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Report on Prosecution
in Wyoming
With Recommendations
For Change

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Governor's Planning Committee
on Criminal Administration
State of Wyoming

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INTRODUCTION

This report is published in order to take a broad look at where prosecution is in Wyoming in regard to the services provided by the system and the problems faced by the system.

Some of the problems and questions raised by this report will hopefully give perspective to the importance of the operations and needs of prosecution in Wyoming.

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SUMMARY OF RECOMMENDATIONS

1. The State of Wyoming should adopt a system of full-time prosecuting attorneys in at least those jurisdictions where the population and caseload justifies it. Three possible alternative systems are outlined in this report.

2. Prosecutors should be elected on a non-partisan rather than a partisan ballot.

3. Local prosecutors should make efforts to fully utilize the services of the prosecution assistance program at the University of Wyoming College of Law and the Division of Criminal Investigation in the Attorney General's Office.

4. The chief prosecutor should carefully take steps to implement an effective organizational system for his office, including a structured format for his relations with law enforcement personnel.

5. The county should take steps to insure that their local prosecutor is adequately equipped with library material, equipment and facilities in order to assure the proper functioning of the prosecutor's office.

6. Steps must be taken to increase prosecutor compensation in order to assure the recruitment and retention of qualified prosecutors.

7. Serious consideration should be given to separating the civil and criminal functions of the County and Prosecuting Attorney's Office.

8. Recognizing the importance of prosecutor discretion in the criminal justice system, each local prosecutor should develop written statements of policy regarding exercising discretion within his office.

9. Salaries for the Attorney General and his deputies and assistants should be increased in order to compete with what the most capable lawyers can receive in private practice.

10. Local prosecutors should be required by statute to work with and attend appeals to the Supreme Court of Wyoming in cases arising within their jurisdiction.

11. A central service office for local prosecutors should be established within the Attorney General's Office.

12. The State of Wyoming should enact a statute to assist counties in financing expenditures for jury trials after a county has expended the maximum amount.

CHAPTER I
CONSTITUTIONAL AND STATUTORY BASIS
FOR
PROSECUTION IN WYOMING

Statutory Provisions

The Constitution of Wyoming authorizes the Legislature to designate each county office and to fix the salary of county officials. Under this authorization, the Legislature has created the Office of County and Prosecuting Attorney. The Office dates back to the territorial laws of 1876, and the general duties of the County and Prosecuting Attorney have changed little since that time.

Though the duties and responsibilities of the County and Prosecuting Attorney are referred to numerous times in the Wyoming Statutes, there are only nine general provisions regulating the Office. These provisions are:

- o Create the Office as an elective office for years open to a member of the Bar.
- o State the general duties of the County and Prosecuting Attorney as the prosecutor for the state in criminal cases and the counsel for the county and its officers.
- o State that the Board of County Commissioners may furnish suitable offices at the expense of the county.
- o Provide for the County and Prosecuting Attorney's salary and provide remedies for the failure of the attorney to perform his official duties.
- o Provide that it is the duty of the County and Prosecuting Attorney to examine the official bonds as approved by the Board of County Commissioners.
- o Provide for travel allowances.
- o Provide for deputies and assistants to the County and Prosecuting Attorney.

There is no provision in the statutes relating to the amount of time the County Attorney is required or expected to devote to his county and prosecuting matters. Thus, all but two of the Prosecuting Attorneys in the state are part-time in the sense that they maintain a private practice of law along with their county matters.

Because the statutes authorize deputies and assistants, in the larger counties where there is more business, County and Prosecuting Attorneys simply hire the number of deputies and assistants as are appropriate and as the county permits. Assistants may be hired at generally low salaries because they are also part-time and receive, in most cases, a majority of their income from their private practice of law.

The Legislature has continually placed new responsibilities on the Office. The statutory responsibilities of the County and Prosecuting Attorney include such duties, other than criminal prosecution functions, as:

- o Representing the state in civil commitments to the State Hospital.
- o Liquor law violations and licensing responsibilities.
- o To probate estates of under \$500.
- o Extensive juvenile code, child abuse, child support and guardianship matters.
- o Prosecute election code violations.
- o Prosecute violations of the insurance code.
- o Represent the worker in Workmens Compensation matters.
- o Prosecute violations of the Labor and Employment Act.
- o Prosecute violations of vocational and professional licensing acts.
- o Abate public health law violations and other nuisances.
- o Prosecute violations of regulations of trade acts.
- o Prosecute violations of Agricultural Commodity Act.

As the Legislature places increasing responsibility on the Office, the question must be raised as to whether the present part-time system can properly absorb these functions. With the large amount of important responsibilities in civil prosecutions

placed on the local prosecutor, no real concern on the part of the state in how the responsibilities are administered exists.

Municipal Prosecution

It is important to note that violations of city ordinances are not prosecuted by the County Attorney. Cities and towns employ a city attorney to prosecute city violations. Feasibility of consolidation of the city prosecutor function with that of the state is questionable. In practice, the types of cases prosecuted by the city attorney are those which do not fit well into the scope of the Prosecutor's Office. However, there could be an overlapping, such as in the area of prosecuting juveniles.

In these areas, the city attorney is vested with a high degree of prosecution responsibility. This is an area in which the city and town exercise a great autonomy, and perhaps an area where the state function should be more clearly delineated in authorizing cities and towns the power to enforce their ordinances. There is only general authorization for the cities and towns to employ a city prosecuting attorney. State statutes do not define the scope and duties of city attorneys. Most of the time of the city attorney is devoted to the civil matters of the city.

Election of Prosecutors

Wyoming statutes provide that County and Prosecuting Attorneys are to be elected on a partisan ballot. Justification for electing Prosecuting Attorneys on a partisan ballot is questionable. Prosecutors should be elected solely for their competency for the job. The enforcement of laws should be non-political. The prosecution non-partisan position is similar to the judiciary. The prosecutor still answers to the people whether partisan or non-partisan.

As a locally elected official, the County and Prosecuting Attorney enjoys a great deal of autonomy, and this system promotes responsiveness to the needs of the locality. The prosecutor's familiarity with the community is a great asset in carrying out his various functions. However, because of the great deal of autonomy vested in the prosecutor, there is no system of coordination of the prosecutor function within the state which could promote uniformity in the prosecutor's enforcement of criminal laws. As a result, methods and standards vary considerably within the state.

CHAPTER II
STRUCTURE AND FACILITIES OF PROSECUTORS' OFFICES

Wyoming has a single system for prosecution offices for each county, no matter what the size of the county. Many states vary the system according to population, such as Texas which has four different types of prosecution offices.

The basic structure of local offices consists of one part-time County and Prosecuting Attorney, and a number of deputies and assistants depending upon the caseload requirement of the county, which is usually determined by population. By part-time prosecutor it is meant that the attorney is authorized to maintain a private practice of law. The number of deputies and assistants ranges from none in the more sparsely populated counties to six in Laramie County, the largest county in the state.

Structure of Staffing

As population and workloads increase, the need to hire assistant prosecutors increases. In Wyoming, assistants may be organized in a number of ways. The organizational impact of hiring assistants is twofold.

- o Assistant prosecutors may work on general assignments from the County Attorney.
- o Part-time assistants may specialize within a field of the prosecutor's work.

With the increase in the number of assistants, the opportunity for specialization increases. Specialization can be an efficient tool to meet caseload demands and to offer expertise within subject areas. A part-time assistant who handles nothing but workmens compensation cases, for instance, should offer the office great efficiency in this area because of his developed expertise there.

Aside from subject area specialization, assistants may be organized and assignments delegated by casework either horizontally or vertically within the prosecution system.

- o The case may be assigned from initial stages to an assistant and carried on by that assistant throughout the progress of the case.
- o Assistants may be assigned to take all cases within a stage of the proceedings.

Except in the larger Wyoming offices, a formal organization plan reflecting assigned specializations is not needed. For larger offices the ideal combination of specialization would be a system of vertical case assignments where the assistant takes a case at its initial beginning and follows it through, combined with case assignments to assistants within a specialized area. Though there may be some structural efficiency built into one assistant handling all initial filings or trials, for instance, the benefit of having one attorney assigned to the case throughout in terms of his first-hand knowledge of the case should outweigh any other type of system.

TABLE II-1
NUMBER OF DEPUTIES AND ASSISTANTS

Albany	2
Big Horn	2
Campbell	1
Carbon	1
Converse	1
Crook	0
Fremont	4
Goshen	0
Hot Springs	0
Johnson	1
Laramie	6
Lincoln	1
Natrona	3
Niobrara	0
Park	1
Platte	0
Sheridan	1
Sweetwater	3
Sublette	0
Teton	1
Uinta	0
Washakie	0
Weston	0

Many offices in Wyoming are now making use of the prosecution assistance program. The circumstances and format for use of the prosecution assistance program operating to serve prosecutors throughout the state should be structured.

- o Research assistance only available at the Law School may be utilized.

- o Students are brought into the prosecution function.
- o Prosecutors may receive valuable on-site assistance.

In the two largest offices, Natrona County and Laramie County, full-time assistants are now working.

- o The full-time prosecutor will be able to spend his entire day on criminal matters.
- o He can be structured into the organization so that part-time assistants and the County Attorney can be relieved of many routine functions.
- o He can serve as a resource person.

The need for investigators working with the larger prosecution offices should be considered. The investigator would be in addition to police and sheriff investigations. There are benefits to having an investigator within the prosecution office.

- o In the preparation of cases specific matters may need to be more thoroughly covered.
- o The investigator will work directly for the prosecutor.
- o Initial prosecution investigation of cases may be appropriate in some instances.

Organization of Operations

It is evident that one of the most important functions of the County and Prosecuting Attorney, in larger offices in Wyoming, is office management.

In the smaller offices, the County Attorney, operating by himself or possibly with one assistant, will be required to devote much of his time to smaller cases. The problem for the prosecutor in rural Wyoming counties is to effectively divide his time, or develop a screening function, between the large number of small matters and the major crimes.

Each prosecutor's organizational system should be designed to effectively incorporate into the inflow and development of

of cases the following processes:

- o Pre-arrest procedures, such as police advice, warrants and investigation.
- o Screening, review of charges and the preliminary hearing.
- o Development of the case and pleas.
- o The trial and post trial procedures.
- o Assistance on appeals.

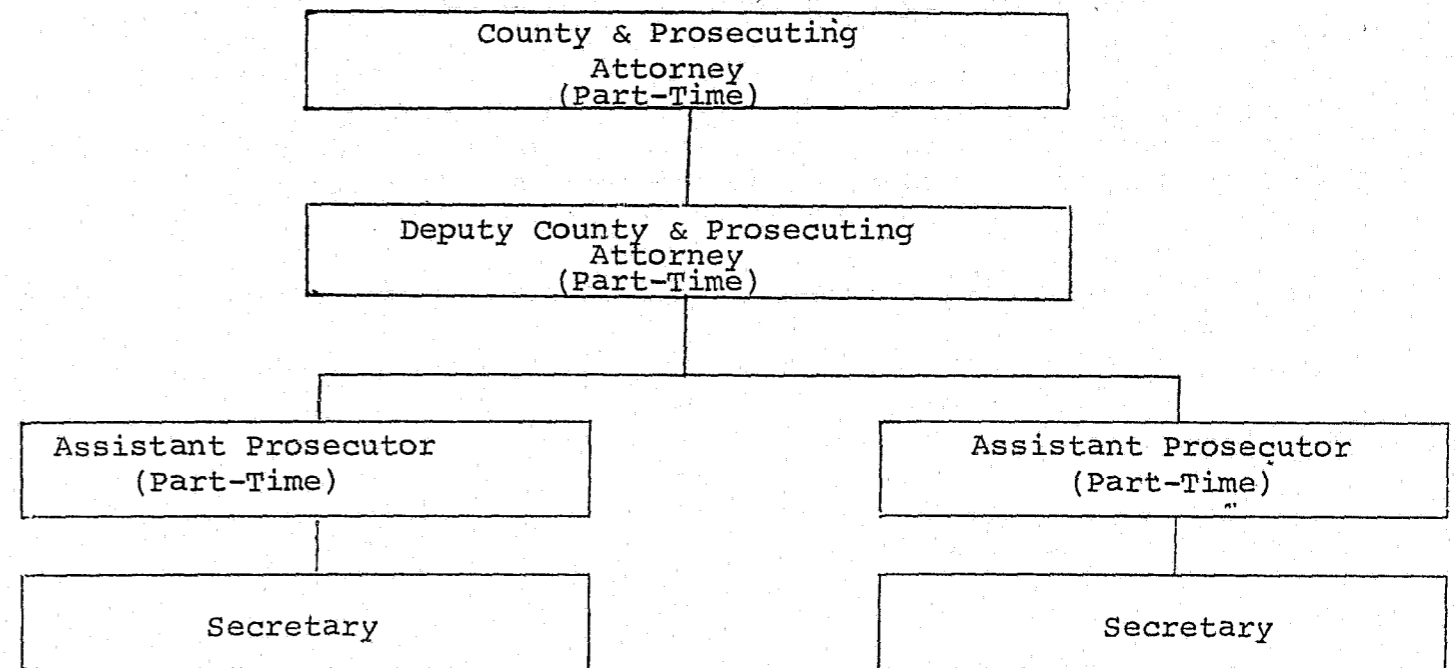
The prosecutor should carefully consider in his organization his relations with law enforcement personnel. The police-prosecutor relationship is important and should be structured. In this regard, the prosecutor or his assistant should have prior approval of all applications for warrants before they are submitted to a judge. The small size of the Wyoming offices will be helpful in this regard. This approval should be formally built into the office structure.

In maintaining regular liaison with law enforcement authorities, the prosecutor can participate in law enforcement training programs and keep law enforcement personnel informed of the latest developments in criminal law and procedure. With lack of consolidation of law enforcement a major problem in Wyoming, the prosecutor should attempt unifying measures to bring about more effective coordination of effort between the municipal police and the county sheriffs' offices in his county.

The organizational structure should be considered in light of the fact that all prosecutors in Wyoming, except for one full-time assistant in Laramie and one in Natrona County, maintain a private practice of law.

- o Clerical responsibility may range from standard criminal motions typing to complicated contracts.
- o Interviewees may range from victims of crimes to divorce clients.

The typical organizational chart for larger offices is as follows:



Facilities and Equipment

The office of the County and Prosecuting Attorney may be either in the County Courthouse or wherever the County Attorney maintains a private law office. A number of combinations of office locations exist in Wyoming.

- o The County Attorney and all his assistants may be located in the County Courthouse.
- o The County Attorney may maintain his office in the County Courthouse and his assistants have outside offices.
- o No prosecution office may be maintained in the County Courthouse.
- o In some instances a County and Prosecuting Attorney may have an office in the County Courthouse and a separate office for his private practice.

The most desirable situation would be for the County Attorney to be available at all times in an office designated as the County and Prosecuting Attorney's Office. Availability to the public, law enforcement officers and assistant prosecutors in the everyday function of the office can be maintained in this way.

By statute the Board of County Commissioners may furnish, at the expense of the county, suitable office space for the County Attorney. An affirmative duty to furnish offices at county expense exists for the Clerk, Sheriff and Treasurer. Adequate books and supplies are required to be furnished to all county officers and travel allowance for county services are allowed at the discretion of the County Commissioners.

A state statute dealing with office facilities and equipment should be enacted which would place an affirmative duty upon the county to furnish the necessary clerical and research needs of a modern prosecutor, along with suitable office facilities.

Even the larger County Attorney offices in Wyoming lack essential office furniture and proper atmosphere. The essential equipment to be provided should be as follows:

- o Waiting room furniture.
- o Dictating/transcribing equipment.
- o Access to copy machines.
- o Desks, chairs and conference table for larger offices.
- o Bookshelves.
- o Telephone services.

A basic law library is essential to each prosecutor's law office. All staff should maintain a set of Wyoming Statutes, fully updated and supplemented. Quick access to most recent state and United States court decisions and lack of complete reference material are probably the greatest problems facing Wyoming prosecutors. Most prosecutors rely on the county law library for resource material. An office library should contain the following:

- o U. S. Supreme Court Reports
- o Attorney Generals' Opinions
- o Wyoming Reports
- o Criminal hornbooks and formbooks

The county law library should contain legal encyclopedias and United States Code Annotated.

CHAPTER III PROSECUTOR COMPENSATION

Structure of Compensation

Much of the structure of prosecution is determined by the type and degree of compensation paid to prosecutors. County and Prosecuting Attorneys' maximum salaries are determined by the assessed valuation of their counties. They may receive up to the maximum and not less than 85% of the maximum. The following is the statutory maximum salary scheme:

TABLE III-1

<u>County Valuation</u>	<u>Maximum Salary</u>
Under \$20,000,000	\$ 7,625
\$20,000,000 to \$40,000,000	9,000
\$40,000,000 to \$50,000,000	9,875
\$50,000,000 to \$60,000,000	10,875
Over \$60,000,000	12,500

The County Attorney may hire one or more deputies who shall not receive more than 85% of such officer's maximum statutory salary. He may appoint other assistants as may be necessary to properly administer the affairs of his office.

It must be noted that in many counties the prosecutor receives compensation, other than direct salary, in the form of the county providing clerical assistance and facilities which the County and Prosecuting Attorney may use in his private practice. This added overhead compensation may be very important in many circumstances as to whether the prosecutor can financially retain his position.

Prosecutor compensation must be approached with regard to the following problems:

- o The recruitment and retention of personnel.
- o The effect of the compensation methods and levels on the structure of prosecution.

Lack of Adequate Compensation

The salaries of prosecutors in Wyoming are too low to attract and retain in a consistent manner qualified and experienced attorneys, even while allowing private practice. Especially in the more

densely populated counties in Wyoming, there is little justification for keeping a low maximum salary for the chief prosecuting attorney. The duties of a County and Prosecuting Attorney require not only a highly skilled trial lawyer, but also a lawyer with organizational skills and an efficient administrator.

The following are possible explanations why attorneys do take this position at low salaries:

- o The position will benefit the private practice of the County and Prosecuting Attorney because the County Prosecutor is most likely a well respected person in the community.
- o Criminal prosecution is often interesting, and attorneys may take the position just because they like the work.
- o In larger counties the prosecutor is authorized to hire a number of assistants who may take the burden of the workload off his shoulders.

The need for higher salary levels is more critical in the more heavily populated counties. In the more sparsely populated counties, the workload of the Prosecuting Attorney is not as great, and the need for greater compensation thus is not as great. A well qualified attorney may be able to handle the duties of the County and Prosecuting Attorney without greatly sacrificing his private practice. However, in rural counties frequently the position is filled with the younger, less experienced lawyer. The compensation is too low to attract the most experienced and able attorneys.

Is it realistic that the Office of County and Prosecuting Attorney, for salary purposes, is grouped with the County Assessor, County Clerk, Clerk of the District Court, County Sheriff and County Treasurer in their respective counties? It is the recommendation of this report that this office be taken out of this category, and the maximum salary limitation for County and Prosecuting Attorneys be abolished. There is simply not enough justification to keep the county's chief prosecuting attorney's salary limited by state mandate with increasing caseloads and crime problems in larger municipalities making the need for obtaining the best quality attorney in this position outweigh the financial limitation for this office.

Hourly Earnings Analysis

The Governor's Planning Committee on Criminal Administration has surveyed local prosecutors to determine how many hours per week they are devoting to prosecution business. (Of the 22 prosecutors reporting available information, seven were spending in the range of 21 to 30 hours per week on prosecution business. Five prosecutors said they were spending from 31 to 40 hours per week, and the remaining ten were spending 20 hours per week or less.)

Table III-2 projects hourly compensation rates based on the maximum salary schedules for 20, 30 and 40 hour average work weeks.

TABLE III-2

PROJECTED PROSECUTOR SALARIES PER HOUR

<u>Hours/Week</u> (All county business)	<u>Salary</u>	<u>Salary Per Hour</u>
20	\$12,500	\$12.02
20	10,875	10.46
20	9,875	9.50
20	9,000	8.55
20	7,625	7.33
30	12,500	8.01
30	10,875	6.97
30	9,875	6.33
30	9,000	5.77
30	7,625	4.89
40	12,000	6.01
40	10,875	5.23
40	9,875	4.75
40	9,000	4.33
40	7,625	3.67

It can generally be observed that the statutory salary structure favors the smaller based County Attorney over the larger. The progressive maximum salary schedule does not fully compensate for the added hours needed in larger counties.

- o The prosecutors in the smaller salary counties who are working 20 hours or less are generally better

compensated than those in the larger counties who are most likely working around 30 hours or more.

- o While the average compensation in the smaller counties is likely to be, \$8.55 to \$9.50 for a 20 hour week, the average compensations in the larger counties for a 30 hour week would range from \$6.97 to \$8.01.

Also, the table simply illustrates the progression in compensation as fewer hours are spent on prosecution business.

Salaries for Full-Time Prosecutors

As possible alternatives to the present system of prosecution in Wyoming, this report has recommended a system of full-time County and Prosecuting Attorneys. Should this system be adopted, it is imperative that the full-time prosecuting attorney receive an adequate salary which would attract the most qualified and competent attorneys within the jurisdiction.

The National Advisory Commission on Criminal Justice Standards and Goals has recommended that the chief prosecuting attorney, who is a full-time attorney unauthorized to practice law, be paid the same salary as the presiding District Judge in the district court of general jurisdiction. This salary would be adequate to attract most lawyers in the community.

If a state district attorney system is adopted, the salaries should be paid by the state, thus relieving the counties of the increased financial burden involved in higher salaries. If only the larger counties are required to retain full-time prosecuting attorneys, then the state should also consider subsidizing salaries for these counties. If the part-time system of prosecution is retained in Wyoming, with the maximum salary limitation repealed, the counties should be permitted to pay salary schemes reflecting compensation adequate to attract top-flight attorneys. The counties should also be permitted to make the position full-time. The salary scheme should be in proportion to the population of the county being served which should reflect the importance of the duties in regard to caseload.

Two important reasons why a full-time prosecutor should be paid a salary comparable to that of the presiding District Judge are:

- o The responsibility of a full-time District Attorney is great and requires expertise in many of the same areas as that of a District Judge. Skills required of the District Attorney in trial practice and administrative matters require the most competent attorney available.
- o This is a salary which is comparable to that of the leading attorneys in private practice in the community.

Separating Civil and Criminal Functions

Altering types of prosecutor compensation can lead to various methods of prosecutor reforms. For instance, if the civil and criminal matters are divided between two attorneys in a county; and the prosecutor is still paid according to the present salary scheme, this in effect would raise his compensation for criminal matters and for practical purposes would mean that the prosecutor would devote more time to criminal matters, less to other matters and become more competent and able in the criminal justice field.

Increasing compensation to the County and Prosecuting Attorney would also be a means to put a limitation to the number of assistants hired, and in effect allow the County and Prosecuting Attorney to devote more time to prosecution matters. The benefits of this are:

- o More time could be devoted to screening and preparation of cases.
- o It would create a more efficient Prosecutor's Office.
- o The prosecutor could better develop his skills in criminal law and procedure.
- o The prosecutor could develop organization and specialization in various branches of his function.

CHAPTER IV
PROSECUTOR DISCRETION

The Importance of Discretion

One of the most important, and yet less frequently discussed, roles of the Prosecuting Attorney lies in his power of discretion concerning charging and initiation of prosecutions. There is no doubt that a great deal of charging discretion exists even where a prosecutor feels he is duty bound to prosecute all complaints filed. Prosecuting Attorneys wield great power. His decisions on whether or not to prosecute, and his discretionary decisions in further stages of the proceedings, have a tremendous impact on the lives of the individuals involved and on the entire community.

Should the prosecutor have the power to drop any charges he feels should not be pursued? The American Bar Association's Standards for Criminal Justice, the Prosecution Function states that:

"The prosecutor is not obligated 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 the evidence exists which would support a prosecution."

The standards go on to cite seven instances where this discretion may properly be exercised. These factors are:

- o The prosecutor's reasonable doubt that the accused is in fact guilty.
- o The extent of the harm caused by the offense.
- o The disproportion of the authorized punishment in relation to the particular offense by the offender.
- o Possible improper motives of a complainant.
- o Prolonged non-enforcement of a statute, with community acquiescence.
- o Reluctance of the victim to testify.
- o Cooperation of the accused in the apprehension or conviction of others.

- o Availability and likelihood of prosecution by another jurisdiction.

The basic discretionary power of Prosecuting Attorneys in case presidence and the general rule regarding discretion may be summarized as follows:

- o The Prosecuting Attorney has wide discretion in the manner in which his duties shall be performed.
- o Such discretion cannot be interferred with by the court.
- o His conclusions in the discharge of his official responsibilities are not in anyway subservient to the view of the judge as to the handling of the state's case.

The Exercise of Discretion

In Wyoming there are generally three theories which are exercised in working with other agencies, such as law enforcement personnel, regarding the manner in which the discretion is to be exercised.

- o Once a case is before the prosecutor, he reserves all decisions within his power to himself.
- o Local prosecutors work on a limited basis with, and seek advice from, law enforcement personnel regarding charging and disposition decisions on the case.
- o The prosecutor works as closely as possible with the law enforcement personnel and actually leaves charging and disposition matters to the discretion of law enforcement personnel.

The benefit in a system of prosecution discretionary independence is that a high degree of uniformity may be achieved. The prosecutor can be able to sit and take all cases in prospective and screen cases on a uniform basis. The proper screening of cases in a prosecutor's office can only be performed if the prosecutor is allowed a high degree of discretion.

Police input into criminal prosecutions is also important. Not

only from the standpoint of police-prosecutor cooperative relations, but also because police input is beneficial in the development of the case. It must be remembered law enforcement personnel have done the background investigation, made the arrest and have spent a great deal of time on the case.

Wyoming does not have a specific statute defining the discretionary powers of the Prosecuting Attorney. As stated, it is the duty of the Prosecuting Attorney to act as the prosecutor for all felony and misdemeanor charges arising in the counties under the laws of the State of Wyoming. It is the recommendation of this report that local prosecutors develop written statements of policy regarding exercising discretion within their office. The uniform application of laws in each county, and public understanding of the office, will be promoted by such a procedure.

Plea Bargaining

One widely discussed area of discretion is the plea bargaining process in criminal cases. Often a defendant has committed more than one violation, and frequently the prosecutor has available a number of statutory alternatives from which to charge. Therefore, in order to obtain a plea of guilty on one charge, other charges may be dropped. This process has a number of practical effects for the defendant to take advantage of:

- o The defendant can assure himself of a lower maximum penalty for the plea.
- o A lower minimum sentence will be available for the defendant.
- o The prosecutor may agree to recommend a sentence in exchange for the plea.

Plea bargaining is widely used in Wyoming, as it is across the nation. The benefit to plea bargaining is that it is a cost saver.

- o Expensive jury trials are avoided.
- o Prosecutor's time is saved.
- o The time of defendant's counsel, usually being paid by the county, is saved.

Law enforcement personnel and the public at large often criticize the plea bargaining process. For this reason, it is recommended that written plea negotiation policies be formulated by local prosecutors. These policies can take into account American Bar Association Standards regarding permissible instances of discretion and other factors which make plea negotiation desirable. The statement can be available to law enforcement personnel and the public and should promote understanding and uniformity in the process.

CHAPTER V
THE ROLE OF THE ATTORNEY GENERAL'S OFFICE

Overall Operations

The Attorney General's Office occupies a position of great importance in the structure of prosecution in the State of Wyoming. The Attorney General could be considered the chief law enforcement officer for the state.

Aside from the large amount of responsibilities in civil matters, the Attorney General is responsible by statute for:

- o The prosecution and defense of all suits instituted by or against the state where the prosecution or defense of which is not otherwise provided by law.
- o Attending to the interests of the state in all suits, actions or claims in which the state is or may become interested in either the Supreme Court of Wyoming or the Supreme Court of the United States.
- o A legal advisor to the prosecuting attorneys of the counties of Wyoming.
- o Issuing written legal opinions on questions submitted to him by county officers.
- o Prosecuting local cases upon the failure or refusal of the local prosecutor to do so.
- o Assisting local prosecutors in felony trials through the appointment of a member of his staff experienced in trial work.
- o Supervising the Division of Criminal Investigation.

The state has little original prosecution responsibilities. The Attorney General's Office will prosecute cases of embezzlement or other cases of misconduct by state officials.

The main function of the Office in criminal matters is to represent the state in criminal appeals and other post-conviction matters in the Supreme Court of Wyoming and federal courts. This important function involves the difficult task of writing appellate briefs based on trial transcripts. The criminal caselaw of the state is made by the Wyoming Supreme Court decisions in these cases.

This practice lifts a heavy burden from the shoulders of local prosecutors who would otherwise be required to devote much time to these matters. The Criminal Division of the Attorney General's Office, which handles criminal appeals, offers young attorneys an opportunity to specialize in criminal law and procedure. Expertise can be gained in brief writing by centralizing this procedure. The Office has adequate research facilities and an extensive brief bank for this task.

The drawback of having the Attorney General's Office handle appeals is that the input gained from the person who prosecuted the case on the local level is sometimes lost. Though the Assistant Attorney Generals who write the brief attempt to work with local prosecutors in putting the appeal in order and preparing oral arguments, the system does present problems:

- o Contact with local prosecutors regarding the case may be difficult.
- o Points may arise on oral arguments which only the local prosecutor may be able to answer.

For this reason, county and prosecuting attorneys should be required to attend oral arguments before the Supreme Court or any other court regarding cases which have been referred to the Attorney General's Office for appeal. The strength of the present system can be continued, whereby centralized expertise in criminal law and procedure can be maintained, yet the full input of the local prosecutor will be evident.

The number of appeals and other matters handled by the Office has expanded greatly in recent years as illustrated by Table V-1, which lists the criminal caseload of the Supreme Court.

TABLE V-1

<u>Year</u>	<u>Total Number of Criminal Cases</u>
1967	14
1968	15
1969	11
1970	33
1971	32
1972	38
1973	61

One major problem facing the Office is retaining competent personnel. The Office is attempting to retain career attorneys, however, the state is unwilling to pay salaries comparable to what the best experienced attorneys could receive in private practice. For this reason the Attorney General's staff consists largely of attorneys out of law school one or two years. In order to obtain career prosecutors in the Attorney General's Office and to best represent the interests of the state in legal matters, greater salaries for experienced assistants must be paid.

Unlike most states, the Attorney General in Wyoming is appointed by the Governor rather than being elected. Whether or not this system makes the Office more or less political is questionable. The salary paid the Attorney General should be appropriate to attract the most competent and respected lawyers in private practice.

Assistance to Local Prosecutors

One important asset of the Attorney General's Office in Wyoming is the newly established Division of Criminal Investigation. The Division has specific statutory authority to assist in the preparation and prosecution of criminal cases. Thus, all prosecutors in the state, even in the most rural areas, have access to expert investigative services to assist them. This assistance can be especially valuable for major crimes which present a severe investigative cost problem. The state investigator also has adequate financial resources to conduct out-of-state investigations or very expensive investigations.

The State Investigator's Office, due to staff limitations, has been unable to answer a great many requests for assistance. The state should adequately fund this Division so that the assistance may be given to all legitimate requests from local prosecutors.

The state lacks a central service office for prosecutors. This function, which could be incorporated into the Criminal Division of the Attorney General's Office, is one which is badly needed. Approximately thirty-five states now have some sort of prosecutor coordination office operating. Most of these offices are operating through the State Council of Prosecutors.

Because of the small number of prosecutors in Wyoming, and the fact that many of them are required to do only small amounts of criminal work, the Wyoming County and Prosecuting Attorneys' Association lacks financial resources and support from its members to properly carry this function.

A prosecutor coordinating office can provide many services:

- o Plan and institute training programs for prosecutors.
- o Represent the prosecutors' interests in dealing with governmental and non-governmental bodies.
- o Provide technical assistance, either through the Attorney General's Office or from outside sources, in assisting local prosecutors in implementing new or improved programs.
- o Generally coordinate assistance requests from local prosecutors.
- o Develop manuals for statewide use reflecting on the important prosecutorial problems in the state.
- o Coordinate appeals.

All prosecutors could benefit by assistance in planning and conducting their work. Much work is being done on the national level in improving the prosecutors' function. A central office coordinator can reach the local prosecutor in Wyoming with the results of these efforts and upgrade the professional standards of the office.

CHAPTER VI
THE COSTS OF PROSECUTION

The offices of County and Prosecuting Attorneys are supported by their respective counties. Municipal prosecution is supported by the cities, with a large amount of fines taken in as a result of municipal law violations.

The costs of salary payments to County Attorneys are the greatest burdens presented to the county in providing prosecution services. The next greatest expense to the county is office facilities. The following table shows per capita county expenditures for the County and Prosecuting Attorney Offices for the year 1972.

TABLE VI-1

<u>Expenditures for County Attorneys and Offices by County - 1972-73</u>		<u>Expenditures Per Capita 1970 Population</u>
Albany	\$25,385	\$.96
Big Horn	19,847	1.95
Carbon	26,465	1.98
Campbell	26,086	2.01
Converse	15,068	2.54
Crook	12,072	2.66
Fremont	47,795	1.69
Goshen	10,499	.96
Hot Springs	12,639	2.55
Johnson	9,730	1.74
Laramie	55,066	.97
Lincoln	14,012	1.62
Natrona	56,667	1.11
Niobrara	7,017	2.40
Park	26,299	1.48
Platte	13,715	2.11
Sheridan	21,383	1.20
Sublette	15,231	4.06
Sweetwater	30,992	1.68
Teton	23,994	4.97
Uinta	11,464	1.61
Washakie	11,780	1.56
Weston	14,209	1.94

Average per capita expenditure for the state - \$1.53.

The table illustrates the range of per capita expenditures for 1972. The range is from \$0.96 in Goshen and Albany Counties to \$4.97 in Teton County. These figures should be considered in

light of the circumstances of the data for a single year.

- o Populations have changed dramatically in impacted areas.
- o Expenditures could vary significantly in certain counties in a single year from that county's normal expenditures.

There appear to be two alternatives to the present system of funding the costs of prosecution.

- o State financing of local prosecution.
- o Inter-county consolidation of prosecution services.

In the following chapter this report recommends the consideration and adoption of a system of full-time prosecutors, whether covering the entire state or only the larger localities. The most significant assistance the state may give is through the payment of prosecutors' salaries. It must be remembered that full-time prosecutors must be paid more than part-time prosecutors. At this time, three sources of state financial assistance are available to local prosecutors:

- o Grants from the Governor's Planning Committee on Criminal Administration for projects to improve prosecutor services.
- o Trial assistance from an assistant Attorney General.
- o Investigative assistance from the Division of Investigation.

The feasibility of consolidating prosecution services among counties can only be approached by studying the individual counties involved. There is no satisfactory authorization at this time for this procedure. There are instances where consolidation could present cost savings.

One cost of prosecution problem which must also be considered is the county expense of jury trials. This expense has an important bearing on decisions prosecutors must make in pursuing cases. The costs of a major jury trial could be overwhelming for smaller counties. For this reason and because the cost impact of a jury trial should be lessened as an influence on the decision of prosecutors,

it is the recommendation of this report that the state finance expenditures for jury trials above a certain amount. This expenditure could be administered through the judicial districts.

CHAPTER VII
ALTERNATIVES FOR CHANGE IN THE PROSECUTOR SYSTEM

The Need for Full-Time Prosecutors

The major recommendation of this report is that the State of Wyoming adopt a system which would provide full-time prosecutor services for at least the more heavily populated areas. This recommendation is based on the belief that full-time prosecutors will best be able to serve the people by adding efficiency and professionalism to their duties.

- o The complexities of modern criminal law and procedures require constant attention to developments in these areas.
- o Expanded defendants' rights require greater prosecution efforts.
- o Many areas within the prosecution function have been ignored because of lack of time on the part of the prosecutors.
- o A prosecutor should be available at all times for prosecution assistance to law enforcement personnel and for relations and availability with the public.

Without question one of the most important persons in the criminal justice system, and one who possesses great responsibilities, is the public prosecutor. Yet Wyoming maintains a system of part-time prosecution even in its larger counties. At its worst, a part-time system of prosecution is characterized by many deficiencies.

- o Lack of attention to prosecution matters in regard to the private business of the prosecutor.
- o Office inefficiency in that the office is not geared for one central purpose.
- o Lack of knowledge on the prosecutors' part of relevant criminal law and procedure.
- o Lack of time on the prosecutors' part to pursue innovative programs and important investigations.

The American Bar Association Standards for Criminal Justice and the National Advisory Commission on Criminal Justice Standards and Goals both support full-time prosecutor systems.

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The problem of conflict of interest between the prosecutors' prosecution business and their private practices is important for consideration. The belief exists that in many instances a prosecutor will put first priority on those items concerning his private practice simply because this is more lucrative business for him. It can be stated that in many instances the part-time system of prosecution promotes the private business of the prosecutor over the public interest in achieving the highest standards of the prosecution function.

Justification for a part-time prosecution system is two-part:

- o It is possible to obtain attorneys at a limited salary.
- o The workload is not great enough for a full-time prosecutor.

The county's ability to obtain attorneys at a limited salary under a part-time system must be considered in light of the many deficiencies of the system of part-time prosecution. In regard to the second reason, consideration must be given to the number of assistants the larger jurisdictions allow now, the sizeable population of some counties in Wyoming, and the projected population increase for the State of Wyoming.

All population projections indicate a sizeable population increase for the state. What this growth means is that caseloads will increase, and the duties to be performed by prosecutors will enlarge. Under our present system, the only capacity that the system has to cope with these changes would be to hire further part-time assistant prosecuting attorneys. A consolidation of part-time assistants into one full-time assistant must be considered.

Under any alternative suggested, part-time assistant prosecutors are maintained because they can fill a needed function within a basic system of full-time prosecutors. First of all, there are many counties which under any alternative, except the District Attorney system, could not justify a full-time prosecutor unless a scheme of consolidation with other counties is available. But most importantly, part-time assistants working at adequate compensation for a full-time prosecutor will be able to assist in a system of full-time prosecuting attorneys.

- o They may be in-residence county attorneys to be available for prosecution matters arising in the county where the full-time prosecutor does not reside.

- o They may staff an office of a full-time prosecutor in cases where another full-time assistant is not justified.
- o They may specialize in certain areas and gain important expertise in these areas, such as handling a certain type of case.

TABLE VII-1

1972 COURT CRIMINAL CASELOAD STATISTICS BY COUNTY

County	Total District Court Cases Disposed of:			Total Justice Court Cases Disposed of:	
	Misdemeanor	Felony	Juvenile	Misdemeanor*	Felony
Albany	52	70	38	374	83
Big Horn	11	22	6	180	50
Campbell	3	40	22	207	32
Carbon	14	57	26	415	90
Converse	17	13	10	127	23
Crook	0	1	0	140	1
Fremont	21	61	17	381	149
Goshen	2	8	9	69	18
Hot Springs	6	5	3	41	28
Johnson	9	1	7	116	11
Laramie	18	82	53	273	159
Lincoln	3	3	8	146	11
Natrona	70	53	116	351	292
Niobrara	6	2	7	41	9
Park	26	29	35	279	71
Platte	18	6	4	95	41
Sheridan	11	44	39	187	49
Sublette	7	11	4	141	17
Sweetwater	7	20	23	320	37
Teton	13	15	22	200	42
Uinta	2	8	20	92	9
Washakie	1	6	5	46	15
Weston	6	16	16	57	21

*Not including traffic.

Table VII-1 illustrates the criminal court caseload for the counties in Wyoming for 1972. The court caseload reflects the criminal caseload of the County and Prosecuting Attorney office as it now stands. As is illustrated, the caseload increases relatively in pro-

portion to the population per county. Counties wishing to consolidate under an alternative plan may judge the need for a base jurisdiction for a full-time prosecutor by caseload. Perhaps the most significant indication of need for the base of the full-time prosecutor can be observed from the number of assistants now working in various counties.

It is the recommendation of this report that the State of Wyoming adopt one of the following alternatives for change in the prosecutor system in order to incorporate a structure which will provide full-time prosecuting attorneys where justified.

Alternative #1

Alternative #1 would create full-time prosecutors in the larger counties and give two or more counties the option to consolidate and benefit from full-time service.

The following basic changes of structure of prosecution will be made:

1. In counties above 25,000 inhabitants, the position of prosecuting attorney will be full-time.
2. In counties with a population of from 20,000 to 25,000, the county may, at its option, make the position full-time.
3. Two or more contiguous counties may consolidate whose combined population is 20,000 or more and hire on full-time prosecuting attorney.
4. In a limited but important respect, counties' civil legal problems will be handled by a separate county attorney.
5. All full-time prosecutors will receive a salary of \$2,000 less than the prevailing salary of District Court judges, and a minimum salary will be set for other prosecuting attorneys based on the population of the county. All salaries of elected prosecutors will be paid by the state.
6. Counties will be authorized to hire a full-time deputy and assistant prosecutors. The counties will also furnish all facilities and equipment as needed.
7. The full-time prosecuting attorneys will have the

same duties and responsibilities as is presently dictated by state statute, except the provision that requires them to be legal advisors to the county officers.

The office of County and Prosecuting Attorney would be abolished and the chief prosecutor for each county under this alternative will be known as the Prosecuting Attorney for his county or consolidation of counties.

Comments

Presently there are four counties with a population of 25,000 or more: Fremont, Albany, Natrona and Laramie. There are no counties in the range of 20,000 to 25,000 population. However, for the purposes of this system, where counties can demonstrate that their population has increased to fit into a higher category, this population figure should be used for the purpose of hiring a full-time attorney. A figure of 25,000 is considered large enough to justify the position on a full-time basis. The base of 25,000 inhabitants will require a great amount of service and will justify the workload of a full-time prosecutor. With a larger workload, the salary for full-time service can be justified.

Part-time prosecutors should also receive a higher salary than is currently being paid. Under this alternative, part-time prosecutors should receive a salary as follows:

<u>Population</u>	<u>Statutory Salaries</u>
15,000 - 25,000	\$15,000
10,000 - 15,000	\$12,000
5,000 - 10,000	\$10,000
5,000 or less	\$ 8,000

The state of Wyoming will pay the salary of all elected Prosecuting Attorneys within each county or consolidation of counties. This will be through an annual appropriation to the counties. With present population figures, and without consolidation, there would be a current obligation to the state of \$291,000. With the state paying the salaries of all chief Prosecuting Attorneys, the counties will be relieved of this financial burden. In the smaller counties, this relief will be very significant because in counties where there is a single Prosecuting Attorney, the salary is usually 50 percent or more of the actual budget of the County Attorney's office. Therefore, smaller counties will be greatly benefited by the state salary payment and will be able to adequately fund facilities and equipment and

needed assistance for the prosecutor's office. Larger counties will also be relieved of a significant financial burden which will assist them in defraying some of the greater expenses of running a full-time office. However, there will be added costs to all counties to some degree in that they will be authorized now to hire a separate attorney as legal advisor to county officers and to represent and defend county officials in legal matters.

The civil function of advising county officers and thus the general duty of handling county business problems will be transferred to a separate County Attorney. However, many of the other statutory responsibilities of the County and Prosecuting Attorney, such as workmen's compensation, etc., will still be handled by the Prosecuting Attorney as the Prosecuting Attorney is required to handle all business presently mandated by state statutes to the County and Prosecuting Attorney. There is nothing to prevent the county from hiring an Assistant Prosecuting Attorney to be the County Attorney. This would seemingly be a very workable arrangement. The county may, however, choose to divorce itself from the office of the Prosecuting Attorney and hire a separate County Attorney.

The benefits of Alternative #1 as opposed to the present system would be:

- o Those prosecutors in larger jurisdictions will be full-time, and the public will have the benefits of full-time prosecution.
- o More attractive salaries in all counties for the chief prosecutor will structure a system which can attract and retain skilled attorneys.
- o Should two or more counties desire, they may form a district and be served by a full-time prosecutor.
- o The civil matter of representing county officers will be transferred from the prosecutor and thus enable him to devote more time to criminal matters.
- o The prosecutor will be elected on a non-partisan ballot, hopefully putting more emphasis on merit selection than political affiliation.

The problem with this system is obviously the increased financial burden this will place upon the state.

As opposed to the District Attorney system, outlined herein as Alternative #2, the following comparisons can be made:

- o No county will be served by a chief prosecuting attorney who is a non-resident unless the county voluntarily joins a consolidation plan.
- o Geographical jurisdiction problems will not be burdensome under Alternative #1.
- o Under Alternative #2, however, all counties will be served by a full-time prosecutor.

Alternative #2

General Scheme

This alternative will create a District Attorney system for the State of Wyoming. Counties in Wyoming will be divided into districts according to Table VII-2. The District Attorney may reside in the locality he wishes within his district. The District Attorney will be elected on a non-partisan ballot from a vote of the inhabitants of the counties within his district. All District Attorneys will be full-time in the sense they will be unauthorized to maintain a private practice of law. Each county will have at least one Assistant District Attorney in-residence.

The state will pay the salaries of all District Attorneys. The salaries will be the same as the prevailing salary of the District Court judges. This salary is currently \$27,500 per year.

The current duty of the County and Prosecuting Attorney to be legal advisor for the county officers will be shifted to a separate County Attorney.

Comments

The only method to provide full-time prosecution services to all the localities within the state is to implement a district-wide prosecuting system. The District Attorney system also provides an attractive way to include state financing into the system. With nine District Attorneys being paid a salary of \$27,500 apiece, the total financial burden to the state will then be \$247,500.

The salary of \$27,500 should make the District Attorney position attractive enough to recruit and retain competent attorneys. A four year term of office should be adequate for the District Attor-

the District Attorney to adequately set up his assistants so as to serve the needs of the district.

Alternative #3

This alternative would make two simple changes in the system. The present system of County and Prosecuting Attorneys for each county would be kept with the same duties as before except that those counties with 25,000 or more inhabitants would be required to make the position of County and Prosecuting Attorney full-time. A salary of \$24,000 would be required to be paid to the County and Prosecuting Attorney by the county.

This alternative differs from the other alternatives in many respects.

- o There is no state financing.
- o The prosecutors will continue to be elected on a partisan basis.
- o Full-time services will only be available on a limited basis.
- o Salaries for most prosecutors will remain unchanged.
- o There will be no authorization to hire a separate attorney for county civil matters.

Therefore, many of the advantages of the other alternatives, such as full-time services for consolidated counties, cannot be achieved under this alternative. However, this system would solve the critical need for full-time prosecutors in the larger jurisdictions within the state. Also, the state will not become involved in financing.

Obviously the disadvantage to the system is the increased financial burden of the extra \$11,500 that will have to be met by the four counties immediately required to go to a full-time prosecutor. Yet the full-time prosecutor will be able to devote time that he is currently devoting to his civil practice to prosecution matters and thus free the services of at least one part-time assistant, cutting the added burden significantly. The figure of 25,000 inhabitants and the determination of that figure would be established for the same reasons and by the same guidelines as illustrated in Alternative #1.

The Effect of Change in the Structure of Prosecution on the System of Delivering Defense Services in Wyoming

The system of full-time prosecutors will not directly affect the current method of delivering defense services throughout the state. Prosecution has always been a centralized state and county function in Wyoming. With the new Defense of Needy Persons Act, which has been in effect for over a year now, the opportunity for centralization of defense services for indigents is now available in Wyoming.

Under the present system of prosecution, or under a full-time system, defense attorneys and public defenders will still be working with a county prosecution office or a district prosecution office. Should more public defender offices develop within the state, then there will be greater centralized defense services.

Should a multi-county District Attorney system be adopted, there would be some changes which should be analyzed.

- o The feasibility of having a statewide public defender system organized around the same jurisdictional boundaries of the District Attorney system.
- o The working relationship of a District Attorney serving more than one county with individual public defenders for each county.

A full-time prosecutor should be able to devote more time to his prosecution function and become more competent in criminal law and will thus demand the utmost ability from defense attorneys. Therefore, the full-time prosecutor could make more serious demands on the criminal workload of the courts and of defense services within his county.

END

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