New York State Judicial Institute

Partners in Justice:

A Colloquium on Developing Collaborations Among
Courts, Law School Clinical Programs and the Practicing Bar

Awareness of Collateral Consequences: The Role of the Prosecutor

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ROLE OF THE PROSECUTOR

New York County Lawyers’ Association President, Norman Reimer states in his essay: “The ‘collateral consequences’ of a criminal conviction, the focus of this colloquium, have multiplied exponentially in the past decade. For an ever-expanding multitude of offenders… these consequences dwarf the severity of the criminal sanction itself.”

What these offenders discover after they have been convicted by plea (or after trial) or have completed their sentences is that they have only begun to suffer the consequences of their convictions. Some examples of the collateral consequences of a criminal conviction are:

   Disenfranchisement

   Employment

   Public Housing

   Driving Privileges

1 DR 7-103 [1200.34], Performing the Duty of Public Prosecutor or Other Government Lawyer.

   A. A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he or she knows or it is obvious that the charges are not supported by probable cause.

   B. A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to a defendant who has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense or reduce the punishment.

Part 1200 of Title 22 of New York Codes, Rules and Regulations


3 Loss of the right to vote or travel abroad. See, Meaton v United States, 328 F2d 379.

4 Loss of civil service employment. See, United States v Crowley, 529 F2d 1066, cert denied 425 US 995; Loss of Professional licenses.

5 Narcotics Eviction Programs
Firearms Possession

Immigration Status

Civil Forfeitures

How much should the prosecutor consider consequences that are “peculiar to the individual and generally result from actions taken by agencies” not within their control? Practically speaking, it is impossible not to consider the effects of these collateral consequences during the prosecution of a criminal case. The ethical prosecutor appreciates the importance of objectivity and evenhandedness in prosecution. “The responsibility of a public prosecutor differs from that of the usual advocate; the public prosecutor's duty is to seek justice, not merely to convict.”9 Accordingly, prosecutors must consider the collateral consequences of the convictions we obtain if we are to ensure that justice is achieved. A few brief examples of how prosecutors can assist in avoiding an unjust collateral consequence of a criminal conviction:

First time offenders who commit truly minor, non-violent offenses who will face a loss of a professional license, employment, deportation, etc. should they receive a criminal conviction should, depending on the facts of the case, be afforded an opportunity of a more favorable disposition i.e. a violation or Adjournment in Contemplation of a Dismissal.

In Narcotics Eviction Programs, the prosecution should review each case individually and be careful not to seek eviction where fairness requires a different remedy.

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6 Loss of a driver's license  See, Moore v Hinton, 513 F2d 781 (1975)
7 Loss of the right to possess firearms  See, Penal Law §400.00
The **primary** mission of a *Civil Asset Forfeiture Program* should be to remove the proceeds of crime and other assets relied upon by *criminals* and their *criminal* associates to perpetuate their criminal activity. Prosecutors should scrupulously avoid depriving assets from those not proven to be involved in the criminal activity.

“Our job, our duty, [as prosecutors] is to seek justice…How can we ignore a consequence of our prosecution that we know will surely be imposed by the operation of law?”10 We can not and should not.

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