

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON FINANCE

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
March 11, 1981

The Senate Committee on Finance was called to order by Chairman Floyd R. Lamb, at 8:00 a.m., Wednesday, March 11, 1981, in Room 231 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Floyd R. Lamb, Chairman
Senator James I. Gibson, Vice Chairman
Senator Eugene V. Echols
Senator Norman D. Glaser
Senator Lawrence E. Jacobsen
Senator Thomas R. C. Wilson
Senator Clifford E. McCorkle

STAFF MEMBERS PRESENT:

Ronald W. Sparks, Chief Fiscal Analyst
Dan Miles, Deputy Fiscal Analyst
Candace Chaney, Secretary

OTHERS PRESENT:

Howard Barrett, Budget Division

SENATE BILL NO. 377 - Appropriates money from State General Fund to Legislative Fund.

Senator Jacobsen moved that SENATE BILL NO. 377 be approved.

Senator Wilson seconded the motion.

The motion carried unanimously.

Indian Commission (Pg. 148)

Mr. Elwood Mose, Executive Director of the Indian Commission, presented the Indian Commission budget to the committee. He noted the Commission was under statute to look at matters and problems affecting the social and economic well-being for American Indians residing in the State.

Mr. Mose stated the agency made studies of those matters affecting Indians under both State and Federal legislation and local ordinances. The agency would make recommendations for legislative changes where they felt necessary. The agency also helped with requests for health services to Indians and assisted with claims by Indians for the return of ancestral lands. Assistance was provided to Indians for help with the court systems and grievances. Mr. Mose said the agency also helped with small business development and economic development. He noted the agency had a surplus distribution program operated through the General Services purchasing division where surplus equipment was distributed to the clients of the agency.

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Senator Lamb asked Mr. Mose if he thought the "host expense" was a necessary item. Mr. Mose noted those funds were used this year but had not been used for the previous two years. He said the monies were not used before due to the different thrust and emphasis of the program at that time. Presently, the funds were used to organize small meetings between legislators and the tribes and had found this method more successful than organizing the larger meetings.

Senator Glaser queried, if the legislature abolished this program, could the functions of the agency be handled by the Bureau of Indian Affairs or the Tribal Council. Mr. Mose thought the philosophy of himself, and the Indian tribes themselves, was the BIA, as every other Federal agency, was overstaffed, burdened with cumbersome regulations, and was merely a drain on the finances of the taxpayers. He felt the BIA was not cost-effective as far as services provided. He noted the BIA had requested a budget of 1.1 billion dollars from the current administration, 60% of those monies going to administrative overhead. Mr. Mose believed the Indian Commission was more productive in the sphere of political interaction between the tribes and the State. He added that he felt the tribes had been insulated by the Federal government and, therefore, had not developed good relations with the State which was the purpose of the Indian Commission.

Senator Jacobsen asked what the status of the Stewart Indian School was at present. Mr. Mose said the status of the school was undetermined as yet since who owned the title to the facility was not known at the present time. He indicated the agency had suggested possible uses for the facility which included a youth center, a juvenile center, or to use the facility to teach vocational education.

Senator Jacobsen offered his assistance to the agency for any help they might need concerning the use of the facility.

Senator Jacobsen requested an explanation of "contractual services". Mr. Mose stated those funds had been used for a mutuality study done two or three years ago. He noted the monies for that category had not been used recently as the agency had not conducted any extensive investigations into legal matters.

The Vice Chairman asked how many tribes were in Nevada. Mr. Mose indicated there were three tribal units, the Shoshone, Paiute, and Washoe. He added there were 23 political subdivisions within those tribes. Mr. Mose said, according to the latest census data, there were 13,000 Indians residing in Nevada.

Senator Echols inquired if the Indian population was increasing or decreasing. Mr. Mose remarked, nationwide, the Indian population seemed to be increasing at a fairly substantial rate. In Nevada, he indicated the population was slowly increasing.

Public Defender (Pg. 158)

Mr. Norman Herring, the Public Defender, presented the budget of the Public Defender's Office to the committee. He noted he had been State Public Defender for two years. He said his agency performed a very important job and was right at the cornerstone of the judicial system. (See Exhibit C.)

Mr. Herring said the Public Defender's Office was the only agency responsible for going out and assessing the counties for their pro rata share of the agency's budget. He proposed

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a bill for consideration by the committee which would prohibit counties from dropping out of the Public Defender system.

The Chairman asked why the Public Defender's Office wanted to lock the counties in. Mr. Herring said one reason was there was no flexibility and not enough monies in the agency's budget.

Senator Lamb referred to the monies recommended for the agency's work program for both years of the biennium and commented that the agency seemed to be doing very well. Mr. Herring felt in past years there had not been a realistic appraisal of the agency's functions and what the office should, in the way of staffing levels. Substantial increases in the budget were a result of a more realistic outlook of the agency. He added the agency was receiving additional pressure from the public for stiffer sentences and more prosecution. As a result, the agency was getting appointed to more cases.

Senator Glaser asked why Elko County had withdrawn from the Public Defender's system. Mr. Herring indicated the withdrawal took place after the last legislative session had adjourned. The assessment of Elko County was \$29,000 for that year. A private attorney offered his services to the county for \$22,000 which the county had accepted. He said, since, entities within Elko County had asked the Public Defender's office to return to the county.

Senator Lamb requested an explanation of the new positions requested. Mr. Herring stated two of the positions were being reinstated, the investigative position and the Research Assistant. The Research Assistant position had been previously funded from the contractual services category; that budget had been reduced and transferred to the unclassified position being requested. He added the position of Appellate Deputy and the support staff for that position were also being requested. Mr. Herring said the legislature had given the agency the responsibility of representing all indigents on post-conviction relief appeals which contributed extra duties to the agency workload not reflected in the agency's budget.

The Chairman asked what constituted the "contract services" category. Mr. Herring said those monies were for word processing equipment and copying equipment, services used by all offices of the agency.

Senator Jacobsen inquired as to why the agency had a new training category in their budget. Mr. Herring said many of the staff of the agency were inexperienced and yet they were being sent to handle first degree murder cases. He stated the training monies were to be used to send personnel to training seminars in Houston. He thought these two week sessions would be very beneficial and worthwhile for the staff. Mr. Herring said closer training seminars were available but were not as intensive and were shorter in length than the ones in Houston.

Senator Wilson asked if the post-conviction relief program was a clams-paying program. Mr. Herring concurred. He said by statue, an individual had the right to file a petition for post-conviction relief within one year after his conviction claiming constitutional error. The cost for the individual to be paid through post-conviction claims statute for representation up through appeal.

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Senator Gibson questioned the need for in-state travel increases if the regional offices were established. Mr. Herring said the figures were computed using the six additional motor pool vehicles, the actual expenditures on travel this year, multiplied by an inflation factor of 10%, times the number of attorneys the agency hoped to have.

The Vice Chairman asked if the public defenders in the regional offices would also live at that location. Mr. Herring said, under normal circumstances, they would. He added the agency was planning to cut down travel some 30,000 miles from last years.

Senator Gibson inquired why the State should pay half of the operation of the regional offices. Mr. Herring indicated that statement was not correct. He said some of the counties paid for 100% of the office there. He added the counties were paying half of his salary as he spent half of his time representing the county clients.

The Chairman asked if the share paid by the counties for Mr. Herring's salary showed in the budget. Mr. Herring stated that share showed at the top of the figure concerning what the general appropriations would be and what the county fees would be.

Senator Echols inquired as to why there was a disproportionate share of regular State funds as opposed to county funds. Mr. Herring felt, in the past, the State had not paid its fair share of the funding. Mr. Herring, in response to a query by Senator Echols, said the Public Defender's Office did not represent prisoners on civil rights suits.

Senator Lamb asked Mr. Herring if his office was like a legal aid services program. Mr. Herring stated absolutely not. He said the Public Defender's Office was mandated by the constitution.

Mr. Herring indicated there was a bill that had to be introduced which was the county contribution bill that constituted some of the funding for his budget with a serial no. 1254.

Gaming Control Board (Pg. 756)

Mr. Richard Bunker, Director of the Gaming Control Board, presented the budget for this agency. Mr. Bunker began the presentation with the agency's requests for one-shot appropriations.

1. SENATE BILL NO. 339 - Monies requested to purchase equipment for electronic testing lab for the Gaming Control Board. (\$56,802)

Mr. Bunker noted the significance of the bill was evident when equated to the fact almost half of the gaming revenue in Nevada was generated from electronic and electro-mechanical devices. He added monies appropriated from the General Fund for the equipment would be paid out over a period of time by the agency charging the various applicants who brought in the gaming devices for review.

Senator Lamb asked what kind of gaming devices were involved. Mr. Bunker said the devices included electronic slot machines, poker games, electronic video games, as well as, all of the new types of slot machines. He indicated, at the present time, the testing of the gaming devices were contracted out. The machines were inspected for cheating devices and there were numerous times when the machines were sent back for retesting.

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2. SENATE BILL NO. 340 - Monies requested for an information management system for the Gaming Control Board. (\$972,518)

Mr. Bunker stated the Stanford Research Institute had been authorized to come into the Gaming Control Board to try to develop an information management system and to identify what kinds of needs and problems existed within the agency. The agency felt some kind of management tool had to be contained within the Board for information retrieval. The system would provide the ability for records processing, text processing, document distribution, and the security of the system. He indicated the security aspect was becoming the primary problem faced by the Board; the ability to assure people that information given the Gaming Control Board was in a secure state.

Mr. Bunker asked the committee to note the problems the Board had recently with the FBI over the generation and the distribution of information. He said it was those kinds of things the Board was trying to alleviate by developing the security within their own system.

Senator Wilson asked if the new system would involve the State computer system. Mr. Bunker said it would absolutely not. He noted the Gaming Control Board would have legislation that would exclude the Board from Central Data Processing. Senator Wilson said he assumed the exclusion was due to reasons of security. Mr. Bunker indicated that was one of the primary reasons; the second reason was the Board was not able to get the type of service and programs they wanted from CDP.

Senator Wilson inquired as to how relations with the FBI might be re-established with the Gaming Control Board. Mr. Bunker noted realtions could only be re-established if the Board became, designated by statute, a police agency.

Senator McCorkle commented that Mr. Bunker had made the statement that as technology improves, the costs go down, and, as employee costs go up, there was a shift in emphasis. Senator McCorkle thought there should have been a corresponding reduction in staffing needs. Mr. Bunker said that had not happened this biennium because there was still a tremendous backlog that the Board would have to catch up on. He felt the agency would not have to ask for the additional personnel that would normally be required if the new system were not implemented.

Senator McCorkle thought the reason the Board's staff was increased last session, over the Governor's recommendation, was because of the backlog problem. He asked if the backlog was still as much of a problem as it was two years ago. Mr. Bunker concurred, to a degree, but asked the Senator to note the productivity had increased tremendously within the agency also. He said there had been a great explosion in the gaming industry in Nevada, thereby an increased workload for the agency.

Senator Lamb remarked that was the same story heard by the committee from the agency two years ago, four years ago, and six years ago. The Chairman said it had always been like that with the Gaming Control Board. Mr. Bunker indicated it would take a year to a year and a half to gear up the new system.

Senator Echols asked for a brief explanation of the systems process being used currently by the agency. Mr. Allan Souigny, Management Analyst for the Gaming Control Board, said, at present, the services of CDP were being utilized by the agency. He stated a management study had found there were a number of

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major problems that were not being addressed by the services provided the agency by CDP. The study determined it would be cost-effective to the State for the Board to invest in a system separate from the State computing facility. Mr. Souigny noted the study projected savings of \$282,000 to the State over a period of five years if the new system was implemented.

Senator Glaser asked if the aforementioned savings would be incurred every five years. Mr. Bunker stated the study projected the agency would realize such savings at the end of five years and asked the committee to appreciate that was a projected figure.

Senator Glaser remarked if the \$282,000 were the only savings to be realized, it would take 20 years for the system to recoup, and, if that were the case, it did not seem to him that the system would ever be cost-effective. Mr. Bunker felt, if the agency did not go with the new system, the escalation of employees would continue since those responsibilities would have to be done manually rather than electronically.

Senator Glaser inquired, if the piece of equipment were obtained by the agency, could the Board guarantee the committee it would not request additional employees two years from now. Mr. Bunker said he would not guarantee anything; he could not know what would happen in the next two years.

Senator Wilson asked why the present system was not adequate. Mr. Bunker stated he could not answer that question as he was not responsible for the computer system of the State. He did note the present system was not responsive to the needs of the Board and the charges imposed on the agency by CDP were tremendously out of line for the services received. He thought one of the problems might be the Gaming Control Board was only a minor account of CDP.

The Chairman felt the Gaming Control Board should not answer for the Central Data Processing agency.

The Vice Chairman thought it might be helpful if the agency supplied the committee with their five-year cost comparison of the two systems. Mr. Bunker stated he would supply such to the committee.

3. SENATE BILL NO. 38 - Establishes annual salaries for members of the Nevada Gaming Commission.

Mr. Bunker noted those monies requested had been included in the agency's budget.

Senator Wilson asked how good relations could resume between the Board and the FBI. Mr. Bunker reiterated the Board had to be designated a police agency. The FBI had determined the Gaming Control Board was not a police agency and, therefore, could not share information with them. He said the current problem with the FBI resulted from one particular investigation; the FBI were not interested in bringing forward information on that particular applicant. He added the Board had received information from the FBI concerning other cases until September of last year. Mr. Bunker noted none of the other Federal agencies had taken the same attitude as the FBI and were providing information to the Gaming Control Board.

Senator Lamb said he thought Mr. Bunker really did not believe the reason for not exchanging information was because the Board was not a law enforcement agency. Mr. Bunker concurred. He said that was the reason given to the Board by the FBI, and, therefore was the one they had to respond to.

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General budget items. Mr. Bunker indicated the agency was asking for an approximately 41% increase in their total budget for the biennium. Of the 41% increase, 61.3% was in personnel costs. One of the strongest recommendations the Board was proposing to the committee involved a substantial increase in salary be given to the employees of the Gaming Control Board. Mr. Bunker felt the increases were necessary if a viable agency was to be maintained to stabilize the movement of senior management personnel to the private sector. The average increase being requested per employee was 15.44%.

Mr. Bunker asked the committee to consider a BDR for introduction moving the employees of the Nevada Gaming Control Board out of the unclassified salary bill. He said because of their employees inclusion in that bill, they had been deprived, to a degree, of some of the advancements and cost-of-living increases provided to other State employees. He added the members of the Gaming Control Board would remain in the salary bill.

Senator Glaser asked if there had been a problem with turnover in the Board. Mr. Bunker indicated for FY 1980, the turnover rate was 32.9%; for FY 1979, it was 18.5%; and, so far, for 1981 the rate had been 13.2%. Mr. Bunker stated he had put a "sales job" on his staff and told them to stick with him until this session. He said he told his staff that he felt the legislature would be fair. He noted the agency had sufficient documentation that would indicate that salary levels should be increased.

Senator Lamb remarked the legislature had 8,000 employees they had to be fair with and felt there should be no preference shown between those employees. Mr. Bunker said all he could tell the committee were the problems of his agency. The Chairman commented that every agency had its problems.

The Chairman asked if Mr. Bunker thought the State of Nevada could compete with the private sector in salary levels. Mr. Bunker said the agency did not intend to compete. He added there were a lot of employees who would be happy with just a good salary to stay on with the Board. Senator Lamb noted the agency's turnover figures were not bad. Mr. Bunker felt their turnover rate for last year was not good. The Chairman thought that last year's rate was even better than that in the private sector.

Senator Lamb asked what the other State employees would think if only the salaries of this agency's employees were increased. Mr. Bunker felt some consideration had to be given to this area due to its very significant responsibility to the State. Some degree of continuity had to be maintained, he thought.

The Chairman felt the committee, in the past, had been very understanding of the Gaming Control Board.

Senator McCorkle asked what had happened in 1980 to cause the 32.9% rate in turnover when the legislature approved at that time salary increases specifically to solve that problem. Mr. Bunker recalled that \$50,000 was given to the agency for each of those two years but was still not a great enough increase to be competitive.

Senator Lamb asked of Mr. Jack Stratton, a member of the Gaming Control Board, if he did not feel the high turnover rate for 1980 was due to many changes being made at the top level of the agency at that time. Mr. Stratton strongly concurred with the Chairman's statement. Mr. Bunker agreed and noted there were other factors involved.

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Senator McCorkle asked how better staff could be attracted to the agency if salary increases were only given to the older staffers. Mr. Bunker indicated the reason was due to the low turnover rate of entry level positions. As those people progressed up the ladder, there the problem lay in trying to maintain continuity in the retention of staff.

The Chairman inquired, referring to the agency's original request for 60 new positions, if the other areas of the budget had been reduced accordingly when that request was reduced to 44 positions. Mr. Bunker stated the necessary reductions were made in the budget.

Mr. Sparks noted there were no cuts in the agency request and the Governor's recommendation in the operating, travel, and equipment areas, except for operating under the agency's revolving fund. Mr. Barrett said the agency had resubmitted new items when the original positions requested were cut. Mr. Sparks inquired if the agency request reflected the operating costs for the 60 new positions. Mr. Barrett stated it did not.

Senator Lamb requested Mr. Bunker to address the new position of Auditor being requested. Mr. Bunker said the agency was asking for a salary of \$40,000 for this new position to head the agency's audit division.

The Chairman stated he had checked with the Chairman of the CPA Board of Nevada and had called numerous sources within Nevada and found the average salary for top-flight auditors to be running between \$25,000 and \$30,000 per year. He asked Mr. Dale Askew, member of the Gaming Control Board if he disagreed with that figure. Mr. Askew felt \$30,000 to \$50,000 was a more realistic figure. Mr. Bunker indicated auditors who were managing partners of private firms in Las Vegas would be making between \$70,000 and \$100,000 per year. He noted a managing partner was the equivalent of the position they were seeking to fill at a salary of \$40,000.

Mr. Bunker showed a chart of statistics to the committee to illustrate what had happened during the last year in the investigation division. He said investigations had increased by 700 from 1979 to 1980. He indicated the backlog of investigations were increasing.

Senator Lamb inquired if any new hotel/casinos were being built at the present time. Mr. Bunker said no and did not foresee any being built in the near future.

Mr. Bunker said the agency did not have enough staff to investigate junket representatives sufficiently. Senator Lamb commented he believed junkets were not as numerous as in the past. Mr. Bunker concurred but added there were still unlicensed junket operators in the State.

Senator Wilson inquired, in terms of time, what the backlog represented. Mr. Bunker felt in the area of junket representatives and key employees, the fact that they had not been investigated did not preclude them from working. The only people not able to participate were the equity partners, manufacturers and distributors; they had to be licensed prior to any activity on their part.

Senator Wilson asked if the cost of the investigations were all recovered in fees. Mr. Bunker said they were.

Senator Glaser requested an explanation of equity applications. Mr. Bunker indicated those were people actually buying an interest in a gaming establishment.

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Audit division. Mr. Bunker stated until last year, 1980, there was no audit division in the Gaming Control Board. He noted there were people occupying auditing positions but a very small number of audits were completed. He said the agency was attempting, now, to work towards a two-year audit cycle. There were 81 audits projected to be completed within the present calendar year.

The Director indicated, in order to perform the two-year audit cycle, it would be necessary to "beef up" one of the sections of the audit division. This section involved the monitoring of the internal controls to be assured the documentation was being handled properly in the interim period between audits. He noted the aforementioned was the reason additional positions were being requested in the audit division.

Senator Glaser asked how many hotels and casinos would be potential recipients of the audits. Mr. Bunker said there were 158 Class I licensees which constituted the major category of unrestricted licensing. He indicated that left 1,250 licensees that the agency would not be able to spend much time on, those restricted licensees with 15 or less machines.

Mr. Bunker continued by saying the agency felt with the addition of the new auditors, there would be an excellent opportunity to perform the two-year cycle audits. The Gaming Control Board audited the licensees for compliance to the regulations and statutes. Most of the time deficiencies were found and the licensees had not paid as much tax as the agency felt they should. As a result of those audits, the agency had found 5.9 million dollars in additional audit assessments of which 2.1 million dollars had been collected. Mr. Bunker noted the reason the rest of the assessments had not been collected was due to those assessments being held up pending adjudication of the case of the Desert Inn Hotel versus the Nevada Gaming Control Board. Mr. Bunker indicated the ruling of that suit was in favor of the Gaming Control Board. He felt confident if the ruling upheld, more of the audit assessments would be collected by the Board.

Senator Wilson noted there were only two new administrative positions for the audit division being requested, that of Deputy Chief and Supervisor. Mr. Bunker, referring to the Special Intelligence and Investigative Bureau (SIIB) category in the budget, explained he had pulled out senior investigators from the audit and investigation divisions to set up a new unit. This unit's prime responsibility was to investigate licensees who had held licenses for a period of time. He noted most of the problems with the Federal government were involved in cases and allegations brought against licensees. In order to facilitate that type of investigation, those positions were pulled out of the two units. Mr. Bunker said if SIIB were funded and the positions approved, six of the SIIB people would be going back into the audit division.

Mr. Bunker indicated, if the agency was to be able to determine the illegal movement of money from casinos, it would have to be done through the audit process or through some type of informant.

Senator McCorkle questioned the productivity and performance of the investigative division and asked if the agency had ever received a performance audit. Mr. Bunker stated, to his knowledge, there had never been one done at the agency. He noted the agency had never been audited by the Governor's Task Force because members of that group were of the gaming industry and

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it was felt inappropriate for licensees to come in and look at the agency that was regulating them.

Senator McCorkle asked what the new organization the Governor was proposing that would pursue the Task Force was called. Mr. Barrett noted the organization was called "Operation Analysis" but did not know if it would handle the Gaming Control Board.

Senator McCorkle felt no matter how many positions were approved, the agency would continue to request more. Mr. Bunker pointed out that the number of investigations had increased considerably also. Senator Gibson noted the agency had made considerable progress in audits.

Enforcement. Mr. Bunker indicated the workload had increased tremendously along the Eastern fringe of Nevada and necessitated the opening of a small office in Elko staffed by three to four members of the enforcement division. Three of the positions were among those being requested by the agency.

Special Intelligence and Investigative Bureau (SIIB). Mr. Bunker said there had been no capability by Gaming Control over the past several years to investigate licensees that were ongoing. He stated the agency was requesting the committee to introduce legislation to allow the Gaming Control Board to charge existing licensees for investigations. Mr. Bunker referred to page 764 of the budget document under "special projects and reports"; the discrepancy in those figures shown were a direct reflection of the aforementioned situation. He noted if legislation was not approved, the agency would be forced to come to the General Fund for the \$150,000 needed to pay for the investigations.

Senator Gibson asked Mr. Bunker to explain the microfilm project. Mr. Bunker indicated the project had been ongoing in the agency for the past several years. The agency's storage problem was becoming acute and, for the past two years, the backlog was trying to be reduced by the use of microfilming.

The Vice Chairman inquired as to what the training budget constituted. Mr. Bunker agreed this budget seemed excessive. He said the agency had worked out with the State Board of Accountancy that the experience presently generated in Gaming Control would go towards the certified public accountant's certificate. A requirement in that area was the continuing education of the accountants as they worked towards that certification. He stated in the enforcement area, new hires of this division did not have the training and background necessary. He felt those people had to have some type of training in order to develop an awareness in those areas. Mr. Bunker noted, presently, there were no training programs used by the agency.

Senator Gibson requested an explanation of the "special communications category", especially for 1981-82. Mr. Bunker said, currently, the Gaming Control Board operated through the dispatch office of the Nevada Highway Patrol. The agency was advised by the people in charge of the communications system for the State, that the Highway Patrol was becoming overburdened with their responsibilities in that area. The agency felt the need to develop their own communication system within Gaming Control. He added the agency presently funded two dispatchers for NHP, and if the new communication system was not approved, NHP had recommended funding would be necessary for four dispatchers. Mr. Bunker indicated the present communication system had not been adequate for the needs of the agency.

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The Chairman asked Mr. Bunker if he was sure about his statement saying NHP was overburdened. Mr. Bunker said that was what NHP had told the agency.

Senator Jacobsen asked if the new communication system involved a statewide net. Mr. Bunker stated it would include Carson City, Las Vegas, and Reno.

Senator Echols asked if the Gaming Control Board used any undercover people. Mr. Bunker indicated they did, primarily in a monitoring capacity.

Senator Jacobsen commented that he felt the acquisition of 44 new positions by the agency would not affect their backlog in any great detail. Mr. Bunker said the agency realized there was a financial problem within the State. He noted the original budget request to Mr. Barrett's office contained a request for 90 new positions and that number had been scaled down to the present 44. He stated the agency could be a "bottomless pit" with regards to new positions.

Senator Jacobsen inquired if the Interim Committee was any benefit to the agency. Mr. Bunker stated he would not know until the present session was over.

Senator Gibson asked if the Board had any figures concerning what New Jersey was spending on gaming control. Mr. Bunker said he understood their budget for next year was going to be 34.5 million dollars. He stated New Jersey had 425 people in the Division of Gaming Enforcement, the counterpart of Nevada Gaming Control, with 220 people on the Casino Control Commission.

Senator Lamb asked Mr. Bunker if he would agree there was quite a bit of difference between the two states. Mr. Bunker said there was a lot of difference. He added there had never been a yardstick for the gaming industry before.

The Chairman noted the gaming industry in New Jersey was only three years old. Senator Gibson felt there was a relevancy between the gaming control operations of the two states. Mr. Bunker indicated Nevada had provided the New Jersey gaming control organization with the bulk of their information.

Senator Jacobsen asked if New Jersey had been charged by Nevada for any of that information. Mr. Bunker stated they were only charged with the printing and copying costs.

Gaming Control Board Investigative Fund (Pg. 766)

Mr. Bunker noted in 1979-80 the agency reverted \$223,000 from the investigative fund. In 1980-81, they were projecting approximately \$275,000 would be reverted. Mr. Bunker said in July of 1980 he raised the fee the agency backcharged to applicants and licensees from \$12.50 to \$25.00 per hour which would result in a substantial increase in the monies reverted.

The Vice Chairman inquired as to the control exercised over travel in the agency. Mr. Bunker noted some travel was charged back to the applicant. Other travel involved staff that might be doing something collateral on an investigation. No travel was authorized in the agency without the signature of the Division Chief. If out-of-state travel were involved, Mr. Bunker's signature had to be on the authorization.

Senator Gibson asked why there was such an increase in in-state travel. Mr. Barrett noted \$200,000 had been budgeted for the

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1979-80 in-state travel. Mr. Bunker said those funds were used by the investigators when they were actually traveling on an investigation; those monies were then charged back to the applicant.

Mr. Bunker requested to leave another bill draft request with the committee. This request reflected the movement of the employees of the Control Board, with the exception of the members of the Board itself, out of the unclassified salary bill and put into a separate bill for gaming employees. Mr. Bunker wanted the positions to stay unclassified but salaries to be comensurate with that of other State employees.

Senator Glaser asked if the agency had any objection to being designated a law enforcement agency. Mr. Bunker said it was a question of what type of terminology the FBI was looking for. He indicated Mr. Frank Dayken was holding a bill until that language had been made clear.

Senator Jacobsen asked if the agency had any positions presently that were unfilled. Mr. Bunker stated there were approximately seven positions vacant as of last Friday. Three of the positions were undergoing a background investigation and the other four positions were being advertised.

The Vice Chairman requested a summation of the number of employees in each division of the agency. Mr. Bunker indicated the following:

	<u>LINE</u>	<u>STAFF</u>	<u>CLERICAL</u>
1. Administration	3	6	18
2. Audit	80		7
3. Tax & License	9		4
4. Investigations	49		11
5. Enforcement	58		12

Senator Gibson asked how the staffing was broken down geographically. Mr. Bunker noted most of the employees, particularly in the audit division, were in Clark County. He said the audit and the enforcement staff in Carson City had 37 of their people moved to Reno.

Senator Lamb inquired if the agency was moving their entire operation out of Carson City. Mr. Bunker said they were with the exception of the administration staff. He felt the staff should be located where the work was.

Senator McCorkle requested a brief description of the types of people needed for the 44 requested positions. Mr. Bunker said the agency had pooled the secretarial staff to be parceled out to the various divisions on a as-need basis. Other than that, there would be three individuals in the investigation division. All of the administration positions were clerical with the exception of a management analyst position for the Las Vegas office. All other positions would be line staff with the exception of three individuals in the SIIB category. Under the tax and license division, there was an agent for applicant services needed for the Las Vegas office to handle inquiries from the industry there.

Senator Jacobsen inquired as to how much square footage of office space the agency would require and how much of that space would be State or private. Mr. Bunker noted all of the office space was private. He indicated the increase in rent was due to the fact that last session, the agency was only authorized 65¢ per square foot.

Senate Committee on Finance
March 11, 1981

There being no further business, the meeting adjourned at
10:20 a.m.

Respectfully submitted by:


Candace L. Chaney, Secretary

APPROVED BY:


Senator Floyd R. Lamb, Chairman

DATE: 3/31/81

SENATE AGENDA

COMMITTEE MEETINGS

Committee on FINANCE, Room 231
Day (See Below), Date (See Below), Time 8:00 a.m.

MONDAY, MARCH 9, 1981

1. S.B. No. 348 - Makes supplemental appropriation to Department of Taxation for payment of rent. (Roy Nickson)
2. S.B. No. 40 - Provides for increase in disability and retirement benefits for retired public employees. (Vernon Bennett)
3. S.B. No. 233 - Creates exemption for elected county officers from certain payroll deductions for retirement contributions. (Vernon Bennett)
4. S.B. No. 337 - Makes supplemental appropriation for cost of utilities for Department of the Military. (William Engel)
5. S.B. No. 305 - Makes appropriation from state General Fund to legislative fund for increased dues to Council of State Governments.
6. S.B. No. 335 - Makes appropriation for certain machines for State Printing Office. (Don Bailey)
7. State Printing Office (Pg. 97 - Don Bailey)
 - a. Records Management Services (Pg. 101 - Don Bailey)
8. Lieutenant Governor (Pg. 33 - Myron Leavitt)

TUESDAY, MARCH 10, 1981

1. Department of Wildlife (Pg. 850 - Joe Greenley)
2. Wildlife Boating Program (Pg. 886 - Joe Greenley)
3. Athletic Commission (Pg. 753 - Ray Tennison)
4. Dairy Commission (Pg. 770 - William X. Smith)
5. Employee Management Relations (Pg. 156 - Ken Fraser)
6. Rural Housing (Pg. 1016 - Ed Markovitch)

WEDNESDAY, MARCH 11, 1981

1. Indian Affairs Commission (Pg. 148 - Elwood Mosey)
2. Public Defender (Pg. 158 - Norman Herring)
3. Gaming Control Board (Pg. 756 - Richard Bunker)
 - a. Gaming Control Board Investigative Fund (Pg. 766 - Richard Bunker)
4. S.B. No. 339 - Makes appropriation for certain testing equipment for State Gaming Control Board. (R. Bunker)
5. S.B. No. 340 - Makes appropriation for system for management of information for State Gaming Control Board. (R. Bunker)
6. S.B. No. 38 - Establishes annual salaries for members of Nevada Gaming Commission.

THURSDAY, MARCH 12, 1981

1. Racing Commission (Pg. 773 - Duane Goble)
2. Department of Energy (Pg. 843-862.....Noel Clark)

FRIDAY, MARCH 13, 1981

1. Central Data Processing (Pg. 116 - Gordon Harding)
2. Computer Facility (Pg. 120 - Art Crosby)
3. Office of Controller (Pg. 50 - Wilson McGowan)

ATTENDANCE ROSTER FORM

COMMITTEE MEETINGS

SENATE COMMITTEE ON FINANCE

DATE: March 11, 1981

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
Elwood MOSE	NEVADA (NOW) Commission ^{1135 TERMINAL WAY} Reno, Nev 89402	784-6248
ERWIE OLSON	KLVX CH10 L.V.	737-1010
SALLY ZALA	Nev. State PUBLIC DEFENDER	885-4880
Norm Herring	!!	"
Sue M. V. ...	SELL: FOR THE RICHNESS OF THE MIND?	maybe - 0 -

CHAPTER 316

AN ACT authorizing the state public defender to collect certain amounts from the counties for the use of his services; and providing other matters properly relating thereto.

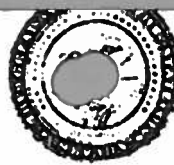
[Approved May 10, 1979]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Section 1. The state public defender may collect not more than the following amounts from the counties for use of his services:

	For the fiscal year ending June 30, 1982	For the fiscal year ending June 30, 1983
20%---CARSON CITY	\$ 79,822.80	\$ 84,977.60
8%---CHURCHILL COUNTY	31,929.12	33,991.04
18%---DOUGLAS COUNTY	71,840.52	76,479.84
2%---ESMERALDA COUNTY	7,982.28	8,497.76
2%---EUREKA COUNTY	7,982.28	8,497.76
10%---HUMBOLDT COUNTY	39,911.40	42,488.80
5%---LANDER COUNTY	19,955.70	21,244.40
3%---LINCOLN COUNTY	11,973.42	12,746.64
11%---LYON COUNTY	43,902.54	46,737.68
5%---MINERAL COUNTY	19,955.70	21,244.40
5%---NYE COUNTY	19,955.70	21,244.40
5%---PERSHING COUNTY	19,955.70	21,244.40
2%---STOREY COUNTY	7,982.28	8,497.76
4%---WHITE PINE COUNTY	15,964.56	16,995.52

Norm



THIRD JUDICIAL DISTRICT COURT
CHURCHILL, EUREKA AND LANDER COUNTIES
STATE OF NEVADA

STANLEY A. SMART
DISTRICT JUDGE

73 NORTH MAINE STREET
FALLOON, NEVADA 89406

May 29, 1980

RECEIVED

JUN 3 1980

Norman Y. Herring, Esq.
Nevada State Public Defender
Capitol Complex
Carson City, Nevada 89710

Nevada Public Defender

Dear Norm:

I have received your letter of April 7, 1980, concerning plans for streamlining procedures in the Nevada State Public Defender's Office. I realize that a number of changes will be required to enable you and your staff to handle the increased volume of work now being assigned to you by the various courts. This increase is reflected even in the Third Judicial District.

With respect to the setting of cases for various attorneys in your office and resulting conflicts on their calendars, I do not believe that that has been a problem in the Third District, since the responsible attorney is ordinarily present at the time of setting and I avoid such conflicts to the extent possible. If a conflict should occur as a result of any matter set by me or my office, please contact me and I am sure we can resolve it somehow.

Finally, I certainly support your intended application to the 1981 Legislature for the funding of additional regional offices. I know these are necessary and will become increasingly so in coming months and years. The concept of a central appellate agency in your office for handling all appeals to the Supreme Court certainly appears to me to be a sensible approach. If I can be of any assistance in regard to the above matters during the 1981 session, please let me know.

Very truly yours,

Stanley A. Smart

SAS/pb

EXHIBIT C

*
Norm
B...

SUPREME COURT OF NEVADA

NOEL E. MANOUNIAN, JUSTICE

CAPITOL COMPLEX

CARSON CITY, NEVADA 89710



RECEIVED

MAY 15 1980

Nevada Public Defender

May 12, 1980

Norman Y. Herring
State Public Defender
Capitol Complex
Carson City, Nevada 89710

Re: Appellate Agency for Indigents

Dear Norm:

This letter is written in regards to your April 11, 1980 correspondence to the court addressing your planned bill draft request for an appellate indigent agency.

I have discussed this matter with Jane Nelson, the Court's supervising staff attorney. Jane has provided me with some of her thoughts in the matter. I correspond with you relative to those thoughts, as well as my ideas in the matter.

I would personally favor the creation of such an agency or division, and although I do not speak for the remaining members of the Court, they should be receptive, particularly in light of NRAP 46(b), which prohibits pro se appeals. This is, of course, without regard to any arguable constitutional infirmity of 46(b). The advantages and benefits perceived by Jane and myself, in addition to those set forth in your letter, which have obvious validity concerning such agency are that such agency:

1. Would afford the opportunity to develop "appellate specialists" more knowledgeable about appellate rules, procedures, and case law. The advantages would be compounded with the creation of the intermediate court of appeals, the November 1980 voters permitting.

EXHIBIT D

Norman Y. Herring
May 12, 1980

2. Would result in the expediting of the appeals as a result of the elimination of presently justified frequent requests for extensions of time in the filing of records and briefs.

3. Has the potential for the central statewide handling of appeals. Your letter states in part that you have conversed with Morgan Harris and Bill Dunseath about the possibility of creating an appellate agency and they are desirous of keeping those appeals which were "generated by their offices." The letter also states that "they would not be opposed to a central office to represent those who were not originally represented by a county public defender, or when the county public defender has been disqualified at the appeal level." Although I am aware that that responsibility would be added to those already represented by the State Public Defender, pursuant to NRS 180.060 (4) in post-conviction relief matters, it would seem more desirable that, at a minimum, the central agency would also absorb any backlog for Clark and Washoe Counties. This would add more flexibility. Tentatively, I would prefer the central agency's handling of all indigent appeals because of that office's expertise, law indexes, and expected uniformity in the preparation of briefs and related materials. This would be a plus from the Court's standpoint and would provide significant budgetary relief to the Clark and Washoe governments, with of course, more state funding being required with a broader base to spread that cost.

4. Will minimize the would be pro se trap. Although I was aware of a number of such instances, Jane further advises that most of the pro per papers come from convicted defendants dissatisfied with their trial counsel. The central agency may well be better equipped to raise such issues as inadequacy or ineffectiveness of counsel without the need for appointment of private counsel.

Norman Y. Herring
May 12, 1980

5. Would eliminate disqualification situations. Disqualifications of attorneys resulting from staff transfers between attorney general, district attorney or public defender offices could be resolved by appointing counsel from the central agency, rather than private counsel.

6. Prisoners desirous of filing petitions for extraordinary relief such as mandamus, prohibition or habeas corpus, would have the assistance of the central agency, instead of proceeding in proper person.

Possible partial alternatives to the central appellate agency concept, are, of course, the increase of your staff with "appellate specialists," this court's considering the repeal of the limiting language in NRAP 46(b), or our modifying the rule to provide that the court make a preliminary determination whether the appeal or extraordinary proceeding has probable merit, and if that finding is in the affirmative, require further briefing, if desirable and have the matter submitted without argument, or appoint counsel and have the case either submitted or argued. The proposed central appellate agency, if used to its maximum potential, would, in my opinion, be the panacea for just about every complained of ill.

Norm, I am well aware of your staff limitations and deficiencies within the system as presently constituted. Certainly if there is any other way that Jane or I can be of further assistance, do not hesitate to be in touch.

Sincerely,



NOEL E. MANOUKIAN

NEM/sb

cc: Ms. Jane Nelson, Supervising
Staff Attorney

1119



SEVENTH JUDICIAL DISTRICT COURT

P. O. BOX 729

ELY, NEVADA 89301

April 9, 1980

MERLYN H. HOYT
DISTRICT JUDGE

WHITE PINE AND LINCOLN COUNTIES
STATE OF NEVADA

RECEIVED

APR 13 1980 dg

MR. NORMAN Y. HERRING
Nevada State Public Defender
Capitol Complex
Carson City, Nevada 89710

Nevada Public Defender

Dear Mr. Herring:

This will reply to your letter of April 7, 1980. I am most familiar with your workload problems. We recently had to conduct a Juvenile hearing by telephone. Your deputy was in Eureka County. The Juvenile, District Attorney and myself were in Lincoln County. We could not continue to hold the Juvenile in custody for a long period to await available counsel.

I assume Mr. Steven McGuire, the local Deputy, will go to Texas for training. We will work around that problem and encourage the additional training of deputies. Steve is conscientious and will benefit greatly from the training.

We will support your efforts for a permanent regional office here and I believe the deputy should be full time, not contractual in Ely. The area is in a period of substantial growth. The criminal caseload is greatly increased and the need for the permanent regional office is demonstrable in terms of man hours, travel time and case filings.

Very sincerely yours,


MERLYN H. HOYT
District Judge

MHH:mk

xc: Steven G. McGuire, Esq.

SUPREME COURT OF NEVADA

JOHN MOWBRAY, CHIEF JUSTICE

CAPITOL COMPLEX

CARSON CITY, NEVADA 89710



April 30, 1980

**Norman Y. Herring, Esq.
State Public Defender
Capitol Complex
Carson City, Nevada 89710**

Dear Norm:

This is to acknowledge receipt of your letter of April 11 regarding your interest in the establishment of an appellate agency in the Defender program to handle the indigent appeals to the Nevada Supreme Court. I am very much in favor of a Central Appellate Public Defender and would be glad to support anything you have in mind.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Mowbray".

John Mowbray

JM:pp

**cc: Morgan Harris
William Dunseath**

EXHIBIT F

MAILED

APR 30 1980

State Public Defender

Norm



APR 14 1980

APR 14 1980

Nevada Public Defender

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA, MINERAL AND NYE COUNTIES

WILLIAM P. BEKO
DISTRICT JUDGE

April 9, 1980

PLEASE RESPOND TO:
Tonopah OFFICE

Norman Y. Herring, Esq.
Nevada State Public Defender
Capitol Complex
Carson City, Nevada 89710

Dear Mr. Herring:

Thank you for your letter of April 7, 1980.

I appreciate the problems you have regarding scheduling when you have a limited number of lawyers to spread out over such a wide area.

The number of requests for calendar changes which I receive from your deputy assigned to my district have been few and far between. I have rescheduled a trial in June in order to allow Gary to attend school, and, to the best of my recollection, there has been only one occasion in the past year when a court commitment elsewhere necessitated a change in my calendar. I only wish I had such a record with private counsel!

Chapter 62 of NRS requires counties having a population of 20,000 or more to provide separate juvenile facilities. With the growth in Tonopah and the surrounding area, I anticipate reaching this figure in the near future. If we vacate our present juvenile probation offices - situated adjacent to the Tonopah Justice Court and the Nye County Jail, I intend to reserve that space for your use if possible.

The suggestion of establishing a central appellate agency for appeals to the Supreme Court, or the new appellate level if adopted, is excellent. An experienced staff of appellate counsel, plus computerized or word processing capability, will reduce time and substantially increase

EXHIBIT G

ESMERALDA COUNTY: (702) 443-6397	P. O. BOX 209	GOLDFIELD, NEVADA 89013
MINERAL COUNTY: (702) 945-2446	P. O. BOX 1457	HAWTHORNE, NEVADA 89415
NYE COUNTY: (702) 482-3341	P. O. BOX 393	TONOPAH, NEVADA 89049

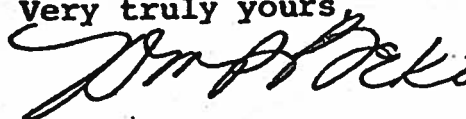
Norman Y. Herring, Esq.
April 9, 1980
Page 2

production. Law clerks or paralegals can be utilized to good advantage in this function.

Needless to say, I would be pleased to have a regional office in this judicial district because it would expedite the movement of cases through our courts. The elimination of the present travel requirements would result in better utilization of the defender's time. The growth of this area will undoubtedly affect this need.

Best personal regards.

Very truly yours,



William P. Beko

WPB/dk

Figure 4

CHANGE IN CASES OPENED FOR REPORTING COUNTIES

<u>Counties</u>	<u>76/77</u>	<u>78/79</u>	<u>% change</u>
Carson City	191	232	+ 21%
Churchill	35	53	+ 51%
Douglas	174	215	+ 23%
Esmeralda	6	6	0
Humboldt	66	95	+ 43%
Lyon	39	49	+ 26%
Mineral	45	45	0
Nye	70	53	- 24%
Pershing	22	51	+131%
Storey	<u>9</u>	<u>1</u>	<u>- 89%</u>
	657	800	+ 24%
*Juvenile Cases	<u>0</u>	<u>69</u>	
	657	869	+ 32%

*The 1977 legislature designated the State Public Defender to represent juveniles in proceedings held pursuant to NRS Chapter 62, The Juvenile Court Act.

CHANGES AND IMPROVEMENTS UNDER THE HERRING ADMINISTRATION

Even though the Public Defender does suffer from several major problems--inadequate funding, too few regional offices, no appellate unit, and lack of support staff--Mr. Herring and his staff have affected substantial improvements in office organization and casehandling in less than two years. Outlined below are the major changes Mr. Herring has initiated, and the problem areas that still remain.

PERSONNELImprovements:

- hired committed, aggressive attorneys
- reduced turnover
- increased morale (through better supervision, more support, improved communication)

Remaining Problems:

- no investigators
- no social service workers
- judges control funds for expert witnesses and investigators

OFFICE AND CASE MANAGEMENTImprovements:

- instituted accountability procedures for regional offices
- applied for and received LEAA grants for outside training
- developing in-house training (still limited at the present time)
- encouraging support staff to enroll in criminal justice classes and sit-in on court
- boosted morale and productivity by replacing old system of pooling secretarial assistance with new system of assigning secretaries to particular attorneys
- developed research file for motions and briefs
- opened regional offices in Winnemucca and Ely
- looking into the possibility of renting or buying more spacious offices closer to the courthouse in Carson City
- increased percent of cases going to trial
- instituted recordkeeping procedures (for cases, calendar-ing, travel, etc.)
- designed law school externship program, which will begin in the fall of 1980

Remaining Problems:

- late case entry (especially in juvenile cases)
- judges determine eligibility (insufficient independence from the judiciary)
- inadequate coverage in southern and western parts of the state; expensive and time-consuming travel
- no appellate unit

FUNDING

Improvements:

- designed and instituted recordkeeping procedures that will provide documentation for budget requests
- applied for and was awarded an \$11,000 grant from the Law Enforcement Assistance Administration to open a regional office in Winnemucca
- presently applying to the court for funding for the representation of municipal ordinance violations

Remaining Problems:

- insufficient level of funding (more money is needed for staff positions and additional regional offices; no money is provided to cover the cost for juvenile proceedings, municipal ordinance violations and appeals)
- complicated planning due to biennial funding cycle
- complicated planning due to local county option that allows county commissioners to opt out of the state-wide system at any time in the funding cycle
- dependence on the judiciary for funds for expert witnesses and investigators

Reviewing this outline, we can appreciate that Herring and his colleagues have made significant progress in redesigning and improving the organization and quality of defense services. Our interviews suggested that most of the remaining problems are linked to the lack of funding, rather than poor management policy or staff performance.

The following recommendations are based on the materials provided by the Public Defender (including the relevant sections of the Nevada Revised Statutes; the Nevada State Public Defender 1978-79 Annual Report; the 1979-81 Public Defender Budget; and the 1979-80 caseload figures), and the information gathered during our two days of interviews on site. Some of these recommendations address administrative issues while others concern political and legislative issues. Obviously, implementation of some of these recommendations will be more difficult than others, but each is grounded in the experience of other public defender offices and would, in our judgment, ultimately improve the quality of representation for indigent defendants in the State of Nevada.

5.1 Appellate Division

The State Public Defender should consider developing a separate appellate office. Many states, as diverse as Indiana and California, have statewide appellate defender offices funded and operated separately from defender offices working in the lower courts. The benefits of a separate appellate office include the expertise which accrues to attorneys who specialize in appeals; the efficiency resulting from the development of an appellate brief bank which can be continuously updated and refined; and the elimination of the potential for intra-office conflict when a public defender case is appealed.

Because of the added administrative costs of setting up an entirely separate appellate office, a distinct appellate division might be initially developed within the State Public Defender's Office. However, if it is part of the same office as the trial court division, the appellate division should be as functionally separate as possible--using lawyers and support staff who do not participate in trial court activities. Although such a division is less optimal than a separate appellate defender office, it would represent a significant improvement over the current method of handling appeals in the Nevada Public Defender Office. As detailed in section 4.3 of the 1976 National Study Commission of the National Legal Aid and Defender Association:

The appellate and post-conviction functions should be independent of the trial function in order to accomplish free and unrestricted review of trial court proceedings.

Where the appellate office is part of a defender system which includes both trials and appeals, the appellate function should be as organizationally independent of the trial function as is feasible.

(a) Counsel on appeal should be different from trial counsel and capable of exercising independent review of the competence and performance of trial counsel.

(b) An appellate defender should not have responsibility for any trial work while in an appellate capacity and should remain in appellate work for a substantial period of time in order to provide continuous representation to a client throughout the appellate process.

Wisconsin presents an example of a statewide public defender system which incorporates both a trial and appellate division in one office. The divisions are kept distinct with no overlap in staff or functions. Further, whenever an appeal from a public defender case has even the potential of raising "adequacy of counsel" issues, the case is assigned out of the office to private counsel.

According to the Nevada State Public Defender, if an appellate division were created in his office its responsibilities would include:

- Direct appeals from the State Public Defender's Office;
- Direct appeals in cases involving indigent appellants who were represented at trial by private counsel or pro se;
- Appeals from counties in which the county public defender is in operation pursuant to Nevada Revised Statutes Chapter 260 and the county defender has been disqualified or when there is an issue regarding adequacy of counsel;
- Habeas corpus appeals and extraordinary writs from inmates of the Nevada Department of Prisons;
- Representation of indigents before the Nevada Board of Pardons Commissioners;
- Post-conviction appeals.

These appellate responsibilities would be pursuant to the duties of the State Public Defender as detailed in NRS 180.060 (4):

In cases of post-conviction proceedings and appeals arising in counties in which the office of public defender has been created . . . , where the matter is to be presented to the supreme court, the state public defender shall prepare and present the case and the public defender of the county shall assist with the state public defender.

From July 1, 1978 to June 30, 1979 the Nevada Public Defender handled 32 appeals. Based on the National Advisory Commission report (1973) the Public Defender Office should not exceed 25 appeals per attorney per year. Thus an adequate appellate division staff would appear to be one full-time attorney, one full-time law clerk and one full-time secretary/word processor.

5.2 County Participation

The State Public Defender should work toward a total statewide system encompassing all counties except Clark and Washoe (which are not presently included in the state public defender trial system because of their unique political and economic circumstances). By providing such coverage the statewide public defender can more feasibly ensure quality services in a cost effective manner. Each county which elects to provide its own public defender service reduces the efficiency of the statewide system and duplicates administrative and support services available through the State Public Defender Office.

Because NRS 260.010 and 260.020 allow for counties to opt out of the statewide defender system, it is difficult to develop long term planning regarding staff and support needs. While hiring decisions must be based on the two year budget established at each state legislative session, counties can withdraw at any time, thereby causing an imbalance between revenues and staff. Recently Elko County, for example, decided to withdraw from the statewide public defender system. While there has been some discussion regarding Elko County's return to the system, such decisions make planning and budgeting extremely difficult. In an effort to remedy this problem and still afford the counties the authority to opt out of the statewide system we recommend that the State Public Defender take the following steps:

- Recommend to the legislature that counties be required to commit themselves to the State Public Defender System for at least two years. If this legislation gives the counties the option of establishing their own defender system, that option must be acted upon at the end of each regularly scheduled legislative session. If a county does not provide its own defender services it should be obligated to join the state system until the following regularly scheduled legislative session. This will allow the State Public Defender to plan and provide security to staff for two years.

● Seek to have the state allocate a greater proportion of Public Defender funds. The state currently provides approximately \$92,000 to the statewide public defender office and the counties, \$277,000. By increasing the state's share and reducing the burden on the counties, each county would have a greater incentive to join the statewide system and the public defender would be less dependent on county commissioners who may seek to impose unrealistic demands on the statewide office as a condition of their participation. Ideally the state should provide all the funds necessary to operate the statewide system. Indeed, as illustrated below, most statewide public defender systems are exclusively funded out of the state budget.

STATEWIDE PUBLIC DEFENDER PROGRAMS FUNDED
EXCLUSIVELY FROM STATE FUNDS

<u>State</u>	<u>Budget (Year)</u>
1. Alaska	\$ 2,900,000 (1979)
2. Colorado	\$ 3,600,000 (1979)
3. Connecticut	\$ 4,800,000 (1979-1980)
4. Delaware	\$ 1,400,000 (1980)
5. Hawaii	\$ 1,500,000 (1979-1980)
6. Maryland	\$ 7,300,000 (1980)
7. New Jersey	\$14,200,000 (1979)
8. New Mexico	\$ 2,500,000 (1980)
9. Rhode Island	\$ 800,000 (1980)
10. Vermont	\$ 1,200,000 (1980)
11. Wisconsin	\$ 8,600,000 (1979-1980)

Further, we have identified fifteen additional states* that are evidencing an interest in combined statewide funding and administration. The degree of interest and support varies substantially among these states, but a definite trend toward state funding is obvious.

In states with a statewide public defender system funded partly by participating counties, the state's share is substantially larger.

*These states include Alabama, New Hampshire, Georgia, Indiana, Iowa, Michigan, Montana, North Dakota, Oklahoma, Mississippi, Massachusetts, Tennessee, North Carolina, Virginia, and West Virginia.

STATES WHICH RELY UPON STATE FUNDING BUT WHICH ALSO
REQUIRE A SUPPLEMENT FROM THE COUNTIES WHICH ARE SERVED

<u>State</u>	<u>Budget</u>	
	<u>State</u>	<u>County</u>
1. Florida	\$15,800,000	\$4,000,000 (1979)
2. Kentucky	\$ 2,900,000	\$ 300,000 (1980)
3. Ohio	\$ 8,500,000	\$4,500,000 (1979-1980)
4. Wyoming	\$ 1,200,000	\$ 200,000 (1979-1980)

If Nevada does not move to a fully state-funded system, we recommend a substantial increase in state funds which would bring the counties' share to 15% or less.

• Set up regional offices around the state which afford adequate representation to the rural counties without imposing excessive travel demands on staff attorneys. The regional office in Winnemucca could be replicated in a city like Tonopah (a centrally located city housing the District Court). Each of these offices should have a full-time lawyer and secretary. The contract arrangement with Steve McGuire in Ely seems to be adequate, but hiring a full-time attorney and secretary to cover Eureka, White Pine and Lincoln Counties would allow some flexibility for that attorney to assist in the anticipated increase in caseload in Nye County.

The development of regional offices would reduce the extraordinary travel burden as well as give the associated counties a sense of commitment from the public defender office. If regional office space could be arranged in a county building, the additional cost of a branch office in Tonopah would be limited to a secretary's salary. This would be mitigated by savings resulting from the significant reduction in travel costs now incurred in covering the four county regions which the Tonopah office could serve.

5.3 Juvenile Representation

Representation of juveniles by the public defender raises several problems discussed in section 2.0. This is an area that needs further study since we were unable to observe the juvenile justice process in the short time we were on site. The public defender reports that the legislature recently expanded the scope of his office to include juvenile representation without a commensurate increase in funds necessary to provide this service. In addition, the courts have traditionally treated juvenile cases informally, appointing counsel only at the sentencing stage.

While the juvenile caseload does not appear to be heavy (11 juveniles charged with delinquent offenses in Carson City in 1979), this additional burden should not be met by taking necessary resources from the adult cases. The public defender should examine the court records in each county served by his office for the past two years to determine the actual juvenile caseload. Based on the results of that effort he should then apply to the state legislature for an appropriation sufficient to provide whatever fraction of a full-time equivalent lawyer is necessary to adequately represent the juvenile defender population.

The Public Defender Office should whenever possible schedule cases so that one lawyer is responsible for all juvenile cases in a district. Such specialization results in increased effectiveness and expertise. This attorney could also develop a working relationship with the juvenile court masters which would help to encourage these masters to appoint counsel at the earliest possible stage in the proceedings. In the absence of such an appointment policy it is the responsibility of the Public Defender to appeal adverse decisions on grounds of inadequacy or lack of counsel.

5.4 Investigative Services and Expert Witnesses

One of the most serious deficiencies of the Nevada State Public Defender Office is the lack of investigative services. The Office should seek funds for two investigators--one for Carson City and Douglas County and one for the remainder of the state. The need for well-trained, experienced investigators is documented in each of the major studies of the public defender function (1973, National Advisory Commission Sec. 13.14; 1976, NLADA National Study Commission Sec. 4.1; 1978, The American Bar Association Sec. 5-1.4). The NLADA Study Commission concludes that "a minimum of one investigator should be employed for every three staff attorneys in an office. Every defender office should employ at least one investigator."

The Nevada Public Defender also suffers from lack of funds to employ expert witnesses. Although this is somewhat mitigated by funds made available from the court, the public defender should not have to request funds for expert witnesses from the court and the court should not be put in the position of assessing the appropriateness of the defense strategy resulting in the need for expert witnesses. This relationship impinges on the independence of defense counsel and forces the court out of its role of disinterested

third party. The situation is particularly egregious in Carson City where, according to those interviewed, funds for defense expert witnesses come from the District Attorney's budget. We have not heard of this situation existing anywhere else and we strongly recommend that these resources be transferred to the public defender office.

In developing his annual budget the Public Defender should include a line item account for both investigative services and expert witnesses. The latter should be based on previous experience including all requests (successful and unsuccessful) for expert witnesses during the previous year. It should be made clear that the funds appropriated for these functions are not extraordinary funds but rather funds which would otherwise be paid out of different budgets.

5.5 Training and Inter-office Communication

While the State Public Defender staff appears to consist of highly motivated attorneys committed to delivering high quality representation to indigent defendants, the staff is relatively inexperienced in the practice of criminal law. The Public Defender has been successful in finding grant money with which to send several of the staff to various training courses. However, a more consistent ongoing training effort should be incorporated. In the absence of additional funds for a training supervisor, the following practices might be implemented:

- Regular (monthly) staff meetings at which specific cases and questions are discussed.
- Assignment of a specific topic to an individual staff person (e.g., search and seizure; death penalty; cross-examination strategy; hearsay rule, etc.) for presentation at a staff meeting. If each of six attorneys is assigned to research one such topic a year, a presentation can be scheduled once every two months.
- Assignment of a new staff attorney to a senior attorney for a period of time. Under this mentor system, new attorneys can watch and learn from the more experienced attorneys and gradually take on more responsibilities.
- Collaboration with the Clark and Washoe County Public Defenders in bringing in training specialists from NCCD and other organizations, and purchasing or leasing video cassette tapes of mock trials and other learning tools.

In addition to training it is important for the State Public Defender to ensure that regional office staff have adequate support. It is important

for regional office staff to communicate regularly with the central office and to identify themselves with the Public Defender Office. This is particularly important in one-attorney offices where isolation and lack of professional contact can be debilitating and demoralizing. Typically, one-lawyer offices should be discouraged even if the caseload will not support two full-time lawyers. Whenever possible, two or more lawyers (even if one is part-time) should be hired for each office. Not only does the second lawyer provide the professional contact and collaboration necessary on difficult cases, but the second lawyer can provide the essential services which are needed when the other lawyer is ill or on vacation. In sparsely populated areas like much of Nevada, however, there simply may not be more than one lawyer available to a public defender office. In this situation the Public Defender should require daily phone contact and at least bi-monthly visits to the central office. A Watts telephone line may also prove cost-effective in protecting against the isolation of rural single-attorney offices.

The Nevada Statewide Public Defender Office has substantially improved during the administration of its current director, Norman Herring. As detailed in sections 2.0 and 3.0, Mr. Herring inherited an office riddled with major problems regarding personnel, office and case management and funding. In the short time (19 months) that Mr. Herring has been in office he has remedied many of the immediate operational problems and has begun to take the necessary steps to solve the more long-term problems. Staff morale is high and all those we interviewed had a uniformly high regard for Mr. Herring and the job he is doing.

Several problems still remain, some of which threaten to jeopardize the advances made in the past year and a half. The most significant problems are the need a) for additional state funding necessary to open a regional office serving Nye, Esmeralda, Mineral and Lyon counties; b) to hire staff necessary to provide adequate representation on appeal and for indigent juvenile defendants; and c) to reduce the level of funding currently imposed on the counties.

Based on our interviews and observations during our two days on-site, it appears that Mr. Herring and his staff are highly dedicated and competent. With the support of the state legislature in assisting Mr. Herring to carry out the recommendations set forth in section 5.0, the Nevada Statewide Public Defender system could serve as a model for other similar states. Upon request and approval by the Government Project Monitor, the Criminal Defense Technical Assistance Project will be available to provide short-term technical assistance to the state of Nevada or the Nevada Statewide Public Defender Office in furtherance of these recommendations.