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BRANCH OFFICES FOR PUBLIC DEFENDERS IN GREATER MINNESOTA:

AN EVALUATION FOR THE STATE BOARD OF PUBLIC DEFENSE

John M. Stuart
Minnesota State Public Defender
May, 1996

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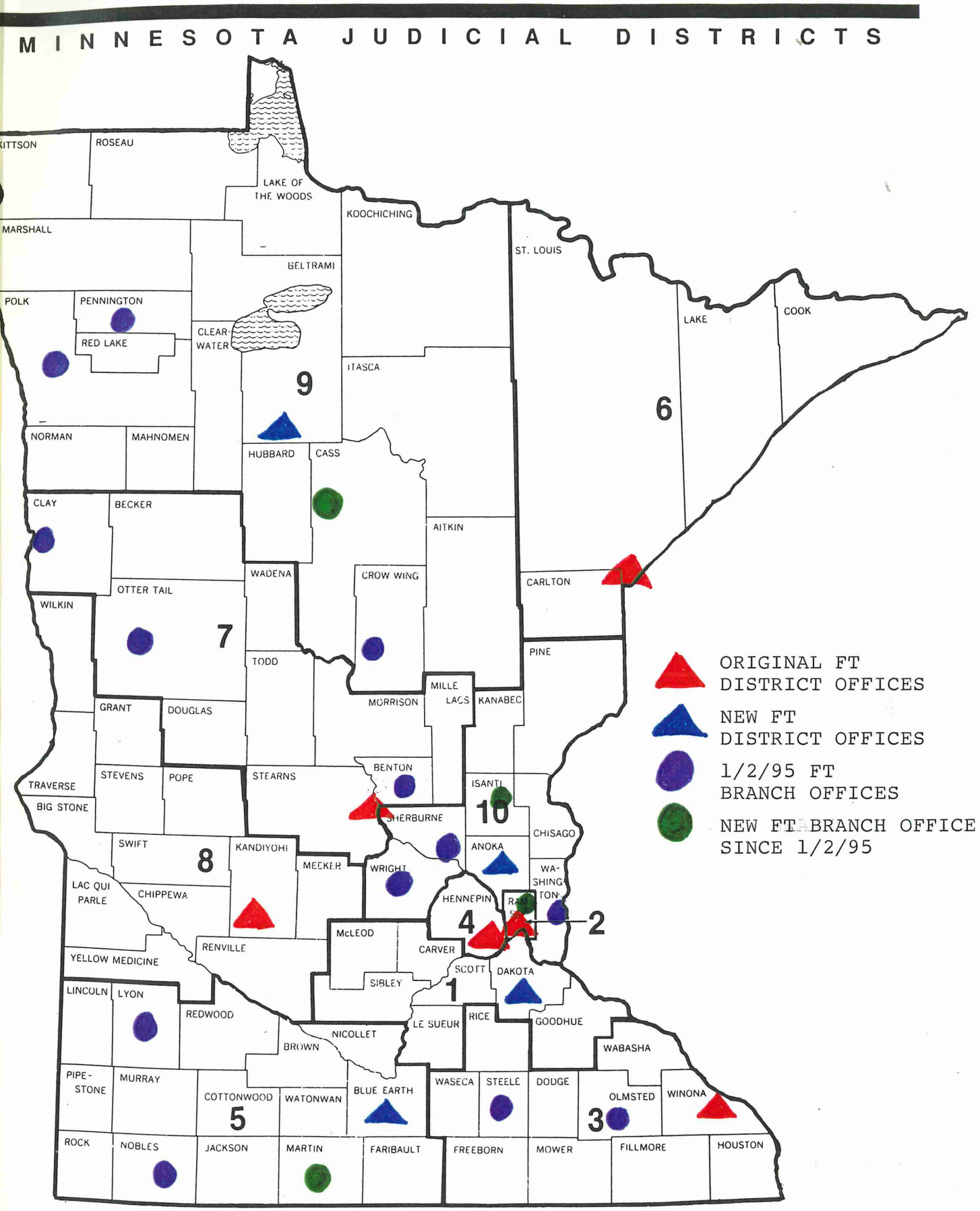
Figure 1.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NOBLES
JACKSON
MARTIN
FARIBAULT
FREEBORN
MOWER
FILLMORE
HOUSTON
ORIGINAL FT DISTRICT OFFICES
NEW FT DISTRICT OFFICES
1/2/95 FT BRANCH OFFICES
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I. INTRODUCTION

A. How the Branch Offices Were Created:

National standards for public defense have encouraged the development of full-time offices for many years. For example, the A.B.A. Standards, Providing Defense Services (1979), Standard 5-3.2 states that "[d]efense organizations should be staffed with full-time attorneys." [1] This Standard is supported by extensive comments relating to conflicts and scheduling difficulties experienced by part-timers, as well as the difficulty of maintaining a civil law practice and criminal defense expertise. The A.B.A. authors claim that better services to clients, cost-effectiveness, and pay equity result from the establishment of full-time offices in rural areas.

Minnesota had, however, and still has, an exceptionally talented, committed, and experienced group of part-time public defenders across the state, many of whom have worked in that role since public defense began here in the 1960s. Any movement toward the recommended full-time offices would have to take into account the benefits of continuing to work with these well-established attorneys, as well as costs, and overall quality of service to clients.

In February, 1992, the Legislative Auditor published a program evaluation, Public Defender System. Citing difficulties with accountability and pay and caseload equity, this report suggested that "[t]he state public defender should begin developing alternative approaches for providing public defense services in the outstate districts, which may involve the creation of some full-time positions."[2]

The issue of how to combine full-time and part-time public defense positions in Greater Minnesota so as to get the best of both worlds, was considered by the State Board of Public Defense in its strategic planning process, from January, 1993 through March, 1994.[3]

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[1] *Similar recommendations for full-time public defenders were made in the National Institute of Law Enforcement and Criminal Justice's manual, Guide to Establishing a Defender System (1978) at pp. 28-30, and the National Study Commission on Defense Services' Final Report (1976) at pp. 180-187.*

[2] *Legislative Auditor, Public Defender System, (1992), at 87.*

[3] *See, Board of Public Defense, Strategic Plan: Vision for a Statewide System of Public Defense, (1994), at 30:*
"GOAL: Encourage and support a blend of full-time and part-time public defenders."

Meanwhile, two important developments were taking place in the Legislature. First, children alleged to be juvenile delinquents were given the right to counsel comparable to the adult version of this right, with the understanding that practically all of them would be eligible for public defense services.[4] Second, the Board of Public Defense was given the responsibility, and funding, to begin to provide representation in juvenile and misdemeanor cases in the First, Fifth, Seventh, Ninth, and Tenth Judicial Districts.[5] Effective January 1, 1995, all district public defense systems were required to provide a full range of criminal and juvenile court defense services.

The effect of these two bills was to bring enough new clients to rural public defenders to make the creation of some full-time branch offices appear to be practical. Through the summer of 1994, the district chief public defenders, state public defender, and the staff of the Administrative Services Office prepared, and revised, detailed plans for the State Board of Public Defense. On January 2, 1995, full-time branch offices opened in Brainerd, Buffalo, Crookston, Elk River, Fergus Falls, Foley, Marshall, Moorhead, Stillwater, Thief River Falls, and Worthington.[6]

B. The Purposes of This Evaluation.

Most of the public defense branch offices in Greater Minnesota have now been open for 16 months. The Board of Public Defense needs to take a closer look at the costs and benefits of this type of operation. This Evaluation intends to accomplish three related purposes:

- Cost-benefit analysis: Has the implementation of the Strategic Plan recommendation been successful, considering: (See footnote 3.)

    1. impact on services to the client?

    2. cost-effectiveness of branch offices vs. per-hour contracting?

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[4] *Minn. Stat. § 260.155, Subd. 2 (1994).*

[5] *Minn. Laws 1994, Ch. 636, Art. 11.*

[6] *At the same time, full-time District Chief Public Defender offices opened in Anoka, Apple Valley, Bemidji, and Mankato. Previously there were District Chiefs' offices in Duluth, St. Cloud, St. Paul, Minneapolis, Willmar, and Winona, and branch offices in Owatonna and Rochester. Since January 2, 1995, additional branch offices have been opened in Cambridge, Fairmont, Roseville, and Walker. See the map which is Figure 1.*

3. influence on relations with the court system?

4. effects on staff demographics? and

5. use of full-time offices to assist part-time defenders in the region?

- Assessment of current needs of the branch offices: Do they have adequate staff? facilities? equipment? training?

- Development of criteria to plan possible new branch offices: When would it be appropriate to open an additional branch office in the future? When should additional required services be performed by part-time defenders operating out of their own law firms? What other service delivery strategies should the Board consider?

To attempt to answer these questions, the Administrative Services Office collected data on caseloads and costs. The state public defender made site visits to branch offices in Brainerd, Buffalo, Moorhead, Owatonna, Rochester, and Worthington. All of these offices are in counties which show dramatic recent growth in criminal case filings, as illustrated by Figure 2 (next page). Many other counties have had the same experience. District chief public defenders filled out questionnaires regarding changes in services provided by the branch offices. Finally, judges and court administrators were asked for their views on the full-time offices.

II. SIX BRANCH OFFICES

A. Brainerd.

Although most Minnesotans think of Brainerd primarily as a vacation spot, as it happens, it is also the center of a small area with three of the top ten "high crime rate per capita" municipalities in the state.[7] At the time of the site visit, the office was handling two homicide cases, three aggravated robberies, seven or eight aggravated assaults with firearms, and a rash of burglaries of occupied homes, in addition to many other less serious cases. District Court felony filings reported as of

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[7] *Interview with Managing Attorney Chuck Halvorson, November 15, 1995. The Star Tribune article on high crime areas listed: Brainerd, #4; Crosby, #5; Baxter, #7.*

Figure 2.

Case Filing Increases in One Year, in Six Counties:

1994 to 1995

	Crow Wing County (Brainerd)	Wright (Buffalo)	Clay (Moorhead)	Steele (Owatonna)	Olmsted (Rochester)	Nobles (Worthington)
FELONY	19%	27%	12%	9%	27%	14%
GROSS MISDEMEANOR	17%	16%	23%	11%	3%	47%
DELINQUENCY	12%	4%	1%	-4%	4%	-11%
TERMINATION OF PARENTAL RIGHTS*	120%	267%	140%	-50%	-13%	10%
5o ASSAULT**	30%	-2%	25%	36%	0%	56%
DWI**	25%	15%	18%	-9%	7%	6%

Source: Supreme Court

* The absolute numbers of TPR's here are rather small, but these are very serious cases.

** These charges are generally thought to be the most serious misdemeanors.

September 1, 1995, had already surpassed the entire year's filings from 1994. Crow Wing County also has a high number of juvenile certifications and Extended Juvenile Jurisdiction cases, as the largest contributor to the Ninth District's total, which is only exceeded by the Fourth District (Hennepin County).[8] The office also provides complete defender services to Aitkin County.

The Brainerd Office staff includes three full-time attorneys, a full-time investigator, and a legal secretary. The average experience of the full-time attorneys is about three and a half years. Two part-time public defenders also work in the Brainerd area, handling conflicts and other cases that can't be taken by the full-time office. Legal research and alternative-sentence-planning services come from the District Chief's office in Bemidji.

Figure 3 shows the projected 1995 caseload for the office based on reports of cases that were either "closed" or "pending" from January to June, 1995.

Figure 3.

Brainerd Cases (Projected), 1995

Felony	142
Gross Misdemeanors	192
Misdemeanors	504
Juvenile	430
Other	120
Total[9]	1388

People who work in the Brainerd office feel that their agency is more visible and accessible to clients than the previous network of part-time defenders. The office opens all files for Crow Wing and Aitkin county, so anyone with a question about a court appearance can call and get the necessary information. The presence of full-time attorneys also aids the court system in scheduling; for example, previously, if a

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[8] *Minnesota Supreme Court statistics, March, 1996.*

[9] *The Caseload Standards adopted by the State Board of Public Defense in October, 1991, call for an attorney's total caseload for a year to consist of no more than: 100-150 felonies; or 250-300 gross misdemeanors; or 400 misdemeanors; or 80 CHIPS; or 175 juvenile delinquency, or 200 other cases. By these Standards this three-attorney office should have five lawyers.*

part-time defender was sick on a day when a court appearance was set, it would have had to be continued -- now, in many cases, the full-time office can provide coverage. Part-time defenders in the region can also use the office to provide consultation, research, and investigation. The office has good relations with the courts.[10]

The office does have some needs. Obviously more attorneys would bring the caseloads closer to the Standards. A paralegal could provide important services in interviewing, research, witness contact, and organization of major case files. More secretarial help is absolutely necessary. Finally, management decisions are being made every day by a "managing attorney" who has not had much training in administration. He, and several other people in similar situations around the state, should not be put in this difficult position without adequate management training.

B. Buffalo.

Wright County is a high-growth area which, in the past five years, has expanded the court house, added new judges, and built a new jail. Criminal prosecutions go up about 15% a year.[11]

Where previously there were just three part-time public defenders (some with caseloads well over 1000 cases a year,) there are now four full-time, and two part-time. Experience of the full-timers averages about eight years. The office has a full-time legal secretary, and a part-time law clerk who also works in Elk River. Investigation and social work back-up come from the District Chief's office in Anoka.

Figure 4 shows the projected 1995 caseload for the office, based on reported cases from January to June.

Figure 4.

Buffalo Cases (Projected), 1995	
Felony	254
Gross Misdemeanor	204
Misdemeanors	488
Juvenile	252
Other	238
Total[12]	1436

---

[10]*See Appendix A.1., letter from Judge Frederick J. Casey, dated December 4, 1995.*

[11]*Interview with Managing Attorney Kevin Tierney, December 19, 1995.*

[12]*By the Board's Caseload Standards, at least five lawyers, rather than four, should be doing this work.*

The changes that have been made in Wright County public defense have allowed more time for clients to meet with their lawyers, more preparation time, and greater flexibility in working with the courts. Tenth District Chief Judge Gary Meyer, who is chambered in Buffalo, says: "Public defense put a lot of resources into Wright County, and it paid off. The court and the clients are being much better served."[13]

As in Brainerd, the Buffalo Managing Attorney needs additional training in administration. Further, the office could take full advantage of its place in the district public defense system, if its computers could be networked with the main office in Anoka. Increased investigator and paralegal time would also be very useful.

C. Moorhead.

Moorhead is the county seat of Clay County, which has a population of about 50,000. However, it is adjacent to Fargo, the largest city in North Dakota, which helps give the Moorhead criminal courts the kind of workload one would expect in a much larger city.[14] Moorhead is also the center of an area that has attracted migrant agricultural workers for many years, so that currently, about 20% of the public defender clients have Spanish as their primary language. In recent years local prosecutors have become much more aggressive in their charging practices; there are now six full-time prosecutors in the Clay County Attorney's Office and the Office of the Moorhead City Attorney.[15]

The Moorhead office is staffed with four full-time attorneys, a legal secretary, and a full-time investigator. Average attorney experience is nine years; in fact, the two most experienced criminal defense lawyers in Clay County work in this office. One lawyer and the investigator are Hispanic, and another lawyer is fluent in Spanish, so, overall, half the staff of this office is bi-lingual.

Figure 5 shows the projected 1995 Moorhead office caseload, based on reports of cases from January to June, 1995. (Since that time both the caseloads and the staffing have gone up.)

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[13] *Interview with Chief Judge Gary Meyer, December 19, 1995.*

[14] *Interview with Managing Attorney Bruce Ringstrom, January 16, 1996.*

[15] *For example, the local paper, The Forum, reported that Clay County had the second-highest welfare fraud charging rate in Minnesota, 119 cases in 1954 (compared to 173 in Hennepin County and 111 in Ramsey.)*

Figure 5.

Moorhead Cases (Projected), 1995

Felony	154
Gross Misdemeanors	104
Misdemeanors	340
Juvenile	374
Other	40
Total[16]	1010

The presence of a full-time office has had several good effects on the criminal justice system in Moorhead.[17]

(1) Clients get the services of very experienced defense lawyers.
It is a relief to all concerned that these lawyers no longer need to subsidize public defense work by pulling in private cases to pay the overhead.

(2) Spanish-speaking clients receive defense services in their own language.
The creation of full-time lawyer and investigator positions made this possible.

(3) Part-time defenders get substantial support from the office.
For one thing, the office does the administrative work of case assignment and filing for the three part-timers. More importantly, the full-time staff can cover appearances and handle the most time-consuming major trials, which can paralyze a small private office.

(4) Full-time staff can address policy issues in the courts, which affect our clients.

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[16] *According to the Caseload Standards, this would be work for five full-time attorneys. There are now four in the Moorhead office. All through calendar year 1995, however, there were only two, with huge caseloads.*

[17] *See Appendix A.3., letter from Judge Kathleen A. Weir, dated January 26, 1996, making several of these points in greater detail.*

A part-time defender would not necessarily, for example, be able to attend meetings to improve the attorney assignment process. Full-time Moorhead defenders get involved in this type of work regularly.

Moorhead is a good example of a full-time office serving as a resource center for part-time attorneys in the region, as well as taking an active institutional role in dealing with the court system as a "player."

D. Owatonna.

At first glance, Owatonna might seem to be a strange place for a full-time public defender office. However, in addition to being the county seat of Steele County; it is located:

- 14 miles from Faribault, the Rice County seat;
- 13 miles from Waseca, the Waseca County seat;
- 20 miles from Albert Lea, the Freeborn County seat;
- 25 miles from Austin, the Mower County seat; and
- 22 miles from Mantorville, the Dodge County seat.

Steele County is also one of three counties in southeastern Minnesota with significant Hispanic communities, making it a good location for bi-lingual public defender staff.[18]

The office is staffed by four full-time attorneys, with an average of five years' experience. One attorney is Hispanic, and fluent in Spanish, and has been able to assist in handling major cases with Spanish-speaking clients in several counties. There is a full-time investigator working out of the Owatonna office, and two legal secretaries. Social work back-up comes from "dispositional advisors" in Rochester and Winona.

One advantage of this full-time office is earlier entry into cases. For example, recently a murder suspect was able to consult with defenders prior to charging, and, ultimately, he was not charged with the crime.[19] There is also considerable time savings to attorneys from Rochester and Winona who used to travel one to two hours

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[18] *Letter from District Chief Public Defender Candace Rasmussen, dated April 4, 1996.*

[19] *This type of consultation is provided for by Minn. Stat. § 611.18.*

to handle cases in the six counties this office serves.[20] Finally, the possibility of full-time public defense careers imparts stability and continuity to an area previously plagued by turnover among part-timers.[21]

The caseloads in the Owatonna office are illustrated by Figure 6.

Figure 6.

Owatonna Cases (Projected), 1995

Felony	76
Gross Misdemeanor	46
Misdemeanor	506
Juvenile	518
Other	80
Total[22]	1226

At the time of the site visit, caseloads were running higher than these projections, with each attorney having at least 110 current open files, up to a high of 130.

E. Rochester.

Olmsted County, by far the largest in southern Minnesota, has a population over 100,000. Unfortunately, the crime situation has acquired an urban character, so that, for example, people are charged with drive-by shootings, crimes for the benefit of a gang, "crack" cocaine sales, etc., relatively commonly.

Rochester has a full-time public defense office with seven attorneys, in addition to nine part-time public defenders.[23] Among the seven full-time lawyers, three have over ten years' experience, and four have three years or less. There is a full-time "dispositional advisor" to provide social work services, and three legal secretaries. Investigative work is done by full-time investigators from Owatonna or Winona.

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[20] *Letter from Managing Attorney Joe Bueltel, dated February 12, 1996.*

[21] *Interview with Joe Bueltel, January 10, 1996.*

[22] *According to the Board's Standards this office should have five attorneys, not just four.*

[23] *Interview with Managing Attorney Rick Smith, January 10, 1996.*

Establishment of a full-time office has allowed representation of clients to begin at an earlier stage, in many cases leading to a prompt resolution which benefits everyone involved. For instance, defendants charged with misdemeanors, not in custody, formerly had to go to court, ask for a public defender, have an attorney appointed by a letter, and then come back to court at a later date. Now the defenders are there when the clients arrive for arraignment. They are appointed on the spot, and often are able to resolve a case on the same day. Similarly, juvenile clients in custody, and adult felony clients in the jail, are able to get defenders immediately for detention hearings or bail arguments. The full-time attorneys have been active in working with the court on policy committees, including the Criminal Procedure Planning Committee, Community Corrections Advisory Board, and Third District Race Bias Task Force.

The combination of very experienced and new attorneys provides many opportunities for second-chairing, consultation, and other mentoring.

Finally, the lawyers in the office are very diverse. There are three women, a man with a serious disability, and two minority attorneys. As recently as 1990, there were no minority attorneys at all in Rochester; now two are full-time public defenders.[24]

Projected caseloads in the Rochester office are shown in Figure 7.

Figure 7.

Rochester Cases (Projected) 1995

Felony	198
Gross Misdemeanor	118
Misdemeanor	916
Juvenile	422
Other	160
Total[25]	1814

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[24]*Full-time offices have helped the Board of Public Defense greatly increase the diversity of public defenders statewide, from 3% (comparable to the percentage of minority lawyers in the state) minority attorneys in 1990, to 8.8% in 1995. Source: Administrative Services Office.*

The need to increase numbers of people of color working in the court system was strongly stated by the Supreme Court Task Force on Racial Bias in the Judicial System, Final Report, May, 1993, pp. 134-138.

[25]*These figures correspond pretty closely to Board Standards for seven attorneys. However, more recent numbers from the*

There is an obvious need for an investigator to be housed in this office, as well as a paralegal to assist in research. Finally, some part-time defenders in the area are concerned that they do not have adequate resources compared with the full-time office staff, a situation that needs to be carefully monitored.

F. Worthington.

Worthington has had small full-time public defender offices since 1990, because very few lawyers in this part of the state want to work in criminal defense.[26] Presently there are three lawyers, averaging five years experience, and a legal secretary in the branch office.[27] Investigation is provided from Mankato and Marshall, where there is another branch office. The office serves Nobles, Rock, Jackson, and Cottonwood Counties.

Many immigrants have come to the Rock/Nobles County area in the last few years. The Managing Attorney there estimates that 30% of the public defender clients do not speak English. The office subscribes to A T & T Language Line services, and routinely uses Spanish, Laotian, Sudanese, and Vietnamese.

The office is in a downtown bank building, is quite accessible, and is visited by five to ten clients every day.

Caseload in the Worthington office is shown in Figure 8.

Rochester office show the attorneys carrying from 96% to 165% of a full-time caseload. Source: Letter from Rick Smith, February 12, 1996.

[26]*In 1990, there were five law firms in town. One did public defender conflicts, one did county attorney work, one prosecuted misdemeanors, and the other two had exclusively civil practices.*

[27]*Interview with Managing Attorney Louis Kuchera, November 28, 1995.*

Figure 8.

Worthington Cases (Projected) 1995

Felony	128
Gross Misdemeanors	158
Misdemeanors	252
Juvenile	270
Other	108
Total[28]	916

In addition to greater client accessibility, defenders in Worthington believe that their full-time status also contributes to:

- better working relationships with prosecutors;
- greater motivation to attend specialized training;
- relief for part-timers who might get very time-consuming cases;
- improved scheduling practices by the courts; and
- more involvement by defenders in court system changes affecting our clients.

These are the same themes that have come up in discussions with full-time staff, and with judges and court administrators, all over the state.[29]

III. COSTS AND BENEFITS OF THESE BRANCH OFFICES.

A. The Benefits.

To summarize what has been achieved by the full-time branch public defender offices, related previously in more detail office-by-office, it appears that as a group they:

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[28] *By the Board's Standards, four attorneys, rather than three, should be sharing this caseload.*

[29] *See letter from Jackson County Court Administrator, David E. Johnson, dated December 7, 1995, in the Appendix A.4.*

- Are more accessible to clients than all-part-time systems in that they:

  (1) have identified "public defender" offices open during regular hours;
  (2) conform to state law regarding access to persons with disabilities;
  (3) can provide legal advice in Spanish to Spanish-speaking clients; and
  (4) are specialized in criminal and juvenile court work.

- Are able to provide support services more uniformly than a loosely-knit group of part-time defenders. For example, all six offices have:

  (1) immediate access to investigative staff;
  (2) computerized legal research capabilities;
  (3) social work support for planning alternative sentences; and
  (4) considerable involvement in public defense and other criminal/juvenile defense training.

- Can work with the court system effectively, by:

  (1) providing coverage quickly in emergencies;
  (2) appearing in court earlier than an attorney who requires an appointment letter:
  (3) participating as an institutional "player" when scheduling or other policy issues are being discussed.

- Can serve as resource centers to part-time public defenders by:

  (1) taking lengthy and "speedy trial" cases; and
  (2) providing consultation, investigation, legal research, and other services.

- Increase public defender staff diversity in Greater Minnesota, in that, considering that the 25 full-time attorneys in the six offices under consideration include:

  (1) seven female attorneys.
  (2) four minority attorneys.
  (3) one attorney with a major disability.

  The three investigators working full-time in these offices are all female, and one is Hispanic. Overall these offices show much greater staff diversity than part-time public defender offices in Greater Minnesota.

- Improve administrative structure and accountability.

The full-time offices generally serve, in addition to legal resource centers for clients and staff, as:

(1) regional case assignment and MIS reporting centers;
(2) training sites; and
(3) communications hubs for use by district chiefs, the Administrative Services Office, state public defender, courts, community organizations, and all the other stake-holders with an interest in public defense.

B. The Costs.

1. Risks to client services.

The Board should be aware of the following possible risks in establishing full-time offices in the future:

- full-time offices may take resources from the part-time defenders in a given region.
- over-investment in full-time offices may make it hard to pay qualified attorneys to handle conflict cases.
- full-time public defenders may not have as much experience as the part-timers in a particular county.

None of these seems to be an active problem at the moment, but they remain items to keep in mind when planning for the future.

2. Funds to pay for full-time offices.

The biggest open question about these full-time branch offices is whether they are cost-effective, compared to retaining part-time public defenders to do the same work on an hourly basis. Three approaches were used to answer this question.

A. Comparison with part-time public defenders at $50 per hour.

This comparison is shown in Figure 9. $50 per hour was chosen as a rather low figure for legal fees, even in public law offices, in 1995.[30] At this rate the

[30] *By comparison, when the Ramsey County Attorney's Office bills for its time, the rate is $90 per hour. (Letter, Minnesota County Attorneys Association to Senate Crime Prevention Finance Committee, February 13, 1996.) For a rural county comparison, it*

COSTS OF FULL TIME ATTORNEY STAFF AND SECRETARIAL SUPPORT v PER HOUR CONTRACTING
(Assumes 1,820 billable hours per year per full time equivalant and $50 per hour.)

DISTRICT	BUFFALO 10	BRAINERD 9	MOORHEAD 7	OWATONNA 3	ROCHESTER 3	WORTHINGTON 5	TOTAL
TOTAL HOURS	7,280	5,460	3,640	7,280	12,740	5,460	41,860
COST AT $50 PER HOUR	$364,000	$273,000	$182,000	$364,000	$637,000	$273,000	$2,093,000
CURRENT COST OF FULL TIME OFFICES							
PERSONNEL	$267,837	$223,912	$185,094	$233,755	$434,948	$148,233	$1,493,779
Attorney	$239,263	$200,434	$161,590	$176,867	$360,531	$127,121	
Non Attorney	$28,574	$23,478	$23,504	$56,888	$74,417	$21,112	
RENT	$14,592	$12,293	$8,015	$13,300	$30,221	$5,597	
Attorneys	$12,160	$9,705	$5,725	$9,500	$22,505	$4,613	
Non Attorneys	$2,432	$2,588	$2,290	$3,800	$7,716	$984	
SUPPLIES	$10,000	$8,000	$6,000	$12,000	$20,000	$8,000	
EQUIPMENT	$25,000	$20,000	$15,000	$30,000	$50,000	$20,000	
COMMUNICATIONS	$1,500	$1,500	$2,400	$1,500	$5,460	$1,500	
TOTAL	$318,929	$265,705	$216,509	$290,555	$540,629	$183,330	$1,815,657
DIFFERENCE	$45,071	$7,295	($34,509)	$73,445	$96,371	$89,671	$277,344

* Non Attorney Personnel is the pro rated time of secretarial staff.

Figure 9.

Board would have had to expend $2,093,000 to have the same work done that was done in the full-time branch offices for $1,815,657. The full-time offices, in other words, saved $277,343 over the $50 rate. Five of the six offices showed savings ranging from $7,295 in Brainerd, to $96,371 in Rochester. Only the Moorhead office cost more than the $50 rate, due to its housing two lawyers who each have more than fifteen years' experience, and, accordingly, are at the top of the pay scale.

B. Comparison with actual part-time public defenders at their FY 1991 rates.

In the Legislative Auditor's 1992 report, Public Defender System, Table 2.8 shows part-time public defenders' compensation broken out by district. The hourly rates of the districts discussed in the present study were as shown in Figure 10.

Figure 10.

FY 1991 Part-Time Public Defender Compensation, by District

Third (Owatonna and Rochester)	Fifth (Worthington)	Seventh (Moorhead)	Ninth (Brainerd)	Tenth (Buffalo)
$46.20	$41.65	$41.45	$51.71	$46.47

Average = $45.50

Source: Legislative Auditor

Taking the number of hours of work done in 1995 (projected from the January - June reports) multiplied by these FY 1991 rates, we get Figure 11.

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is noted that the Swift County Attorney charges Swift County Family Services $65 per hour for its federally-funded paternity representation. (Letter, Tim Johnson, to Judge Steve Drange, April 11, 1996.)

Figure 11.

Costs of 1995 Public Defense Services by Six Full-Time Offices, if Compensation at FY 1991 Part-Time Public Defender Rates

District	Rate	1995 Hours	Cost
Third (Owatonna, Rochester)	$46.20	20,020	924,924
Fifth (Worthington)	$41.65	5,460	227,409
Seventh (Moorhead)	$41.45	3,640	150,878
Ninth (Brainerd)	$51.71	5,460	282,336
Tenth (Buffalo)	$46.47	7,280	338,301
TOTAL (or average)	**$45.50**	**41,860**	**$1,923,848**

The 1995 costs of the full-time offices are less than it would cost to pay part-time public defenders to do the same work at their FY 1991 district average hourly rates, by $108,191.

C. Comparison of 1995 cost-per-case with cost-per-case in 1990.

The Legislative Auditor's 1992 report also shows, in its Table 2.6, the 1990 cost per case of public defense in each district. Three districts, the Second, Fourth, and Eighth were handling the same mixture of case types in 1990, that the six full-time branch offices were handling in 1995, that is: felony, gross misdemeanor, misdemeanor, and juvenile. Their average cost per case: $210.[31]

[31] *Public Defender System, February, 1992, p. 34.*

By comparison, the per-case costs in the six offices visited were as shown in Figure 12:

Figure 12.

1995 Costs-Per-Case in Six Full-Time Public Defender Branch Offices:

Brainerd	$191
Buffalo	$222
Moorhead	$214
Owatonna	$236
Rochester	$298
Worthington	$200
AVERAGE	$226

This comparison shows that the cost-per-case of mixed cases in the full-time offices in 1995 is up $16 from per-case costs in 1990. This increase could be explained by inflation, but, more probably it reflects the fact that the average criminal case in Minnesota was more serious and time-consuming to handle in 1995 than in 1990. [32]

By all three of these analyses, these six full-time branch offices are seen to be cost-effective.[33] However, their existence results from careful planning. It does not follow that any full-time office anywhere would be cost-effective. There will be a fuller discussion of criteria for creating new full-time offices below.

IV. WHAT THE BRANCH OFFICES NEED TO MAXIMIZE THEIR EFFECTIVENESS.

A. Staff.

Several of the offices described in this report are currently short one or two

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[32] *For example, a legislative amendment effective July 1, 1995, removed almost all juveniles alleged to have committed misdemeanors, from public defender caseloads, by reclassifying these children as "petty offenders." Minn. Stat. § 260.195, Subd. 2a(1995). The result is that the average public defender juvenile case is a more serious matter.*

[33] *Data from the Third District shows that the full-time public defenders there handle 46% of the cases, at a cost of 43% of the district budget. See Appendix B.*

attorneys. As they continue to experience double-digit increases in criminal and juvenile filings, more lawyers will be needed. The Board should analyze each situation carefully to see if more full-time or part-time help is the most appropriate. For example, the Brainerd/Aitkin area is short two FTE attorneys, but only has two part-timers to take conflict and overflow cases. This type of situation requires close scrutiny, not just adherence to a "pro-full-timer" or "pro-part-timer" ideology.

Support staff is obviously lacking in several places. Rochester and Buffalo clearly need investigators. Paralegals would be a major asset in several of these offices. Legal secretarial staff is short also, especially considering that offices like the one in Brainerd have regional responsibility for opening files and reporting MIS data.

B. Technology.

We are close to being able to provide legal research support uniformly through district and statewide computer networks. The Administrative Services Office has created a Technology Committee, which is planning how to link up available resources most effectively over the long run.

One possibility that should be considered is that the Office of the State Public Defender is in a good position to hire law clerks for either dedicated district systems, or a statewide research network.

Public defense generally is understaffed compared to the prosecution throughout the state. We do have advantages organizationally in being organized at the state and district level, rather than 87 separate counties. It should be a high priority to plan the most effective means to share legal skills across county and district borders. The creation of the Fourth District electronic bulletin board, "Loophole," has begun to show us what can be done in this area.

C. Training.

As a statewide agency, we have an ability to plan our training systematically, which is in progress currently. Further, full-time public defenders can be expected to concentrate their CLE attendance at our programs and other criminal and juvenile defense events. This is an advantage over part-time systems in which people need to keep up-to-date on torts, divorce law, and real estate, in addition to our type of work.

One area where we have a major deficiency, however, is that our system has vested significant administrative authority in branch office "managing attorneys" who have not, for the most part, had much training in management.[34] It should be a high

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[34] *In 1992, the Legislative Auditor reported that District Chief Public Defenders needed "[a]ppropriate training for . . .*

priority to assess the training needs of these individuals and provide the appropriate programs.

V. DEVELOPMENT OF CRITERIA FOR FUTURE FULL-TIME BRANCH OFFICES.

Final criteria should be developed in an open discussion by the State Board of Public Defense and all others concerned. The following recommendations are meant to get this discussion started, not to be the last word.

A. Caseload.

A full-time office site should be taking in about 1,000 cases a year.

The purposes of this requirement are that:

- full-time staff can handle cases efficiently without excessive travel.
- at least two attorneys can be hired full-time; a one-lawyer office raises cost-effectiveness questions about overhead.
- enough cases beyond the full-timers' caseloads are present to sustain at least two half-time attorneys in the region, for conflicts coverage.

B. Factors Pointing Toward Creation of a Full-Time Office, in a Doubtful Situation.

Where caseload is borderline, the following also should be considered as positive indicators:

- projected growth in cases in the area.
- increase in the seriousness and complexity of the cases.
- client communities with unique needs, e.g., language skills.
- history of part-time defenders unavailable or rapid turnover.

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financial, management, and supervisory responsibilities." For chiefs, this area has since received considerable attention; but now the system has the same issue at the "managing attorney" level. See, Public Defender System, p. 78.

- need to house support staff that will benefit several part-timers in the area, for example, investigators or dispositional advisors.

C. Factors Pointing Against Creation of a Full-Time Office, in a Doubtful Situation.

Where caseload is borderline, these indicators would be negative:

- projected drop in cases in the area.
- decrease in the seriousness and complexity of the cases.
- history of part-time defenders who are stable and effective.
- easy accessibility of resources, such as investigation, to part-timers, from a nearby source.
- need to maintain experienced part-time defenders in a region.

These 13 items, at a minimum should be looked at when a new full-time office is proposed. Doubtless this list will grow as specific proposals arise.

A related question is that of when a new full-time lawyer should be added to an existing office, as opposed to more part-time staff. These same factors apply, with the starting point being the need to provide representation in about 300 cases of various types. Again, it is important to keep active part-time attorneys in the area, so it is recommended that these hypothetical "300 cases" not be taken away from them. They should be new cases.

VI. CONCLUSION.

Minnesota is a rural state which will always need a majority of part-time public defenders outside the metro area. However, the development of a network of full-time offices around the state has improved services, increased diversity, and advanced public defenders' institutional relationships with the courts. These changes have not cost the taxpayers any more than it would have cost to pay exclusively part-time defenders by the hour. In fact, five of the six full-time offices visited in the course of this study were considerably cheaper to operate than a system of all-part-time defenders.

The National Legal Aid and Defender Association gave the Minnesota State Board of Public Defense its 1995 Clara Shortridge Foltz Award, for achievement in public defense services, in part because of the establishment of these full-time offices,

as resource centers. (See Appendix C.) By providing a "home base" for part-time defenders, a full-time office can help keep them supported and integrated into the system.

In the future, the Board of Public Defense should continue to keep an open mind as to how to improve working conditions for part-time defenders in Greater Minnesota, while planning for whatever new full-time offices are shown to best meet the needs of our clients.

TABLE OF APPENDICES

A. Letters from Judges and Court Administration

1. Judge Frederick J. Casey
2. Judge James E. Preece
3. Judge Kathleen A. Weir
4. Mr. David E. Johnson

B. Third District, "Public Defender Q & A," from The First Line of Defense, Vol. 33, April, 1996.

C. Nomination of Minnesota State Board of Public Defense for the 1995 Clara Shortridge Foltz Award, Chief Justice Keith and Chief Judge Burke, July 27, 1995. (The Board did win this award in December, 1995.)

DISTRICT COURT OF MINNESOTA

NINTH JUDICIAL DISTRICT

CHAMBERS OF JUDGE FREDERICK J. CASEY

Crow Wing County Courthouse • Brainerd, Minnesota 56401 • 218-828-2967

December 4, 1995

Mr. John M. Stuart
Minnesota State Public Defender
The Office of the State Public Defender
Suite 600
2829 University Avenue S.E.
Minneapolis, Minnesota 55414

Mr. Stuart:

In response to your letter of November 21, 1995, I advise you that from my perspective the local full-time public defender's office is doing a very good job. They have a very large caseload and limited resources with which to handle it but are representing their clients well.

Frederick J. Casey
Judge of District Court

District Court of Minnesota

NINTH JUDICIAL DISTRICT

CHAMBERS OF JUDGE JAMES E. PREECE

Beltrami County Courthouse, Box 1008
Bemidji, Minnesota 56601
(218) 759-4213

Kathleen A. Cundy, Court Reporter
(218) 759-4212

December 5, 1995

Mr. John M.Stuart
Minnesota State Public Defender
95 Law Center, University of Minnesota
229 - 19th Avenue South
Minneapolis, MN 55455

Dear Mr. Stuart:

Reference is made to your letter of November 21st regarding my observations with respect to the new full-time Public Defender Offices that have been open in the Ninth District. Without any question, these offices have made Public Defenders more available and have had an impact on keeping our calendars current. We are now finding that Public Defenders are available to perform services for the Court System and their clients that was not possible before full-time offices and the increased staff was available. The interim Chief Public Defender, here in Bemidji, Ms. Kris Kolar, I feel has been doing a marvelous job in not only seeing that the Courts are taken care of, but also in people contact and community contact. I believe most of the judges of the district feel the same as I do and if at all possible I would like to see that she continue in this position.

If there is anything further that you may wish to know, please do not hesitate to contact me.

Best wishes,

James E. Preece

JEP:ad

STATE OF MINNESOTA

HONORABLE KATHLEEN A. WEIR
JUDGE

CHAMBERS
Clay County Courthouse
Moorhead, MN 56560

DISTRICT COURT
Seventh Judicial District

January 26, 1996

Mr. John M. Stuart
Office of the State Public Defender
2829 University Avenue Southeast
Suite 600
Minneapolis, MN 55414

Dear Mr. Stuart:

I have your letter of January 19, 1996. Thank you for inviting me to comment on the impact of a full-time public defender office in Moorhead.

There is no question in my mind that the public defenders serving the courts in Clay County have more flexibility in responding to our needs since the establishment of a full-time public defender office in Moorhead and that cost effectiveness is achieved through it. Prior to the structure of a full-time office, there was constant stress on the judicial system by virtue of the limited number of hours, from a practical standpoint, which part-time public defenders could give to the court. That stress was exacerbated by the increasing numbers of criminal cases in the judicial system. When a felony public defender was in trial, for instance, on a murder case, the other cases he was handling were necessarily delayed in the system.

It is my opinion that, as a result of the full-time public defender office, the criminal cases are moved more expeditiously in the judicial system, thus allowing the courts to better maintain its caseload. The full-time public defender structure serves to relieve the pressure on the part-time public defenders not only by the full-time defenders handling some of the more serious and/or time-consuming cases but also by the full-time public defender's office providing the administrative structure for processing the cases. In turn, this allows to the court to have the benefit of part-time public defenders who have experience in Minnesota, North Dakota and federal jurisdictions. This experience allows the part-time public defenders to expeditiously handle their caseloads and, also, (it appears to me at this time) to be able to take on a few private cases so as to make the part-time public defender work economically feasible.

At this time I can safely state that the full-time structure of a public defender office in Moorhead has contributed positively to better serving all individuals involved in the criminal justice system, including but not limited to defendants, witnesses, victims, attorneys, and court personnel. It has aided in our desire to achieve time savings by reducing the number of continued court appearances on individual cases and it has aided in our desire to bring criminal cases to a conclusion in a timely and professional manner.

At this time I have no specific recommendations for further improvements in the public defender system. However, I do want, by copy of this letter, to express my appreciation for the continuing cooperation between the courts and the public defenders who serve this county.

Sincerely,

Kathleen A. Weir

cc: Judges Kirk, Pearson,
Walker and Schroeder
cc: Clay County Public Defender Office

Office of
David E. Johnson
Court Administrator
Jackson County
P.O. Box G
Jackson, Minnesota
56143

Fax No. 507-847-5433

(507) 847-4400
Court Administrator
Civil and Family
Gross Misdemeanors & Felonies

(507) 847-2566
Juvenile
Traffic and Misdemeanors
Probate and Commitments

December 7, 1995

Mr. John M. Stuart
State Public Defender
2829 University Ave. SE
Suite 600
Minneapolis MN 55414

Re: Full Time Public Defenders Offices

Dear Mr. Stuart:

I received your letter inviting comments of the full time public defenders office in our area. Jackson County is served mainly by the two full time offices in Nobles and Martin Counties.

About a year ago, Mr. Castro had set up a meeting in St. James with the public defenders and people from the Court Administrators Offices. At this meeting, each county was advised who the public defenders were that would be handling the various types of cases in each county.

Then the public defenders met with the Court people from each county that they were involved with and the potential scheduling conflicts among the counties were worked out together. The main purpose of this was so that public defenders wouldn't be scheduled in different counties at the same time.

I think after this meeting, everyone felt pretty good about the schedule that had been worked out. Prior to the meeting, I believe people were concerned that things could be confusing in regards to scheduling. At the end, I believe everyone was relieved and knew how things were going to work. Each county made a few scheduling changes during this process.

Once the system was in operation after the first of the year and up to the present, I would say that things have went very well. There have been changes or new assignments made appointing a different public defender to handle various types of cases in some counties. This has been no problem as the counties had been

notified of the changes well in advance and this all worked out smooth also.

As far as the public defenders themselves are concerned: we have had no problems with any of them. They all have been very cooperative and this has made for a very good working relations. I feel we can talk to any of the public defenders and this makes for good communication which is needed to make the system work well. I have heard nothing negative from the clients they have represented and I believe they are doing a good job in representing their clients.

In reviewing the past year, I believe things have went pretty well in this county and I don't foresee any reason why anything will change. I feel the system has worked well.

Yours truly,

David E. Johnson
Court Administrator
Jackson County, Minn.

DEJ/tar

Public Defender Q&A

Q: How many full- and part-time assistant public defenders are there in the Third District?

A: There are 54 assistant public defenders. Thirteen of these attorneys are full-time, and 41 are part-time. Nine of the full-time attorneys were part-time assistant public defenders before they became full-time. The part-time attorneys work anywhere from less than 10% time to nearly full-time.

Q: Where do part-timers work?

A: There are part-time attorneys serving in all 11 counties of the Third District.

Q: What share of the cases do part-time and full-time public defenders handle?

A: Part-time public defenders handle 54% of the cases. Full-time public defenders handle 46% of the nearly 11,000 cases assigned every year.

Q: What share of the budget is spent on part-time and full-time staff?

A: The total cost of the expenses for part-timers, including reimbursements, pay, and insurance for part-time attorneys is 56% of the budget. The total cost of full-time attorneys, including support staff and office costs, is 43% of the Third District Public Defenders budget.

Q: How much money are part-timers and full-timers paid?

A: On the average, part-time attorneys are paid $39 an hour. In contrast, full-time assistant public defenders are paid on the average between $15.38 to $29.56 per hour, but if the cost of overhead expenses are added in, it costs $37.00 an hour to fund full-time attorney work.

Q: What percent of the budget goes for personnel expenses?

A: Ninety percent of the budget goes for payroll and payroll expenses. Only 10% of the budget goes for non-personnel expenses, including reimbursement for travel, long distance phone calls, and office expenses at full-time offices.

Q: How many part-time public defenders receive health insurance benefits?

A: Fourteen part-timers receive health insurance as state employees.

Q: Are we phasing out part-time public defenders in the Third District?

A: NO! We will *always* rely on attorneys in private practice to provide public defense services in the Third District. In 1988, there were 35 part-time public defenders; now, there are 41! Hopefully, attorneys in all 11 counties will continue to accept appointments as assistant public defenders.

Q: Will part-time assistant public defenders get a pay raise?

A: It is anticipated that with the new fiscal year, money will be allocated to all of the judicial districts for pay equity for the part-time public defenders.

THE SUPREME COURT OF MINNESOTA
MINNESOTA JUDICIAL CENTER
25 CONSTITUTION AVENUE
SAINT PAUL, MINNESOTA 55155

CHAMBERS OF
A. M. (SANDY) KEITH
CHIEF JUSTICE

(612) 297-5454

July 27, 1995

RECEIVED
JUL 31 1995
STATE PUBLIC DEFENDER

Ms. Andrea Agloro
NLADA Awards
1625 K Street, N.W.
8th Floor
Washington, D.C. 20006

Re: Nomination of Minnesota State Board of Public Defense
for the 1995 Clara Shortridge Foltz Award

Dear Ms. Agloro:

We are writing to nominate the State Board of Public Defense and the public defenders who serve Minnesota for the 1995 Clara Shortridge Foltz Award.

Briefly, up until the late 1980's Minnesota provided public defense through the 87 counties. Some programs were excellent. Some were very poor, reflecting shortages of county resources. Overall there was a lack of uniformity, standards, support services, supervision and training.

From 1987 to the present, the State Board of Public Defense developed a statewide organization to meet these needs. In 1990 the legislature brought all the counties into the state system. In 1991 the public defense statute was amended to make the State Public Defender, John Stuart, responsible for standards, training and supervision. In 1993 the legislature provided health insurance and other benefits for all public defenders working half-time or more. In 1994 new legislation provided that every juvenile in the state would, if charged with delinquency, receive counsel through the state. Also, the remaining services which were still being provided by counties, that is, most misdemeanor defense, were made the responsibility of the State Board of Public Defense.

This year, operating a full-service statewide public defense system for the first time, the Minnesota State Board of Public Defense has:

(1) Opened 22 new full-time offices.

Previously there had been only six, and as recently as 1992, only two. Each of these serves as a resource center for full-time and part-time public defenders in the area.

(2) Computerized the entire state system.

Among other things, legal research and management information system data will move throughout the state electronically.

(3) Re-emphasized employment diversity.

From December 1991 to June 1994 the percentage of minority attorneys employed in trial courts by the Board doubled. In the State Public Defender's Office the increase was 200%.

(4) Established weighted caseload study as a basis for funding.

The 1995 legislature provided the Board with a 10% annual budget increase, but, more significantly, the bulk of the increase is to move toward Weighted Caseload Standards recommended by the Spangenberg Group. The Board worked effectively with the media to present this need.

(5) Provided "sentencing advocates" across the state.

Although consistently recommended by the experts, the use of social workers to develop alternative sentencing plans was confined, in Minnesota, to just two or three counties. In the past year the State has funded sentencing advocates for all ten judicial districts, and the State Board obtained a Byrne Grant for four more advocates.

(6) Establishment of bi-lingual services.

Western Minnesota, from north to south, has a substantial group of clients whose first language is Spanish. Their needs were not fully met until the State Board funded six bi-lingual positions for attorneys, paralegals, and investigators to begin work in this part of the state in 1995.

In conclusion, the development of bi-lingual services is the type of achievement that could not have occurred in Minnesota in a county-based or private, contractual system of public defense. Similarly, through a state system, public defenders have been active in helping the court system to improve its services by serving in statewide organizations such as the:

* Supreme Court Task Force on Racial Fairness and Cultural Diversity;

* Criminal Rules Advisory Committee;

* Supreme Court Juvenile Justice Task Force;

* Department of Corrections Juvenile Programs Task Force;

* Juvenile Procedure Rules Committee;

* Judicial Services Quality Assessment Conference;

* Minnesota Association of Pre-Trial Services Agencies;

* Minnesota Sentencing Guidelines Commission;

* Supreme Court Interpreter Services Task Force; and many more.

Of course, the state system of public defense in Minnesota is not perfect or fully developed. However, we believe the progress which has been made to date is noteworthy and merits recognition by the NLADA.

Sincerely,

A. M. Sandy Keith
Chief Justice
Minnesota Supreme Court

Kevin S. Burke
Chair, Conference of Chief
Judges