

A Review of the Fulton County Conflict Defender
June 1998

Prepared for:
The Fulton County
Conflict Defender

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Bar Information Program

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Chapter 1

Introduction

The Fulton County Conflict Defender was formed in January, 1996 with the goal of providing quality legal representation to indigent defendants charged with felony offenses in Fulton County, Georgia. The program handles cases which pose a conflict of interest for the Fulton County Public Defender and would otherwise be represented by court-appointed counsel. It also handles juvenile cases which are subject to automatic transfer to Superior Court, and up to two death penalty trial cases a year. The FCCD is funded with a combination of state and county funds.

The Spangenberg Group is a criminal justice research and consulting firm located in West Newton, Massachusetts which specializes in the study of indigent defense systems. We first learned of the FCCD while attending the December 1996 National Legal Aid and Defender Association annual conference in Las Vegas, NV. Representatives from the new provider attended the conference, and inquired whether assistance from the American Bar Association's Bar Information Program might be available to support a study of their program, once it had been up and running for a while.

The Bar Information Program (BIP) provides technical assistance to jurisdictions seeking to make improvements to their indigent defense systems. The Spangenberg Group has been the exclusive provider of research and technical assistance under BIP since 1985. In 1990, BIP funded a study of the Fulton County indigent defense system conducted by The Spangenberg Group at the request of the Georgia Indigent Defense Council (GIDC). GIDC, first created by the Georgia General Assembly in 1979, provides technical and research assistance, clinical and training programs, and administrative support to local programs and attorneys who represent indigent defendants. It also receives state funds to distribute to counties which meet its guidelines for the operation of local indigent defense programs.

In 1990, GIDC was seriously concerned about the quality of indigent defense services in Fulton County. Our report, *Overview of the Fulton County Indigent Defense System*, described what we found to be a system on the verge of collapse, with public defender attorneys responsible for caseloads far in excess of national standards and with a paucity of necessary support services, such as investigators and paralegals. Following release of our report, a great

deal of attention was placed on the public defender office, particularly by the Atlanta Bar Association and other local bar associations, the courts and county officials. Since that time, sizeable increases have been made to the public defender's budget.

In late 1997, approval was granted for us to conduct a review of the new FCCD, in part to allow us to view the indigent defense system following our 1990 report, in part because BIP is interested in innovative approaches to handling conflict of interest cases -- a serious and growing concern in many metropolitan areas -- and primarily to give an objective assessment of the FCCD, in light of our experience reviewing indigent defense programs throughout the country. Marea Beeman and David Carroll visited the office on January 7 and 8, 1998. This report includes our impressions of the program, and offers recommendations for improvement, taking into consideration the major changes under way in Fulton County's criminal justice system.

Chapter 2

Provision of Indigent Defense Services in Fulton County

As we reported in 1990, the Fulton County indigent defense system is fragmented, with different providers responsible for felony defendants at the municipal and superior court levels. Felony defendants initially appear in municipal court for a probable cause hearing. If probable cause is found, they are bound over for indictment in Superior Court. In Atlanta, the Atlanta Municipal Public Defender represents clients at the municipal court level, while in outlying municipalities within Fulton County, defendants are represented by assigned counsel. Once bound over and indicted in Superior Court, at the time of arraignment, an indigent defendant will be assigned to the Fulton County Public Defender, or, if there is a conflict of interest, to either the Fulton County Conflict Defender or a panel attorney. The Fulton County Public Defender handles adult felony, juvenile delinquent and juvenile SB 440 cases. These are cases in which, pursuant to a law that became effective in May of 1994, a juvenile between ages 13 and 17 has been charged with one of seven case types (murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery or armed robbery, if committed with a firearm). Juveniles charged with these offenses are automatically tried in Superior Court rather than Juvenile Court.

Funding for indigent defense in Georgia is primarily a county responsibility. Since 1989, a relatively modest state appropriation has been made to GIDC, which then distributes the funds amongst those counties with indigent defense systems that comply with the organization's *Guidelines for the Operation of Local Indigent Defense Programs*. The guidelines concern areas such as competence and effectiveness of attorneys in local panel programs, early entry by counsel into a case, selection and conduct of panel attorneys, compensation of panel attorneys and determination of defendant financial eligibility. Further, the guidelines require the establishment of a local indigent defense governing committee (IDC), made up of representatives appointed by the judiciary, the county and the local bar association(s). A minimum of three people must serve on the committee, representing the county, the Superior Court and the local bar association. The GIDC grants awards to compliant counties using a formula which considers a county's population, indigent defense caseload and indigent defense expenditure. Currently, 141 of Georgia's 159 counties receive assistance from GIDC. In 1989, GIDC received a

\$1,000,000 appropriation, of which \$900,000 was to be distributed to counties in compliance with GIDC guidelines. In FY 1998, \$3,000,000, or 9.7% of total funding for indigent defense in Georgia, was provided by the state through an appropriation to GIDC.

Fulton County, the most populous county in Georgia, has had a complicated relationship with GIDC, in part because the County Commission has refused to acknowledge the Fulton County IDC, which has been in place since September 1989, and in part because of GIDC's previous concern that the county public defender program did not meet the Council's minimum guidelines. Since 1990, the Public Defender has made strides toward improving his program, securing greatly needed resources for additional staff, which has grown from 39 members and a budget of \$1,257,724 in 1990 to 92 staff members in 1998, including 58 attorneys, and a budget of \$5 million. However, the county still refuses to acknowledge the IDC, in part, we are told, because the county does not want an entity to have the ability to dictate how the system is run when that entity contributes, via the GIDC, just a fraction of the total funding for indigent defense in the county. Despite this disagreement, Fulton County's indigent defense system has benefitted from GIDC support.

Originally, in 1989, GIDC provided to Fulton County the funds which were used to create the Indigent Defense Team (IDT), which consisted of a small staff housed at the Fulton County Jail who interviewed in-custody defendants and, in appropriate cases, filed motions for bail reduction. This program was eliminated after GIDC received criticism from other counties that it was unfairly providing funds to a county that was not in compliance with GIDC guidelines, at the expense of those counties which were in compliance.

In early 1993, GIDC created an in-house Felony Trial Division (FTD), headed by Paul Kehir, now director of the Fulton County Conflict Defender, which handled felony cases and, beginning in May 1994, SB 440 cases in Fulton County. This precursor to the FCCD was created at the request of Fulton County Superior Court judges. Funding was provided by GIDC, but due to the interim nature of the program, the Superior Court judges had to reapply to GIDC each year for continued funding. It was anticipated that the FTD would be a temporary alternative for state-funded support for indigent defense in Fulton County, with the expectation that Fulton County would come into compliance with the GIDC guidelines so that state funds could go directly to the IDC.

In the fall of 1994, the issue of whether GIDC should continue to provide funds in a county that was in non-compliance was again discussed by the Council. After meetings involving GIDC sub-committee members and representatives of Fulton County's IDC and criminal justice system, it was decided the GIDC would close the FTD and instead provide support to a new, non-profit corporation. The new program, the FCCD, would provide vertical representation to indigent defendants accused of felony crimes in the municipalities not staffed by the City of Atlanta or Fulton County Public Defender Offices, as the FTD had been doing. In addition, it would represent indigent clients the Fulton County Public Defender could not represent due to conflict of interest, and accept every third SB 440 case arraigned in Fulton County. The Board of Directors for the program would be made up of the members of the Fulton County IDC. The FCCD was incorporated on January 23, 1996 and had an original agreement to handle 1,200 felony appointments, including every third SB 440 case and up to two death penalty cases per year.

Chapter 3

Managing Conflict of Interest Cases

In large metropolitan areas served by public defender programs, such as Atlanta, there is always a sizable percentage of cases that the public defender cannot handle due to a conflict of interest. Conflicts typically arise when multiple defendants are charged with acting in concert in commission of the same crime, or when the public defender previously represented a prosecution witness in a current case. Conflict of interest cases have traditionally been assigned to private court-appointed counsel, who are compensated for their work at an hourly rate. However, this method presents problems to funders who are unable to predict with certainty the costs associated with assigned counsel cases and have little control over the quality of representation provided. While many conflict cases continue to be handled by court-appointed counsel, jurisdictions are taking a number of different approaches to deal with the increasing numbers of conflict of interest cases, including the following:

- Attorneys work under one of several types of contracts. One type is a fixed fee contract where the contract attorney handles an unlimited number of cases in a given period, usually a year, for a set price which is paid in regular, usually monthly, installments. Another contract model pays attorneys fixed rates set for various types of cases, such as serious felonies, felonies, misdemeanors, juvenile delinquency, etc. In some contract systems, attorneys contract to handle a specific number of a particular type of cases over the contract period. While the contract defender model provides funding bodies with greater control over their indigent defense expenditures than does the assigned counsel model, often times contract attorneys do not have ready access to investigators, paralegals or social workers to which the public defender handling their client's co-defendant has access.
- A second public defender is established to handle conflict-of-interest cases the primary public defender can not handle.
- An alternate defender, which is substantially the same as a second public defender, is established. In addition to the conflict of interest cases, an alternate defender may handle a type or types of cases which the public defender does not handle, such as juvenile dependency cases or mental commitment cases.

Occasionally, jurisdictions rely on more than one of these alternate models for conflict cases. For instance, both Pima and Maricopa counties in Arizona have a primary public defender, a second public defender and a panel of contract attorneys who handle cases of varying severity. In addition, court-appointed counsel will be used if needed.

We believe that use of a conflict or alternate public defender is a wise choice for many jurisdictions. First, it seems unfair and somewhat arbitrary to provide one of two co-defendants with public defender counsel who has ready access to necessary litigation tools, such as investigators, social workers and experts, while the other defendant, sometimes due simply to the luck of the draw, has access to these resources only if his assigned counsel or contract defender successfully petitions the court. Second, from a practical standpoint, development of a staffed office enables the county or other budgeted office to more effectively plan for and control its indigent defense expenditures. With the assigned counsel system, attorney payments will vary from year to year according to the volume and severity of cases. This can be problematic; for example, in jurisdictions where there is no cap on the payment for court-appointed attorneys who handle capital cases (as in Georgia), a county may be confronted with unexpected large bills for multiple capital cases in a single year.

This is not to say that we believe all indigent defendant cases should be handled by government salaried lawyers. We believe it is important for local bar members to remain active in accepting court-appointed cases. The private bar is an important constituency that can speak out on issues affecting indigent defense, and its voice is most effective when its members have a firsthand understanding of those issues. In any jurisdiction, there will always be multiple defendant cases involving three or more co-defendants, and it is appropriate to rely on private court-appointed counsel to represent these defendants. Further, in Fulton County, the private bar, Public Defender and Conflict Defender are appointed to equal numbers of SB 440 cases. In a large metropolitan area, we believe a system that combines a primary public defender, a conflict case/second public defender and the private bar is a model that stands to provide quality representation to indigent defendants at a reasonable cost.

Chapter 4

Structure of the Fulton County Conflict Defender

At the time of our visit, the Fulton County Conflict Defender had 15 full-time employees, including a director, two supervising staff attorneys, two senior attorneys, a legal administrator, five staff attorneys, two paralegals, an administrative assistant and a chief investigator. Since our visit, the program has added an appellate attorney. The program is housed in a nicely appointed, downtown Atlanta office approximately 10 minutes from the Superior Court. A small satellite office at the Superior Court houses a computer which is linked to the office's case management system.

The program consists of two divisions: the Superior Court Division and the Major Case Division. Originally the FCCD had a third division, the Municipal Case Division, which picked up cases prior to bindover in municipalities outside of Atlanta, and remained with cases through disposition in Fulton County Superior Court. That division was eliminated in fall 1997 when the office began its Fulton County Jail project. This project allows the office to contact clients who are detained -- post bindover but pre-indictment -- in the over-crowded Fulton County jail prior to the client's initial appearance in Superior Court, where FCCD will be formally assigned. FCCD staff, usually paralegals, obtain from the court clerk's office a list containing the names of defendants who will be represented by the Public Defender's office and those who will be assigned to the FCCD. At the jail, the paralegals obtain the police reports for those defendants identified as FCCD clients, and then meet with the clients to inform them that the office is representing them and to conduct initial interviews. However, because of Fulton County's peculiar criminal justice system, it is impossible to tell a defendant which attorney will be representing him. That will not be known until after the defendant has been indicted and assigned to a courtroom for a plea and arraignment session, something that may not occur for up to three months following transfer to the Fulton County jail. The jail project allows FCCD to identify its clients early on, represent them in bond hearings pre-indictment and compile background information for the attorneys eventually assigned to the cases. Approximately one-third of FCCD's cases was opened at the jail in 1997.

The office's Superior Court Division is staffed by five staff attorneys, each of whom is assigned to cover the plea and arraignment (P&A) sessions held by two Fulton County Superior Court judges. There are 15 superior court judges in Fulton County, and most hold one plea and arraignment session in his or her court each week (although some add a second P&A session to

help reduce backlog). Once a case is indicted, it is assigned to a judge/courtroom for plea and arraignment. In the Fulton County Superior Court system, conflict defenders, public defenders and district attorneys are assigned to cover specific judges' P&A sessions, so once a case is assigned to a judge, it is also, in effect, assigned to a public defender or conflict defender and assistant district attorney. The Superior Court Division's supervisor is assigned to the plea and arraignment calendars of two judges, so he carries virtually the same caseload as the non-supervisory attorneys in the Division. FCCD's director is assigned to one P&A calendar.

The Major Case Division consists of one supervising attorney, one staff attorney who specializes in mental health advocacy, the new appellate attorney and, when available, a law student intern and a forensics intern. Major cases include capital murder cases, sex cases, cases involving novel issues and cases entailing various alternative sentencing approaches. Many involve extensive mental health intervention. In addition to picking up serious cases which are originally assigned to one of the Superior Court Division staff attorneys and transferred due to their severity, the Major Case Division supervisor covers one courtroom's P&A calendar. He also typically handles the capital cases assigned to the office, usually without a co-chair. The fact that the FCCD accepts death penalty cases is a major distinction between it and the Public Defender, which does not handle death penalty cases. The FCCD policy is to carry no more than one death penalty case at once, and only two a year. The Major Case Division supervising attorney is assisted by the legal intern, while the mental health specialist is assisted by the forensics intern, who can apply his experience toward his graduate degree requirements.

One FCCD staff attorney works outside the Major and Superior Court case divisions covering the pre-arraignment Master Calendar. Cases placed on this calendar are less serious felonies cases that have been indicted and await a plea and arraignment date. If the case is not resolved at the Master Calendar level it will be placed on a plea and arraignment calendar. The FCCD attorney handling these Master Calendar cases may have some background information on the case if FCCD interviewed the client in jail; otherwise, very little information will be available. The Master Calendar attorney also represents FCCD clients at bond hearings. Any client who "survives" Master Calendar will be represented by the staff attorney who covers the courtroom to which the defendant is assigned; there is no continuity of representation from Master Calendar to Plea and Arraignment Calendar.

The firm's Legal Administrator oversees FCCD's day-to-day operations and supervises the support staff. The position is held by a lawyer who is responsible for the firm's financial services, human resources, information systems and facilities management. The two supervising attorneys, the Legal Administrator and the Director comprise the office's Management Team.

The two paralegals in the program have differing responsibilities which draw upon their individual strengths. One is primarily responsible for the jail project while the other assists attorneys with jury selection and other trial preparation work. The size of the office lends itself to flexibility and support staff are the most flexible staff members. As the Legal Administrator told us, she expects support staff to have distinct responsibilities, but to be trained to handle all support functions in order to cover for one another. The receptionist doubles as the office's chief data entry person, and the receptionist and both paralegals also do some legal research.

We found the support staff to be uniformly eager and capable of doing their current work, and desirous of taking on more challenging work, such as conducting more legal research, or having greater involvement with clients and their families. If the Fulton County Superior Court structure is changed -- which is likely -- to allow assignment of cases to attorneys prior to indictment, FCCD would be able to substantially re-define the roles of paralegals, removing them from the jail project and freeing them up to work on teams. The advantages of such a system -- for attorneys, support staff and clients -- is discussed in greater detail below.

The Chief Investigator coordinates and directs all investigative services for the FCCD, which entails providing direct investigative services to staff attorneys and assigning cases to contract investigators on an as-needed basis. Currently the FCCD utilizes several contract investigators who handle work that the Chief Investigator cannot get to due to his other assignments. Contract investigators are paid \$35 per hour for their services.

Chapter 5

Bind-Over to Indictment in Fulton County: A Fundamentally Flawed System

Because the FCCD is structured to respond to the Fulton County criminal justice system, it is useful to briefly describe the peculiarities of the system.

In 1989, Fulton County opened a new jail. The facility's 2,200 beds were quickly filled,

and today it operates at almost twice its capacity. Inmates currently sleep in shifts, spilling out of cells into common areas lined with cots. The overcrowding is a symptom of an overburdened, underfunded and fragmented criminal justice system. The situation was compounded by a sharp influx of unanticipated inhabitants to Atlanta prior to and coinciding with its hosting of the 1996 summer Olympics. The Fulton County sheriff was quoted as saying that the average stay in the jail is 45 days, 30 days more than the national average. *Fulton County Daily Report*, November 3, 1997.

In Fulton County, defendants who are bound over from municipal court following a probable cause hearing must then await grand jury indictment. If a defendant is unable to bond out of jail, he will remain there up to three months between bind-over and indictment. This is a startling delay, particularly compared with a jurisdiction the size of New York City, where the criminal case volume is much greater than that in Fulton County, and where, by statute, a detained defendant accused of committing a felony must be indicted within 120-144 hours following arrest or the local criminal court must release the defendant on his own recognizance. We highlighted this serious systemic problem in our 1990 report on indigent defense in Fulton County, and very little has changed since then to improve it.

The delay between bind-over and indictment is due primarily to the district attorney office's backlog in processing indictments. At the time we visited, the District Attorney had a backlog of 7,500 unindicted cases, according to the *Fulton County Daily Report*. Another factor is Georgia's recent two-strikes legislation that enacted strict, mandatory sentences for various crimes. After indictment, some defendants, with little to lose, choose to stay in the county jail and await trial rather than enter pleas. Even in non-two-strikes cases, the District Attorney's unwillingness to negotiate plea offers leads to more defendants spending more time in jail pre-trial. During the period between bindover and plea and arraignment, no counsel is formally assigned to defendants, another deterrent to easing the severe jail overcrowding.

The system has not gone without criticism, and is currently the subject of a lawsuit. *Stinson v. Fulton County Board of Commissioners* Case No. 1:94-cv-240-GET. In addition, the County has retained the services of a consultant to make recommendations for both short-term and long-term improvements to the County's criminal justice system, starting this year with the troubled pre-trial system. Finally, in this last legislative session, the District Attorney received a

staggering 53% budget increase, which will allow for the addition of 43 new positions including attorneys and support staff. It is hoped this substantial influx in funding for the district attorney will go far toward reducing the backlog of cases awaiting indictment. Whether the courts, public defender and conflict defender will be able to keep up with the anticipated influx of indicted cases without coinciding increases in resources is of question. However, the outcome of either the lawsuit or the current review of the system could lead to permanent changes in the system.

- Implications for the FCCD

The County recently contracted with an expert in jail systems and criminal justice system reform to review Fulton County's criminal justice policies and procedures, from arrest to disposition, in order to create an integrated and efficient system. The consultant is at work making both short-term and long-term improvements to the County's criminal justice system, beginning this year with the pre-trial system. It is anticipated that if the Fulton County criminal justice system did change, defense counsel - whether Public Defender, Conflict Defender or court-appointed private bar - would be assigned in a much more timely fashion following bindover. Because cases would move more expeditiously through the system, it is possible the FCCD's Master Calendar session would no longer be needed. The impact of such changes on the FCCD would be significant. It would be able to eliminate its jail project, as clients would be appointed counsel in a timely fashion, and the office could practice vertical representation, a goal dating back to the GIDC Felony Trial Division. This would free up the paralegals to serve on teams with two or three attorneys, a concept that has a great deal of favor in the office. Paralegals, without the burden of the jail project, would have time to handle liaison with client families, conduct more legal research and perform investigation, eliminating reliance on contract investigators. In addition, elimination of the Master Calendar would free another staff attorney to cover a P&A session, provide coverage to attorneys on trial or vacation, etc.

Chapter 6

Fulton County Conflict Defender Funding and Caseload

The Fulton County Conflict Defender is a non-profit organization that is funded through a combination of state and county funds. The state funds are those provided to Fulton County by the Georgia Indigent Defense Council. County funds come from the county's appropriation made to the superior court to compensate assigned counsel and to provide expert witnesses in indigent defendant cases. However, because the county has refused to acknowledge the IDC or the Fulton County Conflict Defender, there is no direct county appropriation for the program. There is no signed contract between the county and the program nor is there a specific budget for the office set aside by the superior court administrator. Instead, the director of the FCCD bills the court for each case it is assigned, and is paid with funds that otherwise would have gone to assigned counsel. There is arguably no net loss to the court fund, because conflict cases would be handled by assigned counsel if FCCD was not in existence, and because state funds significantly reduce county resource obligations. However, the situation leaves the court administrator's office with no way to effectively plan its expenditures without recognition of the FCCD. The situation also lends some sense of insecurity amongst the FCCD staff over the program's long-term viability.

In 1997, FCCD revenue was \$946,735, of which 57% (\$542,658) came from state, GIDC funds. Actual expenditures totaled \$963,788, approximately \$27,000 over expected expenditures. The difference was due, in part, to an increase in the number of cases assigned to FCCD. The intent between the FCCD and the Superior Court is that the Conflict Defender handle 1,200 felony appointments a year, including every third SB 440 case and up to two death penalty cases. In 1997, the FCCD actually handled 1,577 cases; 31% more cases than it anticipated. Average open caseload per attorney ranges between 50 and 70 cases, but one attorney carried over 200 open cases, and one had over 140 open cases, according to the FCCD 1997 Annual Report. This level of open felony cases, if sustained over the year, would far exceed the recommended maximum annual felony caseload of 150 cases per attorney¹.

¹National Advisory Commission on Criminal Justice Standards and Goals, Courts 13.4 1973.

Every 60 days, the FCCD submits vouchers to the Administrative Office of the Court for each case it handles. Bills are submitted for each indictment number, according to a schedule of rates charged to the county which was developed by the office and approved by the Administrative Office of the Court. Factors that affect the rates include high publicity, speedy trial demands, second chair assistance for trial, level of severity, etc. Charges are as follows:

- Pleas

Plea disposed of a master calendar or other courtroom: \$250

Cases are charged an additional \$50 - \$75 for every 25-30 days they remain active.

- Trials

Felony murder: \$3,500 - \$7,500

Rape, Child Molestation, Armed Robbery, Aggravated Assault: \$1,600 - \$3,800

Violation of Georgia Controlled Substance Acts: \$1,200-\$2,500

Simple Robbery, Theft by Taking (auto), Theft by Shoplifting, Theft by Receiving Stolen Property: \$1,200 - \$2,000

- Death Penalty Cases

1st chair \$85/hour in-court, \$75/hour out-of-court

2nd chair \$75/hour in-court, \$65/hour out-of-court.

In non-capital felony cases, court-appointed counsel in the county are compensated at a rate of \$35 per hour out of court \$45 per hour in-court, up to \$3,000 per case. It would be useful for Fulton County to be able to analyze aggregate indigent defense costs and caseload and to be able to make comparisons amongst the different providers. However, until an improved and integrated case-tracking system is in place, it seems unlikely that this will happen. The three providers of indigent defense representation in Fulton County provide representation in different types of cases. The Conflict Defender handles only the most serious cases: death penalty, felony and SB 440 cases, which are the most time consuming and costly to handle. The public defender handles felony, SB 440 and juvenile delinquency cases, while assigned counsel handle a mixture of misdemeanor, juvenile delinquency, dependency and felony cases. We were unable to compare relative cost per case among public defender, conflict defender and assigned counsel cases, as detailed information on public defender and assigned counsel caseload is unavailable.

We provide, for informational purposes only, 1997 aggregate caseload and expenditure figures for the three providers.

Provider	Caseload	Expenditure
Public Defender	Not Available	\$3,900,000
Conflict Defender	1,577	\$963,788
Assigned Counsel	1,492	\$646,935

Chapter 7

The FCCD's Position Within the County

While we feel the Fulton County Conflict Defender provides an important service, its ability to function and receive recognition as a permanent county agency is threatened due to its tenuous position, given the county's refusal to formally recognize the agency.

We believe a top priority for the FCCD is to gain formal recognition from the county, and to establish a formal budget process. The conflict defender model serves its client well, and with the state contribution, the FCCD reduces the county's expenditure on conflict cases while providing the county with a predictable cost for handling conflict of interest and juvenile SB 440 cases.

The tension between GIDC, Fulton County, and the IDC works to the detriment of the county's indigent defense system and its criminal justice system. The refusal to recognize the IDC or the FCCD has effectively shut out two important voices from the criminal justice system.

As mentioned above, Fulton County is currently embarking on long-term plans to make much-needed improvements to the functioning of its criminal justice system. A group called the Fulton County Criminal Justice Coordinating Committee, which is made up of the chief criminal justice agency representatives of Fulton County and the city of Atlanta, as well as key executive branch decision makers from the county and city, has committed to making major change to the local criminal justice system. The county's decision to undertake the current review of its criminal justice policies and procedures, and to develop an information system which will link all criminal justice departments, was made upon recommendation by the Committee. The Committee will play a key oversight role for all of these changes to the criminal justice system. This is a critical effort, and both the FCCD and the IDC should be parties at the table to help shape the future of the county's criminal justice system.

Further, the FCCD and the county public defender need to work together on matters of importance to indigent defendants. These institutional providers can more effectively advocate on behalf of the indigent defense system if they operate as allies, rather than independent contractors.

Chapter 8

The FCCD's Use of Technology

The FCCD has invested in some of the most up-to-date technological resources available to indigent defense providers. We applaud this innovation, as many indigent defense programs lag behind in making use of technological resources that can greatly assist their practice and budgeting process. The FCCD office operates in a Microsoft environment, utilizing both WORD (word-processing) and EXCEL (spreadsheets), and each staff member's computer is connected to a central Windows NT Server. The computer network has both an interoffice and an external e-mail system and is also linked to the Internet. Additionally, a CD-ROM Tower allows staff to conduct legal research from any office computer or from the Superior Court house satellite office. The CD-ROM Tower contains Michie's Georgia Law, CASEBASE, Shephard's Citations and Shephard's Extract. The office also has three lap-top computers that are shared on an as-needed basis. The FCCD has contracted with a local tech support provider to assist the staff with computer-system problems.

Although the management team had originally considered having a case-tracking system developed specifically for the office, financial considerations led them to purchase an existing case-tracking program, "Time Matters." Time Matters is a customizable, Windows-based software program that stores client information and tracks events (i.e., calendar notices and court appearances) throughout the life of a case. The program allows attorneys to make notes about, or add new information to, the client files as needed. Time Matters also has the capacity to generate over one hundred different, pre-formatted reports and schedules, including: monthly, weekly and/or daily calendar of events; a listing of cases by attorney, case status, case number and/or date; and "to-do" reports, listing up-coming deadlines in a case. Time Matters is also able to interface with the Microsoft environment in use by the FCCD, thus allowing for customized reports in either WORD or EXCEL formats.

Unique for small defender offices, the FCCD has a Case Development Center (CDC). The CDC is a room equipped with two 8mm video cameras, two standard VCRs, a dual deck VCR (to copy tape to tape), and a television and is designed to enhance an attorney's ability to prepare a case for trial by simulating the court room environment. The video equipment allows the attorneys to record and study defense witnesses.

Recommendations for Maximizing Technological Resources

- Computer Network

Overall, we were impressed by the level of technology in use by the FCCD – a level infrequently seen in such a small defender office. Yet, it is apparent that the FCCD staff is not using the technological advantages on hand to their maximum capacity. Staff interviews revealed two main causes for the under-utilization of the computer network. First, all FCCD staff members are naturally at differing levels in their understanding of computers and computer software. Although tutorials are available on the network, those with less computer-use experience felt the tutorials were too time-consuming to be of any advantage. Some employees expressed a desire to have more extensive training on all aspects of the computer network provided by the office. Second, many employees expressed frustration that the system was down for long periods of time, and the frustration has led some staff members to distrust the system. One attorney stated that the system can go down for as long as several days at a time, and for that reason does not rely upon the system's CD-ROM legal research capabilities.

- Time Matters

For purposes of uniformity, FCCD has a single person, the administrative assistant, input all new cases into Time Matters. To open a new case, an attorney must complete an "Opening Form" and submit it with the client file to the administrative assistant. The opening form lists basic information, including client's name, attorney, division, origination point and charges. Once received, the administrative assistant assigns the case file a case number (assigned off a consecutive numeric log on EXCEL), and enters client and case data into Time Matters. When a case is closed, a "Closing Form" is completed by an attorney (listing client name, case number, closing date and reason for closing), and again submitted to the administrative assistant for entry into Time Matters.

In the interim between the opening and closing of a case, attorneys are free to make notes, add new client information, and track phone calls, meetings and investigations dealing with the case. Although it is clear that Time Matters is being used effectively to track FCCD cases, the attorneys are not maximizing Time Matters' capabilities during the life of a case. Again, part of the reason Time Matters is not utilized is that some attorneys need more training and some are distrustful that the system will not be available when he/she needs it. More

importantly, some attorneys felt that the only time they really need the “notes” capacity of Time Matters is in court when the system is unavailable to them. These attorneys do not think it is a good use of their time to input information into the system from their written notes. Although lap-tops are available for court use, attorneys do not use them because (1) they are concerned that people will be able to read the screens over their shoulders; (2) they do not want to be responsible for the lap-tops if they step away from them momentarily; and (3) lap-tops can not be brought down to the holding cells. Additionally, because some attorneys use Time Matters more effectively than others, attorneys feel that the hard-copy case file is more reliable than Time Matters for case information in instances where a case is transferred to a new or different attorney. For all these reasons, Time Matters is under-utilized and the lap-tops are used solely for working at home, if at all.

Finally, it is our opinion that the FCCD should use the Time Matters interface capacities to produce more charts and reports, on WORD and/or EXCEL, that present FCCD data in a compelling light. Easy to read data and reports are important for numerous reasons.

- Statistical information plays a critically important role in “telling the story” of FCCD to the outside world and justifying budget requests and expenditures, whether in meetings and negotiations with Board members, county officials, the District Attorney or judges.
- Trend data can help the FCCD advocate for changes within the Fulton County system that benefit not just the FCCD, but the overall processing of criminal cases in the county.
- Case handling information is important for internal supervisory and resource allocation decisions at the FCCD.

Time Matters makes it easy to produce a range of reports. We suggest that, at a minimum, the FCCD turn out the following reports:

- the number and percentage of cases that go to trial per year, by program and attorney;
- open case inventories of each attorney;
- average length of time between appointment and disposition;
- percentage of cases picked up at the jail vs. in the courts;
- comparison charts of cases handled by FCCD and the public defender office
- outcomes of alternative sentencing interventions (e.g., severity of type of sentence sought and actual sentence in SB 440 cases).

- Case Development Center

During the course of our interviews, we could not find one instance in which the multi-media Case Development Center (CDC) has been used in the capacity for which it was designed. Again, we were told that training and time-considerations were the main reasons why the CDC was not in use. Some attorneys expressed scepticism that the user manuals for the CDC equipment were lost, thus negating the possibility of figuring out how to use the equipment on their own time. Whether or not this was the case, most felt that their workload left them little time to take advantage of the CDC resources anyway. We recommend that any new technology purchases take into account staff training and user time feasibility before resources are expended.

Chapter 9

Program Strengths and Areas for Improvement

Overall, we were very impressed with the enthusiasm of the staff at FCCD, and their dedication to providing quality representation to their clients. The office unquestionably fills a need in Fulton County, and we believe it is a viable and sensible structure for providing quality representation in a cost-effective manner in conflict of interest cases. Conflict cases are a growing concern throughout the country, and various approaches to handling them have been attempted. Contracts with private attorneys, second public defenders and alternate defenders (i.e., programs that handle public defender conflict cases plus non-public defender work, such as mental health commitments, abuse and neglect, or termination of parental rights cases) are replacing reliance strictly on assigned counsel in order to curb costs and control quality of representation. With the infusion of state funds from the GIDC, Fulton County gets a true "bargain" in the FCCD. What follows is a combination of observations and recommendations for change.

- The program would benefit from a greater institutional presence within the criminal justice community. While relations are somewhat strained due to FCCD's lack of formal recognition from the county, this should not prevent the director from participating in county-wide criminal justice system planning. Outreach by the program to ensure it has a presence with local bar associations, law schools and county agencies is important as it builds a place for itself in the community and develops allies for the program. These relations have to be cultivated, and the director in particular needs to have the time to forge these "external" relations; something that is not entirely possible given his current caseload.
- The program has a wonderful resource in its mental health specialist staff attorney. The attorney holds an MSW and has substantial experience working with mental health programs throughout Georgia and out of state. Her extensive mental health background is made use of throughout the office, helping each attorney in the office to identify appropriate alternative sentencing approaches for their clients intended to reduce relapse

and recidivism. This expertise, which is particularly helpful with the SB 440 cases, comes at a cost. Although the mental health attorney is actively involved in numerous cases, most of them are in tandem with another attorney. She does not cover a P&A calendar. Still, the value to the clients is undisputable, and her experience is reportedly recognized by judges as unique.

- The size of the program allows it to be flexible, and lends itself particularly well to teaming, something being considered by the program. However, there is currently no “wobble room” for the current staff. All attorneys in the office, including the director and supervisors have heavy caseloads. There is virtually no ability for one attorney to “cover” for a colleague who is out sick, on vacation or on trial. We strongly recommend that the director and two supervisors carry reduced caseloads.
- The role of the program needs to be fully understood by the judges in Fulton County. The FCCD is not an overflow office. We were told by IDC board members and by FCCD staff that the office has gained a reputation among judges as being very good at handling complex cases, and every staff attorney confirmed they are sometimes assigned cases where there is no conflict with the public defender. The danger with allowing this to continue is that FCCD will be viewed as a dumping ground, and its caseload will substantially exceed the level it is equipped to handle. The office has not institutionalized an approach to handling the situation. Some attorneys said they had specifically requested that “their judge” not appoint them to non-conflict and non-SB 440 cases, and the requests had met varying degrees of success. The director told us he typically leaves it to the individual conflict defender to first address the situation with the public defenders in his or her courtroom, rather than with the judge, because he does not view it as a systemic problem. Rather, he feels that some conflicts are frivolous and the public defender staff should not be calling conflict on them. We were told by other staff that the office is mis-used by both public defenders wishing to get out of certain non-conflict cases and by judges who, in certain cases, prefer to appoint the conflict defender over a private attorney, or would rather appoint the conflict defender than allow a

defendant to represent herself pro se.

- The master calendar position could be more effective. The attorney in this position should strive to leave useful file notes for the attorney assigned to the case at P&A and to make clients feel they are represented by a concerned team, not an assembly line process.
- The office needs training and mentoring. It has many relatively new lawyers, which is not a criticism, in fact, this lends to the overall enthusiasm of staff, but it underscores the need for ongoing training. When we visited, there was no mechanism for training new attorneys who had no or little previous criminal case experience. This is unacceptable, and a top priority of the needed reduction in caseloads of the executive director and supervisors should be to adequately train and mentor new staff. We understand that the new appellate attorney will shoulder some of these responsibilities.
- We feel strongly that the FCCD should assign two attorneys to death penalty cases, in observance of national standards concerning death penalty representation. While the Supervisor of the Major Case Division is an experienced death penalty lawyer, this does not lessen the need for lead and co-counsel on these serious cases. GIDC does not mandate that two lawyers be appointed to death penalty trial cases, but the organization's Guidelines state that the American Bar Association "Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases" may be referred to as a suggestion for the determination of experience, skill and competence of the attorneys. The ABA guidelines specifically call for appointment of two attorneys in death penalty trial cases.
- The program needs to conduct performance evaluations on a regular basis, with the dual purpose of conveying what is expected of staff and of giving staff encouragement and constructive criticism which will enhance their performance.
- The office needs to determine whether it is worthwhile to hire a second investigator rather than rely on contract investigators. If paralegals are freed from the jail project

responsibilities, they will have time to do some of the investigatory work currently handled by contractors.

Chapter 10

Conclusion

While finishing this report, we were informed by the FCCD director that the county had recently announced it was going to appoint two members to the Fulton County Indigent Defense Committee, an encouraging development indicating the county's willingness to finally officially recognize the IDC, and a sign that bodes well for the continued future of the FCCD. The Fulton County Conflict Defender is clearly committed to providing quality representation to its clients, and we find it refreshing to see a management team that is receptive to experimenting with different approaches -- whether they are new technological tools or new staffing arrangements -- in order to best serve its clients and make the best use of its staff. If the County does indeed officially recognize the IDC, we expect the program will play an increasingly important role in the Fulton County indigent defense and criminal justice systems in the years to come.