

MINUTES

WAYS AND MEANS COMMITTEE

NEVADA STATE LEGISLATURE - 59th SESSION

January 28, 1977

The meeting was called to order by Chairman Mello at 8:00 a.m.

PRESENT: Chairman Mello, Mrs. Brookman, Mr. Bremner, Mr. Glover, Mr. Hickey, Mr. Howard, Mr. Kosinski, Mr. Serpa and Mr. Vergiels.

ALSO PRESENT: John Dolan, Assembly Fiscal Analyst; Norman Allen, Nevada Indian Commission; Cameron Batjer, Chief Justice of the Supreme Court; Robert Davenport, Clerk of the Supreme Court; John DeGraff, Director of Judicial Planning; Mike Brown, Judicial Planning; Rod Goff, Public Defender; Tom Susich, Public Defender's Office; Stan Jones, Labor Commissioner; Bill Bible, Budget Division; and Roy Torvinen, District Judge, Washoe County.

INDIAN AFFAIRS.

Mr. Allen explained the purpose of the Commission to the Committee. He then reviewed the Personnel and stated that no positions are vacant. Mr. Allen then went over the budget with the Committee. As to contractual services, Mr. Allen stated that this fund was set up by the Governor, but has not as yet been used. (Please see attachment.)

The minutes for January 18, 1977 were approved. The minutes for January 19, 1977 were adopted as corrected (Page 5, Line 19 the figure indicated is 12% rather than .2%). The minutes for January 21st were approved.

Mr. Dolan explained the agenda for Monday. This will be a joint hearing on Parks.

SUPREME COURT. Chief Justice of the Supreme Court, Cameron Batjer, gave a narrative regarding the various duties and functions of the Supreme Court. (Please see attachment.)

Chief Justice Batjer stated that there are no present vacant positions.

Chairman Mello asked how many people the Supreme Court had on the staff that are not admitted to the Nevada Bar. Presently the only person who is not admitted in Nevada is Dave Frank who is working for Judicial Planning. He started in September under an LEAA grant and the condition of employment was that he take and pass the next Nevada Bar that is given. Mr. Richards, the Chief Legal Adviser, is also not a member of the Nevada Bar.

Mr. Glover pointed out the fact that the highest secretary's salary in the Supreme Court is \$2,800 more than the Governor's private secretary. He also pointed out that all of the salaries of the Supreme Court Legal Secretaries are higher than those in the Executive Branch. Mr. Glover feels this is an inequity, but that the Committee has no control over the salaries.

As to the new positions, Bob Davenport will draft a letter explaining to the Committee why the positions are requested.

Mr. Kosinski asked if Chief Justice Batjer felt his office was exhausting all the possibilities in getting further LEAA funds. Chief Justice Batjer replied that he thought they were doing an excellent job.

Chairman Mello requested that the Contractual Services be explained. Mr. Brown stated that the \$22,500 is built in two parts basically. One is \$12,500 for 1977-78 and goes to \$13,500 in 78-79 for the law student intern program which in the past has been supported by \$5,000 in LEAA support, state support under LEAA funding and federal works study funds. Mr. Richards has reason to believe that some of the outside work study funds are being withdrawn, and in order to maintain this, his office is asking that the Legislature provide the money to have a state funded intern program. The \$10,000 that makes up the other half is to provide technical assistance in many areas of court improvement.

Chairman Mello asked that the training program be briefly explained, Mr. DeGraff stated that the Law Student Training Program is a Law Clerk and new Attorney's Seminar that the Supreme Court sponsors each year. The purpose of this is that because there is no law school in Nevada and there is a problem with new attorneys coming in bridging the gap. Mr. DeGraff stated that if some of the danger areas that might occur to an attorney be pointed out, in the long run the Court's money will be saved. The Law Student Training Program is open to any law clerk who is working for a governmental agency and to any new lawyer in the State.

As to legal defense, Mr. Davenport stated that amount is for defense costs in the case of William Mirin v. Supreme Court and The Attorney General and that by the Attorney General being named as a party that the Supreme Court and the Attorney General didn't have a defensive counsel. The matter went through all the federal courts into the United States Supreme Court.

BOARD OF PARDONS. Chief Justice Batjer stated that this is the way the Justices' salaries are adjusted. Some of the Justices are paid certain amounts as members of the Pardons Board. This is one of the ways the Legislature has been able to use for many years to adjust the salaries of the Justices so that all the Justices receive the same amount of money.

SUPREME COURT JUSTICES AND WIDOWS PENSIONS. Mr. Davenport stated that this is a statutory budget item. At the present time there is one widow on the account and a Justice will be going on this account on May 1st.

DISTRICT JUDGES SALARY. Mr. Davenport stated that this is another statutory account.

DISTRICT JUDGES TRAVEL. Mr. Davenport stated that the District Judges travel is three-fold. It consists of Out-of-State Travel, In-State, In-District Travel and In-State, Out-of-District Travel.

Assembly Committee on Ways and Means

DISTRICT JUDGES AND WIDOWS PENSIONS. Mr. Davenport stated that this budget is a strictly statutory provision. At the present time there are five District Judges and three widows under this fund.

LAW LIBRARY. Barbara White spoke to the Committee on the Law Library budget. Regarding the one new position requested, the Law Library's workload has been steadily increasing. In 1972 the Law Library became a government depository for all the government materials, which have been increasing in volume. The government requires that certain records be kept. In the field of law there seems to be quite a burgeoning of government materials. It is expected that the Law Library will have more floor space opened up when the building is vacated by the Attorney General and that will be approximately 1,000 square feet more. Mr. Davenport stated that the Law Library may be burdened with one more job and if it comes to pass, the job will involve the keeping of and distribution of the Nevada Reports which is now handled by the Legislative Council Bureau. Mr. Kosinski asked if somebody else is being brought in to fill the Assistant Librarian's position. Mrs. White replied that this is the first time she has had professional help in that particular job. She stated that this Assistant Librarian cuts down errors. At Chairman Mello's request, Mrs. White explained the Instructional Supplies. She stated that at least 90% of what the Law Library gets in is for continuation of materials which comes in automatically. It is not known exactly how many supplements will come in during the year.

RETIRED JUSTICE DUTY FUND. The Retired Justice Duty Fund will go into effect approximately July 1st and the amount requested is simply an estimate because there is no experience upon which to base the request.

Going back to the Supreme Court budget, Mr. Bremner asked for an explanation of the Dues and Registration. Mr. Davenport stated that the largest increase of that particular item is \$1,500 that has been paid for the last two years to the National Association of State Courts. Mr. DeGraff explained that this item also picks up some dues and registrations for court administration that previously would be out of LEAA grants. They are looking at special courses and attendance at various conferences. Mr. Davenport stated that the \$1,500 is a "one-shot" per year. No travel expense is in the Dues and Registrations.

PUBLIC DEFENDER. Mr. Goff gave a brief rundown on the duties and responsibilities of the Public Defender's Office and explained to the Committee the existing positions. Chairman Mello pointed out that the Sr. Claim Investigator is not recommended by the Governor. Mr. Goff stated that he made a complete survey of what work the Claim Investigator was doing, talked it over with each one of his attorneys and it was decided that the continuation of the position could not be justified because of the amount of materials work that was being produced.

As to new positions, Mr. Goff stated that his office is asking for para-legals. The para-legal positions are law school graduates who are primarily waiting to take the bar. They research legal issues and help the attorney prepare the case.

Chairman Mello asked if some of the positions new to the Committee are existing. Mr. Susich stated that some positions are currently hired. The secretary in Elko has been hired. The Elko office

Assembly Committee on Ways and Means
January 29, 1977

E Z E R A S E
SECTION CONTENT

has been funded through an LEAA grant which will expire on July 1st. Federal money is being used to support that office almost entirely with the exception of the Deputy who is getting paid through the cancellation of contract attorneys. The new position of Deputy-Prison and Juvenile has been filled. The new position of Senior Clerk Typist has been filled.

Chairman Mello pointed out the fact that in past Sessions the Committee has noticed that people are working in an agency under federal grants and when the federal grant disappears the people have to be picked up under state funds.

Mr. Glover asked if any pressure has been put on by LEAA. Mr. Susich stated that the Elko grant was for approximately \$25,000 and LEAA made it clear that the money was to be used only for the Elko office. An accounting has to be made of the monies spent.

Chairman Mello pointed out that there is quite an increase in the Public Defender County Fee. This is explained in the attached Memorandum to the Governor from the Public Defender's Office, dated January 7, 1977. Mr. Susich explained that his office is proposing to amend N.R.S. 176,091 which is attached.

Chairman Mello asked Mr. Goff to explain to the Committee the Contractual Services. It was explained that that money has been set aside so that the office can continue to utilize the Law Student Program with McGeorge and other law schools. The federal government will subsidize those substantially and for a relatively small amount of money get a great deal of assistance.

Mr. Bremner pointed out that the Dues and Registrations has largely increased. Mr. Goff stated that he felt that professionals should have continuing education. The Dues and Registrations would enable his office to attend seminars where they would be able to keep in touch with what the National consensus is on what is going on in public defense.

At Mrs. Brookman's request, the communication expense was explained.

LABOR COMMISSION. Mr. Jones gave a brief statement on the duties and responsibilities of the Labor Commission. As to the existing positions, Mr. Bible stated that the Chief Assistant is recommended for a 10.5% increase. Mr. Jones stated that of the 14 existing positions, all of them are filled.

Mr. Jones explained the new positions to the Committee. There is a new clerical position that has been needed dramatically in the Las Vegas office. At the present time the office is administered with two clerical positions and it has been an impossible task to do that. There is a new position of Mediator Conciliator.

Mr. Glover pointed out that on the out-of-state travel, the Labor Commission has requested \$3,100 and the Governor granted \$900. Mr. Jones explained that his office has a Mediator that was anticipated would participate in Mediator seminars in learning processes.

The meeting adjourned at 10:45 a.m.

111

NEVADA INDIAN COMMISSION

Introduction

Purpose of Commission N.R.S. 233A.010

- a. Recommend necessary or appropriate action on matters affecting the social and economic welfare and well-being of American Indians residing in Nevada.
- b. Meet quarterly on Indian reservations.
- c. Coordinate with federal, state and county agencies.
- d. Maintain close communication with the Inter-Tribal Council, Bureau of Indian Affairs and other agencies.
- e. Investigate and assist tribes with local problems and assist state agencies that deal with tribes.
- f. Projections - investigate in conjunction with Inter-Tribal Council legal services and Bureau of Indian Affairs law enforcement and judicial problems existing on and near Indian reservations and colonies. Jurisdictional problems and problems after the tribes retroceded from state to federal jurisdiction.

Personnel

Commission

- a. Five members appointed by governor for a three year term.
- b. Chairman and members.

Staff

- a. Executive Secretary
 1. Direct and supervise administrative functions
 2. Attend meetings
 3. Interprets legislation to tribes
 4. Compiles information for report

03 In-State Travel

- 1. Requested \$8840/8840
- 2. Vast distances like interior Nevada
 - a. Requests to attend Council meetings
 - b. Commission held quarterly meetings on reservations
(Duckwater \$750) (McDermitt \$300) (Governor's Conf. \$425)

04 General Operating

- Office Supplies \$1140/1140
 - 1. Paper, typewriter ribbons, envelopes, pens
- Operating Supplies \$750/750
 - 1. Subscriptions, books, drinking water
- Communications \$3160/3460
 - 1. Phones, WATS, long distance, telegrams, postage
 - 2. Twenty three groups, federal agencies, NIC Commissioners
- Print Duplicating \$2500/2500
 - 1. Contract with Xerox
- Annual Report \$750
 - 1. Deleted
- Insurance Expense \$100/100
 - 1. Building office and contents
- Contractual Services \$1000/1000
 - 1. Acquire professional expertise for Commission
 - 2. Board of Examiners requirement
 - 3. Possible use in conjunction with University
- Equipment Repairs \$300/300
 - 1. Contract with IBM on typewriter, mimeograph machine

(4)

Other Building Rent	\$5618/5618
1. Rent for office	
2. Rent for meeting sites where State facilities are unavailable	
Dues and Registration	\$150/150
1. NCAI \$50 per year; NIEA \$25 per year	
2. Registration fees at meetings \$10	
Special Projects Reports (new)	\$500/500
1. Acquire reports and special publications	
2. Publish reports	
05 Office Equipment and Furniture	\$750/750
1. Purchased camera, Dictaphone unit	
2. FY 76-77 Typewriter	
10 Host Expenses	\$2500/3000
1. Annual Governor's State Indian Conference	
a. Defray transportation costs	
b. Host banquet	
11 Training	\$500/500
1. Train staff on applicable federal and state laws affecting Nevada Indians	
a. Attended session on Indian Self-Determination Act	

JANUARY 28, 1977

THE NEVADA SUPREME COURT HAS UNDERGONE SOME RATHER DRAMATIC CHANGES IN THE LAST FEW YEARS.

PRIOR TO 1975, THE SUPREME COURT NEEDED ONLY TWO SUPPORT FUNCTIONS: THE CLERK'S OFFICE AND A SMALL LEGAL STAFF. AT THAT TIME THE COURT HAD A RELATIVELY LOW CASELOAD WHICH REMAINED MORE OR LESS CONSTANT -- WE WERE ALWAYS PRETTY SURE THAT WE WOULD HAVE 300 OR 400 CASES PER YEAR. THERE WERE NO CONCERNS ABOUT A COURT SYSTEM. OUR STAFF AND BUDGET WERE CONCERNED ONLY WITH THE INTERNAL OPERATION OF THE SUPREME COURT.

BETWEEN 1975 AND 1977, THE CASELOAD GREW TO THREE TIMES WHAT IT WAS WHEN I FIRST CAME ON TO THE COURT.

THROUGH AN L.E.A.A. (LAW ENFORCEMENT ASSISTANCE ADMINISTRATION) GRANT, THE SUPREME COURT ESTABLISHED A COURT PLANNING AND COORDINATING OFFICE (C.P.C.O.) WHICH HANDLED THE GROWING JUDICIAL EDUCATION PROGRAM IN THE STATE. WITH THE SECOND PASSAGE IN THE LEGISLATURE OF THE FIVE JOINT RESOLUTIONS THAT WERE TO BECOME QUESTIONS FIVE THROUGH NINE ON LAST NOVEMBER'S BALLOT, THE COURT PLANNING AND COORDINATING OFFICE BEGAN TO DO SOME BASIC PLANNING FOR THE SUPREME COURT AND THE ANTICIPATED COURT SYSTEM.

LATER, THIS PLANNING FUNCTION WAS ABSORBED BY THE JUDICIAL PLANNING UNIT (J.P.U.) WHICH WAS CREATED UNDER A SPECIAL L.E.A.A. GRANT OF DISCRETIONARY FUNDS. (THE C.P.C.O. CONTINUES TO FUNCTION IN THE AREA OF JUDICIAL EDUCATION, PUBLIC INFORMATION, AND SPECIAL

PROGRAMS SUCH AS THE NEW ATTORNEYS AND LAW CLERKS PROGRAM AND THE LAW STUDENT INTERN PLACEMENT PROGRAM.) NEVADA IS ONE OF 15 STATES TO HAVE A JUDICIAL PLANNING UNIT UNDER THIS SPECIAL PROGRAM ALTHOUGH 45 STATES HAVE SOME FORMAL JUDICIAL PLANNING EFFORT.

IN ADDITION, DURING THE 1975-77 BIENNIUM, THE LEGISLATURE EXPRESSED CONCERN ABOUT THE OPERATIONS OF THE COURT SYSTEM. DURING THE LAST SESSION, ACR 84 WAS ADOPTED. ACR 84 RECOGNIZED THAT THERE WAS A CONTINUING PROBLEM AT THE LOCAL LEVEL BETWEEN THE GOVERNING BOARDS OF THE CITIES AND COUNTIES AND THE JUDGES IN THOSE CITIES AND COUNTIES. THE LEGISLATURE RECOGNIZED ALSO THAT THE LOCAL GOVERNING BODIES HAD TO CONTROL THEIR BUDGETS, BUT, BY THE SAME TOKEN, THE COURTS HAD TO RECEIVE ADEQUATE FUNDING.

IN RESPONSE TO ACR 84, A SUBCOMMITTEE CHAIRED BY SENATOR MARGIE FOOTE WAS FORMED TO STUDY AND OFFER RECOMMENDATIONS FOR IMPROVING THE SITUATION. THE SUBCOMMITTEE MADE A NUMBER OF RECOMMENDATIONS THAT IMPACT THE SUPREME COURT:

1. THE OFFICE OF STATE COURT ADMINISTRATOR BE FUNDED BY LEGISLATIVE APPROPRIATIONS.
2. THE SALARY OF THE STATE COURT ADMINISTRATOR BE SET WITHIN THE LIMITS OF LEGISLATIVE APPROPRIATIONS RATHER THAN SPECIFIED BY LAW.
3. THE STATUTORY DUTIES OF THE STATE COURT ADMINISTRATOR INCLUDE RESPONSIBILITIES RELATING TO DATA PROCESSING AND FISCAL AND PERSONNEL ADMINISTRATION.

4. THE EXPENSES OF THE STATE COURT SYSTEM BE FUNDED OUT OF THE STATE TREASURY BEGINNING FISCAL YEAR 1979-80.
5. THE LEGISLATURE SUGGEST THAT THE NEVADA SUPREME COURT CREATE AND BUDGET FOR A JUDICIAL COUNCIL OR OTHER APPROPRIATE AGENCY TO DEVELOP A COMPREHENSIVE PLAN TO CARRY OUT FULL STATE FUNDING WITH UNITARY BUDGETING FOR THE ENTIRE COURT SYSTEM.
6. THE STATE COURT ADMINISTRATOR BE DIRECTED TO PREPARE AND SUBMIT TO THE 60TH SESSION OF THE LEGISLATURE A SINGLE BUDGET FOR THE STATE COURT SYSTEM WHICH CARRIES OUT THE COMPREHENSIVE PLAN.

THE SUBCOMMITTEE ON TRAINING, QUALIFICATIONS, WORKLOADS AND LEAVE POLICIES OF THE JUDICIARY AND DISTRICT ATTORNEYS, CREATED BY ACR 49 OF THE 58TH SESSION, CONCURS IN MOST OF THE RECOMMENDATIONS OF THE SUBCOMMITTEE ON FUNDING OF THE COURTS LISTED ABOVE:

"THE PRESENT SUBCOMMITTEE FOR STUDY OF FUNDING THE COURTS OF THE STATE . . . IS MAKING ITS OWN RECOMMENDATION (BDR 1-3) TO ADD CERTAIN DUTIES TO THE OFFICE OF COURT ADMINISTRATOR. THIS SUBCOMMITTEE CONCURS IN THAT RECOMMENDATION.

"WHETHER OR NOT THAT RECOMMENDATION IS ADOPTED, THE SPECIAL SKILLS WHICH THE COURT ADMINISTRATOR AND HIS STAFF MUST POSSESS . . . ARE: MANAGEMENT AND BUDGETING,

ACCOUNTING, PERSONNEL CLASSIFICATION AND COURT PROGRAMMING-- ONLY THE DISTRIBUTION OF EMPHASIS IS AFFECTED, BOTH BY THAT RECOMMENDATION AND THE POSSIBLE ADOPTION OF CONSTITUTIONAL AMENDMENTS FOR A UNIFIED COURT SYSTEM (A.J.R. 18 OF THE 57TH SESSION) AND JUDICIAL DISCIPLINE (A.J.R. 16 OF THE 57TH SESSION). THIS SUBCOMMITTEE THEREFORE RECOMMENDS THAT

"THE SENATE STANDING COMMITTEE ON FINANCE AND THE ASSEMBLY STANDING COMMITTEE ON WAYS AND MEANS CONSIDER CAREFULLY THE DUTIES REQUIRED OF THE COURT ADMINISTRATOR BY LAW, AND PROVIDE A SUFFICIENT APPROPRIATION FOR HIS SALARY AND STAFF TO DISCHARGE THOSE DUTIES WITHOUT RELIANCE UPON SUPPORT FROM THE FEDERAL GOVERNMENT.

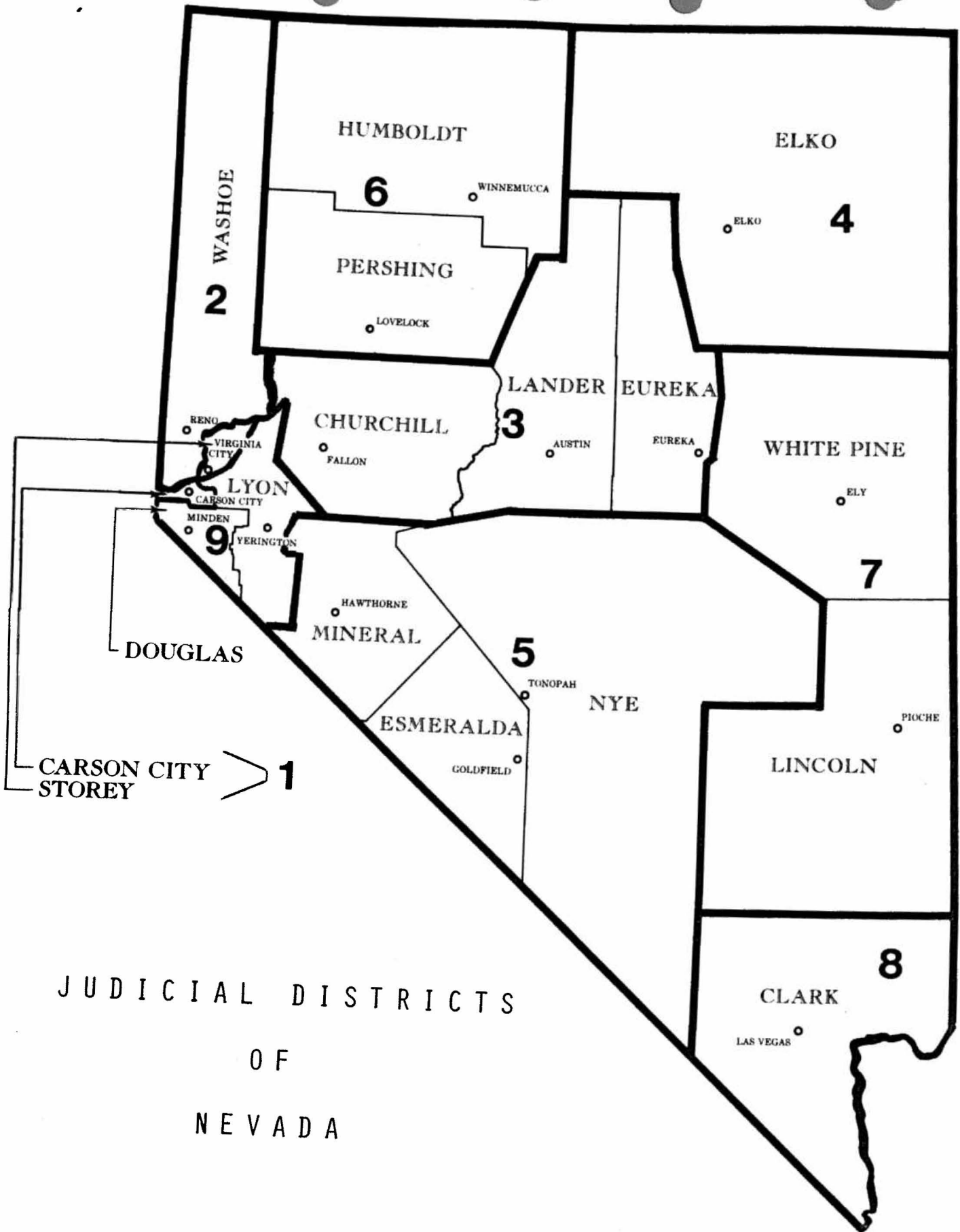
"OBVIOUSLY, ANY MONEY AVAILABLE FROM AN OUTSIDE SOURCE SHOULD BE USED, BUT THE ADMINISTRATION OF JUSTICE IS A FUNDAMENTAL RESPONSIBILITY OF EACH STATE (ARTICLE 3 OF THE NEVADA CONSTITUTION), PLANNING IS ESSENTIAL FOR THE WISE USE OF THE ENTIRE AMOUNT SPENT ON THE COURTS, AND TO HOBBLE THIS PLANNING WOULD BE PENNY-WISE AND POUND-FOOLISH."

WHAT ABOUT THE FUTURE?

WE SEE THE CASELOAD AT THE SUPREME COURT CONTINUING TO GROW AS A RESULT OF NEVADA'S RAPID GROWTH IN POPULATION, URBANIZATION AND LITIGATION.

THE CONSTITUTIONAL AMENDMENTS WHICH WERE PASSED AT THE LAST GENERAL ELECTION HAVE ALREADY AFFECTED OUR EXISTING STAFF WITH ORGANIZATIONAL MEETINGS, RULES OF OPERATION, AND, IN THE CASE OF THE SELECTION COMMISSION, BEGINNING THE PROCESS TO NOMINATE THREE NAMES AS REPLACEMENTS FOR JUSTICE ZENOFF WHO WILL RETIRE APRIL 30.

THE SUBCOMMITTEE RECOMMENDATIONS, OUTLINED ABOVE, SPEAK FOR THEMSELVES. WHAT WE ARE DOING COMES DOWN TO THIS: WE NOW HAVE A COURT SYSTEM WHICH WE MUST PLAN FOR AND BEGIN TO DEVELOP. WE MUST AT THE SAME TIME CONTINUE THE JUDICIAL EDUCATION PROGRAM. MOST IMPORTANT, I THINK, IS THE CREATION OF THE STATE COURT ADMINISTRATOR'S OFFICE BECAUSE WHILE WE MUST FOLLOW THE MANDATE OF THE PEOPLE AND PLAN AND CREATE A COURT SYSTEM, WE MUST ALSO, AS JUSTICES OF THE SUPREME COURT, REMEMBER THAT OUR HIGHEST DUTY IS TO ADJUDICATE CASES. TO ACHIEVE THIS, WE FEEL THAT IS ESSENTIAL THAT THE ADJUDICATION FUNCTION BE SEPARATED FROM THE ADMINISTRATION FUNCTION. IT WILL BE THE CHIEF JUSTICE WHO IS THE ADMINISTRATIVE HEAD OF THE COURT SYSTEM, BUT IT SHOULD BE THE COURT ADMINISTRATOR WHO SEES TO THE ADMINISTRATIVE DETAILS.



JUDICIAL DISTRICTS
OF
NEVADA

JPU 12/76

NEVADA COURT SYSTEM

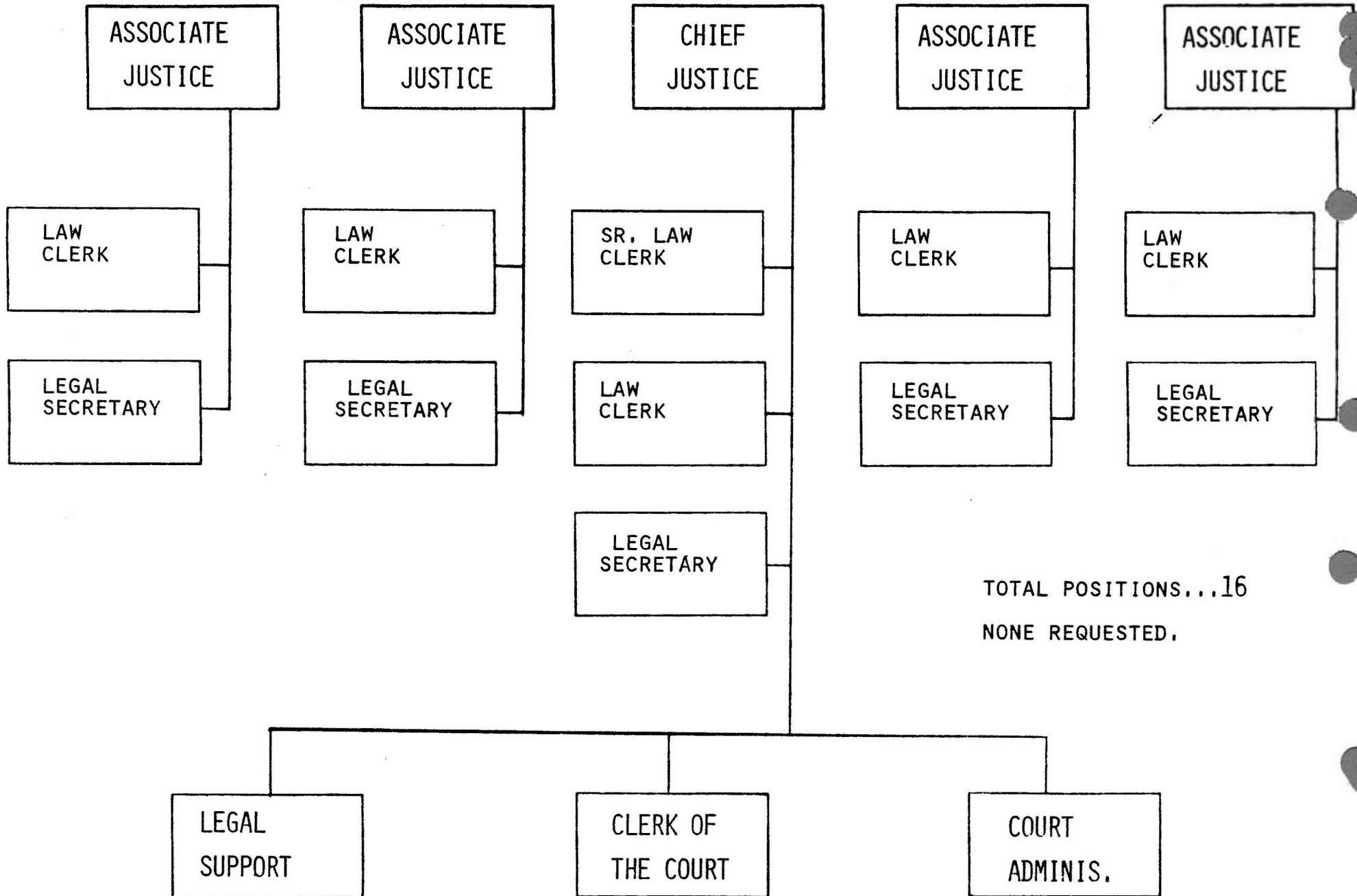
THE SUPREME COURT
CARSON CITY
5 JUSTICES

	<u>1ST JUDICIAL DISTRICT</u>	<u>2ND JUDICIAL DISTRICT</u>	<u>3RD JUDICIAL DISTRICT</u>	<u>4TH JUDICIAL DISTRICT</u>	<u>5TH JUDICIAL DISTRICT</u>	<u>6TH JUDICIAL DISTRICT</u>	<u>7TH JUDICIAL DISTRICT</u>	<u>8TH JUDICIAL DISTRICT</u>	<u>9TH JUDICIAL DISTRICT</u>
THE DISTRICT COURTS	Carson City Storey 1 Judge	Washoe 7 Judges	Churchill Eureka Lander 1 Judge	Elko 1 Judge	Esmeralda Mineral Nye 1 Judge	Humboldt Pershing 1 Judge	White Pine Lincoln 1 Judge	Clark 11 Judges	Douglas Lyon 1 Judge
THE JUSTICE COURTS	Carson City--* Virginia City-1	Gerlach-1 Reno-2 Sparks-1 Verdi-1 Wadsworth-1	New River-1 Beowawe-1 Eureka-1 Argenta-1 Austin-1	Carlin--* East Line-1 Elko-* Jarbridge-1 Mountain City-1 Tecoma-1 Wells--*	Esmeralda-1 Hawthorne-1 Mina-1 Schurz-0 Beatty-1 Gabbs-1 Pahrump-1 Tonopah-1	Gold Run-1 McDermitt-1 Paradise Valley-1 Union--* Lake-1	Meadow Valley-1 Pahranagat Valley-1 Baker-1 Ely-1 Lund-1	Bunkerville-1 Goodsprings-1 Henderson-1 Las Vegas-4 Logan-1 Moapa-1 Mesquite-1 Nelson--* North Las Vegas-1 Overton-1 Searchlight-1	East Fork-1 Tahoe-1 Canal-1 Dayton-1 Mason Valley--* Smith Valley-1
THE MUNICIPAL COURTS	Carson City--*	Reno-2 Sparks-1	Fallon-1	Elko-* Carlin-* Wells--*	Gabbs-1	Lovelock-1 Winnemucca--*	Ely-1 Caliente-1	Las Vegas-3 North Las Vegas-1 Henderson-1 Boulder City--*	Yerington--*

* indicates Justice of the Peace also serves as Municipal Judge.

JPU 12/76

JUDICIAL



TOTAL POSITIONS...16
NONE REQUESTED.

LEGAL SUPPORT

JUSTICES

CHIEF LEGAL
ADVISOR

CLERK OF
THE COURT

COURT
ADMINIS.

SR. LEGAL
ASSISTANT

LEGAL
SECRETARY

LEGAL
ASSISTANT

LEGAL
STENOGRAPHER

SR. LEGAL
ASSISTANT

LEGAL
STENOGRAPHER

LEGAL
ASSISTANT

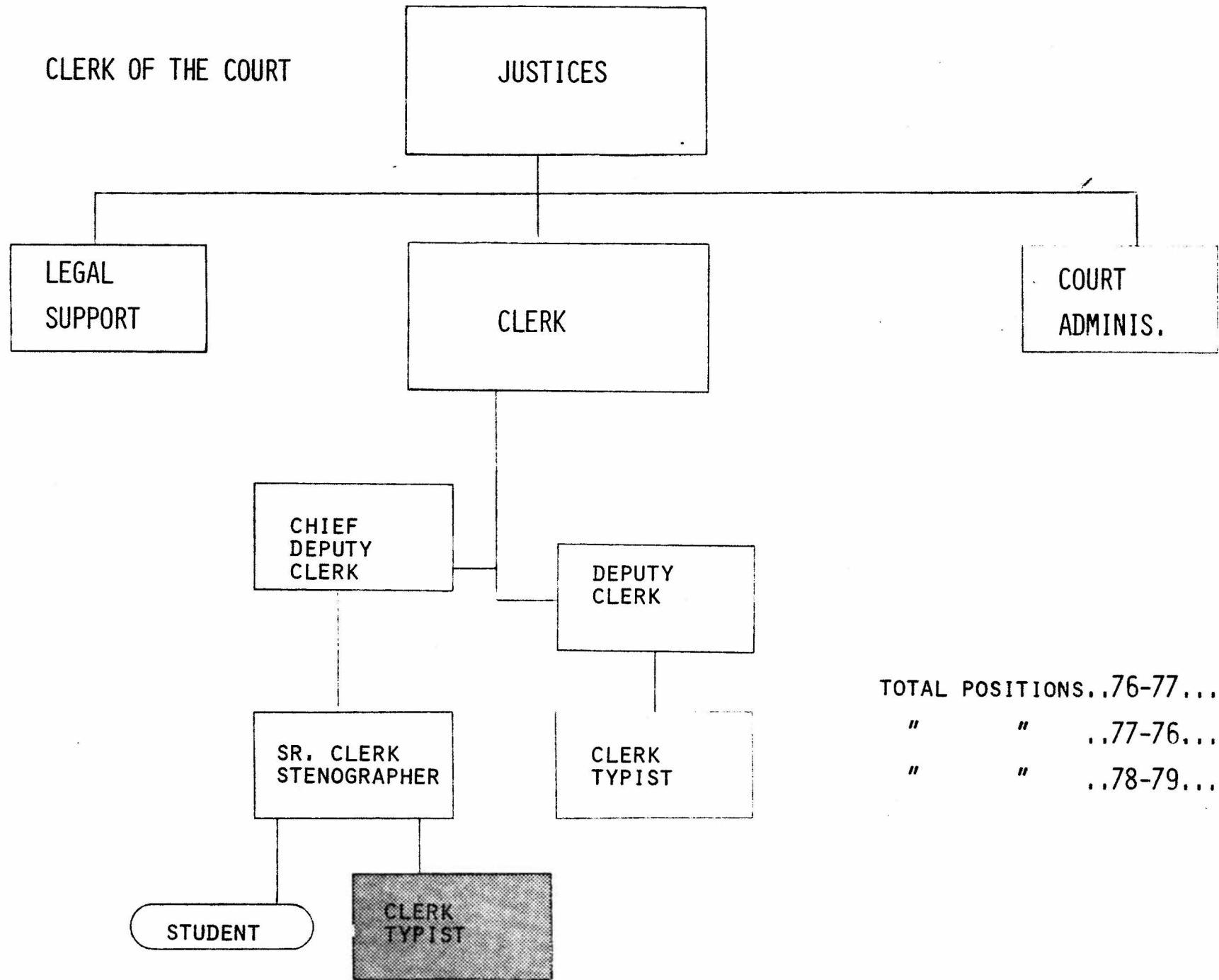
STUDENT

TOTAL POSITIONS..76-77....4.5

" " ..77-78....6.5

" " ..78-79....8.5

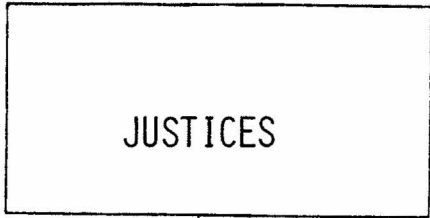
151



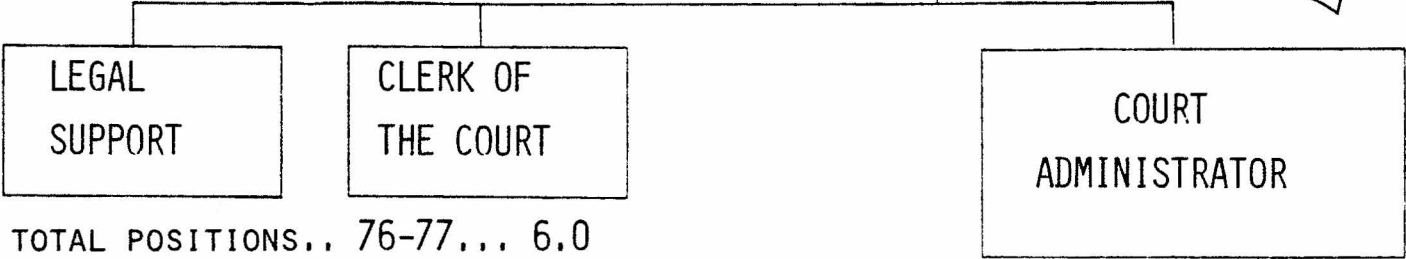
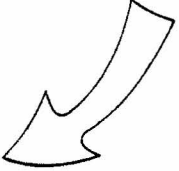
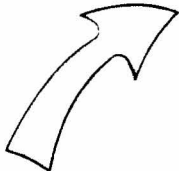
TOTAL POSITIONS..76-77....5.5
 " " ..77-76....6.5
 " " ..78-79....6.5

152

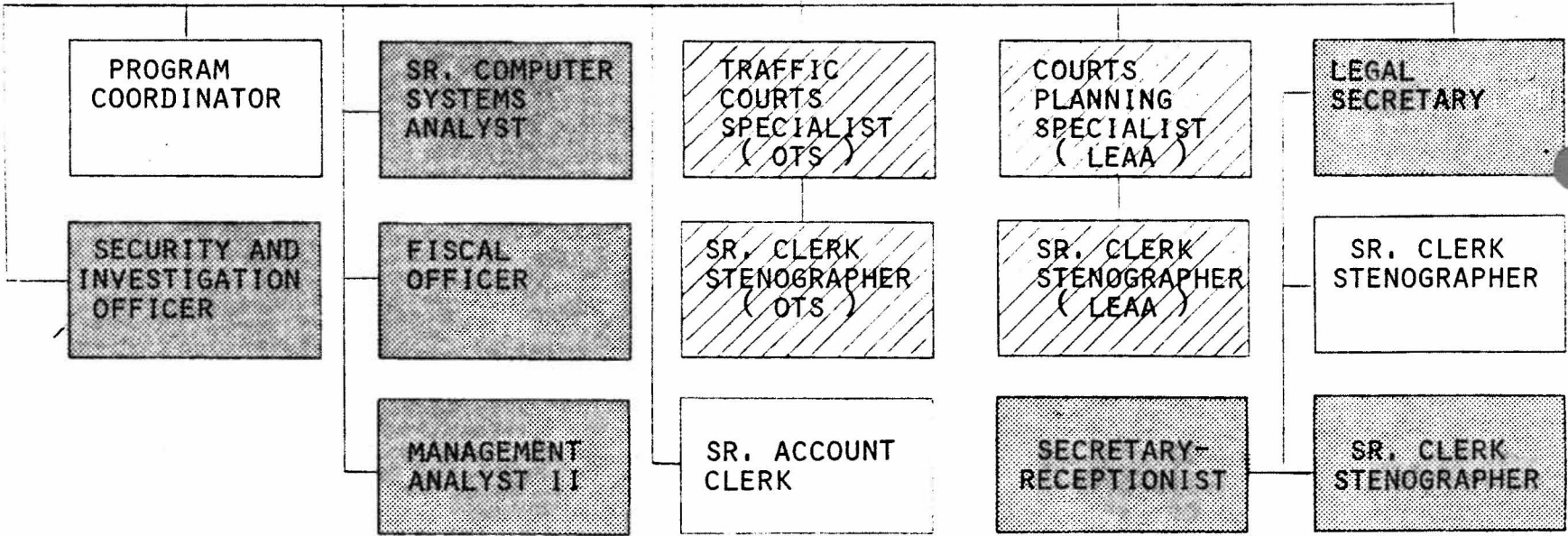
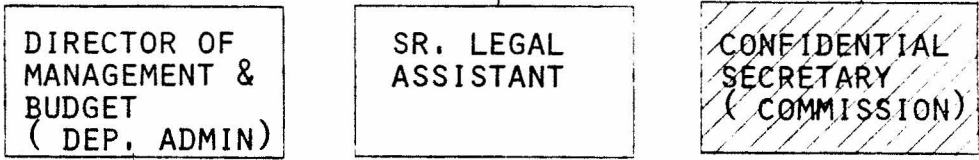
COURT ADMINISTRATION



MUNICIPAL COURTS
 JUSTICE COURTS
 DISTRICT COURTS
 JUD. SEL. COMM.
 JUD. DIS. COMM.
 JUD. PLAN. COMM.
 OFF. OF TRAF. SA



TOTAL POSITIONS.. 76-77... 6.0
 77-78...11.5
 78-79...13.0
 AND 4 POSITIONS GRANT FUNDED..
 AND 1 POSITION COMMISSIONS FUNDED..



153

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 concomitant 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.

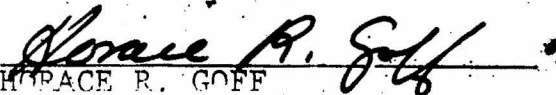
No meaningful statistics were kept prior to 1974 giving the office insight into the number of man hours spent per caseload contribution. I instituted a man hour diary and instructed the secretaries to compile the number of hours spent in each contributing unit upon closing cases from that jurisdiction.

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 prosecutorial 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
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 STANDARDS 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).)

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.

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

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 struc-

tures 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	14,900	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

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 effective-ly 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. 7617.

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, Jr. denied relief and the petition was appealed. The Supreme Court

granted a writ of habeas corpus and a 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.

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 §200(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

(Col 73), 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).

FOX V
STATE

[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

default 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.

Heard
V
PROV
AN

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



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 post-conviction 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

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

<u>FISCAL YEAR</u>	<u>TOTAL CASES OPENED</u>
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.

STATE PUBLIC DEFENDER

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.)

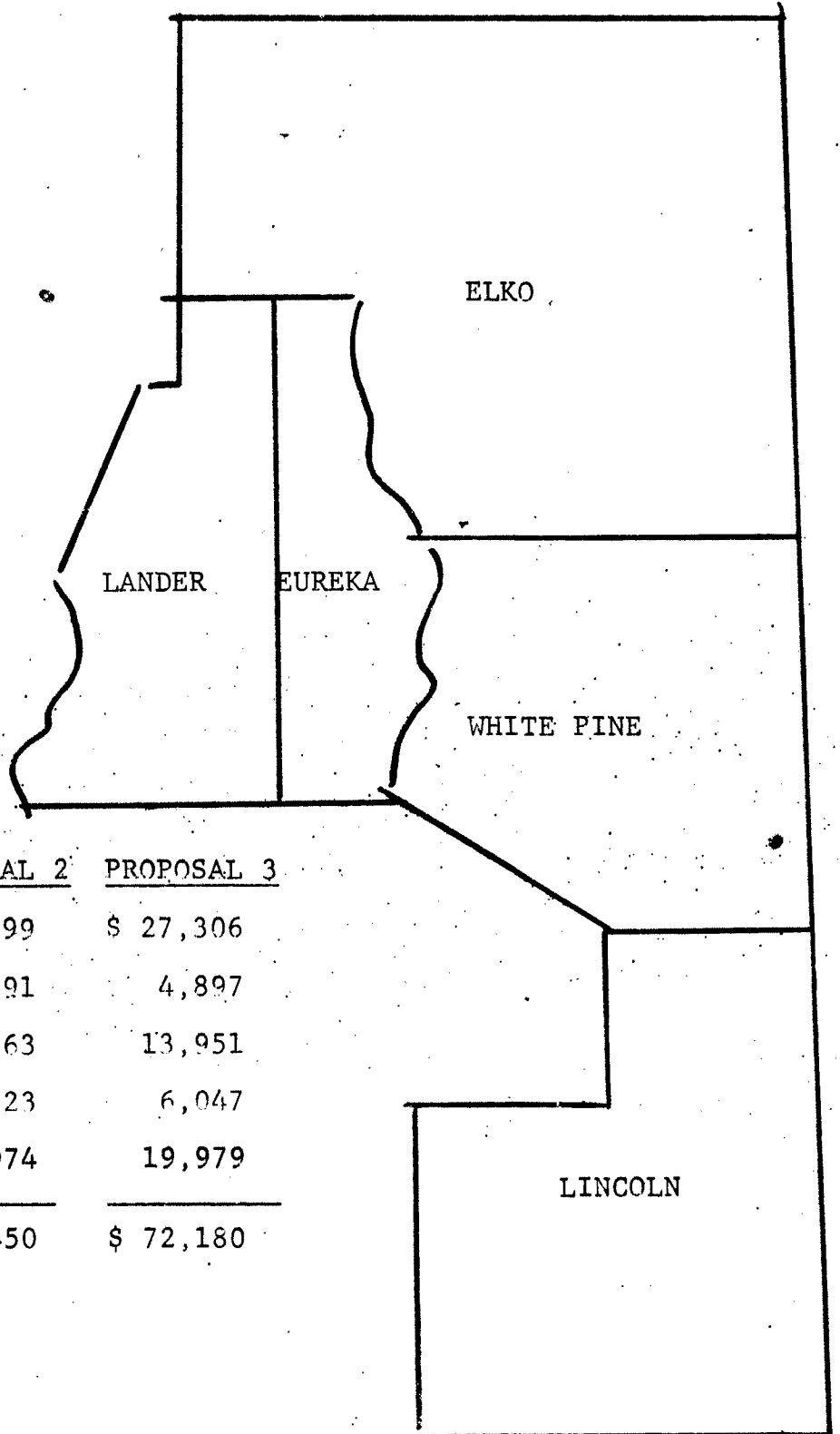
The monies turned over to the State of Nevada shall be used by the Public Defender to cover the cost of appointment of expert witnesses for indigent defendants and for the cost of transporting witnesses to and from criminal proceedings on behalf of indigent defendants. The Public Defender shall not request 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.

ELKO REGIONAL OFFICE

COUNTY FEES



	<u>PROPOSAL 2</u>	<u>PROPOSAL 3</u>
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
	<hr/>	<hr/>
	\$ 41,450	\$ 72,180