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THE ROLE OF THE PROSECUTOR: SERVING THE INTERESTS OF ALL THE PEOPLE

*Alan Vinegrad**

The legal profession's conception of public interest work has traditionally focused on the work of *pro bono* or civil liberties-based organizations, such as the American Civil Liberties Union and its local chapters, a variety of legal defense funds, the Legal Aid Society, and other similar organizations. Certain law schools provide financial incentives and institutional support designed to actively encourage their students to pursue job opportunities with these groups. Many students—the author included—can easily spend three years at a law school and not have any notion that public interest work also includes the job of being an Assistant District Attorney (local prosecutor), an Assistant Attorney General (state prosecutor), or an Assistant United States Attorney (federal prosecutor). Many others, aware of the general role of the prosecutor in our legal system, nevertheless have been steeped in publicity in recent years about the rather unique and increasingly politicized work of our most prominent prosecutors—the special prosecutors appointed under the now defunct Independent Counsel statute.¹ From this publicity, one can easily draw incomplete, if not unfair, judgments about what it means to be a prosecutor in our society.

It did not occur to me until well into my legal career that my own notion of public interest work was under-inclusive in this one significant respect: it did not include the work of the tens of thousands of federal, state, and local prosecutors across the country who lead the legal fight against crime and protect our society and its citizens from those

* Chief Assistant United States Attorney, United States Attorney's Office for the Eastern District of New York. The following remarks were delivered as part of the First Annual Address of the Hofstra University School of Law's Public Justice Foundation on September 22, 1999. I wish to express my sincere gratitude to the members of Hofstra University School of Law for inviting me to deliver this address, as well as to the editorial staff of the *Hofstra Law Review* for editing my remarks and presenting them in readable form.

1. See 28 U.S.C. §§ 591, 594-96 (1994 & Supp. III 1998).

who seek to enrich themselves at society's expense. As I will attempt to demonstrate, it is this sizeable group of lawyers who unquestionably do serve in the public interest in order to protect the safety and integrity of our communities and all of its members.

The purpose of this Essay is to share my thoughts on why what prosecutors do is, and should be, included in that segment of legal practice known as public interest law and, in fact, is one of the most honorable and meaningful ways that lawyers can serve the public interest in the finest traditions of our profession.

My interest in public service commenced with my clerkship for the Honorable Leonard B. Sand, a highly regarded United States District Court Judge for the Southern District of New York. I spent the better part of that fifteen month clerkship helping to draft what became Judge Sand's landmark, 665-page decision, which held the City of Yonkers and the Yonkers Board of Education liable for unlawfully segregating the city's public housing and public schools over the course of forty years.² I also helped draft Judge Sand's 179-page decision prohibiting the United States Government from following its practice of refusing to follow, as binding precedent, federal appeals court decisions holding in favor of Social Security disability claimants and against the federal government—what the government called its “non-acquiescence policy.”³ Although I had yet to take a deposition or cross-examine a witness in court, I knew from these experiences that I wanted to devote a substantial part of my legal career to public interest litigation.

For the next four years, I worked as an associate at a small litigation firm in Manhattan, concentrating on civil, white-collar criminal, and *pro bono* civil rights litigation. During my tenure with this firm, I worked for three experienced attorneys, including one who had worked for the National Association for the Advancement of Colored People (“NAACP”) Legal Defense Fund in the 1960s and early 1970s. While the experience had its rewards, I was increasingly drawn toward the practice of criminal law, and ultimately decided that I wanted to practice it on a full-time basis. More importantly, I realized that I wanted to practice criminal law from the side of the prosecution, rather than the defense—not only because I wanted a stronger commitment to public interest work, but also because I felt that I wanted to serve my country and my community in a more significant way than I could from the

2. See *United States v. Yonkers Bd. of Educ.* 624 F. Supp. 1276 (S.D.N.Y. 1985), *aff'd*, 837 F.2d 1181 (2d Cir. 1987), and *cert. denied*, 486 U.S. 1055 (1988).

3. See *Stieberger v. Heckler*, 615 F. Supp. 1315, 1342-43 (S.D.N.Y. 1985), *vacated on other grounds*, 801 F.2d 29 (2d Cir. 1986).

comfortable but commercially-oriented environment of a private law firm practice.

And so I joined the United States Attorney's Office for the Eastern District of New York, the federal prosecutors' office for Kings (Brooklyn), Queens, Richmond (Staten Island), Nassau and Suffolk Counties. Except for a one-year stint back in the private sector, I have spent the last ten years—from the beginning of January 1990 until now—at that office.

Among the many lessons that I have learned from that experience is that being a prosecutor is indeed among the most fulfilling public interest careers that one can have as a lawyer. A prosecutor is the quintessential public interest lawyer. His or her "client," so to speak, *is* the public. Prosecutors, quite simply, represent society—the public—in its effort to vindicate its rights and interests when those among us violate these rights by breaking the law. At the same time, prosecutors vindicate the interests of the victims of crime—the individuals, the communities, and the organizations who are harmed, either financially, physically, or in more intangible ways, by those who break the law. Prosecutors achieve these objectives by prosecuting and seeking to punish those who threaten the well-being of society and its citizens by breaking the law.

I will now take the opportunity to briefly describe some of the work that my office has done over the years while I have been there, in order to illustrate why it is that I perceive, and would invite you to perceive, what a prosecutor does as a paradigmatic example of public interest law.

The United States Attorney's Office for the Eastern District of New York—like many, if not most, federal and state prosecutors' offices throughout the country—has several different component sections. Each is responsible for prosecuting particular types of cases and offenders. But each of them is responsible for carrying out an important part of the overall mission to prosecute people who break our country's laws and to vindicate the rights of the people who are victimized by these crimes.

Our Organized Crime section, for example, is responsible for prosecuting members of traditional Italian Organized Crime families, as well as newer, emerging criminal organizations such as members of Russian Organized Crime. This includes prosecutions of organized crime figures—both "made" and aspiring members—not only for acts of violence, such as murder, robbery, arson, or hijackings (crimes, which have an obvious, tangible impact on their immediate victims) but

also for crimes that are the financial lifeblood of organized crime families. These crimes include extortion, bid-rigging, labor racketeering, loansharking and gambling. Prosecutors also bring civil actions to take over labor unions that have been infiltrated and corrupted by organized crime. The crimes committed by organized crime groups increase the cost of doing business in so many industries in our society, and thereby increase the cost of living for the citizens who live in communities afflicted by organized crime. An enormous public function is served by the effort to rid our society of the influence of these types of criminal organizations.

The United States Attorney's Office also prosecutes public officials when they violate the public trust and victimize all of us in a non-economic but most serious and destructive way—through acts of corruption. Our job as prosecutors in these cases is to vindicate society's right to honest and loyal public officials, and rid our government of those who breach the public trust for their own personal benefit, typically by accepting or demanding bribes in exchange for exercising their official power in a particular way or for the benefit of a particular person or organization. There are few things more frustrating than speaking with a legitimate, law-abiding businessperson who has been deprived of a government contract because his or her competitor resorted to bribing public officials to secure the business. And there are few things more satisfying than successfully prosecuting the public officials whose greed and disloyalty allow such inequities to occur. Prosecutors help in the effort to create and uphold an environment in which people can maintain, or at least regain, faith in the honesty and integrity of their government.

Our Business and Securities Fraud Section prosecutes people that make their living through various forms of theft. The means for perpetrating fraud are as numerous as the imagination, but generally have one of three principal objectives: stealing money from the government through fraud; stealing money from other businesses through fraud; or stealing money from individual citizens through fraud. The types of fraudulent schemes we prosecute include: securities fraud, mortgage fraud, bank fraud, health care fraud, United States Department of Housing and Urban Development fraud, credit card fraud, insurance fraud, "boiler room" (high-pressure telemarketing) fraud, and many others. This effort involves not only criminal prosecutions, but also civil cases brought by the government to obtain monetary recoveries for the victims of fraud and to impose monetary penalties on the perpetrators.

My first criminal trial was as the junior member of a two-person trial team, prosecuting a group of individuals—including a famous for-

mer New York City police detective—for defrauding several insurance companies of over one million dollars through a large series of fraudulent and phony insurance claims.⁴ Make no mistake: insurance fraud is not a victimless crime. Insurance companies, of course, are the direct victims of this crime. But the companies that sustain such losses do not do so alone. Their customers are also indirect victims of such criminal activity. Fraud prosecutions, such as these, seek to deter schemes in which all of us as consumers are the ultimate victims.

Our Narcotics Section prosecutes the more significant of the local, national, and sometimes international drug traffickers who are responsible for the importation and distribution of the most serious types of drugs into our communities. And have no doubt: if you see or listen to people who have lived in communities that were ravaged by drugs, and by the violence that almost inevitably accompanies them, you will have a much harder time entertaining the idea that drug trafficking is a victimless crime. It is not. Drug trafficking has many victims: neighborhoods that are destroyed by drugs and drug-related violence; users who become addicted to these drugs; and even children who fall prey to drug peddlers in our streets and in our schools.

We also have a relatively new Violent Criminal Enterprises Section, or gang unit. This section was the creation of former United States Attorney Zachary Carter (1993-1999), who decided that it was important for the federal government to augment the efforts of local prosecutors in fighting street crime, particularly when it involved organized gangs committing numerous acts of violence over extended periods of time. The mission of this section was to target gangs that were destroying housing projects, neighborhoods, or even entire communities because of their organized and repetitive commission of serious crimes—drug dealing, robbery, arson, kidnapping, and even murder. The focus of this section included cases that local police precincts were often unable to solve, despite their best efforts, because the gangs were too large, too strong, or too well entrenched to be eradicated.

In the literally dozens of cases brought by my Office over the last decade, we have been able to prosecute, punish, and eliminate the influence of numerous violent gangs in countless communities throughout the Metropolitan area. We have prosecuted gangs of virtually every ethnic stripe: Chinese, Korean, Vietnamese, Taiwanese, Jamaican, Dominican, Trinidadian, and many others.

4. See *'Batman' Detective Sentenced in Fraud Case*, N.Y. TIMES, Nov. 18, 1990, at 45 (referencing *United States v. Greenberg*, No. 89 Cr. 541 (RJD) (E.D.N.Y. Nov. 8, 1989)).

One example will hopefully suffice to illustrate why such prosecutions are eminently public interest in character. One of the more significant cases I have worked on, as a federal prosecutor, was the prosecution of the leaders and members of a Vietnamese street gang known as Born To Kill.⁵ For years, this gang terrorized a large section of New York City's Chinatown section through numerous acts of robbery, extortion, and other acts of violence.⁶ The gang targeted exclusively Asian victims—Chinese, Korean, Cambodian, Laotian, Taiwanese, and even their fellow Vietnamese—because the gang believed that these victims did not trust American police, were afraid of cooperating with the police, and would not report the gang's crimes.⁷ For many years, the gang was right. The gang terrorized members of the community through repeated acts of violence, with the vast majority of these crimes remaining either unreported, unsolved, or unpunished. The gang's crimes included, by way of example, the armed robbery of a jewelry store owner who gang members shot in the head and left for dead right in front of his six-year-old and nine-year-old daughters;⁸ the robbery of an Asian food market owner, whom the gang tied up with duct tape, gagged and viciously beat until she fainted;⁹ and the execution-style murder of a man in front of his wife and twelve-year-old nephew as he was about to close his jewelry store for the night.¹⁰ The murder, moreover, was carried out to prevent the man from testifying in connection with yet another jewelry store robbery that he witnessed less than two months earlier.¹¹ It was immediately after this last crime that the federal government decided that it was time to try to put a stop to this gang.

Within a year, over a dozen of those gang members were in jail. The leaders of that gang—who used to live in an attractive, single-family house in the middle-class neighborhood of Old Bethpage, just a few miles east of this law school—are now in jail, and will be for the rest of their natural lives.¹² I will never forget when the owner of the

5. See *United States v. Thai*, 29 F.3d 785, 794-95 (2d Cir. 1994).

6. See *id.*; see also Peg Tyre, *The Birth of Born to Kill: Officials Track Gang's Influence Along East Coast*, *NEWSDAY* (New York), Oct. 7, 1991, at 8.

7. See *Thai*, 29 F.3d at 795; see also Michael Tomasky, *Asian Gang's Violent World*, *NEWSDAY* (Long Island), Jan. 9, 1995, at B2.

8. See *Thai*, 29 F.3d at 796-97.

9. See *id.* at 797.

10. See *id.* at 798.

11. See *id.*

12. See Patricia Hurtado, *Asian Gang: 7 Guilty*, *NEWSDAY* (New York), Mar. 31, 1992, at 88; Steven Lee Meyers, *Life Sentence for Scourge of Chinatown*, *N.Y. TIMES*, Oct. 24, 1992, at L27; Peg Tyre, *An Enforcer Gets Life*, *NEWSDAY* (New York), Oct. 18, 1992, at 22.

food market, who was tied up and beaten, was finished testifying at the trial of that case. She was one of twenty-four Asian victims who testified at that trial. The local police (who were from out of state) had not been able to solve that robbery, but some of the gang members who cooperated in the case were able to help solve it for us. And I will never forget how the store owner thanked us for catching the people who terrorized her and said that she would never forget what we did for her for the rest of her life. And it was that conversation, among others, that made me realize why it was that one could reasonably describe a prosecutor as a lawyer working in the public interest.

Terrorism prosecutions are an increasingly important part of what federal prosecutors do. Regrettably, terrorism is becoming much more a part of this country's existence than ever before, and thus an increasingly frequent part of the work of federal prosecutors across the country.

The United States Court of Appeals in Manhattan recently issued a lengthy decision upholding the convictions of the defendants in a nine-month terrorism prosecution brought by the United States Attorney's Office in Manhattan¹³—perhaps the preeminent office in the country in the area of terrorism prosecutions. The defendants, led by a blind sheik named Abdel Rahman and numerous others, were convicted of multiple acts of terrorism, including the bombing of the 110-story World Trade Center building, and the aborted plot to bomb the Lincoln and Holland Tunnels, the Federal Bureau of Investigation building, and the United Nations.¹⁴ It is inconceivable to me how anyone could read that decision and not come away believing that the prosecutors in that case were serving the public interest in one of the most important ways imaginable. It is no exaggeration to say that they put their own safety and security on the line in order to incarcerate a ruthless group of would-be mass murderers, all for our societal benefit.

Prosecutors also bring a combination of civil and criminal actions to prevent and punish those who destroy our environment through unlawful activity. Such prosecutions are a fitting compliment to private actions brought by environmental groups and associations, and serve the dual function of preserving and protecting the sanctity of our environment and punishing those who disregard it for their own monetary advantage.

Our Office is also a preeminent force in carrying out the Department of Justice's "Weed and Seed" program. The objectives of this pro-

13. See *United States v. Rahman*, 189 F.3d 88, 160 (2d Cir. 1999).

14. See *id.* at 104-11.

gram are to bring federal prosecutorial resources to bear in eradicating crime from troubled communities (“Weed”) and then assist those same communities in developing social, educational and recreational programs for revitalizing these communities (“Seed”). The United States Attorney’s Office in Brooklyn has helped establish a total of eight separate “Weed and Seed” sites, the most of any district in the country.

A multitude of other types of criminal prosecutions serve the public interest as well. We prosecute gun traffickers, child pornographers, bank robbers, alien smugglers, “deadbeat dads” who fail to pay child support, kidnapers, money launderers, tax evaders, carjackers, and many other criminals who violate the law and threaten society’s economic and physical security in various ways.

As a final example of our public interest work, our Office also has had a prominent role in prosecuting civil rights cases in the New York City area. These are cases in which we as prosecutors can bring charges, both civilly and criminally, to vindicate society’s commitment to equality as expressed in its anti-discrimination laws, as well as to vindicate society’s commitment to the right of every citizen to be free from the unlawful use of excessive physical force at the hands of the police.

Among the more noteworthy civil rights cases brought by my Office are:

1. The prosecution of individuals who firebombed a real estate brokerage office in Canarsie, Brooklyn, because it was serving the needs of its black customers as well as its white ones.¹⁵

2. The prosecution of leaders and members of an organization that brought deaf Mexican aliens into this country so that it could use them as slave labor, selling trinkets on the subways of New York City for well-below minimum wage, and housing them in inhumane conditions of servitude and squalor.¹⁶

3. The prosecution of the man who started the Crown Heights riots in Brooklyn and provoked the attack of Yankel Rosenbaum, an entirely innocent orthodox Jewish man, as well as the prosecution of the man who carried out that attack by stabbing Yankel Rosenbaum to death.¹⁷

15. See *Scire v. United States*, No. 96-CV-3446, 1997 WL 138991, at *1 (E.D.N.Y. Mar. 24, 1997).

16. See *Mirta Ojito, U.S. Permits Deaf Mexicans, Forced to Peddle, to Remain*, N.Y. TIMES, June 20, 1998, at A1 (referencing *United States v. Paoletti-Lemus*, No. 97 Cr. 768 (NG) (E.D.N.Y. Dec. 12, 1998)).

17. See *United States v. Nelson*, 68 F.3d 583, 585 (2d Cir. 1995).

4. The prosecution of the police officers who took a Haitian man named Abner Louima into the bathroom of a police precinct, threw him to the ground, and shoved a broken broom handle into his rectum so forcefully that it tore a hole through his rectum as well as his bladder, all because the police thought—mistakenly, as it turns out—that Mr. Louima had hit one of them earlier that morning.¹⁸

5. The prosecution of prison guards who took a defenseless man serving a ninety-day jail sentence for drunk driving, in a jail less than two miles from this law school, and beat him viciously, resulting in his death.¹⁹

6. A landmark lawsuit challenging Nassau County's method of valuating residential real estate for tax purposes—a system that has resulted in gross inequities that disfavored minorities for many years.²⁰

7. An investigation into the New York City Police Department's pattern and practice of denying citizens' constitutional rights by maintaining an inadequate disciplinary system that tacitly encourages the use of excessive force by the police.²¹

These are all cases that any "traditional" public interest or civil rights organization would likely be proud to have as its own. And yet each and every one of them was brought by federal prosecutors.

This Essay has attempted to convey some of the many ways in which prosecutors serve all segments of our communities and vindicate the public interest by prosecuting those who break the law. It is a message that I believe has been insufficiently delivered to law students and lawyers all over. I urge law schools and their administrators to make, or continue to make, affirmative efforts to include prosecution work within the ambit of what they consider "public interest" law, and to afford it the respect and support that other public interest legal organizations receive. It is a message that I have thought about often but never delivered in a public forum. And it is for this reason that when I was invited to speak to the Public Justice Foundation of the Hofstra University School of Law on how a prosecutor serves the interests of all people in our society, I was more than happy to accept that invitation.

18. See *United States v. Volpe*, 78 F. Supp. 2d 76, 80 (E.D.N.Y. 1999), *aff'd in part*, 2000 U.S. App. LEXIS 20900 (2d Cir. Aug. 16, 2000).

19. See Robert E. Kessler, *Building the Case: Jail-Death Probe Came Close to Murder Charges*, *NEWSDAY* (Long Island), Feb. 5, 1999, at A3 (referencing *United States v. Velazquez*, No. 99 Cr. 516 (JM) (E.D.N.Y. May 26, 2000)).

20. See *United States v. County of Nassau*, 79 F. Supp. 2d 190 (E.D.N.Y. 2000).

21. See William K. Rashbaum, *More Police Officers Being Punished, but Not More Severely*, *N.Y. TIMES*, July 28, 2000, at B1.
