

Summer 1961

## The National District Attorneys' Association

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

The National District Attorneys' Association, 52 *J. Crim. L. Criminology & Police Sci.* 103 (1961)

This Criminal Law is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in *Journal of Criminal Law and Criminology* by an authorized editor of Northwestern University School of Law Scholarly Commons.

# Articles, Reports, and Notes OF THE NATIONAL DISTRICT ATTORNEYS' ASSOCIATION

[This section of the Journal has been added for the exclusive use of the National District Attorneys' Association. The selection and editing of the material contained herein is the sole responsibility of the Association's representative, Mr. Duane R. Nedrud, a former prosecuting attorney, and a member of the Association. However, neither Mr. Nedrud, the Association, nor the Journal assumes any responsibility for the views expressed by the authors of articles appearing in this section.]

*Editor:* Duane R. Nedrud, Assistant Professor of Law, University of Kansas City, Kansas City, Missouri

## ANNUAL MEETING

The National District Attorneys' Association will hold its annual meeting in Portland, Oregon, July 25-29.

## THE CAREER PROSECUTOR—PART IV

### A Proposed Department of Criminal Justice Act (Concluded)

DUANE R. NEDRUD

This is the last installment in a series of articles dealing with "The Career Prosecutor." The previous installments appeared in this Section of the September-October, 1960, January-February, 1961, and March-April, 1961, issues of the Journal.—EDITOR.

#### TITLE III: DISTRICT ATTORNEYS (Cont.)

*Comment: TITLE III: Section 2.*

#### Section 2: Appointments; Qualifications

- A. There shall be appointed for each prosecutor district, by the Governor from a certified list of nominees, a person who shall be known as the District Attorney.<sup>19</sup> The appointment shall be approved by the Senate, except that temporary appointments may be made if a vacancy occurs when the Legislature is not in session.
- B. The nominees shall have been admitted to the practice of law in the State for at least five years and shall have such other qualifications as are set by standards determined by the nominating board.
- C. The District Attorney shall hold office during good behavior.<sup>20</sup>
- D. Each District Attorney shall reside in the district for which he is appointed, but he need not be a resident of the district at the time of his appointment.

The most controversial issue is whether there should be appointment or election. Most reformers favor appointments, because periodic elections must involve the District Attorney in party and factional politics.<sup>21</sup> If a compromise is necessary,

<sup>21</sup> See, e.g., Hobbs, *Prosecutor's Bias, an Occupational Disease*, 2 ALA. L. REV. 40 (1949); Baker, *Criminal Prosecution in the United States*, 1 J. CRIM. L. (Eng.) 279 (1937); Kennedy, *Local Politics v. Prosecuting Attorney*, 23 J. AM. JUD. SOC'Y 180 (1940). Supreme Court Justice Harlan F. Stone, while Dean of Columbia Law School, said, "Fundamentally, there is no more reason why the office of public prosecutor should be a political office than that of a judge of the federal courts, and yet infinite harm is done to the course of law enforcement and good government in this country in consequence of the fact that that office is either frankly and avowedly political or in any event is peculiarly subject to untoward political influences." *Progress in Law Improvement in the United States*, 1924 Am. Bar Ass'n Rep. 199. *Contra*, "... The district attorney is the conscience of the people. If the community wants a different kind of prosecutor, he can be changed at four-year intervals by the elective process. If he were appointed for life... I think it would tend to cut down his sense of responsibility to the public, his continuing imaginativeness, and his incentive..." See address by Robert F. Bradford, Harvard Law School, 1953, in TRUMBULL, MATERIALS ON THE LAWYER'S PROFESSIONAL RESPONSIBILITY 248, 252 (1957).

<sup>19</sup> Adapted from N. J. STAT. ANN. §2A:158-1 (1953).  
<sup>20</sup> Adapted from 28 U.S.C. §134 (1954), with regard to the appointment of federal judges.

possibly the ballot used under the "Missouri Plan" for retaining judges could be adopted.

*Subsection A.* The restriction of the appointment from a certified list of nominees is to remove the control of the office further away from politics, and closer to a professional status, in the same way that any specialist should be appointed.

It has been suggested that the Governor pick the District Attorney from among three persons selected by the local bar association.<sup>22</sup> A similar plan has been in operation in North Dakota, where there is a voluntary selection of three candidates for District Judge by the State Bar Association. While this seems to have some merit, it amounts to a popularity contest in many ways, and should not be used in the case of District Attorneys. It is believed that the most appropriate method would be to nominate a list of qualified persons by means of a non-political statewide board, which would be authorized to make such selections on the basis of merit.

There could be some argument that the Attorney General, as head of the Department and as the person responsible for the District Attorneys, should have the power of their appointment. However, investing this power of appointment in the Governor adds another check and balance.

The one person who should not appoint the District Attorney is the Judge. While there are those who advocate this type of appointment,<sup>23</sup> the District Attorney should be free from the bench before which he practices. The Judge should not have the power to appoint the prosecutor anymore than the prosecutor should have the power to appoint the Judge.

*Subsection B.* That the District Attorney be admitted to the practice of law for a period of five years is a reasonable qualification,<sup>24</sup> together with any further requirements which a "civil service"-type board might consider necessary.

*Subsection C.* Past success in the appointments of the federal district judges gives the greatest impetus to appointments for life. Federal district

judges, although receiving appointments through politics, usually lose their affiliations, both in actual politics and in their judgments.<sup>25</sup> They may be classified as "liberal" or "conservative," but not as Democrat or Republican. This also has been the experience in Canada in the appointment of their prosecutors for life.<sup>26</sup>

*Subsection D.* That the District Attorney should reside in his district is an obvious requirement. The reason for not requiring that he be a resident at the time of his appointment is to permit qualified assistants to advance to District Attorney no matter where they live in the State. Assistants with ability would thus have another incentive to stay in their chosen field, that of being the most likely nominees for such appointments. Some of the reasons for appointments being made outside a district are set forth in the Comment on TITLE III, Section 4 of this Act.

### *Section 3: Duties.*

- A. Each District Attorney shall be vested with the same powers and be subject to the same penalties, within his district, as the Attorney General shall bylaw be vested with or subject to in regard to all criminal matters.<sup>27</sup>
- B. It shall be the duty of the District Attorney to prosecute all crimes and offenses in the Courts of Record of the district for which he shall have been appointed.<sup>28</sup>
- C. The District Attorney may appear and represent the State in criminal cases arising before Justices of the Peace and Magistrates, when, in his opinion, the interests of the people demand his services, or in any case in which a Justice of the Peace or a Magistrate requests his services or assistance. Any Magistrate before whom an arrested

<sup>25</sup> See *Progress in Law Improvement in the United States*, 1924 Am. Bar Ass'n Rep. 199.

<sup>26</sup> "About a century ago, we abolished the time honored system of private prosecutors; an officer is appointed for life for each county to conduct criminal prosecution in that county. . . . When he assumes office, while his appointment may have been political, he drops his politics. . . . I have never heard so much as a suggestion of politics in a criminal prosecution. Prosecuting counsel have nothing to gain by successful prosecution, nothing to lose by failure to convict. . ." Joseph N. Ulman, quoting Hon. William Renwick Riddel, Justice of Appeals in the Province of Ontario, in *Criminal Prosecution in Canada*, 26 J. CRIM. L. & C. 165 (1935).

<sup>27</sup> Adapted from N. J. STAT. ANN. §2A:158-5 (1953).

<sup>28</sup> Adapted from N. Y. COUNTY LAWS §700(1) (McKinney's, 1950).

<sup>22</sup> Caldwell, *How to Make Prosecuting Effectual*, 16 J. AM. JUD. SOC'Y 73, 77 (1932).

<sup>23</sup> In Connecticut, Judges of the Court of Common Pleas and the Superior Court appoint the prosecutors who practice before them. CONN. GEN. STAT. §§51-148, 51-175 (1958); see Hobbs, *Prosecutor's Bias, an Occupational Disease*, 2 ALA. L. REV. 40 (1949).

<sup>24</sup> Generally, the only qualification is that the prosecutor be "learned in the law." New Jersey requires five years' practice. N. J. STAT. ANN. §2A:158-1 (1953).

person is brought for examination or trial shall give notice to the District Attorney of the time when and place where the trial or examining trial will be held.<sup>29</sup>

- D. The District Attorney shall use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the law.<sup>30</sup>
- E. It shall be the duty of the District Attorney to bring actions upon any forfeited recognizance taken in his district in any criminal action or proceeding.<sup>31</sup>
- F. It shall be the duty of the District Attorney to attend and process all complaints and hearings in Juvenile Court, and to give all legal assistance needed to the Juvenile Court.
- G. The District Attorney shall supervise all paroles and probation of persons convicted in and/or living in his district. (Tentative)

*Comment: TITLE III: Section 3.*

*Subsection A.* The subsection would spread the responsibility for law enforcement, so that undue criticism would not fall upon the Attorney General. Yet, supervision which the Attorney General has would require action where it is warranted. The District Attorney would be responsible for criminal matters only. Law enforcement requires specialization. As is common today, the prosecutor's office is burdened with too many municipal law duties, and the legislature makes additional work each session, rather than lessening the load. It is impossible for the conscientious prosecutor to "serve two masters," municipal law and criminal law.

As to civil matters, counties, cities, school boards, sanitation and irrigation districts, and other bodies or agencies, can hire full- or part-time legal advisors, depending upon the need. Private attorneys can specialize in the public law field and handle legal work for several municipalities on a retainer or case basis, without encountering the same difficulties as the part-time prosecutor. Larger counties can hire full-time counsel, as they do now.

<sup>29</sup> Partially adapted from N. M. STAT. §17-1-11 (1953) and KY. REV. STAT. §455.040 (1956). Again, the writer believes there should be no Justices of the Peace; however, this involves another phase of criminal law reform.

<sup>30</sup> Adapted from N. J. STAT. ANN. §2A:158-5 (1953). See *State v. Winnie*, 12 N. J. 142, 96 A.2d 63 (1953), for discussion of requirements of this statute.

<sup>31</sup> Adapted from N. Y. COUNTY LAWS §700(3) (McKinney's, 1950).

*Subsection B & C.* Should the District Attorney handle every criminal case in his district? As it stands now, there is a great deal of variance.<sup>32</sup> One of the difficulties of obtaining the "District Attorney System" (as distinguished from the "County Attorney System") is that legislatures have evidently believed there is too much inconvenience to the citizens in traffic and other minor cases. Thus, most of the states with "District Attorney Systems," have provided the counties with prosecutors also.<sup>33</sup>

The handling of traffic cases and minor misdemeanors does not require the presence of the District Attorney. While every criminal case is important, especially to the individual, the defendants in these cases usually plead guilty. The District Attorney can be of little assistance to the Magistrate, who decides the sentence on a guilty plea. The need for a proper Magistrate in these cases is, of course, important, but this subject is beyond the scope of this paper.

"Private prosecution" of certain types of "crimes" could be the answer to the unnecessary use of the District Attorney's time. Wisconsin has a statute<sup>34</sup> which provides that the District Attorney must prosecute all criminal actions except for assault and battery and the use of abusive language or breach of the peace, except where those offenses might involve "great injustice."<sup>35</sup> Those "crimes" usually have their basic need in "private revenge and deterrence" without any real public interest. So often this type of offense is dismissed at the insistence of the complainant before trial, after much waste of the District Attorney's time and effort.

Another "crime" on this list which is one of the greatest headaches to the District Attorney is the "bad check."<sup>36</sup> The main desire of the complainant is to regain his money. This results in the use of the District Attorney as a collection agency. While the District Attorney is a public servant, the use of the criminal process to collect bad checks, not only "smacks" of the old "debtor's prison," but also lowers the respect for the office of District Attorney.

Slander, libel, seduction, adultery, and other

<sup>32</sup> See Part I of the present series of articles at 51 J. CRIM. L., C. & P.S. 343 (1960).

<sup>33</sup> *Ibid.*

<sup>34</sup> WIS. STAT. ANN. §59.47 (1957).

<sup>35</sup> See *Statutory Discretion of the District Attorney in Wisconsin*, 1953 WIS. L. REV. 170.

<sup>36</sup> The words "bad check" do not include forgeries or "professional check frauds."

like crimes<sup>37</sup> could readily be handled by the "private prosecution" method, except where they might result in a "great injustice" or a very serious breach of public morals. Many of these offenses would thus be thrown into the civil courts for money damages (where they probably belong) rather than the criminal courts for punishment by fine or imprisonment.

There should be no intervening prosecutor, except in the cases which involve violation of city or village ordinances. While there would be some duplication in the offenses, the municipalities would not deal with State laws as such.

*Subsection E.* The District Attorney should be responsible for the forfeiture of bail bonds and any other like proceedings attached to criminal law administration. There would be fewer forfeitures if these bonds were enforced by collection, and this would promote better law enforcement.

*Subsection F.* Juvenile hearings are closely related to all criminal cases and should not be separated from the District Attorney's duties, even though the case load of the Juvenile Division could afford a separate attorney. The schism is deep enough now between the Juvenile Judge and the District Attorney, without making it any deeper. If necessary, a separate department could be established to handle Juvenile Court legal matters. This does not mean that the District Attorney should handle the duties of the Juvenile Commissioner. This section refers only to the prosecution in hearings, drawing of petitions, process of summons and the like.

*Subsection G.* For economy reasons in some states, it might be advisable to include supervision of paroles and probation in the District Attorney's office, rather than to include non-criminal duties in his realm.

#### *Section 4: Assistant District Attorneys*

- A. The District Attorney shall have the power to appoint one or more Assistants to assist him in the discharge of his duties. Appointment of such Assistants, the number for each district to be determined by the Legislature, shall be made from a certified list of applicants.
- B. Assistant District Attorneys shall hold office during good behavior.
- C. They will be subject to the same duties and the same penalties as the District Attorney.

<sup>37</sup> An issue arises as to whether these types of offenses should be considered crimes against the state.

#### *Comment: TITLE III: Section 4.*

In that the District Attorney will be responsible for what is or is not done in his office, he should have the power to appoint his assistants. Limiting the selection from an acceptable list will eliminate the choice of personal or private prejudices. Such a list could be prepared by a Civil Service Commission or some other board, whatever is suitable for the particular State.

Personality clashes or differences may occur between a previously appointed Assistant and a new District Attorney. These could be eliminated by transfer arrangements through the proposed Department of Criminal Justice. Jealousy could be kept at a minimum by the appointment of District Attorneys from outside the district, much in the same manner that presidents and deans of colleges are obtained.

How many assistants a District Attorney should have would involve many factors. There should be enough prosecutors so the courts and defendants are not hampered, and so the individual Assistant has a case load that is not too heavy to be adequately handled.<sup>38</sup> A minimum of one District Attorney and two Assistants in a district of 100,000 people, with an additional Assistant for each additional 50,000 people or major fraction thereof, is reasonable in most offices. The amount of crime seems to increase by the square of the population in a given area, rather than just proportionate to the population; but, while the metropolitan office may handle more cases, it will not encounter the problem of distance, which would make the above formula uniformly acceptable.<sup>39</sup>

#### *Section 5: Investigators<sup>40</sup>*

- A. In each district the District Attorney may appoint, from a certified list of acceptable candidates, one or more Investigators, the number for each district to be determined by the Legislature.
- B. Investigators shall hold their positions during good behavior.
- C. Their duties shall be to investigate and make reports to the District Attorney as to the conduct in office of Magistrates and all offices connected with the administration of criminal justice; to make such investigation and endeavor to obtain such evidence as

<sup>38</sup> See Fay, *False Economy in Government*, 25 J. BAR ASS'N D. C. 179-82 (1953).

<sup>39</sup> See Table 2 in Part I of the present series of articles at 51 J. CRIM. L., C. & P.S. 355 (1960).

<sup>40</sup> Adapted from PA. STAT. §16:7741 (1956).

may be required by the District Attorney in any criminal case; and to perform such other duties as the District Attorney may direct.

- D. Investigators shall be general police officers, and shall have all powers now conferred on peace officers, by existing laws of the State, so far as they relate to crime or criminal procedure.

*Comment: TITLE III: Section 5.*

If the District Attorney has his own Investigators, he has someone to check information on the trial level and make original investigations in certain limited cases. The Investigator will be able to make unbiased reports on inconsistencies which are sometimes involved in police determination. While Assistant District Attorneys could do the investigation, it is preferable to have specialists with police powers. The trained District Attorney's Investigator can help local law enforcement officers, and at the same time he can preserve the evidence which the District Attorney wants and needs.<sup>41</sup>

The argument against private investigators for the District Attorney involves jealousy among the various law enforcement agencies. Often county and city peace officers fight for the so-called "glory" of solving crimes. Experience shows that the District Attorney is a peacemaker and coordinator between "competing" law enforcement factions. Such a role is acquired automatically, since all must deal with him. The District Attorney's Investigator, through instructions, would help rather than hinder that role. The officers which have Investigators have had no problem in that regard, except in rare instances where the

<sup>41</sup> See *Report of the District Attorney's Office of Philadelphia* 37 (1956); see also *Report of the District Attorney's Office, Kings County (N.Y.)* (1955). "It is axiomatic in the practice of law that successful litigation has its origin in the proper and complete preparation of all the evidence at hand. With this as a prime objective, the District Attorney in Kings County maintains an Investigation Bureau. This department functions on a twenty-four hour a day basis, every day of the year. The assistants and investigators attached to this Bureau respond to notification by the Police Department and they cooperate with and advise the police during the operation of a police investigation. The advice given is always with a view to the most expeditious and complete assembly of that evidence necessary to maintain a successful prosecution. . . ." *Id.* at 94. "In addition to handling cases originating with the police, the Investigation Bureau is called upon to investigate cases originating in the office on complaints of citizens, confidential investigations assigned by the District Attorney and cases emanating from the Complaint Bureau." *Id.* at 95.

fault lay in the District Attorney's instructions. Several offices have a District Attorney's squad of policeman assigned to the office for investigative purposes, which also helps in a field where cooperation is imperative.<sup>42</sup>

There is some question of the Investigator's appointment being made by the District Attorney, and for life. As in the case of Assistants, who should make the appointments will depend upon the various factors, political and local, peculiar to each State. The reasoning for lifetime appointments for Investigators is even more stringent than in the cases of the District Attorneys and Assistants. The Investigator's position should be analogous to that of city or state police as far as tenure is concerned.

The limiting of appointments from a "certified list" of acceptable candidates, would insure the calibre of the appointees, as in the case of the Assistants. The writer would have no argument against choosing Investigators by some form of civil service appointment, if that were deemed more appropriate.

*Section 6: Salaries*

- A. Each of the District Attorneys shall receive an annual salary equal to the compensation received by the Judges of the District Court within his district.<sup>43</sup>
- B. The Assistant District Attorneys and Investigators shall receive salaries in accordance with their respective grade classifications, as set by the Legislature.

*Comment: TITLE III: Section 6.*

Salaries of District Attorneys and personnel will vary from state to state. The fact that the District Attorney and District Judge receive the same salary, will make for equal status and uniformity. While the writer believes that the District Attorneys within a particular State should all receive the same salary, the fact that there are more duties and responsibilities within certain metropolitan areas may make this infeasible. Since there usually is little variance in the Judges' salaries, this type of statute should arouse no opposition.

The Assistants' and Investigators' salaries should be determined by a civil service merit system. Thus, advancement in grade can give the incentive to personal improvement and efficiency. Seniority should have little weight in the

<sup>42</sup> *Ibid.*

<sup>43</sup> Adapted from N. Y. COUNTY LAWS §928.

matter of advancement, except as in the case of most civil service programs, where a certain waiting period is required to advance from one position to another. There could be an apprenticeship period for assistants and investigators during which time it would be determined whether or not appointments should be made permanent.

*Section 7: Pension; Retirement*

- A. Every District Attorney, Assistant District Attorney or Investigator who has subscribed to the Constitutional oath of office and who has completed 25 years of service with the Department of Criminal Justice, and has attained the age of 65 years, or who has been totally, or partially disabled while on active duty, shall be entitled to retire and to receive a pension as provided. Such retirement shall be on the order of the Attorney General and upon the request of the person to be retired, or at the discretion of the Attorney General. In the event the Attorney General orders the retirement of any of the above designated persons for reason or reasons other than having attained the age of 65 years and such person shall consider himself aggrieved by such order, the person so affected shall be entitled to appeal such order.<sup>44</sup>
- B. Every District Attorney, Assistant District Attorney or Investigator, who has been retired following 25 years service, or because of total disability shall receive an annual pension payable monthly, equal to 50% of the average annual salary for the last two years such person was in service. In event of death of such retired person, such pension shall continue to be paid to his widow for the rest of her natural life, or until she remarries. In the event of death before retirement of any District Attorney, Assistant District Attorney or Investigator, his widow shall receive a pension in proportion to the years of service. If death was service-connected, his widow shall receive full pension.
- In event of partial disability, the District Attorney, Assistant District Attorney or Investigator requiring resignation or retirement, shall receive a pension in proportion

to the disability, if the disability is service-connected; if it is not service-connected, such person shall receive a pension in proportion to the disability, years of service and age, and in event of death, his widow shall receive that pension. If there be no widow, then the pension shall be paid to the children under the age of 18 years, if any, of such person, and shall continue until they attain the age of 18 years, respectively.

Anyone reaching the age of 65 years who retires and has not served 25 years shall receive a pension proportionate to the number of years of service.<sup>45</sup>

- C. Any retired District Attorney, Assistant District Attorney or Investigator may be designated by the Attorney General to perform such duties as he is willing to undertake. Such a person shall not perform any such duties except when designated and assigned.<sup>46</sup>

*Comment: TITLE III: Section 7.*

Pensions are needed in order to retain career personnel. The statute speaks for itself, but some explanations should be made. The age 65 retirement is not mandatory, but is permissible by statute, or compulsory at the discretion of the Attorney General. This would allow the Attorney General to remove someone at an age, be it 65 or more, when his capabilities may make his retirement advisable, and would also allow a person who wanted to retire, to take advantage of the statute.

The provision of designating duties to retired persons is in keeping with the utilization of those who are retired, but would like to keep useful in an advisory capacity or otherwise.

*Section 8: Private Practice Prohibited*

- A. District Attorneys, Assistant District Attorneys and Investigators shall be prohibited from engaging in the practice of law or other private enterprise, and will devote their full time to the duties of the office.

*Comment: TITLE III: Section 8.*

This is the crux of this whole article, and it needs no further explanation.

<sup>45</sup> *Ibid.*

<sup>46</sup> Adapted from 28 U.S.C. §293 (1956), in regard to federal judges.

<sup>44</sup> Adapted in part from the Michigan pension plan for the Department of Safety; see MICH. STAT. ANN. §§3.335, 3.337 (Supp. 1947).

*Section 9: Removal From Office; Grounds Enumerated*

A. Any District Attorney, Assistant District Attorney or Investigator may be removed from office on the following grounds:

- 1) Conviction of any felony or misdemeanor involving moral turpitude;
- 2) Failure, neglect or refusal to discharge the duties of the office;
- 3) Knowingly demanding or receiving illegal fees as such officer;
- 4) Failure to account for money coming into his hands as such officer;
- 5) Gross incompetency or gross negligence in discharging the duties of the office.
- 6) Any act or acts, which in the opinion of the Court amount to corruption in office or gross immorality rendering the incumbent unfit to fill the office.<sup>47</sup>
- 7) Refusal to testify on grounds of self-incrimination or any other reason before a Grand Jury, Civil Service Commission, Board of Inquiry, or Court, concerning his conduct and duties in office, or regarding any criminal offense with which the District Attorney, Assistant District Attorney, or Investigator may be charged.

B. 1) Charges of any of the causes for removal of the District Attorney, as mentioned in Subsection A hereof, may be filed with the Supreme Court of the State which is hereby given exclusive original jurisdiction of such matters, upon presentment by the Governor, the Attorney General, or any regularly impanelled Grand Jury.

Any such Grand Jury presentment shall be immediately certified to the Supreme Court by the Clerk of the District Court where such presentment is filed.<sup>48</sup>

2) All charges presented to the Court shall be prosecuted by the Attorney General unless he should decline to act, or the Governor, in case of presentment by him, shall request the designation of another attorney, in either of which events the Court will appoint another attorney.<sup>49</sup>

C. 1) Charges for removal of Assistant District Attorneys or Investigators mentioned in Subsection A hereof may be filed with the

Civil Service Commission, which is hereby given the exclusive original jurisdiction of such matters, upon presentment by the Attorney General, the District Attorney or any regularly impanelled Grand Jury. Any such Grand Jury presentment shall be immediately certified to the Civil Service Commission by the clerk of the District Court where such presentment is filed.

2) All charges so presented to the Court shall be prosecuted by the District Attorney unless he should decline to act, or the Attorney General in case of presentment by him, shall request the designation of another attorney, in either of which events the Court will appoint another attorney.

*Comment: TITLE III: Section 9.*

There should be a comprehensive statute to allow for the removal of any person who is appointed for life. It is believed this statute fills that bill. While the District Attorney should be easily removed where there are grounds as enumerated, such action should not be taken lightly. If the Supreme Court has power of removal on charges made by others, there will be safeguards from political and other improper motives. In addition, such action should be taken speedily, and original jurisdiction with the Supreme Court will eliminate the usual appeals from a hearing before the Governor, Attorney General or Board.

The same problem does not exist in the case of Assistants and Investigators, and a civil service commission would be able to take care of most of these cases. The right to appeal on questions of law would, as now, be available.

## CONCLUSION

The Model Department of Justice Act was limited in scope because it was drafted in an attempt to avoid the need for wholesale constitutional change in the framework of state governments.<sup>50</sup> In order to adopt the important parts of the Act proposed herein, that of lifetime appointments and the "District Attorney" concept, a constitutional referendum would be necessary in every state.

It is true that constitutional changes are not made without hard work and persistence. However, the voters will usually approve any constitutional

<sup>47</sup> Adapted in part N. M. STAT. §17-1-9.1 (Supp. 1957).

<sup>48</sup> Adapted from N. M. STAT. §17-1-9.2 (Supp. 1957).

<sup>49</sup> Adapted from N. M. STAT. §17-1-9.3 (Supp. 1957).

<sup>50</sup> 1935 NAT. CONF. COMM'S ON UNIFORM STATE LAWS 247.

change which is in the interest of the populace, if they are adequately and properly informed about it by responsible parties. In the field of administration of criminal law, this responsibility lies with the bar associations.<sup>51</sup> The lawyer's public trust is the laws he administers, and if improvements are to be made in the legal system, the impetus must come from the "trustee."

The writer cites the labor of the Chicago and Illinois Bar Associations in backing the proposed Judicial Amendment in Illinois as an example of the hard work and persistence required to make constitutional changes.<sup>52</sup> In Illinois, selfish individuals who had much to lose by the Judicial Amendment fought its adoption.<sup>53</sup> The Career Prosecutor Act, no matter what its final blueprint, will have the same types of opponents, including some prosecutors who do not want to lose their positions and who like the part-time county system. However, most prosecutors are frank to admit the need for the Career Prosecutor and would be the first to endorse such a change whether they would be interested in such a position as a career or not. Certain persons with improper motives will also oppose the removal of the office of district attorney from partisan politics.<sup>54</sup>

<sup>51</sup> ". . . how well we discharge our responsibility to improve the administration of criminal justice will profoundly affect, not only the future of the law as a profession, but the whole of the constitutional spirit of liberty under law." Address by Loyd Wright, then president, American Bar Association, Tennessee Bar Association Annual Meeting, 1955, 24 *TENN. L. REV.* 1, 12 (1955).

<sup>52</sup> See 42 *J. AM. JUD. Soc'y* 170 (1959). The fight against complacency in regard to the Illinois judicial system has been going on for over six years and the measure failed by about 2.5 per cent of the votes short of the two-thirds majority required.

<sup>53</sup> The justices of the peace, who would have lost their positions under the reform bill, were the main critics.

<sup>54</sup> "The chief function of the prosecuting attorney

There will be many who will honestly fight the adoption of portions of a Career Prosecutor Act, especially if it includes lifetime appointments, on the belief that this will not be an improvement, but rather a backward step in the administration of criminal law. The writer's answer is that the prosecutor should be a specialist, and must be chosen in the same manner as the medical examiner or government engineer.

"The qualities of a good prosecutor are as elusive and impossible to define as those which mark a gentleman. And those who need to be told would not understand it anyway. A sensitivity to fair play and sportsmanship is perhaps the best protection against the abuse of power, and the citizen's safety lies in the prosecutor, who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility."<sup>55</sup> The issue is not how well we have done in the past, but how can we best obtain and keep the good prosecutor. Is not the Career Prosecutor the answer?

is enforcement of the law against criminals of every kind—from the petty thief to the murderer or the defaulting or dishonest public officer. Clearly, therefore, the good order of the community and the efficiency of its government depend in a large measure upon the character of the prosecuting attorney; and it is a small wonder that heated political contests are sometimes waged over the selection of the man to fill this position. There is nothing so important to a corrupt county political "machine" as the office of the prosecuting attorney, for it is practically within his power to decide whether corruption and malfeasance shall be tolerated in the various departments." BEARD, *AMERICAN GOVERNMENT AND POLITICS* 789 (10th ed. 1955).

<sup>55</sup> From an address by Robert H. Jackson, then Attorney General, at the Second Annual Conference of U.S. Attorneys. 24 *J. AM. JUD. Soc'y* 18, 20 (1940).

(This concludes a series of four articles dealing with "The Career Prosecutor.")

Northwestern University's  
Sixteenth Annual  
SHORT COURSE FOR PROSECUTING ATTORNEYS  
will be held in Chicago  
July 31–August 4, 1961

For a copy of the program or for further information, please write to Professor Fred E. Inbau, School of Law, Northwestern University, 357 East Chicago Avenue, Chicago 11, Illinois.