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# The Organization, Powers, and Administration of the District Attorney's Office in the Second Judicial District of New Mexico

Harold R. Goff

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THE ORGANIZATION, POWERS, AND ADMINISTRATION  
OF THE DISTRICT ATTORNEY'S OFFICE IN THE  
SECOND JUDICIAL DISTRICT OF NEW MEXICO

By

Harold R. Goff

A Thesis

Submitted in Partial Fulfillment of the  
Requirements for the Degree of  
Master of Arts in Government and Citizenship

University of New Mexico

1940

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This thesis, directed and approved by the candidate's committee, has been accepted by the Graduate Committee of the University of New Mexico in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

J. R. Hammond  
DEAN

February 28/40  
DATE

Thesis committee

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CHAIRMAN

G. S. White

Manoel Dargatzis

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MASTER OF ARTS

1941

1941

THESIS COMMITTEE

CHAIRMAN

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## PREFACE

The district attorney is one of the most important law enforcement officials in New Mexico because the laws which he enforces touch upon every phase of the life of the community. The purpose of this study has been to determine the function and powers of the district attorney, and how they are administered, as well as the organization of the district attorney's office.

Material for this study was obtained from the laws passed by the legislature of New Mexico, leading writers on the subject, civil and criminal dockets of Bernalillo and Sandoval counties, interviews with an assistant district attorney, district clerk, and a member of the county treasurer's staff, and personal opinions expressed in letters written by two well known Albuquerque lawyers.

The scope of this study has been limited to a five year period, July, 1932, to July, 1937, in order to survey a portion of the work done by the last three district attorneys of the Second Judicial District, which comprises Bernalillo and Sandoval counties.

The procedure followed in making this study was to examine the existing laws and the works of well known authors, and to interview persons acquainted with certain aspects of the office, to secure information concerning the



organization of the district attorney's office, as well as the powers of his office and how they are administered. Then, the civil and criminal dockets of the Second Judicial District were examined and a comparison made between the cases which the district attorney was supposed to prosecute and those he actually prosecuted.

I wish to thank Dr. Thomas C. Donnelly for his assistance and advice during the preparation of this study; Mr. Gino J. Matteucci for the reading of the manuscript and for information concerning the district attorney's office; and my wife for constant aid and encouragement. For the errors which remain the responsibility is mine.

Harold R. Goff

July 18, 1939.

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July 10, 1954

## CHAPTER I

### THE DISTRICT ATTORNEY AND HIS OFFICE

The district attorney plays a role of vital importance in the enforcement of a number of laws which touch upon every phase of the life of the community. So important are the functions and powers of his office that he might well be called the key figure of our judicial system.

Newman F. Baker and Earl H. DeLong, who for many years have been students of the district attorney's office, maintain that,

Whether he is a rural or metropolitan officer, the prosecuting attorney is probably the most powerful figure in local government.<sup>1</sup> The office of prosecutor is the central force which gives tone and momentum to the creaking movement of our criminal judicial machinery.<sup>2</sup>

Dr. G. Kenneth Reiblich, who made a study of judicial administration in Maryland, comments:

It is in the office of State's attorney, corresponding to the district attorney or prosecuting attorney of other jurisdictions, that we have the working unit for the enforcement of criminal law. Its importance is hard to exaggerate. Upon the State's attorney alone, in the great majority of cases, rests the power of

---

<sup>1</sup> Newman F. Baker, and Earl H. DeLong, "Prosecuting Attorney and His Office," Journal of the American Institute of Criminal Law and Criminology, January-February, 1935, p. 598. (Hereinafter cited as: Baker and DeLong, Journal of Criminal Law and Criminology.)

<sup>2</sup> Baker and DeLong, "Prosecuting Attorney and Reform in Criminal Justice," Journal of Criminal Law and Criminology, March-April, 1936, p. 231.

CHAPTER I

THE DISTRICT ATTORNEY AND HIS OFFICE

The district attorney plays a role of vital importance in the enforcement of a number of laws which touch upon every phase of the life of the community. He is important and his position and power of his office that he might call for called the key figure of our judicial system.

James F. Baker and Earl H. Nelson, and for many years have been students of the district attorney's office.

It is that

Whether as in a rural or metropolitan office, the prosecuting attorney is probably the most important figure in local government. In the office of the prosecuting attorney, the central force which gives form and direction to the working movement of our judicial system.

Dr. G. Kenneth Bollich, who made a study of judicial administration in Kentucky, comments:

It is in the office of the district attorney, however, that the judicial system is administered. In other jurisdictions, there are separate offices for the enforcement of criminal law. The importance of the district attorney's office is that he is the great majority of cases, and the power of

---

<sup>1</sup> James F. Baker and Earl H. Nelson, "Prosecuting Attorney and His Office," *Journal of the American Institute of Criminal Law and Criminology*, January-February, 1922, p. 202. (Reprinted also in: Baker and Nelson, *Journal of Criminal Law and Criminology*.)

<sup>2</sup> Baker and Nelson, "Prosecuting Attorney and His Office," *Journal of Criminal Law and Criminology*, March-April, 1922, p. 201.

determining whether prosecution in any given case shall be inaugurated, and if inaugurated, whether it shall be pushed to a successful conclusion. After the case is begun, the vigor and energy with which this all powerful official presses it, seeks witnesses, and controls its course determines the result in practically all instances. He may allow the case to drag, ask for a continuance, or kill it altogether by asking for a nolle pros, which is invariably granted by the court. Then, many times the opinion of the prosecuting attorney has considerable weight in determining the judges sentence after the case is brought to a conclusion.<sup>3</sup>

The National Commission on Law Observance and Enforcement in its Report on the Prosecutor, declared:

The power of nolle prosequi, as a means of selecting those to be tried, makes the prosecutor the real arbiter of what laws shall be enforced and against whom. . . .<sup>4</sup>

Roscoe Pound of Harvard University has said:

The district attorney . . . combines the functions of criminal investigator . . . of the common law attorney general exercising discretion as to whether a private prosecution should go on, of a solicitor preparing the case for trial, and of an advocate trying the case in court.<sup>5</sup>

This study has been made to acquaint the people of Bernalillo and Sandoval Counties with the functions and powers of the person they have placed in the office of the

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<sup>3</sup> G. Kenneth Reiblich, A Study of Judicial Administration in the State of Maryland (Baltimore: Johns Hopkins Press, 1929), p. 114.

<sup>4</sup> National Commission on Law Observance and Enforcement, Report on the Prosecutor, cited by Baker and DeLong, "Prosecuting Attorney: Legal Aspects of His Office," Journal of Criminal Law and Criminology, January-February, 1936, p.669.

<sup>5</sup> Roscoe Pound, Criminal Justice in America (New York: Henry Holt and Company, 1930), p. 182.





district attorney. His power to advise county and state officers, to delay criminal proceedings, to compromise proceedings by accepting a plea of guilty for minor offenses, to promise immunity and finally to dismiss the proceedings altogether, make the district attorney one of the most powerful law enforcement officers in the State of New Mexico. It is imperative that every person should have some knowledge concerning this official, who is so vital to the public welfare.

Discussion of this subject has been divided among the following chapters: chapter one, The District Attorney and His Office; chapter two, The Civil Duties of the District Attorney's Office; chapter three, The Criminal Duties of the District Attorney's Office; chapter four, Information and Indictment; chapter five, Summary and Conclusions.

The Constitution of the State of New Mexico requires the following qualifications of a district attorney:

There shall be a district attorney for each judicial district who shall be learned in the law, and who shall have been a resident of New Mexico for three years next prior to his election, shall be a law officer of the state and of the counties within his district, shall be elected for a term of four years, and shall perform such duties and receive such salary as may be prescribed by law.

The legislature shall have the power for the election of additional district attorney's in any judicial district and to designate the counties there in for which the district attorney shall serve, but no district attorney shall be elected for any district of which he is not a resident.<sup>6</sup>

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<sup>6</sup> New Mexico Constitution, Article 20, Section 24.

district attorney. The fact is that the  
officers, by being placed in the  
proceedings by causing a list of names to be  
to proceed forward and finally reaching the  
altogether, make the district attorney  
powerful in numerous instances in the  
Mexico. It is important that every person  
some knowledge as to certain districts in the  
the public safety.

Enclosure of this letter has been  
following the list of names of the  
Mr. Gifford; Chapter 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

The Committee of the State of New York  
the following provisions of the State

There shall be a district attorney for each  
district who shall be elected by the people of the  
have been a resident of the State for five years  
prior to his election, shall be a law graduate of the  
State and of the superior court of the district, and  
elected for a term of four years, and shall be  
elected and re-elected until he is elected to  
law.  
The legislature shall have the power to provide  
of additional districts whenever in any district  
and to designate the district judge in each  
district attorney shall receive, but no district  
shall be elected for any district of which he is  
resident.

The Constitution further provides that the state shall be divided into twelve judicial districts and lists the counties of Bernalillo and Sandoval in the Second Judicial District.<sup>7</sup>

Candidates running for the district attorney's office are permitted by law to spend ten percent of the first year's salary and in addition the amount of their own personal traveling expenses.<sup>8</sup>

Within sixty days after the election the district attorney must file, in the office of the Secretary of State, an oath of office as prescribed for other officers and a bond of five thousand dollars which has been approved by a justice of the Supreme Court.<sup>9</sup>

The oath of office as provided for in the State Constitution is as follows:

That he will support the Constitution of the United States and the Constitution and laws of the state, and that he will faithfully and impartially discharge the duties of his office to the best of his ability.<sup>10</sup>

On entering office one of the first duties of the new district attorney is to appoint assistants. According to

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<sup>7</sup> New Mexico Constitution, Article 20, Section 25.

<sup>8</sup> Laws, 1927, Chapter 41, Section 706.

<sup>9</sup> Laws, 1909, Chapter 22, Section 1.

<sup>10</sup> New Mexico Constitution, Article 20, Section 1.

The Commission... shall be divided into... the number of members... judicial district... Candidates... are permitted by law to spend... salary and to receive... traveling expenses... within sixty days... attorney must file... an oath of office... bond of five thousand dollars... Justice of the Supreme Court.

The oath of office... Constitution in as follows:  
That he will support the Constitution of the United States and the Constitution and laws of the State, and that he will faithfully and impartially discharge the duties of his office to the best of his ability.

On entering office... judicial district... is to be sworn in.

- 7 New Jersey Constitution, Article 2, Section 1
- 8 Laws, 1907, Chapter 51, Section 100
- 9 Laws, 1907, Chapter 51, Section 101
- 10 New Jersey Constitution, Article 2, Section 1

law the district attorney may have two or more assistants but he receives only \$4,000 with which to pay them.<sup>11</sup> Should he hire more assistants the amount of money allowed must be divided among them. In the district attorney's office of the second judicial district another assistant was added to the staff so all of them would have more time for their private practice.

The assistant must be an attorney in the state, member of the state bar, citizen and resident of the district. The appointment must be made in writing and must be filed in the office of the clerk of the district court. The appointee must file the oath of office with the clerk of the district court after his appointment. It is within the power of the district attorney to revoke the appointment at any time.<sup>12</sup>

In regard to salary, the law provides for the district attorney of the

Second Judicial District, three thousand (\$3,000) dollars salary per annum with four thousand (\$4,000) dollars for two or more assistants, eighteen hundred (\$1,800) dollars for one field agent, and twelve hundred (\$1,200) dollars for stenographer.

Provided that the actual travelling expenses, including hotel bills of district attorneys and their assistants, incurred while in the discharge of their duties shall be paid by the counties in behalf of which the same

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<sup>11</sup> Laws, 1937, Chapter 148, Section 1.

<sup>12</sup> Laws, 1919, Chapter 64, Section 1.

law the district attorney may not be...  
but he receives only \$1,000...  
should he have more...  
must be divided among...  
office of the second judicial district...  
added to the staff as all of them...  
their private practice.

The candidates...  
of the state bar, division and...  
appointment must be made...  
office of the clerk of the...  
must file the oath of office...  
court after his appointment...  
district attorney to receive...  
In regard to salary, the law...  
attorney of the

second judicial district, there...  
salary per annum with four...  
the on some...  
for one year...  
provision that the...  
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sole, inasmuch as...  
shall be paid by the...  
in the...  
of their...  
shall be paid by the...

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11 Law, 1937, Chapter 11, Section 1.  
12 Law, 1918, Chapter 11, Section 1.

are incurred, upon order of the court supported by the sworn statement of such expenses, out of the court fund of each county.

And, provided, further: all necessary stationery, office supplies and postage shall be provided for the use of the several district attorneys, the actual cost thereof as well as the telephone and telegrams necessarily incurred, in the conduct of public business be paid upon verified account, approved by the district judge out of the court fund of the several counties of each district, in the said proportion that said counties of each district respectively contribute to the payment of the salaries of the district attorney, as hereinafter prescribed to be paid.<sup>13</sup>

Money for the court fund comes from the taxes in the county and the fees collected by the District Court. According to the only available figures in the Bernalillo County Treasurer's office, the court fund was allowed a percentage of .000570 from the Bernalillo County taxes for the fiscal year 1936-1937, and a percentage of .000488 for the fiscal year 1937-1938. Court fees collected for the period 1936-1937 amounted to \$9,739.00 while in 1937-1938 it amounted to \$10,806.88.

The following figures have been taken from the private Budget Record of the District Court and show the amounts paid into the court fund by the counties of Bernalillo and Sandoval. This table also shows amounts deducted from the fund for the district attorney's office.

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Laws, 1937, Chapter 148, Section 1.





| Fiscal Year<br>July-July | Bernalillo<br>County | District<br>Attorney | Sandoval<br>County | District<br>Attorney |
|--------------------------|----------------------|----------------------|--------------------|----------------------|
| 1932-1933                | \$23,360             | \$8,160              | \$5,300            | \$1,800              |
| 1933-1934                | 22,400               | 7,200                | *                  | *                    |
| 1934-1935                | 22,400               | 7,200                | 5,940              | 2,040                |
| 1935-1936                | 22,400               | 7,200                | 5,940              | 2,040                |
| 1936-1937                | 22,400               | 7,200                | 5,940              | 2,040                |
| 1937-1938                | 22,400               | 7,200                | 5,940              | 2,040                |

\* Figures not available

There is usually money left in the court fund at the end of the fiscal year, but this money is not figured in the next year's budget. It is used for court expenses until money comes in from the taxes of the new fiscal year.<sup>14</sup>

The district attorney, also, acts as juvenile court attorney. The following section will review briefly the events leading up to the appointment of the district attorney as juvenile court attorney, and the duties of that office.

In order to meet the problem of juvenile delinquency, the legislature in 1917, granted exclusive original jurisdiction to the district court in all juvenile cases. The court was authorized to appoint a referee to investigate all cases of juvenile delinquency and to make recommendations.<sup>15</sup>

<sup>14</sup> Interview with District Court Clerk of the Second Judicial District.

<sup>15</sup> Laws, 1917, Chapter 4, Section 32.

| Fiscal Year | Portland County | Clatsop County | Washington County |
|-------------|-----------------|----------------|-------------------|
| 1937-1938   | \$2,400         | \$1,800        | \$1,200           |
| 1936-1937   | \$2,400         | \$1,800        | \$1,200           |
| 1935-1936   | \$2,400         | \$1,800        | \$1,200           |
| 1934-1935   | \$2,400         | \$1,800        | \$1,200           |
| 1933-1934   | \$2,400         | \$1,800        | \$1,200           |
| 1932-1933   | \$2,400         | \$1,800        | \$1,200           |

\* Figures not available

There is usually money left in the county fund at the end of the fiscal year, but this money is not turned over to next year's budget. It is held for emergency use. Money comes in from the taxes of the year fiscal year. The district attorney, also, acts as juvenile court attorney. The following section will review briefly the events leading up to the enactment of the district attorney as juvenile court attorney, and the duties of that office. In order to meet the growth of juvenile delinquency the legislature in 1937, enacted various criminal laws added to the district court in all juvenile cases. The court was authorized to appoint a referee to investigate all cases of juvenile delinquency and to give recommendations.

In  
 Second Judicial District,  
 In  
 the  
 case of  
 the  
 State of Oregon,  
 vs.  
 the  
 Defendant,  
 the  
 Court  
 do hereby  
 certify  
 that  
 the  
 within  
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 is  
 a  
 true  
 and  
 correct  
 copy  
 of  
 the  
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 of  
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 1938.

In 1921 a juvenile court was established and empowered to appoint a probation officer to handle juvenile cases. This officer and the district attorney usually handled any cases coming before the juvenile court.<sup>16</sup>

The legislature, in order to facilitate the work of the juvenile court, passed a law in 1931, which provided that the district attorney should serve as juvenile court attorney with a salary of twelve hundred dollars a year in addition to his regular salary. This salary was to be paid out of the court fund of the counties in his district.<sup>17</sup> This act was repealed in 1933.<sup>18</sup>

In 1937, the office of the juvenile court attorney was recreated. This time the district attorney was only allowed a salary of seven hundred and fifty dollars per year. All the other provisions of the law of 1931 were re-enacted in the new bill.<sup>19</sup>

The duties of the juvenile court attorney are to represent the state in all cases of juvenile delinquency, of dependent and neglected children, of truancy and in anything else that comes before the juvenile court. The juvenile court attorney is also expected to represent the State Health

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<sup>16</sup> Laws, 1921, Chapter 87, Section 160.

<sup>17</sup> Laws, 1931, Chapter 158, p. 276.

<sup>18</sup> Laws, 1933, Chapter 49, p. 52.

<sup>19</sup> Laws, 1937, Chapter 149, p. 423.

In 1951 a juvenile court was established in the city of  
and a juvenile court was established in the city of  
and the district attorney was appointed as the  
before the juvenile court.

The Legislature, in 1951, passed a law which  
the juvenile court, passed a law in 1951, which  
that the district attorney should serve as the  
attorney with a salary of \$10,000 per year. This  
addition to his regular salary. This was done in the  
out of the court fund of the county in 1951.  
This act was repealed in 1957.

In 1957, the office of the juvenile court  
was transferred. This law was repealed in 1957  
allowed a salary of \$10,000 per year and this was  
all the other provisions of the law of 1951 were repealed  
in the year 1957.

The duties of the juvenile court are to  
represent the state in all cases involving  
dependent and neglected children, to investigate  
also that court should be juvenile court. This  
court attorney is also expected to represent the state in

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- 16 JAMES M. ...
  - 17 JAMES M. ...
  - 18 JAMES M. ...
  - 19 JAMES M. ...

Department and the State Child Welfare Bureau in all juvenile cases where the public health and welfare laws are involved.<sup>20</sup>

The statute books are silent concerning any records which the district attorney is required to keep.<sup>21</sup>

Under the state constitution the district attorney may not accept a free pass or buy a ticket for himself or his family upon terms not open to the public. Any person who violates this provision not only forfeits his office but may be fined and imprisoned as well.<sup>22</sup>

In regard to removal from office, the Supreme Court in Territory v. Mann, declared,

A prosecuting attorney whose term of office is fixed by law, cannot, in the absense of a statute, be removed at the pleasure of the executive.<sup>23</sup>

Neither can the office of prosecuting attorney, if provided for in the constitution, be changed or abolished by the legislature, unless some such provision is made therefore in the constitution.<sup>24</sup>

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<sup>20</sup> Laws, 1937, Chapter 149, p. 423.

<sup>21</sup> Material taken from the Inventory of the County Archives of Bernalillo County, New Mexico. (Albuquerque: Historical Record Survey-Works Progress Administration, 1938), pp. 106-107.

<sup>22</sup> New Mexico Constitution, Article 20, Sections 14, 37, 40.

<sup>23</sup> Territory v. Mann, (16 N. M. 744).

<sup>24</sup> Loc. cit.

Department and the State Child Welfare Bureau in all instances  
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 in Territory v. Mann, declared,  
 A prosecuting attorney does not hold office  
 by law, cannot, in the absence of a statute, be removed  
 at the pleasure of the executive.  
 Neither can the office of prosecuting attorney, if  
 provided for in the constitution, be changed or abolished by  
 the legislature, unless some such provision is made there-  
 fore in the constitution.

30 Ann., 1937, Chapter 105, p. 4281.  
 31 Material taken from the Annals of the Territory of Oklahoma,  
Archives of Oklahoma County, Law Office. (Oklahoma)  
 Historical records survey-work program administered by  
 1938), pp. 102-107.  
 32 New Mexico Constitution, Article 22, Section 11.  
 33 37, 40.  
 34 Territory v. Mann, (18 N. W. 244).  
 35 loc. cit.

The Supreme Court has held, that vacancies in the various district attorneys office in New Mexico, can be filled by the governor if such vacancies exist. However, the court continued,

since a prosecuting attorney, duly appointed or elected, holds office until his successor is qualified, the expiration of the term does not produce a vacancy.<sup>25</sup> A vacancy covers equally a case where the appointment or election may fill the office for the first time and where it may be made to fill one whose previous incumbent has died, resigned or been removed.<sup>26</sup>

An added burden is thrown on the district attorney's office by a New Mexico Statute, which explicitly states that no one besides the attorney general, district attorney, or his assistants shall represent the state, or counties.<sup>27</sup>

Should the district attorney fail or refuse to prosecute a case the court may ask the attorney general of the state to prosecute it.<sup>28</sup> The court may also determine when the district attorney is qualified to act in a given case.<sup>29</sup>

As prosecuting attorneys are judicial, or quasi judicial officers, they should act impartially in the carrying out of public business. District attorneys are public

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<sup>25</sup> Territory v. Mann (16 N. M. 744).

<sup>26</sup> Loc. cit.

<sup>27</sup> Laws, 1933, Chapter 21, Section 7.

<sup>28</sup> Laws, 1933, Chapter 21, Section 3.

<sup>29</sup> State v. Leahy (30 N. M. 221).

The Supreme Court has held, that various  
various district attorneys are  
filled by the government it  
the court contained.

since a practicing attorney, who is  
elected, holds office until his successor is  
the expiration of the term for which he  
a vacancy occurs, and that the government  
election may fill the office for the term  
it may be made to fill the office for the  
and, resigned or term expired.

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the district attorney is qualified to act in  
any case.

As practicing attorneys are  
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| 28 | <u>Justice v. State</u> |
| 29 | <u>Justice v. State</u> |
| 30 | <u>Justice v. State</u> |
| 31 | <u>Justice v. State</u> |
| 32 | <u>Justice v. State</u> |
| 33 | <u>Justice v. State</u> |
| 34 | <u>Justice v. State</u> |



officers because they represent the people of the state. Under the constitution all prosecutions must be carried on in the name of the state.<sup>30</sup>

The development of the district attorney's office began when The Kearny Code, in 1846, created the office of circuit attorney for the first time. According to this law the governor was to appoint one circuit attorney for each circuit to serve for a term of two years. He was to act as a prosecuting attorney in all criminal cases and as attorney in suits which the territory or any county were involved, in his circuit. He was also supposed to give legal advice to any alcalde or prefect in his circuit.<sup>31</sup>

The legislature of 1859 changed the provisions of The Kearny Code, and named the attorney general to prosecute all civil and criminal actions in the supreme court and the several district courts, advise all territorial officials, and maintain his office at Santa Fe. He was to be elected for two years. He was to receive part of his salary from fees which he collected from convictions in gambling cases and fifteen hundred dollars per year from the state. The attorney general could be removed from office for malfeasance,

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<sup>30</sup> State v. Romero (17 N. M. 88, 97).

<sup>31</sup> Kearny Code, 1846, "Attorney General and Circuit Attorneys," Sections 3 and 6.

officers because they were not...  
Under the constitution all...  
in the name of the state...  
The development of the...  
began when the...  
attain...  
the Governor was...  
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fees which he...  
and...  
attorney general...

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Attorneys, ...  
Kearney ...  
...

or for failure to appear at a session of the district court. If he was personally interested in the outcome of the case, the district judge was empowered to appoint a substitute.<sup>32</sup>

In 1862 it was provided that the attorney general must attend all sessions of the district court, or provide a deputy.<sup>33</sup> Later the work of prosecuting cases in the district court was given to three attorneys. The attorney general was given the northern district, which included the territorial supreme court, and the district courts of Santa Fe, San Miguel, Mora and Taos Counties. One of the newly appointed attorneys received the central district, comprising Santa Ana, Bernalillo, Valencia and Socorro Counties, while the other district attorney took the district south of the Jornada del Muerto. These men were appointed by the governor for a term of two years.<sup>34</sup>

The territorial legislature, in 1869, enlarged the duties of the district attorney when it provided that he was to prosecute cases of default of public money.<sup>35</sup> These duties were further enlarged in 1876 when the district attorney was given the power to compromise or settle civil suits.<sup>36</sup>

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<sup>32</sup> Laws, 1858-1859, Chapter 16, p. 36.

<sup>33</sup> Laws, 1860-1862, p. 56.

<sup>34</sup> Laws, 1862-1863, p. 32.

<sup>35</sup> Laws, 1869-1870, Chapter 39, p. 144.

<sup>36</sup> Laws, 1875-1876, Chapter 5, p. 35.



The Constitution, of 1912, created eight judicial districts,<sup>37</sup> and provided that one district attorney should be elected for a term of four years in each judicial district. Each district attorney was supposed to be learned in the law and a resident of New Mexico for three years prior to his election.<sup>38</sup>

The ninth judicial district was created in 1912, and since that time the number of district attorneys in certain judicial districts has been increased in accordance to constitutional provision.<sup>39</sup>

The district attorney is not required by law to keep any particular kind of records. All records which he creates in his work become a part of the records of the district court in his judicial district.<sup>40</sup>

The duties and functions of the district attorney as outlined by the laws of the State of New Mexico are as follows:

1. To prosecute and defend for the state in all courts of record of the counties of his district, all

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<sup>37</sup> New Mexico Constitution, Article 6, Section 12.

<sup>38</sup> Ibid., Section 24.

<sup>39</sup> Ibid., Section 16. Laws, 1919, Chapter 64, p. 138.

<sup>40</sup> Inventory of the County Archives of Bernalillo County, New Mexico. (Albuquerque: Historical Records Survey Works Progress Administration. 1938), pp. 106-107.

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27 New Mexico Constitution, Article 6, Section 12.  
 28 Ibid., Section 24.  
 29 Ibid., Section 10, Laws, 1912, Chapter 64, p. 128.  
 30 Inventory of the Energy Archives of Santa Fe County, New Mexico. (Unpublished Historical Records Survey Works Progress Administration, 1933), pp. 102-107.

cases, criminal and civil, in which the state or any county in his district may be party, or may be interested or concerned.

2. To represent the county before the board of county commissioners of any county in his district in all matters coming before such a board, whenever he is requested to do so by the board of county commissioners, and he may appear before such board when sitting as a board of equalization without such request.

3. To advise all county and state officers whenever such advice is requested.

4. To represent any county in his district in all civil suits in which such county may be concerned in the supreme court, this provision, however, not to apply to suits brought in the name of the state.<sup>41</sup>

The office of the district attorney is located in the First National Bank Building in Albuquerque. It is composed of a suite of four rooms. Mr. Owen B. Marron, the present District Attorney, occupies a private room just off of the main office. Mr. Gino J. Matteucci, an assistant District Attorney, has an adjoining office. Mr. Santos Garcia, the investigator, has an office, adjoining the District Attorney's office, which is sometimes used as a reception room. Mr. Donald Moses and Mr. A. H. McLeod, the other assistants, have offices on another floor in the same building.

Although the District Attorney is a county officer and has a legal right to have his office in the Bernalillo County Courthouse, he has not done so because of his private practice. It would not be possible to carry on this private practice in a public building.

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<sup>41</sup> Laws, 1909, Chapter 22, Section 2.

cases, criminal and civil, in this county in his district may be held, or may be referred or committed.

2. To represent the county before the county court, and to represent any county in his district in all matters relating to the county, and to be sworn to as such by the county court, and he may appear before the county court, and he may appear before the county court sitting as a court of sessions in his district.

3. To advise all county and district officers in such cases as may be referred.

4. To represent any county in his district in all civil suits in which such county may be concerned in the superior court, this provision, however, not to apply to suits brought in the name of the county.

The office of the district attorney is held by the First National Bank Building in Indianapolis, 1915, of a suite of four rooms. Mr. Owen B. Egan, District Attorney, occupies a private room out of the main office. Mr. John A. Patterson, an Assistant District Attorney, has an adjoining office. Mr. James H. Patterson, an investigator, has an office, adjoining the District Attorney's office, which is sometimes used as a waiting room. Mr. Donald Jones and Mr. J. H. Johnson, the District Attorney's assistants, have offices on another floor in the building. Although the District Attorney is a public officer, he has a legal right to have his office in the building. However, he has not done so because of his private business. It would not be possible to carry on his private practice in a public building.



It is debatable whether or not this private practice conflicts with the regular work of the District Attorney and his assistants. However, it can be surmised that the District Attorney and his assistants would want to build up as large a private practice as possible to which they might retire at the end of their term in office.

In the District Attorney's office is a well equipped law library. They, also, have at their disposal, the excellent facilities of the law library in the Bernalillo County Courthouse.

Following is a record of the men who have held the office of the District Attorney within the scope of this study.

Mr. Eugene Lujan acted as assistant District Attorney from 1927-1928. He was elected District Attorney in 1929 and held this post until 1932. In 1936 he was elected District Judge for the Seventh Judicial District.<sup>42</sup>

Mr. Thomas J. Mabry was a member of the New Mexico Constitutional Convention in 1910 and a member of the First New Mexico State Senate from 1912-1917. He became District Attorney in 1933 and held this position until he became

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<sup>42</sup> M. D. Abousleman, editor, Who's Who in New Mexico (Albuquerque: Abousleman Company, 1937), Volume I, p. 133.

It is desirable that the records of the  
conflict with the regular work of the District Attorney  
and his assistants. However, it was in 1933 that the  
District Attorney and his assistants were in conflict with  
as large a private practice as possible in order to  
retire at the end of their term in office.  
In the District Attorney's office in 1933  
the library. They also have a small library, but  
and facilities of the law library in the District  
Courtroom.

Following is a report of the District Attorney  
office of the District Attorney. This is a copy of  
study.

Mr. Eugene Ingraham, District Attorney, from 1927-1933.  
He was elected District Attorney in 1927  
and held this post until 1933. In 1933 he was elected  
District Judge for the District of Columbia.  
Mr. Thomas G. Barry was a member of the  
Constitutional Convention in 1933 and a member of the  
New Mexico State Senate from 1933-1935. He was  
Attorney in 1933 and this position until he became

District Judge for this district in 1936.<sup>43</sup> In 1938 he was elected an associate justice of the Supreme Court of New Mexico.<sup>44</sup>

Mr. Owen B. Marron, the present District Attorney, has practiced law in Albuquerque since 1931. He was a member of the New Mexico State Legislature in 1933 and was elected to his present office in 1936.<sup>45</sup>

All of these men belong to the Democratic party and were elected on the Democratic ticket.<sup>46</sup>

Raymond Moley, in his book Politics and Criminal Prosecution, points out that the average district attorney is elected to that office early in his career. He holds it for a short time, and finds it a relatively easy way to attain the public attention to be elected to higher office.<sup>47</sup> From a study of 767 lawyers, governors, and members of Congress, it was found that 42 percent of them had been district attorneys, and that 75 percent of these had held the

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<sup>43</sup> Abousleman, op. cit., p. 135.

<sup>44</sup> Albuquerque Journal, November 9, 1938.

<sup>45</sup> Abousleman, op. cit., p. 133.

<sup>46</sup> Ibid., pp. 133, 135, 138.

<sup>47</sup> Raymond Moley, Politics and Criminal Prosecution, cited by Baker and DeLong, "Prosecuting Attorney and His Office," Journal of Criminal Law and Criminology, January-February, 1935, p. 700.

District Judge for this district...  
elected an associate Justice of the Supreme Court of the  
Mexico.

Mr. Owen B. Patton, the present Chief Justice,  
has presided in the Supreme Court since 1911. He was a  
member of the New Mexico State Legislature in 1911 and was  
elected to his present office in 1915.  
All of these men belong to the Democratic party and  
were elected on the Democratic ticket.

Raymond Wiley, in his book History of New Mexico,  
discusses the political parties and their influence in  
the election of this office early in his career. He writes  
for a short time, and finds that a relatively small party  
again the public attention as a result of their office.  
From a study of 1911 history, however, and especially  
Congress, it was found that 18 percent of them were elected  
trial attorneys, and that the remainder were the

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43 Abolition, pp. 211, 212.  
44 Abolition Journal, November 7, 1854.  
45 Abolition, pp. 211, 212.  
46 Lib. of N. Y., 1857, 1858.  
47 Raymond Wiley, History of New Mexico,  
edited by Robert and Helen Lynd, University of Chicago Press,  
Chicago, 1921, Journal of Political and Social Science,  
February, 1925, p. 408.

office of district attorney at the beginning of their political career.<sup>48</sup>

It has been shown in this chapter that the district attorney has certain wide powers, which make him an outstanding figure in the New Mexico judicial system; that he carries on a private practice besides his official duties; that he is a member of a political party and usually seeks the office with the idea in mind of placing himself before the public in such a way that they will help him climb the other steps of the "political ladder."

Should the people of New Mexico become aware of the importance of the district attorney's office, to their welfare, they might well insist that the office be taken out of politics and placed on a career basis. Under this plan it would be necessary to increase salaries and terms, to a point where outstanding men would be attracted to the office. The legislature could be asked to furnish sufficient funds for better clerical, detective and professional assistance. The effectiveness of the district attorney's office would be further enhanced if his assistants were placed under the civil service laws and he was relieved of the numerous civil duties of his office.

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<sup>48</sup> Raymond Moley, Politics and Criminal Prosecution, cited by John Fairlie and G. M. Kneifer, County Government and Administration (New York: The Century Company, 1930), p. 252.

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It has been shown in this chapter that the district attorney has certain wide powers, which make him an important figure in the New Mexico political system; that he enters on a private practice besides his official duties; that he is a member of a political party and usually serves the office with the idea in mind of pleasing himself before the public in such a way that they will help him climb the other steps of the political ladder.

Should the people of New Mexico become weary of the ineptness of the district attorney's office, do their efforts, they might well insist that the office be taken out of politics and placed on a non-party basis. Under this plan it would be necessary to increase salaries and terms, to a point where outstanding men would be attracted to the office. The legislature could be asked to transfer suitable funds for policy ethical, scientific and professional standards. The effectiveness of the district attorney's office would be further enhanced if the organization were placed under the civil service laws and be not relieved of the numerous staff duties of his office.

60. Lawrence W. Kelly, Political Parties and Campaign Organizations, p. 232. Also cited by W. H. Miller, Political Parties and Campaign Organizations (New York: The Century Company, 1927).

## CHAPTER II

### THE CIVIL DUTIES OF THE DISTRICT ATTORNEY'S OFFICE

Webster's dictionary defines "civil", when it pertains to law, as "relating to private rights". The idea of the district attorney having duties "relating to private rights" is in contrast to the usual conception of him as a criminal prosecutor. However, each district attorney has a number of civil duties to perform, in addition to his duties as a criminal law enforcement officer. It is with the civil duties of the district attorney's office that this chapter will deal.

In order to make an accurate study of this subject the civil dockets in the district clerk's office have been checked from July, 1932, to July, 1937, as well as all the laws passed by the New Mexico Legislature.

Under New Mexico law it is the duty of the district attorney to handle tax cases, cases of insanity and mental defectives, cases of dependent and neglected children, cases of removal of public officers, condemnation proceedings for the board of county commissioners, suits filed against the county, some cases of annulment, certain writs and cases of forfeiture of recognizances.

In addition to these duties, the district attorney is seated on the boundary commission, and advises such officers

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In addition to these duties, the district attorney is seated on the boundary commission, and advises such officers



as the State Engineer, State Comptroller, State Corporation Commission, County Board of Horticultural Commission and county officers. It is also provided by law that the district judge and the district attorney shall furnish information to the prison board.

Tax suits are handled largely as a matter of routine by the district attorney's office. They are required to file complaints, or petition the district court for a change of the assessment of the property of a taxpayer for the purpose of correction. Errors in making assessments, or in placing the assessment on the county treasurer's books often need correction, but these changes must be made by the court after the district attorney files a petition for correction.<sup>1</sup>

New Mexico statutes provide for tax suits in the following words:

The tax roll when delivered to the county treasurer, properly verified by the affidavit of the county assessor and properly certified by the county commissioners, as required by law, shall constitute his authority to collect the taxes therein set forth and he shall not be held liable for any irregularity or illegality in any of the proceedings prior to his receiving said assessment roll and the amounts to be paid as taxes as shown by said assessment roll shall not be altered, reduced or in any manner changed, except by direction of the district or supreme court; but this prohibition shall not extend to the correction of obvious clerical errors in name,

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<sup>1</sup> Interview with Mr. Gino Matteucci, assistant District Attorney.

as the State Engineer, the State Board of  
Commission, County Board of Supervisors and  
county officers. It is also provided in the  
Act that the district attorney shall have  
them to the prison board.

That said are hereby granted as a matter of course  
by the district attorney's office. They are subject to the  
complaint, or petition the district court for a writ of  
the assessment of the property of a taxpayer for the purpose  
of correction. There is no assessment in the district  
the assessment on the county treasurer's rolls after  
correction, but those changes made by the board of  
the district attorney after a petition is returned.  
New Mexico states; review for the state is

following words:

The tax roll when delivered to the county treasurer,  
properly verified by the auditor, of the county treasurer,  
and properly certified by the county treasurer, as  
required by law, shall constitute the authority to  
collect the taxes thereon, and shall not be  
held liable for any irregularity or illegality in any of  
the proceedings prior to the payment of the same.  
roll and the amount to be paid as shown on the  
said assessment roll shall not be altered, reduced or  
any manner changed, except by direction of the district  
or superior court; and the collection of the same  
to the correction of clerical errors in the

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District Attorney.

description of property or computation of amount of taxes. If the treasurer shall discover any errors of other kinds in said assessment roll by which any injustice would be done to any taxpayer, it shall be his duty to report the same to the district attorney; and any taxpayer complaining of any such injustice may submit his complaint to the district attorney, who shall promptly forward to the state tax commission a copy of such complaint. Such complaint, filed by the district attorney, shall be acted upon by the district court without cost to the taxpayer injuriously affected. Should the district attorney refuse to permit the filing of any such complaint without cost to the taxpayer, such taxpayer may proceed thereon in his own name and at his own expense. Upon the rendition of any order correcting the tax rolls the district court shall promptly send to the state tax commission a copy of any such order and the commission shall make a corresponding change in the roll in its possession.<sup>2</sup>

In every case where a complaint or petition is filed in the district court, asking for an order of the court that a change or correction be made in the tax roll, either upon the report of the county treasurer or the complaint of any taxpayer alleging that any error has been made in such assessment by which injustice would be done such taxpayer, the court shall set the matter for hearing on a day not less than thirty days after the filing of such complaint or petition in said court, and it shall be the duty of the clerk of the said court to forthwith forward to the state tax commission at its office in Santa Fe a notice of the date set for such hearing. The state tax commission may appear in person, or by any member, agent or attorney of the commission, and represent the taxing authorities at such hearing.<sup>3</sup>

In tax cases involving collection and enforcement of the provisions of the liquor tax, gasoline tax, or sales tax, the district attorney's office may be called in by the Bureau of Revenue, but this is seldom done. Usually the Bureau of

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<sup>2</sup> Laws, 1925, Chapter 102, Section 19.

<sup>3</sup> Ibid., Section 20.

description of property or interest in property  
taxes. If the assessor fails to file a return  
of other things in and assessment roll by the  
injustice would be done to the taxpayer, it will  
his duty to report the same to the district  
and any taxpayer complaining of any such  
may submit his complaint to the district  
shall promptly forward to the State Tax  
copy of such complaint. Upon receipt of the  
district attorney shall be called upon by the  
court without need to the assessor to  
should the district attorney refuse to  
filling of any such complaint. It is the  
payer, such taxpayer may proceed to  
name and at his own expense. The  
order correcting the roll shall be  
promptly sent to the State Tax  
upon order and the assessor shall  
change in the roll in the

In every case where a complaint is filed  
in the district court, and for the purpose of  
that a change or correction be made in the  
either upon the facts of the case or  
complaint of any taxpayer alleging that  
been made in such assessment. If the  
be done such taxpayer, the court shall  
for hearing on a day not less than  
filling of such complaint or petition in  
it shall be the duty of the clerk of  
forthwith forward to the State Tax  
office in Seattle a notice of the  
hearing. The State Tax Commission may  
or by any member, agent or attorney of the  
and represent the latter substantially as

In tax cases involving collection and enforcement  
the provisions of the Internal Revenue Act, or  
the district attorney's office may be called upon  
of Revenue, but this is seldom done. Usually the

Revenue use their own attorneys, who are experts in such cases and devote their full time to their duties.<sup>4</sup>

The following chart shows the disposal of tax cases over a five year period, July, 1932, to July, 1937.

|   | Bernalillo    | Sandoval |
|---|---------------|----------|
| Judgment for plaintiff . . . . .          | 312 . . . . . | 17       |
| Waiver of time . . . . .                  | 3 . . . . .   | 1        |
| Restraining order for plaintiff . . . . . | 9 . . . . .   | 0        |
| Dismissed . . . . .                       | 14 . . . . .  | 1        |
| Not disposed of . . . . .                 | 3 . . . . .   | 2        |
| Total cases . . . . .                     | 341 . . . . . | 21       |

Three hundred and thirty-nine of these cases were filed against the county treasurer; twenty cases were directed against the state tax commission and the state treasurer; three cases were directed against the State Bureau of Revenue.<sup>5</sup>

As this chart indicates, most of these suits were filed by taxpayers seeking a correction in their assessments.

<sup>4</sup> Interview with Mr. Gino J. Matteucci, assistant District Attorney.

<sup>5</sup> Civil Dockets of Bernalillo and Sandoval Counties, July, 1932, to July, 1937.

Revenue was first an attorney, and his practice was  
 cases and events which fell like a heavy burden  
 The following chart shows the amount of cases  
 over a five year period, July, 1932, to July, 1937.

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| Category                        | Number of Cases |
|---------------------------------|-----------------|
| Judgment for Plaintiff          | 10              |
| Waiver of time                  | 5               |
| Restraining order for Plaintiff | 3               |
| Dismissed                       | 2               |
| Not disposed of                 | 1               |
| Total cases                     | 21              |

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Three hundred and thirty-one of these cases were  
 filed against the county treasurer; twenty cases were  
 directed against the state tax department and the state  
 treasurer; three cases were directed against the state  
 Bureau of Revenue.

As this chart indicates, most of these cases were  
 filed by taxpayers against a corporation or local government.

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1 Interview with Mr. J. J. [Name], Assistant  
 District Attorney.

2 Civil Books of Hamilton and Hamilton Counties,  
 July, 1932, to July, 1937.

Those receiving restraining orders had applied for an injunction to keep the county treasurer from selling property to satisfy claims. Most of those dismissed, either failed to appear in court, or were refused judgment. There is no information as to why action was not completed in five of these cases.

The figures just given show that Bernalillo County has had far more tax cases during the five years under consideration than has Sandoval County. The larger population of Bernalillo County, as well as the number of business units centered there, would account for Bernalillo County having the larger number of tax cases. Probably the reason Sandoval County has had so few tax cases was due either to the scarcity of population or the people there did not know the law concerning the correction of assessments.

In State v. State Investment Company the Supreme Court upheld the following New Mexico Statute, which allows the district attorney to compromise and settle tax suits. They did not feel that it denied due process of law or equal protection under the law.<sup>6</sup>

The attorney general and district attorney of this state, in their respective districts, when any civil proceedings may be pending in their respective districts, in the district court, in which the state or any county

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<sup>6</sup> State v. State Investment Company (30 N. M. 491).

These receiving...  
injunction to keep the...  
only to notify...  
failed to appear in court...  
is no information...  
five of these cases.

The figures...  
has had far more...  
consideration...  
tion of...  
with...  
having the larger...  
sanction...  
the severity of...  
the law concerning...  
in...  
Court upheld the...  
the district...  
They did not...  
protection under...

The attorney...  
state, in their...  
proceedings...  
in the district...



may be a party, whether the same be an ordinary suit, scire facias proceedings, proceedings growing out of any criminal prosecution, or otherwise, shall have power to compromise or settle said suits or proceedings, or to grant a release or enter claim or judgment in the name of the county or state or dismiss the same, or take any other steps or proceedings which to him may appear proper and right; and all such civil suits and proceedings shall be entirely under the control and management of the said attorney general or district attorney, and all compromise, releases and satisfactions heretofore made or entered into by said officials are hereby affirmed and ratified.<sup>7</sup>

In cases where taxes are due and delinquent upon property in hands of receiver, the district attorney in districts where the property is situated may make application to the court who appointed the receiver to have him cited before the court to answer why taxes are unpaid. The court shall immediately determine amount of delinquent taxes and shall order receiver to pay same within 60 days.<sup>8</sup>

If the taxes are not paid within the 60 day period, the sheriff is ordered to sell the property. At such time the district attorney is authorized to bid in and purchase, for the county, in default of other bidders, as much of the property as may be necessary to pay the taxes. The county shall lease, sell or hold this property as they see fit, unless it is redeemed as provided by law.<sup>9</sup>

On the question of removal from public office the New Mexico Statutes provide:

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<sup>7</sup> Laws, 1875-1876, Chapter 5, Section 1.

<sup>8</sup> Laws, 1905, Chapter 64, Section 1.

<sup>9</sup> Ibid., Section 2.



Any county, precinct, district, city, town or village officer elected by the people, and any officer appointed to fill out the unexpired term of any such officer may be removed from office.<sup>10</sup>

According to a ruling handed down by the Supreme Court in State V. Medler, the proceedings for the removal of an officer are civil in character.<sup>11</sup>

Causes for the removal of any officer belonging to the classes mentioned above are as follows:

1. Conviction of any felony or of any misdemeanor involving moral turpitude;
2. Failure, neglect or refusal to discharge the duties of the office, or failure, neglect or refusal to discharge any duty devolving upon the officer by virtue of his office;
3. Knowingly demanding or receiving illegal fees as such an officer;
4. Failure to account for money coming into his hands as such an officer;
5. Gross incompetency or gross negligence in discharging the duties of his office;
6. Any other act or acts, which in the opinion of the court or jury amounts to corruption in office or gross immorality rendering the incumbent unfit to fill the office.<sup>12</sup>

An accusation in writing, containing sufficient grounds for removal, may be presented by the grand jury to

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<sup>10</sup> Laws, 1909, Chapter 36, Section 1.

<sup>11</sup> State V. Medler (17 N. M. 644).  
State V. Leib (20 N. M. 621).

<sup>12</sup> Laws, 1909, Chapter 36, Section 2.

any other...  
village...  
appointed to fill...  
officer may be removed...

According to a...  
Court in State v. Miller, the...  
an officer are only in character.

Causes for the removal of an officer are...  
the classes mentioned above are as follows:

1. Conviction of any crime or...  
involvement in...
2. Failure to...  
duties of his office, or...  
to discharge any...  
title of his office.
3. Involvement in...  
as such an officer.
4. Failure to...  
hands as such an officer.
5. Gross...  
discharged the duties of his office.
6. Any other...  
the court or...  
gross...  
the office.

An...  
grounds for removal, as...

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|    |   |
|----|---|
| 10 | <u>Index, 1902, Chapter 40, Section 1</u> |
| 11 | <u>State v. Miller</u>                    |
| 12 | <u>State v. Miller</u>                    |
| 13 | <u>Index, 1902, Chapter 40, Section 1</u> |

the district court, in the district in which the officer lives.<sup>13</sup>

The Supreme Court has held that the accusation does not have to be a formal charge, but may be based upon information of the district attorney or by affidavits of other persons having knowledge of the fact.<sup>14</sup>

The Supreme Court has decided further that a citation to an officer to show cause why he should not be suspended from office until final determination of a removal proceeding is necessary before the court has the power to proceed to hear the matter.<sup>15</sup>

The civil dockets for Bernalillo County and Sandoval County show only one case where removal proceedings were started. The case was dismissed when the defendant resigned.<sup>16</sup>

When any person, responsible for public money, neglects and refuses to make good his shortage, it is the duty of the state auditor to make a certified transcript showing the sum due and turn it over to the attorney general or district attorney.

It is the duty of the district attorney to institute suit in favor of the state for the whole sum due, plus

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<sup>13</sup> Laws, 1909, Chapter 36, Section 4.

<sup>14</sup> State v. Leib (20 N. M. 621).

<sup>15</sup> State v. Leahy (30 N. M. 221).

<sup>16</sup> Civil Dockets, op. cit.

the district court, in the district of Columbia, D.C.,  
13

The Supreme Court has said that the Constitution  
has to be a federal court, but not a federal court  
of the district court or in violation of other  
persons having knowledge of the fact.

The Supreme Court has said that the Constitution  
is a violation of an officer to the fact of a  
not be a violation of the Constitution, but a  
of a violation of the Constitution, but a  
has the power to proceed to the fact.

The civil courts are the courts of the district  
County show only one case where the Constitution  
is a violation of the Constitution, but a  
16

When any person, responsible for the fact of a  
and refuse to take the fact of a  
state matter to the fact of a  
due and care is given to the fact of a  
attorney.

It is the duty of the court to proceed to the fact  
with in favor of the fact of a

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- 13 State v. ...
  - 14 State v. ...
  - 15 State v. ...
  - 16 Civil ...

interest. He can use certified copies of the account of the defendant as evidence.<sup>17</sup>

Amendments are allowed in the following proceedings. All actions and to all suits for the recovery of all debts due to this state, or for any debt, duty or revenue belonging to this state; and also to all actions for penalties, to all writs of mandamus, and prohibition, to information in the nature of quo warranto, to writs of scire facias, and to the proceedings thereon, but shall not extend to indictment or information for any criminal matter.<sup>18</sup>

Although the legislature has given wide powers of compromise to the district attorney, it has placed certain restriction on him when it comes to compromising the shortage of an officer.

It shall hereafter be unlawful for any state officer, district attorney, board of county commissioners or other officials charged with the collection of any indebtedness, due to, or claimed by the state, any county, city, town, precinct, or school district, from any public official, or his sureties on his official bond, to compromise, satisfy or discharge such indebtedness in favor of such official or his sureties, except upon payment in full of the amount claimed to be due, or of the amount for which judgment is rendered by a court of competent jurisdiction.<sup>19</sup>

Any compromise, satisfaction, or discharge of indebtedness prohibited by the preceding section of this article is hereby declared to be invalid, and shall not be held a bar to any suit for collection thereof, and suit may be brought at any time within four years of the date of any such compromise, satisfaction, or discharge to enforce payment thereof, notwithstanding any existing law of limitations.<sup>20</sup>

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<sup>17</sup> Laws, 1869-1870, Chapter 39, Sections 1, 2, 3.

<sup>18</sup> Laws, 1897, Chapter 73, Section 95.

<sup>19</sup> Laws, 1893, Chapter 5, Section 1.

<sup>20</sup> Ibid., Section 2.

interest. He can use certified copies of the records of

the defendant as evidence.

Amendments are allowed in the following provisions: All actions and so on shall be the property of the state but to this extent, or for any other purpose, revenue belonging to this state and also all revenues for purposes, to all titles of revenues, and to the information in the nature of the records, to the records of public lands, and to the proceeds of sales, shall not extend to the records of information for any original matter.

Although the legislature has given the courts complete to the district attorney, it has placed a restriction on him when it comes to representing the shortage of an officer.

It shall however be sufficient for any state officer, district attorney, board of county commissioners or other officials charged with the collection of any indebtedness, but he, or claimed by the state, any county, city, town, precinct, or school district, from any public official, or his successor or assigns, shall, he compensated, wholly or in part, by the state, upon payment to him of the amount claimed by him, or of the amount for which judgment is rendered by a court of competent jurisdiction.

any compensation, including, or including by indebtedness provided by the legislature, and this article is hereby declared to be invalid, and shall not be held a bar to any suit for collection of any and will be brought to the attention of the courts of the state of any such compensation, which shall be a charge to enforce payment thereof, and shall be a charge to enforce payment thereof, and shall be a charge to enforce payment thereof.

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|    |                                       |
|----|---------------------------------------|
| 17 | Law, 1882-1870, Chapter 25, Section 1 |
| 18 | Law, 1897, Chapter 25, Section 2      |
| 19 | Law, 1893, Chapter 2, Section 1       |
| 20 | Law, Section 1                        |



Quo Warranto is an action which may be filed in the name of the state by the attorney general, or the district attorney, upon his own information, or on the complaint of some private individual. This writ may be secured for the following reasons:

(a) When any person shall usurp, intrude into or unlawfully hold or exercise any public office, civil or military, or any franchise within this state, or any office or offices in a corporation created by the authority of this state; or,

(b) When any public officer, civil or military, shall have done or suffered an act, which, by the provisions of the law, shall work a forfeiture of his office; or,

(c) When any association shall act, within this state as a corporation without being duly incorporated, or in the case of a foreign corporation, without being duly authorized to do business in this state.

The district attorneys in their respective districts have the same power and rights given by this section to the attorney general in cases which may be limited in their operation to the said district.

When the attorney general or district attorney refuses to act, or when the office usurped pertains to a county, incorporated village, town or city, or school district such action may be brought by a private person on his own complaint.<sup>21</sup>

Of the two cases of this nature, listed in the civil dockets, one was filed by a private individual who received judgment, and the other was filed by the district attorney who dismissed the case.<sup>22</sup>

The district attorney, acting as Juvenile Court

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<sup>21</sup> Laws, 1899, Chapter 28, Section 4.

<sup>22</sup> Civil Dockets, op. cit.



attorney, handles all cases arising in the Juvenile Court as well as cases of dependent and neglected children.<sup>23</sup>

The chart below shows the disposal of cases of this nature.<sup>24</sup>

|  | A <sup>*</sup> | B <sup>**</sup> |
|--|----------------|-----------------|
| Made wards of the court . . . . .        | 126            | 28              |
| Custody given to probation office . . .  | 13             | 1               |
| Custody given to Bureau of Child Welfare | 0              | 13              |
| Custody given to friends or relatives .  | 58             | 3               |
| Committed to Girls Welfare Home . . .    | 21             | 0               |
| Committed to Reform School . . . . .     | 45             | 0               |
| No action taken or case dismissed . . .  | 63             | 8               |

A<sup>\*</sup> Juvenile Cases

B<sup>\*\*</sup> Dependent and Neglected Cases

Another duty of the district attorney is to institute proceedings against mental defectives and insane persons. He has the power to call witnesses and to hold them in contempt of court if they fail to appear.<sup>25</sup> Disposal of this type of cases are listed as follows:<sup>26</sup>

<sup>23</sup> Laws, 1937, Chapter 149, Section 423.

<sup>24</sup> Civil Dockets, op. cit., July, 1932, to July, 1937. Juvenile Docket and Court Record, Number 2-3.

<sup>25</sup> Laws, 1929, Chapter 68, Section 5.

<sup>26</sup> Civil Dockets, op. cit. District Court Insanity Docket and Record, Number 2-3.

attorney, handles all cases arising in the juvenile court as well as cases of dependents and neglected children. The chart below shows the disposal of cases at this court.

| Year | Disposition                             | Number |
|------|---|--------|
| 1927 | Made writs of the court                 | 186    |
| 1    | Waived given to probation officer       | 13     |
| 13   | Waived given to Bureau of Child Welfare | 0      |
| 3    | Waived given to friends or relatives    | 58     |
| 0    | Committed to State Reform Home          | 23     |
| 0    | Committed to Reform School              | 45     |
| 8    | No action taken or case dismissed       | 22     |

As Juvenile Cases  
Not Dependent and Neglected Cases

Another duty of the district attorney is to institute proceedings against mental defectives and insane persons. He has the power to call witnesses and to hold them in contempt of court if they fail to appear. Disposal of this class of cases are listed as follows:

|      |  |
|------|--|
| 1927 | 1927, Chapter 100, Section 438   |
| 20   | Civil Doctate, pp. 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000 |
| 25   | 1928, Chapter 68, Section 2  |
| 20   | Civil Doctate, pp. 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000 |

| Insanity Cases                 |     | Mental Defectives         |   |
|--------------------------------|-----|---------------------------|---|
| Committed to Las Vegas . . . . | 210 | Committed to Los Lunas-22 |   |
| Committed to Veterans Hospital | 19  | Dismissed . . . . .       | 6 |
| Cases Dismissed . . . . .      | 12  | No action taken . . . .   | 1 |

In cases where a person has been convicted of possessing an illegal scale, weight or measure, the district attorney is required by law to see that the said scale, weight or measure is destroyed.<sup>27</sup>

If without sufficient cause, the defendant neglects to appear for trial and judgment, or upon any other occasion when his presence in court may be lawfully required according to the conditions of his recognizance, the court must direct that fact to be entered upon its minutes and the recognizance or money deposited in lieu thereof, as the case may be, is thereupon forfeited.

The district attorney, shall, as soon as such fact of forfeiture is entered, proceed by action upon the recognizance. Such action shall be governed by the rules of civil pleadings so far as applicable. At any time after forfeiture the surety may pay the amount named in the bond, together with the accrued costs, to the clerk of the court, who shall give him a receipt therefore, and in case such amount, together with costs, are paid before judgment, the action on said recognizance shall be dismissed.<sup>28</sup>

Status of the three cases of this nature in the civil dockets of the second judicial district were:<sup>29</sup> judgment for the state, one case; not disposed of, two cases.

<sup>27</sup> Laws, 1913, Chapter 82, Section 34.

<sup>28</sup> Laws, 1919, Chapter 66, Sections 14, 15.

<sup>29</sup> Civil Dockets, op. cit., July, 1932, to July, 1937.

... ..  
Committed to Las Vegas ... ..  
Committed to Veterans Hospital ... ..  
Case Dismissed ... ..

In cases where a person has been ... ..  
and an illegal entry, weight or measure ... ..  
attorney is required by law to use that ... ..  
weight or measure is designed ... ..

It is without sufficient ... ..  
to appear for trial and judgment, ... ..  
occasion when his presence is ... ..  
required according to the ... ..  
the court must direct that ... ..  
minutes and the proceedings ... ..  
thereof, as the case may be, ... ..

The district attorney, ... ..  
petition is entered, ... ..  
minutes. Such action shall be ... ..  
civil proceedings so far as ... ..  
after petition has been ... ..  
the bond, together with the ... ..  
of the court, who shall give ... ..  
and in each such event, ... ..  
before judgment, the ... ..  
be dismissed. ... ..

Section of the laws ... ..  
... ..  
the state, one case; and ... ..

- 27 Laws, 1913, Chapter 22, Section 3
- 28 Laws, 1913, Chapter 24, Section 1, 2
- 29 Civil Decisions, pp. 111, 112, 113, 114, 115

Information concerning the career, associates, character, facts of the case, and disposition, together with the warrant of committment must be furnished by the district attorney to the prison board according to New Mexico law.<sup>30</sup>

Whenever there is a dispute over the boundary of a county, the district attorney is seated on the boundary commission, along with the chairman of the boards of county commissioners and the county surveyors. If the boundary in question is in two judicial districts, both district attorneys sit on the boundary commission.<sup>31</sup>

According to Mr. Gino J. Matteucci, one of the assistant District Attorneys, the filing of annulments, adoptions, illegitimacy or bastardy proceedings and certain other cases, civil in nature, are somewhat discretionary and usually are not handled by the district attorney's office. Adoption matters are handled by the office upon request for assistance from the Bureau of Child Welfare. Generally in cases where the persons are so poor it would not be possible for them to secure legal aid, the district attorney's office will intervene.

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<sup>30</sup> Laws, 1909, Chapter 32, Section 3.

<sup>31</sup> Laws, 1912, Chapter 45, Section 1.





Mr. Matteucci stated further, that tax suits, condemnation suits for the county and State Highway Commission, insanity and mental defective cases, and suits for and against the county were the chief types of suits of a civil nature handled by the District Attorney's office.<sup>32</sup>

New Mexico is one of the four states in the Union where the statutes require the district attorney to act as a general legal advisor to state officers. The other three states are: Rhode Island, Michigan, and Louisiana.<sup>33</sup>

The duty of giving every county official written or oral opinions on matters connected with the duties of their office usually means a great deal of work. In giving legal advice he may be asked to explain the operation of a new law, which changes the procedure to be followed in making purchases and requisitions of supplies. He may give advice concerning the purchase of land by the board of county commissioners, or if necessary institute condemnation proceedings for them. Because of the complexity of local government, the rulings and powers of the prosecuting attorney are of vital importance.<sup>34</sup>

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<sup>32</sup> Interview with Mr. Gino J. Matteucci, assistant District Attorney.

<sup>33</sup> Baker and DeLong, "Powers and Duties of the Prosecuting Attorney: Quasi-Criminal and Civil," Journal of Criminal Law and Criminology, May-June, 1934, p. 31.

<sup>34</sup> Baker and DeLong, "The Prosecuting Attorney and His Office," Journal of Criminal Law and Criminology, January-February, 1935, p. 719.



Whenever a suit is filed against the county, the process must first be served on the county clerk, who must notify the district attorney of such action. He, in turn, is expected to gather evidence for the county commissioners.<sup>35</sup> The civil dockets show that the number of suits instituted for the board of county commissioners, or filed against them from July, 1932 to July, 1937, were very few in number.<sup>36</sup>

#### Suits For or Against the Board of County Commissioners

| Proceedings  | Judgment For | Judgment Against | Dismissed   | No Action |
|--|--------------|------------------|-------------|-----------|
| Condemnation . . . .   | 7 . . . . .  |                  | 1 . . . . . |           |
| Eminent Domain . . .   | 1 . . . . .  |                  |             |           |
| Recovery of judgment on vouchers issued to plaintiff . . . . . |              |                  |             | 1         |
| Workmens Compensation . . . . .                                |              | 2 . . . . .      |             |           |
| Habeas Corpus . . . . .  |              | 3 . . . . .      |             |           |

For any violation of the law regulating competition in automobile financing by a corporation or association it is the duty of the district attorney to institute proper suits or quo warranto proceedings for forfeiture of charter rights.<sup>37</sup>

<sup>35</sup> Law, 1876, Chapter 1, Section 5.

<sup>36</sup> Civil Dockets, op. cit., July, 1932, to July, 1937.

<sup>37</sup> Law, 1937, Chapter 75, Section 5.

Persons a wife is, that is, a person who is  
person who is not a person who is not a person  
notly the district of a person who is not a person  
is expected to get an answer on the ground of  
The civil courts are not the courts of law  
for the body of a person who is not a person  
from July, 1888 to July, 1889, and only on the  
date for an answer to the body of a person

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Proceedings  
Continued  
Return of  
Inventory of  
to district  
Persons  
Persons

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For my opinion of the  
in the case of the  
it is the duty of the  
proper notice of the  
of another person

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36  
37  
38

When any owner, keeper, lessee or possessor of bees shall fail to carry out instructions of County Inspector of Bees and Apiaries, he shall carry out destruction or treatment and send bill to the owner. If the bill is not paid within 30 days the County Inspector shall certify to the district attorney the amount and items of the bill. It shall be the duty of the district attorney to file suit for recovery of said amount.<sup>38</sup>

The attorney general and the district attorney in the county in which legal questions arise, shall be the legal advisors of the state engineer, and shall perform all necessary legal duties. They are to receive no other compensation other than the salaries as fixed by law.<sup>39</sup>

The district attorney also represents the county board of Horticultural Commission in suits for the foreclosure of liens. Such liens are on property where the commission has worked to kill tree diseases. If the bill for such work is not paid within 60 days the district attorney must file a suit against the property.<sup>40</sup>

The attorney general, and the district attorney, may also be called upon to advise the state comptroller in all matters connected with his office.<sup>41</sup>

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<sup>38</sup> Laws, 1912, Chapter 11, Section 7.

<sup>39</sup> Laws, 1907, Chapter 49, Section 38.

<sup>40</sup> Laws, 1909, Chapter 69, Section 5.

<sup>41</sup> Laws, 1923, Chapter 48, Section 11.

than any other, however, it is the duty of the  
 shall fail to carry out its obligations or  
 been and advised, he shall carry out his  
 sent and send bill to the owner. If the bill is not paid  
 within 30 days the County Inspector shall certify to the  
 district attorney the amount and issue of the bill. It shall  
 be the duty of the district attorney to file and the  
 recovery of said amount. 33

The attorney general and the district attorney in the  
 county in which local questions arise, shall be the  
 advisors of the state engineer, and shall perform all  
 necessary legal duties. They may be required to attend  
 commission either from the railroad as filed by the  
 The district attorney also represents the  
 board of Horticultural Commission in matters for the  
 closure of farms. Such liens are on property and the  
 commission has worked to fill these places. If the bill  
 for such work is not paid within 30 days the district  
 attorney must file a suit against the property.  
 The attorney general, and the district attorney, shall  
 also be called upon to advise the state engineer in all  
 matters connected with his office. 41

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|    |                                     |
|----|-------------------------------------|
| 33 | Laws, 1912, Chapter 21, Section 7.  |
| 39 | Laws, 1907, Chapter 49, Section 23. |
| 40 | Laws, 1909, Chapter 22, Section 2.  |
| 41 | Laws, 1922, Chapter 40, Section 11. |

In order to make the district attorney more effective as a law enforcement officer, he should be relieved of most of his civil duties. Certain quasi-criminal duties, such as abatement of nuisances, actions to collect forfeited bonds and fines, actions to recover certain penalties, quo warranto proceedings in the matter of removal from office, and the revoking of licenses,<sup>42</sup> should be retained because they fit in with his criminal duties.

The people of New Mexico would receive greater benefits from district attorneys who were devoting their full time to the enforcement of the criminal laws rather than to routine civil suits and advising of state and county officers.

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<sup>42</sup> Baker and DeLong, "Powers and Duties of the Prosecuting Attorney: Quasi-Criminal and Civil," Journal of Criminal Law and Criminology, May-June, 1934, p. 24.

In order to take the...  
as a law enforcement officer, he should be...  
of his civil duties. Particular attention should be given  
an assessment of his...  
bonds and lines, and...  
maintain possession in the...  
and the revoking of...  
they live in with his...  
The people of the...  
benefits from...  
full time to the...  
then to routine...  
county officers.



## CHAPTER III

### THE CRIMINAL DUTIES OF THE DISTRICT ATTORNEY'S OFFICE

The criminal duties of the district attorney are by far the most important of all the duties he has to perform. For instance, he may represent the county, or state, in any manner, coming before the justice of peace or committing magistrate when he believes the interests of the people demand it.<sup>1</sup> He may set in motion machinery to punish all offenders. Although the statutes say nothing about compromise or adjustments, bargaining with defendants, mediation in quarrels, or crime prevention, he may exercise these powers at his discretion.<sup>2</sup> Rules for the administration of justice provide that all should be treated equally, and that no defendant should have more or less punishment than he deserves. Actually the district attorney is a "father confessor." Whether the defendant shall be prosecuted or not depends upon the judgment of the prosecutor.<sup>3</sup>

Some of the questions which must occur to a prosecutor when he studies a case, where the law has been

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<sup>1</sup> Laws, 1909, Chapter 22, Section 3.

<sup>2</sup> Baker and DeLong, "Initiation of Prosecution," Journal of Criminal Law and Criminology, January-February, 1933, p. 770.

<sup>3</sup> Loc. cit.

CHAPTER II

THE CRIMINAL JUSTICE SYSTEM IN THE UNITED STATES

The criminal justice system in the United States is a complex of agencies and processes designed to identify, prosecute, and punish those who violate the law. It is a system that has evolved over time, reflecting changes in society, technology, and legal thought. The system is composed of several key components: law enforcement, the judiciary, and the corrections system. Each of these components plays a vital role in the overall process of criminal justice.

Law enforcement agencies, such as the police and sheriff's offices, are the first line of defense against crime. They are responsible for maintaining public order, preventing crime, and investigating offenses. The judiciary, consisting of courts and judges, is responsible for interpreting the law, determining the guilt of the accused, and imposing sentences. The corrections system, which includes prisons and probation, is responsible for the custody and rehabilitation of offenders.

The process of criminal justice begins with the investigation of a crime. Law enforcement agencies gather evidence, identify suspects, and make arrests. The accused is then taken to court, where a judge determines whether there is sufficient evidence to proceed with a trial. If the evidence is sufficient, the accused is found guilty and sentenced. The sentence may range from a fine to a term of imprisonment, depending on the nature and severity of the crime.

One of the most important aspects of the criminal justice system is the protection of the rights of the accused. The Constitution guarantees several rights, including the right to a fair trial, the right to counsel, and the right to remain silent. These rights are essential to ensure that the justice system is fair and impartial.

Over the years, the criminal justice system has faced many challenges, including overcrowding in prisons, high costs, and the need for reform. There is a growing awareness of the need to address these issues and to create a more efficient and effective system. This has led to the development of various reforms, such as the use of plea bargaining, the implementation of sentencing guidelines, and the expansion of probation and parole programs.

Some of the questions that arise in the study of the criminal justice system are: What are the purposes of the system? How is it organized? What are the roles of the various agencies? How are the rights of the accused protected? How can the system be improved? These are some of the questions that will be explored in this chapter.

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1 Law, 1900, Chapter 22, Section 2.

2 Walker and Hagan, "The Evolution of the Criminal Justice System," *Journal of Criminal Law and Criminology*, January-February, 1937, p. 171.

3 Law, etc.

broken and where he is required to prosecute, are:

Will it be a waste of time? Will it be expensive to the state? Will it be unfair to the defendant? Will it serve any good purpose to society in general? Will it have good publicity value? Will it cause a political squabble? Will it prevent the prosecutor from carrying the offender's home precinct when he, the prosecutor, runs for Congress after his term as prosecutor? Was the law violated a foolish piece of legislation? If the offender is a friend, is it the square thing to do to reward friendship by initiating criminal proceedings?<sup>4</sup>

Thus, it would seem that the district attorney is the real arbiter of what laws should be enforced, by refusing to prosecute certain cases. However, in many instances the attorney general may be called in if the district attorney refuses to prosecute the case.<sup>5</sup>

In making this study all of the criminal laws passed by the New Mexico Legislature and the duties of the district attorney in regard thereto, as well as the criminal dockets for the Second Judicial District for the five year period, July, 1932 to July, 1937, have been checked in order to make this study as accurate as possible.

New Mexico statutes define crime in the following words:

A crime or public offense is an act or omission forbidden by law, and to which is annexed, upon conviction either of the following punishments,

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<sup>4</sup> Baker and DeLong, op. cit., January-February, 1933, p. 771.

<sup>5</sup> Laws, 1915, Chapter 37, Section 5.

broken and where he is regarded as a person of

Will it be a waste of time? Will it be  
expensive to the state? Will it be a  
deliberate? Will it show any good purpose to  
society in general? Will it have any  
value? Will it cause a political scandal?  
It prevents the prosecution from carrying out its  
home protection when he, the president, is  
Congress after his term as president. The law  
violated a federal statute of legislation. It  
offender is a crime, it is the duty of the  
to prevent it from being established as a  
precedent.

Thus, it would seem that the highest authority  
the rest of the world of what laws should be enacted,  
refusing to prosecute certain cases. However, in  
instances the attorney general has refused to  
district attorney refuses to prosecute the case.  
In making this study of the political law  
by the New Mexico Legislature and the United States  
attorney in regard thereto, on July 11 of the year 1932  
for the second judicial district for the five years  
July, 1928 to July, 1932, have been made in order to  
make this study as accurate as possible.

New Mexico statutes define crime in the following

words:

A crime or public offense is an act or omission  
forbidden by law, and in which is intended, or  
violated either of the following purposes:

4 Baker and Nelson, Pr. Lit., January-February, 1932  
p. 771. B  
LAW, 1918, Chapter 37, Section 2

- First. Death.
- Second. Imprisonment.
- Third. Fine.
- Fourth. Removal from office; or
- Fifth. Disqualification to hold and enjoy any office of honor, trust, or profit, under the laws of this state.<sup>6</sup>

Crimes are classified as either a felony or a misdemeanor. A felony is a public offense which may be punishable by death or imprisonment in the penitentiary.<sup>7</sup> All other offenses are misdemeanors.<sup>8</sup>

To serve as a basis for the arrangement of criminal cases with which the district attorney must deal, the Uniform Classification of Offenses, which is substantially the same as the list of offenses adopted by the Federal Bureau of Investigation and the Bureau of Census, will be used throughout this chapter. Reference to the charts in this chapter will show how many of these offenses the district attorney has actually prosecuted.

Part I of the Uniform Classification covers crimes under the following class titles:

1. Criminal Homicide
  - a. Murder and Nonnegligent Manslaughter
  - b. Manslaughter by negligence
2. Rape
3. Robbery

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<sup>6</sup> Laws, 1853-1854, p. 82.

<sup>7</sup> Loc. cit.

<sup>8</sup> Loc. cit.



4. Aggravated Assault
5. Burglary-Breaking or Entering
6. Larceny-Theft (except auto theft)
  - a. \$20 and over in value
  - b. Under \$20 in value
7. Auto Theft<sup>9</sup>

Homicide is the unlawful murder of a human being with malice aforethought, either expressed or implied.<sup>10</sup> Under the Uniform Classification all criminal homicides are divided into two groups, (a) Murder and Nonnegligent Manslaughter, (b) Manslaughter by Negligence. First degree murder, according to New Mexico law, is a malicious and premeditated killing, either in an attempt to commit a felony or from deliberate design. All other kinds are murders in the second degree.<sup>11</sup> Manslaughter is defined as the unlawful killing of a person without malice. There are two kinds of manslaughter: voluntary and involuntary. Voluntary manslaughter concerns a killing in the heat of passion.<sup>12</sup> Involuntary manslaughter or manslaughter by negligence is the result of culpable negligence and is usually confined to cases where the killing is unintentional.<sup>13</sup>

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<sup>9</sup> John Edgar Hoover, A Handbook Containing Suggestions For the Preparation of Uniform Crime Reports (Washington: Federal Bureau of Investigation, United States Department of Justice, 1938), p. 4.

<sup>10</sup> Laws, 1891, Chapter 8, Section 11.

<sup>11</sup> Laws, 1901, Chapter 56, Section 1.

<sup>12</sup> Laws, 1907, Chapter 36, Section 2.

<sup>13</sup> State v. Pruett (27 N. M. 576).

- 4. Aggravated Assault
- 5. Burglary
- 6. Intentional Killing (Capital Offense)
- 7. Rape
- 8. Kidnap
- 9. False Imprisonment
- 10. Obstruction of Justice
- 11. Perjury
- 12. Contempt

Homicide is the unlawful killing of a human being. It is divided into two groups: (a) Murder and (b) Manslaughter. Murder is further divided into first degree, second degree, and capital murder. Manslaughter is divided into voluntary and involuntary. The killing of a person without malice aforethought is manslaughter. The killing of a person with malice aforethought is murder. The killing of a person with malice aforethought and with the intent to kill is first degree murder. The killing of a person with malice aforethought and without the intent to kill is second degree murder. The killing of a person with malice aforethought and without the intent to kill and without the use of a deadly weapon is capital murder. The killing of a person with malice aforethought and without the intent to kill and without the use of a deadly weapon and without the use of a firearm is manslaughter. The killing of a person with malice aforethought and without the intent to kill and without the use of a deadly weapon and without the use of a firearm and without the use of a firearm is manslaughter.

John Edgar Hoover, A History of the Federal Bureau of Investigation, (Washington, D.C.: U.S. Government Printing Office, 1955), p. 2.

10. Law, 1951, Chapter 4, Section 11.

11. Law, 1901, Chapter 11, Section 11.

12. Law, 1901, Chapter 11, Section 11.

13. State v. Frost (1877), 12 N.W. 270.



Rape is the knowing of a woman in a carnal way, forcibly, and against her will. In New Mexico any person who takes a female under sixteen years of age and forcibly subjects her to sexual intercourse, or any female over sixteen years of age, who is of unsound mind, is guilty of rape.<sup>14</sup> Statutory rape is where consent is present but which the statutes define as rape because of the age of the victim, and her inability at law to consent. Attempts to rape and assaults with attempt to rape come under this classification too.<sup>15</sup>

Robbery is the taking or attempted taking, by force or violence or putting in fear, any money or property of another without the use of a dangerous weapon.<sup>16</sup> Highway robbery, robbery while armed, train robbery, bank robbery, hold ups, assaults with intent to commit robbery or larceny, and all attempts, are included under the general classification of robbery<sup>17</sup> even though in these cases a dangerous weapon is used.

Assault is the unlawfully assaulting or threatening another with a view to inflicting severe bodily injury.<sup>18</sup>

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<sup>14</sup> Laws, 1923, Chapter 110, Section 2.

<sup>15</sup> Hoover, op. cit., p. 5.

<sup>16</sup> Laws, 1853-1854, p. 94.

<sup>17</sup> Hoover, op. cit., p. 5.

<sup>18</sup> Laws, 1853-1854, p. 27.

Rape is the forcing of a woman to have sexual intercourse, forcibly, and against her will. In the United States, a woman who takes a female partner without her consent is guilty of subjecting her to sexual intercourse, or any other act, within ten years of age, and is of sound mind, and is guilty of rape.<sup>14</sup> Statutory rape is a crime because it is an act which the statute defines as rape, and it is not necessary that the victim, and her innocence, be an essential element. The rape and sexual intercourse are defined by the statute, and the classification is.<sup>15</sup>

Robbery is the taking of property from the person of another or violence or putting in fear, or any other means, without the use of a dangerous weapon.<sup>16</sup>

Robbery with a gun, from the person of another, held upon, assaults with intent to commit robbery or murder, and all attempts, are included under the general definition of robbery.<sup>17</sup> Even though the person is armed with a dangerous weapon is used.

Assault is the unlawful assault or battery.<sup>18</sup>

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 15  
 16  
 17  
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Laws, 1933, Chapter 113, Section 2  
 Howell, op. cit., p. 10  
 Laws, 1933-1934, p. 24  
 Howell, op. cit., p. 10  
 Laws, 1933-1934, p. 24

Aggravated assaults deal only with those offenses which are serious in character and are as follows:

1. Assault with intent to kill or murder
2. Poisoning
3. Assault with a dangerous weapon, including dueling
4. Maiming, mayhem, and assault with intent to maim or commit mayhem
5. Assault with explosives
6. Wilful obstruction of railroads
7. All attempts to commit any of the foregoing offenses<sup>19</sup>

Burglary, according to New Mexico statutes, consists of breaking or entering into any dwelling in the night time, with the intention of committing the crime of murder, rape, theft, larceny or any felony, while armed.<sup>20</sup> Under the Uniform Classification burglary offenses are confined to breaking in or entering such places enumerated in the statutes, with intent to commit a felony, or any larceny.<sup>21</sup> Other offenses listed are:

- Burglary (all degrees)
- Breaking and entering with intent to commit a larceny or any felony
- Unlawfully entering with attempt to commit a felony
- Housebreaking
- Burglary and larceny
- Safecracking
- Assault with intent to commit burglary
- All attempts to commit any of the foregoing offenses<sup>22</sup>

Larceny is the stealing of any property in a dwelling

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<sup>19</sup> Hoover, op. cit., p. 6.

<sup>20</sup> Laws, 1921, Chapter 78, Section 1.

<sup>21</sup> Hoover, op. cit., p. 6.

<sup>22</sup> Loc. cit.



house, in the day or night time,<sup>23</sup> or the taking, carrying, riding or driving away,<sup>24</sup> the personal property of another. If the value of the property exceeds twenty dollars, it is classed as grand larceny.<sup>25</sup> If the value of the property is less than twenty dollars, it is considered petty larceny.<sup>26</sup>

Auto theft includes all cases where an automobile, motorcycle or truck is stolen, or driven away and abandoned, or such theft is attempted.<sup>27</sup> Cases of temporary use or unauthorized use by those having lawful access to the vehicle, such as chauffeurs and garage employees, and where the car is returned, are not included in the above classification. However, it does include violation of the "joy riding" statutes, that is persons who take a car without lawful access thereto, and abandon it.<sup>28</sup>

In the chart on the following page will be found all the cases of the type listed in Part I, which were handled by the district attorney of the second judicial district from July, 1932 to July, 1937.

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<sup>23</sup> Laws, 1857-1858, p. 26.

<sup>24</sup> Laws, 1921, Chapter 123, Section 1.

<sup>25</sup> Laws, 1857-1858, p. 26.

<sup>26</sup> Loc. cit.

<sup>27</sup> Laws, 1919, Chapter 150, Section 28.

<sup>28</sup> Hoover, op. cit., p. 6.

hours, in the day or night time,<sup>22</sup> or the taking, carrying, riding or driving away,<sup>23</sup> the personal property of another if the value of the property exceeds twenty dollars, it is classed as Grand Larceny.<sup>24</sup> If the value of the property is less than twenty dollars, it is considered petty larceny.<sup>25</sup>

Auto theft includes all cases where an automobile, motorcycle or truck is stolen, or driven away and abandoned, or such theft is attempted.<sup>26</sup> Cases of temporary use or unauthorized use by those having lawful access to the vehicle, such as chauffeurs and garage employees, and where the car is returned, are not included in the above classification. However, it does include violation of the "joy riding" statutes, that is persons who take a car without lawful access thereto, and abandon it.<sup>27</sup>

In the chart on the following page will be found all the cases of the type listed in Part I, which were handled by the district attorney of the various judicial districts from July, 1932 to July, 1937.

|    |  |
|----|--|
| 22 | <u>Law, 1937-1938, p. 26.</u>              |
| 24 | <u>Law, 1931, Chapter 123, Section 1.</u>  |
| 25 | <u>Law, 1937-1938, p. 26.</u>              |
| 26 | <u>Law, etc.</u>                           |
| 27 | <u>Law, 1919, Chapter 150, Section 23.</u> |
| 28 | <u>Hoover, op. cit., p. 6.</u>             |

CRIMINAL CASES AND THEIR DISPOSAL  
 SECOND JUDICIAL DISTRICT  
 JULY 1932-JULY 1937

| Type of Case                           | No. of Cases | Convicted | Sentence Suspended | Dismissed by Dist. Att'y. | Jury Verdict Not Guilty | Miscellaneous | 2-change of venue | 1-case continued |
|--|--------------|-----------|--------------------|---------------------------|-------------------------|---------------|-------------------|------------------|
| Murder . . . . .                       | 20           | 14        | 0                  | 2                         | 2                       |               |                   |                  |
| Criminal abortion                      | 1            | 0         | 0                  | 0                         | 1                       |               |                   |                  |
| Manslaughter . . . . .                 | 9            | 5         | 2                  | 2                         | 2                       |               |                   |                  |
| Rape . . . . .                         | 8            | 5         | 0                  | 2                         | 1                       |               |                   |                  |
| Assault with intent to rape . . . . .  | 3            | 0         | 0                  | 3                         | 0                       |               |                   |                  |
| Robbery . . . . .                      | 9            | 3         | 2                  | 6                         | 0                       |               |                   |                  |
| Robbery while armed                    | 19           | 13        | 2                  | 6                         | 0                       |               |                   |                  |
| Assault with a deadly weapon . . . . . | 68           | 31        | 11                 | 36                        | 0                       |               |                   |                  |
| Assault with intent to kill . . . . .  | 13           | 6         | 2                  | 7                         | 0                       |               |                   |                  |
| Burglary . . . . .                     | 31           | 22        | 4                  | 9                         | 0                       |               |                   |                  |
| Entry with felonious intent            | 7            | 7         | 0                  | 0                         | 0                       |               |                   |                  |

(continued on following page)

REPORT ON THE PROGRESS OF THE WORK

| Type of Case | No. of Cases | Completed | Uncompleted | Def. Verdict | Acquitted | Dismissed | Not Guilty | Other |
|--------------|--------------|-----------|-------------|--------------|-----------|-----------|------------|-------|
| ... ..       | 27           | 27        | 0           | 0            | 0         | 0         | 0          | 0     |
| ... ..       | 13           | 6         | 7           | 0            | 0         | 0         | 0          | 0     |
| ... ..       | 40           | 27        | 13          | 0            | 0         | 0         | 0          | 0     |
| ... ..       | 10           | 10        | 0           | 0            | 0         | 0         | 0          | 0     |
| ... ..       | 6            | 3         | 3           | 0            | 0         | 0         | 0          | 0     |
| ... ..       | 3            | 0         | 3           | 0            | 0         | 0         | 0          | 0     |
| ... ..       | 0            | 0         | 0           | 0            | 0         | 0         | 0          | 0     |
| ... ..       | 0            | 0         | 0           | 0            | 0         | 0         | 0          | 0     |
| ... ..       | 1            | 0         | 1           | 0            | 0         | 0         | 0          | 0     |
| ... ..       | 80           | 47        | 33          | 0            | 0         | 0         | 0          | 0     |

1914-1915  
 SECOND DISTRICT  
 CHIEF CLERK AND HIS DEPT.



CRIMINAL CASES AND THEIR DISPOSAL (Continued)  
 SECOND JUDICIAL DISTRICT  
 JULY 1932-JULY 1937

| Type of Case  | No. of Cases | Convicted | Sentence Suspended | Dismissed by Dist. Att'y. | Jury Verdict Not Guilty | Miscellaneous     |
|---|--------------|-----------|--------------------|---------------------------|-------------------------|-------------------|
| Breaking and Entering . . . .   | 6            | 6         | 2                  | 0                         | 0                       |                   |
| Grand larceny . . . .   | 51           | 42        | 17                 | 8                         | 0                       | 1-forfeited bond  |
| Embezzlement . . . .  | 19           | 14        | 6                  | 4                         | 0                       |                   |
| Petty larceny . . . .   | 21           | 10        | 3                  | 9                         | 0                       | 2-dismissed court |
| Larceny from dwelling . . . .   | 24           | 21        | 0                  | 3                         | 0                       |                   |
| Larceny of animals  | 39           | 20        | 6                  | 8                         | 3                       |                   |
| Larceny of automobile . . . .   | 15           | 12        | 2                  | 1                         | 0                       |                   |
| Unlawfully driving away automobile . . . .                              | 11           | 8         | 4                  | 3                         | 0                       |                   |
| Using vehicle without owners consent                                    | 2            | 1         | 1                  | 0                         | 0                       |                   |
| Taking bicycle without owners consent for purpose of using same . . . . | 1            | 0         | 0                  | 1                         | 0                       |                   |

| Case No. | Description | Amount | Balance | Receipts | Disbursements | Balance | Receipts | Disbursements | Balance |
|----------|-------------|--------|---------|----------|---------------|---------|----------|---------------|---------|
| 1        | ...         | 0      | 0       | 1        | 0             | 0       | 0        | 0             | 0       |
| 2        | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 3        | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 4        | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 5        | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 6        | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 7        | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 8        | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 9        | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 10       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 11       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 12       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 13       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 14       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 15       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 16       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 17       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 18       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 19       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 20       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 21       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 22       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 23       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 24       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 25       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 26       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 27       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 28       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 29       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 30       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 31       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 32       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 33       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 34       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 35       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 36       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 37       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 38       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 39       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 40       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 41       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 42       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 43       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 44       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 45       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 46       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 47       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 48       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 49       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 50       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 51       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 52       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 53       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 54       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 55       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 56       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 57       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 58       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 59       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 60       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 61       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 62       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 63       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 64       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 65       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 66       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 67       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 68       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 69       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 70       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 71       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 72       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 73       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 74       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 75       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 76       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 77       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 78       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 79       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 80       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 81       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 82       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 83       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 84       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 85       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 86       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 87       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 88       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 89       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 90       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 91       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 92       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 93       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 94       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 95       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 96       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 97       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 98       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 99       | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |
| 100      | ...         | 0      | 0       | 0        | 0             | 0       | 0        | 0             | 0       |

Date of case      No. of cases      No. of cases      No. of cases      No. of cases  
 ...      ...      ...      ...      ...

(continued)  
 CHIKINGI QUERE AND LEIN DICHOMI  
 SECOND LEGISLATIVE DISTRICT  
 1981 YEAR-END REPORT

It will be noticed in this chart that a number of cases are dismissed by order of the district attorney. This is done many times because there is not sufficient evidence to convict the defendant, and at other times this method is used when the district attorney wants to clear the docket of cases that have been carried for some time and for which he sees no possibility of securing a conviction.

A study of the criminal dockets shows that often when the defendant has two charges against him, one of which carries a lighter sentence than the other, he is allowed to plead guilty to the one which carries the lightest sentence. This saves the district attorney trouble in prosecuting the case and sometimes there isn't enough evidence to secure a conviction on the charge calling for the heavier penalty. Cases in which the defendant pleaded not guilty were quite often dismissed.

Under Part II of the Uniform Classification the following offenses are listed:

8. Other Assaults
9. Forgery and Counterfeiting
10. Embezzlement and Fraud
11. Stolen Property: Buying, Receiving, Possessing
12. Weapons: Carrying, Possessing
13. Prostitution and Commercialized Vice
14. Sex Offenses
15. Offenses Against Family and Children
16. Narcotic Drug Laws
17. Liquor Laws
18. Drunkenness
19. Disorderly Conduct
20. Gambling

It will be noted in this case that the  
cases are arranged by order of the date of  
is some very fine evidence from the  
to support the defendant, and at other times  
used when the District Attorney wishes to  
of cases that have been decided for the  
to see no possibility of conviction.

A study of the entire docket shows that  
the defendant has had other cases  
entered a lighter sentence than the  
placed guilty as the one which carries the  
This shows the District Attorney's  
and sometimes there is a  
submitted on the charge called for the  
Cases in which the defendant pleaded not  
often obtained.

Under Part II of the report  
following offenses are listed:

1. Other offenses
2. Forgery and related offenses
3. Larceny and related offenses
4. Assault and battery
5. Rape and related offenses
6. Kidnap and related offenses
7. False personation and impersonation
8. False check and related offenses
9. False money and related offenses
10. False documents and related offenses
11. False statements and related offenses
12. False oaths and related offenses
13. False affidavits and related offenses
14. False certificates and related offenses
15. False licenses and related offenses
16. False permits and related offenses
17. False orders and related offenses
18. False decrees and related offenses
19. False judgments and related offenses
20. False verdicts and related offenses

- 21. Driving While Intoxicated
- 22. Other Violations of Traffic and Motor Vehicle Laws
- 23. All Other Offenses <sup>29</sup>

Other assaults consist of all assaults and attempted assaults which are petty in nature, such as,

- Simple assault
- Assault and Battery
- Injury caused by culpable negligence
- Intimidation
- Coercion
- Resisting or obstructing an officer
- Wife Beating
- Drawing a dangerous weapon
- All attempts to commit the above <sup>30</sup>

Forgery and counterfeiting are classed as the making, altering, forging or counterfeiting public records, notes, insurance, or letters with intent to injure or defraud. <sup>31</sup>

The following offenses are included under this classification:

- Altering or forging public and other records
- Making, altering, forging, or counterfeiting bills, notes, drafts, tickets, checks, etc.
- Forging wills, deeds, notes, bonds, seals, trade marks, etc.
- Counterfeiting coins, plates, bank notes, checks, etc.
- Possessing or uttering forged or counterfeited instruments
- Signing the name of another or fictitious person with intent to defraud
- Using forged labels
- Selling goods with altered, forged or counterfeited trade marks
- All attempts to commit the above <sup>32</sup>

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<sup>29</sup> Hoover, op. cit., p. 21.

<sup>30</sup> Loc. cit.

<sup>31</sup> Laws, 1853-1854, p. 110.

<sup>32</sup> Hoover, op. cit., p. 21.



Embezzlement is the converting of money or property by a public officer or any other person to his own use.<sup>33</sup>

All cases of fraudulent conversion, embezzlement, and obtaining money by false tokens and pretense such as the offenses listed below come under this classification.<sup>34</sup>

Fraud

"Confidence game"

Fraudulent conversion, appropriation, conveyance, entries, accounts, registration, use of trade marks or emblems, misbranding, etc.

False personation, pretense, statement, document, representation, claims, evidence, etc.

Gross fraud, cheat, or swindle

Check frauds; drawing checks without funds, etc.

Fraudulent use of telegraph, telephone messages

Insurance frauds

Use of false weights and measures

False advertising

All attempts to commit the above<sup>35</sup>

Any person who buys, receives, possesses, or aids in the concealment of stolen property is guilty of violating the law on stolen property.<sup>36</sup>

In regard to the carrying or possessing of deadly weapons, New Mexico law has little to say. Outside of a few prosecutions for discharging firearms within a settlement and for handling a deadly weapon in a threatening manner, the district attorney has had little to do under this section.

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<sup>33</sup> Laws, 1923, Chapter 70, Section 1.

<sup>34</sup> Hoover, op. cit., p. 21.

<sup>35</sup> Loc. cit.

<sup>36</sup> Laws, 1853-1854, p. 102.





CRIMINAL CASES AND THEIR DISPOSAL  
SECOND JUDICIAL DISTRICT  
JULY 1932-JULY 1937

| Type of Case  | No. of Cases | Convicted | Sentence Suspended | Dismissed by Dist. Att'y. | Jury Verdict Not Guilty | Miscellaneous    |
|---|--------------|-----------|--------------------|---------------------------|-------------------------|------------------|
| Assault on wife . . .                                     | 3            | 1         | 1                  | 2                         | 0                       |                  |
| Assault and Battery                                       | 8            | 4         | 1                  | 4                         | 0                       |                  |
| Resisting officer   | 10           | 2         | 1                  | 8                         | 0                       |                  |
| Drawing, handling a deadly weapon in a threatening manner | 1            | 1         | 0                  | 0                         | 0                       |                  |
| Insulting another while armed . . .                       | 2            | 0         | 0                  | 2                         | 0                       |                  |
| Obtaining property by means of a false and bogus check .  | 25           | 22        | 7                  | 2                         | 0                       |                  |
| Forgery . . . . .   | 10           | 9         | 2                  | 1                         | 0                       |                  |
| Uttering forged instrument . . .                          | 3            | 3         | 1                  | 0                         | 0                       |                  |
| Obtaining money by false representation . . . . .         | 11           | 9         | 5                  | 2                         | 0                       |                  |
| Impersonating an officer . . . . .                        | 1            | 1         | 0                  | 0                         | 0                       |                  |
| Making, issuing fraudulent checks                         | 8            | 5         | 2                  | 2                         | 0                       | 1-forfeited bond |



Under Prostitution and commercialized vice are listed all the sex offenses of a commercialized nature.<sup>37</sup>

Prostitution  
 Keeping bawdy house, disorderly house, or house of ill fame  
 Pandering, procuring, transporting or detaining women for immoral purposes, etc. 38  
 All attempts to commit the above

In this group of sex offenses are included offenses against chastity, common decency and morals.

Adultery and fornication  
 Buggery  
 Incest  
 Indecent exposure  
 Indecent liberties  
 Seduction  
 Sodomy or crimes against nature  
 All attempts to commit any of the above<sup>39</sup>

Included in offenses against the family and children are charges of failure to take care of, or abusing wife or child, and

Desertion, abandonment, or nonsupport of wife or child  
 Neglect or abuse of child  
 Non-payment of alimony  
 All attempts to commit any of the above<sup>40</sup>

The section on narcotic drug laws includes such offenses as the planting, cultivating and sale of marihuana,<sup>41</sup> unlawful possession, sale of any narcotic drug or any attempt to do so.<sup>42</sup>

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37 Hoover, op. cit., p. 22.

38 Loc. cit.

39 Loc. cit.

40 Loc. cit.

41 Loc. cit.

42 Loc. cit.

Under provision and commensurate with are listed

All the act offenses of a commercialized nature.

Prostitution  
Keeping bawdy house, disorderly house, or house of ill fame  
Lending, producing, transporting or detaining women for immoral purposes, etc.

All attempts to commit the above

In this group of act offenses are included offenses

against chastity, common decency and morals.

Adultery and fornication

Rape

Incest

Indecent exposure

Indecent libel

Obscenity

Seduction or enticement against nature

All attempts to commit any of the above

Included in offenses against the family and children

are charges of failure to take care of, or support wife or

child, and

Desertion, abandonment, or non-support of wife or child

Neglect or abuse of child

Non-payment of alimony

All attempts to commit any of the above

The section on narcotic drug laws includes such offenses

as the planting, cultivating and sale of marijuana, etc.

possession, sale of any narcotic drug or any attempt to do so.

27 Hoover, pp. 411-412.

28 loc. cit.

29 loc. cit.

30 loc. cit.

31 loc. cit.

32 loc. cit.

Liquor law violations, both state and local, are classed in this group and are as follows:<sup>43</sup>

Manufacture, sale, transporting, furnishing, possessing, etc. intoxicating liquor  
 Furnishing liquor to a minor or intemperate person  
 Using a vehicle for illegal transportation of liquor  
 All attempts to commit any of the above<sup>44</sup>

Drunkenness and intoxication include the following:

Drunkenness  
 Drunk and disorderly  
 Common or habitual drunkard  
 Intoxication<sup>45</sup>

All breaches of the peace are listed under disorderly conduct, such as:

Affray  
 Unlawful assembly  
 Disturbing the peace  
 Disturbing meetings  
 Disorderly conduct in state institutions, at court, at fairs, on trains, or public conveyances  
 Disguised or masked persons; night riders  
 Prize fights  
 Blasphemy, profanity, and obscene language  
 Desecrating flag  
 Refusing to assist an officer  
 All attempts to commit any of the above<sup>46</sup>

Under New Mexico law, gambling is the playing or operating any game of chance for money or anything of value.<sup>47</sup>

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43 Hoover, op. cit., p. 23.

44 Loc. cit.

45 Loc. cit.

46 Loc. cit.

47 Laws, Chapter 86, Section 1.

Agency has retained a copy of this report.

Classified in this group subject to review.

Manufacture, sale, transportation, distribution, possession, use, maintenance, repair, and use of motor vehicles, aircraft, and other motorized vehicles, and the use of such vehicles in interstate or foreign commerce.

Transportation and communication facilities.

Transportation  
Business and industry  
Government or national defense  
Intelligence

All branches of the Government and its agencies.

conduct, such as:

Attorney  
Internal security  
International relations  
Miscellaneous  
Disaster relief  
Disorderly conduct  
of fair, or unfair, trade  
Disposal of waste  
Travel  
Bribery, corruption, and other offenses  
Gambling  
Holding of public office  
All other

Under the terms of the license...

operating any such license...

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- 43 Hoover, J. Edgar
  - 44 Inc. 411
  - 45 Inc. 411
  - 46 Inc. 411
  - 47 Inc. 411
  - 48 Inc. 411

CRIMINAL CASES AND THEIR DISPOSAL  
SECOND JUDICIAL DISTRICT  
JULY 1932-JULY 1937

| Type of Case   | No. of Cases | Convicted | Sentence Suspended | Dismissed by Dist. Att'y. | Jury Verdict Not Guilty | Miscellaneous |
|--|--------------|-----------|--------------------|---------------------------|-------------------------|---------------|
| Attempt to obtain money and property by means of trick and deception . . . .       | 1            | 1         | 0                  | 0                         | 0                       |               |
| Buying, receiving and aiding in the concealing of stolen property                  | 8            | 6         | 2                  | 1                         | 0                       |               |
| Discharging firearms within a settlement   | 8            | 6         | 4                  | 2                         | 0                       |               |
| Unlawfully carrying deadly weapon . . . .  | 1            | 1         | 0                  | 0                         | 0                       |               |
| Maintaining a common nuisance . . . . .  | 1            | 0         | 0                  | 1                         | 0                       |               |
| Operating a house for purpose of prostitution, lewdness, and assignation . . . . . | 7            | 3         | 1                  | 4                         | 0                       |               |
| Seduction . . . . .  | 7            | 0         | 0                  | 7                         | 0                       |               |
| Abandonment of wife . . . . .  | 12           | 0         | 0                  | 12                        | 0                       |               |
| Possession and sale of Marihuana . . . . .   | 15           | 9         | 2                  | 6                         | 0                       |               |





Included in the section on gambling are:

Keeping gambling devices  
 Common gamblers  
 Owning gambling resorts  
 Frequenting gambling resorts  
 Lotteries  
 Gambling in any manner  
 All attempts to commit any of the above<sup>48</sup>

Driving while intoxicated refers to the driving, or operating, of any car or common carrier while under the influence of liquor or narcotics.<sup>49</sup>

Certain violations of the traffic and motor vehicle laws are listed in this section:

Failure to secure proper license for car or for driving  
 Leaving scene of accident  
 Failure to report accident  
 Lack of title  
 Obscured or defective markers  
 Misrepresentation respecting ownership or license<sup>50</sup>

In this section are included all other offenses which have not already been listed:

Abduction and compelling to marry  
 Abortion  
 Admitting minors to improper places  
 Arson  
 Assisting another in the commission of self-murder  
 Bastardy and concealing death of bastard  
 Bigamy and polygamy  
 Blackmail and extortion  
 Breaking and entering other than with intent to commit a felony or any larceny

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<sup>48</sup> Hoover, op. cit., p. 24.

<sup>49</sup> Loc. cit.

<sup>50</sup> Loc. cit.

Included in the main category is

Excessive drinking  
Excessive smoking  
Oversight of safety  
Improper use of tools  
Lack of training  
Working in haste  
All attempts to avoid the cause

Driving while intoxicated is the most

operable, at the cost of human safety and health.

Influence of liquor is the

primary violation of the traffic laws.

It is noted in this section

that the driver is responsible for the

driver

leaving the car in motion

failure to report accidents

lack of vision

obscured or defective signals

interference with the driver's view

In this section are included all other offenses which

have not already been listed.

Excessive speed is the

major

violation of the traffic laws.

It is

noted that the driver is responsible for the

failure to report accidents

obscured or defective signals

interference with the driver's view

breaking and entering of the motor vehicle

to obtain or use the same

18

However, the driver is

19

the driver

20

the driver

Bribery  
 Combination in restraint of trade; trusts,  
 monopolies  
 Conspiracy  
 Contempt of court  
 Criminal anarchism  
 Criminal syndicalism  
 Discrimination; unfair competition  
 Displaying red or black flag  
 Forcible entry or detainer  
 Kidnaping  
 Malicious mischief and injury to property  
 Marriage within prohibited degrees  
 Offenses contributing to juvenile delinquency  
 Perjury and subordination of perjury  
 Possession, sale, etc. of adulterated drugs (non-  
 narcotic)  
 Public nuisances  
 Riot and rout  
 Trespass  
 Unauthorized use of motor vehicles, animals, etc.  
 Violation of the state regulatory laws  
 All offenses not otherwise classified 51

Aside from the fact that the district attorney is authorized to act as a criminal prosecutor and may appear and represent the state or county in the courts of his district, the statutes are usually silent about his duties in the above mentioned offenses. However, for violations of certain other laws that do not come within the scope of these offenses he is specifically authorized to prosecute upon the receipt of information concerning the violation of the law.

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51 Hoover, op. cit., p. 25.

of the law.  
 upon the receipt of information concerning the violation  
 these offenses he is specifically authorized to prosecute  
 of certain other laws that do not come within the scope of  
 in the above mentioned offenses. However, for violation  
 district, the statutes are usually placed under the duties  
 and represent the state or county in the course of his  
 authorized to act as a criminal prosecutor and may appear  
 aside from the fact that the district attorney is

- All offenses not otherwise classified
- Violation of the state regulatory laws
- Unauthorized use of motor vehicles, animals, etc.
- Treason
- Riot and rout
- Public nuisance
- (narcotics)
- Possession, sale, use of adulterated drugs (non-)
- Perjury and subornation of perjury
- Offenses concerning the juvenile delinquency
- Marriage within prohibited degrees
- Kidnaping
- Female seduction or seduction
- Displaying red or black flag
- Discrimination against nonwhites
- Original jurisdiction
- Original jurisdiction
- Contempt of court
- Corruption
- Homosexuality
- Combination in restraint of trade; trusts
- Bribery

CRIMINAL CASES AND THEIR DISPOSAL  
SECOND JUDICIAL DISTRICT  
JULY 1932-JULY 1937

| Type of Case   | No. of Cases | Convicted | Sentence Suspended | Dismissed by Dist. Att'y. | Jury Verdict Not Guilty | Miscellaneous |
|--|--------------|-----------|--------------------|---------------------------|-------------------------|---------------|
| Planting and cultivating marihuana . . .                                       | 7            | 3         | 1                  | 4                         | 0                       |               |
| Possession for sale, sale, and transportation of intoxicating liquor . . . . . | 19           | 8         | 4                  | 11                        | 0                       |               |
| Illegal manufacture of alcohol . . . . .                                       | 1            | 1         | 1                  | 0                         | 0                       |               |
| Unlawfully serving liquor to minors . . .                                      | 2            | 2         | 1                  | 0                         | 0                       |               |
| Violation of gambling laws . . . . .   | 9            | 7         | 1                  | 2                         | 2                       |               |
| Owning and operating games of chance . . . . .                                 | 8            | 5         | 5                  | 2                         | 1                       |               |
| Possession of lottery with intent to sell . . .                                | 4            | 4         | 0                  | 0                         | 0                       |               |
| Operating motor vehicle while under influence of intoxicating liquor . . . . . | 35           | 31        | 8                  | 4                         | 0                       |               |
| Accompanying intoxicated person driving motor vehicle . . . . .                | 15           | 14        | 6                  | 1                         | 0                       |               |

| Label of Case | Case No. of | Complaint | Subscribed | Discharged | Not Settled | Miscellaneous |
|---------------|-------------|-----------|------------|------------|-------------|---------------|
| 12            | 13          | 14        | 15         | 16         | 17          | 18            |
| 19            | 20          | 21        | 22         | 23         | 24          | 25            |
| 26            | 27          | 28        | 29         | 30         | 31          | 32            |
| 33            | 34          | 35        | 36         | 37         | 38          | 39            |
| 40            | 41          | 42        | 43         | 44         | 45          | 46            |
| 47            | 48          | 49        | 50         | 51         | 52          | 53            |
| 54            | 55          | 56        | 57         | 58         | 59          | 60            |
| 61            | 62          | 63        | 64         | 65         | 66          | 67            |
| 68            | 69          | 70        | 71         | 72         | 73          | 74            |
| 75            | 76          | 77        | 78         | 79         | 80          | 81            |
| 82            | 83          | 84        | 85         | 86         | 87          | 88            |
| 89            | 90          | 91        | 92         | 93         | 94          | 95            |
| 96            | 97          | 98        | 99         | 100        | 101         | 102           |

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 SECOND DISTRICT  
 CHIEF CLERK AND DEPUTY

CRIMINAL CASES AND THEIR DISPOSAL  
SECOND JUDICIAL DISTRICT  
JULY 1932-JULY 1937

| Type of Case  | No. of Convicted Cases | Sentence Suspended | Dismissed by Dist. Att'y. | Jury Verdict Not Guilty | Miscellaneous |
|---|------------------------|--------------------|---------------------------|-------------------------|---------------|
| Violation of the transportation act                     | 2                      | 0                  | 2                         | 0                       | 0             |
| Acting as a motor carrier agent without a license . . . | 11                     | 4                  | 6                         | 0                       | 0             |
| Failure to report accident . . . . .                    | 1                      | 0                  | 0                         | 0                       | 0             |
| Hit and run driving                                     | 1                      | 0                  | 0                         | 0                       | 0             |
| Bigamy . . . . .  | 2                      | 0                  | 2                         | 0                       | 0             |
| Blackmail . . . . .                                     | 1                      | 0                  | 1                         | 0                       | 0             |
| Receiving a bribe                                       | 1                      | 0                  | 1                         | 0                       | 0             |
| Bribery of witness                                      | 1                      | 0                  | 1                         | 0                       | 0             |
| Malicious injury to animals . . . . .                   | 1                      | 1                  | 0                         | 0                       | 0             |
| Malicious injury to personal property                   | 1                      | 0                  | 1                         | 0                       | 0             |
| Perjury . . . . .                                       | 1                      | 0                  | 1                         | 0                       | 0             |
| Unlawfully branding colt . . . . .                      | 1                      | 0                  | 1                         | 0                       | 0             |
| False voting . . . . .                                  | 1                      | 1                  | 0                         | 0                       | 0             |

| Case | No. of Convicted | Uncharged | Disgraced | Not Convicted | Unconvicted |
|------|------------------|-----------|-----------|---------------|-------------|
| 1    | 1                | 0         | 0         | 0             | 0           |
| 2    | 0                | 0         | 0         | 0             | 0           |
| 3    | 0                | 0         | 0         | 0             | 0           |
| 4    | 1                | 0         | 0         | 0             | 0           |
| 5    | 0                | 0         | 0         | 0             | 0           |
| 6    | 0                | 0         | 0         | 0             | 0           |
| 7    | 0                | 0         | 0         | 0             | 0           |
| 8    | 0                | 0         | 0         | 0             | 0           |
| 9    | 0                | 0         | 0         | 0             | 0           |
| 10   | 0                | 0         | 0         | 0             | 0           |
| 11   | 0                | 0         | 0         | 0             | 0           |
| 12   | 0                | 0         | 0         | 0             | 0           |
| 13   | 0                | 0         | 0         | 0             | 0           |
| 14   | 0                | 0         | 0         | 0             | 0           |
| 15   | 0                | 0         | 0         | 0             | 0           |
| 16   | 0                | 0         | 0         | 0             | 0           |
| 17   | 0                | 0         | 0         | 0             | 0           |
| 18   | 0                | 0         | 0         | 0             | 0           |
| 19   | 0                | 0         | 0         | 0             | 0           |
| 20   | 0                | 0         | 0         | 0             | 0           |
| 21   | 0                | 0         | 0         | 0             | 0           |
| 22   | 0                | 0         | 0         | 0             | 0           |
| 23   | 0                | 0         | 0         | 0             | 0           |
| 24   | 0                | 0         | 0         | 0             | 0           |
| 25   | 0                | 0         | 0         | 0             | 0           |
| 26   | 0                | 0         | 0         | 0             | 0           |
| 27   | 0                | 0         | 0         | 0             | 0           |
| 28   | 0                | 0         | 0         | 0             | 0           |
| 29   | 0                | 0         | 0         | 0             | 0           |
| 30   | 0                | 0         | 0         | 0             | 0           |
| 31   | 0                | 0         | 0         | 0             | 0           |
| 32   | 0                | 0         | 0         | 0             | 0           |
| 33   | 0                | 0         | 0         | 0             | 0           |
| 34   | 0                | 0         | 0         | 0             | 0           |
| 35   | 0                | 0         | 0         | 0             | 0           |
| 36   | 0                | 0         | 0         | 0             | 0           |
| 37   | 0                | 0         | 0         | 0             | 0           |
| 38   | 0                | 0         | 0         | 0             | 0           |
| 39   | 0                | 0         | 0         | 0             | 0           |
| 40   | 0                | 0         | 0         | 0             | 0           |
| 41   | 0                | 0         | 0         | 0             | 0           |
| 42   | 0                | 0         | 0         | 0             | 0           |
| 43   | 0                | 0         | 0         | 0             | 0           |
| 44   | 0                | 0         | 0         | 0             | 0           |
| 45   | 0                | 0         | 0         | 0             | 0           |
| 46   | 0                | 0         | 0         | 0             | 0           |
| 47   | 0                | 0         | 0         | 0             | 0           |
| 48   | 0                | 0         | 0         | 0             | 0           |
| 49   | 0                | 0         | 0         | 0             | 0           |
| 50   | 0                | 0         | 0         | 0             | 0           |
| 51   | 0                | 0         | 0         | 0             | 0           |
| 52   | 0                | 0         | 0         | 0             | 0           |
| 53   | 0                | 0         | 0         | 0             | 0           |
| 54   | 0                | 0         | 0         | 0             | 0           |
| 55   | 0                | 0         | 0         | 0             | 0           |
| 56   | 0                | 0         | 0         | 0             | 0           |
| 57   | 0                | 0         | 0         | 0             | 0           |
| 58   | 0                | 0         | 0         | 0             | 0           |
| 59   | 0                | 0         | 0         | 0             | 0           |
| 60   | 0                | 0         | 0         | 0             | 0           |
| 61   | 0                | 0         | 0         | 0             | 0           |
| 62   | 0                | 0         | 0         | 0             | 0           |
| 63   | 0                | 0         | 0         | 0             | 0           |
| 64   | 0                | 0         | 0         | 0             | 0           |
| 65   | 0                | 0         | 0         | 0             | 0           |
| 66   | 0                | 0         | 0         | 0             | 0           |
| 67   | 0                | 0         | 0         | 0             | 0           |
| 68   | 0                | 0         | 0         | 0             | 0           |
| 69   | 0                | 0         | 0         | 0             | 0           |
| 70   | 0                | 0         | 0         | 0             | 0           |
| 71   | 0                | 0         | 0         | 0             | 0           |
| 72   | 0                | 0         | 0         | 0             | 0           |
| 73   | 0                | 0         | 0         | 0             | 0           |
| 74   | 0                | 0         | 0         | 0             | 0           |
| 75   | 0                | 0         | 0         | 0             | 0           |
| 76   | 0                | 0         | 0         | 0             | 0           |
| 77   | 0                | 0         | 0         | 0             | 0           |
| 78   | 0                | 0         | 0         | 0             | 0           |
| 79   | 0                | 0         | 0         | 0             | 0           |
| 80   | 0                | 0         | 0         | 0             | 0           |
| 81   | 0                | 0         | 0         | 0             | 0           |
| 82   | 0                | 0         | 0         | 0             | 0           |
| 83   | 0                | 0         | 0         | 0             | 0           |
| 84   | 0                | 0         | 0         | 0             | 0           |
| 85   | 0                | 0         | 0         | 0             | 0           |
| 86   | 0                | 0         | 0         | 0             | 0           |
| 87   | 0                | 0         | 0         | 0             | 0           |
| 88   | 0                | 0         | 0         | 0             | 0           |
| 89   | 0                | 0         | 0         | 0             | 0           |
| 90   | 0                | 0         | 0         | 0             | 0           |
| 91   | 0                | 0         | 0         | 0             | 0           |
| 92   | 0                | 0         | 0         | 0             | 0           |
| 93   | 0                | 0         | 0         | 0             | 0           |
| 94   | 0                | 0         | 0         | 0             | 0           |
| 95   | 0                | 0         | 0         | 0             | 0           |
| 96   | 0                | 0         | 0         | 0             | 0           |
| 97   | 0                | 0         | 0         | 0             | 0           |
| 98   | 0                | 0         | 0         | 0             | 0           |
| 99   | 0                | 0         | 0         | 0             | 0           |
| 100  | 0                | 0         | 0         | 0             | 0           |

Table of Cases

Case No. of Convicted Uncharged Disgraced Not Convicted Unconvicted

1967 1968-1971 1972

RECORDS DIVISION DISTRICT

CHEMICAL CASES AND THEIR DISPOSITION



According to New Mexico law, it is the duty of the district attorney to prosecute the following violations of the Game and Fish laws.<sup>52</sup> Hunting, taking, killing, or attempting to take any game animal or bird in the state; or to sell or to offer for sale any such game bird or fish;<sup>53</sup> or to catch, kill or sell bull frogs taken from public waters;<sup>54</sup> or to carry a gun on a game preserve;<sup>55</sup> or failure to secure a hunting or fishing license.<sup>56</sup>

The statutes also provide that it shall be the duty of the state corporation commission to file information with the proper district attorney concerning violation of the following law,

It shall be the duty of every railroad corporation, receiver or lessee thereof, operating any line of railroad in this state, on or before January 1, 1916, to equip all locomotive engines when in use in the transportation of trains over said railroad, with headlights which with the aid of a reflector will enable the engineer on such locomotive to see an object at a distance of at least (800) feet. This law not to apply to switch engines on any railroad less than 16 miles long or if the state corporation commission does not think the expense is justified.<sup>57</sup>

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<sup>52</sup> Laws, 1912, Chapter 85, Section 81.

<sup>53</sup> Laws, 1931, Chapter 177, Section 8.

<sup>54</sup> Laws, 1937, Chapter 217, Section 2.

<sup>55</sup> Laws, 1937, Chapter 23, Section 8.

<sup>56</sup> Laws, 1923, Chapter 129, Section 2.

<sup>57</sup> Laws, 1915, Chapter 37, Section 1.

According to the section law, the following is the  
 district attorney to prosecute the following violation of  
 the game and fish laws, including, but not limited to,  
 attempting to take any game animal within the state, or  
 to sell or to offer for sale any such animal, or  
 or to export, kill or sell any such animal, or  
 waters, or to export, or to sell, or to offer for sale,  
 to secure a hunting or fishing license,  
 The statutes also provide that  
 of the state corporation and shall be liable to the state  
 with the proper district attorney to prosecute the  
 the following law.  
 It shall be the duty of every  
 receiver or lessee of vessels, and of every  
 vessel in this state, to file with the  
 equip all necessary papers in accordance with the  
 portion of the laws which relate to the  
 which with the aid of a collector and other  
 engineer or other person in accordance with the  
 laws of the state. It is the duty of every  
 vessel engaged in any business in this state  
 or in the state corporation to file with the  
 the expense of the vessel.

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- 32 Laws, Chapter 10, Section 10
  - 33 Laws, Chapter 11, Section 11
  - 34 Laws, Chapter 12, Section 12
  - 35 Laws, Chapter 13, Section 13
  - 36 Laws, Chapter 14, Section 14
  - 37 Laws, Chapter 15, Section 15

New Mexico has a Sabbath observance law which the district attorney is supposed to enforce. As a matter of fact it is seldom observed. It is as follows:

Any person engaged in sports, horse racing, cock fighting or disturbing any worshipping assembly or private family, or attending any public meeting or public exhibition, except religious worship or instruction or engaged in any labor, except work of necessity, charity or mercy [shall be punished].<sup>58</sup>

The Supreme Court has since held that this law does not prohibit the playing of baseball on Sunday even if the players receive pay.<sup>59</sup>

Whenever the New Mexico Agricultural Experiment Station discovers that seed sold in the state is not properly cleaned or marked, they shall turn such evidence over to the district attorney and he shall prosecute the offenders.<sup>60</sup>

All violations of the banking act are to be reported to the proper district attorney by the state bank examiner.<sup>61</sup> Violations of this act are, bribing of bank examiners to make false reports,<sup>62</sup> paying dividends while the bank is insolvent,<sup>63</sup> officers of the bank accepting gifts or commission

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<sup>58</sup> Laws, 1887, Chapter 26.

<sup>59</sup> Territory v. Davenport (17 N. M. 214).

<sup>60</sup> Laws, 1919, Chapter 72, Section 10.

<sup>61</sup> Laws, 1915, Chapter 67, Section 79.

<sup>62</sup> Laws, 1919, Chapter 120, Section 28.

<sup>63</sup> Laws, 1916, Chapter 67, Section 46.



for granting loans,<sup>64</sup> making false reports concerning affairs of the bank,<sup>65</sup> and embezzling or misapplying funds.<sup>66</sup>

The district attorney is also charged with the prosecution of violations of the automobile act relating to the number of hours drivers of trucks or busses may work and failure to secure a license of public convenience and necessity to run said trucks and busses from the state corporation commission.<sup>67</sup>

Doctors,<sup>68</sup> dentists,<sup>69</sup> optometrists,<sup>70</sup> and chiropractors<sup>71</sup> who fail to secure a license to practice are prosecuted by the district attorney whenever evidence is presented to him showing such violation.

Charging higher rates for express than allowed by law,<sup>72</sup> violation of the commercial fertilizer act,<sup>73</sup> and failure to immediately register a townsite patent secured from the United States government,<sup>74</sup> are other cases which the

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<sup>64</sup> Laws, 1915, Chapter 67, Section 43.

<sup>65</sup> Ibid., Section 26.

<sup>66</sup> Laws, 1919, Chapter 120, Section 13.

<sup>67</sup> Laws, 1933, Chapter 120, Section 15.

<sup>68</sup> Laws, 1923, Chapter 44, Section 9.

<sup>69</sup> Laws, 1927, Chapter 92, Section 1.

<sup>70</sup> Laws, 1929, Chapter 62, Section 3.

<sup>71</sup> Laws, 1921, Chapter 110, Section 4.

<sup>72</sup> Laws, 1891, Chapter 151, Section 26.

<sup>73</sup> Laws, 1929, Chapter 81, Section 3.

<sup>74</sup> Laws, 1909, Chapter 50, Sections 1, 2, 3.

for granting leave, and the fact that the  
affairs of the bank are being conducted  
The district attorney is also of the opinion  
outlet of violation of the provisions of the  
number of hours worked at that time, and the  
we to secure a license of certain companies and  
was said to be the case with the other  
also.

Doctor, who will be given a license to  
by the district attorney, and the fact that  
showing such violation.

Changing might take the expense of the  
law, the violation of the provisions of the  
we to immediately register a company, and  
the United States government.

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|    |                                       |
|----|---------------------------------------|
| 54 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 55 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 56 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 57 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 58 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 59 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 60 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 61 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 62 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 63 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 64 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 65 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 66 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 67 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 68 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 69 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 70 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 71 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 72 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 73 | Jan. 1901, Chapter 1, Section 1, 1901 |
| 74 | Jan. 1901, Chapter 1, Section 1, 1901 |

district attorney is required by law to prosecute.

A close study of the offenses listed under Part II of the Uniform Classification, and the charts which give the number and type of cases that the district attorney has prosecuted over a five year period, will show that the district attorney of the second judicial district has prosecuted a wide variety of cases. There are many crimes, however, that are listed on the statute books which the district attorney has not prosecuted during the five year period under consideration. This may be explained by the fact that evidence must be presented to him before he can prosecute, or that no crimes of this type were committed, or that he failed to prosecute the crimes if they were committed.

It would seem impossible for the district attorney to do as much work as he does, considering his civil duties, criminal duties, and his private practice. If the district attorney was required to devote full time to his criminal duties, his office would be far more useful to the public at large.

As the Justice of the Peace usually has jurisdiction in all civil suits, in which the debt or sum claimed is under \$200.00<sup>75</sup> and in all cases of misdemeanors where the punishment may be a fine of \$100.00 or less,<sup>76</sup> his duties are

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<sup>75</sup> Laws, 1913, Chapter 14, Section 1.

<sup>76</sup> Laws, 1915, Chapter 13, Section 1.

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It would seem impossible for the district attorney to do as much work as he does, considering his civil duties, criminal duties, and his private practice. If the district attorney was required to devote full time to his criminal duties, his office would be far more useful to the public at large.

As the Justice of the Peace usually has jurisdiction in all civil suits, in which the debt or sum claimed is under \$300.00<sup>75</sup> and in all cases of misdemeanors where the punishment may be a fine of \$100.00 or less,<sup>76</sup> the duties are

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<sup>75</sup> Laws, 1913, Chapter 14, Section 1.  
<sup>76</sup> Laws, 1913, Chapter 13, Section 1.



CRIMINAL CASES AND THEIR DISPOSAL  
SECOND JUDICIAL DISTRICT  
JULY 1932-JULY 1937

| Type of Cases  | No. of Cases | Convicted | Sentence Suspended | Dismissed Dist. Att'y. | Jury Verdict Not Guilty | Miscellaneous            |
|--|--------------|-----------|--------------------|------------------------|-------------------------|--------------------------|
| Violation of Game Laws   | 8            | 4         | 1                  | 4                      | 0                       |                          |
| Peace proceedings . .  | 1            | 0         | 0                  | 0                      | 0                       | 1-dismissed by defendant |
| Making false entries violating banking law . . . . .                                     | 3            | 0         | 0                  | 2                      | 1                       |                          |
| Unlawfully cutting a fence on land granted to a corporation by the Government of Spain . | 1            | 0         | 0                  | 1                      | 0                       |                          |
| Soliciting and writing insurance without a license . . . . .                             | 1            | 1         | 1                  | 0                      | 0                       |                          |
| Having been four times convicted of felonies within the State of New Mexico . . . . .    | 1            | 1         | 1                  | 0                      | 0                       |                          |
| Driving and carrying away encumbered personal property . .                               | 1            | 0         | 0                  | 0                      | 1                       |                          |

Don't think it's  
-Lester W  
for

| Case No. | Label of Case | Age | Sex | Occupation | Education | Religion | Marital Status | Number of Children | Number of Siblings | Number of Grandchildren | Number of Great-Grandchildren |
|----------|---------------|-----|-----|------------|-----------|----------|----------------|--------------------|--------------------|-------------------------|-------------------------------|
| 1        | ...           | ... | ... | ...        | ...       | ...      | ...            | ...                | ...                | ...                     | ...                           |
| 2        | ...           | ... | ... | ...        | ...       | ...      | ...            | ...                | ...                | ...                     | ...                           |
| 3        | ...           | ... | ... | ...        | ...       | ...      | ...            | ...                | ...                | ...                     | ...                           |
| 4        | ...           | ... | ... | ...        | ...       | ...      | ...            | ...                | ...                | ...                     | ...                           |
| 5        | ...           | ... | ... | ...        | ...       | ...      | ...            | ...                | ...                | ...                     | ...                           |
| 6        | ...           | ... | ... | ...        | ...       | ...      | ...            | ...                | ...                | ...                     | ...                           |
| 7        | ...           | ... | ... | ...        | ...       | ...      | ...            | ...                | ...                | ...                     | ...                           |
| 8        | ...           | ... | ... | ...        | ...       | ...      | ...            | ...                | ...                | ...                     | ...                           |
| 9        | ...           | ... | ... | ...        | ...       | ...      | ...            | ...                | ...                | ...                     | ...                           |
| 10       | ...           | ... | ... | ...        | ...       | ...      | ...            | ...                | ...                | ...                     | ...                           |

THE JAMES EARL RAY  
SECOND INDICTMENT DISBURSED  
CRIMINAL CASES AND JURY DISBURSED

rather closely connected with the district attorney's office.

The law specifies that:

Every Justice of the Peace shall have jurisdiction in criminal cases throughout the county in which he was elected and where he shall reside, and he shall be a conservator of the peace therein. He is authorized and required, on view or complaint made on oath or affirmation, to cause any person charged with the commission of a crime or breach of the law, to be brought before him or some other Justice of the Peace, and shall inquire into the complaint, and try the same, if within the jurisdiction of a Justice of the Peace and either commit to jail, discharge or recognize such person to appear before the district court, as the case may require. He shall also recognize the witnesses introduced on behalf of the state, whose testimony may be necessary to the further prosecution of the charge, to appear at the same time as the defendant, to wit: On the first day of the next term before the district court of his county, and shall file said recognizances and all papers pertaining to the cause with the clerk of the district court, on or before the first day of the next term thereof. 77

Every Justice of the Peace is hereby required to make a quarterly report on the first Monday of January, April, July and October of each year, to the board of county commissioners of his county, of all fines and costs taxed or collected by him as such Justice of the Peace in criminal cases. 78

Although the Justices of the Peace were required by the above statute to turn in reports and fees they had taken in, few of them did so with any regularity. In 1937, the District Attorney, Mr. Owen B. Marron, and his assistants,

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77 Laws, 1875-1876, Chapter 27, Section 80.

78 Laws, 1889, Chapter 22, Section 19.



drew up a bill expressly requiring the Justices of the Peace to account for such fees collected, issue receipts therefor, and turn in certain records, or be punished.<sup>79</sup>

This bill was passed by the legislature and since that time the Justices of the Peace, in this district, have been more regular in their reports, and the fees turned into the county treasurer's office have increased.

The following figures show the amount of fees paid into the county treasurer's office before and after the new law went into effect:<sup>80</sup>

|           | Before             |           | After                  |
|-----------|--------------------|-----------|------------------------|
| 1935-1936 | \$433.25           | 1937-1938 | \$2,159.00             |
| 1936-1937 | ----- <sup>†</sup> | 1938-1939 | 1,244.25 <sup>**</sup> |

\* Figures not available  
\*\* First eleven months of fiscal year

According to Mr. Joe Velasquez, Bernalillo County Purchasing Agent, the new law has made a distinct change in the number of Justices of the Peace who turn in fees. Before 1937 only Justice E. C. Gober and Justice L. M. Tartaglia ever turned in their reports or fees with any degree of regularity; now most of them turn in their reports as

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<sup>79</sup> Interview with Mr. Gino Matteucci, assistant District Attorney of the Second Judicial District.

<sup>80</sup> Figures secured from comparison of fees as listed by the County Treasurer's Office and the District Clerk's Report.

draw up a bill accordingly...  
passed to account for each...  
thereof, and some to...  
This bill was passed by the...  
the motions of the...  
regular in their...  
presenter's... have...

The following...  
into the...  
has now...  
before

| 1933-1934 | 1934-1935 | 1935-1936 |
|-----------|-----------|-----------|
| ...       | ...       | ...       |
| ...       | ...       | ...       |

According to...  
purchasing agent...  
the number of...  
1937 only...  
ever found in...  
regularly; and...

by the County...  
Report.

required.<sup>81</sup> However, the district attorney's office has had to call the Justices of the Peace in and explain the new law time and time again. They are of the opinion though that a great improvement has been made in this particular branch of the judicial system.<sup>82</sup>

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<sup>81</sup> Interview with Mr. Joe Velasquez, Bernalillo County Purchasing Agent.

<sup>82</sup> Mr. Gino Matteucci, assistant District Attorney, Second Judicial District.

regarding. However, the district attorney's office has had to call the justices of the peace in and explain the new law and the opinion. They are of the opinion though that a great improvement has been made in this particular branch of the judicial system.

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51 Interview with Mr. J. W. Veasman, Councilman  
County Purchasing Agent.

52 Mr. J. W. Veasman, Councilman District Attorney,  
Second Judicial District.



## CHAPTER IV

### INFORMATION AND INDICTMENT

While previous chapters of this study have discussed the office of the district attorney, and his civil and criminal duties, no mention has been made of the procedure which the district attorney must follow to bring an offender to trial. One method that he may use is called information, which he presents on his oath of office. In certain cases, where the district attorney does not wish to assume the responsibility of prosecuting, yet does not want to accept the onus for failure to prosecute, he may pass the responsibility to the grand jury. It, in turn, may investigate and return an indictment on its oath of office. Both indictment and information are declarations that a person has committed an offense against the law, except that the former is handed down by a grand jury, and the latter by the district attorney.

It is with the process of information and indictment that this chapter will deal. Material for this chapter has been secured from the laws of New Mexico, leading writers on the subject, and from several well known Albuquerque lawyers.

The Constitution of New Mexico provides for the process of information and indictment as follows:

CHAPTER II

This general statement is... the effect of the... original... which the... to find... which he... where the... responsibility... the same... duty to... returns on... and information... an offense... done by a... It is... that this... been... on the... layers.

The... process of...

No person shall be held to answer for a capital, felonious, or infamous crime, unless on a presentment or indictment of a grand jury or information filed by a district attorney or their deputies, except in cases arising in the militia when in actual service in time of war or public danger. No person shall be so held on information without having had a preliminary examination before an examining magistrate, or having waived such preliminary examination.<sup>1</sup>

New Mexico law also provides that misdemeanors must be prosecuted after an information has been filed, except as otherwise provided by law. However, the district judge may order certain misdemeanors to be presented to the grand jury. Should they return a true bill or indictment, it is filed, and the defendant is placed on trial.<sup>2</sup>

The process of information usually does not take place until the offender has been arrested, and has had a preliminary hearing before a magistrate,<sup>3</sup> which in New Mexico is the Justice of the Peace. If the district attorney decides that the evidence is sufficient, he subscribes his name, and oath, to an information and endorses the names of the witnesses known to him at the time of the filing of the information.<sup>4</sup>

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<sup>1</sup> New Mexico Constitution, Article II, Section 14.

<sup>2</sup> Laws, 1925, Chapter 145, Section 1.

<sup>3</sup> R. J. Miller, "Information or Indictments in Felony Cases," Journal of the American Judicature Society, Volume 8, No. 4, December, 1924, p. 104.

<sup>4</sup> Laws, 1925, Chapter 145, Section 2.

No person shall be held to answer for a capital, felony, or infamous crime, unless on a presentment or indictment of a grand jury or information filed by a district attorney or their deputies, except in cases arising in the militia when in actual service in time of war or public danger. No person shall be so held on information without having had a preliminary examination before an examining magistrate, or having waived such preliminary examination.

Has Mexico law also provides that statements may be procured after an information has been filed, except as otherwise provided by law. However, the district judge may order certain statements to be procured for the grand jury. Should they return a true bill or indictment, it is filed, and the defendant is placed on trial.<sup>2</sup>

The process of information usually does not take place until the offender has been arrested, and has had a preliminary hearing before a magistrate,<sup>3</sup> which in New Mexico is the judge of the peace. If the district attorney decides that the evidence is sufficient, he subscribes his name, and sets on information and endorses the name of the witness known to him at the time of the filing of the information.

<sup>1</sup> Has Mexico Constitution, Article 11, Section 11.  
<sup>2</sup> Law, 1928, Chapter 125, Section 1.  
<sup>3</sup> R. J. Miller, "Interrogation or Indictment in Spain," Journal of the American Jurisprudence Society, Volume 2, No. 4, December, 1924, p. 104.  
<sup>4</sup> Law, 1928, Chapter 125, Section 1.

The statutes, of this state, provide that,

An indictment or information must charge but one offense; but where the same acts may constitute different offenses, that the accused may be guilty of the different offenses may be set forth in separate counts in the same indictment or information and the accused may be convicted of either offense, and the jury trying the case may find all or either or any of the persons charged guilty of either of the offenses charged, and the same offenses may be set forth in different forms or degrees under different counts; and where the offenses may be committed by the use of different means, the means may be alleged in the alternative in the same count.<sup>5</sup>

Unless time is a material ingredient, the precise time does not have to be stated in an information or indictment; but may be alleged in the statute of limitations.<sup>6</sup>

Should a person be charged under a false name and his true name is discovered, it must be placed on the information.<sup>7</sup>

The following section indicates when an information or indictment is sufficient.

First. That it is entitled in a court having authority to receive it, though the name of the court is not stated.

Second. That it was found by a grand jury or presented by the prosecuting attorney of the county in which the court was held.

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<sup>5</sup> Laws, 1929, Chapter 48, Section 1.

<sup>6</sup> Laws, 1925, Chapter 145, Section 10.

<sup>7</sup> Ibid., Section 8.

The statement of this witness is as follows:  
As indicated by the statement of the witness, the witness  
offered; but where the witness was not present at the  
scene of the crime, the witness is not qualified to  
testify as to the facts of the crime. The witness  
in the case at hand is not qualified to testify as to  
the facts of the crime. The witness is not qualified  
to testify as to the facts of the crime. The witness  
is not qualified to testify as to the facts of the crime.

Unless this is a material fact, the witness  
time does not have to be stated in an affidavit.  
indictment; but may be allowed in the absence of  
evidence.

Should a person be arrested on a charge of  
this crime is determined, it must be proved by  
information.

The following section is pertinent to the  
or indictment is sufficient.  
First, that it is sufficient in a charge of  
authority to receive it, and the name of the  
is not stated.

Second, that it is sufficient in a charge of  
presented by the prosecuting attorney of the county  
in which the crime was committed.

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§ 100.00, Criminal Law, § 100.00  
§ 100.00, Criminal Law, § 100.00  
§ 100.00, Criminal Law, § 100.00

Third. That the defendant is named or if his name cannot be discovered, that he is described by a fictitious name, with the statement that his true name is unknown.

Fourth. That the offense was committed at some place within the jurisdiction of the court, except where the act, though done without the local jurisdiction of the county, is triable thereon.

Fifth. That the offense was committed some time prior to the time of filing of the indictment or information.

Sixth. That the act or omission charged as the offenses is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

Seventh. That the act or omission charged as the offenses, is stated with such a degree of certainty, as to enable the court to pronounce judgment upon a conviction according to the rights of the case. 8

Information is considered to be the first pleading on the part of the state.<sup>9</sup> It may be amended at any time before the defendant pleads, or afterwards at the discretion of the court.<sup>10</sup> Pleas of abatement, or in bar, are usually made to test the sufficiency of the pleading by information and trial by jury tests the sufficiency of the facts which support the information.<sup>11</sup>

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<sup>8</sup> Laws, 1925, Chapter 145, Section 14.

<sup>9</sup> Ibid., Section 4.

<sup>10</sup> Ibid., Section 5.

<sup>11</sup> Miller, op. cit., p. 109.

Third. That the defendant is named or if his name cannot be discovered, that he is described by a fictitious name, with the statement that his true name is unknown.

Fourth. That the offense was committed at some place within the jurisdiction of the court, except where the act, though done without the local jurisdiction of the county, is triable there.

Fifth. That the offense was committed some time prior to the time of filing of the indictment or information.

Sixth. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

Seventh. That the act or omission charged as the offense, is stated with such a degree of certainty, as to enable the court to pronounce judgment upon a conviction according to the rights of the case.

Information is considered to be the first pleading on the part of the state.<sup>8</sup> It may be amended at any time before the defendant pleads, or afterwards at the discretion of the court.<sup>10</sup> Pleadings of assumpsit, or in bar, are usually made to test the sufficiency of the pleading by information and trial by jury tests the sufficiency of the facts which support the information.<sup>11</sup>

- 8 Laws, 1923, Chapter 148, Section 14.
- 9 Ibid., Section 4.
- 10 Ibid., Section 5.
- 11 Miller, op. cit., p. 109.



In the following laws the New Mexico legislature, has placed provisions regulating the facts which should be contained in information and indictment.

In libel it is only necessary to state generally that a certain statement was published. The fact that the statement was published, and about the person libeled, must be established at the trial.<sup>12</sup>

Whenever a forged instrument has been destroyed, or withheld, the misdescription of the forged instrument is immaterial as long as the information or indictment alleges its destruction, or withholding, and establishes the fact at the trial.<sup>13</sup>

In an indictment, or information, for larceny, or embezzlement, it is sufficient to allege the larceny, or embezzlement, or the attempt to defraud, to be of any money or property, without specifying the kind.<sup>14</sup>

In matters of obscene literature, or pictures, it is generally sufficient to allege the fact of lewdness, or obscenity, in an information, or indictment, without setting forth any of the language, or pictures, used.<sup>15</sup>

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<sup>12</sup> Laws, 1925, Chapter 145, Section 14.

<sup>13</sup> Ibid., Section 20.

<sup>14</sup> Ibid., Section 22.

<sup>15</sup> Ibid., Section 23.

In the following laws the New Mexico Legislature has passed provisions regulating the laws which should be contained in information and indictments.

In 1911 it is only necessary to state generally that a certain statement was published. The fact that the statement was published, and about the person libeled, must be established at the trial.<sup>12</sup>

Whenever a forged instrument has been destroyed, or withheld, the misdescription of the forged instrument is immaterial as long as the information or indictment alleges the destruction, or withholding, and establishes that it was at the trial.<sup>13</sup>

In an indictment, or information, for forgery, or embezzlement, it is sufficient to allege the forgery, or embezzlement, or the attempt to defraud, so far as any money or property, without specifying the kind.<sup>14</sup>

In matters of obscene literature, or pictures, it is generally sufficient to allege the fact of lewdness, or obscenity, in an information, or indictment, without setting forth any of the language, or pictures, used.<sup>15</sup>

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<sup>12</sup> Laws, 1922, Chapter 148, Section 14.  
<sup>13</sup> 1916, Section 20.  
<sup>14</sup> 1913, Section 22.  
<sup>15</sup> 1916, Section 23.

It is not necessary to place any additional facts in an information, or indictment, against an accessory than are required for the principal.<sup>16</sup>

In an indictment or information for perjury or subordination of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense is committed, and in what court and before whom the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of falsity of the matter on which perjury is assigned. . .<sup>17</sup>

Whenever a defendant refuses to answer that information, or indictment, by demurrer, a plea of not guilty must be entered.<sup>18</sup>

Even after the district attorney has filed an information against some person charged with an offense, he may promise him immunity for testifying against his partners in crime. Immunity may mean one of two things, either a lighter sentence or no sentence at all. The courts usually carry out the recommendations of the district attorney in regard to immunity.<sup>19</sup> They are almost bound to do so because the district attorney might refuse to prosecute the case if they

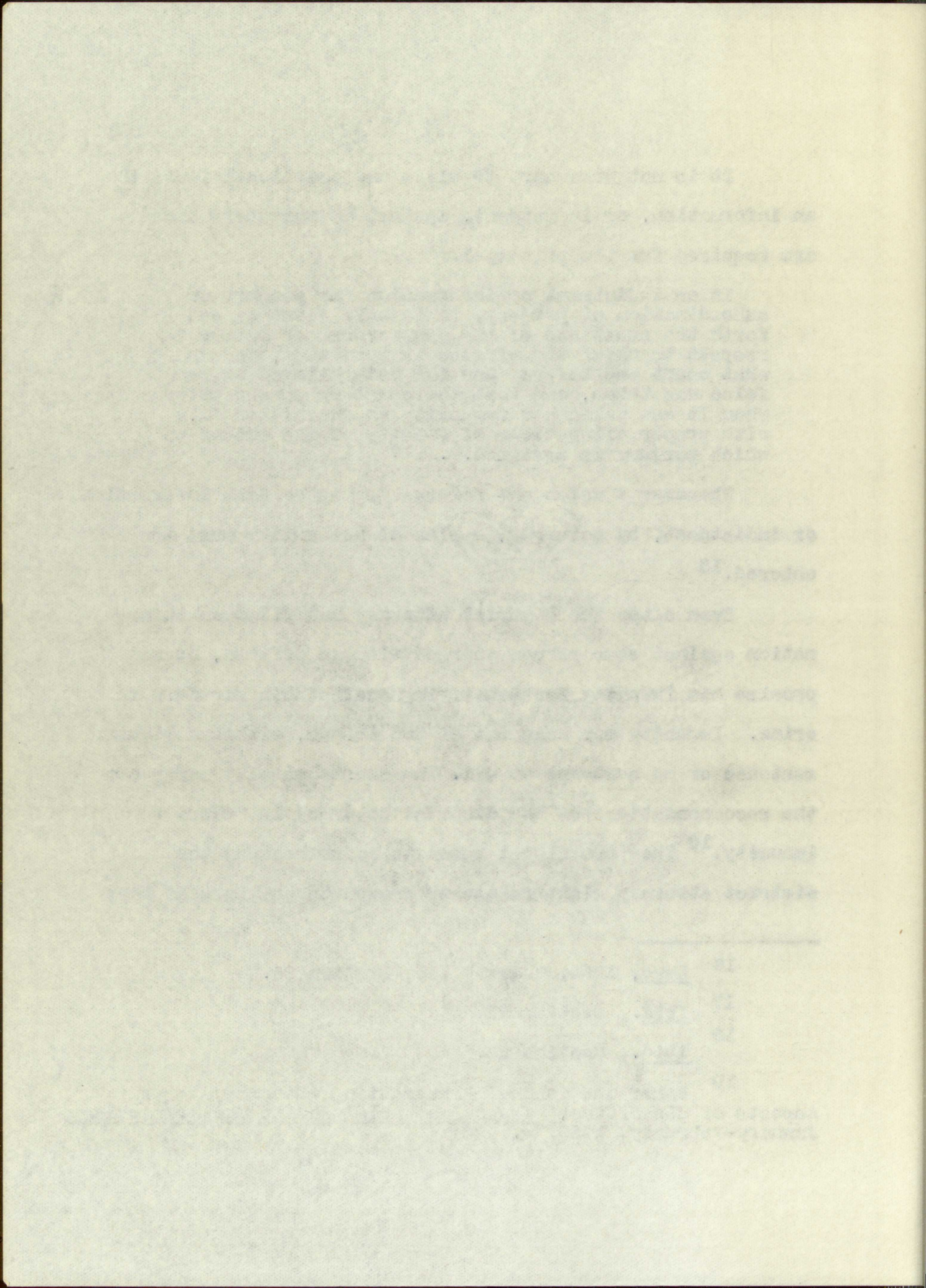
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<sup>16</sup> Laws, 1925, Chapter 145, Section 25.

<sup>17</sup> Ibid., Section 21.

<sup>18</sup> Ibid., Section 28.

<sup>19</sup> Baker and DeLong, "Prosecuting Attorney; Legal Aspects of His Office," Journal of Criminal Law and Criminology, January-February, 1936, p. 672.



didn't. Often the district attorney would not have sufficient evidence to convict the offenders if one of them did not turn "states evidence." New Mexico has made the promise of immunity legal by providing for it in the following words, which are typical of all immunity laws found in the statutes.

No person shall be incapacitated, or excused from testifying concerning any offense committed by another against any of the provisions of such sections, but the testimony which may be given by such persons shall in no case be used against him.<sup>20</sup>

Sometimes, after analyzing the evidence, the district attorney decides that there is not sufficient evidence to convict, or that the defendant is innocent, thereupon he enters a plea of nolle prosequi.<sup>21</sup> The Illinois Crime Survey found that of the 1,560 cases dropped in Chicago in one year, all of them were either nolle prossed, stricken off with leave to reinstate, or dismissed for want of prosecution.<sup>22</sup>

The National Commission on Law Observance and Enforcement reports on the district attorney's power to enter a nolle prosequi as follows:

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<sup>20</sup> Laws, 1901, Chapter 84, Section 7.

<sup>21</sup> Baker and DeLong, "Prosecuting Attorney: Legal Aspects of His Office," Journal of Law and Criminology. January-February, 1936, p. 666.

<sup>22</sup> Ibid., p. 669.

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- 80. Law, 1967, Chapter 11, Section 101
- 81. Law and Order, "Promoting Community Order"
- 82. Aspects of the Urban Crisis in the United States
- 83. January-February, 1968, p. 102
- 84. Law, 1967, Chapter 11, Section 101

At common law exercise of this power is beyond control of the courts, and American courts have in general adopted the common law in this respect. As one court puts it, the power is absolute. The prosecutor is not even required to give a reason for his dismissal. In some states by statute or long judicial practice leave of the court must be had. But in crowded dockets of the modern city these checks have been applied perfunctorily and are achieving little or nothing. In origin a public check on private prosecutions, when private prosecutions came to an end, and all prosecutions became public or official it ceased to be a check and became a mitigating or dispensing device. In practices, in most of our large cities, it is a mode of disposing of criminal cases without trial and without review on grounds nowhere recorded and quite unascertainable. When the number of prosecutions each year has been enormous and beyond the possibilities of proper trial, the power of nolle prosequi as a means of selecting those to be tried, make the prosecutor the real arbiter of what laws shall be enforced and against whom, while the attention of the public is drawn rather to the small percentage of offenders who go to the courts. Thus the blame for non-enforcement may easily be misplaced. Habitual defenders of criminals have learned to take advantage of this power. When exercised by assistants under no responsible organization it lends itself to the quiet choking off of prosecution under political influence. It is an anomaly that the powers and discretion of the judge with respect to the small percentage of prosecutions that ever come before him should be so thoroughly hedged about with restrictions, while the power and discretion of the prosecuting attorney with respect to disposition of the great majority of initiated prosecutions should remain so absolute. 23

In New Mexico the law provides that a nolle prosequi cannot be entered after the defendant has entered testimony.<sup>24</sup>

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<sup>23</sup> National Commission on Law Observance and Enforcement, cited by Baker and DeLong, *Ibid.*, January-February, 1936, pp. 669-570.

<sup>24</sup> Laws, 1851-1852.





During the five year period covered by this study, the criminal dockets did not list a single case that had been nolle prossed. Most all of the cases dismissed were by order of the district attorney. No reasons were given.<sup>25</sup>

A further investigation of the criminal dockets will show that all of the criminal cases handled by the district attorney from July, 1932 to July, 1937, with the exception of three, were filed on by information. The three cases presented by indictment were for violation of the banking laws.<sup>26</sup> The reason so few cases were brought to trial by the latter method is that only in cases of conspiracies, political scandals, conduct of public officers and similar cases, is the grand jury customarily used in New Mexico.

The steps to secure an indictment, against a person accused of a crime, are listed as follows: the arrest, preliminary hearing before a Justice of the Peace, holding over for the grand jury, imprisonment of the accused, or his release on bail, calling of the grand jury, presenting of the case by the district attorney, the grand jury's study of the evidence, preparation and signing of an indictment, and filing of the indictment with the clerk of the court.<sup>27</sup>

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<sup>25</sup> Criminal Dockets, op. cit., July, 1932 to July, 1937.

<sup>26</sup> Loc. cit.

<sup>27</sup> Miller, op. cit., p. 104.

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1937  
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A grand jury is usually convened upon the order of the judge of the district court, or after a petition has been filed with the judge of the district court by seventy-five taxpayers of the district, or in any other way prescribed by law.<sup>28</sup>

The State Constitution provides for a grand jury as follows,

A grand jury shall be composed of such number, not less than twelve, as may be prescribed by law, citizens only, residing in the county for which a grand jury may be convened and qualified as prescribed by law, may serve as a grand jury. . .<sup>29</sup>

During the time the grand jury is being impaneled, the person accused may challenge the panel of the grand jury, or any of the individuals composing it. This law has been on the statute books for many years, but has never been used.<sup>30</sup>

After the grand jury panel has been completed the court appoints one of their number as foreman; he immediately takes the following oath:

You, as foreman of this grand jury, shall diligently inquire, and true presentment make, of all public offenses against the people of this state, committed or

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<sup>28</sup> New Mexico Constitution, Article II, Section 14.

<sup>29</sup> Loc. cit.

<sup>30</sup> Laws, 1853-1854, p. 62.

A grand jury is usually composed of twelve members  
the judge of the district court, a clerk, a sheriff,  
been filed with the judge of the district court, and  
five taxpayers of the district, at least three of  
prescribed by law.

The state constitution provides for a grand jury  
follows:

A grand jury shall be composed of twelve members,  
less than twelve, as may be prescribed by law,  
districts only, residing in the county in which  
grand jury may be convened and holding no office  
by law, may serve as a grand jury.

During the time the grand jury is in session,  
the person accused may challenge the grand jury  
or any of the individuals composing it, either before  
on the state books for any cause, and the grand jury  
shall.

After the grand jury shall have been sworn,  
court appoints one of their number as clerk, who  
directly takes the following oath:

Yes, as foreman of this grand jury, I will  
indict, and true presentment make, all who shall be  
enged against the people of this state, according to

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you shall be indicted, according to the law,  
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1870-1871, p. 30.

triable within this county, of which you shall have or obtain legal evidence; you shall present no person through malice, hatred, or ill will; nor have any unpresented through fear, favor, or affliction, or for any reward or the promise or hope thereof; but in all your presentments or indictments you shall present the truth, the whole truth and nothing but the truth, according to the best of your skill and understanding, so help you God.<sup>31</sup>

After the foreman has taken his oath, the other grand jurors present have the following oath administered to them:

The same oath your foreman has taken before you on his part, you and each of you shall well and truly observe on your part, so help you God.<sup>32</sup>

If a new member comes in, he is supposed to take much the same oath as did the foreman.<sup>33</sup>

The district judge is empowered to appoint a stenographer to take stenographic notes of all evidence given. After the jury is discharged, these notes are given to the foreman for signature of the witnesses. Thereupon the notes are given to the district attorney. The stenographer is allowed five dollars per day and must swear never to reveal anything heard in connection with the trial.<sup>34</sup>

In charging the grand jury after it is impaneled and sworn, the court must give them such information as it thinks

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31 Laws, 1853-1854, p. 62.

32 Loc. cit.

33 Loc. cit.

34 Laws, 1907, Chapter 36, Section 22.

...of this you shall have  
obtain legal evidence; you shall present to the  
through witness, hearsay, or all will be  
represented through legal, hearsay, or all will  
any reward or the promise of some reward; but in all  
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31 Law, 1883-1884, p. 52.  
32 Id. cit.  
33 Id. cit.  
34 Law, 1907, Chapter 35, Section 23.

proper, concerning the nature of their duties, and any charges for public offenses which are likely to come before the grand jury. Unless the statutes provide for the charging of the grand jury concerning the violation of any statute, the court does not have to charge them on this matter.<sup>35</sup>

New Mexico law provides that any member of the grand jury who knows of any public offense must declare the same to the grand jury and they must investigate the case.<sup>36</sup>

Other cases which they must inquire into are:

First. Into the condition of every person on a criminal charge in the county and not indicted.

Second. In the condition and management of the public prison in the county; and

Third. Into wilful and corrupt misconduct, in offices of public officers of every description in the county.<sup>37</sup>

The members of the grand jury are allowed free access to prisons at all reasonable times and are allowed to examine all public records in the county without charge.<sup>38</sup>

During the time the grand jury is in session the district attorney appears before them to present evidence, to give advice, and to examine witnesses.

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<sup>35</sup> Laws, 1853-1854, p. 62.

<sup>36</sup> Ibid., p. 66.

<sup>37</sup> Loc. cit.

<sup>38</sup> Loc. cit.

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Now section 14 provides that any member of the grand jury who knows of any public offense and decides the same to the grand jury and they must investigate the case.

Other cases which they must inquire into are:

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- Second. In the condition and management of the public prison in the county; and
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35 Law, 1883-1884, p. 66.  
 36 Id., p. 66.  
 37 Id.  
 38 Id.



In investigating a charge the grand jury can receive no other evidence than that given by witnesses, or legal documentary evidence. Hearsay, or secondary evidence, is not acceptable.<sup>39</sup> Witnesses giving evidence must first be sworn in by the foreman.<sup>40</sup>

The grand jury is not bound to hear evidence for the defendant, but it is their duty to weigh all evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the district attorney, or attorney general to issue process for the witness.<sup>41</sup>

After all the evidence has been taken, the grand jury retires to a private room, and studies the evidence.<sup>42</sup> If the evidence is such that in their judgment it would, if uncontradicted, warrant a conviction by a trial jury,<sup>43</sup> and if at least eight of the twelve concur in that belief,<sup>44</sup> the foreman certifies under his hand that such indictment is a true bill.<sup>45</sup> After the indictment is found, the names of the witnesses are endorsed thereon,<sup>46</sup> and it is presented by the

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39 Laws, 1853-1854, p. 66.

40 Loc. cit.

41 Loc. cit.

42 Laws, 1853-1854, p. 65.

43 Ibid., p. 66.

44 Laws, 1925, Chapter 145, Section 4.

45 Loc. cit.

46 Laws, 1853-1854, p. 70.

In investigating a crime the jury has the right to  
 no other evidence than that given by witnesses, and that  
 documentary evidence, if any, is to be taken as true and  
 not acceptable. The witness giving evidence must first be  
 sworn in by the foreman.

The jury may in any case be asked to hear evidence from  
 the defendant, and it is their duty to hear it. If evidence  
 is admitted to them, and when they have returned to deliver  
 their verdict they should state in their verdict whether they  
 believe the charges, and if not, they should state what they  
 do believe, and for what reasons. The jury should be asked  
 whether, or otherwise, they believe the evidence given by the  
 witness.

After all the evidence has been heard, the jury  
 may retire to a private room, and there they may discuss  
 the evidence as they think fit. They should not discuss  
 the evidence with anyone else, and should not discuss it  
 with each other until they have returned to the court.  
 If at least eight of the jury agree in their verdict, the  
 foreman certifies when the jury has reached its verdict as a  
 true bill. After the verdict is given, the names of the  
 witnesses are entered thereon, and the jury is discharged.

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|    |                        |
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| 39 | Law, 1883-1884, p. 39. |
| 40 | Law, 1883-1884, p. 40. |
| 41 | Law, 1883-1884, p. 41. |
| 42 | Law, 1883-1884, p. 42. |
| 43 | Law, 1883-1884, p. 43. |
| 44 | Law, 1883-1884, p. 44. |
| 45 | Law, 1883-1884, p. 45. |
| 46 | Law, 1883-1884, p. 46. |

foreman in the presence of the court. It is then filed with the clerk of the court, and remains in his office as a public record.<sup>47</sup>

If the indictment should be lost, mislaid, or destroyed, the prosecution shall not be discontinued if a true copy, satisfactory to the court, can be obtained.<sup>48</sup>

If the grand jury fails to indict an accused person, they are dismissed. However, the case may be brought up as many times as the court may direct.<sup>49</sup>

The court must discharge a grand jury when its business is finished, or it may become automatically discharged by final adjournment of the court, whether their business is through or not.<sup>50</sup>

A member of the grand jury receives three dollars per day as salary, and five cents per mile for travelling expenses.<sup>51</sup>

The Supreme Court has decided that a grand juror should never disclose the happenings of a grand jury session,<sup>52</sup> and New Mexico law provides a fine of fifty dollars for any

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<sup>47</sup> Laws, 1853-1854, p. 70.

<sup>48</sup> Laws, 1912, Chapter 42, Section 1.

<sup>49</sup> Laws, 1853-1854, p. 70.

<sup>50</sup> Ibid., p. 62.

<sup>51</sup> Laws, 1915, Chapter 24, Section 1.

<sup>52</sup> In re Hitson (20 N. M. 327, 150).

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Law, 1883-1884, p. 70.  
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Law, 1883-1884, p. 70.  
Ibid., p. 62.  
Law, 1912, Chapter 36, Section 1.  
In re Wilson (20 N. M. 227, 150).

juror who reveals what the grand jury did or how the members voted.<sup>53</sup> However, a juror may be questioned if it is thought that he has been guilty of perjury in giving testimony before his fellow jurors,<sup>54</sup> and he may also be required by the court to disclose the testimony of a witness if the said witness is charged with perjury in giving evidence before the grand jury.<sup>55</sup>

There has been a great deal of debate as to the relative merits of information and indictment. Among the arguments advanced in favor of the grand jury system are:

Value of secrecy which results from working behind closed doors; because it is necessary to have an independent body of citizens; to initiate prosecutions; because it is too great a responsibility to vest in the prosecuting attorney; because the judgment of the grand jury is better than his; because the very existence of the grand jury has a salutary effect upon law enforcement officials and upon the public generally.<sup>56</sup>

Critics of the grand jury system point out that the use of information gives a much speedier process, and a process which is more economical of both money and labor, and one which avoids duplication of effort.<sup>57</sup> Then, too, the length of time it takes for the grand jury to meet, and

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53 Laws, 1853-1854, p. 68.

54 Loc. cit.

55 Loc. cit.

56 Miller, op. cit., p. 107.

57 Ibid., p. 105.

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52 Law, 1852-1884, p. 68.  
 53 Id. supra.  
 54 Id. supra.  
 55 Kilmer, op. cit., p. 107.  
 56 Id., p. 103.

deliberate, causes people to forget, and the witnesses sometimes move or disappear. It is claimed that the main result of this delay has been to increase the number of acquittals, dismissals and disagreements and to reduce the number of pleas of guilty. The cost of convictions, in this long drawn out method, has been increased, because of the number of people involved in the proceedings.<sup>58</sup>

Other well founded criticisms of the grand jury, and indictment, are that the secret deliberations may permit untrue and malicious accusations, and that under this system there is no centralized responsibility for failing to return, or returning an indictment.<sup>59</sup>

George R. Craig, a well known Albuquerque lawyer who has practiced here for many years, comments on information and indictment as follows:

The advantages of charging the offense by way of information often-times is desirable by the party charged with the offense for the reason that it speeds up the hearing or trial. Where it is permitted to make the charge by way of information, as it is in the State Courts of New Mexico, the party charged does not have to wait until a regular term of court is called and a grand jury impannelled to investigate the case and return an indictment, but the District Attorney may file an information against him after he has had a preliminary hearing before a Justice of the Peace and

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<sup>58</sup> Miller, op. cit., pp. 105-106.

<sup>59</sup> J. A. Fairlie, and C. M. Kneifer, County Government and Administration (New York: The Century Company, 1930), p. 527.

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association may be...  
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then the party charged may be arraigned before the District Court and plead to the information and by so doing have the case immediately settled and passed upon and he does not have to wait for a grand jury investigation which, under the old system, was held twice a year and often-times resulted in having the party charged confined in the county jail in default of bond for a period of six months before a legal charge could be made to which he could plead.

Mr. Craig seemed to believe that a grand jury investigation was a protection for persons suspected of crime, but who were found to be innocent. However, he felt that the disadvantages lay in the expense to the taxpayers, and the length of time between the charge and the trial.

Mr. Craig concluded his statement by saying,

I think the New Mexico law is a very good one for the reason that it provides that we may proceed either by way of information or by grand jury investigation and indictment. 60

Mr. Robert Hoath La Follette, another well known attorney of Albuquerque, has this to say of information and indictment:

The advantages of the method of indictment by information, as I see it, are negligible. Through ten years practise and without casting any reflection on any particular district attorney, I would say it gives too much power to the district attorney to have any one arrested that he cares to, of course, referring only to the frailty of human nature and not to any intended abuse . . . . .  
The power to indict a man is almost as terrible as the power to convict him. It places a cloud on his good name and can be continued along for several terms and

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60 Letter sent to Joseph E. Roehl by Mr. George R. Craig in response to a questionnaire.

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only to the frailty of human nature and not to any  
intended abuse. . . .  
The power to indict a man is almost as terrible as the  
power to convict him. It places a bind on his good  
name and can be continued almost for several years and

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letter sent to Joseph E. Lusk by Mr. George B.  
Craig in response to a questionnaire.

keep him in the class of a criminal when possibly he has committed no crime whatsoever. However, an advantage which does not offset, in my mind, the disadvantage is that this method is much cheaper, there being less expense as it costs a great deal to pay a grand jury to sit. Another thing is that with a grand jury you have to wait for the regular time for them to sit, and it would certainly be impossible, in a state like this, to keep the grand jury sitting all the time, so that speed is another advantage of the method of indictment by information. . . .

Mr. La Follette seemed to think that every man accused of a serious crime should have a grand jury trial, because the grand jury seldom abuses its power of indictment.<sup>61</sup>

The National Commission on Law Observance and Enforcement has concluded that the grand jury should be used:

only as a general investigating body for inquiring into the conduct of public officers and in cases of large conspiracies. It should be retained as an occasional instrument for such purposes, and the requirement of it as a necessary basis of prosecutions should be done away with.<sup>62</sup>

From the evidence that has been presented by both sides, the following facts emerge. The grand jury should be continued as an investigating body, in certain cases, such as political scandals, conduct of public officers, and conspiracies. After all, the grand jury does serve to protect the people from unwarranted and malicious prosecutions,

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<sup>61</sup> Letter sent to Joseph E. Roehl by Mr. Robert Hoath La Follette in answer to a questionnaire.

<sup>62</sup> National Commission on Law Observance and Enforcement, "Report on Prosecution," cited by A. W. Bromage, State Government and Administration in the United States (New York: Harper and Brothers, 1936), p. 263.

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of indictment by information.

Mr. [Name] is called upon to think that every man  
of a certain class should have a grand jury trial, because  
the grand jury system means the best of government.  
The National Commission on Law Observance and Enforcement  
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Only as a general investigation body for judging into  
the conduct of public officers was it ever of large  
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From the evidence that has been presented by both  
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conspiracies. After all, the grand jury has served to pro-  
tect the people from swindlers and various other

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81 Letter sent to Joseph E. Rauh by Mr. Robert [Name]  
in relation to answer to a questionnaire.

82 National Commission on Law Observance and Enforcement,  
"Report on Prosecution," filed by A. J. [Name], [Name]  
Government and Administration in the United States (New York:  
Harper and Brothers, 1935), p. 207.

and they serve as a check on the district attorney if he should fail to prosecute as the law requires.

On the other hand it would seem that the process of information has worked very well in New Mexico, when the grand jury has only been called into session once in five years. If it were not for the quicker, more efficient, and cheaper method of information, the district attorney would never be able to prosecute all the cases that require his attention.

In this chapter it has again been pointed out that the district attorney has wide powers. Although the legislature may pass laws, the district attorney may render them useless through his power to grant immunity, and enter pleas of nolle prosequi, or by refusing to prosecute. Through his better knowledge of the law, and with most of the evidence at his command, he may dominate the grand jury unduly, and finally, through his power to indict by information, he becomes the most predominant force for law-enforcement in his district.

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## CHAPTER V

### SUMMARY AND CONCLUSIONS

This study was made to discover the functions and powers of the man who might well be called the key figure of the New Mexico judicial system, the district attorney.

In summarizing the most important findings of this study, it will be noted that the district attorney is elected to office as a member of a political party; and usually seeks the office with the idea in mind of attracting sufficient attention to be elected to a higher office. Besides his duties as district attorney and juvenile court attorney, he carries on a private law practise, which must interfere with his official duties to a certain extent. Strangely enough, the laws of New Mexico do not require the district attorney to keep any particular type of records. However, all records, which he keeps in the course of his work, become a part of the records of the district court in his district.

In reference to the civil duties, which the district attorney is required by law to perform, it was found that they consist of tax suits, cases of insanity and mental defectives, cases of dependent and neglected children, condemnation proceedings for the board of county commissioners, suits against the county, certain writs, cases of removal of





officers, and cases of forfeiture of recognizances. In addition, the district attorney is seated on the boundary commission, furnishes information to the prison board, and advises such state and county officers as the state engineer, state corporation commission, county officers, and the County Horticultural Commission.

An assistant District Attorney, when interviewed, pointed out, that tax cases, condemnation suits for the county and state highway commission, insanity and mental defective cases, and cases of dependent and neglected children were the chief types of civil cases handled by the district attorney's office. This statement was borne out by an examination of the civil dockets of Bernalillo and Sandoval counties.

The rulings and opinions which the district attorney must give to state and county officers are of great importance, and they take up a great deal of his time.

The district attorney is essentially a criminal prosecutor, and may represent the state or county in any case coming before the Justice of the Peace or committing magistrate. Although the statutes say nothing about compromise or adjustments, bargaining with defendants, mediation in quarrels, or crime prevention, he may exercise these powers at his discretion. By refusing to prosecute certain cases the district attorney may nullify laws passed

officers, and cases of forfeiture of franchises. In addition, the district attorney is called on for his opinion, and examination, in various instances by the various boards, and advises such state and county officers as the state engineer, state corporation commissioner, county officers, and the County Agricultural Commission.

An assistant district attorney, when interviewed, pointed out, that tax cases, condemnation suits for the county and state highway commissioner, forestry and mineral defective cases, and cases of dependent and neglected children were the chief types of civil cases handled by the district attorney's office. This statement was borne out by an examination of the civil books of several of the general counties.

The village and opinions which the district attorney must give to state and county officers are of great importance, and they take up a great deal of his time.

The district attorney is essentially a criminal prosecutor, and may represent the state or county in any case coming before the justice of the peace or practicing magistrate. Although the statutes say nothing about compromise or adjustment, bargaining with delinquents, mediation in quarrels, or crime prevention, he may exercise these powers at his discretion. By retaining no property certain cases the district attorney may finally lose possession

by the legislature. The attorney general may be called in if the district attorney refuses to prosecute a case, but this is seldom necessary.

In the chapter on "The Criminal Duties of the District Attorney," a comparison was made between the offenses which the district attorney was supposed to prosecute and those which he actually prosecuted. This comparison was made between cases as listed in the criminal dockets of Bernalillo and Sandoval counties and the Uniform Classification of Offenses, which is substantially the same as the list of offenses adopted by the Federal Bureau of Investigation and the Census Bureau. It was found that the District Attorney of the Second Judicial District handled a wide variety of cases. There were a number of offenses that he did not prosecute, either from lack of evidence or because no crimes of this type were committed. It should be remembered, too, that the district attorney does not prosecute a case until information is furnished him showing a violation of the law.

Many of the cases listed in the criminal dockets were dismissed by order of the district attorney. This action is often taken when there is not enough evidence to convict, the defendant, or when the district attorney wishes to clear the dockets of cases where there is no possibility of securing a conviction.

The criminal dockets also disclosed that cases in

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The criminal dockets also disclosed that cases in

which the defendant pleaded not guilty were quite often dismissed; also, that when the defendant had two charges against him he was sometimes allowed to plead guilty to the charge which carried the lightest penalty. This latter practice is followed when there is not sufficient evidence to secure a conviction on the charge carrying the heavier penalty.

The District Attorney of the Second Judicial District drew up a bill in 1937 to force the Justices of the Peace to turn in their reports and fees more promptly. This bill was passed by the legislature, and, since that time, the Justices of the Peace have been more regular in turning in their reports, and the fees turned into the county treasurer's office have increased considerably.

The procedure by which the district attorney brings an offender to trial is important because of the power it gives him to initiate prosecutions. If the district attorney, after the defendant has been arrested and has had a preliminary hearing, decides there is sufficient evidence he may institute an information and file the same with the district court clerk. Of all the cases handled by the district attorney's office during the scope of this study, all but three were brought to trial after the filing of an information.

which the defendant...  
dismissed; also, that...  
against him...  
charge which...  
practice is followed...  
to secure a conviction...  
penalty.

The District Attorney...  
draw up a bill in 1847...  
turn in their report...  
passed by the Legislature...  
of the cases...  
reports, and the...  
office have...  
The procedure...  
an offender to trial...  
gives him...  
may, after...  
preliminary hearing...  
any institute an...  
district court...  
district attorney's...  
all but since...  
information.

Sometimes, if the district attorney does not wish to prosecute the case and public opinion demands that the case be prosecuted, a grand jury may be called to investigate. If it finds sufficient evidence, it may return a true bill, which is called an indictment. As has already been pointed out, only three cases of indictment were listed in the criminal dockets of the second judicial district during the period covered by this study.

Information is much quicker, more efficient, and more economical than indictment. However, the grand jury should be retained as an investigating body in cases of conspiracies, conduct of public officers and political scandal, and because it acts as a check on the prosecutor.

Even after the district attorney has filed an information against an accused person, he may promise him immunity if he will testify against his partners in crime. New Mexico law has legalized the promise of immunity so that sufficient evidence can be secured against other defendants in the case. Immunity may mean a lighter sentence, or no sentence at all.

Sometimes, after analyzing the evidence, the district attorney may decide that the accused is innocent, or that there is insufficient evidence to convict him. In such cases the district attorney may enter a plea of nolle prosequi and charges against the defendant will be dropped.

Sometimes, it is the district attorney who...  
presents the case and...  
be prosecuted, a grand jury...  
it is the district attorney...  
which is called an indictment...  
out, only those cases of...  
original books of the...  
period covered by...

Information is...  
economic...  
be retained as an...  
conduct of public...  
is not as a...  
Even after the...  
tion against an...  
if he still...  
Mexico law...  
sufficient...  
in the case...  
sentence of...

Generally, after...  
attorney may...  
there is...  
the district...  
charges against...



The district attorney is the central figure around which the administration of justice revolves in New Mexico. The law may be violated and the offender arrested, but it is the district attorney who decides what charge shall be placed against him. If the defendant has "political pull," the district attorney may allow him to plead to a charge carrying a lighter sentence, promise him immunity, or he may continue the case indefinitely and finally dismiss it. The district attorney may enter a nolle prosequi without giving a reason for doing so. Should the case be taken to the grand jury, it is the prosecutor who appears before the grand jury with much of the evidence, and with his better knowledge of the law and of the facts of the case, he may determine the action of the grand jury. Although the legislature has the power of passing laws, it is the district attorney who actually decides what laws shall be enforced, and in so doing, he becomes the key figure of the New Mexico judicial system.

If the attempt is even made to make the office of the district attorney more effective as a law enforcement agency, the following suggestions should be considered:

1. Take the office of the district attorney out of politics and place it on a career basis.
2. Increase salaries in order to attract outstanding men to the office.

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If the attorney is ever made to leave the office of the district attorney more effective as a law enforcement

- agency, the following suggestions should be considered:
1. Take the office of the district attorney out of politics and place it on a career basis.
  2. Increase salaries in order to attract outstanding men to the office.

3. Increase funds for better clerical, detective, and professional assistance.

4. Place assistants under civil service laws.

5. Allow the district attorney no private practice.

6. Relieve the district attorney of all civil duties, except quasi-criminal duties.

7. Provide by law that the district attorney must furnish the clerk of the court, a statement in writing, for failure to file an information in any case, where the defendant has had a preliminary hearing and been bound over for trial.

- 3. Increase funds for better clerical, detective, and professional assistance.
- 4. Place assistants under civil service laws.
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BIBLIOGRAPHY

REPRODUCTION

## A. BOOKS AND PAMPHLETS

- Aboussleman, M. D., editor, Who's Who in New Mexico.  
Albuquerque: Aboussleman Company, 1937. 1, 254 pp.
- Bronage, A. W., State Government and Administration in the United States. New York: Harper and Brothers, 1936. 678 pp.
- Courtright, W. H., editor, New Mexico Statutes Annotated.  
Denver: Courtright Publishing Company, 1929. 2061 pp.
- Courtright, W. H. and H. C. Allen, editors, Supplement to New Mexico Statutes Annotated. Denver: Courtright Publishing Company, 1915. 1960 pp.
- Davis, Stephen B. and H. C. Neechem, editors, New Mexico Statutes Annotated. Denver: The W. H. Courtright Publishing Company, 1915. 1795 pp.
- Fairlie, John A. and Charles M. Kneifer, County Government and Administration. New York: The Century Company, 1932. 585 pp.
- Grimshaw, I. L., editor, New Mexico Reports. 42 vols.  
Santa Fe: New Mexico Printing Company, 1915. 20, 697 pp.
- Grimshaw, I. L., editor, New Mexico Reports. 42 vols.  
Santa Fe: Catholic Publishing Company, 1922. 27, 736 pp.
- Hoover, John Edgar, A Handbook Containing Suggestions for the Preparation of Uniform Crime Reports. Washington: Federal Bureau of Investigation, United States Department of Justice, 1938. 31 pp.
- Kimball, Everett, State and Municipal Government in the United States. New York: Ginn and Company, 1920. 581 pp.
- McFie, John R., editor, New Mexico Reports. 42 vols.  
Santa Fe: New Mexico Printing Company, 1914. 17, 780 pp.
- Mack, William and W. B. Hale, editors, Corpus Juris.  
72 vols. London: The American Law Book Company, 1919.  
18, 1408 pp.
- Pound, Roscoe, Criminal Justice in America. New York: Henry Holt and Company, 1930. 226 pp.





Reiblich, G. Kenneth, A Study of Judicial Administration in the State of Maryland. Baltimore: The John Hopkins Press, 1929. 155 pp.

Sedillo, J. A., editor, New Mexico Reports. 42 vols. Albuquerque: Thomas Hughes Printer, 1926. 30, 654 pp.

Walter P. F., editor, New Mexico Reports. 42 vols. Santa Fe: New Mexico Printing Company, 1912. 16, 783 pp.

Inventory of the County Archives of Bernalillo County, New Mexico. Albuquerque: Historical Records Survey, Works Progress Administration, 1938. 255 pp.

#### B. ARTICLES FROM PERIODICALS

Baker, N. F., and E. H. DeLong, in the Journal of the American Institute of Criminal Law and Criminology:

"Initiation of Prosecution," 23:770-797, January-February, 1933.

"Provisions of the Law Organizing the Office of Prosecutor," 23:926-963, March-April, 1933.

"Powers and Duties in Criminal Prosecution," 24:1025-1066, March-April, 1934.

"Powers and Duties of Prosecuting Attorney: Quasi-Criminal and Civil," 24:21-52, May-June, 1934.

"Prosecuting Attorney and His Office," 25:884-901, March-April, 1935.

"Prosecuting Attorney and His Office," 25:695-720, January-February, 1935.

"Prosecuting Attorney: Process of Prosecution," 26:3-21, May-June, 1935.

"Prosecuting Attorney: Legal Aspects of His Office," 26:647-678, January-February, 1936.

"Prosecuting Attorney and Reform in Criminal Justice," 26:821-846, March-April, 1936.

Reid, G. Kenneth, A Study of Judicial Administration in the State of Maryland. Baltimore: The Johns Hopkins Press, 1933. 133 pp.

Reid, J. A., editor, New Mexico Reports. 42 vols. Albuquerque: Thomas Hughes Printer, 1933. 30, 682 pp.

Walker, F. V., editor, New Mexico Reports. 42 vols. Santa Fe: New Mexico Printing Company, 1912. 16, 703 pp.

Inventory of the County Archives of Berwick County, New Mexico. Albuquerque: Historical Records Survey, Works Progress Administration, 1933. 233 pp.

E. ARTICLES FROM PERIODICALS

Baker, W. V., and F. R. Nelson, in the Journal of the American Institute of Criminal Law and Criminology.

"Initiation of Prosecution," 23:770-787, January-February, 1933.

"Provisions of the Law Organizing the Office of Prosecutor," 23:922-923, March-April, 1933.

"Powers and Duties of Criminal Prosecutors," 24:1022-1023, March-April, 1934.

"Powers and Duties of Prosecuting Attorney: Civil-Criminal and Civil," 24:21-22, May-June, 1934.

"Prosecuting Attorney and His Office," 23:624-601, March-April, 1933.

"Prosecuting Attorney and His Office," 23:694-700, January-February, 1933.

"Prosecuting Attorney: Process of Prosecution," 23:2-11, May-June, 1933.

"Prosecuting Attorney: Legal Aspects of His Office," 23:647-678, January-February, 1933.

"Prosecuting Attorney and Reform in Criminal Justice," 23:221-240, March-April, 1933.

Miller, Justin R., "Information and Indictment in Felony Cases," Journal of American Judicature Society, Vol. 8, No. 4, December, 1924.

#### C. CIVIL AND CRIMINAL DOCKETS

Civil Dockets of Bernalillo County, July, 1932, to July, 1937.

Civil Dockets of Sandoval County, July, 1932, to July, 1937.

Criminal Dockets of Bernalillo County, July, 1932, to July, 1937.

Criminal Dockets of Sandoval County, July, 1932, to July, 1937.

#### D. INTERVIEWS

Interview with Mr. Gino Matteucci, Assistant District Attorney of the Second Judicial District.

Interview with the District Clerk of the Second Judicial District.

Interview with Mr. Joe Velasquez member of the County Treasurer's Staff.

#### E. LETTERS

Letter Written by Mr. George R. Craig.

Letter Written by Mr. Robert Hoath La Follette.

#### F. NEWSPAPERS

Albuquerque Journal, November 9, 1938.

Albuquerque Tribune, November 9, 1938.

Miller, Justice W., "Investigation and Report of the  
Committee on the Administration of the Government"  
No. 4, December, 1937.

2. CIVIL SERVICE

Civil Service of the Department of Justice, 1937, p. 100.

Civil Service of the Department of Justice, 1937, p. 100.

Civil Service of the Department of Justice, 1937, p. 100.

Civil Service of the Department of Justice, 1937, p. 100.

3. INTERVIEW

Interview with Mr. John H. ...  
Attorney of the Second National Bank.

Interview with the District Clerk of the Second National Bank.

Interview with Mr. John H. ...  
Treasurer's Office.

4. LETTERS

Letter written by Mr. ...

Letter written by Mr. ...

5. REFERENCES

Administrative Journal, December, 1937.

Administrative Journal, November, 1937.

STATE OF

APPENDIX

STATE OF  
NEW YORK  
IN SENATE  
January 1, 1902  
REPORT  
OF THE  
COMMISSIONERS OF THE  
LAND OFFICE  
IN RESPONSE TO  
RESOLUTION PASSED  
MAY 1, 1901



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT IN AND FOR THE COUNTY OF

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT IN AND FOR THE COUNTY OF

COUNTY OF \_\_\_\_\_

STATE OF NEW MEXICO

STATE OF NEW MEXICO

The \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

vs.

STATEMENT OF WITNESS

INFORMATION

Owen B. Marron, District Attorney for the Second Judicial District of the State of New Mexico, composed of the Counties of Bernalillo and Sandoval in said State, accuses

of \_\_\_\_\_ and charges that

WITNESSES FOR STATE

\_\_\_\_\_  
District Attorney for the Second Judicial District,  
State of New Mexico.

STATE OF NEW MEXICO,

County of

ss.

**VERIFICATION**

Owen B. Marron, District Attorney, being duly sworn, says that the facts stated in the within and foregoing information charging the defendant therein named with the crime of

are true according to the best of his knowledge and belief.

Subscribed and sworn to before me this  
day of A. D. 19

Clerk.

No. ....  
IN THE DISTRICT COURT  
SECOND JUDICIAL DISTRICT

County of .....

STATE OF NEW MEXICO

STATE OF NEW MEXICO

VS.

INFORMATION FOR

WITNESSES FOR STATE:



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT IN AND FOR THE

COUNTY OF.....

WARRANT

**STATE OF NEW MEXICO**

State of New Mexico

No.....

vs.

Crime.....

**STATEMENT OF WITNESS**

Name..... Date.....

Residence..... Occupation.....

Age.....

**RECITAL OF FACTS**

And this do you under penalty of the law

Witness: The Hon. Milton J. Rehbeck, Judge of the District Court of the Second Judicial District of the

State of New Mexico, within and for the County of Bernalillo and the seal of said Court this

Clerk

Deputy

Signature.....

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT IN AND FOR THE COUNTY OF

\_\_\_\_\_ COUNTY OF \_\_\_\_\_

Over P. Merton, District Attorney, State of New Mexico, vs. \_\_\_\_\_

No. \_\_\_\_\_ State of New Mexico vs. \_\_\_\_\_

STATEMENT OF WITNESS

Name \_\_\_\_\_ Date \_\_\_\_\_

Residence \_\_\_\_\_ Occupation \_\_\_\_\_

Age \_\_\_\_\_

RECITAL OF FACTS

Signature \_\_\_\_\_

WARRANT

# THE STATE OF NEW MEXICO

TO THE SHERIFF OF BERNALILLO COUNTY, GREETING:

You are hereby commanded to arrest and take the body of \_\_\_\_\_

and him safely keep, so that you have his body before the District Court within and for the County of Bernalillo, FORTHWITH, then and there to answer unto an information for \_\_\_\_\_

And this do you under penalty of the law.

WITNESS, The Hon. Milton J. Helmick, Judge of the District Court of the Second Judicial District of the State of New Mexico, within and for the County of Bernalillo and the seal of said Court this \_\_\_\_\_

Clerk.

By \_\_\_\_\_ Deputy.

No. \_\_\_\_\_

# DISTRICT COURT

COUNTY OF BERNALILLO.

THE STATE OF NEW MEXICO

VERSUS

## FORTHWITH WARRANT

*The Sheriff is authorized to take good and sufficient bond for the appearance of the said defendant, in the sum of \$ \_\_\_\_\_*

By ORDER OF THE COURT.

VALLIANT PRINTING CO., ALBUQUERQUE, N. M.

Fees \_\_\_\_\_

Dated this \_\_\_\_\_

STATE OF NEW MEXICO, }  
County of Bernalillo.

By \_\_\_\_\_ Deputy

SHERIFF OF BERNALILLO COUNTY.

I, the undersigned Sheriff of Bernalillo County, State of New Mexico, do hereby certify, that I have served this warrant on the within named defendant by taking defendant into custody (and have released defendant on proper appearance bond pursuant to order of Court.)

IN THE JUSTICE OF THE PEACE COURT

OF

PRECINCT No. ....

COUNTY OF ....., STATE OF NEW MEXICO

CRIMINAL COMPLAINT

STATE OF NEW MEXICO,  
Plaintiff,

No. ....

vs.

Crime .....

Defendant

STATE OF NEW MEXICO,

ss.

COUNTY OF .....

....., being duly sworn, upon his oath, complains and  
says that

late of said county, on to-wit, the ..... day of ..... 193....., at the  
County of ....., State of New Mexico

WITNESSES FOR STATE

WAL

contrary to the form of the statute in such cases made and provided and against the peace and dignity of  
the State of New Mexico.

WHEREFORE, complainant prays that the said defendant..... may be arrested and dealt with accord-  
ing to law.

.....  
Complainant.

Subscribed and sworn to before me this ..... day of ....., 193.....

.....  
Justice of the Peace.

AFFIDAVIT OF INSANITY

IN THE MATTER OF  
AN ALLEGED INSANE PERSON

STATE OF NEW MEXICO,  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, being duly sworn, deposes and says that there is now in said  
county, in the city or town of \_\_\_\_\_, a person named \_\_\_\_\_  
who is insane and is so far disordered in mind as to endanger the health, person or the property of  
self, or others \_\_\_\_\_ day of \_\_\_\_\_  
and that he, at \_\_\_\_\_ said county on the \_\_\_\_\_  
is \_\_\_\_\_ threatened and attacked \_\_\_\_\_  
(State action, etc.)

That by reason of such insanity, said person is dangerous to be at large;  
WHEREFORE I affirm and pray that such action may be had as the law requires in the case of persons who are so far  
disordered in mind as to endanger health, person and property.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
Justice of the Peace

WARRANT OF APPREHENSION

IN THE JUSTICE OF THE PEACE COURT OF \_\_\_\_\_  
STATE OF NEW MEXICO

IN THE MATTER OF

AN ALLEGED INSANE PERSON

The State of New Mexico to say Sheriff, Constable, Policeman, or Peace Officer, in this State:  
The affidavit of \_\_\_\_\_  
having been delivered this day to me,  
State of New Mexico, from which it appears that there  
is now in this county \_\_\_\_\_ a person by the name of \_\_\_\_\_  
who is insane and who is so disordered in mind as to endanger his  
person and property (or the person, lives and property of others), and that it is dangerous for said person to be at large;  
And it satisfactorily appearing to me that said \_\_\_\_\_  
is insane and so far  
disordered in mind as to endanger health, person and property;

NOW THEREFORE you are commanded forthwith to apprehend the above named person and take him  
before \_\_\_\_\_ County for a hearing and examination in the County of \_\_\_\_\_  
And I hereby direct that a copy of this warrant together with a copy of said affidavit be delivered to \_\_\_\_\_  
at the time of his arrest; and I further direct that this warrant may  
be served at any hour of the night.  
Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
Justice of the Peace

STATE OF NEW MEXICO  
I, \_\_\_\_\_, Justice of the Peace, do hereby certify that I received the above warrant of apprehension on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
and caused the said warrant to be executed by \_\_\_\_\_  
I hereby certify that I received the above warrant of apprehension on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
at the time of the arrest of \_\_\_\_\_  
Justice of the Peace

IN THE DISTRICT COURT

IN THE MATTER OF

COUNTY, NEW MEXICO

AN ALLEGED INSANE PERSON.

No. \_\_\_\_\_

TESTIMONY OF MEDICAL EXAMINER

1. Age \_\_\_\_\_ Nativity, if foreign-born, from what port or place did \_\_\_\_\_ come to this state? \_\_\_\_\_

Occupation \_\_\_\_\_, Religious belief \_\_\_\_\_, Education \_\_\_\_\_ Civil condition \_\_\_\_\_

2. Has either parent been addicted to the use of opium, cocaine, tobacco, or alcoholic beverages to excess, or other stimulating narcotics? \_\_\_\_\_

3. How many relatives, direct or collateral, suffered, or are they suffering from any chronic disease, such as consumption or tuberculosis, syphilis, rheumatism, neuralgia, hysteria, or nervousness, or had epilepsy or falling sickness? \_\_\_\_\_

4. Has alleged insane person ever had convulsions? \_\_\_\_\_ If so, when did \_\_\_\_\_ have the first one? \_\_\_\_\_ When the last one? \_\_\_\_\_

5. State alleged insane person's habits as to the use of liquor, tobacco, opium, or other drugs, and whether excessive or moderate \_\_\_\_\_

6. What is alleged insane person's natural disposition or temperament, and mental capacity \_\_\_\_\_

7. What is alleged insane person's general physical condition? \_\_\_\_\_

8. Has alleged insane person insane relatives? \_\_\_\_\_ If so, state the degree of consanguinity, and whether paternal or maternal \_\_\_\_\_

9. Specify any disease of which alleged insane person has suffered, or does suffer, or any injury received \_\_\_\_\_

10. Has alleged insane person ever been an inmate of an institution for the insane? \_\_\_\_\_ If so, state when, where and how long, and whether discharged or otherwise; also number of previous attacks, date of previous attacks, length of time each previous attack lasted \_\_\_\_\_

When did present attack begin? \_\_\_\_\_ Was it gradual or rapid in its onset? \_\_\_\_\_

11. Is alleged insane person noisy, restless, violent, dangerous, destructive, incendiary, excited or depressed? \_\_\_\_\_

Is \_\_\_\_\_ homicidal or suicidal? \_\_\_\_\_ (If either homicide or suicide has been attempted or threatened, it should be so stated.) \_\_\_\_\_

12. What was age when menses appeared? \_\_\_\_\_ Amount and character since insanity appeared \_\_\_\_\_

Has change of life taken place? \_\_\_\_\_ If so, was it gradual or sudden? \_\_\_\_\_ How changed from normal? \_\_\_\_\_

13. Memory \_\_\_\_\_ (a) Sleep \_\_\_\_\_ (b) Headache or neuralgia \_\_\_\_\_ (c) Constipation \_\_\_\_\_ Indigestion \_\_\_\_\_ (d) Hallucinations \_\_\_\_\_ (e) Delusions (specify, if possible, and whether fixed or changeable) \_\_\_\_\_

14. Supposed cause of insanity? \_\_\_\_\_ Predisposing or exciting? \_\_\_\_\_ Other facts indicating insanity: (State what the alleged insane said and did in the presence of the examiners, and how changed in business or social habits, and disposition, as communicated to examiners by others). \_\_\_\_\_

What treatment has been pursued? (State remedies given, and whether hypodermically or not.) \_\_\_\_\_

Whether patient has been restrained by muff, belt or otherwise. \_\_\_\_\_

15. What is your diagnosis? \_\_\_\_\_

16. Is the alleged insane person so far disordered in \_\_\_\_\_ mind as to endanger health, person and property? \_\_\_\_\_

I certify that I have this day made a thorough examination of the patient and believe that the foregoing questions have been answered correctly. I graduated from \_\_\_\_\_ in \_\_\_\_\_

and was licensed in New Mexico in \_\_\_\_\_

DATED this the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

M. D.





STATE OF NEW MEXICO, COUNTY OF BERNALILLO  
IN THE DISTRICT COURT

IN THE MATTER OF \_\_\_\_\_

No. \_\_\_\_\_

Dependent and Neglected

**INFORMATION**

Comes now \_\_\_\_\_ District Attorney  
for the Second Judicial District of the State of New Mexico, who prosecutes for the State of New Mexico in  
this behalf, and in his own proper person now gives the Court to understand and be informed that

\_\_\_\_\_, under the age of sixteen years, found in said county and  
state, is/are dependent and neglected, particularly in this:

**VERIFICATION**

The names of the parents, guardian or persons with whom such child \_\_\_\_\_ is/are living or stopping and  
their place of residence are as follows: \_\_\_\_\_

The Affidavit of \_\_\_\_\_ is  
hereto attached and made a part hereof.

District Attorney

**VERIFICATION**

STATE OF NEW MEXICO, }  
COUNTY OF BERNALILLO } ss.

\_\_\_\_\_, District Attorney,  
on oath says that the facts stated in the within and foregoing Information are true according to the best of his  
knowledge, information and belief.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 193\_\_\_\_\_

Notary Public

My commission expires \_\_\_\_\_

Law: Chap. 22, Art. 1,  
N.M.S.A., 1929 Comp.

District Judge

pending the final disposition of this cause.

be placed in the custody of

IT IS ORDERED that  
On the Information of the District Attorney, supported by Affidavit:

### TEMPORARY ORDER

District Judge

Copies of Information and supporting Affidavit hereto attached.

193 , at M.

alleged dependent and neglected, in this Court, at the County Courthouse, on the day of

YOU ARE HEREBY COMMANDED to have and produce

To

### CITATION

My commission expires

Notary Public

Subscribed and sworn to before me this day of

193

Affiant

that the names of the parents, guardian or persons with whom such child is/are living or stopping and their place of residence are as follows:

District Attorney

VERIFICATION

STATE OF NEW MEXICO, COUNTY OF BERNALILLO  
IN THE JUVENILE COURT

IN THE MATTER OF THE ALLEGED DELINQUENCY OF \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

No. \_\_\_\_\_

AFFIDAVIT

STATE OF NEW MEXICO, }  
COUNTY OF BERNALILLO } ss.

\_\_\_\_\_, a person over the age of twenty-one years, on oath  
says that \_\_\_\_\_  
\_\_\_\_\_ under the age of eighteen years, now in the custody of \_\_\_\_\_  
\_\_\_\_\_ residing at \_\_\_\_\_, Albuquerque, New Mexico, within the  
jurisdiction of this Court is a (are) juvenile delinquent and particularly in this:

WHEREFORE, affiant prays that the Court cause said juvenile \_\_\_\_\_ to be brought before him to be dealt with according to law.

\_\_\_\_\_  
Affiant

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 193\_\_\_\_\_

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

LET CITATION ISSUE: \_\_\_\_\_

\_\_\_\_\_  
Judge

CITATION

To \_\_\_\_\_

YOU ARE HEREBY COMMANDED to appear before the Juvenile Court of the County of Bernalillo, State of New Mexico, at the County Courthouse, on the \_\_\_\_\_ day of \_\_\_\_\_, 193\_\_\_\_\_, at \_\_\_\_\_ M., and have with you then and there \_\_\_\_\_

WITNESS the Honorable Milton J. Helmick, Juvenile Judge of the County of Bernalillo, State of New Mexico, and the seal of said Court this \_\_\_\_\_ day of \_\_\_\_\_, 193\_\_\_\_\_

\_\_\_\_\_, Clerk

Law: Chap. 35, Art. 41,  
Compilation of 1929.

By \_\_\_\_\_, Deputy

STATE OF NEW MEXICO, COUNTY OF BERNALILLO  
IN THE JUVENILE COURT

Juvenile No. \_\_\_\_\_

**IN THE JUVENILE COURT**  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

**IN THE MATTER OF THE ALLEGED  
DELINQUENCY OF**

**AFFIDAVIT and CITATION**

AFFIDAVIT

CITATION

Notary Public

day of

published and sworn to before me this

My commission expires

ALL CITATION ISSUED

Judge

YOU ARE HEREBY COMMANDED to appear before the Juvenile Court of the County of Bernalillo

IN THE DISTRICT COURT, STATE OF NEW MEXICO  
County of Bernalillo

TAX CASE NO. \_\_\_\_\_

IN THE MATTER OF THE TAXES FOR 193\_\_\_\_\_

of..... Petitioner..... Tax.....

PETITION

Petitioner respectfully shows to the Court:

1. That petitioner's property was unlawfully, unjustly and erroneously assessed for said year, as shown by the 19..... tax roll at page....., line....., in this, to-wit:

2. That petitioner is an honorably discharged soldier from the United States Forces, a resident of New Mexico and has not been granted an exemption in the sum of \$2,000.00 to which he is lawfully entitled; that he entered service..... and was discharged.....

3. Petitioner is the head of a family, resident of the state, and has not been granted an exemption in the sum of \$200.00 to which he is lawfully entitled; that petitioner has not claimed and will not claim such exemption in any other county for the current year.

4. There has been unlawfully and erroneously assessed against petitioner the following property of which he was not and is not the owner:

WHEREFORE, petitioner prays that he may have such relief as the Court may deem proper.

STATE OF NEW MEXICO, }  
County of Bernalillo. } ss.

.....  
Petitioner.

.....being first duly sworn, says, that he is the petitioner mentioned in the foregoing petition; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge.

Subscribed and sworn to before me this..... day of..... 193.....

My commission expires.....

.....  
Notary Public.

Examined.....  
Asst. Dist. Atty.

Examined and approved:

.....  
Assessor.

Note: Draw line through portions of said petition as are inapplicable.

IN THE DISTRICT COURT, STATE OF NEW MEXICO  
County of Bernalillo

IN THE MATTER OF THE TAXES FOR 193\_\_

PETITION

of \_\_\_\_\_ Petitioner Tax \_\_\_\_\_

No. \_\_\_\_\_ Tax \_\_\_\_\_

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

DISTRICT COURT

In the matter of the tax petition of \_\_\_\_\_

WARD ANDERSON PRINTING CO., 211 WEST GOLD AVE.

Petitioner respectfully shows to the Court:

1. That petitioner's property was unlawfully, unjustly and wrongfully assessed for and year \_\_\_\_\_ in the \_\_\_\_\_ line shown by the 19\_\_\_\_\_ tax roll at page \_\_\_\_\_
2. That petitioner is an honorably discharged soldier from \_\_\_\_\_ New Mexico and has not been granted an exemption in the sum of \$2,000.00 to which he is lawfully entitled; that he entered service \_\_\_\_\_
3. Petitioner is the head of a family, resident of the state, and has not been granted an exemption in the sum of \$2,000.00 to which he is lawfully entitled; that petitioner has not claimed and will not claim such exemption in any other county for the current year.
4. There has been unlawfully and erroneously assessed against petitioner the following property of which he was not and is not the owner:

WHEREFORE, petitioner prays that he may have such relief as the Court may deem proper.

Assessor \_\_\_\_\_

Petitioner \_\_\_\_\_  
STATE OF NEW MEXICO }  
County of Bernalillo } ss.

being first duly sworn, says that he is the petitioner mentioned in the foregoing petition that he has read the contents thereof, and that the same is true of his own knowledge.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 193\_\_

RECORD OF MINUTES OF THE DISTRICT COURT OF THE SECOND  
JUDICIAL DISTRICT OF THE STATE OF NEW MEXICO IN AND  
FOR BERNALILLO COUNTY IN REFERENCE TO TAX MATTERS.

TAX CASE NO.

IN THE MATTER OF THE TAXES OF.....

JUDGMENT

This matter coming on regularly to be heard before the Court upon the Petition filed herein; and the Court examining said Petition and hearing the proof in support thereof, FINDS that said Petition ought to be granted

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Treasurer and Ex-Officio Collector of Taxes extend upon the tax rolls of said county, for the years.....  
against the property of Petitioner appearing at

page..... line.....

page..... line.....

page..... line.....

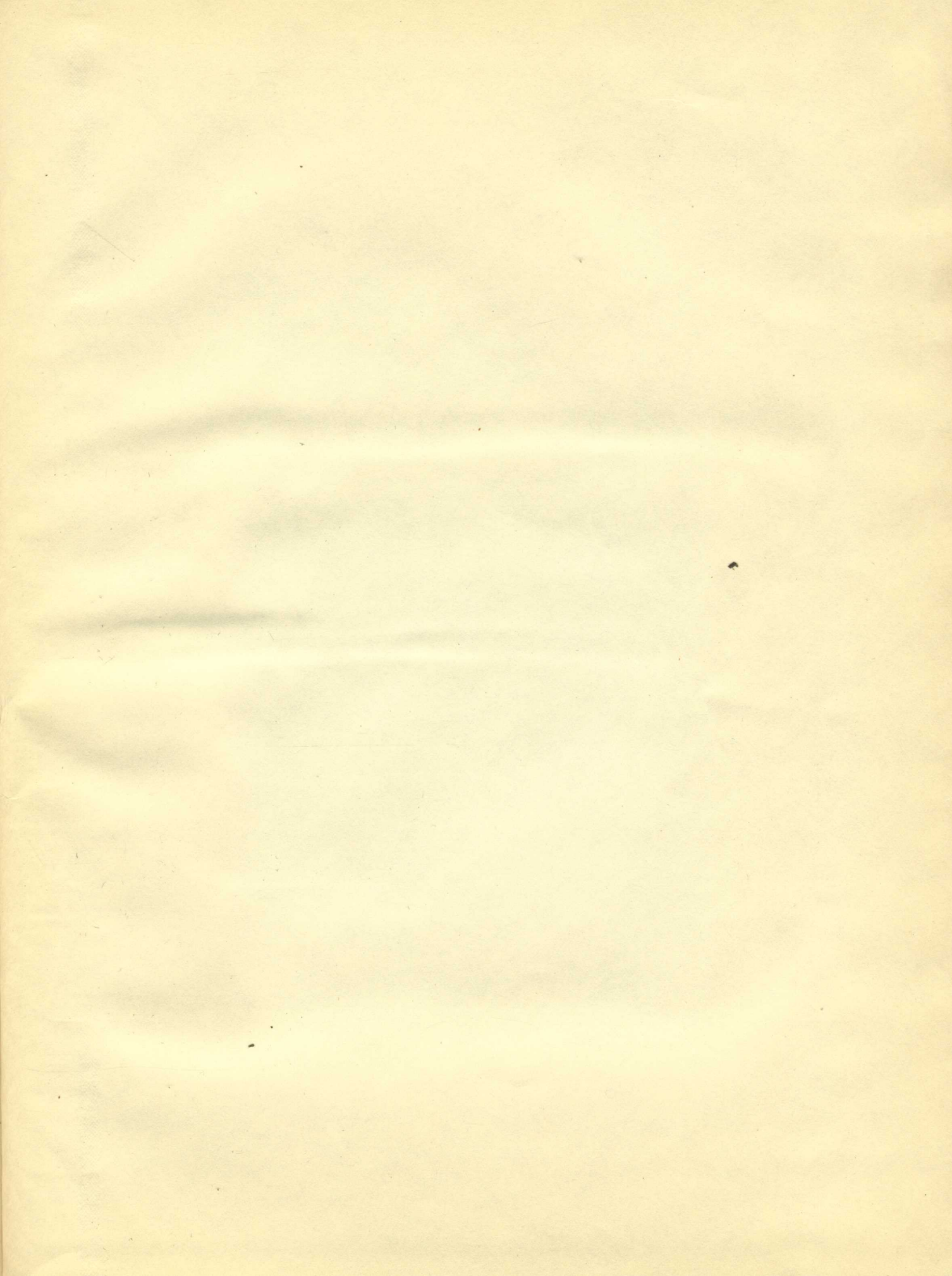
Soldier's Exemption in the sum of \$2,000.00.

Exemption to head of family in the sum of \$200.00.

These exemptions do not apply to taxes levied for Middle Rio Grande Conservancy District.













BOOK CARD  
CANCELLED

NOT TO  
LIBRARY

