THE PROSECUTION FUNCTION: LOCAL PROSECUTORS AND THE ATTORNEY GENERAL

ASSOCIATION OF ATTORNEYS GENERAL

)MMITTEE ON THE OFFICE OF

ATTORNEY GENERAL

National Association of Attorneys General
Committee on the Office of Attorney General

THE PROSECUTION FUNCTION:
Local Prosecutors and the Attorney General

1974

Price $3.00

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FOREWORD

This Report embodies all the major findings pertaining to local prosecutors which the Committee on the Office of Attorney General of the National Association of Attorneys General has gathered over four years of research. It is the most comprehensive report ever published on this office, which is a vital part of the criminal justice system.

In 1971, the Committee on the Office of Attorney General, in its publication *The Office of Attorney General,* pointed out that:

> Virtually no primary data on prosecutors are available from any source. No one can say with certainty how many prosecutors serve what percent of the time; how many employ assistants; what prosecutors' relationships to Attorneys General are, or what are their relationships to local law enforcement officers. Similarly, there have been few efforts to define prosecutors' attitudes toward state or local officials, or to determine what improvements they consider desirable in the criminal justice system. Recommendations are being made by many groups on the basis of data that are inadequate, obsolete, or simply not available.

To meet this need, COAG undertook a series of studies of local prosecutors. In 1970, a detailed questionnaire resulted in 636 responses, which were analyzed by computer. These probed such basic areas as jurisdiction and population served, staff sizes and caseloads, budgets and salaries, training programs attended, and attitude toward the Attorney General. Results were published in the COAG reports, *The Office of Attorney General* (1971) and *Survey of Local Prosecutors* (1972).

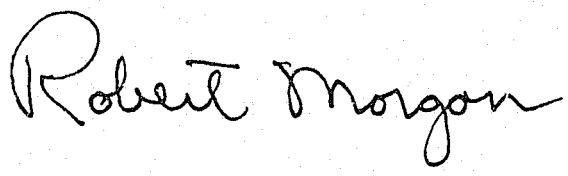
In 1973, COAG conducted a similar survey. Questionnaires were sent to the 2,672 county and district prosecutors in the nation. One thousand responses were coded for computer analysis. This constituted a return of 37 percent, higher than the 1970 response of 24 percent. All states and territories but one were represented. Not only were responses to thirty-two questionnaire inquiries analyzed by the computer, but extensive cross-tabulations were also performed. The results were published in the COAG publication, *Survey of Local Prosecutors: Data Concerning 1000 Local Prosecutors* (1973). This study is to date the most extensive survey of local prosecutors ever conducted, not only in the large number of participating prosecutors, but also in the depth of its inquiry.

In addition, the Committee on the Office of Attorney General has studied prosecutor training and assistance programs among the various states. Information has been gathered through questionnaires sent to agencies and organizations sponsoring such programs, from copies of grant applications to the Law Enforcement Assistance Administration and state planning agencies, and from other sources as available. Information was published as part of *The Office of Attorney General.* This was subsequently updated and expanded, and a research report *Prosecutor Training and Assistance Programs* was published. In 1973, an updated and enlarged version of the 1972 report was published, and it contained information on programs in all fifty states and three territories.

The 1971 COAG publication, *The Office of Attorney General,* discussed the development and duties of the office of local prosecutor, especially as it related to the Attorney General's functions. This report also discussed case law defining the Attorney General's relationship to prosecutors, and their respective roles in appeals.

This publication, *The Prosecution Function: Local Prosecutors and the Attorney General,* incorporates information and analyses from these previous publications, plus additional material. It is intended to provide a factual description of the office of prosecutor and to make significant results of these surveys available to a wider audience. It also includes information on the Attorney General's authority to initiate or intervene in local prosecutions.

Part of the material herein is derived from studies funded by the Law Enforcement Assistance Administration. The fact that LEAA furnished such financial support does not necessarily indicate its concurrence in the statements or conclusions herein. Mr. C. Edward Alexander, II, had primary responsibility for COAG's 1973 reports on prosecutors and for this report.



Attorney General Robert Morgan, Chairman
Committee on the Office of Attorney General

March, 1974

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The American Bar Association characterizes the prosecution and defense functions as "advocacy within the framework of the adversary system," saying that:

> The adversary system which is central to our administration of criminal justice is not the result of abstract thinking about the best means to determine disputed questions of law and fact. It is the result, rather, or the slow evolution from trial by combat or by champions to a less violent form of testing by argument and evidence.[1]

The prosecutor, the defense attorney, and the judge are indispensable elements of this system. The prosecutor exercises, additionally, the critical power of determining what cases will come before it:

> ... [T]he power of the prosecutor to institute criminal prosecutions vests in him an authority in the administration of criminal justice at least as sweeping as, and perhaps greater than, the authority of the judge who presides in criminal cases. ... [T]he prosecutor is vested with virtually unreviewable power as to the persons to be prosecuted or not.[2]

Development of the Office

The American system of public prosecution has developed differently from the experience in England and on the Continent. In most western European countries, for example, the prosecutor is usually appointed rather than elected, and he is usually a career official rather than a one or two-term office holder. The prosecutor has a closer relationship to the court and is considered a court officer. Authority stems from the central government rather than from a local unit.

England has a peculiar system, with three types of prosecutions. In 1879, the office of Director of Public Prosecutions was established, thus ending "traditional adherence to the doctrine that under English law the detection and prosecution of crime was basically the responsibility of private citizens."[3] This right is preserved, and comprises the first type of prosecutions, the second type is prosecutions brought by police, who may conduct courtroom proceedings themselves or engage private attorneys. The third type is cases brought by the Director of Public Prosecutions, a central government officer responsible to the Attorney General. He prosecutes offenses punishable by death and other cases which appear to be of importance to him. The Director also plays an important role in coordinating the other types of prosecutions and is often called on for advice by the police.[4]

America has long embraced the concept of public prosecutors, although some states permit private parties to bring criminal actions. Rather than retaining centralized prosecution functions, states generally have diffused them among county or district prosecutors, most of whom are locally-elected and not responsible to any central authority. As one state court said, "The office of prosecuting attorney has been carved out of that of Attorney-General and virtually made an independent office."[5]

The office of local prosecutor has developed differently in the different states and territories. Some jurisdictions have no local prosecutor; the Attorney General handles local as well as appellate prosecutions. Some have attorneys serving a judicial district. A few have both county and district attorneys. Additionally, most jurisdictions have city attorneys or corporation counsel, who may handle some criminal as well as civil matters. This study excludes city attorneys from consideration, as their

duties are less relevant to Attorneys General.

Even the titles of local prosecutors vary. They are known in various jurisdictions as county attorneys, district attorneys, state's attorneys, prosecuting attorneys, circuit attorneys, solicitors, Commonwealth's attorneys, and others.

Table 1 shows the titles, area served, selection method and the term of local prosecutors with criminal jurisdiction. This emphasizes the diversity among the states in the way this office is organized.

TABLE 1: LOCAL PROSECUTORS WITH CRIMINAL JURISDICTION

	Title	Area	Number of Units	How Selected	Term (Years)
Alabama	District Attorney	Judicial District	37	Elected	4
Alaska	(No Local Prosecutor)	(N.A.)	(N.A.)	(N.A.)	(N.A.)
Arizona	County Attorney	County	14	Elected	4
Arkansas	District Prosecuting Attorney	Judicial District	19	Elected	2
California	District Attorney	County	58	Elected	4
Colorado	District Attorney	Judicial District	22	Elected	4
Connecticut	States Attorney Chief State's Attorney	County	8 1	Chief State's Attorney	4
Delaware	(No Local Prosecutor)	(N.A.)	(N.A.)	(N.A.)	(N.A.)
Florida	State Attorney	Judicial District	20	Elected	4
Georgia	District Attorney	Judicial District	43	Elected	4
Guam	(No Local Prosecutor)	(N.A.)	(N.A.)	Elected	4
Hawaii	County or City Attorney	County	4	Elected or Appointed	4
Idaho	Prosecuting Attorney	County	44	Elected	2
Illinois	State's Attorney	County	102	Elected	4
Indiana	Prosecuting Attorney	Judicial District	87	Elected	4
Iowa	County Attorney	County	99	Elected	2
Kansas	County Attorney	County	105	Elected	2
Kentucky	County Attorney	County	120	Elected	4
	Commonwealth Attorney	District	51	Elected	6
Louisiana	District Attorney	Judicial District	34	Elected	6
Maine	County Attorney	County	16	Elected	2
Maryland	State's Attorney	County and State	24	Elected	4
Massachusetts	District Attorney	Judicial District	9	Elected	4
Michigan	Prosecuting Attorney	County	81	Elected	4
Minnesota	County Attorney	County	87	Elected	4
Mississippi	District Attorney	Judicial District	20	Elected	4
	County Prosecuting Attorney	County	60	Elected	4
Missouri	Prosecuting Attorney	County	115	Elected	2
Montana	County Attorney	County	54	Elected	4

TABLE 1 (cont.): LOCAL PROSECUTORS WITH CRIMINAL JURISDICTION

	Title	Area	Number of Units	How Selected	Term (Years)
Nebraska	County Attorney	County	93	Elected	4
Nevada	District Attorney	County	17	Elected	4
New Hampshire	County Attorney	County	10	Elected	2
New Jersey	County Prosecutor	County	21	Governor with consent of Senate	5
New Mexico	District Attorney	Judicial District	13	Elected	4
New York	District Attorney	County	62	Elected	3
North Carolina	District Attorney	District	30	Elected	4
North Dakota	State's Attorney	County	53	Elected	4
Ohio	Prosecuting Attorney	County	88	Elected	4
Oklahoma	District Attorney	District	27	Elected	4
Oregon	District Attorney	County	36	Elected	4
Pennsylvania	District Attorney	County	67	Elected	4
Puerto Rico	District Attorney	Judicial District		Governor	
Rhode Island	(No Local Prosecutor)	(N.A.)	(N.A.)	(N.A.)	(N.A.)
Samoa	(No Local Prosecutor)	(N.A.)	(N.A.)	(N.A.)	(N.A.)
South Carolina	Solicitor	Judicial District	16	Elected	4
South Dakota	State's Attorney	County	67	Elected	2
Tennessee	District Attorney General	Judicial District	26	Elected	8
Texas	State's Attorney	County	222	Elected	4
	District Attorney	District	91	Elected	4
Utah	County Attorney	County	29	Elected	4
Vermont	State's Attorney	County	14	Elected	2
Virgin Islands	Assistant Attorney General	Virgin Islands		Attorney General	Indef.
Virginia	Commonwealth Attorney	County or City	122	Elected	4
Washington	Prosecuting Attorney	County	39	Elected	4
West Virginia	Prosecuting Attorney	County	55	Elected	4
Wisconsin	District Attorney	County	72	Elected	2
Wyoming	County and Prosecuting Attorney	County	23	Elected	4

Duties of the Prosecutor

The duties of prosecutors are prescribed primarily by statute, although the constitutions of some states establish the office and may prescribe some duties. The statutes in most states may have many provisions dealing with specific powers or duties of the prosecuting attorney. Certain narrow provisions may center on jurisdictional boundaries; or they may require the prosecutor to act in case of specific violations, such as when liquor laws or public health laws are involved. In addition, there is usually found a section dealing with the general powers of the prosecutor. It is this general section which in fact sets forth the wide bound-

aries of the prosecutorial function.

A typical example of the basis of authority for the office is Kentucky, which provides by constitution that a Commonwealth's Attorney shall be elected in each circuit court district and shall serve for a six-year term. The statutes charge him with attending each circuit court held in his district, and prosecuting all violations of the criminal and penal laws therein. Kentucky's Constitution also provides that a county attorney shall be elected in each county for a four-year term. He is required by statute to aid the Commonwealth's attorney and to:

> [A]ttend to the prosecution, in courts inferior to the circuit court, of all criminal and penal cases in his county in which the Commonwealth or the county is interested, except those cases in a police court for which there is a prosecuting attorney who has the duty to prosecute such cases.[6]

As part of his general authority to prosecute, the prosecuting attorney enjoys a wide discretionary power, and most state statutes set no restrictions on such prosecutorial discretion. The prosecutor determines whether or not to initiate criminal proceedings, and once a case is under way, he can use his influence to mitigate the penalties which the law might otherwise prescribe. The final authority of the prosecutor to bring or not to bring a criminal action has been labeled the "power of selective enforcement."[7] It is natural that such a wide power has been criticized. Negative observations center primarily on a lack of consistency in applying the law. This can take place either in a prosecutor's disregarding certain laws, or in his enforcing a given law against some violators but not others. Those critical of the prosecutor's discretion believe that guidelines must be established to insure consistency. "Prosecutors should be required to make and to announce rules that will guide their choices, stating as far as practicable what will not be prosecuted," suggests one expert.[8] Other observers have urged legislative controls, or have suggested that the Attorney General might direct his attention toward unstructured prosecutorial discretion.[9]

Prosecutors defend their discretionary power and the exercise of it. They point to loosely drafted laws and the fact that they are forced to use their discretion as a substitute for more definite laws. For example, some statutes may be overly broad, and prosecutors feel that they are justified in mitigating the harsh effects which would result if such laws were enforced in all cases of mere technical violations. Pragmatically speaking, prosecutors feel that they are in the best position to analyze a case in terms of evidence and strength, and that cases which are not likely to be won should be abandoned in order to save manpower for cases which can be successfully prosecuted.[10]

Even after the prosecutor makes a decision to prosecute, he may choose to seek conviction for a lesser offense than the one originally charged. In return for the reduction in the charge, the defendant has usually changed his plea from "not guilty" to "guilty." Such an arrangement is known as plea bargaining, and it constitutes another facet of the prosecutor's discretionary power.

As with the power to charge or not to charge, the widespread practice of plea bargaining has met with criticism. Strict legal proponents feel that once a viable charge has been made, it should be prosecuted, and the prosecutor should not compromise by letting a defendant plead guilty to a lesser offense. Others see possible dangers to the defendant, asserting that plea bargaining threatens the fundamental rights of trial by jury and affronting one's accusers. The National Advisory Commission on Criminal Standards and Goals has strongly recommended the total abolishment of plea bargaining:

> As soon as possible, but in no event later than 1978, negotiations between prosecutors and defendants—either personally or through their attorneys—concerning concessions to be made in return for guilty pleas should be prohibited.[11]

Nevertheless, it is estimated that 90 to 95 percent of all criminal convictions and 70 to 85 percent of all felony convictions are obtained by guilty pleas, and that plea bargaining has been instrumental in most of these.[12] Prosecutors feel that plea bargaining is necessary to reduce severe case backlogs and to bring defendants to justice speedily. The Supreme Court has also sanctioned plea bargaining, and described it as "not only an essential part of the process, but a highly desirable part."[13] According to the Court, the Fifth Amendment does not prohibit judges and prosecutors from accepting guilty pleas to lesser included offenses or from reducing charges in return for a guilty plea.

It is apparent that despite criticism, the prosecutor's wide powers have not been weakened, nor are they likely to be hampered in the near future. The National Advisory Commission has admitted that its recommendation on the elimination of plea bargaining falls in the minority position.[14] Likewise, most other critics fall in the minority when compared to the vast numbers of judges, attorneys, and prosecutors who do favor retention of the prosecutor's discretionary powers. Therefore, the prosecutor fills a very large and important role in the criminal justice system. Whether the prosecutor continues to play such a large role will depend upon how well he can adapt to modern needs. The National District Attorneys Association has stated:

> If our criminal justice system is to succeed in the years ahead to curb crime and violence in America, the role of the local prosecutor will have to be a highly successful instrument among the other elements of the system. Although it is clear that the local prosecutor possesses great potential in helping to combat crime in America, it has also become increasingly evident that his methods and techniques must be improved if he is to fulfill this potential in the struggle that lies ahead.[15]

Distribution of Activities

Limited data are available on prosecutors' activities. The Committee on the Office of Attorney General's survey of one thousand prosecutors asked them to estimate the percentage of their offices' work concerned with criminal, civil, administrative and other matters. The responses show clearly that criminal work occupies most time. Over three-fourths of the respondents, 78 percent, spend over half their time on criminal matters. The median percent of time spent on criminal matters is 75 percent. By contrast, the median amount of time spend on civil matters is slightly under 10 percent, and the median amount of time spent on administrative matters is even less.

Prosecutors, like Attorneys General, render advice to other officials. Almost all prosecutors responding to COAG's survey report that they often render advice to police and sheriffs. Advising police often are 87 percent; 10 percent seldom advise police; and only 3 percent never advise police. Advising sheriffs often are 87 percent; seldom, 9 percent, and never, only 4 percent. The frequency of advice by prosecutors to other persons and groups is also interesting. Various city officials are advised often by approximately 27 percent of all prosecutors; court clerks are advised often by 47 percent; various county officials are advised often by 58 percent; school boards are advised often by 16 percent; and private citizens receive advice frequently from 60 percent.

Defender Systems

In recent years, there has been an emerging trend toward county and statewide public defense systems. It is generally accepted that the American system of criminal justice rests on three basic assumptions. First, that the ac-

cused is presumed innocent; second, that the accusing party has the burden of proving guilt which must be established in an adversary proceeding; third, that both adversaries must be aided by capable and effective advocates.[16] Serious commitment to the third principle did not begin at the state level until 1963 when the Supreme Court decided in *Gideon v. Wainwright*[17] that the state is obligated to provide counsel in cases involving serious crimes. Since then, many states and localities have begun to devise criminal defense systems. Another decision has added impetus to the trend. In *Argersinger v. Hamlin*,[18] the Supreme Court held that no indigent person may be incarcerated as the result of a criminal trial at which he was not given the right to be represented by publically provided defense counsel.

The ABA Standards relating to Providing Defense Services were approved in 1968. They are based on five general principles: (1) that the objective of the bar should be to assure that all persons receive necessary counsel in criminal proceedings and that the public be educated as to this objective; (2) that counsel be provided in a systematic and well-publicized manner; (3) that each jurisdiction require by law the adoption of a plan for the provision of counsel and the law allow selection from a range of plans suitable to varying local needs; (4) the integrity of the lawyer-client relationship should be guaranteed, and (5) a plan should provide for investigatory expert and allied defense services.[19] Standards are given for both assigned counsel and public defender systems, with no preference expressed.

The National Advisory Commission on Criminal Justice Standards and Goals, in its report on *Courts*, makes several recommendations regarding public defense systems:

> Services of a full-time public defender organization, and a coordinated assigned counsel system involving substantial participation of the private bar, should be available in each jurisdiction to supply attorney services to indigents accused of crime.[20]

The National Legal Aid and Defender Association is a private association organized to advance legal counsel to indigents in civil as well as criminal cases. Its National Defender Project is a grant program designed to establish and improve defender offices. Primary consideration is given to those programs which can serve as a model for the region and other similar communities. The NLADA does not favor either an assigned counsel system or a public defender system, but rather sets forth standards and gives grants to both systems. These standards closely parallel those of the ABA.

Statewide public defender systems are presently operating in fourteen states. They are: Alaska, Colorado, Delaware, Florida, Hawaii, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, Nevada, New Jersey, Rhode Island, and Vermont. Michigan and North Carolina are in the process of going to a statewide program. Other states are assigned-counsel systems, in which judges appoint lawyers to criminal proceedings on a case-by-case basis. These lawyers are in private practice and may or may not be familiar with criminal law and procedure. Some states have assigned or appointed counsel, but may also authorize public defenders in some or all counties. These include Arizona, California, Georgia, Illinois, Indiana, Montana, Nebraska, New York, Ohio, Oklahoma, Tennessee, and Utah.

Overall, the trend appears to be toward statewide public defense systems. Prosecutors should be aware of this trend and should work toward a good working relationship with public defenders. The emergence of this group of advocates creates a new dimension in the criminal justice system.

2. ORGANIZATION, STAFF AND SALARIES

This chapter presents basic facts and statistics concerning the nation's local prosecutors. It is based on the extensive primary data gathered by the Committee on the Office of Attorney General in its nationwide surveys. Included are data pertaining to the number of prosecutorial units in the nation; selection, term, and experience; population and jurisdiction served; full-time and part-time comparisons; staff and caseloads; budgets and salaries; and relationship to defender systems.

Number of Prosecutors

The Committee on the Office of Attorney General conducted research to determine how many local prosecutors there are in the nation. Through correspondence and communication where necessary, the number of prosecutorial units derived was 2,672. This does not include city prosecutors or solicitors; they are not included in this report, because few have significant criminal jurisdiction.

Selection, Term and Experience

In the vast majority of jurisdictions, local prosecutors are elected. All local prosecutors are elected in forty-four jurisdictions. In Hawaii, the public prosecutor for the city and county of Honolulu is appointed by the mayor, but prosecutors for the other counties are elected. In Connecticut, the prosecutorial function is handled by the Chief State's Attorney, who appoints all prosecutors. In New Jersey, prosecutors are appointed by the Governor for five-year terms; inasmuch as the Governor serves for four years, they have some degree of independence. The Governor also names prosecutors in Puerto Rico. In Alaska, Delaware, Rhode Island, Guam, Samoa, and the Virgin Islands, the Attorney General names or serves as prosecutor. In California and Oregon, prosecutors are elected on a non-partisan ballot.

The question of election versus appointment as the method of selection for prosecutors raises several issues. The President's Commission on Law Enforcement and Administration of Justice recognized that either selection process has both advantages and disadvantages:

> Local election increases the likelihood that the prosecutor will be responsive to the dominant law enforcement views and demands of the community. Since he is not dependent on another official for reappointment, the prosecutor possesses a degree of political independence that is desirable . . . But many of these same factors interfere with the full development of the prosecutor's office. Political considerations make some prosecutors overly sensitive to what is safe, expedient, and in conformity with law enforcement views that are popular rather than enlightened. Political ambition does not encourage a prosecutor to take the risks that frequently inhere in reasoned judgments.[21]

The National Association of Attorneys General has recommended that "[t]he method of selecting local prosecutors should depend on conditions in the particular jurisdiction." It recognizes that "[t]here is no single best method; what is appropriate for Delaware would not necessarily be so for California, although both have good prosecution services."

Most prosecutors serve four-year terms, with a two-year period being the second most frequent term. Nearly 50 percent of all respondents to COAG's 1973 questionnaire are currently serving their first term in office. Prosecutors in general are fairly young, since the median year in which all 1973 respondents were admitted to the Bar was 1958. Almost 30 percent had been admitted since 1967.

At least one third of those responding have served as assistant prosecutors before moving up to their present positions. A substantial number, 24 percent, had been city or county attorneys. A few, 7 percent, have held municipal and county judgeships. Approximately 4 percent have served on an Attorney General's staff.

Jurisdiction and Population Served

The county is the most common prosecutorial unit. Of the forty-eight jurisdictions which have local prosecutors, thirty-one have county prosecutorial units, thirteen have districts, and four have both. When considering the totality of local prosecutors, 62 percent serve county jurisdictions, 13 percent serve districts, and 25 percent serve combination systems.

Virtually all groups which have studied the criminal justice system have recognized the desirability of full-time prosecutors. The National Association of Attorneys General recommends that "[l]ocal prosecutorial services should be organized in districts sufficiently large to require full-time prosecutors, with adequate staff."

The President's Commission on Law Enforcement and the Administration of Justice said that "in smaller jurisdictions, where the caseload does not justify a full-time criminal prosecutor, consideration should be given to use of prosecutors representing larger districts."[22] The National Advisory Commission on Criminal Justice Standards and Goals stated in 1973 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."[23] The Standards of Criminal Justice adopted by the ABA agree with this position. The Advisory Commission on Intergovernmental Relations has also recommended that states require prosecuting attorneys to be full-time officials and that their jurisdictions be redrawn so that each is large enough to require the full-time attention of such an official and to provide the financial resources to support his office.[24]

Most of the nation's prosecutors serve relatively small populations. COAG's surveys show that the median population served by county prosecutors is between 20,000 and 30,000 persons. As anticipated, district prosecutors, who may serve several counties, work in areas with a larger median population figure of 60,000 to 100,000. When information concerning combination systems is added, the median population served by all prosecutors in the nation ranges between 30,000 and 45,000 persons. Only 22 percent of all prosecutors hold office in densely populated areas of over 100,000 persons.

Whether a prosecutor employs staff attorneys is directly related to the population served. Only areas with a population between 100,000 and 500,000 show a large percentage of prosecutors' offices with staff attorneys. As could be expected, there is also a correlation between population and salary per hour; as the population increases, so does the salary figure. For example, a prosecutor serving a population between 30,000 and 45,000 earns between $8 and $10 per hour, while the salary per hour of a prosecutor serving a population between 60,000 and 100,000 is in the $10 to $25 bracket. Reflecting this is the fact that district prosecutors make a higher salary per hour (a median of from $9 to $9.99) than county prosecuting attorneys (a median of from $8 to $8.49).

Full-Time and Part-Time Comparisons

Whether prosecutors are elected or appointed, and whether they serve a county or district, there is increasing consensus that they should devote full-time to the position. However, most prosecutors still serve only part-time (65 percent), and these serve a median of 26 hours per week.

Arguments for full-time prosecutors include: the position is important enough to require full-time attention; there is continuing danger that conflicts of interest will develop; private activities may be detrimental to his prestige as a public officer; and it is difficult to draw a clear distinction between actions taken as a public and as a private attorney.

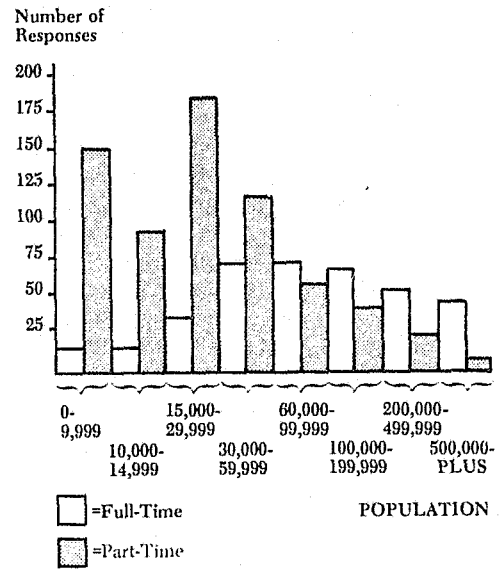
An Idaho study recommended a district attorney system, with full-time prosecutors. It pointed out that forty-two of the state's forty-four prosecutors are part-time, and that most

> ... use their office to supplement their income. All must consider the odds in determining whether or not to run for office. Each gambles that public service will not interfere with their private practice which provides additional income. If the odds are poor and if the job as prosecutor apparently requires too much time, the prosecutor is forced to decide whether to let his private practice slide or cut down on his prosecuting duties. This ethical conflict faces each and every part-time prosecutor. ... Further conflict arises in the small county where there is a sparsity of attorneys. In these counties, the case can and has arisen where the prosecutor finds himself faced with the problem of prosecuting an existing private client, or representing in a civil matter, a person whom he has just prosecuted.[25]

The American Bar Association's Standards Relating to the Prosecution Function has called for full-time prosecutors.[26] The President's Commission on Law Enforcement and Administration of Justice recommended:

> Localities should revise salary structures so that district attorneys and assistants devote full-time to their office without outside practice ... In smaller jurisdictions, where the caseload does not justify a full-time criminal prosecutor, consideration should be given to use of prosecutors representing larger districts.[27]

Whether a prosecutor works full-time or part-time is directly related to the population of the area which he serves. In population areas of less than 60,000, part-time prosecutors constitute a greater percentage. Where the population is over 60,000 people, the majority of prosecutors are full-time.



Full-time prosecutors are also better compensated than part-time prosecutors. For full-time prosecuting attorneys, the median salary per hour is $11.74, while for part-time prosecutors, the median salary per hour is in the $6.50 to $7.50 range. Full-time prosecutors are more active in attending training and educational programs than are part-time prosecutors.

Staff

Prosecutors' offices continue to remain relatively small in terms of personnel. Most prosecutors (68 percent) do not have full-time staff attorneys; and of the 32 percent who do, 35 percent have only one assistant, and 56 percent have less than four.

TABLE 2: NUMBER OF FULL-TIME STAFF ATTORNEYS

Number of Full-Time Staff Attorneys	Number of Responses	Percent of 1000	Percent of 322
0	678	67.8	——
1	113	11.3	35.1
2-3	68	6.8	21.1
4-18	94	9.4	29.2
20-500	47	4.7	14.6
TOTAL	1,000	100.0	100.0

For the most part, the number of full-time staff assistants increases as the population served increases. About one-third of all prosecutors have part-time staff attorneys. Beginning full-time staff attorneys receive a median annual salary of $10,980, with the full range being from $4,000 to $20,000. The maximum salary paid to more experienced staff attorneys is from $5,000 to $40,000 per year, with a median of $15,680.

As anticipated, the majority of prosecutors (69 percent) employ full-time clerical help, and most of these (53 percent) have only one such employee. Very few prosecutors engage investigators.

Budgets

The median annual budget for all prosecutors' offices falls in the $20,000 to $30,000 range. The county unit is the major source of funding, and only 9 percent of the offices are totally funded by the state. The highest yearly budget reported was $12,739,000, but this is a rather unusual occurrence. Only 13 percent of all prosecutors' offices had budgets over $150,000.

One third have received grants from their state criminal justice agency or directly from the Law Enforcement Assistance Administration, ranging from $50.00 to $76,345. The median grant amount was $14,000.

TABLE 3: ANNUAL BUDGETS

	1970		1973	
Annual Budget	Number of Responses	Percent of Total (570)	Number of Responses	Percent of Total (913)
$1-999	—	—	29	3.2
1,000-9,999	65	11.4	93	10.2
10,000-14,999	104	18.0	133	14.6
15,000-19,000	63	11.0	104	11.4
20,000-29,999	62	11.0	133	14.6
30,000-49,999	70	12.3	116	12.7
50,000-79,999	63	11.0	95	10.4
80,000-149,999	50	8.7	87	9.5
150,000-349,999	47	8.6	45	4.9
350,000-999,999	25	4.4	47	5.1
1,000,000 and over	21	3.6	31	3.3
TOTAL	570	100.0	913	100.0

Prosecutors' Salaries

Turnover among prosecutors is one of the major problems which limits the development of prosecutorial expertise. The major reason cited for leaving the job is the failure of salaries to meet the level which attorneys can reach in private practice.

The median income of all prosecutors in 1973 was $12,598 per year. The total salary range reported was from $1,120 to $44,028. These figures include part-time prosecutors. Full-time prosecutors receive a median of $22,042 per year. However, only 35 percent of the nation's prosecutors serve full-time. When a median hourly salary is computed for full-time prosecutors, the figure derived is $11.74. For part-time prosecutors, the hourly median salary is between $6.50 and $7.50. Thus, overall, full-time prosecutors are better compensated.

TABLE 4: ANNUAL SALARY OF PROSECUTORS

Annual Salary	Number of Responses	Percent of Total Responses
$Under 10,000	352	37.4
10,000-11,999	104	11.0
12,000-15,999	176	18.7
16,000-19,999	112	11.9
20,000-24,999	136	14.6
25,000-49,999	59	6.4
TOTAL	939	100.0

3. TRAINING AND ASSISTANCE PROGRAMS

Training and information is a constant need for any profession. Even career prosecutors would need to be kept informed of changes in the law, new court decisions, improvements in investigative techniques, and a myriad of other matters. The present high rate of turnover in most prosecutors' offices makes training even more imperative.

This chapter describes what programs are being conducted for the training of the nation's local prosecutors, and what activities are being undertaken at the state level to improve the prosecutorial function. National programs are also discussed.

Need for Training and Assistance Programs

The National Association of Attorneys General has recommended that the Attorney General take an active part in prosecutor training and assistance:

> The Attorney General should call periodic conferences of prosecutors and should issue regular bulletins concerning developments in the criminal law and other matters of interest.
>
> Coordination between the Attorney General and other prosecutors in the state is essential, to assure interchange of ideas and information and to maintain continuity of policy. The Attorney General should take the initiative in calling conferences and otherwise keeping prosecutors informed of developments in statute and case law. He should also assume leadership in developing and implementing statewide standards.
>
> The Attorney General should develop and retain a staff of specialists who would be available to other criminal justice agencies on request.
>
> The Attorney General should have a "lending library" of men and material that other state or local officers could draw on as needed. This would include specialists in various areas of investigation and prosecution, administration, accounting, and special equipment needed in the detection or prosecution of crime.

Observers agree that prosecutor training is often inadequate, although the situation has improved since the President's Commission on Law Enforcement and the Administration of Justice said in 1967:

> There has been deplorable inattention to the development of curricula and training techniques in the investigative, administrative, and broader law enforcement policy roles played by the prosecutor. These matters have not been seen as suitable subjects for the attention of law schools and the legal scholarly community. ... Large metropolitan prosecutors' offices should develop a formal training program for new assistants. ... There is also a need for training programs on a State or regional level to reach prosecutors and assistants in small offices.[28]

As the information in this chapter shows, there is now some sort of training and/or assistance program in almost every state. But the 1973 COAG survey of local prosecutors showed that 40 percent of all prosecutors had not even attended a single training program in the past year, and nearly half of those who had attended training programs had been to only one. To remedy this situation, more programs should be offered and prosecutors should be encouraged to attend these programs more frequently.

The COAG survey showed that the majority of the nation's prosecutors are relatively inexperienced. Over half are serving their first term, and only 15 percent have been in office longer than ten years. In addition to the relative inexperience among prosecutors, their assistants are also neophytes. This low experience level calls for the additional development of expertise through training programs.

The American Bar Association recommends that "continuing education programs should be substantially expanded, and public funds should be provided

to enable prosecutors to attend such programs."[29] The National Advisory Commission on Criminal Justice Standards and Goals, which reported in 1973, made specific recommendations on formal training:

> All newly appointed or elected prosecutors should attend prosecutors' training courses prior to taking office, and in-house training programs for new assistant prosecutors should be available in all metropolitan prosecution offices. All prosecutors and assistants should attend a formal prosecutors' training course each year, in addition to the regular in-house training.[30]

In addition to training, inexperienced prosecutors and assistants can be aided by continuing services such as legal research, newsletters, and trial assistance. Even experienced prosecutors can find such services to be beneficial. Indeed, when asked what types of assistance they desired from the Attorney General, prosecutors responding to the 1973 COAG survey replied that they wanted, in order: assistance in interpreting laws and doing legal research, preparing manuals and holding seminars, developing case strategy, conducting investigations, and conducting the trial in the courtroom.

The American Bar Association suggests that the state maintain:

> a central pool of supporting resources and manpower, including laboratories, investigators, accountants, special counsel and other experts, to be available to local prosecutors.[31]

The Commission on Standards and Goals recommends:

> In every state there should be a State-Level entity that makes available to local prosecutors who request them the following:
>
> 1. Assistance in the development of innovative prosecution programs;
>
> 2. Support services, such as laboratory assistance; special counsel, investigators, accountants, and other experts; data-gathering services; appellate research services; and office management assistance.
>
> This entity should provide for at least four meetings each year, at which prosecutors from throughout the state can engage in continuing education and exchange with other prosecutors.[32]

Sponsors of Programs

There is some sort of training and/or assistance program in forty-nine states and one territory, although the degree of program activity varies greatly. In most states the prosecutor training and assistance function has been organized either in the Attorney General's office or by establishing a full-time executive director or coordinator of the prosecutors' association. Other programs are combined or joint efforts, often including universities. In some states, different groups maintain separate programs. Attorneys General, for example, sponsor programs solely in twenty states. In two states the Attorney General conducts programs in conjunction with a university, and in four states the Attorney General works with the prosecutors' association. In three states a state agency or council sponsors training and assistance programs. In fifteen states the prosecutors' association is the sole sponsor of activities.

Table 5 presents sponsors of training and assistance programs by state, and then Table 6 shows all activities on a state by state basis. Training, newsletters, and research assistance are the most frequently found activities. Manuals, trial assistance, and legislative activity come next, in that order.

In the twenty states where the Attorney General's office conducts all programs, there are certain advantages. A coordinator located in an Attorney General's office gains the benefit of established office space, equipment, secretarial personnel and other supporting services. He has access to varied printed resources and, when needed, there is an immediate pool of legal expertise through the staff attor-

TABLE 5: SPONSORS OF TRAINING AND ASSISTANCE PROGRAMS BY STATE

State	Sponsor
Alabama	Attorney General, Prosecutors Association, University
Alaska	Attorney General
Arizona	Attorney General
Arkansas	Attorney General
California	Attorney General
Colorado	Prosecutors Association
Connecticut	Chief State's Attorney
Delaware	Attorney General
Florida	Prosecutors Association
Georgia	Prosecutors Association
Guam	(No local prosecutors)
Hawaii	Clearinghouse and Institute
Idaho	Attorney General
Illinois	Prosecutors Association
Indiana	Prosecuting Attorneys Council (State Agency)
Iowa	Attorney General
Kansas	Prosecutors Association
Kentucky	Attorney General
Louisiana	Attorney General, Prosecutors Association, University
Maine	Attorney General
Maryland	Prosecutors Association
Massachusetts	Attorney General
Michigan	Prosecuting Attorneys Council (State Agency)
Minnesota	Attorney General, Prosecutors Association, University
Mississippi	University
Missouri	Attorney General
Montana	Prosecutors Association, Supreme Court, University
Nebraska	Prosecutors Association
Nevada	Attorney General, District Attorney
New Hampshire	Attorney General
New Jersey	Attorney General
New Mexico	Prosecutors Association
New York	Prosecutors Association
North Carolina	Attorney General, University
North Dakota	Attorney General
Ohio	Prosecutors Association
Oklahoma	Prosecutors Association
Oregon	Joint Attorney General-Prosecutors Association
Pennsylvania	Prosecutors Association
Puerto Rico	Attorney General
Rhode Island	Attorney General
South Carolina	(Study being conducted)
South Dakota	Attorney General
Tennessee	Prosecuting Attorneys Council (State Agency)
Texas	Prosecutors Association
Utah	Prosecutors Association
Vermont	Prosecutors Association
Virgin Islands	(No local prosecutors)
Virginia	Attorney General
Washington	Attorney General
West Virginia	Attorney General
Wisconsin	Attorney General, University
Wyoming	Prosecutors Association, University

TABLE 6: PROSECUTOR TRAINING AND ASSISTANCE ACTIVITIES BY STATE

	Training	Newsletter	Research	Trial	Legislative	Manual
Alabama	X	X	X	X		X
Alaska	X					
Arizona	X	X	X			X
Arkansas		X	X	X		X
California	X		X	X	X	X
Colorado	X	X	X		X	X
Connecticut	X		X	X		
Delaware		X				X
Florida		X				
Georgia	X	X	X		X	X
Guam		(No Local Prosecutors)				
Hawaii	X	X	X			X
Idaho	X	X	X	X		
Illinois	X	X	X	X	X	
Indiana	X	X	X		X	X
Iowa	X	X	X	X		
Kansas	X		X			X
Kentucky	X	X	X			
Louisiana	X	X	X	X		X
Maine		X	X	X		X
Maryland	X	X	X			X
Massachusetts			X			X
Michigan	X	X	X		X	X
Minnesota	X	X	X	X		
Mississippi	X	X	X			
Missouri	X	X	X	X		X
Montana	X					X
Nebraska	X	X	X			X
Nevada	X	X	X	X		
New Hampshire	X					
New Jersey	X	X	X	X		
New Mexico		X				
New York	X	X	X			X
North Carolina	X	X	X	X	X	X
North Dakota	X	X	X	X		
Ohio	X	X				
Oklahoma	X	X			X	X
Oregon	X	X	X	X	X	X
Pennsylvania	X	X				
Rhode Island	X	X				X
South Carolina			(Study Being Conducted)			
South Dakota	X		X		X	X
Tennessee	X					
Texas	X	X	X		X	X
Utah	X	X	X			X
Vermont	X					
Virgin Islands		(No Local Prosecutors)				
Virginia	X	X	X	X	X	X
Washington		X				
West Virginia	X	X	X	X		X
Wisconsin	X	X	X			
Wyoming	X	X	X			
TOTAL	43	39	36	18	12	28

neys. There are also financial advantages, since the coordinator may find it easier to obtain state funding through appropriations to the Attorney General.

In the fifteen states where prosecutors' associations conduct all training and assistance activities, most have a full-time head with the title of Executive Director or Training Coordinator. Most offices also have an additional staff attorney who works full-time.

In nine states, no one group conducts programs by itself. For example, three organizations work jointly in Alabama: the Alabama District Attorneys' Association, the Attorney General's office, and the University of Alabama Continuing Legal Education Agency. Other states with several sponsors of training and assistance activities include Louisiana, Minnesota, North Carolina, and Oregon.

Other approaches include Hawaii's Prosecutor-Public Defender Clearinghouse, which serves both prosecutors and defense attorneys' and a state agency or council, which is used in Tennessee, Indiana, and Michigan.

Staffs Budgets and Grants

Staff sizes and budgets vary widely among the various prosecutor training and assistance programs. Practically all offices have full-time professional personnel, ranging from one to nine persons. Attorneys General have a mean professional full-time staff of four attorneys, while prosecutors' associations show a mean of two professionals. Almost all programs have full-time clerical employees, with a mean of one secretary. Other employees are mostly research assistants or interns, most working part-time.

Overall, training takes the greatest portion of staff time, with a mean of 28 percent. Programs of Attorneys General devote more time to training (a mean of 33 percent), while prosecutors' associations spend less time on the training function (a mean of 26 percent). Attorneys General also render a greater amount of research assistance, spending a mean of 27 percent of their time, compared to a mean of only 9 percent which prosecutors' associations devote to research. Newsletters also require a sizable amount of time from all sponsors.

Annual budgets reported for 1973 ranged from $26,311 up to a high of $2,182,000 in Illinois. The next highest budget was $385,626 for Texas. The mean annual budget for all coordination programs was $97,575. Programs under Attorneys General showed a mean annual budget of $62,674, while programs under prosecutors' associations had a mean annual budget of $124,767. Salaries are the major component of all budgets.

Reported yearly salaries for coordinators range between $11,781 and $27,000. The mean annual salary is $20,151.

Grant support by the Law Enforcement Assistance Administration has been vital in establishing and maintaining many training and assistance programs. As of December, 1973, thirty-eight state programs were receiving financial aid through such grants. Five discretionary grants were awarded in 1973. These ranged from $8,000 to $220,000, with a mean award amount of $84,300. Over thirty block grants were reported, ranging from $1,500 to $1,635,000 in federal contributions, with a mean federal award amount of $81,288. The mean state-local block grant match was $35,562.

Two problems have arisen in the area of future funding of these programs. The first is the cash match requirement, and the second is the problem of obtaining permanent funding of a program when federal support ends. Prior to fiscal year 1973, LEAA required the grantee to bear the cost of at least 25 percent of a project. Now the grantee must provide a cash match requirement of 10 percent of the total cost of the program for which federal support is sought.

There are several ways in which this match might be provided. The Kentucky and Texas legislatures have appropriated funds specifically to provide cash match for block grant recipients. Some states have appropriated sufficient cash to state agencies or statewide projects for match. In some states, the legislature may appropriate the necessary cash match for state projects, and part of the match for local projects. Some grantees will have to provide some or all of the cash match for their projects.

The same problems encountered in obtaining cash match will pose even greater difficulties when federal grant support eventually terminates, and total permanent funding will have to be found.

Publications

Most training and assistance programs (thirty-nine) publish newsletters. The newsletters vary greatly from state to state according to the constituency served, its perceived needs, and the funds and time available for the newsletter. Newsletters published by Attorneys General tend to be oriented more to reporting cases and to articles on criminal law; newsletters published by prosecutors' associations tend to be oriented more to activities of the association. The prosecutors associations' newsletters are directed primarily to prosecutors; many Attorneys Generals' newsletters are directed to law enforcement personnel and judges as well as prosecutors. Most newsletters are printed or multilithed on letter- or legal-sized paper.

The professional staff time required to produce the newsletter varies greatly, from approximately 5 hours for Colorado's to one person working almost full-time on Maine's. Printing costs vary from 2¢ per copy to 78¢ per copy.

Thirty-three of the thirty-nine programs publishing newsletters do so on a monthly basis. Pennsylvania circulates its newsletter twice a month, and Alabama produces a weekly issue. Indiana's newsletter appears every other month.

Manuals have been produced by twenty-eight programs. These manuals have usually been of two general types. Some contain miscellaneous aids to prosecutors, such as extradition procedures, how to subpoena a witness from outside the state or how to introduce certain types of evidence. Others are designed as reference manuals for each crime, and usually are arranged by crime, with a copy of the statute, elements of the crime, and notes pertaining to case law and trial problems. A few states are producing manuals incorporating both these approaches. Almost all manuals are prepared in a three-hole binder format to facilitate revisions and additions. In many states the manual is being prepared one part at a time.

Technical Assistance

There are several services which training and assistance programs can provide to help prosecutors. These include advice and research assistance, trial assistance, brief banks, and office management assistance.

Most training and assistance programs (thirty-six) render advice and research assistance. Of these, fourteen are sponsored totally by Attorneys General, nine are conducted totally by prosecutors' associations, and thirteen are sponsored jointly or otherwise. Included in this last category are seven more Attorneys General, working usually with universities.

This type of service to prosecutors

usually involves a request for information made by the local prosecutor to the assistance program. The request may be made via telephone or letter. In most states, training and assistance sponsors prefer to reply via written memoranda, but in emergency situations telephone replies are made if possible. The amount of research performed in order to answer inquiries varies with the complexity of the legal issues involved, and with the staff available to the assistance program.

Rendering trial assistance upon request seems to be limited to programs in Attorneys General's offices, with the exception of the Illinois program. The total number of trial assistance programs, including Illinois, is eighteen.

Attorneys General may render such aid through their prosecutor training and assistance programs, or they often render trial assistance as a normal function of their Criminal Division. In the 1973 COAG survey of local prosecutors, the vast majority (82 percent) of those responding indicated that they favored trial assistance and intervention by the Attorney General, when requested by the local prosecutor.

Training Programs

Training activities are being sponsored in forty-three states, although the degree of program activity varies greatly from state to state. Sponsorship of programs is equally divided between Attorneys General (working either alone or in conjunction with other sponsors) and prosecutors' associations (working either alone or with other sponsors). Most sponsors center their training activities on in-state seminars. Eleven states assist their prosecutors financially to attend these sessions, primarily through transportation and per diem reimbursement. In addition, fourteen states assist prosecutors financially in attending national training seminars, usually with transportation and per diem.

Seminars are usually one to three days in duration, and convenient resort areas are preferred locations. Several states hold one-day programs in different regions of the state in order to attract more prosecutors. Subjects for which prosecutors have expressed a desire for additional training include trial tactics, evidence, and recent decisions, in that order. The format for most seminars is the lecture, followed by question and answer sessions. Sometimes more innovative programs are held such as mock trials and panel presentations.

Legislative Activities

Twelve states reported varying degrees of legislative activity in 1973. One reason that more states are not active may be the uncertainty over the allowable extent of such activity under LEAA grants.

In many states the prosecutors' association has a legislative committee which develops and promotes legislation. Where the association has an executive director, he plays various roles in the legislative program. He keeps track of the progress of legislation, keeps members informed of the status of legislation via the association's newsletter, and maintains personal contact with legislators. In some states, he may testify before committees.

National Programs

National programs can be of assistance to coordinators and prosecutors. These include training programs, conferences designed specifically for coordinators, and prosecutor office management services.

Coordinators and prosecutors in twenty-eight states have been active in attending national training programs.

In fourteen of these states, the coordinating agencies have assisted prosecutors financially in so attending. The most frequently mentioned sponsors of such programs are the National College of District Attorneys, the National District Attorneys Association and its Association of State Executive Directors and Training Coordinators, and Northwestern University Law School.

The National District Attorneys Association has been conducting training programs since 1966. With the establishment of the National College of District Attorneys and various state prosecutor training programs, NDAA now conducts only national programs. These are either special conferences, or training in connection with NDAA meetings. NDAA conducted programs on the following subjects in 1973: police-prosecutor relations, narcotics, juvenile law, penal reform, consumer protection and office management. The NDAA has also fostered the Association of State Executive Directors and Training Coordinators, which holds two meetings per year strictly for coordinators.

The National Center for Prosecution Management is a project funded by LEAA to study and improve management in prosecutors' offices. Staff members of the Center and prosecutors experienced in management spend several days in an on-site study of an office, then submit a written report and recommendations. If expert assistance is necessary to implement recommendations, the Center will assist the prosecutor in identifying, contracting with, and monitoring the work of consultants. Staff representatives are also available to speak at state and national training programs. Several publications on case screening, case evaluation, and general office administration have been produced.

The Center observes that prosecutors' offices are inundated with work, and that they must acquire better management techniques if they are to function in the future. Case screening is important so that non-viable cases can be removed before ever becoming entangled in the already heavy workload. Case file management is vital so that a case, once pursued, can be located quickly and followed along every step in the litigation process. General office management and efficiency keeps the entire operation running smoothly.

For the future, the Center realizes that it cannot reach the vast majority of prosecutors' offices. It advocates setting up, in colleges and other institutions, formalized curricula for the training of prosecutorial office administrators. The Center also recognizes the importance of regular management seminars for prosecutors, whether conducted by a prosecutors' association or by the Attorney General.

The National College of District Attorneys, located at the University of Houston School of Law, began training prosecutors in 1970. It is sponsored by the NDAA, the ABA, the American College of Trial Lawyers, and the International Academy of Trial Lawyers. The College conducts two Career Prosecutor Courses each summer. The College also conducts national programs on such subjects as police-prosecutor relations, office management, environmental protection, juvenile law, and habeas corpus. Three or four regional training seminars emphasizing traditional training subjects such as trial practice and constitutional law are conducted each year. The College has also assisted newly-established state programs in conducting their initial training programs.

The Northwestern University Law School has conducted a short course for prosecutors for many years. Since

it requires a prosecutor to be away from his office for only one week, the course is one of the programs most frequently mentioned by prosecutors and coordinators. The Practicing Law Institute also conducts courses for prosecutors. The Law Enforcement Assistance Administration has financed several conferences on organized crime for prosecutors; some of these have been sponsored by the National District Attorneys Association and some by The National Association of Attorneys General.

4. THE ATTORNEY GENERAL'S AUTHORITY IN LOCAL PROSECUTIONS

The Attorney General's relationship to local prosecutors ranges from complete control in those states where they are under his jurisdiction to no formal contact in some states. His role in local prosecutions ranges from complete responsibility in some states to no authority in others.

Authority to Initiate Prosecutions

Most Attorneys Generals may initiate local prosecutions in at least some circumstances. Only eight states report that the Attorney General may not initiate prosecutions under any circumstances. His authority in the other jurisdictions ranges from power concurrent with that of the local prosecutor to power to initiate prosecution under certain circumstances, at the request of certain officials, or in order to enforce certain statutes.

Attitudes Toward Authority to Initiate. Prosecutors apparently believe that the Attorney General should have the power to initiate local prosecutions.

The 1973 COAG survey of local prosecutors showed that 66 percent of the respondents believed that the Attorney General should be able to initiate actions. A substantial number (28 percent) thought that he should have such power in any case, and 38 percent favored such a power in at least some cases. Only 34 percent said that the Attorney General should never have the power to initiate actions. Interestingly, where the Attorney General had full power to initiate prosecutions, greater percentages of prosecutors had a favorable opinion of him.

It is significant that prosecutors think Attorneys General should be able to initiate litigation, although they oppose intervention in litigation initiated by the prosecutor. The reasons are probably that the prosecutor does not want someone taking over his case, but he does not mind another official developing and handling a case from the beginning. Some cases, such as organized crime conspiracies, might demand special investigative and prosecutorial skills that were not available in all county or district offices.

TABLE 7: MAY THE ATTORNEY GENERAL INITIATE LOCAL PROSECUTIONS?

Alabama	Yes—On own initiative.
Alaska	Yes—(No local prosecutor).
Arizona	Yes—Only on request of Governor.
Arkansas	Yes—Only under certain statutes, on own initiative.
California	Yes—On own initiative.
Colorado	Yes—Only on request of Governor.
Connecticut	No—A.G. has no jurisdiction in criminal matters.
Delaware	Yes—(No local prosecutor).
Florida	No—But A.G. may initiate quo warranto proceedings.
Georgia	Yes—On own initiative or at direction of Governor.
Guam	Yes—(No local prosecutor).
Hawaii	Yes—On own initiative or at direction or request of Governor.
Idaho	No.
Illinois	No.
Indiana	No.
Iowa	Yes—On own initiative.
Kansas	Yes—Only under certain statutes.

TABLE F (cont.): MAY THE ATTORNEY GENERAL INITIATE LOCAL PROSECUTIONS?

Kentucky	Yes—Under some statutes for specific crimes.
Louisiana	Yes—In criminal cases, when the interests of the state requires.
Maine	Yes—On own initiative.
Maryland	Yes—On request of Governor or Legislature.
Massachusetts	Yes.
Michigan	Yes—May initiate and conduct criminal proceedings.
Minnesota	Yes—At request of Governor; assists county attorney on request.
Mississippi	Yes—When required by public service or directed by Governor.
Missouri	No—Except in offenses against morals.
Montana	No.
Nebraska	Yes—Has concurrent power with county attorney.
Nevada	Yes—On own initiative; at request of Governor, (but only through grand jury proceedings).
New Hampshire	Yes—On own initiative; direction of Governor, Legislature, or local prosecutors.
New Jersey	Yes—When interest of state requires it.
New Mexico	Yes—Only under certain statutes.
New York	Yes—Under certain statutes on own initiative; at request of Governor, to supersede a district attorney in specified cases; at request of state agency in matters within its jurisdiction.
North Carolina	Yes—Only for violations of monopolies and trust laws.
North Dakota	Yes—On own initiative, or request of County Board, 25 citizens, doctor, judge.
Ohio	Yes—On request of Governor.
Oklahoma	Yes—On request of Governor or either branch of Legislature.
Oregon	Yes—Only on request of Governor, except for concurrent jurisdiction with district attorneys for election law violations.
Pennsylvania	Yes—Under certain circumstances.
Puerto Rico	Yes.
Rhode Island	Yes—(No local prosecutor).
Samoa	Yes—(No local prosecutor).
South Carolina	Yes—On own initiative.
South Dakota	Yes—On own initiative.
Tennessee	No—(but Governor may appoint extra counsel at district attorney's request).
Texas	Yes—For election fraud, labor union crimes, misuse of state funds.
Utah	Yes—On default of local prosecutor.
Vermont	Yes.
Virgin Islands	Yes—(No local prosecutor).
Virginia	Yes—Under certain statutes.
Washington	Yes—On lobbying law, or when prosecuting attorney fails to take proper action; also for certain acts of city or state officers in connection with public funds.
West Virginia	No—But Attorney General may replace Prosecuting Attorney if he refuses to prosecute.
Wisconsin	Yes—On request of Governor or local prosecutor, and on own initiative in environmental and consumer protection matters and certain other specified areas.
Wyoming	Yes—If the county and prosecuting attorney refuses to act in any case, the Board of County Commissioners, the District Judge, or any State Agency may request the Attorney General to initiate the local prosecution. Local prosecutions may also be initiated upon the request of the Governor.

Attorneys General Who Initiate All Prosecutions. In six jurisdictions, the Attorney General is responsible for all or most local prosecutions. In American Samoa and Guam, the Attorney General handles all prosecutions in all courts. In the Virgin Islands, he handles all prosecutions in the inferior courts, and may handle district court prosecutions with the consent of the United States Attorney. In Alaska, the Attorney General is responsible for the prosecution function. Delaware created a State Department of Justice in January, 1969. The Attorney General is deemed "to have charge of all criminal proceedings." He appoints Deputy Attorneys General, some to serve specified counties and other to serve the state at large.

Rhode Island has no county or district prosecutors. There are, however, city and town prosecutors who handle many local cases. The Attorney General's office prosecutes most criminal offenses and felony actions, as well as handling all misdemeanor prosecutions in the district courts.

Broad Authority to Initiate. In addition to those jurisdictions which give the Attorney General primary responsibility for local prosecutions, some authorize him to initiate prosecutions at his discretion. This group of jurisdictions includes Alabama, California, Georgia, Hawaii, Iowa, Nebraska, New Hampshire, New Jersey, New York, Maine, Michigan, North Dakota, South Carolina, South Dakota, and Vermont.

A 1970 New Jersey statute empowers the Attorney General to "initiate any investigation, criminal action or proceeding" whenever in his opinion "the interests of the State will be furthered by so doing." Georgia empowers the Attorney General to prosecute in any court "for violations of any criminal statute in dealing with or for the State" and he may call on the local prosecutor to assist with or conduct such prosecution.

Limited Authority to Initiate. Some states give the Attorney General either concurrent or exclusive jurisdiction to commence prosecutions under certain statutes. For example, in North Carolina, the Attorney General may bring actions only for violation of monopoly and antitrust laws. Virginia allows the Attorney General to institute criminal proceedings in cases involving violations of the alcoholic beverage control act, motor vehicle laws, the handling of state funds, and the unauthorized practice of law.

A Kentucky survey found that the Attorney General had exclusive power to initiate criminal action under laws relating to unemployment compensation, agricultural seeds, building and loan associations, and miscellaneous other subjects. It noted that "No general pattern for assigning authority to the Attorney General is apparent, and the statutes do not indicate any clearly defined standards for granting him jurisdiction."[33]

Some states allow the Attorney General to initiate prosecutions only on the request or direction of another officer. Arizona, Colorado, Maryland, Minnesota, Ohio, Oklahoma, Oregon, and Wyoming allow him to act only on request of the Governor, the legislature, a local officer, or several officers.

No Authority to Initiate. A few states deny the Attorney General any authority to initiate prosecutions. These are Connecticut, Idaho, Illinois, Indiana, Missouri, Montana, Tennessee, and West Virginia. The Attorney General of Connecticut has no jurisdiction in criminal matters at either the state or local level. In the remaining seven states, he handles cases at the appellate level but cannot initiate litigation. In Missouri, the Attorney General can initiate actions in one specific area, that of enforcing liquor laws, but he can do this only if

the local prosecutor fails to act.

Frequency of Initiation. There are little complete data on how frequently Attorneys General initiate prosecutions, but it appears that this power is exercised infrequently. Thirty-five Attorneys General responded to a COAG inquiry on this matter in September-October 1973. The overwhelming majority said that they initiated prosecutions "rarely." Some reported that they seldom did so. In New Jersey, for example, the Attorney General usually initiates actions only in cases involving organized crime or corrupt practices among local officials.

Massachusetts reported prosecutions initiated by the Attorney General only when state employees were involved, or when crimes crossed county lines. Even in these cases, the Attorney General stressed that he took action only in cooperation with the local prosecutor. Nevada reported just two instances of initiation since 1971, and Utah's Attorney General has brought actions only in a few horserace gambling cases and complex stocks fraud cases. South Dakota reports about two dozen cases per year, usually where the county attorney has a conflict of interest or lacks sufficient expertise. California estimates twenty-five cases per year.

Authority to Intervene or Supersede in Local Prosecutions

Table 8 shows the Attorney General's authority to assist, intervene, or supersede in cases initiated by the local prosecutor. This ranges from general authority to intervene, supersede or assist on his own initiative to limited authority to act on request of another officer, such as the Governor. Some states also authorize the local prosecutor to request the Attorney General's assistance in the conduct of cases. The power to intervene generally refers to the power to act in conjunction with the local prosecutor, and supersede refers to the power to dismiss him from the proceedings entirely.

Attitudes Toward Authority to Intervene. Surveys conducted by the Committee on the Office of Attorney General show that Attorneys General believe that they should have authority to intervene, while prosecutors believe they should not. Of 108 former Attorneys General responding, seventy-eight said that the Attorney General should be able to intervene on his own initiative. A large majority, 96 of 109 respondents, said that the Attorney General should take over on request of the local prosecutor.

The great majority (80 percent) of prosecutors responding to the 1973 COAG survey did not favor intervention by the Attorney General on his own initiative. Where the power would be limited to certain cases, those opposed dropped to 58 percent. Where the Attorney General could intervene only on the request of the prosecutor, only 18 percent of the respondents were opposed. Similar results were obtained in COAG's 1970 survey.

Attorneys General With No Authority to Intervene or Supersede. The Attorneys General of four states have no power to intervene or supersede. These are Connecticut, Georgia, North Carolina, and Tennessee. In a few other jurisdictions, such authority may be so limited that it is of little practical value. In Arizona and Indiana, for example, the Attorney General may participate in a case only on request of the local prosecutor, and then he may merely assist.

Attorneys General With Authority to Intervene or Supersede. There are numerous degrees of authority allowed Attorneys General concerning intervention and supersession. In six jurisdictions, he is responsible for local prosecutions. A few states give the Attorney

TABLE 8: ATTORNEY GENERAL'S POWERS IN PROCEEDINGS INITIATED BY THE LOCAL PROSECUTOR

Alabama	May intervene or assist in criminal cases at any time.
Alaska	(No local prosecutors).
Arizona	May assist on request of local prosecutor.
Arkansas	May act jointly with local prosecutor under certain statutes.
California	May intervene, supersede or assist on own initiative.
Colorado	May intervene or request of Governor or legislature. May assist on request of local prosecutor with direction of Governor.
Connecticut	No jurisdiction in criminal matters.
Delaware	(No local prosecutors).
Florida	May intervene upon request of local prosecutor, at direction of Governor or legislature.
Georgia	May intervene or assist at direction of Governor.
Guam	(No local prosecutors).
Hawaii	May intervene or assist on own initiative or at direction or request of Governor.
Idaho	May assist upon request of local prosecutor; may not intervene or supersede; may be appointed as special prosecutor when local prosecutor cannot act.
Illinois	May intervene in any prosecution if state's interest requires it.
Indiana	May assist in criminal cases upon request of local prosecutor.
Iowa	May intervene on own initiative; may supersede on direction of Governor, legislature, or either house thereof. May assist on request of local prosecutor.
Kansas	May intervene on direction of Governor or either branch of the legislature. May institute action, supersede, or intervene on own initiative on behalf of any political subdivision in action for conspiracy, combination or agreement in restraint of trade, or other illegal acts.
Kentucky	May intervene on request of Governor, courts or grand juries, sheriff, mayor, or majority of a city legislative body.
Louisiana	May intervene, may not supersede.
Maine	May intervene, supersede or assist on his own initiative.
Maryland	May assist on request of local prosecutor or at the direction of the Governor.
Massachusetts	May intervene, supersede or assist on his own initiative. May initiate proceedings independent of local prosecutor.
Michigan	May intervene or initiate on own initiative or at direction of Governor or legislature; will assume jurisdiction when requested by prosecuting attorney.
Minnesota	May intervene or assist at direction of Governor or local prosecutor.
Mississippi	May intervene or assist at direction of Governor or when required by the public service.
Missouri	May intervene or supersede at the direction of the Governor; may assist local prosecutor.
Montana	May intervene or supersede on own initiative or at the direction or request of the local prosecutor.
Nebraska	May intervene, assist or supersede.
Nevada	May intervene, supersede or assist on own initiative or on request of Governor or local prosecutor.
New Hampshire	May intervene, supersede or assist on own initiative, or on direction of Governor or legislature. Has full responsibility for criminal cases punishable with death or imprisonment for 25 years or more.
New Jersey	When, in his opinion, the interests of the state will be furthered by so doing.
New Mexico	May intervene or assist on direction of Governor.
New York	May intervene or supersede at direction of Governor.
North Carolina	No statutes or case law in point.
North Dakota	May intervene, supersede or assist on own initiative; on request of majority of board of county commissioners; on petition of twenty-five taxpaying citizens; on written demand of district judges.
Ohio	May appear for state in all cases in which the state is directly or indirectly interested. May appear in any court on direction of Governor or legislature.
Oklahoma	May appear in any case at direction of Governor or legislature and may, at his discretion, supersede. May assist at request of local prosecutor.

Oregon	May intervene. Attorney General is charged with responsibility of supervising all District Attorneys; however, may only intervene in particular prosecution when directed by Governor or requested by district attorney.
Pennsylvania	May assist. May supersede on own initiative or at request of local judge.
Puerto Rico	May intervene on own initiative.
Rhode Island	(No local prosecutors).
Samoa	(No local prosecutors).
South Carolina	May intervene or supersede in any case where state is a party.
South Dakota	May intervene or assist in any case where the state has an interest on own initiative or on request of Governor or legislature. May not supersede.
Tennessee	May not intervene, supersede or assist, expect that additional counsel may be appointed by the Governor upon request of the District Attorney.
Texas	May assist in or initiate some cases. May not intervene or supersede.
Utah	May intervene when required by the public interest or directed by the Governor.
Vermont	May assist, intervene or supersede on own initiative.
Virgin Islands	Full power, except for felonies, which are handled by U. S. Attorney.
Virginia	May intervene at request of Governor, or on own initiative in cases involving ABC laws, Motor Vehicle Laws and the handling of state funds.
Washington	May intervene on own initiative when the interests of the state require it.
West Virginia	May intervene or supersede on request of Governor. Apparently, assistance is limited to instances where local prosecutor is disqualified.
Wisconsin	May not intervene on own initiative. May assist at request of District Attorney and intervene otherwise at the direction of the Governor.
Wyoming	May intervene or supersede upon failure of local prosecutor to act.

General full authority to intervene, supersede or assist when he considers it proper. These include California, Illinois, Maine, Masschusetts, Montana, Nevada, New Hampshire, New Jersey, North Dakota, Pennsylvania, South Carolina, and Vermont. In other states, including Iowa, Kansas and South Dakota, he may intervene on his own initiative, but it is not settled whether he can supersede.

Some states allow the Attorney General to intervene only at the direction of the Governor or the local prosecutor. These include Colorado, Florida, Kentucky, Minnesota, New Mexico, New York, Oregon, West Virginia, and Wisconsin. Mississippi's Attorney General has jurisdiction in local prosecutions, but it is not clear whether this includes the power to supersede. A few states authorize various arrangements. The Attorney General of Oklahoma, for example, may assist at the request of the local prosecutor, and may intervene at the direction of the Governor or legislature. He may supersede at his discretion.

The Governor of Oregon issued an Executive Order authorizing the Attorney General "to take full charge of any investigation or prosecution of violation of law in which the Circuit Court has jurisdiction" upon request of the District Attorney. This blanket authority enables any District Attorney to request the Attorney General's assistance at any time, without obtaining the Governor's authorization.

The Attorney General of Virginia may intervene only on the direction of the Governor, except in cases involving alcoholic beverage control, motor vehicle laws, or the handling of state funds, where he may intervene on his own initiative.

Michigan reports that the Attorney General enters into criminal prosecutions through: criminal actions which are the result of his own office's investigations, where a vital state interest is concerned or the crime involved is of a specialized nature; requests from the prosecutor; requests from circuit court judge that the Attorney General file an appearance in a case. Also, a substantial number of prosecutions handled by the Attorney General are the result of indictments by circuit judges, acting as one-man grand juries, who then request that the Attorney General handle the case either exclusively or in cooperation with the local prosecutor.

In Wisconsin, the Attorney General may obtain authorization from the Governor or from either house of the legislature to initiate any action in which the state or the people of the state may be interested. The Attorney General of Kentucky is authorized to "intervene, participate in, or direct" any criminal action "necessary to enforce the laws of the Commonwealth" upon request of the sheriff, mayor, or majority of a city legislative body, or the Governor, a court, or a grand jury.

These examples show the great variety of relationships that are involved in intervention and supersession. Not only do these powers vary from state to state, but they may be used frequently or seldom.

Frequency of Intervention. Available data indicate that Attorneys General intervene or assist in local prosecutions very infrequently, even when they have the power so to do. This probably results from a number of factors: a reluctance to interfere in local situations; a shortage of staff; and political considerations.

The 1973 COAG survey of local prosecutors revealed that prosecutors themselves recognize this. When asked how often the Attorney General exercises his power to intervene if he has such power, only 2 percent of the respondents said often. Those who reported that their Attorney General never exercised such power totaled 31 percent. The majority (67 percent) reported that the Attorney General seldom used the power.

Missouri's Attorney General is authorized only to aid in local prosecutions. A study showed that even this limited authority was used only about thirty times over a 7 year period, and that assistance tends to be restricted to special circumstances, such as situations involving prominent local personages, major felony cases for neophyte prosecutors, and when the prosecutor is disqualified through an interest in the case.[34]

Information furnished by Attorneys General's offices to COAG substantiates the infrequency of intervention. In Maryland, the Attorney General assists in local prosecution at the direction of the Governor or upon request of a state's attorney; such intervention occurs only three to five times a year, and only under unusual circumstances, as in an investigation conducted at the request of the Governor which culminates in action by a grand jury. Massachusetts reported that the power to intervene or supersede has not been exercised in the last 20 years.

Minnesota reports that the Attorney General has not intervened in a local proscution since sometime in the 1950's, if by intervention is meant entering the case against the wishes of the county attorney; but he has assisted the county attorneys in prosecutions on many occasions. Mississippi says that the Attorney General usually comes into local criminal cases by invitation of the district attorney, although he frequently brings suits to recover illegal expenditures by local officials.

California reported in 1973 that the Attorney General had intervened in approximately sixty trials within the past year, but that there had been no cases in recent years where he acted without the consent of the local prosecutor. Nebraska says that the Attorney General rarely handles the trial of criminal cases. The Attorney General

of Nevada can take charge of any prosecution on request of the Governor or when the Attorney General considers it necessary; this authority apparently was exercised only once in 1969, to seek reinstatement of first degree murder counts that the prosecutor had dismissed. The Attorney General also "took public issue" with another district attorney who failed to prosecute after a grand jury had so recommended.

South Dakota has said that as a matter of policy, the Attorney General rarely interferes gratuitously with the activities of the local state's attorney. The general policy is that the Attorney General will assist with a case upon request. Vermont reported no instances in recent years of Attorney General intervention, except in homicide cases, where he is required to participate. Kentucky reports a small number of instances where the Attorney General has intervened, and these usually center around grand jury proceedings or cases in which the Attorney General has been called for assistance. Pennsylvania reports that the Attorney General intervenes about five times annually, but only upon invitation by the local prosecutor. Illinois reports approximately fourteen cases per year. Louisiana in 1973 reported only one intervention by the present Attorney General.

New Jersey appears to exercise such powers more frequently than most states. It has reported that it often intervenes in cases of statewide importance, and that any any given time there might be about twenty supercession cases in the Attorney General's office. Supercession is frequently requested with reference to alleged wrongdoings by municipal officials.

Most Attorneys General enter cases more frequently when requested by the local prosecutor. Minnesota, in response to a COAG questionnaire, mentioned some of the more common reasons why a prosecutor requests the Attorney General's assistance: (1) the case unusually difficult or presents unusual questions of law; (2) county attorney is not experienced; (3) the county Attorney is prosecuting a public official whom he works closely with in his daily work; (4) the defendant is a personal friend of the county attorney, or possibly a relative; (5) the case was originally investigated and handled by a state agency. These conditions could be faced by local prosecutors in any state, and could make the Attorney General's intervention sought after by the prosecutor.

The Attorney General's Common Law Powers in Prosecutions

Unlike the prosecutor, the Attorney General derives powers from the common law in addition to his statutory and constitutional powers:

> It is the general consensus of opinion that in practically every state of this Union whose basis of jurispurdence is the common law, the office of Attorney General, as it existed in England, was adopted as a part of the governmental machinery, and that in the absence of express restrictions, the common-law duties attach themselves to the office so far as they are applicable and in harmony with our system of government.[35]

According to the COAG study *The Office of Attorney General,* only eight Attorneys General have no common law powers. In eleven states or territories, it is undecided whether the Attorney General has authority stemming from the common law. Thirty-five Attorneys General have common law powers, although these may be severely restricted by statute or case law.

There is a considerable body of case law defining the Attorney General's powers in prosecutions in those jurisdictions which have created an office of local prosecutor or district attorney. The different bases for this office, and the differences in its relationship to the office of Attorney General, obviously

affect courts' rulings as to its powers. Earl H. DeLong reached the following conclusions in his study of the powers of Attorneys General in criminal prosecutions:

> (1) It is difficult to determine with certainty what were the powers of the attorney general at common law but it seems probable that they included the power to conduct any criminal prosecution properly instituted by information, indictment, or otherwise as prescribed by law.
>
> (2) The language of constitutional provisions seems to have had little bearing on the decisions of the courts upon the common law powers of the Attorney General.
>
> (3) There is wide disagreement among the courts as to the extent of the common law powers now possessed by the Attorney General. In many states it is held that he has none. In others he has all common law powers except such as have been granted by statute to the prosecuting ttorneys. In a few it is held that under the common law, without any reference to statutory or criminal provisions, the Attorney General has full power to prosecute any criminal proceeding . . .
>
> (4) Only in Illinois is there any indication that the legislature cannot deprive the Attorney General of common law powers.
>
> (5) There is no indication that the existance of this power in any state has led to any substantial participation by the Attorney General in the process of criminal prosecution.[36]

Some courts have said that legislative delegation of a power to a local prosecutor deprives the Attorney General of that power. A Washington case, *State ex rel. Attorney General v. Seattle Gas and Electric Co.*,[37] for example, held that the Attorney General could not file an action to enjoin a public utility, where this had been made the duty of the prosecuting attorney.

The West Virginia case of *State v. Ehrlick*[38] discussed in detail the relationship of the two offices and said that the Attorney General "has neither power of removal nor control over the prosecutor within his own province, so far as it is defined by statute." The court agreed that "there would be no individual responsibility if the powers of the Attorney General and prosecuting attorney were co-extensive and concurrent . . . Concurrence would produce interference, conflict and friction in many instances, delaying the disposition of business to the detriment of the state."

Mississippi, in *Kennington-Soenger Theatres Inc. v. State,*[39] noted that, when the framers of the Constitution of Mississippi created the office of district attorney, it was manifestly not their intention "that such powers should be conferred by the legislature upon this officer as would enable him to usurp the common-law duties and functions of the Attorney General." The court noted that the district attorney's functions were confined to one locality, while the Attorney General's were statewide. The New Mexico Court, which has denied the Attorney General common law power, has said in the recent case of *State v. Reese*[40] that:

> There is nothing in our laws making the Attorney General the superior of the district attorneys. To the contrary, the two offices are separate and, except as the legislature had directed joint authority as it has done in a limited number of situations, there is no duplication of duties.

Other courts have taken a contrary position and said that the Attorney General retains common law powers, even if the legislature has assigned them to another officer. The Montana court, in *State ex rel. Ford v. Young,*[41] upheld the Attorney General's authority to enjoin a nuisance, although the statutes gave the county attorneys such power. The court said that the Attorney General's power came from common law, and the only change made by statute was to add additional parties.

A 1900 New York case, *People v. Kramer,*[42] held that:

> The district attorney had no common-law powers . . . His office is derived from

that of the Attorney General, and at its inception he was designated as his assistant . . . The district attorney, by statute and by a long-continued practice, has succeeded to some of the powers of the Attorney General within the respective counties, but he has not supplanted him.

A series of Pennsylvania cases examined at length the Attorney General's relationship to local prosecutors and upheld his power to supersede. These cases have been cited by many other jurisdictions, and have been the subject of considerable scholarly attention.

The office of district attorney was created by statute in Pennsylvania in 1850. *Commonwealth v. Lehman*[43] held in 1932 that, despite the statute, the Attorney General retained supervisory powers over district attorneys. In the 1936 case of *Commonwealth ex rel. Minerd v. Margiotti*[44] the court upheld the earlier decision. Two state policemen had been charged with murder; the judge determined that the district attorney might be implicated, and requested the Attorney General to appoint counsel for the case. The Attorney General appointed himself special attorney, appeared before the grand jury, and proceeded to prosecute the case.

The defendants appealed on the ground that the Attorney General had no legal authority to supersede the district attorney. The court held that:

> We conclude from the review of decided cases and historical and other authorities that the Attorney General of Pennsylvania is clothed with powers and attributes which enveloped Attorneys General at common law, including the right to investigate criminal acts, to institute proceedings in the several counties of the Commonwealth, to sign indictments, to appear before the grand jury and submit testimony, to appear in court and to try criminal cases on the Commonwealth's behalf, and, in any and all of these activities to supersede and set aside the district attorney when in the Attorney General's judgment such action may be necessary.

The Pennsylvania Supreme Court held in 1938 that the Attorney General could supersede a district attorney in a case involving alleged irregularities in his office, in *Dauphin County Grand Jury Investigation.* In a separate proceeding the same year, the court held that the Attorney General did not abuse his discretion by such supersession. The same year, the legislature enacted a law giving the Attorney General "absolute discretion" to supersede. *In re Shelley* held that the court could still review such actions for abuse, despite the statute. The statute was repealed the following year; the question then remained as to whether such action revoked the common law power, as well as that conferred by statute.[45]

In the 1950 case, *Appeal of Margiotti,* the court held that the *Minerd* case was still controlling and that the Attorney General could supersede on the basis of his common law powers. The court held, however, that this was not an absolute right, but was a discretionary power dependent upon his circumstances in each case. Acts of supersession could be reviewed to determine if they had been exercised arbitrarily or unreasonably. A later case, *Commonweath v. Fudeman,* held that it was the Attorney General's duty to supersede "if he believes the government is to be hindered in the lawful conduct of its affairs to the detriment of the security, peace and good order of the state."[46]

5. THE RELATIONSHIP BETWEEN PROSECUTORS AND ATTORNEYS GENERAL

This chapter explores the relationships between prosecutors and Attorneys General, both informally and with regard to the Attorney General's powers in prosecution. The Attorney General is commonly characterized as a state's chief law officer. He cannot serve effectively unless he has a constructive relationship with local prosecutors, who are his partners in handling the public's legal business. Likewise, prosecutors can benefit from the services provided by the Attorney General, with his legal resources and expertise.

Need for Cooperation

There is a commonality of interest between the Attorney General and local prosecutors, whatever the legal relationships might be in a particular jurisdiction. Both are public prosecutors, subject to legislative definition of powers and duties and to judicial definition of the law and procedures. Both are elective in most jurisdictions, and must be constantly cognizant of political realities. Both must be pragmatic in their approach, as their work will be constantly changing. Both usually come to their jobs without special training, and must learn through experience. This list of common factors could be expanded, but it is clear that the two officers have much in common.

When viewing the relationship between prosecutors and Attorneys General, there is a tendency to perceive a vast number of local prosecutors and assistants in contrast to only fifty-four state and territorial Attorneys General. As far as the total law enforcement and criminal justice system is concerned, this is a misconception. According to a COAG survey, *The Office of Attorney General: Organization, Budget, Salaries, Staff and Opinions* (October, 1973), the fifty-four Attorneys General employ 4,677 full-time and 455 part-time attorneys. When these are added to the fifty-four Attorneys General, this makes a total legal work force of 5,186. Based on data in the 1973 *Survey of Local Prosecutors,* the total number of full-time attorneys employed by the nation's prosecutors can be estimated at approximately 4,700. When this figure is added to the nation's 2,672 prosecutors, the prosecutorial work force totals 7,372. However, only 35 percent of the prosecutors work full-time.

The criminal justice system can run more efficiently and effectively if prosecutors and Attorneys General work together. In that way all possible manpower and technical resources can be employed with a minimum of overlap. Attorneys General can do their part in maintaining a close relationship with prosecutors by expanding the services which they provide and by responding to the suggestions which prosecutors have made. Prosecutors can share responsibility in improving cooperation by participating in and contributing to Attorneys General's training programs, newsletters, and manuals; by working with the Attorney General in appellate cases; by utilizing the expertise available in the Attorney General's office when it will speed the course of a trial or investigation; and by realizing that Attorneys General are far too involved in the demanding work of their own offices to consider usurping the functions of the local prosecutor.

Working Relationships

In its 1973 survey of local prosecutors, the Committee on the Office of Attorney General sought information on the relationship between prosecutors and Attorneys General in such areas as

appeals, advice and assistance rendered by Attorneys General, types of assistance desired by prosecutors, and suggestions for improving cooperation.

When handling cases at the trial level, most prosecutors (93 percent) ask the Attorney General for advice at some time. According to the 1971 study of *The Office of Attorney General,* in twenty-nine states Attorneys General render formal advisory opinions to local prosecutors; the question of to whom formal advice is given is usually governed by law, and not subject to the Attorney General's discretion. For the most part, prosecutors seek and receive advice from Attorneys General on an informal basis. While the portion of prosecutors who request advice often is only 28 percent, an additional 65 percent seek advice on occasion. Only 5 percent of the respondents said that they never solicit advice from the Attorney General.

TABLE 9: FREQUENCY OF REQUESTING ADVICE FROM THE ATTORNEY GENERAL

Frequency	Number of Responses	Percent of Total
Often	282	28
Seldom	647	65
Never	49	5
No Response	22	2
TOTAL	1,000	100

Prosecutors do not seek assistance in actually handling a case as often as they request advice. However, since 1970, the number of those who often ask for help in handling a case has doubled, rising from 1 percent to 1.9 percent, and prosecutors who ask for such assistance on occasion have increased from 38 to 49 percent. While 58 percent in 1970 never asked for assistance in handling a case, only 45 percent in 1973 never requested aid of this type.

Prosecutors were asked in the 1973 survey to rank five areas in which the Attorney General might be of most assistance to them. It is clear from the responses that interpreting laws and performing legal research is ranked first in importance. Holding seminars and preparing manuals (training and assistance activities) ranks second. Developing a theory and strategy for a case takes third place, and conducting investigations ranks fourth in importance.

Prosecutors suggested ways to improve relations between themselves and Attorneys General. They asked that Attorneys General do the following: not take an attitude of superiority over local prosecutors; keep prosecutors advised of current judicial opinions through newsletters and memoranda; work with prosecutors' associations; provide liaison staff members; expand legal research services and investigative assistance; sponsor more training programs; and help prosecutors obtain higher salaries and increased office budgets.

Attitude Toward the Attorney General

In addition to information concerning overall working relationships between prosecutors and the Attorney General, COAG has probed other aspects of their relationship which might affect how prosecutors perceive the Attorney General. An index of the prosecutor's attitude toward the Attorney General in his state was derived from answers concerning his relationship with and his attitude toward the Attorney General. The index was cross-tabulated with many variables pertaining to the prosecutor and his office.

With regard to attributes of the prosecutor, the index of attitude toward the Attorney General tended to be lower for the more professional prosecutors. Professionalism was measured by such factors as the size of the population served, whether the prosecutor is selected by county or district, whether the prosecutor serves full-time or part-time, the prosecutor's years in office, the number of assistant prosecutors in the office, and the number of training programs attended by the prosecutor.

Briefly, prosecutors are generally opposed to a strong power held by the Attorney General to intervene in local prosecutions, but are more favorably inclined toward such a power limited by certain statutes or to be used only on the request of the local prosecutor. Prosecutors are much more disposed toward the initiation of prosecutions by the Attorney General. Also, the working relationships between prosecutors and the Attorney General in criminal appellate cases is excellent.

Attributes of a particular Attorney General affect prosecutors' attitude very little. There is no direct correlation between an Attorney General's years in office and prosecutors' attitude. The attitude of prosecutors toward an Attorney General is somewhat higher where the Attorney General has had previous experience as a prosecutor.

There is a relationship between services rendered by Attorneys General and prosecutors' attitudes. For example, where the Attorney General issues a newsletter, the attitude of prosecutors is more favorable. There is a definite correlation between prosecutors' attitude toward the Attorney General and whether he renders research assistance; the attitude index rises directly as the percentage of prosecutors who receive such assistance grows larger.

Relationship in Appeals

The National Association of Attorneys General has recommended that the Attorney General appear for the state in all criminal appeals, in order to assure their uniform quality, provide the necessary expertise in complex cases, and assure a thorough review of the record by someone who has not previously involved.

In the 1973 COAG survey of local prosecutors, a majority (53 percent) of the responding prosecutors reported that their Attorney General does handle all criminal appeals. An additional 15 percent reported some criminal appeals handled by their Attorney General. Only 25 percent reported that he does not handle criminal appeals. In the area of civil appeals, 43 percent of the respondents indicated that the Attorney General does not handle appeal of their civil cases. Nearly 15 percent reported that the Attorney General handles all of their civil appeals, and 11 percent reported some civil appeals handled by the Attorney General.

Apparently prosecutors are favorably disposed toward the Attorney General's handling of criminal appeals. In the 1973 survey, the index of prosecutor attitudes showed that they were most favorable in those cases where the Attorney General handles all criminal appeals himself. The attitude was somewhat less favorable where the Attorney General handles appeals jointly with the prosecutor, and the least favorable attitude was exhibited where the Attorney General handles no criminal appeals.

The Attorney General's Role in Appeals

Table 10 shows the Attorney General's role in criminal appeals. He handles at least some criminal appeals in all jurisdictions except Connecticut; even there, he handles habeas corpus petitions in the federal courts. Hawaii reports that the Attorney General does not ordinarily appear for the state in criminal cases on appeal. New York's Attorney General handles appeals only on request of the Governor. In the Virgin Islands, the Attorney General's jurisdiction is limited to misdemeanors at all levels, including the appellate.

TABLE 10: ATTORNEY GENERAL APPEARS FOR STATE IN CRIMINAL APPEALS

Alabama	Yes.
Alaska	Yes—No local prosecutor; A.G. handles all stages.
Arizona	Yes.
Arkansas	Yes.
California	Yes.
Colorado	Yes.
Connecticut	No criminal jurisdiction.
Delaware	Yes—No local prosecutors.
Florida	Yes—in Dr. Court of Appeals, Supreme Court, and all U.S. courts.
Georgia	Yes—in appeals from capital-felony convictions; d. a. also files a brief.
Guam	Yes—local prosecutor. Attorney General handles all stages.
Hawaii	Not ordinarily.
Idaho	Yes.
Illinois	Yes.
Indiana	Yes—local prosecutor may assist.
Iowa	Yes.
Kansas	Yes—clearinghouse of all criminal appeals.
Kentucky	Yes.
Louisiana	Yes.
Maine	Some—handles own appeals, not those of local prosecutors.
Maryland	Yes.
Massachusetts	Yes—Attorney General handles appeals he took over from local prosecutor and all cases before Supreme Court and U. S. courts.
Michigan	Yes—local prosecutor required to prepare brief on appeal and Attorney General may request he handle oral argument.
Minnesota	Yes—but local prosecutor in Hennepin, Ramsey and St. Louis counties handle own appeals.
Mississippi	Yes.
Missouri	Yes—Attorney General may require local prosecutor to submit brief, but this is seldom done.
Montana	Yes.
Nebraska	Yes.
Nevada	Attorney General has statutory authority but local prosecutors handle appeals.
New Hampshire	Yes.
New Jersey	Yes.
New Mexico	Yes.
New York	Only in cases in which his office has been prosecutor or participated in prosecution and cases raising of constitutionality.
North Carolina	Yes—A.G. handles appeal before Court of Appeals and Supreme Court.
North Dakota	Yes—but local states attorney usually handles appeal.
Ohio	Some—handles own appeals, not those of local prosecutors.
Oklahoma	Yes—District Attorneys assist with preparation of briefs.
Oregon	Yes—on request of local prosecutor.
Pennsylvania	Some—District Attorney handles most appeals but Attorney General handles some.
Puerto Rico	Yes—before Supreme Court and all U. S. courts.
Rhode Island	Yes—no local prosecutors.
Samoa	Yes—no local prosecutors.
South Carolina	Yes—has statutory authority, but normally appears only in his own cases and on request of solicitor.
South Dakota	Yes—state's attorney works closely with A.G. on appeal.
Tennessee	Yes.
Texas	Yes.
Utah	Yes.
Vermont	Yes—(Both the A.G. and the state's attorney represents the state on appeal.)
Virgin Islands	Some—Attorney General handles all stages in misdemeanor cases; U.S. Attorney handles felonies.
Virginia	Yes—local prosecutor must file brief in opposition to granting appeal.
Washington	Yes—upon request of local prosecutor.
West Virginia	Yes.
Wisconsin	Yes.
Wyoming	Yes.

Some states give the Attorney General and the prosecutor concurrent jurisdiction in appeals. Ohio requires the Attorney General to appear before the Supreme Court in cases where the state has an interest, and also requires him to advise prosecutors in all actions in which the state is a party.[47] Another statute says that "in conjunction with the Attorney General, such prosecuting attorney shall prosecute cases arising in his county in the supreme court."[48] In practice, the prosecutor handles all appeals, with the Attorney General's assistance. In Georgia, the Attorney General appears for the state only in appeals to the Supreme Court from convictions of capital felony offenses.

Michigan law requires the Attorney General to prosecute and defend all actions in the Supreme Court in which the state is interested. The law[49] also requires the prosecuting attorney to prepare a brief in all criminal cases on appeal to the Supreme Court which arise from his county, and to give Attorney General a copy of the brief at least 20 days before the case is to be heard. Upon request of the Attorney General, the prosecutor must make the oral argument; the Attorney General's office has estimated that the prosecutor makes the argument in over half the cases. The Attorney General's Appellate Division works very closely with prosecutors.

The most frequent statutory provision, however, is for the Attorney General to appear before the highest court in all cases where the state has an interest or is a party. In the majority of jurisdictions, the local prosecutor's responsibility ends at the trial level.

The statutory provisions for handling appeals do not always prevail in actual practice. Nevada law, for example, charges the Attorney General with appearing for the state before the Supreme Court; the long-standing practice, however, is to permit district attorneys to represent the state in criminal appeals, with the Attorney General assisting.[50] Washington law directs the Attorney General to represent the state before the Supreme Court in all cases in which the state is interested, but he actually participates in ordinary criminal appeals only on request of the local prosecutor. Otherwise, involvement in criminal appeals is only in the context of habeas corpus actions.[51]

There appears to be a trend toward the Attorney General playing a greater part in appeals where he does not do so already. Oregon's Department of Justice offered to represent district attorneys on appeal of criminal cases. By October of 1970, 25 of the 37 local prosecutors accepted. Most appeals are now handled by the Attorney General's office, with 90 percent of the cases won.[52]

Procedures on Transfer of the Case

On the whole, there is no set procedure relative to transfer of jurisdiction from the prosecutor to the Attorney General. The Attorney General simply takes charge.

A few states, however, noted a need for more cooperation when a case is

transferred, because the prosecutor should have a vivid recollection of the live trail, live witnesses and live evidence and all else that has occurred in the trial court, while Attorney General has only a cold record to work with. A Missouri study commented that the Attorney General's office seldom is able to obtain a copy of the local prosecutor's memoranda or briefs; "This means that the staff of the Attorney General must, in effect, start from scratch in researching the myriad legal issues raised by these appealed cases."[53]

In its 1973 survey of local prosecutors, COAG asked about the working relationship between prosecutors and Attorneys General in appellate cases.

TABLE 11: WORKING RELATIONSHIP IN APPEALS

Activity	Always	Sometimes	Never	Total
Turn memoranda on briefs over to Attorney General	280	231	107	618
Confer with the Attorney General about the case	214	338	65	617
Attend when the case is before the court	90	227	281	598
Handle the argument	69	135	393	597

The replies indicated a considerable degree of cooperation on transfer. Most prosecutors, for example, confer with the Attorney General's staff about the case and turn over memoranda. A substantial number attend when the case is before the court even if they are not handling the case.

The amount of cooperation may depend on the particular case. California, for example, reports that the Attorney General usually handles appeals without any particular assistance from the local prosecutor. Where a trial has been very involved, however, the Attorney General may ask the prosecutor to present his version of the facts, and to furnish the legal authorities he relied upon in the lower court. In every instance where such a request has been made, local prosecutors have responded willingly and well.

Two major problems involving the transfer of jurisdiction have been described by one reporting state. First, the record on which the appeal is based may be incorrect or inadequate. This record, including the trial papers and narrative summary of oral presentations on which the appeal must be based, is approved as to content by the appelant and the local prosecutor prior to the Attorney General's knowledge of or involvement in the case, and is available to the Attorney General only in final form. Errors or inadequacies are finalized prior to the Attorney General's participation in the case and the Attorney General has no recourse in the matter. He is bound by the record so prepared.

Appellate proceedings are almost always based entirely on the record of the proceedings below. The parties must submit their arguments based on this:

> Under the principle of timely presentation, they are not permitted, as it is said, to "go outside the record." No contentions can be made on appela unless the argument involved was presented at the proper time in the trial court and unless the record shows that any evidence necessary to establish the contention was presented in the trial court. On appeal the parties cannot offer additional evidence to supplement the record, nor, as a general matter, introduce any assertion not made in the trial court. Appellate litigation is, in the very strictest sense, review rather than fresh consideration of the case.[54]

The ABA Standards stress the value of good records in appellate procedures and suggest that continuing efforts be exerted to improve techniques for the preparation of records of appeal. They recommend that new ways of reproducing such records be examined and, where practicable, adopted with a view toward minimizing the cost of preparation in terms of money and time.[55]

Statewide Coordination of Prosecution

Virtually every observer of local prosecution in the United States has concluded that at a minimum there should be increased coordination of the policies and activities of local prosecutors. Proposals have ranged from a statewide, centrally-managed prosecution system to the formation of state councils of prosecutors. The 1931 Wickersham Commission report recommended a centralized, statewide system of prosecution.

A recent study by the Committee for Economic Development also recommends a statewide, centrally-managed system of prosecution: "We recommend that each of the 50 states establish a Department of Justice, drawing together all germane functions except those of a separate, independent, and unified judicial branch, with which the new Department could maintain close liaison." This department would directly undertake the management of courts, prosecution, and correctional activities.

As an interim measure the study recommends:

> A State Director of Prosecutions should be appointed in each state by the Governor or the Attorney General, under a selection process that emphasizes merit. The Director should have full administrative authority, with power to establish and enforce standards for this function, and with the resources to provide and assign the professional staff necessary to supplement or substitute for prosecutors in every state (or local) court.[56]

Other recent studies have favored retaining independent local prosecutors, but have recommended stronger state supervision and control over them.

The Advisory Commission on Intergovernmental Relations recommends that:

> States (should) strengthen State responsibility for prosecution by enhancing the attorney general's authority to oversee the work of local prosecutors; by establishing a State council of prosecutors . . . under the leadership of the Attorney General; and by giving the Attorney General the power to consult with and advise local prosecutors in matters relating to the duties of their office . . .[57]

The Commission recommends that this system as striking an acceptable balance between the needs of local accountability and flexibility and those of evenhanded enforcement of the state's criminal laws. It suggests that the Attorney General increase his efforts in providing assistance to prosecutors, publishing prosecutors manuals, conducting training programs, and developing standards to guide prosecutors in the exercixe of their discretionary powers.

Among the recommendations that emerged from the Commission's study was an Omnibus Prosecution Act, which was made part of the Council of State Government's program of suggested state legislation for 1972.[59] The Model Act gives the Attorney General extensive powers in prosecution and requires him to "maintain a general supervision over local prosecuting attorneys with a view to obtaining effective and uniform enforcement of the criminal laws throughout the State." The Attorney General is directed to prescribe minimum standards for prosecutors with respect to personnel and

procedures, with the state providing financial assistance to prosecutors who meet their standards. The Attorney General is empowered to conduct periodic evaluations of prosecutors which will meet regularly to develop guidelines and to assure that local policies and practices meet state standards. The Model Act also gives strong powers in prosecution to the Attorney General, to aid in attaining consistent statewide enforcement.

A similar approach was taken by the Model Department of Justice Act, developed by the American Bar Association Commission on Organized Crime and Law Enforcement and promulgated in 1952 by the National Conference of Commissioners on Uniform State Laws.[59] It recommends retaining local prosecutors, but recommends strong supervision and control over them by a state Department of Justice, headed by the Attorney General or an officer appointed by the Governor. The Department of Justice would be empowered to: (1) consult with and advise the several prosecuting attorneys in matters relating to the duties of their office; (2) maintain a general supervision over the prosecuting attorneys; and (3) require reports from prosecutors on any matters pertaining to their duties. The Act gives the Attorney General broad powers in prosecution.

Other studies have suggested a council of prosecutors as a means of coordination. The President's Commission on Law Enforcement and Administration of Justice recommended that:

> States should strengthen the coordination of local prosecution by enhancing the authority of the state attorney general or some other appropriate statewide officer and by establishing a State council of prosecutors comprising all local prosecutors under the leadership of the attorney general.[60]

It said that the Attorney General should take responsibility for organizing the council, which should function to formulate policy and standards, but at least could be a forum for the exchange of views and information. The Commission argued that:

> Since the district attorneys are independently elected officials it would be desirable if the decisions affecting the exercise of their office were the result of collegial discussions of local prosecutors in which all participate. The Council could also have the advantage of allaying the fears of local prosecutors that their authority is being subverted by a central, powerful State officer. Cooperation and implementation become less formidable problems when decisions represent the consensus of those who must carry them out at the operating level. Most important, use of the council in setting statewide standards would insure their relevance to local operating conditions . . .
>
> It might be the function of the attorney general's office to bring continuity of effort that a sporadically meeting council cannot, and to provide a research staff to suggest areas in which statewide standards, programs and policies are needed.[61]

The American Bar Association concurs with the President's Commission in recommending a coordinating council.[62] The ABA Standards also recommend that: "In cases where questions of law of statewide interest or concern arise which may create important precedents, the prosecutor should consult and advise with the Attorney General of the state."[63]

The National Association of Attorneys General has recommended that each Attorney General take the initiative in coordinating prosecution within his state. NAAG says that "The Attorney General should call periodic conference of prosecutors and should issue regular bulletins concerning developments in the criminal law and other matter of interest." The full text of the NAAG recommendations concerning prosecutors are given in the appendix to this report.

The National Advisory Commission on Criminal Justice Standards and Goals, in its Task Force Report on Courts (1973), recommended that in every state there should be a state-level entity that makes available to local prosecutors who request them the following:

1. Assistance in the development of innovative prosecution programs;
2. Support services, such as laboratory assistance; special counsel, investigators, accountants, and other experts; data-gathering services; appellate research services; and office management assistance.[64]

Whether the states will eventually move in the direction of increased centralization of the prosecution function remains to be seen. For the present, as many of the recommendations have suggested, it is possible to take steps to increase coordination between prosecutors themselves, as well as between prosecutors and the Attorney General, while leaving relatively untampered the autonomy of the local prosecutor.

FOOTNOTES

1. American Bar Association Project on Standards for Criminal Justice, STANDARDS RELATING TO THE PROSECUTION FUNCTION AND THE DEFENSE FUNCTION, 2 (1971).
2. *Id.*, at 19.
3. J. L. Edwards, THE LAW OFFICERS OF THE CROWN, 9 (1964).
4. R. M. Jackson, THE MACHINERY OF JUSTICE IN ENGLAND, 154-165 (1972).
5. *State v. Finch*, 128 Kan. 665, 28 P. 910 (1929).
6. KY. REV. STAT. 69.210 (2). *See*, Kentucky Department of Law, *The Office of Attorney General in Kentucky*, Special Issue, 51 KY. L. J. 58-5 through 96-8 (1963).
7. John Kaplan, CRIMINAL JUSTICE, 251 (1973).
8. *Id.*, at 252
9. Note, *Prosecutor's Discretion*, 103 UNIV. OF PENN. L. REV. 1047 (1955).
10. Kaplan, *supra* note 7, at 245-52.
11. National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, COURTS, 46 (1973).
12. Note, *Criminal Law Enforcement of Plea Bargaining Agreements*, 51 N.C.L. REV. 602, 604 (1973).
13. *Santobello v. New York*, 92 SUP. CT. 495, 498 (1971).
14. National Advisory Commission, *supra* note 11.
15. Committee on Prosecution Standards, National District Attorneys Association, NDAA POSITION PAPER: THE ROLE OF THE LOCAL PROSECUTOR IN A CHANGING SOCIETY, 1 (1973).
16. REPORT OF THE ATTORNEY GENERAL'S COMMITTEE ON POVERTY AND THE ADMINISTRATION OF FEDERAL CRIMINAL JUSTICE: Silverstein, DEFENSE OF THE POOR IN CRIMINAL CASES IN AMERICAN STATE COURTS (1965).
17. *Gideon v. Wainwright*, 372 U.S. 335 (1963).
18. *Argersinger v. Hamlin*, 407 U.S. 25 (1972).
19. American Bar Association Project on Minimum Standards for Criminal Justice, STANDARDS RELATING TO PROVIDING DEFENSE SERVICES, 1 (1968).
20. National Advisory Commission, *supra* note 11, at 253.
21. Task Force on Administration of Justice, The President's Commission on Law Enforcement and Administration of Justice, TASK FORCE REPORT: THE COURTS, 73 (1967).
22. Task Force on Administration of Justice, The President's Commission on Law Enforcement and Administration of Justice, THE CHALLENGE OF CRIME IN A FREE SOCIETY, 148 (1967).
23. National Advisory Commission, *supra* note 11, at 229.
24. National Association of Attorneys General, Committee on the Office of Attorney General, THE OFFICE OF ATTORNEY GENERAL, 109 (1971).
25. *County Prosecutors v. District Attorneys*, Paper prepared by Mack A. Redford, Deputy Attorney General of Idaho (no date).
26. American Bar Association, *supra* note 1, at 27.
27. Task Force Report, *supra* note 21, at 148.
28. *Id.*, at 75.
29. American Bar Association, *supra* note 1, at 28.
30. National Advisory Commission, *supra* note 11, at 239.
31. American Bar Association, *supra* note 1, at 51.
32. National Advisory Commission, *supra* note 11, at 237.
33. Kentucky Department of Law, *supra* note 6 at 64-S.
34. R. Watson OFFICE OF ATTORNEY GENERAL 1 U.MO. STUDIES, 35 (August, 1962).
35. *State v. Young*, 1970 P. 947 (Sup. Ct. Montana, 1918).
36. Earl DeLong, *Powers and Duties of the State Attorney General in Criminal Prosecutions*, 25 J. CRIM L. 392, 371 (1934).
37. *State ex. rel. Attorney General v. Seattle Gas and Electric Co.*, 28 Wash. 511, 70 P. 114 (1902).
38. *State v. Ehrlick*, 65 W. Va. 700, 64 S.E. 935 (1909).
39. *Kennington — Soenger Theatres, Inc. v. State*, 196 Miss. 841, 18 S. 2d 483 (1944).
40. *State v. Reece*, 78 N.M. 241, 430 Pac. 399 (1967).
41. *State ex. rel. Ford v. Young*, 54 Mont. 401, 170 Pac. 947 (1918).
42. *People v. Kramer*, 68 N.Y.S. 383 (1900).
43. *Commonwealth v. Lehman*, 309 Pa. 486, 164 Atl. 526 (1932).
44. *Commonwealth ex. rel. Minerd v. Margiotti*, 325 Pa. 17, 188 A. 524 (1936).
45. *In re Shelley*, 332 Pa. 358, 2 A. 2d 809 (1938).
46. *Commonwealth v. Fudeman*, 396 Pa. 236, 152 A. 2d 428 (1959).
47. OHIO REV. CODE ANN. 109, 02, 104.14.
48. OHIO REV. CODE ANN. 309.08.

49. MICH. STAT. ANN. 3.181.
50. NEV. REV. STAT. 228.140.
51. WASH. REV. CODE ANN. 43.10.030.
52. Interview with Deputy Attorney General James Durham, Office of the Attorney General, Salem, Oregon (April 3, 1974).
53. Watson, *supra* note 34, at 27.
54. Jeffrey Hazard, *After the Trial Court: The Realities of Appellate Review*, THE COURTS, THE PUBLIC, AND THE LAW EXPLOSION, 73 (1965).
55. American Bar Association, *supra* note 1.
56. Committee for Economic Development, REDUCING CRIME AND ASSURING JUSTICE, 66 (1972).
57. Advisory Commission on Intergovernmental Relations, STATE-LOCAL RELATIONS IN THE CRIMINAL JUSTICE SYSTEM, 47 (1971).
58. Committee of State Officials on Suggested State Legislation, The Council of State Governments, SUGGESTED STATE LEGISLATION XXXI, 14-22-11 (1971).
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60. The President's Commission on Law Enforcement and the Administration of Justice, THE CHALLENGE OF CRIME IN A FREE SOCIETY, 149 (1967).
61. *Id.*
62. American Bar Association, *supra* note 1, at 28.
63. *Id.*
64. National Advisory Commission, *supra* note 11, at 237.

APPENDIX

Recommendations Adopted By The Committee on the Office of Attorney General and Adopted by The National Association of Attorneys General At Its Meeting on February 1, 1971

THE PROSECUTION FUNCTION

Local prosecutorial services should be organized in districts sufficiently large to require full-time prosecutors, with adequate staff.

Prosecutors in the majority of states serve only a single county and serve only part-time. A district system should be adopted to assure full-time prosecutors. Pay should be adequate to attract and retain qualified persons and to allow prohibition of private practice. Prosecutors should serve for a minimum of four years.

The method of selecting local prosecutors should depend on conditions in the particular jurisdiction.

In most jurisdictions, the local prosecutor is independently elected; in a few, he is appointed by the Attorney General, the Governor, or a judge. There is no single best method: what is appropriate for Delaware would not necessarily be so for California, although both have good prosecution services.

The Attorney General should be able to institute removal proceedings against a local prosecutor or local law enforcement officer for misfeasance, malfeasance or nonfeasance, as defined by law.

Where evidence indicates that a local official has conducted himself and the affairs of his office improperly, the Attorney General should have the authority to bring a removal action against that official. The law should provide adequate procedures to prevent possible misuse of such power.

The Attorney General should call periodic conferences of prosecutors and should issue regular bulletins concerning developments in the criminal law and other matter of interest.

Coordination between the Attorney General and other prosecutors in the state is essential, to assure interchange of ideas and information and to maintain continuity of policy. The Attorney General should take the initiative in calling conferences and otherwise keeping prosecutors informed of developments in statute and case law. He should also assume leadership in developing and implementing statewide standards.

The Attorney General should develop and retain a staff of specialists who would be available to other criminal justice agencies on request.

The Attorney General should have a "leading library" of men and material that other state or local officers could draw on as needed. This would include specialists in various areas of investigation and prosecution, administration, accounting, and special equipment needed in the detection or prosecution of crime.

The Attorney General should be empowered to initiate local prosecutions when he considers it in the best interests of the state.

At common law, the Attorney General had full authority over local prosecutions. The office of county or district attorney represented a division of the Attorney General's powers. In those states where the local prosecutor is independently selected, the Attorney General should retain power to initiate prosecutions when, in his opinion, the interests of the state so require. Experience demonstrates that such authority, when granted, is used only infrequently.

The Attorney General should be empowered to intervene or supersede in local prosecutions.

In those rare instances where local prosecutors are unable or unwilling to prosecute a case properly, the Attorney General should be able to enter the case and to assist or direct the prosecutor. Where such power presently exists, it is rarely exercised, but it should be available to the Attorney General.

The Attorney General should appear for the state in all criminal appeals.

In the great majority of jurisdictions, the Attorney General handles all criminal appeals. In others, he assists the local prosecutor. The Attorney General should take all criminal cases on appeal, to assure uniform quality of appeals, provide the necessary expertise in complex cases, and to assure a thorough review of the record by someone who was not previously involved. The prosecutor should work with the Attorney General when appropriate to assure that he is adequately informed about the case.

The Attorney General should have broad subpoena power.

Eighteen Attorneys General have no subpoena power; twenty-four have such power only in connection with certain statutes, such as consumer protection. Only eleven report that they have broad subpoena powers, yet this is an essential tool if the Attorney General is to conduct investigations, succeed in litigation, and otherwise to act as the state's chief law officer. Many states which deny broad subpoena power to the Attorney General give it to less important officers and agencies.

The Attorney General should have power to call a statewide investigatory grand jury.

Statewide problems cannot be met solely on the local level. The Attorney General should have authority to call a statewide grand jury to investigate organized crime and other matters of general importance.

END