

University of Colorado Law School

Colorado Law Scholarly Commons

Articles

Colorado Law Faculty Scholarship

1990

Book Review

William T. Pizzi

University of Colorado Law School

Follow this and additional works at: <https://scholar.law.colorado.edu/faculty-articles>



Part of the [Criminal Law Commons](#), [Criminal Procedure Commons](#), [Law and Politics Commons](#), [Legal Education Commons](#), and the [Legal Profession Commons](#)

Citation Information

William T. Pizzi, Book Review, 40 J. Legal Educ. 396 (1990) (reviewing James B. Stewart, *The Prosecutors: Inside the Offices of the Government's Most Powerful Lawyers* (1988)), available at <https://scholar.law.colorado.edu/articles/910/>.

Copyright Statement

Copyright protected. Use of materials from this collection beyond the exceptions provided for in the Fair Use and Educational Use clauses of the U.S. Copyright Law may violate federal law. Permission to publish or reproduce is required.

This Book Review is brought to you for free and open access by the Colorado Law Faculty Scholarship at Colorado Law Scholarly Commons. It has been accepted for inclusion in Articles by an authorized administrator of Colorado Law Scholarly Commons. For more information, please contact lauren.seney@colorado.edu.

HEINONLINE

Citation:

William T. Pizzi, James B. Stewart. The Prosecutors:
Inside the Offices of the Government's Most Powerful
Lawyers, 40 J. Legal Educ. 396, 398 (1990)

Provided by:

William A. Wise Law Library

Content downloaded/printed from [HeinOnline](#)

Fri Aug 25 13:23:28 2017

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[Copyright Information](#)



Use QR Code reader to send PDF to your smartphone or tablet device

the book substitutes a table that, by matching the three strategies (in rows) with the six stages (in columns), provides eighteen separate boxes with between one and seven tactical choices per box, for a total of sixty-seven separate choices. Such a matrix, though in form analytical and scientific, is very difficult to use in the "actual practice of law."

To take advantage of its strengths, teachers can use *Legal Negotiation* in combination with a principal text that takes a more theoretical and legal approach to negotiation, one that is organized around important process issues, such as forum selection, information disclosure and acquisition, power, social psychological variables, litigation and court procedures, theory, and ethics. If teachers compensate for the weaknesses of Gifford's text, they can then stress the strengths—its focus on clients, its emphasis on the sequential flow of negotiation, and its detailed concentration on specific tactics.

James B. Stewart. *The Prosecutors: Inside the Offices of the Government's Most Powerful Lawyers*. New York: Simon and Schuster, 1987; reprint, Touchstone Books, 1988. Pp. 378. \$8.95.

Reviewed by William T. Pizzi

James Stewart's *The Prosecutors* tells the stories of six major criminal investigations. Four are white-collar cases: the overseas bribery of Pakistani officials by McDonnell Douglas in order to sell airplanes; an early insider-trading case involving employees of Morgan Stanley; the "Hitachi sting" involving the clandestine purchase of "stolen" IBM technology by agents of Hitachi; and a multimillion-dollar tax shelter scheme in which principals in Denver, working with a branch of the Bank of Nova Scotia in the Cayman Islands, obtained for "investors" tax deductions and tax credits far in excess of the amount of money invested in the projects. The fifth case is a multiple murder case, the so-called "CBS murders," in which three CBS technicians who had finished work and were walking to their cars in a parking garage in Manhattan were killed when they stumbled on a hit man killing a woman who was a witness in a fraud case. The sixth case is the special prosecutor's investigation of Edwin Meese's financial dealings before his confirmation as Attorney General.

This book has serious weaknesses. For one thing, it is trashy in places. The author sprinkles the book with lots of opinionated Giuliani bashing (pre-NYC days) and gossipy accounts of Justice Department politics that sometimes have no relationship to the cases he describes. A second weakness is that Stewart does not explain well some of the central legal issues in the cases. Stewart is very good at describing the factual development of the cases, and some of the chapters read like detective thrillers as

William T. Pizzi is Professor of Law, University of Colorado School of Law.

the prosecutors try to figure out who did what when. But when legal issues arise, too often Stewart does not do much to help the reader assess the merits of the issue. The result is a book that is easy reading, always interesting, and occasionally exciting, but which is also somewhat one-sided in the portrayal of some of the cases, as well as light on the law.

Despite its weaknesses, *The Prosecutors* deserves consideration for use in a seminar or course on white-collar crime. It might also serve as background reading for a criminal procedure course that deals with topics such as the grand jury, prosecutorial discretion, or plea bargaining. The book has one major strength that goes a long way to make up for its weaknesses: the author has chosen his cases very well. The variety of cases selected gives the book an overall balance and a breadth of issues that would be hard to match in books devoted to a single case. Not all of the cases Stewart writes about are prosecutorial "victories." Meese is never indicted (though the young turks on the investigative team push for it). The McDonnell Douglas case results in minor plea bargains that are a terrible disappointment to the prosecutors (and the author). And one of the cases—the Bank of Nova Scotia tax shelter investigation—is not just a defeat, it becomes a prosecutorial nightmare when an outrageous federal judge turns the case into a trial of the prosecutors with results that shatter their careers.¹

The mix of cases and their sometimes disappointing outcomes raise provocative questions about white-collar crime and the difficulties that such prosecutions present. For example, should some of these cases ever have been brought as criminal cases? The Hitachi sting resembles a major drug buy with hidden video cameras capturing the sale of "stolen" IBM documents. But given the cultural differences between Japan and the United States and the competitiveness of the computer industry, should the case more properly have been left as a civil suit between IBM (the "victim" who seems very glad to see the criminal case dissolve in a series of minor plea bargains) and Hitachi (a company with whom IBM wanted to continue to do business)?²

Or consider the enormous tax shelter scheme in the Bank of Nova Scotia case, in which the government lost over \$123 million in just two years as a result of tax shelters that yielded tax writeoffs at a ratio of almost \$4 for every \$1 invested. Lots of money—but reading the case, one can see that the emotion is not there. Is this a "real" crime? Who is responsible? The defendants who drive a truck through the loophole? Or those who put the loophole in the tax code to begin with? The chapter on the CBS murders helps the reader raise such questions. The case provides a wonderful contrast to the white-collar cases. The prosecutors in the CBS case (a real whodunit) have it much easier than the prosecutors in the other cases

1. The case went to the Supreme Court on the issue of prosecutorial misconduct in front of the grand jury. See *Bank of Nova Scotia v. United States*, 487 U.S. 250 (1988), 108 S. Ct. 2369 (1988).
2. Hitachi pled guilty to conspiracy to transport stolen property and received a \$10,000 fine. IBM recovered \$300 million in a civil settlement with Hitachi.

because they do not have to waste a minute worrying about convincing their superiors or the judge or the jury or the public that this is a serious criminal case.

The book also brings out a hazard of white-collar cases: as the prosecutors devote more and more time to developing the case and putting it together, it takes effort to keep the case in perspective. Occasionally, the prosecutors become so immersed in the case that their judgment becomes questionable. For example, in the Bank of Nova Scotia case, one of the prosecutors decides to play investigator in the case. After the indictment is filed (which includes the bank as a defendant), the prosecutor flies to Puerto Rico in an effort to serve a subpoena on a bank employee, who, it turns out, is no longer on the island. So instead he goes to the school that the witness's children attend, and then he goes to the witness's home (as the children are coming in from school) in an effort to try to convince the witness's wife to persuade her husband to testify against his employer (the bank). The attempt to pressure the family looks awful in retrospect, and the defendants use it effectively to put the prosecutors on the defensive.

Another telling example occurs in the McDonnell Douglas case. Just as the indictment is about to come down, the prosecutors place round-the-clock surveillance on one of the individual defendants, Sherman Pruitt, and order the agents to arrest him immediately when the indictment is handed down, because they fear that Pruitt will flee the country. Pruitt is the McDonnell Douglas salesman who had engineered the sale of the planes to Pakistan. Pruitt is arrested and handcuffed on the floor of the McDonnell Douglas plant in view of hundreds of employees, which causes a lot of hard feelings. The prosecutors's worry that Pruitt might flee is revealing. From the description that Stewart paints of Pruitt—a World War II hero and a test pilot who had hung tough throughout the grand jury proceedings—the notion that this defendant, who had known he was a target for months, would flee the United States is utterly ridiculous. Later, when the case is ruthlessly pled out from under the prosecutors by Giuliani, the incident makes one wonder if maybe the prosecutors had lost sight of the fact that the case had its weaknesses.

One of the difficulties in an advanced criminal procedure course that deals with issues such as the grand jury or prosecutorial discretion is that the cases give students a sense of the power that prosecutors wield, but without much insight into the way prosecutors use their power to investigate and put together major prosecutions. Because *The Prosecutors* details a number of sophisticated investigations, it might be useful, despite its weaknesses, as background reading to introduce students to the sorts of investigative decisions, grand jury issues, preindictment and postindictment plea negotiations, and political pressures that are often part of the maneuvering in a major white-collar case.