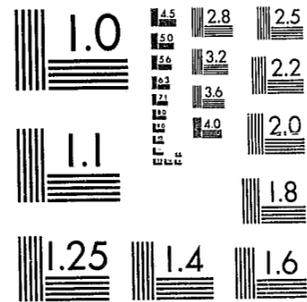


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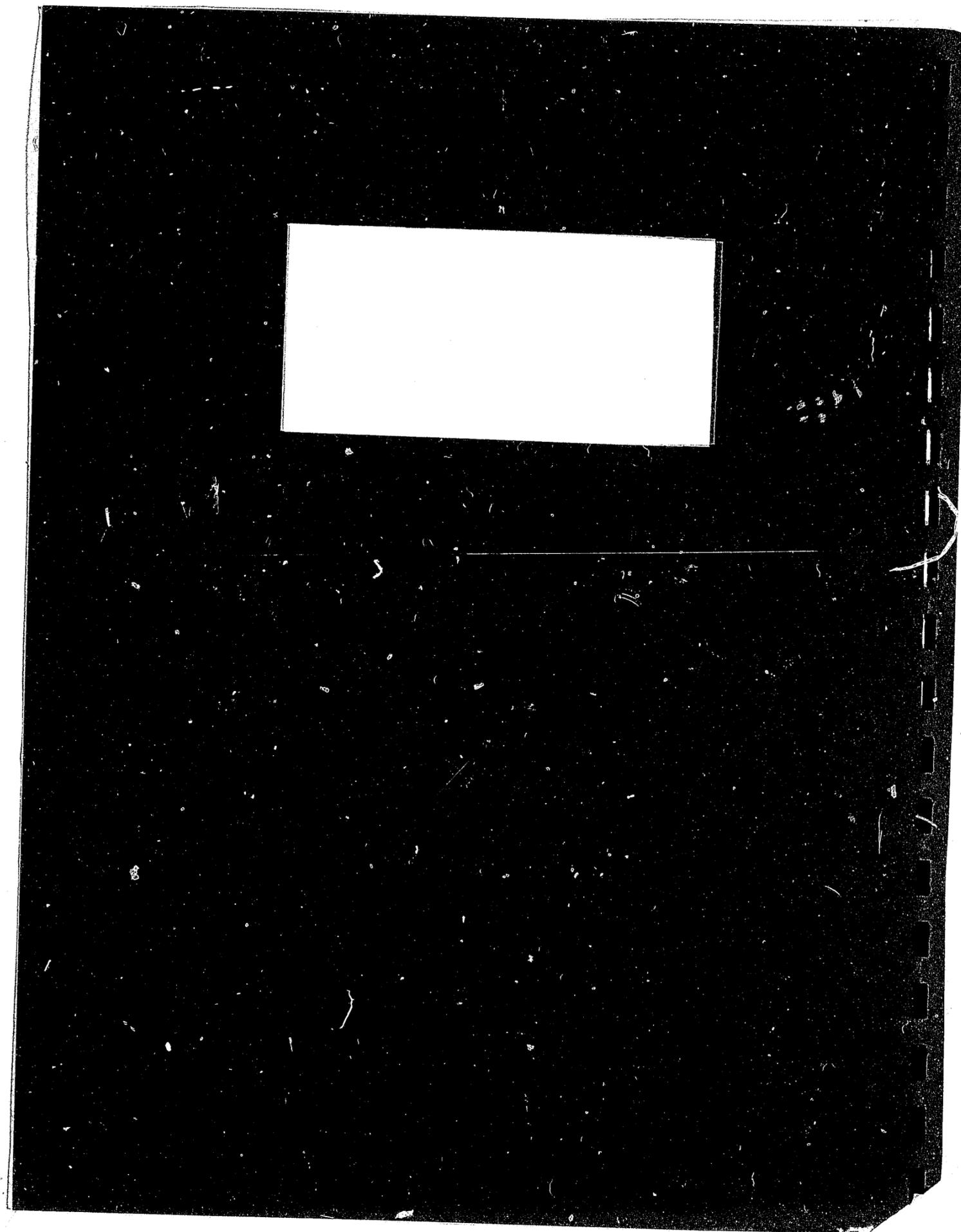
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6-17-82

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AN ASSESSMENT OF THE LAW CLERK PROGRAM
OF THE
FIRST JUDICIAL ADMINISTRATIVE DISTRICT
(MILWAUKEE COUNTY CIRCUIT COURT)

October 1980

Consultant

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NCJRS

MAR 20 1981

ACQUISITIONS

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I. INTRODUCTION

In September 1980, LEAA's Criminal Courts Technical Assistance Project (CCTAP) at the American University was asked to conduct an independent review and assessment of the Law Clerk program which had operated in the Milwaukee Circuit Court since October 1978 under LEAA funding. The study was requested by Chief Judge Victor Manian and District Court Administrator Ronald B. Witkowiak.

In response to this request, the CCTAP assigned as consultant Francis K. Cholko, a private management consultant from Los Angeles, California. Mr. Cholko formerly served with the Los Angeles Superior Court and was familiar with the operation of Law Clerk programs and the type of assessment which the Milwaukee Court now sought. Mr. Cholko conducted a five-day site visit to Milwaukee September 29 - October 3, during which he reviewed available documentation on the program and met with local officials involved in its operation.

This report constitutes a report of Mr. Cholko's findings, and includes a review of current financial conditions, findings related to the program's overall performance from a cost-benefit standpoint, and prescriptions for continued funding of the program at current or reduced levels.

The author wishes to extend his appreciation to Chief Judge Victor Manian, District Court Administrator Ronald R. Witkowiak, the judges and law clerks interviewed during the course of this program analysis, and those Court and County personnel who provided statistical data and related information, for their support in the conduct of this study.

II. BACKGROUND

The Law Clerk program operated between October 1978 and September 1980 under the provisions of a grant award from the Law Enforcement Assistance Administration through the Wisconsin Council on Criminal Justice. For the period October 1 - December 31, 1980, the program will operate with interim financing provided by the Board of Supervisors of Milwaukee County.

The Law Clerk program, as financed by the Federal grant, provided for the establishment of eight (8) law clerk positions. The law clerks employed in the program were assigned to assist the judges hearing felony and misdemeanor cases in the Court's Crime and Traffic Division. One law clerk was assigned to each of the six judges handling felony matters, while two law clerks were assigned to judges handling misdemeanor trials (note: judges are assigned to handle misdemeanor caseloads on a rotating basis -- two judges conduct trials while one each is assigned to intake and preliminary hearings).

The duties and responsibilities of the law clerks included, but were not limited to, the following:

- review pre-trial and post-conviction motions filed with the court;
- research evidentiary issues during trial;
- review written requests of in-custody defendants for specific relief and draft responses for the court;
- assist in the drafting of jury instructions;

-- calculate "front time" (time awaiting trial)
in sentencing of convicted offenders.

During the period of interim financing by Milwaukee County, the Law Clerk program will be modified in order to assign law clerks to the Civil, Family and Children's Divisions of the Court as well as the Crime and Traffic Division. The distribution of assignments will be as follows: four (4) law clerks to the Civil Division, one (1) each to the Family and Children's Divisions and two (2) remaining in the Crime and Traffic Division.

The stated purpose of this program modification is to obtain, at a minimum, preliminary data regarding the value of legal research assistance to these other divisions.

III. CURRENT SITUATION

The Court is seeking County Board of Supervisors' approval for funding in 1981 to continue operation of the Law Clerk program at its present level. Although the Court was successful in obtaining Board authorization for interim funding of the program for the final three months of 1980, the likelihood that support will be forthcoming to extend the program through 1981 and beyond is contingent upon the resolution of a number of financial problems facing both State and County governments. These problems are evidenced by the following recent actions:

- a proposed cut of 4.4% in State aid to Milwaukee County in 1981, resulting in a projected revenue loss of several million dollars;
- a proposed cut of a like 4.4% in the operating budgets of State agencies for 1981;
- a proposed 1981 budget of the County Executive calling for a substantial increase (upwards of 40%) in the County tax levy, coupled with employee layoffs and other position reductions.

These anticipated financial constraints are further aggravated by the differences of opinion that appear to exist between County and State budget officers regarding the assumption of additional court costs. On the one hand, the County Executive, although recognizing the value of the Law Clerk program, has taken the position that these additional program costs should be assumed

by the State as a logical extension of the State's present financing of judge, court reporter and court administrator costs. On the other hand, the State position (although not documented by the technical assistant consultant) appears to be that such program costs should be financed by the taxpayers of the county deriving direct benefit from the services rendered.

IV. FINDINGS

A. Application of Program Measures

At the time of submission of the initial grant application for establishment of the Law Clerk program, the Court set as the project's primary goals a reduction in the felony case backlog, the processing of pending cases within the limitations imposed by the 90-day speedy trial law, and a reduction in the number of appeals. Specific measurements established for the project were:

- comparison of monthly disposals (dispositions) during the project period with monthly disposals prior to the project period;
- comparison of the number of appeals filed during the project period with the number of appeals filed in the year prior to the project.

A 5% increase in case disposals and a 5% decrease in appeals filed were set as specific performance goals based on the Court's estimate that the employment of law clerks in the Crime and Traffic Division would produce at least a 5% "savings" (note: understood by the technical assistance consultant to mean an increase) in judge-time on the bench.

A review and analysis of all available information revealed that the backlog reduction and speedy trial goals of the program have been met. The results of efforts to reduce the number of appeals, however, could not be measured using available statistical data. Just prior to program start-up, the judicial system in the State of Wisconsin underwent a major reorganization

with one of the system modifications being the establishment of an intermediate court of appeals on a state-wide basis (a three-judge intermediate appellate court now sits in Milwaukee County). Previously, appeals from the former County Court were heard in the Circuit Court and Circuit Court appeals were filed directly with the Supreme Court. The consolidation of County and Circuit Court jurisdictions resulted in the filing of all appeals with the new intermediate appellate court. Statistical reporting systems, following reorganization, do not sufficiently segregate appeal counts based on former jurisdictions and it is not possible to accurately measure fluctuations in appeals filed on criminal felony actions. In addition, the judicial article creating this intermediate appellate court also provided the mechanisms for expediting appeals to that body and reduced the costs related thereto.

The Court's stated objective of reducing the felony case backlog was clearly achieved as reflected in the following statistical data covering both pre-project and project periods:

	<u>Pending Cases*</u>		<u>Disposition/Filing Ratio*</u>
Jan. 1, 1977	2141	1976	.988
Jan. 1, 1978	2234	1977	.978
Jan. 1, 1979	2139	1978	1.024
Jan. 1, 1980	2037	1979	1.028
Aug. 1 1980	1397	1980 (7 mo.)	1.310

*Source: Clerk of Courts statistical reports

The reduction in pending criminal cases has been, to some degree, attributable to a decline in the number of cases filed. For the most part, however, this reduction was the result of a constant and continuing improvement in the disposition rate of criminal cases (see above table). The filing and disposition counts for the period 1976-present reflect these factors.

	<u>Filings*</u>	<u>Dispositions*</u>
1976	4448	4393
1977	4190	4097
1978	4026	4121
1979	3592	3694
1980 (7 mo.)	2064	2704

*Source: Clerk of Courts statistical reports

The Court's criminal calendar is now current and it is in compliance with the speedy trial requirements.

It would, of course, be both naive and inappropriate to attribute the performance of the felony courts, over the past two years, solely to the implementation of the Law Clerk program. The efforts of the judges assigned to the Crime and Traffic Division, in expediting the movement of cases, were paramount in reaching the current status of the calendar. In addition, the assignment of Civil Division judges, at various times during the project period, to handle calendar overflow resulted in a high number of settlements (pleas) before trial that otherwise might not have been achieved in the absence of these assignments.

The impact of the law clerks, however, based on analysis of available data and the responses of participating judges, was pronounced. Their assistance in expediting the processing of pre-trial motions, coupled with the performance of other research duties and the review of post-conviction motions, not only relieved the judges of many time-consuming tasks but also achieved the "bottom line" results reflected in the statistical data. There is nothing to indicate to this author that the overall results, during the past two years, would have been achieved without the utilization of legal assistance personnel.

For comparative purposes, it is interesting to look at the overall status of division calendars of the Court for the periods immediately preceding as well as during the project.

(see table on page 10)

While the number of criminal cases pending during the 31-month period from January 1, 1978 to August 1, 1980 dropped by 37.5%, the total number of cases pending in all divisions increased by 32.6%. For the balance of the Court's division calendars, excluding criminal, the increase in pending cases was 36.5%.

It is not possible, within the scope of this study, to fully analyze the filing and disposition rates of the

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	<u>Total Cases Pending*</u>	<u>% change from 1/78</u>	<u>Cases Pending (excl. crim.)*</u>	<u>% change from 1/78</u>	<u>Criminal Cases Pending*</u>	<u>% change from 1/78</u>
Jan. 1, 1978	42,269	--	40,035	--	2,234	--
Jan. 1, 1979	47,279	+11.9	45,140	+12.8	2,139	(-4.3)
Jan. 1, 1980	54,649	+29.3	52,612	+31.4	2,037	(-8.8)
Aug. 1, 1980	56,055	+32.6	54,658	+36.5	1,397	(-37.5)

*Source: Clerk of Courts statistical reports

court divisions, other than the felony courts of the Crime and Traffic Division where the judge complement remained relatively stable both prior to and during the project period. Any such effort would be further complicated by the impact on caseloads resulting from the 1978 court reorganization, which consolidated the limited jurisdiction of the County Court with the general trial jurisdiction of the Circuit Court.

It must suffice to state that the production of the felony courts in the Crime and Traffic Division, in terms of disposal rates, was not approached by any other division. Without a detailed analysis of judicial positions assigned to each of these other divisions over the past 2-3 years, it is not possible to fully equate raw production statistics with overall performance.

B. Program Costs

The costs of the Law Clerk program were limited to the salaries and employee benefits of the law clerk personnel employed plus those indirect costs (overhead) associated with program administration.

Based on current salary, employee benefit and indirect cost data, the continued funding of eight (8) law clerk positions would require an annual expenditure of some \$150,000 computed as follows:

Salary (1st step annual)	-	\$14,388
Employee benefits (retirement, insurance, social security, etc.) @ 33.59%	-	<u>4,833</u>
		\$19,221x8 = \$153,768
less projected vacancy factor @ 8%	-	<u>(12,301)</u>
plus indirect costs (est. @ 6.4%)	-	<u>9,054</u>
		Total \$150,521

There has been no cost displacement associated with this program. That is, no judicial or other staff resources were reduced or eliminated as a result of the employment of law clerks. It is this author's understanding that no cost displacements were anticipated during the course of the project as it was assumed that savings in judge time, coupled with increased judge effectiveness resulting from the staff assistance provided by law clerks, would be "pumped back" into the criminal case processing system in order to reduce the pending caseload.

The costs (both State and County) associated with the operation of a single criminal court are estimated to exceed \$306,000 per year. These cost components include:

- salaries* and employee benefits of judge, court clerk, court reporter, bailiff, assistant district attorneys (2), assistant

public defenders (2), and probation officer	- \$248,150
-- jury fees	- 24,000
-- estimated expenditures for support staffs (Court, Clerk of Court, Sheriff, District Attorney, Public Defender and Probation Department) plus costs of facility operations and administrative overhead @ 30% of above salaries	- <u>55,725</u>
Total	\$306,275

*first step (entry level) salary rates applied where applicable

The above cost estimate of \$306,275, for the annual operation of a criminal court, is reasonably conservative. Only entry level salary rates of in-courtroom personnel were applied. The estimated expenditures for supporting staff, facility operations and administrative overhead were also calculated at rates substantially less than comparable costs in other major metropolitan court jurisdictions. The jury fee cost estimate reflects a proportionate (1:37) distribution of the total 1979 expenditures of \$874,640.

The costs associated with the continuation of the Law Clerk program, as presently funded, are minimal when

compared to the overall costs of operating a single criminal court or to the costs (\$1.8 million) associated with operating six (6) full-time felony courts. This is especially true when the benefits associated with the current program -- significant reductions in pending caseload -- are taken into full account. When considered on a per case disposition basis, the minimal costs of the Law Clerk program are even more pronounced. While overall costs per disposition in 1979 totaled \$486 (\$1.8 million ÷ 3700 dispositions), the per case disposition cost of the Law Clerk program was less than \$41.

It is somewhat premature to assume that the continuation of the Law Clerk program will definitely result in future cost avoidance, i.e., either no increase in operating criminal courts or the reduction of one or more criminal courts and the transfer of staff to other divisions of the court. At this point in time, however, it appears that future cost avoidance is possible and even probable.

In summary, on the basis of the measured performance of the Law Clerk program thus far, it appears totally counter-productive to embark on a long-term evaluation of the program by eliminating it and placing the time-consuming tasks of pre-trial and post-conviction motion review and related legal research functions back on the shoulders of the criminal court judges.

An assessment of program performance would not be complete without considering possible modifications in present system operations. This author was particularly interested in determining if implementation of the following system modifications (requiring legislative enactment and/or court rule changes) would reduce criminal court judge workload and either reduce or eliminate the need for law clerks in those courts:

- (1) establishment of an omnibus pretrial motion hearing in criminal felony proceedings;
- (2) placement of sentence modification authority with the correctional system.

With regard to (1) above, the consensus of opinion seemed to be that an omnibus pre-trial hearing mechanism would most likely result in an increase, rather than a decrease in the number of motions filed. Of course, the real issue here is whether such a mechanism would reduce the elapsed time to disposition of pending cases. It is overly optimistic to expect this to occur without a commitment to the omnibus hearing concept; and, as previous research has demonstrated, reliance on disclosure alone (both informal and judge enforced) cannot control all the variables associated with criminal case processing. In this Court, the induced disclosure aspects of the omnibus hearing concept may, in part, be merely an extension of current practice.

With respect to (2), existing law places authority with the sentencing judge for acting on matters concerning motions for sentence modification. Under the indeterminate sentence laws of the State of Wisconsin, the parole authority does exercise considerable discretion regarding the length of sentences. It is questionable whether that authority should be expanded to remove, from judicial discretion, the consideration of requests for sentence modification. It is, therefore, not expected that workload associated with post-conviction motions of this type will diminish in the foreseeable future.

V. RECOMMENDATIONS

Based on the findings reported above, and other related information obtained during the course of this study, the following recommendations are submitted for consideration by Chief Judge Manian of the First Judicial Administrative District:

- (1) The Court's 1981 budget request for continuation of the Law Clerk program, at its present level, should be vigorously pursued as all available data reflect that law clerks have had a measurable impact on the reduction of pending criminal felony caseloads.
- (2) If the Court's budget request is adopted as submitted, the Court should retain at least six of the eight law clerk positions in the felony courts of the Crime and Traffic Division through 1981.

Comment: This recommendation reflects the author's opinion that deployment of a portion of the existing law clerk staff to other court divisions could not provide an ample basis for total performance measurement. For example, the deployment of two or more law clerks to the Civil Division might meet the research assistance needs of 6-8 judges, but unless the Court was fully prepared to establish experimental and control groups among the Division's 16 judges to assess the overall impact of law clerks on case disposition rates, subsequent evaluation would be based only on conjecture.

- (3) In the event that the Court's budget request for the Law Clerk program is reduced, the Court should pursue every effort to obtain funding for at least four (4) law clerk positions to maintain the pre-trial and post-conviction motion review services afforded by law clerk personnel.
- (4) The Court should consider establishing a firm policy limiting law clerk appointments to a maximum of 12-18 months.

Comment: In the vast majority of courts employing law clerks, the term of service is normally one year. Law clerk assignments are not considered permanent and have, historically, been designed to provide an opportunity for professional development for a significant number of recent law school graduates. By articulating a policy limiting law clerk tenure, the Court can assure that law clerk opportunities will be broad based and, thus, preclude the possibility of developing a cadre of professional legal assistants.

- (5) The Court should consider placing law clerks in the classification of temporary employees, thereby eliminating the costs associated with employee benefits as well as paid vacations and sick leave.

Comment: It is not this author's intention to diminish the status of law clerks as court employees. The fact is, however, that these positions are temporary in nature

and incumbents rarely consider their contributions to and returns from retirement and other benefit plans in the same manner as employees whose career paths are geared toward lengthy court service. In addition, given the present financial constraints facing county government and the courts, a reduction in current charges for employee benefits totaling some \$39,000 (for eight law clerk positions) could be achieved by changing the employee classification status of law clerks. This recommendation, however, is not intended to affect the classification of incumbent law clerks.

END