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FOREWARD

In this day and age when so much of our resources are devoted to the prevention of crime, especially in the large cities, it is surprising that so little is written about and resources devoted to the rural prosecutor, who accounts for 90% of the prosecutors of this nation.

This manual will offer to the one-man or small prosecuting attorneys office, some aid and assistance when he takes office, so that he will have an understanding of the problems, prosecutorial philosophy, and the responsibilities confronting him in his new and difficult position.

The prosecutor in a large office has the opportunity in most cases to travel, exchange ideas, to review common problems and seek common solutions, as well as offering in-office training sessions, manuals and procedures. None of this is true for the one-man or very small office prosecutor; in most cases he is on his own. If there is a turnover in the office he is left to fend for himself. The criminal justice system cannot be run on this basis.

The NATIONAL DISTRICT ATTORNEYS ASSOCIATION exists solely for the improvement of the attorneys representing the public, employing its educational and informational service to this end. By the exchange of information as exemplified by this manual, which is directed to an important area of the responsibility of the prosecuting attorney, the NATIONAL DISTRICT ATTORNEYS ASSOCIATION is able to serve the cause of all people of the United States.

Patrick F. Healy, Executive Director
National District Attorneys Association
Chicago, Illinois

PREFACE

This is one in a series of manuals being published by the National District Attorneys Association and the National Center for Prosecution Management as practical aids to prosecutors in the planning, administration and operation of their offices. Publication of the manuals has been made possible by a grant to the National District Attorneys Association from the Law Enforcement Assistance Administration of the U.S. Department of Justice.

Development and issuance of these handbooks is a part of the program of the National Center for Prosecution Management to provide assistance in improving the management of the prosecution function throughout the United States. The project involved participation by the Executive Board and staff of the National Center, a Subject Matter Consultant, two formal advisory and review Boards, and a number of District Attorneys and their staffs.

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The Subject Matter Consultant for this manual was E. H. Williams, Jr., District Attorney, Third Judicial District, Las Cruces, New Mexico. Mr . Williams was first elected to his present office in 1965 and has held the position of District Attorney continuously since then. He holds a B.A. in Journalism as well as his law degree, both from the University of Oklahoma. He was admitted to the Bar in Oklahoma in 1958 and in New Mexico in 1959. He has held office in both the Santa Ana County and the New Mexico Bar Associations, as well as the New Mexico and the National District Attorneys Associations. Mr. Williams was responsible for the research and field studies on which the manual was based, and the development of the basic draft of the manual.

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The following District Attorneys and their staffs in the offices visited were generous of their time in providing information, ideas and advice about their problems and practices.

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PART I. INTRODUCTION

PART I. INTRODUCTION

The purpose of this manual is to provide general guidelines and advice on managing the office of the district attorney of a rural county, or any small office in which the district attorney is either the only prosecutor or has only a minimum number of assistants.

This manual is intended as a guide for the small office prosecutor and particularly the new prosecutor. The issues raised and the subject matter areas covered are therefore set forth as food for thought for the small prosecutor.

1.1. APPROACH OF MANUAL

In 1972-73, the National Center for Prosecution Management conducted a study to develop statistical data on characteristics of prosecutors in the United States. The results of this study showed that nearly 78 percent of American prosecutors' offices have four or fewer prosecutors and that nearly 49 percent are single-attorney offices.[1/] This analysis, together with widespread comment received from across the nation, pointed to a need for a manual specifically designed for these smaller offices.

Each of the other publications in this series focuses on a specialized function of a prosecutor's office. This manual, on the other hand, is concerned with all major aspects of managing an office composed of less than five prosecuting attorneys. The prosecutor and

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1/ *First Annual Report of the National Center for Prosecution Management, 1972. Washington, D.C.*

his assistants, if any, may be "full-time" or "part-time." (What are commonly referred to as "part-time" prosecutors, may be more accurately referred to as "partially compensated" in that they are permitted to maintain some private practice.)

Many of these prosecutors have both civil and criminal responsibilities. This manual, due to budgetary and time limitations, concentrates on the criminal aspect of the district attorney's duties. It is our concern to cover those areas which (1) cause the district attorney the most problems and, (2) will upgrade the prosecution function if developed properly. It is recognized that civil duties are important and may occupy much of the time available to many prosecutors, but the criminal side is considered to be their primary responsibility and specialization.

1.2 PROSECUTOR'S OFFICE AS A SYSTEM

What is coming to be known as "prosecution management" is a systems approach to the prosecution function. In this approach, the prosecutor's office is considered to be a system in itself as well as one element or sub-system of a local or state criminal justice system. The approach has been used effectively by the National Center for Prosecution Management in its efforts to improve prosecutor's offices.

In applying the prosecution management concept to the District Attorney, he is considered to function in three principal roles: as a lawyer; as a manager; and a politician or policy-maker. In organizing the office, these roles may be expanded into groups of activities which function as sub-systems of the whole office, as follows:

- Lawyer. He is chief law enforcement officer of the community. Supporting this role are the prosecution operations, which include the basic legal activities of the office: the processing of cases from intake and screening through preliminary hearing, arraignment, plea negotiation, trial, appeal, and final disposition.

- Manager. He is the head of a law firm. Supporting this role are the functions of administration, which includes those activities principally related to the management of resources required to carry on the operations. Administrative functions include personnal management, budgeting, accounting, recordkeeping, data processing, purchasing, supply management, and similar activities.

- Politician. He is an elected official, required to respond directly to certain needs of the public. Supporting his role are the planning and program development functions of the office, which include the analysis and evaluation of existing operational and administrative activities, the planning the development of new programs, for serving the public, the anticipation of and preparation for future changes in workload, resources, or changes in the legal, political, or community environment.

In most cases the prosecutor's jurisdiction will coincide with the county, although more states are moving to establish multi-county districts. This manual is generally addressed, therefore, to the prosecutor whose district is a county.

1.3 TITLES

Organizational titles of prosecuting attorneys vary among jurisdictions, often as the result of state law. This manual makes no attempt to change state or local usage, but for clarity in discussion certain standard titles will be used throughout the manual. The most general term applied to any attorney engaged in prosecution work will be prosecutor or prosecuting attorney. These terms will refer to either the head of the office or any of his attorney subordinates.

Chief prosecutor or district attorney (DA) will be used to refer to the head of the office, whether elected or appointed. Although official titles of this position (at the county or judicial district level) may be prosecuting attorney, county attorney, state's attorney, county prosecutor, or other title, the most common is district attorney, which will be used here to include all of the others.

Deputy district attorney or deputy will be used to refer to the No. 2 position, which may in some offices be called first assistant, principal assistant, or another title. Working prosecuting attorneys without organizational title will be referred to as assistant district attorney.

1.4 CONCLUSIONS AND RECOMMENDATIONS

The following are general conclusions and recommendations abstracted from the text to provide the District Attorney with a quick review of the forthcoming materials of this handbook. This is not meant to be a direct reference to the text, as an abstract of the text and an index is provided for this purpose.

The District Attorney as an Elected Official (Part II)

The most general role and responsibility of the District Attorney is that of a government official elected by the people of his jurisdiction to serve and protect their interests. To do this he must be a politician, policy-maker, planner and leader in the community he serves.

Actual trial work usually comprises only a small portion of the prosecutor's responsibility. Therefore, the first, and probably the most important thing a prosecutor should do upon assuming his elected duties is to survey the statutes to determine what is required. The duties of each office vary in every state. Civil responsibilities will vary from jurisdiction to jurisdiction. The District Attorney is attorney for the state and county in which elected. He is often given the duty of representing the county in civil actions, and is also often the attorney and legal advisor of all county officials in matters pertaining to official business of the county.

Basic to the independence of a prosecutor's office is the District Attorney's power to charge or not to charge. At the state level there is strong precedent, and specific state authority in many instances, for prosecutors to exercise considerable discretion in charging.

In addition to broad discretionary powers, certain states have enacted statutes requiring District Attorney approval before a criminal prosecution can be commenced.

The American District Attorney is considered to be an arm of the executive branch of government. Therefore, when he exercises his discretion in any given case, his action is not ordinarily subject to review by the courts.

While attempting to convict those guilty of violating the laws of the land, the prosecutor must also see to it that the individual freedoms and constitutional guarantees of every citizen are protected.

A good prosecutor utilizing proper management techniques may find many serious matters resolved without trial.

The District Attorney is in a position to provide coordination and leadership to the criminal justice effort in his county.

As a policy-maker there are several areas which the District Attorney might explore: specialized training, formation of committees. develop and conduct seminars, courses, etc.

The District Attorney can be instrumental in recommending and installing general improvements to the system.

It is a good policy to keep police agencies advised of all decisions which affect police work, but should avoid assumption of police powers.

Activities of the District Attorney's office can also be directed toward meeting special needs of the community.

The District Attorney as Lawyer (Part III)

Criminal Matters

A prosecutor can spend a smaller portion of his time in the trial of criminal matters if he effectively carries out the investigation, intake, screening, negotiated plea and other functions of his office.

A prosecutor must always be alert for the phrase on police reports, 'case closed by arrest.' Cases are opened by arrest not closed.

A prosecutor should maintain, on a rotating basis, someone available at all times to assist or confer with law enforcement agencies concerning their problems.

Screening is defined as the process whereby a prosecuting attorney examines the facts of a situation presented to him, and exercises his discretion to determine what further action, if any, should be taken.

Manpower devoted to screening the intake flow at the lower court level can be expected to exert maximum impact on the greatest number of cases at the earliest possible time.

As a part of the intake-screening process, and the investigation of any case, the prosecutor should consider all available alternatives by other agencies.

The term diversion refers to halting or suspending before conviction formal criminal proceedings against a person on the condition or assumption that he will do something in return.

Whether the formalization of such an approach is possible or necessary, it is important to develop general criteria and standards for the evaluation of the alleged offender and possible 'alternative' rehabilitative programs.

The prosecutor should determine from the applicable laws whether or not the grand jury can be used to assist efficiently and effectively in the criminal process.

A prosecutor, in his presentation of a case, can use the grand jury to assist in the screening process.

Plea negotiation should be for the benefit of the entire local criminal justice system and society. It should be a cooperative venture entered into equally by the prosecutor, defense and the court and should not be for administrative purposes.

The best tool in plea negotiations the District Attorney has is an accurate charge.

Sentence recommendation was identified as a significant factor by the National Center for Prosecution Management classification survey. The power of this factor lies in its ability to enhance the strength of the prosecutor's role in plea negotiations. This power should increase case dispositions within a shorter period of time.

It is important for the prosecutor to establish, within his office, some standards or outline of factors to be considered which influence the plea negotiations procedure.

In every instance of negotiated plea or sentence, the prosecutor should see that written documentation as to the negotiation be made a part of the record.

While preparation is the key to a successful trial and no theme is stressed more in trial seminars, many rural prosecutors often find themselves without adequate preparation.

Many problems can be eased, if not avoided through the simple process of a standard check list for each file.

The prosecutor should find a form of preparation which affords him an orderly method, together with a checklist, so that, upon entering the court for trial he is ready to meet the issues.

One factor that can assist in the trial of a case is the presence of an advisory witness. There is no abuse of judicial discretion in permitting the state to have one of the investigating officers or other witnesses excused from the rule sequestering witnesses, to sit at counsel table with the prosecutor to assist him during trial.

Several special problem areas should be considered when developing overall policy and procedure guidelines. These include:

Worthless checks, nonsupport-abandonment, consumer fraud, and court practices and procedures.

Iowa, Oklahoma and Florida have, in recent years, established systems for broadening the base of local prosecution.

Iowa area prosecutor program (grant) provides assistance to county attorneys in multi-county areas on special prosecution problems which a county attorney feels he cannot deal with alone.

Oklahoma district attorney system required legislation and involved the organization of a number of multi-county districts, each with a full-time district attorney--salaried by the state.

Florida judicial circuit system was a result of a constitutional amendment establishing multi-county judicial districts and a two-tiered court system.

Grant funds are available from the U.S. Department of Justice, LEAA through various state associations. Contact Regional Planning Agency and State Training Coordinators.

Civil Matters

Within the civil jurisdiction of the prosecutor, certain matters can generally be handled by secretarial staff or para-legal personnel. In each instance, the establishment of policy and procedures with standardized forms, will enable the prosecutor to delegate the handling of these matters to the appropriately trained staff.

URESA can be one of the easiest civil activities of the office involving a minimum amount of the prosecutor's time if proper instructions, training and procedures are established for para-legal personnel.

At an early date the prosecutor should determine the degree of participation by his office in juvenile proceedings.

If a prosecutor desires to minimize his participation in juvenile proceedings he should make sure there is someone in juvenile probation or from another agency handling the bulk of the juvenile court work who can properly screen and file the cases being presented in court.

One consideration when delegating handling of juvenile matters to the juvenile probation or other related officer or agency, is the opportunity to work out many juvenile problems without resort to the courts.

In his official capacity the prosecutor must be careful to avoid placing himself in the policy or decision-making position of the county official.

Welfare and other agencies are valuable information and research tools for the prosecutor if utilized properly.

The District Attorney as Manager (Part IV)

Administration

This section will concentrate on the administrative aspects of a smaller prosecutor's office, on the prosecutor's role as a manager. In this role, in addition to directing the legal and prosecutory operations of the office, he is concerned with obtaining and managing the money, personnel, supplies, services and other resources needed to support these operations. Control over his resources provides the district attorney with a large measure of control over the office as a whole.

The district attorney must often face the existence of practices which have grown over the years without planning. He needs to ask continuously why things are being done in the traditional way.

The single most important and profitable administrative decisions begin with the employment of competent personnel.

In all probability the small office can only offer partial compensation to attorneys. The district attorney will therefore need to stress other things which such employment can offer: public service, excitement, public recognition, etc.

In many offices, the overall character of the prosecutor's offices is reflected by the personality and capability of the secretarial staff.

The district attorney's secretary can be and often is the key administrative person in the office.

An investigator can perform valuable tasks in interviewing, screening and handling citizen complaints. He can be a valuable liaison with police agencies and provides an important inter-agency communications channel for the district attorney's office.

It is important that the prosecutor understand his local budget system and learn how to use it to his own best advantage.

Generally a 'program' budget allocating money to the programs or activities carried out by an office is far more useful as a management tool for the prosecutor than is a line item budget.

The prosecutor should familiarize himself with the source of funds for all government operations, as well as the potential sources of both state and federal funds.

The budget process is also directly related to the financial resources available to the community.

The budget process via the budget document serves as an important information link with the public.

It is important that the district attorney recognize that he is but one of many public officials competing for funds from the same source and act accordingly.

Written office policies, clearly stated and understood, including areas of authority and obligation on the part of each employee, are extremely important and will probably do more to resolve office confusion than any other management technique available.

Just as important as obtaining adequate staff is the development of a system of work assignment within the office. Such a system should be simple to understand, and should not necessarily require specific assignment of each case by the prosecutor.

Where an investigator is available, the prosecutor should not overlook the opportunity to refer office visitors to him. This can be particularly helpful in cases involving citizen complaints at the time of intake.

Specific work assignments regarding visitors, phone calls, incoming mail, etc. should be established in the office. The entire staff should be aware of who is handling what, otherwise the prosecutor will become the point of distribution.

A very important addition to a district attorney's office which deals with multiple police agencies would be a uniform police report form.

This type of form is important in many ways. It provides necessary basic information to support the initial charge decision and serves as a guide in subsequent collection of additional information and preparation of the case.

The police report form should be standardized with the cooperation of the police agencies and district attorneys in order to serve as a reliable prosecutor information form.

A direct result of uniform procedures and reporting system development would be better case preparation, witness selection and notification, case tracking and reduced caseload in regard to bad cases actually getting into the system.

The case folder serves to gather together pertinent working papers and if utilized properly becomes a valuable recording tool regarding useful information concerning the case and can supply valuable statistical data on a uniform basis.

The use of a standardized folder provides automatic guidance in the processing of cases. Standardized forms and required minimum data elements allow for uniform case processing, review of district attorney legal policy and creates a statistical base for uniform data gathering and review.

Generally, filing systems are established on either an alphabetically or numerical basis.

Every efficient system must have a simple, orderly method for closing and storage of files, yet retain the ability to retrieve the files when needed.

Many states have adopted laws, rules or regulations governing disposition of files and prosecutors should check individual state laws on records management to determine when storage or destruction is permitted.

PART II. THE DISTRICT ATTORNEY AS AN ELECTED OFFICIAL

Policy and Planning

PART II. THE DISTRICT ATTORNEY AS AN ELECTED OFFICIAL

POLICY AND PLANNING

The most general role and responsibility of the District Attorney is that of a government official elected by the people of his jurisdiction to serve and protect their interests. To do this he must be a politician, policy-maker, planner, and leader in the community which he serves. Part II is concerned with defining and describing that overall role. Discussed below, therefore, are the kinds of statutory requirements which define his legal authority and duties; the sources of power in the law which provide a base for leadership; and his responsibilities for leadership in the local criminal justice system, in the local and state governments, and in the community as a whole.

2.1 LEGAL RESPONSIBILITIES OF THE DISTRICT ATTORNEY

An attorney, in campaigning for election as prosecutor and in surveying the prosecutor's office, may fail to realize the many responsibilities charged to the office he is seeking. The excitement and drama of the courtroom and the intrigue of criminal prosecution captures the imagination of many new prosecutors. It takes little time in the office, however, to realize that trial work actually comprises only a small portion of the prosecutor's responsibility.

A. General Statutory Duties

The first, and probably the most important thing a prosecutor should do upon assuming his elected duties is to survey the statutes

to determine what is required of the prosecutor. The duties of each office vary in every state, of course.

However, the following is a set of general statutory provisions drawn from several jurisdictions, set forth as an example of the general range of a prosecutor's legally-required duties and responsibilities.[2/]

- Commence and prosecute all actions, suits, indictments, civil and criminal, in any court of record (and in some jurisdictions, in lower courts, not of record) in his county, in which the people of the state or county may be concerned.

- Prosecute all forfeited bonds and recognizances, and all actions and proceedings for the recovery of debts, revenues, monies, fines, penalties and forfeitures accruing to the state or his county.

- Commence and prosecute all actions and proceedings brought by any county officer in his official capacity.

- Defend all actions and proceedings brought against his county, or against any county or state officer, in his official capacity, within his county.

- Attend the examination of all persons brought before any judge or habeas corpus, when the prosecution is in his county.

- Give his opinion, as public duty, to any officer in his county, upon any question of law relating to any criminal or other matters.

- Assist the attorney general whenever it may be necessary, and in cases of appeal from his county to the Supreme Court.

- Pay all monies received by him in trust, without delay, to the officer who by law is entitled to the custody thereof.

2/ *Statutes of the State of Illinois, Chapter 14, Section V and Article VI, Section 19, of the 1970 Constitution of the State of Illinois.*

The district attorney also may be assigned specific responsibilities in statutes dealing with other areas, such as: adoption, collection and disposition of fines and forfeitures, mental commitments, narcotics control, paternity proceedings, prosecution of persons in violation of local boards of health rules, public improvements, and prosecutions for fraud.

While this outline of duties would seem rather complete, in Illinois for example, there are at least 26 other specific areas in which the prosecutor is legally required to act, ranging from adoption matters, to water rights.[3/] A similar situation exists in other jurisdictions, and a complete search of the statutes in each state is necessary to determine all areas of prosecutor involvement. In Michigan such a search of the statutes identified 50 additional areas of obligation directly involving the Michigan prosecuting attorneys.[4/]

B. Civil Responsibilities

The district attorney as attorney for the state and the county in which he is elected, is also often given the duty of representing the county in civil actions, unless assigned to another by express statutory provision. The district attorney is often the attorney and legal advisor of all county officials in matters pertaining to official business of the county, but his powers and duties usually pertain solely to those matters in which a knowledge of the law is required.

3/ *IBID*

4/ *Michigan Bar State Journal, January 1972, "Other Duties of the Prosecutor," John T. Hammond pp. 40-45.*

Civil responsibilities of the district attorney will vary from jurisdiction to jurisdiction. Although 50-60% of all matters coming to him will be civil in nature, it should be clearly recognized that the district attorney is primarily concerned with the prosecution of criminal matters. Every attorney in the jurisdiction is versed in the handling of civil cases, but the prosecutor is looked upon as the expert in criminal case processing.

In most instances the rural prosecutor is one of the best educated individuals in the community. This is particularly true in the courthouse and among law enforcement agencies where other elected officials or police officers will look to the prosecutor for advice, guidance, and assistance. As the legal advisor for all county officials and the county commission, the prosecutor has an opportunity to impress his opinions, ideas and preferences upon them. The prosecutor must be extremely cautious in his dealings with those individuals to confine his activities to that of a legal advisor, and avoid usurping official authority by making decisions that properly belong to the particular public official.

The phrase, 'the buck stops here', is unbelievably applicable to the rural prosecutor's office. Other public officials often attempt to refer to the prosecutor decisions required of their own offices; the district attorney will have more than enough difficult decisions of his own to make. He must remain mindful of the obligations of other office holders, and should not permit himself to be involved in the decision-making for which they are responsible.

Some additional areas of civil responsibility might include public works and county airport; zoning; tax; non-support and abandonment; mental health; public health and the county health department; and county schools.

2.2 THE DISTRICT ATTORNEY'S DISCRETIONARY POWER

Basic to the independence of a prosecutor's office is the district attorney's power to charge or not to charge. Is his discretionary authority adequate to support such a decision? Does the state law give him this prerogative? Many prosecuting attorneys are not sure. The citations below indicate that considerable legal authority to exercise such discretion does exist in many states.

A. State Level

At the state level there is strong precedent, and specific state authority in many instances, for prosecutors to exercise considerable discretion in charging. A general rule here is summarized in the following quotation.

> The prosecuting attorney has wide discretion in the manner in which his duty shall be performed, and such discretion cannot be interfered with by the courts unless he is proceeding or is about to proceed, without or in excess of jurisdiction. Thus, except as ordained by law, in performance of official acts he may use his own discretion without obligation to follow the judgement of others who may offer suggestions; and his conclusions in the discharge of his official liabilities and responsibilities are not in any ways subservient to the views of the judge as to the handling of the state's case. 5/

5/ *27 Corpus Juris Secondum, p. 648, sec. 10, District and Prosecuting Attorneys.*

The Supreme Court of the State of Wisconsin, likewise, has ruled that:

> The district attorney in Wisconsin is a constitutional officer and is endowed with a discretion that approaches the quasi-judicial...
>
> It is clear that in his functions as a prosecutor he has great discretion in determining whether or not to prosecute. There is no obligation or duty upon a district attorney to prosecute all complaints that may be filed with him. While it is his duty to prosecute criminals, it is obvious that a great portion of the power of the state has been placed in his hands for his use in the furtherance of justice, and this does not, per se, require prosecution in all cases where there appears to be a violation of the law no matter how trivial. In general, the district attorney is not answerable to any other officer of the state in respect to the manner in which he exercises those powers. True, he is answerable to the people, for if he fails in his trust, he can be recalled or defeated at the polls. In the event he willingfully fails to perform his duties or is involved in crime, he may be suspended from office by the governor and removed for cause.6/

Following are examples of the scope of district attorney responsibility within another state system of criminal justice:7/

- The district attorney's purpose, as representative of the people is not just to secure convictions, but to see that justice is done. A district attorney cannot secure convictions by unlawful means.

- It is as much the duty of a prosecuting attorney to see that an individual is not deprived of any statutory or legal rights, as it is to prosecute him for the crime with which he may be charged.

- The district attorney has great powers of discretion. The district attorney's duties require that he investigate facts and from such facts determine whether an offense has been committed against the people.

6/ *State ex. rel. Kurkierevicz v. Cannon, 42 Wis 2nd 368, 166 N.W. 2nd 255 (196)*

7/ *Strengthening the State's Attorney's Offices in Illinois. A Report of a Management Improvement Project for the Illinois State's Attorneys Association, December 1972.*

- The district attorney's office is part of the executive branch of government, and the powers exercised by that office are executive powers. The county governing body (in many jurisdictions) has no power to lessen the duties of the district attorney or curtail exercise of his lawful authority or to control him therein. (parenthesis supplied)

In addition to the broad discretionary powers cited above, certain states (e.g., California, Michigan, and Wisconsin) have enacted statutes requiring the district attorney's approval before a criminal prosecution can be commenced.[8/]

B. Federal Approach

The American district attorney is considered to be an arm of the executive branch of government. Therefore, when he exercises his discretion in any given case, his action is not ordinarily subject to review by the courts. The following citation refers specifically to prosecution of federal laws by United States Attorneys, but it represents the same philosophy expressed above.

> Article II, Section III of the Constitution provides that 'the President shall take care that the Laws shall be faithfully executed'. The prerogative of enforcing the criminal law was vested by the Constitution, therefore, not in the Courts, nor in private citizens, but squarely in the executive arm of the government. Congress has implemented the powers of the President by conferring the power and the duty to institute prosecution for federal offenses upon the United States Attorney for each district. (28 U.S. C.A. 507.)
>
> It by no means follows, however, that the duty to prosecute follows automatically from the presentation of a complaint. The United States Attorney is not a rubber stamp. His problems are not solved by the strict application of an inflexible formula. Rather, their solution calls for the exercise of judgement. Judgement reached primarily balancing the public interest in effective law enforcement against the growing rights of the accused...

8/ *Cal. Penal Code, sec. 712 (1970); Mich. Stat. Ann, sec. 281.*

> All of these considerations point up to the wisdom of vesting broad discretion in the United States Attorney. The federal courts are powerless to interfere with his discretionary power. The court cannot compel him to prosecute a complaint, or even an indictment, whatever his reason for not acting. The remedy for any dereliction of his duty lies, not within the courts, but with the executive branch of our government and ultimately with the people.9/

2.3 EXPANDING ROLE OF THE DISTRICT ATTORNEY

A district attorney can authorize the deprivation of an individual's personal freedom. While attempting to convict those guilty of violating the laws of the land, the prosecutor must also see to it that the individual freedoms and constitutional guarantees of every citizen are protected. While assuming a role of leadership in law enforcement, he should also concern himself with the image of criminal justice in the community.

Often the district attorney is pictured as spending most of his time in trial work. In fact, the substantial demands of the office seldom require court appearance. A good prosecutor utilizing proper techniques of police training, investigation, intake-screening, plea negotiation, etc., may find many serious matters resolved without trial. The efficient prosecutor may spend little of his time in court. Through training seminars, field assistance and daily contact with criminal justice agencies, he can help build an atmosphere of professionalism, honesty and fairness which will be appreciated in the community.

9/ *Pugach v. Klein, 193 F. Supp. 630, 634-5 (1961). See also United States v. Cox, 34 2 F, 2d 167 (5th Cir. 1965); Moses v. Kennedy, 292 F. Supp. 762 (1963).*

A. The District Attorney as a Criminal Justice Leader

The district attorney is in a position to provide coordination and leadership to the criminal justice effort in his county. He occupies a pivotal position in the criminal justice system.

His investigative powers permit him to guide the county's criminal justice efforts toward actual or potential criminal areas. Because an elected district attorney is directly responsible to the voters, he is in a position to act as a check on the conduct of other county officials.

Particularly in smaller counties, the district attorney is often in a strong personal position to provide coordination and leadership to the county's criminal justice efforts. While judges have the same educational and legal background as the district attorney, their prescribed role as arbiter prevents them from becoming directly involved in the county's criminal justice efforts that are a responsibility of the executive branch.

B. Responsibility as Policy-Maker

Following are suggestions as to areas which the district attorney might explore when considering his political and policy role:

- Capitalize on both the statutory and personal powers of his office by adopting a posture of leadership in providing primary stimulus to the criminal justice system in his county.

- Assume the mission of providing specialized training for law enforcement officers, for promoting cooperation among the various law enforcement bodies in his county, and for stimulating improvements in the standards of performance in law enforcement agencies.

- Assist in the formation of a committee of judges, police chiefs, and prosecutors to meet periodically and discuss issues of common interest.

- Develop and conduct training courses for law enforcement staff concerning proper techniques of investigation and arrest, rules of evidence, and new criminal rulings affecting police techniques.

Through community information seminars, the prosecutor can educate the general public to the problems of law enforcement in the jurisdiction. For example, a check clinic might be organized and sponsored by the prosecutor, utilizing as speakers the prosecutor, chief of police, sheriff, FBI agents, Treasury Department representatives, etc. When presented with the co-operation of local banks, chamber of commerce, retail merchants association, etc., for the benefit of the merchants and their employees, such a clinic would assist a broad segment of every community.

C. Inter-Agency Leadership

The district attorney can be a constructive critic of the criminal justice system in his county, point out deficiencies that he is in a unique position to observe, and assist responsible officials to correct them. He can also be instrumental in recommending and installing general improvements to the system.

Good police-prosecutor relations require that the district attorney strive to keep police agencies advised concerning decisions made, the reasons for these decisions, and the results of prosecution activities related to police work. In particular, when declining prosecution, the district attorney should advise the investigating officer as to the basis upon which such a decision is made. The same would hold true with regard to pleas.

Lack of communication between police agencies and the prosecutor and different police agencies constitutes a universally common problem. Police agencies often fail to communicate with each other, share information, and cooperate in investigations unless the district attorney assumes a role of leadership, utilizing joint meetings between agency heads and other activities, as well as requesting assignment of officers from different agencies to participate in common investigations.

The prosecutor must often be willing, many times in the field and at unusual hours of the day or night, to assist local law enforcement officials in the performance of their duties. In some instances, the presence of a prosecutor at the scene of a serious crime may be a tremendous help not only to the police, but to the prosecutor himself. The police officer has the confidence of knowing the prosecutor is present to advise, regarding legal technicalities and the application of evidence being gathered to the material elements of that charge. The prosecutor can also advise concerning

the legal technicalities and requirements concerning evidence seizure. Participation in an advisory capacity in an investigation also makes every aspect of the case, including trial, much easier for the prosecutor.

The prosecutor should be aware, however, of avoiding the assumption of police powers. Further, he should avoid participation in an investigation to such an extent that he becomes a witness, and is thereby precluded from prosecuting the case.

D. Special Problems

The activities of some district attorneys offices have also been directed toward meeting special needs of the community, such as:

- Investigating and evaluating allegations directed toward reported criminal misconduct by any public official.
- Developing special skills required to fight organized crime.
- Training law enforcement officials and prosecuting attorneys, including police educational training programs and monthly publication of law enforcement legal bulletins.
- Publishing pamphlets dealing with problems of interest to the public, such as drug abuse, and how the citizen and businessman can protect himself from robbery, fraud and other crimes.
- Creating a district attorney's advisory council comprised of civic-minded laymen who serve as liaison with the community on law enforcement problems.
- Creating a young citizen's council to improve communications and understanding between youth and law enforcement, organized on a local and county-wide basis.
- Creating a council of leaders in the local criminal justice system to discuss current issues of concern affecting community law enforcement programs and agencies.

PART III. THE DISTRICT ATTORNEY AS A LAWYER

Operations

PART III. OPERATIONS - DISTRICT ATTORNEY AS LAWYER

The district attorney in a rural county or small city often serves as legal advisor to the county government. He must therefore be concerned not only with criminal cases, but with the various civil matters of the county board and other governmental agencies as well. The operations part of this manual therefore discusses both criminal and civil matters.

3.1 CRIMINAL MATTERS

A prosecutor can spend a smaller portion of his time in the trial of criminal matters if he effectively carries out the investigation, in-take, screening, negotiated plea and other functions of his office. In this section some of the problems associated with normal case processing will be discussed.

A. Investigator

A prosecutor must always be alert for the phrase on police reports, 'case closed by arrest'. It is a good practice, particularly in cases where such a phrase is appended to the police report, for the prosecutor to examine that report closely and refer it back to the police agency or to his investigator for further investigation if required. Cases are opened by arrest, not closed. Few cases when presented or arrests made are completely investigated, and in many cases the need for investigation continues up to and sometimes through trial.

The prosecutor or his investigator may use two-way radios on police frequencies in order to be readily available. Paging systems which consist of radio receivers, slightly larger than a pack of cigarettes, and operated from the police switchboard, are

also available to be carried by a prosecutor or investigator during those hours when away from the office, or for notification by a particular police agency when counsel is required. In any event, a prosecutor should maintain, on a rotating basis, someone available at all times to assist or confer with law enforcement agencies concerning their problems.

B. Intake and Screening.[10/]

This section concerns itself with police reporting procedures and the prosecutor screening function. Delay in the prosecutor's receipt of police reports, and the prosecutor's decision to review charges or not prior to filing are both very important.

Screening is defined as the process whereby a prosecuting attorney examines the facts of a situation presented to him, and then exercises his discretion to determine what further action, if any, should be taken.

The American Bar Association Standards on prosecution and defense include a number of factors to be considered in the charge/no charge (screening) decision.

Discretion in the charging decision

> (b)...Illustrative of the factors which the prosecutor may properly consider in exercising his discretion are:
> (i) the prosecutor's reasonable doubt that the accused is in fact guilty;
> (ii) the extent of the harm caused by the offense;
> (iii) the disproportion of the authorized punishment in relation to the particular offense or the offender;

10/ *The reader is directed to Case Screening and Selected Case Processing in Prosecutors' Offices, U.S. Department of Justice, LEAA, National Institute of Law Enforcement and Criminal Justice, March 1973, and The Prosecutor's Screening Function: Case Evaluation and Control, National Center for Prosecution Management, October, 1973.*

(iv) possible improper motives of a complainant;
(v) prolonged non-enforcement of a statute, with community acquiescence;
(vi) reluctance of the victim to testify;
(vii) cooperation of the accused in the apprehension or conviction of others;
(viii) availability and likelihood of prosecution by another jurisdiction.

With increased use of screening techniques, and the development of plea negotiation as a regular prosecutor's tool, emphasis is shifting from the trial as the principal means of settling criminal cases. The proceedings that concern prosecutors occur mostly at stages of intake preceding the trial stage. There, they influence among other things, the caseloads eventually calendared in trial courts; the filing of proper charges; the gathering of necessary evidence; and the disposal of cases through non-trial proceedings. Manpower devoted to screening the intake flow at the lower court level can be expected to exert maximum impact on the greatest number of cases at the earliest possible time.

Therefore, intake screening and early case evaluation can be considered a key responsibility of the district attorney. It is at that point in time when he must exercise his discretionary authority to charge or not to charge. The entire criminal case processing system is linked to this key discretion, and the efficiency and quality of criminal justice is based on this authority.

In addition to improving the quality of cases going into the system, district attorney screening allows for feedback to the various police agencies on significant points of law and legal issues which

affect police work.

Screening provides a mechanism for review of legal policy and allows for district attorney decision-making to reflect current community attitudes and mores as well as providing an early point in the system for screening out or diverting those cases not suitable for criminal processing, which can backlog the courts and district attorney offices.

Long-range results include better quality prosecutions for those cases which get into the system; better quality and fewer cases going to the higher courts and increasing effectiveness of the manpower, facilities and fiscal resources available to criminal justice processing.

While the intake of cases can occur in a variety of ways, effective screening of cases can occur only upon the receipt and examination of reports and/or office conference with investigators and witnesses.

The failure of the prosecutor to establish and maintain standards[11/] and information requirements (either formal or informal) for intake and screening can often result in confusion and embarrassment for the prosecutor. Without standards and evaluation requirements the prosecutor may find himself proceeding with trial, in many instances, without a complete police report, witness statements, evidence report or any of the other investigative reports necessary for trial.

11/ *See NCPM/NDAA "Screening - Case Evaluation and Control," Washington, D.C. 1973.*

It is helpful if a prosecutor can establish a policy and procedure with all law enforcement agencies in his jurisdiction whereby:

(1) No serious criminal case is filed without prior approval by the prosecutor, and

(2) No case is authorized for filing by the prosecutor until a police report is received or detailed interview completed with the investigating officer.

While this might be a departure from the practice in many areas, it will afford an opportunity for orderly intake and screening of cases at the earliest possible moment, thereby avoiding much of the confusion and embarrassment which often results from the improper or erroneous filing of charges.[12/]

C. Citizen Complaints

Citizen complaints warrant particular scrutiny and screening. It is a good practice, in each instance of complaint, to refer that individual to the appropriate police agency for purposes of investigation. Such a requirement insulates the prosecutor from problems that arise in rural communities as a result of friendships and familiarity the prosecutor may have with some of the complainants. Citizen complaints made to the prosecutor, more often than not, may arise from marital matters, petty offenses, civil cases and other situations which will often be resolved and settled out of court before case investigation is complete.

12/ *The reader is also directed to the NCPM Model Case File Folder (Appendix B) and the Model Prosecution Report, a police/prosecutor report form which is currently under development at the Center.*

As a part of the intake-screening process, and the investigation of any case, the prosecutor should consider all alternatives available through other agencies. In many instances, a possible criminal matter may be handled through the diversion of that particular defendant to a mental health center, vocational rehabilitation agency, welfare agency, alcoholic center, etc.

Citizen complaints can become a real pitfall to the rural prosecutor. All too often requests for opinions on a variety of issues come into the district attorney's office simply because they know of no one else to turn to. "What do you think?" - "Should I get a lawyer?" and "Will I win?" are some of the common, everyday questions asked of the rural prosecutor.

If a citizen comes in he can be told that if it is a criminal matter the district attorney can advise you or refer you to the proper agency; if it is a civil matter, he cannot offer advice. In some jurisdictions giving advice on civil matters is prohibited by law and one district attorney got around this sticky issue by saying, "You wouldn't want me to violate the law would you?"

Another statement to the point is "I'm the attorney for the county and can only accept requests for advice from official county bodies." However, citizens are always on the lookout for a run around where the police refer, the district attorney can't advise, the citizen can't afford a lawyer, he voted for you and expects you to perform for him or they just need you to determine whether they need a lawyer at all.

Be aware that these are some of the problems you will face on a daily basis and in order to manage your time most efficiently it is best to be prepared to deal with them.

D. Alternatives to Prosecution [13/]

Related to the screening decision is the development of deferred prosecution, also commonly referred to as 'diversion' or 'alternatives to prosecution'.

The term 'diversion' refers to halting or suspending before conviction formal criminal proceedings against a person on the condition or assumption that he will do something in return. Action taken after conviction is not diversion in this sense, because at that point the criminal prosecution already has been permitted to reach its conclusion, the determination of criminal guilt. [14/]

Whether the formalization of such an approach is possible or necessary, it is important to develop general criteria and standards for the evaluation of the alleged offender and possible 'alternative' rehabilitative programs. This in the long run, provides more effective allocation of scarce resources and increased equity in the criminal justice process.

"In evaluating the cost to society of diverting an offender, consideration should be given to the possibility that the offender, having been processed to an extent in the criminal justice system, will of itself have the desired deterrent effect."[15/]

13/ *The reader is directed to the NCPM manual on Deferred Prosecution to be available in the Summer of 1974.*

14/ *NCCJ Working Papers - The Courts, Chapter 2 - Standards for Diversion, January 1973.*

15/ *IBID*

As an example, indecent exposure is an action often indicating a mental rather than criminal problem. Conviction of indecent exposure, although a minor offense under the laws of most states, carries with it a stigma which is often difficult for the defendant to overcome. Unless there are other more serious considerations, a prosecutor, exercising his discretionary function, might divert the accused in this case to a psychiatrist or mental health facility, rather than involving him or her in the criminal justice system.

Cases involving first offenders where the offense might possibly be serious, but the manner in which it was committed is indicative of a practical joke, school boy prank, etc., may be handled through a 'desk drawer' probationary procedure. The accused is advised that no case will be filed pending his good behavior over a definite period of time. Reduced charges can also be used to deal with problems such as those mentioned above.

In exercising this discretionary function, the prosecutor must make sure that he is fully informed as to all aspects of the offense, the victim and the offender. Being so informed, he must make an honest, educated and sincere determination as to the action to be taken. The prosecutor should also take care that the victim is fully aware of all action taken and the reasons for such action.

If a prosecutor can subject his cases to early screening, he will find much can be done to avoid problems which would later arise. Although screening of cases at the earliest possible time is by far the most beneficial procedure, screening is a continuous function throughout the course of all criminal proceedings.

The National Center is currently developing a handbook for prosecutors regarding the deferred prosecution process. The manual will deal, in part, with how to start such a process in a district attorney's office, and how to plan, implement and review the programs. Copies should be available in the summer from NDAA.

E. Grand Jury

The use of the grand jury by the prosecutor is a factor over which he has limited control. Grand juries may contribute to delay and are often used in lieu of effective screening at intake. Grand juries require additional witness appearances, additional staff and paperwork and if nothing else add another processing step to the prosecution function. Often, they are used as a screening vehicle for ridding the criminal justice system of 'garbage' which should have been disposed of prior to a committing magistrate hearing, a preliminary examination, an arraignment, bindover or presentment.

The prosecutor should determine from the applicable laws, whether or not the grand jury can be used to assist efficiently and effectively in the criminal process. Practices vary from jurisdiction to jurisdiction and in some states the grand jury is an extraordinary investigative tool, causing public excitement and much publicity when used to investigate the activities of public officials and agencies. In other jurisdictions, a grand jury indictment is required as a part of the normal criminal process.

Where the grand jury is optional, the prosecutor may call the grand jury in for regular or special hearings, and may determine

the docket or the agenda. The prosecutor may exercise some control and use the grand jury to assist in many of the difficult decisions that confront his office from time to time. While a segment of the community might be adamant, for instance, in a request for prosecution resulting from a special situation, presentation of the case to the grand jury along with the explanation by the prosecutor of the absence of appropriate state laws or difficulty of prosecution, often results in a grand jury 'no bill'. The prosecutor is then in a position to justify his refusal to prosecute, with the explanation that the inability to convince the grand jurors would negate the possibility of obtaining a unanimous guilty verdict on trial of the case in court.

A prosecutor, in his presentation of a case, can use the grand jury to assist in the screening process. Not only can the prosecutor subpoena witnesses before the grand jury that might appear on behalf of the defense during trial and thereby obtain some information concerning the defense to be raised, but he also can discourage an indictment in question, thereby screening bad cases out of the system.

Often, investigation or prosecution will be hampered as a result of some peculiarity in the law or the absence of a law which would be of assistance. For example, some states do not have any law or procedure whereby witness immunity can be granted. The inability to grant a witness immunity from prosecution in exchange for valuable testimony, can prohibit full investigation or prosecution of a case. When these factors are explained to a grand jury, the

grand jury can assist the prosecutor in attempting to obtain passage of new laws or amendments. This can be done through final or interim reports of the grand jury which can be sent to the legislature or an appropriate public official.

From time to time, in the course of grand jury proceedings, extra time will be available to the grand jury during the course of a grand jury day. It is a good practice, should this occur, to arrange through various agencies for demonstrations of different types of narcotics, radar and speed control methods, and other procedures used by local law enforcement. These procedures are of relatively common use and may be unfamiliar to the community.

In many rural areas, where you cannot file a prosecution information, the prosecutors may use the grand jury as a time and money saver by presenting cases to the grand jury rather than through preliminary hearing. Particularly in areas where defense of indigent defendants is handled on a court appointed basis, preliminary hearings and 'fishing expeditions' carried on by the court appointed defense attorneys take up an inordinate amount of the prosecutor's time, and the preparation of the transcripts of trial involve substantial costs. When the grand jury is available, depending on the jurisdiction, it may be justified on the basis of savings of time and money, when a comparison is made to the cost and time of the preliminary hearing.

F. Plea Negotiation

Plea negotiation is one of the most often discussed and least understood functions of the prosecutor's office. Plea negotiations

are a necessary and important part of the criminal process. However, as a part of the process, these negotiations must be permeated with the honesty, impartiality and fairness that is essential to the administration of justice.

Plea negotiation should be for the benefit of the entire local criminal justice system and society. It should also be a cooperative venture entered into equally by the prosecutor, defense and the court, and should not be for administrative purposes. All too often a prosecutor will take the responsibilities for a poorly negotiated plea. Don't get boxed into a plea to satisfy a court calendar as this is not a justifiable reason for taking a plea.

In some instances and where applicable, you may wish as part of your plea negotiation to insist that this plea be made only in conjunction with a companion negotiated sentence. Negotiations should not be entered into from the side of weaknesses. You should be convinced that the man is guilty from the power of your case.

The rural prosecutor should share the responsibility of plea negotiations with others in the system. In some jurisdictions broad policy regarding certain types of offenses has been developed with the cooperation of other agencies in the local system. For example, all crimes of violence, armed robberies, etc. in one jurisdiction, will get some jail time. This is a reflection of broad policy decisions made by the local criminal justice agencies.

If policy is developed, however, without the cooperation of these agencies it is certainly advisable to communicate these policies to

law enforcement, corrections, etc. No matter how much communication exists, it has often been said, it is not enough. All negotiations in addition, should be documented in court or for the court prior to trial.

Plea negotiations should not take place unless the prosecutor has evidence of the guilt of the defendant and is individually convinced that he is not innocent. In considering a case for plea negotiation, the prosecutor must be particularly mindful of the defendant's rights as well as the need to protect society.

There are two types of negotiated plea. In one, the defendant pleads guilty to a lesser or companion offense. In pleading to the lesser offense, for example, entering a plea to manslaughter when charged initially with murder the defendant reduces the possible penalty he might receive. In pleading to a companion charge, even though the penalties are identical, the defendant can protect himself from the stigma or impact carried by the original charge, where the circumstances are justified, or avoid more than one conviction. For example, where disorderly conduct and indecent exposure carry the same penalty, a plea to disorderly conduct rather than indecent exposure, while subjecting the defendant to the same possible penalty, would protect himself from the stigma that would go with the indecent exposure conviction. However, it has also been expressed that in some instances it is better not to hide the original offense or the propensity to that type of offense. This allows law enforcement to better know who they are dealing with in the event of another offense. Proper charging at the time of plea also indicates a sense of fair play on the part of

the prosecutor. Over charging as a rule simply complicates the game defense plays in order to reduce charges. Don't file a bad charge. The best tool in plea negotiations you've got is an accurate charge.

G. Sentence Recommendations

A second type of negotiated plea involves, in fact, negotiated sentences. In such an instance, the defendant might plead to the original charge, but upon recommendation of the prosecution, would receive a specified sentence.

Sentence recommendation was identified as a significant factor by the National Center for Prosecution Management classification survey. The power of this factor lies in its ability to enhance the strength of the prosecutor's role in plea negotiation. This power should not only tend to increase case dispositions within a shorter period of time but also increase the efficiency of the criminal justice system in disposing of cases before they reach the trial stage.

While the negotiated sentence is probably the most common form of plea negotiation, this fact results from the prevailing desire of the defendant to know what his sentence is going to be prior to the entry of the plea. Recommendation of sentence made by the prosecutor is not binding on the court. It is a suggestion only and the defendant must be ready to accept the punishment as provided by statute. The defendant, in some cases, is permitted to withdraw the plea of guilty, in those instances where the court does not accept

the recommended sentence and imposes other penalties. In order to avoid this, the negotiated sentence should be discussed and documented prior to the entry of the plea, where permissible, by the prosecutor and defense counsel with the court. This is in order to assure that the proposal is acceptable to the court.

While considering negotiated pleas, the prosecutor must remember the purposes of punishment are: (1) to rehabilitate the defendant, (2) to protect society from the conduct and activities of the defendant and (3) to deter others in society from committing similar offenses. Regardless of what form of plea negotiations are followed, the prosecutor must, through his recommendation or the type of negotiations employed, place the defendant before the court, in a position to be dealt with so as to achieve those goals as stated above.

While it is not necessary to impose a greater standard of integrity, impartiality or fairness upon the prosecutor, since he should at all times maintain the highest degree possible, plea negotiation calls upon the prosecutor to exercise the highest degree of these traits.

It is important for the prosecutor to establish, within his office, some standards or outline of factors to be considered which influence the plea negotiations procedure. The prosecutor should not hesitate to 'bite the bullet' and dismiss the action, rather than to prosecute the innocent or reach an unjust resolution of the case.

In every instance of negotiated plea or sentence, the prosecutor must make sure that the entry of the plea by the defendant is proper,

and is not the result of threatened prosecution on other charges, or enhanced or excessive punishment. Insofar as possible, the entry of the plea must be free and voluntary and not the result of an offer of leniency through probated, suspended or probationary sentences.

In every instance of negotiated plea or sentence, the prosecutor should see that written documentation as to the negotiation be made a part of the record. Plea negotiations should be carried on by the prosecutor professionally. The prosecutor should have available within his file factors which influence the entry of the negotiated plea, and be willing upon conclusion of the case, to divulge same, should a request be made.

It is important to the understanding of the negotiated plea that the negotiations be carried on openly.

H. Trial Preparation

Trial preparation generally is less difficult for the rural prosecutor than the metropolitan prosecutor, by reason of his familiarity with the people and places involved. This familiarity, however, can also permit a prosecutor to become sloppy and careless in preparation. Each prosecutor must devise a format suitable to his office for trial preparation.

While preparation is the key to a successful trial and no theme is stressed more in trial seminars, many rural prosecutors for various reasons, often find themselves trying their cases without adequate preparation. Even when a poorly prepared trial is successful, the prosecutor finds it much more difficult due to the

uncertainty resulting from failure to be adequately ready for the problems of trial. Too often, a prosecutor will overlook many details of the case. While trying to prove the identity of a defendant, relying on eye witness testimony without prior review, a prosecutor may find that identification is unreliable. This happens often during trial and the closing arguments. Similar reliance on confessions, admissions and inculpatory statements can drag the poorly prepared prosecutor into serious trial problems.

Many of these problems can be eased, if not avoided, through the simple process of a standard check list for each file.[16/] A form, which indicates the date and time of trial, witnesses needed and other information necessary for trial is useful.[17/] Each prosecutor should prepare a form best suited to his needs. In each instance, such a check list should be furnished to the trial prosecutor at the time the case is set for trial. The form could easily be expanded to indicate the availability of witness statements in the prosecutor's file, as well as directions to the investigator or police agency concerning additional statements or investigation required. This list could then be furnished the secretary for purposes of issuing witness subpoenas and to the investigator or police agency for their follow-up investigation.

No two attorneys try, or prepare, a case in the same manner. It is impossible to develop a trial preparation system capable of

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16/ *See NCPM Model Case File Folder. Appendix B.*

17/ *See Appendix A. Examples of District Attorney operating forms.*

fitting every attorney. Any system that is used in trial preparation or to assist during the trial of cases should be simple and easy to use so as to avoid the delays and embarrassment often occasioned when searching through a file in the course of trial for information, evidence, statements, etc.

Some attorneys have solved this problem utilizing alphabetized notebooks, placing witness statements, questionnaires and background information alphabetically, as well as including evidence lists, FBI record sheets, points and authorities on known questions of law, and other information therein. Other attorneys have organized their case in alphabetized collapsible files into which the same information is placed alphabetically as in the notebook. A disadvantage to this procedure is that several statements, documents or other items might be placed in the file pocket under item A, and delay occurs in sorting documents to locate the one needed at a particular time. A benefit exists in that notes to remember during closing argument or on cross examination can be slipped into the appropriate pocket during various stages of trial. These then can be easily retrieved when needed at closing argument, cross examination, etc. Other attorneys prefer legal pads, briefly outlining the individual witness's testimony and the proposed order of trial; some use large desk pads on which all witnesses are listed with proof to be elicited from each; others use 3 x 5 or 5 x 7 cards. The methods of preparation and trial techniques goes on and on. The point to be made is that each

prosecutor should find a form of preparation which affords him an orderly method of preparation, together with a checklist, so that, upon entering the courtroom for trial he is ready to meet the issues and is not in the position of having overlooked important elements of the case.

Some attorneys have compared the trial of a jury case to a theater production. This comparison is not unfair or improper. In addition to an attorney, the prosecutor must be a psychologist, actor and showman. In order to fulfill these roles, the prosecutor must have prepared his lines. Once in the courtroom, thoroughly prepared and ready for trial, the play will unfold and result in a successful prosecution.

I. Advisory Witnesses

One further factor that can assist in the trial of a case is the presence of an advisory witness. As a general rule the defense will invoke the rule sequestering witnesses. Defendant will be present to assist his counsel in the trial of the case, and to point out to defense counsel discrepancies, inconsistencies and problems with the evidence. Prosecutors, having no individual client, are often times required to proceed without assistance. Such a situation does not have to occur. In many jurisdictions, the invoking of the rule sequestering witnesses is a matter of discretion with the court. There is no abuse of judicial discretion in permitting the state to have one of the investigating officers or other witnesses excused from the rule to sit at counsel table with the prosecutor to assist him during trial. (See CJS Criminal Laws, Page 1079 and cases cited therein.)

In trial preparation, the prosecutor should not overlook the resources available to him by way of advice or assistance from his fellow prosecutors, his state training coordinator or executive director, the attorney general, the National District Attorney's Association, the National College of District Attorneys or the National Center for Prosecution Management. Other agencies are more than willing, if not anxious to assist, and the prosecutor will find many such agencies specializing in certain areas of science, social problems, etc. available, subject to the call of the prosecutor, to help in the preparation for trial or trial of cases involving peculiar, technical or specialized problems.

3.2 SPECIAL CRIMINAL PROBLEMS

Several special problems should be considered when developing policy and procedure guidelines. Most typical of these would be the worthless check cases. Prosecutors are not collection agencies via the small claims court. Unless the prosecutor wants to undertake the prosecution and collection of worthless checks for political purposes, community or statistical reasons, or is statutorily required to do so, caution should be exercised in developing such policies.

A. Checks

Some factors to be considered and included in any worthless check policy are as follows:

(1) Date or age of check.
(2) Size of check.
(3) Check paid in exchange for value or on account. (In most states, worthless checks on open account are not a crime.)
(4) Notice of return requirements complied with.
(5) Identification if issued by person who cashed check.
(6) Circumstances under which issued.
(7) Other worthless checks by same defendant.
(8) Bank account activity.
(9) Make sure worthless check has been presented to bank for payment (some require more than once).
(10) "Payment Stopped" checks - civil.
(11) Determine policy re: checks for rent.
(12) Refer to police for investigation.
(13) Set time for worthless check case approval.

B. Nonsupport - Abandonment

Another area of special concern involves nonsupport-abandonment matters. In most instances the criminal laws and procedures pertaining

to nonsupport and abandonment are much more difficult to use than the contempt procedures available through divorce actions. The purpose of most laws pertaining to nonsupport and abandonment pertain to the prosecution of those individuals who criminally abandon or fail to support dependents; and those situations where an order of support has been entered by a court of competent jurisdiction in a divorce or legal separation proceeding and the one ordered to pay fails to comply with the order. Again, the prosecutor must determine his office policy. This could include referral of those individuals to legal aid, a private lawyer or to the attorney handling the divorce matter. In situations where the complainant is receiving welfare benefits and the support money is to be paid to the welfare department, the prosecutor should not overlook the valuable assistance which the welfare agency can furnish in interviewing the nonsupporting parent, checking into resources, employment and assets and in general investigating the case preparatory to non-support or abandonment prosecution. This investigation alone will often prompt a nonpaying parent to more conscientiously attempt to fulfill the obligations of support.

Factors to be considered in abandonment-nonsupport policy include:

(1) Date and length of separation.
(2) Circumstances of separation.
(3) Employment and finances of father.
(4) Pay day of father.
(5) Circumstances of person abandoned.
(6) Department of Welfare or other agency involvement.
(7) Divorce or legal separation pending or completed.
(8) Visitation denial.

C. Consumer Fraud

Many states, through the attorney general or other state agencies have consumer fraud divisions to which complaints can be referred. Other areas have established community consumer fraud agencies manned by individual citizens. In some areas these citizen groups are supported by the prosecutor. Many cases alleged to be consumer fraud are strictly civil as opposed to criminal, and the prosecutor must not hesitate to deny prosecution and refer to private counsel those cases involving civil jurisdiction. Other problems of growing concern which each individual prosecutor should examine and establish policy guidelines and procedures involve welfare fraud, environmental enforcement and zoning.

D. Court Practices

Many things can be done by the prosecutor through his relations with the court to facilitate the operation of his office. The prosecutor should always attempt to maintain a line of communication with the judges before whom he practices. He should not hesitate to make constructive suggestions concerning court procedures. However, in each instance he should be able to show to the court the benefits to be derived. Such things as regularly scheduled arraignment, motion and sentencing dates are of substantial benefit, both to the court and the prosecutor. The prosecutor should not hesitate to discuss the problems created by court practices, and attempt to work with the court to resolve them.

Where relations are such that communications do not exist between the prosecutor and the court, and the prosecutor through normal

channels is unable to communicate with or effect policy changes with the court, the prosecutor should not hesitate to call upon other agencies to assist. The prosecutor is co-equal in importance to the judge and need not be awed by the authority of the court. Should the court persist in attitudes, actions, or procedures which are in violation of law or rules of procedure, the prosecutor, after advising the court of the problems being created and the violations involved, and upon the failure of the court to take corrective steps, should not hesitate to initiate appropriate mandamus, prohibition or other legal action to correct the situation. It also is a good practice, in instances where the prosecutor has the right to appeal or file writs concerning the action of the court and if routes of communication are open, to sit down with and advise the court of the reasons or purposes for such appeal or writ.

In some jurisdictions the prosecutor is able to control the setting of trial dates for misdemeanor and felony trials and the setting of dates for motions and other preliminary matters. If at all possible this type of arrangement should be sought since it overlaps with another important area covered in this manual, that of work assignment and control of attorney personnel. If there is to be any time for preparation, and real assignment of specific cases to specific attorneys, then some degree of prosecutorial control over the court's docket appears almost mandatory.

In that we are speaking in this manual of the smaller operation with fewer assistants, some sort of court docket control would seem especially important. Where personnel is limited, an attorney assigned to that work, may also be accountable for several other duties such as traffic, civil, juvenile, etc; thus emphasis could be placed on assisting the court with docket control and if possible actually doing the scheduling itself.

3.3 CIVIL MATTERS

Within the civil jurisdiction of the prosecutor certain matters almost uniformly handled by prosecutors' offices, often in substantial numbers, can generally be handled by secretarial staff or para-legal personnel. In each instance, the establishment of policy and procedures, with standardized forms, will enable the prosecutor to delegate the handling of these matters to the appropriately trained staff.

A. Reciprocal Enforcement of Support (URESA)

This area of civil activity, generally handled by prosecutors, can be one of the easiest activities of the prosecutor's office, involving a minimum amount of the prosecutor's time if proper instruction, training and procedures are established for para-legal personnel.

Initial screening of office visitors and telephone calls by a properly trained receptionist, secretary or para-legal person, will permit the interception of reciprocal calls which the secretary may handle either individually, or refer to some other office personnel. Many reciprocal support proceedings can be handled by forms. The initial contact can result in the office visitor completing a questionnaire from which the reciprocal support complaint is then typed. A sample of such a questionnaire is attached in Appendix A.

In many instances the requirement that the appropriate social agency fulfill this paperwork obligation, prior to prosecution, provides substantial decrease in workload. Upon receipt of this questionnaire an appointment can be made with the complainant, at

the convenience of the office staff, for the signing of the reciprocal support complaint. From this information and instruction letter, the reciprocal support complainant is put in contact with the proper person who will handle the inquiries regarding case status. For all practical purposes, with the exception of court appearances, the office staff can handle reciprocal enforcement of support proceedings.

In addition to properly trained personnel, a key to the successful handling of these proceedings is regularly informing the reciprocal complainant of the case status. Carbon copies of the prosecutor's outgoing correspondence, as well as photocopies of incoming correspondence forwarded to the complainant, explain action being taken and obviates the necessity for complainants otherwise contacting the prosecutor concerning the case.

Another technique used in some areas involves the delegation of these type proceedings to other agencies, such as the department of public welfare, who prepares the paperwork follow-up, and only contacts the prosecutor's office for approval of complaints and other court documents and for court appearances.

B. Juvenile Proceedings

At an early date, the prosecutor should determine the degree of his participation in juvenile proceedings. A great many things are done in juvenile court, particularly in rural areas, at which the prosecutor's attendance is unnecessary. In rural areas juvenile court proceedings may become much more personalized and individual,

and in many areas the juvenile court has come to rely more on the juvenile probation or social study office than the prosecutor.

If a prosecutor desires to minimize his participation in juvenile proceedings, he should make sure there is someone in juvenile probation, or from another agency, handling the bulk of the juvenile court work who can properly screen and file the cases being presented in that court. Frequently a supervisor provided by the prosecutor's office can oversee this work. Often the prosecutor will be called upon to assist in the training of such an individual. Due to the age of these offenders, there are different considerations important to the screening of juvenile cases than adult criminal cases. In some instances a person trained in social science or psychology might be better equipped to make those decisions than the prosecutor.

Whatever decision is made with regard to the degree of involvement, the prosecutor may eventually be called upon to try the case, in the event it is not resolved prior to trial. He should keep his door open and be available to juvenile authorities to assist them in approving the filing of petitions and oversee other activiries in juvenile proceedings. An effort should be made, depending upon the size of law enforcement agencies within the area, to establish within the individual agencies such juvenile officers or departments. Through the use of such officer or department, many of the juvenile court problems could be avoided, and a great deal of the caseload resolved through the cooperation of the juvenile, his parent, the juvenile officer and the juvenile probation office.

One of the considerations when delegating the handling of juvenile matters to the juvenile probation or other related officer or agency, is the opportunity to work out many of these problems without resort to the courts. However, juvenile court appearances can serve as a deterrent for other juveniles. A proper balance must be maintained in regard to the prosecutor's responsibility in this area to assure that the processing agency does not supplant the court and become the final judge in juvenile cases.

C. County Advisor

Prosecutors are legal advisors to county and other governmental officials in many jurisdictions. In this capacity the prosecutor must be careful to avoid placing himself in the policy or decision-making position of the county official. Many government officials are anxious to permit the prosecutor to assist in the decision-making process. If the advice is good, they will be respected for calling upon their legal counsel for advice. If bad, they can pass the responsibility on to the prosecutor. In order to avoid such problems, it is suggested that prosecutors require the request for legal services to be in writing. The prosecutor should then respond to the inquiry in writing, after a policy decision has been reached by the respective agency.

In jurisdictions where the county commissioners, county board of governors or other board controls the budgetary allotment or finances of the prosecutor, it is important for the prosecutor to carry out his obligations, insofar as the commission is concerned,

on a professional basis. He can assist the board or commission in legally and properly achieving its projects and guide the board's involvement in questionable procedures. The position as legal advisor to the commission or board, in such a situation, could prove beneficial at budget time. However, should the prosecutor overstep his area of authority, neglect the problems of the board or commission, or fail to respond properly to them he could have budgetary and political trouble.

The prosecutor must, of course, always remain professional and should not strain the law or his opinions in an effort to accommodate government officials or county boards.

D. Welfare and Other Agency Relationships

Prosecutors rarely utilize welfare or other agencies sufficiently, yet these agencies are not hesitant to call upon the prosecutor for assistance or advice. Some may not be fully familiar with the role of the prosecutor, the laws applicable to the problems of their office, or procedures within the prosecutor's office affecting their agency. Training sessions can be held where such agencies are advised of these factors and the role of the prosecutor, the nature of the problems handled by prosecutors and the proper procedures to be followed.

There generally is some agency whether it be law enforcement, welfare or other, that can assist the prosecutor in the investigation and preparation of materials necessary to the performance of these

duties involving the prosecutor's office. Calling upon these agencies for help and assistance will create a feeling that the prosecutor is interested in the respective agency and respects the talents and abilities therein. Obviously, such a practice will also serve to facilitate the investigation and handling of such matters within the prosecutor's office.

3.4 RESOURCE DEVELOPMENT

A. Broadening Base of Support

Most small-office prosecutors have single counties as jurisdictions, and are only "part-time" or "partially compensated" because their county governments cannot afford to pay full-time salaries. As a result, most such prosecutors are permitted to have private practices.

This situation of course leads to a number of problems. Although only partially compensated, the prosecuting attorney's official duties may require more than 40 hours a week, leaving little time for private practice. When actually conducted, the part-time private practice opens the possibility of conflicts of interest between public and private cases. Getting competent attorneys who know their economic viability to run for the partially compensated office of prosecutor may also be a problem. Still another is that of having expertise available in the occasional difficult or complex cases which the small office prosecutor has not had the experience to cope with.

In many states such situations are approached in piece-meal fashion such as: a contribution to the local prosecutor's salary by the state to supplement county funding; calling on a prosecutor from a nearby county to help when needed; or asking the Attorney General for special assistance. Other states have approached the matter more systematically. Examples are Iowa, Oklahoma and Florida,

which in recent years have established systems for broadening the base of local prosecution. The systems of these states represent somewhat different approaches.

B. The Iowa Area Prosecutor System

The Iowa system is a limited one, but it was instituted through administrative measures by the prosecutors themselves and did not require either legislative or constitutional changes. In 1970 the Iowa County Attorneys Association began exploring ways to assist partially compensated county attorneys to deal with cases involving conflicts of interest, as well as cases requiring high degrees of expertise or excessive amounts of time. Drawing upon experiences of some other states, the Association, in collaboration with the Iowa Attorney General, established, in July 1971, what is called the "area prosecutor" program.

The program involved the funding of a number of prosecuting attorneys, positioned in the Attorney General's office. They were charged with the responsibility of providing assistance to county attorneys in multi-county areas on special prosecution problems, which a county attorney felt he could not deal with alone. The program was funded by an LEAA grant to the Attorney General's office. Although the Association would have preferred to establish the program independently, it found it could not meet the "match" requirements (local contribution of cash or services) for the grant. Thus it turned to a cooperative arrangement with the Attorney General.

This agreement provided that while the area prosecutors would operate out of the Attorney General's office, they would function only when invited by a county attorney, who retained full control over the procedures and final decisions in each case. The area prosecutors are available for all kinds of assistance, from simple recommendations to conduct of complete trials. The program now includes a full-time research attorney to answer library questions for county attorneys, as well as to digest all Iowa cases and key federal court decisions.

The program has improved the county attorneys' communication and rapport with the Attorney General. A training coordinator is also planned, to be controlled by a five-member board which includes the Attorney General.

C. The Oklahoma District Attorney System

The Oklahoma approach required legislation, which is a slower but broader and more permanent approach than the Iowa system. Essentially, the Oklahoma system involved the organization, in 1967, of a number of multi-county districts, each with a full-time district attorney, first assistant district attorney, and district prosecutor, all salaried by the state. The legislation did not otherwise affect the existing county governments and county court systems.

Prior to adoption of the new system, prosecutors were the county attorneys. Salaries of the county attorneys were paid by the counties, and was based in each case on the assessed valuation of

property in the county served. Salaries were unattractive; of the 77 counties in the state, there were 13 in which no lawyer would run for the job of county attorney. The district attorney's job is now full-time and he can have no private practice. Assistants can be part-time and draw up to 65 percent of the district attorney's salary.

The Oklahoma system is still only a partial solution, and leaves the District Attorney with many operating problems. He must cope with a separate court system for each county. He must go to the board of commissioners of each county in the district for a portion of his budget, in addition to submitting one to the state legislature for the state's share of his funding.

However, many responsible leaders in the state have indicated their belief that the District Attorney system is one of the most beneficial advances in the criminal justice system in the history of the state. Oklahoma District Attorneys have frequently traveled to other states to testify to the state's experience.

D. The Florida Judicial Circuit System

In 1972, the people of Florida approved an amendement to the state consitution which instituted a major reorganization of the state courts, including the prosecution system. The basic structure established was a grouping of the 67 counties of the state into 20 multi-county judicial circuits. Each circuit includes only two tiers of courts, County Courts and Circuit Courts. The reorganization took effect on January 1, 1973.

The new amendment provides for 20 state attorneys, one for each judicial circuit. These state attorneys are elected by the voters of their respective circuits, but their offices are completely funded by the state. Not later than 1977, each state attorney is to have jurisdiction over all prosecutions in his circuit, including violations of state, county and municipal statutes. County attorneys will continue to handle the civil side of county governments' business.

Under the Florida system the state attorney completely by-passes the county government. He is elected by the people of his circuit, and is funded by the state legislature. He is thus a state official with a limited geographical jurisdiction.

E. Grants and Professional Organizations

Grant funds are earmarked for prosecution and are available from various Federal sources including the U.S. Department of Justice through the Law Enforcement Assistance Administration (LEAA), through Regional State Planning Agencies; Governor's Committees and State Associations; the U.S. Department of Labor, Manpower Administration and from the states on a revenue-sharing basis.

Attached as Appendix D is a listing of State Planning Agencies and State Training Coordinators who can provide prosecutors with information regarding how to begin seeking additional funds.

The National District Attorneys Association, the National Center for Prosecution Management, the National College of District Attorneys are available as major resources for prosecutors. Do not hesitate to call upon these associations for assistance or guidance when needed.

PART IV. DISTRICT ATTORNEY AS MANAGER

Administration

PART IV. DISTRICT ATTORNEY AS MANAGER - ADMINISTRATION

A newly elected prosecutor cannot appreciate the number and magnitude of decisions he will face during the course of his term of office. It is necessary in meeting these problems and reaching the appropriate disposition, that the prosecutor create the most favorable atmosphere within his office in which these decisions can be made. Implementation of good office management techniques and procedures, will enable the prosecutor to avoid confusion and efficiently carry out his management responsibilites. This can only be accomplished through employment of a competent staff, proper delegation of authority and implementation of office procedures that permit each staff member to assume his share of the office work. By use of proper office management procedures, the prosecutor and his legal staff will have more uninterrupted time to devote their full attentions to the important decisions that must be made daily in the prosecutor's office. By making these decisions professionally, honestly and after uninterrupted and informed consideration, the prosecutor will find his job more enjoyable and rewarding.

This section will concentrate on the administrative aspects of a small prosecutor's office, on the prosecutor's role as a manager. In this role, in addition to directing the legal and prosecutory operations of the office, he is concerned with obtaining and managing the money, personnel, supplies, services and other resources needed to support these operations. Control over his resources provides the district attorney with a large measure of control over the office as a whole.

4.1 GENERAL

The district attorney often must face the existence, in both the court system and in his own office, of practices which have grown over the years without planning. He may not be able to do much about court or police procedures, but his office procedures are his own responsibility. In either case he needs to ask continuously why things are being done in the traditional way.

This manual provides suggestions which may help in developing improvements in the functioning of the district attorney's office. He must, however, identify his own administrative problems in one way or another, and find the solution which best fit his needs. An open-minded, questioning attitude, applied steadily to all office policies, procedures and practices is the best management tool available.

4.2 PERSONNEL

Undoubtedly, the single most important and profitable administrative decision begins with the employment of competent personnel. As public officials, prosecutors must surround themselves with personnel, secretarial and administrative, as well as legal, who are intelligent, dedicated, competent, personable and loyal. These individuals must realize that they play important parts in the administration of justice and are public servants responding to the needs of the community and the prosecutor's clients.

A. Attorneys

The district attorney himself, and any attorney prosecutors who assist him, are the core of the office. Needless to say, the

district attorney should select his assistants as carefully as he can.

In all probability, the offices with which this manual is most concerned will be able to offer only partial compensation to attorneys. The district attorney and all his attorney assistants may be permitted and expected to engage in private practice to supplement their office income. To overcome the financial disadvantages often associated with working in the prosecutor's office, the district attorney will need to stress other things that such employment can offer: interest and excitement of the work; opportunity for public service; doing something about crime; public prestige and recognition; and contacts in the community.

B. Administrative Staff

In many offices, the over-all character of the prosecutor's office is reflected by the personality and capability of the secretarial staff. The success of an office is directly related to the ability and dedication of the support staff. Often a prosecutor will not appreciate the value of a long-term and competent secretary who, within the limits of delegated authority and ability, can handle a large number of matters which would otherwise cross the prosecutor's desk. Paralegal personnel can and should be utilized to assist the prosecutor. Typical of such matters are URESA proceedings, which can be handled almost entirely by a competent and trained secretary. The district attorney's secretary can be, and often is, the key administrative person in the office. 18/

18/ *The National Center is currently developing college level curriculum for career paralegals for prosecutors' offices.*

c. Investigators

An investigator can perform valuable tasks in interviewing, screening and handling citizen complaints. The investigator may be in a position of prestige, and normally will be as well paid as, if not better than, police personnel. His schedule will be better regulated than personnel of many rural police agencies and his equipment benefits and working conditions probably superior. The investigator can approach these agencies with an offer of assistance, as opposed to an air of direction. In this matter he becomes a valuable liaison with local police agencies and provides an important inter-agency communications channel for the district attorney's office.

4.3 BUDGETING

Although people are the most important element in the prosecutor's office, the district attorney cannot obtain the services of competent personnel without money. People often work at a particular job for less than they might earn elsewhere because of interest in the work, dedication to a cause, loyalty to the boss, etc. But every district attorney needs money to operate and he can do a much better job if he has all he needs. Salaries for personnel usually constitute the district attorney's largest requirements for money. This brings him to the annual task of preparing and presenting his budget to the county board of commissioners or other governmental authority. It is important that the prosecutor understand his local budget system and learn how to use it to his own best advantage. In this connection, the prosecutor may wish to refer to the NCPM Manual, Budgeting for the Prosecutor.

A. The Budget Process

The budget process and the resulting budget document may take one of two forms: 'line-item' or 'program'.

Traditionally, most local governments (especially counties) use a line-item budget. This format presents costs by specific 'objects of expenditure', (e.g., personal services, travel) without reference to the programs and activities for which the services are used. The emphasis is upon what is being purchased rather than what is being accomplished.

A 'program' is that which includes a body of work with the resources to accomplish that work. A program budget, allocating money to the programs or activities carried by an office, is far more useful as a management tool for the prosecutor than is a line-item budget.

The district attorney should familiarize himself with the source of funds for all government operations, as well as the potential sources of both state and federal funds. This includes identifying any constitutional and statutory limitations which would impinge on the amount of funds available for financing the local government or his own operations. He is then in a much better position, not only to understand the over-all financial situation, but also to identify potential sources of funding of which the local authorities may be unaware.

The budget process is directly related to the financial resources available to the community. Normally, the single most important

source of funds for financing the operations of the prosecutor's office is the general fund of the government, ie., funds from revenues raised primarily through general taxes. In practically all cases, the local legislative body (i.e., the council, board of supervisors, etc.) is responsible for allocating such funds among local agencies.

B. The District Attorney in the Budget Process

The district attorney, as a public official, is responsible to the public and the community at large. Normally, the budget process provides one of several opportunities, sometimes the only one, for him to present his plans to the public. It is, therefore, of critical importance to keep the public informed, preferably on a periodic basis, of programs and accomplishments of the office. At the minimum, the budget process (via the budget document) serves as an important information link with the public.

To perform this function, the prosecutor should develop a well-defined program which can be used for getting his story across, both to the budget authorities and to the public. It is most important that he recognize that he is but one of many public officials competing for funds from the same source, and act accordingly.

4.4 ORGANIZATION AND WORK ASSIGNMENT

A. Written Policies and Procedures

In most small prosecutor offices, due in many instances to the size of the community, there will be a degree of easy familiarity among office personnel. Thus, it might appear unnecessary to put

personnel policies concerning vacations, sick leave, job descriptions and the delegation of authority into written form. However, written office policies, clearly stated and understood, including areas of authority and obligation on the part of each employee are extremely important and will probably do more to resolve office confusion than any other management technique available to the prosecutor.

Simple things such as responsibility for telephone answering should be specifically assigned. Intake procedures as to mail, people, reports and trial settings must be outlined. Preparation of cases for presentation to the grand jury, issuance of trial notices, subpoenas, bookkeeping, calendar preparation and secretarial assignments are only a few of the things a prosecutor should outline for his staff in writing. Such written assignments and delegations of authority will also enable the prosecutor to determine responsibility for those occasional mixups or oversights, which everyone fears and occasionally experiences.

A well-written office manual, setting forth continuing policies and procedures, will do much to organize the work of the office.

B. Attorney Assignments

Just as important as obtaining adequate staff is the development of a system of work assignment within the office. Such a system should be simple to understand, and should not necessarily require specific assignment of each case by the prosecutor. Obviously, the small office prosecutor will not have occasion to assign, 'left-handed armed robberies' to one particular assistant. Nevertheless,

the district attorney can assign URESA proceedings to one assistant, and juvenile matters to another, for example. Misdemeanors could be handled by one assistant, and felonies by another. These are both examples of case assignment based upon the type or nature of the case or proceedings. Where more than one judge or magistrate handles the matters of the prosecutor's office, assignments can also be made by judge: assistant A handling all matters filed by judge X, and assistant B handling all matters pending before judge Y.

Another system is assignment by docket numbers. Assistant A might handle all even-numbered cases, while assistant B would take the odd numbered cases. In every instance, the prosecutor must build flexibility into the system, in order to avoid overloads, conflicts, etc. Under any system there will be instances when, for one reason or another, an assistant will be unable to handle a case assigned to him, and in such instances, that assistant must feel free and have authority to obtain additional help or transfer the case with the prosecutor's approval, to another assistant within the office.

C. Investigator Assignments

Where an investigator is available, the prosecutor should not overlook the opportunity to refer office visitors to him. This can be particularly helpful in cases involving citizen complaints at the time of intake. Many people insist on seeing the prosecutor or an assistant prosecutor personally concerning these problems. The prosecutor, his assistants and investigators, should develop a

diplomatic method of referring such individuals to the appropriate agency for the investigation of their particular complaint or problem.

One method is to call the agency in the presence of the complainant and advise of the referral and request agency assistance in investigating the matter. Handwritten requests to the particular agency given to the complainant to deliver are also effective. This gives the citizen some assurance that the particular problem or complaint will be better taken care of. By establishing a policy requiring investigation and police reports, even on the simplest matter, citizen complaints can be referred to other agencies for the required investigation. When reports are received, the decision as to action taken can then be reported to the complainant by mail, telephone or office conference.

D. Clerical Assignments

A prosecutor will find early in his administration, that all correspondence, telephone calls and office visitors will be funneled to his office unless procedures are established to distribute them. The entire staff, secretaries included, should know who is handling what matter, so that incoming mail, pleadings, witnesses, etc., can be referred to the appropriate individual. Otherwise, the prosecutor becomes the point of distribution.

E. Incoming Documents

At intake all paper entering the office should cross the desk of one secretary who, furnished with a stamp or time clock, notes the

date and time of receipt of each individual document. The secretary should be sufficiently acquainted with case assignment so the document can then be filed or referred to the appropriate individual. Otherwise, the prosecutor himself again becomes the point of distribution.

F. Visitors

The handling of people coming to the office to some extent will be influenced by the office layout. It is helpful if the office is arranged in a fashion such that the secretary can ask an office visitor the nature of the visit. This is not only for purposes of referring that individual to the prosecutor or assistant handling a particular matter, but also to determine whether or not the visit concerns a matter which should be handled by the office. Care must be exercised to avoid these inquiries in the presence of others or in a manner that might embarrass the visitor. In many instances people will come in concerning matters which the secretary is capable of handling, such as inquiries concerning the status of URESA matters, or can be referred to another agency.

A registration log which a visitor can sign is helpful. In one office visited, a registration log was placed on a counter in the outer office. People coming to the office were required to sign their name and enter their address on that log. The receptionist then would prepare a three-by-five card on which she would list the name of the individual, the address and the

person to whom the visitor was referred. Preliminary inquiry was made to determine the nature of the office visit to assist the receptionist in making proper referral. This card then accompanied the visitor to the prosecutor or his assistant, who would note the date of the visit and enter brief notes on the card concerning the purpose of the visit.

This card can be maintained in an alphabetical card file, and re-used when the visitor returns to the office. The registration log also enables the prosecutor, quite easily, to determine the number of office visitors for statistical purposes. The card enables the prosecutor and staff to identify habitual visitors, and also affords a reminder as to the nature of the business previously discussed or considered during prior office conferences.

G. Telephone

The telephone is a convenience which, nevertheless can create problems. The requirement for substantial secretarial screening of telephone calls is mandatory. The office staff must be educated to the manner in which telephone screening can be accomplished graciously and then required to follow the established procedure.

The prosecutor should not be hesitant to require the holding of his calls during important office conference, dictation, research or on other occasions when uninterrupted time is necessary. Secretaries should also attempt to log calls on a daily basis for statistical purposes. This can be done by name and time on a simple register or telephone log.

4.5 RECORDKEEPING AND FILING SYSTEMS

A. Police Reports

Some offices have established procedures which require the receipt of police reports prior to the filing of charges. However, in many instances a prosecutor will receive daily police reports on which further investigation is required, no action is taken, or for some reason the prosecutor does not open a court file.

A very important addition to a district attorney's office, which deals with multiple police agencies, would be a uniform police report form. This particular form, after initial design and approval, should be utilized by the various police agencies and completed by the prosecutor or para-legal assistant and inserted into the case folder.

This type of form is important in many ways. It provides necessary basic information to support the initial charge decision, and serves as a guide in the subesequent collection of information and preparation of the case (e.g., criminal history, ID numbers, witness lists and testimony).

The police report form should be standardized with the co-operation of the police agencies and the district attorney in order to serve as a reliable prosecutor information form. A Model Report to the Prosecutor, under design by the National Center for Prosecution Management should be considered as an aid in this project. (See Appendix C).

A direct result of uniform procedures and reporting system development would be better case preparation, witness selection and notification, case tracking and reduced caseload in regard to 'bad cases' actually getting into the system.

In addition, uniform forms designed by district attorneys will provide efficiency in data collection and review. This is the keystone to better case processing in all the courts of the criminal justice system. This involves considerable inter-agency responsibility and can be promoted by regular meetings with heads of police agencies, judges, clerks of the courts and others whose input will determine the integrity and usefulness of the information collected.

B. Case Folders

The case folder serves to gather together pertinent working papers, and, if utilized properly becomes a valuable recording tool regarding useful information concerning the case, and can supply valuable statistical data on a uniform basis. The National Center for Prosecution Management has designed a model case file folder for use in district attorneys' offices that can be modified for use by individual offices. A manual is available from the National Center which describes the minimum data elements required and procedures for use and adoption of the model. (See Appendix B Model Case File Folder.)

The use of such a standardized folder provides automatic guidance in the processing of cases. Standardized forms and required minimum data elements allow for uniform case processing, review of established district attorney legal policy, and creates a statistical base for uniform data gathering and review.

In the NDAA/NCPM manual, Screening: Case Evaluation and Control there are a number of suggestions as to starting a case folder and the initial documents to place in the folder.

C. Case File System

The NDAA/NCPM manual, Managing Case Files in the Prosecutor's Office, provides comprehensive instructions for planning, developing, maintaining and disposing of case files. However, a few important points concerning case files are presented below.

Generally, filing systems are established on either an alphabetical or numerical basis. Due to the different types of matters handled, it may be necessary to utilize different types of filing systems within one prosecutor's office. For instance, it may be advisable to utilize an alphabetical system for uniform reciprocal support matters, while numerical systems are used for paternities, juvenile or criminal cases.

Every efficient filing system must have a simple, orderly method for closing and storage of files, yet retain the ability to retrieve the files when needed. For criminal case files, subject to the variations hereinafter set forth, the numerical file system with alphabetical card file index, appears to be the most widely used and comes closest to meeting the needs of the prosecutor.

(1) Numbering System

Many prosecutors' offices handle both misdemeanor and felony cases. Many have misdemeanor cases in a magistrate court and felony cases in a district or trial court. To differentiate

these cases, the file numbering system could include, either as a prefix or suffix to the file number, M (misdemeanor), or F (felony). An alternative procedure is to color code the file jackets. Whatever procedure is established, it is recommended, insofar as is possible, that the prosecutor's file numbers coincide with the court numbers. An effort should be made to establish a single, uniform numbering system in conjunction with the courts and police agencies for uniform forms development and use. Where more than one court maintains a docket with possible duplication of numbers, it may be necessary to maintain a separate drawer or file for each court, identifying the court on the file number by prefix or suffix, such as D (district court), and S (superior court).

(2) Cross Reference

Where the numerical system is utilized, a cross-reference card file should be maintained. The size of the card depends entirely upon the information which the prosecutor desires to maintain on that card. The card is placed in a file alphabetically by name of defendant and would show the file number, charge, date, and action. The file could then be retrieved by going to the card file under the name of the defendant, and obtaining the file number from his card. Such a numbering system keyed to a corresponding alphabetical card system, represents probably the simplest, most functional filing system available to the prosecutor. When the file is opened, the number is assigned, the card is prepared, at which time any information such as nature of charge, date of filing, number of

defendants, names of co-defendants, witnesses, victims, etc., can be entered on the card. While some offices favor removal of the card upon closing and files storage, the establishment of an additional card index for closed files would seem unnecessary. One card file, containing both active and disposed files could be maintained and appropriate notations made indicating closed (C) or storage (S). By maintaining one filing system, it would be unnecessary to look in the open file, and if not there, then go to the closed file card index. When the file is closed, any other information concerning the case can be placed on the card indicating date closed, disposition, etc. This enables the prosecutor to have readily available information concerning the case without having to dig into the storage files.

(3) Closing Files and Files Disposition

An important value of the numerical-alphabetical system, is that there is orderly closing and storage of files. The numbers are assigned chronologically as the cases are opened, and consequently, the lower numbers would be the older cases. When additional storage space is needed, the older numbers can be placed in storage. In this regard, it is probably advisable to maintain different areas in the file cabinet for pending and closed cases. However, this is entirely optional.

During the office visits, systems were observed whereby files were maintained on a strictly alphabetical basis. All files, whether open or closed, were maintained on an alphabetical basis,

CONTINUED

1 OF 2

all A's being in one drawer, B's in another drawer, etc. While such a system is certainly convenient in closing files, it affords no easy or convenient basis for the eventual storage of files or adding (interfiling) incoming materials. Obviously, it is more advisable to store a five-year-old file than a one-year-old file, and the numerical system previously outlined has that storage time element built into it. The alphabetical filing system, on the other hand, would require the examination of each individual file to determine its age for purposes of storage. When stored, adequate records indicating the place of storage would be difficult to establish and maintain. Another value of the numerical system is that it provides a quick caseload statistic not available under the alphabetical system.

As a matter of tradition many offices maintain their file drawers or open face files where the numerical system is utilized. The lower numbers being at the top left, the result being that when the cabinet or drawer is full, the top drawer or shelf is placed in storage, all other files being moved up. As a result most of the active files will then be in the bottom drawer, making retrieval inconvenient. It might be more convenient to reverse the procedure, placing the active files on a higher level, allowing easier access and retrieval.

Fasteners should be used for papers placed in a case file. Particularly in matters in which court appearances will be required, some system of placing papers within the files should be used to

avoid confusion and an appearance of ineptness in court. For example, all police reports and correspondence could be placed on the left side of the file, while pleadings are placed on the right.

Many states have adopted laws, rules or regulations governing disposition of files, and every prosecutor should check his individual state laws on records management to determine when files storage or destruction is permitted.

(4) Court Files

It must also be remembered that often, with the exception of police reports and correspondence, a corresponding court file containing all pleadings, disposition, etc., will be maintained by the court clerk and is available as a source for much of the information that might be needed after a file is stored. Generally the records of the clerk of the court are the public record of the case.

The files system can also be utilized for any series of files with corresponding court docket numbers such as juvenile court, URESA matters, paternities, mental commitments, etc. Card files or card file sections can be established separately (in low volume offices) by nature of case. Thus, in many offices, all files for court matters can be included in one or two drawer card index files.

(5) General Adminstrative Files

In most offices, substantial miscellaneous correspondence is received and answered. A system must be available to maintain such correspondence. This can be done through the maintenance of alphabetical correspondence files on an annual basis.

In addition, other matters may be of sufficient importance or frequency that individual files should be established for them, such as coroner's reports, search warrants, tax roll corrections, district attorney's opinions, sheriff's department matters, etc. Each can be given an individual file and retained on an annual or continuing basis.

4.6 EQUIPMENT

Every prosecutor should, to the extent his budget permits, make sure that his office has the most modern office equipment available and compatible with his operation. Electric typewriters, dictating equipment, intercom systems, tape recorders, two-way radios, are only a few of the machines which can be utilized to make operation of the office more efficient. For example, the use of dictating equipment enables the secretary to busy herself with other office matters while the prosecutor dictates, and also allows the secretary to work on dictation when the prosecutor is away from the office. The time saving and efficiency cannot be questioned, yet a great many prosecutors neglect to use this very valuable tool in their daily routine. Magnetic card typewriters may also increase the efficiency of the office. They lend themselves to neat and accurate work, which professionalizes the image of the prosecutor, and provides an information storage and retrieval capacity.

The prosecutor should look into all equipment available, determine his needs, the funding available, and strive to establish and maintain a modern and efficient, but simple operation. Having done this, he will find it will not be long until the police and other agencies with which he deals, will begin to assume a similar degree of professionalism, modernization and efficiency, which will endure to the benefit of the prosecutor and his community.

APPENDICES

APPENDIX A

EXAMPLES OF DISTRICT ATTORNEY OPERATING FORMS

1. District Attorney Receipt of Police Report and Statement of Action
2. Request for Investigation
3. Notification of Investigation to Complainant
4. Negotiation Fact Sheet
5. Plea Agreement (a and b)
6. Petition to Enter Plea of Guilty
7. Witness List
8. Information Sheet for Non-Support and RESLS

1. DISTRICT ATTORNEY RECEIPT OF POLICE REPORT AND STATEMENT OF ACTION

PROSECUTING ATTORNEY
County Courthouse
Anywhere, U.S.A.

DATE _____

TO: Police Department

_____

_____

Your File No.: _____
Our File No. : _____

Gentlemen:

Your report above referenced has been received and reviewed.

( ) We are filing a Complaint or Information, a copy of which is attached.

( ) No criminal action has been filed because _____

_____

( ) Additional investigation is needed as follows:

_____

_____

_____

Very truly yours,

Prosecuting Attorney
County Courthouse
Anywhere, U.S.A.

By _____
Deputy Prosecuting Attorney

2. REQUEST FOR INVESTIGATION

PROSECUTING ATTORNEY
County Courthouse
Anywhere, U. S. A.

TO: DETECTIVE DIVISION DATE: _____

Re: Defendant: _____

Offense: _____

Warrant No.: _____ DA File NO.: _____

Gentlemen: Forwarded herewith is a copy of warrant on the above subject, for your investigation and report to this office on the case.

Yours truly,

_____
Prosecuting Attorney

TO: PROSECUTING ATTORNEY: Our investigation has been concluded and we submit the following report:

( ) Report attached.

( ) After interview of the witnesses it has been determined that:

_____

_____

_____
Investigating Detective

Date: _____

3. NOTIFICATION OF INVESTIGATION TO COMPLAINANT

PROSECUTING ATTORNEY
Anywhere, U.S.A.

_____

_____

_____

Re: Defendant: _____
Offense: _____
Warrant No.: _____
DA File No.: _____

Dear _____:

I have forwarded your warrant against the above subject to the Detective Division of the _____ County Police Department for an investigation and report to this office prior to further consideration of the case.

This office receives around one thousand private warrants each year and because of the size of my staff; availability of court room facilities; the increasing large number of violent crimes such as murder, rape, burglary, robberies; this office must, by necessity, screen out and prosecute only the most flagrant violators.

No further action will be taken by this office pending the receipt of the Police Investigation Report. I expect an officer of the Police Department will contact you in this regard and you should have available to him a complete list of all the witnesses, with both their residence and business addresses and phone numbers and a written statement in your own handwriting about the case would also be helpful.

You will be notified of all further action by this office.

Yours truly,

_____
Prosecuting Attorney

4. NEGOTIATION FACT SHEET

The subscribing parties certify that the following facts are accurate and the plea negotiation to be voluntarily and intelligently executed with full knowledge of the maximum possible sentences:

Defendant: _____

If represented by counsel, defendant authorized plea negotiations on his behalf:
Yes_____ No _____

OFFENSES:	PLEA (Guilty or Nol Pros)	INDICTMENTS	
		Approved	Pending
(a) _____	_____	_____	_____
(b) _____	_____	_____	_____
(c) _____	_____	_____	_____

AGREED SENTENCE

Offense	Jail	Probation	Fine	Defendant to pay costs	Restitution
(a) _____	_____	_____	$_____	_____	_____
(b) _____	_____	_____	_____	_____	_____
(c) _____	_____	_____	_____	_____	_____

Sentences to be: Consecutive _____ Concurrent _____
with _____

Date this agreement executed: _____, 19 _____

Signatures:

Defendant _____

Defense Counsel _____

Prosecuting Attorney _____

Presented to Judge _____, ON _____, 19 _____

Accepted: _____ Rejected: _____

5. PLEA AGREEMENT (a)

IN THE COURT OF THE _____ JUDICIAL CIRCUIT
STATE OF _____
COUNTY OF _____

THE PEOPLE OF _____)
)
vs.) No. _____
)
_____)

The Defendant and the Prosecuting Attorney hereby submit the following Plea Agreement to the Court which was reached pursuant to the discussions initiated by them. The defendant consents to the Court receiving evidence in aggravation and mitigation in advance of the tender of this plea. The agreement is as follows:

A. Defendant agrees to plead guilty to Count (s) _____

of the charge.

B. Prosecuting Attorney agrees to nolle pros _____.

C. The Court will impose as a maximum sentence in this case the following:

1. $_____ fine and costs.

2. _____ years/months/days imprisonment in

_____

3. Probation for _____years/months, with payment of costs within _____years/months; payment of $_____restitution within _____years/months; and_____.

D. Restitution in this case is owing to the following persons in the following amounts:

E. It is stipulated the Defendant's prior record is as follows:

F. The defendant does (not) waive presentence investigation and written report.

Date: _____ Defendant _____

_____ _____
Prosecuting Attorney Defendant's Counsel

5. PLEA AGREEMENT (b)

IN THE CIRCUIT OF THE _____ JUDICIAL DISTRICT

STATE OF _____

PEOPLE)
)
vs.) No. _____ _____
)
_____)

Defendant will plead guilty to Count (s) _____.

Prosecuting Attorney will nol-pros _____.

Defendant shall receive:

1. _____ years - months probation;

   _____ fine plus costs;

   _____ restitution to be paid within _____months;

   _____ months-days at _____ Institution or Jail;

   Other conditions: _____

   _____

2. A sentence of _____ at the _____ State Penitentiary

3. A fine in the amount of $ _____.

4. Other disposition: _____

   _____

_____
Prosecuting Attorney

_____
Attorney for Defendant

6. PETITION TO ENTER PLEA OF GUILTY

IN THE DISTRICT COURT OF _____ COUNTY, _____

STATE OF _____)
)
Plaintiff,)
)
vs.)
)
_____,)
Defendant.) No. _____

THE DEFENDANT represents to the Court:

(1) My full true name is: _____, and I request that all proceedings against me be had in that name; and I am mentally competent to make this Petition. I understand, should the plea of guilty herein tendered not be accepted and a trial follows, that admissions made herein would not be admissable against me at said trial.

(2) I am represented by a lawyer; his name is _____

_____.

(3) I plead guilty to the charge of _____

_____.

(4) I told my lawyer all the facts and circumstances known to me about the charges asserted in the Information. I believe that my lawyer is fully informed on all such matters. My lawyer has counseled and advised with me on the nature of each charge and on all possible defenses that I might have in this case.

(5) I understand that I may plead "Not Guilty" to any offense charged against me. If I chose to plead "Not Guilty" the Constitution guarantees me (a) the right to speedy and public trial by jury, (b) the right to see and hear all witnesses called to testify against me, (c) the right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor, and (d) the right to have the assistance of a lawyer at all stages of the proceedings, (3) I also understand that if I do not have funds, and cannot obtain funds to employ an attorney, the Court will appoint an attorney to represent me; and (f) that I do not have to testify against myself.

(6) I also understand that if I plead "GUILTY" to the charges against me, the Court may impose the same punishment as if I had plead "NOT GUILTY", stood trial and had been convicted by a jury.

(7) My lawyer informed me that the punishment which the law provides for the offense charged in the Information is: imprisonment from _____ to _____ years and a fine of $_____, for the offense charged in the Information.

(8) I declare that no officer or agent of any branch of government (Federal, State or local) nor my lawyer, nor any other persons, has made any promise or suggestion of any kind to me, or within my knowledge to anyone else, that I will receive a lighter sentence, or probation, or any other form of leniency if I plead "GUILTY", except _____

_____

_____

_____

_____

(9) I believe that my lawyer has done all that anyone could do to counsel and assist me, AND I AM SATISFIED WITH THE ADVICE AND HELP HE HAS GIVEN ME.

(10) I plead "GUILTY" and respectfully request the court to accept my plea of "GUILTY" and to have the Clerk enter my plea of "GUILTY" on the basis of the following facts: _____

_____

_____

_____

_____

_____

_____

(11) I OFFER MY PLEA OF "GUILTY" FREELY AND VOLUNTARILY AND OF MY OWN ACCORD AND WITH FULL UNDERSTANDING OF ALL THE MATTERS SET FORTH IN THE INFORMATION AND IN THIS PETITION, AND THIS PLEA IS WITH THE ADVICE AND CONSENT OF MY ATTORNEY.

(12) I further state that I wish to waive the 24-hour service of the Information, and I request the Court to enter my plea of "GUILTY" as set forth in paragraph (10) of this Petition.

(13) I have the right to appeal this conviction by filing Notice of Appeal within 30 days of the date of sentencing. If without sufficient funds, I have the right to transcript and lawyer without cost to me.

SIGNED BY ME IN THE PRESENCE OF MY ATTORNEY this _____ day of _____, 197 _____.

_____
DEFENDANT

MY ADDRESS IS _____

MY AGE IS _____

7. WITNESS LIST

Jury Court Preliminary Superior Court Defense Attorney:

_____

PEOPLE VS. : _____

VIOLATION : _____

COURT : _____

DATE OF TRIAL: _____

TIME : _____

WITNESS:	ADDRESS:
_____	_____
_____	_____
_____	_____
_____	_____

_____ Booking Sheet

_____ Priors - FBI Record

_____ Order of Suspension

_____ DMV Certificate of No License

_____ Narrative Report

_____ Voters' Registration

_____ Pictures

_____ Miscellaneous: _____

_____

8. INFORMATION SHEET FOR NON-SUPPORT AND RESLS

NAME OF COMPLAINANT (wife):

ADDRESS (including telephone number):

DATE AND PLACE OF MARRIAGE TO DEFENDANT:

CHILDREN

NAME	BIRTH DATES

NAME OF DEFENDANT (husband):

DATE OF LAST CONTRIBUTION OF SUPPORT: (also amount)

ADDRESS OF DEFENDANT: (in addition to the street address and City, we also need the name of County and the County Seat)

COMPLAINANT'S FULL NAME AND ADDRESS:

IS COMPLAINANT NOW PREGNANT BY DEFENDANT:

CIRCUMSTANCES OF SEPARATION AND/OR DIVORCE: (also date husband last lived with you)

PARTICULARS OF ANY ORDER OF SUPPORT:

IS COMPLAINANT RECEIVING PUBLIC AID:

STATUS OF COMPLAINANT'S EMPLOYMENT OR ANY OTHER SOURCE OF INCOME:

STATUS OF DEFENDANT'S EMPLOYMENT: (include address of employer and salary if known, also Defendant's Social Security number if known)

ARE YOU AND CHILDREN IN GOOD HEALTH:

HAVE YOU ANY DEBTS OUTSTANDING WHICH WERE INCURRED DURING MARRIAGE TO DEFENDANT:

WHAT DO YOU REQUIRE FOR THE SUPPORT OF YOU AND YOUR CHILDREN:

GIVE ACCURATE DESCRIPTION OF DEFENDANT: (height, weight, age, color of eyes and hair, birthmarks, scars, tatoos, etc., any nicknames or aliases, a recent photo should be attached if available)

APPENDIX B

MODEL CASE FILE JACKET

APPENDIX E

MODEL CASE FILE JACKET

Minimum guidelines and standards for the design of a case file folder have recently been developed by the National Center for Prosecution Management. The folder may be utilized by prosecutors or modified for adaptation to a given jurisdiction's procedures. The secondary purpose of this model is to stimulate the thinking of the prosecutor in this area and to present him with standards and guidelines that formulate a base for designing his own case file jacket that will be responsive to his local procedural and information needs.

A report entitled "Minimum Standards for the Design and Use of a Prosecutor's Case Jacket" has been developed as an attachment to the Case File Jacket by the Center for the effective utilization of the Model, and is available upon request.

MODEL CASE JACKET
Front Cover

DEFENDANT'S NAME: _____ (LAST / FIRST / MIDDLE)

CASE NO. _____

TITLE AND ADDRESS OF OFFICE _____

P.D.I.D. _____ D.O.B. ___/___/___ (MO. / DAY / YR)

DEFENDANT'S NAME (LAST / FIRST / MIDDLE)

CASE NO. (OPTIONAL FOR SHELF FILING)

CHARGES

AUTHORIZING ASSISTANT:

CO - DEFENDANT AND/OR RELATED CASES

DEFENSE COUNSEL
(NAME, ADDRESS, PHONE)

POLICE OFFICER
(NAME, DEPT/UNIT, BADGE NO.) REPORTING (R) COMPLAINING (C)

COMPLAINING WITNESS
(NAME, ADDRESS, HOME PHONE, BUSINESS PHONE)

DATE OF ARREST: _____

DATE CHARGED: _____

SPEEDY TRIAL DATES

DEMAND	NO DEMAND
_____ DATE	_____ DATE

RELEASE DECISION

- ☐ JAIL
- ☐ PERSONAL RECOGNIZANCE
- ☐ CASH BOND
- ☐ THIRD PARTY CUSTODY
- ☐ PSYCHIATRIC OBSERVATION
- ☐ NAME OF SURETY

_____

REQUISITE NOTICE TO DEFENDANT

ITEM	CHECK IF TO BE USED	DATE NOTICED
CONFESSION	___	_____
IDENTIFICATION	___	_____
DISCOVERY	___	_____
OTHER	___	_____

PO AVAILABILITY

PRELIM _____

MOTIONS _____

PRETRIAL _____

TRIAL _____

MODEL CASE JACKET

National Center for Prosecution Management
1900 L St., N.W., Suite 701, Washington, D.C. 20036

August, 1973

Work Performed under LEAA Grant No. 72-DF-99-0038

Reverse Side Front Cover

NEEDED	IN FILE	EVIDENTIARY MATTER
[ ]	[ ]	Autopsy
[ ]	[ ]	Ballistics
[ ]	[ ]	Chain of Evidence List
[ ]	[ ]	Chemical Report
[ ]	[ ]	Confession
[ ]	[ ]	Contraband
[ ]	[ ]	Damages Listed
[ ]	[ ]	Evidence
[ ]	[ ]	Indictment
[ ]	[ ]	Investigative Reports
[ ]	[ ]	Motions
[ ]	[ ]	Newspaper Articles
[ ]	[ ]	Office Memorandum
[ ]	[ ]	Photographs
[ ]	[ ]	Police Reports
[ ]	[ ]	Rap Sheet
[ ]	[ ]	Research Material
[ ]	[ ]	Restitution Made
[ ]	[ ]	Trial Memorandum
[ ]	[ ]	Weapons
[ ]	[ ]	Witness List
[ ]	[ ]	Witness Statements

MODEL CASE JACKET INSERT

National Center for Prosecution Management
1900 L Street, N.W., Suite 701, Washington, D.C. 20036
August, 1973

MODEL WITNESS LIST

NAME : D.O.B. I.D. NO.: DATE APPEARED

RES. ADDRESS : PHONE:

BUS. ADDRESS: OCCUPATION: PHONE:

ALTERNATE CONTACT:

WILL TESTIFY TO:

SUBPOENAS		
ACTION	DATE ISSUED	RETURN DATE

TESTIMONY

DESCRIPTION OF WITNESS:

TAKEN: ☐

TRANSCRIBED: ☐

NAME : D.O.B. I.D. NO.: DATE APPEARED

RES. ADDRESS : PHONE:

BUS. ADDRESS: OCCUPATION: PHONE:

ALTERNATE CONTACT:

WILL TESTIFY TO:

SUBPOENAS		
ACTION	DATE ISSUED	RETURN DATE

TESTIMONY

DESCRIPTION OF WITNESS:

TAKEN: ☐

TRANSCRIBED: ☐

NAME : D.O.B. I.D. NO.: DATE APPEARED

RES. ADDRESS : PHONE:

BUS. ADDRESS: OCCUPATION: PHONE:

ALTERNATE CONTACT:

WILL TESTIFY TO:

SUBPOENAS		
ACTION	DATE ISSUED	RETURN DATE

TESTIMONY

DESCRIPTION OF WITNESS:

TAKEN: ☐

TRANSCRIBED: ☐

Work performed under LEAA Grant No. 72-DF-99-0038

INSIDE BACK COVER

CONFIDENTIAL NOTES

BACK COVER

CASE NO.

DEFENDANT'S NAME: LAST FIRST MIDDLE

ACTION DATE	NEXT COURT DATE	ACTION AND REASONS	DEFENDANT	JUDGE	ASSISTANT	COURT REPORTER	INSTRUCTIONS or NOTES

FINAL DISPOSITION AND REASON			APPELLATE ACTION TAKEN				
CHARGE OR DEF. NAME	DISPOSITION	SENTENCE OR FINE IMPOSED	DATE FILED	TYPE OF APPEAL	COURT	Date of Determination	Determination

APPENDIX C

NCPM MODEL PROSECUTION REPORT

NATIONAL CENTER FOR PROSECUTION MANAGEMENT
MODEL PROSECUTION REPORT

EVENT NO.

DEF. ID. NO.

BOOKING NO.

SOC. SEC. NO.

PROSECUTORS

CHARGES | STATUTE

DEF. TRUE NAME: ID ONLY

DEF. STATED NAME

ALIASES OR NICKNAMES

SEX | RACE | D.O.B.

TIME IN AREA | RELEASE STATUS

ADDRESS (INCLUDE APT. NO.)

PHONE
BUS.
RES.

AUTHORIZING ASST. | DATE

COURT OR VENUE

CO-DEFENDANTS: STATUS: arrested (A) wanted (W) : LOCATION jail (J) bond (B)

(1) NAME	ADDRESS	STATUS	LOC.	(2) NAME	ADDRESS	STATUS	LOC.
(3) NAME	ADDRESS	STATUS	LOC.	(4) NAME	ADDRESS	STATUS	LOC.

LOCATION OF ARREST | DATE | TIME

DATE AND TIME REPORTED TO POLICE: | BY WHOM:

DEFENDANT CHARACTERISTICS:

PRINCIPLE DEF:	YES ☐	NO ☐	UNK. ☐
PREVIOUS RECORD:	YES ☐	NO ☐	UNK. ☐
STATEMENT.	DENIED ☐		ADMITTED ☐
IF ADMITTED	ORAL ☐		SUMMARY ☐
	WRITTEN ☐		ATTACHED ☐

ANY RELATION TO: (IF YES DESCRIBE)

VICTIM:

OTHER WITNESSES:

CRIMINAL JUSTICE STATUS:

UNUSUAL CONDITIONS :

CRIMES AGAINST PERSON :

NO. OF VICTIMS:

EXTENT OF INJURIES:

CRIMES AGAINST PROPERTY:

AMOUNT TAKEN:

AMOUNT RECOVERED:

AMOUNT DAMAGE:

OWNERS NAME :

ADDRESS :

TELEPHONE:

EVIDENCE: (PHYSICAL PROPERTY, STATEMENTS, OTHER)

	DESCRIPTION	HOW, WHERE, WHEN, RECOVERED	IN WHOSE CUSTODY NOW	SCIENTIFIC TESTS AND TYPE
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				
(7)				

EVIDENTIARY CHAIN: (LIST ALL PERSONS WHO HANDLED OR POSSESSED THE ITEM AT THE TIME OF RECOVERY AND THEREAFTER IN CHRONOLOGICAL ORDER)

ITEM	ITEM	ITEM	ITEM	ITEM
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				

ADDITIONAL INVESTIGATION REQUESTED: | DATE REQUESTED | DATE NEEDED

COPY 1

COPY 1 TO I.D. – COPY 2 & 3 TO PROSECUTOR – COPY 4 TO OFFICER – COPY 5 TO DISTRICT

REVERSE CARBON AND FILL IN REVERSE SIDE OF THIS FORM

THIS FORM WAS PREPARED UNDER LEAA GRANT NO. 72-DF-99-0038

REVERSE CARBON

BRIEF DESCRIPTION OF CRIME

WITNESS STATEMENTS IN THE FOLLOWING ORDER: VICTIM, POLICE, EXPERTS, OTHERS

(1) NAME: ADDRESS PHONE BUS. RES. OCCUPATION: ALT. CONTACT NAME: PHONE: AVAILABILITY:

SYNOPSIS OF TESTIMONY:

(2) NAME: ADDRESS PHONE BUS. RES. OCCUPATION: ALT. CONTACT NAME: PHONE: AVAILABILITY:

SYNOPSIS OF TESTIMONY:

(3) NAME: ADDRESS PHONE BUS. RES. OCCUPATION: ALT. CONTACT NAME: PHONE: AVAILABILITY:

SYNOPSIS OF TESTIMONY:

(4) NAME: ADDRESS PHONE BUS. RES. OCCUPATION: ALT. CONTACT NAME: PHONE: AVAILABILITY:

SYNOPSIS OF TESTIMONY:

(5) NAME: ADDRESS PHONE BUS. RES. OCCUPATION: ALT. CONTACT NAME: PHONE: AVAILABILITY:

SYNOPSIS OF TESTIMONY:

(6) NAME: ADDRESS PHONE BUS. RES. OCCUPATION: ALT. CONTACT NAME: PHONE: AVAILABILITY:

SYNOPSIS OF TESTIMONY:

ATTACHMENTS BROUGHT TO PROSECUTOR			NAME OR ID NO. OF WITNESS DIRECTED TO APPEAR (PROS. ONLY)			
ITEM	ITEM		ARRAIGN.	PRELM. HRG.	G.J.	TRIAL
CONTINUATION REPORT	ARREST WARRANT					
ARREST REPORT	LOCAL RECORD					
OFFENSE REPORT	FBI RECORD					
SUPPLEMENTAL REPORT	STATEMENTS					
SEARCH WARRANT						

SIG. OF OFFICER	BADGE AGENCY/UNIT DATE	SIG. REVIEWING OFFICER	BADGE AGENCY/UNIT DATE

COPY 1

APPENDIX D

STATE PLANNING AGENCIES

COURT SPECIALISTS

STATE PLANNING AGENCIES

COURT SPECIALISTS
1974

Courts Specialists
Law Enforcement Planning
Agency
501 Adams Street
Montgomery, Alabama 36104

Judicial Specialists
Arizona State Justice
Planning Agency
5119 N. 19th Avenue
Suite M
Phoenix, Arizona 85015

Courts Specialists
Arkansas Commission on
Crime & Law Enforcement
1000 University Tower
Little Rock, Arkansas 72204

Courts Specialists
California Council on Criminal
Justice
1927 13th Street
Sacramento, California 95814

Courts Specialists
Division of Criminal
Justice
600 Coulumbine Building
1845 Sherman Street
Denver, Colorado 80203

Court Specialist
Connecticut Planning Commission
on Criminal Adminstration
75 Elm Street
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