

T H E S P A N G E N B E R G G R O U P

Robert L. Spangenberg
President

Marbo F. Hansen
Financial Officer

Marea L. Beeman
Research Associate

Andrew H. Tarsy
Research Associate

Tessa J. Schwartz
Research Assistant

A REPORT ON THE OPERATION OF THE MISSOURI STATE PUBLIC DEFENDER

June, 1993

Prepared for:

The Missouri State Public Defender
Commission and the Office of the
Missouri State Public Defender

Prepared by:

Robert L. Spangenberg
Andrew H. Tarsy
The Spangenberg Group

Prepared under a grant
from the American Bar
Association's Bar
Information Program

1. Introduction and Background

On October 1, 1992 the American Bar Association's Bar Information Program (BIP) was contacted by the State Public Defender of Missouri, Joe Downey, on behalf of the Missouri State Defender Commission asking for technical assistance on behalf of the commission to conduct a brief overview of the program with particular focus on the operation of the system, the internal allocation of resources, the overall budgeting and staffing situation and information as to where Missouri stands in relation to comparable states in terms of caseload and funding of statewide programs.

The Bar Information Program of the ABA is designed to provide technical assistance and information to state and local indigent defense systems around the country that are seeking improvement or have technical needs that they would like to have addressed. For the past eight years, Robert L. Spangenberg and The Spangenberg Group of West Newton, Massachusetts have been the consultants to BIP and have provided on-site technical assistance in virtually every state in the country and have worked in all states over that period of time. The Spangenberg Group is a nationally recognized research and consulting firm, specializing in the delivery of indigent legal services in both civil and criminal cases.

Several years ago, the Missouri Bar also requested technical assistance from BIP after it had established a statewide committee mandated to consider the adequacy of funding for the Public Defender system in Missouri and the establishment of a Death Penalty Post-Conviction office. The committee first met on August 26, 1988 and Mr. Spangenberg was in attendance. Over the next several months, the Bar Information Program provided technical assistance and information to the committee in regard to the issues for which they were established. Primarily as a result of the work of the committee, the Postconviction Death Penalty Representation Project was established and the Missouri State Public Defender

received a substantial increase in budget, both by way of supplemental appropriation and the annual appropriation for FY 1989-1990.

In December, 1992, Mr. Spangenberg visited Columbia, Missouri and met with the State Public Defender and a number of other individuals in order to gain background information on the program and its current status. In early April, Mr. Spangenberg and Andrew Tarsy of The Spangenberg Group spent a full week in Missouri, travelling to various locations to gather information regarding the operation of the public defender program. We visited Columbia, Jefferson City, St. Louis, Clayton and Kansas City. In addition, we followed up with a number of telephone interviews with public defender staff in Franklin and Columbia.

During the course of our week in Missouri, we met with the Chairman of the Public Defender Commission and public defender staff in all divisions and at all levels. We also met with associate presiding judges in various circuit courts, the current and incoming chief justices of the State Supreme Court, prosecuting attorneys in several jurisdictions, the Governor's legal counsel, the Attorney General, a group of bar leaders from St. Louis including the incoming President of the Missouri Bar and other individuals concerned with the state public defender system.

What follows is information that we obtained and our assessment of the current situation in Missouri. Because of the fact that the Missouri Bar has recently created a task force to review the public defender system in Missouri, we have decided not to make detailed recommendations at this time, feeling that once established, this should be the role of the task force. We also believe that further work and study must be done in addition to that which we were able to accomplish in a short time frame. On behalf of the American Bar Association, Bar Information Program, we remain available to the Missouri State Public Defender, the Commission and the Missouri Bar task force in its efforts over the next few months to address a number of serious problems that

currently exist in the indigent defense system in Missouri. What follows in this report are several areas of concern and information that we would like to make available to the Bar and the public defender system.

2. Indigent Defense in Missouri

In order to understand the current conditions in Missouri, it is important to have an understanding of the background of public defense. Prior to 1988, while there was a state public defender system, it did not have responsibility for representation throughout the entire state through salaried public defenders. There were a number of offices, but the system also relied on coordinated appointments and compensation of private attorneys in many parts of the state. The delivery system varied in different parts of the state and there were serious problems maintaining uniformity and minimum standards of quality.

Following the substantial increase in funding in 1989, the public defender agency embarked on a re-organization plan to attempt to bring full-time public defender staff to the entire state. Over the course of the next couple of years, 35 full-time district public defender offices were created, which is the largest number of full-time offices of any state public defender system in the country. Depending upon one's definition, there are somewhere between 16 and 20 other states that have a statewide public defender system. Several of those states, however, have a larger private bar component than they do a full-time public defender program.

While the state public defender system received a very substantial increase in funding in 1989, most of that money was put into the reorganization plan creating 35 staff offices. In other words, it cannot be said that prior to 1988, that there was a full statewide public defender system. In fact, the state public defender was only able to provide representation in certain

regions.

During our visit, we heard a number of times that some legislative members and some members of the Bar could not understand why, in 1993 after the 40% increase in 1989, the Missouri State Public Defender system claimed that it was underfunded and not able to provide competent representation throughout the entire state. The answer to us is rather simple - the additional money simply opened a large number of offices across the state and did not address such important things as staff salaries, staff caseload, proper equipment, and other overhead needs. It simply spread less than adequate services throughout the state.

The plan of reorganization also created seven regions and seven regional defenders whose responsibility it is to oversee the various offices in each of these regions. Thus, the reorganization plan created a trial division director under the State Public Defender, seven regional defenders under the Trial Division Director, and 35 district defenders under the seven regional defenders.

The reorganization plan was certainly ambitious and an honest attempt to provide administration oversight and quality representation throughout the state. Now, some five years after reorganization, when we visited Missouri earlier this month, we found that there was a great deal of misunderstanding regarding the reorganization plan, the creation of the regional defenders, and the establishment of 35 offices. The concerns go beyond the question of why after the 1989 increase, the program should be in financial trouble again. Questions are now raised about why there is a need for seven regional defenders and just what they are in fact doing on a day-to-day basis. There is a lack of understanding among legislators, judges and some staff. In our view, the Commission and the State Public Defender have not adequately explained what the plan is all about, and therefore suffer from a lack of understanding among some from the bench and the Bar. We

were not able to spend a sufficient amount of time to analyze carefully the role of the regional directors, but feel strongly that this is a matter that the Missouri's Bar Committee should take a look at. This is not to suggest that we find the organizational framework unsatisfactory, simply that it needs to be looked at anew and it needs to be fully explained to the task force.

While the reorganization plan has now been in existence for five years, over the same period of time the workload has risen dramatically. Some increases in statewide budget have been provided, but they are not nearly enough to meet the additional caseload and to improve what are perhaps the lowest salaries of full-time public defender attorneys among all of the state public defender programs.

The effect of the increased caseload and the low salaries have led to a high turnover of staff over the last two years and several additional experienced attorneys indicated that they may also leave. The effect of the workload, the low salary and the turnover has not surprisingly resulted in morale problems in some offices. Many attorneys feel that without additional resources, they will not be able to provide competent representation to all of their clients. We echo this statement in very strong terms.

Along with the increase in the sheer volume of cases has been a shift in types of cases prosecuted which recently have shown an increase in multiple defendant cases, more serious violent crime, and a large volume of drugs and firearms offenses. This has particularly been true in St. Louis and Kansas City, the two largest urban centers in the state.

3. Management of the Missouri State Public Defender

Joe Downey is the State Public Defender Director and has been with the program a number of years having started his work in St. Louis. Included in the reorganization was a redesign of the administrative office in Columbia which has four divisions

including the Trial Division, the Appellate/PCR Division, the Capital Division and the Operations Division. Each of these four divisions are headed up by a director. In the Appellate/PCR Division, there are three offices to cover the western, eastern and central districts. In the Capital Division, there are also three offices to cover the western, eastern and central districts. The Operations Division includes fiscal, data processing, personnel, payroll and purchasing.

Joe Downey has, in our judgment, worked very hard over the last few years to make the State Public Defender program more professional and more tuned to the needs of the clients. He has undertaken a number of administrative and management steps which in our judgment has shown leadership at a time when the funding was insufficient and the caseload, too high. Some examples of what we are talking about has been a creative and forceful system to develop attorney performance standards, performance evaluation procedures and a first-rate training program. The development of these important program cannot be overstated. However, it is our judgment that the program does not have sufficient resources to implement the performance standards and evaluation design. At this time, we feel that some of the management systems and procedures that have been established are a step or two ahead of the resources necessary to make them work. This is due, in large measure, to our view that the program currently lacks the necessary resources to provide competent representation and to also meet the management and administrative goals. The legal staff needs to be increased as soon as possible, and we believe the emphasis should be on staffing of attorneys providing direct representation, salary increases and increase in support staff before some of these management techniques and procedures can be fully implemented.

4. Communication

During our visit to Missouri, we heard a lot about communication or lack of communication between central staff in Columbia and the staff in the 35 regional offices. Repeatedly we heard staff commend the State Public Defender Director for his strong commitment to quality representation and the fact that he cares greatly that this representation be of high quality. However, no one accuses management of being inactive - rather, the complaints are that in developing its priorities and strategies, management sometimes does not listen carefully enough or seek appropriate feedback from line staff. A gap has grown between some line staff, district defenders, regional defenders, the Trial Division Director, and the Chief Public Defender. Some of this, we believe, is a lack of understanding or communication from the top down to the field. When this misunderstanding exists, people perceive the problem in one way and perception becomes reality. The tension is fueled by current conditions, namely that all staff members are underpaid, overworked, and that there is a perception that this is not the case at the regional or management staff levels in Columbia. The problem is exacerbated by the fact that many staff feel that central management has not been an effective lobbyist with the Missouri Bar, the legislature, the executive branch, and the courts. Some suggested that people at the top were convinced that no likely improvement could occur in staffing or resources given the attitude of the Bar, the bench and the legislature. Thus, it had become a self-fulfilling prophecy that it would not do any good to lobby actively because nothing would come of it in the final analysis. Fortunately, the Public Defender Director and the Commission recognize the need to be more aggressive and have indicated that they will do so in the future.

5. Advocacy for the Program

Every public defender system that has a commission or a board has a responsibility to be an advocate for the indigent defense system in that state. This should be the responsibility of the commission and board as well as the Chief Public Defender or Public Defender Director. In some states, this dual responsibility is carried out very effectively and even in the most dire fiscal straits, some public defender systems have managed to get additional resources while many other state agencies have not. In order to achieve this result, however, one must be very active in communicating with and lobbying the legislative and executive branches and building a strong relationship with the courts, the state bar and private attorneys throughout the state, as well as the community. It is in this area that we feel the program has not achieved what it could. The Missouri State Public Defender Commission is a group of individuals, many of whom, we were told, are not well known within the bar, the judiciary, or the legislature. It needs to be strengthened. It needs to have a direct relationship with the state bar, and lawyers who are highly respected throughout the state. It needs to redefine its role which should begin with becoming a statewide advocate for indigent defense. This activity must be accelerated in the immediate future, not only because of the nature of the near-crisis situation in the system, but because of the fact that many leaders of the bench and the bar that we spoke to, indicated the willingness to assist in the advocacy of the program. We consider the creation of the task force of the Missouri Bar to be a major step forward in this regard.

Like several other problems that we noted in our work, the advocacy and communication problem is one that we feel can be substantially improved. In the last few years, we were told the management of the program has not sought sufficient support from the various branches of the government or the bar in large measure

because it thought they would not be forthcoming and it was a lost cause. Insufficient lobbying was done by the commission and the central management staff. On the other hand, those who would have been willing to help and to have been supported the program were not asked and there has not been a sufficient communication link between the commission, top management, and those who are in a position to help. This has then been the fault of the both the commission and management. However, we expect major improvement in this area inasmuch as both the Chairman of the Commission and the State Public Defender Director acknowledge this problem and pledge to begin working on it immediately in cooperation with the new task force.

6. Caseload and Expenditures

The Missouri State Public Defender System is clearly underfunded in relation to other state public defender agencies. The seriousness of the underfunding varies somewhat from district to district and region to region, but it is particularly severe in the major metropolitan centers of St. Louis and Kansas City. The most important aspect of underfunding is the need for more attorney staff in the high volume offices to reduce the caseload per attorney. There is also a major need for increase in salaries for both attorneys and support staff.

Table 6-1

MISSOURI CASELOAD AND EXPENDITURES SINCE 1988

<u>Year</u>	<u>Caseload</u>	<u>Expenditures</u>	<u>Cost per Case</u>
1988	43,756	\$7,756,784	\$177.27
1989	45,457	\$9,172,911	\$201.79
1990	49,628	\$12,212,052	\$246.07
1991	44,842	\$12,927,902	\$288.30

(continued)

Table 6-1, continued

<u>Year</u>	<u>Caseload</u>	<u>Expenditures</u>	<u>Cost per Case</u>
1992	56,309	\$13,205,052	\$234.51
1993*	56,001	\$13,665,871	\$244.03

*Projected

Table 6-1 shows the relationship between caseload and expenditures for the Missouri State Public Defender System for a period of six years, along with the cost per case for each year.

As one can see, the cost per case projected for FY 1993 is less than that spent in 1990 at a time when the caseload has substantially increased. In fact, an analysis of the expenditures for FY 1990, 1991 and 1992 and the projections for FY 1993, shows a very slight increase in expenditures. Of particular concern is the increase in caseload from 44,000 in 1991 to 56,000 in 1993.

Table 6-2

SELECTED STATES' INDIGENT DEFENSE CASELOAD AND EXPENDITURE FOR 1992

<u>State</u>	<u>Caseload</u>	<u>Expenditure</u>	<u>Cost per Case</u>
Massachusetts	195,205	\$58,508,604	\$299.73
Minnesota	67,810	\$21,752,000	\$320.78
Wisconsin	116,302	\$25,459,000	\$374.33
Washington	168,937	\$44,079,861	\$260.92
Colorado	52,025	\$19,029,000	\$365.77
Tennessee	124,232	\$17,554,408	\$141.30

Table 6-2 provides caseload, caseload expenditure and cost per case data from six other states that have similar systems to that of Missouri. An analysis of Table 6-2, Selected States' Indigent Defense Caseload And Expenditure For 1992 is subject to one major caveat. The total volume of cases handled by a state public defender system will vary substantially among the states depending upon the number of misdemeanor appointments. For example, in

Massachusetts approximately 75% of all the court appointments are in misdemeanor cases and juvenile and only 25% in felony. Thus, the cost of \$299.73 reflects a predominant percentage of misdemeanor cases. On the other hand, the projected 1993 cost per case for the Missouri State Public Defender of \$244.03 reflects a predominant felony caseload which we would expect to be substantially higher than the \$244 because of the particular mix. In Missouri, the State Public Defender does not handle many misdemeanor cases, both because appointments are not made in many districts where there will be no jail sentence and misdemeanors in some of the high volume areas are handled outside of the Missouri Public Defender system.

We have been gathering more extensive data on 15 states to compare with Missouri which will include information on both public defender and assigned counsel expenditure and caseload, the number of full-time attorneys and full-time staff, as well as the cost per case and cost per capita. This information should be completed and available to the task force within a few weeks.

7. Compensation

In our view, all levels of staff in the Missouri State Public Defender are substantially undercompensated for their work. This clearly is one of the two or three biggest problems in the Missouri State Public Defender system, and is having a negative impact on the system's ability to function properly.

Current public defender salaries in Missouri are not adequate to either recruit or retain experienced attorneys throughout the state. The current salary structure set out in Table 7-1, entitled Missouri State Public Defender Salary Structure, shows the pay range for the various levels of public defender salaries.

TABLE 7-1

MISSOURI STATE PUBLIC DEFENDER SYSTEM SALARY STRUCTURE

<u>Job Title</u>	<u>Pay Range</u>
Division Director	\$56,000-\$61,200
Regional Defender	\$50,000
District Defender	\$30,000-\$48,500
Asst. Pub. Defender I	\$23,200
Asst. Pub. Defender II	\$25,008
Asst. Pub. Defender III	\$29,004
Asst. Pub. Defender IV	\$36,000

Because of the challenging nature of the work and the immediate exposure to trial practice, recruiting for the entry level positions at \$23,200, while low, does not appear to be a major problem. However, according to data supplied by the public defender system, the median tenure of attorneys leaving the program has slipped from 35 months to 27 months between 1985 and 1990. The public defender's data also illustrates that the program has a serious problem retaining attorneys both after their first year and again after three to four years. These data show that there are not sufficient experienced attorneys left in the system. Some have left and others have moved on to management functions.

Most public defender programs have a hierarchical salary structure which requires a lawyer to leave the courtroom and to move over to the management side after several years, when that lawyer has become an outstanding felony lawyer, in order to increase his or her salary. This notwithstanding the fact that there is a big loss when an experienced felony attorney leaves the courtroom and it may well be that he or she is not a good administrator and/or not interested in administration. In recent years, some public defender programs have developed a dual salary track for experienced lawyers. The parallel tracks include one that heads toward management and one an equal salary for those who

remain in the courtroom to handle the serious cases and supervise the inexperienced attorneys. We strongly recommend such a system. It is easy to look at Table 7-1 and see that the salary ranges at all levels are extremely low.

The salary problems as well as the increased workload has, as we said before, caused a much larger turnover in experienced staff in the last two years than has occurred over the last eight or ten years. There are many problems resulting from an experienced lawyer leaving the program. First of all, it takes time to replace that lawyer and it simply may not be possible to do in terms of comparable experience. Second, the caseload that is left behind has to be absorbed by other lawyers in the office who already have an overburdened workload. The result has been that, in some cases, attorneys who may not be ready to handle serious felony cases are thrust into the courtroom to fill the gaps. An alarming number of attorneys have left the public defender system recently after having developed valuable trial skills and have been a major loss to the system.

8. Comparative Salaries

One of the measures of the adequacy of salary in our judgment is to compare the compensation for public defender attorneys with those of their counterparts in prosecution and other full-time lawyers in public government.

Table 8-1, Comparison of Compensation in State Public Defender System and the Office of the Attorney General, shows very clearly the discrepancy in salary at virtually every level.

TABLE 8-1

COMPARISON OF COMPENSATION IN STATE PUBLIC DEFENDER SYSTEM AND OFFICE OF THE ATTORNEY GENERAL

	<u>Public Defender</u>	<u>Attorney General</u>
	\$68,364	\$78,321
	<u>Division</u>	<u>Assistant Deputy</u>
	<u>Directors</u>	<u>Attorney Generals</u>
Average:	\$57,800	\$62,392
Minimum:	\$56,100	\$56,651
Maximum:	\$57,800	\$71,751
Median:	\$58,650	\$69,791
	<u>Regional</u>	
	<u>Defenders</u>	No Equivalent
Average:	\$50,686	
Minimum:	\$50,004	
Maximum:	\$51,012	
Median:	\$51,012	
	<u>District</u>	<u>Assistant Deputy</u>
	<u>Defenders</u>	<u>Attorney Generals</u>
Average:	\$39,139	\$43,520
Minimum:	\$30,000	\$35,684
Maximum:	\$50,004	\$58,824
Median:	\$39,000	\$41,804
	<u>Staff</u>	<u>Assistant Attorney</u>
	<u>Attorneys</u>	<u>Generals</u>
Average:	\$27,497	\$31,339
Minimum:	\$23,220	\$26,000
Maximum:	\$47,508	\$60,298
Median:	\$25,008	\$28,500

Furthermore we were told that the discrepancy in salary between assistant public defenders and many assistant county prosecutors is even larger than that of the Attorney General's office.

In our judgment there should be no reason whatsoever for a full-time assistant public defender to make less than a full-time assistant prosecutor, a full-time assistant Attorney General, or any other full-time lawyer working in government. We would hope that this matter would be given immediate attention by the task

force.

The salaries of non-attorney staff are also extremely low as indicated by Table 8-2.

TABLE 8-2

NON-ATTORNEY SALARY STRUCTURE

<u>Position</u>	<u>Salary</u>
Receptionist	\$13,000
Docket Clerk	\$14,000
Secretary	\$16,008-\$18,504
Admin. Assistant	\$20,004
Criminal Investigator	\$16,500-\$22,008
Paralegal	\$17,496
Sentencing Specialist	\$20,000

Some might argue that the benefits provided by government employment are attractive enough to afford lower salaries. We feel this is inaccurate and unfair and helps to create a morale problem throughout an office when all staff at all levels feel understaffed and overworked.

9. Physical Conditions of Offices

The physical conditions of at least three district offices that we visited were extremely poor. They were very old, rather dark and had a depressing physical appearance. In addition, the equipment was not updated in terms of computers, word processors, copiers, etc. In a couple of offices, there were several attorneys sharing space in the same office, reaching a level of four attorneys to an office at one of the sites that we visited. This is unprofessional and could seriously affect the work of the individual attorney. It certainly adds to the frustration of attorneys who must practice with a high workload, low salaries and insufficient support staff. The offices could be described simply as bleak. In one office, the only room to visit and interview

clients is the law library, which either closes down access of lawyers and law clerks or means that the client has be interviewed out in the hall or in some other place in the building. Part of the problem, we believe, is that the public defender in some locations is in the courthouse which is very old and dilapidated. There is also another problem of lack of access to both criminal information, computers, and legal research technology.

10. Staffing and Quality of Personnel in District Offices

We were very impressed with the quality and commitment of most of the staff that we visited with in our week in Missouri. Despite working under severe conditions, described throughout this report, there is a continuing commitment of staff to clients and an effort to do the best they possibly can with the resources they have. These human resources, both attorney and non-attorney, are obviously the cornerstone of the program and improvements in all personnel areas that we have discussed are needed badly.

11. A Unique Problem In St. Louis City

We are particularly concerned about the current conditions in the criminal court and public defender system in the St. Louis City office. In addition to overburdened staff and low salaries, the system in St. Louis City presents a serious additional problem. Historically, the court has required a large number of trials and has emphasized the requirement that the criminal courts handle as many trials as possible. The docketing system requires that public defender felony attorneys to be prepared to go to trial on a number of different cases without sufficient notice or preparation. Back-to-back trials are not rare exceptions. In fact, we were told about lawyers empaneling juries in one case while the jury in the previous trial was still deliberating. Public defenders have to be on one hour notice all week to prepare to go to trial on a

number of cases with little knowledge of which of these cases will be called.

The working environment for public defenders in this court has reached the breaking point in our judgment. It is designed unintentionally to burnout felony lawyers within one to three years. The situation as we view it can only be described as a powder keg and one that needs immediate attention by the Missouri Bar and others in the system who can address the current problem. We were particularly concerned about the fact that the bar leaders that we met with in St. Louis were not familiar with the problems and quite surprised to learn of our concerns.

12. Eligibility and Cost Recovery

It is apparent that there is very little focus in Missouri on eligibility screening and cost recovery for court-appointed counsel. Repeatedly we heard that virtually everyone gets a lawyer whether they can afford one or not. No one seems to care very much about this particular problem which we think must be addressed. The courts need to engage in a dialogue about improving the process with the goals of not only making the whole system more efficient, but also reducing public defender caseload for those clients who can afford a private retained attorney. In other states, a small registration fee is charged to indigent clients and/or the client is asked to contribute to the cost of their defense following screening. The latter category is sometimes called "Indigent But Able to Contribute."

Given the serious revenue problems of states in recent years, there is an emergency trend towards tightening the screening process, verifying client information and asking clients, who are able, to contribute to the cost of their defense. The current practice in Missouri of requiring public defender attorneys to file liens against their own clients, we feel, is inappropriate and ineffective. The development of a sound policy of screening and

cost recovery which maintains the integrity of the process and does not result in the chilling effect on the Sixth Amendment has been accomplished in many jurisdictions and needs to be undertaken in Missouri. It is important that there be a set of standards and guidelines uniformly applied across the state to ensure that there is integrity in the system and that only those that cannot afford private counsel, are provided public counsel.

13. Conflict Representation

Caselaw and ethical considerations mandate that a private lawyer or public defender not provide representation to a client where the attorney has a conflict of interest. Many public defender programs have developed a policy that they would never represent a co-defendant in a criminal case arising when the act arises out of a single incident. Thus, we find in some public defender systems, that up to 25% of all of the cases for which public defenders are appointed, involve a conflict of interest and the case is referred either to the private bar, a second public defender or private contract attorney. We are very much concerned that the current policies of the Missouri State Public Defender regarding conflicts need to be reviewed and revised. We are unhappy with the situation where a district office has a private attorney under contract doing conflicts arising out of that office as well as the exchange of conflict cases among district offices throughout the state. We think that this plan is unwise and may involve a true conflict, or at least the appearance of conflict.

14. Private Bar Participation in Indigent Defense in Missouri

Before the reorganization plan of 1989, private court-appointed lawyers handled a large volume of cases throughout the state. Following the reorganization, most of the private bar

representation disappeared because of the creation of 35 regional public defender offices and a loose policy on conflict of interest cases. This was clearly done for cost reasons but we believe it has had some negative effect on the program overall. The first concern is that which we set out in the previous section relating to conflict policy of the Missouri Public Defender system. The second problem is that the private criminal bar has been allowed to basically disappear in Missouri in terms of court-appointed cases. We feel this is extremely unfortunate because it makes the private bar throughout the state more remote to the public defender system and the criminal courts and tends to lose allies that could be supportive. It also creates a situation where the practice of criminal law is now primarily that of public lawyers who are on salary (public defenders and prosecutors) and handle about 90% of all of the cases in the criminal court system. Missouri may have lost a certain independence of the private bar through the policy decision to open the 35 offices.

We believe a strong mixed system of public defenders and private court-appointed counsel is the best system to provide quality defense services provided that the private bar is adequately compensated, adequately trained and has performance standards and qualification standards and sufficient funds for experts, other costs of litigation and support services.

15. Capital Case Representation

The capital division of the public defender system in Missouri is responsible for providing representation in most capital cases around the state. We visited the capital division in the St. Louis office, which is experiencing many of the problems we have detailed in other parts of this report.

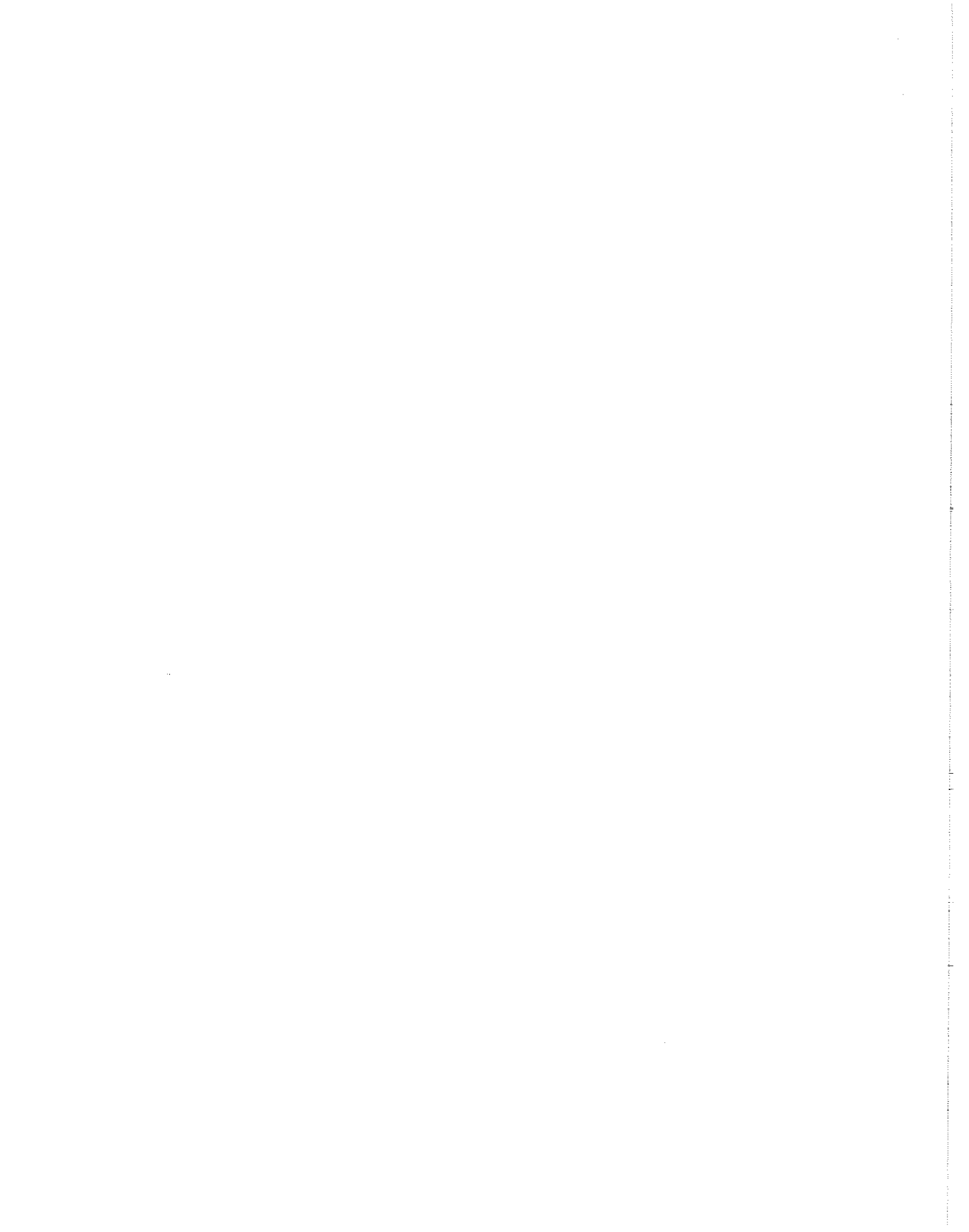
Recruitment and retention of experienced staff in capital cases is a major problem. Distributing capital cases over an inexperienced staff is obviously not in the best interest of the

client. Over the past few years, the St. Louis office has tried to maintain a designation of the most experienced staff as "lead counsel" and coordinates the schedule so that the less experienced co-counsel can be the second attorney on the case. However, because of the lack of experience currently in the St. Louis office, this procedure simply does not work because there are not a sufficient number of experienced lawyers to be lead counsel. In addition, the caseload for attorneys in the Capital Division in St. Louis is of concern. Attorneys in the capital unit carry upwards of 10 cases at a time which is far too high by American Bar Association standards and standards of other state public defender programs.

16. Conclusion

As the new task force of the Missouri Bar begins its efforts to review, analyze and determine what needs to be done to improve the system of indigent defense in the state, we hope the report that we have submitted will be of help. Because of the lack of time and resources, it is not, by any matter of means, a full, comprehensive study of the system in Missouri. Rather it is a snapshot, an overview, from individuals who have done this kind of work in many other states in the country.

We are encouraged by the willingness of the Missouri Bar, many judges, the Public Defender Director, the Public Defender Commission and others, to work together to try to improve the current situation. In a word, the Missouri State Public Defender system is the most poorly funded of all the state public defender systems in the country. On behalf of the Bar Information Program of the ABA, we would be happy to work with the task force and the public defender program to answer questions, provide information and give examples of how improvement has occurred in similar states. We look forward to this opportunity over the next several months.



MISSOURI STATE PUBLIC DEFENDER SYSTEM

SALARY STRUCTURE
January 7, 1993

JOB TITLE	PAY RANGE
Division Director	\$56,100 - \$61,200
Regional Defender	\$50,000
District Defender	\$30,000 - \$48,500
Assistant Public Defender I	\$23,220
Assistant Public Defender II	\$25,008
Assistant Public Defender III	\$29,004
Assistant Public Defender IV	\$36,000
Receptionist	\$13,000
Docket Clerk	\$14,004
Secretary	\$15,000
District Secretary I	\$16,008
District Secretary II	\$16,500
District Secretary III	\$18,504
Administrative Assistant	\$20,004
Criminal Investigator I	\$16,500
Criminal Investigator II	\$22,008
Paralegal	\$17,496
Sentencing Specialist	\$20,000

