# Best Practices for Prosecutors

## A Nationwide Movement

BY KRISTINE HAMANN AND REBECCA RADER BROWN

A prosecutor's core mission is and has always been to promote justice and to protect the community by ensuring public safety. Over the past 30 years, the way prosecutors approach this mission has evolved in a number of ways.

First, the role of the prosecutor has changed. Moving beyond the traditional case-based approach, which focused exclusively on the investigation and prosecution of crimes, prosecutors' role has broadened to include proactive, innovative solutions to challenges facing the criminal justice system. These initiatives include collaborative crime prevention, alternatives to sentencing, specialty courts, victim support, and various forms of community engagement to improve safety and communication. Current events have only demonstrated the importance of these programs and the need for prosecutors to work even more closely with their communities.

The second change is that prosecutors and other law enforcement officials have experienced an explosion in the information and evidence available to investigate and prosecute criminal offenders. These innovations, which include improvements in information technology, forensic science, and social science research, have been instrumental in providing reliable evidence to ensure the validity of a prosecution. However, this new evidence comes with great challenges. First, prosecutors have to be able to review and understand the ever-growing information. Second, the new evidence, most notably DNA, has revealed that some past convictions, particularly those from decades ago, were erroneously obtained. Erroneous convictions, though rare, are tragic. However, they have pushed prosecutors to learn from the mistakes of the past and to work diligently to make sure that their convictions are based on valid, reliable evidence in the first instance.

In place of the old, reactive criminal justice model, prosecutors and police are using new methods and evidence to take a proactive, broader approach to preventing, investigating, and prosecuting crime. A proactive model encourages greater collaboration among prosecutors, between prosecutors and

police, and between the criminal justice system and the community at large.

One way that prosecutors are working to encourage this innovative approach is through the development of statewide best practices committees for prosecutors. These committees, which have formed in 20 states, with more under consideration, help prosecutors to keep abreast of innovations in the criminal justice system. They are statewide think tanks that assist prosecutors to identify best practices and to proactively address emerging issues that can improve their work and benefit our communities. The criminal justices system is undergoing a period of intense reflection and change; prosecutors' input and participation has never been more important than at the present time.

## Statewide Best Practices Committees

Best practices committees are nonpartisan bodies of prosecutors that meet on a regular basis. They include elected district attorneys and senior prosecutors from urban, suburban, and rural districts throughout a state. In most states, the best practices committee works closely with its statewide prosecutors association. The committees gather and examine information on the latest developments in criminal justice and community safety and provide assessments and recommendations that can benefit all prosecutors and law enforcement in the state. Committee membership varies from five to 50 members and may be on an assignment or volunteer basis. The committees have different names, but will be generically referred to in this article as "best practices committees."

Starting in 2013, with the support of the Department of Justice's Bureau of Justice Assistance (BJA), Kristine Hamann, one of the authors of this article, worked with prosecutors around the country through a visiting fellowship. The fellowship was devoted to developing prosecutor-led best practices committees. To date, 20 states have formed best practices committees: Arizona, California, Colorado, Delaware, Idaho, Illinois, Kansas, Louisiana, Maryland, Michigan, Minnesota, Missouri, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Utah, Virginia, and Washington.

Most committees begin by identifying key topics in evolving areas and assigning members of the committee to collect the latest information to share with the group. Examples of commonly addressed topics include body-worn cameras, digital evidence, ethics, eyewitness identification procedures, forensic evidence, erroneous convictions, and interrogations. After examining and discussing the research, the committee works to draft recommendations for prosecutors and law enforcement. The committee also reviews and analyzes proposals made by other groups.

Best practices committees also strive to build relationships with their communities and other organizations in their states. Most committees partner with law enforcement agencies to improve information sharing and promote more consistent policies across the criminal justice system. Others have established relationships with crime labs and academic institutions. Outside partnerships facilitate better communication, encourage uniformity, and build trust within criminal justice systems and the communities they protect.

The work of six best practices committees—California, Colorado, Missouri, North Carolina, Tennessee, and Virginia—is supported by grants from BJA. These grants help to fund committee expenses, including hiring staff to provide full – or part-time administrative support. The funds also offset travel and other committee conference expenses. Given that many district attorney's offices are facing limited or reduced budgets, the work of these committees would be difficult to achieve without BJA's support. Despite receiving no grant funding, an additional 14 states have formed best practices committees.

The following case studies demonstrate the various approaches and accomplishments by some of the best practices committees in recent years (committees are listed in chronological order, from date established):

## New York Best Practices Committee

In 2009, New York was the first state to establish a statewide best practices committee. The work of the committee was the subject of a 2012 article in this magazine. Since that writing, the New York Best Practices Committee (NYBPC) has continued pursuing its goal of exploring ways to improve the investigation and prosecution of criminal cases, to respond to issues arising from erroneous convictions, and to serve as a statewide think tank for prosecutors on emerging issues. The NYBPC has also served as a model for best practices committees in other states.

The NYBPC is made up of elected district attorneys and senior assistant district attorneys from all regions of the state. The New York State Attorney General's Office is also a member. Any recommendation by the committee must be approved by its parent committee, the Fair and Ethical Administration of Justice Committee of the District Attorneys Association of the State of New York (DAASNY) and the DAASNY board of directors.

**KRISTINE HAMANN** *is the founder and executive director of the Prosecutors' Center for Excellence (PCE). She is a former visiting fellow at the Bureau of Justice Assistance (BJA) and was the executive assistant district attorney in the Manhattan District Attorney's Office in New York City.*
**REBECCA RADER BROWN** *is a consulting attorney at PCE. For further information on PCE or topics covered in this article, please contact Kristine Hamann at khamann@pceinc.org.* *The writing of this article is supported in part by Grant No. 2013-DB-BX-K005 awarded by the BJA to the New York Prosecutors Training Institute (NYPTI). BJA is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. BJA's mission is to provide leadership and services in grant administration and criminal justice policy development to support local, state, and tribal justice strategies to achieve safer communities.*

The committee meets monthly, and members participate in person or via conference call, depending on where the meeting is held. Technical and administrative assistance are provided by DAASNY, the Manhattan District Attorney's Office, and the New York Prosecutors Training Institute (NYPTI).

Over the past six years, the committee has had many achievements; here are some highlights:

**Eyewitness identification.** The committee developed identification procedure protocols for police departments, sheriffs' departments, and district attorneys throughout the state. Statewide adoption of the protocols was announced at a joint press conference in May 2010. In collaboration with police agencies and the N.Y. State Division of Criminal Justice Services, the committee created training programs on the new procedures and assisted with training officers throughout the state. These protocols have provided guidance to other best practices committees that are also seeking to improve and standardize their state's procedures.

**Video recording of interrogations.** The committee spearheaded a statewide consensus among law enforcement in support of video recording custodial interrogations of suspects. The committee wrote protocols for the adoption of video recording interrogations by police departments that were endorsed at a press conference with district attorneys and state police agencies in December 2010. Over 380 video recording facilities have been installed around the state.

**Review of erroneous convictions.** On a regular basis, a committee member will present on an erroneous conviction from his or her jurisdiction. The causes and lessons learned from the case are discussed by the committee.

**Discovery training for police.** The committee developed a training program for police to explain the concepts of *Brady* and *Giglio* and to emphasize the importance of turning over all required materials to the prosecution. The training was disseminated throughout the state.

**Ethics handbook.** In collaboration with DAASNY's Ethics Committee, the committee published *The Right Thing: Ethical Guidelines for Prosecutors*. It was first distributed to all prosecutors in the state in 2011 and has been updated several times. The most recent update was in 2016. (*See* http://tinyurl.com/hdarcfn.) The book has spurred new forms of training, including hypothetical-based training and quarterly updates on ethics issues pushed to prosecutors through e-mail. Best practices committees and prosecutors around the country have used this handbook as a foundation for similar guides within their states or offices.

**Case review questions.** Based on a model created in the Manhattan District Attorney's Office, the committee developed a list of questions prosecutors and their supervisors can use to remind themselves of possible weaknesses and problems as they are reviewing a case.

**Presentations.** Routinely presentations are given to the committee on new or difficult issues. Some of the topics have included: trends in encrypted communication, cognitive bias, new forensic methodologies, cell phone technology, how to deal with irregularities in a forensic laboratory, development of a social media policy, witness intimidation, and the creation of mental health courts. The presentations allow the committee members to learn about emerging issues, to share ideas, and to formulate policies on these topics when needed.

## Missouri Best Practices Committee

In September 2013, Missouri was the second state to adopt a best practices committee, which the state prosecutors association announced in a six-minute public service announcement (http://tinyurl.com/jemsmmm). Established by the Missouri Association of Prosecuting Attorneys (MAPA), the Missouri Best Practices Committee (MBPC) has seven members: the president of MAPA and six elected prosecuting attorneys, all of whom have served at least one full term in office. The committee's goal is to study and make recommendations regarding the best ways to address complex issues routinely confronted by prosecutors.

The committee meets six times per year and makes recommendations to the MAPA board of directors, which, if adopted, are distributed to prosecuting attorneys throughout the state, as well as to law enforcement agencies and other organizations. The committee also designates subcommittees, comprised of elected prosecutors and assistant prosecuting attorneys, to address specific topics before issuing recommendations. These recommendations are then sent to the MBPC, which reviews and either approves or sends back the recommendation for possible revisions or additional work. If the recommendation is approved, it is then posted for comments from the MAPA membership and ultimately sent to the full MAPA board for adoption or rejection.

In just over two years, the committee has issued recommendations and press releases on the following key topics:

**Victims' rights.** The committee recommended that prosecutors review case referrals within three business days, meet with crime victims personally prior to the victim testifying, and seek input from the victim prior to making plea recommendations.

**Forensic sciences.** The committee suggested that prosecutors meet regularly with law enforcement agencies and crime laboratory personnel to discuss policy issues relating to evidence collection, retention, and testing, as well as on specific cases involving serious violent or sexual offenses.

**DWI cases.** The committee encouraged prosecutors to develop a "no refusal" policy for DWI cases and work with local law enforcement agencies to develop standard procedures, including electronic means, to obtain search warrants to test a defendant's blood alcohol content.

**Custodial interrogations.** The committee recommended that all custodial interrogations involving crimes against persons be recorded, preferably video recorded, and that suspects in photo array lineups be pictured in noncustodial clothing.

**Special victims cases.** The committee recommended that prosecutors have sufficient knowledge of issues related to child sexual abuse (and other special victims) and meet with victims in order to make informed charging decisions. Prosecutors are encouraged to work with a multidisciplinary team to investigate and prosecute child sexual abuse, developing written protocols for such investigations. The committee emphasized the importance of protecting victims' identities

### Interested in Forming a Statewide Best Practices Committee?

Best practices committees for prosecutors, which have been formed in 20 states so far, can be created in states of all sizes. Prosecutors' Center for Excellence provides ongoing support to best practices committees through the planning stages and throughout their work. The following are suggestions for how to create a committee:

- **Leader:** Find a leader for the committee who is nonpolitical, familiar with the state as a whole, and has the ability to organize meetings, topics, and speakers. This person can be an elected or senior prosecutor, a prosecution coordinator, or a retired prosecutor.
- **Members:** Members should be elected and senior prosecutors from different regions of the state and from offices of different sizes representing urban, suburban, and rural communities. Other members can include prosecutors from the attorney general's office and the state's prosecutor association.
- **Meetings:** Meetings should be held regularly, ideally on a monthly basis. Meetings can be held in different parts of the state, and some members can participate by conference call if the travel cost is too burdensome.
- **Partners and presentations:** The committee should meet with or have presentations from other groups with mutual interests, including police, community members, victim organizations, academic institutions, forensic laboratories, etc.
- **Cost:** Little cost is involved aside from travel, unless the committee decides to sponsor a conference or symposium. In some states, larger prosecutor offices and the state's prosecution association provide some administrative assistance. Consider applying for grants to pay for travel, materials, and speakers.

and establishing a rapport with victims and witnesses prior to hearings and other trial-related events, and encouraged prosecutors to move cases to disposition in a timely manner.

The MBPC has established relationships with law enforcement and other outside organizations, which serve as partners or in an advisory capacity. Recently, the forensic science subcommittee had a series of meetings with state crime labs to discuss policy issues related to evidence collection, retention, and testing. These meetings have been extremely productive and will likely lead to additional best practices recommendations.

## Tennessee Justice and Professionalism Committee

Started in September 2013 as an ad hoc committee within the Tennessee District Attorneys General Conference (TDAGC), the Tennessee Justice and Professionalism Committee (TJPC) began as an effort to focus on ethics and related issues affecting prosecutors. After a month examining materials from a variety of national resources, the Tennessee district attorneys unanimously voted to establish the TJPC as a standing committee to pursue best practices for prosecutors. TJPC's goal is to take the lead in improving Tennessee's criminal justice system by keeping abreast of emerging issues and partnering with state and national criminal justice partners.

The TJPC has nine members, elected district attorneys general and assistant district attorneys general, representing geographically and demographically diverse regions of Tennessee. The full TJPC meets monthly, and working groups, which are subcommittees dedicated to specific areas of the law, meet quarterly.

In addition to funding from BJA, the TJPC received a grant from Tennessee's Office of Criminal Justice Programs. The combined funds made it possible for the committee to hire a full-time attorney to support TJPC's initiatives, to handle administrative work, and to assist in drafting training materials.

The TJPC's "Prosecutorial Ethics Education Series" was initiated by the TJPC to produce and distribute presentations on key topics in prosecution. To date, the committee has produced two DVDs in its "Points to Consider" series:

- Part I: "Constitutional Discovery—Responsibilities of the Prosecutor"
- Part II: "Discovery Responsibilities of the Prosecutor under Rule 16"

These presentations have been distributed to all Tennessee district attorneys. TJPC plans to produce two additional DVDs on "Open Records" and "Ethical and Constitutional Considerations in Closing Arguments," which are slated for release in 2016. In addition to these projects, TJPC has established partnerships with the Tennessee Public Safety Coalition, Tennessee Association of Chiefs of Police, and Tennessee Sheriffs' Association.

## Colorado Best Practices Committee for Prosecutors

In April 2014, the Colorado District Attorneys' Council (CDAC) and Colorado Attorney General's Office announced the formation of the Colorado Best Practices Committee for Prosecutors (CBPCP). Led by the executive director of CDAC and a first assistant attorney general, the committee members consist of elected prosecutors and senior assistant district attorneys from judicial districts across the state. The committee functions as a think tank for prosecutors, analyzing and providing guidance on developing trends in the law, effective legal practices, and technology issues.

Since its formation, the CBPCP has undertaken three major projects in areas of critical importance to Colorado's criminal justice system:

**Eyewitness identification procedures.** The committee evaluated the state's law enforcement and prosecutorial practices for administering eyewitness identification procedures. Based on the committee's in-depth analysis, CDAC was able to work with members of the Colorado legislature, law enforcement

leaders, the Innocence Project, and other stakeholders to craft meaningful legislation to improve the state's eyewitness identification procedures. After the law was enacted in April 2015, the committee drafted a model eyewitness identification policy and model forms to assist state law enforcement agencies as they conform their policies to the new requirements. According to the statute, agencies that do not create their own eyewitness identification policy by July 1, 2016, must adopt the committee model. In addition, the committee organized two conferences for law enforcement on eyewitness identification procedures, which included presentations from scientists about the human brain's ability to view and recall information in connection with identifying a criminal perpetrator, and from attorneys detailing the legal issues related to proper administration of identification procedures.

**Body-worn cameras.** With the surge in national interest about police use of body-worn cameras, the committee researched the benefits and complications of this evolving form of technology and conducted a survey of body camera use among Colorado law enforcement agencies. In February 2015, the committee released its report. (*See* http://tinyurl.com/gl8rkl4.) Without advocating for or against the use of the cameras, the report outlines the many significant and conflicting legal, policy, and logistical issues raised when officers record some or all of their encounters with the public. With the publication of this report, state legislators considering the mandated use of cameras instead passed a law creating a working group of stakeholders to develop recommendations on the topic. Two members of the CBPCP were asked to serve in the working group. The committee's report on body-worn cameras generated considerable state and national attention. After its publication, committee members were invited to give presentations on body-worn cameras at conferences for prosecutors and law enforcement throughout the country. In addition, through the National District Attorneys Association, a Colorado district attorney was asked to speak on the topic of body-worn cameras before the United States Senate Judiciary Committee.

**Recording custodial interrogations.** The committee also has focused on whether recording technology should be used when police officers question suspects who are in custody at a law enforcement facility. While half of the states in the country have statutes or court decisions requiring or encouraging the audio/video recording of some or all police interrogations, Colorado does not. In September 2015, the committee published its report for law enforcement on the recording of custodial interrogations. The report includes the results of the committee's survey of state law enforcement agencies, which showed that the vast majority of Colorado agencies already are recording interrogations in many types of cases. The information provided by the report has helped CDAC with its participation in the drafting of proposed legislation on the issue.

Along with these three projects, the CBPCP serves as an ongoing forum for discussing subjects of concern and interest to the prosecutorial and wider law enforcement community. Through monthly meetings, members bring new topics to the committee's attention, including requests for assistance on best practices matters from police departments, sheriff's offices, and other law enforcement partners.

## Virginia Committee on Justice and Professionalism

Established in September 2014, the Virginia Association of Commonwealth's Attorneys (VACA) Committee on Justice and Professionalism serves as a forum for Virginia prosecutors to share information, collaborate on case reviews, remain current on legal and investigative trends, and avoid erroneous convictions. Committee members include elected commonwealth's attorneys and deputies from a diverse range of counties and cities throughout Virginia.

The committee meets on a regular basis, and its members have been assigned to address key topics, including discovery, ethics and integrity, forensics, special victims, and technology. The work on these issues is ongoing.

In an interesting innovation, the committee recently partnered with the T.C. Williams School of Law at the University of Richmond to create "The Prosecution Project," a clinic for eight law students who have demonstrated an interest in a prosecution career. Professor John G. Douglass will teach the clinic, which is running in the spring semester of 2016 and focuses on two best practices areas: (1) use of force, and (2) witness protection. The collaboration is mutually beneficial. Students have the opportunity to interact with members of the committee and to learn about some of the most complex and pressing issues facing prosecutors today. The committee will benefit from student research and analysis as they delve into these important policy areas, and members of the Virginia committee will share this information with best practices committees in other states as well. Students in the clinic will also present their work at the Virginia Commonwealth's Attorneys' Services Council Spring Institute, a four-day training for all Virginia prosecutors to be held in April 2016. (*See* Deirdre Norman, *VACA Launches Innovative Best Practices Program with Law School*, Va. Law., Oct. 2015, at 16, *available at* http://tinyurl.com/jxb6bzk.)

## California Council for Criminal Justice Integrity

Established in October 2014, the California Council for Criminal Justice Integrity (CCJI) serves the state's 58 county district attorney's offices. CCJI's mission is to oversee educational, informational, and advisory matters pertaining to prosecutorial ethics, procedures, and professional responsibility.

The California District Attorneys Association (CDAA) Foundation oversees CCJI, providing administrative support and approving all of CCJI's projects, publications, and recommendations. In addition to overseeing the CCJI, the CDAA Foundation provides education, training services, and information to prosecutors and law enforcement; promotes the interests of the criminal justice system, crime victims, their survivors, and families; and sponsors education and outreach to the general public on the efforts of prosecutors to make our neighborhoods safe.

CCJI is directed by an executive committee and an advisory committee. The CCJI executive committee includes six members of the CCJI, who are selected by the

foundation board of directors, and directs the council's activities to ensure that it meets its goals. The CCJI advisory committee is comprised of persons working within the criminal justice field, including a retired jurist, a former United States attorney, a deputy district attorney, a retired assistant attorney general, an academician, and a criminal defense attorney. Projects are also vetted through outside organizations, such as law enforcement.

CCJI meets six times per year, and its members are also assigned to subcommittees to address specific topics, such as body-worn cameras, *Brady*, the California Public Records Act, lineups, eyewitness identifications, informants, and prosecutorial discretion. After gathering information on these and other topics, CCJI's goal is to use these findings to pursue the following objectives:

- Develop training programs and assist the CDAA and its foundation in implementing the programs throughout the state.
- Write recommendations to be sent to all California district attorneys for consideration.
- Publish articles in CDAA's *Prosecutor's Brief* to inform prosecutors throughout the state on successful practices.
- Create talking points for CDAA and district attorney's offices for proactive media relations and responding to media inquiries.
- Develop and present training webinars on successful practices, which will be housed in the CDAA Webinars On-Demand Library.
- Coordinate delivery of information to the state legislature.
- Create a social media and web presence for CDAA, including maintaining a "CA Best Practices" page on *Prosecutors' Encyclopedia*.

In June 2015, the CDAA Foundation, in conjunction with the Prosecutors' Center for Excellence, developed *Model Body Worn Camera Policy for Police: An Aid for Prosecutors*. (*See* http://tinyurl.com/gwwzt6g.) The model policy is intended "as a guide to prosecutors who are working with law enforcement agencies to implement body worn cameras." The CDAA Foundation will also host a "National Body Cam Technology & Policy Summit and Expo" in February 2016. This two-and-a-half-day training aims to "provide unbiased information for policy makers and leadership to develop coherent, current, and sensible policies related to technology being made available to law enforcement today." (*See* http://tinyurl.com/hh45qa6.) The summit will involve panels, training, and roundtable discussions. Presenters and attendees will include prosecutors, state legislators and other political figures, law enforcement, technology experts, and community advocates.

## Regional Meetings

In addition to bringing together prosecutors within a state, best practices committees allow for sharing of information between states.

To date, prosecutors from 30 states and the District of Columbia have participated in six regional best practices summits to collaborate on emerging issues and to share the successes and challenges in establishing and running statewide prosecutor committees. The summits, also funded by a BJA grant, were held in Washington, D.C., Denver, St. Louis, Philadelphia, and Phoenix and took place over two-day periods in which participants were given an opportunity to update the group on the progress within their states. Attendees also enjoyed presentations from select committee members and outside speakers on topics such as eyewitness identifications, police-worn body cameras, and community engagement.

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State prosecutors participating in these gatherings benefit from the support and encouragement of their counterparts across the country. Attendees from states without previously existing committees gain valuable advice and resources to help them garner support for establishing a committee upon returning home. The connections formed at regional summits extend beyond the meetings, and participants often reach out to one another for advice on crisis management and other committee activities.

The regional meetings provide momentum to allow the best practices committees to share their accomplishments and to share ideas on emerging issues and the difficult topics of the day. Additional regional meetings are in the planning stages.

## Looking Forward

As prosecutors strive to improve their practices, there is no better means of improvement than through collaboration on the many emerging issues faced by the criminal justice system. Prosecutors' Center for Excellence (PCE) is a newly created think tank for prosecutors. Launched in July 2015, its core mission is to develop and support best practices committees and to work on issues that will improve the criminal justice system. PCE provides technical assistance, training, materials, expert advice, and research on policy issues relevant to the work of these committees. It has developed an extensive library of policy materials and facilitates the sharing of information between best practices committees and between individual prosecutors. PCE creates a place where prosecutors can exchange ideas and share solutions to difficult issues that will benefit the communities that they serve. For more information on PCE, see www.pceinc.org. ■