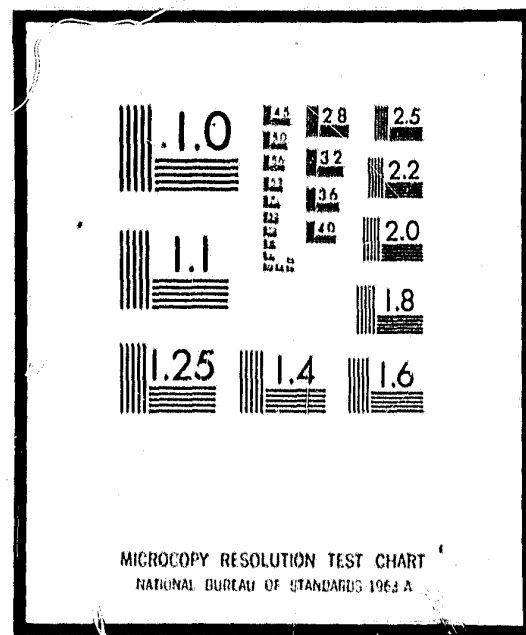


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Polk County (IA) *X*

## EVALUATION OF THE FULL-TIME PROSECUTION PROJECT, 1972 - Evaluation POLK COUNTY, IOWA, 1972

Joan E. Jacoby  
Executive Director

This study was performed under LEAA Grant  
Number 77-702-31-003-0072 to the Polk  
County Board of Supervisors

NATIONAL CENTER FOR PROSECUTION MANAGEMENT  
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EVALUATION OF THE FULL-TIME PROSECUTION PROJECT,  
POLK COUNTY, IOWA, 1972

EXECUTIVE DIRECTOR  
JOAN E. JACOBY

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I. INTRODUCTION

This study was undertaken through a grant made available through the Central Iowa Regional Crime Commission.\* The purpose of this study is to present an evaluation of the Full-Time Prosecution Project to determine whether the public has benefited, and if the benefits achieved justify the increased cost. Further, to determine whether the results achieved indicate that the Polk County Board of Supervisors should continue this program. To the extent that objectives have not been accomplished, the related reasons or causes are identified and discussed. The study includes identification of the significant changes in operations of the County Attorney's Office which can be documented through quantitative data.

Background

Prior to January, 1972, Assistant Prosecutors in the Polk County Attorney's Office devoted part time to private practice, detracting from their public duties. The County Attorney's Office experienced a high turnover rate and found it difficult to recruit and retain talented law school graduates. The County Attorney's Office felt that a number of serious operating problems were directly attributable to such staffing problems. The most obvious problem being the ever-increasing backlog of felony cases.

In response to this situation, as a special one-year project, the Board of Supervisors implemented a new salary schedule and adopted a policy of providing full-time professional staffing of the County Attorney's Office, rather than the part-time

\* This study was performed under LEAA Grant #77-702-31-003-0072 to the Polk County Board of Supervisors.

staffing arrangements formerly utilized. This new policy established the County Attorney and Assistant Prosecutors as full-time county employees and prohibited any form of private practice on the part of such employees.

Funds were made available through an LEAA grant approved by the Iowa Crime Commission to finance this undertaking.

The goal of this Full-Time Prosecution Project was to establish full-time personnel who would devote their entire efforts toward prosecution. Specific project objectives were:

- To allow the County Attorney's staff to function on a full-time basis without being required as a financial necessity to maintain a private practice.
- To reduce to a reasonable level professional staff turnover within the County Attorney's Office.
- To eliminate case backlog attributable to inadequate manpower resulting from the part-time status of staff.

Scope of Study

The scope of the present study is an evaluation of the Full-Time Prosecution Project. Therefore, the study does not encompass any overall evaluation of either the administration or operation of the County Attorney's Office. Three observations are presented.

One, the increase in felony trials, as well as the general consensus that there is significant improvement in processing of trials, is not solely due to the Full-Time Prosecution Project. The County Attorney has initiated a number of new management improvements, e.g., development of the two-man team approach in handling felony trials. Also, two additional Assistant Prosecutors were authorized by the Board of Supervisors as of January 1, 1972, though this gain in available staff was partially offset by the significant rise in workload in many areas, e.g., the increase in the number of pre-trial hearings. New programs were initiated, e.g., the consumer protection program which has returned over \$50,000 to the citizens of Polk County in less than a year of operation.

Two, though the Full-Time Prosecution Project was authorized to be effective January 1, 1972, funds were not made available until July, and it appears that many Assistant Prosecutors maintained a relatively active law practice until that time. Therefore, the time frame for an evaluation is extremely short, only a few months, and the total impact of the program can probably not be clearly ascertained until next year.

Three, the County Attorney's Office has no defined statistical or record system adequate to identify the workload of the office. The records systems that exist within the County often times were found to be inconsistent or poorly defined. Therefore, the statistics and quantifiable data available to the study team for review and analysis were extremely limited.

Methodology

This study was undertaken as a team approach, with an on-site review of operations of the County Attorney's Office and brief visits to related agencies. Interviews were held with the County Attorney, key members of his staff, and Judges Holliday, Missildine, and Oxberger.

The following project tasks were undertaken:

- Review of personnel, staff vacancies, and related information to identify turnover rates and significant changes in professional staffing.
- Identify man-days of professional effort, case-load indicators, case dispositions, and related information, to the extent records are available, in order to determine significant changes in the level of professional effort between part-time and full-time staffing arrangements.
- Identify, to the extent possible, changes in case backlog resulting from the level of professional effort expended between full and part-time arrangements.
- Review and analyze available data, and evaluate if the specified objectives of the Full-Time Prosecution Project have been achieved.

Summary Information: The County Attorney's Office

The County Attorney is the chief officer for the enforcement of law within Polk County, which comprises the 5th Judicial District of Iowa. Polk County is a growing urban area with a population of approximately 250,000. Des Moines, the central city, is both the County seat and the State Capital, having a population of 200,587 (1970 census). It is a growing urban area with a significant amount of light industry and the home of several major insurance companies. The daily newspaper is generally regarded as progressive and the three television stations supply comprehensive news coverage. In general it appears that it is a stable and law-abiding County, with a tradition of responsible jury service.

The present County Attorney was appointed in 1965 and re-elected to office in November 1972 to a new two-year term by a strong majority. The job has been sought because of the prestige associated with the Office, though the salary was significantly less than a private practitioner with comparable experience and responsibility.

Criminal matters are prosecuted at the District Court level by the County Attorney through: a County Attorney's Information, based on reasonable cause; a Grand Jury Indictment; or an appeal made to the District Court from a judgment rendered by a lower court magistrate.

The County Attorney is responsible for the prosecution of most misdemeanors including possession of drugs, driving while under the influence, suspended license violations, failure to render aid at an accident scene, contributing to the delinquency of a minor, and liquor and beer license violations. Minor traffic violations are excepted. He also acts as chief legal advisor to County officials.

In response to increasing workload, the budget and staff of the County Attorney's office has grown in recent years, i.e., the professional staff increased from 11 in 1968 to 15 in 1972. In addition to the responsibility for criminal prosecution, the County Attorney has other functions, including welfare cases, juvenile proceedings, consumer protection, and so forth. Professional office activities include: case screening, recommending warrants, preliminary hearings, misdemeanor trials, Grand Jury, plea negotiations, felony trials, appeals, post conviction remedies, extradition, consumer fraud, uniform reciprocal support, juvenile court, civil matters, training, and administrative duties.

The main office of the County Attorney is in the Court House where the District Courts are located. A branch of the County Attorney's office is located in the Municipal Police Building which also houses the Municipal Courts. The County Attorney's staff consists of 15 attorneys, 1 investigator, 2 legal interns and 7 clerical personnel. Three of the Attorneys and two clerical staff are located in the branch at the Municipal Police Building.

The County Attorney deals with eight police departments and a sheriff's office; also a metropolitan narcotics unit, the State Bureau of Criminal Investigation as well as related Federal agencies and the State Attorney General's Office.



II. SUMMARY OF FINDINGS AND CONCLUSIONS

The policy of full-time staffing arrangement for prosecutors is widely accepted nationally as a desirable practice in order to ensure a competent level of professional effort. This is documented by the American Bar Association's Standards Relating to the Prosecution Function and the Defense Function, which is included in Appendix I. Since establishing full-time prosecutors, the Polk County Attorney's Office has:

- Increased the number of jury trials by nearly 50 per cent.
- Increased criminal case disposition by trial from 102 to 145.
- Devoted more man-days for case screening and preparation and for conducting trials.
- An apparent reduction in professional staff turnover.
- Increased services to the public in the area of consumer protection and civil matters.

It is concluded that such significant improvements are largely attributable to utilizing full-time prosecutors and the related salary policies of the Board of Supervisors. The stated objectives of the initial project have been achieved. Salary compensation is reasonable for full-time work schedules. Turnover has been reduced. There has been a reduction in case backlog.

Though staff turnover remains a problem, there has not been sufficient experience to document the effect of the new salaries on staff turnover. Further, causes of staff changes are numerous and the salary level for full-time employment is but one factor which affects professional career changes. Also the term "reasonable level of staff turnover", as used in the grant application for the present study, is vague and imprecise.

On the basis of the very positive results of recent months, the National Center for Prosecution Management concludes and recommends that the Board of Supervisors budget sufficient funds for the County Attorney to continue the present policy of full-time salaries for full-time work.

If this recommendation is adopted, it is suggested that the County Attorney proceed to develop further management improvements; to devote more time to the planning and development needs of his office; to develop the statistical tools to measure volume intake and disposition of cases, monitor the effectiveness of his work capacity, and assist him in budget preparation and resource allocation.

If the Polk County Board of Supervisors decides to revert to part-time staffing arrangements, it is recommended that before the next term of office clear guidelines be established and published by the Board of Supervisors to provide:

- A clear definition of the term "part-time", which in the past was vague and unclear.
- Rules governing the use of County facilities by part-time Assistant Prosecutors.
- Rules governing conflict of interests.
- Staff growth potential relative to salary and personnel development.
- Regulation of potential staff conflicts in reference to income from private practices versus neglect of official business.
- Limitations in services rendered by the County Attorney appropriate to part-time staffing arrangements.

III. IMPACTS OF THE FULL-TIME PROSECUTION PROJECT

This chapter reviews and evaluated the three stated objectives of the Full-Time Prosecution Project. It also identifies and discusses additional significant changes in the operation of the County Attorney's Office which are attributable to the project.

Adequacy of Salary Levels

For full-time employment, the present salary of the County Attorney is \$25,500. Current salaries of the Assistant Prosecutors range from \$10,800 to \$24,000; refer to Table 1, which follows, for identification of specific salaries.

The first stated objective of the Full-Time Prosecution Project has been realized, namely, to establish a salary structure adequate to allow the County Attorney's staff to function on a full-time basis without being required as a financial necessity to maintain a private practice. The achievement of this objective is documented through a comparison with salaries paid for related jobs in the Des Moines area, as identified in Table 2, which follows. This table identifies the County Attorney's salary in comparison to similar positions in the Des Moines area. The Assistant Prosecutors' salaries are comparative to those paid by other public jurisdictions, which are identified in Table 3, which follows.

The obvious result of having full-time prosecutors, compensated at adequate salary levels, is that all Assistant Prosecutors are devoting full time to the work of the County Attorney's office. A few still have cases remaining open which were undertaken prior to the new policies, but these cases are few in number and are inactive. Though technically they could be considered as pending, no staff time is expended on such cases and thus such cases do not interfere with the work of the office. These conclusions are based on extensive interviews with the staff of the County Attorney's Office.

TABLE 1  
Summary of Current Professional Salaries  
Polk County Attorney's Office  
Des Moines, Iowa  
1972

<u>Position Title</u>	<u>Annual Salary</u>
County Attorney	\$ 25,500
First Assistant	24,000
2nd Assistant	22,000
3rd Assistant	21,000
4th Assistant	21,000
5th Assistant	21,000
6th Assistant	20,000
7th Assistant	20,000
8th Assistant	19,000
9th Assistant	15,000
10th Assistant	15,000
11th Assistant	12,000
12th Assistant	15,000
13th Assistant	14,500
14th Assistant	13,500
15th Assistant	10,800

TABLE 2

Current Salaries of Selected Government Officials

In the Des Moines Area

1972

<u>Position Title</u>	<u>Current Salary</u>
U. S. Attorney	\$ 27,000
COUNTY ATTORNEY	25,500
Attorney for OEO	25,000
Director of Legal Aid	24,000
City of Des Moines Attorney	22,500
District Judge	21,500

Pay Rates for Attorneys in the Public Service

Selected Cities and States <sup>1/</sup>

April, 1972

<u>Position Classification</u>	<u>Annual Pay Ranges</u>	<u>Number of Positions</u>
<u>City of Des Moines, Iowa</u>		
Attorney A (entry level positions)	9,432 - 11,448	5
Attorney B (intermediate level positions)	12,612 - 15,336	5
Attorney C (senior level positions)	17,748 - 21,588	6
<u>City of Peoria, Illinois</u>		
Attorney A	16,536 - 19,080	2
Attorney B	19,080 - 22,020	1
Attorney C	21,012 - 24,228	1
<u>City of Kansas City, Missouri</u>		
Attorney A	9,432 - 11,448	5
Attorney B	12,612 - 15,336	5
Attorney C	17,748 - 21,588	5
<u>State of Nebraska</u>		
Attorney A	8,940 - 11,520	N/A <sup>2/</sup>
Attorney B	9,900 - 12,720	N/A
Attorney C	12,720 - 16,260	N/A
<u>State of Kansas</u>		
Attorney A	11,904 - 15,192	6
Attorney B	13,788 - 17,580	6
Attorney C	15,948 - 20,352	6

NOTE: Do not assume that positions within the County Attorney's Office are exactly comparable to those identified above.

<sup>1/</sup> Source: Pay Rates in the Public Service, April, 1972  
Public Personnel Association, 1313 E. 60th Street  
Chicago, Illinois 60637

<sup>2/</sup> Data not specified in the report.

Retention of Professional Staff

The stated objective of the Full-Time Prosecution Project, to reduce professional staff turnover to a reasonable level, appears to have been achieved. As identified in Table 4, which follows, there have been only two resignations in 1972, in contrast to three or four resignations a year in previous years. While there are many differing reasons for staff resignations, e.g., higher salaries or interest in private practice, the low number of resignations in 1972 can be largely attributed to the new full-time status of employment and the new salary policy.

There are two related benefits significant to the retention of qualified professional staff. First, and largely because of the new salary levels, the County Attorney's Office is attracting a large number of well-qualified applicants for positions that become vacant. This year there have been over 25 applicants, as well as numerous inquiries about jobs. This situation is in sharp contrast to previous years when there were only four or five applicants, or even no applicants for a job. Therefore, the County Attorney now has a larger number and range of applicants to choose from and can be more selective in his choice. In the long run, this ability to be selective should improve the quality of the professional staff, as well as reducing staff turnover.

The second related benefit is one of attitude. There is general consensus that professional staff members look upon a job with the County Attorney as a career, rather than a temporary job between law school and private law practice. In the past many young attorneys took a job with the County Attorney's Office only until they developed their own practice. In such cases the attorney's main concern was his private practice, rather than the work of the County Attorney's Office. Under the present policy of full-time work and pay, attorneys with a strong interest in private practice are not applying for jobs with the County Attorney, and those who are applying are interested in a career. There is general agreement that such career-orientation improves the quality of the professional effort on the part of the individual attorney and therefore is a real, though intangible, benefit to the County Attorney's Office and the County.

TABLE 4

Summary of Professional Staff Turnover

Polk County District Attorney's Office

Des Moines, Iowa

1972

A. CAREER RETENTION EXPERIENCE:

<u>Number of Professional Staff</u>	<u>Years with County Attorney</u>
5	5 or more years of service
5	2 to 5 years of service
5	Less than two years of service

B. PROFESSIONAL STAFF TURNOVER:

<u>Year</u>	<u>Number of Staff Vacancies</u>	<u>Total Number of Professional Staff</u>	<u>Per Cent Change</u>
1972	2	15	13.3
1971	3	12	25.0
1970	3	11	27.3
1969	4	11	36.4

Note: Of the 12 staff additions during this period, five had two or more years of experience and seven had no experience.

C. APPLICATIONS RECEIVED TO FILL VACANCIES:

<u>Year</u> <sup>1/</sup>	<u>Number of Applications</u>
1972	25+
1970	5

<sup>1/</sup> Other years' applications were approximately 6 or less; at one point there were no applicants.



Reduction in Case Backlog

Case backlog has been reduced, and the reduction is largely attributable to increased staff utilization available through the Full-Time Prosecution Project. This conclusion is documented through a number of statistics, namely, the monthly case assignments of the Assistant Prosecutors has risen to a total of 2,744 for 1972, an increase of 919 over 1971. Refer to Table 5, which follows. Comparing 1972 with 1971, the number of indictments and informations filed has remained stable, in fact showing a slight decrease. Therefore, a valid conclusion is that there has been a significant reduction in case backlog.

The other significant indicator is the number of case dispositions. Table 6 following, shows that the number of dispositions by trial has increased by approximately 50 per cent between 1971 and 1972, for the period January through October, respectively.

These data are the best available indication of the impact of the Full-Time Prosecution Project. The number of "pending" cases as reported on the "Report of Judicial Business" by the Clerk of the District Court is not a valid number for identifying backlog. Such "pending" cases include all open docketed cases even though, for example, the defendant may be a fugitive and, therefore, not available for trial. Also, the number of such docketed cases recorded is insufficient to provide statistically valid data for purposes of analysis, comparison, or projections.

The County Attorney's Office does not maintain a record or statistical reporting system to clearly identify and report case backlog, volume, or disposition. Therefore, precise information on case backlog is not available in any form which can be readily used for purposes of statistical analysis.

The available information includes the case assignments, made by the First Assistant Prosecutor each month, which includes all scheduled cases for the next month. Though such cases may be postponed, carried over to the next month, and delayed for a variety of reasons, the major increase this year in the number of scheduled cases is only possible through an increased level of professional effort, which in turn is attributable to the Full-Time Prosecution Project.

TABLE 5  
Summary of Case Assignments for Trial  
Workload of Assistants  
Polk County Attorney's Office  
Des Moines, Iowa

1972

<u>Year</u>	<u>Number of Case Assignments</u> <sup>1/</sup>
1972	2,744
1971	1,825
1970	2,098
1969	1,412

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<sup>1/</sup> Assignments are made by the First Assistant Prosecutor monthly to the appropriate Assistant Prosecutors.

TABLE 6  
Disposition of Criminal Cases  
Polk County  
Des Moines, Iowa  
January through October  
1971 and 1972

CASE DISPOSITIONS: <sup>1/</sup>

<u>Year</u>	<u>By Trial</u>	<u>Plea</u> <sup>2/</sup>	<u>Dismissed</u> <sup>2/</sup>	<u>Total Cases Disposed</u>
1972	145	388	97	630
1971	102	410	122	634

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<sup>1/</sup> Source: Assignment Clerk, who is appointed by the Chief Judge is responsible for docket control.

<sup>2/</sup> The Assignment Clerk is not always notified of pleas and dismissals; therefore the number of pleas and dismissals is higher than the number identified above.

DISPOSITION BY TRIAL (Ten Month Period)

<u>1971</u>	<u>1972</u>	<u>Per Cent Change</u>
102	145	42

Other Project Impacts

In addition to the three stated objectives of the Full-Time Prosecution Project, this section reviews other beneficial impacts of the project.

Decrease in Delays

There is a consensus that there has been a significant reduction in the time between the arraignment of a defendant and final disposition, though precise records to pin-point relevant time periods are not available. However, the Des Moines/Polk County Metropolitan Criminal Justice Center is in process of a detailed review of the docket records of the Clerk of the Court to identify differences in processing time for individual cases for specified months between 1972 and 1971. Preliminary findings indicate that the results are quite inconclusive for making any valid deductions about the improvement in time lags of felony cases. If warranted, the Center will submit a separate report to the Board of Supervisors in the near future identifying such findings.

It should be noted that valid statistical analysis to identify delays is extremely difficult and that any results offer a very limited basis for making judgments concerning such time delays. Such limitations are due to the multiplicity of variables and factors which make each case unique. Variables include the availability of the participants: the prosecutor, the defense counsel, the judge, grand juries, and so forth. Additional factors are the procedures and policies relating to case assignment, continuances, plea negotiations, pre-trial motions and hearings, and related characteristics of the criminal justice process. Therefore, time delays are the sum of the time requirements for a series of independent processes among independent participants with differing functions, responsibilities, and attitudes. In such circumstances it is difficult to identify meaningful data, let alone attribute delays to a specific participant, i.e., the County Attorney's Office. Relevant information cannot be obtained until an effective management reporting system is developed and installed to meet such informational needs.

Improved Screening and Case Preparation

Although statistics are not currently available to identify the number or per cent of cases screened out, the increase in staff resources available to the County Attorney has allowed an Assistant Prosecutor to spend full time on the screening of cases, in contrast to the part-time professional effort of previous years. Hence, the quality of the prosecuting charge and the basis for the decision to prosecute should also improve. In such improved circumstances the County Attorney better represents the public.

Since October of 1972, the County Attorney has installed a two-man approach for case preparation, wherein two cases are ready for trial before a judge each day, so that if one case is quickly disposed of or delayed, the second case is ready for trial and can be initiated. While the program has only been in operation for two months, both the County Attorney's Office and several judges have stated that the program has had beneficial results in reducing delays in felony trials and case dispositions.

Improved Plea Bargaining

It is recognized that "Plea Bargaining" is an acceptable practice wherein guilty pleas are exchanged for reduced charges or other favorable recommendations by the County Attorney's Office. This is documented by the American Bar Association's Standards, refer to Appendix I, Exhibit B, Plea Discussions. Further, plea bargaining is an important factor in avoiding severe congestion in the courts. However, the practice can often be abused, especially in a situation where defense counsel knows that a prosecutor is restricted in available professional resources to bring cases to trial and, therefore, must engage in extensive plea bargaining.

Through the Full-Time Prosecution Project, the County Attorney has an improved capacity to bring cases to trial, as well as meet defense demands for a "speedy trial", requiring a trial within 30 days from date of arraignment. Therefore, the County Attorney is in a much stronger position to effectively engage in plea bargaining with defense counsels.

Improved Working Conditions

Because of inadequate space and antiquated office facilities, working conditions within the County Attorney's Office are extremely poor. There is need for more space, modern equipment and better facilities, as well as additional clerical support. Offices of Assistant Prosecutors are crowded and lack conference rooms. However, working conditions improved slightly this year by eliminating the private practices of Assistant Prosecutors, since some of them conducted their private practice from the County Attorney's Office because they did not maintain private law offices for such purposes. Such activities, in the face of existing crowded conditions, added greatly to the space problems of the Office.

Other Reactions to the Project

District Judge Dale Missildine stated that the need for full time prosecution is essential. He stated that he could see improvement in case preparation, file certainty, background work, and a smoother operation. Similar viewpoints were also expressed by Chief Judge Holliday and Judge Oxberger in interviews with the project team.

The officials within the Police Department indicated that they could see little improvement within the County Attorney's Office, and expressed some general objections to some final charges of defendants as made by the County Attorney's Office. From visiting a number of local government jurisdictions across the county it can be noted that this is not an uncommon situation. Often, conflicts arise between the District or County Attorney and the local law enforcement agency, particularly in reference to the "charging" of defendants. Legitimate complaints should be brought to the attention of the County Attorney. It would be beneficial if the Des Moines Police Department would appoint a "police liaison officer" to handle such matters between the Police Chief and the County Attorney. It is recognized that formal responsibility for charges lies solely with the County Attorney, who acts as the Chief law enforcement official of the County. Refer to Exhibit C in Appendix I, Discretion in the Charging Decision, for the appropriate ABA standard.

Although technically the County Attorney and the Assistants became full-time employees only this year, it was noted that the County Attorney and several of the senior Assistant Prosecutors have, for years, worked more than full time, working many evenings and week-ends, without added compensation and with little or no outside practice. In such a situation the only fair thing to do was to provide a full salary schedule for such County employees.



Conclusions: A Summary of Improvements

From a review of the impacts of the Full-Time Prosecution Project, it is concluded that the specified project objectives have been achieved, along with associated benefits to the public. Actual or potential improvements include:

- A higher quality of "charging", which improves the probability of obtaining pleas thereby reducing court trial days and case backlogs.
- Direct savings of court costs, through more effective use of judicial time, court days, witness and police officers, with direct saving in witness fees and payments to police officers for court days
- More services to the public, e.g., the newly-established program for consumer protection which already has returned over \$50,000 to the citizens of Polk County. With an increase in available staff resources, additional programs can be developed, e.g., an enforcement program concerned with environmental protection.
- More effective prosecution, with its positive impact on convictions, has the long term effect of better protection to the citizens of Polk County.
- More time for the County Attorney to assume a leadership role in improving procedures within the criminal justice system and providing more services to the public whom he serves.

APPENDIX I

Exhibit A

Assuring high standards of professional skill.  
ABA Section 2.3, page 57

- (a) The function of public prosecution requires highly developed professional skills. This objective can best be achieved by promoting continuity of service and broad experience in all phases of the prosecution function.
- (b) The offices of chief prosecutor and his staff should be full-time occupations.
- (c) Professional competence should be the only basis for selection for prosecutorial office. Prosecutors should select their staffs on the basis of professional competence without regard to partisan political influence.
- (d) Except when seeking re-election, a prosecutor who is a candidate for elective office should resign, or at least obtain leave of absence during the period of a political campaign, and should do so as soon as he announces his candidacy.
- (e) In order to achieve the objective of professionalism and to encourage competent lawyers to accept such offices, compensation for prosecutors and their staffs should be commensurate with the high responsibilities of the office and comparable to the compensation of their peers in the private sector.
- (f) Where the prosecutor is an elected official, it is desirable that the statutes providing for election require that the candidates run without party designation.

Commentary

a. Career service

In an effort to recruit the most competent of law school graduates in competition with large law firms, prosecution offices have used as an inducement the larger opportunities for trial experience afforded by spending a few years as a prosecutor. It is indeed true that a young lawyer can acquire a wide trial experience in a relatively short period in a prosecution office, but there is a limit on how much "turnover" of personnel is tolerable and consistent with effective prosecution. The current phenomenon of bright young men "flitting" in and out of prosecution offices in order to acquire trial experience on the assumption that it is valuable to them confuses exposure with experience and seriously undermines the efficiency of the office; it may well be one of the large factors contributing to lack of professional competence observable in some prosecution offices. The most efficient prosecution offices are built on a career type service. See Mayer, "Hogan's Office" Is a Kind of Ministry of Justice, N. Y. Times, July 23, 1967, #6 (Magazine), p.7. Some prosecutors will not appoint a recent law graduate unless he commits himself to serve for at least three or four years. This policy has demonstrable advantages. An efficient balance in terms of personnel can be achieved by maintaining a continuing cadre of experienced lawyers supplemented by infusion of young lawyers, some of whom may be attracted to continue in this important public service. A career service need not require that all or even a majority of the staff dedicate their professional lives to this one task. Effective prosecution, however, requires substantial continuity of service. A career service may be patterned on the United States Department of Justice central staff which relies on normal attrition and turnover to maintain the desirable infusion of new personnel.

To develop and maintain a high degree of professional performance in a prosecution office requires a certain degree of continuity at several levels. In a large office the most important of these levels is the cadre of experienced prosecutors who staff the various sections, bureaus or divisions. With such a reservoir of experience in continuity, periodic changes in the office of chief prosecutor are tolerable

even if not desirable. With reasonable continuity at these two levels, some turnover at lower levels of the staff are not only tolerable but perhaps desirable to maintain a steady infusion of "new blood" and new ideas and to supply a source from which senior prosecutors can be promoted. In this respect, the office and staff of a prosecutor are not unlike a law firm or any other professional group performing important functions.

b. Full-time occupation

An important step in achieving the goal of professionalism is to make the position of prosecutor a full-time occupation for its holder. At present, a large number of prosecutors, including some in urban areas, devote only a portion of their professional effort to the duties of their office. See The Prosecuting Attorneys of the United States--1965, NDAA J. 191, 195-217 (1966). Many undesirable problems arise from this situation. "The attorneys he deals with as a public officer are the same ones with whom he is expected to maintain a less formal and more accommodating relationship as counsel to private clients. Similar problems may arise in the prosecutor's dealing with his private clients whose activities may come to his official attention." President's Crime Commission, The Courts 73. Apart from the problem of conflict of interests, which raises ethical problems, there is a great risk that the part-time prosecutor will not give sufficient energy and attention to his official duties. Since his salary is a fixed amount, and his total earnings depend on what he can derive from his private practice, there is a continuing temptation to give priority to private clients.

There may be some areas of the country in which geographical considerations make it impractical to establish prosecution offices on a scale which would require a full-time attorney, but in most areas of the country it can be done by enlarging the area he serves so as to support and warrant the services of a full-time prosecutor. See #2.2 and Commentary, supra. In larger districts, where the prosecutor's office consists of more than one attorney, there is no substantial justification for the retention of the practice of hiring assistants on a part-time basis. The experience and performance of the United States Department of Justice suggests that even the remote and isolated areas can be served from a centrally-located prosecutor's office without reliance on part-time assistants. The public interest requires that the practice of employing part-time prosecutors should be eliminated as soon as feasible.

APPENDIX I

Exhibit B

Plea Discussions, ABA, Section 4.1, page 35

4.1 Availability for plea discussions.

- (a) The prosecutor should make known a general policy of willingness to consult with defense counsel concerning disposition of charges by plea.
- (b) It is unprofessional conduct for a prosecutor to engage in plea discussions directly with an accused who is represented by counsel, except with counsel's approval. If the accused refuses to be represented by counsel, the prosecutor may properly discuss disposition of the charges directly with the accused; the prosecutor would be well advised, however, to request that a lawyer be designated by the court or some appropriate central agency, such as a legal aid or defender office or bar association, to be present at such discussions.
- (c) It is unprofessional conduct for a prosecutor knowingly to make false statements or representations in the course of plea discussions with defense counsel or the accused.

4.2 Plea disposition when accused maintains innocence.

A prosecutor may not properly participate in a disposition by plea of guilty if he is aware that the accused persists in denying guilt or the factual basis for the plea, without disclosure to the court.

4.3 Fulfillment of plea discussions.

- (a) It is unprofessional conduct for a prosecutor to make any promise or commitment concerning the sentence which will be imposed or concerning a suspension of sentence; he may properly advise the defense what position he will take concerning disposition.

- (b) A prosecutor should avoid implying a greater power to influence the disposition of a case than he possesses.
- (c) If the prosecutor finds he is unable to fulfill an understanding previously agreed upon in plea discussions, he should give notice promptly to the defendant and cooperate in securing leave of the court for the defendant to withdraw any plea and take other steps appropriate to restore the defendant to the position he was in before the understanding was reached or plea made.

4.4 Record of reasons for nolle prosequi disposition.

Whenever felony criminal charges are dismissed by way of nolle prosequi (or its equivalent), the prosecutor should make a record of the reasons for the action.

APPENDIX I

Exhibit C

Discretion in the charging decision. ABA, Section 3.9, page 33

- (a) In addressing himself to the decision whether to charge, the prosecutor should first determine whether there is evidence which would support a conviction.
- (b) The prosecutor is not obliged to present all charges which the evidence might support. The prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute, notwithstanding that evidence exists which would support a conviction. 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;
  - (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.

- (c) In making the decision to prosecute, the prosecutor should give no weight to the personal or political advantages or disadvantages which might be involved or to a desire to enhance his record of convictions.
- (d) In cases which involve a serious threat to the community, the prosecutor should not be deterred from prosecution by the fact that in his jurisdiction juries have tended to acquit persons accused of the particular kind of criminal act in question.
- (e) The prosecutor should not bring or seek charges greater in number or degree than he can reasonably support with evidence at trial.



APPENDIX I

Exhibit D

The Function of the prosecutor. ABA, Section 1.1, page 25

- (a) The office of prosecutor is an agency of the executive branch of government which is charged with the duty to see that the laws are faithfully executed and enforced in order to maintain the rule of law.
- (b) The prosecutor is both an administrator of justice and an advocate; he must exercise sound discretion in the performance of his functions.
- (c) The duty of the prosecutor is to seek justice, not merely to convict.
- (d) It is the duty of the prosecutor to know and be guided by the standards of professional conduct as defined in codes and canons of the legal profession, and in this report. The prosecutors should make use of the guidance afforded by an advisory council of the kind described in ABA Standards. The Defense Function, section 1.3
- (e) In this report the term "unprofessional conduct" denotes conduct which it is recommended be made subject to disciplinary sanctions. Where other terms are used, the standard is intended as a guide to honorable professional conduct and performance. These standards are intended as guides for the conduct of lawyers and as the basis for disciplinary action, not as criteria for the judicial evaluation of prosecutorial misconduct to determine the validity of a conviction; they may or may not be relevant in such judicial evaluation of prosecutorial misconduct, depending upon all the circumstances.

**END**