

AWARENESS OF COLLATERAL CONSEQUENCES: THE ROLE OF THE PROSECUTOR

CATHERINE A. CHRISTIAN*

*“Collateral consequences are peculiar to the individual and generally result from the actions taken by agencies the court does not control.”*¹

THE ROLE OF THE PROSECUTOR²

The New York County Lawyers’ Association President, Norman Reimer, stated: “The ‘collateral consequences’ of a criminal conviction, the focus of this [C]olloquium, have multiplied exponentially in the past decade. For an ever-expanding multitude of offenders . . .[,] these consequences dwarf the severity of the criminal sanction itself.” Some examples of the collateral consequences of a criminal conviction are: (a) disenfranchisement;³ (b) employment;⁴ (c) public housing (Narcotics Eviction Programs); (d) driving privileges;⁵ (e) firearms possession;⁶ (f) immigration status; and, (g) civil forfeiture.⁷

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 fairness

* President-Elect, New York County Lawyers’ Association.

1. *People v. Catu*, 2005 N.Y. LEXIS 451 (2005) (citing *People v. Ford*, 86 N.Y.2d 397 (1995)).

2. The role of the prosecutor in New York is defined, in part, by the New York Lawyers’ Code of Professional Responsibility, as follows:

(a) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when . . . 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.

N.Y. LAWYERS’ CODE OF PROF’L RESPONSIBILITY DR 7-103 [1200.34] (enacted as N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.34 (1990)).

3. *See generally Meaton v United States*, 328 F2d 379 (5th Cir. 1964) (loss of the right to vote or travel abroad).

4. *See generally United States v Crowley*, 529 F2d 1066 (3d Cir. 1976), *cert. denied*, 425 U.S. 995 (loss of loss of civil service employment).

5. *See generally Moore v Hinton*, 513 F2d 781 (5th Cir. 1975) (loss of a driver’s license).

6. *See generally Penal Law §400.00* (loss of the right to possess firearms).

7. *See 28 U.S.C. § 2465* (2000) (Federal civil forfeiture law); N.Y. C.P.L.R. § 13-A (McKinney 1997) (New York State civil forfeiture law).

in prosecution. "The responsibility of a public prosecutor differs from that of the usual advocate; . . . [her] duty is to seek justice, not merely to convict."⁸ Accordingly, prosecutors must consider the collateral consequences of the convictions they obtain if they are to ensure that justice is achieved. In this short article, I present 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, nonviolent offenses who will face, among other things, a loss of a professional license, employment, and deportation should, upon conviction and depending on the facts of the case, be afforded an opportunity of a more favorable disposition, *i.e.*, a violation or Adjudgment 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.

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?"⁹ We can not and should not.

8. MODEL CODE OF PROF'L RESPONSIBILITY EC 7-13 (1980).

9. Robert M.A. Johnson, *Message from the President: Collateral Consequences*, THE PROSECUTOR (May-June 2001), available at http://www.ndaa.org/ndaa/about/president_messagemay_june_2001.html.

**PART TWO:
HOLISTIC LAWYERING**

