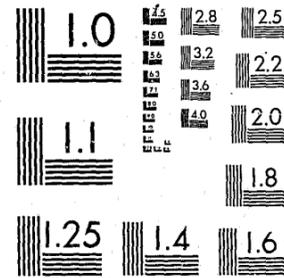


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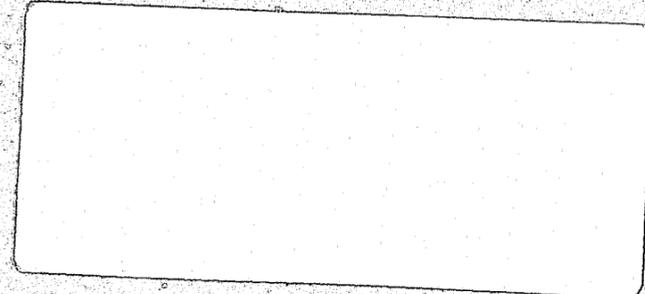
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REPORT ON THE
TECHNICAL ASSISTANCE VISIT TO THE
COMMONWEALTH'S ATTORNEY

FAYETTE COUNTY, KENTUCKY
MAY 14 - 15, 1981

CRIMINAL PROSECUTION TECHNICAL ASSISTANCE PROJECT

LEONARD R. MELLON, PROJECT DIRECTOR

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This study was performed in accordance with the terms of Law Enforcement Assistance Administration Contract #J-LEAA-010-80.

The views expressed in this report are not necessarily those of the Law Enforcement Assistance Administration.

Bureau of Social Science Research, Inc.
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INTRODUCTION

On May 14 and 15, 1981, a Technical Assistance team from the Criminal Prosecution Technical Assistance Project visited the offices of Larry S. Roberts, Commonwealth's Attorney for Fayette County, Kentucky. The Technical Assistance team examined the Commonwealth's Attorney's management and operations functions in accordance with the terms of a contract with the Law Enforcement Assistance Administration. Members of the team included:

David H. Bludworth, Consultant
State Attorney for Palm Beach County
West Palm Beach, Florida

Andrew L. Sonner, Consultant
State's Attorney for Montgomery County
Rockville, Maryland

The purpose of the visit was to study the feasibility of implementing an economic crimes unit in the office, recommend ways to upgrade the case tracking system and analyze problems related to resource allocation in the office involving attorney organization. An overall assessment of the entire office was not attempted, nor was it desired. The purpose of a technical assistance visit is to evaluate and analyze specific problem areas and provide recommendations and suggestions for dealing with those areas. It is designed to address a wide range of problems stemming from paperwork and organizational procedures, financial management and budgeting systems, space and equipment requirements and specialized operational programs, projects and procedures unique to the delivery of prosecutorial services.

It was determined by the members of the Technical Assistance team that, because of the size of the office and the type and level of criminal activity in this area, an economic crimes unit was not warranted at this time. However, the team did observe problems related to the bifurcated prosecution system in Kentucky,

*Vitae are attached as Appendix A.

and with the permission of the Commonwealth's Attorney, investigated and made recommendations in this area.

During the visit, interviews are conducted with those members of the office who are most directly involved in the problem area. Their functions and tasks are examined, as well their perceptions of the problem. The flow of paperwork and the statistical system may also be examined if they are problem areas. Interviews may also be conducted with personnel involved in other component areas of the criminal justice system, such as police, courts and the public defender's office.

The basic approach used by the Technical Assistance team is to examine the office with reference to its functional responsibilities. This means that the process steps of intake, accusation, trials, post-conviction activities, special programs and projects, juveniles and other areas are examined, as required, with respect to their operations, administrative and planning features. Taking a functional analysis approach permits observation of the interconnecting activities and operations in a process step and identification of points of breakdown if they exist.

Once the problem and its dimensions have been specified, and in-depth analysis is made which results in an identification of the major elements and components of the problem, and an exposition of needed change, where applicable.

After the problem has been fully examined, its dimensions discussed, and the analysis of the critical component factors undertaken, recommendations that are practical and feasible are made.

The Technical Assistance team would like to thank Mr. Roberts and his staff for their cooperation and assistance during the visit. Reception of the team was excellent, and the staff's willingness to discuss the strengths and weaknesses of the office was of considerable assistance to the Technical Assistance team in carrying out its tasks.

II. SUMMARY OF RECOMMENDATIONS

1. The Commonwealth's Attorney needs to make every effort to assume the intake and screening function for felony cases which enter his office.
2. The District Court should only make a determination of bail and counsel in felony cases.
3. The initial determination of probable cause in felony cases should be by means of a sworn affidavit.
4. A sworn uniform complaint affidavit, based either upon the 235 report or a similar report, should be developed for use by all law enforcement agencies in the jurisdiction.
5. Transcripts of all preliminary hearings should routinely be made available to the Commonwealth's Attorney.
6. The Commonwealth's Attorney should publish a list of those felonies which will go directly to the Grand Jury under the new intake system.
7. One assistant should be assigned the intake duties, preferably the assistant with the most experience in the office.
8. One additional assistant Commonwealth's Attorney should be hired.
9. A two card case tracking system should be developed to replace the use of the file jacket as a calendar mechanism.
10. A tickler system should be implemented to indicate important future events.
11. An inventory of all outstanding felony arrest warrants should be undertaken at least once a year. Appropriate action should be taken on each one.
12. Separate file drawers for active cases and inactive cases should be created.
13. Statistical reports from other segments of the criminal justice system should be routinely sent to the Commonwealth's Attorney.
14. The Commonwealth's Attorney should develop a systematic budget procedure in order to maximize input into the budgetary process.
15. Two investigators should be requested for the office.
16. The paralegal's role should be expanded to include victim/witness duties.
17. The needs of the office should be reviewed in light of available volunteers.
18. The Friday noon meetings should be reinstated.

III. SYSTEM OVERVIEW

The Commonwealth's Attorney for Fayette County, Kentucky has held this position for approximately 3½ years. He oversees a staff of nine full time employees, of whom five are attorneys, who serve at the pleasure of the Commonwealth's Attorney. At the present time, the office operates a student intern program, a Neighborhood Watch program, a Speakers Bureau, a Shop-lifting Prevention program, an Armed Robbery Prevention program, A Child Abuse program and a Spouse Abuse program.

There are three law enforcement agencies in the jurisdiction which enter cases into the criminal justice system. The largest of these is the Lexington Metropolitan Police Department, which accounts for approximately 90 percent of the workload of the office. During the last year, there were 694 felonies referred to the office for prosecution. Of these, the most common were burglary, theft and assault. There is not a uniform police report in use by all law enforcement agencies in the jurisdiction.

Criminal charges are brought by the police agencies by filing charges directly with the District Court. There is no screening performed prior to the preliminary hearing. The prosecution function is bifurcated in Fayette County, as is the court function. The District Court determines bail and hears the preliminary hearings, which are adversarial in nature. The Fayette County Attorney has exclusive jurisdiction in District Court. He does no screening of cases before they are filed in court by the police agencies. The District Court tries all misdemeanor cases, the prosecution of which is handled exclusively by the County Attorney. All County Attorney personnel serve on a part time basis.

The Commonwealth's Attorney receives cases in one of three ways. The most common procedure is for the District to forward the case file when a felony has been bound over to the Grand Jury after a preliminary hearing or waiver. Secondly, the Commonwealth's Attorney receives cases from police officers who seek direct indictments by the Grand Jury. In rare instances, cases are received by citizen complaint.

Once a case is bound over to the Circuit Court after the preliminary hearing, it is presented to the Grand Jury by the Commonwealth's Attorney, who has exclusive jurisdiction in the Circuit Court. If an indictment is returned by the Grand Jury, the Commonwealth's Attorney tries the case in Circuit Court.

At the present time, plea bargaining is possible in felony cases at two levels. Defendants can negotiate with the County Attorney before the case goes to preliminary hearing, or with the Commonwealth's Attorney after the case has been bound over from the District Court.

The judicial system is comprised of six Circuit Court judges who each sit for one month twice a year on felony cases. The month before their criminal rotation, they are assigned to the Grand Jury. The Grand Jury sits the first three Mondays of each month. Arraignments on indictments are held on the Friday following the Monday indictment. The cases are then set for trial during the next month.

In the routine case, the preliminary hearing is held two weeks after the arrest and the Grand Jury presentment three weeks after arrest. Because there is a lack of accurate statistics being kept by the Commonwealth's Attorney, it is difficult to predict the impact on staff needs and financial

planning of any recommended changes in the office. Information is available from the office of the Court Administrator, but these figures are difficult to use in making assessments of the Commonwealth's Attorney's office.

IV. ANALYSIS

The analysis of the Commonwealth's Attorney's office for Fayette County, Kentucky focused on problems inherent in the current bifurcated system of prosecution in the county, as well as ways to improve the case tracking system and the control of files in the office. The use of statistics was also examined and recommendations were made in the areas of budget and management.

A. Need for Prosecutor to Control the Charging Function

Systems in which the criminal charges are filed with the court by the police always leave the prosecutor in a reactive position. This deficit or liability is compounded in a jurisdiction such as Fayette County in which the office charged with prosecuting felonies does not have any input into a case until after the police have filed charges and until the County Attorney's office has disposed of the case at the District Court level.

According to a recent survey undertaken by the Bureau of Social Science Research of over eighty urban prosecutors, 85 percent of all offices surveyed review felony charges before they are filed with the court.¹ This practice is more efficient than the system in which the criminal process is initiated by the police filing charges with the court.

Jacoby² has developed a theory of prosecution as a process which centers around the prosecutor's ability to make the charging decision. It is part of the criminal justice system's organizational checks and balances that rightfully belongs to the prosecuting attorney. In a later study, Jacoby, Mellon and Smith³ validated the significance of the charging decision in establishing the prosecutor's overall policy. They note that the intake phase of the prosecutorial process determines the character of subsequent phases.

The intake and screening phase is the first process in every office and is the point at which the most crucial decisions--if charges are to be brought and the number and level at which each charge will be brought--are made. The intake decision is the key to all subsequent decisions. It anticipates whether the prosecution, and the defense in many cases, will be willing to negotiate the charges for a plea of guilty, whether the prosecution will seek a conviction on the counts, or whether the defendant will be eligible for alternative programs that may be available, such as deferred prosecution or diversion.⁴

Quality and equity in the discretionary system of justice form the yardstick against which all decisions must eventually be measured. Efficiencies and economies assume only secondary importance, since they measure how these ideals are reached. Equity is the prime issue because it is affected by the discretion exercised by the various parts of the criminal justice system. To control the effects of discretion, the criminal justice system has responded by establishing a system of checks and balances. Ideally, the discretionary decision of the law enforcement agencies to arrest and detain a suspect is checked by the authority of the prosecutor to review the arrest charges, change them if necessary, or even decline to prosecute. If the decision is made to go forward with the case to the point of trial, this action is subject to the decision of the court and/or jury, which acts as a balance and arbiter.

This finely honed system of checks and balances is unique to the United States. It relies on the active participation of all the component parts of the criminal justice system in an equal but independent manner. When one part becomes subservient to another--especially by transferring its decisionmaking authority to another--the system of checks and balances is degraded.

The police are faced with the responsibility for keeping the streets safe by placing alleged wrong-doers in the judicial system; the prosecutor is faced with the task of representing the community in all actions, of keeping the court process moving, and of eliminating those cases that are inappropriate or insufficient for the attention of the court. As the division of work has separated the two agencies, the goals of each have become more divergent, thereby creating some problems that assume more significance as the criminal justice system becomes more procedure-bound and complex. For this reason, prosecutorial review of the charging decisions made by police is crucial. The prosecutor must see to it that the evidence used by the police to make the arrest is sufficient legally to support the allegation that the state will make.

Jacoby, Mellon and Smith describe the intake process as it should function:⁵

Optimally, an efficient and effective intake process is one where all relevant information reaches the prosecutor as quickly as possible after an arrest or criminal event so that the facts of the case can be properly reviewed and analyzed prior to a charging decision.

The concept of the prosecutor having control of his own charging decisions has also been endorsed by several professional organizations, as well as the National Advisory Commission on Criminal Justice Standards and

Goals, which states in Standard 1.2:⁶

After a person has been taken into custody, the decision to proceed with formal prosecution should rest with the prosecutor.

The commission feels strongly that there should be a division of roles between the police and the prosecutor. While the decision to arrest a person is rightly a police decision, the decision to charge, and at what level, should be a function of the prosecutor. The Commission states that the police should have the authority to arrest and book a person suspected of a serious offense without prior approval of the prosecutor, but the process should go no further than that without the formal involvement of the prosecutor's office.

The National District Attorneys Association considers the decision to charge, and selecting the most appropriate and accurate charges, to be one of the prosecutor's greatest responsibilities. It also feels this to be the sole responsibility of the prosecutor. This is reflected in the standards promulgated by this organization concerning the charging and screening function. Standard 9.1 concerns the authority to charge:⁷

The process of determining and initiating criminal charges is the responsibility of the prosecutor. Within his discretion the prosecutor shall determine what charges should be filed, and how charges should be presented.

Standard 9.2 goes on to state:⁸

The prosecutor has the responsibility to see that the charges selected adequately describe the offense or offenses committed and provide for an adequate sentence for the offense or offenses.

In order to insure that the proper charge has been made, the prosecutor must have all available data concerning the event before him at the time he makes his charging decision. He should also consider such factors as the nature of the offense, the characteristics of the offender, the interests of the victim, whether the statute has been enforced with regularity in the

past, the possible deterrent value of prosecution, the probability of conviction, recommendations of the law enforcement agency and the presence of any mitigating circumstances. These are all things which must be weighed by the prosecutor before he makes a decision to charge a certain crime at a certain level. Only the prosecutor has all of the information necessary to make this decision, as some of the information used in coming to a decision involves policy considerations, of which the police are not aware and are not in a position to evaluate.

In addition to these Standards, Standard 8.1 also addressed this area:⁹

The decision to initiate or pursue criminal charges should be within the discretion of the prosecutor, excepting only the grand jury, and whether the screening takes place before or after formal charging, it should be pursuant to the prosecutor's established guidelines.

Screening is defined as the process by which a person is removed from the criminal justice system prior to trial or plea. The earlier in the process screening takes place, the more savings accrue to the system as a whole. Needless steps in the process are eliminated, thereby conserving resources for cases that should be in the system at further points along in the process.

The American Bar Association has also addressed the issue in Standards Relating to the Administration of Criminal Justice. Standard 3-3.4 deals with the decision to charge:¹⁰

- (a) The decision to institute criminal proceedings should be initially and primarily the responsibility of the prosecutor.

- (c) The prosecutor should establish standards and procedures for evaluating complaints to determine whether criminal proceedings should be initiated.

In the commentary to this section, the ABA goes on to point out that:¹¹

Whatever may have been feasible in the past, modern conditions require that the authority to commence criminal proceedings be vested in a professional, trained, responsible public official. The need for law-trained judgment to guide the exercise of the power to charge a citizen with a criminal act and to put the citizen under the heavy burden of defending himself or herself is discussed in Standard 3-2.1.

Standard 3-2.1 states:¹²

The prosecution function should be performed by a public prosecutor who is a lawyer subject to the standards of professional conduct and discipline.

When the charging decision is not made by the prosecutor, as it should be, the function is transferred to another agency, in this case the police department. The effects of this transfer are both predictable and widespread. The effects of transfer on the prosecutor are generally a loss of control, power and influence, and the adoption of a reactive "catch-up" style of operation in the next process step. As a result, the accusatory process assumes the added role of charge review as well as accusation. Some cases that never should have entered the system are disposed of at the preliminary hearing or are remanded to the lower court after grand jury presentations. The accusatory process then can be either pro forma or it can be a major dispositional vehicle. The result of the loss of control in the early stage is to let into the system cases of questionable merit, reduce the discretionary authority of the prosecutor to set the charge and concomitantly increase modifications to the original charges, require additional work in other process steps and generally divert some of the prosecutorial effort to correction, modification and disposition rather than trial preparation. The key distinction between having an intake function and not is that, without screening, the

resources are focused on modifying and adjusting existing charges rather than determining the original charge.

The effect of a lack of control over the intake stage was also noted by the ABA when it observed:¹³

The absence of a trained prosecution official risks abuse or casual and unauthorized administrative practices and dispositions which are not consonant with our traditions of justice.

The prosecutor's expertise and legal knowledge of what is needed to prove the guilt of a defendant in court cannot be used at the intake stage if that stage has been transferred to another agency. This knowledge should be employed at the police investigation level to strengthen cases while it is still possible to do so. A trained attorney's determination that additional witnesses should have been located, that investigative crime scene work to gather additional evidence should have been done, or that some other police initiative was indicated will not be timely when made by the assistant prosecutor preparing a case for hearing or trial weeks or months after the criminal event. The opportunity to consult with police immediately after the arrest, which permits more effective utilization of existing investigatory techniques and evidence gathering is lost if the prosecutor does not review charges before they are filed in court.

Also, without police cooperation in sharing information, no case can be screened for features which can lead to case weakness. Elements such as the relationship between the parties, the attitude of the complainant toward prosecution, or the poor quality of witnesses are thus unavailable to the

screening assistant. An experienced assistant can recognize that the charges are slated for eventual reduction or dismissal. However, no attempt to screen out these cases can possibly be made without prosecutorial review of the charges.

Another effect of the transfer of the charging function is the inability of the prosecutor to assess the facts of the case for accuracy. The conclusions stated by the police in court papers as established facts often turn out to be unsupported, and this legal insufficiency, when it is identified, is the cause for case dismissal. There is no way that an assistant prosecutor, without dialogue with the arresting officer, can isolate such a situation. By the time this takes place under present procedures, the case has already been in the system for some time, and valuable time has been lost.

It is impossible, based only on a reading of the police report, for an assistant prosecutor to recognize the existence of constitutional problems relating to searches, confessions, or identification procedures which may either lessen chances for successful prosecution or destroy them completely. It is manifest that where such an impediment to conviction exists it would be a waste to assign a high priority to a case so flawed, even though the crime may be quite serious. It takes a conversation with the arresting officer to highlight these matters, and it should be done as early in the prosecution as possible.

In addition to these problems, the transfer of the charging function to the police denies the prosecutor the opportunity to identify those cases which require special attention or handling for successful prosecution. It is important that the bail recommendation made by the prosecutor at

arraignment be tailored, within constitutional limits, to the individual defendant and his case. Without complete information from the police involved, there is always the danger that inappropriate bail could be recommended.

The net effect of transfer of the intake function is to debilitate agency control over the subsequent process steps. As a result, the policy position of the prosecutor as first indicated in the intake process sets the course for the rest of his activities. When control over intake is missing, the agency is less capable of assuming a proactive stance. If early penetration of the system is prohibited, then both prosecution and defense are more dependent on the results of the activities of the police and the courts.

In the Commonwealth of Kentucky, the Commonwealth's Attorney has the duty to prosecute all felony cases. This duty necessitates being accountable for all phases of handling the cases. This accountability can only be achieved by the Commonwealth's Attorney being responsible for the decision whether to prosecute at or near the time of arrest.

It is the current practice in Fayette County for the law enforcement agencies to file all charges, misdemeanors and felonies, directly in the District Court. The County Attorney then receives the case and determines the next course of action, either a plea offer or a determination of probable cause at a preliminary hearing. In the case of felonies, if the case survives the preliminary hearing and is bound over to Circuit Court, the Commonwealth's Attorney will then receive the case for the first time. By this time, the public defender has been able to secure extensive discovery, due to the adversarial nature of the preliminary hearing.

This system is clearly unmanagable if the Commonwealth's Attorney is to have the capacity to control not only the intake of cases in his own office, but the screening of cases which never should have reached his office in the first place.

In felony cases, there is currently a duplication of the determination of probable cause. It is determined once at the preliminary hearing, then after the case is bound over from the District Court, probable cause is determined again by the Grand Jury. This duplication does not appear to be mandated by statute and is not required by Federal Constitutional decisions.

The majority of arrests in this jurisdiction are probable cause arrests by the Lexington Police Department. Few warrants are sought prior to arrest from the County Attorney or the District Court. The Lexington Police Department does use a uniform case report, the 235 report.

It is the recommendation of the Technical Assistance team that such a uniform report be developed for use by all law enforcement agencies in the jurisdiction. This should be done in conjunction with the court and the chiefs of the law enforcement agencies in the jurisdiction. An example of such a report is attached as Appendix B.

It is the recommendation of the Technical Assistance team that in the case of felonies, the District Court only make a determination on the questions of release and provision of counsel. This recommendation is premised on a judicial determination of probable cause based upon a complaint at the time of arrest. This could easily be accomplished by requiring that the 235 report be sworn to by the arresting officers. In this way, the requirement of Gerstein v. Pugh, 420 U.S. 103 (1975) that a judicial determination be made as to the reasonableness of an arrest could be satisfied.

This sworn 235 report should be filed in the District Court, with a copy to the County Attorney and to the Commonwealth's Attorney. This filing should be required within 24 hours of arrest.

Upon filing of the sworn 235 report, the case should be presented to the Commonwealth's Attorney for a determination as to the next course of action. At this time, the Commonwealth's Attorney should either accept the case for presentation to the Grand Jury as a felony, recommend that the case be reduced to a misdemeanor and handled by the County Attorney in District Court, or refuse to accept the case and file a motion to dismiss. This procedure would be very similar to what is now being done by police officers who seek direct indictments by the Grand Jury. The decision made by the Commonwealth's Attorney in these cases should be documented in writing with reasons.

The Technical Assistance team recommends that the Commonwealth's Attorney initially publish a list of those cases which will go directly to the Grand Jury under this system. The following types of cases were suggested as those that should be referred directly to the Commonwealth's Attorney:

1. All Class I narcotic dealers
2. Persistent felony offenders under special statutes
3. Homicide cases
4. Rape cases
5. Kidnapping cases
6. Extortion
7. Persistent felony offenders
8. Corruption cases

This list is not total, nor is it meant to be inclusive. However, a list of this type should assist greatly in the transition to the new system.

The police agencies visited by the Technical Assistance team expressed a willingness to cooperate with the Commonwealth's Attorney in working out a satisfactory procedure for more direct referrals to the Grand Jury in felony cases. This spirit of cooperation should be utilized by the Commonwealth's Attorney in bringing about these changes.

While these recommendations are being implemented, the Commonwealth's Attorney will need to offset the extensive discovery being accomplished by the public defender at the preliminary hearing. The current practice does not call for the Commonwealth's Attorney to routinely receive a copy of the transcript of the preliminary hearing. This leaves the prosecutor's office at a decided disadvantage concerning case strategy and other valuable information which could be obtained from the record. It is the recommendation of the Technical Assistance team that in the interim before the Commonwealth's Attorney achieves complete control of the intake function for his office, he routinely receive the transcript of the preliminary hearing. The fact that the cost of producing a transcript for each preliminary hearing will probably be prohibitively high serves to highlight the necessity for a speedy assumption of the intake and screening function by the Commonwealth's Attorney.

The Commonwealth's Attorney should assign one assistant to the intake and screening function. Initially, this should probably be the assistant with the most experience in the office. This person will be able to communicate with the police officers and will have the legal experience necessary to evaluate cases and determine the proper course of action for each one.

It is recommended that the Commonwealth's Attorney hire one additional assistant for the office to compensate for one assistant being assigned to intake. One of the current secretaries should be assigned to the intake assistant. Her duties will include logging in cases and making appointments for police officers to see the intake assistant. They will also include filing the supporting memoranda for decisions made and keeping statistics for the intake function. This secretary will also prepare the indictment as directed by the intake attorney.

The intake assistant should be in charge of Grand Jury presentations and direct any other attorneys assigned to assist him in those presentations.

If, for any reason, the Commonwealth's Attorney feels that a preliminary hearing would be advisable in a case, it should be assigned to one assistant to be handled. It would be the duty of that assistant to coordinate a plea or presentation to the District Court with the County Attorney.

B. Case Tracking and File Control

At the present time, the case jacket is being used as a calendar system for the cases. While the case jacket itself is well designed, its use as a calendar is not efficient in that the file is often in the possession of the attorney who has been assigned the case. It is recommended that a two card system be set up for case tracking.

Only two file cards are necessary to track cases using this system. These cards may be of any design, but a suggested format is attached as Appendix C. This form is designed in three parts with a snap-out carbon paper in between each part. By using the snap-out carbon paper, it is not necessary to type duplicative information. For maximum effectiveness, all of the information should be entered when a case is presented at the intake stage. The intake assistant may also record remarks as to why a case is being dismissed or downgraded.

The two cards should then be filed in their respective locations. The first copy should be filed alphabetically to become the active defendant index file. When cases are closed, the card may be removed to a closed portion of the file. This will become a quick reference as to whether a defendant has been through the criminal justice system before.

The second card should be filed according to the next event and then by date within that type of event. This file becomes the master calendar record. One section should contain cases pending Grand Jury presentation, another those pending trial and a third section for cases pending sentencing. Other sections may be added as needed. Under the recommended system, the clerical employee would pull the appropriate cards from the alphabetical file and the calendar file and would post information to these cards.

Each card has three sections. Information about the defendant and the overall case is typed in the first section. The second part contains information regarding complaints, court numbers, charges and disposition of charges. The back of the card contains both the event history and the sentencing information. The office of the Commonwealth's Attorney may choose to change this format, however, this general type of data has been found to be useful in many places.

These index references should be accessible to everyone in the office. In addition, a tickler system should be used to indicate important future case events so that the assigned assistant can be kept informed.

At the time of the technical assistance visit, the office was purging and closing files for storage in the Department of Archives. This should be a standard practice on a regular basis. Notations are currently being made when a case is sent to the Archives. This should continue, as well as the current practice of notating the file location on the index card for retrieval reference.

In addition, the Commonwealth's Attorney should require an inventory of all outstanding arrest warrants for felony cases on at least an annual basis. Those that have legal impediments to further prosecution should be dismissed. The law enforcement agency responsible should be able to account for those that remain outstanding in regard to efforts to secure arrests.

Finally, the office should create a file drawer for active cases and another one for inactive cases. Upon disposition, a case file should be moved to the inactive drawer for the remainder of the year, pending removal to the Archives.

C. Statistical Information

At the present time, statistical records which could be of use to the Commonwealth's Attorney are generated by several components of the criminal justice system. He has need of data concerning the number and category of felony arrests in the jurisdiction, the calendar and records of the District Court felony case dispositions, and the reasons for those dispositions and the number and date of all pending felony cases in the jurisdiction. In order to make use of this information which is being generated, the Commonwealth's Attorney should request the monthly statistical information from the County Attorney, the Clerk of the District Court, the Court Administrator and the police departments.

This information will give the Commonwealth's Attorney an indication of where backlogs exist, and also will serve as a guide to disparity in dispositions and the reasons for them. This information can also be used by the Commonwealth's Attorney to justify budget requests, especially if the intake system recommended in part A is adopted.

These reports should be reviewed carefully each month by the Commonwealth's Attorney for discrepancies, which should be noted and reconciled.

D. Budgeting and Management

At the present time, the Commonwealth's Attorney's office receives state funding with a county supplement. The state budgetary process uses the Prosecutors Advisory Council to make recommendations and adopts a two year funding plan. The county budget is prepared from requests by the various agencies and is submitted to the mayor and city council for approval.

For the 1980-81 year, the budget for the Commonwealth's Attorney was \$233,000 from the state and \$36,000 from the county. The county funds were used primarily to supplement assistant's salaries and for expenses such as the neighborhood watch program.

It is the recommendation of the Technical Assistance team that the Commonwealth's Attorney develop a systematic budget procedure in order to maximize input into the state and county budgetary processes. He should prepare a functional budget detailing the need for a trial attorney for every judge. There is currently a need for one assistant to be assigned to the intake duties and one to handle persistent offenders under the career criminal concept.

Rather than employ its own investigators, the office of the Commonwealth's Attorney currently uses the Detective Division of the Lexington Police Department for investigation. It is recommended that the Commonwealth's Attorney request that two investigators be included in the next budget for the office. The office has a need for its own investigators, rather than relying exclusively on police detectives. It is suggested that the main function of these investigators be to carry out follow-up investigations to prepare cases for trial or other disposition. The Commonwealth's Attorney may also wish to use his investigators to supplement police department efforts in specialized areas, such as

political corruption, organized crime or consumer fraud.

The office uses one paralegal to act as the police liaison and coordinate witnesses. It is suggested that this person could take on the role of more of a victim/witness coordinator, a duty which is in line with the present duties being performed.

The Technical Assistance team would like to commend the Commonwealth's Attorney on his extensive use of volunteers. This should be continued and encouraged. It is suggested that office needs periodically be inventoried and compared with the available volunteer personnel in order to ensure that those needs are being met and that the skills of the volunteers are being used in the most effective and efficient manner.

Lastly, it is suggested that the Friday noon meetings be reinstated. These meetings were found to be important and valuable by the staff, especially when attended by the Commonwealth's Attorney. Recognition of their importance by the Commonwealth's Attorney would enhance the office morale.

V. CONCLUSIONS

This analysis and these recommendations are presented with the realization that the Commonwealth's Attorney already has an effective working organization. Those areas that are highlighted in this report are those which the Commonwealth's Attorney next wishes to address in his endeavor to make the office more responsive to the needs of his jurisdiction.

The current practice in Fayette County does not allow the Commonwealth's Attorney to review felony charges before they are filed in the District Court. His office learns of the case when the papers are sent from the District Court after a bindover to the Circuit Court. This system is clearly not to the Commonwealth's Attorney's benefit since he needs to control not only the intake of cases in his own office, but the screening of cases which never should have reached his office in the first place.

It is the recommendation of the Technical Assistance team that in felony cases, the District Court only make a determination on the questions of release and provision of counsel. In order to effectuate this change, it will be necessary for the police to obtain a judicial determination as to the reasonableness of an arrest, as mandated by Gerstein v. Pugh, 420 U.S. 103 (1975). This can be accomplished by requiring that the police department's 235 report be sworn to by the arresting officers. This sworn 235 report should be filed in the District Court within 24 hours of arrest, with a copy to the County Attorney and the Commonwealth's Attorney.

A uniform report of this type, either the 235 report in use by the Lexington Police Department, or a similar form such as the one attached as Appendix B, should be developed for use by all police agencies within the jurisdiction.

After the case has been presented and the sworn 235 report filed, the Commonwealth's Attorney should make a determination as to whether to accept the case for prosecution as a felony and present it to the Grand Jury, recommend that the case be reduced to a misdemeanor and handled by the County Attorney in District Court, or refuse to accept the case and file a motion to dismiss.

For a smooth transition to this system, it is recommended that the Commonwealth's Attorney initially publish a list of those cases which will go directly to the Grand Jury under the new system. This list should include the most serious cases, as well as felonies by repeat offenders, as defined by repeat offender statutes.

Until these changes can be fully implemented, it is suggested that the Commonwealth's Attorney should routinely receive transcripts of all preliminary hearings which result in a bindover to Circuit Court so as not to be placed at a disadvantage in further court proceedings.

Upon implementation of the new intake system in the office, it will be necessary for the Commonwealth's Attorney to acquire one additional assistant. This will enable him to assign one assistant full time to the intake function, preferably the assistant with the most experience in the office.

In the area of case tracking and file control, there are two suggestions which the Technical Assistance team would like to make. First, in place of the case jacket as a calendar system, a two card system should be set up and used for tracking cases. Under this system, one card would be filed alphabetically by defendant name and the other card would be filed by date of the next event in the case. This system is fully explained in part B of this report.

In addition, a tickler system should be used to indicate important future case events so that the assigned assistant can be kept informed.

The current practice of purging and closing files for storage in the state Archives should be continued on a regular basis. The Commonwealth's Attorney should also require an inventory of all outstanding arrest warrants for felony cases at least once a year. Appropriate action should be taken at that time on each one.

Finally, the office should create a file drawer for active cases and another one for inactive cases. Upon disposition, a case file should be moved to the inactive file drawer for the remainder of the year, pending removal to the Archives.

The Commonwealth's Attorney should make arrangements to receive all statistical reports generated by the Court Administrator, the Clerk of the District Court, the County Attorney and the police departments in the jurisdiction. These reports should be used by the Commonwealth's Attorney for such purposes as justification for budget requests, identification of areas of backlog, and discrepancies in dispositions.

It is the recommendation of the Technical Assistance team that the Commonwealth's Attorney develop a systematic budget procedure in order to maximize input into the state and county budgetary process. He should prepare a functional budget detailing the need for an additional attorney when the intake system is implemented. He should also request two investigators to be employed directly by the office, in order to avoid any possible conflicts which might arise under the present system of detailing two investigators from the Lexington Police Department.

The paralegal's role in the office could be expanded to include victim/witness duties, as well as police liaison and witness procurement. It is also recommended that the needs of the office be periodically assessed in light of the available volunteer manpower, to determine whether the volunteers are being used as effectively as they could be.

Lastly, it is suggested that the Friday noon meetings be reinstated as a management tool in the office.

If these recommendations and suggestions are implemented by the Commonwealth's Attorney, the result will be a more effective office, with a resultant savings in taxpayer dollars, not only in the prosecutors office, but in the court system as well.

FOOTNOTES

1. Joan E. Jacoby, Leonard R. Mellon, and Walter F. Smith, "Policy and Prosecution" (Washington, D.C.: Bureau of Social Science Research, Inc., 1980).
2. Joan E. Jacoby. "The Prosecutor's Charging Decision: A Policy Perspective" (Washington, D.C.: Law Enforcement Assistance Administration, 1977).
3. Jacoby, Mellon, and Smith, "Policy and Prosecution".
4. Joan E. Jacoby, The American Prosecutor: A Search for Identity (Lexington, Mass.: Lexington Books, 1980), p. 109.
5. Jacoby, Mellon and Smith, "Policy and Prosecution", p. 38.
6. National Advisory Commission on Criminal Justice Standards and Goals, Courts (Washington, D.C.: Government Printing Office, 1975), p. 24.
7. National District Attorneys Association, National Prosecution Standards (Chicago, Illinois: National District Attorneys Association, 1977), p. 131.
8. Ibid.
9. Ibid., p. 125.
10. American Bar Association Standing Committee on Association Standards for Criminal Justice, American Bar Association Standards Relating to the Administration of Criminal Justice, 2nd Edition (Washington, D.C.: American Bar Association, 1978), p. 8.
11. Ibid., p. 9.
12. Ibid., p. 3.
13. American Bar Association Project on Standards for Criminal Justice, Standards Relating to the Prosecution Function and the Defense Function (New York: Office of Criminal Justice Project, Institute of Judicial Administration, 1971), p. 49.

APPENDIX A

DAVID HOWARD BLUDWORTH

OFFICE ADDRESS: State Attorney's Office, Palm Beach County Courthouse, P. O. Box 2905,
West Palm Beach, Florida 33401

OFFICE TELEPHONE: (305) 837-2454

AGE: 39 FAMILY: Wife - Judi, formerly of High Point, North Carolina
Three children - Jessica, Melanie and Brent

EDUCATION: B.A.E. Degree, University of Florida 1962 (History, Political Science);
J.D. Degree in Law, University of Florida, 1964.

CHURCH: Member, Haverhill Baptist Church

WORK EXPERIENCE: Assistant State Attorney General for Florida.
Assistant County Solicitor for Palm Beach County.
Appointed State Attorney for Monroe County, Florida, by the Governor of Florida.
Has been appointed a Special Prosecutor in several Florida circuits.
Assistant State Attorney, Palm Beach County, Florida.
Municipal Judge, Jupiter, Florida.
Elected State Attorney, Fifteenth Judicial Circuit of Florida in 1972.

TEACHING EXPERIENCE: Business Law and Constitutional Law, University of Maryland,
Overseas Division.
Criminal Law and Evidence, Palm Beach Jr. College and Florida Atlantic University.
Palm Beach Atlantic College, Business Law, Constitutional Law & Political Science.

ORGANIZATIONS: Member of American Bar Association, Florida Bar Association, Palm Beach
County Bar Association, Young Lawyers Section of the American, Florida and
Palm Beach County Bar Associations.
National District Attorneys Association.
Florida Prosecuting Attorneys Association, Rotary Club, VFW, American Legion,
Jaycees, Lake Worth Valley Scottish Rite, York Rite Commandery, Amara Shrine
Temple.

PUBLICATIONS AND LECTURE EXPERIENCE:

Amicus Curiae Brief for Florida Prosecuting Attorneys Association on the new
death penalty in Florida.
Author, Bill of Rights for Mobile Home Owners.
NDAA - Delinquency Programs for the Prosecutor's Office.

MILITARY: Sixteen years commission service, two years active duty, one year overseas
in Korea.
Presently lieutenant colonel in U. S. Army Reserve.

R E S U M E

Andrew L. Sonner
205 West Montgomery Avenue
Rockville, Maryland 20850
(H) 762-5112 (O) 279-8211

Date of Birth: July 11, 1934
Married: Sandra Shoemaker - 1958
Six children aged 9-17

EDUCATION BACKGROUND

Montgomery County, Maryland Public Schools
American University - B.A. Government & Politics 1957
American University Law School - J.D. 1963

EMPLOYMENT

Teacher, United States History, Walter Johnson High School,
Bethesda, Maryland, 1958-1964

LEGAL EXPERIENCE

Private practice of law - 1964-1966
Deputy State's Attorney - 1967-1970
State's Attorney - 1971-present

MANAGEMENT EXPERIENCE

As State's Attorney, I am an elected official in charge of a
68 person office composed of 28 lawyers, 11 paralegals, 3
special investigators, and 26 support personnel. The office has
an annual budget of \$1,700,000, and is responsible for the trial
of all criminal cases within Montgomery County, Maryland, a
suburb of Washington, D.C., with a population of 600,000. We
are divided into a Circuit Court Division, a District Court Unit,
a Juvenile Court Unit, a Major Fraud Investigative Unit, and a
Family Support Unit.

Grants Administered

As the State's Attorney, I have applied for and received on behalf
of the office a number of grants from the Law Enforcement
Assistance Administration and the Department of Health, Education
and Welfare.

1. Paralegal Support. This three-year grant established a
screening unit for misdemeanors in the District Court.
Trained paralegals interview complainants and dismiss, divert,
or approve cases arising as a result of citizen complaints.
2. Major Fraud Investigative Unit. This two-year grant created
an investigative unit directly responsible to the State's
Attorney to investigate economic crime and governmental
corruption.
3. Pre-Trial Screening Unit. This three-year grant created a
unit composed of two experienced lawyers who evaluate

serious criminal cases and engage in plea negotiations. It received a County Achievement Award from the National Association of Counties.

4. Victim/Witness Unit. This grant which was awarded two years ago and has one year remaining, created a six-person unit to assist victims and witnesses of crime in dealing with the criminal justice system.
5. Major Offender Bureau. This grant which is presently in its second year created a special unit composed of four lawyers and four support personnel to work closely with the Montgomery County police to prepare and prosecute career criminals who are charged with certain violent street crimes.
6. Family Support Unit. This unit resulted from a grant from the Department of Health, Education and Welfare to assist the office in pursuing absent parents and spouses to obtain support for dependents. It is presently in its third year and created a unit composed of two lawyers, four paralegals, and four support personnel.
7. Prosecutors' Management Information System. This grant recently was awarded to the Montgomery County Government's automated data processing division as a result of my efforts. It will enable the office to monitor statistically its caseload and will generate information which will assist in the better management of the office.

MANAGEMENT TRAINING AND EXPERIENCE

Graduate of the Federal Executive Institute, 1976. Completed this three week intensive course at the Institute's Headquarters in Charlottesville, Virginia. The course teaches management and executive skills to upper level federal civil servants and a few selected local government officials.

Consultant for National Center for Prosecution Management. Gave technical assistance to offices in Virginia, Tennessee, Ohio, Kentucky, New York, Michigan, California, Oregon, Massachusetts, Pennsylvania, Missouri, and Louisiana.

TEACHING AND LECTURING

Instructor, American Academy of Judicial Education, 1970-1976. Lectured to and conducted seminars with judges on search and seizure, confessions and admissions, sentencing, post-conviction remedies and recent decisions.

Professorial Lecturer, American University Law School, 1971-present. Lecture on a semi-regular non-paid basis to law students on trial tactics, prosecution, and criminal law.

Part-time Lecturer, University of Maryland, 1975-present Instruct paralegals on Introduction to Law, Criminal Law, and Trial Practice.

PROFESSIONAL ASSOCIATIONS

National District Attorneys Association, 1967-present. Member of the Board of Directors 1977-present. State Representative 1975-1976. Member of Finance Committee 1979. Chairman of Arbitration and Mediation Committee 1977-1978.

Maryland State's Attorneys Association. Associate Member 1967-1970. Board of Directors 1971-present. President 1973-1976. As President managed all training programs, conventions, and the legislative effort with the Maryland General Assembly.

Maryland State Bar Association, 1964-present. Member Section Council, Criminal Law Section 1978-present. Chairman Section Council 1978-1979. As Chairman am responsible for programs at semi-annual conventions and State Bar's response to legislation involving criminal law and procedure.

American Bar Association, 1964-present.

Editorial Board for Law Notes, Vice-Chairman Criminal Law 1978-present.

Montgomery County Bar Association, 1964-present

American Judicature Society, 1969-present

REFERENCES

Prosecution

Honorable Stephen H. Sachs
Maryland State Attorney General
State Law Department
One South Calvert Street
Baltimore, Maryland 21202
301-383-3720

Honorable Lawrence V. Kelly, President
Maryland State's Attorneys Association
State's Attorney for Allegany County
County Office Building
Prospect Square
Cumberland, Maryland 21502
301-777-5962

Members Board of Directors National District Attorneys Association

Judicial

Honorable Charles E. Moylan, Jr.
Civil Courts Building, Room 626
111 North Calvert Street
Baltimore, Maryland 21202
301-727-2470

EVENT HISTORY

DATE	TIME	TYPE	RSLT	SOURCE/REASON	DATE	TIME	TYPE	RSLT	SOURCE/REASON

TERM BEGINS:		SENTENCE								
CONFINEMENT					FINE		PROBATION			
L	PERIOD	TYPE	SUS. PER.	PCP	AMOUNT	AMT. SUS.	PERIOD	TYPE	SUS. PER.	SPECIAL TERMS

END