

BEST PRACTICES FOR PROSECUTORS: A NATIONWIDE MOVEMENT

By Kristine Hamann and Rebecca Rader Brown

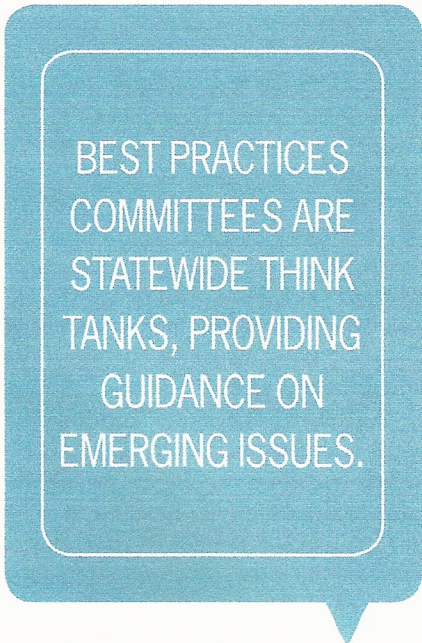
A prosecutor's core mission is and has always been to promote justice and to protect the community by ensuring public safety. Over the past 30 years, the way prosecutors approach this mission has evolved. In place of the old, reactive criminal justice model, prosecutors and police are using new methods and evidence to take a proactive, broader approach to preventing, investigating, and prosecuting crime. 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, 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.

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.

New York Best Practices Committee. In 2009 New York became the first

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state to establish a best practices committee. Over the ensuing years, the committee developed identification procedure protocols for police departments, sheriffs' departments, and district attorneys throughout the state; spearheaded a statewide consensus among law enforcement in support of video recording custodial interrogations of suspects; wrote protocols for the adoption of video recording interrogations



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by police departments; and developed a training program for police to explain the concepts of *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972), and to emphasize the importance of turning over all required materials to the prosecution. 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.

Missouri Best Practices Committee. In September 2013 Missouri became the second state to adopt a best practices committee. In just over two years, the committee issued recommendations and press releases on several topics. It recommended that prosecutors review case referrals within three business days, meet with crime victims personally prior to the victim's testifying, and seek input from the victim prior to making plea recommendations. The committee suggested that prosecutors meet regularly with law enforcement agencies and crime laboratory personnel to discuss police issues relating to evidence collection, retention, and testing, as well as on specific cases involving serious violent or sexual offenses. It encouraged prosecutors to develop a "no refusal" policy for DWI cases and work with local law enforcement agencies to develop standard procedures to obtain search warrants to test a defendant's blood alcohol content. The committee recommended that all custodial interrogations involving crimes against persons be recorded, and that suspects in photo array lineups be pictured in noncustodial clothing. The committee recommended that prosecutors have sufficient knowledge of issues related to child sexual abuse and meet with victims in order to make informed charging decisions.

Tennessee Justice and Professionalism Committee. Started in September 2013 as an ad hoc committee, this committee'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 committee's "Prosecutorial Ethics Education Series" was initiated to produce and distribute presentations on key topics. To date, the committee has produced two

DVDs, one on constitutional discovery, and the other on discovery responsibilities of the prosecutor. It plans to produce two more on “Open Records” and “Ethical and Constitutional Considerations in Closing Arguments.”

Colorado Best Practices Committee for Prosecutors (CBPCP). In April 2014 the Colorado District Attorneys’ Council and Colorado Attorney General’s Office announced the formation of the CBPCP, which functions as a think tank for prosecutors, analyzing and providing guidance on developing trends in the law, effective legal practices, and technology issues. One noteworthy CBPCP project was its evaluation of the state’s law enforcement and prosecutorial practices for administering eyewitness identification procedures. Based on the committee’s in-depth analysis, the Colorado District Attorneys’ Council was able to work with members of the Colorado legislature, law enforcement leaders, the Innocence Project, and other stakeholders to craft legislation to improve the state’s eyewitness identification procedures. After the law was enacted in April 2015, CBPCP drafted a model eyewitness identification policy and model forms to assist state law enforcement agencies as they conform their policies to the new requirements.

Virginia Committee on Justice and Professionalism. Established in September 2014, the Virginia Association of Commonwealth’s Attorneys 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. 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

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BOOKS AND OTHER RECENT PUBLICATIONS: *Trial Tactics*; *Street Legal*; *The Citizenship Flowchart*; *The State of Criminal Justice*; *Leapholes* (fiction); *Achieving Justice: Freeing the Innocent, Convicting the Guilty*; *ABA Standards for Criminal Justice*; *Annual Survey of Supreme Court Decisions*; *Asset Forfeiture: Practice and Procedure in State and Federal Courts*; *The Child Witness in Criminal Cases*; *The Criminal Lawyer’s Guide to Immigration Law*; *The Shadow of Justice* (fiction).

students who have demonstrated an interest in a prosecution career. The clinic, conducted in the spring semester of 2016, focused on two best practices areas: (1) use of force and (2) witness protection.

California Council for Criminal Justice Integrity (CCJI). Established in October 2014, CCJI serves the state’s 58 county district attorney’s offices. Its members are 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. CCJI’s goals is to use the subcommittees’ findings to (1) develop and implement training programs in those areas throughout the state; (2) write recommendations to be sent to all district attorneys for consideration; (3) publish articles in the California District Attorneys Association’s (CDAA’s) *Prosecutor’s Brief* to inform prosecutors throughout the state on successful practices; (4) develop and present training webinars on successful practices;

(5) coordinate delivery of information to the state legislature; and (6) create a social media and web presence for CDAA, including maintaining a “CA Best Practices” page on *Prosecutor’s Encyclopedia*.

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. (For further information, see pceinc.org.) ■