

## WHY A DIVISION OF CRIMINAL JUSTICE?

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### *I. INTRODUCTION*

Looking back from the vantage point of a new century, it seems 1970 was a long, strange year in the United States. A jury found five members of the Chicago Seven not guilty of plotting to incite a riot at the 1968 Democratic Convention in Chicago, Illinois, but convicted them of crossing state lines with the intent to riot.<sup>1</sup> Army First Lt.

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<sup>1</sup> See *In re Dellinger*, 370 F. Supp. 1304, 1307 (E.D. Ill. 1973), *aff'd* 502 F.2d 813 (7<sup>th</sup> Cir. 1974). After a four-and-a-half-month trial, five defendants, David T. Dellinger, Rennard C. Davis, Thomas E. Hayden, Abbott H. Hoffman, and Jerry C. Rubin, were found guilty of violating the 1968 Federal Anti-Riot Act (18 U.S.C. § 2101). See *id.* On November 21, 1972, the Court of Appeals of the 7<sup>th</sup> Circuit reversed the convictions, remanding the case for a new trial, which the government elected not to pursue. See *id.* See

William Calley and others were court-martialed for murdering civilian villagers in Mylai, Vietnam, while the reporter who broke the story, Seymour Hersh, received a Pulitzer Prize for international reporting.<sup>2</sup> Congress recessed for the nation's first Earth Day celebration, which drew 10,000 people to a rally at the Washington Monument to heighten awareness of environmental problems.<sup>3</sup> President Richard Nixon authorized the use of American combat forces in Cambodia.<sup>4</sup> One month later, four students protesting that action were killed by National Guardsmen at Kent State University in Ohio.<sup>5</sup> At a press conference, President Nixon adjudged Charles Manson guilty of eight murders without reason, while a jury was still hearing evidence in a California courtroom.<sup>6</sup> McSorley's Irish Pub in New York City (NYC) served its

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also Douglas O. Linder, *The Chicago Seven Conspiracy Trial*, (visited Oct. 25, 2000) <http://www.law.umkc.edu/faculty/projects/ftrials/Chicago7>. The court reversed the convictions based on the defense's inability to question potential jurors on their cultural biases as well as the Judge Hoffman's "antagonistic attitude toward the defense." *Id.*

The remaining two defendants in the case, Lee T. Weiner and John R. Froines, were fully exonerated of all charges. *See id.* Six weeks into the trial, there was a mistrial declared as to an eighth defendant—Bobby Seale. *See id.*

<sup>2</sup> *See* Calley v. Callaway, 519 F.2d 184, 299 (C. A. Ga.1975); David Rubein, *Brilliant Careers: Seymour Hersh* SALON MAGAZINE (January 18, 2000), <http://www.salonmag.com/people/bc/2000/01/18/hersh>.

<sup>3</sup> *See* Jack Lewis, *The Spirit of the First Earth Day*, EPA JOURNAL (January/February 1990), <http://www.epa.gov/history/topics/earthday/01.htm>.

<sup>4</sup> *See* *President Nixon's Speech on Cambodia* (April 30, 1970), <http://vassun.vassar.edu/~vietnam/doc15.html>:

I have concluded that the time has come for action. . . This is not an invasion of Cambodia. The areas in which these attacks will be launched are completely occupied and controlled by North Vietnamese forces. Our purpose is not to occupy the areas. Once enemy forces are driven out of these sanctuaries and once their military supplies are destroyed, we will withdraw. . . We take this action not for the purpose of expanding war into Cambodia but for the purpose of ending the war in Vietnam and winning the just peace we all desire.

*Id.* *See also* ENCYCLOPEDIA AMERICANA: Richard M. Nixon <http://gi.grolier.com/presidents/ea/bios/37pnixo.html> (visited Oct. 25, 2000). U.S. military involvement continued in Cambodia until August 5, 1973. *See id.* Bombing was halted by a joint agreement between President Nixon and Congress. *See id.*

<sup>5</sup> *See* *Kent State, May 4, 1970: America Kills Its Children*, THE ETHICAL SPECTACLE (May 1995), <http://www.spectacle.org>. Students at Kent State protested what many saw as President Nixon's expansion of the Vietnam War into Cambodia. *See id.* During the protest, rocks were thrown, windows were broken, and an attempt was made to burn down the ROTC building. *See id.* Governor James Rhodes of Ohio called in the National Guard. *See id.* On May 4, after orders to disperse were ignored, the National Guard fired directly into the students, hitting thirteen and killing four, including students who were on their way to class. *See id.*

<sup>6</sup> *See* <http://www.law.umkc.edu/faculty/projects/ftrials/manson/NIXON.HTM> *citing*

first female patron in 116 years after a municipal ordinance forbidding sexual discrimination in public places was signed into law.<sup>7</sup> Finally, Janis Joplin died of a drug overdose in Hollywood, California.<sup>8</sup> As the year closed, the Calley court-martial and the Manson trial, which became the longest jury trial in California history, continued.<sup>9</sup> They both ultimately concluded with the return of guilty verdicts.<sup>10</sup>

In 1970, while many continued to question the credibility of the federal government, New Jersey legislators were busy expanding the role of government in the lives of the state's citizens by creating new institutions. They not only established the Department of Environmental Protection on that first Earth Day,<sup>11</sup> but also passed the "Criminal Justice Act," which established the Division of Criminal Justice (DCJ) in the Department of Law and Public Safety, a/k/a the Attorney General's Office.<sup>12</sup>

DCJ's thirtieth anniversary seems an appropriate time to reflect upon the social factors which led to its creation and which generated the political will to confront the erosion of public confidence in government caused by crime. It is also an appropriate time to take note of DCJ's

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*Manson Guilty, Nixon Declares*, LOS ANGELES TIMES, August 3, 1970, at 1.

<sup>7</sup> See *McSorley's Old Ale House*, <http://www.beertravelers.com/details/newyork/mcsorleys.html> (visited Oct. 25, 2000). National Organization for Women (NOW) attorney Faith Seidenberg filed suit in 1969, when they were refused service. See NY TIMES ABSTRACTS, June 26, 1970, at 1.

<sup>8</sup> See Timothy Egan, *Estate Loses Suit to Control Plays on Janis Joplin*, NY TIMES, at 23. Janis Joplin, a blues and rock artist, was 27 years old when she died from a heroin overdose.

<sup>9</sup> See *supra* notes 2 and 6.

<sup>10</sup> See *Calley v. Callaway*, 519 F.2d 184, 299 (C. A. Ga.1975); *People v. Manson*, 139 Cal. Rptr. 275 (Cal App. 1977).

<sup>11</sup> See N.J.S.A. 13:1D-1. Approved on April 22, 1970, this Act reorganized and continued the Department of Conservation and Economic Development into the Department of Environmental Protection. See *id.* See also Fred Stoss, *Earth Day 1970-1995: An Information Perspective* (April 1995), <http://egj.lib.uidaho.edu/egj03/stoss01.html>. April 22, 1970 was the first official Earth Day. See *id.*

<sup>12</sup> See N.J.S.A. 52:17B-98 (1986). In passing the Act, the Legislature recognized:

[T]he existence of organized crime presents a serious threat to our political, social and economic institutions and helps bring about a loss of popular confidence in the agencies of government. Accordingly, it is hereby declared to be the public policy of this State to encourage cooperation among law enforcement officers and to provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice through the State.

*Id.*

early work in addressing these problems and in establishing itself as an effective institution of government. In short, it is a fitting time to answer the question - why a Division of Criminal Justice?

## II. A CRISIS IN PUBLIC CONFIDENCE

The 1960s were a dynamic decade for New Jersey and for the nation. The failure to seat the 68 delegates of the Mississippi Freedom Democratic Party at the 1964 Democratic convention in Atlantic City was national news.<sup>13</sup> This caused many people actively involved in the civil rights movement to lose faith in government as a whole and convinced them to accept more radical approaches to changing the system. As a result, the summer of 1967 civil disorder in Newark put New Jersey's social, political and economic problems in the national headlines. Prior to the 1967 Newark riots, Essex County Prosecutor and later Governor, Brendan Byrne oversaw a grand jury presentment criticizing the Newark Police Department for making assignments on the basis of politics, as well as the police department's failure to enforce gambling laws.<sup>14</sup> This 1965 presentment presaged the problem that was found to play a major role in the civil disorder that would arise in Newark, Plainfield and Engelwood two years later.

In 1968, New Jersey again found itself under the glare of the national media spotlight. This time, it was atop a category no state desires to claim as its own. In August of that year, *Life* magazine ran an exposé on the corrupt relationship between Congressman Cornelius Gallagher and mafia figure Joseph Zicarelli.<sup>15</sup> The piece included quotes from transcripts of taped telephone conversations, during which the pair discussed the need to protect a gambling operation from

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<sup>13</sup> SNCC-Events, *Mississippi Freedom Democratic Party*, <http://www.ibiblio.org/sncc/mfdp/html> (visited Oct. 25, 2000). In 1968, the Student Nonviolent Coordinating Committee (SNCC) wanted the Mississippi Freedom Democratic Party (MFDP) to represent Mississippi at the Democratic National convention in Atlantic City rather than the state's current delegation. *See id.* The Democratic Party offered the MFDP two non-voting seats next to the regular Mississippi delegates, but that offer was refused. *See id.* This event was cited by Congressman John Lewis in his 1998 civil rights memoir, *Walking with the Wind*, as the beginning of the demise of the non-violent struggle for racial equality. *See* JOHN LEWIS & MICHAEL D'ORSO, *WALKING WITH THE WIND: A MEMOIR OF THE MOVEMENT* (Simon & Schuster 1998).

<sup>14</sup> *See id.*

<sup>15</sup> *See* Russell Sackett, Sandy Smith, and William Lambert, *The Congressman and the Hoodlum*, *LIFE*, Aug. 9, 1968, at 20.

Bayonne police.<sup>16</sup> Two months later, in a follow-up article, *Life* magazine revealed other questionable conduct by Congressman Gallagher.<sup>17</sup> Similarly, in 1969, *Time* and *Newsweek* magazines ran pieces on public corruption and mob influence in Newark. As a result of this press attention, most of the country came to view New Jersey as synonymous with organized crime and corruption. This national exposure had a similar impact on New Jersey's perception of itself at home.<sup>18</sup>

The civil disturbances led Governor Richard J. Hughes to establish a Select Commission on Civil Disorder to "examine the causes, the incidents and the remedies for the civil disorders afflicting New Jersey."<sup>19</sup> The Select Commission determined that "there is widespread belief that Newark's city government is corrupt,"<sup>20</sup> and it found this to be a major factor in the Newark riot. United States Attorney Frederick B. Lacey later argued that the public perception of corruption was not simply limited to Newark: "[I]t is the corrupting influence of organized crime that produces the contemptuous attitude toward local governments in citizens of a municipality where the pervasive feeling is that 'there's a price on everything at City Hall'."<sup>21</sup>

In light of these charges, Newark Police Director Dominick Spina, whom Mayor Hugh Addonizio acknowledged was appointed as a reward for his "political campaign work,"<sup>22</sup> was called before the 1968 *Special Joint Legislative Committee to Study Crime and the System of Criminal Justice* in New Jersey. There, Senator Milton Waldor and his colleagues vigorously questioned him. Director Spina denied that

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<sup>16</sup> See *id.* at 21-22.

<sup>17</sup> See *The Congressman and the Salad Oil Swindler*, LIFE, Oct. 25, 1968, at 70-1. Congressman Gallagher also had relations with Anthony De Angelis who swindled Wall Street financiers out of \$150 million. See *id.* During this fraud, Congressman Gallagher represented De Angelis as his attorney and guaranteed a loan for De Angelis. See *id.*

<sup>18</sup> See *Statement by Governor Richard J. Hughes*, Aug. 8, 1967, GOVERNOR'S SELECT COMMISSION ON CIVIL DISORDER, REPORT FOR ACTION (1968) at 20 (hereinafter, REPORT FOR ACTION).

<sup>19</sup> See REPORT FOR ACTION, *supra* note 18, Preface at v. The Governor challenged Commission members, stating, "[Y]ou are truly probing into the soul and future not only of New Jersey but of the nation." *Id.* at 199 (*Statement by Governor Richard J. Hughes*, Aug. 8, 1967).

<sup>20</sup> See REPORT FOR ACTION, *supra* note 18 at 20.

<sup>21</sup> Frederick B. Lacey, *Recommendation to the 1970 Session of the New Jersey Legislature Concerning Legislation Which Might Be Enacted to Curb the Power and Influence of Organized Crime in New Jersey* 4 (Jan. 20, 1970).

<sup>22</sup> See REPORT FOR ACTION, *supra* note 18 at 21.

corruption was a cause of Newark's civil unrest "in any way, form or fashion," viewing the allegation as a mere "red herring" and the presentment "unfair" and "un-American."<sup>23</sup> The evidence told otherwise, however, and Director Spina was eventually charged for willful nonfeasance with respect to enforcing gambling laws, though the case was dismissed after the trial commenced. Years later, after a joint United States Attorney-Essex County Prosecutor investigation, Newark Mayor Hugh Addonizio was convicted at a federal trial of 63 counts of extorting kickbacks from individuals doing business with the city.<sup>24</sup>

After eight days of hearings, the 1968 Joint Committee, chaired by Senator Edwin Forsythe, issued a report recommending the creation of a "strong State Department of Criminal Justice that will equip our state with the leadership capacity and coordinated capability for a timely effective fight against crime."<sup>25</sup> Essentially, the Committee asked, "who leads" and answered, "no one."<sup>26</sup> The Committee also recommended the creation of a State Commission of Investigation (SCI) to serve as a watchdog for special problems like organized crime and official corruption, a law authorizing electronic surveillance by State officials and the establishment of a statewide grand jury.<sup>27</sup>

These recommendations were enacted into law, but only after additional scorn was heaped upon New Jersey.<sup>28</sup> Two law professors who had worked at the organized crime division of the Department of

<sup>23</sup> See *Hearing of the Special Joint Legislative Committee to Study Crime and the System of Criminal Justice in New Jersey* 210-214 (March 28, 1968).

<sup>24</sup> See *United States v. Addonizio*, 442 U.S. 178, 180 (1979). The sentencing judge described the significance of the mayor's crimes as follows:

"... his conviction by a jury in this court of crimes of monumental proportion, the enormity of which can scarcely be exaggerated and the commission of which create the gravest implications for our form of government. . . It is impossible to estimate the impact upon – and the cost of – these criminal acts to the decent citizens of Newark, and, indeed, to the citizens of the State of New Jersey, in terms of their frustration, despair and disillusionment".

*Id.*

<sup>25</sup> REPORT OF THE SPECIAL JOINT LEGISLATIVE COMMITTEE TO STUDY CRIME AND THE SYSTEM OF CRIMINAL JUSTICE IN NEW JERSEY 7 (April 22, 1968).

<sup>26</sup> See *Hearing of the Special Joint Legislative Committee to Study Crime and the System of Criminal Justice in New Jersey* 213 (March 28, 1968).

<sup>27</sup> See REPORT OF THE SPECIAL JOINT LEGISLATIVE COMMITTEE TO STUDY CRIME AND THE SYSTEM OF CRIMINAL JUSTICE IN NEW JERSEY 8, 12-13 (April 22, 1968). A State Grand Jury has the same duties, powers and functions as a county grand jury, except that its jurisdiction extends throughout the entire state. See N.J.S.A. 2A:73A-3.

<sup>28</sup> See N.J.S.A. 2A:73A-3.

Justice testified in Trenton on the need for State-authorized electronic eavesdropping to combat organized crime.<sup>29</sup> They asserted that New Jersey was the most corrupt state in the country, second only to New York City in terms of the depth of the problem. One professor commented, "[T]here is enough corruption in the state that organized crime can get anything that they want, that they need."<sup>30</sup> State Police Superintendent David B. Kelly also testified in favor of court-ordered wire and oral communication interception, calling it ". . . probably the most singular valuable weapon in law enforcement's fight against crime."<sup>31</sup>

Some were staunchly opposed to wiretapping and the proposed department. Joel Jacobson, representing the United Automobile Workers, Region 9, testified that wiretapping in New Jersey would be "an encroachment on one's privacy," and questioned whether the Committee's proposed ends would justify these intrusive means.<sup>32</sup> Jacobson also opposed the creation of a new, all-encompassing Department of Criminal Justice, viewing it as nothing more than "the majority party's solution for urban strife."<sup>33</sup>

Attorney General Arthur J. Sills also opposed the creation of a statewide law enforcement agency established outside of the Attorney General's Office, based upon his status as a constitutional cabinet officer.<sup>34</sup> Testifying at a public hearing before the Senate Committee on Law, Public Safety and Defense on Eavesdropping and a Department of Criminal Justice on September 17, 1968, Attorney General Sills said:

[T]he problem of crime, as I see it today, will not be solved by playing chess with existing agencies within the Executive Branch of government, nor is it a problem solved by more convictions. Rather, it stems from our inability to arrest and, if convicted, to rehabilitate criminal offenders. And related thereto, it stems from our failure to provide the existing law enforcement system with the necessary tools - money and legislation. We do

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<sup>29</sup> See *Senate Committee on Law, Public Safety and Defense Hearing on Eavesdropping and a Department of Criminal Justice* (Sept. 16, 1968). The two law professors who testified were Henry S. Ruth and G. Robert Blakey.

<sup>30</sup> *Id.* at 38A (Testimony of Professor Henry S. Ruth).

<sup>31</sup> *Id.* at 59A (Testimony of Superintendent David B. Kelly).

<sup>32</sup> See *id.* at 49A, 55A (Testimony of Joel Jacobson).

<sup>33</sup> *Id.* at 2 (Testimony of Joel Jacobson).

<sup>34</sup> See N.J. CONST. art. 5, §4, cl.3.

not need a new bureaucracy. I say to the Legislature, give us the money we have asked for, give us the investigators we have asked for, give us the facilities we have asked for, and give us the legislation we have asked for on a bi-partisan basis, and we will get the job done.<sup>35</sup>

This was no different from the position he had taken previously in his transmittal letter of the 1967 *Department of Law and Public Safety Annual Report* to Governor Hughes, where he highlighted organized crime and civil unrest as national issues.<sup>36</sup> Originally, Attorney General Sills had recommended the creation of an organized crime unit within the Division of Law in the Attorney General's Office. However, he shifted his position a year later in the 1968 *Department of Law and Public Safety Annual Report*, recommending that the Attorney General's Office add a Division of Criminal Justice containing an Organized Crime unit to assist State Police and to present cases to the State Grand Jury.<sup>37</sup> This recommendation changed the form of the proposed institution from cabinet level (department) to sub-cabinet (division).<sup>38</sup> It also slowed action on the Joint Legislative Committee's proposal for a new department, while the other recommendations (an SCI, court-authorized electronic surveillance and the State Grand Jury) became law.

Additionally, Attorney General Sills joined Essex County Prosecutor Joseph Lordi, the dean of county prosecutors of his

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<sup>35</sup> Senate Committee on Law, Public Safety and Defense Hearing on Eavesdropping and a Department of Criminal Justice (Sept. 17, 1968) at 97A-98A (Testimony of Attorney General Arthur J. Sills). Attorney General Sills also referred to the creation of a Department of Criminal Justice as "... a dangerous first step toward a centralized police state, one in which all other considerations are subordinated to the overriding concept of 'order.'" *Id.* at 68A.

<sup>36</sup> See 1967 DEPARTMENT OF LAW AND PUBLIC SAFETY ANNUAL REPORT (Attorney General Sills' Letter of Transmittal to Governor Hughes). The Attorney general had stated:

The people of this Nation have become increasingly concerned with the problem of organized crime, and civil disorders. There are no panaceas for these problems. It is clear, however, that the needs of law enforcement, at the State and local levels, have been neglected for much too long. Here, too, there are no quick and easy solutions. But the situation clearly demands more money, more manpower, and more effective law enforcement tools. Only if these needs are met will law enforcement be able to meet the challenge to law and order which now confronts us.

*Id.*

<sup>37</sup> See 1968 DEPARTMENT OF LAW AND PUBLIC SAFETY ANNUAL REPORT (Attorney General Sills' Letter of Transmittal to Governor Hughes).

<sup>38</sup> See *id.*



generation, in calling for the appointment of full-time, rather than part-time, prosecutors in order to professionalize law enforcement. General Sills viewed this as a necessary part of the "war against crime."<sup>39</sup> Governor Hughes supported both measures in his annual State-of-the-State address, and a law providing for full time prosecutors was enacted in 1969.

### III. THE CRIMINAL JUSTICE ACT

1970 brought a new administration to Trenton, but did not change the fervor for the fight against organized crime and official corruption, and their removal from the fabric of New Jersey's reputation. That year, Governor William T. Cahill proposed an organized crime fighting package which called for the establishment of the DCJ within the Attorney General's Office, as suggested by Attorney General Sills and Governor Hughes.<sup>40</sup> Governor Cahill also suggested giving the Attorney General the power to supersede county prosecutors and to remove any public official who refused to answer questions posed by either a grand jury or the SCI pertaining to his or her conduct in office.<sup>41</sup> In announcing these initiatives, Governor Cahill acknowledged the damage done to New Jersey's image by the national magazine: "It is not based on true facts. It is a part of the picture."<sup>42</sup> He felt that these proposals would revitalize both the Attorney General's Office and the county prosecutors' offices. He also viewed them as a fulfillment of his inauguration pledge of a "total commitment to search out and destroy the corrupters and the corrupted."<sup>43</sup>

On the heels of Governor Cahill's words, Senator Alexander Matturi, who later served as an Essex County Superior Court Judge, sponsored the "Criminal Justice Act of 1970" and the "removal-from-office" bill. Senate President Raymond Bateman, who was the Republican candidate for Governor in 1977, supported both bills, stating, "I am home rule-oriented, but I got to go with the Governor that

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<sup>39</sup> See Attorney General Sills' letter of transmittal to Governor Hughes, Department of Law and Public Safety Annual Report (1968).

<sup>40</sup> See Leon Zimmerman, *Cahill Beefing Crime Fighters*, THE RECORD, April 17, 1970 at A6.

<sup>41</sup> See *id* at A-1.

<sup>42</sup> *Id.*

<sup>43</sup> John McLaughlin, *Organized Crime Package Could Be Law By Mid-May*, THE EVENING TIMES (Trenton), April 21, 1970 at 9.

we will have to have more state powers if we are going to have effective law enforcement."<sup>44</sup> The bills passed unanimously in the Senate.<sup>45</sup>

The bills' passage through the Assembly was almost as smooth. There, Minority Leader David Friedland argued against the "Criminal Justice Act" because he said it would "emasculate" the constitutional right of the Senate to advise and consent on county prosecutor nominations.<sup>46</sup> Nevertheless, the Assembly unanimously passed both bills, with only Friedland abstaining from the vote.<sup>47</sup> Assembly sponsor Herbert Rinaldi called the passage, "a giant step toward fighting organized crime because it enables the Attorney General to work in partnership with prosecutors."<sup>48</sup> Assembly Speaker William Dickey would call passage of the "Criminal Justice Act" the Legislature's "key" accomplishment for the year.<sup>49</sup>

Governor Cahill signed the "Criminal Justice Act," N.J.S.A. 52:17B-97, into law on May 21, 1970, only one month after it was introduced, proclaiming that the Act would make Attorney General George F. Kugler, Jr., the State's chief law enforcement officer in fact as well as name.<sup>50</sup> Attorney General Kugler announced in turn that his new office would work closely with all county prosecutors and handle all appeals.<sup>51</sup> At this time, the bill authorizing removal from public office for taking the Fifth Amendment was also signed into law.<sup>52</sup>

Thus, the Organized Crime and Special Prosecution Section of the Attorney General's Office became part of the Division of Criminal

<sup>44</sup> John O. Davies, *OK Predicted for Anti-Crime Bill*, THE COURIER POST, April 21, 1970.

<sup>45</sup> See P.L. 1970, c. 74 (C. 52:17B-97 et. seq.); L. 1970, c. 72 §2.

<sup>46</sup> See *Cahill's War on Crime Plans Are Approved By Assembly*, THE ASBURY PARK PRESS, May 5, 1970 at 1.

<sup>47</sup> See *United States v. Friedland*, 660 F.2d 919 (3d Cir. 1981) David Friedland was convicted in a federal corruption prosecution during the 1980s.

<sup>48</sup> *Cahill Anti-Crime Bills Cleared for Assembly Vote Next Week*, THE EVENING NEWS (Trenton), April 28, 1970.

<sup>49</sup> See Leonard Fisher, *Trenton Highlights: Dickey's Speech Accentuates the Positive*, THE NEWARK STAR LEDGER, December 23, 1970 at 5. Dickey also noted the establishment of the Department of Environmental Protection on April 22, 1970, as important legislative action. See *id.*

<sup>50</sup> See Peter Carter, *Governor Signs Five Crime Bills*, THE EVENING NEWS (Trenton), May 21, 1970.

<sup>51</sup> See CARTER, *supra* note 50. It should be noted that while DCJ bears responsibility for supervising the efforts of the 21 county prosecutors, who focus predominantly on violent crime, the DCJ itself is primarily a white-collar crime-fighting agency.

<sup>52</sup> See *id.* This law is codified at N.J.S.A. 2A: 81-17.2(a)(1) (2000).

Justice (DCJ) on July 1, 1970.<sup>53</sup> This new section was charged with "... implementing the Division's attack on organized crime and municipal corruption" and was accountable for investigating cases and presenting them to the State Grand Jury.<sup>54</sup> Eventually, a Trial Section was established to try all indictments returned by the State Grand Jury and handle cases in which the Attorney General superseded a county prosecutor's office.<sup>55</sup> Additionally, Prosecutors' Supervisory, Appellate, and Research and Planning Sections were formed.<sup>56</sup> Finally, Evan Jahos was named DCJ's first Director.<sup>57</sup> In the ensuing years, many new sections would be formed and additional responsibilities undertaken.

#### IV. COMBATING ORGANIZED CRIME AND CORRUPTION

During DCJ's first year of existence, organized crime figure Joseph Zicarelli was indicted, tried and convicted of conspiracy and bribery in a case involving public officials in Hudson County.<sup>58</sup> Zicarelli was also jailed for contempt under the new Act for failing to answer questions posed by the SCI concerning organized crime, racketeering and political corruption in Long Branch. His challenge to the validity of the statute made its way to the United States Supreme Court, which decided that the granting of only "use immunity" to public officials was constitutional under the Fifth Amendment privilege against self-incrimination.<sup>59</sup> Thus, while Zicarelli was not absolutely immunized for any crimes he might discuss while answering questions, neither his answers nor the fruits derived from his answers could be used to prosecute him.<sup>60</sup>

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<sup>53</sup> This Section was originally formed in 1969. Robert Jordan became the first State Investigator.

<sup>54</sup> See 1970 DEPARTMENT OF LAW AND PUBLIC SAFETY ANNUAL REPORT 6.

<sup>55</sup> See *id.*

<sup>56</sup> See *id.*

<sup>57</sup> See *id.*

<sup>58</sup> See *State v. Zicarelli*, 64 N.J. 172 (1973).

<sup>59</sup> See *Zicarelli v. New Jersey State Commission of Investigation* 406 U.S. 472 (1972); *Kastigar v. United States*, 406 U.S. 441 (1972). Use immunity protects a person from prosecution based on anything that person has said, or anything derived from his speech. Transactional immunity, on the other hand, is more absolute. Under transactional immunity, a person is protected from prosecution for any crime(s) discussed, even if the evidence used to link that person to the crime is derived from a wholly independent source.

<sup>60</sup> See *United States v. North*, 920 F.2d 940 (D.C.Cir. 1990) (Ordering a *Kastigar* hearing on the testimony of witnesses who were exposed to Oliver North's televised,

By 1971, its first full year of operation, the number of DCJ wiretap requests to the Superior Court had reached 84 and 61 convictions stemmed from electronic surveillance authorized in past years.<sup>61</sup> Further, 225 arrests were recorded.<sup>62</sup> 1971 also saw the Bergen County Prosecutor indicted by the State Grand Jury for bribery, but acquitted after a one-month trial.<sup>63</sup> Subsequently, DCJ assumed full responsibility for the Bergen County Prosecutor's Office until a new prosecutor was nominated and confirmed.<sup>64</sup> During the next year, the Appellate Section argued *State v. Dye*, where the New Jersey Supreme Court upheld the constitutionality of New Jersey's Wiretapping and Electronic Surveillance Control Act.<sup>65</sup> The Appellate Section also developed a brief bank to serve as a centralized information retrieval system for law enforcement personnel throughout the State.

In 1973, David S. Baime,<sup>66</sup> chief of the Appellate Section, established and edited the first volume of the *Criminal Justice Quarterly* in order to "provide a thorough and in-depth study of the developing trends in the area of law enforcement" and to "enhance the coordination of law enforcement efforts throughout the State."<sup>67</sup> The first edition analyzed habeas corpus, immunity under the *Kastigar* and *Zicarelli* decisions; the right to a speedy trial; stop and frisk procedures; the right to counsel at lineups prior to indictment; and prosecutorial misconduct at trial.<sup>68</sup> Many of the articles in this first edition also addressed new U.S. Supreme Court case law under the Fourth, Fifth and

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immunized testimony). After the Court of Appeals issued this ruling, the independent prosecutor abandoned the prosecution.

<sup>61</sup> See 1971 DEPARTMENT OF LAW AND PUBLIC SAFETY ANNUAL REPORT 11. Forty-four of those convictions were for gambling, two for loan sharking, two for theft and thirteen for public corruption. See *id.*

New Jersey has long been one of the leading states in the number of court-authorized wiretaps undertaken. In 1999, New Jersey ranked third among the states where wiretaps are sought, behind only New York and California. See NEW JERSEY LAW JOURNAL, May 15, 2000, at 6. New Jersey's high ranking is due in part to the fact that wiretap requests may come from a number of sources, including the state Police, county prosecutors and the DCJ.

<sup>62</sup> See 1971 DEPARTMENT OF LAW AND PUBLIC SAFETY ANNUAL REPORT 11. Nearly 200 arrests were for gambling; the remainder were for narcotics and bribery. *Id.*

<sup>63</sup> See *id.*

<sup>64</sup> See *id.*

<sup>65</sup> See *State v. Dye*, 60 N.J. 518 (1972) The New Jersey Wiretapping & Electronic Surveillance Act is cited at N.J.S.A. 2A:156A-1 et seq. (2000).

<sup>66</sup> Judge Baime now serves as an Appellate Division judge.

<sup>67</sup> Editor's Note, CRIMINAL JUSTICE QUARTERLY, Winter 1973.

<sup>68</sup> See generally, CRIMINAL JUSTICE QUARTERLY, Winter 1973.

Sixth Amendments to the United States Constitution.<sup>69</sup>

An editor's note on the proposed new State Penal Code appeared in the second quarterly published that year.<sup>70</sup> It was the first in a series of articles analyzing the proposed code, which eventually became law with the enactment of Title 2C in 1979. The *Criminal Justice Quarterly* was a DCJ mainstay throughout the 1970s and most of the 1980s.

In 1973, Governor Cahill was defeated in the Republican primary by Congressman Charles Sandman, who was himself defeated in the general election by Brendan Byrne.<sup>71</sup> The work of DCJ did not slow down under the outgoing administration; that year, the State Grand Jury charged 170 defendants, including 20 public officials.<sup>72</sup> One of the indicted public officials, a state senator, was tried and convicted of conspiracy, bribery and receiving money to improperly dispose of indictments in his home county.<sup>73</sup> The four-year total of DCJ indictments included 104 public officials.<sup>74</sup>

Also in 1973, a joint operation between the State Police and the DCJ led to the indictment of 12 members of the Campisi organized crime family for conspiracy to operate illegal business enterprises involving gambling and narcotics, as well as for the murders of six disloyal gang members.<sup>75</sup> Additionally, the DCJ assumed responsibility for operating four county prosecutor offices as a result of vacancies created by the resignations of prosecutors in Bergen, Hudson, Hunterdon and Mercer counties.<sup>76</sup> Finally, all motions to suppress evidence derived from electronic surveillance were denied.<sup>77</sup>

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<sup>69</sup> See *Mapp v. Ohio*, 367 U.S. 643 (1964); *Miranda v. Arizona*, 384 U.S. 436 (1966); *Gideon v. Wainwright*, 372 U.S. 335, (1963). In these decisions, the United States Supreme Court, led by Chief Justice Earl Warren, revolutionized police practices and criminal procedure during the 1960s by making the constitutional rights articulated in the Fourth, Fifth and Sixth Amendments in the Bill of Rights applicable to state court criminal justice systems.

<sup>70</sup> See Editor's Note, *CRIMINAL JUSTICE QUARTERLY*, Spring 1973.

<sup>71</sup> Governor Cahill appointed former Governor Richard J. Hughes, a Democrat, to serve as Chief Justice of the New Jersey Supreme Court. This was a brilliant and politically courageous move, outdone only by Governor Tom Kean's reappointment of Robert Wilentz to the same post in 1986.

<sup>72</sup> See 1973 DEPARTMENT OF LAW AND PUBLIC SAFETY ANNUAL REPORT 5.

<sup>73</sup> See *id.* at 6.

<sup>74</sup> See *id.* at 5.

<sup>75</sup> See *id.* See also 1974 DEPARTMENT OF LAW AND PUBLIC SAFETY ANNUAL REPORT 7. Ten members of the Campisi crime family pled guilty to these charges one year later.

<sup>76</sup> See 1973 DEPARTMENT OF LAW AND PUBLIC SAFETY ANNUAL REPORT 10.

<sup>77</sup> See *id.* at 6. Indeed, during the 26 years that AAG Michael Bozza reviewed affidavits in support of electronic surveillance applications (1972-1997), no State wiretaps were

In 1974, the Campisi prosecution came to an end, as ten members of the Newark family pled guilty to conspiracy to participate in the above-named organized criminal activities and were sentenced to prison terms of three to 25 years.<sup>78</sup> This was a nationally significant organized crime prosecution, because it was the first case in which the core of an entire organized crime family was convicted, and the first case in which a conspiracy to participate in organized criminal conduct was detailed in a single indictment.<sup>79</sup> The case even generated the best selling book, *To Drop a Dime*, by Ira Penzick, a Campisi hit man who turned state's evidence and entered the witness protection program.

By 1974, the Appellate Section was handling all plenary appeals from every county prosecutor's office except Essex.<sup>80</sup> The Appellate Section also began to assist the Assembly and Senate Judiciary Committees in interpreting the revised Penal Code. This culminated in the development of an implementation strategy by Deputy Attorney General Edwin Stern, who now serves as an Appellate Division judge. This process allowed the Appellate Section to develop a national reputation in the early 1980s as the place to work if you wanted to make new case law.<sup>81</sup> The Appellate Section did not limit itself to this

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suppressed. All of these applications were reviewed by Judges of the Superior Court specially designated by the Chief Justice to rule on wiretap requests, pursuant to N.J.S.A. 2A:156A-8 (2000).

<sup>78</sup> See 1974 DEPARTMENT OF LAW AND PUBLIC SAFETY ANNUAL REPORT 7.

<sup>79</sup> See *id.*

<sup>80</sup> In the 1990s, responsibility for criminal appeals reverted back to the county prosecutors, who now brief and argue the majority of these cases.

<sup>81</sup> See, e.g., *State v. Talley*, 94 N.J. 156 (1983) (a defendant charged with robbery is on notice that any conduct denominated as theft is within the four corners of the indictment); *State v. Roth*, 95 N.J. 334 (1984) (presumption of imprisonment for those convicted of first or second degree crimes can be overcome only in truly extraordinary cases); *State v. Hodge*, 95 N.J. 369 (1984) (the severity of the crime is the single most important factor at sentencing, thus, a sentence for a first degree crime must reflect its severity); *State v. Lee*, 96 N.J. 156 (1984) (proof of intent to use a weapon for an unlawful purpose is not an element of the crime of unlawful possession of a weapon); *State v. Ingram*, 98 N.J. 489 (1985) (absence of a permit is an essential element of the crime of unlawful possession of a handgun which may be inferred by the jury if no evidence to the contrary is presented); *State v. Hardison*, 99 N.J. 379 (1985) (a conviction for criminal conspiracy will not merge with the completed offense if the conspiracy has criminal objectives other than the substantive offense); *State v. Yarbough*, 100 N.J. 627 (1985) (since there are no "free crimes" for a defendant, consecutive sentences are appropriate for multiple offenses in separate, unrelated episodes); *State v. Dunbar*, 108 N.J. 80 (1987) (sentencing court can impose presumptive extended term and then add a period of parole ineligibility); *State v. Breakiron*, 108 N.J. 591 (1987) (to assert a diminished capacity defense, the defendant must show that he suffered a mental disease or defect and that it negated an essential element of the crime charged); *State v. Rivers*, 108 N.J. 622 (1987) (evidence of "imperfect self-

function, however. In addition to publishing the *Criminal Justice Quarterly*, the Appellate Section published the *Criminal Law Digest* for all county prosecutors and State judges.<sup>82</sup> Finally, DCJ was operating five county prosecutors' offices during parts of 1974.<sup>83</sup>

In 1975, Robert DelTufo, who became United States Attorney for New Jersey and later New Jersey's Attorney General, replaced renowned trial lawyer Matthew Boylan as DCJ Director. By that time, any question regarding whether the DCJ was fulfilling its mission as envisioned by the "Criminal Justice Act"<sup>84</sup> could be answered affirmatively by the DCJ with both pride and conviction. The Attorney General's Office was obtaining effective and uniform enforcement of the criminal laws at county and state levels throughout New Jersey<sup>85</sup> and was attracting the State's best and brightest to its ranks. Furthermore, the DCJ was setting a law enforcement standard of excellence in New Jersey and was recognized throughout the nation for fighting organized crime and corruption with the statutory weapons provided by the Legislature. The DCJ was also providing general supervision of law enforcement throughout New Jersey via its Appellate and Prosecutors' Supervisory Sections.

## V. AN EXPANDED MISSION

Over the course of the last 25 years, DCJ's mission has expanded into many other areas of crime fighting and criminal justice policy work, growing beyond its early years in terms of both responsibilities and resources. Today, the division has its largest staff, with 925 people. Interestingly, a larger percentage of the staff are engaged in policy rather than case work as compared to DCJ's early years.

### A. SETTING CRIMINAL JUSTICE POLICY

The formation of the offices of victim-witness advocacy and bias crime and community relations is an example of the DCJ expansion into

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defense" may mitigate a crime by negating one of its essential elements, even though this principle is not part of the code of criminal justice).

<sup>82</sup> See 1974 DEPARTMENT OF LAW AND PUBLIC SAFETY ANNUAL REPORT 9.

<sup>83</sup> See *id.* at 12.

<sup>84</sup> See N.J.S.A. 52:17B-97.

<sup>85</sup> See N.J.S.A. 52:17B-103.

policy areas. After the passage of the Victims' Rights statute<sup>86</sup> in 1986, Attorney General W. Cary Edwards and Director Donald Belsole created the office of victim-witness advocacy to promote victims' rights and to expand the availability of victim-witness services at DCJ and throughout the State.<sup>87</sup> In addition to conducting victim assistance training seminars for law enforcement and criminal justice personnel, the office developed standards to ensure the rights of crime victims and a statewide management information system to monitor the delivery of victim-witness services statewide.<sup>88</sup> The office also began on-site evaluations of county prosecutor offices.<sup>89</sup> Similarly, in 1992, Attorney General Robert DeLufo and DCJ Director Robert T. Winter created the nation's first office of bias crime and community relations "to lead the fight against prejudice."<sup>90</sup> This office developed and implemented a statewide training curriculum on bias and hate crimes for police officers, focusing on the uniqueness of identifying, reporting, investigating and prosecuting bias crimes.<sup>91</sup> The addition of these new areas of responsibility to DCJ's overall mission enabled the Attorney General to develop a uniform response to a statewide law enforcement need. Moreover, the formation of these offices enhanced the Attorney General's ability to advise and supervise the 21 county prosecutor offices.<sup>92</sup>

## B. SPECIALIZED CRIMINAL CASE WORK

As times change, so does crime, which means law enforcement must adjust to criminal permutations in order to remain effective. Prolific bank bandit Willie Sutton once quipped that he robbed banks because that was where the money was. In the same way, when environmental criminals realized they could reap financial rewards by ignoring environmental laws and regulations, law enforcement

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<sup>86</sup> See N.J.S.A. 52:4B-36. The statute provided that crime victims and witnesses are to be treated with dignity, compassion and fairness by the criminal justice system. *See id.*

<sup>87</sup> See 1986 DEPARTMENT OF LAW AND PUBLIC SAFETY ANNUAL REPORT 39. The "Crime Victim Bill of Rights" statute, N.J.S.A. 52:4B-36, was amended in 1991 and 1999 to expand the list of rights. Also in 1991, the rights of crime victims were enshrined in the New Jersey Constitution. *See* N.J. CONST. Art. 1 §22.

<sup>88</sup> See 1987 DEPARTMENT OF LAW AND PUBLIC SAFETY ANNUAL REPORT 44.

<sup>89</sup> *See id.*

<sup>90</sup> 1992 DEPARTMENT OF LAW AND PUBLIC SAFETY ANNUAL REPORT 6.

<sup>91</sup> See 1993 DEPARTMENT OF LAW AND PUBLIC SAFETY ANNUAL REPORT 5.

<sup>92</sup> See N.J.S.A. 52:17B-103.



responded by making them pay for their illegal conduct and by deterring others from engaging in it. Similarly, fraudsters who believed that ripping off large amounts of federal and state tax dollars from the Medicaid program was easy money, had to be addressed. Consequently, specialized crime-fighting units, such as the toxic waste and Medicaid fraud units, were established within DCJ during the late 1970s to deal with the beginning of this new and different crime wave. These units were on the cutting edge of law enforcement in that they stepped in and began to investigate and prosecute these types of criminals on a statewide basis.

These specialized units reflect the Division's unique role in New Jersey's criminal justice system. Since local law enforcement agencies often lack the distinctive expertise, specialty equipment and intensive resources that are required to conduct certain types of white collar crime investigations,<sup>93</sup> the DCJ is the only law enforcement unit in New Jersey that regularly pursues and proactively ferrets out environmental criminals.<sup>94</sup> I believe that filling this law enforcement gap and ensuring that these crimes do not go unchecked in our State is exactly what the Legislature intended to achieve when it established DCJ. Now, every environmental crime in New Jersey requires and receives investigative attention by the DCJ.

These new crime areas produced a sophisticated breed of criminal. In response, these units developed into specialized bureaus within the DCJ, which handled an assortment of environmental crimes and Medicaid fraud cases, and targeted unlawful enterprises and organized criminal conduct.<sup>95</sup> These bureaus are aided by traditional crime

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<sup>93</sup> For example, in environmental crimes cases, regulatory interpretation is necessary, expert testimony is often required and laboratory analysis is expensive. Also, unlike street crimes, municipal police departments do not deliver to either county or State prosecutors environmental crimes case files that are near ready for grand jury action and prosecution. Finally, the United State's Attorney's Office accepts referrals of environmental cases for criminal prosecution on an extremely infrequent basis, cherry picking either sure winners or newsworthy cases.

<sup>94</sup> Although the Division of State Police does not have an environmental crimes unit, it has established the A-901 licensing unit. *See* N.J.S.A. 13:1E-126. The goal of this unit is the maintenance of integrity, public confidence and trust in the solid and hazardous waste industries by keeping out persons who have pursued economic gains in a manner that violated the criminal code or civil public policy of the State. *See id.* In addition, New Jersey's Marine Police, who are now members of the State Police, conduct joint investigations of water pollution incidents with DCJ's Environmental Crimes Bureau (ECB). Finally, some county prosecutors have established environmental crimes units in their offices, but these units typically handle smaller environmental crime cases.

<sup>95</sup> Categories of environmental crime include violations of solid waste, medical waste,

fighting techniques like electronic surveillance and powerful statutory tools such as racketeering, tax crimes and money laundering laws. As such, these crime fighting units perpetuated the DCJ's core mission and set national standards which other states attempted to match.

To illustrate the point that a specialized unit, like the Environmental Crimes Bureau (ECB), furthers DCJ's core purpose when it targets organized criminal conduct, I will describe some of the investigations and prosecutions handled by the ECB from the late 1980s to the late 1990s.<sup>96</sup>

### 1. *State v. Ball*

The prosecution in *State v. Ball* was the culmination of a five month covert investigation conducted by the ECB and the Organized Crime Bureau, which utilized undercover operations and electronic surveillance.<sup>97</sup> A racketeering indictment was returned against two

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hazardous waste, air pollution, water pollution and wetlands laws. Categories of Medicaid fraud include fraudulent receipt of medical assistance payments or filing false claims for Medicaid benefits. Providers can also engage in Medicaid fraud. Provider fraud can occur in the provision of traditional health care services and of ancillary services, like transportation. I will leave it to another article to describe the full spectrum of cases handled by the ECB over the years.

<sup>96</sup> The following Medicaid fraud case is a recent example of an organized criminal scheme where conspirators formed businesses for the sole purpose of perpetrating health care fraud. *See* 1999 OFFICE OF INSURANCE FRAUD PROSECUTOR ANNUAL REPORT 7-8. In 1995, the ECB was called in after a plastic bag of blood was found on a sidewalk in Trenton. *See id.* An investigation into the source of the bag found that this act was not a clear-cut case of medical waste dumping, but a sophisticated Medicaid fraud scheme that involved inner city health clinics. *See id.* The clinics would buy the blood of drug addicts, prostitutes and the poor for 50 dollars. *See id.* The blood would then be passed on to laboratories, which ran expensive and needless tests under the names of real Medicaid clients and then submit bogus Medicaid claims. *See id.* The clinic operators who supplied the blood received kickbacks from the owners of the labs, whose reimbursement from the Medicaid program occurred at a rate many times greater than the value paid for the blood on the street. *See id.* This scheme provided no real medical services to the blood donors and ultimately defrauded the State's Medicaid program of five million dollars. *See id.*

The case was referred to DCJ's Medicaid Fraud Unit, who cracked it by using undercover techniques to follow the blood and money trail to United Diagnostic Laboratory in Manalapan. *See id.* After a three-week jury trial in January 1999, one of the lab owners, Tahir Sherani, was convicted of conspiracy, theft and money laundering. *See id.* He received a one-year jail sentence. *See id.* Two other defendants, Mohammed Javid and Rehan Zaveri, pled guilty and received terms of ten and six years, respectively. *See id.* Unfortunately, most of the ill-gotten money reaped by this crime ring was sent overseas, making forfeiture of the profits impossible and restitution to the State unlikely. *See id.*

<sup>97</sup> *See State v. Ball*, 632 A.2d 1222, 1227-30 (N.J. Super. 1993).

notorious polluters, who acted as dumping brokers, three North Bergen public officials, including the Deputy Police Chief, and numerous New York haulers.<sup>98</sup> The racketeering enterprise was formulated for the purpose of reaping enormous profits from the unregulated and unlawful disposal of huge quantities of New York solid waste and construction debris in North Bergen and the Hackensack Meadowlands.<sup>99</sup> Some of the illegal dumpsites were wetlands.<sup>100</sup> The dump sites were operated by Michael Harvan and Richard Bassi, who paid town officials Joseph Mocco and George Hurtuk to issue bogus permits in an attempt to cover-up the illicit enterprise.<sup>101</sup> Deputy Police Chief Joseph Dulanie protected the operation.<sup>102</sup> As described by the New Jersey Supreme Court in *Ball*:

The defendants in the action now before the Court represent only a part of the enterprise. They were, however, an important part. Joseph Mocco, otherwise known, according to the indictment, as "The Big Guy," "The King," and "God," was the Town Clerk of North Bergen. He was responsible for the issuing of all manner of permits, including permits to dump. The evidence strongly indicates that he was the supervisor of defendant Hurtuk, the license inspector, and also that Mocco held meetings in his office at which the principal participants appeared. Defendant Dulanie was the deputy chief of police and appears to have exerted his influence to get charges dismissed against the dumpers, in return for a fee, and may also have participated in meetings at Mocco's office. Hurtuk, finally, was very active in the everyday management of the enterprise. Whenever the dumpers encountered trouble, they would summon him to the site and he would handle the problem. Also, he attempted to divert the investigation of the undercover DCJ officers away from the enterprise. Defendants Harvan and Bassi appear to have been responsible for finding dumping sites and for establishing a payment schedule with people who needed to dump. Finally, there is the now-deceased

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98 *See id.*

99 *See id.*

100 *See id.*

101 *See id.*

102 *See State v. Ball*, 632 A.2d 1222, 1227-30 (N.J. Super. 1993).

defendant Ball, who as a dumper, also played an important role in the enterprise.<sup>103</sup>

After a seven-month jury trial, all defendants were convicted of racketeering, conspiracy to commit racketeering, bribery and official misconduct. The total jail time meted out to Harvan, Bassi, Mocco, Hurtuk and Dulanie as racketeers was 84 years, including individual terms of 15, 17 and 20 years.<sup>104</sup>

The guilty verdicts marked the first convictions under the State's racketeering statute. N.J.S.A. 2C:41-1, *et seq.* The convictions were upheld on appeal by the New Jersey Supreme Court.<sup>105</sup> Thus, the *Ball* prosecution serves as a hallmark of what DCJ can accomplish when lawyers and investigators in various bureaus, in this case the Organized Crime, Appellate and Environmental Crimes Bureaus, pull together as one team.<sup>106</sup>

## 2. *State v. Frank*

Another example of DCJ's influence occurred in *State v. Frank*, a significant water pollution prosecution which involved General Marine Transport (GMT) and its president, Evelyn Berman Frank (a/k/a "the Dragon Lady").<sup>107</sup> GMT held contracts with six New York and New Jersey sewer authorities to transport sewage sludge to a federally designated dumpsite, located in the Atlantic Ocean 106 miles from

<sup>103</sup> *State v. Ball*, 661 A.2d 251, 270, 141 N.J.142, 180-181 (1995).

<sup>104</sup> See Neafsey and Bonanno, *RICO and the Environment in New Jersey: An Update*, NATIONAL ENVIRONMENTAL ENFORCEMENT JOURNAL :NATIONAL ASSOCIATION OF ATTORNEYS GENERAL 3 (1996).

<sup>105</sup> See *State v. Ball*, 661 A.2d 251, 270, 141 N.J.142, 180-181 (1995).

<sup>106</sup> The *Ball* State Grand Jury presentation was handled by John Mercun, now Deputy First Assistant Ocean County Prosecutor. I argued pre-trial motions, including motions to dismiss the indictment and to suppress evidence. The case was tried by SDAG John A. Matthews III and DAG Christopher Bubb. DAG Robert Bonpietro successfully argued the matter on appeal.

The two notorious polluters in *State v. Ball*, were also prosecuted for causing a ferocious fire at the HUB recycling facility near Newark Airport, which melted an overpass on I-78 and closed the interstate highway for four months. The ECB's investigation of the facility and its owner-operators, Michael Harvan and Richard Bassi, revealed that the HUB "recycling" operation was a front for what was in essence a massive, unlawful garbage dump. Harvan and Bassi were charged with conspiracy, theft, corporate misconduct and fraud, and were convicted by a jury on all counts. The Honorable Thomas Brown, J.S.C., sentenced them to 20 years and 15 years in jail respectively. Bassi's sentence was reduced on appeal. Harvan is still incarcerated serving his sentence.

<sup>107</sup> See *State v. Frank*, 280 N.J. Super. 26 (App. Div. 1995).

shore, for disposal.<sup>108</sup> To save the time and expense of the 106-mile trip, GMT barges would often short dump sewage sludge just off the Jersey shore and in the New York/New Jersey harbor. Furthermore, surveillance disclosed that, at times, barges taking on sludge from a sewage authority through one hose would simultaneously dump the same sludge into the water through another hose. The Dragon Lady was the matriarch of this corporate enterprise that willfully ripped off public sewer authorities paying for lawful disposal and in the process, blatantly caused egregious pollution.

After receiving a tip from a disgruntled GMT barge captain, the ECB conducted a 24-hour a day surveillance of GMT barges and monitored radio transmissions between those barges, tugs and company headquarters. The land and marine investigation lasted four months. On the same day that the ECB executed search warrants on the company and its barges, the State filed a civil suit against Standard Tank, Inc., a Frank family company, for water pollution.<sup>109</sup> Parent corporation GMT, its president, and other corporate officials including barge captains, were indicted for dumping sewage sludge contaminated with toxic pollutants into Newark Bay and the Atlantic Ocean off Sea Girt.<sup>110</sup> They entered guilty pleas to releasing toxic pollutants and hazardous waste into Newark Bay.<sup>111</sup>

Although the Dragon Lady pled to a second-degree crime, which carried a statutory presumption of incarceration, the State agreed to a term of probation for GMT's elderly president, Evelyn Berman Frank.<sup>112</sup>

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<sup>108</sup> See Neafsey and Bonanno, *Criminal Environmental Enforcement: The New Jersey Experience*, NATIONAL ENVIRONMENTAL ENFORCEMENT JOURNAL, NATIONAL ASSOCIATION OF ATTORNEYS GENERAL 6 (1995).

<sup>109</sup> The civil suit sought to enjoin the company's short dumping business practice and to impose civil penalties for misconduct. Thus, the civil and criminal cases proceeded as parallel enforcement actions. See *United States v. Halper*, 490 U.S. 435 (1989); *Hudson v. United States*, 522 U.S. 93 (1997); *State v. Womack*, 145 N.J. 576 (1996).

Unfortunately, Channel 2 news was prepared for the raid. As a long caravan of State vehicles containing State investigators left a waterfront Bayonne park headed for Standard Tank, Inc., in Jersey City where one of the search warrants was to be executed, a Channel 2 news helicopter flew overhead and beat the searchers to the company gate.

<sup>110</sup> See *State v. Frank*, 280 N.J. Super. 26, 29 (App. Div. 1995).

<sup>111</sup> See *id.*

<sup>112</sup> See *id.* N.J.S.A. 2C:44-1d provides:

The court shall deal with a person who has been convicted of a crime of the first or second degree by imposing a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that his imprisonment would be a serious injustice which overrides the need to deter such conduct by others.

The Honorable Anthony Iuliani, J.S.C., placed her on five years probation with conditions requiring a period of community service, divestiture of all stock ownership in any Frank family business and an obligation to gain court permission for travel outside the New York/New Jersey area.<sup>113</sup>

After this ruling, an ECB investigation established that Evelyn Frank had not divested herself of all stock holdings in Standard Tank, Inc., and also that she had traveled to the family condominium in Palm Beach, Florida, for vacation on 17 occasions without court permission.<sup>114</sup> At a 1994 violation of probation (VOP) hearing, Judge Iuliani found her guilty of violating two conditions of her probation and he promptly sentenced her to a three year jail term.<sup>115</sup> After four appellate court arguments, this sentence was finally upheld.<sup>116</sup> Ultimately, Evelyn Frank served more than nine months at the Edna Mahan Correctional Facility in Clinton.

The appellate court was clearly troubled by the idea of jailing a 79-year-old woman, even though the conviction underlying the VOP was for a second-degree crime. Even so, the defense did not raise any medical issues on a timely basis in the lower court.<sup>117</sup> However, on appeal, the defense argued that the defendant's high blood pressure would be adversely impacted by the "stress" of jail and that the jail sentence was in effect a "death sentence." Ultimately, the appellate court rejected this argument and ordered the State to monitor her medical condition while she was incarcerated.<sup>118</sup> After a week in jail, her high blood pressure dropped to normal levels, proving either that she had manipulated her medical tests by skipping doses of prescribed medication or that life at Clinton was better for her health than living on the Upper East Side of the Big Apple.<sup>119</sup>

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<sup>113</sup> See Frank, 26 N.J. Super. at 30.

<sup>114</sup> See *id* at 32-3.

<sup>115</sup> See *id* at 36. Judge Iuliani found that all the mitigating factors except the absence of a criminal record had dissipated due to Ms. Frank's contemptuous conduct. See *id*.

<sup>116</sup> See *id* at 42.

<sup>117</sup> See *id*. Had medical issues been raised, the State would have produced a videotape and other surveillance evidence of the defendant walking her dog along Park Avenue in New York City as was her daily early morning ritual. The tape showed her nimbly bending over to clean up the dog's mess at a time when the temperature was 13 degrees. Both the dog and the defendant were dressed exquisitely for the weather.

<sup>118</sup> See State v. Frank, 281 N.J. Super. 299, 303 (1995).

<sup>119</sup> See State v. Frank, 281 N.J. Super. 285 (1995), *certif. denied*, 142 N.J. 457 (1995).

With an overflowing State prison population, it has often proven difficult to gain significant jail terms for many defendants who commit environmental crimes. This is because environmental criminals are more often viewed as white-collar criminals. Nevertheless, the message of this case for prosecutors is to persist until justice prevails.

### 3. *Wilbert Fountain*

An ECB investigation into municipal corruption in Camden led to the *Wilbert Fountain* prosecution.<sup>120</sup> In this case, the ECB conducted an undercover investigation of public officials in Camden. As a result, the ECB uncovered the payment of kickbacks by private contractors to municipal officials who permitted commercial waste to be dumped at the city transfer station, which was licensed to receive only municipal waste. State investigators penetrated the operation by portraying themselves as haulers for private contractors. Various defendants were charged with conspiracy to commit racketeering, bribery, official misconduct and theft. It was alleged that the Camden City Department of Public Works was an enterprise that permitted private contractors, who paid bribes, to dump commercial waste at the municipal transfer station and to use city equipment for private purposes. After a two-month jury trial in 1994, prosecuted by SDAG Edward R. Bonanno and Assistant Camden County Prosecutor Gregory Smith, the defendants were found guilty of racketeering, bribery, official misconduct and theft. Two public works supervisors received six-year jail sentences and forfeited that portion of their salaries which was earned during the period of the racketeering enterprise.<sup>121</sup> Significantly, this marked the first case in the nation where forfeiture of a public official's salary was imposed under the criminal RICO law.<sup>122</sup>

### 4. *Proactive Efforts*

During the 1990s, ECB also targeted persistent regulatory offenders for proactive criminal investigation.<sup>123</sup> Thus, the ECB reviewed all Department of Environmental Protection (DEP)

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120 See Neafsey and Bonanno, *supra* note 111 at 7.

121 See *id.*

122 See *id.*

123 See *id.* at 9.

enforcement actions - orders, notices of violation and notices of civil administrative penalty action - as part of its intelligence base for identifying persistent offenders. Flagging violations that involved regulatory deceit was an important aspect of this review because the DEP's self-monitoring permit system is only as good as the integrity of the paperwork it receives. The ECB recognized that the DEP had primary enforcement responsibility to ensure compliance with conditions in the permits it issued.<sup>124</sup> But the ECB also recognized that it could buttress DEP efforts to assure that compliance is achieved by aggressively and proactively targeting persistent offenders and others who threaten public confidence in the regulatory agency by their deception.<sup>125</sup> Moreover, taking down the worst offenders sends an appropriate message of general deterrence to others of similar criminal disposition. Therefore, the ECB identified individuals or companies it believed were committing crimes and proactively examined their conduct through undercover operations and both physical and electronic surveillance.

A proactive investigation into one of DEP's most notorious persistent offenders, Christopher Grungo, uncovered a racketeering enterprise comprised of various oil transporters. These persons presented a facade of business legitimacy and masked their true intent by filing false and misleading paperwork with State officials. This investigation included the use of undercover investigators and electronic surveillance as part of the undercover operation. It culminated in Grungo's arrest for selling tax exempt heating oil as diesel fuel and for selling untreated waste oil as fuel oil.<sup>126</sup> After his arrest, the DEP deregulated waste oil, thereby negating the environmental aspect of the prosecution. Nevertheless, Grungo was indicted for racketeering based on theft, false filings and tax crimes.<sup>127</sup>

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<sup>124</sup> Most members of the regulatory community comply with environmental permits and regulations, either out of their own financial interest or because of a corporate ethos that espouses an environmental conscience. However, like everywhere else in life, there will always be some who put their own personal greed and profit above all else.

<sup>125</sup> A comprehensive enforcement program recognizes the proper balance between civil and criminal enforcement and works best when criminal action supplements civil enforcement. But the enforcement system is turned on its head if civil regulators only take action after criminal authorities are involved. During the early 1990s, the DEP forwarded 50 to 60 matters to the ECB annually. By the late 1990s, those referrals dropped to two or three per year. The ECB now relies on many other sources of information, including citizens, environmentalists and informants.

<sup>126</sup> See Neafsey and Bonanno, *supra* note 11 at 8.

<sup>127</sup> In the mid-1980s, Grungo was tried twice in the *Noble Oil* prosecution. This case



Grungo pled guilty to racketeering, cooperated with the State and received a five-year jail term. Eight other defendants also pled guilty for their roles in this criminal enterprise and ten oil tankers were forfeited to the State.<sup>128</sup>

Another proactive investigation into false and misleading filings by a persistent offender led to the indictment of Carmine Franco. Based on Carmine Franco's 1982 guilty plea to antitrust violations in the *Trade Waste* case<sup>129</sup> and various and repeated regulatory violations, Carmine Franco and his brother Salvatore were stripped of their solid waste licenses in the mid-1980s and debarred from running garbage companies in New Jersey.<sup>130</sup> However, they were permitted to remain in the unregulated recycling industry. Operating the recycling companies as camouflage, Carmine and Salvatore Franco maintained control over the Franco family garbage companies, which had been transferred on paper to their children.<sup>131</sup> In actuality, the senior Francos ran the entire operation, including the garbage carting businesses now owned by the sons.

This corporate racketeering enterprise was investigated by a task force of ECB investigators and DEP inspectors through numerous surveillances of Franco garbage and recycling trucks. Documents seized under a search warrant or received under a grand jury subpoena were analyzed by the criminal investigators and matched with what had been observed during the surveillances. An investigative State Grand Jury led to charges against the Francos and four of their children for racketeering, theft, corporate misconduct, forgery and tax crimes.<sup>132</sup>

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involved the unlawful sale of a mixture of waste oil, a hazardous waste, and heating oil to consumers as home heating oil. Each trial ended with a hung jury. Thereafter, the charges were dismissed, so it may have appeared that Grungo's nine lives were at work again. *See State v. Abbati*, 99 N.J. 418 (1985). However, it was the tax crimes that formed the basis for the racketeering charges that led to Grungo's downfall, just as a tax conviction led to Al Capone's jailing and demise.

<sup>128</sup> *See* N.J.S.A. 2C:64-1a(2).

<sup>129</sup> *See State v. New Jersey Trade Waste Association, et al.*, 96 N.J. 8 (1984).

<sup>130</sup> The *Trade Waste* prosecution involved 57 corporations, associations and individuals charged with conspiring to violate antitrust laws by assigning particular commercial-industrial garbage pick-up service stops as the property of specific haulers, and ensuring that the stops remained with those to whom they had been assigned. *See State v. New Jersey Trade Waste Association, et al.*, 96 N.J. 8 (1984).

<sup>131</sup> *See Neafsey and Bonanno, supra* note 111 at 10. The recycling and solid waste disposal companies were located adjacent to each other in Hillsdale.

<sup>132</sup> The theft charges stemmed from the Francos' avoidance of the Bergen County waste transfer station by shipping waste out of state in violation of a contract that established State waste flow directives. The State's waste flow scheme was found unconstitutional in *Atlantic*

Ultimately, Carmine Franco pled guilty to corporate misconduct and received a nine-month jail sentence.<sup>133</sup> Two of Carmine Franco's sons also pled guilty to corporate misconduct for their role in the illegal enterprise. The court imposed \$11.5 million in restitution and penalties on the Francos, elder and younger, as part of a global settlement. All Francos, including the wives and daughters who had also been "owners" of the various companies, were also debarred from the garbage and recycling industries and ordered to sell their garbage and recycling companies. Despite this action, in light of Carmine Franco's dismal track record for compliance, the State must remain vigilant of his future conduct.

Due to the ECB's case work, a final point on national leadership is in order. In 1995, the ECB was asked by the National Association of Attorneys General (NAAG) to write a criminal environmental enforcement guide for environmental prosecutors and civil enforcers.<sup>134</sup> Starting under Attorney General Deborah T. Poritz and finishing under Attorney General Peter Verniero, the ECB prepared a 94 page monograph entitled *Environmental Prosecutions: Investigation to Sentencing*.<sup>135</sup> The monograph was both a compilation of environmental crime case law throughout the country and a primer with practical tips

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*Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County*, 893 F. Supp. 301 (D.N.J. 1995), 909 F. Supp. 229 (D.N.J. 1995), 931 F. Supp. 341 (D.N.J. 1996), *aff'd in part and rev. in part*, 112 F.3d 652 (3d Cir.), *cert. den. sub nom. Shinn v. Atlantic Coast Demolition & Recycling, Inc.*, 522 U.S. 966 (1997).

<sup>133</sup> Carmine Franco has been described in news reports as a ranking member of the Genovese crime family. See Christopher Mumma, *Hauling Firm Patriarch Gets 270 Days*, THE BERGEN RECORD, June 25, 1998 at L1. See also George Anastasia, *Alleged Mob Figure Gets Nine Months*, THE PHILADELPHIA INQUIRER, June 25, 1998 at B1. While his county jail time may appear meager, he was at least convicted by the State in both criminal and civil proceedings for this scheme. Federal authorities had pursued Carmine Franco for more than two decades without any luck. Salvatore Franco died before the case concluded.

<sup>134</sup> The handbook was written and edited by DAGs John Kennedy, Bruce Kmosko and Robert Lytle, SDAG Edward Bonanno and AAG Edward Neafsey. Robert Lytle is now an Assistant Mercer County Prosecutor and John Kennedy is the State's Deputy Inspector General.

<sup>135</sup> Deborah T. Poritz is the Chief Justice of the New Jersey Supreme Court and Peter Verniero is an Associate Justice. As Attorney General, Deborah T. Poritz was one of three attorneys general selected from throughout the nation to serve on the federal Environmental Protection Agency's (EPA) Senior Environmental Enforcement and Compliance Forum. The Forum also included a select group of United States Attorneys, State Environmental Commissioners, and representatives from the EPA's enforcement section and the Department of Justice's environmental section. The Forum met regularly to address environmental enforcement issues of mutual federal and state concern.

for prosecuting environmental criminals.<sup>136</sup> In 1996, NAAG distributed the monograph to enforcement agencies nationwide. In 1998, ECB attorneys updated the monograph and NAAG reissued it throughout the nation. The ECB was chosen by NAAG to author both monographs because it had achieved a national reputation in this specialized area of crime fighting.

## VI. CONCLUSION

True to the spirit with which it was founded, I am sure that the DCJ will continue to respond in novel and improved ways to protect New Jersey's citizenry. Even now, new criminal groups have been replacing traditional organized crime families.<sup>137</sup> Also, the Internet has opened a new galaxy for criminals, both white-collar (fraudsters) and violent (child pornographers and molesters). Again on the cutting edge of law enforcement, the DCJ has recently established a non-traditional organized crime unit and a computer crime unit as part of its Organized Crime Bureau. Thus, the DCJ's specialized bureaus continue to fill a void by investigating and prosecuting the commission of crimes which would otherwise go unchecked in our State.<sup>138</sup> In performing this function, these bureaus are fulfilling the DCJ's original statutory purpose and add to the DCJ's rich heritage of fighting organized crime and corruption. The specialized crime fighting bureaus must continue utilizing every legal tool and law enforcement technique in order to match today's criminal.

It should not be forgotten that in our democratic society, "[t]he first right of the individual is to be protected from attack. That is why we have government, as the preamble to the Federal Constitution plainly

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<sup>136</sup> See Robert E. Misseck, *Focus on Prosecuting Environmental Crime*, THE NEWARK STAR LEDGER, December 8, 1996 at 27.

<sup>137</sup> For example, the Russian Mob has gained fame in the United States by perpetrating various fraud and tax scams, as well as the full panoply of violent crimes. It is said that members of the Russian Mob are highly skilled in manipulating the regulatory system and consider ripping off government to be a badge of honor. See generally, ROBERT I. FREEDMAN, RED MAFIYA: HOW THE RUSSIAN MOB IS INVADING AMERICA (Little Brown & Co.) (1999).

<sup>138</sup> During the latter half of the 1990s, crime rates for index crimes dropped to their lowest levels in the past 30 years. The dramatic decline is attributed to many factors. Some of the law enforcement factors include instituting innovative programs and placing renewed emphasis on crime prevention. The overwhelming majority of cases prosecuted by DCJ, however, do not involve index crimes.

says."<sup>139</sup> This includes, I submit, protection from crime in all its nefarious forms. While government at the local, county, state and federal levels each have an important role to play in this regard, DCJ's role is unrivaled. The DCJ's future will be dictated by the vision of its leaders in determining the balance between policy setting and case work while recognizing its unique role in New Jersey law enforcement.<sup>140</sup> I trust that DCJ will continue to discharge its duties under the Criminal Justice Act and remain on the beat in the coming decades in defense of all New Jerseyans.

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<sup>139</sup> See *State v. Bisaccia*, 58 N.J. 586, 590 (1971).

<sup>140</sup> A good example of this was the creation of the Attorney General's Advisory Committee on Statewide "Use of Force Policy," which was co-chaired by then-DCJ Director Paul H. Zoubek (now First Assistant Attorney General) and DCJ Deputy Director Dr. Wayne Fisher. Attorney General John J. Farmer, Jr. established the Committee to examine the use of force in instances where a motor vehicle constitutes the threat to which police officers must respond and to address the issue of discharging firearms at moving vehicles. The Committee recommended a new "Use of Force Policy," for law enforcement in New Jersey, which set forth specific criteria that a police officer must follow when discharging a firearm at a moving vehicle. Attorney General Farmer approved the recommendations in May 2000; they began to be implemented by the county prosecutors in September 2000. See ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2000-1 (Aug. 4, 2000).