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VIRGINIA COMMONWEALTH UNIVERSITY
SCHOOL OF COMMUNITY AND PUBLIC AFFAIRS

This is to certify that the dissertation prepared by Cyril W. Miller, Jr. entitled "The Diffusion of Public Defenders in Virginia: A Study of Organization Adaption and the Relationships Between Values, Decision-Making Processes, and Organizational Output" has been approved by his committee as satisfactory completion of the dissertation requirement for the degree of Doctor of Public Administration.

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1993

The Diffusion of Public Defenders in Virginia: A Study in
Organization Adaption and the Relationships Between Values,
Decisionmaking Processes, and Organizational Output

A dissertation submitted in partial fulfillment of the
requirements for the degree of Doctor of Public
Administration at Virginia Commonwealth University.

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The Diffusion of Public Defenders in Virginia: A Study in Organization Adaption and the Relationships Between Values, Decisionmaking Processes, and Organizational Output

Abstract

A dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Public Administration at Virginia Commonwealth University.

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Virginia Commonwealth University, 1993

Director: Mary Clement

Research into indigent defense issues has shown that the growth in the use of public defenders has been accompanied by increased bureaucratization and has paralleled the expansion of the right to counsel and the "due process revolution." The goal of this research is the development and testing of a model of organization adaption which explains for public defender offices in Virginia the evolution of multiple and contradictory organizational goals, the means by which they balance conflicting values and goals, and the effect of resulting decisionmaking processes on organizational output. The basic research question addressed is the relationship between values, goals, and organizational processes. Due process goals protect the organizations' ideologically based "core technology." Production goals allow organizations to adapt

to the environment through emphasis on caseloads and efficiency. The possibility that over time normative goals are eclipsed by production goals as the demands of rising caseload increase with an increase in the routinization of decisionmaking processes is also explored. The results on organizational output of the contradiction between due process and production values and goals are examined. Data were collected through a survey of public defenders in Virginia in 1992 (N=118 with a response rate of 73%). Caseload data were also collected. Analysis of the data revealed that due process values and goals are particularly strong throughout the Virginia system. Production values and goals, while not as strong as due process ones, were also important. The oldest offices showed stronger production values and goals even while due process values and goals remained relatively constant. Higher workload pressures were also found in offices where production values were strongest. Stronger production values and goals were associated with more routinized decisionmaking in the forms of increased pressure to plea bargain and more frequent accepting of routine offers of prosecutors; there were also higher caseloads and lower rates of increase in several measures of costs in offices with stronger production values and goals. Higher due process values and goals were associated with increased trial rates and longer case processing times.

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CHAPTER 1

ORGANIZATIONAL ISSUES IN THE PROVISION OF INDIGENT DEFENSE SERVICES BY PUBLIC DEFENDERS

Introduction

The establishment of the first public defender office in Virginia over twenty years ago was an innovation in the delivery of indigent defense services in the Commonwealth which paralleled similar developments in other areas of the nation. The dynamics of why and how this innovation was adopted can be studied to elucidate, in general, the ability of state government to respond effectively to public needs. How the public defender idea has grown and has been adapted since its initial establishment can also reveal much about how criminal justice organizations operate to deal with the changing challenges of society. How government responds to public needs and how it deals with increasing complexity and uncertainty over time ultimately tell us how able the organizational approach of government will be in dealing with future problems, indeed, with problems not yet discovered.

Research into indigent defense issues over the last decade has shown that the growth in the use of the public defender and the resulting bureaucratization of indigent

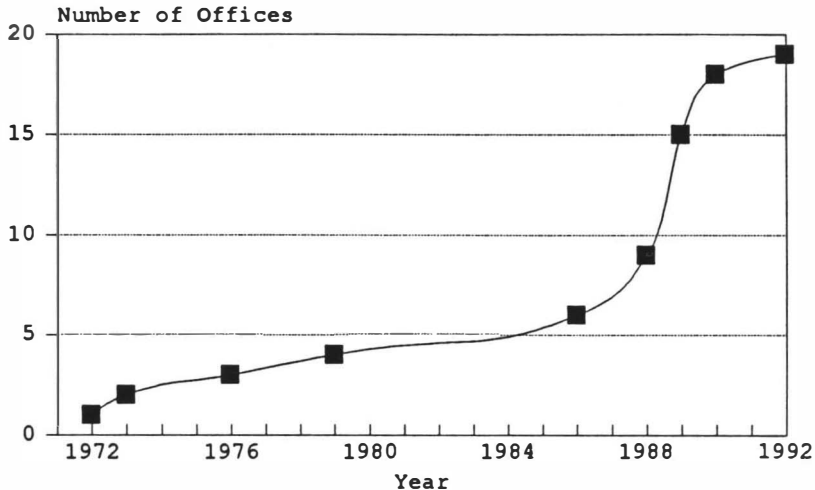
defense services have paralleled the expansion of the right to counsel and the so called "due process revolution." The constitutionally protected right to effective counsel and the right to due process are related within the criminal justice process. Society must assure effective counsel and due process protection for all those who find their way into the criminal justice process. This has become a fundamental ideal of American justice. On the other hand, ways must be found to deal effectively with the problems of crime and civil order which threaten the stability of society. Public defender organizations have been established to assure effective counsel and they have adapted over time to the demands placed upon them to assist in dealing with the problems of crime and civil order. How governments respond to such challenges may depend on their underlying values of criminal process and their ability to innovate. An examination of the rise of the public defender reveals much about the underlying values regarding the use of the criminal sanction by the state against its citizens, as well as the state's ability to respond organizationally to insure the fundamental rights which constitute American polity.

The examination of the spread of the public defender approach in Virginia over the last two decades (see figures 1 and 2) offers an opportunity to use elements of diffusion research and organizational theory to explain organizational innovation in the criminal justice system, how public defender organizations are related to the other components of the criminal justice and judicial systems, and how their

adaption demonstrates the difficulties organizations face in dealing with current and future demands.

FIGURE 1

GROWTH OF PUBLIC DEFENDER OFFICES IN VIRGINIA

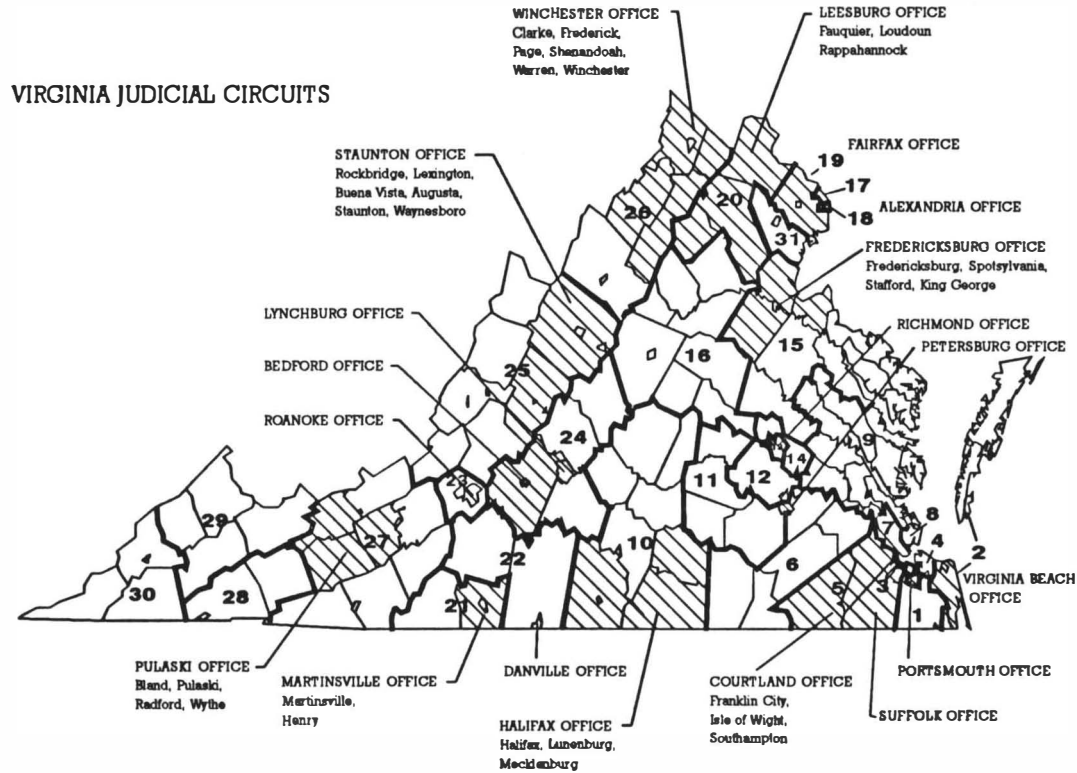


Considerable research has examined public defender organizations. In a sociological study of one of the nation's largest public defender organizations, McIntyre identified the struggles of the public defender as an organization and of individuals within the organization to define roles and to become "legitimate" in the face of what she sees as conflicting value systems and contradictory expectations of various constituents of the legal system of which the public defender is a part and of the society which it serves.¹ McIntyre's research describes some of the

¹Lisa J. McIntyre, The Public Defender: The Practice of Law in the Shadows of Repute, (Chicago: University of Chicago Press, 1987).

FIGURE 2

VIRGINIA LOCALITIES SERVED BY A PUBLIC DEFENDER
(As of July 1, 1992)



complexities faced by organizations in the "administrative state" that characterizes modern American government, namely, the existence of multiple, even conflicting policies and organizational goals and the need for organizational legitimacy.

McIntyre's research continued the tradition begun by Eisenstein and Jacob et al., when organization and management analysis were used to bring a new perspective to the study of the criminal justice system; and organization, programs, and procedures as emphasized in the field of public administration became important topics of study.² Given the need to understand the character of the criminal justice system and the fact that the components of this so-called system are intermingled to such a degree that it is difficult to separate out the effects of one part from those of another, continued research is needed to understand the dynamics of organizational development within this specific policy environment. For example, goals designed to carry out particular public defender policies usually vary and may often conflict. Therefore, research must focus on the operations, management, and planning functions of an agency. It must aggregate responses and behavior of these agencies as they deliver services to the public and provide support to the criminal justice system and to society.

While policy is not synonymous with the concepts of "goals and objectives," policy does reflect certain values

²Joan E. Jacoby, Basic Issues in Prosecution and Public Defender Performance, (U.S. Department of Justice, 1982).

of policymakers and society. ✧ Policy can be viewed as the overall plan of action selected to meet goals and objectives. It is difficult to describe or evaluate the operations of a public agency because its goals are often difficult to quantify, and because an office may espouse several goals that may be contradictory. For example, a public defender's office may have the goal of providing service to all indigent persons accused of crimes in its jurisdiction; it may also have a goal of having each case tried on its merits with each defendant having his day in court. The first goal minimizes the amount of time that could be spent per client; the latter demands that substantial time be spent on behalf of the client. ✧

Policy derived from values can be viewed, therefore, as the means of specifying the particular goals and objectives of an agency as it operates within a larger, delivery service universe. These objectives are operationalized through organizational and procedural configurations (structure, programs, and decisionmaking processes) that vary either by policy or by constraints imposed by the outside environment.

Accomplishing goals requires a plan for maximizing agency resources so that there can be relative optimization of operational goals. A prosecutor, for example, with a "trial sufficiency" policy attempts to maximize the office's use of the adversary trial process; a "system efficiency" prosecutor attempts to dispose of cases in a manner that is

least costly in time and resources.³ This states that different values or priorities create different distributions of resources in an agency. A policy approach requires looking at the relationship between the structure of an agency and the individual character it acquires from a particular mixture of politics, personality, and local community environmental factors.

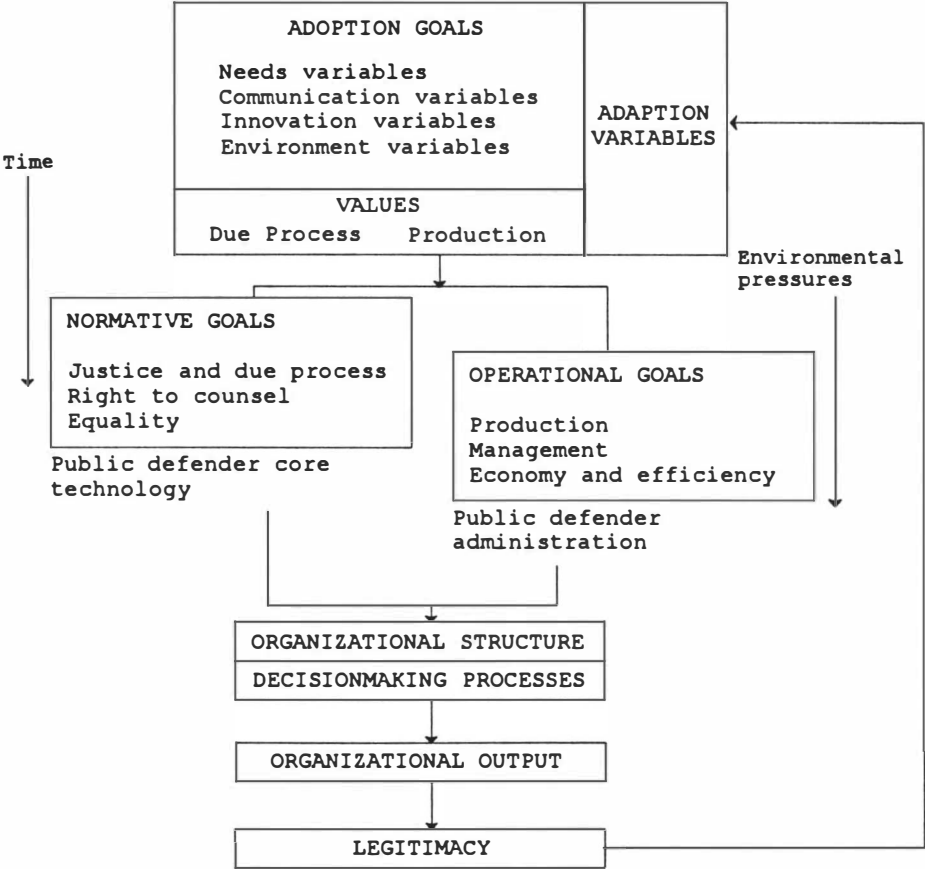
Examination of Public Defenders in Virginia

The main goal of this research is the development and testing of a model of organization adaption which attempts to explain for public defender offices in Virginia (1) the evolution of multiple and contradictory organizational goals, (2) the means by which they balance conflicting values and goals inherent in the delivery of public services (the right to counsel) through the development of routinized decisionmaking processes, and (3) the effect, if any, of these decisionmaking processes on the output of the offices (see figure 3).

While the focus of the inquiry is primarily public defender organizations (offices), the model operates at both the individual and organization levels. In other words, individuals' values and goals, as well as their perceptions of decisionmaking processes and other aspects of the environment are included in the model in order to measure higher level or macro characteristics of the organization's development and operations. Exploration of both individual

³Jacoby, Public Defender Performance, 30-31.

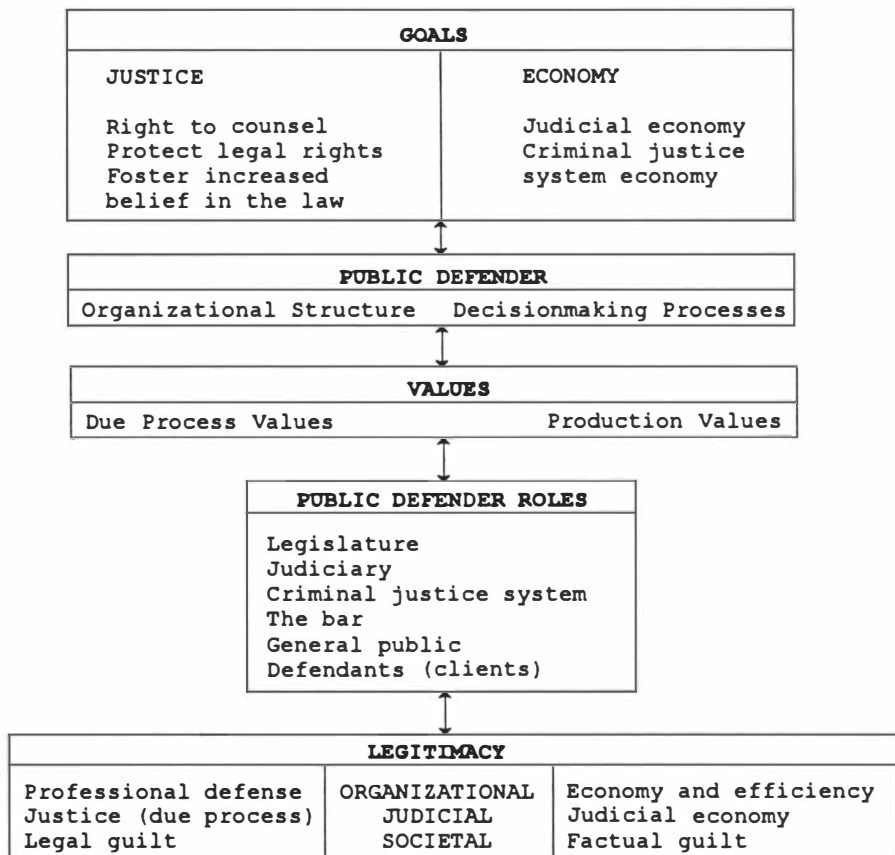
FIGURE 3
THE PUBLIC DEFENDER DIFFUSION MODEL



and organizational levels is important if the research is to reflect concern for the process by which micro-level individual behaviors combine to produce macro-level organizational effects. It is important to note that this research does not examine the dynamics of how individual behavior affects organizational structure and processes. The public defender diffusion model, while it is presented as operating at both the individual and office (or organizational) levels, makes the transition from individual to organizational level only through the aggregation of survey data in order to discover variation between public defender offices.

The public defender diffusion model developed and tested is shaped by the complexity of the policy process which led to the establishment of public defenders as organizations in Virginia (see figure 4). This complexity arose from the multiple policy goals and values which policymakers and other actors in the policymaking process brought to the arena. These goals and values defined what in diffusion research are known as diffusion variables and which can be classified as needs, communication, innovation, and environmental in nature. The decision to adopt a specific program or idea is a function of these variables and is apart from the adaption process which begins after the decision to adopt has been made and efforts at implementation commence and proceed. In the case of public defender offices in Virginia, the adoption of the public defender approach was influenced by the need to

FIGURE 4
ELEMENTS OF THE PUBLIC DEFENDER'S ENVIRONMENT



operationalize due process values and values of economy and efficiency in the utilization of state resources. A basic assumption examined in this research is that once a public defender office is established, it begins to adjust to the demands of its environment. Adoption goals evolve to become adaption goals and separate into two basic categories: normative and operational.

The normative goals serve to establish, maintain, enhance, and protect the ideologically based "core technology" of the organization (defense), to constitute one of the "myths" which hold the organization together ("the myth of competency"), and to establish for the organization and its members the needed legitimacy within the American legal tradition and criminal justice system. In public defender organizations, normative goals define the "due process" values which root the organization in its legal environment.

The operational goals explain how the organization adapts to become institutionalized or administered. They also define the routinization of decisionmaking processes and the development of tools and techniques for dealing with elements of the external environment, thereby establishing and maintaining the legitimacy needed for the public defender organization with other components of government such as other criminal justice and judicial system entities, as well as with the society as a whole, usually called "the public." These operational goals explain the emphasis on caseloads which requires the organization to produce output

efficiently. They also affect the legitimacy of other components of the criminal justice and judicial systems.

The decision to adopt the public defender approach in Virginia was based on a limited number of policy goals, mainly to contain costs of indigent defense while meeting the constitutional mandate for right to counsel and to improve the quality of defense services generally. These and other related goals were shared by many groups within the legal, criminal justice, judicial, and other governmental systems, though the Governor and Virginia State Bar appeared to be the dominant catalysts for getting these goals onto the policy agenda in terms of a policy proposal. Past efforts to determine whether the public defender system has achieved these adoption goals present contradictory and confusing results. There is still no consensus or scientifically reliable evidence that public defender systems offer better quality of defense or are more cost effective when, as in the Virginia case, workload or other measures of output are considered or when the wholly inadequate court appointed attorney fee schedules are used correctly in evaluations. Yet the public defender system has continued to grow and the potential expansion of the system statewide continues to be a policy option in response to the "crisis in indigent defense" in the state. Established public defender offices also continue to face increasing demands as caseloads increase and as the system's central administrative office strives to develop standard operating policies and procedures pursuant to ongoing

evaluations.

The public defender diffusion model predicts that adoption goals over time become adaptation goals, normative and operational. Furthermore, as time passes and even though normative goals remain important to administrators, individual public defenders and others, they are eclipsed by operational goals as the demands of institutionalization lead to the rationalization of decisionmaking processes in order to produce concluded cases. This leads to a fundamental contradiction between and the need to balance the demands of values of due process and values of production with which the organization must deal and to a change in the nature of the organization's output.

This phenomenon might at first be described as an example of goal displacement where original organizational goals give way to procedures or rules which become themselves "substitute" goals of the organization. The theory of goal displacement may explain much of what occurs in public defender organizations. It is limited, however, in explaining (1) the development of goals as a function of values, (2) the effect of the contradiction in original goals of the public defender approach on organizational structure and output, and (3) the appearance that there is a balancing of conflicting goals rather than an actual displacement of goals. Furthermore, goal displacement theory sees individuals' motives (goals) as a primary source of the change in organizational goals, while in the public defender setting, individuals' goals seem themselves to be

in conflict--not driving a displacement of goals as much as they are serving to ensure both personal and organizational legitimacy in a complex environment of conflicting organizational goals.

The diffusion model helps explain the complexity of goal conflict and the results of such conflict which are identified by examining the legal and social environments of public defender organizations: problems of measuring goal attainment, individual public defender concerns of professional legitimacy, and society's and defendants lack of esteem for public defenders and public defender organizations. The research aim here is to explore the diffusion of the public defender approach as a major method for providing indigent defense services in Virginia--to explore the process by which public defender offices as public organizations are established, grow, and adapt in their respective environments in response to conflicting values and goals inherent in providing public defense services.

* As figure 1 showed, the number of public defender offices in Virginia experienced a dramatic upswing beginning in 1985. This may be due to the considerable increases in criminal cases evidenced in official courts' data and to the heightened concern on the part of legislators for rising costs of providing indigent defense services. No attempt to explain empirically the patterns of growth in public defender offices is attempted in this research. A review of the historical record, however, will reveal reasons why

continued expansion of the public defender system has remained a policy option.

Overview of Major Research Tasks

The development and testing of the public defender diffusion model requires the completion of several research tasks. These tasks are to (1) describe the public defender environment, (2) develop the public defender model based on observations about this environment and ground it in organization theory, (3) generate and test several basic hypotheses about important links in the model, (4) extend the exploratory research into the complexities of the model's operations through an examination of other relationships (some possibly causal in nature) between model elements, and (5) present and review the findings of the research exploring the implications of the findings to public defender organizations and to public organizations in general.

The first of these tasks, understanding the public defender's environment, requires the review of (1) the development and nature of the right to counsel, which is a fundamental value underlying the criminal justice process and the meaning of justice in the American context; (2) the nature of the criminal justice process of which the public defense function is a part; (3) a discussion of public defender organizations and their place in the criminal justice system, and (4) an evaluation of the public defender approach across the country, but particularly in Virginia.

Chapter 2 presents a review of the academic and historical papers about these elements which leads to a graphical representation of the public defender's environment (see figure 4). This representation, in turn, serves as a major building block in the construction of the public defender diffusion model as it presents the importance of goals, values, decisionmaking processes, organization structure, and concerns for legitimacy in describing public defender organizational processes.

With a sound understanding of the public defender's environment, the next step is the examination of the dynamics of the adoption and adaption processes, as well as the problems of public defender organizations in carrying out their service delivery function. Chapter 3 discusses the development of the diffusion model and the generation of basic hypotheses which characterize its operation along with a review, evaluation, and synthesis of research in organizational theory as it relates to organizational goals, decisionmaking processes, and structure.

As part of the historical review of the Virginia public defender experience, the adoption process is described in terms of diffusion variables. Together, the dynamics of the adoption process constitute the first element of the public defender diffusion model (see figure 3). Rogers explains diffusion variables in terms of needs variables and innovation variables. The public defender system in Virginia was adopted in response to specific needs and the limited initial pilot program seemed the best response as

measured by these innovation variables. The adoption process was characterized from the beginning by the policy goals of ensuring due process and doing it as efficiently and economically as possible. In terms of the diffusion model, public defenders were given the task of operationalizing these adoption goals which were based on values of due process and production.

The study of the public defender environment also identifies various goals, values, and concepts which makeup the other elements of the diffusion model. A review of the work of Packer⁴, and Benjamin and Pedeliski⁵ leads to the distinction between normative and operational goals in the model. Packer identified two value systems which compete with one another in the operation of the criminal process, due process and crime control. The due process system stresses the formal structure of law--an adjudicative, adversarial, and judicial process based set of values. Operation of this system leads to specific and measurable outputs such as fewer pretrial detentions. The crime control system stresses repression of criminal conduct through mainly efficient administrative or bureaucratic procedures. Operation of this system leads to more pretrial detentions, for example, than would be expected under the

⁴Herbert L. Packer, "Two Models of the Criminal Process," University of Pennsylvania Law Review 4 (November 1968).

⁵Roger W. Benjamin and Theodore B. Pedeliski, "The Minnesota Public Defender System and the Criminal Law Process: A Comparative Study at the Judicial District Level," Law and Society 4 (November 1969).

due process system. The differences in the goals of these two systems, in the values upon which these goals are based, and in the results of the operation of the two approaches lead to the concept in the public defender diffusion model of the need by public defenders to balance both systems in order ultimately to establish and maintain legitimacy in the social and legal environments.

The need to balance differing goals and values leads to consideration of how individual and organizational goals are related, develop, and change over time in response to changing demands and situations. As will be discussed in chapter 3, previous research demonstrates the idea that public defenders and their organizations have goals that change over time to limit individual behavior and result in the bureaucratization of defense services with the routinization of case processing (decisionmaking) rules and the accompanying redefinition of "adequate" defense as what is possible with limited time and other resources, that is, the diminution of due process values under pressure.* Eckart and Stover's work repeats a basic theme of Packer's--public defenders are faced with due process and production values and goals.⁶ They survive by the routinization of decisionmaking activities, the adoption of "rules of thumb" in processing cases, and other techniques.

Packer examines output variables of criminal justice

⁶Robert V. Stover and Dennis R. Eckart, "A Systematic Comparison of Public Defenders and Private Attorneys," American Journal of Criminal Law 3 (1975), 265-299.

programs in his operationalization of the due process and crime control value systems or paradigms of criminal process. Benjamin and Pedeliski extend this idea and conclude that several activity patterns or output measures may be examined to test the value orientation of defense counsel. The incorporation of these measures into the public defender diffusion model allows the consideration of organizational output as a relationship of measured values and organizational decisionmaking processes and structure.

Oaks and Lehman⁷ describe the criminal justice system in terms of an input-output model and discuss the importance of factors which affect the legitimacy or the basic support for and acceptance of each of the system's components. Their research leads to the incorporation of the concept of legitimacy in the public defender diffusion model in order to consider impacts of the public defender's activities on other organizations and ultimately on society. McIntyre identifies conflicting definitions of legitimacy faced by public defenders stemming from their roles to enhance and maintain the legitimacy of the local criminal justice and judicial systems while at the same time providing effective defense counsel to clients. To the degree that these systems define their own legitimacy in terms of economy and efficiency, public defenders must balance the need to process and conclude cases with the need to use procedural

⁷Dallin H. Oaks and Warren Lehman, A Criminal Justice System and the Indigent: A Study of Chicago and Cook County, (Chicago: University of Chicago Press, 1968).

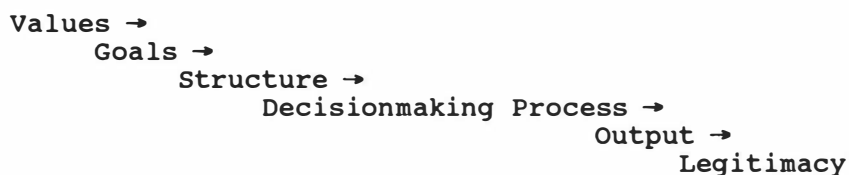
due process rules in behalf of their clients.

The work of Oaks and Lehman, Packer, McIntyre, and others, together describes the conflicting goals and value systems present in the public defender's environment as well as the difficulty public defenders and their organizations face in establishing and maintaining legitimacy in the American context. It is the nature of the operationalization of goals and values through purposeful, organized activity that results in the provision of defense services that leads ultimately to legitimacy or lack of it for public defenders and their organizations. Organizational structures and the decisionmaking processes developed and used to achieve value based goals therefore become important components of the public defender diffusion model.

Generation of Basic Hypotheses

Chapter 3 describes each element of the diffusion model in detail and develops fundamental hypotheses at both the individual public defender and public defender office levels regarding relationships between selected model elements and between exogenous variables (such as environmental characteristics) and model elements. These hypotheses are based on results of previous research into issues of indigent defense and public defenders presented in chapter 2 and elements of organizational theory also discussed in chapter 3. They offer a "first test" of the diffusion model: an opportunity to assess in a general and immediate

way the ability of the model to explain several perceived processes and relationships using a few basic variables, thereby enhancing the validity of the elements of the model as well as the relationships between them: the environment and values affect policies which affect goals which, in turn, affect organizational structure and decisionmaking processes which affect organizational output which affects organizational legitimacy or



where → is read "affect(s)."

This linear representation of the model is similar to Jacoby's graphical representation of the relationship between the external environment within which specific policy is shaped and the implementing components of policy, the organization, programs, procedures and decisions (see figure 5). This makes easier the tasks of variable identification, measurement and hypothesis testing, as well as serve as a foundation for the eventual examination of other possible relationships (including causal ones) at work in the model itself. Hypotheses regarding the model's operations are primarily concerned with the relationships between elements within the model such as organizational decisionmaking processes and output. They attempt to offer summary explanations for the complexities of the public

FIGURE 5

POLICY IN RELATION TO THE ENVIRONMENT AND ITS PARTS

Environment	shapes
Policy	transmitted by
Organization	operationalized
Programs	made manifest by
Decisions	producing
Outcomes	

Source: Jacoby, Public Defender Performance, 8.

defender environment and how that environment affects the provision of an important public service. An hypothesis is also offered for testing the notion that goals change over time and in response to environmental factors. The hypotheses to be tested are not meant as a complete set of all possible relationships between model elements. They are guiding or preliminary ideas about how the model operates. The exploratory nature of the proposed research should lead to the identification of significant relationships between variables not considered a priori.

Review of the Research Design

In order to accomplish the purposes of the research, primary data were collected through a survey of all public defenders and their staff throughout Virginia conducted during the first half of 1992. In addition to gathering

descriptive data about public defenders and the operation of the offices across the state, the survey was constructed to measure attitudes toward various aspects of the criminal justice system and the processes by which the system works to provide defense services. These questions were based on a review of the literature concerning indigent defense issues and the need to measure what attorneys practicing as indigent defenders think about their jobs, organizations, clients, and about issues such as plea bargaining. More details on the survey instrument are discussed later in chapter 3.

In addition to survey data, data were collected from the Public Defender Commission and the Supreme Court of Virginia on the caseloads and workloads associated with indigent defense activities in the state. These data allowed the testing of the public defender diffusion model's hypothesis, and the exploration of other relationships between elements of the public defender's organization and environment.

With this introduction to the research complete, and as discussed above, the next task is to review the public defender's environment so that the construction of the model rests upon a sound understanding of the complexities faced by government in providing indigent defense services to society.

CHAPTER 2

THE LEGAL AND SOCIAL ENVIRONMENTS OF PUBLIC DEFENDER ORGANIZATIONS

Criminal Justice and the Right to Counsel

One of the most basic constitutional principles underlying the American criminal justice system is that everyone accused of a crime is entitled to have counsel represent him at trial and on appeal, and that if the accused cannot afford to retain counsel the state will appoint and pay for that counsel. This "right to counsel" is embodied in the Sixth Amendment to the United States Constitution, which provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."¹

Development of the Right to Counsel

At the time of the American revolution, persons accused of serious crimes in England had no right to counsel except in treason cases. Defense lawyers were welcomed only in misdemeanor cases in English courts; they were even less welcome in America's colonial courts. However, as time passed and as the new American social order took hold, there

¹Constitution, amendment VI.

arose the need for making binding commitments and acquiring rights. As social diversity increased, lawyers were needed to help define a common ground and to help define rights and obligations of an increasingly diverse society.²

The first eight amendments to the Constitution were intended to protect individual citizens from federal power, not state or local governmental power. Although the Sixth Amendment to the Constitution (1791) did provide for assistance of defense counsel in federal courts, the same rights for criminal defendants in most state courts would not be articulated for years. The Fourteenth Amendment's due process clause took on increasing importance after its passage in 1868, an importance which may have culminated in the so-called due process revolution of the 1960s and 1970s when the U.S. Supreme Court came to define due process in procedural terms, that is, to define it not as "justice," but rather as what is necessary to do in order to achieve justice. The right to counsel became the right to procedural due process or to a fair trial process in which the accused is guaranteed the rights to notice of charges and proceedings and to a hearing and an opportunity to conduct a defense before an impartial tribunal in an atmosphere of fairness.³

In 1932, the U.S. Supreme Court found that the failure of a state trial court to make an effective appointment of

²McIntyre, The Public Defender, 16.

³Ibid., 18.

counsel was a denial of due process within the meaning of the Fourteenth Amendment. The due process revolution may have begun with the Mapp decision in 1961 when the Court ruled that Fourth Amendment protection against unreasonable searches and seizures applied to state criminal cases. This case was only the beginning in a series of cases that would firmly establish under the guarantees of the Fourteenth Amendment the Sixth Amendment right to counsel in state trial courts.

* In 1963, in the landmark cases of Gideon v. Wainwright,⁴ the United States Supreme Court took the first major step towards placing the indigent defendant on an equal footing with those able to hire counsel by requiring that states provide indigents with the assistance of counsel in serious criminal prosecutions. Between the 1963 ruling and 1973, the proportion of defendants represented by government-provided lawyers increased from a negligible share of the total caseload to 65 percent of all felony defendants.⁵

In the long march of decisions that followed Gideon, states have been required to provide counsel for indigent defendants virtually from the time of arrest to their release. In 1972, the principle was established by the

⁴Gideon v. Wainwright, (372 U.S. 335), 1963.

⁵Robert Hermann, Eric Single, and John Boston, Counsel for the Poor: Criminal Defense in America (Lexington, Mass.: D.C. Heath and Company, 1977), 1.

United States Supreme Court in Argersinger v. Hamlin⁶ that no person can be deprived of his liberty as a result of any criminal prosecution without being afforded the right to the representation of counsel. The Argersinger decision, in fact, placed the right to counsel in state courts upon the foundation of the Sixth Amendment.⁷ Protection of the sixth amendment guarantee of counsel has also been applied to juvenile delinquency proceedings (In re Gault⁸), to appeals (Douglas v. California⁹ and Ross v. Moffit¹⁰), and to other situations as well (United States v. Wade¹¹ and Coleman v. Alabama¹²). Thus the right to counsel has undergone an enormous expansion necessitating the provision of counsel for nearly one-half of all persons accused of a crime each year in the United States. This expansion is discussed by Krantz et al., who state that the Sixth Amendment as it relates to the requirement for the appointment of counsel proclaims: (1) that defendants in all criminal prosecutions require the assistance of counsel, and (2) all actions where the state is the complainant, not falling within the ambit

⁶Argersinger v. Hamlin, 407 U.S. 25 (1973).

⁷Sheldon Krantz et al., Right to Counsel in Criminal Cases: The Mandate of Argersinger v. Hamlin, (Cambridge, Mass.: Ballinger Publishing Company, 1979), 120.

⁸In re Gault, 387 U.S. 1 (1967).

⁹Douglas v. California, 372 U.S. 353 (1963).

¹⁰Ross v. Moffit, 417 U.S. 600 (1974).

¹¹United States v. Wade, 388 U.S. 218 (1967).

¹²Coleman v. Alabama, 399 U.S. 1 (1970).

of the Sixth Amendment, are civil actions, and the question of whether counsel will be appointed in these cases depends on an analysis of due process issues.¹³ In principle, at least, the Sixth Amendment right to counsel is applicable to state court proceedings through the Fourteenth Amendment due process clause.

The court has held that the right to counsel exists at several "critical" points during the criminal prosecution process: at the preliminary hearing, at indictment, at arraignment, etc. Through the many cases dealing with criminal process, the right to counsel has been defined and redefined in all stages of pretrial and trial. According to Greenhalgh, there are still three areas left for even further extension of the right: postconviction appeals of capital cases,¹⁴ counsel in the grand jury room, and forfeiture of attorney's fees.¹⁵ In the future, then, the U.S. Supreme Court may expand even further the present boundaries of the Sixth Amendment right to counsel.¹⁶ It appears more likely that all "critical" stages have been identified and defined as such and that the right to counsel has reached its maximum extent.

¹³Krantz et al., Right to Counsel, 127.

¹⁴Michael A. Mello discusses this question in "Is There a Federal Constitutional Right to Counsel in Capital Post-Conviction Proceedings?" The Journal of Criminal Law and Criminology 79 no. 4 (1988), 1065-1104.

¹⁵William W. Greenhalgh, "The Assistance of Counsel Clause in the Year 2000," Criminal Law Bulletin, 25 no. 1 (1989), 91.

¹⁶Ibid., 106.

The Right to the Effective Assistance of Counsel

The right to counsel has evolved in both doctrine and scope.¹⁷ History shows that doctrine has moved from the Fourteenth Amendment's requirement of due process to the Sixth Amendment's requirement of assistance of counsel. The scope of the right to counsel has involved the extension of the class of defendants for whom public counsel is required to the present-day standard of all financially eligible defendants who are charged with an offense for which there is the possibility of punishment of imprisonment.

In Powell v. Alabama, the Supreme Court introduced the concept of effectiveness of counsel in procedural terms when it stated that "the necessity of counsel was so vital and imperative that the failure to make an effective appointment of counsel was . . . a denial of due process."¹⁸ In subsequent cases, the Supreme Court began to use the term in a substantive context beginning the development of the doctrine that the right to counsel was not just a procedural formality but rather a substantive right and that such counsel had to meet some test of "effective aid and assistance."¹⁹

Lacking clear definition of the substantive right to counsel by the Supreme Court and the paucity of measurable

¹⁷A thorough review of the development of the right to counsel can be found in Krantz et al., Right to Counsel from which this summary is adapted.

¹⁸Powell v. Alabama 287 U.S. 45 (1932)

¹⁹Krantz et al., Right to Counsel, 167.

standards for effectiveness, the federal and state courts, various levels of governments charged with providing defense services, as well as professional groups such as the Bar, have struggled to develop principles of effective counsel. Briefly these can be stated: Counsel should be appointed promptly. Counsel should have a reasonable opportunity to prepare his defense. Counsel must confer with the accused without delay and often. Counsel must conduct investigations, factual and legal, as needed. Counsel must have sufficient time for reflection and preparation for trial. In effect, counsel has the responsibility to (1) counsel with and advise the defendant, (2) prepare the case factually and legally, (3) protect the legal rights of the defendant, and (4) represent the defendant's interests in dispositional alternatives. "Perhaps the absence of detailed criteria governing effectiveness of counsel can be explained by the traditional "volunteer" origins of public defense. Perhaps courts still confuse public service with charity."²⁰

Discussion of the effectiveness of counsel is important here because its definition and measurement remains one of the problems in indigent defense research and because, given a measure of effectiveness, the concept can be useful in analyzing the ability of the public defender and other approaches to meet the needs of indigent defense.

²⁰Authur B. LaFrance, "Criminal Defense Systems for the Poor," Notre Dame Lawyer 50 (1974): 44.

Mechanisms for Assuring the Right to Counsel and Delivery of Defense Services

A multitude of diverse systems for providing counsel has sprung up across the country as states and local communities have searched for solutions to the problem of complying with the mandates of the United States Supreme Court. Although defense systems vary greatly throughout the country, a report released by the American Bar Association²¹, suggests that they can be broadly categorized into three principle delivery systems: (1) public defender systems, where the defender programs affords the vast majority of indigent representation; typically, private attorneys are assigned to represent only a small percentage of the cases, primarily where the defender has a conflict of interest in representing all co-defendants; (2) assigned or appointed counsel systems, where members of the private bar are appointed by judges to represent all indigent defendants; and (3) mixed systems, where both public defenders and assigned counsel represents a substantial number of indigent defendants.

The changes in the criminal process mandated by the Supreme Court required the elaboration of the role of the defense attorney. Their role became justified by the idea that protecting the rights of the innocent is just as important as punishing the guilty. Traditionally, the defense of the indigent had been provided by members of

²¹American Bar Association, An Introduction to Indigent Defense Systems (1986): 3-13.

local bars on a pro bono basis. Pro bono work was seen as a civic duty on the part of attorneys arising from the "profession's tradition of service before gain and from the lawyer's essential and monopolistic position in the justice system."²² The assigned counsel system was very often judged ineffective and inadequate, especially in large urban areas. Public defender systems are usually recommended as a solution to the problems of these assigned counsel programs.

Criminal Process and Public Defense

The right to effective counsel cannot be separated from the criminal justice system and the values upon which that system operates. The shape of the criminal justice process affects the use of the criminal sanction and the approach government takes to assure justice. Herbert Packer argued that important trends in the development of the criminal process were underway over two decades ago. As the Supreme Court of the United States began to add to the prescriptions of law which govern the operation of the criminal process, it became obvious that adequate legal representation for those who could not afford to retain an attorney of their own choosing was wholly inadequate. In effect, the criminal process was found wanting. Packer argued for an examination of the values underlying the criminal process and criminal law in order to appraise its ability to deal with the problems, or "substantive missions," faced by society. He

²²Barlow F. Christensen, "The Lawyer's Pro Bono Responsibility," American Bar Foundation Research Journal No.4 (1981): 1.

identified two value systems or models which compete with one another in the operation the criminal process, the due process model and the crime control model.²³

According to Packer, both models of the criminal process share some common assumptions or values. Among these is, first, the belief that the function of defining conduct which should be treated as criminal is separate from and precedes the process of identifying and dealing with persons as criminals. Second, there are limits to the powers of the state to investigate and apprehend citizens suspected of criminal activity. Third, the accused is not just an object to be acted upon, but a entity in the process who may force the system to demonstrate to a judge or jury that he is guilty of charges against him.²⁴

The usefulness of Packer's models is found in the delineation of their differences. The crime control model is based on a belief that repression of criminal conduct is the most important goal of the criminal process; therefore, the criminal process is a major positive guarantor of social freedom which must operate efficiently to obtain appropriate dispositions of persons who have been convicted of crime. Efficiency becomes, under this model, the system's ability to "apprehend, try, convict, and dispose of a high proportion of criminal offenders whose offenses become

²³Packer, "Two Models of the Criminal Process," 6-10.

²⁴Ibid., 7-9.

known."²⁵ Since the crime control paradigm assumes that deterrence is most important, it also stresses successful prosecution of cases and focuses on factual guilt, the "presumption of guilt qualified by calculus of the probabilities of guilt."²⁶ The validating authority of the crime control model is legislative (or administrative) because it emphasizes the existence and exercise of official power throughout the criminal process.²⁷

The successful operation of the crime control model of criminal process would produce a high rate of apprehension and conviction, greater speed in case processing, earlier determination of probable guilt or innocence through more administrative and informal means, and a greater number of guilty pleas. These results are based, in summary, on two essential elements: (1) an administrative fact finding process leading to exoneration, or (2) the entry of a plea of guilty.²⁸ It is clear that the goals of the crime control model are felt to be possible if operationalized by objectives of efficient production. These objectives appear to be best achieved in a highly controlled, rational setting where decisionmaking processes are highly routinized and administrative or bureaucratic procedures are used. The degree to which public defender organizations reflect these

²⁵Ibid., 10.

²⁶Benjamin Pedeliski, "The Minnesota Public Defender System," 285.

²⁷Packer, "Two Models of the Criminal Process," 22.

²⁸Ibid., 13.

characteristics should indicate something of their basic goals or values of criminal process as well as enhance their ability to deal with questions of economy in providing a public service.

The due process model stresses the formal structure of law as it insists on formal, highly visible, adjudicative, and adversarial fact finding processes. Here, the possibility of error is everywhere to be expected and everywhere to be prevented and eliminated. There is little demand for immediacy of disposition, efficiency, or reliability when the demands of due process are threatened. In the due process model, the primacy of the individual and the concept of limitation of official power are paramount.²⁹ Therefore, the model's validating authority is basically judicial and requires an appeal to the law of the Constitution.³⁰ This establishes the normative foundation for public defense in terms of the American legal tradition and the history of the right to counsel. It also allows public defender organizations to argue their goals as entirely legitimate and their contribution to society as positive, necessary and proper since they increase the legitimacy of the criminal justice and judicial systems.

✎ One would expect fewer pretrial detentions under the due process model since such detention is seen as a violation of the presumption of innocence and overly

²⁹Ibid., 16-18.

³⁰Ibid., 22.

restrictive of the accused's ability to prepare a defence.³¹ Greater use of hearings and procedures to scrutinize, test, and challenge the activities of police and prosecutors should also be expected. More of the accused should initially plead not guilty and a greater percentage of their cases should be taken to trial under the due process paradigm than under crime the control model.³² The identification of these output measures and those mentioned for the crime control model imply the ability to identify values underlying the operation of indigent defense service organizations by the measurement of specific variables. In other words, organizational output should be a function of organizational values, an idea which will be considered later.

The role of counsel becomes central in both models of criminal process since the right to counsel has been attached to nearly every step of the process. "Of all the controverted aspects of the criminal process, the right to counsel, including the role of government in its provision, is the most dependent on what one's model of the process looks like."³³ How governments assure the right to effective counsel, therefore, becomes a question of perspective and one of values.

In 1964, Packer saw the American criminal process as

³¹Benjamin and Pedeliski, "The Minnesota Public Defender System," 285.

³²Ibid., 287.

³³Packer, "Two Models of the Criminal Process," 21.

resembling the crime control model but with an increasing trend toward the values of the due process paradigm.³⁴ The courts as part of the criminal justice system were described in 1968 as having a constitution designed to produce an ideal legal procedure in which values such as due process are to be maximized.³⁵ In an evaluation of the then relatively new public defender program in Minnesota, Benjamin and Pedeliski agreed and stated that, at least in Minnesota, the establishment of the public defender system demonstrated the trend toward acceptance of the goals of the due process model. At the same time, however, they stated, "In observing the behavior of . . . defender systems in other states . . . public defenders often operate in a manner congruent with crime control objectives."³⁶

It is important, therefore, to recognize the importance of counsel in both models of the criminal process and at the same time to see that the use of public defender organizations by government as a means of providing for indigent defense, a trend well under way in the 1960s, could be justified and operationalized as policy under the values of either model. What is of interest here is first, why do governments chose the public defender approach over the alternatives as a major indigent defense delivery mechanism, or in other words, what values underlie the adoption of

³⁴Ibid., 23.

³⁵Oaks and Lehman, A Criminal Justice System, 178.

³⁶Benjamin and Pedeliski, "The Minnesota Public Defender System," 286.

public defender systems, and second, how do different or conflicting values affect the structure, behavior, and outputs of public defender organizations?

The goal of this research is not to measure the degree to which public defenders hold values of the due process or crime control paradigms versus, say, court appointed attorneys. The merit of the identification of these two models lies in the fact that they demonstrate that varying values are possible in organizations that on the surface have the same goals--providing indigent defense services. The crime control model stresses administrative means to achieve its aims: efficient production; a highly controlled, rationalized, routinized decisionmaking process; and bureaucratic structure. These means constitute the operational or production values under study here and about which more will be said later.

Justice and Legitimacy

Oaks and Lehman describe the criminal justice system in terms of an input-output model and make the point that it be considered in isolation from the society that contains it.

The boundaries that separate [the] system from the world are hazy indeed. The criminal justice system . . . is a device for selecting those whom society wants to treat specially. Public opinion, knowledge and emotion playing upon a criminal justice system have as essential a part in defining how the system operates as the constitution by which its machinery is organized. It is the reasonable responsiveness of the criminal justice system to society's expectation and sense of justice that makes the system legitimate in the eyes of the society it serves. Without the interplay between society and the system, the system can only endure so

long as the sovereign has power to impose its will.³⁷ Other forces more directly related to the system may be conceived as beginning and ending with it. A rash of violent crimes committed by persons released from prison may arouse public indignation which, expressed in the press, has an impact on the behavior of judicial personnel and policy-makers. But, undoubtedly the most powerful external influence is the public attitude toward crime in general, toward specific or sensational crimes, toward punishment, and toward culpability.³⁸

It is also important to consider the expectations of society and of those in the system concerning the success of the system in convicting the factually guilty. "There is reason to believe that even defendants lose respect for a system that, because of inefficiency, poverty, or the stringency of its own procedural rules, cannot convict them with at least reasonable frequency."³⁹ According to Dahlin and McIntyre,^{*} public defenders suffer from a "stigma of ineptitude" whereby defendants and the general public believe that the public defender is less effective than privately retained counsel. Ties to the government or judicial system, the courtroom interaction of defense and prosecution counsel, and the general lack of choice in selecting their own attorney are often given as reasons for

³⁷Oaks and Lehman, A Criminal Justice System, 184.

³⁸Ibid., 185.

³⁹Ibid., 193.

this view. Much research bases these views on case outcomes unfavorable to defendants, while the work of Tyler indicates that perceptions of procedural and distributive justice (fairness) are more important in forming attitudes toward legal authorities and the legal system. As a public organization with a service delivery function, public defender organizations cannot ignore the views of their clients and the public any more than they can ignore the demands of policy-makers and others in the criminal justice system. Their legitimacy depends upon their ability and willingness to consider the impact of their activities on individuals, groups, and society.

As Oaks and Lehman make clear, there are complex forces affecting the legitimacy of the criminal justice process, including the defense function. The concern for procedural regularity and control of police procedures, for example, can be seen as a concern to make the law legitimate in the eyes of those who consider there to be a moral shortcoming in the traditions that support some of the law's traditional substantive rules. The Supreme Court's intervention in the criminal process was an attempt to deal with such a moral void. However, such intervention, which may have the goal of assuring procedural fairness and enhancing legitimacy in the eyes of those who appreciate or identify the moral shortcomings may, in effect, reduce the system's legitimacy in the eyes of the majority in society, who do not question the substantive rules and who are concerned only that the system effectively enforce them. The tension between those

primarily interested in enlarging civil liberties and those primarily concerned with safety on the street is evident everywhere.⁴⁰ These differences must be dealt with in any attempt to understand and effect innovation into the criminal justice and judicial systems. They cannot be dismissed by treating the views of the majority as mere "public irritation with . . . legal technicality . . . [which] is in most instances a purely emotional response to situations understood only vaguely, if indeed understood at all."⁴¹

The concept of legitimacy is important to the question of the relationship between the criminal justice system and the larger society. Legitimacy can be viewed as "the compatibility of the results of governmental output with the value patterns of the relevant systems."⁴² Stillman expands the concept of legitimacy to include government's intentions, processes, and the nature of its authority. This goes beyond Weber's notion that rational claims to legitimacy depend on the legality of patterns of normative rules and the rights of those in authority under those rules to command actions.⁴³

⁴⁰Ibid.

⁴¹William M. Beaney, The Right to Counsel in American Courts, (Westport, Conn.: Greenwood Press, 1955), 3.

⁴²Peter G. Stillman, "The Concept of Legitimacy," Polity 32 (1974), 48.

⁴³Margherita Ciacci presents a review of Weber's contributions to the understanding of legitimacy in "Legitimacy and the Problems of Governance," Athanasios Moulakis, ed., Legitimacy - Proceedings of the Conference

McIntyre explored the concept of legitimacy in her study of public defenders in Chicago.⁴⁴ A major conclusion of her study was that public defender organizations and individual public defenders live under a "stigma of ineptitude" and "operate in the shadows" because of conflicting definitions of their legitimate roles on the part of the legal system, defendants and the public. According to McIntyre, the public defender system was created to enhance and maintain the legitimacy of the local judicial system by strengthening the perception that justice is being done and helping the courts assert that the right to counsel is being assured. LaFrance appears to agree. He states that most current defense services are tradition-bound and concerned more with the "needs of the courts rather than clients" and ignore the special needs of the poor (the public) which they serve. "They [also] view defense services as having only a limited reactive capability and no ongoing obligation to effect law reform."⁴⁵

Public defenders are caught, therefore, between the contradictions of their roles: court legitimizer and effective defense counsel (which means using procedural due process rules to pinpoint the mistakes of others in the criminal justice system). They cannot negotiate social

held in Florence, June 3 and 4, 1982, (Berlin: Walter de Gruyter, 1986), 20-28.

⁴⁴McIntyre, The Public Defender, 172-175.

⁴⁵LaFrance, "Defense Systems for the Poor," 47.

legitimacy as organizations or professionals because of the inability of assessing what they should be doing. The result includes: (1) public defenders operating "in the shadows", avoiding publicity and (2) adopting organizational policies and structures to protect those shadows and to protect individual motives for remaining in public defense work.

The value of McIntyre's research lies in her identification of conflicting roles faced by public defenders and her extension of the concept of legitimacy to these organizations in terms of organizational policy, structure, and output. What she fails to notice, however, is that judicial legitimacy itself involves conflicting goals. That is, judicial legitimacy rests upon issues of judicial economy, the efficient processing of cases, as well as issues of justice, the guarantee of procedural and substantive due process and the effective right to counsel. It is overly simplistic to place public defenders between conflicting definitions of legitimacy without understanding the inherent difficulties of legitimacy of the criminal justice system as a whole. The previous discussion of due process values and the identification of production values within the crime control model contributes to this understanding.

In his study of defendants' attitudes toward public defenders, Dahlin noted that the goals of public defense include providing effective counsel and "fostering increased belief in the fairness of the legal system and greater

willingness to comply with the dictates of the law."⁴⁶ The ideas of belief and obedience (compliance) are fundamental to questions of legitimacy. Tyler's recent research into the legitimacy of legal authorities showed that:

People obey the law because they believe that it is proper to do so. They react to their experiences by evaluating their justice or injustice, and in evaluating the justice of their experiences they consider factors unrelated to outcome, such as whether they have had a chance to state their case and been treated with dignity and respect. On these levels people's normative attitudes matter, influencing what they think and do.⁴⁷

The impact of the defense delivery system on attitudes of defendants and others and therefore on the legitimacy of the criminal justice and judicial systems becomes an important issue for public defender organizations. This is particularly true if the goals of public defense are those stated by Dahlin and if it is true, as he posits, "that functionally the public defender may be making less of a contribution (through no fault of its own) to the stability and continuity of the legal and social system."⁴⁸ Dahlin believes that the public defender as a public organization makes the relationship of the defender and his client more difficult and makes it more difficult for defenders to appear as effective as retained counsel, thereby negatively impacting the legal and social systems.

⁴⁶Donald C. Dahlin, "Toward a Theory of the Public Defender's Place in the Legal System," South Dakota Law Review 19 (1974): 118.

⁴⁷Tom R. Tyler, Why People Obey the Law (New Haven: Conn.: Yale University Press, 1990), 178.

⁴⁸Dahlin, "The Public Defender's Place," 119.

The tension of which Oaks and Lehman speak is similar to the two different paradigms of the criminal justice process developed by Packer and extended by Benjamin and Pedeliski in their studies of public defense and the manifestation of the conflicting definitions of legitimacy faced by public defenders and public defender organizations discussed by McIntyre. Together, the conclusions of these researchers help to describe the complex environment in which public defender organizations and public defenders as individuals find themselves.

Public Defenders as Organizations

History of Public Defenders

A brief review of the history of public defenders in the United States will help to place the Virginia experience in context and will further the identification of the adoption variables important to the diffusion model.

Goldman traces the idea of a public defender back to Roman papal governments and to 15th Century Spain. In several nations, law provided for the employment of counsel to represent indigent defendants well before the Twentieth Century.⁴⁹ *The first public defender program in the United States was established in Los Angeles in 1913 at the peak of the Progressive Era. McIntyre states that the Los Angeles office and the Portland, Oregon, public defender established shortly thereafter were organized with mandates in line with

⁴⁹Mayer C. Goldman, The Public Defender: A Necessary Factor in the Administration of Justice, (New York: Arno Press, 1974), 11.

progressive ideals of social reform.⁵⁰ Over the next 50 years, the number of public defender programs grew slowly, mainly in the large metropolitan areas. Cook County, Illinois (Chicago), for example, established a public defender organization in 1932, but this program, rather than having as a goal social reform or charity, was established to restore legitimacy to the criminal justice system, to deal with a crisis in the courts, and to bring efficiency and economy into the defense arena. It was created "more to serve the needs of the courts than to serve those of defendants . . . a way to make the system seem more efficient, more fair."⁵¹

After the Gideon decision, public defender organizations grew dramatically. By 1973, almost 25 percent of the counties in the United States has such a program. Growth continued during the 1980s, but at a slower rate. By 1982, public defenders were found in 34 percent of all localities and by 1986 to 37 percent.⁵² These localities constituted over 70 percent of the nation's population.⁵³ Most of this growth can be attributed to the creation of several statewide systems. As of 1990, there has been little penetration of the public defender approach into

⁵⁰McIntyre, The Public Defender, 31.

⁵¹Ibid., 32-44.

⁵²U.S. Department of Justice Bureau of Justice Statistics, Criminal Defense for the Poor, (1986), 1-3.

⁵³U.S. Department of Justice Bureau of Justice Statistics, National Criminal Defense Systems Study, 11-13.

rural areas. According to Spangenberg and Smith, the trend toward more public defender programs was also stimulated by the recommendations in the national standards published in the 1970s by several national criminal justice system organizations such as the National Study Commission on Defense Services (1976) and the National Advisory Commission on Criminal Justice Standards and Goals.⁵⁴

In 1982, a national survey of indigent criminal defense programs was undertaken by the Bureau of Justice Statistics.⁵⁵ This survey was the first comprehensive effort undertaken with the goal of providing state-by-state data on legal services for indigent defendants. The survey was revised and repeated in 1986 and results were published in 1988. By the time of the second survey in 1986, more counties still (52 percent) used assigned counsel than any other system of indigent defense, but the percentage showed an eight percent decline from the 1982 survey. The number of counties using the public defender approach increased from 34 to 37 percent during the same period. Public defender systems predominate in the Northeast and West and 43 out of 50 counties with more than 500,000 residents tend to have public defender programs.

* Contrary to commonly held criticisms that public defender offices have become large bureaucracies, the

⁵⁴Robert L. Spangenberg and Patricia A. Smith, An Introduction to Indigent Defense Services, (Chicago: American Bar Association, 1986), 11-12.

⁵⁵U.S. Department of Justice Bureau of Justice Statistics, National Criminal Defense Systems Study, (1986).

National Criminal Defense Systems Study (NCDSS) found that most public defender offices are small--75 percent of the county programs reported having three or fewer full-time attorneys. Only 16 public defender programs said they employed more than 50 full-time attorneys. The largest staffs are in the Northeast and West. The largest public defender program, in Los Angeles, employed more than 400 attorneys. This 1986 study also showed that most public defender offices employed investigators and secretaries, but did not use paralegals, law students, training directories, or other support personnel.

There is much variation among public defender organizations as to funding, administration, and relation with the private bar. Funding can be provided completely by state governments or by county or city governments. Programs may be administered on a state (central) or local basis. There may be offices established in several counties or private bar services may be used in sparsely populated areas.

Most public defender programs are part of the county government but they may also be affiliated with the judiciary or a state executive agency. Statewide defender programs established by legislation are usually a branch of the executive branch. Usually, the Chief Public Defender is full-time and appointed by county officials, although appointments are also made in some localities by judges, members of the county bar, or some sort of committee or commission. Public defenders salaries are generally low

compared to prosecutors.

The West far exceeds other regions in per capita costs for indigent defense services. California in particular shows a higher per capita cost due to the generally high level of salaries of governmental officers and public defenders and the ability of the public defender system in the state to limit caseloads and utilize the private bar in a relatively high proportion of cases. The 50 largest counties (where about one-third of the population live) account for about one-half of the total expenditures for indigent defense.

The Virginia Experience

* As has been seen, the provisions of law requiring the appointment of counsel in state criminal proceedings expanded dramatically during the past several decades. The Supreme Court of Virginia first authorized the appointment of counsel in 1849 for defendants accused of capital offenses. In 1940, Virginia extended the right to counsel to all felony prosecutions commenced in a court of record. The state also expanded the right to counsel in misdemeanor case where imprisonment is possible.⁵⁶

A brief history of public defense in Virginia will identify adoption variables important to the development of the public defender diffusion model. The principal means for providing indigent defense services in Virginia is the

⁵⁶Robert L. Spangenberg, Analysis of Costs for Court-Appointed Counsel in Virginia - Final Report, (Cambridge, Mass.: Abt Associates, Inc., 1985), 5-9.

assigned attorney system under which different attorneys in private practice within a locality are appointed by the court to represent indigent defendants on an ad hoc basis, with compensation levels set by statute for these services. Even though Virginia has traditionally relied on the appointed counsel system to meet its mandate to provide right to counsel, it did experiment early with the public defender approach. In 1920, in fact, the Virginia legislature authorized public defender programs in large jurisdictions. No offices were ever established under this authority partly because funding was left to the local governments and there was fear that the public defender approach would prove more costly than the appointed counsel system. In 1964, the governor commissioned a study to review the need for a public defender system and the provision of defense services in the state. The study recommended a public defender system but no action was taken.

In 1965, expenditures for court assigned attorneys for indigent totaled \$491,101 in Virginia. In fiscal 1971, the total had risen to \$1,655,788, an increase of 237% in six years. Costs continued to increase dramatically, to \$1,920,070 in fiscal 1972, and to \$2,140,622 in fiscal 1983.

Cost was one of the concerns that led the Board of Governors of the Criminal Law Section of the Virginia State Bar, in July 1970, to undertake its study of the adequacy and efficiency of the varied systems of providing legal counsel for indigent defendants. The study of the Criminal

Law Board of Governors was financed through grants provided by the Virginia Council on Criminal Justice and its Division of Justice and Crime Prevention (DJCP) from a Federal Block Grant made to Virginia under provisions of the Omnibus Crime Control and Safe Streets Act of 1968. The Virginia State Bar conducted a survey of judges, prosecutors, and defense lawyers in order to assess the desirability of establishing a public defender system.

In December 1971, the results of the study were presented to the Governor and to the General Assembly of Virginia as "A Study of the Defense of Indigent in Virginia and the Feasibility of a Public Defender System." In this report, the Bar expressed concerns with the adequacy of state compensation levels for court appointed attorneys. Also, the court appointed attorney approach was criticized as offering new young attorneys on the job training, perhaps at the expense of the defendants; serving as a sustainer for the general practitioner who relied on the criminal cases appointed to him by the court as a supplement to his civil practice; as well as reported instances of allegations of inadequacy of counsel.

The report recommended that pilot Public Defender offices be established in three different areas of the state to determine whether improved and more efficient criminal justice would result through this method of providing legal representation and defense services for indigent persons accused of crimes.

The recommendations of the Report were translated into

legislation by the 1972 session of the legislature and the Public Defender Commission was created and charged with selecting three areas for establishment of public defender programs. The legislation set forth the criteria for selection of the three areas as (1) a city with a population in excess of 170,000, (2) a city with a population of at least 85,000 and not more than 125,000 or a county of at least 160,000 and (3) an urban-rural area to be identical with that served by a regional juvenile and domestic relations district court. Duties of the Public Defender Commission also included the appointment of public defenders for each of these areas. The public defenders were to work full time and were not to maintain a private practice of law. Assistant part-time public defenders as well as necessary other staff were also authorized

The Public Defender Commission subsequently established public defender offices in Staunton (1972), Virginia Beach (1973), and Roanoke (1976). Pursuant to 1978 legislation, a fourth office was established in Petersburg in 1979. Local opposition to a public defender office in Richmond and Alexandria delayed the establishment of offices in these localities until 1986 and 1987, respectively. The Portsmouth public defender office was created in 1986, offices in Fairfax and Winchester in 1987, and offices in Pulaski and Leesburg in 1988. In 1989, offices were opened in Bedford, Suffolk, and Courtland (Southampton County), while an office in Danville was initiated in March 1990. In July 1990, an additional office opened to serve

Fredericksburg, Spotsylvania and Stafford counties, and another to serve Halifax, Lunenburg and Mecklenburg counties. The Lynchburg office opened July 1, 1991. Effective July 1, 1992, the Fredericksburg office began to serve King George County, and an office opened in Martinsville to serve that city and Henry County. These latest additions to the system brought the total number of office to 19 serving 44 localities across the state.

While the number of public defender offices has grown gradually since 1972, the growth was painstaking and deliberate as evidenced by the actions of the General Assembly between, for example, 1981 and 1985, a period characterized by dramatic, if not phenomenal growth in indigent defense expenditures. In 1981, the legislature requested a study of statutory and administrative changes which would contain the costs of indigent defense services. In 1982, the proposal to establish a public defender office in Alexandria was rejected. The following year, Alexandria, Richmond, and Fairfax offices were denied. In 1984, the legislature failed to approve a public defender office in Richmond.⁵⁷ These actions are interesting in light of the fact that a host of cost containment measures were passed by the legislature during these years and the prevalence of strong evidence that existing public defender offices were providing defense services more cost effectively and saving

⁵⁷Virginia General Assembly, House Appropriations Committee, Chronology of Legislative Actions Related to the Criminal Fund, (Richmond, Va.: 1985), 2-14.

the state money.

At first, the legislature did not provide monies for the individual public defender offices. Rather, appropriations were granted to the Public Defender Commission to cover expenses only. Funding was therefore sought and acquired from the Virginia Division of Justice and Crime Prevention which received monies from the Law Enforcement Assistance Administration (LEAA) and the U. S. Department of Justice under the Federal Omnibus Control Act. In 1976, the Staunton and Virginia Beach public defender offices became completely state funded. By 1990, all public defender offices were state funded.

Diffusion Variables and the Adoption of the Public Defender Approach in Virginia

Diffusion concepts offer a useful model for understanding the policy process leading to the decision to adopt a new approach for the delivery of indigent defense services. According to diffusion theory, adoption of an innovation progresses through five stages. (1) "Knowledge" of an innovation occurs when policy-makers are exposed to its existence and obtain some understanding of its mechanics. Knowledge of the public defender approach to indigent defense has been apparent in Virginia since the 1920s as evidenced by the 1920 bill concerning public defenders. Until the 1960s, there was little to persuade policy-makers toward either a favorable or unfavorable attitude toward public defenders. (2) "Persuasion" began with the governor's actions in 1964 to improve defense

services. Persuasion continued as costs mounted and as Supreme Court right to counsel mandates grew in number and in scope. By 1970, the Virginia State Bar working with state and federal criminal justice agencies recommended establishment of the public defender system in order to improve the quality of defense services. By this time, sufficient members of the policy-making groups made the (3) "decision" that Virginia was ready to try the public defender approach. (4) "Implementation" began in 1972 as the first three public defender offices were established. (5) Within two years, "confirmation" that the public defender pilot program was achieving its goals came through Public Defender Commission reports. In the following years, executive and judicial agencies, consultants hired by these agencies, and private researchers added to the feeling that the public defender approach was positive and warranted expansion across into additional areas around the state.

Research has shown that the public defender offers no clear, statistically significant difference in the effectiveness or quality of defense services as measured by common output measures. It is clear that the public defender approach spread to Virginia because it appeared to be more cost effective. With the mandates of the Supreme Court and the goals of justice, the demands for cost effectiveness are adequate explanations for the adoption of the program in Virginia. The historical record supports the fact that characteristics of the public defender idea led to its adoption. According to diffusion theory, several types of

variables explain the decision to adopt a new program or innovation.⁵⁸

Needs Variables. What needs did Virginia policy-makers commonly feel justified the establishment of a public defender system? Several needs seem clear: (1) to save money, (2) to "keep the system honest," (3) to deal with a high appeals rate in cases where quality of counsel was an issue, and related to this, (4) to increase the quality of defense services. These and other reasons are cited throughout the historical records regarding the establishment of a public defender system and they are consistent with needs variables observed in other states.

Innovation Variables. Rogers identifies five characteristics of an innovation or policy change which affect its adoption: (1) the innovation's perceived relative advantage over other alternatives, (2) its compatibility with existing social, cultural, or other system values and structures, (3) the complexity of the innovation, (4) the trialability of the innovation, or the availability of the opportunity to conduct a pilot project before actual implementation, and (5) observability, the degree to which the results of adoption of an innovation are visible to others and amenable to monitoring. These constitute innovation variables and together they describe elements of the process by which Virginia policy makers adopted the public defender approach nearly twenty years ago.

⁵⁸Everett M. Rogers, Diffusion of Innovations (New York: The Free Press, 1983), 210-232.

Policy-makers and others in Virginia saw the public defender approach as offering better quality defense at lower cost. The notion of an office of public defenders handling cases fit well with the prevailing structure of law practice. The system seemed simple enough to establish and operate based on the experience of many policy makers, themselves practicing attorneys and members of law firms. Establishing three "pilot" public defender offices was seen as a slow but certain start without over committing scarce resources to an untried approach, untried at least in Virginia. The adoption process of the public defender approach also provided for the collection and analysis of data so that this "pilot program" might be observed and evaluated for further expansion. Monitoring of public defender activities and costs was instituted from the start.

The Virginia Public Defender System Today

The Public Defender Commission administers the operation of 19 offices serving 44 jurisdictions across the state. Based on 1990 population figures from the U.S. Census, approximately 46% of the total state population resides in jurisdictions served by public defender offices.

Services provided in the offices include (1) assisting the court in determining indigency, (2) providing legal counsel and investigative services to those determined to be indigent, (3) and providing appellate defense up to and including appeals to the Supreme Court of Virginia. In fiscal year 1990-1991, public defenders served 32,478 adult

TABLE 1
VIRGINIA PUBLIC DEFENDER OFFICES

Public defender office	Date established	Jurisdictions served
Alexandria	July 1, 1987	Alexandria
Bedford	July 1, 1989	City of Bedford Bedford County
Courtland	July 1, 1989	City of Franklin Isle of Wight Southampton
Danville	March 1, 1990	Danville
Fairfax	July 1, 1987	City of Fairfax Fairfax County
Fredericksburg	July 1, 1990	Fredericksburg Spotsylvania Stafford
	July 1, 1992	King George
Halifax	July 1, 1990	Halifax Lunenburg Mecklenburg
Leesburg	July 1, 1988	Fauquier Loudoun Rappahannock
Lynchburg	July 1, 1991	City of Lynchburg
Martinsville	July 1, 1992	Martinsville Henry
Petersburg	July 1, 1979	Petersburg
Portsmouth	July 1, 1986	Portsmouth
Pulaski	July 1, 1988	City of Radford Bland Pulaski Wythe
Richmond	July 1, 1986	City of Richmond
Roanoke	March 1, 1976	City of Roanoke
Staunton	November 1, 1972	Staunton Waynesboro Augusta
	July 1, 1990	Buena Vista Lexington Rockbridge
Suffolk	July 1, 1989	City of Suffolk

TABLE 1 CONTINUED

Public defender office	Date established	Jurisdictions served
Winchester	July 1, 1987	Winchester Clarke Frederick
	July 1, 1988	Page Shenandoah Warren
Virginia Beach	January 1, 1973	Virginia Beach

and juvenile defendants on a total of 62,438 charges. The cost of providing legal counsel to indigent defendants averaged \$84 per defendant.⁵⁹ By way of comparison, court appointed counsel served 121,485 indigent defendants on 163,998 charges during the same year at an average cost of \$158 per defendant.⁶⁰

The public defender offices are the major means of providing defense counsel in the jurisdictions where they are located even though private bar attorneys are also appointed to represent indigents when there is a potential conflict of interest for the public defender, or when the public defender caseload reaches the point of overload.⁶¹

⁵⁹Virginia Public Defender Commission, "FY90-91 Statistics."

⁶⁰Supreme Court of Virginia, "Fiscal Review of Criminal Fund Expenditures," The State of the Judiciary Report, 1991, A-79.

⁶¹Virginia Department of Planning and Budget, A Study of Indigent Defense Systems in Virginia, (Richmond: 1989), 2.

Indigent Defense Research and Evaluation of the
Public Defender Approach

For many years, policy makers have been faced with the task of determining the best method of providing legal services to indigent defendants. In terms of expense, the assigned counsel system (also known as the court appointed attorney system) is more expensive, but proponents claim that appointed attorneys can deliver more personalized services. Public defenders claim that they have greater familiarity with the criminal law and the criminal justice system.⁶²

In 1965, Silverstein identified and evaluated the arguments for and against court appointed and public defender systems.⁶³ These arguments also represent the findings of subsequent research in the indigent defense area. In this initial inquiry into the social and legal influences on and consequences of the different organizational forms of providing legal representation to indigent criminal defendants, Silverstein emphasized the variability within each type of delivery system.⁶⁴ The arguments supporting the use of public defender systems can

⁶²Larry J. Cohen, Patricia P. Semple, and Robert E. Crew, Jr., "Assigned Counsel Versus Public Defender Systems in Virginia: A Comparison of Relative Benefits," in William F. McDonald, ed., The Defense Counsel (Beverly Hills, Calif.: Sage Publications, 1983), 1.

⁶³Lee Silverstein, Defense of the Poor, (American Bar Foundation, 1965) quoted in Charles Cappell and John Jarvis, Final Report: Special Committee on Indigent Defendants (Richmond: Virginia Bar Association, 1988), 2.

⁶⁴Ibid.

be summarized as follows: (1) Counsel under the public defender system is generally more experienced and competent. (2) A higher level of consistency across cases is obtained. (3) The system is more economical in metropolitan areas. (4) Better and more consistent efforts are obtained because attorneys are not influenced by their doubts of being able to obtain their fee. (5) Greater efficiency is achieved because the prosecutors and defense counsel are able to establish a long term cooperative relationship.⁶⁵

* Several studies have pointed out possible deficiencies of the public defender system: (1) Defender systems that assign attorneys to courtrooms rather than to clients result in sequential representation specialized according to the stage of the process.⁶⁶ This organizational structure can fragment and adversely affect the quality of legal representation. (2) Because of their repeated involvement with prosecutors, public defenders may become coopted by the prosecutorial and court system in order to reduce caseloads.⁶⁷ (3) Underfinanced public defender systems offer no improvement in the quality of representation.⁶⁸ (4) Criminal defense work is viewed by the bar at large as

⁶⁵Ibid., 45-69.

⁶⁶Janet A. Gilboy, "The Social Organization of Legal Services to Indigent Defendants," American Bar Foundation Research Journal 1981 no. 1 (1981): 1031-1036.

⁶⁷Robert Hermann, Eric Single, and John Boston, Counsel for the Poor, (Lexington, Mass.: D.C. Heath, 1977), 162-166.

⁶⁸Ibid., 153-166.

low prestige work.⁶⁹

The arguments concerning the issue of which type of counsel is more effective in representing the indigent client are complex.⁷⁰ Over the last two decades, primarily, there has been considerable research into the methods of providing defense services to the poor. Both Steggerda and McKutcheon found that the public defender approach is less expensive. Singer states that it is more cost-effective. Nagel found that public defenders provided higher quality defense to their clients, while Cohan, Vining and Clarke, and Koch found no differences in the quality of representation provided by public defenders and court appointed attorneys. Kraft and his associates, concluded that the assigned counsel system is actually less expensive than the public defender approach.⁷¹

⁶⁹McIntyre, The Public Defender, 77-94.

⁷⁰This brief analysis draws heavily on Cappell and Jarvis, Final Report, 7-8 and Cohen, Semple, and Crew, "Assigned Counsel," 129-130.

⁷¹R.D. Steggerda and A.L. McCutcheon, Legal Defense for the Indigent Defendant: A Comparison of the Effectiveness of the Offender Advocate and Court Appointed Counsel in the Defense of Indigents, (Des Moines, Iowa: 1974); S. Singer, B. Lynch, and K. Smith, Final report of the Indigent Defense Systems Analysis Project, (Washington, D.C., 1976); Stuart S. Nagel, "Effects of Alternative Types of Counsel on Criminal Procedure Treatment," Indiana Law Journal 48 (Spring): 404-426; M. Cohen, Woodbury County Public Defender Program: Preliminary Evaluation, (Washington, D.C.: U.S. Department of Justice, 1977); A.R. Vining, "Need for a Public Defender in Ontario," Criminal Law Quarterly 20 (September 1978): 468-477; S.H. Clarke and G.G. Koch, Juvenile Court Disposition and the Juvenile Defender Project, (Raleigh, N.C.: North Carolina Governor's Crime Commission, 1977); L. Kraft, R. Erickson, and J. Jill, North Dakota Regional Public Defender Office: An Evaluation, (Bismark, N.D.: North Dakota Combined Law Enforcement

According to LaFrance, the majority of studies which show the lower costs of public defender systems over other approaches are of little value due to methodology and unreliable data. The lower cost shown by these studies is often due to dividing caseloads into cost which ignores the excessively high caseload level and the resulting low quality level of such services.⁷²

As far as case outcome measures are concerned (such being used as a measure of effectiveness of counsel of quality of defense services), none of the empirical studies reviewed found statistically significant differences between the conviction and imprisonment rates obtained by court appointed versus public defender attorneys that could be attributed solely to the type of delivery system. For example, the most elaborate empirical study of legal defense systems for the poor was conducted by Hermann, Single, and Boston in the 1970s.⁷³ They reported that conviction and imprisonment rates obtained by public defenders, court appointed attorneys, and privately retained attorneys did not differ significantly.⁷⁴

A study conducted by the National Center for State

Council, 1973) cited in Cohen, Semple, and Crew, "Assigned Counsel," 130.

⁷²LaFrance, "Defense Systems for the Poor," 60.

⁷³Hermann, Single, and Boston, Counsel for the Poor.

⁷⁴Gerald R. Wheeler and Carol L. Wheeler, "Reflections on Legal Representation of the Economically Disadvantaged: Beyond Assembly Line Justice," Crime and Delinquency (July 1980): 322.

Courts of six indigent defense systems across the country concluded that indigent defenders perform as well as privately retained counsel when measured against case processing times and conviction rates.⁷⁵

In fact, several thorough statistical inquiries into this question found no differences between publicly provided or privately retained counsel in obtaining verdicts of sentences once one takes into account variables such as pretrial detention, prior criminal record, and the seriousness of the offense.⁷⁶ LaFrance questions the value of the many studies of the relative effectiveness of public defenders and assigned counsel systems noting that the observed differences are generally statistically insignificant and are due to other factors than the type of system. He raises serious questions about making comparisons across jurisdictions using different defense systems.⁷⁷

While the empirical record generally shows that no statistically substantial differences arise from providing representation under either the court appointed or public defender system, research has shown that great levels of dissatisfaction with all publicly provided attorneys have

⁷⁵Roger A. Hanson, William E. Hewitt, and Brian J. Ostrom, "Are the Critics of Indigent Defense Correct?" State Court Journal, Volume 16, No. 3, Summer 1992.

⁷⁶See Hermann, Single, and Boston, Counsel for the Poor; Lee Silverstein, Defense for the Poor; and Wheeler and Wheeler, "Reflections on Legal Representation of the Economically Disadvantaged."

⁷⁷LaFrance, "Defense Systems for the Poor," 60-61.

been found among defendants.⁷⁸ While not based on objective outcomes, defendants perceive that the quality of legal representation is lower if they do not pay for it. Dahlin states that "public defenders are less competent, less effective, and less hard working than private counsel."⁷⁹ Stover and Eckart concluded, on the other hand, "that the quality of criminal defense provided by public defenders is quite similar to that provided by private attorneys."⁸⁰ McIntyre has studied the "stigma of ineptitude" faced by public defenders and claims that the attitude that they are not effective as private counsel stems from the perceptions of defendants that the public defender is a bureaucratic functionary, a cog in "the system," trying to manage an incapacitating caseload.⁸¹

"In general, the empirically measurable quality of publicly provided criminal defense advocacy is not dependent upon the system that delivers it, but more upon the resources, commitment, and informed concern that accompanies whatever system is used."⁸² We might say, in other words,

⁷⁸Hermann, Single, and Boston, Defense for the Poor, 167-176.

⁷⁹Dahlin, "The Public Defender's Place," 87-120.

⁸⁰Robert V. Stover and Dennis R. Eckart, "A Systematic Comparison of Public Defenders and Private Attorneys," American Journal of Criminal Law 3 no. 3 (Winter 1975): 299.

⁸¹McIntyre, The Public Defender, 62-70.

⁸²Charles L. Cappell and John Jarvis, Virginia Bar Association Special Committee on Indigent Defendants - Report of a Survey on the Provision of Legal Services to Indigent Criminal Defendants, (Charlottesville, Va.: University of Virginia, 1987), 8.

that the effectiveness of both systems, wherever used, depends on the underlying values toward the criminal justice process shown in the local environment and held by the participants in the system there.

According to LaFrance there are four standard elements of adequate public defender systems: (1) statewide standards concerning indigency, caseload limits, systems, and resolution of grievances, funding, and administration of programs, (2) the autonomy of the system from individual judges, prosecutors, or the judicial system, (3) selection of full-time public defenders with salaries at the level of those paid by law enforcement agencies, and (4) the recognition of the special needs of the constituency served by the public defender office.⁸³

In Virginia, there are statewide standards for determining indigency. However, a 1989 study of the public defender system recommended that appropriate workload standards, staffing levels, and salary levels be established along with caseload limits, and personnel policies for the offices, and that the commission become more involved in the development of policies related to legal defense strategies, appeals, and in policies related to how court costs are determined for indigent clients.⁸⁴

LaFrance advocates the establishment of caseload maxima for public defenders in order to enhance quality or

⁸³LaFrance, "Defense Systems for the Poor," 63-77.

⁸⁴Department of Planning and Budget, "A Study of Indigent Defense Systems," 1989. 19-23.

effectiveness of defense services. Citing the common point that high-volume justice may be no justice, he recognizes that in many cases, the "economies" being achieved by the public defender are made possible by assembly-line methods where administrative decisionmaking is used to decide legal and procedural questions. "Pretrial motions may be foregone; and preliminary hearings may be waived. Cases may be claimed for bench trials to avoid the time consumed before the jury. Appeals may be foregone. Cases may be traded off against each other; plea bargaining may become mass production."⁸⁵ Thus output becomes a function of values and environmental pressures.

Lafrance believes that the right to counsel should be viewed as a constitutional right and as a form of entitlement to public assistance. As such, administrative structures designed to provide defense services should be designed to provide quality service to all indigent defendants in a way commensurate with the goal of due process and justice--the assurance of effective counsel.

The Effectiveness of Virginia's Public Defender System

Issues of indigent defense have continued to receive due attention in Virginia during the past years as the public defender approach has spread. There has been considerable effort by various agencies of government, the Bar, and researchers to evaluate particularly the public defender system in the state. Even though this dissertation

⁸⁵Ibid., 94-95.

is not an evaluation study, a review of this evaluation literature is useful because it helps identify adoption and adaption variables important to the development of the public defender diffusion model.

In 1974 and 1975, two evaluation studies of the first two public defender offices were undertaken. In 1976, the Public Defender Commission conducted an internal assessment of the offices to determine if they were meeting certain standards for defense services. A study in 1980 conducted by the Richmond Bar Association examined the feasibility of establishing an office in the city. The Supreme Court of Virginia undertook a major study in 1981 to determine the costs of a statewide public defender system. The Executive Director of the Public Defender Commission stated in 1981 that "the effectiveness and the efficiency demonstrated by the defender offices lead to the inescapable conclusion that the bulk of defense services in the future should be handled by public defenders."⁸⁶

In 1982, the Criminal Law Section of the Virginia State Bar convened a committee on the public defender system in order to evaluate the system and to recommend to the Board of Governors of the Bar actions related to the future of the public defender approach in the state. The Committee reviewed the caseload and financial statistics for the pilot public defender offices, as well as other resource materials on indigent defense issues. It echoed the opinion of the

⁸⁶"Public Defenders: Effective and Efficient," Criminal Law News, 11, no. 2 (Richmond, Va.: September 1981): 4.

Public Defender Commission finding that the public defender system was more cost effective than court appointed counsel since (1) it allowed better control of costs, (2) costs of the system increased at a slower rate than those for court appointed counsel, (3) a single system was accountable for the administration of the system (Public Defender Commission), and (4) a single administrative oversight provided for more effective review and control of expenses incurred.

The Committee also concluded that the public defender approach offered greater administrative efficiency and an increase in the quality of representation. Administrative efficiency was greater due to (1) increased efficiency with regard to scheduling of cases, management of dockets and general expediting of trial procedures, (2) greater availability and accessibility of public defenders to the courts at all times, (3) the reduction or elimination of various bureaucratic procedures, and (4) enhanced ability to handle sudden increases in caseload. The public defender system was judged to offer (1) increased availability to clients, (2) increased consistency of representation, (3) increased specialization and experience with enhanced opportunity for training of attorneys, and (4) better trial preparation with assistance of investigative personnel.⁸⁷ These conclusions were not based on any rigorous analysis of data, however.

⁸⁷Virginia State Bar, Report of the Committee on the Public Defender System, (Richmond, Va.: 1982), 1-4.

A more scientific review of the public defender offices was undertaken in 1982 and 1983 by Cohen, Semple, and Crew. A review of data from various sources found that defendants in localities with a public defender were less likely to be found guilty, but when they were, the sentences were generally more severe than in localities with no public defender. Case disposition data showed that a significantly greater proportion of public defender clients pled guilty as compared to defendants represented by appointed counsel and that public defenders were more likely to have cases dismissed, but that there was no difference between appointed counsel and public defenders in sentences imposed on those found guilty.⁸⁸

Cohen and others also found the public defender approach to be more cost effective, that is, offering a lower cost per case than the court appointed counsel approach. Interview results indicated "a likely overall preference for the public defender method of indigent criminal representation in Virginia" but also found evidence of opposition to the extension or expansion of the system: a strong public anti-crime temper, a fear that income would be reduced to attorneys serving as court appointed counsel, and a feeling that such action would increase the bureaucratization of the defense function and the growth of government.⁸⁹

⁸⁸Cohen, Semple, and Crew, "Assigned Counsel Versus Public Defender Systems," 132-148.

⁸⁹Ibid., 147.

The American Institute for Research compared the quality and cost of the public defender and appointed counsel systems in Virginia while the Supreme Court of Virginia undertook a thorough review of standards for determining indigency. In 1984, the General Assembly provided judges with definitive guidelines for the determination of indigency and for deciding, therefore, whether or not a defendant is entitled to legal representation at public expense.

Faced with continuing dramatic increases in the costs of indigent defense services in the state, the Supreme Court of Virginia submitted "Cost Containment Within the Criminal Fund to the Governor and the General Assembly of Virginia." This report documented the increased costs due to the continued use of the court appointed system as the dominant service delivery mechanism for indigent defense services. The report stated, ". . . these trends . . . will continue. Thus [we] consider the central issue in cost containment within the criminal fund to be the determination of better methods of controlling court-appointed costs, yet continuing to provide quality representation for indigents."⁹⁰

In 1985, the General Assembly established two joint subcommittee to study various indigent defense issues in the state citing the Sixth Amendment right to counsel, the

⁹⁰Supreme Court of Virginia, Report of the Office of the Executive Secretary of the Supreme Court of Virginia on Cost Containment Within the Criminal Fund and Involuntary Mental Commitment Fund to the Governor and General Assembly of Virginia, (Richmond, Va.: 1981), 6-7.

increasing costs of providing defense services, concerns with the quality and availability of indigent defense counsel.⁹¹ In the same year, the Virginia Law Foundation contracted with Abt Associates of Cambridge, Massachusetts to analyze present indigent defense services and costs in Virginia. This report cited the continuing crisis in indigent defense services in the state as the justification for its efforts to explore the concerns expressed by the Virginia State Bar to the governor. These concerns arose mainly from the continuing reliance on the court appointed counsel system and its demonstrated weaknesses, namely cost. One major recommendation of this study was that a thorough review of the public defender program in the state be conducted to determine the quality and level of operations in those areas where such offices existed toward the goal of expanding the system if warranted. The study analyzed in detail costs under both systems and projected expenditures if the assigned counsel system was continued and if the public defender system was expanded statewide. The authors found that the public defender approach would become more cost effective on a statewide basis as private bar fee levels increased, reaching the breakeven point at a 21.5% increase in private bar fees.⁹² A "crisis in the indigent

⁹¹Virginia General Assembly, Senate, Joint Resolution No. 137, 1985; House of Delegates, Joint Resolution No. 324, 1985.

⁹²Robert L. Spangenberg, Patricia A. Smith, and Norma Casener, Projecting Costs for Various Indigent Defense Systems in Virginia for FY 1986, (Newton, Mass.: The Spangenberg Group, 1985), 11.

defense system in Virginia" due to the continued reliance on court appointed counsel was identified and a statewide public defender system was recommended.⁹³

In a 1988 study of the representation of defendants in capital cases in the state, Spangenberg found some feeling among judges that the problem of capital representation could be largely solved through the establishment of a statewide public defender system in order to offer increased pay for counsel in such cases, better training and availability of qualified attorneys.⁹⁴

The Virginia Bar Association Special Committee on Indigent Defendants, working with the Social Science Research Laboratory of the University of Virginia, presented a major report to the General Assembly of Virginia's Subcommittee on Indigent Defense Issues in October 1988. Focusing on the question, among others, of whether legal representation is best provided by the court appointed counsel system or the public defender system, this study involved a large scale survey of attorneys, state and federal judges, commonwealth's attorneys, public defenders, and members of the Criminal Law Section of the Virginia State bar in order to determine their views on the issue.

The survey revealed that, in general, public defenders were judged to be only slightly more effective than court

⁹³Ibid., 14.

⁹⁴Robert L. Spangenberg, et al., The Study of Representation in Capital Cases in Virginia - Final Report, (Newton, Mass.: The Spangenberg Group, 1988), 32.

appointed counsel. Overall perceptions of experience, preparedness, and competency levels of public defenders and court appointed attorneys were also measured. Both types of attorneys were generally judged to be adequate in terms of the quality of their defense. Public defenders were generally ranked as having more experience than court appointed counsel even though the criminal bar respondents were much less likely than members of the non-criminal bar to rank public defenders as more experienced. Interestingly, responses indicated that privately retained attorneys were felt to be more experienced than either public defenders or court appointed attorneys.

Public defenders were also ranked as more prepared than court appointed counsel with the same sharp division in views between members of the private bar. Again, the criminal bar was much less likely to rank public defenders as more prepared. As to levels of competency, public defenders were generally ranked as more competent than court appointed attorneys, but prosecutors were seen as more competent than either type of defense counsel.

In an attempt to measure any differences in output, respondents were asked to compare the rates of guilty pleas offered by the different types of attorneys. Most felt that both types of attorneys plead their clients guilty at about the same rate.⁹⁵

The Virginia Bar's Subcommittee found that individual

⁹⁵Cappell and Jarvis, Report of Survey, 2-5.

court appointed attorneys and public defenders were adequately qualified; that the court appointed counsel system had serious problems particularly related to the low fee schedule and lack of adequate reimbursement for incurred expenses pursuant to their services. Administrative problems in the court appointed system were also noted. The Committee did not address the relative cost issues of the court appointed and public defender systems. It found that there was a split among attorneys and judges across the state in their preferences for the two systems, with a preference for the public defender approach in urban areas and a preference for the court appointed system in most rural areas.⁹⁶ The Committee stated that "there is insufficient evidence to support a preference for either a court appointed system or a public defender system based on the quality of individual counsel in either system."⁹⁷ However, it recommended to the General Assembly (1) that a public defender system should be established in large urban and suburban areas where there is such a preference and it can be shown to be cost effective and (2) that public defender offices should be established in rural areas where there is such a preference or where problems appear insurmountable problems with the court appointed system. Other recommendations involved improvements in the

⁹⁶Virginia Bar Association, Special Committee on Indigent Defendants, The Defense of Indigents in Virginia: A Consensus for Change, (October 1988), 2-5.

⁹⁷Ibid., 16.

administration of the court appointed system and increases in the fees paid to court appointed attorneys.⁹⁸

These many studies of legal defense services to indigents focused for the most part on expanding the public defender system in order to control costs or on improving the quality of defense services to defendants. The most recent and thorough such study was completed in 1989 by the Department of Planning and Budget working with other state agencies.⁹⁹ The study was to examine the issue of costs as well as appropriate workload standards, staffing levels, and salary levels for existing and future public defender offices. As we will see, this latter objective added a fundamentally new dimension to the adaption process of the public defender system.

The study set forth an extensive list of conclusions and recommendations. Existing public defender offices were found to be handling many more defendants per attorney than recommended by the National Legal Aid and Defender Association and by the Spangenberg group consultants who are nationally recognized as experts in indigent defense issues. The significance of this was underplayed by stating that "variances in local court practices" reduce the caseload limits below recognized standards. Objective caseload standards for staffing public defender offices are not now

⁹⁸Ibid., 22-24.

⁹⁹Virginia Department of Planning and Budget, A Study of Indigent Defense Systems in Virginia, (Richmond, Va.: 1989), 19.

used. The study recommended changes in personnel policies of public defender offices including the adoption of "adjusted caseload limits." These limits would be substantially above several nationally known standards for public defenders. This is interesting given the identification in the same study that existing caseload pressures were causing serious docketing problems and the attitudes of many judges that staffing remained the biggest problem facing the system. The study also recommended the seeking of greater support of the judiciary and local bar in indigent defense issues, and administrative improvements in individual public defender offices and in the Public Defender Commission at the state level.

It is useful to consider the key phrases used in the study's major recommendations: "adopt objective workload standards", "determine cost effectiveness", "reduce costs", "collect monthly workload information", "develop uniform job descriptions, salary scales, and ranges for employees", "increase legal education", "play a more active role in the development of policies related to legal defense strategies," These phrases reflect the continuing pressures to improve the administrative structure and functioning of public defender offices in order to achieve the goal of cost savings in indigent defense services and to improve the quality of those services.

Judges interviewed in the 1989 study of indigent defense issues and serving in jurisdictions where there are public defender offices indicated that they felt public

defenders provided as good or better quality defense services than private bar attorneys. They also felt less concern with the cost of providing defense counsel than with the quality of that counsel and the availability of qualified criminal defense attorneys to provide court coverage.¹⁰⁰

Summary: The Public Defenders Environment
and Implications for Organizational
Diffusion Research

An understanding of the complexities of the public defender's environment is necessary if the organizational processes are to be analyzed and explained in terms of diffusion research and organizational theory. Figure 4 summarizes the study of this environment as it has been presented in the literature and by the historical record of the Virginia experience. The individual public defender and the organization of which he is a part operates in an environment characterized by a conflict in goals and values. The public defender is faced with goals of justice and economy based on values of due process and production. While the right to counsel remains the fundamental value underlying the defense function, the organizational imperative to meet the demands of administration and economy (production) also characterizes the operation of the public defender organization. These organizations have structures and decisionmaking processes that must accommodate these

¹⁰⁰Chappel and Jarvis, Virginia Bar Association Special Committee on Indigent Defendants Report, 3-5.

varying goals and values. Various agencies and groups which constitute the public defender's environment affect and are affected by the way the public defender operates to defend the indigent defendant. The expectations of each group vary which explains the differences in the types of legitimacy important to the public defender organization. Judicial groups demand results from the public defender organization which enhance its own legitimacy in terms of the promotion of justice and due process and the perception of economy in the processing and expediting of cases. Other government agencies and elements of the criminal justice system likewise expect the public defender to promote goals of economy and efficiency while maintaining professional competence and contributing to the continual confirmation by sponsoring agencies that the public defender approach is valid and fulfilling its policy objectives. Society demands that the public defender balance due process and production values defined in terms of legal and factual guilt so that justice can be done while social order is preserved and crime is controlled.

These considerations of legitimacy, coupled with the conflicting goals and values faced by the public defender, combine to affect the way these public organizations adapt and operate to provide public defense services. The ways in which this adaption occurs and the impacts on defendants and the other elements of the environment remain to be explored. The basic question remains how do public defender organizations balance the conflicting values and goals

inherent in the defense function in order to establish and maintain legitimacy within the legal and criminal justice systems and within society as a whole? Organization theory offers a possible answer to this question.

CHAPTER 3

THE PUBLIC DEFENDER DIFFUSION MODEL AND ITS BASIS IN ORGANIZATION THEORY

Introduction

Public defender organizations have become the predominant means of providing for indigent defense needs in the United States and a major factor in indigent defense services in Virginia. In fiscal year 1991, 25.2 percent of total indigent defense expenditures were incurred by public defenders handling 29.2 percent of all indigent charges.¹ Forty-four percent of Virginia's localities are now served by a public defender. The literature has shown that public defender offices are more likely to be located in larger urban areas and that they seem to be more cost-effective than the older assigned counsel method. Yet research has failed to indicate a consistent or clear advantage of the public defender approach over the assigned counsel approach. Despite the wealth of opinions that public defenders offer a better defense to their clients, research has also failed to prove a substantial difference in the effectiveness of

¹Supreme Court of Virginia, The State of the Judiciary Report 1991 (Richmond, Va.), A76-A78.

counsel or quality of defense services offered by the public defender over either the assigned attorney or privately retained counsel.

Public defender programs, as part of the criminal justice system, are adopted in localities to meet the mandates of the U.S. Supreme Court to insure the right to effective counsel under the due process clause of the Fourteenth Amendment and the Sixth Amendment, and to do so with as few resources as possible. These goals in many respects have come to define justice for indigent defendants in America with its concern for protecting legal rights, fostering increased belief in the value of civil order, protecting judicial economy, and ultimately the legitimacy of the American criminal justice system. One might ask whether public defender organizations are achieving these goals as they offer defense services to an increasing percentage of the criminal defendants entering the criminal justice process.

A goal of justice is to protect the legal rights of the accused. Yet there are differing beliefs regarding the proper balance between the need to protect the rights of the accused and the need to protect the order and stability of society. These differences define the due process and crime control paradigms of criminal process, as well as the conflicting definitions of legitimacy identified by McIntyre's research. In many ways, the values which characterize the crime control paradigm are similar to production values as discussed previously.

Another goal is to foster increased belief in the efficacy and legitimacy of law on the part of participants in the criminal process, indeed, on the part of all citizens. Again, differences in belief arise over how the criminal sanction should be used to achieve this goal. The differences manifest themselves as the two paradigms of criminal process and the two definitions of legitimacy.

Public defenders are placed between these differing paradigms. They must operate as if both are valid and must reconcile themselves daily to the conflicts inherent in their position in the criminal justice system. As McIntyre and others have demonstrated, the resulting confusion has led to organizational mechanisms for dealing with the conflict. Benjamin and Pedeliski stated that in Minnesota the establishment of a public defender system meant the adoption of behavior patterns more closely oriented to the due process goals than the court appointed attorney approach.² They also stated their belief that some other public defender programs examined in other states seemed to operate more with crime control objectives.

This leads to the need to explore the real and perceived goals of the public defender offices across Virginia and of those who work in them. Are these goals based on values of due process or production? More importantly, does it make a difference to indigent defendants or to society whether the public defender program

²Benjamin and Pedeliski, "The Minnesota Public Defender System," 286.

operates according to one value system or another? Also of interest is the question whether public defender offices in Virginia operate under different value systems and if so, how might those values have come to predominate in a particular office, either at its inception or through a process of adaptation by the office to its particular environment.

These many questions are about the diffusion and reinvention of public defender offices as a major means of providing indigent defense services in Virginia. They concern (1) the reasons why the public defender approach was adopted in the 1970s and the reasons why the number of offices has continued to grow since; (2) the way in which the offices have developed organizationally in response to initial goals and to environmental characteristics; and (3) the effect of public defender offices' organizational output on the environment in terms of legitimacy in the legal and social sense.

Preliminary Hypotheses of Relationships in the Public Diffusion Model

In line with these underlying concerns, the public diffusion model (figure 3) was developed to explore these questions and several fundamental hypotheses about the mechanics of its operation are central to this inquiry. Briefly, the model describes the adoption and adaption process of public defender organizations in Virginia. According to the model, the adoption variables which diffusion theory identifies in the adoption of an innovation

are seen to rest upon the due process values and production values identified in the public defender's environment. After adoption, these variables over time and in response to environmental pressures separate to become normative goals and operational goals for the organization. The normative goals serve to protect the basic ideology of the defense function -- due process and justice through an independent, professionally competent defense counsel. Operational goals protect the existence and growth of the organization in a hostile environment where caseload pressures and competition for scarce resources make such goals necessary.

The model anticipates (hypothesizes) that as time progresses and pressures increase, a type of goal displacement occurs as operational goals based on production values become relatively more important than normative goals, even though the latter continue to define the fundamental idea which holds the individual attorney in place as a member of the organization and legitimates the organization in terms of American jurisprudence.

Organizational structure and decisionmaking processes used by public defenders are products of these goals and values and organizational output such as the defense of individual indigent defendants depends on this structure and decisionmaking process. Ultimately, according to the diffusion model, the outputs of the public defender organization affect its environment as they impact upon the organization's legitimacy and then become continuing factors in the values which shape public defender goals and

operations. Several basic hypotheses, then, are presented by the model:

Hypotheses for Level 1 Analyses (Individuals)

- 1.1 Public defenders become less concerned with due process and more concerned with production of cases the longer they have been involved in public defense work and the greater their perceptions of environmental pressures to produce.
- 1.2 Public defenders with a greater production value orientation will have personal goals less concerned with normative issues such as justice and equality, and will see organizational goals similarly.
- 1.3 As goals of public defenders become more concerned with the production of cases, there will be greater agreement that standard operating procedures, personnel policies, workload standards, and training programs are important.
- 1.4 The greater the concern with the production of cases, the greater will be the perception that decisionmaking processes are less professional, collegial, and informal and more proceduralized, formal, and routine.

These hypotheses concern the individual public defender as he operates in the public defender and criminal justice environment. They could serve as guides to the exploration and testing of the public defender model if interest was only on the question of how individuals adapt to and cope with the demands of the bureaucratization of indigent defense services. It is necessary, however, to consider the public defender offices themselves as a unit of analysis in the investigation of the diffusion and operation of the public defender system since purposeful organization action is impossible without individual action. Analysis of public defender organizations must consider both individual and organization since social systems are shaped by human will

and social as well as administrative theory demand that this exploratory research connect the two.

The hypotheses stated above need to be stated also in organizational terms in order to investigate variations in public defender offices around the state and to explain the reasons for the variation in terms of measures of individual values and goals, as well as environmental factors. For example, the public defender diffusion model would anticipate that the average value orientation of public defender offices would become more productional in nature and less due process in nature as demands from the criminal justice system increase. Objective measures of office productivity and output should also vary as the overall measure of office goals changes. For example, the stronger the average due process orientation of an office, the greater the percentage of cases going to trial should be if the public defenders are attempting to challenge any errors made in the criminal process and to establish legal guilt as the due process paradigm demands.

Hypotheses for Level 2 Analyses (Public Defender Offices)

- 2.1 Public defender offices become less concerned with due process and more concerned with production of cases the longer they have been established and the greater the measures of pressures to produce.
- 2.2 Public defender offices with greater production value orientations will have goals less concerned with normative issues such as justice, equality.
- 2.3 As value orientations of public defender offices become more concerned with the production of cases, there will be greater consensus that standard operating procedures, personnel policies, workload standards, and training programs are important.

- 2.4 The greater the concern with the production of cases in an office, the greater will be the perception that decisionmaking processes are less professional, collegial, and informal and more proceduralized, formal, and routine.
- 2.5 There is a correlation between measures of organizational output and productivity and underlying goal and value orientations.
- 2.6 Legitimacy of public defenders as professionals among others in the local criminal justice system is greater the longer there has been a branch office in the area and in urban regions.

Taken together these hypotheses reflect commonly accepted concepts in organizational theory: (1) organizational and personal goals are related to values, (2) organizational structure and decisionmaking processes are functions of goals and values, (3) organizational output is a function of organizational structure and decisionmaking processes, and (4) organizational legitimacy is a function of organizational output. This sequence of elements was described in chapter 1. Figure 6 presents these concepts in a form more useful for developing the methodology for exploring the public defender diffusion model. This representation resembles the public defender diffusion model which, as shown above, serves to describe the public defender's environment and to place preliminary research questions in context of that environment. This simpler model (figure 6) shows the two units of analysis, linkages between model elements, as well as the presence of exogenous and secondary variables. It also represents basic concepts derived from the literature describing the public defender's environment reviewed in chapter 2, elements of

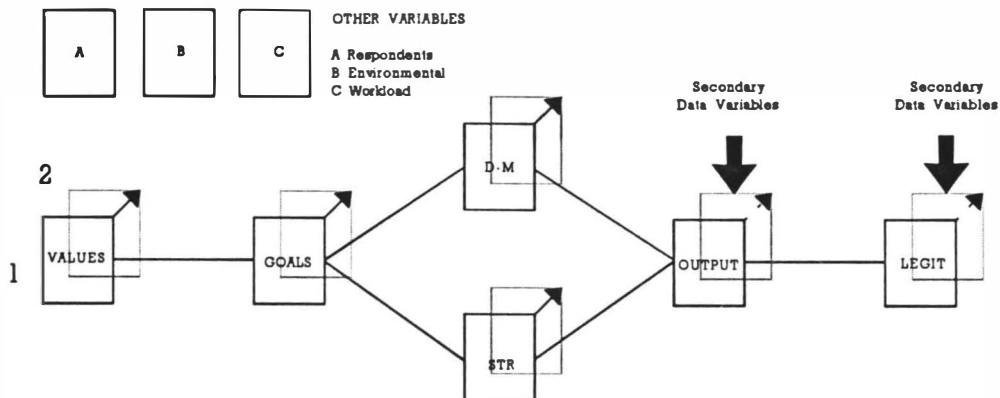
FIGURE 6

THE PUBLIC DEFENDER DIFFUSION MODEL IN AN
ANALYTICAL FRAMEWORK

UNIT OF ANALYSIS

Level 1: Individuals

Level 2: Public Defender Offices

 Represents aggregation of individual level measures to the office level.


diffusion research, and organization theory as it deals with organizational goals and goal displacement, the relationship between structure and goals, decisionmaking theory, and the research on organizational legitimacy. Attention now turns to these concepts in more detail.

Adoption Values and Goals

Organizational goals for public defender offices include (1) the formal goals of the organization such as the goal to "provide adequate legal defense for indigent defendants" and to provide this service at least cost to the state, (2) the goals leaders of the organization feel are necessary in order to survive political and economic

conditions of the local environment, as well as (3) the informal goals of all organizational members.

The mandates of the U. S. Supreme Court and the development of law generally were in large measure responsible for the definition of an "adequate defense" as a primary goal of the public defender pilot program in Virginia.

Economic conditions and the runaway growth in indigent defense costs also affected the original goals of the public defender system due to the natural competition for fiscal resources. It is clear from the Virginia experience that the "minimum-optimum" view of public expenditures, wherein the minimum that must be spent to provide indigent defense services is seen as the optimum, has characterized the local environment from the beginning of the public defender system. An initial goal of the public defender pilot project was to demonstrate cost savings over the court appointed attorney system and a cost savings analysis has been a part of official Public Defender Commission statistics since the 1970s. "Cost containment" has continued to be the goal of the judiciary as well as budget subcommittees of the legislature and executive "planning and budget" offices as greater governmental resources have gone each year into the analysis of costs of services for indigent defense. At the same time, annual court appointed attorney costs have exploded, increasing 138.7% from 1985 to 1990 to reach nearly \$17 million. Reports from the Public Defender Commission each year emphasize to sponsoring

agencies and budget makers the caseload and financial statistics which justify the public defender's continued operations and expansion.

Political conditions also affected the level of support for the pilot program on the part of the general public and lawmakers, as well as leaders in sponsoring and client agencies such as the judiciary and local bar associations. In Virginia, the historical record shows the continuing complexity of political support for the public defender idea. In some localities, for example, opposition by the local bar has delayed or prevented the establishment of a public defender office in there.

A recent survey of members of the criminal justice system involved in defense issues showed the dynamics of this support. According to Cappell, the weakest support for the public defender system in Virginia is found among the private criminal bar. In some areas, a majority of all respondents prefer court appointed counsel for urban areas. For suburban areas, judges and non-criminal private attorneys favor the public defender approach while Commonwealth Attorneys and members of the criminal private bar favor the court appointed counsel approach. Respondents from the Richmond region and from southeastern Virginia favor the court appointed system for suburban areas. The only thing upon which all types of respondents agree is that court appointed counsel are best able to serve the rural

areas of the state.³ We can assume that these preferences translate somewhat into levels of support for the public defender system in respondents' local areas and for the public defender system in general.

McIntyre found that attorneys became public defenders in order to gain experience in trial work and to make a positive contribution to society.⁴ Eckart and Stover found that the desires to help people and to gain experience as a criminal trial lawyer were the most important incentives for becoming a public defender. Monetary rewards, desire for competition, and the chance to bring about social change were other reasons given by public defenders.⁵

These personal goals reflect values of due process, the desire to help people, to see that justice is done and that the rights of defendants are protected, and economic values, the desires to gain experience as a trial lawyer and to grow professionally. The public defender organization must accommodate these personal goals, not by allowing them to displace formal goals, but rather by balancing all goals through its design and decisionmaking processes.

With the additional of personal goals, the adoption variables describing the establishment of the public defender system in Virginia are clear. They are easily

³Cappell and Jarvis, "Report of a Survey," 3.

⁴McIntyre, The Public Defender, 86.

⁵Dennis R. Eckart and Robert V. Stover, "Public Defenders and Routinized Criminal Defense Processes," Journal of Urban Law 51 (1974): 674.

understood in terms of the needs, communication, environmental, and innovation classifications reviewed in Chapter Two. Most importantly, these adoption goals, rest upon values of due process and production and are, according to Perrow,

the product of a variety of influences, some of them enduring and some fairly transient . . . the personality of top executives, the history of the organization, its community environment, the norms and values of the other organizations with which it deals, the technology and structure of the organization, and ultimately the cultural setting.⁶

Normative Goals

The development of the right to counsel was explored in chapter 2. This right constitutes the basic *raison d'etre* for public defenders; the "core technology" of public defender organizations remains the defense function as defined by the American legal experience and characterized by the ideals of justice, due process protection, equality and fairness. The Public Defender Commission stated in 1978 that "the Commission fully recognizes that providing assistance of counsel to indigents means adequate and effective assistance . . ." ⁷ The values and goals defining this core technology include the concern of individual public defenders to "help people" by providing professional and competent legal counsel. The goal of competency is

⁶Charles Perrow, Organizational Analysis: A Sociological View (Monterey, CA: Brooks/Cole Publishing Company, 1970), 172.

⁷Public Defender Commission, Third Report of the Public Defender Commission to the Governor and the General Assembly, January 1978, 2.

particularly important given the common perception among defendants that public defenders are not as competent as privately retained counsel. Together, these goals, reflecting due process values, are the normative or ideal goals which help establish for the individual public defender and the organization the legitimacy necessary to existence.

Operational Goals

The need to provide defense services with limited resources led to the establishment of the public defender system. As a public agency, the early offices and the central administrative bureau of the system became at once concerned with administrative tasks. Annual data summaries, required by statute, began after two of the original three offices started operations. Building upon the adoption goal of economy and the value of production, the Public Defender Commission began quickly to analyze the numbers of cases processed and certified to the grand jury by each office, as well as to report the number and types of charges, felony and misdemeanor, dealt with.

Cost per defendant and per charge data became routinely published, as well as the demonstration of cost savings over the court appointed attorney approach for each office. In June 1976, the Commission stated that its operations had saved the Commonwealth nearly \$170,000 in two years.⁸ As

⁸Public Defender Commission, Second Report of the Virginia Public Defender Commission to the Governor and General Assembly of Virginia, June, 1976, 2-3.

caseload increased, official statistics reported cases (charges) per attorney, among other "productivity measures." In 1989, a major consultants' study recommended the establishment of caseload limits per attorney, specific personnel policies and other administrative controls to improve the management of the public defender offices. It appears, then, that production goals become more important as environmental pressures (caseload and fiscal resources, for example) increased. Normative goals remained, however, and the problem for the organization became one of operationalizing both types of goals in its day-to-day activities.

This review leads to the preliminary operationalization of values as fundamental beliefs regarding the criminal process and the use of the criminal sanction which can be categorized as due process values and production values and measured by means of attitudinal survey questions. Goals include both individual and organizational goals. Individual goals are the reasons public defenders chose public defense work and the degree to which their goals have been realized. Personal goals can be categorized as due process or self-interest oriented. Organizational goals are those identified operating in the office as formal or informal goals and can be classified as due process or operations (production) oriented. It is possible to assess the dimensions of goals through survey questions of those working in public defender offices.

Changing Organizational Goals - Goal Displacement
in Public Defender Organizations

There are certain difficulties in discussing organizational goals. Strictly speaking, people have goals, not organizations. There is also the problem of identifying goals and in distinguishing means from ends. Despite these problems, it is vital to examine the reasons public organizations exist -- their responsibilities to society and the methods they use to meet these responsibilities. As Perrow states:

Goals are multiple, conflicting, pursued in sequence, open to group bargaining, and, in general, problematical, rather than obvious and given. Not only are they not obvious and given, but they provide the best single clue to the distinctive 'character' of an organization . . . [and] the most complete understanding of an organization will come through an analysis of its goals and basic strategies.⁹

The adoption goals of public defender organizations were identified previously as well as the categories of normative and operational goals which describe public defenders' activities. The idea that goals change as an organization moves to meet its formal or adoption goals is commonly accepted in organization theory. Sills has studied the process by which organizations set up procedures or routines in order to accomplish their goals and how members of the organization over time come to consider such routines as goals in themselves rather than as means to achieve desired ends. These organizational procedures come to guide the activities of the organization. Reviewing the work of

⁹Perrow, Organizational Analysis, 180.

Merton, Sills discusses the observation that "adherence to the rules, originally conceived as a means, becomes transformed into an end-in-itself; there occurs the familiar process of displacement of goals . . ." ¹⁰ This process describes the routinization or administrative regularity identified in studies of public defender organizations.

Selznick describes the main source of goal displacement as the delegation of decisionmaking authority to organization members and their coming to regard daily actions as less related to the ultimate (normative) goals of the organization and more related to their own status and their relationships with others in and around the organization (such as judges, other attorneys, and defendants in the case of public defenders). In other words, goal displacement occurs when employees' concern for position and career advancement subordinates the organization's goals. ¹¹

In the public defender office every attorney has a great deal of discretion in handling his assigned cases. This discretion defines the level of professional competency and independence which are a part of the tradition of lawyering. It is also to be expected in an organization better described as professional, perhaps bureaucratic,

¹⁰Robert K. Merton, Social Theory and Social Structure, (New York: Free Press, 1949), 155, is quoted in David L. Sills, "Preserving Organizational Goals," The Sociology of Organizations, (New York: The Free Press, 1970), 228.

¹¹Ibid., 229.

rather than hierarchical. Personal goals of public defenders are important considerations in their organizations as McIntyre, Eckart and Stover, and others have revealed. Yet for public defenders, as the review of their environment has shown, due process goals are important as well. Rather than being displaced to "pathological proportions,"¹² the adoption goals of the organization remain important to organization members as they strive to balance adoption and personal goals. From the research on public defenders, it is not the conflict between adoption goals and personal goals which presents the most difficult organizational problem.

Blumberg discusses the "bureaucratic pressures" which affect public defenders and other attorneys. He believes that concerns for the substance of due process are in time replaced by a "perfunctory administrative-bureaucratic version of due process"¹³ and that the public defender becomes subject to pressures unique to his role and the obligations of his organization, pressures which cause him to stress "administrative regularity" over adversarial challenge.¹⁴ LaFrance agrees. His study led him to describe the "assembly-line methods" of public defenders where administrative decisionmaking is used to decide legal

¹²Ibid., 227.

¹³A. S. Blumberg, "The Practice of Law as a Confidence Game: Organizational Cooptation of a Profession," Law and Society Review 1 (1967), 15-39.

¹⁴Ibid.

and procedural questions.

Eckart and Stover argue that organizational goals can change over time to limit the behavior of public defenders and make it difficult to resist routinization of decisionmaking processes through the establishment of case processing rules, standardization of cases, and routine responses to the prosecution's actions at the pretrial conference stage of the criminal process.¹⁵ The process of formalization of organizational decisionmaking processes and structure is a common subject of study in the literature.

In his study of change in governmental bureaucracies, for example, Meyer found that original organizational structure of local finance agencies was a function of their origins and environments and that they became more formalized with time, and then more hierarchical in structure.¹⁶ Data showed a direct relationship between the year of establishment and degree of formalization with these agencies. Elements of the environment such as competition from other agencies were shown to affect the responsibilities of the agency. Furthermore, demand for agency services affected the formal structure in terms of number of divisions and sections within the organization.¹⁷

¹⁵Eckart and Stover, "Public Defenders," 665-681.

¹⁶Marshall W. Meyer, Change in Public Bureaucracies, (Cambridge: Cambridge University Press, 1979), 182-183.

¹⁷Ibid., 186-187.

Public Defender Behavior as a Function of Goals:
Decisionmaking Processes and
Organizational Structure

Public defender organizations are caught between conflicting policies and operate under conflicting goals. First, they are faced with the need to legitimate the criminal justice system and to point out the errors of others. Second, in order to meet the goal of helping protect due process rights of defendants, they must construct a legal obstacle course in each case to establish guilt or innocence on a legal basis while also making compromises of due process values in favor of bureaucratic values of production to handle caseloads with the limited resources available. They must adapt to these contradictions by establishing a decisionmaking process and organizational structure which balances conflicting goals in such a way so that individuals continue to serve as public defenders and the organization itself will continue to exist. One of the most evident responses public defender organizations make to this complex situation is the routinization of decisionmaking processes and the adoption of production values leading to the case-by-case approach.

Goals arising from responses to political and economic conditions, for example, lead public defender organizations to adopt a "quiet," "nonaggressive," "case-by-case" approach in their defense activity in order to provide "adequate" defense services with a minimal of "disruptive tactics" that might upset the perceived precariousness of the public defender's position in the local environment. In the

situation studied by Eckart and Stover, they found that the public defender lacked widespread political support from the general public and lawmakers as well as economic support in the form of an adequate budget. As an example of this level of support, the state judiciary, while giving the public defender a great deal of freedom, became very concerned any time the actions of a public defender tended to reduce the public image of judges and the courts.¹⁸

The research of McIntyre elucidates another reason for this "shrinking violet syndrome"¹⁹ of public defenders. McIntyre establishes the fact that public defenders as attorneys are perceived by clients and others in the criminal justice system as less capable than privately retained attorneys and work under "the stigma of ineptitude."²⁰ The answer to the question of whether public defenders are less competent than other attorneys is not important here.²¹ What is important is the fact that the perception of ineptitude has been substantiated in study after study. The idea arises ultimately from the fact that the public defender is seen as a "bureaucratic functionary," an agent of the government, and from the notion especially

¹⁸Eckart and Stover, "Public Defenders," 668.

¹⁹Anthony Downs, Inside Bureaucracy (Boston: Little, Brown and Company, 1967), 217.

²⁰McIntyre, The Public Defender, 62-74.

²¹Considerable research into this question has not resulted in any conclusive evidence that public defenders are any less or any more capable than other attorneys. Some of this research was reviewed in Chapter Two.

of defendants that "you only get what you pay for." Dahlin adds to these reasons for the perception by saying that public defenders have not promoted recognition by society of the fact that they are effective attorneys.²²

If Eckart's and Stover's view is valid, the case-by-case approach, especially in the face of heavy caseload and other environmental constraints, requires that defendants be seen as units to be processed; that "adequate" defense become defined in terms of what is possible with the limited time and other resources available to the public defender office. This leads to the search for an organizational structure and decisionmaking processes that will minimize costs in terms of time, money, and effort. Eckart and Stover argue that organizational goals and structural arrangements limit the behavior of public defenders and make attorneys receptive to such routinized decisionmaking processes, and that once a routine become established, such decisionmaking leads to the standardization of cases and the actual entrenchment of routines to handle them.²³

The routines that public defenders adopt to accomplish this include standardization of cases by the public defender and a reliance on the prosecutor for information in the critical early stages of a case. In effect, the public defender reduces the energy required for each case by "defin[ing] the . . . problem [of defending his client]

²²McIntyre, The Public Defender, 65.

²³Eckart and Stover, "Public Defenders," 665.

by plea bargaining within the general patterns set down by the prosecutor."²⁴ The public defender may do this by, for example, adopting the plea bargaining "rules of thumb" of the prosecutor such as "if the defendant is a first offender, and the charge is sale of drugs, charge him with possession of drugs for sale."

Sudnow agrees with this stating that the public defender is not interested in preparing the "best" defense possible, but rather an adequate one. He does not seek information from the defendant to prepare the strongest possible defense. Instead, he assumes early on that the defendant is probably guilty of at least something and seeks just enough information to categorize the case and to define it in terms of preestablished classifications for which there are established routines. Sudnow also characterizes the plea bargaining between the public defender and the prosecution as one based on "a set of unstated recipes for reducing original charges to lesser offenses." He claims that the goal of the public defender is to process cases quickly and easily and if a trial is necessary, not to work to produce victory but rather to avoid appellate determination that he was negligent.²⁵

The processes that Eckart and Stover, Sudnow, and others describe are supported by work in several areas of organizational theory. March and Simon describe the process

²⁴Ibid., 679.

²⁵Dahlin, "The Public Defender's Place," 100-101.

of the routinization of organizational activities in order to simplify responses to predictable events. Faced with the task of defending a client, the public defender must define the job in terms that will guide his actions. According to Eckart and Stover, the public defender defines his task largely as "one of defending a guilty client by plea bargaining within the general parameters set down by the prosecution."²⁶ Having defined the task, the public defender must search for methods to accomplish it repeatedly as cases are assigned to him. If such methods are found that are successful, they will be used again and again and his "search process" will become routine.²⁷

For the public defender, this routine is one where he is constrained by time and caseload and dependent in most cases upon the facts presented by the prosecution early in the case. So, as Cyert and March suggest in such routine decisionmaking situations, the public defender draws upon "rules of thumb" to initiate action in a case and deal with the prosecuting attorney. In other words, he standardizes cases and develops routines in order to limit the resources needed to process each case: he satisfices in cooperation with the prosecution and the courts "to assure a steady flow of cases."²⁸

According to March and Simon, man is "intendedly

²⁶Eckart and Stover, "Public Defenders," 679.

²⁷March and Simon, 179-80.

²⁸Eckart and Stover, "Public Defenders," 680.

reactional." As a part of an organization, the individual makes decisions "subject to the influences of the organization group in which he participates."²⁹ One of the ways this is done is through the standardization of decisionmaking practices so that the members of the organization "adapt their decisions to the organization's objectives." Confronted with a complex choice in the processing of cases, then, the public defender will construct a simplified model of the situation using any established routines or rules available, and will select the first satisfactory solution to the choice problem. The standardization of cases fits this "satisficing" model well. The relevant decision then becomes one of categorizing the case and applying the rule that applies to the classification. This routinization "makes the criminal process more predictable and controllable, but it also severely limits the public defender's behavior."³⁰

The Simon model of organization describes the processes many researchers whose work has just been reviewed have noted to be taking place in public defender organizations. This model was summarized well by Perrow:

. . . it calls for satisficing behavior; sequential and limited search processes that are only mildly innovative; specialization of activities and roles so that attention is directed to "a particular restricted set of values,"; "attention-directors that channelize

²⁹J. G. March and H. A. Simon, Organizations (New York: John Wiley & Sons, 1958), 36-37 in Charles Perrow, Complex Organizations: A Critical Essay (Glenview, Illinois, 1979), 142.

³⁰Eckart and Stover, "Public Defenders," 666.

behavior"; rules, programs, and repertoires of action that limit choice in recurring situations and prevent an agonizing process of optimal decisionmaking at each turn; a restricted range of stimuli and situations that narrow perception; training and indoctrination enabling the individual to "make decisions, by himself as the organization would like him to decide"; and the factoring of goals and tasks into programs that are semi-independent of each other so as to reduce interdependencies.³¹

The Simon model of organizations describes satisficing behavior as a sequential and limited search process that is not particularly innovative and involves the specialization of activities and roles so that attention focuses on a defined set of values. Behavior is channelized by rules, programs of action that limit choice in recurring situations, and perception is narrowed. These rules are inculcated through organizational structural arrangements where training, indoctrination, and operating policies and procedures become tools which enable the individual to make decisions by himself but according to organizational demands.³²

The basic methods and mechanisms of work (case) assignment and case processing within the public defender office constitutes the fundamental definition of decisionmaking processes for purposes of this research. This includes the degree of routinization and amount of discretion allowed in these activities as perceived by public defenders. The structure that supports these processes can be described in terms of the presence or

³¹Perrow, Complex Organizations, 145.

³²Ibid.

absence of basic administrative support activities and functions in the public defender system and branch offices such as training programs, personnel policies, workload standards, and level of supervision.

Organizational Output

Packer, in many ways, set the research agenda for years in the indigent defense area when he examined the output variables of criminal justice programs. His operationalization of the due process and crime control paradigms offered several potential measures of output of the public defender at three stages of the criminal process, arrest-to-charge, charge-to-disposition, and review and correction of errors. According to Benjamin and Pedeliski, there are several activity patterns which may be examined to test the value orientation of defense counsel behavior. One centers on the efforts of defense counsel to obtain release of clients on their personal recognizance. The percentage of accused released from custody prior to disposition proceedings can serve as a comparative indicator of attachment to the goals of the due process model. Another indicator is the activity of defense counsel in utilizing procedures to test whether the due process requirements that are imposed on the police and the prosecution are fully met. This includes the invocation of preliminary hearings to test probable cause, discovery proceedings, mental competency hearings, and evidentiary hearings.

An inferential indicator of the orientation of defense

counsel may also be found in the dismissal rate. The proportion of accused initially pleading guilty and the percentage of cases taken to trial certainly represent a measure of due process orientation. This may represent the most direct indicator of the differences between the two models of criminal process.

We would expect, therefore, that public defender programs showing a higher proportion of cases dismissed, a smaller proportion of guilty pleas, and a higher proportion of cases going to trial would be more likely operating under due process goals and should demonstrate a greater degree of agreement with those values on some measurement instrument. Similarly, to the degree that the crime control model operates under administrative or bureaucratic values, we would expect these output measures to change accordingly.

The number, type, and results of case processing functions such as caseload mix and the proportion of cases going to trial serve as measures of output for the current study. Output also includes measures of office productivity such as average cost per case. It is possible to obtain these measures from official data or secondary sources.

Public Defenders and Organizational Legitimacy

The concept of legitimacy is important to understanding the relationship between the public defender organization and the environment as reviewed previously in the discussion of legitimacy and justice. It is important because of the effect legitimacy or the lack of it can have on the

organizational goals and internal operations of the public defender office. While no one would seriously argue the legal legitimacy--or legal right to exist--of public defender organizations, McIntyre shows that public defenders find it impossible, or at least very difficult, to negotiate a broader social legitimacy because of the basic contradictions in their roles. They have not negotiated the legitimacy of their own public defender organization as a professional, competent organization in the legal and social environments.

As an organization created to enhance the legitimacy of the courts, the public defender must provide competent counsel to defendants. They must also be on the alert for and pinpoint the mistakes of others (such as police, prosecutors, and judges) which can threaten the due process rights of clients.³³ Competent defense counsel, however, can be seen as a threat to the legitimacy of the criminal justice system in which mistakes are bound to occur. Caught between institutional role or goal to enhance the legitimacy of the criminal justice system and the role of possibly threatening its legitimacy by challenging errors of others in the system, the public defender organization is forced to "remain in the shadows," that is go about its work quietly, obscurely.

³³Those threatened it seems are more likely to interpret the efforts of public defenders to pinpoint errors as attacks on their roles, status, etc., and not to consider the possibility, which I too must ignore here, that such efforts might ultimately increase the legitimacy of the criminal justice system.

Again the work of Eckart and Stover confirms this idea as evidenced by their findings that the state judiciary took strong notice whenever the work of the public defender cast a shadow on the public image of the judges and courts. Also, early in the history of the public defender organization they studied, there was a goal to "engage in creative legal strategies involving multiple cases, important constitutional issues, aggressive efforts to change the court system . . ." ³⁴ Such "due process" efforts were not supported by "relevant organizations" and were short-lived. The "quiet" of public defense work leads to the adoption of organizational policies and structures to protect that quiet and to protect the personal motives of individual public defenders for remaining in such work.

Legitimacy is therefore important to all organizations and to those who work in them. It is a social process whereby an organization justifies its right to exist in the views of those in the various areas of its environment such as criminal justice agencies, other attorneys, the courts, defendants, and society at large. ³⁵ "Legitimacy reflects a social assessment of both what an organization accomplishes and how it accomplishes whatever it does: legitimacy is an evaluation of both an organization's means and ends." ³⁶

Given the scope of the concept of legitimacy, its

³⁴Eckart and Stover, "Public Defenders", 668.

³⁵McIntyre, The Public Defender, 173.

³⁶McIntyre, The Public Defender, 173 citing Perrow, Organizational Analysis, 1970.

meaning for purposes of this research must be limited as the degree to which public defenders as attorneys are perceived by others in the criminal justice and judicial systems as professionals and competent counsel, and how others perceive the appropriateness of the public defender approach in providing indigent defense services. While this ignores the importance of society as a whole in discussing the legitimacy of public defenders, it does allow some measure of how well public defenders have been able to establish legitimacy within their immediate environments. The measures of legitimacy thus limited are available from a survey of attitudes conducted in 1987 by researchers at the University of Virginia.

Conclusions and Summary

In his study of defendants' attitudes toward public defenders, Dahlin raised the question which undergirds the reason research such as that proposed in this study is necessary. He asked whether or not public defenders, as attorneys and as public organizations, were actually making a contribution to the stability and continuity of the legal and social systems.³⁷ A consideration of this question ultimately leads to the question of the legitimacy of public defenders in our society.

As chapter 2 described, the environment of the public defender is complex. Elements of this environment have a direct influence on the process by which these organizations

³⁷Dahlin, "The Public Defender's Place," 119.

are established, grow, adapt, and affect not only those directly served but also society at large. The most fundamental characteristic of the public defender's environment is the existence of conflicting goals and values. These goals and values become internalized by public defender organizations and individuals within the organizations as they strive to establish and maintain legitimacy.

During the adaption process, goals come to serve two fundamental purposes: (1) protection of the ideological "core" of the organization and (2) maintenance of legitimacy with other groups and organizations, including defendants or clients. The operationalization of these conflicting goals and values by the public defender organization affects the structure and output of the organization, and ultimately the legitimacy of the public defender system within the criminal justice and judicial systems, as well as within American society. The ability of the public defender to manage conflicting goals while negotiating legitimacy with elements of the environment raises important questions about the ability of all public organizations in general to deal with increasingly complex problems with limited resources.

One of the problems with previous research into public defense issues and the evaluation of public defender systems has been the tendency to define and evaluate "effectiveness" of public defender systems as compared to other approaches without considering the values underlying the measures of effectiveness. The major step in correcting this is to

explore the role of goals and values in public defense work by examining the relationships between goals and values and organizational decisionmaking processes and structure, as well as actual output of public defender organizations without undue reference to "effectiveness."

As public defender organizations become established and face increasing caseloads and competition for resources, is there a change in the actual goals of the organization? Is the need for organizational survival in the face of caseload pressures accompanied by a decline in the due process values upon which the constitutional guarantee of right to counsel is based and an increased emphasis on other values such as efficiency in case processing or crime control? If goals do change in public defender organizations, is there an concomitant change in the operation of organizational processes and in organizational output?

From the research it appears that many public defender programs in the 1960's especially were established under pressure to provide due process protection to defendants. The Minnesota experience states the belief that the establishment of a public defender program there reflected increased emphasis on due process values. The impact on criminal process outputs of the public defender in that state was stated by Benjamin and Pedeliski as confirming the operation of due process values (measures such as the number of guilty pleas, severity of sentences, case processing times, etc.).

There is considerable research evaluating the operation

of public defender organizations in terms of their advantages over other approaches, namely the court appointed counsel approach, and the relative effectiveness of the public defender in meeting the demands of due process and right to counsel. This research seems to indicate that the public defender offers some advantages to the court appointed approach in terms of cost to the state, but the evidence is not convincing enough to believe that public defenders can provide more effective defense services than other methods. In fact, study after study shows no significant difference between public defenders and court appointed attorneys as far as the quality of defense services is concerned.

Yet the public defender approach has diffused throughout the U.S. and continues to grow in Virginia as a major means of providing indigent defense services. Research shows that the state of criminal justice and the operation of the defense delivery system is wholly inadequate and has not met the challenges presented to society by the extension of the rights of effective counsel and due process. Why has such an extensive public service delivery system risen up which fails to provide adequate services for its clients? Has the perceived cost advantages of the public defender approach driven its acceptance as the dominant method of defense for the poor? Has an innovation or idea with a heritage based on such noble goals of justice, equality, social reform, etc., set aside those goals in response to the incredibly burdensome demands of

modern society? Is the system of indigent defense services providing any better service and protection to the indigent than the system existing long before the Supreme Court decisions which resulted in the so called due process revolution?

Can governments respond to solve any problem in this society? How do governments decide to adopt a program such as a public defender system? What are the goals of the programs at the time of their adoption? What factors affect the structure and type of organization eventually adopted? How do these programs cope with the demands placed upon it? How do the operational goals of the organization change in order to survive? Are these changed goals consistent with the original goals? Does the change in goals affect the legitimacy of the organization in the context of the American administrative state?

Admittedly, these questions are many and they cannot all be answered by any one research effort. Nevertheless, this inquiry into public defenders in Virginia offers a manageable opportunity to begin to build useful knowledge based on empirical research that may lead to answers. The importance of due process and constitutional government in an administrative state demand such answers.

CHAPTER 4

TESTING THE PUBLIC DEFENDER DIFFUSION MODEL AND ITS HYPOTHESES AND RELATIONSHIPS

Analytical Strategy

With the diffusion model and basic hypotheses concerning its operation set forth, attention turns to the issues of research design and to methodological considerations. To review, the basic purposes of the research were to measure and describe certain characteristics of public defenders and public defender offices (e.g., value orientations, goals, organizational output) and to examine the relationships among these characteristics, that is, to explore the relationships described by the public defender diffusion model.

A fundamental question addressed was how public defenders and their organizations balance conflicting values and goals in the delivery of indigent defense services. As described in previous chapters, an investigation of the legal and social environment of public defenders led to the development of the diffusion model as well as exploratory hypotheses about the relationships between its elements at both the individual and office levels (see figure 7). The model and its hypotheses present possible answers to the

basic research questions.


FIGURE 7

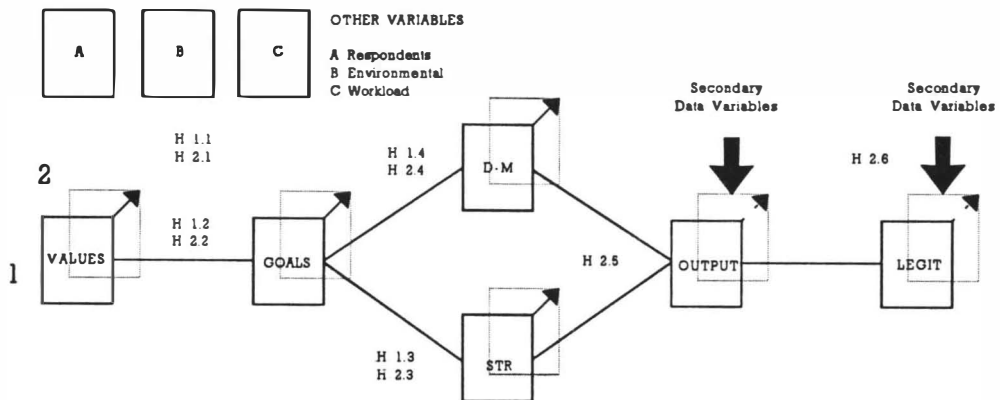
HYPOTHESES OF THE PUBLIC DEFENDER DIFFUSION MODEL

UNIT OF ANALYSIS

Level 1: Individuals

Level 2: Public Defender Offices

 Represents aggregation of individual level measures to the office level.



Hypotheses are referenced as H1.1, H2.1 . . . H2.6. See text for full statement of hypotheses.

Besides the testing of the basic hypotheses of the public defender diffusion model, another component of the research was to examine other relationships between the model's elements. This component was largely an exploratory one--to examine the correlations between elements in a specific part of the model in more detail once the preliminary look at overall model operations was complete. This component of the research was conducted simultaneously with hypothesis testing and descriptive analysis, and results will be discussed at appropriate points in the pages

that follow. Specifically, interest lay in the relationships between environmental characteristics, values, goals, organization decisionmaking processes, and output at the public defender office level. As an example, several aspects of the decisionmaking process in the public defender's environment were measured by variables identified in the survey. While a calculated summary variable and subset of the original variables were used to test the hypothesis that goals affect decisionmaking processes, the specific measures considered individually captured details about levels of discretion and supervision, case assignment procedures, and plea bargaining "rules." Are these dimensions affected by goals? A major part of the analysis task dealt with such questions.

Since the fundamental aim of the analysis was to test the basic hypotheses of the model and then explore in greater detail the relationships between the model's elements, the research design dealt with the three parameters necessary when examining any relationship: (1) measures of variables of interest (2) people or objects such as organizations, and (3) time. The variables of interest for this research were derived from the concepts presented in the public defender model. One model element, values for example, was based on the measurement of the basic attitudes of public defenders toward the criminal justice process and application of criminal sanctions. Each element of the model, then, represented a concept based on previous research which was operationalized into specific measures.

Conceptual definitions for each element of the model are reviewed in table 2. The operationalization of each element stemmed directly from these definitions and from previous research such as that of Packer and McIntyre in the area of public defender research, and from Sills, Simon, and others, in the area of organizational theory. The grounding of both conceptual and operational definitions of the components of the model and of the characteristics of public defenders and their organization in the literature enhanced their validity.

As an example of the operationalization of a concept, data were needed to measure the extent to which due process and production values are held by public defenders in various stages of the criminal process. From the literature, statements characterizing the two value systems were identified and categorized. Responses to these statements were used in the construction of value scales using Likert scaling techniques. These scales became the major measures for this element after an inter-item correlation procedure (α) was used to exclude duplicative or unnecessary variables (those which added little to the alpha coefficient) and to measure the scales' reliability. Separate scales were constructed for each value orientation. Similar procedures were followed for the construction of other scales and calculated variables. For the purposes discussed above, examination of the individual items which were used to construct the scales remained important to the research effort and was undertaken during

TABLE 2
ELEMENTS OF THE PUBLIC DEFENDER DIFFUSION MODEL

Element	Description
VALUES	Fundamental beliefs regarding the criminal process and the use of the criminal sanction. Categorized as due process values and production values. Measurement: survey.
GOALS	Both individual and organizational goals. Individual goals are the reasons public defenders chose public defense work and the degree to which their goals have been realized. Personal goals can be categorized as due process or self-interest oriented. Organizational goals are those identified operating in the office as formal or informal goals and can be classified as due process or operations (production) oriented. Measurement: survey.
DECISIONMAKING PROCESSES	The basic methods and mechanisms of work (case) assignment and case processing within the public defender office. This includes the degree of routinization and amount of discretion allowed in these activities. Measurement: survey questions.
ORGANIZATIONAL STRUCTURE	The presence or absence of basic administrative support activities and functions in the public defender system and branch offices such as training programs, personnel policies, workload standards, and level of supervision. Measurement: survey.
ORGANIZATIONAL OUTPUT	The number, type, and results of case processing functions such as caseload mix and the proportion of cases going to trial. Output also includes measures of office productivity such as average cost per case. Measurement: official data from secondary sources.
LEGITIMACY	The degree to which public defenders as attorneys are perceived by others in the criminal justice system as professionals and competent counsel, and how others perceive the appropriateness of the public defender approach in providing indigent defense services. Measurement: survey.
RESPONDENTS	General characteristics of public defenders and other survey respondents. Measurement: survey.
ENVIRONMENT	General characteristics of the locality where public defender offices are located and the offices themselves such as crime rates, urban/rural nature, age of office. Measurement: secondary sources.
WORKLOAD	Measure of the degree to which public defenders are meeting the demand for indigent defense services compared to court appointed attorneys. Measurement: secondary sources.

the analysis phase in order to reveal relationships not as easily identifiable through the use of the scales alone.

The public defender model also considers the variable of time as it offers a possible explanation for the development of normative and operational goals. All data were collected for one point in time except for several historical organizational output measures such as the number of charges and costs per cases. Generally, for this research, time was measured by variables which describe the characteristics of survey respondents such as the number of years as a public defender or years in the practice of law, and which also describe the characteristics of different public defender offices such as the number of years since an office was established.

Throughout the construction of the public defender model and the development of the research design, attention was given to questions of validity. In the area of external validity, the question was one of "demonstrated generality" and replicability. While the research concerns only public defender organizations in Virginia, the model is based on a broader base of experience across the country and over many years; the relationships studied show application beyond the state to other public defender systems and to other organizations within the criminal justice system.¹

Internal validity of the research rests in part on the

¹Joan Jacoby discusses this point in her review of organizational and management theory's application to public defender performance, Public Defender Performance, 1-23.

content validity of the measures involved, that is, have they been logically deduced or derived from conceptual definitions? Discussion of the development of the model shows that they have been. Another important question about the measures or variables was whether they are relevant in terms of their observed correlation or association with other measures of interest. The basic hypotheses of the model serve to test these correlations for some measures. In order to establish the construct validity of the measures, techniques were used during the course of the research to empirically validate certain variables, for example using coefficient alpha in validating or evaluating value scale measures.

One of the most common threats to validity occurred during the analysis of the survey data. Because of the relatively small number of total attorney respondents ($N < 100$), especially when considering responses from specific public defender offices, some with as few as two attorneys on staff, assumptions necessary for the use of parametric techniques could not always be met. In many instances, less formal and nonparametric techniques were used to compare responses, including comparison of subgroup means without relying always upon corresponding and rigorous tests of statistical significance, and comparisons of the trends in responses across various survey items. In many cases, simple subpopulation means and percents became the evidence of relationships between variables when more rigorous statistical correlation was not evident or statistically

significant. This does not negate the findings of the survey since the units of analysis were the populations of public defenders and offices. Furthermore, attention to the difference between statistical significance and theoretical significance prevents giving a theoretical interpretation to a relationship only because it is statistically significant and rejecting theoretical importance of a relationship only for the lack of statistical significance. The general approach used was, therefore, one of building a body of evidence to support conclusions based on analysis of the survey data. This approach will be evident as the survey results are examined and hypotheses are discussed below.

In reviewing the results of the data analysis, correlations were generally considered significant up to $p=.10$. Significance levels are given for most correlations discussed whether they are significant or not. In those cases where no significance is mentioned, the correlation was not significant at the .10 level. Conclusions based on trends in responses rely on differences in, for example, percentages or means without particular standards as to what constitutes a "significant" difference. These instances will be clear in the sections that follow.

Data Sources and Collection of Data

As mentioned in chapter 2, individuals' attitudes, goals, and perceptions of organizational processes were assessed using data gathered by a questionnaire administered during the spring of 1992. A sample of the survey

instrument used is included in the appendix. A pretest of the survey by several attorneys and others familiar with the operation of the Virginia criminal justice and judicial systems was conducted before the final version of the instrument was distributed.

Surveys were sent to 17 public defenders, 101 assistant public defenders, and 56 staff personnel, for a total of 174. The overall response rate was 64% with 9 public defenders (a response rate of 56%), 77 assistant public defenders (76%) and 25 staff personnel (45%) returning useable surveys.

The data gathered was used to describe the characteristics of public defenders, to test the basic hypotheses, and to explore other relationships at the individual level; data was then aggregated to the office level for similar use in level 2 analysis (see figure 7). Data describing the environment of each office, its output, and measures of its legitimacy were gathered from official documents and other secondary sources at the Public Defender Commission and the Supreme Court of Virginia to supplement the survey data and to provide measures necessary for testing hypotheses at the office level.

Examining the Results of the Survey of the Virginia Public Defender System

The first task of the survey was to measure values of attorneys serving as indigent defenders in the public defender offices in Virginia. Each public defender office is headed by a "public defender" who is assisted by other

"assistant public defenders," themselves attorneys, and by a staff of secretaries, investigators, and others. In reviewing the results of the survey, it is important, at times, to make an explicit distinction between public defenders and assistant public defenders. However, unless this explicit distinction is made, the term "public defender" refers to all attorneys who responded to the survey. Also, unless staff respondents are distinguished from attorney respondents, the term "respondents" refers to attorneys only.

Demographic Characteristics of Respondents

The attorney respondents' demographic characteristics were as follows: 59% were male; 57% were between the ages of 25 and 34 while 38% were between the ages of 35 and 44; 49% have practiced law for four years or less while 31% have practiced between 5 and 10 years; 69% have been with the public defender's office three years or less while 29% have four or more years experience there.

Public defenders generally are older and more experienced in the practice of law than assistant public defenders. Nearly all of the public defenders who responded to the questionnaire have more than four years experience in public defense work versus 75% of assistant public defenders who have between one and three years such experience.

Measuring Public Defenders' Values Toward
Aspects of the Criminal Process

Respondents were asked to indicate their level of agreement with 18 statements about the criminal process, nine reflecting due process values and nine reflecting production values. See tables 3 and 4. Public defenders showed strong and consistent agreement with due process value statements and generally weaker, less consistent agreement with the statements describing production or criminal control values. Among the due process questionnaire items, public defenders were more likely to agree with statements expressing the most basic due process attitudes. For example, 97% of attorney respondents agreed that every defendant should have the right to question the legality of steps of the criminal process; 91% agreed that evidence may be unreliable in a case; 90% agreed that in those cases where procedures violate due process standards, the case should be dismissed. It is interesting that only 51% agreed with the statement that the interests of the accused must take priority during the criminal process, indicating that attorneys consider other interests as well in their defense tasks.

Among the production value items, 67% of respondents did not agree that facts should be established as early as possible in a case; 62% disagreed with the statement that repression of criminal conduct is an important function of the criminal process. A majority of respondents felt that efficiency should be given priority throughout the criminal

process. One way of interpreting disagreement with these strong production value statements is to consider such disagreement as tacit agreement with the statements' converse, thereby turning the statements into ones of due process values. This helps explain why public defenders with strong due process value orientations do not believe, for example, that early factfinding in a case is important.

There were several statements of production values with which respondents showed general agreement. Over 87% agreed the finding of guilty should be based on the facts of the case, but 66% felt that so-called facts should be established only through formal, adversarial, adjudicative process. Nearly 70% agreed that habeas corpus petitioners should not be able to relitigate in federal court. Over 77% of the attorneys agreed that the public defender's office should strive to try a high proportion of criminal offenders whose offenses become known.

Taken as a whole, there seems to be general agreement that due process is more important in the application of the criminal sanction than administrative efficiency and the repression of criminal conduct. However, the level of agreement with certain production value statements shows that it is much more complicated than this. While attorneys highly regard due process and the rights of the accused, they seem to be less sure whether they should consider other criteria in the accomplishment of their tasks. It is clear that attorneys in public defense work are challenged by the needs to fulfill other goals while at the same time insuring

TABLE 3
 RESPONSES TO DUE PROCESS VALUE STATEMENTS

Statements	N	Percentage of Respondents		
		Agree	Neutral	Disagree
If a federal fourteenth amendment claim has been asserted by the habeas corpus petitioner at any point in a state criminal process and has been considered and rejected on the merits by a state court, the petitioner should not be able to relitigate the issue in a federal habeas corpus proceeding (APPEALB)?	86	69.8	13.9	16.3
Primary attention should be given to the efficiency with which the criminal process operates to screen suspects, determine guilt, and secure appropriate dispositions of persons convicted of crimes (EFFIC).	86	33.7	11.6	54.7
It is important to complete factfinding in a case as early as possible so that the accused can be exonerated or can enter a guilty plea (FACTSEAR).	86	14.0	18.6	67.4
The finding of guilt should be based on the facts of the case (FACTSLEG).	86	87.2	10.5	2.3
Sometimes it is necessary for the prosecutor, defense, or judge, to put pressure on a defendant to induce him to plead guilty (GUILTYA).	85	64.7	8.2	27.1
It is usually proper for the police to hold a suspect for the purpose of interrogation or investigation (INTEROG).	86	40.7	29.1	30.2
The screening processes operated by police and prosecutors are usually reliable indicators of probable guilt (POLICSCR).	86	31.4	23.3	45.3

TABLE 3 CONTINUED

Statements	N	Percentage of Respondents		
		Agree	Neutral	Disagree
Repression of criminal conduct is an important function of the criminal process (REPRESS).	86	20.9	17.5	61.6
The public defender's office should strive to try, convict, and dispose of a high proportion of criminal offenders whose offenses become known (TRYHIGH).	86	77.2	15.2	7.6

the due process rights of their clients.

To summarize and measure overall agreement with due process and production value statements, two additive value scales were developed. A reliability analysis was conducted for each scale and items were excluded from the final scale scores based on the results of the analyses. The due process values scale showed an alpha of .53 while the alpha for the production values scale was .60.

Table 5 shows all value statements used in the survey along with the mean rank scores for each item. Those items excluded from the value scales are also noted, along with the mean rank scores for each scale. From this table, it is clear the public defenders are more strongly due process oriented than production oriented. The high mean rank on FACTSLEG probably reflects ambiguity in the question about what is meant by "facts." In effect, this ambiguity makes the statement a due process value statement and the mean rank of 4.4 is commensurate with scores for other such

TABLE 4
RESPONSES TO PRODUCTION VALUE STATEMENTS

Statements	N	Percentage of Respondents		
		Agree	Neutral	Disagree
Sanctions for breaking the rules of arrest should include dismissing criminal prosecution and if it is to re-invoked, starting over again from scratch (ARREST).	83	83.1	8.5	8.4
The right of appeal is an important safeguard for the rights of the individual accused; there should be few if any limitations on the convicted defendant's right to appeal (APPEAL).	85	80.0	12.9	7.1
Arrest and prosecution processes are subject to margins of human error; evidence may be unreliable (EVIDUNRE).	85	90.6	5.9	3.5
Facts should be determined only through formal, adjudicative, adversarial processes (FACTSADV).	86	66.3	13.9	19.8
The accused shall have a full opportunity to question the legality of every aspect of his prosecution (FULOPOR).	86	96.5	1.2	2.3
The interests of the accused shall at all times take priority in the criminal process (INTACSD).	86	51.2	17.4	31.4
The sanction of nullity shall apply to any results of procedures violating established norms of due process protection (NULLITY).	85	89.5	8.1	2.4

TABLE 4 CONTINUED

Statements	N	Percentage of Respondents		
		Agree	Neutral	Disagree
There is a basic right to pretrial liberty since a person <u>accused</u> of a crime is not a criminal (PRETRIAL).	86	79.1	15.1	5.8
Law enforcement and prosecution processes can be corrupted by an unchecked application of power (POWER).	86	62.8	20.9	16.3

statements.

As was seen from examining rates of agreement and mean ranks of individual items, the scales indicated that attorneys showed stronger agreement with due process value statements (mean score = 28.3) than with production value statements (mean score = 17.2). Scores for the production value scale showed greater variability than the due process value scale demonstrating less consensus on scale items.

To obtain a summary score of each public defender's office for the due process and production value scales, mean scale judgements for each office were obtained by summing the individual attorneys' responses for all scale items and dividing by the total number of attorneys responding from each office. These mean judgements could then be correlated with other survey results and with data from other sources for each of the offices. Mean scores for the due process value scale ranged from a low of 26.0 in Suffolk to 32.0 in Alexandria while mean production value scale scores ranged from 13.5 in Pulaski to 19.5 in both Courtland and Staunton.

TABLE 5
VALUE SCALES MEAN RANKS (RATINGS) AND SCORES

Due Process Value Statements		Production Value Statements	
Variable Names	Mean Rank (1-5)	Variable Names	Mean Rank (1-5)
ARREST	4.1	APPEALB	3.2
APPEALA	3.9	EFFACE	2.7
EVIDUNRE	4.2	FACTSEAR	2.3
FACTSADV*	3.6	FACTSLEG*	4.4
FULLOPOR	4.4	GUILTYA	3.7
INTACCSO	3.4	INTEROG	3.2
NULLITY	4.2	POLICSCR*	2.8
PRETRIAL	4.1	REPRESS	2.5
POWER*	3.7	TRYHIGH	4.2
Due Process Values Scale		Production Values Scale	
alpha	.53	alpha	.60
Mean total score	28.3	Mean total score	17.2

* Items excluded from the scales based on the results of the reliability (inter-item correlations) analysis of all items.

The maximum mean total scores for both value scales = 35.

N = 86 for all items.

TABLE 6
MEAN SCORES FOR VALUE SCALES BY PUBLIC DEFENDER OFFICE

Office	N	Mean Scores (Range 7 - 35)	
		Due Process Values Scale	Production Values Scale
Alexandria	6	32.00	17.50
Bedford	1	27.00	18.00
Courtland	2	29.00	19.50
Danville	2	30.50	15.00
Fairfax	7	31.29	16.29
Fredericksburg	6	26.83	18.83
Halifax	0	-	-
Leesburg	3	27.67	18.33
Petersburg	4	29.25	16.67
Portsmouth	6	26.50	16.67
Pulaski	2	31.50	13.50
Richmond City	14	27.36	16.67
Roanoke City	6	29.00	17.60
Suffolk	3	26.00	18.33
Staunton	3	27.67	19.50
Virginia Beach	10	26.00	16.89
Winchester	7	27.86	17.00
Lynchburg	4	31.33	17.67
Totals	86	28.30	17.20

Measuring Personal and Organizational Goals

Another set of survey items was designed to measure attorneys' personal goals and their perceptions of the organizational goals of their offices. They were asked to indicate whether each goal in a list was a personal goal when they entered indigent defense work and to evaluate whether, based upon their experience in the public defender's office, any goals had been realized. Attorneys were also asked to judge on a scale of 0 to 10 how important several goals were in their offices. The list of goals was made up of due process oriented goals and production oriented goals.

Attorneys' Personal Goals for Becoming Public Defenders

The reasons attorneys go into indigent defense work has been researched by McIntyre and others and the results from the survey of Virginia public defenders support the findings of these studies. Attorneys indicated that they chose public defense work for trial experience (87%), to help people (84%), to make a contribution to society (75%), and to keep the system honest (61%). Less frequent reasons included the desire to help develop the law (39%), for the competition inherent in trial work (37%), in order to help bring about social change (31%), and for money (22%). After the goal to gain experience as a trial attorney, the three most frequently cited goals were remarkably selfless or at least due process oriented. See table 7.

TABLE 7
EVALUATION OF ATTORNEYS' PERSONAL GOALS

Goal	Percentage of Respondents					
	N	Goal Chosen?		Degree to Which Goal Has Been Realized		
		Yes	No	Great-ly	Some-what	Not at all
For experience	84	87	13	89	11	0
To make a contribution to society	84	75	25	37	64	0
For money	84	23	77	11	74	16
To help people	83	84	16	27	73	0
For competition	83	37	63	71	29	0
To bring about social change	84	31	69	4	46	50
To keep the system honest	84	61	39	16	75	10
To help develop the law .	83	39	61	9	63	28

As would be expected, public defenders were less likely than their assistants to enter public defence work for trial experience (67% versus 89%) and more likely to do so for money (56% versus 19%). Public defenders also were more likely to believe that their positions would enable them to develop law and to make a contribution to society through their efforts in indigent defense positions. The longer attorney respondents had practiced law and the longer they had been public defenders, the less likely they were to indicate that they entered the area of indigent defense to bring about social change, to keep the system honest, to help develop the law, or to make a contribution to society. Perhaps this pattern of responses is a reflection of the effect of indigent defense work and time on attorneys'

attitudes toward the original reasons they entered the field or a reflection of some tendency of younger, less experienced attorneys toward idealistic notions of what they will be able to accomplish as public defenders.

Attorneys were asked to indicate to what degree their original goals for entering indigent defense work had been realized. A majority of attorneys (99%) indicated that they had indeed gained experience as a trial attorney. The majority of respondents also indicated that they had greatly achieved their goals of competition (71%). Considerably fewer respondents indicated that other goals were realized: to contribute to society (37%), to help people (27%), to keep the system honest (16%), to help develop law (9%), and to effect social change (4%). While the higher proportion of defenders who judged their goals "somewhat realized" mitigates the impact of the low percentages just mentioned, it is telling that many said their goals were not realized at all. Fifty percent indicated that they had not been able to bring about social change, 28% said they had not helped to develop the law, and 10% indicated they had not been able to make a contribution toward keeping the system honest.

In order to summarize responses to questions about personal goals for public defender offices, the mean number of due process personal goals selected by respondents in each office was calculated. The same procedure was repeated for self-interest related goals, and the number of goals chosen as realized to some degree. Even at the office level, the higher scores for due process goals are evident.

The mean due process goals scale ranged from a low of 2.0 in several localities to a high of 2.9 in Winchester.

Production goals ranged from a low of 1.0 in several localities to a high of 2.8 in Petersburg. The highest mean number of goals realized occurred in Fredericksburg with 5.7. See table 8.

Respondents' Perceptions of Organizational Goals

The measure of organizational goals is important because of their relationships to policy or values. Respondents were asked to evaluate how important several possible goals were in their respective offices. Three of the goal statements were decidedly due process oriented; three were production values oriented. Table 9 shows the high proportion of respondents who felt that due process goals were "very important" and the lower rates of agreement with due process goals. While 94% felt the goal to improve the quality of justice was "very important," only 14% indicated that providing services at the least cost to the state was important. The production value goal of providing "adequate" defense services repeats the problem seen with a similar value statement, namely the apparent confusion by respondents regarding the distinction between "adequate" defense and "the best" defense. With all respondents agreeing that providing "adequate defense" is very important, this goal should actually be considered due process in nature.

TABLE 8
MEAN SCORES FOR GOALS SCALES BY PUBLIC DEFENDER OFFICE

Public Defender Office	N	Mean scores				
		Personal Goals			Organizational Goals	
		Original Goals		Realized Goals Scale (0-6)	Due Process Goals Scale (0-30)	Pro- duction Goals Scale (0-30)
		Societal (Due Process) Goals Scale (1-3)	Self- interest Goals Scale (1-3)			
Alexandria	6	2.7	2.2	4.5	28.3	16.5
Bedford	1	2.0	1.0	3.0	29.0	15.0
Courtland	2	2.0	1.5	3.5	28.0	15.0
Danville	2	2.5	1.5	4.0	24.5	24.0
Fairfax	7	2.6	2.2	3.8	23.6	13.6
Fredericksburg	6	2.2	1.8	5.7	24.5	19.3
Halifax	0	-	-	-	-	-
Leesburg	3	2.0	3.3	5.7	28.3	18.0
Petersburg	4	2.0	2.8	4.3	25.5	17.3
Portsmouth	6	2.8	2.2	4.4	24.4	17.5
Pulaski	2	2.5	1.0	3.5	22.5	18.0
Richmond City	14	2.2	2.1	3.9	26.9	16.9
Roanoke City	6	2.5	2.3	4.5	26.8	16.2
Suffolk	3	2.3	1.7	3.7	21.3	18.7
Staunton	3	2.3	1.7	4.0	24.0	24.5
Virginia Beach	10	1.3	1.4	2.6	22.8	16.4
Winchester	7	2.9	2.4	4.9	26.3	22.1
Lynchburg	4	1.8	1.3	2.8	27.0	20.3

Both attorney and staff respondents indicated that due process goals were "very important" in their operations though on the specific goal of "ensuring due process protection," attorneys were slightly more inclined than staff to judge the goal as "very important." The responses on the due process goal statements were more revealing. Only 15% of attorneys believed that the goal of "providing defense services at the least cost to the state" was "very important" while 40% of staff felt similarly about the same goal. Staff were also more likely than attorneys (38% versus 24%) to classify the goal of "defending as many as possible with given time and money" as "very important."

In their responses to the three due process goal statements, public defenders appeared slightly more concerned with due process goals than assistant public defenders. A greater proportion of public defender respondents judged each due process goal as "very important" than did their assistants. However, when it came to the three statements of production goals, public defenders showed considerably greater levels of agreement. For example, only 13% of assistant public defenders indicated that a major goal of the office was to provide defense services at the least cost to the state, while 33% of the public defenders believed this was very important as a goal.

As the number of years in public defense work increased among attorney respondents, the likelihood that they would categorize due process goals as "very important" increased and the frequency with which they categorized production

TABLE 9
ORGANIZATIONAL GOALS IN PUBLIC DEFENDER OFFICES

Goals	N	Percentage of Respondents			Mean Rating (0-10)
		Not Important	Somewhat Important	Very Important	
Due Process Value Organizational Goals					
To improve the administration of criminal justice by identifying the mistakes of others in the criminal process to the extent that such mistakes affect defendants' defense	84	7	31	62	7.3
To improve the quality of justice by striving to ensure due process protection and equal treatment for all defendants	84	1	5	94	9.2
To provide the best defense possible to the indigent defendant regardless of time or costs	84	2	10	88	8.6
Production Value Organizational Goals					
To provide adequate defense to the indigent defendant	83	0	0	100	9.8
To provide indigent defense services at the least cost to the state	84	46	39	14	3.8
To defend as many defendants as possible given the time and fiscal constraints	83	52	25	23	3.9

value goals as "very important" decreased. This same pattern of responses was also evident as the number of years as indigent defenders increased.

To determine if respondents' perception of organizational goals varied from office to office, the rankings for due process goals and production related goals were summed separately and the mean total score was calculated for each office. For the organizational goal scales, the due process score ranged from a low of 21.3 in Suffolk to a high of 29.0 in Bedford. The production goals scale ranged from 15.0 in Bedford to 24.5 in Staunton. See table 8.

Measuring Decisionmaking Processes

In the public defender offices, cases are generally assigned to attorneys on a case-by-case basis. Nearly 85% of the defenders indicated that they had a high level of discretion when conducting their cases. In exercising this discretion, 51% said they "frequently" accept routine offers from the commonwealth attorney and 36% indicated that they "sometimes" accept such offers. When asked how often they urge their clients to accept the offer of the commonwealth attorney, over 30% said "frequently" and 58% responded "sometimes". Only 13% indicated that they "frequently" felt pressured to plea bargain; 31% felt pressured to do so "sometimes".

The activity of plea bargaining is important in considering the decisionmaking processes of individual

TABLE 10
 RESPONSES TO QUESTIONS CONCERNING
 DECISIONMAKING PROCESSES

Decisionmaking Process Variables	N	Percentage of Respondents
<u>Is there a case screening process?</u>		
Yes	50	60
No	34	40
<u>How are cases assigned?</u>		
Cases by case	81	96
By courtroom	3	4
<u>Are cases assigned to balance caseloads?</u>		
Yes	59	69
No	26	31
<u>Are cases assigned to distribute challenging cases?</u>		
Yes	50	60
No	34	40
<u>How often do you accept routine offers from CA?</u>		
Frequently	41	51
Sometimes	29	36
Rarely	4	5
Not at all	6	8
<u>Level of discretion in conducting cases?</u>		
High	71	85
Moderate	13	15
Low	0	0
<u>How often do public defenders feel pressured to plea bargain?</u>		
	11	13
Frequently	26	31
Sometimes	28	33
Rarely	19	23
Not at all		

attorneys and of public defender organizations because its increased use may indicate greater routinization in case processing techniques due to environmental pressures or differing values. To gain more insight into the nature of plea bargaining by public defenders, respondents were asked about the sources of pressure, if any, to plea bargain. The consensus of respondents was that they generally do not feel pressured to plea bargain. Attorneys indicated that to the degree that such pressures do exist they arise most frequently from commonwealth attorneys, the courts, and because of time and caseload pressures. Nearly 22% of defenders indicated that commonwealth attorneys are the more frequent source of such pressure; time limitations, 24%; caseload pressures, 18%, and the courts and judges, 13%. See table 11.

The proportion of respondents who indicated that they routinely accept offers from the commonwealth's attorney varied from .50 in the Danville office to 1.0 in 11 other offices. The proportion who felt pressured to plea bargain at least sometimes ranged from zero in several offices to .78 in Virginia Beach.

Measuring Elements of Organizational Structure

Several survey items were used to measure respondents' views toward the elements of organizational structure in the public defender offices. These questions dealt with the adequacy of personnel policies, training and educational programs, as well as standard operating procedures such as

TABLE 11
SOURCES OF PRESSURE TO PLEA BARGAIN

Sources of Pressure	N	Percentage of Respondents			
		Never	Occasion- ally	Often	Always
Commonwealth attorneys	79	32	47	18	4
Judges and courts	79	52	35	10	3
Caseload	79	64	18	13	5
Public defender system	77	86	8	6	0
Public defender office	79	97	3	0	0
Time limitations	79	53	23	18	6

the level of supervision and the need to record time and costs of casework. Respondents were also asked to evaluate the level of general freedom and equality of treatment they receive as attorneys.

Overall, respondents indicated that the environment of the public defender offices are professional and collegial in nature and that they, as attorneys, are independent to work without undue supervision or constraints and are treated as equals among equals. A notable 48% said that training programs were inadequate, while 29% judged personnel policies as "insufficient" and 27% indicated that case assignment procedures were "insufficient." See table 12. The average number of the six structural elements judged by respondents to be "insufficient" ranged from .50 in Courtland to 1.0 in most localities.

TABLE 12
RESPONSES TO ORGANIZATIONAL STRUCTURE ITEMS

Structure Variables	N	Percentage of Respondents			
		Not Needed	Insufficient	About Right	Excessive
Level of supervision	84	11	13	75	1
Adequacy of training programs	83	0	48	52	0
Continuing legal education	84	0	10	89	1
Need to record time or costs in casework	81	36	1	59	4
Personnel policies (salaries, leave, promotion, etc.)	83	4	29	67	0
Procedures for screening and assignment of cases, equalizing caseloads	84	0	27	72	1

Measuring Legitimacy

Measures of legitimacy proved the most problematical in the research effort. If legitimacy of an agency is to be based at all on society's and on the agency's clients' views toward its operations and output, then the views of these non-agency groups must be measured. Even if the general public's and the clients' appraisal of services are based on case-by-case impressions coupled with imperfect knowledge of the system, if society is to demand accountability from these public agencies, then rigorous and systematic measurement techniques clearly need to be developed and implemented.² Unfortunately, data collected in a major survey of criminal justice participants in Virginia,

²Jacoby, Public Defender Performance, 22.

including public defenders, by the University of Virginia Social Science Research Laboratory in 1987 was no longer available at the local jurisdictional level.³ Thus, it was not possible to compare attitudes of non-public defenders toward public defenders and the services they provide from one office to the next across the state. The only measure available was one based on the views of public defenders themselves, gathered by the survey as part of this research, about how well they feel respected by others such as judges, the community, and their clients. How public defenders judge their own legitimacy, then, was measured by asking them to evaluate whether they feel they have respect from several groups in their environment and whether they feel they are as able to provide quality defense services as privately retained and court appointed counsel.

The majority of defenders (63%) indicated that they do not receive respect from their clients (defendants). Over 37% said that the community at large does not appear to respect them as professionals. Certainly, defenders feel more respected by members of the legal community than by those whom they serve. When asked whether they felt that they as public defenders could offer better defense services to their clients than court appointed attorneys, 73% said they could. Public defenders were less likely to rate their

³Charles L. Cappell, John Jarvis, "Report of a Survey on the Provision of Legal Services to Indigent Criminal Defendants," Virginia Bar Association Special Committee on Indigent Defense, Social Science Research Laboratory, University of Virginia, 1987.

abilities higher than privately retained counsel; 68% said that the quality of service they provided as defense counsel was about the same as private counsel, but a significant 26% still felt that public defenders offer their clients better defense services than private counsel. See table 13.

It is interesting to compare the results concerning public defender and court appointed counsel to those of the 1987 study reviewed in chapter 2. In the former survey, public defenders were judged by others in the criminal justice and judicial systems to be only slightly more effective than court appointed counsel. Both types of attorneys were generally judged to be adequate in terms of the quality of their defense while public defenders were generally ranked as having more experience than court appointed counsel. Responses also indicated that privately retained attorneys were felt to be more experienced than either public defenders or court appointed attorneys.

In the 1987 study, public defenders were ranked as more prepared than court appointed counsel but the criminal bar was much less likely to rank public defenders as such. As to levels of competency, public defenders were generally ranked as more competent than court appointed counsel. The study concluded that there was, however, little evidence to support a preference for either a court appointed system or a public defender system based on the quality of individual counsel in either system. The study also concluded that most perceive privately retained attorneys as more able than court appointed counsel or public defenders.

TABLE 13
RESPONSES TO LEGITIMACY ITEMS

Legitimacy Variables	N	Percentage of Respondents
<u>Respect Variables</u>		
<u>Respect from defendants (clients)?</u>		
Yes	26	31
No	52	63
Don't know	5	6
<u>Respect from the community?</u>		
Yes	26	31
No	32	39
Don't know	25	30
<u>Respect from commonwealth attorneys?</u>		
Yes	72	87
No	11	13
Don't know	0	0
<u>Respect from courts (judges)?</u>		
Yes	73	88
No	8	10
Don't know	2	2
<u>Respect from other attorneys?</u>		
Yes	66	79
No	12	14
Don't know	6	7
<u>Quality of Defense Services</u>		
<u>PD defense services compared to court-appointed counsel?</u>		
Not as good	0	0
About the same	22	27
Better	59	73
<u>PD defense services compared to privately retained counsel?</u>		
Not as good	5	6
About the same	54	68
Better	21	26

Results from the current study revealed that as the number of years in the practice of law increases, defenders feel changing levels of respect from the community. Thirty-seven percent of those with the least experience in law said that they are respected by the community while only 15% of those with over five years experience felt such respect.

Similar patterns are seen when examining the number of years in public defense work. Those with over three years as public defenders feel they receive less respect from the community than those with one to three years such experience. Experience also seems to have a moderating effect on public defenders' ability to offer better defenses than other types of attorneys. While 77% of those with only one to four years of experience felt they could offer better services than court appointed attorneys, this percentage fell to 60% among those with five years or more.

Table 14 shows the percentage of respondents in each office who indicated that they do receive respect from other groups in the criminal justice system. The lower levels of respect felt from defendants and the community is clearly demonstrated. In the three largest offices, as measured by the number of respondents, from zero to only 21% of attorneys indicated they felt respect from their clients. Respect from other attorneys ranged from a low of 25% in Petersburg to 100% in eight offices. System-wide, only 30% of respondents indicated that they felt respected by clients and the community; 77% indicated respect from other attorneys; and 85% felt respected by the courts and judges.

TABLE 14
RESPONDENTS' VIEWS TOWARD SOURCES OF RESPECT

Public Defender Office	N	Percentage of Respondents Answering "Yes" Do you receive respect from				
		Defendants (Clients)	The Community	Courts and Judges	Common- wealth Attorneys	Other Attorneys
Alexandria	6	50	83	83	83	100
Bedford	1	0	0	100	100	100
Courtland	2	50	0	100	100	100
Danville	2	100	50	100	0	100
Fairfax	7	0	29	43	43	86
Fredericksburg	6	67	67	100	100	100
Halifax	0	-	-	-	-	-
Leesburg	3	67	33	100	100	67
Petersburg	4	0	25	100	100	25
Portsmouth	6	50	0	50	80	33
Pulaski	2	50	50	100	100	100
Richmond City	14	21	21	93	93	79
Roanoke City	6	40	40	80	80	80
Suffolk	3	33	0	100	67	67
Staunton	3	0	67	100	100	67
Virginia Beach	10	0	11	100	100	70
Winchester	7	43	43	100	100	100
Lynchburg	7	33	0	100	100	100
Totals	86	30	30	85	84	77

Measures of Organizational Output for
Public Defender Offices

Jacoby pointed out that the primary measure of any policy decision is a definable systemic output⁴. Since the functions of public defender offices within their policy environments are expressed by decisions through specific structural arrangements, one can define a set of outputs as the outcomes of the decisionmaking processes of the offices. One clearly identifiable result of the defender's decisionmaking process is the disposition of cases.

The number of defendants and cases (charges) handled by each office were gathered from the Public Defender Commission. Specific data on the dispositions of these cases were not available, however. While caseload data by locality was gathered from the Supreme Court of Virginia, these data reflected total court caseloads, methods in which cases were disposed, and average disposition times for all cases in the system, irrespective of the type of attorney. No data were available, therefore, to directly compare case dispositions by public defenders from one locality to the next. The proportion of total charges handled by the public defender's office was available, as was the total proportion of cases handled by court appointed counsel. These measures did make it possible to make some comparisons of case output and dispositions.

During fiscal year (FY) 1991, the public defender offices in Virginia handled 62,438 charges at a cost of

⁴Jacoby, Public Defender Performance, 9.

\$5,699 million, for an average cost per charge of just over \$100. In fiscal year 1987, only 24,658 charges were processed and the average cost per charge was \$63.53. The increase in charges and average costs for the caseload handled by public defenders was due to continued expansion of the system and also to increases in the entire indigent defense services area during that time. According to data from the Public Defender Commission, the city of Richmond office handled 10,933 charges for 5,932 defendants in FY 1991, the greatest number of charges among the 18 offices. See table 15.

The Public Defender Commission gathers data on an ongoing basis in order to compare productivity in the various public defender offices. These productivity measures include the mean number of defendants handled per attorney each year, the mean number of charges per attorney, as well as average costs per defendant and per charge. In fiscal year 1991, there was a wide range in each of these measures across the 18 public defender offices. See table 16.

The highest caseload per attorney in terms of defendants and charges occurred in the Staunton office with 568 defendants and 2,213 charges for each of the four attorneys there. According to a state study conducted in 1989, public defender offices in Virginia are handling significantly more cases per attorney than recommended by a

TABLE 16
 PRODUCTIVITY MEASURES OF PUBLIC DEFENDER OFFICES
 (Fiscal Year 1991-1992)

Public Defender Office	Mean Defendants per Attorney	Mean Charges per Attorney	Mean Cost per Defendant (\$)	Mean Cost per Charge (\$)
Alexandria	208	492	290	123
Bedford	321	763	317	133
Courtland	278	668	267	112
Danville	229	445	290	149
Fairfax	197	340	299	174
Fredericksburg	427	860	172	85
Halifax	338	711	169	355
Leesburg	187	528	327	116
Petersburg	357	697	209	107
Portsmouth	429	742	147	85
Pulaski	405	930	171	74
Richmond City	296	744	145	77
Roanoke City	470	896	144	76
Suffolk	288	550	192	367
Staunton	568	2,213	156	40
Virginia Beach	376	789	265	555
Winchester	369	708	256	490
Totals	380	755	199	100

Source: Virginia Public Defender Commission, "FY90-91 Statistics," 1992.

nationally recognized expert on issues of indigent defense.⁵ The "Spangenberg Standard" calls for 860 cases per attorney per year; in Virginia, the caseload was found to be nearly 1,500.

The impact of this caseload was assessed in the 1989 study by a set of structured interviews with others in the criminal justice system. Based on these interviews, judges stated that the most pressing need in public defender offices is for additional attorneys. Another impact of the workload is its impact on docketing of cases. In one jurisdiction, for example, the court in 1989 was setting cases two months into the future because the public defender attorneys did not have open dates until that time.⁶

In the present survey of public defenders, results showed that 65% of attorney respondents indicated that there is usually enough time for them to prepare a "best defense" despite the caseload and despite general agreement (78% of respondents) that the workload pressures they face in the public defenders offices are heavy.

The highest average cost per defendant occurred in Leesburg where each defendant cost an average of \$327. The Virginia Beach office had the highest average cost per charge with \$555.

Charges and costs have been rising consistently in each area served by a public defender. Table 19 shows the mean

⁵Virginia Department of Planning and Budget, "A Study of Indigent Defense Systems in Virginia," 1989, 19.

⁶Ibid., 15.

annual percent change in charges and costs between fiscal years 1986 and 1991 for each public defender office. For offices established after FY 1986, the average rate of change was calculated from the first full year for which data was available. In many offices, total costs have generally increased at a slower average rate than charges over the life of the office; however, for the system as a whole, the rate of increase in costs (43% per year) has been greater than the rate of increase in charges (34%). While the average annual cost per charge showed a decrease in many offices, overall, costs per charge have increased at a rate of 7% a year. For many offices, felony charges were the fastest growing type of charge with felonies comprising an ever increasing proportion of total caseload.

Despite the unavailability of data on dispositions of the cases handled exclusively by public defenders, the role public defenders play in the output of the judicial system is an important one, especially in those areas where they handle a high proportion of the total criminal cases. While judicial system output might have also been described in the section which deals with the public defender's environment, it seems more appropriate to consider such measures here since one of the hypotheses of the public defender diffusion model is that public defenders will have an impact on the nature of this output where they operate.

Table 18 shows the total number of criminal cases concluded in 1991 in the circuit courts for those localities served by public defender offices. As expected, the Fairfax

TABLE 17
GROWTH IN COSTS AND CHARGES BY PUBLIC DEFENDER OFFICE

Public Defender Office	Mean Annual Percent Change				
	Total Charges	Total Costs	Average Costs per Charge	Felony Charges	Felony Portion of Caseload
Alexandria	11.7	24.6	11.6	2.7	-7.9
Bedford	37.3	11.8	-18.6	51.4	10.2
Courtland	16.4	10.0	-5.5	16.9	0.3
Danville	30.1	75.4	-37.7	54.1	6.2
Fairfax	18.3	16.9	-1.2	27.4	7.6
Fredericksburg	-	-	-	-	-
Halifax	-	-	-	-	-
Leesburg	62.8	19.2	-26.8	71.8	5.5
Petersburg	7.9	12.6	4.4	10.0	1.9
Portsmouth	8.5	17.9	8.6	16.7	7.5
Pulaski	27.0	24.7	-1.8	22.9	-3.2
Richmond City	9.5	15.0	5.0	11.1	1.4
Roanoke City	4.3	-0.7	-4.8	5.5	1.1
Suffolk	17.8	17.3	-0.4	31.8	11.9
Staunton	20.8	16.5	-3.6	7.6	-10.9
Virginia Beach	9.6	16.0	5.9	13.3	3.4
Winchester	49.5	30.8	-12.5	31.3	-12.1
Lynchburg	-	-	-	-	-
Totals	33.8	43.1	7.0	36.6	2.0

Note: Localities marked with a dash had data for 1991 and 1992 only and were excluded from the calculations of average annual rates of change.

Source: Virginia Public Defender Commission, "FY90-91 Statistics," 1992.

and Richmond areas had the heaviest criminal caseloads. The highest trial rate (proportion of total cases disposed of by trial) occurred in Roanoke with 63%. Bedford showed the greatest percentage of cases withdrawn, dismissed, or not prosessed prior to trial (40%), while 61% of criminal cases in Virginia Beach were disposed of by a guilty plea prior to trial. An interesting fact evident from table 18 is the low percentage of cases that are disposed of by jury trials in all jurisdictions.

Table 19 shows the age of concluded criminal cases in areas served by public defenders. The greatest mean age at disposition occurred in Virginia Beach where it took an average of 150 days from the filing to the adjudication of a case. The shortest time occurred in Danville (64 days). Danville also recorded the greatest percentage of total criminal cases concluded within 90 days from the date of filing, 83%. Examining the age of concluded cases is important because, as was discussed above, the workload in public defender offices may have a direct effect on how quickly cases can be disposed of by the courts.

Measures Describing the Public Defender's Environment

While the basic characteristics of the public defender system in Virginia and its environment were described in chapter two, it is necessary to mention here additional characteristics directly related to the testing of the diffusion model's hypotheses. These characteristics can be categorized as general environmental and defendants related.

TABLE 18
 CRIMINAL CASES CONCLUDED IN THE CIRCUIT COURTS
 IN AREAS SERVED BY PUBLIC DEFENDERS (1991)

Public Defender Offices (All Jurisdictions Served)	Total Criminal Cases (Circuit Only)	Percent of Total Cases Concluded by				
		Jury Trial	Judge Trial	All Trials	Dismissed Prior to Trial	Guilty Plea Prior to Trial
Alexandria	1,593	6	14	20	16	55
Bedford	916	3	19	22	40	35
Courtland	1,690	3	25	28	13	34
Danville	1,474	3	26	29	26	45
Fairfax	6,330	6	44	50	13	36
Fredericksburg	1,648	4	24	28	23	40
Halifax	969	4	28	32	24	42
Leesburg	2,063	4	16	20	21	45
Petersburg	923	6	25	31	19	43
Portsmouth	3,715	2	35	37	13	33
Pulaski	1,365	2	23	25	26	46
Richmond City	6,059	9	12	21	27	40
Roanoke City	2,622	3	60	63	15	22
Suffolk	1,246	4	37	41	12	47
Staunton	1,495	4	38	42	17	36
Virginia Beach	5,554	3	18	21	18	61
Winchester	2,718	5	17	22	8	51
Lynchburg	1,737	4	45	50	7	37

Source: Supreme Court of Virginia, State of the Judiciary Report, 1991.

TABLE 19
 AGE OF CONCLUDED CRIMINAL CASES IN THE CIRCUIT COURTS
 OF AREAS SERVED BY PUBLIC DEFENDERS (1991)

Public Defender Area	Mean age at conclusion (Days)	Cases Concluded within 60 Days (Percentage)	Cases Concluded within 90 Days (Percentage)
Alexandria	70	33	88
Bedford	127	28	43
Courtland	166	22	32
Danville	64	54	83
Fairfax	109	21	69
Fredericksburg	90	29	70
Halifax	122	28	48
Leesburg	136	31	43
Petersburg	147	2	47
Portsmouth	139	24	42
Pulaski	148	22	47
Richmond City	73	49	74
Roanoke City	115	32	51
Suffolk	174	12	26
Staunton	121	33	56
Virginia Beach	150	22	36
Winchester	110	36	57
Lynchburg	99	36	59

Source: Supreme Court of Virginia, State of the Judiciary Report, 1991.

Many of these characteristics are summarized in table 20. Eleven of the public defender offices serve predominantly urban areas. In 1991, crime rates were predictably higher in these areas than in the rural areas served, and the proportion of total criminal cases handled by indigent defenders ("indigency") ranged from 24% in Danville to 70% in Petersburg. In six of the offices, attorneys handled more felony charges than misdemeanor charges and the mean number of charges per defendant ranged from 1.7 in Fairfax to 3.9 in Staunton. According to the survey, nearly 68% percent of public defenders indicated that they felt at least 75% of the clients they serve are guilty; 24% indicated that between 50% and 75% of the defendants they represent are guilty.

Testing Basic Hypotheses of the Public Defender Model

The testing of the basic hypotheses of the public defender diffusion model developed in chapter three is the most basic step of the research. The hypotheses describe possible relationships between model elements and help concentrate attention on organizational processes at work.

The Development of Values

The first general hypothesis is concerned with the relationship between values and certain measures of time for individual defenders and for public defender offices. Specifically, according to hypothesis 1.1, public defenders become less concerned with due process and more concerned with the production of cases the longer they have been

TABLE 20
 ENVIRONMENTAL CHARACTERISTICS OF AREAS
 SERVED BY PUBLIC DEFENDERS

Public Defender Office	Urban/Rural	Crime Rate (a)	Indigency Rate (b)	Felony per Misdemeanor (Charges) (c)	Felonies as Proportion of Total Cases (c)	Mean Number of Charges per Defendant (c)
Alexandria	Urban	6,676	0.63	2.65	0.61	2.36
Bedford	Rural	1,838	0.38	0.90	0.47	2.37
Courtland	Rural	2,938	0.36	1.40	0.56	2.40
Danville	Urban	4,050	0.24	0.24	0.14	1.94
Fairfax	Urban	4,882	0.38	10.56	0.91	1.72
Fredericksburg	Urban	3,130	0.41	0.54	0.34	2.01
Halifax	Rural	1,850	0.38	1.50	0.54	2.10
Leesburg	Rural	1,963	0.37	1.39	0.50	2.82
Petersburg	Urban	7,485	0.70	1.27	0.55	1.98
Portsmouth	Urban	9,426	0.50	1.48	0.49	1.73
Pulaski	Rural	2,579	0.39	0.59	0.35	2.30
Richmond City	Urban	11,358	0.58	0.86	0.43	1.88
Roanoke City	Urban	8,078	0.39	0.61	0.36	1.91
Suffolk	Urban	5,775	0.44	1.07	0.51	1.91
Staunton	Rural	3,026	1.13	0.42	0.29	3.90
Virginia Beach	Urban	5,784	0.33	1.53	0.58	2.10
Winchester	Rural	3,176	0.29	1.06	0.48	1.92
Lynchburg	Urban	5,841	n/a	n/a	n/a	n/a

Sources: (a) Virginia State Police, Crime in Virginia - 1991 (Richmond, Va.); (b) Calculated as the proportion of total criminal charges handled by indigent defenders; (c) Virginia Public Defender Commission, "FY90-91 Statistics," 1992.

n/a - not available

involved in public defense work and the greater their perceptions of environmental pressures to produce.

Among the individual due process value statements, six showed increasing rates of agreement among respondents as the number of years in law practice increased. See table 21. For indigent defenders, the due process scale increased overall with an increase in the number of years in the practice of law, from 28.1 for 1-4 years to 29.4 for those practicing over 11 years. Similarly, there was a slight increase in the scale with an increase in the years in public defense work, from 28.0 for 1-3 years to 28.9 for over three years. See table 22.

While there was no significant difference between mean rank scores across various categories of response, the production value scale showed a significant decrease across increasing years in the practice of law and years in public defense work. Among the nine production value statements, increased rates of agreement with increasing years in the practice of law occurred in only four.

The correlation between the due process mean rank scores and age of public defender offices was $-.26$ ($p=.16$) when examining all offices. After clustering the public defender offices into two clusters, one for the four oldest offices and the other for the remaining much younger offices, it was found that the mean due process scores were significantly lower ($p<.10$) in the older offices (27.9) than in the younger offices (28.8). Likewise, the mean production values scores were higher in the older offices

TABLE 21
VALUE STATEMENTS AND EXPERIENCE OF PUBLIC DEFENDERS

Values Variables (Statements)	Percentage Agreeing with Statement	
	Years in Law Practice	
	1 to 4	Over 4
Due Process Values Statements		
ARREST	75	91
APPEALA	81	79
EVIDUNRE	87	93
FACTSADV	57	74
INTACCSO	42	61
NULLITY	92	88
PRETRIAL	71	86
POWER	69	58
Production Values Statements		
APPEALB	67	72
EFFIC	26	42
FACTSEAR	7	21
FACTSLEG	86	88
GUILTYA	73	56
INTERROG	33	49
POLICSCR	28	33
REPRESS	11	30
TRYHIGH	79	75

TABLE 22
VALUE SCALE SCORES AND EXPERIENCE VARIABLES

Variables	Due Process Values Scale		Production Values Scale	
	N	Mean (7-35)	N	Mean (7-35)
<u>Years in law practice</u>				
1-4 Years	42	28.1	42	18.1
5+ Years	43	28.5	43	16.3
Total N	86		86	
<u>Years in public defense work</u>				
1-3 Years	58	28.3	58	17.7
4+ Years	26	28.5	26	15.9
Total N	84		84	

(17.7) than in the younger offices (17.1), though the difference was not significant.

In examining due process and production scale data along with respondents' perceptions of workload pressures, due process scores were higher in offices where there was less pressure or fewer constraints on decisionmaking processes. In other words, in offices where there were fewer perceived sources of pressure on attorneys to plea bargain, the due process scale scores were higher. The percentage of respondents citing three or more sources of pressure was negatively correlated with mean due process scale scores ($r = -.48, p < .05$). This may indicate that in offices where due process values are stronger, the pressure to plea bargain is resisted. Another possibility is that greater pressure to plea bargain leads to a change in values --from due process to production values, or at least to

weaker due process values--in order to cope with the pressures.

Relationships Between Values and Goals

A second set of hypotheses deals with the relationship between values and goals. These hypotheses state that (1) public defenders with a greater production value orientation will have personal goals less concerned with normative, or due process, issues such as justice and equality, and will see organizational goals of their office as less due process oriented, and that (2) public defender offices with greater production value orientations will have goals less concerned with due process and more concerned with production of cases.

In order to summarize the responses to personal and organizational goal items in the survey, several goals-related variables were calculated. For measuring personal goals, the number of due process type goals chosen out of the four possible choices, and the number of operational or self-interest related goals chosen from the four presented were counted. For each goal, respondents were also asked to indicate to what degree the goal had been met in their work as a public defender. Another calculated variable was the number of goals scored as having been met to some degree, either "somewhat" or "greatly."

Examining response patterns among the value statements and the goal items of the survey, six of the nine due process value statements showed higher mean ranks as the

number of personal due process goals increased. For example, respondents who chose no due process personal goals showed a mean rank of 3.3 on the statement that criminal processes are often corrupted by unchecked power. Those who chose between one and two due process goals showed a mean rank of 3.6 on the same statement, while those who chose between three and four due process goals showed a mean rank of 3.9. Only three production value statements showed the same pattern of responses when compared to personal goals.

The mean due process values scale score was 25.4 for attorneys who chose no due process goals and rose to 28.9 for those who chose between three and four due process goals. See table 23. The mean production values scale score showed the opposite pattern, 18.2 for those choosing no due process goals, and 16.9 for those choosing between three and four. For the less socially oriented, more self-interest related personal goals such as "to gain trial experience", the mean due process values scale showed little variation as the number of such goals increased; the production values score did increase, however, from 10.0 to 17.4 as the number of the self-interest related goals increased from 0 to 4.

These results seem to indicate a relationship between values and goals. The stronger the due process values of attorneys, the more socially oriented were the goals they gave for entering indigent defense work; the stronger their production values, the more self-interested related goals were chosen. It is also interesting that the mean due

TABLE 23
VALUES SCALES AND PERSONAL GOALS

Variables	Due Process Values Scale		Production Values Scale	
	N	Mean	N	Mean
Goals for Choosing Indigent Defense Work				
<u>Number of Due Process (Social) Goals Chosen</u>				
0 Goals	8	25.4	8	18.2
1-2 Goals	28	28.2	28	17.2
3-4 Goals	35	28.9	35	16.9
Total N	81		81	
<u>Number of Production (Self-interest) Goals Chosen</u>				
0 Goals	3	28.5	3	10.0
1-2 Goals	51	28.1	51	17.2
3-4 Goals	27	28.5	27	17.4
Total N	81		81	
Original Goals Realized				
<u>Number of Goals Realized</u>				
0 Goals	2	23.0	2	-
1-4 Goals	46	28.3	46	17.2
5-8 Goals	33	28.5	33	17.1
Total N	81		81	

process values scale scores increased as the number of individual goals realized increased, while mean production value scale scores showed no change.

The correlation between the due process scale scores and the number of goals realized was .30 ($P < .01$) indicating that those with higher due process scores tended to have a higher proportion of their personal goals realized.

Did respondents' perceptions of the goals of their offices change as their value scale measures changed?

Respondents were asked to judge on a scale of 0 to 10 the importance of six possible goals within their respective offices, three due process goals and three production goals. In order to summarize responses to the goal items, scores were summed for due process related goals and for production or operational related organizational goals. Totals for these goals' scales were then classified into categories of low, medium, and high. No differences in patterns were evident between the mean scores for the value scales and the total scores for due process and production value organizational goals. Both value scales' scores increased as the total due process and operational goal scales increased.

As to whether public defender offices with greater production value orientations have goals less concerned with normative issues such as justice and equality, the data revealed a positive correlation of .18 ($p=.11$) between due process scale scores and due process oriented organizational goals. In other words, attorneys with higher due process scale scores tended to judge the goals of the public defender office as more due process in nature. More important, however, is the finding that attorneys with higher due process value scores tended to have become indigent defenders for personal goals more societal in nature ($r=.39$, $p<.001$). This indicates a strong relationship, as expected, between values held by attorneys and their personal goals in choosing their current profession.

At the office level, these relationships continue but at a weaker level. The correlation between mean due process scale scores and the personal goal index for due process goals was .27 ($p=.30$).

Relationships Between Goals and Organization Structure

Structural aspects of an organization can be examined by looking at the formal and informal mechanisms which the organization has developed to deal with the daily activities necessary to accomplish the goals and objectives pursuant to its underlying policy or value structure. In the case of the public defender, structural elements identified by McIntyre were examined by asking respondents to evaluate the degree to which various elements were needed and provided for in their offices.

The third set of hypotheses deals with the relationship between goals and structural components of public defender offices. First, as organizational goals of public defenders become more concerned with the production of cases, there should be greater agreement that standard operating procedures, personnel policies, workload standards, and training programs are important.

As discussed previously, several items on the questionnaire were designed to evaluate respondents' attitudes about various elements of organizational structure in public defender offices. However, the questions did not directly measure perceived "importance" of structural elements. Instead, respondents were asked to judge whether

elements were "adequate" or not. When examining the response patterns to these items and comparing the responses to the individual organizational goal statements, it was found that for five of the six structure-related items respondents expressing the belief that elements of organizational structure, such as personnel policies, were insufficient, tended to rank production goals as less important than those who believed elements of organizational structure were "about right". In other words, as the importance of production goals increased as measured by the mean rank scores given to goals, there was a greater consensus among respondents that structure was currently adequate. An examination of the mean rank scores for due process oriented goal statements did not demonstrate any clear pattern of responses. See table 24. Table 25 shows the responses for two of the production value goals, the goal to provide defense services at the least cost to the state and the goal to defend as many as possible.

Comparison of tables 24 and 25 clearly shows the greater importance attached to due process goals than to production goals by respondents and the fact that generally the majority of respondents judge current organization structural arrangements to be adequate. Another relevant finding was that for five out of the six structure items, the mean production goals scale score increased as the proportion of respondents who judged that item as sufficient increased.

TABLE 24
STRUCTURE VARIABLES AND DUE PROCESS RELATED
ORGANIZATIONAL GOALS

Mean Rank Scores (Range = 0-10)				
Structure Variables	N	Due Process Goals		
		Provide Best Defense Services	Identify Others' Mistakes	Ensure Due Process Protection
<u>Level of supervision</u>				
Insufficient	11	7.6	7.5	8.5
About right	63	8.9	7.5	9.3
Excessive	1	10.0	7.0	10.0
<u>Adequacy of personnel policies</u>				
Insufficient	40	8.3	7.6	9.3
About right	43	8.9	7.1	9.2
Excessive	0	-	-	-
<u>Need to record time and costs</u>				
Insufficient	1	7.0	9.0	8.0
About right	48	8.6	7.6	9.4
Excessive	3	8.0	7.0	9.7
<u>Case screening and assignment procedures</u>				
Insufficient	23	7.6	7.1	9.3
About right	60	9.0	7.4	9.3
Excessive	1	5.0	5.0	5.0
<u>Adequacy of training programs</u>				
Insufficient	40	8.4	7.6	9.3
About right	43	8.9	7.1	9.2
Excessive	0	-	-	-
<u>Opportunities for continuing education</u>				
Insufficient	8	8.8	7.3	9.9
About right	75	8.6	7.3	9.2
Excessive	1	10.0	10.0	10.0

TABLE 25
STRUCTURE VARIABLES AND PRODUCTION RELATED
ORGANIZATIONAL GOALS

Mean Rank Scores (Range = 0-10)			
Structure Variables	N	Production Goals	
		Provide Service at Least Cost	Defend as Many as Possible
<u>Level of supervision</u>			
Insufficient	11	3.5	2.5
About right	62	4.0	4.3
Excessive	1	5.0	0.0
<u>Adequacy of personnel policies</u>			
Insufficient	24	3.0	3.3
About right	56	4.1	4.1
Excessive	0	-	-
<u>Need to record time and costs</u>			
Insufficient	1	2.0	2.0
About right	48	4.0	4.5
Excessive	3	6.0	4.3
<u>Case screening and assignment procedures</u>			
Insufficient	23	3.1	4.3
About right	60	4.0	3.7
Excessive	1	0.0	0.0
<u>Adequacy of training programs</u>			
Insufficient	40	3.3	3.4
About right	43	4.0	4.1
Excessive	0	-	-
<u>Opportunities for continuing education</u>			
Insufficient	8	3.5	3.8
About right	75	3.8	3.9
Excessive	1	0.0	0.0

Is there a relationship between variations in organizational goals of public defender offices and the views of attorneys practicing there toward elements of organizational structure? To examine this question, the percentage of respondents in each office who felt that a particular element such as personnel policies were "insufficient" was correlated with the mean total scores for both due process and production oriented organizational goals. See table 26. Generally, there were positive correlations between total scores on due process goals scale and the percentage of respondents answering "insufficient" for the element in question. Higher due process goal scale totals were associated with a higher proportion of respondents in an office answering "insufficient." Correlations between structure element responses and the production goal scale totals were predominantly negative.

Among the strongest correlations were those found between respondents who felt education related opportunities in their offices were insufficient and the goal scales. The offices with higher due process goal scale totals had higher proportions of such respondents ($r=.35$, $p=.20$); however, those offices with the highest production goals scores had lower proportion of their attorneys expressing dissatisfaction with training and continuing education programs ($r=-.46$, $p=.17$). A negative correlation of .54 ($p<.10$) was also found between the production goal scores and the proportion of respondents who felt personnel policies were inadequate: as the judgement that production

TABLE 26
 ORGANIZATIONAL GOALS SCALES AND STRUCTURE VARIABLES

Structure Variables	Correlation Coefficients	
	Due Process Related Goals Scale	Production Related Goals Scale
Level of supervision	.23	-.28
Adequacy of training programs	.35	-.46
Continuing legal education	.34	-.21
Need to record time or costs in casework	.15	-.17
Personnel policies (salaries, leave, promotion, etc.)	.05	-.54
Procedures for screening and assignment of cases, equalizing caseloads	-.20	.06

N=17 for all structure variables.

goals were more important became more common, the level of dissatisfaction with personnel polices relating to salaries, leave and promotions fell. If attorneys' perceptions of organizational goals are accurate, we would expect offices with stronger production value goals in operation to have stronger personnel policies, even if informally recognized ones, and a lower level of dissatisfaction among personnel. These findings should not be overstated since the majority of respondents indicated that personnel polices were "about right."

There was a strong negative correlation ($r=-.56$, $p<.01$) found between the average number of "insufficient" responses to structure items in an office and the production goals scale totals. This adds evidence to the possibility that a

relationship exists between judgements of goals and of satisfaction with structural elements.

Relationship Between Goals and Decisionmaking Processes

The fourth set of hypotheses deals with the relationship between goals and decisionmaking processes. First, it was expected that the greater the concern among public defenders with the production of cases, the greater would be their perception that decisionmaking processes are less professional, collegial, and informal and more proceduralized, formal, and routine. Results of the survey indicate such responses for the three most important measures of decisionmaking processes, that is (1) the level of discretion, (2) the frequency of accepting routine offer from the commonwealth's attorney, and (3) the frequency in which public defenders feel pressured to plea bargain. Measured in terms of mean scores across response categories, as the mean due process organizational goal scale total decreased, there was an increase in the perceived level of discretion by respondents, increased frequency of accepting routine offers from the prosecutor, and increased pressure to plea bargain. See table 27. All three items showed the opposite trend when mean production value goals score were compared across categories of response. At the office level, there was a correlation of $-.52$ ($p < .05$) between the proportion of respondents who indicated a more frequent occurrence of plea bargaining and the due process goals score.

TABLE 27
 ORGANIZATIONAL GOALS AND DECISIONMAKING VARIABLES

Element	Due Process Goals Scale		Organizational Goals Scale	
	N	Mean score (0-30)	N	Mean score (0-30)
Level of discretion of the attorney to conduct cases.				
High	66	25.3	64	5.2
Moderate	13	27.3	13	4.8
Frequency of public defenders accepting routine offers the prosecutor.				
Frequently	36	24.9	35	19.5
Sometimes	29	25.5	28	19.0
Rarely	4	26.0	4	18.3
Not at all	6	26.7	6	17.2
How often to public defenders feel pressured to plea bargain?				
Frequently	8	23.1	8	19.2
Sometimes	26	25.1	25	18.4
Rarely	26	26.6	25	17.7
Not at all	19	27.5	19	16.8

It seems that goals operating in an office do affect certain aspects of decisionmaking. Stronger production goals were associated with increased levels of discretion and the frequency with which attorneys must routinize decisionmaking processes. These results are consistent with the production values paradigm which, with "system efficiency" goals, allows increased discretion within limits to attorneys so that they can dispose of cases as quickly as possible through plea negotiation, dismissal, or recommendation of diversionary programs.

The same results also held at the office level using

goal scale totals and value scale totals. In offices where the production value scores were higher, defenders indicated more pressure to plea bargain ($r=-.40$, $p<.05$). As was discussed in chapter three, an increased frequency of plea bargaining is one aspect of routine decisionmaking processes.

Data also revealed that higher production value scores were associated with higher frequency of accepting routine offers from commonwealth attorneys, another routinizing decisionmaking process ($r=.40$, $p<.05$).

Relationships Between Values, Goals, and Output

Another hypothesis operates at the office level only. According to this hypothesis, there should be a correlation between measures of organizational output and productivity and underlying goal and value orientations. First, the relationship between decisionmaking variables and output measures were examined. For example, where plea bargaining is more frequent, cases should be disposed of more quickly and the age of concluded cases should be less. While no measure of the age of concluded cases was available for cases handled only by public defenders, there was a correlation of $-.30$ ($p<.10$) between the frequency of plea bargaining in public defender offices and the proportion of total criminal cases concluded in the courts of the corresponding areas within 60 days of the filing date. The correlation between frequency of accepting the prosecution's routine offers and cases concluded within the same time

frame was $-.21$ ($p=.16$).

As predicted, higher due process value scores were associated with higher costs per defendant ($r=.25$, $p<.10$). This is most likely due to the operation of "trial sufficiency" (due process) goals which tend to lengthen the age of cases and therefore their costs.

Another important question was the relationship between values and goals and the rates at which various dispositional methods are used. For example, a greater percentage of cases going to trial should be expected where due process values and goals are stronger or more prominent. In fact, the correlation between the due process scale scores and the percentage of cases going to trial was found to be positive, though weak and not statistically significant. The noticeable result was that the correlations between the due process scores and the percentage of cases going to judge and jury trial ($r=.18$ and $r=.14$, respectively) were higher than the correlations between the production value scores and these measures, suggesting that values operating through goals do affect output measures defined in terms of case ages and disposition methods.

Because public defenders represent anywhere between 10% and 95% percent of all concluded cases in the areas they serve, the magnitude of any correlation effect of values on cases going to trial is highly problematical. However, the direction of correlation between the due process and production values scales does seem to support the

hypothesis.

Another task was to explore the relationships between values and productivity measures such as caseload per attorney and cost per defendant. It was hypothesized that stronger production values operating through production goals would tend to drive up the number of cases per attorney and drive down the cost per defendant. Data showed a correlation of .39 ($p < .10$) between the due process values scale and cost per defendant, and a correlation of $-.20$ between production value scale and the same measure. It was interesting that in areas with higher production value scores, the proportion of cases handled by public defenders tended to be greater ($r = .42$, $p < .10$).

Areas where indigency rates are highest are also most likely to have the greatest proportion of its criminal caseload handled by the public defender's office. The correlation between the caseload handled by a public defender and the cases going to trial was .26. The higher the proportion of caseload handled by the public defender, the higher the percentage of cases going to trial ($r = .19$). This may indicate that public defenders are slightly more willing to proceed to trial than other attorneys representing indigent defendants. This seems plausible given the very low hourly rate at which court appointed attorneys are reimbursed by the state for in-court time. As expected, trial rates were highly correlated with trial per attorney ($r = .69$, $P < .001$) and with the crime index ($r = .43$, $p < .05$).

The strength of values also seems to be correlated with average annual increase in total operating costs of public defender offices. There was a correlation of .32 between the due process value scores and the average annual growth in costs, while the correlation between production value scores and costs was $-.48$ (both $p < .10$). Due process values consider costs less important than production values and goals, and as production values become stronger, costs should tend to increase at lower rates.

Legitimacy of Public Defenders

The last hypothesis deals with the issue of the legitimacy of public defenders as professionals in the criminal justice system. The breadth of the issue of legitimacy has been discussed previously. With the little data available, the exploration of the relationships between the views of others about public defenders and characteristics of the public defender offices themselves was necessarily a very narrow one. The hypothesis studied states that among others in the local criminal justice system, public defenders will be perceived as more legitimate the longer there has been a branch office in the area and in urban regions where public defenders handle a greater portion of indigent caseload. The attitudes of others toward public defenders could not be studied with the data available. Instead, legitimacy was measured as the degree to which public defenders feel others in the system respect them as professionals and the degree to which public

defenders are preferred to other types of counsel. As was discussed earlier, no data were available on a locality level to compare others' opinions of public defenders.

In order to explore the view public defenders feel others have of them with the survey data available, the proportion of respondents in each office who felt that they receive respect from each of several groups was tabulated and correlated with the age of the public defender office. Results indicated a strong negative correlation ($r=.54$, $p<.02$) between the proportion of respondents who felt they received respect from defendants and the age of the office: as the age of the offices increased, the proportion of respondents in the office who indicated that they were respected by their clients decreased. Similar results were found for the respect felt by respondents from other attorneys ($r=-.49$, $p<.05$). No correlation was found between age of offices and respect from courts. These results indicate that the longer an office has existed, the fewer attorneys working there feel they receive the respect of their clients and of other attorneys; respect from the court does not change. These findings clearly do not support the hypothesis of the model.

Urban offices tended to have proportionately fewer defenders who felt they were respected by others than rural offices. Public defenders in rural areas tend to feel more respected by everyone other than their clients for whom there is little change in levels of respect between urban and rural offices. See table 28. Despite these statements,

the differences between urban and rural offices on these variables are very small and any conclusions are highly questionable. The clearest conclusion is that legitimacy, at least as seen by public defenders themselves, does not change between urban and rural areas.

Offices with higher due process value scores showed a higher proportion of attorneys who felt they were respected by defendants and the community ($r=.19$ and $r=.36$, respectively). The correlations between these measures and the production values scores were negative. The same

TABLE 28
RESPONDENTS' PERCEPTIONS OF RESPECT OF OTHERS

Sources of Respect	Mean Proportion of Respondents Who Feel Respect from Sources	
	Urban Offices (N=11)	Rural Offices (N=6)
Defendants	35.8	34.9
Community	28.6	32.1
Courts	86.0	100.0
Prosecutors	76.8	100.0
Other Attorneys	76.2	88.9

patterns were observed with regard to perceived respect by other attorneys--higher due process scores were associated with higher levels of respect. These results indicate that there are factors influencing how public defenders see themselves and how they feel they are perceived by others around them while performing their duties.

Summary of Findings

Analysis of survey and other data revealed much about the functioning of the public defender diffusion model. Overall, it was evident that complex forces are at work in public defender organizations, forces which affect the way in which public defenders are able to provide indigent defense services to their clients within the policy, criminal justice and judicial system environments. The body of evidence presented by the data supports many of the basic hypotheses set forth as a result of the review of the literature and previous research on public defenders. More importantly, a much more comprehensive understanding of public defenders in Virginia as organizations is now possible because of empirical data which support accepted ideas of organizational processes. While many findings from the analysis of the survey and other data have been discussed, by way of review, the more important findings of can be stated in terms of the basic hypotheses.

Hypotheses of the Public Defender Diffusion Model

Environmental variables and values. Public defenders become less concerned with due process and more concerned with production of cases the longer they have been involved in public defense work and the greater their perceptions of environmental pressures to produce.

Due process values remained high with increased experience in indigent defense. The data did not reveal a weakening of these values over time. However, production values did increase as experience increased, especially among public defenders as compared to assistant public

defenders. Despite these findings, older public defender offices showed significantly weaker due process values scores than younger offices. Due process values were higher in offices where there was less workload pressure or fewer constraints on decisionmaking processes.

Values and goals. Public defenders with a greater production value orientation will have personal goals less concerned with normative issues such as justice and equality, and will see organizational goals similarly.

The stronger the due process values of attorneys, the more socially oriented were the goals they gave for entering indigent defense work; the stronger their production values, the more often self-interested related goals were chosen. Attorneys with higher due process scale scores tended to judge the goals of the public defender office as more due process in nature.

Goals and elements of organizational structure. As goals of public defenders become more concerned with the production of cases, there will be greater agreement that standard operating procedures, personnel policies, workload standards, and training programs are important.

As the strength of production goals increased, there was a greater consensus among respondents that structure was currently adequate. There was a positive correlation between due process goals and the percentage of respondents judging elements of organizational structure as "insufficient." Stronger due process goals were associated with a higher proportion of respondents who felt current structural aspects were "insufficient." There was a strong negative correlation between the average number of

"insufficient" responses to structure items and the production goals scale totals.

Values, goals and decisionmaking processes. The greater the concern with the production of cases, the greater will be the perception that decisionmaking processes are less professional, collegial, and informal and more proceduralized, formal, and routine.

As the due process organizational goals decreased, there was an increase in the perceived level of attorney discretion to conduct caseload, an increase in the frequency of accepting routine offers from the prosecutor, and an increase in pressure felt to plea bargain. Stronger production goals were associated with increased levels of discretion and the frequency with which attorneys must routinize decisionmaking processes. The same results also held at the office level.

Values and organizational output. In public defender offices, there is a correlation between measures of organizational output and productivity and underlying goal and value orientations.

As predicted, stronger due process values were associated with higher costs per defendant. There was a positive correlation between the due process values and the average annual growth in costs, while the correlation between production value scores and costs was strongly negative.

The correlation between the due process values and the percentage of cases going to trial was also found to be positive. Correlations between the due process values and the percentage of cases going to judge and jury trial were

much higher than the correlations between the production value scores and these measures, suggesting that values operating through goals do affect output measures defined in terms of case ages and disposition methods.

Environmental variables and legitimacy. Legitimacy of public defenders as professionals among others in the local criminal justice system is greater the longer there has been a branch office in the area and in urban regions.

The hypothesis was clearly not supported by the findings. Results indicated that the longer an office has existed, the fewer attorneys working there felt they receive the respect of their clients and of other attorneys; respect from the court did not change with time. Urban offices tended to have proportionately fewer defenders who felt they were respected by others than rural offices.

Summary and Conclusions - The Public Diffusion Model Reconsidered

The Virginia public defender program was created to insure the right to effective counsel and to do so with as few resources as possible. These goals in many respects have come to define justice for indigent defendants in the state. A fundamental goal of justice is to protect the legal rights of the accused. Yet there are differing beliefs regarding the proper balance between the need to protect the rights of the accused and the need to protect the order and stability of society. These differences define the due process and production paradigms of criminal process, as well as the conflicting definitions of legitimacy identified by McIntyre's research.

Another goal of justice is to foster increased belief in the efficacy and legitimacy of law. Again, differences in belief arise over how the criminal sanction should be used to achieve this goal and the differences manifest themselves as the two paradigms of criminal process and the two definitions of legitimacy.

Public defenders are placed between these differing paradigms. They operate as if both are valid and reconcile themselves daily to the conflicts inherent in their position in the criminal justice system. This leads to the development of organizational mechanisms, such as routinized decisionmaking processes, for dealing with the conflict.

In order to substantiate the presence of conflicting paradigms at work in public defender organizations, there was need to explore the values and goals of the public defenders themselves. Several basic questions served as the basis for the development and conducting of the research: What are the values or basic beliefs of public defenders about due process and production aspects of the criminal process? Are their goals based on these values? Does the nature of values and goals affect the organizational processes at work in the delivery of services to their clients? More importantly, does it make a difference to indigent defendants or to society whether the public defender program operates according to one value system or another? Do different public defender offices in Virginia operate under different value systems (or in other words, is there variation in values among the many offices) and if so,

how might those values have come to exist in a particular environment, at the office's inception or through a process of adaption to its particular environment?

These questions concerned the diffusion and reinvention of public defender offices as a major means of providing indigent defense services in Virginia. They dealt with (1) the way in which the offices have developed organizationally in response to initial goals and to environmental characteristics and with (2) the effect of public defender offices' organizational output on the environment in terms of legitimacy in the legal and social sense.

In line with these underlying concerns, the public diffusion model (figure 3) was developed to explore these questions and several fundamental hypotheses based on previous research about the mechanics of its operation were used to guide the inquiry. Briefly, the model described the adoption and adaption process of public defender organizations in Virginia wherein the adoption variables which diffusion theory identifies in the adoption of an innovation are seen to rest upon the due process values and production values identified in the public defender's environment. Review of the historical record substantiated the presence of both due process and production policies (values) during the adoption phase of the initial pilot public defender offices and since that time. According to the model, after adoption, these values, over time and in response to environmental pressures, influence the development of the normative and operational goals for the

organization. The normative goals serve to protect the basic ideology of the defense function--due process and justice through an independent, professionally competent defense counsel. Data revealed that due process values and goals are particularly strong throughout the Virginia system. Operational goals protect the existence and growth of the organization in a hostile environment where caseload pressures and competition for scarce resources make such goals necessary. Data revealed that production values and goals, while not as strong as due process ones, are important to individual public defenders, especially the chief public defender in the offices who must run the organizations.

The model anticipated that as time progresses and pressures increase, a type of goal displacement would occur as operational goals based on production values became relatively more important than normative goals, even though the latter would continue to define the fundamental idea which holds the individual attorney in place as a member of the organization and legitimates the organization in terms of American jurisprudence. The oldest offices in Virginia did show stronger production values and goals even while due process values and goals remained relatively constant. Higher workload pressures were also found in offices where production values were strongest.

In reference to time, it should be noted again that this cross-sectional or correlational research did not attempt to explain or measure changes over time in magnitude

of research variables except through the correlation of these measures with the age of public defender offices. No determination of time sequences was attempted. Exploration of the temporal and causal dynamics of the public defender diffusion model await further investigation.

Organizational structure and decisionmaking processes used by public defenders are products of these goals and values and organizational output such as the defense of individual indigent defendants depends on this structure and decisionmaking process. In Virginia, the presence of stronger production values and goals was associated with more routinized decisionmaking in the forms of increased pressure to plea bargain and the accepting of routine offers of prosecutors; and with higher caseloads and a lower rate of increase in several measures of costs. Higher due process values and goals were associated with increased trial rates and longer case processing times.

Ultimately, according to the diffusion model, the outputs of the public defender organization affect its environment as they impact upon the organization's legitimacy and then become continuing factors in the values which shape public defender goals and operations. While the measurement of legitimacy was severely limited in the research, it was found that public defenders do feel as if they are under "the myth of incompetency" at least as far as their clients and the community at large fail to respect them as attorneys. It remains to be seen what effect this lack of respect has on the ability of public defenders to

legitimate their organizations in the larger context of American society.

The Importance of Understanding Public Defender Organizations

It has been claimed that the right to counsel may be this country's most important individual liberty. In an adversarial criminal justice system, counsel for the accused is essential if the process is to be fair in all cases concerning all constitutionally guaranteed individual liberties. Federal judge Edward Johnstone recently asked whether we appreciate the fundamental importance of the right to counsel, or take it for granted.⁷

Policymakers and public administrators cannot take the right to counsel for granted. If indigent defense services are to be provided by public organizations, understanding how these organizations function in a complex environment is important. This research has explored the organizational processes at work in guaranteeing the right to counsel in Virginia through the use of public defenders. The goal of the study was not to measure or compare the quality of defense services provided by these organizations to other means of providing defense services. What is evident is that public defenders are public administrators in a sense because of the organizations they serve and the services they provide.

⁷Edward H. Johnstone, "Some Bicentennial Observations on the Sixth Amendment Right to Counsel," The Advocate Vol. 13 No. 5 (August 1991): 5-6.

In chapters 2 and 3, the role of the indigent defender was considered as part of the criminal justice system and in terms of his relation to society. In our system, lawyers to prosecute are considered essential to protect society's interest maintaining law and order. Those who are charged with crime and who have the means hire the best lawyers they can. Everyone seems to accept the fact that lawyers in criminal courts are necessities, not luxuries; and while society recognizes the importance of prosecutors, law enforcement agencies, and others in meeting the goals of justice, appointed defense counsel shoulder the burden of protecting individual liberties and dignity of the indigent accused and often are seen as less vital than others to the interests of society.

As government becomes more pervasive in the lives of its citizens, the constitutional rights of the accused must be fully protected by capable and motivated attorneys. For the indigent defendant, the burden of insuring capability and motivation rests in large part on society's willingness to support and fund public defender or other indigent defense programs.

In a 1990 interview upon his departure as head of the Defender Association of Philadelphia, Benjamin Lerner pointed out that it is commonly accepted in the legal community that the criminal justice system has become more repressive and onerous in recent years.⁸ Lerner feels that

⁸The National Legal Aid and Defender Association, The NLADA Cornerstone Vol. 12 No. 3 (June/July 1990): 1-6.

the burden of this continuing trend falls most heavily on the poor, on minorities, and on the politically powerless in our society. Yet there is a growing imbalance of resources on the prosecution and law enforcement side as opposed to the defense side--because of the country's preoccupation with crime and especially drug-related crime. This fact demonstrates the pervasiveness of the two paradigms of criminal process not just within the criminal justice and legal systems but within society as a whole. The easy answer to the crime problem given by many continues to be to increase the repression or organizational approach of solving problems by the criminal justice system but the solution to the problems concerning people does not lie in the criminal justice system, no matter how repressive it is made. This research has explored the complexity of the criminal justice environment in which public defender organizations operate.

The challenges public defender organizations face are daunting. If they are to be more successful as organizations in their complex environments, they must improve the training made available to attorneys and improve support services to them, especially in the investigative and sentencing areas. Offices must institute procedures for the evaluation of staff, office management, and planning. They must continue to attract outstanding young attorneys who want to do such work whether for very idealistic, political, or philosophical reasons.

There will be a continuing difficult struggle on the

part of public defender organizations and other types of indigent defense systems to obtain the resources they need to accomplish these tasks and to fulfill the most basic aspects of the effective assistance of counsel that the Sixth Amendment guarantees. The challenges facing public defender organizations in particular and indigent defense system in general are very evident now in Kentucky. A recent study of that state's method for providing indigent defense services using public defenders focused the concerns expressed by many in Virginia and across the country.⁹ This study identified the need to improve personnel policies in offices, to make the public defender organization a full partner in the criminal justice system (rather than a part of the system operating "in the shadows," as McIntyre described them), and to make salaries of public defenders commensurate with the services provided. Kentucky, like Virginia, continues to grapple with the problem of providing indigent defense services and is considering expanding its system statewide even in face of severe financial constraints and the judicial determination that current funding of public defense functions is so inadequate as to render the present level of services unconstitutional. The state courts have ruled that the state has the duty to professionally run and adequately fund a public defender system and that the state must furnish indigents competent

⁹Kentucky Department of Public Advocacy, "Indigent Defense Needs Revising," The Advocate Vol. 14 No. 2 (February 1992): 3-6.

counsel and that counsel must be paid just compensation.

While funding public defender services and insuring that the legal representation provided is professional and competent are not popular causes, it is "in the public interest that the administration of criminal justice proceed fairly, impartially and efficiently."¹⁰ Indigent defense is not an unnecessary service. Public defender organizations have been established to provide services vital to the maintenance of the basic human rights of a free people, rights guaranteed not only by our constitution but also by the very notions of justice that underlie the society. Professionals in the fields of public administration and the administration of justice must, therefore, understand how these organizations function and how well they are able to provide services to their clients and ultimately to society.

¹⁰Bradshaw v. Ball, 487 S.W.2d 294 (Ky. 1972).

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Appendix

SURVEY of the Public Defender System of Virginia

Thank you for your willingness to complete this survey. Your participation in this study is very important and very much appreciated. The survey should take only a few minutes to complete. Please try to answer all the questions.

All those involved in the provision of defense services are meeting a vital public need and are an important part of our system of justice. Your attitudes on the criminal justice process are likewise important.

1. Please express your agreement or disagreement with each of the following statements about some aspects of the steps of the criminal process.

	<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neutral</i>	<i>Agree</i>	<i>Strongly Agree</i>
a. Sanctions for breaking the rules of arrest should include dismissing criminal prosecution and if it is to be reinvoked, starting over again from scratch. [ARREST]	[1]	[2]	[3]	[4]	[5]
b. It is usually proper for the police to hold a suspect for the purpose of interrogation or investigation. [INTEROG]	[1]	[2]	[3]	[4]	[5]
c. There is a basic right to pretrial liberty since a person accused of a crime is not a criminal. [PRETRIAL]	[1]	[2]	[3]	[4]	[5]
d. Sometimes it is necessary for the prosecutor, defense, or judge to put pressure on a defendant to induce him to plead guilty. [GUILTYA]	[1]	[2]	[3]	[4]	[5]
e. The right of appeal is an important safeguard for the rights of the individual accused; there should be few if any limitations on the convicted defendant's right to appeal. [APPEALA]	[1]	[2]	[3]	[4]	[5]
f. If a federal fourteenth amendment claim has been asserted by the habeas corpus petitioner at any point in a state criminal process and has been considered and rejected on the merits by a state court, the petitioner should not be able to relitigate the issue in a federal habeas corpus proceeding. [APPEALB]	[1]	[2]	[3]	[4]	[5]

2. Please express your agreement or disagreement with each of the following statements about aspects of the criminal justice system.

	<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neutral</i>	<i>Agree</i>	<i>Strongly Agree</i>
a. Because arrest and prosecution processes are subject to margins of human error, evidence may be unreliable. [EVIDUNRE]	[1]	[2]	[3]	[4]	[5]
b. Primary attention should be given to the efficiency with which the criminal process operates to screen suspects, determine guilt, and secure appropriate dispositions of persons convicted of crimes. [EFFIC]	[1]	[2]	[3]	[4]	[5]
c. The accused must have a full opportunity to question the legality of every aspect of his/her prosecution. [FULLOPOR]	[1]	[2]	[3]	[4]	[5]
d. Repression of criminal conduct is an important function of the criminal justice process. [REPRESS]	[1]	[2]	[3]	[4]	[5]
e. The finding of guilt should be based on the facts of the case. [FACTSLEG]	[1]	[2]	[3]	[4]	[5]
f. The interests of the accused must at all times take priority in the criminal process. [INTACCSO]	[1]	[2]	[3]	[4]	[5]
g. Law enforcement and prosecution processes are often corrupted by an unchecked application of power. [POWER]	[1]	[2]	[3]	[4]	[5]
h. The screening processes operated by police and prosecutors are usually reliable indicators of probable guilt. [POLICSCR]	[1]	[2]	[3]	[4]	[5]
i. Facts should be determined only through formal, adjudicative, adversarial processes. [FACTSADV]	[1]	[2]	[3]	[4]	[5]
j. Results of any procedures which violate established norms of due process protection should be nullified. [NULLITY]	[1]	[2]	[3]	[4]	[5]
k. It is important to complete factfinding in a case as early as possible so that the accused can be exonerated or can enter a guilty plea. [FACTSEAR]	[1]	[2]	[3]	[4]	[5]
l. The public defender's office should strive to try, convict, and dispose of a high proportion of criminal offenders whose offenses become known. [TRYHIGH]	[1]	[2]	[3]	[4]	[5]

Those attorneys and other professionals working in the public defender system and providing indigent defense services are members of organizations ranging from Bar Associations or the Public Defender Commission itself to local public defender offices scattered across the state.

All these organizations have goals to guide their work and characteristics which describe how they accomplish the tasks before them. An organization's goals can be formal and written, or they can be informal and unwritten -- but just as real as formal goals to those who work there.

3. As a member of the public defender system, how would you evaluate the importance of each of the following statements as actual formal or informal goals of the local public defender or central agency office where you work? [GOLNXA1/B1]

<i>Very important as a goal</i>	<i>Somewhat important goal</i>	<i>Not at all important as a goal</i>
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- | | |
|---|------------------------|
| a. To provide adequate defense to the indigent defendant [GOLADEQ1] | 10 9 8 7 6 5 4 3 2 1 0 |
| b. To improve the administration of criminal justice by identifying the mistakes of others in the criminal process to the extent that such mistakes affect defendants' defense [GOLMSTK1] | 10 9 8 7 6 5 4 3 2 1 0 |
| c. To provide indigent defense services at the least cost to the state [GOLCOST1] | 10 9 8 7 6 5 4 3 2 1 0 |
| d. To improve the quality of justice by striving to ensure due process protection and equal treatment for all defendants [GOLDP1] | 10 9 8 7 6 5 4 3 2 1 0 |
| e. To defend as many defendants as possible given the time and fiscal constraints [GOLCASE1] | 10 9 8 7 6 5 4 3 2 1 0 |
| f. To provide the best defense possible to the indigent defendant regardless of time or cost [GOLBEST1] | 10 9 8 7 6 5 4 3 2 1 0 |
| g. Other [GOLOTH1] | 10 9 8 7 6 5 4 3 2 1 0 |

4. How would you evaluate each of the following in terms of your experience in the public defender or central office where you now work? [NEDSTNX1]

	<i>No need for</i>	<i>Insuf- ficient</i>	<i>About right</i>	<i>Exces- sive</i>
a. Level of supervision [LEVSUP1]	[1]	[2]	[3]	[4]
b. Adequacy of training programs [TRAIN1]	[1]	[2]	[3]	[4]
c. Opportunities for continuing legal education and professional development [CONTEU1]	[1]	[2]	[3]	[4]
d. Need to record time or costs involved in each case [TIMCOST1]	[1]	[2]	[3]	[4]
e. Adequacy of personnel policies for dealing with issues such as salaries, promotions, leave [PERSPOL1]	[1]	[2]	[3]	[4]
f. Adequacy of procedures for screening and assignment of cases, and for equalizing caseloads [CASASGN1]	[1]	[2]	[3]	[4]

5. How would you describe the structure or environment of the office where you work? [STRUCT1]

- a. A company of equals 1
- b. A company of equal sections or divisions 2
- c. A company of unequal sections or divisions 3
- d. No opinion 4

6. Is there a screening process for cases before they are assigned? [SCREEN1] Yes 1
No 2

7. How are cases assigned to attorneys in the public defender's office? [ASSIGN1] 1
 2

Case by case (Attorneys stay with a case from beginning to end)

Courtroom coverage (Attorneys handle only a portion of a case)

8. Are cases assigned to balance attorney caseloads? [TOBALNC1] Yes 1
No 2

9. Are cases assigned to distribute challenging cases? [TODIST1] Yes 1
No 2

10. How would you describe the level of discretion or authority attorneys in your public defender office have to conduct a case as they think best? [DISCRTN1]

- | | | |
|----------|--|----------------------------|
| High | (Attorneys are basically independent of others) | <input type="checkbox"/> 1 |
| Moderate | (Attorneys receive some direction, instruction, or advice) | <input type="checkbox"/> 2 |
| Low | (Attorneys are usually told how to conduct the case) | <input type="checkbox"/> 3 |

11. How often would you say public defense attorneys accept a routine offer from the Commonwealth's Attorney such as "plea to a felony with suspended time" or "plea to a felony with time?" [CAOFRA1]

- | | |
|------------|----------------------------|
| Frequently | <input type="checkbox"/> 1 |
| Sometimes | <input type="checkbox"/> 2 |
| Rarely | <input type="checkbox"/> 3 |
| Not at all | <input type="checkbox"/> 4 |

12. How often would you say attorneys in the public defenders office feel pressured to plea bargain? [PLEABAR1]

- | | |
|------------|----------------------------|
| Frequently | <input type="checkbox"/> 1 |
| Sometimes | <input type="checkbox"/> 2 |
| Rarely | <input type="checkbox"/> 3 |
| Not at all | <input type="checkbox"/> 4 |

13. What is the source of the pressure, if any, to plea bargain? [PRESURE1]

		<i>Almost never</i>	<i>Occas- sionly</i>	<i>Often</i>	<i>Nearly always</i>
a.	The prosecution (C.A.) [PRCA1]	[1]	[2]	[3]	[4]
b.	The local public defender office [PRPDO1]	[1]	[2]	[3]	[4]
c.	The Public Defender System [PRPDS1]	[1]	[2]	[3]	[4]
d.	Expectations of the courts and judges [PRCTS1]	[1]	[2]	[3]	[4]
e.	Time limitations [PRTIME1]	[1]	[2]	[3]	[4]
f.	The need to get through assigned caseloads [PRCASES1]	[1]	[2]	[3]	[4]

14. How often would you say attorneys in the public defender's office encourage their clients to accept the offer of the Commonwealth's Attorney? [CAOFRB1]
- | | | |
|------------|--------------------------|---|
| Frequently | <input type="checkbox"/> | 1 |
| Sometimes | <input type="checkbox"/> | 2 |
| Rarely | <input type="checkbox"/> | 3 |
| Not at all | <input type="checkbox"/> | 4 |
15. How would you judge the amount of time available to attorneys in the public defender's office to prepare a case and provide the representation they feel best for their clients? [TIME1]
- | | | |
|----------------|--------------------------|---|
| Always enough | <input type="checkbox"/> | 1 |
| Usually enough | <input type="checkbox"/> | 2 |
| Rarely enough | <input type="checkbox"/> | 3 |
| Never enough | <input type="checkbox"/> | 4 |
16. For the public defender office where you work, how would you evaluate the workload pressures faced by attorneys? [WORKLOD1]
- | | | |
|----------|--------------------------|---|
| Heavy | <input type="checkbox"/> | 1 |
| Moderate | <input type="checkbox"/> | 2 |
| Light | <input type="checkbox"/> | 3 |
17. What percentage of defendants do you feel are guilty of at least something, if not of the original charge(s)? [GUILTYB1]
- | | | |
|-----------------|--------------------------|---|
| 00 - 25 Percent | <input type="checkbox"/> | 1 |
| 26 - 50 Percent | <input type="checkbox"/> | 2 |
| 50 - 75 Percent | <input type="checkbox"/> | 3 |
| Over 75 Percent | <input type="checkbox"/> | 4 |
18. Do you feel that attorneys in the public defender's office receive respect as attorneys and as competent professionals from [RESPECT1]
- | | <i>Yes</i> | <i>No</i> | <i>Don't know</i> |
|--|------------|-----------|-------------------|
| a. defendants (clients) [RESPDEF1] | [1] | [2] | [3] |
| b. the community in general [RESPCOM1] | [1] | [2] | [3] |
| c. the courts (judges) [RESPCTS1] | [1] | [2] | [3] |
| d. Commonwealth's Attorneys [RESPCA1] | [1] | [2] | [3] |
| e. other attorneys [RESPOT1] | [1] | [2] | [3] |

19. How would you evaluate the ability of a public defender to provide a better quality defense than [QUALITY1]

		<i>Not as good</i>	<i>About the same</i>	<i>Better</i>
a.	a court appointed attorney [QUALCAA1]	[1]	[2]	[3]
b.	a privately retained attorney [QUALPRA1]	[1]	[2]	[3]

20. There are often many reasons for choosing a career step. In Column A, indicate whether or not each goal was a motivation or incentive for you to become involved in public defense work. If a goal in Column A was important for you, indicate in Column B the degree to which that goal has been realized in your experience in the public defender system.

(PGOLNXA1/B1)

(PGOLRLZ1)

	<i>A. Did you choose public defense work</i>		<i>B. If yes, to what degree has this goal been realized?</i>		
	<i>No</i>	<i>Yes</i>	<i>Not at all realized</i>	<i>Somewhat realized</i>	<i>Greatly realized</i>
a. for experience and to practice law as a trial attorney [EXPERA1/B1]	[N]	[Y]	[1]	[2]	[3]
b. to make a positive contribution to society [CONTRBA1/B1]	[N]	[Y]	[1]	[2]	[3]
c. for monetary rewards [MONEYA1/B1]	[N]	[Y]	[1]	[2]	[3]
d. to help people [HELPA1/B1]	[N]	[Y]	[1]	[2]	[3]
e. because of a desire for competition [COMPETA1/B1]	[N]	[Y]	[1]	[2]	[3]
f. for a chance to bring about social change [SOCHNGA1/B1]	[N]	[Y]	[1]	[2]	[3]
g. to keep the system honest [HONESTA1/B1]	[N]	[Y]	[1]	[2]	[3]
h. to be involved in the development of law [DEVLAWA1/B1]	[N]	[Y]	[1]	[2]	[3]

21. How many years have you practiced law? [YRSLAW1]
- | | | |
|---------------|--------------------------|---|
| 01 - 04 years | <input type="checkbox"/> | 1 |
| 05 - 10 years | <input type="checkbox"/> | 2 |
| 11 - 15 years | <input type="checkbox"/> | 3 |
| 16 - 20 years | <input type="checkbox"/> | 4 |
| Over 20 years | <input type="checkbox"/> | 5 |
22. What is your current position with the Public Defender system? [CURRPOS]
- Public Defender Office*
- | | | |
|---------------------------|--------------------------|---|
| Public Defender | <input type="checkbox"/> | 1 |
| Assistant Public Defender | <input type="checkbox"/> | 2 |
| Staff Member | <input type="checkbox"/> | 3 |
23. How many years have you worked in the Virginia public defender system? [YRSPD1]
- | | | |
|---------------|--------------------------|---|
| 1 - 3 years | <input type="checkbox"/> | 1 |
| 4 - 6 years | <input type="checkbox"/> | 2 |
| 7 - 9 years | <input type="checkbox"/> | 3 |
| Over 10 years | <input type="checkbox"/> | 4 |
24. How old are you? [AGE1]
- | | | |
|------------|--------------------------|---|
| Under 25 | <input type="checkbox"/> | 1 |
| 25 - 34 | <input type="checkbox"/> | 2 |
| 35 - 44 | <input type="checkbox"/> | 3 |
| 45 - 54 | <input type="checkbox"/> | 4 |
| 55 - 64 | <input type="checkbox"/> | 5 |
| 65 or over | <input type="checkbox"/> | 6 |
25. What gender are you? [GENDER]
- | | | |
|--------|--------------------------|---|
| Male | <input type="checkbox"/> | 1 |
| Female | <input type="checkbox"/> | 2 |

Thank you again for completing the survey!

Please return the survey as soon as possible in the stamped, self-addressed envelope to:

*Cyril W. Miller, Jr.
2923 Hey Road
Richmond, Virginia 23224*

Vita

