



U.S. DEPARTMENT OF JUSTICE  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION  
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE  
WASHINGTON, D.C. 20531

U.S. DEPARTMENT OF JUSTICE  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION  
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE  
WASHINGTON, D.C. 20531

For Defense  
Matters  
HO 3 / 6

National  
Center

A Project of the  
**National Legal Aid and  
Defender Association**  
Washington, D.C.

EVALUATION OF THE OFFICES OF  
THE NEW HAMPSHIRE PUBLIC DEFENDER

RE: JRC

July 1, 1975

Consultants:

J. Patrick Hickey  
Director, Public Defender Service  
For The District of Columbia

Gustav Goldberger  
Associate Director, National Center  
For Defense Management

NATIONAL CENTER FOR DEFENSE MANAGEMENT  
National Legal Aid & Defender Association  
2100 M Street, N.W., Suite 601  
Washington, D.C. 20037

Law Enforcement Assistance Administration Grant No. 75-DF-99-0008

This report was prepared by the National Center for Defense Management, a project of the National Legal Aid and Defender Association, pursuant to a grant from the Law Enforcement Assistance Administration of the United States Department of Justice.

Organizations undertaking such projects under a Federal Government sponsorship are encouraged to express their own judgement freely. Therefore, points of view or opinions stated in this report do not necessarily represent the official position of the Department of Justice. The grantee is solely responsible for the factual accuracy of all material presented in this publication.

TABLE OF CONTENTS

	Page
I. INTRODUCTION . . . . .	1
II. STATUTORY FRAMEWORK AND OFFICE STRUCTURE	
A. Merrimack County (Concord) . . . . .	2
B. Hillsborough County (Manchester) . . . . .	2
III. PHYSICAL FACILITIES AND OFFICE STAFF . . . . .	3
IV. INVESTIGATIVE SERVICES . . . . .	6
V. RELATIONSHIPS WITH OUTSIDE AGENCIES. . . . .	7
VI. RELATIONSHIPS WITHIN NEW HAMPSHIRE LEGAL ASSISTANCE . . . . .	8
VII. ATTORNEY SUPERVISION AND TRAINING. . . . .	10
VIII. RECORD KEEPING AND STATISTICS	
A. Time Records. . . . .	13
B. Closed Case Results . . . . .	15
C. Workload Reports and "Turn-Around" Time. . . . .	17
D. Cost Per Case . . . . .	19
IX. WORKLOAD . . . . .	21
X. SYSTEMIC REFORM	
A. Plan for Local Procedural Reform. . . . .	23
B. Formalization of Sentencing Proposals . . . . .	24
C. Support Facilities. . . . .	25
XI. SUMMARY OF RECOMMENDATIONS . . . . .	26
XII. CONCLUSION . . . . .	28

TABLE OF CONTENTS  
page two

	Page
XIII. APPENDICES	
A. Appendix One - Resumes of Consultants. . . . .	29
B. Appendix Two - D.C. Case Cards	
(1) Felony. . . . .	32
(2) Misdemeanor . . . . .	33
(3) Family Division . . . . .	34

I. INTRODUCTION

At the request of the New Hampshire Legal Assistance, a team of two evaluators\* under the auspices of the National Center for Defense Management of the National Legal Aid and Defender Association visited the Public Defender offices in Hillsborough and Merrimack Counties on March 24-26, 1975. Prior to the evaluation, standard NLADA evaluation designs were reviewed and basic data obtained from New Hampshire Legal Assistance in accordance with customary procedures. The evaluation consisted of a review of selected records and case files in both offices, and intensive interviews with the defender attorneys and other New Hampshire Legal Assistance staff. In addition, other persons connected with the operation and administration of the criminal justice system in New Hampshire were interviewed by the evaluators. These included discussions with judges, court clerks, prosecutors from the county offices and the Office of the State Attorney General, members of the bar, and clients of the defender offices. The goal was to evaluate the two defender offices in terms of the quality and efficiency of their work, and to make recommendations for improvement where appropriate.

\*J. Patrick Hickey, Director of the District of Columbia Public Defender Service and Gustav Goldberger, Associate Director, National Center for Defense Management, NLADA.

II. STATUTORY FRAMEWORK AND OFFICE STRUCTURE

A. Merrimack County (Concord). The New Hampshire General Court in 1971 enacted a statute authorizing a contract between the State of New Hampshire and New Hampshire Legal Assistance to provide defender services in Merrimack County. The office began its operation in January, 1972, with the hiring of one attorney, who remained the sole defender through the period of this evaluation. The contract provides for the provision of legal services to indigents in criminal cases at both the trial and appellate levels, and for juveniles charged with delinquency. During the three-year period that this office has been in operation the caseload has remained relatively constant with the office closing approximately 450 "actions" per year. The basic court workload for 1974 consisted of 77 closed felony actions, 228 misdemeanors, and 43 delinquency proceedings.

B. Hillsborough County (Manchester). The Manchester office was similarly created pursuant to a legislatively authorized contract between the State of New Hampshire and New Hampshire Legal Assistance. However, the contract regarding the Manchester office provides that the supervision and operations of the office shall be conducted pursuant to a plan devised by a New Hampshire Bar Association Committee in Hillsborough County. The plan limits the representation of the Manchester office to felony

defendants only, although representation is furnished at every stage of the proceeding, including appeal. The plan also limits the caseload to not more than 50 "open and active cases" at one time per attorney.

The full complement of attorneys for the Manchester office was achieved only shortly before the visit of the evaluators, and statistical data available from the beginning of the program (September 23, 1974) through March, 1975, does not provide an adequate basis for predicting the normal workload for the office on annual basis. However, the latest statistics available (15th Biennial Report of the Judicial Council of the State of New Hampshire, December 31, 1974, Table IX-A, Page 55) shows 442 felony cases in the Manchester District Court during calendar year 1973, and 334 in the Nashua District Court for the same period, indicating a total caseload of 776 felonies at the District Court level. Of course, not all of these cases would have been within the mandate of the Manchester public defenders, since some defendants would be represented by retained counsel; some cases would involve co-defendants where conflict of interest prohibitions would prevent the defender office from representing both co-defendants, etc.

### III. PHYSICAL FACILITIES AND OFFICE STAFF

In both Manchester and Concord, the defenders share office space with civil attorneys of New Hampshire Legal Assistance. In

both cities, the offices are located reasonably close to the local courts. The office in Manchester also has a library, and the attorneys also have access to the Bar Association Library at the courthouse a few blocks away. Both the Manchester and Concord attorneys find the Supreme Court Library in Concord the best resources for indepth research.

Each of the four defender attorneys received his own copy of the slip opinions of the New Hampshire Supreme Court in criminal cases as they are issued. Each attorney reads and indexes these cases by subject matter, and keeps an index file to give him access to the relevant New Hampshire case law. In addition, the Criminal Law Reporter is circulated through the offices, and the attorneys select significant cases for indexing from this publication as well.

In Manchester, one secretary is assigned to the three defender attorneys, although there are other secretaries in the office who presumably can assist in emergencies. In Concord, one secretary is shared jointly by the defender attorney and the civil New Hampshire Legal Assistance staff. While we received no complaints concerning secretarial services during our visit, the increase in caseload of the Concord Defender, and our recommendation (infra, section IX) for additional legal staff in that office make likely a need for additional secretarial help as well.

We found some recognition by the defenders of the need for utilizing secretaries or other paralegal assistants to increase the efficiency of the attorneys' output. However, the common tendency of lawyers to believe that they must personally be involved in every aspect of a case was also evident here. While there are dangers in stressing too highly the need for efficiency, since it can result in an unhealthy "competition" related solely to productivity without attention to quality of work, it does seem desirable that the attorneys give some thought to potential methods by which they could increase their productivity without sacrificing either their individual relationship with their clients or their standards of professional quality. Since experience is often the source of time-saving procedures, the senior attorneys have a particular responsibility to share their insights with more recent law school graduates. Despite a natural reluctance to comment on another professional's choice of work habits or style, and a need for recognition of a broad middle ground where personal taste can legitimately be indulged, obvious inefficient use of attorney time (the office's main asset) in such tasks as xeroxing copies, writing out routine correspondence, performing ordinary investigative work, etc. should be discussed frankly among the legal staff.

We noted some appropriate use of secretaries for such tasks as preparation of routine correspondence with clients, scheduling of office interviews for clients and witnesses, record keeping and time record computation, etc. The suggestion is simply that additional attempts at conserving attorney's time be explored.

IV. INVESTIGATIVE SERVICES

The defender offices in both Concord and Manchester have relied on law students from the Franklin Pierce Law School in Concord to take care of their investigative needs. The students are unpaid, but receive course credit for their work, and are required to spend eight hours a week with the defenders. There seems to be no shortage of students available to do this work, but greater attention could be paid to their supervision and effective use. For example, while group training of the investigative students at the start of the semester has occurred, it apparently has not been afforded to later groups of students. The importance of this training cannot be overemphasized, and should cover both the practical and demanding problems of obtaining factual information about criminal offenses and the high standards of conduct which must govern both the attorney and the investigator. In regard to a common accusation of impropriety, viz., that an

investigator misrepresented his position, we understand that the office has already put into effect a procedure for obtaining evidence to establish that the investigator did properly identify himself, through the use of a form which the witness signs acknowledging the proper identification of the investigator.

Effective investigation of cases is a key indicator of the quality of defense services, and time invested by supervisors in monitoring this aspect of the practice is well worth the effort. We recommend periodic review of investigative reports and discussion among the attorneys and investigators.

V. RELATIONSHIPS WITH OUTSIDE AGENCIES AND INSTITUTIONS

It is obviously important for the defender attorneys both to be knowledgeable about and be known by those other parts of the criminal justice system with which they interact. This is important not only to ensure that the defenders' clients receive full legal services, but also to develop a supporting base among other parts of the system. We found that the defender attorneys were well informed about the roles of other actors in the system and were known and respected by the courts, the bar, prosecutors, police and social service agencies. Active participation in the local and state bar associations is extremely desirable, since the absence of a politically articulate client community makes

the bar an important adjunct to strong defender systems. Also, many of the issues confronting defenders are appropriately viewed as problems of the bar as a whole, and they should be earnestly cultivated as an active supporter of the defenders. One method of doing this which has been successful in other locales is to invite prominent trial attorneys to speak to the staff, in an informal setting, about evidence, tactics, etc. Similar invitations to trial judges, probation officers, psychiatrists, police and corrections officials and others can open channels of communication and develop understanding of the role of defense counsel, as well as providing information to the defender staff.

We also commend the defenders for efforts to establish close ties with Franklin Pierce Law School, since contact with the faculty and student body can be very helpful to them. The investigative assistance, already mentioned, is one obvious benefit. Research help from students might also be arranged. Finally, opportunities for involvement of undergraduates in such fields as social work should not be overlooked.

#### VI. RELATIONSHIPS WITHIN NEW HAMPSHIRE LEGAL ASSISTANCE

The concept of an "umbrella" agency suited to advance all the legal rights of its clientele has both positive and negative features. However, we did not find in our evaluation strong

indications of interaction between civil and defender attorneys of the kind which can be most helpful to the clients. One method of furthering this end is regular discussion, at least on the supervisory level, between defender and civil attorneys so that each can be aware of work being done by their respective staffs. Additionally, if the civil attorneys regularly perform an evaluation of the legal needs of their clients (akin to a complete physical examination by a physician) a check list could be developed which the defender attorneys (or paralegal assistants) could use with defender clients. For example, a few brief questions for those defender clients who are veterans might reveal areas where civil attorneys could assist the clients in obtaining veterans benefits, occupational training, medical rehabilitation, etc. Other areas for exploration would include entitlement to social security, welfare benefits, landlord-tenant problems, bankruptcy, and access to state social service programs. Another group of defender clients who can frequently benefit from civil legal assistance are those with mental problems.

We also recommend regular contact between the Merrimack County and the Hillsborough County defenders. One of the difficult aspects of the Merrimack County office is that a single attorney may feel some isolation and need for support that can be most effectively furnished by other attorneys knowledgeable in

the criminal law. Given the short distance separating the two offices, and the common aspect of legal problems, regular meetings and pooling of resources between the two offices seems desirable. One method of assisting in this process is to ensure that copies of motions, office memoranda and briefs prepared in one office should be routinely furnished to the other office.

VII. ATTORNEY SUPERVISION AND TRAINING

Both defender offices presently enjoy a high reputation for quality legal work, reflecting in large part the skills of the attorneys who are employed there. However, given the fact that the attorneys are relatively inexperienced, and that personnel turnover will inevitably occur as the office grows older, the need for supervision of the legal work performed by the attorneys is clear. It is this factor, perhaps more than any other, that guarantees the maintenance of high standards of legal performance.

Unfortunately, caseload pressures in many defender offices have been viewed as requiring that all attorneys carry full caseloads (and sometimes more than full caseloads). Some treat supervision as a "luxury" which defender offices cannot afford. The results of this philosophy are painfully apparent in the

quality of work performed in many defender organizations. Accordingly, an initial and on-going commitment to supervision is essential. The portion of the supervising attorney's time which should be devoted to supervision will vary with the experience of attorneys hired, their development while with New Hampshire Legal Assistance, and other factors. However, we can safely recommend that the supervising attorney should always carry less than a full caseload, and we suggest that at least initially a caseload of approximately fifty percent of that of the regular staff attorneys might be considered as a rule of thumb. We noted that substantial amounts of supervision are now taking place, and that the newer attorneys discuss their cases in depth with Mr. Duggan. Mr. Duggan has also made time for in-court observation and evaluation of the attorneys' performances. This practice is to be commended, and must be continued, along with attention to the efficient management and administration of the defender office. Because many cases do not result in substantive court appearances, it is equally important that case files and office practices also be reviewed.

The supervising attorney must also be responsible for on-going training, and the regular staff meetings which have been initiated are an effective means of doing this. In many offices, as caseload pressures increase, the tendency is to short change

continuing legal education efforts. This can be avoided in part by making the supervising attorney primarily responsible for training, and by having staff attorneys themselves participate in the training on an occasional basis as the "teacher". Another method of supplementing training resources is our earlier suggestion that private attorneys with criminal law experience or litigation skills be invited to "teach" an occasional training program for the defender staff.

Another training device which might be considered is a regular luncheon meeting of the defenders to discuss recent case decisions. Since all of the attorneys receive their own copies of, and regularly read and index, the Supreme Court slip opinions and the Criminal Law Reporter, the added benefit of such a discussion is to stimulate creative thinking about possible avenues of exploitation of recent changes in the law as well as the practical applications of those decisions from the courts. Doing this on a regular basis in the office, with a rotation of the individual attorney responsible in each meeting to brief the remainder of the staff on recent cases, tends to increase knowledge of the relevant law and to stimulate group discussion of its application to the defender's practice. It also serves to emphasize to young attorneys the importance of creative approaches to representation which too often can quickly become routine.

VIII. RECORD KEEPING AND STATISTICS

An essential adjunct to an effective supervision and training program, as discussed in Section VII, is a system for keeping records which will retain and provide information in a readily usable form to those charged with supervisory responsibilities. The data furnished should provide the base for decisions within the office on a variety of topics, discussed in more detail in the sections that follow, and for documentation to outsiders (especially funding sources) of the value of having defender offices.

A. Time Records. The offices already maintain a record of attorney work time on each case, kept on a sheet attached to each case jacket and totaled by a secretary at the conclusion of the case. However, although the attorneys indicate the task performed as well as the amount of time required, the only statistic which is gathered is the total time spent on the case. This figure is then averaged and appears in the annual reports. Thus, the Merrimack County office spent an average of 9.38 hours per felony action in 1974, and the Hillsborough office an average of 10.96 hours per case during the quarter December 16, 1974 - March 16, 1975.

It is recommended that these time records be expanded, at least for a trial period, to include all of the working time

spent by the attorneys including weekend and evening work. A review of these records every few months with supervisory staff might give useful information on a variety of important topics: aspects of the practice where additional training is needed; possible inefficiencies of particular attorneys; the need for additional investigative assistance or paralegal help; restructuring of caseloads; etc. Such an analysis can also indicate systemic problems outside the office which might be the subject of negotiations or, in appropriate cases litigation. For example, data indicating that large amounts of attorney time were being wasted waiting in court for particular types of proceedings might be the subject of discussion with court administrators or judges in an effort to modify scheduling arrangements. Data suggesting that attorneys were spending much of their time in providing or arranging for social work services might suggest the need for closer liaison with the civil side of NHLA, or increased utilization of paralegal help in this area.

Many defender offices do not keep time records of any sort, and many attorneys have some resentment to documenting the use of their time. However, since these records are already being kept, simply expanding them to include all attorney time should not be a substantial additional burden on the legal staff. More-

over, in addition to the value of such data as a managerial tool, this information can be useful in demonstrating to inquiring legislators the high return they are receiving for the public funds expended, since all the attorneys appear to be working long hours in the performance of their jobs.

It is also important that the time records be broken down on each case to reflect the division of labor between such tasks as legal research, investigation, client interviews, pretrial motions, trial time, etc. Review of this data for each attorney is extremely useful in assisting supervisors to insure that quality work is being maintained. While not every case requires legal research, for example, records reflecting that an attorney spent only minimal amounts of time on legal research in the course of a month would justify at least a discussion with the attorney concerning his sensitivity to legal issues in his cases. If great amounts of time are being spent in consultation with the client, it might reflect inadequate interviewing techniques, or the need for paralegal or social work assistants to provide support to the defendant.

B. Closed Case Results. The casecards utilized to reflect the disposition of closed cases provide most of the information needed, at least if considered with adequate time records, to monitor the work of the office (recognizing, of course, that the result in a particular case is not always indicative of the

quality of representation furnished). A few minor revisions might also be desirable. The cases listed as "Appointment Terminated", while usually reflecting a motion by the attorney to withdraw either because retained counsel has entered an appearance or because a conflict of interest has been discovered, might be broken down further to indicate the reason for and timing of the termination of the appointment. If many are attributable to conflicts of interest, and they occur relatively late in the representation, a need for early identification of conflicting representation would be apparent. Additionally, some few appointments may be terminated because of a falling out between attorney and client, a factor of which the supervisor should be aware.

Those cases listed as "Dismissed" might also warrant further explication. A dismissal can result from outstanding work by defense counsel, in marshaling favorable evidence and convincing the prosecutor that the chances of acquittal are so high that proceeding with the case is not warranted. Another category of dismissals may result from very little work by defense counsel and reflect instead only a decision by the prosecutor that the case lacked merit for some reason. To evaluate the performance and workload of the defender attorneys, it is important to know which variety of dismissal is involved.

The timing of the dismissal is also significant. High numbers of dismissals on the eve of trial may reflect inadequate screening

of cases by the prosecutors' offices, delay in efforts at plea bargaining or investigation by defense counsel, or other important factors.

For pleas or convictions, it may also be useful to know whether the plea or conviction involved the most serious felony charge, or a relatively insignificant lesser included felony offense.

In reflecting sentencing results, it would be helpful to know the term of prison sentences (rather than simply indicating that a prison term was imposed), and whether a pre-sentence report or sentencing presentation was offered by the defense.\*

C. Workload Reports and "Turn-Around" Time. The monthly workload reports reflecting the number of pending cases and their status is a helpful attempt at obtaining more detailed information on an individual attorney's caseload than is provided by numbers alone. The failing of these reports, however, is that they do not reflect the in-flow and output of cases and, since cases are not identified by name, do not enable a supervisor to determine whether cases are being moved through the system in a prompt fashion. This data is significant for at least two reasons:

\*For sample case card material from the D.C. Defender Office see Appendix at the end of this report.

given locale; and (2) deciding how much time to spend on a particular case is one of the most difficult decisions for an attorney to make and is more subject than most other decisions to personality traits which vary substantially from one attorney to another (judgement, self-confidence, etc.). Also, for planning purposes, if the defender offices continue to be funded through an annual contract negotiation with the state, knowledge of the average time a case is in the office is necessary to estimate reasonable annual caseloads, and may provide the basis for helpful comparisons if the average time for defender cases is less than the average time for all criminal cases handled by the court.

Another method of obtaining some of the same data, which already exists but is not presently reviewed, is to take the dates from the closed case cards, indicating the date the case was opened and the date closed, and compute the average time per case. This seems less desirable than utilizing the workload report forms, since it provides the information only after the fact, at a time when corrective action regarding that one particular case is no longer an option.

Finally, as the offices grow older, monthly reports reflecting cases closed in the current year to date, as compared with cases closed at the same time the preceding year, would assist

managerial staff in insuring that appropriate work levels were being maintained.

D. Cost Per Case. Although efforts have been made to obtain data on the average cost of various types of cases handled by the defenders, the evaluators' impression was that the information presently available was inadequate to furnish any meaningful comparisons, and that other problems with this type of statistic might suggest the need for reconsideration whether such a figure is desirable or whether other inquiries might produce more useful information. Specifically, cost data on a per case basis can be meaningfully interpreted only if there is some rational basis for comparing the data with the cost of cases handled by non-defender attorneys providing comparable service. Although the State of New Hampshire does have a dollar amount reflecting the average of all vouchers to counsel paid in appointed cases, there apparently is no breakdown into the various types of cases (felony, misdemeanors, juvenile, appeals) handled by the defender staff. Additionally, most compensation statutes (including the Federal Criminal Justice Act, 18 U.S.C. § 3006A) do not purport to give adequate compensation, and specifically exclude common items of overhead in a defender office, including secretarial assistance, rent, supplies, etc. Furthermore, an important notion of the role of a defender office in a "mixed" system of representation which

also utilizes private attorneys is that the defenders serve as a resource to the private bar and the citizens at large in many ways that are not reflected in the handling of an individual case (e.g., some of the categories listed as "Other Actions" in the Defender's Annual Report).

Finally, and perhaps most important, quality and professional services cannot usually be justified on a strictly economic basis. A general hospital providing services to indigent patients could undoubtedly reduce its "cost per case" if expensive diagnostic tests were simply eliminated, but no one would suggest the propriety of such a drastic measure. Good legal services, like good health care, cost money, and the effort must be made to meet fiscal concerns by demonstrated efficiency and high-quality work, and not simply as a cheaper way to deal with the problem of indigent defendants.

Of course, funding sources are legitimately concerned that every effort be made to keep costs at the level necessary and justifiable and to insure that extravagant use of public monies is not occurring. That concern is met in large part by demonstrating that defender offices are well managed and supervised; that defender attorneys are extremely hard working (as is most often the case); and that every effort is made to enhance the productivity of the office.

One helpful statistic that might be gathered, because it is one of the few areas where quality legal services can be translated into dollar amounts, is to keep track of days not spent in custody, either pre-trial or post-sentencing, because the defender obtained his client's release on bond, or provided the judge with a structured probationary plan to keep the defendant in the community. Most jurisdictions have readily available figures on the amount required to keep one person in jail or state prison for one day. If non-defender clients with appointed counsel frequently remain in custody pretrial, or more often receive prison sentences, the record of the defender clients can be effectively used to argue that quality representation does pay off in money terms, as well as in the obvious human values involved.

#### IX. WORKLOAD

The brief history of the Manchester Defender office does not permit adequate evaluation of what appropriate workload standards for that office should be. The limitation of the office to not more than fifty "open and active" cases per attorney seems high, particularly in light of the needs of a young office for supervision and on-going training, and in light of the short time interval between indictment and trial in

many cases. However, the touchstone for determining appropriate caseloads must be a candid appraisal of the quality of legal services being provided. That is, if supervisors consistently find reasonable bases for criticism of the level of representation which defender clients are receiving, then caseloads must be reduced.

The situation in Concord allows for more concrete recommendations. The three-year history of that office (1972 through 1974) reflects a relatively constant amount of felony representation and of juvenile work, with a substantial decrease in the amount of time spent on juvenile cases (6.1 hours per case in 1972, 2.6 hours in 1974); a significant increase in the number of misdemeanor trials; and a growing backlog (56 cases pending as of January 15, 1973; 134 pending as of December 31, 1974). This data, coupled with the comments of court personnel, judges and prosecutors in Concord, clearly indicates a need for additional legal staff. We understand that some efforts to obtain additional funds for hiring another attorney are near fruition, but should that not occur, it seems clear that additional help must be provided from elsewhere if the Concord office is to meet both its contractual obligations and its duties under the Code of Professional Responsibility.

X. SYSTEMIC REFORM

A. Recommendation That a Plan for Local Procedural Reform Be Drafted and Implemented --- Hillsborough County.

The consultant team has had the opportunity to evaluate the work of the public defenders in Hillsborough County and they are unanimous in their opinion that in the short period of time since their appointment, the staff attorneys have done a most creditable job with a potential of becoming an outstanding public defender office. The recommendation that follows in no way detracts from this observation and in fact recognizes that the problem area which is the subject of this recommendation is one not directly within the control of the Public Defender Office. It is strongly suggested, however, that the defenders make every effort to establish a plan calculated to bring about certain innovations in connection with the processing of a defendant through the criminal justice system of Hillsborough County. More specifically, it is recommended that the defenders gain early access to all defendants that may be eligible for indigent defense services. The defenders should be permitted to inquire personally and confidentially of these defendants concerning their financial circumstances and their immediate plans for legal representation. Should it appear that the person is indigent and otherwise eligible for services through the Public

Defender Office, then at that point the attorney-client relationship ought to start with all the attending responsibilities attached thereto. This relationship can later be firmed up or severed at the time of arraignment.

The procedure to date can best be characterized as paternalistic in its approach, that, but for the benevolent inclinations of either the law enforcement official or the court, the defendant may languish in jail for an unreasonable period of time. The Public Defender Office, therefore, should formulate specific procedural steps that will allow for this early access to the defendants. This plan should then be presented to the Bar Association Committee and to the Board of Directors of New Hampshire Legal Assistance for their consideration and approval. A joint resolution by them should carry great weight with the jail and/or the local District Court.

B. Recommendation for the Formalization of Sentencing Proposals. It would seem from the many discussions had with court personnel and members of the private bar that the "seasoned" attorney with long term community ties is afforded more credibility in his presentation of sentencing plans other than incarceration. The defenders are young and relatively new to the community and that places them at a disadvantage, in light of the above alleged consideration, when it comes to plea bargaining and sentencing. To compensate for that "deficiency" it is recommended that the

defenders organize and formalize a sentencing approach in writing which will carefully set out one or more alternative plans for the court to consider in lieu of incarceration. A sentencing report form should be devised suitable to the needs of the office and its clients and one that is applicable in the disposition of every case. Such a procedure is not only useful and impressive with the court but helps to structure and crystallize the thoughts of the trial attorney with respect to the area of rehabilitation and sentencing alternatives.

C. Recommendation Relative to Support Facilities. This recommendation is interrelated with the previous one in that it speaks to the expansion of the concept of providing for the totality of the clients' human needs. The current public defender's budget is such that adequate support staff cannot be acquired. In lieu of such staff it is necessary to open up as many resources as possible. (The team has noted that this effort has already in part been undertaken.) It is specifically suggested that a resource directory be assembled containing the names of all social agencies, addresses, phone numbers and the nature of their objectives. The public defenders should familiarize themselves with key personnel of such agencies with a view to the referral of clients for specialized service. This recommendation as in the case of other recommendations very strongly points to the need for additional staff---a point which is addressed elsewhere.

XI. SUMMARY OF RECOMMENDATIONS

The following is a summary of recommendations extracted from the body of this report and are listed in the order of discussion and not necessarily in order of importance.

It is recommended that:

1. Attorney time be carefully identified to eliminate its use for clerical, investigative and other such tasks that can readily be performed by supportive staff.
2. The use of investigators be maximized by means of more effective training procedures and better attorney-investigator coordination.
3. Current efforts to foster better understanding and appropriate cooperation between defender attorneys on the one hand and other criminal components, the private bar and social service agencies on the other, should be expanded.
4. Regular and frequent staff meetings should be arranged between the Merrimack County and Hillsborough County defenders with a view to case discussions, pooling of resources and general promotion of unity and good office spirit.
5. The New Hampshire Legal Assistance staff should be encouraged to join in defender staff meetings from time to time for discussions leading to a more meaningful interaction between the civil and criminal attorneys beneficial to indigent clientele common to both.

6. The supervising attorney should carry a reduced caseload to allow for the proper supervision and training of staff attorneys.

7. Time records should be expanded to reflect total attorney time to include weekend and evening work.

8. Casecards should be revised to indicate the reason for and timing of the termination of a defender appointment; it should detail categories and the timing of dismissals.

9. The 'cost per case' data should be interpreted and evaluated statistically only in context of the totality of services rendered as compared with services obtained by indigent defendants through non-defender attorneys.

10. In light of the growing workload in the Concord Office, additional attorney manpower should be added to said Office in order to meet its contractual obligations and duties under the Code of Professional Responsibility.

11. The defenders should make every effort to establish a plan calculated to bring about innovations in connection with the processing of defendants through the criminal justice system of Hillsborough County.

12. The defenders should organize and formalize a sentencing approach in writing which will carefully set out one or more alternative plans for the court to consider in lieu of incarceration.

XII. CONCLUSION

While the nature of evaluative reports is such that they often seem only a list of criticisms, this report would be totally unbalanced if several outstanding aspects of the defender offices were not at least mentioned. We found highly dedicated attorneys and supporting personnel, working diligently and effectively to protect their client's rights. We found a proper concern for the administration of justice, and recognition of the need for efficiency and dispatch, lest justice be unduly delayed and thereby denied. We found lawyers with not only legal talent but also a compassion for the citizens they represent, and a desire to do the utmost to insure that their rights were protected.

The ultimate guarantee of quality representation is a firm commitment to that principle by those providing the representation and an unwillingness to "cut corners" to meet caseloads or unreasonable pressures to dispense assembly-line justice. We believe the New Hampshire Legal Assistance defender offices are well established on the path to making equal justice under law a reality for the persons they represent.

**APPENDIX 1**

**CONSULTANT RESUMES**

J. PATRICK HICKEY  
Director  
Public Defender Service for the  
District of Columbia

Experience

Director, Public Defender Service, since July 1, 1975

Deputy Director, Public Defender Service, June 1, 1972  
to July 1, 1975

Director, Criminal Justice Act Planning, Public Defender  
Service, August 1, 1970 to May 31, 1972

Private Practice of Law, Washington, D. C., 1967 - 1970.  
Engaged in aviation accident litigation

Staff Attorney, Legal Aid Agency (now Public Defender  
Service), 1965 - 1967

E. Barrett Prettyman Fellowship Program in Trial Advo-  
cacy, Georgetown University Law Center, Washington, D. C.  
1963 - 1964

Education

LL.M., 1966, Georgetown University Law Center,  
Washington, D. C.

LL.B., 1963, Harvard Law School, Cambridge, Massachu-  
setts

A. B., 1959, Carroll College, Helena, Montana

GUSTAV GOLDBERGER  
2100 'M' Street, N.W.  
Suite 601  
Washington, D.C.  
20037  
(202) 452-0620

5/1/75

PERSONAL DATA

Born: Czechoslovakia, April 28, 1934  
Height: 5'7 1/2"  
Weight: 155 lbs.  
Wife: Betty (Friedman) Goldberger, B.A. - N.Y.U.  
Children: Earl -- 15, Emanuel -- 12, Elana -- 10, Elisa -- 4

EDUCATIONAL DATA

Elementary Schools: Public Schools  
Copenhagen, Denmark 1940-43  
Gothenburg, Sweden 1943-45  
Montreal, Canada 1946-47  
Secondary Schools: Matriculated High School  
McGill University - Montreal, Canada  
Attended Private School - Montreal, Canada

Colleges: McGill University  
Montreal, Canada 1951-53

Sir George Williams University  
Montreal, Canada  
B.A. 1957

Post Graduate: Rutgers ~ The State University  
School of Law  
New Jersey 1957-61  
J.D. Degree

Northwestern University  
School of Law  
Short Course for Prosecutors 1965

PROFESSIONAL EXPERIENCE

City of Akron: Assistant Law Director 1963-64  
City of Akron: Chief Prosecutor 1964-66  
Summit County Ohio: Assistant County Prosecutor 1966-67  
Private Practice: Erickson, Sheppard, Goldberger & Wheeler  
Akron, Ohio 1966-67  
Goldberger, Thomasson, Lane & Rosenblithe  
Akron, Ohio 1970-75

GUSTAV GOLDBERGER  
2100 'M' Street, N.W.  
Suite 601  
Washington, D.C.  
20037  
(202) 452-0620

5/1/75

PERSONAL DATA

Born: Czechoslovakia, April 28, 1934  
Height: 5'7 1/2"  
Weight: 155 lbs.  
Wife: Betty (Friedman) Goldberger, B.A. - N.Y.U.  
Children: Earl -- 15, Emanuel -- 12, Elana -- 10, Elisa -- 4

EDUCATIONAL DATA

Elementary Schools: Public Schools  
Copenhagen, Denmark 1940-43  
Gothenburg, Sweden 1943-45  
Montreal, Canada 1946-47  
Secondary Schools: Matriculated High School  
McGill University - Montreal, Canada  
Attended Private School - Montreal, Canada

Colleges: McGill University  
Montreal, Canada 1951-53

Sir George Williams University  
Montreal, Canada  
B.A. 1957

Post Graduate: Rutgers - The State University  
School of Law  
New Jersey 1957-61  
J.D. Degree

Northwestern University  
School of Law  
Short Course for Prosecutors 1965

PROFESSIONAL EXPERIENCE

City of Akron: Assistant Law Director 1963-64

City of Akron: Chief Prosecutor 1964-66

Summit County Ohio: Assistant County Prosecutor 1966-67

Private Practice: Erickson, Sheppard, Goldberger & Wheeler  
Akron, Ohio 1966-67  
Goldberger, Thomasson, Lane & Rosenblith  
Akron, Ohio 1970-75

resume of Gustav Goldberger

page two

Project Director: O.E.O. Legal Services  
Summit County, Ohio  
September 1967-70

Deputy Director: Summit County Public Defender Office  
Akron, Ohio 1974-75

Associate Director: National Center for Defense Management  
National Legal Aid  
and Defender Association  
Washington, D.C. 1975 to present

MEMBERSHIP

American Bar Association  
Ohio Bar Association  
Akron Bar Association  
A.T.L.A.  
Judicature Society

ADMITTED TO PRACTICE

Ohio Bar 1963  
U.S. District Court  
(Northern District of Ohio) 1964  
U.S. Supreme Court 1968

AWARD

Public Service Award: Summit County Prosecutor 1968

PUBLICATIONS

Legal Aid Divorces - A Practical Approach  
American University Law Review  
Vol. 20, No. 1 Aug. 1970

Book Review  
Insanity Defense: by Richard Arens  
University of Akron Law Review  
Vol. 7, No. 3 Spring 1974

**APPENDIX 2**

**D.C. CASE CARDS**

Has a CASE CARD Previously Been Filed on this Case? No  Yes   
Please explain if answer is yes: \_\_\_\_\_

## SUPERIOR COURT FELONY CASE CARD

Client		Attorney																	
Criminal Nos.		Date Case Assigned	Date Referred to ORD																
			Date Case Closed																
<b>PLEASE FOLLOW INSTRUCTIONS EXPLAINED IN FOOTNOTES BELOW</b>		<b>Trial</b> Judge: _____ <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: center;">Result</th> <th rowspan="2" style="width: 15%;">Mistrial</th> <th rowspan="2" style="width: 15%;">Other</th> </tr> <tr> <th style="width: 15%;">Acquittal</th> <th style="width: 15%;">Not Guilty</th> </tr> <tr> <td style="text-align: center;">Hung Jury<sup>5/</sup></td> <td style="text-align: center;">Guilty</td> <td style="text-align: center;">JNOV</td> <td style="text-align: center;">MJOA</td> </tr> <tr> <td style="text-align: center;">Uncontested</td> <td style="text-align: center;">Contested</td> <td style="text-align: center;">Judge</td> <td style="text-align: center;">NGRI – NGRI –</td> </tr> </table>		Result		Mistrial	Other	Acquittal	Not Guilty	Hung Jury <sup>5/</sup>	Guilty	JNOV	MJOA	Uncontested	Contested	Judge	NGRI – NGRI –		
				Result				Mistrial	Other										
Acquittal	Not Guilty																		
Hung Jury <sup>5/</sup>	Guilty	JNOV	MJOA																
Uncontested	Contested	Judge	NGRI – NGRI –																
Sentence																			
<b>CHARGES<sup>1/</sup></b>		Dispositions <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: center;">Judge:</th> <th colspan="2" style="text-align: center;">Other</th> </tr> <tr> <td style="width: 15%;">Guilty Plea<sup>2/</sup> Post Indictment</td> <td style="width: 15%;">Guilty Plea<sup>2/</sup> Pre-Indictment</td> <td style="width: 15%;">Other</td> <td style="width: 15%;">Other</td> </tr> <tr> <td style="text-align: center;">Dismissed – Pre-Indictment</td> <td style="text-align: center;">Dismissed – Post Indictment</td> <td style="text-align: center;">Other</td> <td style="text-align: center;">Other</td> </tr> <tr> <td style="text-align: center;">Appointment Terminated<sup>3/</sup> Post-Indictment</td> <td style="text-align: center;">Appointment Terminated<sup>3/</sup> Pre-Indictment</td> <td style="text-align: center;">Other</td> <td style="text-align: center;">Other</td> </tr> </table>		Judge:		Other		Guilty Plea <sup>2/</sup> Post Indictment	Guilty Plea <sup>2/</sup> Pre-Indictment	Other	Other	Dismissed – Pre-Indictment	Dismissed – Post Indictment	Other	Other	Appointment Terminated <sup>3/</sup> Post-Indictment	Appointment Terminated <sup>3/</sup> Pre-Indictment	Other	Other
				Judge:		Other													
Guilty Plea <sup>2/</sup> Post Indictment	Guilty Plea <sup>2/</sup> Pre-Indictment	Other	Other																
Dismissed – Pre-Indictment	Dismissed – Post Indictment	Other	Other																
Appointment Terminated <sup>3/</sup> Post-Indictment	Appointment Terminated <sup>3/</sup> Pre-Indictment	Other	Other																
Prison Term of Sentence																			
Maximum Penalty Permitted by Law <sup>4/</sup>		Other Fine/Restitution Only Probation (ISS) Probation (EES) NARA Title II Prison Work Release																	

\*/ This card is to be used for all cases which are begun in Superior Court as felonies. If a case is reduced to a misdemeanor for trial or a guilty plea, this Superior Court Felony Case Card should still be completed, not a Misdemeanor Case Card.

<sup>1/</sup> List on separate lines each different count (offense) in the indictment. However, if there are multiple charges of the same offense (e.g., 5 counts of robbery) and each receives the identical disposition, you can indicate the number of counts beside the charge thus using only one line. If the defendant pleads guilty to different offense(s) from ones originally charged, the offense(s) to which the plea was entered must be listed and dispositions shown for all charges. Also, if a jury convicts on a lesser included offense it, too, must be listed.

<sup>2/</sup> This information is to be supplied for every charge regardless of disposition. The maximum penalty permitted refers to the largest amount of time a first offender could receive; the possibility that the defendant may be a second or third offender, or on parole faced with back-up time, etc., should be ignored.

<sup>3/</sup> This category should be used whenever before disposition your assignment to the case is terminated whether due to appointment of new counsel, the presence of retained counsel, etc. But if another PDS attorney is substituted in your behalf, then a card should be completed only by the new attorney.

<sup>4/</sup> Please make certain that for every guilty plea entered there is a corresponding "Sentence" category checked.

<sup>5/</sup> If a guilty plea is entered following a hung jury or other mistrial, the offense to which the plea is entered and the fact of the plea should be recorded on a new card. Similarly, if after a hung jury or other mistrial the case is retried, a new case card should be completed on which the results of the second trial are reported.



**SUPERIOR COURT MISDEMEANOR CASE CARD\***

\*This card is to be used for all cases which are begun in Superior Court as misdemeanors. If a case is reduced to a misdemeanor from a felony, a Felony Case Card should be completed, not a Misdemeanor Case Card.

- 1/** List on separate lines each different criminal offense charged. However, if there are multiple charges of the same offense (e.g., 5 counts of robbery) and each receives the identical disposition, you can indicate the number of counts beside the charge thus using only one line. If the defendant pleads guilty to different offenses from ones originally charged, the offense(s) to which the plea was entered must be listed and dispositions shown for all charges. Also, if a jury convicts on a lesser included offense it, too, must be recorded.

**2/** This information is to be supplied for every charge regardless of disposition. The maximum penalty permitted refers to the largest amount of time a first offender could receive; you should ignore in this connection the possibility that the defendant may be faced with the Youth Corrections Act, subject to back-up time, etc.

**3/** This category should be used whenever before disposition your assignment to the case is terminated whether due to appointment of new counsel, the presence of retained counsel, etc. But if another PDS attorney is substituted in your behalf, then a card should be completed only by the new attorney.

**4/** This category should be used only where a guilty plea was pre arranged upon referral from the Magistrates. If a guilty plea is entered which was not pre arranged at the time of referral from the Magistrates, the "Guilty Plea" category (see next column) should be used.

**5/** If a guilty plea is entered following a hung jury or other mistrial, the offense to which the plea is entered and the fact of the plea should be recorded on a new card. Similarly, if after a hung jury or other mistrial the case is retried, a new case card should be completed on which the results of the second trial are reported.

# FAMILY DIVISION CASE CARD

Client	Attorney											
Court No.	Date Case Assigned			Date Referred to DRD			Date Case Closed					
PLEASE FOLLOW INSTRUCTIONS EXPLAINED IN FOOTNOTES BELOW										Sentence		
	Acquittal	Mistrial										
	Hung Jury ??	MJDA										
	Not Guilty	JNDV										
	Guilty											
DISPOSITIONS	Guilty Plea	Other	Jury	Judge								
Closed Without a Finding												
Dismissed												
CONSENT DECREES												
Waived for Trial as Adult												
APPOINTMENT TERMINATED <sup>4/</sup>												
INTERSTATE COMPACT REPRESENTATION ONLY <sup>5/</sup>												
ATTACHMENT REPRESENTATION ONLY <sup>2/</sup>												
REPRESENTATION AT DETENTION HEARING AND/OR INITIAL HEARING ONLY <sup>3/</sup>												
MAXIMUM PENALTY PERMITTED BY LAW IF ADULT <sup>2/</sup>												
IN NEED OF SUPERVISION CHARGES <sup>1/</sup>												
IN NEED OF SUPERVISION CHARGES <sup>1/</sup>												

<sup>1/</sup> List on separate lines each different offense charged. However, if there are multiple charges of the same offense (e.g., 5 counts of robbery) and each receives the identical disposition, you can indicate the number of counts beside the charge thus using only one line.

<sup>2/</sup> This information is to be completed for every charge regardless of disposition.

<sup>3/</sup> If this category is appropriate, do not attempt to supply a disposition. Where representation is limited to the detention hearing and/or initial hearing, attachments or interstate compact proceedings, the only records kept will be of the total number of such cases handled.

<sup>4/</sup> This category should be used whenever before disposition your assignment to the case is terminated whether due to appointment of new counsel, the presence of retained counsel, etc. But if another PDS attorney is substituted in your behalf, then a card should be completed only by the new attorney.

<sup>5/</sup> The consent decree is deemed a final disposition and a Family Division Case Card therefore must be completed. If the case is later reactivated on the merits, it should be treated as brand new and another Family Division Case Card turned in at its conclusion.

<sup>6/</sup> Please make certain that for every guilty plea entered there is a corresponding "Sentence" category checked.

<sup>7/</sup> If a guilty plea is entered following a hung jury or other mistrial, the offense to which the plea is entered and the fact of the plea should be recorded on a new card. Similarly, if after a hung jury or other mistrial the case is retried, a new case card should be completed on which the result of the second trial is recorded.

**E N D**