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# Prosecutorial Missed-Conduct

*Patti Sudendorf\**

In an atmosphere infused with allegations of prosecutorial misconduct from the media, coupled with specifics of the same extracted from recent appellate court decisions,<sup>1</sup> the public's perception of prosecutors has been, to varying degrees, challenged. The publicized examples and rhetoric contained in emotionally-charged and animated arguments raised on behalf of silenced victims has caused the spotlight to veer from the defendants onto the prosecutors themselves. "Prosecutorial misconduct" has been regularly splayed across the papers, causing the public and potential jurors pause in examining the role of the prosecutor.<sup>2</sup>

Notwithstanding the present climate, hundreds of prosecutors continually and resolutely step into courtrooms day after day, accepting the prosecutorial responsibilities of advocating aggressively for the People of the State. Whether in an urban or rural area, these attorneys walk into courtrooms every day fully aware of the eyes and ears that are upon them. They understand and appreciate this presence—it is part and parcel of the people they represent. This review falls not only under the scrutiny of the jury, the judge, and the appellate courts, but also by the public for

whom prosecutors swear to serve. This accountability is why many signed on: speaking on behalf of a family for whom no amount of money will replace the loss of a loved one; empowering a young woman to leave an abusive relationship; attempting to right an inexplicable wrong that transpired in only a moment.

This duty-to speak on behalf of traumatized victims, to attempt to correct an injustice, to vigorously advocate in a court of law—is what has inspired many prosecutors. Representing the People of the State presents a daunting but immeasurably rewarding task. Echoing throughout the courtrooms, many of these men and women recount for countless jurors the horrors that had been disclosed to each of them, perhaps only months before in a case file. This role, however, represents only a portion of the prosecutor's responsibilities. There are numerous other duties that may be less visible or less publicized than the courtroom dramas, yet they are just as integral to the role of a prosecutor.

This is not an attempt to undermine the issues presented in recent publications concerning prosecutorial misconduct, but the portrayal of the prosecutor as the overzealous advocate does not reflect the true character and breadth of the men and women who serve in that capacity. The responsibilities of the prosecutor are vast and far-reaching. The com-

munity requires more from its attorneys than the prosecution of misdemeanor and felony crimes, and this is a call to which many prosecutors respond every day. In Illinois, for example, numerous prosecutorial departments and divisions have evolved and expanded over time to respond to the needs of the public.

## The Juvenile Community

To illustrate, the Juvenile Justice Division of the Cook County State's Attorney's Office in Illinois, specifically the delinquency division, deals with minors charged with both misdemeanor and felony cases. In the late 1990s, coming off the heels of a notable increase in crimes committed by youth that peaked in 1994,<sup>3</sup> a need developed for the Juvenile Division to partner more closely with communities in order to provide services for youth and their families within their own neighborhood.

What followed was the passage of the Juvenile Court Reform Act of 1999, introducing the concept of balanced and restorative justice, which focused not only on the minor but also called upon the victim and the community to determine appropriate responses to juvenile crimes. The goals of accountability and restoration of the minor, the victim, and the community were at its core. Instrumental in drafting the Juvenile Justice Reform Act, supervisors within the

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delinquency division of the Juvenile Justice Division testified through numerous sessions before the legislature for its successful passage. Once this legislation was enacted, the delinquency division immediately began actively partnering with community organizations, implementing programs to offer as court alternatives for minors referred to the Juvenile Court system.

Utilizing a balanced and restorative justice approach, the Cook County State's Attorney's Office began looking toward mediation and victim-offender conferencing as an alternative to referring a juvenile to court. This required the cooperation of the victim as well as the community to agree to sit at the same table to discuss and attempt to resolve issues stemming from the action that brought the case to Juvenile Court. The Assistant State's Attorneys assigned to Juvenile Court would regularly reach out to these victims to inform them fully of the process and answer any questions concerning a case that was being diverted to a court alternative program, as opposed to being directly referred to court. The victim would then actively participate in fashioning a disposition with the goal of holding the minor accountable while restoring the victim and the community.

Programs such as Community Justice for Youth, the Chicago Bar Association's Center for Conflict Resolution, and Neighborhood Restorative Justice provide these victim-offender conferences and maintain community ties through panel members, mediators, and service providers. This continued partnership gives the minor and his or her family a connection to the community rather than the courts.

Other community agencies have also teamed up with the Cook County State's Attorney's Office to

provide services for minors referred to Juvenile Court. The Westside Association for Community Action, the Elijah Thurston Organization, Youth Outreach Services, and the City of Chicago's Youthnet programs have

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continually accepted youth referred by Assistant State's Attorneys into their specific community programs and continue to provide a valuable link and individual support to minors and the minors' families.

With the cooperation and involvement of prosecutors in the juvenile system, several programs have been aimed at youth involved in specific crimes. For crimes involving gun possession, the In My Shoes program, developed through Schwab Rehabilitation Hospital, provides a stark presentation of the consequences of gun crimes. Presented almost exclusively by wheelchair-bound victims of gun violence, the program requires that youth who are referred by prosecutors to this program assume the lifestyle and routines of these victims for a brief period. The difficulty involved, coupled with poignant dialogue from the vic-

tims, serve as the foundation for this valuable program. Using referrals by the Assistant State's Attorneys assigned to juvenile court, the Illinois Masonic Hospital's Adolescent Substance Abuse Prevention Program targets youths referred to the Juvenile Court system on possession of controlled substance or substance abuse-related crimes and strives to prevent them from continued contact with the court system. Also, the Cook County Juvenile Probation Department conducts programs that target sex abuse crimes committed by youth. The Retail Theft School, produced by the Cook County Probation Department, regularly calls upon Assistant State's Attorneys to address minors referred on retail theft charges and their parents to educate both about the results and ramifications of continued contact with the court.

As shown here, the role of a prosecutor assigned to the juvenile division encompasses much more than the prosecution of a criminal case. A prosecutor must first determine whether sufficient evidence exists to charge a case, and if so, whether or not the case is more suited to a court alternative program. Not only does this require a working knowledge of the various programs available to minors, but it also demands that prosecutors themselves take an active part in the programs in order to be fully effective in their roles and to meet community needs.

### **Multi-disciplinary Collaborations**

Prosecutors throughout the Cook County State's Attorney's Office work daily in collaboration with other community agencies and government entities to respond to the public's needs. One such collaborative effort, the Chicago Child's Advocacy Center ("CCAC"), involves the Chicago Police Department, the City of

## FEATURES

Chicago, the Department of Children and Family Services, Cook County Hospital, private sector treatment providers, and the Cook County State's Attorney's office.

The CCAC involves members of these groups in a multi-disciplinary team to address child victims of sexual assault. This participation allows allegedly sexually abused children to be seen daily for forensic interviews, crisis intervention, treatment, education, and outreach. Specialized medical facilities, confidential interview and viewing rooms, training areas, and play areas are also available to these children.

Daily meetings between the collaborators determine the programs most beneficial to the children involved. Significantly, it lies within the role of the prosecutor to determine whether sufficient evidence exists to bring the case to court, whether additional investigative work is necessary, or whether the case will be referred for services. These services, provided in part by outside agencies, are a vital component of the CCAC.

### The Neighborhood Community

Yet another example of the Cook County State's Attorney's collaborative efforts is the First Municipal Community Prosecutions Division. The attorneys assigned to this division work closely within communities to provide services both in and out of court. A series of satellite offices are staffed with both a misdemeanor and a felony assistant, who are responsible not only for a specific caseload but also for addressing the public safety needs of the communities in which they serve.

Working together with local law enforcement, the prosecutors meet regularly with community members to address specific areas that are

a source of concern for the community. The prosecutors participate with local law enforcement in meetings at their assigned districts to problem-solve issues affecting a particular neighborhood and to report regularly on the progress and dispositions of misdemeanor and felony cases involving the community. The prosecutors have also developed training programs on crime and the legal system that have been welcomed by both the communities and law enforcement.

One of these programs is directed toward students at the neigh-

### Advocacy lies at the heart of prosecution and is not limited to the courtroom.

borhood schools. The prosecutors hold a "mock trial" for high school students, highlighting perhaps a narcotics, robbery, or battery case, depending on the request of the school. The mock trials involve the students as judge and jury, while the prosecutors and police play the advocates, witnesses, and defendant. Afterward, the prosecutors answer students' questions on the specific issues presented during the course of the trial along with their questions about the justice system.

To meet the increased community interest in hate crimes, which are often handled by both the community prosecutors and hate crime initiative assistants in the suburbs, community prosecutors produced a "Hate Crime" video that educates and trains both law enforcement personnel and high school students. The 25-minute video utilizes a courtroom-as-classroom approach, with prosecutors playing different roles to demonstrate common issues contemplated in hate crime cases. All of these projects, welcomed by community members,

were developed by prosecutors listening to the people they represent and attempting to meet these needs.

### The Advocate Community

Advocacy lies at the heart of prosecution and is not limited to the courtroom. Nor is it limited to the parties traditionally linked to the courtroom, such as the Assistant State's Attorney, the Assistant Public Defender, and the private defense attorney. Advocates acting on behalf of victims—sex assault victims, victims of domestic violence, victims of crimes committed against children—have been instrumental in developing the prosecutor routine.

Prosecutors assigned to the divisions for sex crimes, domestic violence, and child advocacy meet regularly with representatives from various advocacy groups to ensure that victims' needs are addressed. This may include seeking successful prosecution against a particular sexual perpetrator, proposing new legislation on offender reporting and registration, and developing a new domestic violence courthouse. By highlighting safe housing, education, job training, child care, and treatment programs, as well as safety in the courtrooms, during visitation, or at work or school, the advocacy community has brought these issues to the forefront through a specific task force formed by the Cook County State's Attorney. The task force's goal is open discussion in assisting victims beyond a successful prosecution.

Task force meetings focus not only on individual cases but also on broader issues central to victims' needs. This regular dialogue provides the advocates and the Assistant State's Attorneys in each division the opportunity to voice their ideas and insight on upcoming legislation, updating protocol, upgrading services, and

other events impacting the victims. While perhaps every need cannot be met specifically through the State's Attorney's Office, it is through this channel that the task force can collaborate and bring their concerns to an authority that can implement necessary changes. This process effectively enables prosecutors and the public to ensure victims' needs are not compromised within the judicial process.<sup>4</sup>

## Conclusion

While the aforementioned collection of programs and collaborations is by no means exhaustive of the working relationships that prosecutors share with the public and the communities that rely upon them, it offers a glimpse of the many facets comprising this office. It is this daily contact with those in need of more comprehensive attention than what the courts alone provide, with the families trying to keep a member out of prison, with the residents trying to build pride in their neighborhoods—that makes the prosecutor a vital member of the both the courtroom and the community. The time and effort devoted to this involvement, however, is hardly balanced by the same in press coverage. Nonetheless, it only acts as a testament to the prosecutors' commitment to the public that they continue to serve in these collaborative and progressive activities. Most certainly, the public works of the prosecutor, while not by media definition, really are quite sensational.

1. *People v. Johnson*, 208 Ill.2d.53 (2003).

2. Chicago Daily Law Bulletin, March 2, 2004; Chicago Tribune, June 26, 2003.

3. Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, December 2000.

4. Office for Victims of Crime, U.S. Department of Justice Bulletin #3.

# Mandatory Fire Sprinklers: Balancing Home and Workplace Safety

*Eileen D. Collins*

In the wake of the highly publicized fire that killed six people in the Chicago building that housed Cook County government offices, the Chicago City Council now has before it two competing proposals that would require older buildings over 80 feet tall to be retrofitted with fire sprinklers.<sup>1</sup> City ordinances already on the books now require fire sprinklers in all buildings 80 feet and higher built after 1975. While one pending proposal would require all high-rises built before 1975 to be retrofitted with sprinklers within five years, a second proposal would exempt residential and historic high-rises and would allow a twelve-year time frame for compliance.

While both sides seem to be in agreement regarding sprinklers in commercial buildings, debate surrounds the proposed residential sprinkler requirement. Opponents of the residential sprinkler requirement, primarily concerned with the cost associated with the installation of sprinklers, worry about where the money will come from to pay for the upgrades. Proponents, citing numerous examples of lives lost in high-rise fires, counter that one should not put a price on human life.

Compared to fires fought with a fire hose alone, fires that are also fought with fire sprinklers save more lives and decrease the cost and extent of damages in the home.<sup>2</sup> A fire sprinkler has less water flow and lower water pressure than a fire hose.

There are also several myths surrounding fire sprinklers that make some hesitant to support fire sprinkler requirements, such as cigarette smoke or a fire alarm will activate sprinklers, or if one sprinkler is activated all will then activate. Fire sprinklers are activated by heat alone, not smoke, sound or other sprinklers.

The proposal endorsed by Chicago Mayor Richard M. Daley would require all commercial build-

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**Fire records show that 93 percent of all fires are handled by only one sprinkler.**

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ings taller than 80 feet built before 1975 to be retrofitted with sprinklers within 12 years. A competing proposal endorsed by Alderman Edward M. Burke (14th Ward) would require sprinklers in both commercial and residential buildings over 80 feet built after 1975. Although Daley's plan exempts both residential and historic buildings, it would require safety evaluations of those exempted buildings to determine whether the building meets the required level of safety.

Estimates for the installation of fire sprinklers vary, ranging from \$3-4 per square feet up to \$10-15 per square feet. To help alleviate some of the financial burden of complying with these ordinances, Mayor Daley is supporting federal and state tax breaks, property tax exemptions, and