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# Retooling America's Prosecutors

By **Ted Gest** | 8 hours ago



*Courtroom in the old historic courthouse, Sarasota, Fla. Photo by Clyde Robinson via Flickr*

Prosecutors, who are among the most powerful actors in the criminal justice system, have been targets of public criticism in recent years.

The main reason is an accumulation of wrongful convictions. A National Registry of Exonerations has identified [1,884 such cases](http://www.law.umich.edu/special/exoneration/Pages/about.aspx) (<http://www.law.umich.edu/special/exoneration/Pages/about.aspx>), although some date from the 1980s. Even if the vast majority of cases filed by prosecutors are on target, it just takes a few major errors— even if they were committed decades ago—to cast a pall over the profession as a whole.

Prosecutors also bear at least some of the blame for the nation's mass incarceration of more than two million people. Rightly or wrongly, they are accused of trying to pile as many charges on as many defendants as they can, to maximize the amount of prison time for which they can claim credit in election campaigns.

For their part, prosecutors maintain that they have not been very powerful when it has come to formulating the state laws and policies they must live by. Typically, they are not viewed as the leaders in reforming the legal system, but rather are called in to comment on proposals that someone else has drafted.

The belief by some prosecutors that they are too often behind the curve has prompted them to embark on a national “best practices” movement that is designed to help them take a more positive, pro-active approach to their work.

Historically, prosecutors handled their jobs literally on a case-by-case basis. When they won a major conviction, they'd get public accolades. When they lost, or a previous victory was overturned, they'd be on the defensive, trying to explain why something went wrong.

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One challenge to improving the profession is that it is not monolithic. There are a few thousand elected prosecutors around the nation, ranging from large offices in major urban counties such as New York City's Manhattan borough and Los Angeles County to sparsely populated counties where the prosecutor may be a part-time, one-person office. Turnover can be high, as many chief prosecutors serve only one or two four-year terms.

In Missouri, for example, each of 115 counties has an elected prosecutor, and as many as 40 of those positions change hands every four years, says Matt Selby, co-chairman of the Missouri prosecutors best practices group and Prosecuting Attorney of Stone County, with a population of about 32,000 in the southwestern part of the state.

Selby reflects the view of many progressive prosecutors when he says, “We are expected to more than just prosecute cases. We need to play a bigger role in the community.”

To help expand their reach on public issues, prosecutors have organized statewide “best practices” committees that take the lead in working with other elected officials and the various components of the justice system to deal with cutting-edge issues such as advances in forensic evidence and police use of body-worn cameras.

The movement was begun by prosecutors in New York State and now operates in 20 states.

The work of panels in six states is helped by a U.S. Justice Department grant: California, Colorado, Missouri, North Carolina, Tennessee, and Virginia. Other states with ongoing programs are Arizona, Delaware, Idaho, Illinois, Kansas, Louisiana, Maryland, Michigan, Minnesota, Pennsylvania, South Carolina, Utah, and Washington.

A key leader in the movement is Kristine Hamann, a former prosecutor in New York City. She founded the Prosecutors' Center for Excellence, which works with prosecutor organizations in the states and the U.S. Justice Department to promote best practices for prosecutors nationwide.

*Prosecutors as a group are paying much more attention to DNA analysis*

Hamann and her colleagues concede that their work has been marred by wrongful convictions, but they contend that the problem may appear worse than it really is because many flawed

*and other scientific techniques that can insure more accurate evaluation of evidence.*

cases were filed years ago and are occurring much less currently. There is no way to determine this with precision, because it may be years after a case first was pursued before it becomes apparent that it was aimed at the wrong defendant.

What is clear is that prosecutors as a group are paying much more attention to DNA analysis and other scientific techniques that can insure more accurate evaluation of evidence.

“Prosecutors and other law enforcement officials have experienced an explosion in the information and evidence available to investigate and prosecute criminal offenders,” Hamann and Rebecca Rader Brown wrote for the American Bar Association.

“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.”

Details of the best practices program vary from state to state, but in general, a statewide organization of prosecutors meets periodically to decide what issues to tackle. The group then consults experts, whether within their own ranks or in academia, the legal profession or other justice system agencies.

The result may range from holding a seminar open to all prosecutors to writing recommendations on how to handle a particular procedure to drafting a proposal to change a state law or rules of legal practice.

In some cases, the goal is simply to keep all prosecutors who belong to the state group informed of how best to do their jobs, by providing them up-to-date information on scientific evidence methods such as the nuances of analyzing DNA samples. In others, it is to help develop changes so that the system can work more fairly and efficiently.

As far back as 2010, the New York program developed protocols for eyewitness identification and video recording of interrogations. In 2011, the New York group issued a [guide](http://www.daasny.com/wp-content/uploads/2015/07/2015-Ethics-Handbook.pdf) (<http://www.daasny.com/wp-content/uploads/2015/07/2015-Ethics-Handbook.pdf>) called, “The Right Thing: Ethical Guidelines for Prosecutors,” that was distributed to all prosecutors in the state and has been updated several times, most recently this year.

*“The whole purpose is to try to get prosecutors ethically and professionally up to speed—that’s at the core of everything.”*

In Colorado, where the 22 elected prosecutors are limited to four-year terms, the best practices group generally concentrates on one major issue each year, says Thomas Raynes, executive director of the Colorado District Attorneys Council.

The panel issued a model policy

(<https://mail.google.com/mail/u/0/#search/Tom%40cdac.state.co.us/156b93823ae23fe1?projector=1>) on how prosecutors can comply with a new state law on eyewitness identification and a report

(<https://mail.google.com/mail/u/0/#search/Tom%40cdac.state.co.us/156b93823ae23fe1?projector=1>) for law enforcement on complying with the law on electronic recordings of interrogations of suspects.

In each case, prosecutors influenced the passage of “pragmatic legislation” in the state that was endorsed by defense lawyers, the Innocence Project, prosecutors, and law enforcement agencies alike, Raynes told *The Crime Report*.

California has elected prosecutors in 58 counties, usually politically liberal in major population centers like San Francisco and Los Angeles and conservative in rural areas. That state's effort has taken the form of a prosecutors' Council for Criminal Justice Integrity, which this year sponsored a “summit” on police body camera technology and later issued a model police policy (<https://www.cdaa.org/wp-content/uploads/model-police-policy-for-BWC.pdf>) on the subject.

The state group also enlisted a former prosecutor to write a report challenging the assertion by Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit that there is an epidemic of prosecutorial misconduct due to prosecutors failing to provide evidence to the defense that could be helpful to their clients.

Such actions are called Brady violations, after a well-known Supreme Court case called *Brady v. Maryland*. (<https://supreme.justia.com/cases/federal/us/373/83/case.html>) The report ([https://www.cdaa.org/wp-content/uploads/Brady\\_White\\_Paper\\_Final.pdf](https://www.cdaa.org/wp-content/uploads/Brady_White_Paper_Final.pdf)) concluded that, “There is a *Brady* problem in the land but it is not an epidemic.”

Mark Zahner, chief executive officer of the California District Attorneys Association, says the group recently been discussing trying to make prosecutors' offices more ethnically diverse, to help insure that they do not approach cases in a racially biased manner.

In addition to their work within states, 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 state-wide prosecutor committees.

It's too early to say how well the best practices movement has succeeded, because it has been only several years since it began. State leaders say that the reaction has been positive, and they are optimistic about raising the funds needed to support their efforts after federal aid for several of them runs out this fall.

Says California's Zahner: “The whole purpose is to try to get prosecutors ethically and professionally up to speed—that's at the core of everything.”

**Editors Note: For another view of the challenges faced by prosecutors, see William Kelly's TCR Viewpoints column, “Prosecutors: Reform Is Up To You.”**



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**(<http://thecrimereport.org/2016/09/22/prosecutors-reform-is-up-to-you/>)**

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