THE SPANGENBERG REPORT

Volume VI, Issue 3
February 2001

The Spangenberg Group
1001 Watertown Street, West Newton, Massachusetts 02465
Telephone: (617) 969-3820 Fax: (617) 965-3966
E-Mail: tsg@spangenberggroup.com

U.S. Department of Justice, Bureau of Justice Assistance and American Bar Association, Bar Information Program State Commissions Project: The Year in Review

By David J. Carroll

Introduction

In 1999, the American Bar Association, Bar Information Program (BIP) was awarded a grant from the U.S. Department of Justice, Bureau of Justice Assistance (BJA) to assist states that do not currently have statewide oversight of indigent defense services to gather data on, and make recommendations for, the improvement of indigent defense services. The new grant enabled BIP to expand its ability to provide technical assistance, through The Spangenberg Group (TSG), to help states address such critical issues as: indigent defense system funding; standards for assigned counsel, public defenders and contract counsel; uniformity of data collection; and access to justice. Through the joint BJA-BIP State Commissions Project, several states have been able to make, or are on the verge of making, substantial improvements to the way defender services are provided to the poor. This article is intended to give our readers background information on BIP and to chronicle the State Commissions Project's progress in the past year.

Background: BIP's On-Going Commitment to Improving Indigent Defense Services

BIP was created in 1983 by the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants (SCLAID), the ABA Criminal Justice and General Practice Sections, and the ABA Young Lawyers Division in response to the early 1980s "crisis in indigent defense." At that time, indigent defense systems were so starved for resources that it was increasingly difficult to find lawyers willing to accept court appointments or join public defender staffs. BIP's initial purpose was to inform leaders of every state's organized bar of the crisis. At its first meeting, the BIP Advisory Group committed to helping bar leaders secure higher fees for assigned counsel. Additional services became available in 1985, when BIP contracted with TSG to provide on-site technical assistance to states interested in improving their indigent defense systems.

For nearly twenty years, BIP has provided increasing levels of support for states concerned with indigent defense issues. Though BIP resources are limited, it is able to point to a long history of success. As BIP's primary provider of technical assistance relating to indigent defense systems, The Spangenberg Group has worked with judges, bar associations, state and local governments, legislative bodies and public defender organizations in over forty states around the country. Each new request for assistance is reviewed by the BIP Advisory Committee and TSG. To request assistance, please contact Shubi Deoras at deorass@staff.abanet.org or (312) 988-5765.

The BJA-BIP State Commissions Project

The new BJA funding allowed BIP to grant a limited number of states expanded technical assistance in 2000. Over the years, BIP has placed an emphasis on providing assistance to statewide task forces convened to review indigent defense issues. To date, BIP has worked with statewide task forces and/or commissions in over 20 states.

Using criteria developed by the State Commissions Project Advisory Group, eight states were selected to receive assistance under the Project: Alabama, Georgia, Illinois, Nevada, North Carolina, Oregon, Texas and Vermont. The successes in North Carolina have already been documented by *The Spangenberg Report*. In July 2000, the North Carolina General Assembly enacted the Indigent Defense Services Act of 2000, which created an independent agency within the state's Judicial Department called the Office of Indigent Defense Services and includes a 13-member Commission on Indigent Defense Services. The Office and Commission will have broad authority over the delivery of indigent defense services in North Carolina. (See *The Spangenberg Report*, Volume VI, Issue 1 for more information.) A separate article in this newsletter discusses the status of efforts to improve indigent defense services in Texas. Texas received limited technical assistance under the State Commissions Project as part of a larger statewide study. What follows is the latest news on the other six states.

Alabama: Judicial Study Commission Proposes Statewide Indigent Defense Commission and Jefferson County (Birmingham) Commission Supports the Creation of a County Public Defender Office

In light of rising indigent defense costs, Chief Justice Perry O. Hooper, Sr. appointed a special committee to examine the procedures for providing representation to indigent defendants in Alabama in April of 2000. As chairman of the Alabama Judicial System Study Commission, a statutorily created body that addresses systemic justice issues, the Chief Justice formed the committee "to study the state's current system for providing defense services . . . in the trial and appellate courts and to make recommendations . . . as to what direction the state should take in providing future indigent defense services." The special committee was directed to make its recommendations with consideration given to both the quality and cost effectiveness of such services. (For background information on indigent defense services in Alabama, see *The Spangenberg Report*, Volume VI, Issue 1.)

In Alabama, a combination of state funding and court filing fees account for all indigent expenditures. During the summer of 2000, the special committee unanimously decided that it was a poor use of state funds and, more importantly, poor business practice to continue to pay for indigent defense services without statewide oversight on how the monies are being expended. The special committee decided that if the state funds indigent defense services it is the state's responsibility to decide what type of system (public defender, assigned counsel or contract counsel) is the most efficient and cost-effective for a jurisdiction while ensuring the quality of the services.

Over the late summer and early fall, a sub-committee was formed to draft legislation which was adopted by the full special committee and, subsequently, by the full Alabama Judicial System Study Commission. That legislation creates a statewide indigent defense commission with the following purposes: (a) enhance oversight of the determination of indigency, the oversight of the indigent defense system, and the delivery of counsel and related services; (b) improve the quality of representation and ensure the independence of counsel; (c) establish uniform policies and procedures for the delivery of services; (d) generate reliable statistical information in order to evaluate the services provided and funds expended; and (e) deliver services in the most efficient and cost-effective manner without sacrificing quality representation.

If enacted, the proposed 13-member commission will consist of the following members: (1) two members to be appointed by the Chief Justice

of the Supreme Court who may be members of the judiciary; (2) two members to be appointed by the governor; (3) one member to be appointed by the Lieutenant Governor; (4) one member to be appointed by the Speaker of the House; (5) one member to be appointed by the President Pro Tem of the Senate; (6) one member who shall be an attorney specializing in criminal defense to be appointed by the president of the Alabama State Bar; (7) one member who shall be an attorney specializing in criminal defense to be appointed by the Alabama Criminal Defense Lawyers Association; (8) one member who shall be an attorney specializing in criminal defense to be appointed by the president of the Alabama Lawyers Association; and (9) three members to be appointed by the commission, one of whom shall not be an attorney and one of who shall have a financial background. All appointments shall have demonstrated a strong commitment to quality representation on indigent defense matters. No active prosecutors, law enforcement officials, or active judicial officers may serve on the committee except for the member appointed by the Chief Justice.

At the same time, TSG, under the auspices of BIP, worked with the Jefferson County (Birmingham) Commission to study the benefits of creating a full-time public defender office in the county. Only three counties in Alabama have a public defender program; the majority of indigent defense representation is provided by assigned counsel or contract attorneys. Jefferson County currently relies on an assigned counsel plan, except for family court matters where the court contracts with the Legal Aid Society of Birmingham. On January 16th, 2001, the County Commission unanimously voted to support a $3.5 million public defender system that would employ 55 staff, including 34 lawyers. Additionally, the County Commission's support came with the stipulation that the new public defender staff be paid on par with the county prosecutors. The County Commission's support was based on evidence that a county public defender office could retard escalating indigent defense costs, improve court efficiency in processing cases, and increase the quality of representation. The new Jefferson County system faces one additional hurdle: until the Statewide Indigent Defense Commission legislation is passed, the authority for changing county indigent defense systems resides with local indigent defense boards overseen by the presiding judge in the district. Nonetheless, supporters are cautiously optimistic that the public defender plan will be approved by the local board.

Nevada: Supreme Court Task Force Releases New Statewide Indigent Defense Report and Forms Sub-Committee to Draft Legislation Creating Statewide Indigent Defense Oversight Entity

In 1997, the Nevada Supreme Court Task Force for the Elimination of Racial, Gender and Economic Bias in the Justice System issued its final report, which highlighted several problems with the state's indigent defense system that contribute to racial and economic biases in both the quality and the delivery of justice. Those problems include: inadequate financial support of public defender offices to ensure proper attorney, investigatory and support staff; lack of early contact with indigent defendants within 24-48 hours following arrest; insufficient training of indigent defense attorneys; poor interpreter services; and a need to guarantee effective assistance of counsel at all stages of the criminal justice process, including post-conviction. Task Force members successfully advocated for the creation of an implementation committee to work on institutionalizing their recommendations. Last spring, the resulting Implementation Committee for the Elimination of Racial, Economic and Gender Bias in the Justice System ("Implementation Committee") was selected as one of the BJA-BIP State Commissions Project technical assistance sites. Through the State Commissions Project, TSG conducted a statewide study of Nevada's indigent defense system, gathering data on and making recommendations for the improvement of the state's indigent defense program.

In Nevada, state law requires counties whose population is 100,000 or more to create a county public defender office. Of the state's 16 counties, only Clark (Las Vegas) and Washoe (Reno) counties

exceed this population requirement. Both have established county public defender offices through ordinance by the boards of county commissioners. In both, the Chief Public Defender is appointed by, and serves at the pleasure of, the county commissioners. In these two counties, a magistrate or district court may pay (with county funds) an attorney other than, or in addition to, the public defender to represent an indigent person at any stage of the proceedings or on appeal.

All other counties in Nevada have discretion to select what type of indigent defense system will be used. Only one of these other counties has elected to establish a county public defender (Elko County). Though less populated counties may establish a joint public defender office to service two or more counties, none have chosen to do so. Instead, the remaining jurisdictions either contract with local private attorneys or contract with the State Public Defender.

The Office of the State Public Defender, funded by a combination of state and county monies, is overseen by the Department of Human Resources in the executive branch of state government. Originally created to serve as a statewide rural public defender that produced cost-savings through economies of scale, the Office of the State Public Defender has seen the number of counties it originally served (15) reduced since its creation. The State Public Defender, appointed by the governor for a term of four years, now oversees indigent defense services in just seven counties.

The responsibility for funding public defender services in Nevada is primarily a county obligation. The state only reimburses those counties that opt to contract with the State Public Defender. Thus, no state money is expended in the majority of Nevada counties. The state reimburses the seven counties that the State Public Defender serves approximately 44% of the cost of running the state system in their jurisdiction. The remaining 56% is the responsibility of each of the seven counties. Additionally, each county is responsible for the costs of indigent defense in cases where the State Public Defender has a conflict of interest and cannot handle the case. This means that the actual percentage of all indigent defense costs paid by the state in these counties will be somewhat less than 44%, depending on the number of conflict cases in the county. In fiscal year 1999, $23,472,428 was expended on indigent defense services in Nevada. Of this, only $541,885 was state money (or 2.31% of the total expenditure for indigent defense costs statewide).

The TSG report details serious problems with the current provision of indigent defense services in Nevada, and draws the following conclusion: indigent citizens throughout the state of Nevada are not afforded equal justice before the courts. This conclusion is supported by the following nine findings:

1. The state public defender system is in crisis;
2. The defense function's independence is jeopardized throughout the state;
3. Lack of state oversight and binding indigent defense standards raise quality concerns regarding conflicts of interest, contracting for services, attorney eligibility, training, and workload in counties across the state;
4. Criminal justice workload concerns have impacted trial rates throughout the state and may have contributed to an erosion of confidence in the system because of extremely high plea rates, especially in Clark County;
5. Throughout the state, criminal justice workload concerns have initiated early resolution programs that affect the rights of individuals;
6. Nevada lacks comprehensive, reliable indigent defense data;
7. The indigent defense community does not have a unified voice to air justice concerns;
8. Certain juvenile justice practices add to the perception of bias in the system;
9. Anecdotal information suggests that racial bias exists in the criminal justice system.

In addition to making a recommendation for creation of an intermediary appellate court, the TSG

report offers the following recommendations for addressing these problems:

- The state of Nevada must take a leadership role and relieve more of the counties' obligation to fund indigent defense services;
- The state of Nevada should establish, by legislation or court rule, an indigent defense commission to oversee services throughout the state and promulgate effective minimum standards;
- Indigent defense programs throughout the state should make better use of law school resources;
- The state of Nevada should establish a plan to conduct regular performance evaluations of indigent defense providers.

Based on these recommendations, the Implementation Committee formed a sub-committee to draft legislation creating the statewide commission. Recognizing the importance of retaining some degree of local control, the sub-committee anticipates proposing an indigent defense delivery model which will award state funding to counties, contingent upon the counties' compliance with certain standards, thereby fostering overall improvements in indigent defense systems while leaving control at the local level.

Illinois: Task Force Proposes Increased State Funding for Indigent Defense

On May 12, 2000, the Task Force on the Professional Practice in the Illinois Justice System, a 19-member committee with members appointed by the Governor, the Senate, the House, the Supreme Court, the State Bar, the Attorney General, public defender offices, district attorney offices, and others, issued a report finding Illinois' criminal and juvenile justice systems to be in "crisis." In order to alleviate the most critical issue, defined by the Task Force as "the inexperienced prosecuting cases against the overwhelmed," the number one recommendation states: "the State of Illinois and its 102 counties *must* develop a partnership to discharge the state's obligation to provide competent counsel." (See *The Spangenberg Report*, Volume VI, Issue 1, for more information)

Though its assignment was complete with the submission of the report to the General Assembly, the Task Force found taking a cooperative approach to criminal justice problem-solving to be a rewarding experience and requested an extension to draft more specific recommendations on how a new state/county indigent defense funding partnership would work. The Task Force convened again in October 2000, and proposed the following:

- Increase the salaries of assistant public defenders through a program in which the state reimburses a county up to 40% of the assistant public defender salaries if the county agrees to meet minimum salary guidelines;
- Increase Chief Public Defender salaries through a program whereby the state reimburses a county 66.66% of a full-time chief's salary if the county agrees to pay the chief at least 90% of the local state's attorney salary;
- Initiate a technology assistance program to allow public defenders and state's attorneys to apply for state assisted funding to upgrade both hardware and software;
- Create a public defender and state's attorney loan assistance program whereby the state reimburses public defender or state's attorneys $3,500 per year against law school loans for their first five years of employment. For the next seven years, attorneys employed as a prosecutor or public defender may be reimbursed $5,000 per year, to a maximum of $52,500;
- Establish a state-sponsored expert witness trust fund for indigent defendants and those found to be "partially indigent"; and,
- Establish a state funding agency to reimburse counties 40% of their indigent defense costs if they can objectively show that they have reduced public defender caseloads to meet the National Advisory Committee's standards.

Vermont: Indigent Defense Task Force Issues Report Recommending Restructuring How Conflict Cases are Handled, Adopting Minimum Attorney Qualification Standards, and Protecting the Independence of the Defender General.

In the summer of 1999, the Vermont legislature created a Defender General Study Committee to review Vermont's indigent defense system and to make recommendations for improvement. Upon request of the Chair of the Task Force, assistance was sought from the BJA-BIP State Commissions Project.

In Vermont, the Governor appoints a Defender General who serves at will and is responsible for establishing indigent defense systems on a county by county basis. All funds for indigent defense services are provided by the state. Full-time public defender offices are established in the state's more populated regions and the Defender General contracts with private attorneys and law firms in the less populous counties. A central administrative office in Montpelier also houses an appellate public defender staff and lawyers who represent prisoners in certain legal matters.

The Study Committee was particularly interested in considering the creation of an indigent defense commission to promulgate statewide standards and guidelines for qualification and performance of counsel. On January 7, 2000, the Committee adopted a draft report with a recommendation to create such a statewide indigent defense commission. Unfortunately, the commission bill met with some opposition from the Governor. Another bill was drafted that would have created a statewide indigent defense system similar to that in New Hampshire, which uses a private non-profit organization for representation in much of the state and a Judicial Council structure that administers and funds a private counsel conflict program. When it appeared that the original statewide indigent defense commission bill did not have sufficient support, the parties looked for a middle ground.

The Governor felt that members of the original Study Commission (which included the Defender General and Chief Supreme Court Justice) had too much at stake in the current system to be objective in their recommendations. To address this concern, a new Task Force on Indigent Defense was established that included retired judges, former public defenders and state bar representatives, among others.

The new Task Force met throughout the fall and winter of 2000-2001. The Task Force found that the primary defender system in the state provides high quality representation, but that the system for conflict representation is structurally flawed. Conflict of interest cases are currently handled by a combination of court-appointed attorneys and attorneys working under contract with the Defender General. For some time, Vermont has experienced an inability to recruit and retain contract attorneys. Every year approximately one-third of the contractors refuse to renew their contracts for the next year. This leads to a situation in which an increasing number of cases are farmed out to ad-hoc counsel, generally considered to be the least cost-effective means of representation. There is also concern that some ad-hoc assigned counsel do not meet nationally recognized minimum qualification standards.

To resolve this problem, the Task Force is recommending to the Governor that the Defender General Office be restructured to add a Conflict Director position to oversee the creation of three regional serious crimes units to handle cases in which the primary public defender has a conflict. The regional offices would also provide oversight, assistance and training to the contract attorneys practicing in the jurisdiction. The Task Force is also recommending that minimum qualification standards be adopted and that the Defender General's training budget be increased to allow for on-going legal education programs.

Additionally, due to statutory language allowing the Governor to remove the Defender General without cause, the Task Force identified a potential situation in which policy differences between the Governor and Defender General may adversely impact the delivery of legal services to indigent criminal defendants. To remedy this, the

Task Force is advising that legislation be adopted that would permit a Governor to remove a sitting Defender General during his or her term of office only for good cause shown.

Other recommendations include:

- Reduce public defender caseloads by expanding alternative justice programs and requiring corresponding defense budget increases for all new legislative enactments impacting defender workload; and,
- Establish an up-front application fee to augment the Defender General budget.

Oregon: Public Defense Services Commission Proposed

An indigent defense study commission in Oregon has filed legislation to create the Public Defense Services Commission, an independent entity located in the judicial branch of state government that would oversee provision of indigent defense services in Oregon. The bill, SB 145, was pre-session filed at the request of the Joint Interim Judiciary Committee.

During the 1999 session, the Oregon State Legislature established a Public Defense Services Commission (PDSC) to study the current status of indigent defense services in Oregon, make comparisons with other states' systems, and submit a report with recommendations for changes, including any necessary legislative changes, to the state's 71st Legislative Assembly, which convenes this year. Currently in Oregon, the state provides all funding for indigent defense services. At the trial level, the Indigent Defense Services Division (IDSD) of the State Court Administrator's Office administers contracts with programs in each county. Counties may choose a public defender, private bar contract or court-appointed counsel system. The State Public Defender, which is funded separately from the IDSD, handles direct appeals.

The nine-member study PDSC consists of four non-lawyer members and five active Oregon State Bar members, including one public defender, one judge and one district attorney. In addition to these nine members, there are two advisory members, one a state Representative appointed by the Speaker of the House of Representatives and the other a state Senator appointed by the President of the Senate. The Chief Justice, State Court Administrator and chairperson of the State Public Defender Committee serve as ex officio members. The Chief Justice appointed the chairperson and vice chairperson of the Commission.

After a year of review and monthly meetings, the PDSC drafted legislation to create a permanent, seven-member Public Defender Services Commission. The bill grants the Chief Justice of the Supreme Court responsibility for appointing all seven members. The Chief Justice will also appoint a chairperson and a vice-chairperson. The members must include: two persons who are not lawyers; at least one lawyer who provides criminal defense representation but is not primarily engaged in representing indigent defendants; and at least one person who is a former Oregon state prosecutor. The Chief Justice will serve as a nonvoting, ex officio member. Except for the Chief Justice, no member can be a sitting judge, prosecuting attorney or employee of a law enforcement agency. Members will serve four year terms.

As proposed, the Public Defense Services Commission shall:

- Establish and maintain a public defense system that ensures the provision of defense services in the most cost-efficient manner, consistent with Oregon and national standards of justice.
- Appoint a public defense services director who serves at the pleasure of the commission, and set the compensation of the director.
- Submit the budgets of the commission and the office of public defense services to the Legislative Assembly after the budgets are submitted to the commission by the director and approved by the commission.
- Review and approve any public defense services contract negotiated by the director before the contract can become effective.
- Adopt rules regarding:

- financial eligibility of persons entitled to be represented by appointed counsel at state expense
- appointment of counsel
- compensation for court-appointed counsel
- appointed counsel compensation disputes
- costs associated with representation of persons entitled to be represented by appointed counsel at state expense
- professional qualification standards for counsel appointed to represent public defense clients
- procedures for the contracting of public defense services
- any other matters necessary to carry out the duties of the commission.

The public defense services director shall:

- Supervise the personnel, operation and activities of the office of public defense services.
- Provide services, facilities and materials necessary for the performance of the duties, functions and powers of the Public Defense Services Commission.
- Pay the expenses of the commission and the office of public defense services.
- Prepare and submit to the commission, Legislative Assembly and other appropriate persons an annual report of the activities of the office of public defender services.
- Prepare and submit to the commission for its approval the biennial budgets of the commission and the office public defense services.
- Employ personnel or contract for services as necessary to carry out the director's responsibilities.
- Prepare personnel and employment policies for the office of public defense services.
- Recommend to the commission when and where it is necessary to establish, by contract or otherwise, regional administrative or service delivery offices for public defense services.
- Provide cost efficient legal services to persons entitled to, and financially eligible for, appointed counsel at state expense under Oregon Revised Statutes, the Oregon Constitution and the Constitution of the United States.
- Provide for legal representation, advice and consultation for the commission, its members, the director and staff of the office of public defense services who require such services or are named in lawsuits arising from their duties, functions and responsibilities.
- Ensure compliance with the rules adopted by the commission.
- Provide for private nonprofit public defender offices in counties or judicial districts as determined feasible and cost-efficient.

The director also has discretion to negotiate contracts for providing legal services to persons eligible for appointed counsel at state expense.

The legislation abolishes the Office of the Public Defender and the Public Defender Committee, which is an oversight body for the Public Defender. All of the duties of the Public Defender Committee would be transferred to and vested in the Public Defense Services Commission. Employees of the Public Defender would be transferred to the Public Defense Services Commission.

The legislation, if passed, calls for the Chief Justice to appoint members of the Public Defense Services Commission before July 1, 2002. All statutory and administrative duties, functions and powers of the State Court Administrator relating to indigent defense program management would transfer to the Commission.

The Spangenberg Group provided limited technical assistance to the Study Commission on behalf of the State Commissions Project. Most of the work supporting the Commission was coordinated by the Director of the Indigent Defense Services Division, Ann Christian.

Georgia: Indigent Defense Study Commission Recently Appointed

Georgia is the state that most recently began receiving technical assistance under the State Commissions Project. In January 2000, the Georgia State Bar approved a resolution (1) endorsing the formation and appointment, by the appropriate governmental officers of the State of Georgia, of a Commission on Indigent Legal Defense to investigate the current system of providing indigent legal defense in Georgia, including its funding, structure and administration, and recommend any changes to the current system as the commission might propose; (2) recommending that the State Bar provide its resources and support to the work of such a commission; and (3) recommending that the Indigent Defense Committee of the State Bar be authorized to solicit and accept monetary and in-kind contributions in connection with the creation, appointment and operations of such a commission and to report regularly to the President regarding such matters. The resolution was presented by William DuBose, Chair of the State Bar of Georgia's Indigent Defense Committee.

Following adoption of the resolution, bar leaders met with Chief Justice Robert Benham of the Georgia Supreme Court and Ms. Penny Brown Reynolds, Executive Council of the Governor, seeking support for the establishment of a State Commission on Indigent Defense. The Chief Justice and the Governor enthusiastically endorsed the creation of the State Commission. Due to unforeseen delays, Chief Justice Benham has only recently appointed several distinguished members of Georgia's community to the Commission on Indigent Defense.

The members of the Chief Justice's Commission on Indigent Defense include: superior court, district court and appellate court judges, law school representatives, three state senators, four state representatives, private attorneys, and a representative of the Georgia Indigent Defense Council. The Commission met in late January.

Conclusion

Under the grant to the American Bar Association from the Bureau of Justice Assistance, The Spangenberg Group will continue to provide assistance to states working to improve their statewide indigent defense systems through July 2001. We feel confident saying even at this early stage that the State Commissions Project has played an important role in helping a number of states in working toward meeting their goals for indigent defense reform. ❖

News From Around the Nation

Texas Appleseed Releases Study on Indigent Defense in Texas; Begins Lobbying for Reform

In December 2000, Texas Appleseed released two reports that concluded the most comprehensive study ever conducted of indigent defense in Texas. *The Fair Defense Report, Analysis of Indigent Defense Practices in Texas*, contains the complete observations, findings and recommendations of experts and researchers who studied four aspects of indigent defense in Texas this past year: indigent defense practices in non-capital felonies and misdemeanors, representation of indigent defendants charged with capital offenses, representation of indigent defendants with mental illness and representation of indigent children in the juvenile courts.

Findings and Recommendations on Indigent Defense Practices in Texas contains just the findings and recommendations of the four reports and was released December 5, 2000 to coincide with a conference on indigent defense hosted by the State Bar of Texas.

Texas Appleseed is a not-for-profit, non-partisan law center based in Austin, Texas. It enlisted The Spangenberg Group to design and lead the primary portion of the inquiry, which focused on representation of indigent defendants in misdemeanor and non-capital felony cases. In the summer of 2000,

members of The Spangenberg Group headed up research teams that traveled to 23 counties in Texas. The counties visited comprised a representative sample of the state's 254 counties, and roughly 61 percent of the state population. While on-site, interviews were conducted with hundreds of people who are involved first-hand with the indigent defense system in each county, including judges, private attorneys, public defenders, prosecutors, county officials, defendants, community leaders, and court and jail personnel. Also while on-site, researchers collected information from the sample counties concerning indigent defendant caseload and expenditure, mechanisms for appointment of counsel, compensation schedules for court-appointed attorneys, and other relevant materials. The investigative teams for the capital, juvenile and mental health portions of the study conducted site work and reviewed materials from many of the 23 counties in the larger sample.

Currently, funding and provision of indigent defense services in Texas is almost entirely a county responsibility, with just a tiny amount of state money provided for attorney compensation in capital post-conviction cases. Counties are responsible for selecting the delivery systems used, and by far the most common system used is ad hoc, assigned counsel. Just a handful of the state's 254 counties use a public defender program, and only one county uses a public defender program as its primary provider of indigent defense representation.

In most Texas counties, counsel are appointed to represent indigent defendants in misdemeanors and non-capital felony cases by individual county and district court judges, most of whom maintain their own lists of lawyers. Appointments are made in a rotating fashion off the lists, or on a "first come, first served" basis to lawyers who appear at court for the initial appearance or arraignment session. Another method that appears in Texas counties is the use of "lawyers of the day," who work in an initial appearance docket on a daily or weekly basis, typically pleading out as many defendants as possible at the initial appearance. Another system seen predominantly in Harris County (Houston) is the use of lawyers working under contract with individual judges to handle indigent defendant cases in their courtrooms, a practice that is in violation of the Texas Criminal Code.

In the vast majority of Texas counties, judges have complete control over which defendants receive appointed counsel, which lawyers are appointed to represent indigent defendants, how much lawyers are paid, and whether they will have access to experts and investigators. Except in a handful of counties (for example, Austin-centered Travis County), court-appointed attorneys do not need to possess any specific qualifications or meet any particular standards or guidelines in order to receive non-capital court-appointed cases. Also with the exception of a few counties, compensation for court-appointed counsel in Texas is abysmal. Many attorneys are paid according to flat fees for particular events, such as entering a guilty plea or securing a dismissal. For example, among the sample counties, the flat fee paid for a guilty plea in a felony case ranged from $50 to $350. Clear disincentives exist for a lawyer to put in additional time that may be needed to secure a reduced charge, an alternative sentence or a dismissal for a client. Another problem commonly seen is difficulty securing investigators and experts for indigent defendants. Judges in many counties stick to a presumptive cap of $500 for investigator and expert services.

Some of the most disturbing problems we encountered surround indigent defendants who are detained pre-trial. Many counties, especially the smaller, more rural ones, do not appoint counsel for indigent defendants in felony cases until the defendant is indicted. If a defendant does not make bond, he or she can expect to sit in jail for three to six months before a lawyer will be appointed. Another common problem comes from the fact that most judges presume that a defendant's ability to post bond means he is able to hire counsel; something that is in direct violation of the Criminal Code. Defendants out on bond are routinely denied counsel. In the worst-case scenario, if a defendant repeatedly returns to court insisting he or she cannot afford a lawyer, the judge

will revoke bond, return the defendant to jail, and only then appoint counsel.

Another problem is that there is currently no established mechanism to collect, much less analyze, statewide indigent defense data in Texas. As part of the Fair Defense study, the Office of Court Administration in Texas collected, for the first time ever, indigent defense expenditure data from all of the counties. Roughly $93,000,000 was spent by the counties on indigent defense in FY 1999. The OCA was not able to collect caseload data.

Now that the report has been released, Texas Appleseed is focusing its energy on legislative advocacy. The Texas legislature meets on a biannual basis, so the period between January and May 2001 is the only chance in the next two years to enact indigent defense reform legislation. Texas Appleseed is supporting legislation that builds on the findings and recommendations in the Fair Defense report. Some of the recommendations regarding non-capital felony and misdemeanor representation included:

- The State Legislature should require that counsel be appointed to indigent defendants promptly following arrest.
- A state-funded, statewide indigent defense oversight entity should be established during the 2001 Texas Legislative Session.
- The statewide indigent defense oversight entity should be appropriated sufficient funds to develop a state-funded indigent defense grant program.
- Efforts should be made to reduce the delay, sometimes extremely lengthy, in presenting criminal cases to the grand jury to secure an indictment.
- In accordance with statutory law, a defendant's ability to post bond should not serve as the litmus test for eligibility for appointed counsel.
- Counsel should be available at first appearance to advise indigent defendants in Class A and Class B misdemeanor and all felony cases who wish to enter a guilty plea.
- Counsel should be compensated for both in-court and out-of-court time devoted to indigent defense representation.
- State and county standard procedures should provide that where a trial court cuts a fee request, an explanation should be placed in the record and appointed counsel should be able to appeal to an indigent defense commission.
- The $500 presumptive cap for investigator and expert services contained in the vast majority of the counties' fee schedules should be increased to reflect the fair market value for provision of these services, which are both fundamental to the effective assistance of counsel and required, in appropriate cases, under state and federal law.
- Each of Texas' 254 counties should establish a pre-trial services agency (PSA) to gather and provide information about all arrestees charged with criminal offenses in a particular county.
- There is a need for more structure, standards and guidelines to assist the judiciary in carrying out indigent defense responsibilities. There is also a need for additional judicial education and discussion about indigent defense standards and procedures.
- Judges should adopt rules to improve their local indigent defense systems, particularly those that do not require a state mandate or state funds.
- Trial court judges should consider relinquishing primary responsibility for selecting, monitoring and compensating counsel who handle indigent defense representation in their courtrooms.

Additional recommendations, many of which echo those listed above, are set out for the capital, juvenile and mental health sections of the report. The portion of the *Fair Defense Report* focusing on representation in capital cases was overseen by Raoul D. Schonemann of Austin-based Schonemann, Rountree & Owen. The juvenile representation investigation was overseen by Cathryn E. Stewart of

the Northwestern University School of Law Children and Family Justice Center. Chris Sigfried, formerly with the National Mental Health Association, oversaw the mental health investigation. The Spangenberg Group's work on the *Fair Defense Report* was funded primarily by a grant to Texas Appleseed from the Open Society Institute. A limited portion of The Spangenberg Group's work -- collecting statewide indigent defense data for the report -- was conducted under the joint ABA-BJA State Commissions Project (see lead article for more information on the State Commissions Project).

A copy of the full findings and recommendations from the report are available at the Texas Appleseed website: www.appleseeds.net/tx. ❖

Department of Justice Releases Compendium of Standards for Indigent Defense Systems

An 1,800-page collection of standards and guidelines pertaining to indigent defense systems in the United States is now available on-line from the United States Department of Justice Office of Justice Programs website. www.ojp.usdoj.gov/indigentdefense/compendium. An excellent resource for practitioners and policymakers, *The Compendium of Standards for Indigent Defense Systems* brings together materials from national, state and local sources in the form of laws, rules and standards and guidelines. The collection was prepared by the Institute for Law and Justice and paid for by the Bureau of Justice Assistance.

Materials in the compendium are assembled into five volumes that represent five broad categories: Administration of Defense Services, Attorney Performance, Capital Case Representation, Appellate Representation, and Juvenile Justice Defense. The compendium is intended to assist in meeting the mandate under *Gideon v. Wainwright* that every criminal defendant charged with a serious crime is represented by competent counsel. The collection builds on former Attorney General Janet Reno's urging that justice officials and the bar join forces to implement indigent defense standards that cover, among other things, skills, experience, and appropriate workloads for indigent defense offices. In the foreword to the compilation, former OJP Acting Assistant Attorney General Mary Lou Leary and BJA Director Nancy Gist wrote that their hope is that the compilation "will be used by State and local governments and agencies to compare standards from other jurisdictions and come up with their own, thereby helping to assure the fulfillment of the Sixth Amendment and of *Gideon v. Wainwright*."

The Institute for Law and Justice was assisted by an advisory group comprised of: Marea Beeman, The Spangenberg Group; Professor Adele Bernhard, Pace University School of Law; Larry Landis, Indiana Public Defender Council; Jim Neuhard, State Appellate Defender, State of Michigan; Paul Petterson, Indigent Defense Counsel, National Association of Criminal Defense Lawyers; Patti Puritz, Juvenile Justice Center, American Bar Association; Jo-Ann Wallace, National Legal Aid and Defender Association; Scott Wallace, National Legal Aid and Defender Association; and Professor Richard Wilson, Washington College of Law, The American University. Members of this group produced introductory materials that accompany the compendium, including:

- "The Ten Commandments of Public Defense Delivery Systems," by Jim Neuhard and Scott Wallace;
- "Parity: The Fail-safe Standard," by Scott Wallace;
- "Trends in Defense Services Standards," by Adele Bernard; and
- "Trends in Juvenile Justice Standards," by Patti Puritz.

While the compendium does not profess to be an exhaustive collection of all indigent defense standards and guidelines in the United States, the compilers attempted to be as inclusive as possible. The standards and rules collected were issued by national organizations, state agencies, state bar associations, public defender agencies, state high courts and local court or bar associations. The compendium is intended to be useful for individuals

working with funding sources, for agencies or organizations that are developing criminal defense standards, and for academics and courts seeking a reference point.

OJP will make the compendium available in hard copy, CD and electronic formats. ❖

Kentucky's Department of Public Advocacy Continues to Meet Program Improvement Goals

The Kentucky Department of Public Advocacy (DPA) continued to make great strides in improving the state's indigent defense system in 2000. On August 31, 2000, Governor Paul E. Patton was the honored guest at the opening of the state's first public defender office located on the campus of a regional university. This is the DPA's 26th full-time office, and brings to 84 the total number of Kentucky's 120 counties served by a full-time public defender. The office at Murray State University is the latest step towards an entirely full-time system, which Public Advocate Ernie Lewis projects will be in place by 2004.

In his keynote speech, Governor Patton expressed strong support for assuring adequate funding for indigent defense services in Kentucky. The Governor learned of the system's problems through the 1999 report *The Blue Ribbon Group on Indigent Defense in the 21st Century*, which effectively persuaded him to include in his budget proposal to the 2000 General Assembly an additional $10 million "in order to improve this important part of the criminal justice system." *See* Vol. V, Issue 4 of *The Spangenberg Report* for more information on the 1999 report, which was prepared by The Spangenberg Group following a three-month study of Kentucky's indigent defense system.

Governor Patton also used his August 2000 address at Murray State University to announce his reappointment of Ernie Lewis to a second four-year term as the state's Public Advocate. Lewis was first appointed Public Advocate by Governor Patton in October of 1996. His current term will expire on July 2, 2004. Since his initial appointment, Lewis has worked diligently, and successfully, to achieve the three goals he set out upon assuming his position: 1) conversion to full-time delivery of representation across Kentucky; 2) full funding of indigent defense; and 3) having the defender perspective heard at the table where criminal justice issues are discussed and decided.

Lewis' progress on his third goal is reflected in a Spring 2000 survey by the University of Kentucky Survey Research Center, which revealed that an overwhelming majority of those polled -- 85% -- believe that prosecutors and defenders with the same level of experience should receive the same level of pay for working on the same type of cases. This strong public support reflects a national trend towards salary parity. Public defenders in Connecticut, by statute, are paid comparably to state's attorneys. CONN. GEN. STAT. ANN. §51-293 (h) (West 2000). Massachusetts and North Carolina also have prosecutor-public defender salary parity. In certain California counties, such as Orange County, public defenders and district attorneys are part of the same bargaining unions, and are paid the same salaries for comparable positions. Other counties, such as Los Angeles County, pay public defenders and district attorneys comparably, regardless of joint bargaining units. In Wyoming and Maricopa County (Phoenix) Arizona, public defenders and prosecutors are paid according to the same pay scale. (We are always interested in learning about other jurisdictions that have adopted indigent defense services provider-prosecutor salary parity policies. If you know of any, please let us know.)

In the 2000 legislative session the DPA successfully secured funds to increase starting pay for public defenders, from a dismal $23,388 per year to a more nationally competitive $30,594 per year for 2001. The average entry-level salary was $32,396 in The Spangenberg Group's 23-state comparison component of its 1999 Kentucky study. Additionally, in 2000, all other DPA attorneys received an 8% increase in salary. This increase also helps to bring

Kentucky in line with national salary levels for more senior positions. Despite these advances, however, Kentucky prosecutors still earn more than their indigent defense counterparts.

In another noteworthy development, the DPA and Kentucky's Commonwealth Attorneys and County Attorneys are working together towards passage of loan forgiveness legislation. During the 2000 session, a loan forgiveness bill was introduced that would have created the Criminal Justice Loan Assistance Trust Fund to provide for the repayment of student loans of Assistant Commonwealth Attorneys, Assistant County Attorneys and Public Defenders. The Fund would have been financed by creating a $5.00 court cost in criminal cases and establishing a program supervised by the Kentucky Higher Education Assistance Authority. The 2000 bill was not successful, however, Kentucky's prosecutorial and defense leaders remain committed to reintroducing similar legislation in the upcoming biennial session.

While the DPA continues to face challenges regarding high caseloads, inadequate assigned counsel fees and retention of qualified public defenders, Ernie Lewis' leadership and dedication, coupled with Governor Patton's support and the work of the Blue Ribbon Committee, promise further progress toward assuring the delivery of fair and cost-effective indigent defense services in Kentucky.❖

Innovative Arrest-to-First Appearance Representation Pilot Program in Chicago

First Defense Legal Aid (FDLA) is a privately-funded, non-need based pilot program that provides free legal services 24 hours a day to any adult or child arrested in Chicago. In Illinois, counsel for indigent defendants is appointed at the defendant's first appearance, which occurs one to three days following arrest. As a result, suspects who do not otherwise have access to counsel are forced to remain in custody for as many as 24 to 72 hours without attorney contact or advice regarding their legal rights. FDLA fills this critical gap in the criminal justice system by providing immediate legal counsel to suspects shortly after arrest and before a public defender is assigned or private counsel is retained. By providing 24-hour access to legal representation for suspects at the police station, FDLA hopes to enhance the quality of criminal justice by allowing defense attorneys to collect vital information about their clients and the nature of the alleged offenses at a stage when they will be better positioned to counsel and properly defend their clients' interests. In appropriate cases, FDLA attorneys help defendants make informed decisions to plead guilty before indictment. In addition, the program seeks to reduce the costs of unnecessary incarceration or delay.

Although the program assists both indigent and non-indigent individuals, FDLA was created six years ago through the efforts of community and legal advocates with the hope of prompting the State General Assembly to amend the public defender statute, IL ST CH 725, §5/113-3, to require that representation be provided for indigent defendants in the period between arrest and first appearance. FDLA's program design is based on research conducted in the mid-1980s by the U.S. Department of Justice. This research established that the early provision of legal services to suspects shortly after arrest produced substantial savings in time and money and reduced the number of court appearances without adversely affecting or compromising any other aspect of the criminal justice system.

Individuals seeking early representation may call FDLA's toll free number, which rings during the day into the FDLA office and during off-hours into a central bilingual answering service. Both the office staff and the answering service screen callers to determine their eligibility for services. There are several basic situations in which an individual is eligible for FDLA assistance: the individual has been arrested by police and is in custody; the police are looking for the individual; and/or the individual wants to turn him or herself in to police. Many arrested persons do not have access to a phone, so FDLA

accepts requests for assistance from family members or other individuals calling on the suspect's behalf.

Three full-time attorneys make up the core FDLA staff who respond to calls during the day; one volunteer responds to calls during the off-hours of 6 p.m. to 9 a.m. FDLA's corps of 60 volunteers includes attorneys and third-year law students. Each volunteer undergoes training and is required to cover one shift a month. FDLA arranged with the Chicago Kent College of Law for third-year law students to receive academic credit if they work one shift per week for an entire semester. There are also two or three backup attorneys or staff members on call each night to answer any questions or provide advice for the off-hours volunteer.

During the day, the three FDLA staff attorneys respond to calls directly; during off hours, the answering service forwards the calls to the volunteer through a pager. The volunteer then returns the call to the suspect. Staff members and volunteers either counsel a suspect over the phone, meet the suspect in person and escort him or her to the police station, or visit the suspect at the police station or detention facility. Another noteworthy benefit from the FDLA presence during interrogation is that the FDLA attorney can later serve as a witness for defendants in their claims of physical abuse or psychological coercion during custodial interrogation. Volunteer attorneys continue their representation of suspects during the initial detention period until a public defender is assigned at the first appearance bond hearing or until the suspect retains private counsel. At the end of their 12-15 hour shift, volunteers send information back to the office for any necessary follow-up.

FDLA also runs a public education program, Rights & Wrongs, to educate community members of their constitutional rights when arrested. Police officers, former gang members, ex-offenders and defense attorneys participate in Rights & Wrongs by visiting schools, churches, ex-offender programs and any other organization that requests such training.

First Defense Legal Aid is a project of Chicago Commons, one of Chicago's largest human service organizations.

For more information, visit the FDLA website at www.chicagocommons.org/firstdefense/index.html or call Kate Walz, FDLA Executive Director at 1-800-LAW-REP-4 or 1-773-826-6550.❖

Ohio Attorney General Institutes DNA Testing for Death Row Inmates

On November 13, 2000, Ohio Attorney General Betty D. Montgomery announced the institution of the Capital Justice Initiative, a new program through which death row inmates may challenge their convictions by requesting a DNA test from the state. Montgomery voluntarily initiated the program with support from prosecutors after the Ohio legislature provided funding for a new DNA lab and database at the new Bureau of Criminal Identification and Investigators headquarters. Montgomery stated, "We have the technology and facilities to conduct accurate DNA testing. Therefore, we have a responsibility to use this 21st century tool to further assure the citizens of Ohio that their capital system is reliable and equitable." The Capital Justice Initiative does not require new legislation or action by the judiciary, and remains in effect until the end of Montgomery's term in November 2002. Though future attorneys general may continue or modify the Initiative, they are not obligated and may discontinue the program.

Death row inmates must be in the post-conviction stage of litigation and meet all of the following eligibility criteria to apply to the Capital Justice Initiative:

- The defendant has consistently asserted innocence.
- Credible and adequate biological evidence actually exists.
- It can be determined that the testing will definitely result in exoneration or incrimination of the defendant.

Death row inmates may apply through their county prosecutor or the Attorney General; applications will be evaluated by county prosecutors. Inmates whose applications are rejected by the county prosecutors may appeal the rejection to the Attorney General. Rejections by the Attorney General are final and non-appealable.

If the DNA test results are favorable to the inmate, he or she may use the results to petition the courts for a hearing. Since the Initiative is separate from judicial proceedings, it will not add additional procedural steps or delays to the death penalty appeals process. As of yet, no applications for any of the 201 Ohio death row inmates have been filed under the Initiative. ❖

Iowa Indigent Defense Advisory Commission Underway

The Iowa Indigent Defense Advisory Commission, created by the state legislature in 1999 (Code of Iowa, 1999 Supp. Section 13B.2A), is preparing to meet for the first time to review compensation rates for assigned counsel and contract attorneys. The current fees for Iowa court-appointed counsel are $60 an hour for both in and out-of-court work on Class A felonies, $55 an hour for Class B felonies, and $50 an hour for any other types of cases. Per case maximums are: $15,000 for Class A felonies, $3,000 for Class B felonies, $1,200 for Class C felonies and $1,000 for Class D felonies. Iowa's court-appointed counsel rates have been a frequent topic of discussion in recent years. In 1996, the Indigent Task Force of the Iowa State Bar Association recommended increased rates for court-appointed attorneys not under contract with the Iowa Public Defender, which provides primary trial and appellate representation to indigent defendants. For further background information on these rates, please refer to *The Spangenberg Report*, Volume III, Issues 1 and 4.

The Commission consists of five members, three of whom are appointed by Governor Tom Vilsack. The General Assembly selects the remaining two members, one from each chamber and no more than one from a particular political party, from the General Assembly itself. Each member will serve a three-year term, with State Public Defender Thomas Becker serving as both an ex officio member and nonvoting chair of the Commission. The Commission is required to file a written report every three years with the Governor and General Assembly by January 1. The first report of recommendations on the hourly rates is due January 1, 2003. ❖

News From Around the World

The Spangenberg Group Presents Training Seminar in Lawyering and Advocacy Skills in Wuhan, China for Chinese Women's Legal Services Providers

Introduction

In December 2000, The Spangenberg Group (TSG) presented a training seminar in lawyering and advocacy skills for women's legal services in Wuhan, China. The program was part of a project funded by the United States Department of State and the Ford Foundation to support the development of a larger, more skilled community of Chinese women's legal-aid providers. Participating in the training were: Robert Spangenberg; Charles Ogletree, Jesse Climenko Professor of Law, Harvard Law School; Elizabeth Schneider, Professor of Law, Brooklyn Law School and Visiting Professor, Harvard Law School; Lan Yan Chen, Gender Advisor, United Nations Fund for Women in North East Asia; Titi Liu, Democracy and Rights Program Officer, Ford Foundation, Beijing; and Rangita de Silva de Alwis of The Spangenberg Group.

In June 2000, Robert Spangenberg and Professor Charles Ogletree, who is a consultant to

TSG for the project, visited five Legal Aid Centers in China that specialize in issues concerning women. This visit provided first-hand insight into how public interest law works on behalf of women in China.

The work of the Women's Legal Aid Centers has improved the legal landscape in China. These Centers not only have enriched legal education, but also have positively impacted the lives of the disadvantaged and brought to the surface many issues hitherto marginalized, such as domestic violence, children's rights, rights of the elderly, property rights upon divorce and workers' rights.

The site visits conducted by Mr. Spangenberg and Professor Ogletree played an important part in helping TSG to design the second part of the project, which focused on training a corps of Chinese lawyers on how to effectively use the law and legal processes on behalf of women.

Project Partners

The training seminar was a collaborative effort of The Spangenberg Group and the Wuhan University, Center for the Disadvantaged and the Hubei Province Women's Federation. The training on lawyering and advocacy skills was provided by American and international experts as well as Chinese experts. Participation at the seminar was by invitation only. Fifty legal-aid lawyers, legal aid workers and women's rights advocates from all across China came together for the five-day seminar.

Objectives of the Project

The main objective of the project was to train a group of Chinese legal services providers in lawyering and advocacy skills that would help them put rights and laws into action on behalf of women. Another primary objective of the project was to expand networking among the Chinese legal services organizations and to build coalitions across related issues. It is hoped that this training will in turn have resonance with a larger group of lawyers and advocates.

The Program

The seminar featured ten sessions ranging from discussions of the theoretical underpinnings of legal advocacy for women to skills training and role playing for legal services providers. Each session was designed to stimulate audience participation and to advance a participatory, interactive style of pedagogy. The discussions promoted an exchange of ideas between the Chinese advocates and their American counterparts on their respective legal systems, legal professions, women's movements and legal-aid movements, as well as institutional building, lawyering skills, gender differences in lawyering, and the global women's movement.

Mr. Spangenberg, in the opening address, commented on the value of sharing information and exchanging ideas from different legal systems when contemplating changes to local systems.

Professor Elizabeth Schnieder, widely recognized in the United States as the leading expert on gender discrimination and violence against women, made the key note address. Professor Schneider spoke of this historic opportunity to work with Chinese advocates and lawyers and a critical time in China to assist in the assertion of rights protection. Tracing the long struggle of the women's rights movement in the United States from the nineteenth century, she noted that substantial changes occurred only in the 1960s after the law schools opened their doors to women.

Professor Schneider noted that despite tireless efforts on the part of women's rights advocates in the United States to mobilize public attention and to direct the attention of law makers, issues such as domestic violence and sexual harassment were not part of public discourse until the 1990s. In 1993, the United States Supreme Court for the first time recognized domestic violence as a problem affecting American families in the paradigm breaking case of

Casey v. Planned Parenthood, 112 S. Ct. 2791 (1992).

Professor Schneider told participants that the links between violence and equality and violence and power became exposed only after stories and experiences of women who were victims of violence were brought to the surface. The lawyers representing these women re-imagined ways to define these experiences and to translate these stories to legal arguments. Through feminist analysis of law and the use of different advocacy techniques, legal recognition was eventually given in the United States to domestic violence, sexual harassment, equal pay and unpaid housework.

Ms. Lan Yan Chen, the United Nations Development Fund for Women (UNIFEM) Gender Advisor for the North East, placed the work of the of the legal aid centers for women in China within the context of the international rights framework. She spoke of legal aid as being indispensable to the actualization of rights under the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW). She urged lawyers and advocates working on behalf of women to use the Convention creatively to improve national laws and institutional mechanisms to protect women's rights and interests.

During the next part of the opening session, participants listened to Chinese women who were once victims of domestic violence and unfair labor practices. These women, who had all sought help from the Wuhan Centers, shared their experiences, bringing to life in a poignant manner the reality of discrimination against women and creating further opportunities for advocates to think creatively on these issues.

The training sessions were spread out over the next four days of the seminar. The **first session** was on perspectives of the women's legal aid movement in the United States -- the challenges faced and victories won. This was led by Professor Schneider and moderated by Professor Ogletree.

Both Professor Schneider and Professor Ogletree emphasized that the United States still lags behind in women's rights protection. Each victory and milestone was preceded by a long process of baby steps which often resulted in one step forward and two steps back.

To give participants a sense of the law in the United States before the recognition of women's formal equality, Professor Schneider discussed some cases such as *Bradwell v. Illinois,* 83 U.S. 130 (1872), *Muller v. Oregon,* 208 U.S. 412 (1908), and *Hoyt v. Florida,* 368 U.S. 57 (1961), which defined women as inferior and in need of protection. These cases have special significance in present day China where courts and the legislature have used a protectionist jurisprudence to subordinate women.

The speakers noted that seminars and conferences such as the one in Wuhan can act as agents of change. In the United States, the National Conference on Women and the Law acted as a catalyst for change in the 1970s. The national Conference brought together women law students and lawyers from around the United States to think of new possibilities and refine existing thinking on women and the law. Following the Conference, law schools introduced the first courses on Women and the Law. The conversations begun at the National Conference placed issues such as acquaintance rape, sexual harassment, family leave, reproductive freedom and intimate violence on the agenda of public dialogue and law reform.

Seminar participants learned that beginning in the 1970s, in a spate of cases such as *Reed v. Reed,* 404 U.S. 71 (1971) *and Stanton v. Stanton,* 421 U.S. 7 (1975), the United States Supreme Court started recognizing a constitutional right to equal protection of the law. Further, though the United States does not have a Women's Rights Protection law as in China, Federal anti-discrimination law helped in formulating arguments before courts. Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments have been important tools in assisting women to gain access to previously inaccessible

employment opportunities. The Violence Against Women Act (VAWA) of 1994 allows women who are victims of gender-motivated violent crimes to seek civil remedies against their assailants in a court of law.

The **second session** focused on domestic violence as a pattern of behavior aimed at maintaining power and control over the intimate partner or spouse. Speakers noted that because of the traditional separation of society into the male public sphere and the female private sphere, law enforcement officials have been reluctant to prosecute crimes of intimate violence.

Activists and advocates all over the world have challenged the public/private dichotomy and the myth that family life is immune from law. These activists have established shelters and networks of safe homes, set up telephone hotlines, challenged police practices that fail to intervene effectively to assist battered women and developed programs to work with battered women.

Discussion also arose as to the defenses available to those who kill their spouses in self-defense. The battered women's syndrome focuses on the unreliability of women's testimony and many lawyers are cautious to raise this defense for fear that it will be turned against their clients. For a jury to accept a history of domestic violence, the jury and the prosecutor must be able to understand the critical link between domestic violence and homicide and be educated sufficiently to be able to hear women's experiences and understand domestic violence as crucial to a motive for homicide. Women must be afforded an equal opportunity to present an effective defense. It was suggested that introducing social science testimony and expert testimony is one way to meet this challenge.

During the **third session**, various representatives of legal-aid centers for women in China gave an overview of their work. In carrying out the aim of learning from and interacting with each other, these women shared ideas on various programmatic aspects of their work. In speaking about the evolution and development of their work they argued that the China Women's Rights and Interests Law (1992) had repealed feudal practices and put into place structures based on gender equality.

Speakers noted that the institution of legal aid has contributed significantly to broadening access to justice for women in China and legal aid has been used as a way to promote basic human rights. Law school clinical programs in China have helped to develop the concept of public service among law students, in addition to helping to develop lawyering skills among students.

The **fourth session** on Lawyering Skills and Trial Advocacy was co-taught by Robert Spangenberg and Professor Ogletree. Adopting an interactive and participatory teaching style, both trainers discussed what was meant by client-centered advocacy. They also discussed the ethical responsibilities of lawyers.

Professor Ogletree and Mr. Spangenberg spoke about the requirements of good lawyering: the techniques of meeting with clients, gathering information, negotiating with opposing counsel, preparing to resolve disputes, creating agreements, conducting investigation and case preparation, and discovering information from opposing parties. They also discussed attorney/client privilege; conflicts of interest; and trial advocacy strategies.

The training materials provided at the seminar included several case studies on domestic violence and discrimination against women in the labor market. During the **fifth session** the participants divided themselves into three groups and each group selected one case study for discussion and role playing. During the audience participation a lively debate ensued as to whether gender made a difference to lawyering.

These questions flowed into the next session moderated by Professor Schneider on the same subject. She and the participants discussed whether women tend to employ different modes of moral reasoning -- a care-based reasoning rather than a more abstract, rights based approach. The question also

arose whether women adopt a different lawyering style, one which rejects the adversarial mode and prefers mediation and other modes of alternative dispute resolution. The discussion also focused on whether this approach to lawyering and use of informal processes actually disadvantage women. What everyone agreed on was the importance of acknowledging women's experiences and seeing oneself in the position of the client.

The question also arose whether feminist lawyering might perpetuate the stereotype that women are less aggressive professionally. This type of thinking could inform discriminatory hiring practices. Professor Schneider, discussing relevant case law in the United States, illustrated how sometimes emphasizing women's distinct qualities can be a trap.

The **sixth session** continued the focus on training and lawyering skills, this time by Chinese experts. Mr. Shi Lei, Lecturer in Law at Wuhan University and Associate Director of the Wuhan Center for the Disadvantaged, discussed the importance of clinical legal education not only as an effective tool to train future lawyers but as a training methodology for legal services lawyers.

Ms. Chen Min, who is the Director of the Wuhan Legal Aid Center and has practiced in the area of women's rights for over ten years, stated that domestic violence is one of the most common problems encountered by lawyers working in the area of women's rights protection. Apart from issues of domestic violence, the inability to own and convey common property as well as property distribution after divorce were identified as problems affecting women.

It was noted that in many cases women who needed legal assistance also needed help with trauma management. A shortage of counseling services was identified as a major problem.

During the **seventh session**, Professors Ogletree and Schneider further elaborated on the role of law school clinics in developing practical lawyering skills as well as substantive legal skills. Professor Charles Ogletree, who is professor of law at Harvard Law School, founding director of the Criminal Justice Institute, director of the Clinical Legal Education and director of the Trial Advocacy Programs at Harvard Law School, spoke of the clinical program and its efforts to protect the interests of women and children.

Professor Schneider spoke of how law school legal clinics have nurtured a large community of women lawyers and feminist legal scholars. These clinics have also encouraged reflective lawyering as a pedagogical tool and provided a laboratory to experiment with more effective lawyering. Professors Schneider and Ogletree also discussed the importance of law school pedagogy in nurturing lawyering skills among students. It was noted that role playing and participatory teaching are engaging modes of learning and help to bring alive the law that is being taught.

The **eighth session** covered institutional building and was moderated by Ms. Phyllis Chang, President of China Law and Development. Ms. Titi Liu, the Ford Foundation Program Officer, spoke about strengthening the organizational ability of women's legal services groups and of fostering the notion of public service among lawyers and legal service providers to advocate more effectively on issues concerning women.

The **ninth session,** which focused on advocacy lessons from across the world, discussed advocacy experiences especially pertinent to China. In addressing the commonality of problems affecting women around the world, Ms. Rangita de Silva-de Alwis of The Spangenberg Group presented case studies from India, Pakistan, Brazil, Uganda, Botswana, Peru and Turkey. These case studies show how centuries-old cultural and social norms of gender stereotyping still affect judicial and administrative attitudes while traditional patriarchal attitudes govern family life. Ms. de Silva de Alwis illustrated how in each of these cases successful law reform efforts were launched by women's rights organizations using multiple advocacy strategies.

This session brought the training to a close and was followed by the **tenth** session -- one of the most critical sessions of the Seminar --in which participants brain stormed on problems and barriers affecting their work and ways to address those problems effectively. There was a unanimous request for further trainings based on this model and for the development of written educational and training material. There is a tremendous shortage of legal aid lawyers in China. To maximize the capabilities of legal aid workers and to expand outreach to all those who require legal services, more legal skills training at regular periods must be made available.

In his closing address, Robert Spangenberg spoke of how inspired and honored he and The Spangenberg Group were to be part of the pioneering work of the legal-aid centers for women in China and he pledged to support the work of these Centers to the best of his ability. Professor Ogletree, in an evocative example of what the seminar set out to achieve, acknowledged the presence of the youngest participant of the seminar --the five-year-old daughter of the head of a minorities legal services group. The ultimate aim of the seminar, Professor Ogletree remarked, was to open up opportunities and dismantle gender barriers for her and all those who come before and after her.

Conclusion

Building on the success of this program, The Spangenberg Group is developing further initiatives in China. A request has been made for a paralegal training of legal-aid workers in the women's legal services centers in China. This program will be a pioneering effort to introduce to China a training model which has been very successful with legal services providers in similar communities in the developing world. ❖

Case Notes

An Increased Prison Sentence Imposed Under the U.S. Sentencing Guidelines Resulting from Deficient Performance by Counsel Need Not Exceed Some Minimum Length to be Prejudicial Within the Meaning of the Sixth Amendment Test for Ineffective Assistance of Counsel

The U.S. Supreme Court in *Glover v. United States*, U.S., No. 99-8576, 1/9/01 held that deficient performance by counsel which leads to an increase in a prison sentence imposed under the U.S. Sentencing Guidelines meets *Strickland's* prejudice test regardless of the amount of the increase. The Supreme Court overturned a Seventh Circuit Court of Appeals ruling that a sentence increase is not prejudicial under *Strickland v. Washington*, 466 U.S 668 (1984), unless the increase is significant.

The probation officer in this case had recommended that the petitioner's federal labor racketeering, money laundering, and tax evasion convictions be grouped under United States Guidelines Section 3D1.3, which allows the grouping of counts involving substantially the same harm. The prosecution objected to the grouping of money laundering counts with the others, and the trial court agreed. Defense counsel did not press the grouping issue in the trial court or raise it on appeal to the Seventh Circuit. The fact that the counts were not grouped resulted in a sentence of imprisonment that was six to 21 months longer than it would have been if grouping had occurred.

In a unanimous decision, the Supreme Court declared that no additional requirements can be engrafted onto the *Strickland* prejudice test. The Court saw no basis for the proposition that a minimal amount of additional incarceration time cannot constitute prejudice in the context of a claim of

ineffective assistance of counsel. The Court stated that "any amount of the actual jail time has Sixth Amendment significance." Another problem with the appellate court's ruling was that "there is no obvious dividing line by which to measure how much longer a sentence must be for the increase to constitute substantial prejudice."

The Court distinguished the prejudice prong of *Strickland* from the performance component of the test. In drawing a distinction as to the fact that the amount of increased jail time caused by a particular decision "may be a factor to consider in determining whether counsel's performance in failing to argue the point constitutes ineffective assistance," the court held that, "under a determinate system of constrained discretion such as the Sentencing Guidelines it cannot serve as a bar to a showing of prejudice."

The Court also emphasized that it was not inviting counsel ineffectiveness claims alleging that counsel pursued strategies that led to higher sentences. The claim here is strictly limited to a situation where counsel failed to challenge a correctable error in the sentencing court's calculation.❖

California Tort Immunity Statute Which Protects Public Employees for Acts Committed Within the Exercise of Their Discretion Does not Insulate Public Defenders from Liability for Their Operational Decisions

The California Supreme Court ruled in *Barner v. Leeds, Cal.*, (No. S070377, 12/18/00) that public defenders are not immunized from malpractice liability for their trial errors by a statute that protects public employees for acts committed within the exercise of their discretion. The court held that the statute protects only fundamental or quasi-legislative policy decisions made by state employees and does not protect appointed counsel from liability for their operational decisions.

In this case the plaintiff sued defense counsel for malpractice, claiming that she negligently failed to investigate the case. In the underlying case the plaintiff had been arrested and charged with bank robbery. The file received by the attorney assigned to defend the plaintiff included a Federal Bureau of Investigation (FBI) memo stating that an FBI informer had identified the bank robber as a different man. The attorney did not file a motion to disclose the identity of the informer. The plaintiff was found guilty and sentenced to 16 years of incarceration. After the FBI arrested another man who admitted participating in the robbery, on a petition for habeas corpus, the plaintiff was found factually innocent of the robbery.

The attorney filed for summary judgment and argued among other things that she was immune from liability under the California Government Code Section 820.2, which shields public employees from liability for discretionary acts.

The trial court granted summary judgment for the attorney, but the Court of Appeal reversed. The court did not address the question of whether the attorney's alleged negligence involved discretionary acts under the statute. The California Supreme Court affirmed the appellate court decision but for a different reason. The appellate court erred when concluding that the immunity statute was not worded clearly enough to apply to publicly appointed counsel. The court pointed out that under the statute, immunity for discretionary acts is reserved to those areas involving fundamental quasi-legislative policy-making. In the past, the court stated, "we have distinguished between the employee's operational and policy decisions."

The court acknowledged that prior to this case it had not specifically decided whether a public employee charged with a professional duty of care, such as a publicly employed attorney or health care professional, makes policy--as opposed to operational--judgments when discharging duties to the client. The court observed that the initial determination whether to provide representation to a certain class of individuals may be a sensitive policy decision which should be immunized from judicial

review, so as to avoid affecting the public defender's decision making process. However, actual representation of a client requires the exercise of considerable skill and judgment. The court held that, " such services consist of operational duties that merely implement the initial decision to provide representation and are incident to the normal functions of the office of the public defender."

The court acknowledged that public defenders face challenges not always encountered by private counsel. However, countervailing policy arguments support the view that deputy public defenders and private attorneys owe the same duty of care to their clients. Therefore, denying criminal defendants a remedy for malpractice simply because they are indigent and represented by a public employee could be seen as unfair, the court stated.❖

The Decision to Proceed with a Defense that is Inconsistent with Innocence Can Only be Made by the Defendant Personally

In *State v. Carter*, Kan., No. 82, 590, 12/15/00, the Kansas Supreme Court held that a defendant whose appointed counsel advanced a defense inconsistent with innocence over the defendant's objections was denied both the right to counsel and the right to a fair trial. The court further declared that in such a situation, there has been a breakdown in the adversarial process that requires reversal, regardless of whether there has been a showing of prejudice.

The defendant in this case made it clear to the trial court before opening statements were given that he disagreed with his counsel's approach and wanted a different attorney. The trial court informed the defendant that he had to proceed with his original counsel or proceed pro se. The defendant decided to keep his appointed counsel. In his closing statement, counsel told the jury that the defendant's "actions were stupid, and they were a product of rage and panic, but it was not a premeditated killing."

The court agreed with the defendant that his claim did not fall under the *Strickland* test which requires the twin showings of substandard performance and resulting prejudice. The court stated that the defendant's claim was analogous to the decision in *United States v. Cronic*, 466 U.S. 648 (1984), which held that in some cases prejudice from counsel's conduct may be presumed. The court further stated that *Cronic's* reasoning "would require reversal in circumstances where counsel sufficiently betrays a client."

A decision to admit guilt cannot be viewed as a matter of strategy or tactic over which counsel has final say. The decision on how to plead guilty has been recognized as being personal to the defendant. In coming to this judgment, the court drew support from *Faretta v. California*, 422 U.S. 806 (1975), which held that whether or not to assert the defense of lack of criminal responsibility is for the defendant to make. Similarly, counsel in this case "had no right to conduct a defense premised on guilt over his client's objection," the court stated. Allowing defense counsel to argue to the jury that the defendant was guilty while the defendant verbally maintained his innocence violated the defendant's right to counsel, interfered with his due process right to a fair trial and was "betraying the defendant by deliberately overriding his plea of not guilty." The court remanded the case for a new trial. ❖

Adding "No" to Signature on Rights Waiver Amounted to Assertion of Right to Counsel

In *Billups v. State*, Md. Ct. Spec. App., No. 1887- 1999, 11/16/00, the Maryland Court of Special Appeals ruled that a defendant who signed his name to a written waiver of his right to have an attorney present during custodial interrogation but then wrote "no" next to his signature made an unequivocal assertion of the right to counsel.

Prior to interrogation, the defendant in this case had been given a form titled "Explanation of Rights Form." The defendant wrote "no" to the

statement which read: "My decision to answer questions without having an attorney present is free and voluntary on my part." After 25 minutes of interrogation, the detective asked the defendant why he had written "no" after signing the waiver form. The defendant's response indicated that he was mistrustful of the detective and that he did not wish to answer questions without an attorney present.

The trial court denied the defendant's motion to suppress his statement on the basis that he had knowingly and voluntarily waived his right to counsel.

The appellate court in reversing the trial court decision held that by writing "no" on the form, the defendant triggered the rule of *Edwards v. Arizona,* 451 U.S. 477 (1981), that questioning must cease once a defendant asserts his right to counsel under *Miranda* . Although a rights invocation must be unambiguous for this rule to come into play, "there cannot be a more unambiguous response to a written waiver that a written, unconditional "no." This rejection of the waiver, the court stated, "constituted an unambiguous assertion by appellant that he did not wish to answer questions without an attorney present." Citing *Smith v. Illinios,* 469 U.S. 91 (1984), the court held that so long as the request for counsel is unambiguous, subsequent statements by the defendant cannot be used to cast doubt on the request's meaning.❖

Nonstatutory Aggravating Factors Must Meet Heightened Standards of Relevance, Reliability and Probative Value

In *United States v. Gilbert, D. Mass.,* No. 98 CR-300044-MAP, 11/14/00, the U.S. District Court for the District of Massachusetts applied a three-pronged test requiring heightened scrutiny of the relevance, reliability and probative value of nonstatutory aggravating factors.

The charges against the defendant, including four counts of murder, relate to acts allegedly committed on patients of a veterans hospital where the defendant worked as a nurse. The government gave notice of statutory and nonstatutory aggravating factors it proposed to present in support of a death sentence.

Drawing on *United States v. Davis*, 912 F. Supp. 938 (E.D. La. 1996), the court stated that in exercising its discretion to evaluate nonstatutory aggravating factors, it would ask first whether a given factor is "sufficiently relevant to the consideration of who should live and who should die." The court emphasized that the test demands more than ordinary relevance.

Drawing on section 3593 (c) of the federal death penalty scheme, 18 USC 3591-98, the court concluded that relevant and reliable nonstatutory aggravating factors may be excluded if their probative value is outweighed by the danger that the information will create unfair prejudice, confuse the issues, or mislead the jury. With this in mind, the court struck the government's allegation of the defendant's assault of her husband 12 years prior to trial, as well as its allegation that the defendant scalded a retarded boy eight years prior to trial for reliability problems and the absence of any injury. The court also struck all factors the government offered to show the defendant's future dangerousness. Finally, the court concluded that neither the threat to the defendant's husband or her future dangerousness was of sufficient gravity to be relevant to the jury's death penalty decision.❖

Prosecutor's Invocation of Divine Authority Invalidates Death Sentence

The U.S. Court of Appeals for the Ninth Circuit held that the U.S. Constitution forbids a prosecutor from arguing to a jury that a decision in favor of capital punishment would vindicate divine authority. *Sandoval v. Calderon* (9th Cir., No. 99-99010, 11/6/00). Ruling on another issue, a majority of the court stated that the state trial court did not violate *Faretta v. California*, 422 U.S. 806 (1975), by taking at face value defense counsel's assertion that

the petitioner had decided to forgo the right to self representation.

In this case, in response to defense counsel's argument at the penalty phase that an "eye for an eye" would serve no purpose but revenge, the prosecutor invoked biblical justifications for the imposition of the death penalty.

The court stated that the prosecution, instead of addressing the defense's secular argument against vengeance, cited arguments calculated to inflame the jury's passion or suggesting that the jury base its decision on a "higher law." The court observed that there is great danger that such arguments will persuade the jury to disregard the instructions given to them by the trial judge. When the case is a capital case, such an instruction violates the Eighth Amendment's requirement that the death penalty be imposed only upon findings made by a jury whose attention has been focused on specific factors authorized by state.

On the separate claim that the trial court erred in accepting defense counsel's statement that the petitioner changed his mind about proceeding pro se, the majority declined to order a new trial.

The petitioner argued that counsel misrepresented his wishes and that the trial court should have conducted a colloquy to ensure that the petitioner understood what he was giving up. In disagreeing, the majority stressed the differences between the right to counsel and the right of self-representation.

Unlike the right to counsel, the right to self-representation is disfavored. The court concluded that the right to counsel attaches unless it is waived, whereas the right to self-representation must be affirmatively invoked. Furthermore, the court observed, whereas the right to counsel protects defendants, waiver of that right involves sacrificing many benefits, which is why limitations are placed on the right of self-representation.❖

Transitions

Malcolm Ray Hunter, Jr. Named Director of North Carolina Office of Indigent Defense Services

The North Carolina Commission on Indigent Defense Services has selected Malcolm Ray Hunter, Jr. to be director of the newly-established Office of Indigent Defense Services, effective December 8, 2000. Hunter's duties include oversight of the $60 million Indigent Defense Program, which encompasses provision of legal representation to indigent defendants in North Carolina by court-appointed attorneys and public defenders.

Mr. Hunter was appointed by and reports to the 13-member Indigent Defense Commission, which was created by the General Assembly in 2000. The Commission is an independent policy and budget-making body within the judicial department designed to oversee indigent defense operations in the state. Mr. Hunter's new position will entail developing uniform standards for indigency determination, appointment of counsel, attorney qualifications and compensation and quality of representation.

Mr. Hunter brings to the new position a proven commitment to indigent defense, serving since 1985 as the state appellate defender in North Carolina. As appellate defender, Hunter managed a statewide public defender office for appeals ranging from juvenile courts to those involving the death penalty. Hunter has argued more than 100 cases before the North Carolina Supreme Court and has also taken part in numerous capital and non-capital clemency proceedings.❖

New Director Named to Head the Louisiana Indigent Defense Assistance Board

The Louisiana Indigent Defense Assistance Board (LIDAB) has selected Edward R. Greenlee as its new Director. Mr. Greenlee will replace former Director Jelpi Picou Jr., who announced his resignation on August 24, 2000. Mr. Greenlee, a native of Louisiana, graduated from Louisiana State University School of Law in 1977 and worked for two years as an assistant city attorney in Monroe, Louisiana before establishing a private practice that included the representation of indigent defendants. In 1992 Mr. Greenlee joined the East Baton Rouge Parish Public Defender's Office as a trial attorney and later became the chief of the Public Defender's appellate section. He was the second attorney hired in 1996 for the then newly-created Louisiana Appellate Project, a program funded by the LIBAD to provide appellate services for indigents in non-capital felony appeals, for which he served as both regional supervisor and Deputy Director. Mr. Greenlee has worked as a full-time public defender, a court-appointed attorney and a contract attorney. His trial experience includes several first degree murder cases; he has also written hundreds of appellate briefs and writs. As Director of the Louisiana Indigent Defense Assistance Board, Mr. Greenlee will oversee the provision of indigent defense services in each of the state's 41 judicial circuits and administer LIDAB's program that provides supplemental funds to local indigent defender boards that comply with LIDAB qualifications and performance guidelines.❖

Wyoming Governor Appoints New State Public Defender

On January 2, 2001, Wyoming Governor Jim Geringer appointed former Deputy Public Defender Ken Koski as the new State Public Defender. "I am honored and humbled to be appointed State Public Defender by Governor Geringer," Koski was quoted saying. "I would hope to continue with the positive changes made to the Public Defender's Officer under the expert leadership of Sylvia Hackl, my predecessor. I promise to insure the highest quality of representation for our clients and on behalf of the people of the State of Wyoming."

Koski served as the Deputy Public Defender for the past five years. Before joining the Office of the State Public Defender, he represented indigent criminal defendants as the Assistant Public Defender for Park and Big Horn counties for 15 years. He also worked as the town attorney for Frannie, Wyoming and the town judge for Byron, Wyoming for about 15 years. Koski received his undergraduate degrees and law degree from the University of Wyoming. As State Public Defender, Koski will administer the Office of the State Public Defender, a statewide organization that provides legal representation to indigent defendants charged with criminal offenses, and oversee approximately 70 staff members and a biennial budget of $7.5 million.

Former State Public Defender Sylvia Hackl was appointed by Governor Geringer to the State Board of Equalization, a three-member board that is responsible for the equalization of property valuation and hearing appeals from county boards of equalization and the Wyoming Department of Revenue. Hackl served as the State Public Defender for the past six years.❖

San Francisco Mayor Appoints New Public Defender

On January 26th, Mayor Willie L. Brown appointed Kimiko Burton-Cruz as the new San Francisco Public Defender. Former Public Defender Jeff Brown recently resigned upon being appointed by Governor Gray Davis to the California Public Utilities Commission. Burton-Cruz is a native San Franciscan and graduate of Hastings College of Law who served as a felony trial attorney in the Public Defender's Office for nearly five years. She was counsel to the Chair of the State Board of Equalization before becoming director of the Mayor's Criminal Justice Council in 1996. On Burton-Cruz' qualifications,

Mayor Brown said, "She is a tireless advocate for the poor, a hard-nosed trial attorney and a very effective public official, particularly when it comes to working with the federal, state and other local agencies." Burton Cruz will begin the new position immediately. She is the first woman, as well as the first Asian American, to serve as San Francisco's Public Defender. ❖

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We welcome your comments on this issue and would be pleased to consider your suggestions for future articles. *The Spangenberg Report* is written and produced by members of The Spangenberg Group:

Robert L. Spangenberg, President

Marea L. Beeman, Vice President

David J. Carroll, Senior Research Associate & Business Manager

Catherine L. Schaefer, Senior Research Associate

Rangita de Silva-de Alwis, Research Associate

Jaime Bailey, Research Assistant

David J. Newhouse, MIS Analyst

Michael R. Schneider, Of Counsel

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The Spangenberg Group is a research and consulting firm specializing in improving justice programs both nationally and internationally. Created in July 1985, The Spangenberg Group has conducted research and provided technical assistance to justice organizations in every state in the union on behalf of state and local indigent defense organizations, legal services organizations, the federal government, state and local governments, the courts, the American Bar Association, state bar associations, private foundations and other private sources.

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Please Contact Us for More Information:

The Spangenberg Group
1001 Watertown Street
West Newton, MA 02465
(617) 969-3820
TSG@spangenberggroup.com