

Fordham Urban Law Journal

Volume 50
Number 5 *50th Anniversary Symposium: The
Future of Prosecution*

Article 1

2023

Introduction

Peter C. Angelica

Follow this and additional works at: <https://ir.lawnet.fordham.edu/ulj>

Recommended Citation

Peter C. Angelica, *Introduction*, 50 Fordham Urb. L.J. 965 (2023).
Available at: <https://ir.lawnet.fordham.edu/ulj/vol50/iss5/1>

This Prefatory Material is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Urban Law Journal by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

50TH ANNIVERSARY SYMPOSIUM

THE FUTURE OF PROSECUTION

INTRODUCTION

*Peter C. Angelica**

On March 2 and 3, 2023, the *Fordham Urban Law Journal* (“ULJ” or the “Journal”) co-hosted “The Future of Prosecution” with the Stein Center for Law and Ethics and the Center on Race, Law, and Justice. This two-day event celebrated the 50-year anniversary of the ULJ, which was first published during the 1972–73 school year. Attended by students, faculty, practitioners, and the public, the Anniversary Symposium addressed many topics that are at the core of current conversations about criminal justice. The event was the culmination of the ULJ’s golden jubilee, and celebrated the legacy of ULJ’s accomplishments while also inspiring conversations about how the work of prosecutors might evolve in the future.

I. REVIEW OF THE FUTURE OF PROSECUTION

The two-day event started with a fireside chat between U.S. Attorney for the Eastern District of New York Breon Peace, and Elizabeth Geddes, a former federal prosecutor and current defense attorney.¹ This marked the U.S. Attorney’s second visit to Fordham this academic year. In November 2022, U.S. Attorney Peace, U.S. Attorney for the Southern District of New York Damian Williams, Special Agent for the FBI Michael Brodack, and Assistant Attorney General for Civil Rights Kristen Clark, helped launch the

* J.D. Candidate, 2023, Fordham University School of Law; M.A.R., Yale Divinity School; A.B., Princeton University. Editor-in-Chief, *Fordham Urban Law Journal*, Vol. L.

1. Liz Geddes helped prosecute R. Kelly, among many other high-profile prosecutions in the Eastern District of New York. See Emily Palmer, *Who is Elizabeth Geddes, the Prosecutor in the R. Kelly Case?* N.Y. TIMES (Sept. 23, 2021), <https://www.nytimes.com/2021/09/23/nyregion/r-kelly-prosecutor-elizabeth-geddes.html> [<https://perma.cc/MDX7-AX3B>].

United Against Hate Initiative at Fordham.² Among other things, the initiative raised awareness of the increasing number of hate crimes across the country and in New York specifically, and highlighted ways that the community can report and help prevent these incidents.³

At the Future of Prosecution, U.S. Attorney Peace and Ms. Geddes spoke at length about the creative approaches the U.S. Attorney's Office in the Eastern District of New York is taking to combat the challenges facing the district. For example, the U.S. Attorney discussed his office's use of civil prosecution to help disrupt the production of machine gun conversion decides.⁴ U.S. Attorney Peace also spoke about his own efforts to partner with local community groups and his own personal experience doing pro bono work to vindicate the rights of the wrongfully accused.

The fireside chat was followed by a panel discussion of distinguished Fordham Law alumni: Sharon McCarthy, Eliza Orlins, Derick Dailey, and Kenneth Montgomery. Each provided their own unique perspective on the future of prosecution. Views ranged from strong skepticism about the work of prosecutors, to cautious optimism about recent developments that encourage alternatives to incarceration and the use of police to respond to emergencies.

The following day, Fordham hosted a discussion for law professors from across the country that explored the symposium theme. Facilitated by Professors Bruce A. Green, Professor I. Bennett Capers and Zenande Booi, Executive Director of the Center on Race, Law, and Justice, the discussion spanned the course of the day and allowed for both reflection on the previous day's conversations and discussion about current projects. This book contains the pieces produced in response to those conversations.

Carissa Byrne Hessick's essay *The Pitfalls of Progressive Prosecution* argues that despite the recent popularity of progressive prosecutors, they are still susceptible to some of the same well-worn critiques of the position.⁵ More specifically, Hessick highlights two under-addressed areas of the

2. U.S. Attorney Damian Williams speaks at Fordham Law School's United Against Hate Conference, U.S. ATT'YS OFF. (Nov. 9, 2023), <https://www.justice.gov/usao-sdny/gallery/us-attorney-damian-williams-speaks-fordham-law-schools-united-against-hate> [https://perma.cc/2UR2-2WQX].

3. Press Release, U.S. Dep't of Just., Justice Department Launches Nationwide Initiative to Combat Unlawful Acts of Hate (Sept. 15, 2022), <https://www.justice.gov/opa/pr/justice-department-launches-nationwide-initiative-combat-unlawful-acts-hate> [https://perma.cc/76BN-9CFR].

4. Press Release, U.S. Dep't. of Just., United States Obtains Temporary Restraining Order Against Firearm Companies Illegally Selling Machine Guns (Jan. 26, 2023), <https://www.justice.gov/usao-edny/pr/united-states-obtains-temporary-restraining-order-against-firearm-companies-illegally> [https://perma.cc/V7LP-8UB6]

5. Carissa Byrne Hessick, *Pitfalls of Progressive Prosecution*, 50 FORDHAM. URB. L.J. 973 (2023).

movement that leave progressive prosecutor's exposed: their use of tried-and-true prosecutorial tools like prosecutorial discretion, and their reliance on decarceral narratives. Both suffer from their own pitfalls. Use of prosecutorial discretion allows progressive prosecutors to turn into scapegoats for the failures of other actors in the criminal justice system. Emphasizing a decarceral approach often allows prosecutors to be susceptible to public safety critiques that can arise when crime rates go up. Hessick suggests ameliorating these attacks by emphasizing that progressive prosecutors emphasize the long history of prosecutorial discretion, and partnering with non-criminal enforcement agencies that can help reduce crime.

Benjamin Levin's essay reflects on the recall of public defender-turned-San Francisco-DA Chesa Boudin to highlight how the media can shape the definition of a "progressive prosecutor."⁶ Drawing on the work of Stuart Hall and Jonathan Simon, Levin argues that the media creates conditions for the over-emphasis of the prosecutor's role in lower crime and addressing social problem. Levin pushes readers to look past the prosecutor's office for solutions to resolve these systemic problems.

John Pfaff's contribution sifts through data from county prosecutor elections to highlight the political limitations that exist on the role's power and influence.⁷ In particular, Pfaff focuses on the limits that a county's size places on the election of prosecutors. In short, Pfaff uses election data to demonstrate how counties can be simultaneously too big and too small, which allows the views of the electorate to distort election outcomes for areas most affected by the prosecutor in power. Pfaff also notes that the relative "distance" of prosecutors from state capitals leave them at the mercy of state officials who can also curtail their efforts. In addition to colorful maps throughout the piece, a lengthy appendix lists out Pfaff's own research regarding the electoral successes of reform prosecutors in office.

Jennifer Laurin's essay *Progressive Prosecutorial Accountability* weaves together two strands of scholarship on prosecutors: progressive prosecutors, and prosecutorial accountability.⁸ In doing so, Laurin borrows from both the political left and the right to push progressive prosecutors to carefully consider the importance of accountability. She identifies the risks associated with failing to take accountability seriously, which include both democratic accountability issues, alienation of potential allies, both of which may allow successful opposition to the movement.

6. Benjamin Levin, *Prosecuting the Crisis*, 50 *FORDHAM. URB. L.J.* 989 (2023).

7. John F. Pfaff, *The Poor Reform Prosecutor: So Far From the State Capital, So Close to the Suburbs*, 50 *FORDHAM. URB. L.J.* 1013 (2023).

8. Jennifer E. Laurin, *Progressive Prosecutorial Accountability*, 50 *FORDHAM. URB. L.J.* 1069 (2023).

Lauren Ouziel's essay provides a nuanced reflection on the modern-day reality that prosecution is an inherently partisan practice.⁹ She notes two conditions that have clarified this reality: the unraveling of bipartisan support for a re-examination of the politics of crime, and the role that many elected prosecutors play in shaping criminal law in their jurisdictions. After highlighting some of the pros and cons of the inherently partisan nature of the practice, Ouziel offers suggestions to alleviate these political tensions. In particular, she focuses on the work that prosecutors themselves can do to ameliorate these concerns, and also explores how reforming elections might address the problems she identifies.

Steven Koh's contribution reflects on the practice of prosecution both domestically and internationally to also identify that the practice is inherently polarizing.¹⁰ In his interdisciplinary piece, Koh draws out the limits that criminal prosecution can be understood as doing reparative work given its polarizing nature. Koh makes two suggestions to help mitigate the caustic effects of polarization. First, he suggests democratizing criminal justice so that it can be proximate to local communities. Second, he suggests a move toward a mutually intelligible decriminalization, which would allow for less punitive modes of regulation of harmful conduct while recognizing certain core values to the criminal justice system.

Daniel Richman's essay takes up the symposium theme on a short-term time horizon, identifying goals for prosecutors in the immediate future.¹¹ Richman explores the work of a hypothetical line prosecutor and identifies the stark reality that her day-to-day work may not change much in light of the progressive prosecution movement. Nonetheless, Richman encourages prosecutors to think carefully about their participation in the punishment process, and combines his hope for a better future with a more pragmatic reality to encourage solutions that lie outside the criminal justice system. All of this, however, takes place against the backdrop of the prosecutor's inescapable duty to hold wrongdoers accountable. This responsibility, Richman suggests, should be guided by an imperative to promote conditions of democratic equality by combatting illegitimate subordination.

Trace Vardesveen and Tom Tyler's contribution *Elevating Trust in Prosecutors: Enhancing Legitimacy by Increasing Transparency Using a Process-Tracing Approach* puts theory into practice by offering a way to

9. Lauren M. Ouziel, *Prosecutors as Partisans*, 50 FORDHAM URB. L.J. 1095 (2023).

10. Steven Arrigg Koh, *Prosecution and Polarization*, 50 FORDHAM URB. L.J. 1119 (2023).

11. Daniel Richman, *The (Immediate) Future of Prosecution*, 50 FORDHAM URB. L.J. 1141 (2023).

open up the black box of prosecutorial decision-making.¹² Specifically, Vardsveen and Tyler diagnose an ongoing legitimacy crisis with prosecutors and prescribe increased transparency as a way of remedying of this problem. Process-tracing, a software that tracks computer mouse movements, provides a plausible way forward. Vardsveen and Tyler suggest that implementing this tracker software on prosecutors' computers can allow researchers to track what factors prosecutors consider when making discretionary decisions, thereby increasing (or decreasing) prosecutorial legitimacy.

Each of these pieces touches on various aspects of the conversations that took place during the two day period. Together, they provide a benchmark for the state of scholarship on these questions today.

II. REFLECTIONS ON THE FIFTIETH ANNIVERSARY

In the 1972–73 school year, the ULJ published its first volume. Accounts of what it was like to be a law student during those years paint a picture of dynamic, mobilized, and driven student body. National tragedies such as the Kent State shootings rocked the campus and the city at large, causing a disruption in exam schedules during the spring of 1970. The reality that some would be drafted loomed large for many students. Finally, the economic stagnation affecting the nation made a particular impact on New York City and its residents.

In response to these events and others, a group of students got together to found a second publication for the law school. The Board of Founders originally intended for the ULJ to supplement the content of the *Fordham Law Review*, while also providing more students the opportunity to research, edit, and write pieces on important topics impacting their daily lives. Louis Stein provided the initial funding for the Journal, which published two issues during its first year.¹³ Since then, the Journal has supported scholarship and conversation on a wide range of social and legal topics.

Other Journal anniversaries have provided opportunities for reflections on the ULJ, its legacy, and the conversations it has inspired.¹⁴ At the occasion of the 50th anniversary, this forward returns to the Journal's roots and draws

12. Trace C. Vardsveen and Tom R. Tyler, *Elevating Trust in Prosecutors: Enhancing Legitimacy by Increasing Transparency Using a Process-Tracing Approach*, 50 FORDHAM URB. L.J. 1155 (2023).

13. Joseph M. McLaughlin, *Appreciation*, 1 FORDHAM URB. L.J. i, xiii (1972).

14. See, e.g., Nestor M. Davidson, *What is Urban Law Today? An Introductory Essay in Honor of the Fortieth Anniversary of the Fordham Urban Law Journal*, 40 FORDHAM URB. L.J. 1579 (2013); Constantine N. Katsoris, *The Fordham Urban Law Journal: A New Millennium*, 30 FORDHAM URB. L.J. 797 (2003); Constantine N. Katsoris, *The Fordham Urban Law Journal: Twenty Years of Progress*, 19 FORDHAM URB. L.J. 915 (1992).

inspiration from the introductions and dedications found in the Journal's first volume: a short, student-written reflection.

The original ULJ student editors dedicated the first books to the former Dean of Fordham Law School, the Hon. William Hughes Mulligan.¹⁵ The editors also took the opportunity to write a special tribute to Professor Michael R. Lanzarone and Dean Joseph McLaughlin, who both played instrumental roles in the Journal's founding. In their tribute, the editors noted that "an idea whose time has come is indeed a powerful force."¹⁶ For those students, the acknowledgement of the role that law had played in cause the "malaise of the City," and the potential that law had to resolve those problems was such an idea.¹⁷ In their view, ULJ would serve as a forum to foster thoughtful conversations around the future of urban legal questions.

Over the past 50 years, this vision has been realized. The first volume of the ULJ focused largely on public law issues: environmental justice, consumer protection, antitrust. The Journal received contributions from established members of the bar, and also a number of recent graduates who had just started their practices. This combination of authors gives the ULJ a unique position, both as a launching pad for future scholars, and a place for people with experience to reflect on the nature and scope of their own work. ULJ has also catered to supporting the voices of non-lawyers and those not formally educated in law school settings to make their voices heard on pressing social issues.

This year's pieces focused on modern iterations of similar topics found in the first volume, ranging from examinations of urban and rural life to ways that the Federal Rules of Evidence can enable mass incarceration. The Annual Cooper-Walsh Colloquium took up a more modern concern of administrative law for state and local governments. ULJ's spring symposium blended theory and practice with its thorough examination of recent efforts to build environmentally friendly structures in the City to support its vitality for future generations.

The Journal's publications and events are not the only marker of the Journal's commitments. The annual presentation of the Louis K. Lefkowitz award at the annual alumni dinner serves as a way of honoring those reflective of ULJ's values. This year's recipient of that award was, fittingly, the Board of Founders for the Journal.¹⁸

15. Editors, *Dedication*, 1 FORDHAM URB. L.J. i, vi (1972).

16. Editors, *Tribute*, 1 FORDHAM URB. L.J. i, xv (1972).

17. McLaughlin, *supra* note 13.

18. Many were present at the dinner, including Anthony Siano, David Ritchie, and John Kiernan.

At the time of the Journal's founding, Joseph McLaughlin, Dean of Fordham Law recognized the value of ULJ and its original student editors' vision. Dean McLaughlin noted that when the School of Law opened its doors in September 1905, then-president of the University Father John J. Collins, S.J., noted that the law school would have a particular calling to serve the greater metropolitan community and the people who lived there.¹⁹ Fordham Law School has continued to serve other not only New York but those in other urban areas through its examinations of legal and policy questions relevant to the urban law.

Though many things have changed since ULJ's first issue in 1972, much has remained the same. Perhaps the most important constant over the past 50 years has been the commitment and care of the students involved with ensuring the publication of ULJ. Students from all backgrounds have made an impact on the Journal, and the diversity of its leadership and membership has been one of its strengths. The dedication of students and the Board to the success of the Journal has been a necessary condition for its continued success as a leading legal voice on public policy and urban issues across the nation.

19. *See id.*