

COMMITTEE MEETING

before

ASSEMBLY JUDICIARY, LAW, PUBLIC
SAFETY AND DEFENSE COMMITTEE

on

Senate, No. 1050

Held:
February 15, 1979
Room 219
State House
Trenton, New Jersey

COMMITTEE MEMBERS PRESENT:

Assemblyman Martin A. Herman, Chairman
Assemblyman William E. Bate, Vice-Chairman
Assemblyman William E. Flynn
Assemblyman Charles Mays
Assemblyman Eugene H. Thompson
Assemblyman Walter M. D. Kern, Jr.

ALSO:

Gayl R. Mazuco, Research Associate
Legislative Services Agency
Aide, Assembly Judiciary, Law, Public Safety and Defense Committee

CONFIDENTIAL



MEMORANDUM FOR THE DIRECTOR

January 10, 1952

TO: DIRECTOR
FROM: SAC, NEW YORK
SUBJECT: [Illegible]

Reference is made to the report of the New York Office dated January 8, 1952, captioned as above.

ADMINISTRATIVE COMMENTS

The New York Office should continue to maintain close contact with the [illegible] in the [illegible] area.

Very truly yours,
[Illegible Signature]

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[OFFICIAL COPY REPRINT]

SENATE, No. 1050

STATE OF NEW JERSEY

INTRODUCED APRIL 17, 1978

By Senator MERLINO

Referred to Committee on County and Municipal Government

AN ACT relating to the expenses of county prosecutors in the enforcement of the laws and amending N. J. S. 2A:158-7.

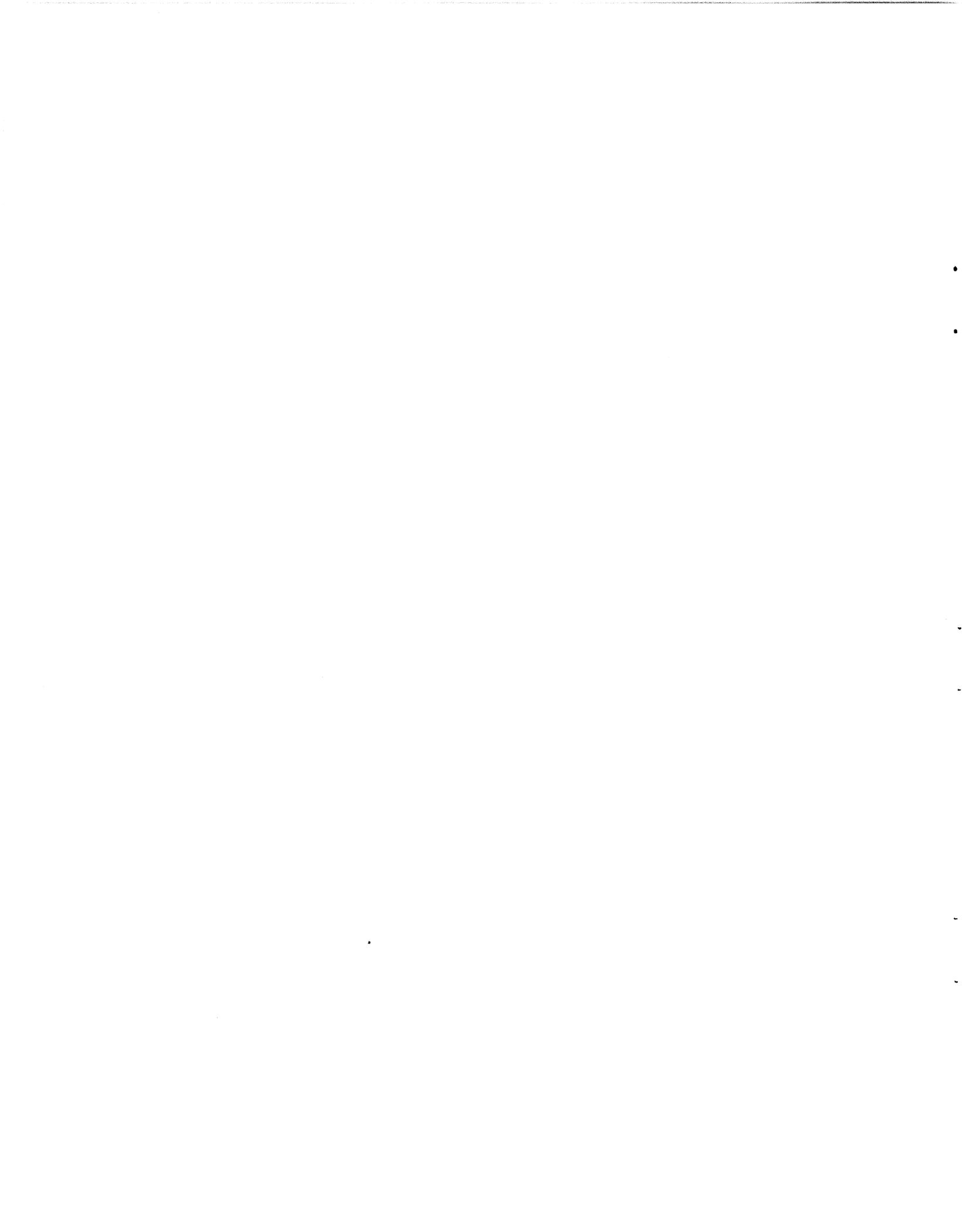
1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. N. J. S. 2A:158-7 is amended to read as follows:

2 2A:158-7. All necessary expenses incurred by the prosecutor
3 for each county in the detection, arrest, indictment and conviction
4 of offenders against the laws shall, upon being certified to by the
5 prosecutor **[and approved, under his hand, by a judge of the**
6 **superior court or of the county court for such county]**, be paid
7 by the county treasurer **[whenever the same shall be approved by**
8 **the board of chosen freeholders of such county. The amount or**
9 **amounts to be expended shall not exceed the amount fixed by the**
10 **board of chosen freeholders in its regular or emergency appropria-**
11 **tion, unless such expenditure is specifically authorized by order**
12 **of the assignment judge of the superior court for such county]**
13 *within the limits of funds appropriated by the* ***[board of chosen**
14 **freeholders]** **governing body* of the county by annual or emer-*
15 *gency appropriations *for such purposes, subject to such fiscal pro-*
16 *cedures as may be established by the governing body*.*

1 2. This act shall take effect immediately.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.



SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO

SENATE, No. 1050

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MAY 4, 1978

Senate Bill No. 1050 would amend N. J. S. 2A:158-7 which relates to the procedure whereby county prosecutors are compensated for expenses, to remove the role of the assignment judge in authorizing such payments.

The statute currently provides that the assignment judge must approve such expenses under his hand. The expenses would be then paid by the county treasurer if approved by the county board of chosen freeholders. The amount to be expended by the board for such purposes may not exceed the amount fixed by the board in its regular or emergency appropriations, unless authorized by order of the assignment judge.

Senate Bill No. 1050 would remove the requirement that such expenses be approved by the assignment judge. It would also provide that the county treasurer would pay such expenses within the limits of funds appropriated by the board of freeholders by annual or emergency appropriations. The bill would thereby remove the requirement that the board approve such expenditures prior to payment by the treasurer, and would appear to remove the ability of the board to fix a limitation on the amount to be expended for such purposes.

The committee amendments would provide that such expenses would be paid by the county treasurer within the limits of amounts appropriated by the county governing body for such purposes, and subject to the fiscal procedures established by the governing body.

ASSEMBLYMAN MARTIN A. HERMAN (Chairman): I would like to extend some time during this Committee meeting to Senator Merlino. Senator.

J O S E P H P. M E R L I N O: Mr. Chairman, I cleared through you the fact that I would like a record made of that which is going to be presented here today. Unfortunately, I will make my statement and then I must go to the Legislative Services Commission meeting which has been scheduled for eleven o'clock.

I am sure you are all aware of the intent of S-1050 which corrects the budget anomaly that is unique in our democracy: An administrative agency, elected by no one, is able to go to a judicial agency, elected by no one, for an increase in spending opposed by elected officials and paid by higher taxes on everyone.

County elected officials are charged by the voters with meeting as many public needs as possible within the amounts that the taxpayers can afford. County freeholders and county executives must weigh the needs of poorer persons for medical care, the adequacy of county roads and public transportation, the conditions in county correctional facilities, the maintenance of parks and recreation as well as the support bureaucracies for welfare, higher education - and for administration of justice.

All of these are pressing public needs. Many of them impinge directly on the lives of our people: how they get around, where they can play, whether they can advance themselves through education.

Yet when county elected officials decide to spend only "x" number of dollars on any of these programs and no more, that is that. There is no appeal over the heads of the freeholders by the needy, the elderly, the students, or the motorists.

With one exception, the Prosecutors' offices do have an avenue of appeal. They can ask the Assignment Judge of the Superior Court to order the public to pay for a budget increase. And this is a power that is not rarely exercised.

In Sussex County the Prosecutor went to the Assignment Judge in four of the last five years and was granted a budget increase every time. Assignment Judges in the same period intervened to increase spending in Bergen, Mercer and Passaic Counties.

Advocates of the Prosecutors' recourse to court-ordered spending generally raise but one argument: That without this avenue of appeal the politicians running a county system might effectively cut off a zealous prosecutor's investigation into corruption.

This argument relies heavily on public cynicism about elected officials - but very little on the actual performance of county prosecutors. When have the county prosecutors initiated major corruption cases - and had to rely on funds ordered by the assignment judge? I know of no examples.

The fact is that there is no evidence of this power being used for anti-corruption cases. It has been used only to fatten prosecutor government for comparable work - and to allow for exciting cases like "Dr. X" in Bergen County.

Such a special recourse for prosecutors' spending is not justified. It is especially dangerous that the decision should be left to another official in the system of justice. Should adequacy of funding road projects be appealable to the Commissioner of Transportation? Or welfare administrators be appealable to the Commissioner of Human Services?

I submit that this is an anomaly which should be changed, and S-1050 is the vehicle to do it.

That is my prepared text. It is not in the usual tone that I would have

addressed you, Mr. Chairman, but I thought it would be better to do it this way.

The Senate Committee released the bill, which has a rather impressive statement which has, I hope, followed you here. The vote in the Senate was substantial enough to get it over here. I have asked that a record be made, and that the Committee not reach a decision today on the record.

ASSEMBLYMAN HERMAN: Based on the time constraints of your schedule, would you prefer that the Committee withhold questions until we have had an opportunity to hear from other witnesses.

SENATOR MERLINO: Yes. Once the record is completed and the transcript is prepared, I think we can proceed more orderly.

ASSEMBLYMAN HERMAN: I want to thank you for appearing.

ASSEMBLYMAN FLYNN: We have had an extensive discussion of this on another occasion. Has that gotten into the record at all?

ASSEMBLYMAN HERMAN: No, that has not. This is a more formalized hearing.

SENATOR MERLINO: There are witnesses here today. Thank you so much.

ASSEMBLYMAN HERMAN: Edward Stier.

E D W A R D S T I E R: As has been indicated, we have been here before, before this Committee. We have today with us Prosecutors Rittenhouse from Hunterdon County, who is the Chairman of the Association, Prosecutor Williams from Atlantic County, and Prosecutor Sullivan from Burlington County, and members of my staff who have since the last hearing done a survey at your request to come up with some indication of the frequency with which Bigley applications - and I call them Bigley applications only because Prosecutor Bigley was the prosecutor who made such an application in Camden County - are made.

Since 1972, we have found that there have been a total of twenty complaints filed. Eight of the cases were consented to. That is, consent orders were entered at the time the complaint was filed, so there was an agreement reached with the freeholders at that very point. Seven of those cases - I am sorry that Assemblyman Herman left because seven of those cases were in Gloucester County where the Prosecutor had taken the position that in construing his legal obligations, he felt that it was necessary to file such an application in order to get the Assignment Judge to sign-off on any requests for an increase in staff, investigators or assistant prosecutors. These were not situations in which the freeholders had rejected the budget application by him. He just felt it was legally necessary to do that.

In two other cases, in addition to the eight, the matter was settled and consent orders were entered during the course of litigation. Ten of them went through to judgement. In nine of those cases judgements were entered increasing the budget for the Prosecutor. In one of those cases, the prosecutor's application was rejected, and his request was denied by the Court.

Without having to repeat the arguments that were made last time, let me just summarize the position we have taken in this way: New Jersey has achieved, I think, a very fine integrated, balanced law enforcement system. When I say integrated and balanced I mean that there is a very delicate relationship that exists between local, county and state law enforcement agencies, each one having unique capabilities to deal with the total law enforcement problems that confront the State. I think it is essential that the character of New Jersey law enforcement be maintained. I realize that there are very serious fiscal problems that face every level of government. I think that the Prosecutors recognize that as well. I don't think anybody can cite

examples within the period of time that I have talked about of situations in which prosecutors have asked for demonstrably frivolous increases in their budgets. There may be serious disagreements, legitimate disagreements, between the freeholders and the prosecutor as to how the prosecutor can meet ever increasing demands that are being made on his office - not demands that are made by the prosecutors, but demands that are generated by a drastically increasing crime rate, which, since 1972 has increased 67%.

We have a delicate balance that I think includes a sense of identity within the community, a feeling that law enforcement at certain levels, important levels, belongs to the community, that the Prosecutor reflects the priorities of the community and having him negotiate with the freeholders, and having the process take place in the county and be funded by the county, I think, is important to maintain that balance. The State, on the other hand, has a responsibility to oversee the total law enforcement system, but the relationship between the Attorney General, the State level law enforcement and the community is necessarily more impersonal. We don't reflect to as great an extent as the Prosecutor does or local policeman or police department does, which has contact in the community directly on a day-to-day basis. We don't reflect as directly and as immediately local concerns and local priorities.

This statute that is on the books today, we believe, is essential to maintain that balance. It represents a safety valve rarely used but when it is necessary, it is there to make everybody conscious of their responsibility to deal with their law enforcement demands in the community. I don't think it has been abused, and I think that by removing that, by taking that away, we are going to upset the balance. We are going to have a different kind of law enforcement in this State. We are going to have to make those demands. The crime rate is not going to drop because this piece of legislation has been changed. We have to meet those demands from some place. It may mean an increased burden on the State; it may mean that the State is going to have to assume responsibilities in the community that it really shouldn't have. It may mean that certain kinds of things simply won't get done. Cases won't get moved. There will be more delays in court calendars. The character and the quality of what we had in this State and what we have built up over the last ten years during the transition from part time to full time prosecutor's offices, that character is going to change.

Now, if you feel that should change, if this Committee believes that there ought to be some change in the allocation of law enforcement resources and the funding for law enforcement, deal with that problem specifically. Don't deal with a small piece of it and have to face the consequences or implications of that later on. Let's talk about the total system and make whatever changes are required. I think that by pulling out this one element we are going to have a serious adverse affect on it.

Now, Prosecutor Rittenhouse and the other prosecutors who are here met with Senator Merlino yesterday. I think they should have an opportunity to indicate what discussions they had and what discussions are presently taking place with the New Jersey Association of Counties where we are attempting to work out an arrangement that will provide a mechanism for balancing the interest of county government, of the restraints that are necessarily imposed on what the counties can provide to law enforcement and the needs that the prosecutor has.

ASSEMBLYMAN FLYNN: I have a question. Am I correct in assuming that the genesis of this statute originally was to preclude the possibility that political people would somehow interfere with the investigation of corruption. Is that the genesis of this statute?

MR. STIER: Well, I believe that was the case. I can't recite specifically the legislative history of it, but that has been the way we have construed it.

I might indicate that in one form or another this mechanism has been on the books since 1874.

ASSEMBLYMAN FLYNN: Is that why it was put on the books?

MR. STIER: Well, not having been around at that time--- I think that is the way it has always be construed. We have felt this was a way of keeping law enforcement independent of direct political pressures. The reality is, that from time to time, investigations are conducted by county prosecutors of local officials.

ASSEMBLYMAN FLYNN: This is impossible, because what we really have before us is a black and white situation. It is all or nothing. It is either all in the Assignment Judge's hands, or all in the county governing body's hands. Would it be possible to set forth categories that would be true Bigley application type categories? This possibly could be done through the kinds of conferences you are talking about with Senator Merlino and the Prosecutors. You could amend the bill to preserve the reason for the bill, and yet at the same time keep the county board of freeholders' fiscal problems in check. I can see the need in that one area, because the last time we were here, there were examples of some things that were not frivolous, but they certainly were not in the parameters of what Bigley was all about.

MR. STIER: In answer to your question, I think the answer is, yes. Certainly, we would be willing to try to work out a compromise that would preserve the independence of the Prosecutor and at that same time balance that against the needs and the interest and the restraints that the county has to face.

I want to make something clear, though. There has been a good deal of confusion, particularly within the last couple of months, confusion about the relationship between the prosecutor and the courts. This is not a situation where the Prosecutor has the authority to increase his own budget as the courts apparently do. This is not a situation where you have that built-in conflict of interest. We have an assignment judge to whom the prosecutor is not responsible and in some cases, the relationship becomes less than cordial between the prosecutor and the assignment judge. There are all kinds of frictions that exist. That assignment judge is the one who sits in judgement upon the application made by the prosecutor. That is very different from a situation where the assignment judge has the authority to increase his own budget. We want to make that distinction and not tie the two together in any way.

I think some of the examples that were cited were situations where the court has increased expenditures for itself for matters that one might consider to be less than vital. I don't want to pass judgement on what the courts have done. But we don't have that kind of conflict of interest. Certainly, we would be more than willing and ready to meet at any time and have met with the association of counties who were ready to continue those meetings and discussions to try to work out a compromise which will preserve the integrity of the system as we would like it preserved, but at the same time provide something for the freeholders that would permit them to not feel the frustration of having made part judgements about county agencies and budgets only to have those difficult judgements upset by the assignment judge. We understand that.

ASSEMBLYMAN HERMAN: Before you get around to more questions of Mr. Stier, we have with us a former colleague that some of you may remember, Peter Shapiro, New Jersey Magazine's playboy of the month. He does have time constraints and he did

want to comment. So, can we interrupt the questioning which might be extensive to give Peter an opportunity to express his views based on his current position as to this particular piece of legislation.

P E T E R S H A P I R O: Thank you, Mr. Chairman. I would be happy to remain for questions. It is very good to hear Director Stier's answers as well.

I would like to read into the record this brief testimony and then add a few more comments.

Mr. Chairman, members of the Assembly Judiciary Committee, good morning, it is a pleasure to return to the General Assembly and I thank you for the opportunity to give you my views on Senate Bill 1050.

I come before you in support of this legislation. At a time when local governments are confronted with the increasing lack of both federal and state revenue resources, it is imperative that we carefully control how we spend the taxpayer's money. Senator Merlino's bill is a step in the right direction.

An assignment judge appointed by the Governor currently has the authority to authorize the expenditures by a prosecutor, another state appointee. Such expenditures are borne exclusively by the local taxpayers and provide a striking example of how an official who is not accountable to a local government or to its constituents can have a direct impact on that local government's fiscal stability.

I recently introduced the 1979 Essex County budget recommendation - the first Essex County Executive Budget under our new form of county government. Because of the massive loss of state and federal revenues, I was forced, in my budget recommendation, to make drastic cuts affecting almost every department and agency.

The budget I recommended attempts to distribute the sacrifice equitably. However, my recommendations were made fully mindful of the public's right to expect and my duty to insure that the law enforcement and justice arms of the government be provided with reasonable and sufficient fiscal capacity to do their jobs. I therefore made an exception to the general pattern of reduction in the case of the prosecutor's office, and recommended that the Board of Freeholders increase the appropriation to the prosecutor's office.

I believe that my recommendation for the Prosecutor's Office represents a reasonable funding level. The Freeholders - in their deliberations on the budget as a whole - have the authority to either increase or decrease any budgeted recommendation including this one according to what they believe to be reasonable and what they perceive to be the will of their constituents.

In a budget as tightly constructed as ours in Essex County, the imposition of any additional expenditure by order of the assignment judge might well push county spending past the threshold of reasonableness.

The determination of what is a reasonable and appropriate expenditure of public funds is a responsibility which belongs to elected officials - and rightly so. Under our system of government this is the primary responsibility of the executive and legislative branch. It is the responsibility that they are elected to fulfill. Therefore, any government expenditure rightfully should be authorized only by those in whom the public has endowed this special trust.

Such authority as that now enjoyed and widely exercised by assignment judges is a clear infringement on the powers of both the legislative and executive branches of government. It is nothing short of a violation of the constitutional principal of separation of powers.

The legislative branch, in our county the Board of Freeholders, is vested

with the authority to appropriate monies. The executive branch, in Essex, the County Executive, is vested with the authority to direct and supervise the administration of the County government - including the expenditure of county funds appropriated by the Freeholders.

The authorization by the assignment judge of any additional expenditures by the Prosecutor represents a clear intrusion upon the authority of both the legislative and executive branches.

An assignment judge does not have the responsibility for the levying of taxes, appropriation of money, or the overall administration of the government. His sensitivity is more attuned to judicial matters and the administration of the courts - matters which are the appropriate focus of his attention.

Only the elected officials, in whom the public have placed their trust, can be expected to be sensitive to the public's right to have the government they finance operate in a fiscally responsible manner.

I urge you to vote to release S-1050. I would like to add just a few brief words in conjunction with some of the earlier remarks. Basically, these speak to the question of, what is our function, what is the function of the legislative branch of government to insure the right of the public to adequate law enforcement. I think that we are elected and endowed with that trust for good reasons. We are supposed to exercise a reasonable and prudent judgement there, and we should be able to have that kind of trust given us. The public, certainly, when they vote for us expects that we have that right; they expect that we are the ones in fact that are setting the taxes which are levied upon them, that we are directly accountable for those. We are certainly blamed for them. I know that. This is an unusual situation where we would still be blamed for it, but we would in fact not be accountable for it. I don't think that this will cause a marked change in law enforcement. I don't think you will see a rash of irresponsibility by county officials. I think quite the contrary, county officials as much as you and as much as the Division, care very, very strongly about the quality of law enforcement. Perhaps they would interpret the dollar need differently, but that is their right, and that is one of the reasons why we have a system of checks and balances, which I think has made our country a good one, and which is the basis of the system of laws under which we live.

I don't think this is affecting independence. I don't think it is any more of a threat of independence of the prosecutor than it is a threat of the appropriations committee that I used to sit on who hears every year from Judge Simpson, the Administrative Officer of the courts, when he comes before us to present the budget for the courts in this entire State. The legislative branch of the government can sit and deliberate and decide to cut that budget, and annually it does as it sees fit. But it has to be responsible and it knows it is responsible for the operation of the courts. He knows that he is responsible to make sure that operation is done in a responsible manner, and it is able to fulfill its constitutional mandates.

What I am basically asking is that we on the county level be endowed with that similar trust. I think we are equally responsible officials. I think we are certainly blamed by the public for what goes wrong, and the taxes they have to pay. That is the reason I ask you to give us the accountability and responsibility for being able to exercise judgement over these matters.

ASSEMBLYMAN HERMAN: The county prosecutor's office you acknowledge as actually an arm of the State even though you fund it?

MR. SHAPIRO: To get into a slightly peripheral matter, actually, yes. It is

a subject I would like very much to go on with. But, yes.

ASSEMBLYMAN HERMAN: Do you acknowledge under the present law that the county prosecutor is in effect an arm of the Attorney General's office?

MR. SHAPIRO: The county prosecutor is in fact a constitutional officer of the county. He is really a state official by all the facts. He is appointed by the Governor, and his mandate is dictated, really, by the State. And, of course, by the exigencies of crime.

ASSEMBLYMAN HERMAN: Are you aware of the situation in Pennsylvania a couple of years ago where there was a statewide prosecutor, and he was investigating an area that was perhaps too close to home for legislators and he inhibited the funding? I am not saying that is the norm, but we don't pass laws --- We don't put up stop signs for people who are going to stop anyway, do we?

MR. SHAPIRO: This is a risk that we definitely run under our system of government, whether it is the county board of freeholders, or whether it is the State Legislature. Just by virtue of the fact that this Committee is meeting here for this discussion is deciding the boundaries within which the county prosecutors ---

ASSEMBLYMAN HERMAN: What I am asking, isn't there some potential for abuse the other way? I am talking about potential for abuse, assuming that a zealous county prosecutor is looking into county "x" purchasing a number of items he feels may be wrongdoing on a local level. Isn't there a potential to inhibit that county prosecutor through the use of the budget? I am not saying that will happen, but doesn't the potential exist?

MR. SHAPIRO: I think that potential does exist. But it is inherent in our system of democracy, just as it would be if a county prosecutor were looking to a member of the Legislature.

ASSEMBLYMAN HERMAN: Let me just ask you this question: Where that potential exists, shouldn't there be some way in which a law enforcement official, the highest law enforcement official in the county can seek some sort of redress? I am just getting your opinion. I am not expressing one now.

MR. SHAPIRO: Yes, as a matter of opinion, I feel that there already is that system, and there would be that system, even if this bill were to pass, that is, without the Bigley provision. That is basically there in our democracy. If it is clear that a county office holder is acting unreasonably, an elected official, he is responsible for the people and the people will sit in judgement on him, and will in effect be able to turn him out of office. That is exactly the same thing, if I can make a parallel, with the kind of public sentiment that there was very recently in this Legislature when there was consideration three years ago of disbanding the State Commission on Investigation.

If you think about that, what appeal did they have? Their appeal in a sense was to the public, and the public is who we are accountable to as elected officials. But, I think that is a very important inherent part of our democracy.

Let me set the other side of it, in a sense, which is, the assignment judge comes before the board of freeholders or the county executive in charter counties and wants to get his budget as well. He may have a perspective on the county government that is being too tight with him, and it is too hard to get money out of him, and may therefore be very, very sympathetic to anyone coming to him and saying, listen, judge, these people are just hitting me too hard, can't you help out. He doesn't have to judge the overall fiscal situation. He doesn't have to look at the entire scope of

services that the county has to supply. He knows, and he deals in the courts, and he deals in court related matters, and he can be very, very sympathetic to people who have the ability to appeal to him. Unfortunately, the senior citizens who are having programs cut out for the parks this year in Essex County don't have the right to appeal to the assignment judge. The children who will be losing teachers at the children's shelter don't have that right to appeal, and they will be losing services in a sense in proportion to the amount that he has the power to add to law enforcement.

We are dealing in very tricky judgemental areas. We are not dealing, ever, in any case with the question of the County Board of Freeholders or a County Executive attempting to make a dramatic slash in the budget of the county prosecutor for "political reasons," for reasons that they feel that prosecutor is getting at their friends.

ASSEMBLYMAN HERMAN: Do you feel at the same time, then, you want to change the law in reference to the construction of that courthouse that the judge says you ought to make, and you say no as a county official and he says yes.

MR. SHAPIRO: I do. I think we ought to look at that quite a bit. In fact, it is today fairly well the case in our county. It was brought up as a supposition by a member of the old government that if an assignment judge, who wanted to be unreasonable, wanted to order a major capital improvement that he could in effect do it, just like you are saying. If he wanted to order a gate to be placed across the street affecting the parking, if he wanted to order some lavish accoutrement in the courthouse, he could in fact do that the way it is constructed today. I think there is a need to make some changes there.

ASSEMBLYMAN HERMAN: Are there any further questions? Yes, Bill.

ASSEMBLYMAN FLYNN: Taking the same question I asked the Attorney General, would you be in favor of some kind of a modification of this type of bill to include those areas that are truly recognized as the Bigley type of applications as opposed to the broad brush or general salary raises for everybody on the prosecutor's staff, where there is a general increase of additional personnel. Let's say he needed an accountant and a special investigator for a corruption investigation which the evidence wasn't clear on, therefore, he can't go to the public until he has some hard evidence. Would you be in favor of some kind of a modification of this bill?

MR. SHAPIRO: I have to say that I think the safeguard already is there in terms of public sentiment.

ASSEMBLYMAN FLYNN: Well, it is not, because you can't go to the public until you have some hard evidence. Otherwise, you will have all kinds of other slander and libel and everything else.

ASSEMBLYMAN HERMAN: Say, you have the five percent cap law, and you say I would love to help you out, and I would love to give you that additional \$50,000 but it just doesn't exist - and he needs it like yesterday for a major investigation - do you wait for the passage of an ordinance or an emergency resolution in order for you to exceed your cap?

MR. SHAPIRO: You are talking about specifically the prosecutor?

ASSEMBLYMAN HERMAN: Yes.

MR. SHAPIRO: I would have to say, at least, given my experience, in the short period of time I have been in the Executive Branch of Government trying to deal with a tight budget and trying to deal with the setting authorities, that the prosecutor is fully capable of doing that as well.

If the prosecutor wants to be able to go in and say, all right we have a very important investigation, he can prioritize. He can say, all right, I am short

of money, and the county is short of money, and the taxpayers are short of money. We lost federal aid, as the case in point, in Essex County. He can say, I will get by by putting something else on a back burner. Okay, I will set this as what is most important now. If the taxpayers of this county cannot afford the full scope of service I would like to be providing, the full scope of investigations I would like to be providing, or whatever, I will set priorities.

Bill's question, I think, is more specifically aimed at corruption.

ASSEMBLYMAN FLYNN: That is right. I assume that was the intent of the original statute. Now, I have not heard anything to the contrary.

MR. SHAPIRO: Ed said he wasn't sure of the precedent.

ASSEMBLYMAN FLYNN: Nobody has come up with anything to the contrary.

MR. SHAPIRO: I think again you really do have to rely ultimately upon the safeguard of the public. Because, what is the test that can be applied? It is a very, very difficult thing. What is the test that is going to be applied to this Legislature and the Federal Congress if there was a major investigation of either one of them that was saying there was a massive conspiracy within the legislature that needed to be investigated? You could ultimately control the purse strings. You could do that. You have that power. No one questions that power. You are elected to exercise that power. In effect, it is spelled out in the Constitution that the power of the purse is supposed to be with the Legislative Branch of the government.

ASSEMBLYMAN HERMAN: Are there any more questions of Mr. Shapiro? If not, Peter, I thank you very much for appearing.

MR. SHAPIRO: Thank you, Mr. Chairman.

ASSEMBLYMAN HERMAN: Now we will go back to Mr. Stier.

MR. STIER: If I could, at this point I would like to introduce Bill Rittenhouse, who I think more than I demonstrates and can articulate for the Committee the perspective of a Prosecutor who really is a part of county government, really is very responsive to local interests and concerns, has a continuing direct dialogue going on with the Freeholders, and I think it reflects a slightly different set of circumstances than we have in Essex County where we have 76 Assistant Prosecutors and priorities can be adjusted more easily. Bill comes from a much smaller county and I think has a different point of view that ought to be heard.

O S C A R W. R I T T E N H O U S E: Thank you, Ed.

Mr. Chairman and members of the Committee, as Ed says, I come from a smaller county, Hunterdon County, where I have been Prosecutor both for a five-year term as a part-time Prosecutor and, I think significantly now, as a full-time Prosecutor. So I have had a chance to compare those two forms. I think that is important because many of the Bigley applications which have resulted in adverse reaction on the part of the freeholders have stemmed from that transitional phase. The cost factor with a part-time office is obviously much less than that with a full-time office. And in many cases, Bigley applications attended that change and brought about some reaction. I think that is a temporary thing. We are now at the point where almost everything is full time and there is a better understanding of that.

I have been very interested to hear the very articulate comments of Executive Shapiro here because I think he has voiced the concerns as well as I have ever heard them voiced about the Bigley legislation, the statute which permits a prosecutor to go to the assignment judge where he feels that he cannot live within the confines of the budgetary restraints that have been put on by the freeholders. But I think what is important when you listen to that is really what is being suggested. I think that what Mr. Shapiro is suggesting when he says that the freeholders, in fact, want to have the responsibility for the administration of criminal justice within the county because they have the budgetary responsibility, is expanding the scope of what traditionally has been true in New Jersey considerably. I think that that is a very proper assessment when he talks about what happens if Senate Bill 1050 passes, because, as of now, while I have all of the identity which has been alluded to by Ed and others here to the people of Hunterdon County as the chief law enforcement officer of that county, my responsibility is to administer the criminal laws of the State as passed by the State Legislature under direction of the Attorney General and eventually the Governor, by whom I am appointed. I do not react or respond directly, other than in a budgetary sense, to the freeholders. They have no responsibility in the area that I have of law enforcement. They do have the funding responsibility.

To answer your question, I think that is in addition to the possibility of corruption and that kind of thing, one of the reasons that the original legislation was passed.

In New Jersey, as is true with only two other states in the Union, the prosecutors are appointed, not elected; the purpose of that is to remove the prosecutor or law enforcement process from the political process. Now if you are going to have a State-appointed official designated as the chief law enforcement officer within a county, you can do one of two things: You can either have

that funded by the State, which is one of the alternatives that has been suggested, or you can have it funded by a local board where there is a responsiveness and reaction to the populous by forcing him to go to the freeholders for his budgetary provision. That is done in this State. I, if I need money for my operations in Hunterdon County, must go to my Board of Freeholders. But if the Board of Freeholders, who doesn't have the law enforcement responsibility, either fails to understand or disagrees strongly to the extent that I am unable to perform my functions, I have to have somewhere to go. That is why originally the statute said, we are going to designate someone who has some understanding of this overall process, and they selected the assignment judge. It might have been someone else. But it is important to note that in selecting the assignment judge under the statute, they selected someone whom they designated as a legislative agent to hear this kind of controversy between two bodies who couldn't agree in the important area of law enforcement.

That is different than all the other funding responsibilities that the freeholders have. Their funding responsibility for law enforcement is an area outside their other responsibilities. This gives me that safety valve when somehow I run up against a situation where I honestly believe I can't perform my mandated functions. That sort of thing ---

ASSEMBLYMAN HERMAN: What is your burden of proof? Chat about that for a few moments.

MR. RITTENHOUSE: When I go to an assignment judge for that, he sits really on the matter in a de nova sense, Mr. Chairman. He is supposed to hear the matter initially from both sides and make an initial determination as that legislative agent. There isn't any established burden of proof; that is, that he has to overcome the decision by the freeholders by clear and convincing evidence. There are no presumptions. He simply sits and hears the evidence.

Some might argue that that is difficult. One of the reasons I think that we are sitting here and talking about this bill is what that has resulted in, because historically in most cases a county government when faced with a Bigley application has not come forward strongly with a defense and put evidence on the record so that the assignment judge can exercise that in a way which they may feel is entirely satisfactory.

With that in mind, Mr. Chairman, that leads me to the point where I think the prosecutors as such --- When I talk like this it can sound very much as though we say, well, okay, if the freeholders don't understand, we want a place to go and it doesn't matter what they think. That isn't so. I think the prosecutors, particularly lately and particularly in light of the public sentiment and reaction to the cap and to budgetary spending as a whole, have had an increasing awareness of the problem that the freeholders face in this respect. We have an obligation to justify the money that we spend in law enforcement. We, when we go to the freeholders, have to make a case for them and we have to make it publicly. They, at the same time, need a basis on which they can compare and evaluate our request. In the past, they haven't had that because we are dealing in an area for which they have no responsibility.

To meet that, we as an Association, along with the Division, have been meeting with Jack Lamping and the Association of Counties to work out a mechanism where, utilizing the information we are going to have on a standardized basis

from computerization programs, etc., that are in effect, we are going to be able to present statewide meaningful figures that will give them a basis for comparison with other counties. In addition, we have been trying and the Association has been cooperating in providing information as to the kind of thing they need to make the sort of evaluation they want. We think that that kind of exchange is necessary so that at the initial steps, just negotiating, as we want to, to adequately fund our operations, we can hopefully settle it there.

The next question is: If it isn't settled there, should you go immediately to the assignment judge? One of the things we have been exploring is - perhaps not. Perhaps we should have an intermediary body we could go to, who could look at the thing objectively at the local level and could come up with, if not a final arbitration on the matter, at least some kind of recommendation which is going to have a profound effect on any hearing before the assignment judge if, in fact, it finally has to go that far.

What I want to stress is that the prosecutors don't believe the Bigley application should be indiscriminately made. It should be made only in rare instances and only when there has been an honest evaluation of the needs at the county level. But somewhere there has to be this safety valve because, otherwise, the freeholders are going to be taking ---

ASSEMBLYMAN HERMAN: In that regard, don't you think that there should be standards set upon what basis a Bigley application should be made?

MR. RITTENHOUSE: I think once this mechanism is put into effect, Mr. Chairman, that that kind of thing will follow.

ASSEMBLYMAN HERMAN: The question is: Who does the legislation? In other words, we had this when the Criminal Code came up and the basic philosophical question, which the majority of this Committee, I believe, if not all the Committee disagreed with --- but the court said it was such and that was the law. Therefore, we had to incorporate it into the Code. There is a certain pride, I believe, in the process that leads us to believe that if we are going to enact a law, at least that law ought to start here.

MR. RITTENHOUSE: I would say that what you are pointing out is a very valid observation about how the system works right now.

ASSEMBLYMAN HERMAN: Or should work.

MR. RITTENHOUSE: Or should work - that's right - because there has been frankly at times criticism, for instance, that the prosecutors will go before the assignment judge armed with surveys and things like that that the county governments just don't have. We are trying to eliminate that kind of thing. I think once the mechanism is set up for an evaluation at the local level, then you can evaluate and see how that works. And, if Bigley applications continue to be necessary, you can evaluate the kinds of standards that may be necessary.

What I am pushing for at this point - and I think validly - is that this particular legislation, if it is voted out of this Committee and is passed, is going to have a very profound effect on the delicate balance that has been in effect for over a hundred years, much more profound than maybe has been represented here at the table in good faith to this point. I think what has been the initiation of good faith negotiations between the Association of Counties and the prosecutors and with Senator Merlino with whom we met collectively only yesterday to talk about this will enable us to put in place a study of this kind of alternatives which will determine then the need for such legislation as you are talking about.

ASSEMBLYMAN FLYNN: First, just an observation, and then I have a question. Using the same logic that you have used, couldn't the Chief of Police of Newark say that the laying off of 200 policemen has so seriously disrupted the enforcement of crime in Newark that he should have somebody that he could go to to override the City Council or the Mayor? Wouldn't the same logic prevail?

MR. RITTENHOUSE: There is one difference in that; and, that is, that the enforcement of the law within the municipality is the responsibility of the governing body and the Mayor. So they not only have the responsibility of effecting the collection of taxes and budgeting there, but they have the law enforcement responsibility at that level. They hire and fire the Chief of Police and the police within the municipality.

ASSEMBLYMAN FLYNN: The Director, not the Chief.

MR. RITTENHOUSE: Or the Director, as it may be. But the ultimate responsibility is with the governing body. That isn't true with the freeholders.

ASSEMBLYMAN FLYNN: Basically, you are resting your case on the fact you feel the freeholders don't have a law enforcement function; is that it?

MR. RITTENHOUSE: They do not have a law enforcement responsibility. They have a budgetary responsibility. I don't think that the prosecutors are coming before this Committee and arguing that the freeholders are acting in bad faith or are going to be corrupt. That is just a possibility. As Mr. Shapiro said, that could be argued, I suppose, about the assignment judge or about the prosecutors. We are not talking in the area of corruption, however. We are talking specifically about the area of designated responsibility.

ASSEMBLYMAN FLYNN: The second question I have is concerning the possibility of compromise. What kinds of Bigley applications have you made in your county, for example, over the last four or five years?

MR. RITTENHOUSE: We made a major Bigley application after the county went to a full-time prosecutor in 1976 - they made it August 15, 1975 - and that was for the addition of Investigative-Detective and prosecutorial personnel. That was turned down when the full-time office went into effect.

ASSEMBLYMAN HERMAN: Describe the differential for us, please, as to what they wanted to give you versus what you went in for, the basis you went in for it and why it was approved?

MR. RITTENHOUSE: Well, I have the full affidavit and testimony that was taken before the judge in that case. It was one in which County Counsel did appear and did oppose.

ASSEMBLYMAN HERMAN: They were willing to give you some staff. You wanted plus that staff. Would you just tell us what they were willing to give you, what you wanted, and what you wound up with?

MR. RITTENHOUSE: We asked for one additional Assistant Prosecutor. At that point, what we were authorized was a Prosecutor and an Assistant Prosecutor. We wanted two at that point. We wanted another Investigator. The argument for it - the prosecutorial argument - was made on the basis of the caseload that we had. The investigative argument was made because we could show the number of investigations that had been undertaken by the State Police, the State Police had been withdrawn from the county, the new role of the Prosecutor's Office in providing the investigative function, the training of local police, and that kind of thing. And we had statistics backing it up, the number of investigations, and that kind of thing.

ASSEMBLYMAN HERMAN: You were doubling your staff from one to two.

MR. RITTENHOUSE: Actually we went up to almost a 25 percent increase on the cost. But the thing I want to stress is that seemed at the time to be almost unacceptable. Yet we compiled statistics to show what the cost of law enforcement had been in each municipality and we were lower on the increase than that relative increase had been in any municipality in the county. The fact is that the cost of law enforcement had gone up that much. Again, it became a matter of evaluating the different needs of a full-time Prosecutor's Office as opposed to a part-time office, something which initially I don't think was appreciated fully.

ASSEMBLYMAN HERMAN: Do any other members of the Committee have any questions?

ASSEMBLYMAN FLYNN: Have there been any other examples of Bigley since that one?

MR. RITTENHOUSE: Not since that one. We had two other ---

ASSEMBLYMAN FLYNN: Before that then.

MR. RITTENHOUSE: We had one other in an area where there was an emergency appropriation requested in the amount of \$9500 for a special investigation into the Lambertville gas explosion which had resulted in the death of three people. There was a reluctance on the part of the freeholders to fund that particular investigation. We went before them. It was not approved. We applied for Bigley for the funding. At that point, an emergency appropriation was made by the freeholders in response to it.

One other was a very rare instance, but the fact is that it happened. We wanted another Investigator at an earlier stage. There didn't seem to be any disagreement as to the need. At least, that is what was represented. But the question was posed: Who do you wish to hire? When that question was posed, I applied for a Bigley application.

ASSEMBLYMAN HERMAN: We will go first to Assemblyman Kern and then Assemblyman Thompson.

ASSEMBLYMAN KERN: During the course of these Bigley applications, what was the political complexion of the Prosecutor and the Freeholders? Was it the same party or different parties?

MR. RITTENHOUSE: During the time --- I have to think back historically. There was a brief period of time when the political complexion was the same. I think in '76, it was different, with the two-to-one majority on the other side. However, I am not alleging that that was a factor. It could have been.

ASSEMBLYMAN KERN: I am not looking for that. I am just looking for some information on which to base a decision.

ASSEMBLYMAN HERMAN: Mr. Thompson.

ASSEMBLYMAN THOMPSON: To whom is the assignment judge accountable, other than the Governor, if someone comes before him for a Bidley application, he grants it and ---

ASSEMBLYMAN HERMAN: I believe the assignment judge is accountable to the Chief Justice.

MR. RITTENHOUSE: He is accountable to the Chief Justice, but the process doesn't end with the assignment judge. It is appealable. And if he makes a decision which isn't reasonable, then the appeal can be taken to the

Appellate Division by the county if they feel offended or by the prosecutor if he feels offended.

ASSEMBLYMAN HERMAN: I would think that by a recent case on the administrative powers of assignment judges that that review is going to be rather narrow in scope.

MR. RITTENHOUSE: No. Excuse me, Mr. Chairman. That is not so. That recent case you are referring to is a good point. That was a case establishing the power of the assignment judge under the doctrine of inherent power of the court as an arm of the Supreme Court. All it was saying was that they have the authority to do that.

In this case, we are talking about a bill, 1050, which is to attack a legislative designation of power to the assignment judge. So the question in that case is not before us at all. The fact is that the appeal would be taken not on the power of the assignment judge to do this, but would be taken on the reasonableness of what he did. That the Appellate Division would be able to evaluate.

ASSEMBLYMAN HERMAN: Are there any other witnesses, Ed, that you wish to be heard that are not cumulative?

MR. STIER: No, not from the Prosecutors or the Attorney General's Office.

ASSEMBLYMAN HERMAN: From your standpoint, you have noted everyone on the record who, I assume, is here in support of Mr. Rittenhouse's testimony.

MR. STIER: Yes. I might add that the group that is here is a committee of the Prosecutors Association and that we only brought these three Prosecutors with us because of the size of the room. The Prosecutors, unanimously, feel very strongly about this bill and would all have been here if they could.

ASSEMBLYMAN HERMAN: Your telephone system does still work well.

MR. RITTENHOUSE: Mr. Chairman, Dick Williams, the Prosecutor of Atlantic County, just asked that I reiterate that. This has been thoroughly discussed by the Association. I believe that the statements I have just made are the unanimous position of the Prosecutors Association.

ASSEMBLYMAN HERMAN: I believe that a representative from the counties would like to testify.

MR. LAMPING: Mr. Madden from Sussex County.

MR. STIER: The Prosecutors, I believe, can be available for any additional testimony.

ASSEMBLYMAN HERMAN: I want it understood we are not taking any vote on this bill today and there may be additional comments or inquiries directed. You are welcome to stick around. We do have other matters of scheduling which we are trying to keep on track.

Sir, if you would like to join us, we would be happy to have you. Mr. Madden, thank you for coming here today. We would like to have some of your comments. If you agree with what Peter Shapiro has already said, please say so, and we would like supplemental remarks or any additional comments.

J O H N T. M A D D E N: I do have some opinions on it, gentlemen, because of my experience.

ASSEMBLYMAN HERMAN: Can you tell us where you are from, sir?

MR. MADDEN: I am from Sussex County. I am the Ex-County Counsel of

Sussex County. I retired at the end of 1977 from that office. I have been asked to testify here because of the experience I had in the last four years of my term. I had been the counsel for that county for 27 years. In each of the last four years, I was involved or the Board of Freeholders was involved, with Bigley applications by our Prosecutor, in the years '74, '75, '76 and '77. Because of that experience, that is the reason I have been asked to come and testify. I am not associated with the county now.

ASSEMBLYMAN HERMAN: We just wanted some of your background. Why don't you share some of your remarks with us, please.

MR. MADDEN: I may say that of the four applications, two resulted in court orders and two of the applications were settled, in fact, out of court. One was settled by the intervention of the assignment judge, himself. The prosecutor had filed a formal complaint with him, but before he issued an order to show cause ---

ASSEMBLYMAN HERMAN: Just for the purpose of structuring the hearing and getting to the essence of the legislation which you appear to testify either for or against - and I assume for - would you perhaps tell us, based on your experiences, why you feel that this legislation is necessary? I think that is what we would like to hear.

MR. MADDEN: Based on my experience - and this is strictly my personal opinion - I have not discussed this --- based on my experience, I do not think that the present statute is good because it represents too easy an avenue for the prosecutor. I think that the assignment judge and the prosecutor are members of the same family, if you will. I make mention of that because county counsels were prohibited some years ago - and are still prohibited - from practicing in the criminal courts. We cannot represent a defendant. The philosophy offered by the court or the Ethics Committee in basis of that ruling was that the county counsel and the prosecutor were members of the same family and that in the public view this was somewhat reprehensible.

ASSEMBLYMAN HERMAN: Didn't that opinion also say because you funded the prosecutor's office, there might be some potential moral coercion, or otherwise, regarding prosecutorial funding as to why county counsel shouldn't appear? Was that the essence of that opinion?

MR. MADDEN: Yes.

ASSEMBLYMAN HERMAN: All right, continue.

MR. MADDEN: So I am extending that same principle for one basis, that the assignment judge and the county prosecutor are in effect State representatives.

I think another aspect is that the assignment judge has much more familiarity in relationship with the prosecutor than he does with the Board of Freeholders. He meets regularly to charge the grand juries. He meets with the prosecutors on the calendar calls, trial of cases and other various matters that may come up. In my experience, possibly once or twice a year, the assignment judge would meet with the freeholders. Some years, he never even met at all. It was only in recent years that this has occurred. So I think because of the nature of the relationship, there is a greater affinity between the prosecutor's office and the assignment judge, without intending any disrespect to either.

ASSEMBLYMAN HERMAN: Let me ask you a question. Do you think the

prosecutors ought to have a right of appeal from an unreasonable decision and, if so, to whom? How would you handle the situation?

MR. MADDEN: My own belief is that inherently they do. I think they would have a right to take this to court on appeal if there were an abuse of discretion by the freeholders.

ASSEMBLYMAN HERMAN: To whom - which court - since all the judges, I believe, are appointed by the State?

MR. MADDEN: Well, I think they would have to go to the Appellate Division on any appeal from an administrative body.

ASSEMBLYMAN HERMAN: Aren't those judges appointed by the State?

MR. MADDEN: Yes, but they are not the judges sitting in that particular vicinage.

ASSEMBLYMAN HERMAN: Do Appellate Judges normally have de nova review proceeding?

MR. MADDEN: They do for many administrative agencies, yes.

ASSEMBLYMAN HERMAN: De nova?

MR. MADDEN: Yes. When I say "de nova," there has to be a record. I am sorry; I didn't mean de nova.

ASSEMBLYMAN HERMAN: Their ability to modify that record is substantially limited. So you are suggesting that we go to the Appellate Division and allow a full de nova hearing?

MR. MADDEN: No. If you want my own opinion, I think the whole difficulty in this matter is that you have a two-fold nature in this office. I think the answer is that the State ought to fund the whole thing.

ASSEMBLYMAN HERMAN: Perhaps some people might agree with you. Given the realities of the limits of tax dollars, under the present law, what do you think we ought to do? In other words, do you support the Merlino measure as a better alternative than our existing system? I am just trying, in essence, to pick your brain as to where this Committee ought to go in handling this matter.

MR. MADDEN: In my own personal opinion, I think it would be better without the present statute. I think there is recourse. I haven't researched this, so I can't talk to you authoritatively on it. But I think there is an inherent ability to take an appeal to whatever body is appropriate.

ASSEMBLYMAN HERMAN: Assuming that there is no inherent ability to appeal this matter and take it to another jurisdiction, what do you suggest? Do you still suggest that we release the Merlino Bill as it is?

MR. MADDEN: I would favor that. But if you want an alternative, if you want to substitute a body of appeal, I would suggest that you provide for an appeal to the Appellate Division where I think you would get a more objective review of the matter.

ASSEMBLYMAN HERMAN: Does any other Committee member have any questions?

ASSEMBLYMAN FLYNN: Do you subscribe to the concept that was espoused earlier that the county board of freeholders has no law enforcement functions?

MR. MADDEN: Yes. That is the determination by the courts. The courts have determined that they don't have the enforcement function. All they have is the function of funding. I think that is the difficulty with this whole situation.

ASSEMBLYMAN FLYNN: Where they have a county police system, does the same thing hold true?

MR. MADDEN: We don't have a county police system and I have never had occasion to --- I don't know.

ASSEMBLYMAN FLYNN: Bergen County has a county police. Hudson has a county police. Don't those counties have law enforcement functions?

MR. MADDEN: If they had a county police department, they would be the administrative body, I assume, yes.

ASSEMBLYMAN FLYNN: Just briefly, in a couple of sentences, tell us about the four applications that you were involved in. What did they involve? Just tell us the topics.

MR. MADDEN: I will have to approach this backwards because it is a little political in one sense. I don't mean to be political. But we had a new prosecutor in 1973 and, on coming into office, he wanted to increase the office considerably. He had a favorable board of freeholders who had been responsible for his appointment. In the budget that was set up in 1974, there was an increase, double in amount, that had previously been set forth for use of the Prosecutor's Office. At the time, there was one Prosecutor, one Assistant Prosecutor and one State Police Detective who had been assigned for investigative purposes to that office. The prior prosecutors had used the municipal police throughout the county for investigative purposes to assist them. The Prosecutor then applied and was granted in that '74 budget by the then friendly board, provision for a Chief of Detectives, as I recall it - this is from recollection - and I think three County Detectives and two Investigators; in other words, a total of six altogether. There were civil service tests taken and none of these positions was filled during the year of 1974, although they had been budgeted. Apparently they were not filled because the Prosecutor objected to the three people who had been selected by the Civil Service Commission. He became embroiled in some litigation with the Civil Service Commission that took a couple of years. So when the next Board of Freeholders came in in 1975, having budgeted a double amount for the Prosecutor's Office which was not fulfilled, none of which positions were filled, they wanted to cut back. As a result of that, we got into litigation. As a matter of fact, this started at the end of '74 and, at that time, the county had put a freeze on hiring any further employees in any of the county departments.

ASSEMBLYMAN FLYNN: The application was just an increase in staff?

MR. MADDEN: Increase in staff with, of course, the concomitant increase in salary and expense of the office.

ASSEMBLYMAN FLYNN: That was one. You said there were three other Bigley applications?

MR. MADDEN: Yes.

ASSEMBLYMAN FLYNN: Just by topic now - was it an increase in staff?

MR. MADDEN: The first two involved the increase in staff plus the additional increase in budget. The third was back again on the same general increase. That was when Judge Antell came before the board and settled the matter directly without any formal court matter.

The next was a further increase to five County Detectives, something like five automobiles and apparatus, countywide radio system, etc.

ASSEMBLYMAN FLYNN: It was a generalized application with regard to a budget priority as opposed to a specific investigation.

MR. MADDEN: That is correct.

ASSEMBLYMAN FLYNN: That is what I wanted to find out. Thank you.

ASSEMBLYMAN HERMAN: I want to thank you for appearing. Are there any other witnesses on this matter?

ASSEMBLYMAN KERN: I have a question. During the course of these applications, what was the political complexion of the Prosecutor's Office and the Board of Freeholders? Were they of the same party or different parties?

MR. MADDEN: No. When the Prosecutor first came in, the first year that was involved, he had a friendly board. After that, the political complexion was different. It changed.

ASSEMBLYMAN HERMAN: It doesn't mean they weren't friendly; they were just of different political persuasions.

MR. MADDEN: I don't mean to indicate there was hostility. But I think, since the question has been asked, that it had a very bad public reaction because the two who had recommended his appointment were defeated in an election after that. I think the public reacted unfavorably to the increased budget and taxes. Remember there was a recession at that time and people were becoming very tax conscious.

ASSEMBLYMAN HERMAN: It just shows that we all have to stand for election and stand by our judgments. The process doesn't change.

Is there anyone else who wishes to testify on this matter? Please state your name and the purpose of your testimony.

G E O R G E J. A L B A N E S E: I am George Albanese, County Manager of Union County. I probably have been involved in more Bigley applications than anybody in this particular room. We have gone through about five Prosecutors.

I think we are here today as a result of an abuse of the Bigley application. In Union County, it has been used to grant exorbitant raises to Assistant Prosecutors, to interfere in labor negotiations and cause labor negotiations to go on for more than two years because the PBA knew they could go to the assignment judge through the prosecutor.

What we have here in the State of New Jersey with the Bigley application in my opinion is a leap-frog case. We have an expert witness named Clint Cronin from the other side of the fence that goes around and says, "Union County is below Hudson County." Then, after the salaries are raised in Union County, he goes over to another county and does the same thing. We have had several applications from manpower requests that were never ultimately justified. The money had to be cancelled in terms of an emergency appropriation. We have had interference in labor negotiations, in which the county's position was offering about 6 percent. Ultimately, the assignment judge offered the same amount through the Bigley application. Then we had a situation where Assistant Prosecutors were granted raises in the area of about \$8,000, \$7,000, \$5,000, and the rest of the county was without a contract for two years because they wanted to know why we were only granting 5 percent as opposed to Assistant Prosecutors who were getting \$8,000 increases.

So this particular use of the Bigley application leads us here today. I think it came to a head now that we have the 5 percent cap because no longer can we just increase the tax rate; we have to subtract.

ASSEMBLYMAN HERMAN: Do you favor the Merlino bill as is?

MR. ALBANESE: I favor the Merlino bill, but I do have an alternative.

ASSEMBLYMAN HERMAN: Let's hear it.

MR. ALBANESE: The alternative is to give it back to a truly neutral body, the Legislature, because the assignment judge in chambers will tell you, "I have to make these guys happy."

ASSEMBLYMAN HERMAN: How are we neutral? (Laughter.) We could put a question mark - exclamation mark - after that.

MR. ALBANESE: The assignment judge has to make the Assistant Prosecutors happy. He has to keep the morale up because these are the guys that make the courts move and make him look good. In several situations, as a matter of fact, he gave more than what the Prosecutor ---

ASSEMBLYMAN HERMAN: Sue us for a history of pension bills through the Legislature.

MR. ALBANESE: But I think since the Legislature gave this particular role to the assignment judge that that is a fair way of having some type of a legislative tribunal, if you will, sit in this particular matter.

Merlino's bill is a step in the right direction because of the fact that today I have an order right here from an assignment judge to give a secretary a \$5,000 increase. This is an abuse of another application.

ASSEMBLYMAN FLYNN: Whose secretary, the assignment judge's?

MR. ALBANESE: The assignment judge's.

ASSEMBLYMAN HERMAN: You are trying to make the point that he sits without question.

MR. ALBANESE: Were the Merlino bill to include the abuse of the court order in light of your mandate of the 5 percent cap, because every time he passes a court order for \$100,000, for \$175,000, we subtract it from our \$2 million or cap increase --- If you say, use emergency appropriation, it only decreases your next year's allocation.

ASSEMBLYMAN HERMAN: We are obviously going to keep the record open. So we can give this greater review, would you be willing to summarize the Bigley applications over the past number of years, not in book form, but in capsule form as to what the requests were, whether they were granted or denied?

MR. ALBANESE: Generally, we have had about three in terms of additional manpower, one where we went before the assignment judge and raised by emergency appropriation an additional \$140,000, which had to be cancelled at the end of the year because the prosecutor really didn't need it. We had another one under another prosecutor for two additional Assistant Prosecutors. We had one in the area of labor negotiations in the PBA Detective-Investigator contract where the Prosecutor went before the assignment judge. We have had, I believe, two in the area of salary increases for Assistant Prosecutors, based on the State's position that they were underpaid, compared to other counties across the State of New Jersey.

That is the same kind of court order or use of the Bigley application that we received with Assistant Prosecutors, that we were granting other employees a \$400 or \$500 increase ---

ASSEMBLYMAN HERMAN: Could you capsulize that for us in writing as to those five or six applications?

MR. ALBANESE: Yes. I have the applications here. I will put them in writing and send down the actual applications.

ASSEMBLYMAN HERMAN: We would appreciate it.

ASSEMBLYMAN KERN: You made mention of the percentage of increase you were giving other county employees. Then you gave a dollar figure for Assistant

Prosecutors. What was the percentage of increase for those Assistants?

MR. ALBANESE: I believe the one Assistant Prosecutor was making around \$20,000 and was granted an \$8,000 increase. There was a list of Assistant Prosecutors - \$3,000, \$4,000, \$5,000.

ASSEMBLYMAN KERN: What was the percentage of increase?

ASSEMBLYMAN HERMAN: Was there an allegation that they were going to quit if they didn't get the money?

MR. ALBANESE: They were going to quit. That was the allegation.

ASSEMBLYMAN KERN: During the course of these applications, has the political complexion of the Prosecutor's Office and the Board of Freeholders been the same or has it been different?

MR. ALBANESE: Different and the same.

ASSEMBLYMAN HERMAN: Thank you very much. I appreciate your patience and your testimony.

I am willing to give the other side three to five minutes for rebuttal or we will hold the record open.

MR. ROGER M. SCHWARZ: May I just state for the record that we have collected statistics on Bigley applications from all 21 counties. It is a little difficult to respond to the Union County statements because I can't really tell if what he is talking about are actual Bigley applications or situations where the Prosecutor has gone to the Freeholders and it has been worked out at that level. Since he is going to submit the material in writing, we will do the same.

ASSEMBLYMAN HERMAN: Fine. We will make sure the staff makes that information available to you.

MR. SCHWARZ: It may be a problem of comparing apples and oranges as with this raise for the Judicial Secretary, which is something that is not at issue.

ASSEMBLYMAN FLYNN: That might be by court rule.

ASSEMBLYMAN HERMAN: What I would like to do is to hold the hearing in adjournment until further notice. I assume that Senator Merlino does want this transcribed as far as we have taken it. We will share those transcripts with everyone who wants them.

ASSEMBLYMAN FLYNN: I wonder if we could ask someone from the side espousing the present statute to give us possible amendments that would preserve the essential facets of what I deem Bigley to really mean, as opposed to salary increases across the board ---

ASSEMBLYMAN HERMAN: --- without prejudice.

ASSEMBLYMAN FLYNN: (Continuing) --- without prejudice. Because, right now, the way I see it, there have been abuses. I think something has to be done. I am willing to do something now. But I don't want to destroy the other facet, the true Bigley facet.

ASSEMBLYMAN HERMAN: I don't want to get into a general debate, back and forth. I think we will be able to take this down the line. This is obviously not going to be the end of the hearings on this particular matter. Let's see whether there is a common accord. I understand Senator Merlino has been talking to the prosecutors and the county people. If they cannot come to a common resolve, which, of course, has to be acceptable to us too, then we will have to come to a common resolve, either yes or no or somewhere in between.

Thank you very much for coming down today and on the many occasions you have come down. I am glad we have finally been able to have a hearing on this matter.

(Hearing adjourned)

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