

SUMMER PROJECT - UNIV. OF MONTANA LAW SCHOOL

1967

158
1967

PROJECT SUMMARY

The University of Montana Law School LEAA Grant subsidized a single summer project with two basic aims. It was designed first to broaden and deepen the understanding of criminal law and procedure of the participating students and second, to assist officers of local, state and national government by providing them with additional necessary manpower. If successful, the project was intended to continue in future years through state and private financing.

The Montana project worked in a variety of fields and localities, but the fundamental objectives were the same.

INDIAN TRIBAL COURTS

In addition to the existing state and Federal Court systems, Montana has a third system of courts not common in other states. These are the tribal courts on Montana's seven Indian reservations. These tribal courts handle all reservation misdemeanors, and some offenses which would be felonies in state or Federal Courts, committed by tribal members. Additionally, the tribal courts exercise a wide variety of civil jurisdiction in disputes between members of the tribe.

On most reservations there is not a single person with legal training. The tribal judges are therefore people untrained in law and confronted with many of the kinds of problems that would normally engage the attention of state and Federal Courts of general trial jurisdiction. These tribal judges feel the need of legal and judicial training very keenly and are eager to receive any training or help that can be made available.

Under the LEAA Grant the University of Montana Law School initiated two programs which we intend to make a permanent part of Law School activities. These were a training session for tribal judges held on the University Campus April 13-14, 1967, and a program of legal assistance to the tribal courts by senior law students during the summer.

The tribal judges conference is designed to discover and isolate the particular kinds of legal problems which give the tribal courts the greatest difficulty. These problems go on the agenda of the conference and faculty members present them for discussion by the assembled judges. Currently the extension of constitutional rights to defendants in criminal matters is a deep and continuing concern of all the tribal judges. This subject in one or another of its phases will probably be on the Conference agenda for a number of years. Questions of procedure and presentation of evidence arise constantly and we encourage the judges to contact us throughout the year when these problems arise for advice upon the procedure in the individual situation and also as a means of developing subjects of common interest for coming Conferences.

The 1967 Conference was well attended and at least one judge of every reservation was present. For most of the judges it was the first Conference they had ever been invited

NCJ-000530

COPY 2

to that was concerned solely with their problems. Many said also that it was the first Conference they had attended where the judges themselves were encouraged to speak and participate and discuss common solutions to common problems. We believe the success of the first conference will insure good attendance and fruitful participation in the coming years.

The employment of senior law students on the reservations during summer was a new departure both for the Law School and the tribes involved. Since there was no previous experience to draw upon, there was no definite plan for any individual reservation. Rather, the students familiarized themselves with the reservations and the tribal courts and determined where legal ability could best be put to work. One obvious place, of course, was in the tribal court as an advisor to the judge. Prior to this time some tribal courts would not even permit a non-Indian to sit in their courts as a spectator. The law students, however, managed to have this restriction removed and were consulted almost every day by the judges on their respective reservations about day-to-day difficulties. Some of the questions raised found the students fully prepared. In more complex cases the students would call the Law School and discuss the question with a faculty member before giving an answer. All of the judges who worked with the law students were anxious to have students assigned for the summer 1968, and the judges on reservations to which students had not been assigned requested student help as soon as possible. Both judges and students felt that the student participation was helpful not only in resolving day-to-day problems but in helping to develop permanent and legally valid practices and procedures which give the judge confidence that he is conducting his court in a correct and legally acceptable way.

The educational benefits to the students were at least equal. Each student was confronted with types and kinds of legal problems never encountered in Law School. Tribal courts are not courts of record and no body of precedent or case law of the type that law students commonly deal with is available. The students had to face original problems of courts in a developing legal area without statutory or case law to guide the course of action. A student on the Crow Reservation met part of this difficulty by drafting a complete Proposed Law and Order Code, which the tribe had never had, and that is now being considered for adoption by the tribal council. For the students it was a type of work which, because there were no firm precedents or pat answers, required thorough sifting of facts and original and inventive thinking about legal problems. This is a type of experience not easy to incorporate into the traditional Law School curriculum and we think the benefits to the students were unusually great.

LAW ENFORCEMENT TRAINING

The grant program was also aimed at putting law students into touch with the basic social problems that give rise to criminal law and prosecutions. Law School courses in the criminal field generally deal with the problem of the offender or the lawyer involved in the defense of an alleged offender. Most law students complete their law school education with no real understanding of the necessity of protecting society that requires criminal laws and procedures for their enforcement. Students were

assigned to work with enforcement officers at three stages of the law enforcement process. One student was assigned to work full time with the Billings Police Department, the largest department in the state. Several students were assigned to work in county attorney's offices in the larger cities. Two students worked with federal probation officers, one in each of the two federal court divisions in the state. In this way some of the students were involved in every step of the enforcement procedure from investigation of original complaints all the way through to the release of convicted prisoners on parole. No single student could, of course, attempt so broad an investigation in the course of a single summer or of several summers. However, the student body at University of Montana School of Law is small and tightly knit, and the experiences of all of the students are compared and shared with one another and with the other students who are not part of the program. The new insights gained by these students is in this way spread throughout the entire student body.

The benefits to the employing agencies were possibly not as great in this portion of the program as in the Indian Reservation activities. There is, though, a shortage of manpower in every phase of law enforcement in Montana so there was always a benefit to the employing agency.

POLICE DEPARTMENT TRAINEE

The intern with the Billings Police Department was probably the student who had the least opportunity to contribute broadly to the employer and he was also the student who may have gained the greatest amount both for himself and his fellow students. He had the closest and most intimate look at the kind of problems that call a police department into action. He saw perhaps more clearly than any other student has at the Law School the law enforcement machinery in all phases of its action. He traveled with police officers on routine patrol and on assignments to investigate accidents and crimes. He assisted officers when difficulties arose at a crime scene or at an arrest. When several courses of action are open to an officer, some of which may be lawful and others unlawful, immediate advice is very valuable to him. In a number of situations this student was able to supply that advice, in this way making sure that an arrest or seizure of evidence was properly and legally made. This was one of the principal benefits to the department. City and county attorneys are the legal advisors of Montana police departments but they are not and cannot be available on a moment's notice 24 hours a day. The officer who must make an immediate determination late at night or in an isolated place, with no available communication except a police radio is usually effectively removed from any source of legal advice. Although the student could not be called an expert in criminal law, he had had a good deal more instruction in the field than any police officer can possibly get. His advice, though unofficial, was highly useful.

For the student the chance to see the things that a police organization must deal with and to watch the means by which they deal with them were so valuable that it made a fundamental change in his outlook about the law enforcement process. From a critic he turned into an advocate for law enforcement and, after graduation from Law School, took a job as a deputy county attorney in the same city where he had worked in the summer of 1967.

PROSECUTOR TRAINEES

Six summer students were assigned to work in the larger prosecuting offices in the state. In these situations there was a definite benefit to the employing agency as well as to the students. Most prosecutor's offices are shorthanded in Montana during the summer months when staff members are on vacation and no replacements are generally available. The students were immediately plunged into all of the activities of the various offices. They helped draft pleadings and briefs in felony and misdemeanor cases, gathered evidence, and prepared actual cases for trial in cooperation with the attorneys in the office. Although these students were at least once removed from the law enforcement processes at the street level as the police department trainee saw it, they did work with police and sheriff officers doing on-the-scene investigations of actual crimes. They, too, got their first look at the way the law enforcement processes really function and they saw, also for the first time, the place in law enforcement of many of the things they had dealt with only as abstractions in case books. Each of them found that some of his stereotyped ideas of law enforcement and law enforcement officers were incorrect. In every case the practices and procedures of the criminal law came alive for the student and made him much more interested in the criminal processes and his place in it as a lawyer and a citizen.

PROBATION INTERNS

Two student interns were assigned to work with federal probation officers. One student was headquartered in Billings in the Eastern District and one at Missoula in the Western District. These students worked directly with federal probation and parole officers in supervising all types of cases adult and juvenile. They paid particular attention to the probation of juveniles and the facilities available particularly for the handling of Indian juveniles. In this portion of the program they were assisted by a third student who was assigned full time to the Fort Peck Indian Reservation under the Montana Defender Project. They jointly concluded that there is a grave need for more treatment facilities for Indian juveniles within the state of Montana. The Montana State and Federal Courts are usually faced with a choice between returning an Indian juvenile offender to the environment which led him into trouble with the law, or to commit him to an institution a great distance away where his confinement will probably be continued until he reaches his majority. Neither of these alternatives provides a good solution to the problem of the Indian juvenile offender.

These students also saw and worked with the present methods with which we try to bring the convicted man back into society. They concluded, as do most people in the field, that much more needs to be done in this area, but that it is the area which offers the greatest hope for eliminating or at least minimizing the problem of the repeated criminal offender. Each of these students was so interested by his employment that he went into the law enforcement field upon graduation. One student accepted appointment as county attorney in a small eastern Montana county where the position had been vacant for several years. The other took a deputy county attorney's job in the city where the Montana State Prison is located where he will be working closely with correctional officers and the staff of the Montana Probation and Parole Board.

CONCLUSION

If the requests from county attorneys and police departments and Indian tribes are a safe criterion the assignment of students to assist these people under the summer project was a great success. Every department which employed a student wanted another for the summer of 1968 and we have done our best to supply them. The students made a substantial contribution to the people with whom they worked. The greatest benefits, though, were to the students themselves. In every case they were thrown into contact with people and situations that are a substantial part of our social fabric but which the average college student never encounters or even sees. It added a whole new dimension to their grasp of and their thinking about the problems that the criminal law and law enforcement officers must meet and solve. They began to think deeply and constructively about these problems and we believe that the fact that several of these students, as a direct result of their summer's work, went into law enforcement after graduation indicates that the program was a success which should be and will be continued.

TRIBAL JUDGES INSTITUTE

For more than ten years the tribal courts on the various reservations in Montana have badly needed help in dealing with their criminal case loads. A series of decisions by the Montana Supreme Court in the middle 1950's vastly expanded the criminal jurisdiction of tribal courts. These decisions (State v. Pepion, 125 Mont. 13, 230 P.2d 961; Irvine v. Dist. Ct., 125 Mont. 398, 239 P.2d 272; and State v. McClure, 127 Mont. 534, 268 P.2d 629) held that various criminal matters were not within the jurisdiction of State district courts. Collectively, they removed the authority of the State courts from large areas of criminal law, including all misdemeanors and all felonies committed by Indians in reservations and not federally prosecuted under the Eleven Major Crimes Act. State law enforcement activities, after these cases, stopped at the reservation boundary. Prior to these decisions tribal courts had functioned only as courts for trial of violations of tribal ordinances, and tribal ordinances were enacted only to cover those cases where neither State nor Federal law was applicable. After these decisions the tribal courts became the only courts of general trial jurisdiction in criminal matters on the reservations.

The tribal courts were not prepared for this new and vastly expanded work load and, in the intervening years, despite efforts by the tribes, the Bureau of Indian Affairs, and other State and Federal agencies, the tribal courts have never been able to meet the demands upon them. No trained Indian judges were, or are, available for service in these courts. In most tribes not a single person has had legal or judicial training. Additional problems are created by the fact that the tribal judiciary is not an independent branch of tribal government but is completely under the domination of the tribal council. Judges usually serve the pleasure of the tribal council and the court itself is frequently looked upon as only an arm of the council to function as the council or individual members direct.

Tribal judges generally make an effort to be independent and dispense justice equally to all parties who come before the court, but they are badly handicapped by lack of any guides to correct court procedure or basic knowledge of the laws which should be enforced. The withdrawal of state authority made the state codes and laws totally inapplicable on the reservation and left enormous gaps which were never filled by the provision of tribal law and order codes. Problems left without remedy come to the attention of judges but they are seldom able to get tribal council action to pass ordinances covering kinds of criminal activity previously prosecuted under state law and not traditionally included in the tribal codes.

Such training as tribal judges receive has generally come from Law and Order Conferences sponsored by the Bureau of Indian Affairs. Financial considerations, however, generally require that such conferences include not only tribal judges but law enforcement personnel, both federal and tribal, and employees of all agencies of government functioning on the reservations.

As a result the programs usually devote only a minor portion of the time to the judicial problems of the courts and tribal judges ordinarily compose a very small minority of the total number of persons in attendance. As a result, through no fault of the sponsoring agencies, the amount of training available to judges of tribal courts is small. Many individual tribal judges try to extend their legal education by attending law and law enforcement seminars sponsored by state and federal agencies, but these ordinarily do not give any attention to the particular problems of tribal courts and their assistance is peripheral at best.

The Tribal Judges Institute, begun in 1967 by the Montana Defender Project and the University of Montana Law School, is an attempt to give systematic consideration to tribal court problems and to investigate means of meeting the peculiar difficulties encountered by tribal courts. Particularly, this Conference is aimed at bringing together tribal judges, court personnel, and

tribal council members to give intensive study to legal and judicial problems of the courts, entirely separate and apart from the problems of police or enforcement personnel which are handled by other federally sponsored training programs. We hoped, through the medium of these meetings, to alert the tribal councils to the need for updating and modernizing the tribal laws under which the courts must work and to impress the councils with the necessity of furnishing their courts with the necessary effective tools. Secondly, we wished, if possible, to persuade the judges to open their courts to the inspection of the Law School so that their problems would regularly be brought to the attention of people capable of rendering assistance. Third, we hoped to persuade the judges to accept evaluation and constructive criticism of their procedures, and to consider adoption of standard methods of protecting constitutional rights to safeguard rights of defendants and protect convictions from collateral attack.

Practically all tribal law and order codes flatly prohibit the appearance of lawyers in their courts and many also prohibit the appearance of anyone not a tribal member for any reason. Most of the courts interpret these provisions as prohibiting a nonmember of the tribe from attending the court even as a spectator. The judge has complete power over and responsibility for the conduct of the court and the validity of its proceedings without help from or interference by counsel.

At the first of the proposed annual session, held April 13 and 14, 1967 on the campus of the University of Montana, tribal judges from every reservation in Montana participated, together with tribal council members from some, but not all, of the reservations. (Copies of the program presented are included with the final report.)

As a direct result of this initial session we have had many inquiries about legal and judicial matters from judges and council members who participated. Also, the prohibitions against attendance at court by nontribal members were relaxed on almost every reservation so that law students and faculty could observe the workings of the court (not all of the courts

have been visited by Law School personnel but all of these visited were open to us). When a summer program was begun, intended to put ombudsmen trainees on each reservation, the attending judges all requested assignment of trainees to their reservations so that the student interns could assist them in court operations. On those reservations to which the ombudsmen were assigned, the students were consulted by the tribal councils about possible or proposed tribal ordinance revision. In one case a complete proposed tribal law and order code was drafted and submitted to the tribal council by the student intern working under the supervision of the law faculty (copies of this proposed code will be enclosed with the final report). The assembled judges also requested copies of the newly enacted Montana State Code of Criminal Procedure and procedural manuals developed to aid state judges in its use as guides for procedures and practices in their own courts. We think this is a significant development, as it will help in making court procedures more uniform between State and Tribal courts. It will also help build into the Tribal courts the procedural safeguards necessary to preserve the rights of defendants brought before them and protect the decisions of the courts against collateral attack. (In the case of Cauliflower v. Garland, 342 F.2d 369, the decision of a Montana tribal court was, for the first time in the United States, held to be subject to review by federal courts because of a denial of constitutional rights to an Indian defendant. The holding caused turmoil in the Montana tribal courts and is much in the minds of tribal judges in their criminal proceedings.)

The sessions also helped to give the tribal judges support in their belief that the tribal courts are a separate and independent branch of tribal government, not subject to day-by-day political domination by powerful groups or individuals within the tribe. This idea was brought home forcefully to the attending tribal council members as well as judges and we hope that this principle will grow in future years.

The agenda for this first meeting was planned primarily to acquaint the judges and tribal councils with the Law School and its facilities and to encourage them to seek its assistance when necessary. The response to this idea was excellent. The participating judges all praised the program as being the first that they had ever attended which gave primary attention to their problems and held out any practical means for finding solutions. All of the tribes are now soliciting the future assignment of summer interns to their reservations to assist in court and tribal affairs. We think a valuable door has been opened through which the Law School may help the Montana Indian tribes to help themselves in dealing within the tribe and with the outside world.

II

OMBUDSMEN

In the grant application (Section I, 2d) funds were requested for an experimental program in which student interns would be placed on Indian reservations with the function of aiding the individual tribal members, the tribes, and the tribal courts. It was projected that individuals could be assisted in handling their legal difficulties with the tribe, federal agencies and the state of Montana. It was also hoped that the tribes as entities could be helped by guidance in the operation of complex network of local, state and federal law which governs tribal operations. The Tribal Judges Conference indicated the need for improvements in tribal courts felt by the tribal judges and others (the proposals for improvement are outlined in the section dealing with the Conference) and it was projected that the student interns could be of substantial assistance to the judges.

Because the program was experimental and even the problems were not clearly known, the students assigned were given only a general understanding of the situation on the individual reservations to which they were assigned (the Crow Reservation in southeastern Montana and the Blackfeet Reservation in northern Montana). Then they were encouraged to make their own contacts among tribal council members, judges and individuals to see where their abilities could be employed.

In each instance the student intern found that dealing with the tribal court took up a major portion of his time. The judges were anxious to discuss practice and procedure and solicit suggestions for improvement. The students, usually after telephone consultation with Law School faculty members, offered suggestions whenever they were asked for or seemed appropriate. Many of these suggestions were not accepted directly but the result advocated by the student was frequently reached by a more indirect and circuitous way. Some of the suggestions were immediately accepted and worked into the general tribal procedures.

The student intern on the Blackfeet Reservation employed a good deal of time working upon the legal problems of individual Indians. He was substantially assisted by the fact that the Montana Legal Services Association (a joint operation of the Montana Bar Association and the Office of Economic Opportunity) had a full-time attorney in the area working on the problems of indigent individuals who needed legal assistance. This attorney served an area larger than the reservation and only a part of his time was spent there. The student was of considerable assistance to the attorney since he was on the reservation full time and could make factual investigations far more extensive than the attorney had time for. This co-operative operation seems very promising and, since the Legal Services Association is now actively functioning in all of the areas in which reservations are located, we feel that very constructive work can be done in the future following the pattern developed on the Blackfeet Reservation.

Both interns found considerable fault with the legal codes of the tribes. Reform of tribal codes is a slow procedure and the impetus must come from the tribe itself or proposed revisions will not be accepted. The intern on the Crow Reservation found an excellent opportunity in this field because the Crow Tribe had been engaged for many years in an attempt to formulate a new law and order code. The project, though of long standing, had shown little progress over a period of many years. Through work with the chairman of the Tribal Council and the reservation superintendant the student intern was designated to produce a complete new draft of a law and order code for the Crow Tribe, and the job occupied a sizeable portion of his time during the summer. (Copies of this draft will accompany final report). The draft is now under review by the area office of the Bureau of Indian Affairs and will probably be recommended for adoption to the Tribal Council in substantially unchanged form.

The interns also found fertile field for work as intermediaries bringing together state, local and federal authorities in attempts to solve tribal problems. The tribes have continuing problems because so many agencies have partial responsibility in fields of health, welfare and public safety that none can do the job completely and, as a result, a number of things are left completely undone. An example was the situation of Indian children temporarily abandoned in the city of Hardin, Montana. Hardin is the county seat of Big Horn County and the city limits are only a few feet outside the boundary of the Crow Reservation. Welfare matters on the Reservation are the province of the Bureau of Indian Affairs; welfare matters outside the Reservation are the responsibility of the Montana Department Public Welfare. It is a common occurrence in Hardin that Indian children are left in automobiles while their parents are drinking in the city bars. Children whose parents cannot be located are often found in parked automobiles at night. Local law enforcement authorities have taken the position that this is a Tribal problem and that the Bureau of Indian Affairs personnel should take charge of the children and return them to the Reservation. The Montana Department of Public Welfare has statutory authority to take charge of any child found abandoned but must bring a court proceeding within 48 hours of the discovery of the child. County officials are reluctant to institute these legal proceedings. The Bureau of Indian Affairs was willing to accept the children if they were physically returned to the Reservation but the Montana Department of Public Welfare had no legal machinery for returning them.

The student intern investigated the situation and determined for himself that there was a complete breakdown. Although no children were then being actually physically endangered, he was quite worried about what would happen to children left in automobiles at night during the winter. By repeated contact with the local officials, the State Department of Public Welfare and the Bureau of Indian Affairs he brought about a working arrangement whereby the children will be taken by the Department of Welfare if the parents cannot be located and turned over to the Bureau

of Indian Affairs if the parents are not found within 48 hours. This solution is neither long term nor perfect, but it is working well enough to inspire confidence that no Indian children will freeze to death on the streets of Hardin this winter.

A problem which this student worked upon but did not solve involved the chronic absenteeism of Indian children from the public schools on the Reservation. The allocation of state financial assistance to the school districts of the state is based in part on the total number of days of student attendance per year. The high rate of absenteeism in the Reservation schools seriously diminishes the amount of state aid that these schools are eligible to receive. Legal researches showed that the Tribe had consented in 1949 that state probation officers could enter the Reservation to prevent and control truancy. The State Department of Public Instruction has taken the position that the consent is not broad enough under state law to permit the employees of that Department to work on the reservation, and requested further authorization. The chairman of the Tribal Council and the superintendant of the Reservation both insisted that the 1949 authorization was all that was necessary and, in spite of the student intern's efforts, there the matter rests.

These examples are typical of situations existing on every reservation in Montana and it seems that the intervention of a person from outside the reservation and not connected with the existing state, federal and tribal organizations can in many instances be helpful in solving these problems.

The tribal councils and the tribal courts on these reservations where these interns were employed were enthusiastic about the program and have requested that it be continued. The area office of the Bureau of Indian Affairs has inquired about the possibility of making the program permanent and extending it to every reservation in the state. We hope to be able to continue and expand this program, which shows real promise of improvement in the tribal courts and in the conditions of life on the Montana reservation.

III

POLICE DEPARTMENT INTERN

One student assistant was assigned to full-time work with the Police Department in Billings, Montana, the largest department in the largest city in the state.

This portion of the summer program was the least productive of tangible results but possibly holds more long-range promise than any other of the summer's activities. Nothing of this kind had ever been attempted before either by this Law School or by any Montana police organization.

Neither the police officers nor the student were clear about their relationship at the beginning of the project, and neither the student nor the officers realized the extent of the gulf between the Law School experience of the student and the practical experience of the officers.

At the beginning the student was puzzled and frustrated in his attempts to find a common meeting ground with the working officers to whom he was assigned. The reaction of the officers varied from suspicion to thinly veiled hostility. These reactions were possibly predictable because of the preconceived notions on each side about the practices of the other side. Police officers, whether correctly or not, have for years felt that the law and lawyers in general are opposed to law enforcement and law enforcement officers. This attitude was clear in their reaction to the presence of a law student among them. Many were sure that he was placed there as a spy. Others felt that his purpose was to find material for new criticism of law officers.

The student shared the usual feelings of law students toward working law enforcement officers--that is, a belief that the law enforcement practices are routinely brutal and tainted with illegality. Law students ordinarily have had no more contact with the processes of law enforcement than other individual citizens and their attitudes are often formulated by some

trivial brush with the law in a traffic case or something similar. Any pre-existing aversion is likely to be fostered, however inadvertently, by the materials placed in law students' hands in courses on Criminal Law Procedure and Constitutional Law. The cases and materials appearing in standard works provide a wide sampling of examples of bad police practices which have had to be corrected by the courts. Good police procedures seldom find their way into court decisions and even less frequently into law school case and text books. Within a short time after the student's arrival the attitudes of the officers and the student began to undergo a radical change. The student involved put it this way:

I feel that this past summer has been the most valuable three months I have ever spent. I arrived in Billings this summer with certain preconceived notions pertaining to police work and how the job is done. My attitude was quite hostile to police work. It didn't take long to realize how things really were and the job that policemen face every day. I think that it's important for any attorney engaged in criminal law to be familiar with the law enforcement, its operation and the problems encountered. It seems that the quality of a police department has a lot to do with the type of community that one lives in. And the performance of a police department depends in part upon the attitude of the community which it serves.. We, as prospective attorneys, stand in a good position to be of some influence in our respective communities in future years. For this reason it seems highly desirable for people like ourselves to have some understanding of police work and the difficulties that exist for law enforcement.

The members of the police department, who had expected nothing but criticism were surprised and pleased to find that the student was genuinely interested in learning about the problems of police work and receptive to the officers' ideas about the proper role of the lawyer and judge in law enforcement. Toward the end of the summer the officers were coming to the student for indoctrinations on legal matters and discussions of the policy and underlying rationale of rules of law that they had formerly felt must be accepted as arbitrary and irrational strictures circumscribing their freedom to do their job.

By the end of the summer the officers in the Billings Department had somewhat altered their traditional view that all attorneys are hostile to the law enforcement and oppose and make it more difficult wherever possible. The student had gained an insight into the actualities of day-to-day enforcement of the law that no other students in his class had ever received.

It can hardly be said that the experience of one student for one summer marks even a beginning in improving the relationship and co-ordination between law schools, law students, lawyers, and law enforcement officers. It does, however, indicate that there is a rich ground here to be explored in the interests of making a better relationship between police officers, lawyers, and citizens. There is no field of public endeavor more broadly misunderstood than law enforcement, and the experience of law enforcement officers with the courts in the past few years has, mistakenly or not, caused the officers to withdraw into a hard protective group with a feeling that they have no friends or allies on the outside. Law students and lawyers tend to come into contact with the law enforcement processes only as partisans on the other side of a case. Lawyers, as law makers both in courts and legislatures, exercise a vast influence over all phases of American life. A better understanding by them of law enforcement generally is certain to produce better laws and better enforcement of those laws. Police officers must, somehow, be given the feeling that their contribution to society is recognized and valued by people involved in the same field of endeavor. This summer program seems to have indicated that the participation of law students in actual police organizations can promote both of these objectives. In a small law school, like the University of Montana Law School, all of the students are acquainted with one another, and they meet and discuss their common experiences every day. The new information and attitudes developed by students during summer service projects of this kind is rapidly and thoroughly disseminated throughout the student body and influences everyone in school to some extent. We feel that this portion of our summer project is sufficiently valuable that we are now exploring methods to continue it on a permanent basis.

IV

PROSECUTOR TRAINEES

Six students were assigned to this part of the program. All were placed in the state's larger counties where there was reasonable expectation of a full-time work load in the criminal field. We wanted them to acquire a working knowledge of criminal law which would make them effective in the field after graduation and to gain an informed point of view about law enforcement and prosecution work which they could communicate to the rest of the student body. Law school class discussions and teaching materials usually leave graduates with fundamental suspicions about the law enforcement process and the people involved in it. We hoped that the summer's experience would enable these students to form a realistic opinion based on actual observation of a prosecutors office at work and bring the results of this experience directly into the thinking of the remainder of the students.

We believe that the program succeeded completely in this aim. Every student who worked for a prosecutor during the summer admitted that he began with a certain degree of hostility toward prosecutors and prosecutions. In no case did this attitude survive the first month. Each student learned that the county attorneys and peace officers with whom he worked had nothing to hide. Every student was given free run of the county attorney's office and files, the county sheriff's office, the city police department, and all of the courts in the jurisdiction. They learned that law enforcement is not based on third degree methods and deception. Every student emerged with respect for the people he worked with during the summer and the legal system of which they were a part.

The prosecutors who agreed to take the students into their offices were, if anything, more enthusiastic than the students. They remembered their own attitudes in law school, and were anxious to show the students what the practice of criminal law really is. Each student was

given the widest possible range of duties. All of them participated in both felony and misdemeanor investigations and prosecutions. They interviewed witnesses, both in the company of the county attorney and alone. They did on-the-scene investigations with police and sheriff officers. They helped apply for and execute search warrants. They sat in conferences with judges and defense attorneys. They participated in arraignments and preliminary hearings and drafted jury instructions for felony prosecutions. In most instances they were allowed or required to participate in criminal actions from the initial Complaint through final Judgment and on to such peripheral things as pre and post sentence investigations, supervision of paroles, sanity hearings and everything else that touched on the complete administration of the system of criminal justice. By the end of the summer each of them had handled several cases from beginning to end, working alone on investigation and research and with the attorneys when court presentation was necessary. Each student was, at least once, allowed to handle a misdemeanor action, including the entire trial, by himself. (Montana statutes permit the appearance in Justice of the Peace Court of persons who are not licensed to practice law).

During periods when action in the criminal field was slow the county attorneys kept the students busy in a variety of ways. One student spent 40 hours on a summary of Montana arrest laws requested by local police officers. Another made a digest of the changes in law enforcement statutes made by the newly enacted Montana Code of Criminal Procedure. One student, who was stationed in the state capital, was assigned to attend meetings of the state boards which exercise quasi-enforcement powers. He attended hearings of the highway patrol board to suspend or cancel drivers licenses of traffic offenders and meeting of the liquor control board when liquor licenses of taverns which had been convicted of liquor violations were suspended. All of the students assisted in gathering statistics for a statewide survey of deferred sentencing laws and procedures.

The participating county attorneys were enthusiastic about the program and the performance of the summer students. The most frequent comment made was "I wish there had been something like this when I was in law school." Each of them asked for assignment of another student next summer if a way can be found to continue the program. A number of complaints were made by county attorneys who were left out of the program and there was some grumbling about discrimination by county attorneys of smaller counties who were not eligible to participate because their criminal work load was too small. We have already received several requests for student assistants next summer from county attorneys who were not included but thought they should have been. It appears that no difficulty will be encountered in finding sponsors for student participation.

The main benefit, of course, was to the students themselves. They had more actual contact with the criminal law in those three months than they had had in all of their lives previously. The deliberately wide area of experience allowed to them gave them a very rich sampling of the whole legal process. Criminal Procedure is a senior course at the University of Montana Law School and Professor Elison, who teaches the course, has noted an upsurge of interest in the course work and a higher level of performance, not only by the students who worked in the summer program but also by the remaining members of the class whose interest is continuously aroused by the reminiscences of their classmates.

A greater benefit is the new view that the students developed about law enforcement and criminal law. They found that law enforcement is a basic grass root social need with the protection of society as its ultimate goal. They found, too, that criminal procedure is not a mechanical process for disposing or getting rid of a wasted portion of humanity but a flesh-and-blood process in which the attempted salvage of the people not yet irrevocably lost is a

prominent concern. The general, but unstated prejudice among law students against personal participation in law enforcement seems to have diminished and perhaps disappeared among this group. Several of them have expressed interest in working in county attorneys offices and one student has already been interviewed for a vacancy as county attorney in one Montana county.

Prospects for the continuation of this program indefinitely are good. The University of Montana has tentatively agreed to make a sufficient number of scholarship grants available to the law school for summer employment to continue and probably expand this program. There will be no difficulty in finding positions in prosecutors' offices for as many students as the available money will finance.

PROBATION AND PAROLE STUDY

Our original plan called for the assignment of students to conduct a study of parole and probation procedures at the federal and state level, particularly as they apply to juveniles of Indian descent. When the request was formulated a situation existed which would have provided an excellent laboratory for such a parallel study. All of the Indian reservations of the Eastern district of the state of Montana were under the exclusive jurisdiction of the federal government. In Western Montana the Flathead Reservation of the Confederated Salish and Kootenai was under the joint jurisdiction of the Federal Government and the state of Montana. It was our belief that two students, one working in each Federal District, would be able to gather materials which would compare and contrast the State and Federal probationary systems.

By the time the project was authorized and begun the Federal Government had withdrawn entirely from law enforcement activities on the Flathead Reservation and, as the summer's work went on, no juvenile cases subject to Federal Control were handled on this reservation at all. For this reason the purpose originally outlined in the project request could not be carried out in the manner originally outlined.

We determined that the pressing problem was really a study of the practicability of probation as an alternative to institutionalization for juvenile offenders living on the reservation. We then began an intensive study of conditions on the Fort Peck Indian Reservation in northeastern Montana which has the highest crime rate of all the Reservations in Montana and the greatest law enforcement problem both among adults and juveniles. One student, as planned, was attached to the Federal Probation and Parole Office headquartered in Billings, Montana. Since the other student employed as a Federal Probation Intern had already been assigned to the Western District

and could not materially assist in this project, a third student, who was part of a parallel National Defender Project was assigned as a full-time observer on the Fort Peck Reservation.

In this way it was possible to study the effects of the Federal Program on the Reservation from the point of view of the Federal Probation Department and its officers and also from the point of view of the probationers themselves, their families, and the society in which they lived.

The Federal Probation Officers in the State of Montana have the highest individual case loads in the United States (address of Attorney General Ramsey Clark at the Ninth Circuit Judicial Conference, New Port Beach, California, July 13-15, 1966). They also work over the largest territorial area. This, in itself, is a formidable obstacle to continuing supervision of probationers and parolees. In addition, a large proportion of the probationers and parolees are Indians who live on scattered reservations in a tribal society wholly different from that of the white man and, in the case of each tribe, different from that of all the other tribes. A single probation officer in Montana must therefore deal with the peculiar difficulties of probationers in various tribal societies as well as the common run of non-Indian criminals who appear in Federal Courts all over the country.

The Indian probationer, particularly the juvenile, poses an extraordinary problem. The reservations are historic pockets of poverty where employment opportunities are few and the types of crime which spring from poverty are wide-spread. In spite of more than a century of so-called assimilation there are large and fundamental differences between the culture of each Indian tribe and the surrounding white culture. The requirements of the white man's law are not often clear to the Indian and the requirements of the probation system are often stranger still. These things provide a whole spectrum of day-to-day problems in probation administration on Indian reservations which exist nowhere else.

The Federal Probation officers try to take the peculiarities of the Indian life into account in administering the probation system and, for this reason, are frequently more lenient about interpretation of probation conditions among Indians than they would otherwise be, but the question remains whether, in the long run, probation is serving a useful purpose in the rehabilitation of the probationers themselves.

Our study indicated that the probation officers are doing the best job possible under the handicaps that exist but improvements certainly could be made if more money and better facilities were available. The success ratio of probation in Indian juvenile cases is very low and this can be attributed directly to the large case loads and the limited manpower available for supervision. Juveniles placed upon probation cannot be given the constant supervision necessary if they are to change their habits of life in the very same environment where they originally got into trouble. On the Fort Peck Reservation, particularly, delinquency and crime are sufficiently wide-spread to constitute a measurable factor in the environment of every member of the tribe. Without constant help and supervision the chance of a probationer overcoming this environmental factor is very small. On this reservation and to some extent on all of the Montana reservations, probation is frequently used because there is simply nothing else to do with the children, especially the very young children, who commit crimes of a magnitude that brings them before the Federal District Court. There are no Federal Juvenile Institutions in Montana and it is very difficult for the Court to commit large numbers of very young Indian boys and girls to youth centers in Colorado and California. The immediate family is the most stable element in present-day Indian society and the one anchor point which offers any semblance of hope and protection to the Indian child. Institutionalization deprives him of this, and although it may remove the child from a poor environment, the cure is often as bad as the disease.

Juvenile first offenders are ordinarily granted probation except in extremely aggregated circumstances. Because constant supervision is not possible this usually means a return of the juvenile to his home with no more change in his situation than a basic instruction on the conditions of probation and the visit from the probation officer whenever his schedule will permit. The student intern who lived on the Fort Peck Reservation noted that the juveniles and their families have come to take probation for granted and expect that probation will be awarded automatically to the first offender and often to the second or third time offender. Its deterrent value, in his opinion, was almost non-existent. The student summarized it this way:

"In short, to the Indian juvenile, only that which influences the course of his daily life has any impression upon him. The word 'probation' has no practical meaning to him, but merely denotes the break that is his due. It doesn't change his future conduct, for his future conduct will only be changed by his next appearance before the judge, which he relates not to the probation, but rather only to his running astray from the law to the extent that he is caught. His good behavior matters not, for it is not observed, and his bad behavior has no influence upon him only to the extent that the number of times he is caught exceeds a certain number."

These facts are, of course, recognized by the Federal District Court, the probation officers, and other persons involved, but no real alternative now exists. A typical case was summarized by the student intern assisting the Federal Probation Officer in Billings who supervises the probationers on the Fort Peck Reservation:

"Under the existing probation system with its large case loads and limited manpower, the success ratio of probation is very low. The case of Steven, a thirteen year old Indian boy from the Fort Peck Reservation, is a case in point. In August of this year Steven was committed under the Youth Correction Act for first degree burglary. Steven had been continually placed on probation for committing various offenses since he was ten years old. Thirteen is a young age to commit a person. However, the Judge had no choice. Steven had not responded to probation and he appeared to have little respect for law and order. If Steven had adequate supervision when he was originally placed on probation he might not be in a correctional institution today.

Another case is that of Michael and Harold, ages ten and eleven respectively, and both Indians from the Fort Peck Reservation. They were charged with first degree burglary along with Steven but because of their youth they received five years probation. Whether they successfully complete their probationary period will depend to a large extent on the adequacy of their supervision during this period.

Many other cases could be mentioned in which probation was used only because of the youth of the offenders. What else can be done with a ten or eleven year old? If he does not develop respect for law and order, he will in time be old enough so the Judge can commit him to one of the Youth Centers. But until the youth is old enough to be committed there is no remedy other than probation."

The Federal Court and probation authorities are not, of course, merely accepting this situation. They have constantly pointed out this difficulty and requested some extension or expansion of federal facilities which would permit some more effective method of dealing with the problem of the Indian juvenile. Recently, after the expenditure of considerable time and effort, the Federal Probation Department in Montana received permission for an experimental placement of a small number of Indian juvenile offenders in the Yellowstone Boy's Ranch, a private Institution near Billings, Montana, for the treatment of pre-delinquents. At this time it appears that this experiment has been quite successful. Excellent results have been achieved with the small number of juveniles sent there who would otherwise almost certainly have continued a career of delinquency on probation on their home reservations. The promise of this experiment is limited, however, since the Yellowstone Boy's Ranch is a very small institution which would never be able to absorb all of the Indian juveniles who might benefit from it even if it were possible to send all these juveniles there.

The summer trainee who worked in the Federal Probation Office in Billings summarized his conclusions as follows:

"In the month of August the Federal District Court in Billings' handled twenty juvenile offenders. (In the age group ten through thirteen, five received probation and two were committed to institutions.) In the age group fourteen through seventeen, seven received probation and six were committed. All of the individuals in each age group who were committed were on probation at the time the offense took place. Probation is an effective remedy only if properly administered. Without close supervision it is a meaningless and ineffective procedure for delaying commitment of a particular individual. Because of their large case loads, the Federal Probation Officers do not have the time to spend counseling and supervising each individual offender. This gap could be filled with Summer legal interns."

The student intern located on the reservation, looking at the probation system from the other side, had these recommendations:

"A proposed solution would go somewhat as follows:

1. Individual contact with the person on probation by some person in authority either with the tribe, local law enforcement personnel, or probation.
2. An intermediary process before an appearance in Federal Court by the individual whereby the Indian person would not be 'guaranteed' probation in any sense of the term.
3. An explanation of what probation is before one is put on probation as well as when one is.
4. A Montana-located alternative to the Colorado and California rehabilitation centers for the juvenile."

It appears to us after the brief period of a single summer's study that a problem of considerable magnitude exists, not only in the field of Indian juvenile probation but in the whole field of probation in Montana. An increase in the number of parole officers would certainly help a great deal. It would permit more constant supervision, particularly of the juvenile offenders who may derive the greatest benefit and the most lasting result from it. Other alternatives to probation should be investigated since the existing alternatives now are hardly practical for handling of Montana's problem.

In connection with the manpower question, the Federal Probation officers found the student assistance quite valuable. Because of the severe winter weather in Montana the largest proportion of field work is done in the summer months. The additional student manpower was very welcome to the overloaded probation and parole officers. The students, of course, benefited greatly by finding out about problems they might never have encountered, and their knowledge has been helpful in informing all of their fellow students. We are now investigating ways to continue this program in cooperation with the Federal Probation Office on a permanent basis because the benefits to both sides are substantial. This limited assistance, however, will not in any sense solve the larger problem of lack of sufficient facilities and manpower in the probation system in Montana, particularly in the field of Indian juvenile correction.

SCHEDULE A

EXPENDITURES FOR PERSONNEL

I. Salaries and Wages

<u>Name</u>	<u>Project Position</u>	<u>No. Months Employed on Project</u>	<u>Average % of Time on Project</u>	<u>Total Amount of Salaries & Wages Paid</u>
1. Larry M. Ellison	Field Supervisor	3 months	50%	\$ 1500.00
2. Joseph F. Daley	Summer Intern	3 months	100%	1050.00
3. Thomas A. Harney	Summer Intern	3 months	100%	1050.00
4. Jack A. Holstrom	Summer Intern	3 months	100%	1050.00
5. Diane G. MacDonald	Summer Intern	3 months	100%	962.50
6. James J. Masar	Summer Intern	3 months	100%	1050.00
7. Christopher Nelson	Summer Intern	3 months	100%	1050.00
8. John R. Prater	Summer Intern	3 months	100%	1050.00
9. Donald L. Schafer	Summer Intern	3 months	100%	1050.00
10. Patrick C. Sweeney	Summer Intern	3 months	100%	1050.00
11. James R. Walsh	Summer Intern	3 months	100%	1050.00
12. Warren C. Wenz	Summer Intern	3 months	100%	1050.00
				\$12,962.50

II. Consultant Fees

None

None

III. Employee Benefits*

<u>Type or Nature</u>	<u>Total Amount Expended for Project Employees</u>
1. Industrial Accident	\$ 26.24
2. T.R.S. (Teacher's Retirement System)	30.00
	\$ 56.24

Total Schedule A: \$13,018.74

*T.R.S. is for Professor Larry M. Ellison, Field Supervisor. We do not break down Industrial Accident into amounts per person due to the small nature of the amounts. These amounts are available for audit.

SCHEDULE B

EXPENDITURES FOR TRAVEL

<u>Student</u> <u>County Attorney</u>	<u>Total</u> <u>Travel</u>	<u>Per Diem</u>	<u>Travel</u>	<u>Total</u> <u>Salary</u>	<u>Total</u> <u>Salary and</u> <u>Travel</u>
Daly, Joe (Kalispell)	\$49.57	\$21.75	\$ 27.82	\$1,200.00	\$1,219.72
Holstrom, Jack (Butte)	20.57	-0-	20.57	1,200.00	1,220.57
MacDonald, Diane (Billings)	60.30	2.50	57.80	1,100.00	1,160.30
Shaffer, Don (Missoula)	-0-	-0-	-0-	1,200.00	1,200.00
Walsh, Jim (Great Falls)	28.22	-0-	28.22	1,200.00	1,228.22
Wenz, Warren, (Helena)	19.72	-0-	19.72	1,200.00	1,219.72
County Attorney Total -	\$178.38	\$24.25	\$154.13	\$7,100.00	\$7,278.38
<u>Ombudsmen</u>					
Harney, Tom (Browning)	\$176.81	\$49.00	\$127.81	\$1,200.00	\$1,376.81
Sweeney, Pat (Hardin)	158.40	40.50	117.90	1,200.00	1,358.40
Ombudsmen Total -	\$335.21	\$89.50	\$245.71	\$2,400.00	\$2,735.21
<u>Probation</u>					
Masar, Jim	\$ 90.30	\$32.50	\$ 57.80	\$1,200.00	\$1,290.30
Prater, John	-0-	-0-	-0-	1,200.00	1,200.00
Probation Total -	\$ 90.30	\$32.50	\$ 57.80	\$2,400.00	\$2,490.30
<u>Police Department</u>					
Nelson, Chris	\$ 60.30	\$ 2.50	\$ 57.80	\$1,200.00	\$1,260.30
Police Department Total	\$ 60.30	\$ 2.50	\$ 57.80	\$1,200.00	\$1,260.30
Students - Total	\$664.19	\$148.75	\$515.44	\$13,100.00	\$13,764.19
<u>Project Directors</u>					
Crowley, William (Law S.)	\$ 60.86	\$ 41.50	\$ 19.36	\$ -0-	\$ 60.86
Elison, Larry (Law School)	243.06	97.00	146.06	1,500.00	1,743.06
Project Directors - Total	\$303.92	\$138.50	\$165.42	\$ 1,500.00	\$ 1,803.92
<u>Project Pilots</u>					
Endsley, Harry	\$ 26.45	\$ 1.25	\$ 25.20	-0-	\$ 26.45
Stone, Albert W.	143.52	18.00	125.52	-0-	143.52
Project Pilots-Total	\$169.97	\$ 19.25	\$150.72	-0-	\$ 169.97
Totals-All Categories	\$1,138.08	\$306.50	\$831.58	\$14,600.00	\$15,738.08

Note: For our travel report we have not included the dates of travel nor the point of origin and destination. The reason for this is that many small trips were taken with various points visited on some trips. All trips taken were between June 15, 1967 and September 15, 1967, and all point of origin and destination were within the state of Montana. Such a breakdown per trip will be made available on request.

SCHEDULE C

EXPENDITURES FOR CONSUMABLE SUPPLIES, COMMUNICATION AND REPRODUCTION

I. Consumable Supplies

<u>Description of Item</u>	<u>Amount</u>
1. Office Supplies	<u>\$15.26</u>
Total Consumable Supplies	\$15.26

II. Communications (Telephone, Postage, Shipping)

<u>Type</u>	<u>Amount</u>
1. Postage	\$ 5.11
2. Telephone	<u>128.62</u>
Total Communications	\$133.73

III. Reproduction (printing, multilith, photographic)

<u>Description of Work</u>	<u>Amount</u>
1. Other	<u>\$ 52.40</u>
Total Reproduction	\$ 52.40
Total Schedule C	\$201.39

SCHEDULE D

OTHER EXPENDITURES

I. Equipment

<u>Description of Item</u>	<u>Cost</u>
None	None
Total Equipment:	None

II. Miscellaneous Expenditures

<u>Description</u>	<u>Amount</u>
1. Montana Tribal Judges Conference	\$516.82
A. Travel -	\$296.37
B. Lodging -	136.00
C. Food -	53.60
D. Contingencies -	<u>30.85</u>
Total Miscellaneous:	\$516.82

III. Indirect Costs

None	Total Indirect Charges:	None
------	-------------------------	------

Total Schedule D:	\$516.82
-------------------	----------