

Let's Revive Private Criminal Prosecutions

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We are all frustrated by corrupt legislators, executives, judges, and sheriffs, but we should give some attention to corrupt prosecutors. They are the ones who refuse to take a meritorious case to a grand jury or to prosecute it because it goes against powerful interests or involves fellow officials.

There is an alternative we can use which we inherit from British law: the private prosecution. It is a criminal prosecution that differs from an ordinary criminal prosecution only in that instead of being prosecuted by a public prosecutor, it is prosecuted by a private prosecutor, either working *pro bono* or being paid by interested parties, such as the victims of a crime or his survivors, family, or friends.

Reviewing the history of law, civil and criminal trials were originally not separated as they are today. In the beginning, all trials were civil in form, with some trials calling for criminal sanctions as remedies. In other words, the victim of a crime would sue for both restitution and punishment of the offender in the same trial. There were few criminal laws. Almost all law was common law, the precedents of court decisions, even criminal law.

Later, as parliaments, county councils, and other legislative bodies adopted criminal statutes, prosecutions of criminal acts would refer to the statutes for support, and, eventually, criminal trials became separated from civil trials, and persons were elected or appointed as full-time public prosecutors. However, the use of private prosecutors did not disappear, and continues until present times in Britain and Canada, among other places.

Private prosecution is not an established practice in the United States, but a review of state and federal statutes finds no exclusion of it, either. If we find the job not being done by public prosecutors, then citizens have the right and the duty to initiate private prosecutions, and there is a vast agenda for this revived practice.

Now, since this is no longer a well-established practice it will seem novel to most judges. Therefore, I propose that the practice be revived for cases in which powerful interests do not have a large stake, and therefore can be expected not to intervene to thwart the effort. There are many cases that should be easy to win that are not being prosecuted simply because prosecutors lack the resources, and would welcome private funding of prosecution, or at least acquiesce in it.

Once we get appellate support for enough private prosecutions, establishing *stare decisis*, we can begin to go after the real targets: corrupt public officials, especially those who stand in the way of prosecuting corrupt public officials.

You are all urged to research the subject of private prosecutions and report back to your correspondents. They are the key to making the grand jury system work the way it was supposed to work. To revive grand juries, we need to revive private prosecutions.