

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

By:

Catherine A. Christian
Vice President
New York County Lawyers' Association

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“Collateral consequences are peculiar to the individual and generally result from the actions taken by agencies the court does not control.”
People v. Catu, 2005 N.Y. LEXIS 451 (2005), citing, People v Ford, 86 NY2d 397 (1995)

ROLE OF THE PROSECUTOR¹

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.”² 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:

Disenfranchisement³

Employment⁴

Public Housing⁵

Driving Privileges⁶

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

² “The Role of the Organized Bar in Building Bridges Between Practicing Attorneys and Law Schools: An Essay on the Prospects for Collaboration Between Law Schools and the Bar to Advance Social Justice.” Norman L. Reimer, Gould Fishbein Reimer LLP, President New York County Lawyers’ Association, March 2005

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 Possession⁷

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.

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

⁸ New York State - Civil Practice Law and Rules Article 13-A Proceeds of a Crime – Forfeiture; Federal- Civil Asset Forfeiture Reform act 28 U.S.C. §2465

⁹ American Bar Association Code of Professional Responsibility, EC 7-13.

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.

¹⁰ “Collateral Consequences” May – June 2001, Message from the President, Robert M.A. Johnson, Anoka County Attorney, Anoka, Minnesota, U.S., President, National District Attorneys Association.