

Mark Bearss does more by 9 a.m. than most lawyers do all day

By Dave Kenney

Photography by Larry Marcus

A Day in the Life of a Public Defender

Mark Bearss, public defender, strolls into the well-lit but windowless courtroom on the 12th floor of the Hennepin County Government Center with the air of someone who's been here before — many times before. He pushes through the swinging door that separates the players from the spectators and checks in with the court clerk. He opens his *New Yorker* calendar book — the one with five case files tucked into it — and engages the clerk in a hushed discussion about dates, times and other lawyerly minutiae. He then closes his calendar and retreats to the public gallery, where two of his clients are sitting in movie theater seats, waiting for him to acknowledge their presence.

Bearss motions to both. "I'll get to you guys as you came in."

"I got here at 8:30," volunteers the one that Bearss calls Mr. Peters.

"So did I," says the other, Mr. Lutz.

Bearss breaks in before an argument can break out. "Listen. I'm not going to argue with you guys about who got here first. Mr. Peters, I'll start with you. Mr. Lutz, I'll be with you in a moment."

Bearss leads Peters out of the courtroom and into the hallway, where a half-dozen other misdemeanor defendants are waiting for lawyers to accompany them into court. This particular attorney and client make an interesting couple. Bearss wears an off-the-rack lawyer uniform — putty suit, yellow shirt, blue tie and black wing-tips. Mr. Peters is less formal in a blue T-shirt, shorts and sneakers. Bearss opens Peters' file and goes over the basics of his case: pulled over for driving 45 in a 30; showed signs of intoxication; four previous DWIs; two in the last 10 years. Prosecutors are offering 120 days of incarceration. Trial date is set for five weeks from now.

Bearss asks Peters to tell his side of the story and Peters relates how the police took him in and tried to force him to take a blood test. "I told them I'm not giving any blood," he

says. He explains how he's taking culinary classes at Brown Institute and how he plans to graduate in five months and how he'll do anything to avoid doing time until then. "I can do weekends at the workhouse," he says. "I've seen people doing that."

"Well," Bearss says, "you can do weekends, but not four months of weekends."

Having spent about five minutes digesting his client's version of events, Bearss segues into his conclusion. "Here's the thing," he says. "Today isn't the be all and end all of your case. You can, if you want to, think it over and decide what you want to do. This offer is not going to go away tomorrow. This isn't like the Kmart blue-light special. If you think about it and you decide you want to accept this or some variant of this offer, then fine. My sense is we can also settle this when we go to trial. But that doesn't mean you have to. It means we can. Or we can force the state to prove this by going to trial."

Bearss tells Peters to think it over and excuses himself to go deal with his next client.

750 CASES A YEAR

Mark Bearss is one of 60 attorneys at the Hennepin County Public Defenders Office — an office that handles about 45,000 misdemeanor, felony and juvenile cases a year. He is, like his fellow P.D.s, a very busy lawyer. Do the simple math and you begin to understand what the average public defender is up against: 750 cases a year; 60-plus cases a month; 15 cases a week. Of course most of those cases get crammed into a limited selection of court dates, so it's not uncommon for a P.D. to juggle — like Bearss had to on this particular morning — five cases in a two-hour span. It's the nature of the indigent law beast.

A good three-quarters of the files dropped on Bearss' desk are of the type he's dealing with this morning — misdemeanors. And while Bearss' misdemeanor clients may believe that their cases deserve the utmost attention, Bearss admits that misdemeanors are, by definition, low priority.

"In my first year of practice I heard somebody say that they weigh their misdemeanors by the pound. And it kind of is true. The felony guys, I can remember their names from years before just because you spend much more time with them. But you have too many misdemeanors just flying around you and it's hard to keep track of these guys."

About a half-hour after his discussion with Mr. Peters, Bearss emerges from the courtroom to tell Peters that his court date is confirmed.

"Mr. Payne, here is your reminder slip."

Mr. Peters, sitting on a hallway bench, gazes up at his attorney. "I'm not Mr. Payne."

"Oh! Just a second, I got yours in there." Bearss scurries back into the courtroom.

Peters leans back against the wall. "I know he's very busy," he says. "I know that when it's crunch time he'll probably come through."

Bearss isn't so sure. "I wouldn't want to be a misdemeanor case," he says. "We don't have time for them, as much time as they deserve. I just wouldn't want to be a person in that position, being represented by our office. It's too bad but it's true."

A CACOPHONY OF HUMAN TRAGEDY

"Just for the record," Mr. Lutz says by way of introduction, "I got here at 8:30."

Mark Bearss smiles and nods and apologizes for choosing to put Mr. Lutz second in line behind Mr. Peters. It is, his demeanor makes clear, just another unavoidable little injustice.

Mr. Lutz, looking comfortable in a yellow shirt, frayed jeans, white socks and black slippers, faces a DWI charge, but he's not a standard-issue DWI client. He recently completed an expensive treatment regimen at Hazelden that left him with no money to hire a private attorney. He seems resigned to the fact that he must now place his fate in Mark Bearss' hands.

After a few minutes of discussion, Bearss homes in on his main concern: Lutz's breath test program. Under the conditions of his current release, Lutz has to come downtown