JUDICIARY COMMITTEE
February 8, 1977

Members Present: Chairman Barengo
Vice Chairman Hayes
Mr. Price
Mr. Coulter
Mrs. Wagner
Mr. Sena
Mr. Ross
Mr. Polish
Mr. Banner

Guests Present: Honorable E.M. Gunderson
Mr. Rod Goff, State Public Defender
Larry Hicks, District Attorney, Washoe County

This meeting was called to order by Chairman Barengo at 9:15.

Assembly Bill 38:

Assembly Joint Resolution 2:

Assembly Joint Resolution 3:

The Honorable Justice Gunderson addressed the committee at length on these three bills and a summation of his remarks is attached hereto and marked as Exhibit A, along with several exhibits of his own that he delivered to the committee to support his testimony. He detailed for the committeehis point of view on these bills and considerable discussion followed.

Assembly Bills 36, 37, 38, 39, 40, 41, 42, 43 and 44:

Mr. Rod Goff, State Public Defender, addressed the committee on bills A.B. 36 through 44. He approached these issues from an economic standpoint and that of the financial capabilities of their office to function. Mr. Goff made reference to his memorandum dated January 7, 1977, which is attached hereto and marked Exhibit B and further detailed for the committee the contents of same. There was considerable discussion and Chairman Barengo concluded by requesting of Mr. Goff to draft the pertinent statistics Mr. Goff mentioned for the committee.

Assembly Bill 38:

Larry Hicks, District Attorney for Washoe County and President of the District Attorney's Association, concurred generally on behalf of his office and on behalf of the D.A.'s association with the opposition proposed by Justice Gunderson. He stated that he did not see any problem with the laws that currently exist; he thinks this bill has worked out well in the past as it insures a speedy trial. He opposes A.B. 38.

Assembly Bill 37:

Larry Hicks stated that he was in support of this bill. The point being that the local consumer protection agencies of the county district attorney offices, particularly his office, are far more involved with these local problems in Washoe and Clark than State Consumer Affairs.

Chairman Barengo adjourned this meeting at 11:30 a.m.

Respectfully submitted,

Anne M. Peirce

Anne M. Peirce, Assembly Attache

Exhibit A

SUPREME COURT OF NEVADA

E. M. GUNDERSON, JUSTICE

CARSON CITY, NEVADA

February 11, 1977

The Honorable Robert Barengo
Chairman, Assembly Judiciary Committee
Legislative Building
Capitol Complex
Carson City, Nevada 89710

Dear Chairman Barengo:

Re: AJR 2; Court of Appeals

In accord with the request of your committee, I have reviewed AJR 2, and suggest that the following changes be considered.

1. It will be necessary for the resolution's preamble to be changed to reflect references to additional amendments to the Constitution, as alluded to herein.

2. As your committee requested, I have re-drafted the proposed new section of the Nevada Constitution, to provide for filling the initial three vacancies by the Commission on Judicial Selection, with the terms staggered so that elections will be held for one of the seats at each of the ensuing three general elections. In drafting this provision, I necessarily made certain choices which I feel are sound, but which I believe I should explain.

First, it appeared to me that the Selection Commission should be concerned only with qualifications, not with the necessarily somewhat political choice of who should receive the longer terms. I also felt that, as to the initial three vacancies, it was preferable to authorize the Commission to send the Governor one larger block of qualified names, rather than three groups of three qualified names, as is done in the case of individual vacancies. The former course requires the Commission to consider only qualifications. To break qualified applicants for initial seats into groups of three would, arguably at least, work to the disadvantage of some, limiting

EXHIBIT 194

the Governor from reaching all but the Governor's first choice in any given group. To permit the Commission to send one group of names to the Governor, wait for him to make a choice, and then send a second group back to him that includes names the Governor initially passed over, would also limit the Governor's choices and subject the nomination process to political manipulation and maneuvering within the Commission.

For these reasons, as noted, I believe that for the initial selections one large group of names should be submitted simultaneously. However, that impels attention to the consideration that in a small state absolutely requiring the Commission to submit nine names at once (three times three) might defeat the purpose of merit selection by forcing recommendations of more than the number deemed truly qualified. I felt, however, that with three vacancies to attract applicants, surely at least six highly qualified persons would apply. Thus, on the basis of these admittedly subjective judgments, which you may wish to evaluate in the light of your own knowledge and experience, it seemed most reasonable to me to establish a discretionary range of between six and nine for the single group of nominees the Commission will submit to the Governor for the first vacancies.

Incidentally, as was done when the Supreme Court was enlarged from three to five members, my proposal fixes October 1 as the date on which the new judges would take office, because I felt at least that much time must be allowed after the 1981 Legislature has considered salaries and otherwise implemented the court of appeals amendment, for the selection process to take place and for the state court administrator to prepare for the judges' arrival. Arguably, the date on which the first three judges are commissioned should be delayed slightly longer, until the first Monday of January, 1982.

I have also added a subsection, making court of appeals judges subject to the new provisions on judicial discipline. As the discipline section is long, we feel this is the clearest and easiest way to accomplish our purpose.

3. On the top of AJR 2's second page, at the point I have marked by a circled "3," your first printing of the court of appeals amendment needs a correction to conform to last fall's ballot question 6, unifying our court system.

4. Also, at the bottom of page 2, where I have indicated by a circled "4," a correction is needed to include the language of ballot question 9, as Mr. Daykin has reconciled that language with ballot question 7.

5. On page 3, at the point I have marked with a circled numeral "5," I suggest the deletion of any reference to article 17, section 22, is appropriate, because that section was amended by vote of the electorate in the fall of 1976, to delete any reference therein to judicial officers.

6. On page 3, at the point I have marked with a circled numeral "6," I feel AJR 2's effective date should be specified to coincide with the time the new court's budgetary appropriation will be available to the state court administrator, coincidentally assuring that prospective nominees would know the salary and other important considerations about the court before deciding to apply.

Arguably, the new Selection Commission article of our Constitution, which was ballot question 5, should be amended also; however, it need not be because of the way I re-drafted AJR 2's first page.

If we can provide any further assistance, please let me know.

My warm personal regards to all of your committee, and my sincere thanks for your diligent attention to the interests of Nevada's judicial system.

Very truly yours,

E. M. Gunderson

EMG:jb

Enclosures

cc: All members, Assembly Judiciary Committee
Frank Daykin, Esq.
John De Graff, Esq.
Chief Justice Cameron Batjer

ASSEMBLY JOINT RESOLUTION NO. 2—ASSEMBLYMEN BARENGO, MANN, HICKEY, WAGNER AND SCHOFIELD

JANUARY 17, 1977

Referred to Committee on Judiciary

SUMMARY—Proposes to amend Nevada constitution to create intermediate appellate court. (BDR C-56)

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

ASSEMBLY JOINT RESOLUTION—Proposing to amend the Nevada constitution to create an intermediate appellate court.

Resolved by the Assembly and Senate of the State of Nevada, jointly, That a new section be added to article 6 and sections 1, 4, 7, 11 and 15 of article [6,] 6 and

section 3 of article 7 [and section 22 of article 17] of the constitution of the State of Nevada be amended to read respectively as follows:

1. The court of appeals consists of three judges or such greater number as the legislature may provide by law. If the number of judges is so enlarged, the supreme court shall provide by rule for the assignment of each appeal to a panel of three judges for decision.

2. Except as otherwise provided in this subsection, the judges of the court of appeals shall be elected by the qualified electors of the state, at the general election, for terms of 6 years beginning on the 1st Monday of January next after the election.[The terms of the first three judges elected are 2 years, 4 years and 6 years respectively, which shall be separately specified for their election, and in any increase or reduction of the number of judges, the legislature shall provide initial terms of 6 or fewer years such that one-third of the total number of judges, as nearly as may be, is elected every 2 years. If this article provides for the appointment of justices of the supreme court from among nominees selected by an authority other than the governor, judges of the court of appeals shall be so appointed also.] The governor shall appoint the first three judges of the court of appeals for terms beginning October 1, 1981, and ending the 1st Mondays in January of 1983, 1985, and 1987, from not less than six nor more than nine nominees selected by the permanent commission on judicial selection in the manner provided for supreme court justices. When a vacancy occurs before the expiration of an initial or subsequent term, the governor shall in like manner appoint a judge from among three nominees selected for such individual vacancy by the commission on judicial selection to serve until the 1st Monday of January next following the next general election. Seats on the court of appeals shall be separately specified on the ballot for purposes of election, and in any increase or reduction of judges, the legislature shall provide initial terms of 6 or fewer years such that one-third of the total number of judges, as nearly as may be, is elected every 2 years.

3. The chief justice of the supreme court shall appoint one of the judges of the court of appeals to be chief judge.

4. The legislature may provide by law, or may authorize the supreme court to provide by rule, for the assignment of a judge of the court of appeals to devote a part of his time to service as a supplemental district judge where needed.

5. Judges of the court of appeals shall be subject to discipline, removal and retirement by the commission on judicial discipline, in the manner provided for district judges and supreme court justices, but if a proceeding is brought against a judge of the court of appeals, no judge of that court may serve as a member of the commission for that proceeding.

Section 1. The Judicial power of this State [shall be] *is* vested in a court system, comprising a

(3)

Supreme Court, *a Court of Appeals*, District Courts, and [in] Justices of the Peace. The Legislature may also establish , as part of the system, Courts for municipal purposes only in incorporated cities and towns.

[Section] *Sec.* 4. The supreme court [shall] *and the court of appeals* have appellate jurisdiction in all [cases in equity; also in all cases at law in which is involved the title, or the right of possession to, or the possession of, real estate or mining claims, or the legality of any tax, impost, assessment, toll or municipal fine, or in which the demand (exclusive of interest) or the value of the property in controversy, exceeds three hundred dollars; also in all other civil cases not included in the general subdivisions of law and equity,] *civil cases arising in district courts*, and also on questions of law alone in all criminal cases in which the offense charged is within the original jurisdiction of the district courts. [The court shall] *The legislature shall apportion this jurisdiction between them by law, and shall provide for the review by the supreme court, where appropriate, of appeals decided by the court of appeals. These courts* also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus and also all writs necessary or proper to the complete exercise of [its] *their* appellate jurisdiction. Each of the justices [shall have] *and judges has* power to issue writs of habeas corpus to any part of the state, upon petition by, or on behalf of, any person held in actual custody, and may make such writs returnable [,] before himself or the [supreme] court, or before any district court in the state or before any judge of [said] *those* courts.

In case of the disability or disqualification, for any cause, of [the chief justice or either of the associate] *one or more* justices of the supreme court [, or any two of them,] *or judges of the court of appeals*, the governor [is authorized and empowered to] *may* designate any district judge or judges to sit in the place or places of such disqualified or disabled justice, [or] justices, *judge or judges*, and [said] *the district* judge or judges so designated [shall] *are entitled to* receive their actual expense of travel and otherwise while sitting in [said] *the* supreme court [,] *or court of appeals; or the governor may designate any judge of the court of appeals to sit in the place of any disabled or disqualified justice of the supreme court.*

[Sec.] *Sec.* 7. The times of holding the Supreme Court, *the Court of Appeals* and District Courts shall be as fixed by law. The terms of the Supreme Court shall be held at the seat of Government unless the Legislature otherwise provides by law, except that the Supreme Court may hear oral argument at other places in the state. The *terms of the Court of Appeals shall be held where provided by law;* and the terms of the District Courts shall be held at the County seats of their respective counties; Provided, that in case any county shall be hereafter divided into two or more districts, the Legislature may by law, designate the places of holding Courts in such Districts.

(4)

Sec. 11. The justices of the supreme court, *the judges of the court of appeals* and the district judges [shall be] *are* ineligible to any office, other than a judicial office, during the term for which they [shall] have been elected or appointed; and all elections or appointments of any such

judges by the people, legislature, or otherwise, during [said] *that* period, to any office other than judicial, [shall be] *are* void.

[Sec:] *Sec.* 15. The Justices of the Supreme Court, *the Judges of the Court of Appeals* and District Judges [shall each] *are each entitled to* receive for their services a compensation to be fixed by law and paid in the manner provided by law, which shall not be increased or diminished during the term for which they [shall] have been elected, unless a Vacancy occurs, in which case the successor of the former incumbent [shall] *is entitled to* receive only such salary as may be provided by law at the time of his election or appointment; and provision shall be made by law for setting apart from each year's revenue a sufficient amount of Money, to pay such compensation.

[Sec:] *Sec.* 3. For any reasonable cause to be entered on the journals of each House, which may [,] or may not be sufficient grounds for impeachment, the [Chief Justice and Associate] Justices of the Supreme Court, *Judges of the Court of Appeals* and Judges of the District Courts shall be removed from Office on the vote of two thirds of the Members elected to each branch of the Legislature, and the Justice or Judge complained of [,] shall be served with a copy of the complaint against him [,] and shall have an opportunity of being heard in person or by counsel in his defense, Provided, that no member of either branch of the Legislature shall be eligible to fill the vacancy occasioned by such removal.

(5) [[Sec:] *Sec.* 22. In case the office of any Justice of the Supreme Court, *Judge of the Court of Appeals,* District Judge or other State officer [shall become] *becomes* vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the Governor until it [shall be] *is* supplied at the next general election, when it shall be filled by election for the residue of the unexpired term.]

and be it further

Resolved, That the secretary of state shall assign a number to the new section added to article 6 according to the number of sections contained in that article when the addition of the new section becomes effective on July 1, 1981.

(6)

INTERMEDIATE APPELLATE COURTS

STATE	TERM
Alabama	6
Arizona	6
California	12
Colorado	8
Florida	6
Georgia	6
Illinois	10
Indiana	10
Iowa	8-- After 1 year, stand retention election for 8 years.
Kansas	4
Kentucky	8
Louisiana	10
Maryland	15
Massachusetts	To age 70.
Missouri	12
New Jersey	7-- With reappointment for life.
New Mexico	8
North Carolina	8
Ohio	6
Oklahoma	6
Oregon	6
Pennsylvania	10
Tennessee	8
Texas	6
Washington	6
(Wisconsin)	(6)--In legislature 2d time. If passed, must be approved by voters.

25 states now have intermediate appellate courts.

The average term is between 6 and 8 years (not counting states which appoint until 70 or reappoint for life).

SOURCES:

Council of State Governments, The Book of the States, 1976-77.

National Center for State Courts.

Iowa State Court Administrator.

Wisconsin Judicial Council.

NOTE:

The National Center for State Courts was unable to supply information concerning the number of states in which courts of appeals are currently being considered. It is known, however, that Idaho currently is considering an intermediate appellate court.

92 Nev., Advance Opinion 69

IN THE SUPREME COURT OF THE STATE OF NEVADA

GERALD M. CURTIS, APPELLANT, *v.* SHERIFF, WASHOE COUNTY, NEVADA, RESPONDENT.

No. 8695

March 31, 1976

Appeal from order denying pretrial petition for writ of habeas corpus, Second Judicial District Court, Washoe County; John W. Barrett, Judge.

Appeal dismissed.

William N. Dunseath, Public Defender, and *William B. Puzey,* Deputy, Washoe County, for Appellant.

Robert List, Attorney General, *Larry R. Hicks,* District Attorney, and *Calvin Dunlap,* Deputy, Washoe County, for Respondent.

OPINION

Per Curiam:

Indicted on November 5, 1975, for murdering Kenneth Todd Butler, a two-year-old child, Gerald M. Curtis was arraigned and pleaded not guilty on December 3, 1975. The record establishes that, although the Grand Jury transcript was filed November 14, 1975, defense counsel prepared no pretrial habeas petition prior to arraignment. Therefore, attempting to accommodate counsel, the district court granted Curtis an additional 21 days, to and including December 24, in which to file "motions and writs." However, as defense counsel declined to waive the "sixty-day rule," NRS 178.556, the court set Curtis's trial to begin January 5, 1976.[1]

Of course, the district court's order, purporting to allow Curtis the right to file a pretrial petition for habeas corpus notwithstanding his entry of a plea, and his acceptance of a trial date directly contravened NRS 34.380(1)(c)(1).[2] Moreover, subsequent events occasioned one of the very procedural

[1]NRS 178.556 provides: "*Dismissal by court for unnecessary delay.* If no indictment is found or information filed against a person within 15 days after he has been held to answer for a public offense, or if a defendant whose trial has not been postponed upon his application is not brought to trial within 60 days after the finding of the indictment or filing of the information, the court may dismiss the indictment, information or complaint."

[2]NRS 34.380(1)(c)(1) provides:

"(c) A district court shall not consider any pretrial petition for habeas corpus:

dislocations which NRS 34.380 was amended in 1973 to eliminate: defense counsel filed a pretrial habeas petition close to the eve of trial, and repeated continuances of the scheduled trial date resulted. On this appeal, therefore, we are constrained to review the import of counsel's conduct.

The record reflects that defense counsel took no action whatever until December 29, 1975, i.e. three judicial days before Curtis's trial was set to commence. Then, having previously insisted on an early trial date, defense counsel and Curtis "stipulated" with the prosecution that the assigned date should be vacated, and a later date allowed. The district court purported to approve this "stipulation," vacated the January 5 trial setting, set the habeas petion for January 9, and assigned Curtis a new trial date on March 15, 1976.

Defense counsel subsequently stipulated to continue the hearing on Curtis's habeas petition, and finally caused it to be heard on January 30, 1976.[3] However, the district court did not decide the petition until March 5, 1976, at which time it ruled adversely to Curtis. Thus, for the second time, Curtis was again permitted to delay his scheduled trial; we are advised by the Second Judicial District's court administrator that the March 15 date was not utilized for any other trial; and Curtis's trial was again reset, and is now scheduled for May 17, 1976. Accordingly, were our court also to ignore NRS 34.380(1)(c)(1)—reviewing formally the supposed "merits" of Curtis's petition notwithstanding that legislative command, and taking as much time to write an opinion as the district court found necessary to reach its decision—then the third trial date now scheduled might also have to be vacated, and Curtis's case allotted yet a fourth date for trial.[4]

"(1) Based on alleged want of probable cause or otherwise challenging the court's right or jurisdiction to proceed to the trial of a criminal charge if such petition is not filed and brought on for hearing before a plea to the charge is entered by the accused or on the accused's behalf by his counsel or the court."

This provision of NRS 34.380 seeks to implement this court's pronouncements in Howard v. Sheriff, 83 Nev. 150, 425 P.2d 596 (1967), involving facts much like those here concerned.

[3]On January 30, counsel and the district judge were not only aware of NRS 34.380(1)(c)(1), but of this court's January 16 decision in Slattery v. Sheriff, 92 Nev. ....., 544 P.2d 894 (1976), wherein we dismissed a pretrial habeas appeal because the petition had not been filed and brought on for hearing before a plea to the charge was entered, as our statute requires. At counsel's instance, however, the district judge purported "to allow a withdrawal of the plea of not guilty, which will technically satisfy the statute and allow a hearing of the petition of the defendant in this case."

[4]For example, if our court were only to consume 36 days to formulate its initial decision, as did the district court—and if counsel were

In the instant case, the record shows no excuse for violating NRS 34.380(1)(c)(1), except that counsel indicates he has done so repeatedly in the past, and considers his accustomed procedures more "convenient" than those established by law. Counsel's tactic of seeking to withdraw the not guilty plea heretofore entered, solely and only to circumvent our statute's mandatory language, was considered and specifically disapproved in Kline v. Sheriff, 92 Nev. ....., ... P.2d ..... (1976 Adv. Op. No. 38). As noted in *Kline:* "At this juncture we need not and do not consider the question of whether, and under what circumstances, if any, it would be permissible to withdraw his plea for some purpose other than circumvention of our statute. When, and if, that issue becomes cognizable, it will be considered and resolved." 92 Nev. at ....., ... P.2d at .....

We do not fault the district court for seeking to accommodate counsel. However, in our view, this court may not properly ignore NRS 34.380(1)(c)(1), merely because we might deem other procedural devices more "convenient," which it happens we do not. Certainly, neither the district court nor counsel may constrain us to accept alternative procedures counsel have devised as preferable to our statute.

This appeal is therefore dismissed; remittitur will issue forthwith; trial may and should proceed on the date now scheduled.[5]

GUNDERSON, C. J.
BATJER, J.
ZENOFF, J.
MOWBRAY, J.
THOMPSON, J.

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to exercise their option to exhaust another 31 days in filing a petition for rehearing, and the permissible response—then computing from the date when this appeal was docketed on March 15, the 68 days thereby expended would necessitate at least one more continuance of the trial currently set for May 17.

To alleviate such problems, in this and other similar cases, our own court could only accord still higher priority to pretrial habeas matters, endeavoring to decide all cases before further continuances became necessary. This preemption of our energies, of course, would only further reduce our capacity to accord needed priority to other worthy matters, including important civil litigation affecting the livelihood and business of honest Nevada citizens.

[5]We note, in passing, that we have perused the record, and believe the record contains ample evidence to hold Curtis for trial on the charge of murdering Kenneth Todd Butler, a minor child two years of age.

SPO, CARSON CITY, NEVADA, 1976

replied that he had decided to talk to the officer. Defendant then confessed. The court held (338 N.Y.S.2d at 834) that under such circumstances "[T]he constitutional safeguards laid down by Miranda v. Arizona [cite omitted] during a period of custodial interrogation have been effectively met."

[8] The situation in the case at bar is similar to the circumstances in People v. Pellicano. Here, Gardner's counsel was available, and the entire episode was at the instance and request of the defense.

[9] The final argument is that Gardner's plea was coerced because he feared the death penalty and that, since the death penalty, in effect at the time, was unconstitutional, then his plea was obtained in violation of his constitutional rights. The argument is without merit. Conger v. State, 89 Nev. 263, 510 P.2d 1359 (1973).

The order of the district court denying Gardner's petition for post-conviction relief is affirmed.

GUNDERSON, C. J., and BATJER, ZENOFF, and THOMPSON, JJ., concur.

Gene Glenn JACKSON, Appellant,
v.
WARDEN, NEVADA STATE PRISON, Respondent.
No. 7817.

Supreme Court of Nevada.
July 9, 1975.

After conviction of battery with intent to commit mayhem, a petition for post-conviction relief was filed. The Fourth Judicial District Court, Elko County, Joseph O. McDaniel, J., denied relief and the petitioner appealed. The Supreme Court held that petitioner made sufficient allegations of denial of effective assistance of counsel to warrant an evidentiary hearing.

Reversed and remanded.

1. Criminal Law ⇐641.13(1)

A defendant's right to assistance of counsel is satisfied only when such counsel is effective.

2. Criminal Law ⇐641.13(1)

"Effective counsel" does not mean errorless counsel, but rather counsel whose assistance is within the range of competence demanded of attorneys in criminal cases.

See publication Words and Phrases for other judicial constructions and definitions.

3. Criminal Law ⇐641.13(1)

Presumption exists that counsel in criminal case has fully discharged his duties and ineffectiveness of counsel will be recognized only when the proceedings have been reduced to a farce or pretense.

4. Criminal Law ⇐641.13(1)

A primary requirement of effectiveness of counsel is that counsel will conduct careful factual and legal investigations and inquiries with a view to developing matters of defense in order that he may make informed decisions on his client's behalf both at the pleading stage and at trial.

5. Criminal Law ⇐641.13(2)

If counsel's failure to undertake careful investigations and inquiries with a view toward developing matters of defense results in omitting a crucial defense from the case, the defendant has been denied effective assistance of counsel.

6. Assault and Battery ⇐63

Battery with intent to commit mayhem is a specific intent crime to which the defense of diminished capacity is applicable. N.R.S. 193.220, 200.400.

7. Criminal Law ⇐998(17)

Allegations in defendant's petition for postconviction relief warranted evidentiary

hearing on issue of whether defendant was denied effective assistance of counsel because of failure of court-appointed counsel to make careful investigations and inquiries into the circumstances and in failing to apprise defendant, who was charged with battery with intent to commit mayhem, of the defense of diminished capacity. N.R.S. 193.220, 200.400.

Horace Rodlin Goff, State Public Defender and Michael R. Griffin, Deputy State Public Defender, Post Office Box B, Carson City, for appellant.

Robert List, Atty. Gen., Carson City, Robert C. Manley, Dist. Atty. and Gary E. DiGrazia, Deputy Dist. Atty., Elko, for respondent.

OPINION

PER CURIAM:

Gene Glenn Jackson entered a plea of guilty to the felony charge of battery with intent to commit mayhem. NRS 200.400.

He was sentenced; placed on probation, which he later violated; and eventually incarcerated in the Nevada Prison.

Jackson has petitioned for post-conviction relief, primarily on the ground that he was denied effective assistance of counsel at the time he entered his plea. His petition was summarily denied below without an evidentiary hearing. We reverse and remand, with instructions to conduct an evidentiary hearing in accordance with the views expressed herein.

1. On February 28, 1972, the district court appointed the state deputy public defender to represent Jackson. Jackson claims that the deputy did not meet with him until the morning set for the preliminary examination, March 10, 1972, even though he had been in jail since February. At this March 10 meeting, counsel urged petitioner to waive the preliminary examination and plead guilty. At the advice of counsel, the preliminary hearing was waived. An information was filed on March 16, 1972, to which Jackson entered his guilty plea. The information contained a list of witnesses, including the policemen and a doctor. Jackson, in his petition, claims that his counsel made no pretrial investigation of his case. According to the presentence report, dated March 27, 1972, a part of this record, there was no offense report filed, neither the victim nor any witnesses could be located, and policemen interviewed indicated that no one at the bar (the scene of the incident) knew what had happened. In fact, after repeated trips to the bar, the investigating officers were never able to produce any concrete information regarding the incident.

[1–5] A defendant's right to assistance of counsel is satisfied only when such counsel is effective. Powell v. Alabama, 287 U.S. 45, 71, 53 S.Ct. 55, 77 L.Ed. 158 (1932). Effective counsel does not mean errorless counsel, but rather counsel whose assistance is "[w]ithin the range of competence demanded of attorneys in criminal cases." McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449, 25 L.Ed.2d 763 (1970). While Nevada law presumes that counsel has fully discharged his duties, and will recognize the ineffectiveness of counsel only when the proceedings have been reduced to a farce or pretense, Warden v. Lischko, 90 Nev. 221, 223, 523 P.2d 6, 7 (1974), it is still recognized that a primary requirement is that counsel ". . . conduct careful factual and legal investigations and inquiries with a view to developing matters of defense in order that he may make informed decisions on his client's behalf both at the pleading stage . . . and at trial . . . ." In re Saunders, 2 Cal.3d 1033, 88 Cal.Rptr. 633, 638, 472 P.2d 921, 926 (1970). If counsel's failure to undertake these careful investigations and inquiries results in omitting a crucial defense from the case, the defendant has not had that assistance to which he is entitled. In re Saunders, *supra;* People v. Stanworth, 11 Cal.3d 588, 114 Cal.Rptr. 250, 522 P.2d 1058 (1974). Further, in People v. White, 514 P.2d 69, 71–72

(Colo.1973), the court noted that the American Bar Association Standards for Criminal Justice set forth minimum standards by which the assistance of counsel may be judged. The following sections of *The Defense Function Standard* are of particular relevancy here: 1.1(b) (Role of the Defense Counsel), 3.2 (Interviewing of Client), and 4.1 (Duty to Investigate).

[6] 2. Battery with intent to commit mayhem is a specific intent crime to which the defense of diminished capacity is applicable. NRS 193.220. The record before us indicates that petitioner, an Indian with a fourth-grade education, had been drinking for some 20 hours before the incident, much of that time with his friend, the victim, and that he had no recollection of the event. Without more, we do not know whether or why defense counsel urged a waiver of the preliminary examination and failed to apprise petitioner of the defense of diminished capacity.

[7] The Ninth Circuit Court of Appeals dealt with a similar situation in Brubaker v. Dickson, 310 F.2d 30 (1962). There, the appellant urged that through lack of investigation and preparation Brubaker's court-appointed counsel failed to discover and present substantial defenses which appellant had to the charge against him, among them being a lack of capacity to form the intent required for first-degree murder. After reviewing the allegations, the court said, at 38–39:

"Upon an examination of the whole record, we conclude that appellant alleged a combination of circumstances, not refuted by the record, which, if true, precluded the presentation of his available defenses to the court and the jury through no fault of his own, and thus rendered his trial fundamentally unfair. Appellant does not complain that after investigation and research trial counsel made decisions of tactics and strategy injurious to appellant's cause; the allegation is rather that trial counsel failed to prepare, and that appellant's defense was withheld not through deliberate though faulty judgment, but in default of knowledge that reasonable inquiry would have produced . . . . It follows that appellant must have an opportunity to support the allegations of his petition, by proof, in a hearing before the District Court."

3. Petitioner additionally urges that his plea was not entered voluntarily with a full understanding of the nature of the charges. Since an evidentiary hearing must be conducted, it is presumed that the district court will take testimony on the voluntariness of petitioner's plea.

The case is reversed and remanded to the district court for appropriate hearing consistent with this opinion.

WEST KEY NUMBER SYSTEM

J. M. BOUNDS, Appellant,

v.

WARDEN, NEVADA STATE PRISON, Respondent.

No. 8059.

Supreme Court of Nevada.

July 9, 1975.

Appeal was taken from an order of the First Judicial District Court, Carson City, Frank B. Gregory, J., denying postconviction relief. The Supreme Court held that where defendant voluntarily, with advice of counsel, entered plea of guilty to homicide charge and there was no allegation of coercion, it would be assumed that defendant was fully advised of consequences of plea.

Affirmed.

Zenoff, J., did not participate.

1. Criminal Law ⇐1134(8)

Supreme Court, on appeal from denial of postconviction relief, would not consider contention regarding events that occurred prior to petitioner's guilty plea.

INDEFINITE TERM:	Colorado
LIFE APPOINTMENT:	Rhode Island
RETIREMENT AT 70:	Massachusetts New Hampshire Puerto Rico
AT PLEASURE OF COURT:	Tennessee West Virginia Wyoming
SERVES AS CJ FOR REMAINDER OF TERM AS JUSTICE:	Georgia Idaho Iowa Kansas Louisiana Maryland Mississippi New Mexico Pennsylvania Virginia Wisconsin
14 YEARS:	New York
12 YEARS:	California Delaware
10 YEARS:	Alaska District of Columbia Hawaii South Carolina
8 YEARS:	Arkansas Connecticut Guam Montana North Carolina
7 YEARS:	Maine New Jersey (With re-appointment to age 70)
6 YEARS:	Alabama Minnesota Nebraska Ohio Oklahoma Oregon Texas Vermont

5 YEARS:	Arizona Indiana North Dakota (or until expiration of term as justice whichever comes first.)
4 YEARS:	South Dakota
3 YEARS:	Illinois
2 YEARS:	Florida Michigan Missouri Nevada Utah Washington
1-1½ YEARS:	Kentucky

AVERAGES FOR STATES HAVING TERMS OF YEARS (INCLUDES D.C. & GUAM

Mean:	6.3 years
Median:	6.0 years
Mode:	6.0 years

FOR ALL TYPES OF TERMS, THE AVERAGE (MODE: I.E., GREATEST FREQUENCY OF OCCURRENCES) IS "SERVES AS CJ FOR REMAINDER OF TERM AS JUSTICE" WITH 11 OCCURRENCES.

(Although, if you classify a term for years, irrespective of the number of years, as "one type of term" then clearly the most occurrences are in the term for years category.)

TERM OF OFFICE

State or other jurisdiction	*Chief Justice*	*Term of office as Chief Justice*	*Length of regular term in office*
Alabama	Howell T. Heflin	January 1971—January 1977	6
Alaska	Robert Boochever	September 1975—September 1978(a)	10
Arizona	James Duke Cameron	January 1975—January 1980	5
Arkansas	Carleton Harris	January 1969—January 1977	8
California	Donald R. Wright	April 1970—February 1977(b)	12
Colorado	Edward E. Pringle	November 1970—	(c)
Connecticut	Charles S. House	May 1971—April 1978(b)	8
Delaware	Daniel L. Herrmann	August 1973—August 1985	12
Dist. of Columbia	Gerard D. Reilly	1972—1982	10
Florida	Ben F. Overton	March 1976—March 1978	2
Georgia	H. E. Nichols	January 1975—January 1981	(d)
Guam	Joaquin C. Perez	October 1974—October 198?	8
Hawaii	William S. Richardson	April 1973—April 1983	10
Idaho	Joseph J. McFadden	March 1975—January 1979(e)	(d)
Illinois	Daniel P. Ward	January 1976—January 1979	3
Indiana	Richard M. Givan	November 1974—November 1979	5
Iowa	C. Edwin Moore	November 1969—August 1978	(d)
Kansas	Harold R. Fatzer	January 1971—January 1977	(d)
Kentucky	Scott Reed	January 1975—	(f)
Louisiana	Joe W. Sanders	March 1973—	(d)
Maine	Armand A. Dufresne, Jr.	September 1970—September 1977	7
Maryland	Robert C. Murphy	November 1974—	(d)
Massachusetts	Edward F. Hennessey	January 1976—April 1989	(b)
Michigan	Thomas Giles Kavanagh	January 1975—January 1977	2
Minnesota	Robert J. Sheran	December 1973—January 1977(a)	6
Mississippi	Robert G. Gillespie	January 1973—January 1981	(d)
Missouri	Robert E. Seiler	July 1975—July 1977	2
Montana	James T. Harrison	January 1957—January 1977(g)	8
Nebraska	Paul W. White	January 1975—January 1981	6
Nevada	E. M. Gunderson	January 1975—January 1977	2
New Hampshire	Frank R. Kenison	April 1952—November 1977	(b)
New Jersey	Richard J. Hughes	December 1973—August 1979	7(h)
New Mexico	LaFel E. Oman	January 1976—January 1979	(d)
New York	Charles D. Breitel	January 1974—December 1979(i)	14
North Carolina	Susie Marshall Sharp	January 1975—July 1979(i)	8
North Dakota	Ralph J. Erickstad	June 1973—June 1978	5(j)
Ohio	C. William O'Neill	January 1975—January 1981	6
Oklahoma	Ben T. Williams (SC)	January 1975—January 1981	6
	Tom Brett (CCA)	January 1975—January 1977	2
Oregon	Kenneth J. O'Connell	June 1970—June 1976	6
Pennsylvania	Benjamin R. Jones	January 1972—January 1978	(d)
Puerto Rico	José Trías-Monge	1975—	(b)
Rhode Island	Joseph A. Bevilacqua	March 1976—	(k)
South Carolina	J. Woodrow Lewis	August 1975—August 1985	10
South Dakota	Francis G. Dunn	September 1974—January 1978	4
Tennessee	William H. D. Fones	September 1974—May 1976	(l)
Texas	Joe R. Greenhill (SC)	October 1972—December 1978	6
	John F. Onion, Jr. (CCA)	January 1970—January 1976	6
Utah	F. Henri Henriod	January 1975—January 1977	2
Vermont	Albert W. Barney, Jr.	March 1974—March 1981(g)	6
Virginia	Lawrence W. I'Anson	October 1974—	(d)
Washington	Charles F. Stafford	January 1975—January 1977	2
West Virginia	Thornton G. Berry, Jr.	December 1975—December 1976(m)	(l)
Wisconsin	Horace W. Wilkie	January 1975—January 1985	(d)
Wyoming	Rodney M. Guthrie	January 1975—December 1978(b)	(l)

(See back page for Footnotes.)

FOOTNOTES

(SC)—Supreme Court.
(CCA)—Criminal Court of Appeals.

(a) Completing unexpired term.

(b) Retirement at age 70.

(c) Indefinite term.

(d) Serves as Chief Justice for remainder of term as Justice.

(e) Completing unexpired term followed by full term.

(f) Twelve to 18 months.

(g) Served previous term(s).

(h) Serves seven years, with reappointment to age 70.

(i) Reaches mandatory retirement age.

(j) Serves 5 years or until expiration of term as Justice, whichever comes first.

(k) Life appointment.

(l) Pleasure of the court.

(m) Present term as Justice ends December 31, 1976.

Secretariat: The Council of State Governments
P.O. Box 11910, Iron Works Pike
Lexington, Kentucky 40511

March 1976
BPW 76

DRAFT OF AMENDMENT TO AJR 3

A. J. R. 3

ASSEMBLY JOINT RESOLUTION NO. 3--ASSEMBLYMEN BARENGO, MANN, HICKEY, WAGNER AND SCHOFIELD

JANUARY 17, 1977

Referred to Committee on Judiciary

SUMMARY—Proposes election of chief justice by justices of supreme court. (BDR C-57)

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

ASSEMBLY JOINT RESOLUTION—Proposing to amend the Nevada constitution to provide for election of the chief justice by the justices of the supreme court and a change in his term.

Resolved by the Assembly and Senate of the State of Nevada, jointly, That section 3 of article 6 of the constitution of the State of Nevada be amended to read as follows:

[Sec:] *Sec.* 3. The Justices of the Supreme Court, shall be elected by the qualified electors of the State at the general election, and shall hold office for the term of Six Years from and including the first Monday of January next succeeding their election; Provided, that there shall be elected, at the first election under this Constitution, Three Justices of the Supreme Court who shall hold Office from and including the first Monday of December AD. Eighteen hundred and Sixty four, and continue in Office thereafter, Two, Four and Six Years respectively, from and including the first Monday of January next succeeding their election. They shall meet as soon as practicable after their election and qualification, and at their first meeting shall determine by lot, the term of Office each shall fill. [, and the Justice drawing the shortest term shall be Chief Justice, and after the expiration of his term, the one having the next shortest term shall be Chief Justice, after which the Senior Justice in Commission shall be Chief Justice; and in case the commission of any two or more of said Justices shall bear the same date, they shall determine by lot, who shall be Chief Justice.] [*The justices shall biennially elect from among themselves a chief justice to serve a term of 2 years beginning on the 1st Monday of January of the even-numbered year. A chief justice may be elected to successive terms. The justices shall fill by election for the unexpired term any vacancy which may occur.*]

On the 1st Monday in January 1983, the justices of the supreme court shall elect from among themselves a chief justice to serve until the 1st Monday in January 1988. On the expiration of the term of the chief justice, or upon his

death, resignation or ceasing to be a justice if one of these occurs sooner, the justices shall elect a chief justice for a term of not less than 4 years and extending to the 1st Monday of January of the next even-numbered year. A chief justice may succeed himself, but no person may be elected as chief justice who has not served at least 1 year as a justice, nor may any person be elected to an initial term as chief justice who would reach the age of 70 years before the expiration of his term. The name of the person elected and the date of expiration of his term shall be specified in an order of the court.

EXHIBIT B

OFFICE OF THE

NEVADA STATE PUBLIC DEFENDER

P.O. Box B
CARSON CITY, NEVADA 89701
TELEPHONE 885-4880

January 7, 1977

MEMORANDUM

TO: THE HONORABLE MIKE O'CALLAGHAN, Governor
MR. HOWARD E. BARRETT, Director, Administration
MR. JOEL PINKERTON, Management Analyst, Administration

FROM: HORACE R. GOFF, Nevada State Public Defender

SUBJECT: COUNTY FEES

Recently the office of the Nevada State Public Defender submitted a memo setting forth proposed funding for the office for the next two years. In that memo facts were set forth concerning the problems with the present county contribution system. It was hoped that the proposal therein would temporarily solve the problems. New information more fully set forth below obtained since that time has demonstrated that a complete review of the funding of the Nevada State Public Defender is in order.

Submitted for your consideration are three proposals for financing the Nevada State Public Defender's office for the coming biennium:

1. Total funding by the State, eliminating county contributions.

2. Partial funding by county contributions with State assistance of $47,000 over what the Budget Division recommends.

3. Apportionment as proposed by the Budget Division.

I recommend State funding as the standard and goal, based not only on my own experience, but for the reasons more fully set forth in Exhibits A, B and C.

The problem confronting the Nevada State Public Defender is clearly set forth in the language of the last paragraph of the comments in Exhibit C:

"However, it is clear that funding the defender office is the responsibility of the state. Constitutional mandates do not permit local options as to when counsel

may be provided, for counsel must be provided uniformly throughout the United States. However, most states have communities that range from the very wealthy to the poverty-stricken. To further aggravate the situation, in counties having a low tax base there is likely to be a higher incidence of crime; in those counties, a higher percentage of criminally accused are financially unable to provide counsel. Hence, where the need may be greatest, the financial ability will tend to be the least capable of meeting the need as required. Also, because county officials have greater susceptibility to citizen insensitivity to the rights of the accused, it is often politically impossible to provide adequate funding for the protection of those rights on the local level in many areas, where the demand for tax dollars must compete with other, more popular causes. This recommendation for state funding of the defender office has received the strong endorsement of the National Advisory Commission on Criminal Justice Standards and Goals, in its Standard 13.6."

If implementation of financing proposal one is impossible, the office submits plan two. In this proposal, I have cut out approximately $43,000 from the "Governor recommends" column of the budget print out for 1977-78 and 1978-79. This has been done by eliminating or reducing the following categories:

CATEGORY 1 - Personnel:	
1. Eliminate legal research position.	$14,000
2. Eliminate field attorney for Elko office.	18,214
CATEGORY 3 - In State Travel	
3. Reduction from $17,500 to $12,000.	5,500
4. Training from $2,000 to $500.	1,500
5. Estimated fringe benefit personnel cut.	3,786
TOTAL	$43,000

I propose the State match this with $47,000. The county contributions under this plan are set forth in Exhibit D, attached hereto.

I predict, financing plan three, acceptable to the Budget Division will cause the collapse of the Nevada State Public Defender system as it exists for the following reason:

The amount of individual contributions are as follows:

Carson City	$ 33,823
Douglas	27,306
Elko	27,306
Humboldt	19,936

Lander	$ 13,951
Lyon	13,312
Mineral	14,100
Pershing	14,271
White Pine	19,979

(See Exhibit D for other counties)

While not unreasonable when viewed in the light of the District Attorney's budget or the number of murder trials and other serious felony trials in the past year, it is of an amount that the counties may well exercise their statutory option and hire private attorneys as county public defenders, or retain an attorney in a regional system. (See NRS Chapter 260)

If this is done, and political forces in Elko County have already indicated they intend to pursue that option, then the Public Defender will be forced to close the embryonic Elko Regional office, reduce the staff in Carson, with the inevitable consequence that the remaining counties will receive inadequate service.

The only alternative is to make the county contributions mandatory, eliminating the option to withdraw from the Nevada State Public Defender system.

The process will inevitably place a financial burden on the State because of the "Jackson v. Warden" syndrome. In Jackson v. Warden, Jackson waived his preliminary hearing on the advice of counsel (Ross Eardley, then contracting with the State Public Defender,) he was placed on probation, then revoked. At the Nevada State Prison, he filed an "In Pro Per" writ, and the Nevada State Public Defender was successful in getting his conviction overturned. (See Exhibit E attached hereto.)

Attention is attracted to the language underlined in Exhibit C and quoted on page 2 of this memorandum.

From professional experience, a $15,000 retainer will be attractive to numerous private attorneys who will commit themselves to representing individuals concommitant with private practice in District Court but whom I feel will not approach the professionalism I feel Public Defenders should maintain, and I predict the Jackson v. Warden syndrome, a common practice prior to my taking office will be revived.

A comment must be made regarding how the percentages were arrived at in financial proposal three.

Previous budgets have been heavily subsidized by Federal Funds obtained through LEAA.

1971-72	$49,830
1972-73	70,000
1973-74	32,653
1974-75	35,000
1975-76	6,172

Because of the previous lack of statistics upon which to accurately prorate costs of defense and reliance on Federal and State funding, the counties are for the first time being confronted with the problem of bearing what appears to be the full costs of providing adequate defense services.

The rural counties have had extreme difficulty in the past in funding adequate law enforcement facilities, let alone defense services, and the facilities they now have creating caseloads for our office are largely developed through Federal and State funds.

Some of the statistical problems are discussed in Bulletin 77-3 of the Legislative Commission of the Legislative Counsel Bureau.

The office has been unsuccessful in continuing that subsidization on a biennial basis.

No meaningful statistics were kept prior to 1974 giving the office insight into the number of man hours spent per caseload contribution. I instituted a man hour diary and instructed the secretaries to compile the number of hours spent in each contributing unit upon closing cases from that jurisdiction.

The percentages were then computed based on the figures available. No representation is made that they are accurate.

Inevitably, demands for services in each county fluctuate depending upon the District Attorney's prosecutiorial discretion, and the crime rate, not to mention economic and demographic factors.

For example, a prognosis on the number of homicides to be expected in Esmeralda County necessitating Public Defender services is obviously difficult to do based on past services performed.

I strongly urge careful consideration of the text of this memorandum, and would solicit an interview to present our position more fully and answer questions.

Horace R. Goff

HORACE R. GOFF
Nevada State Public Defender

P.S. If you determine to stick with proposal 3, please find table of county contributions as calculated according to your final recommendation We have modified our original request to bring it in line with the Governor's recommendation. We strongly urge that you supplement your recommendation for funding to adopt proposal 1 or 2 since proposal 3 will result in far more trouble in the long run. As stated above, our position on proposal 3 was changed based on concrete information received since it was proposed. The Legislative Counsel Bureau has advised us that a change in the original amounts of county contributions sent to the Legislature would require a supplemental request from the Governor even if the adjustments were minor. Please advise us on this.

HRG/msb

EXHIBIT "A"

STATE OF NEVADA GOVERNOR'S COMMITTEE ON STANDRADS AND GOALS

REVIEW OF NATIONAL ADVISORY COMMISSION CRIMINAL JUSTICE STANDARDS AND GOALS (JANUARY 28, 1975)

COURTS

STANDARD 13.6 Financing of Defense Services

Defender services should be organized and administered in a manner consistent with the needs of the local jurisdiction. Financing of defender services should be provided by the State. Administration and organization should be provided locally, regionally, or statewide.

Standard 13.6

Financing of Defense Services

Defender services should be organized and administered in a manner consistent with the needs of the local jurisdiction. Financing of defender services should be provided by the State. Administration and organization should be provided locally, regionally, or statewide.

Commentary

Most organizations that have studied the problem of providing adequate counsel for the indigent defendant have emphasized the need for a flexible approach that enables local jurisdictions to choose the system best suited to their own needs, provided that minimum standards are observed. (See American Bar Association Project on Minimum Standards for Criminal Justice, *Standards Relating to Providing Defense Services, Approved Draft*, 17-18 (1967); Council of State Governments, *Suggested State Legislation 1967*, Vol. D-67 (1966).) The head of the National Advisory Council of the National Defender Project has stated, "The system adopted by a particular jurisdiction should be designed to fit the geography, demography and development of the area." (National Defender Project, National Legal Aid and Defender Association, *Report of Proceedings of the National Defender Conference*, 183 (May 14-16, 1969).)

Such flexibility also takes into account the differing needs of jurisdictions located in States with strong central government and a uniform court system, compared to those located in States with a weak central government where the administration of criminal justice is centered at the local levels.

In endorsing a plan to allow each jurisdiction to choose the defender system best suited to its own needs and resources, however, the American Bar Association has warned against allowing local tradition to serve "as an excuse for failure to establish an adequate system for providing counsel." (American Bar Association Project on Minimum Standards for Criminal Justice, *Standards Relating to Providing Defense Services, Approved Draft*, 18 (1967).)

Financial support is a critical element in providing effective defender services. Local governments are less able than the State to finance such services, and it is often politically impossible to provide adequate funding for defense services on the local level. Further aggravating the situation is that counties with a low tax base often have a higher incidence of crime. Often an especially high percent of defendants in these counties are financially unable to provide counsel. Hence, where the need may be greatest, the financial ability tends to be the least. The only way to balance the resources so that counsel can be provided uniformly to all indigent criminally accused without imposing an unreasonable burden on some communities is through a State-financed system. This need not preclude local autonomy in organizing and administering defender services.

This standard expects that provision is made for local administration. This is somewhat inconsistent with the Model Public Defender Act, which authorizes the Defender General to create offices but apparently intends that these are to be under the control of the statewide office. (Model Public Defender Act § 11 (1970).) The Commission feels, however, that the need for local autonomy outweighs the value of centralized administration and control.

References

1. American Bar Association Project on Minimum Standards for Criminal Justice. *Standards Relating to Providing Defense Services. Approved Draft.* Chicago: American Bar Association (1967).
2. National Defender Project, National Legal Aid and Defender Association. *Report of the Proceedings of the National Defender Conference* (May 14-16, 1969).

Related Standards

The following standard may be applicable in implementing Standard 13.6:

13.2 Payment for Public Representation

STANDARD

1.3

THE STATE HAS THE RESPONSIBILITY TO ASSURE ADEQUATE FUNDING OF DEFENDER OFFICES SERVING CLIENTS CHARGED WITH STATE AND LOCAL OFFENSES. THE DEFENDER OFFICE MAY BE ORGANIZED AND ADMINISTERED AT EITHER STATE, REGIONAL OR LOCAL GOVERNMENT LEVEL, WHICHEVER IS THE MOST EFFICIENT AND PRACTICAL AND IS BEST ABLE TO ACHIEVE ADEQUACY OF FUNDING AND INDEPENDENCE FOR THE OFFICE.

(No specific mention is made of the federal government and its responsibilities to provide defender services to those charged with federal crimes. This omission is warranted not because of any lesser responsibility or obligation on behalf of the federal government, but rather, because the federal government has for the most part acknowledged and met its responsibilities in enacting the Criminal Justice Act of 1964, as amended, 18 U.S.C. §3006A(d) (2). The Criminal Justice Act has spawned a viable and well administered defender system in the federal courts. Nonetheless, the point is made that this Standard applies, and is intended to apply, with equal force and effect to the federal government as well as to the individual states.)

A number of states have developed defender offices on a statewide basis, and state-level organization was recommended by the Advisory Commission on Intergovernmental Relations in 1971, as well as the President's Commission on Law Enforcement and Administration of Justice, in its 1967 report. Statewide organization seems to be the trend. (See Gerald L. Goodell, "Effective Assistance of Counsel in Criminal Cases: Public Defender as Assigned Counsel", Winter 1970, Kansas Bar J., 339, 342-3.)

At least thirteen states have adopted state-financed public defender systems under the direct supervision of a public defender or defender commission. Alaska has recently adopted a statewide system under the supervision of a state public defender, as has the state of Delaware. Colorado's state public defender was appointed in 1970. Hawaii's public defender system, headed by a state public defender, became effective during 1971. Kentucky passed legislation creating a statewide defender system in April 1972 and has an appointed defender general. In Maryland, a state public defender system headed by a state defender was instituted in 1971. Massachusetts in 1960 created the Massachusetts Defender Committee, which is responsible for directing statewide defender services. Minnesota has a statewide defender system headed by a state public defender. Missouri passed statewide defender legislation in May of 1972. New Jersey has, since 1967, operated a statewide defender system under the direction of a state public defender. Nevada has recently appointed a state public defender. Rhode Island has also appointed a state public defender for its state-financed defender services. Vermont's statewide defender legislation became effective July 1, 1972, and the program is being directed by a defender general. In addition several states have adopted a statewide defender system on the appellate level. In July 1972, the Illinois legislature created a state appellate agency. Oregon and Wisconsin have defender appellate offices organized at the state level.

However, in its 1973 report "Courts", the National Advisory Commission on Criminal Justice Standards and Goals in Standard 13.6, recognized that organizational flexibility will allow for differing needs of the various states; hence, the Commission refused to recommend that the defender office be a state agency, although directing that all jurisdictions have an organized defender office.

Regional or local government defender organization also permits the state to enjoy a variety of defender office structures within the state, thus permitting some experimentation in order to arrive at the best structure, based upon performance.

Moreover, a strong argument can be made for the proposition that a defender office should not be a governmental agency at all, but a private, not-for-profit corporation funded by the state. This form may be the best method of assuring the independence of the defender operation, continuity in defender leadership through changes in political control of the state, and may entirely free the defender from political considerations.

In any event, defender systems in many places are in the developmental stage, and, taking that into consideration, it is believed that it is too early in the history of the defender movement to recommend state agency organization of a defender office over private, corporate, regional or local governmental organization.

However, it is clear that funding the defender office is the responsibility of the state. Constitutional mandates do

the United States. However, most states have communities that range from the very wealthy to the poverty-stricken. To further aggravate the situation, in counties having a low tax base there is likely to be a higher incidence of crime; in those counties, a higher percentage of criminally accused are financially unable to provide counsel. Hence, where the need may be greatest, the financial ability will tend to be the least capable of meeting the need as required. Also, because county officials have greater susceptibility to citizen insensitivity to the rights of the accused, it is often politically impossible to provide adequate funding for the protection of those rights on the local level in many areas, where the demand for tax dollars must compete with other, more popular causes. This recommendation for state funding of the defender office has received the strong endorsement of the National Advisory Commission on Criminal Justice Standards and Goals, in its Standard 13.6

NATIONAL ADVISORY COMMISSION
ON CRIMINAL JUSTICE
STANDARDS AND GOALS, COURTS

EXHIBIT "C"

COUNTY CONTRIBUTIONS AS CALCULATED IN PROPOSAL NO. 2

COUNTIES		1977-78		1978-79
Carson City		$ 18,579		$ 18,487
Churchill		7,153		7,133
Douglas		15,999		15,925
Elko		14,999		14,925
Esmeralda		4,761		4,747
Eureka		3,591		2,583
Humboldt		10,950		10,897
Lander		7,663		7,625
Lincoln		4,223		4,212
Lyon		8,812		8,776
Mineral		8,745		8,707
Nye		8,984		8,959
Pershing		7,839		7,800
Storey		2,222		2,221
White Pine		10,974		10,920
Total County		$ 135,494		$ 133,917
Total State		$ 158,983		$ 158,903
Additional State over previous request	($46,714)		($46,924)	
Total Budget		$ 294,477		$ 292,820

COUNTY CONTRIBUTIONS AS CALCULATED IN PROPOSAL NO. 3

COUNTIES	1977-78	1978-79
Carson City	$ 33,823	$ 33,731
Churchill	7,562	7,541
Douglas	27,306	27,232
Elko	27,306	27,232
Esmeralda	7,027	7,013
Eureka	4,897	4,889
Humboldt	19,936	19,882
Lander	13,951	13,913
Lincoln	6,047	6,036
Lyon	13,312	13,276
Mineral	14,100	14,061
Nye	9,074	9,049
Pershing	14,271	14,232
Storey	2,405	2,404
White Pine	19,979	19,925
Total County	$ 220,994	$ 220,416

AMENDMENT OF N.R.S. 176.091

176.091 (4.) All monies ordered to be paid pursuant to this section shall be paid over to the Department of Parole and Probation who shall deposit such monies in the office of the County Treasurer of the respective county wherein the criminal prosecution was commenced and the Order requiring payment entered. The County Treasurer shall upon receipt of such monies credit same to an account to be entitled, "Public Defender's Fund" and shall deposit said monies in the county's general fund.

(5.) The County Treasurer shall continue to deposit in the county general fund the monies that are credited to the "Public Defender's Fund" until such time as sufficient monies are obtained to cover the charges for services set forth in N.R.S. 180.110 for the fiscal year currently in operation. All other funds accumulated pursuant to this section, after the fee for services set forth in N.R.S. 180.110 have been met, shall be turned over to the State of Nevada, on a monthly basis, for deposit in a "Public Defender's Fund".

(6.) The monies turned over to the State of Nevada shall be used by the Public Defender to cover the cost of appointment of expert witnesses for indigent defendants and for the cost of transporting witnesses to and from criminal proceedings on behalf of indigent defendants. The Public Defender shall not request the counties to pay for these services until all such monies in the Public Defender's Fund with the State of Nevada have been exhausted.

(7.) The County Treasurers of the various counties shall submit a yearly report, at the end of each fiscal year, setting forth the amounts of money collected pursuant to this section including the amounts credited to the county general fund and those monies forwarded to the State of Nevada for crediting to the Public Defender's Fund.

CASES OPENED BY FISCAL YEAR

TABLE A

Felonies (F), Gross Misdemeanors (GM), Misdemeanors (M), and Other Cases Opened (O).

Contributing Agency	8-15-72 to 6-30-73			7-73 to 6-74			7-74 to 6-75			7-75 to 6-76				7-76 to 6-77			
	F & GM	M	O*	F & GM	M	O*	F & GM	M	O*	F	GM	M	O*	F	GM	M	O*
(1) CARSON CITY	42	+	+	100	20	24	100	30	52	163	11	63	**	64	6	11	12
(2) CHURCHILL	17	+	+	31	4	3	44	5	4	48	1	5	**	20	2	1	1
(3) DOUGLAS	0	+	+	1	0	0	34	17	2	112	19	72	**	60	3	28	2
(4) ELKO	35	+	+	80	0	3	59	7	0	69	9	12	**	30	3	6	4
(5) ESMERALDA	1	+	+	2	2	0	8	0	0	3	1	0	**	2	1	1	0
(6) EUREKA	3	+	+	1	0	0	0	0	0	3	0	2	**	2	0	0	1
(7) HUMBOLDT	20	+	+	31	2	7	31	3	4	32	3	7	**	23	2	6	1
(8) LANDER	9	+	+	14	0	0	6	0	0	17	1	6	**	5	0	4	1
(9) LINCOLN	3	+	+	0	0	0	(NOT REPORTED)			(NOT REPORTED)				10	0	1	0
(10) LYON	21	+	+	29	2	1	26	8	3	46	2	15	**	13	5	2	1
(11) MINERAL	14	+	+	45	2	3	31	11	3	39	5	22	**	27	2	3	1
(12) NYE	11	+	+	19	4	0	26	2	3	34	4	7	**	32	0	6	1
(13) PERSHING	8	+	+	2	0	0	8	3	2	18	1	0	**	23	8	2	0
(14) STOREY	5	+	+	2	0	0	5	0	0	4	1	0	**	5	0	2	0
(15) WHITE PINE	14	+	+	15	2	0	15	1	3	14	2	0	**	7	0	1	1
(16) STATE														42	0	0	96
CLARK	0	+	+	0	0	0	++	0	37	0	0	0	**	0	0	0	1
WASHOE	0	+	+	0	0	0	++	0	32	0	0	0	**	0	0	0	1
TOTAL	203	+	+	372	38	41	393	87	145	602	60	211	159**	365	32	74	124

* = Other includes post conviction, parole and probation violations, appeals and all other miscellaneous cases.
** = These figures were taken from the 1975-1976 report to the Governor. Statistics were not broken down by county.
\+ = Statistics available only on felonies and gross misdemeanors for this reporting time period.
++ = Statistics were not reported.

CASES OPENED BY FISCAL YEAR

TABLE B

FISCAL YEAR	TOTAL CASES OPENED
7-76 to 6-77	1,200*
7-75 to 6-76	1,032+
7-74 to 6-75	626
7-73 to 6-74	451
8-15-72 to 6-30-73	203**

* = This represents an estimated projected total, based on 595 cases already opened to date. Does not include any juvenile cases or any additional obligations which may be imposed.

+ = In March, 1976, this office canceled all contract work and assumed full responsibility for all cases listed, except for Lincoln County which was handled by the Clark County Public Defender's Office. On July 1, 1976, we opened the Elko Regional Office and, at that time, assumed Lincoln County cases. All statistics shown from July 1, 1976 reflect an accurate record.

** = Note that this figure only represents a 10-month period of time.

CASES OPENED BY FISCAL YEAR

TABLE A

Felonies (F), Gross Misdemeanors (GM), Misdemeanors (M), and Other Cases Opened (O).

Contributing Agency	8-15-72 to 6-30-73			7-73 to 6-74			7-74 to 6-75			7-75 to 6-76				7-76 to 6-77			
	F & GM	M	O*	F & GM	M	O*	F & GM	M	O*	F	GM	M	O*	F	GM	M	O*
(1) CARSON CITY	42	+	+	100	20	24	100	30	52	163	11	63	**	64	6	11	12
(2) CHURCHILL	17	+	+	31	4	3	44	5	4	48	1	5	**	20	2	1	1
(3) DOUGLAS	0	+	+	1	0	0	34	17	2	112	19	72	**	60	3	28	2
(4) ELKO	35	+	+	80	0	3	59	7	0	69	9	12	**	30	3	6	4
(5) ESMERALDA	1	+	+	2	2	0	8	0	0	3	1	0	**	2	1	1	0
(6) EUREKA	3	+	+	1	0	0	0	0	0	3	0	2	**	2	0	0	1
(7) HUMBOLDT	20	+	+	31	2	7	31	3	4	32	3	7	**	23	2	6	1
(8) LANDER	9	+	+	14	0	0	6	0	0	17	1	6	**	5	0	4	1
(9) LINCOLN	3	+	+	0	0	0	(NOT REPORTED)			(NOT REPORTED)				10	0	1	0
(10) LYON	21	+	+	29	2	1	26	8	3	46	2	15	**	13	5	2	1
(11) MINERAL	14	+	+	45	2	3	31	11	3	39	5	22	**	27	2	3	1
(12) NYE	11	+	+	19	4	0	26	2	3	34	4	7	**	32	0	6	1
(13) PERSHING	8	+	+	2	0	0	8	3	2	18	1	0	**	23	8	2	0
(14) STOREY	5	+	+	2	0	0	5	0	0	4	1	0	**	5	0	2	0
(15) WHITE PINE	14	+	+	15	2	0	15	1	3	14	2	0	**	7	0	1	1
(16) STATE														42	0	0	96
CLARK	0	+	+	0	0	0	++	0	37	0	0	0	**	0	0	0	1
WASHOE	0	+	+	0	0	0	++	0	32	0	0	0	**	0	0	0	1
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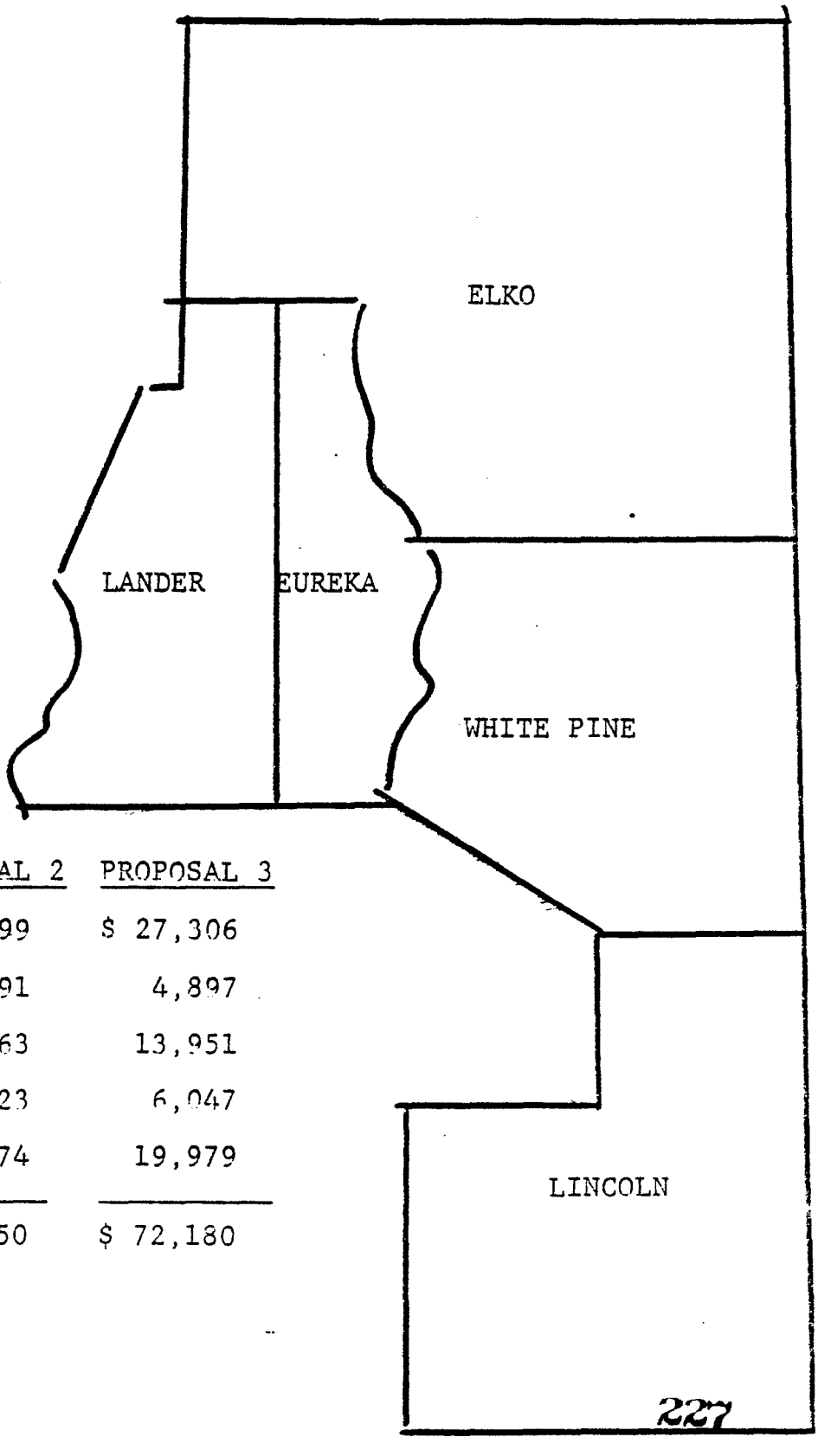
ELKO REGIONAL OFFICE

COUNTY FEES



	PROPOSAL 2	PROPOSAL 3
ELKO	$ 14,999	$ 27,306
EUREKA	3,591	4,897
LANDER	7,663	13,951
LINCOLN	4,223	6,047
WHITE PINE	10,974	19,979
	$ 41,450	$ 72,180

GUEST LIST

NAME (Please print)	REPRESENTING	WISH TO SPEAK Yes	No
ROD GOFF	STATE PUBLIC DEF.	X	