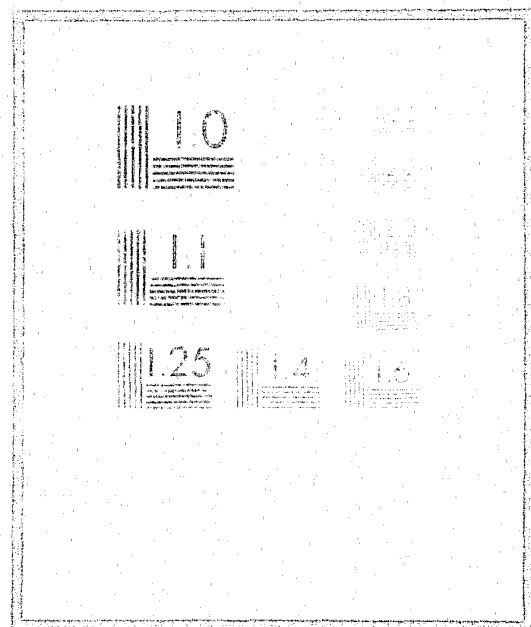


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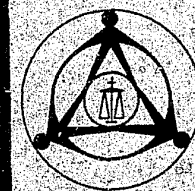
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REPORT ON TECHNICAL ASSISTANCE
TO
DOUGLAS COUNTY, WISCONSIN
DISTRICT ATTORNEY'S OFFICE



THE AMERICAN UNIVERSITY

Criminal Courts Technical Assistance Project
Institute for Studies in Justice and Social Behavior
The American University Law School
Washington, D.C.

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NCJRS

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ACQUISITIONS

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I. INTRODUCTION

On March 27-30, 1973, a two-man consultant team visited the office of the District Attorney for Douglas County, Wisconsin in response to his request for assistance in instituting more effective office procedures. These consultant services were provided under the auspices of the Criminal Courts Technical Assistance Project at American University.

The specific object of this consultancy was to assist the newly elected District Attorney in implementing standardized operating policies for case processing and record keeping in the two-man office. The purpose of these policies would be two-fold: (1) to set up procedures for more effective administration of current caseloads, and (2) to help assure the effective administration of the office by Mr. Cirilli's successors when his two-year term is over.

The consultants assigned to this study were Lewis Ambler, a former county and district attorney from Bartlesville, Oklahoma, and Thomas Lombard, a specialist in prosecution office management from Washington, D.C. This report presents the team's findings and recommendations, as well as background information on the criminal justice system in Douglas County.

II. THE DISTRICT ATTORNEY POSITION

A. Authorization, Salary, Tenure

The Wisconsin constitution requires election of District Attorneys every two years, and designates them "county officers." Art. 6, Sec. 4. The District Attorney in a county under 200,000 population may, when authorized by his county board, appoint "one or more Assistant District Attorneys and stenographer and a clerk". L. 1963, c. 506.

A full-time District Attorney is paid a minimum salary of \$16,500. The State reimburses each county \$4,500 of its District Attorney's salary, and \$3,000 for each full-time Assistant District Attorney. The county Board of Supervisors may supplement the minimum salaries. Wisconsin Statutes Annotated, Sec. 59.471. The current salaries in Douglas County are \$18,000 for the District Attorney and \$6,000 for a part-time assistant who works well over half-time; a full-time assistant at \$12,6000 is authorized as of July.

B. Duties and Responsibilities

1. Criminal

A Wisconsin District Attorney is the sole prosecuting authority in his county for all offenses except violations of municipal ordinances, which may be tried

by a city attorney. The District Attorney is required to prosecute all state and county charges, and also to prosecute municipal ordinance violations when asked by a county court. W.S. A. Sec. 59.47. The circuit court is authorized to appoint a substitute District Attorney pro hac vice in cases where the District Attorney has a conflict of interest, and any court may do so upon the District Attorney's application. W.S.A. Sec. 59.44. The Wisconsin Attorney General has no power to prosecute at trial; but handles all criminal appeals; while the Attorney General may ask the District Attorney to act in an appeal, the norm is for the Attorney General's office to handle all facets of all appeals.

2. Civil

W.S.A. Sec. 59.47 gives each District Attorney sweeping authority to represent both his county and the state, as plaintiff or defendant, in civil actions "in the courts of his county"; case law extends this to representing the county on appeals to the state Supreme Court. As civil counsel the District Attorney has a responsibility for legal advice to the county board and to other county officers, and generally acts as attorney for the county. (Counties over 500,000 population--i.e. Milwaukee--have separate civil corporation counsel.)

Separate special provisions make the District Attorney the attorney and legal adviser to the county highway commissioner, and to soil and water conservation districts.

3. Juvenile

The District Attorney "shall...perform any duties in connection with juvenile court proceedings as the... judge may request." W.S.A. Sec. 59.47. In Douglas County, this generally includes the drafting of delinquency petitions and commitment orders, as well as representing the state at hearings.

III. ANALYSIS OF EXISTING SITUATION

The problems facing Douglas County's new District Attorney are not unique to his jurisdiction; they are common to any new District Attorney--particularly one who is a recent member of the local bar. However, frequency of occurrence is not a justification for the problems to exist. The difficulties confronting the Douglas County District Attorney in assuming office stem in large part from the absence of standardized procedures and policies capable of surviving the frequent changes of administration which, by law, occur in the office every other year. It should be noted that during the two months he had been in office prior to the consultants' visit in March, Mr. Cirilli and his staff made extensive progress in overcoming many of these difficulties of transition. This progress is due, in large part, to Mr. Cirilli's concern for permanent management improvement which motivated his original request for technical assistance.

In addition to the lack of standardized office procedures, Mr. Cirilli's initiation was complicated by the lack of assistance from the outgoing District Attorney whom he had defeated in the November election. Mr. Cirilli had no information regarding what constituted the current office workload or what was the status of any particular matter--open or closed--in the office.

The only source of continuity available to Mr. Cirilli, or, for that matter, to the consultants, has been Mr. Cirilli's part-time (and only) assistant, James C. McNay, an attorney with past experience in the office.

Since assuming office in January, Mr. Cirilli had established with Mr. McNay a sound and progressive view of both the powers and the priorities of the office. Having learned that they had inherited a considerable backlog problem, they attacked the backlog itself and, in addition, instituted more stringent screening of charges to avoid front-loading their system and future pile-up of cases. This use of screening is noteworthy for it reflects a "managerial" view of prosecutive discretion and a full appreciation of the great power that discretion confers.

The recommendations for additional office management improvement discussed below should enable Mr. Cirilli to operate the office more efficiently and, at the same time, allow him to more effectively and better serve the public. The establishment of a viable system of operation should also assure the effective administration of the office by his successors.

IV. DISCUSSION AND RECOMMENDATIONS

A. Reorganize Filing System and Provide Adequate File Security

The greatest, and most basic problem Mr. Cirilli faced upon taking office was the lack of case status information even as to which cases were closed and which were still open. All were filed together, and together with every other file in the office, so that criminal and civil case jackets were intermingled with District Attorney's opinion letters to the board of supervisors, county ordinances issued or drafted, etc. All files were kept in numerical sequence, under initial letters (S-1, S-2, etc. starting in about 1962), and cross-indexed in a card file, by the name of the file and, in criminal cases, by the names of co-defendants. The staff has reorganized the system somewhat by separating active case files from closed ones, and the attorneys are making those files more useful by noting case transactions in the jackets.

We recommend that the entire filing system be fully reorganized as soon as possible, first with active matters and then, if it proves operationally useful, with matters closed in prior years. Separate files should be maintained for different matters by categories, i.e., civil suit county supervisor business, criminal cases, etc. The number of classifications is less important than having the information in the files made useful by being available.

Although filing space did not seem to be a pressing problem, the new system might well include establishing some policies, however informal, on retention and destruction of closed files. This is especially true with respect to case files which contain nothing except papers already on file in the county court. The tedious process of culling through the old non-case files relating to county business may be necessary to ascertain what they contain and whether there is any need to retain them.

Such a revised filing system could well utilize a new, sequential numbering system for all matters instituted under Mr. Cirilli, with a separate numerical sequence for each large category of matters. The essential elements of the system adopted should be (1) easy retrieval of files, and (2) assistance in estimating workloads. No numbering system currently used in the Court consists solely of cases filed by the District Attorney, and he will therefore have to create a new set of numbers for his own use.

It may be worth exploring with the Court the possibility of changing to new numbers at the beginning of the next fiscal year and setting up separate dockets for (a) criminal cases handled by the District Attorney, (b) criminal cases handled by the city attorney, and (c) traffic cases, which

may involve either attorney's office. Such a court system could interface directly with the District Attorney's office with the result that court docket numbers could be used. One of the peculiarities of the existing filing system in the District Attorney's office is the infrequent use of court docket numbers in the files.

Apparently the former District Attorney did not note case transaction data on, or in, file jackets. While the new staff is noting such matters inside file jackets, the staff should also begin using new, pre-printed jackets for criminal matters, and record court events on the outside of the file jacket. In this way, case status information will be instantly available and, in addition, the inside of the jacket will be free for permanent confidential information which should be known only to those members of the District Attorney's office handling the case. It is also recommended that these notations of case actions on file jackets be combined with a small card file, perhaps a Rolodex, which could be kept on a secretary's desk and which would make each case's status instantly available. To provide a basic measure of the office's workload, both as to input and types of output, a secretary could keep a simple running tally of case dispositions (including the number of cases in which charges were dropped without any court filing).

In addition to improved case file management procedures, adequate file security should be provided. Funds for a safe-type file cabinet might be obtained from the Wisconsin SPA's state plan for 1972 LEAA action funds which include money for office management improvements in the District Attorney's office. With such a secure filing facility, open case files could be kept more accessible to the staff in the secretarial area rather than in the file room as is currently practiced. These files would probably fill one standard two-drawer filing cabinet and less than one two-drawer lateral file. Their security is essential since the courthouse is cleaned at night by a work force which includes probationers and trustees from the jail.

B. Evaluate Case Preparation Process

All criminal charges are prepared and filed by the District Attorney's office except those for traffic cases. When the accused is in custody, the District Attorney reviews the offense and arrest report and consults with the arresting officer. He thereafter dictates a complaint to his secretary; this complaint includes an affidavit of probable cause required by Wisconsin law. In routine cases, the District Attorney instructs his secretary what to put in the complaint and she prepares it. He then checks it over, signs the complaint,

swears the complainant (usually the officer) to the affidavit, and instructs the officer to file the complaint in the clerk's office, Branch 2.

When the accused is to be arrested, an almost identical form is used for the arrest warrant, but is taken to the judge for signature instead of to the clerk for filing. The District Attorney may elect to use a summons instead of a warrant and is required to use a summons when the maximum penalty is six months or less and it appears that the accused will respond to a summons. The original copy of the warrant or summons is used as the basic court document since it also includes the complaint.

The forms used for criminal complaints are almost entirely blank with space for extended typing-in of charges in statutorily compulsory form, and for a brief statement of the evidence constituting probable cause. While these forms are adequate for a smaller office, such as Douglas County's, where MTST's and the like are not needed, the use of a form book for the text of the charges could be quite helpful. Such a form book would enable an attorney to simply tell a secretary to type number such-and-such and fill in the blanks. This book is the type of aid to new prosecutors and their secretaries that should be disseminated by a state authority such as the District Attorneys Association or the Department of Justice. It is quite possible that the Milwaukee District

Attorney has already developed such a form book and inquiry should be made to that office.

Most cases are disposed of in the Branch 2 stage-- preliminary hearing or misdemeanor non-jury trial. However, when disposition at this stage does not occur, the date for the next stage of a case is set at the end of the preceding stage. During this process, some problems have arisen with respect to cases transferred to Branch 3 for jury trial or bound over for felony trial there. Such cases have traditionally been calendared for the next semi-annual term of court and as a result of the almost automatic long continuances this entails, some have gone astray. While the Branch 3 judge and Mr. Cirilli have taken steps to avoid this problem in the future, it might be well for Mr. Cirilli to review the court's rules with an eye to proposing changes in the formal division of court "terms".

C. Continue Principle of Dividing Attorney Workload

The District Attorney and his experienced assistant have developed a general rule of thumb that the District Attorney handles criminal matters, and that the assistant handles juvenile and social service business. This is not hard and fast, as criminal matters often call for the

attention of both of them ad lib. It would be difficult, if not foolhardy, to make recommendations for a division of labor in a two-man office, especially one in which the personnel changes so frequently. The particular talents and expertice of Mr. Cirilli and his new assistant are the best determinants for dividing workload, except for matters coming before Mr. Cirilli's father, a county judge, in which case his assistant, or a specially appointed attorney should be appointed.

D. Explore Relationships with Other Agencies and Implications of These Relationships

1. Local Relationships

Mr. Cirilli appears to have established good working relationships with other local agencies, both as a law officer and as counsel. However, it is not clear whether there is any danger of conflict between him and the City Attorney regarding functions of the city police. This potential conflict of interest rests in the nature of Mr. Cirilli's office and his dual authority as prosecutor of cases and theoretically as advisor to police in

avoiding civil liability. It is essential, therefore, that Mr. Cirilli establish his authority as the chief law enforcement officer in the county.

At the multi-county level, Mr. Cirilli should investigate the likelihood of obtaining a seat on the board of the regional planning entity which includes Douglas County. It is notable that the most recent LEAA action-funding State Plan lists no District Attorney on this board. This omission is a technical violation, at the least, of the 1971 Safe Streets Act amendment requiring such boards to be representative of all facets of law enforcement. Moreover, District Attorneys have a unique capacity to view the criminal justice system from a central perspective and they should sit on such boards to provide their viewpoint as well as to represent their own interests.

2. State Relationships

If there is a state-level entity charged with assisting local District Attorneys in Wisconsin, thus far it has been of little help to Mr. Cirilli. Perhaps this problem results from the multiplicity of state-level programs and consequent lack of over-all responsibility in any of the three entities. The only state-level assistance Mr. Cirilli received has been a seminar for

newly elected prosecutors which he attended before taking office and a copy of a manual developed by the Office of the Attorney General which has been quite useful. While the seminar and manual may be sufficient for most newly elected prosecutors, additional assistance should be available for prosecutors who inherit unusual problems, such as Mr. Cirilli's. A concerted effort should be made to acquaint these prosecutors with whatever additional assistance is available within the state.

V. SUMMARY

The foregoing recommendations are designed to enable the District Attorney in Douglas County to administer his responsibilities as effectively as possible. It should be noted that in many cases these recommendations assume action on the part of officials other than the District Attorney--such as the State Department of Justice or District Attorney's Association. In general, where remedial action rests in the District Attorney alone, Mr. Cirilli has already instituted measures to improve office administration. These measures should be evaluated from time to time and appropriate revisions should be made. Moreover, these measures should become standard office policy and be passed on to succeeding district attorneys and their staffs. In view of the extensive efforts already made by Mr. Cirilli and his staff as well as their interest in generating this request for additional assistance and the cooperation provided to the technical assistance team, the problems confronting Mr. Cirilli as January should be a thing of the past.

APPENDIX

APPENDIX

ADDITIONAL BACKGROUND INFORMATION

A. Geographic Data

Douglas County is located in the Northwest corner of Wisconsin, bounded by Minnesota to the West and Lake Superior to the North. It has 1,310 square miles, slightly longer north-to-south than a 36-mile square. It is mostly forest, with some farming along Lake Superior, and the industrial port city of Superior in the Northwest corner of the county.

Superior, pop. 32,237, shares the great natural harbor of St. Louis Bay with Duluth, Minn., to which it is connected by two highway bridges and three rail bridges. The Duluth-Superior area is a Standard Metropolitan Statistical Area, with a current population estimated at 268,000. Of Douglas County's 1970 population of 44,657, 79.5% (35,503) lives in Superior and the two adjacent townships, although that proportion is declining. (It was 81.4% in 1960.) There is no other population center, or even a township, with a permanent population over 1,000. In July and August, however, the southeasterly part of the county is swelled by as many as 15,000 vacationers.

Superior peaked as a rail and port center in about 1910, when it was the second largest city in Wisconsin, with a population slightly over 40,000. Its gradual decline is now somewhat balanced by increases in the population supported by the down-county recreation industry, as

these census figures show:

	<u>1960</u>	<u>1970</u>	<u>Change</u>
Douglas County	45,008	44,657	-351
City of Superior	33,563	32,237	-1,326
Rest of County	11,445	12,380	+935
City and adjacent townships	36,624	35,503	-1,101
Rest of County	8,324	9,154	+830

The non-white population is negligible--1.2% in Superior in 1970.

B. Court System in Douglas County

There are technically two courts of criminal jurisdiction in the county, but operationally only one. The Circuit Court encompasses four other counties, sits only intermittently in Superior, and is simply not used by the District Attorney. All criminal business flows through the County Court.

The County Court's three judges sit in numbered Branches, which have discrete jurisdiction under the court's rules. Branch 1 is primarily a probate court; the District Attorney has no criminal business there, although he represents the county's interest in estates (collecting unpaid property taxes, etc.) and usually represents the state in mental health commitment proceedings. (The incumbent judge is the District Attorney's father.) All criminal cases (except rare indictments) begin in Branch 2, where felony preliminary hearings and misdemeanor non-jury trials are held. Bindover on a felony, or a jury demand on a misdemeanor, results in transfer of the case to Branch 3. Although the judges have equal powers, a defendant wishing to plead to a felony will waive pre-

liminary hearing and be referred to the Branch 3 judge for plea and sentence. This is actually much simpler than it sounds since it actually involves little more than a change of judges on the bench or, at most, a walk to another courtroom. The Branch 3 judge, also hears all juvenile delinquency and PINS matters, although Branch 2 handles support.

It is rather difficult to assemble accurate statistics on the criminal workload of the County Court. All criminal matters (except uncontested traffic violations) are entered on one docket, so that differentiated statistics can only be developed by extracting data on each case. Total criminal figures for the last three calendar years follow:

	Filings	Trfr. to Branch 3	Disp. in Branch 2
1970	644	85	559
1971	610	193	417
1972	514	181	333

This data was taken from the court's docket books. The only figures in the annual statistical reports of the state court administrator that conform to these figures are those for felony preliminary hearings and "dispositions," which include outright dismissals and reductions to misdemeanors before bindover to Branch 3 by either hearing or waiver.

The figures are for Fiscal years:

	Preliminary Hearings			Total Felony Dispositions
	Held	Waived	Total	
FY 1970	18	32	50	68
FY 1971	21	38	59	97
FY 1972	56	56	112	161

It was suggested by a number of courthouse sources that the sudden escalation of Branch 3 and felony filings and dispositions in calendar 1971 was the result of overcharging by Mr. Cirilli's predecessor, who held office in 1971 and 1972, and his failure to move the Branch 3 calendar. This apparently led attorneys to, either waive preliminaries or go through preliminaries and demand jury trials on cases rather than seek early dispositions, since getting cases on the Branch 3 calendar, in effect, got them an automatic continuance. Comparing Branch 3 filings for the first three months of the past six years somewhat tends to corroborate that analysis:

New Criminal Docket Cases, Branch 3

Year	Jan.	Feb.	Mar.	Total
1968	4	0	5	9
1969	4	0	1	5
1970	8	4	6	18
1971	3	5	28	36
1972	21	39	17	77
1973	6	14	17	37

All branches of the court calendar cases for either the April or the October term of court, and Branch 3 has traditionally called a jury panel only at the beginning of each term, to hear cases calendared for that term. The criminal case backlog was attacked in March of 1973, however, by calling back the October Term jury panel and scheduling 50 criminal cases, with pretrial conferences set for the first two days, both to ascertain the status of cases and to negotiate dispositions. All 50 were disposed of (some by dismissal); only one was tried. The apparent success of this device may lead to the court's both recalling its

jurors and holding criminal pretrial conferences on a regular basis; either one should greatly benefit the District Attorney, as well as the court.

It should be noted that, including the three county court judges, there are only 50 members of the county bar.

C. Criminal Offenses

The most recent FBI crime figures for Douglas County (1971) are:

	Superior	Rest of county	County total
Non-negligent homicide	0	1	1
Negligent homicide	0	5	5
Forcible rape	9	1	10
Robbery	9	0	9
Aggravated assault	55	7	62
Burglary	323	175	498
Larceny over \$50	373	64	437
Larceny under \$50	(1,067)	(98)	(1,165)
Auto theft	<u>176</u>	<u>34</u>	<u>210</u>
Total Index Crimes	944	282	1,226

The local index crime rates of 29.3 reported offenses per 1,000 population for the city, 22.8 for the rest of the county, and 27.4 for the entire county are startlingly lower than the Wisconsin rate of 1,751.7 and the total Duluth-Superior SMSA rate of 69.8 per thousand.

D. Law Enforcement

The principal law enforcement agencies in Douglas County are the county sheriff's office and the Police Department of the City of Superior. They share a well-designed, two-year-old combined headquarters and jail

facility across the street from the county courthouse, four blocks from the main business street in downtown Superior.

The sheriff has fourteen deputies, not assigned to jail duty, and four squad cars. The city police force numbers 64 male officers, one policewoman and one civilian employee (December 31, 1971 FBI figures). The only other police in the county, other than store detectives and the campus security force at Wisconsin State University (Superior), are a few part-time constables in outlying townships. The FBI reports only 21 full-time law enforcement officers in the county as of 1971, aside from the city police.

END