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## Wyoming Defender Aid Program Annual Report 1968-1969

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University of Wyoming

College of Law

# LAND AND WATER LAW REVIEW

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## WYOMING DEFENDER AID PROGRAM ANNUAL REPORT 1968-1969

### I. INTRODUCTION

The purpose of the National Defender Project grant to the Wyoming Defender Aid Program, which is sponsored jointly by the Wyoming State Bar and the University of Wyoming College of Law, was to institute a demonstration program for a state-wide project, in an area typical of the Rocky Mountain and Great Plains states, for law student assistance to assigned counsel in rural areas and small cities, accompanied by increased education in criminal procedure and by research leading to the reform of criminal law and procedure.

The grant was for a three year period commencing June 1, 1965 and terminating May 31, 1968. This report covers the period from June 1, 1968 to May 31, 1969, the first fiscal year after the expiration of the pilot program, and proudly announces the success of that program as illustrated by the advances in legal assistance for both prosecution and defense, legal education, and legal research which occurred during the year.

This program was, and still is, primarily a law school program with almost full student participation. It operates in the city courts of Laramie, all Wyoming state courts, the United States District Court for the District of Wyoming which sits in Cheyenne and the United States Court of Appeals for the Tenth Circuit, which is located in Denver, Colorado.

### II. EDUCATION

#### A. Work in the School

The College of Law curriculum offers a three semester hour course in criminal law which is required study for first year students, a four semester hour course in constitutional law and a three semester hour course in evidence both of which

are required study for second year students, and a two semester hour course in criminal procedure which is optional study for third year students.

The course in criminal law features investigation and study of the sources and purposes of the criminal law, the substantive law relating to the crimes of most frequent incidence, and the defenses which negate criminal responsibility. Evidence includes the study of the means by which an alleged fact is established or disproved, including the competency of witnesses, their examination and privileges. It considers relevancy, the constitutional protections affecting evidence, the hearsay rule and its exceptions, opinion and scientific evidence, and instructs the student with respect to burden of proof.

Due to the current trend of United States Supreme Court decisions and the national awareness of the "crime in the street" problem the constitutional law course is an important tool utilized by the program. This course considers the problems and principles relating to judicial review by the United States Supreme Court in cases involving the constitution of the United States; the relationships involved in the federal system; the powers of Congress, the President and the states; and the scope and preservation of individual rights arising under the federal constitution.

One of the five major objectives listed in the 1965 application for the proposed Wyoming Defender Aid Program was that the College of Law would offer a course in criminal procedure. This course became a reality during the first year of the program. Today, this course, which is a study of the procedures in criminal cases from arrest through judicial review, with emphasis on the constitutional rights of the accused, provides the fulcrum which enables the program to utilize the tools acquired in the other courses described above.

### B. Work in the Field

One major purpose of the Wyoming Defender Program is to supply law student assistance to counsel appointed by any Wyoming court to defend an indigent accused of crime. As pointed out in the grant application Wyoming Statutes provide for assigned counsel for indigents accused of both misdemeanors and felonies as well as for indigents prosecuting appeals, those applying for statutory post-conviction relief and in proceedings leading to the involuntary hospitalization of mentally ill persons. There are no provisions for assignment of counsel in juvenile proceedings, revocation of probation

and parole, or in habeas corpus proceedings. Statutes provide a maximum sum which may be allowed assigned counsel (\$500 in a capital case, \$250 in other felonies and \$100 for misdemeanors). In appeals, statutory post-conviction proceedings, and mental proceedings, the court may by statute fix a reasonable fee; however, the tendency of the courts is to allow a very conservative amount for such services in line with the statutory maximums. One glaring weakness of our assigned counsel system is the fact that no provision is made for assigned counsel's out-of-pocket expenses.

On request of counsel assigned at any stage in any proceeding to represent an indigent the program director assigns a team composed of two law students, a senior and a junior, to perform whatever services assigned counsel may desire. The students make investigations, interview witnesses, take statements, check alibis, and in general perform such services as an employed investigator would perform for an attorney. The students also perform research at the pretrial as well as the appellate stage, prepare pleadings for the signature of assigned counsel, suggest defenses, and under Rule 18 of the Amended Rules Adopted by the Supreme Court of Wyoming Providing for the Organization and Government of the Bar Association of the Attorneys at Law of the State of Wyoming the senior student may participate in the actual trial of the case with the consent of the court, prosecutor and defense counsel. Since this aspect of the program requires considerable traveling on the part of the students, they are paid from program funds a per diem of \$10 per day and 8 cents per mile. During the period of this report law students traveled over 11,700 miles, approximately 1500 of which were traveled by air since one of the participating interns is a pilot. Where students are away from Law School for less than one day they are reimbursed for their actual expenses for meals. The entire law school faculty has cooperated in excusing those students participating in the program from class attendance when necessary.

The students are supervised by the project director as well as assigned counsel for whom they perform services, and each assigned counsel who uses the program is asked to comment on student performance and make suggestions. Such counsel have been very enthusiastic over the program and the quality of the services provided by the student assistants. In many instances students have been able to suggest tactics and defenses which had not occurred to assigned counsel. The students have, of course, obtained invaluable ex-

perience with respect to courtroom tactics, etiquette and procedure. This phase of the program has not only improved the quality of defense provided for indigent persons, but has also proved to be a learning experience for both students and practicing attorneys who have not had a chance to keep up with the latest developments in criminal procedure.

A second phase of the program extends the above described assistance to prosecuting attorneys in Wyoming. This extension came about as a result of a recommendation made by the advisory council at a meeting in October of 1966. During this fiscal year prosecutors have employed the students for investigation, research, assistance in preliminary hearings and trial work. The program worked closely with the Laramie City Attorney and handled several cases under his supervision in the Laramie Municipal Court.

Perhaps the most gratifying results of the program are derived from the efforts expended at the State Prison. Here the students are brought into direct contact with convicted felons. Whenever a prisoner claims to be incarcerated in violation of state or federal constitutional rights, two students are assigned to interview him and to make independent investigation in order to determine if there is arguable merit for his contentions. Meritorious claims are drafted into petitions for post-conviction or habeas corpus relief which are then filed in the proper court. After the assignment of counsel, the students follow up as trial assistants and often take part in hearings and arguments on motions as allowed under the aforesaid Rule 18.

### C. Specific Accomplishments of the Program

With respect to accomplishments, many prosecutors, defense attorneys and judges have indicated that the mere fact that the services outlined above are available to indigents has resulted in fairer treatment over the entire state to indigents accused of crime. Initially, a few prosecutors had some reservations about the program; however, it is believed that most of them now realize that program involvement generally leads to more equitable convictions in such cases and that once a conviction is obtained more likely than not they will not be called upon to uphold the conviction in a subsequent post-conviction proceeding.

During the 1968-1969 year there was enthusiastic participation in the program by members of both the senior and junior classes. Of necessity, the work load of each student varies in accordance with type of case, stage of proceedings,

time available, and the like. During the summer of 1968 the program was participated in by five full time students, who were thus able to handle a great deal more more work than is possible during the regular school year.

Students are rewarded for their participation not only through the education and clinical experience they receive from the program, but also from the tremendous personal satisfaction they experience in helping those in dire need of assistance. One of the numerous examples of this is illustrated by the case where an attorney contacted the program for assistance in a matter where his client was charged with first degree murder. An extensive investigation conducted by the program revealed that the killing was in self defense as a result of which the murder charges were dismissed. Several other criminal proceedings, all of which the program participated in by assisting assigned counsel, proved to be rewarding to the student interns involved. In one case the interns traveled to Colorado to investigate the facts and as a result the client was able to plead guilty to a misdemeanor rather than face a burglary charge. In other cases our clients have been charged with a lesser offense than that originally contemplated.

Two original criminal cases were appealed during this fiscal year. The case of *Owens v. State of Wyoming* was argued by the program director on May 29, 1969 before the Wyoming Supreme Court and although the Court dismissed the appeal, the spirit of the program was not dampened. Currently, we are in the process of filing a petition on behalf of Owens for a writ of habeas corpus with the United States District Court in Cheyenne. The second case, namely, *Wright v. State of Wyoming* involving the ubiquitous problem of narcotics, was appealed late in the fiscal year and will come up for oral argument this fall. There are presently ten original criminal proceedings at the trial court level pending in the state courts in which the program is assisting assigned counsel. These cases, together with the increasing number of requests for assistance by counsel, are factors which hopefully will insure a successful fifth year for the program.

As indicated above the second phase of the program extends student assistance to prosecuting attorneys in Wyoming. This aspect of the program has not been utilized to the degree anticipated. However, the County Attorney's who have been assisted have been generous in their praise of both the program in general and the students in particular. One very worthwhile experience in assisting prosecutors resulted from

student participation in *State of Wyoming v. Lentz*, a case involving the issue of negligent homicide. The student interns who were present at the trial, which lasted four days, aided in the selection of the jury, examination of witnesses, determination of trial strategy, participated in "in chamber" discussions, and conducted extensive legal research for the prosecutor both before and during the trial. The jury, after deliberating thirteen and one-half hours found Lentz guilty of negligent homicide.

It is hoped that this phase of the program will be utilized to a greater extent during the program's fifth year since the *Lentz* case proved that student assistance to prosecuting attorneys can be beneficial to both the prosecutor and the participating students.

The diligent work of the student interns during the first three years of the project almost depleted one source of the program's case load, namely, post-conviction relief for the inmates of the State Penitentiary at Rawlins. The number of prisoners seeking such relief steadily declined during the pilot years of the program since the number of new inmates could not keep pace with the program's review of the inmates' requests for relief. A summary of these statistics reveals the following:

*Number of Requests for Post-Conviction Relief:*  
1965-1966 = 68; 1966-1967 = 47; 1967-1968 = 32

*Number of Requests Reviewed and Rejected:\**  
1965-1966 = 53; 1966-1967 = 35; 1967-1968 = 21

\*Note: As a matter of interest, it has been reported to the program that even a request which is reviewed and rejected has some beneficial effects on prison morale since it gives inmates the satisfaction of knowing that they are not incarcerated as a result of a legal error.

However, equally diligent work on the part of student interns last year in the area of detainers served to activate this field for the inmates and thus insured that the prison will continue as the main source of new cases, at least for another year.

In marked contrast to the above statistics a look at the attached Appendix A illustrates that the number of requests for relief from prisoners increased by exactly 100 percent in 1968-1969 (64 requests) as compared to 1967-1968. At the same time the number of requests reviewed and rejected increased only by approximately one-half, from 21 to 32. This difference in statistics can be explained by the success the

program experienced in having detainers on many of the inmates dismissed. This success is best shown in connection with one inmate at Rawlins who had nine detainers against him when he first sought assistance from the program. Since that time five of the detainers have been dismissed due to our efforts, three are still pending and the dismissal of one has been denied. The refusal of the county attorney (in another state, incidentally) to dismiss said detainer has set in motion the wheels for demanding a speedy trial. Student interns are strongly motivated in attacking detainers since generally they feel that this oft-times informal device infringes on the constitutional rights of inmates. This is an area where much remains to be done in the state legislatures and courts of our nation.

The Wyoming Defender Aid Program will record another first on July 9, 1969 when its director will argue the case of *Whiteley v. State of Wyoming* in the United States Court of Appeals for the Tenth Circuit. The program has been involved in this case from the appeal to the Supreme Court of Wyoming in the original proceeding to date, and hopes to clarify the law in Wyoming with respect to probable cause.

The program has a second case which is presently at the appellate stage in its quest for post-conviction relief, namely, *Albert v. State of Wyoming*, which will be heard by the Wyoming Supreme Court this fall. One of the main issues involved in this case is whether petitioner is entitled to a transcript of his trial proceedings in 1955. The program feels this issue is of paramount importance to indigents in Wyoming since the review of a case in post-conviction proceedings without the transcript of the trial is of little, if any, value.

### III. RESEARCH

The work begun in 1964 by the Permanent Rules Advisory Committee to the Supreme Court of Wyoming in considering the desirability of proposing the adoption by the Supreme Court of a new set of rules patterned on the Federal Rules of Criminal Procedure resulted in the creation of a sub-committee to study and prepare draft rules of criminal procedure. For the first two years of the program the Director participated as a full time member and for the third year as an unofficial member of this sub-committee. Under the Director's supervision the students made worthwhile contributions to the sub-committee's work. In September, 1967, the Permanent Rules Advisory Committee approved the final draft of the proposed Rules and the Wyoming State Bar at

its annual convention recommended their adoption by the Supreme Court. The Wyoming Rules of Criminal Procedure were adopted by the Court on November 21, 1968 and became effective on February 11, 1969.

Since these rules superseded more than 125 statutes of the Wyoming Statutes, 1957, and resulted in some extensive changes in Wyoming's criminal procedure, both in court and without, it was felt that the bench, bar and law enforcement agencies of Wyoming could benefit from an institute in which these new procedures could be reviewed at length during a two day series of lectures, discussions and a mock courtroom demonstration. As a result the College of Law together with the Public Administration Services of the University of Wyoming co-sponsored such an Institute in February, 1969. It was generally conceded by the participants to be an overwhelming success.

The aforementioned Rules and Institute completed the last two of the five major features of the program as described in the 1965 application to the National Defender Project. The first three features listed in the application were completed during the period the pilot program was still in effect. Today the Wyoming State Bar uses the College of Law as the center for criminal justice in the state, and the College extends its resources of faculty, students and library to the remotest corners of Wyoming, trains its students in the realities and practicalities of criminal law, receives data and information furnished from throughout the state, and inspires reform and improvement in the criminal law. The principal agency utilized by the College to achieve these tasks has been the Wyoming Defender Aid Program.

The program has available for members of the bench, bar and law enforcement agencies prepared memos on many important aspects of criminal law. These memos, drafted by students under the direction of the director or assigned counsel, have generally been prepared to meet the demands of a particular case. At present, our law memo file is quite extensive.

Another service which the program feels is much needed and which it would like to provide is the publication of a bi-monthly newsletter, addressed to the law enforcement agencies in the state, and possibly the bench and bar, as well. The newsletter would contain training bulletins based on recent court decisions from throughout the United States, legislative enactments, and other changes in the law which directly

affect the administration of criminal justice. Presently the program is looking for a way to finance such a service and if the means are made available to above plan will soon become a reality.

### CONCLUSION

Fiscal year 1968-1969, the first year of operation after the expiration of the pilot program, was not only a busy and productive year, but one which completely justified the faith of the National Defender Project as well as the Wyoming State Bar and the College of Law in such an experiment. The program attained all the goals it set out to accomplish and the Dean of the College of Law, the Director of the program and the students all have high hopes for the future.

A small balance of the funds from the original grant remained at the end of the pilot period, and the program was able to operate during this entire year without the expenditure of additional funds. The Wyoming State Legislature recognized the merit in the program and appropriated sufficient funds to keep the project in operation for another two years.

The outlook for the next year is very optimistic. The student interns continue to be enthusiastic and to seek the practical, clinical experience which this program offers. The June 1, 1969 case load, together with the number of cases opened in June, alone, indicate that the 1969-1970 fiscal year will continue to set records for the program.

Respectfully submitted,  
William J. Knudsen, Jr.  
DIRECTOR

June 30, 1969

*APPENDIX A*

## STATISTICS—JUNE 1, 1968 - MAY 31, 1969

*I. CASE LOAD**A. Number of Matters and Cases*1. *District Court and Appellate Court*

Open Files as of June 1, 1968 .....	16
Files Opened Between June 1, 1968 - May 31, 1969 ..	110
Open Files as of May 31, 1969 .....	28
Files Closed Between June 1, 1968 - May 31, 1969 .....	98

2. *Municipal Court of City of Laramie*

Cases Prosecuted .....	12
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TOTAL MATTERS AND CASES HANDLED .....	138
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*B. Breakdown of Assistance Furnished*

1. Assistance Furnished Assigned Counsel .....	31
2. Assistance Furnished Prisoners Seeking Post-Conviction and Other Relief .....	64
3. Assistance Furnished Prosecuting Attorneys:	
(a) In District Courts .....	2
(b) In Municipal Courts .....	12
4. Miscellaneous Requests for Assistance .....	29

TOTAL MATTERS AND CASES HANDLED .....	138
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*II. NATURE OF MATTERS AND CASES HANDLED**A. Crimes*

Arson .....	1
Breach of Peace .....	1
Breaking and Entering .....	2
Burglary .....	14
Criminal Negligence .....	1
Escape .....	1
Forgery .....	12
Grand Larceny .....	5
Kidnapping .....	1
Mail Fraud .....	1
Miscellaneous Criminal Matters .....	9
Municipal Code Violations .....	12
Murder .....	2
Narcotics .....	8

1970	WYOMING BAR PROCEEDINGS	251
	Negligent Homicide .....	2
	Rape .....	4
	Receiving Stolen Goods .....	1
	Robbery .....	4
	Sodomy - Murder .....	1
	Welfare Fraud .....	1
 <i>B. Other Matters</i>		
	Detainers .....	23
	Extradition .....	1
	Miscellaneous Requests for Assistance .....	29
	Parole Violation .....	2
	<b>TOTAL MATTERS AND CASES HANDLED .....</b>	<b>138</b>

### III. DISPOSITION OF MATTERS AND CASES

<i>A. Post Conviction Proceedings</i>		
	Post Conviction Relief Reviewed and Rejected .....	32
	Post Conviction Relief Filed .....	1
	Post Conviction Relief Cases Appealed .....	2
	Post Conviction Relief Files Under Consideration .....	8
 <i>B. Detainers</i>		
	Detainers Successfully Dismissed .....	12
	Detainers Continued in Effect By Prosecution .....	4
	Detainers Under Consideration .....	10
 <i>C. Original Criminal Proceedings</i>		
	Original Criminal Proceedings Terminated .....	14
	Original Criminal Proceedings Pending .....	10
	Appeal of Original Criminal Proceedings Filed .....	2
 <i>D. Prosecutions</i>		
	Prosecution Cases Successfully Terminated .....	14
	Prosecution Cases Pending .....	0
 <i>E. Other Matters</i>		
	Miscellaneous Requests for Assistance .....	29
	<b>TOTAL MATTERS AND CASES HANDLED .....</b>	<b>138</b>

*APPENDIX B*

WYOMING DEFENDER PROJECT FINANCIAL  
STATEMENT FOR THE PERIOD JUNE 1, 1968 TO  
MAY 31, 1969

*RECEIPTS*

Balance, June 1, 1968 .....\$3,806.13

*DISBURSEMENTS*

Expenses from June 1, 1968 to May 31, 1969

Director's Expense .....	\$ 94.40
Student Expense .....	844.87
Telephone Expense .....	429.73
Supplies and Miscellaneous .....	44.75
	<u>\$1,413.75</u>

TOTAL DISBURSEMENTS .....\$1,413.75

Balance, May 31, 1969 .....\$2,392.38