

Public Defender's Agency Provides Lawyers for Those with No Funds

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(Second in a two part series on legal services in the villages.)

"We don't get that many bush cases, not nearly as many as we should," says Dick Madsen, head of the Fairbanks public defenders agency.

This agency, a state funded agency under the office of the governor, is responsible for providing the right to counsel for people who can't provide their own lawyer. Besides Fairbanks, the three lawyers and one investigator on the staff of the agency must handle cases arising in Bethel, Fort Yukon, Galena, and all their surrounding villages.

Recent Supreme Court decisions have given the right to counsel (the right not to be tried without a lawyer) to persons accused of many misdemeanors. So far, no line has been set as to how minor a crime a person can be accused of and still be entitled to court appointed counsel.

However, many crimes now tried in magistrate's court may come under these new definitions. If so, the Fairbanks' public defenders office will have to expand greatly to handle the new caseload.

"We can't afford to hire someone in each village," says Madsen. He advances several reasons why



FAIRBANKS PUBLIC DEFENDER head Dick Madsen demonstrates the gavel his office is presenting as a gift to newly appointed Sitka Superior Court Judge Vic Carlson. Carlson is a former head of the public defender's agency.

—MADELYN SHULMAN Photograph

his office is rarely called to handle cases in the magistrate courts. When notified, a lawyer from the public defender's agency will fly out to represent an accused person in court—if somebody calls them.

"When they are accused of something, many people in the villages are inclined to admit it," says Madsen. "Also, many really don't understand their rights, or

the concept of the adversary system."

One of these rights is the right not to be tried by a magistrate, to call in a district judge. For many people, turning down the authority figures in the village to request an outsider seems a large request.

"Magistrates aren't trained lawyers," explains Madsen. "It

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is easy for the magistrate in a small town to lean heavily on the advice of the trooper in the town. There can be substantial advantages to the defendant in being tried by a district judge, especially when points of law or personal feelings are involved."

One result of the magistrate system and the lack of representation is that sentences given to prisoners from small villages tend to be higher than sentences handed down for the same crimes in Fairbanks.

Public defenders rarely get appointed by magistrates in bush cases. When the defendant pleads not guilty, the magistrate can set a bail of \$500 and send the man to Fairbanks, to be close to his lawyer.

"They'll stay in jail till they raise bail or we get him out," Madsen explained. "Our feeling is if a guy comes in and pleads guilty, the magistrate should hold off till there are two or three such cases. Then, call us, set a date, and the defender's office will fly a lawyer there. We'll even do it for one case. Nora Guinn at Bethel does this and the system works very well."

With a client being held in jail, the defenders must often plead guilty, to get his client free as soon as possible.

Most of the public defender's office's work for the villages is done in the felony cases which are brought to Fairbanks for trial. These are the serious cases—murder, rape, burglary, assault and battery, etc.

A defendant will be brought to Fairbanks for arraignment, released on bail without means often to return to his village. He may be required to return to Fairbanks for trial as much as a year or more after the crime has been committed.

Trying cases involving crimes committed in villages in Fairbanks poses peculiar problems for both prosecution and defense lawyers. The district attorney must arrange for witnesses to come to Fairbanks.

"The travel difficulty bogs down the whole system," says public defender Madsen. Cases from the Bethel area may in-

volve language problems, necessitating search for an interpreter who speaks the correct dialect.

In cases which range up to first degree murder, it is essential the defendant understand what his lawyer is trying to do for him.

"Sometimes I wonder if my clients from the villages really understand what I'm saying to them," Madsen says. "Lots of times they'll act completely on my advice. I have to be doubly sure they understand."

Many defendants brought to Fairbanks have no understanding of the process which brought them there, or the process which faces them.

One measure of differences in administration of justice in the town and in the bush is that sentences for felonies in Fairbanks where defendants have counsel are often lower than the sentences given for being drunk in public in the bush.

Alcohol is a cause, or a factor in almost every crime by Natives says Madsen. It will be a factor in a fight, burglary, or almost any other violence.

In the towns, the majority of the crimes Native persons commit are misdemeanors, mainly drunk in public, disorderly conduct and other such crimes. A study which Mr. Madsen prepared for the American Bar Association recently showed Natives committing a far lower percentage of serious crimes than their percentage of the population.

The problem in the villages is there is no one available to give information at the time a person is charged with a crime. Better information and education, says Madsen, could greatly improve villagers' knowledge of their rights under the law.

"If we are to serve all of those misdemeanor cases, we don't have enough staff or travel money. If we're to provide people with their rights under the constitution, we'll have to have more staff, mobility and money, and a more flexible system that will allow cases to be tried in the bush," said the public defender.