THE AMERICAN UNIVERSITY
Criminal Courts Technical Assistance Project
Institute for Studies in Justice and Social Behavior
The American University Law School
Washington, D.C.

RECOMMENDED UTILIZATION OF LEGAL RESEARCH AIDES IN THE SUPREME COURT OF FLORIDA

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I. INTRODUCTION

In considering the merits of adding three staff attorneys available through LEAA funds to serve as research aides to justices of the Florida Supreme Court, Chief Justice Vassar B. Carlton requested the consultant services of the National Center for State Courts through the resources of LEAA's Criminal Courts Technical Assistance Project at American University. The purpose of this assistance was two-fold: 1) to provide recommendations for the effective use of the additional personnel and 2) to evaluate the Court's current use of personnel, particularly those involved in the Court's pilot research and case screening program.

On May 24-26, a three-man team from the National Center for State Courts visited the Court. This team consisted of Daniel J. Meador, Director of the Center's Appellate Justice Project, David Halperin, director of the Center's Atlanta Regional office, and Hon. Stanley Mosk of the California Supreme Court. The consultants met with each member of the court research staff, six of the members of the court, the Chief Justice's Executive Assistant and other court officials.

II. DESCRIPTION OF THE COURT AND ITS CURRENT USE OF RESEARCH AIDES

The Supreme Court of Florida consists of seven Justices, each of whom has one personal law clerk (hereafter referred to as an aide, in accordance with the Court's usage). Each justice's aide is responsible directly to the justice. Having differing personalities and work habits, each justice inevitably employs his aide in a somewhat different manner, although in broad generality the techniques are comparable. The aide assists his justice in research, in preparation of memoranda on the threshold question of jurisdiction, in preparation of oral argument summaries, and ultimately in drafting majority, dissenting and concurring opinions. The direction comes from the individual justice and the responsibility is that of the justice.

In addition to the seven aides for the seven justices, since January 1973, an additional circulating or "floating" aide has been employed to assist each of the justices for limited periods, usually two weeks.

A principal source of the Court's business is the state's intermediate appellate court system consisting of four District Courts of Appeals (DCA). Those courts, sitting in four geographical regions, hear appeals taken as a matter of right from the Circuit Courts, which are the trial courts of general jurisdiction.

Decisions of the District Courts of Appeals may be reviewed by the Supreme Court in two circumstances:

- where the DCA certifies the case to the Supreme Court,
- where there is a conflict between the DCA decision and a decision of another DCA or of the Supreme Court.

This "conflict" jurisdiction over DCA decisions forms the largest category of cases in the Supreme Court's docket and these cases come to the court on

petitions for certiorari filed by the litigants. In addition, the Court hears appeals as a matter of right in constitutional, capital, and bond validation cases, and in a few other situations. The Court also has original jurisdiction over habeas corpus and other writ petitions and in a small number of miscellaneous matters.

Filings in the Supreme Court of Florida, during the year 1972 were as follows:

Appeals as a matter of right	166
Petitions for writs of certiorari to review DCA decisions	659
Other petitions for writs of certiorari	191
Original Proceedings	258
Miscellaneous	14
Total filings	1,288

In dealing with the certiorari petitions in cases of alleged DCA "conflict," the Supreme Court's practice is, and has been for some time, as follows. Each petition filed in the Supreme Court clerk's office is assigned to an individual Justice on a strictly rotating basis. The Justice to whom a petition is assigned is responsible for preparing a memorandum on the jurisdictional question, that is, whether the decision below is in conflict with a decision either of another DCA or of the Supreme Court. The existence of a conflict is viewed as jurisdictional because the Court is empowered to review the DCA decision only if it does present such a conflict. The jurisdictional memorandum is based on the papers which the parties have filed; these include briefs from both sides directed to the question of conflict (not, in theory, to the merits) and such parts of the DCA record as the parties have chosen to file in the Supreme Court.

The opinion, if any, written by the DCA must of course be examined, as well as the opinions with which it is alleged to conflict. The memorandum will typically include a summary of the facts, the issues decided, and a brief analysis of the decisions relevant to the conflict question; it concludes with a recommendation by the Justice, sometimes backed up by his own brief argument, that the petition be granted or denied. The memorandum, with the briefs and record, is then circulated to the other four Justices making up the five-man panel which will act on that petition. Each Justice notes his view on the memorandum. If a total of four concur in either a grant or a denial, the appropriate order will issue from the clerk's office. If less than four concur in a disposition, the case is scheduled for conference where it will be discussed and acted upon. Any one Justice can have a petition taken up at conference by simply requesting a conference at the time the memorandum circulates to him.

In preparing these jurisdictional memoranda the Justices rely to a substantial degree on their aides. Usually the memorandum is initially drafted by the aide to the Justice to whom the petition is assigned. In preparing this draft the aide studies all of the papers and conducts such library research as seems necessary. The aide's draft is reviewed by the Justice who may edit or revise it to suit his taste and view of the case. There appear to be differing views among the Justices as to what constitutes a conflict for purposes of granting a certiorari petition; thus a jurisdictional memorandum tends to bear the personal stamp of the Justice originating it.

The preparation of these jurisdictional memoranda takes a substantial part of the aides' time. The estimates of individual aides range from

one-third to one-half of their total time. It is not clear what proportion of the Justices' time is devoted to the memorandum preparation process; though it is less than that of the aides, it is likely to be a significant percentage.

III. SUGGESTIONS FOR USE OF ADDITIONAL STAFF ATTORNEYS

A. Role of Staff Attorney

The term "staff attorney" is commonly used throughout the country to describe a lawyer employed in an appellate court to assist the court as a whole; staff attorneys are typically organized into a central research pool. Obviously, the title is of little importance as long as the function and role are clear. A central research lawyer is to be distinguished from a judge's personal aide or law clerk (sometimes called "elbow clerk"). The theory is that the former works for the Court as a unit while the latter works solely for the judge who appoints him.

A primary object of a central staff in an appellate court is to assist the judges by enlarging their capacity to handle a rising volume of cases. In any court, whatever works best to that end is the arrangement which should be adopted. In the Florida court, as in other courts, there are various ways in which a staff could be utilized. Typically some experimentation and trial and error are necessary in order to learn from actual experience in the court's setting which is the most helpful way. Thus any scheme agreed upon should be viewed as tentative, to be reshaped as experience is gained, or even to be abandoned in favor of another arrangement if that seems wise. The immediate concern is to design a beginning procedure for the use of the staff, realizing that the design is but one of several possibilities and that it might be altered after a trial period.

B. Need for Additional Staff Attorneys.

There is no question that the Florida Supreme Court carries a heavy burden of work. For the year 1972, 1,288 cases were added to the docket, 659 of which were petitions for writs of certiorari after decision by the District Courts of Appeal.

The court was obviously industrious. During the two terms of the year, it disposed of 1,229 cases. Nevertheless the sheer volume of filings and the complex nature of many of the cases caused the court to fall behind. At the beginning of the year there were 457 undecided matters on the docket; at the end of the year there were 516 cases remaining undetermined. This backlog represents a nearly 13 percent increase in pending caseload, and alone would justify the addition of at least two more research aides (and retention of the current eighth, the circulating aide).

But more significant than mere statistics are considerations relating to the quality of work. Since the vast majority of the cases on the docket require a preliminary determination of jurisdiction, an inordinate percentage--estimated at 33 to 50%-- of the time of existing research aides must be devoted to research on jurisdiction and the preparation of jurisdictional memoranda. This expenditure necessarily curtails the time and intellectual resources available for preparation of oral argument summaries on those cases to be heard, and for research and writing drafts on opinions assigned to the justices. Every research aide expressed the belief that pressures of threshold tasks prevented him from pursuing the type of in-depth research that would improve the quality of the work he prepared for his justice. Not only do the aides feel somewhat unfulfilled, but they believe they are not able to adequately assist the justices in the crucial decision preparation responsibility.

Ideally for a court with the Florida volume of work two research aides per justice should be provided. Assuming, as apparently we must, that resources are not forthcoming in the immediate future for that number, it would appear that at a minimum for the effective administration of justice the Florida Supreme Court should have one research aide per justice and three other research aides available for assignment, as discussed infra.

C. Specific Responsibilities of Additional Research Staff

Discussions with Court staff indicated general agreement that the research staff to be created could most productively be utilized by assigning them to a pool subject to the administrative direction of the Chief Justice. While the Chief Justice will not directly channel tasks to the aides, he will be their titular and administrative director, responsible in the final analysis for hiring and firing, providing quarters and assistance, approving sick leave and vacation periods, etc.

In a memorandum entitled "Overview of Our Current Thinking" members of the court described six possible types of work for assignment to the three pool aides. These suggestions were merely tentative, and involved the following responsibilities:

1. Screening prisoner correspondence, preparing summaries of rule 3.850 and habeas corpus petitions.
2. Assisting in research and drafting tentative rules of practice and procedure under the direction of the Court Rules Committee chairman.
3. Researching questions arising from particularly complex litigation and performing special research in areas of the law requiring exceptional expertise.
4. Being assigned to offices that appear to be developing a serious backlog in order that the disposition of cases may be kept as current as possible.
5. Preparing oral argument summaries for motions and cases argued before the court.
6. Serving as research attorneys for the various committees staffed by the justices within the court.

Discussion of these areas of responsibility as well as other possible assignments resulted in a consensus that the new aides could be best utilized by serving as a research pool to prepare jurisdictional memoranda - from both a statistical and functional viewpoint. As indicated above, between 33 and 50% of the time of the present eight aides is currently occupied with preparing jurisdictional memos. This responsibility would make up a full-time workload for three aides.

These jurisdictional cases now run over 650 annually on the court's docket. Assuming that the court desires a memorandum on each case, dealing with jurisdiction only, as has been the practice, three staff attorneys should be able to handle the entire job, although they may be pressed to do so. This would mean approximately 225 memoranda annually be each staff attorney, an average of over 4.5 cases per week, or about one case per workday.

This projected rate of production can be compared with actual experience with staff attorneys in the Michigan Court of Appeals and in the four courts in the Appellate Justice Project of the National Center for State Courts - the Supreme Courts of Virginia and of Nebraska, the Illinois Appellate Court, First District, and the Appellate Division of the New Jersey Superior Court. In those courts the staff attorneys do comprehensive memoranda on the merits of the appeal, and they draft proposed short opinions. That type of case treatment appears to be substantially more elaborate and time-consuming than preparation of the typical jurisdictional memorandum is likely to be in the Florida Supreme Court. In any event, staff experience in those courts indicates that an average of two cases per week - or perhaps slightly less - is the norm for staff productivity. In some instances, however, staff attorneys are handling ten cases a month. One hundred

memoranda of that sort in a year's time would be considered a very good level of productivity for a single staff attorney.

Experience will be necessary to determine whether a staff attorney in the Florida Court can achieve a rate of productivity on jurisdictional memoranda which is over twice that of the staff attorneys in those other courts where they deal fully with the merits. It does not seem unreasonable to think that the Florida staff can do so, in view of the simpler and shorter memoranda involved. If the volume turns out to be too large for the three staff lawyers, the excess can be spread among the Justices' aides, or a fourth staff attorney could be employed.

It appears, therefore, that utilization of the additional aides in preparing jurisdictional memoranda in the DCA cases would be a sound arrangement - at least initially. A staff concentration on the cases coming from the DCA's on certiorari petitions appears to offer promise of substantial and immediate relief to the Justices' aides. By current estimates this would free from one-third to one-half of the aides' time for other work and, depending on the procedures adopted, such an arrangement could also relieve the Justices themselves of the time they presently put into the memorandum preparation process. The aides' time thus freed could be devoted to other important work for the Justices which now gets slighted because of the large amount of time put on jurisdictional memoranda. This other work for the aides will be discussed further below.

Furthermore, most of the aides and justices - with some exceptions, to be sure - believe the jurisdictional memos should be prepared with a minimum of editorializing and without projecting the predilections and legal philosophy of any individual justice. They indicated a desire for objectivity

rather than memoranda reflecting the policy views of justices, some of whom frequently seek ways of finding jurisdiction, others of whom are more often likely to deny jurisdiction, in close cases.

Another argument for utilizing the central staff to work on the certiorari petitions from the DCA is that the "conflict" issue presented at the threshold is a technical jurisdictional issue about which a staff can develop a high degree of expertise. Staff attorneys handling all cases of this type can, after some experience, develop a facility for doing a uniformly good job in producing the kind of memoranda which will be of maximum help to the judges. In other words, a pool of experts on this peculiar jurisdictional issue of conflict can be created, thereby affording the court something of the efficiencies, economies, and quality which specialization can bring.

D. Suggested Operating Procedures for Research Pool

The following procedures are set out as a way in which the additional research staff can attempt to achieve maximum efficiency and relieve the Justices and their aides to the maximum extent possible at the certiorari granting and denying stage of the appellate process.

1. The staff attorneys should have offices of their own, with adequate working arrangements, not connected physically or operationally to any one judge of the Court. They should have easy access to the library. One member of the central staff should be designated staff director and charged with responsibility for the performance of the staff and for all personnel and administrative matters connected with its operations. The staff director should be responsible to the Chief Justice - or his delegate - for the staff's work. Experience with appellate staffs elsewhere suggests that unless there is a director with clear responsibility

and authority difficult problems concerning the quality and volume of work will arise, and there will be unnecessary administrative burdens cast on the judges.

2. As petitions for certiorari and the accompanying papers are filed with the clerk of the court they would be routed immediately to the central staff office. There a staff attorney would prepare a memorandum on the jurisdictional question, i.e., the existence of the requisite conflict. This memorandum would be more or less in the form presently used by the Justices. Ground rules for its precise format and contents should be worked out between the staff and the Justices. The memorandum would contain an objective analysis of the issues with a fair presentation of the facts, the authorities, and a summarization of the arguments on both sides. It should conclude with the staff attorney's recommendation as to whether certiorari should be granted or denied. The reason for including a recommendation is that it will be helpful to the judges to have the benefit of the thinking of the lawyer who has studied and analyzed the case carefully from a non-adversary standpoint. The judges are of course wholly free to make their own decisions and may or may not follow staff recommendations.

3. At least for the first several months after the staff commences work, each memorandum should pass through the staff director's hands before going to the judges. This is a desirable quality control. The staff director should read each memorandum to insure that it is in the agreed upon form and that it is clear and complete. In the early stages of breaking in a new staff attorney his memoranda should probably be checked in depth by a reading of the pertinent authorities and an examination of the record. As the staff attorney gains experience and as confidence

grows in his work, the staff director's review could become briefer. The director should return to the attorney for revision of any memorandum found to be deficient. No memorandum should go to a judge until it has been initialed as satisfactory by the staff director.

4. Once approved by the director, the memorandum, the petition, the briefs, and the record should be sent to the judge who is next on the rotating list to receive a certiorari petition. This should be regarded as merely a mechanical routing and not as an assignment of the case to that judge. To insure additional quality control - at least in the early stages of the staff's life - the judge initially receiving the case might assume a responsibility for reviewing the memorandum with special care. If he should find incompleteness or inadequacies he should return the case to the staff director, informing him either orally or in writing as to the problem. The memorandum should then be redone by the staff attorney who wrote it originally.

5. If there are no technical difficulties with the memorandum, the judge should indicate his vote to grant or to deny, or he might indicate a desire for a conference. A one-page disposition form could be devised to accompany each case as it leaves the staff office. When the initial judge has indicated his action, and appended any comments or arguments he cares to make, the case with the memorandum and all accompanying papers would be sent forthwith to the next judge in the deciding panel of five. He would note his vote, append any comments he felt moved to make, and pass the case on to the next judge. Cases would thus circulate to all five judges in essentially the way they do at present. A case would go to conference only if a judge requested it or if less than four judges agreed on the disposition.

6. When a petition is denied, either as a result of the circulation or of a conference, the clerk's office would, as now, issue the appropriate order to that effect. If a petition is granted, the case would then be assigned to a judge, by whatever assignment system the Court cares to adopt. A key difference between this proposal and present practice is that under the proposal the case is not assigned to a particular judge unless certiorari is granted. Until that point the case would be before the Court as a whole; the Court, based on the staff work, would make the threshold jurisdictional decision before a case is added to the individual work load of a judge. This proposal would have the salutary effect of preventing a single judge's proprietary interest from attaching to a case while it is still in the petition stage and at a time when it may never materialize into full blown appeal on the merits. It would also foster more of a shared institutional interest in granting and denying petitions; when voting on petitions a judge would not know whether, if the petition is granted, he would be assigned the case for opinion writing purposes.

Following action on the petition the staff would have no further involvement with the case. All work thereafter would be done by the Justices and their aides. With over 650 DCA certiorari petitions a year, it is doubtful that the staff could do anything other than prepare jurisdictional memoranda. Certainly for the first few months it would be unwise to load the staff with additional jobs. A fair trial should be given one scheme - whatever it is - before switching arrangements or assigning other duties.

A theory of a central professional staff is that there are steps in the appellate process which do not have to be performed by judges themselves; they can be done by lawyers working for the judges, subject always to the

ultimate control of the judges. To get maximum benefit from a staff it is important that the judges and their aides not do what the staff can--that the judges and their aides not repeat work already done by the staff. In other words, the elimination of unnecessary steps and the avoidance of repetition are crucial to efficiency and increased productivity.

Applying these notions to the procedure outlined above, a judge or his aide should not attempt to revise a staff memorandum or to redo it. It is proposed that the initial judge might undertake a closer look than the other judges as an added quality check, at least in the early stages of the enterprise. But even then, if any short-comings are spotted the memorandum should be returned to the staff. The judge or his aide should not attempt to remedy the deficiency. The judge of course can - and perhaps should - look quickly at the briefs and the record - or selected portions of them - to satisfy himself on the key points. And he can add his personal comments to the memorandum. But to revise or redo the staff work would be duplicative effort and a confusion of function. Moreover, it would not improve the staff's work.

Returning sub-standard memoranda to the staff is one of the most useful ways of educating the staff to what the judges expect in a memorandum. Only by getting feedback from the Court can the staff gradually develop memoranda which are of maximum help. Even if no memoranda are found deficient, the judges should make fairly frequent occasion to convey to the staff their comments about the staff's work. In addition to making for more helpful memoranda, this would also create a good atmosphere, contribute to good morale, and give the staff a feeling of involvement with the Court. These are important factors in attracting and retaining good staff lawyers.

In sum, it is recommended that the additional staff aides be pooled to receive petitions for certiorari directly from the clerk's office, that they write memoranda on jurisdiction as objectively as possible, that the finished product then be circulated among the justices for processing in the manner currently employed by the court. If certiorari is granted, then and only then should the case be assigned to an individual justice for preparation of an oral argument summary and for such other matters as thereafter follow.

The foregoing system has several salutary by-products. It will enable the assignment clerk to more equitably distribute the cases for oral argument summary preparation, without being bound, as is the current custom, to assign each case to the justice who prepared the jurisdictional memorandum. Secondly, it will stimulate more thorough consideration of the jurisdictional memoranda by every justice, rather than his yeilding to the tendency that sometimes creeps into a busy court of relying upon the original authoring justice. Thirdly, it will encourage deeper reflection on the jurisdictional memo since no justice voting to grant certiorari can be certain, as at present, that he will not ultimately be assigned the case.

On the negative side, certain potential problems should be noted. There is the possibility that the pool aides will succumb to boredom that attends performance of a single limited task, and that the quality of their work may deteriorate over a period of time. While we recognize that danger as always a possibility, hopefully it will not eventuate in Florida in view of the widespread recognition of the overriding consequence of jurisdictional determination. If jurisdiction is not affirmatively found, the litigation is at an end. Thus in the vast majority of the cases, the threshold question

determines finality of the proceedings and the opportunity of a review of the memo. Anyone researching jurisdiction, therefore, must of necessity be impressed with the importance of his responsibility. In addition, since the bases of the Supreme Court's jurisdiction are specified in the Florida constitution, each jurisdictional determination is a matter of State constitutional law.

It should also be pointed out that, although the bases for jurisdiction are stated simply, there is no litmus paper test for jurisdiction; there seems to be a substantial jurisprudence revolving around this question in the case of conflict jurisdiction, and the research aides attach a virtual mystique to the analysis of that question. For the same reason, it was frankly indicated by members of the Court that there are different philosophies on the Court with respect to "conflict jurisdiction;" it would probably be overly simplistic to characterize these philosophies as being "liberal" or "strict;" but however described, it was apparent that at least some of the judges viewed their recommendations on jurisdictional determination as highly personal judicial work, which they would not want delegated "to a committee." Finally, some concern was expressed by the individual research aides as to whether taking away the initial jurisdictional determinations from them or their counterparts might have an adverse effect upon their work on decisions on the merits, since the jurisprudence of conflict jurisdiction had to be learned in any event, it being a question which was dealt with in opinions to the merits as well as at the threshold stage.

While the above factors do not negate the benefits of the recommended research aide pool, they should be considered during the planning process.

E. Training the New Research Aides

Instruction of the research aides should be both oral and written and should include the following:

1. At least one lecture session, at which the Chief Justice and Mr. Falck on behalf of the justices explain what is expected of the aides, and a senior aide discusses adaptable techniques.

2. Distribution of samples of the several types of memoranda, carefully selected for superior quality.

3. Preparation of memorandum of policy expectations and incidental benefits with discussion of:

a. The confidentiality required as to all court work and internal operations.

b. Proper use of court property (e.g., no keys to offices are to be duplicated; all memoranda remain the property of the court).

c. Limitation of visitors to court premises and restrictions upon use of telephone facilities for personal calls.

d. Vacation, health and sick leave benefits.

e. Court appearances as counsel in any litigation to be permitted only upon approval of the Chief Justice.

f. Conduct in and out of the court building to be consistent with the dignity expected of an attache of the highest court in the state.

IV. SUGGESTIONS FOR IMPROVING CURRENT USE OF RESEARCH AIDES

A. Improve Quality of Oral Argument Summaries

The consultants examined exemplars of the several types of memoranda prepared by research aides. While the jurisdictional memos appeared adequate for the purpose served, the oral argument summaries could be improved.

At the present time, these memoranda are typically no more than a brief summary of the fact, and a review of the issues as defined by the parties. An expanded oral argument memorandum in which the legal issues are subjected to research and at least a preliminary evaluation will not only lead to a more useful oral argument, but will produce speedier disposition by the court.

The current tendency, expressed by at least one justice, is to consider the oral argument summary merely a slightly expanded jurisdictional memo. However, the two should serve distinctly different purposes. Indeed, the fact that briefs are not submitted on the merits of the case until after assumption of jurisdiction clearly indicates that more adequate research and writing is required before oral argument. With a greatly expanded summary for oral argument, the memo can thereafter serve as the source of a good deal of the basic material for the ultimate opinion and may even constitute, in some cases, a rough draft.

Use of the new pool aides for preparation of jurisdictional memoranda will, hopefully, provide the additional time and stimulus for the justices' own aides to expand indepth research on cases coming before the court on the merits and particularly to prepare more adequate oral argument summaries. After this is done for a period of time, the justices will probably be unwilling to return to the relatively short form presently being accepted.

B. Transfer Circulating Aide to Research Aide Pool

The current use of a circulating research aide should be dropped in favor of utilizing this aide as part of the research aide pool.

There was general agreement that the circulating aide has not been utilized for maximum efficiency. Responsibility to everyone produces responsibility to no one. The two-week period of limitation often results in partially completed projects and the transitory nature of his work renders it difficult for that aide to adjust to the individual style and policy preferences of each member of the court. Indeed the circulating aide hopes to become associated with a single justice as soon as a vacancy occurs. On the other hand, no one questioned the desirability of each justice retaining his one aide; it is essential that one aide work under and be directly responsible to one justice.

C. Provide Adequate Research Staff

1. Respond to increasing caseload

Given the likelihood of steadily increasing caseloads, the court should begin planning immediately for two research aides per justice, in addition to such research staff as is necessary. While two research aides could be used fruitfully at the present time, they will become essential in the near future.

As indicated by recent statistics, the Florida Supreme Court has been and is doing an extremely good job of keeping up with its caseload; and yet, last year's growth in backlog suggests the beginning of a problem. Adequate support should be given to the Court in its effort to anticipate this situation, and to act before a full-blown crisis appears.

2. Assist justices with court committee workload

The special workload imposed on certain justices and their research

aides by virtue of responsibility for special committees of the court should be recognized. For example, the justice who has chaired the Rules Committee has been under severe workload pressures because of the numerous rule changes stemming from the recent constitutional amendment. An affirmative effort should be made to secure special staff for such committees. If not available from general revenue funds, such special staffing can often be procured through the cooperation of the State Bar or some other such special source. It is also likely that law students from Florida State University would be interested in doing such work either without compensation or for a nominal sum.

D. Consider Use of Local Law Students as Externs

Finally, consideration should be given to obtaining additional assistance to the court from the Florida State University School of Law. Senior law students can serve helpfully as "externs," if arrangements therefore can be completed with the Dean of the Law School.

Programs have been adopted at the school for services by senior students to prosecuting and defense offices in the ares. There is no reason why the court cannot participate in a similar program. Students benefit from their association with the justices; the court benefits from research assistance for which no budgetary item is required.

However, one word of caution should be noted in utilizing student research assistants: particular emphasis upon the confidentiality of the court's work is necessary for the externs. There is always the danger they will discuss pending cases or problems upon which they are doing research with their classmates.

V. SUMMARY

The foregoing report is based upon the results of the on-site visit as well as a review of relevant background information. Materials were provided by the Chief Justice's Executive Assistant, William E. Falck, Esq. regarding caseloads, types of cases handled by the Supreme Court pursuant to its constitutionally mandated jurisdiction, current internal court organization and practices, and an analysis of alternative uses of personnel suggested by members and staff of the court.

The various discussions held were characterized by frank and uninhibited recognition of problems and by an encouraging willingness of the justices and aides to consider any program that might improve the administration of justice. All of the aides appeared genuinely dedicated to the court as an institution and to their contribution to Florida jurisprudence. Mr. Falck provided extensive assistance and made his vast knowledge of court practices available throughout the study.

The recommendations of the consultant team and the considerations made in their formulation may be summarized as follows:

1. The three research aides (in addition to those assigned to individual justices) should operate as a central staff, with one of their number designated as staff director. The research staff should be placed, administratively, under the Chief Justice.

Since the Chief Justice handles considerable administrative and ceremonial work, of necessity and by common understanding he writes fewer opinions than his six colleagues. It had been suggested, therefore, that each of the six justices other than the Chief be given one-half of one of the new aides to be acquired. That is, that each new aide be assigned to two justices and work under their joint direction.

Although there is some merit in providing each justice an aide and a half, and in having some direct supervision of the new personnel, this concept was ultimately rejected in favor of the pool arrangement for the three new aides.

2. The work assignment of the research staff should be to prepare a memorandum on the question of jurisdiction in all cases wherein that question arises (or, perhaps, only on conflict jurisdiction certioraris, depending on workload and productivity). Although cases where jurisdiction must be determined constitute the bulk of the Court's caseload, there are some cases in which there is jurisdiction on the face of the papers as, for example, when the District Court of Appeal has certified the question to be one of great public interest. This situation gives rise to two possible routings of cases:

a. All cases of any sort should be routed through the research staff, with the staff extracting only those where there is a jurisdictional question requiring a memorandum, and then distributing the remainder of the cases in accordance with an assignment roster received from the clerk's office; or

b. The cases requiring a memorandum on jurisdiction could be extracted in the clerk's office for forwarding to the research staff, while the other cases were assigned to individual justices by the clerk's office as is now done.

Assuming that the clerk's office personnel are as experienced as we believe them to be, the latter method would be preferable since it would avoid having the research staff office be a mere conduit for papers.

3. The jurisdictional determination memoranda, prepared by the research staff, should be prepared without the staff member knowing to which member of

the Court the case would be given first. The possibility was discussed (but rejected) of having the memorandum emanate from the research staff simultaneously to all five members of the panel of the Court due to receive the case; this idea was rejected because of the expressed fear of the anonymity of a "committee" product.

It was particularly requested during these meetings with the Court that the jurisdictional memorandum not be circulated without the endorsement of a member of the Court - an endorsement of content and style, as well as form. This request could be fulfilled by the following procedure for memo preparation:

a. The staff research attorney would prepare the memorandum in a standardized format, and with the greatest possible degree of objectivity; it would be checked by the staff director, as suggested by Professor Meador, until the staff director had full confidence in the work of a particular staff attorney.

b. The memorandum on jurisdiction would then be forwarded to one of the justices, following the rotational system suggested in this report.

c. The justice receiving such a jurisdictional memorandum and recommendation would then review it for technical completeness and competency. Assuming the memo's completeness and competency, the justice would have a choice: 1) to forward the memorandum along with his own vote to grant or deny certiorari, 2) to raise the matter for discussion at conference; or 3) to return the memorandum to the author for rewriting because, although technically competent, it was stylistically unacceptable. This latter alternative should be made available explicitly because, if it is not a justice faced with a stylistically unacceptable memorandum might assign the rewrite job to his personal research aide, thereby defeating the time

saving intended by the use of staff. Moreover, given competent and objective memoranda, this alternative will not be used frequently.

In connection with the last point, it should be emphasized that the individual research aides to the justices should not, in any way, act as intermediaries between the research staff and the justices. Some of the present research aides, for example, suggested that they might screen work before its submission to their justices. Whatever benefit this might give in protecting a member of the Court from unaccustomed style, it is undesirable for two reasons: 1) work on staff problems by individual research aides would be duplication of effort, defeating the purpose of having staff; 2) the staff should receive feedback directly from members of the Court, not from research aides.

4. After the petition for certiorari and jurisdictional memorandum have been circulated, and have accumulated the appropriate number of votes, the case would either have the status of

- certiorari denied and thereby terminated;
- conference requested;
- certiorari granted.

5. Cases in which certiorari is granted should be reassigned on a new rotational list. Assigning the case on the merits only after certiorari has been granted will have several benefits, not the least of which is equalization of workloads among the justices.

If the above procedures are followed - or some variation of them - the Justices' personal aides will have from one-third to one-half of their time available to do other work. They will be able to spend more time in assisting the Justices with the preparation of their signed opinions, do a larger amount of in-depth research, and pay more attention to the structure

and editing of the opinions presented. This should contribute substantially to an improvement in the quality of adjudication and in the written opinions.

The aides will also have time to prepare more thorough - and perhaps better - argument memoranda, or bench memos, as they are sometimes called. With more time for preparation, they could be more helpful to the Court. Moreover, since the aide who performs this task will also be the aide who later works on the opinion, the effort at this pre-argument stage is really channeled ultimately toward the opinion. Thus, by a more elaborate pre-argument memorandum the entire opinion writing process may benefit.

END