

EVALUATION REPORT

NATIONAL PROSECUTION STANDARDS

NATIONAL DISTRICT ATTORNEYS ASSOCIATION

(Law Enforcement Assistance Administration

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Submitted by

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ACQUISITIONS

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This project is a continuation of an earlier and more extensive effort to develop standards and goals for the nation's prosecutors (Grant 74-DF-99-0021). In summary, the current endeavor can be categorized as an implementation design and a pilot demonstration of standards adoption and the practical utilization thereof.

The goals of the project, which remain unchanged from those of the initial standards and goals development undertaking are:

1. To increase the effectiveness and efficiency of the prosecutorial function within the various offices providing prosecutorial services throughout the United States.
2. To conjunctively enhance the management capabilities of prosecutorial agencies and offices and to reduce the number of impediments affecting those capabilities to apostasy.
3. To provide a more expedient, uniform, and salient form of justice through prosecutorial services as they relate to the flow of cases and individuals through the judicial system.

In more concrete terms the current project is intended to move toward these goals through two major objectives:

1. (A) To have standards reviewed and analyzed by experts in prosecution;
(B) To print and disseminate 1,000 copies of the developed standards or summaries thereof to prosecution and other interested organizations involved in the administration of criminal justice.
2. (A) To select ten topics from the standards in each of three states and to develop and promote enactment of appropriate legislation, court rule or otherwise to effectuate the adoption of these ten standards;

(B) To select three model offices which will establish planning and policy procedures for implementation of the standards.

(C) To determine the desirability of pursuing implementation on a nation-wide basis.

EVALUATION OBJECTIVE

The objective of this evaluation is to measure the degree of progress made by the three pilot states and model offices in implementing the standards selected for such action under this program and to determine the advisability of a continuing effort on a nationwide basis, as well as the review analysis and dissemination of the standards themselves. This measurement is only a tabulation of actions taken and a subjective appraisal of the effect thereof since there is no historic base of similar programs of a comparable nature. The limited financial resources available to the participating localities, the need to induce action by other governmental bodies, the time constraints imposed by primary prosecutive responsibilities and the lack of public pressures for concerted action are among the factors which must be weighed in evaluating what was accomplished. In addition it is noted that the limited period of time allocated for this project is hardly adequate to expect sufficient results to permit a determination of the impact on the criminal justice system or the likelihood of replication in other prosecutors' offices.

METHODOLOGY

The evaluator was retained by NDAA on September 21, 1976, after efforts to obtain a more exhaustive evaluation had to be abandoned because of a limitation of funds. As a result a more modified evaluation effort was defined to supplement work which could be accomplished by the project staff. As of September 21, 1976 the expert review and analysis of the standards and commentary had been completed and submission of the manuscript to the printer had started. Printing was completed and disseminated goals were reached early in 1977. The emphasis of this evaluation was therefore directed to the implementation of the second grant objective relating to the capacity of model states and offices which at that time had only recently been selected.

Two site visits were made in each of the model offices and with the three consultants selected to assist in state-wide implementation efforts. The first of these coincided, in two instances (Arizona and Mississippi), with the initial staff indoctrination trips and one of which (Oregon) closely followed such indoctrination. The second series of on-site visits took place near the end of the project after substantial progress had been made in each of the three states. Four trips were made to NDAA headquarters in Chicago to observe the direction and coordination provided by the project staff. Material emanating from NDAA headquarters and all reports submitted in this project were reviewed and analyzed. Selected interviews with judges, prosecutors, defense counsel, other lawyers and lay persons interested in prosecutive standards were conducted. Related standards and goals including those

of the ABA and the National Advisory Commission on Criminal Justice Standards and Goals were reviewed and compared to those developed by NDAA. Particular attention was directed to the evaluation of Arthur D. Little, Inc. submitted near the conclusion of the original NDAA Standards and Goals Project which made a concerted effort to measure degrees to which those prosecutors who were members of task forces attempted to implement standards in their own jurisdictions.

PROJECT DEVELOPMENT

1. Model Offices

Prosecutors' offices in Tucson, Arizona, Gulfport, Mississippi and Gold Beach, Oregon, were selected by NDAA as the model offices under the current project. These offices represent metropolitan, medium and small prosecution staffs. All were headed by prosecutors who served as members of the Task Forces under the original grant. While this does not represent a reaction to the standards by the average prosecutor, the selection was justified by the short tenure of the current program which would not permit a prosecutor not previously associated with the NDAA standards sufficient time to acquire all the background information necessary to complete his assignment by the deadline date. The prosecutor at Tucson resigned his position about the time the project began in order to run for another political post. His staff, however, had been involved in the earlier effort and the acting prosecutor carried on in a commendable manner.

Gold Beach, Oregon

The Gold Beach, Oregon, model office is representative of the

small prosecutor's office. The prosecutor at Gold Beach has had ten years experience as a district attorney. His county, with a population of about 14,000 people, includes three municipalities, all small. Annually he prosecutes about 50 felonies and 400 misdemeanors. The District Attorney personally handles all felony cases. He has one assistant who is principally assigned to juvenile matters. The problem of representing the county in civil cases has been growing steadily and authorization to employ another assistant for civil jurisdiction was received late in 1976. The District Attorney and all his assistants are employed on a full-time basis. City attorneys assist by presenting many minor misdemeanor cases. The District Attorney coordinates law enforcement efforts and works closely with the sheriff, municipal police and the state police who have jurisdiction over the game wardens as well as traffic control. Since Gold Beach is a fishing and hunting center, there are numerous prosecutions for violations of the game and fishing laws. The District Attorney's budget was approximately \$90,000 for last year.

Gulfport, Mississippi

The prosecutor's office in Gulfport, a medium size office, differs in many respects. Jurisdiction extends over 3 counties having a population of 185,000 which is concentrated in two cities, Gulfport and Beloxi. This requires a District Attorney sub-office in Beloxi which is manned by a full-time assistant. In addition, two other part-time attorneys serve as assistant prosecutors. The annual work load includes 985 felonies. Each county in the district has a county attorney, generally part-time, who has jurisdiction over misdemeanors. Last year's budget for the District Attorney was about \$32,000 which

included \$8,000 in grants; however, salaries of the district attorney and his assistants are paid by the state.

Tucson, Arizona

The District Attorney at Tucson, the large model office, has jurisdiction over Pima County with a population of 450,000 which includes students at the University of Arizona located at Tucson. The county is a small metropolitan area with its attendant problems. These are accentuated by the close proximity of the U.S. - Mexican border which has, in recent years, brought on a large increase in drug cases. In fact the District Attorney has jurisdiction over an inter-district narcotic task force which alone has 43 employees, of whom 21 are investigators and 10 are attorneys.

The normal work load of the office is handled by the District Attorney and 54 assistant district attorneys. Last year there were approximately 2,400 felony and 4,300 misdemeanor cases received in the office for processing. As in any large office there is a division of responsibility by classification of cases and the corresponding development of more expert prosecutive talent. The prosecutor has a full-time screening unit made up of three assistant prosecutors who work closely with law enforcement agencies.

Last year's budget for the Pima County prosecutor's office exceeded four million dollars.

Model Office Review of Standards

To assist the three model offices in making a realistic review of the standards, the NDAA staff developed and disseminated a Model Office Standard Implementation Form. By memorandum dated October 19, 1976 the staff provided helpful guidelines to the model offices in completing the forms. Briefly this form called for (1) identification of the standard; (2) the status in the reporting office, i.e. whether the office was already in compliance; (3) whether the prosecutor accepted or rejected the standard for his office; (4) if accepted, list priority category, an outline of a plan for implementation and identification of base data against which implementation could be measured.

While the form was originally intended to cover only those standards which the prosecutor could implement by action in his own office, as contrasted to those standards implementable on a state-wide basis, the three offices chose to consider all standards. This broader coverage was undoubtedly helpful to the state-wide consultants in selecting the ten standards for state-wide implementation.

This phase of the implementation project received high level direction in that the District Attorneys themselves, or in the case of Tucson, the ranking Assistant District Attorney personally participated in the selection and evaluation of the standards as applicable to their offices. A minimum amount of base data was supplied which would have enabled a measurement of progress in the implementation of individual standards, undoubtedly because the offices had never recorded such information. In addition, the original outlines for implementation

plans, including timetables, were frequently sketchy and required alterations because of unforeseen circumstances.

The following tabulation shows the numerical results of the review of standards by the model offices. It is noted that the numbers are not necessarily comparable between offices because of differences in approach and in no instance do the figures equal the number of standards since offices frequently broke standards down into sub-standards as when a prosecutor accepted part of a standard and rejected another part.

Standards Review

	<u>Tucson</u>	<u>Gulf- Port</u>	<u>Gold Beach</u>
Standards Reviewed	ALL	ALL	ALL
In Substantial Compliance	108	133	134
Standards to be Upgraded	8	3	6
Accepted for Local Implementation	20	29	31
Accepted for State Implementation	29	16	21
Rejected	2	28	8
Priority - HIGH	20	7	6
MEDIUM	20	22	21
LOW	9	16	15

At the end of the project year, the model offices recorded the following accomplishments:

Tucson:

Considered 20 standards as follows:

4 required legislation
11 implementation in progress
5 implementation completed
20

Gulfport:

Considered 29 standards as follows:

7 required legislation
1 required additional funding
9 required state-wide action
10 implementation in progress
2 implementation completed
29

Gold Beach:

Considered 31 standards as follows:

11 required legislation
2 required additional funding
3 required state-wide action
10 implementation in progress
5 implementation completed
31

2. State-wide Action

ARIZONA

NDAAs retained consultants in the three states in which model offices were located. In Arizona the State Prosecutors Association itself acted as the consultant. In Mississippi the consultant tasks were divided between a committee of the State Association and an individual prosecutor, while in Oregon a private attorney with extensive experience in the executive, judicial and legislative branches of government was selected. In Arizona an active State Association began work promptly; however, there was a slight delay in securing qualified consultants in Mississippi and Oregon. The first meeting of state consultants at NDAAs headquarters was held on December 21, 1976. No adverse effect to the project was experienced, however, because the scheduled sessions of the legislatures in the three states precluded immediate action.

The method of selection of the ten topics to be developed as model legislation or for court rule implementation varied in each of the three states. In Arizona a committee of the State Prosecutors Association performed this task and the work of the committee was reviewed by all the district attorneys. The following topics were selected in Arizona:

<u>Number</u>	<u>Description</u>	<u>Standard Identification</u>
1	State Prosecutors Association	2.2
2	Training	4.1 - 2
3	Office Manuals	6.1
4	Screening and Charging	8 & 9
5	Discovery Available to Prosecutor	13.3
6	Grand Jury - Continuation	14.1
7	Jury Instructions	17.18
8	Expert Witnesses	17.12

<u>Number</u>	<u>Description</u>	<u>Standard Identification</u>
9	Extradition	19.9
10	Prosecutor and Other Sections of Criminal Justice System	20.1-4

Of the above listing numbers 1, 6, 8 and 9 require legislative action; numbers 5 and 7 court rules; and numbers 2, 3, 4 and 10 State Association action. At the close of the project period numbers 1, 2 and 10 had been completed; numbers 5, 6 and 7 were scheduled for completion by January 1978; number 8 by May 1978; number 9 by June 1978; numbers 3 and 4 by July 1978.

MISSISSIPPI

Again in Mississippi a committee of the state prosecutors selected the topics for priority implementation. The following standards were chosen:

<u>Number</u>	<u>Description</u>	<u>Standard Identification</u>
1	District Attorney Compensation	1.4
2	Subpoena Powers	7.4
3	Discovery Available to Prosecutor	13.3
4	Appeal Bonds	18.4
5	Evidence - Chemical Analysis	17.10
6	Evidentiary Privileges	17.11
7	Non-unanimous Jury Verdicts	17.4
8	Jury Size	17.3
9	Release Powers of the Court	10.8
10	Diversion	11.1 - 8

All implementation of these standards is to be accomplished through legislative action. Statutes were drafted and prefiled with the Mississippi legislature which is to convene in January 1978. Because of contemplated legislative schedules, the State Association plans to emphasize the first five standards in 1978 and the remainder in future sessions.

OREGON

In Oregon, Robert G. Davis, Esq., acted as the consultant for the state-wide implementation assisted by the Oregon District Attorneys Association. The following standards were selected for state-wide implementation.

<u>Number</u>	<u>Description</u>	<u>Standards Identification</u>
1	Subpoena Powers	7.4
2	Accomplice Rule	17.13
3	Evidence - Chemical Analysis	17.10
4	Jury Selection	17.2
5	Post Verdict Motions	17.19E
6	Depositions	17.7
7	Summons	10.3
8	Reduction of Trial Delay	15.5
9	Jury Instructions	17.18
10	Parole	22.4

Implementation of all of these standards is scheduled for accomplishment through legislation. Appropriate statutes were drafted and introduced in the 1977 Oregon legislative session. None were reported out of committee and consequently none were enacted into law. The proposed statutes were supported by the State

District Attorneys Association. There was no substantial opposition. Interviews with political leaders cognizant of the 1977 legislature revealed that because of disputes in other areas, little was accomplished by way of legislation in any category. In addition, the chairman of the committee was preoccupied with other concerns and considerable proposed legislation was not reported out of committee including the bills submitted by the district attorneys. Plans were formulated at the state convention in July 1977 to have the State Association push for action at the next legislature.

ANALYSIS AND CONCLUSIONS

This evaluation is essentially subjective. It may be, as Marcel Ophul wrote in his documentary, The Memory of Justice, "There is no such thing as objectivity in the strict sense, if only because, to make sense at all, some perspective or point of view must be maintained." It may be a limited model effort just doesn't produce enough measurable quantities or because there are not sufficient resources to finance an effort to try and discover them, if they do exist.

In any event, this evaluation is, like the NDAA Standards themselves, a product of the best wisdom that can be collected from the experiences of prosecutors and others involved in the administration of criminal justice.

There is nothing new in the establishment of standards and goals. Two monumental efforts in the area of criminal justice are those of the American Bar Association and the National Advisory Commission on Criminal Justice Standards and Goals. While admittedly far broader in scope, the ABA has been engaged in an implementation effort for more than ten years and has expended approximately \$3.5

million in this endeavor. Just as in the NDAA project, the ABA began its implementation by testing its potential in three pilot states. A decade later, while some states have implemented as much as 90% of the ABA Standards, other states are just beginning. What has developed in this long-time implementation is that some standards have become obsolete and the ABA is now engaged in a major, continuing effort to bring and keep the standards in harmony with changing time and mores. While more recently promulgated, a similar massive effort to implement standards and goals in all states has been instituted as an outgrowth of the work of the National Advisory Commission on Criminal Justice Standards and Goals.

What makes the NDAA Standards different from previous compilations is the attention paid to detail by NDAA and at the same time a flexibility of interpretation predicated on the individual differences experienced in the offices of prosecutors throughout the country. NDAA Standards and Goals were drafted by prosecutors for prosecutors. As the Arthur D. Little, Inc. evaluation report noted, "There is no assurance that all of the prosecutors from similar jurisdictions have agreed on a particular standard. The way in which the standards were agreed to was a classic one of legislative compromise." From this flowed a flexibility of interpretation by individual district attorneys. Obviously, many of the standards are already in existence in a large number of states and represent a codification of existing ways, e.g., the standard that the district attorney should be an elected public official.

There are many instances where the various standards agree and some where they do not. For example, both the ABA and NDAA Standards require that a prosecutor should maintain an office manual of policy, practices and procedures. In contrast, the ABA Standard requires that calendar control of criminal prosecutions should rest solely with the court while the NDAA Standard gives the district attorney a major role in scheduling criminal cases.

Another factor to be considered by both the public and by officials in an implementation effort, insofar as an acceptance of standards is concerned, is the varying complexity between standards. One ABA standard merely states that a prosecutor should be a public official who is an attorney while the NDAA Standard incorporates the method of selection, the term of office, the compensation to be paid, the facilities and staff provided, etc.

While this project is concerned only with the implementation of NDAA Standards, the existence of reputable but sometimes conflicting standards is a consideration in long-range efforts, particularly in public education to secure acceptance and financial support. The conclusion logically arising from all of these facts is that what we are trying to implement are more logically goals than standards. Flexibility of interpretation in light of local conditions is necessary. Compliance has been made easier in many instances, for example, a standard which requires a prosecutor to support or urge legislative action. It also justifies the large number of instances where a model office indicates present compliance with the standards.

A year ago at the conclusion of the initial year of the NDAA Standards and Goals Project, the evaluator, Arthur D. Little, Inc.,

endeavored to measure against the primary criterion of the degree to which task force member prosecutors attempted to implement standards in their jurisdictions. Since the district attorneys who head the three model offices involved in the current implementation effort were also members of the original task forces, it is interesting to observe the correlation between actual implementation and that which they and their fellow prosecutors indicated was the then current status of implementation. The evaluation report categorizes responses of the Task Force members as to which standards were relevant and actionable. Disregarding the miscellaneous classification which appears too broad to be meaningful, a composite of Task Force members representing all sized offices listed standards in the following categories as having the highest priority:

<u>Standards</u>	<u>Percentage of Standards Met Prior to January 1975</u>
(1) Trial Procedure	(.60)
(2) Facilities	(.38)
(3) Courts	(.50)
(4) Speedy Trial	(.48)
(5) Staff Personnel	(.52)

This same listing showed that actions by others than the prosecutor were a major factor affecting implementation of these standards and four of these (facilities, trial procedures, courts and staff personnel) were listed as the most difficult standards to implement.

In comparison the state-wide consultants in Arizona, Mississippi and Oregon, representing all the district attorneys, in those states,

gave emphasis only to the Trial Procedure Category (40% of standards chosen for implementation), very minor attention to Speedy Trial (.03%) and ignored the other classifications originally listed as having the highest priority.

The three model offices, however, directed primary attention to implementing the following of the original priority categories:

	<u>Gold Beach</u>	<u>Gulfport</u>	<u>Tucson</u>
Trial Procedure	16%	21%	0%
Facilities	10%	10%	15%
Courts	.03%	31%	5%
Speedy Trial	.03%	.03%	0%
Staff Personnel	0%	.07%	1%

The remainder of the standards selected for attention during the initial year fell in other categories. There is no sound basis to determine the significance of the differences, but it can be presumed that the selections reflected the best judgment of prosecutors in three states and in the model offices as to the practical and political considerations influencing probable acceptance of the implementation plans formulated by them as well as the local and state priorities existing at this time.

3. National Action

The accomplishments of the National District Attorneys Association on a nationwide basis have been impressive. This included far more than the review, printing and dissemination of the National Prosecution Standards, which was completed early in 1977. While the

dissemination list was reasonably extensive and included law school and other libraries where the volume will have continuing use as a reference source, a need for further dissemination was detected which may well require a reprinting.

NDAAs gave extensive coverage to the Standards in its own publications and in other criminal justice and legal periodicals. In addition a slide presentation of implementation procedures was prepared. This was used initially as a part of a nationwide seminar for all district attorneys held in conjunction with a national NDAAs conference. The slide presentation is being made available to State Prosecutors' Associations and other organizations interested in standard implementation of a continuing basis. While produced solely with NDAAs personnel and resources, it has a professional flare and has been praised by those who have witnessed it.

A second seminar for all the nation's prosecutors was held at the National NDAAs conference in July 1977. This seminar centered on the Mississippi implementation experience. Those leaders directly involved in the Mississippi effort participated. They were assisted by the NDAAs staff. Their practical experiences as related to this audience provoked many questions and a lively discussion.

The NDAAs staff continues to emphasize the Standards in connection with their contact with State Prosecutors Associations.

NDAAs produced a series of forms and charts to assist the model offices and state consultants in their analysis of the standards and development of implementations' plans. These were well received and extensively used.

Consultation and guidance were provided by NDAA staff experts to those serving as state consultants and to the prosecutors in the model offices both in the field and in the NDAA's headquarters in Chicago. Practically all of these were monitored by the evaluator. They were conducted in a business-like, professional manner. Those attending these meetings expressed individual judgments as to their excellence and value.

The culmination of the NDAA effort has been the preparation of a Standards implementation Manual. Drawing on the experience of NDAA itself, the state consultants and the model offices, this manual provides practical guidance to any prosecutor or State Association desiring to learn how to proceed in an implementation effort. This should provide a valuable method of continuing standards adoption by the individual prosecutors and by the states.

FINDINGS AND RECOMMENDATIONS

1. The implementation effort covered in this project has been successful and should be continued in a slightly altered form on a long-term basis. This finding is supported by the best wisdom of prosecutors, judges, lawyers and knowledgeable private citizens, even though the limited project did not provide measurable data which would quantify its effectiveness, economy or impact.

2. NDAA activity in the future should emphasize education and technical assistance. Through its journal, special publications and by public appearances by its standards experts, NDAA should intensify its efforts to educate district attorneys, other public officials and private citizens alike of the necessity for implementation

of prosecutive standards. This will undoubtedly require a reprinting of the National Prosecution Standards and further dissemination of this basic document. Experience gained in this project has shown that what is needed is initiative by individual prosecutors and the establishment of a favorable political climate which will make implementation grow and mature. District attorneys and their State Professional Associations require technical assistance in this area in order to move forward effectively and efficiently. It has been established that states generally have experts who can draft required legislation and court rules needed to implement some standards. Technical assistance to be provided should include expert testimony before courts and legislative committees, explanation of the techniques of improving a prosecutor's office and justification of funding necessary to support such programs.

3. State Associations of Prosecutors should be strengthened. There is a limit as to how much can be accomplished nationally on a program that must be implemented at the state and local levels. NDAA should increase its efforts to encourage State Associations to improve their effectiveness by retaining capable professional and staff personnel, initiating public educational programs, establishing legislative liaison, and cooperating with the organized bar and other interested organizations. Only a strong State Association of District Attorneys can provide the necessary impetus for comprehensive implementation and the public support this requires.

4. NDAA should continue and expand its cooperation with the ABA commenced in 1975 and with other criminal justice organizations to resolve any NDAA Standards which duplicate, overlap or conflict with those of other criminal justice entities. This is particularly true in light of the LEAA requirement that, beginning in fiscal year 1977,

states must address specific plans for implementation of state criminal justice standards.

5. NDAA should establish a technical assistance unit made up of one or two professionals plus supporting clerical staff and supplemented by a corps of district attorneys and assistant district attorneys who have experience in the drafting and implementation of goals and standards. A fairly large pool of talent in this area now exists and it should not be dissipated. Administered by NDAA, its staff professionals and prosecutor-consultants can --

- Provide expert guidance to individual district attorneys in planning and instituting standards implementation.
- Act as professional expert witnesses in testimony before legislatures and courts.
- Maintain for all prosecutors a library of literature relating to standards and their implementation.
- Collect, correlate and disseminate new methods and procedures utilized in standard implementation projects both at the state level as well as in the individual prosecutor's offices.
- Conduct continuing research.
- Prepare and disseminate written material which will assist in implementation.
- Assist State Associations in planning and conducting seminars and other public meetings to build support for standards.
- Coordinate at the national level NDAA's Standard and Goal project with similar efforts by other criminal justice agencies.



END