

April 12, 1972

N.J.S.A. 2A:158-1

Copy 2

LEGISLATIVE HISTORY OF R.S.2A:158-1  
(Appointment of county prosecutors; general duties).

This statute dates to an act passed in 1823 (Harrison, p.49) a copy of which is enclosed.

Revisions

In 1945 this section was revised becoming title 30, chap.13, a copy of which is enclosed.

There was a supplement in 1869 (PL 1869, p.1161) and in 1877 a general revision of laws. A copy is enclosed of page 56 of the revision of 1877 which includes the earlier supplement.

Compiled Statutes of 1911, p. 153  
Wording identical to 1877 Revision.

1937 Revision

The wording of the section in question (2:182-1) is different in all three drafts. See the attached sheet with all three versions. There were no revisor's notes or comments.

L.1948 - Chap54 - S8

Jan.19 - Introduced by Hannold.  
Feb.9 - Passed in Senate, amended.  
Mar.8 - Passed in Assembly.  
Apr.29 - Approved, chapter 54.  
Statement (copy enclosed).  
Amended (copy enclosed of original bill and amendments)

1950 Revision of Titles 2 and 3 etc.  
2:182-1 became 2A:182-1  
Wording of draft is the same as the 1937 final draft.  
This does not reflect the changes made by Laws 1948 chap.54.

1950 Revision - Suggested changes 2A:182-1  
Wording changed to reflect 1948 amendment ( copy enclosed)

When enacted 2A:182-1 became 2A:158-1. There were no revisors notes or comments.

Hearings and reports

974.90 New Jersey Joint Commission to Study Crime and  
C929 the System of Criminal Justice in New Jersey.  
1963d

Wallat pages 102-104, 163-168  
Vol.3 at pages 57-75, 81-103, 133-139,  
171-174, 194-198, 201-204

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974.90  
C929  
1970a

New Jersey State Commission of Investigation  
Report on the county prosecutor system.

JH/EH  
Encl.

in the abstract, the amount of quotas, if any, for, and road tax, to be assessed and collected in the several townships, to be laid annually before the board of assessors, and also the number of taxable inhabitants in each township, and that so much of the fifth section of the act, entitled "An act concerning taxes," passed the tenth day of August, one thousand seven hundred and ninety-nine, as relates to the duty of the several assessors to deliver a transcript of the same to the county collector, within fifteen days after the annual meeting of the board of assessors, be, and the same is hereby repealed.

*It enacted,* That it shall be lawful for the said assessors to commence taking an account of the ratable property in the several townships, from and after the twentieth day of January in each year, any thing in the first section of the act, which is a supplement, to the contrary notwithstanding.

Repealed by further sup. 13th Feb., 1829, Com.

*It enacted,* That it shall and may be lawful for the owners or purchasers of any timber, wood, herbage, or other property, so as aforesaid, to enter upon the premises for the purpose of conveying away the property by the said owners, for the space of two months next after the expiration of the said term, and no longer.

*It enacted,* That if any person or persons shall enter upon the premises for the purpose of cutting or conveying away any timber, wood, herbage or other property, not lawfully allowed in the fourth section of this act, shall be so offending, shall be guilty of trespass, and shall be fined in any sum not less than ten dollars, or exceeding one hundred, to be prosecuted for by the owner or owners, in any court of competent jurisdiction.

Supplement, passed 13th February, 1829, Com.

to abolish Imprisonment for Debt, in certain cases.

Passed the 11th of December, 1823.

Passed 2d December, 1824, Com.  
Act of 19th February, 1830, Com.

Supplied by

AN ACT directing the manner of appointing Prosecutors of the Pleas of the State, in the several counties thereof.

1823.

Passed the 11th December, 1823.

WHEREAS the present mode of appointing prosecutors of the pleas for the state of New-Jersey, is liable to abuses, and tends to the great injury of the state, by the choice, in many instances, of incompetent persons, and is also contrary to the rights of the people, by taking away from them, or their representatives in Assembly, the election of public officers, and vesting the same in justices of the peace—THEREFORE, to remedy these and other injurious consequences,

Preamble.

1. BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That hereafter there shall be appointed, by the Council and Assembly of this state, in joint-meeting, some one fit person for each county, (and who shall be an attorney and counsellor at law,) whose duty it shall be to prosecute the pleas of the state in such county, in the absence of the Attorney-General, and further to do and perform such acts and things in behalf of the state, in and about such prosecutions, as the said Attorney-General might or ought to do, if he were personally present; which said Prosecutor shall be appointed for five years, and be commissioned by the Governor, or, in his absence, by the Vice President; provided, that the said Prosecutor shall be liable to be dismissed, when adjudged guilty of misbehaviour, on an impeachment of the Assembly.

Prosecutors of the pleas, appointed in joint-meeting.

2. And be it enacted, That every Prosecutor of the pleas as aforesaid, before entering upon the duties of his office, shall take and subscribe, before the clerk of the county of which he has been appointed, or before one of the judges of the Court of Common Pleas for such county, the following oath or affirmation, viz: I, do solemnly promise and swear, (or affirm, as the case may be) that I will faithfully, justly, and impartially execute the duties of Prosecutor of the pleas of the state, in and for the county of \_\_\_\_\_ to the best of my abilities and understanding. So help me God.

Oath of office.

3. And be it enacted, That the said Prosecutors shall, severally, during the continuance of their appointments, be vested with the same powers, subject to the same penalties, and entitled to the same fees for services, in the absence of the Attorney-General, within their respective counties, as the Attorney-General, is or shall, by law, be vested with, or subject or entitled to.

Powers, fees, &c.

4. And be it enacted, That in case of the absence of the Attorney-General and of the Prosecutor as aforesaid, at any term of the Court of Common Pleas and General Quarter-Sessions of the Peace in any county, it shall be lawful for the

Judges, &c may appoint in certain cases.

1823. judges and justices of such court, to appoint some fit person to prosecute the pleas of the state, during said term, who shall take the oath, be vested with the powers, entitled to the fees, and subject to the penalties as above prescribed, allowed and imposed, in respect of the person who shall have been appointed by the Council and Assembly in the joint-meeting as aforesaid.

What re-pealed.

Com. 21.

Proviso.

5. *And be it enacted*, That the second section of the act, entitled "An act to repeal an act respecting deputies to the Attorney-General, and to provide for the appointment of prosecutors of the pleas of the state, in the several counties," passed November the ninth, one thousand eight hundred and twenty-two, shall be, and the same is hereby repealed, and the appointment of any Prosecutor of the pleas, as aforesaid, under and by virtue of the said section, shall cease and determine: *Provided nevertheless*, that until a Prosecutor of the pleas shall be chosen and appointed in any county, in the manner in this act directed, all acts done and performed by any Prosecutor of the pleas as aforesaid, in pursuance of his authority, under his said appointment, in virtue of the said second section, shall be as valid as if this act had never been passed.

Rev. 574,  
709.  
Com 31.

An additional Supplement to "An act establishing a Militia System."

Passed the 11th of December, 1823.

Independent Corps, how formed.

1. *BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same*, That it shall be lawful for the respective brigade boards, at their discretion, upon application made to them, by any number of uniform companies competent to form a battalion, squadron, or regiment, to set off said uniform companies into an independent battalion, squadron, or regiment, as the case may be.

Inspectors duty.

2. *And be it enacted*, That it shall be the duty of the respective brigade inspectors, in the annual returns required from them, to make a particular statement of the troops and companies in uniform, their arms and equipments; likewise the arms and equipments, if any, belonging to the state, which may have been loaned to the brigade, or to any troop or companies within the bounds thereof, or that may have been purchased with money arising from fines of exempts, or others, within the respective brigades.

Fines how disposed of

3. *And be it enacted*, That all fines imposed upon the members of any uniform troop or company, under the provisions of the act to which this is a supplement, be, and they are hereby appropriated to the use of such uniform

troop or company; and the battalion paymaster directed to pay the same, when collected, therefrom the expenses of the troop or company, at the hands of the respective commanding officer for that purpose.

Act 6th Nov. 1829, Com.

See Sup. 23d Feb

A further Supplement to an act, entitled "Lands liable to be sold for the payment of the eighteenth of February, seventeen hundred and nine.

Passed the 11th of Dec

1. *BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same*, That when any Orphans' Court in this State, in order and direct any executor or administrator of the lands, tenements, hereditaments, or real estate of any testator or intestate, it shall and may be lawful for such executor or administrator, at their discretion, to take of such lands, tenements, hereditaments, or real estate, for the executor or executors, administrator or administrators, in complying for such order, sufficient bonds, with good and sufficient sureties, being residents in this State, in the Ordinary of the state and his successors, to double the amount of the estimated value of such lands, tenements, hereditaments, or real estate ordered to be sold, in condition in form and manner following, to wit: That if the condition of this obligation is such, that if the executor or administrator of the last will and testament of any deceased, (or administrator of and singular parts of the estate of any deceased, and singular parts of the estate of any deceased, and credits of C. D., deceased, as the same shall well and truly administer the moneys arising from the sale of any lands, tenements, or real estate of any deceased, directed by the order of the Orphans' Court of the county of M. to be sold according to law; and if the same shall be made, a just and true administration, within twelve months from the date of the above obligation; and the surplus of money found remaining upon the account of such sale, after the same being first examined and allowed of by the Orphans' Court of the county, or other authority,) shall distribute and pay unto such persons respectively, as is, are, or shall be by law entitled to receive the same; then the above obligation shall be of none effect, otherwise to be and remain in full force and virtue.

2. *And be it enacted*, That all bonds given by executors or administrators and their sureties, in

Orders may be made at chambers.

Act Mar. 23, 1859,  
P. L. p. 640.

Proceedings if not pursued for twenty years, cease to have effect.

Act Mar. 17, 1870,  
P. L. p. 53.

76. That all orders for the appointment of auditors, for the sale of perishable property, for advertising the attachment, for the sale of the defendant's property, and all other orders not specifically required by this act to be made in open court may be made out of court by a judge of the court in which the action is pending, in term time or vacation.

77. That in all cases where writs of attachment have heretofore been issued, or may hereafter be issued, and no proceedings have been or shall be had thereon for the period of twenty years, the same shall cease to bind the property and estate of the defendant so attached at the expiration of the said twenty years.

[For preferences on attachment given to wages, see *post*, title OPERATIVES].

## Attorney General.

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|--|---|
| 1. Duties of Attorney General.   | 4. Appointment of prosecutors of pleas. |
| 2. Salary of.  | 5. Oath of prosecutors.                 |
| 3. All criminal business to be prosecuted by prosecutors of pleas. When attorney general to prosecute. | 6. Powers of prosecutors.               |
|  | 7. When court to appoint prosecutor.    |

### An act to define the duties and fix the salary of the attorney-general.

P. L. 1854, p. 131.

Approved February 24, 1854.

Duties of attorney-general.

1. It shall be the duty of the attorney-general, when not incompatible with his other public duties, to be present at the seat of government during the session of the legislature, to give to the members of the senate and assembly, and to the executive, and all the officers of the state government, such legal information as they may from time to time request, examine and decide all cases submitted for his opinion by the state superintendent of common schools, attend in any county of the state for the trial of homicide cases, or other high crimes, on the written request of a justice of the supreme court, or of the board of chosen freeholders of any county, upon all applications for loans of the school fund to inspect the title papers, and determine the security offered, and attend generally to all matters in which the state is a party, or in which its rights and interests are involved.

Salary.

2. The attorney-general shall receive an annual salary of fifteen hundred dollars, to be paid to him by the treasurer of this state, in quarterly payments.

Prosecutors of pleas to prosecute criminal business. When attorney-general to prosecute.

3. After the passage of this act, the criminal business of the state shall be prosecuted exclusively by the prosecutors of the pleas, except in counties where, for the time being, there may be no prosecutor, or where the prosecutor desires the aid of the attorney-general; and when the attorney-general prosecutes in a county having no prosecutor, he shall be entitled to the fees now fixed by law; and where he aids in the prosecution at the request of the prosecutor, he shall be entitled to one-half of the fees; and when the attorney-general attends the trial of any case at the request of a justice of the supreme court, or of the board of freeholders, as provided in the first section of this act, he shall be paid such sum for that special service as the justice of the supreme court of that judicial district shall certify and fix, to be paid by the collector of the county in which the cause is tried.

Harr. 49.

### An act respecting prosecutors of the pleas of the state.

R. S. 832.

Approved April 16, 1846.

Appointment of prosecutors of the pleas.

4. SEC. 1. There shall be appointed for each county some fit person, who shall be an attorney and counsellor at law,<sup>(1)</sup> whose duty it shall be to prosecute the pleas of the state in such county, in the absence of the attorney-general; and further, to do and perform such acts and things in

(1) By supplement of April 1, 1869, (P. L. p. 1161), an attorney-at-law may be appointed prosecutor of the pleas in Bergen county.

behalf of the state, in and about such prosecutions, as the attorney-general might or ought to do, if personally present.<sup>(a)</sup>

5. SEC. 2. Every prosecutor of the pleas as aforesaid, before entering upon the duties of his office, shall take and subscribe, before the clerk of the county for which he has been appointed, or before one of the judges of the court of common pleas for such county, the following oath or affirmation, viz: I, ———, do solemnly promise and swear (or affirm, as the case may be), that I will faithfully, justly, and impartially execute the duties of prosecutor of the pleas of the state, in and for the county of ———, to the best of my abilities and understanding. So help me God. Oath of prosecutors.

6. SEC. 3. The said prosecutors shall, severally, during the continuance of their appointments, be vested with the same powers, subject to the same penalties, and entitled to the same fees for services, in the absence of the attorney-general, within their respective counties, as the attorney-general is or shall by law be vested with, or subject or entitled to. Powers of prosecutors.

7. SEC. 4. In case of the absence of the attorney-general and of the prosecutor as aforesaid, at any term of the court of oyer and terminer and general jail delivery, or general quarter sessions of the peace, in any county, it shall be lawful for such court to appoint some fit person to prosecute the pleas of the state during said term; who, on taking the oath or affirmation above prescribed, shall be vested, during the said term, with the powers of a prosecutor of the pleas, and be entitled to the same fees and subject to the same penalties. When court to appoint.

<sup>(a)</sup> The offices of attorney-general and prosecutor of the pleas cannot be held by the same person at one and the same time, and where a prosecutor of the pleas accepts the office of attorney-general he thereby avoids the former office, without any formal resignation, *The State, Clawson v. Thompson, Spec. 689.*

## Banks.

### I. FORMATION OF BANKS, THEIR POWERS AND DISSOLUTION.

1. Who may associate to establish banks. Capital stock.
2. Certificate of association to be made and recorded. Location of office or place of business.
3. Certificate, evidence. Upon making and recording same, persons associating a body corporate. Legislature may dissolve.
4. Powers of associations.
5. Shares personalty and how transferred. Restrictions on change of articles.
6. Capital may be increased.
7. Power to hold real estate.
8. Name.
9. Who shall sign notes.
10. Associations to possess powers of general act concerning corporations.
11. Change to national banks.
12. Compensation for stock, in case of change, to non-consenting stockholders. Proceedings in case of disagreement as to price.
13. Proceedings to apply to trustees, &c. Proceedings in case of absence or disability of owners.
14. Assets pass to the new bank.
15. Return of deposits of stock, on the bank ceasing business.
16. Notice of redemption of notes.
17. On dissolution by stockholders, State Treasurer to reassign property deposited. Proviso.
18. Surrender of franchise, how made.

### II. ISSUE OF NOTES AND DEPOSITS OF SECURITIES THEREFOR.

19. State Treasurer to prepare notes. To be registered in office of treasurer. Registers.
20. Issue of notes to banks, when.
21. Bills and notes how to be stamped.

22. Plates, &c., to be kept by State Treasurer.
23. Penalty for over-issues of notes.
24. Association not to do business until deposit of required securities. Bond of treasurer.
25. Registry of notes delivered.
26. What stocks may be deposited.
27. One-third of amount of notes to be issued may be secured by mortgages.
28. Regulations as to mortgages transferred as security.
29. Securities, how endorsed.
30. Commissioners to be appointed to estimate value of real estate mortgaged. To certify mortgages.
31. When bank may collect interest.
32. The treasurer may call for more security.
33. Securities may be changed,
34. Cancellation of returned notes.

### III. REGULATION AND REMEDIES.

35. Annual statement. What to contain.
36. Penalty for neglect to make out statement.
37. Examination by Committee on Treasurer's Accounts.
38. Association to pay 12 per cent. damages for non-payment of bills.
39. List of shareholders to be kept for inspection.
40. Dividends unclaimed for three years to be advertised.
41. Balances due depositors unchanged in amount for three years to be advertised.
42. Costs of advertising.
43. Penalty for non-compliance.
44. Bills and notes not to be put in circulation unless countersigned and registered.
45. Proceedings in case of non-redemption of notes.
46. Depreciated paper not receivable.
47. Penalty for over-drawing, etc.
48. Current money, &c., sufficient tender for redemption of notes.
49. How long preceding section to continue in force.



prosecutors of the pleas of such counties shall receive an annual salary of at least eight hundred dollars, to be paid to him in quarter annual payments.

To whom act to apply.

44. SEC. 2. That this act shall only apply to those prosecutors of the pleas whose term of office shall hereafter commence, or to either of those now in office, whose term does not expire during the present year, who may file their assent in writing, under their hand, to the provisions of this act, in the office of the clerk of the county of which he is such prosecutor.

Repealer.

45. SEC. 3. That so much of all acts or parts of acts as relate to the amount of salary of the prosecutors of the pleas in the counties of the third class in this state, whether general, special or local, as come in conflict with the provisions of this act, be and the same are hereby repealed; *provided, however*, that nothing in this act contained shall in any wise be construed or held as reducing the salary of any of the prosecutors of the pleas in any of the counties of the third class in this state.

Proviso.

Salary to be in lieu of fees, etc.

46. SEC. 4. That the said salaries shall be in lieu of all fees, costs and compensation or allowance now received by them, or to which the said prosecutors of the pleas shall be entitled, under existing laws; and all such fees, costs, compensation or allowances shall be taxed in all bills of costs the same as now taxed, and shall be collected by the sheriffs of the several counties, and be by them paid over to the respective county collectors for the use of the said counties.

IV. Clerks of counties.

An act respecting the salaries and compensation of clerks of counties in this state.

P. L. 1880, p. 247.

Approved March 11, 1880.

[SEC. 1 amended and supplied by Sec. 48, *post*.]

Repealer.

47. SEC. 2. That all acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed, and this shall be a public act and take effect immediately, saving and excepting that so far as the same increases or diminishes the salary, fees or compensation of any of said clerks now in office during the term for which said clerk was elected or appointed, it shall take effect only upon and immediately after the end of such term.(a)

Proviso.

An act to amend an act entitled "An act respecting the salaries and compensation of clerks of counties in this state," approved March eleventh, in the year of our Lord one thousand eight hundred and eighty.

P. L. 1884, p. 58.

Approved March 6, 1884.

48. SEC. 1. That section one of an act entitled "An act respecting the salaries and compensation of clerks of counties in this state," approved March eleventh, in the year of our Lord one thousand eight hundred and eighty, shall be amended so as to read as follows:

Salary of county clerks to be in lieu of all fees, etc.

[That in all counties of this state as to which it is now or shall hereafter be provided by law that compensation of the county clerks shall be by annual salary, the salary shall be in lieu of all fees, costs or other remuneration or compensation whatsoever, for any and all services required to be performed by said clerks, and shall be paid to said clerks in quarterly payments, by the collectors of said counties respectively, and all fees, costs and compensation that are now allowed said clerks for services in the courts of said counties shall be taxed in all bills of costs the same as they are now taxed, and shall be, in each county, collected by the said clerk, and be by him paid over to the county collector for the use of the county; and the fees now allowed by law for all other services rendered by the said clerks shall be by them collected and paid over to the said collectors respectively.](b)

(a) This act is special and local, and, therefore, unconstitutional. *Hallock v. Hollinshead*, 20 Vr. 64.

(b) Where an act of the legislature requires the county clerk to pay the fees of his office to the county collector, mandamus will not issue at the suit of a taxpayer to enforce

such payment. *Bamford v. Hollinshead*, 18 Vr. 439. The right of action is vested in the collector, and it is his duty to collect the sum due the county. *Ib.* This act is special and local, and, therefore, unconstitutional. *Hallock v. Hollinshead*, 20 Vr. 64.

VI.

An act to fix the salary senate

49. SEC. 1. That the assant engrossing clerk of the of six hundred dollars.

An act to fix the salary

50. SEC. 1. That the bi house of assembly shall and fifty dollars.

An act to fix the salaries the ser

51. SEC. 1. That the do of the general assembly of three hundred and fifty

52. SEC. 2. That this a to officers of the one hund

I. SALES ON FOUR WE

1. Court may order four weeks' no sale.

II. DEFECTIVE SALES

2. Sales not invalidated for failure relative to advertising (1881)
3. Sales not invalidated where ad paper (1879).
4. Not invalidated by reason of ad paper (1880).
5. Not invalidated by reason of fa vision as to advertising (1880)
6. Not invalidated by irregulariti
7. Not invalidated by omission to (1881).
8. Sales by executors where adjo months validated (1881).
9. Sales not invalidated by failu sions as to advertising (1883).
10. Not invalidated by failure to (1883).
11. Not invalidated by failure to (1884).
12. Not invalidated by failure to tisement (1885).
13. Not invalidated by advertis (1885).
14. Not invalidated by failure t (1885).
15. Not invalidated by omission (1886).
16. Not invalidated by omission tisement (1886).

SENATE, No. 8

STATE OF NEW JERSEY

INTRODUCED JANUARY 19, 1948

By Mr. HANNOLD

Referred to Committee on Law Revision

AN ACT concerning the appointment, qualifications, powers, duties and emoluments of county prosecutors, defining the term "prosecutors of the pleas" in any statute so far as it relates to any county in which a county prosecutor shall have been appointed and making valid indictments or acts done by any county prosecutor when signed or done in the name of, and under the title of, the prosecutor of the pleas.

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

1 1. As the terms of the prosecutors of the pleas of the respective coun-  
2 ties shall expire, there shall be appointed by the Governor with the advice  
3 and consent of the Senate for each county, for a term of five years and until  
4 the appointment and qualification of his successor, some fit person who shall  
5 have been admitted to the practice of law in this State for at least five years,  
6 who shall be known as the county prosecutor and who, except as otherwise  
7 provided by law, shall prosecute the pleas of the State in such county and  
8 shall have all of the powers, perform all of the duties formerly had and per-  
9 formed by the prosecutor of the pleas of such county and shall be entitled to  
10 all of the emoluments to which the prosecutor of the pleas of the county for-  
11 merly was entitled.

1 2. In any statute in which the term "prosecutor of the pleas" is used,  
2 said term shall be construed to mean the county prosecutor so far as it

3 relates to any county in which a county prosecutor shall have been appointed;  
4 and no indictment or act done by any county prosecutor shall be invalidated  
5 because the same shall be signed or done in the name of, and under the title  
6 of, prosecutor of the pleas.

1 3. This act shall take effect immediately.

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#### STATEMENT

Article VIII, Section II, paragraph 1 of the new Constitution sets up a new officer to be known as a county prosecutor in each county, who presumably will take over the duties of the prosecutor of the pleas of the county when his term expires and a county prosecutor is appointed for the county. Until the terms of all of the present prosecutors of the pleas expire there will be county prosecutors in certain counties and prosecutors of the pleas in others and during this period it will be necessary to retain the powers, duties and emoluments of the prosecutors of the pleas in them while they remain in office and at the same time to clothe the county prosecutors as they are appointed with these powers and duties and give them these emoluments.

This bill is intended to accomplish this purpose and it provides, as well, that the qualifications for the office of "county prosecutor" shall be five years admission to the bar of the State.

When all of the terms of prosecutors of the pleas have expired, permanent legislation clothing them with the powers and duties of the prosecutors of the pleas and fixing their emoluments can be passed.

This bill was drafted by the Law Revision and Bill Drafting Commission under the direction of the Senate and General Assembly Committees on Law Revision.

# 1937 REVISION

## 1ST DRAFT

2:182-1. Appointment of prosecutors of the pleas; general duties. There shall be appointed for each county some fit person, who shall be a counselor at law, who shall prosecute the pleas of the state in such county, and do and perform such acts and things in behalf of the state in and about such prosecutions as the attorney general might or ought to do if in attendance in the county.

Source. Rev. 1877, p. 56, §4 [C. S. p. 153, §5].

## 2ND DRAFT

2:182-1. Appointment of prosecutors of the pleas; general duties. There shall be appointed for each county some fit person, who shall be a counselor at law, who shall prosecute the pleas of the state in such county, and do and perform such acts and things in behalf of the state in and about such prosecutions as the attorney general might or ought to do if in attendance in the county pursuant to section 2:18-4 of this title.

Source. Rev. 1877, p. 56, §4 [C. S. p. 153, §5].

## FINAL DRAFT

2:182-1. Appointment of prosecutors of the pleas; general duties. There shall be appointed for each county some fit person, who shall be a counselor at law, who, except as otherwise provided by law, shall prosecute the pleas of the state in such county, and do and perform such acts and things in behalf of the state in and about such prosecutions as were formerly done and performed by the attorney general.

Source. Rev. 1877, p. 56, §4 [C. S. p. 153, §5].



S T A T E O F N E W J E R S E Y

P U B L I C H E A R I N G

THE SPECIAL JOINT LEGISLATIVE COMMITTEE TO STUDY CRIME  
AND THE SYSTEM OF CRIMINAL JUSTICE IN NEW JERSEY, AS  
CREATED BY SENATE CONCURRENT RESOLUTION NUMBER 44

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State House  
Trenton, New Jersey

*New Jersey Legislature*  
Before  
(THE SPECIAL) JOINT (LEGISLATIVE) COMMITTEE TO STUDY CRIME  
AND THE SYSTEM OF CRIMINAL JUSTICE IN NEW JERSEY,

Members of the Committee:

SENATOR E. B. FORSYTHE, Chairman

SENATOR W. DUMONT, JR.

SENATOR W. F. KELLY, JR.

SENATOR J. A. LYNCH

SENATOR F. X. McDERMOTT

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ELIOT H. LUMBARD, ESQ., Chief Criminal Justice Consultant,

HENRY S. RUTH, JR., ESQ., Asst. Criminal Justice Consultant.

thing. I have hearsay information, and I hesitate very much --

Q General, I'm not asking you to name a particular company by name, but industry, what is the industry?

A If I give industry it is, in effect, pointing to certain people, and those of us here in the State of New Jersey know this, once I say something -- I don't mind saying this to you in executive session, but I don't believe I ought to do it here in the public forum.

Q Well, I'll only say this, that part of your problem, I understand, in New Jersey and elsewhere in prosecuting organized crime is to gain potential witnesses, the greatest difficulty is obtaining evidence, and without the evidence you can't prosecute. That means you've got to get a climate of public acceptance, <sup>of civic responsibility,</sup> which produces for you on certain occasions certain amounts of those witnesses.

Secondly, business men, labor union leaders in certain areas <sup>that</sup> have that activity, which might have been a problem, could be alerted. I recognize full well the inhibitions and the propriety in being specific, which is a different thing.

A Well, in this individual case, being general, it may in many instances be specific at the same time, and I must say that I'm very happy to give that information to

any member of the Legislature -- of this committee in executive session, but not in a public hearing.

Q All right. General, I will ask you directly, would you favor a centralization of the prosecution function in New Jersey under your office?

A Well, I started to answer this before. What I favor is something which I have tried to work out and am in the process of working on now. That is that all appellate matters should be handled by the attorney general, not the trial masters, and if I could relieve my deputies from going in, for example, and trying some cases before county Grand Juries, which is sometimes the case, then I could establish the system and I think we need legislation for it whereby county prosecutors could lend assistance from one county to another.

Q What about post-conviction remedies?

A We would take post-conviction remedies too, I consider that an after-trial procedure. I think for the purpose of uniformity and establishing a proper policy would be better emanating from a central office.

Q But you are not in favor of central prosecution under your direction?

A Central prosecution, no, I think it poses too many problems.

Q What are some of the major problems?

A Well, covering the whole state.

Q Well, I'm not sure I follow that. The United States Attorneys system under the Department of Justice is centralized and covers the whole United States.

A But he doesn't run the gamut of cases that we run in the state.

Q I'm trying to get at what the conceptual functional difference is from one as to the other and why you oppose it?

A He would find it very difficult to obtain as many lawyers as would be necessary to handle it, that's number one. It is a money problem. The way things are now, the county, for example, pays the assistant prosecutors. Under the plan which you suggest the state would be paying.

Q I'm not suggesting anything, I'm merely inquiring.

A This is one of the reasons I understood it to be a recommendation from you, but not withstanding, it seems to me that the trial matters are handled very nicely today in the everyday cases by the county prosecutors, and if I could, in co-operation with the prosecutors, and, by the way, I've surveyed all of them and they think it would be a good idea too, if I could use their men so that if there were a conflict in one office, they could use a man from another county to handle that, then all the appellate matters would be picked up, relieving them of

within the State Police alone, so far as organized crime is concerned?

A Right, sir, because of the concentration. We are concentrating on this particular group.

Q Yes, concentration on manpower, better co-ordination and collection of intelligence. Don't these reasons also apply within the county, say, within the police departments of a county, if they have the same function?

A I missed your point.

Q If between troops of the State Police, one entity, you have some loss of effectiveness against organized crime in terms of intelligence, concentration of efforts, specialist assignments or whatever, wouldn't those situations also apply to police departments within the county?

A Yes. I said that.

Q Now, has your organization participated in any kind of plan or made any recommendations with regard to the fragmentation of local police departments in New Jersey?

A I know what you are talking about. I know your theory on fragmentation. In terms of assistance to local police departments, there is no question, technical assistance, a system of intelligence, a system of raids, yes, we have this.

Now, if you are talking about bodies and technical services, one police department has two men, the next one has four, the next one has twenty, and this is the fragmentation that you are talking about. I believe this takes a kind of long look into terms of assistance and the State should give assistance in technical assistance in polygraphs. These types of service should be regionalized. Maybe four or five towns should get together for services. We agree on this, but for manpower, I don't know whether I could justifiably say yes or no to this. You have to understand the geographics of the State, the social problems of the State. The southern part of the State is not as concerned with organized crime as Essex or Hudson County.

Q Let me ask you directly, your organization works everyday with the municipality police, receives information from them, it gives information to them, exchanges services, it is deeply involved in one way or another working with the local police departments.

Has the New Jersey State Police Department, as a result of this involvement, come to any conclusions that it should or should not have so many police departments in the State of New Jersey, for example the General said there are over 400, or whatever

the figure is?

A Let me first tell you of our participation; where the State Police fits into the state's structure.

Q I understand that. Can you just say to me, "Has the department taken a position as to whether there is excessive fragmentation on a municipal police level or not?"

A I don't know, I have never made that study. I'd have to look a little bit deeper into this.

Q Whether or not the department has, what is your opinion?

A As far as my opinion, let me give you our policy, and our policy is in this regard, we have three areas of responsibility, <sup>in</sup> the State Police: Full, partial and co-operative.

The area of full responsibility is where there is no police department or the police department is such that it is unorganized .

The partial is where there is a partial police department or a part-time police department or two or three policemen, and we then have partial responsibility in terms of traffic control, investigation of major crimes, co-operation with the prosecutor, etcetera.

And the co-operative area is where they are self-sustaining, self-supporting, and we co-operate at their request.

Now, we are talking about a police department that has all of the internal functions, as detectives and radio and everything. Now, where we cut this off, and how we cut this off, I'm not quite qualified to say. I have given it some thought in terms of "Should there be regionalization for three or four municipalities?". Well, they may have kind of local political problems and not be in accord with each other.

Q Let me be very clear, we are not here talking about whether there are or not political problems, because clearly there would be political problems in consolidating police departments. Rather we are seeking your technical opinion as an expert policeman as to whether this would or would not be a desirable course.

A If you're asking me about regionalization, I'm in accord with regionalization 100% for the services that they can supply to one another in court.

Q Do you think they would best be organized on a county basis?

A No, I don't think so. I think that the county lines have long gone or have been since gone in terms of

police problems

Q How would you divide the zones or districts that would be most efficient to municipal police departments?

A Well, I just can't tell you. If you asked me to study it and make a survey of it, I would gladly have this done.

Q All right. If you don't know, you don't know.

A Maybe we do, but we just are not fortified with enough information. You are asking me if we should have regionalization. I said yes in terms of services we should. In terms of people, I don't know.

Q You were going on about organized crime before when we got into fragmentation and its impact. You mentioned loan sharking, although you didn't discuss it in any detail. Can you say a little more to the Committee about what you had in mind?

A Well, with regard to the loan sharking, it is such an ambiguous thing, the only time we receive a complaint loan sharking is when the/ <sup>victim has</sup> been kicked around or beat up for failure to pay, and then he's afraid to be kicked around or beat up again. Generally we don't get the information from this individual because of fear or intimidation. Our laws are such that we need corrective laws in terms of loan sharking, in terms of usury

and I understand that there is legislation.

Q Your problem is to get evidence?

A Yes. We don't know who has borrowed from whom. We will have allegations, but they are not provable in court.

Q Well, let's talk about two specific ways of getting evidence that might assist them. One would be immunity, is that correct?

A Yes.

Q And the other would be electronic eavesdropping, is that correct?

A Yes.

Q Do you have a recommendation or an opinion regarding either?

A Both.

Q What is it?

A I'm for eavesdropping, I'm for electronic devices and I'm for witness immunity.

Q Could you spell out to the Committee why you think New Jersey should have an electronic eavesdropping statute?

A Well, I want to qualify this. I am all for the rights of individuals, the rights of the people to be protected, Eavesdropping devices would have to be

P U B L I C H E A R I N G

THE SPECIAL JOINT LEGISLATIVE COMMITTEE TO STUDY CRIME  
AND THE SYSTEM OF CRIMINAL JUSTICE IN NEW JERSEY, AS  
CREATED BY SENATE CONCURRENT RESOLUTION NUMBER 44

HELD:

March 28, 1968  
State Museum  
State House  
Trenton, New Jersey

*New Jersey, Legislature,* Before  
(THE SPECIAL) JOINT (LEGISLATIVE) COMMITTEE TO STUDY CRIME  
AND THE SYSTEM OF CRIMINAL JUSTICE IN NEW JERSEY,

Members of the Committee:

SENATOR E. B. FORSYTHE, Chairman

SENATOR W. DUMONT, JR.

SENATOR W. F. KELLY, JR.

SENATOR J. A. LYNCH

SENATOR F. X. McDERMOTT

SENATOR M. A. WALDOR

SENATOR J. C. WOODCOCK, JR.

ASSEMBLYMAN W. K. DICKEY

ASSEMBLYMAN H. F. GAVAN

ASSEMBLYMAN P. MORAITES

ASSEMBLYMAN R. OWENS

ASSEMBLYMAN H. M. RINALDI

ASSEMBLYMAN A. S. SMITH

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of records, keeping track of your cases, et cetera, et cetera. This would be an example of the science and technological approach in the municipal court.

I would also add that this could be applied to our law enforcement system, also. Many of our local police departments do not have access, for one reason or another, to scientific processes in terms of how they maintain their records and how they coordinate with other police departments, both local police departments and State police.

MR. LUMBARD: While we are on the subject of the municipal court, Mr. Waldron, is it a fair statement that you and your commission recommend that the municipal courts in New Jersey be abolished?

MR. WALDRON: No, sir. We recommended that they be absorbed into the existing court system.

MR. LUMBARD: Well, all right. I meant the same thing. I mean, they wouldn't exist any more if they were absorbed into the county

court system.

MR. WALDRON: In essence what you are saying is correct, that they be put under the supervision of the New Jersey court structure and appointment of magistrates be done by the Governor with the advice and consent of the Senate.

MR. LUMBARD: Page 10 of your report dealing with that one subject reads: "The Commission, therefore, recommends municipal courts should be integrated within the existing court system with judges to be appointed by the Governor with the advice and consent of the Senate. Each court should be provided with a full time court clerk, attendant stenographic services, and probation staff with access to modern criminal identification files and case background data. There should be a permanent court record of all hearings. The County Prosecutor or municipal attorney, as the case may be, should prosecute all cases and handle all appeals."

What are the facts upon which your Commission based that recommendation?

MR. WALDRON: May I ask Mr. Finckenuer to answer that? I didn't handle the hearing on that particular phase of the operation.

MR. LUMBARD: Well, do you join in the judgment?

MR. WALDRON: Oh, yes, indeed. May I say this, for the Board. Each individual member of the Commission was sent a copy of both of these reports and they reviewed them and they sent in any corrections that they deemed necessary and then they signed the report. So that every one has approved the data that is in this report.

MR. LUMBARD: Is it fair to say, then, that every recommendation in the report was unanimous with the Commission?

MR. WALDRON: Yes, sir, as far as I know.

MR. LUMBARD: All right. Please give us the facts with respect to the municipal court.

MR. FINCKENAUER: First of all, your first question was whether or not we were

recommending the abolition of the municipal court. We are not recommending the abolition of the municipal court. We are recommending that the municipal court be integrated into the existing court system for this reason or for these reasons: Number one, the magistrates, the municipal court judges as they are now called, would be appointed by the Governor with the advice and consent of the legislature; number two, that the court will be provided with stenographic services to make it a court of record; number three, that they would have full time staff in terms of court clerks, in terms of prosecutors, in terms of probation services, and in terms of having access to case background data which they do not now have. These courts would still be there in the community, but they would not be autonomous, independent courts. They would operate a part of the existing court system.

THE CHAIRMAN: I don't know the accurate number, but we are certainly approaching 500 municipal courts now.

MR. FINCKENAUER: 567.

THE CHAIRMAN: Most of which are meeting on a part time basis. Are you recommending that there be 567 integrated courts?

MR. FINCKENAUER: No. There has been a recommendation before that the courts be given the opportunity, where they felt this could be done, to combine with other courts. However, this was something that was to be decided on the local level. I am not saying that we need 567 courts. What I am saying is that the courts could decide for themselves, in terms of their case loads, do they need one court in that one area or can one court service several of these areas?

THE CHAIRMAN: You may not then be recommending abolishment of all municipal courts, but a substantial number.

MR. FINCKENAUER: Let me reiterate. We are not recommending any abolition of any of these courts. This is something that they will determine. We are recommending that this system be put into effect and they will

determine do they need a court or not.

MR. LUMBARD: May I come back, then, to whatever the specifics were. Why did you make this recommendation? What were the problems that you saw that led you to make this municipal court recommendation?

MR. FINCKENAUER: In our studies in Monmouth County, which was where we concentrated a great deal of our time and effort, a great deal of the time in Monmouth County was spent in two of the municipal courts, in Asbury Park and in Middletown Township. We there became acquainted with the conditions which operate in the municipal court. For example, we were not able to get records of --we could not trace a case from arrest through to disposition or we could not trace many cases through because of incomplete record keeping. We found, for example, that the courts were sentencing without knowledge of previous criminal history many defendants because the court was sentencing within a period of 24 to 48 hours and it takes approximately five days

to get a fingerprint record and to find out the previous criminal background on a defendant.

We also, in our private hearings, had people who work in the municipal court as well as State level people who are involved with municipal courts that repeated the things we had found, substantiated them, and made basically the same recommendation.

SENATOR WALDOR: Mr. Finckenuer, in the reasons that you set forth before for integrating the municipal courts into the county district courts--this is the way you stated it --one of the reasons you said was so that it would then become a court of record. You are aware, I am sure, that county district courts are not courts of record.

MR. FINCKENAUER: No, I am not.

SENATOR WALDOR: Well, they are not and there is no stenographic service that is given or no reporting service that is given in the county district court, in any of the county district courts. I don't know whether you were

aware of that. If that be true, the same situation prevails in the county district courts insofar as reporting services are concerned as presently exists in the municipal courts insofar as reporting services are concerned. If an attorney who is involved in the trial of a matter in the municipal court as it presently exists--and the same is true of the county district courts--he employs the services of a reporter or a stenographer and brings them in and that is the only record that is kept. When you speak of courts of record, the district courts are no more courts of record than are the municipal courts. I think if that is one of the bases for your recommendation it must fall just by virtue of what you said about it being a court of record. I'm not saying I disagree with your recommendation, but I think your reasoning is fallacious, based upon what our court system presently is, in any event.

Now, let me ask you another question. You say your observations were made upon your

study of Asbury Park and--

MR. FINCKENAUER: Middletown Township,

SENATOR WALDOR: Don't you think that the defects that you may have observed insofar as the tracing of the case from, let us say, the investigation stage to the arrest stage to the hearing in the municipal court to the sentencing--which is the ultimate disposition of a case--that the defects that you observed could be typical of the courts specifically that you observed as contrasted to being defects in the system? I'm not here to defend any municipal court, but I have in my past law practice--I don't presently--appeared frequently in the municipal courts throughout the State of New Jersey and I have found that the contrary is generally true.

--I am familiar primarily with Essex County or Newark. I can trace a case in Newark. That has a record service. I can trace a case from the date it was made, to whom it was assigned, and so forth, as you could in a county court or

in the Superior Court that might be assigned to trying criminal matters.

What I am getting at is if the recommendation is a good one and yet it's based on two courts out of 568 courts, it doesn't seem to me that that represents a typical situation that might exist in the other 565 or 566 courts. Does it?

MR. FINCKENAUER: I would agree with your first premise that these courts could have unique characteristics which would not necessarily be true of all municipal courts. However, I also added that the basis for the recommendation came from people, for example, who work in municipal courts in Newark.

SENATOR WALDOR: In those municipal courts?

MR. FINCKENAUER: People working in municipal courts in Newark at our private hearings, people who are involved at the State level, the present court operations. And I would also say that what you find in Essex County, particularly in Newark, are probably

in the better municipal courts. This would be my opinion. These are the better of the municipal courts in the State and I also would not use them as an example of your municipal court operation.

SENATOR WALDOR: Fine. Just a couple of other comments.

You indicated further--you see, I have no opinion at this moment as to whether I would favor or look with disfavor upon a recommendation to integrate the municipal courts but very frankly, based on the reasons that you have given and with the experience I have in the field, you haven't given a reason that will stand up. For example, you talk about courts of record, the county district courts as courts of record. Not so. You further talk about if they were integrated into the county district system there would be prosecutors assigned to them and so forth. I venture to say, and I could not now specifically tell, but knowing the courts in Essex County I would say that every single municipal

court in Essex County at the present time-- and I would imagine if it's true in Essex County it's probably true in most of the other counties and municipalities--has assigned to them a member of the staff of either the town attorney or the county prosecutor's office to represent the State in matters that would come within the purview of the jurisdiction of the municipal court. So in effect, from an economic standpoint as well as from the standpoint of efficiency, it would seem to me that this phase of your recommendation is also without foundation or without basis because if you have this representation of the municipality or of the State in their criminal matters in a municipal court what are you going to gain by integrating with the county district court where you will have to assign and put on more men in the prosecutor's office to serve that purpose? In effect, the same number of men are serving the same function at this very moment.

Something else. Is it or is it not a

fact, in your judgment and based upon your studies--and this is perhaps the most important or most significant observation I can make --do you not realize that the average person has his first contact with a court of any kind, generally, on the municipal court level? I think we can make a generalization and say that that is probably true. Do you or do you not think--and I am asking your opinion now-- that when a person appears in a municipal court in their particular community as contrasted, for example, to a person from Middletown Township going to whatever the county seat might be, to the county court, if your suggestion were adopted, that there can be and should be a better impression given them with their first contact with the court being in their home town as contrasted to going to a county court or something of that nature. Don't you think that more personalized attention is given them in the respective municipality than would be given them, perhaps, in a county court? That may be an argument for

integration. I don't know. In any event, that is the feeling that I have.

MR. FINCKENAUER: Again, we are not recommending the abolition of the courts.

SENATOR WALDOR: I understood completely what you said.

MR. FINCKENAUER: In other words, this court once it has been integrated, could still be there in Middletown Township.

SENATOR WALDOR: Then what purpose would be served?

MR. FINCKENAUER: The purpose would be to have these other facilities and other services.

SENATOR WALDOR: What?

MR. FINCKENAUER: You asked about the prosecutor or the presence of a prosecutor. It is true in Newark they have a full time prosecutor.

SENATOR WALDOR: Not only Newark. Every municipality in Essex County.

MR. FINCKENAUER: The major cities.

SENATOR WALDOR: That's not so. You

go to Roseland, Essex Fells, Glen Ridge. And the same is true in Bergen County, as a matter of fact.

I am not familiar with all of the municipalities, but wouldn't you say that is true?

SENATOR WOODCOCK: In many.

SENATOR WALDOR: In most of the municipalities where I have appeared in past years there are representatives of either the municipal governing body, the town attorney, the township attorney's office, let's say, who serve as prosecutor--to which you have no objection--or, in the alternative, a representative from the county prosecutor's office. In Paramus, for example, where I appeared a couple of years ago, the prosecutor of Bergen County assigned one of his assistants to serve there.

What I am getting at from an economic standpoint is that there would be a tremendous increase of the staff of the prosecutor's office of the respective counties which would, obviously,

entail a greater expenditure on the part of the counties to add to their staffs when, at the present time, the same function is being served without increasing the budget of the prosecutor's office by reason of the fact that the municipal attorney in the respective municipality that you're talking about generally assigns one of his men to appear for the State of New Jersey in that particular court, which involves no additional expenditure on the people of the municipality or the people of the county. In the alternative, in several municipalities members of the prosecutor's staff

are assigned to the municipal court, which also does not involve any additional expenditure to the people of the county.

MR. FINCKENAUER: But if you go into the other vast areas of the State you will find this function in the municipal court being handled by, number one, either the magistrate or by a policeman.

SENATOR WALDOR: I object to that and

I <sup>do not</sup> agree with that thought.

MR. FINCKENAUER: This is the practice in the rural areas of the State and once you get away from the northeastern corner of the State and away from your urban areas this is what you will find in the municipal courts.

SENATOR WALDOR: It might be easier to adapt the rural areas to what we have in our urban areas.

ASSEMBLYMAN SMITH: Being a former municipal court clerk in a small town, we had our own counsel come in and prosecute cases.

SENATOR WALDOR: Yes. That's what I said.

ASSEMBLYMAN SMITH: And as far as not happening in the suburban areas in the smaller populated counties, it doesn't happen that way. We bring our own city attorneys in to prosecute a case and they do an excellent job.

So I think it happens in other counties as well as it does in the northern counties.

THE CHAIRMAN: Can we bring this back to Mr. Lumbard?

MR. LUMBARD: If you had a State centralized record system operating with a quick computer-based facility and then you had what you are called facsimile machines by which you could transmit fingerprints to the central facility, have a quick search, and then send the criminal sheets, the rap sheets back, you wouldn't have the problem of sentencing without the background history. This system has been developed in New York State. It is now operating. It takes about fifteen minutes to send the fingerprints to Albany from any part of the State. They are searched within an hour or two. The history comes back, again, in about ten minutes. In emergency cases, even on an hourly basis. On the average in about five or six hours you can get the material back there. I am not saying this pro or con, one way or the other, because I agree with you that sentencing should be on a more individual and intelligent basis. But this is a way that you could adopt a central record system.

MR. FINCKENAUER: We were given this

information. We discussed this with representatives of the New Jersey State Police and I understood that they had talked to people in New York and an effort was being made to see if this system couldn't be adopted in New Jersey. And I would be in favor of it.

MR. LUMBARD: Well, insofar as I am aware, there has been no legislation or any budget request put to the legislature to carry that forward. Do you know of any?

MR. FINCKENAUER: No.

MR. LUMBARD: There may be other reasons. Perhaps the one on the municipal court might be more subjective; namely, the overall quality of justice. I don't know.

Now, to go back to your finding on page three again. The next sentence after where I read before is as follows: "The rate of development of our criminal justice system lags behind the progress which characterizes other agencies of government, community organization and social growth."

writing unless a demonstration is made to the Court in chambers that the interests of justice are best served by non-disclosure.

THE CHAIRMAN: Senator Dumont?

SENATOR DUMONT: Mr. Finckenuer, you talked about the fact that the Governor should name these judges. Are you aware of the fact that for the last twenty years--because the judicial act of the Constitution of 1947 constitutionally took effect September 15, 1948 so it's barely twenty years old--are you aware of the fact that where a single municipality wants to join with another municipality to have a joint municipal court that the Governor makes the nomination with the advice and consent of the Senate?

MR. FINCKENAUER: Yes, sir.

SENATOR DUMONT: So to a large degree what you are recommending is already being done.

MR. FINCKENAUER: It is being done by those counties who wish to become involved in this, but it's not a mandatory condition

involving all municipal courts.

SENATOR DUMONT: The point is that not every municipality has a lot of money and some of them do need to join together and they do it in order to save expense to the respective municipalities. That's why they do it.

MR. FINCKENAUER: Right.

SENATOR DUMONT: In that particular situation the Governor must make the nomination of the magistrate with the advice and consent on the Senate.

MR. FINCKENAUER: But how about all the courts who do not choose to join?

SENATOR WALDOR:

What Senator Dumont is suggesting to you is true in rural counties and not urban counties.

MR. FINCKENAUER: But there are 567 municipal courts in operation.

SENATOR DUMONT: Just last week I got

through naming a man in a rural court, Sussex County, for a joint court nominated by the Governor.

MR. FINCKENAUER: This is true. It is done in the rural courts. However, there are many in rural courts who are not coordinated or consolidated.

SENATOR DUMONT: You made a statement that the municipal court system was made up primarily to satisfy the rural situation. There were in New Jersey between four million and five million when the constitution was adopted. It's seven million now. It grew.

That was done was to get rid of the old justice of the peace system, which nobody thought was the greatest one around, and substitute for it a proper municipal court system and attach some dignity and, as Senator Waldor pointed out, to give a defendant who may be up for the first time an opportunity to be confronted in his own home town or somewhere near it with local people and be adjudged on a local basis.

MR. FINCKENAUER: Well, again I have to talk from experience particularly in Monmouth County. Monmouth County within that period of twenty years has turned from a primarily rural area to a suburban and urbanized area. This is why it may have peculiar problems. However, the reason that we selected Monmouth County was that we felt it would be representative of many other counties similar in New Jersey which have gone through this period of being formerly rural areas and are now moving into suburban and urbanized areas.

We found in the court system, in the municipal court system in Monmouth County, that the fact that a defendant was a local resident didn't help him too much. These people were given advice as to their rights which it seemed to me they didn't really understand. This was gone through quickly. The average handling time of a case was about twenty minutes, which didn't leave time to find out anything about this man's background or to make a disposition which might have

been the best suitable disposition in terms of his background and his offense. They were sentenced on the instant offense.

SENATOR DUMONT: I am not suggesting the municipal court system was set up just to help defendants. The point is what you are recommending here is really integration of the whole court system into a State court system.

MR. FINCKENAUER: Exactly.

SENATOR DUMONT: If you are talking about combining with county district courts and, in effect, doing away, not by abolishing them necessarily, but by doing away at least with the local aura that now pertains to the court system in the municipality.

MR. LUMBARD<sup>is</sup> that <sup>what</sup> you are recommending additionally?

MR. FINCKENAUER: Right. Exactly.

MR. LUMBARD: Why do you think that can be handled better by the State of New Jersey than it can be on a municipal court level?

MR. FINCKENAUER: I think if you have --here again you have a central concept versus your local concept. Local concepts are fine if high standards can be maintained. Where you have good standards, and the Senator has pointed out, in some of your municipal courts, in other municipal courts you have very poor standards. I think this makes it very unfortunate if the individual happens to live in one of these areas where there is a poor municipal court and he has to go to court. He may wish he lived in Newark.

THE CHAIRMAN: Senator Woodcock?

SENATOR WOODCOCK: As I understand it, you were talking before about the problem of sentencing without the benefit of records and you said that in some instances the sentence would follow within 24 hours or 48 hours of the charge being leveled. Do you have any idea of the kind of cases that applied to?

MR. FINCKENAUER: This existed in all cases with the exception of indictable offenses

where a person was held for grand jury and would go on to the county court.

SENATOR WOODCOCK: Are you familiar, sir, with the basic jurisdiction of the municipal courts?

MR. FINCKENAUER: Yes, I am.

SENATOR WOODCOCK: Isn't it so that the basic jurisdiction of the municipal court deals with motor vehicle violations, disorderly persons, and violations of local ordinances? Isn't that basically 95 per cent of their work?

MR. FINCKENAUER: This was true to an extent in Middletown. If I can quote you some statistics on the breakdown of cases who appeared in the municipal court, it was not true in Asbury Park.

SENATOR WOODCOCK: What was true in Asbury Park? I mean, there is a different jurisdiction in Asbury Park than in Middletown.

MR. FINCKENAUER: Right, a different municipal court. Two separate municipal

courts.

SENATOR WOODCOCK: They don't have different jurisdictions. They may handle basically a different type of case.

MR. FINCKENAUER: I don't quite understand.

SENATOR WOODCOCK: In other words, what I am saying is that--well, you read the statistics that you are relying on and maybe we can find out something.

MR. FINCKENAUER: The offense pattern --this is Asbury.

MR. LUMBARD: What page is that, sir?

MR. FINCKENAUER: This is page 152 of the staff report.

In Asbury Park 21.9 per cent of the cases were indictable offenses, either high misdemeanors or misdemeanors; 78.3 per cent of the cases were non-indictable offenses. Of the non-indictable offenses only 11.4 per cent were these ordinance violations. The majority, 33.5 per cent, were what they defined as offenses against public policy, which

would be drunkenness disorders, narcotics, this type of offense.

SENATOR WOODCOCK: All under the Disorderly Persons Act?

MR. FINCKENAUER: If you are looking at the report all of the offenses which I saw listed, one, two, three, were disorderly persons offenses; 22.5 per cent were assaults, offenses against the person. This is merely a quarter of the cases.

SENATOR WOODCOCK: Right. Now, basically, what we are talking about with reference to the jurisdiction of that court are the minor offenses. May I ask you, sir, what benefit would the court have in having this man's record with respect to simple assault?

MR. FINCKENAUER: I can say this to you: We went into the Monmouth County Jail and interviewed--went through the records, number one and, number two, interviewed a representative portion of the jail population. We found sentenced offenders in the county jail who had been sentenced for disorderly persons offenses.

Some of these men had a history of seven previous felony convictions and here they were serving a 30-day sentence for an assault where they had previously had a felony conviction for assault. The court was not aware of the previous felony conviction.

SENATOR WOODCOCK: Except that the limit upon which they can be sentenced on a disorderly persons charge is already prescribed by statute. So that in any event you couldn't sentence a man because he was convicted of a disorderly persons charge and had a series of felony convictions. You couldn't sentence him to two years in jail in any event.

MR. FINCKENAUER: No you can sentence him to one year, a thousand dollars fine, or both.

SENATOR WOODCOCK: Up <sup>to</sup> that amount or term?

MR. FINCKENAUER: Right.

SENATOR WOODCOCK: The point is that you have here a simple assault. An aggravated assault is an indictable offense. What I am trying to find out, really, is why this creates

problems with respect to the sentencing.

Let me ask you this: How many of the cases were handled within 24 hours or 48 hours?

MR. FINCKENAUER: About 50 per cent were handled within--there is a difference here. The Asbury Park Municipal Court meets daily. Middletown Township meets once a week. In Asbury Park where we had a daily court about 50 per cent of your cases had been sentenced within 48 hours.

SENATOR WOODCOCK: That's in motor vehicle violations?

MR. FINCKENAUER: This was all cases except your indictable offenses.

SENATOR WOODCOCK: In other words, what you are talking about is under the Disorderly Persons Act or under local ordinances?

MR. FINCKENAUER: Right.

SENATOR WOODCOCK: Having nothing to do with motor vehicle violations?

MR. FINCKENAUER: Right.

SENATOR WOODCOCK: So that your stat-

istics do not take into account motor vehicle violations. Is that correct?

MR. FINCKENAUER: Right.

SENATOR WOODCOCK: Now, just with respect to the integration of the municipal courts, are you suggesting that the State of New Jersey employ more district courts just to assume the jurisdiction of the municipal courts?

MR. FINCKENAUER: No. This, again, would involve abolishing the municipal courts as they now exist. We are in favor of integration of the municipal court system into the / <sup>existing court</sup> structure. Now, obviously--

SENATOR WOODCOCK: Wait. If I may just interrupt you for a moment so I can understand what you are talking about.

Are you talking about having a full time municipal court on a countywide basis?

MR. FINCKENAUER: It would be a county-wide basis, but the court would not be a central court in terms of geographic location. It would be in the community, but it would be a

full time court.

SENATOR WOODCOCK: Let me see if I can find this out. This court, this new court, that would exercise the functions of the municipal court would exercise no other function. Is that correct?

MR. FINCKENAUER: Right.

SENATOR WOODCOCK: In other words, it would not also handle district court matters?

MR. FINCKENAUER: No.

SENATOR WOODCOCK: Non-jury and jury?

MR. FINCKENAUER: Non-jury.

SENATOR WOODCOCK: So if I understand you correctly what we are talking about, in effect, is a consolidation of municipal courts into newer municipal courts?

MR. FINCKENAUER: Right. We call it integration.

SENATOR WOODCOCK: That is, in effect, what it would be. It would be a reduction in the number of municipal courts on a full time basis?

MR. FINCKENAUER: Right.

SENATOR WOODCOCK: When would this court meet?

MR. FINCKENAUER: We have a recommendation in terms of the municipal court meeting, that there be an opportunity for the court to meet in the evenings, for example, or on weekends, because this is a great problem for many people now appearing in the municipal courts. They have to leave their jobs because they're either defendants or witnesses or whatever the case may be. It's an inconvenience to them. Therefore, we feel that the system could be made a little more--I don't like to use the word convenient, but this is what it would be. If there would be evening meetings or weekend meetings it would be more convenient for the people.

SENATOR WOODCOCK: Do you know what a wash line case is?

MR. FINCKENAUER: No, I do not.

SENATOR WOODCOCK: Well, if by definition I can give it to you, it usually involves two neighbors who are arguing over a wash line

or a tree or a boundary or something of a minor nature. Do you think that this type of court with the volume of business that they do is better equipped to handle a wash line case than the average municipal court judge now?

MR. FINCKENAUER: We have an additional recommendation that cases of this type that you're discussing, as well as many of the ordinance violations, be not handled in the criminal court at all but be handled through civil administrative authority. I wouldn't want to define exactly how that would work, but this is what our recommendation is. In other words, these types of things would be taken out of the criminal. I don't think they belong there in the first place. This is not a criminal offense. Many of these ordinance violations are minor things and they're not really criminal cases. Some of them are, but many of them are not.

MR. LUMBARD: Continuing again from page three. "The deficiencies in our criminal

justice system as a whole are not obvious even to those most directly involved in and responsible for its operation for various phases of the criminal justice process function virtually independently in compartmentalized and fragmented sections which have only peripheral contact with each other and with other agencies of government and the general public."

Then you go on: "It is, therefore, the major recommendation of this Commission that the State of New Jersey must move without delay toward the modernization of systems of law enforcement and the administration of justice, taking advantage of the latest discoveries and technological advances of the physical and social sciences in this highly urban and specialized state. Failure to provide the effort and the financial support necessary for such change can only result in serious damage to and eventual destruction of the very foundations of our complex society."

If you had to single out any single

recommendation or aspect of your subsequent report which lies behind those statements, would you please inform the committee what it is? If you feel it is unfair to ask for just one, then tell us whether you think it should be more and then tell us what they are.

MR. WALDRON: It is my understanding, Mr. Lumbard and gentlemen, that the answer to the question that you have asked is on page 9. It deals with the interdepartmental coordination, consolidation, of police agencies.

MR. LUMBARD: Would you spell that out, please?

MR. WALDRON: Yes. I shall, indeed.

The report states on page 9 that the fragmentation of police administration among the 567 municipalities in New Jersey contributes significantly to the high cost of law enforcement. Each separate municipality must provide for the capital cost of buildings devoted to law enforcement, criminal justice and correctional functions as well as expendi-

tures for salaries of various levels of personnel and purchase and maintenance of specialized technical equipment. Therefore, in a given geographic area serving several municipalities where law enforcement equipment, operations, and specialized personnel are duplicated in each municipality the cost per capita of law enforcement could be greatly reduced through a pooling or consolidation of skilled manpower and particularly technical equipment.

In addition, the financial resources available for law enforcement operations in any given municipality cannot possibly be adequate to provide as high a quality of service as could be made available through such sharing or consolidation.

At present there is no standardized system for formal communication among the various municipal police departments and their personnel. What communications do exist have been developed on an informal and individual basis and is inadequate to deal

effectively with criminal activities which so often cross municipal boundary lines.

The Commission, therefore, recommends the New Jersey Police Training Commission should be directed to review the existing structure and administrative costs of police service in New Jersey in order to develop a plan for the sharing or consolidation of police activities, personnel, and equipment, particularly in the field of communications, in areas of this state where such actions are desired and will provide more efficient and more economical law enforcement. Special attention should be paid in the review to the results of experiments undertaken by certain municipalities in the pooling of their police resources and services.

Secondly, a standardized network of direct formal communications and cooperative arrangements should be developed and implemented for use by and among all police departments. Thirdly, the New Jersey Police Training Commission should be empowered to

establish and implement a program of systems analysis of police administrations and establish informal standards of police operations. Sufficient funds should be appropriated to the Commission to enable them to carry out these responsibilities, these new responsibilities.

MR. LUMBARD: Mr. Waldron, much of what you say, I think, would make sense. But I do not understand why you recommend that these matters as you have summarized them in these three items should be done by the Police Training Commission. As I interpret what you said these are matters that go to management, administration and operations of the police departments, three areas which have not been given to the Police Training Commission. As I read the Police Training Commission jurisdiction as spelled out in the statute, it is confined to police training.

MR. WALDRON: This is absolutely correct.

MR. LUMBARD: Are you, therefore,

implicitly recommending an amendment to the Police Training Commission statute?

MR. WALDRON: This would be so, sir.

MR. LUMBARD: You don't spell it out here?

MR. WALDRON: No, sir. It is not spelled out here.

MR. LUMBARD: But you would so recommend?

MR. WALDRON: Yes, sir. This matter was one of the last topics that we had a general discussion on, of the entire Commission. You have in existence already a police training commission. Its jurisdiction, as you say, is limited. But no one goes into police departments and centralizes or helps them to establish records and rather than set up a new agency it seemed to us that with an already existing program--they are training the police departments--that with some additional technical help you'd have an agency that could handle the problem that we have outlined here.

MR. LUMBARD: Are you aware that the

members of the Police Training Commission are not paid, that they are persons who are otherwise engaged and do not meet as a body very often?

MR. WALDRON: This is a general word. We didn't mean the Police Training Commission. We meant Leo A. Culloo and his staff.

MR. LUMBARD: I am trying to establish the organization and functions/because of the Commission if you are going to give a major new task to the organization then it has to be one that can cope with it.

MR. WALDRON: You are perfectly correct. We are saying the Commission. It would be under the jurisdiction of the Commission, but handled by their executive secretary and his staff.

MR. LUMBARD: Would you change the complexion of the Commission as well? These persons have been selected solely to do a police training task rather than the vastly different management, operations, communications task.

MR. WALDRON: Well, we had not discussed

any changes. Of course, this is up to the Governor, the identity of the persons appointed to the Commission. They come, as I understand it, from a rather broad spectrum. You have representatives of law enforcement. You have people from the college level, etc.

MR. LUMBARD: Without pursuing that any further, I gather that the main point of what you are saying, however you would house it in New Jersey, is that the State should for the first time become interested in what goes on in municipal police departments?

MR. WALDRON: Yes, sir.

MR. LUMBARD: Is that the main point?

MR. WALDRON: Yes, sir.

MR. LUMBARD: You have not, however, thought much about how organizationally that general conclusion should be translated into practice?

MR. WALDRON: No, because this would be, in my estimate, rather presumptuous on

our part, to tell a legislative body who would have to act on this, any procedure. We're making the suggestion, the recommendation.

MR. LUMBARD: But you are clear that that is the point?

MR. WALDRON: Yes, sir.

MR. LUMBARD: All right.

THE CHAIRMAN: Senator Waldor?

SENATOR WALDOR: Two questions. Mr. Waldron and Mr. Finckenauer, I am a little confused and I am not going to go into specifics. When was your Commission appointed?

MR. WALDRON: Back in 1966, I believe.

SENATOR WALDOR: 1966?

MR. WALDRON: Yes, sir.

SENATOR WALDOR: The purposes of your Commission are set forth in the booklet, which I haven't read in toto yet, except to hear your testimony. Your budget, as I understand it, is somewhere around \$90,000?

MR. WALDRON: No, sir. \$25,000 from the New Jersey Legislature and \$25,000 from

the federal government.

SENATOR WALDOR: \$50,000 in 1966 and then \$40,000 in 1967. Is that incorrect?

MR. WALDRON: I think so. We didn't come into existence until--was it '67?

MR. FINCKENAUER: The actual expenditure of funds began on December 1, 1966.

SENATOR WALDOR: I want this perfectly clear for the record. Your Commission was born in December of '66. Is that correct?

MR. FINCKENAUER: It wasn't created, but it actually went into operation December 1, 1966.

SENATOR WALDOR: All right. The appointments as set forth were made by the Governor and whoever was the President of the Senate at that particular time and the Speaker of the House at that particular time.

MR. WALDRON: That is correct.

SENATOR WALDOR: And that's in 1966?

MR. WALDRON: Yes, sir.

SENATOR WALDOR: There was an appropriation of \$25,000 from the State and \$25,000

from the federal government, which was \$50,000 for your 1967 appointments?

MR. WALDRON: That's correct.

SENATOR WALDOR: And you're '67 budget of \$40,000 consisted of a State appropriation of \$25,000 and a \$15,000-appropriation from the Federal government, I take it. Is that right? That would be the round figure of \$90,000 since the life of the commission or since the Commission was born. Is that right?

MR. FINCKENAUER: To this date. The total expended by the Commission up to now was about \$49,000. The unexpended

SENATOR WALDOR: I want to ask one question and I am not passing on your integrity or your ability or anything like that. Do you honestly think, Mr. Waldron and Mr. Finckenaue, that your Commission has, by the methods you used, arrived at recommendations that can cover a Statewide problem when you have indicated by virtue of your testimony that the area of your study was confined to such a small and narrow area that it isn't even typical of what exists in the State of New Jersey?

balance was returned to the State of New Jersey.

MR. WALDRON: May I say this to you, Mr. Waldor. We were restricted by the legislative--the ordinance, the law, that was passed by the legislature. Our scope was restricted. Not to two municipal courts, for example, but to arrive at a generality for 565. We had public hearings conducted with representatives from other parts of the State. This was a basic field study that was done and there were additional field studies planned. The program was curtailed.

SENATOR WALDOR: I don't want to interrupt you, Mr. Waldron, but I am saying to you and suggesting to you now--and again I am not reflecting on any of the individuals and I don't want you to get that idea. I am reflecting, very frankly, on the creation of this Commission and the service or lack of it that it provides, in my humble opinion. I am saying to you now, sir, that based upon your testimony and based upon what I have read in your report there are glaring inaccuracies that are supposedly based upon research and

studies and many of which you have testified to today. For example, you have used generalizations that are applicable only to a narrow area of the State and are not applicable, generally speaking, to what the municipal court system is in other parts of the State.

Time doesn't permit me to go into what these inaccuracies are and I don't intend to pursue it further. Frankly, I may communicate with you and indicate to you what I regard as being completely inaccurate and completely untypical of what exists in the State as far as certain areas of criminal justice are concerned.

I think there are areas where I agree with some of your recommendations, but I don't think this type of commission and the studies you made represent a fair approach to the problem that presently exists and I don't think, very frankly, that the Commission to Study the Causes and Prevention of Crime in New Jersey which was organized in December of

I think this tendency to solve problems by calling something a sickness is illusionary. You just can't tear down what you have got unless you know, first, that the medical profession can really deal with the problem. I suggest to you that if you inquire you'll find that they cannot and do not want that responsibility. They are perfectly willing to help do what they can to redeem and cure, but unfortunately they want the legislature or the judge to worry about the problem of protecting the public in that area.

I don't know whether I am taking too much time with this presentation of rather miscellaneous ideas. May I turn now to the problem of the municipal courts. As you know, we have some 500 of them throughout the State. The judges are part time. They are appointed locally. Their term is three years. They are directly dependent upon local political fortune for their fate. Supporting personnel is part time and there is a tremendous turnover. In short, we have some very important

work turned over to the officers of 500 courts widely separated and fairly uncoordinated.

Although the Supreme Court has the administrative responsibility, I must say to you frankly it's awfully hard for us to find out what goes on in the municipal courts. We have all of two investigators who are consigned to that kind of work. From time to time we ask the Legislature for more manpower so we can get around more frequently to find out what goes on. We have not fared very well.

Nonetheless, I want to say to you that the fate of a municipal court is a very important matter in the area of crime. For example, take the problem of releasing a prisoner on his own recognizance. I think we all agree that a man who ought not to be held pending trial ought to get out. It's just a matter of plain economics. He has a family to support and if he doesn't, the taxpayer will pick up that tab. It may cost the man his job. That means, also, prisons and somebody to take care of and feed him. Hence, if

the fellow represents a good risk, by all means let him out. Now, we have been urging the municipal courts to follow that approach but the response has been, "We don't have the manpower. Who here is going to do the checking on the prisoner to determine whether he is a safe prospect for release?"

In the metropolitan area it will require substantial services. Take, for example, a county like Essex where the number of people who are unable to provide bail is substantial and yet the problem of getting out into the field to find out who the man is, whether you could really release him upon his unsecured promise to return, is a rather difficult thing to explore without manpower. As long as we have 500 courts wrestling with that problem, we are going to have great difficulties in getting it under way and making it effective. If we had, as we have been urging for some time, a single court with full time judges appointed by the Governor, supported by full time personnel, with a limited number of

clerks, officers, so that we could maintain contact with them, we could deal with that problem. And so also could the Public Defender who has really been at his wit's end to try and stay in touch with what is going on in 500 courts.

I think, too, that we ought to have public prosecutors in those courts. The very number of courts makes that almost impossible. We could easily achieve that end if we had the kind of judiciary we are talking about.

We have the problem of assignment of counsel. No one yet knows the true demand in that area. As a matter of policy we have told the magistrates that any man who wants a lawyer and cannot afford it should be given one, no matter what the offense is. And a lawyer should be assigned when it appears to the magistrate that he ought to have one. I have no way of knowing whether that policy is being implemented. I know that it is extremely difficult to run that kind of a show in 500 different places and I know if the Public

Defender is to get into that arena, and I hope he will, it will be almost impossible for him to cover so many scenes. He could, however, deal effectively in the kind of full time concentrated courtroom that I have been talking about.

Again, there is legitimate complaint that the proceedings are not somehow recorded. And I would like to know what goes on, too. Yet to ask 500 courts, some of them very small with a small caseload, to provide for a sound recorder with a man to report it is, perhaps, a little bit more than they can carry. At the moment, I don't know that we have the power to compel it. There are some pressure points we can use, but again if we had the kind of court we ought to have there would be no problem at all in having a record of everything that happens, as it should be.

I might say that another problem that inures in the present system is the excessive sentence. I don't want to get this out of balance. It is, though, notable that from

time to time our attention is called to sentences that are just utterly severe as against what a full time county court judge would do. Why it is that you get that kind of result, I don't know. This is not an everyday occurrence, but when it does happen it's enough to really give you concern. You can get more balance, again, if you have a fewer number of full time judges handling this kind of thing.

I would therefore urge, gentlemen-- and hope that you, too, would lend your strength in support of the recommendation-- that the municipal courts be abolished. Not today. It would probably take us three years just to work out the transition. I want to state that I fear that New Jersey, which has led in the area of judicial reform, may prove to be the last to make this much needed change. Other states are doing it and I think it is regrettable that this State, with its fantastic reputation earned, I hope, for its model procedural structure, its flexibility in its courtrooms and at the courthouse,

is unable to match what is going on in other states in an area of maximum public exposure. There is no court in the state that touches the lives of so many people. The only notion they have of justice is what they see in that courtroom. I would hope, gentlemen, that you would conclude that despite the fact that our judges overall have done a good job there, that they are inevitably limited by the deficiencies of the structure itself and that the public interest would be served by their abolition and replacement by full time courts.

Finally, may I talk about two subjects. One, the juvenile court. We do not know as of yet the ultimate impact of the Gault decision which, as you know, seems to introduce into the juvenile process all of the constitutional guarantees that apply to the trial of a charge of crime. I say "all." We do not know whether trial by jury, for example, will be required. It is already apparent that the compulsory assignment of counsel, the introduction of the privilege of self-incrimination

how much of an approximation he can make to you that he can cure.

SENATOR WOODCOCK: Just one other question, Justice. With respect to the abolition of the municipal courts, do you have any idea how many courts we would need to take care of the case loads that the current municipal courts are handling?

CHIEF JUSTICE WEINTRAUB: We haven't made any study. At one time I think we estimated about 65 judges, probably, could do it. That's a matter that would have to be resolved in the light of the current scene and it would depend, I suppose, somewhat with actual experience. It would depend on the number of different courtrooms we would have to maintain. I think that under that program you could have most of your cases, and perhaps all, in the county handling that one courthouse scene. But it may be that problems of convenience would require maintaining several in the county. The experience might, therefore, dictate a need a little bit greater than what

you would anticipate just as a matter of mathematics.

SENATOR WOODCOCK: The jurisdiction would be exclusively that of the municipal courts?

CHIEF JUSTICE WEINTRAUB: Yes. And keep in mind the importance of that jurisdiction. Remember, it's not just traffic tickets. It's the whole range of the disorderly persons offenses, which carry by statute a maximum of one year and a thousand dollars. In most states they are called misdemeanors, a little matter of terminology that can be confusing. In most states a charge that can carry up to one year is called a misdemeanor. In our state we call it a disorderly persons offense. There are tremendous numbers of acts that are embraced by the Disorderly Persons Act and it's a very, very important area. Those courts have that jurisdiction. I don't want to leave the impression that this jurisdiction is petty. It is not. It is extremely significant.

SENATOR WOODCOCK: Would we be getting into some sort of system similar to the municipal courts in New York City?

CHIEF JUSTICE WEINTRAUB: I don't know what they have there and I couldn't make the comparison. I don't know whether New York City has full time judges. I think they do in the City, don't they?

MR. LUMBARD: The municipal courts in New York City used to be civil courts. That's now abolished. They have a general criminal court which handles, roughly, the kind of jurisdiction that Mr. Justice is talking about.

CHIEF JUSTICE WEINTRAUB: They are now full time?

MR. LUMBARD: Oh, yes, all judges in the City.

CHIEF JUSTICE WEINTRAUB: Appointed by whom?

MR. LUMBARD: By the Mayor.

CHIEF JUSTICE WEINTRAUB: I am not reflecting at all upon your very excellent Mayor, but I want the appointing authority

in this State higher up, at the Governor's level with confirmation by the Senate.

MR. LUMBARD: It's rather difficult to do with a population of eight million.

CHIEF JUSTICE WEINTRAUB: Actually, in New York you have got two states in one. New York is itself a state. It's unique.

MR. LUMBARD: If I didn't know you had been connected with the Waterfront Commission, I would take offense at that.

CHIEF JUSTICE WEINTRAUB: Nothing to do with the present strike.

THE CHAIRMAN: Assemblyman Rinaldi?

ASSEMBLYMAN RINALDI: I would like to follow up some of the thoughts that Senator Woodcock has just mentioned. Would you give the addict-pusher--all things being equal, Mr. Justice, would you mete out the same sentence to the addict-pusher as to the non-addict pusher?

CHIEF JUSTICE WEINTRAUB: I don't want to get into what happens at the moment to be a controversy, I take it, of some sort in the

SENATOR DUMONT: They indicated they were handling about 250 cases a month, that they would have to read some material in respect to that before their meetings. Two of them, of course, are part time individuals because the salaries are not commensurate to full time efforts.

CHIEF JUSTICE WEINTRAUB: I have no information that would justify any comment.

SENATOR DUMONT: In connection with the abolition of the municipal courts, as I understand this suggestion you make here it would be almost like regional courts. It would take the place--that might not be a good word in a large city--but in other parts of the State where you don't have a single core city it would be like a series of regional courts in the sense that it would take the place of 500 municipal courts as they exist today. Do you have any thoughts in respect to the salary range of these judges?

CHIEF JUSTICE WEINTRAUB: It should be high.

SENATOR DUMONT: Well, what do you mean by that?

CHIEF JUSTICE WEINTRAUB: It seems to me that at this level you ought to get the best you can. Remember, they're talking about very, very meaningful decisions in the lives of the litigants and, for all practical purposes, these judges are the courts of last resort. No appeals are taken, or very few. You should have men that would be paid, I think, at the level of our present County District Court and Juvenile Court. At the moment that's \$25,000 and we have requested that that go to \$30,000.

That will give you an idea of what I think it ought to be.

SENATOR DUMONT: Are you suggesting that all these salaries would be totally paid by the State or would there be any contribution by the municipality and county?

CHIEF JUSTICE WEINTRAUB: Well, that goes into a subject of many facets. The problem is one of taxation and what should

be the source of revenue. It's the same problem you have with courts generally and the relief and what not. Should real estate bear it or not? If real estate should, then it will go back to the locality. Right now municipalities, of course, get certain revenues. Some of them do quite well in this area. They probably would have no objection to contributing something, but really the question of who should foot the bill is a deeper question of who ought to pick up the costs of government generally and that merely means what tax base is going to be called upon: real estate, which is what supports local government, or other sources of revenue which the State receives. I certainly would not want to get into that one.

SENATOR DUMONT: You would want them all named by the Governor with the advice and consent of the Senate?

CHIEF JUSTICE WEINTRAUB: By all means. I think the public feels better about being judged by a judge not appointed by the mayor

of a small locality.

SENATOR DUMONT: The final outcome of this, then, would be total integration of the court system into a state court system, would it not?

CHIEF JUSTICE WEINTRAUB: That's right. Even though we have already said that magistrates are members of our State system--and we don't want to forget that--it would be, shall I say, a firmer integration.

SENATOR DUMONT: Thank you, sir.

MR. LUMBARD: Your Honor, do you have any figures about bail or release on recognizance failures?

CHIEF JUSTICE WEINTRAUB: Well, I don't know. I know I have just asked for the failures in connection with the Newark riots. I was interested, particularly, in the ROR work. There were about 113 bench warrants that were issued, about 800 arrests. 75 of those were ROR and the balance of 38 or so were bailed. Now, that's a failure of about 9 per cent or so, which is very high.

I would hope that the ROR would work a lot better than that. There may be an explanation because of the tumult, the pressure of the moment, with all of these prisoners with virtually no place to keep them so that a lot were released without the check that you would have ordinarily in the ROR program. I can only indicate that that was a very disappointing experience and I would hope that it would not prove to be average.

THE CHAIRMAN: Assemblyman Rinaldi?

ASSEMBLYMAN RINALDI: I would like to address myself for a minute to another question which I asked Mr. Murray yesterday, the Public Defender, concerning the problem that apparently is looming on the horizon; namely, the additional case loads that the Appellate Courts are faced with now as a result of the Office of the Public Defender. Mr. Murray has indicated, as we are all aware, that each defendant is entitled to all the appeals he desires and the Public Defender is capable of giving. I think you recently made a statement

cases, go and that court will be enlarged as the demand upon it dictates.

And if we need more judges we will be right back to you.

ASSEMBLYMAN RINALDI: So this increased load will not appreciably affect the time lag between the indictment and the disposition of the case?

CHIEF JUSTICE WEINTRAUB: Well, it will to the extent that an appeal in any case extends the time of the ultimate disposition of that case.

ASSEMBLYMAN RINALDI: But you will be able to meet the increased work load by creating additional appellate divisions?

CHIEF JUSTICE WEINTRAUB: Yes.

THE CHAIRMAN: Any other questions?

(No response.)

THE CHAIRMAN: I think that in conclusion I would like to go to the municipal court area for just a little bit. We have heard not only from you but several others in this field and we talked of regionaliza-

tion as an answer and I'm not too sure about this when we get into some of the rural areas of the State. Would you contemplate closeness to the people as a very important part of this in that you would have separate places where you would be sitting with these full time judges?

CHIEF JUSTICE WEINTRAUB: Well, I would contemplate that the judges will sit where the case load and the territorial convenience requires it.

But I would add this: I think experience would indicate that you would not need as many seats of trial as one might fear. We have had some experience already with regionalization of courts. At one time our district court, which was a very important court for the local businessman, was scattered throughout the county, all over the place. We finally united them at the courthouse and all of the fears that we heard before we did it just echoed away. No one has any trouble getting around and getting

there. The roads are there. We're all mobile. I think you are going to find that that problem will not be very big. If it is, we will meet it.

Actually, most of your prisons, I think, are in a central seat. I think very few of your rural communities have their own jails. So the prisoners you are dealing with, those in custody, are already some place and you have a county jail, at least, so that you don't have to lug a man back to some local scene. The trial seat is going to be right at the place.

THE CHAIRMAN: Of course, this opens another door in a sense: This whole area particularly at the pre-trial level of the tremendous number of people who are incarcerated pre-trial. Hopefully, this release program will alleviate it. You say they will be at the county seat. Hopefully, we are going to get away from that kind of a problem where you have to go to where they are in jail.

CHIEF JUSTICE WEINTRAUB: Well, I

think most of them are in jail at the county seat. I don't know how many local jails there are, but I think most of your small municipalities do not have them.

THE CHAIRMAN: Not very many.

CHIEF JUSTICE WEINTRAUB: That's part of our problem. You see, they are brought into a local court. That's the point at which the man should be released on his own recognizance, if he is going to be. Once you lock him up, send him to a jail, you've kind of produced the hurt. If he rushes in with a bail bondsman, you have wasted that bondsman's fee. And I have a private dislike for that. I think that's a horrible thing. It's just money down the drain where the man could go off on his own recognizance. What you want to do is get the ROR facilities at the point of initial contact. That's why, if we have this revised court system, you are going to be able as a practical matter to deal with the man when he is brought in to the first spot, the first court. You are going to