

Indiana Public Defender Council
Board of Directors Meeting - Oct. 28, 1982

MINUTES

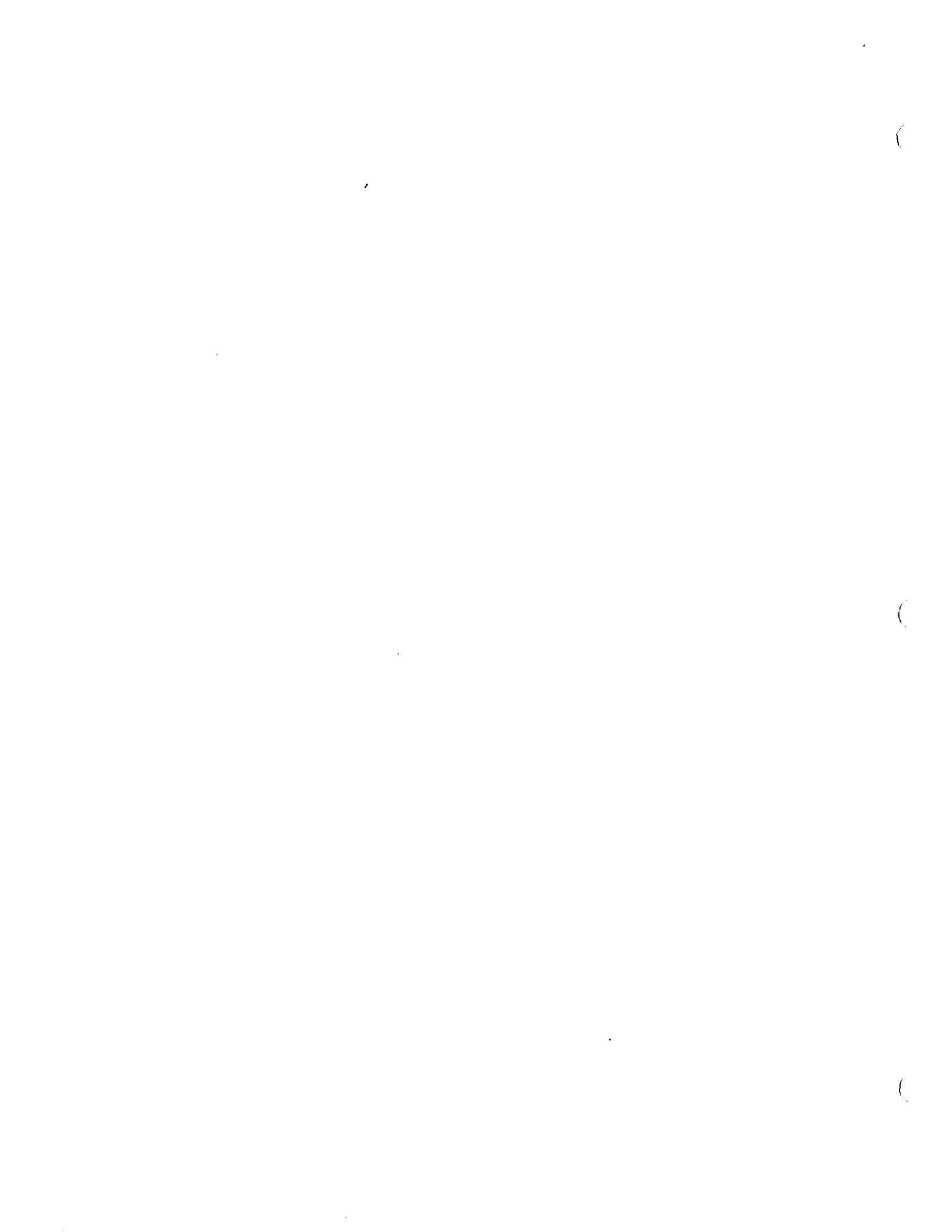
1. Call to Order. The meeting of the Board of Directors of the Indiana Public Defender Council was called to order at 7 p.m. on October 28, 1982 at 309 West Washington Street in Indianapolis, Indiana. Directors present: Larry Combs, John Surbeck, Gene Hollander, Susan Carpenter, Don Peyton, David Keckley, and Brent Westerfeld. IPDC staff present: Larry Landis, Kit Keller, Jim Cupp and Mary Sinnock.
2. Minutes of Meeting Sept. 24-25, 1982. Minutes of the meeting held Sept. 24-25, 1982 at the Holiday Inn North in Indianapolis were submitted by Mary Sinnock. Brent Westerfeld moved for acceptance of the minutes, seconded by Susan Carpenter, approved by acclamation.
3. Executive Director's Report. Larry Landis reported:
 - A. The Council's grant application for a microcomputer has been approved and installation of the equipment is expected in November.
 - B. The Council's grant application for a Juvenile manual and seminar has been submitted for \$15,000 rather than \$27,000 due to limited funds available from the Indiana Criminal Justice Planning Agency. Richard Kiefer has been approached to serve as consultant under the grant and author the manual. The grant includes funds for three hours' use of Westlaw each month.
4. Committee Reports. Committee reports from the meetings held Sept. 25, 1982 (attached as Exhibit A and incorporated with these minutes) were summarized by Larry D. Combs as he directed discussion of each of the committees' recommendation in the following order:

A. Organization and Membership Committee

1. Nominating Subcommittee. The OMC (Organization & Membership Committee) recommended appointment of a Nominating Subcommittee by the Chairman to include a Board member from each geographical third of the state. Members appointed to the subcommittee should not be up for re-election that year. Larry Combs explained that it was not possible to follow these recommendations this year due to constituency of present Board. Brent Westerfeld moved that these specific recommendations be waived for this year; seconded by Susan Carpenter; approved by acclamation.

Larry Combs appointed Brent Westerfeld, Susan Carpenter and Mark McNeely to serve on the Nominating Subcommittee for the year 1982-83.

After discussion Larry Combs suggested that the Nominating Subcommittee make recommendations at the next Board meeting on: 1) a nominating procedure to achieve the desired geographic representation, handle nominations from the membership, and set a deadline for 1983 election nominations; 2) a voting procedure to achieve the desired geographic representation; 3) procedures and deadline for absentee voting; and 4) draft a Board resolution to change the By-Laws accordingly.



2. Absentee voting. It was decided that no amendment to the By-Laws was necessary in order to allow absentee voting for Board elections.
3. Personnel/Executive Committee. In response to the OMC's recommendation that the Chairman appoint a Personnel/Executive Committee (PEC) to deal with personnel issues (such as replacement of Executive Director in case of vacancy), Larry Combs appointed Don Peyton, Linda Wagoner, Gene Hollander and himself to serve on a PEC for the year 1982-83. This committee is to prepare a description of qualifications for the Executive Director position; Larry Landis is to give the PEC a job description.
4. Membership qualification - Associate membership status. Discussion was held on the best means to verify the qualification of attorneys for membership in the IPDC. Opinion favored requesting a signed verification from each attorney, the form for which would be sent out in an issue of the Indiana Defender. If the verification was not returned to the IPDC, the attorney would be dropped from the Council's membership records unless he paid an Associate Membership fee of \$25.

Associate membership would be open to private attorneys but would not be available to prosecutors or DOC inmates. The fee would entitle associate members to receive the Indiana Defender; to receive manuals and seminars at the regular member rates; and research assistance on cases where they have been appointed pauper counsel by their court(s).

Gene Hollander moved that attorneys now on the IPDC mailing list be provided a verification form through the Defender with notice that the form must be returned or they will not be continued as members; that associate membership status be established for attorneys not so verified (except prosecutors and DOC inmates), at a charge of \$25 per year for the Defender, manuals & seminars at member rates, and research assistance for assigned pauper cases. The motion was seconded by Don Peyton and approved by acclamation.

B. Publications and Services Committee

1. Format of Indiana Defender. Larry Landis distributed copies of case review section of latest Indiana Defender with shorter case reviews, case headings and criminal index numbering system. He reported on the staff's consideration of printing the reviews on index cards to permit subscribers to keep their own card file of cases. A second consideration is a brief bank system. Board members expressed an interest in pursuing these options and asked Larry to get cost figures for the next Board meeting. Gene Hollander moved that the appellant attorney's name in each case be included in the Defender review of each case; Susan Carpenter seconded the motion; approved by acclamation.

Brent Westerfeld made a motion that the new format be adopted for future issues of the Defender; seconded by Susan Carpenter; approved by acclamation.

(

(

(

2. Evidence and Sentencing Handbooks updating. Susan Carpenter moved that the Board approve the Committee's recommendation that the Council update the Evidence Manual next, followed by updating the Sentencing Handbook. Brent Westerfeld seconded the motion; it was passed by acclamation.

3. Future Manuals. Larry Landis reminded the Board that the Council is committed to do a juvenile manual under the grant. After discussion, Don Peyton moved that the Council undertake future manuals in the following order of priority:
 1st - Instructions Manual (solicit contributions from members)
 2nd - Search and Seizure Handbook
 3rd - Discovery Manual
 The motion was seconded by Susan Carpenter and approved by acclamation.

4. Approval of Juvenile Grant. Don Peyton moved that the Board approve the Juvenile Grant as submitted by Larry Landis. The motion was seconded by Susan Carpenter and approved by acclamation.

5. Research guidelines. The Board approved the Committee's recommendation that guidelines for research by the Council be published in the Indiana Defender.

6. The Board approved the Committee's recommendation that research requests be used to generate articles for future issues of the Defender.

7. Susan Carpenter moved that the Board approve the Committee's recommendation regarding the following priority of Council publications and services (excluding programs):
 1. Indiana Defender with case reviews
 2. Update Evidence and Sentencing Handbooks
 3. Research Assistance
 4. New manuals
 5. Articles
 The motion was seconded by Gene Hollander, and approved by acclamation.

C. Programs Committee

1. The Board noted that the first recommendation in the Program Committee's report regarding goals and priorities required no Board action.

2. Trial Skills Program. The Committee recommended that the Trial Skills program definitely be held in 1983. Larry Landis informed the Board that this would be financially possible if the program is held after July 1, 1983 (putting it in the next fiscal year) and conducting the program in a single week-long session to reduce costs. These changes were put in a motion by Gene Hollander, seconded by Brent Westerfeld, and approved by acclamation.

(

(

(

3. Video taping of programs. No Board action was necessary on the Committee's recommendation that the Council tape the significant parts of seminars so they can be loaned to interested members. The Board recommended that a list of the Council's video tapes be put in the Indiana Defender. Regional seminars (using video tapes) were discussed and considered too costly at this time.
4. Future Programs. The Board discussed the Committee's recommendation that more programs aimed at misdemeanor practice should be considered by the Council. Brent Westerfeld commented on need for training attorneys about impeachment procedures, laying foundations for statements, depositions, etc. The following recommendations were made for future programs in the order of the Board's preference: (numbers in parentheses following each topic is the membership survey rating of that topic)
 1. Pretrial Motions (5)
Motion by Gene Hollander, seconded by Susan Carpenter, approved.
 2. Entrapment (17) & Defense of Drug Cases (6) & Expert Witnesses(7)
Motion by Gene Hollander, seconded by John Surbeck, approved.
 3. Drunk Driving (3) & Defense of Misdemeanor Cases(11)
Motion by Dave Keckley, seconded by Brent Westerfeld, approved.
 4. Voir Dire (9)
Motion by Don Peyton, seconded by Gene Hollander, approved.
 5. Confessions (4) with Eyewitness Identification (12)
Motion by Gene Hollander, seconded by Susan Carpenter, approved.
 6. Sentencing (19) (with DOC procedures) and Mental Defenses (10)
Motion by Gene Hollander, seconded by Dave Keckley, approved.
 7. Appellate Procedure (16) with Sex Offenses (14)
Motion by Gene Hollander, seconded by Susan Carpenter, approved.
 8. Burnout (18) with Interviewing Skills, etc.(20)
Motion by Gene Hollander, seconded by Brent Westerfeld, approved.
 9. Forensic Sciences Update (13)

(

(

(

5. 1983 Annual Meeting. Larry Landis asked the Board's opinion if the Council's annual meeting should be held with the juvenile seminar or if they thought the subject was too specialized to combine with the annual meeting. Another option would be to have the annual meeting earlier in the summer or in the spring when the Council will likely be holding a seminar. The Board recommended holding the annual meeting in the spring if a seminar is scheduled then. The motion was made by Susan Carpenter, seconded by Don Peyton, and approved by acclamation.

D. Budget and Finance Committee

The Board discussed the need to raise funds, lower costs, and find new or increased revenue sources.

1. Raise price of manuals. A lengthy discussion of raising prices was held. Don Peyton made a motion to raise the price of current manuals by \$5 and to add at least \$5 when figuring the charge for new manuals. The motion was seconded by Dave Keckley, and approved by acclamation.
2. Grants. The Board discussed seeking grants to support the trial skills program. Larry Landis commented that outside fund raising should be done by the Board. Gene Hollander made a motion that the Budget and Finance Committee should actively pursue private fund raising for the projects listed in their committee report (items 1 through 6 under Section II). The motion was seconded by Brent Westerfeld and approved by acclamation.
3. Activation of the Indiana Public Defender Association. Larry Landis reported that he did not call a meeting of the IPDA Board because he has no authority to do so. He said the Council Board needs to give him specific proposals to take to the IPDA. The Board discussed the concept of interlocking directors between the IPDA and the Council - Larry Combs commented that an advantage of separate boards is the increased number of attorneys involved - why use only 10 active attorneys if you can get 20? Larry Landis said he believed there are still several members on IPDA Board who would probably like to stay with it. The Board (in a motion by Don Peyton) made the following specific proposals for Larry to take to the IPDA:

Because the Council sees the role of the IPDA as being able to work more appropriately in certain areas than the Council, namely (1) exploring sources of revenue; (2) Lobbying and legislation positions on behalf of Indiana defenders; and (3) amicus brief committee, the Council Board would like to meet with the IPDA Board and also explore joint meetings in the future.

The motion was seconded by Gene Hollander and approved by acclamation.

(

(


(

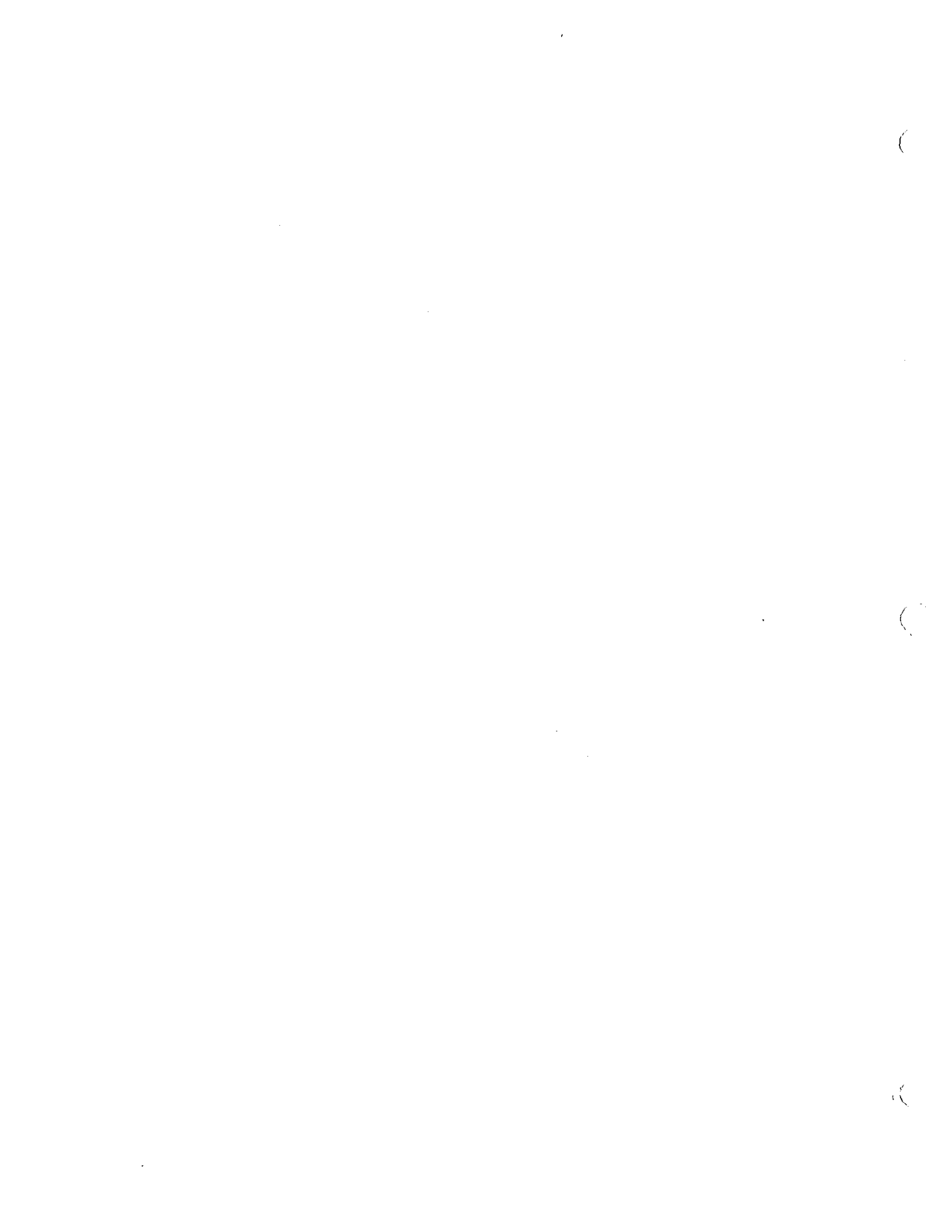
5. New Business

- A. Committee merger. Larry Landis proposed merging the Programs Committee and the Publications and Services Committee; and merging the Finance Committee and the Organization & Membership Committee. After lengthy discussion the Board decided not to combine the committees at this time. Gene Hollander remarked that he felt Board members should be more involved in Council projects - seminars and publications. He suggested two Board members assist the Council with each seminar and publication.
- B. The Board was reminded that of the six positions filled by the election held in July, one was the position vacated by Don Gibson's resignation, and would therefore run for only one year. No action was taken at this time.
- C. Next meeting. Brent Westerfeld suggested meeting in December before the legislature convenes. Larry Landis said that probably would not be necessary. After discussion the next meeting was set for January 20, 1983 at 7 pm at the Council office in Indianapolis.

Meeting adjourned at approximately 9 pm.

Submitted by:


Mary Sinnock



**EXECUTIVE DIRECTOR'S REPORT
1981-82**

I. FINANCIAL REPORT

A. 1982-83 Budget

1. Freeze on merit and cost of living raises.
2. Equipment freeze.
3. 1981 expenses rolled forward.
4. Ten percent of 1982-83 budget held in reserve.

B. Grants

1. Trial Skills Workshop. On December 9, 1981, a grant application was submitted to ICJPA for \$5,892 to conduct our Trial Skills Workshop in March and May of 1982. The grant was approved.
2. Motions Seminar and Manual. On December 9, 1981, a grant application was submitted to ICJPA for \$4,704 to conduct a Motions Practice Seminar and produce a Motions Manual. This grant was denied because of a lack of LEAA money.
3. Microcomputer. On July 1, 1982 a grant application was submitted to ICJPA for \$6,000 for a microcomputer to use as a terminal for Westlaw. On September 16, 1982, the grant was approved by the State Budget Agency and the Data Processing Oversight Commission.
4. Juvenile Grant. On August 5, 1982, a grant application was submitted to ICJPA for \$27,756 to produce a manual and conduct a two-day seminar. This grant is presently under consideration.
5. Alternative Sentencing/Sentencing Advocacy Project. In August, the Council made preliminary application to NLADA to be one of three pilot projects for an AS/SAP. The project will utilize client specific planning to develop alternative sentencing plans for felons who would otherwise be sent to prison. A community-based justice organization in Northern Indiana, PACT, will be the service provider. Mark Umbreit, Executive Director of the PACT Institute of Justice, had contacted the Council in the summer of 1981 concerning our interest in client specific planning. At that time we expressed an interest, but did not feel we were in a position to expand our services in this direction.

The targeted counties will be Lake, Porter, Elkhart and St. Joseph. Case consultants, trained by NCIA (National Center on Institutions and Alternatives), will be available to work with public defenders in Marion, Tippecanoe and Wayne Counties as well. The final grant application is due in December. The project is funded for one year (March 1983 to March 1984). The first-year budget has been set at \$45,000 (\$29,275 from NLADA/Clark Foundation and \$16,225 local match from PACT). Fifty to 75 sentencing plans will be developed during the first year.

(

(

(

C. 1983-85 Funding

1. Budget Submitted (see Attachment A).
2. Budget Process (see Attachment B).
3. Support Plan (see Attachment C).

D. Other Funding

II. OFFICE ADMINISTRATION

A. Personnel

1. The staff has remained the same since August of 1981.
2. Because of substantial changes in job responsibilities, there is a need to reclassify Kit Keller and Lisa Snyder.
3. Additional staff is needed to meet the mandates of I.C. 33-9-12-4.

B. Office Move

1. On May 22, 1982 the Council's office was moved from 802 State Office Building to 309 West Washington Street, Room 401. This was the culmination of a two-year effort to relocate the office to a larger and more tolerable working environment. The main obstacles have been the lack of alternative office space owned by the State and the lack of money to pay rent for commercial space. In November of 1981, Mary Sinnock and I met with the Budget Director, Judy Palmer, and our Budget Analyst, Janet Bozzelli, to state our case for a need to relocate the office. This meeting resulted in a search for money to pay rent. Since we obviously had no money budgeted for rent for FY 1981-83, it was necessary to find money in the budgets of other agencies which could be diverted to our use. Fortunately, both the Prosecuting Attorneys Council and the Office of the Public Defender of Indiana had money appropriated which they projected would revert to the State at the end of the 1983 fiscal year. Both agencies were willing to have the money revert earlier so that it could be allocated to us for rent and utilities. The total reallocated was \$20,000.

C. Office Equipment

1. In July of 1982 we acquired two Xerox 850 word processors from the Public Defender of Indiana at no cost. These machines were to be transferred to the DOA, Surplus Property, but were transferred to us with the consent of Susan Carpenter and Chief Justice Givan.
2. Filing cabinets and conference/library table need to be replaced as budget permits.

C

C

(

III. TRAINING PROGRAMS

A. Past Seminars

1. Attached is a list of seminars which we have conducted since September of 1976, including those conducted in 1981-82. (See Attachment D).
2. In the past two years we have selected seminar subjects on the basis of recommendations by the Programs and Publications Committee and a 1981 survey of members. (See Attachment E).

B. Future Seminars

1. We need to start planning for seminars for the next two years.

IV. PUBLICATIONS

A. Indiana Defender

1. In June of 1981 we combined the monthly newsletter and Training Bulletin into the present format of the monthly Indiana Defender.
2. We have not been successful in meeting a monthly publication schedule. This is due primarily to the lack of staff time to devote to it. Publication of the Indiana Defender on a monthly basis requires the following commitment of staff time:

Larry	5 percent of time per month
Mary	0 percent of time per month
Jim	25 percent of time per month
Kit	15 percent of time per month
Lisa	25 percent of time per month

This service, in particular the case reviews, needs to be considered by the Board to determine if its value justifies the amount of staff time it takes.

B. Manuals

1. Past Manuals. Attachment F is a list of manuals produced by the Council.
2. Motions Manual. The publication of the Motions Manual in July of 1982 was accomplished with the substantial assistance of the Publications Committee. This procedure worked extremely well and is recommended for future manuals. Three hundred copies have been distributed since the July 25 seminar.
3. Evidence and Sentencing Handbooks. Both of these manuals were written by Brent Westerfeld and I in 1980. They need to be updated.

(

(

(

V. RESEARCH

- A. The demand for research has increased considerably since we began this service in 1978. During 1982 there has been a sharp increase during the first six months with an increase of over 100 percent from the previous year.

<u>Year</u>	<u>Research Request Number</u>
1978	70
1979	118
1980	146
1981	167
1982 (6 months)	183

VI. DEATH PENALTY SERVICES

- A. The Council initiated our death penalty services in the Fall of 1981 in response to requests from the Death Penalty Task Force and participants at the February 1981 Death Penalty Seminar. Our goal is to reduce the time required to adequately prepare and defend a capital case. To date, we have served 34 attorneys. Eleven cases are closed (no death penalty). Eleven cases are awaiting trial and twelve are on appeal. Death penalty services include:
1. Contacting attorney immediately after Council learns of case. First contact is by telephone. Second contact is by letter, which includes a description of services and a listing of expert witnesses.
 2. Offering research, referral and clearinghouse services and performing these services as requested.
 3. Maintaining case files to track progress of case and contacts with attorney.
 4. Publishing a bi-monthly death penalty review which digests key death penalty cases across the country and offers practical tips.
 5. Developing and maintaining a death penalty resource bank which includes manuals, motions, memoranda, appellate briefs, etc.

Kit is the staff person in charge of providing these services. Approximately 12 percent of her time is spent on this project.

VII. OTHER PROJECTS

A. Criminal Law Index

1. After numerous revisions we have developed a 35-page index which we will use for our research files. This index could also be used for a brief bank and as an index for an annual summary of appellate court cases.

(

(

(

B. Brief Bank

1. In August, I finally concluded an agreement with Margorie O'Laughlin, Supreme and Appellate Court Clerk. When an appeal is closed, they will remove a copy of all briefs from the case file for us. These will be reviewed by us and put in our brief bank at our discretion.

IX. OTHER ACTIVITIES OF EXECUTIVE DIRECTOR

A. NLADA - Defender Trainers Section

1. In 1977 I and four other defender trainers in the country organized the Defender Trainers Section of NLADA. As the Chairman of this Section from 1979-81, I obtained a grant for \$50,000 from LEAA for the Section to do the following:
 - a. Write a trainer's manual (published in 1981).
 - b. Conduct a national workshop for trainers (held in April of 1981 in Denver).
 - c. Prepare a bibliography of national training materials. (Published in 1981).
 - d. Produce a national appellate training package. (Will be completed in early 1983).
2. Mental Defenses Seminar - November 8-9, 1982, Boston

B. NLADA - Amicus Brief Committee

1. As a member of this committee since 1977, I review requests for amicus participation by NLADA and vote on positions to be taken by the organization. Included among the United States Supreme Court cases in which this committee has submitted briefs are:
 - a. Holloway v. Arkansas
 - b. Dolbert v. Florida
 - c. Michigan v. DeFillippo
 - d. Fersi v. Ackerman
 - e. Rhode Island v. Innis
 - f. Eddings v. Oklahoma
 - g. Polk County v. Dodson

C. ABA

1. In June I was appointed to the Criminal Justice Section's Competency Committee. This is the successor of the Teaching Trial Advocacy Section which I was appointed to last year.

(

(

(

D. ISBA

1. Chairperson of Criminal Justice Section for 1981-82.

E. Indiana Lawyers Commission

1. Board of Directors for 1981-82.

F. Indianapolis Bar Association

1. Board of Directors of Indianapolis Lawyers Commission since 1978.

G. Indiana Trial Lawyers Association

1. Board of Directors of Criminal Justice Section

H. Indiana Criminal Justice Coordinating Council

I. Supreme Court Committee on Rules

1. Appeared on behalf of IPDC at C.R. 12 hearing on April 23, 1982.

J. Media Contacts (Since June 1982)

1. June 22, 1982. Louisville Times article regarding Guilty But Mentally Ill.
2. August 4, 1982. Interview with Karen Day of LaPorte Daily News regarding impact of new criminal procedure code.
3. August 23, 1982. U.P.I. article by Jan Carroll regarding death penalty services.
4. September 14, 1982. Susan Conner, Channel 6, Indianapolis, regarding President Reagan's proposal to restrict exclusionary rule.
5. September 15, 1982. Bill Lutholtz, Indianapolis Monthly magazine, regarding use of videotape in the law.
6. September 19, 1982. Indianapolis Star article on Marion County public defender services.

A
C

C

(