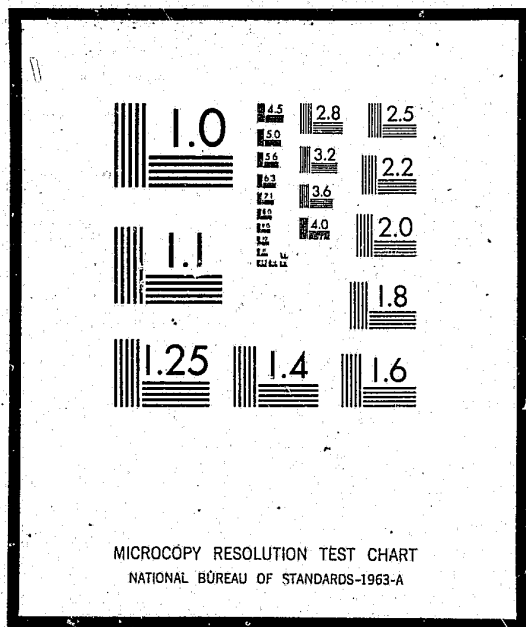


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EVALUATION REPORT OF THE
NATIONAL LEGAL AID AND DEFENDER ASSOCIATION
ON THE
MASSACHUSETTS DEFENDERS COMMITTEE

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APPENDIX A

INTRODUCTION AND OVERVIEW

The Massachusetts Defender Committee (hereafter referred to as MDC) is a statewide, state financed organization created by statute to provide representation (except in capital cases) to criminal defendants who are financially unable to otherwise obtain counsel. MDC presently serves a state with a population of over five and one-half million, of whom over two and one-half million reside in the Boston metropolitan area including the majority of the black and Spanish-speaking residents.

MDC is the successor of the Voluntary Defenders Committee, Inc. organized in 1935 with funds solicited through the organized bar to provide counsel to indigent defendants in Boston and the immediate Boston area. Subsequent financial support was provided by the United Fund of Boston but the Committee's representation, due to its limited resources, essentially was confined to the Superior Courts in the three counties comprising Metropolitan Boston until 1954 when a one man office was opened in Springfield.

In 1958, the Massachusetts Supreme Judicial Court adopted a rule (Rule 10) providing for the assignment of counsel in non-capital felony cases or where "the gravity of the charge or other circumstances" required representation. However, assignment was not required under this rule in District Court proceedings. After 1958, Voluntary Defenders Committee attorneys began to be heavily relied

upon by Superior Court Justices under Rule 10. Upon the adoption of this Rule, the Boston and Springfield United Funds indicated their intention to withdraw their financial support on the grounds that Rule 10 made representation a Commonwealth obligation. In August of 1960, the legislature created the MDC (Section 34D, Ch. 221, Mass. Gen. Laws Ann.) which, in effect, established MDC as the state-wide public defender. Initially, the MDC appointed a Chief Counsel and five full-time attorneys in the Boston office (who appeared in Suffolk, Middlesex and Norfolk counties) and contracted for the services of six other attorneys in the six districts in the Commonwealth outside Boston. The first year appropriation for MDC was \$61,588. By June of 1964, MDC employed 10 attorneys in the Boston office and 12 outside Boston on a contract basis with a budget of about \$100,000. By 1965 MDC was providing representation in all of the Superior Courts and in a few District Courts. In 1965, the National Defender Project of the National Legal Aid and Defender Association provided a 40 month grant of \$340,000 to provide representation to indigents in all District and Municipal Courts in Suffolk County including the Boston Municipal and Juvenile Courts and all juvenile sessions of the District Courts.

In July of 1966, the Office of Economic Opportunity provided a grant of approximately \$396,000, most of which went to expand MDC's services and make them available statewide. Both the NDP and the

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OEO grants terminated on June 30, 1968. Since then, the Commonwealth has been the primary source of MDC's financing. Subsequently, the Massachusetts Supreme Judicial Court amended its Rule 10 to require assignment of counsel in any criminal case in which a sentence of imprisonment may be imposed and also to require the appointment of MDC or a voluntary charitable group, corporation or association or one serving without charge unless exceptional circumstances justify another appointment.

At the time of this evaluation MDC employed 73 staff attorneys. The office is headed by Edgar A. Rimbold, who bears the title Chief Counsel and employs three first Assistant Attorneys, an Executive Secretary, a Chief Appellate Attorney, a Post-Conviction Supervisor and 38 staff attorneys, located in the Boston office. Another 29 attorneys (including two in part-time positions) are employed in the Districts located outside of Boston.

MDC's current budget appropriation from the legislature is \$1,140,000. As a result of a LEAA grant application made by MDC, a \$183,000 defender project in the Roxbury community of Boston began operation in May of 1971. Roxbury is largely inhabited by black and Spanish-speaking residents and has a high incidence of poverty. Entitled Roxbury Defenders, Inc., the project has its own Director, Wallace Sherwood, its own Board of Directors, staff and office and operates essentially independently of the Chief Counsel of MDC.

This evaluation is conducted upon MDC request by the National Legal Aid and Defender Association, which has performed similar studies in Detroit, San Francisco, Las Vegas, Seattle and Philadelphia as well as many evalua-

tions of National Defender Project funded offices. NLADA, in turn, assigned and assembled the evaluation team which conducted the evaluation.

METHODOLOGY

Three of the evaluators, including the evaluation team captain, spent a week in Massachusetts in January 1972 preliminary to the full team evaluation. The full team then conducted the field survey beginning March 6, 1972, and concluding March 10. The evaluation consisted of first-hand observation of the operation of all MDC offices, the Roxbury Defenders Project, observation of court proceedings and the examination of office and court records.

An attempt was made to interview every MDC and Roxbury Defender in addition to a number of the secretarial and clerical personnel. A majority of the MDC Committee and Roxbury Board members were also interviewed.

Personally contacted for their views were members of various courts including the Supreme Judicial Court, various Superior and District Courts. Court observation was conducted in Superior, District, Municipal and Juvenile Court cases in courtrooms in Boston and in the districts. Private lawyers, district attorneys, bar representatives, legal services program attorneys as well as non-lawyer community representatives were also interviewed. Additionally, a number of client interviews were conducted at several jails and penal institutions as well as incident to court observations. In total, including staff, over 200 persons were interviewed.

This evaluation was conducted in accordance with a defender evaluation design prepared by NLADA staff. In the evaluation, the evaluators were guided by:

- (1) the general standards which have been accepted as the basic criteria for defense services which are best illustrated by the Gideon decision and subsequent Supreme Court decisions relating to the right to counsel;
- (2) the NLADA standards for a Defender System and the various American Bar Association standards, particularly the Standards Relating to Providing Defense Services and the Standards Relating to the Defense Function;
- and (3) the obligations of MDC under its enabling statute and applicable court rules.

The members of the evaluation team were:

- Patrick J. Hughes, Jr., former Director of Defender Services, NLADA (Captain)
- Barbara Bowman, Director, Public Defender Service for the District of Columbia
- John Emery, President, Legal Aid and Defender Association of Detroit
- Theodore Gottfried, Director, Illinois Defender Project
- James Gramenos, Supervisor, Appellate Division, Cook County Public Defender's Office (Chicago)
- R. A. Green, Jr., Public Defender, 8th Judicial Circuit, Gainesville, Fla., Past Chairman NLADA Defender Committee
- John Shullenberger, Former Acting Director, National Defender Project of NLADA
- Myzell Sowell, Chief Defender, Legal Aid and Defender Association of Detroit
- Stanley Van Ness, Public Defender of New Jersey
- Frank Wright, Chief, Appeals Division, Defender Association of Philadelphia
- Vincent J. Ziccardi, Chief Defender, Defender Association of Philadelphia

Lower Courts Massachusetts has a total of 73 lower criminal courts in which originate virtually all criminal offenses. Seventy-two of these are District Courts which operate under one Chief Judge and one set of rules as a single system. The other, the Boston Municipal Court, exists separately and independently although it has the same criminal subject matter jurisdiction as the district courts. Each district court has territorial jurisdiction over a certain geographical area, which outside of Boston, may include a number of smaller communities. In Boston, there are eight district courts, each serving a defined portion of the city. District courts have jurisdiction to try all misdemeanors (all offenses not punishable by confinement in the state prison) except libel and ordinance and by-law violations. They also have concurrent jurisdiction over felonies punishable by up to five years imprisonment in the state prison and some few felonies with even greater penalties. However, a district court may not sentence to state prison and as its sentences to houses of correction can be no longer than $2\frac{1}{2}$ years, the effect is to limit the district courts to the imposition of a maximum sentence of $2\frac{1}{2}$ years. The district court also conducts "probable cause" hearings in serious crimes over which the superior courts have original jurisdiction. The district court may also decline jurisdiction and send a case to the Superior Court where a sentence of greater than $2\frac{1}{2}$ years can be imposed. Ordinarily trials in the district courts are non-jury and an appeal is taken to the superior court where the defendant receives a trial de novo rather than review of the decision below. However, in certain counties, a defendant in the district court may choose to be tried by a six-man jury if he waives his right to a trial de novo in the Superior Court.

Superior Courts The superior courts have jurisdiction over all crime and appellate jurisdiction over crimes tried in lower courts. (via trial de novo) The superior court judges generally sit in the 14 counties in the commonwealth in rotation. A Chief Justice heads the court and has rule-making power relative to the practice and business of the court provided such rules are not in conflict with those promulgated by the Supreme Judicial Court. Cases other than de novo district court appeals are commenced in the superior courts by grand jury indictment or upon a finding of probable cause by a lower court judge. Trial is by jury unless a jury is waived.

Supreme Judicial Court The Supreme Judicial Court is primarily an appellate court and is the court of final review in all civil and criminal cases. It is composed of a Chief Justice and six associate justices. It is the only court which can accept a prisoner's petition for writ of error (a very narrow review procedure) initially heard by a single justice and may also hear pleas for bail reduction. The court also may preside over hearings for writs of habeas corpus, mandamus and similar requests for extraordinary relief.

The judges (including a number of "special justices" who sit in the district courts) of all courts are appointed by the Governor for life "during good behavior."

Prosecution Cases are prosecuted by the various local police departments, the state's nine District Attorneys offices and the Attorney General's office. Also a number of law students serve as voluntary prosecutors, under law school training programs.

The vast majority of criminal cases prosecuted in the district courts are prosecuted by police prosecutors, who are ordinarily either the arresting officer or an officer assigned full-time to the court as a prosecutor. District attorneys are elected and prosecute most criminal cases in the superior courts. The Attorney General, who is elected for a four-year term, acts primarily in criminal matters when they involve the Commonwealth, its officials and employees or in matters extending beyond district boundaries or which exceed local prosecutorial capacity.

PERSONNEL

Edgar A. Ribold heads the office and bears the title of Chief Counsel. He and the Executive Secretary are appointed by the MDC Committee (apparently to serve at the Committee's pleasure since there is no statutory provision concerning the duration of such appointments). However, in 1967, the Committee adopted a resolution that the employment of all attorneys terminates each June subject to renewal for another year by Committee vote. Mr. Ribold has been with the office since 1959 when he was employed by its predecessor, Voluntary Defenders. His salary is presently slightly over \$26,000 per annum and it appears that he complies completely with the Committee's understanding that he not engage in private practice.

In the opinion of the evaluators, this office has a serious leadership deficiency which starts at the top. The Chief Counsel displays nothing which can in any sense be called leadership. Except for a few of the older employees, he has virtually no daily contact with any of the staff lawyers (a number, including some who had been there for years, said he had never spoken to them since the day they were hired). Very few of the lawyers or the non-legal personnel had any idea of what he did in the office. Virtually all of the lawyers felt he was inaccessible to them and that he was doing absolutely nothing about

the many serious problems they and the office were confronted with daily. It was a consistent observation that each day he "put in his time," returned to his home outside Boston, and collected his salary. We observed no sense of dedication we believe a defender must have to the clients he represents. His attitude toward them is perhaps best summarized by the phrase "most of them are guilty anyway," which in various forms was made to many of the evaluators. He exhibited no interest in law reform or in cooperating with anyone outside MDC to criticize, change, or improve the criminal justice system or any of its practices. While defender offices in other states have applied for and received funds from various federal sources such as LEAA, Model Cities and HEW, the Chief Counsel did not seem to actively pursue these other avenues to obtain auxiliary funding for his office. He maintains limited or no personal contact with the judiciary, including the Justices of the Supreme Judicial Court and the Chief Justices of the various lower courts. He has made no effort to obtain the support of the private bar, the Massachusetts or Boston Bar Associations, other segments of the legal community or other community groups or associations and he is not active in bar association activities or committees. In summary, he appears to lack the vigor, interest and aggressiveness required of an effective defender and is unable or unwilling to understand and appreciate the responsibilities and goals of an effective

defender office. Notwithstanding that his office is gravely under-financed, he nonetheless must bear a share of the responsibility for its many deficiencies.

Staff Attorneys: Recruiting and Employment Policies

In the Boston office, Neil Colicchio, one of the First Assistant Attorneys, is responsible for supervising the Superior Court Staff Attorneys. Another, Bernard Bradley, is responsible for the supervision of the District Court staff. A third, Robert Fandel, is responsible for assisting both of them. The Appeals Chief, Ruben Goodman and the Post-Conviction supervisor, Walter Powers, head their respective divisions. The heads of MDC offices outside of Boston report directly to the Chief Counsel. No attorney employed unless he has passed the bar. Responsibility for the performance of lawyers must be borne by the chief executive of the office. However, it appears such responsibility has not been very effectively carried out, partly because of office policy or the lack thereof, and partly because of the inadequate funding MDC receives. Some notable deficiencies are:

- 1) The complete lack of any recruiting program in or out-

side of the Commonwealth. Being in Massachusetts, MDC is in a geographical position to draw from a number of very good law schools. Yet no real recruiting is done by the office on the grounds that an attorney can be hired only if (a) the legislature approves additional positions, or (b) an attorney leaves the office. Thus, the office is not in a position to offer a student any assurance he will be employed and has no budget to employ one who hasn't yet been admitted to practice. We agree this is a serious problem which requires additional funding for the office. However, other defender offices in similar circumstances have recruited in the law schools and despite such limitations, have generally been able to employ top students by a variety of means such as predictable turnover, student programs, funding from other sources or by making it clear to the students that they must take a chance upon then being subsequently employed by the office. Also, because of MDC's reputation for lack of interest in improving the criminal justice system and making it more responsive to the needs of the poor, the public service oriented law students go elsewhere, i. e., to legal service programs, law firms which promise pro bono publico work and other governmental jobs.

2) The complete lack of any discernable employment policies. The only consistency evident in employment seems to be a predilection for Suffolk Law School graduates, which appears to be unusual, given the number of excellent law schools accessible to the office. The

evaluators also noted the absence of any black or Spanish-speaking staff lawyers and were advised by the Chief Counsel that because of the low salaries paid by MDC, none had applied. However, the Roxbury Project (where the lawyers do not practice privately and where the salaries are not that much higher) has no problem recruiting minority lawyers. Apparently no real effort has ever been made to employ minority employees (at any level, including clerical and secretarial) and there is a feeling among younger lawyers that the office discourages minority applicants, particularly black lawyers. Also, such applicants are discouraged by MDC's lack of aggressiveness on behalf of its clients and the apparent lack of commitment to them.

3) The Chief Counsel's observation that he does not want "hell-raisers who are going to stir things up" in his office. This apparently refers to lawyers who criticize the criminal justice system or wish to improve it. Such an attitude clearly affects all hiring decisions in that it almost certainly results in the exclusion of aggressive young attorneys and, perhaps, even more significantly, prevents communication to staff lawyers of the goals of an adequate defender office and the responsibilities of the office to the clients it serves.

4) An attitude shared by a number of staff attorneys, especially those who have been there awhile is that their clients were not worthy of receiving any better services than they were getting.

Training and Supervision

Perhaps the most accurate illustration of the lack of training and supervision is the unanimous observation of the evaluators that the office operates more as a loosely associated group of private criminal practitioners similar to an assigned counsel system rather than an organized defender office. Attorneys are assigned to the various courts and, in effect, are forgotten by the office so long as they are in court when they are required to be. Attorneys have no idea what office policy is on any given matter, for they are never told anything. Contact with their supervisors is at best minimal. Their files are never reviewed for either content or disposition. The supervisors do not observe them in court or call upon them for discussion of problems, or exchange ideas, nor is any evaluation of their abilities or the level of their performance ever discussed with them. Newly hired attorneys, if they are fortunate, are given the opportunity to observe in District Court for a day and thereafter are assigned to a court. Except for some scanty introductory material containing essentially a listing by statutory reference of Massachusetts crimes, their elements and ranges of punishment, they receive no further instruction from the office. Because the District Court attorneys receive no training, their file memoranda regarding the District Court proceedings and the evidence presented there, are often inadequate in terms of what is important or relevant to a case

and the criticism of these by the Superior Court lawyers is probably the only form of evaluation their work ever gets. Attorneys newly assigned to the Superior Court often begin representing defendants on guilty pleas but this seems to be more a matter of being assigned the least preferable work rather than programmed training. Some attorneys have set up their own system for answering letters, prepared their own forms for motions and instructions to secretaries but there is no institutionalized way of disseminating these ideas, no office interest in them and, perhaps understandably, no spirit of sharing them. Besides the lack of a training program for new lawyers, there is no attempt to augment the abilities of the staff lawyers by seminars on law or tactics, staff meetings or discussion groups nor has any real attempt been made to develop a program of advising lawyers on recent decisions and new developments and techniques. No attempt is made to promote interchange among the staff. Aid and advice on cases is occasionally given personally by one attorney to another, but no system exists to regularize or formalize such contacts.

Salaries

In the opinion of the evaluators the low salaries paid the MDC attorneys are inexcusable. Six of the Superior Court lawyers, some of whom have been with the office since 1966, receive slightly over \$9,000. Except for two attorneys denoted as second assistant attorneys who have been in the office since 1965 and receive \$16,510 and \$15,636, the

other Superior Court attorneys are paid not more than \$12,932. The District Court lawyers, some of whom have been in the office since 1969, are paid between \$7,935 and \$9,355. By comparison, the minimum salaries in several other public defender offices are:

San Francisco:

<u>Position</u>	<u>Salary</u>
Chief Attorney	\$ 14,698
Senior Attorney	17,449
Principal Attorney	21,195
Head Attorney	22,794
Chief Attorney	31,165

Los Angeles:

<u>Position</u>	<u>Salary</u>
Deputy I	\$14,436
Deputy II	19,524
Deputy III	24,324
Deputy IV	27,156
Head Deputy	28,692
Chief Deputy	30,276

In Philadelphia, the beginning salaries for new lawyers exceeds \$10,000 and in Cook County (Chicago) it is \$10,800.

The MDC salaries are also lower than those paid in Boston legal service programs and to District Attorneys. These salaries must be upgraded, not only to attract young lawyers but to provide a professional wage to the office lawyers and encourage career employment with the office. Nor can the present situation of permitting the lawyers to practice privately, be continued. Obviously, with the salary levels as they are, most lawyers are forced to supplement their salaries with

outside work. However, with their MDC caseload, we see no conceivable way they can discharge their responsibilities to their MDC clients and also engage in private practice. It is unfair to the defender office clients and to the attorneys to create a situation where such choices must be made. Office positions should be full-time with adequate and competitive compensation.

Caseloads

The MDC statistics are intended to reflect the total number of defendants represented by the office in the various courts as well as the number and nature of the offenses charged. For each defendant at the time MDC is appointed, a new case is opened. If later in the year the defendant is arrested, and charged with another offense, he would ordinarily be counted as another defendant. Appeals to the Supreme Judicial Court and post-conviction cases are counted separately. Although such statistics are not (as in any defender office evaluated) a reliable measure of the quality or quantity of the services provided to clients, some conclusions can be drawn from them. The obvious one, confirmed by our evaluation, is that the caseloads are so high as to preclude any meaningful representation. MDC statistics show that for the year ended June 30, 1971, the annual caseload per attorney in the Boston office was 172 in Suffolk County, 188 in Norfolk and 297 in Middlesex. For the Boston district court attorneys, the caseload was 876 cases per year. In the offices outside Boston, the average caseload

was 597 cases, with anywhere from as low as seven percent to as high as 18 percent of those being Superior Court cases. For the fiscal year ended June 30, 1972, the office, based on caseload growth over the last six years estimates an approximate 20% growth in the number of defendants to whom it is appointed. The deficiencies which the evaluators found in the representation provided because of these caseloads are noted elsewhere in the report, particularly in the sections dealing with Services to Clients. Unless the caseload problem is resolved, MDC will only be a participant in a continuing injustice perpetrated on its clients and in effect, will continue to keep the calendars moving at the expense of adequate representation. The office also has statistics broken down on a monthly basis showing a breakdown of cases and charges disposed of showing how the matter was disposed, whether it was favorable or unfavorable, whether the defendant was discharged or convicted, and if convicted, committed or released and similar information. However, since these statistics were not currently up-to-date at the time of the evaluation, they were not available for use in the evaluation. Such statistics should be kept for they can provide guidance to the office and others, particularly if they are correlated to the court's statistics. They can also be used to compare results with those obtained by private counsel, which if materially variant, may be an indication that the quality of representation provided is something less than it should be.

Morale

The morale of the staff attorneys is very low for a number of reasons:

1) The caseloads which virtually preclude adequate preparation and seriously undermine their ability to professionally represent their clients.

2) Their low salaries which often make it economically necessary to develop a private practice with the frustration resulting from the knowledge that their MDC workload will not permit professionalism in either their MDC or their private representation. Considerable resentment exists with respect to the salaries paid to the Roxbury Defender Project Attorneys. In the opinion of the MDC lawyers, the Roxbury lawyers, although less experienced, are receiving substantially higher salaries for the same work that they are doing. This is a continuing source of serious irritation in the MDC office. Furthermore, there is a feeling that no one, neither the Chief Counsel nor the Committee, is doing anything to obtain the funds for higher salaries, that the office has wholly failed to obtain the necessary legislative support for its financial requirements, and that it is presently unable or unwilling to change the situation.

3) Another serious morale factor is an almost inflexible hierarchical seniority system wherein District Court attorneys, regardless of ability, move up to Superior Court assignments only when a

Superior Court attorney leaves. The vacancy is then filled by the District Court lawyer with the most seniority. The Superior Court clearly offers the most opportunities for the lawyers to develop and demonstrate skilled trial advocacy and could provide prime inducements for attracting and keeping staff lawyers. Understandably, those lawyers who believe they have the ability to be in the Superior Courts, resent remaining in the District Court until "their turn" finally comes, which may be years, and further resent an advancement policy whose sole criterion is seniority. Also among the Superior Court lawyers there is a belief by the younger attorneys that a small number of older attorneys receive far fewer assigned cases while the younger attorneys are being swamped with crushing caseloads.

4) Another factor detrimental to morale and one which certainly inhibits staff lawyers from considering the office as a career is the lack of salary positions to pay adequate salaries to the experienced lawyers. Salaries of \$12,000 and \$13,000 are simply not sufficient pay for qualified attorneys who have been in the office for five to six years. A merit raise program must be instituted to provide more positions and at significantly increased salaries, to lawyers who wish to spend a number of years with the office. Also, the office grades should either not be tied in with state budget positions, equivalents and merit raises, or should be upgraded to appropriate pay rate positions.

5) Many of the attorneys, particularly the younger attorneys,

regard MDC as a drifting, leaderless organization with no apparent decision-making process and no stated policy in any area. The absence of staff training and supervision makes them feel they are isolated, left to their own devices and totally without guidance or support. The absence of any real vigor in leadership and the failure of the office to appreciate its responsibilities as a defender office contribute to that isolation. Furthermore, all felt that no significant attempts had ever been made to communicate to the judiciary, the bar, the legal community or the community in general the problems and needs of the office.

6) Few attorneys expect to receive any strong backing from their supervisors or from the Chief Counsel when they take positions in opposition to the judges before whom they appear. Certainly, a staff lawyer may not always be correct in such situations, but he must believe that if he is, the office will back him up. No such confidence is manifested by the MDC lawyers.

7) A feeling that generally the supervisory attorneys and Chief Counsel were doing nothing at all productive was prevalent among staff attorneys. Although Neil Colicchio was respected for his trial ability and his willingness to give advice, if asked, none of the attorneys believed he or the other supervisors exercised any supervisory functions at all. As a result, many of the attorneys have become almost impervious to the needs of their individual clients and further have become so inured with things "as they are"

and so much a part of the system that they are incapable of seeing practices that may prejudice their clients. Another result is that many are just marking time getting whatever experience they can while waiting to obtain employment elsewhere such as in a District Attorney's office where the caseloads are lighter and thus part-time practice is less difficult. And the fact that MDC lawyers often leave to become District Attorneys has not gone unnoticed by MDC clients which simply furthers the image that MDC is another arm of the Commonwealth uninterested in offering a genuine defense effort.

RECOMMENDATIONS

THE COMMITTEE SHOULD ASSESS THE EFFECTIVENESS AND PERFORMANCE OF THE CHIEF COUNSEL AND DETERMINE WHETHER HE SHOULD BE REPLACED. THE RESPONSIBILITY FOR EMPLOYMENT AND TERMINATION OF ALL OTHER STAFF PERSONNEL, INCLUDING THE EXECUTIVE SECRETARY, SHOULD BE THAT OF THE CHIEF COUNSEL.

A RECRUITMENT PROGRAM TO ATTRACT PROSPECTIVE LAW SCHOOL GRADUATES SHOULD BE INSTITUTED. SUCH PLAN SHOULD OFFER A COMMITMENT OF A POSITION TO THE STUDENTS PRIOR TO THEIR GRADUATION TO INSURE THAT COMPETITION FROM OTHERS IS MET. AN ACTIVE ATTEMPT SHOULD BE MADE TO RECRUIT MINORITY EMPLOYEES, PARTICULARLY ON THE LEGAL STAFF, TO AT LEAST ACHIEVE A RATIO OF APPROXIMATELY

THEIR REPRESENTATION IN THE COMMUNITY POPULATION.

THOROUGH AND EFFECTIVE TRAINING AND SUPERVISION PROGRAMS FOR THE PROFESSIONAL AND CLERICAL STAFF MUST BE INSTITUTED. THESE INCLUDE THE PREPARATION AND DISTRIBUTION OF AN OFFICE MANUAL, A FORMAL TRAINING PROGRAM FOR NEW LAWYERS, PREPARATION OF MATERIALS AND INSTITUTION OF CONFERENCES FOR LAWYERS RELATING TO RECENT LEGAL DEVELOPMENTS, PARTICIPATION WITH SENIOR ATTORNEYS IN MAJOR AND JURY TRIALS, STRUCTURED GUIDANCE OF THE YOUNGER ATTORNEYS BY SENIOR ATTORNEYS, DEVELOPMENT OF GUIDELINES FOR AND INSTRUCTIONS IN THE USE OF PROBABLE CAUSE HEARINGS AND INSTITUTION OF A PROCEDURE FOR REGULAR QUARTERLY STAFF EVALUATORS BY THEIR SUPERVISORS. JUDGES, MEMBERS OF THE PRIVATE BAR, LAW ENFORCEMENT PROFESSIONALS, INCLUDING CORRECTIONAL OFFICERS, PROSECUTORS AND OTHERS WITH CRIMINAL JUSTICE TRAINING SHOULD BE INVITED TO PARTICIPATE IN ANY FORMALIZED ATTORNEY TRAINING.

THE RATIO OF ATTORNEY SUPERVISORS SHOULD NOT BE LESS THAN ONE SUPERVISOR FOR EVERY EIGHT ATTORNEYS.

THE SALARIES OF THE STAFF LAWYERS MUST BE INCREASED TO A LEVEL SUFFICIENT TO PAY A PROFESSIONAL LIVING WAGE. WITHOUT THE NECESSITY OF THE LAWYER ENGAGING IN PRIVATE

PRACTICE. STARTING SALARIES FOR ATTORNEYS SHOULD BE OFFERED AT A LEVEL ROUGHLY COMPETITIVE WITH THOSE OFFERED BY LAW FIRMS AND AT LEAST EQUIVALENT TO THOSE OFFERED BY LEGAL SERVICE PROGRAMS AND THE DISTRICT ATTORNEY'S OFFICE.

THE PRIVATE PRACTICE OF LAW BY ALL STAFF ATTORNEYS SHOULD BE PROHIBITED.

THE DISPARITY BETWEEN THE SALARIES PAID TO MDC AND ROXBURY LAWYERS MUST BE ELIMINATED AND THE STAFFS OF BOTH MUST RECEIVE EQUIVALENT SALARIES BASED UPON EQUIVALENT COMPETENCY, ABILITY AND EXPERIENCE.

PROVISION SHOULD BE MADE, PERHAPS BY ROTATING ASSIGNMENTS, TO INSURE THAT THE YOUNGER ATTORNEYS ABILITY ARE GIVEN THE OPPORTUNITY TO TRY AND PARTICIPATE IN THE TRIAL OF SUPERIOR COURT CASES WITH SUPERVISION PROVIDED BY THE SUPERVISORS AND EXPERIENCED TRIAL ATTORNEYS.

RECOGNIZED ATTORNEY ADVANCEMENT PATTERNS BASED ON ABILITY MUST BE ESTABLISHED AND ACCURATE AND FAIR PROCEDURES FOR EVALUATING THE ATTORNEYS' PERFORMANCE AND FOR INFORMING THEM OF THEIR PROGRESS AND PROSPECTS FOR ADVANCEMENT MUST BE INSTITUTED.

MORE POSITIONS AT SIGNIFICANTLY INCREASED SALARIES MUST BE PROVIDED TO RETAIN EXPERIENCED LAWYERS AND ENCOURAGE THEIR PROFESSIONAL GROWTH.

THE PRESENT METHOD OF KEEPING CASE AND CASELOAD STATISTICS SHOULD BE RE-EXAMINED. THE CHIEF COUNSEL SHOULD OBTAIN INFORMATION FROM AND FORMS USED BY OTHER DEFENDER OFFICES IN GATHERING AND KEEPING STATISTICS AS BACKGROUND FOR THE ESTABLISHMENT OF SUCH PROCEDURES. SUCH STATISTICS SHOULD BE COMPILED ON AT LEAST A MONTHLY BASIS AND SHOULD BE KEPT CURRENT. LIAISON SHOULD ALSO BE HAD WITH THE VARIOUS COURT CLERKS AND CHIEF JUSTICES AND ADMINISTRATORS TO SEE IF BASES FOR UNIFORM COLLECTING AND REPORTING OF STATISTICS CAN BE ACCOMPLISHED AND ALSO TO PREPARE FOR THE DAY WHEN THE COURT STATISTICS WILL BE FULLY COMPUTERIZED SO THAT MDC CAN OBTAIN FOR ITS USE THE BENEFIT OF SUCH COMPUTERIZATION. SUCH STATISTICS WILL ALSO BE USEFUL IN DETERMINING HOW MUCH OF THE CRIMINAL CASELOAD IS BORNE BY MDC IN THE VARIOUS COURTS AND HOW MUCH BY OTHER COUNSEL.

Administrative Personnel

The Executive Secretary, who, by statute, is hired by and is directly responsible to the Committee and not the Chief Counsel, and the Executive Assistant generally provide what little supervision is given to the clerical and stenographic employees. However, the Executive Assistant is apparently the one responsible for supervision of these employees on a daily basis. Again, the lack of leadership and real purpose and direction which the office displays, manifests itself among these employees. They exhibit no sense of pride in the office or in the work it does.

As was previously pointed out, the physical surroundings do not make them feel as if they were working for a professional law office. Many believe that the Chief Counsel and several of the Supervisory attorneys do nothing "except drink coffee" and have no idea what the executives do. The supervisory personnel seldom ask for, or solicit, suggestions as to how improvements could be made in their job or in office administrative procedures, file and record keeping. Although many of them have criticisms of the office administration as it affects them, they are very reluctant to discuss them with the supervisory personnel. Also other than a brief period of supervision when they first started on the job, they received no orientation about the office or the importance of their work to it and its clients. Additionally, there are seldom any staff meetings held for them to discuss the office, their work or their problems with a supervisor.

The clerical staff is not used to the greatest advantage. Each secretary is ordinarily responsible to do work for three attorneys. Since the attorneys are frequently in court until three p. m. or after, the lack of dictating equipment results in competing claims for the same secretary in the late afternoon hours and in the morning hours may result in the secretary having little to do. Because the work load per attorney varies, some secretaries are much busier than others. However, when work is shifted from one secretary to another, resentment is caused because the other feels she is doing someone else's work. The office has taken no steps to resolve the problem and no supervision is exercised to attempt to minimize its arising.

Notwithstanding such criticism, it is clear that this office does not have adequate administrative personnel to operate adequately. At the very least, each Superior Court lawyer should have available half-time the services of a secretary-stenographer (i. e., 1 for each 2 lawyers). With adequate dictating equipment, the present ratio of one secretary for each District Court lawyer might be maintained so long as there are at least 4 secretaries available who would work for attorneys whose secretaries are ill, on vacation, and would also handle overflows on a regular basis. Also some supervisory positions must be established to see that the secretaries' work is being done and coordinated.

The evaluators also have serious reservations about the hiring practices for clerical and secretarial employees, especially as no black or Spanish-speaking employees are employed in the Boston office.

We believe the office must make an effort to recruit among minorities.

We are also advised that in the past, such irrelevant personal considerations as the fact that a single secretarial applicant was not living with her parents was used as a basis for not employing her. These kinds of personal considerations should, of course, have no bearing on a person's employment; retention or advancement in the office.

Although the secretarial and clerical initial salaries are somewhat lower than they should be, a more serious problem is that they are in effect considered commonwealth employees and thus limited by budget and executive decision to minimum merit raises and limited periodic salary increases. The office must have the flexibility to establish its own administrative, clerical and secretarial positions with salaries which reflect the skills and responsibility needed to do these jobs and also provide for merit raises as well as earned increments. The office should also distribute an office procedure manual for these employees setting forth office hours, holidays, vacation and annual leave policies, a simple table of organization and similar material.

RECOMMENDATION

THE EXECUTIVE SECRETARY SHOULD NOT BE APPOINTED BY THE COMMITTEE. HE SHOULD BE HIRED BY AND DIRECTLY RESPONSIBLE TO THE CHIEF COUNSEL AND AN EFFORT SHOULD BE MADE TO AMEND SECTION 34D TO ACCOMPLISH THIS.

EFFORTS MUST BE MADE TO RECRUIT MINORITY SUPERVISORY, SECRETARIAL AND CLERICAL PERSONNEL.

STEPS MUST BE TAKEN TO ENCOURAGE AND INSURE THE FREE DISCUSSION BY THE ADMINISTRATIVE PERSONNEL OF THEIR WORK AND THEIR VIEWS ON PERSONNEL MANAGEMENT, SALARY LEVELS, ADVANCEMENT IN THE OFFICE. FURTHERMORE, ENCOURAGEMENT MUST BE PROVIDED TO THEM FOR SUGGESTIONS REGARDING IMPROVEMENTS IN OFFICE PROCEDURES, FILING AND RECORD KEEPING.

ADDITIONAL CLERICAL AND SECRETARIAL STAFF INCLUDING SUPERVISORY STAFF ARE NEEDED. THE RATIO OF ONE SECRETARY TO EVERY TWO LAWYERS AND ONE SECRETARY FOR EACH ADMINISTRATOR IS RECOMMENDED.

A MANUAL SHOULD BE PREPARED FOR ALL ADMINISTRATIVE PERSONNEL DETAILING OFFICE POLICIES REGARDING SUCH MATTERS AS COMPENSATION, PAY RAISES, OFFICE HOURS, SICK AND VACATION PAY.

RESPONSIBILITY FOR SUPERVISION OF THE DAY TO DAY ACTIVITIES OF CLERICAL AND SECRETARIAL PERSONNEL MUST BE PROVIDED. FORMAL TRAINING OF NON-LEGAL PERSONNEL ALSO MUST BE INSTITUTED AND REGULAR STAFF MEETINGS SCHEDULED. SUCH MEETINGS SHOULD PERIODICALLY INCLUDE THE LAWYERS AND LEGAL SUPERVISORY PERSONNEL WHOSE EFFORTS ARE SUPPORTED BY THE SECRETARIAL AND CLERICAL WORK.

THE OFFICE MUST HAVE THE BUDGETARY FLEXIBILITY TO ESTABLISH ADMINISTRATIVE CLERICAL AND SECRETARIAL POSITIONS WITH SALARIES APPROPRIATE TO THE SKILL REQUIRED AND THE RESPONSIBILITY ASSUMED. SUCH POSITIONS MUST ALSO PROVIDE FOR MERIT RAISES AS WELL AS ANNUAL INCREMENTS.

INVESTIGATORS

MDC employs four investigators. One is assigned to the Boston office and the other three to the New Bedford, Pittsfield and Worcester offices. Two are paid approximately \$9,000 per year and the others approximately \$7,500. The investigator in Boston spends between 80% and 90% of his time serving process. However, even if this were not the case, one investigator cannot possibly provide the investigative services required for effective representation in the courts served by the Boston office. The evaluators believe that a standard of one investigator for three attorneys is a minimal one for a defender office. (For example, the Defender Association of Philadelphia employs approximately 20 investigators to serve its about 60 lawyers). It also accounts for the fact that the evaluators found that in both the District and Superior Courts, no investigation except that which the attorney found the time to do himself, was generally done and defense witnesses were seldom procured for trial. Furthermore, it appears that the office feels the majority of cases need not be investigated because they are not considered "triable" since they will end up in bargained pleas. Additionally, the investigator in Boston does not appear to be qualified as a defense investigator by background or attitude. He does not attempt to interview Commonwealth witnesses because he feels they are unwilling to talk to someone from the defense and he seldom interviews the police officers regarding the case. He will not enter various areas of the city, does not have a desk in the office and

is unacquainted with many of the lawyers in the office. Furthermore, it appears he has no formal or informal liaison or communication with the prosecutors or law enforcement authorities. Unless adequate investigative services, are provided, MDC will continue to be unable to give its clients the quality of representation required under the ABA and NLADA standards.

RECOMMENDATIONS

ADDITIONAL QUALIFIED INVESTIGATORS MUST BE EMPLOYED AND MUST INCLUDE BLACK AND SPANISH-SPEAKING PERSONNEL. ONE INVESTIGATOR SHOULD BE EMPLOYED FOR EACH THREE TRIAL ATTORNEYS. THEIR SALARIES SHOULD BE COMPARABLE TO THOSE PAID POLICE OFFICERS WITH DETECTIVE STATUS WITH APPROPRIATE ANNUAL AND MERIT INCREASES.

UPON THE EMPLOYMENT OF AN INVESTIGATIVE STAFF, AN ABLE AND COMPETENT CHIEF INVESTIGATOR MUST BE EMPLOYED WHO WILL DEFINE INTERVIEWING AND INVESTIGATIVE RESPONSIBILITIES AND SET TRAINING GOALS FOR HIS STAFF.

AN INVESTIGATOR'S MANUAL SHOULD BE DEVELOPED AND MADE AVAILABLE TO EACH MEMBER OF THE INVESTIGATIVE STAFF.

THE INVESTIGATIVE STAFF MUST BE GIVEN A PLACE TO WORK WITH ACCESS TO THE ATTORNEYS AND THE FILES AND PROVIDED APPROPRIATE EQUIPMENT SUCH AS TAPE RECORDERS, CAMERAS, DICTATING EQUIPMENT AND THE NECESSARY CLERICAL ASSISTANCE.

STUDENTS AND PARA-PROFESSIONALS

MDC uses a large number of students to conduct client interviews.

For the most part, these students are undergraduates and not law students.

(Unfortunately, particularly in the district courts, because of the staff attorneys' caseloads, the student interview is frequently the only contact the office has with the client until his case comes up in court and often, even then, the only contact is a hurried conversation before the case is called.) Generally, these students are brought into the office in a large group, given a brief orientation at which the filling out of the interview fact sheet is explained to them. They are then assigned to interview clients. However, no real instructions are given them as to how to take an interview, what facts were relevant, the significance of the circumstances of the arrest, the significance of conversation with and statements made by the defendant to the police and similar matters.*

It also was the students' experience that no one ever reviewed their interviews before they were placed in the files and none had ever been supervised or criticized concerning their interviews. Also, none had ever received any comment, criticism or instruction by the district attorneys concerning the interviews, their content or inadequacies.

*A fairly comprehensive and well prepared memorandum providing the students with information about and instructions for conducting such interviews was supplied to the evaluators who were advised that henceforth it would be distributed to them as part of their orientation.

Although there is a student rule in Massachusetts which permits a law student to try cases in the District Courts with supervision, the only court in which the evaluators found such use being made was in Cambridge, under a Harvard Law School student program and again, because of the MDC attorneys' caseload, the MDC attorneys there had no time to give the students any supervision either in or out of court although they tried to be helpful by answering questions for the students. However, MDC provided no other regular supervision of the students or the program.

A small number of law students are also employed under a work-study program wherein the federal government pays 80% and MDC 20% of their part-time salaries (which are less than \$3.00 per hour). * Generally these approximately 3-5 students have been used by the post-conviction division to visit prisons, and interview prisoners seeking legal assistance with respect to their conviction and by the office to conduct interviews in the Boston office and at the jail facilities in the Boston area. Again, it appears that frequently these interviews are the only personal contact MDC has with convicted prisoners and with respect to clients awaiting trial, are their only contacts till they get to court. Also, because the student undergraduate interviewers generally work for the office only when school is not in session (i. e. during the summer recess, between quarters, etc.) frequently the work-study students end up with

*In this regard, it should be noted that MDC has applied as of March 10, 1972, to the Massachusetts Department of Community Affairs Public Service Intern Program for funding of eight legal intern positions for law students who would do essentially what the present interns do during the summer and part-time during the school year.

the responsibility for interviewing clients prior to trial. Because these students do not come in every day and work limited hours, the scheduling of clients for interviews is difficult. Another problem with the students interviewing clients is that because of the lack of supervision in the office, the attorneys can, and often do, shunt off the interviews scheduled for them to the students even though the attorneys are in the office.

When it was receiving OEO funds MDC also had a social services program consisting of a director, a full-time psychiatric social worker and several other workers. The program was essentially an offender rehabilitation program whose object was to provide the courts with alternatives to prosecution and/or commitment of MDC clients. Although the program was aimed at serving MDC clients in the courts within the Boston area, it essentially was used in juvenile court cases. Since the termination of OEO funds, the office has no similar program, or other defender rehabilitation or social services program.

RECOMMENDATIONS

STUDENT INTERVIEWS MUST NOT BE USED AS A SUBSTITUTE FOR THE CLIENT INTERVIEW BY THE STAFF LAWYER.

THE OFFICE, WITH THE COOPERATION OF ALL OF THE VARIOUS LAW SCHOOLS IN THE AREA, SHOULD ESTABLISH A SUPERVISED AND COMPREHENSIVE CLINICAL LAW STUDENT PROGRAM. SUCH A PROGRAM SHOULD ATTEMPT TO INVOLVE STUDENTS IN THE CRIMINAL PROCESS AT EVERY LEVEL FROM ARREST THROUGH TRIAL AND APPEAL AND SHOULD ATTEMPT TO PLACE STUDENTS IN EVERY MDC OFFICE.

AN OFFENDER-REHABILITATION PROGRAM SIMILAR TO THAT WHICH WAS PREVIOUSLY FUNDED BY OEO BUT EXTENDING ITS SERVICES THROUGHOUT THE STATE TO DISTRICT AND SUPERIOR COURT CLIENTS IN ADDITION TO JUVENILES SHOULD BE ESTABLISHED. THIS MIGHT BE DONE AT REDUCED COST BY COOPERATION WITH THE COURTS, THE PROSECUTORS, THE PROBATION OFFICES AND THE SCHOOLS OF THE SOCIAL SCIENCES, MEDICINE AND PSYCHIATRY LOCATED IN THE AREA AND THEIR STUDENTS.

EXCEPT FOR OBTAINING AND VERIFYING INFORMATION FOR FILE KEEPING AND BAIL PURPOSES OR IN WORK IN AN OFFENDER-REHABILITATION PROGRAM, UNDERGRADUATE OR OTHER STUDENTS WHO ARE NOT LAW STUDENTS SHOULD NOT BE USED FOR CLIENT INTERVIEWS.

File Flow

A file is established in the MDC office at the time the Massachusetts Defender is appointed by the court to represent a defendant, which is ordinarily the day after arrest. If the Defender in the District Court picks up the client's name and address and returns it to the office that day, work will start on establishing the file the next day. Two clerks are responsible for establishing a file and for typing file cards. The file jacket itself is a blank letter-sized folder. The name of the client is put on the file and the file is numbered. If the client has had a prior case or cases with the office, his new file number is put on his file card. If he has no prior case, a new file card is made up. However, the file cards frequently do not show the nature of the charges made against the defendant, whether the defendant is in custody or on bail, whether the defendant has any open charges other than the charges for which the appointment has been made, the existence of detainers, or the client's last address. Therefore, in many cases once a client's file is assigned to an attorney, no one in the office other than that attorney has access to identifying information about that client.

If the client is out on bail, the clerks establishing the file will send him a letter, setting a time and date for an interview in the office. Usually this letter is sent two to three days after the appointment is made and five to seven days before the date of the hearing in the District Court. If a client is in jail in lieu of bail, his name is placed on a prison interview list which is turned over to the students who do the prison interviewing for the Defender Committee.

An attempt is made to schedule the client for an interview at a time and day when the attorney who is to provide the representation may be available for an interview. The bail client may or may not come in to the office for an interview on the time and date scheduled.

If the client does not come in for interview a second letter is sent. If there is no response, the MDC pursuant to an agreement with the court sends a letter to the District Attorney notifying him of the client's failure to appear and the District Attorney then ordinarily has a warrant issued.

But even when the client does appear for an interview, he is frequently not seen by the attorney who is to provide the representation because he is busy in court or otherwise unavailable. Instead he is seen by an undergraduate college student who takes the interview. These interviews are generally thought to be of little value by the attorneys. No other investigation is done for district court cases. Sometimes there is no interview of the client at all prior to the day of hearing in the district court. Thus the district court attorney frequently has merely a file jacket with no interview or investigation in it.

The Superior Court preparation appears to be a little better. Once a case is held for the Superior Court it is assigned to an individual attorney who is totally responsible for it.

Usually the file contains a write-up (done by a District Court attorney) of what occurred at the probable cause hearing in the District Court. These write-ups are necessary as there is no court stenographer assigned to the District Court. However because of the lack of supervision over the District Court attorneys' work, each varies greatly as to the information it contains and the usefulness of the information to the Superior Court lawyer. The file is then supplemented by a reinterview of the client by the Superior Court attorney and because of the lack of investigative staff and other supplementary services, very little else. Upon the conclusion of the proceeding by a plea of guilty, dismissal or finding of not guilty, the file is closed. On a plea of guilty, it is closed after sentencing. Upon a conviction after a trial, the file should contain a signed copy of a form the office has prepared advising the client of his appellate rights and how he must exercise them (by notifying the MDC office within a stated period of time in writing) signed by the attorney assigned to the case and the client. It appeared however, that Superior Court files of defendants convicted after a trial frequently did not have such executed forms in the file.

The file system reflects the lack of effective supervision.

No one appears to be responsible for ensuring that the information resulting from the client interview and District Court hearings is adequately recorded and retained. Furthermore, there seems to be no concern about their adequacy or any interest in reviewing, updating or modernizing the file system used.

RECOMMENDATIONS

THE OFFICE FILE AND RECORD KEEPING PROCEDURES SHOULD BE COMPLETELY RE-EXAMINED.

PROCEDURES AND SAMPLES OF FORMS AND RECORDS UTILIZED BY OTHER DEFENDER OFFICES SHOULD BE OBTAINED AND A SIMPLE BUT COMPREHENSIVE AND ACCURATE RECORD AND FILE SYSTEM SHOULD BE DESIGNED. SUCH A SYSTEM SHOULD:

- 1) INSURE THAT EACH FILE CONTAINS A PROCEDURAL HISTORY OUTLINING EACH STAGE OF THE CRIMINAL PROCESS THROUGH WHICH THE CASE HAS PASSED IN A FORM WHICH CAN BE RELATED TO A MASTER STATISTICAL CHART MAINTAINED ON A MONTHLY BASIS.
- 2) INSURE THAT EACH FILE IS HANDLED BY AS FEW PERSONS AS IS NECESSARY, SECURES THE PRIVACY OF CLIENT COMMUNICATIONS AND IS KEPT IN AN ASSIGNED PLACE ACCESSIBLE TO THOSE WHO MUST HAVE IT.
- 3) INSURE THAT ALL PRE-TRIAL PREPARATION IS CONCLUDED AND A COMPLETE FILE IS AVAILABLE FOR TRIAL OR DISPOSITION.
- 4) ELIMINATES ALL UNNECESSARY PAPER WORK.
- 5) INSURE THAT INDEPENDENT OF THE FILE SUFFICIENT

INFORMATION IS OTHERWISE AVAILABLE TO LOCATE THE CLIENT AND ASCERTAIN THE PRESENT STATUS OF HIS CASE.

6) INSURE THAT THE CLIENT'S FILE CONTAINS DOCUMENTATION OF THE CLIENT'S EXERCISE OR WAIVER OF SUCH RIGHTS AS TRIAL DE NOVO, TRIAL BY JURY AND APPEAL FROM SENTENCE OR VERDICT.

7) INSURES THAT ALL APPEALS ARE TIMELY PERFECTED AND THE FILE FORWARDED TO THE APPROPRIATE DIVISION FOR ACTION ON THE APPEAL.

THE PRACTICE OF NOTIFYING THE DISTRICT ATTORNEY'S OFFICE OF A CLIENT'S FAILURE TO APPEAR FOR INTERVIEW SHOULD BE RE-EVALUATED AND ALTERNATIVE SOLUTIONS TO THE PROBLEM EXPLORED WITH THE COURTS AND THE DISTRICT ATTORNEYS. SUCH A PRACTICE CLEARLY ERODES THE CONFIDENCE OF THE CLIENT IN HIS LAWYER AND SERIOUSLY UNDERMINES THE ATTORNEY-CLIENT RELATIONSHIP.

OFFICE AND FACILITIES

The headquarters of MDC is the Boston office which also serves as the office for all the staff attorneys who serve in the superior and district courts located in Suffolk, Middlesex and Norfolk counties.

The other offices are located in Salem, Worcester, Springfield, New Bedford, Pittsfield and Whitman. Also in Ashfield and Easthampton,

MDC has part-time attorneys who work out of their private offices.***

Physical Facilities

The physical facilities of the MDC Boston office are located in a commercial office building and are woefully deficient in terms of professional legal atmosphere. Although the office space occupied by MDC is the result of a relatively recent move from another office building, it does not appear that any planning was done to improve the atmosphere or project a professional appearance. The office is listed on the building directory in the lobby of the building, but there is no sign or other information which can be seen in the lobby or from the street outside the lobby indicating its location in the building. The reception area reminds one of a large city unemployment compensation or welfare office. It is painted a drab color and furnished with a bench

***The branch offices, including their physical facilities, are discussed separately in a subsequent section of this report

and various chairs of miscellaneous description (apparently well-aged) lined up against the walls for the use of clients and others waiting to be seen by someone in the office. A receptionist sits behind an open glass window to greet those who enter, directs them to be seated and arranges for them to be seen. The interior of the office also has the look of a public welfare or similar type public office rather than a law office. Essentially, the interior consists of one large room (also painted in drab colors) with a number of smaller rooms on each of its two sides. Most of these rooms serve as staff attorneys' offices. Except for the offices occupied by Mr. Rimbold and Mr. Bradley, two or more attorneys are quartered in each office and the two attorneys' last names are handwritten on cardboard signs on the office doors. Most of these rooms are bare-walled and of such size as to be obviously overcrowded with their furnishings of two desks and two chairs. Thus, the attorneys' offices neither ensure privacy nor project a professional image to the clients. Also, there are no client interview rooms. This means there is no privacy for client interviewing if both attorneys are in the office when an interview is scheduled unless another office is not in use by either attorney assigned to it. On several occasions the evaluators observed two lawyers interviewing two clients simultaneously in the same small office and one lawyer using the telephone while the other interviewed a client. The evaluators also noted that virtually all of the office furniture,

particularly the attorneys' and secretaries' desks and chairs appeared to have been donated rather than purchased because of their apparent age and lack of uniformity.

The Executive Secretary and Executive Assistant also share an office. The remaining approximately 18 secretarial and clerical personnel work at desks located at various places in the much-traveled, open area of the office. These desks are not partitioned or closed off in any way from each other or from other activities in the area. It was also observed that the typewriters were not uniform in make or model, and that little dictating-recording equipment was in use. Thus the attorneys must write their own legal memoranda, district court case write-ups and letters in longhand because they are either in court or interviewing clients during regular office hours. No automatic typewriter or other similar time-saving equipment was observed and there seemed to be no interest in or awareness of, the availability and uses of such equipment.

The office has no conference room but uses the "library" room for that purpose. Although the physical appearance of the library room could be improved by installing a full sized conference or worktable, the primary problem is the inadequacy of the legal material. It contained the Massachusetts Reports and Statutes, the U.S. Supreme Court Reporter, U.S. Law Week and one copy of the Criminal Law

Reporter but lacked Federal Supplement and Federal Second reports and did not have adequate textbooks, advance sheets or citators.

Also, no effort was made to keep what services there were current and in sequence, or to keep control of volumes taken out of the library.

Proximity to Courts and Clients

Although the Suffolk County Superior Court, the Boston Juvenile and Boston Municipal Court are located within a few minutes walk of the MDC Boston office, the remainder of the superior and district courts it serves are not. This is not only a problem for the attorneys who serve in those courts, but it is a problem for the clients because of the office practice of interviewing clients free on bail at the downtown office. Except for the Roxbury Defender Project, MDC has no offices located near these courts and apparently has never attempted to obtain space or the use of space near or in the court buildings for use in interviewing clients or for other purposes.

In summary, this office clearly does not meet standard 3.3 of the American Bar Association Standards Relating to Providing Defense Services (Approved Draft, 1968) as it is deficient in terms of its location as to many of the courts it directly serves, its furnishings are not appropriate to the legal profession, its library is inadequate and other necessary facilities and equipment are lacking.

RECOMMENDATIONS

THE EXISTENCE AND LOCATION OF THE OFFICE SHOULD BE

MADE MORE PROMINENT AND SPECIFIC IN THE BUILDING LOBBY BY MEANS OF A PROMINENT SIGN OR OTHER NOTICE. SUCH A SIGN SHOULD ALSO BE PLACED SOMEWHERE EASILY VISIBLE OUTSIDE OF THE LOBBY OF THE BUILDING.

A SPACE PLANNING AND OFFICE MANAGEMENT, RECORD AND FILE FLOW STUDY OR STUDIES SHOULD BE UNDERTAKEN. SUCH MIGHT BE DONE AT MINIMAL COST WITH THE ASSISTANCE AND COOPERATION OF ONE OR MORE OF THE MANY UNIVERSITIES IN THE AREA AND THE ASSISTANCE OF APPROPRIATE PRIVATE AND PUBLIC AGENCIES. SUCH STUDY SHOULD ALSO BE USED TO DETERMINE IF THE PRESENT OFFICE FACILITIES CAN ECONOMICALLY BE MADE PROFESSIONALLY SUITABLE. IF NOT, CONSIDERATION SHOULD BE GIVEN TO LOCATING THE OFFICE IN MORE SUITABLE QUARTERS.

THE OFFICE RECEPTION AREA SHOULD BE REPAINTED AND THE FURNITURE REPLACED WITH PROFESSIONALLY APPEALING, DURABLE PIECES. A BOOK, PAMPHLET OR SIMILAR HANDOUT IN CONVERSATIONAL ENGLISH AND SPANISH SHOULD BE PREPARED AND GIVEN TO EACH CLIENT. IT SHOULD CONTAIN INFORMATION ABOUT THE OFFICE AND ITS TELEPHONE NUMBER. IT FURTHER SHOULD ADVISE THEM IN SOME DETAIL OF THE NECESSITY AND PURPOSE OF THE INTERVIEW AND WHAT WILL OCCUR AT THE INTERVIEW.

THE INTERIOR OF THE OFFICE SHOULD BE REDONE, INCLUDING REPAINTING AND REPLACING MOST OF THE OFFICE FURNITURE. APPROPRIATE FACILITIES MUST BE PROVIDED FOR CLIENTS TO BE INTERVIEWED IN PRIVATE. EACH ATTORNEY SHOULD HAVE A DESK AND A TELEPHONE IN AN UNCROWDED LOCATION WITH SOME ELEMENT OF PRIVACY. STEPS SHOULD BE TAKEN TO MINIMIZE THE PLACING OF SECRETARIES AND CLERICAL PERSONNEL IN THE HEAVILY TRAVELED CENTRAL AREAS OF THE OFFICE. THE MECHANICAL EQUIPMENT MUST BE UPGRADED. AT LEAST ONE DICTATING AND TRANSCRIBING UNIT SHOULD BE AVAILABLE FOR USE BY EACH SECRETARY AND THE ATTORNEYS SHE SERVES. IBM OR SIMILAR FIRMS SHOULD BE CONTACTED TO ASSESS THE OFFICE NEEDS AS TO MODERN TYPEWRITERS, INCLUDING MAGNETIC CARD TYPEWRITERS AND SIMILAR ATTORNEY AND SECRETARIAL TIME AND LABOR SAVING DEVICES.

ACTION MUST BE TAKEN TO OBTAIN AND MAINTAIN AN ADEQUATE LIBRARY AND APPROPRIATE RESEARCH AND RESOURCE MATERIALS OF SUFFICIENT SIZE TO ACCOMMODATE THE NUMBER OF LAWYERS IN THE OFFICE.

CONSIDERATION SHOULD BE GIVEN TO OBTAINING OFFICE SPACE OR OTHER APPROPRIATE FACILITIES FOR ATTORNEYS NEAR THE VARIOUS COURT HOUSES LOCATED OUTSIDE OF DOWNTOWN BOSTON AND CONVENIENT TO COMMUNITIES SERVED.

SERVICES TO CLIENTS

District Court

The office does not undertake the representation of a client unless and until appointed by the court. This means that counsel is not available for representation at the police station or for interview of witnesses prior to appointment and frequently means that no representation is provided when bail is set. Appointments are usually made the day following the defendant's arrest. At the time the Defender is appointed a hearing is scheduled in the District Court for seven to ten days from the date of arrest.

Virtually all new attorneys start in the district court with no supervision or training and minimal observation. A substantial number of the clients, whether on bail or in jail, are interviewed by students and see their MDC attorney for the first time on the date of trial. There is no investigation done for district court cases regardless of the charge or nature of the case. In cases which are tried, defense witnesses are not interviewed or subpoenaed. On a typical day in court, MDC counsel will often have 10-12 cases. Accordingly, he will barely have enough time to speak to his clients before trial. At best it can be anticipated the lawyer has reviewed the file the night before. Pretrial discovery is minimal. Generally it is limited, if there is time, to a discussion with the police prosecutor or an examination of the police journal entries. Prosecution witnesses are almost never interviewed. Since MDC has no social services department and no time to consult with the probation officer, the attorney is seldom in a position to offer any convincing probation plan or other alternative disposition. After trial, the press of the next

case means there is frequently little time to confer with the clients about the relatively complex decision to appeal.

The study done by the Lawyers' Committee for Civil Rights Under Law* of six district courts, namely Roxbury, Dorchester, Boston Municipal, Chelsea, Malden and Waltham, seems to verify the observed deficiencies in MDC's district court representation. It indicates that for the fiscal year selected (1968), of cases adjudicated where defendants pleaded not guilty, defendants with private lawyers were found guilty in 49% of the cases and not guilty in 35%; whereas defendants with appointed counsel, a great percentage of whom were MDC, were found guilty in 65% of the cases and not guilty in 18%. (Table D, page 33.) With the increasing caseloads it appears likely such percentages are even less favorable today.

It was not and is not a function of this evaluation to criticize the Massachusetts judicial system or its procedures. However, incident to the evaluation, court observation in various courts was necessary. District court observations led to the compelling conclusion that the absence of effective judicial review of the district court judge's conduct, rulings and actions, coupled with the lack of a stenographic record of the proceedings, frequently result in inadequate and perfunctory court proceedings. The problems incident to this system are discussed in the previously referred to study at pages 24 through 28,

*The Quality of Justice in the Lower Criminal Courts of Metropolitan Boston. A Report by the Lawyers Committee for Civil Rights Under Law to the Governor's Committee on Law Enforcement and the Administration of Criminal Justice, 1970.

and the stated observations as to the consequences of the lack of review are evident throughout the study and therefore are not repeated here. But the nature of proceedings in the district courts also have a serious impact on the MDC staff lawyers. Because they feel they seldom are functioning as lawyers there, any pride they initially have about their work is soon destroyed. Our observations confirm their belief that proceedings in the district court are not litigation or vehicles for advocacy but, at best, are limited discovery proceedings and generally, are nothing more than dispositions of cases.

Also, given the lack of scrutiny of district court judges' conduct by any reviewing court, it is further understandable why in the trials which are conducted, there is seldom any real opportunity to assert constitutional defenses (i. e., motions to suppress), significantly cross-examine the prosecution witnesses, effectively present the defendant's evidence and otherwise develop defenses or make an adequate closing argument. It was evident to the evaluators that a number of practices regularly occur in the district courts which it is MDC's obligation to attempt to correct. One of these is the practice of discouraging defendants from exercising their right to counsel in a variety of ways, including the threat of a more severe sentence if the right is exercised. Another is the practice of using the threat of increased sentences and the raising of bail against defendants who exercise their right to a de novo trial. Another is the examination by the trial judge before he has heard all the evidence of the probation report which contains the defendant's prior record. It was also clear to the evaluators that the MDC attorneys in the district courts had very little familiarity with the use of or the grounds for the procedure of writ of error to the Supreme Judicial Court which has been

used in a limited fashion to obtain review of a district court's action. The expanded use of this procedure is in its formative stages and it would seem that MDC would be pioneering in such use on behalf of its clients. Unfortunately, this is not the case, with respect to the representation provided in the district courts.

On February 17, 1972, the Massachusetts Defender Committee had a meeting attended by the chief counsel and other staff members. At such meeting, MDC acknowledged that because of the caseloads in the superior and district courts, it could not render effective assistance of counsel in those courts. Accordingly, it was determined MDC had no alternative but to withdraw its representation from some courts. The outline for such withdrawal provided that the Chief Counsel submit a plan to the committee chairman placing all the staff lawyers in the superior courts, except whatever number was determined could be spared to be retained in a few of the heavy load district courts on a broad geographical basis. Upon committee approval, the Chief Justices of the Superior and District courts were to be notified as well as the Supreme Judicial Court. The plan would then be made public. It was anticipated that upon such withdrawal, the district court judges would appoint private counsel at county expense and the expenditures would be recorded by MDC for future appropriation efforts. MDC would also submit a project proposal for LEAA funds to employ staff to assist the district court judges in assuring appointment of competent attorneys. The plan also indicated a hope that MDC would in some unspecified manner seek to insure

that adequate counsel was being provided in the courts from which it withdrew.

Superior Court

It was our observation that MDC had some excellent and experienced trial attorneys assigned to the superior court. Cases are assigned by the supervisors to the superior court attorneys based upon an attempt to match the nature of the case to the capability and experience of the MDC attorney. This is just about the extent of the supervision and assistance rendered by the office to the attorney. If investigation is needed, he must do it himself or it won't be done. Also, whatever alternatives to incarceration he wishes to offer he must develop without any assistance from the office. With their heavy caseload, these things cannot be done by the lawyers. As previously pointed out, a serious problem is the necessity for reliance on the district court attorney's often inadequate file memorandum concerning what took place at the probable cause hearing. In view of the significance of such proceedings (See Coleman v. Alabama, 399 U.S. 1, 1970) and its many uses, it would seem obligatory that the stenographic record of hearings be available well in advance of trial as a part of the client's file. Discovery is generally more of an informal than formal nature and the office has no policy regarding discovery motions nor has any attempt been made formally or informally to establish by either agreement or court rule, uniform discovery

in superior court cases. Another serious problem caused by the increasing caseload is such that some attorneys spend so much time in court, the students must do all of the client interviewing and even when the attorney is given information by the district attorney or the probation office, he sometimes has no opportunity to examine it. In the numerous cases where a guilty plea is tendered, the lawyer does not have the time to check into the defendant's background, seek letters of recommendation and similar mitigative material or submit a prepared disposition plan to the court. The caseload coupled with inefficient scheduling of cases also result in continuances when the client is in jail. All of the judges interviewed commented upon this, which meant that on some days attorneys are listed for no cases and on others, for two or three at the same time. This problem was discussed with the Chief Counsel in a meeting in December, 1971 with Judge Rose, attended by the MDC chairman.

The failure to provide the quality of representation the lawyers are capable of in the superior court is particularly unfortunate because the system of assigning a client's case to one lawyer has great potential for the kind of close and continuing client contact which could be one of the strong points of MDC's representation. (See ABA Standards Relating to the Defense Function, pp. 197-224.)

Another factor militating against the most effective client representation is the dock. Not only does the use of the "dock" interfere with the client's ability to communicate with his counsel during the trial, but in the opinion of the evaluators cannot fail to have a deleterious effect on the jury as well. During courtroom observation one evaluator noted that the defendant tried in vain to catch his attorneys eye during his sentencing due to the fact that he was in the dock.

RECOMMENDATIONS

MDC SHOULD BE ABLE TO ACCEPT CASES PRIOR TO ASSIGNMENT BY THE COURT BASED ON AN INITIAL DETERMINATION OF FINANCIAL ELIGIBILITY.

ASSIGNMENTS SHOULD BE ROTATED SO THAT THE CAPABLE YOUNG ATTORNEYS OBTAIN SUPERIOR COURT EXPERIENCE AND SOME APPELLATE EXPERIENCE. ATTORNEYS SHOULD ALSO BE PERMITTED TO FOLLOW UP CASES BY HANDLING THE DE NOVO TRIAL OR THE APPEAL.

A SOCIAL SERVICES DEPARTMENT SHOULD BE ESTABLISHED.

THE DISTRICT COURT TRIAL DE NOVO SYSTEM AS IT PRESENTLY OPERATES SHOULD BE THOROUGHLY STUDIED WITH A VIEW TOWARD ITS ABOLITION OR AT LEAST, CHANGING SOME OF THE PRACTICES UNDER SUCH SYSTEM.

AT LEAST IN PROBABLE CAUSE HEARINGS IN THE DISTRICT COURTS, A STENOGRAPHIC RECORD SHOULD BE PROVIDED THE MDC LAWYER FOR USE IN THE SUPERIOR COURT PROCEEDINGS.

MDC SHOULD ENCOURAGE ITS DISTRICT COURT LAWYERS TO MAKE BROAD USE OF THE WRIT OF ERROR PROCEDURE TO OBTAIN REVIEW OF DISTRICT COURT POLICIES AFFECTING THE RIGHTS OF ITS CLIENTS.

THE CASELOAD FOR SUPERIOR COURT DEFENDER ATTORNEYS OUGHT TO BE REDUCED AND CAREFUL CONSIDERATION OUGHT TO BE GIVEN TO CASE SCHEDULING SO AS TO AVOID UNDUE CONTINUANCES.

THE USE OF THE "DOCK" OUGHT TO BE ABOLISHED.

Appeals and Post-Conviction

Appeals

The chief appellate attorney is Ruben Goodman who, prior to his employment with the office in 1967, did a great deal of appellate work for a Boston law firm. There are three other attorneys and two secretaries in the Appellate Division. Under Massachusetts law, there are essentially two methods of appealing a Superior Court decision, claim of appeal and bill of exceptions. The simpler procedure is claim of appeal, however, most other appeals proceed via bill of exceptions for apparently historical and procedural reasons. Defendants also have a right to appeal only their sentences to the Appellate Division of the Superior Court.

In the fiscal year 1971, the Appellate Division received appointments in 74 appeals on the merits and two appeals from sentences. This figure seemed inordinately low for a State with a program serving a population served by MDC and appeared contrary to the evaluators' experiences elsewhere. We believe this low figure may well be attributable to the fact that no check system exists to insure that Superior Court lawyers have fully advised convicted defendants of their appeal rights so that the defendants, having been so advised, either elected an appeal or waived their appellate rights. As was previously pointed out, MDC has a form which briefly sets forth the defendant's appeal rights with a space requiring the client's acknowledgment of these rights. However, except in the rare cases when a Superior Court attorney takes the time to alert the Appellate Division concerning a case, no appeal is taken by MDC unless and until they receive a written notice from the defendant advising them of his wish

to appeal. Upon receipt of such request, a transcript is obtained by motion and an assignment of errors is prepared which is always received by Mr. Goodman to insure that all appropriate issues are raised. Presently, the office has about 100 appeals pending and disposes of about 70 appeals a year. Although it appeared that the MDC briefs were on par with those written by private counsel (and frequently were better) some criticism has been leveled by the Supreme Judicial Court that MDC is filing a number of "non-merit" or "frivolous" appeals which it should dispose of under the provisions of Anders v. California, 386 U.S. 738. From our brief visit, the evaluators are not in a position to determine if such is the case. But the evaluators were seriously concerned about the position MDC is placed in because its governing body is selected by the Supreme Judicial Court. The office is quite vulnerable to pressure of this kind, either real or imagined, because it must practice before the body which initially appoints its Committee membership. No defender office should be placed in such a position but rather must use its own unfettered and uninhibited professional judgment as to whether it should withdraw under Anders or file a brief.

The records in the Appeals Division appeared to be adequate and well maintained and a running sheet is maintained of the current status of all appeals. (However, the prison interviews disclosed that no system existed for regular contact with clients as to the status of their appeal. It would seem that a correspondence procedure could be instituted, advising the clients of the filing of their appeal and various stages of the status of their cases). In one case, the defendant had an appeal pending but had never been advised of the fact by the office. Such a system would correct

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this problem. The evaluators reviewed a number of briefs and concluded they were well researched and well written. The appeals attorneys believed they were receiving good training and adequate supervision. We believe that Ruben Goodman is a knowledgeable, competent appellate attorney. However, because of MDC's administrative structure, its lack of leadership and the lack of coordination or cooperation of its supervisory and legal personnel, the Appeals Division is severely hampered from acting except as cases come to it through the administrative process. The evaluators believe that this is too limited a role for an Appeals section. It has an initial obligation to insure that every client's right to appeal is protected and that the trial lawyers are advised as to how to protect such right. Furthermore, it has an obligation to be especially aware of issues which are particularly significant to its clients and the criminal justice system and to insure that procedures exist to insure that clients who wish appeals in such cases receive them and that when such issues are raised, if necessary, they are pursued to the Supreme Court or in the federal courts.

Post-conviction

The attorney in charge of the Post-Conviction Division is Walter Powers who has been with the office for three (3) years. Prior to that time he had a private criminal practice. Mr. Powers has two attorneys and one secretary assisting him.

The chief attorney for the Post-Conviction Division supervises the staff attorneys, volunteer attorneys, and assisting law students. He is also responsible for the preparation and presentation of cases in the Federal Courts, Supreme Judicial Court (Single Justice and Special Master Sessions),

Superior Courts and District Courts when concerned with post-conviction matters. The chief attorney is responsible for the processing of hearings concerning sexually dangerous persons, parole board, pardon board, and department of correction administrative hearings.

The staff attorneys are responsible for the preparation of all post conviction causes, which includes interviews with inmates and witnesses, legal research, preparation of appropriate motions and pleadings, presentation of cases to all courts and administrative agencies. The attorneys are also responsible for supervising law students. The division handles: (1) Motions for New Trial; (2) Habeas Corpus (mainly in sexually dangerous cases); (3) Writs of Error; (4) Mandamus; (5) Petition to Review Sentences; and (6) Declaratory Judgment.

Since there is no time limit for filing a Motion for New Trial or Writ of Error, the Massachusetts post conviction procedures remain open to anyone who wishes to question his conviction. The stated policy is to represent anyone who writes a letter requesting help, some of which are referred by the court. There is no test for indigency, and no policy on the kinds of relief which can be sought.

The post-conviction supervisor was observed in court and in the office. It was the evaluator's opinion that he lacks the requisite administrative ability and displayed no particular competence, dedication or interest as either a trial or appellate lawyer. The record keeping of the post-conviction division is completely unsatisfactory. A card file kept to include open and closed cases is out of date. The division has no idea of how many cases

it has pending but merely handles them when and if they are gotten around to. No regular correspondence with or acknowledgment of prisoner communications is carried on nor is the client advised when MDC files a petition or the progress of it. Furthermore, no statistics are kept as to the nature and type of various cases the division handles. If the client's letter has been received and a petition filed on his behalf, the client is then brought in for a hearing where the extent of the representation provided is to let him "tell his story." If relief is denied, the matter is referred to the appeals division to handle. It is obvious that this division needs two additional secretaries to maintain adequate records and prisoner correspondence. It also needs a minimum of several additional attorneys to insure that inmates with justifiable legal grievances regarding their convictions are interviewed cannot be done by a student as it requires sufficient legal ability, and experience to evaluate the prisoner's claims. Furthermore, the division does not appear on behalf of prisoners in sentence appeals to the Appellate Division of the Superior Court since MDC apparently concurs in that Court's position that no right to counsel exists for such proceedings.

It would seem that consideration should be given to the combining of the appeals and post-conviction divisions into one unit with the appropriate additional lawyers to raise its size to 12-15 attorneys and supporting secretarial staff. Part of the unit's training should include court work in the district and superior courts. The duties

of such a unit would include use of all available remedies, appeals, post-convictions, mandamus and other extraordinary remedies in all courts including federal court actions where called for to effectively represent MDC clients. Also, trial attorneys should be encouraged, if consistent with their other duties, to follow through and write an appeal, post-conviction petition or application for federal or other extraordinary relief. Presently no follow through from the trial level is ever allowed (by the exigencies of caseload if not policy) or encouraged. It is also imperative that MDC insist on being relieved from representation in any case where it represented the client trial and competency of counsel or adequacy of representation is an issue either in an appeal, post-conviction petition or other proceeding. Furthermore, MDC should provide representation on sentence appeals unless such representation is waived by the defendant.

RECOMMENDATIONS

THE PRESENT PRACTICE OF NOT APPEALING A SUPERIOR COURT CASE UNLESS THE DEFENDANT ADVISES MDC IN WRITING HE WISHES TO APPEAL MUST CEASE. APPEALS SHOULD BE FILED ON BEHALF OF ALL SUCH CLIENTS AFTER A TRIAL UNLESS THE DEFENDANT KNOWINGLY AND VOLUNTARILY WAIVES SUCH RIGHT IN OPEN COURT OR IN WRITING, WHICH WRITTEN WAIVER MUST APPEAR IN THE CLIENT'S FILE. IT IS THE RESPONSIBILITY OF THE SUPERIOR COURT LAWYER TO CONFER WITH HIS CLIENT AND ASSIST HIM IN THE DETERMINATION OF WHETHER OR NOT TO FILE AN APPEAL.

THE APPEALS DIVISION SHOULD IMMEDIATELY INSTITUTE PROCEDURES TO INSURE THAT THE FILES IN ALL SUPERIOR COURT CASES TRIED ARE TIMELY REVIEWED TO INSURE AN APPEAL IS INSTITUTED OR IS WAIVED.

THE SELECTION OF THE MDC COMMITTEE BY THE SUPREME JUDICIAL COURT SHOULD BE RECONSIDERED IN LIGHT OF ITS POSSIBLE INHIBITING EFFECT ON MDC SUPREME JUDICIAL COURT REPRESENTATION.

CONSIDERATION SHOULD BE GIVEN TO THE COMBINING OF THE APPEALS AND POST-CONVICTION DIVISIONS INTO ONE UNIT WITH A STAFF OF 12-15 LAWYERS AND SUPPORTING SECRETARIAL -CLERICAL ASSISTANCE. IN ADDITION TO APPEALS AND POST-

CONVICTION PROCEEDINGS, SUCH A UNIT SHOULD HAVE BROAD RESPONSIBILITY FOR PURSUING ISSUES OF SIGNIFICANCE TO THE OFFICE AND ITS CLIENTS.

ASSIGNMENT TO SUCH A UNIT SHOULD BE FOR LONGER PERIODS OF TIME AND ATTORNEYS SO ASSIGNED SHOULD DO SOME COURT WORK AS PART OF THEIR TRAINING.

TRIAL ATTORNEYS SHOULD BE ENCOURAGED, WHEN POSSIBLE, TO HANDLE APPEALS AND SIMILAR POST-CONVICTION MATTERS ON BEHALF OF THEIR CLIENTS.

MDC SHOULD WITHDRAW IN ANY APPEAL OR POST-CONVICTION PROCEEDING WHEN COMPETENCY OF COUNSEL OR ADEQUACY OF REPRESENTATION IS AN ISSUE IF IT REPRESENTED THE DEFENDANT IN THE PROCEEDINGS COMPLAINED OF.

MDC SHOULD PROVIDE REPRESENTATION ON APPEALS FROM SENTENCES UNLESS SUCH REPRESENTATION IS WAIVED BY THE DEFENDANT.

Bail

The importance of pretrial release to the defendant to the ultimate disposition of the charges he faces has been well documented. The statistics of the study by the Lawyers Committee point out that in the courts surveyed, 18% of the defendants with private lawyers (most of whom appear and argue bail) are committed for failure to make bail and for defendants assigned counsel the rate is 44%. These statistics also confirm the national experience in showing that a substantially higher percentage of defendants in jail were both found guilty and received jail sentences as compared to those on bail. However this primacy of pretrial release did not seem to be perceived by the chief counsel, the supervisors or the staff lawyers and the office does not engage in litigation seeking appellate or other review of adverse bail decisions but rather essentially relies upon accommodation for its bail review results.

Unless MDC represents defendants during the hearing when bail is set, it cannot provide effective representation. However, such representation will be virtually meaningless unless some kind of ROR or verification program is instituted which includes an interview of the defendant and as much verification of information as is possible before the bail hearing. With the number of law and undergraduate schools in the state and adjoining areas, such a program certainly is feasible. Also, the office must, at least on a selective basis, be prepared to litigate adverse bail decisions in the Superior Court, Supreme Judicial Court or the federal courts, when necessary.

RECOMMENDATIONS

REPRESENTATION SHOULD BE PROVIDED DEFENDANTS PRIOR TO THE TIME THAT THE DISTRICT COURT SETS BAIL. A BAIL PROJECT SHOULD BE INSTITUTED WITH THE COOPERATION OF THE COURTS AND THE VARIOUS UNDERGRADUATE AND LAW SCHOOLS IN THE AREA. STUDENTS SHOULD BE USED TO CONDUCT BAIL INTERVIEWS AND VERIFY INFORMATION AS WELL AS CONDUCT A JAIL CHECK TO ENSURE THAT THE DEFENDANT IS REPRESENTED BY MDC AT THE BAIL HEARING AND TO RECEIVE REQUESTS FOR PETITIONS TO REDUCE BAIL.

THE SUPERIOR COURT LAWYER CONDUCTING A BAIL REDUCTION HEARING SHOULD HAVE THE PROBATION OFFICE FILE, THE DISTRICT COURT ATTORNEY'S FILE AND THE RESULTS OF THE BAIL PROJECT VERIFICATION PRIOR TO THE REDUCTION HEARING. HE ALSO SHOULD HAVE INTERVIEWED THE DEFENDANT PRIOR TO SUCH HEARING.

THE OFFICE MUST ENGAGE IN SELECTIVE LITIGATION REGARDING BAIL AND ACTIVELY PURSUE BAIL REMEDIES ON BEHALF OF ITS CLIENTS.

Probation

According to both Superior and District Court probation supervisors, most probation and parole violation proceedings commence with a letter to the defendant to surrender on a certain day, usually ten to fourteen days later. When a man is represented by private counsel, this letter usually results in a phone call from counsel, seeking to work the matter out informally, and the probation department is receptive to such arrangements. When the defendant has no attorney, M. D. C. is called upon often initially at the time of the hearing. The M. D. C. attorney then neither has the benefit of investigation nor M. D. C.'s trial file. He can seek to continue the case, but the understanding is that it must proceed on that day. These hearings could be anticipated by insisting on the same early notice that private counsel enjoys, and by developing and maintaining an ongoing relationship with the respective probation departments. This would involve enough activity to warrant one attorney being permanently assigned.

RECOMMENDATIONS

IF POSSIBLE, THE DEFENDANT IN A PROBATION REVOCATION HEARING SHOULD BE REPRESENTED BY THE MDC LAWYER WHO REPRESENTED HIM AT THE TIME HE RECEIVED PROBATION. MDC SHOULD ADVISE ALL OF THE JUDGES IT WILL NOT REPRESENT DEFENDANTS AT SUCH HEARINGS WITHOUT SUFFICIENT NOTICE AND ARRANGEMENTS SHOULD BE MADE SO THAT MDC RECEIVES A COPY OF THE LETTER SENT TO THE CLIENT ADVISING HIM OF HIS COURT DATE.

ONE ATTORNEY SHOULD BE ASSIGNED TO HANDLE PROBATION HEARINGS WHEN THE ORIGINAL MDC LAWYER IS OTHERWISE OCCUPIED AND TO ESTABLISH A RELATIONSHIP WITH VARIOUS PROBATION DEPARTMENTS AND SUPERVISORS OVER PROCEDURES AND RECORDS.

JUVENILE COURT REPRESENTATION

Introduction

The Boston Juvenile Court is the oldest unified Juvenile Court in Massachusetts and has a separate, rather small jurisdictional base confined to a centralized area of Boston. Throughout the Commonwealth other juvenile matters are handled almost exclusively in the District Courts.

Boston Juvenile Court

The case load in the Boston Juvenile Court is quite naturally limited and therefore susceptible to management by efficient court staff. One MDC lawyer is assigned to represent indigent juveniles in this court, an outwardly justifiable allocation, since, on an average day the BJC hears only about 25 cases, not all of which would involve indigents. As in criminal proceedings in the District Court, the MDC lawyer in the Boston Juvenile Court does not provide representation until formally appointed by the Court. However, when a child comes before the court, he has been extensively interviewed about his background by court probation staff, in an evaluation process which virtually controls most dispositions.

The consensus of those persons interviewed who work in the Boston Juvenile Court is that the presence of the MDC lawyer is a necessity since it is required by law, but his role is

pieces of knowledge about the child's background and recommendations of court personnel. The Boston Juvenile Court seemingly attempts to follow a "process" which seeks an ultimate disposition in the best interests of the child, as opposed to a series of separate procedural steps (e.g. detention, probable cause hearings, adjudication, disposition) only after which would it address itself to the ultimate matter of disposition.

The MDC attorney in the Boston Juvenile Court appears to be a part of this "process", rather than as completely independent advocate for the child. For example his "office" is in effect, wherever he can locate a vacant room. He is rarely seen outside of the courtroom by his client and has no time to prepare motions or other personalized documents for his clients. Since there are so relatively few cases in the Boston Juvenile Court, the MDC lawyer attempts to contest the facts in almost every delinquency matter. These factual hearings, however, are very informal and the rules of criminal procedure are not strictly followed. Indeed, in both the Boston Juvenile and other Courts, a juvenile adjudicatory hearing will often amount to no more than a probable cause hearing. Moreover, the judge may decide sua sponte without notice to the minor or his lawyers after all the evidence that he will bind the child over to superior court, to be treated thereafter as a criminal matter in violation of the spirit, if not the letter of Kent v. United States, 383 U.S. 541 (1966).

not generally understood or well defined. Moreover, it is apparent that the MDC representation stops at the courtroom door, unless a child charged with an act, which if committed by an adult would be a crime, is bound over to the superior court, whereupon a new MDC lawyer is appointed.

The bulk of the MDC attorney's time is spent in court, representing clients at delinquency hearings. No pretrial motions are filed, no investigation of the facts is performed, no witnesses are secured unless by the client himself and interviewing takes place in a vacant courtroom or office on the day the client's case is to be heard. Perhaps one reason for the rather indefinite, limited role of the MDC attorney in Boston Juvenile Court proceedings is that this Court conscientiously attempts to resolve the problems of each child who appears before it. In this sense, the court operates consistently with the spirit and purpose of a specialized, non-criminal juvenile system. In another sense, juvenile adjudicatory proceedings, not only in the Boston Juvenile Court but throughout the Commonwealth often dispense with constitutional rights and privileges, and fail to adhere to rather straightforward principles of criminal law, particularly in delinquency matters. Neglect, dependency, runaway and other matters are handled even more informally. Fact finding is neither objective nor consistent, but rests upon an amalgam of bits and

In juvenile proceedings throughout the Commonwealth, including the Boston Juvenile Court, matters are prosecuted by police officers in delinquency matters and by social workers in neglect, dependency and other cases. Thus, there is no screening of cases by a prosecutor experienced in juvenile problems. The child's fate is left to the police officer who refers him to the court and depends heavily upon the quality of the probation staff in the particular court. (In the Boston Juvenile Court he is fortunate to receive the attention of highly qualified, dedicated probation officers). Thus, the MDC attorney has relatively little to say about what happens to his clients.

MDC Juvenile Representation in Other Courts

Since juvenile matters, outside of the Boston Juvenile Court, are largely handled in the District Courts, juvenile representation becomes a part of every MDC District Court lawyer's responsibility. These lawyers handle juvenile cases one or two days a week, and appear usually without the benefit of an interview or investigation. They receive absolutely no training, supervision or insight into the handling of juvenile matters, and thus treat them as part of their regular criminal case load. While many procedural aspects of a juvenile hearing are similar to those of a criminal case, neglect, dependency, runaway and other matters within juvenile jurisdiction present special, extremely delicate problems.

The attorneys are largely unaware of the vast changes in the law effecting juveniles throughout the rest of the country. This ignorance is not confined to the MDC lawyers, however, for the District Court judges have little understanding of the purpose of a juvenile proceeding.

Bail and Custody

Massachusetts courts may set bail in juvenile proceedings, contrary to the philosophy of a non-criminal juvenile court system, which, if properly administered, should provide adequate substitutes for monetary bail. Because the full amount of bail must be posted, the indigent minor respondent suffers from the same abuses common to adults. The institutions maintained by the counties for detention of juveniles awaiting trial are little more than jails. Fortunately, a relatively small percentage of children are placed in these institutions. It is apparent that the MDC has done little, if anything at all, to correct the abuses inherent in a bail system as applied to juveniles and to alleviate the hardships of pretrial confinement.

Treatment Facilities

Juvenile procedures throughout the Commonwealth are tempered somewhat by a new fact of life. Many of the old security institutions and detention facilities either have been closed down or transformed into more open settings. The use of group homes and community based preventive and rehabilitative facilities staffed by both professional and volunteer personnel, have removed many of the harsh consequences formerly resulting from juvenile adjudications.

The Department of Youth Services is responsible for the statewide improvement in the quality of juvenile correctional facilities. Judges of the Boston Juvenile Court and some District Court judges have serious reservations about the plan of the Department of Youth Services to minimize, if not eliminate, institutionalization of juveniles. Apparently, there is a feeling that the courts' sentencing prerogatives have been diluted, if not taken away. The presiding judge of the Boston Juvenile Court, in particular, feels the absolute necessity for a closed, structured security environment to which he can commit a child he feels is unable to function in the community. The MDC has taken no position on this matter.

The concept of the therapeutic community, as applied to juvenile proceedings, is a most refreshing and useful change. Only by creating viable alternatives to incarceration, can the juvenile system operate as it was intended to function: not as a junior criminal court, but as a place where a child could receive care, guidance and treatment, and hopefully, as inspiration to refrain from anti-social behavior.

RECOMMENDATION

AT LEAST TWO MDC ATTORNEYS AND AN INVESTIGATOR SHOULD BE ASSIGNED TO THE BOSTON JUVENILE COURT IN ORDER TO INSURE PROPERLY INVESTIGATED AND PREPARED REPRESENTATION. MOREOVER, THESE INDIVIDUALS SHOULD SEEK PRE-HEARING PLACEMENT ALTERNATIVES WHENEVER INDICATED IN DELINQUENCY OR OTHER MATTERS.

OTHER DISTRICT COURT ATTORNEYS HANDLING JUVENILE MATTERS MUST BE PROVIDED THOROUGH ORIENTATION TRAINING IN HANDLING JUVENILE MATTERS, AND SHOULD BE KEPT UP TO DATE ON RECENT DEVELOPMENTS IN THE JUVENILE FIELD. PARTICULAR ATTENTION SHOULD BE GIVEN TO THE INTRICACIES OF DISPOSITION.

INVESTIGATIVE BACK-UP ASSISTANCE SHOULD ALSO BE AFFORDED IN JUVENILE CASES.

EVERY ATTEMPT SHOULD BE MADE TO INTERVIEW JUVENILE CLIENTS IN A COMMUNITY SETTING OR IN AN ATTORNEY'S PRIVATE OFFICE AS SOON AS POSSIBLE AFTER COURT REFERRAL.

WHERE PRETRIAL MOTIONS ARE INDICATED BY AN INVESTIGATION THEY SHOULD BE TIMELY PREPARED AND FILED PRIOR TO THE DAY SET FOR HEARING. THE CHIEF DEFENDER SHOULD DISCUSS SUCH MATTERS WITH THE PRESIDING JUDGE WITH A VIEW TO A MUTUALLY AGREEABLE PROCEDURE FOR DECIDING SUCH LEGAL QUESTIONS IN A SWIFT, ORDERLY MANNER.

STRENUOUS EFFORTS SHOULD BE MADE TO ENSURE THAT PROCEEDINGS WHICH CAN RESULT IN A WAIVER OF JUVENILE JURISDICTION CONFORM TO THE REQUIREMENTS OF DUE PROCESS OF LAW, INCLUDING NOTICE OF THE STATE'S INTENTION TO SEEK A WAIVER.

THE MDC SHOULD ESTABLISH A CLOSE WORKING RELATIONSHIP WITH THE MASSACHUSETTS DEPARTMENT OF YOUTH SERVICES IN ORDER TO PARTICIPATE IN THE DEVELOPMENT OF NON-INCARCERATIVE ALTERNATIVES FOR JUVENILES. MOREOVER, THERE SHOULD BE EFFORTS TO SECURE VOLUNTEER ASSISTANTS FOR COUNSELING IN A COMMUNITY SETTING AT THE EARLIEST POSSIBLE STAGE OF JUVENILE PROCEEDINGS. THE DEPARTMENT HAS SUCCESSFULLY UTILIZED NON-PROFESSIONAL, COLLEGE STUDENT VOLUNTEERS IN ITS COMMUNITY ADVOCATES PROGRAM.

STRENUOUS EFFORTS SHOULD BE MADE TO ENCOURAGE COURT PARTICIPATION IN DEVELOPING THESE ALTERNATIVES AND IN NARROWING THE CLASS OF JUVENILES WHO WILL ULTIMATELY BE COMMITTED TO CLOSED INSTITUTIONS.

GOVERNING BOARD

As was previously pointed out, the eleven-man Massachusetts Defender Committee, appointed by the Supreme Judicial Court, serves as a Board to which the chief counsel and staff are responsible. The Supreme Judicial Court regards its functions with respect to the Committee to be:

(1) selection of Committee members and replacement when vacancies occur; (2) approval of operating rules relative to MDC proposed by the Committee; and (3) approval of any funding proposal from sources other than the annual budget submitted to the Commonwealth. The Court's efforts in support of an increase in MDC's budget has been limited to its annual letter to the legislature in support of its own budget (MDC's budget is submitted as a part of the Court's budget). Apparently the Court feels that since it does no lobbying for its own budget, it is not in a position to do it for MDC.

Other than the fact that all the Committee members are lawyers (except one who is a lawyer and journalist), there appears to be no particular standard or criteria used in appointing Committee members other than willingness to serve and some degree of personal recognition by the Court of the appointee's standing in the legal community. Members are

appointed for four years subject to removal by the Court, apparently with or without cause, at any time. The Committee ordinarily meets once a month. Prior to the meeting, an agenda and the minutes of the previous meeting are provided. The minutes are kept by the MDC executive secretary who, together with the Chief Counsel, attends all meetings. This average attendance is six members (five is a quorum) and ordinarily, the same members faithfully attend while the others rarely do. Because of "open meeting" legislation it appears such meetings would be open to the public but members of the public have never attended and no efforts are made to publicize the meetings. The Committee appears to have played a very passive role in the administration for many years. About 1966, the Committee's activities and interest in MDC's operation increased as five or six Committee members became increasingly active. In November of 1971, the present chairman was appointed and since then, the Committee's role vis-a-vis MDC's operation and administration has increased.

Until lately, the chief counsel administered MDC, submitting periodic reports and explanations to the Committee and had complete authority to run the office. Now the Committee is becoming increasingly more heavily involved in the day-to-day

administration of MDC. For example, the Committee now has a role in the hiring of MDC staff. Before an attorney can be employed, he must be approved by the Committee. Although the chairman and members all basically agreed that the normal relationship between the Committee and chief counsel should be to permit the chief counsel to operate the office and bear full responsibility to them for its operation, they still seem more and more to believe and act as if they must involve themselves in closer surveillance and more of the day-to-day operation of the office. Although they admit that in the past the Committee has often shown lack of any real interest and has failed to give the chief counsel any help in obtaining funds or establishing liaison with legislators, they also believe the chief counsel has not kept them informed and aware of MDC's problems. It appears that the Committee as a whole lacks knowledge and comprehension of the responsibilities and goals of an adequate defender service, a deficiency for which they and the chief counsel are responsible. But in our view, the major responsibility for this deficiency must be placed with the chief counsel whose obligation it is to educate them as to the goals of an effective office and to provide the stimulus for them to support him toward meeting such needs.

As of the time the evaluators were in Massachusetts, legislation had been introduced to make certain changes regarding MDC. One change was to shift the appointment power to the governor. However, a proposed revision would provide for appointment alternately by the governor and the Court of Committee increased to 12, thus splitting them between the Committee and the Court. In either event, six would be required to be lawyers and three would be representatives of the client community. A copy of the legislation with the proposed revisions is attached as Appendix A of this report. The legislation has some particularly interesting and significant provisions in other areas such as standards of indigency, etc. which clearly warrant close study and consideration by the legislature, the Supreme Judicial Court and by MDC chief counsel, staff and Committee.

RECOMMENDATIONS

THE COMMITTEE SHOULD NOT INVOLVE ITSELF IN THE DAY TO DAY OPERATIONS OF THE OFFICE INCLUDING EMPLOYMENT AND TERMINATION OF PERSONNEL. IF IT DOES NOT HAVE CONFIDENCE IN THE CHIEF COUNSEL TO ADMINISTER THE OFFICE, HE SHOULD BE REPLACED RATHER THAN HAVE THE BOARD ASSUME HIS FUNCTIONS.

THE COMMITTEE SHOULD REQUIRE THE CHIEF COUNSEL TO SUBMIT QUARTERLY REPORTS TO IT CONCERNING THE WORK OF MDC. THE REPORT NEED NOT BE EXTENSIVE BUT SHOULD INCLUDE INFORMATION ON ATTORNEY CASELOADS, A SUMMARY OF THE NATURE AND SCOPE OF THE SERVICES BEING PROVIDED MEASURED AGAINST THE IDENTIFIABLE NEEDS. SUCH REPORT SHOULD ALSO INCLUDE A DISCUSSION OF PROBLEMS WHICH THE OFFICE FACES AND THE CHIEF COUNSEL'S PROPOSALS FOR SOLUTIONS TO THEM. CONSIDERATION SHOULD ALSO BE GIVEN TO CIRCULATING SUCH REPORTS AS BROADLY AS POSSIBLE IN THE LEGAL COMMUNITY AND THE COMMUNITY IN GENERAL IN ORDER TO GAIN PUBLIC SUPPORT FOR THE OFFICE AND TO ADVISE THE PUBLIC OF ITS WORK AND PROBLEMS.

TO ENSURE ATTENDANCE AT AND PARTICIPATION IN THE COMMITTEE'S WORK BY ITS MEMBERS, THE COMMITTEE SHOULD ADOPT MEETING ATTENDANCE RULES WITH THE SANCTION OF REMOVAL FOR NON-ATTENDANCE AT A SPECIFIED NUMBER OF COMMITTEE MEETINGS. EACH COMMITTEE MEMBER SHOULD BE PROVIDED WITH COPIES OF THE ABA STANDARDS RELATING TO DEFENSE SERVICES AND STANDARDS RELATING TO THE DEFENSE FUNCTION TOGETHER WITH AN ASSESSMENT

BY THE CHIEF COUNSEL OF THE OFFICE'S SUCCESS IN MEETING THE VARIOUS STANDARDS. AS ADDITIONAL STANDARDS ARE DEVELOPED BY NLADA AND OTHERS, COPIES SHOULD ALSO BE SUPPLIED COMMITTEE MEMBERS.

THE COMMITTEE SHOULD CONSIDER FORMING SUB-COMMITTEES TO DEAL WITH SPECIFIC PROBLEMS SUCH AS BUDGET AND FUNDING, MDC-COMMUNITY RELATIONS AND SIMILAR AREAS. CONSIDERATION SHOULD ALSO BE GIVEN TO PLACING NON-MEMBERS OF THE COMMITTEE INCLUDING COMMUNITY REPRESENTATIVES, ON SUCH SUB-COMMITTEES.

THE FACT THAT THE COMMITTEE MEMBERS ARE CHOSEN SOLELY BY THE SUPREME JUDICIAL COURT BEFORE WHOM THE OFFICE REGULARLY APPEARS SERIOUSLY UNDERMINES ITS INDEPENDENCE. ACCORDINGLY, WE BELIEVE STEPS SHOULD BE TAKEN TO AMEND THE MDC ENABLING STATUTE TO (a) ENSURE THAT THE SUPREME JUDICIAL COURT APPOINTS LESS THAN A MAJORITY OF THE COMMITTEE, (b) REQUIRE AT LEAST ONE-THIRD OF THE COMMITTEE MEMBERS TO BE REPRESENTATIVE OF GROUPS WHOSE MEMBERS ARE SERVED BY THE OFFICE, (c) REQUIRE A MAJORITY OF THE COMMITTEE MEMBERS TO BE PRACTICING ATTORNEYS, (d) TO ENSURE, AS FAR AS POSSIBLE, THAT THE OFFICE BE INSULATED AGAINST POLITICAL PRESSURES AND INFLUENCES.

THE COMMITTEE SHOULD REQUIRE THE CHIEF COUNSEL TO

SUBMIT AN ANNUAL REPORT CONCERNING THE OFFICE. SUCH REPORT SHOULD THEN BE PUBLISHED AND BROADLY PUBLICLY DISTRIBUTED.

THE COMMITTEE MUST TAKE AN ACTIVE ROLE IN PUBLICIZING THE FINANCIAL NEEDS OF THE OFFICE AND IN GAINING SUPPORT FROM LEGISLATORS, THE LEGAL COMMUNITY AND THE COMMUNITY AT LARGE FOR THE NECESSARY FUNDING TO MEET SUCH NEEDS.

Eligibility

The Supreme Court rule provides that the judge "assigns" counsel upon being satisfied that the defendant is unable to procure counsel. MDC's interpretation of this essentially is to take the position that they cannot act on behalf of a defendant, regardless of his financial situation, unless and until they are actually appointed by the court. Since there are no standard procedures or criteria guiding or directing the judges in determining the defendant's financial inability, disparity exists from one judge to another. Thus, the criterion is not dependent upon whether the defendant can or cannot afford a lawyer, but upon the judge before whom he initially appears for arraignment.

Accordingly, MDC has no significant role in ascertaining eligibility except to exclude certain clients in the event that the client interview indicates the defendant is in MDC's judgment, (which essentially means the judgment of the lawyer assigned to the case) able to hire his own lawyer. In such cases, which occur infrequently, the office will then move the court to relieve them of the appointment. Although this procedure does not seem to result in MDC being appointed to clients who could otherwise afford a lawyer, it does seem to leave unattended to the problem pointed out by Stephen Bing and S. Stephen Rosenfield in The Quality of Justice in the Lower Criminal Courts of Metropolitan Boston, of judges using assignment

RECOMMENDATIONS

MDC HAS AN OBLIGATION TO MONITOR THE APPOINTMENT OF COUNSEL TO ENSURE THAT COUNSEL IS BEING PROVIDED FOR THOSE WHO ARE FINANCIALLY UNABLE TO RETAIN PRIVATE COUNSEL.

COUNSEL SHOULD BE PROVIDED TO ANY PERSON FINANCIALLY UNABLE TO OBTAIN ADEQUATE REPRESENTATION WITHOUT SUBSTANTIAL HARDSHIP TO HIMSELF OR HIS FAMILY. THE CRITERIA AND QUALIFICATIONS TO BE USED IN APPLYING SUCH STANDARD ARE:

- (a) THIS STANDARD IS A FLEXIBLE ONE, AND CONTEMPLATES SUCH FACTORS AS AMOUNT OF INCOME, BANK ACCOUNT, OWNERSHIP OF A HOME, CAR OR OTHER PROPERTY, TANGIBLE OR INTANGIBLE, NUMBER OF DEPENDANTS, AND THE COST OF SUBTENANCE FOR DEFENDANT AND HIS DEPENDANTS.
- (b) COUNSEL SHOULD NOT BE DENIED TO ANY PERSON MERELY BECAUSE HIS FRIENDS OR RELATIVES HAVE RESOURCES ADEQUATE TO RETAIN COUNSEL OR BECAUSE HE HAS POSTED OR IS CAPABLE OF POSTING BOND.
- (c) ONE TEST TO BE APPLIED IS THAT OF WHETHER OR NOT A COMPETENT PRIVATE ATTORNEY WOULD BE INTERESTED IN REPRESENTING THE DEFENDANT IN HIS PRESENT ECONOMIC CIRCUMSTANCES.
- (d) SINCE FEW ATTORNEYS WILL ACCEPT A CRIMINAL CASE ON A CREDIT BASIS, AND WILL REQUIRE A SUBSTANTIAL CASH ADVANCE, THE FACT THAT AN ACCUSED ON BAIL HAS BEEN ABLE

of counsel for purposes unrelated to financial need such as controlling the defendant's in-court behavior, obtaining guilty pleas and otherwise expediting cases. MDC takes the position it can do nothing about such practices because it does not represent the people who are the victims of it.

Standard 6.1 of the American Bar Association's Standards Relating to Providing Defense Services (Approved Draft, 1968), provides:

"Counsel should be provided to any person who is financially unable to obtain adequate representation without substantial hardship to himself or his family. Counsel should not be denied to any person merely because his friends or relatives have resources adequate to retain counsel or because he has posted or is capable of posting bond."

The Supreme Court rule providing that the judge assigns counsel should not be interpreted to preclude representation of indigents prior to and at arraignment. Furthermore, it seems clear that it is an obligation of the Public Defender to continuously monitor the appointment of counsel to ensure that counsel are being provided for those who are financially unable to retain private counsel.

TO CONTINUE EMPLOYMENT FOLLOWING HIS ARREST IS NOT TO BE CONSIDERED DETERMINATIVE OF HIS ABILITY TO EMPLOY COMPETENT PRIVATE COUNSEL.

(e) THE ADMINISTRATION OF THE METHOD OR PROCEDURE WHEREBY IT IS DETERMINED WHETHER OR NOT A DEFENDANT IS ENTITLED TO HAVE A COUNSEL PROVIDED MAY NOT, BY ANY NECESSARY MEANS, DETER EITHER THE SAID DEFENDANT, OR OTHER DEFENDANTS WHO MAY REASONABLY BE EXPECTED TO HAVE KNOWLEDGE THEREOF, FROM EXERCISING ANY CONSTITUTIONAL RIGHTS. SPECIFICALLY, SUCH RIGHTS SHALL NOT BE DETERRED BY ANY MEANS INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

(i) BY SUCH STRINGENCY OF APPLICATION OF FINANCIAL ELIGIBILITY STANDARDS AS MAY CAUSE A DEFENDANT TO WAIVE REPRESENTATION BY COUNSEL RATHER THAN INCUR THE EXPENSE OF PRIVATE COUNSEL.

(ii) BY UNNECESSARILY CONDITIONING THE EXERCISE OF THE RIGHT TO COUNSEL BY A DEFENDANT ON THE WAIVER OF SOME OTHER CONSTITUTIONALLY-BASED RIGHT.

(f) IN ALL INSTANCES, THE DEFENDANT'S OWN ASSESSMENT OF HIS FINANCIAL ABILITY OR INABILITY TO OBTAIN ADEQUATE REPRESENTATION WITHOUT SUBSTANTIAL HARDSHIP TO HIMSELF OR HIS FAMILY SHALL BE GIVEN GREAT WEIGHT.

THE EVALUATORS DO NOT FAVOR THE USE OF A STATED AMOUNT OF INCOME, REGARDLESS OF WHETHER SUCH AMOUNT IS SET IN TERMS OF AN AMOUNT BELOW WHICH COUNSEL MUST BE APPOINTED, OR OTHERWISE, BECAUSE EXPERIENCE HAS DEMONSTRATED THAT WHEN SUCH AN AMOUNT IS SET, APPOINTMENT IS FREQUENTLY DENIED THOSE WHOSE INCOMES ARE ABOVE THE FIGURE, REGARDLESS OF THEIR ABILITY TO EMPLOY PRIVATE COUNSEL.

BUDGET

There is no doubt that MDC does not and cannot, within its present budget, discharge the responsibility which the legislature and Supreme Judicial Court have given it to adequately represent persons charged with crimes who are financially unable to employ counsel.

Because of the budgetary limitation on attorney positions, the attorney caseloads in virtually every courtroom MDC serves are so high as to preclude any meaningful representation. Furthermore, the inexcusably low salaries paid to the attorneys, the lack of senior and supervisory positions with adequate salaries, the absence of an investigative staff and adequate clerical and other supporting services also essentially are directly traceable to a lack of funds. The responsibility to provide adequate and effective defender services is mandated by the Constitution and it extends to any criminal case in which a jail sentence is sought. (Gideon v. Wainwright, 372 U. S. 335 (1963); Argersinger v. Hamlin, U. S. slip opinion (June 12, 1972)).

It is obvious that the legislature has not provided the resources requested to carry out this obligation. A simple chart is illustrative of that fact:

FISCAL YEAR	BUDGET REQUEST	APPROPRIATED
1965	196,350.	168,374.
1966	709,251.	250,500.
1967	709,251.	357,335.
1968	1,380,729.	586,920.
1969	1,054,833.	819,906.
1970	1,198,492.	952,474.
1971	1,767,503.	1,099,938.
1972	3,794,452.	1,140,162.

The 1973 budget request is \$5,656,356. In our opinion, MDC cannot continue to provide the inadequate representation it presently is providing and must either immediately, on an emergency basis, be provided with enough funds to sufficiently staff all the courts it now serves (with sufficient supervisory and supportive personnel and services) or else it must withdraw from a number of courts until acceptable caseload levels per attorney are reached which for the superior courts should be no more than 150 cases per year. For the district courts, such level should be a maximum of 350 cases per annum per attorney.

RECOMMENDATIONS

IT IS THE CONSTITUTIONALLY MANDATED OBLIGATION OF THE COMMONWEALTH TO PROVIDE ADEQUATE AND EFFECTIVE REPRESENTATION TO THOSE OF ITS CITIZENS CHARGED WITH A CRIME WHO ARE FINANCIALLY UNABLE TO EMPLOY COUNSEL. (GIDEON V. WAINWRIGHT 372 U. S. 335 (1963) and ARGERSINGER V. HAMLIN U. S. SUPREME COURT SLIP OPINION (June 12, 1972)).

MDC CANNOT CONTINUE THE INADEQUATE REPRESENTATION THE PRESENT CASELOADS FORCE IT TO PROVIDE IN VIRTUALLY ALL OF THE COURTS IT SERVES.

IMMEDIATE FUNDING MUST BE PROVIDED TO EMPLOY SUFFICIENT LEGAL STAFF TO (a) REDUCE THE BOSTON SUPERIOR COURT TRIAL ATTORNEYS' CASELOADS TO A MAXIMUM OF 150 CASES PER YEAR AND THE DISTRICT COURT TRIAL ATTORNEYS' CASELOADS TO A MAXIMUM OF 350 CASES PER YEAR, (b) REDUCE THE CASELOADS FOR THE TRIAL ATTORNEYS IN MDC OFFICES OUTSIDE BOSTON ON THE SAME BASIS COMPUTED ON THE PERCENTAGE OF DISTRICT AND SUPERIOR COURT CASES THEY HANDLE, (c) PROVIDE FOR THE ADDITIONAL SUPERVISORY LEGAL AND ADMINISTRATIVE PERSONNEL, APPELLATE STAFF, INVESTIGATORS, CLERICAL, STENOGRAPHIC AND OTHER PERSONNEL (BASED ON STANDARDS REFERRED TO ELSEWHERE IN THE EVALUATION) AT THE LEVEL NECESSARY TO PROVIDE THE SUPPORTING SERVICES REQUIRED BY SUCH INCREASED LEGAL STAFF.

CONTINUED

1 OF 2

IF SUCH FUNDING CANNOT BE PROVIDED ON AN IMMEDIATE EMERGENCY BASIS, MDC MUST IMMEDIATELY REDUCE ITS CASELOAD TO THE PREVIOUSLY DESCRIBED LIMITS EITHER BY A CO-ORDINATED PLAN OF WITHDRAWAL FROM SOME COURTS OR SOME OTHER METHOD

COMMUNITY RELATIONS

Judges

All of the district and superior court judges interviewed were of the opinion that the MDC attorney case levels were much too high. The superior court judges believed some of the MDC attorneys were the equal of, and several, superior to, private defense lawyers who appear before them. Because of their caseloads, and the lack of investigation and other supporting services, however, MDC attorneys were viewed as less effective. However, except for the MDC lawyers who appear before them, very few, including the chief justice of the district court, had any regular contact or communication with any representative of MDC including the chief counsel. Nor was there any contact between the Chief Counsel and the Supreme Judicial Court.

Community Groups

It does not appear that MDC's reputation and relationship to the community it serves could be much worse. No effort is made by the office to obtain or marshal support from the community or any segment of it and the vocal segments in the community are becoming more and more critical. It appears that a strong feeling exists that MDC is not providing adequate representation to those it serves and MDC concedes this is so.

As far as various segments of the bar are concerned, clearly MDC has not sought their help. The Boston and Massachusetts Bar Associations have done little to obtain support for MDC's budget requests or monitor its performance. Among younger attorneys MDC bears a reputation as an office which keeps the

court calendars moving at the expense of adequate client representation and which actively discourages litigation challenging practices which often have the most detrimental impact on MDC clients. The office and the chief counsel have a very poor relationship with Massachusetts Law Reform Institute, Boston Legal Assistance Program, The Lawyers' Committee for Civil Rights Under Law and similar "law reform" oriented programs and has generally refused to extend any cooperation to them or to request support from them on any issue.

The prisoner interviews with MDC clients confirmed the existence of the problem previously discussed, i. e., the lack of any response or other communication from MDC regarding their cases. However, most also believed they had not received real representation, even where they acknowledged the results were good. Most did not know the name of the MDC lawyer who represented them at trial or on their plea of guilty. Very few had any real relationship at all with their lawyer and did not believe he was really "working for them" as a private lawyer would.

RECOMMENDATIONS

THE CHIEF COUNSEL SHOULD ESTABLISH REGULAR CONTACT WITH THE JUDICIARY, INCLUDING THE SUPREME JUDICIAL COURT, IN ORDER TO INSURE THAT MUTUAL PROBLEMS SUCH AS CASELOADS, CASE SCHEDULING, INDIGENCY STANDARDS, COURT RULES AND SIMILAR MATTERS ARE RESOLVED.

THE CHIEF COUNSEL SHOULD AFFIRMATIVELY SEEK OPPORTUNITIES TO REACH THE COMMUNITY AND EDUCATE IT ABOUT MDC'S GOALS AND NEEDS. THIS SHOULD INCLUDE SPEAKING AND HAVING STAFF MEMBERS SPEAK AT COMMUNITY AFFAIRS AND BEFORE COMMUNITY AND SCHOOL GROUPS. AN EXAMPLE OF THIS IS THE WORK DONE BY THE ROXBURY DIRECTOR AND STAFF.

THE CHIEF COUNSEL SHOULD BE ACTIVE IN THE VARIOUS BAR ASSOCIATIONS, PARTICULARLY ON THE COMMITTEES WHICH TOUCH IN ANY WAY THE OPERATION OF HIS OFFICE OR THE CRIMINAL JUSTICE SYSTEM.

THEIR ASSISTANCE AND COOPERATION SHOULD BE SOUGHT IN DEVELOPING PLANS NOT ONLY IN MEETING MDC'S NEEDS BUT IN IMPROVING THE CRIMINAL JUSTICE SYSTEM. EFFORTS SHOULD BE MADE TO COOPERATE IN JOINT PROGRAMS SUCH AS DISCUSSION MEETINGS, SEMINARS, CONTINUING LEGAL EDUCATION PROJECTS AND SIMILAR PROGRAMS.

THE BAR ASSOCIATIONS SHOULD STRONGLY SUPPORT MDC'S NEEDS FOR ADEQUATE FINANCING.

THE CHIEF COUNSEL SHOULD ESTABLISH AND MAINTAIN CONTACTS

WITH ALL SEGMENTS OF THE LEGAL COMMUNITY PARTICULARLY LEGAL SERVICES OFFICES AND SIMILAR OFFICES WHO SERVE THE POOR. ALL ATTEMPTS SHOULD BE MADE TO MUTUALLY COOPERATE AND SUPPORT EACH OTHER IN IMPROVING JUSTICE FOR THE POOR.

LAW FIRMS SHOULD BE ENCOURAGED TO CONTRIBUTE THE SERVICES OF YOUNG ASSOCIATES TO MDC.

MDC OFFICES

Introduction

There are striking similarities between the six branch offices¹ of the MDC insofar as their effectiveness is strangled by the requirements of covering a large number of courts with undermanned, underpaid staff, operating out of totally inadequate facilities, without fringe benefits, in the face of developing opposition from an impoverished private bar, and in spite of an antiquated criminal system which often ignores the interests and rights of the indigent accused. All offices process an extremely large number of cases,² compounded by the fact that many of the full-time attorneys

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1. New Bedford, serving Bristol, Dukes and Nantucket Counties
 2. Salem, serving Essex County
 3. Pittsfield, serving Berkshire County
 4. Springfield, serving Hampden, Hampshire and Franklin Counties
 5. Worcester, serving Worcester County
 6. Whitman, serving Plymouth and Barnstable Counties

MDC offices are supported in Ashfield and Easthampton where two lawyers provide representation part-time in both district and superior courts. The attorneys are paid \$4,500 and \$5,000 respectively. For purposes of this report only the six other offices will be discussed.

²"Case" is defined as a defendant. Figures are drawn from District Court statistics from July 1969 to 30 June 1970, the last period for which complete District Court statistics are available from MDC. (During the evaluation in March 1972 the Boston Office had two legal secretaries assigned full-time to bring statistics up to date. These secretaries had already been working for five weeks.) No Superior Court statistics are available.

assigned to the District Court cover several District and Superior Courts in more than one county. The following Table indicates the District Court case flow in the six branch offices over a one year period from July 1969 June 1970.

In Massachusetts the District Court, as the Court of original (not of record) trial jurisdiction, sits throughout the entire year, while the Superior Courts hold sessions periodically during which criminal cases are heard. The District Attorney for each county prosecutes only Superior Court charges³ which arise during the criminal session. Police prosecutors (and in some cases, the judge) represent the Commonwealth at the District Court level. The MDC lawyers, however, must provide defense representation at both District and Superior Court levels, including juvenile probation revocation and mental health matters. During the Superior Court sessions, which entail time-consuming trials, the New Bedford and Salem offices, for example, develop large backlogs of "non-jailer"⁴ cases in the District Courts, simply because there are not enough MDC attorneys available to adequately cover the courts.

³The District Attorney for Bristol County has received an LEAA grant to assign an assistant to prosecute District Court matters.

⁴"Non-jailer" cases are those in which the defendant has been released on bail or recognizance. During the Bristol County Superior Court sessions in February, June and November, and the Dukes-Nantucket session in May and October, the New Bedford Office expects to develop a "non-jailer" backlog of up to 250 cases. Judges in most areas are accommodating to those who are incarcerated and always schedule their hearings first. Even so, there are speedy trial problems which result. The New Bedford office has filed bail petitions in the Supreme Judicial Court to obtain personal recognizance for jailed clients.

	New Bedford (4 attys)	Salem (5 attys)	Pittsfield (3 attys)	Springfield (6 attys)	Whitman (4 attys)	Worcester (6 atty)
Defendants pending at beginning of year	185	533	91	29	336	160
Defendants received	1416	2071	677	2891	2304	906
Defendants disposed of	1425	1060	617	2858	2167	843
Number of Charges	3505	1990	965	5187	4594	2197
Defendants represented	1180	751	594	2477	1814	820
Number of Charges	2814	1376	932	4426	3842	2127
Defendants tried	969	616	573	2044	1575	641

One would assume that "defendants represented" would have to at least be as great as "defendants disposed of," however the discrepancy may be explained if some cases were disposed of without formal representation (going to court) being provided.

Another important factor in assessing the MDC branch office operations is the economically depressed state of the private bar outside the Boston metropolitan area. Massachusetts has instituted no fault coverage for both personal injury and property damage automobile accidents, thereby depriving the sole practitioner and small law firm of a substantial source of income. Criminal matters represent potential, albeit small, fee-generating cases which can be disposed of quickly and which may help sustain a law practice. All offices have experienced some resentment and bitterness from the private bar, who feel that strict eligibility standards are not followed. The MDC branch offices agree with the private attorneys to the extent that their lawyers are appointed in almost every case, and would welcome some increased representation by private attorneys. The District Courts, however, do not have adequate monetary reserves to subsidize private representation on a case-by-case basis and also feel that MDC representation, with a few exceptions, is superior to that afforded by private counsel. Hence the MDC is forced into a rather undesirable posture; it has a monopoly on representation of indigents, yet it has totally inadequate resources to fulfill the responsibilities of that monopoly.

Defender Office Operation and Structure Facilities and Equipment

The branch offices are located in the major cities within the geographical area served. Each is conveniently located near the courts offering the most substantial volume of business. Attorneys

who service outlying courts however, must spend considerable driving time for which they are not compensated. Without exception, branch office facilities are abysmally small and ill-equipped to operate as law offices. In Whitman, for example, one must walk through the office shared by two staff attorneys in order to reach the washroom. The chief defenders occupy private offices, but staff attorneys share offices, and sometimes desks, and have absolutely no privacy for interviewing. Waiting rooms are created by placing chairs in the space occupied by the secretaries. There are no MDC libraries, no duplicating equipment and no dictating units. There are no signs conspicuously designating the branch facilities as MDC offices.

Personnel

1. Attorneys

Currently, the 28 attorneys employed on a "part-time, contract basis" by the Commonwealth as MDC branch office lawyers, receive none of the fringe benefits such as pay raises, insurance, sick pay, accrued vacation, etc. afforded to MDC personnel in the Boston office, and to the secretaries who are regarded as state employees.⁵ Their employment, however, is

⁵Branch Office Personnel are listed as follows:
New Bedford - 4 attorneys, 1 investigator, 2 clerk typists.
Salem - 5 attorneys, 2 clerk-typists.
Pittsfield - 3 attorneys, 1 investigator, 1 clerk-typist.
Springfield - 6 attorneys, 2 clerk-typists.
Worcester - 6 attorneys, 1 investigator, 2 clerk-typists.
Whitman - 4 attorneys, 2 clerk-typists.

a full-time proposition. Several of the lawyers attempt to maintain an outside civil practice, but frankly admit to failure, due to the overwhelming time commitment required of the MDC position.

The Chief Defender in each of the branch offices is highly regarded by both defender staff and court personnel for his skills as a criminal attorney. Each has a minimum of seven years experience in defender and criminal law related work. He is free to run his own office within financial limitations, although hiring policies are controlled by the Boston office, as Mr. Rimbold must approve each staff attorney's contract of employment. Applicants generally live in the areas covered by and are screened in the MDC branches. The low salaries naturally limit the number of qualified applicants. In addition to administrative responsibilities, the chief defenders carry daily caseloads and attempt to supervise felony matters in Superior Court and regulate the allocation of district court representation.

Staff attorneys either are assigned to District or Superior Court depending upon their experience and seniority and are in court every day. In those offices with no investigators the attorneys do all their own interviewing and whatever field work time permits. It was the consensus of opinion of the judges, district attorneys, probation officers and other court personnel who were interviewed that the MDC attorneys gave representation

in individual cases equivalent or superior to that afforded by private counsel; however, it was felt that they were vastly overworked and often forced to compromise the interests of individual defendants in order to seek some minimal level of justice for all their clients.

2. Secretaries

Clerical positions in each office are filled by women, who generally use their time to answer the phones, schedule interviews, send out court notices, and keep statistics. They type relatively few motions or briefs except in some Superior Court cases, since the attorneys have no time to draft or dictate them.

Salaries

Attorney salaries are scheduled so unrealistically low⁶ that the MDC cannot expect to attract experienced defenders, particularly in the offices outside metropolitan Boston since the opportunities to supplement their incomes by outside practice are almost non-existent. By the same token, those attorneys who are hired are generally young and inexperienced and must learn in the courtroom, since no formal training is offered. After they learn

⁶ Five of the six chief branch office defenders earn \$13,440 per year. One is paid \$11,500, although he spends only 70% of his time directing the MDC office in Pittsfield. None of these office heads has less than 7 years of criminal law experience. Staff attorney salaries range as follows:

6(Cont'd)

New Bedford 3 attorneys at \$8,540 averaging less than 1/2 year MDC experience

Pittsfield 1 attorney at \$8,000 - 4 - 1/2 years MDC experience
1 attorney at \$7,500 - 1 - 1/2 years MDC experience

Salem 2 attorneys at \$8,540 - 5 years and 3 years MDC experience
1 attorney at \$7,500 - 1/2 year MDC experience
1 attorney at \$9,040 - 3 years MDC experience

Springfield 1 attorney at \$7,540 - 1/2 year MDC experience
1 attorney at \$8,040 - 1/2 year MDC experience
1 attorney at \$9,040 - 2 years MDC experience
1 attorney at \$9,540 - 5 years MDC experience

Whitman 1 attorney at \$7,540 - 3/4 year MDC experience
1 attorney at \$8,540 - 1 - 1/2 year MDC experience
1 attorney at \$9,540 - 3 years MDC experience

Worcester 2 attorneys at \$7,540 - 1 year MDC experience
1 attorney at \$8,540 - 2 years MDC experience
2 attorneys at \$9,040 - average 5 years MDC experience

their trade, they move on to more lucrative pursuits. The branch offices are fortunate in that staff attorneys have developed into competent, resourceful criminal lawyers. There is no compensation for skill, however, other than personal satisfaction. For example, one Salem defender, has practiced law for nine years and is regarded as an exemplary criminal trial attorney. He joined the MDC in 1966, remained two years and left to practice with another attorney. When "no fault" became law his practice suffered; therefore, he recently rejoined MDC. He is paid \$8,500 per annum and has no time for a private practice. Like the other attorneys in the six branch offices, he enjoys and is well skilled in criminal law, yet he is locked into his MDC position, with no real likelihood for advancement either in salary or responsibility. He realizes that it is not physically possible for him to always provide the calibre and extent of representation which his clients should have. A probation officer in Essex County, with a college diploma and one year of experience, receives a starting salary of from \$10,800 to \$13,000 per year. District Attorneys receive higher salaries for Superior Court prosecution only and are able to maintain private law practices since Superior Court Criminal Sessions are not held year round.

Secretarial staff are regarded as state employees and receive appropriate fringe benefits. Salaries average \$6,775 per annum, which is comparable to those offered in the Boston office.

Training

The chief defenders must carry proportionate shares of the office caseloads and have little time to provide intensive supervision or training aside from a brief orientation to the office. Those staff attorneys interviewed unanimously praised the legal abilities of their respective office heads and sincerely felt that they had received as much insight and technique as time permitted; but realized the logistical difficulties in removing two men from the mainstream of day-to-day representation in order to provide intensive training. A partial solution to training deficiencies has been achieved in Worcester where the attorneys and investigator hold regular monthly meetings where particular problems are discussed, sometimes with cases and notes distributed. Every lawyer interviewed would welcome regular training seminars sponsored by Boston headquarters and an opportunity to exchange ideas with other defenders around the state. Moreover, each felt out of touch with important changes in the criminal law, since no reference materials, statutes, cases, such as The Criminal Law Reporter or even recent advance sheets were available, except at their own expense. Few expressed real interest in bringing litigation to reform or improving the outdated Massachusetts criminal system, since almost every working hour was spent in court processing a great number of cases or in the office, interviewing clients.

Investigation

New Bedford, Pittsfield and Worcester employ experienced competent full-time investigators. In New Bedford, a former policeman who has excellent contact within the police department, provides back-up assistance to the attorneys in addition to regular field work in felony cases. He also assumes the burden of interviewing a significant number of clients and witnesses. Pittsfield's investigator, who possesses a masters degree in community leadership, interviews witnesses and defendants in Superior Court, conducts field examinations and attempts to locate non-incarcerative placements for MDC clients. The Worcester investigator concentrates primarily on field work and does little interviewing with clients. These investigators must use their own equipment and often purchase necessary items, such as camera film, with their own funds.

Quality of Representation

Based upon extensive interviews it is the opinion of the evaluators that MDC branch offices are staffed with attorneys of high professional ability, yet they are caused to handle such great volumes of cases that the services delivered are dangerously close to falling below the constitutionally mandated level of "effective assistance of counsel." This effectiveness cannot be measured according to the number of defendants whom the MDC lawyers

"get back on the street"; for freedom is often at the expense of constitutional rights and contrary to what the facts in each case might indicate. The most important factor in this conclusion is the "bargain-basement" character of the District Court system itself, which encourages perfunctory hearings, little or no preparation by law enforcement, inconsistency in fact-finding and discourages appeal because of the relatively light sentences imposed. An attorney who represents a great number of defendants at the District Court level is not in a position to talk to the defendant personally or at length or marshal the testimony of many defense witnesses, or investigate facts thoroughly, and therefore he does not appeal many cases if the defendants are satisfied with their sentences. Because of the pressures created by the District Court workloads and by the fact that attorneys may also appear in Superior Court, representation also suffers from a paucity of time for preparation. As long as MDC is unable to hire more lawyers and at the same time must provide representation in the District Courts, quality will continue to slide. For example, records indicate that in the Salem office alone the caseload has quadrupled since 1966 while the number of MDC staff attorneys has remained constant. The attorneys admit that their efforts are spread so thinly that the clients are not receiving the attention they deserve.

Since the MDC lawyers are constantly in court, MDC branch offices rarely offer important collateral services to their clients. Sentencing alternatives are rarely explored; contacts with drug abuse and alcoholism programs are limited and job and family counseling is non-existent, except insofar as Court probation staff make it available. Thus, there can be no effort to help the client deal with his total problem, nor to assist him in better dealing with the disabilities imposed by his condition of poverty. Moreover, no branch office has received suggestions from Boston headquarters of how to deal with these deficiencies.

It is in Superior Court that the MDC lawyers are at least able to bring their experience to bear favorably for their clients. They are the best criminal attorneys around. All MDC Branch offices appear to have excellent relationships with their local district attorneys, which result in full discovery and often beneficial plea-bargaining. Indeed, in this regard the MDC lawyers provide higher quality trial representation than the private bar. The District Attorney knows what he can expect, and often will reduce charges to obviate trial.

Relationships with Judicial and Court Personnel

District and Superior Court judges and probation officers (Superior Court only) were uniform in their praise of the MDC attorneys. The basis of such praise, however, differed among those consulted. Some judges view defenders as functional parts of the

criminal justice machinery which enable it to run smoothly, while others appreciate the presence of forceful independent advocacy. Everyone agreed that the defenders were overworked and underpaid and that their clients often did not receive the personal attention which one expects from his lawyer. Probation personnel confirmed the observation that MDC representation stops at the courtroom door, since dispositions of those found guilty are largely left to the recommendations of probation officers. It was commented that MDC attorneys are systematized, very knowledgeable and at least as well prepared as the District Attorneys.

Relationship with the Chief Counsel

The evaluators noted that while contact between the branch offices and Boston is maintained periodically, there is no real assistance flowing from headquarters to the district offices. Most communications deal with statistical reporting or attorney employment approval. In fact, staff attorneys in the branch offices indicate that the only time the chief counsel visits the districts is when new attorneys are hired.

Moreover several office chiefs believe that the chief counsel is completely ineffective in seeking legislative support and monetary appropriations for the program and further believes that he ignores the needs of the branch offices both at budget time and throughout the year. All desired more positive services from Boston, including regular reports on developments in the criminal law, assistance in providing structural training for new and on-going education for staff attorneys, back-up support by way of investigator and appellate assistance and moral support for their efforts to alleviate the great district court case load burden.

CONCLUSIONS

The branch offices are staffed with competent lawyers who are frustrated by their unmanageable caseloads, low salaries, inadequate office facilities and equipment, and a District Court system which does not afford a fair and adequate forum for the vindication of the rights of the indigent accused. Each office desperately requires important criminal law and evidence works, advance sheets and statutes. The attorneys need and desire opportunities to expand and improve their abilities in the courtroom and to recognize important issues for appeal. They would welcome back-up assistance from the Boston office, but since Boston offers no benefits, they prefer to be left alone at this time. Most importantly, they desire to function as attorneys rather than as mere components of the Massachusetts criminal system. The right to counsel demands no less.

RECOMMENDATIONS

EACH MDC BRANCH OFFICE MUST BE ENLARGED TO PROVIDE PRIVACY FOR THE ATTORNEYS, SPACE FOR CLIENTS AWAITING INTERVIEWS AND LIBRARY ACCOMODATIONS.

ATTORNEYS MUST HAVE OFFICES OR SOME PRIVATE SPACE IN WHICH TO PERFORM NECESSARY LEGAL RESEARCH AND WRITING, TO RECEIVE AND MAKE PRIVATE TELEPHONE CALLS AND INTERVIEW CLIENTS.

IT IS INEXCUSABLE FOR A LAW OFFICE OF ANY SIZE TO BE FORCED TO OPERATE WITHOUT THE BASIC TOOLS OF THE PROFESSION. THEREFORE, EACH OFFICE SHOULD HAVE A LIBRARY CONTAINING AT LEAST THE FOLLOWING:

- MASSACHUSETTS ANNOTATED STATUTES
- FULL SET OF MASSACHUSETTS DECISIONS
- WEST'S FEDERAL AND NORTHEASTERN REPORTERS
- UNITED STATES SUPREME COURT REPORTS OR LAWYERS EDITION (FULL SET)
- MASSACHUSETTS COURT RULES
- THE CRIMINAL LAW REPORTER
- ALI-ABA TRIAL MANUAL FOR THE DEFENSE OF CRIMINAL CASES
- SHEPHERD'S CITATIONS
- A MASSACHUSETTS REFERENCE DIGEST (CRIMINAL LAW VOLUMES)
- BAILEY AND ROTHBLATT'S CRIMINAL LAW FORMS

MOREOVER, THE LIBRARY SHOULD AFFORD SOME SPACE FOR QUIET RESEARCH AND PERHAPS STAFF MEETINGS.

THERE SHOULD BE AT LEAST ONE DICTATION UNIT FOR EACH TWO ATTORNEYS, AND SOME TYPE OF DUPLICATING EQUIPMENT IN EACH BRANCH OFFICE.

EACH BRANCH OFFICE SHOULD CLEARLY BE IDENTIFIED BY A SIGN PLACED CONSPICUOUSLY FOR THE CONVENIENCE OF CLIENTS AND THE PUBLIC.

EACH BRANCH OFFICE MUST EMPLOY ADDITIONAL QUALIFIED ATTORNEYS TO PROVIDE REPRESENTATION IN THE INCREASING NUMBER OF CASES. PRESENT LEVELS PERMIT AN ATTORNEY LITTLE TIME TO DO MORE THAN "PROCESS" A GIVEN NUMBER OF CASES.

THE NUMBER OF CLERICAL POSITIONS MUST BE INCREASED TO HANDLE THE WORK LOAD GENERATED BY NEW ATTORNEYS AND INVESTIGATORS.

ATTORNEY POSITIONS SHOULD BE MADE FULL-TIME, WITH APPROPRIATE FRINGE BENEFITS (E. G. INSURANCE, SICK LEAVE, VACATION WITH PAY) AT LEAST EQUIVALENT TO THOSE ACCORDED TO ATTORNEYS IN THE BOSTON OFFICE.

SALARIES MUST BE INCREASED COMMENSURATE WITH THE INDIVIDUAL ATTORNEY'S ACADEMIC QUALIFICATIONS, ABILITIES AND EXPERIENCE AND SHOULD BE SUBSTANTIAL ENOUGH TO WARRANT ELIMINATION OF THE NECESSITY FOR AN OUTSIDE LAW PRACTICE TO SUPPLEMENT A MEAGER DEFENDER SALARY. OUTSIDE LAW PRACTICE SHOULD BE ELIMINATED COMPLETELY.

ALL BRANCH OFFICES IN COLLABORATION WITH THE BOSTON OFFICE SHOULD DEVELOP DETAILED, LONG-RANGE TRAINING OBJECTIVES FOR LEGAL STAFF, TO BE IMPLEMENTED ON A REGULAR BASIS. NEW ATTORNEYS SHOULD BE INTRODUCED TO THE CRIMINAL SYSTEM AT BOTH DISTRICT AND SUPERIOR COURT LEVELS, UNDER CLOSE SUPERVISION BY A SENIOR TRIAL LAWYER. CONTINUING INSTRUCTION TO EXPAND KNOWLEDGE OF DEVELOPMENTS IN CRIMINAL LAW AND TO SHARPEN TRIAL TECHNIQUES SHOULD BE COORDINATED THROUGH THE BOSTON OFFICE AND BE MADE AVAILABLE THROUGH PERIODIC TRAINING SEMINARS AND BULLETINS HIGHLIGHTING IMPORTANT CHANGES IN CRIMINAL AND JUVENILE LAW.

EACH BRANCH OFFICE MUST EMPLOY A FULL-TIME QUALIFIED INVESTIGATOR, IN ADDITION TO PRESENT STAFF LEVELS. IT IS APPARENT THAT THE MDC HAS FILLED VACANCIES, WHICH CLEARLY DEMAND AN ADDITIONAL ATTORNEY, WITH AN INVESTIGATOR BECAUSE THE SALARY ALLOTMENTS ARE TOO LOW TO ATTRACT QUALIFIED LAWYERS. INVESTIGATIVE CAPACITIES SHOULD BE SUCH, THAT A FULL RANGE OF SERVICES CAN BE OFFERED AT BOTH DISTRICT AND SUPERIOR COURT LEVELS.

INVESTIGATORS SHOULD BE PROVIDED, WITHOUT EXPENSE TO THEMSELVES, WITH APPROPRIATE EQUIPMENT INCLUDING CAMERAS, FILM AND TAPE RECORDERS; AND SHOULD HAVE ACCESS TO PRIVATE OFFICE SPACE EQUIPPED WITH A TELEPHONE AND DICTATING EQUIPMENT.

THE CHIEF COUNSEL SHOULD TAKE IMMEDIATE STEPS TO OFFER AT LEAST THE FOLLOWING SERVICES TO THE BRANCH OFFICES: UP-TO-DATE REPORTS ON CHANGES IN THE LAW, BI-ANNUAL TRAINING SEMINARS FOR LAWYERS AND INVESTIGATORS, PERIODIC SALARY REVIEWS.

THE CHIEF COUNSEL SHOULD PAY REGULAR VISITS TO THE BRANCH OFFICES TO MEET WITH THE STAFF, REVIEW ADEQUACY OF STAFF LEVELS, OFFICE AND LIBRARY SPACE, EQUIPMENT, AND TO EVALUATE GENERAL OFFICE PROCEDURES AND PERFORMANCE.

THE GENERAL COUNSEL SHOULD ESTABLISH IMMEDIATE AND CONTINUOUS CONTACT WITH JUDGES, PROBATION STAFF AND CORRECTIONAL PERSONNEL IN THE OUTLYING DISTRICTS TO INDICATE MDC WILLINGNESS TO HELP REDUCE CASE LOADS, BROADEN THE SCOPE OF MDC REPRESENTATION AND TO RESOLVE SUCH DIFFICULT QUESTIONS AS ELIGIBILITY.

ROXBURY DEFENDERS, INC.

The Roxbury Defender Project is the result of a grant application made early in 1971 to the Massachusetts Committee on Law Enforcement and Administration of Criminal Justice for an LEAA action grant. The objectives of the project were to:

(1) provide vigorous and effective service to the Roxbury community, a high crime area; (2) provide representation without the necessity of initially being appointed by the Court; and (3) to provide, on a referral basis, related social services. Its first year goals were to provide effective representation by limiting caseloads, to have substantial community participation and involvement, to be accessible to the clients and to have liaison with and make use of the other legal resources and organizations in the community.

The grant application required that the project board be representative of the community it served including specification of certain groups and organizations which must be represented. The Board selects the project director and the staff lawyers and reviews the selection of other staff and also has the right to terminate them (for cause). The Board is composed of whites, blacks and Spanish-speaking representatives, all of whom are active in community affairs and organizations. The director is a very community-minded person and the Board fully approves of and supports the goals, priorities and objectives he has set for the project and also is cooperating with him in seeking additional funds and grants to expand its services. The Board meets monthly and receives a written report from the director.

SERVICE TO CLIENTS AND LEVEL OF PREPARATION

a. The Roxbury Defenders, Inc. presently handles appeals from the district and superior courts involving clients whom they have represented at the trial level. There has only been minimal participation in post-conviction remedies.

b. The office has been involved in several juvenile court cases and its limited involvement in juvenile court is due to lack of appointment by the courts.

c. The Roxbury Defenders, Inc. had pending applications for grants to provide juvenile court representation and post-conviction relief to inmates at Massachusetts Correctional Institution.

District Court

d. Upon appointment, the Roxbury Defenders represent indigents in the Roxbury and Dorchester District Courts. The caliber of the representation provided appeared to be very high and the staff attorneys appeared competent, zealous and dedicated.

Since its inception, the Roxbury Defenders have handled trials, probable cause hearings, juvenile cases and coroners inquests in the Roxbury and Dorchester District Courts.

Superior Court

e. The Roxbury Defenders also upon appointment by the court represent indigents accused of felonies in the superior court. They also take appeals from the judgments of the district court judges, i. e., trials de novo, and bail appeals including in one case, a bail appeal to the Supreme Judicial Court.

The 1971 case statistics supplied by the Roxbury Defenders Project follows. These statistics cover the period May 12, 1971 (the first day it began accepting clients) to December 31, 1971.

Number of cases for superior and district court activities	Number of Cases for district Court Trials	Number of Cases Appealed from district court
775	245	19
Number of Cases for superior court *P. C. B. O. and Appealed	Number of Cases for superior court Trials (P. C. B. O.)	Cases Plead district Court
231	25	19
Cases Plead superior Court	Cases Pending	Cases with No Court Action
8	203	205

* (Probable Cause Bind Overs)

f. It is anticipated that with the impending growth of the demand for Roxbury Defenders that they will need at least three more attorneys (preferably two Blacks and one Spanish-speaking to accommodate the racial balance of its clientele) to try cases in the Superior Court. Their ability to handle the present caseload is aided by a full-time investigator who supervises twenty very highly motivated students who function as investigators.

If and when the applicants for funds for juvenile court representation and post-conviction remedies are granted there will be a need for hiring six additional attorneys and other supportive personnel, hopefully quantitatively representing the racial mix of the community the Roxbury Defenders serve.

Offender Rehabilitation

b. The Offender Rehabilitation program is labeled the "Social Services Department" and is manned by four students, two of whom will receive their degrees in Social Work in June, 1972.

They are actively involved in making community contacts with Social Services agencies (i. e. , welfare, drug clinics, alcohol treatment centers, job placement center, Legal Aid Societies, etc.) to assist the clients.

There is a need for a full-time trained social worker in this department and one is being sought at the present time.

Clerical

The clerical staff consists of one part-time and five full-time secretaries.

ADMINISTRATIVE

The office administratively is very well run and has created a "positive attitude" among staff attorneys and supportive personnel. The director and deputy director are ably assisted by an administrative assistant who is jack of all trades and is a trouble-shooter for the office, plugging in any gaps which may arise on a day-by-day basis. He is responsible to the director and is responsive to the deputy director, who is likewise responsible to the director in seeing to it that all office policies are carried out as directed.

The executive secretary manages property, interviews applicants for clerical jobs, and supervises work, compiles statistics and prepares monthly and annual reports. The staff assistant controls the docket and controls flow of paper and files, coordinates work of entire staff in terms of paper flow, and prepares scheduling of trials.

PHYSICAL

The office is presently situated at 2401 Washington Avenue, Boston, Massachusetts, and occupies the entire floor of the Bartlett Building, which is an office building adequate in appearance but inadequate in size. Presently two to three attorneys share offices with only the director and deputy director having private offices. This is hardly a desirable situation.

This situation is being remedied however, as the office has contracted for new quarters which will have seventeen private, paneled, carpeted, air-conditioned offices with a library and ample secretarial and storage on the second floor level, and two store fronts down below which will house the investigators, two secretaries and the Social Services Department. Thus, while acquiring a "store-front image" below, the upstairs will reflect the view that to win the confidence of the clientele, poverty lawyers need not and should not be, or appear to be, "poverty stricken." There is no present need for a District Office.

The library of the Roxbury Defenders, Inc. is composed of the Supreme Court Reporter, Massachusetts Reports, Federal Supplements, Massachusetts General Laws Annotated, Massachusetts Digest, and Corpus Juris Secundum. While it is a good working library, it lacks many texts dealing with special problem areas of concern to trial lawyers, (i. e., defense of drug cases, juvenile court, presentation of insanity defense, eye-witness identification, successful trial of criminal cases (Rothblatt), Reasonable Doubt (Cohen), etc.

PUBLIC RELATIONS

The public relations program of the Roxbury Defenders, Inc. is one of the most effective in the nation for defender programs. Each member of the staff is available for, and involved in making presentations in the schools and before community groups (the most active of which have representation on the board), the Director, Wallace Sherwood, and his Deputy, Roderick Ireland, have a weekly radio program on station W. I. L. D., called "Rap Seventh." This program, on every Tuesday at 1:00 p. m., deals with issues of primary concern to the community which R. D. C., serves and provides for the listeners to call in their questions and concerns. Sherwood and Ireland provide answers to the questions and possible avenues of approach to a resolution of their concerns. The program deals with issues and endeavors to avoid dealing with personalities. The director on Saturday, March 4, 1972, appeared on a TV program (Black oriented) on Channel 4. The reports received from members of the Board and staff members who viewed it were very favorable. The Board members, in particular, who represent poverty programs in Roxbury, believe that the community is very enthusiastic about the attorneys and their work. The overall public relations program is doing an outstanding job of creating an awareness of the existence of and availability of the attorneys to the community.

It must be noted, however, that their aggressive, representation has not met with approval everywhere. The most serious consequence of this to the office has been the failure of some of the judges to appoint the Roxbury attorneys. Notwithstanding the fact that the defendants qualify for such representation and the project is available and willing to provide it. One judge took it as a personal affront when the project attorneys appealed a bail hearing all the way to the Supreme Judicial Court. Subsequently, the project was barred from his courtroom for the balance of a month and since then,

has not been assigned cases by him. The use of the power of appointment in this fashion not only is violative of Rule 3.10 but also clearly interferes with the indigent clients' rights to zealous and effective advocacy.

has not been assigned cases by him. The use of the power of appointment in this fashion not only is violative of Rule 3.10 but also clearly interferes with the indigent clients' rights to zealous and effective advocacy.

OFFICE POLICIES

a. The Project has an office policy of hiring qualified people and to the extent that it can, having a racial mix which reflects the racial composition of the community it serves (i. e., Blacks, Spanish-speaking and whites). This probably contributes to broad based community-responsiveness to and acceptance of the program.

b. The office's salaries are competitive with those paid other attorneys involved in poverty law programs but fail to meet the standards of either the District Attorney's office or those paid by law firms.

1. Project Director	(\$18,000-22,000)	\$19,000
2. Deputy Director	(15,000-18,000)	15,000
3. Senior Staff Attorneys	(10,000-18,000) (3)	13,000
4. Staff Attorneys	(10,000-18,000) (1)	12,000
	(2)	11,000

The office policy is to give annual increments to secretaries and investigators and Social Workers and merit and/or annual increments for attorneys.

c. The office employs and intends to continue to employ part-time students to function as investigators and in the Social Services Department. But all attorneys are full-time and are not permitted private practice.

STAFF TRAINING SUPERVISION

a. Lawyers

1. The District Court lawyers are supervised by the senior staff attorneys who advise and counsel with regard to tactics and techniques and are always accessible for such purposes.

2. The Superior Court lawyers are supervised by the director and the deputy director who lead weekly discussions at office meetings of new developments in the law, new insights on judges in the Superior Court as well as the District Courts and trial techniques.

b. Supervisory

1. The office's administrative assistant supervises the clerical staff as well as the students, other than law students, who are supervised by the director personally and the administrative assistant has responsibility for coordinating the functioning of the various segments of the office and is responsible to the director.

c. Fringe Benefits

1. The attorneys receive two weeks vacation and twelve days sick time. Their limited funds have not permitted the usual fringe benefits of office contribution to hospitalization and life insurance programs.

BOARD STRUCTURE & RELATIONS

a. Board Functions

The Roxbury Defender, Inc. has an activist board of directors each of whom is the representative of a proverty oriented program in the Roxbury community. It has the responsibility of setting policy for the organization and has the authority to approve the hiring or firing of the director. They seem to take seriously their responsibility to assist the director in his efforts to raise funds to implement the many programs which he has recommended and which they have approved.

b. Policies

The Board set the policies for the office regarding hiring, firing, and salaries of employees and the office's priorities and must approve all actions of the director which are not purely administrative. The Board's actions have been in total support of the director and his staff.

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MORALE

a. Lawyers

The moral of the Roxbury Defenders is very high.

1. The public's attitude toward the attorneys is very positive and this receptivity must boost the morale of the attorneys.

2. The attorneys do not seem to have any morale problems stemming from any of the office's policies regarding them. They seem to enjoy their work and the people with whom they work.

3. The attorneys would like more money but fully understand the fiscal situation at the time that each was employed. It should be noted, however, they cannot be expected to continue indefinitely at wages which are not commensurate with their abilities. Stepped up efforts should be made to raise the necessary money for merit and/or annual raises.

b. Secretaries

The morale of the secretaries is high and they seem to share the joy of the lawyers in office victories and also the enthusiasm of the balance of the staff for the kind of work it is engaged in. The secretaries do not have any problems conforming to the office policies and seem appreciative of the fact that the attorneys, social workers, investigators and students treat them professionally.

The secretaries also understand the fiscal situation and seem content to wait a reasonable period of time until more money is available. Several stated that they feel that the work that they are doing now, "makes them feel more relevant."

The executive director appears to be exceptionally well qualified for the job in terms of his legal ability, dedication, integrity, inventiveness, responsiveness and awareness, on all of which he rates very highly. He has prepared several grant applications which should soon be approved. His relations with the Bar are good and he is active in the Boston Bar Association. His relations with the community he is serving are excellent. His relations with judges of the

District, Superior Court and Supreme Judicial Court appear to be good. However, it would appear that some members of the bench find it difficult to accept the kind of aggressive, concerned, representation afforded indigents by the director and his staff.

RECOMMENDATIONS

THE ROXBURY PROJECT APPEARS TO BE ACHIEVING ITS PROJECT GOALS AND OBJECTIVES AND SHOULD BE CONTINUED.

MDC SHOULD CAREFULLY STUDY THE ROXBURY PROJECT AND MAKE USE OF ITS EXPERIENCES IN THE AREAS SUCH AS ATTORNEY CASELOADS, ATTEMPTS TO OBTAIN GRANT FUNDS, COMPOSITION OF GOVERNING BOARD, USE OF SOCIAL SERVICES, CONCEPT OF THE NEIGHBORHOOD OFFICE AND COMMUNITY INVOLVEMENT. CLOSE AND REGULAR LIAISON SHOULD BE ESTABLISHED BETWEEN THE CHIEF COUNSEL OF MDC AND THE PROJECT EXECUTIVE DIRECTOR.

THE PRESENT QUALITY OF REPRESENTATION PROVIDED BY THE PROJECT SHOULD NOT BE PERMITTED TO DIMINISH AS CASELOADS INCREASE, CONSIDERATION SHOULD BE GIVEN TO PROVIDING AT LEAST THREE MORE ATTORNEYS TO PROVIDE REPRESENTATION IN THE SUPERIOR COURTS.

MDC SHOULD ACTIVELY SUPPORT THE PROJECT IN ITS EFFORTS TO INSURE ITS APPOINTMENT IN THE DISTRICT AND SUPERIOR COURTS FOR ALL QUALIFIED PERSONS IN THE COMMUNITY THE PROJECT SERVES AND IF NECESSARY SHOULD BE PREPARED TO TAKE APPROPRIATE ACTION INCLUDING THE INSTITUTION OF LITIGATION, IF THE REFUSALS TO APPOINT THE PROJECT CONTINUE.

THE ADDITIONAL TEXTUAL AND OTHER LIBRARY MATERIALS SUGGESTED FOR THE MDC DISTRICT OFFICES SHOULD BE ACQUIRED BY THE PROJECT.

NOTWITHSTANDING THE EXCELLENT RAPPORT BETWEEN THE BOARD AND THE PROJECT DIRECTOR, THE PROJECT DIRECTOR SHOULD HAVE THE AUTHORITY TO EMPLOY AND TERMINATE ALL PROJECT PERSONNEL.

CONCLUSION

This Report is a result of a full field evaluation conducted by the National Legal Aid and Defender Association, pursuant to a request by the Massachusetts Defender Committee. The evaluation team was drawn largely from neighboring defender systems and included evaluators from Washington, D.C., Michigan, New Jersey, Illinois and Florida.

Following is a recapitulation of all the recommendations which have appeared at the close of each section in the body of the report.

RECOMMENDATIONS

1. THE COMMITTEE SHOULD ASSESS THE EFFECTIVENESS AND PERFORMANCE OF THE CHIEF COUNSEL AND DETERMINE WHETHER HE SHOULD BE REPLACED. THE RESPONSIBILITY FOR EMPLOYMENT AND TERMINATION OF ALL OTHER STAFF PERSONNEL, INCLUDING THE EXECUTIVE SECRETARY, SHOULD BE THAT OF THE CHIEF COUNSEL.
2. A RECRUITMENT PROGRAM TO ATTRACT PROSPECTIVE LAW SCHOOL GRADUATES SHOULD BE INSTITUTED. SUCH PLAN SHOULD OFFER A COMMITMENT OF A POSITION TO THE STUDENTS PRIOR TO THEIR GRADUATION TO INSURE THAT COMPETITION FROM OTHERS IS MET. AN ACTIVE ATTEMPT SHOULD BE MADE TO RECRUIT MINORITY EMPLOYEES, PARTICULARLY ON THE LEGAL STAFF, TO AT LEAST ACHIEVE A RATIO OF APPROXIMATELY

THEIR REPRESENTATION IN THE COMMUNITY POPULATION.

3. THOROUGH AND EFFECTIVE TRAINING AND SUPERVISION PROGRAMS FOR THE PROFESSIONAL AND CLERICAL STAFF MUST BE INSTITUTED. THESE INCLUDE THE PREPARATION AND DISTRIBUTION OF AN OFFICE MANUAL, A FORMAL TRAINING PROGRAM FOR NEW LAWYERS, PREPARATION OF MATERIALS AND INSTITUTION OF CONFERENCES FOR LAWYERS RELATING TO RECENT LEGAL DEVELOPMENTS, PARTICIPATION WITH SENIOR ATTORNEYS IN MAJOR AND JURY TRIALS, STRUCTURED GUIDANCE OF THE YOUNGER ATTORNEYS BY SENIOR ATTORNEYS, DEVELOPMENT OF GUIDELINES FOR AND INSTRUCTIONS IN THE USE OF PROBABLE CAUSE HEARINGS AND INSTITUTION OF A PROCEDURE FOR REGULAR QUARTERLY STAFF EVALUATORS BY THEIR SUPERVISORS. JUDGES, MEMBERS OF THE PRIVATE BAR, LAW ENFORCEMENT PROFESSIONALS, INCLUDING CORRECTIONAL OFFICERS, PROSECUTORS AND OTHERS WITH CRIMINAL JUSTICE TRAINING SHOULD BE INVITED TO PARTICIPATE IN ANY FORMALIZED ATTORNEY TRAINING.
4. THE RATIO OF ATTORNEY SUPERVISORS SHOULD NOT BE LESS THAN ONE SUPERVISOR FOR EVERY EIGHT ATTORNEYS.
5. THE SALARIES OF THE STAFF LAWYERS MUST BE INCREASED TO A LEVEL SUFFICIENT TO PAY A PROFESSIONAL LIVING WAGE WITHOUT THE NECESSITY OF THE LAWYER ENGAGING IN PRIVATE

PRACTICE. STARTING SALARIES FOR ATTORNEYS SHOULD BE OFFERED AT A LEVEL ROUGHLY COMPETITIVE WITH THOSE OFFERED BY LAW FIRMS AND AT LEAST EQUIVALENT TO THOSE OFFERED BY LEGAL SERVICE PROGRAMS AND THE DISTRICT ATTORNEY'S OFFICE.

6. THE PRIVATE PRACTICE OF LAW BY ALL STAFF ATTORNEYS SHOULD BE PROHIBITED.

7. - THE DISPARITY BETWEEN THE SALARIES PAID TO MDC AND ROXBURY LAWYERS MUST BE ELIMINATED AND THE STAFFS OF BOTH MUST RECEIVE EQUIVALENT SALARIES BASED UPON EQUIVALENT COMPETENCY, ABILITY AND EXPERIENCE.

8. PROVISION SHOULD BE MADE, PERHAPS BY ROTATING ASSIGNMENTS, TO INSURE THAT THE YOUNGER ATTORNEYS ABILITY ARE GIVEN THE OPPORTUNITY TO TRY AND PARTICIPATE IN THE TRIAL OF SUPERIOR COURT CASES WITH SUPERVISION PROVIDED BY THE SUPERVISORS AND EXPERIENCED TRIAL ATTORNEYS.

9. RECOGNIZED ATTORNEY ADVANCEMENT PATTERNS BASED ON ABILITY MUST BE ESTABLISHED AND ACCURATE AND FAIR PROCEDURES FOR EVALUATING THE ATTORNEYS' PERFORMANCE AND FOR INFORMING THEM OF THEIR PROGRESS AND PROSPECTS FOR ADVANCEMENT MUST BE INSTITUTED.

10. MORE POSITIONS AT SIGNIFICANTLY INCREASED SALARIES MUST BE PROVIDED TO RETAIN EXPERIENCED LAWYERS AND ENCOURAGE THEIR PROFESSIONAL GROWTH.

11. - THE PRESENT METHOD OF KEEPING CASE AND CASELOAD STATISTICS SHOULD BE RE-EXAMINED. THE CHIEF COUNSEL SHOULD OBTAIN INFORMATION FROM AND FORMS USED BY OTHER DEFENDER OFFICES IN GATHERING AND KEEPING STATISTICS AS BACKGROUND FOR THE ESTABLISHMENT OF SUCH PROCEDURES. SUCH STATISTICS SHOULD BE COMPILED ON AT LEAST A MONTHLY BASIS AND SHOULD BE KEPT CURRENT. LIAISON SHOULD ALSO BE HAD WITH THE VARIOUS COURT CLERKS AND CHIEF JUSTICES AND ADMINISTRATORS TO SEE IF BASES FOR UNIFORM COLLECTING AND REPORTING OF STATISTICS CAN BE ACCOMPLISHED AND ALSO TO PREPARE FOR THE DAY WHEN THE COURT STATISTICS WILL BE FULLY COMPUTERIZED SO THAT MDC CAN OBTAIN FOR ITS USE THE BENEFIT OF SUCH COMPUTERIZATION. SUCH STATISTICS WILL ALSO BE USEFUL IN DETERMINING HOW MUCH OF THE CRIMINAL CASELOAD IS BORNE BY MDC IN THE VARIOUS COURTS AND HOW MUCH BY OTHER COUNSEL.

12. THE EXECUTIVE SECRETARY SHOULD NOT BE APPOINTED BY THE COMMITTEE. HE SHOULD BE HIRED BY AND DIRECTLY RESPONSIBLE TO THE CHIEF COUNSEL AND AN EFFORT SHOULD BE MADE TO AMEND SECTION 34D TO ACCOMPLISH THIS.

EFFORTS MUST BE MADE TO RECRUIT MINORITY SUPERVISORY, SECRETARIAL AND CLERICAL PERSONNEL.

STEPS MUST BE TAKEN TO ENCOURAGE AND INSURE THE FREE DISCUSSION BY THE ADMINISTRATIVE PERSONNEL OF THEIR WORK AND THEIR VIEWS ON PERSONNEL MANAGEMENT, SALARY LEVELS, ADVANCEMENT IN THE OFFICE. FURTHERMORE, ENCOURAGEMENT MUST BE PROVIDED TO THEM FOR SUGGESTIONS REGARDING IMPROVEMENTS IN OFFICE PROCEDURES, FILING AND RECORD KEEPING.

13. ADDITIONAL CLERICAL AND SECRETARIAL STAFF INCLUDING SUPERVISORY STAFF ARE NEEDED. THE RATIO OF ONE SECRETARY TO EVERY TWO LAWYERS AND ONE SECRETARY FOR EACH ADMINISTRATOR IS RECOMMENDED.

14. A MANUAL SHOULD BE PREPARED FOR ALL ADMINISTRATIVE PERSONNEL DETAILING OFFICE POLICIES REGARDING SUCH MATTERS AS COMPENSATION, PAY RAISES, OFFICE HOURS, SICK AND VACATION PAY.

15. RESPONSIBILITY FOR SUPERVISION OF THE DAY TO DAY ACTIVITIES OF CLERICAL AND SECRETARIAL PERSONNEL MUST BE PROVIDED. FORMAL TRAINING OF NON-LEGAL PERSONNEL ALSO MUST BE INSTITUTED AND REGULAR STAFF MEETINGS SCHEDULED. SUCH MEETINGS SHOULD PERIODICALLY INCLUDE THE LAWYERS AND LEGAL SUPERVISORY PERSONNEL WHOSE EFFORTS ARE SUPPORTED BY THE SECRETARIAL AND CLERICAL WORK.

16. THE OFFICE MUST HAVE THE BUDGETARY FLEXIBILITY TO ESTABLISH ADMINISTRATIVE CLERICAL AND SECRETARIAL POSITIONS WITH SALARIES APPROPRIATE TO THE SKILL REQUIRED AND THE RESPONSIBILITY ASSUMED. SUCH POSITIONS MUST ALSO PROVIDE FOR MERIT RAISES AS WELL AS ANNUAL INCREMENTS.

17. ADDITIONAL QUALIFIED INVESTIGATORS MUST BE EMPLOYED AND MUST INCLUDE BLACK AND SPANISH-SPEAKING PERSONNEL. ONE INVESTIGATOR SHOULD BE EMPLOYED FOR EACH THREE TRIAL ATTORNEYS. THEIR SALARIES SHOULD BE COMPARABLE TO THOSE PAID POLICE OFFICERS WITH DETECTIVE STATUS WITH APPROPRIATE ANNUAL AND MERIT INCREASES.

18. UPON THE EMPLOYMENT OF AN INVESTIGATIVE STAFF, AN ABLE AND COMPETENT CHIEF INVESTIGATOR MUST BE EMPLOYED WHO WILL DEFINE INTERVIEWING AND INVESTIGATIVE RESPONSIBILITIES AND SET TRAINING GOALS FOR HIS STAFF. AN INVESTIGATOR'S MANUAL SHOULD BE DEVELOPED AND MADE AVAILABLE TO EACH MEMBER OF THE INVESTIGATIVE STAFF.

19. THE INVESTIGATIVE STAFF MUST BE GIVEN A PLACE TO WORK WITH ACCESS TO THE ATTORNEYS AND THE FILES AND PROVIDED APPROPRIATE EQUIPMENT SUCH AS TAPE RECORDERS, CAMERAS, DICTATING EQUIPMENT AND THE NECESSARY CLERICAL ASSISTANCE.

20. STUDENT INTERVIEWS MUST NOT BE USED AS A SUBSTITUTE FOR THE CLIENT INTERVIEW BY THE STAFF LAWYER.

21. THE OFFICE, WITH THE COOPERATION OF ALL OF THE VARIOUS LAW SCHOOLS IN THE AREA, SHOULD ESTABLISH A SUPERVISED AND COMPREHENSIVE CLINICAL LAW STUDENT PROGRAM. SUCH A PROGRAM SHOULD ATTEMPT TO INVOLVE STUDENTS IN THE CRIMINAL PROCESS AT EVERY LEVEL FROM ARREST THROUGH TRIAL AND APPEAL AND SHOULD ATTEMPT TO PLACE STUDENTS IN EVERY MDC OFFICE.

22. AN OFFENDER-REHABILITATION PROGRAM SIMILAR TO THAT WHICH WAS PREVIOUSLY FUNDED BY OEO BUT EXTENDING ITS SERVICES THROUGHOUT THE STATE TO DISTRICT AND SUPERIOR COURT CLIENTS IN ADDITION TO JUVENILES SHOULD BE ESTABLISHED. THIS MIGHT BE DONE AT REDUCED COST BY COOPERATION WITH THE COURTS, THE PROSECUTORS, THE PROBATION OFFICES AND THE SCHOOLS OF THE SOCIAL SCIENCES, MEDICINE AND PSYCHIATRY LOCATED IN THE AREA AND THEIR STUDENTS.

23. EXCEPT FOR OBTAINING AND VERIFYING INFORMATION FOR FILE KEEPING AND BAIL PURPOSES OR IN WORK IN AN OFFENDER-REHABILITATION PROGRAM, UNDERGRADUATE OR OTHER STUDENTS WHO ARE NOT LAW STUDENTS SHOULD NOT BE USED FOR CLIENT INTERVIEWS.

24. THE OFFICE FILE AND RECORD KEEPING PROCEDURES SHOULD BE COMPLETELY RE-EXAMINED.

25. PROCEDURES AND SAMPLES OF FORMS AND RECORDS UTILIZED BY OTHER DEFENDER OFFICES SHOULD BE OBTAINED AND A SIMPLE BUT COMPREHENSIVE AND ACCURATE RECORD AND FILE SYSTEM SHOULD BE DESIGNED. SUCH A SYSTEM SHOULD:

A) INSURE THAT EACH FILE CONTAINS A PROCEDURAL HISTORY OUTLINING EACH STAGE OF THE CRIMINAL PROCESS THROUGH WHICH THE CASE HAS PASSED IN A FORM WHICH CAN BE RELATED TO A MASTER STATISTICAL CHART MAINTAINED ON A MONTHLY BASIS.

B) INSURE THAT EACH FILE IS HANDLED BY AS FEW PERSONS AS IS NECESSARY, SECURES THE PRIVACY OF CLIENT COMMUNICATIONS AND IS KEPT IN AN ASSIGNED PLACE ACCESSIBLE TO THOSE WHO MUST HAVE IT.

C) INSURE THAT ALL PRE-TRIAL PREPARATION IS CONCLUDED AND A COMPLETE FILE IS AVAILABLE FOR TRIAL OR DISPOSITION.

D) ELIMINATES ALL UNNECESSARY PAPER WORK.
INSURE THAT INDEPENDENT OF THE FILE SUFFICIENT

INFORMATION IS OTHERWISE AVAILABLE TO LOCATE THE CLIENT AND ASCERTAIN THE PRESENT STATUS OF HIS CASE.

E) INSURE THAT THE CLIENT'S FILE CONTAINS DOCUMENTATION OF THE CLIENT'S EXERCISE OR WAIVER OF SUCH RIGHTS AS TRIAL DE NOVO, TRIAL BY JURY AND APPEAL FROM SENTENCE OR VERDICT.

F) INSURES THAT ALL APPEALS ARE TIMELY PERFECTED AND THE FILE FORWARDED TO THE APPROPRIATE DIVISION FOR ACTION ON THE APPEAL.

26. THE PRACTICE OF NOTIFYING THE DISTRICT ATTORNEY'S OFFICE OF A CLIENT'S FAILURE TO APPEAR FOR INTERVIEW SHOULD BE RE-EVALUATED AND ALTERNATIVE SOLUTIONS TO THE PROBLEM EXPLORED WITH THE COURTS AND THE DISTRICT ATTORNEYS. SUCH A PRACTICE CLEARLY ERODES THE CONFIDENCE OF THE CLIENT IN HIS LAWYER AND SERIOUSLY UNDERMINES THE ATTORNEY-CLIENT RELATIONSHIP.

27. THE EXISTENCE AND LOCATION OF THE OFFICE SHOULD BE MADE MORE PROMINENT AND SPECIFIC IN THE BUILDING LOBBY BY MEANS OF A PROMINENT SIGN OR OTHER NOTICE. SUCH A SIGN SHOULD ALSO BE PLACED SOMEWHERE EASILY VISIBLE OUTSIDE OF THE LOBBY OF THE BUILDING.

28. A SPACE PLANNING AND OFFICE MANAGEMENT, RECORD AND FILE FLOW STUDY OR STUDIES SHOULD BE UNDERTAKEN. SUCH MIGHT BE DONE AT MINIMAL COST WITH THE ASSISTANCE AND COOPERATION OF ONE OR MORE OF THE MANY UNIVERSITIES IN THE AREA AND THE ASSISTANCE OF APPROPRIATE PRIVATE AND PUBLIC AGENCIES. SUCH STUDY SHOULD ALSO BE USED TO DETERMINE IF THE PRESENT OFFICE FACILITIES CAN ECONOMICALLY BE MADE PROFESSIONALLY SUITABLE. IF NOT, CONSIDERATION SHOULD BE GIVEN TO LOCATING THE OFFICE IN MORE SUITABLE QUARTERS.

29. THE OFFICE RECEPTION AREA SHOULD BE REPAINTED AND THE FURNITURE REPLACED WITH PROFESSIONALLY APPEALING, DURABLE PIECES. A BOOK, PAMPHLET OR SIMILAR HANDOUT IN CONVERSATIONAL ENGLISH AND SPANISH SHOULD BE PREPARED AND GIVEN TO EACH CLIENT. IT SHOULD CONTAIN INFORMATION ABOUT THE OFFICE AND ITS TELEPHONE NUMBER. IT FURTHER SHOULD ADVISE THEM IN SOME DETAIL OF THE NECESSITY AND PURPOSE OF THE INTERVIEW AND WHAT WILL OCCUR AT THE INTERVIEW.

30. THE INTERIOR OF THE OFFICE SHOULD BE REDONE, INCLUDING REPAINTING AND REPLACING MOST OF THE OFFICE FURNITURE. APPROPRIATE FACILITIES MUST BE PROVIDED FOR CLIENTS TO BE INTERVIEWED IN PRIVATE. EACH ATTORNEY SHOULD HAVE A DESK AND A TELEPHONE IN AN UNCROWDED LOCATION WITH SOME ELEMENT OF PRIVACY. STEPS SHOULD BE TAKEN TO MINIMIZE THE PLACING OF SECRETARIES AND CLERICAL PERSONNEL IN THE HEAVILY TRAVELED CENTRAL AREAS OF THE OFFICE. THE MECHANICAL EQUIPMENT MUST BE UPGRADED. AT LEAST ONE DICTATING AND TRANSCRIBING UNIT SHOULD BE AVAILABLE FOR USE BY EACH SECRETARY AND THE ATTORNEYS SHE SERVES. IBM OR SIMILAR FIRMS SHOULD BE CONTACTED TO ASSESS THE OFFICE NEEDS AS TO MODERN TYPEWRITERS, INCLUDING MAGNETIC CARD TYPEWRITERS AND SIMILAR ATTORNEY AND SECRETARIAL TIME AND LABOR SAVING DEVICES.

31. ACTION MUST BE TAKEN TO OBTAIN AND MAINTAIN AN ADEQUATE LIBRARY AND APPROPRIATE RESEARCH AND RESOURCE MATERIALS OF SUFFICIENT SIZE TO ACCOMMODATE THE NUMBER OF LAWYERS IN THE OFFICE.

32. CONSIDERATION SHOULD BE GIVEN TO OBTAINING OFFICE SPACE OR OTHER APPROPRIATE FACILITIES FOR ATTORNEYS NEAR THE VARIOUS COURT HOUSES LOCATED OUTSIDE OF DOWNTOWN BOSTON AND CONVENIENT TO COMMUNITIES SERVED.

33. MDC SHOULD BE ABLE TO ACCEPT CASES PRIOR TO ASSIGNMENT BY THE COURT BASED ON AN INITIAL DETERMINATION OF FINANCIAL ELIGIBILITY.

34. ASSIGNMENTS SHOULD BE ROTATED SO THAT THE CAPABLE YOUNG ATTORNEYS OBTAIN SUPERIOR COURT EXPERIENCE AND SOME APPELLATE EXPERIENCE. ATTORNEYS SHOULD ALSO BE PERMITTED TO FOLLOW UP CASES BY HANDLING THE DE NOVO TRIAL OR THE APPEAL.

35. A SOCIAL SERVICES DEPARTMENT SHOULD BE ESTABLISHED.

THE DISTRICT COURT TRIAL DE NOVO SYSTEM AS IT PRESENTLY OPERATES SHOULD BE THOROUGHLY STUDIED WITH A VIEW TOWARD ITS ABOLITION OR AT LEAST, CHANGING SOME OF THE PRACTICES UNDER SUCH SYSTEM.

36. AT LEAST IN PROBABLE CAUSE HEARINGS IN THE DISTRICT COURTS, A STENOGRAPHIC RECORD SHOULD BE PROVIDED THE MDC LAWYER FOR USE IN THE SUPERIOR COURT PROCEEDINGS.

37. MDC SHOULD ENCOURAGE ITS DISTRICT COURT LAWYERS TO MAKE BROAD USE OF THE WRIT OF ERROR PROCEDURE TO OBTAIN REVIEW OF DISTRICT COURT POLICIES AFFECTING THE RIGHTS OF ITS CLIENTS.

38. THE CASELOAD FOR SUPERIOR COURT DEFENDER ATTORNEYS OUGHT TO BE REDUCED AND CAREFUL CONSIDERATION OUGHT TO BE GIVEN TO CASE SCHEDULING SO AS TO AVOID UNDUE CONTINUANCES.

39. THE USE OF THE "DOCK" OUGHT TO BE ABOLISHED.

40. THE PRESENT PRACTICE OF NOT APPEALING A SUPERIOR COURT CASE UNLESS THE DEFENDANT ADVISES MDC IN WRITING HE WISHES TO APPEAL MUST CEASE. APPEALS SHOULD BE FILED ON BEHALF OF ALL SUCH CLIENTS AFTER A TRIAL UNLESS THE DEFENDANT KNOWINGLY AND VOLUNTARILY WAIVES SUCH RIGHT IN OPEN COURT OR IN WRITING, WHICH WRITTEN WAIVER MUST APPEAR IN THE CLIENT'S FILE. IT IS THE RESPONSIBILITY OF THE SUPERIOR COURT LAWYER TO CONFER WITH HIS CLIENT AND ASSIST HIM IN THE DETERMINATION OF WHETHER OR NOT TO FILE AN APPEAL.

41. THE APPEALS DIVISION SHOULD IMMEDIATELY INSTITUTE PROCEDURES TO INSURE THAT THE FILES IN ALL SUPERIOR COURT CASES TRIED ARE TIMELY REVIEWED TO INSURE AN APPEAL IS INSTITUTED OR IS WAIVED.

42. THE SELECTION OF THE MDC COMMITTEE BY THE SUPREME JUDICIAL COURT SHOULD BE RECONSIDERED IN LIGHT OF ITS POSSIBLE INHIBITING EFFECT ON MDC SUPREME JUDICIAL COURT REPRESENTATION.

43. CONSIDERATION SHOULD BE GIVEN TO THE COMBINING OF THE APPEALS AND POST-CONVICTION DIVISIONS INTO ONE UNIT WITH A STAFF OF 12-15 LAWYERS AND SUPPORTING SECRETARIAL-CLERICAL ASSISTANCE. IN ADDITION TO APPEALS AND POST-

CONVICTION PROCEEDINGS, SUCH A UNIT SHOULD HAVE BROAD RESPONSIBILITY FOR PURSUING ISSUES OF SIGNIFICANCE TO THE OFFICE AND ITS CLIENTS.

44. ASSIGNMENT TO SUCH A UNIT SHOULD BE FOR LONGER PERIODS OF TIME AND ATTORNEYS SO ASSIGNED SHOULD DO SOME COURT WORK AS PART OF THEIR TRAINING.

45. TRIAL ATTORNEYS SHOULD BE ENCOURAGED, WHEN POSSIBLE, TO HANDLE APPEALS AND SIMILAR POST-CONVICTION MATTERS ON BEHALF OF THEIR CLIENTS.

46. MDC SHOULD WITHDRAW IN ANY APPEAL OR POST-CONVICTION PROCEEDING WHEN COMPETENCY OF COUNSEL OR ADEQUACY OF REPRESENTATION IS AN ISSUE IF IT REPRESENTED THE DEFENDANT IN THE PROCEEDINGS COMPLAINED OF.

47. MDC SHOULD PROVIDE REPRESENTATION ON APPEALS FROM SENTENCES UNLESS SUCH REPRESENTATION IS WAIVED BY THE DEFENDANT.

48. REPRESENTATION SHOULD BE PROVIDED DEFENDANTS PRIOR TO THE TIME THAT THE DISTRICT COURT SETS BAIL. A BAIL PROJECT SHOULD BE INSTITUTED WITH THE COOPERATION OF THE COURTS AND THE VARIOUS UNDERGRADUATE AND LAW SCHOOLS IN THE AREA. STUDENTS SHOULD BE USED TO CONDUCT BAIL INTERVIEWS AND VERIFY INFORMATION AS WELL AS CONDUCT A JAIL CHECK TO ENSURE THAT THE DEFENDANT IS REPRESENTED BY MDC AT THE BAIL HEARING AND TO RECEIVE REQUESTS FOR PETITIONS TO REDUCE BAIL.

49. THE SUPERIOR COURT LAWYER CONDUCTING A BAIL REDUCTION HEARING SHOULD HAVE THE PROBATION OFFICE FILE, THE DISTRICT COURT ATTORNEY'S FILE AND THE RESULTS OF THE BAIL PROJECT VERIFICATION PRIOR TO THE REDUCTION HEARING. HE ALSO SHOULD HAVE INTERVIEWED THE DEFENDANT PRIOR TO SUCH HEARING.

50. THE OFFICE MUST ENGAGE IN SELECTIVE LITIGATION REGARDING BAIL AND ACTIVELY PURSUE BAIL REMEDIES ON BEHALF OF ITS CLIENTS.

51. IF POSSIBLE, THE DEFENDANT IN A PROBATION REVOCATION HEARING SHOULD BE REPRESENTED BY THE MDC LAWYER WHO REPRESENTED HIM AT THE TIME HE RECEIVED PROBATION. MDC SHOULD ADVISE ALL OF THE JUDGES IT WILL NOT REPRESENT DEFENDANTS AT SUCH HEARINGS WITHOUT SUFFICIENT NOTICE AND ARRANGEMENTS SHOULD BE MADE SO THAT MDC RECEIVES A COPY OF THE LETTER SENT TO THE CLIENT ADVISING HIM OF HIS COURT DATE.

52. ONE ATTORNEY SHOULD BE ASSIGNED TO HANDLE PROBATION HEARINGS WHEN THE ORIGINAL MDC LAWYER IS OTHERWISE OCCUPIED AND TO ESTABLISH A RELATIONSHIP WITH VARIOUS PROBATION DEPARTMENTS AND SUPERVISORS OVER PROCEDURES AND RECORDS.

53. AT LEAST TWO MDC ATTORNEYS AND AN INVESTIGATOR SHOULD BE ASSIGNED TO THE BOSTON JUVENILE COURT IN ORDER TO INSURE PROPERLY INVESTIGATED AND PREPARED REPRESENTATION. MOREOVER, THESE INDIVIDUALS SHOULD SEEK PRE-HEARING PLACEMENT ALTERNATIVES WHENEVER INDICATED IN DELINQUENCY OR OTHER MATTERS.

54. OTHER DISTRICT COURT ATTORNEYS HANDLING JUVENILE MATTERS MUST BE PROVIDED THROUGH ORIENTATION TRAINING IN HANDLING JUVENILE MATTERS, AND SHOULD BE KEPT UP TO DATE ON RECENT DEVELOPMENTS IN THE JUVENILE FIELD. PARTICULAR ATTENTION SHOULD BE GIVEN TO THE INTRICACIES OF DISPOSITION.

55. INVESTIGATIVE BACK-UP ASSISTANCE SHOULD ALSO BE AFFORDED IN JUVENILE CASES:

56. EVERY ATTEMPT SHOULD BE MADE TO INTERVIEW JUVENILE CLIENTS IN A COMMUNITY SETTING OR IN AN ATTORNEY'S PRIVATE OFFICE AS SOON AS POSSIBLE AFTER COURT REFERRAL.

57. WHERE PRETRIAL MOTIONS ARE INDICATED BY AN INVESTIGATION THEY SHOULD BE TIMELY PREPARED AND FILED PRIOR TO THE DAY SET FOR HEARING. THE CHIEF DEFENDER SHOULD DISCUSS SUCH MATTERS WITH THE PRESIDING JUDGE WITH A VIEW TO A MUTUALLY AGREEABLE PROCEDURE FOR DECIDING SUCH LEGAL QUESTIONS IN A SWIFT, ORDERLY MANNER.

58. STIPENDIOUS EFFORTS SHOULD BE MADE TO ENSURE THAT PROCEEDINGS WHICH CAN RESULT IN A WAIVER OF JUVENILE JURISDICTION CONFORM TO THE REQUIREMENTS OF DUE PROCESS OF LAW, INCLUDING NOTICE OF THE STATE'S INTENTION TO SEEK A WAIVER.

59. THE MDC SHOULD ESTABLISH A CLOSE WORKING RELATIONSHIP WITH THE MASSACHUSETTS DEPARTMENT OF YOUTH SERVICES IN ORDER TO PARTICIPATE IN THE DEVELOPMENT OF NON-INCARCERATIVE ALTERNATIVES FOR JUVENILES. MOREOVER, THERE SHOULD BE EFFORTS TO SECURE VOLUNTEER ASSISTANTS FOR COUNSELING IN A COMMUNITY SETTING AT THE EARLIEST POSSIBLE STAGE OF JUVENILE PROCEEDINGS. THE DEPARTMENT HAS SUCCESSFULLY UTILIZED NON-PROFESSIONAL, COLLEGE STUDENT VOLUNTEERS IN ITS COMMUNITY ADVOCATES PROGRAM.

60. STRENUOUS EFFORTS SHOULD BE MADE TO ENCOURAGE COURT PARTICIPATION IN DEVELOPING THESE ALTERNATIVES AND IN NARROWING THE CLASS OF JUVENILES WHO WILL ULTIMATELY BE COMMITTED TO CLOSED INSTITUTIONS.

61. THE COMMITTEE SHOULD NOT INVOLVE ITSELF IN THE DAY TO DAY OPERATIONS OF THE OFFICE INCLUDING EMPLOYMENT AND TERMINATION OF PERSONNEL. IF IT DOES NOT HAVE CONFIDENCE IN THE CHIEF COUNSEL TO ADMINISTER THE OFFICE, HE SHOULD BE REPLACED RATHER THAN HAVE THE BOARD ASSUME HIS FUNCTIONS.

62. THE COMMITTEE SHOULD REQUIRE THE CHIEF COUNSEL TO SUBMIT QUARTERLY REPORTS TO IT CONCERNING THE WORK OF MDC. THE REPORT NEED NOT BE EXTENSIVE BUT SHOULD INCLUDE INFORMATION ON ATTORNEY CASELOADS, A SUMMARY OF THE NATURE AND SCOPE OF THE SERVICES BEING PROVIDED MEASURED AGAINST THE IDENTIFIABLE NEEDS. SUCH REPORT SHOULD ALSO INCLUDE A DISCUSSION OF PROBLEMS WHICH THE OFFICE FACES AND THE CHIEF COUNSEL'S PROPOSALS FOR SOLUTIONS TO THEM. CONSIDERATION

SHOULD ALSO BE GIVEN TO CIRCULATING SUCH REPORTS AS BROADLY AS POSSIBLE IN THE LEGAL COMMUNITY AND THE COMMUNITY IN GENERAL IN ORDER TO GAIN PUBLIC SUPPORT FOR THE OFFICE AND TO ADVISE THE PUBLIC OF ITS WORK AND PROBLEMS.

63. TO ENSURE ATTENDANCE AT AND PARTICIPATION IN THE COMMITTEE'S WORK BY ITS MEMBERS, THE COMMITTEE SHOULD ADOPT MEETING ATTENDANCE RULES WITH THE SANCTION OF REMOVAL FOR NON-ATTENDANCE AT A SPECIFIED NUMBER OF COMMITTEE MEETINGS. EACH COMMITTEE MEMBER SHOULD BE PROVIDED WITH COPIES OF THE ABA STANDARDS RELATING TO DEFENSE SERVICES AND STANDARDS RELATING TO THE DEFENSE FUNCTION TOGETHER WITH AN ASSESSMENT BY THE CHIEF COUNSEL OF THE OFFICE'S SUCCESS IN MEETING THE VARIOUS STANDARDS. AS ADDITIONAL STANDARDS ARE DEVELOPED BY NLADA AND OTHERS, COPIES SHOULD ALSO BE SUPPLIED COMMITTEE MEMBERS.

64. THE COMMITTEE SHOULD CONSIDER FORMING SUB-COMMITTEES TO DEAL WITH SPECIFIC PROBLEMS SUCH AS BUDGET AND FUNDING, MDC-COMMUNITY RELATIONS AND SIMILAR AREAS. CONSIDERATION SHOULD ALSO BE GIVEN TO PLACING NON-MEMBERS OF THE COMMITTEE INCLUDING COMMUNITY REPRESENTATIVES, ON SUCH SUB-COMMITTEES.

65. THE FACT THAT THE COMMITTEE MEMBERS ARE CHOSEN SOLELY BY THE SUPREME JUDICIAL COURT BEFORE WHOM THE OFFICE REGULARLY APPEARS SERIOUSLY UNDERMINES ITS INDEPENDENCE. ACCORDINGLY, WE BELIEVE STEPS SHOULD BE TAKEN TO AMEND THE MDC ENABLING STATUTE TO

(a) ENSURE THAT THE SUPREME JUDICIAL COURT APPOINTS LESS

THAN A MAJORITY OF THE COMMITTEE, (b) REQUIRE AT LEAST ONE-THIRD OF THE COMMITTEE MEMBERS TO BE REPRESENTATIVE OF GROUPS WHOSE MEMBERS ARE SERVED BY THE OFFICE, (c) REQUIRE A MAJORITY OF THE COMMITTEE MEMBERS TO BE PRACTICING ATTORNEYS, (d) TO ENSURE, AS FAR AS POSSIBLE, THAT THE OFFICE BE INSULATED AGAINST POLITICAL PRESSURES AND INFLUENCES.

66. THE COMMITTEE SHOULD REQUIRE THE CHIEF COUNSEL TO SUBMIT AN ANNUAL REPORT CONCERNING THE OFFICE. SUCH REPORT SHOULD THEN BE PUBLISHED AND BROADLY PUBLICLY DISTRIBUTED.

67. THE COMMITTEE MUST TAKE AN ACTIVE ROLE IN PUBLICIZING THE FINANCIAL NEEDS OF THE OFFICE AND IN GAINING SUPPORT FROM LEGISLATORS, THE LEGAL COMMUNITY AND THE COMMUNITY AT LARGE FOR THE NECESSARY FUNDING TO MEET SUCH NEEDS.

68. MDC HAS AN OBLIGATION TO MONITOR THE APPOINTMENT OF COUNSEL TO ENSURE THAT COUNSEL IS BEING PROVIDED FOR THOSE WHO ARE FINANCIALLY UNABLE TO RETAIN PRIVATE COUNSEL.

69. COUNSEL SHOULD BE PROVIDED TO ANY PERSON FINANCIALLY UNABLE TO OBTAIN ADEQUATE REPRESENTATION WITHOUT SUBSTANTIAL HARDSHIP TO HIMSELF OR HIS FAMILY. THE CRITERIA AND QUALIFICATIONS TO BE USED IN APPLYING SUCH STANDARD ARE:

(a) THIS STANDARD IS A FLEXIBLE ONE, AND CONTEMPLATES SUCH FACTORS AS AMOUNT OF INCOME, BANK ACCOUNT, OWNERSHIP OF A HOME, CAR OR OTHER PROPERTY, TANGIBLE OR INTANGIBLE, NUMBER OF DEPENDANTS, AND THE COST OF SUBTENANCE FOR DEFENDANT AND HIS DEPENDANTS.

(b) COUNSEL SHOULD NOT BE DENIED TO ANY PERSON MERELY BECAUSE HIS FRIENDS OR RELATIVES HAVE RESOURCES ADEQUATE TO RETAIN COUNSEL OR BECAUSE HE HAS POSTED OR IS CAPABLE OF POSTING BOND.

(c) ONE TEST TO BE APPLIED IS THAT OF WHETHER OR NOT A COMPETENT PRIVATE ATTORNEY WOULD BE INTERESTED IN REPRESENTING THE DEFENDANT IN HIS PRESENT ECONOMIC CIRCUMSTANCES.

(d) SINCE FEW ATTORNEYS WILL ACCEPT A CRIMINAL CASE ON A CREDIT BASIS, AND WILL REQUIRE A SUBSTANTIAL CASH ADVANCE, THE FACT THAT AN ACCUSED ON BAIL HAS BEEN ABLE TO CONTINUE EMPLOYMENT FOLLOWING HIS ARREST IS NOT TO BE CONSIDERED DETERMINATIVE OF HIS ABILITY TO EMPLOY COMPETENT PRIVATE COUNSEL.

(e) THE ADMINISTRATION OF THE METHOD OR PROCEDURE WHEREBY IT IS DETERMINED WHETHER OR NOT A DEFENDANT IS ENTITLED TO HAVE A COUNSEL PROVIDED MAY NOT, BY ANY NECESSARY MEANS, DETER EITHER THE SAID DEFENDANT, OR OTHER DEFENDANTS WHO MAY REASONABLY BE EXPECTED TO HAVE KNOWLEDGE THEREOF, FROM EXERCISING ANY CONSTITUTIONAL RIGHTS. SPECIFICALLY, SUCH RIGHTS SHALL NOT BE DETERRED BY ANY MEANS INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

(i) BY SUCH STRINGENCY OF APPLICATION OF FINANCIAL ELIGIBILITY STANDARDS AS MAY CAUSE A DEFENDANT TO WAIVE REPRESENTATION BY COUNSEL RATHER THAN INCUR THE EXPENSE OF PRIVATE COUNSEL.

(ii) BY UNNECESSARILY CONDITIONING THE EXERCISE OF THE RIGHT TO COUNSEL BY A DEFENDANT ON THE WAIVER OF SOME OTHER CONSTITUTIONALLY-BASED RIGHT.

(f) IN ALL INSTANCES, THE DEFENDANT'S OWN ASSESSMENT OF HIS FINANCIAL ABILITY OR INABILITY TO OBTAIN ADEQUATE REPRESENTATION WITHOUT SUBSTANTIAL HARDSHIP TO HIMSELF OR HIS FAMILY SHALL BE GIVEN GREAT WEIGHT.

70. THE EVALUATORS DO NOT FAVOR THE USE OF A STATED AMOUNT OF INCOME, REGARDLESS OF WHETHER SUCH AMOUNT IS SET IN TERMS OF AN AMOUNT BELOW WHICH COUNSEL MUST BE APPOINTED, OR OTHERWISE, BECAUSE EXPERIENCE HAS DEMONSTRATED THAT WHEN SUCH AN AMOUNT IS SET, APPOINTMENT IS FREQUENTLY DENIED THOSE WHOSE INCOMES ARE ABOVE THE FIGURE, REGARDLESS OF THEIR ABILITY TO EMPLOY PRIVATE COUNSEL.

71. IT IS THE CONSTITUTIONALLY MANDATED OBLIGATION OF THE COMMONWEALTH TO PROVIDE ADEQUATE AND EFFECTIVE REPRESENTATION TO THOSE OF ITS CITIZENS CHARGED WITH A CRIME WHO ARE FINANCIALLY UNABLE TO EMPLOY COUNSEL. (GIDEON V. WAINWRIGHT 372 U. S. 335 (1963) and ARGERSINGER V. HAMLIN U. S. SUPREME COURT SLIP OPINION (June 12, 1972)).

72. MDC CANNOT CONTINUE THE INADEQUATE REPRESENTATION THE PRESENT CASELOADS FORCE IT TO PROVIDE IN VIRTUALLY ALL OF THE COURTS IT SERVES.

73. IMMEDIATE FUNDING MUST BE PROVIDED TO EMPLOY SUFFICIENT LEGAL STAFF TO (a) REDUCE THE BOSTON SUPERIOR COURT TRIAL ATTORNEYS' CASELOADS TO A MAXIMUM OF 150 CASES PER YEAR AND THE DISTRICT COURT TRIAL ATTORNEYS' CASELOADS TO A MAXIMUM OF 350 CASES PER YEAR, (b) REDUCE THE CASELOADS FOR THE TRIAL ATTORNEYS IN MDC OFFICES OUTSIDE BOSTON ON THE SAME BASIS COMPUTED ON THE PERCENTAGE OF DISTRICT AND SUPERIOR COURT CASES THEY HANDLE, (c) PROVIDE FOR THE ADDITIONAL SUPERVISORY LEGAL AND ADMINISTRATIVE PERSONNEL, APPELLATE STAFF, INVESTIGATORS, CLERICAL, STENOGRAPHIC AND OTHER PERSONNEL (BASED ON STANDARDS REFERRED TO ELSEWHERE IN THE EVALUATION) AT THE LEVEL NECESSARY TO PROVIDE THE SUPPORTING SERVICES REQUIRED BY SUCH INCREASED LEGAL STAFF.

74. IF SUCH FUNDING CANNOT BE PROVIDED ON AN IMMEDIATE EMERGENCY BASIS, MDC MUST IMMEDIATELY REDUCE ITS CASELOAD TO THE PREVIOUSLY DESCRIBED LIMITS EITHER BY A CO-ORDINATED PLAN OF WITHDRAWAL FROM SOME COURTS OR SOME OTHER METHOD

75. THE CHIEF COUNSEL SHOULD ESTABLISH REGULAR CONTACT WITH THE JUDICIARY, INCLUDING THE SUPREME JUDICIAL COURT, IN ORDER TO INSURE THAT MUTUAL PROBLEMS SUCH AS CASELOADS, CASE SCHEDULING, INDIGENCY STANDARDS, COURT RULES AND SIMILAR MATTERS ARE RESOLVED.

76. THE CHIEF COUNSEL SHOULD AFFIRMATIVELY SEEK OPPORTUNITIES TO REACH THE COMMUNITY AND EDUCATE IT ABOUT MDC'S GOALS AND NEEDS. THIS SHOULD INCLUDE SPEAKING AND HAVING STAFF MEMBERS SPEAK AT COMMUNITY AFFAIRS AND BEFORE COMMUNITY AND SCHOOL GROUPS. AN EXAMPLE OF THIS IS THE WORK DONE BY THE ROXBURY DIRECTOR AND STAFF.

77. THE CHIEF COUNSEL SHOULD BE ACTIVE IN THE VARIOUS BAR ASSOCIATIONS, PARTICULARLY ON THE COMMITTEES WHICH TOUCH IN ANY WAY THE OPERATION OF HIS OFFICE OR THE CRIMINAL JUSTICE SYSTEM.

78. THEIR ASSISTANCE AND COOPERATION SHOULD BE SOUGHT IN DEVELOPING PLANS NOT ONLY IN MEETING MDC'S NEEDS BUT IN IMPROVING THE CRIMINAL JUSTICE SYSTEM. EFFORTS SHOULD BE MADE TO COOPERATE IN JOINT PROGRAMS SUCH AS DISCUSSION MEETINGS, SEMINARS, CONTINUING LEGAL EDUCATION PROJECTS AND SIMILAR PROGRAMS.

79. THE BAR ASSOCIATIONS SHOULD STRONGLY SUPPORT MDC'S NEEDS FOR ADEQUATE FINANCING.

80. THE CHIEF COUNSEL SHOULD ESTABLISH AND MAINTAIN CONTACTS

WITH ALL SEGMENTS OF THE LEGAL COMMUNITY PARTICULARLY LEGAL SERVICES OFFICES AND SIMILAR OFFICES WHO SERVE THE POOR. ALL ATTEMPTS SHOULD BE MADE TO MUTUALLY COOPERATE AND SUPPORT EACH OTHER IN IMPROVING JUSTICE FOR THE POOR.

81. LAW FIRMS SHOULD BE ENCOURAGED TO CONTRIBUTE THE SERVICES OF YOUNG ASSOCIATES TO MDC.

82. EACH MDC BRANCH OFFICE MUST BE ENLARGED TO PROVIDE PRIVACY FOR THE ATTORNEYS, SPACE FOR CLIENTS AWAITING INTERVIEWS AND LIBRARY ACCOMODATIONS.

83. ATTORNEYS MUST HAVE OFFICES OR SOME PRIVATE SPACE IN WHICH TO PERFORM NECESSARY LEGAL RESEARCH AND WRITING, TO RECEIVE AND MAKE PRIVATE TELEPHONE CALLS AND INTERVIEW CLIENTS.

84. IT IS INEXCUSABLE FOR A LAW OFFICE OF ANY SIZE TO BE FORCED TO OPERATE WITHOUT THE BASIC TOOLS OF THE PROFESSION. THEREFORE, EACH OFFICE SHOULD HAVE A LIBRARY CONTAINING AT LEAST THE FOLLOWING:

MASSACHUSETTS ANNOTATED STATUTES

FULL SET OF MASSACHUSETTS DECISIONS

WEST'S FEDERAL AND NORTHEASTERN REPORTERS

UNITED STATES SUPREME COURT REPORTS OR LAWYERS EDITION (FULL SET)

MASSACHUSETTS COURT RULES

THE CRIMINAL LAW REPORTER

ALL-ABA TRIAL MANUAL FOR THE DEFENSE OF CRIMINAL CASES

SHEPHERD'S CITATIONS

A MASSACHUSETTS REFERENCE DIGEST (CRIMINAL LAW VOLUMES)

BAILEY AND ROTHBLATT'S CRIMINAL LAW FORMS

MOREOVER, THE LIBRARY SHOULD AFFORD SOME SPACE FOR QUIET RESEARCH AND PERHAPS STAFF MEETINGS.

85. THERE SHOULD BE AT LEAST ONE DICTATION UNIT FOR EACH TWO ATTORNEYS, AND SOME TYPE OF DUPLICATING EQUIPMENT IN EACH BRANCH OFFICE.

86. EACH BRANCH OFFICE SHOULD CLEARLY BE IDENTIFIED BY A SIGN PLACED CONSPICUOUSLY FOR THE CONVENIENCE OF CLIENTS AND THE PUBLIC.

87. EACH BRANCH OFFICE MUST EMPLOY ADDITIONAL QUALIFIED ATTORNEYS TO PROVIDE REPRESENTATION IN THE INCREASING NUMBER OF CASES. PRESENT LEVELS PERMIT AN ATTORNEY LITTLE TIME TO DO MORE THAN "PROCESS" A GIVEN NUMBER OF CASES.

88. THE NUMBER OF CLERICAL POSITIONS MUST BE INCREASED TO HANDLE THE WORK LOAD GENERATED BY NEW ATTORNEYS AND INVESTIGATORS.

89. ATTORNEY POSITIONS SHOULD BE MADE FULL-TIME, WITH APPROPRIATE FRINGE BENEFITS (E. G. INSURANCE, SICK LEAVE, VACATION WITH PAY) AT LEAST EQUIVALENT TO THOSE ACCORDED TO ATTORNEYS IN THE BOSTON OFFICE.

90. SALARIES MUST BE INCREASED COMMENSURATE WITH THE INDIVIDUAL ATTORNEY'S ACADEMIC QUALIFICATIONS, ABILITIES AND EXPERIENCE AND SHOULD BE SUBSTANTIAL ENOUGH TO WARRANT ELIMINATION OF THE NECESSITY FOR AN OUTSIDE LAW PRACTICE TO SUPPLEMENT A MEAGER DEFENDER SALARY. OUTSIDE LAW PRACTICE SHOULD BE ELIMINATED COMPLETELY.

91. ALL BRANCH OFFICES IN COLLABORATION WITH THE BOSTON OFFICE SHOULD DEVELOP DETAILED, LONG-RANGE TRAINING OBJECTIVES FOR LEGAL STAFF, TO BE IMPLEMENTED ON A REGULAR BASIS. NEW ATTORNEYS SHOULD BE INTRODUCED TO THE CRIMINAL SYSTEM AT BOTH DISTRICT AND SUPERIOR COURT LEVELS, UNDER CLOSE SUPERVISION BY A SENIOR TRIAL LAWYER. CONTINUING INSTRUCTION TO EXPAND KNOWLEDGE OF DEVELOPMENTS IN CRIMINAL LAW AND TO SHARPEN TRIAL TECHNIQUES SHOULD BE COORDINATED THROUGH THE BOSTON OFFICE AND BE MADE AVAILABLE THROUGH PERIODIC TRAINING SEMINARS AND BULLETINS HIGHLIGHTING IMPORTANT CHANGES IN CRIMINAL AND JUVENILE LAW.

92. EACH BRANCH OFFICE MUST EMPLOY A FULL-TIME QUALIFIED INVESTIGATOR, IN ADDITION TO PRESENT STAFF LEVELS. IT IS APPARENT THAT THE MDC HAS FILLED VACANCIES, WHICH CLEARLY DEMAND AN ADDITIONAL ATTORNEY, WITH AN INVESTIGATOR BECAUSE THE SALARY ALLOTMENTS ARE TOO LOW TO ATTRACT QUALIFIED LAWYERS. INVESTIGATIVE CAPACITIES SHOULD BE SUCH, THAT A FULL RANGE OF SERVICES CAN BE OFFERED AT BOTH DISTRICT AND SUPERIOR COURT LEVELS.

93. INVESTIGATORS SHOULD BE PROVIDED, WITHOUT EXPENSE TO THEMSELVES, WITH APPROPRIATE EQUIPMENT INCLUDING CAMERAS, FILM AND TAPE RECORDERS: AND SHOULD HAVE ACCESS TO PRIVATE OFFICE SPACE EQUIPPED WITH A TELEPHONE AND DICTATING EQUIPMENT.

94. THE CHIEF COUNSEL SHOULD TAKE IMMEDIATE STEPS TO OFFER AT LEAST THE FOLLOWING SERVICES TO THE BRANCH OFFICES: UP-TO-DATE REPORTS ON CHANGES IN THE LAW, BI-ANNUAL TRAINING SEMINARS FOR LAWYERS AND INVESTIGATORS, PERIODIC SALARY REVIEWS.

95. THE CHIEF COUNSEL SHOULD PAY REGULAR VISITS TO THE BRANCH OFFICES TO MEET WITH THE STAFF, REVIEW ADEQUACY OF STAFF LEVELS, OFFICE AND LIBRARY SPACE, EQUIPMENT, AND TO EVALUATE GENERAL OFFICE PROCEDURES AND PERFORMANCE.

96. THE GENERAL COUNSEL SHOULD ESTABLISH IMMEDIATE AND CONTINUOUS CONTACT WITH JUDGES, PROBATION STAFF AND CORRECTIONAL PERSONNEL IN THE OUTLYING DISTRICTS TO INDICATE MDC WILLINGNESS TO HELP REDUCE CASE LOADS, BROADEN THE SCOPE OF MDC REPRESENTATION AND TO RESOLVE SUCH DIFFICULT QUESTIONS AS ELIGIBILITY.

97. THE ROXBURY PROJECT APPEARS TO BE ACHIEVING ITS PROJECT GOALS AND OBJECTIVES AND SHOULD BE CONTINUED.

98. MDC SHOULD CAREFULLY STUDY THE ROXBURY PROJECT AND MAKE USE OF ITS EXPERIENCES IN THE AREAS SUCH AS ATTORNEY CASELOADS, ATTEMPTS TO OBTAIN GRANT FUNDS, COMPOSITION OF GOVERNING BOARD, USE OF SOCIAL SERVICES, CONCEPT OF THE NEIGHBORHOOD OFFICE AND COMMUNITY INVOLVEMENT. CLOSE AND REGULAR LIAISON SHOULD BE ESTABLISHED BETWEEN THE CHIEF COUNSEL OF MDC AND THE PROJECT EXECUTIVE DIRECTOR.

99. THE PRESENT QUALITY OF REPRESENTATION PROVIDED BY THE PROJECT SHOULD NOT BE PERMITTED TO DIMINISH AS CASELOADS INCREASE, CONSIDERATION SHOULD BE GIVEN TO PROVIDING AT LEAST THREE MORE ATTORNEYS TO PROVIDE REPRESENTATION IN THE SUPERIOR COURTS.

100. MDC SHOULD ACTIVELY SUPPORT THE PROJECT IN ITS EFFORTS TO INSURE ITS APPOINTMENT IN THE DISTRICT AND SUPERIOR COURTS FOR ALL QUALIFIED PERSONS IN THE COMMUNITY THE PROJECT SERVES AND IF NECESSARY, SHOULD BE PREPARED TO TAKE APPROPRIATE ACTION INCLUDING THE INSTITUTION OF LITIGATION, IF THE REFUSALS TO APPOINT THE PROJECT CONTINUE.

101. THE ADDITIONAL TEXTUAL AND OTHER LIBRARY MATERIALS SUGGESTED FOR THE MDC DISTRICT OFFICES SHOULD BE ACQUIRED BY THE PROJECT.

102. NOTWITHSTANDING THE EXCELLENT RAPPORT
BETWEEN THE BOARD AND THE PROJECT DIRECTOR,
THE PROJECT DIRECTOR SHOULD HAVE THE AUTHORITY
TO EMPLOY AND TERMINATE ALL PROJECT PERSONNEL;

APPENDIX A

By Mr. Atkins of Acton, petition of Chester G. Atkins, Max Volterra and Martin A. Linsky relative to the appointment of members of the Massachusetts Defenders Committee and related matters. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Two.

AN ACT TO GIVE THE GOVERNOR LIMITED POWER TO APPOINT MEMBERS OF THE MASSACHUSETTS DEFENDERS COMMITTEE AND FOR OTHER CHANGES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 34D of chapter 221 of the General Laws, as most recently amended by chapter 360 of the acts of 1970, is hereby amended by striking the section and inserting in its place the following: - Section 34D. There shall be a Massachusetts defenders committee consisting of seven persons, at least six of whom shall be lawyers, at least three of whom shall be poor persons, and each of whom shall hold office during the term for which he is appointed and until his successor in office has qualified. Upon completion of a term of a member of said committee his successor shall be appointed for a term of four years. Every new appointment shall be made by the governor. No member of the committee shall receive any compensation for his services but each member shall be reimbursed for actual traveling expenses incurred by him in attending the committee meetings. The committee shall, except as hereinafter limited, provide to indigent litigants, as defined in section thirty-four E, the effective assistance of counsel at every stage of a criminal proceeding commenced in any court of the commonwealth.

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23 The committee shall adopt, and may from time to time revise, 24 such rules and regulations as may be necessary for the conduct 25 of its affairs, including rules for the limitation of the caseload 26 so that to the extent the committee provides counsel, such 27 counsel may be effective in the opinion of the committee. 28 Except as limited by its rules and regulations, the committee 29 shall accept appointments by any court and may on its own 30 initiative take other cases for indigent litigants at any stage of 31 such criminal proceedings. Before any court assigns counsel the 32 probation officer shall prepare and furnish the court with a 33 written report containing said officer's opinion as to the defen- 34 dant's indigency and sufficient factual information on which 35 the court may make an independent determination as to 36 whether counsel should be assigned. 37 The committee shall appoint a chief public defender for a 38 term of four years who shall carry out such duties as the 39 committee may authorize, including the certification of pay- 40 ments under section twenty of chapter twenty-nine. Said com- 41 mittee shall also appoint such assistant public defenders and 42 other professional, clerical and other assistants as may be neces- 43 sary to carry out its duties, and shall provide suitable accom- 44 modations throughout the commonwealth. Such employees 45 appointed by the committee shall not be subject to the pro- 46 visions of chapter thirty-one. Said committee may accept gifts, 47 grants or contributions from any source, whether public or 48 private, and may expend the same.

SECTION 2. Said chapter 221 is hereby further amended by inserting after said section 34D, as amended, by section 1 of this act, the following new section: - Section 34E. (1) A litigant shall be deemed indigent for purposes of the assignment of counsel in criminal proceedings if (a) he receives any federal, state or local public assistance, including medical assistance or any rental supplement or subsidy, or (b) his net or takehome income does not exceed the limits set out in subsection (2) of this section, or (c) he is unable to pay private counsel a fee consistent with the minimum fee schedule of the

including, but not limited to, rules (1) for the charging of a reduced or nominal fee of clients whose net income, while within the limits set forth in section thirty-four B, is within fifteen hundred dollars of such limits and (2) for the limitation of the committee's

- 12 Massachusetts or a local bar association without depriving him-
 13 self or his dependents, if any, of the necessities of life, in-
 14 cluding shelter, food and clothing.
- 15 (2) The limits referred to in subsection (1) shall be as
 16 follows, except as modified in accordance with subsection (3):

Litigant	NET INCOME		
	ANNUAL	or MONTHLY	or WEEKLY
	1700	283.25	76.82
	2400	200	43.03
Additional sum allowed for each dependent	60	50	11.53
	900	75	17.31

- 17 (3) The attorney general is hereby authorized and directed
 18 to adopt and promulgate regulations from time to time but at
 19 least by June thirtieth of every odd numbered year under the
 20 provisions of chapter thirty A, modifying the limits set out in
 21 subsection (2), in accordance with changes, if any, in the
 22 United States consumer price index.

END