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Legislative Research Department

July 31, 1975

M I N U T E S

SPECIAL COMMITTEE ON JUDICIARY

July 10, 1975

Room 514 - State House

10:00 a.m.

Members Present

Representative John Hayes, Chairman
Senator J. C. Tillotson, Vice-Chairman
Senator Paul Hess
Senator Cale Hudson
Senator Jim Parrish
Representative William Cather
Representative Ben Foster
Representative Patrick Hurley
Representative David Mikesic
Representative Ted Templar

Staff Present

Walter L. Smiley, Jr., Legislative Research Department
Bob Alderson, Revisor of Statutes Office

Conferees

Dr. Richard E. Zody, Director, Center for Urban Studies
John J. Douglas, Dean of National College of District Attorney's,
Houston, Texas
Jim Reardon, Kansas County and District Attorney's Association
Fred Holliman, Administrative Assistant for Representative
Donn Everett
Gene Olander, Chairman KCDAA Legislative Committee
Margaret Jordan, Chairman KCDAA Continuing Legal Education
Commission
James Fetters, Immediate Past President KCDAA, Smith County Attorney
Keith Sanborn, Vice-President National District Attorney's
Association
Chief Justice Harold R. Fatzer
Attorney General Curt Schneider

Conferees (Continued)

Adrian M. Farver, GCCA Director
William L. Albott, Director KBI
Robert Tilton, Kansas Sheriff's Association
Bill Gough, Kansas Retail Council
Ken Kline, Kansas Bar Association
David Thompson, County Attorney, Independence, Kansas
Louie Barney, Assistant County Attorney, Pittsburg, Kansas
Steve Opat, County Attorney, Abilene, Kansas
Bob Nicholson, Miami County Attorney
Larry Mears, Atchison County Attorney
John Sutton, Reno County Commission
Representative Robert Frey

The Chairman called the meeting to order. He informed the Committee that the agenda for the meeting would be Proposal No. 26 - Statewide District Attorney.

Dr. Richard E. Zody, Director, Center for Urban Studies, Wichita State University, was introduced to the Committee. Dr. Zody told the Committee that the 1972 Legislature implemented on a trial basis the D.A. concept in the four-most populated counties in Kansas and that in 1973 LEAA provided funding for a study of county attorneys in Kansas. A copy of this study is appended as Attachment I. The following is a brief summary of Dr. Zody's oral comments.

Dr. Zody told the Committee that the study pinpointed serious problems. Dr. Zody mentioned that several neighboring states have adopted the D.A. concept since the 1972 changes. Dr. Zody stated that his study shows that the office of county attorney tends to be used as a training ground for the judiciary. He said that many of the county attorneys who responded to the survey came directly from school without any experience. Dr. Zody stated that there was a definite need for a training program for county attorneys and their assistants. He further stated that the low salaries seem to be one of the major factors influencing those who do not make a career of the office. (He found that the mean 1972 salary for those county attorneys who participated in the survey ((71 CA's did so) was \$6,682)). He said that many of the county attorneys were considered "part-time" officials, but many actually worked full-time and maintained a private practice to supplement their CA income. He concluded that many county attorneys are spending long hours for little pay.

Dr. Zody stated that many of the county attorneys felt that they could not really be effective on a part-time basis. He said that no county attorney reported a provision for orientation or training (beyond courtroom observation) for county attorneys or their assistants. He stated that lack of training and lack of experience combine to erode the quality of prosecution in Kansas.

Dr. Zody stated that about 70% of the county attorneys responding to their questionnaire favored the full time prosecuting attorney system.

Dr. Zody offered the following recommendations:

1. The State should assume all responsibilities for the operation and maintenance of the prosecution system.
2. Legislation be drawn which abolishes the present "systems" and establishes a statewide D.A. system which would include provisions for recruitment, selection, training and retention through a special merit system; funding consistent with the needs of a professionalized operation; and enough flexibility to allow temporary assignment of personnel to meet changes in the caseload.

Dr. Zody was asked how specialized education training should be provided for county attorneys. He stated that this could be provided by the Prosecutors Training Council.

In response to a question, Dr. Zody stated that he felt that all law enforcement officials needed "refresher" courses from time to time, yet county attorneys presently are not able to do this.

In response to a question, Dr. Zody said that it was probably true that most of the resistance to the idea of a D.A. in each judicial district came from the small communities, but he felt that these people did not always have all the information about the idea.

The next conferee introduced to the Committee was John J. Douglas, Dean of the National College of District Attorneys. Dean Douglas told the Committee that he was mostly concerned with training programs. He stated that continuing education was necessary for the attorney. He said that specialization in the law was a fact, that there were more and more areas of law that were not even in existence a few years ago. Dean Douglas said that he could not accept the notion that a person could come out of law school and be prepared to handle all aspects of the law. He stated that he felt that using the county attorney's office as a training ground for the young lawyer

just out of the law school was unfair to society. He stated that many national organizations urge the ongoing training of prosecutors. He stated that there was much nationwide support of the kind of program that was being suggested for Kansas. He said that he felt that more qualified attorneys would stay in the field if they were adequately supported.

Mr. Jim Reardon, Kansas County and District Attorneys' Association, was introduced to the Committee. He distributed a packet of information to each Committee member (copies of this information are on file with the Legislative Research Department). Mr. Reardon explained to the Committee some of the techniques that his organization has been using in a statewide training program. He stated that federal funds were running out and that the state would need to establish some kind of program if this training were to continue. He stated that his organization had developed a five-year plan for implementing various goals and standards, and then discussed the plan.

Ms. Margaret Jordan, Chairman KCDAA Legislative Committee, was introduced to the Committee. She noted that the D.A. plan should not be restricted only to urban areas. Ms. Jordan pointed out that prosecutor liability was also a problem, and that there were no funds provided for defenses in such cases. Ms. Jordan stated that she would have to agree with the testimony already before the Committee. She submitted a "Progress Report" from the D.A.'s office in the 10th Judicial District (Johnson County). This report is appended as Attachment II.

Mr. Fred Holliman, Administrative Assistant to Representative Donn Everett, was introduced to the Committee. Mr. Holliman read Representative Everett's statement (see Attachment IIA) and gave a brief explanation of the bill.

Mr. Gene Olander, Chairman KCDAA Legislative Committee, was introduced to the Committee. Mr. Olander stated that he supported the D.A. system for the reasons previously discussed.

Mr. Keith Sanborn, Vice-President of the National District Attorney's Association and District Attorney from Wichita, was introduced to the Committee. Mr. Sanborn stated that he felt that the question concerned the desired quality of justice in Kansas. He said that he fully supports the D.A. system.

Afternoon Session

Attorney General Curt Schneider was introduced to the Committee. Attorney General Schneider told the Committee that the Attorney General's Office was in full support of the D.A. plan. He stated that this was the only way Kansas was going to have an adequate system. He indicated that relations between

County Attorneys and the AG's office have generally been coordinated and harmonious. However, Attorney General Schneider noted that he had recently issued an opinion (No. 75-43) in which he held that county commissioners had no statutory obligation to fund appeals to the Kansas Supreme Court when taken by the county attorney. The Attorney General's Office lacks the resources to take over all criminal appeals, Schneider said.

The next conferee was Mr. Adrian Farver, Executive Director of the Governor's Committee on Criminal Administration. Mr. Farver said that he was very much in favor of this plan and that it represented a step toward a higher degree of professionalization in law enforcement. He said that he had had the personal experience of becoming a county attorney right out of law school. To require experience, then, is desirable, Mr. Farver stated. According to Mr. Farver, a survey conducted by GCCA indicated that about 66% of the general population favored a D.A. type plan, whereas 6% opposed such a plan. He stated that he felt that the D.A. plan would be a great improvement over the present county attorney plan.

H. R. Fatzer, Chief Justice of the Kansas Supreme Court, was introduced to the Committee. Justice Fatzer stated that he felt that generally this was a good thing for Kansas. Justice Fatzer said that he felt that many cases were reversed as a result of, among other things, an inexperienced prosecutor. It was his opinion that the person who tries a case is better qualified to handle the appeal and should do so. Prosecutors should be experienced in criminal law, he stated. The Chief Justice concluded by reiterating his support of H.B. 2372.

Colonel William L. Albott, Director KBI, was introduced to the Committee. Colonel Albott spoke from a prepared statement, a copy of which is attached. (See Attachment III). He supported the bill, and said that he felt that Kansas needs full time prosecutors as well as full time defense attorneys.

Representative Robert Frey was introduced next, and spoke in opposition to the proposal. A copy of his statement is attached (See Attachment IV). Representative Frey said that the Committee should be made aware of some of the negative effects that he felt would result if this bill is passed into law. Representative Frey stated that he felt that many goals could be accomplished by adequate compensation for the duties performed. He stated that he could not support a change merely for the sake of change.

Robert Tilton, Kansas Sheriff's Association, was introduced to the Committee. Mr. Tilton stated that his organization voted to endorse the D.A. plan as embodied in H.B. 2372. He indicated that he felt law enforcement officials on the whole support this bill.

Next to appear was Mr. Bill Gough, representing the Kansas Retail Council. He reflected the Council's support for H.B. 2372 and noted that the Council has 800-900 members in the state.

Mr. Ken Kline, of the Kansas Bar Association, was then introduced to the Committee. He distributed copies of a resolution endorsed by the Executive Committee of the Bar Association. A copy of the resolution is attached. (See Attachment V)

The next conferee, Mr. John Sutton (President of the Kansas County Commissioners' Association), said he felt H.B. 2372 is basically a good bill. He also indicated that if counties are to pay for Assistant D.A.'s, then the counties and their commissioners should receive legal defense. He felt the bill would receive greater support in western Kansas if this amendment were adopted.

The next conferee to be introduced was Mr. Bill Thompson, County Attorney for Montgomery County. Mr. Thompson supported H.B. 2372, and urged the Committee to extend the D.A. plan to at least 10-15 of the heavier caseload counties, even if the Committee did not approve the plan for the whole state. In response to a question about the qualifications for a D.A., Mr. Thompson noted that someone not interested in law enforcement would not seek a job as D.A. He indicated that the present system and the present pay scale penalize the attorney interested in law enforcement. Mr. Thompson indicated his willingness to run again for county attorney should H.B. 2372 not pass, citing courtroom experience and respect from fellow lawyers and from the general public as sufficiently motivating.

Mr. Louis Barney, Assistant County Attorney of Crawford County was the next speaker. He noted that he was speaking for the Crawford County Attorney's office. He expressed a view that the present system encourages plea-bargaining. If county attorneys had more staff available, and were full time, then he felt plea-bargaining might be used less frequently. He felt a career D.A. was desirable, but a career county attorney could not occur under the present system. Mr. Barney also indicated that county attorneys and their staff have difficulty in finding time to attend training seminars.

The next conferee was Mr. Steve Opat, County Attorney of Dickinson County. He noted that to date in 1975, he had handled 199 cases in county court, whereas in 1974, the office handled 311 such cases. In the district court, the office handled 33 felony cases in 1974, compared with 34 cases so far in 1975. His main concerns, he said, were salary and the multiplicity of duties that county attorneys presently have. Mr. Opat noted that various ethical conflicts may arise for the county attorney who maintains a private practice. He felt that the D.A. plan would solve the monetary and ethical problems

of many county attorneys. The longer tenure in office would avoid constant pressure from the public, he noted.

Mr. Bob Nicholson, County Attorney of Miami County, was the next speaker. He said that his office handled 764 cases (not including non-support cases) in 1974. He indicated that the case load prevented him from any real private practice. He said that he "farms out" work as county counsellor. Mr. Nicholson voiced support for H.B. 2372.

The next speaker, Mr. Jim Fetters (County Attorney of Smith County), indicated that his judicial district has special geographical problems. He estimated that about 50% of his time was spent as county attorney, and indicated that one person could probably prosecute all the criminal cases in the 17th judicial district if the person rode the circuit. An assistant D.A. could handle the duties of the county counsellor, Mr. Fetters indicated.

The final conferee of the day was Mr. Larry Mears, County Attorney of Atchison county. He noted that an occasional case may consume a disproportionate amount of time, which consequently encroached upon other cases in which the office may be involved. He also remarked that a part-time county attorney has no way of being involved in the day-to-day operations of the county, yet the county attorney must approve county bills, etc. H.B. 2372 would be a step toward the solution of these difficulties, Mr. Mears felt.

The Chairman thanked the conferees for appearing, announcing that the next meeting would be July 31 and August 1. He then asked the Committee for suggested meeting dates to take up Proposal No. 65 - Decriminalizing Marijuana. After some discussion, it was decided to take up that subject on October 30, 1975. The Chairman then adjourned the meeting.

Appended to the minutes as Attachments VI-IX are letters submitted by the following persons:

Mr. Jay Don Reynolds, Gray County Attorney
Mr. Patrick J. Reardon, Leavenworth County Attorney
Mr. Gary Nafziger, Jefferson County Attorney
Honorable John W. Brookens, District Judge, Second
Judicial District

Prepared by Walter L. Smiley, Jr.

Approved by Committee on:

(Date)

return to go ATTACHMENT

DRAFT COPY

KANSAS COUNTY ATTORNEYS: A SURVEY ANALYSIS

PREPARED BY

THE CENTER FOR URBAN STUDIES

WICHITA STATE UNIVERSITY

WICHITA, KANSAS

Dr. Richard E. Zody

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Mr. Ray Trail, and

Mr. William Wurtz, Jr.,

Research Assistants

FOR

THE KANSAS COUNTY ATTORNEYS ASSOCIATION

AUGUST, 1973

RECOMMENDATIONS

These data present a vivid picture of an office which is of major importance to the effective functioning of government. However, this picture is one of a serious crisis, and it raises a serious question as to whether or not the State of Kansas and its entities are capable of effectively upholding the laws of this nation and state. Two major problems are documented by these data, a serious lack of funds and an archaic County Attorney "system."

It is apparent that funding for the Office of County Attorney is totally inadequate. During the years 1970, 1971, 1972, the total budgets of the County Attorneys increased at an average rate which is less than the average rate of inflation. There are a number of consequences of inadequate funding. There is little competition for the office, and turnover is high. It may be that prosecution suffers from this inexperience and may be unable, as one CA indicates, to recruit qualified personnel. While many of the CA's are part-time, the time they spend in the performance of their official duties belies this legal classification. Where CA's engage, as many out of economic necessity do, in private practice, it is questionable as to whether or not they can adequately fulfill the demands of the office. Unfortunately, these CA's have no choice. It should be stressed, however, that this criticism is not directed at the CA's, but at a "system" which mandates such a situation. Considering their backgrounds and educations, the salaries paid the CA's and their staff are totally inadequate. The average County Attorney makes less than the average employed Kansan.

As a result of inadequate funding, all areas of the County Attorney's office suffer--equipment, facilities, materials, and staff are inadequate for the tasks. Moreover, there is a high staff turnover. Legal resources are limited, and there is inadequate time to take care of administrative details. Training of staff is virtually non-existent. In effect, as a result of an archaic part-time "system" and inadequate funding, the Office of County Attorney is poor and poorly managed.

Obviously, few CA's can afford specialization, the press of duties are too great. Plea bargaining may be detrimental not only to the rights of the accused, but also to the obligations of the Office of County Attorney. The rate of plea bargaining is probably a function of a complex number of factors, most of which may be traced back to inadequate funding. For example, the CA has little time to regularly meet with or formally train law enforcement officials. As a result, basic elements of investigation may suffer and this may, in turn, detrimentally affect the prosecution of cases.

It is clear from the comments of the CA's, and the other data, that the present "system" is inadequate. In reality, Kansas does not have a County Attorney system, but 105 "systems." Given the growth of the state since the inception of the existing "systems," increased crime rates, and increased statutory duties, it is no wonder that there are serious inequities in the Office of County Attorney between counties and it is unreasonable to expect these "systems" to effectively function. If there is to be an effectively functioning prosecution system in the State of Kansas, some major modifications are necessary. Therefore, it is recommended that a Commission be established to consider the problems of the Office of County Attorney, and to make specific recommendations for legislation to the Kansas State Legislature. This Commission

should be particularly representative of County Attorney-experienced members. In the deliberations on its charges, the Commission should consider, among others, the following suggestions:

- not clear?*
1. That the State of Kansas assume all responsibilities for the operation and maintenance of the prosecution system.
 2. That legislation be drawn which abolishes the present "systems" and institutes a professionalized, statewide DA system; this legislation should include the following elements:
 - a. full professionalization: provisions for recruitment, selection, training, and retention through a special professional merit system.
 - b. provide funding consistent with the needs of a professionalized operation, not only in terms of salaries, but also in terms of staff, equipment, facilities, and materials.
 - c. provide a system which is flexible enough to permit the temporary assignment of personnel to areas which are experiencing temporary case overloads.

In effect, this Commission should develop legislation which recognizes that prosecution is a full time profession, just as crime is.

PREFACE

The preparation of this report involved the cooperation and assistance of a number of individuals. In particular, I would like to express my appreciation to Mr. Jan G. Banker, Executive Director of the Kansas County Attorneys Association, and to the members of the Board of Directors of the KCAA. I would also like to express my appreciation to the graduate research assistants, Ms. Coykendall, Ms. Gragg, Mr. Trail, and Mr. Wurtz, all of whom worked above and beyond the efforts normally expected of part-time workers. While these persons provided much advice and information, some of which I followed, the errors which may exist in this report are my responsibility.

Richard E. Zody, Ph.D.
Director, Center for Urban Studies
Project Director
August, 1973

INTRODUCTION

This analysis is based on data gathered during 1972 by the Kansas County Attorneys Association (KCAA). The data are a result of a mail survey of all Kansas County Attorneys. The survey instrument is a revised version of one developed and designed by Mr. James Beck and the Community Systems Foundation, Ann Arbor, Michigan.

While only seventy-six of 105 county attorneys responded to the questionnaire, the response rate appears to permit a relatively accurate assessment of the Kansas County Attorney. Inspection of demographic information further supports the idea that this is a relatively representative sample. It should be stressed, however, that on any survey caution needs to prevail in making inferences. For example, on a number of questions in this study, the response rate is quite low, and hence much caution should be used in evaluating that information. Regardless, in all cases, the response rate to a particular question is given (N=) or otherwise made clear, so that the reader may judge the adequacy of the data.

Throughout this study, mean and average are used interchangeably, and refer to the arithmetic mean:

$$\bar{X} = \frac{\sum_{i=1}^n X_i}{n}$$

All figures are rounded.

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I. DEMOGRAPHICS

The mean population for the respondents' (N=71) counties is 23,613. Table I presents grouped data on the County Attorneys' (CA) reported county populations. Eighteen respondents report a total of twenty-two cities of the

TABLE I.
REPORTED COUNTY POPULATIONS

County Population	Respondents	
	%	(N)
Less than 4,999	.17	(12)
5,000 to 9,999	37	(26)
10,000 to 14,999	13	(9)
15,000 to 19,999	6	(4)
20,000 to 24,999	11	(8)
25,000 to 29,999	4	(3)
30,000 to 34,999	3	(2)
35,000 and above	10	(7)
	101%	(71)

first class, forty CA's indicate a total of seventy-nine cities of the second class, sixty-seven respondents report a total of three hundred thirty-two cities of the third class, and thirty respondents report one hundred fourteen "other" cities.

II. COUNTY ATTORNEYS AND THEIR ASSISTANTS

BACKGROUND AND EDUCATION. The average County Attorney is thirty-seven years of age, with a mean year of law school graduation of 1962 (N=74). Sixty-four CA's report an average of four years' experience as County Attorney; with, on the average, an additional four years' experience in the County Attorney's office. None of the CA's report a lack of legal experience when they assumed their present position. In fact, a majority of the respondents (N=54), indicate an average of four years' prior legal experience in full-time private practice. Fourteen CA's report an average of two years' prior legal experience in government, and four respondents report an average of six years' prior legal experience in industry. Finally, eight CA's report an average of three years of "other" prior legal experience. It should be noted that when the CA's were asked the "nature of the last position" they held "before assuming the office of County Attorney for the first time," forty-five of sixty-nine CA's indicate "none, still in school," while nine CA's report private full-time practice, and the remainder indicate various forms of other prior legal experiences. Most CA's (N=51) report that the following types of experiences (in order of importance) are most important to the CA in enabling him to do an excellent job: general and private practice; trial experience; assistant CA; criminal and defense law; and, law school.

The average age of the CA's chief assistant (N=17) is thirty-three, with an average year of law school graduation of 1966. The chief assistants' (N=18) average two years' experience in their position, with an average additional

experience in the CA office of three years (N=12). None of the chief assistants lack legal experience: seven have an average of two years' prior legal experience in full-time private practice (this excludes one chief assistant with twenty-five years of full-time private practice); four report an average of two years' legal experience in government; four report an average of two years' industrial legal experience; and, three indicate other prior legal experiences.

Twenty-three CA's report they have assistants (seventeen report only one assistant). The assistant CA's (N=25) are an average of thirty-one years of age, with an average law school graduation year of 1967, and average one year of experience in their present position. Sixteen assistants have an average of two years' experience in the CA office. Only two assistants have prior full-time private practice experience (one with twelve years and one with five years), two have prior legal experience in government (four years and twenty years), one has thirty-five years of industrial legal experience, and six are reported to have an average of two years of "other" prior legal experience. Twenty-one CA's report that they need additional assistants (usually one).

TURNOVER. Sixty-nine of the CA's report their predecessors spent an average of seven years in office. More respondents (N=74) indicate the position to which their predecessors returned: private practice (N=60); government (N=4); judiciary (N=3); retirement (N=2); and, other (N=5).

Seventy-four percent (that is, 55 of 74) of the CA's report they are interested in continuing in office in 1973. Of those not interested in continuing in office, most (N=13) indicate they will return to private practice, two indicate "county judge," and one indicates "assistant county attorney."

Fifteen CA's report that none of their assistants (including chief assistants) terminated in 1970 and 1971. However, six CA's report losing a total of twenty-seven assistants during the same period. Most of these resignations entered private practice (N=15), two entered the judiciary, eight received governmental appointments (two federal, one state, and five local), and two entered other legal occupations. The most common reasons for the resignation of assistants are the "higher salary or income potential of the new position" (N=17), and career-line decisions regardless of salary (N=6).

COMPETITION FOR OFFICE. The CA's do not indicate a substantial amount of political competition for their office: sixty-nine CA's report running for office in the August 1970 primary election with a total of eighty-eight candidates; and, sixty-eight CA's report running for office in the November 1970 general election with a total of eighty-four candidates. At the time of the survey, only nine of the CA's indicated they had opposition (six said they had primary election opposition, three said they had opposition in the general election, and three reported opposition in both elections), while forty-three CA's report "no opposition."

competition for office is positively related to office

BY 1975 39 need CA
in 1974 82 unassigned candidates to CA

X

*The data show the inadequacy of CA & assistants
down to the need for training*

III. OFFICE OPERATIONS

ECONOMICS. Only fourteen ~~of~~ of seventy-five CA's report they prepare a formal budget. When asked how ~~the~~ their expenditures were controlled, six CA's indicate "by county commissioners ~~and~~ establishing a maximum amount for expenditures," fifty-two report "by county ~~and~~ commissioners on an item-by-item basis," three CA's indicate "no limits," ~~and~~ and two CA's indicate "other." The mean, total annual expenditures reported (N=55) for 1970 by the CA's is \$11,461; for 1971, the average reported (N=~~63~~53) total expenditures is \$11,777; and in 1972, the mean, reported (N=63) total (estimated) expenditures is \$12,139. Table II presents a summary of the ~~the~~ grouped data on total expenditures for the period 1970-1973.

*Summary
in
table
II*

TABLE II.

TOTAL CA OFFICE EXPENDITURES

Range	1970		1971		Estimated 1972 (N=60)	
	%	(N)	%	(N)	%	(N)
\$ 1,000 to \$ 3,999	2	(1)	2	(1)	3	(2)
4,000 to 6,999	21	(11)	18	(11)	15	(9)
7,000 to 9,999	38	(20)	43	(26)	43	(26)
10,000 to 12,999	21	(11)	17	(10)	13	(8)
13,000 to 15,999	2	(1)	7	(4)	8	(5)
16,000 to 18,999	4	(2)	2	(1)	2	(1)
19,000 to 21,999	0	(0)	0	(0)	3	(2)
22,000 to 24,999	2	(1)	3	(2)	3	(2)
25,000 to 27,999	2	(1)	2	(1)	2	(1)
28,000 to 30,999	2	(1)	0	(0)	0	(0)
31,000 to 33,999	0	(0)	0	(0)	0	(0)
34,000 to 36,999	4	(2)	2	(1)	2	(1)
37,000 to 39,999	0	(0)	2	(1)	2	(1)
40,000 to 42,999	0	(0)	0	(0)	0	(0)
43,000 to 45,999	2	(1)	2	(1)	0	(0)
46,000 to 48,999	0	(0)	2	(1)	2	(1)
49,000 and over	0	(0)	0	(0)	2	(1)
	100%	(52)	102%	(60)	100%	(60)

*X for my selection
10,000 + in salaries
in 3/1/72
(interviews)*

The mean reported (N=71) CA salary is \$6,682. Table III presents the CA salary ranges. Forty-seven CA's indicate their annual salaries are

46%

TABLE III

CA SALARY RANGES: 1972

Salary	%	(N)
Less than \$ 4,999	0	(0)
5,000 to 5,999	45	(32)
6,000 to 6,999	30	(21)
7,000 to 7,999	8	(6)
8,000 to 8,999	3	(2)
9,000 to 9,999	0	(0)
10,000 to 10,999	4	(3)
11,000 and above	<u>10</u>	<u>(7)</u>
	101%	(71)

inadequate for their time (average, budgeted weekly hours for these CA's is twenty-^{eight}~~seven~~). In 1971, the average reported (N=40) authorized minimum CA salary was \$7,287 and the authorized maximum average (N=31) reported was \$7,699. The CA's indicate (N=41) that, on the average, their 1971 minimum should have been \$14,113 with an average maximum of \$17,832. In 1972, the average budgeted work week of the CA's is reported at twenty-eight hours. The average annual authorized minimum salary reported (N=33) is \$6,687, and the average authorized maximum reported (N=26) is \$7,342. Thirty CA's indicate the 1972 minimum salary should be \$10,969, with a maximum of \$13,813 (N=32). While the number of respondents vary a great deal on these data, inspection of the individual protocols

suggests that most of the respondents were not getting the maximum allowable salaries, and, in all cases, the CA's felt there should be substantial increases.

The average reported (N=44) work week for all assistants is thirty-one hours. Their authorized minimum average reported (N=38) annual salary is \$8,069, with an average authorized maximum of \$9,155. The CA's indicate the minimum authorized salary for assistants should average \$11,786, with a maximum average of \$15,263 (N=37). Seven CA's indicate the maximum number of authorized assistants should be increased, on the average, by two, with an average work week of thirty-six hours. The CA's indicate the annual salary range should be from \$6,620 to \$18,000 for the additional assistants.

Table IV presents a summary of changes in the 1970 or 1971 CA budgets. The CA's were asked to rank the three items (in order) which they felt should be

TABLE IV
COUNTY ATTORNEY BUDGET CHANGES
IN 1970 OR 1971

Item	Up		Down	
	Yes	No	Yes	No
County Attorney Salary	23	44	4	55
Assistant's Salary	13	29	1	38
Number of Assistants	7	35	0	42
Secretarial/Clerical Salaries	38	27	3	56
Number of Sec./Cler. Personnel	6	49	0	50
Investigator Salary	3	30	0	34
Number of Investigators	2	28	0	32
Facilities	9	47	1	51
Equipment	13	46	2	53
Employee Benefits	15	36	0	49
Other	8	8	0	13

increased. The most important item to the CA's (N=45) is an increase in their own salary, second (N=35) in importance is an increase in salaries of their

*8/23/51 - worked
in more or less
1 deputy, etc*

*Advantage of CA
Plan - ...
* comment on the
lack of financial support
of counties
in CA*

secretarial/clerical personnel, third (N=17) in importance is the need for more investigators, fourth (N=16) in importance is an increase in the salary of assistants, and fifth (N=14) in importance is the need for more equipment.

WORKLOAD. Seventy-two of seventy-four CA's report that they engage in private law practice: fifty-two indicate this private practice involves a "significant amount" of their time; eighteen indicate it involves a "minor portion" of their time; three indicate they only engage in "occasional" private practice; and, one did not indicate the extent of his private practice. On the average, the CA's report (N=73) they expend a total of fifty-five hours per week in the practice of law (both private and CA duties). Twenty-five CA's report a work week of 60 or more hours, forty-five report a work week of 40-60 hours, and one CA reports a 20-29 hour work week. However, the CA's report that, on the average, they devote twenty-eight hours per week to their responsibilities as County Attorney. The lowest number of hours reported by CA in the performance of his County Attorney duties is seven, while the highest is 110. Table V presents the distribution of CA duty hours.

*Long hours
short pay
refer to
breakdown
of payroll*

TABLE V

COUNTY ATTORNEY DUTIES: HOURS WORKED

Hours per Week	%	(N)
0 to 10	8	(6)
11 to 20	28	(20)
21 to 30	32	(23)
31 to 40	25	(18)
41 to 50	3	(2)
51 to 60	1	(1)
80 or more	3	(2)
	100%	(72)

Twenty-one CA's report their assistants engage in private law practice which, on the average, involves thirty hours per week and, that the assistants also average twenty-nine hours per week in their ^{duties} assistant County Attorney ~~duties~~.

Table VI gives an indication of the activities of the CA's and their staff. (These percentages may not be added. For example, twenty-nine CA's report

TABLE VI
PERFORMANCE OF DUTIES

Activities	CA		Staff	
	Percent	(N)	Percent	(N)
Interviewing Police or Sheriff's Officers	16	(29)	14	(13)
Interviewing Citizens	15	(68)	19	(12)
Preparation of Cases	19	(66)	12	(13)
Court Appearances	19	(71)	28	(13)
Appeals Preparation and Processing	5	(39)	8	(9)
Board of County Commissioners	16	(68)	20	(5)
Other Police or Sheriff's Relationships	7	(54)	8	(7)
Staff Relationships	6	(33)	5	(6)
Representing County "Law Enforcement"	5	(48)	6	(7)
Other	10	(15)	9	(2)

that, on the average, they expend sixteen percent of their time interviewing police or sheriff's officers. Thirteen CA's indicate that their staff expends, on the average, fourteen percent of their time interviewing police or sheriff's officers. The sixty-eight CA's who report citizen interviews, expend an average of fifteen percent of their time in this activity. But, it does not

follow that CA's expend an average of thirty-one percent of their time in interviewing police and sheriff's officers and citizens). CA's and their assistants expend most of their time in five areas (in order of importance): case preparation; court appearances; relationships with county commissioners; interviewing law enforcement officials; and, interviewing citizens.

Of the CA's reporting (N=75), sixty-four indicate they appear for the state in all non-traffic misdemeanor trials, fifty report appearing for the state in all juvenile cases, and fifty-nine report appearing for the state in all traffic case trials. Only five of sixty-three CA's indicate that their county has a county counselor (full time, part-time, or occasional). In those counties which have a county counselor, he generally does some or all of the following civil legal matters: acquisition of rights of way; zoning; bond issues; and, represents the county in tax foreclosures.

There are distinct patterns to the CA's screening of complaints: thirty-one CA's indicate they interview the parties involved; eight report they check the backgrounds of those involved; eight indicate they personally screen complaints; and, ten CA's utilize other screening techniques.

Table VII presents data on the number of warrants authorized during the period January 1, 1971 to March 31, 1972, by the CA's.

TABLE VII

AVERAGE NUMBER OF AUTHORIZED WARRANTS
1/1/71 to 3/31/72

Item	Careful Record Count	Estimated
Felonies and District Court Misdemeanors.	168 (N=24)	95 (N=36)
Non-traffic Simple Misdemeanors	224 (N=23)	150 (N=36)
Traffic Cases	739 (N=21)	218 (N=35)

Seventy-five CA's report they expend, on the average, forty-eight percent of their caseload time in county or magistrate court. Seventy-two CA's indicate they expend an average of twenty-three percent of their caseload time in juvenile court. Seventy-five CA's report that, on the average, they expend twenty-nine percent of their caseload time in district court. And, eleven CA's indicate they expend, on the average, eight percent of their caseload time in "other" courts.

On the average, the CA's report (N=74) that their counties would be served by one district judge, one county or magistrate judge and one juvenile judge in 1973 (the data were the same for 1972, except the average number of district court judges was two (N=67)). Twenty-six CA's report "other" types of judges would be serving their county in 1973: probate (6); municipal (28); police (11); and, juvenile (6).

FACILITIES AND EQUIPMENT. Table VIII illustrates the nature, source, and evaluation of the facilities and equipment reported by the CA's. Eleven CA's

TABLE VIII

CA FACILITIES AND EQUIPMENT, SOURCE AND EVALUATION

Item	CA Pro-vides	County Pro-vides	Combi-nation	N	Ade-quate	Limited	Clearly Inade-quate	N
Office Space	27	36	12	75	50	12	9	71
Office Equipment	14	36	24	74	48	14	7	69
Office Supplies	7	48	20	75	60	6	3	69
Telephone	9	47	18	74	58	7	5	70
Sec./Cler. Help	6	35	32	73	42	21	7	70
Law Library	16	23	34	73	38	19	13	70
Other	3	6	1	10	7	3	2	12
Ct. Report. Serv.	2	29	1	32	28	7	7	42

report they either requested these items and were refused or limited by their county commissioners.

*need texts to in
grades in rural
counties*

LEGAL RESOURCES. The average CA (N=75) receives a total of 4 magazines or legal materials. Kansas Reports (N=66), Prosecutor (N=61), and the KCAA Newsletter (N=61) are the most commonly received materials. Varying numbers of CA's also report receiving: Kansas Cases (N=26); Criminal Law Reporter (N=20); Defender (N=11); Journal of Criminal Law and Police Science (N=7); The Juvenile Digest (N=6); and, Law Week (N=4). Fifty-nine CA's report receiving one to five legal materials, while sixteen CA's indicate they receive six to ten legal materials.

Sixty-one CA's indicate (out of seventy-one respondents) that they are able generally to inform themselves about recent state legislative, judicial, and administrative decisions pertaining to their work. Of the thirteen CA's reporting they were unable generally to inform themselves, the most common reason given was "inadequate library or access to legal materials."

TRAINING OF ASSISTANTS. No CA's report the provision of any orientation or training beyond the courtroom observation for their new assistant county attorneys.

Only five CA's indicate they provide any method of continuing education for their staff, and this continuing education is usually limited to seminars sponsored by various professional organizations. The most common method for disseminating formal office policies among the CA's is oral instructions (N=36), only seven CA's indicate they use written memoranda.

*This lack of training & experience may
contribute to reduce the quality
& persistence*

SPECIALIZATION IN OFFICE. Thirty-one CA's indicate they consider the development of a career prosecution speciality as "highly desirable" in counties where the work load justifies a full time County Attorney, seventeen report it is "probably

a good idea," eight CA's report it is "probably not a good idea." Of the sixty-eight CA's responding, fifty-nine favor a full-time prosecuting attorney. Only eighteen of these CA's either explicitly or implicitly favor the idea of a full-time prosecuting attorney for large counties or where the case load requires it. In other words, sixty-nine percent of all CA's favor a full-time prosecuting attorney system regardless of county size or workload. Only two CA's report current staff specialization.

IV. ADMINISTRATION AND PROCESSING OF CASES

DOCKET MANAGEMENT. Table IX summarizes the data on court docket control which the CA's reported.

TABLE IX
MANAGEMENT OF COURT DOCKETS

	District Court		County or Magistrate Court		Juvenile Court		Other	
	Yes	No	Yes	No	Yes	No	Yes	No
County Attorney	18	56	34	40	31	43	3	71
Court	60	14	53	21	53	21	5	69
Other	4	70	3	71	3	71	2	72

PROCESSING TIME FROM ARREST TO TRIAL. On the average, the CA's indicate (N=67) that it takes eighteen days from arrest to trial (misdemeanors) (only four CA's report that it takes "too long"), ^{for felonies} sixty-seven CA's report that arrest to preliminary examination takes an average of fourteen days (four CA's indicate that this is "too long"), sixty-seven CA's report that preliminary examination to district court arraignment takes an average of twenty-eight days (five CA's indicate this is "too long"), and sixty-eight CA's report that, on the average, it takes seventy-four days for district court arraignment to trial (seventeen CA's report this is "too long"). On both arrest to trial (misdemeanors) and arrest to preliminary examination, the most common reason

given for the delay is "crowded dockets." In the other two instances, preliminary examination to district court arraignment and district court arraignment to trial, the most common reason given for the delay is "court scheduling problems."

PLEA BARGAINING. The CA's report (N=64) that, on the average, they accept pleas to reduced charges in district court (prior to the day of the trial) forty-three percent of the time. The CA's who report more than a twenty percent rate of plea bargaining averaged the following acceptance rates: before preliminary examination (N=28), twenty-six percent; on the day of preliminary examination (N=21), twenty-one percent; at pre-trial conferences (N=12), seventeen percent; through informal contacts before the day of the trial (N=50), fifty-nine percent; and, through informal contacts on the day of the trial (N=17), fifty-eight percent.

Sixty-four CA's report they accept pleas to reduced charges in county or magistrate court (prior to the day of the trial), on the average, twenty-five percent of the time (twenty-nine CA's report an average of sixty-nine percent of the time through informal contacts before the day of the trial, twenty-two CA's indicate they average thirty-one percent acceptance of plea bargaining through informal contacts on the day of the trial). Thirty-nine CA's report they accept pleas to reduced charges in juvenile court (prior to the day of trial), on the average, sixteen percent of the time (nine average fifty-nine percent acceptance through informal contacts before the day of the trial; and nine averaged thirty-one percent acceptance through informal contacts on the day of the trial). The CA's indicate they consider the following factors in their decision to accept or reject pleas for reduced charges prior to the day of trial: case strength (N=35); prior record (N=16); defendant's background (N=1); best for defendant (N=5); best for county (N=1); circumstances of case (N=1); non-factors, combinations, and other types of responses (N=11).

may be a reflection of lack of opportunity, time, etc.

WITNESS WAITING TIME. Eleven CA's indicate they have made attempts to avoid the problem of witness waiting time (six said they had not), but fifty-one CA's report that witness waiting time is not a problem.

V. RELATIONSHIPS WITH OTHER AGENCIES

OTHER COUNTY ATTORNEYS. When offenses are inter-county, thirty of the CA's report that inter-County Attorney coordination is "always satisfactorily worked out." Thirty-one CA's indicate there are some problems in such instances, "but they are usually resolved." Other CA's report (N=11) a variety of comments, but only one CA indicates that "we usually end up developing two completely separate cases."

PROFESSIONAL ORGANIZATIONS AND AGENCIES. Table X summarizes the CA's evaluations of various professional organizations and state agencies with which they deal. While all of these agencies, except the Kansas Highway Patrol, receive

TABLE X
ORGANIZATION AND AGENCY EVALUATIONS

	Very Helpful	Of Some Assistance	Not Helpful	No Assistance Received	No Eval.	N
Kansas Highway Patrol	57	7	3	4	4	75
KBI	54	14	0	2	5	75
KBI Lab	57	9	0	5	4	75
State Health Dept.	21	23	3	24	4	75
Attorney General	38	25	5	2	5	75
KCAA	32	18	1	21	3	75
NDAA	17	19	3	31	5	75

some particular negative comments, the Kansas Attorney General receives the most negative comments (6) (these usually refer to the slowness of the KAG office in responding to requests).

COUNTY AGENCIES. Table XI summarizes the CA's evaluations of county agencies which they customarily dealt with in 1972.

TABLE XI
EVALUATIONS OF COUNTY AGENCIES

County Agency	Very Helpful	Helpful	Of Some Help	Not Helpful	Not Available	N
Medical Examiner or Coroner	24	20	6	6	0	56
County Welfare and Social Service	24	19	19	6	1	69
Civil Rights Groups	1	1	4	4	18	28
Bar Association	13	16	11	5	3	48
School Officials	23	21	19	2	0	65
Bd. of County Comm.	24	20	21	6	1	72
Taxpayer Organizations	2	2	4	15	11	34
Legal Aid Agency	3	1	0	2	21	27
Parole and Probation Div.	31	12	12	3	2	60
City Councils or Comm.	8	24	18	7	0	47
Juvenile Authorities	29	24	5	1	1	60
Others	4	1	1	1	0	7

THE POLICE. The CA's indicate (N=74) that, on the average, they deal with six separate law enforcement agencies (sixty-nine report one to ten law enforcement agencies, three CA's report eleven to twenty law enforcement agencies, and two

CA's indicate they work with twenty-one or more law enforcement agencies). On the average, the CA's report (N=70) that thirty police work in their county (sixty-one report one to fifty police, five indicate fifty-one to 100 police, and one CA indicates that he works with 401 to 450 police).

Sixty-nine CA's indicate they expend an average of sixteen percent of their time interviewing police or sheriff's officers (thirteen indicate their staff expend an average of fourteen percent of their time in the same task). Also, the CA's report (N=54) that they, on the average, spend seven percent of their time on relationships with police or sheriff's officers (other than specific cases), seven CA's report that their staff expend an average of eight percent of their time on the same task). While sixty-seven CA's report they participate in police investigations, six indicate they do not. The CA patterns of participation in police investigations are: all kinds (N=12); most or all felonies (N=14); serious crimes (N=16); drugs (N=7); civil liberties (N=5); law enforcement officers' request (N=4); inept law enforcement officials (N=2); and, other types (N=2) (seventeen CA's report they assist or accompany officers to the crime scene and/or advise officers and/or help interrogate witnesses; twelve CA's report they participate most or all the time, "a great deal," "frequently," etc.; twelve CA's indicate that their participation depends upon the case or when and/or to what extent the CA feels it is necessary; four CA's indicate they "rarely" participate; and, two report "other" responses). Fifty-one of the CA's indicate that it is desirable to participate in police investigations. (twenty-one indicate it is undesirable). The most common justification for participation given by the CA's is that their expertise can aid the investigative process (N=20). The most common (N=7) justification for not participating in police investigations is the idea of functional separation (that is, "investigation is solely a police function").

Of the CA's reporting (N=74), forty-three indicate that they take part in training police; of those not taking part, only four have even been asked to do so, and only sixteen have ever suggested that their office participate in police training. Usually, the training is informal in nature (N=26), although nine CA's indicate they provide formal training.

Twenty-nine CA's indicate that they or their assistants meet "regularly" with police officials to confer on matters of policy or procedures, forty-three CA's indicate they "occasionally" confer with police officials on such matters, and two CA's report that they "never" confer with police on policy or procedure matters. Of those reporting (N=67) which law enforcement agencies they confer with, fifty-one mention the sheriff or sheriff-combination agencies. Sixty-five of seventy-five CA's indicate they attempt to make suggestions to police in their jurisdictions regarding general policies or investigations in specific cases (forty-six of these report "general acceptance" of such, sixteen report "partial acceptance," and two report "rejection" of suggestions).

Thirty-one of the CA's indicate they "always" consult with the investigating police agency before agreeing to accept a plea to reduce charges, thirty-one CA's report they "usually" do so, eight indicate "occasionally," three report they "seldom" consult, but none report "never." Seventy-one of seventy-four CA's indicate that their consultation with an investigating agency is (or could be) useful (the remaining three CA's also conditionally agree).

Of CA's reporting (N=73), thirteen indicate they "always" receive a "case write up" or "complaint report" from the investigating police agency before authorizing any warrant or complaint, twenty-five CA's report they "usually" do so, ten CA's indicate they "occasionally" receive such documents before proceeding, fourteen CA's report they "seldom" do so, eight CA's indicate they "never" do so, and three CA's gave "other" answers.

VI. STRENGTHENING THE OFFICE OF COUNTY ATTORNEY

All respondents were provided with the opportunity to "comment on the problems of County Attorneys and to make suggestions for strengthening the ability of the office to provide service to the community." Thirty-seven (N is for non-duplicate responses) CA's availed themselves of the opportunity. Their comments and suggestions may be divided into three areas: problems, suggestions for improvements, and statutory recommendations.

Thirteen of the CA's commented on the problems of the County Attorney. Three CA's indicate that the "work load is too heavy relative to wages." Another CA notes that the "salary is not high enough for the amount of time required and too much time is required in paperwork and in administrative details." One consequence of the low salary is, according to still another CA, that it "will not attract qualified personnel." Another consequence of low salaries is, as another CA indicates, that it forces the "attorney to develop his private practice and public office suffers." As a result, as another CA points out, "business may be neglected or a fast solution sought due to [the pressures of] part-time and private practice." Usually low status is associated with low salaries. Two CA's reflect this in commenting that they felt "more like a social worker than a prosecutor." In all, five CA's commented on inadequate salaries relative to work factors, five CA's noted the consequences of low salaries, two CA's commented on the low status of the profession, and one CA said that the "probable cause" requirement is too stringent.

Twenty-seven CA's made suggestions for strengthening the office. Eight CA's indicate strong support for a DA plan, four of these eight proposed variations on the DA plan. Eight CA's commented that salaries should be increased. Another CA said, "if County Attorneys are not paid additional wages for work outside area of prosecution, county counseling should be contracted for." Two CA's indicated that staff, facilities, and materials should be provided which are equal to performance of the work. Five CA's noted that the present system should be retained. Another CA indicates that the County Attorney's office should be separate from the courthouse. Yet another CA suggests that the revenue derived from KSA 79-429 should be derived from another source. And, one CA suggests that there should be an "implementation of county-wide law enforcement with full time investigative staff assigned to prosecutor's office."

Seven CA's made recommendations for statutory modifications. Three CA's suggest that legislation should be passed which would provide "pay for additional case work which are currently 'free' (i.e., welfare instigated conservatorship and guardianship proceedings, areas outside of prosecution)." Another CA indicates that salaries should be increased by the state legislature without a referendum. Yet another CA indicates that there should be a "fifty percent increase in pay for a county attorney whose area borders Indian or federal reservation." One CA suggests the repeal of KSA 79-420, and another indicates the probable cause requirements should be loosened.

PROGRESS REPORT
OFFICE OF DISTRICT ATTORNEY
10TH JUDICIAL DISTRICT

Reviewing the projected operation for 1975 on the basis of 4 months experience of the office, the following observations are made:

- 1. The felony case load is the generally accepted measure of prosecutor activity.

	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u> (projected)
	267	334	489	555
%increase (base)		25%	83%	108%
Assistant D.A.s	9	10	11	12

- 2. The juvenile case load is a measure of new activity requiring action of the prosecutor and forecasting future increases in criminal activity.

	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u> (projected)
	778	774	878	1,110
%increase (base)		-.5%	+13.9%	+43%

- 3. Three areas of criminal activity show that enforcement efforts are successful:

Non-Support:

By monitoring through computerization of active cases and by weeding out inactive cases, the dollar payments have increased:

	<u>1973</u>	<u>1974</u>	<u>1975</u> (projected)
	\$6,000 (est.)	\$57,463	\$172,389.

There has been a corresponding decline in filings of both criminal non-support and uniform reciprocal support actions. National estimates would indicate that approximately 75% of monies paid by parents would have been paid as welfare benefits under Aid to Dependent Children. The office is negotiating with Social and Rehabilitative Services under the new federal support locator service regulations to have a portion of this recovery repaid directly to the County.

Checks:

This is the major category of crime that shows a decrease. By institution of a first notice letter to the first time violator, court proceedings have been reduced 52%. At the same time, rigorous prosecution on the remaining cases has resulted in substantial restitution. Together the office has returned in 1974, \$68,393 to businessmen. One important aspect of the program is the education of the business community to increase their willingness and ability to protect themselves. During the past year, we have participated in 25 seminars and produced a video tape mock check trial as well as a "Protect Yourself" kit reviewing proper procedures for accepting checks and identifying passers.

Misdemeanors:

By using administrative procedures in checks and consumer fraud and by concentrating on the higher levels of criminal activity (i.e., drug pushers, fencing, conspiracy), the misdemeanor load has remained relative constant. At the same time the percentage of cases brought to a successful conclusion has increased.

	<u>1972</u>	<u>1973</u>	<u>1974*</u>	<u>1975 (projected)</u>
Guilty	56	101	150	102
Not Guilty	3	15	18	15
Dismissed	<u>52</u>	<u>79</u>	<u>105</u>	<u>75</u>
Total	112	199	273	192

*1974 reflects the agreement that, during the life of the drug training unit, misdemeanor possession cases would be tried in the County, rather than in municipal courts. These cases are now being handled by the cities having drug ordinances.

4. Utilization of Staff

The success of the check and non-support programs reflects the use of paralegals to free attorneys for courtroom and legal advisory services. Additional legal time is available through employing non-attorney personnel for administrative and management functions.

The office has also undertaken the staffing of the City-County Investigative Squad with full-time personnel for the permanent core staff. One attorney, one investigator and one paralegal are so assigned for 1975 for a total contribution from the budget of \$38, 120.

The establishment of a satellite office in the Northeast Court House has been overwhelmingly successful. Average activity in this one-girl office is now 85 contacts per week either by phone or in person in areas of bad checks, non-support and consumer fraud. This accessible office has held the load in the main office within manageable bounds for the present. The business community north of 95th Street has appreciated the convenience of presenting checks for prosecution at Northeast.

Recognition:

Members of the staff have been recognized at both the State and National level. Requests for serving on commissions, as faculty and as speakers have been increasingly frequent. A sampling:

G. Joseph Pierron-	National Board on Juvenile Crime and Delinquency Member: Child Protective Unit, Kansas Committee on Standards and Goals: Juvenile Justice Lecturer, Kansas Association of Commerce and Industry
Dale Hartung	Training Committee Kansas County and District Attorneys Association. Lecturer, New Intern Orientation Faculty, Johnson County Community College.
Richard Wetzler-	Lecturer, Johnson County Police Academy, New Intern Orientation
William Coates-	National District Attorneys Association Office of Economic Crime Commission Lecturer, Consumer Fraud
Sandra Hartley -	Panel Member: Block Mothers Training Program Rape Advisory Committee
Ken Rock	Lecturer- Economic Crime, Kansas Association of Commerce and Industry.

Forecast-

Economic Crime: One rapidly increasing activity is economic and white collar crime. The assistance of an experienced investigative accountant and of an attorney experienced in corporate, financial and regulatory law is essential in these areas. Two cases have been successfully concluded but five others are waiting investigation. The volume of work and the cost of outside contractual services indicate that these should be the next personnel to be acquired.

Citizens Service Bureau: The gloomy economy reenforces the need to beef up efforts in areas of bad checks, support and consumer fraud. The activity in Northeast indicates a need for an additional clerk to assist the paralegal there.

GRESS REPORT
DISTRICT ATTORNEY'S OFFICE

Diversion: Participation with Manpower and Johnson County Mental Health Center in pre-trial diversion projects will aid in curtailing an increase in intake into the criminal justice system by substituting a less costly diversion of first time offenders into remedial administrative channels. This should free the courts and the prosecutors to concentrate on the professional criminal, the habitual criminal and the high level criminal manipulators.

Police Advisor and Office Hours Warrant Officer: Legal advisory services to local police departments and continuation of the 24 hour warrant officer have paid handsome dividends. In spite of the doubling of felony case load, the conviction rate has risen to 83%, only 16% of which result from reduced charges, insufficient evidence to establish the original charge, or concessions for information. The percentage of "prosecution declined" on police reports presented to the warrant desk is negligible. Evidence suppressed because of improper search or seizure has declined markedly. The support by this office to the greatly increased activity of our police agencies and their increasing effectiveness and innovation has been furnished by unpaid over-time of our attorneys. With night calls occurring as frequently as 8 times a night, it is unreasonable to expect full day time court appearances as well. Some off duty relief must be sought such as an alternate warrant and training attorney.

Juvenile Court: Effective processing of juvenile court cases requires more than the statutory appearance in juvenile court by the prosecutor. Consultation with juvenile court intake officers, with other agencies and prosecutors on adult companion cases, legislative liason, planning for improved facilities for juveniles treatment are among other services furnished. Juvenile prosecution is no longer a part-time duty for an Assistant District Attorney. Starting August 1, 1975, a full-time and a part-time prosecutor will be assigned to juvenile court.

Case Load: The attached projection of felony case load for 1976 forecasts 660 criminal cases. Although civil cases have increased 24% between 1972 and 1974, there has been an increase of 83% in criminal cases for that period. It should be noted that cases handled per attorney have risen from an average of 30 per prosecutor in 1972 to over 46 per prosecutor in 1975.

This increased capacity per attorney reflects two factors:

1. The increasing experience of the staff and the low turnover rate.
2. The increased use of paralegals to free attorneys for exclusively legal work.

The conclusion to be drawn from this analysis is that cost per case handled can be reduced by:

1. Retaining, by competitive salaries, trained personnel- both attorneys and support staff. Salary expenditures between January 1973 and December 1975 have increased only 65% although case load has doubled and many additional services have been provided.

2. Continue to develop expertise of staff through educational support and specialized training.

Please accept my apology for not appearing in person to speak to the matter of the installation of a district attorney system state wide.

Those who truly believe in law and order should give attention to improving our criminal procedure. One key strength is the establishing of a district attorney system that will professionalize prosecution.

The attorney general's handling of a murder case in Geary County recently was a meritorious aid to a local prosecutor. We should hope that it is not necessary to have his office aiding across the state as that would be a mankilling job.

The criminal law changes and moves too fast to utilize part time lawyers. In recent years stories of county attorneys ill prepared have lost some major cases. We cannot permit this to continue.

REPRESENTING ONE SEGMENT OF THE LAW ENFORCEMENT COMMUNITY, I WOULD LIKE TO GO ON RECORD BEFORE THIS SPECIAL COMMITTEE AS SUPPORTING PROPOSAL No. 26, STATE-WIDE DISTRICT ATTORNEY. I AM SURE THAT MANY OF MY REASONS AND JUSTIFICATIONS HAVE ALREADY BEEN VOICED BY THOSE MORE KNOWLEDGEABLE THAN I; HOWEVER, I AM SURE THAT MANY OF THE JUSTIFICATIONS ARE WORTH REPEATING.

THROUGHOUT MY YEARS IN LAW ENFORCEMENT I HAVE WORKED WITH MANY OUTSTANDING COUNTY ATTORNEYS WHO, AS FAR AS I AM CONCERNED, WERE TOPS AS PROSECUTORS, AND HAVE SEEN THEM SERVE IN THAT CAPACITY FOR A SHORT PERIOD OF TIME AND THEN GO INTO PRIVATE PRACTICE, NOT BECAUSE THEY DID NOT LIKE TO PROSECUTE, BUT BECAUSE THEY COULD NOT AFFORD TO CONTINUE THE CAREER AS A PROSECUTOR BECAUSE OF THE SALARIES THEY WERE PAID. WE MUST FACE THE FACT THAT EVERY INDIVIDUAL, REGARDLESS OF THEIR DEDICATION, MUST BE ADEQUATELY PAID OR THEY WILL SEEK OTHER AVENUES TO PURSUE, AND IT IS MY BELIEF THAT A PROSECUTOR, REGARDLESS OF HOW GOOD THEY ARE, WILL BE A BETTER PROSECUTOR, IF THEY DO NOT FIND IT NECESSARY TO RESORT TO PRIVATE PRACTICE IN ORDER TO MAKE A LIVING FOR THEIR FAMILY.

I HAVE BEEN TOLD THAT IN THE ACADEMIA YEARS, MORE EMPHASIS IS PLACED ON DEFENSE THAN ON PROSECUTION AND IF THAT BE TRUE, COUPLED WITH THE FACT THAT THE BIG MONEY IS IN DEFENSE AND PRIVATE PRACTICE, THEN IT IS EASY TO UNDERSTAND WHY THE TURNOVER IN THE COUNTY ATTORNEY PROFESSION IS SO GREAT, AND ADDITIONALLY, I BELIEVE WE FAIL TO ATTRACT MANY YOUNG MEN OR WOMEN INTO THE PROSECUTORIAL PHASE OF CRIMINAL JUSTICE DUE TO THE SALARIES PAID AND THE SYSTEM WE NOW HAVE.

IT SEEMS TO ME THAT WE NEED FULL TIME, VIGOROUS, PROSECUTING ATTORNEYS, AS WELL AS FULL TIME, VIGOROUS DEFENSE ATTORNEYS, AND THE ONLY WAY THAT WE CAN ACCOMPLISH THIS TO THE ULTIMATE IS BY MAKING THE PROSECUTOR A FULL TIME POSITION WITH ADEQUATE COMPENSATION. AND, AS YOU ARE AWARE, WE HAVE DONE JUST THAT IN OTHER AREAS OF CRIMINAL JUSTICE, TO-WIT: THE POLICE AND THE JUDGES.

LIKE EVERY NEW POLICEMAN, THE NEW PROSECUTOR MUST BE TRAINED AND TO KEEP TRAINING NEW PROSECUTORS EVERY TWO OR FOUR YEARS ADDS UP TO QUITE A LOSS, NOT ONLY IN MONEY, BUT EXPERTISE TO THE STATE OF KANSAS. SELFISHLY SPEAKING, THE POLICE OFFICER, UNDER THE PRESENT SYSTEM, FINDS THAT HE MUST BE CONSISTENTLY RE-LEARNING WHAT A NEW PROSECUTOR WILL REQUIRE OF HIM AND I SPEAK NOT ONLY OF EVIDENCE, BUT PROCEDURES HE HAS TO FOLLOW.

IF, AND I BELIEVE THAT THE DISTRICT ATTORNEY CONCEPT WILL DIMINISH THE TURNOVER RATE, THEN BOTH THE ARREST AND THE PROSECUTORIAL PHASE OF CRIMINAL JUSTICE WILL BE ENHANCED.

IT HAS BEEN SAID THAT NO ONE CAN SERVE TWO MASTERS AND DO JUSTICE TO BOTH AND I BELIEVE THAT THIS IS APPLICABLE TO THE COUNTY ATTORNEY WHO FINDS IT NECESSARY TO PRACTICE OR TO PARTICIPATE IN PRIVATE PRACTICE IN ORDER TO ADEQUATELY PROVIDE FOR HIS FAMILY.

I BELIEVE THAT UNDER OUR PRESENT SYSTEM, THE COUNTY ATTORNEY'S POSITION, IN MANY INSTANCES, IS A STEPPING STONE TO MOVE TO A MORE LUCRATIVE POSITION AND WERE I A YOUNG ATTORNEY, I WOULD CERTAINLY VIEW IT IN THAT LIGHT.

THE CRIMINAL JUSTICE SYSTEM NEEDS TO HAVE FULL TIME, PROPERLY TRAINED, CAREER, POLICE OFFICERS; IT NEEDS TO HAVE FULL TIME,

PROPERLY TRAINED, PROSECUTING ATTORNEYS; AND FULL TIME, PROPERLY TRAINED, CAREER JUDGES.

KANSAS MADE A GREAT STRIDE IN EQUAL JUSTICE WHEN THE LEGISLATURE DIMINISHED THE POWER OF THE PART-TIME JUDGES, KNOWN AS JP'S, AND I FEEL WITH THE IMPLEMENTATION OF THE DISTRICT ATTORNEY CONCEPT, EVEN GREATER STRIDES WILL BE MADE IN IMPROVING OUR OVER-ALL CRIMINAL JUSTICE SYSTEM.

I THANK YOU.

STATEMENT ON PROPOSAL NO. 26
STATEWIDE DISTRICT ATTORNEY, HOUSE BILL 2372
Joint Committee on Judiciary, July 10, 1975
R. G. Frey, Representative 125th District

I am appearing today in opposition to House Bill 2372, and wish to urge the Committee studying proposal No. 26 of the interium study agenda that notation should be made of some of the negative effects which could be triggered if House Bill 2372 is made law. I do not come before this Committee in opposition to District Attorneys, per se, but in opposition to the District Attorney plan that is proposed in House Bill 2372.

District Attorneys are a part of the Kansas criminal justice system at this time in the four populated counties of Kansas, namely, Sedgwick, Wyandotte, Shawnee and Johnson counties. It is not necessarily true, however, that if the District Attorney system works in the four large counties of Kansas, that it will also work in Western Kansas and in the small counties which make up the bulk of Kansas counties. As you know, the four large counties also comprise four separate Judicial Districts which means that the County Attorney of those four large counties was, in fact, a District Attorney even before the recent enactment of the law which made them assume the title of District Attorney instead of County Attorney. The County Attorney's jurisdiction extended to the county line before that law was passed and it still does under the present District Attorney system in Kansas.

If the same system were adopted in the small counties that make up the bulk of Kansas counties, we would be faced with an entirely different situation. We would not have one county districts, but instead as many as seven counties in one district. This alone makes the four large counties of Kansas so totally different from the small counties, that a true picture of the workability of the District Attorney system as proposed in these small counties is not and cannot be presented.

The problems generated by the adoption of such a system in these small counties, in my opinion, out-weigh the advantages.

1. It would tend to remove the office from direct contact with the people in that a District Attorney in the multi-county judicial districts would be serving a minimum of 50,000 people in his district as opposed to between 5,000 to 20,000 in the present County Attorney system.

2. The cost would be much higher. There would, for instance, be some 25 additional new positions created for the remaining twenty-five Judicial Districts which do not presently have District Attorneys. That cost would, alone, amount to close to \$800,000. There would, in addition to that, be fringe benefits and retirement costs which would ultimately raise the cost to over \$800,000, and with additional travel and subsistence costs which necessarily would be involved in a large district, the costs would reach very nearly \$1,000,000.

In the publication, Kansas Prosecutor, Vol. 2, Issue 3, of the Summer of 1975, which is published by the Kansas County and District Attorney's Association, it was stated that the expenditures required under House Bill 2372 would amount to from \$3,260,000 to \$4,705,000. This, in my opinion, is reason enough alone to discourage the adoption of this plan as it is presented in House Bill 2372.

3. There would more than likely be a built-in political discrimination which would favor the larger counties in a Judicial District to the detriment of the smaller, less populated counties. It is more than likely that the voters of one county in each district would control, by sheer numbers, any election regardless of the merits of the individual who seeks the office. Good prosecutors do not necessarily come from large counties. But under the proposed District Attorney plan, it would be very difficult for the lessor populated counties to ever have a real choice as to who will represent them in their criminal courts. One need only look at Judicial Districts such as the 25th Judicial District which includes Garden City, Kansas; the 26th Judicial District, which includes Liberal, Kansas, and many others to see that this is not an isolated problem but a problem which would exist statewide. Of the 29 Judicial Districts in Kansas, there are 16 which contain four or more counties. Of those 16, there are 7 Judicial Districts which contain 6 counties, and there is 1 Judicial District, that being the 17th Judicial District, which has 7 counties in it. Political alienation is a problem that we know is getting larger as governments become larger. In House Bill 2372, there is very obvious evidence of what the effort towards unification can do to stimulate political alienation within those small counties which cannot counteract the effect of the larger, more populated counties when it comes to determining who their District Attorney would be.

4. The individual counties would, under the proposed bill, more than likely be forced to hire, at additional expense to the taxpayers, a County counselor, to represent them in civil matters. At present, a large portion of the County Attorney's time is spent on matters which are not involved with criminal prosecution. Tax protests, tax foreclosures, formation of benefit districts for sewer systems and street and highway improvements, defense of civil lawsuits, advising and consulting with elected officials and appearing at juvenile matters are all civil matters, which the County Attorney is involved with and which the District Attorney would not be involved with if the system which is proposed in House Bill 2372 is adopted.

What the matter boils down to is that the State would have a much more costly system which would probably not in the final analysis, enhance the administration of criminal justice any more than the present system. Most of all, the proposed District Attorney system would take away from the people at the local level, the control which they enjoy now under the present system.

My specific objections to House Bill 2372 are as follows: In Section 4, line 16 through 19, it is questionable in my mind what the purpose of the statement contained actually is. Often in the prosecution function, it is necessary to enter into plea bargaining activity with persons charged with crimes and this has been approved of many times by the Supreme Court as a valid function of the County Attorney. Yet the words, as I read them, in the bill seem to indicate that this function would be frowned upon if not, in fact, forbidden.

In Section 4, on page 5, line 30 and following, it provides that the District Attorney shall be reimbursed for his actual travel and subsistence expenses incurred while in the performance of official duties. This particular provision is a problem to persons who reside in the smaller counties which would not encounter these travel expenses under the present County Attorney system. As you know, House Bill 2372 would provide for a State financed District Attorney system, but those finances that the State pays to support the District Attorney system must come from the pockets of all Kansans and I feel that it would be particularly offensive for persons in the small counties to have to support the expenses of the larger counties which incur greater criminal activity, and thus, greater expenses.

In Section 6, beginning at line 17 through line 23, I see a distinct disadvantage again for any county which does not happen to be the home county of the District Attorney. In the quoted section, it states that the District Attorney will determine who the qualified person is who shall be appointed as an assistant or deputy District Attorney for the counties in his district. As I read the bill, the District Attorney has the sole right of determination as to who is qualified and therefore, who shall obtain the position, and I can foresee the possibility that persons may be assigned to counties who do not even live in the counties merely out of political favoritism or the need for a District Attorney to assign such political plum positions to persons who assisted him in obtaining his election to the office. It is also unusual that the bill provides that each assistant and deputy District Attorney shall serve at the pleasure of the District Attorney who appointed them, when the stated object of the District Attorney bill is to establish professional prosecutors. It would seem to me that a professional prosecutor cannot exist in the political atmosphere which would be created by the coming and going of assistants and deputies with the coming and going of the District Attorney who appointed them.

Under Section 6(d) page 7, lines 24 through 29, there is a provision for the hiring of special counsel for assisting District Attorneys in cases where there is a need for additional assistance. This, again, would provide an exceptionally high cost in the more populated areas which expense would be borne by the persons in the small counties which do not have excessive criminal activity.

Under new Section 9(a) on page 9, there is provision for a "District Attorney's Finance Board". My objection to the method of selecting the District Attorney representatives on the Board is simply this; the two District Attorney members who would be selected to serve on the Board would be selected by the "District Attorney's Training and Assistance Council", which is provided for in new Section 8(a). Since the makeup of the "District Attorney Training and Assistance Council" would be made up of all District Attorneys and assistants and deputies it is obvious that the populated counties would control the council since the vast majority of the District Attorneys and assistants and deputy District Attorneys would be from the populated areas. Here, again, the deck is stacked against the districts which would be less populated and therefore less able to have their voice heard in any matter concerning the selection of the District Attorney representatives on the District Attorney Finance Board.

What solutions do I offer as an alternative to House Bill 2372? Very simply, the problem of finding competent prosecutors for Kansas counties can be solved by offering a reasonable salary for the services performed. The present County Attorney salaries could be doubled and it would not ultimately cost as much as it would under the District Attorney system as proposed. Prosecutors must be able to spend time on their cases, if the cases are to be handled properly and they can only do that if they are not forced to neglect their office in order to earn a living with their civil practice. It is certainly true that the present County Attorney system tends to attract a younger and less experienced attorney, but I do not view this as a defect in the system. If a young attorney has the financial security of a decent salary, he can devote more of his time to his duties and through the natural course of things become proficient in his field of prosecution. Without sufficient salary, he cannot. It is as simple as that. When he cannot, the system suffers. Mr. G. Garrett wrote in The Peoples Pottage, that "The moral overtones to paternalistic government cannot be stressed too strongly. First, as the government expands explosively, the people will lose control of it. Secondly, the people learn to become dependent upon government for aid and comfort. And, thirdly, people are first enticed by the benefits, and then obliged by authority to exchange freedom for status, and finally, the revelry of public money which for awhile seems to cost nobody anything, brings to pass a state of moral obliquity throughout society. This moral debacle is cancerous and possible incurable."

I cannot support a change merely for the sake of change and at the present, this appears to be the only real reason that the District Attorney system is being promoted in Kansas.

RESOLUTION

WHEREAS, the American Bar Association's Standards (a) recommend that wherever possible a unit of prosecution should be designated on the basis of population, case load, and other relevant factors, sufficient to warrant at least one full-time prosecutor and the supporting staff necessary to effective prosecution; and

WHEREAS, the American Bar Association's Standards (b) recommend that wherever feasible the offices of chief prosecutor and his staff should be full-time occupations; and

WHEREAS, the American Bar Association's Standards recommend that a state council of prosecutors should be established in each state; and

WHEREAS, the National Advisory Commission on Criminal Justice Standards and Goals recommend that in every state there should be a state level entity to promote innovative prosecution programs and support services; and

WHEREAS, the National Advisory Commission on Criminal Justice Standards and Goals recommend that such an organization should be subject to the control of the local prosecutors it serves; and

WHEREAS, the Kansas County and District Attorneys Association has been actively conducting studies, surveys, hearings, and planning sessions for the implementation of these standards for the past several years;

NOW, THEREFORE, BE IT RESOLVED THAT the Criminal Law Section of the Kansas Bar Association therefore favor and support the implementation of the concept of a statewide district attorney system as prepared for recommendation to the 1975 Kansas Legislature by the Kansas County and District Attorneys Association.

[Note: This resolution proposed by the Criminal Law Committee was adopted by the KBA Executive Council at its November, 1974 meeting.]

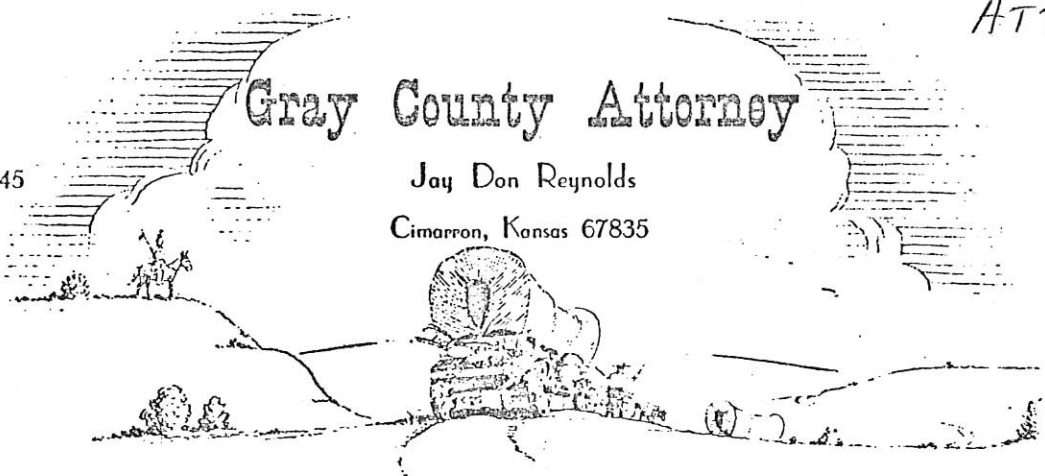
Gray County Attorney

Jay Don Reynolds

Cimarron, Kansas 67835

Phone (316) 855-3645

105 Main



July 9, 1975

Judiciary Interim Study Committee
 Kansas House of Representatives
 Capitol Building
 Topeka, KS 66612

ATTENTION: The Honorable John F. Hayes

In Re: House Bill No. 2372

Dear Sirs:

Having served as County Attorney in Gray County since January of 1971, I wish to comment on the above referenced bill which contains the District Attorney plan.

For background, please consider that Gray County is a small rural county containing just under 5,000 people and slightly over 500,000 acres.

As County Attorney for the past five years, I've spent between 40% and 60% of my time on county matters. Although the prosecution is the most dramatic and the most glamorized function of the office, substantial demands have been made by county officials in requesting counsel and legal advice on the operation of their respective offices. This appears to me to be under emphasized by many individuals in their appraisal of the County Attorney's role.

No question exists as to the need for improvements in the present system. I will not admit that prosecution by the so-called "part-time" prosecutors has been totally inadequate. When I think of myself as a prosecutor, it is not on a part-time basis. In my mind's eye, I am on call twenty-four hours a day at the request of the sheriff or any other law enforcement agency located within

the county. There has been times when I have cooperated with the Kansas Bureau of Investigation, the game wardens, the Kansas Highway Patrol and local police and sheriff offices in the same week. Effective prosecution is not going to be guaranteed by the adoption of the district attorney plan unless the district attorney and his deputies or assistants or whatever are given the tools they need to work with which should include trained investigative personnel and also make themselves available and accessible.

Under the bill as written, the investigative and the clerical staff, operating expenses and office space would continue to be provided for by the county. This particular provision is not going to change the status quo. Presently many county attorneys fight the continuing battle with their Commissioners to obtain adequate financing to operate their offices, pay secretaries, and purchase supplies for the county attorney's office. To request funds to hire additional investigative personnel may provoke a financial revolution. It would be my recommendation that the bill apportion the expenses of clerical and investigative staff, operating expenses and office space of the district attorney, his assistants and deputies on some equitable basis among the counties within the district, rather than require negotiation with each set of commissioners.

Another foreseeable problem is that the part-time deputies are going to be utilized in small counties and will be compensated on a per diem basis. This is impracticable in view of the fact that the part-time deputies will be the ones receiving the phone calls late at night and on the weekends from law enforcement agencies requesting warrants and complaints be drawn or other immediate action. These deputies will be the front line troops counseling the officers in the field while the district attorney and his assistants recline in their plush offices or engage in glamorous jury trials. For that reason, I would suggest that the plan adopt some concrete salary arrangement for the deputy.

Another reservation I have concerning the plan is that the civil responsibilities of the county attorney's officer must continue to be executed in order for county government to enjoy its present level of efficiency and hopefully improve it. County counselors may be the solution; I hope so.

With all these reservations and with the recommended changes I have made, I still support the bill and the concept. My only

hope is that the bill, when enacted will be flexible enough to meet the individual needs of all Kansas counties regardless of size and location. Thank you for your consideration.

Sincerely,

Jay Don Reynolds
Jay Don Reynolds
Gray County Attorney

JDR:jr

OFFICE OF THE
LEAVENWORTH COUNTY ATTORNEY
PATRICK J. REARDON
COUNTY ATTORNEY
COUNTY COURT HOUSE
LEAVENWORTH, KANSAS 66048
682-7230

THOMAS J. BROWN, JR.
CHIEF DEPUTY COUNTY ATTORNEY
AUSTIN N. WYRICK
FIRST ASSISTANT COUNTY ATTORNEY

July 8, 1975

Mr. Patrick J. Hurley
Attorney at law
818 North 7th Street
Leavenworth, Kansas 66048

Re: District Attorney Plan

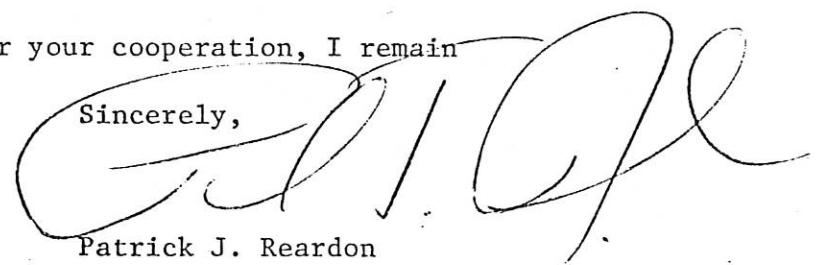
Dear Mr. Hurley:

I am writing this letter to express in the strongest terms possible my opposition to the establishment of the DA system in all counties in Kansas. As you know I have been the Leavenworth County Attorney for approximately four and one-half years; I am the secretary-treasurer of the Kansas County and District Attorneys Association; I am an experienced prosecutor and have personally tried a considerable number of felony jury trials; I am knowledgeable with respect to the operation of the prosecutor's office, both with respect to my own county and other counties in Kansas; in short I am not a neophyte attorney talking off the top of my head about a subject of which I am ignorant.

In any event, I enclose herewith a Memorandum of my views on this subject; I would appreciate your making this Memorandum available to the members of your committee and giving it your own thoughtful consideration.

Thanking you in advance for your cooperation, I remain

Sincerely,



Patrick J. Reardon
Leavenworth County Attorney

PJR:bs

Enclosures - 8 copies of Memorandum

cc: Mr. Walter Smiley
Legislative Research Department
Room 545
State House
Topeka, Kansas 66612

MEMORANDUM OF PATRICK J. REARDON, LEAVENWORTH COUNTY ATTORNEY,
IN OPPOSITION TO THE ESTABLISHMENT OF THE D.A. SYSTEM THROUGHOUT
ALL KANSAS COUNTIES

Except for the four largest Kansas counties, which of course already have the District Attorney system, I cannot express too strongly my disagreement with the establishment of the D.A. system throughout the State of Kansas, all as shall be hereinafter listed in more detail. Although my reasons for this disagreement are far too numerous to list with particularity, I shall set forth the following objections:

1. In the first place, I think that everyone agrees that the prime goal in this area is to obtain qualified and experienced prosecutors and in this connection the argument is advanced that this goal can best be achieved by means of full-time prosecutors under the D.A. system. The fallacy in this argument seems to me to be the assumption--in logic it would be called begging the question, i.e., assuming something has been proved when in fact it has not and then proceeding as if it had--that a full-time prosecutor in a small or medium county will be or would become more qualified and experienced than a part-time prosecutor. This may or may not be true depending upon the abilities, talents and work habits of each individual involved, all of which are completely separate from the type of system by which that individual is selected for his prosecutorial duties; there can be lazy or untalented full-time prosecutors; / just as there can be lazy or untalented part-time prosecutors; a guarantee of qualification or the lack thereof than is part-timeness--in either event it all depends upon the individual.

2. The next issue that should be in everyone's mind who is not independently wealthy or mentally deranged is the question of money. It should go without saying that the qualified and more experienced attorney makes a greater sum of money per year than his less gifted fellow practitioner; money is still the name of the game for the great majority of practicing attorneys, which really includes about everyone excepting those attorneys receiving substantial remittance payments or those laboring under ideological idiosyncracies. Therefore, to put the money matter into proper context, the D.A. system requires an attorney, whether qualified or not, to run for office and if he is elected, then to renounce private practice for at least four years; during this four year period of time this D.A. gains no private clients

and is limited to his D.A. salary, which by the way in a small or medium county is not nearly as much as a good attorney can make in private practice; a D.A. in a larger county at least can supplement his regular income to some meaningful extent by the number of appeals processed in said county; in addition to what has already been said, any D.A. is always subject to being defeated, whether fairly or otherwise, in the next election and if this occurs, and it will, then he is without any settled practice, office, secretary, income, or clients; prospects of this nature in a small or medium county are not going to attract anyone other than attorneys recently out of law school and with no practical experience or older attorneys whose private practice is either not flourishing or who want to rest on their laurels and draw their main income from the public treasury; in other words, the competent, aggressive and ambitious attorney in the small or medium county is not going to box himself into a D.A.'s position which he could lose at the next election and which, if he did, would leave him with no private practice developed on which to fall back or rely.

3. The advocates of the D.A. system for small and medium counties throughout Kansas are, in my opinion, innocently and with the best of intentions, subject to the age old mistake of thinking that theory is better than practice; these individuals mistakenly think that what sounds fine on paper or rhetorically expressed will work out equally well in practice or the real world; in thinking this way, these individuals unfortunately forget the truism of George Santayana's aphorism that he who does not know history is condemned to repeat it; the French Revolution was the finest revolutionary government ever committed to paper and yet in practice it led to the guillotine; the founding fathers of the United States Government, in formulating our present system of government, categorically rejected out of hand all arguments based on theory and accepted only those arguments founded upon experience, and, needless to say, in doing so they created the greatest form of government in the history of man; in short, practice should always prevail over theory in the real world.

4. In line with the above, and to be personal for a moment, I am the Leavenworth County Attorney and I also have a private law practice; I work conscientiously and diligently at both jobs and neither job suffers due to

the demands of the other;^ the crucial issue is self-discipline and I have tried more felony jury cases than any other County Attorney in Leavenworth's history and my office has handled a greater volume of cases than in any other administration in Leavenworth; I am quite proud of my record as County Attorney, as well as my record as a private attorney. My record is there for all to see and I am not exaggerating in the least; perhaps immodestly I set out these matters but I do so simply to demonstrate the legitimacy of what I have said above, namely, that in given circumstances a part-time prosecutor can be every bit as good, if not better, than a full-time prosecutor and that it would be a sad mistake to rush headlong into a D.A. system throughout every county in Kansas without consideration of the particular situation that may prevail in each county and what the D.A. system would mean in the long run for each county.

5. I set out the above facts simply because I know their accuracy and to show that it is possible for a part-time prosecutor to keep abreast of the law, to attend training seminars, to run his office properly, to try his cases on time and successfully, and to be honest and fair with the general public, and also to practice law on the side; in short, the part-time prosecutor system is not necessarily bad or not necessarily inferior to the D.A. system; in fact, the part-time prosecutor, in necessarily dealing with a broader range of subjects and peoples, may even be a little more competent and understanding in the discharge of his duties than his full-time compatriot whose vision just might become a little too narrow or circumscribed.

6. I think the D. A. system 1) would be too expensive for the entire state of Kansas (presently a County Attorney can supplement his official salary through private practice); 2) would change for the worse the complexion of the prosecution in the various counties (presently a County Attorney is elected every two years and therefore is more responsive to the wishes of his community since with the ability to practice privately his job is more attractive to more attorneys/competitors); 3) would lead to more bureaucracy in the prosecutorial system (full-timeness automatically leads to increased bureaucratic ineptitude in the name of efficiency); 4) would not eliminate possible conflicts of interests as the system's supporters claim (in a middle or smaller community a good friend of the prosecutor who

gets into trouble--and several always do--is a far worse problem than a client who may run afoul of the law, and the D.A. system certainly will not eliminate friends, friendship or friends of friends; 5) would not necessarily bring forward regularly the best qualified attorney for the job (without private practice and no guaranteed job stability, a really competent lawyer would not generally seek the position in a middle or smaller community); and 6) would result in making the present system, which admittedly is not the best, even worse.

7. I realize to a large extent in stating the views set out above that I am fighting for a cause which, if not already lost, is at least damaged in today's society, a society which is daily becoming more and more bureaucratic in nature, if not indeed insane. I assure you that I am not so naive as to think that my opinions on the superiority of practicality over theory are the opinions of the many, although of course I should like to think that some of my views are shared by a thoughtful few who may in time become a majority.

In conclusion I especially deny any idea that this Memorandum is intended in any way to disparage the integrity, ability or character of any full-time prosecutor or advocate of the D.A. system. I know certain full-time prosecutors who are some of the finest attorneys presently practicing law. My only reason for writing this Memorandum is because I believe fully in its contents, while recognizing at the same time the fallability of my own judgments; however recognizing the fallability of my judgments is not equivalent to admitting my fallability on every issue and I am frankly convinced that I am not in error on this issue, at least not in substantial degree. I strongly recommend retaining the part-time County Attorney system presently prevailing in all Kansas counties except the four largest.

Sincerely,



Patrick J. Reardon
Leavenworth County Attorney
Leavenworth County Courthouse
4th and Walnut Streets
Leavenworth, Kansas 66048
(913) 682-7230

OFFICE OF
THE
COUNTY ATTORNEY
JEFFERSON COUNTY
OSKALOOSA, KANSAS 66066

ATTACHMENT VIII

July 2, 1975

LAKE PERRY

The Special Committee on Judiciary
c/o Walt Smiley
Legislative Research Department
Room 551 N. Statehouse
Topeka, Kansas 66612

Re: HB No. 2372 -- Statewide District Attorney Plan

Committee Members:

It is my understanding that your committee is considering the feasibility of the implementation of House Bill No. 2372, submitted by Representative Everett regarding the establishment of a statewide District Attorney system.

The following represents some of my viewpoints regarding such a change based on my three years experience as a prosecutor in Jefferson County, Kansas.

The population of Jefferson County, Kansas, is approximately 13,000. The county is located directly north of Shawnee and Douglas Counties, Kansas, and is the site of Lake Perry, a federal reservoir, which is visited by approximately 1,000,000 people annually.

The implication and publicity pertaining to HB 2372 are that:

1. County Attorneys are underpaid.
2. County Attorneys are overworked.
3. County Attorneys are part-time.

The reasoning, therefore, is that County Attorneys are not truly professional prosecutors and the overall administration of criminal justice suffers as a result of the current system. The implementation of HB 2372 is submitted as a solution to "the problem" which will require the expenditure of from \$3,260,000 to \$4,705,000 as reported in the "Kansas Prosecutor", Vol. II, Issue 3, Summer 1975, Page 8.

Limiting my comments to my experience and my county, the passage of HB 2372 would, in my opinion, have this effect:

1. The small county would be required to hire and compensate a County Counselor to advise and represent the county in all matters which are not of a criminal nature. Under the present system this is not necessary.
2. The small county would be required to provide reasonable funds of the county for the compensation of stenographic, investigative, and clerical hire and other necessary expenses of the office of the District Attorney in the county. The county currently does this under the present plan.
3. The small county would be assigned, at the pleasure of the District Attorney, an assistant or Deputy District Attorney, who is not an elected official and responsive to the people of the county. If the assignment was a Deputy District Attorney, he could and obviously would engage in the private practice of law while serving as Deputy District Attorney. This part-time provision is the same as the current plan provides, and creates one of "problems" sought to be alleviated by the implementation of HB 2372.
4. The Assistant District Attorney or Deputy District Attorney would have the benefit of the experience and advice of the District Attorney of the district in the event of major crimes or complex legal issues.

Under the current plan the County Attorney, pursuant to K.S.A. 75-704 has the aid of the Attorney General of the State regarding consultation and advice and pursuant to K.S.A. 75-702 the benefit of his office in Supreme Court appeals.

The net result of implementation of HB 2372 in its essence regarding a small county would be:

1. The small county would no longer pay a County Attorney, but would be required to retain and pay a County Counselor.
2. The small county might have a full-time prosecutor, but also might have a part-time prosecutor as it currently does, neither of which would be locally elected and responsive to the local public.

The Special Committee on Judiciary
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July 3, 1975

What else might the expenditure of \$3,260,000 to \$4,705,000 bring? New Sec. 8(a) would provide for the development of a coordinated program for the training and assistance of all members of the council referring to all District Attorneys and Assistant and Deputy District Attorneys. Properly administered, this would greatly benefit the Kansas Criminal Justice System.

I do not by my comments intend to indicate a belief that our present system is totally adequate and needs no change. Obviously as the crime rates have increased, procedure and laws have become more complex, and the ancillary duties of the County Attorney have increased, it has become necessary to change the current system to meet the current needs. My contention is that HB 2372 in its present form is not adequate to meet the needs of a small county.

I realize that it is very easy to be critical of a proposal and yet not offer a solution. My concept of a solution to the problem as I understand it is rather simple. Maintain the present County Attorney's system with the following changes:

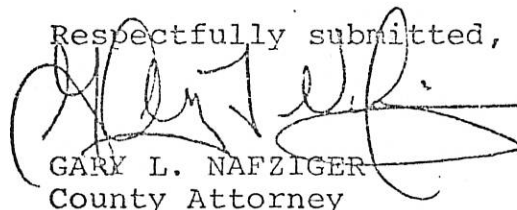
1. Require County Attorney be full-time prosecutors and County Counselors.
2. Provide adequate salaries to attract and hold qualified County Attorneys.
3. Provide funding for the continuing education, training, and assistance of County Attorneys.

The implementation of these changes will place a competent full-time prosecutor in each county. He will be well-trained, qualified, and responsive to the local populace and in close contact with local government.

The local government will have the advantage of his total efforts as County Counselor and the local law enforcement will have the benefit of a close working relationship with their prosecutor.

The net result should be a cure of the inherent difficulties in our present system without altering the advantages of the present system which, in my opinion, has functioned quite well over the years.

Respectfully submitted,


GARY L. NAFZIGER
County Attorney

SECOND JUDICIAL DISTRICT

JACKSON JEFFERSON POTTAWATOMIE WABAUNSEE

JOHN W. BROOKENS, JUDGE
COURTHOUSE
WESTMORELAND, KANSAS 66549

ALVIN A. STEVENS, CSR
OFFICIAL REPORTER
WAMEGO, KANSAS 66547

July 2, 1975

Honorable John F. Hayes
State Representative, 104th District
Chairman, House Judiciary Committee
106 Crescent
Hutchinson, Kansas 67501

Dear Representative Hayes:

Mr. Waler L. Smiley, Jr., Research Assistant of the Legislative Research Department called me on the telephone and asked that I appear July 10, 1975 before the Special Committee on Judiciary which will then be considering H.B. 2372, relating to District Attorneys. I advised Mr. Smiley that July 10th is one of my statutory Court Days, with cases long previously set, and could not appear; he suggested, confirmed by his letter of June 24th, that I write you concerning my views on this subject.

Senator Parrish also writes me in this regard. Apparently one or more county attorneys of my Judicial District have suggested to Senator Parrish that their views and my views coincide in many respects regarding this subject.

Views expressed herein are my own, and I do not presume to speak for any group or for any other person.

Proponents of a state-wide District Attorney system suggest this would enhance professionalism and competence in the prosecutor's office, would permit adequate pay scales to be developed, would reduce conflict of interest which at times does occur in our present system, and would lend itself to State, rather than local County, control.

The bill requires the District Attorney to be in the practise of law for 5 years. In looking over my Judicial District, I cannot think of any attorney with an established practise of 5 years, who would walk away from his practise and devote full, exclusive, time to this office. My experience in this district has been that the young attorneys seek the county attorney's office. As to competence, in my ten years on the bench, in this district, this idea of the young prosecutor being incompetent, or not professional, is in error. I have no statistics, but would suggest the win-lose record of the present county attorneys in this district compares very favorably with the existing District Attorney staff in the metropolitan areas which now have the DA system. I do not recall a single case where the State lost its case by reason of inadequate prosecution.

The 5 year requirement would eliminate all but one of the county attorneys in this district from seeking the District Attorney office, except for the grand-father clause.

As to conflict of interest, this does occur, but rarely. In the past, the County Attorneys have sought and secured an assistant to handle a criminal matter. I know of no violation of ethical standards in this regard in our present system.

In Pottawatomie County, alone, the county attorney's office has processed 19 felony matters through this court to a conclusion in the period from January 1, 1975 through June 30, 1975. This includes preparation of the case for trial. This county attorney uses plea bargaining very sparingly. Of the 19, 5 have been tried to a jury, 5 were dismissed for one reason or another, and 9 entered pleas of guilty. Additionally, the County Attorney appears in the County Court on juvenile matters; rather, the Juvenile Court on juvenile matters, and in the County Court on misdemeanor and traffic matters. This young man is very effective; he graduated from Law School in June, 1974. He confers with the County Commissioners on matters. He works very hard and long hours. He is grossly underpaid.

This theme would be true, generally, in each county--although right now, Pottawatomie County seems to have the highest criminal case load--this will vary from county to county from year to year, for reasons that I do not comprehend.

I wonder how a District Attorney in this four county district would keep tabs on the cases in each county, would control the cases; is it anticipated the DA will try the cases, the felony matters, because he is the competent expert in this field. Will the DA be entitled to employ such assistant district attorneys as he deems necessary? If so, he will need at least three in this district.

Is it implicit in this legislation that each county will have a county counsellor? This will be necessary if we go to the district attorney system, which is pointed, it seems, solely to prosecutorial duties.

If each county is to have either the DA, or the assistant DA or deputy DA, what is the need for the district attorney with overall authority?

Local control is inherent in the county system of government. The prosecutor has wide discretion, based on local factual situations, and historical considerations, as to what particular charge is to be brought against an individual. I would oppose any lessening of local control of government. The history of concentration of governmental powers is not conducive to the belief that big is better. Impersonal government exists at the national and state level; it is only at the local level that the people can reach those in governmental authority.

There is now pending in the Legislature a bill that would abolish city police courts. If this item should become law, would city ordinances come under the authority of the DA staff?

I suppose if the Legislature wants to embark on a full-time, State controlled, State financed prosecutor system, this bill is as good as any. However, I believe our present county attorney system is responsive to the people, it has very few faults (except pay to the county attorney), and has served the people well over the years. I am not aware of any hue and cry to abolish the county attorney system, except in metropolitan areas. This was needed, for example, in Topeka, Wichita, Johnson County, and perhaps is needed in some other metropolitan areas. As you know, the Kansas District and County Attorney Association is controlled, as to its endorsements, and recommendations, by the present areas that have District Attorneys. I cannot see the need, nor any benefits, in this particular judicial district. I am not familiar with the other rural areas of the State, but would see no reason for dissimilarity.

This legislation reminds me of the legislation proposed a year or so ago by a legislator from Wichita, to consolidate the State into a few, larger counties. This was in the name of economy. The party forgot about the cost of travel and the time of travel -- of the people. Economy of scale is not necessarily a controlling factor in government. I always wonder why one from Wichita worries so much about local governmental costs in rural areas.

I do believe the present county attorneys should have their salaries substantially increased; this, by statute, not by a board of governors.

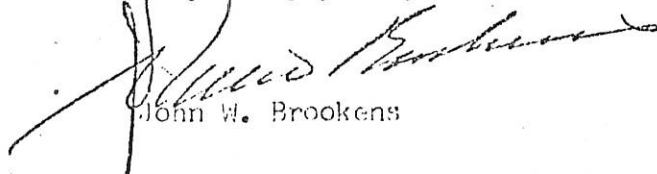
If there is a need for "expert" prosecutors, let the Attorney General's office engage the services of 2 or 4 such persons, and let them be at the call of the county attorneys, over the State.

I am not sure how the people in a four county area, such as this district, will have any more knowledge of the competence of a candidate for district attorney, than they will of a candidate, in one county, for county attorney. The reverse would seem more true.

I don't know the reason, but I do believe the last two or three county attorneys of Riley County were defeated for re-election. This, again, goes to local reasons and local control, on the county level.

I have not had time to more than read the proposed bill over once, and it may be I have not understood the thrust of the bill; but, overall, I would oppose this legislation on philosophical and on practical grounds as indicated. I believe this to be the opinion of the county attorneys in this judicial district.

Very truly yours,



John W. Brookens

JWB:nb

cc: Honorable Jim Parrish
Mr. Walter L. Smiley, Jr