

Reanimate Grand Jury, State Prosecutor System



By A. PAUL SPINELLA | OPED FEBRUARY 15, 2015

So where have all of Connecticut's prosecutors gone?

For the past several decades, nearly all criminal prosecutions of consequence in Connecticut have been brought by federal prosecutors. They have won convictions involving municipalities, high level politicians (including a sitting governor), police departments and others.

Meanwhile, Connecticut's prosecutors, and the grand juries that act as their powerful investigative arm, have stood idly by, demonstrating little activity or interest in bringing sophisticated prosecutions of their own.

We now have a justice system in Connecticut where there are no state prosecutors — neither the chief state's attorney nor the regional county state's attorneys — initiating prosecutions of sophisticated criminal enterprises and high public figures. As a result, the prosecution of offenses of this importance and difficulty has been left to federal grand juries employed by the Connecticut U.S. attorney's office.

Why should we care? The absence in Connecticut of vigorous prosecutors employing the investigative power of a grand jury has created a default system where police departments, with their obvious limitations, are left to assume the charging responsibility.

If there is any doubt about the deficiency of such a system look to Enfield, where I've seen the problem first hand. A large group of plaintiffs, who I represent, recently brought claims alleging that a number of police officers have been trampling civil rights over a period of years while the police department turned a blind eye — despite increasingly vocal critics, who include officers within the department. When an arrest warrant application was finally submitted for one of these officers, who alone was responsible for one-third of all civilian complaints, the state's attorney for Hartford County, Gail Hardy, refused prosecution.

The state's attorney's decision in the Enfield matter is troubling, in particular because this is a case that cries out for a grand jury run by a vigorous prosecutor. Only a grand jury is equipped to compel the production of repressed testimony and hidden evidence.

How do we fix this? We can start by acknowledging an old legal truism: that prosecutors are the gatekeepers of the criminal justice system. We need to insist that they resume their rightful authority over the charging function and make police accountable for wrongful conduct.

The decision to initiate criminal prosecution is an executive branch responsibility invested in the hands of a public prosecutor who, in Connecticut, is appointed in secret by a commission appointed by the governor. In other states, prosecutors are elected.

We need to restore the power and authority of grand juries with investigatory power, secrecy and guidance by a public prosecutor.

Connecticut used grand juries to great effect through the middle of the last century when they returned indictments in complex financial and political crimes involving multiple defendants, such as the prosecution of the infamous “Hayes ring” in 1930s Waterbury.

Use of the "judicial inquiry" — a recent incarnation of the grand jury consisting of a sitting judge in lieu of a citizens' panel — came to full flower in the 1970s with the creation of the office of the chief state's attorney and the appointment by the chief justice of the Connecticut Supreme Court of attorney Austin McGuigan. He used this enormous prosecutorial tool to win convictions in numerous complex criminal schemes, such as corruption in the New Britain Police Department.

McGuigan's reign ended with the creation of a commission, whose members were appointed by the governor. This commission was given the sole authority to hire and fire the chief state's attorney and they ousted McGuigan. With McGuigan gone, a number of potentially sensational political investigations were dropped.

Here are three more fixes:

Prosecutors should be elected to promote debate of issues and scrutiny of incumbents' records.

A special prosecutor's office should be established with a mission to investigate criminal police misconduct of all kinds and combinations.

Give the attorney general the power to prosecute criminal offenses and conduct grand jury investigations, particularly in cases involving conflicts among state's attorneys, or allegations involving the criminal justice system or police corruption.

None of these suggestions are silver bullets, but they would go a long way toward getting Connecticut's prosecutors and investigative grand juries working again.

A. Paul Spinella is a Hartford based civil rights and criminal defense attorney. He is the author of "Connecticut Criminal Procedure."