

SYSTEMS DEVELOPMENT STUDY
FOR
AN APPELLATE DEFENDER PROGRAM
FOR
THE STATE OF NORTH DAKOTA

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I. INTRODUCTION

The implication of judicial opinion on the availability of legal defense services to indigent criminal defendants pursuant to the Sixth Amendment of the U. S. Constitution has had a significant impact on communities throughout the United States which are attempting to provide such quality representation in a cost-effective manner. The North Dakota Supreme Court has attempted to come to grips with this problem, at the appellate level, through the provision of outside technical assistance by the National Center for Defense Management (NCDM). The Honorable Ralph J. Erickstad, Chief Justice, through a letter to Mr. Robert Holte, Executive Director, North Dakota Combined Law Enforcement Council, communicated the need for a legal systems development study to address such problems unique to that state. A copy of that letter is contained in Appendix A.

A. Nature and History of the Request

1. Nature of the Request

In a letter prepared on March 18, 1975 to Mr. Tom Wallner of the North Dakota Law Enforcement Council, Mr. Ted Gladden, Assistant Court Administrator of the North Dakota Supreme Court, asked for technical assistance in developing an Appellate Defender Program. The request was transmitted through the LEAA Regional Office in Denver, Colorado and the Courts Division, Office of Regional Operations, LEAA, in Washington, D. C. The request was forwarded to NCDM for necessary action. See Appendix B for copies of this correspondence and authorization for this assistance.

2. Background

In 1975, House Bill No. 1465 was introduced in the North Dakota Legislative Assembly. It provided for a division of the state into eight regions (none of them equating to any of the state six judicial districts) and the appointment for four-year terms (by the district judges having jurisdiction over the counties within such regions) of regional public defenders. No specific appellate scope of authority included appellate representation in before-parole and pardon boards. See Appendix C for a copy of this bill. It did not pass in the legislature; following its non-passage, this request for technical assistance from the National Center for Defense Management was initiated.

B. Replicability

This report, designed to provide assistance to the State of North Dakota, is also written with a view to assisting other jurisdictions with similar interests to blueprint an approach of their own, either with or without technical assistance from other sources, and, therefore contains much data already known to the client jurisdiction and its agencies and personnel. The inclusion of this material is not intended to imply unawareness by the client jurisdiction but, rather, is done in order to facilitate replicability of methodology and concepts elsewhere in accordance with LEAA policies.

C. Methodology

A consulting team of attorneys, including one well-versed in appellate defender programs, and a management analyst visited Bismarck, North Dakota during the period May 19-22, 1975.¹ They performed the

¹See Appendix H for consultant resumes.

necessary interviews and gathered the requisite data. Subsequent to the site visit, NCDM arranged for the administration of questionnaires to appellate attorneys, the private bar and prison inmates in North Dakota. A district judge survey was also administered.

D. Summary of Findings and Design

• The present system of delivery of indigent appellate defense services in North Dakota appears to function well. Competent representation appears to be provided appellants, at a reasonable cost per case, and significant problems of delay appear to exist.

• No findings are made with respect to the question of whether or not appeals are discouraged by any process operating at the trial or appellate levels.

• While significant judicial and bar support appears to exist for a statewide trial-level defender system, there is little support for an appellate defender system standing alone.

• If an appellate defender system (standing alone) is established, it should, in the absence of any enabling legislation, function through the entity of a non-profit corporation designed to ensure the professional independence of the defender and governed by a Board of Directors consisting primarily of members of the North Dakota bar. It should be staffed with one attorney and one secretary and should plan to handle not more than 25 appeals per year. If time permits, certain federal court and parole matters might be handled.

• An appellate defender system (standing alone) will probably operate at more than twice the cost per case of the present assigned counsel appellate system.

• No advantages, either to indigent criminal appellants or the State of North Dakota, are seen in changing from the present appellate assigned counsel system to an appellate defender program (standing alone), although advantages might be realized if such a program were included as part of a statewide trial and appellate system.

II. DESCRIPTION OF CRIMINAL APPELLATE FUNCTION IN NORTH DAKOTA

A. Data Relevant to North Dakota

In evaluating the present and future need for an appellate defender system in North Dakota and in assessing future appellate trends, demographic, economic and population trends were examined. Aside from a projected gradual population increase and a transition (as coal resources are developed) from a rural to an industrial population in certain parts of the state, no significant trends relating to the purpose of the assistance rendered were noted. These two factors might ordinarily be expected to stimulate some increases in criminal justice system activity.

B. The Appellate Process in Criminal Cases

For practical purposes, the Supreme Court of North Dakota functions as the essentially exclusive forum in direct appeals originating out of felony convictions in that state. With respect to collateral appellate relief, the State Constitution apparently vests habeas corpus and other writ jurisdiction in both it and the State's District Courts (the highest level of trial courts) but, since North Dakota has adopted the Uniform Post-Conviction Procedure Act, it would appear that most collateral appellate matters before the Supreme Court involve appeals from trial court level rulings under such act.

The Supreme Court does have misdemeanor appellate jurisdiction, but, the consultants were informed, the number of cases heard pursuant to the jurisdiction is statistically insignificant; they were also informed that appeals from convictions following pleas of guilty are permitted. The number of these, again, is statistically insignificant. Persons interviewed

were unaware of any juvenile court cases reaching the Supreme Court. Appeals from death sentences are not encountered; no death sentences have been imposed for years.

Therefore, it would appear that, for appellate defense planning purposes in the Supreme Court, the principal focus of attention should be directed toward direct appeals from felony convictions following trial in District Courts (the courts possessing such felony trial jurisdiction).

A diagram illustrating the North Dakota judicial system can be found at Appendix D.

The attorney consultants serving on this assignment devoted some time to discussing appellate practice with justices of the Supreme Court and local attorneys and reviewing Supreme Court files, including defendants' (appellants') briefs and opposing briefs and court opinions. Operating hypotheses and conclusions reached were as follows:

- The appeal briefs filed on behalf of defendants/appellants appeared, without exception, to be of good quality. No instances of patently poor or inadequate appellate representation were noted. (N.B., Since time constraints did not permit review of trial transcripts, this observation must, of necessity, be limited by the fact that the evaluative process was confined to assessment of issue-recognition, research and argument based on the statements of facts in the briefs. Also, obviously, many grounds for possible collateral relief might not be apparent from reading such briefs.)
- The Supreme Court appears to average little or no criminal appellate case backlog (see North Dakota Judicial News, September--December 1975, page 12, "Supreme Court Clears Docket for Second Time in Less Than a Year"). Recent opinions of the Court in criminal cases which were

reviewed by attorney consultants indicated exhaustive treatment of case issues in all majority opinions and most concurring and dissenting opinions.

• The consultant team was informed that, in indigent appeals, trial counsel becomes appellate counsel in the majority of instances. Most persons interviewed appeared to favor this arrangement inasmuch as trial counsel, having full familiarity with the case, is best equipped to deal with appellate issues. The attorney members of the consultant team, while recognizing that such continuous representation is often a manifestation of professional dedication on the part of counsel operating in the highest traditions of the bar, such consultants are deeply concerned lest the practice operate so that a competence-of-counsel issue which may have silently arisen at the trial court level may then not be raised, through oversight or otherwise, on appeal. Given present trends in the development of American constitutional law, it is the view of such consultants that the question of trial competence must be the subject of independent review by counsel on appeal in every case; it is neither proper nor wise to place this responsibility on trial attorneys themselves. Then, too, since the Supreme Court will conduct its own review based on the "cold record" of the trial court rather than personal recollections of proceedings therein, the detached analytical review of independent appellate counsel operates as an actual plus in the process for many purposes. This does not mean that trial counsel has no place in the appellate process; on the contrary, it is most desirable for trial counsel also to review the record and for there to be full consultation and discussion between trial and appellate counsel.

The consultant team did not fully resolve the question (raised during the visit) as to whether persons convicted in trial courts are sufficiently apprised of their appellate rights (see IV.B.3 below).

Payment for assigned counsel on appeal is authorized (following financial eligibility screening) at the trial court level and, at the conclusion of service, the amount of such payment is fixed by counsel. Records of appointments of counsel and amounts of fees are not to be found in Supreme Court files.

C. Statistical Data Relating to Criminal Appeals and Eligibility of Appellants for Publicly Financed Representation

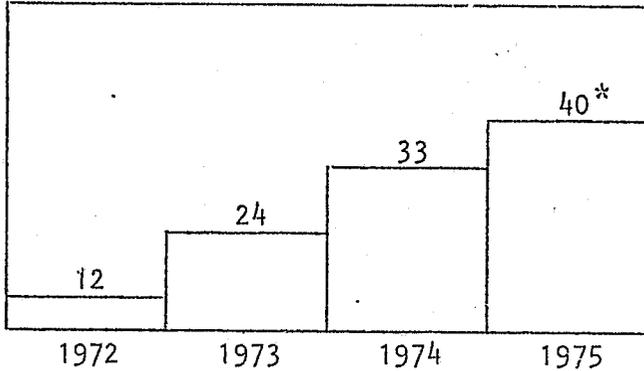
The statistical data set forth hereafter consists of that which was available to the consultant team in compiled form plus some which was derived through the investigatory process. It is limited to those areas which, in the opinion of the team, provide "indicators" or clues as to the probable upper and lower limits of the potential caseload of an appellate defender.

Caution is urged with respect to the drawing of conclusions from this data on a long-range basis; if a trial-level defender system were to be implemented on a statewide basis, this factor alone might produce an impact on the appellate process which could render the present data irrelevant. Such an impact might well (if non-intelligent waivers of appeal rights or trial rights are occurring with any degree of frequency) cause a significant increase in the number of appeals.

1. Supreme Court Appellate Statistics

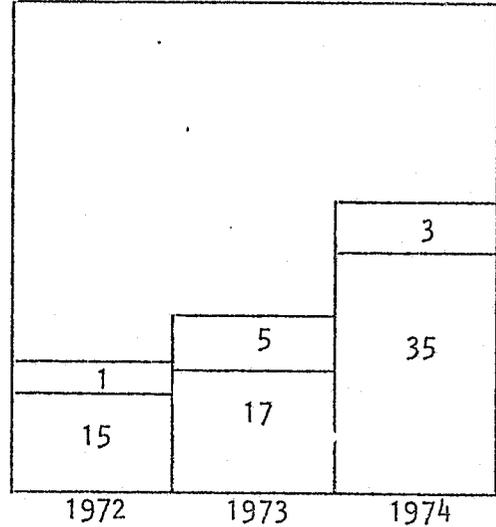
(Sources: Semiannual North Dakota Judicial Council Statistical Compilations and Reports, Tables 2 & 5)

Number of new criminal appellate cases in Supreme Court (all types), by year



*Number provided by telephone by Mr. William Bohn, Court Administrator.

Constitutional criminal appellate matters disposed of, by year, showing breakdown into writs (original jurisdiction) and appeals (from lower courts)

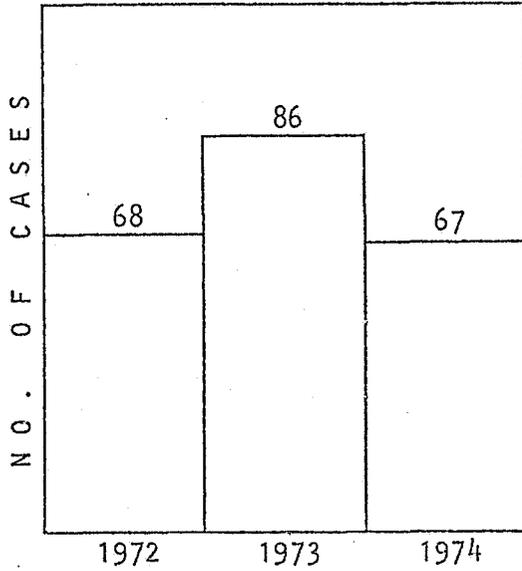


Top figure: Writs
Bottom " : Appeals

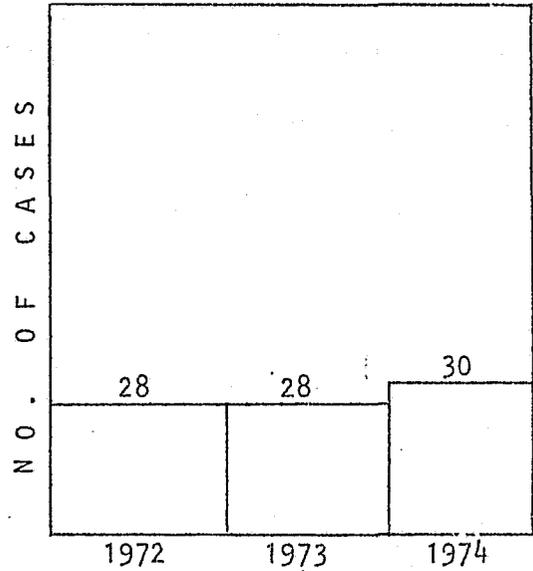
Appellate matters, generally showing a steady increase for the period 1972-74 inclusive, appear to have consisted of about 88% matters appealed from lower courts and 12% matters of original jurisdiction. Of the latter, the reports suggest that about a third result in decisions and orders.

2. Relevant District Court Criminal Statistics
 (Sources: Semiannual North Dakota Judicial Council
 Statistical Compilations and Reports, Tables 14, 15 & 16)

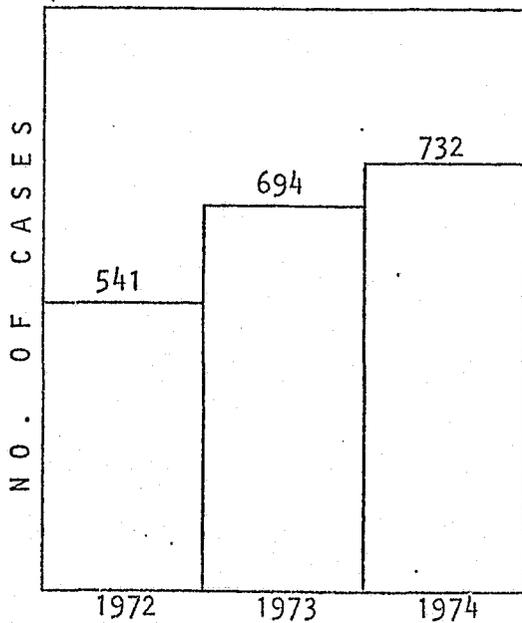
Total District Court Trials Reaching Verdict, by year



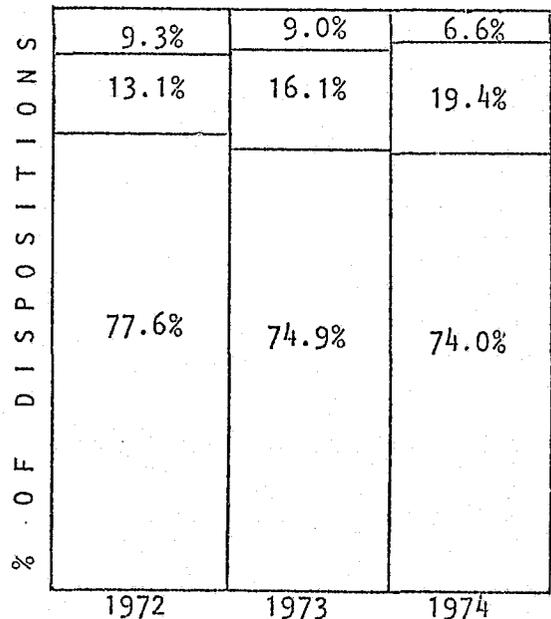
Total District Court Habeas Corpus and Post-Conviction Matters, by year



Total District Court Pleas of Guilty, by year



District Court Criminal Case Dispositions, by year (trials to verdict, dismissals & pleas of guilty expressed)



Top figure: Trials to verdict
 Middle " : Dismissals
 Bottom " : Pleas of guilty

The foregoing District Court trial-level data provides some indicators with respect to probable appellate trends. In general, most appeals tend to follow trials in which a guilty verdict is reached; convictions rates in trials may tend to hold true (often 75%--85%). Certainly, the direct appeal rate is not likely to exceed the conviction rate after trial. Pleas of guilty, and the plea-trial-dismissal dispositional rates may indicate propensities to contest charges (often the prelude to appeal) and dismissal rates may indicate screening out of "bad" cases by the prosecution or judiciary; meticulous screening may reduce appeals.

3. Statistical Data Re Indigent Appellate Representation; Cost Factors

A survey questionnaire was sent to attorneys who had represented defendants (indigent and non-indigent) on appeal before the Supreme Court. Since the Supreme Court records themselves did not reflect whether a particular criminal appellant was being, or had been, represented at public expense, this information was sought. Also sought was information regarding the average fee paid in appointment cases on appeal and the average number of hours devoted to an appeal. Some responses could not be utilized due to misunderstanding regarding the questions posed; however, the 19 responses covered 37 appeals (there were a total of 69 appeals from 1972 through 1974), of which data from 14 to the total of 37 could be utilized for various purposes. Therefore, only a marginal degree of reliability may be properly ascribed to the results, which follow.

a. Indigency Rate

Persons responding indicated that, in 14 out of 37 appeals, representation was at public expense; giving an indigency rate of

38% An analysis of vouchers for payment of appointed counsel provided the consultants suggests an indigency rate of 44.8% in felony cases at trial level, 12.4% proceeding unrepresented (the indigency rate in District Court felonies was higher in the two prior years).

Both 38% and 44.8% appear to be questionable determinations, given the national averages (which tend to be above 30%²) and the fact that many clients who can afford to retain counsel at trial cannot, thereafter, afford the cost of an appeal.

We recommend, for planning purposes, that an indigency rate of 50% be projected; this would also be more in accord with District Court felony averages for 1971 and 1972.

b. Average Time Per Appellate Case

Based on responses in 13 questionnaires covering 27 appellate cases (indigent and non-indigent), the time spent by counsel per case ranged from a low average of 61 hours to a high average of 68 hours, with an overall average of 65 hours.

Court time in appellate matters appeared to average 1.35 hours (this amount is included in the 65-hour overall average).

c. Average Appellate Appointment Fees

Based on responses in 6 questionnaires covering 14 indigent appeals, an average of \$1262 per case was received for services of counsel. Since fee schedules provided to the consultant team show the compensation rate to be \$20/hr. for office time and \$30/hr. for

²See "The Other Face of Justice", National Legal Aid and Defender Association, Chicago 1973, pp. 82-83 (national indigency averages are Felonies 65%/Misdemeanors 47%).

the computation. While this is not far from the figure of \$1262, the figure of \$1262 may be more accurate, since it is based on derived rather than computed data.

III. DESIGN FOR NORTH DAKOTA
APPELLATE DEFENDER SYSTEM

A. Staffing

1. Size:

The number of appeals and the administrative requirements of an appellate defender office indicate that one appellate defender and a secretary (legal assistant) would be adequate. As noted at page 20, one attorney should be able to handle up to 25 appeals per year, and, given an indigence rate of 50% discussed above, this is more than half of the number of appeals filed annually at the present time.

2. Selection and Tenure of Appellate Defender; Structure of Program

The National Advisory Commission on Criminal Justice Standards and Goals (Courts Task Force, Chapter 13, Standard 13.8) recommends that the method employed to select defenders should insure that he or she is as independent as any private counsel who undertakes defense of a fee-paying criminally accused person. It then goes on³ to provide for reasonable tenure in office. The draft report of the National Study Commission on Defense Services (Volume I, pp. 443-444)⁴ has similar provisions, as does the discussion draft of the National Legal Aid and Defender Association Proposed Standards for Defense Services (Standard 3.1) and the American Bar Association's Project on Minimum Standards for Criminal Justice, Standards Relating to Providing Defense Services (Standard 1.4).⁵

³See Appendix E for standard.

⁴Ibid.

⁵Ibid.

A defender program is contemplated which is independent of legislation for its existence⁶ (i.e., a pilot project, assisted in its inception through L.E.C. funding, in which the defender is appointable by courts of the State). Therefore, the specific provisions of the cited standards are probably inappropriate as a design, but furnish useful guidelines. The most appropriate initial structure for the program would be for it to be organized as a non-profit corporation, having a Board of Directors primarily consisting of members of the North Dakota Bar, in much the same way as was done in the case of the trial-level defender office in Bismarck and as is commonly done in the cases of Legal Services offices. This Board of Directors should be precluded from involvement in specific cases but should select and appoint the appellate defender and, if necessary and for good cause, remove him. It should also advise the defender from time to time, and have certain policy-making functions not inconsistent with the cited standards.

3. Duties; Jurisdiction

The appellate defender should be available for appointment in up to 25 indigent appeals per year.^{6a} If caseload warrants, he or she should be available for representation in collateral appellate proceedings in federal courts arising out of North Dakota state conviction (the number of these, the consultants were informed, is small enough to be statistically insignificant). Likewise, as time permits, he or she may well consider entering into the arena of parole hearings as required by law.

Should the appellate defender have the authority to directly accept applications for indigent persons in direct or collateral appellate matters arising out of State convictions? The consultants do not answer this question,

⁶The consultants were informed that the North Dakota Legislature would not convene for general legislative purposes in 1976.

^{6a}See p. 20, D.

which, however, should be considered on a practical level. In the best of all systems, the appellate defender would have this power; however, where collection of state monies and/or provision of representation are contingent upon court-appointment, the complexities of achieving this (coupled with the relative lack of need as compared to that at trial level) may defeat feasibility. In years to come, if a statewide defender act (trial and appellate levels) is considered, this matter should be reviewed, with "direct entry" into cases at all stages being recognized as the norm in private representation and, therefore, as the goal in publicly financed representation.

B. Budget

1. Discussion of Needs

While the estimated budget submitted as a part of the technical assistance request by the client is useful, several variations from it appear to be required. Among them are the following:

- a. The appellate defender position would require an attorney well experienced in both trial and appellate matters. This indicates that it should most properly be classified as an Attorney III position, according to classification data supplied by the North Dakota Combined Law Enforcement Council. The general nature of his duties would be obtaining and reading transcripts, filing briefs, interviewing clients and presenting oral arguments. Should North Dakota decide in the future to institute a statewide defender system at the trial level, this office might provide the management component of such a combined system.
- b. Since the starting salary of the appellate defender is at an advanced level, no cost of living increases are proposed for the first

or second years. Fringe benefits, such as medical coverage, FICA, insurance and unemployment compensation should be included; 15% of total personnel costs should prove adequate.

c. Some professional services, such as occasional use of expert witnesses, social services⁷ and startup costs, would be required. \$2000 would appear to be an appropriately austere estimate.

d. A law library should be provided as a mandatory legal reference requirement. A list of the references required is attached at Appendix F, with observations concerning options and priorities.

e. Office equipment and supplies are itemized and show the basis for exceeding the estimate provided by the client.

⁷In collateral appellate and parole matters.

2. First Year Budget

Personnel \$43,765

Appellate Defender	28,056
Secretary	10,000
Fringe Benefits (15%)	5,709

Professional Services 2,000

Travel, Transportation and Subsistence 4,820

Office Operations	2,820
Board of Directors Meetings	2,000

Equipment 14,911

1 Atty. desk	200
1 Atty. chair	125
1 Sec. desk	200
1 Sec. chair	55
1 Atty. dictaphone	500
1 Sec. dictaphone	500
1 typewriter	700
1 filing cabinet	130
1 bookcase	50
law library	12,301
2 side chairs	150

Operating Expendables 18,100

Rent	3,600
Duplicating	2,000
Postage	1,500
Telephone	3,500
Transcripts	7,500

Total: First Year Budget \$83,596

3. Projections

<u>Personnel</u>		\$44,915
Appellate Defender	28,056	
Secretary	11,000	
Fringe Benefits	5,859	
<u>Professional Services</u>		3,000
<u>Travel, Transportation and Subsistence</u>		5,000
<u>Equipment</u>		1,165
Law library (annual replenishment)	1,165	
<u>Operating Expendables</u>		21,600
Rent	3,600	
Duplicating	2,000	
Postage	1,500	
Supplies	500	
Telephone	3,500	
Transcripts	10,500	
<u>Total: Budget Projections</u>		<u>\$75,680</u>

C. Funding

Should the client decide to pursue the creation of the office studied herein, the possibility of a three-year pilot project, funded through the North Dakota Law Enforcement Council (LEC) might be explored. While the client's estimates for two years, LEC 90%/County 10% and LEC 75%/County 25%, respectively, are reasonable, it might prove worthwhile to project for three years with a view toward self-sustaining operation beginning in the fourth year. The ratios might, therefore, be more appropriately scaled at

- ⊙ LEC 90%/County 10%, first year;
- ⊙ LEC 60%/County 40%, second year;
- ⊙ LEC 30%/County 70%, third year.

During the tenure of such a pilot project, consideration should be given to the preparation of appropriate legislation for state funding, beginning in the fourth year.

D. Costs Per Case: Appellate Defender

The standards of the National Advisory Commission on Criminal Justice Standards and Goals recommended (Courts Task Force, Chapter 13, Standard 13.12) that the workload of an attorney not exceed 25 appeals per year. Appellate defender staff, in generally seeking to adhere to this maximum, tend to assume that the figure 25 does not include motions for rehearings, summarily-denied petitions (not briefs) and other minimally time-consuming activities which are nevertheless routinely handled by them. Based on the budget figures and the 15 appeals per year maximum, a first-year average \$3,351.44 per case is anticipated and a projection (subsequent) year average of \$3,047.24. Assuming no rental expense or library expense (should the defender be housed in the Supreme Court building), the cost would still

exceed \$2,800 per case, as compared to the present \$1,262 per case average noted in II.C.3 above. It is common for appellate defender costs per case to (at least initially) exceed those of assigned counsel on appeal (the opposite being true with respect to trial-level defender offices) as appellate fees paid assigned counsel are traditionally on the low side and the economies of scale which reduce costs per case at the trial level for defenders do not operate with the same vigor on the appellate level. In North Dakota, the present costs per appellate case for assigned counsel are not wholly dissimilar from those encountered in large appellate defender offices, but the structure of a one-attorney appellate defender office renders it impossible for such office to be competitive, cost-wise. Where appellate defender offices are not justified by cost factors (or have a substantially higher cost than the existing assigned counsel system), they are often justified on the basis of qualitative and/or impactive factors (e.g., better representation, reduction of delays). As noted elsewhere in this report, such justifications were not found in North Dakota.

IV. DATA GATHERED RELATING TO PERCEIVED NEED FOR SYSTEM

A. Results of Interviews

The consulting team of two attorneys and one management analyst spent a week in the Bismarck, North Dakota area interviewing 16 persons. Justices of the Supreme Court, court administrative personnel, private bar, Attorney General and Combined Law Enforcement personnel were among those interviewed. Documents relating to support data were gathered. Names of interviewees are at Appendix G.

The perceptions of those interviewed as to the need in North Dakota for an appellate defender system were solicited. One person unqualifiedly endorsed the concept. Five persons expressed opinions, stated in varying ways, to the general effect that an appellate defender system would be a good thing, but that it should be accompanied by (or be part of) a statewide trial court system. The interviewers were left with the impression that a trial court level system was seen as of greater priority. Two persons seemed generally favorable, but doubted that there was enough work for one full-time appellate attorney. Discussions with them included the expression of ideas on how, by possibly including federal cases or general prison inmate representation, the caseload might be increased to a level justifying one such full-time attorney. One person, while not expressing outright opposition, was cool toward the concept, and the remainder of those interviewed either expressed no opinion or gave the impression of being neutral on the subject.

Five of those interviewed felt that an appellate defender system, if implemented, should not be under judicial or political control. In some instances, this viewpoint was volunteered without being elicited by interviewers.

B. Results of Mailed Questionnaires

Since personal interviews were both limited in number and geographic scope (additionally, no trial court judges were interviewed), management survey instruments designed for the derivation of quantitative data were utilized to further ascertain the existence or non-existence of support for an appellate defender system, and to obtain certain other data. The test items which were, as a result of the responses received, unacceptably ambiguous, were rejected as containing unusable data.

1. District Court Judges

District Court judges were surveyed. This level of the judiciary constitutes the group most heavily involved with the responsibility of ascertaining indigency and setting fees for indigent appellate representations. Court records showed that 19 such judges serve in North Dakota; 15 responses to the questionnaires were received.

The judges were asked to react to three statements relating to an appellate defender system in North Dakota, and to indicate their reactions on the scale provided (an opinion spectrum). The scale, questions and responses were as follows:

Statement Re Appellate Defender Systems for North Dakota	Number of Responses in Each Category				
	Highly Agree 1	Agree 2	No Opinion 3	Dis- agree 4	Highly Disagree 5
1. There is presently a need for an appellate defender system in North Dakota.	2	0	7	5	--
2. There is presently a need for an appellate defender system in my jurisdiction.	2	0	2	9	2
3. I am satisfied with the manner in which indigent clients convicted of a criminal offense are currently being represented in my jurisdiction.	1	10	1	2	1

The above data show that the preponderance of the judges responding were not in favor of an appellate defender system; most were satisfied with the present system.

Two judges entered comments (which were solicited) on their responses. One (in response to Statement #1) indicated that he "highly agreed. . . provided fees are contracted in some reasonably satisfactory manner and funded from a state source, not local." Also, this judge indicated "disagree" with respect to Statement #2, and commented, "On the whole, I am well satisfied. However, in two or three instances, I believe representation has bordered on the inadequate. While this number is not great, yet it is too many."

Another judge indicated "highly disagree" in response to Statements #1 and 2, and to both added, "Counsel at the trial level are capable of prosecuting any appeal they deem advisable." He then indicated "agree" in

response to Statement #3, and commented, "I believe a public defender system would be more economical, hence I favor a change to that system."

2. Attorneys Practicing in North Dakota

The 1974 Directory of North Dakota Lawyers, published by the State Bar Board, indicates close to 700 resident attorneys licensed to practice in North Dakota. One hundred survey questionnaires, covering each county, were sent to members of the bar, the objective being to achieve a 50% return;⁸ in fact, 47 sets of scaled responses were returned. However, distribution by county could not be accurately determined, as this information was not furnished by many of those responding.

The attorneys were asked to react on an opinion spectrum to three statements relating to an appellate defender system in North Dakota, and to indicate their reactions on the scale provided (an opinion spectrum). The scale, questions and responses are as follow:

⁸A further objective was to limit the survey to the private bar, but indications suggest that some survey of the prosecution occurred; it appears unlikely that this affected the outcome.

<u>Statement Re Appellate Defender Systems for North Dakota</u>	Number of Responses in Each Category				
	Highly Agree 1	Agree 2	No Opinion 3	Dis- agree 4	Highly Disagree 5
1. There is presently a need for a state-supported appellate defender system in North Dakota.	4	12	8	21	2
2. There is presently a need for a state-supported appellate defender system in my jurisdiction.	3	9	3	29	3
3. I am satisfied with the manner in which indigent clients convicted of a criminal offense are currently being represented on in my jurisdiction.	6	23	5	10	3

A number of attorneys responding accepted the invitation to submit comments. The comments which indicated opinions regarding the subject matter were as follows:

"The current system allows uneven and often unskilled representation of indigent defendants at both the trial and appellate levels. I believe it is an absolute necessity that a statewide public defender program be initiated immediately."

"Appeals in criminal cases are best handled by trial attorneys. The only time non-appellant counsel is justified is when there is a serious allegation of incompetent trial counsel or when trial counsel is unwilling or unable to serve."

"Local attorneys who have served as trial counsel have done a good job in pursuing meritorious appeals."

"The practice of appointing new appellant counsel would invariably lead to many unjustified challenges of the competency of trial counsel--a choice of tactics during trial is always subject to hindsight judgment, especially

when the tactics were unsuccessful. I do not approve of the concept that a new attorney searching the record to uncover some error which nobody else knew was there. Trial counsel is in the best position to judge what was prejudicial to his client's cause. A criminal defendant is entitled to a fair trial--not an errorless trial. A new attorney appointed solely for the purpose of appeal would feel obliged to raise an appeal for every error committed by the trial court."

"In my jurisdiction, no criminal appeals to the Supreme Court or from inferior courts to the District Court for many years past have required any public assistance."

"Burleigh County's public defender system is excellent, hence the response to #3. Of greater need is the public defender system at trial level on the statewide system. The present system of non-public defender representation is satisfactory in the appeal tribunal."

"I do not believe that a state-supported appellate defender system is needed in the Third Judicial District of North Dakota. The situation may differ in other areas of North Dakota, however, and I cannot comment on them."

"Normally, I believe indigent clients are fairly well-represented on appeal; however, I can see the possibility of a statewide appeal division for indigent clients in criminal matters, but can't say I enjoy just one more bureau."

"District population does not generally nor even remotely approximate indigent status. Expense to the state would not be worth the expense involved."

"The need is obviously present in some areas of the state. Many attorneys do not desire appeals and cannot properly handle them. However, the number of likely appeals is so low that there need not be a statewide public defender system."

"I don't think there are sufficient appellate criminal matters in North Dakota to justify a defender system."

"I personally feel that the State should provide for an appellate defender system, because if the grounds for appeal exist, then the State should insure that the person will have an opportunity to defend."

"I am not presently aware of a need for the defender system in my jurisdiction; one reason being that I am practicing as a Tribal Court Judge within the boundaries of the Standing Rock Sioux Reservation."

"I do feel that the State has an obligation to insure that indigent clients are represented on appeal."

"I am not aware of a substantial enough number of such appellate work to justify a full-time program in this District."

"Criminal law should be a specialty. On that basis alone it would want public defenders. It would also make visible access to post conviction remedies which otherwise might not have been pursued. This is a view based on personal opinion rather than actual experience, however."

"Court-appointed counsel should take care of worthwhile appeals that have merit for indigents. A state-supported appellate system would only add fuel to the fire of criticism that criminals get free defense, and get off since they have no financial obligation to pay for the crimes they commit."

"Up to now, we certainly have not had such a need here."

"Those defendants who have appealed certainly were not prejudiced by the defense offered on either a court-appointed or privately hired basis."

3. Inmates of the North Dakota State Prison

Since it was deemed virtually impossible to reach all former defendants who had been convicted in a base period of up to three years, the inmates of the North Dakota State Prison were selected as a group whose perceptions concerning the appellate process should, if possible, be ascertained. Difficulties in conducting this survey were encountered (the State Prison population ranges from 100 to 150 at any one time and only 15 responses were received) and, in retrospect, it appears doubtful that the questionnaire derived much substantive information.

However, some observations may be in order. Of the 15 responses which were received, ten of them were from inmates who declared that they were not (then) appealing and, during the time in which they were eligible to appeal, had not wanted to appeal (North Dakota prison terms tend to be shorter than in some parts of the United States). This group, who by national standards

one could assume to be among those relatively less dissatisfied with their convictions, were nevertheless virtually unanimous on two points: 9 of 10 claimed not to have received either the information that they could have appealed or the information as to the time period in which they could appeal.

Since it is the opinion of the consultants that the inmate survey in this case cannot be established as valid for the purpose of drawing substantive conclusions for the entire prison population, the reactions noted above should not form the basis for same. However, such reactions from this particular group are certainly sufficient as a basis for making further investigation into the matter of whether convicted persons are properly informed of their appeal rights. If any pattern exists whereby such persons are not fully informed, corrections of this procedural imperfection may well lead to an increase in the number of indigent appeals.

C. Summary of Results

Relatively major changes in that part of the criminal justice system relating to publicly financed representation (of eligible persons) usually require, for implementation, either a judicial mandate or a fairly broad base of popular support. Where judicial mandate is not forthcoming, a base of support must exist among the judiciary, the bar and the community or its representatives.

In North Dakota, insofar as an appellate defender program (alone) is concerned, such base of support either does not exist or is elusive in the extreme. Neither persons interviewed nor groups surveyed showed any collective enthusiasm for the suggested change or a significant dislike for the status quo. Even though the inmate survey was felt to be unsuccessful in terms of answering questions concerning total inmate population perceptions of the indigent appellate problem, some greater degree of "client

dissatisfaction" would have been manifested directly or indirectly at some point in the investigation process in most jurisdictions in the United States (the team also contacted some persons during the visit who were considered likely recipients of complaints from the client population).

The absence of manifestation of support for an appellate defender system should not be construed as opposition thereto, and should certainly not be construed as opposition to either a statewide trial-level defender system or such latter system combined with an appellate function. On the contrary (although feasibility and/or desirability of a trial-level system was not investigated by the consultants), numbers of persons volunteered their opinions that such a (statewide, trial-level) system was most necessary, and that this, not an appellate system standing alone, should be North Dakota's first public legal defense priority. Many doubted if there was enough indigent appellate defense work in North Dakota to keep one attorney occupied full-time, and in this they may be correct.

The technical assistance requested was, fundamentally, for the design of an appellate defender project, and did not include a specific request for opinion sampling. However, the consultants would be derelict if we did not point out the rather clear lack of support for an appellate (only) defender program.

It is, therefore, our recommendation that the design be implemented as part of a statewide system providing both trial-level and appellate representation. We do not consider "appellate only" feasible at this time.

V. CONCLUSIONS REGARDING ESTABLISHMENT
OF AN APPELLATE DEFENDER SYSTEM
IN NORTH DAKOTA

Since the technical assistance requested in this instance called for the design of an appellate defender project, such a design is provided in this report. If the client agency and others involved reach different conclusions than those which follow hereafter, the design should not prove difficult to implement.

However, the technical assistance consultants are unanimous in their conclusion that at this time, the creation of an appellate defender system standing alone and not as part of a statewide defender system might well be a serious mistake. The general lack of perceived need would mean that such a system would commence without essential judicial and bar support. Additionally, there appears to be no underlying actual need for change.⁹ Furthermore, an appellate defender program standing alone would be substantially more expensive than the present system.

One statewide defender bill has already failed to gain passage in the state legislature. Implementation of a pilot appellate defender program which cost more than the present assigned counsel system, lacked general support and promised to deliver little in the way of improvement, might set back efforts to address what many (seemingly with good reason) see as the number one priority in the defense area--namely, the creation of a statewide defender program covering both trial and appellate levels.

⁹As noted elsewhere in this report, the present system seems to be operating quite well. It seems unlikely that any major improvements would result from change.

APPENDIX A

Letter from Chief Justice Erickstadt
Regarding Need for Legal Systems Development Study

State of North Dakota
SUPREME COURT
BISMARCK

CHAMBERS OF
RALPH J. ERICKSTAD
CHIEF JUSTICE

January 21, 1975



Mr. Robert Holte, Executive Director
North Dakota Combined Law Enforcement
Council
Box B
Bismarck, North Dakota 58505

RECEIVED
APR 3 1975
REGION VIII
LEAA - DENVER

Re: North Dakota Supreme Court intent to
apply for Law Enforcement Council funds.

Dear Mr. Holte:

This letter is a follow-up to our visit of
January 3, 1975. Consistent with our discussion at that
time, I wish to formally notify the North Dakota Combined
Law Enforcement Council staff of two areas of need identi-
fied by the Court for which we may make application for
Grant funds to begin July 1, 1975.

The first area of need is an appellate de-
fender program. The North Dakota Judicial Council has
gone on record supporting the concept of a statewide
regional public defender program. As you know, such a
bill will be introduced during this session to provide
a program through a general fund appropriation. If
this bill receives favorable consideration, the problem
of providing counsel for indigent defendants through the
appellate process will be taken care of. However, if
such a bill is not passed, requests will continue to
be made of this Court for assistance to pay appointed
counsel. With no appropriation to pay counsel or legal
staff to handle the appeal, we will have to instruct
the district courts to continue to charge the cost of
litigation to the appropriate county, the same county
that has already paid for defense counsel for the orig-
inal proceeding. The district judges are receiving
complaints as to costs of criminal litigation from
their respective county commissioners because of the
present system.

Rule 44 of the North Dakota Rules of Criminal
Procedure states in part, "Every indigent defendant shall
be entitled to have counsel appointed at public expense

Mr. Holte
Page 2
January 21, 1975

to represent him at every stage of the proceedings from his initial appearance before a magistrate through appeal in all felony cases." Attached for your review is a proposed budget for an appellate defender program. Staff of the Court Administrator's office will be following the bill submitted on the statewide regional public defender program and will be looking at alternatives for providing appointed counsel through the appellate process prior to the submission of any application for a grant from the Law Enforcement Council.

~~The second area of need is a procedural committee.~~
We would like to expand the purposes of the criminal rules committee to cover all procedural matters including rules of evidence and a study of the recommendations of the task force on courts of the National Advisory Commission on Standards and Goals. While study of criminal rules has been most successful, it must be viewed as only the first step in upgrading our judicial processes.

The activities of the criminal rules committee must be viewed as on-going, as procedural law is constantly changing. The committee will continue to work on the criminal rules and will be constantly considering proposals to modify and expand the rules based on experience.

Since the committee on criminal rules submitted their proposed rules of criminal procedure to our Court, a special committee headed by Professor Larry Kraft of the School of Law of the University of North Dakota has compared our rules with the American Bar Association's standards of justice. The National Advisory Commission on Standards and Goals has published five task force reports with one covering the courts. Since then the North Dakota Criminal Justice Commission has been established. If suggestions for implementing the various procedural recommendations can be processed by our procedural committee, they will more likely ultimately be adopted by our Court.

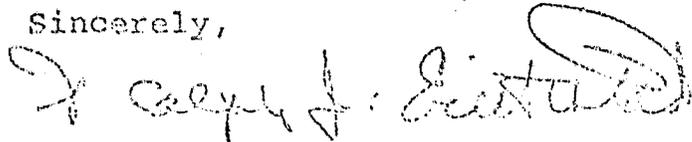
During the November 1974 Judicial Council meeting, District Judge Eugene Burdick reported on progress toward adoption of federal rules of evidence. He informed the Council that congress now has under consideration, after adoption by the United States Supreme Court, rules of evidence for the federal courts. It was his opinion that most of the rules, as submitted by the Supreme Court, have been or will be approved by the Senate. He further stated that during December of 1974 the National Conference of Commissioners on Uniform State Laws approved the

Mr. Halte
Page 3
January 21, 1975

uniform rules of evidence for the states. These rules parallel very closely the rules submitted by the United States Supreme Court to the Senate. As past Chairman of the National Conference on Commissioners on Uniform State Laws, Judge Burdick felt a committee of the Judicial Council should be established to review and adopt rules of evidence for North Dakota's judiciary. The Court and the Judicial Council are very interested in assuring a process to constantly review and upgrade procedural law for our State and he is in a position to analyze various standards recommended for our judiciary. Attached for your review is an estimated budget of providing staff assistance to a procedural committee.

If you have any questions in regard to either of the matters outlined in this letter, please do not hesitate to contact me.

Sincerely,



RALPH J. ERICKSTAD
Chief Justice

RJE/ms
attachment

cc: Honorable Norbert Mugglie
Honorable Eugene Burdick
Calvin N. Rolfson
William G. Bohn
Luella Dunn
Ted Gladden
Jon Nelson



ESTIMATE OF BUDGET-APPELLATE DEFENDER PROGRAM

January 7, 1975

I. Personnel

	Salary		Fringe Benefits		TOTALS	
	1st yr.	2nd yr.	1st yr.	2nd yr.	1st yr.	2nd yr.
Public Appel- late Defender	\$21,000	\$23,100	\$3,150	\$3,465	\$24,150	\$26,565
Secretary	10,000	11,000	1,500	1,650	11,500	12,650

II. Transcripts

1st year - 25 transcripts with an estimate of 200 pages in length at \$1.50 per page						
2nd year - 35 transcripts with an estimate of 200 pages in length at \$1.50 per page					7,500	10,500

III. Supplies

1st year - \$1,000	2nd year \$1,100			1,000	1,100
--------------------	------------------	--	--	-------	-------

IV. Office Equipment

1st year - \$2,300	2nd year - 0			2,300	0
--------------------	--------------	--	--	-------	---

V. Office Rent

1st year \$3,600	2nd year - \$3,600			3,600	3,600
------------------	--------------------	--	--	-------	-------

VI. Staff travel

10,000 miles at 15¢ a mile = \$1,500 (same 1st & 2nd yrs.)				1,500	1,500
--	--	--	--	-------	-------

VII. Meals and lodging

40 days at \$18.00 a day = \$720 (same for 1st & 2nd yrs.)				720	720
--	--	--	--	-----	-----

II. Staff training

\$600 (same 1st & 2nd yrs.)				600	600
-----------------------------	--	--	--	-----	-----

TOTALS-----				<u>\$52,870</u>	<u>\$57,285</u>
-------------	--	--	--	-----------------	-----------------

LEC funds 1st yr. 90% = \$47,583 Ct. 10% = \$ 5,287
 LEC funds 2nd yr. 75% = \$42,926 Ct. 25% = \$14,309



PROCEDURAL RULES PROJECT

January 7, 1975

	Salary		Fringe Benefits		TOTALS	
	1st yrs.	2nd yr.	1st yr.	2nd yr.	1st yr.	2nd yr.
Personnel						
Staff Lawyer	\$13,000	\$14,300	\$1,950	\$2,145	\$14,950	\$16,445
Secretary	6,600	7,260	990	1,089	7,590	8,349
Supplies						
\$200 1st yr.	\$500 2nd yr.				200	500
Travel and per diem of committee members						
15 members X 8 meetings (2 days each)	(same 1st & 2nd yrs.)				6,380	6,380
Office equipment						
\$750					750	0
TOTALS	-----				<u>\$29,870</u>	<u>\$31,574</u>
LEC funds 1st yr.	90% = \$26,883		Ct. 10% = \$2,987			
LEC funds 2nd yr.	75% = \$23,756		Ct. 25% = \$7,918			

APPENDIX B

Correspondence Relative to this
Technical Assistance and
Authorization for Same

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

Memorandum

DATE: APR 28 1975

TO : Mr. James Swain, ONPP
FROM : Mr. Joseph A. Nardoza
Acting Assistant Administrator, ORO

COM : Mr. George S. Kondos
Acting Regional Administrator
Region VIII - Denver

SUBJECT: North Dakota Appellate Defender - T.A. Request

Approval is requested for the National Center for Defense Management to render technical assistance to the North Dakota Supreme Court in analyzing the most appropriate method for handling criminal appeals by indigents. More detail concerning the need is provided in Mr. ~~Warbler's~~ letter and the first part of Chief Justice Erickstad's letter, copies of which are attached.

Preliminary arrangements for a visit in mid-May already have been made by Mr. Ted Gladden, Assistant Court Administrator, and Mr. William Higham. We look forward to a productive assistance effort by the National Center for Defense Management.

If any questions or difficulties arise regarding this request, please let me know.

Attachments

*5/16/75 Approved.
Dwight C. Beedy
Project Monitor
LEAA*

North Dakota Combined Law Enforcement Council

Box B
Bismarck, North Dakota 58505
Area Code (701) 224-2594

JR A. LINK
Governor

ALLEN I. OLSON
Attorney General
Chairman

March 31, 1975

ROBERT W. HOLTE
Executive Director

Mr. Larry Backus
Courts Specialist
LEAA Regional Office
6519 Federal Bldg.
1961 Stout Street
Denver, Colorado 80202

RECEIVED
APR 3 1975
REGION VIII
LEAA - DENVER

RE: North Dakota Supreme Court
Technical Assistance Request
Appellate Defender Program

Dear Mr. Backus:

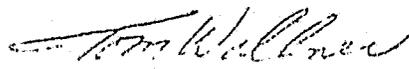
As you recall, on March 19, we discussed the possibility of securing outside technical assistance for the North Dakota Supreme Court to establish a state-wide appellate defender program. You indicated to me in our conversation that in order to expedite this assistance, a formal request had to be made by this office.

Therefore, on behalf of the North Dakota Supreme Court, I hereby request that the LEAA Regional Office make arrangements to provide technical assistance to the Supreme Court for planning the development of an appellate defender program in North Dakota. Since the Supreme Court hopes to have the program operational by July 1, 1975, I hope this request will be attended to as soon as possible.

For your information, I have enclosed a copy of the request to our office for this assistance from Ted Gladden, Assistant Court Administrator. I have also enclosed a copy of a January 21, 1975 letter from North Dakota Chief Justice Ralph J. Erickstad which outlines the need for an appellate defender program in North Dakota.

Please contact me if you have any questions or need further information.

Sincerely,



Tom Wallner
Acting Courts Coordinator

TW/pjk
Enclosure

cc: Honorable Ralph J. Erickstad
Cal Rolfson

State of North Dakota
SUPREME COURT

STATE CAPITOL
BISMARCK, NORTH DAKOTA 58501
(701) 224-3134

LVIN N. ROLFSON
ADMINISTRATOR

March 18, 1975



Mr. Tom Wallner
Law Enforcement Council
Box B
Bismarck, North Dakota 58501

Re: Technical assistance request

Dear Tom,

RECEIVED
APR 3 1975
REGION VIII
LEAA - DENVER

This letter is a follow-up to our telephone conversation of March 18, 1975. As you are aware, the bill before the Legislature to develop a statewide regional public defender program did not pass. As a result, the Court is faced with the same dilemma that brought about the letter of intent of January 21, 1975, from Chief Justice Ralph Erickstad to Mr. Holte.

I talked with Mr. Larry Backus, Regional LEAA Office, about six weeks ago concerning the development of an appellate defender program. Based on my visit with Mr. Backus, I have had a number of calls from people in other states and at the national level involved in appellate defender programs. At this time, we are requesting that you contact Mr. Larry Backus for technical assistance to look at our present problem. We would like to have the program operational on July 1, 1975, dependant upon the alternative chosen and whether sufficient data can be gathered prior to that time. Thus, I am asking you expedite our request for technical assistance so that we may begin planning in earnest to meet this need.

Thank you for your assistance in this matter, and I will be looking forward to hearing from you.

Sincerely,

TED GLADDEN
Assistant Court Administrator

TG/ms

APPENDIX C

House Bill 1465,
1975 North Dakota Legislative Assembly
Relating to a Statewide Defender System

Introduced by

Representatives Raymond,
Atkinson

Assigned To Committee On		SENATE	HOUSE	AVE	MAY
SENATE	HOUSE				
Committee Report		PASS		SENATE	HOUSE
SENATE	HOUSE	S. J.	H. J.		
SENATE	<input type="checkbox"/> GO PASS <input type="checkbox"/> INDPOST <input type="checkbox"/> AMEND				
HOUSE	<input type="checkbox"/> GO PASS <input type="checkbox"/> INDPOST <input type="checkbox"/> AMEND				
Legislative Action on Amendments				SENATE	HOUSE
SENATE	<input type="checkbox"/> ADOPTED <input type="checkbox"/> NOT ADOPTED				
HOUSE	<input type="checkbox"/> ADOPTED <input type="checkbox"/> NOT ADOPTED				
2nd Reading and Final Passage				SENATE	HOUSE
SENATE	<input type="checkbox"/> PASS <input type="checkbox"/> FAIL				
HOUSE	<input type="checkbox"/> PASS <input type="checkbox"/> FAIL				

1 A BILL for an Act to create the office of public defender, to
 2 establish districts, qualifications, powers and duties, methods
 3 of selection, and tenure; and to provide for an appropriation.

4
 5 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
 6 STATE OF NORTH DAKOTA:

7
 8 SECTION 1. OFFICE CREATED - DISTRICTS DESIGNATED.) There
 9 is hereby created in the state of North Dakota the office of the
 10 public defender with offices in each of the eight districts
 11 designated by this section. The public defender for each dis-
 12 trict shall maintain an office within that district for the
 13 duration of his term.

- 14 1. District one shall consist of the counties of Grand
- 15 Forks, Steele, Traill, Walsh, and Pembina;
- 16 2. District two shall consist of the counties of Ward,
- 17 McHenry, Mountrail, Burke, Renville, and Bottineau;
- 18 3. District three shall consist of the counties of
- 19 Ramsey, Pierce, Rolette, Benson, Wells, Eddy, Nelson,
- 20 Towner, and Cavalier;
- 21 4. District four shall consist of the counties of
- 22 Williams, McKenzie, and Divide;
- 23 5. District five shall consist of the counties of Cass,
- 24 Ramsom, Richland, and Sargent;

1 6. District six shall consist of the counties of Stutsman,
2 Foster, Griggs, Barnes, LaMoure, Dickey, Logan, and
3 McIntosh;

4 7. District seven shall consist of the counties of
5 Burleigh, Kidder, Sheridan, McLean, Mercer, Oliver,
6 Morton, Grant, Sioux, and Emmons; and

7 8. District eight shall consist of the counties of Stark,
8 Dunn, Billings, Golden Valley, Slope, Bowman, Hettinger,
9 and Adams.

10 SECTION 2. APPOINTMENT AND QUALIFICATIONS.) The district
11 judges having jurisdiction over the counties of each district
12 created by section 1 shall meet prior to the twentieth day of
13 July 1975, and every four years thereafter, on or before the
14 twentieth day of June of that year, to appoint, upon a two-thirds
15 vote, a public defender for each district. The appointee must
16 be a duly qualified attorney with at least five years' experi-
17 ence, and who, for at least one year prior to his appointment,
18 shall be a resident attorney licensed to practice law within
19 the state of North Dakota. Each public defender shall serve a
20 term of four years.

21 SECTION 3. WAIVER OF QUALIFICATIONS.) If the judges
22 having jurisdiction over the counties in any of the districts
23 are unable to find an attorney with the qualifications listed
24 in section 2 willing to accept the office of public defender,
25 they may waive any and all of the qualifications except that of
26 being a duly licensed North Dakota attorney, and may appoint
27 anyone possessing that qualification as public defender.

28 SECTION 4. VACANCIES AND REMOVAL.) Should a vacancy
29 occur in a district due to death, resignation, or removal, the
30 district judges, having jurisdiction over the counties in the
31 district in which the vacancy occurs, shall meet within thirty
32 days after notice of the vacancy to select a new public defender
33 for that district. A public defender may be removed during his
34 term by a two-thirds vote of the district judges having juris-
35 diction over the counties in the district.

1 SECTION 5. SCOPE OF APPOINTMENT.) The public defender
2 shall be appointed by the court to represent an indigent defend-
3 ant at every stage of the proceedings from the initial appearance
4 before a magistrate through appeal in all felony cases, and from
5 the initial appearance before a magistrat through appeal in all
6 misdemeanor cases and cases involving violations of city ordi-
7 nances if it has been determined by the magistrate that a convic-
8 tion may result in imprisonment. In addition, the public defend-
9 er shall be appointed upon request to represent indigent persons
10 in juvenile matters, habeas corpus proceedings, rendition hear-
11 ings, mental health hearings, and hearings before the parole and
12 pardon boards.

13 SECTION 6. DETERMINATION OF INDIGENCY.) When a person,
14 charged with an offense specified in section 5, makes his initial
15 appearance before any court without an attorney, the presiding
16 official shall inquire of that person as to his assets, liabili-
17 ties, current income, number of dependants, and such other infor-
18 mation as the court shall deem necessary in order to determine
19 whether or not the costs of such an action shall constitute an
20 undue hardship upon the person charged. If it is determined by
21 the court that the costs of such defense would cause undue hard-
22 ship on the defendant charged, he shall be deemed indigent.

23 The court may also consider these additional circumstances
24 in determining indigency:

- 25 1. The ownership of, or equity in, any intangible or
26 tangible personal property or real property or the
27 expectancy of an interest in any such property by the
28 defendant;
- 29 2. The amount of debts owed by the defendant or debts that
30 might be incurred by the defendant because of illness
31 or other misfortunes within his family; and
- 32 3. The probable expense and burden of defending the case.

33 The inquiry into and determination of indigency shall
34 either appear in the court's record or in a written form
35 to be drawn up by the public defender and approved by the

1 district court judge of the county in which the person is
2 charged at the time determination is made as to his in-
3 digency.

4 SECTION 7. LIMITED PRACTICE IN FEDERAL COURTS.) The
5 judges having jurisdiction over any district public defender may
6 by two-thirds vote allow the defender to accept appointments to
7 federal court cases in instances where such acceptance of federal
8 court appointments would not interfere with the work to be done
9 within the district.

10 SECTION 8. ASSESSMENT OF PARTIAL COSTS.) When the court
11 determines that a defendant is able to contribute towards the
12 cost of his defense, but is unable to bear the entire cost, the
13 court may assess the defendant such sums as he is able to con-
14 tribute, without undue hardship, during the time counsel is ap-
15 pointed for him.

16 SECTION 9. JUDGE MAY ASSESS FINAL COSTS.) The court may
17 require a convicted defendant to pay costs. Costs shall be
18 limited to expenses specially incurred by the state in prosecut-
19 ing the defendant. They cannot include expenses inherent in pro-
20 viding a constitutionally guaranteed jury trial or expenditures
21 in connection with the maintenance and operation of government
22 agencies that must be made by the public, irrespective of spe-
23 cific violations of law.

24 The court shall not sentence a defendant to pay costs un-
25 less the defendant is or will be able to pay them. In deter-
26 mining the amount and method of payment of costs, the court shall
27 take into account the financial resources of the defendant and
28 the nature of the burden that payment of costs will impose.

29 A defendant, who has been sentenced to pay costs and who
30 is not in contumacious default in the payment thereof, may at
31 any time petition the court which sentenced him for remission of
32 the payment of costs or of any unpaid portion thereof. If it
33 appears to the satisfaction of the court that payment of the
34 amount due will impose manifest hardship on the defendant or his
35 immediate family, the court may remit all or part of the amount

1 due in costs, or modify the method of payment.

2 SECTION 10. PAYMENT OF ASSESSED COSTS.) When a defendant
3 is sentenced to pay a fine or costs, the court may grant permis-
4 sion for payment to be made within a specified period of time or
5 in specified installments. If no such permission is included in
6 the sentence, the fine or costs shall be payable forthwith.

7 When a defendant sentenced to pay a fine or costs is also
8 placed on probation, or imposition or execution of sentence is
9 suspended, the court may make payment of the costs a condition
10 of probation or suspension of sentence.

11 SECTION 11. DEFAULT ON PAYMENT OF ASSESSED COSTS.) When
12 a defendant sentenced to pay costs defaults in the payment there-
13 of or of any installment, the court, on motion of the state's
14 attorney or upon its own motion, may require the defendant to
15 show cause why his default should not be treated as contempt of
16 court, and may issue a show cause summons or a warrant of arrest
17 for his appearance.

18 Unless the defendant shows that his default was not at-
19 tributable to an intentional refusal to obey the order of the
20 court or to a failure on his part to make a good faith effort to
21 make the payment, the court may find that his default constitutes
22 contempt and may order him committed until the costs, or a speci-
23 fied part thereof, are paid.

24 The term of imprisonment for contempt for nonpayment of
25 costs shall be set forth in the commitment order, and shall not
26 exceed one day for each twenty-five dollars of the costs, and
27 not over thirty days if the costs were imposed upon conviction
28 of a violation or misdemeanor, or one year in any other case.
29 A person committed for nonpayment of costs shall be given credit
30 toward payment for each day of imprisonment at the rate specified
31 in the commitment order.

32 If it appears to the satisfaction of the court that the
33 default in payment of costs is not contempt, the court may enter
34 an order allowing the defendant additional time for payment,
35 reducing the amount thereof or of each installment or revoking

1 the costs or the unpaid portion thereof in whole or in part.

2 A default in the payment of costs or any installment there-
3 of may be collected by any means authorized by law for the en-
4 forcement of a judgment. The levy of execution for the collec-
5 tion of costs shall not discharge a defendant committed to im-
6 prisonment for contempt until the amount of the costs has actually
7 been collected.

8 SECTION 12. STATE'S ATTORNEY MAY SEEK RECOVERY OF COSTS.)

9 The state's attorney may seek recovery of any such costs at any
10 time he determines the person for whom counsel was appointed may
11 have funds to repay the county within six years following the
12 date such amount was paid on his behalf.

13 SECTION 13. PAYMENT FOR SERVICES.) The public defender
14 shall receive such reasonable compensation for his services as
15 the judge of the district court, county court, municipal court,
16 or juvenile court shall fix. The compensation shall be compar-
17 able to that paid to private counsel by the county or municipal-
18 ity in which the service was rendered.

19 SECTION 14. APPOINTMENT AND PAYMENT FOR SERVICES OF OTHER
20 ATTORNEYS.) The presiding district, county or municipal judge,
21 or juvenile court referee shall appoint other attorneys as he
22 shall deem necessary upon application by the public defender,
23 and such attorneys shall receive the same compensation as set
24 out in section 13, and shall be paid by the county or municipal-
25 ity in which his services were rendered.

26 SECTION 15. REPORTS TO THE STATE TREASURER, DISTRICT
27 COURTS, BOARDS OF COUNTY COMMISSIONERS, AND MUNICIPAL OFFICIALS.)

28 At the close of each quarter and at the end of each fiscal year,
29 the public defender shall make and file a report with the state
30 treasurer, the district judges having jurisdiction over the coun-
31 ties in his district, the board of county commissioners of each
32 county in his district, and with municipal officials of municipi-
33 palities served. Said reports shall show the following:

34 1. A quarterly breakdown showing the amounts billed to
35 and received from each county and municipality and

- 1 any additional moneys received;
- 2 2. The disbursement of such funds by the office of the
- 3 public defender; and
- 4 3. A summary of all cases handled by the public defender,
- 5 showing the final disposition of the case and the
- 6 amount of fees and costs billed and received.

7 SECTION 16. SALARY - HOW FIXED.) The salary of the pub-
8 lic defender in each district shall be the same as that of the
9 highest paid prosecuting attorney in the same district. In the
10 event the salary of the prosecuting attorney is fourteen thou-
11 sand dollars or more, the public defender receiving a like
12 salary shall not engage in the private practice of law. If the
13 salary of the prosecuting attorney of the district is less than
14 fourteen thousand dollars, then the public defender receiving a
15 like salary shall be allowed to engage in the private practice
16 of law.

17 SECTION 17. APPOINTMENT OF ASSISTANTS AND OTHER STAFF -
18 COMPENSATION THEREOF.) The public defender, upon approval of
19 the district judges having jurisdiction over the counties of
20 the district, may appoint any assistant public defenders, in-
21 vestigators, and clerical personnel that he shall deem necessary.
22 The salary of any such personnel shall be subject to the approval
23 of the judges of the district. Should the salary of an assistant
24 public defender be set at an amount of twelve thousand dollars or
25 more, the assistant shall not be allowed to engage in the private
26 practice of law. Should the salary of an assistant be set at an
27 amount less than twelve thousand dollars, the assistant shall be
28 allowed to engage in the private practice of law. The expenses
29 for salaries of assistants, investigators, and clerical personnel
30 shall be set out in the annual budget of the public defender of
31 each district.

32 SECTION 18. BOOKS, FURNITURE, AND OFFICE SPACE.) At the
33 start of each fiscal year, the public defender shall present to
34 the district judges having jurisdiction over the counties within
35 his district a proposed budget for their approval. This budget

1 shall show the estimated costs of books, furniture, and office
2 space, plus expenses for the coming year.

3 SECTION 19. TRAVEL EXPENSES.) Travel expenses for the
4 public defenders and their staffs incurred in the performance
5 of actual and necessary duties shall be paid by the county or
6 municipality bringing the criminal charge upon the approval of
7 the presiding district, county or municipal judge, or juvenile
8 referee. Such compensation shall be at the rate set by law for
9 officials in the state. An estimate of such expenses shall be
10 set out in the budget of the public defender's office for each
11 district.

12 SECTION 20. HANDLING OF MONEYS RECEIVED.) The public de-
13 fender shall select a bank qualifying as a depository for public
14 funds within his district to serve as the repository for all
15 moneys received by his office. The public defender shall be
16 authorized to open a checking account at such institution with
17 which to transact the business of his office.

18 SECTION 21. ADDITIONAL FUNDS.) The public defender of
19 each district may receive money and other contributions from
20 private organizations, individuals, and other public agencies in
21 addition to moneys received from the counties in his district to
22 finance the operation of his office. The public defender shall
23 account for the disbursement of such funds in his quarterly and
24 annual reports to be submitted to the state treasurer, district
25 judges, boards of county commissioners, and municipal officials
26 in his district.

27 SECTION 22. APPROPRIATION.) There is hereby appropriated
28 out of any moneys in the general fund in the state treasury, not
29 otherwise appropriated, the sum of \$365,000.00, or so much there-
30 of as may be necessary, for the biennium beginning July 1, 1975,
31 and ending June 30, 1977. An initial sum of \$125,000.00 shall
32 be authorized for expenditure for establishing offices, attorneys'
33 fees, and clerical salaries through January 1, 1976. Thereafter,
34 an additional expenditure shall be authorized as needed to defray
35 the costs of operation in an amount not to exceed \$80,000.00 in

1 any six-month period. The additional authorized expenditure
2 after the initial allocation shall be offset by whatever county
3 charges and fees are received by the public defenders in each
4 district.

5 SECTION 23. PERCENTAGE EACH DISTRICT PUBLIC DEFENDER CAN
6 APPROPRIATE FROM THE STATE.) Each full-time public defender
7 shall not expend more than sixteen and two-thirds percent of the
8 initial allocation and any later allocations so provided in sec-
9 tion 22 of this Act, and each part-time public defender shall
10 not expend more than eight and one-third percent during any six-
11 month period. However, if at the end of ninety days after each
12 six-month period any unallocated funds remain in the public de-
13 fender allocation for any six-month period, any public defender
14 may make application for all or part of these funds. The depart-
15 ment of accounts and purchases shall allocate and approve the
16 transfer funds as provided in sections 22 and 23 of this Act.

17 SECTION 24. REFUND TO STATE.) Any and all funds in the
18 possession of the district public defenders after the close of
19 the biennium ending June 30, 1977, shall be returned to the
20 state general fund after all outstanding bills of the office
21 have been paid. Such remittance shall be made to the state by
22 July 15, 1977.

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APPENDIX D

Diagram Illustrating North Dakota Judicial System

SUPREME COURT

Chief Justice & 4 Associates. Elected for 10 year terms. Chief Justice appointed by Supreme & District Court judges from ranks of Supreme Court Justices. Chief Justice serves term of 5 years.

Final Appellate Jurisdiction in:

1. All criminal cases (felony or misdemeanor) from District Court.
2. Final judgments, orders or writs of District Court in civil cases.
3. Misdemeanor & civil cases from County Court with Increased Jurisd.
4. Such other cases as provided by law.

Original Jurisdiction in:

1. Writs of habeas corpus, mandamus, quo warranto, certiorari & injunction.
2. Cases of public concern affecting sovereign rights of the State.

DISTRICT COURT

19 Judges in 6 judicial districts. Elected for 6-year terms.

Original Jurisdiction in:

1. Issuing all writs, process & commissions as provided by law.
2. All civil cases (concurrently with county justice & county judge with increased jurisd.
3. All criminal cases (concurrently with county justice & county judge with increased jurisd. in misd. cases.
4. All juvenile matters.

Appellate Jurisdiction in:

1. Final judgments of county justice Court (civil or crim.)
2. Final judgments of municipal courts.
3. Judgments, decrees or orders of county court probate matters
4. Determinations of inferior officers, boards or tribunals.

COUNTY COURT WITH INCREASED JURISDICTION

Increased jurisdiction determined by county election. 4-year terms.

Original Jurisdiction in:

1. Civil cases up to \$1000.
2. All misdemeanor cases.
3. Small claims court (up to \$200)
4. Concurrent jurisdiction with county justice court.

Appellate jurisdiction in:

1. Final judgments of municipal courts.

(NOTE: As of 7/1/73, 13 of the State's 53 counties had county courts with increased jurisd.)

COUNTY JUSTICE COURT

County-wide jurisdiction. Elected for 4-year terms.

Original jurisdiction in:

1. Civil cases up to \$250, except boundary or title disputes.
2. All misdemeanor cases.
3. Small claims court (up to \$200).
4. Institute searches & seizures.
5. Hold preliminary hearings & act as committing magistrate in felonies.
6. Other cases as provided by law.

Appellate Jurisdiction: None.

COUNTY COURT

4-year terms. Combined with County Justice Court, it becomes County with Increased Jurisdiction when approved by county electorate.

Original Jurisdiction in:

1. All probate, guardianship & other testamentary matters.

Appellate Jurisdiction: None.

MUNICIPAL COURT

Elected by city voters for 4-year term.

Original Jurisdiction in:

1. All offenses against city ordinances.

Appellate Jurisdiction: None.



— Indicates appeal route.

APPENDIX E

Standards Relating to Independence,
Appointment, Tenure of Defenders

National Advisory Commission on Criminal Justice Standards and Goals,
Courts Task Force, Chapter 13, Standard 13.8

Standard 13.8

Selection of Public Defenders

The method employed to select public defenders should insure that the public defender is as independent as any private counsel who undertakes the defense of a fee-paying criminally accused person. The most appropriate selection method is nomination by a selection board and appointment by the Governor. If a jurisdiction has a Judicial Nominating Commission as described in Standard 7.1, that commission also should choose public defenders. If no such commission exists, a similar body should be created for the selection of public defenders.

An updated list of qualified potential nominees should be maintained. The commission should draw names from this list and submit them to the Governor. The commission should select a minimum of three persons to fill a public defender vacancy unless the commission is convinced there are not three qualified nominees. This list should be sent to the Governor within 30 days of a public defender vacancy, and the Governor should select the defender from this list. If the Governor does not appoint a defender within 30 days, the power of appointment should shift to the commission.

A public defender should serve for a term of not less than four years and should be permitted to be reappointed.

A public defender should be subject to disciplinary or removal procedures for permanent physical

or mental disability seriously interfering with the performance of his duties, willful misconduct in office, willful and persistent failure to perform public defender duties, habitual intemperance, or conduct prejudicial to the administration of justice. Power to discipline a public defender should be placed in the judicial conduct commission provided in Standard 7.4.

RECOMMENDATION

(2) *Composition of Commission*

THE COMMISSION SHOULD CONSIST OF NINE TO THIRTEEN MEMBERS, DEPENDING UPON THE SIZE OF THE COMMUNITY, THE NUMBER OF IDENTIFIABLE FACTIONS OR COMPONENTS OF THE CLIENT POPULATION, AND JUDGMENTS AS TO WHICH NON-CLIENT GROUPS SHOULD BE REPRESENTED.

CRITERIA FOR SELECTION OF COMMISSION MEMBERS:

(a) THE PRIMARY CONSIDERATION IN MAKING UP THE COMPOSITION OF THE SPECIAL SELECTION COMMISSION SHOULD BE THAT OF ENSURING THE INDEPENDENCE OF THE DEFENDER DIRECTOR.

(b) THE MEMBERS OF THE COMMISSION SHOULD REPRESENT A DIVERSITY OF FACTIONS IN ORDER TO ENSURE INSULATION FROM PARTISAN POLITICS.

(c) NO SINGLE BRANCH OF GOVERNMENT SHOULD HAVE A MAJORITY OF VOTES ON THE COMMISSION.

(d) ORGANIZATIONS CONCERNED WITH THE PROBLEMS OF THE CLIENT COMMUNITY SHOULD BE REPRESENTED ON THIS COMMISSION.

(e) A MAJORITY OF THE COMMISSION SHOULD BE PRACTICING ATTORNEYS.

(f) NONE OF THE MEMBERS OF THE COMMISSION SHOULD BE JUDGES OR PROSECUTORS.

RECOMMENDATION

b. Selecting the Defender Director

(1) *Special Selection Commission*

A SPECIAL SELECTION COMMISSION SHOULD BE CREATED TO APPOINT, AND, TO A LIMITED EXTENT, ADVISE, THE STATE DEFENDER DIRECTOR.

Commentary:

This Commission recommends that a Special Selection Commission whose composition truly reflects non-partisan representation and a broad spectrum of interests in the community select the Defender Director after receiving and reviewing applications and conducting interviews with attorneys desiring to be appointed. The problems inherent in having any one branch of the government appoint the Defender Director have been well laid out. Therefore, the selection commission should not be attached to any of the existing branches of government. It is only in this way that the appointed defender director may be truly independent.

American Bar Association's Project on Minimum Standards for Criminal Justice, Standards Relating to Providing Defense Services (Standard 1.4).

1.4 Professional independence.

The plan should be designed to guarantee the integrity of the relationship between lawyer and client. The plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. One means for assuring this independence, regardless of the type of system adopted, is to place the ultimate authority and responsibility for the operation of the plan in a board of trustees. Where an assigned counsel system is selected, it should be governed by such a board. The board should have the power to establish general policy for the operation of the plan, consistent with these standards and in keeping with the standards of professional conduct. The board should be precluded from interfering in the conduct of particular cases.

APPENDIX F

Proposed Library for Appellate Defender

NORTH DAKOTA--APPELLATE DEFENDER

LIBRARY

Essential Publications

1) Complete set of Supreme Court Reporters (West S. Ct. Reporters)	\$1,372.50 ¹
Current bound volumes with advance sheets (per year)	54.00
2) Complete set of official State Reporters (Northwestern Reporter 2d--West)	2,561.50
Current volumes with advance sheets (approximately 10 volumes per year @ \$16 per volume)	160.00 ²
3) Complete set of Shepard's Citations	
North Dakota	75.00
Current volumes/year	32.00
Federal 2d	175.00
Current volumes/year	64.00
United States	175.00
Current volumes/year	64.00
4) Complete set of North Dakota Statutes, Annotated	260.00
Current volumes/year	30.00
5) Complete set of ABA Standards for Criminal Justice	42.00
6) Criminal Law Reporter (per year)	210.00
7. Dakota Digest (West)	352.00
Current volumes/year	<u>70.00</u>
TOTAL OF ESSENTIAL PUBLICATIONS	<u>\$5,697.00</u>

Extremely Useful Publications

1) Complete set of Federal Reporter 2d ³ (West)	\$5,949.50
Current volumes with advance sheets (per year) 19 volumes per year @ \$19 per volume	361.00
2) Nedrud, <u>Criminal Law</u> (optional)	70.00

¹The figure quoted is for a new set. It may be possible to purchase a used set; the price of such a set depends upon its availability, condition and shipping costs. An estimate of the cost would be approximately \$900.

²The upkeep per year cost is approximate because it is based on a cost per year volume and the number of volumes differs each year.

³It may be possible to purchase a used set. See footnote 1.

LIBRARY, cont'd.

3) Weinstein, <u>Evidence</u> (7 vols.) ⁴	148.75
4) Kamisar, LaFave, et al., <u>Modern Criminal Procedure and Supplement</u>	24.50
5) Contents of Current Legal Periodicals (per year)	35.00
6) North Dakota Law Review (per year)	<u>15.00</u>
TOTAL OF USEFUL ITEMS	<u>\$6,603.75</u>
TOTAL OF ESSENTIAL & USEFUL ITEMS	<u><u>\$12,300.75</u></u>

YEARLY UPKEEP

Essential Items

1) S. Ct. Reporters	\$54.00
2) Northwestern 2d	160.00
3) Shepard's Citations	
N.D.	32.00
Fedl.	64.00
U.S.	64.00
4) Statutes	30.00
5) Crim. L. Repr.	210.00
6) Digest	<u>70.00</u>
TOTAL UPKEEP--ESSENTIALS	<u>\$684.00</u>

Useful Items

1) Federal 2d	\$361.00
2) Crim. Law	70.00
3) Legal Periodicals	35.00
4) Law Review	<u>5.00</u>
TOTAL UPKEEP--USEFULS	<u>\$481.00</u>
TOTAL YEARLY UPKEEP	<u><u>\$1,165.00</u></u>

APPENDIX G

Persons Interviewed During Team
Visit to North Dakota

Persons Interviewed During Team Visit to North Dakota

Honorable Ralph J. Erickstad
Chief Justice and Judicial Council Chairman
North Dakota Supreme Court
State Capitol
Bismarck, North Dakota 58505

Honorable A. J. Pederson
North Dakota Supreme Court
State Capitol
Bismarck, North Dakota 58505

Honorable Paul M. Sand
North Dakota Supreme Court
State Capitol
Bismarck, North Dakota 58505

Allen I. Olson
North Dakota Attorney General
State Capitol
Bismarck, North Dakota 58505

Ted Gladden
Assistant State Court Administrator
State Capitol
Bismarck, North Dakota 58505

Daniel James Chapman, Esq.
Box 1258
First Federal Savings & Loan Bldg.
Bismarck, North Dakota 58501

Kent A. Higgins, Esq.
411 North Fourth Street
Bismarck, North Dakota 58501

Vance K. Hill, Esq.
11 Santa Gertrudis Drive
Bismarck, North Dakota 58501

Duane E. Houdek
Law Clerk
State Capitol
Bismarck, North Dakota 58505

Robert W. Holte, Esq.
North Dakota Combined Law Enforcement
Council
Box 8
Bismarck, North Dakota 58505

Thomas F. Kelsh, Esq.
Assistant Attorney General
Courthouse
Bismarck, North Dakota 58501

Russell R. Mather, Esq.
Box 1436
Suite 200, Professional Bldg.
Bismarck, North Dakota 58501

Jon O. Nelson
Law Clerk
Supreme Court Offices
State Capitol
Bismarck, North Dakota 58505

John M. Olson, Esq.
State's Attorney
Burleigh County Courthouse
Bismarck, North Dakota 58501

Benjamin C. Pulkrabek, Esq.
411 North Fourth Street
Bismarck, North Dakota 58501

Mr. Tom Wallner
Law Enforcement Council
Box B
Bismarck, North Dakota 58501

APPENDIX H

Resumes of Consultants

BIOGRAPHICAL SKETCH

THEODORE A. GOTTFRIED

Mr. Theodore Gottfried is currently the State Appellate Defender of Illinois.

In this capacity Mr. Gottfried is the chief executive officer of a state agency that provides appellate, post-conviction and other prison legal services to convicted indigent persons.

Mr. Gottfried was appointed by the Illinois Supreme Court to a 4-year term of office. He also is responsible to a Board of Commissioners who make policy, and has Board fiscal responsibilities.

Mr. Gottfried's agency consists of six offices at various locations in Illinois and a total staff of 87 persons.

Theodore Gottfried is a 1966 graduate of the John Marshall Law School in Chicago, Illinois. He began his career as an Assistant Public Defender in the office of the Public Defender of Cook County Illinois where he had experience in all divisions of that office, leaving that office as a supervisor in the Appellate Division.

After leaving the Cook County Public Defender Office, Mr. Gottfried was director of the Ottawa, Illinois office of the Illinois Defender Project (the predecessor of the present State Agency) and rose to the Executive Directorship of that agency.

He held the position of Executive Director of the Illinois Defender Project until it became the State Appellate Agency of Illinois.

Mr. Gottfried has lectured on Criminal Law at a number of continuing legal education programs and has published several articles relating to criminal law.

PERSONAL RESUME

PRESCOTT EATON

6/18/75

Personal Biography

Born January 29, 1930, in Seattle Washington. Lived in Seattle, Washington to age 23. Entered U.S. Army October 2, 1953 and served until voluntary retirement June 1, 1975 as a Lieutenant Colonel. Served in positions of responsibility at military installations throughout the United States, in Greenland, Europe, Vietnam and Laos.

Education

High School: Shawnigan Lake, British Columbia (graduated 1949)

College: Washington State College (1949-1951)
 University of Washington (1951-1953)
 Bachelor of Arts in Anthropology
 Eastern Washington State College (1965-1967)
 Master of Science in Psychology

Relevant Positions Held

Associate Director, Management Programs, National Center for Defense Management, 2100 M Street, N.W., Washington, D.C. (4/21/75 to present)

Assistant Comptroller, Military District of Washington, Washington, D.C. (June 7, 1974 to April 20, 1975)

Executive Officer, Support Element, Defense Attache Office, Vientiane, Laos (January 16, 1974 to June 6, 1974)

Executive Assistant (Secretary of the General Staff), Commander, U.S. Army Criminal Investigation Command (April 15, 1973 to December 15, 1973)

Graduate Faculty Member, U.S. Army Command and General Staff College, Fort Leavenworth, Kansas (June 6, 1970 to May 15, 1972)

Professional Training

Automatic Data Processing Theory/Applications (Jan-June, 1970/October, 1970)

Operations Research/Systems Analysis Executive Course (November - December, 1973)

Personal Resume
Prescott Eaton
6/18/75
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Professional Training cont'd.

Application of Behavioral Science Models for Management, U.S. Department
of Agriculture Graduate School (October, 1974)

Organizational Memberships

American Psychological Association (APA)
Division of Industrial - Organizational Psychology (Division 14), APA
American Society of Military Comptrollers
Association of Legal Administrators
Psi Chi (Psychology Honorary)
American Society of Association Executives

Awards

Legion of Merit, Bronze Star
Meritorious Service Medal, Air
Medal, Army Commendation Medal (three awards)

PERSONAL RESUME

William R. Higham

10-21-75

I. PERSONAL DATA

Home Address: 4300 Old Dominion Drive, Apt. 808
Arlington, Virginia 22207

Home Telephone: (703) 528-0860

Office Address: National Center for Defense Management
2100 M Street, N.W., Suite 601
Washington, D.C. 20037

Office Telephone: (202) 452-0620

Wife: Pam Higham

Children: Two daughters, Mary B. (16) and
Jeaneane A. (14) Higham (by prior marriage)

Date and Place of Birth: August 28, 1926, in New York, N.Y.

II. EDUCATION

Law School: Hastings College of Law (University of
California) 1949 - 1952 (Bachelor of Laws degree)

College: Oregon State University, 1945 - 1949.
(Bachelor of Science degree in General Science).

High School: Diocesan College, Capetown, South Africa.
Graduated in 1944.

III. EMPLOYMENT AND SELF EMPLOYMENT (1955 - 1975)

December 1974
to present

Director, National Center for Defense
Management, 2100 M Street, N.W., Suite 601
Washington, D.C. 20037
Salary: \$35,000 per year. As first director
of this National Legal Aid and Defender
Association (hereafter referred to as NLADA)-
sponsored, LEAA-funded program, duties are to
achieve the fulfillment of stated project goals.
These include the furnishing of management
assistance to defender organizations,

PERSONAL RESUME
William R. Higham
(10-21-75)
page two

the conducting of feasibility studies and evaluations, the sponsorship of management training programs for defender managers, the development of management systems for defender offices, and related functions. Supervise two professional staff, two clerical staff, numerous consultants.

November, 1966
to November, 1974

Public Defender of Contra Costa County
California, 901 Pine Street, Martinez,
California 94553

Salary: \$36,144 per year. As first public defender of this 570,000 population county, was responsible for bringing the office into being and managing it from its initial size (one office location, eleven employees) to its size in the fiscal year 1974-1975 (four branches, over sixty employees, \$1.3 million budget). Reason for leaving: to take position as director of National Center for Defense Management.

April, 1966
to November, 1966

Private Practice of Law, 423 Cumberland
Street, Pittsburg, California

Do not recall income for period. General practice of law, with emphasis on criminal defense practice. Reason for leaving: to become county's first public defender.

February, 1958
to March, 1966

Deputy District Attorney for Contra Costa
County, California, 100 - 37th Street,
Richmond, California

Salary: About \$14,000 per year. At time of leaving, was Deputy-in-Charge of Richmond Branch Office, supervising a staff of about seventeen persons.

October, 1956
to February, 1958

Private Practice of Law, 1766 Locust Street,
Walnut Creek, California

Do not recall income. General practice of law. Reason for leaving: to take position as deputy district attorney and gain trial experience.

PERSONAL RESUME
William R. Higham
(10-21-75)
page three

May, 1955
to May, 1956

Claims Authorizer, Social Security
Administration Area Office, San Francisco,
California

Cannot recall salary. Review of claims
for OAS DI benefits at Area Office level.
Reason for leaving: to relocate to Contra
Costa County and start law practice.

IV. CONSULTANCIES

1972

To Courts Task Force of National Advisory
Commission on Criminal Justice Standards
and Goals (thru NLADA).

Co-authored a draft of proposed defense
standards for the U.S., many of which were
incorporated in the final text adopted.

1973

To Alaska Public Defender Agency (thru
NLADA and Criminal Courts Technical Assistance
Project of American University).

Conducted evaluation and engaged in management
consultation.

1973

To Massachusetts Defenders Committee (private
consultation).

Subject matter dealt with forensic photography
and use of visual aids in trial, and systems
to resources necessary to effectuate such use.

1974

To Vermont Defender General's Office (thru
NLADA and Criminal Courts Technical Assistance
Project of American University).

Conducted evaluation and engaged in management
consultation.

1974

To Seattle-King County Public Defender
Association (thru NLADA and Criminal Courts
Technical Assistance Project of American
University).

Developed a request for proposals to conduct
an evaluation of indigent defense services
in Seattle-King County, Washington.

PERSONAL RESUME
William R. Higham
(10-21-75)
page four

V. RELEVANT ACTIVITIES

Chairman, Defender Committee, NLADA, from November, 1973 to November, 1974. Member of Defender Committee from 1971 - 1974; served on and/or chaired various defender subcommittees before and after that time, including subcommittees on NLADA dues structure, NLADA bylaws, defender standards, defender membership, and death penalty.

Member, Board of Directors, NLADA, November, 1974 to present.

President, California Public Defenders Association, from September, 1972 to May, 1974. Previously served terms as First Vice President, Second Vice President and Secretary Treasurer. As President, personally supervised the Association's legislative program during the months that the legislative chairman was heavily engaged in representation in a major case. Testified as the Association's representative before both the California State Senate Judiciary Committee and Assembly Criminal Justice Committee in hearings on restoration of the death penalty.

As the Association's first Secretary-Treasurer (two terms), was responsible for drafting its bylaws and articles of incorporation, incorporating it, and doing all things necessary to place it on a sound financial footing.

Member, Board of Directors, Western Regional Defender Association, 1972 - 1974. Was responsible for drafting the bylaws and articles of incorporation of this association and incorporating it.

Chairman, Judicial Process Committee, and Member, Board of Directors, of the Criminal Justice Agency of Contra Costa County, from 1971 to 1974. This agency was responsible for reviewing grant applications for funding of projects in the county out of such county's allocation of LEAA money received thru California's state block grants.

Delegate to and Discussion Leader At the National Conference on Criminal Justice, Washington, D.C., in January, 1973. Chaired panel discussions on National Advisory Commission Standards for the defense.

Member, Board of Directors, Contra Costa County Mental Health Association, (1971 - 1973).

PERSONAL RESUME
William R. Higham
(10-21-75)
page five

VI. AWARDS

Reginald Heber Smith Award (Defender)
By NLADA, November 16, 1974

VII. ARTICLES AND PAPERS

"The Defender Office: Making Managers Out of Lawyers"; paper given at American Association for Advancement of Science meeting, New York, N.Y. January 31, 1975.

VIII. BAR ADMISSIONS

Admitted to practice in California on June 16, 1955, including admission to practice in United States District Court for Northern California and Ninth Circuit Court of Appeals. U.S. Supreme Court admission on October 23, 1967.

Certified in California as Criminal Law Specialist.

IX. ORGANIZATIONAL MEMBERSHIPS

National Legal Aid and Defender Association

American Bar Association

California State Bar Association

California Public Defenders Association (Honorary Life Member)

California Attorneys for Criminal Justice

X. MILITARY SERVICE

U.S. Navy, World War II



END