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(STATE) COMMISSION OF INVESTIGATION ,  
REPORT  
on  
COUNTY PROSECUTOR SYSTEM ,

February 1970

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**State of New Jersey**  
**STATE COMMISSION OF INVESTIGATION**

WILLIAM F. HYLAND  
CHAIRMAN  
CHARLES L. BERTINI  
JAMES T. DOWD  
GLEN B. MILLER, JR.

IN REPLY, PLEASE ADDRESS  
CORRESPONDENCE TO

February 1970

TO: The Governor and the Honorable Members of the  
Senate and Assembly of the State of New Jersey

The New Jersey Commission of Investigation  
herein submits its recommendations relating to the  
Office of the County Prosecutor. These recommendations  
are made pursuant to Section 10 of P.L. 1969, Chapter 266,  
(N.J.S.A. 52:9M-10) which directs this Commission to  
make interim reports to the Governor and Legislature.

Respectfully submitted,

William F. Hyland, Chairman

Charles L. Bertini

James T. Dowd

Glen B. Miller, Jr.

## I. INTRODUCTION

The Office of County Prosecutor for the State of New Jersey has been functioning in essentially the same fashion and under almost identical statutory provisions since 1844.<sup>1</sup> The appointment processes and office structure demand immediate revision and reform if the flood tide of crime in the State is to be contained. It is submitted that the people of the State of New Jersey are entitled to assurance that each prosecutor will "...faithfully, justly and impartially execute (his) duties...".<sup>2</sup>

Under the New Jersey Constitution, county prosecutors are nominated and appointed by the Governor with the advice and consent of the Senate.<sup>3</sup> Their term of office is set at five years and they serve until the appointment and qualification of their successors.<sup>4</sup>

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1. N.J.S.A. Const. of 1844, Article 7, Section 2, Par. 3, as amended 1875

2. 2A:158-3, Oath of Prosecutors

3. N.J.S.A. Const of 1947, Article 7, Section 2, Par. 1.

4. Ibid.

The Constitutional provisions above related are codified in the New Jersey Statutes with the qualification that the prosecutor shall be "...some fit person who shall have been admitted to the practice of law in this State for at least five (5) years..."<sup>5</sup>

The functions, powers and responsibilities of prosecutors in New Jersey are statutorily derived from Chapter 158 of Title 2A. Perhaps the most important of the provisions of that title is Section 4, which provides:

"The criminal business of the state shall be prosecuted exclusively by the prosecutors, except in counties, where, for the time being, there may be no prosecutor, or where the prosecutor desires the aid of the attorney general, or as otherwise provided by law." (Emphasis added)

This section places the exclusive function of administering the criminal business of the State in the hands of the county prosecutor in the absence of conflicting constitutional authority elsewhere. That the legislature does, in fact, have power to grant to the county prosecutor such broad and encompassing authority has been upheld.<sup>6</sup> Under Section 5 of 2A:158, each prosecutor is vested with the same powers

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5. 2A:158-1

6. State v. Longo, 136 N.J.L 589, 54 A. 2nd 788 (1947)

and is subject to the same penalties within his county as the Attorney General is within the State. The Section further charges each prosecutor to "...use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the laws.<sup>7</sup> The remaining provisions of Chapter 158 deal generally with the number of assistant prosecutors allocated to a particular county and their duties and salaries,<sup>8</sup> the fees<sup>9</sup> and expenses of prosecutors,<sup>10</sup> temporary prosecutors,<sup>11</sup> the salaries of prosecutors<sup>12</sup> and other administrative matters.<sup>13</sup>

Moreover, with respect to the degree of authority exercised by the prosecutor over criminal matters within the jurisdiction of the county it is noted that the Attorney General of the State has the power and obligation to render

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7. 2A:158-5
  8. 2A:158-15, 16, 17 and 17.1.
  9. 2A:158-6.
  10. 2A:158-7, 8.
  11. 2A:158-9.
  12. 2A:158-10, 11, 12 and 14.
  13. 2A:158-18.1, 18.2 and 20.

aid in a prosecution at the written request of the county prosecutor,<sup>14</sup> and to take over the function of the prosecutor's office where there is no county prosecutor.<sup>15</sup> Additionally, the Attorney General may also try homicides or other high misdemeanors at the written request of the Superior Court Assignment Judge or Board of Chosen Freeholders.<sup>16</sup> He may also be required to investigate a special matter at the written request of the Governor.<sup>17</sup> There is no provision which gives the Attorney General supervisory powers of any kind over county prosecutors.

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14            14. 52:17A-4F

15. Ibid.

16. Ibid.

17. Ibid.

## II. INVESTIGATION AND HEARINGS

This Commission has underway an investigation to determine whether the laws are being effectively enforced and to what extent, if any, the elements of organized crime have influence in Long Branch and Monmouth County.

Since the primary responsibility for law enforcement is vested in the Prosecutor of each county, it was necessary for the investigation to concern itself with the manner in which the Monmouth County Prosecutor's office was being administered.

The investigation, prior to being directed at day-to-day operations of the prosecutor's office, had convinced the Commission of the absolute necessity for a strong and effective county prosecutor system to deal with increasing activity among organized crime elements.

With respect to this phase of the probe, the Staff interviewed more than seventy individuals, subpoenaed hundreds of documents and examined some aspects of every criminal case handled by the Prosecutor's office for the past twelve years.



This preliminary phase led to extensive executive hearings conducted by the Commission at which private testimony was received and elicited from numerous witnesses representing all levels of the prosecutor's office, as well as witnesses who were not members of that office.

Testimony coupled with other investigative findings showed an alarming pattern of loose administrative practices which severely inhibited the effectiveness of that office to conduct its business.

The Commission decided it was appropriate to convene public hearings immediately, rather than await the conclusion of the overall investigation, to present the facts to the public. Accordingly, public hearings were held February 3 and 4, 1970, in the Senate Chambers.

Witnesses who testified were Prosecutor Vincent Keuper, First Assistant Prosecutor Solomon Lautman, and Chief of County Detectives Albert McCormick, of Monmouth County; Andrew F. Phelan, executive director, and Julius Cayson, special agent, of the State Commission of Investigation, and State Police Lt. Clinton Pagano.

Testimony produced at these hearings received wide publicity through extensive reporting by the news media, including television stations covering the entire State. These hearings are now a matter of public record.

At the conclusion, the Staff presented a series of recommendations for consideration by the Commission. These recommendations, all relating to the Monmouth County prosecutor's office-system, and supported by additional surveys of other prosecutor's offices, were taken under advisement.

After due study and deliberation the Commission adopted the eight recommendations which follow and respectfully offer them for consideration by the Governor and Legislature.

### III. RECOMMENDATIONS

1. An Executive Office for County Prosecutors Should Be Created Under The Direction of The Office of The Attorney General and Be Headed by an Assistant Attorney General.

This office would be similar in scope and operation to the Executive Office of the United States Attorneys.

The Executive Office for County Prosecutors would perform the following functions: (A) It would conduct a periodic evaluation of each county prosecutor's office in the State, and (B) would co-ordinate the efforts and activities of all county prosecutors and their assistants in order to maximize the use of experienced personnel notwithstanding county border limitations, especially in the fight against organized crime.

2. Each County Prosecutor, and all Assistant Prosecutors, Should Serve on a Full Time Basis.

In every county, regardless of size, there should be a full time prosecutor responsible for the detection, arrest, indictment and conviction of offenders against the laws, as set forth in Section 2A:158-5 of the New Jersey Statutes.

Even in the smallest counties of the State, those engaged in prosecutorial functions should be full time in order to eliminate any possible conflict between their public duties and the interests of private clients. Such conflicts can arise inadvertently, or may even be intentionally created by unscrupulous individuals who wish to compromise a law enforcement official in the performance of his duties.

To accomplish a reasonable transition to the stage where each county will have a full time prosecutor, it is conceivable that for a time a given individual might be appointed as prosecutor for several counties, with one or more full time assistants in each of these counties to assist him.

Full time prosecutors and assistant prosecutors will also ensure a more co-ordinated effort and continuity in the internal administration of the county prosecutor's office and in the trial of criminal cases. This has been a serious deficiency under the existing part-time system, a factor which has severely handicapped the effective trial of alleged criminals.

The number of assistant prosecutors in a given county should depend not only upon its population, but also upon the particular needs of the county. The determination of the number of assistants should be made by the Attorney General, based upon the recommendations of the county prosecutor.

3. The Term of Each County Prosecutor Should Be The Same as The Governor.

This recommendation will require an amendment to the New Jersey Constitution. However, it would be an important factor in delineating the responsibility for law enforcement since the Governor, as Chief Executive of the State, appoints the Attorney General, who is the principal law enforcement officer of the State, and whose term is the same as the term of the Governor. In order to provide a sensible chain of responsibility, the terms of county prosecutors, who are vested with the same powers and duties within their respective counties as the Attorney General is for the State as a whole, should also be the same as the term of the Governor.

4. The State of New Jersey Should Assume Sixty Per Cent of the Salaries of Prosecutors and Assistant Prosecutors.

The 1970 Legislature has established that full time county prosecutors shall receive the same salary as county judges, \$32,000. A salary of that level is necessary if qualified full time prosecutors are to be obtained. The State of New Jersey pays sixty per cent of the salary of county judges, and each county assumes the remaining forty per cent share. To minimize the impact of the increased cost of full time prosecutors and assistant prosecutors, the same cost allocation should be made between the State and the counties. A further reason for this proposal is that the State of New Jersey is the real party in interest in prosecutions, rather than the county.

5. The Chief of County Detectives and The Captain of County Detectives Should Serve at the Pleasure of the County Prosecutor.

While it is recognized that existing civil service positions probably cannot be affected by this recommendation, for future purposes, it is essential that each county prosecutor have the opportunity to appoint the supervisory heads of his detective and investigative force. Such appointments conceivably might be made from existing detective personnel. However, it is essential that the leadership of the detective and investigative force be provided by someone selected by the prosecutor and in whom he has a basis for complete confidence.

6. A Security Clearance For All Employees of the County Prosecutor's Office Should Be Conducted Prior to Their Appointment.

In many respects, it is as essential that a security clearance be obtained for clerical and secretarial help in the office of the county prosecutor as it is for the prosecutor himself. A security clearance should be conducted by the State Police before the appointment of any county prosecutor, assistant prosecutor, county detective, investigator, or other employee. This report should be submitted to the Executive Office of County Prosecutor and the county prosecutor himself.

7. The Executive Office of County Prosecutors Should Be Vested With the Power to Make a Financial Audit of the Office of Any County Prosecutor.

In addition to the existing audit procedures in the various counties, the Executive Office of County Prosecutors should have the authority to conduct periodic audits of the funds received and disbursed in the office of each county prosecutor. The county prosecutor, himself, however, should remain primarily responsible for the professional and financial integrity of his office.

8. The Salary Levels for Detectives and Investigators Should Be Raised to Insure Qualified Personnel Who Will Devote Full Time to Their Duties.

This recommendation is made for the same reason that prosecutors and assistant prosecutors should be full time. Implementation of this recommendation would eliminate possible conflicts of interest arising from outside employment and would help attract and keep competent people.