



The Evolving Prosecutor: Broadening the Vision, Expanding the Role

BY CHARLES J. HYNES

This past March, Senator Jim Webb (D-Va.) fueled a growing debate on criminal justice reform when he introduced legislation (S.714) to create a federally funded, blue-ribbon commission that would undertake a thorough evaluation of the nation's criminal justice system and recommend changes for its improvement. That call for a national criminal justice commission put me in mind of another commission, one that completed its work over four decades ago when I was just beginning my career as a prosecutor. How was the prosecutor's role viewed back then? Has there been any real change, and, if so, how widespread is that change? The answers to these questions obviously concern me as a district attorney, but I believe that they have significant implications for the country's future success in reducing crime.

In 1967, the President's Commission on Law Enforcement and Administration of Justice issued its landmark report: *The Challenge of Crime in a Free Society*. The commission, composed of an illustrious group drawn from the judiciary, academia, law enforcement, the defense bar, and government, and assisted by an extraordinary staff headed by Executive Director James Vorenberg, professor at Harvard Law School, conducted an in-depth examination of every facet of crime and law enforcement in this country and made more than 100 recommendations for reform.

The 1967 report remains a remarkably fresh and

CHARLES J. HYNES is the 2009-2010 chair of the Criminal Justice Section and the district attorney for Kings County, New York.

vigorous document. Putting aside a few anachronisms, many of its observations are as applicable today as they were more than 40 years ago. Even many of the commission's wide-ranging recommendations have remained pertinent—including the broader use of alternatives to incarceration for nonviolent offenders, including community-based treatment; the implementation of strategies to improve police/community relations; and a greater reliance on research to develop effective means of controlling crime.

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The commission recognized that a slew of factors contribute to crime and that it is the responsibility of society as a whole, and not just those in the criminal justice system, to prevent crime by alleviating the social conditions that stimulate it. The commission also saw a need both for better coordination among entities within the criminal justice system in dealing with offenders and implementing crime prevention strategies, as well as better

coordination between those entities and other social service agencies outside the system. However, even as it promoted a more proactive and holistic approach to crime, the commission still did not make the leap and embrace a completely integrated strategy.

As for prosecutors, the commission primarily characterized them as case processors who, exercising a fair amount of discretion, moved offenders through the criminal justice system from arrest to incarceration. The commission urged prosecutors to exercise their discretion to divert more offenders out of the system, but it did not envision prosecutors as truly transcending the walls of the courtroom, collaborating with social service agencies, acting as problem

solvers, and exploring innovative strategies at a community level.

By the early 1990s, the view of prosecutors as simple case processors was evolving. Prosecutors began to look beyond their essentially reactive approach to crime and to recognize that, with contacts both inside and outside the courtroom, they were uniquely positioned to forge partnerships and linkages, act as agents of change in the criminal justice system, and promote a paradigm shift in how to address crime. They adopted crime prevention as a key component of their mission.

The new strategy has taken root over the last two decades in district attorney offices across the country. Different jurisdictions have tweaked the paradigm in distinct ways, emphasizing certain aspects over others (for example, targeting quality of life crime in a definite geographic area or focusing on treatment alternatives to incarceration), but commitment to community engagement and to crime prevention remains constant (*see* ROBERT V. WOLF and JOHN L. WORRALL, CENTER FOR COURT INNOVATION AND APRI, LESSONS FROM THE FIELD: TEN COMMUNITY PROSECUTION LEADERSHIP PROFILES (November 2004)). No single term truly encompasses all these different programs, but “community prosecution” is the most commonly used umbrella label. According to the National District Attorneys Association’s National Center for Community Prosecution, the proactive, collaborative, problem-solving approach is distinguished by certain key principles: (1) recognizing the community’s role in public safety; (2) engaging in problem solving; (3) establishing and maintaining partnerships; and (4) evaluating outcomes of activities. The American Prosecutors Research Institute has issued several reports exploring the varied dimensions of community prosecution and the redefinition of prosecutors’ roles (*see, e.g.*, M. ELAINE NUGENT, PATRICIA FANFLIK, and DELENE BROMIRSKI, APRI, THE CHANGING NATURE OF PROSECUTION, COMMUNITY PROSECUTION VS. TRADITIONAL PROSECUTION APPROACHES (February 2004)).

State and local prosecutors have increasingly teamed up with entities outside the criminal justice system and built partnerships to curb criminal behavior by addressing its root causes, and this is especially true in jurisdictions serving large urban populations. For example, in response to a 2005 nationwide survey of state prosecutor offices, 66 percent answered that they used tools other than criminal prosecution to address community problems; the number was 95 percent for full-time offices serving populations of one million or more. Seventy percent of prosecutor offices reported a formal or informal relationship with community associations; 92 percent in large offices. And although only 24 percent assigned prosecutors to community-related activities, that number jumped to 84 percent for large offices. (Steven W. Perry, *Prosecutors in State Courts, 2005*, BUREAU OF JUST. STAT. (U.S. Dep’t of Justice), July 2006 at 9.) Space here does not permit

a description of the efforts of these prosecutor offices, but the National Center for Community Prosecution publishes a newsletter that reports on several of the programs reflected in these statistics (*available at* www.ndaa.org/publications/newsletters/building_bridges_contents.html).

Additionally, prosecutors have become more willing to divert both juvenile and adult offenders, even felony offenders, into alternatives to incarceration, as can be seen in the proliferation of problem-solving courts, most notably drug courts (which, from one court in Florida in 1989, now number over 2,100 across the United States). Prosecutors are often key players in these courts, heavily involved in their establishment and operation. Prosecutors have also created their own diversion programs, targeted at different groups, such as youthful offenders, chronic drug addicts, and mentally ill offenders.

Although federal prosecutors have in general been slower than their state counterparts to embrace this new proactive, holistic approach to crime reduction, especially the use of alternatives to incarceration, change may be on the horizon. Fifteen years ago, when he was the U.S. attorney for Washington, D.C., Attorney General Eric Holder broke new ground by starting a community prosecution program in that office, a program still in place today. This year, in his remarks at the ABA Annula Meeting in Chicago, Attorney General Holder, still clearly committed to innovative solutions, declared that,

getting smart on crime means thinking about crime in context—not just reacting to the criminal act, but developing the government’s ability to enhance public safety before the crime is committed and after the former offender is returned to society.

The attorney general, among other things, specifically endorsed greater use of drug treatment alternatives to incarceration for nonviolent addicted offenders. Perhaps, federal prosecutors nationwide will now increasingly shift from functioning as case processors to becoming problem solvers.

Some question the wisdom of this broadened vision of a prosecutor’s role, and certainly, further research and evaluation of the myriad prosecutor programs would provide useful insights into their most effective aspects. But, experience already tells us that we cannot prison-build ourselves to a safer society. Almost all inmates eventually leave jail and prison, and a large number reoffend. A prosecutor’s office that, in blinkered fashion, focuses on just convicting and locking up offenders is ignoring the reality of criminal recidivism. The proactive, collaborative approach does not entail an abandonment of the district attorney’s traditional tools for crime reduction: investigation, prosecution, and conviction. Rather, it means complementing those tools with new ones: diversion, collaboration, community par-

ticipation, and research-based innovation. By enlisting the aid of entities outside the criminal justice sphere and by exploring fresh methods to reduce recidivism, prosecutors can increase public safety and help foster mutual respect between law enforcement and the citizenry.

The ABA *Criminal Justice Standards on the Prosecution Function*, approved in 1992, essentially focus on a prosecutor's professional conduct as an investigator and case processor. However, the Standards do note that the prosecutor is "an administrator of justice," has "[t]he duty . . . to seek justice, not merely convict," and has, as an important function, "to seek to reform and improve the administration of criminal justice." (Standard 3-1.2.) That commitment to justice, which in its broadest sense undergirds a fair and safe society, informs the new vision of the prosecutor's expanded role.

It is unclear whether Congress and the president will decide

that the time has come for a new National Criminal Justice Commission. However, it *is* clear (even without the insights of a commission) that there will always be room for improvement in our criminal justice system. We should never be satisfied with the status quo as long as people perpetrate crimes against others and violence threatens the public weal. All those in the criminal justice system, including prosecutors, should take these words of the 1967 commission to heart:

The Commission finds . . . that the officials of the criminal justice system itself must stop operating, as all too many do, by tradition or by rote. They must re-examine what they do. They must be honest about the system's shortcomings with the public and with themselves. They must be willing to take risks in order to make advances. They must be bold. ■