

John Caher: Welcome to Amici, news and insights from the New York Judiciary and Unified Court System. Today, we are fortunate to have two guests, retired Court of Appeals Judge Albert M. Rosenblatt, who is president of the Historical Society of the New York Courts, and the Honorable Michael Obus, the Administrative Judge for Criminal Matters in New York County.

On July 28th at the New York City Bar Association, judges Rosenblatt and Obus will be participating in a unique Historical Society program: "Bad Apples in the Big Apple: Notorious Criminal Trials in New York." The program is free and open to the public. Amici listeners may be familiar with the historical society through a podcast we previously did with Marilyn Markus, executive director. If you haven't heard that program, it remains available on our website.

Today, we'll focus on one particular historical society program that will start with a presentation on the history of New York's organized crime cases followed by a panel discussion among trial lawyers discussing specific cases and litigation strategy.

Judge Rosenblatt, why don't we start with you as president of the Historical Society. What inspired this particular program?

Judge Rosenblatt: Of course, the objective is to revel in history and to learn a lot and to enjoy it and to have a dimension of it that's more than dry historical accounts. At our various meetings and output and our calendars, we try to inject a little bit of liveliness, and occasionally drama, and we've done programs that are very diverse in that sense. It just seems that because New York is a magnet for excellence of all sorts, that we include the bad apples who are among the baddest apples anywhere because New York excels and we're going to have the baddest apples of anyone.

John Caher: Will the focus be on just organized crime at this conference?

Judge Rosenblatt: No, not necessarily, although much of crime in New York is disorganized. We're going to be covering—I will let Judge Obus get into a little bit of that as far as the program goes—but I think you made an interesting point, John, in what we mean by organized crime. We're not writing a statute here, we're just having an evening that's informative and lively and going to be interesting.

John Caher: Okay. I was wondering in my own mind, is gang activity inherently organized crime? A lot of times when we think of organized crime, we think of the Mafia and all of that, but I wonder if any gang activity really falls into that category?

Judge Rosenblatt: Mike, what do you think?

Judge Obus: Well, it could. Sometimes the prosecution is more formally of an organization and under the state law it could come under the “Enterprise Corruption Statute,” which is the state version of what's known as the RICO statute in the federal courts. But sometimes there are gangs that are organized to varying degrees, whether the charge is gang assault or it's just a drug selling operation, that present similar problems to more organized criminal conduct.

John Caher: So Judge Obus, you will be moderating the discussion. Moderating who? Who is on the panel?

Judge Obus: We have four panel members, including two who are prosecutors now, and two who are defense attorneys now.

Karen Agnifilo is the Chief Assistant D.A. in New York County and she's also worked with the Mayor's Office of Criminal Justice and has been involved in the prosecution of cases,

including gang cases. The other prosecutor on the panel is Laurie Korenbaum, who's an Assistant United States Attorney in the Southern District where she's the Chief of the Violent and Organized Crime Unit. So she certainly has a great deal of experience in handling the prosecution of organized crime or gang types of cases.

From the defense point of view, Dan Gitner is a partner at Lankler Siffert & Wohl. He was a U.S. Attorney previously, and handles criminal matters currently.

The other panel member is Harlan Protass, who is a defense attorney at Clayman & Rosenberg. He has had a great deal of experience in handling the defense of criminal cases, including cases involving organizations, and is an adjunct professor at the Cardozo Law School, so they should know what they're talking about.

John Caher: I would think so. That sounds like quite a line-up. What can the audience expect?

Judge Obus: I know that part of it is going to be talking about their experience with particular cases. As Judge Rosenblatt was saying, we're trying to keep this interesting and relatively light. They'll also talk about some of the legal issues that may present themselves in the context of prosecuting organizations that commit crimes, or people that commit them in the context of an organization. There will also be some discussion about how the court system handles cases like that and what particular problems are presented by cases of that nature, including multiple defendant cases.

John Caher: I know you can't discuss any pending case, or any case that's likely to come before you, but it seems that historically New York does have kind of something of a rogue's gallery of mobsters. Do either of you want to address that?

Judge Rosenblatt: We sure do. The original conception of this was thought to be a little more theatrical, and it's turning out to be more substantive.

Mike, I must say that the original thought was pictures and slides of guys like Jimmy Cagney with Tommy guns rounding corners in automobiles on two wheels, and lining up New York's criminals in that light. We have quite an array when you think about Legs Diamond, Dutch Schultz, Meyer Lansky, Lucky Luciano and, as a Historical Society, we can have a whole evening based on people like that alone.

As we started to look for presenters and people who would be conversant, we are I think getting people who are very talented and who are in the pit today and can speak from personal experience, rather than just present pictures and historical accounts of guys who were active in the 20's and 30's with rum running and prohibition. It's taken on a different aspect, and I think an interesting one.

Judge Obus: I know that Judge Rosenblatt is going to give some historical background at the outset of the program, not that he actually remembers all of these things, but he's at least researched it. As he was saying, the group that is actually going to present are going to be speaking of their experiences with this type of case.

John Caher: What about you guys, have you had experiences with this type of case? I mean, Judge Rosenblatt, you were a prosecutor for quite a while and Judge Obus, you've had a career with the Legal Aid Society, I believe. Have you ever encountered organized crime cases in your own courtroom, or in your own practice?

Judge Rosenblatt: Being from Dutchess County, John, we like to say there's no crime in Dutchess County and whatever crime there is, it's highly disorganized.

We're not really too expert in organized crime here. And in my tenure here as the D.A., we did not encounter much of that at all, in the classical defined sense of it. Street gangs, if you want to define that as organized, in that they could qualify at times as an enterprise, surely that does exist. I think Judge Obus has had more experience along those lines than I did as the D.A. or even as the County Judge.

Judge Obus: My experience is not so much as a Legal Aid attorney, where we did not have, almost by definition, real organized crime cases.

As a judge, I've had a few cases before me, including enterprise corruption prosecutions. One that comes to mind, which took place several years ago, was one in which the enterprise at issue was alleged to be a crew of the Gambino crime family, with 10 defendants. They all had retained counsel, nine of them entered guilty pleas, although no one would admit the existence of the crime family. They would admit to the crimes and some of the facts that would be required to be proved in order to establish an organization committing those crimes. But nobody was prepared to say this was a crew of the Gambino family, and one of the defendants went to trial and the other defendants were prepared to testify if necessary that he had nothing to do with anything, with arguably some evidence that he did.

That's the way that particular case went, and there are other cases currently in the court where the allegation is that the defendants are members of a crime family.

I think there's one where the allegation is the Bonanno family. But most of the gang type cases that we have in the court these days, at least in the state court—and the federal court may be quite different and we'll hear about it at the panel discussion—most of what's in state court are more street gangs of a sort.

Whether they're as formal as Bloods and Crips, or just loosely affiliated with that, they're more likely to be gangs coming from certain housing developments.

My experience with those kinds of cases has been more as an administrator, because, while people may not really focus on this, it requires a certain preparation to handle cases like that. When we are told that they're going to arrest 30 or 40 people to take down an investigation, and they come from different gangs, and they're all going to be brought in for arraignment, we have to be careful about not even having them housed in the same detention pens, and sometimes not even being arraigned in the same court rooms because of concerns about warring factions, not only among the people who've been arrested, but the people who are coming to court as their friends and family. It involves a great deal of security resources, even just for arraignments, much less later on for trying to conduct a jury trial.

That's where my more personal experience has been involved. As I say, the panelists will be more involved in actually handling these cases than I have been.

John Caher: I remember a federal case out of Buffalo many, many decades ago that was made into a movie. I think it was called Hide in Plain Sight. It was a case of a woman who had taken up with a mobster, and eventually became an informant against the mob. The federal government put her and her children in a witness protection program, and hid them wherever. The father of the children had joint custody and they wouldn't tell him where the kids were.

Judge Obus: Complications like that can arise, and even in less organized matters, but certainly in those where you have cooperating witnesses there's another level of concern about protecting

witnesses, making sure that they're not tampered with in some way, and protecting after the testimony.

John Caher: Is there a New York State version of the witness protection program, do you know?

Judge Obus: Not really. As far as I know, the prosecutor's offices will try to make arrangements to protect people, move people, any type of incentives. Any kind of compensation or anything like that that any witness receives has to be disclosed because it's relevant to the credibility of that witness at the trial. But they will put people in hotels during the trial, offer to assist them in moving within public housing if that will do any good, that kind of thing. A real witness protection program like you see in the movies and maybe that's something we want to talk about is the romanticizing of all of this.

A real witness protection program, I don't think exists among the state prosecutors. It may have something to do with why certain cases are prosecuted here, meaning the state system, and others in the federal court.

John Caher: Why don't we delve into that a little bit. What would be the circumstances that a case would be prosecuted federally rather than in the state court. It seems to me that most of the ones we would, not the gang cases, but the ones that you would typically think of as organized crime, Mafia, that sort of thing, are usually in federal court, I believe.

Judge Rosenblatt: There's joint jurisdiction, and you could hypothesize that any criminal event could at least in theory violate both the state statute and a federal statute.

John Caher: Sure, it probably crosses state lines.

Judge Rosenblatt: Yes. There's a federal, and then the mails, and then the wires and so forth.

I think as we become more globalized and nationalized with state lines, particularly with internet and the scope of criminal activity, it's going to be less localized and more likely moving toward a larger arena, which means a federal arena.

New York has its version, as Judge Obus said, of the RICO statute in Section 460 in that article. There's going to be both, but I think that there's been somewhat of a shift when you think of the old characters of the 20's, 30's, 40's. Tom Dewey almost became president of the United States, having launched his career at a D.A., locking up very bad guys and becoming famous and respected as a District Attorney who then went on to become governor. Those were state prosecutions.

There was a lot of overlap between the state mobsters and the federal mobsters with a concurring jurisdiction. Legally speaking, there's a lot of deference to one side or the other given that either side, at least in theory, would be free to prosecute. Though I think as a legal matter, either jurisdiction would be an appropriate or lawful jurisdiction.

John Caher: That's an interesting point about Dewey. I think all of his cases were state cases. He was never a federal prosecutor, was he?

Judge
Rosenblatt: They were all state, and that's right.

Mike, I don't know whether you know this, but we did a little bit of history on one of New York's most notorious criminals, organized in the sense that I think he would probably say criminal enterprise, William Boss Tweed, who did more harm with a pen than a lot of people did with other kinds of weapons, at least in a sense.

He was prosecuted under a penal statute where the most they could get on him, apparently, was a dozen or so misdemeanors,

and the judge hit him with 12 consecutive misdemeanors and the Court of Appeals declared that an illegal sentence, which it was in the legal sense. It took a lot of courage, I think, on the part of the Court to, in the face of what was undoubtedly massive criticism of being soft on crime, to declare that sentencing illegal. It was Dewey who saw to it that you could add up these misdemeanors so that they could be consecutive and lawful.

Judge Obus: Yes. There are joint task forces that investigate cases, whether they're terrorist task forces or drug related, which is the more common. Some determination is made, and this is not really my expertise, about where to bring the prosecution. It may depend in part on what sentences are possible and what would be the more serious sentence if it were prosecuted in a particular jurisdiction. I think that happens with some drug cases, and it may also have something to do with the nature of the evidence and whether it is really a multi-district kind of case, or not.

It's true, you don't see prosecutors running for office as gang busters in terms of real organized crime. You don't hear about it that much. Whereas, you do see that prosecutor's offices, including in New York County, are interested in taking down gangs that are terrorizing neighborhoods, or causing problems in certain areas, and there's a lot of publicity to those things. But they're the more modern versions of the local kinds of gangs and they would not necessarily be Italian organized crime, but any other ethnic group. Usually, the ethnic groups more recent to the country have their share of these kinds of cases.

John Caher: That's always been the case. I think we get started with Murder Inc., which was largely a Jewish enterprise, wasn't it?

Judge Rosenblatt: When you think about ethnicity, we cover the whole spectrum, and when you look at some of the baddies in the 30's and 40's,

immediately you come to names like Meyer Lansky and Arnold Rothstein and Benny Siegel and Dutch Schultz, Legs Diamond.

I think most of those guys are Jewish, and it probably reflects early immigration practices. People coming at the bottom of the barrel, so to speak, most of whom go on to live good, orderly lives, and some of whom seek the opposite direction. So sure all the ethnics had their turn in that department. I'm sure the Irish as well, when you think of some of the street gangs. I'm sure there's plenty of ethnicity to go around.

John Caher: Oh, I'm sure there is.

Judge Obus: I would say historically these gangs, in terms of being romanticized a bit, some were providing that at least part of the public wanted, such as alcohol during prohibition, or even drugs now. People sometimes think of them as not really hurting regular civilians, only each other. But of course communities are damaged by some of the things that go on.

Over the years, different groups take their turns. Now we have Chinese and Russian and Jamaican and Dominican gangs as well as other kinds of gangs, and that's always been the case.

John Caher: Sounds like a fascinating program. If someone wants more information, or wants to attend, how should they proceed?

Judge Rosenblatt: It's free, you know. It's always been free. We try to get a little bit of publicity through the New York Law Journal. They have that column of the events of the day or the events of the week.

We have a large mailing list, and we've asked some of the folks to send an email blast in their law firm. So if they have 500 people in the law firm, there's 500 possible people who might want to attend. If we get a dozen or so from each of these blasts, that would be nice.

It's going to be a pretty good turn out and particularly pleased that Marilyn Markus helped organize this and we've done it through, this is going to be a maiden effort of the Young Lawyers Division of the Historical Society. The young lawyers put this together, and it's their first effort at putting together a program. We've done programs for years, but this is the first time they put it together. Look at the cast they've come up with: Judge Obus, and three defense lawyers, three prosecutors—very talented and knowledgeable people. We're looking forward to it.

John Caher: Thank you for listening to this edition of Amici. If you have a suggestion for a topic on Amici, call John Caher at 518-453-8669 or send him a note at jcaher@NYCourts.gov. In the meantime, stay tuned.