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Articles, Reports, and Notes

OF

THE NATIONAL DISTRICT ATTORNEYS' ASSOCIATION

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THE CAREER PROSECUTOR—PART III

A Proposed Department of Criminal Justice Act

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This is a continuation of an article previous installments of which appeared in this Section of the September-October, 1960, and January-February, 1961, numbers of the Journal. This article will be concluded in the next issue of the Journal.—EDITOR.

GENERAL COMMENTARY

The Career Prosecutor, who will hereafter be referred to as the District Attorney, should be a part of the Department of Criminal Justice for the State. However, the Act proposed herein does not emphasize the reasons for such a department, as these have been promulgated in the past.

In 1934 the need for a Department of Justice for every state was deemed urgent.¹ On the recommendation of the American Bar Association,² a Committee on Uniform State Department of Justice Act was appointed by the National Conference of Commissioners on Uniform State Laws. In 1935, the first tentative draft was presented³ and in 1952 the Model Department of Justice Act (also known as the Model Department of Criminal Justice Act) was completed.⁴ The purpose of the Act is limited:

Fundamentally the Model Act is intended to restore what has been lacking in local criminal prosecution in this country for a long time, namely, ultimate accountability to a single coordinating official and some measure of ad-

ministrative responsibility for acts of discretion.⁵

Several states have Departments of Justice or similarly designated bureaus in their statutes, but there has been no adoption, either wholly or partially, of the Model Act. Any resemblance between any State Department of Justice and the Federal Department of Justice is in name only.

Oregon is the only state that has proposed that a true Department of Justice be adopted.⁶ In the Oregon Act, an Attorney General would have been appointed. The Department would have had seven divisions: 1) civil matters; 2) criminal prosecution; 3) police; 4) criminal identification, investigation and statistics; 5) medical; 6) prison; and 7) probation and parole. In civil matters, the Attorney General would have handled the legal work for the State, while the counties would have had the option of hiring their own lawyers. The District Attorneys would have been appointed.⁷ However, like so many good plans, it failed to materialize and has evidently been abandoned.

⁵ *Id.* at 369.

⁶ See *Report of Law Enforcement Committee, Fifth Annual Meeting of the Oregon Bar Association, 19 ORE. L. REV. (Supp.) 70 (1939).*

⁷ *Ibid.*; See also *Report of the Committee for Department of Justice, Sixth Annual Meeting of the Oregon Bar Association, 20 ORE. L. REV. (Supp.) 55 (1940).*

¹ 1934 AM. BAR ASS'N REP. 113.

² 1935 NAT. CONF. COMM'S ON UNIFORM STATE LAWS 249.

³ *Ibid.*

⁴ 1952 NAT. CONF. COMM'S ON UNIFORM STATE LAWS 366.

Georgia proposed a less elaborate form of Department of Justice, which also failed to become law.⁸

The Oregon plan, if it had been adopted, could have had a tremendous effect on law enforcement, not only in that state, but over the country. If one state would adopt such a plan, many others would follow after observing results in the pioneering state. The Oregon plan may have failed because it was an attempt to change too much at once. For this reason, it seems more desirable to make changes step by step, until the ultimate Model Act, or a satisfactory approximation, can be achieved. It is the writer's contention that the heart of such an act, establishment of the Career Prosecutor, should be the first step.

The proposals of the following Act deal only with the *status* of the District Attorney. Details concerning procedures by which the District Attorney or the Department of Criminal Justice will operate are purposely not included, except where such procedures would affect the status of the District Attorney. Methods by which the desired effect will be carried out are left to the individual prejudices of the various State legislatures.⁹

The writer does expect to show by the various sections of the proposed Act and the comments after each section, certain basic matters which are needed for the adoption of the Career Prosecutor System.

The following proposed Act has been compiled by the writer from the Model Department of Criminal Justice Act, state statutes, the United States Code, and personal adaptations and additions.

DEPARTMENT OF CRIMINAL JUSTICE ACT

TITLE I: ATTORNEY GENERAL

Section 1: Department Established; Duties

- A. The powers and duties of the Department of Criminal Justice shall be the powers and duties in respect to the enforcement of the criminal laws of the State now or hereafter conferred upon or required of the Attorney General, either by the Constitution or by

⁸ Caldwell, *How To Make Prosecuting Effectual*, 16 J. AM. JUD. SOC'Y. 73 (1932).

⁹ For example, some states will want appointments made by the governor, some by the attorney general, some by a civil service board, etc. Disciplinary proceedings may be administered by different persons or bodies. The functions of the Attorney General will vary from state to state, as will the systems of setting salaries, administering pension plans, etc.

the common and statutory law of the State and also as provided in this Act.¹⁰

- B. The Attorney General shall consult with and advise the several District Attorneys in matters relating to the duties of their office. The Attorney General shall maintain a general supervision over the District Attorneys of the State with a view to obtaining effective and uniform enforcement of the criminal laws throughout the State.¹¹
- C. Whenever, in the opinion of the Attorney General, the interests of the State will be furthered by so doing, or whenever requested in writing by a District Attorney, the Attorney General is authorized and empowered to assist or to supersede and relieve said District Attorney.¹²
- D. The Attorney General may require any District Attorney, Assistant District Attorney, or investigator, to perform any duty required of the Department of Criminal Justice in any part of the State. Such person or persons may receive additional compensation for such duties, as prescribed by law.

Comment: TITLE I: Section 1.

This section "... provides an integrated and rational system for statewide supervision, direction, and coordination of law enforcement agencies..."¹³ While the Federal Department of Justice would probably be more efficient, the plan here would give the desired supervision. Subsection C, besides the obvious reasons, gives the Attorney General the right to send out specialists in criminal trials, investigations, and other specific instances where it is deemed necessary.¹⁴ Subsection D of this Act merely gives the Attorney General, as head of the Department of Criminal Justice, the right to use District Attorneys and investigators any place in the State where they might be needed.

¹⁰ MODEL DEPT. OF CRIMINAL JUSTICE ACT §7(1).

¹¹ *Id.*, §7(2).

¹² Adapted from MODEL DEPT. OF CRIMINAL JUSTICE ACT §§7(3)-7(7).

¹³ 1952 NAT. CONF. COMM'S ON UNIFORM STATE LAWS 381.

¹⁴ It would seem that use of Assistant Attorneys General to help local District Attorneys, and to aid in the establishment of the uniform policy under certain types of investigations, would be accentuated by use of specialists who could go from district to district when needed in specific instances. See Heinberg, *Centralization in Federal Prosecutions*, 15 MO. L. REV. 244-58 (1950).

*Section 2: Reports*¹⁵

- A. The Attorney General shall on the 30th day of January each year submit to the Governor and to each General Session of the State Legislature a report setting forth the investigations, criminal actions or proceedings conducted by the Department of Criminal Justice during the preceding calendar year, together with suggestions and recommendations for the adequate and uniform enforcement of the criminal laws of the State. The Attorney General shall include in his report an abstract of the annual reports of the District Attorneys.
- B. Each District Attorney shall annually submit to the Attorney General a written report for the last preceding calendar year, covering such items of information and such dispositions of complaints, investigations, criminal actions and proceedings as the Attorney General shall prescribe. The Attorney General may also require the District Attorneys to submit from time to time reports as to any matters pertaining to the duties of their office.
- C. The Attorney General, whenever he has taken any action pursuant to Section 1 C of this TITLE, shall submit to the Governor and the State Legislature a special report specifying the action taken and setting forth in detail the investigations conducted, the prosecutions carried on, the number of persons prosecuted, the crimes for which they were prosecuting, the counties wherein such prosecutions were had, and the results thereof.

Comment: TITLE I: Section 2.

There is some question as to whether the filing of reports actually promotes reform. However, if reports are available, and if the proper use of them is made, the desired results bolstered by the supervision outlined under Section I of this TITLE will be achieved.

Subsection C. Any action by the Attorney General will be rare, and the fact that a report of such action must be made, will stop any possible political purposes of the Attorney General. Whether

¹⁵ Adapted from MODEL DEPT. OF CRIMINAL JUSTICE ACT §10.

there should be any change in the office of the Attorney General is another issue.¹⁶

TITLE II: DIVISION OF IDENTIFICATION AND INFORMATION

Section 1: Established; Duties

- A. There is established under the jurisdiction of the Department of Criminal Justice a division to be known as the Division of Identification and Information. Said bureau shall be vested with the duty of acquiring, collecting, classifying and preserving criminal identification and other crime records and the exchange of said criminal identification records with the duly authorized officials of governmental agencies, or divisions of the state, other states, and the Federal Government.¹⁷

Comment: TITLE II: Section 1.

This is the only section which does not deal directly with the District Attorney, and is included here as provisional in States where such an agency does not exist. The importance of law enforcement on a nationwide basis requires each state to have such a division. If such a division is already under the auspices of a State Police or statewide law enforcement organization, there is no need to transfer this agency to the Department of Criminal Justice, unless the legislature decides the whole law enforcement organization should be coordinated.

While many similar sections could be included in this Act, as was indicated in the general commentary preceding, it should be remembered that introducing too many changes at once could defeat the Act. This particular section would not be expected to have any opposition, if used as suggested.

TITLE III: DISTRICT ATTORNEYS

Section 1: Prosecutor Districts

- A. The State shall be divided into _____ prosecutor districts. The boundaries of the various districts are as follows:

First Prosecutor District: This district shall

¹⁶ There are some arguments that the Attorney General should be appointed by the governor, and that other changes should be made in the direction of the Federal Department of Justice. This is not covered in this paper.

¹⁷ Adapted from 5 U.S.C. §340 (1952).

encompass the following counties:
Second Prosecutor District: This district shall encompass, etc.

Comment: TITLE III: Section 1.

The area will vary with density of population, public prejudices in certain instances, and county lines, of necessity. There may even be involved some of the same issues faced by the various States in the original determination of boundaries of counties and representative districts.

If a county is large enough to maintain a full-time District Attorney and staff, there would be no reason to go beyond the limits of the county for the district. On the other hand, it would be

difficult to cut a county into different prosecutor districts.¹⁸

The area and population of some states might make feasible the handling of prosecution through one central state office, while other states which have smaller populations but because of the area, would require division into districts. It would defeat the purpose of the proposed Act, to have assistants placed in different offices within a large district.

(To be concluded in next issue)

¹⁸ A certain amount of division of authority, such as in New York City with its five counties and five district attorneys, might be advisable in other metropolitan areas, particularly Los Angeles County and Cook County. But, regardless of how many advantages there might be, it is impracticable to discuss such division here.