

Special Report

**West Virginia Prosecuting
Attorneys Institute**

**The West Virginia Prosecuting Attorneys Institute
Resubmitted Unsupported Modified Time Sheets
In An Attempt to Increase Its Federal Grant
Reimbursements By \$8,107 for July and
August 2004**

**The Former Executive Director of the West
Virginia Prosecuting Attorneys Institute
Abused His State Issued Wireless Phone.**



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May 15, 2005

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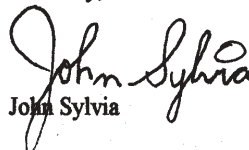
Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Special Report on the West Virginia Prosecuting Attorneys Institute, which will be presented to the Joint Committee on Government Operations on Sunday, May 15, 2005. The issues covered herein are "The West Virginia Prosecuting Attorneys Institute Resubmitted Unsupported Modified Time Sheets In an Attempt to Increase Its Federal Grant Reimbursements by \$8,107 for July and August 2004;" and "The Former Executive Director of the West Virginia Prosecuting Attorneys Institute Abused His State Issued Wireless Phone."

We transmitted a draft copy of the report to the West Virginia Prosecuting Attorneys Institute on May 9, 2005. We held an exit conference with the Institute on May 9, 2005. The Institute did not provide a written response. We transmitted a draft copy of Issue 1 to the Division of Criminal Justice Services on May 10, 2005. We held an exit conference with the Division on May 10, 2005. We received a response from the Division on May 11, 2005.

Let me know if you have any questions.

Sincerely,


John Sylvia

JS/wsc

Joint Committee on Government and Finance

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Executive Summary

Issue 1: The West Virginia Prosecuting Attorneys Institute Resubmitted Unsupported Modified Time Sheets In An Attempt to Increase Its Federal Grant Reimbursements By \$8,107 for July and August 2004.

The United States Department of Justice awarded the federal Edward Byrne Memorial State and Local Assistance Grant to the West Virginia Division of Criminal Justice Services as part of the Drug and Violent Crime Control Grant Program. The West Virginia Prosecuting Attorneys Institute applied in writing to the Division of Criminal Justice Services for funding from the federal Byrne Grant. The most recent federal Byrne Grant cycle began on July 1, 2004, and provided funding solely for the prosecution of cases involving elder abuse and training on elder abuse prosecution. The intention of the Division of Criminal Justice Services with the current grant cycle is to reimburse the Prosecuting Attorneys Institute up to 90% of the salary of one assistant prosecutor used for cases that fall within the guidelines of the Byrne grant.

In 2003 and 2004, the Legislative Auditor's Post Audit Division conducted a post audit of the West Virginia Prosecuting Attorneys Institute. During the July 2004 Legislative interim meetings, the Post Audit Division issued a memo to the Legislative Post Audit Committee raising concerns regarding the usage of the Byrne grant funds. The Legislative Auditor was concerned that the federal grant funds had been used by the Prosecuting Attorneys Institute for cases that did not fall within the guidelines of the previous grant limiting the grant funds for use on domestic violence, sexual assault, and juvenile delinquency. When questioned whether the Prosecuting Attorneys Institute had appropriately used the federal grant funds for only domestic violence, sexual assault, and juvenile delinquency, the Executive Director of the West Virginia Prosecuting Attorneys Institute informed the Legislative Auditor on June 17, 2004:

The Institute has historically taken a liberal interpretation of the Byrne grant requirements to find ways to provide assistance, upon request, to the underfunded and understaffed county prosecutor offices.

The Division of Criminal Justice Services responded by stating that:

The Division never intended a liberal interpretation of what constituted a domestic violence, sexual assault or juvenile delinquency case, nor communicated such intent to the

Prosecuting Attorneys Institute.

As a result of the Legislative Auditor's Office Post Audit report, the Division of Criminal Justice Services immediately took action to ensure that federal grant funds were spent appropriately in the future. Prior to entering into the new cycle for the federal grant which began on July 1, 2004, the Division of Criminal Justice Services developed a new time sheet to be used by the Prosecuting Attorneys Institute in order to have better oversight on the types of cases that were to be worked on and paid for through grant funds.

In November 2004, the director of the Division of Criminal Justice Services contacted the Legislative Auditor with concerns regarding the July and August time sheets that had been submitted to the Division. In October 2004, the Division of Criminal Justice Services had received the July and August 2004 monthly reports from the Prosecuting Attorneys Institute. The original July time sheet reported 85 hours of work. However, after reviewing the time sheet, the Division of Criminal Justice Services determined that only 40 hours of the work submitted actually qualified for reimbursement according to the terms of the federal Byrne sub grant. Therefore, based on 176 possible work hours for a state employee during July 2004, this amounts to 23% reimbursement of the assistant prosecutor's salary and benefits. Similarly, the original August 2004 monthly report with the time sheet reported 60 hours of work. However, after reviewing the August time sheet submitted by the Prosecuting Attorneys Institute, the Division of Criminal Justice Services determined that only 45 hours were within the parameters of the grant. Based on a possible 176 hours for a state employee during August 2004, this amounts to 26% reimbursement of the assistant prosecutor's salary and benefits.

The Institute was then informed by the Division of Criminal Justice Services that based on the submitted time sheets, 90% of the assistant prosecutor's salary could not be reimbursed.

...the second set of time sheets submitted by the Prosecuting Attorneys Institute increased the number of hours worked on cases which the Institute claimed to be covered by the federal grant from 40 hours to 176 hours...

The Institute was then informed by the Division of Criminal Justice Services that based on the submitted time sheets, 90% of the assistant prosecutor's salary could not be reimbursed. According to the Division of Criminal Justice Services, a conference call with Prosecuting Attorneys Institute staff commenced on November 4, 2004, and it was clearly communicated that the Assistant Prosecuting Attorney must work at least 90% of monthly hours on approved cases in order to receive full reimbursement of 90% of his salary and benefits. The following day the Prosecuting Attorneys Institute submitted amended time sheets for July and August 2004. Both amended time sheets significantly increased time attributed to work on the cases that were within the grant agreement. For July 2004, the Assistant Prosecuting Attorney originally submitted a time sheet totaling 85 work hours. Moreover, the second set of time sheets submitted by the Prosecuting Attorneys Institute increased the number of hours worked on cases which the Institute claimed to be covered by the federal grant from 40 hours to 176 hours, including 8 hours for the July 4th

... the amended time sheet submitted by the Prosecuting Attorneys Institute increased the number of hours worked on cases which the Institute claimed to be covered by the federal grant from 45 hours to 176 hours...

holiday. Thus, the Prosecuting Attorneys Institute's submission of the modified reimbursement request was an attempt to increase the federal grant reimbursement for work done in July 2004 from \$1,244 to the maximum reimbursement amount allowed.

On the August 2004 time sheet, the Assistant Prosecuting Attorney originally submitted 60 work hours. Moreover, the amended time sheet submitted by the Prosecuting Attorneys Institute increased the number of hours worked on cases which the Institute claimed to be covered by the federal grant from 45 hours to 176 hours. Thus, the Prosecuting Attorneys Institute's submission of the modified reimbursement request was an attempt to increase the federal grant reimbursement for work done in August 2004 from \$1,385 to the maximum amount allowed.

The Legislative Auditor concluded that the amended time sheets must be incorrect by analyzing other documents either signed by the Assistant Prosecuting Attorney as being true and correct or accurate, and by documents written by the Assistant Prosecuting Attorney. The 3 types of documents were: travel expense reimbursement forms submitted by the Assistant Prosecuting Attorney for July and August 2004 travel, which were signed as being accurate; the Prosecuting Attorneys Institute's Daily Time Records for July and August 2004, which were signed as being true and correct; and documents from the Assistant Prosecuting Attorney's computer, which were last modified during July and August 2004.

The Legislative Auditor concluded that the amended time sheets must be incorrect by analyzing other documents either signed by the Assistant Prosecuting Attorney as being true and correct or accurate, and by documents written by the Assistant Prosecuting Attorney.

Travel Reimbursement Forms: The Legislative Auditor obtained from the State Auditor's Office the July and August 2004 travel expense reimbursement forms for the Assistant Prosecuting Attorney. The travel documents show cases that did not fall within the parameters required in the grant, although amended time sheets and the daily time record show that the maximum full-time work was conducted on grant related cases. Thus, the question of the accuracy of the amended time sheets is further raised.

Daily Time Records: The Legislative Auditor's Office also examined the possibility that some of the changes in the amended time sheets might be explained by the Assistant Prosecuting Attorney working overtime. The Legislative Auditor's Officer analyzed the Daily Time Records from 13 months preceding and 2 months following the July and August 2004 records. Daily Time Records show that the Assistant Prosecuting Attorney denoted when he worked overtime hours in the months before and after the months in question. The Legislative Auditor concludes from this analysis that the pattern of behavior

when filling out the daily time records is that overtime hours are claimed. Thus, when reviewing July and August 2004, and no hours are claimed, the Legislative Auditor's Office conclusion is that overtime hours were not worked by the Assistant Prosecuting Attorney in the months of July and August 2004 since no overtime hours are shown on the daily time records for these months.

The Legislative Auditor found 31 documents on the CD-R that were last modified in July and August 2004.

The Assistant Prosecuting Attorney's work documents: The staff from the Prosecuting Attorneys Institute provided the Legislative Auditor with a disc containing a copy of the contents of the "My Documents" folder from the Prosecuting Attorneys Institute's computer formerly assigned to the Assistant Prosecuting Attorney. The Legislative Auditor found 31 documents on the CD-R that were last modified in July and August 2004. Of the 31 documents, **16 were documents related to cases not included on the amended submission for July and August 2004.** Of those 16 documents, 5 were documents pertaining to cases that were specifically not approved to be reimbursed by the Division of Criminal Justice Services. The Legislative Auditor was unable to determine whether the remaining 11 would be approved for reimbursement. The majority of these documents were dated correspondence regarding these cases. Thus, the conclusion can be made that these documents were created and worked on close to the date and time last modified. Alternatively, while these documents may have been located on the Assistant Prosecuting Attorney's computer, it does not necessarily mean that he worked on the documents. But, several of the documents such as sentencing orders state that they were prepared by the Assistant Prosecuting Attorney, and there was no indication on the bottom of the documents that it was prepared by a secretary or paralegal.

The Legislative Auditor cannot determine whether the amended set of submitted time sheets were intentionally falsified or just a result of poor record keeping.

The Legislative Auditor concludes that the amended time sheets must be incorrect. The Legislative Auditor cannot determine whether the amended set of submitted time sheets were intentionally falsified or just a result of poor record keeping. While poor record keeping may be the cause for the discrepancy in the amended time sheets, the Prosecuting Attorneys Institute's conflicting documentation gives the appearance that the Prosecuting Attorneys Institute intentionally misrepresented the amended time sheets in order to receive full reimbursement for the Assistant Prosecuting Attorney's salary and benefits. While the Assistant Prosecuting Attorney is no longer employed with the Prosecuting Attorneys Institute, better time recording could have offered substantial proof of time spent on grant approved cases. In the opinion of the Legislative Auditor, upon receiving the letter from the division and the questions on usage of grant reimbursements in the Post Audit report, and the Prosecuting Attorneys Institute's Executive Director admitting in his June 28, 2004 letter that the Prosecuting Attorneys Institute "*simply needs to do a better job at record keeping,*" the Prosecuting Attorneys Institute **should** have immediately

enacted policy to keep detailed track of time spent on cases.

Issue 2: The Former Executive Director of the West Virginia Prosecuting Attorneys Institute Abused His State Issued Wireless Phone.

Through analysis, the Legislative Auditor was able to determine that 60% of calls placed on the Executive Director's wireless phone were for personal use...

In January 2005, the Legislative Auditor's Office began reviewing the former Executive Director's use of the wireless phone provided to him by the Prosecuting Attorneys Institute. The former Executive Director's state wireless phone records were obtained from the State Auditor's Office for the period beginning in August 2002 through April 2004. Through analysis, the Legislative Auditor was able to determine that **60% of calls placed on the Executive Director's wireless phone were for personal use**, while 28% of calls were determined to be work-related. The Legislative Auditor was unable to determine the remaining 12% of calls.

The total for all additional charges beyond the monthly payment plan for the twenty-one month period was \$1,082.75.

Analysis not only showed that the majority of calls from the former Executive Director's wireless phone were personal, but the former Executive Director abused the phone, in such a way that caused the monthly minute allowance to be exceeded, thus resulting in overcharges. Further, roaming charges were accumulated while on out of town business and personal trips. The total for all additional charges beyond the monthly payment plan for the twenty-one month period was **\$1,082.75**. This total includes total overtures for roaming and non-roaming incoming calls (\$196.07), overtures for roaming (\$580.87) and non-roaming (\$154.95) outgoing calls, voicemail calls that resulted in a charge (\$25.86), and text messaging (\$125). Even if all indeterminable outgoing calls were found to be work related, **it is the opinion of the Legislative Auditor that there is still a pattern of abuse of state resources**. In addition, according to the fiscal officer at the Prosecuting Attorneys Institute, the Executive Director never reimbursed the state for his personal use of his state wireless phone.

Recommendations

1. *The Legislative Auditor recommends that the Prosecuting Attorneys Institute enact policy requiring grant funded employees to maintain detailed time records including: a daily sign - in sheet or a time clock; detailed time sheets showing time spent working on Byrne grant cases broken down into 30 minute increments; and total time spent working on cases that do not fall within the parameters of the Byrne grant.*

2. *The Legislative Auditor recommends that the Executive Council of the Prosecuting Attorneys Institute should request that the former Executive Director reimburse the Institute for a minimum of \$345.43 in personal phone calls made from August 2002 through April 2004 on his state issued wireless phone. In addition, the Institute's Executive Council should request the former Executive Director to reimburse an additional \$588.30, for a total reimbursement of \$933.73, unless the former Executive Director can prove that the additional \$588.30 in charges were work related.*

Review Objective, Scope and Methodology

This Special Report of the Prosecuting Attorneys Institute is required and authorized by the the West Virginia Code §4-2-5 as amended. The report was initiated as a result of concerns brought to the attention of the Legislative Auditor by the Division of Criminal Justice Services regarding time sheets submitted by the Prosecuting Attorneys Institute for July and August 2004. Upon review of the time sheets, the Division had determined and informed the Institute that 90% of the assistant prosecutor's salary could not be reimbursed. As a result, the Institute resubmitted time sheets for July and August 2004 which increased the amount of work hours for the assistant prosecutor. This raised a red flag with the Division, and representatives contacted the Legislative Auditor in November 2004 to discuss their concerns. The Legislative Auditor thus began auditing the time sheets and all pertinent data which resulted in multiple issues, 2 of which are included in this report.

Objective

The objective of this review was to determine whether time sheets submitted to the Division of Criminal Justice Services for reimbursement through Byrne grant were falsified. As a result, the wireless phone records of former Executive Director of the Prosecuting Attorneys Institute were reviewed.

Scope

The scope of the report was from May 2003 - October 2004 for the issue regarding the former Assistant Prosecuting Attorney's time records. The focus of that issue was the July and August 2004 time sheets submitted to the Division of Criminal Justice Services, although daily time records for other months were used to determine whether overtime hours were recorded. The scope of the wireless phone records issue was from August 2002 - April 2004, which was the period of time that the former Executive Director was issued a wireless phone while an employee with the Prosecuting Attorneys Institute.

Methodology

Information used in compiling this report was gathered from the Prosecuting Attorneys Institute, the Division of Criminal Justice Services, and the West Virginia Auditor's Office. The methodology included interviews with staff from the Prosecuting Attorneys Institute and Division of Criminal Justice Services, compiling data provided by the agencies, including but not limited to travel data, wireless phone records, computer files, and Byrne grant time sheets submitted by the Prosecuting Attorneys Institute. Every aspect of this review complied with Generally Accepted Government Auditing Standards (GAGAS).

The West Virginia Prosecuting Attorneys Institute Resubmitted Unsupported Modified Time Sheets In An Attempt to Increase Its Federal Grant Reimbursements By \$8,107 for July and August 2004

The West Virginia Prosecuting Attorneys Institute Receives Federal Byrne Grant Funds from the Division of Criminal Justice Services.

Beginning July 1, 2000, the Prosecuting Attorneys Institute entered into a legal grant agreement with the West Virginia Division of Criminal Justice Services, with the Prosecuting Attorneys Institute being the grantee.

The United States Department of Justice awarded the federal Edward Byrne Memorial State and Local Assistance Grant to the West Virginia Division of Criminal Justice Services as part of the Drug and Violent Crime Control Grant Program. The West Virginia Prosecuting Attorneys Institute applied in writing to the Division of Criminal Justice Services for funding from the federal Byrne Grant. Beginning July 1, 2000, the Prosecuting Attorneys Institute entered into a legal grant agreement with the West Virginia Division of Criminal Justice Services, with the Prosecuting Attorneys Institute being the grantee. According to the terms of the grant, the Prosecuting Attorneys Institute was responsible for providing two assistant prosecutors and one paralegal to support West Virginia county prosecutors for specific types of cases during a four-year grant cycle.

The intention of the Division of Criminal Justice Services with the current grant cycle is to reimburse the Prosecuting Attorneys Institute up to 90% of the salary of one assistant prosecutor used for cases that fall within the guidelines of the Byrne grant.

The four-year federal grant cycle beginning on July 1, 2000 and ending on June 30, 2004 provided funding only for cases involving aspects of prosecution of domestic violence, sexual assault and juvenile delinquency. This limitation was clearly stated in the *Grant Contract Agreement* entered into by the Prosecuting Attorneys Institute with the Division of Criminal Justice Services. This grant cycle, focusing on domestic violence, sexual assault and juvenile delinquency, ended on June 30, 2004. The grant also provided funds for training criminal justice professionals throughout the State of West Virginia.

The most recent federal Byrne Grant cycle began on July 1, 2004, and provided funding solely for the prosecution of cases involving elder abuse and training on elder abuse prosecution. The intention of the Division of Criminal Justice Services with the current grant cycle is to reimburse the Prosecuting Attorneys Institute up to 90% of the salary of one assistant prosecutor used for cases that fall within the guidelines of the Byrne grant. The present *Grant Contract Agreement* entered into by the West Virginia Prosecuting Attorneys Institute and the Division of Criminal Justice Services specifically states:

WHEREAS, the DCJS is the recipient of a Drug Control and System Improvement Grant from the United States Department of Justice, and

*WHEREAS, the Grantee [the West Virginia Prosecuting Attorneys Institute] is an eligible applicant who is desirous of receiving funds. **Funds will provide ONLY for a statewide Elder Abuse Prosecution and Training Project.***

The *Grant Contract Agreement* was signed by the former Executive Director of the Prosecuting Attorneys Institute and the Director of the Division of Criminal Justice Services. However, on July 2, 2004, the Division of Criminal Justice Services agreed in writing to also reimburse the Prosecuting Attorneys Institute in the interest of justice for:

...all official current pending cases that originated under subgrant 03-DC-34, (the previous grant for prosecution of domestic violence, sexual assault and juvenile delinquency) - in which the Institute's assistant prosecutor was the official prosecutor of record for the case ...

Subsequently, on August 17, 2004, the Division of Criminal Justice Services approved allowing the Prosecuting Attorneys Institute to expend federal grant funds for 13 cases which the Institute was assisting outside the scope of the elder abuse limitations.

...as of July 1, 2004, the Prosecuting Attorneys Institute was limited to using the federal Byrne Grant solely for statewide elder abuse prosecution and training projects, with the exception of the 13 cases referenced above.

Thus, as of July 1, 2004, the Prosecuting Attorneys Institute was limited to using the federal Byrne Grant solely for statewide elder abuse prosecution and training projects, with the exception of the 13 cases referenced above. The Prosecuting Attorneys Institute was notified by the Division of Criminal Justice Services that elder abuse cases were defined as follows:

Elder abuse cases will be cases where the victim of a crime is over or equal to 65 years of age. The crimes included, but not limited to, are murder, manslaughter, forcible rape, robbery, aggravated assault, simple assault, intimidation, forcible sodomy, kidnaping, abduction as well as white collar crimes which have a financial impact on the elderly victim.

Legislative Auditor's Post Audit Division Raises Concerns About Cases Prosecuted With Federal Byrne Grant Funds

In 2003 and 2004, the Legislative Auditor's Post Audit Division conducted a post audit of the West Virginia Prosecuting Attorneys Institute. During the July 2004 Legislative interim meetings, the Post Audit Division issued a memo to the Legislative Post Audit Committee raising concerns regarding the usage of the Byrne grant funds. The Legislative Auditor was concerned that the federal grant funds had been used by the Prosecuting Attorneys Institute for cases that did not fall within the guidelines of the previous grant limiting the grant funds for use on domestic violence, sexual assault, and juvenile delinquency. A July 2004 Post Audit memo stated:

The Legislative Auditor was concerned that the federal grant funds had been used by the Prosecuting Attorneys Institute for cases that did not fall within the guidelines of the previous grant limiting the grant funds for use on domestic violence, sexual assault, and juvenile delinquency.

We were provided a list of cases that was prepared by the Institute. We also prepared a list of cases from the West Virginia Prosecuting Attorneys Monthly Activity Reports for the period July 1, 2001 through June 30, 2003. The [r]eports were submitted to the DCJS as support for reimbursement of salaries paid through the Byrne Grant. We were unable to determine the accuracy of either list because of the lack of information provided in the reports.

The Post Audit memo further stated that:

In many instances we were unable to determine whether the case involved domestic violence, sexual assault or a juvenile. Some of the cases we noted were first degree murder, second degree murder, felony plea, battery, probation revocation, harrassment, animal cruelty, and habeas corpus. We also noted several cases in which there was no indication of the type of case at all.

"The Institute has historically taken a liberal interpretation of the Byrne grant requirements..."
- former Executive Director

When questioned whether the Prosecuting Attorneys Institute had appropriately used the federal grant funds for only domestic violence, sexual assault, and juvenile delinquency, the former Executive Director of the West Virginia Prosecuting Attorneys Institute informed the Legislative Auditor on June 17, 2004:

The Institute has historically taken a liberal interpretation of the Byrne grant requirements to find ways to provide assistance, upon request, to the underfunded and understaffed county prosecutor offices. For example, most, if not all, criminal defendants have been adjudicated as juvenile delinquents. Moreover, most witnesses and/or victims have a

history of family violence. Since the Byrne grant relates to juvenile delinquency and domestic violence, the requirement of the funding source is met.

Subsequently on June 22, 2004, the Legislative Auditor asked the former Executive Director of the Prosecuting Attorneys Institute the following question:

Over the past four years, has the Prosecuting Attorneys Institute simply ignored the grant requirement and used the federal Byrne grant money to fund the Institute's operations for any and all cases for which the Prosecuting Attorneys Institute assisted county prosecutors?

The former Executive Director replied on June 28, 2004:

The answer is no.

As the recently concluded audit shows, the Institute simply needs to do a better job at record keeping... Beginning July 1, 2004, however, the Institute will begin documenting the style of the case, the nature of the action and how the case relates to the requirements of the grant by including this information in the grant funded position's monthly activity report...

The Institute has always complied with the provisions of the Byrne grant. This agency will continue to comply with the provisions of this, and every other, grant. I am confident any review will show nothing less.

“...there have been instances where cases have been handled which were outside of the parameters of the Byrne Grant...”
- former Executive Director

Because the post audit showed that the statement of the former Executive Director was not supported by the information on the cases on which federal grant funds had been expended, the Legislative Auditor informed the Prosecuting Attorneys Institute that, if necessary, he would send a Legislative staff attorney who was a former assistant county prosecutor to the appropriate county prosecutors offices to review the files of the cases in question. Subsequently, the former Executive Director sent a new letter on July 2, 2004, stating:

After an initial review of the cases handled and discussions amongst the Executive Council of the West Virginia Prosecuting Attorneys Institute, there have been instances where cases have been handled which were outside of the parameters of the Byrne Grant... We realize that we should

have exercised more care in reviewing which cases would be handled under this grant. On behalf of the Institute, we apologize for any problems this may have caused... With this letter I would ask that the letter previously sent on June 28, 2004 be withdrawn and this letter be considered instead.

In addition to criticizing the Prosecuting Attorneys Institute's handling of the federal grant funds, the Legislative Auditor's Office Post Audit Division memo also criticized the Division of Criminal Justice Services' lack of monitoring of the use of the federal Byrne grant funds.

In addition to criticizing the Prosecuting Attorneys Institute's handling of the federal grant funds, the Legislative Auditor's Office Post Audit Division memo also criticized the Division of Criminal Justice Services' lack of monitoring of the use of the federal Byrne grant funds. As a result of the Post Audit Division's findings concerning the Prosecuting Attorneys Institute's use of federal grant funds, the Division of Criminal Justice Services admitted weaknesses in monitoring the federal Byrne grant funds for this project. On June 29, 2004, the Director of the Division of Criminal Justice Services (DCJS) wrote the Legislative Auditor and stated:

*The monthly program reports for the PAI (Prosecuting Attorneys Institute) grant varied in style and content depending on the incumbent special prosecutor. Reference in the reports was generally by the style of the case (i.e. State vs Jones for example) or by a combination of style and county (i.e. the Jones case in Green county). Activities done on the case were stated (interview witnesses, file motions, trial, sentencing hearing, etc.) But the details of the connectivity to the grant were only rarely stated. This was an administrative oversight on the part of DCJS in not demanding specific information or a specific manner of reporting references to defendants' age for juvenile cases, relationship of defendant to victim, to determine domestic violence connections or the categorical nature of any case worked by the special prosecutor. **Our [grant] monitoring therefore could determine that the grant supported person was working, but was unable to determine whether the cases were appropriate to the intent of the grant.** This oversight on the part of DCJS will be addressed immediately to assure something of this nature does not occur in this sort of sub grant in the future. (Emphasis Added)*

While admitting that the Division's grant monitoring process had been inadequate, the Director of the Division of Criminal Justice Services went on to say in his June 29, 2004, letter:

*... the prosecuting attorneys [n]ever ask[ed] for advice on whether a particular case fit within the grant guidelines. **The Division never intended a liberal interpretation of what constituted a domestic violence, sexual assault or juvenile delinquency case, nor communicated such intent to the Prosecuting Attorneys Institute.** (Emphasis Added)*

...the Legislative Auditor finds that both agencies - the Prosecuting Attorneys Institute and the Division of Criminal Justice Services - were at fault for the administration of grant funds through June 30, 2004.

The Post Audit evidence shows the Prosecuting Attorneys Institute did not take the responsibility of following the Byrne grant guidelines seriously, dating back to at least July 1, 2001. However, the Legislative Auditor finds that both agencies - the Prosecuting Attorneys Institute and the Division of Criminal Justice Services - were at fault for the administration of grant funds through June 30, 2004. The Prosecuting Attorneys Institute was at fault for using grant funded prosecutors to work on cases not falling within the Byrne grant parameters and not properly documenting time and cases worked. The DCJS was at fault for not monitoring the reimbursement of grant funds to the Prosecuting Attorneys Institute properly and not requesting enough documentation as justification for reimbursement. **The difference between the two agencies, which will be discussed in detail below, is that the Division of Criminal Justice Services immediately attempted to correct its internal control weaknesses detailed in the Legislative Auditor's Office Post Audit Division memo.**

Division of Criminal Justice Services Changes Reporting Requirements in June 2004

As a result of the Legislative Auditor's Office Post Audit report, the Division of Criminal Justice Services immediately took action to ensure that federal grant funds were spent appropriately in the future.

As a result of the Legislative Auditor's Office Post Audit report, the Division of Criminal Justice Services immediately took action to ensure that federal grant funds were spent appropriately in the future. In a June 30, 2004, letter to the former Executive Director, the deputy director for programs at the Division of Criminal Justice Services clearly stated what information should be included in the monthly financial and progress reports. This information as quoted from the letter included:

- *Time sheet - Outlining **only** the number of hours worked within the scope of the grant. Attached to this time sheet there must be detailed backup information. This should consist of the number of hours worked each day, case names and information regarding the case which shows that it is directly linked to elder abuse.*

It should be noted that neither the former Executive Director nor the former Assistant Prosecutor are currently employed at the Prosecuting Attorneys Institute.

- *Financial Report and Request for Reimbursement - These documents should reflect your expenditures. Please note you may only request reimbursement for the number of hours that were worked related to the scope of the grant.*
- *Progress Report - This report should give a detailed, daily account of the assistant prosecutor, paralegal, training, etc.*

The Prosecuting Attorneys Institute provided no evidence that “detailed backup information” or a “detailed, daily account of expenditures” was completed by the assistant prosecutor. The former Assistant Prosecutor at the Prosecuting Attorneys Institute stated that he had not been informed of this letter. **It should be noted that neither the former Executive Director nor the former Assistant Prosecutor are currently employed at the Prosecuting Attorneys Institute.**

In November 2004, the Division of Criminal Justice Services Contacts the Legislative Auditor Because the Division Is Concerned with Accuracy of Time Sheets Submitted by the Prosecuting Attorneys Institute

Prior to entering into the new cycle for the federal grant which began on July 1, 2004, the Division of Criminal Justice Services developed a new time sheet to be used by the Prosecuting Attorneys Institute in order to have better oversight on the types of cases that were to be worked on and paid for through grant funds.

Prior to entering into the new cycle for the federal grant which began on July 1, 2004, the Division of Criminal Justice Services developed a new time sheet to be used by the Prosecuting Attorneys Institute in order to have better oversight on the types of cases that were to be worked on and paid for through grant funds. In the June 30, 2004 letter, from the deputy director for programs at DCJS to the former Executive Director, it was communicated that:

...No funds will be reimbursed to the WV Prosecuting Attorney’s [sic] Institute for cases or activities that do not reflect the current scope of the grant.

In addition to elder abuse cases, the Division later agreed for the grant to support 13 pending cases from the previous grant cycle.

In November 2004, the director of the Division of Criminal Justice Services contacted the Legislative Auditor with concerns regarding the July and August time sheets that had been submitted to the Division. In a letter dated November 23, 2004, the Director of the Division of Criminal Justice Services wrote the Legislative Auditor and stated:

In light of the events surrounding the WV Prosecuting Attorneys Institute (PAI) this past summer in relation to the administration subgrant 03-DC-34, the Division [of Criminal Justice Services] believed it to be imperative that this information be shared which is related to the new subgrant 04-DC-27, which began on July 1, 2004.

The original July time sheet reported 85 hours of work.

In October 2004, the Division of Criminal Justice Services had received the July and August 2004 monthly reports from the Prosecuting Attorneys Institute. The July 2004 monthly report was accompanied by a time sheet requesting 90% of the assistant prosecutor's salary. **The original July time sheet reported 85 hours of work. However, after reviewing the time sheet, the Division of Criminal Justice Services determined that only 40 hours of the work submitted actually qualified for reimbursement according to the terms of the federal Byrne sub grant.** Therefore, based on 176 possible work hours for a state employee during July 2004, this amounts to 23% reimbursement of the assistant prosecutor's salary and benefits.

Similarly, the original August 2004 monthly report with the time sheet reported 60 hours of work.

Similarly, the original August 2004 monthly report with the time sheet reported 60 hours of work. **However, after reviewing the August time sheet submitted by the Prosecuting Attorneys Institute, the Division of Criminal Justice Services determined that only 45 hours were within the parameters of the grant.** Based on a possible 176 hours for a state employee during August 2004, this amounts to 26% reimbursement of the assistant prosecutor's salary and benefits.

... 90% of the former Assistant Prosecutor's salary could not be paid based on the submitted time sheets for July and August 2004.

The Division of Criminal Justice Services contacted the Prosecuting Attorneys Institute by fax on November 1, 2004, to inform it that 5 cases were included on the time sheets that did not fall within the parameters of the grant, and that 90% of the former Assistant Prosecutor's salary could not be paid based on the submitted time sheets for July and August 2004. A request was then made to the Prosecuting Attorneys Institute to resubmit the requests excluding the cases not included in the grant. According to the Division of Criminal Justice Services, a conference call with Prosecuting Attorneys Institute staff regarding the fax commenced on November 4, 2004, and it was clearly communicated that the former Assistant Prosecutor must work at least 90% of monthly hours on approved cases in order to receive full reimbursement of 90% of his salary and benefits. The following day, the Prosecuting Attorneys Institute submitted via fax amended time sheets for July and August 2004. Both amended time sheets significantly increased time attributed to work on the cases that were within the grant agreement.

Both amended time sheets significantly increased time attributed to work on the cases that were within the grant agreement.

As shown in Table 1, for July 2004, the former Assistant Prosecutor originally submitted a time sheet totaling 85 work hours. Moreover, the second set of time sheets submitted by the Prosecuting Attorneys Institute increased the number of hours worked on cases that the Institute claimed to be covered by the federal grant from 40 hours to 176 hours, including 8 hours for the July 4th holiday. Thus, the Prosecuting Attorneys Institute's submission of the modified reimbursement request was an attempt to increase the federal grant reimbursement for work done in July 2004 from \$1,244 to the maximum reimbursement amount allowed. The maximum reimbursement for July 2004 was \$5,409 or 90% of the former Assistant Prosecutor's total salary and benefits, which was \$6,010.

As shown in Table 2, for August 2004, the former Assistant Prosecutor originally submitted 60 work hours. Moreover, the second set of time sheets submitted by the Prosecuting Attorneys Institute increased the number of hours worked on cases which the Institute claimed to be covered by the federal grant from 45 hours to 176 hours. Thus, the Prosecuting Attorneys Institute's submission of the modified reimbursement request was an attempt to increase the federal grant reimbursement for work done in August 2004 from \$1,385 to the maximum amount allowed. The maximum reimbursement for August 2004 was \$5,327 or 90% the former Assistant Prosecutor's total salary and benefits, which was \$5,919. It must be noted that the total salary and benefits for July 2004 is higher than August 2004 is because worker's compensation benefits are paid quarterly, and were paid in July 2004. Combining both months, submission of the modified monthly time sheets was an attempt by the Prosecuting Attorneys Institute to increase the federal grant reimbursement by \$8,107.

Combining both months, submission of the modified monthly time sheets was an attempt by the Prosecuting Attorneys Institute to increase the federal grant reimbursement by \$8,107.

Table 1
July 2004
Time Sheet Comparison for the
Former Assistant Prosecutor's Salary and Benefits
Which Were Submitted to Division of Criminal Justice Services

CASE	COUNTY	Original Submission Hours		Amended Submission Hours		DIFFERENCE b/n Original and Amended Hours	
State v. America	Harrison	10		0		-10	
State v. Waldron	McDowell	15		35		+20	
State v. Harrison	Preston	10		30		+20	
State v. Langford	Gilmer	15		0		-15	
State v. Jenkins	Gilmer	5		0		-5	
State v. Starcher	Roane	15		0		-15	
State v. Rush	Calhoun	15		25		+10	
State v. Keenan	Fayette	0		30		+30	
State v. Shamblin	Calhoun	0		25		+25	
State v. Blair	Marshall	0		23		+23	
July 4 th Holiday				8		+8	
		Total		Total		Total Difference	
		Hours	\$	Hours	\$	Hours	\$
		40*	\$1,382	176	\$6,010	136	\$4,628

Bold denotes cases approved by the Division of Criminal Justice Services as being grant related.

** Total only includes hours that were approved by the Division of Criminal Justice Services.*

Source: PERD Analysis from Prosecuting Attorneys Institute Original and Amended Time Sheets for July 2004

Table 2
August 2004
Time Sheet Comparison for the
Former Assistant Prosecutor's Salary and Benefits
Which Were Submitted to Division of Criminal Justice Services

CASE	COUNTY	Original Submission Hours		Amended Submissions Hours		Difference b/n Original and Amended Hours	
State v. Waldron	McDowell	10		20		+10	
State v. Keenan	Fayette	10		30		+20	
State v. Rush	Calhoun	10		15		+5	
State v. Jenkins	Gilmer	5		0		-5	
State v. Davis	Putnam	5		10		+5	
State v. Harrison	Preston	10		25		+15	
State v. Blair	Marshall	10		5		-5	
State v. Shamblin	Calhoun	0		15		+15	
Sick Leave		0		24		+24	
Annual Leave		0		32		+32	
		Total		Total		Total Difference	
		Hours	\$	Hours	\$	Hours	\$
		45*	\$1,539	176	\$5,919	131	\$4,380

Bold denotes cases approved by the Division of Criminal Justice Services as being grant related.

** Total only includes hours that were approved by the Division of Criminal Justice Services.*

Shaded rows equal cases added on the amended time sheet submission.

Source: PERD Analysis from Prosecuting Attorneys Institute Original and Amended Time Sheets for August 2004

Table 3 Total Differences in July and August 2004 Time Sheets Which Were Submitted to Division of Criminal Justice Services								
Original Time Sheets			Amended Time Sheets			Differences		
Hours	Dollar Amount	90%*	Hours	Dollar Amount	90%*	Hours	Dollar Amount	90%*
85	\$2,921	\$2,629	352	\$11,929	\$10,736	267	\$9,008	\$8,107
*90% is the amount reimbursed by Division of Criminal Justice Services								
Source: PERD Analysis from Prosecuting Attorneys Institute Original and Amended Time Sheets for August 2004								

The updated time sheets increased hours worked on cases from the previous time sheet and also included additional cases.

“The Division did not tell, imply or infer to the PAI (Prosecuting Attorneys Institute) that cases and/or time shall or should be added to the resubmitted time sheets for July and August 2004.”

-Division of Criminal Justice Services

The updated time sheets increased hours worked on cases from the previous time sheet and also included additional cases. On December 3, 2004, the Division of Criminal Justice Services (DCJS) informed the Legislative Auditor that:

DCJS questions the accuracy of all time sheets due to the significant increase in hours and as well as some cases being added. . .

*The Division of Criminal Justice Services did concur with a resubmission of July and August 2004 time sheets but that was based solely on the original submissions being incorrect because of the inclusion of cases not paid by the subgrant. **The Division did not tell, imply or infer to the PAI (Prosecuting Attorneys Institute) that cases and/or time shall or should be added to the resubmitted time sheets for July and August 2004.***

As you are already aware, the Division has a firm grasp on the monitoring of this important project to ensure only approved cases are supported by Federal funds. The Division has accepted and will process the July and August 2004 reports based on the original time sheet submissions and not the resubmitted versions.

As a result of the July and August inconsistencies, the Division of Criminal Justice Services revised the time sheet for clarity, and it was to be used starting with the September 2004 submission of time. On January 25, 2005, the Division of Criminal Justice Services informed the Legislative Auditor that:

The Division has not processed monthly reports for September 2004 through December 2004, and the

Division's confidence in the accuracy of the new time sheets for these months remains a concern.

Legislative Auditor Seeks Explanation From the Former Assistant Prosecutor

As a result of receiving the information from the Division of Criminal Justice Service, the Legislative Auditor scheduled a meeting with representatives from the Prosecuting Attorneys Institute to inquire about the time sheets. The assistant prosecuting attorney, whose time sheets were in question, as well as the chairperson for the Prosecuting Attorneys Institute's Executive Council were present for the meeting. In addition, 2 staff members of the Legislative Auditor's Performance Evaluation and Research Division and an audit manager from the Legislative Auditor's Post Audit Division also attended.

At the beginning of the meeting, the former Assistant Prosecutor was advised by the Executive Council Chair to not speak about the situation, although the former Assistant Prosecutor eventually did discuss the situation. It must be noted that representatives of the Prosecuting Attorneys Institute refused to sign the notes or documents of the Legislative Auditor which would ensure reporting accuracy. The former Assistant Prosecutor attributed the situation to "sloppy record keeping," stating that he "only took five minutes to fill out the first time sheet." He further explained that he was not aware or was simply confused about which cases should or should not have been listed on the time sheets. In addition, he stated that the original time sheet hours were underreported and that in resubmitting the amended time sheets a "good faith" effort was made in estimating the approximate hours worked. The Prosecuting Attorneys Institute did not keep records of days or time worked within the office. When asked whether the office had a daily sign-in sheet, the former Assistant Prosecutor responded by saying that, "He was a professional," and didn't have to maintain those records. The former Assistant Prosecutor produced newspaper clippings, and letters written, which in no way show the amount of time spent working. The Legislative Auditor can not determine the time it would take to work on these particular projects. The chairperson of the Prosecuting Attorneys Institute's Executive Council stated that the actual time spent on cases could possibly be rebuilt.

The former Assistant Prosecutor attributed the situation to "sloppy record keeping," stating that he "only took five minutes to fill out the first time sheet."

The Legislative Auditor questions how an individual could "forget" to include 78 hours or 46% of work for the month.

Questions must be raised about the reporting of the time sheets. For example, 3 major cases consisting of 78 hours of reported work were omitted from the original July 2004 submission, one of which - State vs. Keenan - was a murder case. The Legislative Auditor questions how an individual could "forget" to include 78 hours or 46% of work for the month.

State Auditor's Office Travel Expense Documents Conflict with Prosecuting Attorneys Institute Time Sheets

The Legislative Auditor obtained the travel expense reimbursement forms for the former Assistant Prosecutor from the State Auditor's Office for July and August 2004. The goal was to match the former Assistant Prosecutor's travel with work that was claimed on the time sheets. The travel reimbursement documents show that the former Assistant Prosecutor submitted and was approved for travel to the locations as shown in Table 4. The purpose of travel was listed on all travel expense forms by the former Assistant Prosecutor as "prosecuting cases." No other information was listed, and only the date of travel was listed. The time of travel was left blank.

Table 4 Travel for the Former Assistant Prosecutor July and August 2004				
Date (2004)	City	Included on original time sheet submission	Included on amended time sheet submission	Case*
July 1	Clarksburg			
July 6 & 8	Glenville	Yes	No	Langford, Jenkins
July 9	Spencer	Yes	No	Starcher
July 14	Welch	Yes	Yes	Waldron
July 30	Clarksburg	Yes	No	America?
August 12	Clarksburg	No	No	Law
August 25	Morgantown			Blair - Stayed Overnight
August 26	Morgantown - New Martinsville	Yes	Yes	Blair
*Grant approved cases are in bold				
<i>Source: WV State Auditor's Office, Prosecuting Attorneys Institute</i>				

As shown in Table 4, the only travel in July that matched grant approved cases on the amended time sheets was the July 14, 2004, trip to Welch. In August, the trip on August 26, 2004 to New Martinsville was for a grant approved case - State v. Blair. This trip included an overnight stay in Morgantown, and no hotel stay was charged for the trip. The amended time sheet only stated 5 hours of work on the State v. Blair case, although if the travel to Morgantown for the overnight stay was during state work hours, the drive time alone could have been more than 5 hours. The original submission was for 10 hours for the State vs. Blair case, thus shows the inaccuracy of the amended time sheet.

All other travel was for cases that did not fall within the parameters required in the grant, although amended time sheets and the daily time record show that the maximum full-time work was conducted on grant related cases.

All other travel was for cases that did not fall within the parameters required in the grant, although amended time sheets and the daily time record show that the maximum full-time work was conducted on grant related cases. Thus, the question of the accuracy of the amended time sheets is further raised.

Submitted Documents Require Signature for Verification from Employee and Supervisor

Both original and resubmitted time sheets require signatures verifying their accuracy. The employee/contractor time sheet as shown in Appendix B - E were signed by the former Assistant Prosecutor and the executive director of the Prosecuting Attorneys Institute. Signature of the document signifies as follows:

The undersigned certifies that the above information is accurate and the above named employee/contractor was paid for the above hours worked.

Likewise the “Daily Time Record” submitted by the former Assistant Prosecutor has space for a date and signature from the employee and supervisor. This document as shown in Appendix F is a daily accounting of hours worked. the former Assistant Prosecutor and the former Executive Director both signed and dated these records for July and August. Above the signatures is the statement:

CERTIFIED AND SUBMITTED AS TRUE AND CORRECT

In addition, the state Travel Expense Account Settlement form states:

I certify that these costs incurred were in connection with my assigned duties, are true, accurate and actual, and do not reflect any costs or expenses reimbursed or to be reimbursed

Thus, if these documents conflict, then one or more must be incorrect and may have been falsely signed.

from any other source. Thus, if these documents conflict, then one or more **must** be incorrect and may have been falsely signed.

Verification of Travel Shows Direct Conflict With Amended Time Sheet

The amended time sheets show that 100% of possible hours for a state employee were worked on grant approved cases, but the travel documents show that time was spent on other cases.

In order to determine which document was incorrect, the Legislative Auditor contacted each of the prosecutor's offices for each county to which the Prosecuting Attorneys Institute's former Assistant Prosecutor traveled according to the travel reimbursement forms. These contacts were made to determine the name of the case or cases that the former Assistant Prosecutor would have been prosecuting on the travel day. The amended time sheets show that 100% of possible hours for a state employee were worked on grant approved cases, but the travel documents show that time was spent on other cases. Just for actual traveling time, the Legislative Auditor estimates that a minimum of 16 hours would have been spent on non-reimbursable cases during July, and a minimum of 4 hours would have been spent in August. These estimates are assuming that the former Assistant Prosecutor drove to the destination and immediately turned around and returned to Charleston. If cases were actually being prosecuted in court, a full day could have been spent on the travel, which means that as many as 40 hours could have been spent on non-reimbursable cases in July 2004 on travel dates alone, and as many as 8 hours in August 2004. **Thus, the former Assistant Prosecutor's certified travel documents directly conflict with the amended set of certified time sheets which were submitted by the Prosecuting Attorneys Institute seeking additional federal grant reimbursement.**

Pattern of Behavior in Reporting Time Shows Overtime Hours Before and After July and August 2004

The Legislative Auditor's Office also examined the possibility that some of the changes in the amended time sheets might be explained by the assistant prosecuting attorney working overtime. The Legislative Auditor's Office analyzed the Daily Time Records from 13 months preceding and 2 months following the July and August 2004 records. Table 5 below displays the months analyzed. As shown in the table, the former Assistant Prosecutor denoted when he worked overtime hours in the months before and after the months in question. The Legislative Auditor concludes from this analysis that the pattern of behavior when filling out the daily time records is that overtime hours are claimed. Thus, when reviewing July and August 2004, and no hours are claimed, **the Legislative Auditor's Office conclusion is that overtime hours were not worked by the former Assistant Prosecutor in the months of July**

and August 2004 since no overtime hours are shown on the former Assistant Prosecutor's daily time records for these months.

Table 5			
Analysis of the Former Assistant Prosecutor's Daily Time Records			
May 2003 - October 2004			
Month and Year	Claimed More Than 8 Work Hours In a Day		Amount of Hours Claimed in Overtime for the Month
	YES	NO	
May 2003	X		12.5*
July 2003	X		1
August 2003	X		0
September 2003	X		0
October 2003	X		2
November 2003	X		0
December 2003	X		3
January 2004	X		21
February 2004	X		16
March 2004	X		8
April 2004	n/a	n/a	n/a
May 2004	X		12
June 2004		X	0
July 2004		X	0
August 2004		X	0
September 2004	X		14
October 2004		X	0
<p><i>*Of 168 maximum hours worked possible for this month, the former Assistant Prosecutor claimed 180.5 hours worked and recorded overtime hours at 28.5. The Legislative Auditor corrected the math in this table to 12.5 hours of overtime claimed.</i></p>			
<p><i>Source: Prosecuting Attorneys Institute</i></p>			

Legislative Auditor’s Review of the Assistant Prosecuting Attorney’s Work Documents

The Legislative Auditor found 31 documents on the CD-R that were last modified in July and August 2004.

The staff from the Prosecuting Attorneys Institute provided the Legislative Auditor with a CD-R¹ containing a copy of the contents of the “My Documents” folder from the Prosecuting Attorneys Institute’s computer formerly assigned to the assistant prosecuting attorney. The Legislative Auditor found 31 documents on the CD-R that were last modified in July and August 2004. The intention was to assist in determining whether or not the amended time sheets were accurate. The Legislative Auditor could not determine the case on 2 of the documents. Of the 31 documents, **16 were documents related to cases not included on the amended submission for July and August 2004.** Of those 16 documents, 5 were documents pertaining to cases that were specifically not approved to be reimbursed by the Division of Criminal Justice Services. The Legislative Auditor is unable to determine whether the remaining 11 would be approved for reimbursement. Table 6 shows each document reviewed by the Legislative Auditor.

The majority of these documents were dated correspondence regarding these cases. Thus, the conclusion can be made that these documents were created and worked on close to the date and time last modified. Alternatively, while these documents may have been located on the assistant prosecuting attorney’s computer, it does not necessarily mean that he worked on the documents. But, several of the documents such as sentencing orders state that they were prepared by the former Assistant Prosecutor, and there was no indication on the bottom of the documents that it was prepared by a secretary or paralegal.

¹A CD -R is a recordable compact disk. The disk can be written to by a user with the proper kind of CD recording drive, and cannot be erased to be written on again.

Table 6				
Assistant Prosecuting Attorney's Documents of Cases Dated July and August 2004				
Date Last Modified	Time	Case	Grant Approved	Included on Amended submission
July 2, 2004	8:56 a.m.	Merritt	?	No
July 2, 2004	9:41 a.m.	Law	?	No
July 2, 2004	9:59 a.m.	Langford	No	No
July 2, 2004	12:22 p.m.	Cochran	?	No
July 7, 2004	8:16 a.m.	Starcher	No	No
July 7, 2004	8:25 a.m.	Waldron	Yes	Yes
July 8, 2004	2:22 p.m.	Jenkins	No	No
July 8, 2004	2:23 p.m.	Jenkins	No	No
July 12, 2004	10:30 a.m.	Waldron	Yes	Yes
July 12, 2004	10:30 a.m.	Waldron	Yes	Yes
July 12, 2004	10:30 a.m.	Waldron	Yes	Yes
July 12, 2004	3:12 p.m.	Kecnan	Yes	Yes
July 13, 2004	9:11 a.m.	Law	?	No
July 13, 2004	9:17 a.m.	Law	?	No
July 13, 2004	10:30 a.m.	?	?	?
July 19, 2004	9:41 a.m.	Waldron	Yes	Yes
July 19, 2004	9:49 a.m.	Waldron	Yes	Yes
July 20, 2004	10:13 a.m.	Waldron	Yes	Yes
July 21, 2004	11:45 a.m.	Waldron	Yes	Yes
July 23, 2004	9:00 a.m.	Jenkins	No	No
July 23, 2004	9:37 a.m.	?	?	?
July 26, 2004	11:00 a.m.	Blair	Yes	Yes
July 30, 2004	2:11 p.m.	Law	?	No

July 30, 2004	2:18 p.m.	Law - Incomplete	?	No
August 2, 2004	10:48 a.m.	Andrews	?	No
August 2, 2004	11:37 a.m.	America	Yes - on July	No
August 2, 2004	11:41 a.m.	Law	?	No
August 16, 2004	9:36 a.m.	Law	?	No
August 16, 2004	1:27 p.m.	Blair	Yes	Yes
August 16, 2004	1:57 p.m.	Blair	Yes	Yes
August 31, 2004	10:31 a.m.	Shock	?	No

Source: Prosecuting Attorney Institute CD-R of the assistant prosecuting attorney's documents.

In addition, the documents show that the assistant prosecuting attorney worked on cases that were not approved for grant reimbursement that were shown on the original time sheet.

The review of these documents is further indication that the assistant prosecuting attorney worked on cases that were not included on the amended time sheets. In addition, the documents show that the assistant prosecuting attorney worked on cases that were not approved for grant reimbursement that were shown on the original time sheet. **Thus, providing further evidence that the amended time sheets were an attempt to increase the former Assistant Prosecutor's reimbursement by \$8,107 for July and August 2004.**

Justification for Legislative Auditor's Conclusion That the Amended Time Sheets Are False

The Daily Time Record - which indicates the total number of hours worked per day - in July 2004 showed 168 work hours plus 8 holiday hours for July 4th. No overtime was shown on the Daily Time Record.

The Daily Time Record - which indicates the total number of hours worked per day - in July 2004 showed 168 work hours plus 8 holiday hours for July 4th. No overtime was shown on the Daily Time Record. The Daily Time Record for July 2004 was signed as being true and correct by the former Assistant Prosecutor on August 2, 2004. In addition, the document was signed by the Executive Director of the Institute as being true and correct. Thus, according to this document signed as being accurate, the former Assistant Prosecutor did not work any overtime hours for the month of July 2004.

The amended time sheet for July 2004 showed a total of 176 hours worked including 8 holiday hours for July 4th. The time sheet was signed as certification that the information was accurate by the former Assistant

Prosecutor and the former Executive Director. Thus, since both the Daily Time Record and the amended time sheet signed as being accurate each equal 176 hours, the conclusion must be made that all hours and cases worked for the month of July 2004 were intended to be reflected on the amended time sheet.

...the Daily Time Record in August 2004 showed 120 work hours plus credit for 24 hours of sick leave and 32 hours of annual leave. No overtime was shown on the Daily Time Record.

Similarly, the Daily Time Record in August 2004 showed 120 work hours plus credit for 24 hours of sick leave and 32 hours of annual leave. No overtime was shown on the Daily Time Record. The Daily Time Record for August 2004 was signed as being true and correct by the former Assistant Prosecutor on September 16, 2004. In addition, the document was signed by the former Executive Director as being true and correct. Thus, according to this document signed as being accurate, the former Assistant Prosecutor did not work any overtime hours for the month of August 2004.

The amended time sheet for August 2004 showed a total of 176 hours worked including credit for 24 hours of sick leave and 32 hours of annual leave. The time sheet was signed as certification that the information was accurate by the former Assistant Prosecutor and the former Executive Director. Thus, since both the Daily Time Record and the amended time sheet signed as being accurate each equal 176 hours, the conclusion must be made that all hours and cases worked for the month of August 2004 were intended to be reflected on the amended time sheet.

Document	July and August Hours worked per month including leave taken	July and August Maximum # of Work hours available per month
Daily Time Record	176	176
Amended Time Sheet	176	176

If the July and August 2004 amended time sheets and Daily Time Records agree that 176 hours were worked, including leave taken, and were signed stating so, then the evidence compiled by the Legislative Auditor clearly suggests that the time sheets seeking the maximum grant reimbursement are false. Travel documents and documents created by the assistant prosecuting attorney show that cases were worked on that were not included on the amended time sheet. In addition, these documents show that cases were worked on that

were not within the parameters of the grant. In addition, the first submitted time sheet indicates that work was conducted on cases outside of the grant. Thus, the conclusion must be made that the amended submission was an attempt to receive the former Assistant Prosecutor's full 90% reimbursement of salary and benefits for July and August 2004 after being told that full reimbursement could not be paid with the first submission.

Legislative Auditor's Analysis of the Time Sheet Discrepancies

The Legislative Auditor's analysis of the discrepancies in the original time sheets for July and August 2004 and the amended time sheets show, at a minimum, poor record-keeping on behalf of the Prosecuting Attorneys Institute and a disregard for the responsibility associated with the federal Byrne grant funds. At issue is whether the resubmission of time sheets was an example of poor record-keeping or whether the Prosecuting Attorneys Institute intentionally misrepresented the hours worked by the former Assistant Prosecutor on grant related activities in order to receive the maximum reimbursement for the former Assistant Prosecutor's salary and benefits. **The discrepancies in the amended time sheets and the fact that the amended time sheets clearly conflict with the former Assistant Prosecutor's travel documents give the appearance that the Prosecuting Attorneys Institute intentionally submitted misrepresented documents.** The Legislative Auditor offers the following timeline in summary to justify the conclusion that time sheets may have been intentionally misrepresented:

At issue is whether the resubmission of time sheets was an example of poor record-keeping or whether the Prosecuting Attorneys Institute intentionally misrepresented the hours worked by the former Assistant Prosecutor on grant related activities in order to receive the maximum reimbursement for the former Assistant Prosecutor's salary and benefits.

- June 17, 2004 - Letter from the former Executive Director to the Legislative Auditor admitting to taking a "liberal" interpretation of the Byrne grant requirements (see Appendix G).
- June 28, 2004 - Letter from the former Executive Director to the Legislative Auditor stating that the Prosecuting Attorneys Institute needs to do a better job of record keeping, and that the record keeping will improve starting July 1, 2004. (see Appendix H).
- June 30, 2004 - Division of Criminal Justice Services informs the Prosecuting Attorneys Institute of time sheet reporting changes in the new grant cycle starting July 1, 2004 (see Appendix I).

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- July 26, 2004 - Memo dated July 19, 2004 from Legislative Post Audit Division presented to the Post Audit committee regarding the Prosecuting Attorneys Institute's usage of the Byrne grant funds (see Appendix J). This meeting was attended by representatives of the Prosecuting Attorneys Institute.
 - October 14, 2004 - Daily Time Record and Time Sheet submitted to Division of Criminal Justice Services for July 2004. Daily Time Record reports 168 hours of work- maximum full-time hours including holidays with no overtime (see Appendix F). Time Sheet reports 85 hours of work (see Appendix B).
 - October 14, 2004 - Daily Time Record and Time Sheet submitted to the Division of Criminal Justice Services for August 2004. Daily Time Record reports 120 hours of work- maximum full time hours including vacation and sick leave with no overtime (see Appendix F). Time Sheet reports 60 hours of work (see Appendix C).
 - November 1, 2004 - The Division of Criminal Justice Services sent a fax to the Prosecuting Attorneys Institute stating that there were not enough allowable hours to reimburse 90% of Mr. Giggenbach's salary.
 - November 4, 2004 - The Prosecuting Attorneys Institute informed the Division of Criminal Justice Services that maybe all appropriate hours were not reported and amended sheets would be submitted.
 - November 5, 2004 - The division received amended time sheets by fax for July 2004. The amended sheets increased to 168 hours from 85 hours (see Appendix D).
 - November 5, 2004 - The division received amended time sheets by fax for August 2004. The amended sheets increased to 120 hours from 60 hours (see Appendix E).
 - November 23, 2004 - The division contacted the Legislative Auditor with concerns about the amended time sheets (see Appendix K).

-
- January 2005 - The Legislative Auditor completes analysis of the time sheets and includes the former Assistant Prosecutor's travel reimbursement documents. The amended time sheets and Daily Time Records from July and August 2004 show that the former Assistant Prosecutor worked full time with no overtime hours on grant approved cases. Travel reimbursements from those months and verification from representatives from the travel destinations show that the former Assistant Prosecutor worked on cases not included on the amended time sheets and not within the parameters of the grant.

Conclusion

The Legislative Auditor concludes that the amended time sheets must be incorrect.

The Legislative Auditor concludes that the amended time sheets must be incorrect. The Legislative Auditor cannot determine whether the amended set of submitted time sheets were intentionally falsified or just a result of poor record keeping. While poor record keeping may be the cause for the discrepancy in the amended time sheets, the Prosecuting Attorneys Institute's conflicting documentation gives the appearance that the Prosecuting Attorneys Institute intentionally misrepresented the amended time sheets in order to receive full reimbursement for the former Assistant Prosecutor's salary and benefits. While the former Assistant Prosecutor is no longer employed with the Prosecuting Attorneys Institute, better time recording could have offered substantial proof of time spent on grant approved cases. In the opinion of the Legislative Auditor, upon receiving the letter from the division and the questions on usage of grant reimbursements in the Post Audit report, and the Prosecuting Attorneys Institute's Executive Director admitting in his June 28, 2004 letter that the Prosecuting Attorneys Institute "simply needs to do a better job at record keeping," the Prosecuting Attorneys Institute **should** have immediately enacted policy to keep detailed track of time spent on cases.

The Legislative Auditor takes the appropriation of monies seriously. Whether appropriations are federal, state or grant funds, state entities should take the intended purpose of those appropriations seriously and only use those funds for the intended purpose. In addition, state entities should be able to justify the actual usage of these funds. The Prosecuting Attorneys Institute did not do this.

Recommendation

1. The Legislative Auditor recommends that the Prosecuting Attorneys Institute enact policy requiring grant funded employees to maintain detailed time records including: a daily sign - in sheet or a time clock; detailed time sheets showing time spent working on Byrne grant cases broken down into 30 minute increments; and total time spent working on cases that do not fall within the parameters of the Byrne grant.

The Former Executive Director of the West Virginia Prosecuting Attorneys Institute Abused His State Issued Wireless Phone.

In January 2005, the Legislative Auditor's Office began reviewing the former Executive Director's use of the wireless phone provided to him by the Prosecuting Attorneys Institute. The former Executive Director's state wireless phone records were obtained from the State Auditor's Office for the period beginning in August 2002 through April 2004.

Analysis of the Former Executive Director's State Issued Wireless Phone Records from August 2002 - April 2004

The former Executive Director along with other Prosecuting Attorneys Institute staff were provided with wireless phones paid for from the Institute's budget. The Legislative Auditor performed a detailed analysis of the wireless phone records for twenty-one months, August 2002 through April 2004. This was the period of time in which the former Executive Director had the office issued wireless phone. Through this analysis, the Legislative Auditor was able to determine that **60% of calls placed on the wireless phone were for personal use**, while 28% of calls were determined to be work-related. The Legislative Auditor was unable to determine the remaining 12% of calls. Personal and work-related calls were determined by researching the telephone and wireless numbers on Google™ and the former Executive Director's address book.

...the Legislative Auditor was able to determine that 60% of calls placed on the wireless phone were for personal use...

The Legislative Auditor considered the following to be personal calls: the former Executive Director's family members; individuals found on the contribution list for the former Executive Director's campaign; restaurants; golf courses; directory information; etc. Work calls were considered as calls to: the Prosecuting Attorneys Institute's office or its individual employees; state or county offices; the State Police; judges; voicemail; etc. It must be noted that the Legislative Auditor credited phone calls from the former Executive Director to Institute staff as work calls, no matter whether the calls were to the office; staff personal or work wireless and home phones. These calls were also credited as work related even if the calls were made in the late evening. Thus, the benefit of doubt was given to the former Executive Director.

...the total for all additional charges beyond the monthly payment plan for the twenty-one month period was \$1,082.75.

Only \$149.02 of the \$1,082.75 in overcharges could determined to be work related.

Analysis not only showed that the majority of calls from the former Executive Director's wireless phone were personal, but the former Executive Director abused the phone, in such a way that caused the monthly minute allowance to be exceeded, thus requiring overcharges. Further, roaming charges were derived while on out of town on business and personal trips. Many of the roaming charges were also determined to be personal calls. As shown in Table 8, the total for all additional charges beyond the monthly payment plan for the twenty-one month period was **\$1,082.75**. This total includes total overtures for roaming and non-roaming incoming calls (\$196.07), overtures for roaming (\$580.87), overtures for outgoing calls with charges as a result of exceeding minutes (\$154.95), voicemail calls that resulted in a charge (\$25.86), and text messaging (\$125). **In addition, Table 8 shows \$345.83 worth of personal roaming calls the former Executive Director made while on business or personal out of town trips.** Only \$149.02 of the \$1,082.75 in overcharges could determined to be work related.

As stated previously, the former Executive Director used his state wireless phone while on business and personal out-of-state trips. For outgoing roaming calls (\$580.87), the Legislative Auditor determined that \$345.43 was charged for personal calls made by the former Executive Director. Work related calls cost \$149.02, while \$86.42 of charges were indeterminable. However, the pattern of calls seem to suggest that the majority, if not all of the indeterminable calls, were for personal use. Even if all indeterminable outgoing calls were found to be work related, **it is the opinion of the Legislative Auditor that there is still a pattern of abuse of state resources.** For example, while in New Orleans for a conference, the former Executive Director called Brennan's restaurant. While in San Francisco, the former Executive Director called the Aqua and Acquerello restaurants. These calls, among many others, resulted in roaming charges which were paid for by the Prosecuting Attorneys Institute.

The trip was not work related... The former Executive Director made 32 roaming telephone calls for a total charge of \$66.29.

In addition, during April 3-6, 2003, the former Executive Director went on a golf outing to Pinehurst Resort in North Carolina. The trip was not work related. Yet an analysis of his wireless telephone records shows that the former Executive Director used his state issued wireless telephone to make personal phone calls during this outing. The former Executive Director made 32 roaming telephone calls for a total charge of \$66.29. All outgoing calls during this trip, with the exception of one, were to his wife. The table in Appendix L shows the telephone calls made during this time, the length of the call, and the cost to the state. The former Executive Director also used his wireless phone during another trip to North Carolina for WVU's appearance in the 2003 Continental Tire Bowl. During this trip, the former Executive Director made 30 roaming wireless phone calls for a total charge of \$29.67, of which \$15.87 was determined by the Legislative Auditor as being work-related.

**Table 8
Analysis of the Former Executive Director's Wireless Phone Overcharges
August 2002 - April 2004**

Invoice Month	Total Over Charges for Regular Incoming Calls (Roaming and Non-Roaming)	Text Messages	Outgoing Call Charges Due to Exceeded Minutes (Non - Roaming)	Voice Mail Calls With Charge	Outgoing Roaming Calls			Total Charges (Includes all columns to the left)
					Work	Personal	Unknown	
August 2002	\$0.00	\$1.10	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1.10
September 2002	\$0.00	\$5.40	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$5.40
October 2002	\$0.00	\$10.40	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$10.40
November 2002	\$0.00	\$21.60	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$21.60
December 2002	\$0.00	\$9.40	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$9.40
January 2003	\$12.42	\$2.30	\$0.00	\$1.38	\$3.45	\$11.73	\$1.38	\$32.66
February 2003	\$0.00	\$8.60	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$8.60
March 2003	\$0.00	\$3.80	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$3.80
April 2003	\$1.20	\$7.80	\$5.00	\$0.00	\$0.00	\$0.00	\$0.00	\$14.00
May 2003	\$22.68	\$7.70	\$1.85	0.00*	\$11.57	\$37.38	\$0.00	\$81.18
June 2003	\$5.04	\$8.30	\$0.00	0.00*	\$9.79	\$67.91	\$20.47	\$111.51
July 2003	\$25.80	\$4.30	\$0.80	\$0.00	\$3.56	\$19.47	\$0.00	\$53.93
August 2003	\$0.00	\$7.00	\$1.25	\$0.00	\$2.67	\$0.89	\$0.00	\$11.81
September 2003	\$50.40	\$5.30	\$18.35	4.76*	\$65.08	\$34.71	\$16.02	\$194.62
October 2003	\$13.44	\$4.30	\$5.00	\$0.80	\$4.35	\$20.74	\$0.00	\$48.63
November 2003	\$5.04	\$4.00	\$12.80	\$0.00	\$0.00	\$0.89	\$0.00	\$22.73
December 2003	\$35.97	\$3.70	\$0.00	\$0.00	\$37.87	\$108.10	\$34.31	\$219.95
January 2004	\$10.08	\$2.90	\$4.20	\$7.92	\$10.68	\$40.05	\$14.24	\$90.07
February 2004	\$0.00	\$2.40	\$1.25	\$0.00	\$0.00	\$0.00	\$0.00	\$3.65
March 2004	\$0.00	\$3.00	\$21.25	\$0.20	\$0.00	\$3.56	\$0.00	\$28.01
April 2004	\$14.00	\$1.70	\$83.20	\$10.80	\$0.00	\$0.00	\$0.00	\$109.70
Totals	\$196.07	\$125.00	\$154.95	\$25.86	\$149.02	\$345.43	\$86.42	\$1,082.75

* Denotes charge accounted for by work related roaming fees (\$11.57 for May 2003; \$9.79 for June 2003; \$9.21 for September).

Source: PERD analysis of the former Executive Director's AT&T wireless phone records provided by the West Virginia State Auditor's Office

According to the fiscal officer at the Prosecuting Attorneys Institute, the former Executive Director never reimbursed the state for his personal use of his state wireless phone.

... the Legislative Auditor recommends that the Institute require the former Executive Director to reimburse the agency for \$345.43 for the personal calls that were made while incurring roaming charges.

Records show that the former Executive Director cancelled his personal wireless phone account in August 2002, which was the same time that he received his work issued wireless phone.

According to the fiscal officer at the Prosecuting Attorneys Institute, the former Executive Director never reimbursed the state for his personal use of his state wireless phone.

The Legislative Auditor recommends that the former Executive Director reimburse the Institute in the amount of \$345.43 for personal use of the state issued wireless phone. These calls were all determined as personal roaming calls while the former Executive Director was out of town. In addition, the Institute should consider requiring former Executive Director to reimburse the Institute for the \$154.95 in calls made that exceeded the wireless phone plan minutes. **Had the former Executive Director not excessively used his wireless phone for personal calls, most, if not all of these additional charges, could have been avoided.** Significant, also, is the frequent use of the wireless phone's text message and email feature. The Legislative Auditor has calculated \$125.00 worth of charges for this service. The Legislative Auditor cannot determine if any or all of the text messages sent from the former Executive Director's state issued wireless phone, at the rate of ten cents per transmission, were work related.

Records show that the former Executive Director cancelled his personal wireless phone account in August 2002, which was the same time that he received his work issued wireless phone.

Conclusion

Analysis of the former Executive Director's state wireless phone records show a disregard for state resources. The former Executive Director abused his state provided wireless phone by exceeding his monthly plan by \$1,082.75 from August 2002 - April 2004. These charges were due to exceeding his monthly minutes; using the phone excessively while incurring roaming charges during out of town trips; and text messages. The Legislative Auditor could only determine that \$149.02 of the excessive charges were work related. Thus, the Legislative Auditor recommends that the Institute require the former Executive Director to reimburse the agency for \$345.43 for the personal calls that were made while incurring roaming charges. In addition, the Institute should consider requesting the former Executive Director to reimburse the agency for all other charges that were incurred that were not work related. The Legislative Auditor has determined that this could be as much as **\$933.73**, since only \$149.02 of the \$1,082.75 could be determined as being work related charges.

Recommendation

2. *The Legislative Auditor recommends that the Executive Council of the Prosecuting Attorneys Institute should request that the former Executive Director reimburse the Institute for a minimum of \$345.43 in personal phone calls made from August 2002 through April 2004 on his state issued wireless phone. In addition, the Institute's Executive Council should request the former Executive Director to reimburse an additional \$588.30, for a total reimbursement of \$933.73, unless the former Executive Director can prove that the additional \$588.30 in charges were work related.*

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

May 9, 2005

Ginny Conley, Chairperson
Executive Council of the Prosecuting Attorneys Institute
90 MacCorkle Avenue SW, Suite 202
South Charleston, WV 25303

Dear Chairperson Conley:

This is to transmit a draft copy of the Special Report of the Prosecuting Attorneys Institute. This report is scheduled to be presented at the May 15, 2005 interim meeting of the Joint Committee on Government Operations at 4:00 p.m. in room E-215 at the State Capitol Complex. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

We need your written response by noon on Wednesday, May 11, 2005, in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, May 12, 2005, to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

Enclosure

Joint Committee on Government and Finance

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

May 10, 2005

J. Norbert Federspiel
Director, Division of Criminal Justice Services
1204 Kanawha Boulevard, East
Charleston, WV 25301

Dear Director Federspiel:

This is to transmit a draft copy of the Special Report of the Prosecuting Attorneys Institute. This report is scheduled to be presented at the May 15, 2005 interim meeting of the Joint Committee on Government Operations at 4:00 p.m. in room E-215 at the State Capitol Complex. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

We need your written response by noon on Wednesday, May 11, 2005, in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, May 12, 2005, to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

Enclosure

Joint Committee on Government and Finance

Appendix B: Original July 2004 Time Sheet

7/20/04

Drug and Violent Crime Control Grant Program

Statewide Prosecution - Employee / Contractor Time Sheet

Name: *FREDERICK BENDERBACH* Agency: *WVPA*
 Month/Year: *July 2004* Grant #: *04-DC-27*

hrs

Head
7/20/04

County	Case Name	Offense	Age	Category	Hours	Amount	
Contra.	St. v. America Harrison	elderly ✓	elderly ✓	stopping full m	(10) ok	Elderly	
Contra.	St. v. Nation McDaniel	avg, elderly ✓	murder ✓	murder	(10) ok	Pending	
Contra.	St. v. Herkin Probin	40s	rape	rape	10		
Contra.	St. v. Longford Gilmer	20-30, 50s	drug, battery, arson	drug, battery, arson	15		
Contra.	St. v. Jenkins Gilmer	pubic, 30s	pubic, 30s	pubic, 30s	15		
Contra.	St. v. Stacher Kean	elderly ✓	murder, battery ✓	murder, battery	(5) ok	Elderly	
Contra.	St. v. Ruth Calhoun						
					TOTALS:	40	
					FICA		\$
					WORKERS COMP		\$
					UNEMPLOYMENT		\$
					INSURANCE		\$
					RETIREMENT		\$
					TOTAL COMPENSATION / FRINGES		\$

The undersigned certifies that the above information is accurate and the above named employee/contractor was paid for the above hours worked.

EMPLOYEE/CONTRACTOR:
Mindy
 SUPERVISOR:
[Signature]

Appendix C: Original August 2004 Time Sheet

Bojore

Drug and Violent Crime Control Grant Program Statewide Prosecution - Employee / Contractor Time Sheet

Name: Fred Giegenbuch Agency: WVPA
 Month/Year: August 04 Grant #: 04-02-1

NEW OR CONTINUATION	EMPLOYEE	POINTS	AGENCY	PROJECT	DESCRIPTION	STATUS	DATE	AMOUNT
✓	Watson	20s, 70s	✓	murder	malicious w/v	(2)	ok Pending	
✓	Keenan	30s	✓	murder		(1)	ok Pending	
✓	Kush	70s	✓	dbl. murder		(1)	ok Pending	
✓	Stankin	stave	✓	drug		(5)	ok Ebbdy	
✓	Greer/Davis	60-70	✓	kill	Marass.	(1)	ok Pending	
✓	Harrison	40-50s	✓	rape		(1)	ok Pending	
✓	Blair	50s	✓	domestic assault		(1)	ok Pending	
✓	Shack							
							(15)	
TOTALS:							150	
FICA								\$
WORKERS COMP								\$
UNEMPLOYMENT								\$
INSURANCE								\$
RETIREMENT								\$
TOTAL COMPENSATION / FRINGES								\$

The undersigned certifies that the above information is accurate and the above named employee/contractor was paid for the above hours worked.

EMPLOYEE / CONTRACTOR:
[Signature]

SUPERVISOR:
[Signature]

Appendix D: Ammended July 2004 Time Sheet

After

Drug and Violent Crime Control Grant Program Statewide Prosecution - Employee / Contractor Time Sheet

Name: Fred Gigganbach Agency: WVPAI
 Month/Year: 7/04 Grant #: 04-DC-27

✓ Cont.	St. v. Waiden	McDowell	20's + 70's	Murder	35/0k Pending
✓ Cont.	St. v. Keenan	Fayette	33	Murder	80 ok Pending
✓ Cont.	St. v. Harrison	Preston	40	Rape	30
✓ Cont.	St. v. Lush	Calhoun	elderly	Miscellaneous	03 DK Early
✓ Cont.	St. v. Shapelle	Calhoun	elderly	Murder, Robbery	05 OK Early
✓ Cont.	St. v. Blair	Marshall	50's	dom. violence	03 OK Pending
7/4	Helweg				8

TOTALS: 176

FICA	\$
WORKERS COMP	\$
UNEMPLOYMENT	\$
INSURANCE	\$
RETIREMENT	\$
TOTAL COMPENSATION / FRINGES	\$

The undersigned certifies that the above information is accurate and the above named employee/contractor was paid for the above hours worked.

EMPLOYEE/CONTRACTOR:
[Signature]

Amended

SUPERVISOR:
[Signature]

Appendix E: Amended August 2004 Time Sheet

Asst

Drug and Violent Crime Control Grant Program Statewide Prosecution - Employee / Contractor Time Sheet

Name: Fred Cusumback Agency: WVPHI
 Month/Year: Aug 04 Grant #: 04-DC-27

Employee Name	Agency	Case No.	Case Name	Status	Hours	Rate	Total	Notes
Cont. St. V. Helburn	McDonnell	203, 705	Mundy Multi-Brandg	OK	00	00	00	Pending
Cont. St. V. Helburn	Falouto	303	Munday	OK	00	00	00	Pending
Cont. St. V. Rush	Calhoun	705	Chl. Munday	OK	00	00	00	Pending
Cont. St. V. Spambin	Calhoun	705	Chl. Munday	OK	00	00	00	Pending
Cont. St. V. Davis	Pistone	40-70	tel. harassment	OK	00	00	00	Pending
Cont. St. V. Harrison	Preston	40-505	RAE	OK	00	00	00	Pending
Cont. St. V. Blair	Marshall	503	Chl. Asslt.	OK	00	00	00	Pending
Sick					24			
Annual					32			
TOTALS:							176	
FICA							\$	
WORKERS COMP							\$	
UNEMPLOYMENT							\$	
INSURANCE							\$	
RETIREMENT							\$	
TOTAL COMPENSATION / FUNDS							\$	

The undersigned certifies that the above information is accurate and the above named employee/contractor was paid for the above hours worked.

EMPLOYEE/CONTRACTOR: *[Signature]*
 SUPERVISOR: *[Signature]*

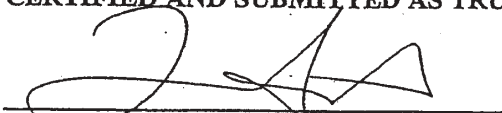
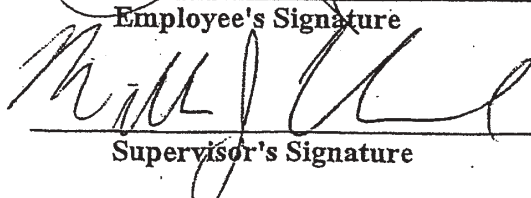
Amended

Appendix F: July and August Daily Time Record

DAILY TIME RECORD

1. Name of Employee FRED J. GIGGENBACH		2. Month and Year JULY 2004		3. Grant Number 04-DC-27	
5. Title of Employee SPECIAL PROSECUTOR		5. Social Security Number [REDACTED]			
Day of Month	Hours Worked	Day of Month	Hours Worked	Day of Month	Hours Worked
1	8	11		21	8
2	8	12	8	22	8
3		13	8	23	8
4		14	8	24	
5	HOLIDAY	15	8	25	
6	8	16	8	26	8
7	8	17		27	8
8	8	18		28	8
9	8	19	8	29	8
10		20	8	30	8
				31	
Total 168 Possible 168 over/short					Total Hours Worked 168

CERTIFIED AND SUBMITTED AS TRUE AND CORRECT

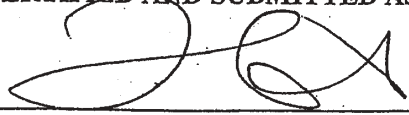

 Employee's Signature

 Supervisor's Signature

8/2/04
 Date
 10/14/04
 Date

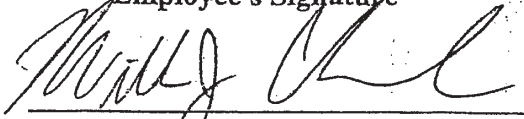
DAILY TIME RECORD

1. Name of Employee FRED J. GIGGENBACH		2. Month and Year AUG 2004		3. Grant Number 04-DC-27	
5. Title of Employee SPECIAL PROSECUTOR		5. Social Security Number [REDACTED]			
Day of Month	Hours Worked	Day of Month	Hours Worked	Day of Month	Hours Worked
1		11	VAC	21	
2	8	12	8	22	
3	sick	13	8	23	8
4	sick	14		24	8
5	sick	15		25	8
6	VAC	16	8	26	8
7		17	8	27	8
8		18	8	28	
9	VAC	19	8	29	
10	VAC	20	8	30	8
Total 120 Possible 176 over/short 56				31	8
Total Hours Worked					121

CERTIFIED AND SUBMITTED AS TRUE AND CORRECT



 Employee's Signature



 Supervisor's Signature

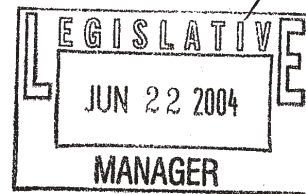
9/14/04

 Date

10/14/04

 Date

Appendix G: Letter to the Legislative Auditor



BOB WISE
GOVERNOR

TOM SUSMAN
ACTING CABINET SECRETARY

WILLIAM J. CHARNOCK
EXECUTIVE DIRECTOR

WEST VIRGINIA
PROSECUTING ATTORNEYS INSTITUTE
90 MACCORKLE AVENUE, SW
SUITE 202
SOUTH CHARLESTON, WEST VIRGINIA 25303
TELEPHONE: (304) 558-3348
FACSIMILE: (304) 558-3360
WWW.STATE.WV.US/WVPAI

GINNY CONLEY
CHAIRPERSON
EXECUTIVE COUNCIL
PAUL M. BLAKE
MARK A. SORSAIA
ALEXANDER M. ROSS
CHRISTOPHER D. CHILES
W. KENT CARPER
JAMES E. SAGO

June 17, 2004

Mr. Aaron Allred, Legislative Auditor
WV Legislature Joint Committee on Government and Finance
Building 1, Room E-132
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610

Dear Mr. Allred:

I have previously provided Mr. Maruish with a list of the cases the Institute's grant-funded assistants have provided assistance. The Institute has historically taken a liberal interpretation of the Byrne grant requirements to find ways to provide assistance, upon request, to the underfunded and understaffed county prosecutor offices. For example, most, if not all, criminal defendants have been adjudicated as juvenile delinquents. Moreover, most witnesses and/or victims have a history of family violence. Since the Byrne grant relates to juvenile delinquency and domestic violence, the requirement of the funding source is met.

It should be noted the activities of the grant funded assistants is reviewed monthly by a specialist with the Division of Criminal Justice Services and again annually by a separate Division of Criminal Justice Services specialist. Should you have question about the relationship between the work of the Institute assistants and the funding source requirements, I encourage you to review the records and reports of the Division of Criminal Justice Services. I am,

Very truly yours,

William J. Charnock
WVPAI Executive Director

cc: WVPAI Executive Council

AN EQUAL OPPORTUNITY EMPLOYER

Appendix H: Letter to the Legislative Auditor



BOB WISE
GOVERNOR

TOM SUSMAN
ACTING CABINET SECRETARY

WILLIAM J. CHARNOCK
EXECUTIVE DIRECTOR

WEST VIRGINIA
PROSECUTING ATTORNEYS INSTITUTE
90 MACCORKLE AVENUE, SW
SUITE 202
SOUTH CHARLESTON, WEST VIRGINIA 25303
TELEPHONE: (304) 558-3348
FACSIMILE: (304) 558-3360
WWW.STATE.WV.US/WVPAI

GINNY CONLEY
CHAIRPERSON
EXECUTIVE COUNCIL
PAUL M. BLAKE
MARK A. SORSAIA
ALEXANDER M. ROSS
CHRISTOPHER D. CHILES
W. KENT CARPER
JAMES E. SAGO

June 28, 2004

Mr. Aaron Allred, Legislative Auditor
WV Legislature Joint Committee on Government and Finance
Building 1, Room E-132
1900 Kanawha Boulevard East
Charleston, WV 25305-0610

Dear Mr. Allred:

By letter dated June 22, 2004, I was asked to provide an answer to the following question:

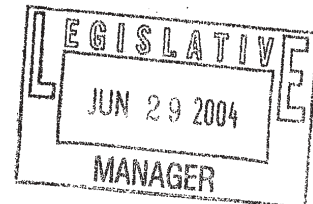
Over the past four years, has the Prosecuting Attorneys Institute simply ignored the grant requirement and used the federal Byrne grant money to fund the Institute's operations for any and all cases for which the Prosecuting Attorneys Institute assisted county prosecutors?

Please accept my deepest and most sincere apologies for not meeting your one day deadline as I was out of the office attending the Institute's annual meeting.

The answer is no.

As the recently concluded audit shows, the Institute simply needs to do a better job at record keeping. The Institute does not keep records, other than the monthly activity reports the grant requires, from the cases on which the grant funded assistants provide assistance.

Once a case file has been closed, the Institute returns any and all files of the case to the county having venue. The records you would like to review are either in the county prosecutor's office or the county circuit clerk's office. This office simply does not keep such a record because it is not our file to keep. These files by necessity need to be kept in the county having venue and not in an agency of state government.



AN EQUAL OPPORTUNITY EMPLOYER


Mr. Aaron Allred
June 28, 2004
Page 2

Beginning July 1, 2004, however, the Institute will begin documenting the style of the case, the nature of the action and how the case relates to the requirements of the grant by including this information in the grant funded position's monthly activity report.

By copy of this letter, I have notified the fifty-five elected prosecuting attorneys that either you or your staff may make inquiry about the services provided by the Institute assistant prosecutors funded through the Byrne grant.

The Institute has always complied with the provisions of the Byrne grant. This agency will continue to comply with the provisions of this, and every other, grant. I am confident any review will show nothing less.

Sincerely,



William J. Charnock
WVPAI Executive Director

cc: WV Prosecuting Attorneys
Prosecuting Attorneys Institute Executive Council

Appendix I: Division of Criminal Justice Services

Division of
**CRIMINAL
JUSTICE
SERVICES**

Department of Military Affairs
& Public Safety

June 30, 2004

William Charnock
Executive Director
West Virginia Prosecuting Attorney's Institute
90 MacCorkle Avenue, S.W.
Suite 202
Charleston, West Virginia 25303

RE: Subgrant 04-DC-27 (Elder Abuse Prosecution/Training)

Dear Mr. Charnock: *Bill*

Regarding your new subgrant award which starts July 1, 2004, the assistant prosecutor and paralegal that are subgrant funded, should only work cases directly related to elder abuse, and the training must be related to elder abuse issues. No funds will be reimbursed to the WV Prosecuting Attorney's Institute (WVPAI) for cases or activities that do not reflect that current scope of the grant. It was never clarified in the program abstract or application, however, the Division is characterizing elder abuse cases as follows to ensure it is able to effectively monitor the project. Please ensure all cases worked fall within these parameters.

- Elder abuse cases will be cases where the victim of a crime is over or equal to 65 years of age. The crimes included, but not limited to, are murder, manslaughter, forcible rape, robbery, aggravated assault, simple assault, intimidation, forcible sodomy, kidnapping, abduction as well as white collar crimes which have a financial impact on the elderly victim.

The monthly financial and progress reports shall include the following information to ensure all cases and activities fall within the current scope of the subgrant.

Timesheet- Outlining **only** the number of hours worked within the scope of the grant. Attached to this timesheet there must be detailed backup information. This should consist of the number of hours worked each day, case names and information regarding the case which shows that it is directly linked to elder abuse.

Financial Report and Request for Reimbursement- These documents should reflect your expenditures. Please note that you may only request reimbursement for the number of hours that were worked related to the scope of the grant.

Progress Report- This report should give a detailed, daily account of the assistant prosecutor, paralegal, training, etc.

Should you have questions regarding reporting for this new subgrant, please do not hesitate to contact Leslie Boggess at (304) 558-8814, extension 270.

Very truly yours,


Michael W. Cutlip
Deputy Director - Programs

MWC:LB/aw
C: Christy Morris, MAPS Secretary
Aaron Allred, Legislative Manager

J. Norbert Föderspiel, Director
1204 Kanawha Boulevard East
Charleston, West Virginia 25301

Bob Wise, Governor
Phone: (304) 558-8814
Fax: (304) 558-0391

Appendix J: Post Audit Memo

WEST VIRGINIA LEGISLATURE *Joint Committee on Government and Finance*

Theford L. Shanklin, CPA, Director
Legislative Post Audit Division
Building 1, Room W- 329
1900 Kanawha Blvd., E



Area Code (304)
Phone: 347-4880
Fax: 347-4889

CHARLESTON, WEST VIRGINIA 25305-0160

Memorandum

To: Mr. Theford L. Shanklin, CPA, Director
From: Ethelbert Scott, Jr., Supervisor *ES*
Date: July 19, 2004
Subject: Use of Byrne Grant Funds by the West Virginia Prosecuting Attorneys Institute

Per your instructions concerning the use of funds for the Federal Byrne Grants awarded the West Virginia Prosecuting Attorneys Institute, we have summarized the correspondence between our office and the West Virginia Division of Criminal Justice Services (DCJS), and the West Virginia Prosecuting Attorneys Institute (Institute).

A grant agreement was entered into between the West Virginia Division of Criminal Justice Services and the West Virginia Prosecuting Attorneys Institute. The DCJS was the recipient of a Drug and Violent Crime Control Grant from the United States Department of Justice for \$195,000 per year for fiscal years 2003 and 2002. The Institute was the grantee.

The purpose of the grant is for the Institute to provide two assistant prosecutors and one paralegal to support West Virginia prosecutors in all aspects of prosecution of domestic violence, sexual assault and juvenile cases. The grant also provided funds for training criminal justice professionals throughout the state of West Virginia.

We were provided a list of cases that was prepared by the Institute. We also prepared a list of cases from the West Virginia Prosecuting Attorneys Monthly Activity Reports for the period July 1, 2001 through June 30, 2003. The Reports were submitted to the DCJS as support for reimbursement of salaries paid through the Byrne Grant. We were unable to determine the accuracy of either list because of the lack of information provided in the reports.

Mr. Thedford L. Shanklin
July 19, 2004
Page 2

In many instances we were unable to determine whether the case involved domestic violence, sexual assault or a juvenile. Some of the cases we noted were first degree murder, second degree murder, felony plea, battery, probation revocation, harassment, animal cruelty, and habeas corpus. We also noted several cases in which there was no indication of the type of case at all.

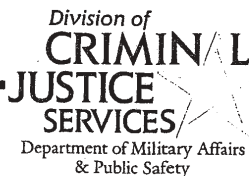
In letters addressed to you the Institute has admitted taking a liberal interpretation of the Byrne Grant requirements to find ways to provide assistance, upon request, to underfunded and understaffed county prosecutor offices. They also admitted they have participated in cases that were outside of the parameters of the Byrne Grant.

The DCJS also admitted weaknesses in monitoring the Byrne Grant funds provided to the Institute. According to their correspondence to you, they require enough information to make a determination that program activity is taking place. They admit there was an administrative oversight on their part in not demanding specific information or a specific manner of reporting references to determine whether or not the Institute's cases involved domestic violence, sexual assault or juvenile delinquency. The information they accepted from the Institute was not complete, nor did they receive adequate documentation to determine the cases were in compliance with the grant agreement

According to the June 30, 2003 Single Audit of West Virginia, the DCJS awarded subrecipients a total of \$2,529,394 for the Byrne Formula Grant Program and a total of \$565,000 for the Edward Byrne Memorial State and Local Law Enforcement Assistance Discretionary Grants Program in fiscal year 2003. We are concerned that since the DCJS monitored the Institute's grant funds of \$195,000 so loosely, are they monitoring the other funds received from Byrne Grants in the same manner.

We recommend the Institute comply with the parameters set out in the Byrne Grant agreement. We also recommend DCJS require sufficient documentation from the Institute for work performed under the grant.

Appendix K: DCJS Letter to the Legislative Auditor



November 23, 2004

Mr. Aaron Allred
Legislative Auditor
WV Legislative Auditor's Office
State Capitol, Room E-132
1900 Kanawha, Blvd., East
Charleston, WV 25305

Dear Mr. Allred:

In light of the events surrounding the WV Prosecuting Attorneys Institute (PAI) this past summer in relation to the administration subgrant 03-DC-34, the Division believed it to be imperative that this information be shared which is related to the new subgrant 04-DC-27, which began July 1, 2004.

A new timesheet was developed to be utilized for 04-DC-27 in order to have better oversight on the types of cases being worked and paid for through the subgrant. It was clearly communicated to the PAI that 04-DC-27 would only support work on elder abuse cases as well as 13 pending cases that in the interest of justice should be closed appropriately.

In October 2004, the Division received the July 2004 monthly report with timesheet requesting 90% of the assistant prosecutor's salary. The new timesheet reported 85 hours of work; however, the Division determined that only 40 hours were within the parameters of 04-DC-27. Based on 176 possible hours for a state employee during July 2004 this amounts to 23% of the assistant prosecutors salary was within the parameters of the subgrant.

In October 2004, the Division also received the August 2004 monthly report with timesheet requesting 90% of the assistant prosecutor's salary. The new timesheet reported 60 hours of work; however, the Division determined that only 45 hours were within the parameters of 04-DC-27. Based on 176 possible hours for a state employee during August 2004 this amounts to 26% of the assistant prosecutors salary was within the parameters of the subgrant.

In November 2004, the Division contacted the PAI to discuss with them that 90% of the assistant prosecutor's salary could not be paid based on the submitted timesheets for July and August 2004. The PAI showed concern about

J. Norbert Federspiel, Director
1204 Kanawha Boulevard East
Charleston, West Virginia 25301



Bob Wise, Governor
Phone: (304) 558-8814
Fax: (304) 558-0391

Mr. Aaron Allred
November 23, 2004
Page Two

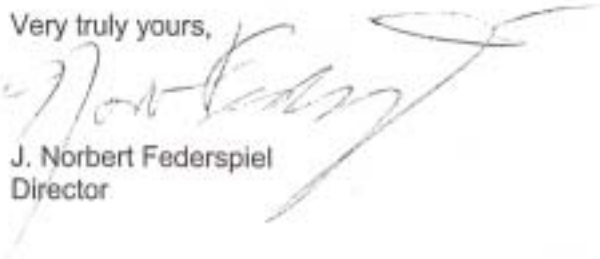
this reduced amount to be reimbursed. They submitted via fax amended timesheets for both July and August 2004. Both amended timesheets significantly increased time attributed to work on cases that were within the subgrant parameters.

The Division is going to reimburse the PAI for July and August 2004 at the 23% and 26% levels of the assistant prosecutor's salary. At this point, the Division is accepting the first timesheets submitted as being accurate. In addition, the Division has once again revised the timesheet for clarity and it is to be used for the monthly reports starting September 2004. Also, the Division has revised the timesheet to be used by the paralegal.

Considering the events that have taken place with both subgrants over the last several months, the Division's confidence in the accuracy of future timesheets is in question. The Division will also submit copies of the September and October timesheets for your review once the Division has received them.

As always, should you have questions please don't hesitate to contact me.

Very truly yours,



J. Norbert Federspiel
Director

JNF:MWC/bw
Enclosures (9)
c: Charles R. Bedwell

Appendix L: Wireless Phone Usage

Pinehurst Golf Trip April 3-6, 2003			
Date/Time	Number called	Minutes	
4/3	8:20am	Voicemail	2
	12:11pm	Wife's Cell	3
	5:55pm	Voicemail	2
	5:59pm	Home	1
	6:00pm	Wife's Cell	1
	6:10pm	Incoming Call	2
	8:09pm	Wife's Cell	1
	8:15pm	Incoming Call	5
	9:18pm	Voicemail	1
	9:19pm	Home	1
	9:20pm	Voicemail	1
	9:42pm	Wife's Cell	1
	9:42pm	Home	6
	10:00pm	Personal Friend	4
4/4	5:56am	Voicemail	1
	4:57pm	Wife's Cell	2
	5:09pm	Incoming Call	5
	7:08pm	Home	6
	7:22pm	Incoming Call	1
	8:23pm	Voicemail	1
	9:15pm	Incoming Call	4
	9:42pm	Incoming Call	5
4/5	5:23pm	Home	1
	5:24pm	Wife's Cell	1
	5:24pm	Voicemail	2
	6:11pm	Incoming Call	3
	7:27pm	Home	3
	8:12pm	Voicemail	2

4/6	8:23pm	Home	7
	9:41pm	Incoming Call	2
	2:43pm	Home	4
	4:20pm	Voicemail	1
Total roaming charges from April 3-6, 2003: \$66.29			
<i>Source: PERD analysis of cell phone records provided by the West Virginia Prosecuting Attorneys Institute and West Virginia State Auditor's Office.</i>			

Appendix M: Distribution of Use of Cellular Telephone

Distribution of Use of Cellular Telephone				
Invoice Date	Total Outgoing Minutes	Personal Minutes	Work Minutes	Unknown Minutes
August 2002	50	35(70%)	12(24%)	3(6%)
September 2002	298	138(46%)	97(33%)	63(21%)
October 2002	266	204(77%)	40(15%)	22(8%)
November 2002	246	160(65%)	58(24%)	28(11%)
December 2002	235	161(68%)	35(15%)	39(17%)
January 2003	181	101(56%)	73(40%)	7(4%)
February 2003	206	144(70%)	34(17%)	28(13%)
March 2003	95	76(80%)	19(20%)	0(0%)
April 2003	462	338(73%)	88(19%)	36(8%)
May 2003	235	136(58%)	89(38%)	10(4%)
June 2003	337	217(64%)	73(22%)	47(14%)
July 2003	380	243(64%)	103(27%)	34(9%)
August 2003	406	278(68%)	114(28%)	14(3%)
September 2003	500	289(58%)	171(34%)	40(8%)
October 2003	194	123(63%)	51(26%)	20(11%)
November 2003	295	155(53%)	62(21%)	78(26%)
December 2003	412	243(59%)	76(18%)	93(23%)
January 2004	380	246(65%)	76(20%)	58(15%)
February 2004	225	115(51%)	67(30%)	43(19%)
March 2004	480	244(51%)	171(35%)	65(14%)
April 2004	400	122(30%)	198(50%)	80(20%)
Totals	6,283	3770	1705	808
Average Usage	299	60%	28%	12%

Appendix N: Former Assistant Prosecutor's Travel Forms



STATE OF WEST VIRGINIA TRAVEL EXPENSE ACCOUNT SETTLEMENT

04028
01645402
received
7-6-04

Name: Fred Gigganbeck		Title: Spec. Prosecutor	FMS Vendor No: 384007
Address: 90 West Corkle Avenue, Ste. 202		Social Security No.	
City/State/Zip: Ches., WV 25303	Headquarters: S. Charleston		Normal Work Hours: 8 to 5
Department: Admin	Division: WVPPI	Section:	
Purpose of Travel: Prosecuting cases			

DATE	TIME	CITY/STATE	MILES	AMOUNT	AIR	CAR RENTALS	TOLLS	LODGING	OTHER	TOTAL
6/29		From Ches to clarksburg and back	245	\$91.87					park \$1.50	\$93.37
		To								
7/1		Ches to clarksburg and back	245	\$91.87						\$91.87
TOTAL			490	\$183.74					\$1.50	\$185.24

AGENCY ACCOUNTING INFORMATION						Less Cash Advance (WVFIMS ID# (
Fund	Area	Org	Object	Sub Obj	Amount	<input checked="" type="checkbox"/> Due Employee	<input type="checkbox"/> Due State
0007	1000	0002	006		\$283.74		
2574	1000	0228	006	076	\$93.37		
2574	2005	0228	006	026	\$91.87		
						\$185.24	

Traveler must attach copies of direct billed receipts or invoices, i.e., airline, registration, lodging, etc.

OTHER EXPENSES		
DATE	ITEMS	AMOUNT
6/29	parking	1.50

EXPENSES DIRECT BILLED TO THE STATE	
DATE	ITEM AND VENDOR

I certify that these costs incurred were in connection with my assigned duties, are-true, accurate and actual, and do not reflect any costs of expenses reimbursed or to be reimbursed from any other source.

Signature
 7/2/04
 Date
 Approval Supervisor/Department Head
 Date

I certify that I have personally examined and approved this Travel Expense Account Settlement. The travel expenses are reasonable and commensurate to the assigned duties of the traveler. The items of expenses further meet all State of West Virginia Travel Regulations and are within the budget of this traveling unit.

Approval Supervisor/Department Head
 7/2/04
 Date



STATE OF WEST VIRGINIA
TRAVEL EXPENSE ACCOUNT SETTLEMENT

16461314

05003

received
7-8-04

Name: Fred Giggerbach	Title: Spec. Prosecutor	FIMS Vendor No: 389,067
Address: 40 MacCorkle Avenue, Ste. 202		Social Security No.
City/State Zip: S. Charleston, WV 25303	Headquarters: S. Charleston	Normal Work Hours: 8 to 5
Department: Admin	Division: WJPM	Section:
Purpose of Travel: Prosecuting cases		

DATE	TIME	CITY STATE	MILE	AMOUNT	AG	CR	RENTAL	MEALS	LODGING	OTHER	TOTAL
7/6		From char to glenville and back	188	\$70.50							\$70.50
		To									
7/8		char to glenville and back	188	\$70.50							\$70.50
7/9		char to spencer and back	107	\$38.25							\$38.25
TOTAL			478	\$179.25							

AGENCY ACCOUNTING INFORMATION					
Fund	Area	Org	Object	Sub Obj	Amount
2007	2008	0003	000		\$00.75
2007	2004	0224	096	026	\$179.25

Less Cash Advance (WVFIMS ID# (_____))

Due Employee Due State \$179.25

Traveler must attach copies of direct billed receipts or invoices, i.e., airline, registration, lodging, etc.

OTHER EXPENSES		
DATE	ITEMS	AMOUNT

EXPENSES DIRECT BILLED TO THE STATE	
DATE	ITEM AND VENDOR

I certify that these items incurred were in connection with my assigned duties, are true, accurate and correct, and do not reflect any costs or expenses reimbursed or to be reimbursed from any other source.

7/9/04
 Approved Supervisor/Department Head Date

I certify that I have personally examined and approved this Travel Expense Account Settlement. The items of expense are reasonable and correspond to the assigned duties of the traveler. The limits of expense adhere to all State of West Virginia Travel Regulations and are within the budget of this spending unit.

7/8/04
 Approved Agency Head/Designee Date



**STATE OF WEST VIRGINIA
TRAVEL EXPENSE ACCOUNT SETTLEMENT**

03800
I 6474911
received
7-16-04

Name: Fred Gigenbach	Title: Spec. Prosecutor	FIMS Vendor No: 387012
Address: 90 Marshville Avenue, Ste 202		Social Security No.
City/State Zip: China, WV 26033	Headquarters: In Charleston	Normal Work Hours: 8 to 5
Department: Admin	Division: WVPAI	Section:
Purpose of Travel: Prosecuting cases.		

DATE	FROM	CITY/STATE	MILEAGE	AMOUNT	CLASS	REMARKS	LOADING	OT-PAID	TOTAL
7/14		from China to Welch and back	255	\$98.00					\$98.00
		To							
TOTAL									\$98.00
									\$5.00
									\$101.00

AGENCY ACCOUNTING INFORMATION						Less Cash Advance (WVFIMS ID#)
Fund	Area	Org	Object	Sub Obj	Amount	
2002	1000	0002	000		228.78	
2521	2000	0228	040	026	101.00	
						<input checked="" type="checkbox"/> Due Employee <input type="checkbox"/> Due State \$101.00

Traveler must attach copies of direct billed receipts or invoices, i.e., airline, registration, lodging, etc.

OTHER EXPENSES		
DATE	ITEMS	AMOUNT
	Tolls	5.00

EXPENSES DIRECT BILLED TO THE STATE	
DATE	ITEM AND VENDOR

I certify that these costs incurred were in connection with my assigned duties, are true, accurate and actual, and do not reflect any costs or expenses reimbursed or to be reimbursed from any other source.

I certify that I have personally examined and approved this Travel Expense Account Settlement. The items of expense are reasonable and correspond to the assigned duties of the traveler. The items of expense further meet all State of West Virginia Travel Regulations and are within the budget of this spending unit.

Traveler's Signature
7/15/04
Date
7/19/04
Date

Approved Agency/Department Head

Approved Agency Head/Designee
7/19/04
Date



STATE OF WEST VIRGINIA
TRAVEL EXPENSE ACCOUNT SETTLEMENT

05013
2006 03/01/04

received
8-2-04

Name: Fred Gyggenbach		Title: Spec. Prosecutor	FIMS Vendor No: 101127
Address: 20 MacCorkle Avenue, Ste. 202		Social Security No.	
City/State Zip: Ches., WV 25303	Headquarters: <u>Chesapeake</u>		Normal Work Hours: 8 to 5
Department: Admin	Division: <u>WVPA</u>	Section:	

Purpose of Travel: Prosecuting cases

Date	To	City/State	MILES	AMOUNT	AIR	CAR RENTAL	MEALS	LODGING	OTHER	TOTAL
7/30	From To									
		ches to clarksburg and back	245	\$81.87					park \$1	\$82.87
TOTAL			245	\$81.87					\$1.00	\$82.87

AGENCY ACCOUNTING INFORMATION					
Fund	Area	Org	Object	Sub Obj	Amount
900F	4000	0002	020		\$82.87
0101	1005	0002	050	010	\$82.87

Loss Cash Advance (WVFIMS ID# ())

Due Employee Due State \$82.87

Traveler must attach copies of direct billed receipts or invoices, i.e., airline, registration, lodging, etc.

OTHER EXPENSES		
DATE	ITEMS	AMOUNT

EXPENSES DIRECT BILLED TO THE STATE	
DATE	ITEM AND VENDOR

I certify that these costs occurred in connection with my assigned duties, are trip-reimbursable and actual, and do not reflect any costs or expenses reimbursed or to be reimbursed from any other source.

I certify that I have personally examined and approved this Travel Expense Account Settlement. The items of expense are reasonable and correspond to the assigned duties of the traveler. The terms of expense further meet all State of West Virginia Travel Regulations and are within the budget of this spending unit.

[Signature]
Approval: Supervisor/Department Head
Date: 7/30/04

[Signature]
Approval: Agency Head/Designee
Date: 8/6/04



55276

STATE OF WEST VIRGINIA TRAVEL EXPENSE ACCOUNT SETTLEMENT

Name: Fwld Glijgenbach		Title: Spec. Prosecutor	FMS Vendor No:
Address: 80 MacCorkle Avenue, Ste. 202		Social Security No.	
City/State/Zip: Ches., WV 25303		Headquarters: <i>S. Chambers</i>	Normal Work Hours: 8 to 5
Department: Admin	Division: <i>WVPAI</i>	Section:	
Purpose of Travel: Prosecuting cases.			

DATE	TIME	BY STAFF	MILES	AMOUNT	OR	CAR RENTAL	TOLLS	LODGING	OTHER	TOTAL
8/12		From Ches to Parkersburg and back	245	\$91.87						\$91.87
		To								
TOTAL			245	\$91.87						\$91.87

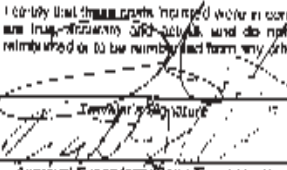
AGENCY ACCOUNTING INFORMATION						Less Cash Advance (WVFIMS ID# _____)	
Fund	Area	Org	Object	Sub Obj	Amount	<input checked="" type="checkbox"/> Due Employee	<input type="checkbox"/> Due State
9007	1000	0600	000	000	2000.00		\$91.87
2521	2005	0200	0000	020	591.87		

Traveler must attach copies of direct billed receipts or invoices, i.e., airline, registration, lodging, etc.

OTHER EXPENSES		
DATE	ITEMS	AMOUNT

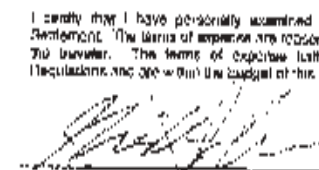
EXPENSES DIRECT BILLED TO THE STATE	
DATE	ITEM AND VENDOR

I certify that the ~~above~~ items reported were in connection with my assigned duties, are true, accurate and correct, and do not reflect any other or expenses reimbursed or to be reimbursed from any other source.



 Date: *8/13/04*

I certify that I have personally examined and approved this Travel Expense Account Settlement. The items of expense are reasonable and correspond to the assigned dates of the traveler. The items of expense further meet all State of West Virginia Travel Regulations and are within the budget of this reporting unit.



 Date: *8/13/04*



STATE OF WEST VIRGINIA
TRAVEL EXPENSE ACCOUNT SETTLEMENT

057056
IG538237

received
8-20-04

Name: Fred G. Gogenbach	Title: State Prosecutor	FMS Vendor No: 389067
Address: 90 McCorkle Avenue, Ste. 202		Social Security No.
City/State/Zip: S. Chas., WV 25303	Headquarters: S. Chas. Station	Normal Work Hours: 8 to 5
Department: Admin	Division: WPAI	Section:
Purpose of Travel: Prosecuting cases.		

DATE	TIME	CITY/STATE	MILES	AMOUNT	AIR	CAR RENTAL	MEALS	LODG NG	OTHER	TOTAL
8/25		From chas to morg	161	\$60.38						\$60.38
		To								
8/26		morg to new martinsville	75	\$28.13						\$28.13
8/28		new martinsville to chas	127	\$47.83						\$47.83
TOTAL			363	\$136.34						\$136.34

AGENCY ACCOUNTING INFORMATION						Less Cash Advance (WVFMS ID# _____)
Fund	Area	Org	Object	Sub Obj	Amount	<input checked="" type="checkbox"/> Due Employee <input type="checkbox"/> Due State
9807	1998	0802	026		\$282.75	
2511	2005	0822	026	026	\$136.34	

Traveler must attach copies of direct billed receipts or invoices, i.e., airline, registration, lodging, etc.

OTHER EXPENSES		
DATE	ITEMS	AMOUNT

EXPENSES DIRECT BILLED TO THE STATE	
DATE	ITEM AND VENDOR

I certify that these expenditures were in connection with my assigned duties for me, my spouse and family, and do not reflect any costs or expenses incurred or to be incurred from any other source.

[Signature]
Date: 8/27/04

[Signature]
Date: 8/30/04

I certify that I have personally examined and approved this Travel Expense Account Settlement. The items of expense are reasonable and correspond to the assigned duties of the traveler. The items of expense further meet all State of West Virginia Travel Regulations and are within the budget of the spending unit.

[Signature]
Date: 8/20/04

Appendix O: Agency Response



May 11, 2005

Mr. John Sylvia
Director
WV Legislature
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Blvd., East
Charleston, WV 25305

Dear Mr. Sylvia:

This letter shall serve as the Division's written response to the May 10, 2005 draft copy of the Special Report of the Prosecuting Attorneys Institute. As you are aware, we met with your staff on February 2, 2005, regarding an earlier draft report. The Division proposed some changes at the February 2, 2005 meeting and this current draft reflects those proposed changes.

The Division concurs with the "Conclusion" section of the draft report as well as the "Recommendation" section. However, the Division would recommend in addition that not only grant funded employees, but all employees should be required to maintain the same detailed time records. Implementing such a time recording policy would lessen the likelihood of confusion in requirements for time recordation and eliminate status questions based upon employment funding sources.

We were asked during the February 1, 2005 exit conference whether we thought the revised timesheets were submitted fraudulently. That is certainly a possibility, and it was that very possibility that caused the decision to refer this matter to your Division. Further, we re-iterate as earlier stated in a December 3, 2004 letter, the Division did not tell, imply or infer to the Institute that cases and/or time shall or should be added to the resubmitted timesheets for July and August 2004. In addition, the Division never authorized a liberal interpretation of grant parameters nor communicated to the Institute to be liberal in nature regarding the types of cases to be worked. The Division's stance has always been that the cases to be worked by the assistant prosecutor had to fall within the scope of the subgrant in order to be reimbursed by the subgrant.

J. Norbert Peterspiel, Director
1204 Kanawha Boulevard East
Charleston, West Virginia 25301

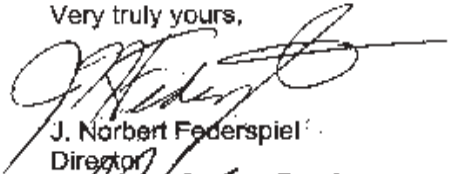


Tom Manchin III, Governor
Phone: (304) 568-8911
Fax: (304) 558-0891

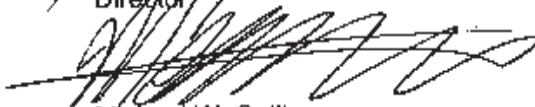
Mr. John Sylvia
May 10, 2005
Page Two

The Division of Criminal Justice Services appreciates the assistance that your agency has provided regarding this issue. As always, should you have questions please do not hesitate to contact the Division.

Very truly yours,



J. Norbert Federspiel
Director



Michael W. Cutlip
Deputy Director – Programs

JNF:MWC/bjw