly service the region, given the distances solicitors would have to travel. If solicitors were spending a large proportion of their time 'on the road' it would mean that there would be less time for consultations with clients and counsel and less time to prepare cases properly. It is considered, therefore, that the identification of the number of solicitors, based solely on caseload for each District Court area, is not an appropriate way of determining the requirement and that substantially more solicitors would actually be required.

This would give rise to the necessity to employ more solicitors or alternatively, it might be necessary to contract out the overflow to private practitioners. Both of these options would result in further significant increases in the cost of the Public Defender models which involve delivery of the service outside Dublin. This is the rationale behind our costing a number of the models profiled within a 'range'.

### Cost

Comparing the current system with the models:—

Model 1 envisages that full-time, salaried solicitors and barristers would service the whole country and that private solicitors and barristers would not be utilised in any capacity whatsoever. The actual cost of this model is estimated at between £22m and £27.2m. Even the lower end of the range is 33% higher than the estimated cost of the Criminal Legal Aid Scheme (£15m excluding VAT and including the Attorney General's Scheme) in 1999.

Model 2 envisages that full-time, salaried solicitors would service the whole country and that they would then brief barristers who would continue to act in a private capacity. The actual cost of this model is estimated at between £18m and £23m. Even the lower end of the range is 17% higher than the estimated cost of the Scheme in 1999.

Model 3 entails the employment of full-time salaried barristers for the whole country, being briefed by solicitors who would operate in private practice. There is, in addition, the likelihood of encountering a problem recruiting Senior Counsel. The actual cost of this model is estimated at £18m, which is 17% higher than the estimated cost of the Scheme in 1999. The implementation of this model might also give rise to certain professional and logistical difficulties which would not arise in the other

## Analysis of Models Profiled and Comparison with Existing Scheme

models, specifically since it is without precedent for private solicitors to instruct salaried barristers.

Model 4 consists of Public Defenders servicing Cork and Dublin with the rest of the country operating under the Scheme. Those employed in the Cork area would be required to service three District Court areas (Districts 18, 19, 20) as well as the Cork Circuit. One of the difficulties with having a Public Defender System in Cork, as mentioned previously in Chapter 9, is the arrangement of the sittings of the Circuit Criminal Court in Cork. In addition, the actual cost of this model is estimated at £19m. which is 22.5% higher than the estimated cost of the Scheme in 1999.

Model 5 is based on the employment of full-time solicitors, barristers and support staff in the Dublin Metropolitan District with the status quo being maintained elsewhere in the country. The actual cost of this model is estimated at £18.8m. which is 21% higher than the estimated cost of the Scheme in 1999.

Model 6 entails the employment of full-time solicitors and support staff in the Dublin Metropolitan District only, briefing private barristers, with the status quo being maintained in the regions outside Dublin. It is the model which, if implemented, would involve the minimum degree of structural change in the system and its estimated cost of £16m is 7% more expensive than the estimated cost of the Scheme in 1999.

The Committee regards that it may be undesirable to have different systems in operation in different parts of the country as would be the case in models 4, 5 and 6.

## Funding

Having reflected on some of the fixed budget models we encountered in the US and Australia, it is considered by the Committee that one of the strengths of the existing system is that it has a relatively open ended budget, such that the State pays the legal aid bill which actually arises. Whilst, for example, the Legal Aid Commission and the Public Defender's Office in New South Wales had statutory guaranteed independence, funds were provided by Central Government on a fixed budget basis, which were subject to cuts, rather than on an agreed payment per case basis as obtains in our system. This has lead to a situation where the cuts imposed by Central Government in Australia heavily circumscribed the capacity of the Legal Aid Board to deliver the range of services it wished to provide. The implementation of a fixed budget system for the Criminal Legal Aid Scheme is considered undesirable by the Committee.

While it is argued that a fixed budget and a Public Defender system are inextricably linked, we consider that if a Public Defender system was introduced whereby its funding could be increased as required to meet the demand for the service, as happened when an additional £5m was provided for the existing scheme in 1998, then it too would be in a position to deliver an effective service. The issue of fixed versus open funding is important in itself and the Committee considers it important to point out that the Scheme, as with any possible replacement, is as effective as the funding provided enables it to be.

The cost to the exchequer of the Scheme (including the cost of the Attorney General's Scheme) in 1998 was £13.14m., exclusive of VAT. The comparable estimate provision for both the above

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Schemes combined in 1999 is £14.86m. While the cost of the Criminal Legal Aid Scheme has risen significantly over the last number of years the cost of the models profiled in this Report are more expensive.

It must be stated, however, that the Scheme is 43%, 59% and 74% less expensive, per capita, that those in operation in England/Wales, Northern Ireland and Scotland, respectively. (It must be acknowledged, in this context, that those jurisdictions provide a broader range of services, specifically consultation and advice). We believe therefore, on the basis of this comparison, that we are getting good value for money from our private practitioner Scheme. That is not to say, however, that improvements could not be made and we will also examine and make recommendations on issues relating to the operation of the Scheme in the future.

### Delivery of Service

The Committee considers that all systems for the provision of State funded legal aid services have within their structures, inherent advantages and disadvantages.

Within the past ten years, difficulties have arisen in regard to the effective delivery of both the Civil and Criminal Legal Aid Schemes.

Insofar as the Civil Legal Aid Scheme is concerned, both prior to and subsequent to the Scheme being placed on a statutory footing, efforts were made to expand the service by engaging private practitioners. These efforts were frustrated because either, the level of fee offered by the Legal Aid Board was too low or industrial relations problems arose in relation to solicitors who were in the full-time employment of the Legal Aid Board.

In the early 1990s, some private practitioners operating the Criminal Legal Aid Scheme withdrew their services due to grievances over the level of fees payable under the Scheme. In some areas, trials were aborted by the prosecution or were struck out in court due to the non-availability of legal representation under the Criminal Legal Aid Scheme.

The Committee understands that it is the view of the Legal Aid Board that the operation of a mixed system better safeguards the continuous provision of the service, but considers that there is no guarantee that a mixed system would avoid all such difficulties as it may be doubtful that one group of lawyers, whether salaried or private, would undertake cases which had previously been handled by colleagues in dispute.

The Committee, while mindful of these two historical events and of the danger of allowing a monopoly of service supply to dictate to and fetter the State's constitutional obligations, accepts that there are few complaints regarding the Criminal Legal Aid Scheme which is provided on a 7 day, 24 hour basis. The fact that the Scheme operates in a uniform way throughout the country is considered to be a strength with all citizens having the same method of representation available to them. It may be undesirable to have different systems in operation in different parts of the country as would be the case if many of the models profiled in this report were to be implemented.

The implementation of the Public Defender system could give rise to serious logistical problems such as, lengthy establishment time for recruitment and selection of candidates, assuming, of

## Analysis of Models Profiled and Comparison with Existing Scheme

course, that one could attract lawyers to work for the remuneration proposed in Chapter 9. There would also be a requirement to provide intensive training and supervision of lawyers, particularly in the initial stages of operation. These problems would be endemic to all models. In this context, it should be noted that there is no Senior Counsel in the full-time employment of the State practising as a barrister.

### Choice/Client Confidence

The *State (Freeman) v. Connellan* [No. 656 SS] case has effectively interpreted the 1965 Criminal Legal Aid Regulations as meaning that a poor person, once granted a legal aid certificate, has the right to choose the legal aid solicitor s/he wishes to represent him/her and should only be denied access to that solicitor if there are relevant and sufficient grounds for doing so. The Committee considers that the element of choice which exists within the existing system to be its primary strength.

Providing choice of representation to an accused has, as a minimum, the following advantages:

- In a trial procedure, where the accused would perceive the Court to be alien and the prosecution hostile, s/he has at least the reassurance that s/he was able to choose his/her own representative and can repose confidence and trust in him/her.
- The accused is, moreover, more likely to co-operate with and accept the advice of a lawyer s/he has selected than an assigned lawyer of whom s/he might be distrustful. This leads to a considerable saving in Court time where, when appropriate, an accused can accept that it is in their interests to make an early plea of guilty or, for instance, not to contest certain aspects of the evidence at a trial.
- Conferring the element of choice on an accused empowers the accused to a certain extent. The views and concerns of the accused must be addressed by the lawyer engaged or else s/he will face being discharged.
- Under the present system, an accused can choose a lawyer from among those considered to be the best on the legal aid panel and potentially receive the same representation as the wealthiest person in the land, in that many of the better lawyers do both public and private criminal defence work. If the accused wishes different representation it is entirely their own choice.

The introduction of a Public Defender's Office in Dublin, or in any other part of the country, would necessarily restrict the right to choice requiring amendments to the 1965 Regulations. It might even lead to the parameters of '*Freeman*' being tested in court as the 'right' to choice is now somewhat ingrained in the Irish criminal justice system. It is important to note in this regard, however, that a former Chief Justice, in a submission to the Tormey Committee, expressed a view that there were no constitutional impediments associated with a Public Defender System. In addition, the Bench of the High Court, stated, in its submission to the Committee, that it saw no difficulty, in principle, with the Public Defender System being introduced.

The fact that an accused currently has a right to choose the lawyer s/he wishes to represent him/her, leads, we believe, to great confidence on their part in the system. It may be difficult to preserve the same level of confidence in the event of a Public Defender System being introduced. The Criminal Legal Aid Scheme is seen as conferring substantial rights on the

## Criminal Legal Aid Review Committee – First Report

defendant who is of poor means. If a Public Defender System was introduced here the public perception may be that an accused person's rights were being eroded in some way.

The reason little or no dissatisfaction has been expressed in relation to the Scheme appears to stem directly from the fact that clients have access to the lawyer of their choice. Even if clients are not particularly satisfied with the representation they receive, the fact is that they have chosen that particular lawyer themselves and, can, if the court agrees, have a different lawyer assigned to represent them. The element of choice and competition inherent in the existing system tends to lead to a higher degree of client satisfaction than would be likely to exist if clients were unhappy with the representation received from a lawyer assigned to them by a Public Defender's office where a change of representation could not be made at all, or, if so, only in very limited circumstances.

### Quality of Representation

It is difficult to assess the quality of service provided in the existing system without an independent evaluation. On the grounds that no criticism has been expressed in the matter, it is accepted that under the Scheme, persons who are granted legal aid would generally receive a high standard of representation.

A valuable feature of the Scheme whereby the leading criminal lawyers and therefore, the same standard of representation, are equally available to both the prosecution and the defence, is the parity of fees arrangement which applies to all trials on indictment in the Circuit and higher Courts. This particular aspect of our Scheme was considered important by the authorities which we met on our study visits as they viewed it as strengthening the integrity of the Scheme as a number of counsel work for both the prosecution and the defence.

It is not possible to predict with any degree of certainty whether the same level and quality of representation and service and the same level of client confidence can be replicated if a Public Defender System is introduced. The members of the judiciary with whom we discussed the merits and demerits of Public Defender systems in some detail on our study visits to the United States and Australia indicated that the commitment and standard of representation provided by the Public Defender's Office was high. Some judges stated, indeed, that the standard of representation provided by Public Defenders was higher than that provided by their colleagues in private practice.

It should be pointed out that the jurisdictions that we visited were acknowledged as being examples of some of the better systems. The Spangenberg Group did inform us that in certain places in the United States the standards were low and cases involving claims of incompetence of counsel were not infrequent. In this regard, it was suggested to us that one of the main reasons for the poor quality of representation was the complete and utter lack of financial resources which resulted in extremely high caseloads being carried by the Public Defenders.

Even in the jurisdictions which we visited, which were considered to be amongst the better systems, the level of client confidence in Public Defenders was low irrespective of the standards offered by the Public Defenders. It appears only to be a matter of perception but it is still a problem. During our visits to the other jurisdictions, the lawyers and administrators whom we met, were praiseworthy of key features of our Scheme, namely, parity of fees between



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prosecution and defence lawyers, freedom to choose one's solicitor and the low level of bureaucracy.

### Independence

One of the major criticisms of Public Defender Systems that appeared in the submissions to the Committee was that such an institution would be perceived as being an arm of the State, with the consequent implications for public and client confidence in the independence of representation provided and, more importantly, confidence in the integrity of the Irish system of criminal justice as a whole. Concerns were expressed that if lawyers were employed directly by the State that the integrity of the criminal justice system would be compromised because the Public Defender would be, and would be seen to be, an arm of the State.

It was also suggested to the Committee that there is an apparent conflict between the fact that Public Defenders are employed by the State and yet appear against the State in prosecutions. In submissions to the Review Committee views were expressed that a Public Defender's Office would be subjected to government interference and that the traditional lawyer/client relationship is compromised unlike the private practitioner who maintains complete independence owing a duty only to the client and the court. This appeared to stem from the perception that lawyers who are State employees would find it difficult to challenge the State and therefore, their independence as defence lawyers would be compromised.

However, the Committee considers it important to record that Legal Aid Board solicitors have taken numerous actions against the State without fear or favour and their independence and integrity have been unquestioned. The independence of the Legal Aid Board is enshrined in the Civil Legal Aid Act, 1995 and the independence of a Public Defender system, if implemented, could be enshrined in a similar manner.

The Department of Justice, Equality and Law Reform is responsible for the formulation and review of policy, funding and accountability for the Criminal Legal Aid Scheme and, at an operational level, for the payment of fees through its Finance Division. There is no involvement in the day to day running of the Scheme, the granting of free legal aid and assignment of lawyers being matters which are handled by the courts.

The issue of perception was alluded to in relation to our analysis of 'quality of representation' and it arises in the context of 'independence' also. Even with statutory guaranteed independence, it appeared that the message or perception of independence did not get through to the public in the US and New South Wales. That said, members of the delegations which studied the Public Defender system in operation in Boston and New South Wales found no evidence to support the view that Public Defenders are less committed than are private practitioners to the defence of accused persons or that their independence was compromised. Indeed, members of our Committee were particularly impressed by the situation in New South Wales where the independence of the Public Defender's Office was guaranteed by statute and this independence was zealously guarded. In our view, implementation of any form of Public Defender system would require a clear policy in regard to funding, control and accountability.

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### Flexibility

We consider one of the major advantages of the existing system is its inherent level of flexibility. Any solicitor or barrister on the legal aid panel can be appointed to represent an individual who has been granted a legal aid certificate by the court. If there is a significant increase or decrease in the number of cases being prosecuted before the Courts, the number of practitioners operating within the current system can take on any additional work which arises with little or no disruption to the court system. In contrast, the operation of a Public Defender System would, by its very nature, introduce a certain amount of inflexibility into the system.

A statistical analysis of the number of prosecutions taken over the last five years shows an upward trend. It is not possible to predict whether or not this upward trend will continue. The figures for the number of solicitors and barristers identified in the models profiled are based on existing business levels. If there is a significant drop in the volume of business the requirement for solicitors and barristers would be reduced accordingly. The difficulty with a Public Defender System is that the lawyers and support staff would be State employees and it would be difficult to terminate their contracts without running into significant industrial relations problems and, in all likelihood, it would be necessary to wait for natural wastage to address the excess in numbers. This would have significant cost implications and would be a serious disadvantage to a Public Defender System. Where there was a relatively sharp increase in the activity levels, the rigidity of a salaried system may prevent it from responding with the necessary speed in providing representation. This would have negative implications for the accused, the courts and, to an extent, undermine the criminal justice system.

### Administration

Solicitors and barristers are remunerated according to a predetermined fee structure. There is very little bureaucracy attached to the current Scheme and it is administratively inexpensive. The Committee acknowledges that our Scheme compares very well with other jurisdictions in this area. In saying that, however, the Committee considers that the payment/accounting system should be enhanced where possible to improve the service provided to the practitioners and to safeguard against any potential abuse.

If a Public Defender System was introduced, a number of indirect costs would arise in the context of, for example, the provision of a staff pension scheme, office accommodation and facilities, secretarial support, accounting and IT facilities, etc. which are, of course, included in the costings for the different models profiled.

## Chapter 12

# Conclusion/Recommendation

### Conclusion

The provision of an effective criminal legal aid service to persons facing serious charges which could result in the loss of their liberty is of fundamental importance. In Ireland, this takes on an even greater significance because of the Supreme Court ruling in the *State (Healy) v Donoghue [1976] I.R. 325* which has, effectively, determined that the right to criminal legal aid is, in circumstances which are quite wide in practice, a constitutional right.

On the basis of our investigation into the feasibility of introducing a Public Defender system in this jurisdiction, in part or full replacement of the existing private practitioner system, we consider that the Scheme should be maintained.

Objections to the desirability of a Public Defender system on the grounds that a Public Defender's Office may lack independence and experience difficulty in attracting lawyers of ability and commitment have been examined by the Committee. We believe these specific concerns to be ill founded provided that proper protections and structures are put in place. This would involve enshrining the guarantee of independence in statute and providing terms and conditions of employment, such as salary and tenure, which properly reflect the status and importance of the position.

Nevertheless, the existing Criminal Legal Aid Scheme has advantages which, we believe, render it preferable to a Public Defender system. These are dealt with in the main body of the Report but are worthy of particular mention here;

- It is generally recognised that accused persons, who would otherwise have been unable to retain their own legal representation, have been well served by the Scheme.
- The element of choice which exists under the Scheme and all that it entails is one of its greatest strengths as it creates conditions for independence and client confidence. If a Public Defender system was introduced it would not be possible to maintain this element of choice. The capacity of a legally aided person to choose a solicitor to represent him/her is desirable and should, if at all possible, be maintained.
- The inherent flexibility which exists in the Scheme is also a highly desirable feature. The Scheme can adjust quickly to accommodate increases or decreases in the rates of criminal prosecution whether foreseen or unforeseen. A Public Defender system with full-time staff and more rigid structures would be most unlikely to be in a position to respond to such changes as efficiently and effectively.
- The operation of the Scheme is streamlined. It is administratively inexpensive and non-bureaucratic. This cannot be said of the Public Defender systems which we studied.
- Having regard to the pertinent question of cost, which, it ought to be stated was the impetus for this investigation, we believe that the Scheme as it is currently structured and operates, is less expensive than any of the alternative models profiled and costed in this Report.

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### **Recommendation**

The Committee considers that the existing private practitioner system for providing criminal legal aid should be continued as it is a more equitable, effective and economic system, in the current circumstances, than a Public Defender system.

## Appendix A

# DISTRICT COURTS — No. of Legal Aid Certificates Granted

1/8/1997 — 31/7/1998

District Area	District Court Offices	No. of Certificates granted	No. of persons involved	Total No. of Certs. for District	Total No. of persons granted Certs.
No. 1	Donegal	165	133	724	692
	Letterkenny	559	559		
No. 2	Sligo	160	151	160	151
No. 3	Ballina	96	79	206	189
	Castlebar	110	110		
No. 4	C/Shannon	24	24	80	80
	Roscommon	56	56		
No. 5	Cavan	221	215	386	380
	Monaghan	165	165		
No. 6	Drogheda	305	305	562	543
	Dundalk	257	238		
No. 7	Derrynea	15	15	694	724
	Galway	313	343		
	Tuam	366	366		
No. 8	Athlone	256	232	513	480
	Ballinasloe	207	203		
	Loughrea	50	45		
No. 9	Longford	128	124	548	538
	Mullingar	216	210		
	Tullamore	204	204		
No. 10	Trim	315	315	315	315
DMD	Dublin	16,952		16,952	16,952
No. 12	Ennis	115	115	115	115
No. 13	Listowel	63	63	63	63
No. 14	Limerick	810	842	977	1,009
	Nenagh	74	74		
	Thurles	93	93		
No. 15	Carlow	178	178	313	313
	Portlaoise	135	135		
No. 16	Bray	469	527	795	892
	Naas	326	365		
No. 17	Killarney	26	26	230	230
	Tralee	204	204		
No. 18	Bandon	133	133	133	133
No. 19	Cork	1,685	1,685	1,685	1,685
No. 20	Fermoy	38	38	84	84
	Mallow	46	46		
No. 21	Clonmel	278	278	451	451
	Youghal	173	173		
No. 22	Kilkenny	228	225	561	558
	Waterford	333	333		
No. 23	Gorey	128	128	383	383
	Wexford	255	255		
<b>TOTAL</b>				<b>26,930</b>	<b>26,960</b>

# Appendix B

## Amount Earned By Legal Aid Solicitors in Dublin during 1998

Total amount of legal aid fees paid to solicitors in 1998 under the Criminal Legal Aid Scheme (exclusive of VAT): £7.514m.

Amount of legal aid fees paid to solicitors in Dublin: £4.466m.

Percentage of total legal aid fees paid under the Scheme to solicitors in Dublin: 59.5%

Of the amount of fees paid to solicitors under the Scheme, £3.26m. went to five firms of solicitors in Dublin. This is equal to 73% of the total fees paid under the Scheme to solicitors in Dublin. At the beginning of 1998 these firms employed a total of thirty-three (33) solicitors. Therefore, a total of 33 solicitors did almost three-quarters of the legal aid work in Dublin — presuming that all of these solicitors were employed full-time on legal aid matters.

Another, £1m. was paid to a further eighteen (18) solicitors. This amounts to 22.4% of the total fees paid to solicitors in Dublin under the Scheme.

All this means that a total of 51 solicitors accounted for 95.4% of the total fees paid under the Criminal Legal Aid Scheme in Dublin in 1998.

Firm	Amount earned	No. of solicitors
	£	
HANAHOE	661,000	7
LYONS	903,000	8
MORRIS	313,000	5
SHEEHAN	457,000	6
STAINES	926,000	7
TOTAL	3,260,000	33

# Appendix C

## BARRISTERS — Earnings From Legal Aid — 1998

Total number of barristers on Legal Aid Panel: 768

The number of barristers who received payment: 337

Total amount earned by barristers from Criminal Legal Aid Scheme: £4,824,000

Amounts earned by Barristers	No. Barristers	% of Total Barristers	Cumulative Amount Earned	% of Total Amount Earned
£			£	
0 — 1,000	99	29.38	93,000	1.93
1,001 — 2,000	38	11.28		
2,001 — 5,000	67	19.88	214,000	4.44
5,001 — 10,000	42	12.46	300,000	6.22
10,001 — 15,000	17	5.04	201,000	4.17
15,001 — 20,000	17	5.04	295,000	6.12
20,001 — 30,000	15	4.45	343,000	7.11
30,001 — 50,000	18	5.34	679,000	14.08
50001 — 100,000	11	3.26	790,000	16.38
100,000-200,000	10	2.97	1,242,000	25.75
Over 200,000	3	0.89	667,000	13.83

As can be seen, nearly 40% of the legal aid fees paid to barristers in 1998 was earned by thirteen barristers. Meanwhile, forty-two barristers earned 70% of the total amount of legal aid fees paid to barristers in the calendar year of 1998. Of the forty-two barristers, there are sixteen Senior and twenty-six Junior Counsel.

# Appendix D

## Submissions

### Received by the Criminal Legal Aid Review Committee

Office of the Director of Public Prosecutions  
His Honour Judge Kevin Haugh, Judge of the Circuit Court  
Mr. Jim Woods, District Court Clerk, Limerick  
His Honour Judge Kieran O'Connor, Judge of the Circuit Court  
The Hon. Mr. Justice Frederick Morris, President of the High Court  
The Law Society of Ireland  
Mr. David Goldberg, B.L.  
Mr. M. H. Walsh, Solicitor  
Ms. Sabha Green, Free Legal Advice Centre, Dublin  
His Honour Judge Peter A. Smithwick, President of the District Court  
Mr. Timothy Crowley, Judge of the District Court  
Mr. Niall Browne, Solicitor  
Mr. Anthony Murphy, Solicitor  
D. H. Sheridan & Co. Solicitors  
An Garda Síochána  
The Bar Council  
Mr. Noel Brennan, District Court Clerk, Bray  
Mr. Michael Finucane, Solicitor  
Office of the Attorney General  
Office of the Chief State Solicitor  
Mr. Dermot Shanley  
J.J. Ivers  
Mr. Patrick Deely, District Court Clerk, Galway  
Ms. Michele O'Boyle, Chairman, Victim Support, Sligo Branch  
Association Of District Court Judges