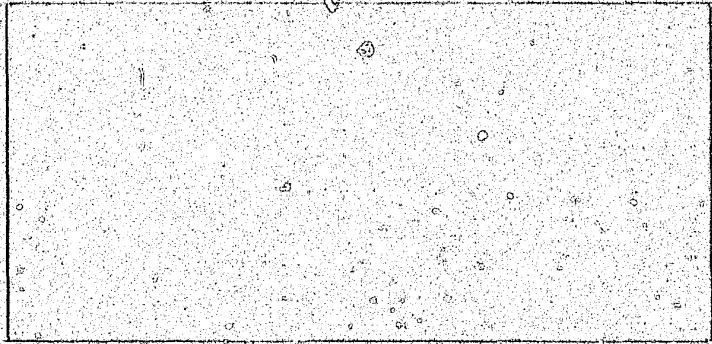


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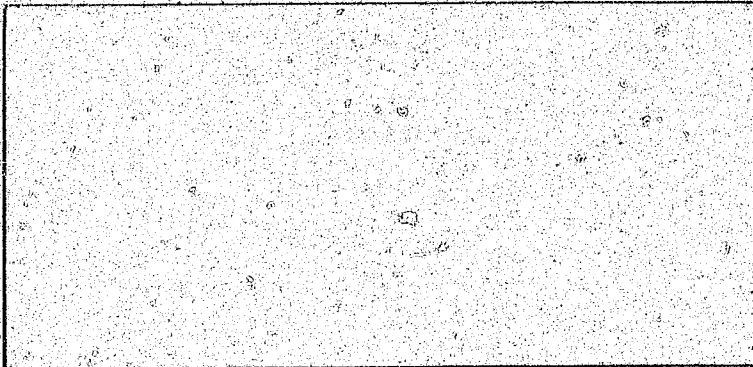
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Criminal Courts Technical Assistance Project  
Institute for Advanced Studies in Justice  
The American University Law School  
Washington, D.C.



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MINNESOTA DEFENDER

EVALUATION

July, 1973

NCJRS

MAR 8 1977

ACQUISITION

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Law Enforcement Assistance Administration Contract Number: J-LEAA-043-72

This report was prepared in conjunction with the Institute's Criminal Courts Technical Assistance Project, under a contract with the Law Enforcement Assistance Administration of the U.S. Department of Justice.

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## STATE OF MINNESOTA DEFENDER EVALUATION

### I. INTRODUCTION AND METHOD OF EVALUATION

The Criminal Courts Technical Assistance Project of American University, Washington, D. C., in conjunction with the National Legal Aid and Defender Association (NLADA) undertook an evaluation of the Minnesota Public Defender System with a technical assistance team furnished by NLADA. The evaluation included on-site visits to the two independent and seven state administered public defender operations in Minnesota with a data study of the two judicial districts (Third and Eighth) that operate with appointed counsel. State of Minnesota, Hennepin County, and federal funds were used to conduct this evaluation.

The evaluation team consisted of:<sup>1</sup>

John J. Cleary, Executive Director, Federal Defenders of San Diego, Inc.

Theodore A. Gottfried, Appellate Public Defender, State of Illinois

Patrick J. Hughes, Practicing Criminal Attorney and former Director of Defender Services, NLADA

Professor Bruce R. Jacob, Clinical Law Professor, Ohio State University School of Law

Stanley C. Van Ness, New Jersey State Public Defender

John D. Schullenberger, Attorney, Juvenile Litigation Office, Legal Aid Society of Chicago

Vincent J. Zicardi, Chief Defender, Defender Association of Philadelphia

A brief biographical sketch of the evaluators is attached as Exhibit A.

The evaluation was conducted during the week of 26 February 1973 through 2 March 1973. The evaluators interviewed members of the various organizations providing defender services in Minnesota, judges, prosecutors, and those involved in other court activities,<sup>2</sup> as well as observing on-going court operations and the performance of defender attorneys. Prior to the

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<sup>1/</sup> The team was also assisted by C. Ray Falls, Chief Investigator, New Jersey State Public Defender.

<sup>2/</sup> List of persons interviewed is attached as Exhibit B.

evaluation the team had the advantage of substantial materials<sup>3</sup> including defender caseloads, operation of the Minnesota courts, a description of the defender office staff, and the applicable Minnesota statutes. Information concerning the nature and operation of defender services was obtained, and the persons interviewed were also solicited for comments and suggestions concerning improvement. The ABA Standards Relating to Providing Defense Services (Approved 1968) as well as the ABA 1966 (NLADA 1965) Standards for a Defender System were used as the basic references. This report is a result of a distillation of the reports and interviews, as well as the observation of the team of evaluators, which expresses their considered opinion based upon the collective experience of the evaluators in the field of defender services. The Minnesota courts, prosecutor's office, defender offices, law enforcement agencies, probation departments, county administrator offices, county commissioners, and all other activities connected with the courts were most cooperative in furnishing information concerning the operation of the defender system for which we are most appreciative.

The focus of the evaluation was the state of Minnesota which has 87 counties with a population of 3,805,069 and covers a land area of 79,289 square miles (12th largest state in area). Special emphasis was placed on the areas of the major criminal litigation in the three major metropolitan centers: Minneapolis (Hennepin County, population 960,080), St. Paul (Ramsey County, population 476,350), and Duluth (St. Louis County, population 220,693). In the same fashion that the state of Minnesota represents a mixture of metropolitan and rural areas, the defender systems reflected the community in which they operated. The type of defender system that might work in one part of the state might not be appropriate for another, even though there was a need to evaluate one defender component in comparison with another.

The general conclusion of the evaluators was that the defender services now existing in Minnesota constitute "minimum adequacy," but are in substantial need of immediate improvements to provide effective defender representation and auxiliary services consistent with the meaning of the Sixth Amendment. Five major recommendations are made to better defender services. (See p. 53-54.)<sup>4</sup>

## II. MINNESOTA JUDICIAL SYSTEM<sup>5</sup>

The Minnesota Judicial Council which was organized in 1937 to study organization rules and methods of procedure and practice in the state judicial system also serves as the appointing and approving authority for the office of State Public Defender. The Judicial Council consists of eleven members: the Chief Justice

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3/ The 1968 study by Robert W. Benjamin and Theodore B. Pedeliski entitled "The Public Defender and the Judicial District Process: An Interim Report on the Minnesota Public Defender System" provided a helpful background.

4/ Some of the evaluators who had served on the NLADA evaluation of the Massachusetts' defender system found some striking comparisons in comparing Hennepin County, Minnesota, with Suffolk County, Massachusetts, which defender system was the subject of a not too complimentary review by Mr. Richard Harris, "Annals of Law" (parts I and II) New Yorker, 14 and 21 April 1973.

5/ The reference used was one prepared by William E. Haugh, Jr., The Judicial System in Minnesota 1972 (West Publishing Company). Another handy reference was the Minnesota Judiciary: Structures and Procedures prepared by the League of Women Voters of Minnesota 1972.

of the Supreme Court or a justice designated by him, two judges of the district court, a judge of the probate court, and seven persons appointed by the Governor of whom one shall be a judge on the municipal court and four other attorneys of law with wide experience. The last Biennial Report (1972) submitted by the Judicial Council to the Governor contains an excellent summary of the State Public Defender operation during the period of 1 January 1966 through 30 June 1972.

The Supreme Court consists of a Chief Judge, six associate judges with a provision for an additional two associate judges as established by the legislature. The court sits in two divisions and the Chief Justice presides over each division. The Supreme Court exercises appellate jurisdiction and exercises supervisory control over the lower courts. The Chief Justice is assisted by a state court administrator in the function of the supervising and coordinating the work of the district courts in Minnesota.

The state is divided into ten judicial districts, each which has two or more judges. The district court is the court of general civil and criminal jurisdiction in Minnesota. Attached as Exhibit C is a map of Minnesota divided into the ten judicial districts. The Second judicial district consists of Ramsey County with twelve (12) district judges, and the Fourth judicial district consists of Hennepin County with nineteen (19) district judges. Appeals from inferior courts can generally be made to the district court, and on such appeals the right to jury trial is extremely restricted. Appeals from the district court are on the record to the Minnesota Supreme Court. Petit jury trials in all courts of the state are composed of six members in civil cases, and in criminal cases, where the charge is a gross misdemeanor or felony, the petit jury is twelve (12) in number.

In Hennepin and Ramsey County the district court is also the juvenile court with juvenile court jurisdiction. In other counties of the state, the county court serves as the juvenile court. The juvenile court's jurisdiction is original and exclusive in proceedings concerning any child alleged to be a delinquent, traffic offender, or neglected or dependent. The court also has jurisdiction over persons contributing to delinquency or neglect of a child. Appeals from the decisions of the district court having juvenile court jurisdiction are taken to the Supreme Court, and appeals from the county juvenile court are to the district court. Hearings in juvenile court are conducted without a jury and the juvenile proceeding is divided into the two standard stages: (1) the adjudicatory hearing and (2) the dispositional hearing.

The county courts have jurisdiction over the misdemeanors and ordinance violations committed within the county court district and also have the authority to conduct preliminary hearings on criminal charges.

Recent legislation has reorganized the municipal courts. There is a municipal court for Hennepin County. In Ramsey and St. Louis Counties, there are

municipal courts in St. Paul and Duluth, and there are municipal or justice of peace courts in the balance of the counties. These municipal courts have criminal jurisdiction to try criminal misdemeanors, ordinance violations, and the authority to conduct preliminary hearings. The separate Hennepin County Municipal Court and the St. Paul Municipal Court hear state misdemeanors and ordinance violations and can conduct preliminary hearings on cases arising within their districts. The Duluth Municipal Court has jurisdiction to hear charges of violations of criminal law in which the punishment does not exceed ninety (90) days or a fine of \$300 or both or ordinance violations and to conduct preliminary hearings on charges arising within the county.

### III. CRIMINAL CASES IN MINNESOTA<sup>6</sup>

#### A. Supreme Court

|  | Year: | 1968 | 1969 | 1970 | 1971 | 1972 |
|--|-------|------|------|------|------|------|
| Criminal Appeals and Post Convictions                        |       | 68   | 81   | 87   | 99   | 113  |
| Criminal Cases - Habeas Corpus and Other Extraordinary Writs |       | 27   | 5    | 7    | 3    | 0    |

#### B. District Courts - Criminal Cases Terminated 1 January 1972 through 31 December 1972

| District          | No. of Counties | Total Cases Terminated | Dismissed | Plea Guilty | Court Trial | Jury Trial |
|-------------------|-----------------|------------------------|-----------|-------------|-------------|------------|
| First             | 7               | 391                    | 64        | 298 (76%)   | 17          | 12         |
| Second (Ramsey)   | 1               | 849                    | 153       | 603 (71%)   | 13          | 80         |
| Third             | 11              | 431                    | 80        | 306 (71%)   | 11          | 34         |
| Fourth (Hennepin) | 1               | 1789                   | 0         | 1593 (89%)  | 10          | 186        |
| Fifth             | 15              | 285                    | 36        | 199 (70%)   | 26          | 24         |
| Sixth             | 7               | 402                    | 82        | 258 (64%)   | 32          | 30         |
| Seventh           | 10              | 286                    | 64        | 179 (63%)   | 21          | 22         |
| Eighth            | 13              | 167                    | 21        | 120 (72%)   | 22          | 4          |
| Ninth             | 17              | 602                    | 105       | 464 (77%)   | 12          | 21         |
| Tenth             | 8               | 438                    | 88        | 316 (72%)   | 11          | 23         |
| Statewide Total   |                 | 5640                   | 693       | 4336 (76%)  | 175         | 436        |

<sup>6/</sup> Statistics furnished by State Court Administrator Richard E. Klein.



#### IV. STATE PUBLIC DEFENDER

##### A. Introduction

In 1965 model statewide defender legislation was enacted creating the office of State Public Defender and authorizing the districts the option of establishing a district defender. The purpose of the statute was to unify defender services in Minnesota. The goal was laudable, but in practice it has not been achieved. The state of Minnesota defender services are more readily characterized as fragmented and disjointed. In noting that there was no system of defender services one of the evaluators commented that Minnesota had little more than a modified appointed counsel method of indigent criminal defense representation. Since in the whole state there are only two full-time experienced defender attorneys,<sup>7</sup> this comment is more than a generalization.

The State Public Defender is appointed by the Minnesota Judicial Council for a term of four years. The State Public Defender must be a licensed attorney and can only be removed for cause by the appointing authority. He is to devote his full-time to the performance of his duties and may not engage in the general practice of law.

C. Paul Jones, an accomplished criminal law advocate, administrator, and teacher, is the State Public Defender. Mr. Jones has been the State Public Defender since 1966, and prior to that time he was in private practice. He has held positions as an Assistant United States Attorney, Special Assistant Attorney General, and First Assistant County Attorney in Hennepin County. He has authored a leading text on Minnesota Criminal Procedure. In the drafting of the statewide defender statute he was a principal architect, and he is a recognized national authority on defender services. His imagination and creative ingenuity have brought about many of the improvements in defender services in the last seven years in Minnesota. He is eminently well qualified for his position.

By statute (MSA<sup>8</sup> 611.25), the State Public Defender is to represent persons charged with crime financially unable to obtain counsel on an appeal or post-conviction proceeding to the Supreme Court; to assist district public defenders when they so request; and to supervise and conduct training for all state and district public defenders. Mr. Jones also sees his role as seeking generally to improve the criminal justice system and the education and training of law students for future roles in the criminal justice system. With extremely limited resources, Mr. Jones has done an excellent job at implementing the statutory and ancillary objectives of his office.

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<sup>7/</sup> The four attorneys in the Hennepin County misdemeanor program serve for one year or six months and cannot be considered truly full-time because of their rapid turnover. See also footnote 14.

<sup>8/</sup> Minnesota Statutes Annotated.

## B. Office Structure and Personnel

The State Public Defender may employ assistant State Public Defenders at a salary not to exceed \$12,500 annually. These assistant State Public Defenders may engage in the private practice of law. The State Public Defender may employ "such other employees as may be necessary to discharge the function of the office." (MSA 611.29) At the present time the office has ten part-time attorneys, one full-time investigator, one executive secretary, two secretaries, one bookkeeper, and two law clerks.

### Patrick G. Farnand, Assistant Public Defender

Mr. Farnand is a 1963 graduate of the University of Michigan Law School who has had his own law practice for the last four years. His offices are located in Minneapolis, and he had previous criminal law experience with one of the district public defenders.

### Henry H. Feikema, Assistant Public Defender

Mr. Feikema is a 1952 graduate of the University of Minnesota Law School and is an experienced trial lawyer who has served as an Assistant County Attorney and an Assistant Attorney General. He was instrumental in establishing the office of State Public Defender, and he now serves as an advisory counsel to other assistant public defenders and district public defenders. He continues to participate in the training courses, and he has a high opinion of the State Public Defender.

### Marvin J. Green, Assistant Public Defender

Mr. Green is a 1960 graduate of William Mitchell College of Law, and from 1965 through 1969 he was an assistant part-time public defender in Ramsey County. Mr. Green's work consists entirely of post-conviction proceedings in Ramsey and Hennepin Counties, and his services are at the trial level only. This attorney provides representation at evidentiary hearings, but the petition for post-conviction relief is prepared at the office of the State Public Defender. His principal work involves review of pleas of guilty. Mr. Green also teaches an advanced course in criminal justice at the William Mitchell College of Law and teaches one day in a nine-week police science course. Approximately ten percent of his law firm's work involves criminal law.

### Ronald L. Haskvitz, Assistant State Public Defender

Mr. Haskvitz is with the same law firm as Mr. Feikema and is a 1963 graduate of the University of Minnesota Law School. He is a former law clerk to the Chief Justice of the Supreme Court of Minnesota. During his three years in working on appeals for the State Public Defender, he has prepared briefs in fifty (50) cases, filed two petitions for certiorari in the United States Supreme Court, and filed one federal habeas corpus petition.

**Doris O. Huspeni, Assistant State Public Defender**

Mrs. Huspeni is a 1970 graduate of the William Mitchell College of Law, who previously worked as a law clerk with the Minnesota Public Defender Office for three years. As a part-time staff attorney, she works three days a week.

**Phillip Steven Lange, Assistant State Public Defender**

Mr. Lange is a 1963 graduate of the University of Minnesota Law School who had three years experience as a trial lawyer in criminal cases as an Assistant County Attorney and as Assistant United States Attorney. He has a total of six years experience in private practice, and for four of the past five years has been retained as an assistant Minnesota Public Defender. He is in charge of the Annual Criminal Justice Course.

**Mollie G. Raskind, Assistant State Public Defender**

This staff assistant State Public Defender joined the office during the 1970 - 1971 school year at the same time her husband accepted a professorship at the University of Minnesota Law School. She spends three days a week in the defender office, and her duties include briefing and arguing criminal appeals. She is one of the attorneys who evaluates a prisoner's request for assistance on appeal.

The other assistant State Public Defenders are Donald H. Nichols, who handles post-conviction hearings in out-state counties, and Jerome D. Truhn, who writes briefs and argues appeals in the Supreme Court.

**Christian L. Snoyenbos, Investigator**

Mr. Snoyenbos has been the investigator for the State Public Defender office since 1966. He was a lawyer who practiced in Wisconsin before joining the FBI where he served for twenty-five (25) years. His primary duty is to interview clients at the penitentiary, and on a few occasions he has done investigations for the District Public Defenders.

**Part-time Personnel**

Although the representation of indigent, be it at the trial or appellate level, should involve a substantial participation of the bar by way of individual appointments of counsel, use by the State Public Defender of three half-time attorneys and other retained attorneys with varying degrees of compensation is both inefficient and uneconomical. The use of part-time attorneys is unrealistic, for the three existing part-time defender attorneys who spend approximately three days per week with the program have important outside professional or family commitments that substantially restrict their work on the demanding caseload required of an appellate public defender. The

forty-hour work week is an unrealistic standard, and a defender attorney must be expected to spend far beyond that time when required. Other commitments substantially impair their devotion to defender work. The limited staff available to the State Public Defender is an internal condition that has limited his ability to handle criminal appeals. The staff interviewed were qualified to perform their duties, but the part-time arrangement was a reaction to the extremely limited funds authorized by the legislature.

Where feasible, a cadre of full-time attorneys provides a nucleus that could handle a substantial number of the appeals, and yet funds still could be provided for the State Public Defender to employ retained counsel in certain other cases. To this end, three full-time assistant public defenders should be employed who would be able to more expeditiously process appeals and also develop a reservoir of expertise in handling criminal appeals and post-conviction proceedings. These full-time attorneys would be in a position to visit at least once during the appeal or post-conviction proceeding the confined defendant.

Adequate compensation should be on a parity with that provided for the Attorney General's Office senior staff and should be paid all full-time personnel in the office of State Public Defender. The salary of the State Public Defender should be on a par with a senior member of the judiciary. 9

Although the legal background of the investigator permits him to perform more than the fact-finding role, his use has been restricted to interviews of prisoners which preclude him from any real investigative role. Even if additional lawyers conducted the interviews at the prison, a special investigator would be necessary to provide adequate investigation to support post-conviction petitions and provide, on a limited basis, some assistance to the District Public Defenders.

The clerical staff performed their job well, but to support additional full-time attorneys, it would be necessary to employ one additional legal secretary. To implement the personnel adjustments suggested here, a proposed budget has been included, infra.

### C. Office and Facilities

This state defender office, housed in the University of Minnesota School of Law, has probably one of the most inadequate defender office facilities in the United States. Not only is its inaccessible basement location buried under the library stacks, but its unduly crowded conditions defy description.

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9/ The National Advisory Commission on Criminal Justice Standards and Goals in its Working Papers for the National Conference on Criminal Justice (January 1973) in Court Standard 13.7 stated: "The public defender should be compensated at a rate not less than the chief judge of the highest trial court of the local jurisdiction."



The offices are demeaning, and if any client with the good fortune to be at liberty on bail pending appeal would visit the office he would harbor serious distrust of his attorney's competence.

The one-room office of the State Public Defender houses the State Public Defender, a secretary, a bookkeeper, a law clerk, and several bookshelves in the middle of the room. Another office contains two secretaries, files and records. The third office has space for two or three attorneys plus the investigator. Although there is easy access to the law library, the crowded conditions create a depressing effect. The lack of air conditioning apparently makes the offices almost unbearable in the summer. In the winter, it is our understanding that the offices are chilly. The absence of windows isolates the occupants. These overcrowded offices must be substantially upgraded and expanded, for they are completely inadequate and interfere with rather than facilitate efficient work. The standard to be used is that of a modern contemporary law firm, for even though the appellate defender does not have substantial client contact, he or his attorneys should be able to receive clients as well as interested relatives and friends. An office that appears second rate creates the impression for the client or his relatives that the legal services provided are of like kind.

The defender office is properly equipped with good typewriters and dictation equipment, but each attorney should have a separate dictation unit. The adoption of a cassette tape-recording system would be economical, both for recording units (approximately \$50 each) and transcription units (approximately \$220). If prisoners were interviewed at the institution, a tape recording could be made of the salient points of the interview for later transcription and inclusion in the file. Reproduction equipment of some sort should be acquired by the office even though the State Defender Office has limited access to the Xerox machine of the law school.

#### D. Caseload

All the several defender offices fail to maintain uniform and accurate statistics. The State Public Defender is and should be the natural repository for such information, but the voluntary furnishing of this information leaves much to be desired.

#### Direct Appeals

| <u>Year</u> | <u>Briefs Filed in Supreme Court</u> | <u>Appeals Filed</u> | <u>Appeals Dismissed</u> | <u>Relief Granted or Remanded</u> | <u>Petition for Rehearing</u> |
|-------------|--------------------------------------|----------------------|--------------------------|-----------------------------------|-------------------------------|
| 1966        | 47                                   | 69                   | 4                        | 2                                 | 1                             |
| 1967        | 43                                   | 76                   | 10                       | 4                                 | 0                             |
| 1968        | 37                                   | 52                   | 11                       | 9                                 | 3                             |
| 1969        | 25                                   | 83                   | 26                       | 13                                | 2                             |
| 1970        | 50                                   | 64                   | 16                       | 16                                | 1                             |
| 1971        | 69                                   | 58                   | 18                       | 8                                 | 3                             |
| 1972        | 59                                   | 59                   | 21                       | 9                                 | 1                             |

### Habeas Corpus and Post-Conviction Proceedings

| Year | Petition <sup>10</sup><br>Filed | Hearings | Relief<br>Granted | Appeal<br>Filed | Briefs Filed in<br>Supreme Court | Relief<br>Granted |
|------|---------------------------------|----------|-------------------|-----------------|----------------------------------|-------------------|
| 1966 | 63                              | 41       | 12                | 43              | 18                               | 0                 |
| 1967 | 70                              | 32       | 11                | 39              | 23                               | 4                 |
| 1968 | 66                              | 68       | 9                 | 44              | 20                               | 2                 |
| 1969 | 43                              | 35       | 7                 | 21              | 23                               | 2                 |
| 1970 | 32                              | 28       | 5                 | 17              | 22                               | 1                 |
| 1971 | 21                              | 33       | 1                 | 17              | 16                               | 1                 |
| 1972 | 11                              | 14       | 1                 | 10              | 13                               | 0                 |

During 1972 the State Public Defender filed fifty-nine (59) appellate briefs, eleven (11) post-conviction petitions, and thirteen (13) post-conviction appellate briefs for a total of eighty-three (83) petitions and briefs. This caseload could be more efficiently handled by three or four full-time appellate defenders instead of the ten part-time attorneys and four stand-by attorneys. A rule of thumb to measure appellate caseload is the expectation that a full-time appellate defender will produce between twenty-four (24) to forty-eight (48) appellate briefs per year. C. Paul Jones is primarily an administrator, and an adjustment should be made in the appellate program so that he would have three full-time attorneys (at least one with substantial criminal law experience) on his staff. The number of part-time attorneys should be drastically reduced, and it is doubtful that more than four part-time attorneys would be necessary. To the extent feasible, efforts should be made to achieve full-time positions so that these attorneys will not be distracted by outside commitments.

#### E. Quality and Scope of Appellate Defender Services

After a defendant is sentenced in the district court, neither the court nor his counsel advise the prisoner of his right to appeal. The notice of appeal is to be filed in the district court within six months. Although the time period is substantial, the defendant-prisoner now receives no advice at an early stage concerning his right to appeal. In only rare cases will the State Public Defender be alerted to the appeal by trial counsel. After his arrival at prison, the defendant is not advised of his appeal, and after several months he may learn by word of mouth of this right. The inmate then writes to the State Public Defender, who in response sends him a questionnaire. The inmate completes this form on his own except for some help from a case worker. The form is returned to the State Public Defender, and thereafter, the investigator goes to the prison to talk with the inmate. The lawyers of the office of State Public Defenders do not visit the prison or interview the clients. Approximately the same time as the inmate interview, the defender office obtains the available (common law) record of the case which includes the docket entries, the transcripts of the plea, suppression, and sentencing

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<sup>10/</sup> Of the total post-convictions, over two thirds were taken from pleas of guilty.

hearings. A transcript of any other trial proceedings would not be available at this time. The attorney makes an evaluation of the case on the available record. If there is merit, a notice of appeal is filed and the trial transcript requested. If appeal is believed to have no merit, the inmate is sent a letter discouraging his filing of an appeal, but if the inmate is insistent, an appeal will be filed. The procedure for a post-conviction petition is similar to that of the appeal.

The State Public Defender does not enter the case at a sufficiently early point to insure reasonable continuity of service after the termination of the indigent criminal case in the district court. At the time of sentencing neither the district judge nor the defendant's attorney advises him of the right to appeal, and the imprisoned defendant must fend for himself to seek such relief. Although Minnesota permits the appeal to be filed within six months after sentence, this procedure only fosters unnecessary delay. The district court should be under an affirmative duty to notify the defendant at sentencing of his right to appeal, and if he is without funds, his right to appeal in forma pauperis. See ABA Standards Relating to Criminal Appeals, Standard 2.1(b), Federal Rules of Criminal Procedure, Rule 32(a)(2).

The procedure for evaluating an appeal on the basis of the clerk's records (official papers in the district court file) is grossly inadequate. If new or different counsel is going to evaluate the proceedings in the district court, this appellate counsel should not only review the official records but should review the verbatim transcript of the in-court proceedings. Cf. Hardy v. United States, 375 U.S. 277 (1964). The low percentage of litigated cases would not make the transcripts as costly as the legal speculation that would have to be made from the clerk's record alone.

During the evaluation it was noted that Minnesota has no intermediate appellate courts and that a great burden was placed upon the Minnesota Supreme Court which sits in two divisions to handle the growing caseload. Although it is worthwhile to discourage frivolous appeals, the State Public Defender, as an advocate for the confined defendant, should not be forced to act as a screening device to discourage appeals in criminal cases. If the appellate defender, after a complete and careful review of the record finds no merit, there is an appropriate procedure for handling that appeal, Anders v. California, 386 U.S. 738 (1967), however, experienced appellate defenders have found it best to pinpoint at least one arguable point and present it succinctly to the appellate tribunal for review rather than reviewing every possible issue and discounting the point under the Anders procedure. The limited staff of the State Public Defender also causes him to be most conservative with his manpower resources.

The senior investigator conducts most of the initial prison interviews with the prisoner concerning whether the prisoner will go forward with the appeal. Since this appellate defender convinces one out of three persons desiring an appeal that such appeal has no merit, the review preceding that judgment should be most professional. The better practice would indicate that after a

notice of appeal is filed, the State Public Defender immediately acquire a complete copy of the record of proceedings in the district court. <sup>11</sup>(If better control was fostered over the district court defender by the State Public Defender, a trial memorandum outlining the issues for appeal could be presented to the appellate defender which would both simplify and expedite appellate review.) At the same time the record was being obtained the investigator could contact the defendant to obtain personal background information on the individual and the case and investigate the possibility of a motion for bail pending appeal. The investigator should inform the defendant of the procedural steps involved in the appeal. After the attorney has reviewed the record and the information from the investigator, the attorney, in person or in writing, should advise the defendant of the results of his legal analysis of the record. If it entails a post-conviction proceeding, the matters affecting the case that are outside the record should be investigated prior to the rendering of his opinion. His opinion should be that of an advocate, and if there is arguable merit, it should be promptly and properly presented to the reviewing court. The defendant should be furnished a copy of all pleadings filed in his behalf.

"Justice delayed is justice denied." The tendency to expect the late appeal to be treated as a post-conviction proceeding is unwarranted and legally precarious. During the evaluation we were advised that the post-conviction petition could raise any matter that could have been raised on a direct appeal, but such notion is against the general view that the post-conviction petition is limited to constitutional errors or matters not contained in the record. If error did exist in the original proceeding, it should be promptly asserted on an appeal. A timetable or schedule for an expedited appeal should be developed so that the time period from the filing of the notice of appeal to the filing of the record should not exceed forty (40) days, the appellant's brief to be filed not later than thirty (30) days thereafter with a maximum of six months from the filing of the notice of appeal to appellate disposition.

A "no-man's land" exists with respect to appeals from juvenile proceedings and misdemeanor convictions. The State Public Defender has taken only one such appeal and exercises discretion in accepting such appeals because of limited manpower, and the local district defenders or appointed counsel do not regularly follow through on such appeals because they look upon their efforts as restricted to the courts within the judicial district. The State Public Defender should take the initiative to see that appeals are properly presented to the district court from inferior courts and is under an existing statutory responsibility to take any appeal from the district to the Supreme Court. This limited interpretation of the State Public Defender's role is dictated by his unduly limited manpower resources and an unjustified adverse feeling of some district defenders to his assistance at the district court level.

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11/ Although the district court could determine that the appeal was frivolous, a record would still be necessary to review the correctness of this determination.



The service that State Public Defender renders to district defenders should be enhanced, for this appellate defender staff has done research and memoranda for district defenders. This was a goal of the unified defender services, but the State Public Defender to properly accomplish this end needs at least one full-time attorney for this service.

#### F. Governing Body

The Minnesota Judicial Council was considered by some to be the "alter ego" of the Supreme Court and not truly representative of the needs in the districts. Since the Minnesota Judicial Council does have the responsibility for the operation of the statewide defender office, it should insure adequate representation from the various communities served. One suggestion might be for the Judicial Council to establish a public defender committee which could include additional district and municipal court judges, defenders, attorneys, and possibly even lay persons, which could serve as an advisory committee to the Judicial Council on the operation of defender services generally throughout the state. This broadly based group might be able to coordinate the many separate defender activities. During the last budget hearings before the State Legislature the State Public Defender had to appear alone in seeking a modest budget for constitutionally required legal services. Representatives of the Judicial Council should have been there with him to give him the support that he needs to obtain the funds to make his office run effectively.

#### G. Attitude of the Supreme Court

The Chief Justice<sup>12</sup> and the six associate justices, as well as the State Court Administrator and Supreme Court Commission, are justly proud of the professional competence of the State Public Defender and his staff. The Supreme Court itself is faced with an increasing calendar and was appreciative that the appellate defender did not pursue frivolous appeals. This concern might have a negative influence on an understaffed appellate defender. No influence of the Supreme Court was found concerning the operation of the State Public Defender office or the selection of his staff.<sup>13</sup>

#### H. Training Program

Since 1966, the State Public Defender has conducted an annual criminal justice course in conjunction with the Attorney General, the Minnesota County Attorneys Association and the Continuing Legal Education program of the Minnesota State Bar Association and the University of Minnesota. A copy of the program

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<sup>12/</sup> It should be noted at the initiative of Chief Justice Knutson that this most progressive defender legislation was enacted and a grant of \$120,000 obtained to commence this improved defender service in Minnesota.

<sup>13/</sup> Although this report refers to the undue judicial control, it was not meant to apply to the operation of the Minnesota Judicial Council over the statewide defender system. If anything, this Judicial Council should take a more active role in support of defender services.

of the 7th Annual Criminal Justice Course, conducted on 6 - 8 September 1972 in Bloomington, Minnesota, is attached as Exhibit D. This once-a-year program fills a vital need, and the State Public Defender in the past has prepared excellent materials and handbooks to supplement this training. In addition to this annual training the State Public Defender might institute half-day regional seminars focusing on a particular topic of local needs. Also, a monthly newsletter with recent criminal cases decided by the Minnesota Supreme Court as well as other state and federal court decisions would even further enhance the support to be given defenders at the district and municipal court levels. The training programs might also be preserved on audio or video tape for replay to different groups at different locations.

The student program, referred to in other parts of this report, is an integral part of the State Public Defender office and is a primary advantage of housing the office in the law school. Students have an opportunity to review a live criminal case, in the form of an appellate record or at the hearing of a traffic or municipal court proceeding, and in return they can provide valuable research. Two law students, Mary Burns and Thomas Seifert, prepared a comprehensive and timely article entitled "Procedures for the Adult Corrections Commission and Youth Conservation Commission to Follow Relative to Parole Revocation to Comply with Morrissey v. Brewer, 408 U.S. 471 (1972), and Beyond." The work of the law students is strongly encouraged.

#### I. Records and Statistics

The State Public Defender is the repository for all the case files in which his office has provided legal representation, but the attorney to whom the case is assigned keeps the file in his own office while the case is active. The files should be standardized, and if the number of part-time attorneys were reduced, needed centralization of files could be achieved. A review of these files will provide an excellent guide to the standard of performance of the various attorneys. If full-time attorneys were employed the advantage of centralized files would also be a boon to research.

The forms used by the State Public Defender are unduly stereotyped, especially the initial advice letter (which is being rewritten). The tone of the letter discourages an appeal and is inconsistent with the role of a prospective advocate. If appeals were initiated at the time of sentencing as suggested by this report, this letter would have to be greatly revised. Other forms should not be printed, for a short individually typed letter (following a format) personalizes that relationship with a client.

Existing case statistics reveal only the number of cases without further comment. The counting of cases is never a fair measure of an attorney's work, and a better guide would be the use of a time recording system whereby the attorney might be expected to charge six hours each day (if full-time) to one or more cases. A file should also contain a summary diary sheet of the work performed and action taken by the court. A sample Case Diary and Time Sheet is attached as Exhibit E.

The existing statistics of the State Public Defender should be maintained, and the State Public Defender should be charged with the responsibility (by statutory amendment if necessary) of collecting statistics on all defender services in the State of Minnesota, whether or not that defender service is now under the umbrella of the 1965 defender legislation. The State Public Defender is in an ideal position to collect and compile this necessary information by which to determine the effectiveness of the defender services.

J. Finances and Budget

The budget for fiscal year 1973 (1 July 1972 - 30 June 1973) is summarized as follows:

Personal Services (Annual)

|        |                                       |          |
|--------|---------------------------------------|----------|
| Staff: | C. Paul Jones (fulltime)              | \$27,500 |
|        | Assistant Public Defender (part-time) | 9,372    |
|        | Assistant Public Defender (part-time) | 8,328    |
|        | Assistant Public Defender (part-time) | 8,328    |
|        | Investigator (fulltime)               | 10,956   |
|        | Executive Secretary (fulltime)        | 8,328    |
|        | Senior Accountant Clerk (fulltime)    | 7,692    |
|        | Legal Secretary (fulltime)            | 6,828    |
|        | Legal Secretary (fulltime)            | 6,312    |
|        | Law Clerk (part-time)                 | 4,440    |
|        | Law Clerk (part-time)                 | 3,200    |

Total \$101,284

Outside part-time attorneys \$ 63,809  
(11 attorneys or combination thereof earning from \$11,400 to \$225)

Other Office Overhead 44,669  
(Includes \$24,000 for records)

Total \$209,762

Proposed Budget:

|                   |                        |           |
|-------------------|------------------------|-----------|
| Fulltime Staff:   | State Public Defender  | \$ 33,500 |
| (except part-time | Deputy State Public    | 25,000    |
| law clerks)       | Defender               |           |
|                   | Assistant State Public | 20,000    |
|                   | Defender IV            |           |
|                   | Assistant State Public |           |
|                   | Defender III           | 18,000    |
|                   | Assistant State Public |           |
|                   | Defender II            | 16,000    |

|                         |            |
|-------------------------|------------|
| Investigator, Senior    | \$ 12,000. |
| Investigator            | 11,000     |
| Executive Secretary     | 8,300      |
| Senior Accountant Clerk | 7,700      |
| Legal Secretary         | 6,800      |
| Legal Secretary         | 6,800      |
| Legal Secretary         | 6,300      |
| Law Clerk               | 4,500      |
| Law Clerk               | 3,200      |

|       |           |
|-------|-----------|
| Total | \$175,600 |
|-------|-----------|

|  |           |
|--|-----------|
| Outside Part-time Attorneys<br>(Transition device to employ part-time<br>defenders and pay other part-time<br>attorneys for cases they have already started) | \$ 50,000 |
|--|-----------|

|  |        |
|--|--------|
| Other Office Overhead<br>(Includes additional \$20,000 for rent to<br>obtain adequate offices) | 64,700 |
|--|--------|

|       |           |
|-------|-----------|
| Total | \$293,800 |
|-------|-----------|

Although the proposed budget for the office of State Public Defender creates four full-time positions, adds an investigator and a legal secretary, and includes an additional \$20,000 for rental of adequate space, the annual budget is increased only \$80,000. This increase would initiate the needed changes for this defender office to adequately perform its statutory objective. The proposed budget is a flexible guideline that conforms to several of the suggested changes contained in this report. The proposed budget includes the sums paid for transcript, but this expense should not properly be charged to the defender office.

#### K. Attitude of Clients

Under the present system the convicted defendant is not affirmatively given advice concerning the possibility of an appeal. The court does not advise those convicted of the right and the prison officials do not advise or inform prisoners of such rights. The prisoner learns of the right of an appeal by the "grapevine," and the burden is on him to institute the appeal. The questionnaire sent by the State Public Defender to the prospective applicant is an obstacle to overcome, and the investigator is not an adequate substitute for a direct interview with an attorney. Although the use of questionnaires may be of assistance in post-conviction proceedings as distinguished from direct appeals, attorney-client contact needs to be increased to demonstrate that the defender is the advocate for the prisoner-appellant. The reputation of the work of the State Public Defender Office is not very high among prison inmates. Although the rate of success of the State Public Defender on appeal is not great (a factor that is more often dictated by the merits of the record rather than by the skill of the advocate), the State Public Defender must improve the quality of zealousness on appeal which could be accomplished by making

efforts to obtain bail pending appeal for confined appellants. An ameliorative improvement from the viewpoint of the prisoners as well as the evaluators would be the creation of appellate review of sentencing (See ABA Standards Relating to Appellate Review of Sentences), for many prisoners institute proceedings only for this purpose.

## V. FOURTH DISTRICT DEFENDER SERVICES (HENNEPIN COUNTY)

Hennepin County best exemplifies the conflict between the fragmented and overlapping defender services. The State Public Defender provides representation on appeals to the Supreme Court from this district as well as the post-conviction proceedings within this district which may later be appealed. Also, the misdemeanor program in the municipal court is operated by the State Public Defender staffed by energetic, hard-working full-time defender attorneys who are fresh out of law school and serve but one year. The district court public defenders are part-time, older, experienced trial lawyers with substantial law practices. The lawyers of the Legal Rights Center are aggressive and skilled advocates who restrict their representation in criminal cases to minority groups, primarily blacks and Indians. The present amalgam of defender services should be unified, but the serious defects in certain programs should be positively eliminated so as not to permit the consolidation to become a conduit that would infect one defender with the weaknesses of another.

### A. Municipal Court Defender Services

Hennepin County has contracted with the State Public Defender to furnish legal representation in misdemeanor cases. The office is staffed with a public defender (\$18,500 per year), three assistant staff public defenders<sup>14</sup> (\$12,500 per year each attorney), two secretaries (\$7,500 per year) and ten law school summer interns (\$1,500 total), and one full-time investigator (\$8,400 per year) who was to start the Monday after the evaluation visit was completed.

The five most dedicated and hardest working lawyers were the five full-time attorneys working in the Hennepin County Municipal Court. The then director of the program, Steven Champlin, who was a 1969 graduate of the University of Minnesota School of Law and was on a leave of absence from the litigation department of the firm of Dorsey, Marquart, Windhorst, West and Halladay, acknowledged that the six-month period for which he was loaned from the law firm was not sufficient to provide necessary expertise to direct the program. Nonetheless, it did provide an experienced attorney who would not otherwise be available to direct this program at the salary now established. Although the director is a capable trial lawyer, he had to learn his business

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<sup>14/</sup> The misdemeanor program has only four attorney positions, but in one of those positions two different attorneys rotate every three months. Reference is made to five attorneys but not more than four are participating at any one time.

from the assistant public defenders who served a longer term of one year. The director of the misdemeanor defender program should be an experienced attorney who could provide continuing guidance and expertise for the younger assistant public defenders. The trial and disposition of misdemeanor cases does require senior staff expertise that cannot be gained from a short-term director. The director of the program never really separated from his parent law firm, and the temporary nature of the position puts him in the same category as if he were only a part-time attorney.

The participation by law firms who allow members of their staff to serve with the defenders as their community contribution should be encouraged, but hopefully such firms will provide attorneys without compensation for short periods (one to three months). These attorneys should not direct the program even if they have substantial civil practice experience.

The four assistant public defenders exhibited the sincerity, dedication and drive characteristic of the lawyers that the evaluators would consider employing in their own offices. William Forsyth was a 1971 graduate from the University of Minnesota Law School and placed in the upper ten percent of his class. Like other assistant public defenders he previously served as a law clerk in the program, and this provided him with an understanding and expertise in the work prior to his formal admission to the Bar. Deborah Hedlund was a 1972 graduate from the University of Minnesota Law School with a good academic record and was admitted to practice in October 1972. Her litigation and moot court courses in school as well as her participation as an intern in this defender program made her an effective trial advocate. Phillip Marron<sup>15</sup> was a 1972 graduate of the University of Minnesota Law School who also had the advantage of serving as a law clerk in the defender program. Mark Peterson<sup>15</sup> is a twenty-five (25) year old attorney who entered in July 1972 the program as a legal intern and will stay with the misdemeanor program for only one year (October 1973). This 1972 University of Minnesota law graduate explained the rotation system whereby assistant public defenders are rotated through the suburban municipal courts (on Monday St. Louis Park, on Tuesday Bloomington, on Wednesday and Thursday downtown). Mr. Peterson was asked for his view as to the number of attorneys that would be necessary to provide a service comparable with that of private counsel, and he indicated that it would take twenty-five (25) attorneys. This claim is to be contrasted with the statement of Steven Champlin that this work could be handled by six full-time attorneys. Mr. Peterson pointed out that he worked approximately eleven (11) hours each day and that one of the greatest deficiencies of an attorney providing misdemeanor representation was that after a period of one year he was "burned out." Two former attorneys in the misdemeanor program described

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15/ The two rotating lawyers. See footnote 14.



the experience as beneficial, but they could not see any attorney spending more than one year in such demanding and exhausting work. These comments clearly support the need for an integrated defender service, at least within the county, so that attorneys could be rotated through different roles in a defender office. Again, assuming that the attorney would remain only one year in this type of work, this fact puts them on a par with a part-time attorney who has only a transitory commitment to providing defender services and a limited ability to gain expertise.

One of the distinct advantages of Hennepin County's contract with the State Public Defender and the involvement of the law school was that in addition to the services of the law student, there were the most invaluable services of the Professor Robert Oliphant and that of Assistant State Public Defender Rosalie Wahl. Both these attorneys served as an integral part of the services rendered by the misdemeanor defender program, and they took scheduled assignments with the downtown municipal court.

Although this was one of the best components of defender services provided in Minnesota, there were areas in need of immediate improvement. The offices at the law school were less than adequate, and the lack of adequate equipment, especially dictation equipment, was a deficiency. The lack of supplies was best manifested by the fact that attorneys had to scrounge for note pads. There was no reimbursement for travel, and although overtime would not be appropriate in the case of professionals, salary should be increased so as to recognize the long hours provided by these attorneys. It would be even better, however, as suggested below, to increase the full-time staff.

The hiring of a third year William Mitchell Law School student, Bryan Palmar, as an investigator would not meet the need of a fully experienced hard-charging investigator necessary to support the legal services rendered throughout the municipal court system. An investigator is a fact finder who has to spend substantial time on the streets, and the commitment to law school would seriously detract from doing such a first rate and necessary service.

To implement the requirements of the Sixth Amendment and the laws of Minnesota in providing requisite defender representation in the municipal courts, the following staff complement for the misdemeanor program is suggested:

|   |                 |
|---|-----------------|
| Director, misdemeanor public defender program   | 1 Attorney      |
| Assistant Public Defenders  | 9 Attorneys     |
| (Six assistants for trial and arraignments in downtown municipal courts, two for the outlying courts, and one for action appeals) |                 |
| Investigators   | 2 Investigators |
| Secretaries   | 3 Secretaries   |

The use of compensated law students should be substantially reduced, for law students gain a valuable clinical educational experience and academic credit by participation in the program for which they should not receive compensation. The function of the defender office is to provide a community legal service required by law, and the law school can by participating in the program and sponsoring the students, serve the community and provide the students with an extraordinary educational opportunity.

The statistics kept and provided by the misdemeanor program in 1972 were in need of substantial revision. It appears that representation was furnished in approximately 4,500 closed cases which involved 636 court trials and 53 jury trials. Additional effort should be made toward having at least a minimum file kept on each client served. The heavy caseload precluded effective supervision by senior attorneys, although Professor Oliphant was the invaluable mentor and advisor for these young attorneys. Although a handbook was available for law students participating in the misdemeanor program, no such materials were found available for the public defenders handling misdemeanor cases. Excellent examples of some good training materials were available in a Municipal Court Bench Book dealing with the trial of a typical misdemeanor case published by the State Court Administrator.

This misdemeanor defender program, although in need of substantial improvements, probably has the best potential of any of the various existing defender programs, and any unification of this system should not work to the detriment of the quality now being furnished by this program.

## B. Juvenile Court Defender Services

### 1. Personnel

The Hennepin County Juvenile Court is currently serviced by seven part-time public defenders. One additional attorney has been hired and will begin shortly. These part-time defenders are compensated for twenty (20) hours per week of service, although the time actually spent varies, depending upon the court caseload. These part-time defenders handle most of the cases in which attorneys appear in juvenile court. The system was set up with the urging and approval of Judge Lindsay Arthur, in order to provide a daily coverage of three lawyers to receive appointments when indicated. All of the defenders are either employed by a law firm or maintain an outside law practice.

By statute, Minnesota Statutes, Chapter 260, jurisdiction over juvenile proceedings in counties having a population of over 200,000 is vested in the district court. In Ramsey County, the judge designated as the juvenile court judge is chosen by the judges of the district court, while in Hennepin County, the district court judge, juvenile court division may either be appointed and designated as such or be elected during a general election. The juvenile court in St. Louis County (Duluth) is a county court responsibility. All other counties under 200,000 have juvenile jurisdiction vested in the county court.

In Hennepin County, there are four referees in the juvenile court, in addition to Judge Lindsay Arthur. Only one of these four referees, however, hears contested matters. The other three conduct only arraignments and dispositions. The reason for this is that although two of the four referees are lawyers, only one, Referee Chapman, has engaged in private practice and is familiar with the rules of evidence. Thus, only Judge Arthur and Referee Chapman conduct trials in juvenile court. Referees are appointed by and serve at the pleasure of Judge Arthur. Moreover, the judge has authority to appoint probation staff. Hence, the Hennepin County Juvenile Court is a very accurate reflection of the well-ordered appearance and personality of Judge Arthur.

Under the Minnesota Juvenile Court Act (Ch 260.131), any "reputable" person may file a petition to invoke jurisdiction. It is rather apparent, however, that most petitions are in fact screened by, if not filed by, the Department of Court Services or the Probation Department, particularly those dealing with dependency or termination of parental rights.

## 2. Comments of Judge Lindsay G. Arthur, Juvenile Court Judge

The Hennepin County Juvenile Court is Judge Arthur's show. One gets the impression that everyone who operates within the court was hand-picked. Like the people who work there, the juvenile court is clean, attractive, unruffled, and benign. Although Judge Arthur regards the role of an attorney as integral to the functioning of his court, it is rather clear that the atmosphere for all appearances, is nonadversarial as is evidenced by the relatively few number of trials. Judge Arthur states that the part-time public defender system was his idea and was designed to attract more experienced and "well-rounded" attorneys than that which a full-time public defender system could recruit.

Judge Arthur outlined the filing system as follows: In delinquency matters, the Police Department or "any reputable person" may refer a charge to the Intake Department of the juvenile court where it undergoes a social screening process to determine if the juvenile court is needed in the particular case. From Intake, it is referred to the county attorney, who reviews the matter to determine whether there is a case and whether it is in the public interest to proceed. Thereafter, the administrative section of the court draws the petition. Depending upon the individual circumstances, the county attorney may or may not review the final petition for legal sufficiency. The public defender is never involved in any of these stages of filing but appears initially at arraignment. Judge Arthur characterized the arraignment proceeding as perhaps the most critical aspect of juvenile matters for it is at such point that the legal rights of the minor are invoked insofar as the determination of his right to counsel and whether or not he shall be held in custody. Judge Arthur thought the present number of referees and one district judge were adequate to handle the existing caseload. He commented

that it was not necessary to have anyone other than himself and Referee Chapman to hear trials since all referees can enter dispositional orders and conduct arraignments. Judge Arthur felt that his court was very non-institutionally oriented and that only in cases where there is a determination that a child need security, is he waived into adult jurisdiction and treated as a criminal in order to secure his commitment to the youth program at St. Cloud. All matters which require nonsecure "commitment" are treated locally at the county level. The counties maintain small programs such as the Hennepin County Home School.

Judge Arthur indicated that there was a definite need to get funds and personnel to handle juvenile appeals. One attorney had appealed fourteen (14) of his decisions and the judge was affirmed thirteen (13) times. With respect to appeals, Judge Arthur stated that he was in the process of working out an arrangement with the Minnesota Supreme Court whereby if the public defenders would file notices of appeal in appropriate cases, the court, which authorized a party to proceed with appointed counsel, would pay for such representation. Evidently, he was concerned that his court might be liable for the expenses of in forma pauperis appeals.

By and large, Judge Arthur was quite satisfied with the performance of his court and appeared willing to match it up against any other in the country. He is currently serving as president of the National Council of Juvenile Court Judges, a position of national prominence. His view of the public defender system is that it contributes to the smooth functioning of the juvenile court. The judge was reluctant to comment on the use of law students in the juvenile court.

### 3. Operation of Hennepin County Juvenile Court

The relationship between the prosecutors in juvenile court and the part-time public defenders was quite amicable, and they had an open file policy and most cases were resolved through negotiation. The disposition, of course, cannot be negotiated in juvenile court except to the extent that only certain alternatives, most of them not involving incarceration, are available. Negotiation most often takes the form of an admission to one charge in exchange for the dismissal of others. Assistant County Attorney Jim Albrecht stated that his office does not screen juvenile petitions except after they have been referred to the court and processed through the Intake Department, that is, the Probation Department. Intake draws up the petition and when requested, the county attorney reviews it for legal sufficiency.

Although the defenders claim to handle close to 8,000 hearings per year, many of these are detention or arraignment matters and are very brief. Very few matters are contested and result in trials; thus most hearing time is devoted to detention, arraignment, disposition and violation (dispositional hearings where a new petition is read) matters.

#### 4. Court Procedures and Hearing Observation

In Hennepin County Juvenile Court, a public defender, according to Judge Arthur, "is always present" at arraignments and violation hearings. A minor's first contact with his appointed counsel is in the Juvenile Court where he is interviewed in one of several small rooms provided mainly for probation officers. The defenders do not, except on rare occasions, meet with their clients in their private law offices. The majority of client contacts are largely in the court building itself.

After the public defender is notified by the Court Services Department, Welfare Department or Probation Department that he is to be appointed, he interviews his client and then appears at the arraignment. There is usually no county attorney present at this hearing, because its purpose is merely to inform the minor of the nature of the petition and to determine whether or not the case will result in a trial. If multiple count petitions are filed, negotiation between the public defender and the county attorney may take place prior to arraignment.

One case observed involved a young girl charged with being beyond the control of her parents and unlawful use of drugs. For an admission on the issue of parental control the drug charge was dropped, which was considered a fairly typical disposition. Few cases necessitated a contested trial. The assertion of technical defenses are taken with the whole case, but very few dispositions required long term commitments.

These hearings in the juvenile court were tape recorded, for there was no court reporter present. The review procedure, if a matter is to be considered via post trial motions, is to transmit the tape recording to Judge Arthur, who listens to the whole proceeding and, in effect, conducts a "mini-appeal."

Very few delinquency matters result in waiver hearings to transfer charges to the criminal court. It is generally only resorted to where it is felt that the child will have to be placed in a security environment, none of which are available for juveniles. One defender attorney stated that he was in the midst of a waiver procedure and had filed motions attacking the constitutionality of the applicable statute on the grounds that there were no identifiable standards to guide the court's discretion.

#### 5. Supervision and Training

Manley Zimmerman, the supervising part-time public defender, is a native of Canada, having moved from Winnipeg several years ago. Evidently, because of his immigrant status, he was not allowed to practice law in the United States for approximately five years. The part-time public defender's salary is an important source of income to him. Mr. Zimmerman states that he spends approximately forty (40) percent of his time handling juvenile cases



as a part-time public defender, often working nights and weekends. He states that he "passively" supervises the other seven lawyers and does not attempt to tell them how to do their jobs. He said he and the other part-time public defenders occasionally get together to discuss cases, hearing techniques, and other approaches to juvenile cases which have proved successful. William Kennedy serves only as an administrator and makes sure that there are enough attorneys available to cover the courts in the Fourth District. Mr. Zimmerman makes sure that each week there are three lawyers at juvenile court each morning and afternoon everyday of the week. He schedules attorneys at certain times on even and odd days so that no part-time defender serves two days in a row in any given week. This is an accommodation to their private practice.

Mr. Zimmerman said he was speaking for the other attorneys when he stated he would like to see more training for attorneys and would welcome on-going information on developments in the law, dispositional alternatives and successful treatment programs. The summer criminal law course is simply not enough. Moreover, he has not set up an initial orientation program for new lawyers in juvenile court. Much is lacking in an effective training program.

#### 6. Record Keeping

Public Defender Zimmerman stated that he does not keep statistics on juvenile cases other than an informal record of the number of cases handled. Apparently, no defender files are kept in a centralized location for juvenile matters. The Court Services Department did not have a record of the number of cases in which the public defenders were appointed.

#### 7. Independence of Representation

The public defenders should have an office available near to the juvenile center where clients could be referred by the Welfare Department or the Court Intake Staff so that the defenders would not appear to be so much a part of the system. A client is suspicious of the defender under the present system. Moreover, if the defenders had an independent base of operations, they could get to service clients prior to arraignment and perform crucial investigations.

No outside attorneys are appointed to represent children in the juvenile court. Under the system set up by Judge Arthur, multiple respondents are appointed different part-time public defenders. Although the public defender was satisfied that there was no conflict of interest in this arrangement since the public defenders act as individual attorneys, the practice is doubtful because notwithstanding the loosely-knit organization, they are all staff members of the same public defender office.



## 8. Comments and Evaluation

The Hennepin County Juvenile Court needs the infusion of the adversary representation of advocates dedicated to the interests of the clients served. Although the well-ordered court was oriented for disposition, improvement of the defender service will more properly emphasize the adjudicatory hearing. The defenders need independence from ever-present judicial control of this court, and the exclusion of outside attorneys did not appear warranted. A shift from the use of part-time attorneys to full-time attorneys would increase the quality of legal service and would not increase the cost for such services. The work of the University of Minnesota Law School program should be encouraged.

### C. District Court Defender Services

#### 1. Organization and Personnel

The Hennepin County Public Defender was created under special statutory authority (MSA 611.12) and is not part of the state public defender legislation (MSA 611.26). He is appointed by a majority of the district court judges for a term of four years. Although the public defender has the legal authority to appoint and remove assistant public defenders, in fact, the district judges exercise great weight in the selection of assistants. The district judges do fix the compensation for the public defender and his assistants (MSA 611.12 Subdiv. 4 and 6).

The 1973 budget for the combined representation for both adults and juveniles was \$242,000. The Chief Public Defender (\$27,300) organized his office into two principal divisions: District Court (including preliminary hearings, in municipal court) and Juvenile Court (under the supervision of Assistant Public Defender Manley Zimmerman), *supra*. Ten part-time attorneys provide representation in the district (two at preliminary hearings, and eight part-time attorneys assist at juvenile court). One full-time investigator (\$13,000 per annum) commenced work 1 January 1973, and one full-time secretary works at the recently opened office at 601 Chicago Avenue, Minneapolis, Minnesota 55415.

William Kennedy, the Public Defender, was last selected in February 1971 for this position. He is recognized as a capable criminal trial advocate, probably one of the best in Hennepin County. He had spent several years with the office rising to the rank of principal assistant before he became the Public Defender. He clearly voiced his steadfast preference for an all part-time staff of eighteen (18) attorneys, even though he was aware that the ABA standards and experience of other defender offices were to the contrary. Because the county would not provide necessary salary increases, retention of full-time personnel was difficult. He preferred seasoned and experienced attorneys, even though he recently hired one new admittee. He strenuously opposed even the consideration that Hennepin exercise the option to join the statewide public defender system. With the construction of a new courthouse

(the necessity of which is obvious to even the casual observer), he hopes to move his distant office into the courthouse. The lack of space for the defenders now distant from the courts was depressing. The evaluators had to schedule meetings with the public defender at the County Attorney's Office, and even the little room provided for the misdemeanor defender program, overstuffed with filing cabinets, was marked on the door entrance as a prosecutor's office. One wonders about the clients' feeling regarding the independence and competency of counsel while being interviewed in such an office. Mr. Kennedy did not have much use for law students; however, he was willing to experiment with three summer law clerks. His attorney training program consisted of a once-a-month meeting with the attorney supervisors and the preparation of an operational manual which may be published as a book. He strongly encouraged a community program in which he and several of the staff attorneys honor speaking engagements with local groups. Mr. Kennedy is an active sponsor of the Police Training Institute, and he has been able to obtain excellent cooperation from the Minneapolis Police Department, especially in the handling of serious criminal cases.

The eighteen (18) part-time attorneys averaged one-half of their time on defender cases. All had substantial outside interests and appeared to provide no more service than required in the defense of indigents. Although prohibited from handling a felony or juvenile case, they were permitted to handle misdemeanors and federal criminal cases. These older lawyers might average about six outside criminal cases a year. All these attorneys preferred the part-time arrangement.

The part-time defenders exhibited precisely the performance predicted by the ABA Standards Relating to Providing Defender Services, Standard 3.2, which urges the use of full-time attorneys, who would not be devoting their principal energies to maintaining or increasing their private practice. The representation of these part-time defenders was neither zealous nor independent, and the retention of some defender attorneys appeared to be based on the fact that they might not be able to independently maintain a law practice without the sinecure of the defender position. The praise of the judges for the existing system is questionable, for judges with crowded calendars would prefer the "quick disposition" oriented defender who has to hurry back to his practice, rather than the aggressive advocate who may advise clients to assert defenses or demand trials. A community the size of Hennepin County cannot continue the existing use of part-time defenders and provide an economic, efficient, and fair defense and quality in legal representation.

A suggested revision of the organization of this office that would better meet the needs of this county would be the following full-time staff:

|                               |                                  |
|-------------------------------|----------------------------------|
| 1 Public Defender             | 2 Preliminary Hearings           |
| 14 Assistant Public Defenders | 7 District Court                 |
|                               | 4 Juvenile Court                 |
|                               | 1 Writs and Appeals Coordination |
| 3 Investigators               |                                  |
| 4 Secretaries                 |                                  |

The above format could easily include the misdemeanor program, but that program would be severely down-graded if the district court public defender office was not completely reorganized. If a merger is to take place, hopefully it would be accomplished after the reorganization of the Hennepin County Public Defender Office. Also, the county would have to make use of appointed counsel in multiple defendant cases, but the involvement of the bar is competitive with and healthy for the institutional defender service.

## 2. Caseload and Statistics

Like other defender activities, standardization is necessary in maintaining statistics. The State Public Defender should be charged with the responsibility of record keeping and for the compilation of such information for the whole state and this district should be a part of that system. This defender office indicates for 1971 it served in 886 municipal court cases and 952 district court cases,<sup>16</sup> but if, as it appears, representation was furnished in a case at a preliminary hearing, it should not be separately counted again when it arrives in the district court for disposition. Also it should be noted that only two attorneys (part-time) appear in municipal court, and that this 886 case figure includes a waiver of preliminary in 513 cases and 53 cases taken over by private attorneys.

In 1971 the Public Defender had 29 of the 219 criminal jury trials of which ten resulted in not guilty verdicts. Of 1717 criminal cases terminated in Hennepin County District Court during 1971 there were 219 juries. The Public Defender went to trial in two percent of his cases, but other counsel in criminal cases went to a jury trial in twenty-five (25) percent of their cases. In that year of 1092 type of offenses, there were three murder cases and approximately forty (40) percent of their cases involved narcotics (controlled substances). Of this number there were 238 commitments to state institutions.

## 3. Attitude of the District Court

The majority of the district court judges were very complimentary of the work of the public defender and his part-time staff. Since several of the district judges were unavailable during the original evaluation visit, a supplemental interview was conducted by two evaluators and their report and comments have been considered and included with this report.<sup>17</sup> To sum up, the close and interdependent relationship between the district court and the Public Defender is unhealthy to the fair implementation of the adversary system inherent to our criminal justice system. The cooperation of the judiciary is vital in developing support for an adequate defender service, but in the same manner

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<sup>16/</sup> The State Public Defender lists 866 cases, but where there was a conflict we used the local statistics;

<sup>17/</sup> Certain proposed legislation has been introduced since our on-site evaluation, but we have limited our comments to the existing defender services rather than commenting on any particular proposed legislation. To the extent that legislation would reduce or eliminate the district court control of the public defender of Hennepin County, we would strongly recommend its adoption.

that the independence of the judiciary is recognized, so also the independence of a Public Defender should be honored.

#### 4. Proposed Structural Changes

Hennepin County should substantially reorganize its defender service. The suggested formats available are:

(1) Adoption of the statewide defender system at the district level (MSA 611.26), but the role of the district judges in nominating the district public defender should be avoided. The State Public Defender should make the nominations, and the input of the district court judges would be of assistance rather than controlling. The misdemeanor program, district court program, and appeal and post-conviction program would be consolidated. The advantage of the statewide system would become more of a reality if Hennepin County so elected. The advantages of a statewide system can be seen from such systems as they now exist (Colorado and New Jersey).

(2) Adoption of an integrated Hennepin County Defender System in which all organized defender programs would be consolidated within the county. After careful consideration of the needs of Hennepin County, we would suggest the creation of a not-for-profit corporation with an independent board of trustees and strong sponsorship and support from the Hennepin County Bar. To fill an old wine bag would be taking a chance at this time, and during an interim period the independent corporation (along the same concept as now suggested at the national level for OEO Legal Services) could, hopefully, function as a neutral composite for the existing fragmented programs. The independence of the attorneys would be improved, for the board of trustees should serve to buffer and blunt improper controls exercised over the defender office. Also, the board of trustees would have the responsibility for upgrading the quality of legal services, and this would entail making changes where necessary in existing programs.

(3) The least desirable alternative is an adjustment to the Hennepin County Public Defender so as to assimilate other defender activities within the county. If such reorganization were writing on a "clean slate," this solution might be feasible. Substantial structural changes to eliminate the district court control and establishment of full-time positions are essential first steps, and even then, an independent public defender commission appointed jointly by the Bar Association and County Board of Commissioners should exercise supervisory control over the operation of the re-structured office.

The single greatest area in Minnesota for reform in defender services is in Hennepin County.

## 5. Legal Rights Center, Inc.

One more indicator in the inadequacy of existing defender services at the district court level is the need for an alternative or competitive defender organization, which is the Legal Rights Center, Inc. The program is three years old and is funded with LEAA funds and local matching funds through the Governor's Commission on Crime Prevention and Control. The local governmental unit sponsoring the grant is Hennepin County. The total budget for 1 July 1972 through 30 June 1973 is \$143,000, and approximately \$42,000 of the local matching funds are contributions from local law firms. The defender program provides: (1) legal representation for indigents (principally minority members), (2) liaison with the clients through community workers, and (3) law reform litigation.

The staff consists of three full-time attorneys, one part-time attorney, four community workers, one secretary and one secretary-receptionist. The senior attorney, Doug Hall, receives a salary of \$20,000 per year, and the other two attorneys receive \$16,000 and \$13,000 per year. The four community workers (\$9,200 - \$11,000 per year) spend half of their time in the minority communities on investigations, referral work, client counseling, or assisting the client's family. The advantages over the public defender are early entry into the case (the public defender must wait until appointed), community resources and support of the client and his family. This defender program not only effectively litigates its cases, but it is most concerned with the critical aspects of sentencing and prepares a plan of rehabilitation that will include sentence alternatives other than prison. This defender office does not take appeals and relies upon the services of the State Public Defender to pursue the appeal on behalf of these clients.

The governing body is a board of directors of not less than three nor more than thirty (30), with staggered terms, composed of the following percentage of representation from: American Indian Movement and Way Community Center (20%), residents of poverty areas (10%), legal advice clinics (10%), youth in poverty areas (10%), participating law firms (20%), and community at large (10%).

This defender office represents approximately ten percent of the district court criminal cases, and this innovational program is designed to secure the "trust" of the clients which it states that the existing public defender service is not able to secure. An evaluation of this program conducted in the summer of 1972 makes excellent comparison with existing defender services and recommends the continuation of this valuable and necessary service.

If defender services were unified in Hennepin County, the existence of this different advocate for indigent minority members should be maintained. If LEAA funds were not forthcoming, Hennepin County should assume financial responsibility for its continued operation in simple recognition of the fact that it provides representation in approximately ten percent or more of the district court criminal cases (170 - 200 cases) that would otherwise need representation by the public defender.

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## VI. SECOND DISTRICT DEFENDER SERVICE (RAMSEY COUNTY)

### A. Prosecution Function

#### 1. City Attorney

The St. Paul City Attorney's Office, located in the courthouse in St. Paul, prosecutes all misdemeanor and municipal ordinance violations occurring in the city of St. Paul. Such prosecutions are conducted by the criminal division which consists of seven attorneys headed by Keith Hanzel, its chief. This division also prosecutes the de novo appeals in the district court. During the seven and one-half month period 1 January 1972 through 15 August 1972, only 642 cases, or about thirty (30) percent of the total, had counsel and of these, 262, or less than half, were represented by the Legal Assistance of Ramsey County misdemeanor program. This would indicate this program averaged about thirty-four (34) or thirty-five (35) dispositions per month. The City Attorney's Office is responsible for the commencement of formal misdemeanor or ordinance violation charges by the filing of a criminal complaint. Such complaint must be authorized by a prosecutor. The City Attorney and his staff are all full-time employees who are not permitted private practice. Salaries for newly hired lawyers begin at \$13,500 and after one year, are increased to \$14,500. The City Attorney has no problem obtaining young lawyers at this salary level. Furthermore, Mr. Hanzel believes that for the office to be efficient, the attorneys must be full-time.

In Mr. Hanzel's view, the misdemeanor project lawyers were better criminal lawyers than many of the private lawyers which clients retain and probably tried more of their cases than private counsel do (i. e., they plead less often). One of the Legal Assistance lawyers, Michael Fetsch, particularly impressed him and he has tried to hire Mr. Fetsch for his office, so far without success. Although he believed that the Legal Assistance Office was taking some cases where the defendants could afford to pay a private lawyer the \$200 - \$250 fee required in an ordinary case, he did not feel this is a serious problem, and he recognizes this occurs in part because the judges often appoint when the defendant says he cannot afford a lawyer and wishes to have one. He also indicated the importance of a defender being available daily at municipal court arraignments because it was his opinion that most defendants who plead guilty on arraignment receive more severe sentences than those who request a trial and plead guilty on the day of trial after plea bargaining with the prosecutor's office.

Insofar as the district defenders were concerned, although Mr. Hanzel had little contact with them in his position, those whom he knew he believed did a good job and he did not believe they were inhibited in their representation by virtue of the role of the district judges in their selection.

## 2. Ramsey County Attorney

The Ramsey County Attorney is elected for a four-year term. The trial work, including prosecution, is done by his staff and not by him personally. All of his attorneys are full-time and civil service. Base salaries are as follows:

|              |                           |
|--------------|---------------------------|
| Attorney I   | \$1,054 - 1,282 per month |
| Attorney II  | \$1,233 - 1,500 per month |
| Attorney III | \$1,443 - 1,756 per month |
| Attorney IV  | \$1,623 - 1,975 per month |

The Civil Service Commission which tests the applicants is composed of a law school dean, one lawyer from the prosecutor's office, and one of the County Commissioners who is also a lawyer.

William Randall, Ramsey County Attorney, estimated his attorneys prepare about three cases a week for trial. Two of his lawyers are assigned to write and argue criminal appeals. (The Attorney General pays the cost of printing the brief; however, Mr. Randall's office writes and argues it.) He believes that virtually all criminal appeals from Ramsey County are taken by the State Defender's Office, and he doubts whether in the past year there were more than three cases in which private attorneys were on the briefs.

Mr. Randall had serious reservations about public defenders being full-time which were shared by County Commissioner John Finley. His reasons were: (1) The part-time operation constantly brings into the system "fresh blood," i. e. young lawyers who obtain experience and at the same time, get an opportunity to develop a private practice. When their defender caseload becomes too high, they then leave. It is believed desirable because of this turnover several members of the bar are familiar with criminal law and the administration of criminal justice. (2) It was also asserted that it was much easier and more economical to add additional part-time attorneys as the caseload increases than to employ a full-time lawyer.

Mr. Randall had high praise for the public defender attorneys and indicated that if he were charged with a crime in Ramsey County, he would employ any one of the last three Ramsey County Public Defenders.

## B. St. Paul Municipal Court Operation

This court has jurisdiction to conduct preliminary hearings in felony and gross misdemeanor cases and to try misdemeanors and ordinance violations. All defendants arrested in St. Paul appear initially for arraignment in the criminal branch of this court which is located in the basement of the jail around the corner from the courthouse. The courtroom, dismal in appearance, has a number of pillars which obstruct the view of some spectators and also interfere with the freedom of movement of court personnel in the working areas of the courtroom. It is a court of record, and a court reporter records all proceedings. Upon the court being called to order, the judge

makes a general statement to all present including a "collective" advice of rights. Such advice or warning included the advice that a person charged with an offense had the right to have a lawyer represent them and if such person could not afford to hire a lawyer, they have a right to have one furnished. If a defendant needs counsel, he will be referred to the Ramsey County Legal Assistance Office. All were further collectively advised that whether they have a lawyer or not, they have the right in a misdemeanor or ordinance case, to have a trial, to confront and cross-examine the witnesses against them, and to bring or have subpoenaed witnesses on their own behalf. They had the choice to testify or not on their own behalf. Such warning also indicated that if convicted on such a charge, they could go to jail for ninety (90) days or be fined up to \$300, or both. No specific mention was made regarding the rights of those charged with felonies or gross misdemeanors.

When the misdemeanor cases are called, if the defendant steps up without a lawyer, the court asks him if he heard the advice of rights he gave when court opened and if he wishes to have a lawyer or will represent himself. On the day the court was observed, all defendants called answered that they had heard the advice of rights and a number pleaded guilty to misdemeanor or ordinance violations after advising the court they did not wish to have a lawyer. Prior to the acceptance of such pleas, no additional advice of rights or other warning was given them. Upon such plea, the City Attorney's representative would then read a summary of the facts of the offense and the court would then ask the probation office representative, one of whom is assigned to the court while it is in session, to advise him concerning the defendant's prior record and background. For domestic cases, the court services officer is a referral. The court also has assigned to it a volunteer representative from Alcoholics Anonymous who was present in court. Enrollment in an Alcoholics Anonymous unit was made a condition of probation in several cases. Virtually all of the pleas entered on this day were entered without counsel.

If the defendant enters a plea of not guilty, he is advised to see a clerk who supplies him with a written slip indicating his trial date and a number to call to confirm such date with the court clerk's office. If he requests appointment of a lawyer, he is given a card with the address and telephone number of the Legal Assistance Office and told to talk to them unless their lawyer is in court at the time. If the defendant has indicated he wishes a trial, he will be given a trial date. If not, the case will be continued for a short time until one of the Legal Assistance lawyers can appear in court.

The defendant has a right to a six-man jury trial except for ordinance violations where a jury is only available in a de novo proceeding. In addition to a court administrator, the clerk's office has an assignment clerk who is responsible for scheduling cases for trial and assigns them to the judges for trial. The assignment clerk estimated that they set about five cases per day for trial and the interval between arraignment and trial in non-jury cases is about three and one-half to four weeks. In jury cases, other sources estimated the interval was about three to four months. The assignment

clerk also received each day a jail count from the jail indicating which defendants are incarcerated and how long they have been there. These cases are scheduled for trial as soon as the attorneys are ready to proceed. Few defendants are incarcerated pending trial in municipal court.

The judge assigned to the criminal branch of the municipal court usually sits only in the morning, and the court generally concludes by noon. In the afternoon the judge is assigned other matters. Preliminary hearings on felonies and gross misdemeanors are usually scheduled for Mondays, Wednesdays and Fridays. In felony and gross misdemeanor cases, the court, upon initial arraignment will either set bail or inquire into the bail previously set by another judge. The court will then inquire of the probation office representative in court as to the defendant's background and prior record. He then fixes bail and may also refer the matter to the court services people for their recommendation as to release on recognizance, in which case the matter will be continued usually to the next day. If the defendant has no lawyer, the court will ask if the defendant has a lawyer. If the answer is no, the public defender will be appointed. The defendant is then advised that the public defender will contact him and a date is set for preliminary hearing.

#### C. District Court - Ramsey County

This court also has a court administrator and an assignment clerk. The assignment clerk schedules the cases for trial. Arraignments are all scheduled before one judge who also accepts pleas if tendered at arraignment or before the case is scheduled for trial. At arraignment, the cases are set to be called for trial on a following Monday which is an interval of about two weeks from arraignment. Each Monday about seventeen (17) cases are scheduled to be called for trial that week. Once seventeen (17) cases are set for any Monday, the eighteenth (18th) case is then scheduled for a succeeding Monday. The assignment clerk uses a blackboard on which is listed each judge and assigns the cases to each judge listing the case name on the board for that judge. Essentially the assignment clerk makes the assignments and keeps in contact with the prosecutor, the defense attorney, and the defendant advising them as to when their case will be tried that week. Ordinarily three judges are assigned to the trial of criminal cases but the assignment clerk has the authority to send a criminal case to a judge assigned civil cases if he is available to hear it. The administrator prepares a monthly report showing cases commenced and concluded. The district court also hears criminal appeals from the municipal court which are usually scheduled for trial on Tuesday. Such cases are prosecuted by the City Attorney and ordinarily four such cases per week are the maximum number scheduled.

#### D. Municipal Court (St. Paul) Defender Services

The Legal Assistance Ramsey County, headed by John Brauch, entered into a contract with the city of St. Paul to provide legal services in indigent misdemeanor cases where incarceration is possible in the St. Paul Municipal Court. The new contract effective 1 February 1973 was for \$41,500 and permitted Legal Assistance to employ two full-time and one part-time attorney for this purpose.

The full-time attorneys were not authorized on outside practice. During the last year when the program operated with one full-time and one part-time attorney, it provided assistance in approximately 400 cases.

This defender service provides quality legal representation under dynamic leadership and enjoys an excellent reputation among the clients served, the bar, and the community generally. This excellent defender service should be extended to the suburban municipal courts and would be capable of providing first class services in the juvenile court. The program should acquire the capability of taking appeals from the municipal court to the district court.

## E. Juvenile Court Defender Services

### 1. Introduction

The Ramsey County Juvenile Court serves the second most populous county in the state of Minnesota. It does not utilize public defender representation but appoints private lawyers from a rotating list of about fifty (50) attorneys. The Ramsey County Juvenile Court was observed and one evaluator met with the Chief Judge, Archie Gingold, and other personnel available at this juvenile court. During 1971, 1807 (1366 boys and 441 girls) delinquency petitions were heard by this court and the caseload continues to increase.

### 2. Physical Facilities

The Ramsey County Juvenile Court is located in the rather old courthouse and City Hall in St. Paul. The juvenile court operation takes up about one-half of the floor upon which it is located. The court is staffed with one full district judge, and two referees, each of whom have courtrooms. Also located on this floor are the juvenile court clerk's office, the Court Services Division, the probation staff and some small detention rooms or "cages" which house those children brought to court for hearings, who have been held in detention. The detention facility is located some six miles out of St. Paul.

### 3. Referees

The two young referees indicated that counsel for indigents are regularly appointed at the first court hearing, or arraignment, after a determination of financial eligibility. The standard is a flexible one, and is insisted upon by Judge Gingold: "Whether, on balance, the child or his family is able to truly afford an attorney." Generally, the benefit of the doubt is given to the child and his family. The referees indicated that private counsel appointed to provide representation in the juvenile court are paid approximately \$20 per court appearance on each case.

Both referees felt that the need for a lawyer was paramount, although they admitted that the consequences of juvenile proceedings in Ramsey County are not severe. One referee stated that since October 1972, he had committed to a correctional facility only two children, who were charged with very serious felonies. A fairly common disposition of a delinquency matter in which the child cannot remain in the home or the particular community, is to place him on probation and commit him to a county treatment facility. Periodic reviews of these dispositions are made, and the attorneys are involved at the post-disposition stage.

Neither referee could recall when an appeal in a juvenile proceeding had been filed.



#### 4. Judge Archie L. Gingold

Judge Gingold was very satisfied with the appointed counsel system in his court for a number of reasons. He is convinced that his court benefits from the involvement of the private bar, because such appointments involve a greater number of lawyers with a vast range of experience and community spirit than that available in a part or full-time public defender system. Moreover, he feels an assigned counsel system ultimately brings about more attention for the problems of the juvenile court and the poor who are generally brought in before it. Significantly, he was not in favor of the public defender system in his court because the defender, in the eyes of the children and their parents, is a part of the system, and therefore lacks independence, a matter which creates suspicion.

Judge Gingold was adamant in his belief that the court and all of its services should be located where the people are. To this end, he has planned exhaustively with his staff to lobby for a new juvenile center to be located in St. Paul, with all services centrally located and coordinated.

Judge Gingold felt that legal representation in juvenile cases was absolutely necessary, not merely because of court decisions, but because they provided a check to the inherent opportunities for abuse in a system which is heavily loaded with social agencies. He viewed social workers and probation officers as important but not controlling and believed that attorneys were necessary to strike a balance, through the proper use of rules of evidence and proof.

#### 5. Probation Staff

The plans for the new juvenile center were discussed with Robert Nelson, Probation Staff, who has been intimately involved in the planning for almost six years. The basic principle of the plan is to provide a centralized administration and coordination of all services which are made available to children within the Ramsey County Juvenile Court. The result sought is individual attention and treatment for each child at each stage in the Juvenile Justice System with a view to providing a way out of the system at an appropriate time, instead of forcing the child to run the full cycle which may be deleterious to his best interest.

#### 6. Comments and Evaluation

At least one full-time defender attorney is needed to insure that the specialized experience necessary for the handling of juvenile cases is present, and such attorney would also be available to assist other appointed counsel. The defender system should develop some mechanisms to provide counsel to process juvenile appeals. The defender attorneys should be independent of any judicial control that would not be present as to privately retained attorneys.

### F. District Court Defender Services

#### 1. Organization and Personnel

The Public Defender for Ramsey County is authorized by Chapter 838, Minnesota Laws 1969 (but not published in the code). Although the public defender may represent juveniles and simple misdemeanants who are unable to obtain counsel, the public defender limits his representation to the mandatory services required in felony and gross misdemeanor cases.



The majority of the district court judges appoint the public defenders, appoint and determine the number of his assistants, and fix their compensation. The public defender and his assistants hold their positions at the pleasure of the majority of the district court judges.

The public defender is Warren Peterson who like the six assistants serves part-time. One of the assistant public defenders is Warren Peterson's brother who is also associated with his firm. All the public defenders prefer the part-time status and the opportunity for private practice, both civil and criminal. In fact, these attorneys operate out of their own law offices, for there is no public defender office as such. The public defender is paid \$13,000 and his assistants each receive \$9,500. One special assistant is a black lawyer, Charles Williams, whose salary is provided from a foundation grant. These attorneys furnish representation at the municipal court level in preliminary hearings as well as at the district court level. These defenders have no formal investigative service, but each uses his own only after prior approval has been obtained from the court.

Although Ramsey County could easily enter the State Public Defender at the option of the district judges, unification of defender services within the county is a more meritorious goal. The public defender under existing statute could consolidate the defender activities with a core of full-time attorneys. Under the present system at least the director of the program should devote full-time as public defender and not otherwise engage in the practice of law. If municipal court and juvenile court representation, at least four full-time attorneys would be needed for representation in those courts. At least one full-time investigator should be hired, and one full-time secretary or administrative assistant could alleviate the public defender of non-legal minor administrative work.

## 2. Caseload

There were some minor unexplained differences between the cases reported by the Ramsey County Public Defender and those recorded by the State Public Defender. We have relied upon the former. In 1970 this public defender was assigned 439 cases and in 1971 was assigned 448 cases. For the first eleven (11) months of 1972 the 440 cases were classified as follows:

|                                      |     |
|--------------------------------------|-----|
| Pleas of guilty                      | 277 |
| Dismissals                           | 79  |
| Retained Counsel or<br><u>pro se</u> | 46  |
| Jury Trials                          | 29  |
| Court Trials                         | 9   |

In both court trials and jury trials, not guilty findings or verdicts were obtained in more than one-half of the cases. This caseload is not excessive for the seven part-time attorneys.

## 3. Attitude of the Court

The district judges believed that the public defenders, in general, were equal or superior to the average retained lawyer in a criminal case. However, it was noted that Ramsey County did not have any specialized criminal bar. The district judges, unlike their counterparts in Hennepin County, were aware of

the possibility or appearance of judicial impropriety in undue direct control of the public defenders. The district judges were sincerely interested in a viable alternative to their control, and one district judge indicated that the State Public Defender system under the supervision of the Minnesota Judicial Council might not be inappropriate, but the Judicial Council would have to be more than the "alter ego" of the Chief Justice and reflect local community concern and be responsive to the needs within the district. Another suggestion was the creation of a Legal Rights Center similar to the one in Minneapolis, that would combine defender services in an independent non-profit corporation operating under the auspices of the bar. This latter suggestion has great merit, for it could through a board of trustees or directors insure adequacy of representation tailored to meet the needs of the community (county). The non-profit corporation could contract with the several court activities to provide the service in the same manner as the Legal Assistance Program has contracted to misdemeanor work in the municipal court.

#### 4. Comments and Evaluation

One of the most glaring defects with the existing defender office is the actual and potential control of the judiciary. Such control is not consistent with zealous and independent advocacy expected of a defender attorney, and the court should avoid even the appearance of impropriety (i. e. patronage, reward for non-aggressive advocacy, etc.).

In essence, Ramsey County has little more than a stabilized appointed counsel method of representation with seven attorneys comprising the panel. The control exercised by the judiciary clearly violates ABA Standard Relating to Providing Defense Services, Standard 1.4, and some mechanism should be developed to create the supervision and buffer of a board of trustees either a separate non-profit organization or a commission for the public defender. Records are almost nonexistent, and each attorney maintains the type of file he desires. The inadequate records reflect the lack of even simple management or administrative control of this necessary legal service. Questions had been raised concerning the performance of an assistant public defender, but no positive effort had been made to investigate or review the performance of this attorney by the public defender because each attorney was a separate entity.

The entry of the public defenders to assist clients came too late, for no public defender will be there to assist the defendant at his first appearance where reduction of the charge might be possible or the pretrial release of the defendant secured. The defender office has such a "low profile" that a listing for the "public defender" could not even be found in the telephone directory, and the public defender commented on this lack of notice on the grounds that such listing would multiply needless inquiries. Although an additional burden is involved, this minimal notice should be initiated.

No internal training program exists. The quick-changing developments in the criminal law might be discussed at a weekly or at least monthly meetings of the assistant public defenders; at which time their cases might be reviewed and evaluated in addition to the informal training session.

## VII. OTHER DISTRICT DEFENDER SERVICES

### A. Comparative Statistics

For comparative purposes, set forth below is the caseload and case costs in 1971 of the various district public defenders, public defenders of Hennepin and Ramsey County, and assigned counsel districts (Third and Eighth Judicial Districts): 18

| <u>District</u> | <u>Cases Terminated</u> | <u>Defender (Appointed) Cases</u> | <u>% Defender (Appointed)</u> | <u>Cost Per Case</u> | <u>1971 Defender Budget</u> |
|-----------------|-------------------------|-----------------------------------|-------------------------------|----------------------|-----------------------------|
| First           | 311                     | 194                               | 62%                           | \$196                | \$36,500                    |
| Second          | 795                     | 544                               | 68%                           | \$112                | \$61,000                    |
| Third           | 421                     | 213                               | 51%                           | \$439                | \$93,545                    |
| Fourth          | 1717                    | 866                               | 50%                           | \$62                 | \$105,863                   |
| Fifth           | 398                     | 177                               | 44%                           | \$207                | \$36,700                    |
| Sixth           | 365                     | 280                               | 74%                           | \$266                | \$74,500                    |
| Seventh         | 258                     | 202                               | 78%                           | \$191                | \$38,550                    |
| Eighth          | 151                     | 115                               | 76%                           | \$191                | \$21,953                    |
| Ninth           | 488                     | 369                               | 73%                           | \$134                | \$47,250                    |
| Tenth           | 400                     | 217                               | 54%                           | \$155                | \$32,700                    |

### B. First District Defender Services

Of the approximately 152 felony cases occurring each year in this district in which the district public defender was appointed, approximately 80% arose in Dakota County. Of this caseload, approximately six trials were expected each year. The district defender now represented approximately 80% of the total criminal cases, which is higher than the ratio reported for 1971 (62%). The assistant public defender interviewed, Jack Mitchell, who had been practicing five years (two as a prosecutor and over three as a defender) was deemed to be well-qualified for his work. With his partner, the District Public Defender, Mr. Mitchell shared the \$15,000 compensation for their services as defenders. These district defenders are allowed to handle criminal cases, and this is an unfortunate situation created by the fact that the district defenders constitute the experienced criminal law bar for this area. Since there was no investigator, the State Public Defender's investigator has provided upon request helpful investigative services. These defenders preferred the part-time arrangement which was suited to this less populated area. Both the appointment of the defender and the budget for this office was under the close direction of the district court judges. Both the judges and prosecutors interviewed thought highly of the district defender.

### C. Fifth District Defender Services

In 1972 this district defender, Chuck Adamson, personally served in fifty-two (52) cases, eight of which were jury trials. This district encompasses fifteen (15) counties and Mr. Adamson is assisted by four part-time attorneys. Contact

18/ Statistics furnished by State Public Defender, and minor variations as to total criminal cases from those published by State Court Administrator. See Part IIB, this report.

between the defender and his assistants was minimal. The district defender devotes approximately 30% of his time to public defender for which he receives \$10,200 per year. His assistants each receive \$9,200. One of the most obvious personnel needs in this area was for two full-time investigators (the district defender indicated the need for five). Not only the appointment (not just nomination) of the district defender, but that of his assistants, is controlled by the district judges. The judges also regulate the budget of the defender.

This district defender office did not represent juveniles unless the juvenile court's jurisdiction was waived and they were to be tried as adults. Representation was not furnished in misdemeanor or mental health cases, for these cases are assigned to members of the private bar. (In his private capacity this defender might handle some of these cases.)

This district defender had been admitted to practice for eleven (11) years with service as a prosecutor and had an excellent grasp of criminal law. He appeared to be well-qualified for his position. Mr. Adamson did have a successful and busy law practice, and although he acknowledged the need for a full-time defender, he indicated that he would not be interested in such a position. The district defender had a high regard for the State Public Defender, but did not wish more State control of the district operation.

The presiding district judge, Judge Mason, was most laudatory of the district defenders and said their performance might surpass that of the county attorneys. Judge Mason thought highly of the State Public Defender and his annual training program. Judge Mason was aware of the inadequate investigative services available to the defenders and suggested that two full-time investigators might be added.

#### D. Sixth District Defender Services

This district defender office is headed by Mr. John Durfee, who is part-time, as well as his assistants. This defender staff is supported by a single investigator, and the part-time attorneys use their secretaries and clerical staff. The district defender has no internal training program, but relies upon informal discussions with staff attorneys. The number of defender cases in this district is high (74% of the criminal cases), but the several part-time attorneys had a manageable caseload.

The misdemeanor cases in St. Louis County are handled by the Legal Aid Society under a LEAA grant. In Lake and Cook Counties, however, misdemeanors are handled on a court-appointed basis. In conflict cases attorneys come in from Duluth. This procedure is used because there are no attorneys in Cook County and only two in Lake County. One attorney handles juvenile cases on an assigned counsel basis, and defender attorneys are frequently appointed.

This district needs investigative support and to improve liaison among the several defender activities in the district. Judicial control is also present over appointment of personnel and budget. The advantage of consolidation of defender activities, with a provision for the appointment of other counsel in conflict cases, would alleviate unnecessary duplication and achieve economy.

#### E. Seventh District Defender Services

The Seventh Judicial District has one part-time district defender and five part-time assistants. John Q. Quam, the district public defender and William Briggs, an assistant, are located in Detroit Lakes, while two defenders each operate out of Long Prairie and St. Cloud. St. Cloud is located in Stearns County, where St. Cloud is located, had the greatest percentage of the population within the district. The defenders in Detroit Lakes servicing the immediate four-county area, Becker, Wadena, Otter Tail and Clay Counties, handle more cases than the other officers. At the present time, there are only two attorneys serving out of Detroit Lakes due to the fact that R.W. Irvine, a member of Quam's law firm, the former District Defender, has resigned to devote full-time to private practice. Approximately 50% of the public defender work of this district is done in John Quam's office.

John Quam and his staff were knowledgeable and competent attorneys. During the last year John Quam tried three cases, all serious felonies. John Quam's office receives \$18,000 for defender services, of which \$12,000-\$13,000 is for the salary of John Quam and one of his assistants. These attorneys indicated that defender cases are handled as a case of the law firm in which the funds paid by the county are treated as a retainer for the appointed case. No internal training program exists, but John Quam's law office subscribes to publications in the field of criminal law and procedure.

This district has few major felonies, and the reoccurring charge is possession of marijuana. Many of these cases are negotiated and disposed of at the County court level even though the technical jurisdiction of the county court over such offenses may be in doubt. Most of these cases result in fines only, and the defendant is left without a record of conviction.

The public defender office does not foresee any problems in which different part-time defender attorneys represent different defendants in the same case. Since each part-time attorney is on his own, the fact that he is a public defender and so also co-counsel for a co-defendant with an adverse interest is not considered a problem. This view is questionable. The problem reaches much more serious proportions where two assistant public defenders are in the same firm with a brother of one of them who is a part-time county attorney (prosecutor).

Last summer this district defender had a law student assigned for purposes of research but who did most investigation, which was very worthwhile. This experience pointed up the need for a full-time investigator, although this district would not have much use for other expert or specialist services.

A county court judge indicated he would like to see the public defender handle misdemeanor cases, which service would probably require a full-time attorney. In the 200 juvenile delinquency cases per year in his court, most parents did not desire an attorney.

#### F. Ninth District Defender Services

This district comprises seventeen (17) counties in Northern Minnesota with a large area, sparsely populated, encompassing several Indian reservations. The district public defender is Paul A. Kief, who has seven assistant public defenders, and both he and they are part-time. One assistant is in private practice in the same firm with the district defender in Bemidji. The public

defender and his assistant, in their office, spend 25% to 33% of their time on defender cases, which are treated as regular office cases. This office has kept time records, and last year twelve hundred (1200) hours were spent on defender cases. Investigative services are obtained on an ad hoc basis.

The defender does not enter a case until formally appointed, but occasionally the police will contact the defender concerning a suspect they have in custody. The public defender and assistants also provide representation in the county court cases and juvenile proceedings, but this is done in a private capacity as appointed counsel who receive \$30 per hour for their services. The district defender's firm also accepts retained criminal cases, which including their public defender work, accounts for 40-50% of the firm's legal work. The existing defender staff indicated they would not be interested in full-time defender work.

This district defender's caseload is manageable (twenty-two (22) trials in 1971), and like the Hennepin County public defender a high proportion (approximately two-thirds) of the preliminary hearings were waived, which eliminated an important step in the criminal process to assess the case at an early stage.

A district court judge commented that one-half or more of the defendants were Indians. This judge felt that the defender staff included the best criminal lawyers in the area, and he had doubts about the feasibility of a full-time district defender (a salary of \$30,000 would be required). The judges exercise the right of review over the defender's budget.

On the question of conflict of interests, if a conflict arose between defenders in the same law firm, they would seek to have a different assistant public defender appointed.

#### G. Tenth District Defender Services

The tenth district comprises an area immediately north of the cities of Minneapolis and St. Paul. Mr. Kim Johnson, an assistant public defender for that district was interviewed. He worked as a part-time defender since admission to the bar approximately five years ago, and the public defender was his law partner. This district defender system appeared to be working well, and the only suggestion for improvement was the possibility of additional assistant public defenders who might be available during emergency situations. Although eligibility was relatively low, (the public defender appointed in 50% of the total criminal cases), the assistant public defender indicated that there were no problems encountered in eligibility determinations.

A request for additional investigative services by the hiring of a full-time investigator was made a part of a recent budget, but the district court judges had deleted their request. Although the judges control the appointment of the district public defender and exercise supervisory powers over the budget, the assistant public defender felt there was no problem of undue control of the public defenders by the district court.

With respect to conflict of interest situations, (this was allegedly resolved by assigning cases among the various part-time public defenders.



## H. Districts with Appointed Counsel

The Third and the Eighth districts which are located in the southeastern and midwestern parts of Minnesota have not elected to come under the statewide defender system and establish a district defender. The principal difficulty is that under the district defender system, the counties would have to pay for the district defender on a pro rata population basis. Since some of the counties have little crime, they wish to avoid sharing the cost of the more crime prone counties.

The most striking feature of the Third District's cases is the cost per case of \$439. This is an extremely excessive figure when compared to the next highest case cost of \$266 per case (Sixth District). Although appointed counsel traditionally are not able to develop the reservoir of specialized criminal law experience of designated defender attorneys, these attorneys are receiving compensation far in excess of that paid to defender attorneys. A most interesting comparison can be made with Ramsey County (Second District) which has more than twice the number of appointed (defender) cases (544 to 213) and the case cost is approximately one-fourth (\$112/\$439) of that of the Third District. The cost of defender services in the Third District with less cases is one and one-half times greater than the total cost of defender services in Ramsey County (\$61,000/\$93,545). These high costs attributed to the use of appointed counsel for a substantial indigent caseload would be reduced and the community could be better served by the adaption of a defender system.

Since the Eighth District had not only the lowest number of criminal cases (151) and the lowest number of appointed cases (115), its continued use of the appointed counsel system over such a large area may still be appropriate. However, advantages of being part of a statewide defender system would inure to the benefit of this program if it participated in the system and merely adapted a part-time defender who would coordinate the appointments of individual attorneys.

## I. Comments and Evaluation

The operation which defenders services are provided in the outlying districts, even with part-time attorneys, is superior to the defender services of Hennepin County.

Each district should consider the employment of a full-time district public defender who could not only put his time and energies exclusively to the criminal law specialization and the service of indigent clients within his district, but also provide the administrative framework for the effective utilization of the part-time assistants throughout the other parts of the district.

The district court judges exercise undue control and supervision over the appointment and selection of the district defender as well as the assistant defenders, and they also seriously tread upon the independence of the defenders by their close review of the budget. Although this district court control has not reached the degree found in Hennepin County, it should be immediately terminated. Since these district defenders operate as part of the statewide defender system, regional coordination should be maintained with the state public defender who should become more active in his assistance to the district defenders in the preparation of their budget. The Minnesota Judicial Council should independently review the requests contained in the budget rather than depending upon the district court for review of the budgets.

Although the use of part-time assistants may be maintained, it may be better for the state public defender with approval of the district defender to designate qualified attorneys to serve on a panel who are compensated on a case-by-case basis so as to avoid conflict of interest problems.

VII. CLINICAL PROGRAMS INVOLVED IN PROVIDING LEGAL ASSISTANCE TO INDIGENTS IN THE MINNESOTA CRIMINAL JUSTICE PROCESS

A. The University of Minnesota Law School Personnel Involved in Clinical Programs in the Criminal Justice area

Professor Robert Oliphant. Robert Oliphant obtained his B. A. and J. D. degrees from the University of Minnesota. He graduated from the law school in 1966. He joined the law faculty after working in the office of the State Public Defender. He is the unofficial director of the clinical program at the University of Minnesota Law School. Beginning next academic year, he will be a full professor. He has extensive experience in clinical and advocacy training.

Professor Richard Clendenen. Richard Clendenen is Professor of Law and its administration at the University of Minnesota Law School. He has a joint appointment in the School of Social Work. He is not a lawyer, but is a criminologist and social worker, having received his B. A. at the University of Indiana and M. S. W. at Western Reserve. He taught in the Social Work Department at Ohio State University and has been Commissioner of the State Department of Child Welfare for the state of Kentucky. His major interest is in the area of juvenile corrections.

Professor Clendenen has established a number of projects in the criminal justice area and has a large staff (approximately twenty (20) people) housed in an office near the law school. He has started Project Newgate at the St. Cloud reformatory. He has taken over an old fraternity house and turned it into a halfway house for the ex-offenders who attend the University of Minnesota. He is presently interested in starting a prosecution project at the law school.

Associate Professor Melvin Goldberg. Melvin Goldberg is one of the faculty members in charge of the LAMP (Legal Assistance to Minnesota Prisoners) program. He has an excellent background for the program. He received his legal training from the University of Chicago. He did graduate work under Professor Norvel Morris, a criminologist. He took part in the Cook County Jail Project in Chicago, in which attorneys and students from the University of Chicago provided legal services to inmates of the Cook County Jail, one of the largest such institutions in the United States.

Associate Professor James Cullen. James Cullen is a graduate of the University of Minnesota Law School and had practiced with a large firm in Minneapolis. He was president of the Young Lawyers' Section of the Minnesota Bar Association. While in practice he began doing a great deal of pro bono work, particularly in drug cases and did some legal work in behalf of prison inmates. He was drawn into law teaching and into the LAMP program because of these interests.

Professors Goldberg and Cullen are both Associate Professors and "attorney-directors" of LAMP. Neither of them is on tenure. In other words, since their money is coming from a grant and not from regular law school funds, they are not eligible for tenure even though they are on the law school faculty.

Professor Don Marshall. Don Marshall graduated from Yale Law School in 1960. He practiced corporation law in New Jersey until 1967 when he joined the Minnesota faculty.

Rosalie Wahl. Attorney Rosalie Wahl obtained her B.A. degree from the University of Kansas and her law degree from William Mitchell College of Law. She graduated and was admitted to the Bar in 1967. Three quarters of her time is spent on doing appellate work for the State Public Defender. She is an Adjunct Clinical Professor at the Law School, spending one-fourth of her time working for Professor Oliphant supervising students in the misdemeanor program.

#### B. Existing Clinical Programs

The Appellate Advocacy, Civil and Paraprofessional Programs. There are three clinical programs at Minnesota which are not directly involved in the provision of legal help to indigents in the criminal justice system. These programs should be mentioned.

The Appellate Advocacy program is a moot court program. Practicing lawyers are hired on a part-time basis to supervise this program.

The Civil Clinical program involves one faculty member. This is a legal aid clinic with the work of the students being supervised by the more experienced "student-directors." This year the program is being taught by Professor Zerby, a new teacher who has been in private practice in a corporate law firm. Apparently Professor Zerby has had problems adjusting to clinical legal aid practicing, and the program has been much criticized. It is a one-quarter, three-hour course. This past fall he started out with thirty (30) to forty (40) students, but the course has been unpopular and enrollment has now dwindled down to approximately fifteen (15) students. Professor Zerby is returning to private practice, and another lawyer will be teaching this course.

Professor Oliphant has recently instituted a training program for paraprofessionals. He is the only faculty member involved in the project which is designed to introduce into the criminal justice system non-lawyers who are technically skilled to perform necessary but non-professional work. This is one of the first programs of its type in the country.<sup>19</sup>

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<sup>19</sup> The evaluation did not extend to the Criminal Law Paraprofessional Course conducted by Professor Oliphant, but a review of the materials of the course indicate that Professor Oliphant is to be complimented for his imaginative and innovative program.

The Appellate Brief Writing Program. The brief writing program is taught by Professor Oliphant. The course is given once each year. It lasts for two quarters, but the student receives three quarter hours of credit. Last fall there were only seven students involved. Professor Oliphant is the sole instructor and has tried various teaching formats. First, he placed his students with the State Public Defender office. This was impractical because of the lack of the attorney supervision. Next, he tried "farming out" students to other faculty members for supervision, but that too was not feasible because other faculty members were too busy to devote sufficient time. Now he receives several briefs from the State Public Defender and also briefs from the state Attorney General. In his opinion, this does not create a conflict of interest because he never takes briefs from both offices in the same case and because the briefs which he does for the State Public Defender are usually in cases in which the defendant was represented by a private attorney at the trial level. From the standpoint of the inmates represented by this program there appears a conflict of interest. In his class sessions in brief writing, Professor Oliphant discusses brief-writing techniques and strategy. He does not use any written course materials and major reliance is placed upon the records of the cases. Each student completes two appellate briefs in this program.

### C. The Misdemeanor Program <sup>20</sup>

The law school clinical misdemeanor program operates in Hennepin County in the Minneapolis Traffic and Misdemeanor Court. This clinical program was initiated with funds from a Ford Foundation grant. The program was designed and developed by Professor Oliphant and Paul Jones. At first, two part-time defenders were used as supervisors in the program, but this was a mistake. The caseload was too great to be handled by part-time lawyers. Next, the program employed these two part-time defenders on a full-time basis during the mornings only. This did not work because the caseload was still too great and there existed an improper incentive to plead as many defendants guilty as possible to lighten the caseload. This program thereafter engaged one full-time lawyer. The program was further expanded by a grant from the LEAA. Four<sup>21</sup> full-time staff attorneys were hired. These recent graduates were hired by the law school on one-year contracts. Local opinion is that these attorneys should be hired for no more than one year because they get tired of misdemeanor work and are "burned out" after one year. Also, the effect of such turnover permits continual use of a low starting salary. A full-time administrator for this program is obtained from the Dorsey law firm in Minneapolis. This is a six-month position and a new young lawyer comes to the law school every six months to act as administrator.

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<sup>20/</sup> Although the misdemeanor program was described previously as a public defender function, it is not described from the viewpoint of law student participation.

<sup>21/</sup> See footnote 14

The misdemeanor program is taken by students as a one-quarter course for three hours of credit. Twenty to twenty-five students take part each quarter. The four full-time defenders have their offices in the same law school annex building as Professor Oliphant, who has ready access to and the cooperation of these defender attorneys. In turn these defender attorneys provide cases for use in the training program.

Each student spends three days in court handling arraignments. They interview the clients using an interview form developed by Professor Oliphant and on the afternoon of the same day may plead some of these clients guilty. Each student will normally interview at least six clients during the quarter. They handle the case from beginning to end. On arraignment days they will negotiate and plead the client guilty or obtain dismissal of charges. If the case needs to go to trial, it will be set for trial several weeks later. Each student handles three trials. Students do not handle jury trials because defendants are entitled to jury trials only in very serious misdemeanors in Minnesota and students do not become involved in these cases.

Bob Oliphant and Rosalie Wahl handle the supervision of students during arraignments. Rosalie Wahl spends two days per week, Mondays and Tuesdays, in the Minneapolis Traffic and Criminal Misdemeanor Courts. On those two days Robert Oliphant is at the court until noon, and she remains there the rest of the day. The four staff attorneys in the Hennepin County misdemeanor program supervise students during the remainder of the week. Trial briefs are required before a student goes to trial. The trial briefs are examined and graded by Professor Oliphant or one of the other criminal law faculty members. At the trial the student is supervised by one of the staff attorneys. Professor Oliphant has developed a system of forms to be used for checking on the work of the students. These include interview forms, progress reports, grading sheets, etc.

The students meet once each week. At these sessions a misdemeanor manual which Professor Oliphant helped to write is used as a basis for class discussion. In order to get a grade the student must hand in a progress report at the end of the quarter, even though he may have to continue working on his cases during the following quarter in order to complete his three trials.

Professor Oliphant says that at first he thought that the misdemeanor program could be run with little supervision -- that the students were bright enough to handle misdemeanors on their own. This was a serious miscalculation. He found that they need a great deal of supervision to do even the simplest task when they first began handling cases. The students' beneficial experience from the program is directly proportional to the degree of attorney supervision. In this respect, the educational value of the program is dependent upon quality attorney supervision.



The law student receives a packet of training materials and forms which provide an orientation as to his participation in the misdemeanor and traffic courts. Very few clinical programs in the country could equal the fine work of the Field Manual: Clinical Criminal Law, Criminal Procedure, and Ethics (81 pages), prepared by Professor Oliphant for this course. The misdemeanor interview form is far too cumbersome, and too much of the inquiry is devoted to eligibility rather than essential facts surrounding the charge and possible disposition of the case.

The William Mitchell College of Law has just commenced a clinical misdemeanor program. Professor Oliphant is acting as a consultant in establishing their program. Rosalie Wahl will be employed with the William Mitchell program. William Mitchell students will take part in arraignments on Fridays during this spring quarter in Hennepin County. Mrs. Wahl feels strongly that William Mitchell College of Law should be involved in misdemeanor representation in St. Paul (Ramsey County) because of the demonstrated need in the community. The school's community location would facilitate such involvement. Mrs. Wahl, expectedly, finds participation in both the clinical misdemeanor program and work in the appellate defender program difficult, and she will probably engage full-time work with the law school program.

#### D. The Juvenile Law Course

Donald Marshall has taught a clinical course on juvenile courts for the first time this year. This course is jointly taught with Richard Clendenen.

The juvenile course was given in the winter quarter. The student received four hours of credit and may receive the credit either in the winter or spring quarter, even though there are no formal class sessions in the spring. There were sixteen (16) or seventeen (17) students in this course. During the winter quarter a great deal of academic material is reviewed during the class sessions. Professors Marshall and Clendenen and a staff attorney participate in the class sessions. Near the end of the winter quarter the academic phase of the course is completed, and the students begin handling some juvenile cases. They are to handle one or two cases each, finishing their cases during the early part of the spring quarter. In the course an effort has been made to bring in students from other disciplines as well as law students. Professor Marshall handles the legal aspects, and Richard Clendenen deals with diagnosis, diversion, and treatment of juvenile offenders.

To supervise the students in the Juvenile Law Course the Law School hired a staff attorney. The staff attorney had graduated from the University of Minnesota Law School with an extremely high grade point average and had spent some time doing empirical research in the area of juvenile law. Problems have recently arisen which may unfortunately terminate the juvenile law course. Apparently the staff attorney has incurred the disfavor of a juvenile court referee in Minneapolis. This referee claimed that he was "abrasive." In an apparent attempt to eliminate this advocate from the juvenile court, the juvenile court judges adopted a rule to the effect that only the public defender could represent indigent juveniles. However, it also has the effect of making it impossible even for Professor Marshall to represent juveniles. At the time of our evaluation, the Dean and Professor Marshall are negotiating with the juvenile court judges in an attempt to resolve this problem.



## E. The Legal Assistance to Minnesota Prisoner (L.A.M.P.) Program

The Administrative Director of this program is Professor Clendenen. Professor Clendenen prepared the grant application, obtained the funds, hired Professors Mel Goldberg and James Cullen and continues to participate in L.A.M.P.

L.A.M.P. handles civil legal problems of inmates. It is a new program, having been started last summer. It was established with a grant from the Minnesota Crime Commission, which obtains its money from LEAA (Law Enforcement Assistance Administration). L.A.M.P. is part of a consortium in three states, Georgia, Kansas, and Minnesota. L.A.M.P.'s share of the grant money comes to approximately \$85,000 per year.

L.A.M.P. provides services at several institutions. One is the Minnesota State Prison at Stillwater, with approximately 750 inmates. The second is the St. Cloud Reformatory with approximately 500 inmates. The third is the Women's Reformatory at Shakopee with 40 to 60 inmates. Some services are provided to federal inmates at the United States Penitentiary at Sandstone. Also, the project provides services at the Minneapolis Workhouse, which has approximately 200 inmates. The Workhouse used to have a much greater population, but recently Minneapolis has developed an alternative solution to its intoxication problem by providing services outside the criminal justice system, and this has reduced the population of the Workhouse.

L.A.M.P. handles civil matters only. Professor Goldberg says that thus far most of the cases handled consist of domestic problems. However, the program has also had some consumer problems and other types of civil cases. Also the program has provided assistance in civil rights matters. In such cases L.A.M.P. attempts to negotiate with the prison officials before going into court. Prison officials in Minnesota have been reasonable and in almost every case so far civil rights complaints have been resolved through negotiation. This has saved time, court resources, and has improved relations between inmates and prison staff. Just recently L.A.M.P. went into court, filing an action against the State Parole Board. The Board re-paroled the inmate rather than submit to litigation, which action rendered the case moot. L.A.M.P. has been instrumental in creating an inmate-staff council at the Stillwater Prison. L.A.M.P. has also assisted in the processing of administrative grievance complaints. They have attempted to establish administrative procedures for the processing of grievances by inmates against the administration. Recently there was a "shakedown" at Stillwater, in which much property of inmates was destroyed. L.A.M.P. set up a claims procedure in which inmates could process their claims for property losses in an orderly, simplified way without resorting to the courts.

Students at the Law School may enroll for three quarter hours of credit in a course which is jointly given by Professors Goldberg, Cullen and Clendenen. Enrollment has been climbing each quarter. At the present time there are fourteen (14) law students enrolled. Also, students from the Department of Social Work enroll in the course and participate in investigative and other work. Each student who enrolls for the course understands that he will be required to finish any cases which he begins, even though it will take longer than a quarter to finish them. He receives his grade at the end of the quarter, however, based upon the work he has done up to that point.

Inmates apply for assistance from L. A. M. P. by filing an application in a locked box which is located in the institution. Students are sent to the institution to interview the inmate. Students interview clients as a team, with one law student and one social work student comprising the team. After the interview, the case is discussed at a class session under the supervision of a lawyer. In class sessions the cases are discussed, but there is no formal academic material covered as there is in the Juvenile Law course. The work of the students on their cases is supervised by the two lawyer faculty members with the help of student directors, or more experienced students, who take some of the responsibility for supervising other students. During the first six months of operations, L. A. M. P. interviewed a total of 294 inmates. During January and February 1973, 150 inmates were interviewed.

L. A. M. P. is a year-around project, whereas the juvenile course lasts about one and one-half quarters. To handle the caseload during the summer, full-time summer interns are hired. Professor Goldberg and Professor Cullen are on year-round contracts.

L. A. M. P. is also involved to some extent in empirical research in the correctional institutions in Minnesota. For instance, at the present time a Ph.D. student from the Political Science Department is present at disciplinary hearings at Stillwater and doing research on that subject. Professor Goldberg is also thinking about instituting a legal education program, in which law students would teach short courses on various legal subjects to inmates.

The course given in connection with L. A. M. P. was originally a three-quarter hour, non-repeatable course. However, at the end of the fall quarter, several students requested that they be allowed to continue for another three hours of credit in the winter quarter. The faculty gave permission, and there are several students who took advantage of the decision. However, this ruling only applies to this one situation, and it is not clear whether students will be allowed to repeat the course in the future.

Professor Goldberg prefers being able to take nothing but civil cases. He is afraid that if his program were to handle criminal as well as civil matters they would be swallowed up by the criminal matters, and assistance for the civil problems of the inmates would not be forthcoming.

At present, L. A. M. P. interviews an inmate only if he applies for assistance from them. It would be a good idea if L. A. M. P. could be allowed to interview each inmate as he enters the institution to determine whether he has legal problems. Also, it would be helpful if the students could make direct telephone calls to their clients in the institutions rather than have to drive to the institution for each conference with their clients.

The program now has no staff attorney, but one is seriously needed. L. A. M. P. now has cases coming up (mostly domestic problems) in the seven-county area surrounding Minneapolis. L. A. M. P. clients will need lawyers to appear at these various hearings. If the two lawyer instructors make those appearances with students as well as provide other representation, the educational program will suffer. The teaching component should be strengthened rather than weakened, yet the inmates are entitled to fair representation.

These bright and energetic law professors are capable of expanding the clinical program to other serious social problems (i. e. drugs and the law), and the law school should capitalize on its investment by reinforcing the academic component by adding a lawyer to render legal assistance in conjunction with the efforts of the students.

The experimental L. A. M. P. program should be further evaluated by the law school to review the status of the two instructors. Both have no teaching load other than their participation in the L. A. M. P. program. Unfortunately, since the program is funded through temporary funds, neither instructor has a permanent faculty position nor a "tenure track" at the Law School. However, the program is regarded highly by other law faculty members, and it is quite possible that the program will eventually be incorporated into the regular budget of the Law School. On its first efforts, this program has done well.

#### F. Evaluation and Comments

The several clinical programs at the University of Minnesota are a comprehensive and complementary effort to introduce law students to the reality of law practice. The intensity of effort of the law school in the scope of courses offered and the high professional competence and experience of the instructors manifests the law school's commendable recognition of this new direction in legal education. The University of Minnesota School of Law may well have one of the outstanding and progressive clinical law programs in the country.

The most glaring deficiency for one of the nations top-rated law schools was the deplorable and grossly inadequate physical plant. The law school has long since outgrown its archaic facility, and the clinical programs (as well as the office for the State Public Defender) are not singled out for inadequate office space. The inadequacy of present facilities are an improvement over the space previously made available to the program. Provisions will have to be made to establish a contemporary law office within the law school complex so that clients can realize they are receiving fair legal assistance and not a second rate hand-out from students who are learning at the client's expense.

The clinical program should be re-oriented so as to make the primary focus of the instructor-lawyers the supervision and direction of the law students, and provisions should be made to have other attorneys provide the assistance that is needed by clients.

The misdemeanor program might be made more effective if the clinical program accepted only a limited number of cases on which the students could devote their efforts, rather than trying to assist all the clients or otherwise act as an auxiliary for the understaffed misdemeanor defender staff.

The appellate writing program should be split so that the same class is not writing briefs both for the Attorney General and the prisoners. During one year the class could assist the Attorney General, and then during the next year the State Public Defender.

The L. A. M. P. program is deserving of special credit, for it has served as a vital catalyst to point up the shortcomings in the criminal justice system, especially in the prisons. Although the program is restricted to civil matters, it has acted as a referral agency on criminal matters. Also the boundary between the civil and criminal case becomes ever so difficult these days, for a civil suit

brought about the release of a prisoner by having him placed back on parole. The excellent instructors of this program should be given guidance as to their status, and if otherwise eligible tenure is recommended for both of them. Security for them is security for the program.

Professor Robert Oliphant is a human dynamo, who is not only an experienced criminal trial lawyer but a law professor who has the respect of his students. His pace is fast, but he has more work than he can handle in five separate and demanding projects: the misdemeanor clinical program, the appellate brief writing course, the paraprofessional training course, a civil legal aid program, and a voluntary consultant for the William Mitchell College of Law in developing a misdemeanor clinical program. Professor Oliphant also participates in a summer advocacy program at the University of Colorado and provides representation in certain important indigent cases. Some adjustment should be made to give him some help on one or more of these projects.

The use of "student directors" to supervise other law students is extremely questionable, and this practice should be terminated. Only lawyers should supervise the work of the law students, and the greater experience of a student should not be so formalized so as to create an unwarranted infrastructure. The value to the student and his client should be direct and accessible contact with the supervising lawyer.

Clinical programs, where possible, should be of longer duration to insure sufficient contact of the student so as to appreciate the implementation of theory in practice and insure adequate client contact. One-quarter courses are insufficient for this purpose.

## IX. ELIGIBILITY FOR DEFENDER SERVICES

The Minnesota statute describes eligibility for defender services as one in which the defendant is financially unable to employ retained counsel. This is a reasonable standard which in practice is interpreted as a "substantial hardship test." If it would cause the defendant a substantial hardship to employ counsel, then the court would appoint counsel for him. In one court, it was observed that the court refused to consider the defendant eligible for appointment of counsel because defendant was able to make bond. The ability to make bond, as well as the resources of relatives should not be considered in determining eligibility of counsel. See ABA Standards Relating to Providing Defense Services, Standards 6.1. In the Hennepin County Municipal Court, law students conducting interviews of persons at municipal court hearings and using forms prepared for them, spent an undue amount of time eliciting information concerning eligibility for counsel in the limited time available, rather than securing more important information surrounding the facts and circumstances about the person's arrest and the present charges against him. Notwithstanding this inquiry, the Municipal Court again spent substantial time in court reviewing the eligibility of the defendant for appointment of a public defender. In Hennepin County, there exists an excellent Pre-Court Screening Program which is an LEAA funded activity as part of the Hennepin County court services. It is expressly designed to interview defendants taken into custody so as to provide the court with objective information at the first court hearing. One of the express purposes of this Pre-Court Screening Unit is to determine eligibility of a felony or misdemeanor defendant for the services of the public defender, but notwithstanding this report, the court conducts its own

independent in-court interview. The recommendation of the Pre-Court Screening Program should be accepted as recommendation for the appointment of a public defender and might be reviewed where the defendant is found ineligible. The public defenders whose limited resources are already substantially taxed are not in a position to accept cases where the defendants could otherwise employ counsel.

The standard of eligibility for confined defendant-appellants is not unreasonable but the procedural obstacle course by which the defendants seek to initiate an appeal by writing to the state public defender and then obtaining a questionnaire form concerning his eligibility for services as well as the merits of his appeals constitutes an undue inhibition on the appeal. This practice should be corrected so that a person otherwise without funds should be able to expeditiously take his appeal.

The attitude of the bar throughout the state was that the eligibility standards were not unfairly applied so as to affect the appointment of public defenders who were defending persons who could financially employ counsel. The variation in eligibility ran from a low of 50% in the Fourth District (Hennepin County) to 78% in the Seventh District. It should be noted that the eligibility factor would be much higher in the Fourth District if the cases handled by the Legal Rights Center, Inc. were included within this figure, for that defender activity represents those without funds. It is then submitted that this would increase the figure to 60%. It would appear that a 60-75% indigency was reasonable.

#### X. SUPPORTING SERVICES

The single greatest need for the various public defender offices throughout the state, both at the trial and the appellate level, was an increase in full-time investigators. The recommended investigators for each office has previously been stated. The national yardstick for determining the need of a full-time investigator has been that for every three full-time attorneys there should be at least one full-time investigator. Where large sparsely populated areas are involved, there might be an even greater need for investigative support, but if the area to be covered is too great, it might be best to employ such investigative assistance on a case-by-case basis. Use of a full-time investigator in conjunction with part-time attorneys should provide support that was not previously available in insuring more adequate preparation of cases for trial. This full-time support of the investigator might be abused by part-time practitioners, who might then relegate improperly legal functions to the investigator so that greater time could be devoted to their private practice.

In most defender offices utilizing only part-time attorneys, as a secondary alternative to a full-time director, consideration should be given to the employment of an administrative assistant for the program or a senior legal secretary who could manage internal administration of the program to include furnishing accurate up to date statistics on the work of all the defender attorneys in that district. Legal secretaries are invaluable for they increase the work that can be performed by an attorney, and all of the defender offices evaluated were understaffed in that respect. If legal secretaries are properly trained in their functions, they can provide clients, courts, law enforcement agencies, and other court activities with information concerning cases so that the lawyer can conserve his time and energy for those things for which he has been trained.



The use of law students has been previously described with respect to clinical programs. In the appellate program as well as the misdemeanor program, under the direction of the State Public Defender they are integrated into the defender service and provide valuable assistance. The students who participate in the program for educational experience are under the proper direction of experienced clinical law professors. Whenever law students are used, there should be always close supervision by an attorney. The summer law clerk program of the Hennepin County Misdemeanor Public Defender and the District Defenders should be continued and expanded, but the primary role of such participating law student would be to support the defender office rather than participate in an educational program. Since this compensation is to be afforded to the law student, his primary function should be service to the defender office.

The defender offices not using law students should consider the use of law students in conjunction with one of the clinical programs in the various law schools in Minnesota. It has been the experience in the past, such student participants might later become members of the defender office with the advantage of prior experience.

## XI. CONCLUSION

The defender offices observed and evaluated need substantial reorganization and reform in order to provide a quality legal service for those who would not otherwise be financially able to afford it. The 1965 statewide defender legislation was a substantial step in that direction, but the implementation of that enlightened design has not yet met with success. In addition to the enumerated recommendations contained in this report, it is strongly urged that the following major recommendations be implemented as soon as possible:

1. Local judicial control over the selection of public defenders and their assistants and supervisory regulation of their budgets must be eliminated to insure that the public defender can function as an independent advocate on behalf of his clients. See ABA Standards Relating to Providing Defense Services (approved Draft 1968) Standard 1.4. The most aggravated situation concerning improper judicial control exists in Hennepin County, but the other public defender offices also suffer from the improper supervision over the operation of the defender office. To implement Standard 1.4, the Minnesota Judicial Council should establish a Public Defender Committee composed of local judges, lawyers, and other representatives of the community, not necessarily lawyers, who would take an active role in insuring quality legal services consistent with the economy required for public funds. This neutral committee would function as a board of trustees that would serve to blunt any improper influences<sup>22</sup> over the public defenders and insure their professional independence.

2. The unification or consolidation of defender services, at the state or district level is essential so as to reduce the friction caused by fragmentation and unnecessary duplication of defender services. Although there

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<sup>22/</sup> As indicated in the ABA Standard 1.4, public defenders would always be subject to the control of the court in the same manner as retained attorneys in their day-to-day appearances before the court.



is overlapping, there is glaring lack of continuity in the vertical processing of a case, especially the appeal from the district court to the Supreme Court. Coordination among all defenders throughout the state is necessary.

3. Whenever possible, full-time defender attorneys should be employed in lieu of part-time attorneys. In Hennepin County Public Defender office and the State Public Defender office, there is no legitimate reason why most of the attorney personnel should not be full-time. Other comparable offices in the criminal justice system were able to obtain qualified full-time attorneys, and the part-time attorneys now used were all hampered by other professional or personal commitments. Ramsey County (Second District) should have one full-time public defender and possibly one full-time assistant public defender. In the outlying district defender offices, at least one attorney in that office should be employed on a full-time basis.

4. Increased financing should be provided for the existing defender offices, and serious consideration should be given to the funding of all defender services in Minnesota at the state level. The limitation availability of defender services as well as the use of part-time staff was attributed to the lack of adequate financing. The suggested increases in staffing and financing of several defender offices set forth in this report are believed to be moderate and well within the means of the county and state governments.

5. By statute, court rule, or practice, the district court should be under a duty to advise the sentenced defendant of his right to appeal. The following modification from California Rules for Superior Court, Rule 250, is suggested:

"After imposing sentence or making an order deemed to be a final judgment in a criminal case upon conviction after trial, the court shall advise the defendant of his right to appeal from the judgment, of the necessary steps and time for taking an appeal and of the right of an indigent defendant to have the assistance of appointed counsel and a record and transcripts of trial furnished to him without cost."

This report represents a coalition of the substantial work papers and reports of individual evaluators and other materials, which are available for any person interested in reviewing them. This report represents the considered opinion of the evaluators and is designed to offer suggestions for a positive improvement in the delivery of these constitutionally required legal services.

Respectfully Submitted,

Dated: June 1973

John J. Cleary, Executive Director  
Federal Defenders of San Diego, Inc.

Theodore A. Gottfried, Appellate Public  
Defender, State of Illinois

Patrick J. Hughes, Practicing Criminal  
Attorney and former Director of  
Defender Services, NLADA

John D. Shullenberger,  
Attorney Juvenile Litigation  
Office, Legal Aid Society of  
Chicago

Professor Bruce R. Jacob, Clinical  
Law Professor, Ohio State University  
School of Law

Vincent J. Zicardi, Chief Defender  
Defender Association of Philadelphia

Stanley C. Van Ness, New Jersey State  
Public Defender

## BIOGRAPHICAL SKETCHES OF EVALUATORS

### (EXHIBIT A)

John J. Cleary was admitted to practice in 1960. After military service as a judge advocate officer, he served from 1964 through 1969 as the Deputy Director, NLADA National Defender Project which was a \$6.1 million grant from the Ford Foundation to improve and strengthen defender services throughout the United States. (One of these grants initiated the Minnesota State Public Defender system.) In 1969 he served as attorney in residence for the Illinois Law Enforcement Commission in the capacity as an advisor and planner on courts, prosecution services and defender services. From April 1971 he has served as Executive Director of Federal Defenders of San Diego, Inc., the federal community defender organization for one of the largest federal criminal jurisdictions in the United States. This defender office provides legal representation, not only in the trial (district) court but also through appeal. He is a member of the ABA Standing Committee on Legal Aid and Indigent Defendants.

Theodore A. Gottfried was admitted to practice in 1966. After a short period of private practice, he served as assistant public defender in Cook County (Chicago), Illinois, for a period of three years during which time he worked in both the trial and appellate divisions of that public defender office. Because of his superior performance as a supervising attorney in the public defender office, he was selected as the District Defender for a downstate Illinois area under a newly formed statewide defender project, the Illinois Defender Project. Within two years he was made permanent director of the statewide program. In 1972 Illinois created the new office Appellate Public Defender, and Mr. Gottfried was selected by the Supreme Court of Illinois as the first State Appellate Defender. As of 1 July 1973 the Illinois Appellate Defender system has five district offices and employs twenty-two (22) attorneys, seven investigators and twenty-five (25) clerical staff. The annual budget is \$1.6 million. Mr. Gottfried is a frequent lecturer on criminal law and has written several legal articles.

Patrick J. Hughes was admitted to practice in 1960. From 1963 to 1967 he served as an Assistant United States Attorney in Chicago, Illinois, where he specialized in criminal trial work. From 1967 to 1970 he was the Director of Defender Services for NLADA, and in that capacity assisted communities throughout the country in improving their delivery of defender services. At the same time he served as staff attorney to the ABA Committee on Legal Aid and Indigent Defendants. His work at NLADA included consultation and advice to jurisdictions interested in establishing organized defender systems and field visits to these jurisdictions. An integral part of his work included evaluation of defender programs, and he has participated in evaluations of defender officers in Columbia, South Carolina; Houston, Texas; Detroit, Michigan; Philadelphia and Pittsburgh, Pennsylvania; San Francisco, California; and Boston, Massachusetts. He is presently in private practice in Chicago specializing in criminal law, and he serves as senior member of the panel of attorneys of the local federal defender program.

Bruce R. Jacob was first admitted to practice in 1959, obtained a master of law degree (LLM) from Northwestern University School of Law, Chicago, in 1965, and is presently a doctoral (S. J. D.) candidate at Harvard Law School. From 1960 to 1962 he was an Assistant Attorney General for the State of Florida (Criminal Appeals Division) and argued the landmark decision of Gideon v. Wainwright before the United States Supreme Court. (A second argument before that Court on behalf of a federal inmate was more successful.) After two years of private practice he became a law professor at Emory University Law School, Atlanta, Georgia (1965-1969). During that time he established and served as faculty supervisor for the law school's Legal Assistance to Inmates Program which clinical program provided legal assistance to inmates of the local and other federal prisons. He personally litigated some of the first precedent cases on prisoners' legal rights. While at Harvard Law School, he participated in criminal defense work and clinical programs at the Center for Criminal Justice and the Community Legal Assistance office in Cambridge, Massachusetts. He is now a law professor and Director of Clinical Programs at Ohio State University College of Law, where he teaches clinical courses and supervises law students handling criminal appeals and providing representation in misdemeanor cases on behalf of indigents. Mr. Jacobs is admitted to practice in Florida, Illinois, Massachusetts and Ohio. He co-authored a most comprehensive article on prisoners' rights: Justice After Trial: Prisoners' Need for Legal Services in the Criminal-Correctional Process, 18 Kans. L. Rev. 493 (1970) and wrote several other articles in this field.

John D. Shullenberger was admitted to practice in 1969. He has served as the staff attorney for the ABA Standing Committee on Legal Aid and Indigent Defendants and during 1970-1971 he was the Acting Director of the NLADA National Defender Project. While employed at the American Bar Center he served as appointed counsel in state and federal criminal cases, both as the trial and appellate lawyer. He now specializes in impact litigation as one of the senior attorneys of the innovative Juvenile Litigation office which has received national acclaim for its exceptional work in the field of juvenile law. Mr. Shullenberger organized and participated in an evaluation of the defender office in Seattle, Washington and was the principal participant in the evaluation of statewide defender services in Hawaii. He has lectured widely on the handling and treatment of juveniles by state institutions.

Stanley C. Van Ness was admitted to practice in 1963 after he graduated cum laude from Rutgers University School of Law. From 1964 to 1965 he was an Assistant United States Attorney for the District of New Jersey and from 1965 to 1967 was Assistant Counsel for Governor Richard Hughes and later (1967 to 1969) was counsel for the Governor. Since 1969 he has served as the New Jersey State Public Defender. This defender system is a statewide defender system including both the trial and appellate level. This defender system has seventeen (17) regional offices and employs two hundred and five (205) attorneys, one hundred and thirty-three (133) investigators and one hundred and sixty (160) clerical staff. The budget for fiscal year 1974 is \$8,257,000. Mr. Van Ness is the vice-chairman of the State Law Enforcement Planning Agency, a trustee of the New Jersey Bar Institute, and a member of the Supreme Court Committee on Criminal Procedure. He is also associate editor of the New Jersey Law Journal.

Vincent J. Ziccardi was admitted to practice in 1964. He graduated at the top of his class from Temple Law School and also received a masters degree in education. Since 1964 he has served with the Defender Association of Philadelphia which is the non-profit organization providing defender services in Philadelphia in both state and federal courts. He has headed various departments of this office including appeals and Law Development and Staff Education. He was made Acting Chief Defender in January 1969 and became Chief Defender in September 1970. This defender office employs ninety-five (95) attorneys, twenty-two (22) investigators, ten (10) social workers, and sixty-four (64) clerical staff including paraprofessionals. The current budget of this office is \$2,600,000. Mr. Ziccardi was the defender advisor to the National Commissioners on Uniform State Laws and lectured and wrote on criminal law and defender services.

C. Ray Falls is chief investigator of the New Jersey Public Defender Office who had sixteen (16) years of prior police experience prior to his appointment in 1967. In addition to demonstrated investigative experience, Mr. Falls has served as an expert on internal office management for defender offices with emphasis on statistical reporting.

PARTIAL LIST OF PERSONS INTERVIEWED

(EXHIBIT B)

Numerous individuals were interviewed during the on-site evaluation. Principal effort was made to interview the staff of the various defender offices. Some of the evaluators had lunch with the Justices of the Minnesota Supreme Court.

The following is a partial list of those persons interviewed by the several evaluators:

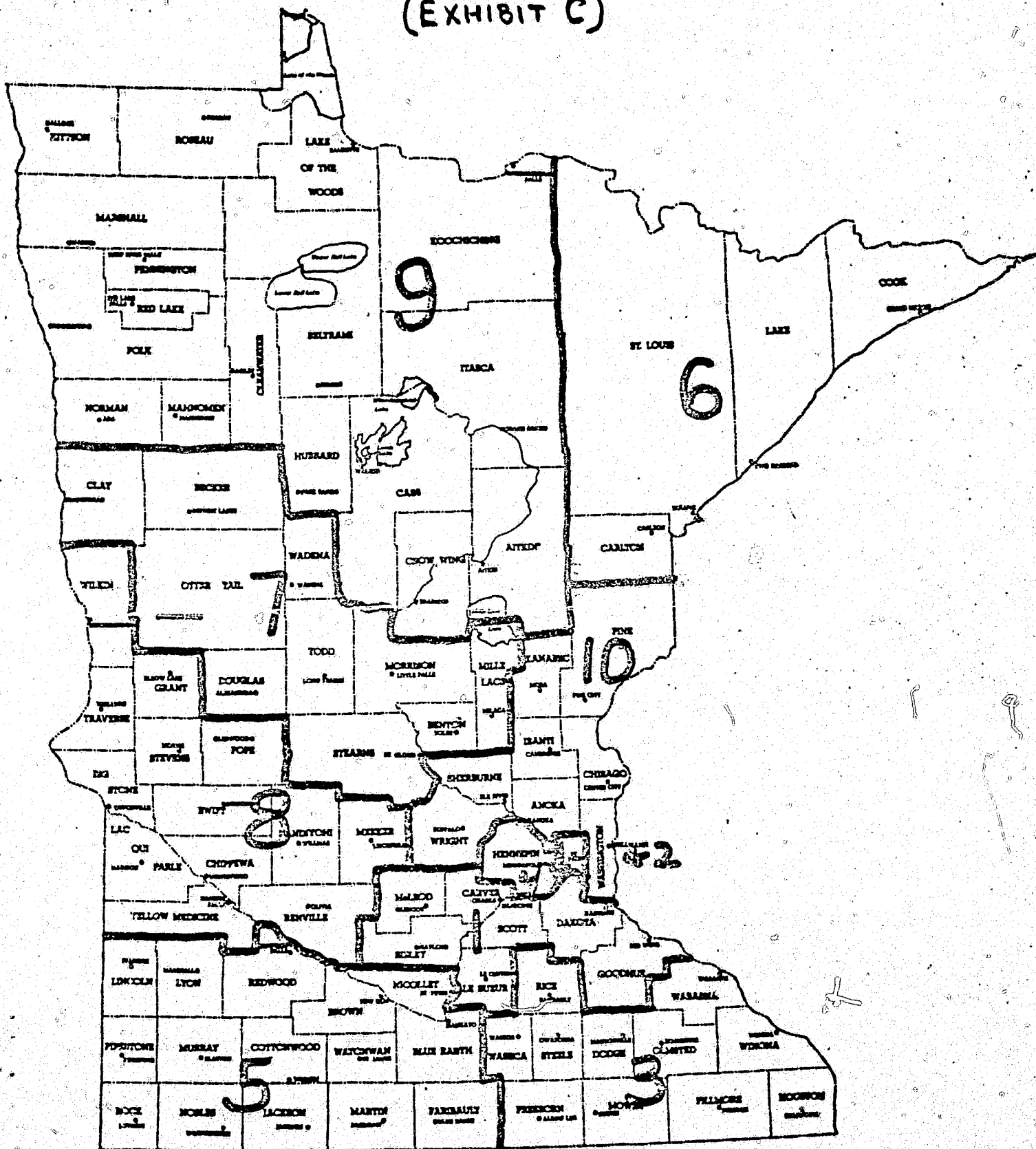
Chuck Adamson, Public Defender, 5th Judicial District  
James Albrecht, Assistant County Attorney, Hennepin County, Juvenile Court Division  
Richard B. Allyn, Special Assistant to Attorney General  
Judge Andersen, District Court Judge  
Austin Anderson, Attorney, Director of St. Paul Regional Office of the National Center for State Courts  
Judge Lindsay Arthur, Hennepin County Juvenile Court  
Judge Donald Barbeau, Minneapolis District Court  
Bernard Becker, Assistant Director Legal Aid Society of Minneapolis  
Patricia Belois, Part-time Public Defender, Hennepin County, Juvenile Division  
Thomas J. Bieter, Assistant Defender  
Charley Boehrs, Head of Treatment Program, Minnesota State Penitentiary, Stillwater  
John Brauch, Legal Assistant of Ramsey County  
William Briere, Part-time Assistant Public Defender, Hennepin County, Juvenile Division  
William H. Briggs, Assistant Part-time Public Defender, 7th Judicial District  
Leonard Broad, Assistant County Attorney, Hennepin County Juvenile Court  
Judge Bruenig, District Court, Dakota County  
Referee Chapman, Hennepin County Juvenile Court  
Frank Claybourne, Chairman, Supreme Court Advisory Committee on Rules, St. Paul  
Dick Clendenen, Professor of Criminal Law and Its Administration, University of Minnesota  
James Cullen, Associate Professor of Law, University of Minnesota  
Judge Andrew W. Danielson, District Court Judge  
Michael Davis, Chief of Law Reform Section, Legal Rights Center, Inc.  
George Duranske, Assistant Public Defender, 9th Judicial District  
Judge Chester Durda, Municipal Court, Minneapolis  
John D. Durrer, Public Defender, 6th Judicial District  
Michael Fetsch, Staff Lawyer, Legal Assistance for Ramsey County  
John Finley, Ramsey City Commissioner  
Lieutenant Folvery, Officer, Ramsey County Jail

Judge Archie L. Gingold, District Judge, Ramsey County Juvenile Court  
Joe Gockowski, Assignment Clerk, St. Paul Municipal Court  
Mel Goldberg, Associate Professor of Law, University of Minnesota  
Judge John Graff, Chief Judge, Ramsey County District Court  
Earl P. Gray, Assistant United States Attorney, Minneapolis  
Marvin Green, Attorney, St. Paul, and Part-time Assistant Public Defender,  
State Public Defender Office  
Jerry Halloran, Staff Assistant to Governor  
Keith Hanzel, Chief of Criminal Division, St. Paul City Attorney  
James Hulbert, Associate Warden for Custody, Minnesota State Penitentiary,  
Stillwater  
Doris Huspeni, Assistant Public Defender, State Public Defender Office  
Judge Irving Iverson, District Court, Hennepin County  
Kim Johnson, Assistant Public Defender, 10th Judicial District  
C. Paul Jones, State Public Defender  
Judge Stanley D. Kane, District Court, Hennepin County  
William R. Kennedy, Hennepin County Public Defender  
William Keppel, Private Attorney, Dorsey, Marquart, Windhorst, West &  
Halladay  
Richard Klein, Supreme Court Administrator  
Judge Theodore B. Knudson, District Court Hennepin County  
Detective Lieutenant Russell Krueger, Minneapolis Police Department  
Judge Jonathan G. Lebedoff, Municipal Court, Hennepin County  
Donald Lennon, Assignment Clerk, Ramsey County District Court  
David P. Lindgren, Hennepin County Commissioner  
Judge James Lynch, Ramsey County District Court  
Robert Lucas, Assistant County Prosecutor  
Referee MacFarland, Hennepin County Juvenile Court  
Paul Marino, Director, Legal Aid Society of Minneapolis  
Judge Mason, Senior Judge, 5th Judicial District  
Jack Mitchell, Assistant Public Defender, Dakota County  
Robert Nelson, Probation Staff, Ramsey County Juvenile Court  
Elmer Nordlund, Deputy Chief of Police  
Judge Patrick O'Brien, District Court Judge  
Judge Odden, District Court Judge  
Robert Oliphant, Associate Professor of Law, University of Minnesota  
Mr. O'Rourke, Newly-hired investigator, Public Defender of Hennepin County  
Judge Edward Parker, District Court, Hennepin County  
Warren Peterson, Ramsey County Public Defender  
Judge James Preece, District Judge, 9th Judicial District  
Jack Provo, District Court Administrator, 4th Judicial District  
John C. Quam, Public Defender, 7th Judicial District  
William Randall, Ramsey County Attorney  
Leo Raskind, Professor of Law, University of Minnesota  
Mollie Raskind, Assistant Public Defender, State Public Defender Office  
E. F. Robb, Jr., Hennepin County Commissioner  
Judge James D. Rogers, Municipal Court, Minneapolis  
David Roston, Assistant Defender, Hennepin County



Richard Scherman, Pre-Court Screening  
George M. Scott, Hennepin County Attorney  
Judge Susanne Sedgwick, Municipal Court Judge  
John Sonsteng, County Attorney, Dakota County  
Fred Spencer, City Attorney's Office  
Judge Bruce C. Stone, District Court, Hennepin County  
William D. Summerness, Assistant Defender  
Judge William C. Sykora, Municipal Court, Hennepin County  
Captain Thompson, Officer, Ramsey County Jail  
T. Eugene Thompson, Inmate of Minnesota State Penitentiary, former  
practicing criminal defense attorney  
John D. Tierney, Assistant Defender  
Thomas Tinkham, Private Attorney, Dorsey, Marquart, Windhorst, West &  
Halladay  
Thomas Tyson, Chairman, Hennepin County Commissioners  
Rosalie Wahl, Assistant Public Defender, State Public Defender Office  
George Webber, Chief Deputy, Ramsey County Sheriff  
Harold Westerberg, Court Administrator, Hennepin County Juvenile Court  
Michael Wethervee, Legal Counsel, Minnesota Civil Liberties Union  
T. Williams, Ombudsman for Corrections, St. Paul  
Judge Sigwel Wood, Judge of the County Court, Becker County  
John Wunsch, Budget Division of the County Administrator's Office  
Robert Wyckoff, Supervisor, Municipal Court Probation  
Manley Zimmerman, Supervising Part-time District Public Defender,  
4th Judicial District, Juvenile Division

# MINNESOTA JUDICIAL DISTRICTS (EXHIBIT C)



# 7th ANNUAL CRIMINAL JUSTICE COURSE

September 6, 7 & 8, 1972

Radisson South  
7800 Normandale Boulevard  
Bloomington, Minnesota

## SCOPE AND PURPOSE OF THE COURSE

The 1972 Annual Criminal Justice Course features a trial demonstration which employs a cast of experienced and exceptionally talented participants. The trial of the case begins with a Rasmussen hearing and proceeds through the presentation of the State's case, the defendants' case and concluding with final arguments of the prosecution and the defense. A "trial critique" will be offered in which the opposing attorneys will comment on tactics and strategies used during the trial, and you will have the opportunity to ask questions.

Each registrant will receive a complete "file" of the case, including a statement of the hypothetical fact situation and the pleadings. In addition, each will receive a copy of the new and greatly expanded edition of CRIMINAL PROCEDURE.

The always popular "Review of Recent Minnesota and United States Supreme Court Cases" will again be presented as will several new topics such as: the proposed new Rules of Minnesota Criminal Procedure.

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Office of the Attorney General, State of Minnesota  
Minnesota County Attorneys Association  
Office of the Minnesota Public Defender  
Continuing Legal Education, Minnesota State Bar Association and University of Minnesota

(EXHIBIT D)

## COURSE SCHEDULE

### REGISTRATION:

Tuesday, September 5: 5:00 p.m. - 7:00 p.m.  
Lobby, Radisson South  
Wednesday, September 6: 8:00 a.m. - 9:30 a.m.  
Lobby, Radisson South

### WEDNESDAY, SEPTEMBER 6

9:30 a.m. - 9:50 a.m. INTRODUCTION AND SCOPE AND PURPOSE OF THE COURSE - *Warren E. Peterson*

9:50 a.m. - 10:20 a.m. CHARGING CONSIDERATIONS OF THE TRIAL DEMONSTRATION CASE - *Paul E. Lindholm*

10:20 a.m. - 10:30 a.m. Coffee Break

10:30 a.m. - 12:30 p.m. TRIAL DEMONSTRATION - *Warren E. Peterson and John Tierney*  
The Rasmussen Hearing - Line-up Considerations; Search and Seizure; Confessions (Admissibility and Promises Made); Miranda Questions

12:30 p.m. - 1:30 p.m. Luncheon

1:30 p.m. - 3:00 p.m. TRIAL DEMONSTRATION (Continued)  
The State's Case - *Emanuel Z. Kopstein*  
Opening Statement and Presentation of Evidence

3:00 p.m. - 3:15 p.m. Coffee Break

3:15 p.m. - 4:45 p.m. TRIAL DEMONSTRATION (continued)  
The State's Case Continued

**THURSDAY, SEPTEMBER 7,**

- 9:30 a.m. - 10:30 a.m. TRIAL DEMONSTRATION (continued)  
Completion of the State's Case
- 10:30 a.m. - 10:45 a.m. Coffee Break
- 10:45 a.m. - 12:00 noon TRIAL DEMONSTRATION (continued)  
The Case for the Defense - *Douglas W. Thomson*
- 12:00 noon - 1:00 p.m. Luncheon
- 1:00 p.m. - 2:00 p.m. TRIAL DEMONSTRATION (continued)  
Final Arguments - *Emanuel Z. Kopstein* and  
*Douglas W. Thomson*
- 2:00 p.m. - 2:30 p.m. TRIAL CRITIQUE - Question & Answer Ses-  
sion - *Panel of participants*
- 2:30 p.m. - 2:45 p.m. Coffee Break
- 2:45 p.m. - 3:45 p.m. PROFESSIONAL RESPONSIBILITIES OF THE  
TRIAL JUDGE, THE PROSECUTION LAWYER,  
THE DEFENSE LAWYER AND THE LAW EN-  
FORCEMENT OFFICER - *Professor Maynard  
Pirsig*
- THE PROPOSED NEW RULES OF MINNESOTA  
CRIMINAL PROCEDURE - *C. Paul Jones*

**FRIDAY, SEPTEMBER 8**

- 9:30 a.m. - 10:45 p.m. REVIEW OF RECENT MINNESOTA AND UNIT-  
ED STATES SUPREME COURT DECISIONS -  
*Gerard W. Snell and Henry W. McCarr, Jr.*
- 10:45 a.m. - 11:00 a.m. Coffee Break
- 11:00 a.m. - 12:00 noon REVIEW OF CASES (continued)
- 12:00 noon - 12:30 p.m. Question & Answer Session

**REGISTRATION FORM  
7TH ANNUAL CRIMINAL JUSTICE COURSE  
September 6 - 8, 1972**

**CONTINUING LEGAL EDUCATION**  
Continuing Education & Extension  
388 Nolte Center for Continuing Education  
University of Minnesota  
Minneapolis, Minnesota 55455

Make Check Payable to:  
**UNIVERSITY OF MINNESOTA**

Please register the following individuals in the 7th Annual Criminal Justice Institute at \$50.00.

NAME \_\_\_\_\_  
NAME Please Print \_\_\_\_\_  
NAME \_\_\_\_\_  
NAME \_\_\_\_\_  
FIRM/ORGANIZATION \_\_\_\_\_  
CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

# REGISTRATION INFORMATION

## WHO MAY ENROLL:

The Criminal Justice Course is open for enrollment to all members of the Bar, the Judiciary and to all law enforcement officials. Legal assistants, currently employed in a law office, may also enroll on the same terms and conditions as attorneys.

## TUITION:

Tuition for the Course is \$50. This entitles the registrant to attend all lectures during the two and one-half day course, a set of course materials, two noon luncheons and morning and afternoon coffee breaks.

## REFUNDS:

Refunds will be made only if cancellation is received before September 1.

## ACCOMMODATIONS:

Room reservations should be made directly with the:

Radisson South Hotel  
7800 Normandale Boulevard  
Bloomington, Minnesota 55435

Mention that you are attending the 7th Annual Criminal Justice Course.

## TAX DEDUCTIBLE:

Tuition, travel, hotel and living expenses incurred in attending Continuing Legal Education courses are tax deductible. Treas. Reg. § 1.162.5.

## TAPE RECORDINGS:

Tape recordings of Continuing Legal Education courses is not permitted.

# FACULTY

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**END**