

‘We’re never going to prosecute our way to public safety’

By Barbara L. Jones

barbara.jones@minnlawyer.com

John Marti did not want to smile for the camera. “Marines don’t smile,” he joked.

They do, actually, and they can have big hearts that make them care for those who are hurt by crime or malfeasance. The prospect of working on behalf of victims or organizations in trouble as well as defendants drew him from the U.S. Attorney’s Office, where he was a high-profile prosecutor, to the Dorsey law firm’s Government Enforcement and Corporate Investigations team. He says emphatically that he did not leave the U.S. Attorney’s Office because he is disillusioned with government service.

“He’s a Marine at heart,” said Joe Dixon, who worked with Marti as an AUSA. When the going gets tough, that’s when Marti enjoys himself the most, Dixon said. “He’ll roll up his sleeves and dig in.” Dixon and Marti are best known locally for the prosecution of Tom Petters, who was sentenced to 50 years in prison for his \$3.7 billion Ponzi scheme. No wonder Dixon calls Marti a “seasoned and talented trial attorney.”

That makes him an important addition to the government enforcement group, said



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— U.S. Attorney Andrew Luger

Ken Cutler, Dorsey’s managing partner. “You can imagine how excited we were when he agreed to come [to Dorsey],” he said. The firm thinks that it’s important to have a recent alumni of the U.S. Attorney’s Office who is familiar with people and practices in the field. Marti will be working through Dorsey’s entire platform, not just in Minnesota.

Former U.S. Attorney Thomas Heffelfinger compared Marti to a star athlete, because being an athlete requires courage and so does being a prosecutor. “John is a great leader. He has the courage to do the right thing which may be not to prosecute.” Heffelfinger said that Marti’s leadership skills made him a Marine *officer* at heart.

U.S. Attorney Andrew Luger was stoic about his loss. While traveling, he sent an email to Minnesota Lawyer: “John Marti has been a tremendous public servant and a great prosecutor. Over the last year and one-half, he helped train more junior prosecutors and took on large cases. His experience and talent are already greatly missed in this office. The good folks at Dorsey are lucky to have him.”

Marti discussed the criminal justice system with Minnesota Lawyer editor Barbara Jones. The interview has been edited for length and clarity.

ML: Please tell me about your background.

Marti: I went to the Massachusetts Institute of Technology on a ROTC



The FBI raided Minnesota businessman Tom Petter’s office on Sept. 24, 2008.

AP FILE PHOTO



Tom Petters is an inmate in federal prison in Leavenworth, Kansas.



STAFF PHOTO: BILL KLOTZ

John Marti wants to help people navigate through disorder, be that through criminal defense or in some other way.

scholarship and became a Marine infantry commander. Then peace broke out all over the world. I was looking at what I wanted to do with my life and I didn't necessarily want to be an engineer. The service had a law school scholarship program. I thought I'd be an environmental lawyer but it didn't happen that way

I discovered I liked being a trial lawyer and I had never imagined I'd be a trial lawyer. I grew up in New Ulm, a nice German, orderly community. I never thought I'd come back here. I had previously met [former U.S. Attorney B.] Todd Jones, also a Marine. I reconnected with him he said come work with me.

ML: When you started with the Tom Petters case, did you know how big it would be?

Marti: I was too busy working to think about the impact. It was the largest fraud case in the country until Bernie Madoff showed up. Any time you have a prosecution that's getting that much scrutiny — it's sand in the gas tank.

First there was the case [against Timothy Rehak and Mark Naylon in the Ramsey County Sheriff's Office]. (Editor's note: Rehak and Naylon were convicted of conspiring to violate civil rights and theft in an FBI "integrity" test. Naylon was hired to be Sheriff Bob Fletcher's official spokesman, but testimony at his trial showed he engaged in police work although he was not a licensed peace officer.)

That was a very significant prosecution. There are different aspects to our culture and one is the First Amendment. It was a case against these two individuals who were stealing money but the other aspect of it was it shone a spotlight on the internal operations of Sheriff Fletcher's sheriff's department.

Right after that ended Deanna Coleman walks in the door. (Coleman was Petter's assistant and reported Petters to the U.S. Attorney's Office.)

Part of the value I found in working on [the Petters] case was being part of the [trial] team, the other was working with the victims and witnesses. Having their life played out in the headlines of the paper again and again and again was difficult and hard.

If you remember who Tom Petters was in this state, he was a captain of industry, he saved Sun Country, Fingerhut and Polaroid. I don't think anyone could think that that whole thing was a Potemkin village.

I would speak at different events and the feedback was that the victims were somehow stupid and I would push back and say everyone here is capable of being a victim. How do those victims who were caught up in this thing hear [someone calling you stupid.] I have continuing relationships with some of them. All of us go through struggles, and there's a moment when your heart gets broken. To have that thrown on the front page of the New York Times is difficult.



John Marti is "a Marine at heart," says Joe Dixon, who worked with Marti as an AUSA.

ML: Are you disillusioned with the idea of being a federal prosecutor?

Marti: No, but our federal justice system is going through a transformation in response to a transformation that occurred in the '80s. That's when the war on drugs started. There was a public emergency and the president got up and said this is a war on drugs. And words have meaning. So if it's a war and it's an emergency, society reacts in a way that it might not otherwise react. Part of it came with congressional reaction — mandatory minimums, mandatory sentencing guidelines, and a huge flood of money into law enforcement. Whenever you have that rapid change in a system that has developed conservatively for over 200 years it has substantial changes on the federal justice system and the federal courts. And we're looking at how those impacts are playing out 30 years later.

And it's broader than the idea that we've thrown too many young men into prison. That's one distortion that we've had in the criminalization of the war on drugs. It had a broader impact than that in terms of the impact on the federal justice system and the impact on the federal-state justice systems.

ML: You've called this the federalization of crime.

Marti: Justice [William] Rehnquist identified this when he was talking to Congress in the 1990. Also the ABA had a task force that looked at the federalization of criminal law. In [their report] they identified the impacts of federalization. It lists how this rapid traumatic change that was a societal response distorted relationships among the three branches and between the state and federal governments.

There was a substantial problem and not a conservative, thoughtful approach but a political reaction to a systemic complex problem. We think that very complex problems can be solved.

ML: You said that rapid traumatic change distorted relationships. Can you explain that?

Marti: Matters that had historically been handled in the state justice system were moved to the federal system and the

real purpose [for that] was that you had significantly more severe punishments.

So it wasn't that we have to handle these cases in federal court because we have [otherwise] no remedy, it was that we have to handle them in federal court because we have substantially stronger sentences.

And then mandatory minimums give leverage to the prosecutor and the defendants have a choice between horribles. So when you talk about shifting power from the prosecutor to the judge, there's a truth there in that the prosecutor became the sentencing authority by deciding which charge and which mandatory minimum. Over the past 10 years defense counsel would talk to me about sentencing because federal prosecutors had the sentencing power. There was a judicial reaction that was natural and expected. Authority that the federal bench had had since the founding of the republic, that authority had been moved to the Department [of Justice].

ML: You've also talked about the criminal industrial complex. What does that mean?

Marti: General Eisenhower, when he became president, used to talk about the military industrial complex. The money that flowed into this created structures and institutional pressures. Agencies are fighting for budgets and their performance is measured by metrics, which is the number of convictions you have. Judgeships are funded based on the work that happens in any particular district. All this money flowed in to create structure to deal with these issues.

When you start using different strategies such as maybe not using federal criminal law enforcement as the only tool, maybe the numbers draw down, that has an impact on structure and funding. There's an institutional reluctance to walk away from the strategy because the impacts are real. I get that there are real pressures when you try to pivot strategy.

We implemented, as a nation, a strategy to deal with drugs. The vast amount of funds that went into the strategy were aimed at enforcement. We voted with our dollars and we voted for enforcement strategies.

ML: Are you saying that a rehabilitation strategy would have been better? Less violent?

Marti: I don't know if different strategies would have produced better results. I know that we're never going to prosecute our way to public safety and its worth spending dollars in building families and young adults.

The reason I left federal law enforcement isn't because I was disillusioned by where

we are. Federal law enforcement is still a very important part, a small part, in our public safety strategies. But the prosecutors who are doing most of the work are your county attorneys. The U.S. Attorney's Office handles 1 to 2 percent of the felony prosecutions in the state of Minnesota in any given year. The county attorney offices are handling 97 to 99 percent of the work.

ML: A few minutes ago you said that federal prosecutions were preferred because the sentences were stiffer.

Marti: There are two reasons to bring cases (to the U.S. Attorney's Office). It's that there aren't appropriate resources to handle it in state court, or that it is of unique federal interest. Sometimes cases are brought in the door because there isn't an adequate state remedy, in other words, cops want more punishment.

The reason I left federal law enforcement after 30 years of Big G either wearing the uniform of a Marine or being a prosecutor is, I've done enough cases with organizations and every organization is complex. And by organizations I mean communities. And there's a tendency to think within our national community that there are simplistic direct answers to problems. I wanted to have an opportunity to work with organizations — corporations, businesses, other organizations that find themselves facing what to them is really a crisis. When there's an internal disruption or there's a government enforcement action it impacts not just the legal issues but it impacts operations and leadership, finance and public relations. This is a large crisis event.

What I've discovered about myself is that I can help people navigate through that disorder. Whether it starts from being a young infantry officer in the Marine Corps where you're thrown into chaotic environments, 'let's work the problem,' and then respond in a way that serves the long-term interests of that community. You work the problem, you understand what the problem is, be direct, you always be honest. As soon as you think that I'm trying to mislead you and you don't trust me—all we've done is created more problems. An organization doesn't get healthier until it works the problem with transparency, integrity and directness. The law will inform your decision making but it's not going to direct your decision making. These crisis events are really leadership problems.

When the central command general testified in Congress after the airplane hit

the Doctors Without Borders Hospital, he said, this is a problem in the United States chain of command. He didn't try to blame anything else. He said, 'We own this and we're going to figure it out.'

ML: So your goal is to help people or defend them?

Marti: It's legal defense, it's consulting, it's leadership, it's stepping into situations.

ML: So taking Volkswagen for example, some of those men are going to need criminal defense lawyers. But the company needs something too.

Marti: Public relations, operations. What are we going to do with the cars? You have customer relations, dealer relations, the politics of regulation. I want to be in that environment and I want to help. Because at the end of the day it's not a legal problem, it's a leadership problem. You have a vision of where you want to be and then you act with integrity every day, understanding that there's going to be pain. To avoid pain is creating greater pain down the road.

ML: [You wanted to discuss] the globalization of crime and avenues of investigating cross border conduct.

Marti: That's a tough one. It's much more complex than cross-border drug trafficking. We're talking about information flow, [with respect to both] national security and crime. The tools to investigate cross border crime are based on a treaty structure, a large part of it went into place after World War II.

What used to be so hard to do—delivery of physical items—is now so easy to do. You can search on servers all over the world. We have an information environment that is so far ahead of the legal tools we have to deal with it

ML: Changing the subject, what are your views on these police shootings and the Black Lives Matter movement?

Marti: If the only tool that I give to somebody for self-defense is a firearm, then when I'm placed into a threatening environment, I'm going to use the tool that's available to me. But the lesson I learned as a young Marine is that the most effective weapon you carry with you is your judgment.

ML: But we're talking about a 12-year-old boy or a man walking away from you. Doesn't that matter?

Marti: I think it matters intensely. The way in which we police in the United States, which is different than say, how London does it. But England has a different relationship with firearms than the United States does. Do I have an answer? No, I do not. Until we as a nation have a healthy relationship with firearms ... Maybe it is the view we have as a society about what policing means.



Contact information:

John Marti

Partner at Dorsey & Whitney LLP

marti.john@dorsey.com

(612) 492-6775