

GOVERNOR'S COMMISSION ON
THE STATEWIDE PROSECUTION FUNCTION
February 8, 1985

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"Statewide Prosecution"

The Honorable Bob Graham
The Governor of Florida
The Capitol
Tallahassee, Florida 32301

Dear Governor Graham:

The charge to the Governor's Commission on the Statewide Prosecution Function, as you clearly indicated in Executive Order 84-150, was to draft, prior to the 1985 legislative session, a constitutional amendment to permit the establishment of an agency with statewide responsibility for prosecuting organized criminal activity and to draft enabling legislation to establish and define the jurisdiction of such an agency. Attached hereto are the products of the Commission members' deliberations. The Commission has drafted a proposed constitutional amendment which would grant to the Attorney General concurrent jurisdiction with the state attorneys to prosecute violations of the criminal laws of the State of Florida, in a manner prescribed by law. In addition, the Commission has drafted proposed enabling legislation which defines the jurisdiction of the Attorney General and creates an Office of Statewide Prosecution headed by a statewide prosecutor who is empowered to exercise the Attorney General's jurisdiction.

The proposed constitutional amendment and enabling legislation are the products of five meetings of the Commission, beginning in September of 1984. At the first meeting, the Commission heard from some of the individuals who are actively involved in the statewide investigation of organized crime and who shared with the Commission some of their experiences in this area. Bob Stone, State Attorney for the Nineteenth Judicial Circuit and Legal Adviser to the Statewide Grand Jury, advised the Commission that this state has a significant organized crime problem and that we need to address the problem on a statewide basis. The Director of the Division of Criminal Investigations of the Florida Department of Law Enforcement, Jim Nursey, detailed for the Commission the scope and extent of organized crime in our state. Bob Dempsey, Commissioner of the Florida Department of Law Enforcement, explained to the Commission his integrated approach towards investigating organized criminal activity. He related that the objective of the integrated approach is not simply to affect an

arrest, but rather, to disrupt and dismantle the criminal organization, utilizing a multifaceted approach.¹ All of the speakers echoed the same theme: to combat organized crime, it is necessary to have a statewide, coordinated investigative and prosecutorial capacity. The State of Florida has established the Florida Department of Law Enforcement which has statewide responsibility for investigating organized criminal activity, but the state lacks an agency which has statewide responsibility for prosecuting organized crime.

At our second meeting, the Commission members reviewed the testimony of those working in the law enforcement and criminal justice fields and identified the issues that needed to be resolved to establish a statewide prosecutorial presence. In November, the Commission held its third meeting, a two day public hearing, in Tampa. As Chairman, I invited over three hundred individuals - sheriffs, police chiefs, state attorneys and other interested persons - to attend and speak before the Commission. In addition, the Commission heard from three recognized experts in the statewide prosecution of organized crime: Ronald Goldstock, Director of the New York State Organized Crime Task Force; Edwin H. Stier, Director of the New Jersey Division of Criminal Justice from 1977 to 1982, and G. Robert Blakey, Professor of Law at Notre Dame Law School and Director of the Cornell Institute on Organized Crime from 1973 to 1977.² Most of the speakers agreed - the experts with unanimity - that there is a need in the State of Florida to have some statewide prosecutorial capability to deal with sophisticated crime that is multijurisdictional in scope. The experts stressed the need for prosecutors to participate in the investigative stage of a case involving organized criminal activity. Furthermore, they deemed it essential that a single agency be responsible for prosecuting organized crime cases because of the necessity of providing continuity in such cases which often require 3 to 4 years to develop.

Having heard from the experts in the field, and with a fuller understanding of the problem, the Commission, at its last two meetings, addressed those issues identified at the second meeting and reached the following conclusions as to how to resolve the issues:

¹A full transcript of the remarks delivered at this meeting is transmitted with this report.

²Ibid.

- Where should the agency be located? The Commission determined that the agency should be located in the Department of Legal Affairs.
- What should the agency and the agency head be named? The Commission determined that the agency should be designated the Office of Statewide Prosecution and the agency head the Statewide Prosecutor.
- How should the Statewide Prosecutor be selected? The Commission determined that the Statewide Prosecutor should be appointed by the Governor and Attorney General jointly.
- What should be the tenure of the Statewide Prosecutor? The Commission determined that the Statewide Prosecutor should be appointed for a term of four years to run concurrently with the terms of the Governor and Attorney General. The Statewide Prosecutor cannot be removed prior to the end of his term, except by the joint action of the appointing officials. Any vacancy in the office shall be filled within sixty days and during the term of any vacancy, the Attorney General shall exercise all the powers and perform all the duties of the Statewide Prosecutor. The Statewide Prosecutor may not run for or be appointed to a state office for a period of two years following vacation of office.
- What should be the qualifications of the Statewide Prosecutor? The Commission determined that the Statewide Prosecutor should be an elector of the state, a member of The Florida Bar for the preceding five years, devote full time to his duties and not engage in the private practice of law.
- What should be the jurisdiction of the Office of Statewide Prosecution? The Commission determined that the office should have the same subject matter jurisdiction as is presently authorized by law for the Statewide Grand Jury. However, the Statewide Prosecutor may not exercise his jurisdiction unless the criminal activity is

multi-circuit in scope and the Statewide Grand Jury Act should be amended to contract the exercise of its authority from multi-county to multi-circuit criminal activity.

- What powers should be conferred on the Statewide Prosecutor? The Commission determined that the Statewide Prosecutor shall have the same powers as conferred by law on state attorneys, except the power to initiate wire interceptions. Apart from the legal uncertainty of being able to confer such power upon other than those currently named in the wire interception statute, it was determined that a Statewide Prosecutor would not be impeded by having to rely on the Attorney General to formally initiate wire interceptions.

The Commission members agreed that the Office of Statewide Prosecution should be located in the Department of Legal Affairs under the supervision of the Attorney General, because he has historically, at common law, been charged with the responsibility of prosecuting criminal activity and the public continues to believe that the Attorney General is ultimately responsible for this activity. However, it was the opinion of the Commission that the office should operate independently of the rest of the department. To help assure the independence of the office, the Commission opted to make it a separate budget entity, to exempt the staff from career service, and to provide that the Statewide Prosecutor be appointed by the Attorney General and Governor jointly.

The Commission members expressed two concerns about the position of Statewide Prosecutor: on the one hand, the members wanted to insulate the Statewide Prosecutor from any undue political influence, and on the other hand, they wanted to assure that the Statewide Prosecutor did not use his position as a stepping stone to a state political office. To accomplish the first objective, the Commission determined that the Statewide Prosecutor should be appointed for a term of four years and that he could not be removed prior to the end of his term, except by the joint action of the Governor and the Attorney General. To accomplish the second objective, the members agreed that the statewide prosecutor would be prohibited from running for or being appointed to a state office for two years after he leaves his position.

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One of the most difficult decisions made by the Commission was to determine the jurisdiction of the Office of Statewide Prosecution. The Commission recognizes that establishing a state agency charged with the responsibility of prosecuting multijurisdictional criminal activity creates a potential for conflict between the agency and the state attorneys who are charged with prosecuting all criminal activity in their respective circuits. While the Commission was unable to establish a jurisdictional test that would eliminate all potential overlap in the responsibilities of the Statewide Prosecutor and the state attorneys, the Commission members believe that by recommending the same subject matter jurisdiction as is presently provided in the Statewide Grand Jury Act, they are adopting a test that has proven workable and has been met with few objections since it was first adopted in 1973. In addition, to further reduce the potential that the functions of the Statewide Prosecutor and the state attorneys will overlap, the Commission recommended changing the jurisdiction of the statewide grand jury from multi-county to multi-circuit criminal activity and adopted the same standard for the Office of Statewide Prosecution. In summary, the enabling legislation provides that before the Statewide Prosecutor can initiate criminal prosecution, a two-part jurisdictional test must be met: first, the subject matter of the offense prosecuted must be one of the offenses enumerated in the enabling legislation, and second, such offense must be occurring, or must have occurred, in two or more circuits as part of a related transaction.

In addition to creating a state agency to prosecute organized crime, the enabling legislation attempts to identify and amend those provisions of the Florida Statutes which would otherwise conflict with the recommendations of the Commission. During the review of the statutes, the Commission discussed, but did not resolve, the question of whether it is necessary or desirable to continue the Council on Organized Crime, provided for in section 27.37, Florida Statutes, if the enabling legislation is adopted. The Commission decided that resolution of this question was beyond the scope of its charge. Therefore, it recommends only that this issue should be considered at the appropriate time by the Florida Legislature.

The Commission recognizes that organized criminal activity poses an immediate threat to the citizens and vitality of our State. Therefore, while it is the desire

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of the Commission to implement, this year, those provisions of the enabling legislation that could be implemented prior to the ultimate adoption of the constitutional amendment by the voters, the Commission could not devise a method for accomplishing this objective. The Commission notes that in the Office of Prosecution Coordination, Office of the Governor, there is presently a staff of five attorneys that acts as permanent assistant legal adviser to the statewide grand jury. If the Commission's recommendations are adopted by the Legislature and the people, the statewide grand jury and the permanent staff should logically be transferred to the Department of Legal Affairs. While the transfer would not require the adoption of the constitutional amendment, the Commission was unable to devise a way to transfer this unit without divesting the staff of the authority to act as assistant legal adviser to the statewide grand jury. It is for this reason that we have recommended the adoption of the constitutional amendment before establishing the Office of Statewide Prosecution. We would, however, encourage you to continue to support and develop the permanent staff of the statewide grand jury, since the staff would logically be the nucleus of the Office of Statewide Prosecution, once the enabling legislation takes effect.

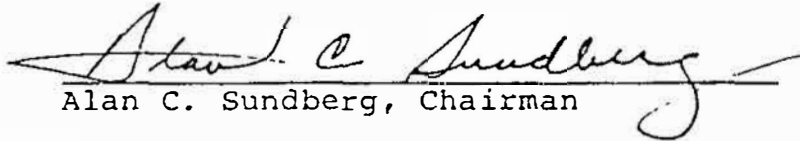
During the course of the Commission's deliberations, legislation from many jurisdictions without the state of Florida was reviewed for such instruction as it could provide. Although concepts embodied in some of those laws are incorporated in the Commission's final products, Florida is truly unique in the manner in which its prosecutorial function is structured. Hence, the products which we supply you are essentially "Florida grown." Florida has often been on the cutting edge of devising innovative responses to pernicious social problems. Our environmental laws and court reform measures are just several of many examples. We trust that the enclosed proposals will serve as an equally suitable response to the significant problem of organized crime with which the citizens of this state are today faced.

The Commission welcomed the opportunity to be of service to you and the people of Florida in the performance of this task. As Chairman, I should like to personally commend and thank the members of the Commission for the

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diligence and yeomanlike service which they displayed throughout.

Respectfully submitted,


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