



*State of New Jersey
Commission of Investigation*

NEW JERSEY DETECTIVE AGENCY

CREATED BY CHAPTER 457, LAWS OF 1871

DECEMBER 1997

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December 1997

Governor Christine Todd Whitman
The President and Members of the Senate
The Speaker and Members of the General Assembly

The State Commission of Investigation herewith formally submits, pursuant to
N.J.S.A. 52:9M, a report and recommendations based on its investigation of the New
Jersey Detective Agency.

Respectfully,

Leslie Z. Celentano

M. Karen Thompson

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EXECUTIVE SUMMARY

For more than a century, an obscure entity known as the New Jersey Detective Agency has existed in the shadow of legitimate law enforcement in this state.¹ The NJDA's 25 members are all civilians, but like police officers, they believe they are authorized to exercise full police powers – to make arrests, conduct investigations and provide backup assistance – at any time and at any place. They wear uniforms and carry credentials bearing the New Jersey state seal. Most of the members carry handguns without permits. Unlike a genuine law enforcement agency, however, the NJDA is accountable to no one. Moreover, most of its members lack adequate, up-to-date training in firearms handling and in basic law enforcement techniques. In essence, the Agency constitutes a completely autonomous entity and stands as an anomaly in today's stratified hierarchy of law enforcement at the state, county and local levels of government.

The Commission concludes that while the NJDA long ago may have served a valid function to augment law enforcement in New Jersey, it fulfills no legitimate purpose today.² On the contrary, the Agency's existence poses a distinct danger to the community – a danger recognized by a full spectrum of key law enforcement officials. The NJDA is a tragedy waiting to happen. The legislative act that created it should be repealed.

¹ The NJDA was created by chapter 457 of the Laws of 1871.

² The Commission examined the NJDA under its statutory authority to provide oversight of New Jersey's law enforcement system.

The 1871 charter establishing the NJDA was intended to supplement a statewide police system that, at the time, had proved inadequate for the protection of citizens and the detection and investigation of crime. That charter, together with similar measures, afforded civilians the means to hire pursuers or detectives to investigate criminal activity, apprehend offenders and recover stolen property. These legislative acts typically were acts of incorporation and not statutory mandates for the establishment of police agencies or for the hiring of police officers – steps that were left to local and county authorities. Clearly, in granting the NJDA charter, the Legislature did not create 25 additional police officers in the state to ferret out crime on their own, selectively enforce the laws of the state as they deemed appropriate and report to no public official.

Today, New Jersey's law enforcement system has evolved into a multi-layered, highly supervised structure of municipal, county and state agencies composed of professionals. Neither the NJDA nor its members are recognized in any statute, rule or regulation as being involved in police work or the administration of justice. To suggest that the citizens of this state are served by a group of 25 unsupervised, largely untrained individuals exercising police powers is contrary to the measured efforts over the decades to create a professional law enforcement system. Moreover, it is ludicrous to suppose that legislators in 1871 intended commissioned detectives to possess whatever police powers would develop over future centuries.

Current NJDA members range in age from 40 to 74 years and have held their commissions for between two and 48 years. In the exercise of police powers, members said their primary involvement has been the voluntary backup of police on the highways.

Those members who function actively under their NJDA commissions operate essentially as private detectives – outside the parameters of the Private Detective Act of 1939. Twenty members admit to carrying handguns without permits, even though they are not covered by any statutory exemption under the state’s gun-control laws.

THE 1871 CHARTER IN HISTORICAL PERSPECTIVE

In assessing the need for the NJDA, its enabling charter must be understood in the context of the state of law enforcement at the time of its enactment and evaluated in relation to today's criminal justice system. Such an analysis compels the conclusion that commissioned detectives were never intended to serve as a roving band of police officers, but only to exercise police powers during their engagement by private parties in an effort to supplement a deficient police system. Significantly, the legislative act creating the NJDA was an act of incorporation. The Legislature did not establish a police agency, vest the corporation with any police powers, or place the Agency or its members under the supervision of a public official or agency. In light of the state's comprehensive law enforcement system and network of regulated private detective, security and guard services, there is no valid purpose served by NJDA members today. In fact, their existence poses a danger to police work and the orderly administration of the criminal justice system.

Legislative and Judicial History

Originally established as the New Jersey Detective Association in 1870, the organization was incorporated and renamed the New Jersey Detective Agency by chapter 457 of the Laws of 1871. The bill was first introduced in the Assembly, where it was referred to the Committee on Corporations, and was passed by a vote of 41 to 2 following initial defeat. The bill was then carried to the Senate and passed. On April 4, 1871, the Governor signed the bill into law. Today, the act appears in New Jersey Statutes

Annotated under Title 15, Corporations and Associations Not For Profit, specifically in the Appendix to Chapter 4, entitled Detective Associations.

On February 14, 1938, a bill to repeal the 1871 charter was introduced in the Senate. The statement to the bill read: “The purpose of this act is to repeal this obsolete statute concerning detectives, which has become unnecessary by the passage of general laws relating to the subject.” The bill passed both houses of the Legislature and was signed by the Governor on May 25, 1938. *Laws of 1938, chapter 214*. The following year, two citizens brought a court challenge to the repealer statute. In a published opinion, the former Supreme Court invalidated the repealer because of the Legislature’s failure to meet the statutory requirements of providing notice and publication of the intent to seek repeal of a corporate charter, as required by the State Constitution.³

Subsequent bills to repeal the 1871 charter were introduced in the Legislature, but not enacted into law.

In 1980, the Private Detective Association of New Jersey, Inc., brought an action seeking, among other relief, judicial declaration that the detectives commissioned under the 1871 charter are subject to the licensing provisions of the Private Detective Act of 1939. In an unpublished opinion, the Appellate Division determined that the Private Detective Act did not serve to amend or repeal the 1871 charter by implication.⁴

³ *In re Miller’s Petition, et al.*, 122 N.J.L. 176 (Sup. Ct. 1939).

⁴ *Private Detective Association of New Jersey, Inc. v. State of New Jersey, Division of State Police, Col. C.L. Pagano, Superintendent, and New Jersey Detective Agency* (App. Div. 1982). The action was dismissed with respect to the State of New Jersey, the Division of State Police and Col. Pagano.

Therefore, commissioned detectives are exempt from the licensing provisions of the Private Detective Act. However, construing the 1871 charter narrowly, the court ruled that the exemption applies only to the 25 commissioned detectives and that they have no authority to employ others. Significantly, it implicitly recognized that the work of the chartered detectives involves the private detective business.

The Charter's Provisions

The 1871 act named the eight men initially comprising the corporation and empowered them and their successors to elect additional members up to a total of 25.⁵ As a corporation, the Agency was granted rights to purchase, hold, sell and convey real and personal property, but in an amount not to exceed \$5,000; elect officers for the transaction of business, and enact by-laws, rules and regulations. Upon the election of a new member, the agency must file with the secretary of state a certificate of election signed by the president and attested by the secretary, together with the member-elect's \$1,000 bond. A commission from the governor then issues to the individual. Any person feeling aggrieved or injured by a member's act may petition the governor for an order for the prosecution of the bond of that member and the governor may issue such an order. The charter enables the Agency to expel a member for any cause prescribed by its by-laws. When a member is expelled for cause, the Agency must file a certificate or notice of expulsion with the secretary of state. While "on duty," the member must "wear a

⁵ Of the initial group, three were former or current members of the Jersey City Police Department; one was the police justice and city judge for Jersey City; one was the Jersey City prison keeper and doorman for the Jersey City Police Department, and one had been a member of the Newark Police Department. In 1872, one member, who was then chief of the Jersey City Police Department, was convicted of defrauding the city. In the same year, he was acquitted of charges relating to stolen bonds and bank robbery. Another member was arrested on a charge of rape and acquitted at trial in 1872.

metallic shield or device, with the letters and words, 'N.J. State Detective,' in a visible place "where it can be readily shown to any person demanding his authority." The charter designated Jersey City as the Agency's principal office or place of business.

The legislation delineates the authority of commissioned detectives in broad terms in four separate paragraphs, which, taken together, make it clear that commissioned detectives are vested with police powers only when they are employed. Paragraph 2 of the charter required each of the named incorporators, or a majority of them, to file a \$1,000 bond, "conditioned for the faithful and bona fide performance of his duties and undertakings as a detective and police officer, when employed in that capacity by any person or persons." The third paragraph mandated the issuance of a commission by the governor to each of the incorporators who filed a bond, "empowering them to act as detectives or policemen in any part of this State." The fourth paragraph addressed the authority of Agency members in an employment situation:

[I]t shall be lawful for the members of said agency to demand and receive reasonable fees and rewards as shall be agreed upon by the officer or officers and those who may employ them, for their services as such detectives or police officers from any person or persons who may employ them, to make contracts and agreements concerning such employment; to sue and be sued, implead and be impleaded, in any court of record in this State, in their corporate name.

Paragraph 5 accorded the members of the Agency "the same powers and authority that constables and policemen have by law in the several cities, townships and counties, in which they may act in all criminal matters," and made it "lawful for them to serve any criminal process which constables and sheriffs may serve."

Evolution of Law Enforcement

Law enforcement in New Jersey has evolved into a stratified system of career professionals. Today, the state boasts 556 law enforcement agencies that employ 34,432 full-time police officers and 10,988 full-time civilian employees. These agencies exist at all levels of government – municipal, county and state. They include 494 municipal police departments, the Division of State Police, the Division of Criminal Justice, 21 county prosecutor offices, 21 county sheriff departments, three county police departments and three county park police departments. In order to ensure “a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State,”⁶ the Criminal Justice Act of 1970 designated the Attorney General as the state’s chief law enforcement officer. In addition to New Jersey’s hierarchy of police organizations, a myriad of federal law enforcement agencies operates within the state, providing additional resources for the prevention, detection and prosecution of crime.

Law enforcement officers are subject to stringent qualifications for hiring, rigorous training and education throughout their careers, strict discipline for infractions and an extensive supervisory structure. In 1961, responding to “a serious need for improvement in the administration of local and county law enforcement,”⁷ the Legislature established the Police Training Commission (PTC) in the Department of Law and Public Safety. The PTC sets educational and training standards and requirements for every municipal and county police organization, as well as the Division of Criminal Justice. Importantly, detectives commissioned under the 1871 charter do not comport

⁶ *N.J.S.A. 52:17B-99.*

⁷ *N.J.S.A. 52:17B-66.*

with any statutory definition of police officer or law enforcement officer, and the NJDA is not one of the enumerated agencies that must comply with the law enforcement standards set by the PTC. Indeed, a commissioned detective is the antithesis of a municipal police officer, who must undergo a selection process that includes competitive written examination, physical test, medical examination and background investigation; complete a basic police training course that averages 16 weeks in length and must be repeated following a three-year break in law enforcement service, and submit to a supervisory hierarchy comprised of the municipal governing body, the county prosecutor's office and the Attorney General through the Division of Criminal Justice.

Today's highly specialized law enforcement system poses a stark contrast to the police structure of the early twentieth and prior centuries. From the late 1700s to the early 1900s, officials possessing police powers were few and enforcement of the laws was sporadic. Constables, elected by townships, and sheriffs, elected by counties and commissioned by the governor, were the pioneer law enforcement officers. According to an 1832 treatise on various public offices,⁸ sheriffs were not involved in the detection of crime or apprehension of criminals and the police duties of constables were confined to apprehending persons committing breaches of the peace in their presence, riotous persons refusing to disperse, and disorderly persons, beggars and fortune tellers. Throughout the 1800s, police departments formed primarily in the cities, while constables remained the primary resource for townships. What was lacking was not the concept of organized police groups, but a sufficient presence throughout the state to deter crime and respond to

⁸ James Ewing, Esq., *A Treatise on the Office and Duty of a Justice of the Peace, Sheriff, Coroner, Constable, and of Executors, Administrators, and Guardians* (D. Fenton, Trenton, N.J.; 2d ed. 1832).

acts of lawlessness. Further, even where police departments were formed, they frequently lacked a detective bureau or, if they did possess one, a sufficient number of detectives to investigate crimes and apprehend violators.

Three publications on the history of the Newark, Jersey City and Trenton police departments afford a valuable glimpse into the state of early law enforcement. According to an 1893 treatise on the Newark Police Department,⁹ the town appointed its first constable in 1668 and a second in 1773. It established the Watch in the Night and the Ward on Sabbath Days in 1681, and in 1834 appointed watchmen for each of the newly created districts. In 1836, when Newark was incorporated, the city selected 12 constables, eight special justices, and watchmen to patrol the streets and apprehend offenders of the peace. In 1844, the first city marshal was designated to furnish the city attorney with proof of violation of ordinances. From 1844 to 1857, police protection consisted of the city watch, which constituted the regular police force; marshals, who preserved the peace and enforced the police regulations; watchmen, who served only during nights, and constables, who functioned primarily as court officers in summoning and impaneling jurors and executing warrants, processes and executions. It was not until 1857 that the police and watch departments were reorganized into one department under a chief of police. By 1869, the police force had grown to 110 men, but the number was inadequate to protect the city's outer wards, which surrendered most of their protection to the business part of the city. Over the next two decades, a steadily increasing population and the development of previously unoccupied territory brought heightened demands for

⁹ *History of the Police Department of Newark, An Official Publication* (The Relief Publication Co., Newark 1893).

additional police. Although the number of police reached 182 men in 1887, the department was still inadequate to protect the city. Consequently, special police powers were conferred upon individuals employed by private parties in the city's unprotected areas. The year 1859 marked the advent of a detective bureau with the assignment of three patrolmen to handle detective work. Subsequent years brought increasing demands for more detectives to cope with escalating crime.

An 1891 dissertation on the Jersey City Police Department¹⁰ cites the constabulary system as the primary police force until the city's incorporation in January 1820, when it established a night watch and designated constables each year. In 1829, the precursor of a police department was formed, consisting of a city marshal and watchmen. With its re-incorporation in 1838, Jersey City elected a marshal and three constables, appointed watchmen and built a prison. In 1841, the city was divided into three lamp and watch districts, each with a watchman and lamp lighter. The insufficiency of police protection as the population grew was repeatedly noted. In 1848, the city council called for an ordinance to organize a police department. In 1856, the city abolished the watch and established a department of day and night police. In the following year, four men were assigned to detective service. In the early 1860s, the city was divided into four wards, each with a police precinct and an elected constable. Demands for enhanced police protection resulted in an 1863 ordinance increasing the department to 34 uniformed policemen. In 1873, a detail of mounted police was established. Rapid growth in population and crime brought increasing appeals for

¹⁰ A.E. Costello, *History of the Police Department of Jersey City* (The Police Relief Association Publication Co., Jersey City, N.J. 1891).

additional police throughout the 1880s and into the 1890s.

The history of the Trenton Police Department followed a similar path.¹¹ The police force had its origins in the late 1700s with the appointment of a city marshal, who was required to traverse the city searching for disorderly persons, and a few aides, whose primary duties were the lighting, extinguishing and cleaning of city lamps. In 1874, a city ordinance reorganized the police department and designated the marshal as chief of police. The department of 14 policemen was expanded in 1886 to include two lieutenants, two sergeants and 25 patrolmen. By 1899, captains, sergeants, detectives and patrolmen comprised an 80-man department.

Against the backdrop of a police system that was insufficient in numbers in the cities and virtually non-existent in the rural areas, the Legislature enacted a series of measures allowing private citizens to form associations to provide police protection, apprehend offenders, investigate crime and recover stolen property. One such act was the 1871 charter that incorporated the New Jersey Detective Association. The Legislature's creation of the NJDA appears similar to its incorporation of other private detective companies and thief-detecting societies. For example, the Laws of 1851, at page 243, authorized 10 or more residents of a township to establish a protection society or company, formed as a corporation, for "the pursuit and detection of thieves of horses, mules, cattle, or other property." Chapter 88 of the Laws of 1878 authorized "the formation of associations for the more effectual prevention and detection of crime." It

¹¹ *A Review of the Department of Police, Trenton, New Jersey* (Narr, Day and Narr, Book and Job Printers, 14 N. Warren Street 1899).

enabled the inhabitants of a township or a number of townships within a county to form an association “to protect the inhabitants thereof and punish the lawless.” Constituted as a corporation, the association had the power to apply to the governor for the issuance of commissions to individuals designated as marshals, who were to possess all powers of a constable in criminal cases, including the power to arrest. In addition, the governor could issue commissions to the president and vice-president of the association to act as special police justices, with the powers of a justice of the peace. The association was also authorized to purchase land for the erection of a house of detention for those arrested by the marshals. Similarly, chapter 152 of the Laws of 1878 empowered citizens to form companies for “the detection, pursuit, apprehension, arrest and prosecution of thieves, tramps, marauders, and other depredators on persons and property, and the recovery of stolen goods.” Also enacted as a corporation, the company could appoint or elect up to 20 of its members as pursuers, with each possessing a badge and the authority of a constable. Operating funds were to be raised only by fees for admission as members, assessments of the members and fines for neglect or failure of duty. An 1880 supplement to the act authorized the members to receive “reasonable fees and rewards” from those who employed them.

By chapter 76 of the Laws of 1899, the Legislature repealed certain enumerated acts relating to not-for-profit associations. It included the Laws of 1851, at page 243, and chapters 88 and 152 of the Laws of 1878, but not the 1871 charter. The state’s licensure and regulation of private detectives and detective agencies commenced in 1906. *Laws of 1906, chapter 288.*

Despite the proliferation of police forces and the existence of supplementing groups in the private sector, escalating crime continued to overwhelm the extant law enforcement structure. The problem was acutely depicted in a 1917 study of the police problem in the state by the Bureau of State Research, New Jersey State Chamber of Commerce.¹² The study provided a detailed review and evaluation of the police authorities in every county and recommended the establishment of a state police system. Specifically, it found an absence of police protection in the vast rural and suburban areas that claimed 65% of the population and were experiencing considerable crime; a failure of the sheriff-constable system to apprehend criminals and gather evidence for prosecution, and the punishment of only one criminal for about every two complaints filed. The study also recorded the hiring of (1) private detectives or guards by companies and businesses to protect employees during the workday and the premises during strikes, and (2) private detective associations by some prosecutors to assist in assembling evidence and apprehending criminals. Nowhere in the study's exhaustive review of the state of law enforcement, which encompassed the role of private detectives and detective agencies, was there mention of the detectives commissioned under the 1871 charter. Manifestly, they were not considered police officers and, if recognized at all, must have been included under the category of private detectives.

¹² *The State Police Problem in America, "Including a Special Study of the Problem in New Jersey"* (New Jersey State Chamber of Commerce, Bureau of State Research, Newark 1917).

CURRENT PROFILE OF THE NJDA

The NJDA is an autonomous group where membership is frequently passed from father to son. Members dictate the content of their governing by-laws; who receives a commission; whether and how a member is disciplined; whether a member is expelled, and how to interpret their powers under the 1871 charter. Unless members happen to be retired police officers, they have no formal police training. The few training courses that have been offered to members in recent years have not been mandatory. No governmental agency or official exercises any supervision over the membership. The role of state officials is purely ministerial, limited to issuing commissions to new members when notified by the Agency.

NJDA members lack a uniform understanding of the operation of their agency, the application process and how funds are expended. They also hold conflicting views on the extent of their powers, except to recite in broad terms the powers to arrest, investigate crime and carry a weapon. The explanation of their powers is transmitted by word of mouth from member to member.

Commissioned detectives have been reluctant to engage in actual police work. The services performed by those members who earn an income as commissioned detectives are not unique to them, but are provided by private detectives, security guards or off-duty police officers.

The Commission's review of records subpoenaed from the NJDA for the past seven years disclosed a record-keeping system in shambles. Records that should have been maintained, such as application files, personnel files and training records, were rarely kept. Numerous records have been lost because there is no orderly system for the transfer of records when new officers are elected. The financial records of the Agency are so incomplete and in such disarray that it is impossible to conduct a proper financial audit.

The By-Laws

The members of the NJDA craft their own by-laws and are free to adhere to or disregard the provisions with impunity. Over the past eight years, they have redesigned the by-laws at least twice. The most recent revisions were approved only two months ago, during the Commission's investigation. At the same time, the members also adopted, for the first time, a set of rules and regulations. The new by-laws and rules and regulations reflect the effort of a growing number of members over the past few years to make the NJDA more professional as a law enforcement agency and the members more accountable. This effort, however, ignores the facts that the NJDA was never intended to simulate a police agency and that its members are not police officers.

The following key provisions appear in both the current and prior by-laws, except as noted; they are contrasted with actual practice where apposite:

- Under the current by-laws, a majority of the members present at the annual meeting elect the president, vice-president, secretary, treasurer and sergeant at arms. The prior by-laws combined the offices of secretary and treasurer. Although not designated in either version of the by-laws, but in an obvious attempt to replicate the hierarchy of a police department, the traditional

positions of chief, deputy chief, captain and lieutenant of detectives have been utilized. The titles are now contained in the newly promulgated rules and regulations. Members have disagreed strongly on the utility of these titles.

- Only five members – a mere fifth of the membership – constitute a quorum at meetings for purposes of transacting business.
- At the annual meeting, the president must appoint the following committees:
 1. Discipline Committee (previously, the Internal Affairs Committee) to investigate allegations of criminal charges and complaints filed by members against other members; under recent changes, the committee is to recommend whether the matter should be referred to the County Prosecutor or Attorney General;
 2. By-laws Committee;
 3. Legislative Committee;
 4. Membership Committee (formerly, the Membership Investigating Committee);
 5. Training Committee;
 6. Awards Committee, and
 7. Audit Committee.

The Grievance, Advisory and Firearms Committees were eliminated in the October 1997 by-laws. In addition, an Executive Committee, composed of all elected officers, is now established.

- Committee reports and written financial reports are to be presented at the annual and six regular meetings to be held each year. In both the prior and current by-laws, committee reports are included in the “order of business” for meetings. Yet, the records produced by the Agency in response to the Commission’s subpoena contain only one committee report and no financial reports, and the minutes supplied include no reference to written committee or financial reports.
- Candidates for membership must have a high school diploma, or its equivalent, and not less than 10 years of experience as a full-time law enforcement officer with a municipal, county, state or federal agency. The alternative requirement of 10 years of investigative experience was deleted in the current by-laws. Prior to these two sets of by-laws, there had been no requirement for law enforcement experience.
- Candidates for membership must complete an application form, undergo a background investigation by the Membership Committee, receive the endorsement of members residing in the same county and obtain the vote of a majority of the members present at the meeting. All records concerning a candidate’s application are to be maintained by the Agency. However, the records furnished to the Commission contain no personnel or application files for a majority of the present members and incomplete files on candidates for membership.

- Candidates for membership must provide fingerprint cards. Under the prior by-laws, nothing was done with the cards; now, the Agency must submit them to the State Bureau of Identification, Division of State Police, “for the purpose of obtaining a criminal history on the applicant.” However, because the NJDA is not a law enforcement agency, it is prohibited from submitting fingerprint cards to any police agency for criminal record checks. Moreover, the NJDA’s files do not contain the fingerprint cards for a majority of the current members.
- Dues and fees include a non-refundable application fee of \$300, an initiation fee of \$1,500, and annual dues of \$100. An assessment to cover expenses at each regular meeting was increased from \$5 to \$20.
- Until the passage of the October 1997 by-laws, there were no physical and mental fitness requirements for candidates and members. Consequently, the Agency includes at least five members who are physically impaired. Now, candidates must be “fit for duty prior to be [sic] accepted,” pass a physical examination prescribed by the Executive Committee, undergo a medical examination, including hearing and vision tests, and submit to a drug screening. Under the rules and regulations, “[m]ental or physical incapacity to perform required duty” constitutes a violation of the rules of discipline. However, the terms are not defined and there is no requirement for periodic examination.
- The Agency will exercise no control over the business of its members unless, according to the prior by-laws, it was of “a questionable character,” and, under the recent changes, it violates the by-laws or rules and regulations. Criminal defense work is not prohibited and, in fact, has been engaged in.
- Being “disrespectful” to a fellow member constituted grounds for expulsion under the prior by-laws and, under the current ones, for the filing of charges.
- Following the filing of internal charges, a member may be reprimanded, fined, suspended or expelled pending completion of an investigation. The actual procedures are addressed not in the by-laws, but in the rules and regulations. The prior by-laws authorized the president to suspend the member.
- The current by-laws permit the Agency, “after notice, charges, or a hearing,” to reprimand, suspend, fine and/or expel a member found in violation of any rule, regulation or “lawful order.”
- In contrast to the prior by-laws, the new ones require members to file reports when engaged “in a police action of a criminal nature, aside from his actions taken while contracted out for private services,” and to notify the local police and the NJDA president of any incident involving “lethal or excessive force.”

The by-laws are also remarkable for what they do not mandate:

- There is no mandatory retirement age for members. Hence, seven members are in their 70s and seven in their 60s.
- There are no term limits for the holding of office. In recent history, one member held the presidency for 21 years, while another held the position for about 10 years. Another member was vice-president for 20 years.

The stated purpose of the Agency's new rules and regulations is "to establish methods of conduct covering the official actions of the members." The rules and regulations refer to the NJDA as "a law enforcement agency in the performance of its public duties"; recognize the members as "police officer[s] 24 hours a day"; mandate that "on duty" members carry a firearm; define "on duty as performing a police service or conducting an investigation for a specific client, whether or not for a fee"; require members to attend training sessions scheduled by the Agency; enumerate 22 rules of discipline; require adherence to the Attorney General's guidelines on the use of force and firearms training and qualification; delineate the procedures following the filing of charges against a member, including the designation of "a retired judge of record as the hearing officer," and provide for drug screening through urinalysis "when there exists [sic] facts that prove a reasonable objective basis to suspect that a member is illegally using drugs." It is noted that there is no requirement that a positive test result for illicit drugs be reported to a law enforcement agency. The new code also decrees that members "at all times, take appropriate action to:

- a. Protect life and property.
- b. Preserve the peace.
- c. Prevent crime.
- d. Detect and arrest violators of the law.
- e. Enforce all federal, state and local laws coming within Agency jurisdiction.¹³
- f. Aid citizens in matters of police action.

¹³ State, county and local police are not authorized to enforce federal laws.

- g. Take appropriate police action in aiding fellow officers, as needed.
- h. Provide miscellaneous police related services.
- i. [F]ile all appropriate governmental reports.”

The Members

The membership, which currently numbers 24 men, is extraordinary in terms of both age and longevity with the Agency. Members range in age from 40 to 74 years, with seven in their 70s, seven in their 60s, seven in their 50s and three in their 40s. The most senior member joined in 1949, while two were commissioned in 1954, six in the 1970s, nine in the 1980s, and only six since 1990.

NJDA members live in seven of the 21 counties. Eleven members reside in Bergen County; three each in Essex and Camden Counties; two each in Passaic, Middlesex and Morris Counties, and one in Hudson County.

Ten members are former New Jersey law enforcement officers – six retired from municipal police departments, one retired as an investigator with a county prosecutor’s office, one is a former county sheriff, one retired from the State Police and one retired, albeit on disability, from a county police department. Another member is a former police officer with the New York Central Railroad. The remaining 13 members possess no law enforcement background.

Membership in the Agency is a family tradition for eight members. A father and his two sons are members. Three are second-generation commissioned detectives and one is third-generation. Another member’s son is a former member.

Because commissioned detectives cannot operate a private detective agency, three members transferred their agencies to their wives, but continued to do work for the agencies. One agency was subsequently transferred to the member's son. Five other members have relatives who are private detectives.

During interviews by Commission staff, a number of members were candid about why they joined the NJDA. One member cited social reasons, while another referred to the advantage of having a badge and gun. Other reasons included family tradition; the ability to carry a handgun; easier access to information from police agencies, and the perception that the NJDA is a fraternal organization of retired senior police officers and a good place to network. One member stated that he became interested in doing detective work as a result of reading detective stories. Several former law enforcement officers viewed a commission as a way to carry their police identity into the private sector. Clearly, a few members are “wannabe cops.”

Commission staff interviewed NJDA members regarding their work as commissioned detectives. Three admitted to being inactive. What the remaining members described as “police work” are tasks that other groups in the private sector discharge. Private detectives perform most of these functions, such as escorting corporate executives; searching for missing persons; locating birth parents; serving subpoenas for attorneys; investigating matrimonial cases; conducting criminal and civil investigations for attorneys and private parties; conducting internal investigations for corporations, and renting surveillance equipment. In fact, four members held private detective licenses before becoming commissioned and a fifth had worked for a private

detective agency. Guard services or off-duty municipal police officers provide other services, such as transferring bank safe-deposit boxes and providing security. One member admitted to assisting in criminal defense cases, a service that is incongruous with the original purpose of commissioned detectives. Although some members claim to have furnished local police with information of a criminal nature, such assistance can be provided by anyone. Despite a number of members citing their power of arrest, only a few alleged that they had ever made any arrests, and those that did recalled little or none of the details. However, the Commission did confirm that one member had involved himself in the arrest of individuals by a city police department. There is little doubt, though, that this member would have done so even without his commission.

Believing themselves to be police officers, a majority of the membership approved the wearing of a uniform in 1996. The uniforms include blue and gold shoulder patches that contain the word “POLICE” across the top, a portion of the state’s Great Seal, the words “NEW JERSEY STATE DETECTIVE” in smaller letters, and the year “1871.” One member stated that he used to wear his uniform when travelling on an interstate highway for identification purposes in the event that he stopped to assist a truckdriver. Some members possess other police accoutrements – red emergency lights for their cars, which is in violation of *N.J.A.C. 13:24-1.1 et seq.*; handcuffs; a police scanner, and a magnetic sign displaying the New Jersey Detective shield for the side of the car. All members carry badges. The reproduction of the Great Seal of the State of New Jersey on members’ badges, shoulder patches, business cards and stationery is in violation of *N.J.S.A. 52:2-3* and 4. The NJDA never applied for authorization to

reproduce the Great Seal, as required by *N.J.S.A. 52:2-9*, and, according to the Secretary of State's Office, does not satisfy the criteria to receive authorization.

Conflict with Law Enforcement Agencies

NJDA members present a unique problem for law enforcement. Not only do they create confusion for the general public as to their true identity, but the acts of some members have served to compromise police action.

A number of members claimed that they routinely stop along the highways to back up police officers on motor vehicle stops. Such action poses a threat to police officers, who are not familiar with commissioned detectives and must then be concerned about their security from a second source. The danger is even greater when a commissioned detective has no background as a police officer and, therefore, has not been trained in proper procedures for providing backup.

The prior by-laws prohibited members "by word, deed or action [from] in anyway obstruct[ing] the implementation of any law enforcement action executed by law enforcement personnel in the performance of their duties." Although this provision was omitted in the current by-laws, the new rules and regulations contain as a violation of the rules of discipline "[r]efusing to cooperate fully with any investigation conducted by the Agency or any other governmental entity." During the Commission's investigation, reports were received of incidents where members acted contrary to these proscriptions. For example, during the surveillance of a business location, investigators with the Division of Criminal Justice questioned an individual who appeared to be watching them.

The individual identified himself as a commissioned detective, but refused to reveal who had hired him or why he was there. In another instance, when Division investigators sought to interview a witness in a criminal case, the witness disclosed that he had already been interviewed by “the State.” It turned out that a commissioned detective, working on behalf of the defense, had interviewed him.

The opportunity for the public to confuse commissioned detectives with police officers, especially members of the State Police, is substantial because commissioned detectives identify themselves as “state” detectives and, at times, wear uniforms with patches containing the words “POLICE” and “NEW JERSEY STATE DETECTIVE.” Commission staff reviewed statements obtained by local police from private citizens who stated that they had been interviewed in a criminal matter by an individual, a commissioned detective, who identified himself as a State Police detective. Even if he had not done so, these incidents exemplify the likelihood for confusion. Moreover, during the Commission’s interview of one commissioned detective, who was never a member of the State Police, he referred to himself twice as the “State Police.”

Carrying Weapons

According to State Police records, 24 NJDA members have registered more than 200 handguns and only one member has obtained a permit to carry a handgun. Twenty members admit to carrying handguns without permits. Although members claim they are exempt from the permit requirements of *N.J.S.A. 2C: 58-4*, they are not.

In 1905, the Legislature enacted the first regulations governing the possession and use of weapons. Chapter 172 made possession of weapons, in the absence of a permit from a governing body, a misdemeanor offense. It further provided:

Nothing in this act shall be construed to prevent any sheriff, deputy sheriff, police officer, constable, state detective, member of a legally organized detective agency or any other peace officer from carrying weapons in the discharge of his duty....

Specific exemptions for commissioned detectives, denoted as “State detective[s],” as well as exemptions for members of legally organized detective agencies, continued in the revised laws until 1924, when both categories were deleted. In 1938, commissioned detectives, together with detective agencies, reappeared in the law of enumerated exemptions. *N.J.S.A. 2:176-43*. Subsequent amendments to the law continued to include commissioned detectives, although reference to detective agencies was omitted in the 1963 amendment to *N.J.S.A. 2A:151-43*. In the 1966 statutory amendment, the Legislature deleted the category of commissioned detectives.

When the Legislature enacted the New Jersey Code of Criminal Justice in 1979, *N.J.S.A. 2C:1-1 et seq.*, it included extensive gun-control laws, which our Supreme Court has characterized “as a ‘careful grid’ of regulatory provisions.”¹⁴ Under the Code, it is illegal for a person to carry a handgun unless he or she first obtains a permit issued by a Superior Court judge or falls within one of the enumerated exemptions from the permit requirement. As the Supreme Court has noted, the issuance of permits constitutes “the

¹⁴ *In re Preis*, 118 N.J. 564, 568 (1990), quoting *State v. Ingram*, 98 N.J. 489, 495 n.1 (1985).

most closely-regulated aspect of gun-control laws”¹⁵ and “[v]ery few persons are exempt from the permit requirement.”¹⁶

Commissioned detectives are not specifically named or encompassed within any category of exemption from the criminal provision for carrying a handgun without a permit. Subsection a.(7)(a) of *N.J.S.A. 2C:39-6* is inapplicable because commissioned detectives are not “regularly employed member[s]” of any municipal or county police department. Further, any suggestion that commissioned detectives are subsumed under subsection c.(1), exempting “any other police officer, while in the actual performance of his official duties,” ignores basic rules of statutory construction in light of the specific deletion of their category. Further, commissioned detectives do not constitute “police officer[s]” under any statutory definition and no statute lists “official duties” for them. Moreover, in order to qualify for an exemption under subsection c.(1), an individual must complete a firearms training course approved by the Police Training Commission. Not only have NJDA members never attended such a course, except for those who are former police officers, but they are not even recognized by the Police Training Commission as law enforcement officers. Police officers must also adhere to the Attorney General’s Semi-Annual Firearms Qualification and Requalification Manual. Commissioned detectives do not observe the requirements.

The Commission was informed that all members qualify with their handguns twice each year in accordance with the Attorney General’s requirements and procedures

¹⁵ *Id.*

¹⁶ *Id.* at 569.

and that the Agency maintains records of their qualifications. Based upon the Agency's qualification records subpoenaed by the Commission, documentation began in 1992, but was haphazardly maintained each year thereafter. According to Agency records, most members did not qualify in some years; in other years, most did not qualify twice a year, and in two of the years, a number of members were "qualified" by an individual who was not certified as an instructor by the Police Training Commission. In addition, one member told Commission staff that, upon becoming a member and informing the president that he did not intend to carry a weapon, he was directed to submit his prior qualifications for inclusion in the Agency's records. The Commission examined these records and discovered that the dates were altered to make it appear that he had qualified at the time of his commission and in the subsequent year.

Two court cases have addressed the carrying of weapons by commissioned detectives. In 1971, a constable and member of the NJDA was indicted for carrying a weapon without a permit. The incident arose when he attempted to serve a subpoena for an attorney in a civil case. In denying the defendant's motion to dismiss the indictment, the court held that the statutory exemption for constables did not apply because the service of the subpoena was not in the course of his constabulary duties.¹⁷ The court also addressed the defendant's membership in the NJDA. Finding "nothing" in the 1871 charter that "purports to exempt" the members from the permit requirement, the court commented that "[e]ven if ... section 5 of the 1871 act...was deemed to give its members...the broadest rights of 'policemen' ..., such authority by the very terms of this

¹⁷ *State v. Nicol*, 120 N.J. Super. 503 (Law Div. 1972).

ancient legislation is limited to acting in criminal matters and serving criminal process.”¹⁸ This observation is not persuasive today, especially in light of the extensive regulations governing police officers’ possession of weapons and the improbability that an NJDA member will actually perform a police function.

Recently, a county prosecutor’s office filed a civil forfeiture action against an Agency member’s 9 millimeter handgun that had been confiscated by local police. On September 12, 1997, a judge ruled that the weapon constituted contraband and entered a judgment of forfeiture.¹⁹ The court found nothing in the 1871 charter or current legislation that “directly permits the carrying of a handgun by members of the New Jersey Detective Agency” and held that none of the enumerated exemptions to the permit requirement applies to the commissioned detectives.

A recent amendment to *N.J.S.A. 2C:39-6* establishes a new category of exemption for certain retired law enforcement officers. Accordingly, those NJDA members who are less than 70 years of age and were regularly employed as a full-time county sheriff, member of the State Police, county prosecutor’s detective or investigator, or member of a county or municipal police department may apply to carry a handgun under specified conditions, including that they semi-annually qualify in the use of a handgun.

¹⁸ *Id.* at 507.

¹⁹ *State of New Jersey v. Browning 9MM* (Law Div., Civil Part, Bergen County 1997).

Financial Analysis

For various periods from 1990 to March 1997, the NJDA maintained four checking accounts and four savings accounts, with a total of \$44,935 in receipts and \$42,489 in expenditures. The Commission's examination of the Agency's financial records revealed an inadequate accounting system, poor record-keeping and an absence of controls. The following specifics are noted:

- The Agency was unable to produce the majority of cancelled checks, deposit slips and bank statements.
- There was widespread failure to document either the receipt of monies or the expenditure of funds. Only 16% of the Agency's expenditures was supported by documentation. For example, only \$1,421 of the \$6,704 paid to a restaurant for dinner meetings was documented. In addition, there was no documentation to identify approximately 23% of the Agency's income and insufficient detail concerning most of the remaining income. Reimbursement to members for out-of-pocket expenses frequently was not supported by vendor or store receipts.
- The balances of closed accounts did not reconcile with the opening deposits for corresponding new accounts.
- Monies obtained from the closing of accounts were held for lengthy periods before being deposited into other accounts. For example, in 1993, there was a delay of eight and one-half months between the closing of an account and the corresponding deposit of the bank check into a new account. In 1995, a bank check of more than \$4,000 was deposited approximately four months after the first account was closed; further, for more than 28 months, the balance lay dormant in a non-interest bearing account.
- The receipt of dues has not been recorded in a uniform manner. There were no statements of dues paid for years 1990 through 1993. In addition, there was evidence that officers used cash dues to reimburse undocumented expenses.
- In violation of the 1871 charter, the Agency frequently maintained bank account balances in excess of the \$5,000 limit on the possession of real and personal property. During a 26-month period, bank balances exceeded the asset limitation 16 times. For example, during a 16-month period from August 1994 to November 1995, combined bank balances exceeded \$10,000.

- Contrary to the Agency's by-laws, financial reports were not submitted to the membership at the annual and regular meetings for years 1990 to 1997. The only financial information reflected in minutes consisted of account balances. Requests by some members for detailed financial data were never satisfied.
- Although, according to some members, budgets were compiled for each year since 1990 and a CPA was hired to perform an audit for one of the years, these documents were not contained in the NJDA's files.
- Pursuant to the current and prior by-laws, members holding the position of secretary have received "monetary consideration for [their] services." However, the Agency failed to issue them IRS federal tax forms 1099 for the fees to be reported as income.

The NJDA has not filed state or federal income tax returns or applied for an exemption from taxation. The assumption that it is a government entity and, therefore, exempt from taxation is not only fallacious, but contrary to the manner in which members have conducted themselves. It bears emphasis that the Legislature did not create another governmental subdivision when it passed the charter of 1871, but merely incorporated an existing association. The NJDA possesses none of the earmarks of a governmental unit – it maintains its own tax identification number, does not undergo a formal audit by an independent party, is not included in the state bureaucracy, is charged sales tax by vendors, and is not part of the state's budget, appropriation or accounting system.

The NJDA is not exempt from taxation because it does not fall within any of the categories of exempt organizations enumerated in subsection 501(c) of the Internal Revenue Code. The Agency does not operate exclusively for educational, religious, charitable, scientific, testing for public safety or literacy purposes, or for the prevention of cruelty to children or animals; nor is it a not-for-profit civic league or organization that is operated exclusively for the promotion of social welfare and devotes its net earnings

exclusively to charitable, education or recreational purposes. Moreover, until recently, the NJDA was authorized to receive fees from cases that it referred to members.

New Jersey Detective Agency Benevolent Association, Inc.

In March 1993, eight members of the NJDA formed the New Jersey Detective Agency Benevolent Association, Inc., as a non-profit corporation “to support and assure the continued existence of the New Jersey Detective Agency and enhance law enforcement.” The Benevolent Association has not had the unanimous support of NJDA members, and its only activity to date has been a failed attempt at holding a fund-raising dinner. Although the certificate of incorporation requires the adoption of by-laws, none have been passed. Despite the recollections of some members to the contrary, a checking account has never been opened in the name of the Benevolent Association.

A number of NJDA members, including one of the incorporators and past presidents of the Benevolent Association, stated that the related entity was formed to circumvent the \$5,000 asset limitation imposed by the 1871 charter and to raise funds for the NJDA. One member commented that they did not want the NJDA to be perceived as a fund-raising entity. Some members did not know anything about the Benevolent Association’s purpose or activities, while others believed it might have been disbanded.

Like the NJDA, the Benevolent Association never filed tax returns and never applied for an exemption from taxation. In light of the facts that the Benevolent Association was formed to support the NJDA and the NJDA does not qualify as an

exempt organization, the Benevolent Association also would not qualify for an exemption from taxation.

THE LAW ENFORCEMENT COMMUNITY

The state's chief law enforcement officer and every organization representing the leading law enforcement agencies throughout the state are unanimous in the opinion that the NJDA is archaic and has no place in today's system of criminal justice. The Attorney General, the New Jersey State Police, the New Jersey County Prosecutors' Association, the Sheriffs' Association of New Jersey and the New Jersey State Association of Chiefs of Police set forth their positions in written statements urging the repeal of the 1871 charter. Their statements include the following:

Some of the more significant oppositions to the existence of the NJDA include:

- Lack of accountability.
- Lack of formal police training.
- . . .
- The fact that the NJDA is a self-governing body with no obligation to report to any supervisory or governmental authority regarding the actions of its board or membership.

. . .
While I am sure that this legislation had some utility in the past, I think that the mission, role, and accountability of the NJDA is problematic especially when one compares the NJDA with the typical police agency in this state. As a result, the Division of State Police strongly encourages the repeal of A-285.²⁰

Carl A. Williams, Colonel
Superintendent, Division of State Police

²⁰ A-285 is the Assembly bill number for the 1871 charter.

Based upon our review of the statute, it does not appear that the New Jersey Detective Agency serves any current need of the State of New Jersey. I think we can all agree that the status of the law enforcement community today is a far different one than that which existed in 1871, when the statute was enacted....

...

In light of the current law enforcement agencies at the local, county and state levels, as well as state law permitting licensing of private detectives, there does not appear to be a need for such an Agency.

...

Inherent in the statute is the potential for abuse, since the "Agency" can select their own membership, accept reasonable fees and rewards, have the "same powers and authorities that constables and policemen have," yet are essentially self-supervised.

...It appears that the use of the name of this Association by its members has a serious capacity to mislead persons into believing that its members are, in fact, affiliated with the New Jersey State Police. The patches that they are authorized to wear on their "uniforms" also contribute to this capacity to mislead. I am aware of no function they are authorized to perform that can not [sic] be and should not be performed by a traditional law enforcement agency subject to training requirements and appropriate supervision.

Maryann K. Bielamowicz, Mercer County Prosecutor
President, New Jersey County Prosecutors' Association

It was unanimously agreed upon that the Sheriffs' Association of New Jersey opposes any organization that might interfere with or bring harm to other trained law enforcement personnel. It is our recommendation that the statute creating the New Jersey Detective Agency be repealed.

Samuel J. Plumeri, Jr., Sheriff, Mercer County
President, Sheriffs' Association of New Jersey

The Association believes that the statute enacted in 1871 to create the Detective Agency is outmoded, in that it now poses a threat to public safety rather than an enhancement and should be repealed.

We have no doubt that members of the Detective Agency served the State well at some time, but there is no longer a need for the Detective Agency. It is the position of the Association that this outdated statute be repealed before an unavoidable tragedy is caused by its continued existence.

Sandy Danco, Chief, Clark Police Department
President, New Jersey State Association of Chiefs of Police

I join in the general consensus of those law enforcement agencies expressing the belief that the enabling statute pertaining to the Agency should be repealed.

Peter G. Verniero
Attorney General

The New Jersey State Policemen's Benevolent Association, which represents more than 32,000 active and 16,000 retired police officers, also takes the position that the NJDA serves no valid purpose and is contrary to the state's system of law enforcement. PBA President Michael J. Madonna, who is vice-chairman of the Police Training Commission and a 31-year veteran of the Oakland Police Department, recalled that a number of years ago, the PBA rejected a request from the NJDA president for his members to join on the ground that NJDA members are not law enforcement officers. Madonna stated that commissioned detectives do not meet the criteria for membership in the PBA.

RECOMMENDATIONS AND REFERRALS

The Commission recommends that the Legislature repeal chapter 457 of the Laws of 1871.

At the same time, this matter is referred to the Attorney General, with the recommendation that he consider seeking a judicial declaration that the 1871 charter is repugnant to the comprehensive law enforcement scheme established by the Legislature and, therefore, has been repealed by implication.

It is further recommended that, in the interim, the Attorney General immediately notify NJDA members that they enjoy no exemption from the requirement for obtaining a permit to carry a weapon under *N.J.S.A. 2C:39-6* and, therefore, must cease carrying firearms. The Attorney General should also notify members that the use of red emergency lights on their motor vehicles violates the law.

Referral is also made to the Secretary of State, with the recommendation that NJDA members be notified that they must cease replicating all or part of the Great Seal of the State of New Jersey and discontinue utilizing any item that bears the seal.

In addition, the Commission's findings are referred to the Division of Taxation, New Jersey Department of Treasury, and the Internal Revenue Service.

This investigation was directed by Counsel Ileana N. Saros and conducted by Special Agents Michael J. Dancisin and David F. Mertz and Investigative Accountant Michael R. Czyzyk.