A Report by

JUSTICE

A Public Defender

Chairman of Committee

James Morton

£3.00

A Report by

JUSTICE

A Public Defender

Chairman of Committee

James Morton

London

JUSTICE

1987

This Report has been prepared and published under the auspices of the JUSTICE Educational and Research Trust

ISBN 0 907247 09 1

Printed in Great Britain by E. & E. Plumridge Limited of Linton, Cambridge, England.

JUSTICE

British Section of the International Commission of Jurists

95a Chancery Lane, London WC2A 1DT

JUSTICE

British Section of the International Commission of Jurists

JUSTICE is an all-party association of lawyers concerned, in the words of its constitution, 'to uphold and strengthen the principles of the Rule of Law in the territories for which the British Parliament is directly or ultimately responsible: in particular, to assist in the administration of justice and in the preservation of the fundamental liberties of the individual'. It is also concerned to assist the International Commission of Jurists in its efforts to promote observance of the Rule of Law throughout the world.

JUSTICE was founded in the Spring of 1957 following a joint effort of leading lawyers of the three political parties to secure fair trials for those accused of treason in Hungary and South Africa. From this co-operation arose the will to found a permanent organisation. A preamble to the constitution lays down that there must be a fair representation of the three political parties on the governing Council, which is composed of barristers, solicitors and teachers of law.

In the thirty years of its existence, JUSTICE has become the focal point of public concern for the fair administration of justice and the reform of out-of date and unjust laws and procedures. It has published authoritative reports on a wide variety of subjects, the majority of which are listed at the end of this report. Many of them have been followed by legislation or other government action. In Commonwealth countries, JUSTICE has played an active part in the effort to safeguard human rights in multi-racial communities, both before and after independence.

Membership of JUSTICE is open to both lawyers and non-lawyers and enquiries should be addressed to the Director at 95A Chancery Lane, London WC2A 1DT. Tel: 01-405 6018/9.

JUSTICE

THE COMMITTEE

CONTENTS

This report is published for the purpose of stimulating discussion. The Council of JUSTICE recognise that some members of JUSTICE are unable to support all the proposals and that it would, therefore, be inappropriate to publish the report with the Council's usual from of endorsement. The Council hope nevertheless that the report will focus attention on matters which they believe to be of great importance, and so lead to a radical improvement in the present position

PREFACE

From the practical experience of JUSTICE it has long been apparent that there is a significant imbalance between the resources available to many defendants in criminal trials and appeals and those at the disposal of the prosecution. A further matter of concern is the situation of the rejected appellant of limited means who seeks to challenge a conviction. Two committees of JUSTICE considered the last of these matters and concluded that a new investigatory institution was needed. This view was shared by Lord Devlin's Committee on Evidence of Identification in Criminal Cases (1976) and by the House of Commons Home Affairs Committee in its report *Miscarriages of Justice.*

Though in the present report part of that area is considered, the focus of the report is different. The idea of a public agency to counterbalance the public prosecution service is not new. Public defenders are to be found in many common law countries and states. This report is the work of a committee appointed in July 1982 to consider whether there was a need for a public defender in the United Kingdom and to make recommendations.

On one point we have been unable to reach a unanimous conclusion. We regret this, but have no doubt that we should respect the minority view by a frank acknowledgement of our disagreement.

We had the misfortune to lose our first Chairman, David Smout, QC, under whose wise guidance were laid the foundations for all our subsequent work, on his appointment to judicial office in July 1983. We are particularly indebted to Joanna Greenberg who undertook the drafting and re-drafting of much of the report. We are grateful to Peter Ashman who ably served us as Secretary in the early stages of our deliberations, and to Ronald Briggs, who succeeded him in that office in September 1983, for the benefit of his historical, comparative and statistical research.

We were greatly assisted by our discussions with Dr. Richard Goodbody and Miss Margaret Pereira and thank them both for their help. We record our gratititude to the following correspondents in North America and Australia who contributed much to our understanding of the nature and operation in practice of the public defender:

The American Bar Association;
Miss Kim Ashby;
The Australian Legal Aid Office;
James R. Dunn, Federal Public Defender, Central District of California;

Theodore A. Gottfried, Appellate Defender, State of Illinois;
The Law Society of Scotland;
Professor Norman Lefstein, University of North Carolina, whose report for the American Bar Association, *Criminal Defence Services for the Poor* 1982, is the *locus classicus* in the United States;
The Legal Services Society of British Columbia;
The National Legal Aid and Defender Association, Washington;
James R. Neuhard, Appellate Defender Association, State of Michigan;
Mark Richardson, Legal Services Commission of New South Wales;
Joseph R. Russoniello, US Attorney, Northern District of California;
Professor Ronald Sackville, Law Reform Commission of New South Wales;
The Legal Aid Commission of Victoria.

We thank those local law societies in England and Wales which responded to a questionnaire we addressed to them.

We acknowledge the assistance we derived from the memorandum prepared by the JUSTICE Committee under the chairmanship of William Denny, QC, part of which is now published in Appendix B.

NOTE OF DISSENT

Peter Danbury, while supporting the proposal that the Public Defender should, at the pre-trial stage, provide the services to solicitors in private practice outlined in paragraph 55, does not support the proposal in paragraph 59 that the Public Defender should, at the election of the defendant at that stage, take over the functions of private solicitors in representing him and instructing trial counsel.

INTRODUCTION

1 Until 1986 the accusatorial system of English criminal justice permitted but did not compel the prosecutor and/or the defendant to be represented. Hitherto in the magistrates' courts many cases have been conducted not by legal representatives on either side but by police officers for the prosecution and defendants who have appeared in person. The Prosecution of Offences Act 1984 has changed this. Now, from October 1985 in the metropolitan areas and from October 1986 in the remainder of the country, all but minor motoring cases, and some cases involving organisations such as British Transport, will be undertaken by the Crown Prosecution Service.

2 At the Crown Court the prosecution invariably has been represented and, in the vast majority of cases, so has the defendant (some 98%). The defendant in the Magistrates Court and/or the Crown Court may either pay for his representation or apply to the court for a grant of legal aid to enable him to be represented in the Magistrates Court by his solicitor, and, in the Crown Court, by solicitor and counsel. In the Magistrates Court it is possible in exceptionally complicated cases, such as commercial frauds, and almost invariably in the case of a murder charge, for him to be granted the services of counsel as well as of a solicitor.

3 In most cases at the Crown Court the defendant is represented by a barrister and a solicitor. A solicitor may appear for a defendant in any Crown Court (i) at places where before 1972 solicitors had rights of audience at Quarter Sessions, or (ii) on appeal from a magistrates court, or on committal for sentence to the Crown Court if the solicitor or a member or representative of his firm had appeared for the defendant in the lower court. It is possible, but rare, for counsel alone to be instructed by the Crown Court to represent a defendant. In the Crown Court some 99% of all the 98% of defendants represented are represented under a legal aid certificate.

4 In the Magistrates Court legal aid was formerly granted by the magistrates and there was no appeal against refusal. A variety of tables has been published to show the vast discrepancies in granting legal aid between one court and another in a given commission area. Since March 1984 new provisions for legal aid have been implemented and there is now a right of appeal to a committee of the Law Society against the refusal by a Clerk to the Justices to grant legal aid. In 1984 the Law Society dealt with some 7,500 such appeals and this figure is increasing.

5 Generally speaking, any person charged with a serious offence is granted legal aid and represented by a solicitor and counsel. What then is the need for a committee on the subject of a Public Defender? We examined four aspects:–

(i) whether there was in fact adequate representation under the present system from arrest or summons to acquittal or conviction;

(ii) the position of the expert witness in the conduct of a case for the defence;

(iii) the position of the defendant between his conviction and the time when his appeal was heard by the Court of Appeal (Criminal Division). We did not take account of the rarer cases when the House of Lords reviews a decision of the Court of Appeal;

(iv) the position of the convicted person after the dismissal of his appeal by the Court of Appeal. At this point in the English Judicial system he is left without any legal representation at all, unless his friends and/or family are able to instruct a solicitor to campaign on his behalf.

6 We paid particular attention to what we considered were practical financial proposals and recommendations as opposed to wholesale sweeping changes which would find acceptance with neither Parliament, nor the public, nor the profession. There was a minority on the Committee who would have wished to have examined further the quality of representation of the present system *ab initio*, but it was felt that this exceeded our brief.

7 We found that despite the apparent smooth running of the criminal justice system and its benefits to the accused, the defendant has considerable problems, particularly with regard to expert witnesses and to his position after his conviction at the Crown Court.

8 There are also problems inherent in the granting of legal aid. The defendant is not necessarily given the solicitor of his choice, nor will he necessarily have the barrister of his solicitor's choice to appear for him at his trial. The rather cynical legal aphorism 'he is entitled to counsel of his choice, not his choice of counsel' sums up the existing state of affairs.

9 Whether he gets the solicitor of his choice is a total lottery in a multi-handed case. If there is more than one defendant, unless there is what is termed a 'conflict of interests', one solicitor will be assigned under the legal aid scheme to deal with all the defendants. The solicitor who puts his application for legal aid in first will be the one who decides whether there is conflict of interests. As the Lord Chief Justice put it: 'It is for the appointed rather than the disappointed solicitor to indicate whether there is a conflict'. In the event of that solicitor failing to appreciate that there is a conflict, the matter will be resolved only when the case gets to the Crown Court.

10 One of the great *lacunae* so far as the defence in a criminal case is concerned is the position of the expert witness. Before 1st March 1984 any application to call such a defence witness had to be reviewed by the administration at the relevant Crown Court. The defence had to demonstrate that the reason for wishing to obtain expert evidence would justify the ensuing cost. Since 1st March 1984 the Area Committee of the Law Society covering the area in which the Crown Court is situated took over this responsibility. In 1984 the Law Society considered some 7,200 applications, granting 89% of them. The defence has to disclose the reason why it wishes to have expert witnesses called, and also to indicate the likely cost before authorisation is given.

11 The second problem concerning the expert witness is dealt with in paragraphs 28 to 38. Principally it concerns the quality of expert evidence generally and that specifically available to the defence.

12 The third area which concerned us was the position of the defendant after a conviction at the Crown Court and before his case comes before the Court of Apeal (Criminal Division). At this point a legally-aided defendant is at a considerable disadvantage compared with one who is able to pay privately or have friends pay for his representation. We consider in paragraphs 17 to 19 the various problems raised in such cases.

13 The fourth aspect we considered was the positon of the unsuccessful appellant. His conviction and sentence may have been confirmed but there has been, in recent years, a sufficient number of cases which show that the defendant has been the victim of a miscarriage of justice to shake belief in the system. We have been particularly concerned with what steps and support are available to a person in this situation.

14 The body of the Report sets out our recommendations and why it is, in our view, essential for a Public Defender to be appointed to deal with each and all of the issues raised.

PART ONE: THE PRE-TRIAL POSITION

Introduction

15 The existence of an adversarial system of justice, by its very nature, results in both the prosecution and the defence being left substantially to their own devices as to the manner in which they investigate and prepare their respective cases. It is therefore important to consider whether there are available to the defence the same investigatory and legal services as exist for the prosecution, whether these are, in any event, adequate and whether there should be any alterations to the present system.

16 The purpose of this part of the Committee's report is to identify the problems facing a defendant and his legal advisers in preparing and conducting a criminal trial and to consider whether, and how, these could be alleviated by alterations within the existing framework; alternatively, to consider whether a more radical approach should be taken. In contemplating the more radical approach, we have in mind particularly the setting up of an office of Public Defender, either to provide advice and assistance to defence solicitors or to take over the conduct of the defence in criminal trials.

Present problem

17 Some criminal trials revolve solely around the issue of which of two or more people is or may be telling the truth. Where there are no questions of supporting evidence – independent eye-witnesses, scientific evidence and the like – the conduct of such cases is relatively straightforward. However, there are also a great many trials where the issues range far more widely than simply asking a jury to decide whose word to accept. In such cases, merely taking a statement from the defendant and obtaining his comments on the prosecution statements do not provide adequate material upon which to conduct a trial. Yet it frequently happens that this is all that is done to prepare a case for trial, and investigations to seek out, for example, witnesses or documents or scientific evidence are never undertaken. Such cases require:–

(i) the identification (preferably at an early stage) of the issues that will fall to be determined,

(ii) the resources with which to pursue any investigations, and

(iii) information and experience upon which to base decisions.

18 We believe that in these areas the present system serves defendants badly, particularly when one compares it with the funding and facilities available to the prosecution. This, together with the fact that the prosecution invariably have the advantage of being able to investigate first, demands, in our opinion, a re-assessment of the way in which defendants' interests are represented.

19 Imbalance and limitations exist particularly in the following areas:

(i) investigation services

(ii) information services

(iii) forensic science and expert services

(iv) unidentified defendants

(v) legal aid.

Investigation services

20 The prosecution have the obvious major advantage of there being available to them highly skilled police forces to carry out investigations. Should they so wish, defence solicitors can try to enlist the assistance of the police to investigate on their behalf. But in addition to having to rely on police goodwill, this has certain palpable dangers: it discloses to the prosecution aspects of the defence case which would not normally be revealed before trial or at all. Where, for example, help is sought in tracing a possible witness, where what that person is likely to say is unknown, there is the risk of either supplying the prosecution with information which may in the event go to strengthen their case, or with the opportunity to counter in advance the defence case.

21 It is, therefore, only in very limited circumstances that a defence solicitor would seek the aid of the police. Generally the defence rely on private investigators. This is both expensive and less readily available than the resources of the police.

Information services

22 The prosecution also have extensive information services, much of it computerised. This supplies them not only with people's criminal records but also, from other sources such as local police collators' records, comprehensive background material on individuals and organisations.

23 In 1981 the Attorney General laid down guidelines on disclosure to the defence of certain categories of information. Subject to the exceptions set out in the guidelines, all unused material in the possession of the prosecution is to be made

available to the defence if it has some bearing on the offence charged and the surrounding circumstances of the case.

24 The exceptions include such situations as where a statement is believed (presumably in the opinion of the prosecution) to be untrue and 'might be of use in cross-examination if the witness should be called by the defence'. Another exception is with regard to 'sensitive' statements. This category includes statements dealing with matters of national security as well as those dealing with details of private delicacy to the maker which 'might create the risk of domestic strife'.

25 Thus the exceptions are very widely drawn and their wording allows for considerable differences in interpretation. It is the experience of the Committee that the spirit if not the letter of these guidlines is frequently ignored and, further, that the practice with regard to disclosure has varied from one prosecuting authority to another. In any event, apart from this limited requirement and apart from the prosecution's duty to disclose to the defence the criminal records of the defendant and of the prosecution witnesses, the defence have little access to prosecution information. They may, in igornance, call as a defence witness a man with a criminal record, the disclosure of which at the trial could be highly damaging to the defendant. If that witness did not disclose his record to the defence solicitors, and if the defendant was unaware of it, there is presently no way of discovering its existence until the prosecution cross-examine the witness about it when he is actually in the witness box.

26 It is unlikely that defendants whose cases originate from the same police area will all be represented by the same solicitor. Because any one solicitor may well only deal with a small number of cases from a particular area, he will generally remain in ignorance of any trends or pattern. Only occasionally does it come to light, for example, that officers from a particular police station have been accused in a number of trials of certain improprieties like the 'planting' of drugs or the frequent harassing of ethnic minorities. There may also have been repeated acquittals in such cases.

27 At present there is no information service available to the defence which collates this and other intelligence. Matters of vital importance in deciding how best to conduct the defence may never be taken into consideration. The defence have been left to rely on haphazard sources.

Forensic science and expert services

28 The police authorities employ large numbers of scientists and, in addition, have available to them details of experts in many fields whose services they can employ from time to time. A problem which constantly arises, particularly for the solicitor who does not do a great deal of criminal work, is in finding expert witnesses. It is not sufficient merely to locate a person who works in the field

concerned; consideration must also be given to his reputation and standing in that field and his ability as a witness. Very little help is available in this area and the defence are often left to take pot luck.

29 One possible avenue open to the defence is to use the police and Home Office forensic science laboratories. Indeed, in some areas, the very nature of the specialisation required (such as fingerprint analysis) means that, almost without exception, experts in that field are employed by the police. The defence may be able to engage the services of a retired police employee but, even then, such work as he can do is limited in a case involving fingerprint analysis to comparing samples supplied to him. He will not be able to use the extensive police fingerprint records in order to make comparisons.

30 The Metropolitan Police theoretically make their forensic science laboratory facilities available to the defence, but in practice little or no use can be made of them. The police will not permit the re-examination of an exhibit already examined by one of their scientists. They will allow their scientists to carry out examinations on behalf of the defence or, alternatively, a scientist employed by the defence to use their laboratory. In the latter case the Metropolitan Police insist that their scientists be present. Either way this means that the prosecution are fully apprised of the experiments and results. This is wholly unacceptable as it could well result in material detrimental to the defence falling into the hands of the prosecution. It is an erosion of the principle that it is for the prosecution to establish their case.

31 It appears that generally defence solicitors do not take advantage of the offer of police facilities. Indeed if they did, and, as a result, evidence damaging to the defence was revealed to the police, this would be a gross breach of duty to their client.

32 Home Office (HO) forensic science laboratories can also be used by the defence, although they were not originally set up for that purpose. They were created, in the interests of justice, to improve the quality of police evidence. The hope was that they would achieve this by improving standards of work and technical resources, and by being regarded as independent. They have the reputation of employing highly capable scientists.

33 The rules governing the operation of the HO laboratories are contained in the Consolidated Circular on Detection and Kindred Matters. In essence, non-Home Office experts employed by the defence may use the laboratory facilities and, although there is some supervision, it appears to be discreet and not therefore to involve risks of disclosure to the prosecution. This facility seems to be used a great deal and there is no charge for it.

34 Home Office scientists will carry out experiments at the defence request, also at no charge, but, with the exception of drunken-driving cases involving the 'hip flask' defence, such requests are rare. The same problems of disclosure to the

prosecution exist here as is the case with the Metropolitan Police Laboratories. The Home Office laboratory returns its report to the defence through the relevant police force. Their policy is to make the results of all their experiments available to both sides. It is almost certainly for this reason that such a free facility, which makes available scientists of quality, is virtually unused.

35 The courts place heavy reliance on Home Office and police forensic scientists. There is a tendency amongst judges and lawyers not to appreciate that scientists can be wrong and that interpretations do vary. Lack of knowledge and facilities frequently result in prosecution scientific evidence going unchallenged, making it impossible to identify the inefficient scientist. The dangers inherent in this state of affairs were demonstrated recently in the case of Dr Alan Clift. As a result of quality controls introduced into the forensic science service in 1977 there was discovered what the Director of the forensic science service described as 'gross professional incompetence' by Dr Clift. After 20 years as a forensic scientist, Dr Clift was retired prematurely. Extensive investigations resulting in the quashing of convictions in a number of cases in which he had given evidence. In one, Mr Jack Preece had been convicted of murder and sentenced to life imprisonment. Dr Clift's evidence was central to the prosecution case. It was subsequently discovered that he had failed to disclose the blood group of the victim, which evidence would have undermined the conclusions as to the identity of the murderer.

36 Dr Clift's case highlights the need for the defence to be able to carry out their own experiments and to seek advice from independent experts.

37 It frequently arises that weeks or even months may pass before committal papers are served on the defence and they are made aware of the existence of exhibits and experiments which have been conducted. The defence often have great difficulty in gaining access to exhibits and, in any event, the experiments already carried out may have effectively destroyed an exhibit for the purposes of further examination. There is at present no duty on the prosecution to disclose proposed examinations to the defence and invite them to have a defence expert present at their tests. Nor are they required where possible to preserve an item in such a way as to enable the defence to test it.

38 In cases of murder an autopsy is carried out by a Home Office pathologist. It does not appear that such autopsies are ever carried out jointly with a pathologist employed by the defence, nor is it the practice for a defence pathologist to be present. This means that a defence pathologist has to carry out a second autopsy where both the first one and the deterioration due to delay may have so damaged the body as effectively to conceal vital evidence. Even in the more mundane crimes scientific evidence frequently deteriorates and therefore speed of examination is essential. [See also Appendix C.]

Unidentified defendant

39 Where a suspect has not yet been identified or arrested, at present no-one is charged with the duty of collecting and preserving possible evidence on his behalf. Where this evidence does not form part of the materials accumulated by the prosecution, it may disappear entirely. Furthermore, scientific experiments which ought to be carried out early on behalf of the defence are not even considered until there is a defendant.

Legal Aid

40 Formerly the employment of private investigators, scientists, hand-writing experts and the like by defence solicitors instructed under legal aid required that expenditure to be allowed on taxation. To ensure that it was, caution dictated to some solicitors that they obtain prior authority from the court which granted the legal aid certificate. Without it the sum claimed could be disallowed, in which case the solicitor would have to bear the cost himself.

41 Solicitors have frequently complained that asking for authority in advance was more likely to meet with a refusal than if the bill is presented after trial. There had also been complaints of arbitrary and variable practices. But the main criticism has been that defence solicitors have not employed the services they have regarded as necessary because experience has demonstrated that it would not be covered by the legal aid certificate.

42 The Legal Aid Act 1982 has introduced changes. In particular, section 5 (which came into operation on 1st March 1984) has, for the first time, allowed defence solicitors to apply to the criminal legal committee for the area for prior authority to incur these sorts of expenditures. It may be noted that in the first year the application was refused in nearly 800 cases.

Possible solutions

43 Having identified the scope of the problems facing the defence, we went on to consider solutions to them. One factor which carried weight with us was whether our proposed solutions would effectively counteract the special difficulties that arise where a defendant's solicitor is inefficient or inexperienced. We also bore in mind questions of finance, and in particular whether the government was likely to be persuaded to pay for any additional costs that might be incurred if our proposals were adopted.

44 Our discussions centred on two main areas:-

(i) Alterations limited to enabling the present system of private practitioners (financed by legal aid) to provide an improved service;

(ii) The creation of an office of Public Defender, with the following possible roles:-

a. A public advisory and investigatory service to complement the existing system of private practice.

b. A public legal defence service (with power to brief counsel) to operate parallel to the existing system.

c. A public legal defence service to take over all state-financed defence work, employing trial counsel as salaried staff.

Alterations to present system

45 It is the experience of many solicitors that criminal legal aid work is unprofitable. There are two ways in which this is presently overcome. One is to support a criminal practice from a civil practice and the other is to conduct it in an inadequate way by limiting the amount of work put into it. There is clearly scope for improvement which could be achieved by spending more money on legal aid. The wider use of private investigators and experts would go some way towards creating a better balance between the parties. A change in attitude of defence solicitors towards the reliability of certain types of evidence which so frequently remain unchallenged at present would also help. But such changes cannot deal with what we consider to be the under-lying problem.

46 Most private practitioners operate in isolation and without support save of the most informal kind. The services available to the prosecution gain an enormous advantage by their cohesion at both national and regional levels, and the wealth of knowledge and experience built up thereby.

47 It was suggested to us that local Law Societies might expand their information service to members. At present, no more than details of available experts and services are kept. We recognise that it would place an undue burden on the resources of a Law Society to go beyond this.

48 We have concluded that little would be accomplished by tinkering with the present system. Even the experienced and efficient solicitor would still labour under the disadvantages we have described. Despite improvements that could be made, the system of private practice, financed by legal aid, would always remain a poor relation to the prosecution.

Office of Public Defender

49 The idea of a legal defence service with salaried lawyers is not new in this country. Such offices exist in a number of other countries. The report of The Royal Commission on Legal Services in Scotland (Cmnd 7846) recommended the setting up of an experiment to assess whether a Public Defender (PD) system to run parallel with the present system should be introduced. We understand that this is under consideration.

50 We examined information on public legal defence services in the USA and Australia and an experimental service in British Columbia (see Appendices A and D). We considered whether their experiences had any validity in this country.

51 As an example, in New South Wales a Public Solicitor's office employs some 50 solicitors who can appear in Petty Sessions and in sentencing cases. The Public Solicitor (PS) instructs a Public Defender (of whom there are 15 appointed rather as Treasury Counsel are in this country) to represent a defendant in the higher courts. The PS system is considered there to be a cheaper and more efficient system than conventional legal aid using private practice. The career structure and salaries are such that they attract the best lawyers. The office operates from one building in Sydney and has extensive research facilities. It also makes use of private investigators.

52 We were impressed by this system, its efficiency over the private sector and its public accountability. However, it must be borne in mind that New South Wales has no tradition of criminal legal aid and that a population of five to five-and-a-half million (four-fifths of whom live in Sydney) does not present the same difficulties as exist in this country where the population is not heavily concentrated in one area. The system also revealed the disadvantages that appear to be inherent in all bureaucracies - worries over promotion, excessive paperwork and the difficulty of removing less efficient staff.

53 We agree with the Royal Commission on Legal Services in Scotland which, on examining various PD systems, found them to be held in high regard by both judiciary and private practitioners. The Royal Commission recognised that such systems laid themselves open to the criticism that they worked too closely with the prosecution and that on occasion, administrative convenience and cost were put before the needs of defendants. They also pointed out that such systems have been claimed to provide second-class representation.

Conclusions

54 We conclude that the interests of justice require as a bare minimum the creation of a public advisory and investigatory service available for use by the defence to complement the existing system. This will give the defence some of the advantages at present enjoyed only by the prosecution.

55 We envisage the functions of such a service as including the following:-

(i) facilitating the search for, and in certain circumstances undertaking the interviewing of, witnesses;

(ii) assisting in the procurement of relevant information from the prosecution, banks, Government departments etc;

(iii) collating and providing information including the state of scientific research and the availability and quality of experts in the various parts of the country;

(iv) providing a legal research department;

(v) enabling legal aid to be speedily obtained to cover the prompt instruction of experts and investigators;

(vi) ensuring the early examination of exhibits on behalf of potential and perhaps unidentified defendants;

(vii) ensuring the retention of possible defence exhibits where there is as yet no defendant;

(viii) facilitating adequate access to forensic science labortories.

56 To assist in the provision of these services, such a body should have statutory powers to demand information and overcome obstruction. However, we do not envisage that it would frequently be necessary for the statutory powers to be invoked. Experience elsewhere leads us to believe that such a public service would quickly acquire the reputation and status which would encourage co-operation rather than conflict with the prosecution.

57 Amongst other things, such a service is likely to allay many of the suspicions which the prosecution (particularly the police) and the defence presently have for each other. For example, there is a belief widely held by defence solicitors that the prosecution do not always comply with their duty to disclose to the defence names and addresses in their possession of possible defence witnesses. There is a similarly widely held belief by police officers that defence solictors cannot be trusted not to behave improperly if given the opportunity to interview prosecution witnesses. In consequence the police often tell their witnesses not to speak to the defence. The intervention in areas such as these of a public defence service trusted by both sides would give rise to the confidence which is presently so often absent.

58 Although such a service would obviously have to be funded from the public purse, we believe that its cost would not prove an undue burden. Court time would be saved by the more efficient preparation of cases and identification of issues. Trials would be shorter and fewer cases appealed. A centralised service such as this, organised on a national or regional basis, would be more cost-effective than merely extending the legal aid presently allowed without supplying solicitors with the benefit of the services we envisage.

59 We can see no objection in principle to our proposal for an advisory role for a Public Defender prior to trial, nor do we anticipate objections of principle to his office having the conduct of post-conviction and post-appeal proceedings (see later). We do, however, recognise that the institution of such an office raises the question whether the Public Defender should (as in certain other Commonwealth jurisdictions) prepare cases for trial and either defend them or instruct counsel to do so. Such a development would cause anxiety to those who believe that the tradition of defence by private practitioners should remain sacrosanct. Nevertheless, the majority of us takes the view that the interest of justice would be better served by permitting the PD office to represent the defendant (at his election) in the same manner as is presently done by a private solicitor under a legal aid certificate. Our reasons for recommending this additional function in suitable cases are:

(i) The PD office would be staffed by solicitors and barristers with extensive practical experience in defence work, who would have the commitment, the expertise and the resources to mount effective defences. They would have ready access to legal, investigatory and other forensic facilities necessary in preparing cases for trial, and would be subject to a degree of oversight and accountability which should ensure that cases are put forward properly.

(ii) The cases conducted by the PD office would frequently have elements of difficulty or importance which made it desirable in the public interest that there should be high standards of investigation and preparation, without the constraints imposed by the limited resources of small firms of criminal practitioners.

(iii) The choice of being represented by the PD office would be that of the defendant and all existing professional ethical rules, such as client confidentiality would bind PD office lawyers as rigorously as they bind private solicitors. In addition, a solicitor who found that he lacked the resources to cope with a particularly difficult case could, with the consent of his client, ask the Public Defender to take it over.

(iv) The PD office, in addition to maintaining high standards of preparation, would have the capacity to instruct the best counsel and to ensure that the defence case was properly presented.

60 It would not be surprising if this proposal were to arouse anxiety in the profession. When a similar project was under consideration by the Royal Commission on Legal Services in Scotland, the Scottish Law Society objected that it would destroy the accepted public view of the independence of the legal profession, that it would interfere with the normal professional relationship of confidence between solicitor and client, and that the public were unlikely to accept it.

61 We have carefully considered objections of this nature, but we do not believe they would prevail, so long as the PD office was seen to have the independence and experience we have recommended. The administration of criminal justice is too important a matter to be resolved by narrow considerations of professional self-

interest, and we anticipate, in any event, that the PD office, offering higher salaries than in many legal aid practices, and attracting those whose dedication to the work was undimmed by the difficulties of running an office, would be staffed by persons of demonstrable competence and ability. If quality is to be the ultimate yardstick, we believe that it would be found more assuredly and reliably in the PD office than in private practice.

62 We accept that there would be a reduction in the amount of defence work available to private practitioners. But it seems that this would be regarded as no great loss by many practitioners. We have been told repeatedly by solicitors that it is impossible with the present scales of legal aid payments, to conduct a criminal law practice both efficiently and economically. The Law Society has many times made the point that criminal practices have either to be financed from a practitioner's other work or conducted with such economy that the work itself has to be skimped. We envisage the PD office as working alongside the private sector rather than replacing it; whether defendants will seek to have their cases dealt with by the PD office will be a measure of its achievement. This has tended to happen where such schemes exist in other parts of the world.

63 We believe that the office of Public Defender would serve the interests both of defendants and of justice in ways which the existing system cannot do. It would be a professional and publicly accountable body, able to maintain high standards of work, in which both defendants and the public could have confidence. We emphasise the need for quality. The Public Defender himself would have to be someone of the calibre of the Director of Public Prosecutions. There would obviously have to be adequate scales of remuneration for professional staff and a proper career structure. We think that the organization should be supported by an advisory board comprising persons with distinguished records in legal defence work, including some from the various voluntary organizations which have concerned themselves for so long with the problems of the defence. If these conditions were satisfied we believe that competent persons, both barristers and solicitors, with a sense of dedication would be attracted to the work though not necessarily for the whole of their legal careers. A Public Defender would be able to supervise far more carefully than the present system allows, the standard of counsel instructed and would provide a geographically more even service than presently exists. So far as possible the wishes of the defendant in the choice of counsel would be accommodated, though the difficulties of achieving that desideratum are notorious. The office would be bound by the same rules of privilege as presently bind solicitors. This means that the defendant would have full control over such matters as disclosure to the prosecution and to the court, subject always to the overriding duty not to mislead the court.

64 We envisage that such an office would operate on a regional basis with access to a national information service. It would also have local offices throughout the regions. The Public Defender would also have the power to refer defendants to the private sector in cases where there was a conflict between defendants or where a defendant wished it. We discuss the practical details in Appendix D.

65 We consider that it would be economically viable to establish PD offices in relatively small centres of population. In those areas where this would not be practicable, a defendant would have to decide whether to engage (under legal aid) a local solicitor in private practice or to travel to the nearest PD office. Provision for a defendant's travelling expenses to consult a Public Defender would to some extent lessen the disadvantage of not having the choice of both a solicitor in private practice and a Public Defender in the immediate locality.

66 These proposals would be costly, but, when weighed against the savings to the legal aid fund of the work that would be undertaken by the Public Defender's office, we believe that the net cost would be little different from that presently shouldered by the legal aid fund.

67 The third possible role of a Public Defender [paragraph 44 (ii)c] would involve the removal entirely of all legally-aided criminal work from the private sector. This was rejected by the majority of this Committee. We regard the existence of a free choice in the selection of legal representation as an important right and one which should exist for all defendants, and not only for those able to pay for their legal services.

PART TWO: THE POST-CONVICTION POSITION

After Conviction

68 Once a verdict of guilty has been returned by a jury and sentence has been passed, the legally aided defendant finds himself in a somewhat difficult position. He is entitled to have a written opinion from the counsel who appeared at his trial as to whether there are arguable grounds of appeal which may be presented to the Court of Appeal (Criminal Division). If there are such grounds, then counsel who appeared for him is obliged to settle them and the solicitor who acted at his trial must lodge these within 28 days. This is, however, only the first hurdle he must clear. With the exception of the fairly rare cases where the appeal is solely on a point of law, at this stage he is not appealing, but is only, seeking leave to appeal. The machinery of the application for leave is that the papers are considered, without, oral argument from counsel, by a single judge, who either gives leave to appeal or refuses it. This information is frequently communicated direct to the applicant. It is often the case that his solicitor only receives the information if his client informs him. Occasionally the single judge may refer the application for leave to the full court for determination.

69 If counsel advises that there are no arguable grounds of appeal, both he and the solicitor cease to act under the terms of the legal aid order and the defendant is left to fend for himself.

70 The defendant who is in a position to pay is in a far superior position to that of his legally-aided counterpart. Not only is he able to communicate with the solicitor and counsel who represented him at his trial, who can advise him of the progress of his appeal, but if he is dissatisfied with the way the case was handled he is able to change his solicitor and/or counsel and have fresh minds to prepare his case for appeal. Not so the legally-aided defendant. The practical position is that once the grounds of appeal have been lodged by the solicitor he is *functus officio* and if leave to appeal is granted, the preparation of the appellant's case is taken over by the Registrar of Criminal Appeals who briefs counsel, almost invariably the one who appeared at his trial, to argue the case before the Court. An appellant in custody who wishes to be present at the hearing of his appeal must make an application for leave to that end. The Donovan Committee on the Court of Criminal Appeal (Cmnd. 2755 4 1965) considered that no distinction should, in theory, be made between the appellant in custody and the appellant at large, but recognised the administrative burden if every prisoner wished to be brought to court to hear his appeal. The Devlin Committee on Evidence of Identification in Criminal Cases (1976, HC 338) considered that there should be a general discretion that when an

appellant in custody had been brought to the court building (as had occurred in one of the cases particularly examined by that Committee), he should normally be admitted to the court. We understand that no such general direction has been given but that the influence of the Devlin Committee's recommendation has achieved a general practice that complies with it.

71 Where the single judge refuses leave the solicitor who acted on behalf of the applicant at his trial should, as a matter of good practice, advise on the prospects of pursuing the application, and on the attendant risk of losing remission of sentence, or of abandoning appeal. But unless counsel and solicitor are willing to represent him thereafter without charge, the applicant is left without professional assistance. The defendant who, against the advice of his lawyers, then renews his application for leave to appeal after a refusal by the single judge is always at risk of losing remission of sentence equivalent to the time between the single judge's refusal and the full court's consideration of the renewed application.

72 The defendant with means, or whose family or friends are prepared to finance an appeal, is in a better position. The hurdle of the single judge is often dispensed with, and the full Court of Appeal will usually treat the application for leave as the appeal itself if it considers that leave should be granted.

73 The applicant's prospect of succeeding on appeal are greatly enhanced by representation. Moreover, the represented applicant is hardly ever penalised, though the Court of Appeal has felt it necessary to issue a warning that the opinion of counsel is not an automatic safeguard against the loss of remission of sentence.

74 The disadvantages of this system for the legally-aided defendant can readily be appreciated. The Registrar of Criminal Appeals has a dual function. Firstly, that of an administrative officer of the court, and secondly that of instructing solicitor. The arguments in favour of this dual function are economy and possibly administrative expediency, but the consequence of it is that the convicted and usually imprisoned defendant finds himself in the very difficult position of being virtually unable to communicate with anybody who is acting on his behalf. However fairly the Registrar and his staff may act (and we do not doubt that they are at pains to do so), the defendant, now the appellant, is a faceless and very often unseen man, and the appeal is for them a paper exercise. The appellant's inclination is then to write longer and longer letters. Inevitably the longer the letter, the less likely it is to be read.

75 The Registrar, in endeavouring to act for an applicant for leave to appeal against conviction or sentence, is in an anomalous position. He has neither the resources nor the resolve necessary for the proper conduct of an appeal. There exists no professional confidence between the applicant and himself; indeed, he is required to carry out duties that are inconsistent with it. Where an appeal fails to be heard a departmental note on the history of the case and the evidence given and proposed to be given is prepared for the use of the appellate judges. This is done

either by the staff of the Criminal Appeal office or in some cases by barristers in practice. This note is not disclosed to the parties to the appeal. The Criminal Division of the Court of Appeal has a heavy workload of difficult cases. That the court should take the initiative of informing itself by such a note is convenient and, indeed, to be welcomed, though the Donovan Interdepartmental Committee was critical of the practice. There are, dangers: the note may contain inaccuracies of fact or emphasis; it may inadvertently convey a recomendation; it may, in short, have an influence on the outcome of the appeal; and it is, of course, not disclosed in open court. One solution to these objections would be to have something resembling a case stated. The 1907 Criminal Appeal Act, indeed, contained a provision for stating a case but it was little used, no doubt because of the difficulty of stating a case where the defendant was not represented, as frequently occurred. That difficulty no longer exists. As there is no solicitor, counsel briefed by the Registrar cannot, without breach of professional etiquette, interview the applicant. The operation and inadequacies of the system were graphically described in the report of Lord Devlin's Committee on Evidence of Identification in Criminal Cases. Though condemned in the report, the system is essentially unaltered today. One of its particular drawbacks is that the Registrar can only operate within the confines of the aid (if any) ordered by the single judge. If, for example, the appellant desires to call fresh evidence, a separate application for leave to do so must be made, and unless it is granted by the single judge after considering written material in support of the application, the Registrar cannot instruct a solicitor to prepare the evidence. The privately funded applicant labours under no such difficulties. He has a solicitor to assemble the evidence and, though leave to call it may be refused by the full court if the failure to do so at the trial is not adequately explained, he is in a stronger position by the very fact of having the evidence to hand, to persuade the Court of Appeal to admit it, as the *Dougherty* case described in the Devlin Report demonstrates.

> [We] do not think that the discretion [to admit fresh evidence] can be properly exercised when the weight of the further evidence is unknown. [paragraph 6.13]

76 It is unhappily true that from time to time cases at the trial are poorly prepared by instructing solicitors and poorly presented by defending counsel and that the defendant thinks that his counsel or solicitor made serious errors in the conduct of the case, e.g. by not calling the defendant or available witnesses to give evidence, or unnecessarily attacking the credit of a prosecution witness thereby resulting in the defendant's criminal record being admitted in evidence. The effect of the Devlin Committee's recommendations is that where the acts or omissions of counsel or solicitor or both will be the subject of scrutiny at an appeal the general practice should be for a new counsel or solicitor to be assigned. This is one obvious instance where a Public Defender could fulfil a useful role.

77 It will be remembered that from the time of their creation by statute in 1907 until 1967, appellate criminal courts had only two options open to them in dealing with irregularities at the trial, namely to quash the conviction, or, if the court

thought that the defendant would in any event have been properly convicted, to uphold the conviction by applying the proviso that no miscarriage of justice has actually occured.

78 The power to order a re-trial created by the Criminal Justice Act 1967 is limited to cases where fresh evidence is available that could *not* reasonably have been produced at the trial, and that might have led a jury to return a verdict of not guilty. In fact, since the power to order a re-trial has been available to the Court of Appeal, there have been very few such re-trials. There have been some striking instances where the Court of Appeal did not allow itself to be influenced to order a re-trial by evidence which, though available to the defence at the time of the trial, was not, for a variety of reasons, put before the jury.

79 The Court of Appeal has power to adjourn an appeal pending the completion of an investigation of fresh evidence but this is rarely done; indeed it is our experience that the court is reluctant to adjourn matters for further investigation. In one case, for example, where certain evidence had come into the possession of the police which tended to exculpate the appellant, it was only because of the strongest representations by counsel *for the Crown* that the court reluctantly gave an adjournment to allow the police to continue enquiries, which in fact led to the quashing of the conviction.

80 Alarmingly, it is sometimes years after a conviction that a case is re-opened and the conviction is set aside either by the Court of Appeal where the Home Office refers the case to that court for its further consideration or the individual is pardoned under the Royal Prerogative. Public disquiet about such cases is justified for three reasons. First that a man has been wrongly convicted and punished; secondly, that the real wrong-doer goes free, and thirdly, that the system of appeal against and review of criminal convictions is such as to leave the distinct possibility that such cases remain undetected, and so, more importantly, unrectified.

Post-appeal

81 Even worse is the position of the convicted defendant once his appeal has been dismissed. It is open to him to petition the Home Secretary and allege that the conviction is wrong or doubtful. The Home Secretary may recommend the exercise of the Royal Prerogative for a free pardon or may refer the case to the Court of Appeal for review. The procedure of the Home Office in such cases is described below. Once again there is no professional relationship between the petitioner and the Home Office, as there is not in the case of the Registrar of Criminal Appeals and an applicant for leave to appeal. The Department has no facilities for investigations of its own and is heavily dependent for such investigation on the police. Nor are there sufficient staff to deal with such cases in the way in which a solicitor would deal with them.

82 The approach adopted by the Home Secretary in considering the rightness of a conviction was criticized in the Devlin Report:

> Essentially the test which the Home Secretary applies is a reversal of the burden of proof. This does not mean that the petitioner must provide indisputable proof of innocence, but he must establish very convincing grounds for thinking that he did not commit the offence of which he has been found guilty by due process of law. This is a lot stiffer than the test that is applied by the Court of Appeal. There, since the appeal is based on fresh evidence, there is an initial burden on the appellant to show that the evidence he is tendering is credible and material in the sense that it might have made a difference to the verdict. But, once that hurdle is cleared, the appeal follows the ordinary course with the burden of proof, always, on the prosecution to show that after a re-examination of all the relevant material the conviction is one which is 'safe and satisfactory', that is, as it has been put, that the court is not left with a 'lurking doubt'. We think that the Home Secretary should apply the same test to the Court of Appeal. It is anomalous that he should not. [Paragraphs 6.20 and 6.21]

At this stage there is neither legal aid nor any official organisation to take up a petitioner's case for him. The best he can do is to approach a voluntary organisation such as JUSTICE or the National Council for Civil Liberties, none of which has adequate resources for the purpose. JUSTICE receives some 50 applications for assistance from potential petitioners in a year. To do anything there must be a petition to the Home Secretary.

83 The way in which he deals with this is described in the evidence of the Home Office to the Home Affairs Committee of the House of Commons in 1982:

> "HOME OFFICE CONSIDERATION OF INDIVIDUAL CASES
>
> 18. Consideration of cases involving possible exercise of the (Home Secretary's) powers and of requests for compensation for wrongful charge or conviction, is undertaken by a division of the Home Office's Criminal Department. The staff concerned are one Assistant Secretary (who has other responsibilities), four Principals (one of whom is mainly employed on other work) and eight Higher Executive Officers (HEOs), with appropriate clerical support. The total of rather more than twelve executive and higher level staff involved in the consideration of this work compares with the divisional complement of 14 mentioned in the Devlin Report, but there has since been a sharp fall in the number of cases requiring consideration. Precise aggregate figures of cases handled by these staff are not maintained, but divisional records indicate that since 1976 there has been a reduction of over a quarter, from some 3,700 a year to some 2,650.
>
> 20. Each case is in the first instance considered by one of the HEOs. In view of the importance of the work, and the variety of issues which can arise in its discharge, this consideration is at one grade higher than that normally applying to initial Home Office casework. The initial consideration will normally entail establishing two key facts: whether normal avenues of appeal have been exhausted, and whether the arguments put forward constitute new evidence (i.e. evidence that has not been considered by the courts). In order to establish the latter the HEO will usually examine the Court of Appeal's papers (which normally include a copy of the trial judge's summing up) or call for a report from the police on the evidence produced at the trial. Where a formal complaint has been made about the conduct of police officers involved in the case it is also normal practice to seek a copy of the report of the officer appointed to investigate it by the Chief Officer of the force concerned.
>
> 21. Where there is new evidence in the case it will also be necessary to consider whether supplementary enquiries need to be made to elicit further information. In making this assessment Home Office staff scrutinise documents such as police complaints reports and court transcripts which are immediately available. But as these were compiled for specific purposes distinct from that of examining the facts of the case as a whole in relation to the conviction, it is frequently necessary to make further enquiries, often of the police, from this different standpoint. For example, this may be necessary when considering a police complaints investigation report; here a decision by the Director of Public Prosecutions, or a chief officer of police, to take no action against the police officers concerned has no direct bearing on the Home Office's quite separate scrutiny of such reports.
>
> 22. In exceptional cases it will be necessary to call for a systematic further inquiry into the circumstances of the case, often by a senior officer of an 'outside' police force. Very occasionally there have been public enquiries by independent figures of legal standing, most recently that by Sir Henry Fisher into the murder of Maxwell Confait. In short, the Home Office consideration of a case seeks to ensure that all relevant available information is assembled to enable an assessment to be made as to whether any of the powers available to the Home Secretary should be exercised."

84 The quality of an investigation by the Home Office is, as indicated above, uncertain. If a police report is commissioned, then there will be, again understandably but perhaps not reassuringly, almost total reliance on the report and its recommendations. Indeed, whether a case is thoroughly investigated may depend on external pressure. In other cases, a prisoner's Member of Parliament may also be able to exert some pressure, as may also such organisations as JUSTICE and the National Council for Civil Liberties.

85 Any further police investigation called for by the Home Office has obvious disadvantages. Without doubt the police have the best facilities. However, it is evident that in many cases they have a vested interest in upholding the conviction. This risk is always present where the investigation is controlled by officers from the

same force that investigated the case before the conviction, particularly where there is an allegation about malpractice by the police or a failure to make a proper investigation in the first place. Even if the police carry out the investigation impeccably, justice is not seen to be done. Reports are neither published nor made available to independent bodies. There is no independent supervision or review of the investigation.

86 There are alternatives that would satisfy the need for the element of independence so obviously lacking in the present system of post-appeal investigation. The simplest would be for a solicitor to be given legal aid to make inquiries on behalf of the court. The whole problem of post-appeal investigation of the correctness of a conviction was examined by the Devlin Committee in 1975 and twice by JUSTICE Committees. The Devlin Committee's report concluded:

> The discussion [with representatives of the Home Office] went on to contemplate an independent review tribunal with rules of evidence and procedure different from those of the ordinary courts, to which cases unsuited to the section 17 [of the Criminal Appeal Act 1968] procedure could be referred. We recommend that the feasibility of creating such a tribunal should be studied within the Home Office. It could be manned by persons with criminal appellate experience and its powers might be either determinative or advisory. [paragraph 6.22]

87 The JUSTICE Report, *Home Office Reviews of Criminal Convictions*, 1968 recommended the appointment by the Attorney General of a panel of senior practitioners experienced in criminal law. Where a post-appeal investigation was called for a member of this panel would be nominated to conduct an inquiry and to report with recommendations. He would, where necessary, have the services of a corps of independent investigators. In 1977 another JUSTICE committee, under the chairmanship of William Denny QC, examined the subject of appeals against conviction to the Court of Appeal (see Appendix B). This committee also concluded that the existing system was inadequate and that what was required was a new body, distinct from both the Court of Appeal and the Home Office, that would investigate difficult cases both where it was contended that the conviction was unsafe and unsatisfactory and where fresh evidence was relied on. The committee reached no conclusion on the precise nature and composition of this body. This is also in essence the so far unimplemented recommendation of the Home Affairs Committee of the House of Commons (Sixth Report, Session 1981–2, HC 421).

Conclusions

88 We consider there to be an overwhelming case for the creation of an office of Public Defender to deal with post-conviction and post-appeal situations.

89 We believe that the serious shortcomings in the present system, outlined in this part of this report, can best be overcome by the creation of an independent office such as that of Public Defender. The Public Defender would be able to undertake and consolidate those functions presently carried out somewhat haphazardly by a number of governmental and non-governmental agencies, as well as those additional functions which we regard as essential but which at present are not catered for at all.

90 We considered the stage at which the Public Defender should become involved. If the conclusions in Part One of this report are adopted then, where the Public Defender had acted for a defendant at his trial, he would continue to do so through all later stages. Where, however, the defendant was represented under legal aid at his trial, either because he had elected to be so represented or because the office of Public Defender did not extend to the conduct of cases before conviction, we consider that legal aid should cease once a defendant has been convicted and sentenced. Trial counsel would then be obliged to advise the defendant through the office of Public Defender on whether there were any grounds of appeal and, if so, to settle them.

91 The Public Defender would thereafter take over those tasks presently undertaken by the Registrar of Criminal Appeals concerning the preparations for appeal and the instructing of counsel. Several of the present limitations would thus be overcome immediately. A defendant would have someone representing his interests with whom he could communicate directly and in person. The Public Defender would be able to interview him in prison, instruct counsel and institute any inquiries that were considered necessary.

92 The Public Defender would fill the disturbing gap under the present system where legal aid is unavailable to pursue the case further or to provide independent legal advice in the following circumstances:

(i) where trial counsel has advised that there are no grounds of appeal;

(ii) where leave to appeal has been refused;

(iii) where trial counsel and/or solicitor were (or are perceived by the defendant to be) negligent or incompetent.

93 We accept that it is not in the interests of justice for defendants to be allowed an indefinite number of reviews of their cases. Nevertheless, as the system now operates, little in the way of safeguards is provided for the legally-aided defendant to allow him a second opinion on his case.

94 A Public Defender should have the power to consider any case and, if he believes there to be grounds, to institute an appeal whether or not counsel's advice supports this. We recognise that this will impose on the Public Defender the considerable burden of weeding out unmeritorious cases but we consider that no one will be better equipped to do this than he. In cases where leave to appeal has been refused by the single judge, again where he considers there to be grounds, the

Public Defender would have the power to provide legal representation to argue the application for leave to appeal before the full court.

95 He would also be able to consider whether the conduct of the defendant's trial had been negligent or faulty. The defendant could then receive an independent opinion explaining why, if it were the case, no valid grounds for criticism existed. Alternatively, if there were grounds for complaint, the Public Defender would be able to pursue the matter and instruct new counsel to present the case in the Court of Appeal.

96 The Public Defender would have available all the papers used by the defence at the trial, he would be able to interview the defendant and any witnesses (irrespective of whether or not they gave evidence at the trial), and undertake any further investigations he considered necessary. In short, he would have extensive powers to re-assess cases and instigate appeals.

97 In the post-conviction situation, the Public Defender would not labour under the burden of having to try to combine the present irreconcilable dual roles of the Registrar of Criminal Appeals. He would be independent of the court. In the post-appeal situation, the Public Defender would undertake the vital investigatory role now played by the Home Office and various other organisations. he would institute inquiries, for example, for fresh evidence, having power to use the resources (including the man-power) of the police as well as having available independent investigators. His reports would then be submitted either to the Court of Appeal or to any review tribunal or body of inquiry set up to consider such reports.

98 *To sum up,* we believe that after conviction the Public Defender would be better able to carry out functions now performed by the Registrar of Criminal Appeals, the Home Office, the police and voluntary organisations. Furthermore, with powers to take up any case which he considered warranted further investigations, a vital and at present largely unfulfilled sevice would be provided.

99 The office of Public Defender would fulfil an essential need. It would operate with independence and authority and would by its very nature enjoy the confidence of defendants, the judiciary and the public. In short, the office of Public Defender would provide a clearly defined agency for the proper discharge of an important responsibility in the administration of justice in this country.

HISTORICAL AND COMPARATIVE REVIEW

1 In 1919 a Private Member's Bill to set up a Public Defender Department was introduced; it sought to provide a defence for all prisoners charged with indictable offences. It made no progress. At that time, apart from the dock brief, the only official provision of aid for such prisoners was under the Poor Prisoners' Defence Act 1903. It was not available before the committal, was awarded by the justices or the trial judge and, most curiously for the present-day outlook, was only available to those who had disclosed their defence. The Lord Chief Justice, Lord Alverstone, explained that: 'the Act was not intended to give a prisoner legal assistance to find out if he has got a defence... The governing principle of the Act is that people who have a defence should tell the truth about it at the earliest opportunity' (23 vii 1904 quoted Hansard, HC Debates, 8 xi 1929, c 1416). The first report of the Committee on Legal Aid for the Poor, under the chairmanship of Mr Justice Finlay, March 1926 (Cmd 2638) concluded:

> 'in the course of the exhaustive evidence to which we have listened, matters have emerged which we think show that, satisfactory as the system is, it is not incapable of improvement'. (paragraph 22)

As the late Professor R.M. Jackson observed, 'there can be few reports in which recommendations have been put forward quite so half-heartedly' (*The Machinery of Justice in England,* 7 edn., p 237). The Finlay Committee recommended against an office of Public Defender: 'the weight of evidence was against this far-reaching proposal'; it would be 'exceedingly expensive and difficult to work' and the volume of cases would not justify it. Despite this another Private Member's Public Defender Bill was presented in 1928, but was no more successful than its predecessors. In 1930 the Poor Prisoner's Defence Act reached the statute book. As well as widening the scope of the aid provided under the 1903 Act this did away with the obligation to disclose his defence as a condition of the prisoner's being granted a defence certificate, though the 'gravity of the charge' test remained.

2 'The Act did not work well in the period before the war', commented Professor R.M. Jackson, '... some courts being apparently unaware that the requirements of a defence being disclosed had been repealed' (ibid). Nevertheless the act survived the introduction of the Legal Aid and Advice Act 1949. The parts of that act affecting criminal law, under which the test for the grant of aid was 'the interests of justice' only came into effect in 1960 and 1963. The system was then reviewed by a committee under the chairmanship of Mr Justice Widgery (later Lord Chief Justice). Its principal recommendations were incorporated into the Criminal Justice Act 1967 (and subsequently into Part II of the Legal Aid and Advice Act

1974), including criteria for the grant of aid. This is essentially what obtains today. The court is the authority responsible for granting legal aid. In the case of prosecutions for indictable or 'either-way' offences there is a right of appeal against a refusal to a criminal legal aid committee which may also give solicitors prior authority for expenditure in magistrates' and Crown court proceedings including counsel in magistrates' court proceedings. The applicant's eligibility 'is determined not by the merits of his case but by the seriousness of the charge brought against him' (Benson Royal Commission on Legal Services (Cmnd 7648, 1979), paragraph 11.24). Legal advice is, however, available through the so-called 'green form' system introduced by the Legal Advice and Assistance Act, under which a solicitor may provide advice subject to a simple means test. The court can extend this to include representation. As the Lord Chancellor's Advisory Committee on Legal Aid has observed: 'The rules of the two systems do not blend to constitute a single satisfactory basis for the provision of the appropriate legal service' (31st Annual Report 1982, HC 131, paragraph 54). The Lord Chancellor's Committee has made detailed proposals for the integration of the two systems.

3 The existing criminal legal aid system in this country consists, in essence, in the purchase of the services of private practitioners by the State. It is noteworthy that the provisions of the 1949 Act for salaried full-time or part-time solicitors to provide an immediate service in every locality has never been implemented. However, the idea of a salaried state lawyer acting for accused persons is not entirely unknown in this country as witness the Official Solicitor. The idea of a state agency in aid of the individual is to be seen expressed also in the Commission for Racial Equality, the Equal Opportunities Commission, the office of the Director General of Fair Trading and the United Kingdom Immigrants Advisory Service.

4 In Scotland there has, since the 15th century, been better provision than in England and Wales for legal assistance for poor persons in criminal as in civil proceedings. For the superior courts the Bar and the Society of Solicitors appointed lawyers to act for the poor. For the sheriff courts 'agents for the poor' were appointed by local solicitors in the large towns. An applicant for legal assistance received it, in practice, without enquiry into his means [Special Report from the Select Committee on Poor Prisoners' Defence Bill, 1903, HC 254, p 59; Appendix No. 1, Memorandum of the Solicitor General for Scotland]. This was, of course, a private enterprise initiative. In 1937 the Morton Report of the Poor Prisoners' Representation (Scotland) Committee recommended a system of 'public defensors' in Scotland. However, the Guthrie Report on Legal Aid in Criminal proceedings in 1960 (Cmnd 1015) were 'strongly inclined' to prefer, for Scotland, a rota of private practitioners to a salaried 'defensor' in the sheriff courts. The Hughes Royal Commission on legal Services in Scotland (Cmnd 7846, 1980) considered the idea of a public defender system, and indeed looked closely at several such systems in North America, and concluded that

> 'with annual expenditure on criminal legal aid now running at over £4 million it would be irresponsible to ignore a potential saving if this could be achieved without a reduction in the quality of the service to accused persons'. (paragraph 8.77)

The majority of the Hughes Royal Commission reached the view that:

> 'a public defender was an acceptable way to provide State assistance to accused persons provided that no-one is compelled to use his services. Such a service might be better value for money than criminal legal aid; and public defenders operate successfully in other parts of the world'. There was, in fact, a 'public defensor' in the Edinburgh Police Court some years ago... There, is however, no guarantee that a public defender would be acceptable to clients in Scotland, or that he would be better value for money than legal aid.'

The Hughes Royal Commission accordingly recommended that there should be an experiment:

> 'to assess whether or not a public defender system could with advantage be introduced in Scotland to run parallel with the service provided by solicitors in private practice supported by legal aid'. (paragraph 8.81)

Two members of the Hughes Royal Commission dissented from the view of the majority that 'a public defender employed by the State is an acceptable way to provide advice and representation for persons accused of crime whether use be compulsory or not'. They considered that:

> 'A State agency, as the public defender system envisaged by the Commission is, cannot ultimately guarantee independence in reality or appearance. That is the fundamental objection'. (Report, p 409)

We understand, however, that the Royal Commission's recommendation of a public defender experiment in Scotland is under consideration by the Scottish Home and Health Department [Hansard, HC, First Scottish Standing Committee, 5th Sitting, 21 December 1982, c. 159].

5 In other parts of the common law world the public defender system is long established and is in some instances the only form of criminal legal aid. An experiment in the comparative cost and acceptability of the public defender and criminal legal aid has been mounted at Burnaby, Vancouver, BC, under the auspices of the Canadian Department of Justice. In the United States of America, the legal framework for a public defender service at both federal and community level is provided by the US Criminal Justice Act 1964 as amended. A Federal Public Defender is appointed by the judicial council of the relevant circuit for a term of four years (but is removable for incompetence, misconduct in office or neglect), receives remuneration comparable to that of the US District Attorney and is given an annual appropriation based on a budget. Community Defenders are 'nonprofit' organisations of a defence counsel established and administered by any authorized group. Such organizations, which are not to be confused with State public defenders, are supervised by, and are accountable to, the Judicial

Conference of the United States which approves grant for pump-priming expenses and 'periodic sustaining grants to provide representation and other expenses pursuant to' the provisions of the Federal Act. A regulatory scheme for the operation of these provisions has been developed by the Judicial Conference. The majority of States of the Union have public defenders supported financially by the State and in some cases appellate defenders. Generally speaking during the past twenty years the public defender system has seen a vast expansion in the United States and opposition to it by private practitioners has diminished. It is said to be well accepted and well established.

6 In Australia, the public defender system in varying forms has been adopted in three States of the Commonwealth: New South Wales, Queensland and Victoria, though only put on a statutory footing comparatively recently. The Commission of Inquiry into Poverty of the mid-1970s produced reports that contain a great deal of information about the operation of the public defenders and public attitudes to them. There have been some changes in the practical arrangements since then, but the reports we have seen indicate that the public defender performs a valuable service without any apparent loss of independence. The system appears to have been developed furthest in New South Wales. In that State there is both a Public Solicitor and a Public Defender. The Public Solicitor employs a staff of some 50 legally qualified persons supported by paralegal and clerical staff. The starting salary of the legal staff is £14–15,000 and the top salary is £30,000. The Public Defender, so-called, is in fact a body of retained members of the criminal bar. There are about sixteen of these and they receive £30,000 per annum. There is a career structure and members of the service are eligible for appointment to the bench. The disadvantages that have been suggested to us are, first, those of bureaucracy. There is much form-filling and it is not easy to dispense with indifferent performers; they are relegated to administration but that does involve some wastage of public funds. Second, there is some effect on the private part of the profession. The Public Defender deals with approximately 90% of the cases and the remaining 10% tend to be dealt with by indifferent firms and there is some evidence of corruption among these. Third, there tends to be a fairly rapid turnover of qualified staff. Many stay in the Public Solicitor's office for no more than four or five years before moving into private practice. The advantages are that a more uniformly efficient service is achieved because of greater supervision and accountability than is possible with private practitioners. Backup services are better. The Public Solicitor has a research department and information on technical experts. Generally it is easy to obtain whatever is needed for the proper defence of the accused. There are fewer returned brief problems and a high quality of service can be assured.

JUSTICE COMMITTEE ON APPEALS AGAINST CONVICTION TO THE COURT OF APPEAL - MEMORANDUM SUBMITTED TO THE LORD CHIEF JUSTICE, SEPTEMBER 1977 (EXTRACTS)

Weight of evidence/fresh evidence cases: an investigating body

1 Difficult cases continue to arise causing much public disquiet; cases in which a convicted person has appealed to the Court of Appeal complaining that the evidence called at his trial was unsatisfactory in that the evidence which existed was not considered at that trial, but the Court of Appeal refused to hear it and dismissed his appeal. At a later date, sometimes years later, his case is re-opened and his conviction is set aside either by the Court of Appeal after reference to it for its further consideration by the Home Office or by pardon under the Royal prerogative.

2 Public disquiet is justified for two reasons, firstly that a man has been wrongly convicted and punished and secondly that the system of appeal against and review of criminal convictions is such as to leave the real possibility that other such cases remain undetected, unidentified and unrighted.

3 Undeniably these cases can pose particular problems for all concerned. The Court of Appeal is empowered to quash a verdict of guilty if they think "under all the circumstances of the case it is unsafe or unsatisfactory". This is a subjective test, intended to be liberally interpreted - does the court have any lurking doubt whether justice has been done. But cases vary infinitely in their circumstances and in any particular case doubt may lurk within one judge where another may find none.

4 Similarly with fresh evidence cases, opinions may well vary as to whether the usual prerequisites are satisfied, namely that the evidence tendered is not only relevant but also "likely to be credible" and the explanation for failure to adduce it at the trial is a reasonable one. The increasing use of the over-riding power given to the court and contained in Section 23 (1) of the Act of 1968 to receive fresh evidence if necessary or expedient in the interests of justice is welcome but its use, being discretionary, is open to wide variations of interpretation.

5 Once the preliminary hurdles are overcome and the evidence is admitted, the judges face what may be a daunting task. They did not hear the evidence called at the trial and although they may have a shorthand note of it, their evaluation of the worth of that evidence must in some cases be a matter of conjecture. In such cases, the assessment of the effect, if any, which the fresh evidence might have had upon the mind of the jury and the questions whether the conviction ought to be quashed

because of it and if so whether to quash outright because the verdict was thereby made unsafe or unsatisfactory, or to order a re-trial or to substitute a conviction of a lesser offence, must all call for the making of very difficult decisions which will have the greatest importance for the convicted person.

6 The heavy workload borne by judges sitting in the Court of Appeal (Criminal Division) is well-known. Inevitably, they must welcome the provision of proper assistance in getting to grips with a case and identifying the problem areas. A departmental note is supplied, but in the nature of things it cannot be a complete guide to the case and its background; nor is it necessarily accurate in all respects. The same comment and more may be made as to the preparation and presentation of the application or appeal on behalf of the convicted person. If the court is not fully and effectively assisted to an appreciation of the features which may render a conviction unsafe or unsatisfactory or to a recognition that proposed fresh evidence in the context of that previously given at the trial justifies further enquiry into the case, the risk that these difficulties in decision-making may produce injustice is made the greater.

7 Once an appeal has been dismissed, the obstacles in the way of effectively re-opening a case are, in practice, formidable. Application can be made to the Home Office for a royal pardon on a reference of the case back to the Court of Appeal but this will never be granted if the material relied upon has already been considered by that court.

8 Where additional material is relied upon its investigation by the Home Office is put into the hands of police officers (generally but not necessarily, from a constabulary other than that involved in the case) and whatever its merits this procedure invites complaint by the convicted person that the investigation was less than adequate or impartial. The Home Office department concerned is staffed by an Under-Secretary, an Assistant Secretary, 18 Higher Executive Officers and a small secretarial staff. The decision by the Home Secretary whether to refer to the Court of Appeal or not must be substantially dependent upon the work of that Department, none of whose members is legally trained. It has a workload of approximately 3,000 petitions or applications per year. The JUSTICE Report on Home Office Reviews of Criminal Convictions (1968) considered the position in detail and it is unnecessary for us to repeat its conclusions here. Needless to say we strongly support them and we shall turn to certain of its recommendations later in this report.

9 Even when the Home Secretary has been persuaded to refer the case back to the Court of Appeal, the correct determination of where the truth lies and its proper effect upon the conviction is by no means guaranteed. The court is confined to the consideration of the specific grounds upon which the matter was referred to it and when they include questions of fresh evidence the difficulties facing the court referred to earlier in this report are likely to be compounded by the staleness of the case.

10 It is also worth emphasising that the discovery of fresh evidence or fresh material affecting the case is not a once and for all process – in a given case it may be on-going, year in year out, the individual items having different weight but whose cumulative effect may be substantial and such as would at some stage justify the quashing of the conviction by the Court of Appeal.

11 We have come to the conclusion that the present system does not provide adequately for dealing with all cases where it is contended that the conviction is unsafe or unsatisfactory, or where fresh evidence is relied on. In many cases, as we believe, the court would be considerably assisted by preliminary investigations into the matter complained of or relied upon which cannot be carried out in court or by the judges or officers of the court as at present constituted.

12 Those investigations should be made by a new body, which we consider should be under the control of, and responsible to, the court. An alternative would be a body independent of the Court of Appeal and the Home Office but capable of being activated by either. The precise nature and composition of this body is open to discussion. If the recommendations contained in the 1968 JUSTICE Report on Home Office Reviews of Criminal Convictions were implemented, there would be created a panel of senior practitioners experienced in criminal law appointed by the Attorney General after consultation with the President of The Law Society from whose number one would be selected and charged with investigating, reporting his conclusions and making such recommendations as might assist. The panel would be entitled to call upon the services of police and other bodies but would have available when necessary a corps of investigators recruited for the purpose and independent of other authorities.

13 We see no reason why the same or a similar body should not carry out the functions required of the investigating body charged with making preliminary reports to the Court of Appeal in those classes of cases we have under consideration. There is also no reason why *ad hoc* members should not be appointed, for example, a High Court Judge in a particularly heavy case.

14 Whether such a body could or should be capable of being brought into operation by someone in addition to the Court of Appeal or the Home Office (for example, some new 'Ombudsman for Criminal Cases' acting at the request of the convicted person or third parties) and whether in any circumstances the factual report could or should be binding in the case are matters for debate. In our view, it is not necessary to reach any decision on these matters at this stage; they do not affect the principle proposals we have advanced.

15 We would emphasize that we do not envisage that, in every application for leave to appeal on the ground that the verdict was unsafe and unsatisfactory or to present fresh evidence, the court would enlist the aid of the investigating body. In many cases no problems of credibility may arise and having regard to the issues the court may find no difficulty in quashing the conviction. In other cases, the tendered evidence may readily be capable of being shown to be wholly worthless by the

ordinary processes of testing it in the witness box so as to make further enquiry entirely unnecessary. It is in respect of that hard core of difficult cases we have referred to earlier in this report that we believe the court requires and will seek the aid of the investigating body.

16 We recognise that to this limited extent our proposals may be thought to represent a departure from our ordinary adversarial system and the introduction to it of an inquisitorial element. We do not think that this alone should constitute such an objection as to deprive the Court of Appeal of what could prove to be a valuable means of improving the present system.

Appendix C

NOTE ON AN INDEPENDENT SERVICE FOR THE PROVISION OF FORENSIC SCIENTIFIC AND OTHER EXPERT EVIDENCE

1 In paragraphs 28–38 of this report we discuss the problem facing the defence in obtaining forensic science and expert evidence – in particular the dangers inherent in using police and Home Office facilities and the absence of comparable independent facilities for use by the defence. Although it was peripheral to our examination of the need for a Public Defender, we were sufficiently concerned about the serious imbalance that exists between the prosecution and the defence in the matter of access to essential evidence to give some thought to what improvements might be made to redress it.

2 Ideally, the defence should be able to avail themselves of the exclusive use of laboratories and scientists. We recognise that the costs involved in setting up, equipping and staffing such a separate system would be considerable and that this factor would be likely to diminish the attractions of such a solution for the government.

3 There are, however, improvements that could be made to the present system that would remove some of the present inequities. The net cost of these improvements would be very little. We consider that all the forensic science and expert services presently operated by the police and the Home Office should be made into an independent service to which both the prosecution and the defence should have equal access.

4 We also consider it essential that the present rules under which the Home Office and the police laboratories operate (referred to in paragraphs 30 and 33–34 of our report) should be altered so that no details of any defence experiments or results are communicated to the prosecution. This would enable the defence to use facilities which the present system of disclosure inhibits them from using.

5 An independent service such as we envisage is not a perfect solution and would not overcome all problems. For example, major difficulties would occur where the skill required was of so specialised a nature that the laboratory service employed only one person in that field. Another problem to be confronted is that scientists within the new service would have to be prohibited from discussing their work with their colleagues where there was any risk that a colleague might be asked to carry out work for the defence. Undoubtedly scientists would find such a restriction irksome and would, with some justification, argue that their work benefited from discussion and exchanges of ideas between themselves.

6 Despite such remaining problems we consider that without the changes we propose the present inequality will grow as increasingly sophisticated science becomes available, in effect, exclusively to the prosecution.

Appendix D

THE COST OF OUR PROPOSALS

1 Cost is obviously a matter material to any serious consideration of our proposals. We have given a good deal of thought to this but it would be wrong to suggest that we can provide close estimates. We have lacked the resources needed to assemble essential data and we endorse the comment in one Treasury document on the assessment of staff costs: 'Experience has shown that time can be wasted in seeking greater precision in cost calculations than is warranted either by the purpose of the exercise or by the degree of inevitable approximation in fundamental data'. A further impediment to the close calculation of the resource implications of establishing a Public Defender's Office (PD Office) is the existence of imponderables. We follow the example of the Royal Commission on Criminal Procedure: where there are imponderables that make close estimation impossible, we say so.

2 We have found it useful to consider some of the material produced by the studies that preceded and followed the Government's decision in favour of the national prosecution service that has recently been introduced in England and Wales:

- The (Philips) Royal Commission on Criminal Procedure, Report, 1981 (Cmnd 8092)
- 'The Prosecution System', Philips Royal Commission Research Studies Nos. 11 and 12 comprising:
- 'Survey of Prosecuting Solicitors' Departments', Mollie Weatheritt, 1980 (Weatheritt), and
- 'Organizational Implications of Change', David R. Kaye, 1979 (Kaye)
- 'The Staff Resource Implications of an Independent Prosecution System', Peter R. Jones, Home Office Research and Planning Unit Paper 22, 1983, (Jones)
- The White Paper, 'An Independent Prosecution Service for England and Wales', October 1983 (Cmnd 9074) (WP and WP Annex)
- The White Paper, 'Proposed Crown Prosecution Service', December 1984 (Cmnd 9411)
- Setting a Direction for the Crown Prosecution Service'. Recommendations for Management', April 1985, Arthur Andersen & Co. for the Home Office (Andersen)

- The summary of the Andersen report with an introduction by Sir Thomas Hetherington, the DPP, published by the Home Office, n.d.
- *Legal Aid Annual Reports* 1982–83, 1983–84 and 1984–85 (HC 137, 151 and 156)

No direct comparison can, of course, be made between the cost of the Crown Prosecution Service (CPS) and that of our proposed PD Office. We have also found it useful to consider:

- 'The Burnaby, British Columbia, Experimental Public Defender Project: An Evaluation Report', Department of Justice, Canada, December 1981, especially Report III: Cost Analysis (Burnaby III).

3 At the time of the Government's decision to establish a national prosecution service there were only 10 out of 43 police forces that did not have a Prosecuting Solicitors' Department (PSD). There was no statutory basis for these and no standard pattern. 'The result is a hotch-potch of arrangements reflecting differing local priorities with no nationally laid-down standards governing departments' status and the conditions of employment of their staff... apart from simple figures on solicitor establishment, almost nothing is known about differences in size and budgetary and staffing arrangements of different departments; even the prosecuting solicitors' own professional body states that it is impossible to describe them generically' (Weatheritt, 1.4). The Royal Commission set about altering all that by commissioning the studies by Weatheritt and Kaye. A great deal of factual and statistical information was collected and three options for possible systems of an independent prosecution service were constructed. The Royal Commission recommended a Crown Prosecutor in each police area, accountable to a local supervising authority, but when its report was debated in the House of Commons, in November 1981, strong reservations were expressed about the practicability of the proposal and as to whether it would achieve the desired independence.

4 The Government then sought the advice of an interdepartmental Working Party on what would be the best model for the organization of the desired service. The Working Party commissioned a study by the Home Office Research and Planning Unit to bring up to date the work done by the Royal Commission; the study was headed by Dr P.R. Jones.

5 The functions of the new prosecution service were to be:

(i) the conduct of all criminal cases in which the initial decision to proceed had been taken by the police;

(ii) the provision of legal advice to the police; and

(iii) the provision of advocates in the Magistrates' Court in all cases initiated by the police and the briefing of counsel in all such cases tried on indictment. (WP paragraph 3)

The first of these functions involved the review by the new prosecution service of all prosecutions initiated by the police and the third the taking over of the police's advocacy function.

6 A detailed study of the staffing and other resource implications of the new service was carried out for the Home Office by the management consultants, Arthur Andersen & Co. Its terms of reference called for a study of the prosecution services in a representative sample of police force areas (in the event, five county areas and three London districts) and for one or two experiments to check the validity of the recommendations. We have found this study, which was directed by Mr D.R. Kaye, of considerable assistance in contemplating the practical requirements of our own proposals.

7 The total manpower needed for the CPS was estimated at 3,750 staff (*The Government's expenditure plans 1986–87 to 1988–89*, Cmnd 9702–II, January 1986). Some 1,500 of these are lawyers. The service is strongly centralised and staffed by Civil Servants, with the Director of Public Prosecutions at the top of a pyramid of districts, each formed from one or more whole police force areas and headed by a Chief Crown Prosecutor. Each district has not more than five branches, each headed by a Branch Crown Prosecutor. In each branch there is a Senior Crown Prosecutor and Crown Prosecutors in a ratio of 1:2 (Hansard, HC 13 xi 1985, *WA* 172). The headquarters of the service has three main units: (i) legal services, responsible for prosecution policy, legal research and information and for prosecution work on cases of particular difficulty or importance; (ii) central management of the districts and (iii) support services of an administrative character, including finance, personnel and management services. The headquarters staff will eventually number a little over 200.

8 Our report proposes three main functions for the PD Office, namely:

(i) a public advisory and investigatory service at the disposal of the defence (paragraph 5). We refer to this henceforth as Service A.

(ii) a similar service for appellants to the Court of Appeal (Criminal Division) and the House of Lords, and also for post-appeal petitioners, replacing the functions of the Registrar of Criminal Appeals in this area (paragraphs 88, 90 *et seq.* and 96). This we call Service B.

(iii) an alternative available to the defendant or the appellant, at their election, to the private solicitor remunerated under the legal aid scheme (paragraph 59). We call this Service C.

The problem of the unidentified defendant, referred to in paragraph 39 of the report, calls for an additional function, but we find it impossible to gauge the extent to which it would be called for.

9 The similarities and differences between the new prosecuting service and our proposed PD Office may briefly be detailed:

(i) the CPS will provide an almost exclusive service, the PD Office would largely supplement the existing system, replacing it wholly only in the case of Service B.

(ii) the CPS is obliged to review every prosecution initiated by the police; the extent of the use of the PD Office Services A and C is uncertain. However, both organizations are able to fall back as necessary on the contingency reserve of the private sector.

(iii) the CPS can rely on police preparation of cases and its review function is not as time-consuming as the case preparation that would be carried out by the PD Office;

(iv) the PD Office would be more concerned with investigation, witnesses, forensic laboratories and experts than is the CPS;

(v) the PD office would be as concerned with law as is the CPS;

(vi) the PD office would have some contact with the police especially over unidentified defendant matters; the CPS will be constantly in contact with the police.

10 The heaviest item of cost for both systems is that for staffing. The Andersen study shows how a refined calculation of the cost was carried out for the CPS and how it could be for the PD Office. Andersen divided the prosecution work into three categories:

(i) work which could only done by qualified lawyers;

(ii) work which should only be done by law clerks; and

(iii) work which could sensibly be done by either law clerks or lawyers; the so-called 'middle ground'.

Andersen made detailed calculations for each category as well as calculations to determine the most economic use of resources, the allowances to be added for management time and taxation of costs, the extent of support staff requirements (such as secretarial, clerical, typing, switchboard and reception), the cost of using private agents where necessary and travel costs. Andersen did this at both district and central court level and also calculated the cost of senior administration. To perform all the calculations Andersen developed a computer programme on a microcomputer.

11 We have not. We are neither management consultants nor in a position to engage their services. Essentially the Andersen exercise consisted of scaling up of existing structures – the Prosecuting Solicitors' Departments – and the calculation of the time needed for the review of cases passed to the new service by the police. In the case of the PD Office there is one function, namely Service B, replacing the work on behalf of appellants of the Registrar of Criminal Appeals, the cost of which can be estimated fairly accurately; but the extent to which Services A and C would be used is imponderable.

12 Our approach to the costing of the PD Office is therefore somewhat different from that of the calculation of the cost of the CPS and what we attempt is no more

than an indication. Before turning to our estimate, we make a preliminary observation. Of the three main services we propose for the PD Office, Service A would improve upon what is at present undertaken, if attempted at all, by the private sector. We envisage that the PD Office would be better equipped for the task and would therefore perform the work more thoroughly. That greater thoroughness might reasonably be expected to involve greater expense. On the other hand, we believe that a nationally integrated service would be able to achieve economies and that there would in fact be no net increase in cost; the outlay on criminal legal aid would be reduced by an amount at least equal to the expense of the new service.

13 In the case of Service B we again envisage that the PD Office would do the work more thorougly. In this case that probably would involve a significant increase in expenditure on each appeal, reflecting the effort at present expended on such matters by organizations such as JUSTICE. On the other hand the volume of cases is small. It is to be expected that a more effective service would attract a greater volume of business, but the process would be gradual.

14 Service C would, in the cases concerned, provide a complete alternative to the practitioner. The national criminal legal aid bill would therefore be reduced to the extent of the practitioner's bill of costs. We believe that, here again, there would be no net increase in the burden of criminal legal aid on the public purse; there could be substantial savings by having one law clerk per court rather than per case. The briefing of counsel by the PD office would neither add nor subtract anything from the present expenditure on criminal legal aid.

15 On the question of eligibility for legal aid, the Lord Chancellor's Advisory Committee commented: 'despite the absence of an upper eligibility limit, it has never been a difficulty with the criminal scheme that the affluent insure themselves against the cost of very expensive cases by applying for legal aid' (*34th Legal Aid Annual Reports* 1983–84, p.330). The question of contribution is, however, more troublesome because the mechanism needed for collection could add significantly to the cost of the PD Office. We are not opposed in principal to the payment of contributions for the Public Defender's services and we do not overlook the point made by the Lord Chancellor's Advisory Committee that 'Free and universal criminal legal aid would fail to exclude the affluent, thereby bringing the whole scheme into disrepute'. However, the Committee went on to say: 'With a large proportion of defendants receiving free legal aid it does not make sense to have complicated assessment payment and collection procedures. The administrative costs of the scheme might all too easily exceed contribution income'. (*ibid.*, p.328)

16 Bearing these considerations in mind, our view is that no contribution should be required for services A and B. As service C is, however, an alternative to the existing service, under which contribution is required in appropriate circumstances, it seems that a mechanism for collecting contribution would have to be incorporated into the PD Office.

17 Jones estimated that the new prosecution service would require 1345 solicitors (which includes, in this context, barristers) and some 596 law clerks (Jones, p.9; WP Annex paragraph 11). The law clerks employed by the prosecution at the time of the research were wholly concerned with Crown Court cases and were assumed to spend most of their time in case preparation and in briefing counsel in the Crown Court (Kaye, p.85, Jones, p.9). According to Kaye, unadmitted prosecution staff are two thirds as expensive as lawyers and this suggested to him an obvious economy if, contrary to existing practice, law clerks were to be allowed to review police initiated prosecutions (Andersen, 6.68). Much of the out-of-court investigation of the PD Office could be undertaken by unadmitted staff. This work and some of the preparation on the prosecution side are chiefly undertaken by the police and it is difficult to isolate the cost of that work.

18 The information available to Jones did not enable him to make a close calculation of the number of support staff (administrative, clerical and secretarial) required by the prosecution service because some staff were shared with the police. Jones estimated that the ratio of 'professionals' (lawyers and law clerks) to support staff was 4:1, which gave an aggregate for support staff for the new service of 494. But Kaye now considers that the previous research underestimated the support staff needed for the CPS. His revised ratio for support staff to lawyers and law clerks is 1:2, and on this footing the support staff for the field work is about 1,000.

19 Kaye was informed that in those Prosecuting Solicitors' Departments (PSDs) that undertook the prosecution of all police initiated cases (i.e. to the exclusion of all police prosecutors) the more junior solicitors spent half their time in prosecuting 'simple' cases (Kaye, 3.21). Half the time of the junior solicitors and all the time of the senior solicitors was therefore absorbed by the 'difficult' cases (the 'difficult' cases comprised all the indictable plus 10% of the non-indictable cases). The ratio of senior to junior solicitors in the seven largest PSDs investigated was an average of 1:3 (disregarding the Chief and Deputy Solicitors whose activities were largely managerial) (Kaye, p.89). The ratio of senior to junior prosecutors in the CPS is to be 1:2 (see paragraph 7 above). If the proportions reported by the seven PSDs hold generally and the PD Office were to take over all defence work for 'difficult' cases, the maximum number of lawyers needed for the Office would be five eigths of the number needed for the CPS (1345), i.e. 840. But since the total replacement of the private sector is neither proposed nor expected by us, the actual number of lawyers needed for the PD Office will be less than that. This crude calculation provides a very rough idea of the order of the establishment of lawyers that might be needed. On the other hand, the CPS lawyers do rely on the police for investigation and some of the preparation of cases, whereas the PD Office would undertake the whole of that work; but much of it would be entrusted to law clerks.

20 We have found the discussion in the literature of the organization of an independent prosecution service useful in considering the organization of our own project because it has obliged us to take account of matters which, as lawyers rather

than administrators, we might otherwise have overlooked. We discuss first the form of the organization that seems best suited to our proposals, then the functional areas of activity, and the various types of expenditure.

21 Our proposal for a PD Office is not simply for a collection of small units composed of salaried lawyers and supporting staff and a headquarters. The function of the PD Office outlined above suggest that what is needed is a centralised service with a network of local offices, but also some specialised units. It should satisfy the following requirements:

(i) it should carry sufficient weight to surmount the barriers of inertia and resistance encountered in the collection of whatever material is properly needed for the defence;

(ii) it should be readily accessible to the clients of the service whether defendants or solicitors;

(iii) it should provide a consistent service throughout the country;

(iv) it should enjoy the facilties comparable to those of the CPS;

(v) in the interests of independence, it should be financed from central rather than local funds.

22 The PD Office should not form part of the Civil Service; the reason is simply that the CPS does. However, the fact that it is a public service does require it to be publicly accountable, to be managed efficiently, to provide an effective service and to be subject to inspection to ensure both of these, and to offer satisfaction, including reasonable remuneration, conditions of service and career prospects for those employed in it.

23 The need for ease of access, which argues for a larger number of access points, i.e. local offices, conflicts with the need for economic efficiency which is more likely to be achieved with larger offices. However, the PD Office could operate like any large organization, such as the police or the CPS, and staff could be transferred in case of need or cases could be passed for handling to other units.

24 The PD Office would, as we see it, have three operational levels – local, for defendants, using service C; regional for private solicitors, using service A; and central, for appellants and petitioners, using service B.

25 The studies of the public service by Sir Derek Rayner, as he then was, suggest that a single headquarters can cope with up to 45 or so outlying units (WP Annex paragraphs 19 and 28). If there were no more than one PD local office for each of the 43 local police force areas, no regional offices would be needed; but such a distribution would not be satisfactory, because for service C, it would be too remote from the clients and would involve an unacceptable amount of travel.

26 The location of PD local offices will depend on geographical considerations and, as demand develops, the requirements of the population. It should also endeavour to compensate for areas where solicitors' offices are scarce. The number and location of PD local offices would of course be subject to periodical review and adjustment.

27 The structure we envisage for the PD Office is a headquarters from which the organization would be led, administered and inspected, a Central Courts unit to handle appeals and post-appeal matters (cf. Andersen, 4.69 and App 6B), which might also comprise specialising units and regional and local offices.

Local offices

28 There are some 91 Crown Courts in England and Wales. We propose that there should be one office for each Crown Court area though not necessarily always located at or near the Crown Court. This number may prove insufficient in some rural areas to achieve the objective of ready access to the service by defendants but it would provide a reasonable network with which to launch the service.

Regional offices

29 The legal aid organization as run by the Law Society has 15 legal aid areas of which three are in London. This seems to us a reasonable structure for Service A which would largely be for the use of private practitioners. Regional offices would need fewer lawyers in relation to law clerks, and support and administrative staff. At this level there would probably be more correspondence, telephoning and travelling by staff.

The Central Courts unit

30 The work of this unit would be comparable to that of the CPS Central Courts Branch. Andersen's estimates for lawyers, law clerks and staff therefore offer some guidance. However, the volume of work is likely to differ because, whereas for the CPS the passage from trial to appeal will be interrupted, it is to be expected that many appellants will only turn to the PD Office at the appeal stage, thus requiring more preparatory work at this stage than in the case of the CPS. A large component of the work of the central courts unit would be the briefing and payment of counsel.

Headquarters

31 The three main activities of the PD Office headquarters would be administration of the service, inspection and audit. Administration comprises budgeting,

personnel matters, property procurement and maintenance, the provision and maintenance of equipment and payroll work. Andersen suggests that payroll management might with advantage be contracted out, but even if that is done it remains an item of expenditure (Andersen, 10.4).

The PD local office

32 The size of the PD local office needed to perform service C is critical in determining the cost of the whole of the PD service. Kaye suggests that for the Branch offices of the CPS fewer than seven lawyers would make for an inefficient unit and estimates that for the Magistrates' Court work one typist and one clerk would be needed for every seven lawyers. In addition to this, support staff at the rate of 1 per 30 defendants per day for computerised case-tracking would be needed and for the preparation of committal papers at the rate of one staff per 2.5 committals per day. Crown Court work would call for one general typist per five Crown Court cases and one clerk per ten such cases per day (Andersen, App 6D).

33 We have derived assistance from 'Report II: Cost of the Burnaby, BC, Experimental Public Defender Project: An Evaluation Report', mentioned in paragraph 2 above, not only because the experiment was, subject to local differences, directly comparable with a part at least of our own proposals, but because of the clear way in which the analysis of that experiment's cost is presented. A quotation from Burnaby III indicates the size of the experimental office:

> The Public Defence Office was a small criminal legal aid office set up near the provincial court in Burnaby. The office staff included three full-time staff lawyers, a paralegal and a secretary. The office functioned as a general, non-specialized, criminal defence office... The office structure was representative of the structures which most likely could be set up in other cities in the Province... (p.2)

The Burnaby office was, of course, performing only the equivalent of our proposed services B and C.

34 The size of the PD local office we tentatively propose would have three lawyers, three law clerks and three support staff, thus conforming to Kaye's ratio of 1:2 for the support of legal staff, but not to his view of the minimum number of lawyers needed for an efficient CPS Branch. We are influenced by the need to provide ready access to the service.

The regional offices

35 The regional offices would be larger than the PD local offices and would hold a reserve of staff to back up those offices when subjected to heavy demands. The regional offices would carry the administrative staff needed for the internal running of the organization. They would be responsible for handling service A work, consisting mainly of investigation, witness interviewing and making use of forensic laboratory facilities. There would be a regional manager and clerks to check and pay travel claims; Kaye estimated a need of one staff per 200 legal staff per month for this. Some briefing and payment of counsel would be dealt with by the regional office.

The Central Courts unit

36 The Central Courts unit would deal almost entirely with service B work. The Court of Appeal (Criminal Division) heard some 4,000 appeals in 1984. A proportion of these appeals would fall to the Central Courts unit of the PD office. Contrary to what Kaye proposed for the CPS, we envisage that the Central Courts unit would be responsible for briefing counsel and preparing briefs. As in the case of the CPS, the PD central courts unit would handle, as agents for PD local offices, Old Bailey cases, but we do not suppose that that would form a large part of the work. Kaye estimated that 40 law clerks would be needed for the CPS central courts branch, and eight support staff (Andersen, APP 6B paragraphs 20 and 21). We assume that roughly the same number of clerks would be needed for the PD Central Courts unit but consider that about 20 support staff would be required.

The Headquarters

37 As we have indicated (paragraph 31) the work of the headquarters would be largely administrative. The CPS headquarters has, in addition to administrative responsibilties, the Director of Public Prosecutions' functions, including responsibility for prosecution policy and for prosecuting in cases of particular difficulty or importance. These burdens have no parallel at the PD Office headquarters. Legal research and information is a function common to both headquarters but would not engage many staff. Staff for the central management of the regions and for providing non-legal services (including personnel, finance and management services) would be needed. For a field force of the size we have proposed we estimate that a headquarters established of about 90 (10 legal, 80 non-legal) would be required.

38 Our calculation of the cost of the structure of the PD office we propose is as on the following page (the figures are rounded upwards).

	£M
Headquarters, London	1.831
Central Courts Unit	1.165
Regional Offices, London (3)	1.190
Regional Offices, country (12)	3.627
Local Offices, London (10)	1.839
Local Offices, country (81)	11.744
	£21.396 M per annum

Additional to this would be the cost of overtime and travel and subsistence (of staff and witnesses). As these items are problematical we have not attempted any calculation of them, but we do not expect that they would constitute a substantial element in the running costs of the PD Office.

Equipment of the PD office

39 It is apparent that the new CPS is nothing short of a department of state with all the resources that that implies. Andersen urged that the CPS should be provided with the best equipment, notably in the area of information technology. We believe that the PD office should match the CPS in this respect. Kaye discusses (Andersen, chapter 10) the equipment requirements for the operations of equipment retrieval, financial management and administration. He foresees a probable need for telecommunications lines linking branches to the central office and to one another.

Included in Kaye's estimate for Branch office costs (Andersen, Appendix 5A) are the following:

good quality photocopier	£5,000 per annum
law library	500
telephone switchboard	1,000
microcomputer with typewriting/word processing capability	1,000
	£7,500 per annum

The equipment of the PD local offices should not be inferior in quality or quantity.

40 The cost of criminal legal aid in England and Wales in 1984 was, in the Magistrates' Court, net of contributions, £65.8M. In the Higher Courts it was, for the Crown Court £64.7M and for the Court of Appeal, the Courts-Martial Appeal Court and the House of Lords, gross, about £1M (*Judicial Statistics* 1984, Cmnd 9599, table 10.17). The aggregate for all criminal legal aid, therefore, was £131.5M; of this payments to counsel amounted to about £60M; payments to solicitors accounted for the balance of £71.5M. In the light of these figures the estimated cost of the PD office of £21.5M does not seem unacceptable.

41 We conclude this attempt at costing our proposals for a PD Office by endorsing the wise words of the Philips Royal Commission:

> Because of the number of assumptions that have had to be made and the variety of imponderables in the calculations, these conclusions must be treated with caution and can be taken as no more than broad guidelines to the resource costs of the options for change available. (paragraph 7.75)

In the case of our proposals the chief imponderable is the extent to which the service would be called upon. This has a direct bearing not only on the size of the local offices but also on their number. We suggest two possible ways of addressing the problem. The first is to conduct trials along the lines of the Burnaby experiment. The second is to make a modest start and adjust the establishment upwards if the demand exceeds the provision. Our proposal that the PD Office should supplement rather than replace the existing criminal legal aid scheme allows of a flexible approach to the expansion of the PD system.

PUBLICATIONS

The following JUSTICE reports and memoranda may be obtained from the Director at the following prices, which are exclusive of postage:

	Non-Members	Members
Privacy and the Law (1970)	£1.50	75p
Litigants in Person (1971)	£1.50	75p
The Unrepresented Defendant in Magistrates' Courts (1971)	£1.50	75p
The Judiciary (1972)	£1.50	75p
Compensation for Compulsory Acquisitions and Remedies for Planning Restrictions (1973)	£1.50	75p
False Witness (1973)	£1.75	80p
No fault on the Roads (1974)	£1.50	75p
Going Abroad	£1.50	75p
The Redistribution of Criminal Business (1974)	50p	30p
Parental Rights and Duties and Custody Suits (1975)	£2.00	£1.00
Compensation for Accidents at Work (1975)	50p	30p
The Citizen and Public Agencies (1976)	£2.50	£1.50
Lawyers and the Legal System (1977)	£2.00	£1.00
Our Fettered Ombudsman (1977)	£2.50	£1.50
Plutonium and Liberty (1978)	£1.50	75p
CLAF, Proposals for a Contingency Legal Aid Fund (1978)	£1.75	80p
Pre-trial Criminal Procedure (1979)	£2.00	£1.00
The Truth and the Courts (1980)	£2.00	£1.00
Breaking the Rules (1980)	£3.00	£2.00
The Local Ombudsman (1980)	£3.00	£2.00
Compensation for Wrongful Imprisonment (1982)	£2.00	£1.00
Justice in Prison (1983)	£3.00	£2.00
Fraud Trials (1984)	£3.00	£2.00
Witnesses in the Criminal Court (1986)	£2.00	£1.00
Coroners Courts in England and Wales (1986)	£2.50	£1.50
The Administration of the Courts (1986)	£3.00	£1.50
Annual Report	£1.00	

The following reports are out of print. Photostat copies are available at the prices listed:

Contempt of Court (1959)	£2.50
Legal Penalties and the Need for Revaluation (1959)	£1.50
Preliminary Investigation of Criminal Offences (1962)	£2.00
The Citizen and the Administration (1961)	£5.00
Compensation for Victims of Crimes of Violence (1962)	£2.00
Matrimonial Cases and Magistrates' Courts (1963)	£2.00
Criminal Appeals (1964)	£4.50
The Law and the Press (1965)	£3.50
Trial of Motor Accident Cases (1966)	£2.50
Home Office Reviews of Criminal Convictions (1968)	£2.50
The Citizen and his Council - Ombudsmen for Local Government? (1969)	£2.50
The Prosecution Process in England and Wales (1970)	£2.00
Complaints against Lawyers (1970)	£2.00
Home-Made Wills (1971)	£1.50
Administration under Law (1971)	£2.50
Living it Down (1972)	£2.50
Insider Trading (1972)	£1.00
Evidence of Identity (1974)	£2.00
Going to Law (1974)	£4.00
Bankruptcy (1975)	£3.00
*Boards of Visitors (1975)	£4.50
Freedom of Information (1978)	£1.50
British Nationality (1980)	£3.00
Review of Administrative Law (1981)	£4.50

Duplicated Reports and Memoranda

Report of Joint Working Party on Bail	50p
Evidence to the Morris Committee on Jury Service	50p
Evidence to the Widgery Committee on Legal Aid in Criminal Cases	50p
Planning Enquiries and Appeals	50p
Rights of Minority Shareholders in Small Companies	50p
Complaints against the Police	50p
A Complaints Commission	50p
The David Anderson Case	£1.00
Powers and Duties of Trustees	50p
Report of Data Protection Committee	50p
Select Committee on Parliamentary Commissioner	50p
The Private Security Industry	50p
Illegitimacy	50p
Observations on the Triennial Review Report of the Police Complaints Boards	50p
Official Receivers	50p

* Report of Joint Committee with Howard League and NACRO

Review of the Public Order Act 1936 and related legislation	50p
Payment into Court	50p
Review of Immigration Appeals	50p
Extradition	50p
Remands in Custody	30p
Legal Aid	50p
Insolvency	50p
Road Traffic Law Review	50p
Public Order Law Review	50p
Codification of the Criminal Law	50p
White Paper on Criminal Justice	50p
Guardianship of Children	50p
Wards of Court	50p
Civil Justice Review	
Personal Injuries Litigation	50p
Small Claims in the County Court	75p
Commercial Litigation	50p
Enforcement of Debt	50p
Housing Cases	50p
General Issues	75p
Conveyancing	
1. Evidence to Farrand Committee	50p
2. Formalities for Deeds and Contracts for Sales of Land	50p
3. Trusts of Land, Distress for Rent and Bain v. Fothergill	50p

Transcripts of JUSTICE *Conference on–*

Civil Procedure after Benson (1980)	£5.00
Royal Commission on Criminal Procedure (1981)	£5.00
Decriminalization (1982)	£5.00
Family Law (1983)	£5.00
Time and Crime (1984)	£5.00
The Future of the Legal Profession (1985)	£5.00
Public Order (1986)	£5.00
Judicial Review of Administrative Action (1987)	£5.00

Memoranda by Committee on Evidence (1966)

1. Judgments and Convictions as Evidence	50p
2. Crown Privilege	50p
3. Crown Witnesses	50p
4. Character in Criminal Cases	50p
5. Impeaching One's Own Witness	50p
7. Redraft of Evidence Act 1938	50p
8. Spouses' Privilege	50p
9. Availability of Prosecution Evidence to the Defence	50p
10. Discovery in aid of the Evidence Act	50p
11. Advance Notice of Special Defences	50p
12. The Interrogation of Suspects	50p
13. Confessions to Persons other than Police Officers	50p
14. The Accused as a Witness	50p
15. Admission of Accused's Record	50p
16. Hearsay in Criminal Cases	50p

Published by JUSTICE *and International Commission of Jurists*

Sri Lanka. A Mounting Tragedy of Errors (1984)	£3.50

Published by International Commission of Jurists

	Swiss Francs (net of postage)
Gross Violations of Human Rights, A Practical Guide to Filing Communications with the United Nations, 1973 (E)	5.00
Report of Mission to Chile, The Legal System and the Protection of Human Rights, 1974 (E)	5.00
Supplement to Report of Mission to Chile, Sept. 1976 (E)	5.00
The Application in Latin America of Int'l Declarations and Conventions relating to Asylum, 1975, 64 pp. (S-E)	10.00
Detention of Children in South Africa, 1978, 8 pp. (E)	2.00
Report of Mission to El Salvador, 1978, 14 pp. (E-F-S)	3.00
How to Make the Convention Against Torture Effective, 1980, 60 pp. (E-F-S)	4.00
Persecution of Defence Lawyers in South Korea, 1979, 65pp. (E)	4.00
The Trial of Macias in Equatorial Guinea, 1979, 90pp. (E-S)	4.00
The West Bank and the Rule of Law, 1980, 128 pp. (E)	10.00
(F)	16.00
Development and the Rule of Law, Prevention Versus Cure as a Human Rights Strategy, 1981, 125 pp. (E)	10.00
Morocco, Trial in Rabat arising out of disturbances on 20 and 21 June 1981, 25pp. (E)	4.00
Ethnic Conflict and Violence in Sri Lanka, 1983, 109 pp. (E)	7.00
Torture in South Africa, 1983, 48 pp. (E)	5.00
ICJ Report on Activities 1977-1980, 109pp. (E)	7.50
States of Emergency - Their Impact on Human Rights, 1983, 480 pp. (E)	40.00
Torture and Intimidation in the West Bank, 1984, 56 pp. (E)	10.00
Sri Lanka, a Mounting Tragedy of Errors, 1984, 95 pp. (E)	12.00
The Philippines: Human Rights after Martial Law, 1984, 123 pp. (E)	12.50
ICJ Report on Activities 1981-1985, 146 pp. (E)	10.00
Human Rights and Mental Patients in Japan, 1986, 88pp. (E-Japanese)	10.00
The Return to Democracy in Sudan, 1986, 104 pp. (E)	10.00

Indonesia and the Rule of Law - 20 Years of 'New Order' Government 1987, 208 pp. (E) 50.00

E, English; F, French; S, Spanish

Available directly from the ICJ, PO Box 120, CH-1224, Geneva, Switzerland.

Regular publications: ICJ Review, ICJ Newsletter and the CIJL Bulletin are available from JUSTICE.