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JUSTICE WAS HIS CLIENT

A prosecutor chooses between what's right and what's expedient

By Julius (Jay) Wachtel. Twenty-one years as a prosecutor in the Manhattan D.A.'s office had left Daniel Bibb with little patience for law school abstractions. He was there for one reason, and one only: to serve the citizens of New York. And until this particular day in 2005 he had never questioned his purpose, nor those of his colleagues.

In 1990 a bouncer was **shot and killed** and his supervisor was wounded at the Palladium nightclub in New York City. Suspicion quickly fell on two men, David Lemus and Olmedo Hidalgo. Despite witnesses who swore that the accused were elsewhere both were convicted and got twenty-five to life. Evidence of their innocence continued to accumulate, and by the time that they passed their fifth anniversary in prison ("celebrate" seems the wrong word) it seemed far more likely that the real killers were two local gangsters, Joseph Pillot and Thomas Morales, aka Jimmy Rodriguez. Eventually the Feds got involved, and as the episode turned into a cause célèbre the D.A. himself, the famous Robert Morgenthau, put Daniel Bibb on the case. Spend all the time you need, he was told, and get to the bottom of this mess. Let the hammer of justice fall where it might.

That's exactly what he did. And as he sat in his superiors' office two years later, he was certain as could be that **the wrong men were in prison**. The evidence against them had been thoroughly debunked. What's more, Pillot had confessed and implicated Morales, and his confession was corroborated. Far from being happy at his good work, Bibb's bosses were appalled. Freeing the men would be a major embarrassment. Lemus and Hidalgo had asked for a new trial. Go to the hearing, the prosecutor was told, and fight *against* their release. Remember who you represent!

Lawyers are sworn to **zealously pursue** the interests of their clients. For criminal defendants that's to avoid conviction, or if convicted to minimize any penalty that might be imposed. But Daniel Bibb felt caught in a bind. Just who *was* this "client" whose interests would be served by leaving innocents in prison, and, not incidentally, letting the guilty go free? No, he decided, this was an injustice that must be corrected. Worried that if he stepped aside another prosecutor might succeed in keeping the wrong men locked up, Bibb remained on the case.

He had decided to throw the fight.

Bibb started helping Lemus's and Hidalgo's lawyers however he could. He in effect became Defense Lawyer Bibb, finding new witnesses and suggesting strategies to counter the prosecution's case -- *his* case. In time his bosses let him dismiss the charges against Hidalgo, but they stubbornly insisted on proceeding against Lemus. Bibb had had enough. He quit and became a defense attorney. His transformation was complete.

Lemus got his new trial. When he was acquitted in December 2007 Bibb finally felt free to come forward with his story. Then the arrows started flying. From his comfortable office at New York University a professor of legal ethics accused the veteran prosecutor of failing to represent his "client": "He's entitled to his conscience, but his conscience does not entitle him to subvert his client's case. It entitles him to withdraw from the case, or quit if he can't."

That might make sense if prosecutors really *had* "clients." One thing's for sure -- they're not ordinary lawyers. Unlike defense attorneys, prosecutors must share exculpatory and mitigating evidence with the other side ([Brady v. Maryland](#)). Ethical guidelines also require them to correct miscarriages of justice. According to the American Bar Association's [Model Rules of Professional Conduct](#), prosecutors who learn of "new, credible and material evidence" that reasonably suggests someone was wrongly convicted *must* investigate, and should evidence of innocence become "clear and convincing" they *must* act.

Prosecutors *are* different. They're charged with doing justice regardless of what their superiors, the police or the public want. More than two decades earlier, it was that transcendent goal that encouraged a young man fresh out of law school to take on the role. That he had to leave it to remain true to its precepts was the final irony of this sad affair.