

Utah Law Enforcement Planning Agency's Project on  
Criminal Justice Standards and Goals

## JUDICIAL SYSTEMS

### THE PROSECUTOR

**DUP**

Approved by

Judicial Systems Task Force

Utah Law Enforcement Planning Council

August, 1974



GALVIN L. HAMPTON  
GOVERNOR

STATE OF UTAH  
OFFICE OF THE GOVERNOR  
SALT LAKE CITY

October 22, 1975

Dear Citizens:

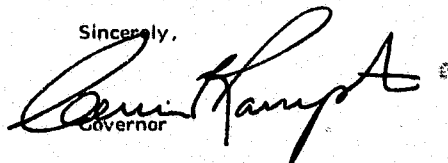
This pamphlet is one of a series of reports of the Utah Council on Criminal Justice Administration. The Council's five Task Forces: Police, Corrections, Judicial Systems, Community Crime Prevention, and Information Systems, were appointed on October 16, 1973 to formulate standards and goals for crime reduction and prevention at the state and local levels. Membership in the Task Forces was drawn from state and local government, industry, citizen groups, and the criminal justice profession.

The recommendations and standards contained in these reports are based largely on the work of the National Advisory Commission on Criminal Justice Standards and Goals established on October 20, 1971 by the Law Enforcement Assistance Administration. The Task Forces have sought to expand their work and build upon it to develop a unique methodology to reduce crime in Utah.

With the completion of the Council's work and the submission of its reports, it is hoped that the standards and recommendations will influence the shape of our state's criminal justice system for many years to come. Although these standards are not mandatory upon anyone, they are recommendations for reshaping the criminal justice system.

I would like to extend sincere gratitude to the Task Force members, staff, and advisors who contributed something unknown before--a comprehensive, inter-related, long-range set of operating standards and recommendations for all aspects of criminal justice in Utah.

Sincerely,

  
Governor

## THE PROSECUTOR

**JUDICIAL SYSTEMS  
TASK FORCE**  
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## INTRODUCTION

Our criminal justice system is essentially an adversary system designed to establish facts, determine truth and administer justice through the interaction of opposing sides. The entire premise is based upon the proposition that both sides will be equal to their assigned task. Only in this way will the goals of the present judicial institutions work. When one side becomes imbalanced with the other, then efficient, competent judicial determinations cannot be made.

One side of this great adversary system is the prosecutor. He occupies a most critical position in the criminal justice system. It is the prosecutor who must focus the power of the state on those who defy its prohibitions. He must meet the highest standard of proof and must bear the burden of the attack. When the defense is weak and incompetent, the goals of personal freedom and just determinations of guilt or innocence cannot be properly made. This is also true of the weak prosecutor, except his responsibility is greater -- he must also protect the public good as well as the individual need. Therefore, an inadequate prosecution is more detrimental to the system than a weak defense.

The basic premise of this chapter is that the office of the prosecutor should be on the same level of professionalism as private law firms of comparable size. The chapter deals with the issues of personnel, manner of conducting business, salaries, working facilities and the creation of statewide organizations for mutual help. The emphasis in this chapter is not so much on changing attitudes but rather on the need for a greater monetary commitment in bringing the office of the prosecutor the necessary professionalism to properly represent the state and thus give greater credence to the adversary system.

### 3.1 PROVIDING PROSECUTIONAL SERVICES

#### STANDARD

There should be established an office of "state prosecutor" to handle all prosecutorial duties within the state involving violations of statutes of the State of Utah. This office should be non-political and separate from the attorney general's office. The complexities and demands of the prosecution function require that the prosecutor be a full-time, skilled professional selected on the basis of demonstrated ability and high personal integrity. The prosecutor should be authorized to serve a minimum term of four years. He should maintain no outside practice. He should be separate from any county attorney's office. The prosecutor and his staff should receive an annual salary comparable to that of the attorney general and his staff.

The "state prosecutor's" office should prosecute persons charged with violations of the criminal statutes of the State of Utah from the inception to the conclusion of each case, including appeal.

The "state prosecutor's" office should be adequately staffed and financed by the state.

The method of selection of the "state prosecutor" should be set by the legislature.

Prosecution of violations of city or county ordinances should be handled by the city or county attorney.

#### NATURE OF THE STANDARD

The basic premise of this standard is that the complexities of the job of prosecutor require that full time be devoted to the task. It is imperative that all prosecutors devote full time to the duties of their office, and have no outside legal practice. The Commission has determined that professionalism demands such a full-time commit-

ment, and that the state needs to rearrange its priorities to provide for it.

The chief prosecutor should be elected for a full four years. Elected, because on balance, this gives him the needed independence to carry on his duties, and yet, also makes him responsible and answerable to the sovereign citizenry. In some jurisdictions, the prosecutor is elected every two years. The Commission recommends that this be changed, where applicable, to a four-year term as more conducive to the type of work involved in prosecution. Two years has an unstabilizing effect, and does not lend itself to performing a professional job.

It is also recommended that the chief prosecutor's salary be no less than those of the judges under which he practices. This is premised upon the determination that such a salary base will make the job properly attractive, and reflect the area's standard rate for judicial public officials.

The state, themselves, must assume responsibility for assuring an adequate salary. Local options permit increases above this minimum to allow specific jurisdictions to take account of local economic conditions and to attract qualified attorneys to the office of the prosecutor.

#### UTAH STATUS AND COMMENTS

a) Utah Law: In Utah, there are two offices of prosecution that are to be dealt with in the standards. The first is the "County Attorney", and the second is the "City Attorney".

The proceedings by which a person charged with a public offense, accused, brought to trial and sentenced, is known as a criminal action. A criminal action may be prosecuted in the name of the State of Utah as a party against the person charged with the offense. The party prosecuted in a criminal action is designated as the defendant and is entitled to certain rights.

Criminal proceedings are initiated in a justice or City Court by means of a "complaint" filed by the County Attorney or a private citizen. After a "preliminary examination", the accused is "bound over" to the District Court. The County Attorney files an "information", charging him with the offense before the District Court. A defendant may waive the preliminary hearing with the state's consent. Elected public prosecutors gather evidence and conduct prosecution against persons charged with crimes in Utah. City and County Attorneys bring misdemeanor cases to trial before City and Justice Courts; County Attorneys handle preliminary hearings in felony cases. Felonies are tried in the District Court, and are also presented by the County Attorneys. The Attorney General represents the State of Utah before the Utah Supreme Court or the Federal courts.

In the past, Utah labored under a splintered prosecution system, in which three separate agencies handled the same case. The County Attorney initiated a complaint, and was responsible for the preliminary hearing; the case was then passed on to the District Attorney for trial. In the event of an appeal after trial, or a writ of habeas corpus, the Attorney General was charged with representing the state.

This system was changed on January 1, 1973. At that time, all District Attorney offices were abolished, and the District Attorney responsibilities were taken over by the County Attorney, thus creating a "single prosecution system". The major goal of the program is to have one attorney handle each case from the issuance of complaint to final disposition.

The County Attorney who issues the original complaint also handles all matters which arise in relation to that particular case. He issues the felony complaint, issues any necessary search warrants, conducts line-ups, conducts the preliminary hearings, and prepares and presents evidence in any pre-trial evidentiary and suppression hearings. The same attorney also conducts the trial on any post-trial motions.

The single prosecution system requires that if, upon conviction, a defendant is put on probation and then violates the terms of his probation, the same attorney conducts the probation violation hearing. When extraordinary writs are filed by a defendant, the attorney who has dealt with the case would also prepare a response to that writ. The program, therefore involves the attorney with the most knowledge of the case to effectively prosecute and deal with it at any stage of the proceedings. Chapter 18 of the Utah Code outlines the powers, duties, and prohibitions of the County Attorney. Chapter 10 of the Utah Code deals with the duties of the City Attorneys.

In Utah, with only one exception, all of the County Attorneys are part-time officials. This "part-time" is anything from three-fourths time, as in Salt Lake and Davis Counties, to less than one-half time in some of the rural southern and northern Utah Counties. Only in the more populous counties of the State of Utah is an Assistant or Deputy County Attorney found. These counties consist of Cache, Weber, Davis, Salt Lake, Iron and Carbon. Of these, only Cache, Weber, Davis, Salt Lake, and Utah Counties have full-time Deputy or Assistant County Attorneys.

County Attorneys are elected for four-year terms on a partisan ballot in the State of Utah, and receive a salary ranging from \$1,200 per year in the most rural of Utah's counties, to \$16,000 per year in the most populated county. The City Attorney's range in salary from \$600 per year in the rural counties to \$16,064 in Salt Lake City. There are 29 County Attorneys in the State of Utah, and 20 City Attorneys. As compared to their judicial counterparts, District Court Judges in the State of Utah receive a salary of \$22,000 per year, and City Court Judges receive a salary between \$13,002 per year and \$16,064. The City Attorney is appointed by the City Commission, with the administration to run until the next municipal election.

b) Where Utah Differs: The differences in Utah are quite obvious. Utah does not have full-time prosecutorial personnel, with the exception of Deputy and Assistant County Attorneys. Utah does not

offer a salary commensurate with their judicial counterpart on either the District Court level or the City Court level. Utah also does not have a statutory requirement for full-time prosecution. The standard indicates that the jurisdiction of every prosecutor's office should be designed so that population, caseload, and other relevant factors warrant at least one full-time prosecutor. Through the changeover to County Attorneys and the abolishment of District Attorneys, this is no longer the case in the State of Utah.

#### **METHOD OF IMPLEMENTATION**

Legislative action, sponsored and drafted by SWAP.

### **3.2 SELECTION AND TRAINING OF ASSISTANT PROSECUTORS**

#### **STANDARD**

The primary basis for the selection and retention of assistant prosecutors should be demonstrated legal ability. Care should be taken to recruit lawyers from all segments of the population. The prosecutor should undertake programs such as legal internships for law studies, designed to attract able young lawyers to careers in prosecution.

The position of assistant prosecutor should be a full-time occupation, and assistant prosecutors should be prohibited from engaging in outside law practice. The starting salaries for assistant prosecutors should be no less than those paid by private law firms in the jurisdiction, and the prosecutor should have the authority to increase periodically the salaries for assistant prosecutors to a level that will encourage the retention of able and experienced prosecutors. Salaries of assistant prosecutors should remain comparable to those of attorney associates in local private law firms.

The caseload for each assistant prosecutor should be limited to permit the proper preparation of cases at every level of the criminal proceedings. Assistant prosecutors should be assigned cases sufficiently

in advance of the court date to enable them to interview every prosecution witness and to conduct supplemental investigations when necessary.

Each office also should have a sufficient number of attorneys to perform the other functions of the office.

Each prosecutor's office, where appropriate, should develop an operations manual of office practices and policies for distribution to every assistant prosecutor. This manual should be reviewed not less frequently than every six months to assure that it remains up to date and relevant. The manual should include guidelines governing screening, diversion, and plea negotiations, as well as other internal office practices.

#### **NATURE OF THE STANDARD**

This second standard extends the professional criteria past the chief prosecutor, who is elected, to his deputies. This standard is concerned with attracting able persons into a career of prosecutorial work. One method is to undertake educational programs and establish legal interns. These programs would expose law students to the opportunities available in the field and also equip prospective prosecutors with some practical experience.

It is also recommended that the starting salaries for deputies should correspond in some way, with the type of salaries paid in the private firms of the area. The chief prosecutor should have some leeway to determine salaries within a given budget.

There is also a recommendation to appoint enough deputies and have sufficient help that caseloads may become more manageable and that competent trial personnel be hired.

Tying in with past standards, it is recommended that assistant prosecutors should be assigned cases sufficiently in advance of the

court date in order to enable them to interview witnesses, conduct proper investigations and proper preparations for trial. This would call for cooperation from the bench and large enough staffs to handle the load.

#### UTAH STATUS AND COMMENTS

a) Utah Law: In the Utah Code, 17-16-69, deputies may be appointed with consent of the Commissioners. In some counties, staffs are comparatively large, while in others they consist of only the chief prosecutor.

In Salt Lake County, the county attorney has 30 deputies and three investigators. Their salaries range from \$13,000 to \$21,000. In comparison, through a straw poll, it has been determined that a starting salary in a Salt Lake law firm might range from \$10,000 to \$15,000. Of course, with these private firms, the salary potential is practically unlimited; whereas, with the county attorney, raises are necessarily restricted.

In Salt Lake City, the attorney has 11 assistants who are paid between \$10,072 and \$13,068.

In terms of caseload, the county attorney for Salt Lake, for example, is understaffed, and the recommendation by the Commission that there be a separate staff of trial personnel is not possible with the present facilities.

There is a prosecutor-intern program conducted by the University of Utah Law School under the direction of Professor Ronald Boyce, with financial assistance from L.E.P.A. Much of the work is conducted, however, with the Attorney General's Office rather than with either the City or County attorney, and, in any event, their work is restricted to the Salt Lake area because of the location of the school.

b) Where Utah Differs: The differences in Utah are obvious. Most of

Utah's prosecutorial offices do not have the need for assistant prosecutors. As indicated in other standards, only Salt Lake, Weber, Davis, and Utah Counties have full-time assistants, and Iron, Cache, and Carbon Counties have part-time assistants.

The only legal-intern program currently ongoing is the Prosecutor-Intern Project at the University of Utah Law School, and this was only refunded through U.L.E.P.A. with strong resistance and reluctance by members of the Law Enforcement Planning Council. Fourth-year funding for the program was denied.

The position of assistant is only "full-time" in theory. The Salt Lake County Attorney's Office has a merit system, and thus the majority of its 30 assistants do not have outside practices. However, the same cannot be said of any other county attorney office.

Salaries on a starting level are commensurate, but increases and maximum payment is not commensurate with private practice.

Assignment of cases is not done in advance sufficiently to prepare for court. However, this is true on all levels of prosecutorial service, and is due to the lack of staff and its proportionate caseload.

#### METHOD OF IMPLEMENTATION

Voluntary compliance would be the main approach, with public relations work by SWAP.

If standard 3.1 is adopted, legislative action will be required to make this applicable statewide.

#### 3.3 SUPPORTING PERSONNEL AND FACILITIES STANDARD

**The office of the prosecutor should have an adequate supporting staff, including an office manager if the need exists.**



The office of the prosecutor should have adequate physical facilities. The prosecutor and his staff should have immediate access to a library sufficiently extensive to fulfill the research needs of the office. Staff attorneys should be supplied with personal copies of books such as the state criminal code, needed for their day-to-day duties.

The basic library available to the prosecutor's office should include at least the following: the annotated laws of the state, the state code of criminal procedures, municipal codes, the United States code annotated, the state appellate reports, the U.S. Supreme Court reports, citations covering all reports and statutes in the library, digests for state and federal cases, a legal reference work digesting law in general, form book of approved jury charges, legal treatises on evidence and criminal law, criminal law and U.S. Supreme Court case reports published weekly, looseleaf services related to criminal law, and, if available, an index to the state appellate brief bank.

#### NATURE OF THE STANDARD

The Commission is concerned about adequate working facilities for the state's prosecutors. This stems from a basic belief that for an effective prosecution there must be a proper correlation between what the prosecutor has to work with and what defense counsel has. The belief carries over into the area of physical maintenance of the prosecutor's office. Of course, apart from what the defense has, an efficient, well-healed prosecutor's office helps the community by being an effective cog in the criminal justice system. The system functions more smoothly and in the greater interest of justice.

The standard calls for adequate staffing of the prosecutor's office. This includes: deputies of sufficient experience and background to properly represent the state, paraprofessionals, such as law clerks, to enhance the efficiency and productivity of the office so that each case will be properly prepared, supporting staff of investigators and secretaries.

Another aspect to this standard is the emphasis on actual physical improvements for the office. First, the office should have adequate space, not only for individual work areas, but for reception areas and storage areas. Secondly, there should be a proper library in order to do at least the rudiments of research.

#### UTAH STATUS AND COMMENTS

a) Utah Law: In Utah, only four counties have a full-time staff doing prosecutorial work. They are, Salt Lake, Weber, Davis and Utah Counties. Salt Lake has the largest allotment of deputies; 30. The others range between two and eight. Most County Prosecutors in the state spend between one-third and one-half of their time in prosecution. Except for the four counties listed, plus Cache and Carbon Counties, their prosecutor's office is also their private law office, even though the county may provide space in its county courthouse. The county usually allots money to each county attorney in two lump sums. First, the salary, and secondly, office management. The second category goes for secretarial help, rent, and supplies. A recent survey conducted by S.W.A.P. showed that most of the county attorneys consider the amounts received for office management below the actual amount needed to maintain the present level. Some counties have a lump sum given for hiring deputies.

The vast number of offices in the state are essentially small office operations. Recently, the Law Enforcement Planning Agency issued a grant establishing a full-time prosecutor in Iron County to demonstrate the value of full-time commitment. It is the general consensus, however, that in terms of the smaller counties, the state may have to revert to some form of district attorney system.

b) Where Utah Differs: The standard is, of course, formulated with the entire country in mind. As such, it does not take into consideration the situation in such counties as Daggett, Piute, Grand, etc. The work for a prosecutor in such small counties is limited, and therefore, the

need for a large staff and the sort of physical plant that the standard contemplates is not only not needed, but unaffordable.

In the larger counties, the general consensus is that there is always room for a better physical plant and enough work for additional personnel. If the standard uses as a measuring stick the comparability of private law firms in the area, then this is a true statement. For example, in Salt Lake County, the prosecutor handled 29,000 felony matters in 1972, with a staff of 30.

Of the four metropolitan county attorney's offices, only Salt Lake County has an office manager. Paraprofessionals are not utilized in any of the county attorney offices, with the exception of the third-year law students through the University of Utah's prosecutor-intern program. Secretarial help is deficient across the board. Legal library facilities are not adequate. The only well-stocked facilities are at the Attorney General's Office via the Capitol Law Library, the University of Utah Law Library, and Salt Lake County Attorney's Library, and some of the private law libraries of elected County Attorneys.

#### **METHOD OF IMPLEMENTATION**

Voluntary compliance by the various county attorneys. However, guidance should be given through SWAP, and economic consideration has to be secured, either via county commissions or the Utah Legislature.

### **3.4 STATEWIDE ASSOCIATION OF PROSECUTORS [SWAP]**

#### **STANDARD**

There should be a state-level entity whose objectives are:

1. To establish a coordinator's office which should function as a clearing-house for all training, both pre-service and in-service, for

prosecutors; aid in coordination of prosecutorial activities; function as a liaison agency between resource agencies and the various prosecutor's offices needing legal advice and research.

2. To provide pertinent information on new cases, points of law, and other related data to prosecutors through a monthly newsletter.

3. To upgrade the role and image of prosecution through establishment of a "professional organization."

4. To disseminate updated sections of the prosecutors' handbook and new reference sections of the index/cross reference of the penal code.

5. To further professionalize prosecution through advancement of prosecution as a career and thorough correspondingly increased salaries.

6. To aid in legislative transactions for prosecutors.

7. To give assistance in developing innovative prosecution programs.

This entity should provide at least two seminars of two-or three-days' duration each year and cover topics within the law enforcement system: the duties and responsibilities of the prosecutor, trial strategy and evidentiary duties, general problems in prosecution, and recent statutory enactments and court decisions.

The statewide organization should have a full-time administrator who should set the tone for the rest of the state's prosecutors; his pay should be commensurate with other prosecutors; he should have no private practice; and he should work full time in his position. He should have an assistant director and whatever support staff is needed for the completion of his duties.

The statewide organization should develop guidelines for all

prosecutors' offices, and these should be included as part of the prosecutors' handbook.

#### NATURE OF THE STANDARD

One of the key elements on which the Commission has placed a great deal of emphasis is that the greater problems of our system can be cured, in large part, through better organization. Standard 3.4 directly addresses itself to that issue by establishing an organization for prosecutors.

It is recognized that in many respects each office has its different problems as dictated by the different atmosphere under which it must conduct business. But, in a larger sense, there is a great deal to be gained through a statewide organization.

The standard contemplates that such a structure as it has fashioned will assist the prosecutorial process in three main areas: First, a statewide organization will serve as a conduit for assistance in terms of new programs and education. Second, the statewide organization will serve in terms of support systems. This includes laboratories, special personnel, data gathering services and research facilities. In this way, even the smaller offices will have the advantages of the larger offices, and all state prosecutors will benefit from mutual help. This state organization will serve as the formal mechanism to channel that special expertise. Third, the statewide organization will serve as an organizing device to bring the prosecutors into better contact with each other. It is contemplated that these prosecutors will meet in periodic seminars to engage in continuing education and exchange ideas and programs with their fellow prosecutors.

#### UTAH STATUS AND COMMENTS

- 1 a) There has been created, through the assistance of ULEPA in 1973,
- c a prosecutorial organization called SWAP (State Wide Association of Prosecutors).

This project establishes a central office for education, training and coordinating the technical efforts of all prosecutors in the State of Utah. SWAP was conceived as a professional organization of all Utah prosecutors from city and county prosecutors thorough and including the state prosecutors. The Legislature created a mandate of single prosecution which lends itself effectively to this concept, and it blends nicely with the Court Administration Office of the Unified Courts concept. In addition to being a professional organization, the four main areas of activity are: a central organization coordinating all prosecutorial activity, establishing an agency to give needed legal advice and carry out research as requested, printing of monthly or semi-monthly newsletter-type publications, and ascertaining training needs and implementing such programs in terms of these needs as is felt best.

SWAP is administered by a "Prosecutor Advisory Board" composed of seven members--five of whom are county attorneys, one city prosecutor, and the Attorney General or his designate. Currently, this Advisory Board meets monthly, or as otherwise deemed necessary. There is a full-time director and an assistance director of SWAP. SWAP also utilizes three of the prosecutor-interns for research purposes. Funding comes on a 90-10 basis, 90% from ULEPA and 10% from county, city and Attorney General budgets on a prorated assessment. Two annual in-state seminars are now held by SWAP, as well as individual office training and out-of-state training when needed.

b) Where Utah Differs: There has been no evaluation of the SWAP program to determine if it is meeting the goals that have been established. Its concept is, of course, in the same vein as that recommended by the Commission, although not as all-encompassing or ambitious. Nevertheless, the basic goals of creating a state organization, rendering special assistance and creating innovative programs is part of the present system, and if SWAP meets expectations, Utah will then be in compliance with the recommended standard.

## METHOD OF IMPLEMENTATION

None needed, since the organization is already established. However, legislation will be necessary to make SWAP a statutory agency and to remove the funding source from ULEPA.

If a "state prosecutor's" office is created, this organization would become a part of that office.

### 3.5 EDUCATION OF PROSECUTORS

#### STANDARD

Education programs should be utilized to assure that prosecutors and their assistants have the highest possible professional competence. All newly-appointed or elected prosecutors should attend prosecutor's training courses. Training programs for assistant prosecutors should be available in all prosecution offices. All prosecutors and assistants should attend a formal prosecutors' training course each year, in addition to the regular training.

#### NATURE OF THE STANDARD

The standard recommends that the need for specialized training be met by introductory training sessions for new assistant prosecutors, continuing educational programs within local offices, and formal educational programs of wide scope than purely locally-based programs.

The standard is based upon the proposition that the skills required, the duties imposed, and the responsibilities demanded of both the chief prosecutor and his deputies require that these people be more than just graduates of a law school. Rather, their education should be continuous, with programs designed to make them aware of new

procedures and recent developments in the ever-changing parameters of the law being a regular undertaking of the prosecutors' offices.

These sessions are of a double nature. First, there are the various training courses for prosecutors that have been developed by the National District Attorneys Association, the National Center for Prosecution Management, and similar groups. This is training directed at the techniques of office management, court administration, and administration of the criminal justice system. Second, there are in-service training seminars designed to keep the prosecutor abreast of his profession and recent developments. The office seminars are not designed to supplant the attendance by assistants at formal training programs outside of the office, but rather to complement such programs as those mentioned above.

#### UTAH STATUS AND COMMENTS

a) Utah Law: In Utah, under Article 8, Section 10 of the Utah Constitution, the Office of County Attorney is created. It states that the office be an elected position, but it does not require that the individual be either a member of the Utah Bar or a graduate of a law school. The law is also silent on any stipulation of formal pre-or in-service training. This is also true of deputy or assistant attorneys.

Currently in Utah, there are two county attorneys who are not members of the Bar, nor are they graduates from an accredited law school...Wayne and Piute County Attorneys. A few years ago, the legal status of the Wayne County Attorney was challenged and taken before the Utah Supreme Court. In the subsequent opinion, the Court ruled that the position of County Attorney in Utah was a constitutional position and was not required to be subjected to restrictions such as membership in the Utah Bar, or training such as graduation from law school.

There are two in-state seminars sponsored each year through SWAP. SWAP also provides individual training, as needed, on both the in-state and out-of-state level. The National College of District Attorneys, the National District Attorneys Association (NDAA), the National Center for Prosecution Management (NCPM), and the American Bar Association (ABA) all offer training.

ULEPA has drafted formal training guidelines for prosecutors in the State of Utah. The criteria for prosecutors is designed to be implemented by SWAP, and are as follows:

1. To provide 80 hours of basic level training for new prosecutors, district juvenile, city, and supreme court judges, and public defenders within the first year of service.
2. To provide prosecutors and public defenders with a minimum of 40 hours of job related training each year after the first year of service.
3. To provide a minimum of 16 hours of job-related training to justices of the peace annually.
4. To provide 20 hours of in-service training to supreme, district, juvenile, and city judges annually.
5. To provide 20 hours minimum job-related Training to all court-related personnel annually.

These guidelines are stated as goals for the entire Judicial System.

b) Where Utah Differs: There are no legal requirements, either constitutional or statutory, that require training for prosecutors. There is no requirement that a county or city attorney be a member of the Bar or a graduate of a law school. \*

\* It should be noted, however, that in UCA there is a qualifying statute concerning the office of county attorney. 17-18-4 states: "No

person shall be elected to the office of, or serve as county attorney, without being duly licenced to practice law in the State of Utah". [Effective January 1, 1959].

Exception: "Where there are no licenced attorneys in a county and enforcement of this section would result in the denial of the right to elect a county attorney as provided by Article VIII, Section 10 of the Constitution, then a person who is not a licensed attorney will be allowed to hold the office". [State v. Bentensen, 14 U 2d, 121, 378 P. 2d 669].

## METHOD OF IMPLEMENTATION

If statutory requirements are deemed necessary, the legislation should be prepared and sponsored by SWAP. If voluntary compliance is sought, SWAP should provide the training and also be the agency to see that compliance is achieved.

## 3.6 PROSECUTORS' INVESTIGATIVE CAPABILITIES

### STANDARD

The prosecutor's primary function should be to represent the state in court. He should cooperate with the police in their investigation of crime. Each prosecutor also should have investigative resources at his disposal to assist in case preparation, to supplement the results of police investigation when police lack adequate resources for such investigation, and, in a limited number of situations, to undertake an initial investigation of possible violations of the law.

The prosecutor should retain the power, subject to appropriate safeguards, to issue subpoenas requiring potential witnesses in criminal cases to appear for questioning. Such witnesses should be subject to

contempt penalties for unjustified failure to appear for questioning or to respond to specific questions.

The office of the prosecutor should review all applications for search and arrest warrants prior to their submission by law enforcement officers to a judge for approval; no application for a search or arrest warrant should be submitted to a judge unless the prosecutor or assistant prosecutor approves the warrant.

#### NATURE OF THE STANDARD

The traditional role of the office of the prosecutor has, in most jurisdictions, been totally as the state's litigation arm. The prosecutor was the last link in a process of investigation and arrest. In the majority of cases such a role has little effect because most cases arising out of investigations leading to an arrest are never litigated for one reason or another. The actual number of cases brought to trial is so small in comparison to the vast number of arrests, that the impact of the prosecutor in terms of crime detection and crime prevention is non-existent.

The commission feels that there is a legitimate place for the office of the prosecutor in investigation and prevention and has fashioned Standard 3.6 as a framework to set the tone for a new direction in this area.

There are four areas in which the commission believes there should be changes made in order to bring about this goal. First, in terms of police cooperation, the commission visualizes more interaction between the police and the prosecutor in the investigation of crime. In many jurisdictions the investigation is carried forth and upon its culmination, the prosecutor is called in to put the case into a legal context. The commission provides for a prosecutor who is part of the investigation. In a limited number of situations, the prosecutor himself

should undertake the initial investigation; but, in any event, the investigator and the prosecutor need to move closer together.

The second area is to give the prosecutor independent investigation capabilities. Such investigations would supplement the work of the police and would also branch off into technically legal areas where the expertise of a prosecutor is needed to properly pursue the investigation.

The third area is an innovative program giving the prosecutor limited powers of subpoena in order to call in witnesses for questioning in the investigation. There are recognized problems that will arise under the fourth amendment because this power is in effect a seizure of the witness' person. But, the commission feels that such a barrier could be overcome by requiring the reading of Miranda type warnings and allowing an attorney to be present.

The fourth area is to permit, and even require, that the prosecutor review all search and arrest warrant applications before the police go before the magistrate for a request. This ties in with the first enumerated area of cooperation between the prosecutor and the police.

The commission recognizes that as prosecutors begin to perform tasks beyond their traditional role in litigation, there is a danger that they will lose their traditional immunity to civil damages. The commission is not prepared to take a stand on this issue.

#### UTAH STATUS AND COMMENTS

a) Utah Law: In Utah there is a liaison between the prosecutor and the police, not so much from a legal precedent as from necessity of the situation. Where the police are involved in a protracted investigation, it is more likely that there will be cooperation with the prosecutor as opposed to the short or standard investigation.

Most prosecutor offices are too small to engage in any independent investigation. In Salt Lake County, the Salt Lake County Attorney has three investigators assigned to his office. But, in the majority of jurisdictions the prosecutor has no facilities to do any investigation.

The prosecutor has no powers to subpoena. His questioning of witnesses is on a voluntary basis or in connection with the various people held by the police, pursuant to probable cause as arrested.

The prosecutor does review the applications for search and arrest warrants when he is involved in the investigation or the police seek out his counsel. There is no requirement that he pass on all warrants sought by the police.

b) Where Utah Differs: The chief difference between what the standard contemplates and what the realities of the Utah situation seem to be is that, though some of the principles of the standard are followed, they are not formal procedures in Utah. Most of the prosecutorial offices are too small to successfully consider the possibility that they could have independent investigation capabilities. No subpoena power is granted to the prosecutor.

## **METHOD OF IMPLEMENTATION**

Statutory authority now in existence.

### **3.7 PROSECUTOR AND THE PUBLIC**

#### **STANDARD**

The prosecutor should be aware of the importance of the function of the prosecutor's office for other agencies of the criminal justice system and for the public at large. The prosecutor should maintain relationships that encourage interchange of views and information and that maximize coordination of the various agencies of the criminal justice system.

The prosecutor should maintain regular liaison with the police department in order to provide legal advice to the police, to identify mutual problems, and to develop solutions to those problems. The prosecutor should participate in police training programs and keep the police informed about current developments in law enforcement, such as significant court decisions. The prosecutor should develop and maintain a liaison with the police legal advisor in those areas relating to police-prosecutor relationships.

The prosecutor should develop for the use of the police a basic police report form that includes all relevant information about the offense and the offender necessary for charging, plea negotiations, and trial. The completed form should be routinely forwarded to the prosecutor's office after the offender has been processed by the police. Police officers should be informed by the prosecutor of the disposition of any case with which they were involved and the reason for the disposition.

The relationship between the prosecutor, the court and defense bar should be characterized by professionalism, mutual respect, and integrity. It should not be characterized by demonstrations of negative personal feelings or excessive familiarity. Prosecutors should avoid the appearance of impropriety and partiality by avoiding excessive camaraderie in their courthouse relation with defense attorneys, remaining at all times aware of their image as seen by the public and the police.

The prosecutor should establish regular communications with correctional agencies for the purpose of determining the effect of their practices upon the correctional programs. The need to maximize the effectiveness of such programs should be given significant weight in the formulation of practices for the conduct of the prosecutor function.

The prosecutor should regularly inform the public about the activities of the prosecutor's office and of other law enforcement agencies and should communicate with the public on important issues and problems

affecting the criminal justice system. The prosecutor should encourage the expression of views by members of the public concerning the office and its practices, and such views should be taken into account in determining office policy.

#### NATURE OF THE STANDARD

This standard is not a specific recommendation for a particular program or procedure, but rather a general statement of policy, designed to stimulate each local task force studying these standards to adopt procedures in implementation. Therefore, this standard is designed to set the tone and the direction for those deliberations.

This central proposition is that the prosecutor's interests should be expanded in two directions. First, in regards to the police, the prosecutor should have closer liaison with the enforcement branch of the criminal justice system. This aids a smoother running system because the prosecution and the police would be working together. There would also be mutual education. The prosecution would become aware of the problems met by the police and their needs, and the police would be kept aware of the latest legal developments and which procedures are required of them in order to comply with the law.

Second, in terms of public relations work, the standard recommends a formal policy implementation to reach out to the general public to inform them of the office of the prosecutor and the job which that office is trying to perform. The standard also has recommendation outlining conduct between the defense counsel and the office representing the prosecutor. Such concerns are proper in the context of this standard because the outward conduct of the defense is a part of public relations work. It is in the courtroom that the public will most likely view the prosecutor. Therefore, it is incumbent on him to present a judicious and respectable appearance in that setting.

#### UTAH STATUS AND COMMENTS

a) Utah Law: Utah's prosecuting offices have only recently been of sufficient size and activity to concern themselves with public relations and with coordination with other law enforcement agencies in the criminal justice system. As such there has been no unified effort in the area although organizations such as SWAP and ULEPA recognize the need. In Salt Lake County there is an ongoing effort to achieve closer links with the police in order to present a more unified operation to combat crime. There now exists in Davis and Weber Counties "police-legal advisors", whose main function is to aid the law enforcement officers on aspects that require legal knowledge, interpretation of statutes, investigative procedures, and crime-scene mechanics.

The standard also calls for a "basic police report form" to be developed by prosecutorial personnel. This exists in Utah through two endeavors. The first is via SARS, an information system program that impacts on police standardized reports. The second is through SWAP and its efforts to develop forms for prosecutor offices and interface with police agencies. They are embodied in the *Utah Prosecutors Handbook*. There is, of course, a standard of conduct observed in the courtroom. This includes outward appearance between the prosecutor and defense counsel.

b) Where Utah Differs: The standard does not call for a specific program but is intended only to spur interest in the need. The smaller prosecuting offices do not evidence the sort of problems mentioned as the stimulus for the standard, and the larger state offices have engaged in some activity and have formulated some programs that are designed to achieve the standard's goals. What the standard calls for is renewed efforts in these directions.



#### **METHOD OF IMPELEMENTATION**

Voluntary compliance of prosecutorial offices with interagency cooperation between peace officer agencies and sponsored by SWAP and POST.

#### **3.8 PROSECUTING ORGANIZED CRIME**

##### **STANDARD**

The prosecutor's office should have established a division to investigate and prosecute on a statewide basis public corruption and organized crime, both within and outside the criminal justice system, and should establish an ongoing statewide capability for investigation and prosecution of corruption.

##### **METHOD OF IMPLMENTATION**

Enabling legislation giving statutory authority of office.

# **END**