



## **MIRS Capitol Capsule, Friday, August 21, 2009**

### **Minnesota Public Defender Pushes State-Run System**

As the chief public defender for the Sixth Judicial District in Minnesota, Fred **FRIEDMAN** is the local head of a state-run network of trial attorneys who are appointed and paid by the state to represent accused criminals who don't have the means to pay for a lawyer.

Last week, Friedman visited Michigan at the request of the Michigan Bar Association and the Michigan Campaign for Justice (MCJ). MCJ is an organization dedicated to reforming the state's county-by-county patchwork of public defenders into a statewide system, a move the state of Minnesota made between 20 and 30 years ago.

Interestingly, Friedman said his mother was raised in Michigan and her parents ran a resort in South Haven from 1919 to the early 1950s.

Friedman, also a University of Minnesota-Duluth professor, spoke with *MIRS* about his impressions of Michigan's public defender system. The following is an excerpt of that interview:

#### **Q. Have you looked at the effectiveness of public defender systems, in general, as far as whether they are county-run or state-run?**

A. Yes, I've been around since 1972, and I've talked and trained at a lot of places and have been very active in programming in other states.

#### **Q. Talk about the program in Minnesota?**

A. Minnesota walked away from county funding. They didn't feel like county funding treated the poor counties right. It didn't treat the rural counties right. The pay rate varied too much. The workload varied too much. The caseload varied too much. Justice varied too much.

They went to state funding to make it fairer, and, secondly, to get the judges out of indigent defense. We went to a state system where it's funded by the Legislature. County boards have nothing to do with it.

Minnesota has 10 judicial districts, each made up of many counties. Each judicial district has a chief judge and a chief public defender. I happen to be the chief in one of those, the one closest to you guys. My job is to hire, fire, retain, train and inspire lawyers who work for us and to assign the cases. The judges have zero to say about our budget, zero to say who is appointed to a specific case, zero to say in hiring or firing me or any of our folks.

#### **Q. Has that been of a benefit to Minnesota?**

A. Tremendous. Most people take the position, including the American Bar Association on down . . . , that indigent defense should be independent from the bench. In a few states, and Michigan is one of them, judges are deciding who represents whom. That's crazy.

That means the lawyer has to worry about pleasing the judge. The judge has a say in how much money they get, how many cases they get, how often they get cases. The lawyer has to worry about whether the judge is going to get angry if something goes to trial.

The lawyer has to worry about appeals, all kinds of things. In Minnesota, we have none of that. We're independent.

**Q. Is that a common trend across the country -- going from county-run to state-run systems?**

A. Yes, but Michigan is not the only place in the country that goes county by county. Pennsylvania is that way. Much of Illinois is that way. The clear trend is toward state funding. Even in systems that are county-run, the judges have no say in who gets appointed to an individual case. That's why people in Michigan like the Bar Association, the Campaign for Justice, lots of lawyers, lots of law professors -- as I understand it -- want to get Michigan's law changed.

**Q. How much has it cost the state of Minnesota to do this?**

A. Our budget is \$67 million in a state of 4.5 million people. North Carolina, which has fewer people than you but who will soon have more, runs a system that costs \$126 million, I believe.

**Q. As a result, the county is no longer on the hook with this expense?**

A. It gets the county out of it. There is no county money. So let's say you have a situation in Michigan where a rural county has a terribly complex case. They need to bring in an expert witness. There's DNA evidence. They have a multi-week trial. How could they possibly afford it? The local lawyer shouldn't have to worry about what the judge wants.

Just like the judge can't appoint the district attorney, he shouldn't be appointing the defense attorney.

**Q. Where is Michigan right now compared to where Minnesota was before going to a state-run system?**

A. Michigan needs to go a lot further in terms of training. I don't think anybody would be offended or assaulted by that. We were told by the law professors and the bar folks that Michigan has no minimum requirements in terms of continued education, which puts you very much in the minority.

Secondly, you guys are 44th according to a National Legal Aid and Defender Association study in representing people who are presumed to be innocent. That puts you down there with folks like Arkansas and South Carolina. That's not a place you want to be in, especially when your Department of Corrections budget is so high.

The amount of justice you get shouldn't depend on whether your grandma can triple mortgage her house. That's the problem.

**Q. Did the counties and local judges in Minnesota put up a fight when you began arguing for this system?**

A. The counties were very happy to get out of the money business. Their attitude is that the laws are state laws, therefore enforcing the laws of justice should come from the state. In America, locals pay the police. They pay the sheriff. Most county administrators, philosophically, believe the state should be paying for courts, administration, judges, court reporters and defense services.

Most judges were glad to get out of this. They felt like they had enough to worry about without worrying about what lawyer to please and which lawyer to displease. We met with judges in Michigan and that was the most common question they asked. "What was the reaction of judges in Minnesota and elsewhere to getting out of it?"

I gathered that some Michigan judges would like to get out of the business of selecting counsel. Some don't, but there are studies that rip Michigan. The (American Bar Association) standards are that the public defender function is supposed to be independent.

**Q. Where would you rank Michigan's public defender system compared to other states'?**

A. I haven't practiced law in Michigan, but based on what I read, you're not spending enough money. The judges have too much say. Rural counties and small counties aren't being treated right.

**Q. Michigan has a substantial budget hole right now and the last thing policymakers are thinking about right now**

**is spending more money. Why should they care about something like this?**

A. Everybody should be concerned that innocent people aren't getting locked up. Unfortunately that happens. It happens in Michigan. It happens elsewhere, and if you don't have quality, well-trained, fearless counsel representing people, especially poor people with no influence, it increases the risk of unjust convictions.

That's what a democracy does -- it protects people's rights. It puts teeth into the Bill of Rights.

I guarantee you that if the folks from Ford and General Motors and Chrysler get arrested or their kids get arrested, they get excellent counsel to represent them. Shouldn't poor people, and the children of poor people, who may be unemployed because of the recession, be afforded the same protections under the Constitution, or is the Constitution only going to protect General Motors?

**Q. Do you believe appointed public defenders are given incentives to cut deals and pleas with those accused of crimes so cases are moved off a judge's docket?**

A. It happens all the time. Let's say the judge says to an attorney, "I'm going to appoint you to represent this defendant for burglary. I'm going to give you \$400. If it goes to trial in a week, you're getting \$400. If you roll 'em and plead him this afternoon in three minutes, I'm giving you \$400." What's the incentive?

It happens in the Wolverine state all the time. And I'm not saying we're perfect in Minnesota. We could use more money like everyone else. But we work hard on independence.

I'm going to quote from the *National Standard*. This is what all the experts say, "The public defense function, including the selection, funding and payment of defense counsel is to be independent" and it's not in Michigan.

**Q. Have you seen public resistance in other states about going to a state-paid system?**

A. Some states, yes. Some states, no. Some people don't like the idea that local control goes away. I want local control to stay, too. I just don't want local dollars used and I don't want the local control to be a judge. The local control should be somebody whose job it is to have the buck stop with them.