

**The Need For A Special Prosecutor
For Criminal Justice**

**By the Committee on Criminal Law
of the Association of the Bar of the City of New York**

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The Need For A Special Prosecutor For Criminal Justice

The Criminal Law Committee of the Association of the Bar of the City of New York urges the reestablishment of the office of special prosecutor for criminal justice. From 1972 until its dissolution in 1990, the office prosecuted corrupt acts by public servants that were connected to law enforcement or criminal justice administration in New York City. We believe the special prosecutor should have jurisdiction to prosecute cases of brutality as well as corruption. We also believe that there is ample evidence that the office should have state-wide, and not just New York City, jurisdiction.

Now, just as at the time of the Knapp Commission, 20 years ago, a series of allegations concerning police misconduct have propelled the question of adequate controls in law enforcement onto the front burners for renewed scrutiny and reconsideration. It is hoped this report will contribute to that process.

Background

Police misconduct has been a recurring problem in New York for at least the past 150 years. Beginning with its creation in 1844, the City's Municipal Police Force was found to have problems of corruption. In 1857 after finding the city police to be grossly corrupt, the state legislature voted to replace the City Municipal Police Force with a new Metropolitan Police Force. The two groups fought a pitched battle in City Hall Park on June 16, 1857.

In 1894 the Lexow Committee of the State Senate found police corruption to be a continuing major problem. Similar conclusions were drawn by the Curran Committee in 1911, the Seabury Commission in 1932, and the Keafauber Committee in 1956.

The Knapp Commission

In 1972, the Knapp Commission once again looked at the police corruption problem. It found corruption, payoffs, and drug dealing, protection, to be endemic. It found police corruption to be the rule, not the exception: "At the time of the Commission's investigation, police corruption was found to be an extensive, Department-wide phenomenon, indulged in to some degree by a sizable majority of those on the force and protected by a code of silence on the part of those who remained honest."

The Knapp Commission made several recommendations for reform. The primary recommendation was that a special prosecutor's office be created to go after police corruption. The Commission was convinced that the local District Attorneys were not the proper agencies to deal with the problem. "The District Attorneys in the five counties and the Department of Investigation, although they have a few non-police investigators, depend primarily upon policemen to conduct investigations. In the case of the District Attorneys there is the additional problem that they work so closely with policemen that the public tends to look upon them - and indeed they tend to look upon themselves - as allies of the Department." As a result of the Knapp Commission recommendation, the special prosecutor for criminal justice was created. The second most important Knapp

Commission recommendation was that the New York Police Department's Internal Affairs Division be strengthened and reorganized to gain greater distance from the influence of the rest of the Department. The Commission proposed that Internal Affairs add more staff and draw officers directly upon their graduation from the Police Academy, rather than after service with the force, to diminish conflicting loyalties. The proposal to add staff was adopted. The recommendation to recruit from the academy was not.

The Current Situation

The Knapp Commission Report asked: "Will history repeat itself? Or does society finally realize that police corruption is a problem that must be dealt with and not just talked about once every twenty years?" It is ironic that it is exactly twenty years later and we are again talking about the same problem. For the past few years, the attack on police corruption, both from within and without the Department, has been sorely weakened. In 1990, the special prosecutor's office was eliminated. An investigation by New York Newsday disclosed "a dramatic turnabout in the department's handling of police misconduct in the 20 years since the Knapp Commission" Newsday found that "[s]ince 1989 only five of the city's officers have been fired for brutality. Only one was fired for corruption. . . ." This conclusion is further demonstrated by the following table of the New York City Police Department's firing of police officers.

City Police Department figures on officers fired, 1988-91, by offense

	1988	1989	1990	1991
No. officers fired	57	39	29	15
No. off-duty offenses	8	8	10	5
For on-duty offense				
Brutality	6	4	1	0
Corruption	4	0	0	1
Official misconduct	19	9	2	1
Drugs	18	14	13	6
Unlisted reasons	0	3	1	1
Other	0	3	1	1

*through October

Chart by N.Y. Newsday

Law enforcement officials interviewed by The New York Times attributed the failure of the New York City Police Department's Internal Affairs Division to the lack of oversight resulting from the dissolution of the special prosecutor's office. The Times article concluded that "without the [special prosecutor's] office, an independent agency financed by the state and dedicated solely to the investigation of corruption in the criminal justice system in New York City, Internal Affairs has been left largely on its own. Many law enforcement officials said it might be overburdened by the increased workload and unchecked by outside agencies. Some said the office's demise came at an inopportune moment when a police force that has been infused with young officers was facing difficulties and

temptations of increased drug activities on the streets." It may, therefore, be concluded that the reinstatement of the special prosecutor's office will also act to strengthen the department's internal misconduct apparatus.

At present there is serious public discussion not only of the issues of police brutality and corruption but whether the existing safeguards are adequate to deal with the problem. This past spring five New York City Police Officers were charged with cocaine trafficking. Although the allegations were that the officers were acquiring the drugs while on duty in Brooklyn, they were apprehended by the Suffolk County police, in Suffolk County, where the drugs were allegedly sold. Concern was expressed that the New York Police Department's Internal Affairs Division had let this serious misconduct occur undetected. The Suffolk County arrests were followed by allegations that one of the officers involved also worked with a Dominican organized crime group known as "The Company" that he had participated in a kidnapping and was an accessory to murder as a result of working with the group. The officer was indicted by a federal grand jury in July in relation to work for "The Company." One of the other officers arrested on the drug trafficking charges in Suffolk was tried and acquitted last year on homicide charges stemming from the death of a prisoner in his custody.

The factors that necessitated the creation of the special prosecutor's office 20 years ago have not appreciably changed, nor are they likely to. The temptation for police to take payoffs will exist as long as lucrative illegal activities

such as narcotics and gambling continue. Internal Affairs continues to need outside oversight. The conflict for a local District Attorney to investigate and prosecute the very people he relies upon to make the bulk of his cases will also continue. Therefore, the need for a special prosecutor is just as great today as at the time of the Knapp Commission. In addition, former special prosecutor and now Kings County District Attorney, Charles J. Hynes has called for the reinstatement of the special prosecutor's office.

Brutality As Well As Corruption

All of the factors that necessitate a special prosecutor for corruption also exist in the area of police brutality. Those who try to separate the two miss their key points of commonality. The underlying problem is police illegality whether it manifests itself in assaulting a prisoner, giving perjured testimony or taking a bribe. We can not expect officers to act as servants of the law and not above the law if they are not uniformly required to obey the law. Police shakedowns, extortion, and drug dealing, all commonly include the use of force. Incidents of police brutality are frequently harbingers of police corruption. As was noted above, one of the police defendants in the drug trafficking case was tried and acquitted last year in a case stemming from the death of his prisoner.

The Newsday study found that "the number of police brutality court claims has risen by 15 percent in the past year, and the city paid \$10 million in brutality lawsuits in fiscal

1991." Since 1986, "the number of police brutality lawsuits filed against the city has increased by 50 percent, from 1,027 to 1,558 annually."

The difficulty local District Attorneys have in prosecuting police corruption is frequently even greater in brutality cases because they engender a more demonstrative reaction from the Patrolman's Benevolent Association as well as from many individual officers. When then Brooklyn District Attorney Elizabeth Holtzman began aggressively prosecuting police brutality, thousands of angry off duty officers marched on her office. As recently as this past summer, officers demonstrated in support of fellow officers charged with brutality in Bedford Stuyvesant.

R. Harcourt Dodds, former Executive Assistant District Attorney in Brooklyn, has stated that he had difficulty convincing assistant district attorneys to join an anti-police brutality prosecution unit because the assistants believed that "over the long term" their careers would be "compromised by being identified with a unit the cops did not like."

The New York State Commission of Investigation in the 1989 report on its investigation into the handling of the death of a prisoner recommended that the Special Prosecutor's jurisdiction be expanded to include cases of the alleged use of excessive force by the police. The report merits quoting at length:

The Commission believes the potential for favoritism that justified the creation of the Office of the Special Prosecutor extends to cases where a citizen has died in police custody, especially where death has occurred under

circumstances having the appearance of excessive use of force or unjustified use of deadly physical force. The public's suspicion of bias or even collusion in such investigations of police conduct is prevalent. When the public sees no indictment ensue, distrust is exacerbated.

Moreover, the problem is not solely one of appearance. The same factors that explain and justify the public perception of prosecutorial favoritism to the police may indeed cause a district attorney, even if unconsciously, to act favorably to the police. As discussed in this report, the Commission has concluded that the Orange County district Attorney's Office made errors in its presentation to the grand jury that investigated Bruce's death; and that those errors were favorable to the police officers against whom the grand jury considered criminal charges.

As a result of our findings that the inherent conflict of interest often extends beyond investigation of crimes of official police corruption, the Commission recommends that the Attorney General initially determine whether that office or the district attorney should investigate and prosecute cases of death allegedly caused by the unnecessary use of force by police officers while acting in their official capacity. The commission believes that this reform would bolster confidence in our criminal justice system among the public at large and especially among minorities who feel most disadvantaged by our current legal system.

We foresee the special prosecutor's office focusing its resources on the most serious cases of brutality, such as those resulting in civilian death at the hands of law enforcement. Local prosecutors would have concurrent jurisdiction enabling them to continue to prosecute brutality cases.

State-wide Jurisdiction

We also believe that the special prosecutor should have state-wide jurisdiction. The State Investigation Commission report quoted above, was issued in April 1989. The report was based on an investigation of the criminal justice system, not in New York City, but in Orange County. The following month, the Commission issued a report on the Suffolk County District

Attorney's office and Police Department which found that personnel from both had engaged in serious misconduct without adequate oversight. The Commission reported that in police brutality cases where victims might sue, the only investigation would be conducted by the County Attorney's office with the single purpose of developing evidence to defend against a claim.

These reports were followed by the successful federal prosecution of the Chief of Police of Rochester, N.Y. on corruption charges. In Syracuse, local practitioners have complained about the local District Attorney's failure to prosecute police officers. This year The City Department of Investigation issued a report on the N.Y.C. water police in the Catskill region of New York which found serious misconduct.

The Knapp Commission concluded that "the pressures upon policemen, the nature of the job and the inevitable temptations were similar enough in any large municipal police department at any time to give rise to the kinds of problems found by the Commission and its predecessors."

In short there should be no illusion that the need for a special prosecutor exists only in the City of New York. One of the reasons the Knapp commission gave for the creation of the special prosecutor's office was that police corruption doesn't stop at county lines. The recent arrest of New York City police for drug dealing in Suffolk County shows that police corruption doesn't stop at the city line either.

Just as in the area of brutality prosecution, we recommend that the special prosecutor and local prosecutors have

concurrent jurisdiction. The protocols worked out between the offices for the speedy determination of which office will handle which type of case is a necessary prerequisite to the successful implementation of concurrent jurisdiction.

Conclusion

It is truly unfortunate that the Special Prosecutor's office was dissolved. It is quite probable that the office's demise sent precisely the wrong message to law enforcement personnel. The decline in serious internal disciplinary measures parallels the abandonment of the special prosecutor's office. The Criminal Law Committee of the Association of the Bar of the City of New York strongly advocates the recreation of the office of special prosecutor for criminal justice with state-wide jurisdiction over brutality as well as corruption matters.

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*** Dissents from this report to the extent that it recommends a Special Prosecutor for cases involving brutality as distinct from corruption