STILL STRIKING FOUL BLOWS

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Objection!
Nancy Grace with Diane Clehane
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> Although the prosecutor is viewed as a quasi-judicial official whose duty "is to seek justice, not merely to convict," the reality is often different. Public prosecutors are frequently ambitious, aggressive, adversarial, and biased. "Prosecutors act like prosecutors" because a successful conviction rate is important to them and because their mental attitude often conditions them to believe unquestioningly that the defendant is guilty and that society's welfare demands a conviction. Contending against an aggressive advocate for the defendant, the prosecutor not surprisingly will subordinate his function as a minister of justice to appear as an overzealous champion of the people.–Bernard Gershman, *Prosecutorial Misconduct* § 10.1 (1995).
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> The fair way is the safe way, and the safe way is the best way, in every criminal prosecution. The history of criminal jurisprudence and practice demonstrates generally that if everyone prosecuted for crime were fairly and fully conceded all to which he is entitled, and if all doubtful advantages to the state were declined, and if adventurous forays into dangerous and unknown fields were shunned, and if the beaten paths were heedfully followed, there would be secured as many convictions of the guilty, and such convictions would be succeeded by few or no reversals.– *Hill v. State*, 72 Miss. 527, 534-35, 17 So. 375, 377 (1895) (Woods, J.).

Nearly three-quarters of a century ago, the Supreme Court of the United States, expounding on the legal and ethical responsibilities of a prosecutor, announced that "while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *Berger v. United States*, 295 U.S. 78, 88 (1935).

To Nancy Grace, the Supreme Court's admonition is bleeding-heart twaddle.

Before she became a TV celebrity, Grace was an assistant district attorney in Fulton county with a deserved reputation for overzealousness and harshness. (In her book Objection!, Grace admits that she "quickly gained a reputation for being unreasonable when negotiating pleas and vicious at trial. I didn't care.") Her detestation of criminal defendants and the attorneys representing them, her end-justifies-the means philosophy, her semi-maniacal desire to obtain a conviction at all costs, and her relish for draconian sentences propelled her to strike foul blows against the defendants she prosecuted. For a brief discussion of three appellate court decisions officially reprimanding Grace for her prosecutorial misconduct, see the Appendix to this book review.

Nancy Grace has ceased prosecuting cases, but has not stopped striking foul blows against persons accused of crime. Her book *Objection!* is a writhing mass of such blows. In the book, as in her breathless TV posturing, Grace relentlessly heaps scorn on, and endeavors to undermine, the constitutional protections afforded criminal defendants, particularly the rights to counsel and to a fair trial. Grace demonizes persons charged with crime. She ascribes to criminal defendants the same qualities the Nazis ascribed to the Jews: they are vicious, dangerous, clever, cunning, sly, and diabolically evil. Nancy Grace does the same thing in her book that Florida journalist Tom Lyon says she does on TV: "pop off with shoot-from-the-hip condemnations and pronouncements without doing any research."

A major defect of *Objection!*, subtitled "How High-Priced Defense Attorneys, Celebrity Defendants, and a 24/7 Media Have Hijacked Our Criminal Justice System," is that it makes unfounded generalizations about the criminal justice system based on atypical cases, i.e., criminal proceedings against such celebrities as Robert Blake, Kobe Bryant, Michael Jackson, O.J. Simpson, Martha Stewart, and Jayson Williams. Nowhere in her book does Grace acknowledge that she herself is part of the "24/7 media" she excoriates or that she is one of a unique group of individuals who day after day make vast sums of money out of horrible or notorious crimes.

Objection!, in the words of reviewer S. Shirazi, has an "aggrieved and paranoid tone" that betrays its author's "hideous inner certainty." The book is in fact pervaded by high-strung, overexcited exasperation: "I was devastated" (p. 3); "I am sick at heart ... it's so disheartening" (p. 7); "I was sick when I learned ..." (p. 10); "I was shocked" (p. 11); "It took me a solid year to accept that [Johnny] Cochran was not the one responsible for the double murders of Nicole Brown and Ron Goldman"(!) (p. 16);" "I was so angry" (p. 16); "My head was spinning" (p. 19); "I felt numb" (p. 51); "I have a waking nightmare every time I hear about another abuse of the justice system" (p. 67); "my disgust is reserved for the others who slither into court" (p. 77); "I was shocked to discover" (p. 93); "I predict you'll soon be as nauseated as I was when I discovered the truth" (p. 93); "I forced myself to look at [the defendant]" (p. 116); "it all became overwhelming" (p. 117); "It strikes fear in my heart" (p. 134); "it pains me to say this" (p. 166); "I found this absolutely outrageous" (p. 188); "It causes me genuine pain" (p. 304); "I was torn ... [a]nd it hurt" (p. 304); "Put that in your pipe and smoke it" (p. 305); "I very frequently cry ... when I hear about a victim" (p. 310). This overwroughtness explains why Grace's argumentation is laden with non sequiturs and at times downright irrational, and why she tends to shade her facts. Reason, facts and fairness mean nothing to the author of *Objection!*

Objection! eliminates any doubt on one matter: Nancy Grace loathes and is incapable of understanding the indispensable role of the defense attorney in our criminal justice system. Grace compares criminal defense attorneys to snakes (p. 18) and pigs (p. 17), and the first chapter of her book is entitled "Defense Attorneys and Other Wily Characters I Have Known." Over and over she professes her contempt for defense attorneys, who she says are part of "the dark side"(!). The list of their transgressions is long: "By twisting the rules of evidence, the defense can score a myriad of pretrial victories;" "the 'job' of defense attorneys is to use every means possible to get their clients acquitted–regardless of the truth;" "juries are hoodwinked every day by defense lawyers;" criminal defense lawyers "attack the truth and hide evidence from the jury" and are "adversaries who trick Lady Justice;" "defense attorneys obscure the truth

from the jury;" defense attorneys employ "deplorable strateg[ies]" and "dirty trick[s]"; defense lawyers "have a host of trial tactics at their disposal that I would never even consider;" "defense attorneys truly believe it's all a big game;" "the defense bar has Lady Justice over a barrel;" "[t]he truth doesn't matter to the defense;" defense lawyers are "wily characters" and "quick and wily"; "[t]he state seeks the truth and the defense zealously defends its client;" "It's set up for the state to seek the truth behind the crime and for the defense to protect its client;" the experts retained by a criminal defense lawyer to testify in behalf of the defendant are "hired guns"; defense lawyers are "much more dangerous ... than I had previously thought;" and Barry Scheck, the defense attorney who started the Innocence Projects which have used DNA evidence to obtain the exoneration of scores of wrongfully convicted persons (including death row inmates), is "brilliant but clearly misguided."

Bizarrely, Nancy Grace has convinced herself that a criminal defense attorney should ally himself with the prosecution and seek the conviction of his own client. Grace actually believes–at least where the attorney knows the client is guilty–that the defense attorney should join the prosecution team and assist in the client's conviction. Grace thinks it is abominable for an attorney representing a defendant he knows is guilty to work for his client's acquittal. No reputable attorney should ever, Grace believes, seek the acquittal of a violent criminal he knows is guilty of the offense charged. Grace would never cross over to "the dark side" because she fears she might help cause a guilty person to be acquitted: "I could never live with myself if I helped a violent felon by prostituting my law degree, my energy, and my experience to free someone that I know is guilty."

Defense attorneys are scum-sucking bottom-feeders. Defense attorneys who represent guilty defendants are prostitutes. Defense attorneys ought not to represent guilty persons or should if they do represent such a person assist the prosecution in obtaining a conviction. Ethical lawyers could never be defense attorneys (although they could be prosecutors). This is the weird, weird world of Nancy Grace.

How is it possible for a lawyer who prosecuted felony cases for a decade and has been a TV legal commentator for nearly as long to be so clueless about one of the basic protections of the Bill of Rights–the right to counsel, which distinguished law professor Yale Kamisar labels "the most pervasive right"? Why can't Nancy Grace comprehend that the right to counsel clause of the Sixth Amendment does not contain the proviso "provided the defendant is innocent"? Would she, or anyone else charged with crime, want to be represented by an attorney who, convinced of the defendant's guilt, gives the defendant less than his best efforts or refuses to seek an acquittal? Why does Grace disagree with the obvious truth that anyone on trial for crime is entitled to a competent attorney whose diligence and devotion cannot and must not be attenuated by whether the defendant is guilty or whether the attorney thinks the defendant is guilty? Doesn't she know that in the long run the fundamental fairness essential to the administration of criminal justice will be overthrown if there is not an aggressive, able defense bar giving their clients their complete loyalty? Doesn't she realize that her odious view of the right to counsel, if implemented, would result in criminal trials like those in Stalinist Russia or Nazi Germany where guilty persons facing trial could not find an attorney who would take their case or where attorneys who did represent guilty persons took the side of the prosecution and actually sought to have their own clients convicted and punished?

Nancy Grace's discussion of the Central Park Jogger Case furnishes an excellent example of how she manipulates the facts to serve her pro-state agenda. In 1989 a young woman jogging in New York City's Central Park was beaten and sexually assaulted, and the following year five young men were tried for the crimes. The case involved, Grace claims, "the brutal gang rape of a woman who'd been left for dead." At the trial, Grace asserts, the defense attorneys adopted a "blame the victim" strategy, thereby demonstrating that they "were not interested in pursuing the prevention of violence against women." Grace omits an important fact. Whatever the truth of how the defense attorneys proceeded (Grace's account of the presentation of the defense case at the trial is not necessarily to be trusted), the defense attorneys were totally unsuccessful in that all their clients were convicted and sentenced to long prison terms. You would never know from reading Objection! that the defendants were found guilty.

More importantly, Grace conceals the fact–firmly established before Grace wrote her book–that actually there had been no gang rape and that the five young men charged and convicted were innocent on all counts. She neglects to mention that these young men served up to 12 years in prison for crimes they never committed. She also conceals the fact that police had induced these young men, all minorities, into making the false confessions which were used to convict them. Over two years before Objection! went to press, the trial court, with the consent of prosecutors, granted the defendants' motion for new trial based on newly discovered evidence. People v. Wise, 194 Misc. 2d 481, 752 N.Y.S.2d 837 (N.Y. Sup. Ct. New York County 2002). From that decision setting aside the convictions, we learn that the defendants' innocence was proven by DNA evidence and by the volunteered confession of the actual criminal, Matias Reyes, who had acted alone. See also Davies, "The Reality of False Confessions–Lessons of the Central Park Jogger Case," 30 N.Y.U. Rev. L. & Soc. Change 209 (2006).

Nancy Grace's essentially misleading account of the Central Park Jogger Case does not inspire confidence that she can be trusted with the facts.

Nancy Grace's sophomoric defense of the death penalty in America relies on falsehoods and distortions. "Only a handful of wrongful capital convictions and penalties are known, and none has occurred since 1976, when capital punishment was reinstated in this country," Objection! claims (p. 265). This is entirely false. *In Spite of Innocence* (1992), a 399-page treatise by scholars Michael Radelet, Hugo Bedau, and Constance Putnam, for example, lists over 400 convictions of innocent persons for capital crimes since 1900; and, as the Death Penalty Information Center points out, 123 innocent death row inmates have been exonerated and released since 1973 (see < www.deathpenaltyinfo.org/article.php?did=412&scid=6 >). And what does Grace have to say about the hundreds of recent DNA exonerations of death row inmates and other innocent convicted prisoners? "When an allegedly wrongful conviction has taken place, we hear about it eternally"(!) (p. 267).

This book review will now reveal a secret about Nancy Grace which she does not appear to want the public to know. On one occasion, soon after her graduation from law school, Nancy Grace defected to "the dark side"! See *Thomas v. Newsome*, 646 F. Supp. 583 (M.D. Ga. 1986) (in federal habeas corpus proceeding, Nancy Grace assisted in preparation of legal brief in behalf of prisoner convicted of armed robbery and of kidnaping with bodily injury by shooting victim in the head, and sentenced first to death and later to consecutive terms of life imprisonment).

Nancy Grace's *Objection!* is so pro-government and anti-individual rights (e.g., "the power of the state is a myth"(!)), so contemptuous of opposing views (e.g., "Trying to reason through the evidence with these ladies [who sat on the jury that acquitted O.J. Simpson] was like shrieking at a deaf man"), and so eerily laced with pious invocations of the Almighty (e.g., "I know that God will lead me to my next battle"(!)), that a reader not knowing the identity of the author of the book might well deduce that it presents the appearance of having been penned by a God-fearing, fascist-leaning escapee from a lunatic asylum.

APPENDIX

On at least three occasions appellate courts scathingly rebuked then-assistant district attorney Nancy Grace for striking foul blows against an accused person.

In *Bell v. State*, 263 Ga. 776, 439 S.E.2d 480 (1994), the Georgia Supreme Court reversed a drug conviction in a case where Grace had gone bonkers in her closing presentation to the jury by raving about irrelevant drug-related murders and serial rapes. Speaking of Grace's misbehavior, the Court said: "By referring to such extraneous and prejudicially inflammatory material in her closing argument, the prosecutor exceeded the wide latitude of closing argument, to the detriment of the accused and to the detriment of the fair administration of justice."

In *Stephens v. Hall*, 407 F.3d 1195 (11th Cir. 2003), a federal appeals court weighed strong indications that Grace had knowingly elicited a police officer's false testimony at Stephens' state murder trial. Although ultimately concluding that the false testimony did not rise to the level of a due process violation, the court nonetheless blasted Grace, saying that at the murder trial she "had played fast and loose with the rules" and had "fail[ed] ... to fulfill her [constitutional] responsibilities."

The most stinging condemnation of Grace's inappropriate overeagerness to convict occurred in 1997, when the Georgia Supreme Court unanimously reversed the murder conviction of Weldon Wayne Carr, who had allegedly killed his wife. *Carr v. State*, 267 Ga. 701, 482 S.E.2d 314 (1997). The court castigated Grace for her prosecutorial misbehavior in these words: "Our review of the record supports Carr's contention that the prosecuting attorney engaged in an extensive pattern of inappropriate and, in some cases, illegal conduct in the course of the trial.... [T]he prosecuting attorney abused the subpoena process by, among other things, inserting false information regarding hearing dates; ... the witness list delivered on the eve of the trial contained many names new to the defense; ... the prosecuting attorney repeatedly made references to physical abuse although the trial court had ruled out all such evidence of purported abuse ...; and the closing argument was replete with ... patent misrepresentations of fact such as the prosecuting attorney's use of a chart falsely indicating that a defense expert had not disagreed with a specific opinion by a State's witness.... We wish to register our stern disapproval of tactics which give rise to the appearance that the prosecution, by act or omission, has attempted to subvert or circumvent the right[s] of an accused.... We conclude that the conduct of the prosecuting attorney in this case demonstrated her disregard of the notions of due process and fairness, and was inexcusable."