

*Finding Appropriate Candidates For The District Attorney's Office*

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**I. THE PROBLEM: WHAT ATTRACTS PEOPLE TO PROSECUTION?**

Prosecutors are given an abundance of power in the criminal justice system. We must take care not to abuse the power that rests in the hands of the district attorney. However, many aspiring prosecutors forget that, “with great power comes great responsibility.” – *Voltaire*. This begs the question, is it the “power” that attracts people to this job or is it the “responsibility?” Most would agree; it is the power. Power is synonymous to control, influence, authority, rule, command, and dominance. Power is idealized in American society. People want to be powerful; after all, it is a reasonable desire.

However, as a prosecutor, you cannot have one part of the package without the other. Responsibility is synonymous to obligation, restraint, blame, liability, accountability, and duty. These are unquestionably less desirable words than those associated with power. Many aspiring prosecutors want power, but they do not fully consider the responsibility that comes with it.

From my own experience, most prosecutors pursue their careers for the right reasons; they are transparent and reasonable in their efforts to pursue justice. I have had the honor of working under the supervision of many hardworking, humble, ethical, and dedicated prosecutors throughout law school. Yet, the small percentage of those attracted to the innate power of the position is enough to taint the work of those who are so dedicated in the eyes of the community. To prevent this small percentage of people from joining the ranks of the prosecutors who are devoted to justice, district attorney's offices need to make ethical behavior the central factor in

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hiring decisions and the impetus behind promotions. District attorney's offices must emphasize that a prosecutors work centers on the responsibility to pursue justice.

When district attorney's offices hire or promote prosecutors who have not truly evaluated the level of responsibility inherent to the job, they jeopardize the integrity of the entire criminal justice system. Some potential prosecutors are so attracted to the power aspect of the job that they lose sight of the responsibility. When integrity is jeopardized it results in a slew of problems such as: Brady violations, wrongful convictions, loss of faith in the system, stereotypes, and many more.<sup>2</sup>

It is common to hear aspiring prosecutors talk about how the job of a prosecutor is to win. This response makes my stomach turn. Of course, when a prosecutor takes a case to court they believe they have the requisite probable cause to obtain a guilty verdict. This is the pursuit of justice, not to be confused with the goal of wining. Winning is not the job of a Prosecutor. Winning at all costs is a breeding ground for unethical practices and results in people jeopardizing their integrity and the integrity of the district attorney's office.

What is it that motivates people to jeopardize their integrity? Many people believe that they must win to maintain power. However, it is this obsession with winning that often makes people lose sight of the true role of a prosecutor. The true role of a prosecutor is to pursue justice; which demands justice for all parties involved, including the defendant. If a trial ends in an acquittal after being funneled through the system, instead of a conviction, then justice has been served. There seems to be a mistaken belief that winning and justice are synonymous. This is false.

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<sup>2</sup> In the landmark case, *Brady v. Maryland*, the Prosecution's suppression of evidence was found to be a 14<sup>th</sup> amendment violation setting the precedent for the prohibition of unethical practices in criminal law. 373 U.S. 83 (1963). In *Connick v. Thompson*, a lawyer's failure to disclose a crime lab report placed the entire Orleans Parish District Attorney's Office in jeopardy by way of a \$14 million dollar law suit. 131 S. Ct. 1350 (2011).

However, many aspiring prosecutors confuse the pursuit of justice with the pursuit of what they believe is “the truth.” When an unethical prosecutor believes they know the truth about what happened in a case, but lack faith in the evidence they have to prove their case, they sometimes justify taking unethical steps in securing a guilty verdict. In these instances, the unethical prosecutor does not want to risk a guilty person going free. Unfortunately, an acquittal or an overturned verdict does not always mean that the defendant did not commit the crime. However, a prosecutor must model more faith in the system by putting forth the best case possible with ethical practices and trusting that the jury will reach a just verdict. “Better that ten guilty persons escape than that one innocent suffer.” – *Sir William Blackstone* (1765). It is the renegade prosecutor and his unethical practices, which deteriorate the public’s faith in the criminal justice system. This, we cannot afford.

When the sole focus of the job is on winning, people get caught up in doing whatever is within their power to obtain that win. As long as prosecutors look at their jobs as a series of wins and losses, unethical behavior will continue to be incentivized. But the criminal justice system is not a game, and winning is not the goal. The real goal of prosecutors is to take on the societal responsibility of pursuing justice.

## **II. THE ROOT OF THE PROBLEM – THE PRESSURE OR THE PEOPLE**

Being an attorney has long been seen as a prestigious position within our society, but becoming one today is more difficult than ever. In 2013, the number of graduating law students peaked with a national record of 46,776.<sup>3</sup> The NALP recognized that despite the increase in the number of jobs obtained by the class of 2013 being slightly higher than that of the previous class,

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<sup>3</sup> *American Bar Association releases class of 2013 law graduate employment data*, ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR (Apr. 9, 2014), [http://www.americanbar.org/news/abanews/aba-news-archives/2014/04/american\\_bar\\_associa4.html](http://www.americanbar.org/news/abanews/aba-news-archives/2014/04/american_bar_associa4.html).

the resulting employment rate had fallen due to the large number of graduating lawyers.<sup>4</sup> With the job market still in a state of peril, attaining, much less holding on to, a coveted position as an attorney is a daily battle. This feeling of job insecurity, especially among young attorneys, puts more pressure than ever before on attorneys to be seen as an asset to their office and a success in the courtroom.

The pressure of being seen as a successful prosecutor can be a significant influence on what decisions are made in the work place. This is where the root of the problem lies. The misguided belief that successful prosecutors must always win leads many to take on a “do whatever it takes to be an asset” mentality. This is a dangerous school of thought because it often leads to unethical decisions. It is a slippery slope; first it begins with a minor unethical decision that may later lead to hiding exonerating evidence. In fact, a recent study found that although people are more likely to justify small unethical decisions than major ones, overtime they are more likely to make more unethical choices when faced with the reoccurrence of those small indiscretions.<sup>5</sup> This highlights how important it is for district attorney’s offices to successfully screen out potential hires that could potentially make even a minor unethical decision.

If a person is unethical prior to becoming an attorney then he or she will likely practice law unethically. If a person has a strong moral compass and is strongly rooted in good values and principles prior to becoming an attorney, then he or she will likely practice law ethically. That is not to say some ethical people do not buckle under the pressure previously mentioned,

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<sup>4</sup> *For Second Year in a Row New Grads Find More Jobs, Starting Salaries Rise – But Overall Unemployment Rate Rises with Historically Large Graduating Class*, NALP.ORG (Jun. 19, 2014), [http://www.nalp.org/2013\\_selected\\_pr](http://www.nalp.org/2013_selected_pr).

<sup>5</sup> *Caution: Small ethical lapses lead to a slippery slope*, UNC KENAN-FLAGLER BUSINESS SCHOOL (Jun. 25, 2014), <http://www.kenan-flagler.unc.edu/news/2014/06/Slippery-Slope>.

but they are certainly less likely to. It is the nature of the person when she first enters this profession that best dictates how she will conduct herself as a prosecutor.

### **III. THE SOLUTION**

There is not a single solution that can be implemented to change the aforementioned problems overnight. However, something must be done to prevent the position of a prosecutor from being tainted by the unethical practices of those who choose the position to pursue power and shirk their responsibility to the system. There needs to be a clear expectation of what it means to be a prosecutor.

#### **A. Manning the Gate**

The first step in this process is “manning the gate,” that is, creating an additional hurdle after passing the bar. Potential prosecutors should be subjected to an intense training program that thoroughly trains prosecutors on the repercussions of their unethical actions. As it stands, it is clear that teaching a class about professional responsibility during law school does not prevent people from acting unethically. A practical course should be required. This course should involve speaking with people who have suffered at the hands of prosecutors’ unethical behavior, for example, a family member of a murder victim whose killer was released because of a Brady violation.

Additionally, the course should require potential prosecutors to learn ethical practices while they work post bar and at the introductory stage of the hiring process. This training course will entail going through evidence from multiple cases and determining what evidence is discoverable and why. Although there is some debate about the exact numbers, the well-

accepted theory developed by Edgar Dale shows that most people retain less of what they read and more of what they do.<sup>6</sup>

There are multiple benefits to changing the current training paradigm from reading about events that occurred in a case long ago, to practical interactive training sessions. Practical training will impress upon aspiring prosecutors the impact that unethical decisions have on the criminal justice system, and how to ethically handle situations as they arise in practice. This course should not only focus on discovery, but on how to represent the People in an ethical way, how to deal with victims, the best practices on how to ethically communicate with the defendant, and how to effectively communicate with defense counsel.

One of the benefits to implementing a practical training program is that it will give employers the opportunity to see how their potential hires respond to various scenarios. Employers will be able to see first hand how the potential prosecutor approaches a case. The discussion that surrounds the training will provide the employer with insight as to the individual's thought process. This gives employers an opportunity to see what considerations are weighed when the potential prosecutor is handling their case and how much weight is given to each issue.

Another benefit to the practical training program is it also gives the potential prosecutor the opportunity to see what the job of a prosecutor truly entails. Because many aspiring prosecutors are attracted to power and often blind to the level of responsibility that comes with the job, this practical training program will force them to see that a great deal of responsibility is also a part of the package. This program would expose potential hires to the level of

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<sup>6</sup> See, Heidi Milia Anderson, PH.D., *Dale's Cone of Experience*, EAST TENNESSEE STATE UNIVERSITY (last visited Apr. 9, 2015), [https://www.etsu.edu/uged/etsu1000/documents/Dales\\_Cone\\_of\\_Experience.pdf](https://www.etsu.edu/uged/etsu1000/documents/Dales_Cone_of_Experience.pdf).

responsibility they will face once officially hired on. In some cases, it will prove to the individual that this job is not one they can, or would even like, to take on.

Aspiring prosecutors should also be required to complete psychological testing similar to that of police officers with a focus on moral and ethical principles. Years of studies show that psychological screening assessments prove to be accurate predictors for behavior.<sup>7</sup> After completing the training and passing the psychological evaluations potential prosecutors can pass the gate that screens out candidates that exhibit unethical traits.

### **B. Changing the Office Culture**

The next step is changing the culture in the district attorneys office by adjusting promotion practices that are commonly used today. Instead of basing promotions on winning statistics, they should emphasize ethical practices and work ethic above all other considerations. District attorney's offices should incentivize ethical practices above all else because it will influence people who lack a strong moral compass, but desire promotion, to conduct themselves ethically.

There should be a system in place that encourages prosecutors to discuss ethical issues that arise throughout trial which are potentially damaging to their case. This system will encourage prosecutors to get involved in finding ethical solutions to problems that arise. Instead of feeling the need to hide these issues, prosecutors will feel comfortable in a place where there is an open forum to discuss solutions. The benefit to this system is two fold; first, it rewards those who suggest and implement consistent ethical practices, and second, it educates others in the office on how to handle similar situations in the event they arise in the future.

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<sup>7</sup> Timothy Roufa, *Psychological Exams and Screening for Police Officers*, CRIMINOLOGYCAREERS.COM (last visited Apr. 9, 2015), [http://criminologycareers.about.com/od/Job\\_Market/a/Psychological-Screening-For-Police-Officers.htm](http://criminologycareers.about.com/od/Job_Market/a/Psychological-Screening-For-Police-Officers.htm).

When the office culture is changed, the perception of prosecutors will change. The open forum will create unity within the office. It will alleviate the pressure to do whatever it takes to win because winning will no longer be the focus. This system will not reward those who win cases at the cost of practicing unethically. Instead, it will incentivize prosecutors to practice ethically.

There must be a higher standard of integrity and ethics when people's liberty is at stake. There must be faith in the system. Prosecutors cannot take it upon themselves to create justice. The system is imperfect; it is flawed but, if the system is to ever improve, prosecutors must be the guarantee that upholds its integrity. We must implement ethical practices that show we have faith in the system regardless of the outcome. The life of a prosecutor is not a game, and people who believe the job description is "to win" should not be allowed to represent the People.