

Testimony from Robin A. Davis, Merrimack County Attorney

To the Commissioners of the Law Enforcement Accountability, Community and Transparency

8/24/2020

I know that this submission is late however I hope that the information can be provided to the Commissioners before they complete their reports.

As a County Attorney, the attorneys in my office work directly with the police departments regarding the cases that are prosecuted in the Superior Court and in some counties the Circuit Courts. I do think it would have been very helpful to have had a County Attorney on the Commission to help address the goals of the Commission. I would like to speak to a few issues I think are important:

1. Each County Attorney is an elected official and the highest law enforcement officer in the County. We each work for the citizens of the County. We received all the felony cases from our police departments for review before making a charging decision that will result in the prosecution of an individual. We also set policies within our office on how to proceed with this process. Our relationships with the police chiefs and their departments is very important to the successful prosecution of our cases. Although, we do not work for or represent the departments themselves, we work very closely with them in an effort to prosecute the criminal behavior occurring in our communities. The Attorney General is an appointed position and the County Attorneys do not work for the Attorney General. However, the Attorney General's office provides protocols for us to follow and provides assistance and training to our offices. Since I was elected two years ago, I have seen the police chiefs or other members of the police departments go directly to the Attorney General when they have an issue with the County Attorney or members of their office. In my experience, these concerns were not discussed with me nor was I advised that the police had made contact with the Attorney General. However, the Attorney General then sent his attorneys directly to the courtroom to inquire about the plea and what had been done to notify the victims and police prior to the plea. I see this as inappropriate. The police should be encouraged to communicate their issues and work them out with the County Attorney. The police should not be empowered to circumvent the County Attorney. This also occurred in Hillsborough County, the Attorney General worked with the police to try to remove the County Attorney without providing any corrective measures or training. Later it was

determined that the Attorney General did not have the authority to remove the County Attorney.

2. Training for new County Attorneys should be provided by the Attorney General's Office and the County. At the present time, the Attorney General's office provide a one day training that touches on some of the responsibilities of the office such as one-party authorizations, victims services, Immunity ect. However, a more intensive training may be advisable to support the county attorney from the beginning and help them build good relationship with the police departments.

3. The role of a prosecutor is an important one and one that needs to be understood and respected by police officers and chiefs. I have been told by chiefs and officers that "I work for them." This is not accurate. The role of a prosecutor is separate and distinct from the role of a police officer. Officers investigate criminal behavior and determine if an individual should be arrested. The case is then referred to the prosecutor for review and to determine if the behavior can be proved based on the facts and circumstances provided via the investigation. If the prosecutor feels, he or she can meet the elements of the Statute they may proceed with prosecution. If they feel additional investigation is needed, they will request the police provided the additional information before proceeding. This should be a strong professional relationship based on a mutual understanding of each other's roles in the criminal justice system. This relationship may have become blurred by the role of police prosecutors. Police departments utilize police prosecutors to represent the department in the Circuit court. These prosecutors can be a police officer but more recent departments have hired attorneys that work directly for the police departments. These prosecutor works in the department and is supervised by the Chief of Police. This is not the case with Assistant County Attorneys. These prosecutors are appointed by the County Attorney to serve as assistant prosecutors and work for the citizens of the county. They are supervised and paid through the County Attorney's office creating a degree of separation from the police departments.