

Prosecuting Cases Vertically: A More Victim-focused Approach

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I. INTRODUCTION

“I went to law school. And I became a prosecutor. I took on a specialty that very few choose to pursue. I prosecuted child abuse and child homicide cases. Cases that were truly gut-wrenching. But standing up for those kids, being their voice for justice was the honor of a lifetime.” Susana Martinez, current governor of New Mexico and former District Attorney of Doña Ana County, New Mexico²

People become prosecutors for different reasons; some become prosecutors as an avenue to public office, some do it for public service, and others do it to seek justice for the victims of crime. Regardless of why someone becomes a prosecutor, he or she has a special duty not only to help society by reprimanding criminals, but also to act with victim’s rights in mind.

According to the FBI UCR Program’s National Incident-Based Reporting System (NIBRS), in 2012, there were over 6 million victims of crime.³

Victims’ needs and considerations are largely underrepresented in the criminal justice system. The United States Constitution contains numerous amendments directed at defendants’ rights, but zero for victim rights.⁴ Some victim rights advocates have encouraged a national amendment encouraging a more victim-centered approach. In addition, California has even adopted a Victims’ Bill of Rights, which lists 17 enumerated rights.⁵ Though this is good

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² BRAINYQUOTE.COM, http://www.brainyquote.com/quotes/authors/s/susana_martinez.html

³ This included crimes against persons, property, and against society. *see* <http://www.fbi.gov/about-us/cjis/ucr/nibrs/2012>.

⁴ The Fourth Amendment protects against unreasonable searches and seizures, the Fifth Amendment protects the right of self-incrimination, the Sixth provides the right to a jury trial and competent counsel, and the Eighth protects against cruel and unusual punishment.

⁵ Some of these rights include reasonable protection from the defendant or persons acting on behalf of defendant, preventing confidential information about the victim to leak out, notice of when the defendant will be in court, and restitution for the wrong done to the victim by defendant. Victims’ Bill of Rights, http://oag.ca.gov/victimservices/content/bill_of_rights.

progress on victim's rights in the criminal justice system, to more effectively include victims as part of the criminal justice process in a way that is meaningful and impactful, District Attorney offices should prosecute cases vertically.

Prosecutors prosecute crimes two ways: vertically or horizontally. When a prosecutor prosecutes a case vertically, the same prosecutor handles every part of the trial process, from arraignment to sentencing. When a prosecutor prosecutes a case horizontally, a different prosecutor is in charge of each part of the process. For example, in some jurisdictions, the initial prosecutor handles the arraignment, then it gets passed off to another prosecutor for a preliminary hearing, and then another prosecutor does the trial. Advocates of horizontal prosecution argue that this type of organization is 1) better for efficiency because a prosecutor only has to focus on one aspect of the litigation process, and 2) prosecutors can become specialized in a particular area of the trial process and if a prosecutor is within a certain department, for a particular crime. Though there are valid benefits, vertical prosecution is the better option for justice because it makes the victim feel more meaningful involved in the system of justice, and is actually more efficient.

There is not a lot of guidance about what exactly a prosecutor's role is within the criminal justice system. One of the few rules from the American Bar Association Model Rules is 3.8: Special Responsibilities of a Prosecutor. Though not explicitly written in the text, Comment 1 gives prosecutors an idea of what their role is. It states, "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon

the basis of sufficient evidence.”⁶ Again, the focus is to ensure justice for the defendant; there is no mention of the victim.

According to the National Prosecution Standards⁷, a prosecutor’s primary responsibility is not only to be “an independent administrator of justice,” but also to ensure that “the rights of all participants, particularly victims of crime, are respected.”⁸ On the other hand, these same standards inform prosecutors to “zealously protect the rights of an individual, but without representing any individual as a client.”⁹ They also say that society’s interests are always weighted above any individual’s interest, including the victim’s.¹⁰ This leads to a conflict between the victim’s interest and doing what is best for society because they are not always the same thing. The rules guide prosecutors to value society’s interest above the victim’s, but one interest should not automatically take precedent over the other.

Conducive to these rules, vertical prosecution supports victims throughout the process while still keeping in mind defendants’ rights and justice.

II. VERTICAL PROSECUTION ADDRESSES VICTIM NEEDS

“Years ago when my husband was murdered, I had to sit outside of the courtroom during the trial. My husband’s murderer sat inside with a lawyer paid for by my tax dollars, in a new suit with his wife, children and minister. His wife sobbed at the drop of a hat, but when I began to cry the prosecutor asked me to leave so I wouldn’t influence the jury. No one seemed concerned about his family influencing the jury. You call that justice?” Victim - MADD Focus Group¹¹

⁶ Comment 1, ABA Model Rules 3.8, <http://423judicialdistrict.blogspot.com/2007/11/quotes-about-prosecutors-and.html>.

⁷ National District Attorneys Association, *National Prosecutions Standards, Third Edition*, Introduction, at 10 (2009), “These standards are intended to be an aspirational guide to professional conduct in the performance of the prosecutorial function.... These standards are intended to supplement rather than replace the existing rules of ethical conduct that apply in a jurisdiction.”

⁸ *Id.* Rule 1-1.1 Primary Responsibility of National Prosecutor Standards.

⁹ *Id.* Rule 1-1.2 Societal and Individual Rights and Interest of National Prosecutor Standards

¹⁰ *Id.* Rule 1-1.2 Societal and Individual Rights and Interest of National Prosecutor Standards

¹¹ Impact Statements: A Victim’s Right to Speak, A Nation’s Responsibility to Listen, Office for Victims of Crime, https://www.ncjrs.gov/ovc_archives/reports/impact/impact.htm.

Vertical prosecution better addresses victim's unique needs. Victims often feel traumatized, humiliated, and insecure after enduring a criminal act against them no matter how insignificant the case may seem. In the criminal justice system, the only opportunity victims have to be heard is in victim statements during the penalty phase of trial. However their feelings should be incorporated at the earliest stage of trial and throughout the trial. Because judges change and have no statutory or ethical responsibility towards the victim, and police officers don't have the time to sit with a victim throughout the case, the only agent available consistently to a victim is a prosecutor. By understanding the victim's feelings and experiences, a prosecutor can use it as motivation and intelligence for the trial while providing a victim a more meaningful way to connect with the criminal justice system rather than just showing up for a preliminary hearing or trial.

In addition, not only do victims feel powerless and vulnerable, but the trial process can re-traumatize them. Dr. Mark Umbright, Director of Research and Training at the Center for Victim Offender Mediation at the Minnesota Citizens Council on Crime and Justice, University of Minnesota stated, "the criminal justice system places victims in a passive position. They feel powerless and vulnerable; some even feel twice victimized, first by the offender, and then by the police and the courts who often overlook their needs."¹² They often feel like a pawn in the process, that their opinion does not matter, that what happened to them was not important, and that can make them feel like the prosecutor is not getting justice because they have no say in the process. In the book, *Victims in the Criminal Justice System*, Jo-Anne M. Wemmers gives several quotes from victims about how they felt about the overall prosecution from their interaction with police to their interaction with the prosecutors. One victim stated, "You get the feeling that you're only one of many cases and that there is more attention for offenders than for

¹² *Id.*

victims.”¹³ Another person was generally concerned about what was going on in her own case, saying, “You really want to know what happened with your case,” and yet another lamented, “I find it very careless that you don’t hear anything about your case.”¹⁴ Though these victims were from Norway, there is a common thread within the United States criminal justice system.

A. Vertical Prosecution addresses a victim’s unique needs by offering victims a way to feel involved with the justice process.

One way the justice system can support these feelings is by having one prosecutor assigned to a victim’s case from the preliminary hearing through the penalty phase of a trial, i.e. when the victim needs to be in court. Though there are victim support groups, the prosecutor is the center of the criminal justice system for these victims. The prosecutor has all the information and all the power to do something. Victims need to be able to express these feelings and need to feel safe.¹⁵ Having one person in the process who a victim feels like is on their side is important to making them feel safe and that they have someone to talk to. Instead of making the trial process impersonal, they have one person who they can seek information and support from. This leads to a more meaningful relationship between the prosecutor and victim where the victim feels involved and appreciated, and the prosecutor feels they are getting justice for them while also upholding justice for society.

B. Vertical Prosecution leads to better outcomes because prosecutors have the most complete information.

Having a good working relationship between the victim and prosecutor also leads to better outcomes for cases. If a prosecutor did not take time to speak to the victim, they would lose out on valuable information. Building rapport leads to more and better information. A

¹³ Jo-Anne M. Wemmers, *Victims in the Criminal Justice System*, 2.

¹⁴ *Id.*

¹⁵ Basic Guidelines on Approaching Victims of Crime, Office for Victims of Crime, https://www.ncjrs.gov/ovc_archives/reports/firstrep/bgavoc.html.

victim is less likely to tell someone all the details if she or he knows they are not invested in her case or she is just going to have to tell someone else the same thing again. Especially in cases where the substantial evidence comes from a victim, it is important to make them feel the prosecutor is trustworthy so they share all the details. If a victim does not feel the prosecutor cares, they are less likely to divulge both helpful information and hurtful information. It can also help when trying to get a victim to testify because the prosecutor has established a relationship with them. If victims feel like they are a part of the process, like they are helping the prosecutor put the defendant away, and are empowered; they should be more likely to testify.

On the other hand, horizontal prosecution makes a victim's feeling of helplessness even worse. The victim ends up speaking to multiple people who only have his or her case for a brief period of time before they pass it on to the next prosecutor. There is no real time to get to know the victim or all the intricate details of the crime. While some may argue that it should be this impersonal because the victim is not a prosecutor's client and they may grow too attached, it is in the best interest of justice to show compassion to the victim. If they don't, they just feel re-traumatized and they feel the system is against them. This is especially important in a particularly violent crime like rape or a serious assault, or for a family coping with a murdered family member.

Because vertical prosecution leads to a better working relationship with the victim, it addresses a victim's need for security and knowledge of what is going on and ensures that the prosecutor knows everything about the case.

III. VERTICAL PROSECUTION IS BETTER FOR OFFICE EFFICIENCY

“The idea that there aren’t mistakes made constantly in the judicial system is too obvious even to need to mention.” James Toback, screenwriter and film director.¹⁶

Prosecuting vertically is much better for office efficiency. In offices where time is valuable, it is important to have the most efficient system possible. It is also important to operate the office in a way that encourages the best outcomes for cases; it is not just about winning cases, but about making the right decisions for justice. Prosecuting vertically allows offices to limit the number of people who have to spend time learning new cases and allows prosecutors to dig deeper into their case. As a result they become more invested and will likely do better work.

A. Prosecuting vertically allows a prosecutor to make the best strategic decisions regarding the outcome of the case.

Having one prosecutor handle the case in its entirety allows one person to become knowledgeable and understanding of the case. It is not just about pleading out cases as quickly as possible or getting to the next stage of the process, but about ensuring justice at each stage of the trial process. While proponents of horizontal prosecution advocate for how efficient this organization is because it allows prosecutors to specialize, it is actually quite the opposite. For example, when a prosecutor receives a file for arraignment or for a preliminary hearing, they are only focused on that particular outcome. They miss out on strategizing a long-term effect of the case. District Attorney’s offices should not only concentrate on winning the case, but should also consider the best course for a defendant and victim. If a prosecutor only cares about continuing a case through a probable cause hearing, then they are not looking to the best interest of justice. They also might lose important details of the case because they are focused only on a particular issue or stage of the process. On the other hand, if a prosecutor is assigned the case

¹⁶ BRAINYQUOTE.COM, http://www.brainyquote.com/quotes/keywords/judicial_system.html.

from beginning to end, they will spend the time, early on, getting to know the details so they can strategically determine how to bring the case forward.

B. Vertical prosecution is more efficient because one person becomes the expert on the case.

Vertical prosecution is more efficient because you have one person focused on the entire case allowing them to become intimately familiar with all the details. In horizontal prosecution, multiple people see the case, but as mentioned earlier, it is brief and focused only on one aspect of litigation. Prosecutors waste valuable time re-learning a case only to then pass it off again so someone new can learn the case. When a case switches hands at every junction, prosecutors simply do not have the time to review the case in that much depth, especially when they are just taking it to a grand jury or a probable cause hearing. With the time pressure and caseloads placed on prosecutors shoulders, prosecutors end up relying heavily on their predecessor's notes. Hopefully their predecessor took good notes. As the case continues, the further a prosecutor gets from the primary source, the more likely they might miss key details that maybe someone else picked up on, but did not leave a good note about it in the case file. If they do end up re-interviewing victims and witnesses, these witnesses may not give them all the information because they know someone else is just going to come along later and ask them the same questions.

While some might argue that horizontal prosecution is good because multiple people working on one case means more eyes and more ideas, this idea does not mean anything if people are not collaborating. Under vertical prosecution, prosecutors can still collaborate with their fellow colleagues or supervisors and this should be encouraged.

IV. CONCLUSION

The most important part of the criminal justice system is getting justice. Getting justice for a victim and for society as a whole is not mutually exclusive. By making the victim more a part of the process through prosecuting a case vertically and really listening to their unique needs helps the victim feel empowered. At the same time, a prosecutor can more effectively prosecute a defendant for his or her wrongdoing.