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THE STATE ATTORNEY GENERAL AND THE CHANGING FACE OF CRIMINAL LAW

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There need be little doubt that great and continuing changes are taking place in the workings of criminal justice in the United States. These changes find partial expression in the developing standards of due process of law in a civilized society, as applied by the Supreme Court of the United States. A separate coercive force is found in a crime rate outracing population, with a newly exposed, organized class of professional criminals at the core. An additional and all-pervading pressure is found in the problems of an age of mass communication and mobility of population.

These combined winds of change are blowing with increasing force against an American practice of almost traditional vintage. This is the practice of localized criminal prosecution. One or more of these modern pressures applied to a local criminal prosecution can create a breakdown in the processes of criminal justice. The pressure may come in varying forms; the push of professionalism in crime against amateurism in prosecution, the harsh application of force and ignorance against sensitive rights, or the press of publicity upon a notorious crime. An exemplar of this breakdown was found in the notorious events occurring subsequent to the tragedy of 22 November 1963. The handling of this criminal investigation led that conservative voice of the American lawyer, the *American Bar Association Journal,* to describe it as a "hippodrome spectacle." In its editorial, the *Journal* noted that the handling of the case up to the time of Lee Harvey Oswald's death made it "doubtful whether the suspect could ever have a fair trial. No change of venue could have assured him of an impartial jury."[1]

Yet this was the criminal investigation and prosecution machinery of a comparatively large city. What would have been the result in a smaller and less populous community?

The paths to higher responsibility in the area of criminal justice all lead from local authority to the office of the state Attorney General. It is the connection between problems in this area, both existing and potential, and the powers of that office, both existing and potential, which should be explored further.

RECENTLY ERECTED LEGAL SAFEGUARDS AND THEIR SIGNIFICANCE FOR PROSECUTIONS BY LOCAL PERSONNEL

The United States Supreme Court has recently re-analyzed the standards and procedures required in state criminal prosecutions. *Mapp v. Ohio,*[2] in 1961, provided the first major inroad into state procedures more lax than

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1. 50 A.B.A.J. 50 (1964). In this regard see Rideau v. Louisiana, 373 U.S. 723 (1963).
2. 367 U.S. 643 (1961).

existing federal constitutional requirements. The Court there held that the requirements of the Fourth and Fifth Amendments, applying to the state through the Fourteenth, operated to forbid the admission of evidence obtained by unreasonable search or seizure. The federal exclusionary rule was applied and more lax local criminal investigative practices were rendered insufficient to obtain a valid criminal conviction. In *Ker v. California*[3] the Court sealed some remaining loopholes in this area by requiring that search and seizure standards be set through federal constitutional requirements rather than individualized state determination. In *Aguilar v. Texas*[4] the last of these loopholes was apparently filled by a determination that federal standards for obtaining a search warrant would be applied to the states.

Turning to another phase of criminal prosecution, the Court rendered a landmark decision in the case of *Gideon v. Wainwright.*[5] Here, at long last, it was held that an individual had a constitutional right to legal counsel in a state criminal prosecution. Subsequently, it was held that police refusal to allow a suspect to consult with counsel during an interrogation, coupled with a failure to effectively warn him of his right to remain silent, constituted a denial of counsel and rendered his confession inadmissable in a state prosecution.[6] In considering the trial phase of criminal prosecution, the Court examined a state procedure which gave a questioned confession to the jury and left to them, in their deliberation on findings, the factual determination of voluntariness. This was held to be so unreliable as to violate the standards of due process.[7] The Court required a "reliable and clear-cut determination of the voluntariness of the confession" such as that of Massachusetts, involving independent factual determinations of voluntariness by the trial judge and the jury.

The onward march continued in *Malloy v. Hogan*[8] where the privilege against self-incrimination was held to be protected against state action by the Fourteenth Amendment, with federal standards to be applied.

Even as these decisions increase the protections constitutionally accorded an individual in a state criminal prosecution, they increase the standards of fairness, proficiency and expertise required of those handling criminal investigation and prosecution. Clumsiness, ignorance, and inexperience in these matters will lead to acquittals at trial or reversals on appeal. Local law enforcement officers and local prosecutors who deal in serious criminal actions only as a rare event may thus find their efforts futile.

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3. 374 U.S. 23 (1963).
4. 32 U.S.L. Week 4499 (15 June, 1964).
5. 372 U.S. 335 (1963).
6. Escobedo v. State, 32 U.S.L. Week 4605 (22 June, 1964).
7. Jackson v. Denno, 32 U.S.L. Week 4620 (22 June, 1964).
8. 32 U.S.L. Week 4507 (16 June, 1964).

THE COURSE OF CRIME OUTREACHES LOCAL CONTAINMENT FACILITIES

Most recently, through the testimony of one Joseph Valachi before the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Operations, the American public has been made aware of the sinister role of organized crime in this country. Mr. Valachi's testimony concerned the criminal organization denominated by its members, La Cosa Nostra. However, organizations of this character are not recent in origin. The Mafia was brought into the United States in the nineteenth century and other ethnic criminal groupings were entrenched before it's arrival.[9] The proper seedbed for the development of the professional organization came at a later time. In the words of J. Edgar Hoover, "Organized crime as we know it today can best be traced to the Prohibition Era which started in January, 1920, with the enactment of the Eighteenth Amendment to the Constitution and ended thirteen bloody years later when the Volstead Act was repealed in 1933."[10] The illegal importation, production and sale of liquor made wealthy men of a great many who had formerly been considered mere hoodlums.

It was during prohibition that La Cosa Nostra began to assert itself as a dominant force in organized crime. After prohibition these groups looked for other activities that would not create wide public indignation. They then moved into such areas as prostitution and gambling, later, narcotics. Though Joseph Valachi's testimony covered the operations of twelve "families" in various major Eastern and Midwestern cities, "FBI investigations have revealed that La Cosa Nostra activities and influence reach far beyond these areas; in fact, they can be found in practically all parts of the United States."[11] The ineffectiveness of localized action against organizations of this nature is readily apparent.

Through a series of new federal laws prohibiting interstate transmission of wagering information,[12] interstate transportation of wagering equipment,[13] and interstate travel in aid of racketeering,[14] the United States Department of Justice and the Federal Bureau of Investigation have entered the picture. However, FBI arrests under the new laws have led to criminal reorganization on intrastate lines.[15] A corresponding reaction in statewide law enforcement and prosecution is necessary.

Yet it must be recognized that this hard-core organized crime accounts for but a small percentage of actual criminal investigations and prosecutions. The total number of reported crimes over the last five year statistical period

9. Hoover, The War on Organized Crime, 13 DePaul L. Rev. 195, 196 (1964).
10. *Ibid.*
11. *Id. at* 199.
12. 18 U.S.C. § 1084.
13. 18 U.S.C. § 1953.
14. 18 U.S.C. § 1952.
15. Hoover, *supra* note 9 at 205.

increased four times faster than population.[16] There was a nine per cent annual increase in arrests of young people under eighteen years of age.[17] Rural areas have traditionally enjoyed a lighter share of this problem but they share in the present increase. *E.g.*, in 1962 North Dakota had *reported* 8 cases of murder or non-negligent manslaughter, 27 cases of rape, 40 robberies, 53 aggravated assaults, 1217 burglaries, 754 larcenies over $50 in value, and 536 automobile thefts.[18]

SOME CRITICISMS AND POSSIBLE CURES

As early as 1934 it was considered urgent that every state establish a unified Department of Justice. On recommendation of the American Bar Association, a committee to deal with the subject was appointed by the National Conference of Commissioners on Uniform State Laws.[19] It was not until 1952 that a Model Department of Justice Act was completed.

> "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 administrative responsibility for acts of discretion."[20]

It was in 1935 that a young District Attorney fast rising into national prominence addressed the American Bar Association. These comments of Earl Warren upon the state of criminal justice machinery bear the same ring of truth though thirty years have passed in the interim.

> "In the main our institutions are much the same as they were before we had highways, fast transportation, high powered repeating weapons, vast areas and densely populated communities. We have at the present time about 40,000 police agencies and several thousand prosecuting agencies, most of which are administering the criminal law of their respective states as purely local problems and with but little official connection with the activities of other similar agencies."[21]

The present Chief Justice of the United States saw then a basic remedy, drawn from the sources of Anglo-American common law and experience.

> "The office of Attorney General, which should head up the State Department of Justice, has come down to us from earliest colonial times

16. Uniform Crime Reports (1962) at 1
17. *Ibid.*
18. *Id.* at 49.
19. The resolution of the 1934 American Bar Association convention read as follows:
    "The American Bar Association recommends the creation in each state of a State Department of Justice, headed by the Attorney General or such other officers as may be desirable, whose duty it would be to direct and supervise actively the work of every district attorney, sheriff and law enforcement agency, and who would be specifically charged with the responsibility therefor. This Department should include a central criminal bureau equipped with records and with investigators similar in character and qualifications to those now attached to the Federal Department of Justice." 21 A.B.A.J. 498 (1935).
20. 1952 National Conference of Commissioners on Uniform State Laws 369.
21. Warren, A State Department of Justice, 21 A.B.A.J. 495, 496 (1935).

> and its roots are to be found in the common law of England. Although in a few jurisdictions the office has only such powers as are expressly conferred upon it by law, it is generally held throughout the country that the Attorney General has all the common law powers and duties pertaining to that office except in so far as they have been limited by statute. He is, therefore, by tradition, as his forebear the Attorney General of England, the Chief Law Officer of the State. It is true that in the past the activities of our state Attorneys General have been largely of a civil nature, but that is because of our treatment of the office rather than because of any inherent weakness in it so far as criminal jurisdiction is concerned."[22]

Localized prosecution remains subject to various criticisms.[23] The office itself is usually elective, insecure, low paid and merely a stepping stone for future ambitions. The occupant thus often lacks knowledge of criminal law, crime detection and specialized court rules and legislation. Conflicts of interest arise because the prosecutor is also involved in his own private practice. "Public welfare" offenses, and minor crimes committed by business or potential business clients are particularly a problem, as are motor vehicle violations by potential personal injury clients. The general political pressures of an elective office are always present.

Professor Duane Nedrud, editor for the National District Attorney's Association and himself a former North Dakota State's Attorney, has done extensive research and analysis in this area. Writing in the *Journal of Criminal Law, Criminology and Police Science*, he concluded that "very few, if any, state statutes give any incentive to a lawyer to become a 'Career Prosecutor'."[24] Yet it is that same professionalism, in integrity, in experience, in education and knowledge, which is essential to fair, effective and respected administration of criminal justice. Professor Nedrud additionally notes that, of existing state laws, "the statute providing for the District Attorneys General in Tennessee seems to come the closest to the ideal of the full-time District Attorney insofar as the entire state structure of that office is concerned."[25]

Certainly appointed, full-time representatives of the Attorney General would provide much more in the way of these specialized and professional attributes. The necessity is particularly apparent in the states with smaller populations. As has been recognized by the United States Supreme Court in its reapportionment decisions,[26] counties do not provide a realistic basis for distribution of governmental authority in our modern democracy. Where the state does not adequately support state-wide administrative machinery there seems little basis for spreading tax revenues among fifty or sixty different

22. *Id.* at 497-498.
23. See MacDonald, American State Government and Administration 442-446 (5th ed. 1955); Nedrud, The Career Prosecutor, 51 J. Crim. L., C. & P.S. 343, 557-560 (1961).
24. Nedrud, *supra* note 23 at 343.
25. *Id.* at 345.
26. See Reynolds v. Sims, —U.S.—, 12 L. ed. 2d 506 (15 June, 1964).

units. The fact that some counties can afford to pay adequately only makes for a greater breach in the guarantee of equal protection of the laws.

With regard to principals of good government and administrative efficiency, we can turn to a most authoritative source. The Commission on Organization of the Executive Branch of the Government, better known as the "Hoover Commission", contained some of the foremost figures in the field of administration and government, headed by the former President. Although the report pertained to the Federal government only, many of the conclusions apply with even greater force to state governments. The first recommendation of the "task force" report to Congress upon legal services and procedure was as follows:

> "The Department of Justice should be recognized as the chief law office of the Government and should be given the authority necessary for the efficient and effective coordination of the performance of legal services in the executive branch."[27]

The final report added the specific recommendation that all litigation before the courts "on behalf of the Government and its executive departments and agencies" be conducted by the Department of Justice.[28] These authorities found in the existing organization a number of small uncoordinated legal staffs and a corresponding loss of efficiency and professional attributes, together with conflicting legal approaches and an absence of necessary lines of professional authority to the Attorney General.[29] These small legal staffs, dependent upon their individual agencies, were found to be professionally wanting. It was recommended that no legal staff be created in any governmental department or agency which had fewer than ten attorney positions.[30]

These findings are in line with the experience and practice of state reorganization and reform. It has been there recognized that state governments must move in the direction of (1) departmentalization or functional integration, (2) coordination of the staff services of administration and, (3) concentration of authority and responsibility.[31] This follows the criticism of the political scientist that in the governor's office, for example, there is responsibility but insufficient authority, "his is the kingdom and the glory, but not the power."[32]

This return to effective and coordinated state action is in accord with the thinking of another and much earlier political scholar, Alexander Hamilton:

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27. Commission on Organization of the Executive Branch of the Government, Task Force Report on Legal Services and Procedure, March 1955 at 59.
28. Legal Services and Procedure, A Report to the Congress by the Commission on Organization of the Executive Branch of the Government, March 1955 at 6.
29. Legal Services, *supra* note 28 at 4. Task Force, *supra* note 27.
30. Task Force, *supra* note 27 at 67.
31. Buck, Reorganization of State Governments in the United States 14-15 (1938). See also, MacDonald, American State Government and Administration 339-359 (5th ed. 1955).
32. MacDonald, *supra* note 31 at 215.

"That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and despatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number."[33]

THE EXISTING POWERS OF CENTRAL LAW ENFORCEMENT

Assuming, in line with the course of modern criminal justice development and the principles of effective government, that the Attorney General should play a central role in the field of criminal justice, it would be well to examine his existing authority. In this we must include all the powers available to him as opposed to those powers which are generally used. The popular eye has long envisioned the district attorney (or states attorney or county attorney) as the sole protector of criminal justice and its administration. Yet the Attorney General has a wider and more historic role. The office of the district attorney is statutory in origin and carries with it only specific statutory powers.[34] The office of the Attorney General has origins and a history going back to the early days of the common law.

It must first be recognized that there is overwhelming legal authority for the proposition that the state Attorney General is invested with the powers inherent in that office at common law.[35] It is usually stated that the Attorney General has all the common law duties and powers of that office except insofar as they may be specifically restricted by constitutional or statutory provisions.[36] The Illinois Supreme Court has gone so far as to hold that the legislature cannot remove these common law powers and duties from the Attorney General, but may only add to them.[37]

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33. The Federalist, No. 70, cited in Caldwell, the Administrative Theories of Hamilton and Jefferson, 25 (1944).
34. Withee v. Lane Fisheries Co., 120 Me. 121, 113 Atl. 22, 23 (1921 (dictum); Capitol Stages v. State, 157 Miss. 576, 128 So. 759, 763 (1930) (dictum); See also State v. Rovinson, 101 Minn. 277, 112 N.W. 269 (1907).
35. State *ex rel* Carmichael v. Jones, 252 Ala. 479, 41 So. 2d 280 (1949); State v. Karston, 208 Ark. 703, 187 S.W.2d 327 (1945); Pierce v. Superior Ct., 1 Cal. 2d 759, 37 P.2d 460 (1934); State *ex rel* Landis v. S. H. Kress & Co., 115 Fla. 189, 155 So. 823 (1934); Saxby v. Sonnemann, 318 Ill. 600, 149 N.E. 526 (1925); State v. Finch, 128 Kan. 665, 280 Pac. 910 (1929); Respass v. Commonwealth *ex rel* Atty Gen., 131 Ky. 807, 115 S.W. 1131 (1909); Withee v. Lane & Libby Fisheries Co., 120 Me. 121, 113 Atl. 22 (1921); Parker v. May, 59 Mass. 336 (1850); Munday v. McDonald, 216 Mich. 444, 185 N.W. 877 (1921); State *ex rel* Young v. Robinson, 101 Minn. 277, 112 N.W. 269 (1907); State v. Key, 93 Miss. 115, 46 So. 75, 76 (1908) (dictum); State *ex rel* Barrett v. Boeckeler Lumber Co., 302 Mo. 187, 257 S.W. 453 (1924); State *ex rel* Ford v. Young, 54 Mont. 401, 170 Pac. 947 (1918); State *ex rel* Fowler v. Moore, 46 Nev. 65, 207 Pac. 75, 76 (1922) (dictum); Fletcher v. Merrimack County, 71 N.H. 96, 51 Atl. 271, 273 (1901) (dictum); Bd. of Pub. Util. Coms'rs v. Lehigh, R.R., 106 N.J. Law 411, 149 Atl. 263, 264 (1930) (dictum); People v. Tru-Sport Pub. Co., 160 Misc. 628, 291 N.Y. Supp. 449 (Sup. Ct. 1936); State *ex rel* Miller v. District Ct., 19 N.D. 819, 124 N.W. 417 (1910) (semble); Gibson v. Kay, 68 Ore. 589, 137 Pac. 864 (1914); Commonwealth *ex rel* Minerd v. Margiotti, 325 Pa. 17, 188 Atl. 524 (1936).
36. State v. Karston, *supra*, note 35; State *ex rel* Barrett v. Boeckler Lumber Co., *Supra*, note 35.
37. Fergus v. Russell, 270 Ill. 304, 110 N.E. 130 (1915).

The office itself is rooted in the early history of English legal institutions, that period when the structural members of common law jurisprudence were being formed.[38] During the earliest stages of English law there was, of course, no need for legal representation and no provision for such. In the thirteenth and fourteenth centuries the need for expertise in the law was recognized and a professional legal class developed. The gestation period of the legal profession extended from the reign of Edward I (1272-1307) through the reign of Henry VI (1422-1461). With the development of the English Crown as a strong sovereignty came the necessity for legal representation of the Crown. At earlier stages the Crown was represented by a variety of attorneys or sargents at law, each with limited authority as to the courts before which he could appear and the subject matter he could handle. It was soon recognized that the Crown's business could be better handled by an attorney with general powers, who might appoint deputies. By the sixteenth century the Attorney General had become the chief law officer of the Crown. His powers were further developed in the seventeenth century. He had the power to appear in high and low courts throughout the realm. It appears he had the power and duty of appearing on any matter, civil or criminal, whenever the Sovereign was interested. Until recent times the Attorney General of England was the only English equivalent to a public prosecutor.

By the seventeenth and eighteenth centuries, when the English colonization in North America was taking place, the office of the Attorney General was fully developed. Together with other English legal institutions, it made the journey across the Atlantic to the New World.

> "At first there was no statute defining the powers and authority of the attorney general, but there had been such an officer in England for centuries prior to the settlement of this colony, and the powers and duties of the office had become well established. An attorney general was appointed in the colony as early as 1683, and there has been one ever since, except, perhaps, during temporary vacancies in the office. Among the powers and duties of the office by the common law was the prosecution of persons for crimes and misdemeanors."[39]

In 1850 the Supreme Judicial Court of Massachusetts assumed without citation that the Attorney General might exercise the common law powers of the English Attorney General.[40] But the case usually cited as the leading case on the common law powers of the Attorney General is *People v. Miner*,[41] decided in New York in 1868. The New York court stated that most, if not

38. As to this background see 6 Holdsworth, History of English Law 458 (1924); Holdsworth, The Early History of the Attorney and Solicitor General, 13 Ill. L. Rev. 602 (1919); Pound, The Lawyer from Antiquity to Modern Times 78, 82, 111-114 (1953); Plucknett, Concise History of the Common Law 228-230 (5th ed. 1956); 1 Stephen, A History of the Criminal Law of England 500-501 (1883). See also the excellent analysis in Commonwealth *ex rel* Minerd v. Margiotti, *supra*, note 35.
39. Fletcher v. Marrimack County, 71 N.H. 96, 51 Atl. 271-272 (1901).
40. Parker v. May, 5 Cushing (Mass.) 336.
41. 2 Lans. (N.Y.) 396.

all, of the original colonies had appointed Attorneys General and they were understood to be clothed with the powers of the Attorney General of England. In discussing some of these powers the court included the power to prosecute actions necessary for the protection of the property and revenues of the Crown and, the power to bring certain persons accused of crimes and misdemeanors to trial.[42]

Another authority much cited in later cases is the analysis of Ruling Case Law regarding the powers of the Attorney General:

> "Although in a few jurisdictions the Attorney General has only such powers as are expressly conferred upon him by law, it is generally held that he is clothed and charged with all the common law powers and duties pertaining to his office, as well, except in so far as they have been limited by statute . . . Accordingly, as the chief law officer of the state, he may, in the absence of some express legislative restriction to the contrary, exercise all such power and authority as public interests may, from time to time, require; and may institute, conduct, and maintain all such suits and proceedings as he deems necessary for the enforcement of the laws of the state, the preservation of order, and the protection of public right."[43]

The more recent approach to the issues of the Attorney General's power regarding criminal prosecution can best be expressed by the case of *Commonwealth ex. rel. Minerd v. Margiotti.*[44] In that case the Pennsylvania Supreme Court was forced to consider "the broad question" of "the power and status of the Attorney General in criminal proceedings."

A man had been killed while in police custody. After his inquest the coroner charged a county detective and two state policemen with murder. After further unpleasant publicity, the district judge made request of the Attorney General under a statute providing for appointment of a special attorney to prosecute, upon judicial request. The Attorney General began his own investigation and, determining that the District Attorney and other public officials might be involved, appointed himself special attorney. As special attorney and as Attorney General, he drew indictments, appeared before the grand jury and presented his evidence. Upon receiving true bills he began his prosecution. The defendants appealed to the Pennsylvania Supreme Court, alleging that the Attorney General's actions were accomplished without legal authority and were invalid.

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44. 325 Pa. 17, 188 Atl. 524 (1936).
42. *Id.* at 398.
43. 2 R.C.L. 916. This might be compared with the analysis of Am. Jur. 2d:
" . . . in addition to the powers conferred and the duties imposed upon him by statute, he is clothed and charged with all common-law powers and duties pertaining to his office as well, except insofar as they have been expressly restricted or modified by statute or the state constitution. The duties of the office are so numerous and varied that it has not been the policy of the state legislature to attempt to enumerate them; and it cannot be presumed, therefore, in the absence of an express inhibition, that the attorney general has not such authority as pertained to his office at common law." 7 Am. Jur. 2d, Attorney General § 6.

In an exhaustive opinion, the Court analyzed the historic origins of the office and the application of decided cases. It concluded that:

> " . . . the Attorney General of Pennsylvania is clothed with the powers and attributes which enveloped Attorneys General at common law, including the right to investigate criminal acts, to institute proceedings in the several counties of the Commonwealth, to sign indictments, to appear before the grand jury and submit testimony, to appear in court and to try criminal cases on the Commonwealth's behalf, and, in any and all of these activities to supersede and set aside the district attorney when in the Attorney General's judgment such action may be necessary."[45]

In those situations where there has been conflict and the Attorney General has superseded a local prosecutor in the handling of a criminal action, it is usually held that his action is subject to judicial review for abuse of discretion.[46] In Illinois it is held that the Attorney General cannot supplant or control the state's attorney, but he may intervene and act with the local prosecutor.[47]

The courts generally state that the duties and powers of the Attorney General are too numerous to be completely set out, but certain powers of the Attorney General have received specific recognition as the situations have arisen. Included among these are: (1) the power to appear before and present evidence to a grand jury in seeking an indictment,[48] (2) the power to enter a nolle prosequi, even over the local prosecutor's objection,[49] (3) the power to sign indictments,[50] (4) the power to seek injunctions against certain illicit activities,[51] (5) the power to bring action for removal of a public official and his subjection to criminal sanctions for malfeasance in office,[52] (6) the power to defend those involved in criminal prosecutions from harassing law suits.[53]

Accepting first the concept of the Attorney General as a common law officer, a short-sighted search for case precedent to justify his every act should

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45. *Id.* at 530. See also State v. Robinson, 101 Minn. 277, 112 N.W. 269, 272 (1907): ". . . as chief law officer of the state, he may, in the absence of some express legislative restriction to the contrary, exercise all such power and authority as public interests may from time to time require. He may institute, conduct and maintain such suits and proceedings as he deems necessary for the enforcement of the laws of the state . . ."
46. Kerry v. Stanley, 204 La. 110, 15 So. 2d 1 (1943); In re Margiotti's Appeal, 365 Pa. 330, 75 A. 2d 465 (1950).
47. People v. Flynn, 375 Ill. 366, 31 N.E.2d 591 (1940).
48. People v. True-Sport Pub. Co., 160 Misc. 628, 291 N.Y. Supp. 449 (Sup. Ct. 1936); State *ex rel* Miller v. District Ct., 19 N.D. 819, 124 N.W. 417 (1910).
49. People *ex rel* Elliott v. Corvilli, 415 Ill. 79, 112 N.E.2d 156 (1953); State v. Finch, 128 Kan. 665, 280 Pac. 910 (1929).
50. Commonwealth v. Frideman, 391 Pa. 236, 152 A.2d 428 (1959).
51. State v. Karston, 208 Ark. 703, 187 S.W.2d 327 (1945) (bookmaking establishment); State *ex rel* Ford v. Young, 54 Mont. 401, 170 Pac. 947 (1918) (bawdy house).
52. State v. Robinson, 101 Minn. 277, 112 N.W. 269 (1907).
53. Mundy v. McDonald, 216 Mich. 444, 185 N.W. 877 (1921) (defending judge against libel suit); O'Regon v. Schnerhorn, 25 N.J. Misc. 1, 50 A.2d 10 (1946) (defending grand jurors against libel suit).

be avoided. Following the common law's evolutionary approach, the powers of the office were shaped to meet the needs of the time and the function of the officer. If the Attorney General is to be the chief law officer of the government, a modern interpretation must grant him the authority to accomplish his function effectively. His actions will, in any case, remain subject to the review of the court before which he practices, just as the actions of any attorney.[54]

Those cases which have not recognized common law powers in the state Attorney General must be regarded as aberrations from the stream of legal thought and authority. One source for this handful of holdings is found in an old Indiana case which merely cited other of its own holdings for the proposition that state officers have but delegated authority.[55] The authorities regarding the special role of the Attorney General were never discussed. Another source for such holdings is found in the peculiar situation of states influenced by a Spanish civil law, as opposed to an English common law background.[56]

CONCLUSIONS.

After viewing these aspects of state action in criminal justice, we may turn to the drawing of conclusions. Analysis reveals two antagonistic forces acting upon the process of criminal investigation and prosecution. One derives from the high value our society has placed upon protections for the individual in those situations where the forces of government are brought to bear upon him. The Supreme Court of the United States has continued to refine and redefine these standards, in accordance with changing conditions and an increasingly civilized society. This has resulted in the erection of definite standards for the actions of government investigators and prosecutors in their manner of obtaining evidence and dealing with the individual suspected or accused of criminal wrongdoing. Most recently these standards have been uniformly applied to state prosecutions, in addition to their federal application. This necessitates higher standards of fairness and proficiency for state and local investigating and prosecuting officials. The subsequent difficulties in trial and appeal, whether as to illegally obtained evidence or involuntary confessions, arise more often through lack of understanding and proficiency than through intentional unfairness.

The second antagonistic force acting upon criminal justice is the pressure of increasing, and increasingly more complex, criminal activity in our society. As the society becomes more complex, the character of behavior that is to be

54. See In re Lord, 97 N.W.2d 287 (Minn 1959) in which the Supreme Court of Minnesota censured the Attorney General of Minnesota and retained jurisdiction over his case for a three year period, holding he was not rendered immune from the court's disciplinary powers over an attorney.
55. Inlion v. State, 122 Ind. 68, 23 N.E. 690 (1890), cited in State *ex rel* Winston v. Seattle Gas & Elec. Co., 28 Wash. 488, 68 Pac. 946 (1902).
56. See Westover v. State, 66 Ariz. 145, 185 P.2d 315 (1947); State v. Davidson, 33 N.M. 664, 275 Pac. 373 (1929).

considered criminal also becomes more complex. While crimes of force and violence most attract our attention, the "new breed" of white collar crimes often go unnoticed. As the mobility of the population has increased, crime has assumed a regional or national character. The strong social pressure exerted by the local community upon its members is ineffectual against those who come and go with transitory suddenness. Those law enforcement agencies that have moved to meet these problems effectively have developed scientific crime detection techniques and a coordinated informational and organizational approach.

An analysis of the existing situation reveals a variety of criticisms leveled at the system of local, elected, part-time prosecutors. Those who have made a knowledgeable study of this area see the necessity for two major innovations: (1) the establishment of the professional nonpolitical criminal prosecutor, (2) the establishment of a single responsible state agency for handling and coordinating criminal justice matters. In accordance with our standards of fair play and the mandate of the United States Supreme Court as to representation by counsel, consideration must also be given to the means of providing public defenders for the indigent.

Turning in the direction of state officers and looking for an existing agency to accept these functions we are met face to face with the office of the Attorney General. Here is available a lesson from the sources of the common law. The public prosecutor of the crown has, in this country, been neglected in favor of localized prosecution, contained within the confines of county lines. Criminal activity no longer has any relationship to these limited confines and, in the great majority of cases, a county cannot and does not adequately support a professional prosecutor. As has been discussed, the Attorney General has a wide variety of common law powers available for the effective handling of criminal justice matters. This is not to say that there has been any substantial participation by state government in the process of prosecution. It is generally distasteful to an Attorney General, who is usually an elected official, to exercise power over the heads of local elected prosecutors. There is also the simple matter of appropriations to support such action. The legislature must provide the revenue to support the personnel and costs for such action.

These powers of the Attorney General nevertheless remain effective tools for those situations where the local machinery has broken down or is likely to break down. An immediate approach to the problem would be to place appointed full-time assistants of the Attorney General directly in charge of these criminal justice matters. These professional public servants could be situated within prosecution districts as necessary. A state of small population cannot afford a multi-level governmental structure. This has been recognized in the states of Rhode Island and Delaware where all criminal prosecution is handled by the office of the Attorney General.[57]

57. Del. Const., Art. 15, § 1; Del. Code Ann., tit. 29, § 2501 et. seq. (1953); Gen. Laws of R. I. § 42-9-3 (1956).

For a long term comprehensive approach a more systematic assessment of responsibility is necessary. Coordinated state action under the office of the Attorney General will require specific legislative enactments. In the specifics of these problems, the Model Department of Justice Act and Professor Nedrud's legislative suggestions are available for comparison. The problem here, as in many other areas of state government, is primarily one of integrating authorities and functions spread among a variety of state and local officers.