Hitotsubashi Journal of Law and Politics 26 (1998), pp. 19-27. © The Hitotsubashi Academy

SOME ISSUES REGARDING THE RIGHT TO COUNSEL IN THE UNITED STATES

MARK M. STAVSKY*

Preface

My paper concerns two quite different topics, but both related to the right to counsel in the United States. The first topic concerns the right to counsel during police interrogation, while the second topic relates to problems and possible solutions concerning funding for indigent criminal defense services.

I. *The Right to Counsel During Interrogation*

A. Defining *Custodial Interrogation*

Miranda v. Arizona[1], the landmark United States Supreme Court decision, firmly established criminal suspect's right to retained or appointed counsel,[2] among other rights,[3] during *custodial interrogation*.[4]

Custodial interrogation was defined as questioning initiated by law enforcement officers after a person has been taken into custody or "otherwise deprived of his freedom of action in any significant way[5]." This concept is important since if the suspect is either *not* in custody[6] or *not* being interrogated[7], then he has no right to counsel under the rules of *Miranda*.[8]

---

* This paper is based upon the author's presentation at the International Conference on Criminal Defense and Legal Aid, on July 5, 1997, at Hitotsubashi University. The author wishes to thank the members of the Faculty of Law, especially Professor Akira Goto, for their kind invitation to speak at the conference.

[1] 384 U.S. 436 (1966).

[2] *Id.* at 470–73. This right derives from the Fifth Amendment Privilege Against Self-Incrimination, not the Right to Assistance of Counsel contained in the Sixth Amendment. *See* notes 47 through 61 and accompanying text.

[3] The suspect also has the right to remain silent. *Id.* at 467–68.

[4] *Id.* at 444.

[5] *Id.*

[6] "General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by our holding." *Id.* at 477–78.

[7] "There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime or a person who calls the police to offer a confession or any other statement he desires to make." *Id.* at 478.

[8] "In such situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present." *Id.* at 478. In *Miranda*, the Court specifically stated that custodial interrogation is what they meant when they used the term "focus" in the *Escobedo* decision. Escobedo v. Illinois, 378 U.S. 478 (1964), was the first Supreme Court decision establishing a right to counsel --- at least when the suspect requests his own attorney to be present --- when "the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect." 378 U.S. at 491.

1. Custody

A number of post-*Miranda* Supreme Court decisions have attempted to define the meaning of this concept. Generally, if a suspect is questioned in a police station he is in *custody*;[9] if a suspect is questioned on the street or at home he is *not*[10]. There are, of course, exceptions.

Sometimes, you can be in custody even in your own home. In *Orozco v. Texas*,[11] the suspect was questioned in his bedroom by four police officers at 4:00 a.m. in the morning.[12] The Court ruled that Mr. Orozco was in custody because under those circumstances the potential for compulsion in the suspect's own bedroom was equivalent to police station interrogation.[13]

Other times, a suspect who is questioned *in* a police station may still not be in custody. In *California v. Beheler*,[14] a murder suspect agreed to go with[15] the police to the station house, even though he was told explicitly that he was not under arrest. While at the station he was questioned even though no Miranda warnings were given.[16] The Supreme Court found no Miranda violation since the suspect was not in *custody*.[17]

2. Interrogation

Interrogation can also sometimes be difficult to determine. The Court defined interrogation in Rhode Island v. Innis[18] as express questioning *or* "words or actions...that the police should know are reasonably likely to elicit an incriminating response."[19] The defendant, a murder suspect, incriminated himself even though he was neither asked any questions nor were any remarks explicitly directed towards him.[20] Instead, he overheard a police conversation in the squad car in which he was being transported to the station regarding the possibility that a handicapped child might find the still missing murder weapon.[21] He led the police to the weapon, "because of the kids" he said.[22]

Under the *Innis* standard, it appears *interrogation* would occur when the police merely show a suspect the property he allegedly stole, or confront him with an accusing accomplice,[23] as some lower courts had held before the Innis decision.[24]

---

[9] *See* Yale Kamsar, Wayne R. LaFave & Jerold H. Israel, Basic Criminal Procedure 516 (8th ed. 1994).
[10] *Id.*
[11] 394 U.S. 324 (1969).
[12] *Id.* at 325.
[13] *Id.* at 326–27. *See generally* Robert M. Bloom & Mark S. Brodin, Criminal Procedure 261–63 (2d ed. 1996)
[14] 463 U.S. 1121 (1983) (per curiam)
[15] *Id.* at 1122.
[16] *Id.*
[17] *Id.* at 1123.
[18] Rhode Island v. Innis, 446 U.S. 291 (1980)
[19] *Id.* at 300; "To limit the ambit of Miranda to express questioning would 'place a premium on the ingenuity of the police to devise methods of indirect interrogation ...' " *Id.* at 299 n. 3, *quoting* Commonwealth v. Hamilton, 285 A.2d 172, 175, such as the "reverse line-up", a police practice which offended the *Miranda* Court, in which the suspect is accused of a fictitious crime by a coached witness. *Id.* at 299, *citing* Miranda v. Arizona, 384 U.S. 436, 453 (1966).
[20] *Id.* at 294–95.
[21] *Id.*
[22] *Id.* Nevertheless, the Court held that the specific conversation between the police in the squad car was not *interrogation*, since the officers could not have known that their remarks were reasonably likely to cause the suspect to lead them to the gun. *Id.* at 302–03.
[23] *See generally* Wayne R. LaFave & Jerold H. Israel, Criminal Procedure §6.7(c) (2d ed. 1992).
[24] *Id.*

3. "Police Blue"

Interestingly, *custody* plus *interrogation* may not equal *custodial interrogation*. In *Illinois v. Perkins*[25], the Court found that a **jailed** suspect **questioned** by a government informant posing as a fellow inmate is not *custodial interrogation*.[26] When a suspect is being asked questions by someone he *believes* is just another criminal and not a police agent, such a situation is not as inherently coercive as the police-dominated atmosphere of an interrogation room; he cannot feel compelled to confess.[27] The interrogator must be wearing "police blue" not "prison gray."[28]

B. Defining "Waiver"

If there is custodial interrogation, *Miranda* requires the suspect be told the following four things: 1) he has the right to remain silent; 2) anything he says can be used against him in court; 3) he has the right to the presence of an attorney; and 4) if he cannot afford an attorney, one will be appointed for him.[29] If the officer fails to inform the suspect of these rights, the confession is inadmissible.[30]

Once the suspect is given his warnings, he can either choose to invoke his rights *or* waive them and talk with the police.[31] Even if the suspect is illogical or ignorant in waiving, waiver may still be valid.[32] For example, many suspects mistakenly believe that only written confessions are admissible.[33] Thus, some agree to cooperate with the police as long as nothing is written down.[34] This is known as a "qualified waiver." Police are only too happy to oblige since oral confessions *are* admissible.

Lastly, according to *Miranda*, even after a valid waiver, a suspect can end the interrogation by invoking his right to counsel or silence.[35]

C. Refining the right to counsel

According to several fairly recent Supreme Court decisions specifically concerning *Miranda's* right to counsel during interrogation, the Court has refined this important right in several ways.

1. Ambiguous Request for Counsel

In order for a suspect to invoke his right to counsel, he must do so unambiguously.[36] "I want to talk to a lawyer!", for example The statement "Maybe I should talk to a lawyer?" is

---

[25] 496 U.S. 292 (1990).
[26] *Id.* at 296–97.
[27] *Id.*
[28] *Id.* at 297, *quoting* Yale Kamisar, *Brewer v. Williams, Massiah and Miranda: What is "Interrogation"? When Does it Matter?*, 67 Geo L. J. 1, 67, 63 (1978).
[29] 384 U.S. at 444.
[30] *Id.* Any *Miranda* violation will preclude the government from using the suspect's statement at trial during its case-in-chief. However, it may be used to impeach the suspect if he decides to testify in his defense. *See* Harris v. New York, 401 U.S. 222 (1971); Oregon v. Hass, 420 U.S. 714 (1975).
[31] *Id.* at 473–75.
[32] *See, e.g.*, Connecticut v. Barret, 479 U.S. 523 (1987); North Carolina v. Butler, 441 U.S. 369 (1979).
[33] One study found that 45% believe that oral statements cannot be used against them in court. *See* Kamisar, LaFave & Israel, *supra* note 9, at 544 n.b.
[34] *See supra* note 32.
[35] 384 U.S. at 473–74.
[36] Davis v. United States, 129 L. Ed.2d 362, 371 (1994).

not clear enough.[37] In practice, police should ask the suspect to clarify what he means.[38]

2. Interrogation After Invocation

Once the suspect makes a request for a lawyer, not only must all interrogation stop, but he cannot be interrogated at a later time until a lawyer is actually present.[39] This rule applies even if the police want to interrogate him about a different crime.[40]

In a case where a suspect was allowed to communicate with a lawyer after requesting one, and then reinterrogated *without one*, the Supreme Court held that this rule was still violated since the attorney had to be present at the interrogation itself.[41]

D. Formal Adversarial Proceedings and the Sixth Amendment Right To Counsel

Once the police arrest a suspect, they are under significant time constraints. In addition to the requirements of *Miranda* this further limits the opportunity for interrogation. States require that the suspect appear before a judge within a certain period of time usually within 24 or 48 hours or "without unnecessary delay."[42]

Every jurisdiction provides for such a procedure, often called the "first appearance", or "initial presentment", or "preliminary arraignment."[43] Whatever it is called, in substance it is the same in many states. It is often a short proceeding. The suspect will be informed of his rights to silence and, if he is not accompanied by an attorney, his right to retained or appointed counsel.[44]

If the suspect indicates that he wants an attorney but cannot afford one, the judge must determine whether he is truly indigent.[45] Another important function of the judge at the first appearance is to set bail, i.e. the conditions that the accused must meet in order to be released from custody. Often this involves a cash or secured bond, although there are alternative ways to make certain that he shows up for trial.[46]

Most significantly, once there is an appearance before a judge *adversarial judicial proceedings* have begun. The government, by presenting the suspect to the judge "has committed itself to prosecute."[47] Once such proceedings are initiated the accused is entitled to an additional Constitutional Right --- the Right to Counsel under the Sixth Amendment.[48]

This Right to Counsel under the Sixth Amendment is different than the right a suspect enjoys under the *Miranda* doctrine.[49] The Right to Counsel which Miranda provides derives not from the *Sixth* Amendment to the Constitution but rather from the privilege against

---

[37] *Id.* at 373.
[38] *See generally id.*
[39] Edward v. Arizona, 451 U.S. 477 (1981).
[40] Arizona v. Roberson, 486 U.S. 675 (1988).
[41] Minnick v. Mississippi, 498 U.S. 146 (1990).
[42] Kamisar, LaFave & Israel, *supra* note 9, at 26.
[43] *Id.*
[44] *Id.* at 26–27.
[45] *Id.* at 27.
[46] *Id.*
[47] Kirby v. Illinois, 406 U.S. 682, 689 (1972).
[48] U.S. Const. amend. VI, states, *inter alia*, "In all criminal prosecutions, the accused shall enjoy the right ...to have the assistance of counsel for his defense." Adversarial judicial proceedings can be initiated in several ways, by "formal charge, preliminary hearing, indictment, information, or arraignment." Brewer v. Williams, 430 U.S. 387, 398 (1977) (citations omitted).
[49] Brewer v. Williams, 430 U.S. at 397–399.

self-incrimination contained in the *Fifth* Amendment.[50] According to *Miranda*, the presence of an attorney is necessary to help eliminate the inherent coercive nature of interrogation so that the suspect is not forced to incriminate himself.[51] For this reason *Miranda* only applies during custodial interrogation and no other times.[52]

The Right to Counsel under the Sixth Amendment is based upon a somewhat different theory.[53] The Supreme Court explained this distinction in Moran v. Burbine,[54] a case in which a suspect, in custodial interrogation, was not informed that his attorney had called trying to reach him. The Supreme Court upheld his waiver of silence and counsel despite his ignorance since the police complied with his rights under *Miranda*.[55] In response to the defendant's claim that his Sixth Amendment right to counsel was violated, since the police interfered with his attorney-client privilege, the Supreme Court reiterated that only *after* adversarial judicial proceedings occur does the Sixth Amendment come into effect.[56] When adversarial judicial proceedings begin, the government's role shifts from investigation to accusation.[57] At that point, the accused requires the assistance of someone who is knowledgeable about the intricacies of the law --- that is, a lawyer.[58] After an appearance before a judge, or the filing of formal charges, a criminal prosecution has begun, and the accused should not be left to his own inadequate abilities when facing the prosecutorial forces of society.[59] Therefore, *any* attempt by the government to obtain an incriminating statement from the accused when counsel is not present regardless of custodial interrogation interferes with this broader Sixth Amendment right.[60]

According to Professor Anthony Amsterdam, a leading criminal law scholar and defense attorney, the initiation of adversarial judicial proceedings "invalidates any police investigative procedures involving the defendant that are conducted in the absence of counsel."[61]

---

[50] U.S. Const. amend V, states, *inter alia*, "No person ... shall be compelled in any criminal case to be a witness against himself ..." *See* Brewer v. Williams, 430 U.S. at 397–98. *See generally* LaFave & Israel, *supra* note 23, at 302–17.

[51] *See* Miranda v. Arizona, 384 U.S. at 471–72; Brewer v. Williams, 430 U.S. at 397.

[52] *See supra* notes 1–24 and accompanying text.

[53] *See generally* Brewer v. Williams, 430 U.S. at 398–99. Although *Escobedo v. Illinois*, 378 U.S. 478 (1964), the predecessor to *Miranda*, relied upon the *Sixth* amendment to establish a right to counsel during interrogation, the Supreme Court no longer relies upon the Sixth Amendment as the actual basis for the *Escobedo* decision. *See* Moran v. Burbine, 475 U.S. 412 (1986). "Although Escobedo was originally decided as a Sixth Amendment case, the Court in retrospect perceived that the prime purpose of Escobedo was not to vindicate the constitutional right to counsel as such, but, like Miranda, to guarantee full effectuation of the privilege against self-incrimination ..." *Id.* at 429–30.

[54] 475 U.S. 412 (1986).

[55] *Id.* at 421.

[56] *Id.* at 428–31.

[57] *Id.*

[58] *Id.* at 430. (citations omitted)

[59] *Id.* (citations omitted)

[60] *See* LaFave & Israel, *supra* note 23, at 310–12. *See generally, e.g.*, United States v. Henry, 447 U.S. 264 (1980) (use of jail plant to obtain incriminating information from indicted suspect violates his Sixth Amendment right to counsel).

[61] Anthony G. Amsterdam , Trial Manual for the Defense of Criminal Cases §97 (4th ed 1984).

II. *Funding of Indigent Defense Services*

A. Indigent Defense Systems in the United States

My second topic concerns problems related to funding for indigent defense services. In the United States, all indigents charged with any but the most minor crimes[62] are entitled by the Constitution to be represented by an attorney. This basic constitutional right was established in *Gideon v. Wainwright*, the famous Supreme Court decision which ruled that all indigent felony defendants have an absolute right to a lawyer during trial.[63] The problem this decision has created, of course, is a large one --- if the defendant does not pay for the lawyer who will?

Each state had its own answer. In Kentucky, for example, *no one* paid the attorney who was appointed to represented an indigent.[64] For almost ten years after *Gideon* was decided, no system existed in Kentucky to compensate attorneys. Fortunately this situation changed in 1972.[65]

Currently states and the federal government have established systems for providing attorneys for indigent defendants. These systems vary from state to state.[66] The funding comes primarily from the state budget, but also from counties as well.[67] Little, if any, comes from the federal government[68] --- except, of course, funding of attorneys who represent the poor in federal courts.

There are three basic types of models of indigent defense representation.

1) The public defender model --- this is a public or private non-profit organization with full or part-time attorneys and support personnel.

2) The assigned counsel model --- under this system, indigent criminal cases are assigned to private attorneys who are paid for each case they take.

3) The contract attorney model --- this model involves a contract between a municipality --- a city or county --- and an attorney or group of attorneys which agree to represent some or all of the indigents in that area for a certain period of time.[69]

Funding for criminal defense has always been inadequate.[70] In response, organizations

---

[62] *See* Scott v. Illinois, 440 U.S. 367 (1979) (no right to counsel in shoplifting prosecution where only a $50 fine was imposed; no indigent may be sentenced to *imprisonment* without the assistance of appointed counsel).

[63] 372 U.S. 335 (1963); *See also* Argersinger v. Hamlin, 407 U.S. 25 (1972) (*Gideon* applies to misdemeanors).

[64] *See* Ky. Dept. of Public Advocacy Policies and Procedures 1.01, *History of the Department of Public Advocacy* (Jan. 1, 1995).

[65] *Id.*

[66] Richard Klein & Robert Spangenberg, *The Indigent Defense Crisis*, Report of the Ad Hoc Committee on the Indigent Defense Crisis, ABA Section of Criminal Justice (August 1993) at 3.

[67] *Id.* at 13.

[68] *Id.* at 14–15.

[69] *Id.* at 3. Any particular state may have one or more of these systems in place; oftentimes the counties themselves decide which system or systems to adopt. In a study conducted in 1988 by the United States Department of Justice, 1,100 counties chose the public defender model, 1,600 counties chose the assigned counsel model, and 330 counties chose the contract attorney model. Whichever of these models is chosen, it is generally underfunded. *Id.*

[70] *Id.* at 10.

interested in the process of providing indigent defense have developed some creative methods for raising funds to close the gap between inadequate legislative appropriations and the actual funding needs of an effective criminal defense system. This is only a start at solving a very serious problem.

B. The Ongoing Funding Crisis: Cause and Effect

According to the recent statistics compiled by the United States Department of Justice, at the end of 1995 there were in the United States over 1,000,000 people in prisons.[71] This is more than three times the number of prison inmates in 1980.[72] In addition, there are over 3,000,000 people on probation, that is, court-ordered community supervision of convicted criminals.[73] The number of criminals on probation also tripled since 1980.[74] Finally, there were 500,000 people in jail in 1995.[75] Those in jail are either serving sentences of 1 year or less or are waiting to go to trial. In 1980, that number was under 200,000.[76]

Of the five million people under some form of supervision for criminal acts in the United States today, *most* had appointed counsel to represent them since they are indigent. Approximately 75% of prison inmates were represented by appointed counsel.[77] Lawyers involved in defending the poor have had to bear most of the increased burdens caused by the enormous rise in numbers of individuals flowing through the criminal justice system.[78]

Increased convictions and sentences for drug offenses make up much of the increase in our prison population.[79] A recent study by the American Bar Association found that between 1986 and 1991, drug arrests increased by only 25%, but the number of people imprisoned for drug crimes increased by 327%.[80] Specific examples are seen on both American coasts. In Los Angeles 75% of all criminal prosecutions were drug related.[81] In New York, felony drug indictments tripled since 1985.[82] Ironically, serious violent crimes such as homicide, rape, robbery and assault have been steadily declining; the same is true of property crimes such as burglary and theft.[83]

The following are some specific examples of the kinds of problems which have arisen due to inadequate funding of indigent defense.

1) In New York City, the Legal Aid Society --- a private organization that has a contract with the city to provide indigent defense --- recently had to reduce the number of its investigators from 119 to 63 due to budget cuts. Most investigators are former police officers trained in criminal investigation. To replace this critical loss of half their investigative staff, the Society hired college and law students as part-time investigators. Instead of seasoned police

---

[71] U.S. Department of Justice, Bureau of Justice Statistics, *Correctional Population in the United States, 1995*, p.1.
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] U.S. Department of Justice, *1995 Sourcebook of Criminal Justice Statistics* 516
[78] *See* Klein & Spangenberg, *supra* note 66, at 3.
[79] *Id.* at 4. See Fox Butterfield, *Crime Keeps Falling, but Prisons Keep on Filling*, N.Y. Times, Sep. 28, 1997, §4 (Week in Review), at 1, 4.
[80] *See* Klein & Spangenberg, *supra* note 66, at 4.
[81] *Id.*
[82] *Id.*
[83] Butterfield, *supra* note 79.

officers with years of experience, they now have students who receive a one-week training program.[84]

2) In Connecticut, public defenders in fiscal year 1993–94 were assigned, on average, 1,045 cases per year. The American Bar Association recommends that defense attorneys take no more than 300 misdemeanor cases or 150 felony cases per year. During the same time period, Connecticut prosecutors were assigned an average of only 260 cases per year --- 1/4 the number assigned to public defenders.[85]

3) In Tennessee, in 1992, a funding crisis in one county meant that assigned counsel would be paid $5.00 per hour for out-of-court time and $7.50 per hour for in-court time when representing indigents. When this money eventually ran out, judges simply ordered all attorneys in the county (including the Mayor of Knoxville) to take indigent cases even if they had no prior experience in criminal matters.[86]

C. Creating New Sources of Funding

In order to solve the funding crisis, individuals involved in administering indigent defense systems have had to develop new ways to increase their revenue.[87] In Kentucky, for example, the legislature approved two new funding sources specifically earmarked for indigent defense. One is a user fee of $40, that means that anyone who uses an indigent defense attorney must pay a fee of $40[88], which can be reduced if the user is extremely poor.[89] Such user fees are also in place in the states of Connecticut, New Jersey, Colorado, and Massachusetts.[90] The amounts range from $5 to $75.[91]

The other new funding mechanism in Kentucky was to increase the service fee for all convicted drunk drivers from $150 to $200.[92] The $150 service fee had been earmarked to pay for the enforcement of the drunk driving laws.[93] The additional $50 is now specifically earmarked for the Department of Public Advocacy, the official organization in Kentucky that administers indigent defense.[94]

With so many different indigent defense systems among the 50 states, and also differences in the counties and cities within the same state, it would be impossible to correct all the problems of underfunded indigent defense systems in the same way. What is politically and economically feasible for one jurisdiction may not be for another. Each jurisdiction needs to

---

[84] Michael Prince, *Funding Cuts Force N.Y. Group to Rely on Unseasoned Investigators*, Nat'l L.J., Dec. 11, 1995, at A13.

[85] Robin Dahlberg, Reginald Shuford, Philip D. Tegeler & Ann Parrent, *Connecticut's Public Defender System in Crisis*, April 29, 1996 (Perspectives; Letters to the Editor), at 24.

[86] *See* Klein & Spangenberg, *supra* note 66 at 1, 2 & 6.

[87] *See generally id.* at 10–22.

[88] Ky. Rev. Stat. Ann. §31.051(2) (Supp. 1996).

> Any person provided counsel under the provisions of this chapter shall be assessed at the time of appointment, a nonrefundable forty dollar ($40) administrative fee, payable, at the court's discretion, in a lump sum or in installments. The court may reduce or waive the fee if the person remains in custody or does not have the financial resources to pay the fee. In any case or legal action a needy person shall be assessed a total administrative fee of no more than forty ($40), regardless of the stages of the matter at which the needy person is provided appointed counsel. In the event the defendant fails to pay the fee, the fee shall be deducted from any property which secures the person's bail, regardless of whether the bond is posted by the needy person or another. The failure to pay the fee shall not reduce or in any way affect the rendering of public defender services to the person. *Id.*

[89] *Id.*

[90] *See* Klein & Spangenberg, *supra* note 66, at 14.

[91] *Id.*

determine for itself the most efficient method.[95] In Tennessee, legislation was passed requiring that any increase in funding prosecutors offices must include an increase in funding of public defenders offices.[96] In San Francisco, appointed attorneys must pay a $250 registration fee to participate in the appointment process and must also remit 2% of their criminal defense fees to the Bar Association to cover the cost of administering the appointed attorney system.[97]

Finally at least six states are considering allocating to their indigent defense budget a percentage of the assets obtained from the forfeiture of property used by convicted drug dealers in their drug transactions.[98]

While these financing methods are creative and will certainly generate money, they cannot replace general state or local revenue funds as the primary source of funding for indigent defense.[99] They are only a source of supplementary funding.[100]

D. Conclusion

Indigent defense will never be a popular cause. It is hard to imagine a time when public defender offices will be funded to the same extent as prosecutors offices.

Nevertheless, the situation has improved in some states due to the efforts of task forces and committees specifically formed to address the problems of indigent defense.[101] As pointed out by the American Bar Association's Ad Hoc Committee on the Indigent Defense Crises such task forces are most successful if they are broad-based and represent all branches of government, the bar associations, and even prosecutors.[102] Such a group was successful in convincing the Governor and State Legislature of Missouri to increase the budget of the state public defender office by 40%.[103] Indigent defense will improve only if there is a spirit of cooperation and mutual respect among all those involved or interested in the criminal justice system.

NOTHERN KENTUCKY UNIVERSITY

---

[92] Ky. Rev. Stat. Ann. §189A. 050 (Supp. 1996)
(1) All persons convicted of violation of KRS 189A.010 shall be sentenced to pay a service fee of two hundred dollars ($200), which shall be in addition to all other penalties authorized by law.
(2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS 534.020 relating to the method of imposition and KRS 534.060 as to remedies for nonpayment of the fee.
(3) The service fee shall be utilized to fund enforcement of this chapter and for the support of jails, record keeping, treatment and education programs authorized by this chapter, and the Department of Public Advocacy.
(4) Twenty-five percent (25%) of the service fee collected pursuant to this section shall be allocated to the Department of Public Advocacy. These funds shall be placed in a special trust and agency account for the Department of Public Advocacy, and the funds shall not lapse.

[93] *Id.*
[94] *Id.*
[95] *See generally* Klein & Spangenberg, *supra* note 66, at 13.
[96] *Id.* at 16.
[97] *Id.*
[98] *Id.* at 17.
[99] *Id.* at 13.
[100] *Id.*
[101] *See generally id.* at 23–24.
[102] *Id.* at 23.
[103] *Id.*