Findings and Recommendations Regarding the Training of Prosecutors in Hawaii

TECHNICAL ASSISTANCE REPORT

Bureau of Justice Assistance
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ADJUDICATION TECHNICAL ASSISTANCE PROJECT
Technical Assistance Assignment No. 185

Findings and Recommendations
Regarding the Training of
Prosecutors in Hawaii

February 1989

Consultants:
James L. Shonkwiler, Esq.
Paul M. Li, Esq.

Prepared Under BJA Cooperative Agreement No.87-DD-CX-K061
ASSIGNMENT DATA SHEET

Technical Assistance No.: 185
Requesting Jurisdiction: State of Hawaii
Requesting Agency: Department of the Attorney General
Requesting Official: Ms. Lari Koga, Administrator
Resource Coordination Division
Dates of On-Site Study: February 13-16, 1989
Consultant(s) Assigned: James L. Shonkwiler, Executive Director
Prosecuting Attorneys Association of Michigan
Paul M. Li, Executive Director
California Center for Judicial Education & Research
Central Focus of Study: Development of a Long-Range Prosecutor Training Program

This report was prepared in conjunction with the EMT Adjudication Technical Assistance Project, under a Cooperative Agreement with the Bureau of Justice Assistance of the U.S. Department of Justice.

Organizations undertaking such projects under Federal Government sponsorship are encouraged to express their own judgment freely. Therefore, points of view or opinions stated in this report do not necessarily represent the official position of the Department of Justice. EMT is solely responsible for the factual accuracy of all material presented in this publication.
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APPENDIX

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I. INTRODUCTION

In November, 1988, the director of the Resource Coordination Division of the Department of the Attorney General, State of Hawaii, requested technical assistance from the Adjudication Technical Assistance Project to: (1) assess the training needs of the prosecuting attorneys throughout the State's four counties, and (2) provide the Attorney General with recommendations for a long-range training program and an implementation plan for carrying it out. It was anticipated that the adoption of a permanent formal training program for Hawaii prosecutors will enable the Attorney General to apply for use of state asset forfeiture funds for ongoing training.

By mutual agreement, the site work was scheduled for mid-February, 1989, to permit adequate time for development and transmittal background information on the various prosecutor offices and on Hawaii's present and prior experience with prosecutor training. The ATAP team selected for this assignment included the heads of two highly respected statewide justice system training organizations in the county: Paul M. Li, Executive Director of the California Center for Judicial Education and Research, and James J. Shonkwiler, Executive Director of the Prosecuting Attorneys Association of Michigan. Site work took place February 13-16, 1989.

This report reviews actions taken by the consultants to conduct a training needs assessment of the four county prosecuting attorneys serving the state of Hawaii, and the criminal prosecution staff of the State's Attorney General. A long-term training and central prosecutors services plan has been the result, which is included with this report.

The consultant team's in-state itinerary and interview schedule, as well as selected background material supplied to the team for review prior to its on-site work are contained in Appendices A and B. In the course of conducting all meetings indicated in the "revised itinerary" the consultants interviewed all persons listed in the "revised schedule" and "contact persons" list, except Honolulu Prosecuting Attorney Keith Kaneshiro. The following persons also were interviewed: William R. Coleman, Deputy Attorney General for the Criminal Division; Alan Shimabukuro, Executive Director of the Hawaii Criminal Justice Commission; Jay Kimura, First Deputy Prosecuting Attorney, County of Hawaii; Charlene Iboshi, Senior Deputy Prosecuting Attorney, County of Hawaii; Robert Toyofuku, Director, Pacific Law Institute. Several other persons were present at meetings conducted, but were not extensively interviewed.

Appendix C contains the outline of the consultants' recommended long-term training program that was discussed at an exit seminar with representatives of all four prosecuting attorneys offices on the final day of the team's site work. Appendix D contains relevant reference materials for the proposed Hawaii program.
II. ANALYSIS OF THE EXISTING SITUATION

The last period during which Hawaii prosecutor training programs were tailored to a continuing identification of local needs was a combined public defender/prosecutor training project under LEAA funding in the 1970s. There has been no central training or coordination of training for Hawaii prosecutors since that project terminated. Occasional courses are offered by the Hawaii Institute for Continuing Education, and the private Pacific Law Institute. In recent years, three or four specialized seminars have been conducted annually arranged by members of the staff of the Attorney General or the Honolulu prosecuting attorney. They have been supported by special justice assistance grants, and have typically been conducted by outside contractors such as the National College of District Attorneys. Some excellent local people and valuable in-state resources have been utilized, but an overall theme or plans has not been adopted or followed. It appears that the availability of funding has driven the identification of training needs and priorities, rather than the other way around. The most obvious missing ingredient: no one is in charge. The result has been "hit and miss" "catch-as-catch-can" training without reference to long-term objectives. The approach to training has featured little long-term planning, no anticipation of needs, and duplication of effort when one state-level work product could serve the need of others who do not benefit. There has been no system in place to enable those not participating in a good seminar to obtain some of its benefits through review of pretrial materials or recordings.

A notable exception exists to the general finding that little attorney-leadership has been invested in an overall training effort. Upon assuming office, Attorney General Warren Price designated Deputy Attorney General Wesley Fong as the department's formal training officer. Mr. Fang's assignment was to develop an internal training agenda for all attorneys and support staff in the department, civil as well as criminal. The resulting nine-component training plan may be a national model for a full-service approach for the department's 120 attorneys and additional subordinate staff. This excellent program, which has been conducted on a modest budget and is considered mandatory for the Attorney General's staff, does not involve the county prosecuting attorneys in Hawaii. While Mr. Fong's background is essentially civil, he represents an outstanding resource to the Hawaii prosecutors as an advisor or consultant on training design and technology.

Examination of internal training efforts in the four county prosecutors' offices indicates essentially an on-the-job training approach: "walk around and watch". Several worthy efforts have been undertaken to orient deputy prosecutors in Saturday sessions or during out-of-court time, but participation is generally voluntary and the results appear limited. There is no indication of formal training for secretaries or paralegal staff. There has been a move toward increased use of paralegals in Honolulu County, which would
indicate an additional specialized training need. Prosecutor training budgets in the
individual counties are limited. Secretarial training was seen as a priority objective, and
in some cases the secretarial staffing picture was described as a crisis. High secretarial
turnover was seen as a serious problem. Personnel interviewed did not see it as realistic to
propose the training of secretarial staff during workday released time.

Examination of submitted materials and the response to interview questions indicated
a high deputy prosecuting attorney turnover in Hawaii. While the turnover was not seen
as a staffing problem due to the ample number of applications for vacancies, turnover
represents a significant training problem. Interviews within and without the prosecutor
offices disclosed a number of fundamental weaknesses in the competency level of some
assistants who appear in court. Among the specifics cited: an absence of a thorough
knowledge of the rules of evidence and effectiveness and creativity in their use; trial
deputy(s) may "overstate their case" creating a danger of mistrial; and in some cases, they
appear to lack confidence in their case, which reflects lack of organized trial preparation.

Special subject matter areas cited as examples of a need for specialized training
included scientific evidence, the insanity defense and management skills, in addition to the
basics of criminal law and procedure, and the rules of evidence.

Among some prosecutors interviewed, there was a lack of commitment to the concept
of training as an office priority, indicating that the benefits of training still need to be
sold. Most persons interviewed, however, reflected a high concern that a system for
continuing training be established as a state priority. Most supported the viability of
weekend training events while expressing preference for periodic workday training on
released time. A Honolulu judge expressed support for a court-declared "training holiday"
for all judges and trial attorneys, and indicated a willingness to endorse that concept to the
Supreme Court.

It is the team's overall impression that the prosecution system in Hawaii functions
reasonably well, through the efforts of a number of dedicated individuals and the
motivation and competence of the attorneys and staff. A high price is being paid, however,
for the lack of central coordination. Counties are essentially isolated from each other in
policies, working style and priorities. When a lack of training, information, or skills
becomes apparent, the leadership reacts to what is happening, rather than anticipating and
planning to meet needs which are inevitable, such as a change of law due to legislation or
court decision. A spin-off benefit from regular training is the generation of fresh ideas
through cross fertilization. This benefit is realized by the Hawaii deputies who attend
mainland specialized courses each year sponsored by NCDA and others. The number of
deputies who can be freed from regular assignments, or can afford to go, however, is too
limited to have a substantial impact on the system as a whole.
III. THE TRAINING PLAN

The state as a whole bears the responsibility for a reasonable measure of uniformity in the quality of prosecution services in each county. This should be a state goal, and it should be reflected by a state assumption of responsibility for the costs of achieving that goal. The state’s continuing interest in a measure of standardization of service can be met through systematic training and regular meetings and communication between the professionals who are responsible for that service. The counties can still be left free to reflect local priorities and the variation of local needs.

The key to any effective training plan to meet the needs of the prosecutors of Hawaii will depend upon assignment of clear responsibility in an attorney-executive to follow up on the components of that plan. The Hawaii Prosecuting Attorneys Association should continually define and redefine training priorities based on identified needs. A central responsible official must follow through and provide continuity.

As in the case of the fine training plan presently implemented by the Attorney General, all members of the county prosecuting attorney’s staff should participate in training activities. On-going training in realistic amounts and at realistic times is needed for secretaries, investigators, and victim/witness counselors, as well.

The consultants directed many questions to local prosecutors to determine the acceptability and appropriateness for the location of central responsibility for on-going training. All prosecuting attorneys offices seemed willing to defer to the Department of the Attorney General as the appropriate location for a permanent training staff. In addition to the appropriate personnel, the central office should be equipped with basic video recording hardware to preserve live seminars for local distribution. Through this approach, all personnel can benefit from the material presented in seminars, including those who could not attend. All counties presently have video replay equipment, except Kauai, and that omission should be remedied.

On Thursday, February 16, the consultant team presented an oral report to an assembly of representatives from each of the effected offices. Appended (Appendix C) are the overhead projector outlines utilized for that presentation. It is recommended that action begin at once to implement the plan contained in Appendix C, Page 2. Until a central office headed by an attorney director can be established, a temporary training team should be established to follow through on details. (See "A Training Program Implementation Schedule", infra.)
A. Overview of the Program [Reference Appendix C-2]

1. New Attorneys (Basic)
   
   a. Local. This represents the initial orientation presently conducted in some form by each county. It is necessary to assure that a new attorney is acclimated to the policies, procedures, and priorities observed by each local office.

   b. Statewide. This central program, which should be three-five days in duration and conducted three or four times per year at a central location, should be a presentation of generic basic materials which are common to all offices: the criminal code, basic criminal procedure, the rules of evidence, the role of a prosecutor, and ethics. These regularly scheduled programs could be videotaped and portions of them that have not changed could be repeated at subsequent programs, supported by live discussion leaders. Veteran prosecutors drawn from all four counties would compose the faculty.

2. Continuing Education

   Two annual institutes should be established for the entire Hawaii Prosecuting Attorney’s Association (HPAA) to be conducted in the spring and fall while the courts are adjourned for their own meetings or training. The curriculum should include an update on the law, and new developments in the field. These institutes should include breakout groups for clerical and other support staff. At the option of the state, some essential materials which are generic to all personnel in the system could be presented to all in a consolidated session.

   The addition of specialized trial practice and advocacy programs to the recurring training agenda may have to await the establishment of a permanent, central coordinating office. "NITA-type" programs are presently being presented by experienced state-level staff in many states, utilizing a modest budget. The outlines of model programs are available from other states for the use of an Hawaii central staff when they reach that stage of development. Attorneys should continue to be sent to mainland NITA courses. These persons can used for faculty for later in-state sessions.

3. Special Programs (Advanced)

   a. In-State. We recommend the continuation of specialty programs conducted with state or federal resources following the pattern of the three or four per year sessions conducted in recent years.
b. **Mainland.** It is essential that prosecuting attorneys and deputies continue to be sent as often as possible to mainland NCDA specialized conferences, such as the Executive Course, and the Career Prosecutor's Course. These valuable programs should be available as an incentive/reward for senior personnel who have assumed a leadership role in their office. This approach is consistent with the concept that "basic training" is a state-level responsibility.

4. **Video Programs**

   This anticipates the establishment of a central library of training materials which should include videotapes of in-state live programs or tapes purchased from out-of-state sources. The tapes can be accompanied by training handouts from seminars conducted in-state or on the mainland. This revolving library can reach all staff members in all locations for local training as time permits.

5. **"How To" Practice Materials**

   The basic working tools for daily practice of prosecuting attorneys can be developed once for the use of each office. The discussion of the components of a full service central office includes a listing of the other resources appropriate for central production.

**B. A Training Program Implementation Schedule**

1. **Short-Term: 3-6 months**

   A temporary training team should be appointed. A team that would be appropriate for this purpose could include an attorney from the Honolulu prosecuting attorney's staff, Deputy Attorney General Wesley Fong, Hawaii Criminal Justice Commission Executive Director Alan Shimabukuro, supported by Lari Koga of the Attorney General's staff, and Karen Sakata of the Honolulu prosecuting attorney's staff. They should be accountable to the Hawaii Prosecuting Attorneys Association, or an educational committee appointed by them. This central oversight group is essential to begin laying the groundwork for a permanent central staff.

2. **Intermediate/Long-Term: 1 year or longer**

   Forty of the 50 United States have created a central staff responsible for ongoing training and services for local prosecutors. That list includes states with a smaller population that Hawaii, and without Hawaii's inherent isolation of counties which creates
additional urgency to this need. A basic model for this full service approach is the central services supplied by the Department of Justice to United States Attorneys.

3. **Long-Term Alternative**

   We have been made aware of a previous report prepared and filed by a state-level crime commission which recommended establishment of a Hawaii State Criminal Justice Academy. The academy and oversight Criminal Justice Standards and Training Commission would set standards and mandate training for all components of Hawaii's system. This approach may have merit for the overall training needs of the state. We believe that a central office to serve the state's prosecutors should be established in any event. That central office could act cooperatively with a state-level academy if one were established in future years.

C. **Financing Options [Reference Appendix C-3]**

1. **State**

   Based on the successful initiatives of other states across the nation, it is recommended that Hawaii establish a permanent base of prosecutor support composed of a minimum central staff. This should consist of an attorney director, a non-attorney training administrator, and a secretary. A budget in the amount of $150,000 - $200,000 should be adequate to initially establish this base unit. Future expansion will depend upon state priorities. Some states, such as Michigan, have established central prosecutor-service programs involving 15-20 staff with funding exceeding $1 million. The actual costs of training should also be state-financed, but can be obtained from specialized sources such as Hawaii's new statute providing for forfeiture of criminal assets.

2. **Federal**

   Hawaii's past practice of applying for federal grants for special purpose seminars should be continued as long as those funds are available.

3. **County/Local**

   Modest tuition payments supported by county funds for the attendance of prosecutor office staff should be viewed as a source of "enrichment" funds to expand central programs and services, rather than the basic funding support for training.
4. **Justice Training Fund**

Several states have established "justice training funds" funded from surcharges against criminal convictions or civil traffic infractions. More information can be supplied when an Hawaii central staff reaches that stage of development.

D. **A Full HPAA Central Office [Reference Appendix C-4, Appendix D]**

A principal recommendation of the consultants in the establishment of a central training coordination office under the auspices of the Hawaii Prosecuting Attorneys Association. The initial structure and estimated cost for such an office capability are discussed under Section C, above, and the range of services that should be provided by that office are detailed in Appendix C-4. Also see appended (in Appendix D): 1) "Program Description and Management Plan" for the Prosecuting Attorneys Coordinating Council of Michigan. This outline, which was developed for budget presentation purposes, further details the services of that office; 2) "PACC/PAAM Training Manuals". The manuals included on this list have been developed and are periodically revised by a staff of part-time law student interns supervised by an experienced attorney; 3) "Video/Audio Library". The videotapes included have been both developed in-state and obtained from other sources; 4) "PA 203 of 1972". This statute created the Office of Prosecuting Attorneys Coordination in Michigan, and has been unamended since its adoption.
IV. CONCLUSION

As indicated above, the consultant team presented its findings and recommendations to the Hawaii prosecuting attorneys and their representatives in Honolulu on February 16, 1989. The participants in that meeting agreed with the findings and recommendations. They also expressed a desire to begin at once to implement the recommended training plan and agreed to form a statewide educational committee, with representatives from all the affected offices, to undertake this important work.

Throughout the entire consultancy, the Hawaii prosecuting attorneys and their staffs worked closely with the consultant team and contributed greatly to formulating its findings and recommendations. Indeed, in the last analysis, this is their training proposal, and the consultants appreciate very much having had the opportunity to work with them to institute a formal training program for the prosecuting attorneys of Hawaii.
APPENDICES

A. Letter of February 3, 1989 from Lari Koga of Hawaii Attorney General's Office to project director Joseph A. Trotter, transmitting information about the various prosecuting attorneys' offices in Hawaii, the names of other criminal justice agency personnel, and the proposed schedule for the project consultants.

Memorandum of February 14, 1989 from Prosecuting Attorney Joseph E. Cardoza to Lari Koga, concerning the prosecuting attorney's office for Maui County.


C. Copies of overhead transparencies used by consultants in making February 16, 1989 oral report to the Hawaii prosecuting attorneys and their representatives in Honolulu.

D. Information on Michigan Prosecuting Attorneys Coordinating Council, including legislation creating the coordinating council within the Michigan Attorney General's Office and descriptions of the council's program service areas, training manuals, and video/audio library.

* * * *
Mr. Joseph A. Trotter, Jr.
Project Director
Adjudication Technical Assistance Project
EMT Group
3615 Wisconsin Avenue, N. W.
Washington, D. C. 20016

Dear Mr. Trotter, Jr.:

Enclosed are as much information as I could gather from the Prosecuting Attorneys of each county. It may not be as detailed as I had hoped but I thought you'd want the information as soon as possible.

Attachment A: Information requested on the prosecutors' offices and division.

Attachment B: Names of the other criminal justice agencies personnel.

Attachment C: Suggested schedule for the consultants.

If you have other questions, please call me or Karen Sakata.

Sincerely,

Lari Koga

Attachments

cc: Ms. Karen Sakata
ATTACHMENT A

Information from Prosecutors

City and County of Honolulu

a. No position descriptions for deputy prosecutors.
b. No. of deputies: 88
c. Years in department:
   0-1 year  28 deputies
   1-2 years  7
   2-3        10
   3-4        10
   4-5        13
   5-6        6
   6-7        8
   7+ years   6

d. There are 10 legal divisions in the Department:
   Appellate
   Career Criminal
   Circuit Court
   District Court
   SID
   White Collar

   Support divisions: administration, investigators,
   victim-witness, and library.

e. Caseload:
f. Contact: Keith Kaneshiro, Prosecutor
   Cora Lum, First Deputy Prosecutor

Hawaii County

a. No position descriptions for deputy prosecutors.
b. No. of deputies: 16
c. No. of Years in department or experience:
   1 year   3 deputies
   2 years  2
   3        3
   4        3
   6        2
   8        1
   9        1
   17       1
d. Names of divisions/unit (see Attachment A-2).
   Career Criminal Program
   Screening, Felonies, Misdemeanors

e. Caseload: 11,499 plus 36,233 traffic cases

f. Contact: Jon Ono, Prosecuting Attorney

Maui County
a. No position descriptions for deputy prosecutors.
b. No. of deputies: 

c. No. of years in department or experience:
d. Names of division/unit:
e. Caseload:
f. Contact: Joseph Cardoza, Prosecuting Attorney

Kauai County
a. No position descriptions for deputy prosecutors.
b. No. of deputies: 6

c. No. years in department or experience:
   1 year  2 deputies
   2 years  1
   4        2
   7        1

d. Names of division/unit:
   County funded
   Career Criminal Program
   Special Drug Prosecution Unit
e. Caseload: 3,062 plus 17,673 traffic cases

f. Contact: Ryan Jimenez, Prosecuting Attorney

Criminal Justice Division, Department of the Attorney General
a. Position description: Attorneys with state-wide jurisdiction who prosecute cases at all levels of state courts, and on occasion in federal courts. Should be able to prosecute any crime with a criminal penalty, with emphasis on white-collar crime.
b. No. of deputies: 5

c. Years of experience:  
- 15 years: 1 deputy  
- 10 years: 1 deputy  
- 7 years: 1 deputy  
- 5 years: 2 deputies

d. The Criminal Justice Division is one of many divisions under the Attorney General (see Attachment A-1). There is one supervising deputy attorney general, and 4 deputies.

e. Caseload:

f. Contact: Lawrence Goya, Supervising Deputy Attorney General  
           William Coleman, Deputy Attorney General
PROSECUTING ATTORNEY'S OFFICE

PROSECUTING ATTORNEY AA18
Z-0026

FIRST DEPUTY PROSECUTING ATTORNEY AA16
Z-0027

FISCAL SERVICE
Cost Account Clerk SR 13
#2988

SECRETARIAL SERVICES
Private Secretary SR 16
#1882

SR. DEPUTY LG2
Z-0028

VICTIM/WITNESS UNIT
CHART II

PROSECUTION UNIT
CHART III

CAREER CRIMINAL PROGRAM/ORGANIZED CRIME
CHART IV

WEST HI UNIT
CHART V

ATTACHMENT A-2
ATTACHMENT B

LIST OF OTHER CRIMINAL JUSTICE PERSONNEL

Chiefs of Police

City and County of Honolulu: Douglas Gibb
County of Hawaii: Victor Vierra
County of Maui: Howard Tagomori
County of Kauai: Calvin Fujita

Public Defender:

County Unit Supervisors
Hawaii: Hilo Office Francis Akamine
Maui: Kona Office Frank Miller
Kauai: Thomas Griswold

The Judiciary

Chief Justice, Supreme Court: Herman Lum
Chief Judge, Appellate Court: James Burns

Administrative Judges of the Circuit Courts

First Circuit (Honolulu): Wendell Huddy
Second Circuit (Maui): Boyd Mossman
Third Circuit (Hawaii): Ernest Kubota
Fifth Circuit (Kauai): George Masuoka
MONDAY, February 13, 1989

Depart Honolulu, Oahu: Aloha, Flight 97, 5:30 p.m.
Arrive Lihue, Kauai: 5:57 p.m.

Transportation: Taxi from Airport to
Kauai Sands Hotel
420 Papaloa Road
Coconut Plantation;
from Hotel to Office of the
Prosecuting Attorney, 4193 Hardy
Street, Room 7 (ph. 245-7791)

TUESDAY, February 14, 1989

Depart Lihue, Kauai: Hawaiian, Flight 312, 12:03 p.m.
Arrive Kahului, Maui: 1:32 p.m.

Transportation: Taxi from Airport to Office of
the Prosecuting Attorney, 200
South High Street (243-7777)

Depart Kahului, Maui: Aloha, Flight 222, 6:15 p.m.
Arrive Hilo, Hawaii: 6:43 p.m.

Transportation: Taxi from Airport to
Hilo Hawaiian Hotel
71 Banyan Drive

WEDNESDAY, February 15, 1989

Transportation: Jay Kimura to pick up from Hotel
to Office of the Prosecuting
Attorney, 34 Rainbow Drive (941-0466)

THURSDAY, February 16, 1989

Depart Hilo, Hawaii: Aloha, Flight 41, 7:00 p.m.
Arrive Honolulu, Oahu: 7:41 p.m.
Revised Schedule

8:15 a.m.  Meeting with Karen Sakata and Lari Koga
8:45 a.m.  Meet with Corinne Watanabe, First Deputy Attorney General
9:15      Meet with Wesley Fong, Deputy Attorney General formerly training coordinator for the Department
9:30 a.m.  Meet with City and County of Honolulu Prosecuting Attorney staff
2:00 p.m.  Meet with Judge Donald Tsukiyama, Circuit Court Judge (Court Room 8, 3rd Floor)
3:00 p.m.  Meet with Larry Goya, Supervising Attorney for Criminal Justice Division, Department of the Attorney General

Thursday, February 16

Add 11 a.m. meeting with Joy Labez of the Judiciary (she is attempting to arrange a meeting with Justice James Wakatsuki who is overseeing judicial training)