



criminal case is obviously *not* that of the jury and the phrase “the People” includes the defendant:

The nature of the impartiality required of the public prosecutor follows from the prosecutor's role as representative of the People as a body, rather than as individuals. **"The prosecutor speaks not solely for the victim, or the police, or those who support them, but for all the People. That body of 'The People' includes the defendant and his family and those who care about him.** It also includes the vast majority of citizens who know nothing about a particular case, but who give over to the prosecutor the authority to seek a just result in their name." (Corrigan, *On Prosecutorial Ethics* (1986) 13 *Hastings Const.L.Q.* 537, 538-539.) Thus the district attorney is expected to exercise his or her discretionary functions in the interests of the People at large, and not under the influence or control of an interested individual. (***People v. Superior Court (Greer)***, supra, 19 Cal. 3d at p. 267.) [Emphasis added.]

Unlike the adversary role of the prosecutor, the domain of the judge and the jury is true disinterest and objectivity in a criminal case. (*Id.* at 590.) To suggest to jurors that the prosecutor's role and interest and the jury's role and interest are one and the same is a total distortion of the constitutional role each must play and undermines the defendant's Fifth Amendment right to due process of law, the presumption of innocence, proof beyond a reasonable doubt, and the Sixth Amendment right to trial before an impartial jury under both the State and Federal Constitution.

ABA STANDARDS FOR CRIMINAL JUSTICE Standard 3-3.2 cmt. (1993) ("the prosecutor's client is not the victim but the people who live in the prosecutor's jurisdiction"); Carol A. Corrigan, *On Prosecutorial Ethics*, 13 *HASTINGS CONST. L.Q.* 537, 537 (1986) ("The prosecutor does not represent the victim of a crime, the police, or any individual. Instead, the prosecutor represents society as a whole."). A prosecutor's tripartite responsibility to the public, the accused, and the victim resembles the "three-model" framework described by Professor Douglas Beloof - i.e., the "Crime Control Model," the "Due Process Model," and the "Victim Participation Model." *See* Douglas Evan Beloof, *The Third Model of Criminal Process: The Victim Participation Model*, 1999 *UTAH L. REV.* 289 (1999).

The American Bar Association and the National District Attorneys Association have promulgated standards addressing the prosecutor's relations with victims. *See* ABA STANDARDS FOR CRIMINAL JUSTICE Standard 3-3.2 (1993); NAT'L PROSECUTION STANDARDS, Standard 26.1-26.8 (1991).

*See* MODEL RULE OF PROFES'L CONDUCT R. 3.8 cmt. 1 (2004) (stating that prosecutors

are "minister[s] of justice"); MODEL CODE OF PROF'L RESPONSIBILITY EC 7-13(3) (2004) (stating that prosecutors must "seek justice"). *See also* ABA STANDARDS FOR CRIMINAL JUSTICE Standard 3-1.2(c) (1993) ("The duty of the prosecutor is to seek justice, not merely to convict."); NAT'L PROSECUTIONST ANDARDS,S tandard 1.1 (1991) ("The primary responsibility of prosecution is to see that justice is accomplished."). Every state has adopted the "do justice" standard of either the Model Rules or Model Code.

*See also* NAT'L PROSECUTION STANDARDS Standard 1.3 (1991) (prosecutor "must place the rights of society in a paramount position in exercising prosecutorial discretion").

WHEREFORE, Defendant asks that the Court conduct a hearing on this motion and grant the relief requested herein.

Respectfully submitted,

**Certificate of Service**

This is to certify that the undersigned hand delivered a true and correct copy of this pleading to the Office of the Tulsa County District Attorney, 9<sup>th</sup> Floor, Tulsa County Court House, 500 S. Denver Ave., Tulsa, Oklahoma, on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

By: \_\_\_\_\_