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**1991 A N N U A L R E P O R T**

Judge Kevin Burke, Chair

Paul Benshoof  
Harry Burns  
Stephen W. Cooper  
Lee Luebbe

John Stuart  
State Public Defender

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1991

Pursuant to Mn Stat 611.25, sd 3  
and Mn Stat 611.215, sd 2

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## STATE PUBLIC DEFENDER - ANNUAL REPORT

### I. Introduction:

In 1991, two trends in the Minnesota public defender system continued and intensified. First, the legislature strengthened the principle that public defense is a state function. The responsibilities of the state public defender were increased, to provide for statewide standards and policies to be drafted and put into effect. The juvenile and misdemeanor defense services provided by the counties in the Third and Sixth Judicial Districts were transferred to the state system, effective July 1, 1992.

Second, as these administrative changes were being made, it became more and more evident that Minnesota's system of indigent defense is desperately in need of resources. The deficit limited the budget increase to about 2.5%; but, in every public defense office in the state, caseloads rose -- from previous record high levels -- 10 to 20% in 1991. We are rapidly approaching a constitutional crisis: will Minnesota pay for poor people to have lawyers in criminal court?

This Report will highlight these two themes, progress toward a state system and impending fiscal emergency, as they are demonstrated in the work of district public defenders, the office of the state public defender, the administrative services office, and the public defense corporations.

To set the stage, however, it is appropriate to have in mind the 1991 legislative changes to Chapter 611. Here, briefly, is how these changes affect the work of the components of the public defender system:

#### A. The State Board of Public Defense (§ 611.215):

- continues to be part of the judicial branch.
- still has 7 members. Appointing authorities are encouraged to appoint qualified women and members of minority groups. After January 1, 1995, there will be no judge on the Board.
- maintains responsibility for the budget and the distribution of state funds.
- has approval authority over standards proposed by the state public defender.



- appoints district chief public defenders and the state public defender.

B. The State Public Defender (§§ 611.23-25):

- establishes standards, with Board approval, for 6 aspects of the system: operations, caseloads, eligibility, county contracts, qualifications for counsel, and conflicts cases.
- is responsible to the Board.
- supervises the "operation, activities, policies and procedures" of the system.
- employs a chief administrator, and a deputy state public defender who supervises the appellate office.
- plans training for all public defense attorneys.
- establishes policies for district public defenders.
- prepares the Annual Report.

C. The Chief Administrator (§ 611.215):

- is appointed by the state public defender.
- enforces resolutions of the Board.
- prepares the Board's annual budget, and serves as its financial watchdog.
- plans improvements in the administration of the state system of public defense.
- performs other administrative duties, as needed.

D. The Chief District Public Defenders (§ 611.26):

- serve 4-year, staggered terms, beginning January 1. Appointment schedule is: 1/1/92, 2d and 8th; 1/1/93, 1st, 3rd, 4th, 10th; 1994, 5th and 9th; 1995, 6th and 7th.
- are appointed by the Board, plus two ad hoc members selected by the Chief Judge of the district.
- appoint assistant district public defenders who are "at will" employees.

- may be part-time employees (except in the 2d, 4th, 8th, and soon, 3rd and 6th districts).
- administer public defender services in their districts, consistent with standards and policies adopted by the State Board of Public Defense and State Public Defender.

The Appendices contain history and an organizational chart, for readers who want more information on the developments summarized above.

## II. Building a State System of Public Defense.

### A. Communications.

One thing which should be obvious from the 1991 legislation is that this is a system where there are a lot of meetings. The Board has adopted a monthly meeting schedule. The state public defender, chief administrator, and district chief public defenders meet monthly. These groups established task forces to work on Equal Employment Opportunity, affirmative action, and sexual harassment policies, and on caseload standards. The district chief public defenders have regular meetings with their assistants, which the state public defender, and chief administrator, governmental relations director, and fiscal analyst, attend.

This last group, collectively known as the "administrative services office" meet weekly with the state public defender and deputy state public defender.

Through this process, an understanding has developed that issues are thoroughly discussed with the people involved. As much as possible the state public defender, administrative services office, and district chiefs make decisions on a consensus basis.

The state public defender also keeps in touch with local, state, and national legal organizations through involvement in the National Legal Aid and Defender Association, Minnesota State Bar Association, Minnesota Association of Criminal Defense Lawyers, and several other, similar associations.

One of the primary responsibilities of the Administrative Services Office is communication with the legislature. Especially during the session, the three professional staff in that office, and the state public defender, are constantly in motion in three areas: the funding of the public defense system; administrative changes that affect indigent defense; and substantive criminal law.



Finally, the public defense system, as part of the judicial branch, needs to keep communications lines open with the courts. Public defenders have had frequent meetings with the Chief Justice and the State Court Administrator, as well as chief judges from the various districts.

These contacts, though more extensive than in past years, may not be enough. Although public defenders need to be independent from the courts with respect to individual cases, as an institution, "public defense" was created by the courts in cases like Gideon. As deficits put increasing pressure on all aspects of state government, and as criminal court caseloads soar, it is more necessary than ever to have good communications within the judicial branch.

## B. Setting standards.

The statute requiring the state public defender, with Board approval, to set standards became effective July 1, 1991. For the rest of the year, the various participants in the system worked to develop standards in two key areas: caseloads, and operation of a public defender office.

### 1. Caseload standards.

In February, 1991, the Board received a Weighted Caseload Study from The Spangenberg Group, the best-known national consulting firm for public defender systems. The Study resulted from a process in which:

- Spangenberg Group staff spent 40 days meeting with public defenders across the state.
- a sample group of attorneys kept 2,740 weekly time records, in great detail, through the summer of 1990.
- the results were compiled, analyzed, and compared with the independent records system at the Minnesota Supreme Court.
- progress was discussed on a monthly basis with a Steering Committee including Board members, chief administrator, district chiefs, staff attorneys, and state public defender.

The final Study was almost 100 pages of findings, proposals, and recommendations. This material had to be translated into the caseload standards required by the 1991 public defender statute. An ad hoc committee volunteered in May to take on this job, and continued meeting regularly until caseload standards were

proposed to and adopted by the Board in October, 1991.<sup>1</sup>

## 2. Standards to Maintain and Operate a Public Defender Office.

The district chiefs, chief administrator, and state public defender worked together on the development of operating standards from September through December, 1991. These include standards in the following areas:

- personnel policies and contracts
- compensation
- budget administration
- training
- economic conflicts of interest

This set of standards was proposed to the Board by the state public defender December 12, 1991, and adopted.

## 3. Standards in progress.

Discussions are under way that should lead to the proposal of standards in 1992 in the other four areas listed in the statute: eligibility, county contracts, attorney qualifications, and conflicts. Some of these areas overlap with the jurisdiction of other entities in the judicial branch, for example, the Criminal Rules Committee and the Conference of Chief Judges.

## C. Management Information System.

The adoption of caseload standards assumes standardized caseload reporting throughout the state. This has not been accomplished yet, because each of the ten districts has had its own method of maintaining records, resulting from the piece-by-piece evolution of the state system. Some of the districts had no computer equipment or software for reporting caseloads.

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<sup>1</sup>The Caseload Standards Committee consisted of: Jim Hanks (2d district), Candace Rasmussen (3rd), David Knutson (4th), Cal Johnson (5th), Fred Friedman (6th), Jon Erickson (10th), John Stuart (SPD), and Dick Scherman (Chief Administrator).

The Standards which were adopted are meant to be a goal to reach over the next two biennia. As adopted, they include a goal of 5% of the cases going to trial. Copies of the Standards are available on request.



As of July 1, 1991, however, the legislature required that:

"The state board of public defense shall adopt and implement a uniform system for reporting of hours and cases by district public defenders . . .".

The Chief Administrator retained KPMG Peat Marwick, a consulting firm which has handled similar problems for the Supreme Court, to help plan a public defender MIS.

Peat Marwick staff met with the district chiefs on July 12, and began to design a survey to determine how the necessary information should be organized. They are now working on the design of the appropriate forms and software. Assuming funds are available for staff, the MIS will be running in 1992.

#### D. Training.

Traditionally, public defender training in Minnesota has come from three sources:

- (1) the Criminal Justice Institute: joint continuing education for defenders, prosecutors, judges, law enforcement.
- (2) the Bemidji Trial School: intensive trial practice training for 24 defenders and 24 prosecutors.
- (3) private continuing legal education courses.

In 1991, public defenders continued to plan, teach, and attend the CJI and Bemidji Trial School. In addition, however, federal funds were obtained to bring public defenders together for three days of statewide training, on the defense of drug cases. 128 lawyers from all ten districts and the State Public Defender office attended. Planning is in progress for a similar state-wide defender training conference in 1992.

One highlight was the first presentation of the Jack Durfee Award -- named for Minnesota's first Native American Chief Public Defender, now deceased - to Bill Falvey, who retired after 21 years of service to public defender clients in Ramsey County.

A second development was the beginning, on a small scale, of management training for chief public defenders. Former Human Rights Commissioner Steven Cooper presented the first topic, "Equal Employment Opportunity."

The Office of the State Public Defender has continued to present a noon lecture series on "The Future of Minnesota's Criminal Justice System." 1991 speakers included: Hon. Kathleen Vellenga, Chair of House Judiciary; Chief Justice A.M. (Sandy) Keith); Chief Judge of Court of Appeals, D. D. Wozniak;



Commissioner of Corrections Orville Pung; and Commissioner of Public Safety Tom Frost.

E. Administrative Assistance to Districts.

The Chief Administrator, along with Candace Rasmussen (3rd) and Larry Hammerling (Deputy SPD) met repeatedly throughout the year to develop an Affirmative Action Plan, an Equal Employment Opportunity Plan, and a Sexual Harassment Policy for the districts. Currently, the policies are in place, and an analysis of Minnesota's public defender work force is in progress.

At the suggestion of Jim Hanks (2d), chief public defenders began to work together on a minority staff recruitment strategy, in which law students from racial minority groups are interviewed at career conferences, and their resumes exchanged among the various districts. There were clear gains made in minority staff hiring in the metro area in 1991, and ideas for improved recruiting in Greater Minnesota are under discussion.

The Chief Administrator and Fiscal Analyst have both been deeply involved in planning to assume responsibility for juvenile and misdemeanor services in the 3rd and 6th Districts. The Board wants, very appropriately, for chiefs in the full-service districts to become full-time employees. Although this decision causes short-term costs and administrative needs, in the long run the result should be an improved planning ability for the delivery of a variety of legal services in areas outside the Twin Cities.

Finally, the administrative services office, with the Board's approval, is planning a transition to centralized budgeting for the multi-county districts, i.e., all but Hennepin and Ramsey Counties. This plan, if approved by the legislature, will end the "host county" system, and lead to increased accountability for state funds, and a reduction in administrative chores for the part-time district chiefs. Moreover, this change will save the general revenue fund about \$150,000 per year.

F. District-by-District Assessments of Strengths and Weaknesses.

The State Public Defender and Chief Administrator began a series of site visit reports in fall, 1991, attempting to provide themselves and the Board with better information on issues arising in each district. So far, these "assessments" or "inventories" have been done in the 5th, 7th, and 8th Districts.

G. Developing New Leadership.

Two district chief public defenders, Bill Falvey and Richard Hilleren, retired in 1991. The expertise and dedication which

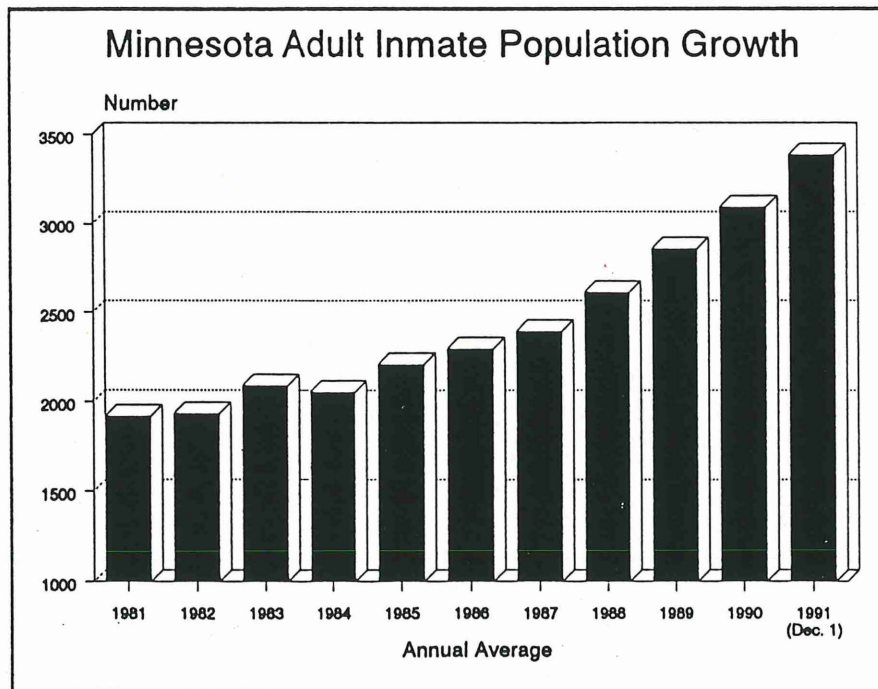
made them role models for newer attorneys will certainly be missed.

The Board was lucky to have strong fields of candidates for both these positions, and selected Jim Hanks to head the Second District, and Tim Johnson to be the new Chief of the Eighth. These are both experienced trial lawyers and public defense administrators, who are, and will continue to be deeply involved in the transition to a state-wide system.

#### H. Changing Role of the Office of the State Public Defender.

There are more appeals to do for indigent clients than ever before, with the 1991 caseload showing a 15% increase over 1990, which was a record year.<sup>2</sup> Despite the need to handle an unprecedented volume of appellate cases, however, staff of the state public defender's office has increased its ability to assist the trial public defenders in Minnesota by:

<sup>2</sup>The L.A.P. and L.A.M.P. programs, which handle prison discipline, parole revocations, and prisoners' civil cases, have also had to face staggering caseload increases due to the proliferation of new prisons, increased populations at existing prisons, and longer sentences for all. During the period 1981-1991, the L.A.P. caseload rose from 1600 to 2700. L.A.M.P. now has a 12-month waiting list -- up from 5 months 2 years ago.





- answering approximately 450 trial lawyer research requests in 1991;
- providing training in all the statewide training programs that district public defenders attend; and
- taking a conflict case from the "Stillwater 26."

The addition of two federally-funded drug defense specialists, one for adult appellate work and trial assistance, and one for juveniles, has been a big help. Unfortunately, through the greater availability of federal funds, and the use of drug forfeiture money, the agencies that generate our cases are still increasing staff faster than the public defender system.<sup>3</sup>

### III. Impending Crisis in Funding.

The graph on the next page, "Public Defender Caseload 1987 to 1990," presents the big picture very directly: cases have been going up 8-10% a year, overall, statewide, every year since 1987. Meanwhile, funding has increased slightly, for example, by 2.5% in the current biennium.

#### A. Numbers crunch in the cities.

Hennepin and Ramsey County (the Fourth and Second Districts) have full-time public defender offices. These two urban offices have seen their felony caseloads increase 68% from 1988 to 1991, as the attached graph shows. In the Fourth District, felonies rose 35% in 1989, and continued to increase above that plateau. In the Second, several years of 8-10% increases were capped by a 17% rise in felonies in 1991.<sup>4</sup> This situation is a constitutional time-bomb with a short fuse.

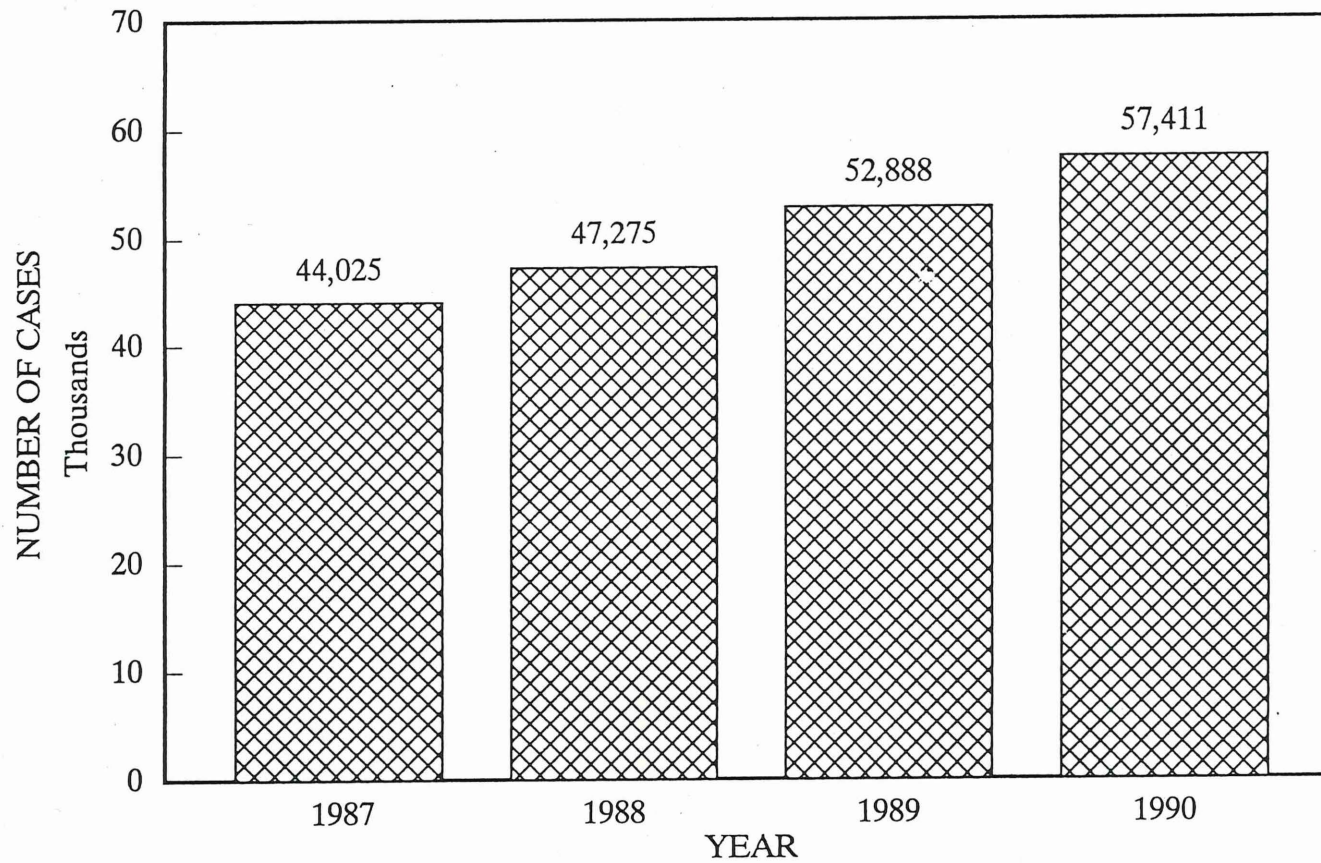
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<sup>3</sup>For example, the Star Tribune reported, 2/21/92, that felony charges had risen 27% in Dakota County in 1991, largely due to the addition of two new drug investigators.

<sup>4</sup>In raw numbers, 290 more felonies. According to the Board's caseload standards, this change would justify the addition of two full-time felony attorneys. Instead, due to lack of funds, the Second District Public Defender has frozen hiring, with the complement lacking two attorneys, two investigators, and four law clerks who were on staff in previous years.

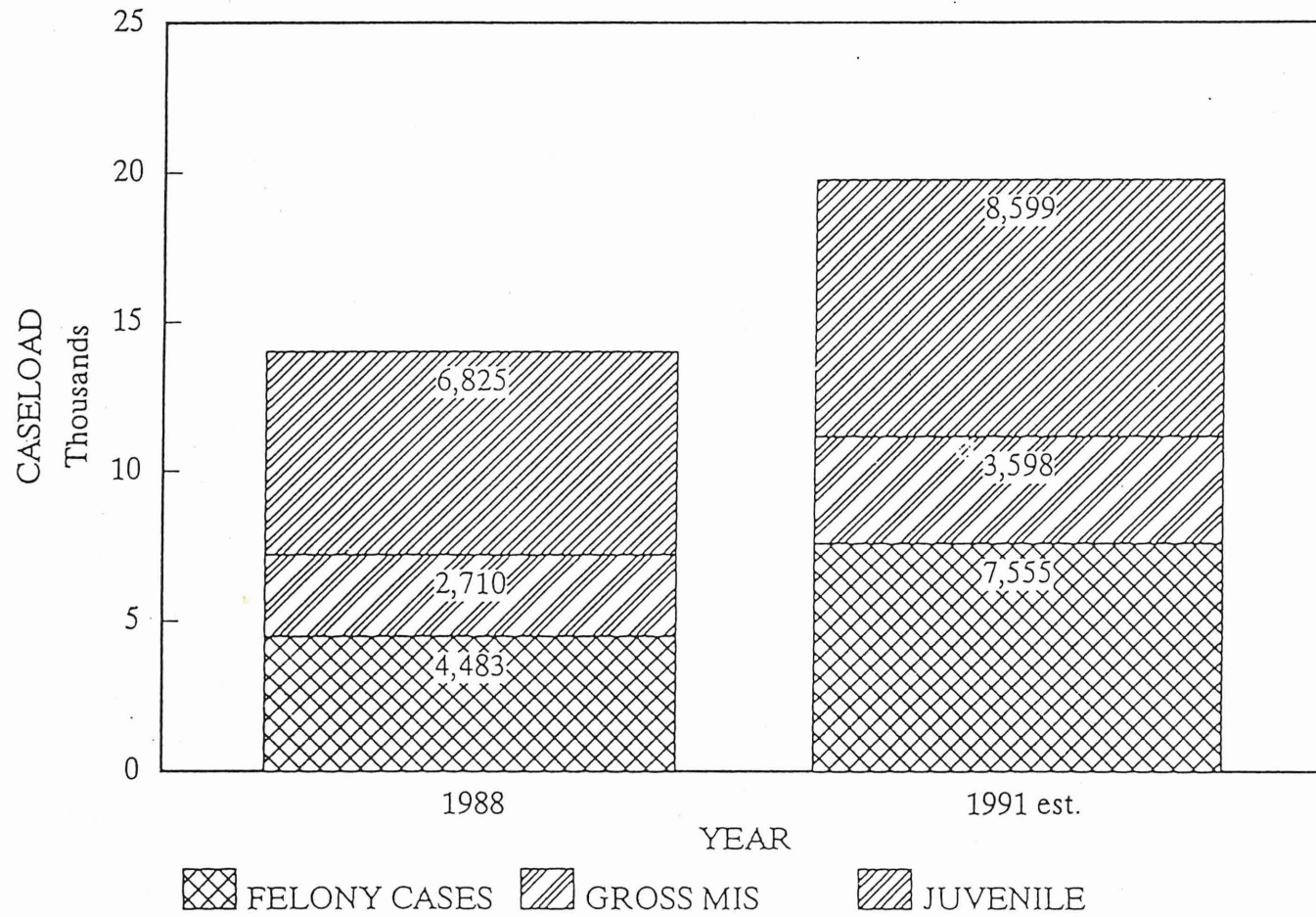
# PUBLIC DEFENDER CASELOAD

1987 TO 1990



Source: Legislative Auditor Report 2/92

CY 1988, CY 1991 DISTRICT PUBLIC DEFENSE CASELOAD  
2ND AND 4TH JUDICIAL DISTRICTS





#### B. Cases up, wages down in Greater Minnesota.

Meanwhile, in the rest of the state, where public defenders are part-time contractors who agree to take all the cases arising in the particular county, the hours required to do the job are steadily increasing. (See graph, "Public Defender Increase in Hours." p. 13) Since 1986, the increase has been from about 77,000 total hours to about 133,000. The result is a decline in the hourly rate that these attorneys -- who have to pay their own office overhead, and, in most districts, health insurance -- earn from public defense cases.

One such attorney, resigning after 12 years as a public defender in southern Minnesota, wrote:

" . . . I'm being compensated at the rate of about \$33.00 an hour . . . with the cost of wages and services, that \$33.00 barely compensates my employees let alone pays overhead . . . . In essence, I'm not getting one nickel for doing any of this work and I just can't afford to continue on that basis."

This is not an isolated example. One public defender in Northern Minnesota is defending an elderly farmer on a murder charge at \$27.00 per hour, while a neighboring city is advertising for a part-time traffic court prosecutor at \$90.00.

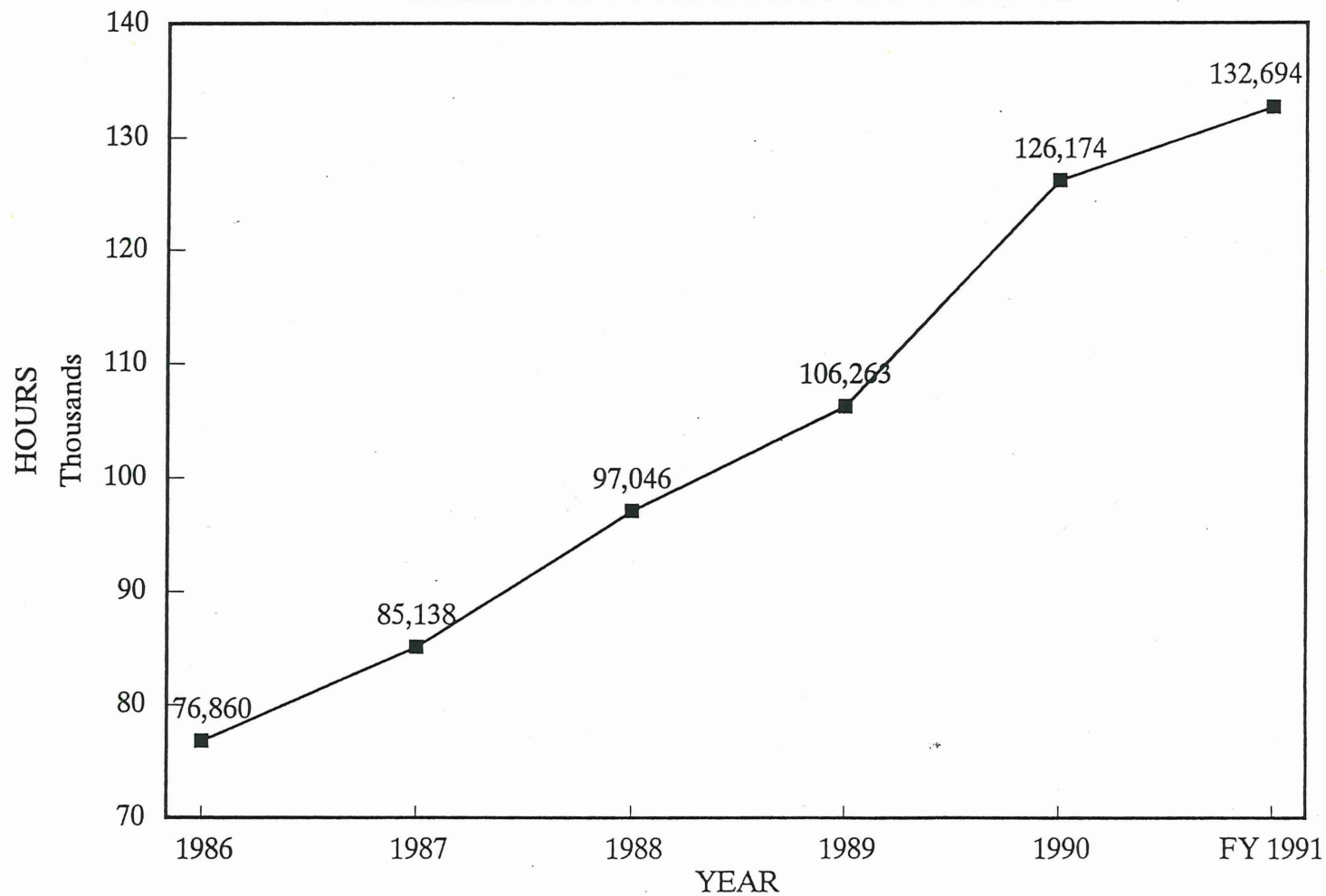
#### C. Reaching for Broader Support.

Of course, the primary funding source for public defender services is the legislature. During 1991 the Board of Public Defense, State Public Defender, and Chief Administrator worked together to make the needs of the system better known, and better funded:

- the Chief Administrator, Intergovernmental Relations Manager, Fiscal Director, and State Public Defender made many appearances in the House and Senate to support the Board's budget, which was increased by \$390,000;
- the Board succeeded in receiving an appropriation of \$2,750,000.00 to provide juvenile and misdemeanor services in the Third and Sixth Districts, starting July 1, 1992;
- the Legislative Advisory Commission granted \$45,000 to the Office of the State Public Defender for rising transcript costs;

# PUBLIC DEFENDER INCREASE IN HOURS

MULTI COUNTY JUDICIAL DISTRICTS 1986-91



- the federal Bureau of Justice Assistance, working through the Minnesota Office of Drug Policy, granted funds to create - with the help of a one-third state match - two new positions in the Office of the State Public Defender, to assist trial defenders with drug cases;
- the BJA and ODP also granted funds to the Board for three state-wide drug defense training programs; and
- the Minnesota State Bar Association, for the first time, passed a resolution endorsing the Board's urgent appeal for more funds.

These indications of increased financial support for public defense, in a period of major concern over the state deficit, are certainly positive. The Board's message is being heard.

Nevertheless, the financing increases of under 3% do not begin to provide for the continuing, year-after-year, annual caseload increases of over 10%.<sup>5</sup> The stage is set for a constitutional crisis.

#### D. Tapping the Counties: Necessary - Legal - Controversial.

The legislature has provided two "safety valves" for handling situations in which district public defender budgets are pressed beyond their limits. These statutes -- § 611.27, subd. 7, and § 611.21 - are necessary because public defender clients are constitutionally entitled to adequate services. There is no way to stop the cases from pouring in; each individual client must receive proper attention; when state funds run out, someone else must pay.

§ 611.21 requires that trial judges must order necessary payments by counties, to fund investigation, expert witnesses, and other case-related expenses that are beyond the ability of state funds to provide.<sup>6</sup> 1991 saw trial defenders around

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<sup>5</sup> For example: Ramsey and Hennepin County public defender felony cases increased 68% from 1988 to 1991. Multi-county hours increased -- mostly uncompensated -- from 97,000 to 132,000 during the same period.

<sup>6</sup> A U. S. Supreme Court decision Ake v. Oklahoma, requires that the government provide for these needs in cases involving indigent defendants. For example, an impoverished client with an insanity defense is entitled to have a psychiatrist at public expense.



Minnesota forced to resort to this statute more and more, as state monies for these services ran out. As a result, several test cases are being litigated regarding the appropriate procedures for reconciling the defendants' constitutional rights with the counties' need for balanced budgets.

Similarly, § 611.27, subd. 7, provides that when overall expenses for public defense in a district run beyond the state's appropriation, a district court judge may order the counties of the district to be assessed on a pro rata basis. This emergency funding mechanism is being tested in the Tenth District in the "Stillwater 26" case, in which prison inmates are charged with an extraordinarily complex conspiracy involving 164 felony counts. (See Appendix D, "The Stillwater 25" Public Defense Crisis.)

Naturally, county officials who believed the state had shouldered the full costs of public defense, are upset about cases which require these emergency funding measures to be invoked. The Board, State Public Defender, District Chief Public Defenders, Chief Administrator, and staff are pledged not to take the counties' concerns lightly. Our first concern, however, has to be the individual client: poor, generally locked up, charged with a crime. As cases continue to increase dramatically, tension in the system seems inescapable.

#### CONCLUSION

On one hand, the people of Minnesota are concerned about crime. Every year there are efforts to increase regulation of criminal conduct, raise penalties, and help police, prosecution, and corrections handle more cases.

On the other hand, as a society we pride ourselves on a court system in which everyone is entitled to a fair trial. We require equal justice for all, rich and poor, under our most cherished laws.

Public defenders are caught between these two legitimate social goals, safe streets, and equal justice. This is not an easy role in the best of economic times, and now, with massive deficits, it is increasingly difficult.

Our hope is that by improving communication with the public, and with policy-makers in all three branches of government, the mission of public defenders will be better understood. We need not only to survive hard times, but to continue to improve the services we deliver to Minnesota's poor, who provide the vast majority of our state's criminal defendants.

Public defenders contribute to the fairness of our courts, often at the expense of themselves, often without other people

fully comprehending their mission. It is the goal of this Annual Report to increase public understanding of not only what we do, but why.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John M. Stuart", with a long horizontal flourish extending to the right.

John M. Stuart  
Minnesota State Public Defender  
March, 1992



## APPENDIX A - RIGHT TO REPRESENTATION

### Right to Representation

The defense of accused persons is constitutionally mandated and must be provided even when such costs are borne by the public. The right to representation by counsel was established under the Constitution by three United States Supreme Court decisions. In Gideon v. Wainwright, 372 U.S. 335 (1963), the United States Supreme Court held that the Sixth Amendment right to counsel was applicable to the States, through the due process clause in all felony prosecutions. Juveniles were accorded the right to counsel by the Court in In re Gault, 387 U.S. 1 (1967). Subsequently, in Argersinger v. Hamline, 407 U.S. 25 (1972), the Court further extended the right to counsel to those misdemeanor cases that can lead to imprisonment.

Under Minnesota law, all individuals accused of a felony, gross misdemeanor, or misdemeanor are entitled to be represented by an attorney. Individuals undergoing civil commitment, paternity, non-support or contempt proceedings and juveniles subject to judicial proceedings, are also entitled to representation by an attorney. If a defendant in one of the above proceedings demonstrates an inability to pay for the services of a private attorney, the Court will appoint a Public Defender to represent that individual (Minnesota Statutes § 611.14 - 611.18). It is estimated that 90% of those charged with crimes in the State of Minnesota are indigent and require public defense counsel.

The Public Defender "system" is an integral part of the State of Minnesota's justice system and has a profound impact on the lives of thousands of poor people. Public defense, however, is perhaps the least popular area of public expenditure. Yet, it is a public service guaranteed as a fundamental right under the United States Constitution, and as such, public defender representation cannot be denied to poor people who meet indigency standards. Thus, it is important to state that the public defender system does not and cannot control its client intake. Rather, public defender caseloads are controlled by external circumstances, such as Constitutional mandates, Legislative policies, Supreme Court Rules, Sentencing Guideline changes, Statutory changes, judicial calendaring changes and Department of Corrections policies, etc., which the Board does not direct.

Equally important, the current system of Legislative Biennial appropriations for the Board of Public Defense is extremely difficult to administer since many variables that increase caseloads, such as local funding of police and prosecutors, occur on an annual or in some cases, a six month budget cycle. For example, when a City decides to add more police officers or a County decides to add more prosecutors to concentrate on drug

arrests, the Public Defender systme within that locality has no ability to match those increased services under the current State budgeting system. Another example is money collected and used by prosecutorial and police agencies as a result of forfeitures. In many cases, the use of this money is outside the budget review of the local governmental entity. The availability of forfeiture money to police and prosecutors allows those agencies to either add additional personnel to their departments or increase their services, without the defense having an opportunity to do the same.

The rapid increase of individuals charged with crimes and eventually incarcerated directly affect the ability of the Board of Public Defense to provide adequate and competent representation to their indigent clients. Effective representation is required by Supreme Court Rules, American Bar Association Standards, and Rules of Professional Responsibility. Under existing budget conditions, the public defense system within the State is in serious jeopardy of failing to provide constitutionally mandated services. This is the paramount issue for the Board of Public Defense in the upcoming year.



APPENDIX B - HISTORY OF THE MINNESOTA  
PUBLIC DEFENDER SYSTEM

History of the Minnesota Public Defender System

The foundation of Minnesota's system for the delivery of indigent criminal defense services to the poor was established in the mid-1960's. In 1967, the Judicial Council of Minnesota was created by the Minnesota Legislature. The purpose of this Council, comprised of Minnesota Supreme Court members, was to oversee the public defender system in operation at that time. In 1978, the Judicial Council was empowered by the Legislature to prepare funding proposals and to distribute appropriated money for non-profit criminal and juvenile defense corporations, which primarily serve minority populations located throughout the State.

Eventually, the Court became concerned about conflicts between its role in overseeing public defender services and its judicial function. In 1981, the Judicial Council recommended to the Legislature that it create a Board of Public Defense to supervise and review public defense operations throughout the State. During that year, legislation was enacted creating the Board of Public Defense and charging it with the responsibility of appointing the State Public Defender and six Judicial District Chief Public Defenders. It also mandated that the Board approve and certify budgets for each Judicial District Public Defender office under its jurisdiction.

The public defense system was, at this point, a combination of several systems delivering state mandated programs. In Hennepin and Ramsey Counties the county boards determined the budget and policy of the public defender offices, which provided felony, gross misdemeanor, misdemeanor and juvenile defense. In six other judicial districts the Board of Public Defense set the budget and therefore the county tax level for felony and gross misdemeanor public defense services. In the two remaining judicial districts, district court judges assigned attorneys to individual cases at an hourly rate. The "appointed counsel" system was also used for juvenile and misdemeanor cases outside of Hennepin and Ramsey counties.

In 1987, the Minnesota Legislature expanded the Board of Public Defense's statutory authority (Minnesota Statutes §611.215 - 611.27). The legislation modified the Board's membership, created an administrative office, instituted greater oversight in regard to the State Public Defender's Office, created two new Judicial District Public Defender positions and offices (Third and Eighth), mandated new standards regulating the offices and conduct of all public defender organizations and established new reporting, budgeting and funding processes. These legislative

changes created greater administrative oversight of public defender activities and significantly expanded the role of the Board in governing public defender organizations in Minnesota. A second step was taken by the Legislature in 1987 with the appropriation of over \$800,000 of State funds to assist those counties that were in a "distressed situation."

The 1988 Legislature created two committees, the State and Local Services/Fiscal Responsibility Study Committee instituted by the Governor's Council on State and Local Relations, and the Supreme Court State Financing Task Force created by Chapter 582, Section 2, which examined the existing funding of public defender systems statewide. The primary issue they examined was whether or not Counties should continue to pay for mandated public defender programs. Both of these committees recommended that the State should begin a process of funding Judicial District Public Defender Offices in order to unify the provision of defense counsel to poor people in Minnesota.

The 1989 Minnesota Legislative Session made a number of sweeping changes in regard to public defender programs. Most importantly, it adopted the basic principle of the Committees' recommendations and began a phased approach to State financing of the costs of the trial court public defender system. The Legislature appropriated \$16,910,000 of State funds to the Board of Public Defense to provide representation in all Judicial Districts for indigent felony and gross misdemeanor cases as well as representation of juveniles and misdemeanants in Hennepin and Ramsey Counties. These funds became available for distribution to the Judicial Districts on July 1, 1990. With the exception of the Second, Fourth, and Eighth Judicial Districts, the responsibility for misdemeanor, juvenile and other cases requiring appointment of counsel remained with individual counties. In order to properly administer the newly implemented statewide system, the Legislature in 1989 also appropriated \$100,000 to the Board of Public Defense to conduct a weighted caseload study.

The public defender system in Minnesota is comprised of four basic organizational entities: State Public Defender's Office; ten Judicial District Public Defender Offices; five Public Defense Corporations; and eighty-seven local appointed counsel systems. Although the primary goal of all these offices and corporations is to provide quality legal services to indigent people, the make-up of their staff and administrative services is quite diverse.

For example, the State Public Defender's Office operates primarily at the appellate level, handling direct appeals of



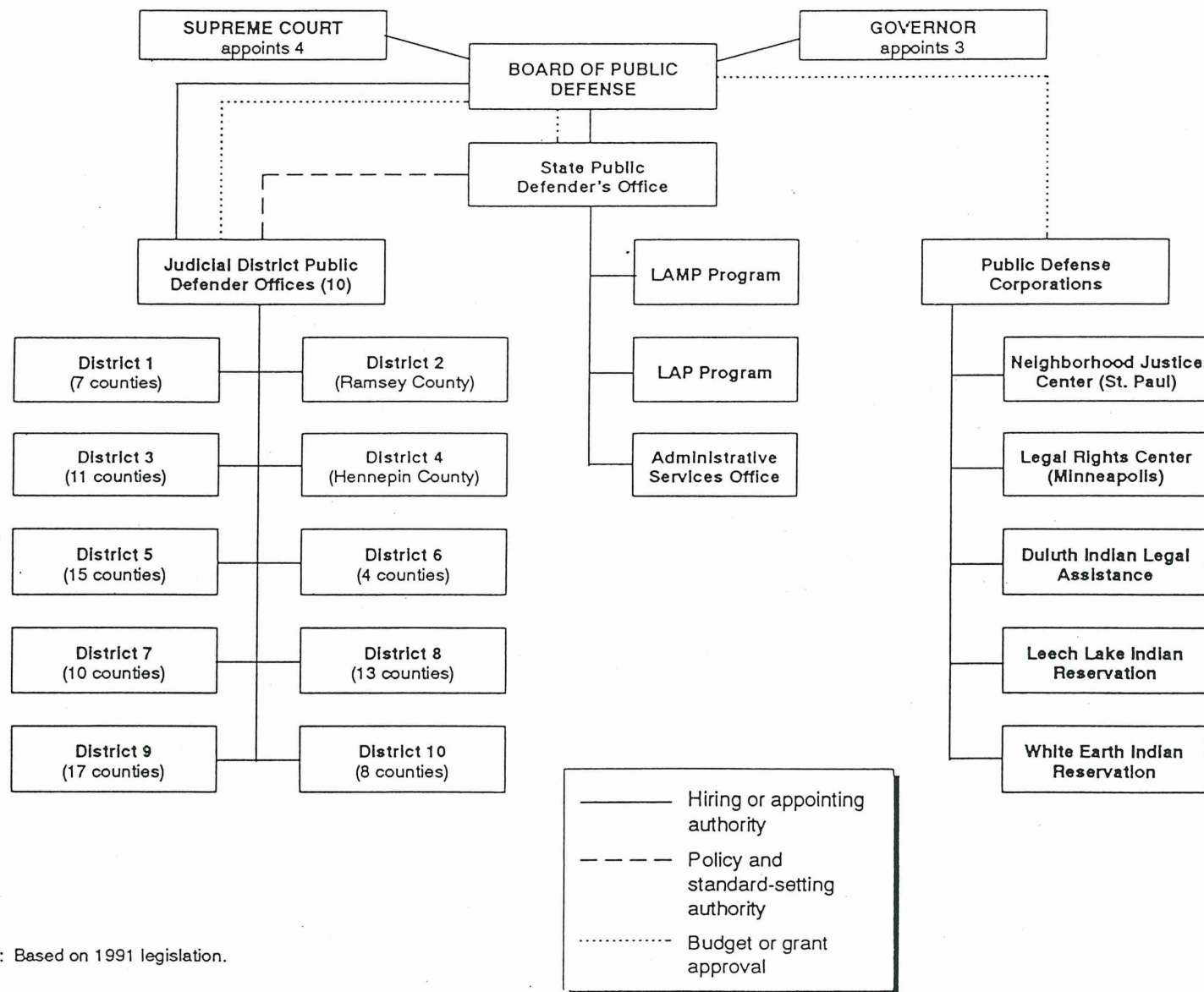
felony and gross misdemeanor convictions, sentencing appeals, parole revocation and restructuring hearings. In addition to appellate services, the State Public Defender's Office also offers civil legal services to indigent prison inmates. The ten Judicial District Public Defender Offices function mostly at the trial court level and handle all indigent felony, gross misdemeanor, extradition, and probation violation cases. Three of the ten Judicial District Public Defender Offices (Second, Fourth and Eighth) also defend juvenile and misdemeanor cases. The five Public Defense Corporations specialize in serving minority indigents in Minneapolis, St. Paul, and native American Indian Reservations in northern Minnesota.

The State Public Defender's Office and the Second (Ramsey) and Fourth (Hennepin) Judicial District Public Defender Offices employ predominantly full time attorneys to provide public defender services. In contrast, the eight other Judicial District Public Defender Offices rely on agreements with private attorneys to serve on a part time basis as public defenders. The five Public Defense Corporations employ attorneys and support staff through their status as non-profit corporations.

Some public defender organizations were instituted years ago and thus have stable and experienced staff, while the inception of other offices is relatively recent (e.g., the Third and Eighth Judicial District Public Defender Offices, created in 1987). To insure the quality of public defense services statewide, the Board of Public Defense was developed to provide public defender organizations with policy standards for effective and competent representation of indigent defendants. Although the Board has administrative and jurisdictional oversight of all public defense organizations in the State, its purpose is not to replace local offices with a centralized bureaucracy; e.g., it is not involved in intraoffice hiring or issuing employee paychecks.



# Organization of Minnesota's Public Defender System, 1991



Note: Based on 1991 legislation.

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January 2, 1992

Re: The "Stillwater 25" Public Defense Crisis

Recently you may have read the enclosed news story, or heard from county officials that the counties of the Tenth Judicial District are being assessed for public defender costs. This situation arises from one very complex case, in which 25 inmates of the Stillwater Prison are charged with 164 felony counts of racketeering, drug dealing, and extortion.

On November 25, Chief District Public Defender Jon Erickson and I appeared before Judge R. Joseph Quinn to ask him to take the extraordinary step of assessing the counties. I am sending you the transcript of that hearing so you can see for yourself, exactly what happened.

Before taking this step, our administration recruited volunteer attorneys from the First, Second, and Seventh Judicial Districts, and the state public defender's office. The Fourth District (Hennepin County) was unable to help because they have six related cases which caused a conflict of interest.

Each of the offices that provided volunteer staff attorneys is already seriously overloaded:

- First District: 17 "part-time" lawyers doing the work of 16.5 "full-time" lawyers.
- Second District: Higher public defender caseloads than New York City.

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- Seventh District: After several years with no murder cases, they have had 10 in one year -- this is the district including St. Cloud.
- State Public Defender's Office: Appeals up 50% since 1986, staff up 5%. New record for number of appeals, October, 1991.

I can't tell you how much I personally appreciate people from these offices pitching in to help solve the problem in the Tenth District. Even with their help, however, the state system of public defense did not have the resources to do the job by itself.

The legislature has provided that when state funds for public defense are not adequate, the counties of the affected judicial district must contribute. I believe we will always need some kind of emergency, contingency plan like this, because (1) The constitutional law governing our operations is that each individual indigent defendant is entitled to representation by counsel; and (2) We have no way to control the number of cases that come in.

Unfortunately, in recent years the funding for this basic right has not been able to be maintained at an adequate level, considering that every public defense agency is setting new caseload records every day. Society's desire to crack down on crime and drugs inevitably increases the demand on our limited resources.

Our nation's belief that rich and poor alike are entitled to justice in the courts is central to our values. The women and men who work in Minnesota's public defender system are struggling to uphold this ideal every day. Right now, however, we have our backs to the wall.

I would be glad to talk this situation over with you at your convenience, as would our Chief Administrator, Dick Scherman, whom you can reach at (612) 349-2565. Meanwhile, I hope this letter and these enclosures give you a better idea of the circumstances involved in our request for the counties of the Tenth Judicial District to provide additional funding for public defense services.

Sincerely,

John M. Stuart  
Minnesota State Public Defender  
JMS/pmw