

The American Prosecutor in Historical Context

By Joan E. Jacoby

Introduction

The American prosecutor enjoys independence and a wealth of discretionary power unmatched in the world. With few exceptions, the prosecutor is a locally elected official and the chief law enforcement official of the community. The American prosecutor represents a local jurisdiction and his or her office is endowed with unreviewable discretionary authority. Nowhere else in the world does this combination of features define prosecution.

If there is no other prosecutor like this then where did the office come from and what was it that gave this position this unique set of features? There has been continuous interest—and even controversy—about the origins of the prosecutor. Historians have variously pictured the prosecutor as having descended from one of the three European nations that had a substantial impact on the early development of the American nation. They have claimed that the prosecutor descended from the English attorney general, the French *procureur publique*, and even the Dutch *schout*. Although a number of convincing arguments can be developed to demonstrate the influence of all three heritages on American criminal justice, no compelling theory has been forwarded that shows a direct line from any one European precursor to the American prosecutor. The fact is that while many features of these predecessors may be found in the American prosecutor, the role, powers and authority of the office reflect an amalgam of forces not

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exclusive to any of them.

The American prosecutor has the power, like the *procureur*, to initiate all public prosecutions; he or she is a local official of regional government like the *schout*; he or she has the power to terminate all criminal prosecutions like the attorney general. But as much as the prosecutor has these features, the roots of the office cannot be attributed to any single source. Rather, it reflects the same forces that fostered the American revolution, conquered the vast open spaces of the west and espoused the principles of democracy, namely, the right of the people to have a voice in the government process and a belief in a system of checks and balances.

This article traces the development of the American prosecutor, showing how the office came to assume its present role and examining the influences that produced the essential features of the modern prosecutor. It explores the historical context that changed the face of prosecution. Previous theories are presented about the origins of the American prosecutor that show how little is known about its historical development. It sets the stage for the birth of the American prosecutor by focusing on the first step that occurred when the colonies adopted a system of public, not private, prosecution.

It explores why prosecution is local in nature, not centralized at the federal level. It examines the forces that made the office of the prosecutor elective. Finally, it traces the controversial history of the prosecutor's discretionary power, namely the unreviewable authority to bring charges or dismiss them. By the end of the article, the hope is that all prosecutors will have a richer understanding of their roots and the history of events that created this uniquely American institution. By describing the dynamics of this development process, prosecutors may be better able to examine present day issues within a historical context.

Previous Studies about the Origins of the American Prosecutor

In 1620, the estimated population of the colonies was 2,500. By the end of the century (1690) the colonial population had increased almost one hundred-fold, numbering about 213,500. Bear in mind, however, that the rapidly growing colonial population was dispersed over widely separated regions. In 1700, Boston had a colonial population of 7,000; New York, 5,000; Philadelphia reported 700 houses and Charleston, South Carolina had 250 families.

By 1790, a new nation had been formed in North America. Following a revolution, a peace treaty and the election of our first American president, the first census estimated a population of 3.9 million that included 698,000 slaves and 65,000 free Negroes. During this period, the office of the American prosecutor was born and was given a set of characteristics that would ultimately make it unlike any other prosecutor in the modern world.

The prosecuting attorney did not descend from any one particular institution at any one time or place. While much remains unclear or undocumented, some facts are known. It can be safely said that: there was no figure like the prosecutor at Jamestown or Plymouth; by the time of the revolution, an officer with some of his basic characteristics had appeared in various colonies; and, by the Civil War there were district attorneys quite like those in the present era.

The few attempts at recording the history and development of the American prosecutor have been inaccurate or incomplete. A summary published in the Missouri Crime Survey in 1926 was one of the first to describe the origins of the American prosecutor. The summary was not a scholarly study but simply stated that the American public prosecutor was descended from a "chief prosecuting officer in England... whose duties for centuries have been the prosecution of crimes and misdemeanors."² This assertion was inaccurate since England did not adopt a system of public prosecution of crimes until 1879, only 47 years before the publication of the Missouri Crime Survey.³

In 1931, the Wickersham Report on Prosecution attempted to clarify the forces influencing the development of prosecution. In a longer and more detailed report, the commission noted that American criminal justice differed from the English tradition in that the British used a system of private prosecution whereby individual citizens hired lawyers to press prosecutions of crimes they had suffered. The report concluded that the concept of a public officer to conduct prosecutions had been borrowed from the French after the American Revolution, when French institutions were in favor and British institutions were unpopular.⁴

Although this theory had some merit, it overlooked the facts that public prosecution had preceded the American Revolution and that public officers conducted prosecutions 75 years before the French influenced the young American republic. It also failed to account for crucial differences between the French *procureur* who was part of a national civil service hierarchy with very little freedom of action and the American prosecutor who, even then, was an independent, local officer.

Another highly provocative theory was forwarded in 1952 by W. Scott Van Alstyne writing in the *Wisconsin Law Review*.⁵ Van Alstyne argued that the prosecuting attorney was an office that resulted from Dutch influence. Early Dutch settlers, scattered along the American seaboard from Delaware to Connecticut, had utilized a local prosecuting official called the "*schout*." Van Alstyne documented colonial records indicating the existence of the *schout* in at least five of the original colonies. Unfortunately, the Dutch settlements had a short life and their influence on criminal justice and prosecution could not be directly linked to the American prosecutor.

The most comprehensive study of the possible historical origins of the American prosecutor was prepared in 1976 by Jack Kress of the State University of New York.⁶ Kress concluded that the truth about the three theories of development lay in a combination of factors and influences. His analysis suggested that the development of the prosecutor could be traced by integrating the various factors that influenced the evolution of the office rather than by trying to force the modern prosecutor into a narrow historical framework. Kress's approach is the one adopted for this study. The prosecutor and prosecution are presented within their historical context, i.e., within the legal institutions and choices available to the early American colonists.

It is the choices that produce the most interesting insights into the development of the American prosecutor. Why was one feature selected and not others? Were all the decisions deliberate or did some

come about as a natural extension of our society's development? By examining the choices and the forces that made them acceptable, we can see how they combine into our modern system of prosecution.

Private versus Public Prosecution

The fundamental, differentiating factor in American criminal law lies in the adoption of a system of public prosecution. The public prosecutor is not part of America's heritage from British common law. As Professor Kress stated, the district attorney appears to be "a distinctive and uniquely American contribution... whereas Americans typically describe their legal system as based upon English common law, in terms of both its procedural attributes and substantive penal codes, the public prosecutor is a figure virtually unknown to the English system, which is primarily one of private prosecution to this day."⁷

The origin of a public prosecutor presents something of a historical and social puzzle. What is clear is that private prosecution was inconsistent with the American concept of a democratic process. Although private prosecution prevailed in the English world at the time of the establishment of the first American colonies in Jamestown and Plymouth, it never took root in the colonies. By 1704, one colony, Connecticut, had adopted a system of public prosecution and all others would soon follow.

There are clear differences between a system of private prosecution and a public one both in concept and operations. The British system of private prosecution developed from a social and governmental environment that had its roots in medieval rather than modern social contracts and was designed to protect the monarch, not the individual. The court system that evolved was one that pitted individual against individual. English common law did not make the sharp division between civil wrongs and criminal wrongs. All violations of law were wrongs committed by an individual against an individual. As a result, English justice was a system whereby the individual protected himself and avenged himself in the courts because he could not rely on the strength and security of societal protection. It was a system designed to protect *property* in a society based on *property*. As a result it became a system of government "of the rich and by the rich" but then, so too was the medieval English society in which it first developed.⁸

As the English legal system developed and became more complex, the professional bar grew and adapted, serving as prosecutors for individual clients. No lawyer was elected or appointed to serve as a representative of the county, the court, the town or the government. Rather, individual solicitors and barristers were hired to prosecute individual cases in the same manner as they were for any other legal matter. The conduct of prosecution (until 1885) was never "in the hands of any special body of counsel dedicated to that particular class of work... there is nothing which corresponds to the District Attorney in the United States."⁹

The French had operated under a similar system beginning in the twelfth century; but, over the next three hundred years, they began to adopt public prosecution in progressive stages. Eventually, they abandoned the private system, retaining private complaint only as a method of correcting a neglectful prosecutor.¹⁰ The Dutch and Germans adopted similar and related forms of public prosecution.

The idea of private prosecution is alien to modern America, as is its basic supposition that crime is essentially a private concern between the aggressor and the victim. The concept of criminal justice that developed in the United States proclaims the opposite view. The American system conceives the criminal act to be a public occurrence and society as a whole to be the ultimate victim.

There are few vestiges of private prosecution in the United States today. Few states allow the use of private prosecutors, and those that do restrict their participation to limited types of cases. The opposition to private prosecution has also been clearly and consistently demonstrated by court decisions. In several states, convictions were overturned in cases where private counsel was hired to pursue a prosecution. In the opinion of the Wisconsin courts in the *State v. Peterson*, such practice was contrary to "state policy."¹¹

In 1921, the Connecticut courts made the definitive statement in opposition to private prosecution in *Mallory v. Lane*. The opinion of the court stated, in part:

In all criminal cases in Connecticut, the state is the prosecutor. The offenses are against the state. The victim of the offense is not a party to the prosecution, nor does he occupy any relation to it other than that of a witness, an interested witness mayhaps, but none the less, only a witness. It is not necessary for the injured party to make complaint nor is he required to give bond to prosecute. He is in no sense a relator. He cannot in any way control the prosecution and whether reluctant or not, he can be compelled like any other witness to appear and testify. The Peace is that state and sense of safety which is necessary to the comfort and happiness of every citizen and which government is instituted to secure.¹³

When the earliest settlers of America rejected the premise of private prosecution, they set in motion a series of events that ultimately produced a uniquely American prosecutor who was characterized by being a locally, elected official. This article documents how prosecutors emerged and became instruments of local governments that were firmly established in the colonies long before the American Revolution began and the United States was created.

The Emergence of Local Prosecutors

This section describes the forces that created the local courts and justice systems from which the local sheriff and the local prosecutor emerged. It examines the period from 1600 to 1750 when local governments waxed strong; English and Dutch judicial systems were adapted to meet local needs; courts were decentralized and grand juries were added. The result was to create two new faces in the justice system—local sheriffs and prosecutors.

From the beginning, the colonization of America fostered a spirit of independence among its new immigrants that was reinforced by the geographic dispersion of the colonies over more than two thousand miles along the eastern seaboard of North America. Although they shared British norms and traditions and a system of jurisprudence based on English common law, their isolation from each other and England sparked the emergence of strong and independent forms of local government. “The heritage of English ideas that went with the institutions was so rich and varied that Americans were able to select and develop those that best suited their situations and forget others that meanwhile were growing prominent in the mother country... The New England town, for example... set New Englanders off not only from Englishmen, but from Virginians.”¹³

English royal power would increase the size of the colonies in the eighteenth century, but it could not control the emergence of a basic local populism that remained dominant until the American Revolution.¹⁴ Influenced by geography, a spirit of independence and a rich cultural heritage, the early residents created local government bodies, established local courts and as part of this process, created a local public prosecutor.

In many ways, the rise of local independence was as much a result of neglect by the monarchy and the British government as it was an exercise of the independent nature of the colonists. British disinterest allowed the colonists to devise a judicial system that would be consistent with their beliefs and the assumptions of public prosecution that they had adopted at the outset. “The British government claimed the sole right to create courts, and the early courts except in the charter and proprietary colonies, were created by executive action. However, after the initial settlement, the judiciary received little attention from the King, and colonial courts were left to evolve without much thought or consideration. England never tried to make the judicial system in the colonies uniform.”¹⁵

In the early 1600s, the first courts reflected the simple nature of colonial society with its small population. They were tribunals held by the governor of the newly formed colony with all procedure copied directly from the English common law. Prosecution of criminal offenses consisted of charges being brought to the attention of the courts by individuals who had been wronged and who sought redress. There was no formal system of advocacy, no trained bar and no public official to bring charges. Nor was there a separation of powers or functions. The first court was held in the Virginia colony, where after 1619, the governor sat regularly with his council and the elected burgesses to decide criminal cases. Their procedures mirrored the British government where there was substantial involvement by the executive and legislative branches with the judicial branch of government.

In 1636, the Massachusetts Bay Colony modeled its court system after the rural British justice of the peace courts.¹⁶ With a larger population (numbering about seven thousand), the colony was able to

support a professional judiciary even at that time. "The colonists' substantial adaptation of the machinery of criminal justice as administered by the English justices of the peace was apparently deliberate. It was what they were used to, and, as the system developed... it provided wide latitude for the exercise of magisterial discretion; consequently it comported well with the leaders' ideas about the functions of government and law."¹⁷

Some of the other colonies experimented for short times with more unorthodox alternatives to British law. For example, in the colony at Newport, Rhode Island, in 1639 there was a brief attempt at government by arbitration. However, by the time Newport City was founded in 1640, this had quickly given way to the simple justice of the peace court system.¹⁸

As the populations in the New World grew and settlements spread west, the courts reorganized. In 1691, the New York colony established a complex two-tiered system with courts of original jurisdiction in all outlying counties and an appellate court in New York. Maryland and Massachusetts made similar changes the following year; Pennsylvania followed in 1702; Virginia, in 1705; and South Carolina, in 1721.

The century's emerging justice system was also influenced by Dutch jurisprudence and would eventually produce a sheriff and a prosecutor. The Dutch colonies of New York and New Jersey were familiar with Dutch law and the duties of the Dutch judicial officer, the *schout*.¹⁹ The first courts in New Amsterdam (1653) and Bergen (1661) consisted of a director general, three magistrates and a presiding officer, the *schout*, whose duties in the court were to present criminal charges against alleged criminals. The *schout* was a combination constable and court officer with limited discretion in charging. He presented the case against the defendant and notified all accused of the charges being leveled against them. He had some powers of arrest and was involved in the collection of evidence, but he served more as a central figure that controlled access to the court than as an officer who initiated prosecutions.

Early records of the New Amsterdam court show that the first *schout*, Cornelius Van Tienhoven, appeared as plaintiff in a criminal trial for the first time on February 17, 1653, and consistently thereafter in most criminal matters until his replacement in 1665. *Schouts* remained in office for the next 20 years and even weathered the change of flags over the colony. In 1664, the English captured the settlement in the name of the crown and the Duke of York. Under the interim code of law known as the "Duke's Law" the *schout* remained as an officer of the court.

In 1674 English common law was established in New York, New Jersey and in other former Dutch settlements in Delaware and Pennsylvania. Although the title of *schout* disappeared, his function as police-prosecutor was carried on through the office of the sheriff. When the propriety of this was questioned for lack of precedent in the English courts, "the Governor's council issued a plainly-worded reply which stated that the sheriff was to put the law into execution, apprehend and prosecute violators."²⁰

The separation of the police-prosecutor functions was not clearly distinguished in the early days. Records exist of an ordinance established by the English governor of Newcastle, Delaware, in 1676 directing the sheriff to act as principal officer in the execution of the laws. Subsequent records show him acting as the prosecutor in a notorious murder case in the Newcastle courts. In 1686 the Quaker communities of Burlington, New Jersey, and in 1687, the county of Philadelphia, both established the position of county prosecutor. Both towns were in close geographic proximity to former Dutch settlements in whose courts *schouts* had conducted prosecutions only 10 years earlier.

Still the Dutch colonies did not have hegemony over this new form of public prosecution. Parallel changes were taking place in colonies where the English influence was primary. In these colonies, the office of the attorney general underwent adjustment. Virginia's first attorney general was an agent for the monarchy. In 1643 Richard Lee was appointed to the courts as a representative of the crown. Lee's primary responsibility in the court was advisory and most of his formal duties were corresponding with legal authorities in England to get opinions on certain points of law. Lee became involved in criminal matters only where an alleged violation of the law directly involved the royal interest, which was infrequent. So strong was his advisory role that he was not required to be at court. In fact, the attorney general of Virginia was not even required to live at the capital in Williamsburg, where court was held until 1670.

Change in his role was rapid. By 1670 the attorney general was ordered to appear in the Court of Oyer and Terminer during all trials and to relocate his residency to the capital. By 1687 Virginia had deputy attorneys general for courts in the outlying counties, and by 1711, both the attorney general and his deputies were handling all serious criminal trials, although less serious matters were still being handled summarily by the magistrate of the court.

In other colonies the role of the attorney general in criminal matters had been more active than was traditional in England or had been the case in Virginia from the beginning. William Calvert, the first attorney general of Maryland and the brother of the governor, assumed much more than an advisory responsibility.²¹ Appointed in 1666, Calvert was responsible for presenting criminal indictments to the grand jury and sat on the court as a member of the Governor's Council during all criminal trials. In 1687, in the same year that Philadelphia County appointed its own prosecuting officer, the English governor of Pennsylvania appointed David Lloyd to be attorney general of the colony. Lloyd, in turn, appointed deputies for the county courts, each of whom had some limited responsibility for criminal prosecutions.²²

New Hampshire existed for its first 45 years without an attorney general. The post was created in 1683 and, at once, the attorney general was charged with the responsibility for presenting all cases before the grand jury.²³ The Carolinas' Acts of 1738 created the post of attorney general and allowed for deputies in all county courts. Prosecutions were brought almost exclusively by these men. "There were important changes in the court's procedures for exercising its criminal jurisdiction. For the first time the court has a prosecuting attorney, a deputy appointed by the attorney general for each county."²⁴

Once deputy attorneys general were assigned permanently to local county courts, it was not unusual for them to be considered instruments of local rather than central government. Part of this perception was due to the rampant march toward local government and local control; part stemmed from the inconvenience of servicing a centralized court system. For example, even after court reorganization in Virginia in 1705, it was not uncommon for a retinue of 10 to 20 citizens from an outlying county to spend days on the road traveling to Williamsburg for a serious trial. Without proper legal counsel and expert magistrates, the citizens were cautious about local trials where harsh punishment might be the result for the accused. So all serious cases were heard in Williamsburg; the occasion of the trial required that the prisoner, his guards, the local sheriff, the accuser, all witnesses and a jury of six or 12 men be sent from the rural counties to the capital.²⁵ Ultimately, the difficulty of the logistics favored local trials and supported the need for local legal expertise.

Some changes in the justice system were instigated by the increased use of grand juries that sparked requests for jury trials and the need for a professional buffer between the grand jury and the courts. In the early courts the magistrates or justices handled criminal offenses in a summary fashion. By the mid 1700s, however, presentment by grand jury was as common a method of bringing charges as were indictments and informations. But the power of the grand jury was often criticized for inflicting its personal biases and dislikes on the court and increasing the number of jury trials. "At Plymouth Colony, presentment by the grand jury was tantamount to conviction unless a traverse was had, and then there was trial by jury."²⁶ Jury trials had been uncommon in North Carolina prior to 1739 when the county court began to summon the grand jury and to "have criminal cases tried before a jury by a public prosecutor."²⁷

In the formative years between 1650 and 1750, it did not take long for local public prosecutors to emerge either as officers of the court or representatives of the attorney general. Connecticut was the first colony to establish county attorneys as prosecutors. William Pitkin, the first prosecutor, was appointed at Hartford in 1662. In 1704 Connecticut also became the first colony to entirely eliminate the system of private prosecution by establishing public prosecutors as adjuncts to all county courts. The statute of 1704 states: "Henceforth there shall be in every county a sober, discreet and religious person appointed by the county court to be attorney for the Queen to prosecute and implead in the law all criminals and to do all other things necessary or convenient as an attorney to suppress vice and immorality."²⁸ By 1711 local men were being nominated from Virginia county courts to serve as deputy attorneys general.²⁹

In New York other forces worked to strengthen local control of the courts, including local control of prosecution. By the beginning of the eighteenth century, sheriff/prosecutors had been replaced by deputy attorneys general who had much the same power and responsibility. But because of their status as assistants to the attorney general, the deputies were paid a percentage of the court fees collected and thus were the victims of uncertain wages. By 1732, however, the counties began to pay these

officials through relief granted by the county grand jury under its common law powers. Recognition of an obligation to pay for the services of the prosecuting officer without duress indicates that by 1732, the deputies had become an integral part of the local court structure. This resulted in many attorneys settling into the county and becoming permanent members of the local bar.³⁰

The nature of the offices varied. Some were county officials appointed by the courts; some were deputies of the attorney general but were nominated by the court and operated with little supervision; some were deputies of the attorney general operating directly under his purview. Often more than one form existed simultaneously such as in Philadelphia and Pennsylvania. In spite of these differences, prosecutors had in common that—unlike any judicial officer in England or Europe—they were a new breed created by the demands of a new society. It would not be until a century later that the prosecutor's status would change to that of an elected official. In the meantime, the foundation of our modern justice system had been established, and the task of winning independence from Great Britain would have little effect on it.

In retrospect the emergence of local public prosecutors long before the colonists declared their independence and fought a revolutionary war was the result of a series of important choices made by early settlers. The first was the rejection of the notion of a privileged class and the adoption of the principles of representative government. This created a system of public prosecution, not private. The second was the shift of some centralized powers and authority to local governmental entities. This hastened the decentralization of the lower courts and the creation of local court officers. Finally, the public's demands for law enforcement and public safety, and the court's need for professional representation to act as a buffer between them and the grand jury were satisfied by separating the powers and duties of the sheriff/prosecutor.³¹ It was not until nearly 100 years after the Revolutionary War, during the age of Jacksonian democracy in the 1830s, that the prosecutor acquired elective status.

Endnotes

1 Much of the material presented here was extracted from the first chapter of *The American Prosecutor: A Search for Identity*, authored by Joan E. Jacoby and published by Lexington Books, D.C. Heath and Company, 1980.

2 Missouri Crime Commission (New York: McMillan, 1926).

3 Patrick Devlin, *Criminal Prosecution in England* (New Haven, CN: Yale University Press, 1958).

4 National Commission on Law Observance and Enforcement (NCLOE), *Report on Prosecution* (Washington, D.C.: U.S. Government Printing Office, 1931).

5 W. Scott Van Alstyne, "The District Attorney - A Historical Puzzle," *Wisconsin Law Review* 1952: (1952), 125. See also, Douglass Campbell, *The Puritan in Holland, England and America* (1899), 438-467.

6 Jack M. Kress, "Progress and Prosecution," *Annals of the American Academy of Political and Social Sciences* 423 (January 1976), 99-116.

7 *Ibid.*, 100. This is no longer the case, however. The Prosecution of Offences Act of 1985 established the Crown Prosecution Service in England as an independent prosecution body. The statute says that no prosecution can be brought without the consent of the Crown Prosecutor.

8 Glanville Williams, "The Power to Prosecute," *Criminal Law Review* (1955), 601.

9 Patrick Devlin, *Criminal Prosecution in England* (New Haven, Conn.: Yale University Press, 1958), 25.

10 See A.C. Wright, "French Criminal Procedure," *Law Quarterly Review* 44 (1928), 423.

- 11 State v. Peterson, 195 Wis. 351, 218 N.W. 367 (1928).
- 12 Mallory v. Lane, 97 Conn. 132, 138 (1921).
- 13 John Blum et al., *The National Experience* (Harcourt, Brace and World, 1968), 59.
- 14 Charles A. Beard and Mary R. Beard, *New Basic History of the United States*, (Doubleday, 1968), 84.
- 15 Edwin Surrency, "The Courts in the American Colonies," *American Journal of Legal History* 11 (1967), 263.
- 16 George Lee Haskins, *Law and Authority in Early Massachusetts* (New York: McMillan, 1960), 177.
- 17 Oliver P. Chitwood, *Justice in Colonial Virginia* (New York: DeCapo Press, 1971), 120. A different view is taken by Arthur P. Scott, *Criminal Law in Colonial Virginia* (Chicago: University of Chicago Press, 1930).
- 18 John T. Farrell, "The Early History of Rhode Island's Court System," in *Rhode Island History*, vol. 9: 65.
- 19 See generally Julius Goebel and Raymond T. Naughton, *Law Enforcement in Colonial New York* (New York: 1944) and Harry B. Weiss and Grace M. Weiss, *An Introduction to Crime and Punishment in Colonial New Jersey*, (Trenton, NJ: 1960) 8-9.
- 20 Van Alstyne, *op cit*, "The District Attorney," 137.
- 21 Raphael Semmes, *Crime and Punishment in Early Maryland* (Baltimore: Johns Hopkins Press, 1938).
- 22 John J. Poserina, "Appointed Attorney General's Power to Supercede an Elected District Attorney," *Temple Law Quarterly* 33 (1959), 78, 83.
- 23 Edwin L. Page, *Judicial Beginnings in New Hampshire* (Concord, NH: 1959), 60.
- 24 Paul M. McCain, *The County Court in North Carolina before 1750* (Durham, NC: Duke University Press, 1954), 18.
- 25 Scott, *op cit*. *Criminal Law*, 48-49.
- 26 Goebel and Naughton, *Law Enforcement*, 334.
- 27 McCain, *County Court*, 33.
- 28 Van Alstyne, *op cit*. "The District Attorney," 1125.
- 29 Chitwood, *op cit*. *Justice in Colonial Virginia*, 120.
- 30 Goebel and Naughton, *op cit*. *Law Enforcement*, 332-334.
- 31 Even today it is still possible for police to prosecute district court cases in Massachusetts, although the practice has mostly been discontinued by district attorney policy.