

OP-ED CONTRIBUTOR

# Who's Policing the Prosecutors?

By Richard D. Emery

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PROSECUTION is becoming a lucrative business. In the last fiscal year, the Justice Department collected \$24.7 billion from civil and criminal actions (including \$20 billion from JPMorgan Chase and Citigroup over their handling of mortgage-backed securities before the financial crisis). Recently, the Manhattan district attorney's office kept \$449 million of an \$8.9 billion settlement between the French bank BNP Paribas and federal authorities over sanctions violations.

Another growing revenue source is civil forfeiture, which allows the authorities to seize cash, cars and even homes from people who haven't been charged with wrongdoing, who in order to get the property back must prove that it was legally acquired. In September, The Washington Post reported that more than \$2.5 billion had been seized from motorists and others since 9/11, without search warrants or indictments, under a program that targets cash that moves along highways.

Even as settlements, fines and confiscated assets have become a growing source of income for federal, state and local governments, there is very little monitoring of where it goes. In many cases, local prosecutors are spending the money as they wish, without adequate oversight or accountability. The money is supposed to be used for law enforcement purposes, but that term is so loose and broad that it has been interpreted in shocking ways.

The Massachusetts state auditor's office discovered that a local district attorney had used confiscated funds to purchase an ice-resurfacing machine and lawn equipment, and to refurbish a school basketball court, in the name of crime prevention. In Connecticut, police used forfeited money to buy undercover vehicles and fitness equipment and pay for training trips. The district attorney in Montgomery County, Tex., used funds to purchase liquor for a cook-off for workers.

In New York, the state attorney general, Eric T. Schneiderman, allocated \$3.5 million toward the purchasing of bulletproof vests for police officers. The New York City police spent \$160 million on tablets and smartphones for officers and patrol cars. The Manhattan district attorney, Cyrus R. Vance Jr., allotted \$35 million for a national effort to process backlogged rape kits. There have also been unseemly fights between Mr. Schneiderman and Gov. Andrew M. Cuomo over who gets to dole out this largess.

The temptations for elected prosecutors to self-promote are irresistible. The former Brooklyn district attorney Charles J. Hynes is alleged to have used such funds for campaign-related purposes.

What is worse, these billions of dollars in discretionary spending aren't being used to compensate victims of wrongful convictions or other civil rights violations in which the very prosecutors collecting these funds participated. Since the funds are seized from wrongdoers as compensation for their debt to society, logic dictates that when society's prosecutors do wrong, they, too, should pay their debts.

The New York City Council — and other local bodies, in coordination with state legislatures — should set a hierarchy for the use of fines, forfeiture and settlement funds collected by prosecutors that reflects the wishes of constituents rather than those of prosecutors and police officials.

Benefits and compensation for wrongfully convicted people and other victims of law enforcement or civil rights violations should top the list of deserving recipients. Victims of police abuse who win civil rights and tort cases should also get priority; when prosecutors and the police are held accountable for misconduct, they should have to cover the costs.

Fixed guidelines for the use of money from settlements, forfeiture and fines will also end what critics have called “prosecuting for profit.” Prosecutors, whose choice of targets is not reviewable by lawmakers, often, understandably, choose the cases that will generate funds over those that won't. Moreover, prosecutors enjoy immunity from civil rights violations; victims of wrongful conviction — for example, the Central Park Five, wrongly convicted of a 1989 attack on a jogger, and Jabbar Collins, the Brooklyn man who was prosecuted by Mr. Hynes's office and then imprisoned for 15 years for a 1994 murder he did not commit — may sue the state and city, but not the district attorney.

Prosecutors are human, and just like entrepreneurs and politicians, make human judgments. Like all of us, they need oversight and control. Judges serve that function for individual cases. But there is no oversight for how prosecutors choose targets.

Though it can be argued that money is fungible, that it all belongs to the taxpayer, in this context it's not. That's because the use of public funds obviously depends on who controls spending choices. Back in 2009, Michael R. Bloomberg, then the mayor, and Robert M. Morgenthau, Mr. Vance's predecessor as district attorney, squabbled over how to use proceeds from a settlement with the bank Credit Suisse. Such quarrels are inevitable without clear legislative guidelines for how to use the money.

In the recent settlement with BNP Paribas, \$447 million, a sum almost equal to the money that went to the Manhattan district attorney's office, went into city coffers. It's likely that that money will go to current policy priorities, like expanded prekindergarten, sheltering the homeless and fixing Rikers Island, the New York City jail complex. All of them are worthy, but victims of police and prosecutorial misconduct should get priority.

**Prosecutorial wish lists are important, but should not drive or bind local legislative and executive public policy. The profits from prosecution belong to the people.**

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